

DATED

10th September

2015

WREXHAM COUNTY BOROUGH COUNCIL (1)

- and -

PHILIP CAULFEILD GODSAL (2)

- and -

NATIONAL WESTMINSTER BANK PLC (3)

SUPPLEMENTAL AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990
in respect of land at Kiln Green Iscoyd Whitchurch in the County Borough of
Wrexham

T Coxon
Head of Corporate and Customer Services
Guildhall
Wrexham
LL11 1AY
(Ref: ND/10008259)

THIS AGREEMENT is made on the 10th day of September 2015

BETWEEN:-

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham, LL11 1AY ("the Council")
- (2) **PHILIP CAULFEILD GODSAL** of Wolvesacre Mill, Agden, Whitchurch, Shropshire, SY13 4RE ("the Owner")
- (3) **NATIONAL WESTMINSTER BANK PLC** (company registration number 929027) ^{whos address for service is} ~~at~~ Credit Documentation Department, 8th Floor, 1 Hardman Boulevard, Manchester M3 3AQ ("the Mortgagee") and ^{whos registered address is} 135 Bishopsgate, London, EC2M 3UR

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RECITALS

- (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 parts of the Land registered at the Land Registry under Title Number CYM559834 (part)
- (C) By a legal charge dated 21st May 2014 and made between the Owner of the one part and the Mortgagee of the other part the Site was charged by way of legal mortgage to the Mortgagee
- (D) The Main s106 Agreement regulates development carried out or to be carried out under the Existing Permission (as hereinafter defined)
- (E) The Owner has submitted the Further Planning Application to the Council
- (F) 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.
- (G) 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/2008/0265

“Further Planning Application” means the application for planning permission reference P/2014/0414 for revisions to the Existing Permission for barn conversion scheme to allow change of use of one residential unit to three units and a new link extension and garage block

“Further Permission” means the planning permission issued pursuant to the Further Planning Application

“Main s106 Agreement” means the Agreement dated 26th November 2010 made between the Original Parties

“Original Parties” means (1) the Council and (2) the Owner and William Hyslop Grosset

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. WHEREAS

- 3.1 The Owner has submitted the Further Planning Application increasing the amount of units to be constructed on the Land
- 3.2 The object of this Supplemental Agreement is to increase the amount required as a secondary education contribution as is more particularly described in the third schedule ("the Obligation") of the Main s106 Agreement to reflect the increase in residential units permitted by the Further Planning Permission.

4. OPERATIVE PROVISIONS

The Council and the Owner agree that in respect of the Land if the Further Planning Permission is implemented by way of commencement of development within the meaning set out in Section 56(4) of the Town and Country Planning Act 1990:

- 4.1 The Further Permission shall be subject to and governed by the obligations set out in the Main s106 Agreement (as varied by, or provided for, by this clause 4 as the context so admits)

4.2 Variation

The parties agree that the Main s106 Agreement shall henceforth be read and construed and take effect subject to the following additions and amendments:

- 4.2.1 the definition of the Obligation within the third schedule of the Main s106 Agreement is deleted and substituted with the following:

to pay to the Council within a period of 14 days from the first date upon which four of the dwellings created by the Development are occupied the sum of eighteen thousand eight hundred and forty eight pounds (£18,848.00) payable to the Council as a contribution towards the provision of secondary education facilities within the Penley Maelor School catchment area such sum to be expended by the Council for that purpose and in the manner set out in the Council's published Local Planning Guidance Note No. 27 entitled "Developer Contributions to Schools".

- 4.2.2 references to "the Development" and "the Planning Permission" in the Main s106 Agreement shall be deemed to refer to the Further Permission instead of the Existing Permission.

- 4.2.3 the definition of the Development in the Second Schedule of the Main s106 Agreement is deleted and substituted with the following:

"Conversion of traditional barns into 7 residential units with new link extension and garage block".

5. 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 4 of this Supplemental Agreement

6. AGREEMENTS AND DECLARATIONS

- 6.2.1 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 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;

- 6.2.2 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
- 6.2.3 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
- 6.2.4 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
- 6.2.5 Obligations entered into by any party which comprises more than one person shall be deemed to be joint and several
- 6.2.6 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.

7. 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

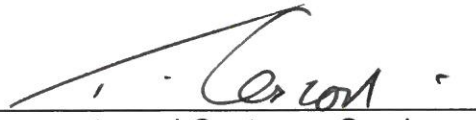
CERTIFICATE 1

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

Signed *Lanyon Bowdler LLP* **Dated** *4th September* **2015**

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

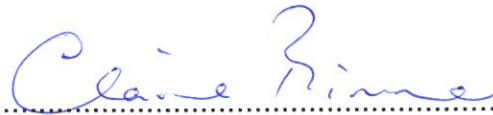



Head of Corporate and Customer Services

SIGNED AS A DEED by
PHILIP CAULFEILD GODSAL
In the presence of:

PCA
x  x

Witness' signature:

x  x

Name (in block capitals):

x CLARE RIMMER x

Address:

x SOUTH PAULION x
x SMOGAN BUSINESS PARK x
x HADWICK, SY4 4AS x

SIGNED AND DELIVERED AS A DEED

by NATIONAL WESTMINSTER BANK by
for and on behalf of
National Westminster Bank plc by a duly
authorised attorney in the presence of:-

Paul Brown

George Power



Witness signature – Bank employee

DOCUMENTOR
CREDIT DOCUMENTATION

REF 3441214