

DATED:

30<sup>th</sup> September

2014

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

**relating to Land at the former Foundry, Mount  
Street, Rhostyllen, Wrexham, LL14 4AU**

**WREXHAM COUNTY BOROUGH COUNCIL (1)**

**and**

**S G ESTATES LTD (2)**

DATE

30<sup>th</sup> September

2014

## **PARTIES**

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** ("Council") of the Guildhall, Wrexham, LL11 1AY
- (2) **S G ESTATES LIMITED** (a company incorporated in England and Wales under Company Number 05145645) of 5 Churchlea, Main Road, Rhosrobin, Wrexham, LL11 4RB ("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 17<sup>th</sup> February 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 17<sup>th</sup> February 2014 submitted to the

Council for the Development and allocated reference number P/2014/0097.

"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.

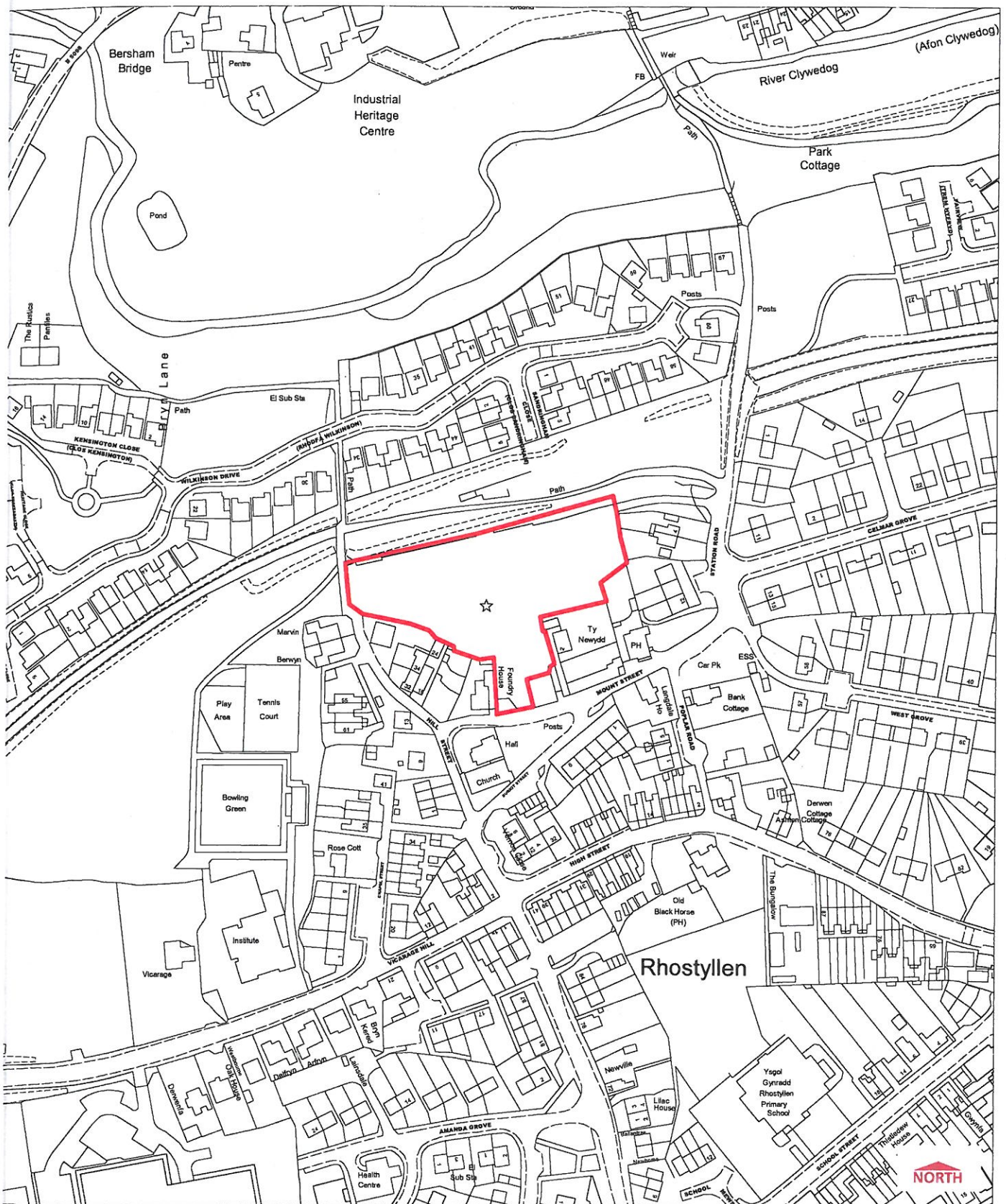
"Development" the development of the Site consisting as set out in the Application.

"Dwelling" means any residential unit (including a house flat or maisonette) constructed on the Land pursuant to the Planning Permission.

"Education Contribution" means the sum of £31,752.00 (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.

"Footpath" means a 2 metre wide footpath link shown hatched on Plan B.

"Index" all Items Index of Retail Prices issued by the Office for National Statistics.



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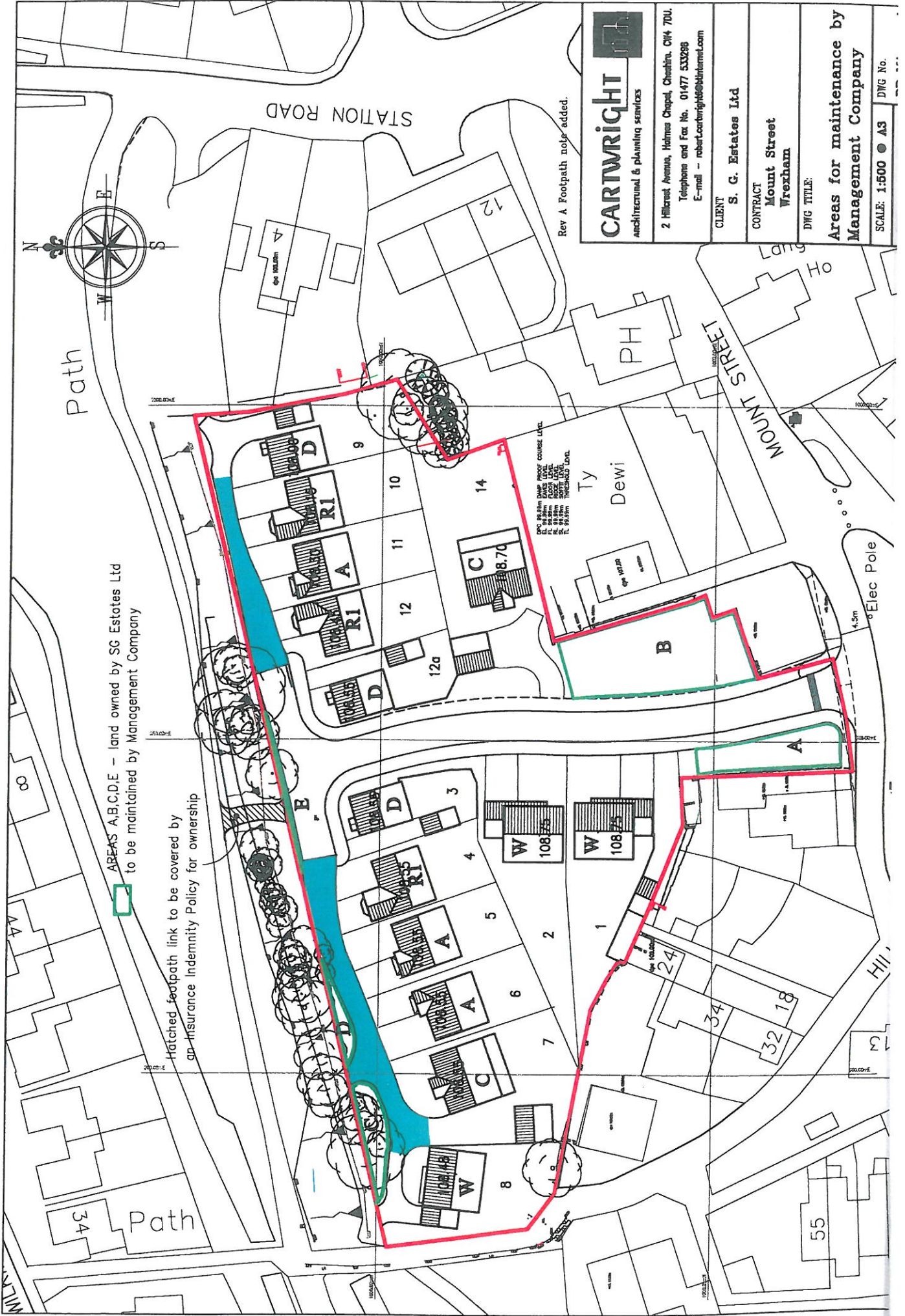
**Town & Country Planning Act 1990  
Section 106 Obligation**



P/2014/0097  
The Foundry, Mount Street  
Rhostyllen, Wrexham



10/05/2014  
Scale 1:2500  
3148



|                                                                                                                                          |                                                |
|------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| <b>CARTWRIGHT</b><br>architectural & planning services                                                                                   |                                                |
| 2 Hillcrest Avenue, Holmes Chapel, Cheshire. CW4 7DU.<br>Telephone and Fax No. 01477 533298<br>E-mail - robert.cartwright@btinternet.com |                                                |
| CLIENT                                                                                                                                   | S. G. Estates Ltd                              |
| CONTRACT                                                                                                                                 | Mount Street<br>Wrexham                        |
| DWG TITLE:                                                                                                                               | Areas for maintenance by<br>Management Company |
| SCALE: 1:500                                                                                                                             | A3 DWG No.                                     |

|                                |                                                                                                                                                                                                                               |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "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.                                                                                                                                                                                             |
| "Planning Permission"          | the full planning permission subject to conditions to be granted by the Council pursuant to the Application.                                                                                                                  |
| "Practical Completion"         | issue of a certificate of practical completion by NHBC by way of the usual NHBC cover note.                                                                                                                                   |
| "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. |
| "POS Transfer"                 | means a transfer of the Public Open Space to a Residents Management Company.                                                                                                                                                  |
| "Public Open Space"            | means the areas of the Land shown edged green on Plan B.                                                                                                                                                                      |
| "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.                        |
| "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 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 hereby covenants with the Council on behalf of itself and its successors in title to the Site to:

5.1.1 comply with the obligations relating to the Education Contribution set out in the Second Schedule to this Agreement.

5.1.2 comply with the obligations relating to the Public Open Space and Residents Management Company 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 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 prior to the issue of the Planning Permission the sum of **£1,587.60** 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 The Old Foundry, Mount Street, Rhostyllen, Wrexham LL14 4AU which is registered at H M Land Registry in the name of the Owner with title absolute under title number WA890806 and shown edged in red on Plan A

## **SECOND SCHEDULE**

### **EDUCATION CONTRIBUTION**

On Commencement of Development the Owner shall pay the Education Contribution to the Council and the monies paid shall be used by the Council to provide additional educational facilities within the Wrexham Clywedog School catchment area pursuant to the Council's published Local Planning Guidance Note No. 27.

### THIRD SCHEDULE

#### PUBLIC OPEN SPACE AND 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 the provisions of paragraph 3 of the Third Schedule of an Agreement dated 2014 made between Wrexham County Borough Council (1) S G Estates Limited 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.

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 POS 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 30<sup>th</sup> September 2014 made between Wrexham County Borough Council (1) S G Estates Ltd 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 POS Transfer has been completed and a certified copy of the POS 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 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 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.

11. Not to affix to any trees on the Land any items or structures likely to occasion damage to any such tree.
12. To ensure that the Footpath is laid out with a gravel surface to a width of 2 metres, prior to the occupation of 50% of the Dwellings, and to keep it open for use by pedestrians at all times and managed and maintained in perpetuity.

**FOURTH SCHEDULE**

**Council's Covenants**

**Discharge of obligations**

- 1 The Council covenants with the Owner to use the Education 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.

## CERTIFICATE

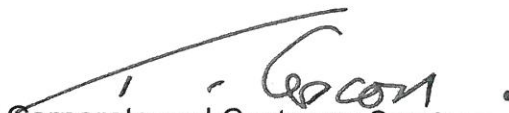
Ian Lewis of Allington Hughes as solicitors for the Owner (as defined in the within written Deed) hereby certify that the First Schedule of this Agreement is correct.

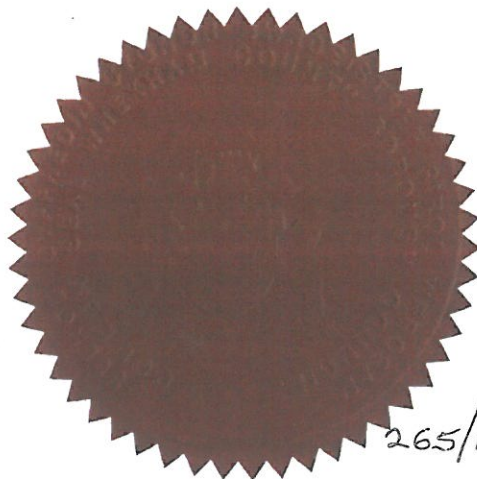
Signed 

Dated: 27<sup>th</sup> Sep 2014

**EXECUTED as a DEED** on the date specified at the commencement of this Agreement.

**EXECUTED** as a **DEED** by affixing  
the **COMMON SEAL** of  
**WREXHAM COUNTY BOROUGH COUNCIL**  
in the presence of:

  
Head of Corporate and Customer Services



265/14

**EXECUTED** as a **DEED** by  
the above-named  
**S G ESTATES LIMITED**  
and signed by a director and  
the secretary or two directors:

Director

Director/Secretary