

DATED 18 May 2015

WREXHAM COUNTY BOROUGH COUNCIL

and

GRWP CYNEFIN

AGREEMENT

pursuant to section 106 of the Town and Country Planning Act 1990 relating to development of land at Phase 2 of the Ty Newydd Development being land on the south side of Hope Street Gwersyllt Mold Road Wrexham (Planning Application No. 2007/0849, P/2009/0444 and P/2010/0544)
Variation of Section 106 Agreement

DATED

18 may

2015

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham, LL11 1AY (the "**Council**")
- (2) **GRWP CYNEFIN** of Ty Silyn, Llanllyfni Road, Penygroes, Caernarfon, Gwynedd LL54 6LY (the "**RSL**")

BACKGROUND

- (A) The Council is the local planning authority for the County Borough of Wrexham for the purposes of section 106 of the 1990 Act .
- (B) This Agreement relates to the Site part of which is vested in the RSL under registered title number CYM570051 (the "**Property**").
- (C) The units comprising the Property are all Affordable Housing Units.
- (D) The Council, Redrow Homes (NW) Limited and Anwyl Construction Company Limited and Ty Newydd Management Company (Wrexham) Limited entered into the Original Section 106 Agreement.
- (E) A Supplemental Section 106 Agreement was entered into between the Council, Redrow Homes Limited and Anwyl Construction Company Limited and Ty Newydd Management Company (Wrexham) Limited.
- (F) It is now proposed to vary the terms of the Original Section 106 Agreement to vary the terms in relation to the obligations of a mortgagee of the RSL in respect of the land owned by the RSL.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

- 1.1 Unless the contrary intention appears the following definitions apply:

"**the Agreement**" means this agreement

"**Original Section 106 Agreement**" means the section 106 agreement made between (1) The Council (2) Redrow Homes (NW) Limited and Anwyl Construction Company Limited and (3) Ty Newydd Management Company (Wrexham) Limited and dated 5 November 2009 as varied by the Supplemental Section 106 Agreement.

"**Supplemental Section 106 Agreement**" means the section 106 agreement made between (1) the Council and (2) Redrow Homes

Limited and Anwyl Construction Company Limited and (3) Ty Newydd Management Company (Wrexham) Limited and dated 15 December 2011

- 1.2 The terms "the parties" or "party" means the Council and/or the RSL as the case may be
- 1.3 Any reference in the Agreement to any of the parties shall be deemed to include their successors in title and/or statutory successors and/or successor body as the case may be
- 1.4 Words in this Agreement importing the singular meaning shall where the context so admits include the plural meaning and vice versa
- 1.5 Words in this Agreement of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting an actual person shall include corporations and vice versa
- 1.6 References in this Agreement to any Statutes or Statutory Instruments shall include and refer to any Statute or Statutory Instrument amending consolidating or replacing them respectively from time to time and for the time being in force
- 1.7 Where in this Agreement reference is made to a Clause Schedule Plan or Recital such reference (unless the context otherwise requires) is a reference to a Clause Schedule Plan or Recital of or (in the case of a Plan) attached to this Agreement
- 1.8 The clause paragraph and schedule headings do not form part of the Agreement and shall not be taken into account in its construction or interpretation
- 1.9 Definitions contained in the Supplemental Section 106 Agreement shall have the same meaning and effect in this Agreement unless otherwise stated in this Agreement.

2 GENERAL

- 2.1 This Agreement is entered into and completed pursuant to Sections 106 and 106A of the 1990 Act Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers and the obligations entered into by the RSL shall constitute planning obligations for the purpose of Section 106 of the 1990 Act shall bind the Site and shall be binding and enforceable by the Council against the RSL and any person deriving title to the Site therefrom as provided in Section 106 of the 1990 Act

3 VARIATION OF ORIGINAL SECTION 106 AGREEMENT

The Council and the RSL agree:

3.1 that the Original Section 106 Agreement is varied with immediate effect by:

adding a new definition of "RSL Mortgagee" to clause 1 of the agreement (interpretation) which reads as follows:

"RSL Mortgagee" means a mortgagee or chargee (or any receiver (including an administrative receiver) or administrator appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (each a Receiver)) of the whole or any part of the Affordable Housing Units.

substituting paragraph 12 of Schedule 2 to the Original Section 106 Agreement with a new paragraph 12 which reads as follows:

12. In the event that an RSL Mortgagee proposes to sell one or more of the Affordable Housing Units it must first notify the Council in writing of the proposed sale and thereafter allow the Council or its nominee a period of one month to agree a sale to the Council or its nominee and thereafter a further period of two months to exchange contracts in respect of the Affordable Housing Unit(s) failing which the mortgagee in possession or RSL Mortgagee shall be entitled to dispose of the Affordable Housing Unit(s) without the provisions of this Agreement being binding upon them PROVIDED THAT at all times, the rights and obligations in this clause 12 shall not require the RSL Mortgagee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the RSL Mortgagee in respect of moneys outstanding under the charge or mortgage including interest and costs accrued.

adding a new paragraph 12A to Schedule 2 to the the Original Section 106 Agreement which reads as follows:

12A. Where a purchaser purchases one or more Affordable Housing Units from an RSL Mortgagee in accordance with the provisions of clause 12 the provisions of this Agreement in relation to the Affordable Housing Unit(s) shall not apply to any such property.

For the avoidance of doubt all other clauses in the Original Section 106 Agreement remain unchanged and in full force and effect.

4 **AGREEMENTS AND DECLARATIONS**

It is hereby agreed and declared that:

Lapse of Agreement and Severability

4.1 If the Planning Permission shall lapse without having been implemented then this Agreement shall lapse as regards the obligations which shall not have come into force at the date of lapse and upon performance of all obligations then in force the Council shall confirm the same in writing to the RSL.

4.2 The parties hereto intend that the covenants obligations and other provisions of this Agreement shall be severable in the event that any one or more of them shall be held to be unlawful or invalid by a Court of proper jurisdiction.

Service Provisions

4.3 Any notice or other written communication to be served upon or given by one party to any other under the terms of this Agreement shall be deemed to have been validly served or given if delivered by hand 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 as otherwise notified for the purpose by notice in writing

4.4 The address for any notice or other written communication shall only be within the United Kingdom and is

4.4.1 for the Council as specified above marked for the attention of the Head of Legal Services

4.4.2 for the RSL as specified above marked for the attention of the Company Secretary

or such other address as may be notified in writing by the parties for this purpose and served as aforesaid

4.5 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

Release

4.6 No party shall be liable for any breach of covenant restrictions or obligations contained in this Agreement first occurring after it has parted with all of its interest in the Site.

4.7 Nothing in this Agreement shall require the performance of any obligation whatsoever in upon or under land outside the ownership of the RSL to perform the obligation unless such land shall be within the public highway and/or made available for the performance of that obligation at no cost to the party to perform its obligations PROVIDED THAT this Clause shall not vitiate any restriction in this Agreement relating to the performance of obligations on land outside the ownership of the RSL

Consents

- 4.8 That unless otherwise specified where any agreement certificate consent permission expression of satisfaction or other approval is to be given by the Council or any person on its behalf under the terms of this Agreement the same shall not be unreasonably withheld or delayed but save as permitted in law or equity this shall not be taken to fetter or restrict the exercise by the Council of any of its powers

Registration

- 4.9 That this Agreement shall be a local land charge and shall be registered as such

Not Planning Permission

- 4.10 That nothing in the Agreement constitutes planning permission

No Fetter or Restriction of Statutory Powers

- 4.11 Save as may be permitted by law that nothing in the Agreement fetters or restricts the exercise by the Council of any of its powers as a local planning authority and/or local highway authority or otherwise

EXECUTED AS A DEED on the date of this Agreement

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of WREXHAM)
COUNTY BOROUGH COUNCIL in)
the presence of:

Chairperson



Authorised Signatory



135/15

Head of Corporate & Customer Services Department

Executed as a deed by affixing the)
common seal of)
GRWP CYNEFIN)
in the presence of:)



Authorised Signatory



Authorised Signatory