

Dated

9th February

2018

THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE

and

MARO DEVELOPMENTS LIMITED

and

BDW TRADING LIMITED

and

THE ROYAL BANK OF SCOTLAND PLC

Deed of Variation

pursuant to Section 106A of the Town and Country
Planning Act 1990 relating to land at the former
Bedewell Industrial Park/Baker Perkins Sports Ground
and Car Park, Red House Road, Hebburn, Tyne &
Wear

Sintons
Law

The Cube, Barrack Road, Newcastle upon Tyne, NE4 6DB DX715139 Newcastle upon Tyne 19
Tel No. 0191 226 7878 Fax No. 0191 226 7850
www.sintons.co.uk

SN-1904066_1

This Deed of Variation is made the 9th day of February 2016⁷

By

1. **THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE** of Town Hall and Civic Offices, Westoe Road, South Shields, Tyne and Wear NE33 2RL (hereinafter called the "Council"); and
2. **MARO DEVELOPMENTS LIMITED** (CRN 04460238) whose registered office is at Metropolitan House, Station Road, Cheadle Hulme, Cheshire SK8 7AZ (hereinafter called the "Owner"); and
3. **BDW TRADING LIMITED** (CRN 03018173) whose registered office is at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire LE67 1UF (hereinafter called the "Developer"); and
4. **THE ROYAL BANK OF SCOTLAND PLC** (CRN SC90312) whose registered office is at 36 St Andrew Square, Edinburgh EH2 2YB (hereinafter called the "Mortgagee")

Whereas

- A. The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated and the Authority entitled to enforce the obligations in this Deed of Variation.
- B. The Owner is the freehold owner of part of the Land registered at HM Land Registry under title numbers TY338319, TY323419, TY33790, TY232741, TY219489, TY350578, TY522140 and TY209117 subject to a legal charge in favour of the Mortgagee dated 4 April 2003.
- C. The Developer has taken a transfer of part of the Land dated 18 May 2016 from the Owner and has the benefit of a contractual right to acquire the Owner's interest in the remainder of the Land dated 28 April 2015 made between the Owner and the Developer.
- D. The Developer is the freehold owner of part of the Land registered at HM Land Registry under title number TY537283.
- E. A Section 106 Agreement made between (1) the Council (2) the Owner (3) the Developer and (4) the Mortgagee was entered into on 16 May 2016 ("the Original Agreement").
- F. Full planning permission was granted subject to the Original Agreement on 17 May 2016 by the Council for "Erection of 335 residential dwellings (Use Class C3) and associated access, landscaping and engineering works" on the Land under reference ST/0539/15/FUL ("the Original Planning Permission").
- G. The Developer has submitted an application on 6 June 2016 under Section 73 of the Act to vary condition 2 of the Original Planning Permission in order to achieve an amendment to house types and allocated planning application reference ST/0533/16/VC ("the Section 73 Application").

- H. The Council supports the principle of the development to be carried out pursuant to the Section 73 Application but is unable or unwilling to approve the Section 73 Application or to grant planning permission for it in the absence of this Agreement, which makes provision for regulating the development to be carried out and securing the matters referred to in this Agreement.
- ~~I. The Council resolved at its Planning Committee on 2016 to approve the Section 73 Application subject to the prior completion of this Deed.~~

- I. This Deed of Variation is entered into to ensure that the provisions of the Original Agreement as varied by this Deed of Variation continue to bind the Owner's, the Developer's and Mortgagee's respective interests in the Land at the date hereof so far as the Land is developed pursuant to the Original Planning Permission and / or the planning permission to be granted pursuant to the Section 73 Application.
- J. All references, clauses, definitions and paragraphs refer to the Original Agreement (unless expressly stated otherwise) and are used in this Deed of Variation.

NOW THIS DEED is made pursuant to sections 106 and 106A of the Act and contains planning obligations for the purposes of those sections and **WITNESSES** as follows:

1. The parties expressly agree that the Original Agreement shall remain in full force and effect save as expressly varied by this Deed of Variation.
2. Save for clause 6 (legal costs) this Deed of Variation is conditional upon Commencement of Development authorised by the Section 73 Planning Permission.
3. This Deed of Variation shall cease to have effect (in so far only as it has not already been complied with) if the Section 73 Planning Permission is quashed, revoked or otherwise withdrawn or (without the consent of the Owner and the Developer) it is modified by any statutory procedure or expires for any reason prior to Commencement of the Development authorised by the Section 73 Planning Permission.
4. It is hereby agreed between the parties that the Original Agreement shall be modified (or as the case may be construed) as follows:
 - 4.1. The definition of "Dwelling" at clause 1 is to be deleted and replaced by the following:

"Dwelling" means a dwelling (including a house flat or maisonette) to be constructed on the Land pursuant to the Planning Permission and / or the Section 73 Planning Permission
 - 4.2. Within the definition of "Land" at clause 1, the words "and TY209117" shall be omitted and replaced by "TY209117 and TY537283".
 - 4.3. The definition of "Occupation" and "Occupied" at clause 1 is to be deleted and replaced by the following:

"Occupation" and "Occupied" occupation of any Dwelling for the purposes permitted by the Planning Permission and / or the Section 73 Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.

- 4.4. A new definition of "Section 73 Planning Application" shall be inserted into the Original Agreement at clause 1 as follows:

"Section 73 Planning Application" the application submitted on the 6 June 2016 under Section 73 of the Act and carrying reference ST/0533/16/VC for the erection of 335 dwellings and associated access, landscaping and engineering works but with variation of condition 2 of planning permission reference number ST/0539/15/FUL, to allow the house types within the approved scheme to be revised.

- 4.5. A new definition of "Section 73 Planning Permission" shall be inserted into the Original Agreement at clause 1 as follows:

"Section 73 Planning Permission" the planning permission to be granted by the Council in pursuance of the Section 73 Planning Application"

- 4.6 Clause 8.5 of the Original Agreement is to be deleted and replaced by the following:

8.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission and the Section 73 Planning Permission) granted (whether or not on appeal) after the date of this Deed.

- 4.7 Clause 8.7 of the Original Agreement is to be deleted and replaced by the following:

8.7 In the event that a condition or conditions to the Planning Permission or the Section 73 Planning Permission is or are varied pursuant to Section 96A of the Act this Deed shall continue in full force in respect of the Planning Permission and the Section 73 Planning Permission with the relevant condition or conditions as so varied.

- 4.8 Clause 11.2 of the Original Agreement is to be deleted and replaced by the following:

11.2 This Deed shall not be enforceable against the owners, lessees, occupiers or tenants (or their mortgagees) of the Dwellings constructed pursuant to the Planning Permission and/or the Section 73 Planning Permission nor against those deriving title from them.

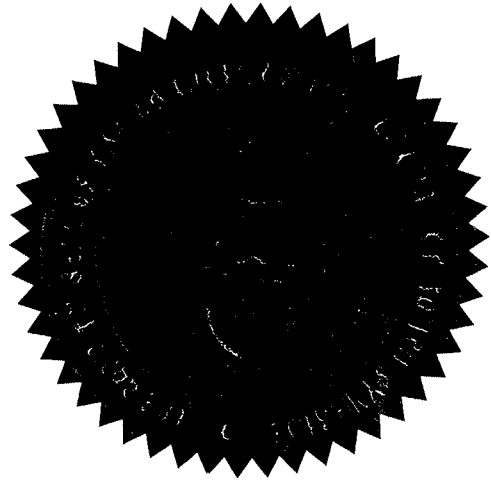
5. The Mortgagee has agreed to enter into this Deed of Variation on the terms contained in Clause 7 of the Original Agreement and its liability under this Deed of Variation shall be limited in the same manner as set out in that Clause.

6. **Legal costs**

The Developer shall pay the Council's reasonable legal costs in the negotiation and completion of this Deed of Variation in the sum of £600.

IN WITNESS of which the parties have executed this Deed of Variation on the date first written above

EXECUTED as a DEED (but not delivered until the date of it) by the affixing of the COMMON SEAL of the COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE in the presence of:



[Redacted signature]

Mayor/Authorised Signatory

[Redacted signature]

Head of Legal Services/Authorised Signatory

EXECUTED as a DEED by)
MARO DEVELOPMENTS LIMITED)
acting by one director in the)
presence of:)

Director ...

[Redacted signature]

(10538)

Witness Signature

[Redacted signature]

Witness Full Name

LIS Gray

Witness Address

43 Metropolitan HS

Spoken Rd

Chadwell Hall

SK 8 7AZ

Witness Occupation

Accountant

EXECUTED as a DEED on behalf of)

BDW TRADING LIMITED by STEVE JONES)

Attorney

and SCOTT MARTIN)

as joint attorneys in exercise of the powers)

Attorney

conferred on them by a Power of Attorney)

dated 23/9/16 who have hereunto)

set the name of BDW TRADING LIMITED)

in the presence of: AMY McFAULDS)

Witness Signature... [Redacted] WITNESSING AND SIGNATURES

Witness Full Name... AMY CLARE McFAULDS

Witness Address... [Redacted]

Witness Occupation... ARCHITECT

EXECUTED as a DEED by)

as authorised attorney for THE ROYAL)

BANK OF SCOTLAND PLC in the)

presence of:- [Redacted])

Witness Signature... [Redacted]

Witness Full Name... [Redacted] Knight

Witness Address... Sheffield Credit Documentation

PO Box No. 502
2nd Floor, 42 High Street
Sheffield S1 2YW

Witness Occupation... Bank Official

Kevin Knowles