

THIS DEED OF NOVATION is made the 28 day of March 20 13

BETWEEN:

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham LL11 1AY (the "**Council**") which term shall include its successors;
- (2) **FCC WREXHAM PFI LIMITED** (registered number 05572555) whose registered office is at Ground Floor West, 900 Pavilion Drive, Northampton Business Park, Northamptonshire NN4 7RG (the "**P1 Developer**"); and
- (3) **FCC WREXHAM PFI (PHASE II) LIMITED** (registered number 08164693) whose registered office is at Ground Floor West, 900 Pavilion Drive, Northampton Business Park, Northamptonshire NN4 7RG (the "**P2 Developer**").

WHEREAS

- (A) On 23 January 2012, the Council and P1 Developer entered into an 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 (the "**Section 106 Agreement**"); and
- (B) The P2 Developer is to be appointed in relation to part or all of the Development (as defined in the Section 106 Agreement). Accordingly, the P1 Developer will join with the P2 Developer and the Council in executing a deed of novation such that certain rights, benefits, powers, and duties, obligations and liabilities of the P1 Developer under the Section 106 Agreement will be novated and transferred to the P2 Developer and the P1 Developer shall thereupon be discharged and released from those liabilities, obligations, actions, claims and proceedings under the Section 106 Agreement; and
- (C) This Deed of Novation is the deed of novation referred to in Recital (B).

NOW THIS DEED OF NOVATION witnesseth as follows:

1. The P2 Developer hereby assumes the rights of the P1 Developer under the Section 106 Agreement and covenants with each of the parties to this Deed to assume and to observe and perform and be bound by the terms of the Section 106 Agreement and the duties, liabilities and obligations (including without limitation all actions claims and proceedings) of the P1 Developer under the Section 106 Agreement, whenever created or arising, as if the P2 Developer were a party to the Section 106 Agreement in place of the P1 Developer in relation to the terms, rights, duties, liabilities and obligations.
2. The P2 Developer shall indemnify the P1 Developer, to the extent (if any) that the P1 Developer has not been released on the date of this Deed of Novation from the duties, liabilities and obligations of the P1 Developer (including without limitation all actions, claims and proceedings against the P1 Developer) under the Section 106 Agreement wherever and however created.
3. The P1 Developer is released from all duties, liabilities and obligations which are owing or which but for the execution of this Deed of Novation would have become owing under the Section 106 Agreement whenever arising. It is acknowledged by the Council that it will not be entitled to enforce obligations against the P1 Developer in the event that there is a breach of the provisions of the Section 106 Agreement by the P2 Developer.

4. Each of the parties shall take such steps, execute all such documents and do all such acts and things as may be reasonably required by the other parties to give effect to any of the transactions contemplated by this Deed of Novation.
5. The parties have the same interests in the Site as defined and described in the Section 106 Agreement.
6. This Deed of Novation is entered into pursuant to section 111 of the Local Government Act 1972 and all other enabling powers.
7. The Parties do not intend that any of the terms of this Deed of Novation will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
8. This Deed of Novation may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.
9. Any demand, notice or other communication given in connection with or required by this Deed of Novation shall be made in writing (entirely in the English language) and shall be delivered to, or sent by pre-paid first class post to, the recipient at its registered office or its address stated in this Deed of Novation (or such other address as may be notified in writing from time to time), sent by facsimile transmission to the recipient:

in the case of the Council to:

Wrexham County Borough Council, The Guildhall, Wrexham, LL11 1AY
Facsimile number: 01978 292207

in the case of the P1 Developer to:

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

Facsimile number: 01604 826202 (or such other number as may be notified in writing from time to time)

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

Facsimile number: 01604 826202 (or such other number as may be notified in writing from time to time)

10. Any dispute or difference between the parties arising out of, or related to, this Deed of Novation or any breach thereof, which cannot be settled by negotiation between the parties, shall be dealt with in accordance with clause 7 of the Section 106 Agreement.
11. This Deed of Novation (and any non-contractual obligations arising out of or in connection with it) shall be construed in accordance with the laws of England and Wales and shall be in all respects subject to the non-exclusive jurisdiction of the Courts of England and Wales.

EXECUTED as a Deed and delivered as a Deed on the day and year first above written

WREXHAM COUNTY BOROUGH COUNCIL

The common seal of
WREXHAM COUNTY BOROUGH COUNCIL
was affixed to this deed
in the presence of:

)
)
)
)
)
S. G. Davies
Authorised Signatory



Executed as a deed by
FCC WREXHAM PFI LIMITED
on being signed by:
.....
in the presence of:

)
)
)
)
)
[Signature]
Director

Signature of witness:

Name:

Address:

Occupation:

[Signature]
.....
S. STRUDWICK
.....
.....
LAWYER
.....

CMS Cameron McKenna LLP
Mitre House
160 Aldersgate Street
London EC1A 4DD

Executed as a deed by
FCC WREXHAM PFI (PHASE II) LIMITED
on being signed by:
.....
in the presence of:

)
)
)
)
)
[Signature]
Director

Signature of witness:

Name:

Address:

Occupation:

[Signature]
.....
S. STRUDWICK
.....
.....
LAWYER
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