

DATED 14<sup>th</sup> July 1998

NORFOLK COUNTY COUNCIL

- and -

FIELDMATTER LIMITED

- and -

PAUL WILLIAM GEE

- and -

MICHAEL ALFRED COE

---

A G R E E M E N T

Under Section 106 of the Town  
and Country Planning Act 1990  
relating to land at Cantley

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Director of Law and Administration  
Norfolk County Council  
County Hall  
Martineau Lane  
Norwich  
NR1 2SH

THIS AGREEMENT is made the 14<sup>th</sup> day of July One thousand nine hundred and ninety-eight

BETWEEN NORFOLK COUNTY COUNCIL ("the County Council") of County Hall Martineau Lane Norwich of the first part MICHAEL ALFRED COE of 22 Station Road Hopton Great Yarmouth Norfolk NR31 9BE and PAUL WILLIAM GEE of 70 Corton Road Lowestoft Suffolk NR32 4PP trading as Gee and Coe (Builders) ("the Developers") FIELDMATTER LIMITED ("the Owners") whose registered office is at 22 Station Road Hopton Great Yarmouth Norfolk and LLOYDS BANK PLC ("the Mortgagee") of 60 London Road North Lowestoft Suffolk

WHEREAS:-

- (1) The Owners are the owners in fee simple in possession of the land shown edged red on the attached plan ("the Land")
- (2) The Land is charged to the Mortgagee by a registered charge dated 5 September 1997
- (3) The County Council is a Local Planning Authority within the meaning of the Town and Country Planning Act 1990 ("the Act") and the Local Highway

Authority within the meaning of the Highways Act 1980 for the area within which the Land is situated

- (4) The Developers have made application to the Broadland District Council (reference 970839) dated 21st July 1997 ("the Application") in accordance with the Act and the Orders and Regulations for the time being in force thereunder for planning permission to develop the Land by the erection of five detached houses ("the Development")
- (5) There are highway objections to the Development which can only be overcome by the works specified in Schedule 1 hereto ("the Works")
- (6) The County Council are satisfied that this agreement will be for the benefit of the public
- (7) The obligations created by this Deed are planning obligations within the meaning of Section 106 of the Act (as amended)
- (8) The obligations created by this Deed are enforceable by the County Council

N O W THIS DEED WITNESSETH as follows:-

1. This Agreement is made in pursuance of Section 106 of the Act Section 111 of the Local Government Act 1972 Section 278 of the Highways Act 1980 and all other enabling powers
2. The Owners and the Developers hereby jointly and severally covenant with the County Council that in the event of planning permission being granted in respect of the Application:-
  - (i) no part of the Development shall be brought into use until the completion (at the expense of the Developers) of the Works to the reasonable satisfaction of and in accordance with the reasonable requirements and specifications of the County Council
  - (ii) no part of the Works shall be commenced unless at least 28 days before the commencement of the Works they have provided a Bond of Surety with an Assurance Company Guarantee Society Bank or like body approved by the County Council or have deposited cash with the County Council in the total sum of THIRTY TWO THOUSAND POUNDS as a guarantee for the due performance by the Developers of the covenant in 2(i) such sum to be reviewed if the Works have not been completed within twelve months of the date of this Agreement and thereafter at 12 monthly

intervals and amended to such sum as the County Council may reasonably determine

3. The Owners hereby covenant with the County Council that they will upon completion of the Works and at no cost to the County Council dedicate to the County Council the land shown coloured pink on the attached plan
4. The Developers hereby jointly and severally covenant with the County Council that upon adoption of the Works they will pass to the County Council copies of all "as built" drawings documents and maintenance records for the Works in a form and reasonable quantity to be approved by the County Council such approval not to be unreasonably withheld
5. The Developers hereby jointly and severally covenant with the County Council that they will comply with any reasonable request of the County Council the purpose of which is to ensure that the County Council meet their obligation under Section 59 of the New Roads and Street Works Act 1991 in respect of the Works
6. The Developers hereby jointly and severally covenant with the County Council that they shall (a) obtain (at no cost to the County Council) all necessary statutory consents orders licences and the like prior to the commencement of the Works and (b) supply to the County Council such information as the County

Council require in order to maintain their obligations under Part III of the New Roads and Street Works Act 1991

7. The Developers hereby jointly and severally covenant with the County Council that they will reimburse the County Council (a) any compensation properly paid by the County Council under Parts I and II of the Land Compensation Act 1973 or Regulations made thereunder as a result of the carrying out of or use of the Works and (b) any damages for nuisance properly paid by the County Council as a result of the carrying out of use of the Works
8. The County Council hereby agree to the Works being carried out by the Developers or by a contract introduced by the Developers subject to the conditions set out in Schedule 2 and such other reasonable conditions as the County Council may from time to time consider appropriate
8. It is hereby agreed that on the date that completion of the Works shall be certified pursuant to Paragraph 8 of Schedule 2 then the amount of the Bond as set out in Clause 2(ii) of this Agreement shall be reduced by 90% and the remaining 10% shall be discharged on the first anniversary of such certificate provided that any identified remedial works required under Paragraph 9 of Schedule 2 have been completed in accordance with the Agreement or later upon the satisfactory completion of the remedial works

10. No waiver (whether express or implied) by the County Council of any breach of detail by the Developers or their successors in title in performing or observing any of the terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the terms and conditions or from acting upon any subsequent breach or default in respect thereof by the Developers or their successors in title
11. The Owners hereby warrant that they have full power to enter into this Agreement and that there is no person having any charge over or any interest in the Land other than those entering this Agreement binding upon the Land and all estates and interests therein
12.
  - (1) The parties 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
  - (2) If the matter is not resolved through negotiation 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 for Dispute Resolution
  - (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 shall be referred 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

13. This document is executed as a Deed and is delivered on the date first before written
14. The expressions "the County Council" "the Owners" "the Developers" and "the Mortgagee" shall include their respective successors and assigns as appropriate within the terms of Section 106 of the Act



## SCHEDULE 1

- (i) The widening of the carriageway of Burnt House Road to provide a 5.0 metre carriageway along the western frontage of the Land
- (ii) The provision of kerbing along the western frontage of the Land and along the transition by the "Oaks"
- (iii) The highway improvements in (i) and (ii) above shall be drained by means of gullies which shall discharge to an outfall or soakaways to be approved by the County Council
- (iv) The provision of two ramped footway connection to the existing tarmac footpath on the western side of Burnt House Road together with suitable barriers adjacent to the carriageway
- (v) Any necessary statutory undertaken works
- (vi) Any necessary ancillary works

## SCHEDULE 2

- (1) The name of any contractor introduced by the Developers shall be notified in writing to the County Council not less than twenty-eight days before the commencement of the Works
- (2) The Developers shall only be entitled to introduce contractors who are specifically approved by the County Council such approval not to be unreasonably withheld or delayed
- (3) The Developers shall upon receiving a written request so to do produce to the County Council for inspection any contract documents in respect of the Works
- (4) (a) The Works shall be carried out:-
  - (i) In accordance with a timetable to be approved by the County Council before the commencement of the Works such approval not to be unreasonably withheld or delayed
  - (ii) Under the supervision of the County Council
  - (iii) In accordance with the reasonable requirements and specifications of the County Council

- (b) The Works shall not be commenced until the Developers have received from the County Council a written authorisation to commence the Works such authorisation not to be unreasonably withheld or delayed
- (5) (a) The Developers shall be responsible for producing contract drawings for the Works
- (b) The contract drawings shall require the approval of the County Council (such approval not to be unreasonably withheld or delayed) prior to the commencement of the Works or where the Developers propose to introduce a contractor prior to any arrangements being entered into between the Developers and their contractor
- (6) During the carrying out of the Works the Developers shall provide free of charge within the site or in its immediate vicinity a suitable office for use by the County Council for the purpose of the Works
- (7) The Developers shall be responsible for ensuring that any requirements of statutory undertakers are met prior to the commencement of the Works and the cost of any works required by the statutory undertakes shall be met in full by the Developers

- (8) The Works shall be completed to the reasonable satisfaction of the County Council who shall give the Developers a written certificate to that effect as soon as shall be reasonably possible after the completion of the Works
- (9) The Developers shall be responsible for the execution of all works of repair amendment reconstruction rectification and making good of defects as may be required in writing by the County Council during the period ending 12 months after the date of the certificate referred to in Paragraph 8 of this Schedule
- (10) The Developer shall be responsible for the execution of such additional works or works of amendment as may be required in writing by the County Council following the completion by the County Council of a Stage 3 Road Safety Audit in respect of the Works and which arise out of that Stage of the Audit and are notified to the Developer within 60 days after the date of the certificate referred to in Paragraph 8 of this Schedule and the terms of reference of the Road Safety Audit are those described in the Department of Transport's Safety and Traffic Department Standard HD 19/94 and Advice Note HA 42/94 or any similar procedures from time to time in force but substituting the County Council for any references therein to the Department of Transport
- (11) Nothing in this Schedule shall imply any obligation on the part of the County Council to the Developers or to any other person to ensure that the Works or any part or parts thereof are properly designed and constructed and the County

Council shall have no responsibility for producing any documentation for the Works including schedules designs calculation and contract drawings

- (12) (a) The County Council reserve the right to terminate forthwith in writing the arrangement whereby the Developers (or their contractor) carry out the Works if the conditions set out in this Schedule are not strictly complied with
- (b) Upon termination under Paragraph 12 (a) above the County Council shall be entitled to call in the Bond referred to in Clause 2(ii) for the purposes either of completing the Works or reinstating the site to its condition immediately prior to the commencement of the Works
- (13) In the event of the County Council terminating these arrangements they shall not be liable in any way for any direct or indirect loss resulting from termination
- (14) The County Council its servants and authorised agents shall at all times during the Works and the maintenance period referred to in Paragraph 9 above have access to the Works
- (15) (a) Throughout the execution of the Works the Developers shall insure against any damage loss or injury which may occur to any property or to any person by or arising out of the execution of the Works such insurance

to be effected with an insurer in terms approved by the County Council for FIVE MILLION POUNDS (£5,000,000) for any one claim

(b) Prior to the commencement of the Works the Developers shall forward to the County Council evidence of their insurance cover

(16) (a) A competent and authorised representative of the Developers shall be available throughout the carrying out of the Works

(b) Such authorised representative shall receive on behalf of the Developers direction from the County Council or the County Council's representative and shall be competent to determine the action required and act accordingly

(17) The Developers shall be responsible for the proper execution and maintenance of the Works and shall indemnify and keep indemnified the County Council against:-

(a) all losses and claims for injury or damage to any person or property whatsoever which may arise out of or in consequence of the execution and maintenance of the Works and

(b) all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto (This liability to

indemnify the County Council shall be reduced proportionately to the extent that the said loss injury or damage is proved to be contributed to by the act or neglect of the County Council or its servants)

(18) (i) The Developers shall pay to the County Council the following sums:-

(a) A legal and administration charge amounting to 2% of the Bond figure referred to in Clause 2(ii) of this Agreement (such sum to be paid upon completion of this Agreement)

(b) A sum to cover the actual staff costs (plus overheads) incurred by the County Council in supervising the carrying out of the Works (such sum to be paid on such date or dates as the County Council may specify)

(c) A sum to cover the actual costs (plus overheads) incurred by the County Council in checking the contract documents and drawings for the Works (such sum to be paid on such date or dates as the County Council may specify)

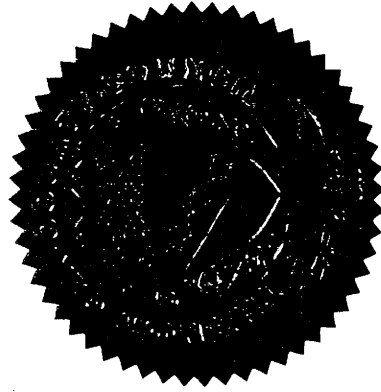
(d) A sum to cover the actual costs (plus overheads) incurred by the County Council in ascertaining the prevailing noise levels for eligible buildings within the meaning of the Noise Insulation Regulations 1975 insofar as they apply to the Works

- (ii) The County Council shall in respect of the sums to be paid by the Developers pursuant to Paragraph 17 above deliver to the Developers when so requested in writing by the Developers a breakdown of all costs incurred by the County Council to date



IN WITNESS whereof the County Council the Owners and the Mortgagee have  
has affixed their Common Seals and the Owners have signed this instrument as their  
deed the day and year first before written

THE COMMON SEAL of THE NORFOLK  
COUNTY COUNCIL was hereunto  
affixed in the presence of:-



*K. Beattie*

~~Assistant General Executive and Corporate Solicitor~~

~~on behalf of:~~

DIRECTOR OF LAW  
AND ADMINISTRATION

SIGNED as a DEED  
by the said PAUL WILLIAM GEE  
in the presence of:-

*Paul William GEE*

*Paul  
Giles  
Norfolk  
Solicitor*

SIGNED as a DEED  
by the said MICHAEL ALFRED COE  
in the presence of:-

*Michael Alfred COE*

*Paul  
Giles*

The COMMON SEAL of  
FIELDMATTER LIMITED  
was hereunto affixed in  
the presence of:-

Director

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke.

Secretary

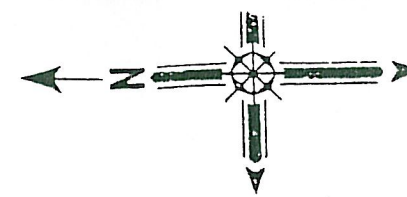
A handwritten signature in black ink, featuring a large 'C' and 'ae' at the end.

The COMMON SEAL of  
LLOYDS BANK PLC was  
hereunto affixed in the  
presence of:-

A faint, circular stamp or seal, possibly a company seal, located to the right of the text.







**Phase One**  
( 5no 4 Bed Cottages )

**Phase Two**  
( 5no 4 Bed Cottages )

**Phase Three**  
( 8no Semi-Detached  
Low Cost Cottages )

noted timber fences  
is and gravel boards.

be submitted to  
approval prior  
building works.

existing trees

existing trees ( indicated with dotted lines )  
ing frontage to plot 1, to improve visibility to  
driveway and to allow 2.0m wide grassed  
to new road.

All accesses shall be provided  
with suitable visibility splays  
along Burnt House Road.

Provide 2.0m high matching brick screen walls to plots  
4 and 6 ( screening rear gardens ).  
Capped with bullnosed shaped engineering bricks set upon  
two rows of plain tiles, projecting 50mm beyond the face  
of the wall, with a splayed cement fillet over,  
Build damp proof course at the base formed with two  
courses of red engineering bricks.

Where indiv  
off Burnt H  
spaces shall

existing  
tree

# **Site Layout Plan 1 : 500**

*John A. Cull*

*[Signature]*