

DATED

10 February

2011

WREXHAM COUNTY BOROUGH COUNCIL (1)

- and -

WALES AND WEST HOUSING ASSOCIATION (2)

- and -

THE WELSH MINISTERS (3)

AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990
in respect of land at Rivulet Road Wrexham

Trevor Coxon
Head of Corporate and Customer Services
Guildhall
Wrexham
LL11 1AY
(Ref: SWD/10004626)

THIS AGREEMENT is made on the 10th day of February 2011

BETWEEN:-

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

and

(2) **WALES AND WEST HOUSING ASSOCIATION LIMITED** (Company number IP21114R) whose registered office is at 3 Alexandra Gate, Ffordd Pengam, Tremorfa, Cardiff CF24 2UD ("the Owner")

and

(3) **THE WELSH MINISTERS** care of The Director of Legal Services, CP1 Legal Services Department, Welsh Government, Cathays Park, Cardiff CF10 3NQ ("the Mortgagee")

RECITALS

- A The Council is the Local Planning Authority for the purposes of Section 106 of the Act in respect of the Land.
- B The Owner is the owner of the freehold interest in the Land registered at the Land Registry under Title Number CYM488453.
- C The Land is subject to a legal charge dated 4 February 2010 and made between the Owner of the one part and the Mortgagee of the other part but there are no other legal interests in the Land.
- D The Owner is a Registered Social Landlord.
- E The Owner has submitted the Reserved Matters Application to the Council and the Parties have agreed to enter into this deed in order to secure the planning obligations contained in this deed.
- F The Council is minded to approve the reserved matters subject to conditions in response to the Reserved Matters Application subject to the prior completion of this deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this document unless the contrary intention appears the following terms shall have the following meanings:

"Act"	means the Town and Country Planning Act 1990
"Affordable Housing"	means the provision of the Affordable Housing Units by means of Social Rented Housing
"Affordable Housing Units"	means the 14 Dwelling Units for Affordable Housing to be provided in the Development being Plots 1 – 14 inclusive shown on Plan 2 and comprising 1 x two bedroom four person house and 13 x three bedroom five person houses.
"HHPP"	means the Council's Head of Housing and Public Protection for the time being in post or his duly appointed representative or any successor post with responsibility for housing
"Close Family Connection"	means members of family as described in Section 113 of the Housing Act 1985
"Commencement of Development"	means the carrying out of a material operation as defined by Section 56(4) of the Act in accordance with the Planning Permission and the expression "Commencement Date" shall mean the date on which the Commencement of Development occurs
"Contributions"	means the Education Contribution and the Public Open Space Contribution and "Contribution" shall be construed accordingly
"Development"	means the development of the Land in accordance with the Planning Permission
"Dwelling"	means a residential dwelling comprising a house or a flat within the Development
"Education Contribution"	means the sum of £59,584 (Fifty nine thousand five hundred and eighty four pounds) to be utilised to increase school capacity in the primary sector in Wrexham.
"Eligible Person"	means a person as defined in the Fourth Schedule
"First Occupation Date"	means the date on which the first Dwelling in the Development is first occupied for residential use (excluding any use for construction, fitting out or marketing)

Town & Country Planning Act 1990 Section 106 Obligation

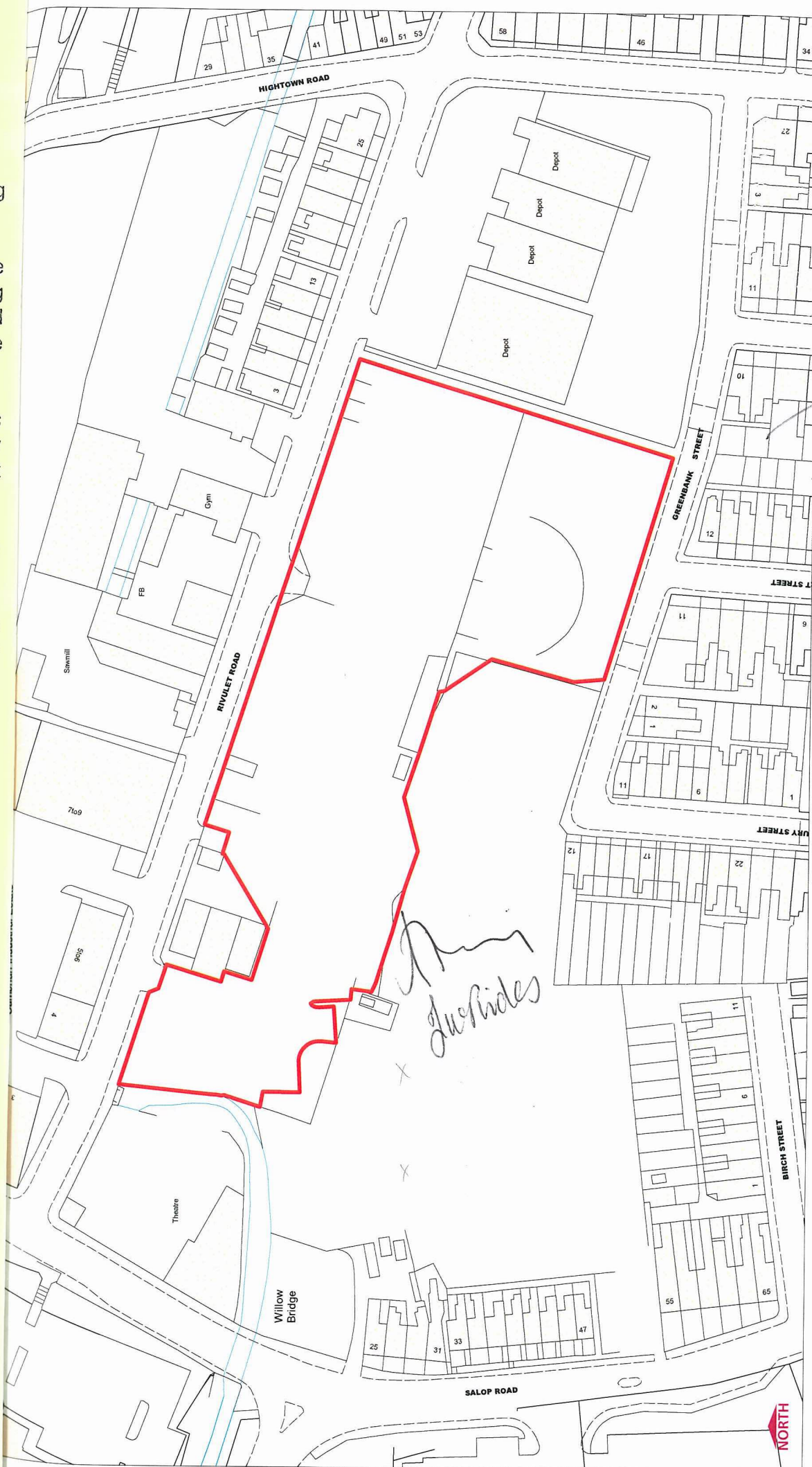
P/2011/0675

Former Gas Works Site, Rivulet Road, Wrexham.

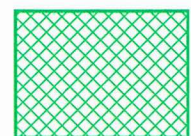
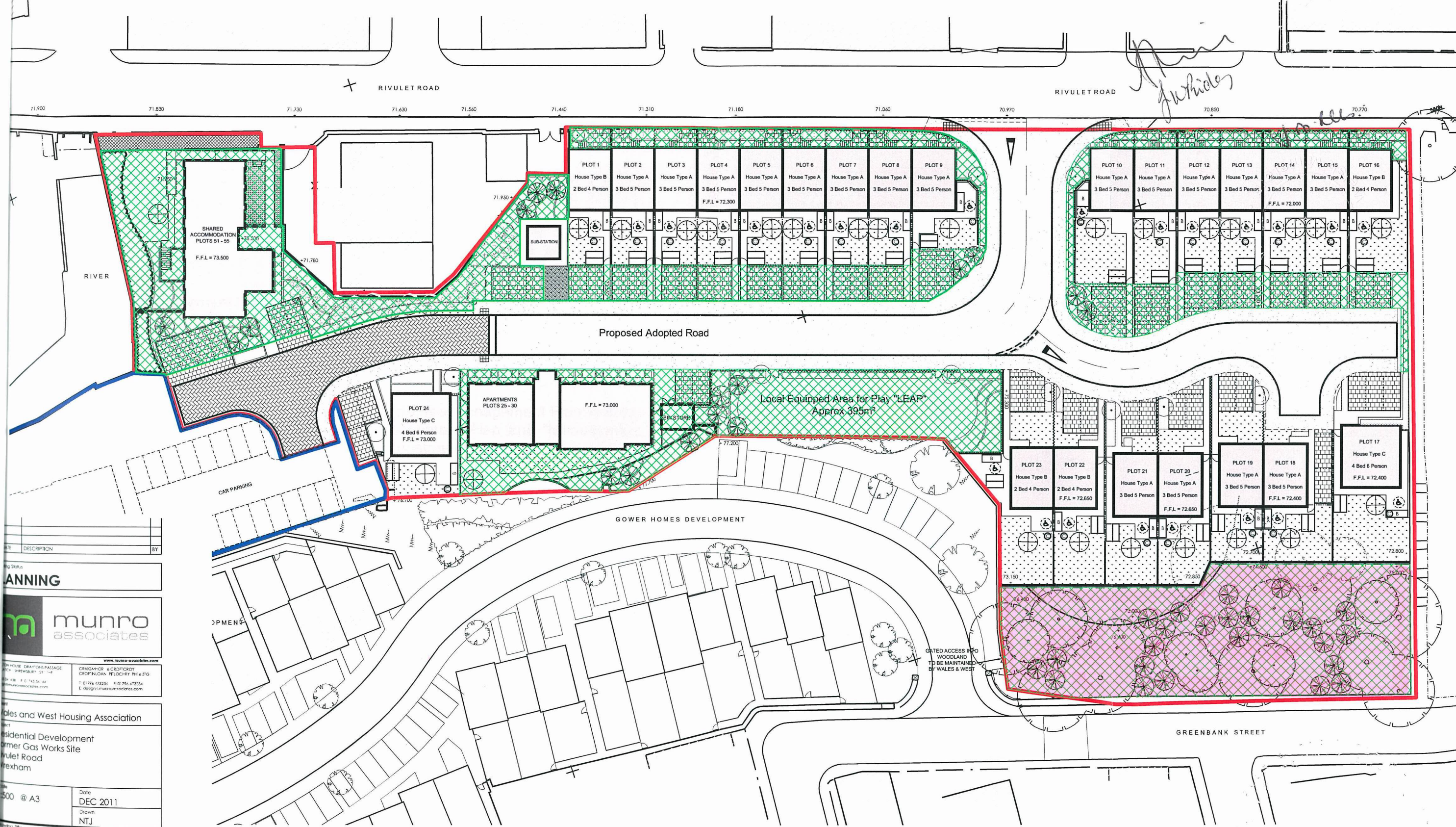


Lawrence Isted
Head of Community Wellbeing
and Development
Lambpit Street,
Wrexham
LL11 1AR

Telephone 01978 292017.
Fax 01978 292502
31/10/2011
Scale 1:1250 SJ3349
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NOTES:
ALL DIMENSIONS TO BE CHECKED AND CONFIRMED ON SITE PRIOR TO ANY WORKS OR FABRICATION.
DO NOT SCALE OFF THIS DRAWING.
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AREA OF LAND TO BE
MAINTAINED BY WALES & WEST
HOUSING ASSOCIATION



INDIATES SITE
BOUNDARY



INDIATES SITE
BOUNDARY OF FUTURE
DEVELOPMENT

DESCRIPTION		BY
Planning		
MUNRO ASSOCIATES		
www.munro-associates.com		
CRADDOCK & CROFTCROFT CROFTCROFT, PLYMOUTH PL16 5TG T: 01794 473234 F: 01794 473234 E: design@munro-associates.com		
Wales and West Housing Association		
Residential Development Former Gas Works Site Rivulet Road Wrexham		
Scale 1:500 @ A3	Date DEC 2011	Drawn NTJ
PROPOSED SECTION 106 SITE PLAN -		
Project No. 183	Drawing No. 009	Revision
THE CONTENTS OF THIS DRAWING ARE THE COPYRIGHT OF MUNRO ASSOCIATES. IT MUST NOT BE REPRODUCED NOR AMENDED BY A THIRD PARTY WITHOUT OUR WRITTEN PERMISSION.		

"Index"	means the all items index of retail prices issued by the Office for National Statistics or any successor organisation
"Interest"	means 4% above the base lending rate from time to time of Nat West Bank Plc compounded annually
"Land"	means the land situate at Rivulet Road Wrexham and shown edged red on Plan 1
"Landscape Areas"	means the hard and soft landscaped and planting areas, Local Equipped Area of Play (LEAP), boundary treatments, communal gardens, driveways and pathways, parking spaces and communal bin storage areas all of which are shown cross-hatched green on Plan 2.
"Landscape Management Plan"	means the plan for the management of the Landscape Areas to be submitted to and approved in writing by the Council in accordance with Condition 24 of the Reserved Matters Approval.
"Management Plans"	means the Landscape Management Plan and the Woodland Management Plan and "Management Plan" shall be construed accordingly.
"Occupy" and "Occupation"	means use of a Dwelling for residential use (excluding any use for construction fitting out or marketing of the Dwelling)
"Person in Housing Need"	means a person who by reason of their limited income is unable to purchase a home suitable for their needs on the open market
"Plan 1" & Plan 2"	means the plan so marked annexed hereto and "Plans" shall be construed accordingly
"Planning Permission"	means the planning permission issued by the Council under ref: P/2009/0969 on 24 November 2009 incorporating as appropriate the Reserved Matters Approval
"Public Open Space Contribution"	means the sum of £30,000 (thirty thousand pounds) to be utilised to carry out improvement to the existing facilities at Whitegate
"Registered Social Landlord"	means a body registered pursuant to the Housing Act 1996 or any register replacing the register under the Housing Act 1996

"Reserved Matters Application"	means application ref no: P/2011/0675 for approval of matters reserved under the Planning Permission in respect of the Development	1.2.6	Refe cont in th
"Reserved Matters Approval"	means the approval of reserved matters subject to conditions to be issued by the Council pursuant to the Reserved Matters Application	2	LEG
"Social Rented Housing"	means Affordable Housing Units let by the Registered Social Landlord in accordance with Part 2 of the Third Schedule	2.1	This Loca all o
"Unrestricted Housing Unit"	means a Dwelling which is not an Affordable Housing Unit and "Unrestricted Housing" shall be construed accordingly	2.2	The Own
"Woodland Area"	means the wooded area shown cross hatched green and shaded pink on Plan 2	2.3	The Sec auth
"Woodland Management Plan"	means the plan for the management of the Woodland Area to be submitted to and approved in writing by the Council in accordance with Condition 14 of the Reserved Matters Approval.	2.4	The
"Working Days"	means any day falling between Monday and Friday (both days inclusive) upon which the clearing banks in the City of London are open for normal business which is not Good Friday or a statutory bank holiday	2.4 3	2.4 CO

1.2 Interpretation

- 1.2.1 A reference in this deed to an Act of Parliament or to any order regulation statutory instrument or the like shall include a reference to any amendment or re-enactment of the same.
- 1.2.2 Words importing the masculine gender include the feminine gender and vice versa. Words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa.
- 1.2.3 Any heading or side notes are for ease of reference only and shall not affect the construction of this deed.
- 1.2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 1.2.5 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council the successors in title to their statutory functions.

0675 for Planning
1.2.6 Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires a reference to the recital, clause, paragraph or schedule in this deed so numbered.

s subject pursuant
2 **LEGAL BASIS**

by the
2.1 This deed is made pursuant to Section 106 and 106A of the Act, Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other enabling powers.

fordable shall be
2.2 The obligations created by this deed relate to the Land and are binding on the Owner pursuant to Section 106 of the Act.

atched
2.3 The obligations contained in this deed are planning obligations for the purposes of Section 106 of the Act and are enforceable as such by the Council as local planning authority.

of the
2.4 The obligations contained in this deed are:-

approved
2.4.1 necessary to make the Development acceptable in planning terms;

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2.4.2 directly related to the Development; and

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2.4.3 fairly and reasonable related in scale and kind to the Development.

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3 **CONDITIONS AND DURATION**

3.1 This deed is conditional upon:-

3.1.1 the grant of the Approval of Reserved Matters

3.1.2 the Commencement of Development

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save for the provisions of clause 8 Provisions of Immediate Effect which shall come into effect immediately upon completion of this deed.

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3.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his entire interest in the Land but without prejudice to liability for any subsisting breach arising before parting with that interest or in parting with that interest.

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3.3 Nothing in this deed shall prevent compliance with any obligation pursuant to it before that obligation comes into effect under this clause 3 and no such early compliance shall amount to a waiver of the effect of this clause 3.

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4 **OWNER'S COVENANTS**

The Owner hereby covenants with the Council:

- 4.1 to comply with the obligations relating to the Management Plans set out in the First Schedule;
- 4.2 to comply with the obligations to pay Contributions set out in the Second Schedule;
- 4.3 to comply with the obligations relating to the provision of Affordable Housing set out in the Third Schedule;
- 4.4 to give notice in writing to the Council's Head of Community Well Being and Development of the Commencement Date within 14 days thereof.

5 COUNCIL'S COVENANTS

The Council hereby covenants with the Owner:

- 5.1 to use all sums received from the Owner for the purposes specified in this deed for which they are to be paid;
- 5.2 upon request in writing to pay to the Owner (here meaning the party which shall actually have paid the relevant sum or sums) such amount of any payment made by the Owner to the Council which has not been expended or committed in accordance with the provisions of this deed within five years of the date of receipt by the Council of the final such payment if payable in instalments together with such interest thereon as the relevant sum has earned in the hands of the Council but the Council shall be under no obligation to maximise such interest whilst the relevant contribution is in its hands;
- 5.3 upon request in writing to provide to the Owner reasonable evidence as to the expenditure of the sums paid by the Owner under this deed.

6 LOCAL LAND CHARGE

This deed is a Local Land Charge for the purposes of the Local Land Charges Act 1975 and will be registered as such by the Council.

7 MORTGAGEE'S CONSENT

The Mortgagee acknowledges and declares that:

- 7.1 this deed has been entered into by the Owner with his consent,
- 7.2 the Land shall be bound by the obligations contained in this deed and
- 7.3 the security of the mortgage of the Land shall take effect subject to this deed

PROVIDED THAT

the Mortgagee shall otherwise have no liability under this deed unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

PROVISIONS OF IMMEDIATE EFFECT

8.1 The Owner shall pay to the Council on the signing hereof the sum of £1,750 in respect of the Council's legal costs for the preparation and execution of this deed.

8.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999 save for the avoidance of doubt it is declared that the planning obligations contained in this deed are enforceable by any successor local planning authority to the Council exercising planning powers under the Act.

NOTICES

9.1 Any notice or other written communication to be served upon any party or given by one party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by ordinary first class post or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or otherwise notified.

9.2 A notice or communication shall be served or given:

9.2.1 on the Owner at its usual address (registered office if a company) or such other address as shall be notified in writing to the Council from time to time;

9.2.2 on the Council at Guildhall Wrexham LL11 1AY or such other address as shall be notified in writing to the Owner from time to time.

9.3 Any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory.

DISPUTE RESOLUTION

If any difference or dispute arises between the parties hereto touching or concerning their respective rights duties liabilities or obligations under or by virtue of this deed the same shall be referred to a member of the Royal Institution of Chartered Surveyors ("RICS") to be agreed between the parties or failing agreement upon request by one party for arbitration that party may after 21 days of that request by him request that an arbitrator be appointed by the President for the time being of RICS or his duly authorised deputy on the application of either party and in this respect such referral shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

JURISDICTION AND LEGAL EFFECT

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

- 11.2 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.
- 11.3 No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
- 11.4 Nothing herein contained or implied shall prejudice or affect the rights powers duties and obligations of the Council in exercise of its functions as a local authority highway authority and local planning authority and the rights powers duties and obligations of the Council under all public and private statutes and byelaws orders and regulations may be fully and effectually exercised in relation to the Land or any part thereof and any works executed thereon as if the deed had not been executed by the Council and in particular nothing in this deed shall restrict the Council and/or any other local authority from exercising powers of compulsory purchase in respect of any part of the Land.
- 11.5 Any approval given under this deed or for the purpose of this deed shall not be deemed to be approval for any other purpose whatsoever.

12 INDEXATION AND INTEREST

- 12.1 Any sum to be paid to the Council under the Second Schedule and being due more than twelve months after the date of this deed shall be increased by an amount equivalent to the increase in the Index from the date of this deed until the date such sum is due and payable.
- 12.2 If any payment due under this deed is paid late Interest shall be payable from the date payment is due until the date of payment.

IN WITNESS whereof the Council the Owner and the Mortgagee have executed this agreement as a **DEED** the day and year first before written

THE FIRST SCHEDULE MANAGEMENT OF THE LANDSCAPE AREAS AND WOODLAND AREA

To observe and perform the provisions of the Management Plans.

To be responsible for the maintenance, upkeep and works in accordance with the Management Plans.

To employ only reputable and experienced consultants or contractors to undertake all works under the measures contained in the Management Plans.

Not to dispose of the Landscape Areas and/or Woodland Area.

Management Plans Review Procedure

By no later than the tenth year anniversary of the date of the approval of the Management Plan ("the Review Date") to procure the commencement of a re-assessment of management tasks and specific work programmes set out in the Management Plan and shall forward such resurveys and reassessment to the Council within three calendar months of the Review Date.

The Council shall within six calendar months of the Review Date or of receipt of the resurveys and reassessment referred to in paragraph 5 above whichever is the later give written notice to the Owner of either its agreement to the terms of the said resurvey and reassessment or its non-acceptance thereto and its comments upon or objections to the terms of the said resurveys and reassessment and the Owner and the Council shall thereafter endeavour to reach agreement upon the terms of the said resurvey and assessment save that if the terms thereof have not been agreed by the anniversary of the review date then the Council or the Owner shall refer the terms of the said resurveys and reassessment and the comments upon or objections thereto to the expert who shall be appointed in accordance with Clause 10 who shall determine the terms of the said resurveys and reassessment and who shall act under the provisions of this paragraph.

From a date which shall be

7.1 the date upon which the Council and the Owner shall have agreed the terms of the resurveys and reassessment; or

7.2 the date upon which the expert appointed under paragraph 6 shall have communicated his determination of the terms of the resurveys and assessments under paragraph 5 above

the said resurveys and reassessments shall thereafter form the Management Plan.

To thereafter repeat the above process beginning with the commencement of resurveys and a reassessment in paragraph 5 commencing on the tenth year anniversary of the review date calculated in accordance with paragraph 5 and at ten yearly intervals thereafter.

**THE SECOND SCHEDULE
PAYMENT OF CONTRIBUTIONS**

1 The Owner shall pay to the Council the Contributions in accordance with this Schedule and for the avoidance of doubt it is acknowledged that the obligation to pay such contributions is not conditional upon receiving any demand, request, invoice or other communication from the Council.

2 **Education Contribution**

To pay the Education Contribution on the First Occupation Date.

3 **Public Open Space Contribution**

To pay the Public Open Space Contribution on the First Occupation Date.

To design
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Requirements

To construct
Housing

Not to use
any purpose
Agreement

To give
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THE THIRD SCHEDULE

PART 1 THE AFFORDABLE HOUSING OBLIGATION

To design and construct the Affordable Housing Units in accordance with the Planning Permission and the Welsh Assembly Government's Development Quality Requirements: Design Standards and Guidance.

To construct the Affordable Housing Units contemporaneously with the Unrestricted Housing.

Not to use the land on which the Affordable Housing Units are to be constructed for any purpose other than the provision of Affordable Housing in accordance with this Agreement.

To give notice in writing to the HHPP upon the disposal or letting of each Affordable Housing Unit in accordance with the terms of this Agreement within 28 days of such letting and providing such details as the HHPP may reasonably require.

In selecting Eligible Persons to whom Affordable Housing Units are to be allocated to give priority to persons whose names are on the housing waiting lists held by the Council in its capacity as local housing authority or those held on its behalf by a Registered Social Landlord.

To keep such full and proper records as are reasonably required to demonstrate strict compliance with the affordable housing obligations contained in the Third Schedule to the Council.

THE THIRD SCHEDULE

PART 2

REQUIREMENTS OF SOCIAL RENTED HOUSING

- 1 The Social Rented Housing must not be let to or occupied by persons other than Persons in Housing Need who are also Eligible Persons.
- 2 The Social Rented Housing must not be let other than by way of an assured or assured short hold tenancy, at a rent which complies with the rent bench marking guidance published by the Welsh Assembly Government .
- 3 To manage the Social Rented Housing in accordance with the Regulatory code for Housing Associations in Wales issued by the Welsh Assembly Government in 2005 or any successor Regulatory Code in force in Wales.

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THE FOURTH SCHEDULE

DEFINITION OF AN ELIGIBLE PERSON

n Eligible Person means a Person who is in Housing Need who:-

an has resided personally or who has had a Close Family Association in Wrexham Town for a continuous period of one year immediately preceding the proposed occupation of an Affordable Housing Unit; or

or is in permanent full time employment at a location within Wrexham Town and has been in such employment for a period of six months immediately preceding the proposed occupation of an Affordable Housing Unit; or

5 has previously resided or had a Close Family Association in Wrexham Town or has been in employment therein for a continuous period of five years;

PROVIDED THAT

if no person meeting the requirements in paragraphs 1 – 3 above can be identified from the housing waiting lists held by the HHPP and a period of not less than four weeks has elapsed after an advertisement seeking such a person has been placed in a newspaper circulating in the Wrexham locality then the references in paragraphs 1 – 3 above to Wrexham Town shall be treated as if they included references to Wrexham County Borough and any person who satisfies one of the said criteria by virtue of such treatment shall be regarded as an Eligible Person for the purposes of this agreement;

PROVIDED FURTHER THAT

5 if no applicant qualifies under paragraph 4 above within 8 weeks, then any other person who in the opinion of the Registered Social Landlord or the Council is in housing need shall be treated as an Eligible Person.

CERTIFICATE

As Solicitors for the Owner (as defined in the within written Deed of Agreement) we hereby certify that Recitals B and C hereof are correct.

Signed

Dated

2011

Property Lawyer
Wales and West Housing Association
3 Alexandra Gate
Ffordd Pengam
Tremorfa
Cardiff CF24 2UD

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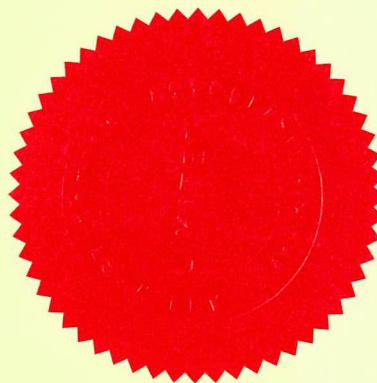
2011

THE COMMON SEAL of
REXHAM COUNTY BOROUGH
COUNCIL was hereunto affixed
in the presence of:



42/12(a)

EXECUTED as a DEED on
behalf of WALES & WEST
HOUSING ASSOCIATION LIMITED
by the affixing of its COMMON SEAL
in the the presence of:



Chief Executive

Board Member

EXECUTED AS A DEED by applying the seal of the Welsh Ministers
The application of the seal of the Welsh Ministers is authenticated by

JACQUELYN M REES, SENIOR LAWYER JHR.

Who is duly authorised for that purpose by the Director of Legal Services by
the authority of the Welsh Ministers under section 90(2) of the Government of
Wales Act 2006

Signed: _____



77/12