

THIS AGREEMENT is made the *20th* day of *August* 1998
BETWEEN the Council of the first part and the County Council of the
second part and the Applicant of the third part

Definitions and Interpretations

1. In this Deed unless the context otherwise requires the following expressions shall have the following meanings attributed to them:-

1.1 the Council Welwyn Hatfield District Council of Council Offices
The Campus Welwyn Garden City Hertfordshire AL8 6AE

1.2 the County Council Hertfordshire County Council of County Hall Pegs Lane
Hertford Hertfordshire *being the Highway Authority for Hertfordshire*

1.2.1 the Applicant Whitbread Plc whose registered office is Chiswell
Street London EC1Y 4SD

1.3 the Land All that freehold piece or parcel of land situate
between Gosling Stadium and Longcroft Green
Stanborough Road Welwyn Garden City Hertfordshire as
the same is more particularly shown by way of
identification only edged red on the plan annexed
hereto marked "A"

1.4 the Development Erection of 60 bedroom hotel restaurant car parking
and new vehicular access off Stanborough Road pursuant
to the Planning Permission

1.5 the Planning Application A planning application under reference N6/1047/97/FP
for planning permission to carry out the Development
together with plans specifications and particulars
deposited with the Council

1.6 the Planning Permission A planning permission for the Development the subject
of the Planning Application in the form of the draft
annexed marked "B"

- 1.7 the Act The Town and Country Planning Act 1990
- 1.8 the Highways Act The Highways Act 1980
- 1.9 the Director The Director of Environment for the time being of the Council or such other officer that the Council may from time to time appoint to undertake the duties of the Director of Environment
- 1.10 the Junction Works The works described in Part I of the First Schedule
- 1.11 the Road Works The works described in the Second Schedule
- 1.12 The expressions "the Council" and "the County Council" and "the Applicant" shall include where appropriate their respective successors in title and assigns
- 1.13 (a) Reference to Clauses sub-clauses and Schedules refer to clauses sub-clauses and schedules of this Deed
- (b) In this Deed the singular shall include the plural and the masculine shall include the feminine and vice versa where the context so admits
- (c) The Clause headings do not form part of this Deed and shall not be taken into account in its construction or interpretation
- 1.14 Unless otherwise provided all the parties to this Agreement hereby agree and confirm that the covenants and terms of this Agreement shall be deemed to remain in full force and effect on any extension or renewal variation modification or amendment of the Planning Permission which the Council may grant if the Development has not been commenced within five years from the date hereof
- 1.15 References in this Agreement to any statutes or statutory instrument shall include any statute or statutory instrument amending consolidating or replacing them respectively from time to time being in force

Recitals

2. WHEREAS:-

2.1 The Council is the Local Planning Authority for the area in which the Land is situated and by whom the obligations restrictions stipulations conditions and covenants herein are enforceable

2.2 The Council is for the purpose of the Highways Act ^{the Highway Authority's} ~~the local highways~~ ^{agent for Longcroft Green and is also hereby appointed by the County} ~~authority for Longcroft Green and is hereby appointed to act as agents~~ ^{ALL} ~~Council to act as agent of the Highway Authority in respect of that part~~ ^{WJJD} ~~on behalf of the County Council in respect of Stanborough Road upon~~ ~~of Stanborough Road affected by the Junction Works limited to the~~ ^{RS} ~~the same terms (except insofar as they may be inconsistent with these~~ ~~purposes of supervision of and enforcement in respect of the Junction~~ ~~Works being carried out until such time as the Junction Works~~ ~~5th March 1990 between the county council and the Council-~~ ~~become maintainable at the public expense.~~

2.3 The Applicant is the owner of the Land by virtue of a transfer of even date herewith made between the Council and the Applicant

2.4 The Applicant has by the Planning Application applied to the Council for planning permission to carry out the Development on the Land

2.5 The Council is satisfied that the Development is such as may be approved by it under the Act and has agreed to grant Planning Permission subject to the parties entering into this Agreement including all the obligations restrictions stipulations conditions and covenants contained herein

NOW THIS DEED WITNESSETH as follows:-

Nature of Agreement

3. The parties HEREBY AGREE:-

3.1 The obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the Act insofar as they fall within the terms of sub-section (1) thereof to the intent that subject to sub-clause 3.5 below all obligations restrictions stipulations conditions and covenants herein shall be binding upon the owner and

its successors in title and shall be registered as a local Land charge by the Council under the provisions of the Local Land Charges Act 1975

3.2 Insofar as the obligations restrictions stipulations conditions and covenants contained herein are not planning obligations within Section 106 of the Act the covenants are entered into pursuant to Section 111 of the Local Government Act 1972 and Sections 38 of the Highways Act and all other enabling powers and this Agreement shall be registered as a local land charge by the Council under the provisions of the Local Land Charges Act 1975

3.3 Any expense incurred or to be incurred by the Council (whether as landowner or Local Planning Authority or Local Highway Authority) or the County Council to which the Applicant is or may become liable under this Agreement may be recoverable by the Council as provided by Section 291 of the Public Health Act 1936 and the Council reserves its right to pursue recovery of any monies due under this Agreement by civil action

3.4 None of this Deed other than this clause and any other provision hereof required to give effect to this clause and Clause 4.1 below shall take effect unless or until both of the following shall have been satisfied:-

(a) the Planning Permission shall have been granted

(b) the Development shall have been commenced by or on behalf of the Applicant by commencing the Junction Works or the Road Works (as defined below) or by the carrying out on the Land of any material operation and for the purposes of this Deed the term "material operation" shall have the meaning set out in sub-section 56(4) (a) (b) (c) (d) and (e) inclusive of the Act PROVIDED that any works of demolition site inspection testing sampling site surveys site clearance or levelling fencing archaeological excavations or surveys shall be deemed not to constitute commencement of the Development

3.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after he shall have parted with his entire interest in the Land or that part thereof on

which such breach occurs but without prejudice to liability for any subsisting breach

Applicant's Covenants

4. The Applicant HEREBY COVENANTS in favour of the Council (in its capacity as Local Planning Authority) that:-
 - 4.1 on the date hereof the Applicant will pay the whole of the reasonable costs incurred by the Council and the County Council in the preparation and completion of this Agreement
 - 4.2 prior to commencement of the Junction Works and/or the Road Works the Applicant will enter into an agreement with the Council (in its capacity as Local Highway Authority) under Section 38 of the Highways Act backed by a bond (for an amount equivalent to the estimated cost of carrying out and completing the Road Works) with a surety reasonably acceptable to the Council in respect of the Road Works such agreement to be in terms reasonably stipulated by the Council ("the Section 38 Agreement")
 - 4.3 prior to the Development being brought into use the Applicant will carry out the Junction Works and the Road Works in accordance with the Planning Permission the terms of this Agreement and (in respect of the Road Works) the Section 38 Agreement
 - 4.4 the Applicant will not at any time prevent nor allow permit or suffer the prevention of vehicular and pedestrian access to and from the properties currently served by Longcroft Green

Council's Covenants

5. The Council HEREBY COVENANTS with the Applicant in the event of Planning Permission being granted and implemented but not otherwise that upon being called upon by the Applicant to do so the Council will enter into the Section 38 Agreement in its capacity as Local Highway Authority so as to enable the Applicant to comply with its obligations herein PROVIDED ALWAYS that:-

a) the Council shall not be bound to enter into the Section 38 Agreement if the Applicant is in material breach of the terms hereof until such breach has been remedied

b) the Applicant defers the reasonable and proper costs of the Council in preparing and entering into the Section 38 Agreement

The First Schedule - Part I
(the Junction Works)

The construction on land presently designated as public highway of the works set out in this Part I of this Schedule in accordance with the provisions set out in Part II of this Schedule and otherwise to the reasonable satisfaction of the Director:

- (i) Part of the new access to the Development from Stanborough Road in accordance with and shown for identification only coloured pink on the site layout drawing numbered 3866/002 annexed hereto marked "C"
- (ii) The right turn lane from Stanborough Road as shown on the said drawing
- (iii) Improvements to the existing street lighting including any replacements/resiting of street lighting columns reasonably considered necessary by the Director in Stanborough Road all such works to comply with the Council's standard specifications and to be carried out by a contractor approved by the Council (such approval not to be unreasonably withheld or delayed)
- (iv) The reinstatement of any vehicular cross over and footpath in Stanborough Road which will not be required following completion of the Development
- (v) The construction of a joint cycleway/footway from Stanborough Lane to the approach islands on Stanborough Road for the roundabout at the junction of Stanborough Road, Osborn Way and Twentieth Mile Bridge the approximate position of such proposed cycleway/footway being shown for the purpose of identification only coloured blue on the said drawing marked "C"

The First Schedule - Part II
(Provisions Relating to Construction of the Junction Works)

1. The Applicant shall construct and complete at its own expense the Junction Works in accordance with

(a) the "Manual of Contract Documents" and the "Design Manual for Roads and Bridges" published by the Department of Transport as modified and amended by the said Department and/or by the Director

(b) the specification entitled "Development Sites Off Site Highway Works Guidance Notes for Developers" Second Edition July 1995 published by the County Council's Transportation Department as amended by the said Department and/or the Director

(c) the Disability Unit Circular 1/91

(d) "Cycling Facilities - Guidance Notes" published by the County Council's Transportation Department incorporating all amendments and revisions issued by the Local Highway Authority

(e) "Roads in Hertfordshire A Design Guide" published by the County Council's Transportation Department in March 1994 incorporating Amendment 2

(f) the Traffic Signs Regulations and General Directions 1994 and

(g) the works drawing number 3866/002 or any future revision of the said drawing provided it is agreed in writing between the Director and the Applicant

2. The Applicant shall not to commence the Junction Works until such time as

(a) it has at its own expense entered into a bond in terms reasonably acceptable to the Director for the reasonably estimated cost of the Junction Works given by a surety reasonably acceptable to the Director and registered as approved by the Department of Trade and Industry to the effect that should the Applicant default in the execution of its obligations to carry out the Junction Works in accordance with this

Agreement then the Council may itself carry out the Junction Works and call upon the surety to reimburse the lesser of the cost expended in so doing and the bond figure which shall be not less than £70,000 being such amount estimated by the Director to be the reasonable cost of the Junction Works and

(b) it shall pay the Council's reasonable and proper fees associated with the approval of the Junction Works and in connection with all work undertaken consequent upon the construction (whether proposed or actual) thereof including work in relation to traffic regulations or orders

(c) it shall submit for vetting by Mouchel TSC Safety Audit Team the detailed drawings of the Junction Works (which drawings shall first have been approved by the Director acting reasonably and without undue delay) and incorporate any necessary amendments to those detailed drawings reasonably required as a result of any Safety Audit Team requirements with all Safety Audit Team fees to be paid by the Applicant

(d) it has provided a detailed designers safety plan in accordance with the Construction (Design and Management) Regulations 1994

(e) it has served all requisite notices under the New Roads and Street Works Act 1991

3. Having first obtained the approval of the Director (such approval not to be unreasonably withheld or delayed) to the detailed drawings of the Junction Works at the Applicant's sole expense to carry out the Junction Works prior to the Development being brought into use
4. Within 14 days of demand to pay to the Council in respect of its fees for supervision of the Junction Works a sum equal to 5% of the value of the Junction Works as estimated by the Director
5. To sign and protect the Junction Works in accordance with Chapter 8 of the Traffic Signs Manual published by Her Majesty's Stationary Office and in accordance with the New Road and Street Works Act 1991

6. The Applicant shall place all orders and pay any proper costs to statutory undertakers for all works to their mains or services necessitated by the Junction Works (provided that such costs are not in the reasonable opinion of the Director unreasonable) and shall relocate all street furniture affected by the Junction Works to the satisfaction of the Director
7. The Applicant shall notify the Director in writing at least 28 days prior to the commencement of any work connected with statutory undertakers equipment and shall further notify the Director in writing at least 28 days prior to the commencement of the Junction Works of its intention to proceed with the Junction Works
8. The Junction Works shall be carried out under the terms of a construction contract approved by the Director such approval not to be unreasonably withheld or delayed
9. The Applicant shall accept the supervision of the Director and shall carry out the Junction Works in accordance with details and drawings first submitted to and reasonably approved by the Director and to a standard of workmanship and quality of materials reasonably approved by the Director (acting in both cases without undue delay) and during the progress of the Junction Works give to the Director free access to every part thereof for the purpose of testing and/or inspecting the Junction Works as they proceed and all materials for use therein and also give free access to every part of the Junction Works to the County Council in its capacity as Safety Auditors for the purpose of conducting a safety audit on the Junction Works provided that if the Director shall reasonably require the Applicant so to do the Applicant shall at its own expense uncover or open up the Junction Works to enable the same to be inspected and provided further if so required the Applicant shall remove any work or materials which are in the reasonable opinion of the Director defective unsuitable or not in accordance with the matters previously approved by him and re-execute any such works and substitute proper and suitable materials to the reasonable satisfaction of the Director
10. The Applicant will have in force at all relevant times public liability insurance of not less than £5 million in respect of any single accident and the Applicant will indemnify the Council against

all claims whatsoever arising out of or in connection with the construction performance and/or execution of the Junction Works

11. The Applicant shall complete all the Junction Works to the reasonable satisfaction of the Director within six calendar months of their commencement and in any event before the Development first comes into use and on completion of the Junction Works to his reasonable satisfaction the Director shall issue a Certificate of Completion ("the Certificate of Completion") which shall not be unreasonably withheld or delayed and whereupon the said bond in relation to the Junction Works will be reduced by half
12. The Applicant shall fully maintain the Junction Works for a period of twelve months from the date of issue of a Certificate of Completion ("the Maintenance Period") and shall make good any defects or damage which may arise from any cause whatsoever or be discovered during the Maintenance Period and at the expiration of the Maintenance Period and provided that such defects and damage shall have been made good to the satisfaction of the Director (acting reasonably and without undue delay) the Director shall issue a Certificate of Maintenance of the Junction Works and upon the date thereof the Junction Works shall become maintainable at public expense
13. The Applicant will provide the Director with accurate 1 in 500 scale negatives of "as built" record drawings showing details of all aspects of the Junction Works as constructed immediately upon the issue of the Certificate of Completion together with (a) record drawings showing details of all aspects of the Junction Works as constructed (b) records of the earthwork showing sources of material used in areas of fill description of fill materials description of sub grades in cut areas and copies of results of tests of material carried out as part of the supervision of the construction of the earthwork (c) records of the sources of supply of all deliveries of road construction materials with details of the location in the Junction Works at which each load is placed and (d) records of the sources of supply of all other manufactured materials
14. Should the Applicant arrange for the carrying out of the Junction Works or any part thereof to be undertaken by any third person the Applicant will seek the Director's approval to such a person carrying

out the Junction Works or part thereof (such approval shall not be unreasonably withheld or delayed) and if such approval is forthcoming they will ensure that contracts with such third person shall include the obligations and covenants on the part of that third person mutatis mutandis in the same terms as the covenants on the part of the Applicant contained in this Agreement

15. The Applicant will indemnify the Council and keep it indemnified against all claims under (a) Part I and Part II of the Land Compensation Act 1973 including claims the Council determine should be met under the provisions of Regulation 4 of the Noise Insulation Regulations 1975 (b) the Environmental Protection Act 1990 and all Regulations and Codes of Practice made thereunder in particular Part II (Control of Waste) and Part III (Statutory Nuisances) arising out of the construction and use (as a means of access to and from the Development) of the Junction Works and for the purposes of this indemnity the Applicant is deemed to carry out the Junction Works as agent for the Council

16. The Applicant will provide detailed proposals for dealing with the prevention of mud being deposited onto adjoining public highways by the passage of vehicles to and from the Land and/or the site of the Junction Works to the reasonable satisfaction of the Director prior to commencement of the Junction Works and shall observe all Heavy Goods Vehicle routes reasonably notified to the Applicant by the Director

The Second Schedule
(the Road Works)

The construction of the following works to the reasonable satisfaction of the Director:

- (i) The remainder of the new access to the Development from Stanborough Road and the new section of Longcroft Green in accordance with and shown coloured yellow on the site layout drawing numbered 3866/002 annexed hereto marked "C"

Items "A" "B" & "C" annexed

IN WITNESS whereof the Council and the County Council and the Applicant have executed this Agreement as a Deed the day and year first before written

THE COMMON SEAL of WELWYN)
HATFIELD DISTRICT COUNCIL)
is hereunto affixed in the)
presence of:-)

Susan E Jones
Chairman of the Council

M J Davies
Solicitor to the Council
(being its Authorised Officer):-

THE COMMON SEAL of)
HERTFORDSHIRE COUNTY COUNCIL)
is hereunto affixed in the)
presence of:-)

Authorised officer

Authorised officer

Andrew Laycock
ANDREW LAYCOCK
County Secretary

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PETER JAMES BROWN)
SIGNED AS A DEED by)
ATTORNEY for and on behalf of)
WHITBREAD PLC)
in the presence of:-)

P. Brown

R M Johnson
R M Johnson
12 Elliswick Road
Harpden
Herts AL5 4TP
Secretary

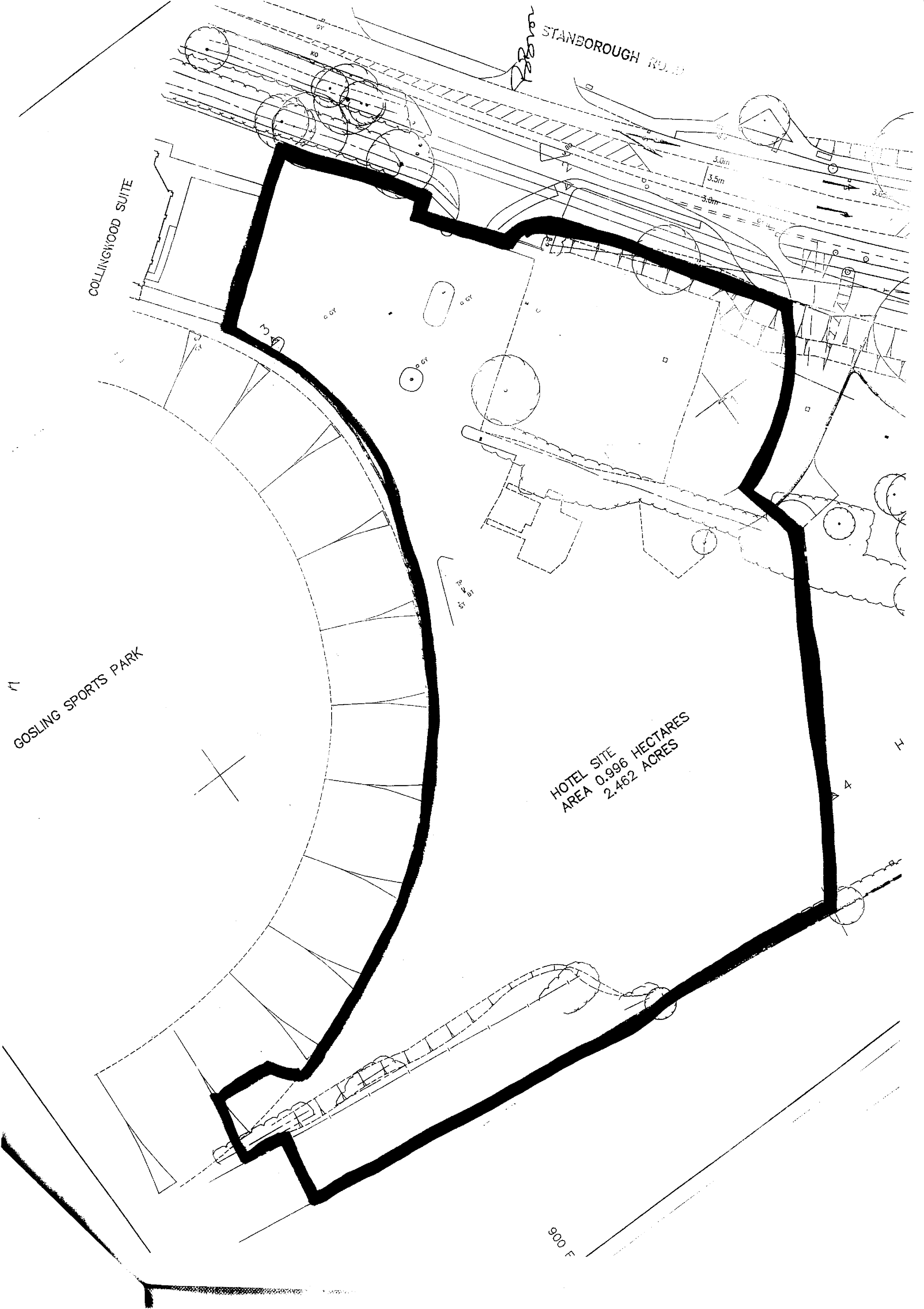
STANBOROUGH ROAD

COLLINGWOOD SUITE

GOSLING SPORTS PARK

HOTEL SITE
AREA 0.996 HECTARES
2.462 ACRES

900 F



Date 20th August 1998

WELWYN HATFIELD DISTRICT COUNCIL

and

HERTFORDSHIRE COUNTY COUNCIL

and

WHITBREAD PLC

AGREEMENT

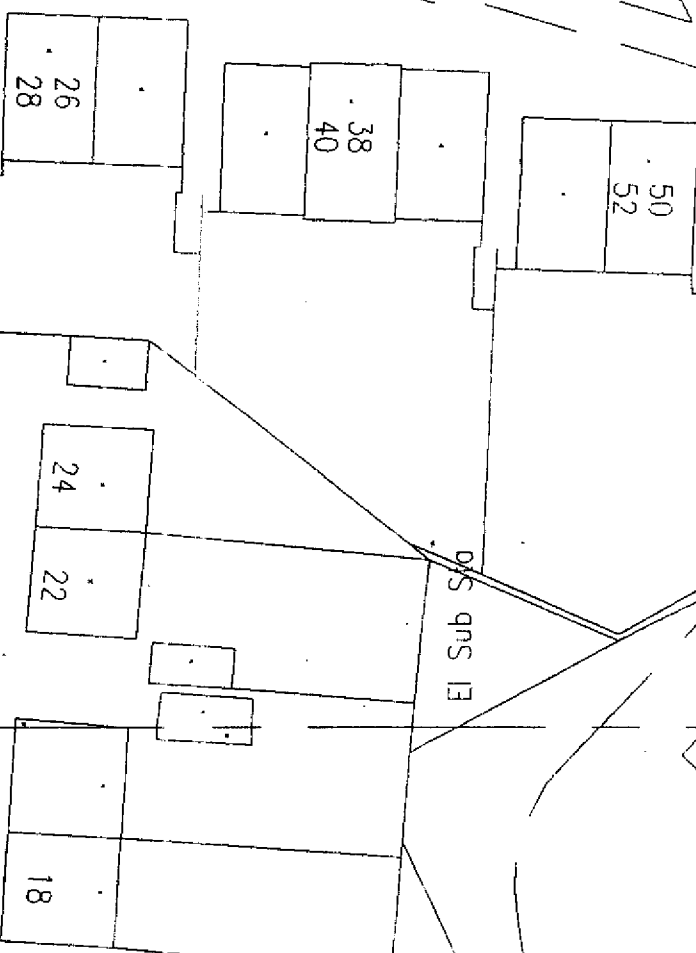
under Section 106 of the Town and
Country Planning Act 1990 relating to
land situate between Gosling Stadium
and Longcroft Green Stanborough Road
Welwyn Garden City Hertfordshire

Solicitor to the Council
Welwyn Hatfield District Council
Council Offices
The Campus
Welwyn Garden City
Herts.
AL8 6AE

on request

or approval with section of the Secretary of the County Council shall be prepared

ROOKS HILL



El Sub St

LOCAL CYCLE WAY NETWORK TO BE EXTENDED ACROSS STANBOROUGH ROAD AND INTO LONGCROFT ROAD. ACTUAL LAYOUT TO BE AGREED.

RIGHTS TO BE EXTINGUISHED OVER REDUNDANT LENGTH OF LONGCROFT GREEN.

ACCESS ROAD TO LONGCROFT GREEN.

FOOTWAY/CYCLEWAY TO BE PROVIDED.

ACCESS TO MCCARTHY & STONE SITE.

Nº 3866/002

ACCESS TO CAR PARK FOR PROPOSED HOTEL AND

EXISTING ACCESS TO BE STOPPED UP.

PETROL FILLING STATION

LIMIT OF ADIPTION

FOOTWAY/CYCLEWAY TO BE REALIGNED

Lane

Stonecroft

Scrub

Nc

Nc

Scrub

Nc

Scrub

Robson

MP

N

