

DATED 12th May 1995

NORFOLK COUNTY COUNCIL

- and -

GRANCHESTER INVESTMENT PROPERTIES COMPANY LIMITED

A G R E E M E N T

under Section 106 of the Town
and Country Planning Act 1990
relating to land at Sprowston

Nicholas Hancox
Director of Legal Services
Norfolk County Council
County Hall
Martineau Lane
Norwich
NR1 2SH

THIS AGREEMENT is made the 12th day of May One thousand nine hundred and ninety-five

BETWEEN NORFOLK COUNTY COUNCIL ("the County Council") of County Hall Martineau Lane Norwich of the first part and GRANCHESTER INVESTMENT PROPERTIES COMPANY LIMITED ("the Owners") of 3 Holgate Court Western Road Romford of the second part

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 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
- (3) Planning permission has been granted (reference 5/94/0717) ("the Application") in accordance with the Act and the Orders and Regulations for the time being in force thereunder for the development of the Land for retail development and modifications to Sainsbury's Homebase Garden Centre and car parking area ("the Development")

- (4) There are highway objections to the Development which can only be overcome by the works specified in Schedule 1 hereto ("the Works")
- (5) The County Council are satisfied that this agreement will be for the benefit of the public
- (6) The obligations created by this Deed are planning obligations within the meaning of Section 106 of the Act (as amended)
- (7) 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 Sections 38 and 278 of the Highways Act 1980 and all other enabling powers
- 2. The Owners hereby covenant with the County Council that:-
 - (i) no part of the Development shall be brought into use until the completion (at the expense of the Owners) 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 in the total sum of NINETY THOUSAND POUNDS (£90,000) as a guarantee for the due performance by the Owners 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 to pay to the County Council within 28 days of receiving written notice from the County Council so to do a sum calculated in accordance with the formula set out in Schedule 3 ("the Contribution") such sum to be applied by the County Council only towards the future costs incurred by the County Council in connection with the maintenance of the Works
4. 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 as public highway the land shown coloured pink on the attached plan

5. The Owners hereby 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
6. The Owners hereby covenant with the County Council that they shall obtain (at no cost to the County Council) all necessary statutory consents orders licences and the like prior to the commencement of any relevant part of the Works
7. (1) The Owners hereby covenant with the County Council that during the carrying out of the Development they shall comply and shall use their reasonable endeavours to ensure that their contractors and sub-contractors and suppliers comply with all such reasonable requirements of the County Council as relate to:-
 - (a) The routing of construction traffic visiting and leaving the Land
 - (b) The provision of any traffic signing and traffic control measures which the County Council considers reasonably necessary as a result of the carrying out of the Development or of any

statutory undertakers work necessitated by the Development or the Works

- (2) The Owners hereby further covenant with the County Council that during the carrying out of the Development except as may be agreed with the County Council they shall use all reasonable endeavours to ensure that construction traffic does not load or unload materials within the public highway at any time
- (3) The Owners hereby covenant with the County Council that during the carrying out of the Development they shall provide within the Land such wheel-washing equipment as is necessary to ensure that vehicles leaving the Land during the carrying out of the Development are in a clean condition to the reasonable satisfaction of the County Council
- (4) The Owners hereby covenant with the County Council that during the carrying out of the Development they shall use all reasonable endeavours to ensure (a) the inspection of roads in or in the vicinity of the Site at such intervals as may be considered reasonably necessary by the County Council but at least on a daily basis and (b) that such action as is necessary is taken forthwith to secure the clearance from such roads of any mud soil or other materials deposited on the said roads by vehicles belonging to their contractors

sub-contractors and suppliers leaving the Land during the carrying out of the Development

8. The Owners hereby covenant with the County Council that they will reimburse the County Council any compensation properly paid by the County Council under Part I of the Land Compensation Act 1973 as a result of the carrying out of or use of the Works
9. The County Council hereby agree to the Works being carried out by the Owners or by a contractor introduced by the Owners subject to the conditions set out in Schedule 2 and such other reasonable conditions as the County Council may from time to time reasonably consider appropriate
10. 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
11. No waiver (whether express or implied) by the County Council of any breach of default by the Owners 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 Owners or their successors in title

12. The Owners hereby warrant that they have full power to enter into this Agreement
13.
 - (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

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

SCHEDULE 1

- (i) The construction of a ghost island right turn facility on the C283 Salhouse Road as indicated on Drawing No: 501 or such other Drawing as may be agreed by the County Council
- (ii) The extension of the left-turn lane on the C283 Salhouse Road associated with the Heartsease Lane/Mousehold Lane/Salhouse Road/Gurney Road Traffic Signalled Controlled Junction as indicated on Drawing No: 501 or such other Drawing as may be agreed by the County Council
- (iii) The construction of a new ^{to the land hatched red} ~~service access with associated visibility splays on~~ ^{attached} ~~the UC57545 Roundtree Way~~ as indicated on Drawing No: 501 ^{or such} ~~other Drawing as may be agreed by the County Council~~ C455
JH
DASH
- (iv) The reinstatement resurfacing regrading reseeding or where necessary the construction in full or in part of the existing highway disturbed by the carrying out of the Works as reasonably directed by the County Council
- (v) The provision and laying of all road markings reasonably required by the County Council
- (vi) The provision erection and connection of all street lighting columns where required including services for both temporary and permanent arrangements

pursuant to the Works in accordance with all current codes of practice as varied from time to time to be approved by the County Council

- (vii) The provision and erection of all traffic signs reasonably required by the County Council including services where appropriate
- (viii) All statutory undertakers diversion works and the making good of any damage caused to any statutory undertakers installation as a result of the carrying out of the Works
- (ix) Any necessary ancillary highway works

SCHEDULE 2

(1) The name of any contractor introduced by the Owners shall be notified in writing to the County Council not less than twenty-eight days before the commencement of the Works

(2) The Owners shall only be entitled to introduce contractors who are *CPMSE* specifically approved by the County Council such approval not to be *AM* unreasonably withheld or delayed and for the avoidance of any doubt Amey *Victory House Vision Park Chivers Way Histon Cambridge* Build Limited of *are hereby approved by the CB44Z* County Council *Yon*

(3) The Owners 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 Owners 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 Owners 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

(6) During the carrying out of the Works the Owner 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 Owners 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 undertakers shall be met in full by the Owners

- (8) The Works shall be completed to the reasonable satisfaction of the County Council who shall give the Owners a written certificate to that effect ("the Certificate") as soon as shall be reasonably possible after the completion of the Works
- (9) The Owners 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 Owners 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 Owners 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 19/90 and Advice Note HA 42/90 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 Owners 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 Owners (or their contractor) carry out the Works if the conditions set out in this Schedule are not strictly complied with following notice from the County Council to the Owners within a reasonable period
- (b) Upon termination under Paragraph 11 (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 lawfully 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 Owners 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 Owners shall forward to the County Council evidence of their insurance cover

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

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

(17) The Owners 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 Owners 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) PROVIDED that such sum shall not exceed 10% of the Bond sum referred to in Clause 2(ii)

(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) PROVIDED that such sum shall not exceed 10% of the Bond sum referred to in Clause 2(ii)

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

(19) (a) If the Owners should fail to complete the whole of the Works in accordance with the timetable approved by the County Council pursuant to Paragraphs 4(a)(i) above then the Owners shall pay to the County Council for such default the sum of £50 for every day which shall elapse between the date on which the Works should have been completed under the said Paragraph 4(a)(i) and the date of completion of the whole of the Works

- (b) All sums payable by the Owners to the County Council pursuant to this paragraph shall be paid as liquidated damages for delay and not as a penalty

- (c) It is hereby declared and agreed that the sum of £50 per day represents the County Council's genuine pre-estimate of the damage likely to be suffered by them in the event that the whole of the Works shall not be completed in accordance with the timetable approved under the said Paragraph (4)(a)(i)

SCHEDULE 3

The Contribution shall be calculated by the County Council no later than 60 days after the date of "the Certificate" in accordance with the following formula

$$\text{Increase in cost of annual maintenance} \times \frac{100 + a}{100 + b} \times \left(1 - \left(\frac{100 + a}{100 + b} \right)^n \right)$$

$$1 - \left(\frac{100 + a}{100 + b} \right)^n$$

Where

a = The annual rate of inflation at the date of the Certificate as calculated by reference to the all items index figure of the Index of Retail Prices published by the Department of Employment or any successor Ministry or Department.

b = The relevant Lower Quota E.I.P (annuity) interest rates of the Public Works Loan Board applying at the date of the Certificate.

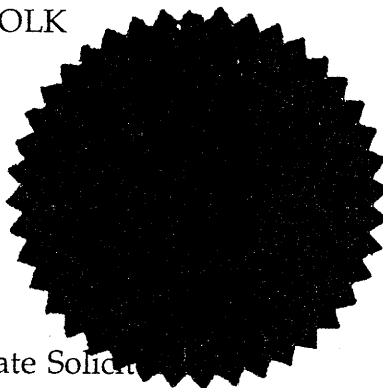
n = The number of years over which the Contribution is to be calculated: (15)

The Increase in cost of annual maintenance = the increase in the annual highway maintenance costs incurred by the County Council as a result of the carrying out of the Works, such sum to be reasonably determined by the County Council provided that it shall not exceed 1 percent of the Bond figure.

IN WITNESS whereof the County Council and the Owners have affixed their Common Seals the day and year first before written.

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

Nicholas Hancox



authorised to sign on behalf

of the Assistant Chief Executive and Corporate Solicitor

THE COMMON SEAL of INVESTMENT
GRANCHESTER/PROPERTIES COMPANY
LIMITED was hereunto affixed in
the presence of:-

Secretary

[Signature]

Director

[Signature]