

DATE:

16TH APRIL

2012

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

FREEDOM LAND DEVELOPMENTS LTD (2)

AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990 in respect of the management of public open space in connection with residential development on land at North Road, Ponciau, Wrexham

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

Ref: LP/ZS/10002786

THIS DEED is made the 16TH day of APRIL 2012 **BETWEEN**
WREXHAM COUNTY BOROUGH COUNCIL of Guildhall, Wrexham, LL11 1AY
(hereinafter called "the Council") of the one part and **FREEDOM LAND**
DEVELOPMENTS LIMITED (Co. Regn. No. 5906547) whose registered office is
situate at Chapter House, 5A Ffordd Dolgoed, Mold, Clwyd, CH7 1PE (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 situated 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 21 December 2009 which has been allocated code number P/2009/1030 (hereinafter called "the Application") application has been made to the Council for detailed planning permission (outline planning permission having already been granted) in respect of the development specified in the Second Schedule hereto (hereinafter called "the Development") on the Land and on certain other areas of land adjoining the Land
- (4) The Council has decided to grant such detailed 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 **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" and "the Owner" shall include their respective successors in title and assigns except for the owner or owners of any completed dwelling erected as part of the Development standing upon the Land
 - (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 the Land
 - (vii) The Obligation shall take effect upon the 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 Five Hundred Pounds (£1,500.00) representing the Council's legal costs in connection with this Deed

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

**THE FIRST SCHEDULE
("the Land")**

ALL THOSE pieces or parcels of land situated adjoining North Road, Ponciau in the County Borough of Wrexham which are at the date hereof registered with title absolute at H.M. Land Registry in the name of the Owner under title numbers CYM102053, CYM371084, CYM389422 and CYM389912

**THE SECOND SCHEDULE
("the Development")**

'Submission of reserved matters pursuant to outline planning permission code no. P/2007/1016 granted October 2007 in respect of siting design external appearance means of access and landscaping – residential development (erection of 17 no. dwellings)'

**THE THIRD SCHEDULE
("the Obligation")**

- (a) Within a period of three months from the date this schedule comes into effect in accordance with clause 2(vii) or clause 2(viii) hereof to form a company

(hereinafter called "the Company") whose objects shall be or include the future management of the public open space (hereinafter called "the open space") forming part of the Development and within the same period to produce to the Council certified copies of the memorandum and articles of association and certificate of incorporation thereof

- (b) To procure that every purchaser of a dwelling constructed pursuant to the Planning Permission (hereinafter together referred to as "the Residents") shall contemporaneously with the transfer of such dwelling become a member or shareholder of the Company
- (c) To procure that every transfer of a dwelling constructed pursuant to the Planning Permission contains provision to secure to the Company in perpetuity by way of periodical payments from the purchaser thereof monies sufficient (when aggregated with those from the remainder of the Residents) to enable the Company to maintain the open space to a standard enabling it to comply with the covenant at "(b)" of the Fourth Schedule hereto and the Owner shall lodge with the Council a specimen of the said provisions on a date not later than twenty-eight days before the completion of the first transfer of any dwelling constructed as part of the Development
- (d) Not to allow more than ten of the dwellings to be constructed pursuant to the Planning Permission to be occupied until the Owner has entered into a transfer (hereinafter called "the Transfer") which conveys the fee simple absolute in possession in respect of the open space to the Company in a form which incorporates the provisions set out in the Fourth Schedule hereto and to lodge with the Council a certified copy of the Transfer within 14 days of the date thereof
- (e) To constitute the Company so as to provide that
 - (i) at the first annual general meeting thereof which falls due after the date specified in (d) above a majority of the directors then holding office shall retire

(ii) at every election of directors after the date specified in (d) above a majority of the directors thereof shall be chosen from among the Residents

(f) In case of any default by the Owner in the performance of those parts hereof set out in (a) – (e) above the Council shall at any time at which the default remains unrectified be at liberty to call upon the Owner in writing to enter into the Transfer with the Council instead of the Company (in which event the Transfer shall likewise be in the form referred to in “(d)” above) and to pay to the Council on the date of the Transfer the sum of Seventeen Thousand Pounds (£17,000) representing the commuted costs of future maintenance of the open space as provided for in the Council’s Local Planning Guidance Note No. 10 entitled ‘Public Open Space in New Housing Development’.

(g) If the Owner receives a request from the Council as set out in “(f)” above, the Owner shall within a period of 56 days from receipt thereof either:-

(a) Comply with the same or

(b) Rectify the default in compliance with parts (a) – (e) hereof

FOURTH SCHEDULE (Provisions to be incorporated in the Transfer)

(a) A covenant by the transferee that the open space shall not be used otherwise than as open space for the public (which shall in this context include the Residents) amenity (such covenant to bind each and every part of the open space for the benefit of the remainder of the Land and each and every part thereof).

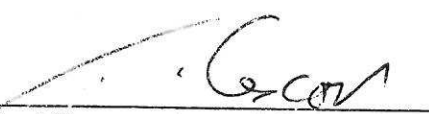
(b) A covenant by the transferee to maintain the open space in a condition fit for use as such (such covenant to bind each and every part of the open space for the benefit of the remainder of the Land and each and every part thereof).

(c) An exception and reservation in favour of the remainder of the Land of rights and easements in respect of drainage infrastructure (which includes for the

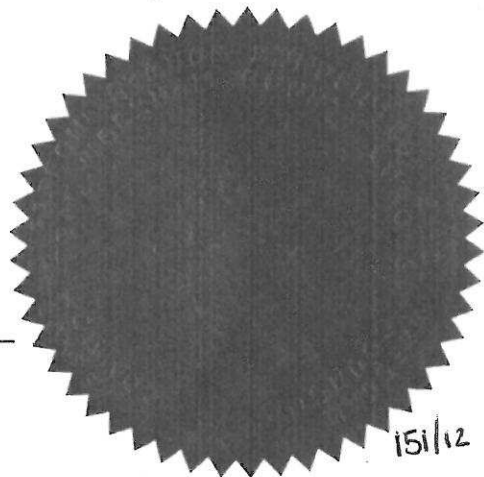
purposes of this provision such apparatus and works as will constitute the surface water drainage regulation system which shall be required pursuant to the drainage strategy stipulated by the outline planning permission for the Development) and other conducting media so far as the same shall be in existence at the date of the Transfer or are required for the purposes of carrying out the Development together with rights of entry upon the open space to lay inspect repair renew and replace the said drainage 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 open space.

- (d) A covenant by the Owner to maintain the said surface water drainage regulation system in good working order and to indemnify the transferee against all actions proceedings costs claims and demands arising from the use or operation thereof until the same is adopted by Welsh Water.

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

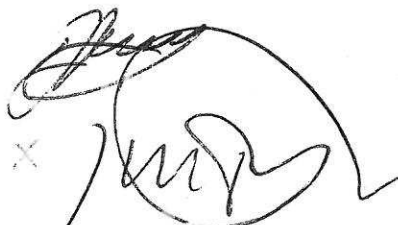


Head of Corporate and Customer Services



EXECUTED as a **DEED** by **FREEDOM**
LAND DEVELOPMENTS LIMITED
by **DAVID PARRY** a director
and **PHILIP GARETH HUGHES** another director
or the secretary
in the presence of:

J.J. Medcalf
Solicitor
31 High Street
Wrexham



Philip Gareth Hughes
Receptionist
31 High Street
Wrexham

CERTIFICATE

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

Signed  Dated 16th APRIL 2012

Thomas, Andrews & Partners
Solicitors
31 High Street
Wrexham
LL13 8HY