

DATED

21 FEBRUARY 2023

**DEED OF VARIATION UNDER SECTION 106A OF THE TOWN & COUNTRY PLANNING ACT 1990
RELATING TO LAND AT**

Phase 1A Whitfield Urban Expansion in Dover

between

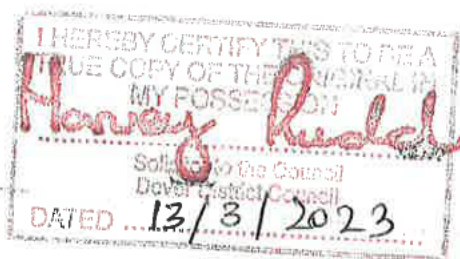
Dover District Council

and



And

Nerbun Limited



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This deed is dated

~~DO NOT DATE~~ 21 FEBRUARY 2023

PARTIES

- (1) **DOVER DISTRICT COUNCIL** of White Cliffs Business Park Dover Kent CT16 3P (the "District Council"); and
- (2) [REDACTED]
- (3) **NERBUN LIMITED** incorporated in the Isle of Man (company registration number 002455V) whose registered office is at 69 Athol Street, Douglas Isle of Man IM1 1JE ("the Owner")

RECITALS

- (A) The District Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (B) On 21 December 2012 the District Council [REDACTED] and Nerbun Limited entered into the 2012 Section 106 Agreement which was subsequently varied by the Deed of Variation.
- (C) On 24 May 2013 the Owner acquired the Site in a Transfer dated 12 May 2013 and is now the freehold owner under title number TT15272 including the part of the Site comprising the Additional Affordable Housing Land as defined herein.
- (D) On 5 June 2013 the Owner entered into a farm business tenancy with the Tenant who became the leaseholder under title number TT19777 of part of the Site including the Additional Affordable Housing Land.
- (E) The District Council has acquired the freehold of the land coloured blue (excluding the Road) on the Phasing Layout Plan in accordance with clause 5.3 of Schedule 3 of the 2012 Section 106 Agreement.
- (F) In accordance with paragraph 5.4 of Schedule 2 of the 2012 Section 106 Agreement as amended by the Deed of Variation, the District Council has an obligation to construct the Road coloured blue on the Phasing Layout Plan.
- (G) The highway authority has required an increase to the visibility splays to the Road at junction to Napchester Road.
- (H) Without prejudice to the terms of the other covenants contained in the 2012 Section 106 Agreement as amended by the Deed of Variation, the parties have agreed to vary the terms of the 2012 Section 106 Agreement as amended by the Deed of Variation as set out in this deed.

Agreed Terms

1. DEFINITIONS AND INTERPRETATION

1.1 For the purposes of this deed the expression in this Clause 1 have the meanings given.

1.2 All words and phrases defined in the 2012 Section 106 Agreement and the Deed of Variation shall have the same meaning in this deed.

"2012 Section 106 Agreement" means the section 106 agreement dated 21 December 2012 between (1) the District Council and (2) Keith Edward Broadley and (3) the Developer

"Deed of Variation": a Deed of Variation to the 2012 Section 106 Agreement dated 24 May 2013 and made between (1) the District Council and (2) Keith Edward Broadley and (3) the Developer

1.3 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the District Council the successors to their respective statutory functions; and

1.4 The clause headings do not form part of this deed and are not to be taken into account for the purposes of its construction or interpretation.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

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

1.8 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.9 Except where a contrary intention appears, references to clauses and Schedules are to the clauses and Schedules of this deed and references to paragraphs are to paragraphs of the relevant Schedule.

1.10 Clause, Schedule and paragraph headings shall not affect the interpretation of this deed.

2. LEGAL BASIS

This deed is made pursuant to sections 106 and 106A of the 1990 Act, section 111 of the Local Government Act 1972 and section 2 of the Local Government Act 2000.

3. VARIATION OF THE SECTION 106 AGREEMENT

3.1 The Parties agree that the 2012 Section 106 Agreement as amended by the Deed of Variation shall be further varied as follows:

(a) A new definition of "Additional Affordable Housing Land" shall be added as follows:

"Additional Affordable Housing Land" means the land shown coloured red on the plan annexed to the Second Deed of Variation"

(b) A new definition of "Second Deed of Variation" shall be added as follows:

"Second Deed of Variation" means the further deed of variation to the 2012 Section 106 Agreement as amended by the Deed of Variation dated 21 February 2024 and made between (1) the District Council and (2) Keith Edward Broadley and Pauline Broadley and (3) Nerbun Limited"

(c) The definition of Learning and Community Campus Land shall be amended by the addition of the words "...but excluding the Additional Affordable Housing Land" after clause (g).

(d) In paragraph 5.4 (a) of Schedule 2 of the 2012 Section 106 Agreement as amended by the Deed of Variation words shall be added after "Phasing Layout Plan" as follows:

"and on the Additional Affordable Housing Land"

And at the end of subparagraph 5.4 (a) (ii) the words "and the Owner and the Tenant hereby grant to District Council all necessary rights to construct such road also on the Additional Affordable Housing Land to the extent required by the Highway Authority and to enter into such agreement for the dedication of the whole or any part of the Additional Affordable Housing Land as public highway as the Highway Authority may require at the expense of the District Council and subject to the terms of such agreement being approved by the Owner and the Tenant acting reasonably".

4. REGISTRATION

4.1 This deed shall be registered as a local land charge.

5. MEMORANDUM

Promptly following completion of this deed the District Council shall endorse a memorandum of variation on the 2012 Section 106 Agreement and the Deed of Variation in the following terms:

"This Agreement has been varied by a supplemental agreement dated 21 FEBRUARY 2023 and made between ."

IN WITNESS whereof this deed has been duly executed and is intended to be delivered on the date first above written.

Schedule 1 Plan

Signed as a **DEED** by
NERBUN LIMITED
acting by a director, in
the presence of :

[Director]

