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Please ask for: Ms Katharine Chatters
Email: katharine.chatters@spiresolicitors.co.uk
Our Ref: KSC/kr/C20133-0053
Your Ref:
Date: 09 October 2020
Direct dial: 01603 677023

nplaw
Norfolk County Council
County Hall
Martineau Lane
Norwich
NR1 2DH

F.A.O Rachel Garwood

Dear Sirs

Deed of Variation of Section 106 Agreement -Leffins Lane, Acle

Please find enclosed the signed Deed of Variation to the Section 106 Agreement of land at Hillside Farm, Reedham Road, Acle.

Yours faithfully

For and on behalf of Spire Solicitors LLP
Enc.

DATED

8th October

2020

BROADLAND DISTRICT COUNCIL (1)

CROCUS CONTRACTORS LIMITED (2)

**DEED OF VARIATION TO SECTION 106
AGREEMENT DATED 23 February 2015**

pursuant to Section 106A of the Town and Country
Planning Act 1990 relating to the development of land at
Hillside Farm Reedham Road Acle Norfolk



Telephone: 01603 677077
Holland Court
The Close
Norwich
Norfolk
NR1 1 HZ
Fax: 01603 610700
DX NO: 5217

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THIS DEED OF VARIATION is made on 8th October

2020

BETWEEN:

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich NR7 0DU ("the District Council"); and
- (2) CROCUS CONTRACTORS LIMITED whose registered office is at Saffron Barn Swan Lane Long Stratton Norfolk NR15 2XP (Incorporated in England and Wales under Company number 05127689) ("the Owner");

together "the Parties"

RECITALS

- (A) The District Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Site is situated and by whom the planning obligations contained in this Deed of Variation are enforceable.
- (B) On 23 February 2015 the District Council entered into an Agreement under Section 106 of the 1990 Act with John Albet Wilson in his then capacity as owner of the Site ("the Original Agreement").
- (C) The Owner is now the freehold owner and registered proprietor of the Site shown edged red on the attached plan under title number NK488944 (but less any Open Market Dwellings sold by the Owner prior to the date of this deed).
- (D) The Owner and the District Council have agreed to vary the terms of the Original Agreement in relation to the affordable housing provision on the Site.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

Wherever the context so admits and unless otherwise specified terms defined in the Original Agreement shall bear the same meaning when used in this Deed of Variation.

2. CONSTRUCTION OF THIS DEED OF VARIATION

2.1 Where in this Deed of Variation reference is made to any recital, clause or paragraph such reference (unless the context otherwise requires) is a reference to a recital, clause or paragraph in this Deed of Variation.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.

2.4 Wherever 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 severally unless there is an express provision otherwise.

2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed of Variation shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the District Council the successors to its statutory functions.

2.7 The table of contents and clause headings are for reference only and shall not affect the construction or interpretation of this Deed of Variation.

3. LEGAL BASIS

3.1 This Deed of Variation is made pursuant to Section 106A of the 1990 Act but to the extent that any obligations contained in this Deed of Variation are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all others enabling powers.

- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed of Variation create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the District Council as local planning authority against the Owner.

4. **COMMENCEMENT**

The obligations contained in this Deed of Variation shall come into effect immediately upon completion of this Deed of Variation.

5. **OPERATIVE PROVISIONS**

- 5.1 On and with effect from the date of this Deed of Variation (and notwithstanding anything to the contrary expressed or implied in the Original Agreement) the Original Agreement shall be varied as follows :-

- 5.1.1 Paragraphs 1.10, 1.10.1, 1.10.2, 1.10.3 of the First Schedule are to be deleted and replaced with the following :-

1.10 The affordable housing provisions in this First Schedule shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or charge to realise its security or any administrator (howsoever appointed) including a housing administrator (each a receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or charge or receiver PROVIDED THAT :

1.10.1 such mortgagee or chargee or receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and 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 include all accrued principal monies, interest and costs and expenses; and

1.10.2 if such disposal has not completed within the three month period, the mortgagee, chargee or receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions determine absolutely.

- 5.1.2 Paragraph 1.11.3 of the First Schedule shall be deleted and replaced with the following:

1.11.3 a requirement that any proceeds from the disposal of subsequent equity in Shared Ownership Dwellings and Shared Equity Dwellings will be paid to the Affordable Housing Provider and must be used for the provision or improvement of Affordable Housing within the administrative area of the Council where reasonably practicable.

5.1.3 Paragraph 1 of the Fourth Schedule will be deleted.

5.1.4 The definition of Shared Equity Arrangements shall be amended by replacing "council" in the penultimate line with "AHP".

5.2 The Original Agreement shall continue in full force and effect subject only to the provisions of this Deed of Variation

6. **MISCELLANEOUS**

6.1 No provisions of this Deed of Variation shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

6.2 This Deed of Variation shall be registerable as a local land charge by the District Council.

6.3 Insofar as any clause or clauses of this Deed of Variation are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed of Variation.

6.4 No person shall be liable for any breach of any of the planning obligations or other provisions of the Original Agreement (as varied by this Deed of Variation) and/or this Deed of Variation after it shall have parted with its interest in the Site or that part of the Site in respect of which such breach has occurred but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.5 This Deed of Variation (save for the restrictions in the Second Schedule to the Original Agreement) will not bind any owner or occupiers of an individual Dwelling.

6.6 Nothing in this Deed of Variation shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed of Variation.

6.7 Nothing contained or implied in this Deed of Variation shall prejudice or affect the rights discretions powers duties and obligations of the District Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

- 6.8 On completion of this Deed of Variation the Owner shall pay the District Council's reasonable legal costs in connection with this Deed of Variation.

7. **WAIVER**

- 7.1 No waiver (whether expressed or implied) by the District Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed of Variation shall constitute a continuing waiver and no such waiver shall prevent the District Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8. **DISPUTE PROVISIONS**

- 8.1 In the event of any dispute or difference arising between any of the parties to this Deed of Variation in respect of any matter contained in this Deed of Variation such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 8.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to **Clause 9.1** or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
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9. **JURISDICTION**

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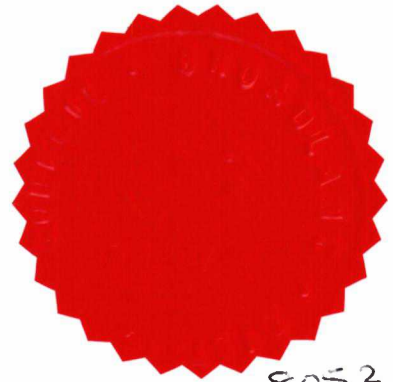
10. **DELIVERY**

The provisions of this Deed of Variation (other than this clause which shall be of immediate effect) shall be of no effect until this Deed of Variation has been dated.

IN WITNESS of which this Deed of Variation has been executed by the Parties as a deed and is intended to be and is delivered on the date written at the beginning of it.

THE COMMON SEAL OF
BROADLAND DISTRICT COUNCIL
was affixed in the presence of:

)
)
)



Authorised Officer:

8052

Authorised Officer:

Deputy Monitoring Officer

EXECUTED as a deed by
CROCUS CONTRACTORS LIMITED
by affixing its Common Seal
In the presence of :-

Director:

Secretary:

7.3.13



DATED

8th October

2020

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CROCUS CONTRACTORS LIMITED (2)

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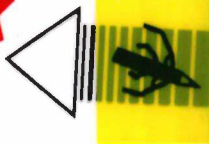
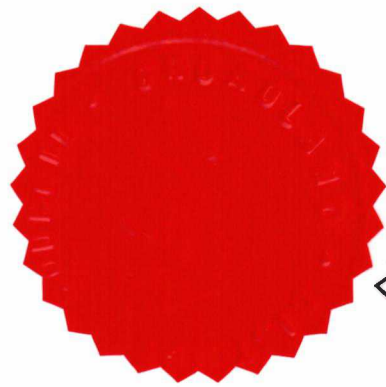
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THE COMMON SEAL OF
BROADLAND DISTRICT COUNCIL
was affixed in the presence of:

)
)
)



Authorised Officer:

8052

A handwritten signature in blue ink.

Authorised Officer:

Deputy Monitoring Officer

EXECUTED as a deed by
CROCUS CONTRACTORS LIMITED
by affixing its Common Seal
In the presence of :-

A handwritten signature in blue ink, likely of the Director.

Director:

Secretary:

7.3.45

