

DATED

7th February

2017

WREXHAM COUNTY BOROUGH COUNCIL (1)

- and -

WALES & WEST HOUSING ASSOCIATION LIMITED (2)

SUPPLEMENTAL AGREEMENT (No 1)

Pursuant to Section 106 of the Town and Country Planning Act 1990
in respect of Land off Whalleys Way, Acrefair, Wrexham

T Coxon
Head of Corporate and Customer Services
Guildhall
Wrexham
LL11 1AY
(Ref: LL/023346)

THIS AGREEMENT is made on the 7th day of February 2017
BETWEEN:-

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall Wrexham LL11 1AY ("the Council")
- (2) **WALES & WEST HOUSING ASSOCIATION LIMITED** (Company Number IP21114R) of Archway House, 77 Parc Ty Glas, Tremorfa, Cardiff, CF14 5DU ("the Owner")

WHEREAS

- (A) This Supplemental Agreement is made under Section 106 of the Town and Country Planning Act 1990 supplemental to the Existing Agreement (as hereinafter defined)
- (B) The Owner is now the owner of the Land registered at the Land Registry under Title Number CYM644404. There are no other legal interests in the land.
- (C) The Main S106 Agreement regulates development carried out or to be carried out under the Planning Permission (as hereinafter defined)
- (D) The Owner has submitted the Further Planning Application to the Council
- (E) The Council is minded to approve the Further Planning Application but considers that in the exercise of its statutory powers and duties and in order to bind the Land the parties hereto should enter into this Supplemental Agreement in order to secure the planning obligations contained herein.
- (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.

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

"Existing Planning Permission" means the planning permission granted by the Council under code number P/2014/0188

"Further Planning Application" means the application for planning permission reference P/2016/1017 for variation of condition 8 of the Existing Planning Permission to allow connection of surface water run-off into the public sewer

"Further Permission" means the planning permission issued pursuant to the Further Planning Application

"the Land" means the land off Whalleys Way Acrefair Wrexham as shown edged red on the Plan

"Main S106 Agreement" means the Agreement dated 13th March 2015 made between the Council and the Owner

"Plan" means the plan annexed hereto

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 Land 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

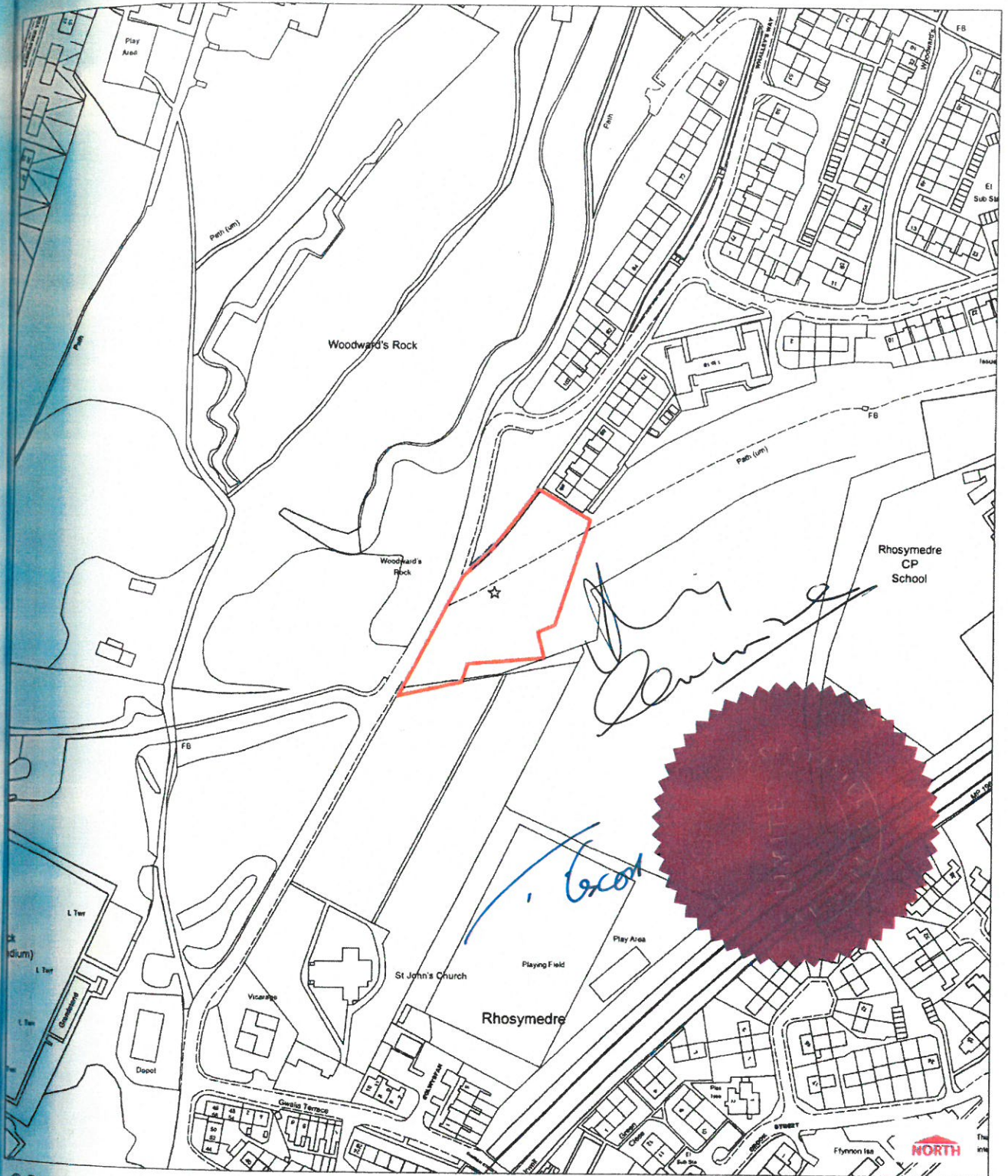
- 3.1 The Owner has submitted the Further Planning Application to request connection of surface water run-off into the public sewer and therefore vary condition 8 of the Existing Planning Permission
- 3.2 The Council confirms that the provisions of the Second Schedule to the Main S106 Agreement are applicable in respect of the Further Planning Application

4 CONTINUATION OF MAIN S106 AGREEMENT

The parties hereto agree that from the date hereof the Main S106 Agreement shall continue in full force and effect other than as provided by clause 3 of this Supplemental Agreement

5 AGREEMENTS AND DECLARATIONS

- 5.2.1 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



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

**Town & Country Planning Act 1990
Section 106 Obligation**

P/2016/1017
Site south of Whalleys Way
Acrefair, Wrexham

01/12/2016
Scale 1:2500
SJ 2842

wrexham
COUNTY BOROUGH COUNCIL
CYNGOR BWRD ISTRY SIROR
wreccsam

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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

- 5.2.2 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
- 5.2.3 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
- 5.2.4 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
- 5.2.5 Obligations entered into by any party which comprises more than one person shall be deemed to be joint and several

5.2.6 This Supplemental Agreement will come into full force and effect on the date hereof. Other than as provided herein, the Main S106 Agreement continues in full force and effect

6 PAYMENT OF COSTS

The Owner agrees to pay to the Council on the signing hereof the sum of £750.00 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

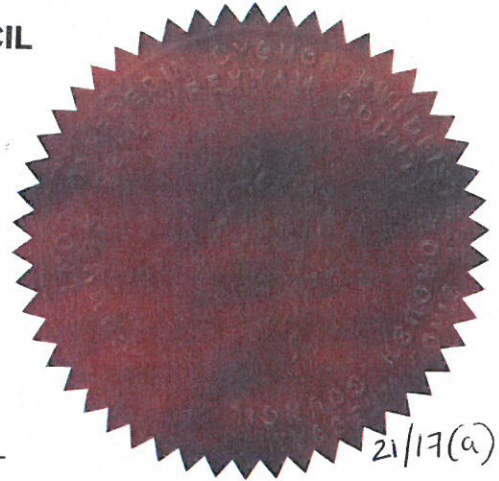
CERTIFICATE 1

As Solicitors for the Owner (as defined in this Supplemental Agreement)
we hereby certify that Recitals B & D within this deed are correct.

Signed *Donna E. Evans*

Dated *25th January* 2017

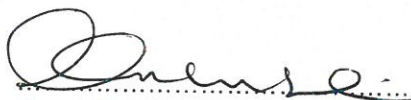
**THE COMMON SEAL of
WREXHAM COUNTY BOROUGH COUNCIL**
was hereunto affixed in the presence of;





Head of Corporate and Customer Services

**EXECUTED AS A DEED by
WALES & WEST HOUSING ASSOCIATION LIMITED**
by the affixing of its seal in the presence of:



Board Member



Board Member/Secretary

