

DATED

11th June

1997

NORFOLK COUNTY COUNCIL

and

EASTERN ELECTRICITY PLC

A G R E E M E N T

EVERSHEDS

Paston House

Princes Street

Norwich NR3 1BD

Tel: 01603 72727

T H I S A G R E E M E N T is made the 11th day of June One thousand nine hundred and ninety-seven

BETWEEN NORFOLK COUNTY COUNCIL ("the County Council") of County Hall Martineau Lane Norwich of the one part EASTERN ELECTRICITY PLC ("the Owners") of Wherstead Park, Wherstead, Ipswich, Suffolk of the other part

W H E R E A S:-

- (1) The Owners are the owners in fee simple in possession of the land shown on the attached plan "A" ("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) The Owners have made applications to the Broadland District Council and Norwich City Council (reference 950095 and 49509360 and dated 30 January 1995 and 6 November 1995 respectively) ("the Applications") 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 demolishing existing properties and building a retail warehouse including a

PLAN "A"

Approx. Scale: 1/1,2

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referred to made

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CORONATION ROAD

CORONATION CLOSE

SCEPTRE CLOSE

CORONATION ROAD

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garden centre and covered storage area together with the creation of open space a new access and estate road car park and landscaping ("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

NOW 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 hereby covenant with the County Council that in the event of planning permission being granted in respect of the Applications:-

(i) no part of the Development shall be brought into use until the completion (at the expense of the Owners) of the Works (excepting those referred to in paragraph B of Schedule 1) 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 four-hundred-and-fifty-thousand-pounds (£450,000) 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 towards the future costs incurred by the County Council in connection with the maintenance of the Works

4. (1) The Owners hereby covenant with the County Council that before the commencement of the Development they will pay to the County Council:-

(a) the sum of £40,000 as a contribution towards:-

(i) the evaluation by the County Council of the use of Overbury Road as a "rat run" ("the Evaluation") to be completed in the period between 6 and 12 months after the Development is brought into use

(ii) (in the event that the County Council reasonably conclude that there has been a material increase in the use of Overbury Road as a "rat run" as a result of the Development being brought into use) the carrying out of a traffic calming scheme or the introduction of a road closure in Overbury Road (including in

either case the promotion of any necessary orders and the carrying out of any incidental works)

(iii) the carrying out of the traffic surveys which the County Council consider reasonably necessary in connection with the evaluation and which will be conducted in accordance with the provisions of Schedule 4

(b) the sum of £20,500 (which the County Council shall pass on to Norwich City Council for the purpose of enabling Norwich City Council to construct a cycle/footway link to Bowers Avenue from the new cycle/footway referred to in Paragraph (B) of Schedule 1

(c) the costs incurred by the County Council in respect of this Agreement and its implementation more particularly referred to in Schedule 2

(2) The County Council hereby covenant with the Owners that they will place the sums of money referred to in Clause 4(1) in an interest bearing

account and such money as has not been used for the purposes set out in this clause within 6 years from the date on which the Development commences or 3 years from the date on which the Development is brought into use (whichever is the later) shall be returned to the Owners together with any interest that has actually accrued thereon

- (3) It is hereby agreed that if the Development has not been commenced within 12 months of the date of this Agreement and thereafter at 12 monthly intervals the sums of money referred to in Sub-Clause 4(1) shall be increased by applying to them a percentage increase equivalent to the annual rate of inflation at the relevant date 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

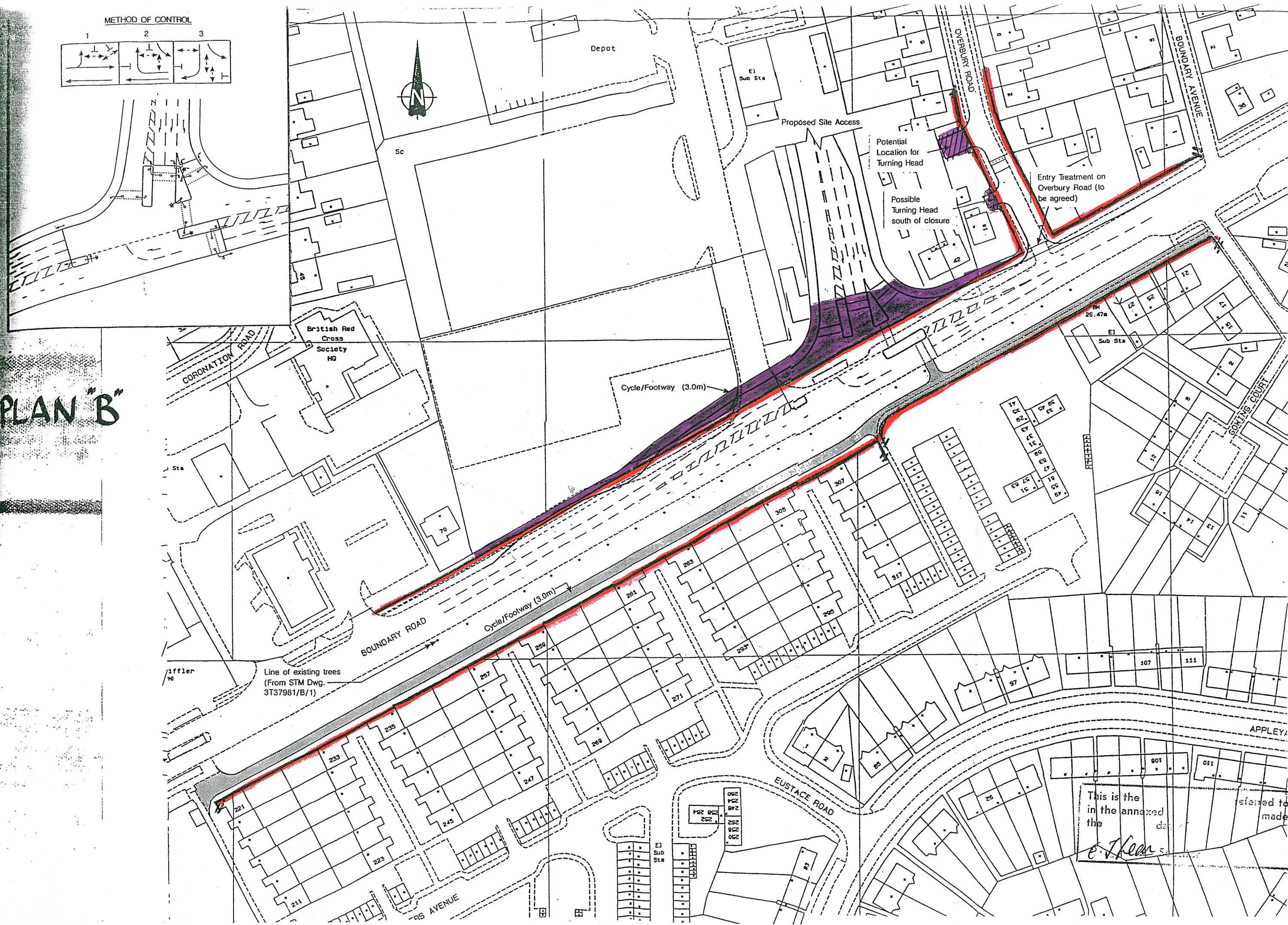
5. The Owners covenant with the County Council that they will upon completion of the Works and at no cost to the County Council:-

- (a) dedicate to the County Council the land shown coloured pink on the attached plan "B"

(b) (in the event that a road closure is introduced in Overbury Road pursuant to Clause 4(1)(a)(ii) secure the dedication to the County Council of all that land shown coloured pink and cross-hatched black on the attached plan "B" for the purpose of constructing turning heads in Overbury Road

(c) secure the grant to the County Council of such rights of access inspection repair maintenance renewal replacement and the like as the County Council reasonably require in respect of the traffic control loops to be linked to the traffic signals referred to in Paragraph (A) of Schedule 1

6. (1) In the event that the installation of the traffic signalled controlled access referred to in paragraph A of Schedule 1 were to trigger the need to upgrade the County Council's central Urban Traffic Control System ("the UTC") the Owner will pay the Council the sum of £51,000 ("the UTC Payment") and in such event the sum of £51,000 will be offset against all and any sums payable under the Contribution such that the Contribution will be reduced and if appropriate cancelled out.



This is the in the annexed the referred to made

- (2) In the event that the owners make the UTC Payment to the County Council the County Council covenant to upgrade the UTC within six months from the date of such payment and for the purposes of this clause time shall be of the essence.
7. 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
8. The Owners 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
9. The Owners 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

10. (1) The Owners covenant with the County Council that during the carrying out of the Works 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 routeing 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 Works or of any statutory undertakers work necessitated by the Works

(2) The Owners further covenant with the County Council that during the carrying out of the Development:-

(a) They shall use all reasonable endeavours to ensure that at all times all highways and private accesses in the vicinity of the Land shall be kept free of any obstruction caused by the carrying out of the Development and if the County

Council so reasonably requires that any temporary traffic signing and traffic control measures referred to in Clause 9(1)(b) above are removed

- (b) Except as may be agreed with the County Council and except in connection with carrying out works to the public highway 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 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 covenant with the County Council that during the carrying out of the Development they shall use their best endeavours to ensure (a) the inspection of roads in or in the vicinity of the Land 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

11. In the event of any claim being made for compensation or charges whatsoever arising out of or incidental to the Works or the existence or implementation to this Agreement (other than in respect of claims arising from the negligence of the County Council its employees agents or contractors) to hold the County Council harmless and indemnified from all claims charges costs and expenses made under or arising from Section 23 of the Land Compensation Act 1961 Parts I and II of the Land Compensation Act 1973 and the Noise Insulation Regulation 1975 (as amended) Provided always that the County Council shall forthwith notify the Owners in writing of any such claim charges costs and expenses hereinbefore referred to and shall permit the Owners to have the conduct of any claim against the County Council
12. 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

13. 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
14. 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 successor in title
15. 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

16. (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 56 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

17. This document is executed as a Deed and is delivered on the date first before written

18. 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

- A. The construction of a traffic signalled controlled access way to the Land together with its approach on the A140 Boundary Road as shown in principle on Plan B attached or such other drawing as may from time to time be agreed by the County Council such agreement not to be unreasonably withheld or delayed

- B. The construction of a Cycle/footway on the southern verge of the A140 Boundary Road between Marshall Road and the Pelican Crossing adjacent to Whiffler Road including all such connections as necessary with existing footway links to Bowers Avenue and Eustace Road as shown in principle on Plan "B" attached or such other drawing as may from time to time be agreed by the County Council such agreement not to be reasonably withheld or delayed

- C. The provision installation and commissioning of a new 24 phase traffic signal controller at the Cromer Road Gyratory

- D. 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 and/or the Development such works to be agreed with the County Council

- E. The provision and laying of all road markings to be agreed with the County Council
- F. The provision erection and connection of all traffic signs and lighting required and agreed with the County Council including services for temporary and permanent arrangements
- G. All statutory undertakers diversion works and the making good of any statutory undertakers installations as a result of the carrying out of the Works as agreed with the County Council

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 specifically approved by the County Council such approval not to be unreasonably withheld or delayed
- (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 or where the Owners propose to introduce a contractor prior to any arrangements being entered into between the Owners and their contractor

(6) During the carrying out of the Works the Owner shall provide free of charge within the site or in its immediate vicinity office accommodation 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 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 State 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 HD19/90 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 complied with to the reasonable satisfaction of the County Council

- (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

- (c) and 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

(13) 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

(14) (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

(15) (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

(16) 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)

(17)(i) The Owners shall pay to the County Council the following sums:-

- (a) A legal and administration charge amounting to ^{2%}~~1%~~ of the Bond figure referred to in Clause 2(ii) of this Agreement (such sum to be paid upon completion of this Agreement)

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(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 provided that the sums payable by the owners in respect of clause (b)(c) and (d) above shall not exceed £13,500 in aggregate

(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

SCHEDULE 3

("The Contribution")

The Contribution shall be calculated by the County Council no later than 60 days after the date of the written certificate referred to in Paragraph (8) of the Schedule 2 ("the Certificate") in accordance with the following formula.

$$\begin{array}{l} \text{Increase in cost of} \\ \text{annual maintenance} \end{array} \quad \times \quad \frac{\frac{100+a}{100+b} \times \left(1 - \left(\frac{100+a}{100+b} \right)^{15} \right)}{1 - \left(\frac{100+a}{100+b} \right)}$$

Forwards


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 EIP Interest rate of the Public Works Loan Board at the date of the Certificate

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 reasonable determined by the County Council provided that it shall not exceed 1 percent of the Bond figure.

SCHEDULE 4

("The Evaluation")

Specification for assessment of through traffic movements:
Overbury Road, Norwich.

Objectives

To assess the amount of rat-running traffic using Overbury Road, Norwich before and after the opening of B & Q store.

Proposed Survey Period

Time period to cover a weekday (Friday evening peak 1600 - 1900 hours) and a weekend (Saturday shopping peak 1000 - 1600 hours)

Proposed Methodology

To determine the percentage of through traffic using Overbury Road, record the registration numbers of all vehicles travelling in both directions throughout the proposed survey period.

Position 2 video cameras at either end of Overbury Road and continuously record the registrations of all vehicles. By analysis of the video tapes and setting a time limit for vehicles to travel through the cordon, use a registration matching computer program to match all vehicles.

The exceptions would be any locally based traffic which has either an origin or destination within the cordon and fall outside the time period, or those number plates that are misread or dirty or missing. The normal procedure for identification of

these vehicles would be to record them with a special code and reexamine the video tape for possible matches.

Data Presentation

Results of matching data is produced in matrix and spreadsheet format for 1/4 hour or 1 hour periods dependant on the level of assessment required.

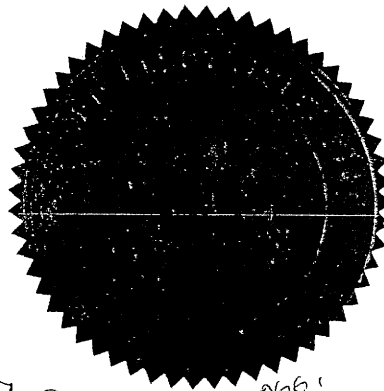
I N W I T N E S S whereof the County Council the Owners and the
Developers have affixed their Common Seals the day and year first
before written

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



Director of Law and Administration

THE COMMON SEAL of
EASTERN ELECTRICITY PLC
was hereunto affixed in
the presence of:-



E. J. Lean
Group Solicitor.

Abb

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