

THIS DEED is made the 27th day of August Two thousand and nineteen **BETWEEN GWYNEDD COUNCIL** of Council Offices Caernarfon Gwynedd ("the Council") of the first part; and **JAMES LLOYD DEVELOPERS (CRICCIETH) LIMITED** (Company number 11466238) whose registered office is at 10 Erwenni Ala Road, Pwllheli, Gwynedd LL53 5RH ("the Owner") of the second part; and **GOLDENTREE FINANCIAL SERVICES PLC** whose registered office is at Spectrum, 56 – 58 Benson Road, Birchwood, Warrington WA3 7PQ ("the Mortgagee") of the third part

WHEREAS: -

- (1) The Council is the local planning authority for the purposes of this Deed and the Town & Country Planning Act 1990 (as amended) for the area within which the property described in the First Schedule hereto is situate and is the local planning authority by whom a planning obligation is enforceable
- (2) The Owner is the registered proprietor of the Red Land
- (3) The Mortgagee is the mortgagee of the Red Land under a Legal Charge dated the 27th day of August 2011.
- (4) The Owner has submitted the 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.
- (5) The Council resolved on the 15th January 2018 to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED is made pursuant to Section 106 of the Act and is a planning obligation for the purposes of that Section and all other statutory authorities and WITNESSES as follows:-

1 Definitions

The following definitions apply to the interpretation of this Agreement: -

- 1.1 "the Act" means the Town & Country Planning Act 1990 (as amended)
- 1.2 "Affordable" means that the proportion of the Qualifying Person's net disposable income together with their spouse or partner's net

disposable income (that is gross wage/salary less income tax and national insurance payments) including Benefits entitlement used to meet the mortgage, rent or rent/mortgage should not exceed 30%.

- 1.3 **"Affordable Dwelling"** means the two dwellings being plots 2 and 3 shown on Plan C
- 1.4 **"Affordable Price"** means the price that is at a discount of at least 30% less than the prevailing Open Market Value.
- 1.5 **"Affordable Housing Restriction"** means one of the affordable housing restrictions described in the Third Schedule.
- 1.6 **"Affordable Rent"** means a level of rent inclusive of all service charges which does not exceed the level of rent and service charges paid by tenants of Registered Social Landlords for equivalent properties in the Community Council Area where the Development Site is situated or the nearest Community Council area where such properties are located.
- 1.7 **"Application"** means the application for full Planning Permission dated 20th September 2017 (Ref: No C17/0912/35/AM) to construct 7 dwellings on the Red Land
- 1.8 **"Commencement of Development"** means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out by the Owner its successors in title and assigns other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, the erection of any temporary means of enclosure, temporary display of site notices or advertisements or any Flood alleviation works on the Red Land.
- 1.9 **"Community Council Area"** means the area of the Community Council in which the Red Land is sited.

- 1.10 **"The County"** means the administrative County of Gwynedd as at the 31st of March 1996.
- 1.11 **"the Deed"** means this Deed
- 1.12 **"Development"** means the development of the Red Land in accordance with the Planning Permission and the "Development Site" shall be construed accordingly
- 1.13 **"Disposal"** means a transfer of the freehold or leasehold title to an Affordable Dwelling or the grant of a lease or tenancy of an Affordable Dwelling
- 1.14 **"Dwelling"** means any of the dwellings referred to in the Application and which are, at the date of this Deed, to be constructed on the Red Land and includes houses, bungalows, flats, maisonettes, any other unit of residential accommodation, any land forming the curtilage of such unit of accommodation and any garage or other structure which may be attached to, or sold with, such unit of accommodation.
- 1.15 **"Family Member"** means a member of the family of a Qualifying Person and is either:-
- 1.15.1 the spouse of the Qualifying Person, or that person and the Qualifying Person live together as husband and wife; or
- 1.15.2 the Qualifying Person's parent, grandparent, child, grandchild, brother, sister, forming part of the Qualifying Person's household and is dependent on the Qualifying Person. And for the purposes of this definition a relationship by marriage shall be treated as a relationship by blood, a relationship of the half-blood shall be treated as a relationship of the whole-blood, the stepchild of a Qualifying Person shall be treated as their child and an illegitimate child shall be treated as the legitimate child of their mother and reputed father.
- 1.16 **"Initial Qualifying Person"** means: a Local Person who is considered in the reasonable opinion of the Council to be in Local Housing Need
- 1.17 **"Interest"** means interest at 3% above the base lending rate of

Barclays Bank plc from time to time

1.18 **“Local Area”** means the dependency catchment area for Porthmadog in which the Red Land is sited and the Community Councils adjoining the catchment area. The area is shown edged blue on plan “B” annexed hereto.

1.19 **“Local Person”** means

(a) a person who has lived or worked in the Local Area where the Red Land is to be sited or in the adjacent Community Council area, for a continuous period of five years immediately before submitting the application or occupying the property or

(b) a person who resides outside the Local Area but who has lived within the Local Area for a continuous period of five years or more in the past, or

(c) A person who resides outside the Local Area but who has lived there in the past for a total of five years including a continuous period of three years or more within a period of twenty years.

1.20 **“Local Housing Need”** means a Local Person who meets the Need Criteria and one of the Qualifying Criteria;

1.21 **“Mortgagee in Possession”** means a person or body which has entered into a mortgage in respect of an Affordable Dwelling constructed on the Development Site and has taken action following a default by the borrower in respect of the repayment due under that mortgage and shall include any receiver appointed by such mortgagee

1.22 **“Need Criteria”** means Local Persons who are unable to be able to meet their housing needs in the existing local housing market without some assistance in so much that the members of the household or proposed household must together have insufficient income and capital to purchase a house on the open market in the Local Area.

1.23 **“Plan A”** means the plan marked A and annexed to this Deed

- 1.24 **"Plan B"** means the plan marked B and annexed to this Deed
- 1.25 **"Plan C"** means the plan marked C and annexed to this Deed
- 1.26 **"Planning Permission"** means the grant of full planning permission to be issued by the Council pursuant to the Application
- 1.27 **"Open Market Value"** means the best price at which the Affordable Dwelling to be valued would have been disposed of unconditionally for cash consideration assuming

1.27.1 a willing seller;

1.27.2 that prior to the date of valuation there has been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the Affordable Dwelling;

1.27.3 that both parties to the transaction had acted knowledgeably, prudently and without compulsion;

1.27.4 that the property was not subject to the provisions of this Deed or any restrictive covenant relating to affordable housing; and

1.27.5 Vacant possession was available on completion

PROVIDED THAT such Open Market Value shall be agreed in writing between Owner and the Council and in default of such agreement shall be determined in accordance with the provisions of clause 8 of this Deed

- 1.28 **"Qualifying Criteria"** means Local Persons;

1.28.1 who do not own a house and who are establishing a new home,
or

1.28.2 who do not own a house and who are leaving rented accommodation where they have been living for at least two years, or

1.28.3 People who own a house but require a new dwelling to meet genuine need e.g. house too small for the family or dwelling deemed to be sub-standard condition by the Council and where it can be proven that the present home cannot be converted in an acceptable way, or suitably upgraded, to meet those needs and the owners cannot purchase a house from existing stock.

1.29 **“Qualifying Person”** means an Initial Qualifying Person or a Secondary Qualifying Person.

1.30 **“the Red Land”** means the land shown edged red on Plan A and more particularly described in the First Schedule

1.31 **“Secondary Qualifying Person”** means a person who is considered, in the reasonable opinion of the Council, to be in Local Housing Need outside of the Local Area but within the County, who has

- a) lived or worked in the County where the Red Land is to be sited for a continuous period of five years immediately before submitting the application or occupying the property or
- b) a person who resides outside the County but who has lived within the County for a continuous period of five years or more in the past, or
- c) A person who resides outside the County but who has lived there in the past for a total of five years including a continuous period of three years or more within a period of twenty years.

2 CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in

this Deed

- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed as interchangeable in that manner
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and any deriving title through or under that party and in respect of the Council the successors to their respective statutory function

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act section 111 of the Local Government Act 1972 and section 2 of the Local Government Act 2000
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner

4 CONDITIONALITY

- 4.1 This Deed is conditional upon

4.1.1 the grant of the Planning Permission

4.1.2 the Commencement of the Development

Save for the provisions of clauses 7.1, 13 and 14 legal costs clause jurisdiction and delivery clauses and any other relevant provisions which shall come into effect immediately upon completion of this Deed.

5 OWNER'S COVENANTS

The Owner Covenants with the Council as set out in the Second and Third Schedules

6 THE COUNCIL'S COVENANTS

The Council Covenants with the Owner as set out in the Fourth Schedule

7 MISCELLANEOUS

7.1 The Owner shall pay the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £670

7.2 The Owner shall pay the Council's or its Nominee reasonable and proper legal, administrative and valuation costs in connection with any of the procedures in the Third Schedule hereof.

7.3 This Agreement is a local land charge and shall be registered as such.

7.4 The Owner hereby agrees to apply to the Land Registry for a restriction to be entered in the Proprietorship Register of Title Number CYM678104 with regards to the obligation set out in this Agreement in the following terms:-

"No disposition of the part of the registered estate shown for the purposes of identification edged blue on the plan attached hereto (Plots 2 and 3) by the proprietor of the registered estate is to be registered without the written consent signed by Cyngor Gwynedd Council of Shirehall Street, Caernarfon, Gwynedd."

7.5 No provisions of this Deed shall be enforceable under the Contracts

(Rights of Third Parties) Act 1999.

- 7.6 Where the agreement, approval, consent or expression of satisfaction is required by The Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Regulatory Services or such other Council officer as shall have been appointed by the Council for that purpose
- 7.7 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 7.8 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.9 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.10 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.11 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Development Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.12 Nothing in this Deed shall prohibit or limit the right to develop any part of the Development Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on

appeal) after the date of this Deed.

7.13 The Mortgagee hereby consents to the Owner entering into this Deed and acknowledges that this agreement binds the Red Land. The Mortgagee shall only be liable for any breach of this agreement if it has itself caused the breach whilst mortgagee in possession. It shall not be liable for any pre-existing breach.

8 ARBITRATION

Any dispute or difference arising between the parties shall be referred to the decision of a sole arbitrator to be agreed upon by the parties or in default of agreement to an arbitrator to be appointed at the request of either of them by or on behalf of the President for the time being of the Law Society such arbitrator to act in accordance with the Arbitration Act 1996 and his fees shall be within his award

9 WAIVER

No waiver (whether expressed 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.

10 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Red Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Red Land or unit of occupation purchased by reference to a plan and/or description PROVIDED THAT this clause shall not apply in respect of a transfer or grant of a Lease of a Dwelling which is not an Affordable Dwelling or the grant of a lease of a unit in the Development to a business tenant

11 INTEREST

If any payment due under this Deed is paid late, Interest will be payable from

the date payment is due to the date of payment.

12 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

13 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales.

14 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

FIRST SCHEDULE

Description of the Red Land

Station Bakery, Criccieth, Gwynedd shown for the purpose of identification only edged red on Plan A and more particularly comprised in the Land Registry Title Number CYM215985, CYM678104 and WA930600

SECOND SCHEDULE

Affordable dwelling Sales Procedure

1 Disposals by way of sale to Qualifying Persons

- 1.1 If an Affordable Dwelling is to be sold or leased the Owner must notify the Council (or its Nominee) in writing of any such intention and obtain the Council's prior written consent to such a disposal.
- 1.2 If neither the Council, nor a body nominated by the Council, agree to purchase or rent the Affordable Dwelling within 4 weeks of notification as referred to in paragraph 1.1, then the Owner can proceed to market the property to be sold at the Affordable Price, or to be rented at the Affordable Rent, to an Initial Qualifying Person.
- 1.3 The Owner will inform the Council or its Nominee in writing of potential purchasers of the Affordable Dwelling. Such notification shall be supported by sufficient evidence to enable the Council or its Nominee to determine whether the proposed purchasers are Qualifying Persons. The Council or its Nominee will within 28 days of such notification notify the Owner's solicitor whether the Council is satisfied or not that the proposed potential purchasers of the Affordable Dwelling are Qualifying Persons. If the potential purchasers are Qualifying Persons then the Council or its Nominee will give permission to the Owner to sell the Affordable Dwelling to such purchaser or purchasers in accordance with this Schedule.
- 1.4 If the Affordable Dwelling has been adequately and properly marketed in the Local Area and has not, within a period of eight consecutive weeks, been made the subject of an offer to purchase at the Affordable Price by an Initial Qualifying Person, then it may be offered for sale and disposed of at the Affordable Price to a Secondary Qualifying Person, subject to the owner complying with paragraph 1.1 and 1.3 of this Schedule.

1.5 If after a further consecutive period of eight weeks the property has been adequately marketed and has not been made the subject of an offer to purchase at the affordable price by any person(s) meeting neither the Initial or Secondary Qualifying Person criteria, the Owner may apply to the Council to vary the definition of Secondary Qualifying Person to include a wider geographical area than the County

1.6 If sold under the provisions of paragraph 1.5, the Council, in giving its consent, would require that the restrictions as to who may occupy, and the sale price, will still apply to subsequent occupants of the Dwelling in question.

1.7 Notwithstanding the operation of paragraphs 1.4 to 1.6 of this Schedule any subsequent Disposal of an Affordable Dwelling shall comply with the whole of the Sales Procedure as if the said transaction were an initial Disposal of an Affordable Dwelling.

1.8 Where the Owner seeks to rely upon the provisions of either paragraph 1.5 or 1.6 then, in addition to providing the information required as to the identity of the potential Qualifying Person, the Owner must provide such documentary and other evidence as to the marketing of and expressions of interest in the Affordable Dwelling as the Council or its nominee may reasonably require.

2. Letting Procedure

2.1 If a house subject to an Affordable Housing Restriction is to be let, the Owner must ensure that any tenant or tenants of an Affordable Dwelling are Qualifying Persons in accordance with the terms of this Deed. If the potential tenant or tenants are eligible then the Owner may let the Affordable Dwelling to such tenant or tenants in accordance with this Schedule.

- 2.2 Save as set out below the Affordable Dwelling may only be let to an Initial Qualifying Person.
- 2.3 If the Affordable Dwelling has been adequately and properly marketed and has not, within a period of six weeks, been made the subject of an offer to rent at the Affordable Rent by an Initial Qualifying Person, then it can be offered to let at the Affordable Rent to a Secondary Qualifying Person.
- 2.4 If after a further consecutive period of six weeks the Affordable Dwelling has been adequately and properly marketed and has not been made the subject of an offer to rent at the Affordable Rent by either an Initial or Secondary Qualifying Person, the Owner may apply to the Council to vary the Definition of Secondary Qualifying Person to include a wider geographical area than the County
- 2.5 Notwithstanding the operation of paragraphs 2.3. and 2.4 of this Section of the Agreement the subsequent occupation and disposal of the Affordable Dwelling shall comply with the Third Schedule of this Agreement as if the said transaction were an initial Disposal of the Affordable Dwelling.

3 Sale by Mortgagee In Possession of a Qualifying Person

In the case of all Affordable Dwellings developed if a Qualifying Person defaults on their mortgage and the Mortgagee in Possession “takes possession” or assumes control of the property (directly or through an agent) that Mortgagee in Possession shall be bound by and adhere to the following procedures:

- 3.1 The Mortgagee in Possession shall as soon as is reasonably practicable

inform the Council in writing that it has taken possession or assumed control of the Affordable Dwelling.

3.2 The Mortgagee in Possession shall first offer to sell the Affordable Dwelling to the Council or its nominee at the Affordable Price.

3.3 If after a period of 4 weeks (from the date that the Mortgagee notifies the Council in accordance with 3.2 above) neither the Council, or its Nominee, have agreed to purchase the Affordable Dwelling, the Mortgagee (or its agent) can dispose of the Affordable Dwelling for sale at the Open Market Value and to any purchaser free from qualifying restrictions but subject to payment (after recouping first the mortgage debt and costs) by the Mortgagee in Possession to the Council of all the difference between the sale price and the Affordable Price (subject to the sale price exceeding the Affordable Price) which sum the Council will use towards the provision of affordable dwelling(s) elsewhere in the Local Area.

3.4 Following completion of the sale by the Mortgagee in Possession and payment to the Council in accordance with clause 3.3 of this Schedule the Council shall remove the provisions of this Agreement from the local land charges register in connection with the Red Land and if required to do so consent to the removal of the Restriction registered at Land Registry.

THIRD SCHEDULE

Owner's Covenants – Affordable Housing Restrictions

1 Affordable Dwelling Construction

The Owner covenants with the Council that:

- 1.1 The Owner will (in the construction of the Affordable Dwellings) construct and complete each Affordable Dwelling to a standard fit for human habitation in a good and workmanlike manner in accordance with the Planning Permissions and the relevant Building Regulations applying at the time of construction.
- 1.2 The Owner shall construct and complete the two Affordable Dwellings prior to the occupation of the fourth Dwellings constructed on the Development Site

2 Affordable Housing Restrictions and Sales Procedure

The Owner covenants with the Council that:

- 2.1 No Affordable Dwelling shall be occupied other than as the sole residence of a Qualifying Person and of any Family Member
- 2.2 No Affordable Dwelling shall be the subject of a Disposal other than in accordance with the Sales Procedure set out in the Second Schedule and at the Affordable Price or Affordable Rent.
- 2.3 No document giving effect to a Disposal shall at any time be executed unless it contains a covenant in favour of the Council and under Section 33 Local Government (Miscellaneous Provisions) Act 1972 for the purchaser of an Affordable Dwelling to comply with the terms of this Deed and an obligation to ensure that any subsequent Disposal is in compliance with the Sales Procedure set out in the Second Schedule.
- 2.4 The legal owner for the time being of the Affordable Dwelling shall provide at their own expense such documentation as the Council or its nominee shall in any case reasonably require evidencing that the occupier or proposed occupier of any Affordable Dwelling at any time

is complying or will comply with the covenants in paragraphs 2.1 and 2.4 above

- 2.5 The legal owner for the time being of the Affordable Dwelling shall pay the Council's or its nominee's reasonable legal, administrative (which includes but is not limited to all costs in relation to assessing as to whether any person is eligible in accordance with the terms of this agreement) and valuation costs in connection with any of the procedures required by the Sales Procedure set out in the Second Schedule

FOURTH SCHEDULE

Council's Covenants

- 1 The Council **HEREBY APPROVES** the development of the Red Land for the purposes of Part III of the Act and in accordance with the Development shown on the Application and **HEREBY COVENANTS** with The Owner that immediately upon the execution of this Deed by the parties hereto it will issue the Planning Permission

dobson:owen
 PENSEIRI - ARCHITECTS
 3 Trecast Buildings, Penarth U13 3BH
 T: (0) 1753 84401 • F: (0) 1753 84583
 E: pen@dobsonowen.com

MEDIWYN HUGHES
 NODIADAU - NOTES

TEITL PROSECT / PROJECT TITLE
 STATION BAKERY, ORICETH

2017-22

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 09.2017

COBBARTHWYO ISSUED FOR: CYNLLUNIO

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 2017-22
 Paper A3
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 Date of issue
 Date of revision
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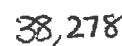
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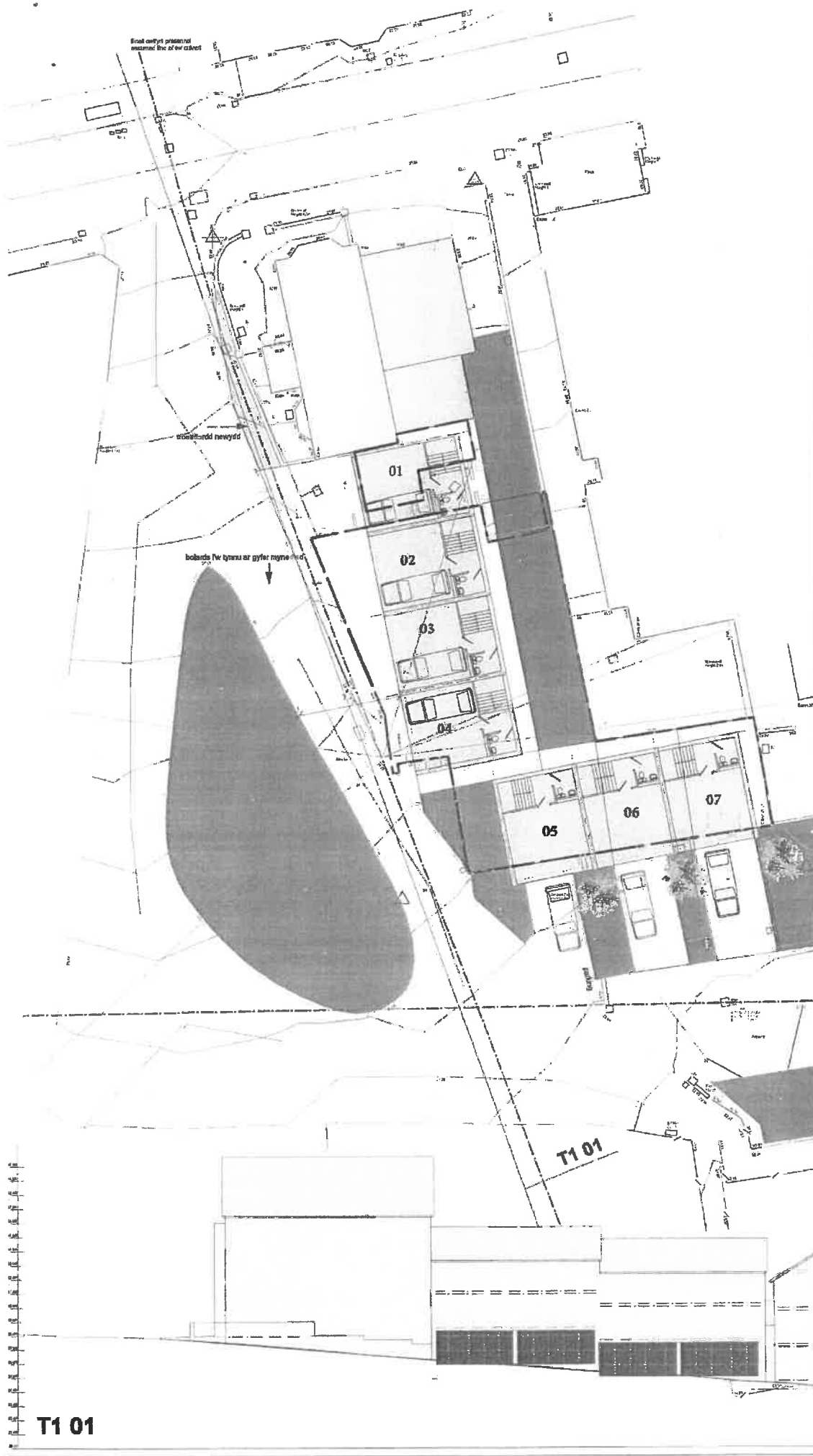
S. Buckerton
KC108

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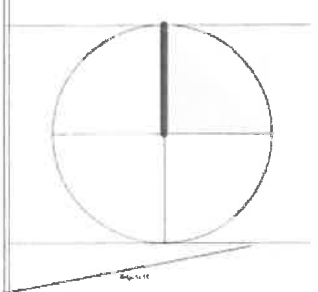
Dalgylch Porthmadog Catchment

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MEDWYN HUGHES
NODIADAU • NOTES
outline of existing buildings
units 02 + 03 - affordable dwellings



PROJECT TITLE
STATION BAKERY, CRICIETH
2017-22

06.2017
DOSBARTHWRD ER | ISSUED FOR: CYNLLUNIO

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SAFLE A TORIAD - BWRIAD

SB1 01
- 1 OF 1 -

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THE COMMON SEAL of GWYNEDD
COUNCIL was hereunto affixed in the
presence of:-

)
)
)



38,276

Executed as a deed by JAMES LLOYD
DEVELOPERS (CRICCIETH) LIMITED
acting by
[a director and its secretary] [two directors]

Signature of Director:

[Redacted signature]

Signature of ~~[Secretary]~~ [Director]:

[Redacted signature]

~~EXECUTED AS A DEED BY~~
~~THE COMMON SEAL~~ of
GOLDENTREE FINANCIAL
SERVICES PLC was hereunto
affixed by order of the Board in the
presence of: ARNA BY:

)
)
)
)
)

[Redacted signature]

[Redacted signature]

Company Secretary

CYNGOR GWYNEDD COUNCIL

and

JAMES LLOYD DEVELOPERS (CRICCIETH) LIMITED

and

GOLDENTREE FINANCIAL SERVICES PLC

CYTUNDEB/AGREEMENT

Section 106, Town and Country Planning Act, 1990

Relating to: Proposed development on Land at Station Bakery, Criccieth,

Gwynedd

Ref: CAT-3238

Iwan G. D. Evans
Pennaeth Gwasanaethau Chyfreithiol/
Head of Legal Services,
Swyddfeydd y Cyngor/Council Offices,
CAERNARFON,
Gwynedd,
LL55 1SH