

DATED

28 July

2017

BROADLAND DISTRICT COUNCIL (1)

CROCUS CONTRACTORS LIMITED (2)

ACLE PARISH COUNCIL (3)

DEED OF VARIATION TO SECTION 106

AGREEMENT DATED 13 May 2015

pursuant to Section 106A of the Town and Country
Planning Act 1990 relating to the development of
land north of Springfield, Acle, Norfolk



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TABLE OF CONTENTS

1.	DEFINITIONS	4
2.	CONSTRUCTION OF THIS DEED OF VARIATION	4
3.	LEGAL BASIS	4
4.	COMMENCEMENT	5
5.	OPERATIVE PROVISIONS	5
6.	MORTGAGEE'S CONSENT	5
7.	MISCELLANEOUS	6
8.	WAIVER	<u>76</u>
9.	DISPUTE PROVISIONS	7
10.	JURISDICTION	<u>87</u>
11.	DELIVERY	<u>87</u>

THIS DEED OF VARIATION is made on

28 July

2017

BETWEEN:

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich NR7 0DU ("the District Council");
- (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"); and
- (3) ACLE PARISH COUNCIL c/o Clerk to the Parish Council of Beech Farm 15 Marsh Road Upton Norwich NR13 6BP ("the Mortgagee")

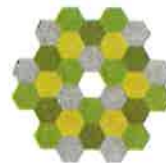
together "the Parties"

RECITALS

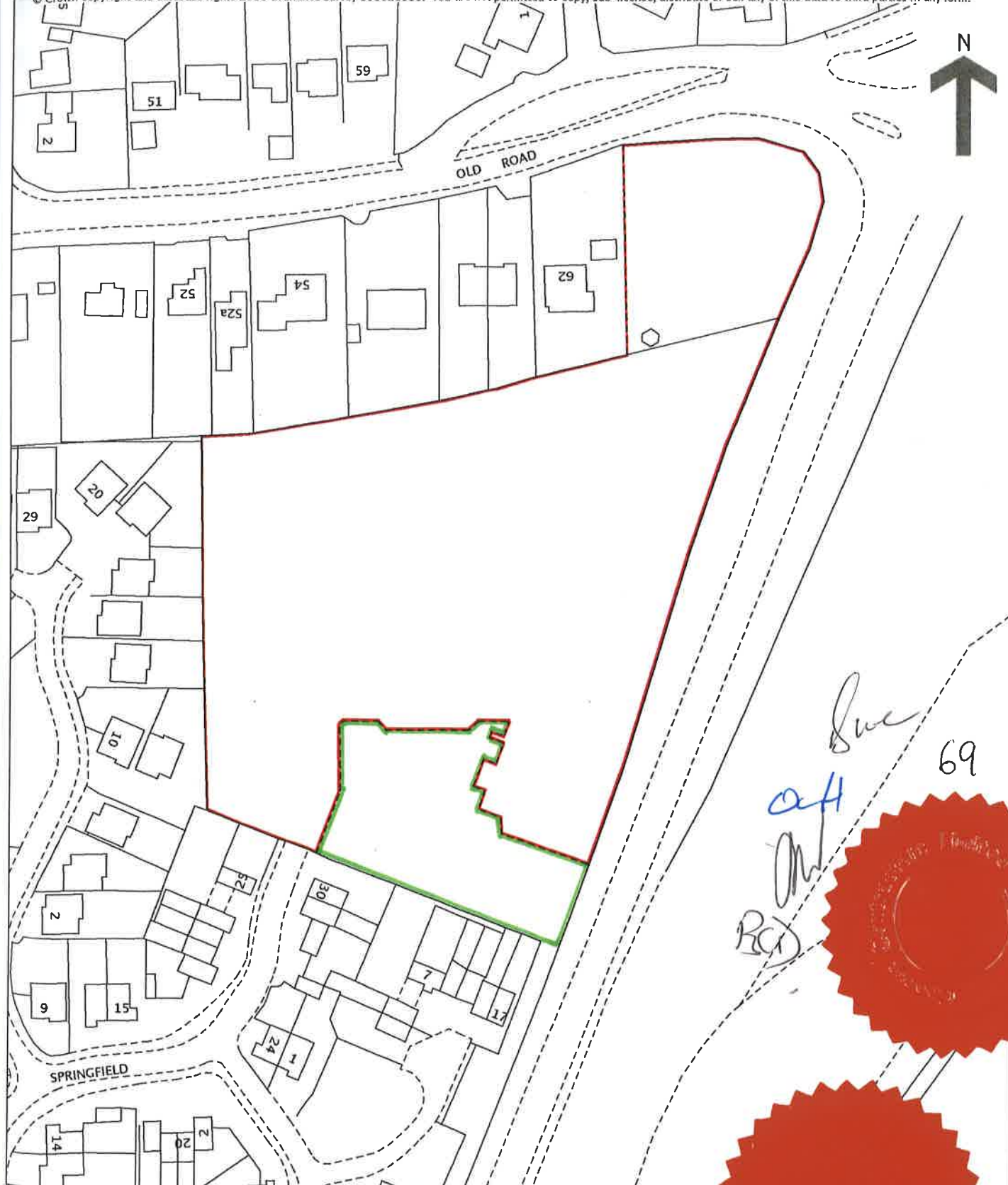
- (A) The District Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Site is situated and by whom the planning obligations contained in this Deed of Variation are enforceable.
- (B) On 13 May 2015 the District Council entered into an Agreement under Section 106 of the 1990 Act with the Mortgagee in its then capacity as owner of the Site ("the Original Agreement").
- (C) The Owner is now the freehold owner and registered proprietor of that part of the Site shown edged red on the attached plan under title number NK455211 (but less any Open Market Dwellings sold by the Owner prior to the date of this deed).
- (D) The Mortgagee is the freehold owner and registered proprietor of the remainder of the Site shown edged green on the attached plan under title number NK346211.
- (E) The Mortgagee has a legal and equitable charge ("the Charge") dated 23 December 2015 over that part of the Site shown edged red on the attached plan (but less any Open Market Dwellings sold by the Owner prior to the date of this deed).
- (F) The Owner the Mortgagee and the District Council have agreed to vary the terms of the Original Agreement in relation to the affordable housing provision on the Site.

Land Registry Official copy of title plan

Title number **NK**
Ordnance Survey map reference **TG4010NE**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Norfolk : Broadland**



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M Mue

Head of Democratic Services and
Monitoring Officer

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 the definition of "Affordable Housing Provision" in the Second Schedule shall be deleted and replaced with the following:

"The construction and provision of Affordable Dwellings on the Site equating to 33% of the total number of Dwellings in accordance with the Affordable Housing Mix

- 5.1.2 a new definition of "Affordable Housing Mix" shall be added to the Second Schedule as follows:

"12 Affordable Dwellings shall be provided on the Site, 8 of which will be Affordable Rented Dwellings and 4 of which will comprise Intermediate Housing"

- 5.1.2 in paragraph 1.5 of the Second Schedule the number "6" shall be deleted and replaced by the number "4"

- 5.1.3 the table in the Third Schedule shall be varied in respect of Plots 5 and 6 to substitute in each case "S/E" for "ART" in the column headed "Tenure" and in respect of Plots 20 and 25 to substitute "B" for "A" in the column headed "Lettings Cascade A or B"

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

6. **MORTGAGEE'S CONSENT**

- 6.1 The Mortgagee consents to the completion of this Deed of Variation and agrees that its interest in that part of the Site shown edged red on the attached plan remaining subject to the Charge from time to time shall be bound by the Original Agreement as

varied by this Deed of Variation as if it had been executed and registered as a land charge prior to the creation of the Charge .

- 6.2 The Mortgagee shall not be personally liable for any breach of the obligations in the Original Agreement as varied by this Deed of Variation unless committed or continuing at a time when the Mortgagee is in possession of all or any part of that part of the Site remaining subject to the Charge from time to time.

7. MISCELLANEOUS

- 7.1 No provisions of this Deed of Variation shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.2 This Deed of Variation shall be registerable as a local land charge by the District Council.
- 7.3 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.
- 7.4 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.
- 7.5 This Deed of Variation (save for the restrictions in the Second Schedule to the Original Agreement as varied by this Deed of Variation) will not bind any owner or occupiers of an individual Dwelling.
- 7.6 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.
- 7.7 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.
- 7.8 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.

8. **WAIVER**

- 8.1 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.

9. **DISPUTE PROVISIONS**

- 9.1 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.
- 9.2 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.
- 9.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty working days after the conclusion of any hearing that takes place or twenty working days after he has received any file or written representation.
- 9.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written

submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

9.4

10. **JURISDICTION**

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

11. **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:

)
)
)

M. Mue
Head of Democratic Services and
Monitoring Officer

Authorised Officer:



Authorised Officer:

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

Director:

B. D. D.

Secretary:

M. D. D.
D. D. D.



EXECUTED as a deed by
ACLE PARISH COUNCIL
acting by:-

A. Hemmingway
Anthony Hemmingway, Chairman

B. Coveley
Barry Coveley, Vice Chairman