

DATED 21st January 2005

WELWYN AND HATIFELD DISTRICT COUNCIL

- and -

HERTFORDSHIRE COUNTY COUNCIL

- and -

INDUSTRIAL DEVELOPMENT PARTNERSHIP II
(NOMINEE COMPANY) LIMITED

PLANNING OBLIGATION BY AGREEMENT

pursuant to Section 106 of the
Town and Country Planning Act 1990
relating to land at
Hatfield Aerodrome, Comet Way, Hatfield

DAVIES ARNOLD COOPER

6-8 Bouverie Street
London EC4Y 8DD

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Ref: 387/128006.**/03/09/04/mey

THIS AGREEMENT is made this **21st** day of **January** 200**5**

BETWEEN:

- (1) **WELWYN AND HATFIELD DISTRICT COUNCIL** of Council Offices Welwyn Garden City ("the District Council"); and
- (2) **HERTFORDSHIRE COUNTY COUNCIL** of County Hall Pegs Lane Hertford AL8 6AE ("the County Council"); and
- (3) **INDUSTRIAL DEVELOPMENT PARTNERSHIP II (NOMINEE COMPANY) LIMITED** whose registered office is situate at 33 Cavendish Square London W1A 2NF (Company number 04042250) ("the Owner").

PRELIMINARY:

- (1) The Owner has the freehold interest in the Site registered at HM Land Registry under Title No. HD 412587.
- (4) For the purposes of the 1990 Act the District Council and the County Council are the local planning authorities for the area in which the Site is situated.
- (5) The covenants restrictions and limitations contained in this Agreement are planning obligations for the purpose of Section 106 of the Town and Country Planning Act 1990 and are enforceable by the District Council and the County Council respectively against the owners and all of the persons with an interest in the Site and against their respective successors in title and assigns as if those persons had been original covenanting party in respect of the interest or estate for the time being held by them in the Site.
- (6) This Agreement is made pursuant to Section 106 of the Town and Country Planning Act 1990 the Highways Act 1980 and Section 111 of the Local Government Act 1972 and all other powers enabling.
- (7) This Agreement shall be registrable as a local land charge by the District Council and/or the County Council under the Local Land Charges Act 1975.
- (8) The obligations contained in this Deed are intended to bind the Site and each and every part of it and to restrict and control its use development and occupation.
- (9) On 23 March 2004 the Owner submitted the Application 2 to the District Council for permission to develop the Site for the purposes and in the manner described in the Application 2.
- (10) In August 2004 a decision was made by the District Council to grant the Second Permission subject to an agreement under section 106 of the Act.
- (11) This Agreement is supplemental to the First S.106 Agreement the Deed of Modification and the 2003 Agreement.
- (12) By virtue of the 2003 Agreement and the First Permission the Council and the District Council agreed that the floorspace within Class B8 of the Use Classes Order authorized by the First Permission should not count towards the maximum permitted floorspace under sub-clause 4.139 of the First Section 106 Agreement as amended by the Deed of Modification.

- (13) By virtue of the 2003 Agreement and the First Permission the Council and the District Council agreed that the restrictions relating to the delivery of the Small Business Units contained in the First Section 106 Agreement as amended by the Deed of Modification should be varied and that a total of 15 small business units should be constructed on the site.
- (14) This Agreement further varies the restrictions relating to the delivery of the Small Business Units and increases the number of Small Business Units to 16 instead of 15.
- (15) It is recognized that the First Permission has been implemented and references in this Deed to Units and Small Business Units shall be applicable to all development on the Site whether constructed pursuant to the Outline Permission and/or the First Permission and/or the Second Permission.
- (16) The amount of floorspace within class B8 of the Use Classes Order authorised by the First and Second Permission is in addition to that authorised by the Outline Permission and the subject of the First S.106 Agreement and the Deed of Modification.
- (17) The amount of floorspace within class B 1 and class B2 of the Use Classes Order authorised by the Original Permission and the First and Second Permission forms part of and shall count towards the maximum permitted floorspace specified under sub-clause 4.139 of the First S.106 Agreement as amended by the Deed of Modification.

IT IS HEREBY AGREED AS FOLLOWS:

1. **INTERPRETATION**

1.1 In this Agreement unless the context otherwise requires:

"2003 Agreement" means an agreement made inter alia under section 106 of the Town and Country Planning Act 1990 and made between Welwyn Hatfield District Council (1) Hertfordshire County Council (2) and Industrial Development Partnership II (Trading Subsidiary) Limited (3) dated 25 March 2003;

"Application 2" means the application dated 23 March 2004 reference S6/2004/494/FP which seeks planning permission for development of the Site by the erection of 35 units for the provision of flexible dual use for flexible light industry (B1 (c)) general industrial (B2) and the capacity of further alternative use for storage and distribution (B8) (max 40%);

"Deed of Modification" means the agreement under section 106A of 1990 Act dated 16 October 2002 and made between: the District Council (1); the County Council (2); City and District of St Albans District Council (3); BAE Systems plc (4); Arlington Property Developments Limited (5); Harbour Properties Limited (6); Hatfield Business Park Limited (7); API (No. 11) Limited (8); API (No. 14) Limited (9); API (No 17) Limited (10); API (No. 18) Limited (11); Ocado Limited (12); T-Mobile (UK) Limited (13); NBC Apparel (14); the Owner (15); Bovis Homes Limited (16); Bryant Homes Southern Limited (17); The University of Hertfordshire Higher Education Corporation (18); Next Generation Clubs Limited (19); the Trustees of the De Havilland Sports and Social Club (20) and Polyfield Property Limited (21);

"Development" means the development of the Site as described in Application 2 and as authorised by the Outline Permission and/or the First Permission and/or the Second Permission;

"First S.106 Agreement" means the agreement under section 106 of the 1990 Act dated 29 December 2000 and made between: the District Council (1); the County Council (2); City and District of St Albans District Council (3); BAE Systems plc (4); Arlington Property Developments Limited (5); the University of Hertfordshire Higher Education Corporation (6); and Hatfield Business Park Limited (7) as subsequently modified by the Deed of Modification;

"First Permission" means the planning permission dated 25 March 2003 reference S6/2002/1136/FP;

"Gross External Area" means the gross external area measured in accordance with the Code of Measuring Practice (Fifth Edition) published on behalf of the Royal Institution of Chartered Surveyors and the Incorporated Society of Valuers and Auctioneers;

"Outline Permission" means the outline planning permission granted by the District Council on 29 December 2000 under reference number S6/1999/1 064/OP;

"Phase 1" means the area edged blue on the Phasing Plan;

"Phase 2" means the area edged green on the Phasing Plan;

"Phasing Plan" means the plan so marked and annexed to this Agreement or as otherwise varied by agreement between the parties;

"Second Permission" means the planning permission granted pursuant to Application 2;

"Site" means the land shown edged red on the Site Plan;

"Site Plan" means the plan annexed to this Agreement;

"Small Business Units" means the 16 individual units to be erected on the Site whether pursuant to the Outline Permission and/or the First Permission and/or the Second Permission that individually do not exceed 300 square metres Gross External Area on all floors unless otherwise agreed in writing by the District Council;

"Unit" means any individual unit comprised within the Development (whether constructed pursuant to the Outline Permission and/or the First Permission and/or the Second Permission) other than a Small Business Unit;

"Use Classes Order" means the Town and Country Planning (Use Classes) Order 1987 as amended;

"1990 Act" means the Town and Country Planning Act 1990, as amended.

1.2 Where the context so requires:

1.2.1 the singular includes the plural;

1.2.2 references to any party will include the successors in title of that party;

1.2.3 where a party includes more than one person any obligations of that party will be joint and several; and

1.2.4 references to clauses and schedules are references to clauses in and schedules to this Agreement.

2. **LEGAL EFFECT**

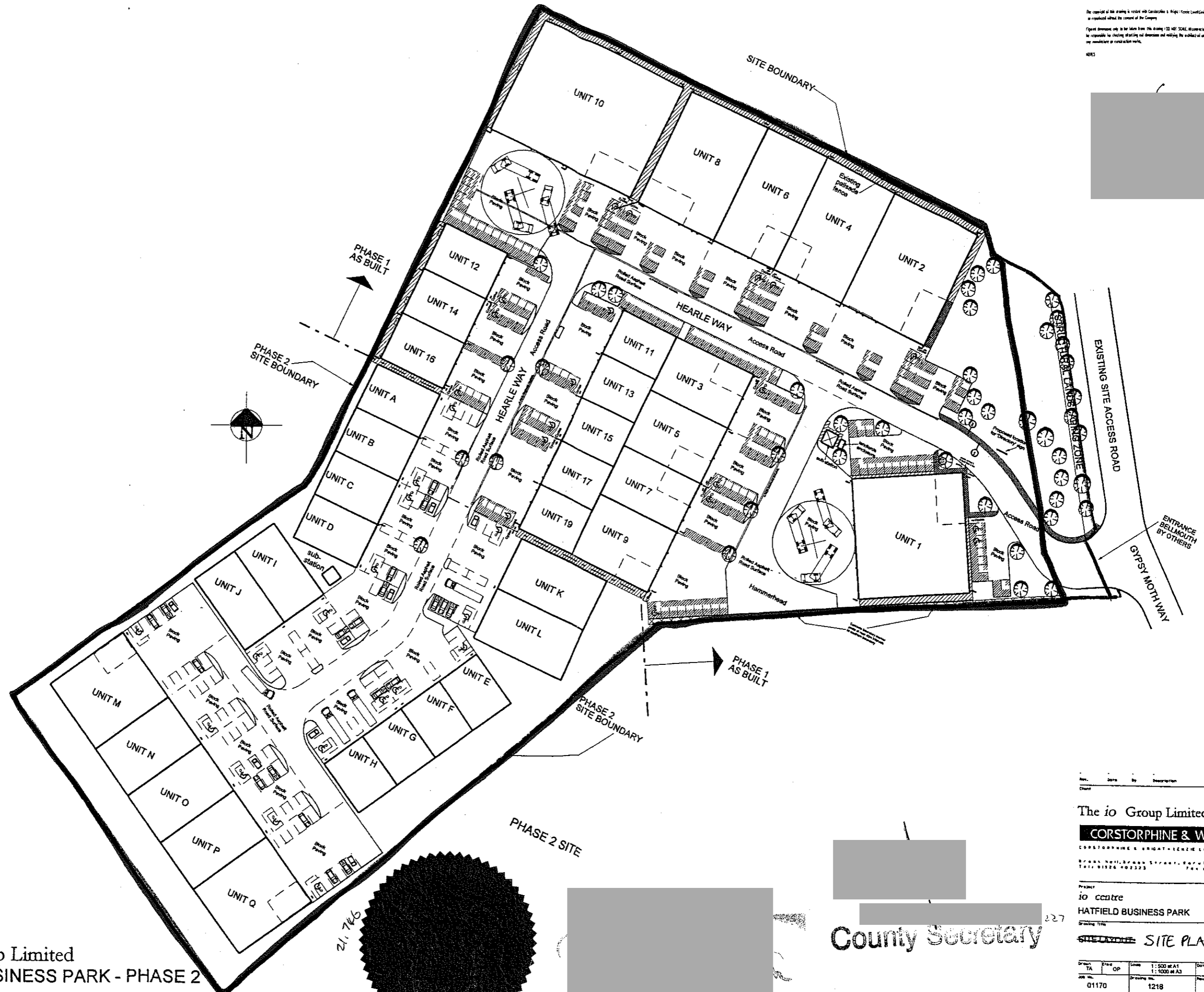
- 2.1 This planning obligation by agreement is made pursuant to section 106 of the 1990 Act and section 111 of the Local Government Act 1972 to the intent that it will bind the Owner and its successors in title to each and every part of the Site and their assigns as provided in those sections.
- 2.2 For the avoidance of any doubt it is hereby agreed between the parties hereto that the terms conditions covenants and obligations contained in the First S.106 Agreement as amended by the Deed of Modification shall save as otherwise provided in the 2003 Agreement and this Agreement remain in full force and effect in relation to the Development of the Site.
- 2.3 This Agreement will be enforceable by the District Council and the County Council as the local planning authorities for the area in which the Site is situated.
- 2.4 No person will be liable for any breach of this Agreement unless they hold an interest in that part of the Site in respect of which such breach occurs or held such an interest at the date of the breach.
- 2.5 This Agreement will not take effect until the following conditions precedent have been fulfilled:
- 2.5.1 the Second Permission has been granted;
 - 2.5.2 the Second Permission has been implemented by the carrying out of a material operation as defined in s56(4) of the 1990 Act.
- 2.6 Nothing in this Agreement will be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission granted by the local planning authority or by the Secretary of State on appeal or by reference to him after the date of this Agreement.
- 2.7 On the date hereof the Owner will pay to the District Council and to the County Council their reasonable costs for the preparation and completion of this Agreement.

3. **OWNER'S COVENANTS**

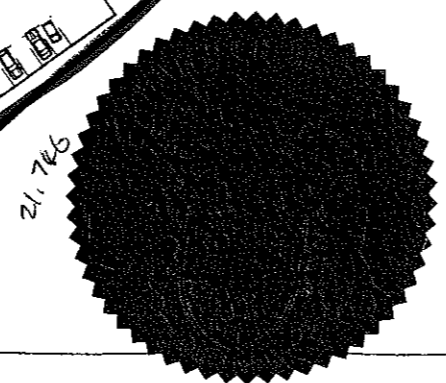
The Owner for itself and its successors in title to the Site and each and every part of it hereby covenants with the District Council and with the County Council as follows:-

- 3.1 prior to the date of the first occupation of each Unit and Small Business Unit comprised within the Development and on every anniversary hereof, it shall submit to the District Council a schedule of the uses to which each individual Unit and Small Business Unit comprised within the Development are being put as at that date and the amount of floorspace given over to each such use;
- 3.2 unless otherwise agreed in writing with the District Council not to occupy or cause or permit to be occupied at any time an aggregate Gross External Area of more than 6690 square metres of Units and Small Business Units erected on the Site whether pursuant to the Outline Permission and/or the First Permission and/or the Second Permission or otherwise for uses within the meaning of class B8 of the Use Classes Order;
- 3.3 unless otherwise agreed in writing with the District Council not to occupy or cause or permit to be occupied:-

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 HATFIELD BUSINESS PARK - PHASE 2



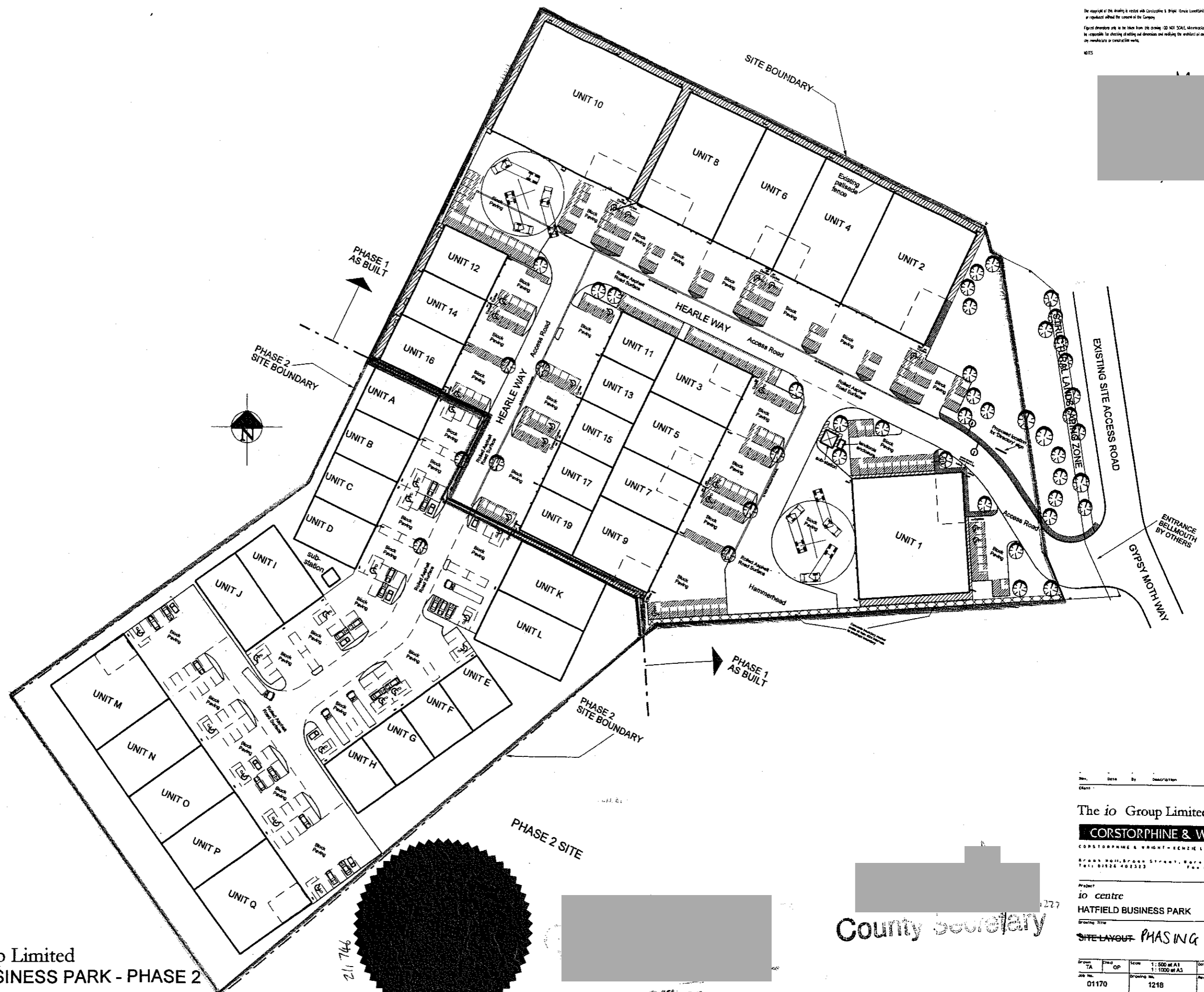
County Secretary

Rev.	Date	By	Description
The io Group Limited			
CORSTORPHINE & WRIGHT			
CORSTORPHINE & WRIGHT - ENGINEERS & ARCHITECTS			
21, 74/6 GYPSY MOTH WAY, HATFIELD, ALVERHAM, ALVERHAM, ALVERHAM			
TEL: 01452 402323 FAX: 01452 402324			
Project			
io centre			
HATFIELD BUSINESS PARK			
Drawing Title			
SITE PLAN			
Drawn	Rev	Scale	Date
TA	OP	1:500 at A1 1:1000 at A3	22.11.04
Site No.	Drawing No.		
01170	1218		

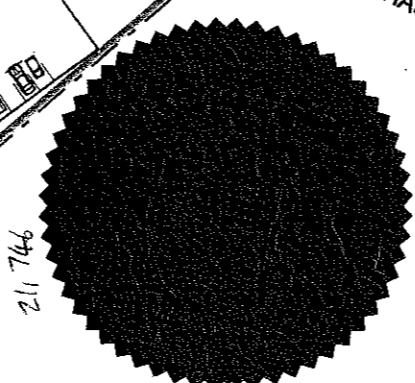
SCALE

A1

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 NOTES



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 HATFIELD BUSINESS PARK - PHASE 2



211 746
 [Redacted]
 Authorised Officer

[Redacted]
 County Secretary

Rev.	Date	By	Description
01			Issue

The io Group Limited
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 CORSTORPHINE & WRIGHT - ECHMIE LOVELL LIMITED
 BRUNN HILL, BRUNN STREET, BIRMINGHAM, CV34 4BL
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Project
 io centre
 HATFIELD BUSINESS PARK

Drawing Title
 SITE LAYOUT PHASING PLAN

Drawn	Check	Scale	Date
TA	OP	1:500 at A1 1:1000 at A3	22.11.04

Job No. 01170 Drawing No. 1218 Rev. -

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