

HERTFORDSHIRE COUNTY COUNCIL
SECTION 106 DEED OF AGREEMENT

Date:

20

PARTIES:

1. **HERTFORDSHIRE COUNTY COUNCIL** of County Hall Hertford Hertfordshire SG13 8DE (“the County Council”)
2. **BRETT AGGREGATES LIMITED** (Co. Regn. No 316788) whose registered office is situate at ~~150 Aldersgate Street London EC1A 4AB~~ Robert Brett House, Ashford Road, Canterbury, Kent CT4 7PP (“the Developer”)
3. **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”)

WHEREAS

- (1) 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
- (2) The County Council is the Highway Authority the Surveying Authority and the Minerals and Waste Authority for Hertfordshire
- (3) The Owner is the freehold owner of the whole of the Site

- (4) 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
- (5) The Developer has submitted the Planning Application to the County Council
- (6) On 6 January 2021 the County Council refused to approve the Planning Application and the Developer has submitted the Appeal
- (7) 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 WITNESSETH as follows:

OPERATIVE PART

1. DEFINITIONS

- 1.1 In this Deed the following expressions shall have the following meanings:-

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

“the 2000 Agreement” means an agreement Dated 29 December 2000 pursuant inter alia to Section 106 of the 1990 Act made between (1) Welwyn Hatfield District Council (2) the County Council (3) City and District of St Albans District Council (4) BAE Systems PLC (5) Arlington Property Developments Limited (6) The University of Hertfordshire Higher Education Corporation (7) Hatfield Business Park Limited (8)

“Aftercare Period” means a period of five (5) years during which time the Owner and/or Developer is responsible for the care and management of the Site such 5 year period is to begin upon the issue of the relevant Bridleways Certificate of Completion for each Bridleway;

“Alternative Restoration Guarantee Bond” means a bond, the terms of which shall be approved by the County Council at the cost of the Developer, given by the Developer to the County Council and secured by a financial institution to be approved by the County Council

“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;

“Bridleway 1” means a bridleway between Points A and B and marked green on Plan 1 commencing at TL 2017 0879 (point A on Plan 1) continuing south south east to TL 2019 0870 (point E on Plan 1) before turning west then south west to TL 1958 0818 (point H on plan 1) then turning south then south east, looping around the south west site boundary, to TL 1981 0787 (point J on Plan 1) then continuing north east to TL 2055 0844 (Point B on Plan 1) for an approximate total distance of 2390 metres and to be no less than 5 metres in width;

“Bridleway 2” means a bridleway between Points C and D and marked yellow on Plan 1 commencing at TL 1941 0869 (point C on Plan 1) and continuing south east to TL 1971 0833 (Point D on Plan 1) for an approximate distance of 470 metres and to be no less than 5 metres in width;

“Bridleway 3” means a bridleway between Points E and F and marked orange on Plan 1 commencing at TL 2019 0870 (point E on

Plan 1) and continuing south east to TL 2047 0843 (Point F on Plan 1) for an approximate distance of 395 metres and to be no less than 5 metres in width;

“Bridleway 4” means a bridleway between Points G and H and marked dark blue on Plan 1 commencing at TL 1954 0819 (point G on Plan 1) and continuing east to TL 1958 0818 (Point H on Plan 1) for an approximate distance of 30 metres and to be no less than 5 metres in width;

“Bridleway 5” means a bridleway between Points I and J and marked pink on Plan 1 commencing at TL 1973 0775 (point I on Plan 1) and continuing north east to TL 1981 0787 (Point J on Plan 1) for an approximate distance of 140 metres and to be no less than 5 metres in width;

“Bridleway 6” means a bridleway between Points K and L and marked purple on Plan 1 commencing at TL 1955 0804 (point M on Plan 1) and continuing north east to TL 1958 0805 (Point N on Plan 1) for an approximate distance of 25 metres and to be no less than 5 metres in width;

“Bridleway 7” means a bridleway between Points M and N and marked turquoise on Plan 1 commencing at TL 1961 0795 (point O on Plan 1) and continuing north east TL 1964 0797 (Point P on Plan 1) for an approximate distance of 30 metres and to be no less than 5 metres in width;

“Bridleway” means Bridleway 1, Bridleway 2, Bridleway 3, Bridleway 4, Bridleway 5, Bridleway 6 ~~and~~or Bridleway 7 and “Bridleways” shall be construed accordingly;

“Bridleways Certificate of Completion” means the certificate issued by the County Council certifying that the works for the

provision of each Bridleway have been completed to the satisfaction of the County Council;

“Cash Deposit” means the sum of thirty thousand pounds (£30,000) [index linked as provided in this Deed](#) to be paid to the County Council;

“Certificate of Completion” means the certificate issued by the County Council certifying that the highway works to be carried out under a Section 278 Agreement have become highway maintainable at public expense and the Developer’s obligations to maintain those works have ceased;

“Certificate of Restoration” means the certificate issued by the County Council certifying that the works for the provision of Restoration have been completed to the satisfaction of the County Council;

“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;

“Completion of Restoration” the date upon which the ~~Developer and/or Owner notifies the~~ County Council ~~that~~ [issues the Certificate](#)

~~of Restoration has been completed in accordance with the terms of the Planning Permission~~

“Completion of the Development” the date upon which the Development has been completed in accordance with the terms of the Planning Permission

“Condition Survey” means a survey undertaken to assess the condition of Hatfield Road;

“Definitive Map” means the map prepared by the Surveying Authority which is the legal record of Public Rights of Way in Hertfordshire;

“Definitive Statement” means the statement which is the legal record that accompanies the Definitive Map and describes each Right of Way;

“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;

“Ellenbrook Park” has the meaning given to it under the 2000 Agreement

“Hatfield Road” means the part of the highway along Hatfield Road (A1057) between the Comet Way and Oaklands Lane junctions as shown edged red on Plan 2;

~~**“Hatfield Road Cash Deposit Sum” means the sum of thirty thousand pounds (£30,000);**~~

“HCC Rights of Way NMR Guide” means the County Council’s document ~~entitled~~titled “Non-Motorised Routes: A Design Guide Countryside and Rights of Way Service” attached at Schedule 5 or such version as updated from time to time;

“Highway Authority” means Hertfordshire County Council in its capacity as the highway authority;

“Insolvency Event” means any one of the following:

- (a) If the Developer is an individual or a firm – an online application to an adjudicator for a bankruptcy order or the presentation of a petition for the Developer’s bankruptcy; or the making of a criminal bankruptcy order against the Developer or any partner in the firm; or the Developer or any partner in the firm making a composition or arrangement for the benefit of creditors; or the making of a conveyance or assignment for the benefit of creditors; or the appointment of an administrator to manage the Developer’s or firm’s affairs;
- (b) If the Developer is a company – the company passing a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction); or the making of an application for, or any meeting of its members resolving to make an application for an administration order in relation to it; or the giving or filing of notice by any party of intention to appoint an administrator of it; or the appointing of such an administrator or the making by the court of a winding up order; or the company making a composition or arrangement with its creditors; or the appointment of an administrative receiver, receiver or manager or supervisor by a creditor or by the court, or the taking of possession of its property under the terms of a fixed or floating charge.

"Minerals and Waste Authority" means Hertfordshire County Council in its capacity as the minerals and waste authority;

"MPARGF" the Mineral Products Association Restoration Guarantee Fund or alternative guarantee fund provided by any successor body previously approved by the County Council;

"Plan 1" means the plan annexed to this Deed at Annexure 1 titled "Former British Aerospace_Proposed rights of Way";

"Plan 2" means the plan annexed to this Deed at Annexure 2 titled "Hatfield Road";

"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;

"Restoration" means restoration of the Site in accordance with the Planning Permission and for the purposes of the obligations, covenants and restrictions set out within paragraph 3 of Schedule 1.
"Restoration" shall mean restoration of any part of the Site;

"Right of Way" means all routes that are subject of this Deed as shown on Plan 1 which the public shall have a legally protected right to pass and re-pass as set out in the Wildlife and Countryside and Rights-of-Way Act 2000~~1981~~;

"Secretary of State" means the Secretary of State for Levelling Up, Housing and Communities or any planning inspector authorised by him;

“Section 278 Agreement” means a valid agreement executed as a deed and to be entered into with the County Council pursuant to Section 278 of the Highways Act 1980;

“Section 25 Agreement” means an agreement entered into by the Owner and the County Council, in respect of the Bridleways only, pursuant to Section 25 of the Highways Act 1980 substantially in the form set out in Schedule 4;

“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;

“SPONS Index” means the index linked by reference to the price adjustment formula for construction contracts in the monthly bulletin of indices published by ~~Her Majesty's Stationery Office~~[the Building Cost Information Service](#) as ~~collaged~~[collated](#) into a single index known as the ~~SPONS Construction Price Adjustment Formulae Indices~~ [\(Civil Engineering Cost Index\) Series 2](#);

“Survey” means a visual inspection of the condition of the surface of the Bridleways;

“Surveying Authority” means Hertfordshire County Council in its capacity as surveying authority for purposes pursuant to the Wildlife and Countryside Act 1981;

“Survey Report” means a written report of the condition of the surface of the Bridleways produced by the Surveying Authority subsequent to the Survey;

“Sustainable Transport Contribution” means the sum of ninety two thousand pounds (£92,000) (indexed linked as hereinafter provided) as a contribution towards improvements of the Hatfield Road and Ellenbrook Lane junction and improvements of the Hatfield Road and Comet Way junction with half of the contribution being applied to each junction;

“Working Day” means any day other than a Saturday or a Sunday or a Public Holiday or Bank Holiday;

1.2 In this Deed:-

1.2.1 the clause headings do not affect its interpretation;

1.2.2 words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa;

1.2.3 the reference to any statute or section of a statute includes 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;

1.2.4 any reference to a clause, a paragraph or a schedule is unless the context otherwise requires a reference to a clause, a paragraph or a schedule of this Deed and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears;

1.2.5 references to the Site include any part of it;

1.2.6 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;

1.2.7 references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the County Council the successors to its functions;

1.2.8 any covenant by the Owner and the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing and words denoting an obligation on the Owner and the Developer to do any act matter or thing include an obligation to procure that it be done;

2. EFFECT OF THIS DEED

2.1. This Deed is entered into pursuant to Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the County Council;

2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers;

2.3 The Owner and Developer enter into the obligations for themselves and their successors in title with the County Council to the intent that the obligations hereunder shall be enforceable not only against the Owner and the Developer but also against the successors in title of the Owner and or the Developer and any person claiming through or under the Owner and or the Developer an interest or estate in the Site or any part thereof

3. CONDITIONALITY

3.1 This Deed is conditional upon:-

3.1.1 the grant of the Planning Permission; and

3.1.2 the Commencement of Development

save for the provisions of Clauses 4.4, 7.1, 9 which shall come into effect immediately upon completion of this Deed

3.2 The Deed shall be null and void if for any reason the Secretary of State decides not to grant the Planning Permission for the Development pursuant to the Appeal.

3.3 Should a court or the Secretary of State determine that any provision in this Deed does not meet the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and/or paragraphs 54-58 of the National Planning Policy Framework (July 2021) then those provisions shall not be enforceable by the County Council AND FOR THE AVOIDANCE OF DOUBT the Owner and the Developer do not need to comply with them.

4. OWNER'S AND DEVELOPER'S COVENANTS

~~4~~The Owner and the Developer covenant with the County Council:-

4.1 to observe and perform the covenants restrictions stipulations and obligations contained in Schedule 1 hereto

4.2 to give the County Council no less than five (5) Working Days' notice of the Commencement Date such notice to be given prior to the Commencement Date in writing using the proforma set out in Schedule 3 hereto

4.3 to give the County Council no less than five (5) Working Days' notice of the Completion of the Development such notice to be in writing using the proforma set out in Schedule 3 hereto

- 4.4 upon completion of this Deed pay to the County Council its costs in connection with the preparation negotiation and completion of this Deed

5. COUNTY COUNCIL'S COVENANTS

- 5.1 The County Council hereby covenants with the Owner and the Developer to observe and perform the covenants restrictions stipulations and obligations contained in Schedule 2 hereto

~~5.2 The County Council further covenants with the Owner and the Developer that following the performance and satisfaction of all of the obligations contained in this Deed the County Council shall within twenty eight (28) Working Days effect the cancellation and removal of all entries made in the register of local land charges in respect of this Deed~~

6. INDEXATION

- 6.1 The Sustainable Transport Contribution and the Cash Deposit shall each be index- linked to any increase in the SPONS Index from July 2006 to the date on which each of the Sustainable Transport Contribution and the Cash Deposit is paid

- 6.2 Each payment to replenish the Cash Deposit pursuant to paragraph 2.6 of Schedule 1 shall be index linked to any increase in the SPONS Index from the date on which the County Council makes the relevant call on the Cash Deposit pursuant to paragraph 2.5 to the date on which the payment is made by the Owner and/or the Developer to replenish the Cash Deposit

- 6.3 Where any sum to be paid to the County Council under the terms of this Deed is required to be ~~indexed~~index linked then an interim payment shall initially be made based on the latest available forecast figure (or figures as the case may be) at the date of payment and any payment or payments by way of adjustment shall be made within ten (10) Working Days of written

demand by the County Council or the payer of the interim payment (as the case may be) once the relevant indices have been finalised

7. MISCELLANEOUS

- 7.1 The Owner hereby warrants that it is the owner of the freehold of the Site and that no other party save for the Developer has an interest in the Site ~~save as disclosed in writing to the Chief Legal Officer prior to completion of this Deed~~
- 7.2 The parties agree that this Deed shall be registered as a local land charge
- 7.3 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) granted (whether or not on appeal) after the date of this Deed.
- 7.4 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a statutory successor to a party hereto
- 7.5 Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or ~~sent~~ by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified (or such other address as is notified in writing by a party to each of the other parties to this Deed):

<u>In respect of the Owner :</u>	<u>In respect of the Developer:</u>	<u>In respect of the County Council:</u>
Arlington Business Parks GP Limited 1230 Parkview Arlington Business Park Theale RG7 4SA (marked for the attention of the Company Secretary <u>Legal</u> <u>Department) with a</u> <u>copy to Harwell,</u> <u>HQ Building,</u> <u>Thomson Avenue,</u> <u>Harwell Campus,</u> <u>Oxfordshire OX11</u> <u>0GD (marked for</u> <u>the attention of the</u> <u>Legal Department)</u>	Brett Aggregates Limited 150 Aldersgate Street London EC1A 4AB and also at Robert Brett House, Ashford Road, Canterbury, Kent CT4 7PP (marked for the attention of the Company Secretary and the Director of Legal Property Services)	The Chief Legal Officer, Hertfordshire County Council, County Hall, Pegs Lane, Hertford, Herts SG13 8DE (ref : 17251)

- 7.6 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.
- 7.7 Nothing in this Deed shall be construed as imposing a contractual obligation upon the County Council as to the issue of the Planning Permission or as restricting the exercise by the County Council of any powers exercisable by them under the 1990 Act or under any other Act or authority
- 7.8 No waiver whether express or implied by the County Council of any breach or default by the Owner and/or Developer in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing the relevant obligations or from acting upon any subsequent breach or default

- 7.9 ~~This~~[Save for Clauses 4.4, 7.1, 9 and 10 hereof this](#) Deed shall cease to have any effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner and the Developer) it is modified by any statutory procedure or if the Commencement Date has not been initiated in accordance with section 56 of the 1990 Act before the expiration of the period specified in the Planning Permission
- 7.10 Where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the County Council or any officer of the County Council is required for any purpose under or in connection with the terms of this Deed such approval, consent, expression of satisfaction, agreement, confirmation, or certification shall not be unreasonably withheld or delayed
- 7.11 Without prejudice to the County Council's statutory rights the Owner and the Developer hereby grant to the County Council or any person duly authorised or instructed by it an irrevocable licence at all reasonable times and upon prior notice (save for in emergencies notice will be provided as soon as possible thereafter) and subject to the County Council and its authorised officers complying with all appropriate health and safety regulations relating to the Site as may be imposed by the Developer from time to time to enter such parts of the Site to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed [and for checking compliance with the Planning Permission](#)
- 7.12 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach prior to parting with such interest

8. VALUE ADDED TAX

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

9. 2000 AGREEMENT

9.1 The parties to this Deed hereby agree and affirm that nothing in this Deed is intended to supersede amend or otherwise impact in any way the covenants restrictions stipulations and obligations under the 2000 Agreement in respect of Ellenbrook Park AND FOR THE AVOIDANCE OF DOUBT the provisions of this Deed in respect of the Bridleways are without prejudice to the covenants stipulations restrictions and obligations in the 2000 Agreement in respect of public use of Ellenbrook Park including the bridleways footpaths and other public access secured pursuant to the 2000 Agreement

10. LAW AND JURISDICTION

~~9.1~~10.1 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

IN WITNESS whereof the parties hereto have executed this Deed as a Deed but the same remains undelivered until the day and year first before written

SCHEDULE 1

The Owner's and Developer's Covenants stipulations and Obligations

The Owner and/or the Developer hereby covenant with the County Council

1. Sustainable Transport Contribution

- 1.1 To pay the Sustainable Transport Contribution to the County Council prior to the Commencement of Development
- 1.2 Not to Commence the Development until the Sustainable Transport Contribution has been paid in accordance with paragraph 1.1 of this Schedule

2. Hatfield Road

- 2.1 Not to Commence the Development until such time as a Section 278 Agreement has been entered into for works relating to the proposed new site access and removal of existing vegetation on highway land and for improved pedestrian facilities (widening of existing footway) along Hatfield Road (A1057) to assist pedestrian links between the Site and Albans Way and the works have been completed by the Owner and/or Developer to the satisfaction of the Director as evidenced by the issue of a Certificate of Completion by the Director in accordance with the Section 278 Agreement.
- 2.2 Not to Commence the Development until the Developer has:-
 - 2.2.1 undertaken a Condition Survey and submitted this to the County Council for approval; and
 - 2.2.2 paid the Cash Deposit to the County Council for the due performance of all the Developer's obligations under ~~paragraph 2~~paragraphs 2.2 to 2.7 inclusive of this Schedule 1

- 2.3 ~~Thereafter to~~To carry out further Condition Surveys and to submit these to the County Council for approval at the end of each five (5) year period starting from the Commencement of Development and continuing until the County Council issues the Certificate of Restoration whereupon the Developer shall carry out and submit to the County Council for approval a final Condition Survey Provided That the final Condition Survey shall be carried out not later than six (6) weeks from the date of the County Council issuing the final Certificate of Restoration for the mineral processing site
- 2.4 Should any Condition Survey(s) reveal a deterioration in the condition of Hatfield Road or any part(s) thereof as identified by the relevant officer/engineer of the County Council and as notified in writing to the Developer the County Council and the Developer shall as soon as reasonably practicable determine the extent and cause of such deterioration and assess the cost of repair/reinstatement and the amount (if any) attributable to the Developer's activities in carrying out the Development and upon such determination the Developer shall pay to the County Council any such sum within ten (10) Working Days thereafter PROVIDED THAT any such sum due on each occasion shall not be greater than the ~~Hatfield Road~~ Cash Deposit ~~Sum~~
- 2.5 If the Developer fails to pay any sum(s) as determined pursuant to the provisions of paragraph 2.4 of this Schedule and within the timeframe as set out therein or an Insolvency Event or any event or proceedings having an analogous effect as an Insolvency Event occurs in respect of the Developer the County Council shall be entitled to call upon the Cash Deposit to carry out and complete any works required in accordance with the Condition Survey
- 2.6 In the event of the County Council calling upon the Cash Deposit pursuant to paragraph 2.5 of this Schedule the Developer shall ~~thereafter~~within twenty (20) Working Days of a written demand from the County Council replenish the Cash Deposit by paying to the County Council the total amount of the Cash Deposit used by the County Council to carry out and

complete works required in accordance with the Condition Survey to thereby ensure that the County Council always has the full Cash Deposit available

- 2.7 Whenever the Cash Deposit ~~is less than~~ (or any part of it) is called on by the ~~Hatfield Road Cash Deposit Sum~~ County Council pursuant to paragraph 2.5 of this Schedule 1 the Developer shall immediately cease all activities on the Site as permitted by the Planning Permission and which create traffic movements affecting Hatfield Road and will not recommence such activities until such time as the Cash Deposit available to the County Council ~~equals the amount of the Hatfield Road Cash Deposit Sum~~ has been replenished in accordance with paragraph 2.6 of this Schedule 1

3. Bridleways

- 3.1 Not to Commence nor cause nor permit Commencement of the Development nor to carry out any such enabling works for the purposes of the Development until it has entered into a Section 25 Agreement substantially in the form attached at Schedule 4 to dedicate each of Bridleway 1, Bridleway 2, Bridleway 3, Bridleway 4, Bridleway 5, Bridleway 6 and Bridleway 7 and such dedication ~~is to~~ shall take effect from the issue of the Bridleways Certificate of Completion for each Bridleway by the Director pursuant to the Section 25 Agreement;
- 3.2. ~~To~~ On Restoration of any part of the Site to construct such of the Bridleway(s) as are safe for public access as agreed by the County Council in writing and in accordance with the timescales set out within the Section 25 Agreement and each of Bridleway 1, Bridleway 2, Bridleway 3, Bridleway 4, Bridleway 5, Bridleway 6 and Bridleway 7 shall be constructed in accordance with the specifications (set out in the HCC Rights of Way NMR Guide) for drainage, surfacing (subject to the

provisions of paragraph ~~3.5~~3.6 of this Schedule), sign-posting and way-marking ~~and~~

3.3 To make each of the Bridleways available to the public for use as bridleways upon the date of issue of the relevant Bridleways Certificate of Completion.

~~3.3~~3.4. Not to Commence nor cause nor permit Commencement of the Development until the County Council's fees incurred in relation to the drafting negotiation and preparation of the Section 25 Agreement have been paid.

~~3.4~~3.5 To provide all new Bridleways with drainage, surfacing, fencing, gates or other means of enclosure (as appropriate), sign posting and way marking in accordance with the specifications set out in the HCC Rights of Way NMR Guide PROVIDED THAT the surface dressing of the Bridleways may be comprised of crushed stone of a type to be agreed in advance by the County Council such agreement not to be unreasonably withheld or delayed and on the basis that such surface dressing is fine enough for horses, cycles and walkers on any shared-use route.

~~3.5~~3.6 To maintain all surfaces of the Bridleways throughout the Aftercare Period PROVIDED THAT, for the avoidance of any doubt, upon the expiry of the Aftercare Period the County Council shall be responsible for all such maintenance.

~~3.6~~3.7. To maintain all gates, fences and other means of enclosure of the Bridleways in perpetuity which for the avoidance of doubt includes the period following the issuing by the County Council of the Bridleways Certificate of Completion.

~~3.7~~3.8 To pay to the Surveying Authority the costs associated with undertaking the Survey and preparing the Survey Report within twenty eight (28) Working Days of receiving details of the costs from the Surveying Authority.

4. Restoration

4.1 In the event that the County Council undertakes Restoration and/or aftercare as a consequence of the Developer and/or Owner having failed to do so in accordance with the Planning Permission the Developer and/or the Owner shall within ten (10) Working Days following receipt of invoices accompanied by a detailed breakdown of all works undertaken and costs incurred in so doing pay to the County Council the costs of undertaking the Restoration and/or aftercare pursuant to the Planning Permission for a period of five (5) years commencing on the ~~Completion~~completion of Restoration.

4.2 From the signing of this Deed, the Developer shall be a valid member of the Mineral Products Association to secure access to the MPARGF and membership shall be maintained until the expiry of the Aftercare Period / for the lifetime of the Development. Within 14 days of a written request from the County Council, the Developer shall provide evidence of its continued membership of the Mineral Products Association to the County Council to assure the County Council that it would be entitled to draw on the MPARGF for the purposes of restoring the Site and carrying out the aftercare of the Site in accordance with the restoration scheme required by the Planning Permission and that the MPARGF continues to be sufficient to meet the cost of implementing the aforementioned schemes. In the event that the Developer's membership of the Mineral Products Association ceases the Developer shall within 2 months of that cessation procure that the Alternative Restoration Guarantee Bond is provided to the County Council.

SCHEDULE 2

The County Council's Covenants stipulations and Obligations

The County Council hereby covenants with the Owner and/or Developer:-

1. Bridleways

1.1 To carry out a Survey of the condition of each Bridleway in terms of its width, alignment, surfacing, signposting and way finding within forty five (45) Working Days of having been notified in writing by the Owner and/or Developer that the relevant works as referred to and defined within the Section 25 Agreement have been completed in accordance with the specifications set out in the HCC Rights of Way NMR Guide subject to the provisions of paragraph ~~3.5~~3.6 of Schedule 1.

1.2 To:

1.2.1 Provide to the Owner and/or Developer a Bridleways Certificate of Completion within ninety (90) Working Days of the Survey of each Bridleway PROVIDED THAT the Bridleways Certificate of Completion for each Bridleway will not be issued until satisfactory completion of the infilling and ~~restoration~~Restoration of the relevant part(s) of the Site upon which each Bridleway is located has occurred; or

1.2.2 Where the works have not been completed in accordance with the HCC Rights of Way NMR Guide subject to the provisions of paragraph ~~3.4~~3.5 of Schedule 1 then the Director shall be at liberty to delay the issue of the Bridleways Certificate of Completion and shall specify in writing those works as are outstanding and as may be

required to meet the specifications set out in the HCC Rights of Way NMR Guide within ninety (90) Working Days of being notified in writing by the Owner and/or Developer of the works having been carried out and thereafter and subject to such outstanding works having been completed and further notified in writing by the Owner and/or the Developer as having been carried out then the County Council will provide to the Owner and/or Developer a Bridleways Certificate of Completion within ninety (90) Working Days of being notified.

- 1.3 Notwithstanding paragraph 1.1 of this Schedule, to carry out a Survey of the Bridleways not less than once every two (2) years for the duration of the Aftercare Period.
- 1.4 To provide the Owner and/or Developer with a Survey Report within ninety (90) Working Days of the Survey specifying the works necessary to maintain each Bridleway in accordance with the specifications set out in HCC Rights of Way NMR Guide subject to the provisions of paragraph ~~3.5~~3.6 of Schedule 1.
- 1.5 To register each Bridleway on the Definitive Map and Definitive Statement as soon as reasonably practicable following the issue of the Bridleways Certificate of Completion for each Bridleway;

2. Hatfield Road

- 2.1 Upon receipt of the Cash Deposit (including any subsequent replenishment of it pursuant to paragraph 2.4 of Schedule 1) from the Developer pursuant to paragraph 2 of Schedule 1 the County Council shall hold the Cash Deposit in its general account and without undertaking any fiduciary obligations as trustee for the Developer and /or the Owner but subject to the provisions of paragraph 2 of Schedule 2

2.2 Upon payment of the sum(s) by the Developer pursuant to paragraph 2.4 of Schedule 1 or withdrawal of such sum(s) from the Cash Deposit pursuant to paragraph 2.5 of Schedule 1 the County Council shall apply such sums to carrying out and completing the works required to repair any deterioration in the condition of Hatfield Road or any part(s) thereof as identified by the County Council pursuant to paragraph 2.4 of Schedule 1 as soon as reasonably practicable thereafter and in any event within six (6) months and provide evidence of such to the Developer

2.3 Provided that the Cash Deposit has not been called upon by the County Council or the Developer has replenished the Cash Deposit pursuant to paragraph 2.6 of Schedule 1 the County Council shall within thirty (30) Working Days following ~~Completion~~ issue of the Certificate of Restoration return to the Developer (or the relevant payor) the Cash Deposit or whatever amount is still held by the County Council.

3. **Restoration**

To inspect the Site within fifty-six (56) calendar days taking into account the planting season following receipt of written notification from the Developer that the Site has been restored and thereafter to issue the Certificate of Restoration PROVIDED THAT the County Council shall be at liberty to delay the issue of the Certificate of Restoration in the event that further restoration work is required to ensure that restoration meets the requirements of the Planning Permission

4. **Sustainable Transport Contribution**

4.1 To expend the Sustainable Transport Contribution towards improvements of the Hatfield Road and Ellenbrook Road junction and improvements of the Hatfield Road and Comet Way junction with half of the contribution being applied to each junction

- 4.2 To pay to the party who has paid any such sum to the County Council pursuant to the provisions of this Deed a sum equal to the amount of any payment made which has not been expended in accordance with the provisions of this Deed within ten (10) years of the date of receipt by the County Council of such payment

SCHEDULE 3

PROFORMA

EVENT NOTIFICATION AND PAYMENT

**PURSUANT TO SECTION 106 AGREEMENT/UNILATERAL
UNDERTAKING**

DATED

MADE BETWEEN

PLANNING PERMISSION REFERENCE.....

HCC DU REFERENCE

SITE ADDRESS
.....
.....
.....

SITE OWNER DETAILS

Name

Contact name

Address
.....
.....

Telephone nos.

Main

Mobile

Email

EVENTS BEING NOTIFIED

Commencement Date – date :.....

Occupation of Development (Number if relevant) – date:.....

Completion of Development – date:

COMPLIANCE WITH OBLIGATION(S)

Schedule **Paragraph**

Details of obligation and compliance

PAYMENT OF S106 CONTRIBUTIONS

Payment Type	Amount	Interim Indexation	Final Indexation	Total	Payable to
Example Education (primary)	X £	Y £	Z £	X+Y £	Herts County Council

Payment of S106 contributions can be made by BACS, CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

- a) The Chief Legal Officer
Hertfordshire County Council
County Hall,
Pegs Lane
Hertford
Hertfordshire
SG13 8DE

(Ref : 17251)

SCHEDULE 4

Section 25 Agreement Template

DATED

20[**]

[NAME]

and

[NAME]

and

HERTFORDSHIRE COUNTY COUNCIL

and

[* insert any MORTGAGEES]

The [INSERT] Public Path Creation Agreement 20[**]
pursuant to Section 25 of the Highways Act 1980
relating to a footpath/ in the Parish of [INSERT]

Quentin Baker, Chief Legal Officer
Hertfordshire County Council
Legal Services
County Hall
HERTFORD
Herts SG13 8DN

- 1.4 The County Council is the surveying authority and highway authority for Hertfordshire
- 1.5 The County Council has consulted with [INSERT Borough/District Council] and [INSERT Parish Council] in whose area [INSERT] is situated
- 1.6 The Owner(s) is/are willing to dedicate [INSERT] for use by the public thereby [INSERT DESCRIPTION]
- 1.7 The route of the footpath/Bridleway/the Restricted Byway is currently recorded as a public footpath/bridleway/restricted byway on the Definitive Map and Statement of public rights of way in Hertfordshire

2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Agreement unless the context otherwise requires the following expressions shall have the following meanings attributed to them:

"the 1980 Act"	The Highways Act 1980
"the Certificate of Completion"	The certificate to be issued by the Director upon satisfactory completion of the Works by the Owner
"Certificate of Maintenance"	The certificate issued by the Director under Clause [*INSERT] certifying that the Works have been maintained to the County Council's satisfaction and the Owner's obligation to maintain the Works has ceased
"the County Council"	Hertfordshire County Council and any successors to its statutory functions as local highway authority

“the Chief Legal Officer”	The County Council’s Chief Legal Officer for the time being and his agents
“the Director”	The County Council’s Director of Environment and Infrastructure for the time being and his officers and agents
“the Additional Width”	The route shown by a bold broken line and labelled Point [INSERT] on the Creation Agreement Plan being an additional width to the route of which is more particularly described in Part I of the Schedule
“the Footpath” / “the Bridleway”/ “the Restricted Byway”	The route shown and labelled [*] on the Creation Agreement Plan such route being more particularly described in Part 1 [and Part 2] of the Schedule
“the Footpath/bridleway/ restricted byway”	The footpath / bridleway / restricted byway known as [INSERT] in the county of Hertfordshire which is recorded as [INSERT] metres in width
“the Creation Agreement Plan”	The plan marked “This plan forms part of the [INSERT] Public Path Creation Agreement 20[**]” and attached hereto
“the Land”	The land in the county of Hertfordshire which is registered at Land Registry under title number (Title Number) and which for the purposes of identification only is shown edged red on the [extract of the] Title Plan
“the Mortgagee(s)”	[INSERT] that has the benefit of the registered charge referred to in recital [**] above]
“the Owner(s)”	The Owner(s) as described in recital(s)

	[*insert] above and their successors in title
"the Title Plan"	The plan marked "the Title Plan" and attached hereto <i>[add optional clarity, e.g. "extract of..." / "edged in red / blue"]</i>
"the Schedule(s)"	The schedule(s) attached hereto
"the Specification"	The specification agreed in writing by the County Council and attached hereto
"the Works"	The works required to bring the Footpath / Bridleway / Restricted Byway into a fit condition for use by the public as described in Schedule 2 and shown on the Works Plan
"The Works Plan"	The plan marked [insert drawing reference etc] and attached hereto

2.2 In this Agreement where the context so admits the singular number shall include the plural number and the masculine and neutral genders shall include the feminine gender and vice-versa

2.3 Where a party includes more than one person any obligations of that party shall be joint and several

2.4 This Agreement is governed by and interpreted in accordance with the law of England and Wales

3. STATUTORY AUTHORITY AND EFFECT

3.1 This Agreement is made pursuant to the powers contained in section 25 of the 1980 Act and section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other powers enabling the County Council thereunto

4. NOW IT IS HEREBY AGREED BY THE PARTIES HERETO

- 4.1 On the date of the issue of the Certificate of Completion the Owner for itself and its successors in title hereby unconditionally and irrevocably dedicates [the Additional Width of] the Footpath/ Bridleway/ Restricted Byway as public highway [subject to the limitation set out in Part 2 of the Schedule] PROVIDED THAT on default by the Owner of any of the terms of this Agreement the County Council shall have the right to enter on to the Land to complete the Works and in this case then dedication shall be effective from the date of such entry PROVIDED FURTHER THAT the County Council shall not exercise this right unless it has first provided the Owner with a reasonable period of time (being no less than 28 days) within which to rectify the default and the Owner has failed to do so
- 4.2 The County Council shall be deemed to have accepted the dedication of [the Additional Width of] the Footpath/ Bridleway/ Restricted Byway as public highway on the date of the issue of the Certificate of Completion [subject to the limitations/conditions set out in Part 2 of the Schedule] and the dedicated [Additional Width of] Footpath/Bridleway/Restricted Byway shall immediately and automatically from that date become and remain highway maintainable at public expense without the need for any further documentation or act by or on behalf of the County Council
- 4.3 The Owner shall carry out the Works within NUMBER (WORDS) months/weeks of the date of this Agreement in a good and professional manner and with proper materials and in accordance with the Specification at its own expense and to the satisfaction of the County Council as evidenced by the issue of the Certificate of Completion by the Director
- OR
- The Owner shall carry out the Works within NUMBER (WORDS) months/weeks of the date of this Agreement in a good and workmanlike manner and with proper materials and in accordance with the Specification at its own expense and to the satisfaction of the County

Council as evidenced by the issue of the Certificate of Completion by the Director

OR

The Owner shall ensure that the Works are carried out within NUMBER (WORDS) months/weeks of the date of this Agreement by a contractor approved in writing by the Director and in accordance with the Specification at its own expense and to the satisfaction of the County Council as evidenced by the issue of the Certificate of Completion by the Director

- 4.4 Following the issue of the Certificate of Completion the Owner shall make the Footpath/ Bridleway/Restricted Byway freely available at all times for use by the general public [on foot] [on foot on horseback and on bicycle] [on foot on horseback by horse drawn carriage and on pedal cycle]
- 4.5 The Owner hereby indemnifies the County Council in respect of all actions claims demands expenses and proceedings arising within the period of NUMBER (WORDS) months/weeks from the date of the Certificate of Completion out of or in connection with or incidental to the carrying out of the Works and any works required by any statutory undertaker other than those arising under parts I and II of the Land Compensation Act 1973 irrespective of whether such actions claims demands expenses and proceedings are brought or made within the NUMBER (WORDS) months/weeks from the date of the Certificate of Completion or thereafter PROVIDED THAT the Owner shall not be liable to indemnify the County Council in respect of any liability solely arising from any negligence, act, omission or default on the part of the County Council (including its properly appointed agents and contractors) PROVIDED FURTHER THAT the County Council shall notify the Owner as soon as reasonably possible of any claim for compensation or otherwise or costs or charges which it intends to make a claim on the Owner under the provisions of this Agreement and shall provide details of any such claims or charges and have regard to (but not be bound by) any reasonable representation made by the Owner in respect of any

claims or charges to be paid by the County Council and to be reimbursed by the Owner.

- 4.6 The Owner shall without any prejudice to its liability in clause 4.5 above to indemnify the County Council be insured against public liability risks for a sum of at least TEN MILLION POUNDS (£10,000,000) in respect of any one claim and furthermore shall ensure that any person or persons carrying out the Works on its behalf is similarly insured against public liability risks and the Owner or any person authorised by it to carry out the Works shall on request by the County Council produce for inspection the relevant policies or insurance together with receipts for the premiums paid
- 4.7 The Owner shall maintain the Works to the reasonable satisfaction of the Director for a period of five (5) years from the date of the issue of the Certificate of Completion and provided always that the Works have been fully maintained as aforesaid and that any defects appearing during the said five (5) years period have been made good the Director shall thereupon issue the Certificate of Maintenance
- 4.8 [The Owner shall on the date of this Agreement pay to the County Council the whole of the costs incurred by the Chief Legal Officer and the Director in the preparation of this Agreement and in advertising this Agreement as required under the 1980 Act]
- 4.9 [The Mortgagee hereby agrees to the Owner entering into this Agreement and to its interest in the Land being bound by the terms of this Agreement]

THE SCHEDULE

Part 1

DESCRIPTION OF ROUTE

Public [footpath / bridleway / restricted byway] commencing from the [highway] at [grid ref] (point [A] on the Creation Agreement Plan) {and then running [compass direction e.g. north-east / generally north-east / north-easterly / north-eastwards] for approximately [y] metres [to/crossing] [feature] at [grid ref] (point [B] on the Creation Agreement Plan)}{*repeat as necessary starting 'continues'*} to [join/a junction with/re-join] [specify highway joined] at [grid ref] (point [C] on the Creation Agreement Plan).Width: [INSERT as per Order Guidelines]

Part 2

DESCRIPTION OF LIMITATIONS / CONDITIONS

[INSERT as per Order Guidelines]

THE SPECIFICATION

[*to be provided by HCC Rights of Way]

Describe works required; referring to the Works Plan if used. Include details of the materials to be used if required. Please ensure you consider matters such as

- What will the new path be surfaced with?*
- What works will need to be done to ensure an even level surface?*
- Is – or will – any drainage be required?*

- *What works will need to be done to provide the width stated in the order?
(Have you checked that the width given in the order is physically available?)*
- *What structures, signposts, waymark posts etc will the landowner be required to provide?*
- *Are there any other works needed to make the new path suitable for use and to ensure that there will be no great maintenance liability placed on HCC in the next 10-15 years?*
- *Have all the required works been clearly defined i.e. shown on a plan or referred to in such a way that the landowner is clear as to what they need to do, and we are clear as to whether the works have been done to the required standard? (If the works are not done to our satisfaction, HCC needs to say so and be able to use this agreement to explain what is required)*

IN WITNESS WHEREOF the Owner and the County Council have hereunto executed this instrument as a deed in the manner hereinafter appearing but not delivered until the date and year first above written

(Deed – has to be ‘executed’ – there are 3 options depending on type of party

- 1) Individual is signature + witness*
- 2) Company either common seal affixed in presence of director etc. or*
- 3) Company signature by two directors or one director and company secretary*

*INSERT relevant execution clause for the Owner
[attestation clause for any Mortgagees if required]*

Signed as a deed by
(insert name of owner)
in the presence of

Signature
.....

Signature of witness

.....

Name and address of witness

(IN BLOCK CAPITALS)

.....

.....

-----or-----

The Common Seal of

insert company name

was hereunto affixed

in the presence of

Full name:.....

Signature:

Director/Company Secretary*

Full name:

Signature:

Director

----- Or -----

Executed as a deed by *insert name of company*

acting by [a director and its secretary]

[two directors]

Full name:.....

Signature:

Director/Company Secretary*

Full name:

Signature:

Director

The Common Seal of
HERTFORDSHIRE
COUNTY COUNCIL
was hereunto affixed
in the presence of

Full name:.....

Signature:

Chief Legal Officer/Assistant Chief Legal Officer*

SCHEDULE 5

HCC Rights of Way NMR Guide

Annexure 1

Plan 1

Annexure 2

Plan 2

The COMMON SEAL of)
HERTFORDSHIRE COUNTY)
COUNCIL was hereunto affixed)
in the presence of:-)

Executed as a deed by BRETT
AGGREGATES LIMITED acting by

.....
Director

a director, in the presence of:

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 one
director in the presence of:

sign here:

Director

print name:

In the presence of:

Witness signature:

Witness sign here:

Witness name:

print name:

Witness address:

Witness occupation:

~~Executed as a~~

.....
Director

deed

by

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Director/Secretary

Date _____ 20

HERTFORDSHIRE COUNTY COUNCIL

- and -

BRETT AGGREGATES LIMITED

- and –

**ARLINGTON BUSINESS PARKS GP
LIMITED**

-

Deed of Agreement pursuant to S.106 Town
and Country Planning Act 1990 (as
amended) in relation to the development of
Site at land lying to the north-west of Hatfield
Road, Smallford, St Albans (former Hatfield
Aerodrome Site)

-

QUENTIN BAKER
Chief Legal Officer
County Hall
Hertford
SG13 8DE

REF: 17251

Document comparison by Workshare Compare on 25 November 2021
17:19:12

Input:	
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Description	Compare_176407967_r18
Rendering set	standard

Legend:	
<u>Insertion</u>	
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Moved from	
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Style change	
Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Insertions	92
Deletions	56
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	148