## **BROADLAND DISTRICT COUNCIL**

- and -

# WESTON PARK GOLF CLUB LIMITED

- and -

# **GOYMOUR PROPERTIES LIMITED**

- and -

# NORFOLK DINOSAUR PARK LIMITED

- and -

LLOYDS 788 BANK PLC

- and -

ROYAL NORWICH GOLF CLUB

A G R E E M E N T
Under Section 106 of the
Town and Country Planning Act 1990
relating to land at Weston Park Golf Club, Weston Park, Lenwade, Norfolk

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

### BETWEEN:

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, Yarmouth Road, Thorpe St Andrew, Norwich NR7 0DU ("the Council"); and
- (2) **WESTON PARK GOLF CLUB LIMITED** (whose Company Registration Number is 3254087) and whose registered address is at The Grove, Banham, Norfolk, NR16 2HE ("the First Landowner"); and
- (3) **GOYMOUR PROPERTIES LIMITED** (whose Company Registration Number is 00242734) and whose registered address is at The Grove, Banham, Norfolk, NR16 2HE ("the Second Landowner"); and
- (4) NORFOLK DINOSAUR PARK LIMITED (whose Company Registration Number is 3150726) and whose registered address is at The Grove, Banham, Norfolk, NR16 2HE ("the Third Landowner"); and
- (5) **LLOYDS FSB BANK PLC** (whose Company Registration Number is 2065) and whose registered address is c/o Pendeford Securities Centre, Pendeford Business Park, Wobaston Road, Woverhampton WV9 5HZ ("the Mortgagee"); and
- (6) **SOHN GRANGER BROWN** of Rose Cottage, 32 West End, Old Costessey, Norwich, Norfolk, NR8 5AG and DAVID JAMES BRUCE COVENTRY of 12 Greenfields Road, Dereham, Norfolk, NR20 3TE and ALAN EDWARD HOWARD of 14 Upton Road, Norwich, Norfolk, NR4 7PA as trustees of ROYAL NORWICH GOLF CLUB of Drayton High Road, Hellesdon, Norwich ("the Purchaser");



together "the Parties"

#### RECITALS

- (1) The Council is the local planning authority for the purposes of the Act for the area in which the Golf Club Site is situated.
- (2) The Owners are the freehold owners of the Golf Club Site registered at H M Land Registry under title numbers NK186312, NK349507, NK186253 and NK442247.
- (3) The Purchaser has an interest in the Golf Club Site by way of a contract for sale dated 26 January 2015 and is entering into this Deed for the purposes of consenting to the covenants to be given by the Owners having regard to the fact that it will be bound by the terms of this Deed if it completes the purchase
- (4) The Mortgagee has an interest in the Golf Club by way of a Registered Charge dated 23 February 2010 "(the Registered Charge") affecting

title numbers NK186312, NK349507 and NK186253 and has agreed to enter into this Deed in the manner and for the purposes set out below

(5) The Council has resolved to grant the Golf Club Planning Permission subject to the prior completion of this Deed.

# NOW THIS DEED WITNESSES AS FOLLOWS:

## 1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"

The Town and Country Planning Act 1990 as amended

"Commencement"

The date on which any material operation as defined in Section 56(4) of the Act forming part of the Golf Club Development begins to be carried out other than operations consisting of archaeological investigations or investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions erection of any temporary means of enclosure the temporary display of site notices or advertisements and "Commence" and "Commenced" shall be construed accordingly

"Owners"

The First Landowner, the Second Landowner and the Third Landowner

"Plan 1"

The plan attached to this Deed at the First Schedule and marked Plan 1

"Plan 2"

The plan attached to this Deed at the First Schedule and marked Plan 2

"the Golf Club Application" The application validated on 30 October 2015 for outline planning permission for the part demolition of the existing club house and erection of new extension, erection of new green keepers facility, practice range building and partial conversion of existing residential bungalow to starters pavilion and staff accommodation, provision of new access road and expansion of the golf course from 18 holes to 27 holes including land currently in agricultural use and associated works plus the dismantling and repositioning of the listed Lenwade Lodge (West Lodge) gates submitted to the Council and allocated reference number 20151771

"Golf Club Development" The development of the Golf Club Site to be carried out pursuant to the Golf Club Planning Permission

"Golf Club Planning Permission"

The planning permission to be granted subject to conditions by the Council or on appeal to the Secretary of State (or the successor in title to his statutory functions) pursuant to the Golf Club Application for the Golf Club Development

"Golf Club Site"

The land known as Weston Park Golf Club, Weston Park, Lenwade, Norfolk shown edged red on Plan 1 against which this Deed may be enforced

"the Owners"

The First Owner, the Second Owner, and the Third Owner

"the Residential Application" The application validated on 30 October 2015 for outline planning permission for the erection of up to 1000 dwellings including up to 2ha to be reserved for a primary school site and detailed proposal for the first phase of 110 dwellings and associated infrastructure plus off-site highway works to serve phase one and the overall scheme submitted to the Council and allocated reference number 20151770

"Residential Development" The development of the Residential Site to be carried out pursuant to the Residential Planning Permission

"Residential Planning Permission"

The planning permission to be granted subject to conditions by the Council or on appeal to the Secretary of State (or the successor in title to his statutory functions) pursuant to the Residential Application for the Residential Development

"Residential Site"

The land known as the Royal Norwich Golf Club shown edged red on Plan 2 against which this Deed may be enforced

"Practical Completion"

The issue of a certificate of practical completion by or on behalf of the Owners and "Practically Complete" shall be construed accordingly

# 2. CONSTRUCTION OF THE DEED

- 2.1 Where in this Deed reference is made to any clause paragraph schedule or recital such reference unless the context otherwise requires is a reference to a clause paragraph schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless an express provision indicates otherwise.
- 2.5 A reference to an Act of Parliament shall include any later modification extension or re-enactment of that Act of Parliament and shall include all statutory instruments orders and regulations made under that Act of Parliament or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any persons deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 2.7 Any approval consent certification direction or permission to be or made by the Council shall not be unreasonably made withheld or delayed

## 3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and in so far as any provision contained herein is not a planning obligation it is made pursuant to section 111 of the Local Government Act 1972 and all other enabling powers.
- 3.2 The covenants restrictions and requirements contained in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council

### COVENANTS

4.1 With effect from Commencement of the Residential Development (or earlier where the context requires) the Owners covenant with the Council to comply with the obligations and restrictions contained in this Deed.

- 4.2 The Owners further covenant that they are the freehold owners of the Golf Club Site and have full power to enter into this Deed and that apart from the Registered Charge the Golf Club Site is free from mortgages charges or other encumbrances and that there is no person having any interest in the Golf Club Site other than as notified in writing to the Council's solicitors prior to the date hereof.
- 4.3 The Council covenants to comply with the obligations and restrictions contained herein.

### LIABILITY

- 5.1 No person shall be liable for any breach or non-performance of the covenants contained herein in respect of the whole or any part of the Golf Club Site in which they no longer have a legal interest save in respect of any prior subsisting breach.
- Any liability of the Purchaser in respect of any breach of the obligations of the Purchaser under this Deed is limited to the liquidated value of the assets of the Royal Norwich Golf Club and nothing in this Deed shall entitle any of the other Parties or any other person to pursue, exercise or enforce any right or remedy against the personal effects, estate, property or assets of the said John Granger Brown, David James Bruce, Coventry and Alan Edward Howard or any other trustee from time to time of the Royal Norwich Golf Club or against any assets for the time being vested in them or any of the which are not assets of the Royal Norwich Golf Club

A Park

- 5.3 The obligations which the Purchaser undertake can only be enforced against them jointly and not individually and then only in their capacity as trustees of the Royal Norwich Golf Club and a trustee who retires from being a trustee of the Royal Norwich Golf Club will after his retirement no longer be liable for any breach of an obligation under this Deed whether that breach occurs before or after the retirement.
- 5.4 The Council shall not be liable to any person under this Deed after that person has parted with all interest in the Golf Club Site save in respect of any liability arising prior thereto.
- 5.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Golf Club Site in accordance with a planning permission (other than the Golf Club Planning Permission or any renewal thereof or any Reserved Matters approval with respect thereto) granted after the date of this Deed in respect of which development this Deed will not apply.
- 5.6 The covenants, restrictions and requirements contained in this Deed shall not be enforceable against any statutory undertaker or other person who acquires any part of the Golf Club Site or an interest in it for the purposes of the supply of electricity gas water

- telecommunications or highways in connection with the Development of the Site.
- 5.7 In the event of the Golf Club Planning Permission being quashed revoked or withdrawn before the Commencement of the Golf Club Development or expiring and not being renewed without the Golf Club Development having been Commenced the obligations under this Deed shall cease absolutely
- 5.8 In the event of determination of this Deed under Clause 5.7 above the Council shall upon request procure that any entry referring to this Deed in the Register of Local Land Charges shall be removed
- Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed which shall continue in full force and effect.
- 5.10 No waiver (whether express or implied) by the Council of any breach or default by the Owners or their successors in title in performing or observing any of its obligations under this Deed shall constitute a continuing waiver or prevent the Council from enforcing those obligations or from acting upon any subsequent breach or default

#### 6. DISPUTES

- 6.1 Wherever there is a dispute between the Parties arising from the terms of this Deed which shall not be resolved within two months of any of the Parties having notified the others that any such dispute exists then any of the Parties may require the dispute to be determined by a professional person having at least ten years professional standing in a relevant professional discipline ("the Professional") which Professional shall be agreed between the Parties or in default of agreement appointed by the President for the time being of the Royal Institution of Chartered Surveyors and:
  - 6.1.1 the Professional shall act as an expert;
  - 6.1.2 the Professional shall afford the Parties to the dispute an opportunity promptly to make representations in writing and if they so direct to make submissions on one another's representations:
  - 6.1.3 the Professional shall be able to stipulate periods of time for the making of such submissions and representations;
  - 6.1.4 the Professional shall be bound to have regard to the said submissions and representations;
  - 6.1.5 the Professional shall have the power to award the costs of the determination in favour of any of the Parties at the expense of any other Party in the event that the Professional shall consider that the said other Party has acted unreasonably and the extent

- of the costs awarded shall reflect the extent and effect of said unreasonable behaviour:
- 6.1.6 the Professional shall be limited in his findings to the determination of the dispute put by any Party;
- 6.1.7 the findings of the Professional shall save in the case of manifest material error be final and binding on the Parties save that the Parties retain the right to refer to the Courts on a matter of law; and
- 6.1.8 the Professional shall be required to issue his decision as soon as reasonably practicable.
- 6.2 If for any reason the Professional shall fail to make a decision and give notice thereof within two months of the deadline for submissions and representations given by the Professional in clause 6.1.3 above any of the Parties may apply to the President or the Vice President for the time being of the Royal Institution of Chartered Surveyors for a substitute to be appointed in his place which procedure may be repeated as many times as necessary;
- 6.3 Nothing in this clause 6 shall be taken to fetter the ability of the Council to carry out their statutory functions as local planning authority with powers to enforce breaches of planning control arising from any breach of any of the obligations entered into by the Owners in this Deed or any other planning breach in respect of the Site.
- 6.4 no party shall be obliged by virtue of this clause 6 to engage in the resolution envisaged by this clause 6 where the issue relates to the non-payment of financial contributions; and
- 6.5 the Parties shall comply in full with any award decision or direction made by the Professional including any as to costs.

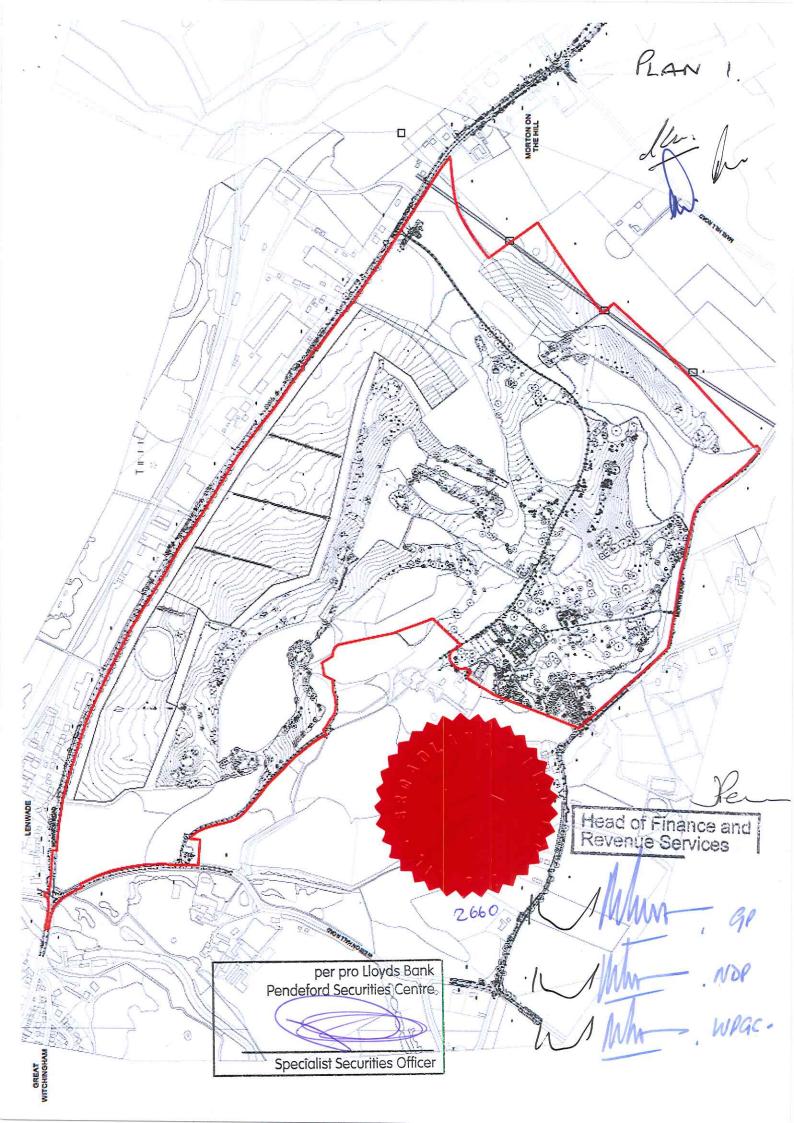
#### 7 MISCELLANEOUS

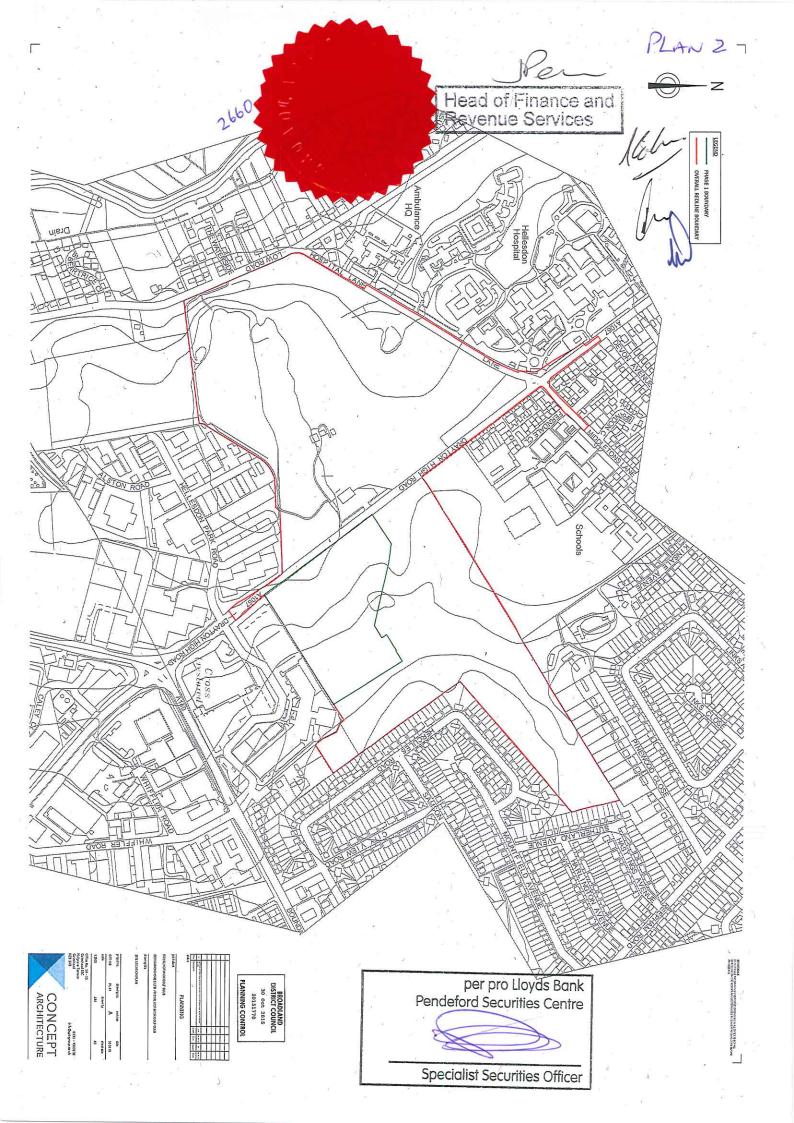
- 7.1 Immediately on completion of this Deed the Purchaser shall pay the Council's reasonable legal costs properly incurred in connection with the negotiation preparation and execution of this Deed.
- 7.2 The Owners shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Golf Club Site at all reasonable times for the purpose of verifying whether or not any obligation arising pursuant to this Deed has been performed or observed.
- 7.3 In the event that the Owners dispose of their interest in the Golf Club Site or any part thereof it shall within twenty eight days of such disposal give written notice of the name and address of its successors in title to the Council together with sufficient details of the part of the Golf Club Site included in the disposal to allow its identification.

- 7.5 The Owners agree to give the Council notice in writing no later than 28 days prior to the anticipated Commencement of the Golf Club Development PROVIDED THAT default in giving the requisite notice shall not prevent Commencement of Golf Club Development occurring or the triggering of obligations contained herein
- 7.6 Subject to Clause 2.6 above no provisions of this Deed shall be construed as creating any rights enforceable by a third party as defined by the Contracts (Rights of Third Parties) Act 1999 and any third party rights as may be implied by law or are deemed to be enforceable by the Contracts (Rights of Third Parties) Act 1999 are hereby excluded to the fullest extent permitted by law.
- 7.7 Save as provided for below any notice or communication to be given pursuant to this Deed shall be in writing and shall either be delivered personally or sent by registered post or recorded delivery service. The address for service on the Parties shall be those stated in this Deed or such other address in England for service as the Party to be served may have previously notified the other Parties in writing.
- 7.8 This Deed shall be registered as a local land charge by the Council.
- 7.9 This Deed is governed by and interpreted in accordance with the law of England
- 8. MORTGAGEE'S CONSENT
- 8.1 The Mortgagee consents to this Deed so that its interest in the Golf Club Site shall be bound by the obligations contained in this Deed and that its security over the Golf Club Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall not be required to observe or perform the obligations in this Deed unless it takes possession of the Golf Club Site BUT FOR THE AVOIDANCE OF DOUBT any successor in title to the Mortgagee shall also be bound by this Deed as a successor in title to the Owners.

# FIRST SCHEDULE

the Plans





## SECOND SCHEDULE

# **Owners Obligations**

The Owners hereby covenant with the Council as follows:

- PROVISION OF IMPROVED GOLFING FACILITIES
- 1.1. To Commence the Golf Club Development within 18 months of the Commencement of the Residential Development (for the avoidance of any doubt this provision will not prevent the Commencement of the Golf Club Development in advance of the Commencement of the Residential Development)
- 1.2. To use reasonable endeavours to Practically Complete such parts of the Golf Club Development within 5 years of the date of Commencement of the Golf Club Development in accordance with paragraph 1.1 above that are reasonably required to increase the playing capacity at the Golf Club Site from 18 holes to 27 holes.
- 1.3. If the conditions at either paragraph 1.1 or 1.2 above are not met, then the Owners shall within 2 months of that failure submit a revised scheme for improved golfing provision at the Golf Club Site for the approval of the Council which is in the opinion of the Owners financially viable and capable of overcoming the technical issues that may be affecting the delivery of that part of the Golf Club Development required to increase the playing capacity at the Golf Club Site from 18 holes to 27 holes within such timescales as may be agreed in the revised scheme

IN WITNESS whereof the parties hereto have executed this document as a Deed on the day and year first before written.

THE COMMON SEAL OF **BROADLAND DISTRICT COUNCIL** was affixed in the presence of: Head of Finance and Revenue Services Authorised Signatory: EXECUTED as a DEED by WESTON PARK GOLF CLUB LIMITED in the presence of: Director Director / Secretary EXECUTED as a DEED by **GOYMOUR PROPERTIES** LIMITED in the presence of:

Director

Director / Secretary

| NORFOLK DINOSAUR PARK ) LIMITED in the presence of:   |
|---|
| Director  |
| Director / Secretary  EXECUTED as a DEED by  LLOYDS TSB BANK PLC  in the presence of:   |
| Director  SIGNED AS A DEED  BY RICHARD DAVID JONES  |
| as authorised signatory for Lloyds Bank plc in the presence of (signature of witness)  Wobaston Rd, Wolverhampton WV9 5HZ   |
| Witness name:  Witness Address:  Witness occupation:  EXECUTED as a DEED by Allian Roy Nove  JOHN GRANGER BROWN  in the presence of:  EGBellow  EDWARD EFECUANY  Witness Address:  Birlatts M. P., Kingsher House  I Gildes Way Monsiel, NR3 Turs  Salveille. |

EXECUTED as a DEED by DAVID JAMES BRUCE COVENTRY in the presence of: Witness: Witness name: Witness Address: Witness occupation: EXECUTED as a DEED by ALAN EDWARD HOWARD in the presence of: Witness: Witness name:

Witness Address:

Witness occupation: