

Dated

20

(1) BRETT AGGREGATES LIMITED

and

(2) ARLINGTON BUSINESS PARKS GP LIMITED

and

(3) HERTFORDSHIRE COUNTY COUNCIL

Unilateral Undertaking

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

This Deed is made the

day of

20

By

1. **BRETT AGGREGATES LIMITED** (Co. Regn. No 316788) whose registered office is situate at Robert Brett House, Ashford Road, Canterbury, Kent CT4 7PP ("the Developer");
2. **ARLINGTON BUSINESS PARKS GP LIMITED** (Co. Regn. No 4233559) whose registered office is at Ground Floor, 1230 Parkview, Arlington Business Park, Theale, Reading, Berkshire RG7 4SA acting as general partner of the limited partnership carrying on business under the name Arlington Business Parks Partnership (registered in England and Wales as a limited partnership under the Limited Partnerships Act 1907 with number LP8624) ("the Owner")

To

3. **HERTFORDSHIRE COUNTY COUNCIL** of County Hall Hertford Hertfordshire SG13 8DE ("the County Council")

Whereas

- A. The County Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situate and as such is the local planning authority entitled to enforce the planning obligations hereinafter recited
- B. The County Council is the Minerals and Waste Authority for Hertfordshire
- C. The Owner is the freehold owner of the whole of the Site
- D. The Developer has an interest in the Site by way of an option agreement to enter into a mineral lease between the Developer and the Owner dated 10 November 2016
- E. The Developer has submitted the Planning Application to the County Council
- F. On 6 January 2021 the County Council refused to approve the Planning Application and the Developer has submitted the Appeal
- G. This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to go ahead

Now this Deed witnesses as follows:

1. **Definitions**

For the purposes of this Deed the following expressions shall have the following meanings:

"the 1990 Act"

means the Town and Country Planning Act 1990 (as amended);

“Appeal”	means the appeal lodged in respect of the refusal by the County Council to approve the Planning Application given the appeal reference APP/M1900/W/21/3278097 by the Planning Inspectorate;
“Chief Legal Officer”	means the County Council’s Chief Legal Officer for the time being and his officers and agents;
“Commencement Date”	means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and no other purpose) operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the expressions “Commence” and “Commencement” shall be construed accordingly;
“Development”	means the development of the Site for the establishment of a new quarry as set out in the Planning Application;
“Director”	means the County Council’s Director of Environment and Infrastructure for the time being and his agents and officers;
“Plan 1”	means the plan appended to this Deed and marked “Plan 1”
“Planning Application”	means the application for the establishment of a new quarry on land at the Former Hatfield Aerodrome including a new access onto the A1057, aggregate processing plant, concrete batching plant and other ancillary facilities, together with the importation of inert fill materials for the restoration of the minerals working dated 22 January 2016 bearing the Council’s reference number 5/0394-16
“Planning Permission”	means such permission as is granted pursuant to the Appeal by or on behalf of the Secretary of State and any subsequent variations or modification thereto pursuant to Section 73 of the Act

"Secretary of State"	means the Secretary of State for Levelling Up, Housing and Communities or any planning inspector authorised by him;
"Site"	means the land known as land lying to the north-west of Hatfield Road, Smallford, St Albans and registered at the Land Registry under title number HD551580 and land known as land on the north west side of St Albans Road, Hatfield and registered with the Land Registry under title number HD430220 all of which land is shown for identification purposes only edged red on Plan 1;
"Working Day(s)"	means any day other than a Saturday or a Sunday or a Public Holiday or Bank Holiday;

2. **Construction of this Deed**

- 2.1. Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed (unless the context otherwise requires).
- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4. Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly, or against each of them individually unless there is express provision otherwise.
- 2.5. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the County Council the successors to their respective statutory functions.
- 2.7. The headings and contents list are for reference only and shall not affect construction.
- 2.8. Any covenant by any party not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.9. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

3. **Legal Basis**

- 3.1. This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and the Localism Act 2011 and all powers so enabling.
- 3.2. The covenants, restrictions and requirements imposed upon the Owner and/or the Developer under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the County Council as local planning authority against the Owner and/or the Developer.
- 3.3. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provision of this Deed.

4. **Conditionality**

- 4.1. This Deed is conditional upon:

- a) the grant of the Planning Permission on Appeal; and
- b) the Commencement of Development

save for the provisions of clauses 6, 12, 13, 14, 16 and 17 which shall come into effect immediately upon the completion of this Deed.

5. **The Covenants**

- 5.1. The Owner and Developer covenant with the County Council so as to bind the Site to fully observe and perform the obligations in this Deed including those obligations set out in Schedule 1 and hereby agrees that the Site shall be subject to the obligations, restrictions and covenants herein, such obligations being planning obligations for the purposes of section 106 of the Act.

6. **Local Land Charge**

- 6.1. This Deed shall be registrable as a local land charge by the County Council.

7. **Termination of this Deed**

This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn (without the consent of the Owner and/or Developer) or it is modified by any statutory procedure or expires prior to the Commencement Date.

8. **The Contracts Act**

Save as provided in respect of successors in title to the Site or any successor to the relevant statutory function of the County Council this Deed shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit, rights or claims whatsoever thereto.

9. **Liabilities**

- 9.1. No person shall be liable for any breach, non-performance and non-observance of any covenant, obligation or restriction or other provision of this Deed after it shall

have parted with all or part of its interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 9.2. Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission.

10. **County Council's Powers**

Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authority.

11. **Notices**

- 11.1. Any notice, demand or other communication to be delivered to a party under this Deed shall be in writing and shall be in the manner and marked for the attention of the person from time to time designated by it to the other parties to this Deed. The initial details so designated are as follows:

- a) The Owner: Arlington Business Parks GP Limited, 1230 Parkview, Arlington Business Park, Theale RG7 4SA (marked for the attention of the Company Secretary)
- b) The Developer: Brett Aggregates Limited, Robert Brett House, Ashford Road, Canterbury, Kent CT4 7PP (marked for the attention of the Company Secretary and the Director of Legal Property Services)
- c) The County Council: The Chief Legal Officer, Hertfordshire County Council, County Hall, Pegs Lane, Hertford, Herts SG13 8DE (ref : 17251)

- 11.2. Subject to clause 11.3 below and unless the date and/or time of actual receipt is proved a notice, demand or other communication sent by the following means is to be treated as having been served as follows:

- a) If delivered by hand at the time of delivery;
- b) If sent by pre-paid first class post on the second working day after posting; or
- c) If sent by recorded delivery at the date and time delivery was signed for.

- 11.3. If a notice, demand or other communication is served after 16:00 on a working day or on a day that is not a working day it is to be treated as having been served on the next working day and for the purpose of this clause a working day is any day from Monday to Friday (inclusive) which is not a statutory bank holiday.

12. **Waiver**

No waiver (whether expressed or implied) by the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

13. **Change in Ownership**

The Owner agrees with the County Council to give the County Council written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged. Such notice to be given within seven Working Days of the date of any change in ownership.

14. **VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

15. **Dispute Provisions**

15.1. In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

15.2. In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 15.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

15.3. Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

15.4. The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

16. **Jurisdiction**

This Deed is governed by and interpreted in accordance with the law of England and the parties agree to submit to the exclusive jurisdiction of the courts of England.

17. **Delivery**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

19. **Discharge of Deed**

This Deed may neither be amended nor discharged without the prior consent in writing of all of the following:

- (a) The Owner;
- (b) The Developer; and
- (c) The County Council.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

Schedule 1

The Owner's and the Developer's Covenants

The Owner and the Developer covenant that should the Planning Permission be granted they will not construct nor operate the concrete batching plant forming part of the Development.

Executed as a deed by **BRETT
AGGREGATES LIMITED** acting by
a director,
in the presence of:

.....
Director

Witness Signature:

Witness Name:

Witness Address:

Executed as a deed by **ARLINGTON
BUSINESS PARKS GP LIMITED** as
general partner of **ARLINGTON
BUSINESS PARKS PARTNERSHIP**
acting by two directors or one
director and its secretary:

.....
Director

.....
Director/Secretary