

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

relating to a residential development at 74 – 82
Smithfield Road, Wrexham

Dated : 7 APRIL 2015

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

IRONGATE (GRIMSBY) LTD (2)

and

ITL MORTGAGES LTD (3)

DATE 7 APRIL 2015

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of the Guildhall, Wrexham, LL11 1AY ("Council")
- (2) **IRONGATE (GRIMSBY) LTD** (a company incorporated in England and Wales under Company Number 03149111) of 26 South St Marys Gate, Grimsby, N E Lincs, DN31 1LW ("the Owner")
- (3) **ITL MORTGAGES LTD** (a company incorporated in England and Wales under Company Number 2321779) of Oakfield House, Binley Business Park, Harry Weston Road, Coventry, CV3 2TQ ("the Mortgagee")

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 subject to a charge by way of legal mortgage entered into between the Owner and the Mortgagee and dated 29 November 1996
- (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.

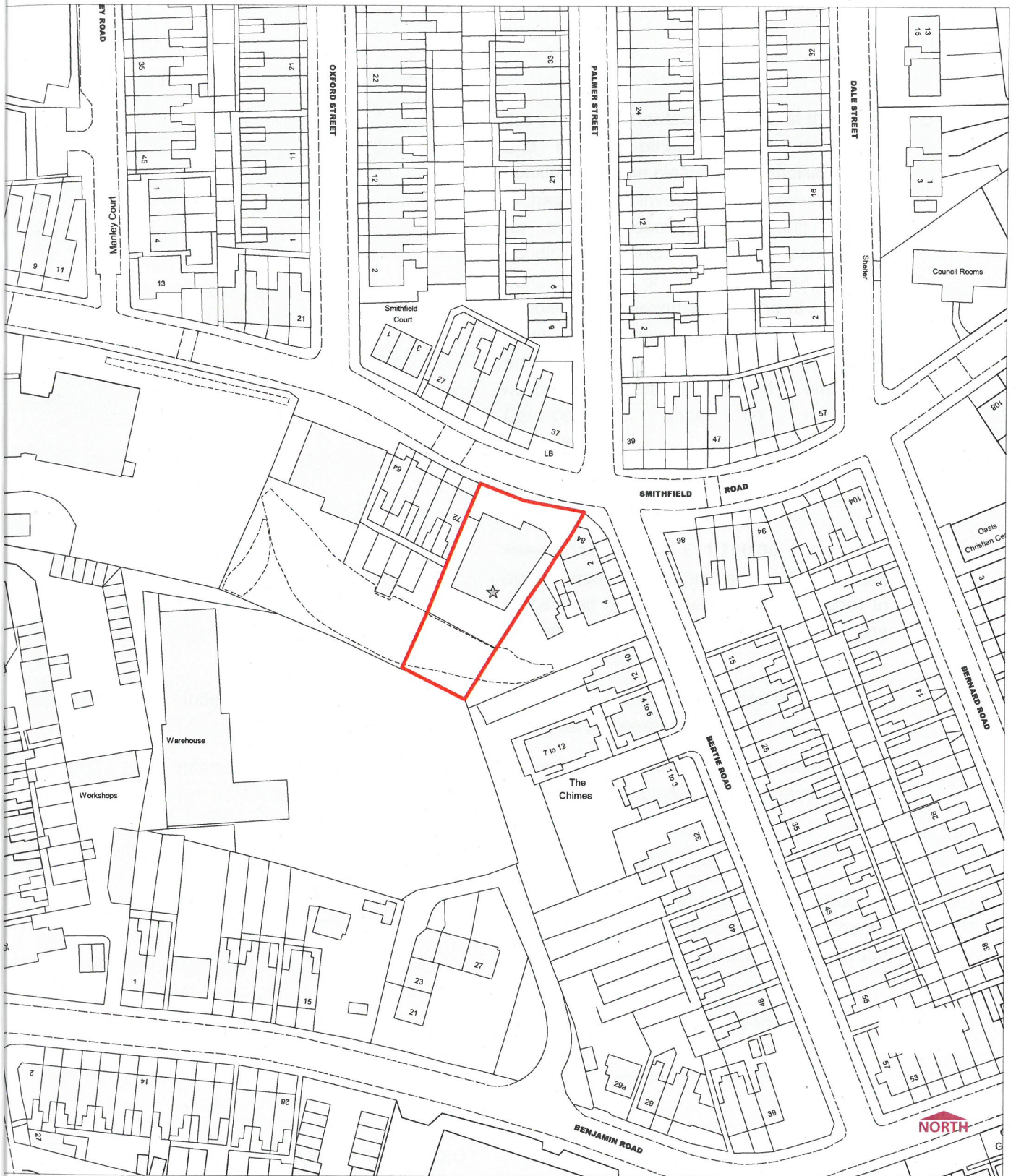
NOW THIS DEED WITNESSES AS FOLLOWS:

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 20 November 2014 submitted to the Council for the Development and allocated reference number P/2014/0866
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried



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S. J. Davies

Head of Community Wellbeing & Development
Planning Services
5 Lord Street, Wrexham LL11 1LG

Town & Country Planning Act 1990 Section 106 Obligation

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P/2014/0866
74 to 82 Smithfield Road, Wrexham

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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
"Education Contribution"	means the sum of £11,760.00 (indexed in accordance with the provisions of this Deed) to be paid by the Owner to the Council in accordance with the provisions of the Second 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.
"Plan A"	the Plan attached to this Deed
"Planning Permission"	the draft full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Fourth Schedule.
"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 the successor to its 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 and 15 (commencement of development, legal costs, jurisdiction, delivery and monitoring fees) and any other relevant provisions which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council as set out in the Second Schedule.
- 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 Third 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 £756.
- 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 Well-being 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.
- 7.11 Nothing in this Deed shall prevent the Council from exercising its statutory powers under any legislation.

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.

14 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 MONITORING FEES

The Owner shall pay the Council prior to the issue of the Planning Permission the sum of **£588.00** in respect of administrative and monitoring fees with regard to the Obligations set out in this Deed.

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

FIRST SCHEDULE

Description of the Site

The freehold land at 74 to 82 Smithfield Road, Wrexham in the County Borough of Wrexham, being the land which, at the date of this Deed is comprised in Title Number WA457030 registered at HM Land Registry in the name of the Owner with title absolute.

SECOND SCHEDULE
EDUCATIONAL CONTRIBUTION

On Commencement of Development the Owner shall pay the Educational Contribution to the Council and the monies paid shall be used by the Council to provide additional educational facilities within the catchment area of Ysgol Clywedog in the County Borough of Wrexham.

THIRD SCHEDULE

Council's Covenants

Discharge of obligations

- 1 The Council covenants with the Owner to use the Educational 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 Contribution made by the Owner to the Council under this Deed which have not been expended in accordance with the provisions of this Deed within 10 years of the date of receipt by the Council of the final payment in accordance with the provisions of the Second Schedule hereto together with Interest from the date of the payment to the date of refund.

FOURTH SCHEDULE
Draft Planning Permission

Applicant	MR ANDREW BUTT IRONGATE (GRIMSBY) LTD	Code No	WRC P/2014/0866
Agent	T A C P LTD MR KEITH ALDERMAN REMBROKE HOUSE ELLICE WAY WREXHAM TECHNOLOGY PARK WREXHAM LL13 7YT	Date Received	20/11/2014
		Decision Date	

DRAFT DECISION

Town and Country Planning Act, 1990
Section 73

Location of application

74 TO 82 SMITHFIELD ROAD, WREXHAM, LL13 8EP

Description of application

APPLICATION TO REMOVE CONDITIONS 13, 14 AND 15 AND TO VARY CONDITION 1 OF P/2010/0082 TO ALLOW THE DEVELOPMENT TO COMMENCE BEFORE THE EXPIRY OF 10 YEARS FROM 08/04/2010

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

GDP1	Development objectives
GDP2	Capacity of infrastructure and community facilities
H2	Residential development within settlements
T8	Parking

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 five years from the date of this permission.
2. Prior to their use on the development samples of all external facing and roofing materials shall be submitted to and approved in writing by the Local Planning

Authority. The development shall only be carried out in strict accordance with such details as are approved.

3. Within three months of commencement of development, full details of a hard and soft landscaping scheme together with a timescale for implementation of works shall be submitted to and approved in writing by the Local Planning Authority.
4. The landscaping scheme submitted and approved in connection with condition no. 3 shall be fully implemented in all respects within the agreed timescale and in strict accordance with the approved scheme.
5. The landscaping scheme as carried out in connection with condition nos. 3 and 4 shall be permanently retained. Any planting becoming severely damaged or seriously diseased, or is in poor physiological condition and/or are removed without the written permission of the Local Planning Authority shall be replaced with trees or shrubs and within a timescale all to be submitted to and approved in writing by the Local Planning Authority.
6. No trees shall be lopped, topped, felled or uprooted without the prior written permission of the Local Planning Authority, nor shall any trees be wilfully damaged.
7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting that Order with or without modification), any window or opening in the elevation facing East or West shall only be glazed or re-glazed using obscure glass which shall thereafter be permanently retained.
8. The car park and turning area shall be surfaced and marked out in full accordance with the drawings approved as part of planning permission ref: P/2010/0082 prior to first occupation of the units and shall thereafter be retained in a useable condition.
9. No part of the development shall commence until a scheme to deal with potential contamination at the site has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include a phased investigation approach to identify the extent of contamination and any measures required to remediate the site, including post-development monitoring.
10. No part of the development shall be occupied until a Verification Report which demonstrates that the remedial works approved as part of condition no. 9 above have been satisfactorily carried out, has been submitted to and approved in writing by the Local Planning Authority.
11. Prior to first use of the development hereby approved the vehicular access shall provide visibility splays of 2.4 metres x 33 metres in both directions measured to the nearside edge of the adjoining highway. Within these splays there shall be no obstruction in excess of 1 metre in height above the level of the nearside edge of the adjoining highway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.
12. From a point on the centre line of the access 2.4 metres back from the edge of the footway, to points 3.3 metres to both sides of that point measured along the edge of the carriageway, all obstructions to visibility shall be reduced to and thereafter maintained at a height not exceeding 0.6 metre above the level of the adjacent carriageway

13. The proposed access shall be a minimum width of 4.5 metres up to the parking area.
14. No private surface water run off shall be permitted to flow from the development site onto the adjoining highway. An Aco drain or similar shall be provided across the approved access to intercept any such run off prior to first use of the development.
15. The development shall not be occupied until the existing footway fronting the development site has been reinstated to full height footway construction and these works have been approved in writing by the Local Planning Authority.
16. No land drainage run-off or surface water shall be permitted to discharge or connect to the public sewerage system, either directly or indirectly, and foul and surface water shall be drained separately from the site.

Reason(s)

1. To comply with Section 91(3) of the Town and Country Planning Act, 1990.
2. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
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4. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
5. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
6. To protect trees which are of significant amenity value to the area.
7. To protect the amenities of the occupiers of nearby properties.
8. To ensure that adequate parking facilities are provided and maintained within the curtilage of the site in the interests of the free flow of traffic, highway safety and the amenities of the locality.
9. In the interests of the amenities of the future occupants of the buildings
10. In the interests of the amenities of the future occupants of the buildings
11. To ensure that adequate visibility is provided at the proposed point of access to the highway.
12. For the safety and convenience of all pedestrians, but in particular, the elderly, the disabled and wheelchairs, pram, and pushchair users.
13. In the interests of highway safety.
14. In the interests of highway safety.
15. In the interests of highway safety.
16. 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.

Note(s) to applicant

All works relating to this development which are audible beyond the site boundary should be carried out only between 7.30 and 18.00 hrs Monday to Friday, and 08.00 to 14.00 hrs on a Saturday, and at no time on a Sunday or a Bank Holiday. Outside these times, any works which are audible beyond the site boundary have the potential to cause unreasonable disturbance to neighbouring premises.

The applicant is advised that the Council has the option to control construction noise by serving a Control of Pollution Act 1974, Section 60, Notice where deemed necessary, and failure to comply with such a Notice can result in prosecution.

The applicant should adhere to the times given above wherever possible. For further information and advice regarding construction noise please contact the Council's Housing and Public Protection Department on 01978 315300.

The permission hereby granted does not authorise encroachment upon, or interference with, the adjoining property.

You are advised that building work which involves work on an existing wall shared with another property, building on the boundary with a neighbouring property or excavating near a neighbouring building may require the separate consent of the neighbour under the provisions of the Party Wall Act. If you require further information or advice please contact the Building Control Section on 01978 292050.

Further advice on compliance with condition nos. 9 and 10 may be obtained by contacting the Council's Environmental Protection Team on 01978 315733. Should the investigation identify contamination issues that may affect receptors other than the site users e.g. groundwater, then it is recommended that these works are also addressed in consultation with the Housing and Public Protection Department prior to commencement of works on site.

You are advised that this grant of planning permission was made following the completion of an Agreement under Section 106 of the Town and Country Planning Act. Before undertaking any work under this permission you are advised to obtain full details of the Agreement and ensure that you are able to comply with its terms.

The proposed footway reinstatement should be constructed to a standard suitable for adoption by the Council for future maintenance at public expense. Such works should be subject to formal consent pursuant to Section 184 of the Highways Act 1980.

Officer Appointed for this purpose

Head of Community Wellbeing and Development

Refer to the Statement of Applicant's Rights and General Information enclosed or refer to the following link:-

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

CERTIFICATE

The Owner hereby certifies that Paragraph (2) of the Introduction to this Deed is correct.

THE COMMON SEAL of WREXHAM)

COUNTY BOROUGH COUNCIL was)

hereunto affixed in the presence of:-)

.....
Shyn Davies

~~Trevor Coxon~~ Signed Wyn Davies

~~Head of Corporate and Customer Services~~

Legal, Democratic & Registration Services Manager.



99/15

EXECUTED as a Deed by IRONGATE)

(GRIMSBY) LTD acting by a Director and its)

Secretary or two Directors:-)

.....
Paul Watts

Director

.....
[Signature]

Director/Secretary

THE COMMON SEAL of ITL MORTGAGES)

LTD was hereunto affixed in the presence of:-)

.....
Georgina Ward

Authorised Signatory

.....
[Signature]

Robert John Higgs



