

DATED

7 August 2023

~~2022~~

(1) ARUN DISTRICT COUNCIL

and

(2) WEST SUSSEX COUNTY COUNCIL

and

(3) BDW TRADING LIMITED

and

(4) SAGE HOUSING LIMITED

**DEED OF VARIATION
PURSUANT TO SECTION 106 AND 106A OF THE TOWN AND
COUNTRY PLANNING ACT 1990**

**relating to a Section 106 Agreement dated 30 May 2019 relating to Land east of
Drove Lane, Yapton, West Sussex, BN18 0EB**

Planning Ref: Y/92/17/OUT



Devonshires Solicitors LLP
30 Finsbury Circus
London
EC2M 7DT

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THIS DEED OF VARIATION is dated

7 Aug. st 2022

2022

BETWEEN:

- (1) **ARUN DISTRICT COUNCIL** whose principal office is at Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("the **Council**");
- (2) **WEST SUSSEX COUNTY COUNCIL** whose principal office is at County Hall, West Street, Chichester, PO19 1RQ ("the **County Council**");
- (3) **BDW TRADING LIMITED** (Company Registration Number: 03018173) of Barratt House Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF ("**BDW**"); and
- (4) **SAGE HOUSING LIMITED** (Company Registration Number: 05489096) of 5th Floor Orion House, 5 Upper St Martin's Lane, London, WC2H 9EA ("**Sage**")

Collectively referred to as "the **Parties**"

BACKGROUND

- (A) For the purposes of the Act, the Council is the local planning authority for the area within which the Land is situated.
- (B) BDW is the owner of the Site registered at HM Land Registry with freehold title absolute under title number WSX421223 having acquired it from the original Owner to the Section 106 Agreement pursuant to a Transfer dated 30 October 2020.
- (C) Sage will be acquiring the Affordable Housing Units.
- (D) The Application was granted subject to a Section 106 Agreement dated 30 May 2019 made between (1) Arun District Council (2) West Sussex County Council (3) Landlink Estates Limited and (4) David Winston Langmead and Sandra Ann Langmead and Denton & Co Trustees limited ("the **Section 106 Agreement**").
- (E) Without prejudice to the terms of the other covenants contained in the Section 106 Agreement the Parties have agreed that the Section 106 Agreement shall be modified in the manner set out within this Deed of Variation ("this **Deed**").

AGREED TERMS

1 INTERPRETATION

- 1.1 Save where expressly stated otherwise the words and expressions used in this Deed shall have the meaning assigned to them as in the Section 106 Agreement.
- 1.2 The clause and paragraph headings in this Deed are for reference only and do not affect its construction or interpretation.
- 1.3 References to clauses and Schedules are to the clauses and Schedules of this Deed, unless stated otherwise.
- 1.4 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 1.5 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 1.6 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 1.7 Unless this Deed states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 1.8 References to any party in this Deed include the successors in title of that party and any references to the Council include any successor local planning authority exercising planning powers under the Act.
- 1.9 References to "including" mean "including, without limitation".
- 1.10 Whenever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 1.11 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Deed shall be unaffected.

2 LEGAL BASIS

- 2.1 This Deed is made pursuant to section 106 and 106A of the Act, section 111 of the Local Government Act 1972, Section 120 of the Local Government Act 1972, and Section 2 of the Local Government Act 2000 and any other enabling powers.

3 VARIATIONS TO THE SECTION 106 AGREEMENT

- 3.1 From and including the date of this Deed the Section 106 Agreement shall be read and construed as varied by the provisions of the Schedule of Variations to this Deed.
- 3.2 Except as provided in this Deed, it is agreed between the parties that this Deed is supplemental to and not in substitution for the Section 106 Agreement and that the terms of the Section 106 Agreement will continue in full force and effect, subject only to the provisions of this Deed.

4 COVENANTS TO THE COUNCIL

- 4.1 BDW and Sage covenant to observe and perform the covenants restrictions and obligations contained in the Section 106 Agreement as varied by this Deed.

5 COSTS

Sage shall pay on or before the date of completion of this Deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this Deed.

6 LAND CHARGES

This Deed shall be registered as a local land charge by the Council.

7 THIRD PARTY RIGHTS

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

8 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.

IN WITNESS whereof the parties hereto have sealed and/or executed this document as a deed the day and year first before written.

EXECUTED as a DEED by affixing
THE COMMON SEAL of
ARUN DISTRICT COUNCIL

In the presence of:

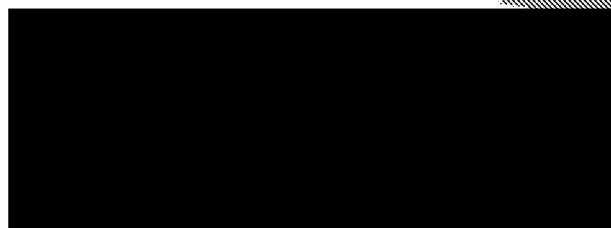
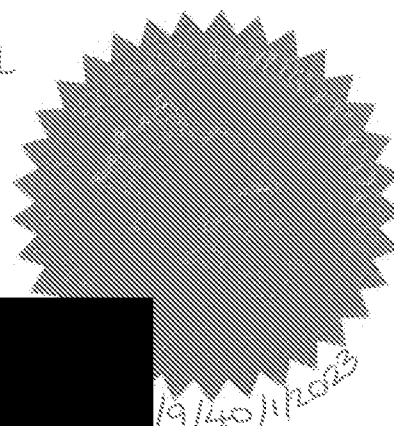
Edmund C. Brown
Property Manager



Authorised Signatory



EXECUTED as a DEED by affixing
THE COMMON SEAL of WEST SUSSEX COUNTY COUNCIL
~~ARUN DISTRICT COUNCIL West Sussex District Council~~
In the presence of:



SIGNED as a DEED by

JAMES ARTHUR

and

DAVID BARNARD

Attorneys for and acting on
behalf of **BDW TRADING
LIMITED** in exercise of the
powers conferred on them by a
Power of Attorney dated

12 October 2023

in the presence of:

Witness Signature:

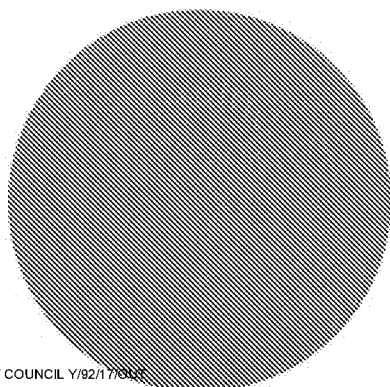
Witness Name:

Witness Address:

Witness Occupation:

BDW Trading Limited
Compton House
210 Wilton Road, Portsmouth PO1 2AD
Sussex PO1 2AD
Head of Planning

EXECUTED as a DEED by affixing
THE COMMON SEAL of
SAGE HOUSING LIMITED
In the presence of:



SCHEDULE OF VARIATIONS

The following variations will be made to the Section 106 Agreement:

1. The definition of Nomination Agreement at Clause 1.1 shall be deleted in its entirety and replaced with the following:

“Nominations Agreement” means a Nominations Agreement entered into by the Affordable Housing Provider with the Council in respect of the Affordable Housing Units in the form agreed between those parties acting reasonably

2. The definition of Registered Provider at Clause 1.1 shall be deleted in its entirety and any reference to Registered Provider shall be read to be a reference to the Affordable Housing Provider
3. All references to the words “Affordable Dwellings” shall be read to be a reference to Affordable Housing Units
4. Clause 12.6 shall be amended by inserting the words “(including an 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 (each a Receiver))” before the words “of an Affordable Housing Provider”
5. The second Paragraph 1.10 of the Third Schedule starting with the words “The owners and the Council hereby agree that subject to and without prejudice ...” shall be amended to delete reference to “paragraph 1.8” and replace with reference to “paragraph 1.12”
6. Paragraph 1.11.1 shall be amended by deleting the words “Upon the transfer” and replacing with the words “As soon as reasonably practicable following the handover”
7. Paragraph 1.12.1 of the Third Schedule shall be deleted in its entirety and replaced with the following wording:

1.12.1 *Any mortgagee or chargee or any receiver of the Affordable Housing Provider (including an 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) (“a Chargee”) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Chargee provided that the Chargee shall first have complied with the provisions under Clause 1.14 (Chargee’s Duties)*
8. Paragraph 1.14 of the Third Schedule shall be deleted in its entirety and replaced with the following wording:

Chargee's Duties

1.14 The Owner and Council agree that:

- 1.14.1 *the Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units; and*
- 1.14.2 *the Chargee shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and*
- 1.14.3 *if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Agreement which provisions shall determine absolutely*

9. The draft Nominations Agreement at Appendix 4 shall be deleted in its entirety