

Deed of Variation pursuant to the Deed of Agreement under Section 106 of the Town and Country Planning Act 1990 relating to the development of Land off Cowbridge Road, St Athan, Vale of Glamorgan

2020

Dated: 16th July

Vale of Glamorgan Council (1)

BDW Trading Limited (2)

DATE

16th July

2020

PARTIES

- (1) **Vale of Glamorgan Council** of Civic Offices, Holton Road, Barry CF63 4RU ("Council");
- (2) **BDW Trading Limited** (registered number 3018173) whose registered office is at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire LE67 1UF ("the Owner")

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. On 28th June 2019 the Council (1), John William Thomas and Rhiannon Kate Thomas (2) and Annington Property Limited (3) 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").
3. On 04th December 2019 John William Thomas and Rhiannon Kate Thomas transferred the part of the Site formerly registered with HM Land Registry under title number WA987765 to the Owner.
4. On 04th December 2019 Annington Property Limited transferred the part of the Site formerly registered with HM Land Registry under title number CYM344498 to the Owner.
5. The Owner is registered proprietor for the Site pending under title number CYM792591 and is therefore the "Owner" for the purposes of 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 **AGREED TERMS**

- 1.1 All terms and definitions contained in the Principal Agreement shall apply to this Deed unless otherwise stated herein.
- 1.2 It is agreed that the terms of the Principal Agreement shall be supplemented and varied as set out in the First Schedule to this Deed.
- 1.3 This Deed is supplemental to the Principal Agreement which remains in full force and effect.
- 1.4 All references in this Deed to clauses in the Principal Agreement are to clauses within the Principal Agreement.
- 1.5 Clause headings shall not affect the interpretation of this Deed.
- 1.6 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.7 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.
- 1.8 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.
- 1.9 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.
- 1.10 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.
- 1.11 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 1.12 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 COVENANTS TO THE COUNCIL

The Developer covenants to observe and perform the covenants, restrictions and obligations contained in the Principal Agreement as varied by this Deed.

4 MISCELLANEOUS

- 4.1 Nothing in this Deed shall create any rights in favour of any person not a party to it pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 4.2 This Deed shall be registrable as a local land charge by the Council.
- 4.4 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.
- 4.5 The Parties agree with one another to act reasonably and in good faith in the fulfilment of the objectives of this Deed.

5 JURISDICTION

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

6 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.

FIRST SCHEDULE

The Principal Agreement shall be varied as follows:

1. The definition of "Public Open Space Scheme" at Clause 1 shall be deleted and replaced with the following:

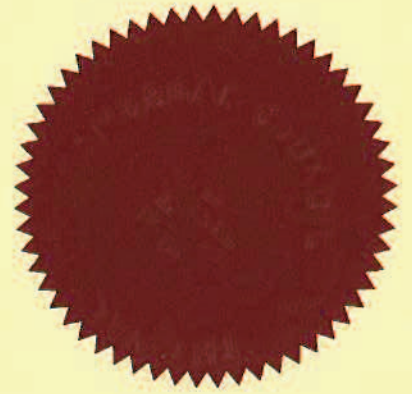
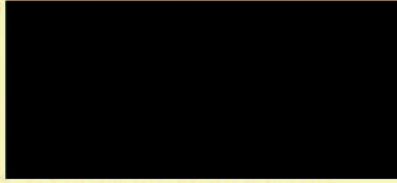
"Public Open Space Scheme" means a scheme to be approved by the Council pursuant to paragraph 1.1 of the Second Schedule for the provision of Public Open Space within the Site at a ratio of at least 18.56 square metres per Dwelling on which there shall be provisions for the NEAP, LEAP and LAP;

2. The definition of "Social Rented Housing" at Clause 1 shall be amended so that the words **"one two storey block containing"** are deleted from paragraph i) and ii).
3. The definition of "Commencement of Development" at Clause 1 shall be amended so that:
 - 3.1 the words **"provisions of attenuation features,"** are inserted after "laying of services" and before "the Highway Works"
 - 3.2 the words **"(including main drainage throughout the Site, the construction of the pumping station and rising main)"** are inserted after the words "the diversion and laying of services" and
 - 3.3 the words **"and temporary site compound for the carrying out of the foregoing works"** are inserted after the words "temporary means of enclosure".

IN WITNESS whereof the Parties have executed this Deed of Variation the day and year first before Written

17466.

EXECUTED as a **DEED** on behalf of the **Vale of Glamorgan Council**
By the affixing of its seal in the presence of

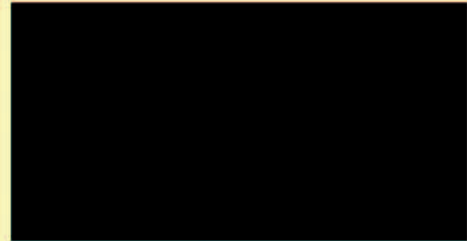


~~DEBBIE MARLES/VICTORIA DAVIDSON~~

~~Monitoring Officer and Head of Legal and Democratic Services/Operational Manager Legal Services~~

**Executed as a DEED by
BDW TRADING LIMITED**

acting by [NAME OF DIRECTOR]
a director and [NAME OF SECOND
DIRECTOR/SECRETARY]



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MARTIN LEWIS