

DATED

6th October

2017

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

GOWER HOMES LIMITED (2)

and

HERITABLE DEVELOPMENT FINANCE LIMITED (3)

SUPPLEMENTAL AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990
in respect of land to the South West Side of Stansty Road (North of Total Fitness)
Wrexham LL11 2BU

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

(Ref: NR/023365)

THIS AGREEMENT is made on the 6th day of October 2017

BETWEEN:-

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham LL11 1AY ("the Council")
- (2) **GOWER HOMES LIMITED** (company registration number 01204658) whose registered address for service is 8 Temple Row, Wrexham LL13 8LY ("the Owner")
- (3) **HERITABLE DEVELOPMENT FINANCE LIMITED** (company registration number 08606584) of Reliance House, Sun Pier, Chatham, Kent ME4 4ET ("the Lender")

RECITALS

- (A) This Supplemental Agreement is made under Section 106 of the Town and Country Planning Act 1990 ('the Act') and is supplemental to the Main S106 Agreement
- (B) The Owner is the owner of the Site which is registered at the Land Registry under Title Number CYM686701
- (C) The Main s106 Agreement regulates development carried out or to be carried out under the Existing Permission (as hereinafter defined)
- (D) The Owner has submitted the Further Planning Application to the Council
- (E) Since entering the Main S106 Agreement the Owner has charged the Site in favour of the Lender and the Lender acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed **PROVIDED THAT** the Lender shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner
- (F) The Council is minded to approve the Further Planning Application and has agreed to vary the terms of the Main S106 Agreement in relation to removing of the Third Schedule from the Main s106 Agreement
- (F) The Council is the Local Planning Authority for the purposes of Section 106 of the Act in respect of the Land

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 In this Supplemental Agreement expressions shall where the context admits have the same meaning as expressed in the Main s106 Agreement and in the event of conflict the provisions of this Supplemental Agreement shall prevail.

1.1.2 In this Supplemental Agreement unless the contrary intention appears the following terms shall have the following meanings:

"Existing Permission" means the planning permissions granted by the Council under code number P/2015/0812

"Further Planning Application" means the application for planning permission for the Development of the Land submitted to the Council and given reference number P/2016/0828

"Main s106 Agreement" means the Agreement dated 16th June 2016 made between the Council and the Owner

"Substantial Commencement" means the construction of a Dwelling under the Further Planning Application to and beyond damp proof course level

"Supplemental Agreement" means this agreement

1.2 Interpretation

1.2.1 A reference in this Supplemental Agreement to an Act of Parliament or to any order regulation statutory instrument or the like shall include a reference to any amendment or re-enactment of the same.

1.2.2 Words importing the masculine gender include the feminine gender and vice versa. Words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa.

1.2.3 Any heading or side notes are for ease of reference only and shall not affect the construction of this Supplemental Agreement.

- 1.2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 1.2.5 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council the successors in title to their statutory functions.

2. FORMAL REQUIREMENTS

- 2.1 The Council enters into this Supplemental Agreement in pursuance of its powers under Section 106 of the 1990 Act Section 2 of the Local Government Act 2000 and Section 111 of the Local Government Act 1972 and all other enabling powers in that regard
- 2.2 The obligations imposed by this Supplemental Agreement relate to the Site and are binding on the Owner and its successors in title pursuant to Section 106 of the 1990 Act
- 2.3 The obligations contained in this Supplemental Agreement 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
- 2.4 This Supplemental Agreement is a Local Land Charge for the purposes of the Local Land Charges Act 1975 and will be registered as such by the Council

3 OPERATIVE PROVISIONS

3.1 Variation

The parties agree that the Main s106 Agreement shall as from the date of Substantial Commencement be read and construed and take effect subject to the following amendments:

- 3.1.1 Removing the definitions Plan B, POS Scheme, POS Transfer, Public Open Space and Residents Management Company
- 3.1.2 Removing Plan B
- 3.1.3 Removing the Third Schedule in its entirety

4 CONTINUATION OF THE MAIN S106 AGREEMENT

The parties agree that from the date hereof the Main S106 Agreement shall continue in full force and effect amended by clause 3.1 of this Supplemental Agreement

5 AGREEMENTS AND DECLARATIONS

- 5.1 Nothing contained or implied in this Supplemental Agreement shall prejudice or affect the discretions rights powers duties and/or obligations of the Council in the exercise of its functions as a local authority highway authority housing authority education authority and local planning authority and the discretions rights powers duties and/or obligations of the Council under all public and private statutes byelaws orders and regulations may be fully and effectually exercised in relation to the Land or any part thereof and any works executed thereon as if this Supplemental Agreement had not been executed by the Council and in particular nothing in this Supplemental Agreement shall restrict the Council and/or any other local authority from exercising powers of compulsory purchase in respect of any part of the Land;
- 5.2 Unless the right of enforcement is expressly granted the parties to this Supplemental Agreement do not intend any of its terms to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Supplemental Agreement save for the avoidance of doubt it is declared that the exclusion of the application of the Contracts (Rights of Third Parties) Act 1999 shall not prevent any future successor in title to any of the parties to this Supplemental Agreement from being subject to or able to benefit from or to enforce any of the obligations benefiting such original party in this Supplemental Agreement including by any successor local planning authority to the Council exercising planning powers under the 1990 Act and the parties may rescind or vary this Supplemental Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided
- 5.3 If any of the terms obligations and/or covenants in this Supplemental Agreement 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 Supplemental Agreement and the remainder of this Supplemental Agreement 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 Supplemental Agreement and the Planning Permission shall be valid and be enforceable to the full extent permitted by law
- 5.4 Each party to this Supplemental Agreement acknowledges that this Supplemental Agreement has not been entered into in reliance wholly or partly on any statement or representations made by or on behalf of the other party except any such statement or representation that is expressly set out in this Supplemental Agreement

6 PAYMENT OF COSTS

The Owner agrees to pay to the Council on the signing hereof the sum of £250.00 in respect of the Council's legal costs for the preparation and execution of this Supplemental Agreement

IN WITNESS whereof the Owner and the Council have executed this Supplemental Agreement as a **DEED** the day and year first before written

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CERTIFICATE

As Solicitors for the Owner (as defined in this Supplemental Agreement) we hereby certify that Recital B within this deed is correct.

Signed  Dated 26/6/ 20.....

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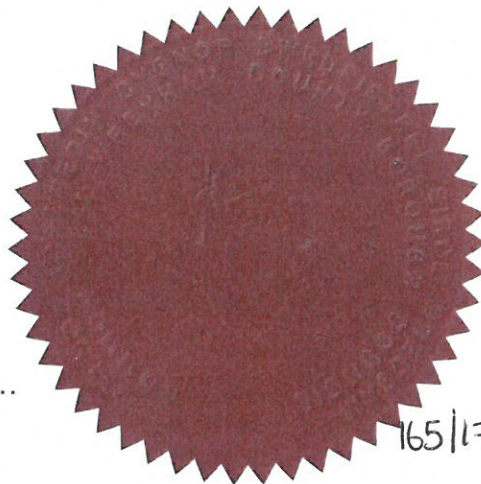
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EXECUTED as a **DEED** on the date specified as the commencement of this Agreement.

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



[Handwritten signature]

Head of Corporate and Customer Services

165/17

EXECUTED as a **DEED** by
GOWER HOMES LIMITED acting by a
Director and its Secretary or two Directors:-

[Handwritten signature]

*MICHAEL WILLIAM FORKHEAD IN THE
PRESENCE OF
WITNESS*

Director

*JOHN MARTIN LEWIS
SOLICITOR SLATER GORDON
43 KING ST
WREXHAM*

Director/Secretary

EXECUTED as a **DEED** by
**HERITABLE DEVELOPMENT FINANCE
LIMITED** acting by a Director and its
Secretary or two Directors:-

Director

Director/Secretary

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