

A37

DATED 28th October 1996

NORFOLK COUNTY COUNCIL

- and -

WIMPEY HOMES HOLDINGS LIMITED

AGREEMENT
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 28th day of October One thousand nine hundred and ninety-six

BETWEEN NORFOLK COUNTY COUNCIL ("the County Council") of County Hall Martineau Lane Norwich of the first part and WIMPEY HOMES HOLDINGS LIMITED whose registered office is situated at 27 Hammersmith Grove London W6 7EN ("the Owners") 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 numbered 1 ("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 application to the Broadland District Council (reference 96.0611) dated 29th May 1996 ("the Application") in accordance with the Act and the Orders and Regulations for the time being in force thereunder for planning permission to develop the Land by the erection of 165 dwellings together with play area and open space ("the Development")

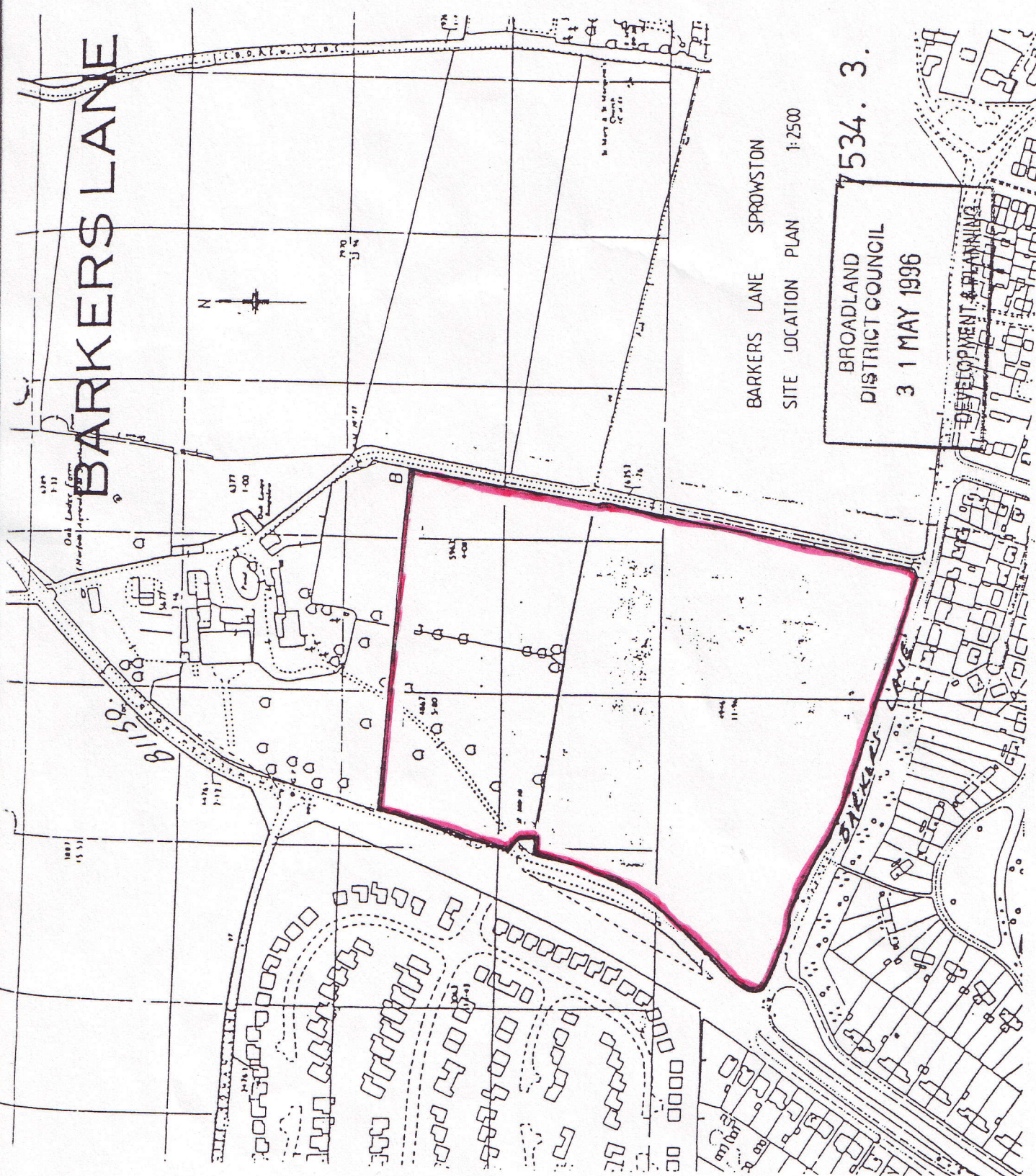
- (4) There are highway objections to the Development which can be overcome by the making and implementation of Traffic Regulation Orders ("the Orders") to provide a 20 mph speed zone for the area shown edged yellow on the attached plan numbered 2 ("the Scheme") and the carrying out of the work specified in Schedule 3 hereto ("the Footway 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. SECTION 106 ETC

- 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. 20 MPH SPEED ZONE



BARKERS LANE SPROWSTON

SITE LOCATION PLAN 1:2500

534. 3.

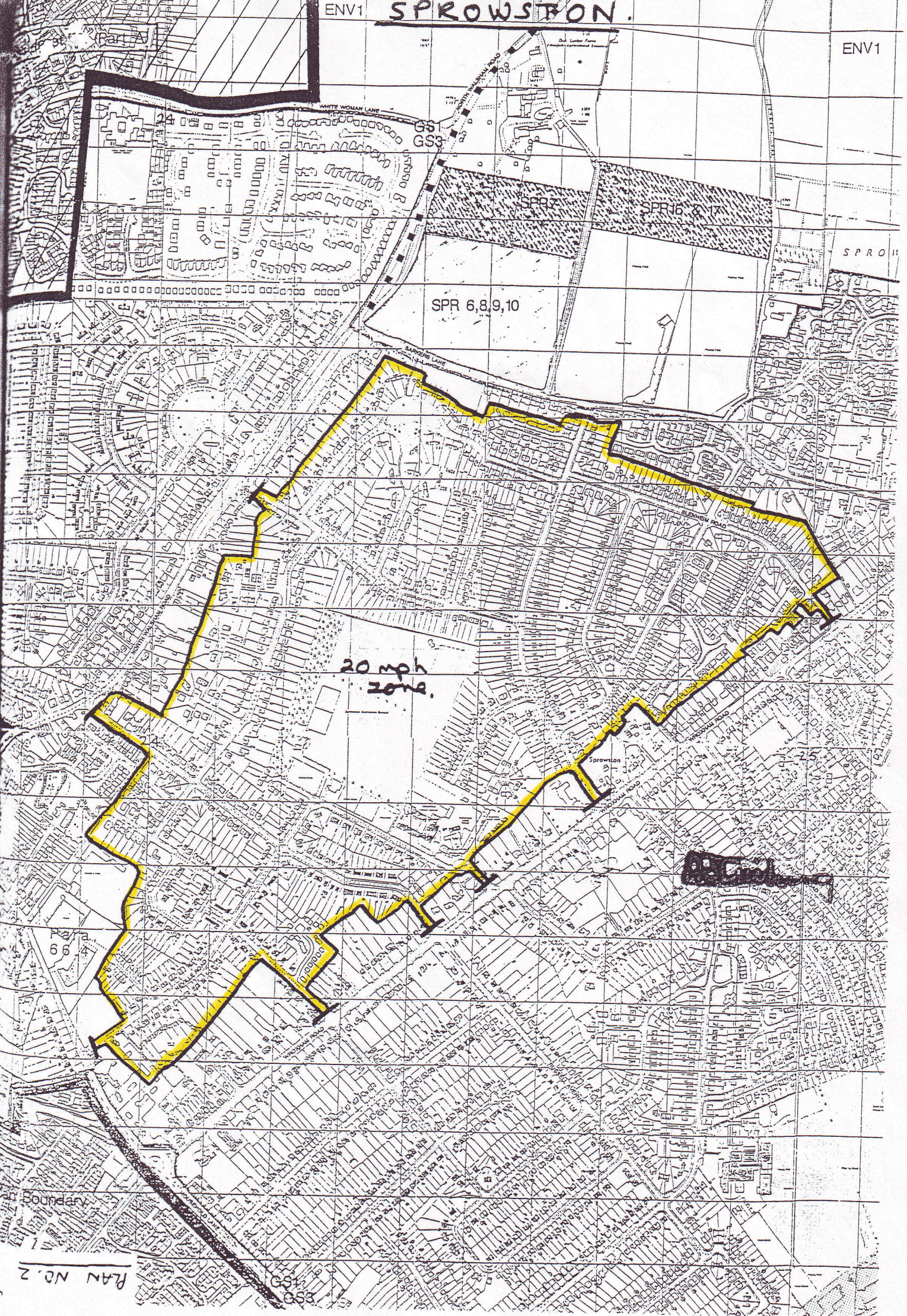
BROADLAND
DISTRICT COUNCIL
31 MAY 1996

DEVELOPMENT PLANNING

ENV1

SPROWSTON.

ENV1



PLAN NO. 2



2.1 In consideration of the covenants contained in this Agreement the County Council hereby agrees that subject to the making of the Orders they will promote and implement the Scheme and construct the works set out in Schedule 1 hereto ("the Works") required to implement the Scheme without undue delay

2.2. The Owners hereby covenant with the County Council that in the event of planning permission being granted for the Development:-

(a) no part of the Development shall be commenced until the Owners have deposited with the County Council the sum of ~~£~~4,000 to be used for the purposes set out in Schedule 2 hereto

(b) prior to authorisation being sought from the County Council's Highways Sub-Committee to the making of the Orders the Owners will have deposited with the County Council the sum of ~~£~~4,000 referred to in 2.2 (a) above together with the sum of ~~£~~4,800 to be used for the purposes set out in Schedule 2 hereto

(c) they will not cause or permit more than 61 dwellings comprised in the Development to be completed or occupied prior to the earlier of (a) the letting of the contract for the Works ("the Contract") and prior to the letting of the Contract they will have deposited with the County Council the sums referred to in Clause 2.2 (a) and (b) above together with a sum

equivalent to the accepted Contract tender figure plus £4,000 for supervision and certification of accounts (b) the expiration of the period of six months from the date the Owners make the payments set out in 2.2. (b) above and (c) the date the County Council gives written notification to the Owners that it does not intend to proceed with the Works

(d) upon completion of the Works the Owners will deposit with the County Council the sum of £10,800 to be used for the purposes set out in Schedule 2 hereto

(e) Provided that the County Council shall have confirmed in writing to the Owners that it intends to proceed with the Works within the six months period referred to below and before 61 dwellings have been completed or occupied no more than 61 dwellings comprised in the Development shall be completed or occupied unless the Owners 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 TEN THOUSAND EIGHT HUNDRED POUNDS as a guarantee for the due performance by the Owners of the covenant in 2.2 (d) such sum to be reviewed if the Works have not been commenced 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 PROVIDED THAT the obligations set out in 2.2 (c) (d) and (e) above

shall not apply in the event of the County Council deciding not to proceed with the Works and the County Council hereby covenants with the Owners that it will communicate its decision whether or not to proceed with the Works in writing to the Owners within six months of the date the Owners make the payments set out in 2.2 (b) above

2.3. The County Council hereby covenant with the Owners that:-

- A. the Owners will be entitled to nominate 3 contractors to be invited to tender for the Works PROVIDED THAT such contractors appear on the County Council select list of tenderers

- B
 - (a) the money deposited in accordance with Clause 2.2 above ("the Money") will be held in an interest bearing account the identity of which shall be agreed between the Owners and the County Council

 - (b) any part of the Money remaining unspent will be returned to the Owners with interest on demand:-
 - (i) in the event of planning permission for the Development not being granted

 - (ii) in the event of the Owners not implementing the planning permission by carrying out a material operation (as

defined in S56(4) of the Act) before the planning permission expires without it being renewed

(iii) in the event of a decision being taken by the County Council not to make the Orders or undertake the Works

(c) it will not use the Money for the purpose of the Works unless the Owners implement the planning permission by carrying out a material operation as defined in clause 2.3 (b) (ii) above

2.4. The Owners hereby covenant with the County Council that they will reimburse the County Council any compensation properly paid by the County Council under Parts I and II of the Land Compensation Act 1973 or Regulations made thereunder as a result of the carrying out of or use of the Works and the County Council hereby covenants with the Owners to carry out the Works in accordance with best practice as is usual for works such as the Works and to use its best endeavours not to use the Works or permit the same to be used in such a way as may induce a claim for compensation as aforesaid

3. CONSTRUCTION OF FOOTWAY

3.1 The Owners hereby covenant with the County Council that in the event of planning permission being granted in respect of the Application:-

- (i) no part of the Development shall be brought into use until the completion (at the expense of the Owners) of the Footway Works to the reasonable satisfaction of and in accordance with the reasonable requirements and specifications of the County Council
- (ii) no part of the Footway Works shall be commenced unless at least 28 days before the commencement of the Footway 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 SIX THOUSAND POUNDS as a guarantee for the due performance by the Owners of the covenant in 3.1 (i) such sum to be reviewed if the Footway 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

3.2 The Owners hereby covenant with the County Council that upon adoption of the Footway Works they will pass to the County Council copies of all "as built" drawings documents and maintenance records for the Footway Works in a form and reasonable quantity to be approved by the County Council such approval not to be unreasonably withheld

3.3 The Owners hereby 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 Footway Works

- 3.4 The Owners hereby 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 Footway 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
- 3.5 The Owners hereby covenant with the County Council that they will reimburse the County Council any compensation properly paid by the County Council under Parts I and II of the Land Compensation Act 1973 or Regulations made thereunder as a result of the carrying out of or use of the Footway Works and the County Council hereby covenants with the Owners to use its best endeavours not to use the Footway Works or permit the same to be used in such a way as may induce a claim for compensation as aforesaid
- 3.6 The County Council hereby agree to the Footway Works being carried out by the Owners or by a contractor introduced by the Owners subject to the conditions set out in Schedule 4 and such other reasonable conditions as the County Council may from time to time consider appropriate

3.7 It is hereby agreed that on the date that completion of the Footway Works shall be certified pursuant to Paragraph 8 of Schedule 4 then the amount of the Bond as set out in Clause 3.1 (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 4 have been completed in accordance with the Agreement or later upon the satisfactory completion of the remedial works

4. WAIVER

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

5. OWNERSHIP OF THE LAND

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 save for a legal charge granted/to be

granted in favour of The Norfolk Agricultural Station to secure potential overage payments in relation to disposals of the Land or parts thereof

6. NO OBLIGATION TO MAKE ORDERS

It is hereby agreed that nothing in this Agreement shall oblige the County Council to make the Orders

7. DISPUTES

- (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

8. DELIVERY

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

9. SUCCESSORS

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 *subject to clause 11 hereof*

ASG
R *2/4*

10. DEVELOPMENT

It is hereby agreed that nothing in this Agreement shall oblige the Owners to carry out the Development

11. LIABILITY OF PURCHASERS OF DWELLINGS

It is hereby agreed that the liability of the Owners under this Agreement shall not pass to any transferee of a dwelling forming part of the Development

SCHEDULE 1

1. The formation laying out and construction of such traffic calming measures required to achieve a 20 mph zone for the area shown on the drawing attached and numbered 3
2. 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
3. The provision and laying of all road marking reasonably required by the County Council
4. 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
5. The provision and erection of all traffic signs reasonably required by the County Council 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

6. All statutory undertakers diversion works and the making good of any damage caused to any statutory undertakers installation as a result of carrying out the Works
7. All necessary ancillary highway works in relation to the Works

SCHEDULE 2

Breakdown of £4,000	
Feasibility Study	£ 1,600.00
Formal Consultations	£ 200.00
Public Consultation/Exhibition	£ 1,500.00
Duplication and delivery of Leaflets	£ 200.00
TRO plan and schedule and Annex C documentation	£ 500.00
	£ 4,000.00
Breakdown of £4,800	
Detailed Design - Drawings, specification and safety Audit	£ 3,000.00
Bill of Quantities, Contract Documents and Tender procedures	£ 1,500.00
Act as Planning Supervisor	£ 300.00
	£ 4,800.00
Breakdown of £10,800	
TRO after speed monitoring	£ 800.00
Contribution towards future maintenance	£ 10,000.00
	£ 10,800.00

SCHEDULE 3

1. The formation laying out and construction of footway of minimum width 1.8 metres along the northern side of Barkers Lane between points A and B as shown in principle on the attached drawing numbered 3
2. 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 Footway Works as reasonably directed by the County Council.
3. The provision erection and connection of all street lighting columns where required including services for both temporary and permanent arrangements pursuant to the Footway Works in accordance with all current codes of practice as varied from time to time to be approved by the County Council
4. The provision and erection of all traffic signs reasonably required by the County Council including services for both temporary and permanent arrangements pursuant to the Footway Works in accordance with all current codes of practice as varied from time to time to be approved by the County Council

5. All statutory undertakers diversion works and the making good of any damage caused to any statutory undertakers installation as a result of carrying out the Footway Works
6. All necessary ancillary highway works in relation to the Footway Works

SCHEDULE 4

- (1) The name of any contactor introduced by the Owners shall be notified in writing to the County Council not less than twenty-eight days before the commencement of the Footway 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 Footway Works
- (4) (a) The Footway Works shall be carried out:-
 - (i) In accordance with a timetable to be approved by the County Council before the commencement of the Footway 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 Footway Works shall not be commenced until the Owners have received from the County Council a written authorisation to commence the Footway Works such authorisation not to be unreasonably withheld or delayed
- (5)
 - (a) The Owners shall be responsible for producing contract drawings for the Footway 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 Footway Works or where the Owners propose to introduce a contractor prior to any arrangements being entered into between the Owners and their contractor
- (6) The Owners shall be responsible for ensuring that any requirements of statutory undertakers are met prior to the commencement of the Footway Works and the cost of any works required by the statutory undertakers shall be met in full by the Owners
- (7) The Footway 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 Footway Works

- (8) 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 (7) of this Schedule
- (9) 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 Footway Works and which arise out of that Stage of the Audit and are notified to the Developer within 60 days after the date of the certificate referred to in Paragraph (7) of this Schedule and the terms of reference of the Road Safety Audit are those described in the Department of Transport's Safety and Traffic Department Standard HD 19/94 and Advice Note HA 42/94 or any similar procedures from time to time in force but substituting the County Council for any references therein to the Department of Transport
- (10) 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 Footway 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 Footway Works including schedules designs calculation and contract drawings

- (11) (a) The County Council reserve the right to terminate forthwith in writing the arrangement whereby the Owners (or their contractor) carry out the Footway Works if the conditions set out in this Schedule are not strictly complied with
- (b) Upon termination under Paragraph 11 (a) above the County Council shall be entitled to call in the Bond referred to in Clause 3.1(ii) for the purposes either of completing the Footway Works or reinstating the site to its condition immediately prior to the commencement of the Footway Works
- (12) 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 Footway Works and the maintenance period referred to in Paragraph (8) above have access to the Works
- (14) (a) Throughout the execution of the Footway 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 Footway 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 Footway 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 Footway 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 Footway 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 Footway 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% of the Bond figure referred to in Clause 3.1 (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 Footway 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 Footway Works (such sum to be paid on such date or dates as the County Council may specify)

(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

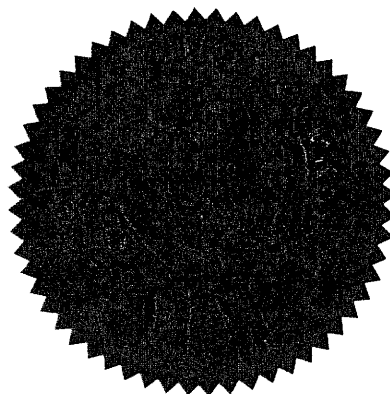
IN WITNESS whereof the County Council and the Owners have affixed their
Common Seals the day and year first before written

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



**DIRECTOR OF LAW
AND ADMINISTRATION**

~~Assistant Chief Executive and Corporate Solicitor~~



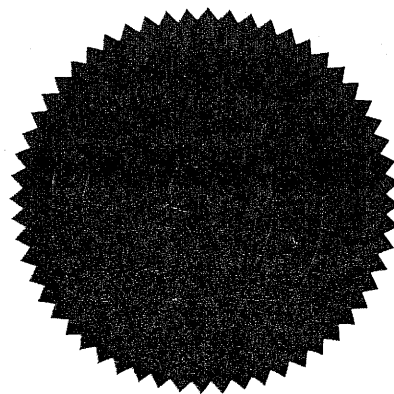
THE COMMON SEAL of
WIMPEY HOMES HOLDINGS LIMITED
was hereunto affixed in
the presence of:-

Director

M. Blarles

Secretary

ASG
/Authorised Signatory



*op/ear initial
amount &
charge 9.*