

DATE:

21 NOVEMBER

2012

WREXHAM COUNTY BOROUGH COUNCIL (1)

THE FIRST MILK CHEESE COMPANY LTD (2)

LLOYDS TSB COMMERCIAL FINANCE LTD (3)

and

BANK OF SCOTLAND PLC (4)

AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990 in respect of ecological management matters arising from and in connection with industrial development on land at Pickhill Lane, Cross Lanes, in the County Borough of Wrexham

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

Ref:LP/LMK/10004988

THIS DEED is made the 21 st day of NOVEMBER 2012 **BETWEEN**
WREXHAM COUNTY BOROUGH COUNCIL of Guildhall Wrexham LL11 1AY (hereinafter
called "the Council") of the first part **THE FIRST MILK CHEESE COMPANY LIMITED** (Co.
Regn. No. 05893846) whose registered office is situate at Pickhill Lane, Cross Lanes,
Wrexham aforesaid (hereinafter called "the Owner") of the second part **LLOYDS TSB**
COMMERCIAL FINANCE LIMITED (Co. Regn. No. 00733011) whose registered office is
situate at No. 1, Brookhill Way, Banbury, Oxon, OX16 3EL (hereinafter called "the First
Mortgagee") of the third part and **BANK OF SCOTLAND PLC** (Co. Regn. No. SC327000)
whose registered office is situate at The Mound, Edinburgh, EH1 1YZ (hereinafter called
"the Second Mortgagee") of the fourth 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 subject to the legal charges next herein recited but otherwise free from financial incumbrances
- (3) By two several legal charges both dated 27 August 2009 made respectively between the Owner of the one part and the First Mortgagee and the Second Mortgagee of the other part the Land was charged by way of legal mortgage to the First Mortgagee and the Second Mortgagee
- (4) The First Mortgagee and the Second Mortgagee have agreed to join in this deed in the manner hereinafter appearing
- (5) By an application received by the Council on 11 October 2011 which has been allocated code number P/2011/0750 (hereinafter called "the Application") application has been made to the Council for planning permission in respect of the development specified in the Second Schedule hereto (hereinafter called "the Development") on the Land
- (6) 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 set out in the Third Schedule hereto (hereinafter called "the Obligation")
- 2 The First Mortgagee and the Second Mortgagee hereby (each as respects its interest in the Land by virtue of its mortgage) consents to the entry into this deed by the Owner and declares that its rights and interest in the Land as mortgagee shall henceforth take effect subject to the Obligation.

3 **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 applicant who made the Application on completion of this Deed
- (v) The expressions "the Council" "the Owner" "the First Mortgagee" and "the Second Mortgagee" shall include their respective successors in title and assigns and if any such successor in title or assign shall comprise more than one person or corporation all liability hereunder on the part of such person or corporation shall also be joint and several
- (vi) No party hereto shall be liable for a breach of the Obligation after they shall have parted with all interest in the Land but this provision shall not affect the liability of such party in respect of any antecedent breach of the Obligation in existence at the time such party disposes of its interest in the Land
- (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 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
- (ix) The Obligation is a local land charge and shall be registered as such

- (x) This Deed will not prevent the Council from exercising its statutory powers under any legislation
- (xi) The Owner will pay to the Council on the date hereof the sum of One Thousand two hundred and fifty Pounds (£1250.00) representing the Council's legal costs in connection with this Deed
- (xii) In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in Wales to such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- (xiii) In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 3 (xii) or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- (xiv) Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- (xv) The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party

will be entitled to make a counter written submission within a further ten working days.

- 4 **NOTWITHSTANDING** the terms contained herein the parties hereto agree that the First Mortgagee and the Second Mortgagee shall only be liable for any breach of the Obligation during such periods (if any) as they are respectively mortgagees in possession of the Land and then only if they shall have caused such breach to have been occasioned and provided further for the avoidance of doubt that they shall not in any event be liable for any breach arising prior to becoming a mortgagee in possession of the Land regardless of whether or not such pre-existing breach shall continue for any period during which they are mortgagees in possession.

IN WITNESS WHEREOF the Council has executed this Deed as a deed by the affixation of its Common Seal the Owner acting by a director and the secretary or two directors has executed this Deed as a deed and the First Mortgagee and the Second Mortgagee each acting by their respective attorney have executed this Deed as a deed the day and year first before written

THE FIRST SCHEDULE

("the Land")

ALL THAT piece or parcel of land with the buildings erected from time to time thereon or on some part thereof being Maelor Creamery Pickhill Lane Cross Lanes Wrexham aforesaid registered at H.M. Land Registry at the date hereof with title absolute in the name of the Owner under Title Number CYM327826

THE SECOND SCHEDULE

("the Development")

"Demolition of existing factory buildings and construction of new cheese cutting and packing plant including offices together with new chill storage warehouse"

THE THIRD SCHEDULE

("the Obligation")

To comply fully and completely with all requirements and recommendations of the ecological management plan and method statement (hereinafter called "the Plan") which

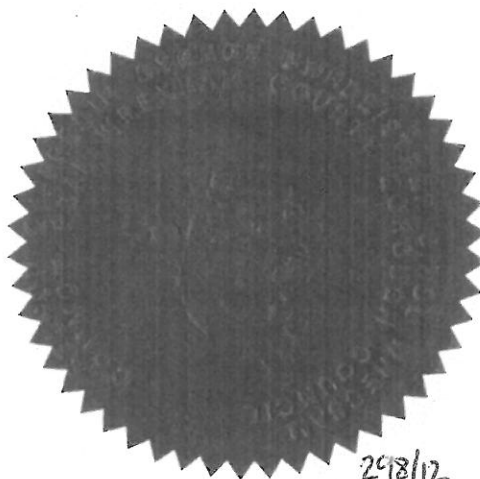
ll be prepared in order to comply with condition 14 subject to which the Planning mission will be granted including, in particular, but without prejudice to the generality of h obligation:-

- (i) before first use of the Development to create, set up or bring into existence such corporate body or bodies as the Plan requires or recommends be brought into existence for the purpose of assumption of responsibility for the long term ecological management of the Development (in co-operation with the Owner or otherwise)
- (ii) before first use of the Development to submit details of such body or bodies to the Council for approval (which shall not be unreasonably withheld)
- (iii) to control and operate such body or bodies as necessary in order to secure such long term management for the whole of any period stipulated in the Plan or the period of 15 years from first use of the Development (whichever is the longer)
- (iv) to co-operate as necessary with all governmental quasi governmental or private agencies charities or trusts with which relationships are required or recommended in the Plan and to enter into such relationships with those bodies either contractual or otherwise as are necessary as part of such co-operation
- (v) to lay out all such monies as are necessary to comply with the Obligation

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

St Wyn Davies

~~Head of Corporate and Customer Services~~
Legal Services Manager.



29/8/12

EXECUTED as a DEED by
THE FIRST MILK CHEESE COMPANY LIMITED
acting by [**PAUL ROWE**]
one of its directors and
[**STEPHEN PAUL FAULKNER**] another
of its directors or the secretary

Paul Rowe
Stephen Paul Faulkner

STEPHEN PAUL FAULKNER

EXECUTED as a DEED by
[**STEPHEN GEOFFREY POLLARD**]
as attorney for and on behalf
of **LLOYDS TSB COMMERCIAL
FINANCE LIMITED** in the
presence of:-

Stephen Geoffrey Pollard

Stephen

Stephen Mann Chapman

STEPHEN MANN CHAPMAN

EXECUTED as a DEED by
[**KEVIN MAY**]
as attorney for and on behalf
of **BANK OF SCOTLAND PLC**
in the presence of:-

Kevin May

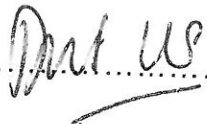
Ian David Smellie

IAN DAVID SMELLIE

KEVIN MAY, SENIOR MANAGER CREDIT
LEEDS CREDIT MANAGEMENT CENTRE

CERTIFICATE

As solicitors to the Owner as defined in the written deed **WE HEREBY CERTIFY** that
Recital (2) hereof is correct

Signed 

Dated 21 November 2012

DWF LLP
1 Scott Place
2 Hardman Street
Manchester M3 3AA