

Dated

31st March

2014

- (1) THE VALE OF GLAMORGAN COUNCIL
- (2) BDW TRADING LIMITED, TAYLOR WIMPEY UK LIMITED AND PERSIMMON
HOMES LIMITED
- (3) ASSOCIATED BRITISH PORTS AND ABP PROPERTY DEVELOPMENT
COMPANY LIMITED
- (4) MCLAGAN INVESTMENTS LIMITED

DEED OF VARIATION AND SUPPLEMENTAL SECTION 106 AGREEMENT

THIS DEED is made

31st March

2014

BETWEEN

- (1) **THE VALE OF GLAMORGAN COUNCIL** of Civic Offices Holton Road Barry CF63 4RU ("the Council")
- (2) **BDW TRADING LIMITED** (Company no. **03018173**) whose registered office is at **Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire LE67 1DF**, **PERSIMMON HOMES LIMITED** (Company no. **04108747**) whose registered office is at **Persimmon House, Fulford, York, YO19 4FE** and **TAYLOR WIMPEY UK LIMITED** (Company no. **01392762**) whose registered office is at **Gate House, Turnpike Road, High Wycombe, Buckinghamshire, HP12 3NR** ("the Developers")
- (3) **ASSOCIATED BRITISH PORTS** a company registered in England and Wales (company number ZC000195) having its principal office at Aldwych House, 71-91 Aldwych, London, WC2B 4HN ("Associated British Ports") and **ABP PROPERTY DEVELOPMENT COMPANY** a company registered in England and Wales (company number 015219270) and whose registered office is situate at Aldwych House, 71-91 Aldwych, London, WC2B 4HN ("ABP Dev Co") (together "ABP") (together referred to as "ABP")
- (4) **MCLAGAN INVESTMENTS LIMITED** (company number 02127156) whose registered office is at Asda House, Southbank, Great Wilson Street, Leeds, LS11 5AD ("McLagan")

WHEREAS:-

1. The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 ("the Act") for the area in which the Site is situated.
2. The Developers are the freehold owner of part of the Site and the leasehold owner of part of the Site registered at the Land Registry with title numbers CYM564443, CYM508750, CYM508744, CYM508745, CYM508749, CYM508743, CYM508742 and CYM508750.
3. ABP is the freehold owner of part of the Site registered at the Land Registry with title numbers WA793141 (in part), CYM453559 (in part), WA862420 (in part),

CYM27128 (in part), and WA958988 (in part) and is the registered proprietor of the ABP Charge.

4. McLagan are the freehold owner of part of the Site registered at the Land Registry with title numbers CYM576827.
5. On 2nd March 2012 the Council, the Developers and Associated British Ports and ABP Property Development Company Limited ("ABP") entered into an agreement made under section 106 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 ("the Principal Agreement")
6. Without prejudice to the terms of the other covenants contained in the Principal Agreement the parties have agreed to vary the terms of the Principal Agreement as set out in this deed
7. This agreement is made under sections 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 and is supplemental to the Principal Agreement

1 CONSTRUCTION OF THIS DEED

- 1.1 The definitions and rules of interpretation in this clause apply in this deed and for the purposes of this Deed the following expressions shall have the following meanings:

"ABP Charge" means the registered legal charge in favour of ABP over title number CYM508750 (in part).

"BILR2 Works" means the construction of the Barry Island Link Road Phase 2 (BILR2) in accordance with the specification at Annexure 1.

"Construction Contract" means a construction contract(s) let by or on behalf of the Developers to carry out works including the BILR2 Works.

"Developers' Appointed Engineer" means such professional from time to time appointed by the Developers to oversee and supervise the Works.

"Developer's Contractor" means such reputable contractor or contractors appointed by the Developers to carry out the BILR2 Works

"Necessary Consents" means completion of:

- (a) an agreement between the Council and the Developers under s.38 of the Highways Act 1980 in relation to the BILR2 Works;
 - (b) an agreement between the Council and the Developers under s.278 of the Highways Act 1980 in relation to the BILR2 Works; and
 - (c) an agreement between Dwr Cymru (Welsh Water) and the Developers under s.104 of the Water Industry Act 1991;
 - (d) Any s.111 Local Government Act 1972 Agreement;
 - (e) Any planning permission required;
 - (f) Any transfer of land required from the Council.
- 1.2 All terms and definitions contained in the Principal Agreement shall apply to this Deed unless otherwise stated herein.
- 1.3 All references in this deed to clauses in the Principal Agreement are to clauses within the Principal Agreement
- 1.4 Clause headings shall not affect the interpretation of this deed.
- 1.5 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.6 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 interchangeable in that manner.
- 1.7 References to any party in this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their statutory functions
- 1.8 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.
- 1.9 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.

- 1.10 No provision of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 1.11 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

2 **STATUTORY PROVISION**

This Deed is made pursuant to the provisions of sections 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and any other enabling powers.

3. **VARIATIONS TO THE PRINCIPAL AGREEMENT**

3.1 Schedule 7 (Affordable Housing) shall be varied as follows:

3.1.1 The definition of "Affordable Housing Units" shall be deleted and replaced with the following:

"Affordable Housing Units" means that part of the Development to be built and thereafter occupied as Affordable Housing comprising 15% of the total number of Dwellings (rounded up) to be built on the Site pursuant to the Planning Permission of which in West Pond Part 1 and West Pond Part 2, 7.5% of the Dwellings (rounded up) are to be Social Rented Housing Units and 7.5% of the Dwellings (rounded down) are to be Intermediate Housing Units and in the remainder of the Site a minimum of 12% of the Dwellings are to be Social Rented Housing Units (rounded up) and 3% of the Dwellings (rounded down) are to be Intermediate Housing units.

3.1.2 In Paragraph 12, the words "..within 30 Working Days.." shall be replaced by the words "..within 3 months.."

3.1.3 Paragraph 13 shall be deleted and replaced with the following:

"The Developers shall offer the Intermediate Housing Unit for sale to the party nominated in the Nomination Notice ("the Nominated Party") by issuing a notice offering to sell the relevant Intermediate Housing Unit at the Sale Price ("the Offer Notice") such Offer Notice may only be issued after:-

- (a) reserved matters consent has been granted in respect of the relevant Intermediate Housing Unit; and

(b) the Developers have used all reasonable endeavours to market the relevant Intermediate Housing Unit for a period of at least 3 months "

3.1.4 Paragraphs 16.2 and 16.3 shall be amended by replacing the words "the person or persons so nominated" with "the Nominated Party"

3.1.5 Paragraph 17 shall be deleted and replaced with the following wording:

"Subject to the provisions in paragraph 17.3 below, the Developers may either;"

3.1.6 The following paragraph shall be added to Schedule 7 of the Principal Agreement as follows:

"17.3 The provisions of paragraphs 17.1 and 17.2 shall not apply in respect of 60% of the Intermediate Housing Units in West Pond Part 1 and West Pond Part 2 and the following paragraphs shall apply to those units:

17.3.1 The Developers shall either;

17.3.1.1 dispose of the relevant Intermediate Housing Unit to an Eligible Person an RSL or such other person approved by the Council at the Sale Price and in accordance with paragraph 15 of this Schedule and including the provisions at Schedule 10 and will provide to the Council such information as the Council may reasonably require in respect of such disposition within 10 Working Days of completion of the same; or

17.3.1.2 dispose of the relevant Intermediate Housing Unit as an Open Market Dwelling free of the requirements of Schedule 7 and Schedule 10 PROVIDED THAT the Developers shall be required to provide a replacement Intermediate Housing Unit ("the Replacement Intermediate Housing Unit") in substitution for the Intermediate Housing Unit disposed of in accordance with this paragraph 17.3.1.2

17.3.1.3 the Replacement Intermediate Housing Unit shall be provided within the subsequent Phases and the provisions of this Schedule 7 shall apply to the Replacement Intermediate Housing Units as if set out and repeated herewith SAVE THAT the provisions of this paragraph 17.3 shall not apply and SAVE FURTHER THAT the notification to the Council to be given in accordance with paragraph 10.2 shall not be given before the expiry of 12 months from the date of the original notification to the Council of the Market Value of the Intermediate Housing Unit disposed of in accordance with paragraph 17.3.1.2 above ("the Original

Notice Date") but shall be given within 48 months of the Original Notice Date (unless agreed otherwise by the Council and the Developers)."

- 3.2 In all other respects the Principal Agreement (as varied by this deed) shall remain in full force and effect.

4 **COVENANTS TO THE COUNCIL**

The Developers covenant to observe and perform the covenants, restrictions and obligations contained in the Principal Agreement as varied by this Deed and also those contained in Clause 5 of this Deed.

5 **SUPPLEMENTAL PLANNING OBLIGATIONS**

- 5.1 The Developers will use reasonable endeavours to obtain all Necessary Consents to carry out the BILR2 Works within 12 months of the date of this Deed.

- 5.2 The Developers will commence the BILR2 Works within 12 months from the date that all Necessary Consents are in place.

- 5.3 The Developers will use reasonable endeavours to procure the carrying out and completion of the BILR2 Works within 18 months of commencement of the BILR2 Works or such date as may be extended by the Developers' Appointed Engineer pursuant to paragraph 5.4 below.

5.4 **Delaying Factors**

If the Developers fail to comply with its obligations in paragraphs 5.1, 5.2 and 5.3 of this Schedule due to:

- 5.4.1 any delay which is beyond the control of the Developers;
- 5.4.2 exceptionally adverse weather conditions;
- 5.4.3 loss or damage by fire or other accident not due to the wilful act, default or negligence of the Developers;
- 5.4.4 civil commotion, a local combination of workmen, strike or lock-out affecting any of the trades employed in connection with the BILR2 Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the BILR2 Works, or any persons engaged in the preparation of the design of the BILR2 Works;

- 5.4.5 any delay in receipt of any necessary permission or approval of any statutory body where the Developers have not delayed in making its application for such permission or approval and has pursued the application with all proper expedition;
- 5.4.6 any delay or failure by statutory undertakers or utility companies to provide adequate services to the BILR2 Works where the Developers have not delayed making its application for such services and has pursued the application with all proper expedition;
- 5.4.7 any restriction, requirement or obligation imposed after the date of this Deed by statute or otherwise by law;
- 5.4.8 any properly certified extension of time under the Construction Contract
- 5.4.9 the termination of the Construction Contract by the Developers where the Developers' Contractor shall be in breach of its obligations and the letting of a replacement Construction Contract by the Developers
- 5.4.10 any delays caused by the Council
- 5.4.11 any delay as a result of complying with the requirements of a statutory undertaker or utility company where the Developers shall have used reasonable endeavours to mitigate such delay

then the Developers' Appointed Engineer shall certify what extension of time for completion of the BILR2 Works shall be reasonable in the circumstances and if the Developers complete or procure the completion of the relevant works within the extended time it will not be in breach of its obligations in paragraphs 5.1, 5.2 and 5.3 of this Schedule

6. **PROVISIONS RELATING TO ABP**

- 6.1 ABP join in this Deed for the purpose of consenting to its terms so far as they relate to the Site and for the purpose of giving effect to the obligations on its part contained in this Deed which are planning obligations within section 106 of the Act and in order to bind its interest in the Site and that of its successors in title but not further or otherwise.

6.2 The Parties agree that nothing in this Deed shall prevent or restrict ABP in carrying out its functions as Port Authority (as defined in the Transport Act 1981) in relation to any neighbouring property of ABP subject to its statutory and common law obligations.

7. **LOCAL LAND CHARGE**

This deed shall be registered as a local land charge

8. **COUNCIL'S COSTS**

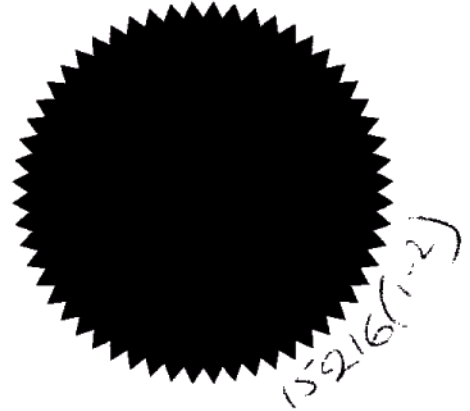
The Developers shall pay to the Council on the date of completion of this deed, the Council's reasonable and proper legal costs in the sum of £1,500 together with all reasonable disbursements incurred in connection with the preparation, completion and registration of this deed

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written

THE COMMON SEAL of **THE VALE OF**

GLAMORGAN COUNCIL was hereunto affixed

in the presence of:



Authorised Signatory



EXECUTED AS A DEED by on behalf of

BDW TRADING LIMITED

in exercise of the powers conferred on them

by a Power of Attorney dated

EXECUTED as a **DEED** by

duly authorised attorneys of

TAYLOR WIMPEY UK LIMITED

in the presence of:

EXECUTED AS A DEED by

PERSIMMON HOMES LIMITED

acting by its Attorneys

and

in the presence of

THE COMMON SEAL of

ASSOCIATED BRITISH PORTS

was hereunto affixed

in the presence of

Assistant Secretary

THE COMMON SEAL of

ABP PROPERTY DEVELOPMENT COMPANY LIMITED

was hereunto affixed

in the presence of

Director

Secretary

EXECUTED as a DEED by McLAGAN INVESTMENTS

LIMITED by a Director, Secretary or Attorney

Director

Secretary

Signature of attorney:

Name of attorney:

as attorney for and on behalf of

McLagan Investments Limited

under a power of attorney dated

[] in the presence of:

Witness to attorney's signature

Signature:

Name:

Address:

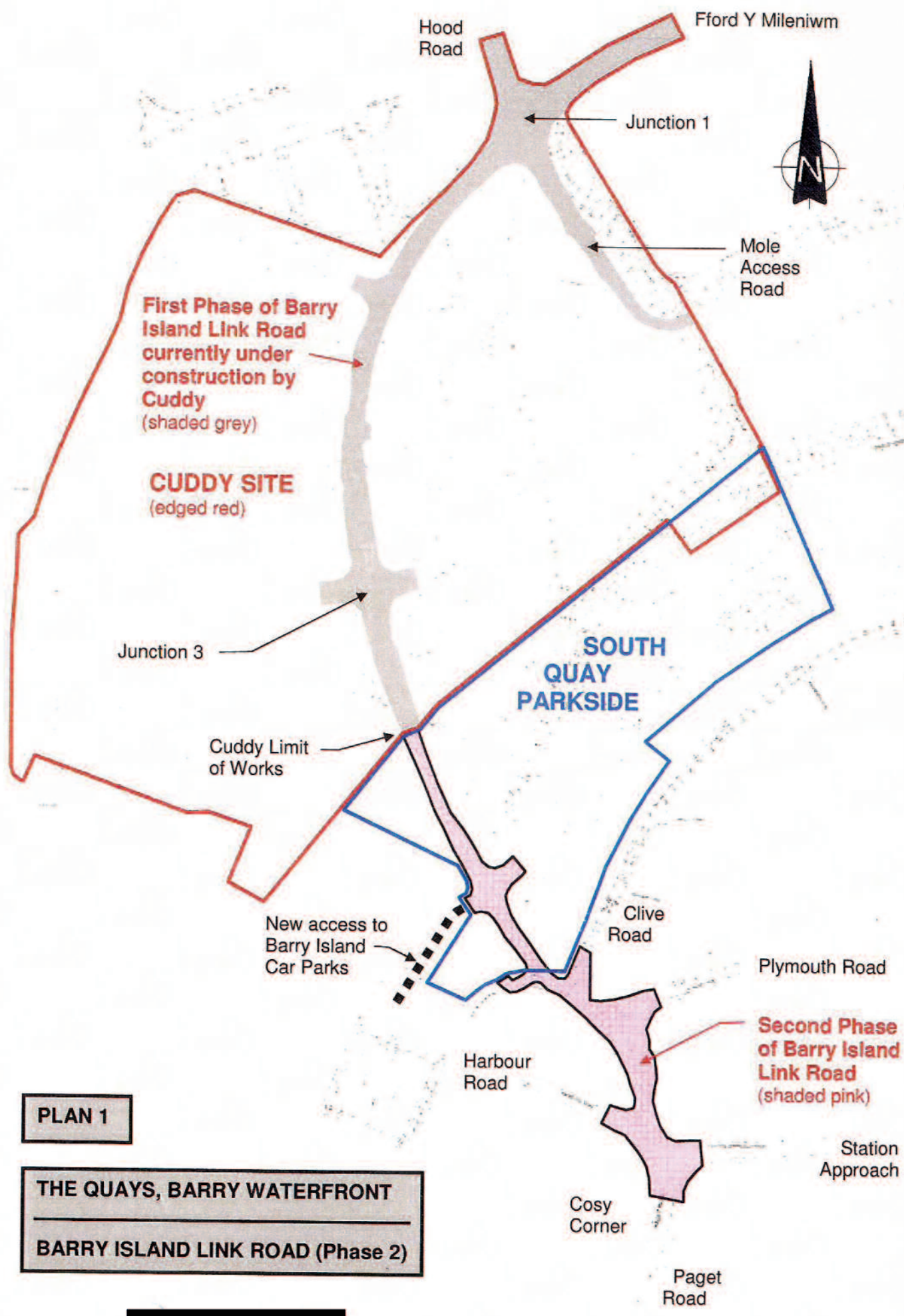
Occupation:

ANNEXURE 1

THE QUAYS, BARRY WATERFRONT

PHASE 2 OF THE BARRY ISLAND LINK ROAD SCOPE OF WORK

1. This Scope of Work describes the second phase of the proposed Barry Island Link Road which extends the new road from its current Limit of Works just to the south of Junction 3 (approx. chainage 600m), as shown on the appended **Plan 1**, to its southern termination at the proposed Junction 6 at the existing Harbour Road/Station Approach mini roundabouts (*Cosy Corner*).
2. The appended **Plan 2** is the General Arrangement for the Phase 2 roadworks.
3. The new road is to be designed in accordance with technical drawings, highway standards, and a specification approved by the Vale of Glamorgan Council.
4. Implementation of the Works is to be the subject of a Section 38 Agreement for the on-site road, and a Section 278 Agreement for the off-site highway improvements. The *Limits of Works* for these two agreements are edged green and blue respectively on **Plan 2**.



PLAN 1

THE QUAYS, BARRY WATERFRONT
BARRY ISLAND LINK ROAD (Phase 2)



