

THIS AGREEMENT is made the 3rd day of December 1990 BETWEEN WAITROSE LIMITED whose registered office is situate at 171 Victoria Street London SW1E 5NN (hereinafter called Waitrose) of the one part and WELWYN HATFIELD DISTRICT COUNCIL of the Council Offices The Campus Welwyn Garden City Hertfordshire AL8 6AE (hereinafter called Welwyn) of the other part

WHEREBY IT IS AGREED as follows:-

1. Definitions

In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

- 1.1 "Blue Land" means the freehold land shown on the Plan edged with blue and registered at HM Land Registry with title absolute and comprising part of the land in title number HD251620
- 1.2 "Red Land" means the freehold land shown on the Plan edged with red and registered at HM Land Registry with title absolute and comprising part of the land in title number HD141179 and the unregistered freehold land edged and hatched in red by a Conveyance dated 14 December 1962 (hereinafter called "the Conveyance") and made between Welwyn Garden City Development Corporation of the one part and Welwyn Garden City Urban District Council of the other part
- 1.3 "Green Land" means the freehold land shown on the Plan edged with green and being the remainder of the land registered at HM Land Registry with title absolute under title number HD251620
- 1.4 "Plan" means the Plan annexed to this Agreement

- 1.5 "Development" means the development and use of the Green Land and Red Land by Waitrose for a supermarket of approximately 31,750 square feet gross internal floor area together with ancillary service yards service road means of access and egress thereto and car parking for a minimum of 232 cars for use by short stay shoppers as permitted by the planning permission granted by Welwyn Hatfield District Council on the date hereof, under Reference No. N6/0631/90/FP
- 1.6 "Waitrose's Works" means the works to be carried out by Waitrose at its own expense details of which are provided in clause 3 hereof and which shall be carried out to the reasonable satisfaction of the Director (hereafter defined) for the time being of Welwyn
- 1.7 "The Highway Works" means the highway works as generally shown on Glanville & Associates drawing No. ML 2544/101 being part of Waitrose's Works and also (if appropriate) the Contingency Works
- 1.8 "Car Park Lease" means the Lease of the land edged in blue proposed to be granted by Welwyn to Waitrose pursuant to this Agreement in the form of the draft Lease contained in the Second Schedule annexed hereto
- 1.9 "The Contingency" means the occurrence of the event details of which are provided in Clause 6 of this Agreement

- 1.10 "The Contingency Fund" means a sum of up to £12500 to be made available by Waitrose to Welwyn being a financial contribution of the costs which may be properly incurred by the Council in the event that the Contingency Works are required as herein provided such payment to be made in the manner hereinafter specified and the obligation to make such payment to cease in the event that the Contingency shall not have occurred by the time the Development shall have been open for six months
- 1.11 "The Contingency Works" The works of highway improvement to the roads known as The Campus and College Way Welwyn Garden City as may be reasonably required by Welwyn as provided for in Clause 6 hereof
- 1.12 Enforceability of Covenants Any agreement or obligation or undertaking on Waitrose's part contained in this Contract shall be deemed to be a covenant made by Waitrose with Welwyn pursuant to the provisions of S33 Local Government (Miscellaneous Provisions) Act 1972 and S106 Town and Country Planning Act 1990 and for the avoidance of doubt this Contract shall not merge upon completion but shall remain alive to give effect to the intentions of Waitrose and Welwyn and their successors in title
- 1.13 "The First Reservations" shall mean those matters set forth in the Second Schedule hereto which shall be excepted and reserved out of the Transfer of the Red Land
- 1.14 "The Second Reservations" shall mean those matters set forth in the Third Schedule hereto which shall be excepted and reserved out of the Transfer of the Blue Land for the benefit of the Green and Red Land

- 1.15 "Director" shall mean the Director of Technical and Professional Services for the time being of Welwyn his officers staff agents and contractors
- 2.1 Waitrose is registered with absolute title as proprietor of the Blue Land and Welwyn is registered with absolute title as proprietor of part of the Red Land and is the unregistered owner in fee simple absolute in possession of the remaining part of the Red Land and the parties have agreed to give and take in exchange these respective properties
- 2.2 Completion of the transfers of the respective properties shall take place at the offices of Waitrose's Solicitors (or at such other place as they may reasonably specify) within 14 days of the date of this Agreement
- 2.3.1 Title to the Blue Land is registered at HM Land Registry with absolute title under title number HD251620 and shall consist of an office copy entry of the Register together with an authority to inspect the Register
- 2.3.2 Title to the Red Land is part registered at HM Land Registry with absolute title under title number HD141179 and shall consist of a copy entry of the Register together with an authority to inspect the Register and part unregistered with title commencing with the Conveyance
- 2.4.1 Title to the Blue Land having been deduced to Welwyn or its Solicitors prior to the date hereof Welwyn shall be deemed to have accepted such title and shall not be entitled to raise any objection or requisition in respect thereof
- 2.4.2 Title to the Red Land having been deduced to Waitrose or its Solicitor prior to the date hereof Waitrose shall be deemed to have accepted such title and shall not be entitled to raise any objection or requisition in respect thereof

2.5.1 The Red Land is sold with vacant possession on completion but subject to the First Reservations

2.5.2 The Blue Land is sold with vacant possession on completion subject to :-

2.5.2.1 Welwyn granting to Waitrose on completion the Car Park Lease of the Blue Land

2.5.2.2 The Second Reservations

2.6 Waitrose's solicitors shall prepare the engrossments of the Car Park Lease and Counterpart and Welwyn shall execute the Lease and Waitrose the Counterpart in each case in time for completion pursuant to Clause 2.2 above

3.0 Waitrose shall at its own expense and in accordance with Drawings Specifications Designs and Levels previously submitted to and approved by the Director such approval not to be unreasonably withheld:-

3.1 Surface the Blue Land for use as a long stay car park and for no other purpose and erect at the entrance thereof a barrier system for control of vehicles entering and leaving the car park such that there shall be no queuing of vehicles on the public highway such work to be completed before the supermarket forming part of the development is open for trading

3.2 Construct a new ramp access and a new accessway to Welwyn's adjoining staff roof car park over the land and in the manner shown on the Plan 3732/A/202 and at all times during such construction to maintain proper and effective control barriers across the said new access ramp and new accessway to fully prevent unauthorised access to Welwyn's staff car park and it is agreed between Waitrose and Welwyn that such work shall be in all respects complete before Waitrose commence any operations on the Red Land

- 3.3 Adapt the existing access ramp (and such adaptation shall include the erection of bollards thereon) to Welwyn's adjoining roof staff car park for pedestrian only access thereto and to construct a footpath from the base of the existing access ramp over and along the land and route shown on Plan 3732(A)202 to connect to the entrance roadway to the Development and Campus East and further to connect to and then to run from the pedestrian gate shown on Plan 3732(A)202 to Bridge Road and to the east of the supermarket PROVIDED ALWAYS that Waitrose may having first obtained Welwyn's consent (such consent not to be unreasonably withheld) and such other consent which may be required relocate the said connecting footpath AND FURTHER PROVIDED that Waitrose shall break up any existing concrete and other surfacing not required for the footpath or for the Development and shall return such areas to landscape
- 3.4 Take all reasonable measures to ensure that the car park to be constructed as part of the Development shall be used as a short stay shoppers car park
- 3.5 In the event that the Director shall reasonably so require to relocate any public or private foul or surface water sewer or sewers which shall lie beneath or be in close proximity to any building to be erected on the Red Land and the Green Land and the Blue Land and further if the Director shall so require to make provision for on site storage and balancing of surface water with a reduced discharge and the sole opinion of the Director in respect of both relocation and balancing as aforesaid shall be final and binding on Waitrose
- 3.6 Erect as shown on Plan 3732(A)202 on all boundaries of the Development and the Blue Land and the Red Land such boundary fencing or walling or hedging as the Director of Welwyn may reasonably require and to erect on the eastern boundary of the Blue Land a dividing wall to the reasonable satisfaction of the Director of Welwyn all of which shall in future be maintained by Waitrose

- 3.7 Ensure that all highway works shall be signed and protected in accordance with Chapter 8 of the Traffic Signs Manual published by Her Majesty's Stationery Office and that there shall be no interruption to the two-way flow of traffic on The Campus and College Way and Bridge Road by reason of the highway works
- 3.8 Ensure that the highway works shall be carried out in accordance with the "Specification for Highway Works" published by Her Majesty's Stationery Office in 1986 as modified and extended by the Supplements issued by the Director
- 3.9 Having first given prior written notice to them place orders and pay any costs to public utility undertakers for all works to their mains or services or other servicing media necessitated by the highway works and shall relocate all street furniture affected by the highway works to the reasonable satisfaction of the Director
- 3.10 Notify the Director in writing at least 14 days prior to the commencement of any works connected with statutory undertakers equipment and shall further notify the Director in writing at least 14 days prior to the commencement of the highway works
- 3.11 Ensure that the highway works shall be carried out under the terms of a construction contract incorporating the most up to date edition of the conditions of Contract approved by the Institution of Civil Engineers and the Federation of Civil Engineering Contractors and commonly known as the ICE Conditions of Contract by a roadworks contractor approved by the Director
- 3.12 Complete the highway works to the reasonable satisfaction of the Director within 6 months of their commencement and in any event prior to the supermarket forming part of the Development being open for trading whereupon the Director shall issue a Certificate of Completion (hereinafter called "the Certificate of Completion") such issue not to be unreasonably withheld or delayed

- 3.13 Provide the Director with record drawings showing details of all aspects of the highway works as constructed immediately upon the issue of the Certificate of Completion
- 3.14 Until the highway works become maintainable at the public expense indemnify Welwyn and keep it indemnified against all claims under Part I and Part II of the Land Compensation Act 1973 (including claims Welwyn determine should be met under the provisions of Regulation 4 of the Noise Insulation Regulations 1975) arising out of the use of the said highway works and for the purposes of this indemnity Waitrose is deemed to carry out the highway works as agent for the Council
- 3.15 Accept the supervision of the Director and carry out the highway works and Waitrose's works to a standard of workmanship and quality of materials reasonably approved by the Director and pay the supervision fees of the Director and all other costs which the Director may incur in so supervising such costs to be the sum of £200 or 5% of the costs of carrying out the highway works whichever is greater

PROVIDED ALWAYS that if (i) as a result of such supervision the Director shall wish to make representations regarding Waitrose's Work such Representations shall be made exclusively to Waitrose and (ii) Waitrose shall not be liable for any defect which shall be attributable to Welwyn's supervision of Waitrose's Works

- 3.16 Have in force at all relevant times a policy of insurance indemnifying the Council against all claims whatsoever arising out of or in connection with the highway works and Waitrose's Works the insured sum to be not less than £5 million in respect of any single accident

- 3.17 Fully maintain the highway works and Waitrose's Works for a period of twelve months from the date of the issue of the Certificate of Completion (hereinafter called "the Maintenance Period") and shall make good during such period any defects or damage which may arise from any cause whatsoever or be discovered during the Maintenance Period which is attributable to a defect in the works
- 3.18 In the event that it arranges for the carrying out of the highway works and Waitrose's Works or any part thereof to be undertaken by any third person to ensure that contracts with such third person shall include the obligations and covenants on the part of that third person mutatis mutandis the same as the covenants and obligations herein contained
- 3.19 Ensure that access can be had to Welwyn's adjoining staff car park at all times during the works which comprise the Development and that there is no unauthorised access thereto
- 3.20 Having first given 14 days prior written notice to Welwyn's Director only relocate control barriers or erect new control barriers at weekends
- 3.21 Bear all of Welwyn's costs which it shall reasonably incur in the preparation advertising and confirmation of any traffic regulation order required for The Campus and College Way one way system
- 3.22 During the period that Waitrose shall carry out the construction of the Development:-
- (i) Provide on site wheel washing facilities for all vehicles to effectively prevent mud being transmitted onto the highway roads and footpaths adjoining the Red Land the Blue Land and the Green Land and

(ii) Ensure that construction vehicles serving the Development and the Red Land the Blue Land and the Green Land shall use for access to and egress from the Development the route of Bridge Road across Hunters Bridge to the A1000 and thereafter Principal Roads or such other route as Welwyn shall reasonably approve

3.23 Remove the existing lay-by on the south side of the Green Land and reinstate as a footpath

3.24 Carry out such minor works on and in Welwyn's adjoining staff car park as may reasonably be required by the Director which shall include the following but which is not an exhaustive list as Waitrose agrees:-

(i) Removal and relocation of barriers and vehicle stops as required and making good in consequence

(ii) Removal of old drains and cables and making good in consequence

(iii) Provision of guard rails on the new access ramp to match those already erected

(iv) Retention of electricity supplies to existing lighting

(v) Provision of new lighting as required by the Director

(vi) White lining as required

4. In the Transfer of the Red Land to it Waitrose shall covenant to use the Red Land for the purposes of access to and egress from its retail supermarket and for short term car parking and for no other purposes whatsoever provided that this covenant shall endure for a period of 20 years from the date hereof

5. In the event that any dispute or difference shall arise between the parties in relation to the provisions of Clause 3 hereof as to whether any works or other matters to be undertaken hereunder have been carried out satisfactorily or reasonably or the provisions of Clause 6 hereof then such dispute or difference shall be determined by a single arbitrator (expert) in accordance with the Arbitration Acts 1950 to 1979 to be appointed in default of agreement upon the application of either party by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy or any person authorised by the President to make appointments on his behalf

- 6.1 In the event that Welwyn shall reasonably consider that development by Waitrose has adversely affected the traffic flow to the said roads known as The Campus and College Way Welwyn shall serve on Waitrose written notice to this effect within 6 months of the Development being open for trade then Waitrose shall pay to Welwyn the Contingency Fund such payment to be made on production of an estimate by Welwyn's Director of the amount likely to be incurred in carrying out such highway improvements required to rectify and improve the traffic flow to the said roads known as The Campus and College Way in the event that Welwyn's costs are less than the estimate it shall make a refund to Waitrose

- 6.2 Any dispute or difference between the parties as to whether the improvements were reasonably required or the cost properly incurred shall be referred to the decision of any arbitrator as provided by Clause 5 herein contained

7. The National Conditions of Sale (Twentieth Edition) are incorporated herein so far as the same are not varied by or inconsistent with the express provision of this Agreement and are applicable to a sale by private treaty and in the event of conflict between those conditions and the terms of this Agreement the terms of this Agreement shall prevail

8. All notices requests demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or sent by prepaid registered or recorded delivery mail to a party at its address set forth above or at such other address as such party may specify from time to time by written notice to the other party
9. Notwithstanding the assurances all the provisions of this Agreement shall continue in full force and effect to the extent that any of the same may then remain to be implemented
10. Neither party hereto shall assign the benefit of this Agreement
11. In the event of the liquidation of Waitrose this Contract shall determine absolutely

AS WITNESS the hands of the parties hereto the day and year first above written

THE FIRST SCHEDULE

THE CAR PARK LEASE

THIS LEASE is made the day of 1990 BETWEEN Welwyn ("the Landlord") of the one part and Waitrose ("the Tenant") of the other part

WHEREBY IT IS AGREED as follows:

1. The Landlord agrees to let and the Tenant agrees to take ALL THAT property described in the Schedule hereto ("the Demised Property") for a term of 10 years beginning on the date hereof but determinable as provided below YIELDING AND PAYING therefor the annual sum of a peppercorn payable on the 25th day of March in every year (if demanded)

2. The Tenant agrees with the Landlord as follows:
 - (1) to pay the said rent as aforesaid without any set off or deduction whatsoever

 - (2) to pay all rates taxes and other outgoings (except such as are charged on a disposal of the Landlord's reversion) payable in respect of the Demised Property or the ownership or occupation thereof

 - (3) to keep the Demised Property properly drained and in good order and condition and free from rubbish

 - (4) not to use the Demised Property for any purpose other than as a long stay car park for private motor cars and motor cycles

 - (5) not to assign underlet charge or part with the possession of the Demised Property or any part thereof without the prior written consent of the Landlord (such consent not to be unreasonably withheld)

- (6) to keep the Landlord indemnified against any claim loss or damage whatsoever in respect of any loss or damage to any person using the Demised Property
- (7) not to carry out any development on the Demised Property other than the use thereof as a car park as aforesaid nor to apply for planning permission to carry out any such development
- (8) not to use the Demised Property for any illegal or immoral purpose nor for any purpose which causes or might cause a nuisance or annoyance to the Landlord or to neighbouring occupiers
- (9) to permit the Landlord and all persons authorised by him at reasonable times and on reasonable notice to enter the Demised Property for the purposes of inspecting surveying or repairing the same or for storing with the minimum of reasonable interruption to the Tenant's use of the Demised Property as a car park any plant machinery or materials in connection with the development of any adjoining property belonging to the Landlord and access thereto during the course of such development
- (10) to supply to the Landlord a copy of any notice order direction consent or permission relating to the Demised Property within fourteen days of the receipt thereof by the Tenant
- (11) to take all reasonable steps to prevent any encroachment on the Demised Property or the acquisition of any easement thereover and promptly to notify the Landlord of any attempt or claim to make or acquire the same
- (12) at all times to insure the Demised Property against such risks as the Landlord acting reasonably shall require and to produce such policy to the Landlord on demand together with evidence that such Policy is current

3. The Landlord agrees with the Tenant that the Tenant paying the said rent and performing and observing this Agreement the Tenant shall peaceably hold and enjoy the Demised Property for the term hereby granted without any interruption by the Landlord or any person claiming under or in trust for him

4. Provided always that if the rent or any part thereof shall be in arrear for fourteen days after becoming payable (whether formally demanded or not) or if the Tenant shall commit any breach of this Agreement or shall be adjudicated bankrupt or (being a company) enter into liquidation then and in each case the Landlord shall be entitled to re-enter the Demised Property or any part thereof in the name of the whole and thereupon this Agreement shall forthwith determine but without prejudice to any accrued right of action vested in the Landlord

- 5.1 The Landlord shall be entitled to determine this Tenancy by not less than six months' prior notice in writing only if it intends at the expiry of such notice to occupy the Demised Property ^{or part thereof} for purpose of ~~redevelopment of the Demised Property~~ ^{in connection with} redeveloping the Landlord's adjacent office land

- 5.2 In the event that the Landlord shall determine the Lease of the whole of the Demised Property pursuant to Clause 5.1 above it shall pay to the Tenant as compensation for such early determination a sum equal to ten per cent (10%) of the cost to the Tenant of laying out the car park on the Demised Property multiplied by the number of years (including part of any year) of the original term remaining

6. Provided always that having been authorised to do so by an Order of the Westminster County Court made on the day of 199 under the provisions of S38(4) of the Landlord and Tenant Act 1954 (as amended by S5 of the Law of Property Act 1969) the parties hereto agree that the provisions of S24 to 28 (inclusive) of that Act shall be excluded in relation to the Lease hereby granted

THE SCHEDULE

Description of the Demised Property

The Freehold land shown edged blue on the plan annexed hereto

IN WITNESS whereof the Landlord and the Tenant have hereunto affixed their
Common Seals the day and year first before written

THE COMMON SEAL of)
WAITROSE LIMITED was)
hereunto affixed in)
the presence of)

Director

Secretary

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

Chairman of the Council

Authorised Officer

THE THIRD SCHEDULE

There shall be excepted and reserved out of the Transfer of the Blue Land a right for Waitrose and its successors in Title to enter onto the Blue Land to lay and use and thereafter from time to time inspect maintain repair relay and remove lines for the transmission distribution of electricity from the Electricity Substation situated on the Blue Land and to lay the necessary ducts pipes and other apparatus appurtenant thereto in and under the Blue Land and for the purpose aforesaid to break up and excavate so much of the Blue Land as from time to time may be necessary for this purpose PROVIDED THAT in so doing the person exercising such right shall cause as little damage as possible to the Blue Land and shall promptly make good all damage thereby caused to the reasonable satisfaction of Welwyn and PROVIDED FURTHER THAT in the event Welwyn require to develop the Blue Land they may require Waitrose at its expense to re-route the aforesaid lines into such position as Welwyn shall reasonably require

SIGNED BY)
for and on behalf of)
WAITROSE LIMITED in)
the presence of:-)

SIGNED by WILLIAM JOHN)
ANDERSON duly)
authorised officer for)
and on behalf of)
WELWYN HATFIELD)
DISTRICT COUNCIL in the)
presence of:-)

W. J. Anderson

W. J. Anderson
Legal Executive with
Welwyn Hatfield District Council

THE SECOND SCHEDULE

There shall be excepted and reserved out of the Transfer of the Red Land a right for Welwyn and its successors in title in common with public utility undertakers and others similarly entitled to enter onto the Red Land and carry out all work required to connect to maintain relay and renew the main private surface water sewer and the oil interceptor shown and marked on the Plan the person or persons exercising such right doing as little damage as possible and making good all damage actually caused