

Dated

28 March 2013

- (1) WREXHAM COUNTY BOROUGH COUNCIL
- (2) FCC WREXHAM PFI (PHASE II) LIMITED

Supplemental Agreement

under section 106 of the Town and Country Planning Act 1990 and section 111 of the Local Government Act 1972 relating to land at Wrexham Recycling Park Phase II, Bryn Lane, Wrexham LL13 9UT

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THIS SUPPLEMENTAL AGREEMENT is made on

28 March 2013

BETWEEN:

- (1) **Wrexham County Borough Council** of Guildhall, Wrexham LL11 1AY ("**the Council**"); and
- (2) **FCC Wrexham PFI (Phase II) Limited** (registered number 08164693) whose registered office is at Ground Floor West, 900 Pavilion Drive, Northampton Business Park, Northampton NN4 7RG ("**the P2 Developer**")

BACKGROUND

- (A) This Supplemental Agreement supplements the Section 106 Agreement, as novated under the Deed of Novation.
- (B) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Supplemental Agreement.
- (C) The Council is the freehold owner of the whole of the Site.
- (D) The Council and the P1 Developer entered into the Section 106 Agreement on 23 January 2012 containing planning obligations enforceable by the Council against the P1 Developer in respect of the Site.
- (E) The Section 106 Agreement contains an obligation of the P1 Developer that with effect from the date upon which the P1 Developer acquires the Lease the P1 Developer shall simultaneously enter into an agreement supplemental to the Section 106 Agreement on terms identical to the provisions of the Section 106 Agreement (subject to any amendments the Council and the P1 Developer shall agree) in order to bind the leasehold interest in the Development Land created by the Lease by the terms of the Section 106 Agreement.
- (F) On or about the date of this Supplemental Agreement the Council, the P1 Developer and the P2 Developer entered into the Deed of Novation to the effect that obligations of the P1 Developer under the Section 106 Agreement were novated and transferred to the P2 Developer and the P1 Developer was thereupon discharged from the obligations under the Section 106 Agreement.
- (G) On or about the date of this Supplemental Agreement the Council granted the Lease to the P2 Developer.
- (H) The P2 Developer enters into this Supplemental Agreement in order to comply with the obligation under the Section 106 Agreement to enter into a supplemental agreement simultaneously with the acquisition of the Lease.

- (I) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Supplemental Agreement may be enforced by the Council against the P2 Developer and its successors in title.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Agreement, the following words and expressions have the following meanings:

"Deed of Novation" the deed dated on or about the date of this Supplemental Agreement made pursuant to section 111 of the Local Government Act 1972 and all enabling powers entered into by (1) the Council (2) the P1 Developer and (3) the P2 Developer

"P1 Developer" FCC Wrexham PFI Limited (registered number 05572555) whose registered office is at Ground Floor West, 900 Pavilion Drive, Northampton Business Park, Northampton NN4 7RG

"Section 106 Agreement" the agreement dated 23 January 2012 made pursuant to section 106 of the 1990 Act and section 111 of the Local Government Act 1972 entered into by (1) the Council and (2) the P1 Developer and novated by the Deed of Novation

- 1.2 In this Supplemental Agreement:

1.2.1 all words and phrases defined in the Section 106 Agreement shall have the same meaning save where the context dictates otherwise;

1.2.2 the clause headings do not affect its interpretation;

1.2.3 unless otherwise indicated, references to clauses are to clauses of this Supplemental Agreement;

1.2.4 references to any statute or statutory provision include references to:

1.2.4.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and

- 1.2.4.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
 - 1.2.5 references to the Site include any part of it;
 - 1.2.6 references to any party in this Supplemental Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;
 - 1.2.7 "including" means "including, without limitation";
 - 1.2.8 any covenant by the P2 Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing; and
 - 1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Supplemental Agreement is to be unaffected.
- 1.3 The parties to this Supplemental Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. EFFECT OF THIS SUPPLEMENTAL AGREEMENT

- 2.1 This Supplemental Agreement is made pursuant to section 106 and section 106A of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Supplemental Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.
- 2.2 To the extent that any of the obligations contained in this Supplemental Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and all other enabling powers.
- 2.3 The P2 Developer enters into this Supplemental Agreement in order to bind the P2 Developer's leasehold interest pursuant to the Lease in the Site and hereby acknowledges that the obligations contained in the Section 106 Agreement are enforceable against the P2 Developer and its successors in title.

2.4 The P2 Developer agrees that the Section 106 Agreement remains in full force and effect and is enforceable by the Council against the P2 Developer and its successors in title.

2.5 This Supplemental Agreement will be registered as a local land charge by the Council.

3. **NOTICES**

3.1 The notice provisions contained in the Section 106 Agreement shall apply in relation to this Supplemental Agreement provided that any notice, demand or other communication shall be sent:

3.1.1 in the case of the Council to:

Wrexham County Borough Council, The Guildhall, Wrexham, LL11 1AY

Facsimile number: 01978 292207

3.1.2 in the case of the P2 Developer to:

FCC Wrexham PFI (Phase II) Limited, Ground Floor West, 900 Pavilion Drive, Northampton Business Park, Northamptonshire, NN4 7RG

4. **DETERMINATION OF DISPUTES**

4.1 Any dispute relating to or arising out of the terms of this Supplemental Agreement, which cannot be settled by negotiation between the parties, shall be dealt with in accordance with clause 7 of the Section 106 Agreement.

5. **JURISDICTION**

5.1 This Supplemental Agreement is to be governed by and interpreted in accordance with the law of England and Wales.

5.2 The courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

6. **EXECUTION**

6.1 This Supplemental Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

6.2 The parties have executed this Supplemental Agreement as a deed and it is delivered on the date set out above.

EXECUTED AS A DEED by affixing the)

COMMON SEAL OF WREXHAM COUNTY)
BOROUGH COUNCIL)
in the presence of:)



Shyn Davis

~~Head of Corporate and Customer
Services~~

Legal Services Manager.

EXECUTED as a deed (but not)
delivered until the date hereof)
by FCC WREXHAM PFI (PHASE II) LIMITED)
acting by:)


Director

Director / ~~Secretary~~

Vicente Conf.