DATED 2022

(1) DANDARA SOUTHERN LIMITED

(2) ARUN DISTRICT COUNCIL

(3) WEST SUSSEX COUNTY COUNCIL

DEED OF VARIATION TO S106 AGREEMENT

RELATING TO

LAND TO THE EAST OF FONTWELL AVENUE, FONTWELL

Lester Aldridge LLP
Solicitors
Real Estate Team
Alleyn House
Carlton Crescent
Southampton
Hampshire
SO15 2EU

[redacted]

THIS DEED is made on 2022

BETWEEN:-

(1)	**DANDARA SOUTHERN LIMITED ("the Owner")**	:	incorporated and registered in England and Wales with company number 12506052 whose registered office is at Roman House South Hampshire Industrial Park, Eddystone Road, Totton, Southampton, United Kingdom, SO40 3SA
(2)	**ARUN DISTRICT COUNCIL("the District Council")**	:	of 1 Maltravers Rd, Littlehampton BN17 5LF
(3)	**WEST SUSSEX COUNTY COUNCIL ("the County Council")**	:	of County Hall, West Street, Chichester, PO19 1RQ

BACKGROUND

0.1 This Deed is supplemental and collateral to the Original Agreement entered into in respect of the Original Planning Permission.

0.2 The Owner has the freehold interest in the Land registered under Title number WSX424175 at the Land Registry.

0.3 The Owner has by planning application reference number [ ] and dated [ ] ("the New Application") applied to the District Council for permission to develop the Land in the manner and for the uses set out in the New Application and in the plans specifications and particulars deposited with the Council and forming part of the New Application.

0.4 The District Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 in respect of the Land.

0.5 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.

0.6 The obligations in the Original Agreement as amended by this Deed of Variation are enforceable by the District Council and/or the County Council as appropriate.

0.7 The District Council has delegated authority to the Head of Planning to grant planning permission for the New Application subject to the entering into of this Deed of Variation and the Owner and the Council have agreed that the Original Agreement shall be varied in accordance with section 106A(1)(a) of the Town and Country Planning Act 1990 in accordance with the provisions of this Deed.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions in this clause apply in this deed.

New Planning Permission	:	full planning permission granted by the Council pursuant to the New Application
Original Agreement	:	a s106 Agreement dated 2 December 2016 entered into by (1) Fontwell Estates Limited (2) The Dunhill Medical Trust (3) Antony Richard Saunders (4) Arun District Council (5) West Sussex County Council and (6) Walberton Parish Council
Original Planning Permission	:	the planning permission issued by the Secretary of State for Levelling Up, Housing and Communities dated 13 July 2017 and with reference number APP/C3810/V/16/3143095

1.2 A reference to the Original Agreement includes any deed, agreement, licence, consent, approval or other instrument supplemental to it.

1.3 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.

1.4 A **person** includes a corporate or unincorporated body.

1.5 Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause of, or Schedule to, this Deed and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.

1.6 Clause, Schedule and paragraph headings do not affect the interpretation of this Deed.

1.7 Except to the extent that they are inconsistent with the definitions and interpretations in clause 1 of this Deed, the definitions and interpretations in clause 1 of the Original Agreement shall apply to this Deed.

1.8 Unless the context otherwise requires, a reference to the **Land** is to the whole and any part of it.

2. LEGAL EFFECT

2.1 This Deed is made pursuant to Section 106 of the Town and Country Planning Act 1990 Section 111 of the Local Government Act 1972 and all other powers so enabling.

2.2 This Deed contains planning obligations made pursuant to the Original Agreement which are enforceable by the District Council the County Council

and the Owner as appropriate and which binds each and every part of the Land.

3. ORIGINAL AGREEMENT REMAINS IN FORCE

It is hereby agreed and declared as follows:

3.1 This Deed shall be construed as one with the Original Agreement.

3.2 The Owner the District Council and the County Council agree that the Original Agreement is varied as set out in the Schedule.

3.3 The Owner the District Council and the County Council confirm that the covenants and conditions contained in the Original Agreement except as varied by this Deed are to continue in full force and effect and that any development carried out under the Original Planning Permission or the New Planning Permission is bound by the terms of the Original Agreement, as varied by this Deed, PROVIDED THAT the Owner shall never as a result of this Deed be required to perform an obligation set out in the Original Agreement more than once.

4. COSTS

The Owner hereby covenants with the District Council and the County Council to pay on the completion of the Deed the District Council and County Council's legal advisors' reasonable costs incurred in the preparation and execution of this Deed.

5. REGISTRATION OF THIS DEED

This Deed shall be registered as a local land charge for the purposes of the Local Land Charges Act 1975.

6. EXECUTION

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

7. GOVERNING LAW

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 Wales.

8. CONTRACTUAL RIGHTS OF THIRD PARTIES

No term of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

Schedule 1 - Variations to the Original Agreement

1. REPLACEMENT OF EXISTING CLAUSES

The parties hereby agree as follows:

1.1 Recital (H) shall be deleted and replaced with the following –

"(H) The Developer has submitted a Planning Application to the Council for permission to develop the Land in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application."

1.2 The following new definitions shall be inserted into clause 1.1 of the Original Agreement:

"Bus Service Contribution" means the sum of one hundred and seventy-nine thousand four hundred and ninety-three pounds and sixty pence (£179,493.60) to be provided in accordance with Schedule 4 which shall be paid to the County Council towards the delivery of additional bus services to serve the Dwellings."

"Discount Housing Unit Owner" means the person or persons having the freehold or leasehold interest (as applicable) in a Discount Housing Unit other than the Owners or another developer or other entity to which the freehold interest or leasehold interest in a Discount Housing Unit or in the land on which a Discount Housing Unit is to be provided has been transferred before that Discount Housing Unit is made available and is Disposed of for occupation as a Discount Housing Unit

"Discount Housing Units" means the 5 Dwellings identified for the purposes of illustration only with red edging on the plan annexed to this Deed and labelled "Discount Housing Units Plan" to be Occupied in accordance with the provisions set out in Schedule 6 to this Deed and which shall only be Disposed as a freehold or (in the case of flats only) as a leasehold property at the Discount Market Price"

"Discount Market Price" means a sum which is the Market Value discounted by 20%

"Disposal" means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a Discount Housing Unit other than an Exempt Disposal

and "Disposed" and "Disposing" shall be construed accordingly.

"Exempt Disposal" means the Disposal of a Discount Housing Unit in one of the following circumstances:

(a) Disposal to a spouse or civil partner upon the death of the Discount Housing Units Owner

(b) *a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the Discount Housing Units Owner*

(c) *a Disposal to a former spouse or former civil partner of a Discount Housing Units Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order*

(d) *a Disposal to a trustee in bankruptcy prior to sale of the relevant Residential Unit (and for the avoidance of doubt paragraph 8 shall apply to such sale)*

"Market Value" means the open market value as assessed by a Valuer of Dwelling and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 20% discount in the valuation

"New Application" means the application for full planning permission dated [ ] submitted to the Council for [ ] and allocated reference number [ ]."

"Planning Application" means:

1. *the application for full planning permission dated [ ] submitted to the Council for the Development and allocated reference number [ ]; and/or*

2. *the New Application".*

"Valuer" means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the Discount Housing Units Owner and acting in an independent capacity

1.3 The definitions of *"Bus* Service", *"Bus Service Schedule", "Communities Buildings" "Healthcare Contribution", "MUGA at Walberton Contribution" and "Walberton Cycle Path Contribution"* shall be deleted.

1.4 The definition of *"Development"* shall be deleted and replaced by the following:

"means the development authorised by the Planning Application or the New Application as appropriate."

1.5 The definition of *"Council Contributions"* shall be amended by the deletion of the words *"Healthcare Contribution".*

1.6 The definition of *"County Council Contributions"* shall be amended by the addition of *"Bus Service Contribution"* immediately before *"Education Contribution".*

1.7 The definition of *"Planning Permission"* shall amended by the addition of the words *"and/or* pursuant *to the New Application"* after *"Secretary of State"*.

1.8 Paragraph 1 of Part A of Schedule 1 to the Original Agreement shall be deleted.

1.9 Schedule 4 shall be deleted and replaced by the following:

"SCHEDULE 4

BUS SERVICE CONTRIBUTION

1. The Developer First Owner and Second Owner hereby covenant with the County Council not to allow Occupation of first (50) Dwellings within the Development to occur until the whole of the Bus Service Contribution has been paid to the County Council."

1.10 Schedule 6 shall be deleted and replaced by the following:

"SCHEDULE 6

DISCOUNT HOUSING UNITS

1. DISCOUNT HOUSING UNITS

The Developer First Owner and Second Owner hereby covenant with the Council as follows.

2. MARKETING AND DISPOSAL

2.1 Subject to paragraph 2.6 below, no Discount Housing Unit shall be Disposed of (whether on a first or any subsequent sale) unless and until:

2.2 The Council has been provided with evidence that:

2.2.1 the Dwelling is being Disposed of as a Discount Housing Unit at the Discount Market Price and

2.2.2 the transfer of the Discount Housing Unit includes:

(a) a definition of the "Council" which shall be the Council

(b) a definition of "Discount Housing Units Provisions" in the following terms:

"means the provisions set out in paragraph 2 of Schedule Two to the S106 Agreement a copy of which is attached hereto as the Annexure."

(c) a definition of S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ ] made between ([ ]

(d) *a provision that the Property is sold subject to and with the benefit of the Discount Housing Units Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the Discount Housing Units Provisions*

(e) *a copy of the Discount Housing Units Provisions in an Annexure*

2.3 *On the first Disposal of each and every Discount Housing Unit to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that Discount Housing Unit of the following restriction:*

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the Council of [address] or their conveyancer that the provisions of clause XX (the Discount Housing Units provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

2.4 *The owner of a Discount Housing Unit (which for the purposes of this clause shall include the Owners and any Discount Housing Units Owner) may apply to the Council to Dispose of it other than as a Discount Housing Unit on the grounds that either:*

2.4.1 *the Dwelling has been actively marketed as a Discount Housing Unit for six (6) months but it has not been possible to Dispose of that Residential Unit as a Discount Housing Unit; or*

2.4.2 *requiring the Discount Housing Units Owner to undertake active marketing for the period specified in paragraph 2.6.1 before being able to Dispose of the Dwelling other than as a Discount Housing Unit would be likely to cause the Discount Housing Units Owner undue hardship*

2.5 *Upon receipt of an application served in accordance with paragraph 2.4 the Council shall have the right (but shall not be required) to direct that the relevant Residential Unit is disposed of to it at the Discount Market Price*

2.6 *If the Council is satisfied (acting reasonably) that either of the grounds in paragraph 2.4 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 2.4 that the relevant Residential Unit may be Disposed of:*

2.6.1 *to the Council at the Discount Market Price; or*

2.6.2 *(if the Council confirms that it does not wish to acquire the relevant Dwelling) as a Market Housing Unit*

and on the issue of that written confirmation the obligations in this Deed which apply to Discount Housing Units shall cease to bind and shall no longer affect that Dwelling PROVIDED THAT failure by the Council to respond in writing

within the 28 period shall be treated as confirmation that one of the grounds in paragraph 2.4 were successfully made out and that paragraph 2.6.2 applies.

2.7 *If the Council does not wish to acquire the relevant Residential Unit itself and is not satisfied (acting reasonably) that either of the grounds in paragraph 2.4 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 2.4 serve notice on the Owners setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a Discount Housing Unit and an associated timescale (which shall be no longer than three (3) months). If at the end of that period the Owners have been unable to Dispose of the Dwelling as a Discount Housing Unit they may serve notice on the Council in accordance with paragraph 2.4 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of as a Market Housing Unit (and failure to issue such confirmation in writing within the 28 period shall be treated as deemed approval).*

2.8 *Each Discount Housing Unit shall be used only as the main residence of the Discount Housing Units Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 2.8.1 – 2.8.4 below.*

2.8.1 *A Discount Housing Units Owner may let or sub-let their Discount Housing Unit for a fixed term of no more than two (2) years, provided that the Discount Housing Units Owner notifies the Council in writing before the Discount Housing Unit is Occupied by the prospective tenant or sub-tenant. A Discount Housing Units Owner may let or sub-let their Discount Housing Unit pursuant to this paragraph more than once during that Discount Housing Units Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a Discount Housing Units Owner's period of ownership may not exceed two (2) years.*

2.8.2 *A Discount Housing Units Owner may let or sub-let their Discount Housing Unit for any period provided that the Discount Housing Units Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:*

(a) *the Discount Housing Units Owner is required to live in accommodation other than their Discount Housing Unit for the duration of the letting or sub-letting for the purposes of employment;*

(b) *the Discount Housing Units Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;*

(c) *the Discount Housing Units Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;*

(d) *the Discount Housing Units Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;*

(e) *the Discount Housing Units Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and*

(f) *the Discount Housing Units Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.*

2.8.3 *A letting or sub-letting permitted pursuant to paragraph 2.8.1 or 2.8.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the Discount Housing Unit on terms which expressly prohibit any further sub-letting.*

2.8.4 *Nothing in this paragraph 2.8 prevents a Discount Housing Units Owner from renting a room within their Discount Housing Unit or from renting their Discount Housing Unit as temporary sleeping accommodation provided that the Discount Housing Unit remains at all times the Discount Housing Unit Owner's main residence.*

3. MORTGAGEE EXCLUSION

The obligations in paragraph 2 of this Schedule in relation to Discount Housing Units shall not apply to any mortgagee or any receiver (including an administrative receiver appointed by such mortgagee or any other person appointed under any security documentation to enable such mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual Discount Housing Unit or any persons or bodies deriving title through such mortgagee or receiver."

EXECUTED as a deed by **DANDARA SOUTHERN LIMITED** acting by one director in the presence of))))

…… Director

……

Witness Name:

Witness Address:

Witness Occupation:

THE COMMON SEAL of **ARUN DISTRICT COUNCIL** was hereunto affixed in the presence of)))))

……

Authorised Signatory

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

……

Authorised Signatory