

**Dated: September 2000**

**(1) Thanet District Council**

**(2) Kent International Airport plc**

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**AGREEMENT PURSUANT TO SECTION 106 OF THE TOWN  
AND COUNTRY PLANNING ACT 1990 AND SECTION 111  
OF THE LOCAL GOVERNMENT ACT 1972**

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**This Agreement** is made the                    day of                    **2000**

**Between:**

- (1) Thanet District Council** of Cecil Street Margate Kent CT9 1XZ (“the Council”), and
- (2) Kent International Airport plc** (registered in England; registration number 1472559) of 35 Berkeley Square Mayfair London W1X 5DA (“the Owner”)

**WHEREAS:**

- (a) The definitions contained within clause 1 shall apply to these Recitals
- (b) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Property is situate
- (c) The Owner is the Proprietor of the Property

**NOW THIS AGREEMENT WITNESSETH** as follows:

**1. Interpretation and Construction of this Agreement**

1.1 In this Agreement save where the context otherwise requires:

“the 1988 Agreement”                    means the Agreement dated 28 October 1988 between (1) the Council (2) the Owner pursuant to (inter alia) section 52 of the Town and Country Planning Act 1971

“the 1990 Act”                    means the Town and Country Planning Act 1990 as amended (inter alia) by the Planning and Compensation Act 1991

“the Airport”                    means London Manston Airport Manston Ramsgate Kent CT12 5BP as edged red on Plan 1

“the Council’s Address”                    means Cecil Street Margate Kent CT9 1XZ or such other address that the Council may from time to time notify the Owner of

“Engine Testing”	means any running of engines in connection with scheduled or planned maintenance or repair either with engines on or off of an aircraft
“Engine Testing Area”	means an area within the Property designated by the Owner for the purposes of Engine Testing
“Environmental Statement”	has the same meaning as in Regulation 2(1) of The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999
“Flight Movements”	means the taking off or landing of civilian aircraft at the Airport and includes any ‘touch and go’ movements which shall be deemed to constitute a landing and take off
“the GPDO”	means the Town and Country Planning (General Permitted Development) Order 1995
“MACC”	means the Manston Airport Consultative Committee
“MAEIF”	means the Manston Airport Environmental Improvement Fund
“the Master Plan”	means a plan to be prepared by or on behalf of the Owner illustrating its proposals for the further development of the Airport or Property (as the case may be) during the course of the next 5 - 10 and 15 years which will include reference to and an assessment of how those proposals match the policy and proposals of the Kent County Structure Plan the Isle of Thanet District Plan the Central Island Supplementary Planning Guidance and the Thanet District Council Economic Development Plan
“Night-time”	means 2300 – 0700 hours

“Night-time Flying Noise Policy”	means the policy prepared in accordance with paragraph 1 of the Second Schedule
“Noise Contours”	means a line of equivalent continuous sound level superimposed on a geographical representation of the Airport and surrounds
“Noise Contour Map”	means a computer generated map of weighted equivalent continuous sound level contours arising from all Flight Movements based on flight path aircraft types and destinations and such contours shall cover the period 0700 - 2300 hours and (if there are Regular Night Flying Operations) the period 2300 - 0700 hours
“Noise Monitoring Terminal”	means a sound level meter optimised for continuous data capture for aircraft and background noise capable of storing and analysing a minimum of twelve months’ historical data
“the Owner’s Address”	means 35 Berkeley Square Mayfair London W1X 5DA or such other address that the Owner may from time to time notify the Council of
“Plan 1”	means the plan attached to this Agreement and numbered 1
“Plan 2”	means the plan attached to this Agreement and numbered 2
“Plan 3”	means the plan attached to this Agreement and numbered 3
“the Property”	means the property described in the First Schedule
“the Register”	means the register of local land charges maintained by the Council

“Regular Night Flying Operations” means Flight Movements which are scheduled or programmed and which occur frequently or regularly to the same or similar patterns for the same operator during Night-time

“Scoping Opinion” has the same meaning as in Regulation 10(1) of The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

“Quota Count” means the noise classification for an aircraft on take off or landing which shall be judged in accordance with the following table

<u>Noise Classification</u>	<u>QC Points</u>
Less than 90 EPNdB	0.5
90-92.9 EPNdB	1
93-95.9 EPNdB	2
96-98.9 EPNdB	4
99-101.9 EPNdB	8
Greater than 101.9 EPNdB	16

and for the avoidance of doubt an aircraft shall be deemed to have taken off or landed at the time recorded by the air traffic control unit of the airport

1.2 References to a clause schedule or paragraph are references where the context admits or requires to a clause schedule or paragraph of a schedule in this Agreement

1.3 The clause and paragraph headings in this Agreement are for ease of reference only and are not to be taken into account in the construction or interpretation of the clause or paragraph to which they refer

1.4 Words importing the singular meaning include the plural meaning and vice versa unless the context otherwise requires

- 1.5 Words of one gender include both other genders and words denoting natural persons include corporations and firms and all such words are to be construed interchangeably in that manner
- 1.6 Words denoting an obligation on a party to do any act matter or thing includes an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit or allow infringement of the restriction
- 1.7 Any reference to any enactment (whether generally or specifically) shall be construed as a reference to that enactment as amended extended re-enacted or applied or consolidated by or under any other enactment and shall include all instruments orders plans regulations permissions and directions made or issued thereunder or deriving validity therefrom
- 1.8 The expression “the Council” and “the Owner” shall where the context so admits or requires include the respective successors in title of the Council and the Owner
- 1.9 Reference in this Agreement to “the Parties” is a collective reference to the Council and the Owner
- 1.10 All references in this Agreement to time are references to local time

## **2. Enabling Power**

This Agreement is entered into by the Council pursuant to:

- 2.1 its powers under Section 106 of the 1990 Act;
- 2.2 Section 111 of the Local Government Act 1972; and
- 2.3 all other powers enabling the Council in this behalf

## **3. Planning Obligation**

All of the covenants and obligations of the Owner contained herein are planning obligations for the purposes of Section 106 of the Act and shall be enforceable by the Council against the Owner and any person deriving title to the Property or part thereof providing however that no person shall be bound by this Agreement after he has

relinquished the whole of his interest in the Property save that nothing in this clause shall affect any liability for any antecedent breach of any of the provisions of this Agreement

#### **4. Term of Agreement**

4.1 This Agreement shall remain in force for the period of three years from the date hereof

4.2 The Parties shall not later than 33 months after the date of this Agreement consult to review the terms of this Agreement (or at any earlier date either in the event of a major development proposal being promoted by the Owner or if agreed by the Parties to consult earlier) and with a view to agreeing a new agreement of the same or a similar nature as this Agreement to address changing circumstances and the next planned phase of the development of the Airport

4.3 If the Parties shall not have agreed and executed a new agreement of the same or a similar nature as this Agreement prior to the ending of this Agreement then this Agreement at the option of the Council shall continue in force and the Owner shall operate the Airport in accordance with its terms

#### **5 The Owner's and the Council's Obligations**

5.1 The Owner (subject to clause 5.2) covenants to comply with the obligations on its part set out in the Second Schedule

5.2 This Agreement shall disregard use of the Property (or any part thereof) for the purposes of:

5.2.1 any commemorative flights (except during Night-time); and

5.2.2 any public air display or exhibition (which includes Flight Movements) provided they are:

5.2.2.1 not on more than two occasions in any calendar year; and

5.2.2.2 limited to a single 24-hour period and for 24 hours before and after the event

5.3 The Council covenants to comply with the obligations on its part set out in the Second Schedule

## **6. GPDO and Planning**

It is hereby declared that:

6.1 Nothing in this Agreement shall affect restrict or inhibit or be construed to affect restrict or inhibit in any way whatsoever any permitted development rights that the Owner enjoys under the GPDO

6.2 Nothing in this Agreement shall restrict or inhibit or be construed to restrict or inhibit the Owner in making any application for planning permission of whatsoever nature in connection with the Property during the continuance of this Agreement

6.3 Nothing in this Agreement shall restrict or inhibit or be construed to restrict or inhibit the current planning permissions or certificates of lawful use the Airport has the benefit of or enjoys during the continuance of this Agreement

## **7. MACC**

The Owner agrees to:

7.1 meet the administrative salaries and costs of MACC; and

7.2 provide for the use of MACC a meeting room at the Airport

## **8. Statutory Provisions**

In the event that the Owner or the Council are required to comply with any planning condition or other statutory or legal obligation (other than a contractual one) imposed upon them by any relevant authority the terms of which conflict with the provisions of this Agreement such condition or obligation shall prevail over the provisions of this Agreement and the Owner and the Council as the case requires shall not be in breach of this Agreement by reason of their compliance with such condition or obligation provided that the parties hereto may review the relevant provision of this Agreement in the event of such conflict and the Owner and the Council shall give full and proper consideration to any reasonable proposal which they may bring forward to resolve such conflict

## **9. The 1988 Agreement**

9.1 The Council hereby releases the Owner from the covenants contained within the 1988 Agreement

9.2 Contemporaneous with this Agreement the Council will forthwith remove the 1988 Agreement from the Register

## **10. Registration of this Agreement**

10.1 This Agreement shall be registered as a local land charge in the Register

10.2 Where in the opinion of the Owner any provision of this Agreement has been completed and/or satisfied (as the case may be) the Owner shall be entitled to make application to the Council for a certificate to the effect that the provisions of this Agreement have been completed and/or satisfied (as the case may be) and upon the Council (which shall act reasonably and diligently in considering such application) being satisfied that such obligations have been completed and/or satisfied the Council shall issue a certificate to such effect and forthwith place a note of such certificate with the Register or remove this Agreement from the Register (as the case may be)

## **11. Notices**

Any notice required to be served or given under this Agreement shall be made in writing and shall be deemed given when delivered in person or sent by first-class pre-paid post and served:

11.1 on the Council at the Council's address

11.2 on the Owner at the Owner's address

## **FIRST SCHEDULE**

This schedule sets out the definition of the Property

The Property shall consist of all that:

1. freehold land and buildings situate and forming part of the Airport which is registered with other land at HM Land Registry:
  - 1.1 with title absolute under title number K803975; and
  - 1.2 with possessory title under title number K743314; and
2. leasehold land and buildings situate and forming part of the Airport and which is registered at HM Land Registry:
  - 2.1 with title absolute under title number K671894; and
  - 2.2 with title absolute under title number K709140

as the same is together edged blue on Plan 2

## SECOND SCHEDULE

This schedule sets out the obligations of the Owner and the Council

### 1. Night-time Flying Noise Policy

- 1.1 The Owner agrees not to cause suffer or permit any Regular Night Flying Operations at any time (subject to paragraph 1.4 below) before a Night-time Flying Noise Policy shall have been prepared and a copy lodged with the Council.-
- 1.2 The Owner will prepare the Night-time Flying Noise Policy at least six months before the commencement of any Regular Night Flying Operations after consulting with the Council in accordance with paragraph 1.3 below. The policy will specifically address the following matters:
  - 1.2.1 the restriction on those aircraft likely to cause unacceptable disturbance, such that no aircraft with a noise classification in excess of Quota Count 4 shall be permitted to take off or to land during Night-time
  - 1.2.2 a process for the sharing of data on details of aircraft operating during Night-time; and
  - 1.2.3 the embodiment of the principles of UK best practice at the time and the appropriateness of those principles to prevailing local conditions
- 1.3 The consultation process shall include providing all relevant information to the Council and affording an adequate period within which the Council may consider the issues arising and formulate its views which shall be taken into account by the Owner and due weight given to such views; in the event that the Owner does not propose to accept the views of the Council in formulating its policy it shall first provide to the Council a reasoned justification and shall take into account and give due weight to such further views of the Council as may be expressed
- 1.4 The Owner shall not be obliged to prepare a Night-time Flying Noise Policy where Flight Movements during Night-time will involve:

- 1.4.1 departures to European destinations or arrivals from North America by solely passenger carrying aircraft scheduled to occur between 0600 and 0700 on any day where the aircraft involved in the operation have a noise classification of Quota Count 4 or less; or
  - 1.4.2 humanitarian mercy or emergency flights by relief organisations on not more than 12 occasions during any calendar year
- 1.5 The Owner will:
- 1.5.1 (and whether or not a Night-time Flying Noise Policy has been prepared but subject to paragraph 1.6 below) pay £1,000 for the first occasion when an aircraft with a noise classification in excess of Quota Count 4 undertakes a Flight Movement during Night-time and during the following twelve calendar months to pay an amount increased by a factor of two for each successive occasion by the same aircraft (namely £2,000 for the second occasion £4,000 for the third occasion £8,000 for the fourth occasion and so on) and at the end of such twelve month period the payments shall recommence at the level of £1,000 and a further period of twelve months as aforesaid shall follow and such increasing payments shall be made
  - 1.5.2 not cause suffer or permit any training flights during Night-time by any jet or large aircraft (being an aircraft with a maximum take-off weight in excess of 5700 kg) and to pay £10,000 for each and every occasion when a contravention occurs
- 1.6 The Owner shall be under no obligation to make any payment under paragraph 1.5.1 above where the Flight Movement concerns the type of flight referred to in paragraph 1.4.2 above and whether or not the aircraft had a noise classification in excess of Quota Count 4

## **2. General Noise Limitations**

- 2.1 The Owner with a view to ensuring that the operation of aircraft shall cause the least disturbance by reason of noise will:

- 2.1.1 ensure that the number of Flight Movements during the first 12 months following the date of this Agreement shall not result in any expansion of the 1996 63dB LAeq (16-hour 0700 - 2300 hours) contour as identified on Plan 3; and
- 2.1.2 within 12 months of the date of this Agreement and again between 21 and 24 months of the date of this Agreement submit to the Council a 63dB LAeq (16-hour 0700 - 2300 hours) noise contour map for the Airport based on the previous 12 months of airport operations, which will have been produced by an independent and appropriately qualified consultant using ANCON or INM models (or agreed alternatives)
- 2.2 If the Owner fails to comply with any obligation in paragraph 2.1 above by the appropriate date or in the event that the 63dB LAeq (16-hour) contour so produced has expanded beyond the same contour produced in 1996 as identified on Plan 3 but not by more than 5% the Owner shall pay a sum of £10,000 and if by more than 5% but not by more than 10% the Owner shall pay a sum of £40,000 and if by more than 10% the Owner shall pay a sum of £100,000

### **3. Dwelling Insulation Scheme**

The Owner will within 24 months of the date of this Agreement submit to the Council a detailed scheme for noise insulation of dwellings that fall within the 63dB LAeq (16-hour 0700 - 2300 hours) contour for the Airport. The contour shall be calculated on actual Flight Movements during the previous 12-month period and annually re-calculated in terms of any potential extensions of the scheme. The scheme of noise insulation submitted will indicate to the Council what level of noise retardation is to be achieved and over what period

#### **4. Preferred Departure Runway**

The Owner will:

- 4.1 adopt the use of runway 28 as the preferred departure runway and will use its reasonable endeavours to achieve a target of seventy per cent (70%) of all departures on that runway subject to safety requirements at all times and to air traffic and weather requirements; and
- 4.2 supply data on runway departure usage to the Council and MACC on a monthly basis

#### **5. Noise Abatement Routes**

The Owner will:

- 5.1 within two months from the date of this Agreement submit to the Council details of the noise abatement measures it will require (subject to safety requirements at all times) operators of jet and large aircraft (any aircraft with a maximum take-off weight in excess of 5700Kg) to use which will include the requirements that:
  - (a) when departing to the west (runway 28) on achieving 1.5 miles DME (airport distance measuring equipment) make a right turn to the north west onto heading 300° and to climb to a height of 3000 feet, before setting an alternative course
  - (b) not to descend below 1500 feet when carrying out circuits until entering final approach to the runway;
  - (c) to endeavour to fly over the sea when operating on the northern circuit, which shall be at least 3 nautical miles from the centre point of the runway, except when using the noise abatement take off route or when entering the final approach to the runway; and
  - (d) to endeavour when operating on the southern circuit to keep north of and clear of the town of Sandwich

5.2 submit to the Council and to MACC a monthly list of all breaches identified by the Owner of the noise abatement measures referred to in 5.1

## **6. Noise Monitoring Terminals**

6.1 The Owner will:

6.1.1 within nine months from the date of this Agreement (subject to first being able to acquire any third party land and obtain any planning permission required for which he will use all reasonable endeavour to achieve) install at least two Noise Monitoring Terminals which shall have been agreed by an independent aviation acoustic consultant having regard to the guidelines laid down by the International Civil Aviation Organisation;

6.1.2 calibrate and maintain the Noise Monitoring Terminals in accordance with manufacturer's instructions;

6.1.3 provide the results of the noise monitoring to the Council and MACC on a monthly basis; and

6.1.4 within nine months from the date of this Agreement provide for use by the Council a digital audio tape recorder with a type 1 front end with a remote handset controller for recording which complies fully with all appropriate British Standards/Codes of Practice for use in domestic and educational properties and thereafter be responsible for both repair and replacement of the unit

6.2 The Council will on receipt of the portable noise monitoring unit supplied by the Owner assume responsibility for maintenance and calibration of the unit and keep the unit suitably and adequately insured with a reputable insurer for its replacement value in the event of loss damage and third party claims

## **7. Pollution Monitoring**

The Owner will:

7.1 within nine months from the date of this Agreement (subject to first being able to acquire any third party land and obtain any planning permission required and

having used all reasonably endeavours to achieve such) install not less than three passive atmospheric pollution monitoring tubes at such locations as the Owner (using a best practice policy) may determine;

7.2 the pollutants to be monitored at each site will be determined by the Owner in consultation with the Council and in accordance with any good practice policy advised by the Department of Trade and Industry; and

7.3 provide the results of the pollution monitoring to the Council and MACC on a monthly basis

## **8. Noise Monitoring**

The Owner will:

8.1 by 1st April 2002 or having carried out twelve months of noise monitoring at the Airport agree with the Council new maximum noise levels for aircraft movements which will produce a significant reduction in the noise impact for individual aircraft over the previous two years of operation and which in no circumstances will be less than a 5% reduction over the average of the previous two years. Failure to agree on a suitable reduction level will result in the matter of a suitable reduction level being put to a mutually agreed and independent expert in aviation matters, or in the event of failure to agree within one month he shall be appointed by the President of the Institute of Vibration and Acoustic Engineers. The expert will decide the appropriate level of reduction suitable for the Airport by reference to the levels of individual aircraft noise acceptable at one or more comparable airports, judged to be comparable by reference to the characteristics of operation and geographic proximity to urban areas. The expert will act as an expert and not as an arbitrator and shall be entitled to rely on his own judgement and opinion. He shall afford the Parties a reasonable opportunity to submit both representations and counter-representations to him and shall consider all of the same. He shall give to the Parties written notice of his determination (within 25 working days after counter-representations) (if any) and his decision shall be binding on both Parties to the Agreement in respect of the level of reduction to be achieved; and

8.2 on and after 1st April 2002 pay the sum of £500 per aircraft exceeding the agreed or imposed maximum noise level referred to in 8.1 and for every 1 decibel (dB) above the agreed base level the additional sum of £500

## **9. Engine Testing**

The Owner agrees:

- 9.1 that no Engine Testing (other than for emergency purposes which shall in any case not exceed five separate occurrences in any calendar year) shall occur within the Property between 2300 - 0800 hours. Between 2100 - 2300 hours the number of occurrences of Engine Testing (whether for emergency purposes or otherwise) shall not exceed 10 separate occurrences in any calendar year. For every occurrence of Engine Testing above these limits the Owner will pay the sum of £1,000. For the purposes of this provision “emergency” shall be taken to refer to any occurrence or circumstances not reasonably foreseeable;
- 9.2 within six months from the date of this Agreement to submit to the Council a proposal for the location of an Engine Testing Area located in such a position as to minimise potential noise disturbance;
- 9.3 thereafter to be restricted to this defined location and that:
- (a) no continuous Engine Testing will exceed a period of sixty minutes duration and that a break of a period at least equal to the period of any Engine Testing shall be allowed after any Engine Testing before any further Engine Testing takes place;
  - (b) Engine Testing will be restricted to 0800 - 2100 hours (other than in the circumstances referred to in 9.1 above);
  - (c) the alignment of any aircraft on which engines are being tested will be such as to project the noise envelope over the maximum airport area; and
  - (d) the cumulative effect of Engine Testing will be restricted to ensure that the 13-hour noise level around the Airport does not increase by more than 1dB (as determined by benchmark background noise measurement)

9.4 Not knowingly to permit any aircraft to land at the Property for the purpose of any Engine Testing on any land adjoining the Property except in accordance with the terms of paragraph 9.

## **10. Green Travel Strategy**

The Owner will:

10.1 within one month from the date of this Agreement appoint a recognised and agreed Traffic Consultant to produce a Green Travel Strategy for the development of the Airport for a period of at least five years and ensure that the draft strategy is submitted to the Council for agreement within three months of the consultant being appointed. The draft strategy will address how the Owner its tenants and licensees will take steps to encourage employees working within the airport boundaries, and visitors to the Airport, to travel by means other than the private car. In the event of failure to agree within one month the Traffic Consultant shall be appointed by the President of the Institute of Highway and Transportation Engineers on application by either the Council or the Owner

10.2 ensure that each application for planning permission, or each consultation submitted to the Council in accordance with the GPDO for new development proposals within the Property shall be accompanied by a Green Travel Plan related to the development proposal which will indicate how the proposal accords with the Green Travel Strategy referred to in 10.1 above

## **11. Environmental Statement**

11.1 The Owner will:

11.1.1 within six months of the date of this Agreement submit to the Council the Master Plan

11.1.2 within a further period of six months from the date of submission of the Master Plan and based on the information contained in the Master Plan submit an Environmental Statement for consideration by the Council

11.2 Prior to and in sufficient time to enable the Owner to comply with the obligation in paragraph 11.1.2 apply to the Council for a Scoping Opinion

11.3 The Environmental Statement shall be prepared by an independent recognised environmental consultant whose appointment and terms of reference have first been agreed in writing with the Council. In the event of failure to agree within one month the consultant shall be appointed by the President of the Royal Town Planning Institute on application by either the Council or the Owner

## **12. Payments**

12.1 The references in paragraphs 1, 2, 8 and 9 of this Schedule to any sums of money to be paid by the Owner shall mean an obligation for the Owner to pay such sums to a fund to be called MAEIF within one month of the occurrence in question.

12.2 If MACC shall have been constituted as a charitable or other trust and shall administer MAEIF the same shall be expended at the discretion of such trust.

12.3 If MACC does not become so constituted or fails to administer MAEIF payments shall be made to the Council and may be expended by the Council in consultation with MACC (or in the event that the same or any trust formed ceases to exist or fails to respond to any requests for consultation then at the discretion of the Council after consultation with the Owner) for the purposes of environmental improvements for the general public good in the vicinity of the Airport (but outside the perimeter of the Airport). In the event that no expenditure within the vicinity of the Airport is considered appropriate any balance of funds may be expended on similar environmental improvements for the general public good.

## **13. Third Parties**

To use such controls rights or other measure available to the Owner (whether arising by way of contract statutory power or otherwise) to ensure so far as reasonably possible that no person (whether having a legal interest in the Property or any part thereof or not) shall use any part of the Airport in a way which would be a breach of the terms of this Agreement.

**IN WITNESS** whereof the Parties have executed this Agreement as a Deed in the manner hereinafter appearing

**THE COMMON SEAL** of **THANET** )  
**DISTRICT COUNCIL** was hereunto )  
affixed in the presence of: )

**EXECUTED AS A DEED** by **KENT** )  
**INTERNATIONAL AIRPORT plc** )  
acting by: )

Director:

Director/Secretary:

