

DATED 16 March

2004

BROADLAND DISTRICT COUNCIL

- AND -

GRAYS OF NORWICH LIMITED

-AND-

NORFOLK COUNTY COUNCIL

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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 The Winery Chapel  
Street Cawston

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steales  
2 The Norwich Business Park  
Whiting Road  
Norwich NR4 6DJ

RAB 4349-1221-9

THIS AGREEMENT is made the                      day of                      Two thousand and four  
BETWEEN

1. BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road Thorpe  
St Andrew Norwich in the County of Norfolk (hereinafter called “the Council”)
2. GRAYS OF NORWICH LIMITED of Unit 1 Beech Avenue Taverham Norwich  
NR8 6HW (“the Owner”)
3. NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich  
Norfolk (hereinafter called “the County”)

#### RECITALS

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

|                        |                                                                                                                                                                                               |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Affordable Units”     | those seven (7) units for rent to be constructed<br>within the land coloured yellow on the Plan and<br>that are intended to be occupied by people with<br>a Local Connection and Housing Need |
| “Application”          | the application for full planning permission to<br>develop the Land dated 15 <sup>th</sup> July 2002 and<br>bearing reference no 2002 1087                                                    |
| “Care Unit”            | a care unit comprising no more than thirty five<br>(35) bedrooms together with necessary and<br>ancillary facilities                                                                          |
| “Development”          | the development permitted by the Permission                                                                                                                                                   |
| “Free Market Dwelling” | a Residential Dwelling that is not an Affordable<br>Unit                                                                                                                                      |

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Highways Contribution”             | the sum of Six Thousand Seven Hundred and Fifty Pounds (£6,750) as increased by the Inflation Provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| “Housing Register”                  | means the register maintained by the Council pursuant to the Housing Act 1985                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| “the Industrial Units”              | the light industrial, office and storage units to be constructed on the area edged green on the Plan                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| “Inflation Provision”               | the increase (if any) in the RICS Building Cost Information Service All In Tender Price Index between the date of this Agreement and the date upon which a payment of money is made or play equipment provided in accordance with the requirements of the provisions of this Agreement                                                                                                                                                                                                                                                                                                                                                                                |
| “Local Connection and Housing Need” | means a person who has attained at least the age of 55 and who is entered on the Housing Register PROVIDED THAT where there is a person or persons on the Housing Register who reside in the parishes of Cawston and if no suitable person is available from the parishes contained in sub area 3 of the Broadland Housing Needs Survey 2002 and if no suitable person is available from the parishes in sub areas 1 4 and 5 of the Broadland Housing Needs Survey 2002 and if no suitable person is available from the parishes comprising the remainder of the district of Broadland then no other person shall be deemed to have Local Connection and Housing Need |



|                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Local Reference Rent”   | means the maximum rent which would be prescribed from time to time by the Housing Corporation if the Affordable Units were owned or managed by a social landlord registered pursuant to the Housing Act 1996 or in default thereof such other rent as the Council shall reasonably determine as affordable by persons with Local Connection and Housing Need<br>“Occupied/Occupation/Occupy” the first occupation for residential purposes of a Residential Dwelling or any part or parts thereof by one or more person |
| “Permission”             | the planning permission granted pursuant to the Application together with any renewal or modification thereof                                                                                                                                                                                                                                                                                                                                                                                                           |
| “the Plan”               | the plan annexed to this Agreement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| “the Play Equipment Sum” | the sum of ten thousand pounds (£10,000) as increased by the Inflation Provision                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| “Residential Dwelling”   | a dwelling forming part of the Development excluding any of the rooms in the Care Unit                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| “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 schedules 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 and the County are Local Planning Authorities for the purposes of the 1990 Act and the County is the Highway Authority within the meaning of the Highways Act 1980 (“the Highways Act”) for the area within which the Land is situated.
- (C) The Owner is the freehold owner of the site (herein 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 NK282028 subject to the matters contained in the Property and 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. GENERAL

- 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 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 and the County.
- 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 Owner 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:



NOTES  
The copyright of the design remains with  
PETER W. MOORE and may not be reproduced  
without prior written consent.  
All dimensions are to be checked on site.  
Do not scale from this drawing for constructional  
purposes.

*[Handwritten signature]*



| Date       | Revisions                          |
|------------|------------------------------------|
| C 11.07.02 | REVISION 10 - DISTANCE CHANGES     |
| B 25.02.02 | REVISION 9 - UNIT ADDED            |
| A 20.11.01 | REVISION 8 - PLANNING REQUIREMENTS |

**PETER W. MOORE**  
Architectural and Building  
Management Services

27 BANCROFT CLOSE  
STOKE HOLY CROSS  
NORWICH NR14 8LT

Telephone: 01508 494288

Client  
GRAYS OF NORWICH LIMITED

Job Title  
CONTINENTAL WINE EXPERTS  
LIMITED  
CHAPEL STREET · CAWSTON  
PROPOSED REDEVELOPMENT  
OF EXG BROWNFIELD SITE TO  
PROVIDE MIXED USE OF EM-  
PLOYMENT/RESIDENTIAL

Drawing Title  
INDICATIVE  
REVISED SITE LAYOUT

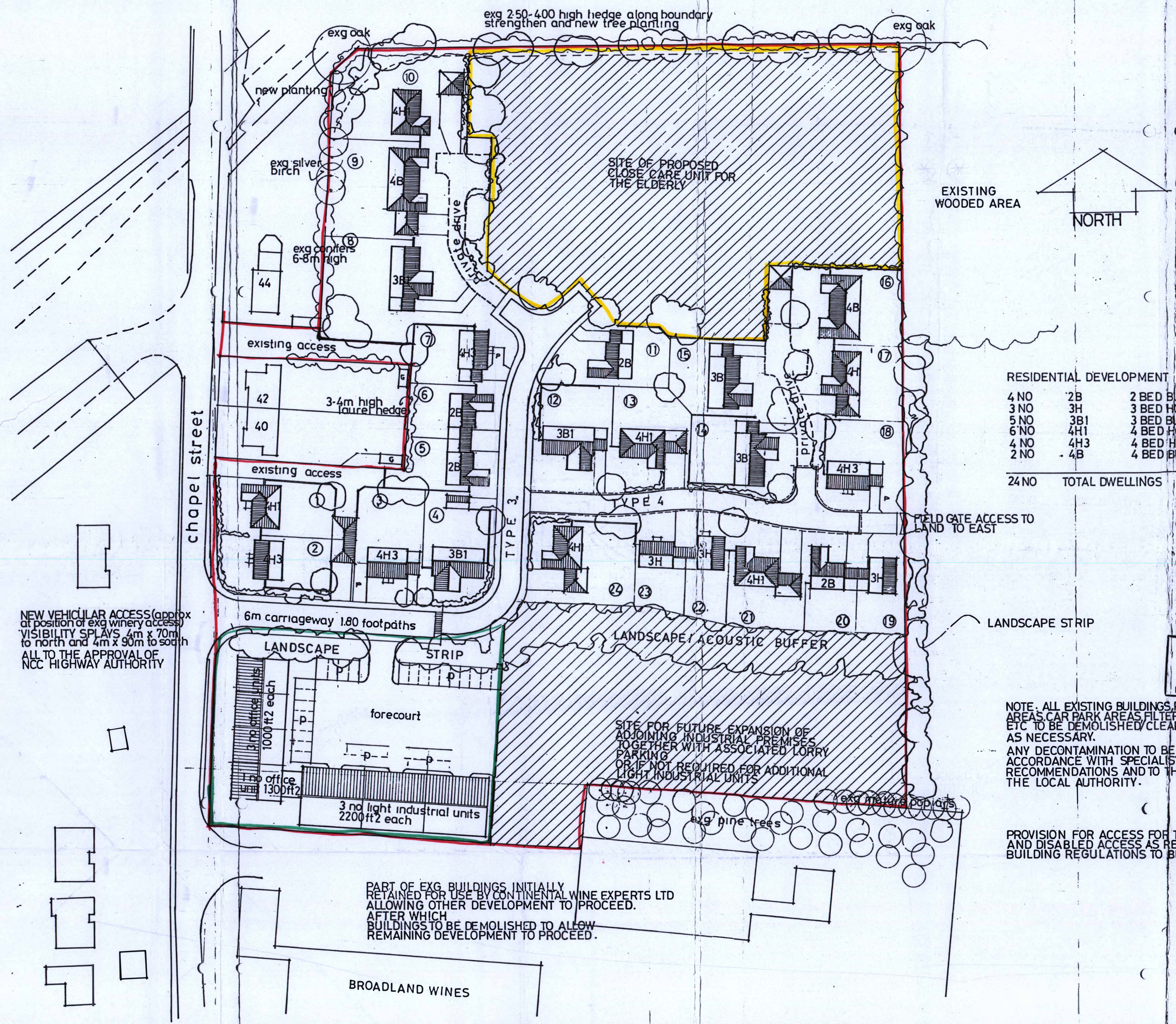
Scale  
1:500

Date  
Nov. 2001

Drawn by  
pwm

Org. No.  
01-1127-06

Rev.  
*[Signature]*



RESIDENTIAL DEVELOPMENT

|      |     |                         |
|------|-----|-------------------------|
| 4 NO | 2B  | 2 BED BUNGALOW DETACHED |
| 3 NO | 3H  | 3 BED HOUSE DETACHED    |
| 5 NO | 3B1 | 3 BED BUNGALOW DETACHED |
| 6 NO | 4H1 | 4 BED HOUSE DETACHED    |
| 4 NO | 4H3 | 4 BED HOUSE DETACHED    |
| 2 NO | 4B  | 4 BED BUNGALOW DETACHED |

24 NO TOTAL DWELLINGS

NOTE. ALL EXISTING BUILDINGS, ROADS, FORECOURT  
AREAS, CAR PARK AREAS, FILTER BEDS, DRAINAGE  
ETC TO BE DEMOLISHED/CLEARED IN STAGES  
AS NECESSARY.  
ANY DECONTAMINATION TO BE CARRIED OUT IN  
ACCORDANCE WITH SPECIALISTS REPORT AND  
RECOMMENDATIONS AND TO THE APPROVAL OF  
THE LOCAL AUTHORITY.

PROVISION FOR ACCESS FOR THE FIRE SERVICE  
AND DISABLED ACCESS AS REQUIRED BY THE  
BUILDING REGULATIONS TO BE PROVIDED.

NEW VEHICULAR ACCESS (approx  
at position of exg winery access)  
VISIBILITY SPLAYS 4m x 70m  
to north and 4m x 90m to south  
ALL TO THE APPROVAL OF  
NCC HIGHWAY AUTHORITY

PART OF EXG BUILDINGS INITIALLY  
RETAINED FOR USE BY CONTINENTAL WINE EXPERTS LTD  
ALLOWING OTHER DEVELOPMENT TO PROCEED.  
AFTER WHICH  
BUILDINGS TO BE DEMOLISHED TO ALLOW  
REMAINING DEVELOPMENT TO PROCEED.

BROADLAND WINES



(a) 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 or

(b) where liability would but for the provisions of clause 1.13 fall upon a person or body of a type referred to in that clause;

AND FURTHER PROVIDED THAT the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer shall not contribute an interest for the purposes of this clause.

1.9 This Agreement shall cease to have effect if the Permission is quashed revoked or otherwise withdrawn.

1.10 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 clause 1.11.

1.11 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows or as otherwise notified to the parties in writing:-

|             |                                                                                                     |
|-------------|-----------------------------------------------------------------------------------------------------|
| The Council | The Strategic Director of Community Services Thorpe<br>Lodge Yarmouth Road Thorpe St Andrew Norwich |
| The Owner   | Unit 1 Beech Avenue Taverham Norwich NR8 6HW                                                        |
| The County  | County Hall Martineau Lane Norwich Norfolk                                                          |

1.12 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.

1.13 1.13 None of the obligations in this Agreement will be binding against any owner or lessee of an individual Residential Dwelling or resident of the Care Unit or any person deriving title from them or a mortgagee or chargee in possession of the Affordable Units exercising a power of sale in respect of a default by the then owner of the Affordable Units or against any person



deriving title from such mortgagee or chargee PROVIDED THAT the mortgagee or chargee has:

- 1.13.1 Previously given notice to the Council of its intention to dispose of the Affordable Units ("the Sale Notice");
- 1.13.2 For a continuous period of two (2) calendar months ("the RSL Period") from the date of the Sale Notice has offered to sell the Affordable Units to a registered social landlord;
- 1.13.3 Provided that no registered social landlord has completed the purchase of the Affordable Units during the RSL Period has offered to sell the Property to the Council for a continuous period of one (1) month immediately following the RSL Period.
- 1.14 Whenever the consent or approval of the Council the County is required such consent or approval shall not be unreasonable withheld or delayed

## 2. FINANCE

- 2.1 The Owner 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 this 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 Owner and at no cost to the Council or the County.
- 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.
- 2.4 The Owner shall pay the County's reasonable legal costs on this Agreement

## 3. ARBITRATION



- 3.1 Any dispute or difference arising between the parties as a result of this Agreement shall be referred to the arbitration of a single arbitrator to be agreed upon between the parties, or failing agreement within fourteen (14) 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:-
- 3.2.1 the seat of the arbitration shall be at the Council's offices in Norwich;
- 3.2.2 where appropriate the Arbitrator may consolidate arbitral proceedings; and
- 3.2.3 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

- 4.1 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 Owner hereby covenants and undertakes with the Council and the County so as to bind the Land and each and every part thereof to carry out and comply with the obligations on its part set out in this Agreement.



The Council

- 5.2 The Council hereby covenants and undertakes with the Owner to carry out and comply with the restrictions on its part set out in this Agreement.

The County

- 5.3 The County hereby covenants and undertakes with the Owner to carry out and comply with the obligations on its part set out in this Agreement.

## 6. HIGHWAYS AND ACCESS OBLIGATIONS

- 6.1 The Owner shall pay the County the Highways Contribution prior to the Occupation of any Residential Dwelling
- 6.2 The County shall hold the Highways Contribution in an interest bearing account and apply it towards traffic management and footway works in Cawston
- 6.3 In the event that the Highways Contribution or any part of it has not been committed by the County for the use in clause 6.2 above within 5 years from the date of receipt of such sum then the County shall repay to the Owner named herein such unexpended parts of the Highways Contribution together with whatever interest has accrued thereon

## 7. EDUCATION OBLIGATIONS

- 7.1 The Owner shall pay to the County the sum of twenty eight thousand pounds (£28,000) as increased by the Inflation Provision in respect of the provision and improvement of educational facilities serving the Development (“the Educational Facilities Sum”) prior to the Occupation of the 6<sup>th</sup> Residential Dwelling
- 7.1.1
- 7.2 The County undertakes with the Owner that the Education Facilities Sum shall be for the provision and improvement of educational facilities serving the



## Development

- 7.3 The County hereby covenants with the Owner to make repayment to the Owner of any unexpended part of the Educational Facilities Sum required to be paid in accordance with Clause 7.1 hereof plus whatever interest has accrued thereon if the County fails to have committed the sum paid (by way of a contract to provide facilities or by the expenditure of the moneys) in the manner described in Clause 7.2 within ten (10) years of the date of receipt of the sum.

## 8. FIRE HYDRANT OBLIGATION

- 8.1 Prior to the Occupation of any Residential Dwelling the Owner shall provide and install one fire hydrant on a minimum 90 mm main on the Land.

## 9. LIBRARY OBLIGATION

- 9.1 The Owner shall pay to the County the sum of one thousand pounds (£1,000 ) as increased by the Inflation Provision in respect of the provision and improvement of library facilities in accordance with the requirements of the County prior to the occupation of the 6<sup>th</sup> Residential Dwelling

### 9.1.1

## 11. PLAY EQUIPMENT OBLIGATION

- 11.1 The Owner shall pay to the Council the Play Equipment Sum in lieu of providing play facilities as would otherwise be required to satisfy the Council's policy for recreational play and the Council shall be entitled to use the said sum for the provision of further play facilities within Cawston.



11.2 The Play Equipment Sum shall be payable in two instalments as follows:

11.2.1 Five thousand pounds (£5,000) shall be payable prior to Occupation of the first Residential Dwelling;

11.2.2 Five thousand pounds (£5,000) shall be payable prior to Occupation of the sixteenth Residential Dwelling.

11.2.3 .

11.3 The Council undertakes with the Owner that the Play Equipment Sum shall be applied for the provision of new recreational play facilities or the improvement of existing facilities in the parish of Cawston.

11.4 The Council hereby covenants with the Owner to make repayment to the Owner of the Play Equipment Sum required to be paid in accordance with clause 15.2 hereof (or the unexpanded part thereof) together with interest at the rate of the base lending rate from time to time of Barclays Bank PLC if the Council fails to have committed the sum paid (by way of a contract to provide facilities or by the expenditure of the moneys) to provide new play facilities or improve the existing facilities as aforesaid within five (5) years of the date of the receipt of the sum.

11.5 The Council hereby covenants to use its best endeavours to devise a scheme utilising the Play Equipment Sum to provide new play facilities or improve the existing facilities within the parish of Cawston within five (5) years of the date of receipt of the sum.

## 12 AFFORDABLE HOUSING OBLIGATIONS

12.1 Not to permit the Occupation of more than 12 Free Market Dwellings until such time as the Affordable Units have been constructed and are available for occupation

12.2 Subject to Clause 12.2.3:



12.2.1 The Owner shall not permit the occupation of any of the Affordable Units by any person or persons other than persons with Local Connection and Housing Need;

12.2.2 The Affordable Units shall only be occupied by persons nominated by the Council from the Housing Register in accordance with the provisions of the Schedule hereto PROVIDED ALWAYS THAT if the owner of the Affordable Units shall be at any time be a Registered Social Landlord within the meaning of the Housing Act 1996 it shall grant the Council 100% nomination rights in respect of first lettings and 75% nomination rights in respect of subsequent lettings.

12.2.3 If at any time there shall be no person with Local Connection and Housing Need then the Owner shall be free to let a vacant Affordable Unit to any person in accordance with the provisions of the Schedule.

12.3 The Owner shall ensure that the Affordable Units are let at all times at the Local Reference Rent

### 13. PHASING

13.1 No more than 12 Free Market Dwellings shall be Occupied until such time as a minimum of fifty percent (50%) of the Industrial Units have been constructed.

13.2 Unless otherwise agreed in writing no more than 18 Free Market Dwellings shall be Occupied until such time as the Care Unit the Affordable Units and such part or parts of the Industrial Units as remain to be constructed have all been constructed on the Land

### 14. OCCUPATION

14.1 The Owner shall notify the Council and the County within 7 days of the Occupation of each of the 1<sup>st</sup>, 6<sup>th</sup>, 12<sup>th</sup> and 18<sup>th</sup> Free Market Dwellings




## THE SCHEDULE

1. The Owner shall notify the Council forthwith upon receiving notice that any of the Affordable Housing Units are vacant or will be vacated by the current occupier at any time.
2. The Council shall nominate to the Owner prospective tenants with Local Connection and Housing Need.
3. The Owner shall offer to the person so nominated as assured tenancy of the dwelling unless the Owner shall reasonably satisfy the Council that the nominated person is unlikely to comply with reasonable terms of the tenancy or pay the rent reserved (or be eligible for housing or other benefits in respect thereof).
4. If the nominated person shall not accept a tenancy within a reasonable time or shall be rejected in accordance with paragraph 3 then the Council shall nominate further prospective tenants as required until such time as the Owner shall offer a tenancy to a person nominated by the Council PROVIDED ALWAYS THAT if no such tenancy has been granted to a Council nominee within six weeks of the Owner notifying the Council in accordance with paragraph 1 then the Owner shall be free to let such Affordable Unit to any other person

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 )

  
HEAD OF CORPORATE SERVICES  
& MONITORING OFFICER

TCI/090377.010045. 537684.02





SIGNED AS A DEED  
by GRAYS OF NORWICH LIMITED  
acting by [Name M J Gray] and  
[Name L A Gray]

Director

*[Handwritten signature in blue ink]*

Director/Secretary

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

*Keir W...*  
Head of Law

