

Dated :

4 May 2021

GLYNDWR UNIVERSITY (1)

To

WREXHAM COUNTY BOROUGH COUNCIL (2)

UNILATERAL UNDERTAKING

Pursuant to Section 106 of the Town and Country Planning Act 1990

relating to Land north of Holt Road Wrexham

THIS DEED is dated the day of two thousand and twenty one

PARTIES

(1) **GLYNDWR UNIVERSITY** of Glyndwr University, Plas Coch Campus, Mold Road, Wrexham LL11 2AW ("the Owner")

TO

(2) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham, LL11 1AY ("Council")

INTRODUCTION

- (1) The Council is the local planning authority for the purposes of this Undertaking and the Town & Country Planning Act 1990 (as amended) for the area within which the property described in the First Schedule hereto is situate and by whom the obligations contained within this Undertaking are enforceable
- (2) The Owner is the registered proprietor of the Site
- (3) The Owner has submitted the Application to the Council to carry out the Development on the Site
- (4) The Council refused the Planning Application ('the Planning Refusal') on the 1st July 2019 and the Owner submitted an Appeal under section 78 of the 1990 Act to the Planning Inspectorate
- (5) The Owner has entered into this Undertaking so as to create planning obligations in favour of the Council pursuant to Section 106(3) of the Act and to be bound by and observe and perform the covenants hereinafter contained should the Inspector appointed by the Welsh Minister determine to grant Planning Permission

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Undertaking the following expressions shall have the following meanings:

"Act" means the Town and Country Planning Act 1990

"Affordable Housing" means subsidised housing which will be available to Eligible Persons including (without limitation) Intermediate Rented Housing, Shared Equity Housing, Shared Ownership Housing and Social

	Rented Housing and which shall comprise 25% of the Dwellings to be built on Site (rounded down to the nearest whole number)
“Affordable Housing Contribution”	means the sum calculated in accordance with Part 8 of the Fourth Schedule and due to the Council
“Affordable Housing Disposal”:	a transfer or lease of one or more of the Affordable Housing Units by the Owner to an RSL.
“Affordable Housing Units”	means the Dwellings provided as Affordable Housing as part of the Development.
“Affordable Housing Transfer”	means the transfer of either a freehold interest or leasehold interest of not less than 125 years of the Affordable Housing Units by the Owner to the Registered Social Landlord
“Appeal”	means the appeal against the Council’s refusal of the Application
“Application”	means the application for outline planning permission dated 10 th August 2018 submitted to the Council for the Development and allocated reference number planning application ref P/2018/0673.
“CCOHE”	means the Council’s Chief Officer – Housing & Economy for the time being in post or his duly appointed representative or any successor post with responsibility for housing.
“Close Family Connection”	means members of family as described in Section 113 of the Housing Act 1985
“Commencement of Development”	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Undertaking and for no other purpose) operations consisting of site clearance, demolition work, earth works, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” or “Commenced Development” shall be construed accordingly.
“Commencement of Development	the carrying out of a Material Operation within a

of a Dwelling Phase”:	Dwelling Phase notwithstanding that the Planning Permission may have been implemented.
“Development”	means the development of the Site consisting as set out in the Application including Affordable Housing
“Discounted Sale Housing”	means Affordable Housing Units sold or available for sale by way of a Discounted Housing Lease and “Discounted Sale Housing Unit” shall refer to any single Dwelling provided as such
“Discounted Housing Disposal”	means a lease for a term of not less than 125 years or a freehold disposal of an Affordable Housing Unit to an Eligible Person for a premium or consideration equal to but not more than the Discounted Value on terms that include those set out in Part 6 of the Fourth Schedule
“DHD Housing”	means Affordable Housing Units sold or available for sale by way of a Discounted Housing Disposal and “DHD Unit” shall refer to any single Dwelling provided as such
“DHD Owner”	means the owner of the freehold or leasehold of a DHD Unit
“DHD Transfer”	means a lease or TP1 transfer effecting a Discounted Housing Disposal
“Discounted Housing Lease”	means a lease for a term not less than 125 years of a Discounted Sale Housing Unit granted by the Registered Social Landlord to an Eligible Person at a premium equal to or not more than the Discounted Value on terms which include those set out in Part 3 of the Fourth Schedule.
“Discounted Value”	means 70% of the Market Value
“Dwellings”	means the residential units (including houses, flats or maisonettes) permitted as part of the Development and “Dwelling” shall be construed accordingly which shall include for the avoidance of doubt Market Housing Units and Affordable Housing Units. “Dwelling Phase”: any Phase of the Development that comprises a Dwelling.
“Equity Price”:	70% of the Market Value of a Shared Equity Unit.
“Education Contribution”	means the sum to be paid by the Owner to the Council in accordance with the provisions of the Second Schedule of this undertaking
“Eligible Person”	means a person as defined in Part 7 of the Fourth Schedule

“Expert”	means an independent and suitable person holding appropriate professional qualifications appointed in accordance with the provisions of Clause 16 to determine a dispute
“First Charge”:	a legal charge entered into between a Shared Equity Owner and a mortgagee and which shall secure against a Shared Equity Unit any mortgagees lending (of up to the Equity Price) together with any interest on the debt owed to any mortgagee by the Shared Equity Owner at the time that any mortgagee shall enter into possession together with the costs of enforcing the First Charge and the reasonable costs of marketing and disposal of the Shared Equity Unit by any mortgagee.
“Freeholder RS”L:	the RSL that owns the freehold of a Shared Ownership Unit.
“Index”	All Items Index of Retail Prices issued by the Office for National Statistics
“Interest”	interest at 5 per cent above the base lending rate of the Barclays Bank Plc from time to time.
“Intermediate Rented Housing”	means housing unit let by an RSL at a rent equal to or less than 80% of the open market rental (being the rent which that unit would secure in the open market as between a willing lessor and a willing lessee acting at arm’s length) or the maximum amount of local housing allowance which would be payable for such a unit on terms that include those set out in Part 5 of the Fourth Schedule
“Low Cost Home Ownership Register”:	the register maintained by the Council or its nominated agent for the purpose of providing access to properties at less than market value for persons who cannot afford to buy housing generally on the open market.
“Market Housing Units”:	those Dwellings which are general market housing for sale on the open market and which are not Affordable Housing.
“Market Value”	means (in respect of any Affordable Housing Units other than the Social Rented Housing) the price at which the Affordable Housing Unit might reasonably be expected to be sold at arm’s length by a willing seller to a willing buyer with vacant possession taking into account all encumbrances to which the Affordable Housing Unit is subject (other than the affordable housing obligations contained in this Agreement) or if such sum cannot be agreed the Market Value shall be determined by an independent qualified valuer

	appointed by agreement between the parties or failing agreement by the President for the time being of the Royal Institution of Chartered Surveyors and the cost of the independent qualified valuer shall be paid by the parties to the referral in such proportions as the valuer shall specify and valuer shall be entitled to make awards as to costs.
"Material Operation"	means a material operation as defined in Section 56 subsection 4(a) to (e) of the 1990 Act to implement the Planning Permission
"Nominated RSL":	an RSL that holds a Second Charge
"Occupation":	use of a Dwelling for residential use but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and Occupied shall be construed accordingly
"Plan A"	means the plan exhibited in the First Schedule
"Person in Housing Need"	means a person who by reason of their limited income is unable to purchase a home suitable for their needs on the open market
Planning Permission"	means the planning permission issued by the Minister pursuant to the Appeal and any associated Reserved Matters Approval to include any applications made under Section 73 of the Act
"POS Scheme"	means the scheme relating to the implementation and management of the Public Open Space submitted to and approved in writing by the Council pursuant to the Application and relevant conditions of the Planning Permission
"POS Transfer"	means a transfer of the Public Open Space to a Residents Management Company
"Playing Fields & Park Contribution"	means the land used for Sports and Recreation hatched brown on Plan A
"Playing Fields Transfer"	means the land hatched brown on Plan A used for Sports and Recreation being offered for transfer to: (i) Wrexham County Borough Council; or (ii) The Community Council; to be used solely for the use of sports and / or recreational use. Such transfer as outlined in Schedule Three Part 2
"Practical Completion"	means the issue of a certificate of practical completion by NHBC by way of the usual NHBC cover note
"Public Open Space"	means the areas such areas of public open space

	trees hard and soft landscaping planted features driveways parking areas on the Development in accordance with conditions of the Planning Permission
Redemption Money:	the sum required to discharge the Second Charge.
RSL:	a registered social landlord as defined in Part 1 of the Housing Act 1996.
"Residents Management Company"	means a registered company limited by guarantee that has been formed for the purposes of amongst other obligations maintaining the Public Open Space and for complying with and carrying out the requirements of the POS Scheme
"Registered Social Landlord" (RSL)	means a body registered pursuant to the Housing Act 1996 or any register replacing the register under the Housing Act 1996 or any other affordable housing provider or providers approved by the Council.
"Reserved Matters Approval"	the grant of any application for reserved matters approval required pursuant to the Planning Permission
"Second Charge":	a legal charge to be entered into by the Shared Equity Owner for the time being in favour of the Council or a Nominated RSL in respect of up to 30% of the Market Value of a Shared Equity Unit, subject always to the Second Charge ranking second in priority to any First Charge.
"Shared Equity Disposal":	a disposal to an Eligible Person by a freehold transfer or by a lease for a term of not less than 125 years (or an assignment thereof) of a Shared Equity Unit.
"Shared Equity Housing":	a form of affordable housing whereby the purchaser acquires a 100% equity share in an Affordable Housing Unit subject to a Second Charge and with a restriction in perpetuity upon the future sale price of it.
"Shared Equity Owner":	a freeholder or a leaseholder (as appropriate) of a Shared Equity Unit.
"Shared Equity Unit":	an Affordable Housing Unit sold or available for sale as Shared Equity Housing on the Development.
"Shared Owner"	means a leaseholder under a Shared Ownership Lease
"Shared Ownership Housing":	a form of Affordable Housing which is provided by an RSL on the basis of part rent and part sale

“Shared Ownership Interest”:	the specific equity share in the Shared Ownership Unit held by the Shared Owner.
“Shared Ownership Unit”:	an Affordable Housing Unit sold or available for sale as Shared Ownership Housing.
“Shared Ownership Lease”	means a lease of an Affordable Housing Unit granted by a Registered Social Landlord to an Eligible Person for a term of not less than 125 years containing the terms set out in the Fourth Schedule hereof at a premium of between 25% and 90% of Market Value and requires the Eligible Person to pay rent to the Registered Social Landlord in respect of the remaining percentage of the value of the leasehold.
“Social Rented Housing”	means Affordable Housing Units and Intermediate Rented Housing let to the Registered Social Landlord in accordance with Part 4 of the Fourth Schedule hereof
“Sports and Recreational Use”	means the use of the brown land on Plan A for organised competitive physical sports i.e. football
“Staircase”	means in respect of Shared Ownership Housing to acquire pursuant to the provisions of the Shared Ownership Lease a share of the equity in the relevant Affordable Housing Unit in addition to the tenant’s existing share up to a maximum share of the equity in the relevant Affordable Housing Unit and “staircasing” shall be construed accordingly.
“Site”	means the land subject to this Undertaking as shown edged red on the Plan more particularly described in the First Schedule.
“Unrestricted Housing Unit”	means those dwelling units to be erected in the Development which are not to be Affordable Housing Units and “Unrestricted Housing” shall be construed accordingly.
“Working Days”	any day falling between Monday and Friday (both days inclusive) upon which the clearing banks in the city of London are open for normal business which is not Good Friday or a statutory Bank Holiday

2 CONSTRUCTION OF THE UNDERTAKING

- 2.1 Where in this Undertaking reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Undertaking.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

- 2.4 The Headings of this Undertaking are for convenience only and shall not affect its interpretation
- 2.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.6 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.7 References to any party to this undertaking shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions.

3 LEGAL BASIS

- 3.1 This Undertaking is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Undertaking create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner and to the extent that any of the obligations are not planning obligations within the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and will be registered as such
- 3.3 The Undertaking is a Local Land Charge for the purposes of the Local Land Charges Act 1975 and will be registered as such.

4 CONDITIONALITY

This Undertaking is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development;

save for the provisions of Clauses 5.1, 7.1, 9, 13 and 14 (commencement of development, legal costs, jurisdiction and delivery) fees and any other relevant provisions which shall come into effect immediately upon completion of this Undertaking.

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council as set out in this Undertaking PROVIDED ALWAYS that the Owner shall not be obliged to comply with an obligation set out in this Undertaking if in determining the Appeal the Planning Inspector expressly states that the obligation either:-
- a) is not necessary to make the Development acceptable in planning terms; or
 - b) is not directly related to the Development; or
 - c) it is not fairly and reasonably related in scale and kind to the Development; or
 - d) is an immaterial planning consideration; or
 - e) has not weight attached to it in determining the Appeal
- 5.2 The Owner shall serve on the Council a notice of Commencement of Development not less

than two days before Commencement of Development.

6 MISCELLANEOUS

- 6.1 No provisions of this Undertaking shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 6.2 This Undertaking shall be registrable as a local land charge by the Council.
- 6.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Undertaking such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by Council's Chief Officer – Housing & Economy and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 6.4 Following the performance and satisfaction of all the obligations contained in this Undertaking or an event under Clause 7.6 the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Undertaking.
- 6.5 Insofar as any clause or clauses of this Undertaking are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Undertaking.
- 6.6 This Undertaking shall cease to have effect (insofar only as it has not already been complied with) if:-
 - 6.6.1 the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure
 - 6.6.2 the Planning Permission shall expire prior to the Commencement of Development; or
 - 6.6.3 the Site is developed under a new planning permission (other than one issued under Section 73 of the Act for variation or discharge of a condition of the Planning Permission) granted after the Planning Permission by the Council or any other competent authority and there has been no Commencement of Development.
- 6.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Undertaking after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.8 This Undertaking shall not be enforceable against owner-occupiers or tenants or lessees of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them or their mortgagee or chargee.
- 6.9 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Undertaking.
- 6.10 The provisions of Fourth Schedule (except for paragraph 5 of Part 5 and Part 6 thereof) shall not be binding on a mortgagee in possession of an Affordable Housing Unit or a bona fide purchaser for value from such a mortgagee in possession or any receiver (or administrative receiver) appointed by such mortgagee (except a purchaser which is a RSL)

Provided that:

- 6.10.1 Such mortgage or receiver shall first have used reasonable endeavours over a period of three months in consultation with the Council's Head of Housing and Public Protection Office to dispose of the Affordable Housing to an RSL or otherwise in accordance with the Fourth Schedule; and
- 6.10.2 Such mortgagee or receiver shall have provided such evidence to the Council of such reasonable endeavours
- 6.11 The provisions of the Fourth Schedule (except for paragraph 5 of Part 5 and Part 6 thereof) shall not be binding on either:
 - 6.11.1 any successors in title to the Owner as owners or occupiers of the Market Housing Units on the Site and any mortgagee or charge (or receiver or administrative receiver) appointed and their successor in title;
 - 6.11.2 any leaseholder of a Shared Ownership Unit who has Staircased out to 100% or their mortgagee or charge (or receiver or administrative receiver) or successor in title; or
 - 6.11.3 any occupier of any other Affordable Housing Unit who have acquired 100% of the relevant Affordable Housing Unit under s statutory right to buy or acquire and their mortgagees and successors in title

7 WAIVER

No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 CHANGE IN OWNERSHIP

The Owner agrees to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Undertaking have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan

9 INDEXATION

Any sum referred to in the Schedules shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

10 INTEREST

If any payment due under this Undertaking is paid late, Interest will be payable from the date payment is due to the date of payment.

11 VAT

All consideration given in accordance with the terms of this Undertaking shall be exclusive of any value added tax properly payable.

12 JURISDICTION

This Undertaking is governed by and interpreted in accordance with the law of England and Wales.

13 DELIVERY

The provisions of this Undertaking (other than this clause which shall be of immediate effect) shall be of no effect until this Undertaking has been dated.

14 DISPUTE PROVISIONS

- 14.1 In the event of any dispute or difference arising between the parties in respect of any matter contained in this Undertaking, such dispute or difference shall be referred to an Expert to be agreed by the parties, or in the absence of agreement, to be appointed, at the request of any of the parties, by or on behalf of the president for the time being of the professional body chiefly responsible for dealing with such matters as may be in dispute and the decision of such an Expert shall be final and binding on the parties except in the case of manifest error
- 14.2 The Expert shall be appointed subject to an express requirement that the Expert shall reach a decision and communicate it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) Working Days from the date the Expert receives the written submissions of the parties pursuant to clause 15.3.
- 14.3 The Expert shall be required to give notice to each party inviting each party to submit within ten (10) working days of the Expert's appointment, written submissions and supporting material and shall afford each party a further five (5) working days to make counter-submissions to the written submissions of any other party.
- 14.4 The Expert's costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 14.5 The provisions of this Clause 15 shall not fetter the Council's power to enforce this Undertaking by way of an application for declaratory relief or injunction.

IN WITNESS whereof the Owner hereto has executed this Undertaking on the day and year first before written.

FIRST SCHEDULE

DESCRIPTION OF THE SITE

All that parcel of land being **Land north of Holt Road Wrexham** being the land registered at H M Land Registry in the name of the Owner with title absolute under title number CYM541599 shown edged in red on the Site Plan

SECOND SCHEDULE

Owner's Covenants – Education Contribution

1. Prior to the first occupation of 50% of Dwellings on the Development the Owner covenants to pay to the Council 50% of the Education Contribution with the balance being paid prior to the occupation of 85% of the Dwellings on the Development towards the provision, improvement or extension of primary education facilities at Borrass Park County School or to contribute towards the cost of the provision of a new primary school on the site identified as Key Strategic Site 2 (KSS2) in the Wrexham Local Development Plan 2013-2028 in accordance with the following formula:

Primary Education Contribution: -

A = no of One bedroom apartments x 0 (There is no sum payable in respect of One bedroom apartments)

B = No of Two+ bedroom apartments x £858.00 eight hundred and fifty-eight

C = No of 2 bedroom Dwellings x £1471.00 One thousand four hundred and seventy one pounds

D = No of 3 bedroom Dwellings x £2819.00 Two thousand eight hundred and nineteen pounds

E = No of 4+ bedroom Dwellings x £3800.00 Three thousand eight hundred pounds

Total Education Contribution = the total of A and B and C and D and E

2. For the avoidance of doubt it is acknowledged that the obligation to pay the Education Contribution is not conditional upon receiving any demand, request, invoice, or other communication from the Council
3. In the event that the Education Contribution is paid later than 12 (twelve) months from the Commencement of Development it shall be increased by the same percentage as the percentage increase in the all items figure of the Index of Retail Prices published two months before the date of payment when compared with the all items figure at the said Index in existence at the date of this Undertaking until the date of actual payment

THIRD SCHEDULE

Part 1

Owner's Covenants – Public Open Space and Residents Management Company

The Owner covenants with the Council:

1. Not to permit the occupation of any Dwelling until:-
 - 1.1 the Residents Management Company has been incorporated and
 - 1.2 a copy of the proposed articles of association of the Residents Management Company has been submitted to and approved in writing by the Council such approval not to be unreasonably withheld or delayed.
 - 1.3 a copy of the POS Scheme has been submitted to the Council
- 2 To submit to the Council the articles of association and certificate of incorporation of the Residents Management Company within 4 weeks of its incorporation
- 3 On the first disposal of each Dwelling to require the purchasers thereof and their successors in title to become members of the Residents Management Company with a view and to the intent that they can influence and contribute to the compliance with the obligations of this Schedule and to procure that a restriction is entered on the Proprietorship Register of all individual Dwellings in the following form:

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of paragraph 3 of the Third Schedule of the Unilateral Undertaking dated [insert date] made by Glyndwr University to Wrexham County Borough Council
4. To pay to the Residents Management Company a fair and reasonable proportion (with the intention that the sum of all contributions from the Dwellings on the Site shall equal 100%) of the outgoings of the Residents Management Company incurred in complying with the relevant obligations of this Schedule
5. To observe and perform the provisions of the POS Scheme and monitor and review it at least every 5 years and to obtain the approval of the Council to any amendments thereto so as to ensure that they remain appropriate and relevant over time
6. To provide in the POS Transfer a covenant in the following terms:

“ The Transferee hereby covenants in fee simple in perpetuity to observe and perform the covenants agreements obligations and stipulations contained or referred to in the Third

Schedule of the Unilateral Undertaking dated [insert date] 2021 made by Glyndwr University to Wrexham County Borough Council.”

7. Not to allow more than 50% of the Dwellings to be occupied until the POS Transfer has been completed and a certified copy of the POS Transfer and the enabling Residents Management Company’s board minute and resolution has been submitted to the Council in evidence thereof
8. To plant lay out and construct, and provide play equipment on, the Public Open Space in accordance with the POS Scheme the Planning Permission including reserved matters and this Undertaking
9. To comply with the POS Scheme and to maintain and manage in perpetuity the Public Open Space and any play equipment erected thereon in accordance with the POS Scheme the Planning Permission and this Undertaking
10. Not to use the Public Open Space for any purpose whatsoever other than as public open space for the benefit of the Development being landscaped and open grassed areas and as a play area nor cause permit or allow any structures other than play equipment in accordance with the Planning Permission or other obstructions whatsoever to be erected within the Public Open Space or deposit any waste or alter ground levels or light fires within the Public Open Space

Part 2

Owner’s Covenants – Playing Fields Transfer

The Owner covenants with the Council:

1. Prior to the commencement of the Development, the Owner must offer the land hatched Brown on the attached Plan A to;
 - (a) Wrexham Borough Council. Should Wrexham Borough Council choose not to accept the Land within one month of the Owner making the offer, the Owner shall offer the land to;
 - (b) Acton Community Council. Should Acton Community Council choose not to accept the land within one month from the offer from the Owner, the land shall be retained by the Owner or its successor in title.

In all events, the land in its entirety shall be made available for, and maintained for use for sports and/or recreation, and used solely for the use of sports and/or recreation.

If the land hatched Brown on the attached Plan A is retained by the Owner or its successor in title, it will form part of the POS Scheme, and be managed as per part 1 to this schedule.

FOURTH SCHEDULE

AFFORDABLE HOUSING

Part 1 - General Obligations

The Owner hereby covenants with the Council to:

1. To design and construct the Affordable Housing Units (to comprise 25% (rounded down to the nearest whole number) of the total number of Dwellings on Site) in accordance with the Planning Permission.

Not to dispose of the Affordable Housing Units other than to an RSL by way of the Affordable Housing Disposal or to an Eligible Person by way of a Shared Ownership Disposal or a Shared Equity Disposal (as set out in paragraph 1 of Parts 2, 3, 4, 5 and 6 hereof) Provided That the Council and the owners of the Affordable Housing Units may by agreement prescribe terms for the disposal of different types of Affordable Housing not detailed in this Undertaking (both parties acting reasonably and without delay in agreeing such terms) Provided That such agreement is legally secured by way of a supplemental agreement made under Section 106 of the Act.

Give to the Council notice in writing of a disposal of its interest in any Affordable Housing Unit and its interest in any part of the Site (excluding Market Housing Units) occurring before all the obligations in this Undertaking have been discharged such notice to be given within 10 Working Days of such transfer and giving details of the transferee's full name and usual address (registered office if a company) together with a plan showing the area of the Site transferred.

Prior to Commencement of Development of a Dwelling Phase to provide the Council's Head of Housing and Economy the following details in so far as they are known for each Affordable Housing Unit within such Dwelling Phase:

postal address;

gross and net floor area;

anticipated practical completion date (subject to market conditions); and

plans indicating location, elevations and internal layout.

Following receipt of the decision letter confirming the grant of the Planning Permission and prior to the commencement of a Material Operation to approach an RSL and to pursue negotiations with all due diligence in order to comply with the obligations contained in this Undertaking and to offer the Affordable Housing Units (other than those designated as Shared Equity Units) for sale to an RSL on terms that have due regard to the restrictions affecting such Affordable Housing Units contained in this Undertaking.

Following a written request from the Council, to provide to the Council such information concerning the progress of negotiations for Affordable Housing Disposals with an RSL or Shared Equity Disposals to Eligible Persons (as appropriate) as shall reasonably be required by the Council.

Not to use any part of the Site on which the Affordable Housing Units are to be constructed for any purpose other than the provision of Affordable Housing in accordance with this Undertaking.

Not to use the Affordable Housing Units for any purpose other than for the provision of Social Rented Housing, Shared Ownership Housing, Shared Equity Housing and Intermediate Rented Housing (subject to the proviso set out in paragraph 2 of this Part) and to respond to any request from the Council for information as to the tenure of each Affordable Housing Unit within 10 Working Days of receipt such request to be made on no more frequent a basis than once every six months.

To keep such full and proper records as are reasonably required to demonstrate to the Council strict compliance with the affordable housing obligations contained in this Undertaking and any supplementary agreement thereto.

Not to allow the occupation of more than 50% (fifty percent) of the Market Housing Units within any Dwelling Phase until the Affordable Housing Units within that Dwelling Phase have been constructed, are ready for Occupation and have been disposed of (or evidence has been provided to the Council that the Owner is actively marketing and has used reasonable endeavours to procure such disposals) by way of an Affordable Housing Disposal to an RSL and/or Shared Equity Disposals to Eligible Persons.

On each Shared Equity Disposal and Shared Ownership Disposal the owner thereof shall pay to the Council or the RSL nominated by the Council a sum equivalent to 0.50% of the Market Value of the percentage share purchased by an Eligible Person on completion of that sale, to cover the costs of the Council or the RSL nominated by the Council in administering the Low Cost Home Ownership Register.

Part 2

Social Rented Housing

1. Not to dispose of the Affordable Housing Units which are provided as Social Rented Housing other than by way of an Affordable Housing Disposal in accordance with the provisions of this Part of this Schedule.
2. No Social Rented Housing shall be:
 - 2.1 let to or occupied by persons other than Eligible Persons; and
 - 2.2 let other than as Social Rented Housing by way of an assured or assured short hold tenancy (or such statutory form of tenancy as may replace such forms of tenancies from time to time)(subject to the proviso set out in paragraph 2 of Part 1 of this Schedule).

Part 3 - Intermediate Rented Housing

1. Not to dispose of any Affordable Housing Units which are provided as Intermediate Rented Housing other than by way of an Affordable Housing Disposal in accordance with the provisions of this Part of this Schedule.
2. No Intermediate Rented Housing shall be:
 - 2.1 let to or occupied by persons other than Eligible Persons; and

- 2.2 let other than as Intermediate Rented Housing by way of an assured or assured short hold tenancy (or such statutory form of tenancy as may replace such forms of tenancies from time to time) (subject to the proviso set out in paragraph 2 of Part 1 of this Schedule).

Part 4 - Shared Ownership Housing

1. Not to dispose of any Affordable Housing Unit which is provided as Shared Ownership Housing other than by way of Shared Ownership Disposal to an Eligible Person.
2. To procure that each Shared Ownership Disposal shall incorporate the following terms:
 - 2.1 a right of pre-emption in favour of the freeholder RSL; and
 - 2.2 a covenant whereby a Shared Owner who wishes to dispose of their interest in the Shared Ownership Unit (and where the freeholder RSL does not wish to exercise the right of pre-emption referred to in paragraph 2.1 of this Part) shall be prevented from disposing of their interest in the Shared Ownership Unit other than to an Eligible Person at no more than Market Value of their Shared Ownership Interest.
3. Not to sub-let or let (other than in accordance with this Part of this Schedule) any Shared Ownership Unit.
4. Shared Owners wishing to dispose of their interest in a Shared Ownership Unit shall comply with any reasonable procedure adopted by the Council (or its nominated agent) from time to time for arranging and administering the disposal to Eligible Persons of interests in Affordable Housing Units such as the Shared Ownership Units.
5. In the event that a Shared Owner wishes to dispose of their interest in a Shared Ownership Unit and such unit has been actively marketed for sale for a period of 20 weeks and no Eligible Person has exchanged unconditional contracts for the purchase of the said unit within that period Provided That:
 - 5.1 such unit has been offered for sale pursuant to paragraph 2.1 above and to an RSL or RSLs nominated by the Council and such RSLs have not exchanged unconditional contracts to buy such unit within such period;
 - 5.2 the price at which the Shared Ownership Unit has been offered for sale to Eligible Persons is no greater than the Market Value of the Shared Ownership Interest ascertained by agreement between the Shared Owner, any mortgagee of the Shared Owner and the freeholder RSL (**Parties**) or failing agreement at the expense of the Shared Owner by an independent qualified valuer appointed by agreement between the Parties or failing agreement by or on behalf of the president for the time being of the Royal Institution of Chartered Surveyors on the application of any party and the decision of such valuer shall be final; and
 - 5.3 the Shared Owner has reasonably demonstrated to the Council and the freeholder RSL that it has acted in good faith in considering any offers from Eligible Persons
- (A) Then the Shared Ownership Unit may be sold in the open market at Market Value (provided the freeholder RSL consents to such sale) free from the affordable housing restrictions

contained in this Undertaking Provided Further That where an Eligible Person or RSL has been identified as a potential purchaser of the Shared Ownership Unit within the said 20 week period the Shared Owner shall use reasonable endeavours to progress such sale and shall not dispose of the Shared Ownership Unit in the open market unless such potential sale is not completed within a further 20 weeks.

6. Following the sale of a Shared Ownership Unit on the open market pursuant to paragraph 5 above, the Shared Owner will remove the restriction set out at paragraph 11 of Part 1 above from the title of the Shared Ownership Unit at the Land Registry and the Shared Ownership Unit will no longer be bound by the terms of this Schedule.

Part 5- Shared Equity Housing Initial Sales

1. Not to dispose of the Affordable Housing Units provided as Shared Equity Housing other than by way of a Shared Equity Disposal to an Eligible Person at a price no greater than the Equity Price.
2. No Shared Equity Disposal shall be completed without the new Shared Equity Owner simultaneously entering into a Second Charge.
3. That upon first acquiring an interest in a Shared Equity Unit the Shared Equity Owner shall not borrow from any mortgagee nor charge a Shared Equity Unit under a First Charge for a sum in excess of 70% of the Market Value of the Shared Equity Unit without the consent of the Council or the Nominated RSL (as appropriate) providing that nothing in this paragraph shall prevent or prohibit a Shared Equity Owner from later increasing its borrowings from any mortgagee in order to discharge and secure release from the Second Charge.
4. Each Shared Equity Disposal shall contain a restriction whereby the Shared Equity Owner who wishes to dispose of their interest in the Shared Equity Unit shall be prevented from making that disposition other than in accordance with Part 6 of this Schedule.
5. In the event that the Shared Equity Unit is sold by a mortgagee in possession without the provisions of this Undertaking being binding upon it (pursuant to clause 6.10 hereof), the mortgagee shall, in so far as it is able to from the proceeds of sale of the Shared Equity Unit and in any event only after deduction of any monies owing to the mortgagee pursuant to the First Charge, pay to the Council or Nominated RSL as the Council may determine, the Redemption Money within one week of completion of the sale of the Shared Equity Unit and provide the CCOHE (or such other officer undertaking the duties of a chief housing officer) with an account of the amount due pursuant to this paragraph.
6. Not to let (other than by way of a Shared Equity Disposal) or sub-let the Shared Equity Unit.
7. The provisions of this Part of this Schedule shall only apply to the initial sale of Shared Equity which means the first disposal of the Shared Equity Housing Unit.
8. In the event that a Shared Equity Unit has been actively marketed for sale for a period of six months and no Eligible Person has exchanged unconditional contracts for the Shared Equity Unit within that period and no RSL has conditionally contracted to buy such units within such period then the Shared Equity Unit may be sold in the open market at Market Value free from the affordable housing restrictions contained in Schedule 3 of this Undertaking Provided That

within two working days of legal completion of such sale, a payment of 30% of the sale proceeds (**Commuted Sum**) is paid to the Council by the Owner to be used for the provision of Affordable Housing within the Wrexham County Borough Council administrative area within five years of receipt Provided Further That where an Eligible Person or RSL has been identified as a potential purchaser of the Shared Equity Unit within the said six month period the Owners shall use reasonable endeavours to progress such sale and shall not dispose of the Shared Equity Unit in the open market unless such potential sale is not completed within a further 20 weeks.

9. The payment of the Commuted Sum is conditional upon that if at any time after the fifth anniversary of the receipt by the Council of the Commuted Sum at the Owner request then the Council will provide (subject to the Owner paying the Council's reasonable and proper expenses in connection with providing the same) written confirmation as to whether the whole or any part of the Commuted Sum has been expended or committed for expenditure in accordance with paragraph 8 above and in the event that the Council fails within 3 calendar months of such request to provide written confirmation that the whole of the Commuted Sum paid by the Owner to the Council pursuant to paragraph 8 above has been expended by the Council or committed towards the designated purposes within 5 years from the receipt by the Council of the Commuted Sum then the Council shall repay all or part of the Commuted Sum for which that written confirmation has not been given to the person or persons who actually paid the Commuted Sum together with all interest accrued thereon

Part 6 - Shared Equity Housing Subsequent Sale

1. Not to dispose of the Affordable Housing Units provided as Shared Equity Housing other than by way of a Shared Equity Disposal to an Eligible Person at a price no greater than the Equity Price.
2. That no Shared Equity Disposal shall be completed without the new Shared Equity Owner simultaneously entering into a Second Charge.
3. That upon first acquiring an interest in a Shared Equity Unit the Shared Owner shall not borrow from any mortgagee nor charge a Shared Equity Unit under a First Charge for a sum in excess of 70% of the Market Value of the Shared Equity Unit without the consent of the Council or the nominated RSL (as appropriate) providing that nothing in this paragraph shall prevent or prohibit a Shared Equity Owner from later increasing its borrowing from any mortgagee in order to discharge and secure release from the Second Charge.
4. No Shared Owner shall transfer the Shared Equity Unit without first having notified the Council or its nominated RSL (as appropriate) in writing of their intention to dispose of the Shared Equity Unit.
5. In the event that the Shared Equity Housing Unit is sold by a mortgagee in possession without the provisions of this Undertaking being binding upon it (pursuant to clause 6.10 hereof), the mortgagee shall, in so far as it is able to from the proceeds of sale of the Shared Equity Unit and in any event only after deduction of any monies owing to the mortgagee pursuant to the First Charge, pay to the Council or Nominated RSL (as appropriate), the Redemption Money within one week of completion of the sale of the Shared Equity Unit and provide the Council's Head of Housing and Public Protection (or such other officer undertaking the duties of a chief housing officer) with an account of the amount due pursuant to this paragraph.

6. Not to let (other than by way of a Shared Equity Disposal) or sub-let the Shared Equity Unit.
7. In the event that a Shared Equity Unit has been actively marketed for sale for a period of 20 weeks and no Eligible Person has exchanged unconditional contracts for the purchase of the Shared Equity Housing Unit within that period Provided That:
 - 7.1 the price at which the Shared Equity Housing Unit has been offered for sale to Eligible Persons is no greater than its Market Value ascertained by agreement between the Shared Owner, any mortgagee of the Shared Owner, and the Nominated RSL (**Parties**) or failing agreement at the expense of the Shared Owner by an independent qualified valuer appointed by agreement between the Parties or failing agreement by or on behalf of the president for the time being of the Royal Institution of Chartered Surveyors on the application of any party and the decision of such valuer shall be final;
 - 7.2 the Shared Equity Owner has reasonably demonstrated to the Council that it has acted in good faith in considering any offers from Eligible Persons; and
 - 7.3 such unit has also been offered for sale to the Nominated RSL and any other RSL or RSLs put forward by the Council and that such RSL(s) have not exchanged unconditional contracts to buy such unit within such period
- (B) then the Shared Equity Unit may be sold in the open market at Market Value free from affordable housing restrictions contained in this Undertaking Provided Further That where an Eligible Person or RSL has been identified as a potential purchaser of the Shared Equity Housing Unit within the said 20 week period the Shared Equity Owner shall use reasonable endeavours to progress such sale and shall not dispose of the Shared Equity Unit in the open market unless such potential sale is not completed within a further 20 weeks.
8. In the event that the Shared Equity Unit is sold on the open market pursuant to paragraph 7 the Shared Equity Owner shall pay the Redemption Money to the Council of the Nominated RSL (as appropriate) to redeem the Second Charge within two days of legal completion Provided That such funds received by the Council or the Nominated RSL (as appropriate) shall be used for the provision of Affordable Housing within the Wrexham County Borough Council administrative area as agreed between the Council and the nominated RSL within five years of receipt.
9. Following receipt by the Council or Nominated RSL of the Redemption Money in the circumstances set out in paragraphs 5, 7 or 10 hereof the owner of the Shared Equity Unit will remove the restriction set out at paragraph 11 of Part 1 above from the title of the Shared Equity Unit at the Land Registry.
10. Nothing in this Part shall prevent or prohibit a Shared Equity Owner from paying the Redemption Money to the Council or the Nominated RSL (as appropriate) in order to discharge the Second Charge Provided That the Redemption Money received by the Council or the Nominated nominated RSL (as appropriate) shall be applied for the provision of Affordable Housing within the administrative area of Wrexham County Borough Council as agreed between the Council and the nominated RSL within five years of receipt.

11. It is acknowledged that where a Shared Equity Owner disposes of a Shared Equity Unit to an RSL pursuant to paragraph 7 above the RSL shall not be required to enter into a Second Charge and may use or dispose of such unit (as appropriate) to provide Affordable Housing in accordance with any of the methods of doing so permitted by this Undertaking
12. The provisions of this Part of Schedule 3 shall only apply to the sale of Shared Equity Housing after the initial sale.

Part 7 - Definition of an "Eligible Person"

1. An Eligible Person means a Person in Housing Need identified from the Low Cost Homes Ownership Register or the Council's housing waiting list (as appropriate) who:
 - 1.1 has resided personally or who has had a Close Family Connection in the Acton Community Council Area for a continuous period of one year immediately preceding the proposed Occupation of an Affordable Housing Unit; or
 - 1.2 is in permanent full time employment at a location within the Acton Community Council Area and has been in such employment for a period of six months immediately preceding the proposed occupation of an Affordable Housing Unit; or
 - 1.3 has previously resided in the Acton Community Council Area for a continuous period of five years; or
 - 1.4 has previously had a Close Family Connection in the Acton Community Council Area for a continuous period of five years; or
 - 1.5 has previously been in employment in the Acton Community Council Area for a continuous period of five years.
2. Provided That if:
 - 2.1 no person meeting the requirements in paragraph 1 above can be identified from the Low Cost Homes Ownership Register or the Council's housing waiting list (as appropriate); and
 - 2.2 a period of not less than four weeks has elapsed after an advertisement seeking a person who meets the requirements of paragraph 1 has been placed in a newspaper circulating in the Wrexham locality

(C) then the references in paragraph 1 of this Part to the Acton Community Council Area shall be treated as if they included references to the Abenbury, Caia Park, Gresford, Gwersyllt, Holt and Rhosddu and any person who satisfies one of the said criteria by virtue of such treatment shall be regarded as an Eligible Person for the purposes of this Undertaking.
3. Provided Further That where no person who qualifies or who can be regarded as qualifying as an Eligible Person pursuant to paragraph 2 of this Part can be identified from the sources mentioned therein after at least one advertisement has been placed in a newspaper circulating in the locality then after a period of not less than eight weeks the references in paragraph 1 of this Part to the Acton Community Council Area shall be treated as if they included reference to the Wrexham County Borough Council Area and any person who satisfies the said criteria by virtue of such treatment shall be regarded as an Eligible Person for the purposes of this

Undertaking.

4. Provided Further That if no applicant qualifies under paragraph 3 above within 12 weeks, then any other person who in the opinion of the RSL or Council (as appropriate) is a Person in Housing Need shall be treated as an Eligible Person.

Part 8 - Calculation of "Affordable Housing Contribution"

1. Should the number of Affordable Housing Units provided within each Dwelling Phase result in a fraction of an Affordable Housing Unit then within 30 days of the date of first Occupation of the last Affordable Housing Unit within each Dwelling Phase the Affordable Housing Contribution for that Dwelling Phase shall be calculated by the Owner and notified in writing to the Council in accordance with the following formula:

$D/N \times Y = \text{Affordable Housing Contribution}$

Where

D = total value of discount for Affordable Housing Units in each Dwelling Phase

N= total number of Affordable Housing Units in each Dwelling Phase

Y = The fraction of an Affordable Housing Unit which may occur as a result of the requirement for 25% of the Dwellings on Site to be Affordable Housing

2. Within 21 days of the amount of the Affordable Housing Contribution within each Dwelling Phase being notified to the Council the Owner shall pay the Affordable Housing Contribution to the Council PROVIDED THAT it is a condition of the payment of the Affordable Housing Contribution that such funds shall be used by the Council for the provision of Affordable Housing within the Wrexham County Borough Council administrative area within 5 years of receipt and FURTHER PROVIDED THAT any part of the Affordable Housing Contribution that remains unspent by the Council after the period of 5 years from the date of receipt shall be refunded to the person that made the payment.

FIFTH SCHEDULE

Owners Covenants - Discharge of obligations

1. The Owner covenants to pay the Education Contribution, Playing Fields and Parks Contribution and Affordable Housing Contribution ('the contributions') under the terms of this Undertaking for the purpose specified in this Undertaking for which they are paid.

GLYNDWR UNIVERSITY acting by a

Director and its Secretary or two Directors:-



.....

Director



.....

Director