

WALES & WEST HOUSING ASSOCIATION LIMITED (1)

TO

WREXHAM COUNTY BOROUGH COUNCIL (2)

UNILATERAL UNDERTAKING

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

in respect of Woodlands Farm, Dodds Lane, Gwersyllt, Wrexham, LL11
4NS

THIS DEED is given on the

day of

2019

BY:-

- (1) **WALES & WEST HOUSING ASSOCIATION LIMITED LIMITED** a registered society under the Co-operative and Community Benefit Societies Act 2014 (registration no 21114R) whose registered office is at Archway House, 77 Parc Ty Glas, Llanishen, Cardiff CF14 5DU ("the Owner");

TO:-

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

RECITAL

- (A) The Council is the local housing authority and the Local Planning Authority for the purposes of Section 106 of the 1990 Act for the area within which the Land is situated.
- (B) The Owner is the owner of the freehold interest in the Land registered at the Land Registry under title number CYM135598 free from encumbrances.
- (C) The Council's Planning Committee considered the Planning Application at its meeting on [01/04/19] and refused to grant the Planning Permission and issued the Refusal Notice on 1st April 2019 and the Developer has submitted the Appeal to the Planning Inspectorate.
- (D) The Owner has agreed to enter into this Deed in order to secure the provision of public open space, the provision of habitat mitigation and the provision of Affordable Housing in the event that Planning Permission is granted pursuant to the Appeal and to overcome any objections of the Council or the Secretary of State to the Planning Permission being granted.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

In this document unless the contrary intention appears the following terms shall have the following meanings:

"1990 Act"

means the Town and Country Planning Act 1990 as amended

“Affordable Housing”	Means subsidised housing which will be available to Eligible Persons including (without limitation) Intermediate Rented Housing, Shared Equity Housing and Social Rented Housing.
“Affordable Housing Unit(s)”	means that part of the Development []
“Appeal”	Means the appeal submitted by the Developer under reference APP/H6955/A/19/3233167 to the Secretary of State against the Refusal Notice issued by the Council
“COM Regulations”	means the Construction (Design and Management) Regulations 2007 including any modification extension or re-enactment of them or any other regulations of a similar nature in force at any time during the course of the Development
“Commencement of Development”	means the carrying out on the Land of any Material Operation
“Development”	means the development of the Land in accordance with the Planning Permission
“Development Requirements”	means: (i) In accordance with the Planning Permission; and (ii) In accordance with current building regulations; and (iii) In accordance with the COM Regulations.
“Dwelling”	means any residential unit (including a house, flat or maisonette) constructed on the Land pursuant to the Planning Permission which shall include for the avoidance of doubt Market Housing Units and Affordable Housing Units.
“Eligible Person”	Means a Person in Housing Need identified from the Low Cost Home Ownership Register or the Council's housing waiting list

“Freeholder RSL”	means the RSL that owns the freehold of a Shared Ownership Unit
“Habitat Management Plan”	means a management plan to be submitted by the Owner to the Council for approval by the Council and the National Rivers Authority
“Habitat Mitigation Site”	Shall comprise an area of land identified on a plan submitted for the purpose of meeting the requirements of a condition imposed on the planning permission.
“Implementation Notice”	means the notice to be served in writing by the Owner upon the Council when Commencement of Development has occurred
“Intermediate Rented Housing”	means housing units 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 arms length) or the maximum amount of Local Housing Allowance which would be payable for such a unit whoever is the greater.
“Land”	means the land situate at Woodlands Farm, Dodds Lane, Gwersyllt, Wrexham LL114NS and shown edged red on the Plan for the purposes of identification only.
“Low Cost Home Ownership Register”	means 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”	means 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 and Intermediate 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
"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
"Mortgagee"	means any mortgagee for the time being of a registered charge over any Affordable Housing Unit
"Occupation"	means use of a Dwelling for residential use but not including occupation by personnel engaged in construction, fitted out or decoration or occupation for marketing or display or occupation in relation to security operations and " occupied " shall be construed accordingly
"Person in Housing Need"	means a person who cannot afford to rent or buy a home suitable for their needs on the open market
"Plan "	means the plan annexed to this Deed
"Planning Application"	means the application for Planning Permission for the Development of the Land submitted to the Council and given the reference P/2018/0997
"Planning Permission"	means a form of planning permission issued by the Secretary of State pursuant to the Appeal and any associated reserved matters approval(s)
"POS Scheme"	means a scheme relating to the implementation and management of the Public Open Space that may be required to be submitted to and approved in writing by the Council in accordance with the Planning Permission
"Public Open Space"	means the areas of the Land shown edged [Green] on the Plan 2

“RSL”	means a registered Social Landlord as defined in Part 1 of the Housing Act 1996
“Secretary of State”	means the Secretary of State or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the 1990 Act and or under any relevant section of the 1990 Act
“Shared Equity Disposal”	means 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”	means 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”	means a freeholder or a leaseholder (as appropriate) of a Shared Equity Unit
“Shared Equity Unit”	means an Affordable Housing Unit sold or available for sale as Shared Equity Housing on the Development
“Social Rented Housing”	means Affordable Housing Units let by an RSL to and to be occupied by Eligible Persons at a rental level which complies with the rent bench marking guidance (from time to time) published by the Welsh Government
“Working Days”	means 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

INTERPRETATION

- 2.1 A reference in this Deed to an Act of Parliament or section of such Act or to any order regulation statutory instrument or the like shall include a reference to any replacement modification amendment or re-enactment of the same.
- 2.2 Wording importing the masculine gender includes the feminine and neuter genders and vice versa.
- 2.3 Words in the singular include the plural and vice versa.
- 2.4 Words importing individuals shall be treated as importing firms companies corporations authorities and other bodies and vice versa.
- 2.5 Any heading or side notes are for ease of reference only and shall not effect the construction of this Deed.
- 2.6 Covenants made hereunder -
 - 2.6.1 if made by more than one person are made jointly and severally; and
 - 2.6.2 are to the intent that the same bind whomsoever shall become successor or successors in title to the Land.
- 2.7 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 a clause paragraph or schedule or recital in this Deed.

3 FORMAL REQUIREMENTS

- 3.1 The obligations imposed by this Deed relate to the Land and are binding on the Owner and its successors in title pursuant to Section 106 of the 1990 Act.
- 3.2 The obligations imposed by this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable as such by the Council as local planning authority without limit of time.
- 3.3 This Deed is a Local Land Charge for the purposes of the Local Land Charges Act 1975 is capable of being registered as such by the Council.

4 OPERATIVE PROVISIONS

- 4.1 In the event that the Planning Permission is granted by the Secretary of State pursuant to the Appeal the Owner hereby covenants with the Council on behalf of itself and its successors in title to each and every part of the Land to:

- 4.1.1 comply with the obligations relating to Public Open Space set out in the First Schedule to this Deed;
- 4.1.2 comply with the obligations set out in the Second Schedule to this Deed relating to the provision of Affordable Housing;
- 4.1.3 comply with the obligations relating to Habitat Management Area set out in the Third Schedule to this Deed;
- 4.1.4 Serve upon the Council (addressed to the Council's Head of Community Wellbeing and Development) the Implementation Notice within 10 Working Days from but not including the date of Commencement of Development
- 4.1.5 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 Land (excluding Market Housing Units) occurring before all the obligations in this Deed 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 Land transferred.

5 DECLARATIONS

- 5.1 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999 save for the avoidance of doubt it is declared that the planning obligations contained in this deed are enforceable by any successor local planning authority to the Council exercising planning powers under the 1990 Act.
- 5.2 No person shall be liable for any breach of the planning obligations or other provisions of this deed after parting with his entire interest in the Land but without prejudice to liability for any subsisting breach arising before parting with that interest or in parting with that interest.
- 5.3 In the event that any difference or dispute arises between the parties in connection with their respective rights duties liabilities or obligations under or by virtue of this Deed (including sums of money and the construction of this Deed) then such difference or dispute shall be referred for determination by an appropriately qualified independent expert (of not less than ten years standing) experienced in the relevant matter ("the Expert") to be agreed between the parties or in default nominated on the application of any party by the President (or other available officer to make such appointment) of the Royal Institution of Chartered Surveyors ("RICS") Provided That the provisions of this clause shall not prejudice prevent or delay the right of any party to seek the resolution of any matter relating to this Deed by the Courts and/or in accordance with Section 106(6) of the 1990 Act.

- 5.4 The expressions "the Owner" and "the Council" and shall include their respective successors in title.
- 5.5 If any of the terms obligations and/or covenants in this Deed or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable the same shall be severable from the remainder of this Deed and the remainder of this Deed or the application of such terms obligations and/or covenants to parties or circumstances other than as to which such terms obligations and/or covenants is held invalid or unenforceable shall not be affected thereby and each of the other terms obligations and/or covenants of this Deed and the Planning Permission shall be valid and be enforceable to the full extent permitted by law.
- 5.6 Any notice or other written communication shall be validly served if delivered to the relevant party by hand or if sent by ordinary first class post or recorded delivery post:
- 5.6.1 in the case of the Council at the Guildhall Wrexham LL11 1AY or such other address as shall be notified in writing to the Owner from time to time;
- 5.6.2 in the case of the Owner to the address given in this Deed or such other addresses of such parties as may be notified in writing to the Council from time to time;
- 5.6.3 any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory.
- 5.7 The provisions of the Second Schedule shall not be binding on a mortgagee in possession of an Affordable Housing Unit or a bona fide purchaser for value thereof from such a mortgagee in possession or any receiver appointed by such mortgagee (except a purchaser which is an RSL) **PROVIDED THAT** such mortgagee 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 Officer to dispose of the Affordable Housing to an RSL or otherwise in accordance with the Second Schedule.

THE FIRST SCHEDULE

Public Open Space

1. On the first disposal of each Dwelling to require the purchasers thereof and their successors in title to enter into a covenant with the Owner to pay a fair proportion of the costs incurred by the owner in maintaining the Public Open Space and the Habitat Mitigation Site and ensure that the transfer of each Dwelling contains a restriction in substantially 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 1 of the First Schedule of a Unilateral Undertaking dated [] given to Wrexham County Borough Council (1) by Wales & West Housing Association Limited (2) have been complied with".

2. in the event that the Planning permission requires the Council's approval of a POS Scheme 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.
3. To plant lay out and construct, and provide play equipment on, the Public Open Space in accordance with the POS Scheme the Planning Permission and this Deed as appropriate.
4. 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 Deed as appropriate.
5. 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 and not to allow any 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.

THE SECOND SCHEDULE
Affordable Housing

1. To design and construct the Affordable Housing Units in accordance with the Planning Permission and the Development Requirements.
2. Not to dispose of the Affordable Housing Units other than to an RSL by way of an Affordable Housing Disposal or to an Eligible Person by way of a Shared Equity Disposal 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 Deed (both parties acting reasonably and without delay in agreeing such terms) provided that such agreement is legally secured by way of a supplemental obligation made under Section 106 of the 1990 Act.
3. Prior to the Commencement of Development to provide the Council's Head of Housing and Public Protection the following details in so far as they are known for each Affordable Housing Unit:
 - 3.1 postal address;
 - 3.2 gross and net floor area;
 - 3.3 anticipated practical completion date (subject to market conditions); and
 - 3.4 plans indicating location, elevations and internal layout.
4. Not to use the land on which the Affordable Housing Units are to be constructed for any purpose other than the provision of Affordable Housing in accordance with this Deed.
5. Not to use the Affordable Housing Units for any purpose other than for the provision of Social Rented Housing or Shared Equity Housing and Intermediate Rented Housing and to respond to any request from the Council for information as to the tenure of each Affordable Housing Unit within 10 Working Days such request to be made on no more frequent a basis than once every six months.
6. 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 Deed and any supplemental agreement thereto.

Management of the Habitat Mitigation Site

A Conditions Imposed

1. Not to use the Habitat Mitigation Site for any purpose other than as an area for long term amphibian conservation purposes and the management of ecological measures in accordance with the Habitat Management Plan.
2. Prior to Commencement of Development to appoint an independent body to carry out an ecological compliance audit in accordance with the Habitat Management Plan to assess whether ecological avoidance, mitigation and compensation schemes have been implemented in compliance with the Habitat Management Plan.
3. To observe and perform the provisions of the Habitat Management Plan in respect of the Habitat Management Site

B Performance of Work

To employ only reputable and experienced consultants or contractors to undertake all works under the measures contained in the Habitat Management Plan.

EXECUTED as a DEED on the date specified at the commencement of this Deed

EXECUTED as a DEED by

Wales & West Housing Association Limited

By the affixing of its seal in the presence of>

Board member

Authorised signatory



