

6th October

2017

**Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country
Planning Act 1990**

relating to Land on the South West Side of
Stansty Road (North of Total Fitness), Wrexham
LL11 2BU

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

GOWER HOMES LIMITED (2)

and

HERITABLE DEVELOPMENT FINANCE LIMITED (3)

Head of Corporate and Customer Services
Guildhall
Wrexham
LL11 1AY
Ref: NR/023365

DATE 6th October 2017

PARTIES

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

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 Owner has submitted the Application 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 5th December 2016 to grant the Planning Permission 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
"Application"	the application for full planning permission dated 1 st September 2016 submitted to the Council for the Development and allocated reference number P/2016/0828
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming

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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 notices or advertisements and "Commence Development" shall be construed accordingly.

"Development"

the development of the Site consisting as set out in the Application

"Dwelling"

means any residential unit (including a house flat or maisonette) constructed on the Site pursuant to the Planning Permission

"Education Contribution"

means the sum to be paid by the Owner to the Council in accordance with the provisions of the Third Schedule

"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.

"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

"Plan A"

the Plan A attached to this Deed

"Planning Permission"

the full planning permission subject to conditions to be granted by the Council pursuant to the Application and attached to this Deed

"Playing Fields and Parks Contribution" means the sum of three thousand pounds (£3,000.00) (indexed in accordance with the provisions of this Deed) to be paid by the Owner to the Council and expended by the Council in accordance with the provisions of the Second Schedule

"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 A 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 a 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 all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 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

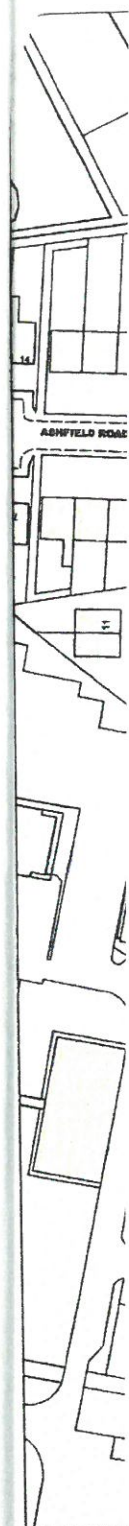
- 3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant 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 Permission; 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.



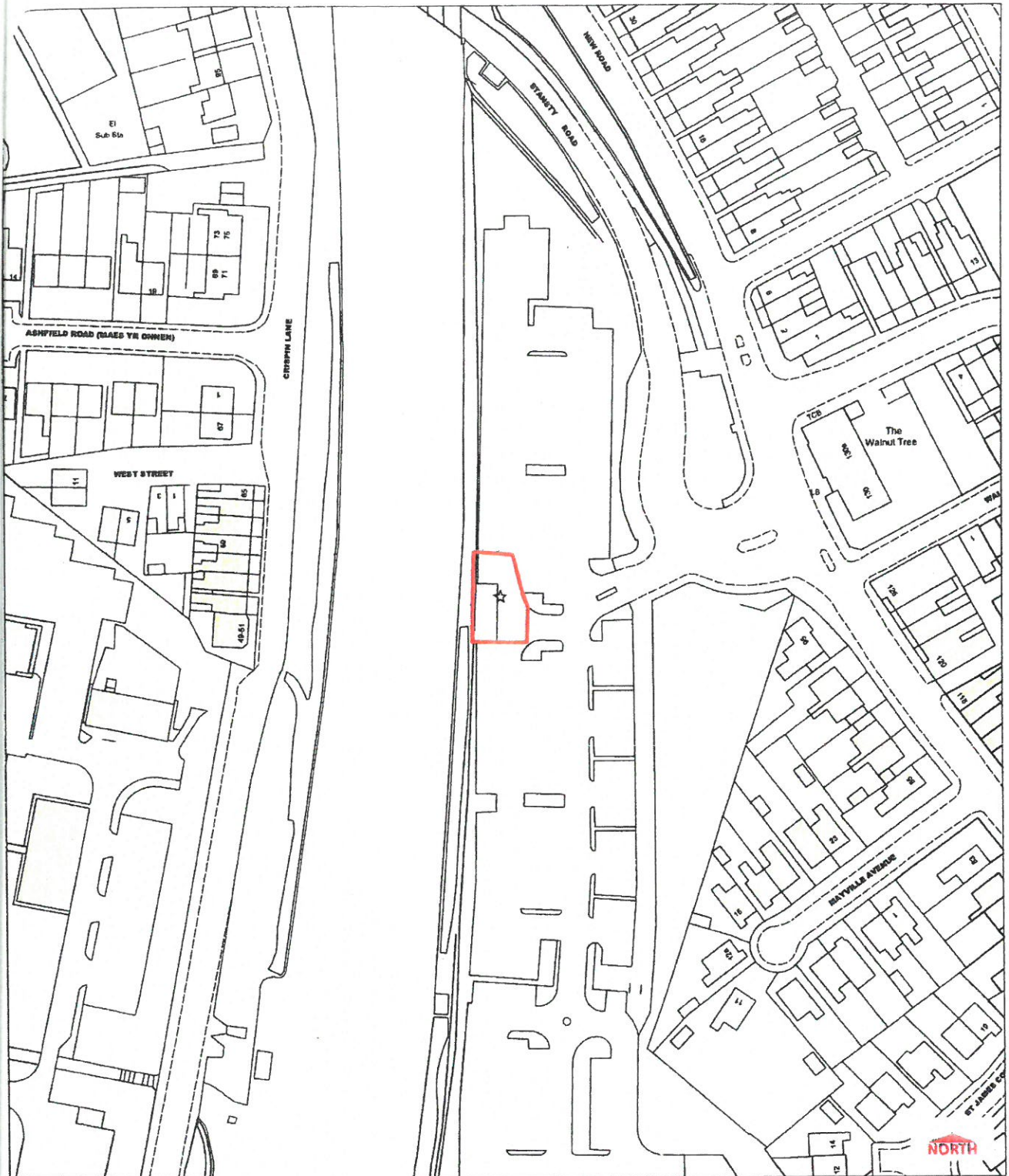
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Head of E
Environm
16 Lord S
LL11 1LG

12/12/20
Scale 1:1
SJ 3351

Y/shared/pjpx

Plan A



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

12/12/2016
Scale 1:1250
SJ 3351

Town & Country Planning Act 1990
Section 106 Obligation



P/2015/0828
Land North of Total Fitness
Stansty Road
Wrexham



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pursuance of its powers under the Acts and Orders referred to below, the County Borough Council as Local Planning Authority, hereby determines your application in accordance with the particulars and plans comprising the application

Applicant	MR M FORGRAVE GOWER HOMES LTD	Code Number	WRR P/2016/0828
Agent	PARRY DAVIES ARCHITECTS LTD MRS KATHRYN GRATTON STUDIO 55:20 NORTH WALES BUSINESS PARK ABERGELE CONWY LL22 8LJ	Date Received	01/09/2016
		Decision Date	

Town and Country Planning Act, 1990

Location of application

LAND NORTH OF, TOTAL FITNESS, STANSTY ROAD, WREXHAM,
LL11 2BU

Description of application

ERECTION OF 2 NO. DWELLINGS (AMENDMENT TO PLANNING
APPLICATION CODE NO. P/2015/0812 GRANTED ON 16.06.2016)

In reaching this decision the Council has had regard to the relevant policies in the Wrexham Unitary Development Plan which are as follows:-

CLF5	Open space requirements from new residential developments
GDP1	Development objectives
GDP2	Capacity of infrastructure and community facilities
H2	Residential development within settlements
T8	Parking

Revision	Date	Description of Decision
0		Planning permission issued

Particulars of decision that permission be GRANTED
Subject to the following:-

Condition(s)

1. The development hereby permitted shall be commenced before the expiry of three years from the date of this permission.
2. The development shall be carried out in strict accordance with the following approved drawings:
 - i) Drawing No. 15.5554/1 Revision L: Site Plan
 - ii) Drawing No. 15/5554/D1 Revision J: Road and Levels

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- iii) Drawing No. 15/5554/D/H1 Revision B: Durham-Hampton
iv) Drawing No. 07/102/01 Revision v1.1 - Proposed soft landscape works
3. Each part of the site subject to the remediation scheme subject to approved reference P/2016/0601 shall not be occupied / used until a Validation Report has been completed in respect of that part of the site and submitted to and approved in writing by the Local Planning Authority.
 4. No dwelling shall be occupied until the noise mitigation measures set out in the Noise and Vibration Report dated June 16 and subject to approval reference P/2016/0601 have been implemented in full.
 5. The vehicular parking and turning areas as shown on approved drawing(s) No(s). 15.5554/1 Revision L: Site Layout Plan shall be fully laid out, surfaced and drained prior to first use of the development. These areas shall thereafter be permanently retained and kept free of any obstruction, and made available solely for the parking and turning of motor vehicles at all times.
 6. Foul water drainage from the site shall only discharge to the public sewerage system between manholes SJ09836029 and SJ09835030.
 7. Prior to the first occupation of any dwelling hereby granted permission a trespass proof fence of at least 1.8m high shall be erected along the full length of the eastern boundary of the site. The fence shall thereafter be permanently retained and maintained.
 8. No external facing or roofing materials shall be used on the development other than materials matching those used on plots 1 - 10 and 12 - 23 subject to planning permission reference P/2015/0812.

Reason(s)

1. To comply with Section 91(3) of the Town and Country Planning Act, 1990.
2. To ensure that the development fully complies with the appropriate policies and standards.
3. In the interests of the amenities of the future occupants of the buildings
4. In the interests of ensuring the amenity of future occupiers of the development.
5. To provide for the parking and turning of vehicles clear of the highway and to ensure that reversing by vehicles into or from the highway is rendered unnecessary in the interest of traffic safety.

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6. To protect the integrity of the public sewerage system and prevent hydraulic overloading of the public sewerage system. To protect the health and safety of existing residents and to ensure no detriment to the environment.
7. To protect the railway from unauthorised access.
8. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.

Note(s) to applicant

The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place.

It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Regulations approval (if relevant). Your attention is drawn to The Coal Authority Policy in relation to new development and mine entries available at: <https://www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries>

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action. Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com

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If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. Further information is available on The Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority.

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**Officer Appointed for this purpose
Head of Environment and Planning**

7.3

7.4

Refer to Statement of Applicant's Rights and General Information on our planning web site at:-

http://www.wrexham.gov.uk/english/planning_portal/publications/info_sheets.htm

7.5

7.6

7.7

5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the Council on behalf of themselves and their successors in title to the Site to:

5.1.1 comply with the obligations relating to the Playing Fields and Parks Contribution set out in the Second Schedule to this Agreement; and

5.1.2 comply with the obligations relating to the Education Contribution set out in the Third Schedule to this Agreement.

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 THE COUNCIL'S COVENANTS

6.1 The Council covenants with the Owner as set out in the Fourth Schedule.

7 MISCELLANEOUS

7.1 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 £1,250.00

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

7.3 This Deed shall be registrable as a local land charge by the Council.

7.4 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.

7.5 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.

7.6 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.

7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if:-

7.7.1 the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure

7.7.2 the Planning Permission shall expire prior to the Commencement of Development; or

- 7.7.3 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 Permission by the Council or any other competent authority and there has been no Commencement of Development.
- 7.8 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.
- 7.9 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 7.10 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 Permission) granted (whether or not on appeal) after the date of this Deed.
- 8 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.
- 9 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
- 10 INDEXATION**
- Any sum referred to in the Second Schedule 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.
- 11 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.
- 12 VAT**
- All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.
- 13 JURISDICTION**
- This Deed is governed by and interpreted in accordance with the law of England and Wales.

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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.

15

LENDER'S CONSENT

15.1

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.

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

FIRST SCHEDULE

Description of the Site

All that parcel of land being Land on south west side of Stansty Road (north of Total Fitness), Wrexham LL11 2BU which is registered at H M Land Registry in the name of the Owner with title absolute under title number CYM686701 and shown edged in red on Plan A

Total
name
ged in

SECOND SCHEDULE

Owner's Covenants – Playing Fields and Parks Contribution

1. On Commencement of Development the Owner shall pay the Playing Fields and Parks Contribution to the Council which shall be used by the Council to upgrade and improve the provision and facilities of playing fields and parks namely Rhosddu Road Play Area, Wrexham.

THIRD SCHEDULE

Owner's Covenants – Education Contribution

FOURTH

1. On Commencement of Development The Owner covenants with the Council to pay to the Council the Education Contribution towards the provision, improvement or extension of secondary education facilities in accordance with the following formula:

1

Primary Education Contribution: -

A = (2-3 bedroom Dwellings) - No of Units x £1960.00 One thousand nine hundred and sixty pounds

B = (4+ bedroom Dwellings) - No of Units x £2352.00 Two thousand three hundred and fifty two pounds

Total Education Contribution = A and B

2.

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 Deed until the date of actual payment

FOURTH SCHEDULE

Council's Covenants - Discharge of obligations

- 1 The Council covenants with the Owner to use the Playing Fields and Parks Contribution ("the Contribution") received from the Owner under the terms of this Deed for the purpose specified in this Deed for which they are paid
2. The Council covenants with the Owner that it will repay the Owner such amount of any of the Contributions made by the Owner to the Council under this Deed which have not been expended in accordance with the provisions of this Deed within five 5 years of the date of receipt by the Council

CERTIFICATE

JOHN MARTIN WILKES SLAVER GORDON
(name) of 43 KING STREET (address) as

solicitors for the Owner (as defined in the within written Deed) hereby certify that the First
Schedule of this Agreement is correct.

Signed

[Signature]
of Mr Slater
Gordon

Dated:

13/9/17

s) as
st

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:-

3 Wyn Davies

Head of Corporate and Customer Services

Service Manager
(Legal, Democratic and Registration Services)



235/17(a)

EXECUTED as a Deed by

GOWER HOMES LIMITED acting by a

Director ~~and its Secretary or two Directors:~~
IN THE PRESENCE OF

MC Foy

Director

[Signature]

Director/Secretary
W.M.G.

JOHN MARTIN LEWIS
SOLICITOR
SLATER GORDON
43 KING ST
WREXHAM

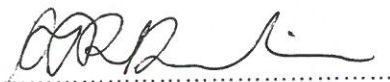
EXECUTED as a Deed by

HERITABLE DEVELOPMENT FINANCE LIMITED acting by a

Director and its Secretary or two Directors:-

A handwritten signature in dark ink, consisting of a large, stylized 'R' followed by a horizontal line and a small flourish at the end.

Director

A handwritten signature in dark ink, appearing to be 'A. R. D.' followed by a horizontal line and a small flourish at the end.

Director/Secretary