

DATED 26<sup>th</sup> September

1983

NORFOLK COUNTY COUNCIL

- and -

BROADLAND DISTRICT COUNCIL

- and -

J SAINSBURY plc

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AGREEMENT PURSUANT TO SECTION 52 OF  
THE TOWN AND COUNTRY PLANNING ACT 1971  
affecting property at Yarmouth Road, Thorpe St. Andrew, Norfolk

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HERBERT OPPENHEIMER, NATHAN & VANDYK

20 COPTHALL AVENUE  
LONDON EC2R 7JH



THIS AGREEMENT is made the 26<sup>th</sup> day of September One thousand nine hundred and eighty-three



BETWEEN NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich in the County of Norfolk (hereinafter called "the County Council") of the first part BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road Norwich NR7 0DU (hereinafter called "the District Council") of the second part and J SAINSBURY plc whose Registered Office is situate at Stamford House Stamford Street London SE1 9LL (hereinafter called "J Sainsbury") of the third part

**WHEREAS:-**

- (1) The County Council is the highway authority for Harvey Lane Thorpe St. Andrew Norwich and is the agent of the Secretary of State for Transport the highway authority for Yarmouth Road and Thorpe Road Thorpe St. Andrew Norwich
- (2) In applications reference 9/5/82/0990 and 9/5/82/0991 J Sainsbury has applied to the District Council for Outline Planning Permission to erect a retail store together with ancillary facilities including car parking service yard access road and landscaping (hereinafter called "the Retail Store Development") upon land situate south of Thorpe Road and Yarmouth Road Thorpe St. Andrew aforesaid as the same is for the purposes of identification shown edged red on the plan attached hereto (hereinafter called "the Land")
- (3) By a Notice dated the 14th day of September 1982 the District Council refused consent for the Retail Store Development referred to in application reference no. 9/5/82/0990 (hereinafter called "the First Refusal") and in respect of application reference no. 9/5/82/-0991 the District Council failed to determine the same within the prescribed period (hereinafter called "the Deemed Refusal") (the





the Land

the north western land

For and on behalf of J SAINSBURY plc

LAND REFERRED TO IN  
AGREEMENT UNDER  
SECTION 52 OF THE  
TOWN & COUNTRY  
PLANNING ACT 1971

J SAINSBURY plc  
THORPE ROAD  
NORWICH

G.L. HEARN & PARTNERS  
Chartered Surveyors & Planning Consultants  
44/48 BOROUGH HIGH ST.  
LONDON SE1 1XP  
Telephone 01 407 5321

Scale 1:1250  
Date JUNE 1983  
Drawing

*[Signature]*  
AUTHORISED SIGNATORY  
*[Signature]*  
Acting COMPANY SECRETARY



First Refusal and the Deemed Refusal hereinafter called "the Refusals")

- (4) Pursuant to Appeals (hereinafter together called "the Appeals") made to the Secretary of State for the Environment (hereinafter called "the Secretary of State") on the 16th day of September and 25th day of October 1982 J Sainsbury appealed to the Secretary of State against the Refusals
- (5) The Appeals are to be determined by the Secretary of State
- (6) The Land includes a site at the north-west of the Land which is for the purpose of identification shown edged blue on the plan attached hereto (hereinafter called "the north-western land")
- (7) There are planning permissions dated the 18th day of April 1978 and the 28th day of July 1981 with references 77.25500 and 81.0285 respectively for residential development on the north-western land and by letter of the 7th February 1982 J Sainsbury have through their agents requested the District Council to renew the former permission and the aforesaid planning permissions and any renewals thereof shall hereinafter be referred to as "the residential planning permissions"
- (8) It is agreed that the development permitted by the residential planning permissions and the Retail Store Development shall not both take place
- (9) This Agreement is conditional upon either of the Appeals being successful and outline permission being granted for the Retail Store Development in a form and with conditions (if any) acceptable to J Sainsbury in its sole and absolute discretion (hereinafter called "the Satisfactory Outline Planning Permission")

NOW THIS DEED WITNESSETH :-



NOW in pursuance of powers contained in Section 52 of the Town and Country Planning Act 1971 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other powers enabling the County Council and the District Council thereunto IT IS HEREBY AGREED AND DECLARED with the intent permanently to bind the Land in the manner provided by the said Acts as follows:

1. The County Council and the District Council are the Local Planning Authorities for the administrative area in which the Land is situate
2. J Sainsbury hereby warrant that they are seised in fee simple of the Land
3. J Sainsbury HEREBY COVENANTS with the County Council that:-
  - (i) subject to the fulfilment of the conditions precedent referred to in clause 6 hereof the Retail Store Development permitted by the Satisfactory Outline Planning Permission shall not open for trade with the public until at the cost of J Sainsbury those parts of the Highway Works described in Options 1(a) or 4(b) in the Schedule hereto pursuant to whichever of the Options 1 to 5 inclusive described in the Schedule hereto shall be appropriate in all the circumstances shall have been substantially completed as defined in clause 48 of the Institution of Civil Engineers standard form of contract; and
  - (ii) upon the commencement of development as defined in Section 43 of the Town and Country Planning Act 1971 J Sainsbury shall notify the County Council in writing (hereinafter called "the Notice") and during the period of three months from the service of the Notice J Sainsbury and the County Council shall use their best endeavours to agree the detailed design and specification for the improvement of the Thorpe Road/Yarmouth Road/ Harvey Lane highway junction referred to in the Schedule hereto and in the event that agreement shall not be



reached within three months as aforesaid either J Sainsbury or the County Council may refer the same to be determined by an Arbitrator pursuant to clause 7 hereof; and

- (iii) if required in writing by the County Council J Sainsbury shall before the Highway Works described in the Schedule hereto are commenced provide a Bond or such other financial security for the performance of the Highway Works as aforesaid as the County Council shall reasonably require

4. J Sainsbury HEREBY COVENANTS with the District Council that subject to the fulfilment of the conditions precedent referred to in clause 7 hereof:-

- (i) If any development permitted by the residential planning permissions shall have taken place or been commenced, then the Retail Store Development shall not take place; and
- (ii) If the development permitted by the residential planning permissions shall not have commenced, then the Retail Store Development may be commenced, but as soon as it is commenced, no part of the developments permitted by the residential planning permissions shall be undertaken

5. The District Council in its capacity as local planning authority HEREBY DECLARES that in the event that the Retail Store Development shall be implemented pursuant to a Satisfactory Outline Planning Permission the land shown for the purposes of illustration only edged blue on the plan attached hereto shall be suitable to be used for the purposes of residential development other than as permitted by the residential planning permissions

6. The terms conditions covenants and obligations of the parties hereto shall not come into effect until the complete fulfilment of the following conditions precedent:



- (i) J Sainsbury shall have received from the Secretary of State the Satisfactory Outline Planning Permission granting permission for the Retail Store Development; and
- (ii) J Sainsbury shall wish to implement the Satisfactory Outline Planning Permission

7. In the event of any dispute arising between the parties hereto in respect of the matters referred to in clause 3 hereof the same shall be referred to a Chartered Civil Engineer to be agreed between the parties hereto or failing agreement as to the same to be appointed upon the application of either party hereto by the President for the time being of the Institution of Civil Engineers and in this respect these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Acts 1950-1979 or any statutory modification or re-enactment thereof

8. IT IS HEREBY AGREED AND DECLARED that:-

- (i) the covenants on behalf of J Sainsbury to be observed and performed under this Agreement shall be treated and registered as local land charges for the purposes of Land Charges Act 1925
- (ii) forthwith upon J Sainsbury complying with any and/or all of its covenants and/or obligations to be observed and/or performed under clauses 3 and 4 of this Agreement the County Council and the District Council hereby consents to an application and /or applications being made to the relevant Local Land Charges Registry and in the event that the covenants and obligations to be observed and performed under this Agreement are at any time when this Agreement shall remain in force registered at H.M. Land Registry then additionally to the Chief Land Registrar for the cancellation of the entry and/or entries in the Register of Local Land Charge and/or in the Registers of title or Titles as appropriate PROVIDED ALWAYS



that in the event of any dispute arising between the parties hereto in respect of any matter or thing referred to in this sub-clause or the operation or construction thereof the same shall be referred by either party to the President for the time being of The Law Society and in this respect these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Acts 1950 to 1979 or any statutory modification or re-enactment thereof

- (iii) J Sainsbury shall not be under any liability whatsoever in relation to the performance non-observance or breach of any of the covenants and obligations to be observed and performed under this Agreement after it shall have ceased to be entitled to a legal estate in the Land

IN WITNESS whereof the County Council, the District Council and J Sainsbury have hereunto caused their respective Common Seals to be hereunto affixed the day and year first before written



## THE SCHEDULE

### (The Highway Works)

The Highway Works shall comprise the works (which shall be carried out (if at all) at no expense to the County Council) described in one of the following options and the relevant option shall be ascertained by reference to the recorded decisions of the County Council in relation to a Martineau Lane to Harvey Lane Link road hereinafter called the Direct Link Road.

Option 1 Direct Link Road Alternative B is to be constructed on the route shown on Drawing Number T/90/1230 annexed hereto after the Retail Store Development is completed

If Option 1 is chosen the Highway Works shall comprise:

- 1(a) Improvements to the Thorpe Road/Yarmouth Road/Harvey Lane junction to maintain after the Retail Store Development existing traffic flow rates and also to facilitate right turns to the entire satisfaction in each case of the County Surveyor and
- 1(b) The construction of the Retail Store Development so that no part of the structure of the Retail Store Development shall lie within 9 metres of the centre line of the Direct Link Road Alternative B and
- 1(c) Should any part of the car park be subsequently affected by any part of the structure of the Direct Link Road Alternative B the amendment by the developer of the car park layout (including providing any replacement parking) and the access roads as necessary to the entire satisfaction in each case of the County Surveyor.



Option 2 Direct Link Road Alternative A is to be constructed after the Retail Store Development is completed on the route shown on Drawing Number T/90/1229 annexed hereto

If Option 2 is chosen the Highway Works shall comprise:-

- 2(a) The junction improvement works described for Option 1 in paragraph 1(a) of this Schedule and
- 2(b) The subsequent revision of access provision from the Retail Store Development onto the raised level of the Direct Link Road alternative A at a position at least 150 metres from the centre line of Great Yarmouth Road by means of an appropriate signal controlled junction (which signals are to be linked to the Urban Traffic Control system) and
- 2(c) Provision for the Direct Link Road Alternative A to cross the Retail Store Development site

[to the entire satisfaction in each case of the County Surveyor]

Option 3 There is to be no Direct Link Road

If Option 3 is chosen the Highway Works shall comprise the junction improvement works described for Option 1 in paragraph 1(a) of this Schedule.

Option 4 Work to construct Direct Link Road Alternative A at either level is to commence before the Retail Store Development construction contract is let

If Option 4 is chosen the Highway Works shall comprise:-



- 4(a) The provision of vehicular access from the Retail Store Development onto the raised level of the Direct Link Road Alternative A at a position at least 150 metres from the centre line of Yarmouth Road by means of an appropriate signal controlled junction (which signals are to be linked to the Urban Traffic Control system) to the entire satisfaction of the County Surveyor and
- 4(b) Improvement of the Thorpe Road/Yarmouth Road/Harvey Lane junction to provide additional traffic capacity to cope with the traffic generated by the Retail Store Development to the satisfaction of the County Surveyor.

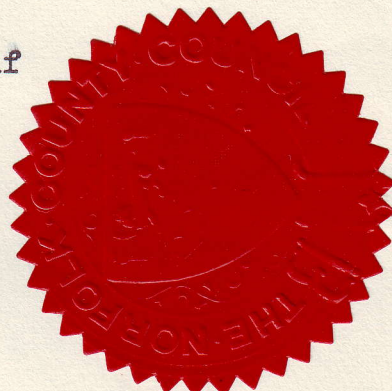
Option 5 Direct Link Road Alternative B is to commence before the Retail Store Development construction contract is let

If Option 5 is chosen the Highway Works shall comprise the junction improvement works described for Option 1 in paragraph 1(a) hereof.



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

*[Signature]* Authorised to sign on behalf  
of the County Solicitor



THE COMMON SEAL of )  
BROADLAND DISTRICT )  
COUNCIL was hereunto affixed )  
in the presence of:- )

*[Signature]*

Chairman

*[Signature]*

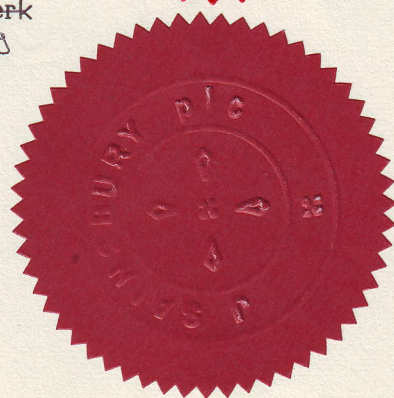
Chief Executive and Clerk  
District Solicitor & Deputy  
Clerk



THE COMMON SEAL of )  
J SAINSBURY plc was )  
hereunto affixed in the )  
presence of:- )

*[Signature]*  
Authorised Signatory

Acting Secretary



EVN13003V923

*[Signature]*