DATED 11 JULY **2014**

BRYMBO DEVELOPMENTS LIMITED

- and -

WREXHAM COUNTY BOROUGH COUNCIL

AGREEMENT

---

for the construction and adoption of roads
on land at Brymbo, Wrexham and at the junctions of Railway Road and Mount Hill, Wrexham and Blast Road, High Street and Gwalia Road, Wrexham
under the Highways Act 1980 Sections 38 and 278

Trevor Coxon
Head of Corporate and Customer Services
Wrexham County Borough Council
Guildhall
Wrexham
LL11 1AY

Ref: TS/10005795

THIS AGREEMENT is made the 11th day of JULY **2014**

BETWEEN:

(1) **BRYMBO DEVELOPMENTS LIMITED** whose registered office is situated at Fernhill Estate Office, Fernhill Road, Sutton, Newport, Shropshire TF10 8DJ (Company Registration No. 00936369) ('the Developer') and

(2) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham LL11 1AY ('the Council').

NOW IT IS AGREED as follows:

1 Definitions and Interpretation

In this Agreement:

1.1 'the Appropriate Officer' means the highway engineer or other appropriate officer for the time being of the Council,

1.2 'the Bond' means the bond to be entered into by the Developer with Lloyds Bank plc or another Bank being a member of the London Bankers Clearing House in favour of the Council to guarantee the due performance of the terms and conditions of this Agreement in accordance with the terms of the s106 Agreement

1.3 'the Existing Roads' means the existing highways maintainable at public expense shown shaded green on Plan A,

1.4 'the Final Certificate' means the certificate issued under Clause 6.3 of this Agreement,

1.5 'the Interim Certificate' means the certificate to be issued under Clause 6.1 of this Agreement,

1.6 'the Land' means the land being described as land at Brymbo, Wrexham shown on Plan B being the land identified by title numbers CYM194878 and WA705202,

1.7 'the Maintenance Period' means the period of 12 months from the date of the Interim Certificate,

1.8 'Plan A' means the drawing numbered P 47067923/058 Rev. 03 annexed to this Agreement which has been approved by the Council,

1.9 'Plan B' means the drawing numbered P 47067923/059 Rev. 03 annexed to this Agreement which has been approved by the Council,

1.10 'the Planning Permission' means the obligations set out in BRY P/2010/0516 or any superceding permission as granted by the Council,

1.11 'the Roads' means the roads to be constructed on the Land by the Developer in connection with the Section 38 Works as set out and shown on Plan B,

1.12 'the s106 Agreement' means the s106 entered into on the same date as this Agreement between Wrexham County Borough Council, Parkhill Estates Limited, Brymbo Developments Limited and the Welsh Ministers,

1.13 'the Section 278 Works' means the improvements, alterations and additions to the Existing Roads as shown on Plan A,

1.14 'the Section 38 Works' means the construction of the Roads including but not limited to the carriageway, footway, street lighting columns and gullies and shown on Plan B,

1.15 'the Specification' means all plans, documents and drawings deposited with and agreed by the Council in respect of the Section 38 and Section 278 Works outlined in Schedule 1 to this Agreement

1.16 words importing one gender shall be construed as importing any other gender,

1.17 words importing the singular shall be construed as importing the plural and vice-versa,

1.18 words importing persons shall be construed as importing a corporate body or a partnership and vice-versa,

1.19 where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons, and

1.20 the clause headings do form part of this Agreement and shall not be taken into account in its construction or interpretation.

2 Background

2.1 The Council is:

2.1.1 the local Highway Authority for the County Borough of Wrexham and

2.1.2 the Local Planning Authority by whom the Planning Permission is enforceable.

2.2 The Developer is registered as proprietor of the Land with an absolute freehold title under title numbers CYM194878 and WA705202.

2.3 The Developer intends to carry out the Section 38 Works on the Land and the Section 278 Works in accordance with Plan A and Plan B and the Specification.

2.4 The Developer desires that upon completion the Roads should become highways maintainable at the public expense.

2.5 The Developer also wishes to carry out work on the Existing Roads.

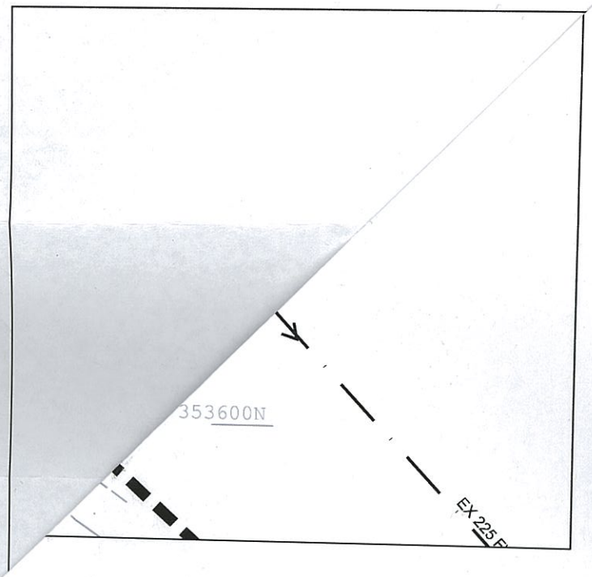
This drawing is for Preliminary purposes only and is subject to amendment during design development. UNDER NO CIRCUMSTANCES MUST THIS DRAWING BE USED FOR CONSTRUCTION PURPOSES

NOTES

1. IF RECEIVED ELECTRONICALLY IT IS THE RECIPIENTS RESPONSIBILITY TO PRINT TO THE CORRECT SCALE. ONLY WRITTEN DIMENSIONS SHALL BE USED.

KEY

- S104 SURFACE WATER DRAIN.
- S104 FOUL WATER DRAINAGE.
- HIGHWAY DRAIN GULLY AND CONNECTION.
- HIGHWAY DRAIN AND CARRIER PIPE
- PRIVATE FOUL WATER CONNECTION.
- PRIVATE STORM WATER CONNECTION.
- CULVERT IN RIPARIAN OWNERSHIP
- S104 SEWER EASEMENT.
- EXISTING HIGHWAY LAND
- LAND TO BE DEDICATED AS HIGHWAY
- PROPSED STREET LIGTHING



By / Check	Date	Suffix
		03
	12.02.14	02
JC/GAL	23.08.12	01

LIMINARY

O DEVELOPMENTS LTD

BRYMBO DEVELOPMENT
BRYMBO
WREXHAM

Drawing Title

SECTION S278
PLAN
PLAN A

Drawn	Checked	Approved	Date
SJC	CEH		16.12.13
URS Internal Project No. 47067923		Suitability N/A	
Scale @ A1 1:500		Zone / Mileage N/A	

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URS

Drawing Number	Rev
P 47067923/58	03

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NOTES

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KEY

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- S104 FOUL WATER DRAINAGE.
- HIGHWAY DRAIN GULLY AND CONNECTION.
- HIGHWAY DRAIN AND CARRIER PIPE
- PRIVATE FOUL WATER CONNECTION.
- PRIVATE STORM WATER CONNECTION.
- CULVERT IN RIPARIAN OWNERSHIP
- S104 SEWER EASEMENT.
- LAND TO BE DEDICATED AS HIGHWAY
- PROPSED STREET LIGTHING

CUT LINE

Check	Date	Suffix
		03
		02
	04.09.12	01

...MINARY

...DEVELOPMENTS LTD

BRYMBO DEVELOPMENT
BRYMBO
WREXHAM

Drawing Title

SECTION 38 PLAN
PLAN B

Drawn	Checked	Approved	Date
SJC	CEH		16/12/13
URS Internal Project No. 47067923		Suitability N/A	
Scale @ A1 1:1000		Zone / Mileage N/A	

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Drawing Number	Rev
P 47067923/59	03

2.6 This Agreement is entered into pursuant to the Highways Act 1980, Sections 38 and 278.

2.8 The Council has agreed with the Developer that subject to payment of the cost of inspection of the Section 38 Works and their maintenance in a proper manner on the terms and conditions of this Agreement, the Council will do and procure all acts and things necessary for the taking over and adoption of the Roads as highways maintainable at the public expense.

2.9 The Council is satisfied that the Section 278 Works are of benefit to the public.

3 Bond

3.1 The Developer shall not commence the s278 Works or the s38 Works until the Bond has been executed and delivered to the Council.

4. The Section 38 Works: Construction of the Roads

4.1 Junctions

Where the Roads join an existing highway the Roads to that highway shall be constructed at the expense of the Developer and to the satisfaction of the Appropriate Officer.

4.2 Construction of the Section 38 Works

4.2.1 The Developer shall at his own expense construct the Section 38 Works or cause the Section 38 Works to be constructed in accordance with Plan B and the Specification approved by the Council and in all respects to the satisfaction of the Appropriate Officer, provided that any amendment to Plan B or the Specification shall be previously approved in writing by the Council and the work comprised in the amendment shall not be commenced until notification in writing of approval has been received by the Developer.

4.2.2 The Developer shall complete the Section 38 Works or any part of them as soon as is practicable and in any case not later than twelve months after the commencement of the Section 38 Works.

5 The Section 278 Works: on the Existing Highway

5.1 Liabilities of the Developer

The Developer shall carry out the Section 278 Works at his own expense and as agent for the Council in accordance with Plan A and the Specification and in all respects to the satisfaction of the Appropriate Officer within twelve months of the commencement of the s278 Works.

5.2 Statutory undertakers

The Developer shall pay all charges that may be levied on the Council or the Developer by any of the statutory undertakers in respect of removal, protection or alteration of any of their apparatus necessitated by the Section 278 Works.

6 Provisions applying to both the Section 38 Works and the Section 278 Works

6.1 The Interim Certificate

After the completion of the Section 38 Works and the Section 278 Works in accordance with this Agreement the Appropriate Officer shall issue the Interim Certificate to the Developer stating that those works have been carried out to his satisfaction and during the Maintenance Period the Developer shall execute all such works of repair, reconstruction or rectification of any and all defects and imperfections and of any and all other faults of whatsoever nature that may be required of him in writing by the Appropriate Officer.

6.2 Parties' obligations during the Maintenance Period

During the Maintenance Period:

6.2.1 the Developer shall at his own expense maintain the Section 38 Works and the Section 278 Works to enable safe use by vehicles and pedestrians to the satisfaction of the Appropriate Officer, and

6.2.2 the Council shall at its own expense undertake routine maintenance of and be responsible for payment for energy for all street lights and illuminated traffic signs.

6.3 Final Certificate

If upon the expiration of the Maintenance Period the Appropriate Officer is satisfied that the Section 38 Works and the Section 278 Works have been duly and properly maintained and are not then subject to any defects, and all other obligations under this Agreement have been performed and that an agreement pursuant to Section 104 of the Water Industry Act 1991 has been entered into by the Developer with the relevant sewerage undertaker, he shall issue the Final Certificate to the Developer stating that the Section 38 Works are suitable for adoption and shall procure the adoption of the Roads by the Council as highways maintainable at the public expense.

6.4 Issue of certificates for part

Notwithstanding the provisions of this Agreement, the Appropriate Officer may in his absolute discretion

6.4.1 issue an Interim Certificate and a Final Certificate in respect of such part or parts only of the Section 38 Works and the Section 278 Works as are from time to time constructed and maintained in accordance with this Agreement, and Clauses 6.1 and 6.3 shall apply accordingly to such part or parts of the Existing Roads or the Roads as are from time to time the subject of such certificates; and

6.4.2 agree to reduce the Bond proportionately.

6.5 Notice and access to be given to Appropriate Officer

The Developer shall:

6.5.1 before commencing the Section 38 Works or the Section 278 Works give 5 working days notice in writing to the Appropriate Officer of his intention to do so, and if such notice is not given by 11 JANUARY 2015 works shall be deemed to have commenced on 11 JANUARY 2015

6.5.2 during the progress of the Section 38 Works or the Section 278 Works and until the issue of the Final Certificate give to the Appropriate Officer and any person or persons duly authorised by him free access to any part of the Section 38 Works or the Section 278 Works,

6.5.3 permit him or them to inspect the Section 38 Works or the Section 278 Works and all or any materials used or intended to be used in the Section 38 Works or the Section 278 Works, and

6.5.4 give effect to any requirements made or instructions given by the Appropriate Officer or any person duly authorised by him, including the removal of specimens for analysis or other examination, for securing that the Section 38 and Section 278 Works conform to Plan A and to Plan B and the Specification, and are executed to the satisfaction of the Appropriate Officer.

6.6 No erection of overhead services

The Developer shall not at any time give consent to any service undertaking or supplier whether statutory or otherwise for the erection of overhead services in the Existing Roads or the Roads without the written consent of the Appropriate Officer being first obtained, and the location and the disposition of underground services shall follow best practice.

6.7 Default provisions

If the Developer:

6.7.1 fails to perform or observe any of the conditions, covenants, agreements or obligations on the part of the Developer contained in this Agreement or described or referred to on Plan A or Plan B or the Specification, or

6.7.2 fails to proceed with the Section 38 Works and the Section 278 Works in respect of the Existing Roads or the Roads or any of them to the satisfaction of the Appropriate Officer (whose decision shall be conclusive), or

6.7.3 fails to complete the Section 38 Works and the Section 278 Works within the time limits set out in this Agreement, or

6.7.4 being a company is wound up either voluntarily (except for the purpose of reconstruction or amalgamation) or compulsorily or being an individual becomes bankrupt or in either case enters into composition with its or his creditors, or

6.7.5 suffers any distress or execution to be levied against its or his goods, or

6.7.6 is the subject of the appointment of a receiver,

the Council shall (after twenty one days' notice in writing to the Developer of its intention so to do) have the right to exercise any powers whatsoever enabling it to carry out or cause to be carried out the Section 38 Works or any part of them in respect of the Roads or any part of them, or the Section 278 Works or any part of them in respect of the Existing Roads or any part of them, and to remedy any defect in them before their adoption as highways maintainable at the public expense.

6.8 Notice of default in respect of part

Where the Council serves a notice under Clause 6.7 of this Agreement in respect of any of the Existing Roads or the Roads or part of them, the service of the notice shall not in any way relieve the Developer from the performance and observance of the conditions covenants agreements or obligations on his part contained in this Agreement in respect of the rest of the Existing Roads or the rest of the Roads or part of them included in this Agreement, whether or not specified in the notice, and so far as such other Road or Roads or parts of them are concerned the terms of this Agreement shall remain in full force and effect.

6.9 Recovery of costs

If the Council serves a notice under Clause 6.7 of this Agreement and carries out the Section 38 Works and the Section 278 Works or any part of them or causes them to be carried out, the Council shall be entitled to recover the cost of doing so from the Developer including any Necessary Associated Costs, as defined in the 106 Agreement whether internal or external.

6.10 Indemnity

The Developer on behalf of himself and his successors in title or assigns, undertakes and agrees with the Council that if any claim for compensation damages, charges, costs or expenses arises in connection with or incidental to the carrying out of the Section 38 Works or the Section 278 Works (including claims relating to infringement or destruction of any right, easement or privilege and claims under Parts I and II of the Land Compensation Act 1973) or anything done or omitted to be done before issue of the Final Certificate, he will hold the Council harmless and safely indemnified from the claim FOR THE AVOIDANCE OF DOUBT such indemnity shall cease upon the date six years from the grant of the Final Certificate

6.11 Dedication of Land

Upon the issue of the Final Certificate or certificates as provided for in this Agreement the Developer shall give up and dedicate to the public

6.11.1 the Land on which the Section 38 Works are constructed or such part of the Land as is covered by the Final Certificate to the intent that the Land shall become a public highway up to and including the boundary of the Land with other land as indicated on Plan B; and

6.11.2 the land shaded clay brown on which the Section 278 Works are constructed or such part of the said land as is covered by the Final Certificate to the intent that the said land shall become a public highway up to and including the boundary of the said land with other land as indicated on Plan A

6.12 Costs of agreement

The legal costs of the Council in connection with the preparation, sealing and completion of this Agreement (and in relation to a Deed of Grant of Easement in respect of land owned by the Council under title number CYM502891) in the sum of two thousand pounds (£2,000.00) shall be paid by the Developer prior to the completion of this Agreement (and the Deed of Grant of Easement described in this Clause 6.12) to the Head of Corporate and Customer Services for the Council.

The Developer shall also pay prior to the commencement of the s278 Works s38 Works of this Agreement (and the Deed of Grant of Easement described in this Clause 6.12) to the Head of Corporate and Customer Services for the Council a fee in the sum of one hundred and six thousand, four hundred and seventy five pounds (£106,475) in respect of the inspection by the officers, employees or agents of the Council of the works executed by the Developer under this Agreement.

6.13 Adoption not to include drains

It is agreed that the adoption of the Roads as highways maintainable at the public expense shall not include the adoption as part of such highways of the drains or sewers to be constructed by the Developer but subject to this exception the adoption shall include the surface water drains, gullies and connections shown on the Plan B.

6.14 Service of notices

6.14.1 Any notice required to be given to the Developer under this Agreement shall be deemed to have been properly served if it is sent by the Council by pre-paid recorded delivery post to the Developer at the address given at the head of this Agreement.

6.14.2 Any notice required to be given by the Developer to the Council (which expression shall include the Appropriate Officer) shall be deemed to be properly served if sent by pre-paid recorded delivery post to the Head of Housing, Public Protection and Environment of the Council at the address given at the head of this Agreement.

6.15 Value Added Tax

All sums paid or to be paid in accordance with the terms of this Agreement shall be exclusive of any Value Added Tax ("VAT"). If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then, to the

extent that VAT had not previously been charged in respect of that supply, the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

6.17 Construction (Design and Management) Regulations 2007

If applicable, the Developer shall assume the obligations of the client for the purposes of the Construction (Design and Management) Regulations 2007 ("CDM Regulations") and will ensure that the execution of the works to construct the Roads complies with the CDM Regulations and in the course of carrying out such obligations the Developer shall:-

(i) make an election in accordance with Paragraph 8 of the CDM Regulations that it is to be treated for the purposes of the CDM Regulations as the only client (when there is more than one client as defined in the regulations) in respect of the works to construct the Roads;

(ii) appoint a CDM Co-ordinator and a principal contractor in respect of the works to construct the Roads and take all steps as are in the circumstances reasonable to ensure that each is provided with the relevant information to enable him to perform his duties under the CDM Regulations;

(iii) allow sufficient time and resources to enable the CDM Co-ordinator and principal contractor to comply with their obligations relating to health and safety matters arising from the regulations and to co-operate with them to that end;

(iv) notify the CDM Co-ordinator and principal contractor of any change in circumstances relating to the works to construct the Roads of which it is or ought reasonably to be aware which may affect the health and safety of persons involved or likely to become involved in the works to construct the Roads;

(v) secure and deliver to the Council as soon as practicable after the date of completion of the works to construct the Roads (but in any event not later than three months after that date) a copy of the health and safety file prepared maintained and completed as required by the CDM Regulations;

(vi) include in the design all information relating to design and materials which might reasonably affect the health and safety of persons involved in the works to construct the Roads and its maintenance and repair.

6.18 Jurisdiction

This deed shall be governed by and interpreted in accordance with the law of England and Wales

SCHEDULE 1

Specification for the Section 38 and Section 278 Works

Improvement to highway at the junction of Railway Road and Mount Hill, Wrexham and at the junction of Blast Road, High Street and Gwalia Road, Wrexham and highway works on land at Brymbo, Wrexham as detailed in the Planning Permission and on Plan A and Plan B

SCHEDULE 1

Specification for the Section 38 and Section 278 Works

Improvement to highway at the junction of Railway Road and Mount Hill, Wrexham and at the junction of Blast Road, High Street and Gwalia Road, Wrexham and highway works on land at Brymbo, Wrexham as detailed in the Planning Permission and on Plan A and Plan B

IN WITNESS whereof the parties hereto have executed this instrument as a Deed the day and year first before written

EXECUTED as a DEED by
BRYMBO DEVELOPMENTS LIMITED
and signed by:-

.....
Director

.....
Director/Company Secretary

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

.....
Head of Corporate and Customer Service/
Legal Services Manager

188/14