

DATED 6th April 1998

NORFOLK COUNTY COUNCIL

- and -

PELHAM HOMES DEVELOPMENTS LIMITED

- and -

ALLIED LONDON PROPERTIES PLC

AGREEMENT
Relating to Broadland Park
Thorpe St Andrew Norwich

Director of Law and Administration
Norfolk County Council
County Hall
Martineau Lane
NORWICH
NR1 2SH

THIS AGREEMENT is made on the 5th day of April
One thousand nine hundred and ninety-eight

BETWEEN:-

THE NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich NR1 2SG ("the County Council") of the first part PELHAM HOMES DEVELOPMENTS LIMITED whose registered office is at Tubbs Hill House London Road Sevenoaks Kent TN13 1BL ("the Landowners") of the second part and ALLIED LONDON PROPERTIES PLC whose registered office is at Allied House 26 Manchester Square London W1A 2HU ("the Guarantor") of the third part

WHEREAS:-

- (1) The County Council are the owners in fee simple in possession of the land shown edged red on the attached drawing SK 102/03/124 Rev B ("the Red Land") and the Landowners are the owners in fee simple in possession of the land shown edged green on the attached drawing SK 102/03/124 Rev B ("the Green Land") and all of which land is together called "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 by the Broadland District Council (reference 950052) dated 29 May 1997 ("the Planning Permission") to develop the Land by the construction of a Business Park ("the Development")

subject inter alia to conditions requiring the carrying out of certain highway works

- (4) The Landowners have agreed to enter into this Agreement to carry out the works specified in Schedule 1 hereto ("the Works") in order to comply with such conditions
- (5) The County Council are satisfied that this Agreement will be for the benefit of the public
- (6) It is apprehended that the Works will be carried out by the Landowners in conjunction with the works to be carried out pursuant to a separate agreement to be entered into with the Secretary of State for Transport
- (7) The obligations created by this Deed are planning obligations within the meaning of Section 106 of the Act (as amended)
- (8) 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 Section 278 of the Highways Act 1980 and all other enabling powers

2. The Landowners hereby covenant with the County Council and the County Council in their capacity only as owner of the Red Land separately hereby undertake that

- (i) no part of the Development shall be occupied until the completion (at the expense of the Landowners) of that part of the Works described in paragraphs (i) to (iv) of Part I of Schedule 1 (which together with the works described in paragraph (v) of Part I of Schedule 1 are hereinafter referred to as "the Phase I Works") to the reasonable satisfaction of and in accordance with the reasonable requirements and specifications of the County Council
- (ii) no part of the Development shall be occupied until the completion of that part of the Works described in paragraph (v) of Part I of Schedule 1
- (iii) not to carry out any part of the Works in the vicinity of the junction of Green Lane with the A1042 without procuring the stopping up and diversion of the relevant parts of Green Lane South in accordance with the programme of works referred to in paragraph (4)(a)(i) of Schedule 2
- (iv) the Guarantor hereby guarantees the performance by the Landowner of its obligations hereunder PROVIDED THAT the liability of the Guarantor under this Agreement shall not exceed the sum of £1,015,000 and without prejudice to Clause 13 such sum shall be

reviewed twelve months after the date of this Agreement and thereafter at twelve monthly intervals and on each occasion amended to such sum as the County Council may reasonably determine to reflect the estimated cost of the uncompleted Phase 1 Works

3. The Landowners hereby covenant with the County Council and the County Council in their capacity only as owner of the Red Land separately hereby undertake that

(i) that part of the Works described in Part II of Schedule 1 ("the Phase II Works") shall be completed (at the expense of the Landowners) to the reasonable satisfaction of and in accordance with the reasonable requirements and specifications of the County Council and in accordance with the timetable referred to in paragraph (4)(a)(i) of Schedule 2

(ii) no more than 25,000 square metres of development within Class B1 of the Use Classes Order 1987 shall be occupied unless the Phase II works have been carried out in accordance with Clause 3(i) above

4. The Landowners hereby covenant with the County Council that upon completion of the Phase II Works they will pay to the County Council the sum of £9,700 such sum to be applied by the County Council towards the maintenance of the traffic signals comprised in the Phase II Works

5. The Landowners hereby covenant with the County Council that they will pay to the County Council within 28 days of receiving written notice from the County Council so to do the sum of £16,500 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 Phase I Works
6.
 - (a) The Landowners hereby covenant with the County Council that they will upon completion of the Phase 1 Works to the reasonable satisfaction of the County Council and at the expense of the Landowners secure the dedication to the County Council of all the land coloured pink on the attached drawing SK 102/03/124 Rev B
 - (b) The County Council hereby covenant with the Landowners that they will upon the said land coloured pink being offered for dedication (and subject to the prior adoption of any sewers thereunder) accept the same as a public highway maintainable at the public expense
7. The Landowners hereby covenant with the County Council that upon adoption of each phase of the Works they will pass to the County Council copies of all “as built” drawings documents and maintenance records for that phase of the Works in a form and reasonable quantity to be approved by the County Council such approval not to be unreasonably withheld
8. The Landowners hereby covenant with the County Council that they will comply with any reasonable requirement 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 Landowners hereby covenant with the County Council that they shall (a) obtain at the expense of the Landowners all necessary statutory consents orders licences and the like prior to the commencement of each phase 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 Landowners 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 Landowners hereby further covenant with the County Council that during the carrying out of the Development:-

(a) They shall provide a plan to demonstrate the access to the Land for employees and construction vehicles during the carrying out

of the Development such plan to be approved by the County Council whose approval shall not be unreasonably withheld or delayed

(b) 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 Landowners hereby covenant with the County Council that during the carrying out of the Development they shall provide within the Land such wheel-cleaning equipment as the County Council shall from time to time require 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 Landowners hereby covenant with the County Council that during the carrying out of the Development they shall use their reasonable 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. The Landowners hereby covenant with the County Council that they will reimburse the County Council (a) 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 (b) any damages for nuisance properly paid by the County Council as a result of the carrying out or use of the Works PROVIDED that the County Council will not compromise or settle any claim for any such compensation or damages without first obtaining the agreement of the Landowners to the terms thereof and the County Council will consult with the Landowners in relation to any such claim and any action arising thereunder and will provide the Landowners with details of all relevant matters pertaining thereto

12. The County Council hereby agree to each phase of the Works being carried out by the Landowners or by a contractor introduced by the Landowners subject to the conditions set out in Schedule 2 and such other reasonable conditions (consistent with this Agreement) as the County Council may from time to time consider appropriate
13. It is hereby agreed that on the dates that completion of the Phase I Works (except the landscaping works referred to in paragraph (iv) of Part I of Schedule 1) shall be certified pursuant to Paragraph (8) of Schedule 2 then the maximum amount of the Guarantee as set out in Clause 2(iv) of this Agreement shall be reduced by 90% and the obligation of the Guarantor under this Agreement shall be discharged on the first anniversary of such certificates 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 or default by the Landowners 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 Landowners or their successors in title
15. The Landowners 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. (a) Save as mentioned in Clause 17(b) the Covenants on the part of the Landowners contained in this Agreement shall not be enforceable against purchasers lessees mortgagees or chargees of individual plots comprised in the Development or against service supply companies in respect of any parts of the Land acquired by them for electricity substations gas governor stations or pumping stations
- (b) This Clause shall not extend to the covenants contained in Clauses 2(i) and (ii) and 3(ii)
18. This document is executed as a Deed and is delivered on the date first before written
19. (1) The expressions "the County Council" and "the Landowners" shall (subject to Clause 17) include their respective successors and assigns as appropriate within the terms of Section 106 of the Act
- (2) Reference to any plan or drawing in this Agreement includes reference to such replacement plans or drawings as may from time to time be agreed between the County Council and the Landowners

SCHEDULE 1

Part I

- (i) The enlargement of the existing roundabout on the A1042 at Postwick as indicated on the attached drawing SK 102/03/124 Rev B
- (ii) The provision of a roundabout on the A1042 at the location indicated on the attached drawing SK 102/03/124 Rev B
- (iii) The dualling of the A1042 between the roundabout referred to in paragraph (i) of Part I of this Schedule and the roundabout referred to in paragraph (ii) of Part I of this Schedule
- (iv) the provision of landscaping on the two roundabouts referred to in paragraphs (i) and (ii) above in accordance with plans approved by the County Council (being consistent with the Landscape Master Plan approved by Broadland District Council)
- (v) the provision of a bus gate as indicated on the attached drawing SK 102/03/124 Rev B

Part II

- (i) The provision of traffic lights in Green Lane in the Parishes of Thorpe St Andrew and Great and Little Plumstead in the location indicated on the attached drawing SK 102/03/80

In each case the Works to include:-

- (a) 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
- (b) The provision and laying of all road markings reasonably required by the County Council
- (c) The provision, erection and connection of all traffic signs and lighting where required including services for temporary and permanent arrangements
- (d) All statutory undertakers' diversion works and the making good of any statutory undertakers' installations as a result of the carrying out of the Works
- (e) Any necessary ancillary highway works
- (f) The maintenance of the landscaping works referred to above for a period of 15 years from the date hereof

SCHEDULE 2

In this Schedule references to the Works shall be construed as references to the Phase I Works or the Phase II Works as the case may be

- (1) The name of any contractor introduced by the Landowners shall be notified in writing to the County Council not less than twenty-eight days before the commencement of the Works
- (2) The Landowners 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 Landowners 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 communicating with the Landowner's contractor through the Landowner's Representative referred to in paragraph (16) below
 - (iii) In accordance with the reasonable requirements and specifications of the County Council

- (b) The Works shall not be commenced until the Landowners 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 Landowners 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 Landowners propose to introduce a contractor prior to any arrangements being entered into between the Landowners and their contractor
- (6) During the carrying out of the Works the Landowners 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 Landowners 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 Landowners
- (8) The Works shall be completed to the reasonable satisfaction of the County Council who shall give the Landowners a written certificate to that effect as soon as shall be reasonably possible after the completion of the Works. For the purposes of this paragraph the landscaping works referred to in paragraph (iv) of Part 1 of Schedule 1 shall be dealt with by a separate certificate so that the certificate hereinbefore referred to is issued only in relation to the works referred to in paragraphs (i) (ii) and (iii) of Part 1 of Schedule 1

- (9) The Landowners 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 any certificate pertaining to such works referred to in paragraph (8) of this Schedule
- (10) The Landowners shall be responsible for the execution of such additional works or works of amendment (not exceeding £50,000 in respect of any works carried out in accordance with the approved Stage 2 Road Safety Audit) 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 Landowners 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 This paragraph shall not apply to any additional works or works of amendment carried out ~~by the Landowners~~ to the roundabout referred to in paragraph (ii) of Part 1 of Schedule 1 save where the works carried out by the Landowners are inconsistent with the approved Stage 2 Road Safety Audit
- (11) Nothing in this Schedule shall imply any obligation on the part of the County Council to the Landowners 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 Landowners (or their contractor) carry out the Works if the conditions set out in this Schedule are not strictly complied with
- (b) Upon termination under Paragraph (12) (a) above the County Council shall be entitled to call upon the Guarantee referred to in Clause 2(iv) 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 for the purposes of this Agreement
- (15) (a) Throughout the execution of the Works the Landowners 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 Landowners shall forward to the County Council evidence of their insurance cover
- (16) (a) A competent and authorised representative of the Landowners shall be available throughout the carrying out of the Works

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

(17) The Landowners shall be responsible for the proper execution and maintenance of the Works and shall indemnify and keep indemnified the County Council against:-

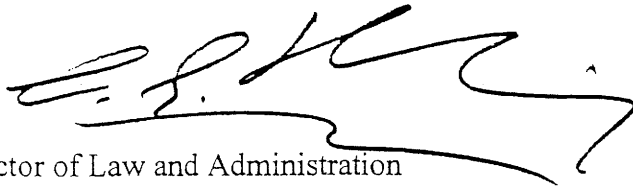
- (a) all losses and claims for injury or damage to any person or property whatsoever which may arise out of or in consequence of the execution and maintenance of the Works and
- (b) all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto (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) The Landowners shall pay to the County Council the following sums:-

- (a) A legal and administration charge amounting to £ 21,800 such sum to be paid on completion of the Agreement
- (b) A sum supported by appropriate records to cover the actual staff costs (plus overheads) at the Council's hourly rates then current reasonably and properly incurred by the County Council in checking the contract documents and drawings for the Works and supervising the carrying

out of the Works (such sum to be paid on such date or dates as the
County Council may specify)

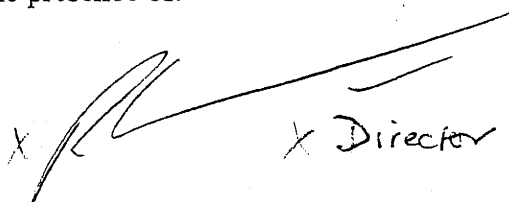
THE COMMON SEAL of
NORFOLK COUNTY COUNCIL
was affixed in the presence of:-



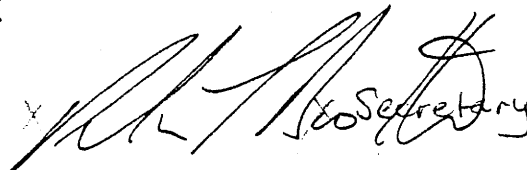
Director of Law and Administration



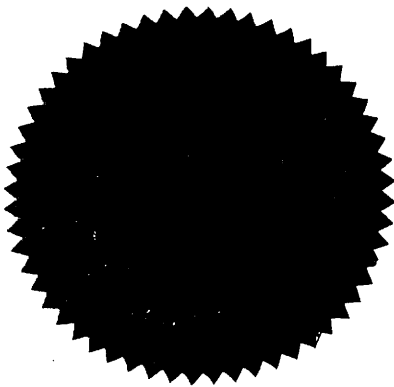
THE COMMON SEAL of
PELHAM HOMES DEVELOPMENTS LIMITED
was affixed in the presence of:-



X Director



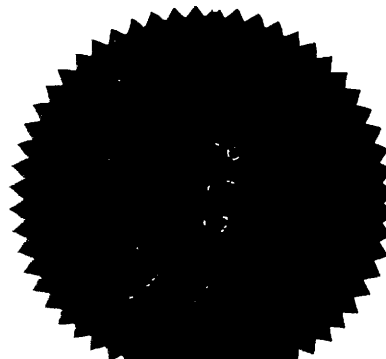
X Secretary



THE COMMON SEAL of
ALLIED LONDON PROPERTIES PLC
was affixed in the presence of:-

Director X 

Secretary 



MEMORANDUM

This Memorandum clarifies the provisions of the S.106 and S.278 Agreement dated 6th April 1998 made between Norfolk County Council (1) Pelham Homes Developments Limited (2) and Allied London Properties plc (3) ("the Agreement") and is supplemental to it.

1. It is apprehended that the part of the Works described in Schedule 1 Part 1 paragraph iv of the Agreement ("the Landscape Works") can only be carried out in the appropriate planting season and accordingly if at the time the remainder of the Phase I Works are complete the Landscape Works are incomplete because the Landowners have been unable to carry them out in the appropriate planting season
 - (a) the covenant and restriction in clause 2(i) of the Agreement shall not be applicable by reason only that the Landscape Works have not been carried out and
 - (b) the Landscape Works shall be excluded from the Phase I Works for the purposes of clause 6(a)

Provided that in such case the Landowners carry out the Landscape Works in the next planting season and the Landowners undertake accordingly.

2. The works listed in paragraphs (a) - (f) inclusive of Schedule 1 are intended to relate as appropriate to both the Phase I Works and the Phase II Works.
3. The covenants and restrictions in clauses 2(i), (ii) and (iii) and in clause 3(ii) of the Agreement shall not prevent or restrict the occupation of the Development by reason only that the obligations in Schedule 1 paragraph (f) remain outstanding. Provided that the Landowners nevertheless covenant to carry out the works described in the said paragraph.

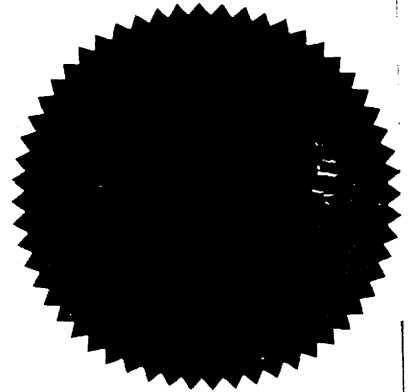
4. The words and expressions specifically defined in the Agreement shall have the same meanings in this Memorandum.

Dated this 6th day of April 1998

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

K. A. Beattie

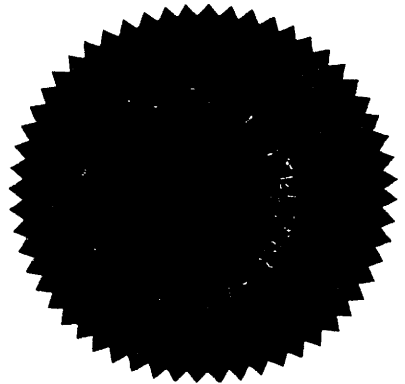
*authorised to sign on
behalf of* Director of Law and Administration



THE COMMON SEAL of PELHAM)
HOMES DEVELOPMENTS LIMITED)
was affixed in the presence of:-)

X X *[Signature]* Director

X X *[Signature]* Secretary

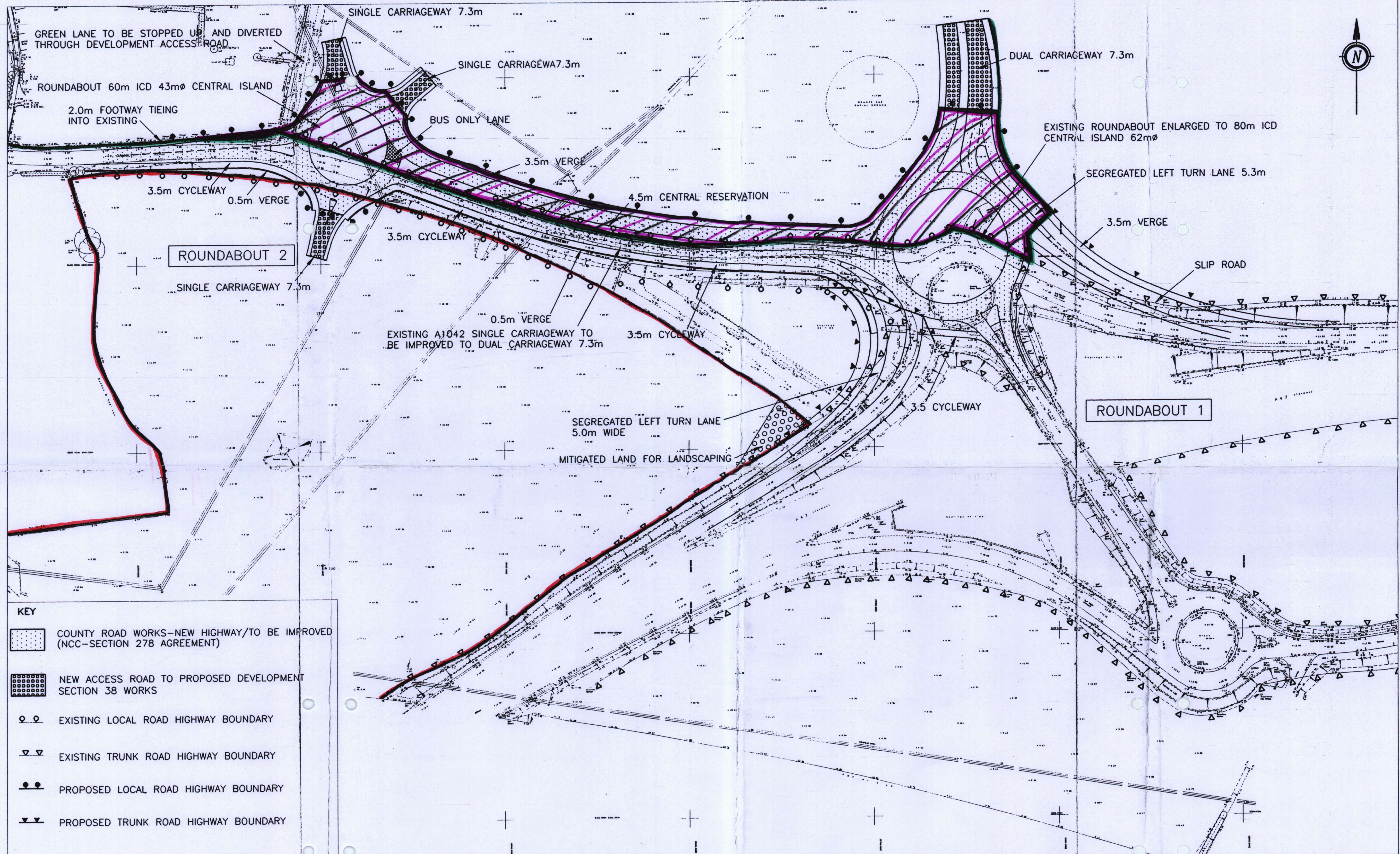


THE COMMON SEAL of ALLIED)
LONDON PROPERTIES PLC was)
affixed in the presence of:-)

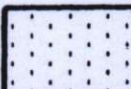

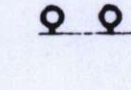
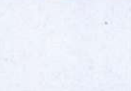
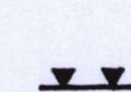

X X *[Signature]* Director

X X *[Signature]* Secretary





KEY

-  COUNTY ROAD WORKS—NEW HIGHWAY/TO BE IMPROVED (NCC—SECTION 278 AGREEMENT)
-  NEW ACCESS ROAD TO PROPOSED DEVELOPMENT SECTION 38 WORKS
-  EXISTING LOCAL ROAD HIGHWAY BOUNDARY
-  EXISTING TRUNK ROAD HIGHWAY BOUNDARY
-  PROPOSED LOCAL ROAD HIGHWAY BOUNDARY
-  PROPOSED TRUNK ROAD HIGHWAY BOUNDARY

Rev	Amendment	Drawn	Date
B	ROUNDABOUTS 1 & 2 ALTERED	B.W.A.	16.01.98

NOTES:—

- 1 THE LAYOUT OF THE ROAD WORKS SHOWN ON THIS PLAN FULLY CONFORMS TO THE CURRENT DEPARTMENT OF TRANSPORT STANDARDS.
- 2 ALL THE LAND NECESSARY TO CARRY OUT THE PROPOSED ROAD WORKS SHOWN ON THIS PLAN IS EITHER WITHIN THE CONTROL OF THE BROADLAND PARK CONSORTIUM OR IS WITHIN THE EXISTING HIGHWAY BOUNDARY.
- 3 THE EXISTING GROUND FEATURES INCLUDING LAND BOUNDARIES SHOWN ON THIS PLAN ARE DEEMED TO BE ACCURATE.

THE **TA** PARTNERSHIP
MILLARD

CHARTERED CIVIL AND DEVELOPMENT ENGINEERS

PERTH OFFICE
72 Victoria Street
PERTH PH2 8JS
Tel (01738) 638141
Fax (01738) 638157

NORWICH OFFICE
Britannia House
45-53 Prince of Wales Road
NORWICH NR1 1BL
Tel (01603) 610916
Fax (01603) 620631

Project
BROADLAND PARK

Drawing Title
S278—NCC WORKS
COUNTY ROAD WORKS

Client
PELHAM HOMES
DEVELOPMENTS Ltd.

Drawn
B.W.A.

Checked

Approved

Date
16.01.98

Scale
1:1000 (A1)

Drawing No.
SK102/03/124

Rev.
B