

THIS AGREEMENT is made the

29th

day of

August

2001

B E T W E E N BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich in the County of Norfolk (hereinafter called "the Council") of the first part and **BALMFORTH HOMES LIMITED** whose registered office is situate at Suite 9 St. Francis House 141/147 Queens Road Norwich (hereinafter called "the Company") of the second part and **BUXTON WITH LAMAS PARISH COUNCIL** acting by the hand of the Chairman CHRISTOPHER JOHN TOMLINSON of The Retreat The Heath Buxton and the Vice Chairman GARRY GORDON GOODMAN of Heath Far House Coltishall Road Buxton (hereinafter called "the Parish") of the third part

RECITALS

(A) (1) In this Agreement unless the context otherwise requires the following words shall have the following meanings:-

"Application" means the application for planning permission to develop the Land and to develop the Land and dated 7th June 2000 submitted to the Council in accordance with the Application plans and other materials deposited with the Council and bearing reference no 00.0723

"Development" means the development permitted by the Permission

"the Land" means the land edged red and blue on the Plan and registered at H M Land Registry under title number NK248635

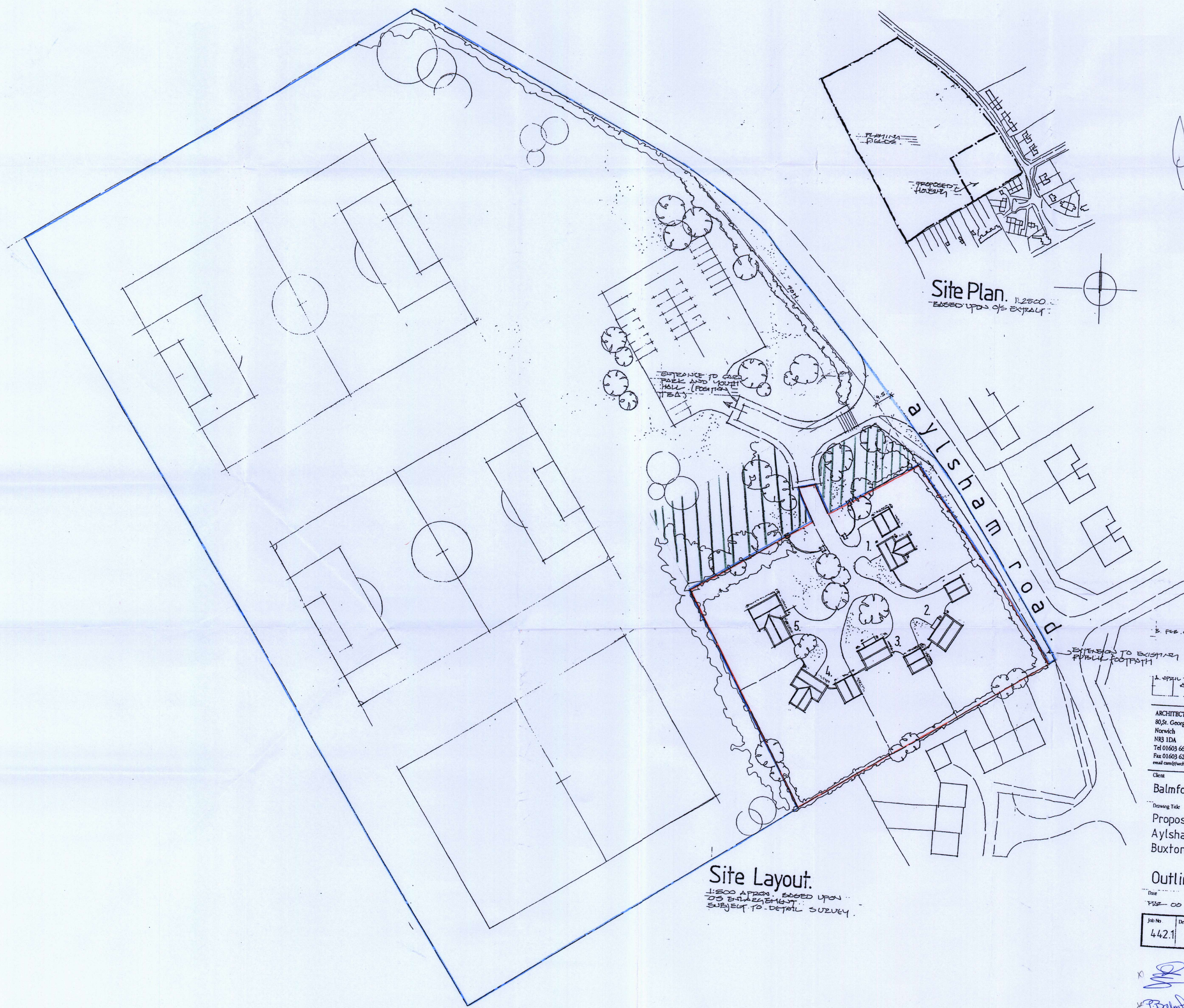
"Permission" means the outline planning permission granted pursuant to the Application together with any renewal or modification thereof

“Plan” means the plan annexed hereto

“1990 Act” means the Town and Country Planning Act 1990 (as amended)

2. In this Agreement unless the context otherwise requires:-

- (i) words importing the masculine gender shall where appropriate include the feminine gender and the neuter gender or vice versa as the case may be and words importing the singular number shall where appropriate include the plural number and vice versa
- (ii) “party” or “parties” means a party or parties to this Agreement
- (iii) references to any party shall include the successors in title and assigns of that party
- (iv) where a party includes more than one person any obligations of that party shall be joint and several
- (v) headings in this Agreement shall not form part of or affect its construction
- (vi) references to clauses and schedule are references to clauses in and schedules to this Agreement
- (vii) where a party or any officer or employee is required to give its consent approval or agreement in any specific provision in this Agreement such approval or agreement shall not be unreasonably withheld or delayed



Fuller
5252

Site Plan. 1:2500
BASED UPON OS EXTRACT

Site Layout.
1:500 APPROX. BASED UPON
OS EXTRACT. NOT TO SCALE.
SUBJECT TO DETAIL SURVEY.

- 1. FEB. 01. HALL OMITTED. ACCESS RE-ALIGNED.
- 2. APRIL 2000. COMMUNITY HALL ADDED

ARCHITECTS & PLANNERS
80, St. Georges Street,
Norwich
NR3 1DA
Tel 01603 665151
Fax 01603 621476
email cam@architects.plusnet.co.uk



Client
Balmforth Builders.

Drawing Title
Proposed Housing & Playing Fld.
Aylsham Road
Buxton.

Outline Proposal.

Date	Scale	Ref
FEB 00	1:500	KC
Job No	Drawing No	Rev
442.1	2.	B

P. Balmforth
A. Balmforth

- (viii) 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
- (B) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated
- (C) The Company and the Parish are registered as Proprietor with absolute title of the Land subject to the matters contained in the Charges Register for that title number but otherwise free from encumbrances
- (D) Having regard to the Development Plan and other material considerations the Council consider it expedient in the interests of the proper planning of their area that provision should be made for regulating or facilitating the Development of the Land in the manner hereinafter appearing and the Council is satisfied the Permission can only be granted subject to and upon completion of this Agreement

NOW THIS DEED WITNESSETH as follows:-

- 1.1 This Agreement and the covenants that appear hereinafter are made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and any other enabling power

- 1.2 The covenants that appear hereinafter are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council
- 1.3 This Agreement is a Deed any made be modified or discharged in part or in total at any time after the date of this Agreement by agreement between the parties in the form of a Deed
- 1.4 This Agreement is a local land charge and upon completion shall be registered by the Council as such
- 1.5 No waiver (whether express or implied) by the Council of any breach or default by the Company and the Parish 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
- 1.6 Any provision of this Agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Agreement
- 1.7 This Agreement shall be governed by the laws of England
- 1.8 No party shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement after that party has parted with its interest in the Land or the part of the Land in respect of which such breach occurs provided that liability will still remain for any breach occurring prior to the parting of any party's interest in the Land or any part thereof in respect of which any such breach has taken place

1.9 This Agreement shall cease to have effect if either:-

1.9.1 the Permission is quashed revoked or otherwise withdrawn; or

1.9.2 planning permission on the Land is granted subsequently and implemented for proposals incompatible with the Development

1.10 Notices

1.10.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Agreement shall be deemed to have been validly served or given if received by facsimile delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing provided that the notice or other written communication is addressed and delivered or sent by facsimile or by recorded delivery post to the address of the party concerned as nominated in sub-clause

1.10.2 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 Director of Resources Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich
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The Parish	The Parish Clerk, Roz Rose Swan Cottage Lamas
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The Company	Suite 9 St Francis House 141/147 Queens Road Norwich
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1.10.3 Any notice or other written communication to be given by the Council 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

2. General

- 2.1 The Company and the Parish HEREBY FURTHER AGREE that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Land under the terms of the Agreement are hereby waived
- 2.2 All works and activities to be carried out under the terms of this Agreement (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Company and the Parish and at no cost to the Council
- 2.3 All consideration given and payments made in accordance with the provisions of this Agreement shall be exclusive of any VAT properly payable in respect thereof and in the event of VAT becoming chargeable at any time in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not presently been charged in respect of that supply the person making the supply shall raise a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

3. ARBITRATION

- 3.1 Any dispute or difference arising between the parties as a result of this Agreement shall be referred to the arbitration or a single arbitrator to be agreed upon by the parties, or failing agreement within fourteen days after any of the parties has given to the other parties a written request requiring the appointment of an Arbitrator, to a person to be appointed at the request of any of the parties by the President of The Institution of Civil Engineers for the time being

3.2 Any reference to arbitration shall be undertaken in accordance with and subject to the provisions of the Arbitration Act 1996 save as follows:-

- (a) the seat of the arbitration shall be at the Council's offices in Norwich
- (b) where appropriate the Arbitrator may consolidate arbitral proceedings;
- (c) with the parties agreement the Arbitrator may appoint experts or legal advisers

3.3 Any of the parties mentioned in clause 3.1 concerned in any such dispute or difference arising from this Agreement wishing to refer any such dispute or difference to arbitration shall notify the other parties in writing of such intention without delay

3.4 The Arbitrator shall act as a referee and not as an expert except in any case where the parties to a dispute or difference agree on the Arbitrator when such parties may also agree that such Arbitrator shall act as an expert

3.5 Subject to Sections 67, 68 and 69 of the Arbitration Act 1996, the parties agree to be bound by the decision of the Arbitrator

4. RIGHTS OF 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

5. COVENANTS

The Owner

- 5.1 The Company and the Parish hereby covenant and undertake with the Council so as to bind the Land and each and every part thereof to carry out and comply with the obligations set out in this Agreement

THE OBLIGATIONS

6. Landscaping

- 6.1 During the first planting season following the commencement of any development on the Land to take such measures as are necessary to implement an agreed landscaping scheme within the area hatched green on the plan

- 6.2 Following completion of the landscaping scheme to take such steps as are necessary to protect the landscaping from damage during the continuance of the works to implement the Permission

7. Playing Field Provision

- 7.1 Prior to the commencement of any development on the Land the Company and the Parish transfer to the Parish the area of land edged blue on the Plan annexed hereto

- 7.2 Prior to the occupation of any of the dwellings permitted by the Permission the playing field to be provided on the area edged blue on the Plan shall be levelled and seeded and shall thereafter be brought into use at the earliest possible opportunity following the establishment of the area seeded

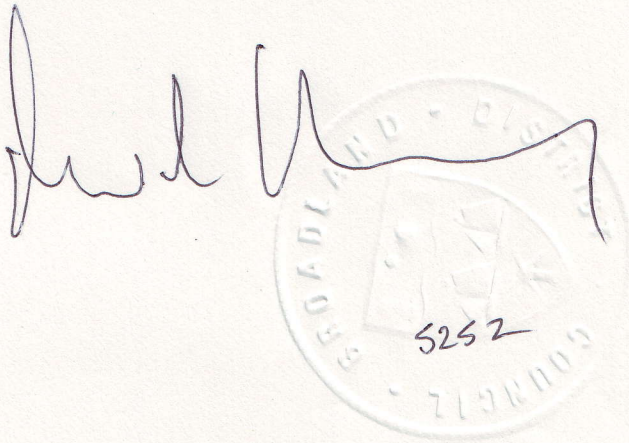
- 7.3 The Parish Council shall only use the land edged blue on the Plan as public open space and hall for indoor and outdoor recreational purposes

8. Car Park Provision


8.1 A car parking area in the approximate position shown on the Plan shall be laid out and made available for use by the completion of the works to level and seed the playing field and shall thereafter be retained for use in conjunction with the playing field and any other facilities of a community nature provided by the Parish or any other body or organisation on the playing field on the land edged blue on the Plan

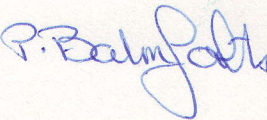
IN WITNESS whereof this Agreement has been executed and delivered as a Deed on the date first above written

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



SIGNED as a DEED
on behalf of
BALMFORTH HOMES LIMITED

Director: X  X

Secretary: X  X

SIGNED as a DEED
on behalf of
BUXTON WITH LAMAS PARISH COUNCIL
by Christopher John Tomlinson and Garry Gordon Goodman
in the presence of the Clerk to the Council

Roseanne A. Rose (WITNESS)