

DATED 16<sup>th</sup> March 2001

NORFOLK COUNTY COUNCIL

- and -

MARTIN WILLIAM WEBSTER

- and -

RICHARD JAMES WEBSTER

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A G R E E M E N T

Under Section 106 of the Town and Country  
Planning Act 1990 relating to Orchard Lane,  
Aylsham, Norfolk

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Director of Corporate Resources  
Norfolk County Council  
County Hall  
Martineau Lane  
Norwich  
NR1 2DH

THIS AGREEMENT is made the 16<sup>th</sup> day of March Two thousand and one

BETWEEN NORFOLK COUNTY COUNCIL ("the County Council") of County Hall Martineau Lane Norwich of the first part and MARTIN WILLIAM WEBSTER and RICHARD JAMES WEBSTER ("the Owners") of Bolwick Hall Farm Marsham Norwich NR10 5PU of the second part

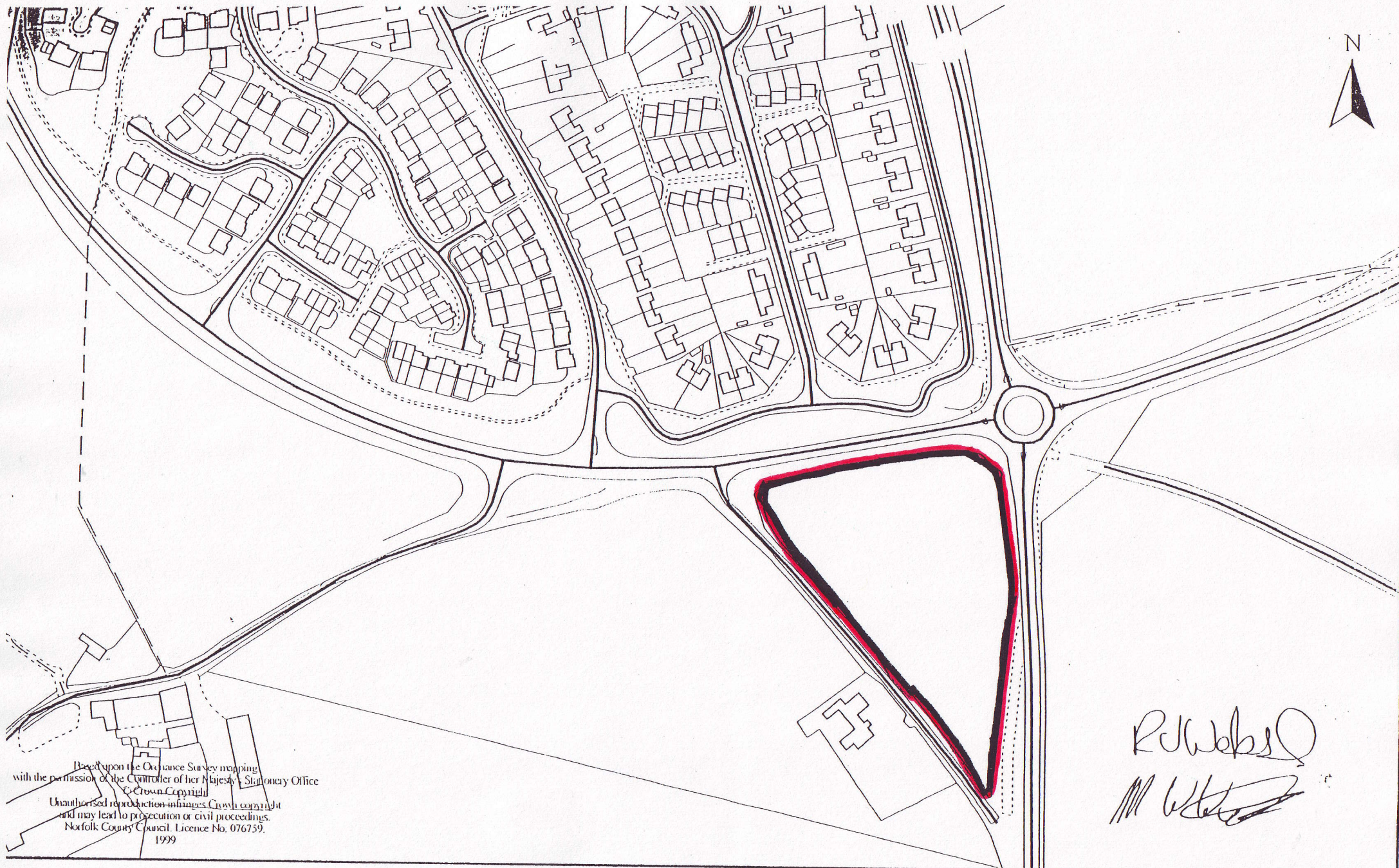
WHEREAS:-

- (1) The Owners are the owners in fee simple in possession of the land shown edged red on the attached plan ("the Land")
- (2) The County Council is a Local Planning Authority within the meaning of the Town and Country Planning Act 1990 ("the Act") and the Local Highway Authority within the meaning of the Highways Act 1980 for the area within which the Land is situated
- (3) The Owners have made application to the Broadland District Council (reference 991287) dated 26 October 1999 ("the Application") in accordance with the Act and the Orders and Regulations for the time being in force thereunder for planning permission ("the Planning Permission") to develop the Land by the development of a petrol filling station, shop, restaurant, motel and associated works ("the Development")

- (4) There are highway objections to the Development which can only be overcome by the works specified in Schedule 1 hereto ("the Works")
- (5) The County Council are satisfied that this agreement will be for the benefit of the public
- (6) The obligations created by this Deed are planning obligations within the meaning of Section 106 of the Act (as amended)
- (7) The obligations created by this Deed are enforceable by the County Council

N O W THIS DEED WITNESSETH as follows:-

- 1. This Agreement is made in pursuance of Section 106 of the Act Section 111 of the Local Government Act 1972 Section 278 of the Highways Act 1980 and all other enabling powers
- 2. The covenants in this Deed shall only come into effect on the date upon which the Development shall be commenced by the carrying out on the Land pursuant to the Planning Permission of a material operation specified in Section 56(2) of the Act (but not including any operations relating to the demolition of any existing buildings or clearance of the Land)



Aylsham

Produced Using  
HMMS  
Scale 1: 2500  
Map centered on 619464 325715

**NORFOLK**  
COUNTY COUNCIL  
Planning &  
Transportation

3. 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 Works to the reasonable satisfaction of and in accordance with the reasonable requirements and specifications of the County Council

(ii) no part of the Works shall be commenced unless at least 28 days before the commencement of the Works they have provided a Bond of Surety with an Assurance Company Guarantee Society Bank or like body approved by the County Council in the total sum of FORTY THOUSAND POUNDS (£40,000) 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

4. 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

5. 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 Works

6. 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 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
7. The Owners hereby covenant with the County Council that they will reimburse the County Council (a) any compensation paid by the County Council pursuant to any legally sustainable claim 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 paid by the County Council pursuant to any legally sustainable claim arising from the carrying out or use of the Works PROVIDED THAT the Owners indemnity will not extend to any claims submitted to the County Council to the extent that they are due to the negligence of the County Council or its employees or agents or arise out of any works of alteration carried out by the County Council or on its behalf to the Works after the issue of the certificate pursuant to paragraph (8) of Schedule 2
8. The County Council hereby agree to the Works being carried out by the Owners or by a contractor introduced by the Owners subject to the conditions set out in Schedule 2

and such other reasonable conditions which relate to the carrying out of the Works as the County Council may from time to time consider appropriate

9. 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
10. 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
11. 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

12. (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
13. All covenants entered into in this Agreement by the Owners shall be enforceable jointly and severally against both and each of them
14. This Agreement shall cease to have effect if the Planning Permission is either quashed, revoked or otherwise withdrawn or amended (save as to any minor amendments as are approved from time to time by Broadland District Council)

15. The expressions "the County Council" and "the Owners" shall include their respective successors and assigns as appropriate within the terms of Section 106 of the Act
16. Where the context so admits:-
- (a) the masculine feminine and neuter genders include each of the other genders and the singular includes plural and vice versa
  - (b) reference to any statutory or other body shall include reference to its successors in function
  - (c) "party" or "parties" means a party or parties to this Agreement
  - (d) references to clauses schedules and paragraphs are references to clauses in schedules to and paragraphs of this Agreement
  - (e) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source as at any time amended and where such Act Section Regulation or Statutory Instrument has been replaced consolidated or re-enacted with an actual amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting Act or Section or Regulation or Statutory Instrument.

17. No party or person shall be liable for any breach of the covenants restrictions or obligations contained in this Deed occurring whilst he or it has no interest in the Land or the part of the Land in respect of which such breach occurs but without prejudice to liability for any subsisting breach which occurs prior to parting with such interest PROVIDED THAT the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer or lease shall not constitute an interest for the purposes of this clause
18. This document is executed as a Deed and is delivered on the date first before written

## SCHEDULE 1

1. The formation laying out and construction of a right turn lane as shown in principle on Drawing No 1249/01C attached or such other Drawings as may from time to time be agreed by the County Council.
2. The reinstatement resurfacing re-grading re-seeding 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 markings reasonably required by the County Council.
4. The provision, erection or re-siting 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, erection or re-siting and connection 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.

## 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 a suitable office for use by the County Council for the purpose of the Works
- (7) The Owners shall be responsible for ensuring that any requirements of statutory undertakers are met prior to the commencement of the Works and the cost of any works required by the statutory undertakers shall be met in full by the Owners
- (8) The Works shall be completed to the reasonable satisfaction of the County Council who shall give the Owners a written certificate to that effect 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 reasonably 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 reasonably required in writing by the County Council following the completion by the County Council of a Stage 3 Road Safety Audit in respect of the Works and which arise out of that Stage of the Audit and are notified to the Owners within 60 days after the date of the certificate referred to in Paragraph (8) of this Schedule and the terms of reference of the Road Safety Audit are those described in the Department of Transport's Safety and Traffic Department Standard HD 19/90 and Advice Note HA 42/90 or any similar procedures from time to time in force but substituting the County Council for any references therein to the Department of Transport
- (11) Nothing in this Schedule shall imply any obligation on the part of the County Council to the Owners or to any other person to ensure that the Works or any part or parts thereof are properly designed and constructed and the County Council shall have no responsibility for producing any documentation for the Works including schedules designs calculation and contract drawings

- (12) (a) The County Council reserve the right to terminate forthwith in writing the arrangement whereby the Owners (or their contractor) carry out the Works if the conditions set out in this Schedule are not strictly complied with
- (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
- (13) In the event of the County Council terminating these arrangements for the reasons set out in paragraph 12(a) above they shall not be liable in any way for any direct or indirect loss resulting from termination save where such termination is unlawful
- (14) The County Council its servants and authorised agents shall at all reasonable times during the Works and the maintenance period referred to in Paragraph (9) above have access to the Works
- (15) (a) Throughout the execution of the Works the Owners shall insure against any damage loss or injury which may occur to any property or to any person by or arising out of the execution of the Works such insurance to be effected with an insurer in terms approved by the County Council for FIVE MILLION POUNDS ( 5,000,000) for any one claim

- (b) Prior to the commencement of the Works the Owners shall forward to the County Council evidence of their insurance cover
- (16)
  - (a) A competent and authorised representative of the Owners shall be available throughout the carrying out of the Works
  - (b) Such authorised representative shall receive on behalf of the Owners directions from the County Council or the County Council's representative and shall be competent to determine the action required and act accordingly
- (17) The Owners shall be responsible for the proper execution and maintenance of the Works and shall indemnify and keep indemnified the County Council against:-
  - (a) all losses and claims for injury or damage to any person or property whatsoever which may arise out of or in consequence of the execution and maintenance of the Works and save to the extent that such losses and claims for injury or damage arise in respect of the maintenance of the Works by the County Council (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 negligence, act or neglect or omission of the County Council or its servants)

(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 negligence, act or neglect or omission of the County Council or its servants)

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

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

(b) A sum to cover the actual staff costs (plus overheads) incurred by the County Council in supervising the carrying out of the Works (such sum to be paid on such date or dates as the County Council may specify)

(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)

(ii) The County Council shall in respect of the sums to be paid by the Owners pursuant to Paragraph 18(i) above deliver to the Owners when so requested in

writing by the Owners a breakdown of all costs in writing incurred by the  
County Council to date

IN WITNESS whereof the County Council have affixed their Common Seal and the  
Owners have signed this instrument as their Deed the day and year first before written

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

*C. S. Russell*

authorised to sign  
on behalf of:

Director of Corporate Resources



EXECUTED by the said MARTIN WILLIAM  
WEBSTER as a Deed in the presence of:-

*M W Webster*

Keith Hands  
1 BOLWICK HALL FARM COTTAGE  
MARSHAM  
NORWICH  
NORFOLK NR10 5PU  
HERDSMAN

EXECUTED by the said RICHARD JAMES  
WEBSTER as a Deed in the presence of:-

*R J Webster*

Keith Hands  
1 BOLWICK HALL FARM COTTAGE  
MARSHAM  
NORWICH  
NORFOLK NR10 5PU  
HERDSMAN