

DATED

20TH FEBRUARY

2013

WREXHAM COUNTY BOROUGH COUNCIL (1)

- and -

HEED DEVELOPMENTS LTD (2)

AGREEMENT

pursuant to Section 106 of the Town and Country Planning Act 1990
arising from proposed development at the former Ysgol-y-Wern,
Hill Street, Rhosllanerchrugog
in the County Borough of Wrexham

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

Ref: LP/AMG/10005662

THIS DEED is made the 20TH day of FEBRUARY

2013

BETWEEN WREXHAM COUNTY BOROUGH COUNCIL Guildhall Wrexham LL11 1AY
hereinafter called "the Council") of the one part and HEED DEVELOPMENTS LIMITED
Co. Reg'n No. 6440182) whose registered office is situate at 43, Chapel Street, Ponciau,
Wrexham, LL14 1SD (hereinafter called "the Owner") of the other part

WHEREAS

- 1) The Council is the local planning authority within the meaning of the Town and Country Planning Act 1990 (hereinafter called "the Act") for the area in which the land described in the First Schedule hereto (hereinafter called "the Land") is situate and by whom the obligations contained in this Deed are enforceable
- 2) The Owner is the owner of the Land in fee simple in possession free from incumbrances
- 3) By an application received by the Council on 6 January 2012 which has been allocated code number P/2012/0010 (hereinafter called "the Application") application has been made to the Council for planning permission for the development specified in the Second Schedule hereto (hereinafter called "the Development") on the Land
- 4) The Council has decided to grant planning permission for the Development subject to conditions (hereinafter called "the Planning Permission") in accordance with the Application subject to the execution of this Deed without which planning permission for the Development would not have been granted

NOW THIS DEED which is made in pursuance of Section 106 of the Town and Country Planning Act 1990 WITNESSETH as follows:-

1 **THE** Owner hereby covenants with the Council to perform the obligations (hereinafter called "the Obligation") set out in the Third Schedule hereto

2 **IT** is hereby agreed and declared as follows:-

- (i) The Obligation is a planning obligation for the purposes of Section 106 of the Act
- (ii) The Obligation relates to the Land
- (iii) The Obligation is enforceable by the Council as local planning authority
- (iv) The Council will issue the Planning Permission to the Owner on completion of this Deed
- (v) The expressions "the Council" and "the Owner" shall include their respective successors in title and assigns (except for the owner of any completed dwelling standing on the Land following implementation of the Planning Permission) and if any successor in title to the Owner shall comprise more than one person or corporation all obligations contained herein on the part of the Owner shall be the joint and several liabilities of such persons or corporations
- (vi) No party hereto shall be liable for a breach hereof after they shall have parted with all interest in the Land but this permission shall not affect any liability of such party in respect of any antecedent breach of the Obligation in existence at the time such party disposes of such interest
- (vii) The Obligation shall take effect upon a date which shall be specified by the party intending to implement the Planning Permission in a written notice served upon the Council as being the date upon which the Development is to be commenced (such notice to be served not less than 7 days before such date)

- (viii) If the party intending to implement the Planning Permission fails to serve the notice referred to in (vii) above before commencement of the Development the Obligation shall take effect upon the actual date upon which the Development is begun within the meaning of Section 56 of the Act (as amended)
- (ix) The Obligation is a local land charge and shall be registered as such
- (x) If the sum payable pursuant to paragraph (iv) of the Obligation falls to be paid later than two years from the date of this Deed the said sum shall be increased in proportion to the increase in the Index of Retail Prices maintained by the Office of National Statistics between the date of this Deed and the date upon which the said sum falls to be paid
- (xi) The parties to the Transfer (hereinafter defined) shall each bear their own legal costs in connection therewith
- (xii) The Owner shall pay to the Council on completion of this deed the sum of One thousand pounds (£1,000) representing the Council's legal costs of and incidental to its preparation
- (xiii) This Deed will not prevent the Council from exercising its statutory powers under any legislation
- (xiv) In so far as any clause or clauses of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

THE COUNCIL undertakes with the Owner that forthwith upon execution of the Transfer and payment of the sum stipulated in paragraph (iv) of the Third Schedule the Council will apply to the Chief Land Registrar for entry of the Council as

registered proprietor of the land the subject of the Transfer on the registers of title pursuant to the Land Registration Act 2002.

- 4 **THE** Council shall not be obliged to expend the sum of money referred to in paragraph (iv) of the Third Schedule or any other specific sum upon the maintenance of the public open space provision at the Development and the expenditure of the said sum shall be at the sole discretion of the Council in relation to the time when and the location or locations in respect of which it shall be disbursed.

IN WITNESS WHEREOF the Council has executed this Deed as a deed by the affixation of its Common Seal and the Owner acting by two of its Directors or one of its Directors and its Secretary has executed this Deed as a deed the day and year first before written

FIRST SCHEDULE
("The Land")

ALL THAT piece or parcel of land situate and being the site of the former Ysgol y Wern, Rhosllanerchrugog in the County Borough of Wrexham being the land registered at the date hereof at H M Land Registry in the name of the Owner with title absolute under Title Numbers CYM 255175 and CYM 415896

SECOND SCHEDULE
("The Development")

"Demolition of existing school buildings and erection of 15 no. residential dwellings".

THIRD SCHEDULE ("The Obligation")

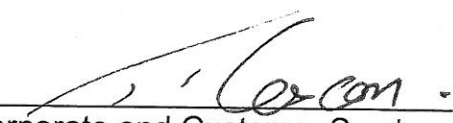
- i) At a time which shall be specified as part of the design and landscaping details of the public open space areas to be provided on the Development as referred to in condition 6 subject to which the Planning Permission shall be granted (which details shall have been previously approved by the Council in accordance with such condition) to lay out the said area(s) of public open space in accordance with the said details.
- ii) Upon completion of the said area(s) of public open space to maintain the same for a period of one year from issue by the Council of a certificate under the hand of its Head of Community Wellbeing and Development to the effect that the Council is satisfied that such public open space has been laid out in accordance with the approved details (the issue of such certificate not to be unreasonably withheld or delayed)
- iii) Not to allow more than fifty per cent (50%) of the dwellings created by the Development to be occupied until the unincumbered freehold interest with vacant possession of the Owner in the area(s) of public open space on the Development has been transferred to the Council (the document effecting such transfer being herein elsewhere referred to as "the Transfer") in a form including the provisions set out in the Fourth Schedule hereto
- iv) Upon the date of the Transfer to pay to the Council the sum of Fifteen Thousand Pounds (£15,000) being a sum representing the costs of future maintenance of the said public open space.

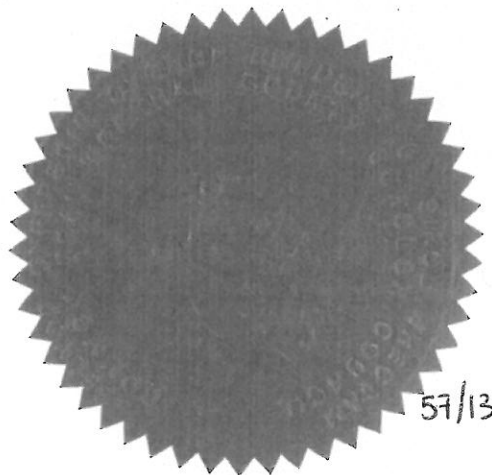
FOURTH SCHEDULE

- (a) A consideration of £1.00 which shall actually be paid
- (b) A covenant by the Council that the area(s) of public open space forming part of the Development shall not be used otherwise than as open space for the public amenity (such covenant to bind each and every part of the public open space for the benefit of the remainder of the Land and each and every part thereof)
- (c) A covenant by the Council to maintain the said area(s) of public open space in condition fit for use as such (such covenant to bind each and every part of the public open space for the benefit of the Land and each and every part thereof)
- (d) An exception and reservation in favour of the remainder of the Land of rights and easements in respect of drainage and conducting media so far as the same shall be in existence on the date of the Transfer or required for the purposes of carrying out the Development together with rights of entry upon the said public open space to lay inspect renew repair and replace the said drains and conducting media subject to the proviso that such exceptions reservations and rights of entry shall not materially restrict prejudice or detrimentally affect any of the landscaping planting amenity works or vegetation upon the public open space.
- (e) A right of way in favour of the Council with or without vehicles equipment and personnel at all reasonable times and for all purposes relating to the future maintenance or enhancement of the area(s) of public open space on the Development:-

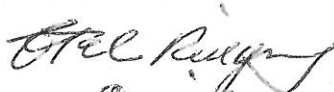
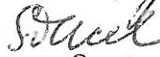
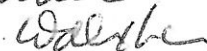
- (i) over and along such part of the Land (if any) as lies between the said area(s) of public open space and the point nearest thereto within the Land which shall become adopted highway maintainable at the public expense and
- (ii) over and along the estate road(s) within the Development which shall become so maintained until the happening of that event.

EXECUTED as a **DEED** by the affixation of the Common Seal of **WREXHAM COUNTY BOROUGH COUNCIL** in the presence of:


Head of Corporate and Customer Services



EXECUTED as a **DEED** by the said **HEED DEVELOPMENTS LIMITED** by **ANDREW CLARKE** a Director and **SHAUN ROBERT BEECH** another Director or its Secretary in the presence of:




CERTIFICATE

As solicitors for the Owner (as defined in the within written deed) we hereby certify that recital 2 hereof is correct

Signed 

Dated: 20 / 02 / 2013

Hopleys GMA,
5 King Street,
Wrexham
LL11 1HF