

DATED

21<sup>st</sup> JUNE

2001

BROADLAND DISTRICT COUNCIL

- AND -

GERALD MARJORAM

-AND-

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NORFOLK NATURALISTS TRUST  
NORFOLK WILDLIFE TRUST

RG

-AND-

NATIONAL WESTMINSTER BANK PLC

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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 Holly Farm South  
Walsham

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



THIS AGREEMENT is made the 21<sup>st</sup> day of JUNE 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 GERALD MARJORAM of Holly Farm South  
Walsham Norfolk (hereinafter called "The Owner") of the second part and  
NATIONAL WESTMINSTER BANK PLC whose registered office is situate at  
135 Bishopgate London EC2M 3UR (hereinafter called "the Mortgagee") of the third  
part and <sup>NORFOLK</sup> ~~NOEFOLK~~ NATURALISTS TRUST of 72 Cathedral Close Norwich NR1  
4DF (hereinafter called "the Trust") of the fourth 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 4<sup>th</sup> June 1999  
submitted to the Council in accordance with the  
Application plans and other materials deposited  
with the Council and bearing reference no  
99.0630

"Development" means the development permitted by the  
Permission

"Director" means the Council's Director of Planning and  
Community Services or other officers of the  
Council acting under his hand



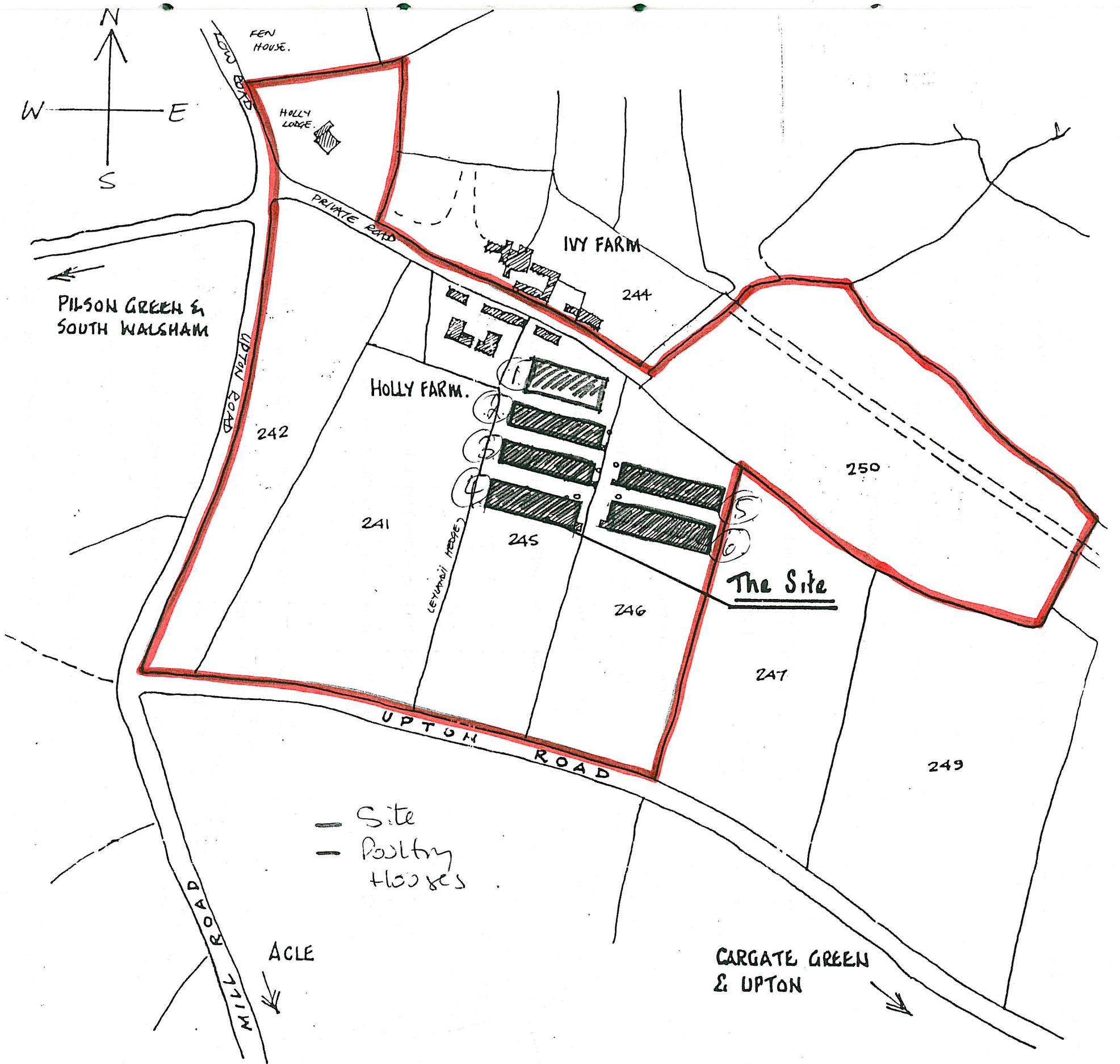
“Permission” means the detailed planning permission granted pursuant to the Application together with any renewal or modification thereof

“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





## LOCATION PLAN

PROPOSED NEW POULTRY UNIT AT  
HOLLY FARM, SOUTH WALSHAM, NR/3 LEL  
FOR MR. G.A. MARJORAM & SON.

SCALE 1:2500

MAY 1999.

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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 District Council is a Local Planning Authority for the purposes of the 1990 Act for the area within which the Site is situated
- (C) The Owner is seised of land situated at and known as Holly Farm South Walsham in the County of Norfolk (hereinafter called "The Land") shown for the purpose of identification only edged red on the plan annexed hereto (hereinafter called "The Plan") for an estate in fee simple absolute
- (D) The Land is charged by way of a legal mortgage dated the eleventh day of July One Thousand and Ninety One in favour of the Third Part
- (E) The Trust is the owner of the land edged blue on the Plan and is entering into this agreement for the sole purpose of permitting the Owner to install the monitoring equipment required to be installed as part of this agreement on its land and to permit retrieval of that equipment for the purposes of facilitating analysis
- (F) 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 and for the adjoining Broads Authority Area that provision should be made for regulating or facilitating the Development of the Site 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 District Council as such
- 1.5 The Owner hereby requests the Chief Land Registrar to register the terms of this Agreement at H M Land Registry against Title Number
- 1.6 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

1.7 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

1.8 This Agreement shall be governed by the laws of England

1.9 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 Site or the part of the Site 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 Site 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 Site is granted subsequently and implemented for proposals incompatible with the Development

#### 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 Director of Resources Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich
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The Mortgagees	Nottingham Security Centre Impact House Nottingham
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The Owner	Mr. G. A Marjoram Holly Farm South Walsham Norfolk NR13 6EL
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The Trust	72 Cathedral Close Norwich NR1 4DF
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- 1.11.3 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 Owner the Mortgagees and the Trust HEREBY FURTHER AGREE that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site 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 Owner 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 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 Mortgagees

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

##### The Trust



5.3 The Trust hereby covenants and undertakes with the Council and the Owner so as to bind its land to permit the Owner to undertake his obligations under the terms of this agreement and for no other purpose

## 6. The Obligations

6.1 Prior to the commencement of any development in relation to this application the Owner shall submit to the Council for approval a scheme for the annual monitoring of ammonium emissions at Grid References TG 38341 13500 and TG 38268 13397 from the Land and upon approval such scheme shall be deemed to be incorporated into the terms of this agreement as if it had been set out herein

6.2 Upon the commencement of the use of the building to be erected in accordance with the Permission the Owner shall take such steps as are necessary to ensure that the emissions of ammonium from the Land shall not exceed 44.5 Kg. of Nitrogen per hectare per year at Grid Reference TG 38341 13500 and shall take such steps as have been approved in accordance with Clause 6.1 above to monitor the emissions

6.3 The Owner shall submit the results of such monitoring as is required by Clause 6.2 hereof to the Director within ten days of the date on which the monitoring information is made available to him

6.4 The Trust hereby agrees to permit the Owner to have access to its land at such times as may be required to install such monitoring equipment as may be necessary to enable him to discharge his obligations under the terms of this agreement at Grid Reference TG 38341 13500 and thereafter to retrieve such equipment







SIGNED AS A DEED by

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On behalf of Norfolk Naturalists Trust

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*[Handwritten signature]*  
D. A. Davis

