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09/0537/FULL

DATED 7 June **2010**

WORTHING BOROUGH COUNCIL

- and -

WEST SUSSEX COUNTY COUNCIL

- and -

BELLWINCH HOMES LIMITED

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DEED OF VARIATION OF A DEED MADE PURSUANT TO SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 DATED 5th February 2009

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Relating to
Land at
Eirene Road, Eirene Avenue and Sea Place Worthing

BATES BRUNEL
44 Essex Street
London WC2R 3JF

THIS DEED OF VARIATION is made the 7 day of June 2010

BETWEEN:

(1) **WORTHING BOROUGH COUNCIL** of The Town Hall Chapel Road Worthing BN11 1HA (**"the Council"**);

(2) **WEST SUSSEX COUNTY COUNCIL** of County hall, Chichester, West Sussex, PO19 1RQ (**"the County Council"**); and

(3) **BELLWINCH HOMES LIMITED** (Company number 00614248) whose registered office is at Tempsford Hall Sandy Beds SG19 2BD (**"the Developer"**)

1. This Deed of Variation is supplemental to an Agreement dated 5th February 2009 made between Worthing Borough Council (1) West Sussex Council (2) and Bellwinch Homes Limited (3) ("the Planning Agreement") made pursuant to S106 of the Town and Country Planning Act 1990 (the Act) in respect of land at Eirene Road, Eirene Avenue and Sea Place Worthing

2. The Council is local Planning Authority for the area in which the land (as defined in the Planning Agreement) is situated for the purposes of the Act and is a local authority by who the obligations in this Deed are enforceable

3. The County Council is the County Planning Authority, The Education Authority, Fire Authority and the Local Highway Authority for the area in which the Land is situated

4. The Council granted planning permission under reference numbers WB/06/1121/FULL and WB/09/0537/FULL for residential and ancillary development of the Land (as defined in the Planning Agreement)

5. The Developer hereby covenants to pay the Council's and County Council's reasonable legal costs incurred in connection with the preparation and completion of this Deed

6. The parties to this Agreement have agreed that the Planning Agreement shall be varied in the manner hereinafter appearing

NOW THIS DEED W I T N E S S E T H that:-

1. This Deed is a planning obligation for the purposes of Section 106 of the Act

2. This Deed will be registered as a local land charge

3. The parties hereby agree that from the date of this Deed the Planning Agreement shall be varied as hereinafter set out

2. The provisions of the Planning Agreement shall remain in full force and effect save as varied by this Agreement

3.1 The definition of "Affordable Housing Units On-Site Units" contained in clause 1.1 of the Planning Agreement shall be amended so as to read as follows:-

"the Affordable Housing Units On-Site Units" means **2 x 1 bed** flats – 46 sq.m and **8 x 2 bed** flats – 57 sq.m = 10 total

3.2 A new definition of "Sale" shall be inserted into clause 1.1 in alphabetical order:-

""**Sale**" means a disposition by way of freehold transfer

3.3 A new definition of "Transfer" shall be inserted into clause 1.1 in alphabetical order:-

"Transfer" means the document by which the Land and units comprising the Affordable Housing Units are transferred in accordance with the Planning Agreement (as varied by this Deed)"

4. Part One of clause 9 of the Planning Agreement shall be deleted and replaced with:

"Part One – On Site Affordable Housing

The Developer Covenants that the Affordable Housing On-Site Units shall be offered as follows:

9.1 Prior to the substantial completion of the Intermediate Trigger Dwelling the Developer will offer for Lease or Sale the Affordable Housing On-Site Units unencumbered (except for the provisions contained within this Deed and as appearing on the registered title to the Land as at the date of this Deed and save for those stipulations obligations covenants and regulations imposed in the Lease or Transfer which are normally so imposed for the purposes of good estate management) at the Appropriate Price to the RSL

9.2 The offer for Lease or Sale referred to in paragraph 1 shall remain open for acceptance by the RSL for 4 months ("the Offer Period")

9.3 If any Offer for Lease or Sale is accepted by the RSL the Developer shall use reasonable endeavours to facilitate exchange of contracts for the Lease or Sale within 3 months of the date when contracts are first issued

to the RSL post acceptance in respect of the Affordable Housing On-Site Units;

9.4 If the Offer for Lease or Sale has been rejected or there has been no acceptance of the Offer by the RSL within the Offer Period then the Developer shall Offer the Affordable Housing On-Site Units to the Council or its nominee on the same terms as set out above in 9.1 to 9.3 (the offer period shall recommence from the date of the offer to the Council or its nominee)

9.5 If the provisions of 9.4 apply the Offer for the Lease or Sale is rejected or there has been no acceptance of the Offer by the Council or its nominees within the Offer Period then it shall be deemed that the Offer in respect of the Affordable Housing On-Site Units is rejected and the provisions of paragraph 9.6 hereof shall apply

9.6 In the event that the Developer shall be unable to secure acceptance of the Offer for Lease or Sale from a RSL the Council or nominees of its choice, the Developer shall be entitled to construct Open Market Housing Units for sale on the Affordable Housing On-Site Units free from the restrictions of this paragraph 9

9.7 In the event that the Affordable Housing On-Site Units is Leased or Sold to a Social Landlord and/or the Council the Lease or Sale shall contain

9.7.1 a covenant restricting the use of such units to be used for Affordable Housing within the meaning of this Agreement in perpetuity (the perpetuity period shall be 125 years from the date hereof) PROVIDED ALWAYS that the provisions of this clause shall not be binding nor enforceable against any person who has acquired any New Build Homebuy Unit and who has purchased a 100% share in that New Build Homebuy Unit and anyone deriving title there from and mortgagee in possession of that person or successor in title thereto; and

9.7.2 a covenant that the lessee or buyer will transfer each of the Affordable Housing Units when any such Affordable Housing Units become available only for occupation by a person selected in accordance with the terms of this Deed and the transferee will not permit any of the Affordable Housing Units to be occupied otherwise than in accordance with the terms of this Deed

9.8 The Lease or Sale shall contain the grant to the RSL of all rights of access and passage of services rights of support rights of entry and all

other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing On-Site Units to be erected on the Land.

9.9 The Lease or Sale shall contain a reservation of all rights of access and passage of services rights of support rights of entry and all other rights reasonably necessary for the purposes of the Development

9.10 Any contract for sale (or agreement for Lease or Sale as the case may be) of the Affordable Housing On-Site Units shall contain the Standard Conditions of Sale (Fourth Edition) including a special condition stating that the Affordable Housing On-Site Units are to be sold with vacant possession) with such amendments as may be agreed between the parties but shall not be inconsistent with the terms hereof.

9.11 Title to the Affordable On Site Housing Land shall be deduced by the Developer in accordance with the Land Registration Act 2002."

5. There shall be inserted into the Planning Agreement the Schedule annexed hereto

6. For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 it is hereby AGREED AND DECLARED that the Parties to this Deed (and their respective successors in title) may rescind or vary this agreement without the consent of any third party

IN WITNESS whereof the parties have executed this document as a Deed

THE COMMON SEAL of)
WORTHING BOROUGH COUNCIL)
was affixed to this Deed)
in the presence of:)

[redacted]

~~Solicitor/~~Authorised Signatory

8919

Executive Head of
Legal and Democratic Services

THE COMMON SEAL of)
WEST SUSSEX COUNTY COUNCIL)
was affixed to this Deed)
in the presence of:)

[redacted]

Authorised Signatory



SIGNED AS A DEED by
BELLWINCH HOMES LIMITED
Acting by a Director and its Secretary

[redacted] Director

[redacted] Director/Secretary

WB 7176 Land North of Beech Avenue

WB 7162 Worthing Under