

DATED 15<sup>th</sup> June 2015

NORFOLK COUNTY COUNCIL

- and -

PATRICK DOUGLAS COOK

- and -

ALFRED PETER MALCOLM COOK

- and -

LAFARGE AGGREGATES LIMITED

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## AGREEMENT

Under Section 106 of the  
Town and Country Planning Act 1990  
relating to land at Spixworth Quarry  
Grange Farm Spixworth Norfolk

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Head of Law  
Norfolk County Council  
County Hall  
Martineau Lane  
Norwich  
NR1 2DH

NF/45058

**THIS AGREEMENT** is made by Deed the *15<sup>th</sup>* day of *June* 2015  
**BETWEEN :-**

- (1) **THE NORFOLK COUNTY COUNCIL** of County Hall Martineau Lane  
Norwich Norfolk NR1 2DH ("the County Council")
- (2) **PATRICK DOUGLAS COOK** of Grange Farm 2 Buxton Road Spixworth  
Norfolk NR10 3PR and **ALFRED PETER MALCOLM COOK** of Quaker  
Farm Spixworth Norfolk NR12 7BH ("the Owner") and
- (3) **LAFARGE AGGREGATES LIMITED** of Portland House Bickenhill Lane  
Solihull Birmingham B37 7BQ ("the Developer")

#### **RECITALS**

- A. The County Council is a local planning authority within the meaning of  
the 1990 Act for the area within which the Land is situated
- B. The Owners is the registered proprietor of the Land which is registered  
at H M Land Registry under title number NK376496 and NK134835  
subject to a lease in favour of the Developer and the matters recorded  
on the register
- C. The Developer has the benefit of various leases over the Land and has  
submitted the Application to the County Council for planning permission  
to carry out the Development and the County Council have resolved to  
grant the planning permission subject to completion of this Deed

**NOW THIS DEED WITNESSETH as follows:**

## DEFINITIONS

1. In this Deed:

1.1 The following words have the following meanings unless in the context it would not be appropriate:

“the 1990 Act”	the Town and Country Planning Act 1990 or any statutory modification or re-enactment thereof
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“the Application”	one or more of the following applications:
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1) the application dated 5<sup>th</sup> July 2011 to vary conditions 1 and 16 of Planning Permission C/5/1999/5008 (relating to the construction of a sand and gravel processing plant) to allow an extension of time, retrospective changes to site layout and erection of additional plant, buildings and machinery on the Land in accordance with the forms plans and particulars deposited with the County Council and numbered C/5/2009/5011

2) the application dated 5<sup>th</sup> July 2011 to vary condition 1 of Planning Permission C/5/1996/5007 (relating variation of conditions to C/5/1992/5009 for extraction of sand and gravel) to allow an extension of time to secure remaining mineral reserves on the Land in accordance

with the forms plans and particulars deposited with the County Council and numbered C/5/2009/5012

- 3) the application dated 25th April 2014 to vary condition 1 of Planning Permission C/5/2009/5011 to extend operation and restoration of the quarry until 31 October 2020 and numbered C/5/2014/5008
- 4) the application dated 25th April 2014 to vary condition 1 of Planning Permission C/5/2009/5012 to enable recovery of minerals until 30 April 2019 and restoration by 31 October 2020 and numbered C/5/2014/5007 and "Applications" shall be construed accordingly

"Commencement"

the initiation of the Development by the carrying out of a material operation within the meaning of Section 56(4) of the 1990 Act and "Commence" shall be interpreted in accordance with this definition

"the Development"

development carried out pursuant to the Planning Permission

"HCV"

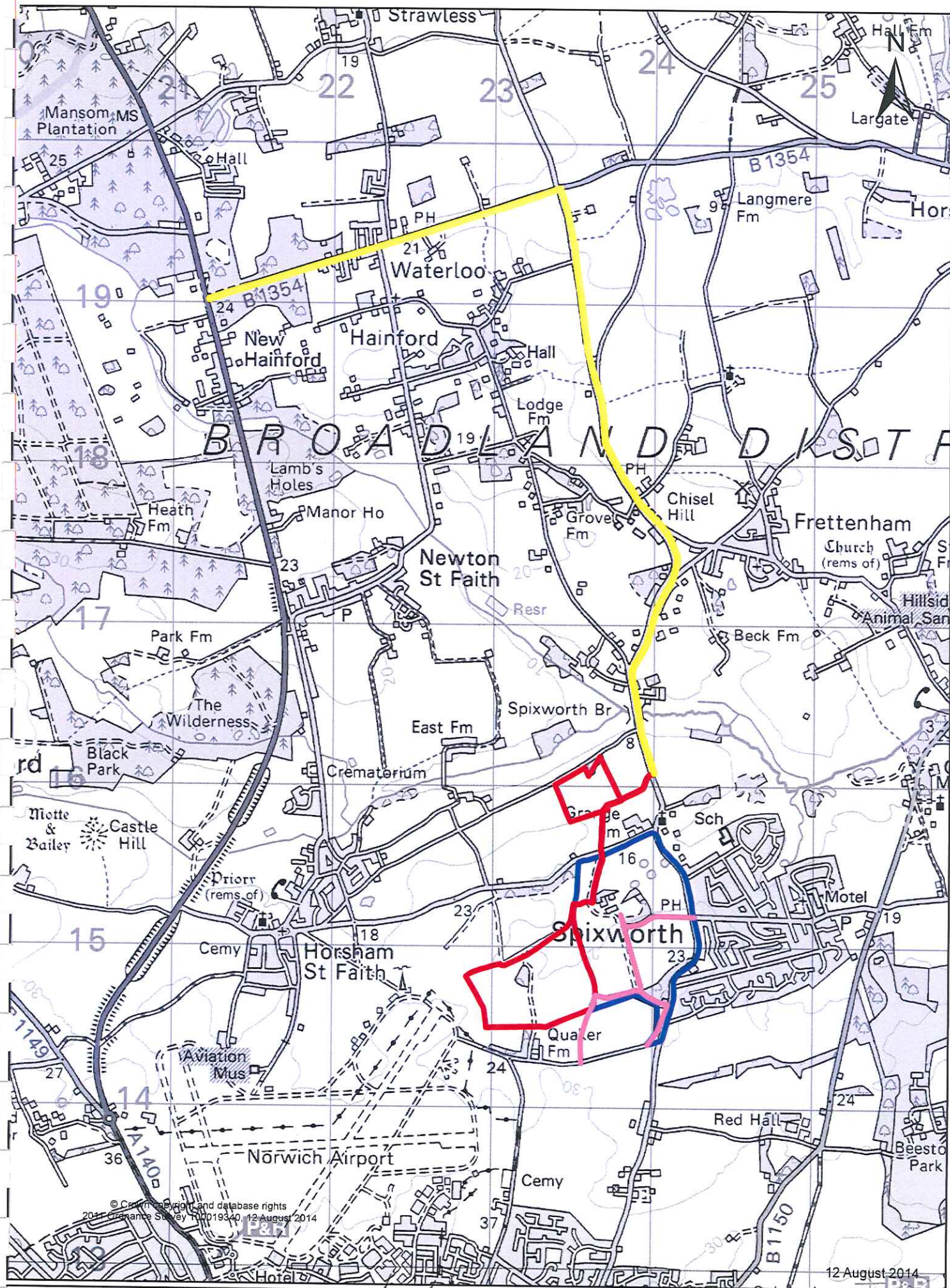
means a heavy commercial goods vehicle within the meaning of section 138 of the Road Traffic Regulation Act 1984

"the Land"	the land at Spixworth Quarry Grange Farm Spixworth Norfolk shown edged red and edged blue on the Site Plan
"the Planning Permission"	means planning permission granted pursuant to the Applications for the Development which shall include any subsequent planning permission issued pursuant to an application to vary its conditions under Section 73 of the Act
"Site Plan"	means the plan annexed to this Agreement

## **INTERPRETATION**

- 1.2 One gender includes all the others
- 1.3 The singular includes the plural and vice versa
- 1.4 the obligations imposed by this Deed on more than one person are joint and several
- 1.5 The parties to this Deed include their respective successors in title
- 1.6 A covenant not to do something includes a covenant not to permit or suffer that thing to be done
- 1.7 Headings in this Deed are for ease of reference only and cannot be taken into account in its construction or interpretation
- 1.8 A reference to a paragraph or clause in the Schedule of this Deed is a reference to a paragraph or clause in that part of the Schedule





s106 Plan

Horsham St. Faith and Newton St. Faith

**Norfolk** County Council

authorised to sign  
on behalf of: HEAD OF LAW

Scale 1: 30000 Centred On: 622923 316861

37833



## **ENABLING POWERS**

2. This Deed and the covenants hereinafter contained are made with the County Council and are enforceable by the County Council pursuant to Section 106 of the 1990 Act (and to the extent to which the said covenants are capable of being entered into thereunder they shall constitute planning obligations for the purposes thereof) Sections 111 and 139 of the Local Government Act 1972 or any statutory modification or re-enactment thereof and any other powers thereby enabling

## **DEVELOPER'S AND OWNER'S OBLIGATIONS**

- 3.1 The Owner and Developer hereby jointly and severally covenant with the County Council so as to bind the Land that they will observe and perform the obligations contained in the Schedule to this Deed
- 3.2 The Owner covenants that they are the freehold owners of the Land and have full power to enter into this Deed and that the Land is free from all mortgages charges or other encumbrances save for the lease in favour of the Developer and that there is no other person having an interest in the Land other than the parties to this Deed whose consent is necessary to make this Deed binding on the Land and all estates and interests in it

## **AGREEMENTS AND DECLARATIONS**

4. The parties agree and declare as follows:
  - 4.1 No waiver (whether express or implied) by the County Council of any breach or default by the Developer or the Owner or their successors in title in performing or observing any of its obligations under this Deed shall constitute a continuing waiver or prevent the County Council from

enforcing those obligations or from acting upon any subsequent breach or default

- 4.2 This Deed shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn before the date upon which the Development is Commenced AND FOR THE AVOIDANCE OF DOUBT where permission is issued pursuant to an application under section 73 of the Act this Deed shall continue in full force and effect subject to and in accordance with the provisions contained herein AND PROVIDED THAT in the event that upon receipt of an application under section 73 of the Act the County Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the County Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations.
- 4.3 The provisions of this Deed shall only come into effect on Commencement of the Development unless otherwise specifically indicated in this Deed or to construe otherwise would be inconsistent with the requirements of any such covenants or provisions
- 4.4 Without prejudice to the enforcement of restrictions and obligations against successors in title no person shall be liable for any breach of this Deed if at the time the breach occurs they have no interest in the Land
- 4.5 The County Council shall not be liable to any person under this Deed after that person has parted with all interest in the land but without prejudice to any liability arising prior thereto
- 4.6 The Developer agrees to pay to the County Council their reasonable legal costs incurred in connection with the preparation of this Deed limited to a maximum of £1,500



## **DEVELOPER INDEMNITY**

- 5 The Developer hereby covenants with the Owner that it will perform the obligations contained in the Schedule on behalf of the Owner and will indemnify the Owner against and pay to the Owner all costs claims losses damages or other liability incurred by the Owners arising directly or indirectly as a result of non-compliance its entering into this Deed or any breach of the terms of this covenant or this Deed by the Developer

## **DISPUTE RESOLUTION**

- 6.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Deed promptly through negotiations between the respective senior executives of the parties who have authority to settle the same
- 6.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution
- 6.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR Procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties
- 6.4 Nothing in this clause shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

## **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

7. Subject to Clause 1.5 no person shall derive any benefit or have any right entitlement or claim in relation to this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999

## **JURISDICTION**

8. This Deed is govern by and interpreted in accordance with the laws of England and Wales

## **SCHEDULE**

### **Part 1 – Routing**

- 1 The Owner and the Developer hereby jointly and severally covenant with the County Council that with effect from the date of the Planning Permission that the Land shall not be used for the purposes authorised by the Planning Permission unless:-
  - 1.1 Other than in the case of road closure or emergency all HCVs connected to the Development and operated by the Developer or the Owner or their respective employees or otherwise under the direct control of the Owner approach and leave the Land via the route shown coloured yellow on the Site Plan (the "Permitted Route")
  - 1.2 in relation to HCVs not under the direct control of the Developer or the Owner [all reasonable endeavours] shall be used to ensure that such vehicles approach and leave the Land via the Permitted Route
  - 1.3 there are affixed and displayed and maintained on the Land such signs approved by the County Council in writing as to locations numbers size and legend and as shall be reasonably required from time to time by the County Council (including any modifications, additions or subtractions to those first or subsequently approved by the County Council)



2. It is hereby agreed and declared for the purposes of paragraph 1.2 above that the requirement to use reasonable endeavours:
- 2.1 requires the Developer and / or the Owner to incorporate in all written contracts with persons likely to visit the Land for the purposes of the Development a term having the same effect as paragraph 1.1 above
- 2.2 requires the Developer and / or the Owner to communicate in writing with persons whose HCVs from time to time regularly visit the Land for the purposes of the Development informing them of the Permitted Route and requesting that their HCVs follow it at all times when visiting the Land at a method and frequency as shall be reasonably likely to secure co-operation with the use of the Permitted Route such method and frequency to be determined by the Developer and the Owner and disclosed to the County Council as requested or at the County Councils discretion shall be as reasonably determined by the County Council
- 2.3 requires the Developer and the Owner on receiving information that any driver of a HCV shall have taken any route to or from the Land other than the Permitted Route to take such lawful action as shall be reasonable and necessary and lawful action possible against the Driver to ensure future compliance

- 2.4 save in the case of road closure or emergency, will be breached if an employee of the Developer or the Owner uses a route other than the Permitted Route

## **Part 2 – Management and Footpath Scheme**

- 3 The Owner and the Developer covenants with the County Council as follows:
- 3.1 To maintain the footpaths shown coloured pink on the Site Plan in accordance with the scheme detailed in the letter dated 17<sup>th</sup> October 1994 and marked "Footpath Scheme" attached at Part 3 of this Schedule.
- 3.2 within 6 months from the date of this Agreement the Developer will submit to and obtain the approval (such approval not to be unreasonably withheld or delayed) of the County Council to a management plan for Spixworth Park shown edged blue on the Site Plan ("the Blue Land") with the objective of maintaining and enhancing the character of the historic parkland which management plan shall be implemented as shall be provided therein
- 3.3 Not to cause or permit any further mineral working to take place on the Blue Land

### **Part 3 – Footpath Scheme**



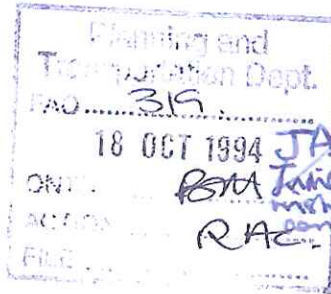
Redland Aggregates Limited  
Alresford Road  
Wivenhoe  
Colchester  
Essex  
CO7 9JY  
Telephone: 0206 82 2231  
Fax: 0206 82 2555



Our reference: SJA/KEB/F.7/PL.2

17 October 1994

R A Cranthorne Esq  
Norfolk County Council  
Planning & Transportation  
County Hall  
Martineau Lane  
Norwich  
Norfolk



Dear Mr Cranthorne

**RE: SPIXWORTH - GRANGE FARM MINERAL EXTRACTION**

We refer to our Planning Permission and Section 106 Agreement dated 1 June 1994 and, in particular, to Clause 11 of that Agreement relating to the footpath scheme and the Historic Parkland Management Plan.

The line of the permissive footpaths, where they are not on farm tracks, have now been cut through the existing woodland to a minimum width of 1.8 metres and considerable quantities of vegetation have been removed. The surface of the footpaths is left as natural ground formation as the conditions are good and there is no need to introduce other materials, such as hoggins.

The line of the footpaths was walked with members of the Spixworth Liaison Committee and your good self and everybody seemed pleased with the new routes and that the condition of the footpaths was satisfactory, except for two specific locations, namely:-

- 1 Where the footpath emerging from woodland onto the Buxton Road opposite Arthurton Road was partially obstructed and it was agreed that a bole of a tree should be removed.
- 2 Where the footpath emerges from the woodland onto Quaker Lane down a steep embankment and it was agreed that this embankment should be graded out to prevent people accidentally stumbling onto the highway.

(contd.....)

Other works to be carried out were to take place after sugarbeet harvest where the footpath will run down the western side of Field No 6947 from the woodland to Quaker Lane. This hedgerow will be flailed back mechanically by the landowner and the headland of 1.8 metres' wide left for people to use between that hedgerow and the arable field.

Signposts and direction indicators will be ordered up and it is intended to open the footpath for public use by Christmas 1994 and the routes will be publicised in the village magazine.

Regarding future maintenance of the permissive footpaths, it is hoped that, with public usage, they will be very much self-maintained but, should additional works need to be carried out, either with strimmers or mechanical flails, these will be done as and when required.

We should be grateful if you would confirm that the works carried out to date and, subject to the other items being completed, meet the County Council requirements under Clause 11 (i), (ii) and (iii).

Regarding Clause 11 (iv), we enclose for your approval our Plan No F7/20 showing proposed planting on the Spixworth Park area. Each tree will be planted in a 1.2 metre high grow cone and, where it is in an area of grazing animals, they will be protected by stockproof fencing with wooden top rail in order that the plants cannot be grazed by horses.

We have endeavoured to take account of comments from Judith Cantell and Ben Hobden in the preparation of the scheme, although, at this stage, there is no intention to alter the actual cropping rotation of the park.

It is proposed to do additional planting on the track running east to west from the Buxton Road to form an avenue of mainly oak. In the damper low-lying area, north of this track, running from Spixworth Hall buildings through to the Buxton Road it is proposed to plant with mainly ash, willow, alder and some native black poplar immediately adjacent to water areas. Additional ash and oak will be planted adjacent to a track that runs north towards Grange Farm buildings and, in the two fields north of Spixworth Hall buildings, currently in arable use, it is proposed to under-plant existing oak trees, some of which are in poor condition, each with three transplants, again protected by grow cones.

It would be our intention to maintain these trees for a period of at least five years, both by spraying off competitive weeds and by actual replacement, should that become necessary.

(contd.....)

We should be grateful for your confirmation or otherwise that these proposals meet with your requirements of Clause 11 (iv) of our Agreement.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'S J Anderson', with a large, stylized initial 'S'.

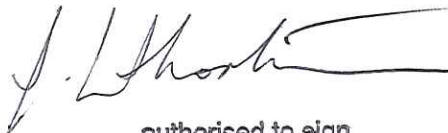
***S J ANDERSON***  
Lands & Planning Manager

*Copy to:* Judith Cantell  
Ben Hobden



IN WITNESS whereof the parties hereto have executed this instrument as their deed and it is the parties' intention that this deed be delivered and it is hereby delivered on the date first before written

THE COMMON SEAL of  
THE NORFOLK COUNTY COUNCIL  
was hereunto affixed  
in the presence of:-



authorised to sign  
on behalf of: HEAD OF LAW

~~HEAD OF LAW~~



37832

SIGNED as a DEED by  
PATRICK DOUGLAS COOK  
in the presence of:-



SUE I HOLLAND, 26 CHESNUT AVENUE, SPIXWORTH,  
NORWICH  
NR10 3QG



SIGNED as a DEED by  
ALFRED PETER MALCOLM COOK  
in the presence of:-




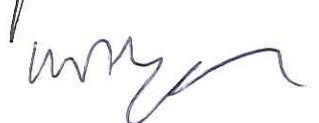
SUE I HOLLAND, 26 CHESNUT AVENUE,  
SPIXWORTH, NORWICH, NR10 3QG  
GARDEN DESIGN AND MAINTENANCE



EXECUTED AS A DEED  
~~THE COMMON SEAL of~~  
LAFARGE AGGREGATES LIMITED  
~~Was hereunto affixed~~  
In the presence of:-

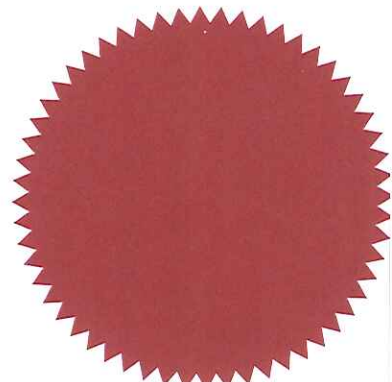
Director x  
~~Director/Secretary~~

LT Sec x

x JG

x LH



Lafarge Tarmac Secretaries (UK) Ltd