

DATED 22 August 2012

BROADLAND DISTRICT COUNCIL

-AND-

R.G. CARTER FARMS LIMITED

**AGREEMENT UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

Relating to the development of land to the
South of Dog Inn, Holt Road, Horsford, Norfolk

Broadland District Council
Thorpe Lodge
1 Yarmouth Road
Thorpe
Norwich
NR7 0DU

THIS AGREEMENT is made the 22 day of August 2012

BETWEEN:

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road
Norwich NR7 0DU ("the Council")
- (2) R G CARTER FARMS LIMITED whose registered office is at 9-11 Drayton
High Road Drayton Norwich NR8 6AH ("the Owner")

WHEREAS:

- A. The Council is a local planning authority for the purposes of the Act for the area within which the Site is situated
- B. The Owner is the freehold owner of the Site
- C. The Council has resolved to approve the Planning Application subject to the completion of this Agreement

1. INTERPRETATION AND DEFINITIONS

In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	housing which is available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market
"Affordable Housing Scheme"	a detailed scheme submitted to and approved by the Council for the provision of Affordable Housing on the site by a Registered Provider which complies with the requirements of the Schedule.

"Affordable Housing Units"	individual units of accommodation constructed or provided as part of the Development as Affordable Housing
"Affordable Rents"	Rents not exceeding 80% of Market Rents
"Affordable Rental Units"	Affordable Housing Units to be constructed or provided on the Site as part of the Development and to be let for a rent upon either a weekly or monthly tenancy basis at Affordable Rents and to be let by or on behalf of a Registered Provider
"Code"	the "Code for Sustainable Homes" published by the Department for Communities and Local Government in November 2010 (or any replacement Code for Sustainable Homes)
"Commencement Date"	the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56 (4) of the Act (but not including any operations relating to the demolition of any existing buildings, archaeological investigations, remedial works, erection of any temporary means of enclosure, temporary display of notices or advertisements or clearance of the Site) and "Commence" shall be interpreted in accordance with this definition
"Council's Monitoring Fee"	the sum of £332
"Development"	the development permitted by the Planning Permission

"Director"	the Council's Chief Executive or other officers of the Council acting under his hand
"HCA Standards"	the appropriate and applicable "Housing Quality Indicators" and "Design and Quality Standards" specified by the Homes and Communities Agency or their successors or such other standard as may be agreed with the Registered Provider
"Local Lettings Policy"	The local lettings policy attached as an annex to this Agreement.
"Market Rent"	the estimated rent at which a property would be let on the date of valuation between a willing lessor and a willing lessee on appropriate tenancy terms in an arm's length transaction after proper marketing wherein the parties had acted knowledgeably prudently and without compulsion
"Occupation"	means Occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting-out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly
"Planning Application"	the application for planning permission for the Site and other land to be developed for 15 affordable dwellings with associated new access parking and landscaping and given reference number 20120204.
"Planning	the planning permission to be granted pursuant to the

Permission"	Planning Application
"Plan"	the plan annexed to this Agreement
"Qualifying Occupiers"	in relation to any person housed in an Affordable Housing Unit, any person who meets the qualifying criteria contained in the Council's policies relating to housing allocation (as amended from time to time and as formulated pursuant to the provisions of the Housing Acts 1996 and 2004 and the Homelessness Act 2002) and having a total household income at a level which prevents them from obtaining on the open market housing accommodation locally
"Registered Provider"	a provider of social housing registered in the register kept by the Regulator of Social Housing as provided for in Chapter 3 of the Housing and Regeneration Act 2008 (or any statutory re-enactment or modification thereof)
"Regulator"	the Tenant Services Authority or such other body as shall from time to time be a Regulator of Social Housing within the meaning of Section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating Registered Providers
"Shared Ownership Dwellings"	those Affordable Housing Units to be let on a Shared Ownership Lease
"Shared Ownership Lease"	a lease or sub-lease of a Shared Ownership Dwelling granted at a premium whereby up to 50% on first purchase of the equitable interest in the Shared Ownership Dwelling is paid by the tenant upon

completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to acquire up to 80% (eighty percent) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates and shall allow a rent to be charged on the remainder of the equitable interest such rent not to exceed an annual sum calculated at 2.75% of the value of the equity retained by the Registered Provider at the date of the grant of the Shared Ownership Lease and any increase of the said annual rent shall be no more than the percentage increase in the Retail Price Index (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% of the current annual rent from time to time

"Site"

the land to the South of Dog Inn, Holt Road, Horsford, Norfolk which is shown for the purposes of identification only edged red on the Plan

In this Agreement unless the context otherwise requires:

- (i) references to any party shall include the successors in title and assigns of that party
- (ii) references to clauses and schedules are references to clauses in and schedules to this Agreement except where otherwise specified
- (iii) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source as at any time amended and where such Act Section Regulation or Statutory Instrument has been replaced consolidated or re-enacted with or

without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting Act or Section or Regulation or Statutory Instrument

- (iv) headings in this Agreement shall not form part of or affect its construction

2. GENERAL PROVISIONS APPLICABLE TO THIS AGREEMENT

- 2.1 This Agreement is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and any other enabling powers
- 2.2 The obligations of the Owner hereunder are planning obligations for the purposes of the Act and enforceable by the Council against the Owner and its successors in title and assigns
- 2.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with the interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach which occurs prior to parting with such interest in the Site or any part thereof in respect of which any such breach has taken place
- 2.4 The provisions of this Agreement shall have immediate effect upon completion of this Agreement
- 2.5 This Agreement shall cease to have effect if:
 - 2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn

2.5.2 the Planning Permission shall expire prior to the Commencement Date

2.6 This Agreement shall be registered by the Council as a charge in the Council's Register of Local Land Charges

3. AGREEMENTS AND DECLARATIONS

IT IS HEREBY AGREED AND DECLARED as follows:

3.1 No Fetter of Discretion

Save insofar as legally or equitably permitted nothing contained or implied in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council in the exercise of its functions as local planning authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully and effectively exercised as if the Council was not a party to this Agreement

3.2 Invalidity or Unenforceability of any of the terms of this Agreement

If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

3.3 No Waiver

No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof

4. NOTICES

- 4.1 Any notice document or other correspondence required to be served or given under the provisions of this Agreement shall be in writing and delivered personally or sent by pre-paid letter or facsimile
- 4.2 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The Council

The Chief Executive
Thorpe Lodge
Yarmouth Road
Thorpe St Andrew
Norwich
NR7 0DU

The Owner

R G Carter Farms Limited
9-11 Drayton High Road
Drayton
Norwich
NR8 6AH

- 4.3 Any notice or other written communication to be given by the Council or the shall be deemed to be valid and effective if on its face it is signed on behalf of the Council by a duly authorised officer

5. THIRD PARTIES

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in that person's

own right to enforce any provisions of this Agreement pursuant to the provisions of the said Act

6. COSTS

- 6.1 The Owner shall on completion of this Agreement pay to the Council its legal and administrative costs reasonably incurred in the preparation negotiation and completion of this Agreement (not to exceed £750).

7. PAYMENT OF INTEREST

- 7.1 The Owner shall pay interest at the rate of 4% above HSBC Bank base rate for the time being in force on any monies due under the provisions of this Agreement in the event of late payment for the period from the date the monies should have been paid to the date of actual payment

8. VAT

- 8.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable
- 8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

9. JURISDICTION

- 9.1 This Agreement is to be governed by and interpreted in accordance with the law of England

11. DISPUTE RESOLUTION

- 11.1 The parties to this Agreement will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same
- 11.2 If the matter is not resolved through negotiations the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre of Dispute Resolution
- 11.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties
- 11.4 Nothing in Clause 11.1, 11.2 and 11.3 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

12. TITLE WARRANTY

The Owner hereby warrants that it is the freehold owners of the Site which is registered at the Land Registry under title number NK 337648 and has full power to enter into this Agreement and that the Site is free from all mortgages charges or other encumbrances

13. PLANNING OBLIGATIONS

The Owner covenants with the Council to comply with the provisions of the Schedule

SCHEDULE

Owner covenants with the Council

- 1.1 Not to Commence the Development unless and until the Affordable Housing Scheme has been submitted to and approved by the Director. (The Affordable Housing Scheme shall deal with and include: a timetable and programme for its implementation; the identity of the Registered Provider; the mix of Affordable Rental Units and Shared Ownership Dwellings; and the nature of the disposal to the Registered Provider. Upon approval, the Affordable Housing Scheme shall be deemed to be incorporated into the provisions of this Agreement) and
- 1.2 Not to occupy any part of the Development unless and until the Affordable Housing Units have been transferred to the relevant Registered Provider
2. Not to deliver the Affordable Housing other than in accordance with the provisions of the Affordable Housing Scheme
3. Not to let the Affordable Rental Units or lease the Shared Ownership Dwellings except in accordance with the Local Lettings Policy.
4. The Affordable Housing Units provided shall be constructed in accordance with and so as to meet the HCA Standards and the appropriate level of the Code at the time of construction and taking into account national guidance and locally set planning policies
5. Subject to Paragraph 8 not to use the Affordable Housing Units for any purpose other than for Affordable Housing
6. Subject to Paragraph 8 the Affordable Housing Units shall not be Occupied otherwise than by Qualifying Occupiers or persons nominated by the Registered Provider, as appropriate

7. Subject to Paragraph 8 the Registered Provider shall not dispose of its interest in the Affordable Housing Units or any part thereof (except by way of mortgage) other than to any other Registered Provider
8. Where Affordable Housing Units have been transferred to a Registered Provider as part of the Affordable Housing Scheme paragraphs 5, 6 and 7 above shall not be binding upon:
 - 8.1 any mortgagee exercising its power of sale in respect of the Affordable Housing Units or part thereof
 - 8.2 any receiver or manager (including an administrative receiver) for such mortgagee;
 - 8.3 any of the Affordable Housing Units where the Registered Provider shall be required to dispose of such Affordable Housing Units pursuant to a right to buy under Part V of the Housing Act 1985 or the Right to Acquire pursuant to Section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable;

EXECUTED by the parties hereto as a deed on the date written above

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

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)
)
)
)



M. M. M. M.
Head of Democratic Services and
Monitoring Officer

Authorised Officer

EXECUTED as a DEED by
R G CARTER FARMS LIMITED
acting by

)
)
)

N. H. A.
[Signature]

Director/Secretary

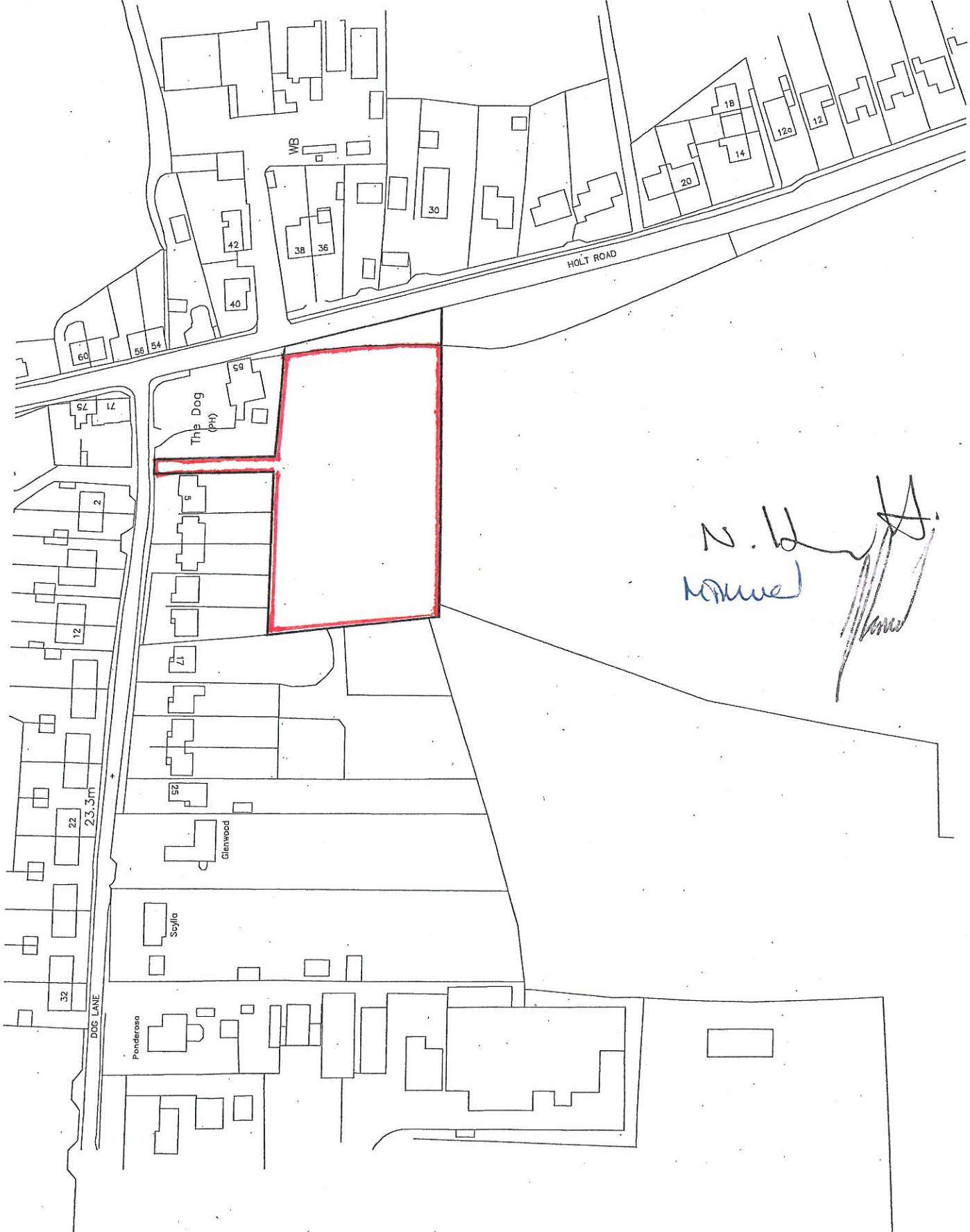
COMPANY SECRETARY

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BROADLAND DISTRICT COUNCIL
 09 Feb 2012
 20120204
PLANNING CONTROL

DRAWING FOR COMMENT ONLY
 THIS DRAWING SHOULD BE
 CONSIDERED PROVISIONAL
 - UNTIL RECEIPT OF
 WRITTEN CLIENT APPROVAL

A 22/12/12 Updated all line locations		1:1	1:1
Rev	Date	Description	Notes
Richard Pike Associates Building Design and Planning Associates 4 Highwayside Road, 85-85 King Street, Norwich Norfolk, NR1 1PW T: 01603 491223 E: info@rpa.co.uk www.rpa.co.uk			
Project Details Dog Lane, Horsford			
Client John Youngs Ltd trading as Youngs Homes			
Drawing Location Plan			
Date December 2010			
Scale	1/1250 @A3	Drawn By JH	Checked By JH
Drawing No.	7370-00	FOR COMMENT ONLY	
All dimensions must be fully checked and not scaled from this drawing			



**Local Lettings Policy for Land behind Dog Inn,
Holt Road, Horsford, NR 3DF**

1. Nomination Rights Policy

1.1 The Policy will apply to all categories of properties on the basis of 100% of all lettings for the first 80 years.

1.2 The Council and the Association are both committed to eradicating double scrutiny of nominated households for general needs accommodation. They are also agreed on the move away from a pool nomination system to a direct nomination system where a maximum of 2 households will be nominated in priority order for any letting other than those designated as hard to let where a maximum of 3 households will be nominated

2. Allocations will be made to applicants on the Common Housing Register managed and maintained by Broadland District Council on the following priority basis:

2.1 Residents of Horsford who have lived in the Parish for a total of at least 3 of the last 10 years.

2.2 Former residents of Horsford who have had their main home in the Parish for 3 of the last 10 years.

2.3 Households who need to move to the parish of Horsford to give/receive support from family/relatives.

2.4 Residents of the adjacent parishes of Drayton, Felthorpe, Hainford, Hellesdon, Horsham and Newton St Faith, and Stratton Strawless who have lived in these parishes for the last three years.

2.5 People working in the parish of Horsford who have done so for a year or more.

2.6 Residents of Horsford who have lived in the parish for less than three years.

2.7 Residents of the adjacent parishes of Drayton, Felthorpe, Hainford, Hellesdon, Horsham and Newton St Faith, and Stratton Strawless who have lived in these parishes for less than 3 years.

2.8 Residents of the adjacent parishes of Attlebridge, Buxton with Lamas Haverlingland, Hevingham, Swannington and Taverham who have lived in these parishes for the last three years.

2.9 Residents of the adjacent parishes of Attlebridge, Buxton with Lamas Haverlingland, Hevingham, Swannington and Taverham who have lived in these parishes for less than 3 years.

2.10 Residents of Broadland District

2.11 Any other person

3. Administrative Procedure for Nominations

3.1 The administrative procedure for nominations shall be in accordance with the operational procedures of the Home Options Allocations Scheme as amended from time to time or in accordance with alternative procedures as the Council and the Owner shall agree between them.