

Dated 19<sup>TH</sup> SEPTEMBER 2017

**(1) MANSFIELD SAND COMPANY LIMITED**

**AND**

**(2) THE NOTTINGHAMSHIRE COUNTY COUNCIL**

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Agreement under Section 106 of the Town and Country Planning Act 1990 relating to  
land at Two Oaks Farm Derby Road Mansfield Nottinghamshire

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Nottinghamshire County Council  
Legal Services  
Resources Department  
County Hall  
West Bridgford  
Nottingham  
NG2 7QP

Reference: RHC/036876

THIS AGREEMENT is made this 19<sup>TH</sup> day SEPTEMBER 2017  
BETWEEN

1. MANSFIELD SAND COMPANY LIMITED (Company Number 3754188) of Sandhurst Avenue Mansfield Nottinghamshire NG18 4BE ("the Operator") and
2. THE NOTTINGHAMSHIRE COUNTY COUNCIL of County Hall West Bridgford Nottinghamshire NG2 7QP ("the County Council")

### Background

- 1) The County Council is the minerals and waste planning authority and county planning authority for the purposes of the Act for the area in which the Site is situated and is the enforcing authority for the matters set out in this Agreement
- 2) The Operator is:
  - (a) the tenant pursuant to a long lease dated 22nd October 2009 for a term of 999 years from that date of the surface of the Site registered with absolute leasehold title under Title Number NT461148 at HM Land Registry ; and
  - (b) the tenant pursuant to a lease dated 16 August 2013 for a term of 50 years of the minerals under the Site registered with good leasehold title under Title Number NT495018 at HM Land Registry.
- 3) The County Council granted permission for the Development under reference number 4/2010/0178 on the 7<sup>th</sup> March 2013 "the Original Permission"
- 4) The County Council subsequently granted a variation to the Original Permission made under planning reference 4/V/2016/0062 to allow a temporary change to allow an increase in daily and weekly traffic movements "Varied Permission".
- 5) The Operator operates the Site pursuant to the Original Permission and Varied Permission and entered into a section 106 agreement with the County Council dated 6 March 2013 "the Original Section 106 Agreement".

6 The Operator has submitted the Application to the County Council and in respect of which the County Council at its meeting of its Planning and Licensing Committee held on 21<sup>st</sup> March 2017 has resolved to grant permission and the prior execution of this Agreement to ensure the continuation of the obligations contained in the Original Section 106 Agreement.

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**Definitions and Interpretation**

1. In this Agreement the following words and expressions shall have the following meanings:

**Act**

The Town and Country Planning Act 1990 as amended

**Application**

The planning application ref 4/V/2016/0655 for the variation of Condition 13 in planning permission no [V/2016/0009] to increase limits for annual HGV movements

**Application Site Plan**

The plan annexed to this Agreement and so marked

**Development**

The development of the Site pursuant to the Planning Permission

**Implementation of the Planning Permission**

The commencement of development by the carrying out of any operations comprised in the Development pursuant to the Permission and within the meaning of Section 56(2) of the Act

**Parties**

The parties to this Agreement

**The Planning Permission**

The permission to be granted by the County Council pursuant to the Application or any planning permission granted after the date of this

Agreement under Section 73 of the Act for the development of the Site in a form which the parties hereto agree in writing is similar to the Development

**The Site**

The site at Two Oaks Farm Derby Road Mansfield Nottinghamshire lying between Mansfield and Kirkby in Ashfield and comprising approximately 100 hectares and as shown on the plan numbered PA2 annexed to this Agreement

**HGVs**

Any goods vehicles having a gross vehicle weight exceeding 7.5 tonnes which are associated with the transport of sand and sand-based products from the Site and the transport of soils, compost, other materials and plant into the Site whether laden or unladen

**The HGV Routeing Scheme**

A scheme for the routeing of HGVs travelling to and from the Site in connection with the Development in accordance with the details set out in the First Schedule

**The Annual Dilapidation Survey**

A survey of the B6139 to identify the impacts of the Development on the condition of the B6139 and any works required to maintain the condition of the B6139 in accordance with the Second Schedule

**Scheme for the Translocation of Common Lizards**

A scheme which provides for the translocation of common lizards on the site to a suitable alternative habitat in accordance with the details set out in the Third Schedule

**The Additional Aftercare Scheme**

A scheme of additional aftercare and management of those areas of the Site to be restored to woodland wetland and heathland in connection with the Development in accordance with the details set out in the Fourth Schedule

**The Management of HGVs Entering the Site**

A scheme which provides for the management of HGVs entering the Site which ensures that no HGVs queue outside the Site or queue on the highway network except in areas formally designated for HGV parking prior to the opening of the Site as detailed under Condition 21 of the Planning Permission in accordance with the Fifth Schedule

**The Site Liaison Committee**

A forum for representatives of the Operator, the County Council, Ashfield District Council and the local community in the vicinity of the Site for the purpose of discussion of any matters relating to the carrying out of the Development in accordance with the Sixth Schedule

2. In this Agreement unless the context otherwise requires:
- (a) all references to clauses and paragraphs and schedules are to such within this Agreement
  - (b) the Schedules and Plan shall be incorporated into and form part of this Agreement
  - (c) words importing the singular shall include the plural and vice versa and words importing a gender include all genders
  - (d) "person" includes any individual, partnership, firm, trust, body, corporate government, government body, authority, agency or unincorporated body of personnel or association
  - (e) the words "include" and "including" are to be construed without limitation and
  - (f) references to any party to this deed shall include the successors in title to that party and to any party deriving title through or under that party and in the case of the County Council any successor to its statutory functions
  - (g) references to Legislation shall include all statutory additions amendments modifications re-enactments or replacements thereof from time to time in force

**Effect of this Deed and Legal Basis**

3. This Deed is made pursuant to sections 106 and 106A of the Town and Country Planning Act 1990 and the terms within it are planning obligations and are enforceable by the County Council a, section 111 of the Local Government Act 1972, and section 2 of the Local Government Act 2000 and section 1 of the Localism Act 2011 and all other powers so enabling.

4. The covenants restrictions and requirements imposed upon the Owner and Developer Operator under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the County Council as set out herein and as provided for in the Act.

5. The Original Agreement shall remain fully effective in respect of the Original Permission.

#### Covenants by the Operator

6. The Operator hereby covenants with the Council to implement and fully comply with the provisions in the First Second Third Fourth Fifth and Sixth Schedules and agree to provide to the County Council written notice of any sale or other disposition of their respective interests in the Site not more than seven days after any such sale or other disposition

#### Conditionality

7. The covenants in this Agreement shall come into effect only upon the later of:

- (a) the issue by the County Council of the Planning Permission; and
- (b) except where this Agreement expressly provides otherwise upon Implementation of the Planning Permission

#### Miscellaneous

8. No person shall be liable for breach of a covenant contained in this Agreement after they shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to their liability for any subsisting breach of covenant prior to parting with such interest

9. If the Planning Permission shall expire before Implementation or shall at any time be revoked this Agreement shall forthwith cease to have further effect
10. Nothing in this Agreement shall in any way prevent or regulate the development of the Site pursuant to a planning permission (other than the Planning Permission) granted after the date of this Deed
- 11 This Agreement is a local land charge and shall be registrable as such by the County Council and in the event that the County Council agrees that this Agreement may be discharged or determines that it no longer serves a useful purpose pursuant to section 106 A of the Act then the County Council shall remove it from the local land charges register
- 12 Any notice to be given under the terms of this Deed shall be in writing and sent to the relevant addressee as follows:
- (a) in the case of the Developer addressed to their Managing Director at its registered office or such other address as may later be notified in writing to the County Council from time to time and
- (b) in the case of the County Council addressed to its Head of Development Management, Planning Department, at Floor 1 North Wing County Hall West Bridgford Nottingham NG2 7QP or such other address as may be notified in writing to the Operator
- 13 The parties to this Agreement do not intend that any of its terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to this Agreement

#### **Waiver/Modification**

- 14 No failure or delay (whether express or implied) by the Council to exercise any right or remedy in respect of any breach or default by the Developer in performing or observing any of the terms and conditions of this Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy: and

15 No modification variation or amendment of any provisions of this Agreement shall be effective unless in writing and signed by the Parties' duly authorised signatories acting on authority to vary such terms

#### **Dispute Resolution**

16 Any dispute or difference between the Parties with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected to this Agreement shall except as otherwise expressly provided be referred to the decision of a single arbitrator being a person of not less than ten years standing with relevant experience of the matter in dispute and to be agreed between the parties or failing such agreement to be nominated by the President for the time being of the Royal Town Planning Institute (or the Royal Institution of Chartered Surveyors if more appropriate) as the case may be and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996

#### **Severability**

17 If any term condition provision or covenant in this Agreement is held to be invalid unlawful or unenforceable to any extent then amendments to this Agreement may be made by the deletion of wording as appropriate to remove such invalid term condition provision or covenant but so otherwise to retain the provision and the other provisions of this Agreement to the maximum extent permissible under applicable law so as not to affect the legality validity or enforceability of the remaining parts of this Agreement

#### **Jurisdiction**

18. This Deed shall be governed by the laws of England and Wales and the parties shall submit to the exclusive jurisdiction of the courts of England and Wales

#### **Costs**

19. The Operator shall pay to the County Council on completion of this Agreement its reasonable and proper legal costs incurred in the negotiation



**preparation and execution of this Agreement and its subsequent registration as a local land charge to a maximum of £1,500.00**

**Execution and delivery**

**20. This Agreement is executed as a Deed and is delivered on the date stated at the commencement of this Deed**

**In Witness whereof the Parties hereto have executed this Deed on the day and year first before written**

## FIRST SCHEDULE

### The HGV Routeing Scheme

1. The Operator for themselves and their successors in title to the Site hereby covenant to ensure that all HGVs owned or controlled or contracted by the Operator shall not in the course of HGV movements of any description whatsoever in connection with the Development travel to or from the Site by using the B6139 west of the A611/B6139 crossroads and specifically:
  - (a) any HGVs turning right out of the Site shall upon reaching the A611/B6139 crossroads either head north-east up the A611 towards the A617 Mansfield-Ashfield Regeneration Route (MARR) or travel south-west along the A611 towards junction 27 of the M1 Motorway and provided further that any HGVs which turn left out of the Site and then head south-east along the B6139 towards the B6020 Blidworth Road and then towards the A60 shall not travel along Little Ricket Lane to access the A60 but shall travel to the A60/B6020 crossroads and then head either north or south along the A60 (as the B6020 east of the A60 has an 18 tonne HGV weight limit restriction) and
  - (b) as regards any HGVs entering the Site then due to the A611/B6139 crossroads having a "no right turn" restriction in place for vehicles heading north-east along the A611 then shall ensure that those HGVs heading towards the Site from the south shall turn right at the A611/B6020 crossroads and then turn left into the B6139 before entering the Site via a right turn AND shall ensure that those HGVs heading towards the Site from the A60 to the east shall not travel along Little Ricket Lane to access the B6020 and shall also enter the Site via a right turn AND those HGVs heading to the Site from the north-east shall turn left at the A611/B6139 crossroads and enter the Site via a left turn
2. The Operator shall take all such proper and necessary steps (including the provision and maintenance of suitable signs and notices) to require drivers of all HGVs travelling to and from the Site to observe these restrictions

3. The Operator shall in order to comply with the provisions of paragraphs 1(a) and 1(b) above:
- (a) issue or cause to be issued directives to the drivers of HGVs under the direct control of the Operator or otherwise lawfully entering and leaving the Site setting out and requiring compliance with the permitted journey routes prescribed in paragraphs 1(a) and 1(b) above and requiring avoidance of any alternative routes
  - (b) use all reasonable endeavours to ensure compliance with such directives including the inclusion of such directive requirements within the Conditions of Contract of all haulage contractors employed by the Operator to travel to and/or from the Site and such Conditions of Contract to include an escalating sanctions regime whereby a warning will be issued for a first breach of such requirements by a contractor followed by a written warning for any second breach and then for any third breach a notice suspending a contractors haulage contract for a period of not less than seven days and in the event that a contractor or its drivers fail to comply with such lorry routeing restrictions on four or more occasions the termination by the Operator of such contractor's haulage contract
- use all reasonable endeavours to enforce such contractual requirements where any breaches come to the attention of the Operator
- (c) inform the County Council of the steps it has taken to comply with the requirements of this paragraph 3
  - (d) monitor the routeing of such HGVs travelling to and from the Site by carrying out random spot checks at the exit to the Site and on the local road network to ensure such compliance and such checks to be undertaken not less than four times per calendar year evidence of which shall be provided to the County Council within one month of a written request from the County Council and
  - (e) issue to all HGV drivers a map indicating the routes to be used and any prohibited routes

## SECOND SCHEDULE

### Site Access Visibility Maintenance and Annual Dilapidation Survey

1. The Operator further covenants for itself and its successors in title to and assigns of the Site as follows:
  - (a) at all times and to the satisfaction of the County Council to maintain clear visibility at the junction of the Site access road and the B6139 for a distance of 250 metres when viewed at a height of 2 metres and from 4.5 metres back from the kerbside through the management and control of roadside vegetation to a maximum height of 0.26 metres
  - (b) within one month of the date of this Agreement to carry out:
    - (i) a baseline survey of the existing condition of the B6139 for a distance of two hundred and fifty metres east of the junction of the Site access road and the B6139 and up to the A611/B6139 crossroads north-west of the junction of the Site access road and the B6139; and
    - (ii) an annual dilapidation survey of the said B6139 and to promptly carry out any remediation measures identified by such surveys to the reasonable satisfaction of the County Council AND the County Council will provide all such assistance as may be reasonably necessary in the granting of any permits in connection with such works.

### **THIRD SCHEDULE**

#### **Scheme for the Translocation of Common Lizards**

- 1. The Operator further covenants for itself and its successors in title to and assigns of the Site as follows:**
  - (a) within one month of the Implementation of the Planning Permission to submit the Scheme for the Translocation of Common Lizards**
  - (b) to include as a minimum in the Scheme for the Translocation of Common Lizards the following details:**
    - (i) the identification of a suitable receptor site and details of fencing and signage to demarcate the receptor site**
    - (ii) management works to be undertaken prior to the translocation of common lizards to ensure that the receptor site is suitable for the translocated species including the creation of areas of refugia and the creation of basking areas and areas of sparse vegetation**
    - (iii) a timetable for the review of the translocation area in order to assess its continued suitability as a receptor site including appropriate surveys for common lizard and the identification of any additional management works to ensure the continued suitability of the receptor site for the translocated species**

## FOURTH SCHEDULE

### Additional Aftercare Scheme

2. The Operator further covenants for itself and its successors in title to and assigns of the Site as follows:
  - (a) prior to the completion of the first five years of the aftercare scheme in any phase or sub-phase required pursuant to conditions 56 – 58 of the Planning Permission to submit the Additional Aftercare Scheme in respect of any phase or sub-phase for the following periods of time:
    - (i) 10 years for woodland planting areas and wetland areas
    - (ii) 15 years for heathland areas
  - (b) To include as a minimum in the Additional Aftercare Scheme the following details:
    - a. an assessment as at the date of carrying out such assessment of the ecological interest and management of the woodland wetland or heathland areas or any part thereof and the progress towards the targets set out in the approved aftercare scheme required pursuant to conditions 56 – 58 of the Planning Permission achieved through the carrying out of appropriate ecological surveys to inform the assessment
    - b. Management proposals for each habitat type created on or within the woodland wetland or heathland areas or any part thereof
    - c. An overview of the general aims and objectives of the restoration and aftercare of the woodland wetland or heathland areas as a whole and details of the actions required during the period of the Additional Aftercare Scheme to achieve such aims and objectives
    - d. A programme of works detailing the management activities proposed for each month of the period of the Additional Aftercare Scheme

- e. Monitoring proposals in respect of the ecological targets set out for each habitat type which shall identify any additional management necessary over and above the programme of works and actions referred to in this clause (b)
  
- (c) to implement and fully carry out the Additional Aftercare Scheme in accordance with the details approved in writing by the County Council together with any subsequent requirements for aftercare identified as necessary by the County Council (subject to any subsequent variation thereto agreed in writing between the County Council and the Operator).

**FIFTH SCHEDULE**

**Management of HGVs entering the Site**

The Operator further covenants for itself and its successors in title to and assigns of the said Site as follows:

All HGVs owned or controlled or contracted by the Operator shall not in the course of HGV movements of any description whatsoever in connection with the Development queue outside the Site or queue on the highway network prior to the opening of the Site as detailed under Condition 21 of the Planning Permission and in respect of this covenant the provisions set out in the First Schedule hereto shall apply mutatis mutandis to this covenant



## SIXTH SCHEDULE

### Site Liaison Committee

The Operator further covenants for itself and its successors in title to and assigns of the Site as follows:

- (a) within four weeks following the grant of Planning Permission to invite the County Council and Ashfield District Council to nominate representatives to serve on the Site Liaison Committee and to convene the first meeting of the Site Liaison Committee prior to the removal of any sand or gravel from the Site pursuant to the Planning Permission and subsequently to convene regular (at least quarterly unless subsequently agreed by the Site Liaison Committee) meetings of the Site Liaison Committee throughout the carrying out of development under the Planning Permission
- (b) provide all practical administrative and secretarial facilities which may be necessary to enable the Site Liaison Committee to function effectively including the provision of a suitable local venue for every meeting notification in advance of every meeting to members and the production and keeping of minutes for every meeting (which shall be available to the public)
- (c) appoint and ensure the regular attendance at the Site Liaison Committee of an appropriate representative of the Operator who shall participate fully in the activities of the Site Liaison Committee

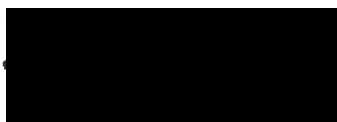


**EXECUTED AS A DEED**

on behalf of

**MANSFIELD SAND COMPANY LIMITED**

acting by



in the presence of

Witness signature



Witness name *LINDA LIBURO*

Witness Address

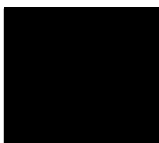


Witness occupation *Personel Assistant.*

**THE COMMON SEAL of**

**NOTTINGHAMSHIRE COUNTY COUNCIL**

Was hereunto affixed in the presence of



Authorised signatory



SEAL REGISTER  
NO. - *44164*

