

DATED 25 January 2013

BROADLAND DISTRICT COUNCIL

-AND-

R.G. CARTER FARMS LIMITED

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

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

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

THIS DEED is made the 25 day of January 2013  
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 and the Owner entered into a deed dated 22 August 2012 made under section 106 of the Act (the "Original Agreement") and have now agreed to vary that the provisions of that deed as set out in this further deed

**1 INTERPRETATION AND DEFINITIONS**

- 1.1 In this Deed unless the context otherwise requires the defined terms have the same meaning as set out in the Original Agreement
- 1.2 In this Deed unless the context otherwise requires:
  - 1.2.1 references to any party shall include the successors in title and assigns of that party
  - 1.2.2 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
  - 1.2.3 headings in this Agreement shall not form part of or affect its construction

**2 GENERAL PROVISIONS APPLICABLE TO THIS DEED**

- 2.1 This Deed is made under Section 106 And Section 106A 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 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Deed 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

The provisions of this Deed shall have immediate effect upon completion of this Deed

This Deed shall cease to have effect if:

2.4.1 the Planning Permission shall be quashed revoked or otherwise withdrawn

2.4.2 the Planning Permission shall expire prior to the Commencement Date

2.5 This Deed 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 Deed 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 Deed

#### **3.2 Invalidity or Unenforceability of any of the terms of this Deed**

If any provision in this Deed 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

### **4 THIRD PARTIES**

4.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed 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 Deed pursuant to the provisions of the said Act

### **5 JURISDICTION**

5.1 This Deed is to be governed by and interpreted in accordance with the law of England

### **6 VARIATION**

6.1 The Owner and the Council agree that the Original Agreement shall be varied as follows but shall otherwise remain in full force and effect and remain enforceable by the Council:

Paragraph 8 of the Schedule shall be deleted and replaced with the following wording:

*8. Where Affordable Housing Units have been transferred to a Registered Provider as part of the Affordable Housing Scheme paragraphs 2, 3, 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

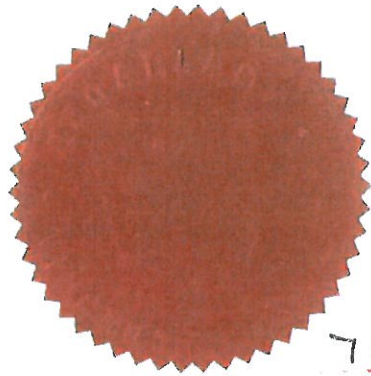
8.2 any receiver or manager (including an administrative receiver) for such mortgagee;

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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)  
)



Authorised Officer

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

7123



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

) *N. H. [Signature]*  
) DIRECTOR.  
)

Director/Secretary