

DATED

30th OCTOBER

2001

BROADLAND COUNCIL

- AND -

CHASE (CAISTER) LTD

AGREEMENT

Made pursuant to Section 106 of the Town
and Country Planning Act (as amended) 1990
and any other enabling power relating to the
development of land at Dawdys Farm,
Wickhampton Road, Norfolk

Steele & Co
2 The Norwich Business Park
Whiting Road
Norwich NR4 6DJ

THIS AGREEMENT is made the 30th day of October Two thousand and One
BETWEEN 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 of Chase (Caister) Ltd of Halvergate Hall, Halvergate,
Norfolk, NR13 3AJ (hereinafter called “The Owner”) of the second part and HSBC
Bank Plc of Birmingham Securities Processing Centre P.O.Box 8042 Birmingham
B2 4NQ hereinafter called “The Mortgagees” of the third part

RECITALS

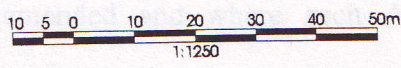
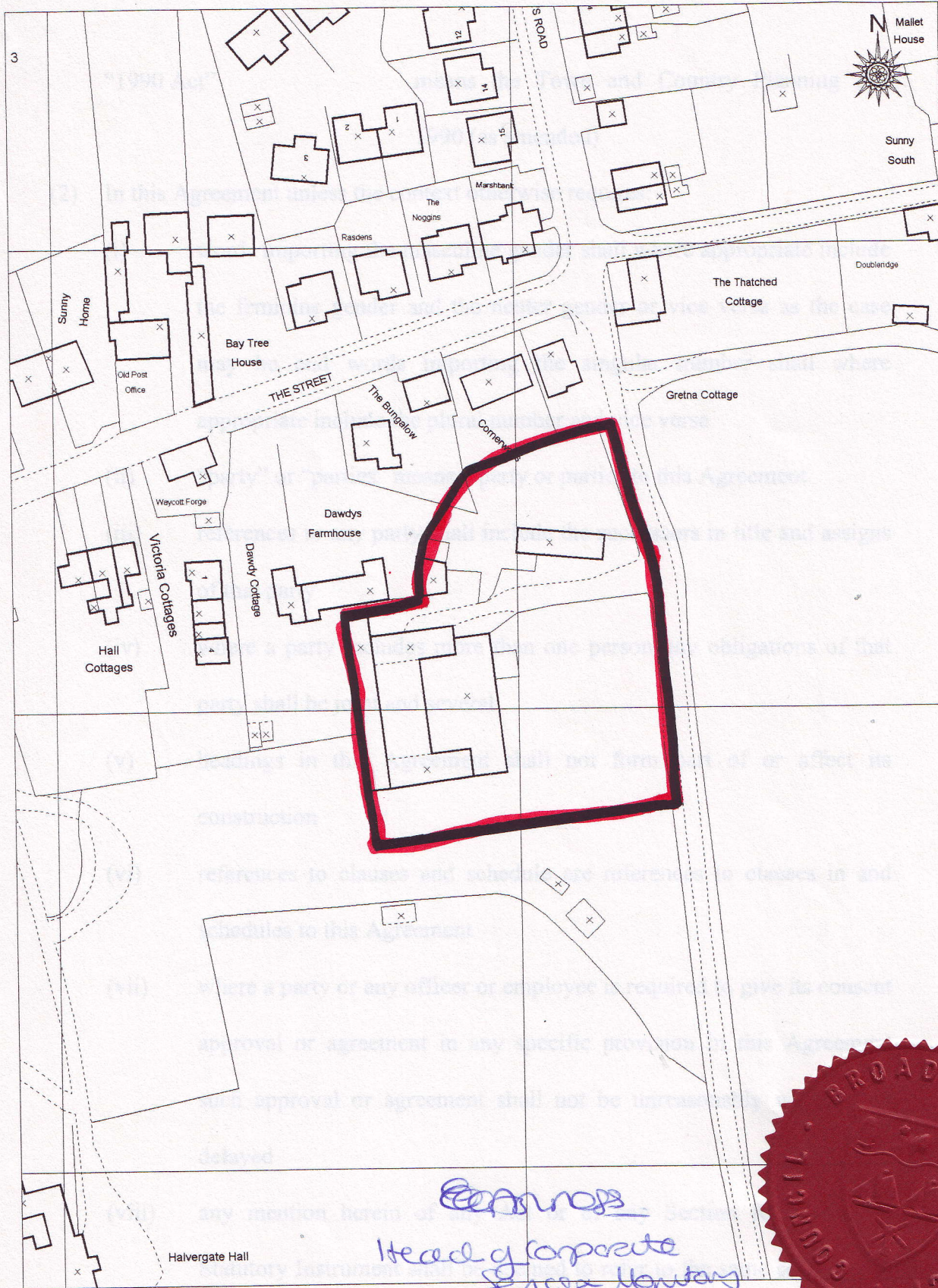
(A) (1) In this Agreement unless the context otherwise requires the following
words shall have the following meanings:-

“Application” means the application for planning permission
to develop the Land and dated 5th April 2001
submitted to the Council in accordance with the
Application plans and other materials deposited
with the Council and bearing reference no
01.0431


“Development” means the development permitted by the
Permission

“Director” means the Council’s Strategic Director
(Community Services) or other officers of the
Council acting under his hand

“Permission” means the detailed planning permission granted
pursuant to the Application together with any
renewal or modification thereof



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“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
- (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 a Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated
- (C) The Owner is registered as Proprietor with absolute title of the land (hereinafter called "the Land") shown for the purpose of identification only edged red on the plan annexed hereto as the same is registered with Title Number NK 25862 subject to the matters contained in the Charges Register for that Title Number but otherwise free from encumbrances
- (D) The Mortgagee is the registered proprietor of a Registered Charge dated the twelfth day of December 2000 and registered on the twelfth day of December 2001
- (E) Having regard to the Development Plan and other material considerations the Council and the County 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 and may 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 Developers 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

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

1.10.1 the Permission is quashed revoked or otherwise withdrawn; or

1.10.2 planning permission on the Land is granted subsequently and implemented for proposals incompatible with the Development and/or the purposes of this Agreement

1.11 NOTICES

1.11.1 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

1.11.2 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 Strategic Director (Community Services) Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich
The Owner	Halvergate Hall, Halvergate, Norfolk, NR13 3AJ

The Mortgagee

Birmingham Securities Processing Centre P.O.Box 8042

Birmingham B2 4NQ

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 Owner HEREBY FURTHER AGREES 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 Developers 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 the time that payment is made under 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 between 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 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 Owner hereby covenants and undertakes 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 Mortgages

- 5.2 The Mortgagees hereby acknowledge the terms of this Agreement and agree not to develop pursuant to the Permission any part of the Land in which they have an interest otherwise than in accordance with the terms of this Agreement

The Obligations

6. AFFORDABLE HOUSING

- 6.1 Not to permit the occupation of any houses on the Land constructed pursuant to the Permission until such time as the Owner has paid to the Council the commuted payment sum of £20,293.00 in lieu of the provision of Affordable Housing on the Land
- 6.2 The Council hereby covenants with the owner to make repayment to the Owner of such part of the commuted payment sum required to be paid in accordance with Clause 6.1 hereof plus interest at the rate of the Base Lending Rate from time to time of Barclays Bank PLC if the Council has failed to spend the commuted sum payment for affordable housing as aforesaid within five years of the date of receipt of the sum

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

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



Witness
Head of Corporate Service
& Monitoring Officer

EXECUTED AS A DEED by)
CHASE (CAISTER) LTD.)

Reel
JW Chase

SIGNED AS DEED by)

IN WITNESS WHEREOF this document which is intended to take effect as a deed has been duly executed by a duly authorised Official of the Bank as Attorney of the Bank the day and year first above written.

SIGNED AND DELIVERED

by

JEREMY DAVID LAMPITT

Attorney of
HSBC Bank plc

in the presence of:

[Signature]

Witness:

Address:

Signed

Occupation:

Tim Dickson
HSBC BANK PLC
Birmingham Securities Processing Centre
DX 720970
BIRMINGHAM 48
BANK OFFICIAL