**DATED 2018**

**SECTION 106 AGREEMENT**

**MADE BETWEEN**

**CYNGOR SIR YNYS MÔN / ISLE OF ANGLESEY COUNTY COUNCIL (1)**

**AND**

 **GRŴP CYNEFIN (2)**

**AND**

**THE WELSH MINISTERS (3)**

**RE Land at Llanddeusant Primary School,**

**Llanddeusant, Ynys Môn**

**THIS AGREEMENT** is made on the ……………….. day of …….………………………. 2018

**BETWEEN CYNGOR SIR YNYS MÔN/ISLE OF ANGLESEY COUNTY COUNCIL** (“the Council”) of Council Offices, Llangefni, Ynys Môn, LL77 7RW of the first part and **GRŴP CYNEFIN** whose registered office is situated at Tŷ Silyn, Penygroes, Gwynedd LL54 6LY (known as “the Developer” which expression shall include its successors and assigns) of the second part and **THE WELSH MINISTERS** of Cathays Park, Cardiff CF1 3NQ (“the Welsh Ministers”) of the third part.

**NOW THIS DEED WITNESSES AS FOLLOWS:-**

1. IN this Agreement the following terms shall have the meanings set out below:-

**“Act”** means the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and as may from time to time be amended by statute.

**“Property”** means the land described in the First Schedule hereto.

**“local connection”** means a person who has for at least 5 years prior to purchasing or renting an affordable dwelling either had their only or principal residence on Anglesey, or had their place of work on Anglesey or a combination of both, or where not resident on Anglesey, they have an offer of employment on Anglesey or they have established links (for example, elderly people who need to move to a locality to be close to relatives).

**“affordable dwelling” and “affordable dwellings”** means the dwellings to be built on the Development as detailed in clause 7 of this Agreement.

**“housing needs”** means a person shall be in “housing need” if they are demonstrably unable to afford to purchase or rent a house of a size suitable for their needs (which shall include the needs of any others who live with that person as part of one family) on the open market, as certified by a body registered with the Financial Services Authority to provide mortgages via written confirmation of the maximum amount of mortgage eligibility, with the applicant’s income details stated, AND as assessed by the Council’s Housing Department AND that person (or at least one person if there is more than one) qualifies under the definition of “local connection” as stated above.

**“qualifying purchaser or tenant”** means a person who qualifies as having a local connection and housing needs.

**“developer”** and/or future owners means the persons or body responsible for the construction and ownership of the affordable home and all subsequent successors and assignees.

**“discounted price”** means the % below the open market price that the property will be sold at.

**“open market price”** means the average of at least two valuations each provided by an independent Estate Agent who is a member of the Royal Institute of Chartered Surveyors or a Member of the National Estate Agents Association. Each valuation shall be certified in writing by the independent Estate Agent and shall assume a sale in the open market and with vacant possession by a willing seller to a willing purchaser and assuming that the dwelling is not an affordable dwelling. Where applicable the valuation will disregard any additions or improvements that have been carried out by the owner with the prior written consent of the Council.

**“certificate”** means the written statement detailing the valuation of the open market price provided by an independent Estate Agent as defined in open market price above.

**“Development”** means the scheme described in the Second Schedule relating to the scheme viability details submitted in support of the number of affordable homes to be provided.

**“legal charge”** means the provisions contained in the Fourth Schedule.

**“Let”** means an affordable dwelling which is rented on a social rent which is at 80% or less of the private market rent for that dwelling.

In prioritising housing needs, links to a specific community will be an important consideration.

1. THE Developer is the owner in fee simple in possession free from encumbrances of all the Property as further described in the First Schedule but subject to a registered charge in favour of the Welsh Ministers and dated 7 December 2017.
2. THE Council is the local planning authority for the purposes of the Act and by whom the planning obligations referred to herein are enforceable.
3. BY a written application Mark Blackwell applied to the Council for permission to develop part of the Property in the manner and for the uses set out in the application and plans submitted therewith (the Application) and described in the Second Schedule hereto (hereinafter referred to as the “Development”).
4. THIS Agreement is made pursuant to Section 106 of the Act, and in consideration of the covenant by the Council contained in Clause 6 hereof.
5. IN consideration of the covenants by the Developer contained in Clause 7 hereof the Council HEREBY COVENANTS TO **grant planning permission** for the Development in a form similar to the draft Planning Permission set out in the Third Schedule hereto **within five (5) working days of the date of this Agreement.**
6. THE Developer for itself and its successors and assigns HEREBY COVENANTS with the Council that these covenants shall be enforceable without any limit of time hereof against the Developer and any person deriving title from the Developer to their said interests in the Property and any person deriving title under the Developer in respect of any lesser interest in the Property, as follows:-
7. Three (03) affordable dwellings shall be provided as an integral part of the Development in accordance with the requirements of the Council’s Ynys Môn Joint Local Development Plan and Affordable Housing Delivery Statement.
8. Not more than three of the dwellings comprising the Development, excluding the affordable dwellings, shall be sold until the affordable dwellings on the Development have been built and either sold or Let. The ***Developer must notify***the Council’s Head of Housing Serviceswhen the affordable dwellings are completed and ready for occupation. Such notification to be received **within five (5) working days** of this being achieved. **Within 10 working days** of receipt of this notification Council Officers will visit the property and where **completion is agreed this will be confirmed in writing with the Developer at the time of the visit.** The Council will endeavour to identify and / or approve qualifying purchaser(s) within three (03) months of receipt of the confirmed notification.
9. All owners and occupiers of the affordable dwellings on the Development (either initially or subsequently) shall be a qualifying purchaser or tenant. Where there are joint occupiers at least one of them shall be a qualifying purchaser or tenant.
10. Subject to clause (j) hereof; where the affordable dwellings are to be sold, then the first and all subsequent sales shall be at a price no greater than seventy percent (70%) of the open market price of the affordable dwellings free from any restriction imposed by this Agreement. This, the “Discounted Price”, will be ***confirmed by the requisite open market price certifications.***
11. The Developer shall ensure that the purchaser(s) of the affordable dwellings shall enter into a Legal Charge with the Council in the form shown in the Fourth Schedule concurrently with the sale of the affordable dwellings. This legal charge shall be in respect of the remaining percentage of the open market price.
12. Each Valuation ***Certificate is to be forwarded to the Council’s*** Head of Housing Services at the time the affordable dwellings are advertised for sale. Each Certificate will be ***accompanied by a written confirmation of compliance*** with the requirements of this Agreement. The affordable dwellings shall not be sold until the ***Council’s*** Head of Housing Services ***has agreed*** in writing the Discounted Price and that the proposed purchaser is a Qualifying Purchaser. The Council’s Head of Housing Services shall have a period of 15 working days from the receipt of the last Certificate in which to respond, if no response is issued then the affordable home shall be sold at the discounted price.
13. Subsequent disposals of the affordable dwellings shall be conducted as follows:
* The property will be valued as in 7(d) above and purchasers will be required to enter into a Legal Charge as provided for in clause 7(e) above.
* The property will be marketed for a minimum 3 month period as in 7(b) above and 7(h) below. The Council having the right to identify qualifying purchasers within the 3 month period from the date that marketing has commenced. NB Advertising the properties on the Tai Teg web site, i.e. [www.taiteg.org.uk](http://www.taiteg.org.uk) will qualify as marketing.
1. Future Owners of the affordable dwellings, subsequent to the Developer who have occupied the property as his/her principal home, subject to this Agreement can purchase the property outright, by paying to the Council the difference between the Discounted Price and the open market price of the dwelling (as calculated in accordance with clauses 7(d) and (f) above) before the expiry of 3 months from the date of the required certificates, i.e. valuations are only valid for 3 months.
2. Where the affordable dwellings have been appropriately marketed for sale subject to the restrictions of this agreement for a minimum 3 month period following completion, which is defined as the date agreed by the Council in accordance with 7(b), or where an existing dwelling, notification of commencement of marketing for sale in accordance with 7(g); without receipt of an offer to purchase at the Discounted Price, then subject to a written request being made to the Council’s Head of Housing Services the property can be offered for sale at the open market valuation. Any such written request from the Developer or subsequent owners of the affordable dwellings must include both an opinion as to why the affordable dwellings concerned have not been purchased and reasonable evidence as to how the affordable dwellings have been marketed, at what price(s) and how much sales interest has been generated. Evidence should include marketing / advertising details. **The Head of Housing Services will respond to the written request within 15 working days of receipt.** **When the property is subsequently sold on the open market then the difference between the discounted price and the open market price is payable to the Council’s Affordable Housing Account. On receipt of the payment the Council will discharge the provisions of this Agreement**
3. Where a Mortgage Lender has obtained possession of an affordable dwelling by virtue of their charge or mortgage, they are required to offer the Council the opportunity either to purchase or to nominate a purchaser for the affordable dwelling. The Council shall have fifteen (15) working days from the date of receipt of the written offer to confirm whether to accept or decline the offer. Where the offer is accepted contracts relating to the purchase of the property must be exchanged within twenty (20) weeks of the date of the written offer. No other restrictions will apply.

The Council has no responsibility for any costs that are incurred in the implementation of this Clause 7.

1. **IT IS FURTHER AGREED BETWEEN THE PARTIES HERETO THAT:-**
	1. None of the covenants made by the Developer under Clause 7 hereof

shall give rise to any claim whatsoever against the Council for compensation.

8.2 All covenants in this Agreement by the Developer whether restrictive or otherwise shall for the purposes of the Act be considered as planning obligations.

8.3 The planning obligations herein shall not come into effect until the Developer has commenced the Development in reliance upon the issued Planning Permission as referred to in the Third Schedule.

8.4 No persons shall be liable for breach of a covenant contained in this Agreement after they shall have parted with all interest in the Property or the part in respect of which such breach occurs but without prejudice to that person’s liability for any subsisting breach prior to parting with such interest.

8.5 The Welsh Ministers hereby consent to the execution of this Deed and acknowledge that subject as herein provided that part of the Property over which they have a registered charge shall be bound by the restrictions and obligations herein contained.

8.6 For the avoidance of doubt The Welsh Ministers are entering into this Deed solely for the purpose of providing their consent as set out in clause 8.5 and each of the Developer and the Council agree and acknowledge that The Welsh Ministers shall not incur or take on any liability or other obligation set out herein in that capacity unless and until they enforce their security by taking possession of that part of the Property.

**IN WITNESS WHEREOF**, this Agreement has been executed as a deed by the parties hereto the day and year first above written.

**FIRST SCHEDULE**

For the purpose of this Agreement the Property is that land situated at and known as **land at Llanddeusant Primary School, Llanddeusant** in the County of Ynys Môn/Isle of Anglesey and shown for the purposes of identification only edged red on the plan attached hereto and which is registered at the Land Registry with absolute title in the name of the Developer under title number CYM494707.

**SECOND SCHEDULE**

An application for planning permission “under section 73A for the variation of conditions of planning permission reference 47C149 so as to submit the details after works have commenced” at the Property (and given reference number 47C149B/VAR).

**THIRD SCHEDULE**

A draft form of planning permission as attached to this Agreement

**FOURTH SCHEDULE**

THIS LEGAL CHARGE made the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Two thousand and BETWEEN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“the Borrower” which expression shall where the context admits include persons deriving title under the Borrower or entitled to redeem this security) of the one part and CYNGOR SIR YNYS MÔN / THE ISLE OF ANGLESEY COUNTY COUNCIL of Council Offices, Llangefni Ynys Môn LL77 7TW (“the Lender” which expression shall where the context admits include persons deriving title under the Lender) of the other part

WITNESSES as follows:-

1. In this Deed the following words have the following meanings:-

1.1 “Disposal” means transfer to a third party of the Borrower’s interest to a Qualifying Purchaser as defined in the Section 106 Agreement in the Property pursuant to clause 3(a) hereof or any part thereof or the grant of a lease for a term of more than seven years at open market rent PROVIDED for the purposes of this Deed that a lease for an initial term of less than seven years but with the right for the lessee to take a further term which when added to the initial term would in aggregate exceed seven years shall be deemed to be a lease for more than seven years.

1.2 “Disposal Value” means the full open market price as ascertained in accordance with clauses 7(d) and 7(f) of the duly signed Section 106 Agreement but disregarding the value of any additions or improvements carried out by the Borrower with the written consent of the Lender after the date hereof

1.3 “Interest Rate” means 4 percentage points above the base rate for the time being of HSBC Bank Plc

1.4 “Property” means the property described in the Schedule

1.5 “Repayment Date” means the date ascertained in accordance with the provisions of clause 5 of this Deed

* 1. “Repayment Sum” means 30% of the Disposal Value
	2. “Section 106 Agreement” means the agreement entered into between the Lender and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ pursuant to the Section 106 of the Town and Country Planning Act 1990 dated \_\_\_\_\_\_\_\_

2. Unless the Borrower is one person all covenants and warranties by the Borrower shall be construed and take effect as joint and several covenants and warranties by the persons hereinbefore defined as the Borrower and all references to the Borrower shall include any one or more of the said persons.

3. The Borrower COVENANTS with the Lender to pay to the Lender:-

(a) The Repayment Sum in the event that the Property is sold on the open market in accordance with clause 7 i) of the Section 106 Agreement.

(b) Interest on written demand at the “Interest Rate” from the Repayment Date until actual payment in full of the Repayment Sum and upon all other monies for the time being remaining due on this security or on any order or judgement which may be made or recovered hereunder.

4. The Borrower as Beneficial Owner CHARGES the Property BY WAY OF LEGAL MORTGAGE with the payment to the Lender of the Repayment Sum interest and all other money covenanted to be paid by the Borrower or otherwise secured by this Deed.

5. The “Repayment Date” shall be the date of the earliest of the following events to occur:-

5.1 A Disposal by the Borrower, or their legal successors in title in the event that the property is sold on the open market in accordance with clause 7 i) of the Section 106 Agreement

5.2. Forthwith upon the Borrower being in breach of his covenants and obligations hereunder and the Lender calling in the Repayment Sum.

5.3 Three months after the Borrower giving written notice of his intention to pay the Repayment Sum in full.

6. The Lender COVENANTS to discharge the Borrower from its obligations hereunder on the earlier of the Borrower complying with the terms of clause 5 hereof, or payment by the Borrower of a sum equivalent to the Repayment Sum at any time during the Borrower’s ownership of the Property.

7. The Borrower COVENANTS with the Lender at all times during the continuance of this security:-

7.1 To keep the Property and all additions thereto in good and substantial repair and insured against all usual comprehensive risks to the full reinstatement value thereof with a quoted insurance company and punctually to pay all premiums and other monies necessary for effecting and keeping up such insurance immediately on the same becoming due or within one week thereafter and on demand to produce to the Lender the policy of such insurance or a copy of the same and the receipt for every such payment.

7.2 To apply all monies received in respect of such insurance in reinstating the Property or (at the option of the Lender) in or towards the discharge of the Repayment Sum.

7.3 To observe and perform all restrictive and other covenants conditions and stipulations (if any) for the time being affecting the Property or the use or enjoyment of the same or any part thereof.

7.4 To pay and discharge all rents and service charges (if any) which now are or at any time during the continuance of this security may become payable in respect of the Property or any part thereof.

7.5 To execute and do at the expense of the Borrower all such works and things whatever as may now or at any time during the continuance of this security be directed or required by any national or local or other public authority to be executed or done upon or in respect of the Property or any part thereof or by the owner or occupier thereof.

7.6 To obtain all necessary licences permissions and consents and execute and do all works and things and bear and pay all expenses required or imposed by any existing or future legislation in respect of any works carried out by the Borrower on the Property or any part thereof or of any user thereof during the continuance of this security.

7.7 Not to make or cause or permit to be made any alteration in or addition to the Property nor carry out any development or change of user on the Property within the meaning of any legislation for the time being relating to Town and Country Planning without the previous consent in writing of the Lender, such consent not to be unreasonably withheld.

7.8 Within seven days of the receipt thereof to deliver to the Lender full particulars of any notice or order or proposal therefore served or made by a planning authority affecting the Property or any part thereof of which the Borrower has notice and take all necessary steps to comply therewith and in default of such compliance permit the Lender to enter on the Property for the purpose of taking such steps.

7.9 At the request of the Lender to make or join with the Lender in making such representations or objections or appeals in respect of any such notice order or proposal as aforesaid as the Lender may reasonably require and to indemnify the Lender against all costs charges and expenses incurred by the Lender in respect of such representations objections and appeals.

7.10 To occupy the Property as the Borrower’s only or main residence and not to cause any nuisance or annoyance to neighbours that affects the quiet enjoyment of their properties.

8. If default shall at any time be made by the Borrower in the performance of any of the covenants contained in the preceding clause it shall be lawful for but not obligatory upon the Lender to perform the same and to pay all costs and damages occasioned by such default and with power in the case of any failure to repair in accordance with the covenants hereinbefore contained to enter upon the Property without becoming liable to account as mortgagee in possession and all monies expended by the Lender for any such purpose and all costs charges and expenses properly incurred by the Lender in relation to the protection or enforcement of this security whether involving litigation or not and on a complete unlimited and unqualified indemnity basis with interest thereon at the “Interest Rate” from the time of the same having been expended or incurred shall on demand be repaid to the Lender by the Borrower and until such repayment shall be a charge on the Property PROVIDED that the charge hereby conferred shall be in addition and without prejudice to any and every other remedy lien or security which the Lender may or but for the said charge would have for the recovery of monies thereby secured or any part thereof.

9. The Borrower will not without prior consent in writing of the Lender exercise the power of leasing or agreeing to lease or accepting surrenders of leases conferred on a mortgagor in possession by the Law of Property Act 1925 nor otherwise grant or agree to grant any lease or tenancy of the Property or any part thereof nor confer upon any person any contractual right or interest to occupy the Property or any part thereof.

10. The statutory power of sale and of appointing a receiver shall arise on the Repayment Date and shall be exercisable at any time thereafter and Section 103 of the Law of Property Act 1925 (which restricts the exercise of the said power of sale) shall not apply to this security.

11. Section 93 of the Law of Property Act 1925 (which relates to consolidation) shall not apply to this security.

12. The Lender agrees to the postponement of this Charge in favour of any legal charge created by the Borrower to enable the Borrower to purchase the Property.

13. The Borrower WARRANTS to the Lender that the Borrower is in personal occupation of the whole of the Property and that neither it nor any part of it is now let or agreed to be let.

14. If the Lender shall enter into possession of the Property or any part thereof the Lender may from time to time go out of such possession and shall not be liable to account as mortgagee in possession while in fact out of such possession Provided that notice of such fact shall within seven days after its happening be served on the Borrower.

**IN WITNESS** whereof the Borrower has executed this Deed the day and year hereinbefore

written:

SIGNED as a Deed by the Borrower ) ..........................................................................

in the presence of:- ) ...........................................................................

Executed as a Deed by affixing the

Common Seal of Cyngor Sir Ynys Môn /

The Isle of Anglesey County Council

in the presence of:-

Solicitor ..........................................................................................

Executed as a Deed by affixing the

Common Seal of Cyngor Sir Ynys Môn /

The Isle of Anglesey County Council

in the presence of:-

Solicitor ..........................................................................................

EXECUTED as a DEED by the said

GRŴP CYNEFIN

Acting by two Directors or a Director and its Secretary:-

……………………………

Director

…………………………………………………….

Director / Secretary

EXECUTED as a DEED on behalf of

THE WELSH MINISTERS

By its Authorised Signatory:-

………………………………………….

Authorised Signatory