DATED THIS 8th DAY OF SEPTEMBER 2023

(1) ADUR DISTRICT COUNCIL

(2) WEST SUSSEX COUNTY COUNCIL

(3) OHF 26 LIMITED

DEED OF VARIATION UNDER SECTIONS 106 AND 106A OF THE TOWN AND COUNTRY PLANNING ACT 1990

Relating to land at 85 to 89 Brighton Road, Lancing, West Sussex BN15 8RB

Planning Ref: AWDM/1126/22

Adur District Council
Worthing Town Hall, Chapel Road, Worthing, BN11 9SA.

DX 142960 Worthing 10

DEED OF VARIATION 8th SEPTEMBER 2023

PARTIES:

(1) **ADUR DISTRICT COUNCIL** of Worthing Town Hall, Chapel Road, Worthing, BN11 9SA ("the **Council**");

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

(3) **OHF 26 LIMITED** (a non-cellular company limited by shares incorporated in the Island of Guernsey under company number 70057) whose registered office is at Ground Floor, Cambridge House, Le Truchot, St Peter Port, GY1 1WD ("the **Owner**").

INTRODUCTION

A1 The Council is the Local Planning Authority for the administrative area within which the Site is situated and by whom the obligations in this Deed are enforceable.

A2 The County Council is the highway authority for the administrative area within which the Site is situated.

A3 The Owner is the freehold owner of Land registered under title numbers WSX187256, WSX34428, WSX72251, WSX23052 and WSX156792. The Site registered under these title numbers was transferred to the Owner on the 11th February 2022.

A4 The Council granted planning permission on the Site for a care home (C2) on 4 July 2012 subject to the completion of unilateral undertaking dated 4 May 2021 (herein defined as the Section 106 Agreement).

A5 The Variation Application (herein defined) was submitted to the Council to vary condition 1 of the planning permission dated 4 July 2012 to include PV panels and protective guarding to the roof.

A6 The Council has resolved to grant the Variation Permission pursuant to the Variation Application subject to entering into this Deed.

A7 This Deed is supplemental to and to the extent that its contents so provide, varies the Section 106 Agreement to the extent only that the Section 106 Agreement relates to the Site.

A8 The provisions of this Deed bind the Site, the parties to this Deed and their successors in title.

A9 The Owner and the Council have agreed to amend the Section 106 Agreement so that the obligations contained in it also bind the Variation Permission.

A10 This agreement is entered into as a Deed.

1 DEFINITIONS

1.1 For the purposes of this Deed the following expressions shall have the following meanings:

Section 73 Consent means a planning permission granted pursuant to Section 73 of the 1990 Act which varies and/or removes any condition(s) subject to which the Planning Permission and/or any subsequent planning permission pursuant to Section 73 of the 1990 Act was granted;

Section 106 Agreement means the Unilateral Undertaking dated 4th May 2021 made between (1) Michael Anthony Braganza and (2) Vesta Care Homes Limited and given to (1) Adur District Council and (2) West Sussex County Council;

Variation Application means the application submitted to the Council on 1st July 2022 for planning permission and given planning reference AWDM/1126/22 to vary condition 1 (Approved plans) of planning permission dated 4 July 2021 (reference AWDM/1217/20) granted following the completion of the Section 106 Agreement; and

Variation Permission means the planning permission to be granted pursuant to any Variation Application.

1.2 Unless the context otherwise requires, all words and phrases defined in the Section 106 Agreement shall have the same meaning in this Deed.

1.3 Clause heading shall not affect the interpretation of this Deed.

1.4 A "person" includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

1.5 A reference to a "company" shall include any company, corporation or other body corporate, where and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

1.7 Unless the context otherwise requires a reference to one gender shall include a reference to other genders.

1.8 A reference to any party shall include that party's representatives, successors and permitted assigns and to any person deriving title through or under the party and in the case of the Council and the County Council the successors to their respective statutory functions.

1.9 Unless the context otherwise requires a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.10 Unless the context otherwise requires a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.11 A reference to "writing" and "written" does not include fax or email.

1.12 Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.13 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 them individually.

2 LEGAL BASIS

2.1 This Deed is made under Section 106 and 106A of the Act and its purpose is to vary the Section 106 Agreement with the intention that the planning obligations contained in the Section 106 Agreement shall also apply to development to be undertaken in accordance with the Variation Permission save for any variations contained within this Deed.

2.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations under Section 106 and Section 106A of the Act and are enforceable by the Council (and County Council (as appropriate)) in accordance with Section 106 of the 1990 Act as local planning authorities against the Owner.

2.3 The planning obligations contained in this Deed shall bind the Site.

3 COMMENCEMENT

Unless the context otherwise requires this Deed shall come into effect on the grant of the Variation Permission.

4 VARIATION OF THE SECTION 106 AGREEMENT

4.1 The parties agree that the Section 106 Agreement shall be varied as follows:

4.1.1 The following definitions shall be inserted into Clause 1:

Section 73 Consent means a planning permission granted pursuant to Section 73 of the 1990 Act which varies and/or removes any condition(s) subject to which the Planning Permission and/or any subsequent planning permission pursuant to Section 73 of the 1990 Act was granted;

Variation Application means the application submitted to the Council on 1st July 2022 for planning permission and given planning reference AWDM/1126/22 to vary condition 1 (Approved plans) of planning permission dated 4 July 2021 (reference AWDM/1217/20) granted following the completion of the Section 106 Agreement; and

Variation Permission means the planning permission to be granted pursuant to any Variation Application.

4.1.2 In Clause 1 the definition of Planning Permission shall be deleted and replaced with the following:

"Planning Permission" means the planning permission dated 4 July 2021 granted subject to conditions by the Council

4.2 The parties agree that reference to the Planning Permission in the Section 106 Agreement shall mean reference to the Planning Permission or the Variation Permission (as relevant).

4.2.1 The following shall be inserted as Clause 15:

Section 73 Consent

Unless otherwise agreed between the Council and the Owner, if a Section 73 Consent is granted by the Council in relation to the Development, then with effect from the date that each such Section 73 Consent is granted:

(a) the obligations in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent Section 73 Consents and the Site itself without any further act by the Owner; and

(b) the definitions of Development, Application and Planning Permission in the Section 106 Agreement shall be construed to include references to any future Section 73 Consent granted pursuant to any such application and the development permitted by such Section 73 Consent.

PROVIDED THAT:

(i) nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the 1990 Act and its ability to impose any further planning obligations that it may consider necessary; and

(ii) to the extent that any of the obligations in the s106 Agreement have already been discharged at the date that any Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent

5 CONTINUATION OF THE TERMS OF THE SECTION 106 AGREEMENT

It is hereby agreed and declared by the Council, the County Council and the Owner that saving and excepting as expressly provided for by the provisions of this Deed the covenants and provisions contained in the Section 106 Agreement shall continue to have full force and effect.

6 COSTS

6.1 The Owner covenants with the Council prior to the completion of this Deed to pay to the Council its reasonable legal costs and disbursements in connection with this Deed.

6.2 The Owner covenants with the County Council prior to completion of this Deed to pay to the County Council its reasonable legal costs and disbursements in connection with this Deed.

7 MISCELLANEOUS

7.1 Unless expressly stated to the contrary, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person or persons other than the parties shall have any rights under it nor shall it be enforceable by any person other than the parties.

7.2 Upon completion this Deed shall be registered as a Local Land Charge by the Council.

8 GOVERNING LAW AND JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the jurisdiction of the courts of England.

This Agreement is executed as a deed by the parties and is delivered and takes effect on the date at the beginning hereof:

The common seal of

The District Council of Adur

Was hereunto affixed

In the presence of:-



Authorised signatory CAROLINE PERRY

for and on behalf of

the Solicitor to the Council

Seal Book No.

The common seal of

West Sussex County Council

was hereunto affixed

in the presence of:-



Authorised signatory

for and on behalf of

the Solicitor to the Council

Seal Book No.

Company

EXECUTED as a deed by)
OHF 26 LIMITED, a company incorporated)
in Guernsey, acting by)
[ ] MATTHEW BREHAUT)
who, in accordance with the laws of that)
territory, is/are acting under the authority of)
the company)
)
)
)

Signature in the name of the company

Director of Liha2 (Guernsey) Limited
AS Corporate Director to OHF 26 Limited

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Signature of Authorised Signatory