

DATED

7th August

2014

WREXHAM COUNTY BOROUGH COUNCIL (1)

- and -

BLOOR HOMES LIMITED (2)

SUPPLEMENTAL AGREEMENT (No 3)

Pursuant to Section 106 of the Town and Country Planning Act 1990
in respect of land at the former Gatewen Colliery site, Gatewen Road, New
Broughton, Wrexham

T Coxon
Head of Corporate and Customer Services
Guildhall
Wrexham
LL11 1AY
(Ref: DP/10007585)

THIS AGREEMENT is made on the 7th day of August 2014

BETWEEN:-

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall Wrexham LL11 1AY ("the Council")
- (2) **BLOOR HOMES LIMITED** (Company Number 02162561) whose registered office is at Ashby Road, Measham, Swadlincote, Derbyshire, DE12 7JP ("the Owner")

RECITALS

- (A) This Supplemental Agreement is made under Section 106 of the Town and Country Planning Act 1990 supplemental to the Existing Agreements (as hereinafter defined)
- (B) The Owner is now the owner of the Land registered at the Land Registry under Title Numbers CYM586780, CYM596475, CYM528970 and CYM389556 and CYM618837 WA823636 CYM347520, WA703179 and CYM460870. There are no other legal interests in the Land.
- (C) The Existing Agreements regulate development carried out or to be carried out under the Existing Permissions (as hereinafter defined)
- (H) The Owner has submitted the Further Planning Application to the Council
- (I) The Council is minded to approve the Further Planning Application but considers that in the exercise of its statutory powers and duties and in order to bind the Land the parties hereto should enter into this Supplemental Agreement in order to secure the planning obligations contained herein.
- (J) The Council is the Local Planning Authority for the purposes of Section 106 of the Act in respect of the Land.
- (K) The Council are satisfied that plots 77, 79, 80, 82, 83 and 84 as shown edged orange on Plan 1 have been actively marketed for sale for a period of six months and no Eligible Person has exchanged unconditional contracts for such Shared Equity Housing Units within such period and no RSL has unconditionally contracted with the Owner to buy such units within such period and as such these Shared Equity Housing Units may be sold in the open market at Market Value free from the affordable housing restrictions contained in the Third Schedule of the Existing Agreements subject to payment of Commuted Sums as provided in paragraph 8 of Part 6 of the Third Schedule

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 In this Supplemental Agreement expressions shall where the context admits have the same meaning as expressed in the Main s106 Agreement (as varied by, or provided for, by the First Supplemental Agreement and the Second Supplemental Agreement and this Supplemental Agreement) and in the event of conflict the provisions of this Supplemental Agreement shall prevail.

1.1.2 In this Supplemental Agreement unless the contrary intention appears the following terms shall have the following meanings:

"Existing Agreements"	means the Main s106 Agreement and the First Supplemental Agreement and the Second Supplemental Agreement
-----------------------	--

"Existing Permissions"	means the planning permissions granted by the Council under code numbers P/2007/0700, P/2008/0790 P/2009/0735, P/2010/0253, P/2010/0701 and P/2012/0523 relating to the Land
------------------------	--

"First Supplemental Agreement"	means the Agreement dated 4 March 2011 and made between the Original Parties
--------------------------------	--

"Further Planning Application"	means the application for Planning permission reference P/2013/0839 for reserved matters approval pursuant To outline planning permission P/2012/0523 for Residential Development Consisting Of 110 Dwellings (including Access, Appearance, Layout, Scale And Landscaping)
--------------------------------	---

"Further Permission"	mean the planning permission issued pursuant to the Further Planning Application
----------------------	--

"Main s106 Agreement"	means the Agreement dated 9 July 2010 made between the Original Parties as varied by
-----------------------	--

the First Supplemental Agreement and the Second Supplemental Agreement

“Original Parties”

means the Council, Sir Thomas Farmer Thomas Frederick Teviot Harrison and Rowanmoor Trustees Limited, Fifers 11 Limited and Bank of Scotland Plc

“Plan 1”

means the plan attached to this Supplemental Agreement and marked “Plan 1”

“Plan 2”

means the plan attached to this Supplemental Agreement and marked “Plan 2”

“Second Supplemental Agreement”

means the Agreement dated 4 December 2013 and made between the Council, Sir Thomas Farmer Thomas Frederick Teviot Harrison and Rowanmoor Trustees Limited, Fifers 11 Limited the Owner and Bank of Scotland Plc

1.2 Interpretation

- 1.2.1 A reference in this Supplemental Agreement to an Act of Parliament or to any order regulation statutory instrument or the like shall include a reference to any amendment or re-enactment of the same.
- 1.2.2 Words importing the masculine gender include the feminine gender and vice versa. Words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa.
- 1.2.3 Any heading or side notes are for ease of reference only and shall not affect the construction of this Supplemental Agreement.
- 1.2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 1.2.5 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council the successors in title to their statutory functions.

2. FORMAL REQUIREMENTS

- 2.1 The Council enters into this Supplemental Agreement in pursuance of its powers under Section 106 of the 1990 Act Section 2 of the Local Government Act 2000 and Section 111 of the Local Government Act 1972 and all other enabling powers in that regard
- 2.2 The obligations imposed by this Supplemental Agreement relate to the Land and are binding on the Owner and its successors in title pursuant to Section 106 of the 1990 Act
- 2.3 The obligations contained in this Supplemental Agreement are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable as such by the Council as local planning authority
- 2.4 This Supplemental Agreement is a Local Land Charge for the purposes of the Local Land Charges Act 1975 and will be registered as such by the Council

3 RECITALS

- 3.1 Commencement of Development has occurred in relation to Planning permission reference P/2010/0701 and accordingly the Main s106 Agreement is varied as set out in clauses 1.3 and 1.4 of the First Supplemental Agreement.
- 3.2 The object of this Supplemental Agreement is to acknowledge the reduction in the number of plots comprising the Development pursuant to the Further Permission and to make consequential changes to the Education Contribution and Affordable Housing Units. It also makes changes to the way in which Area A and Area B are to be managed in the future.

4 OPERATIVE PROVISIONS

The Council and the Owner agree that in respect of the Land:

- 4.1 The Further Permission shall be subject to and governed by the obligations set out in the Main s106 Agreement and the First Supplemental Agreement and the Second Supplemental Agreement (as varied by, or provided for, by this clause 4 as the context so admits)

4.2 Variation

The parties agree that the Main s106 Agreement shall henceforth be read and construed and take effect subject to the following additions and amendments:

- 4.2.1 As if the definition of Affordable Housing Unit(s) in the Main s106 Agreement was deleted and substituted with the following:

“Affordable Housing Unit(s)” means that part of the Development comprising 11 Dwellings being Plots 77 to 84 inclusive and plots 175, 176 and 177 and shown shaded blue or shown edged orange on Plan 1 comprising a one bedroom maisonette and 2 bedroom Dwellings, or any one or more of them”

4.2.2 As if the definition of Primary School Contribution in the Main S106 Agreement was deleted and substituted with the following:

“Primary School Contribution” means the sum of Four hundred and sixty three thousand, three hundred and forty four Pounds (£463,344) calculated in accordance with the formula annexed to this Agreement as Appendix 5”

4.2.3 As if the definition of Secondary School Contribution in the Main S106 Agreement was deleted and substituted with the following:

“Secondary School Contribution” means the sum of Three hundred and seventy eight thousand, two hundred and forty Pounds (£378,240) calculated in accordance with the formula annexed to this Agreement as Appendix 5”

4.2.4 As if the definition of SW Zone 1 in the Main S106 Agreement was deleted and substituted with the following:

“SW Zone 1” means plot numbers 1 to 87 and 152 to 170 inclusive shown on Plan 1 which are served by the SWDS within Area A or such alternative plot numbers as may be approved by the Council”

4.2.5 As if the definition of SW Zone 2 in the Main S106 Agreement was deleted and substituted with the following:

“SW Zone 2” means plot numbers 88 to 151 and 171 to 214 inclusive shown on Plan 1 which are served by the SWDS within Area B or such alternative plot numbers as may be approved by the Council”

4.2.6 As if the definition of “Planning Application” as defined in the Main s106 Agreement is deemed deleted and replaced by the following:

“Planning Application” means the applications for reserved matters approvals pursuant to Outline Planning Permission reference P/2007/0700 and

varied by P/2008/0790 for the Development of the Land submitted to the Council and given reference number P/2009/0735 registered on 2 September 2009, reference number P/2010/0253 submitted on 29 March 2010, and reference number P/2010/0701 registered on 12 August 2010, the application to vary condition number 9 of permission P/2008/0790 submitted to the Council and given reference number P/2012/0523 and received on 18 July 2012, and the application reference number P/2013/0839 registered on 21 January 2014”

4.2.7 As if the definition of Planning Permission as defined in the Main S106 Agreement is deemed deleted and replaced by the following:

“Planning Permission means the grant of planning permission substantially in the form of the draft annexed to this Agreement issued by the Council pursuant to the Planning Application”

4.2.8 As if the definitions of, and all references to, “Area A Lease” and “Area B” Lease in the Main S106 Agreement are deemed deleted

4.2.9 As if the definition of Area A WW Transfer as defined in the Main S106 Agreement is deemed deleted and replaced by the following:

“Area A WW Transfer means a freehold transfer of those parts of Area A as are required to be transferred for the purposes of the SWDS to Welsh Water or such other statutory undertaker as is appropriate in a form to be approved by the Council”

4.2.10 As if the definition of Area B WW Transfer as defined in the Main S106 Agreement is deemed deleted and replaced by the following:

“Area B WW Transfer means a freehold transfer of those parts of Area B as are required to be transferred for the purposes of the SWDS to Welsh Water or such other statutory undertaker as is appropriate in a form to be approved by the Council”

4.2.11 As if the definition of “Baseline AH Value” as defined in the Second Supplemental Agreement is deemed deleted and replaced by the following:

“Baseline AH Value”

means the value of the Affordable Housing Units as set out in the Appraisal being:
£1,850 per square metre x the aggregate Size of Units of all the Affordable Housing Units that are Two bed terraced houses
Plus £1,930 per square metre x the aggregate Size of Units of all Affordable Housing Units that are two bed flats or one bed maisonettes

4.2.11 As if the definition of “Baseline Value” as defined in the Second Supplemental Agreement is deemed deleted and replaced by the following:

“Baseline Value”

means the value of the Dwellings as set out in the Appraisal being:
£1,650 per square metre x the aggregate Size of Units of all Relevant Units that are Market Housing Units and are Five bed detached houses
Plus £1,750 per square metre x the aggregate Size of Units of all Relevant Units that are Market Housing Units and are Four bed detached houses
Plus - £1,750 per square metre x the aggregate Size of Units of all Relevant Units that are Market Housing Units and are Three bed detached house
Plus £1,800 per square metre x the aggregate Size of Units of all Relevant Units that are Market Housing Units and are Three bed terraced houses
Plus £1,850 per square metre x the aggregate Size of Units of all Relevant Units that are Market Housing Units and are Two bed terraced houses
Plus £1,930 per square metre x the aggregate Size of Units of all Relevant Units that are Market Housing Units and are Two bed flats or one bed maisonettes
Plus £1,572.50 per square metre x the aggregate Size of Units of all Relevant Units that are Affordable Housing Units and are Two bed terraced houses
Plus £1,640.50 per square metre x the aggregate Size of Units of all Relevant Units that are Affordable Housing Units and are Two bed flats or one bed maisonettes

4.2.12 As if the plans attached to this Supplemental Agreement marked 'Plan 1' and 'Plan 2' are substituted for the plans marked 'Plan 1' and 'Plan 2' in the Main S106 Agreement

4.2.13 As if a new paragraph 10 were added to Part 1 of the First Schedule to the Main S106 Agreement as follows:

"Neither the Area A WW Transfer or the Area B WW Transfer shall be completed without the prior written approval of the Council having been obtained to the extent of the land to be transferred by such transfers, except that such approval shall not be required where the extent of such land is limited to the areas shown coloured purple on the plans attached to an Agreement under Section 104 of the Water Industry Act 1991 relating to sewers at Gatewen Road Phase 2 Wrexham, dated 6 June 2014 and made between Sir Thomas Farmer Thomas Frederick Teviot Harrison and Rowanmoor Trustees Limited, Fifers 11 Limited the Owner, MD Insurance Services Limited and Dwr Cymru Cyfyngedig.

4.2.14 As if a new paragraph 11 were added to Part 1 of the First Schedule to the Main S106 Agreement as follows:

"Subject to compliance with paragraph 10 above, upon completion of the Area A WW Transfer and the Area B WW Transfer the land transferred by such transfers shall be released from the obligations contained in the Existing Agreements"

5 CONTINUATION OF MAIN S106 AGREEMENT

The parties hereto agree that from the date hereof the Main S106 Agreement shall continue in full force and effect other than as provided by clause 4 of this Supplemental Agreement

6 AGREEMENTS AND DECLARATIONS

6.2.1 Nothing contained or implied in this Supplemental Agreement shall prejudice or affect the discretions rights powers duties and/or obligations of the Council in the exercise of its functions as a local authority highway authority housing authority education authority and local planning authority and the discretions rights powers duties and/or obligations of the Council under all public and private statutes byelaws orders and regulations may be fully and effectually exercised in relation to the Land or any part thereof and any works executed thereon as if this Supplemental Agreement had not been executed by the Council and in particular nothing in this Supplemental Agreement shall restrict the Council and/or any other local authority from exercising

powers of compulsory purchase in respect of any part of the Land;

- 6.2.2 Unless the right of enforcement is expressly granted the parties to this Supplemental Agreement do not intend any of its terms to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Supplemental Agreement save for the avoidance of doubt it is declared that the exclusion of the application of the Contracts (Rights of Third Parties) Act 1999 shall not prevent any future successor in title to any of the parties to this Supplemental Agreement from being subject to or able to benefit from or to enforce any of the obligations benefiting such original party in this Supplemental Agreement including by any successor local planning authority to the Council exercising planning powers under the 1990 Act and the parties may rescind or vary this Supplemental Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided
- 6.2.3 If any of the terms obligations and/or covenants in this Supplemental Agreement or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable the same shall be severable from the remainder of this Supplemental Agreement and the remainder of this Supplemental Agreement or the application of such terms obligations and/or covenants to parties or circumstances other than as to which such terms obligations and/or covenants is held invalid or unenforceable shall not be affected thereby and each of the other terms obligations and/or covenants of this Supplemental Agreement and the Planning Permission shall be valid and be enforceable to the full extent permitted by law
- 6.2.4 Each party to this Supplemental Agreement acknowledges that this Supplemental Agreement has not been entered into in reliance wholly or partly on any statement or representations made by or on behalf of the other party except any such statement or representation that is expressly set out in this Supplemental Agreement
- 6.2.5 Obligations entered into by any party which comprises more than one person shall be deemed to be joint and several
- 6.2.6 This Supplemental Agreement will come into full force and effect on the date hereof. Other than as provided herein, the Main s106 Agreement continues in full force and effect.

7 PAYMENT OF COSTS

The Owner agrees to pay to the Council on the signing hereof the sum of One thousand eight hundred pounds (£1800) in respect of the Council's legal costs for the preparation and execution of this Supplemental Agreement

IN WITNESS whereof the Owner and the Council have executed this Supplemental Agreement as a **DEED** the day and year first before written

CERTIFICATE 1

As Solicitors for the Owner (as defined in this Supplemental Agreement)
we hereby certify that Recital B hereof is correct.

Signed

Freeths LLP

Dated

31st June 2014

THE COMMON SEAL of
WREXHAM COUNTY BOROUGH COUNCIL
was hereunto affixed in the presence of;

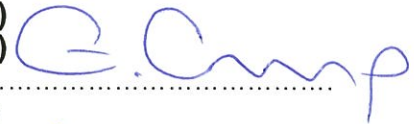


Head of Corporate and Customer Services



SIGNED AS A DEED by Bloor Homes Limited
acting by G. CRISP and D. SORRELL:
for and on behalf of Bloor Homes Limited
under a power of attorney
dated 30 Sept 2013

)
)
)
)
)
.....
Attorney



.....
Attorney



Witness' signature: 
Name (in block capitals):
Address:

Georgina Carvell
Bloor Homes Limited
Ashby Road, Measham
Swadlincote
Derbyshire DE12 7 1st