

DATED

2021

(1) WEST SUSSEX COUNTY COUNCIL

AND

(2) WALBERTON PARISH COUNCIL

AND

(3) ARUN DISTRICT COUNCIL

AND

(4) DANDARA SOUTHERN LIMITED

AND

[(5) SAGE HOUSING LIMITED]

SUPPLEMENTAL AGREEMENT

**Pursuant to Section 106A of the
Town and Country Planning Act 1990 (as amended)
relating to
Land to the East of Fontwell Avenue, Fontwell**

**Devonshires Solicitors LLP
30 Finsbury Circus
London
EC2M 7DT
Tel: 0207 628 7576
Ref: TXM\SAG5\1943**

THIS AGREEMENT is made on the _____ of _____ 2021

BETWEEN

- (1) **WEST SUSSEX COUNTY COUNCIL** of County Hall, Chichester PO19 1RQ (“the County Council”)
- (2) **WALBERTON PARISH COUNCIL** of The Pavilion, The Street, Walberton, Arundel, West Sussex BN18 0PJ (“WPC”)
- (3) **ARUN DISTRICT COUNCIL** of the Arun Civic Centre, Mathravers Road, Littlehampton, West Sussex BN17 5LF (“the Council”)
- (4) **DANDARA SOUTHERN LIMITED** (Company Number 12506052) whose registered office is at Roman House, South Hampshire Industrial Park, Eddystone Road, Totton, Southampton, United Kingdom, SO40 3SA (“the Owner”)
- (5) **[SAGE HOUSING LIMITED** (Company Number 05489096 and Registered Provider Number 4636) whose registered office is at 5th Floor Orion House, 5 Upper St Martin’s Lane, London WC2H 9EA (Sage)]

WHEREAS

1. The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated and is the authority by whom the planning obligations contained in this Deed are enforceable.
2. The County Council is the local highway authority, the education authority, the library authority, the social services authority and the fire and rescue authority for West Sussex.
3. WPC is the parish council for the Parish of Walberton.
4. The Owner has the freehold interest in the Land.
5. [Sage acquired an interest in part of the Land by the Acquisition Contracts.]
6. The Parties to this Deed have agreed that the Original Agreement in relation to the Land shall be varied by the terms of this Deed.
7. The Council considers it expedient and in the interests of the proper planning of its area and having regard to its statutory function that this Deed which is a supplemental agreement to the Original Agreement in relation to the Land.

NOW THIS DEED WITNESSES AS FOLLOWS:

In this Deed where the context so admits all expressions shall have the meanings given to them by the Original Agreement save that the following expressions shall have the following meanings:-

“Act”	means the Town and Country Planning Act 1990
“Acquisition Contracts”	means : (i) an agreement dated 2021 and made between (1) the Owner and (2) Sage in relation to 61 affordable rent dwellings; (ii) an agreement dated 2021 and made between (1) the Owner and (2) Sage in relation to 59 shared ownership dwellings; and (iii) an agreement dated 2021 and made between (1) the Owner and (2) Leaf in relation to 118 affordable housing dwellings
“the Original Agreement”	The agreement made under Section 106 of the Act dated the agreement made between (1) The Dunhill Medical Trust (2) the Developer (3) Antony Richard Saunders (4) Arun District Council (5) West Sussex County Council and (6) Warberton Parish Council dated 2 November 2016.
“the Land”	means the freehold land registered at the Land Registry under Title Numbers XXX

1 CONSTRUCTION OF THIS AGREEMENT

- 1.1 The definitions and rules of interpretation in this Clause apply in this Deed.
- 1.2 All references to Clauses in this Deed are to Clauses within the Original Agreement.
- 1.3 Clause headings shall not affect the interpretation of this Deed.

- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a party shall include that party's representatives, successors or permitted assigns in the case of the Council the successors to its statutory functions.
- 1.8 A reference to a statute or statutory provisions is a reference to it as it is in force at the date of this Deed and shall include any subordinate legislation made under the statute or statutory provision.
- 1.9 References to clauses, schedules and plans (unless the context otherwise requires) are to clauses, schedules and plans of this Deed.
- 1.10 Where 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 the individually.

2 LEGAL BASIS

- 2.1 This Deed is made pursuant to all powers enabling the parties and in particular Section 106 of the Act and Section 111 of the Local Government Act 1972.
- 2.2 The obligations imposed upon the Owner and Sage by this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner Sage and their successors in title and assigns and the persons claiming under or through them subject to the exclusions herein contained.

3 VARIATION TO THE ORIGINAL AGREEMENT

- 3.1 A new definition shall be added to the Original Agreement:
 - 3.1.1 Chargee:

“any mortgagee or chargee (or any receiver (including any administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator) of the whole or any part of the Affordable Housing Units”

- 3.2 Paragraph 4.1 of Schedule 2 of the Original Agreement shall be deleted and replaced with the following:

In the event that any Affordable Housing Unit is the subject of a legal charge or mortgage and there is a default under any legal charge or mortgage of the Affordable Housing Units then any Chargee shall be entitled to exercise its power of sale free from the restrictions set out in this Schedule provided that the Chargee shall first have followed the procedure set out below whereupon the provisions of this Schedule shall cease with immediate effect and not be binding on the Chargee or its successors in title.

- 3.3 Paragraph 4.1.5 (2) of Schedule 2 shall be deleted and replaced with the following:

The Council and the Chargee shall endeavour to agree the Purchase Price which shall represent the open market value of the Affordable Housing Units but subject to all or any tenancies of the Affordable Housing Units as may be subsisting at the date of the Sale notice and disregarding the provisions of this Schedule and in default of such agreement the Purchase Price shall be determined on the same basis of valuation by an independent surveyor ("the Surveyor") experienced in valuing residential land and property who shall act as an expert and whose costs shall be borne by the Council and the Chargee in equal shared and the Surveyor shall be appointed in default of agreement between the parties on the application of either party by or on behalf of the President for the time being of the Royal Institute of Chartered Surveyors (or successor organisation) and the Surveyor's determination shall be binding on both parties Provided That the Purchase Price shall be not less than the amount outstanding under the relevant security documentation including all accrued principal monies, interest, costs and expenses" shall be added at the end of the paragraph.

- 3.4 Paragraph 4.1.6 shall be deleted and replaced with the following:

Subject to the provisions of sub-paragraph 4.1.7 the transfer to the Council or to a Registered Provider shall be completed within two months of the date of the Offer ("the Completion Period").

- 3.5 Clause 9.1 of the form of Nominations Agreement attached at Schedule 2 shall be deleted and replaced with the following:

The provisions of this Agreement shall not apply to any mortgagee or chargee (or any receiver (including any administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator) of the whole or any part of the Affordable Housing Units or anyone deriving title therefrom including a dwelling under which the right to acquire or right to buy, whether statutory or voluntary, has been exercised.

4 REGISTRATION

This Deed shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council and a notice in the Charges Register at Land Registry

5 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it

6 COUNCIL'S COSTS

6.1 [Sage covenants with the Council to pay the reasonable legal costs of the Council in respect of this Deed.]

6.2 MISCELLANEOUS PROVISIONS

7.1 This Deed is a local land charge and shall be registered as such.

7.2 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of their statutory powers functions or discretions in relation to the Site or otherwise.

7.3 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England, and each party agrees to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising under this Deed.

IN WITNESS whereof this instrument has been executed as a Deed the date and year first before written

EXECUTED as a DEED by)

DANDARA SOUTHERN LIMITED)

acting by)

.....

Director

.....

Director/Secretary

EXECUTED as a **DEED** by affixing)
The COMMON SEAL of the **ARUN**)
DISTRICT COUNCIL to this Deed)
in the presence of :-)

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

SIGNED and **DELIVERED** as a **DEED**)
By **WALBERTON PARISH COUNCIL**)
(pursuant to a resolution of WPC))
acting by)
being two members in the presence)
of a witness:)

Witness Signature

Witness Address

.....

Witness Occupation

EXECUTED as a **DEED** by affixing)
The COMMON SEAL of **SAGE HOUSING**)
LIMITED to this Deed)
in the presence of :-)

.....

Authorised Signatory

.....

Authorised Signatory