

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

relating to Land at Former Rosemary Nurseries,
Burton Hall Road, Rossett, Wrexham LL12 0AR

Dated : 17th December 2014

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

NATHANIEL VINCENT MAURICE-JONES and HELEN JANE MAURICE-JONES (2)

Ref: ND/10008000

DATE 17th December 2014

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of the Guildhall, Wrexham LL11 1 ("Council") and
- (2) **NATHANIEL VINCENT MAURICE-JONES** and **HELEN JANE MAURICE-JONES** of Rosem Nurseries, Burton Hall Road, Burton, Rossett, Wrexham ("the Owner")

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 1st September 2014 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 outline/full planning permission dated 14 th April 2014 submitted to the Council for the Development and allocated reference number P/2014/0292
"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 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.

"Communal Facilities Area"	means the Public Open Space and the Estate Roads
"Communal Facilities Transfer"	means a transfer of the Communal Facilities Area to a Residents Management Company
"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 Land pursuant to the Planning Permission
"Estate Roads"	means the area coloured terracotta on Plan C as referred to in condition 21 and 23 of the Planning Permission
"First Instalment Playing Fields and Parks Contribution"	means the sum of £7,500.00 (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
"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

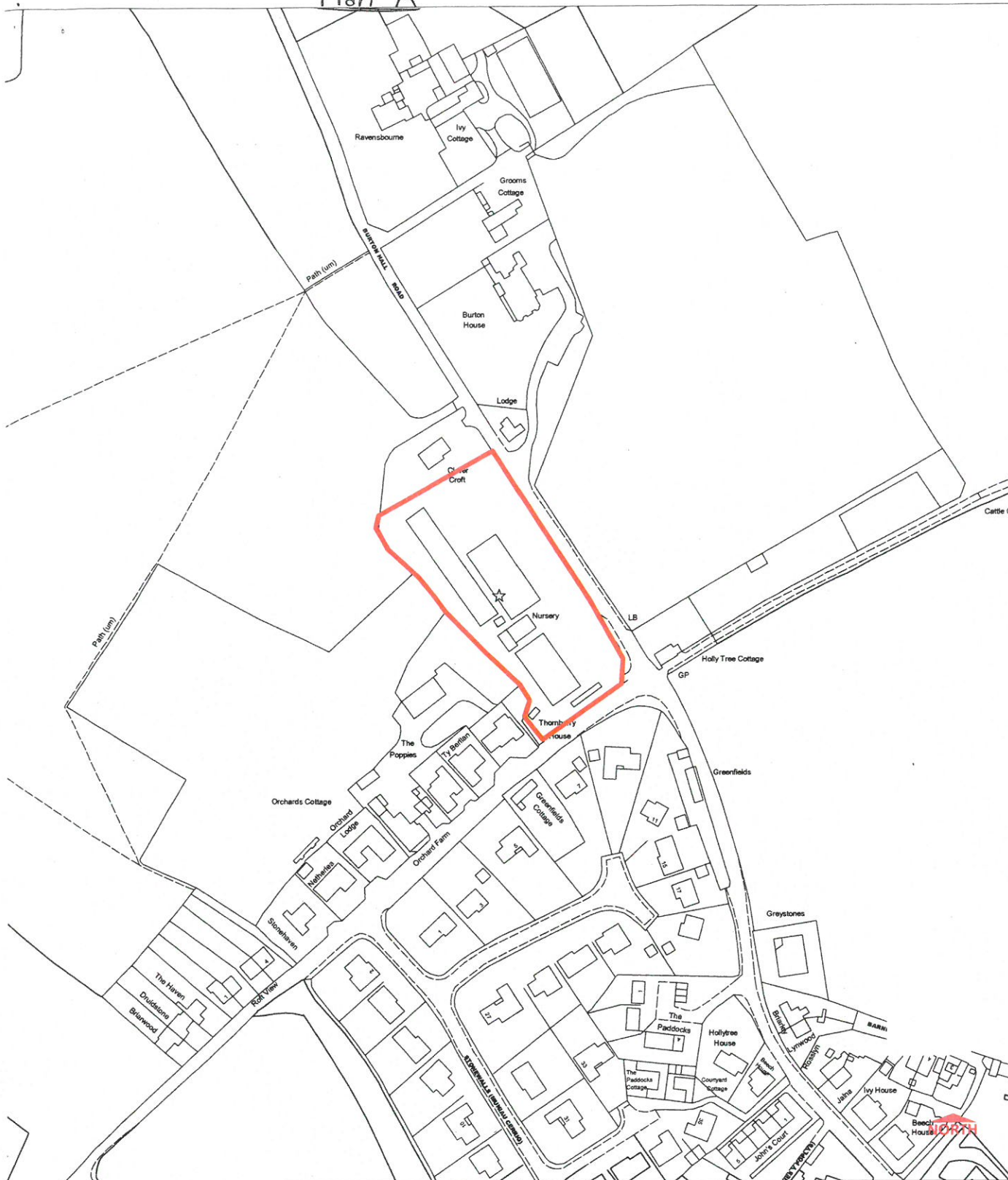
"Plan A"	the Plan A attached to this Deed
"Plan B"	the Plan B attached to this Deed
"Plan C"	the Plan C attached to this Deed
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application and attached to this Deed
"Playing Fields and Parks Contribution"	means the sum of £15,000.00 (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
"POS Scheme"	means the scheme relating to the implementation and management of the Public Open Space submitted to and approved in writing by the Council pursuant to the Application and relevant condition(s) of the Planning Permission
"Practical Completion"	issue of a certificate of practical completion by NHBC by way of the usual NHBC cover note
"Public Open Space"	means the areas shown coloured green on Plan C and all trees and other such areas of landscaping and planting on the Development in accordance with condition 14 of the Planning Permission
"Residents Management Company"	means a registered company limited by guarantee that has been formed for the purposes of maintaining the Public Open Space and for complying with and carrying out the requirements of the POS Scheme
"Second Instalment Playing Fields and Parks Contribution"	means the sum of £7,500.00 (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
"Site"	the land subject to this Deed as shown edged red on the Plan A and more particularly described in the First Schedule

Crowr

Head of Planning
 & Lord S
 telephone
 Planning

ate: 09/
 ale: 1:
 S Shee

ared/plpol



Crown copyright. All rights reserved. 100023429. 2013

Head of Community Wellbeing & Development
Planning Services
3 Lord Street, Wrexham LL11 1LG
Telephone 01978 298994
Planning@wrexham.gov.uk

Date: 09/09/2014
Scale: 1:2500
Sheet: SJ3557

Town & Country Planning Act 1990
Section 106 Obligation

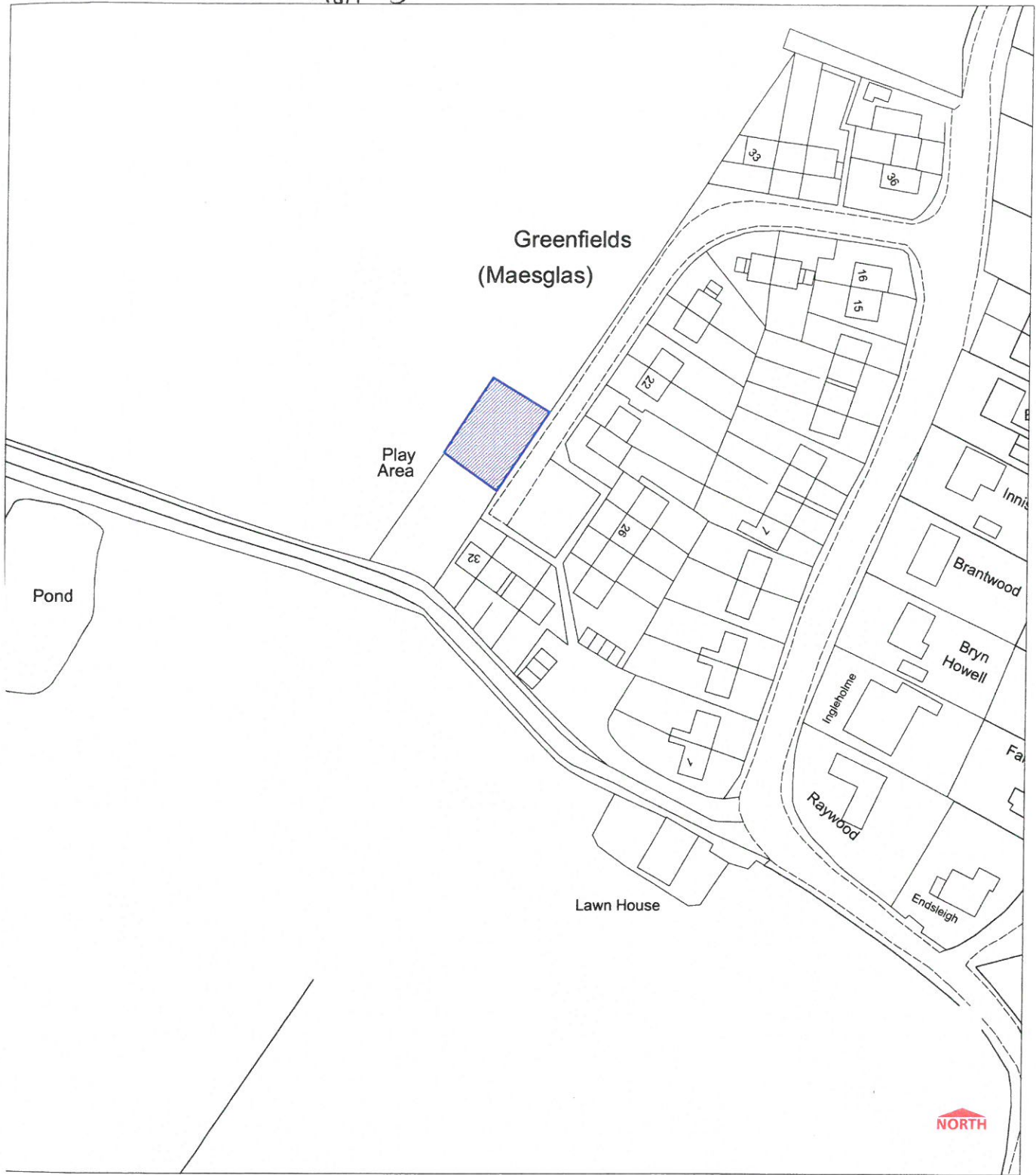
[Signature]
N.V. Morgan



P/2014/0292
Site of former Rosemary Nurseries,
Burton Hall Road, Burton, Rossett, Wrexham



Plan B



© Crown copyright. All rights reserved. 100023429. 2013

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

Town & Country Planning Act 1990
Section 106 Obligation

Area of off site POS on land at
Greenfields, Croeshowell, Rossett



P/2014/0292

Erection of 15 dwellings at the former
Rosemary Nurseries, Burton, Rossett.

[Handwritten signature]
[Handwritten signature]
wrexham
COUNTY BOROUGH COUNCIL
CYNGOR BWRDEISTREF SIROI
wrecsam

Date: 11/11/2014
Scale: 1:1250
OS Sheet: SJ3457

Plan C



Jonathan M. Mander

Parry Davies Architects.

Land at Burton Hall Road, Rossett

SITE LAYOUT PLAN

Chartered Architects.

Studio 55/20, North Wales Business Park, Abergelle LL22 8LJ

Tel: 01745 585517 E-mail: PDP.Architects@aol.com

DATE	SCALE	DRAWN	CHECKED
September 2014	1:50 @ A3	KEG	KEG
DRAWN NO: 14.5518/L1			

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 and 15 (commencement of development, legal costs, jurisdiction, delivery and monitoring clauses) 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 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

5.1.2 comply with the obligations relating to the Public Open Space 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.

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 on Commencement of Development the sum of **£750.00** 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

All that parcel of land being Rosemary Nurseries, Burton Hall Road, Burton, Rossett, Wrexham LL12 0AR which is registered at H M Land Registry in the name of the Owner with title absolute under title number CYM45357 and shown edged in red on Plan A

SECOND SCHEDULE

Owner's Covenants – First Instalment and Second Instalment Playing Fields and Parks Contribution

1. On completion of the sale of the fifth dwelling within the Development the Owner shall pay the First Instalment Playing Fields and Parks Contribution to the Council which shall be used by the Council to extend and improve the provision and facilities of playing fields and parks namely Greenfields play facility in Burton as is shown coloured blue on Plan B.
2. On completion of the sale of the tenth dwelling within the Development the Owner shall pay the Second Instalment Playing Fields and Parks Contribution to the Council which shall be used by the Council to extend and improve the provision and facilities of playing fields and parks namely Greenfields play facility in Burton as is shown coloured blue on Plan B.

THIRD SCHEDULE

Owner's Covenants –Residents Management Company and the Communal Facilities Area

Residents Management Company

1. Not to carry out any Material Operation on the Site until:-
 - 1.1 the Residents Management Company has been incorporated and
 - 1.2 a copy of the proposed Articles of Association of the Residents Management Company has been submitted to and approved in writing by the Council
- 2 To submit to the Council the Articles of Association and Certificate of Incorporation of the Residents Management Company within 4 weeks of its incorporation
3. On the first disposal of each Dwelling to require the purchasers thereof and their successors in title to become members of the Residents Management Company with a view and to the intent that they can influence and contribute to the compliance with the obligations of this Schedule and to procure that a restriction is entered on the Proprietorship Register of all individual Dwellings in the following form:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that 17 December the provisions of paragraph 3 of the Third Schedule of an Agreement dated 2014 made between Wrexham County Borough Council (1) and Nathaniel Vincent Maurice-Jones and Helen Jane Maurice-Jones (2) have been complied with"
4. To pay to the Residents Management Company a fair and reasonable proportion (with the intention that the sum of all contributions from the Dwellings on the Land shall equal 100%) of the outgoings of the Residents Management Company incurred in complying with the relevant obligations of this schedule

Communal Facilities Area

Public Open Space

5. To observe and perform the provisions of the POS Scheme and monitor and review it at least every 5 years and to obtain the approval of the Council to any amendments thereto so as to ensure that they remain appropriate and relevant over time
6. To provide in the Communal Facilities Transfer a covenant in the following terms:

"The Transferee hereby covenants in fee simple in perpetuity to observe and perform the covenants agreements obligations and stipulations contained or referred to in the Third Schedule of an Agreement dated 17 December 2014 made between Wrexham County Borough Council (1) and Nathaniel Vincent Maurice-Jones and Helen Jane Maurice-Jones (2) AND to observe and perform the requirements of the POS Scheme referred to therein".

7. Not to allow more than 50% of the Dwellings to be occupied until the Communal Facilities Transfer has been completed and a certified copy of the Communal Facilities Transfer and the enabling Residents Management Company's Board Minute and Resolution has been submitted to the Council in evidence thereof
8. To plant lay out and construct, and provide play equipment on the Public Open Space in accordance with the POS Scheme the Planning Permission and this Agreement
9. To comply with the POS Scheme and to maintain and manage in perpetuity the Public Open Space and any play equipment erected thereon in accordance with the POS Scheme the Planning Permission and this Agreement
10. Not to use the Public Open Space for any purpose whatsoever other than as public open space for the benefit of the Development being landscaped and open grassed areas and as a play area nor cause permit or allow any structures other than play equipment in accordance with the Planning Permission or other obstructions whatsoever to be erected within the Public Open Space or deposit any waste or alter ground levels or light fires within the Public Open Space except that the Owner may install subterranean plant and equipment for the reception storage and disposal of foul and surface water and sewerage and gas together with appropriate infrastructure relating to such installations, any surface projections being suitable protected to the reasonable satisfaction of the Council
11. Not to affix to any trees on the Site any items or structures likely to occasion damage to any such tree

Parking and Turning Area

12. To lay out surface and drain the Parking and Turning Area in accordance with condition 21 of the Planning Permission.

Estate Roads

13. To lay out surface and drain the Estate Roads and construct it at the Owner's expense including the carriageways footways verges and all other necessary work to base course level within 3 months of Commencement of the Development
14. To complete the Estate Roads in accordance with the Highway Authority's Supplementary Guide to Design Bulletin 32 Residential Roads and Footpaths dated May 2000 within 3 months of Practical Completion of the final Dwelling within the Development

15. To level pave flag metal kerb channel sewer drain light and joint with the existing road to which the Development abuts and make good by the Owner in all respects in accordance with the Council's Supplementary Guide to Design Bulletin 32 Residential Roads and Footpaths dated May 2000 and otherwise in all respects in accordance with the requirements and to the satisfaction of the Council

FOURTH SCHEDULE

Council's Covenants - Discharge of obligations

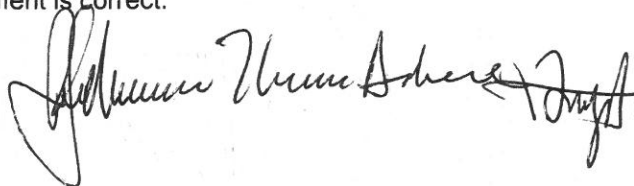
- 1 The Council covenants with the Owner to use the Playing Fields and Parks Contribution, ("the Contribution") received from the Owner under the terms of this Deed for the purpose specified in this Deed for which they are paid

2. The Council covenants with the Owner to repay 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 5 years of the date of receipt by the Council commencing from 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.

CERTIFICATE

Thomas Andrews & Partners of 31 High Street, Wrexham LL13 8HY as solicitors for the
Owner (as defined in the within written Deed) hereby certify that the First Schedule of this
Agreement is correct.

Signed

A handwritten signature in black ink, appearing to read 'Thomas Andrews', written over a horizontal line.

Dated: 15/12/2014

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:-



Stacy Davies

Legal Services Manager

EXECUTED as a Deed by

NATHANIEL VINCENT MAURICE-JONES-

N.V. Maurice Jones

.....
in the presence of:

[Signature]
Solicitor
Member

EXECUTED as a Deed by

HELEN JANE MAURICE-JONES

[Signature]

.....
in the presence of:

[Signature]
as above