

DATED:

9th January

2016 7

**Planning Obligation by Deed of Agreement
under Section 106 of the
Town and Country Planning Act 1990
relating to Land off North Road,
Ponciau, Wrexham**

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

FREEDOM LAND DEVELOPMENTS LIMITED (2)

and

PHIL HUGHES (3)

Trevor Coxon
Head of Corporate and Customer Services
The Guildhall
Wrexham
LL11 1AY

Ref: LL/019638

DATE:

9th January

2016

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham, LL11 1AY (hereinafter referred to as "the Council")
- (2) **FREEDOM LAND DEVELOPMENTS LIMITED (Company Regn. No.5906547)** of 67 Bangor Road Johnstown Wrexham LL14 2SR (hereinafter referred to as "the Owner")
- (3) **PHIL HUGHES** of Chapter House, 5a Ffordd Dolgoed, Mold, Flintshire, CH7 1PE (hereinafter referred to as "the Developer")

INTRODUCTION

- (1) The Council is the Local Planning Authority for the purposes of this Deed 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 is the Local Planning Authority by whom a Planning Obligation is enforceable.
- (2) The Owner is the registered proprietor of the Site.
- (3) The Developer has submitted the Applications to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- (4) The Council resolved on the 1st February 2016 to grant the Planning Permissions subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:-

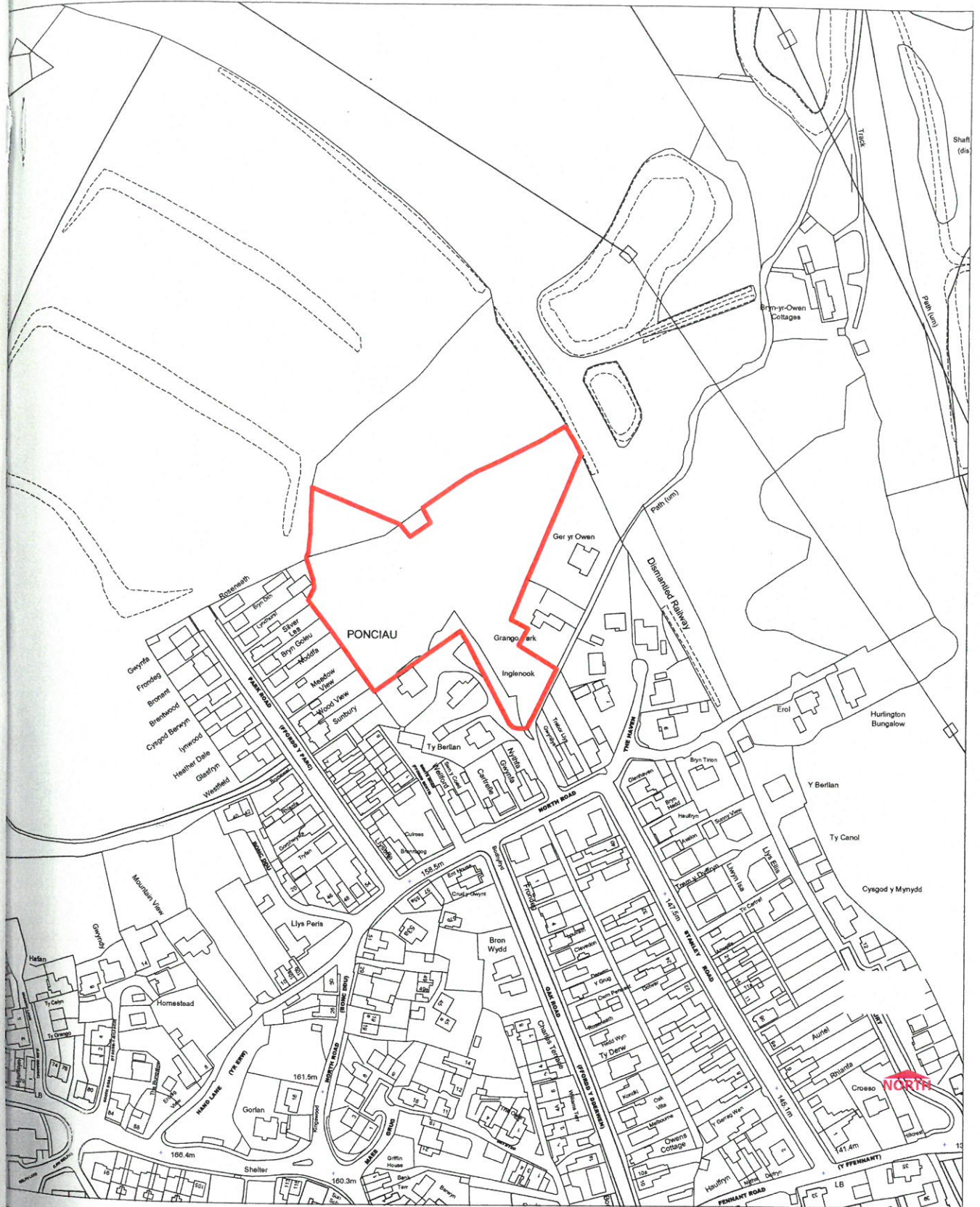
"Act"	the Town and Country Planning Act 1990
"Applications"	the application for outline planning permission dated 25 th March 2015 submitted to the Council for the Development and allocated reference number P/2015/0382 and the delegated decision dated 14 th July 2016 granted by the Council for the Development and allocated reference number P/2016/0458
"Commencement of Development"	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

Deed and for no other purpose) operations consisting of site clearance, demolition work, 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 notice or advertisements and "Commence Development" shall be construed accordingly

"Development"	the development of the Site consisting as set out in the Application
"Index"	all Items Index of Retail Prices issued by the Office for National Statistics
"Interest"	interest at 5% above the base lending rate of the Barclays Bank Plc from time to time
"Plan"	the Plan attached to this Deed and referenced P/2015/0382 P/2016/0458
"Planning Permissions"	the draft full planning permissions subject to conditions to be granted by the Council pursuant to the Applications
"Practical Completion"	issue of a Certificate of Practical Completion by NHBC by way of the usual NHBC cover note
"Site"	the land subject to this Deed as shown edged red on the Plan and more particularly described in the First Schedule

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to that clause, paragraph or schedule or recital in this Deed.
- 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 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.
- 2.5 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 a



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Head of Environment and Planning
Planning Services
16 Lord Street, Wrexham LL11 1LG

Town & Country Planning Act 1990 Section 106 Obligation

P/2015/0382
P/2016/0458
Land Off, North Road
Ponciau
Wrexham



Date: 15/07/2016
Scale: 1:2500
OS Sheet: SJ2947

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instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

- 2.6 References to any party to this Deed 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 Deed 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 Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner

4 CONDITIONALITY

This Deed is conditional upon:

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

save for the provisions of Clauses 5.2, 7.1, 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 Deed.

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council as set out in the Second Schedule.
- 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 The Owner shall pay the Council on completion of this deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £1,250 (one thousand two hundred and fifty pounds).
- 6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.3 This Deed shall be registrable as a local land charge by the Council.
- 6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed 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 the Head of Community, Wellbeing and Development 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.

- 6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 6.6 Insofar as any clause or clauses of this Deed 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 Deed.
- 6.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if:-
 - 6.7.1 the Planning Permissions shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner) are modified by any statutory procedure;
 - 6.7.2 the Planning Permissions shall expire prior to the Commencement of Development; or
 - 6.7.3 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 Permissions by the Council or any other competent authority and there has been no Commencement of Development.
- 6.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed 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.
- 6.9 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permissions nor against those deriving title from them.
- 6.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permissions) granted (whether or not on appeal) after the date of this Deed.

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 Deed 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 with the Council 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 Deed 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 **INTEREST**

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

10 **VAT**

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

11 **JURISDICTION**

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

12 **DELIVERY**

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

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

Description of the Site

Land off North Road, Ponciau, Wrexham edged red on the Plan and registered at the Land Registry with title numbers CYM389912, CYM371084 and CYM389422.

SECOND SCHEDULE
Owner's Covenants – Public Open Space

1. Definitions

For the purpose of this Schedule, the following definitions apply:-

- 1.1 "the Common Parts" means all those parts of the Development which are not conveyed or to be conveyed to buyers of dwellings forming part of the Development and which include (without this list being exhaustive) access roads and ways (other than those to be adopted by the Council as highway authority), driveways, parking spaces, courtyards, pathways, footways, walls, fences, gates, lawns, shrubs, trees, ponds, hard and soft landscaped areas and planted features.
- 1.2 "the Company" means the company to be formed by the Owner for the purpose of the future management of the Common Parts.
- 1.3 "the Residents" means the purchasers of the individual dwellings constructed on the Site pursuant to the Planning Permissions

2. The Obligation

On Commencement of Development the Owner shall:-

- 2.1 form the Company and produce to the Council certified copies of the memorandum and articles of association and certificate of incorporation thereof.
- 2.2 procure that all Residents shall contemporaneously with the transfer of each such dwelling become a member or shareholder of the Company.
- 2.3 procure that every transfer of a dwelling constructed pursuant to the Planning Permissions contains a provision to secure to the Company in perpetuity by way of periodical payments from the purchaser thereof monies sufficient (when aggregated with those from the remainder of the Residents) to enable the Company to maintain the Common Parts to a standard commensurate with reasonable use and enjoyment thereof for domestic purposes arising from residential use of the dwellings on the Development by the Residents and, as necessary, refurbish the same from time to time and the Owner shall lodge with the Council a specimen of the said provisions on a date not later than fourteen days before the completion of the first transfer of any dwelling constructed as part of the Development.
- 2.4 On a date no later than fourteen days after the date when the last of the dwellings to be constructed pursuant to the Planning Permissions is occupied to transfer the fee simple absolute in possession in respect of the Common Parts to the Company and to lodge with the Council a certified copy of such transfer within fourteen days thereof.

2.5 constitute the Company so as to provide that:-

2.5.1 at the first annual general meeting thereof which falls due after the date specified in 2.4 above a majority of the directors then holding office shall retire,

2.5.2 at every election of directors after the date specified in 2.4 above a majority of the directors thereof shall be chosen from among the Residents.

3. Not to use the Common Parts for any purpose whatsoever other than as public open space for the benefit of the Development being landscaped or open grassed areas nor cause permit or allow any structures or other obstruction whatsoever to be erected within the Common Parts or deposit any waste or alter ground levels or light fires within the Common Parts.

CERTIFICATE

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above
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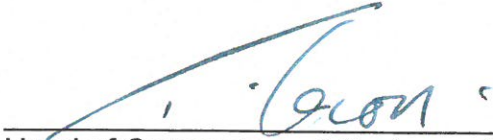
[Paul Andrews] of [Quarry Road No 10 Hales Graft] as
solicitor for the Owner (as defined in the within written Deed) hereby certifies that
Paragraph (2) of the Introduction to this Deed is correct.

Signed: 

Dated: 13/12/ 2016

EXECUTED as a **DEED** by affixing
THE COMMON SEAL of **WREXHAM**
COUNTY BOROUGH COUNCIL
in the presence of:-





Head of Corporate and Customer Services

396/16

EXECUTED as a **DEED** by
affixing the **COMMON SEAL** of  (DAVID PARRY - DIRECTOR)

FREEDOM LAND DEVELOPMENTS LIMITED

In the presence of: -

 (PHIL HUGHES DIRECTOR)

EXECUTED as a **DEED** by
PHIL HUGHES

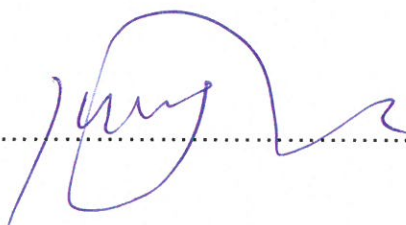
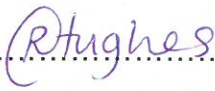
in the presence of:

Signature of Witness:

Name (*in block capitals*):

Address:

Occupation:


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MRS R HUGHES
.....
CHAPTER HOUSE
.....
5A Ffordd Dolgoed
.....
MOLD CH7 1PE
.....
ADMINISTRATOR
.....