DATED 5th February **2013**

DEED OF VARIATION

OF

S106 AGREEMENT
Dated 31 July 2008

between

WORTHING BOROUGH COUNCIL (1)

and

WEST SUSSEX COUNTY COUNCIL(2)

and

SAXON WEALD HOMES LIMITED (3)

Relating to

LAND AT FORMER HIGHDOWN SCHOOL AND
CISSBURY LODGE, DURRINGTON LANE, WORTHING

Griffith Smith Farrington Webb LLP
47 Old Steyne
Brighton
BN1 1NW
(COS/32673/372)

THIS DEED OF VARIATION AGREEMENT is dated the 5th day of February 2013

BETWEEN:

(1) **WORTHING BOROUGH COUNCIL** of Town Hall, Chapel Road, Worthing, West Sussex, BN11 1HA ("the Borough Council") and

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

(3) **SAXON WEALD HOMES LIMITED** (Company Registration No. 3847737) whose registered office is at 38-42 Worthing Road, Horsham, West Sussex, RH12 1DT ("the Developer")

WHEREAS:

(A) This Deed of Variation is supplemental to and varies a S106 Agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 ("the Act") dated 31 July 2008 and subsequently varied by a Deed of Variation dated 19th April 2010 and entered into by the Parties hereto ("the Principal Agreement")

(B) Since completion of the Principal Agreement the Parties have agreed to temporarily amend the housing mix on the Development

(C) The Borough Council is prepared to agree to a temporary amendment to the mix of housing at the Development subject to the Developer entering into this Deed of Variation varying the Principal Agreement in order that it shall relate and apply to the temporary mix agreed between the parties

(D) The Borough Council is the local planning authority for the purposes of this Deed of Variation. The County Council is the education, fire and rescue and highway authority responsible for the area in which the Property is situated.

(E) West Sussex County Council disposed of its interest in the Property on 15 December 2008 to the Developer

(F) The Developer is now the registered proprietor with Title Absolute to the Property registered at HM Land Registry under title number WSX326498 described therein as land on the east side of Durrington Lane, Worthing.

(G) This Deed of Variation shall be enforceable by the Council as the local planning authority and the County Council as the case may be.

NOW THIS DEED WITNESSES AS FOLLOWS

1. AGREEMENT

1.1 This Deed of Variation is a planning obligation for the purposes of Section 106 of the Act

1.2 The variations of the Principal Agreement created by this Deed of Variation shall take effect on the date hereof and are made pursuant to Section 106A of the Act

1.3 No Party will be liable for any breach of the contents of this Deed of Variation in respect of any period during which that party no longer has interest in the Property or the part in respect of which the breach occurs

1.4 This Deed of Variation will be registered as a local land charge

1.5 The Parties hereto agree to vary the Principal Agreement as follows:

1.5.1 To insert a proviso at the end of paragraph 2.1.1 of the First Schedule of the Section 106 Agreement dated 31 July 2008 as follows: "Provided that for a maximum period of three years from the date of this Deed of Variation the Affordable Housing Units may comprise a housing mix of 54 units (37 for rent and 17 for shared equity) and for the avoidance of

doubt at the end of that three year period the housing mix shall be 35 for rent and 19 for shared equity"

1.6 The Parties hereto further agree that in all other respects the Principal Agreement remains as drawn and shall be of full force and effect in relation to the Application and the Further Planning Application and unaltered except for the variations thereof contained in this Deed of Variation

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

1.8 The Developer covenants that no one else has an interest in the Property that ought to be a party to this Agreement

2. DECLARATION

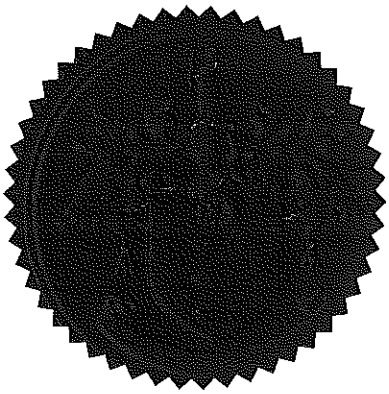
2.1 It is agreed and declared that in interpreting this Deed of Variation all other meanings definitions and interpretations set out in the Principal Agreement shall apply save **Party** or **Parties** shall mean "the Developer, the Borough Council and/or the County Council"

3. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

3.1 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

EXECUTED as a Deed and delivered on this date of this Deed

THE COMMON SEAL of WORTHING BOROUGH COUNCIL was hereunto affixed in the presence of:)

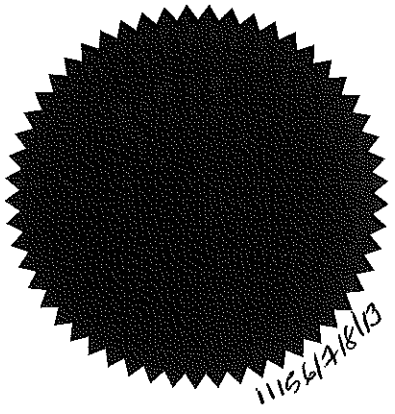


A. Matthews

Authorised Signatory

9202.

THE COMMON SEAL of WEST SUSSEX COUNTY COUNCIL was hereunto affixed in the presence of:)



M Hensley

Authorised Signatory

EXECUTED as a Deed by SAXON WEALD HOMES LIMITED acting by)

Director

In the presence of

Witness name S Fullwood

Address 38/42, Worthing Rd Horsham

Occupation Head of New Business

RH12 1DT