
**FINAL S106 AGREEMENT – 22 SEPTEMBER 2021
SHOWING CHANGES FROM 10 AUGUST 2021**

PLANNING APPLICATION 4/17/9007

**RELATING TO WEST CUMBRIA MINING LIMITED'S
PROPOSED METALLURGICAL COAL MINE AT WHITEHAVEN**

Notes:

1. Planning application 4/17/9007 has been considered by the Cumbria County Council's Development Control & Regulatory Committee on 3 previous occasions on 19 March 2019, 31 October 2019 and 2 October 2020 at which the Committee resolved to approve the planning application subject to the completion of this S106 Agreement.
2. However, before completion of the agreement and the issue of the planning permission, the Secretary of State called-in planning application 4/17/9007 on 11 March 2021 for his own determination instead of being determined by the Council. The application is being heard by an Inspector at a public inquiry in September 2021 under PINS reference APP/H0900/V/21/3271069.
3. In light of this, the S106 Agreement has been updated and now agreed between the parties to the Agreement. The main changes to the Agreement since the Council's Committee last considered the planning application on 2 October 2020 are updated greenhouse gas (GHG) obligations and additional obligations relating to a training and employment management plan, which were proposals put forward by the applicant, West Cumbria Mining. The changes made since the last draft of the Agreement dated 10 August 2021 was published by the Council are shown in track change.
4. The 6 plans for the S106 agreement have previously been uploaded to the internet by the Council and remain unchanged in respect of this version of the Agreement.
5. The Ecolyse GHG assessment dated 1 September 2021 submitted on behalf of the applicant is publicly available as part of the inquiry documents.
6. It is possible that further changes to the detailed drafting of the S106 Agreement may also be made by the parties following the S106 roundtable discussion session at the public inquiry.

Given the number of parties and for the purposes of efficiency, this Agreement may be signed by the parties in counter-parts, which means that the parties have signed separate versions of the same agreement, but together each part of the Agreement signed by the respective parties constitutes a valid and legally enforceable original part of the Agreement

DATED

2021

CUMBRIA COUNTY COUNCIL
and
WHITEHAVEN DEVELOPMENTS LIMITED
and
GRAHAM STANLEY BARWISE AND BARBARA BARWISE
and
STELLA MARGARET BARWISE AND MARTIN BARWISE
and
TIMOTHY WILLIAM WEST
and
DAVID ANDERSON BOWICK
and
WILLIAM HERBERT ATKINSON
and
JOHN DEREK KELLETT
and
JULIE NICHOL
and
WEST CUMBRIA MINING LIMITED

Agreement

pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) for land at the former Marchon Works Site, Whitehaven, Cumbria (Planning Application ref: 4/17/9007)

APP/H0900/V/21/3271069

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RECITALS:

- (A) For the purposes of the 1990 Act, the Council is the Minerals Planning Authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Deed.
- (B) The First Owner is the registered proprietor of the freehold interest in part of the Site under title numbers CU103528 and CU88197.
- (C) The Second Owner is the registered proprietor of the freehold interest in part of the Site and the Additional Main Band Colliery Land under title numbers CU45201 and CU209637.
- (D) The Third Owner is the registered proprietor of the freehold interest in part of the Site under title number CU249327.
- (E) The Fourth Owner is the registered proprietor of the freehold interest in part of the Site under title numbers CU99323 and CU255418.
- (F) The Fifth Owner is the registered proprietor of the freehold interest in part of the Site and Additional Main Band Colliery Land under title numbers CU74765, CU47962 and CU260503 and a freehold and / or leasehold interest of part of the Site under title number CU296101.
- (G) The Sixth Owner is the registered proprietor of the freehold interest in part of the Site under title numbers CU241048 and CU284555.
- (H) The Seventh Owner is the registered proprietor of the freehold interest in part of the Residential Land under title number CU38814.
- (I) The Eighth Owner is the registered proprietor of the freehold interest in part of the Residential Land under title numbers CU269803 and CU229393.
- (J) The Developer has the following interests in the Site, Residential Land and Additional Main Band Colliery Land:
 - i. a beneficial interest pursuant to a contract to acquire a leasehold interest in that part of the Site as is owned by the First Owner (as identified in Recital B) dated 23 December 2020;
 - ii. a beneficial interest pursuant to an option agreement by which the Developer has the right to acquire a leasehold interest in that part of the Site and relevant and necessary rights over the Additional Main Band Colliery Land as is owned by the Second Owner (as identified in Recital C) dated 19 July 2019;

- iii. a beneficial interest pursuant to an option agreement by which the Developer has the right to acquire a freehold estate in that part of the Site as is owned by the Third Owner (as identified in Recital D) dated 23 December 2020;
 - iv. a beneficial interest pursuant to an option agreement by which the Developer has the right to acquire a leasehold interest in that part of the Site as is owned by the Fourth Owner (as identified in Recital E) dated 2 February 2021;
 - v. a beneficial interest pursuant to an option agreement by which the Developer has the right to acquire easements over that part of the Site as is owned by the Fifth Owner (as identified in Recital F) dated 10 October 2018;
 - vi. a beneficial interest pursuant to an option agreement by which the Developer has the right to acquire a leasehold estate in in that part of the Site as is owned by the Sixth Owner (as identified in Recital G) dated 27 January 2021;
 - vii. a beneficial interest pursuant to an option agreement by which the Developer has the right to acquire a freehold estate in in that part of the Residential Land as is owned by the Seventh Owner (as identified in Recital H) dated 21 December 2018;
and
 - viii. a beneficial interest pursuant to an option agreement by which the Developer has the right to acquire a freehold estate in that part of the Residential Land as is owned by the Eighth Owner (as identified in Recital I) dated 21 December 2018.
- (K) The Developer has submitted the Application to the Council for the Site and a wider underground area of land and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed relating to the Site, Residential Land and Additional Main Band Colliery Land.
- (L) The Council resolved on 19 March 2019, 31 October 2019 and 2 October 2020 to grant the Planning Permission for the Development subject to the prior completion of this Deed.
- (M) On 11 March 2021 the Secretary of State directed that the Application should be referred to the Secretary of State instead of being determined by the Council. The Application is due to be heard by an Inspector at a public inquiry in September 2021 under PINS reference APP/H0900/V/21/3271069.

OPERATIVE PROVISIONS:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Deed the following words and expressions shall have the following meanings and interpretation:

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

1988 S33 Agreement the agreement pursuant to S33 Local Government (Miscellaneous Provisions) Act 1982 dated 5 August 1988 and entered into by the Council and the Main Band Colliery Company Limited in respect of the main band colliery

5 Year Review the review of the Restoration Securities to be carried out and completed prior to the 5 Year Review Date in accordance with the relevant Review provisions in paragraph 9 of Schedule 1

5 Year Review Date the date being at the end of each consecutive 5 year period after the start of the relevant Period until the end of the Restoration Period

Acquisition of Carbon Offsets the acquisition by the Owners and/or the Developer of Gold Standard as governed by the Gold Standard Foundation or equivalent verified emission reductions as off-site measures to offset GHG Emissions in full accordance with up to date legislation government policy national guidance and other nationally accepted

	standards as shall be in force and/or published from time to time
Additional Main Band Colliery Land	the part of the former main band colliery located outside of the Site shown hatched dark pink on Plan 1 in the Second Owner's land within titles CU45201 and CU209637
Aftercare Condition	the condition(s) of the Planning Permission addressing the aftercare of the Site substantively in the form of Draft Condition 8 or such other condition or conditions dealing with the same or similar issues as Draft Condition H imposed by the Secretary of State addressing the aftercare of the Site or such condition varying or replacing it subsequent to the grant of the Planning Permission
Aftercare Land	all parts of the Site above ground shown shaded Green on Plan 1
Aftercare Period	the total period of 10 years from the end of the Restoration Period or the issue of a certificate by the Council certifying that all required aftercare has been carried out to its reasonable satisfaction (whichever is the later)
Aftercare Scheme	the scheme and programme for the aftercare of the Aftercare Land approved pursuant to the Aftercare Condition
AMC	the Fourth Owner's mortgagee comprising the Agricultural Mortgage Corporation PLC

(Company Registration Number: 00234742) whose registered office is situated at Charlton Place, Charlton Road, Andover, Hants, SP10 1RE

AMC's Mortgage

registered charges in favour of AMC dated 6 June 2008 and 24 December 2015 over part of the Site under title number CU99323 and a registered charge dated 24 December 2015 over part of the Site under title number CU255418

Annual Heritage Contribution

the sum of £5,000 (five thousand pounds)

Annual Index Payment

an additional payment as Restoration Security calculated as follows:

$$\text{Annual index payment} = A \times (B/C) - A$$

Where:

A = the current total cumulative amount of all Restoration Securities

B = the figure for the Index that applied immediately prior to the date of the current annual payment

C = the figure for the Index that applied immediately prior to either:

- (a) in respect of the first Annual Index Payment, the start of the Preliminary Works; or
- (b) in respect of any subsequent Annual Index Payment, the date of the last

annual payment that was made or the date of the Independent Surveyor's final determination on the last Review (whichever is the later)

If the Index has decreased in any given annual period the security from all Restoration Securities shall remain unchanged (without any decrease)

Application

the application referenced 4/17/9007 submitted to the Council

Appropriate Contingency

such reasonable contingency in respect of an unforeseen escalation of costs attributable to the Default Reinstatement Works to be included in the Restoration Security as determined by the Independent Surveyor taking into account that it would be the Council calling on and/or withdrawing the Restoration Securities and carrying out the Default Reinstatement Works in a Default Event circumstance

Approved GHG Report

the form in which the proposed GHG Report is approved in writing by the Council pursuant to the provisions hereof

Approved Routes

the HGV routes to and from the Site as set out in the approved Construction Traffic Management Plan

Approved Training and Employment Management Plan	a Training and Employment Management Plan as approved by the Council pursuant to the provisions of paragraph 15 of Schedule 1 of this Deed.
Bond	a bond substantially in the form (which means it does not have material amendments) for the Restoration Security as annexed to Schedule 4 save that such form may include an obligation on the Developer in favour of the Guarantor of the Bond to apply for a restriction to be registered against all of the Developer's titles registered at the Land Registry in relation to all interests it takes/holds in relation to the Site in such a form that is similar to that contained at clause 16 or such other form as may be agreed to in writing by the Council
Carbon Budget	The UK Government's carbon budget placing a restriction on the total amount of greenhouse gases the UK can emit in order to achieve a pathway to net zero emissions by 2050 and as set out from time to time in secondary legislation
CIL Regulations	means the Community Infrastructure Regulations 2010 (as amended)
Commencement of Construction	the date on which any material operation (as defined in Section 56(4) of the 1990 Act) begins to be carried out pertaining to that part of the Development relating to all those building, engineering and other works associated with the construction of the Development (excluding the Preliminary Works) (and where for the

avoidance of doubt “Planning Permission” as defined for the purposes herein comprises more than one such Planning Permission the earliest date after the date hereof on which any such development under such planning permission is commenced on the Site) and for the avoidance of doubt, “Commence Construction” shall be construed accordingly

Commencement of Development

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 (or any component stage thereof, as the context permits) (and where for the avoidance of doubt “Planning Permission” as defined for the purposes herein comprises more than one such Planning Permission the earliest date after the date hereof on which any development under such said planning permission is commenced on the Site) within the meaning of Section 56 of the Act other than operations consisting of:

(a) the erection of fencing and hoardings and for the avoidance of doubt, “Commencement Date”, “Commencement” and “Commence” shall be construed accordingly

Construction

all those building, engineering and other works associated with the construction of the Development (excluding the

Preliminary Works) in order to facilitate Production at the Site

Construction Period

the stage of the Development commencing from the Commencement of Construction and continuing until the start of the Production Period

Construction Traffic Management Plan

the plan (CTMP) approved under any relevant condition(s) of the Planning Permission for traffic to and from the Site during the Construction Period

Controlled GHG Emissions

means the emissions as so defined in the definition of “GHG Emissions”

Cycle Path Part 1

the whole or such part of the route as specified in the Council’s notice under paragraph 8.2.1 of Schedule 1 over the part of the eastern access to the Site as shown indicatively marked by the purple dashed line from point A to point B annotated on Plan 2 to form part of the St Bees – Mirehouse Rd Cycle Path and as may come to be located at the date of this Deed on the Second Owner’s land within title CU209637, and the Eighth Owner’s land within title CU269803

Cycle Path Part 2

a cycle path which is to form part of the St Bees – Mirehouse Road Cycle Path running from Cycle Path Part 1 or in the vicinity of the Rail Loading Facility to

Mirehouse Road, the precise route of which is to be determined at later date

Cycle Path Contribution

the sum of £72,000 (seventy two thousand pounds) to be used towards the provision of the St Bees – Mirehouse Road Cycle Path

Decision Letter

means the decision letter issued by the Secretary of State (or by their Inspector if delegated to that Inspector) in determination of the Application and includes any conclusions and recommendations contained within any report issued by an Inspector appointed by the Secretary of State to the extent that such conclusions and recommendations are adopted by the Secretary of State in the decision letter;

Default Event

any of the following:

- (a) the expiry of 12 months after the insolvency of the Developer (or any alternative or successor developer) without a replacement developer having purchased the Developer (or any alternative or successor developer) if a company acquisition or their interest in the Site so as to enable the Development to continue without further delay;
- (b) SUBJECT ALWAYS to the Council on having been furnished with such requisite information as is necessary to discharge any planning condition

preventing Construction from commencing duly discharging such conditions, a default event of:

- (i) cessation of Preliminary Works for a period of 18 month (unless it can be adequately evidenced to the Council through contracts or documents of intent that there is a reasonable prospect of the Preliminary Works resuming within the following 9 month period as agreed in writing with the Council); or
 - (ii) failure to resume the Preliminary Works within the additional 9 month period referred to in paragraph (i) above if applicable unless otherwise agreed in writing with the Council;
- (c) a default event of:
- (i) during the Construction Period cessation of construction for a period of 9 months (unless it can be adequately evidenced to the Council through contracts or documents of intent that there is a reasonable prospect of construction resuming within the following 2-year period as agreed in writing with the Council); or
 - (ii) failure to resume construction within the additional 2-year period referred to in paragraph (i) above if applicable unless otherwise agreed in writing with the Council;

- (d) a default event of:
 - (i) cessation of Production at the Site for a period of 12 months (unless it can be adequately evidenced through contracts or documents of intent to the Council that there is a reasonable prospect of Production recommencing within the following 2 year period as agreed in writing with the Council); or
 - (ii) failure to recommence Production within the additional 2-year period referred to in paragraph (i) above if applicable unless otherwise agreed in writing with the Council;
- (e) the failure by the Owners or Developer (as the case may be) to pay any Annual Index Payment to the Council as Restoration Security or cause the value of the Restoration Security to be increased by an amount equating to the Annual Index Payment in accordance with the relevant provisions in paragraph 9 of Schedule 1;
- (f) following a Review by the Independent Surveyor, the failure by the Owners or Developer (as the case may be) to provide to the Council an increase to the Restoration Securities or an additional Restoration Security in accordance with the Independent Surveyor's decision and the relevant

Review provisions in paragraph 9 of Schedule 1;

- (g) the occurrence of an event under paragraph 9.10.6 of Schedule 1 (failure to arrange replacement Restoration Security for time limited existing Restoration Security);
- (h) the failure of the Owners or Developer (as the case may be) to carry out or complete the restoration of the Site in accordance with the Restoration Conditions or Default Reinstatement Conditions (as applicable);
- (i) if an event occurs under paragraph 9.39 of Schedule 1 (failure by Owners or Developer as applicable to carry out the Default Reinstatement Works having elected to do so);
- (j) the failure of the Owners or Developer (as the case may be) to carry out or complete the aftercare of the Aftercare Land in accordance with the Aftercare Scheme, Aftercare Condition and/or the aftercare provision in paragraph 6 of Schedule 1; or
- (k) a failure by the relevant Owners to comply with paragraph 9.47 of Schedule 1 if applicable (failure by the relevant Owners to carry out the Default Reinstatement Works having requested to do so and the Council agreeing)

Default Reinstatement Conditions

the following conditions of the Planning Permission:

(a) the restoration conditions in one of sub-paragraphs (i) to (iii) below as applicable:

(i) the conditions of the Planning Permission substantively in the form of Draft Conditions A and B or such other condition or conditions imposed by the Secretary of State dealing with the restoration of the Site after or in relation to the Preliminary Period (whether on its own or with other Periods of the Development);

(ii) the conditions of the Planning Permission substantively in the form of Draft Conditions A and D or such other condition or conditions imposed by the Secretary of State dealing with the restoration of the Site after or in relation to the Construction Period (whether on its own or with other Periods of the Development);
or

(iii) the Restoration Conditions (other Periods); and

(b) the Aftercare Condition,

and/or such other conditions varying or replacing the relevant condition(s)

Default Reinstatement Works

the works in relation to the relevant Period that would be required to carry out the restoration and aftercare of the Site in accordance with and to discharge the Default Reinstatement Conditions from time to time

Development

the development of the Site to which the Application relates consisting of: –

- a new underground metallurgical coal mine and associated development including: the refurbishment of two existing drifts leading to two new underground drifts; coal storage and processing buildings; office and change building; access road; ventilation, power and water infrastructure; security fencing; lighting; outfall to sea; surface water management system and landscaping at the former Marchon site (High Road) Whitehaven;
- a new coal loading facility and railway sidings linked to the Cumbrian Coast Railway Line with adjoining office / welfare facilities; extension of railway underpass; security fencing; lighting; landscaping; construction of a temporary development compound, and associated permanent access from Mirehouse Road, Pow Beck Valley, south of Whitehaven; and
- a new underground coal conveyor to connect the coal processing buildings with the coal loading facility

Draft Conditions

the drafts of those conditions of the Planning Permission that are referenced

within this Deed and that may be subject to amendment or substitution by the Secretary of State and which are appended at Schedule 9

Drain Maintenance Schemes

schemes for the Western Outfall Drain and Eastern Drain for the maintenance and management of those drains covering the period from the Commencement of Development to the completion of the Restoration

Drains

together the Western Outfall Drain and the Eastern Drain

Drain Surveys

surveys of the Western Outfall Drain and Eastern Drain to verify that they are in good repair, suitable and have sufficient capacity to carry the anticipated effluents from the Development

Drivers

drivers of HGVs in association with the carrying out and/or use of the Site for the purposes of the Preliminary Works and/or Development and for no other purpose

Eastern Drain

the drain on the eastern side of the Site running across part of the Site under the railway to Pow Beck as shown for illustrative purposes only on Plan 5 located partly as at the date of this Deed in the Second Owner's land within title CU209637

Emissions Monitoring Report

an annual report to be prepared by the Owner and/or the Developer in accordance with up to date legislation government policy national guidance and other nationally accepted standards as shall be in force and/or published from time to time and the Council's approval under paragraph 12.7 of Schedule 1, which annually reports in full on the GHG Emissions, the GHG Mitigation provided and the extent to which the Development has achieved the Net Zero Emissions Limit over the preceding 12 months along with any further action (if any) the Owner and/or Developer proposes to take in the following 12 month period

Escrow Account

a bank account under the control of an Investment Grade Rating Body within which monies are to be deposited as Restoration Security where it is provided by way of a deposit of money to the Council in accordance with the relevant provisions in paragraph 9 of Schedule 1

Expert Decision

the decision including the written findings of the expert appointed pursuant to clause 15 hereof to determine a matter that is in dispute between the parties

Expert Determination Date

means the date on which an expert appointed pursuant to clause 15 hereof determines a matter that is in dispute between the parties

Extraordinary GHG Report

a Proposed GHG Report required by the Council outside of the review timescales pursuant to paragraphs 12.10 and 12.12 of Schedule 1 where an Emissions Monitoring Report gives rise to concern in respect of the GHG Emissions at that stage in the Development such that the Council requires a full assessment of the GHG Emissions, the GHG Mitigation and the method(s) by which the Owner and/or Developer shall achieve the Net Zero Emissions Limit

Extraordinary Review

the review of the Restoration Securities to be carried out and completed in accordance with the relevant provisions in paragraph 9 of Schedule 1 if the Independent Surveyor determines that an Extraordinary Review is required due to an extraordinary circumstance following a written request from the Owners or Developer (as the case may be) or the Council (but a request for such a review cannot be made more than once in any 12 month period or within the 12 month period of any prior Review)

GHG Approval

the review and approval by the Council of the Proposed GHG Report such review to be carried out so far as is reasonably practicable and relevant in compliance with up to date legislation government policy and accepted national guidance and standards as shall be in force and/or published from time to time

GHG Assessment

the report prepared by Ecolyse dated ~~11~~
September 2021 and appended to this
Deed at Schedule 8

GHG Emissions

the emissions of methane, carbon dioxide, nitrous oxide, sulphur hexafluoride, hydrofluorocarbons, perfluorocarbons, and nitrogen trifluoride arising as a result of the Development as described for the purposes of the GHG Assessment or the latest Approved GHG Report (whichever is the later) which includes:

- (a) "Controlled GHG Emissions" being those emissions from activities owned or controlled by the Developer and comprising:
 - i) fuel use on Site from mining related equipment;
 - ii) fugitive emissions from the mining operations (below ground); and
 - iii) fugitive emissions from the mining operations (above ground);
 - iv) emissions associated with the consumption of electricity in respect of the Development and comprising electricity consumption on Site from the purchase of grid electricity for mining operations;
- (b) "Sphere of Influence GHG Emissions" being those emissions that are associated with the Development but which are not

owned or controlled by the Developer and comprising:

- i) emissions from delivery vehicles supplying goods and materials to the Site;
- ii) emissions from rail distribution of coal directly to UK steelworks or the point of departure out of the UK;
- iii) emissions that are embodied in construction materials;
- iv) emissions from processing and disposal of general waste off-Site generated by the Development;
- v) emissions from employee commuting to and from the Site;

and for the avoidance of doubt save in the absence of express advice to the contrary in the form of up to date Government guidance, policy, legislation and other nationally accepted standards as shall be in force and/or published from time to time it does not include the emissions arising from the use of the coal in steel making or its onward distribution outside of the UK borders

GHG Mitigation

those measures that shall be employed under the terms of this Agreement on the Site or elsewhere concerning processes or arrangements to reduce, mitigate, displace and/or offset GHG Emissions associated

with the Development which may include (but not be limited to):

- (a) Primary GHG Mitigation Measures
- (b) Secondary GHG Mitigation Measures
- (c) Acquisition of Carbon Offsets

GHG Mitigation Failure Notice

a written notice to be served on the Owners or Developer (as the case may be) by the Council notifying and providing the basis for service of the notice to the Owners or Developer as referred to below in paragraphs (a) and (b), together with the actions for compliance required in accordance with paragraph 12.10 of Schedule 1:

- (a) a failure to secure and provide the GHG Mitigation which is the subject of the GHG Assessment or the latest Approved GHG Report (whichever is the later) which for the avoidance of doubt shall include the failure to meet any commitment financial or otherwise including the Acquisition of Carbon Offsets or
- (b) an Emissions Monitoring Report identifying that the Net Zero Emissions Limit has been exceeded.

GHG Rejection Notice

written notice refusing a Proposed GHG Report duly served by the Council on the Owners or Developer as relevant stating reasons and providing reasonable

evidence as to why the Proposed GHG Report is not approved by the Council

GHG Review Date

Commencement of the Preliminary Works and every 5th anniversary thereafter until the end of the Restoration Period or (as relevant for the purposes of paragraph 12.6 of Schedule 1) the expiry of 3 (three) months following the submission of an Extraordinary GHG Report;

Heritage Payment Purpose

the enhancement of the industrial heritage assets known as Barrowmouth Gypsum and Alabaster Mine, Saltom Coal Pit and Haig Colliery to include any of the following: restoration and enhancement of the condition of those assets and their setting, the erection of interpretation boards, the laying out of heritage trails, activities that enhance public understanding of the heritage assets (through survey, other fieldwork and research) and activities that promote public appreciation of the assets through outreach projects

HGVs

heavy goods vehicles travelling to and from the Site at any time from the start of the Preliminary Works until the end of the Aftercare Period with a gross combination mass of more than 7.5 tonnes

Highways Contribution 1

the sum of £155,000 (one hundred and fifty five thousand pounds) to be used towards

traffic calming measures including any or all of the following:

- (a) consultation and legal advertisement for Traffic Regulation Orders and traffic calming features
- (b) Installation of 4 x uncontrolled pedestrian points with dropped kerbs, central refuges and "KEEP LEFT" bollards;
- (c) Traffic calming features and general signage;
- (d) Revised and enhanced road markings and textured surfacing in key locations;
- (e) Design, audit and commissioning overheads; and
- (f) Contingency

to be utilised within locations to be identified within a 1.5 mile buffer of the main mine site boundary including potential for works on High Road Woodhouse Road, Ennerdale Terrace, Rydal Ave and Lakeland Ave

Highways Contribution 2

The sum of £68,327 (sixty eight thousand three hundred and twenty seven pounds) as a contribution towards improvements to the Mirehouse Road / St Bees Road junction and the Mirehouse Road / rail load facility access road junction including street lighting and other improvements

Immune from Judicial Challenge

the expiry of the forty two day period commencing after the date on which the Planning Permission is granted without

any legal challenge or judicial review (whether pursuant to the Section 288 of the Act or otherwise) being instituted and in the case that such proceedings are instituted such proceedings being finally determined so as to leave the Planning Permission in place and without any reasonable prospect of further challenge or appeal

Independent Surveyor

the person appointed as the independent surveyor pursuant to paragraph 9.2 of Schedule 1 who shall be an independent and suitable person holding appropriate professional qualification in relation to the said appointment with not less than ten years recent and relevant professional experience

Index

All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or in the event that such index ceases to be published any similar alternative index as agreed in writing between the Owners or Developer (as the case may be) and the Council or determined by an expert in the event of a dispute under clause 15

Investment Grade Rating Body

being a company or body that is FCA registered and has an investment rating of BBB or higher as applied by Standard and Poor's and/or Moody's Investors' Services and/or an equivalent credit-rating agency

Main Band Colliery Aftercare Scheme the scheme and those details shown by reference to a plan or otherwise appended to Schedule 6 hereof relating to the aftercare of the main band colliery in full accordance with the terms of the Planning Permission and planning permission ref: 4/88/0664 dated August 1988

Main Band Colliery Restoration Scheme the scheme and those details shown by reference to a plan or otherwise appended to Schedule 6 hereof relating to the restoration of the main band colliery in full accordance with the terms of the Planning Permission and planning permission ref: 4/88/0664 dated August 1988

Mine Gas Capture Management Scheme if relevant a Mine Gas Capture Management Scheme for the capture of methane gas (CH₄) emitted on Site during the Production Period and approved by the Council pursuant to a condition (if any as relevant) of the Planning Permission

Monitoring and Administration Costs the reasonable and properly incurred costs of the Council relating to monitoring and administering the provisions in this Deed save in respect of those costs pertaining to the Travel Plan Monitoring Fee

Net Zero reaching zero GHG Emissions through the use of ~~all reasonable~~best endeavours to mitigate such GHG Emissions and/or the Acquisition of Carbon Offsets in the order

of priority set out in paragraph 12.1 of Schedule 1 hereof

Net Zero Emissions Limit

means a GHG Emissions limit of Net Zero

On-Site GHG Capture

those measures identified within a Mine Gas Capture Management Scheme approved by the Council pursuant to any condition of the Planning Permission seeking to address the on-Site capture of the GHG Emissions and/or any measures identified in the GHG Assessment or the latest Approved GHG Report which capture and manage on-Site GHG Emissions

Owners

the First Owner, the Second Owner, the Third Owner, the Fourth Owner and the Sixth Owner are collectively known as the Owners and shall mean all and any of them

Path Rules

rules for the public's use of the Cycle Path Part 1 which may include regulating the:

- (a) hours of use;
- (b) anti-social and illegal behaviour including procedures and mechanisms for warnings, revoking the right of particular individuals involved to access and use the Cycle Path Part 1 and excluding them from such access and use permanently, temporarily or at particular times and when the Council's written consent is required; and/or

- (c) periods when the path may be closed for temporary periods with the prior written consent of the Council

Period

means (as applicable):

- (a) the Preliminary Period;
- (b) the Construction Period;
- (c) the Production Period;
- (d) the Restoration Period;
- (e) the Aftercare Period

Period Review

the review of the Restoration Securities to be carried out and completed prior to the start of each Period relating to the Development in accordance with the relevant Review provisions in paragraph 9 of Schedule 1

Plan 1

the plan identifying the Site edged red and the Residential Land (edged blue) the Aftercare Land shaded green the Additional Main Band Colliery Land edged and hatched dark pink appended to this Deed in Schedule 5

Plan 2

means the plan of the route within which Cycle Path Part 1 is to be located appended to this Deed in Schedule 5

Plan 3

the public rights of way maps annotated to identify the improvements to be made to the public rights of way network appended to this Deed in Schedule 5, all or some of

which are to be funded by the Public Rights of Way Contribution

Plan 4

the plan identifying indicatively coloured red the Western Outfall Drain appended to this Deed in Schedule 5

Plan 5

the plan identifying indicatively the Eastern Drain by way of a red broken line appended to this Deed in Schedule 5

Planning Permission

the planning permission granted by the ~~Council~~Secretary of State pursuant to the Application and subject to clause 2.6 any further planning permission granted pursuant to section 73 of the Act in relation to the Development

Preliminary Works

the stage relating to works associated to the Development attributable to the following works:

- (a) ground investigation and Site survey work ;
- (b) the demolition of existing buildings and/or clearance of the Site;
- (c) remediation;
- (d) advanced ecology works and investigations;
- (e) temporary structures providing cover during remediation; and
- (f) access and haul roads, amenities, toilets, fencing, signage and lighting to the extent necessary for the works in paragraphs (a) to (e) above

Preliminary Period	the initial stage associated with the Development from the start of the Preliminary Works until the Commencement of Construction
Primary GHG Mitigation Measures	those measures that may be employed on the Site or elsewhere concerning Controlled GHG Emissions as identified in the GHG Assessment or the latest Approved GHG Report (whichever is the later) which may include (but not be limited to): <ul style="list-style-type: none"> (a) On-Site Gas Capture; (b) the use of green tariff electricity; (c) the use of electrical company vehicles on Site
Principles of Staged Draw Down	the principles in such form (or any other form reasonably agreed to in writing by the Council) as contained in Schedule 7 hereof
Production	the winning and working of metallurgical (coking) coal as part of the Development including the extraction and dispatch from the Site starting from the beginning of the Production Period
Production Period	the stage of the Development commencing on the day of the first dispatch of metallurgical (coking) coal from the Site and continuing until the start of the Restoration Period

Proposed GHG Report

a report the methodology, approach and structure to be in general conformity with the GHG Assessment but providing an update on the following:

- (a) an assessment of the GHG Emissions and the impacts on the climate and environment of the Preliminary Works, the Construction Period, the Production Period and the Restoration Period (as applicable at the time) of the Development (as and if relevant);
 - (b) so far as reasonably practicable and relevant, such assessment is to be carried out in compliance with up to date legislation government policy and accepted national guidance and standards as shall be in force and/or published from time to time; and
 - (c) The proposed scheme(s) for the Acquisition of Carbon Offsets (if required)
 - (d) any details of Primary GHG Mitigation Measures and Secondary GHG Mitigation Measures; and
- and reference to "Proposed GHG Report" shall include reference to an "Extraordinary GHG Report" where applicable

Public Rights of Way Contribution

the sum of £94,235 (ninety four thousand, two hundred and thirty five pounds) to be used towards improvement works to the

public rights of way network within the vicinity of the Site identified in the public rights of way maps (Plan 3)

Rail Loading Facility

the rail loading facility in the Development in the location identified on Plan 2

Residential Land

the residential dwellings and associated land known as Lake View and Stanley House shown for identification purposes edged blue on Plan 1 against which the obligations in Schedule 2 are enforceable

Residential Owners

the Seventh Owner and Eighth Owner

Restoration

those works pursuant to the Development relating to the restoration of the Site in such form as may be approved from time to time in full accordance with the Restoration Conditions

Restoration Conditions

the condition(s) of the Planning Permission addressing the restoration and decommissioning of the Site substantively in the form of Draft Conditions A, E, F and G or such other condition or conditions dealing with the same or similar issues as Draft Conditions A, E, F and G imposed by the Secretary of State addressing the restoration and decommissioning of the Site or such conditions varying or replacing them subsequent to the grant of the Planning Permission

Restoration Period

the period from the end of Production until the Site has been restored in full accordance with the Restoration Conditions and the Council has duly issued the relevant restoration certificate pursuant to conditions of the Planning Permission or otherwise given its certification if a certificate is not required under the conditions certifying the works of restoration are complete which certificate or certification of the Council shall not unreasonably withhold or delay

Restoration Security

a Bond or money for an Escrow Account or if agreed in writing with the Council in its absolute discretion such other form of security and delivered to the Council that together with any other restoration security provides security to cover the Restoration Security Amount. The substantial form for any security provided by way of a Bond is set out in Schedule 4 and other forms of security shall be provided on equivalent terms in so far as applicable and "Restoration Securities" shall be interpreted accordingly

Restoration Security Amount

reasonable costs including legal and administrative costs (both internal and external), consultant's fees, engineer's fees, other professional fees, contract fees, procurement costs and other associated costs and expenses in respect of the maximum Default Reinstatement

Works on the Site at any remaining point in time of the relevant Period, the amount of which is to be assessed and determined by the Independent Surveyor in accordance with the relevant provisions in paragraph 9 of Schedule 1

Review

the following as applicable:

- (a) a Period Review;
- (b) a 5 Year Review; or
- (c) an Extraordinary Review

Santander

the Eighth Owner's mortgagee comprising SANTANDER UK PLC (Company Registration Number: 02294747) whose registered office is situated at Deeds Service, 101 Midsummer Boulevard, Milton Keynes, MK9 1AA

Santander's Mortgage

the registered charge dated 9 December 2014 over part of the Residential Land under title numbers CU269803 and CU229393

Secondary GHG Mitigation Measures

those measures that may be employed on the Site or elsewhere concerning Sphere of Influence GHG Emissions as identified in the GHG Assessment or the latest Approved GHG Report (whichever is the later) which may include (but not be limited to):

- (a) initiatives for cycling, car sharing, use of local bus services and provisions of electrical vehicle

charging points for employee use on Site;

(b) on Site waste minimisation programmes;

(c) exploration with rail providers as to methods to improve the efficiency of rail operations and the feasibility of biodiesel and electrification of rail lines

(d) use of preferential suppliers who themselves operate carbon reduction or Net Zero operations and/or use low carbon materials

Site

the land at the former Marchon Works, Kells, Whitehaven and other land (with the exception of Schedule 2) and shown for identification edged red on Plan 1 and which for the avoidance of doubt excludes the Residential Land

Sphere of Influence GHG Emissions

means the emissions as so defined in the definition of “GHG Emissions”

St Bees – Mirehouse Road Cycle Path

a cycle path connecting St Bees to Mirehouse Road, the precise route of which is to be determined at a later date

Training and Employment Management Plan

having regard to the employment and training targets set out in chapter 7 of the Environmental Statement submitted by the Developer pursuant to the Application a plan to promote training and employment opportunities throughout the Construction Period, the Production Period and the Restoration Period and designed to ensure that local residents are employed

or trained throughout the life of the Development to include (but not limited to) the following:-

(i) the measures which the Owners and/or the Developer and their contractors will implement to achieve the target that 80% of all jobs created within each of the Construction Period, the Production Period and the Restoration Period, including any apprenticeships will be filled by people currently living within the 20 miles of the Site; and

(ii) the targets and the respective measures to achieve such targets to provide training opportunities in respect of any new jobs created for the Construction Period, the Production Period and the Restoration Period including the timescales for such training opportunities; and

(iii) measures and targets for re-training employees and providing assistance with finding alternative employment at any time when there is a significant reduction in the workforce employed by the Development and as the Production Period expires; and

(iv) measures to provide verifiable monitoring information regarding training and employment; and

(v) The resources that will be committed by the Owners and/or the Developer to implement the above measures;

Travel Plans

the construction travel plan (CTP) and travel plan (TP) approved under any relevant condition(s) of the Planning

Permission which includes a management strategy for construction and the long term traffic and travel associated to and from the Development respectively through which the setting of reasonable and achievable targets seeks to deliver sustainable transport objectives in respect of those employed in and/or engaged in working within the Development

Travel Plans Monitoring Fee

the sum of £13,200 (thirteen thousand two hundred pounds) made up of two payments consisting of £6,600 (six thousand and six hundred pounds) per Travel Plan to be paid to the Council for monitoring and reviewing the two Travel Plans

Western Outfall Drain

the drain on the western side of the Site running across part of the Site westwards to the Irish Sea as shown for illustrative purposes only on Plan 4 located as at the date of this Deed in the First Owner's land within titles CU103528 and CU88197

1.2. In this Deed:

1.2.1. the clause headings do not affect its interpretation;

1.2.2. unless otherwise indicated, references to clauses and Schedules are to clauses and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;

- 1.2.3. references to any statute or statutory provision include references to:
 - 1.2.3.1. all Acts of Parliament and all other legislation having legal effect in England and Wales as enacted at the date of this Deed as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.3.2. any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
 - 1.2.4. references to the Site, Residential Land, and Additional Main Band Colliery Land include any part of them;
 - 1.2.5. references to any party in this Deed include the successors in title and assigns of that party and references to the Council include any successor Minerals Planning Authority exercising planning powers under the 1990 Act;
 - 1.2.6. “including” means “including, without limitation”;
 - 1.2.7. 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; and
 - 1.2.8. if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Deed is to be unaffected.
- 1.3. The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. EFFECT OF THIS DEED

2.1. This Deed is made 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 and are enforceable by the Council as follows:

2.1.1. the obligations in Schedule 1 (excluding paragraphs 1, 8.2 to 8.6, 10.2, 10.3 and 11) are only enforceable against the Owners of the Site, and the Developer and persons deriving title to the Site under any of them;

2.1.2. the obligations in paragraph 1 of Schedule 1 are only enforceable against the Owners, the Fifth Owner, the Developer and persons deriving title to the Site under any of them and the obligations in paragraphs 9.40.2, 9.41 and 9.47 of Schedule 1 only in respect of the Council accessing the Site are enforceable against the Fifth Owner and persons deriving title to the Site under any of him (in addition to the Owners of the Site and Developer under paragraph 2.1.1 above);

2.1.3. the obligations in paragraphs 8.2 to 8.6 of Schedule 1 (Cycle Path Part 1) are only enforceable against the Second Owner, Eighth Owner and Developer and persons deriving title to the relevant part of the Site under any of them;

2.1.4. the obligation in paragraph 10.2 of Schedule 1 (Western Outfall Drain) is only enforceable against the First Owner and Developer and persons deriving title to the relevant part of the Site under any of them;

2.1.5. the obligation in paragraph 10.3 of Schedule 1 (Eastern Drain) is only enforceable against the Second Owner and Developer and persons deriving title to the relevant part of the Site under any of them;

2.1.6. the obligations in paragraph 11 of Schedule 1 (Additional Main Band Colliery Land) are only enforceable against the Second

Owner, and Developer in respect of the Additional Main Band Colliery Land and persons deriving title to the Additional Main Band Colliery Land under any of them; and

- 2.1.7. the obligations in Schedule 2 are only enforceable against the Residential Owners in respect of the Residential Land, the Developer and persons deriving title to the Residential Land under any of them.
- 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. If the Secretary of State in a Decision Letter expressly concludes that any of the planning obligations set out in this Deed are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the CIL Regulations, and accordingly makes a finding that no weight should be attached to that obligation in determining the Application, then the relevant obligation shall, from the date of the Decision Letter, cease to have effect and the Owners and/or the Fifth Owner and/or the Developer and/or the Residential Owners (as relevant) shall be under no obligation to comply with the said relevant obligation.
- 2.4. Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site, the Residential Land and Additional Main Band Colliery Land or otherwise.
- 2.5. This Deed shall be registered as a local land charge by the Council.
- 2.6. Nothing in this Deed prohibits or limits the right to develop any part of the Site or the Residential Land in accordance with a planning permission, other than the Planning Permission for the Development (including any associated consent granted by the Council pursuant to section 96A or 73 of the 1990 Act granted after the date of this Deed whether or not pursuant to an appeal).

2.7. In the event that subsequent to the date hereof an application is made for planning permission under section 73 of the 1990 Act for any Development and planning permission is granted in respect of the said application, references to "Planning Permission" in this Deed shall include the said section 73 planning permission granted and this Deed shall apply to and remain in full force in respect of that new section 73 planning permission without the need for a further agreement to be entered into pursuant to Section 106 or Section 106A of the Act save where the Council require or determine otherwise in writing.

2.8. The Residential Owners separately and severally covenant for the purposes of section 106 of the Act solely in relation to the obligations contained in Schedule 2 and it is hereby acknowledged and agreed that:

2.8.1. the obligations in Schedule 1 (excluding paragraphs 8.2 to 8.6) shall not be enforceable against the Residential Owners save in the event that the Developer comes to acquire the interest of the Residential Owners in the Residential Land in which case it is agreed and understood that the obligations in both Schedule 1 and Schedule 2 shall be jointly and severally enforceable against the Developer; and

2.8.2. the obligations in paragraphs 8.2 to 8.6 of Schedule 1 (Cycle Path Part 1) shall only be enforceable against the Second Owner, Eighth Owner, Developer and persons deriving title to the relevant part of the Site under any of them and not against the Fifth Owner Seventh Owner or any other Owners.

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 1, 2.1 to 2.6, 3, 6 – 19, paragraph 1 (Approved Routes for HGVs), paragraph 3 (Highways Contributions), paragraph 5 (Monitoring and Administration Costs), paragraphs 9.2 – 9.19 and 9.27 – 9.50

(Restoration Security provisions to the extent that they relate to the Preliminary Works) of Schedule 1, paragraph 12 of Schedule in respect of the Preliminary Works only (greenhouse gas obligations) and Schedule 3 which shall come into effect immediately upon completion of this Deed or on such date as is specified in the particular provisions.

4. THE OWNERS' THE FIFTH OWNER'S AND DEVELOPER'S COVENANTS

- 4.1. The Owners and Developer covenant with the Council as set out in Schedule 1 (excluding paragraphs 1, 8.2 to 8.6, 10.2, 10.3 and 11).
- 4.2. The Owners, the Fifth Owner and the Developer covenant with the Council as set out in paragraph 1 of Schedule 1 (HGV routeing).
- 4.3. The Second Owner, Eighth Owner and Developer covenant with the Council as set out in paragraphs 8.2 to 8.6 of Schedule 1 (Cycle Path Part 1).
- 4.4. The Fifth Owner covenants with the Council for the purposes of paragraphs 9.40.2, 9.41 and 9.47 of Schedule 1 (to grant rights of access to the Council for the purposes of enforcing the restoration obligations in the event of a default).
- 4.5. The First Owner and Developer covenant with the Council as set out in paragraph 10.2 of Schedule 1 (Western Outfall Drain).
- 4.6. The Second Owner and Developer covenant with the Council as set out in paragraph 10.3 of Schedule 1 (Eastern Drain).
- 4.7. The Second Owner, and Developer covenant with the Council as set out in paragraph 11 of Schedule 1 (Additional Main Band Colliery Land).

5. THE RESIDENTIAL OWNERS' AND DEVELOPER'S COVENANTS

- 5.1. The Residential Owners and Developer covenant with the Council as set out in Schedule 2.

6. THE COUNCIL'S COVENANTS

- 6.1. The Council covenants with the Owners and Developer as set out in Schedule 3 and in any other obligations on its part in this Deed.

7. MISCELLANEOUS

- 7.1. Each of the parties agrees to act reasonably, properly and diligently in exercising its discretion, discharging its functions and complying with its obligations under this Deed. In particular, unless otherwise stated, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required or may be given under the terms of this Deed, each of the parties agrees not to unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or similar affirmation.
- 7.2. Subject always to the provisions at clause 16 hereof no person shall be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Site, Residential Land and/or Additional Main Band Colliery Land or the part of the Site, Residential Land and/or Additional Main Band Colliery Land in respect of which the breach occurs (as the case may be), but they will remain liable for any breaches of this Deed occurring before that date.
- 7.3. Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.4. This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn by any statutory procedure or expires prior to the Commencement of Development, but for the avoidance of doubt this Agreement shall continue in force and effect if any Planning Permission (which includes permission referenced 4/17/9007 and any associated section 73 permission) remains extant.
- 7.5. Following the performance and discharge of all the obligations contained in this Deed the Council shall effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7.6. This Deed shall not be enforceable against:

7.6.1. any statutory undertaker who acquires an interest in the Site Residential Land and/or Additional Main Band Colliery Land (as the case may be) for the purpose of providing services to the Site, Residential Land and/or Additional Main Band Colliery Land; and

7.6.2. any mortgagee or proprietor of a financial charge unless such person takes possession of the whole or part of the Site, Residential Land and/or Additional Main Band Colliery Land (as the case may be) and then this Deed shall only be enforceable against such person for so long as they are in such possession.

8. [CLAUSE NUMBER NOT IN USE]

9. DEVELOPER'S CONSENT AND OBLIGATIONS

9.1. The Developer HEREBY CONSENTS to the Owners, Fifth Owner and Residential Owners entering into this Deed and to the Site, Additional Main Band Colliery Land and Residential Land respectively being bound by the obligations contained in this Deed PROVIDED THAT the Developer shall only be liable for any breach of this Deed once it has acquired a legal interest in any part of the Site and/or Additional Main Band Colliery Land and/or the Residential Land (as the case may be).

10. WAIVER

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

11. NOTIFICATION

11.1. The Owners or Developer (as the case may be) shall notify in writing the Council of the following events 5 working days prior to the relevant event occurring:

11.1.1. save where the process has begun prior to the date hereof the beginning of the process to appoint an Independent Surveyor under paragraph 9.2 of Schedule 1;

11.1.2. the start of the Preliminary Works;

11.1.3. the Commencement of the Development;

11.1.4. the beginning of any other Period of the Development.

11.2. The Owners, Fifth Owner, Developer and/or Residential Owners (as the case may be) shall give the Council immediate written notice of any change in ownership of their interests in the Site, Residential Land and/or Additional Main Band Colliery Land respectively occurring before all of the obligations in this Deed have been discharged, such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site, Residential Land and/or Additional Main Band Colliery Land (as the case may be) purchased by reference to a plan.

12. INDEXATION

12.1. Any sum referred to in paragraphs 2 to 5, 7 and 8 of Schedule 1 shall be increased by an amount equivalent to any increase in the Index from the date of this Deed until the date on which such sum is paid and if the Index has decreased the sum payable shall be the amount specified in this Deed (without any decrease).

13. INTEREST

13.1. If any payment due under this Deed is paid late, interest will be payable from the date payment is due to the date of actual payment at a rate of 4% per

annum above the base rate of the Bank of England calculated on a daily basis.

14. NOTICES

- 14.1. Any notice, demand or any other communication served under this Deed shall be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 14.2. Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Deed or to such other addresses as one party may notify in writing to the others at any time as its address for service.
- 14.3. Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as being served:
- 14.3.1. If delivered by hand, at the time of delivery;
 - 14.3.2. If sent by post, on the second working day after posting; or
 - 14.3.3. If sent by recorded delivery, at the time delivery was signed for.
- 14.4. If a notice, demand or any other communication is served after 4.00pm on a working day, or on a day that is not a working day, it is to be treated as having been served on the next working day.

15. EXPERT DETERMINATION

- 15.1. Except where stated otherwise in this Deed and save in relation to the amount of any Restoration Security (which is to be determined by an Independent Surveyor), the parties agree that any differences and questions which arise between the parties in relation to this Deed shall be referred for determination by an independent person in accordance with the following provisions:-

- 15.1.1. where such dispute principally relates to the construction of this or any other deed or document it shall be referred to a solicitor or barrister agreed upon in writing by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Law Society;
- 15.1.2. where such dispute principally relates to any other matter related to this Deed it shall be referred to an expert to be agreed in writing between the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of The Royal Institute of Chartered Surveyors; and
- 15.1.3. an independent person appointed under this clause shall, unless the parties otherwise agree, act as expert and not as an arbitrator;
- 15.1.4. the independent person shall give their Expert Decision on the matter referred within 30 working days of the referral and the procedure and costs of the parties and dispute resolution procedure shall be for the independent person to determine save in relation to any dispute or part of a dispute referred to expert determination by the Owners or Developer (as the case may be) relating to paragraph 12 of Schedule 1 in which case the Owners or Developer (as the case may be) shall, unless otherwise determined by the independent person, pay their own costs, and the costs of the independent person and the expert determination procedure (excluding the Council's costs); and
- 15.1.5. the Expert Decision shall be final and binding on the parties (except in the case of a manifest error).

16. RESTRICTION

- 16.1. If any extant Restoration Security has been provided pursuant to this Deed to the Council by or on behalf of the Developer (or any persons deriving title

from the Developer out of its interest in the Site), following the Commencement of Development the Developer agrees that it will not sell, transfer or assign any interest it holds in the Site without having procured that any transferee or assignee first either:

16.1.1. provides a replacement Restoration Security which is equivalent to or on no lesser terms to the existing Restoration Security or is otherwise to the satisfaction of the Council (where that Restoration Security does not substantially follow the form of the Bond) in accordance with and on the same terms as set out in Schedule 1 to this Deed; or

16.1.2. has assigned to him the extant Restoration Security.

16.2. If any extant Restoration Security has been provided pursuant to this Deed to the Council by or on behalf of any of the Owners (or any persons deriving title to the Site from the Owners other than the Developer out of its interest in the Site), following the Commencement of Development the relevant Owners agree that they shall not sell, transfer or assign any interest it or they hold in the Site without having procured that any transferee or assignee first either:

16.2.1. provides a replacement Restoration Security which is equivalent to or on no lesser terms to the existing Restoration Security or is otherwise to the satisfaction of the Council (where that Restoration Security does not substantially follow the form of the Bond) in accordance with and on the same terms as set out in Schedule 1 to this Deed; or,

16.2.2. has assigned to him or them the extant Restoration Security.

16.3. If the Developer breaches the restriction in clause 16.1 hereof notwithstanding the provisions of clause 7.2 hereof the Developer shall continue to be liable pursuant to the terms of this Deed and specifically it is agreed and understood that any extant Restoration Security procured by the Developer shall remain in force and be capable of being drawn down by the

Council notwithstanding the fact that the Developer has parted with its interest in the Site.

16.4. If the Owners breach the restriction in clause 16.2 hereof notwithstanding the provisions of clause 7.2 hereof the Owners shall continue to be liable pursuant to the terms of this Deed and specifically it is agreed and understood that any extant Restoration Security procured by the Owners shall remain in force and capable of being drawn down by the Council notwithstanding the fact that the Owners have parted with their interest in the Site.

16.5. The Developer (or any person acting on its behalf or authorised by it) shall not Commence the Development until the Developer has applied for the entry of the following restriction against all of the Developer's titles registered at the Land Registry in relation to all interests it takes/holds in relation to the Site and written evidence has been provided to the Council of such application and the Developer shall procure that the restriction has priority over any mortgage or charge entered into by the Developer and provide written evidence to the Council of the entry having been made, the said restriction being as follows (with such variations as may be required by the Land Registry):

“No disposition, of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by Cumbria County Council that the provisions of clause 16.1 (if applicable) of the section 106 Agreement dated _____ and made between (1) Cumbria County Council (2) Whitehaven Developments Limited (3) Graham Stanley Barwise and Barbara Barwise (4) Stella Margaret Barwise and Martin Barwise (5) Timothy William West (6) David Anderson Bowick (7) William Herbert Atkinson (8) John Derek Kellett (9) Julie Nichol (10) West Cumbria Mining Limited is complied with or do not apply.”

16.6. Within 5 working days of written request from the Developer and subject to the Developer having complied with clause 16.1 (if applicable), the Council will provide to the Developer a duly executed Certificate in writing confirming

compliance with clause 16.1 for the purposes of satisfying the terms of the restriction referred to at clause 16.5 above.

- 16.7. For the purposes of this clause 16, the reference to Developer includes any successor in title to the Developer's interests held in the Site.

17. JURISDICTION

17.1. This Deed is governed by and interpreted in accordance with the law of England.

17.2. The Courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Deed.

18. COUNTERPARTS

18.1. This Deed may be executed in any number of counterparts each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Deed.

19. EXECUTION

19.1. The parties have executed this document as a Deed and it is delivered on the date set out above.

SCHEDULE 1

Covenantee Parties' Covenants

1. HGV Routeing

The Owners, the Fifth Owner and Developer covenant as follows:

- 1.1. The Owners, the Fifth Owner and Developer shall use all reasonable endeavours to require and ensure that every Driver using the Site in respect of the Preliminary Works and/or Development shall be bound by his transport contract to only use the Approved Routes.
- 1.2. The Owners, the Fifth Owner and Developer shall in respect of the Preliminary Works and/or Development:
 - 1.2.1. erect signs at entrances and exit points to and from the Site prior to the start of the Preliminary Works (of which sign(s) shall first be submitted to and approved in writing by the Council) warning Drivers to travel along the Approved Routes;
 - 1.2.2. not to start the Preliminary Works nor cause nor permit the Preliminary Works to start until the sign(s) referred to in Paragraph 1.2.1 above have been erected at the entrance and exit points to and from the Site;
 - 1.2.3. retain and maintain the sign(s) referred to in paragraph 1.2.1 above throughout the life of the Preliminary Works and Development (including from the start of the Preliminary Works until the end of the Restoration Period);
 - 1.2.4. provide to the Council on request evidence of Drivers contracts documenting details on the Approved Routes;
 - 1.2.5. ensure that adherence to the Approved Routes are a fundamental condition of the terms of employment of the Owners', the Fifth Owner's and/or Developer's Drivers;

- 1.2.6. in the event of discovering or being advised of a Driver using a route to or from the Site that is not the Approved Routes, take appropriate action by:
 - 1.2.6.1. issuing a verbal warning to the Driver on the first breach;
 - 1.2.6.2. issuing a written warning to the Driver on the second breach; and
 - 1.2.6.3. in the event of a third breach the Owners, the Fifth Owner and Developer shall prohibit the Driver entering the Site;
- 1.2.7. advise any third parties driving HGVs to and from the Site of the need to drive on the Approved Routes;
- 1.2.8. provide the Council with the name, telephone number and email addresses of an employee to whom complaints about traffic routeing should be addressed to; and
- 1.2.9. keep the following records:
 - 1.2.9.1. copies of all contracts entered pursuant to paragraphs 1.1 and 1.2.5 of this Schedule; and
 - 1.2.9.2. keep written record of all Drivers and companies with HGVs travelling to or from the Site; and
 - 1.2.9.3. keep written records of all warnings and prohibitions pursuant to paragraph 1.2.6 above; and
 - 1.2.9.4. provide to the Council on request details of the Drivers and companies with HGVs that are permitted to enter the Site and copies of their

associated contracts and any written warnings and prohibitions,

SAVE THAT where a verifiable road closure or diversion is in place with regard to any part of the Approved Routes Drivers may travel to and from the Site by alternative routes agreed in writing the Council or at the discretion of emergency services as and if relevant

- 1.3. The obligations in paragraph 1 shall take effect from the start of the Preliminary Works.

2. Public Rights of Way Contribution

The Owners and Developer covenant as follows:

- 2.1. To pay the Public Rights of Way Contribution prior to the Commencement of Development
- 2.2. Not to Commence Development on the Site unless and until the Public Rights of Way Contribution has been paid.

3. Highways Contributions

The Owners and Developer covenant as follows:

- 3.1. To pay Highways Contribution 1 and Highways Contribution 2 to the Council as soon as reasonably practicable after the Planning Permission is Immune from Judicial Challenge and no later than the date on which the Preliminary Works begin.
- 3.2. Not to begin the Preliminary Works unless and until the Highways Contribution 1 and the Highways Contribution 2 have been paid to the Council.

4. Travel Plan Monitoring Fee

The Owners and Developer covenant as follows:

- 4.1. To pay the Travel Plan Monitoring Fee to the Council prior to the Commencement of Development.
- 4.2. Not to Commence Development unless and until the Travel Plan Monitoring Fee has been paid to the Council.

5. Monitoring and Administration Costs

The Owners and Developer covenant as follows:

- 5.1. Subject to the following provisions in paragraphs 5.2 to 5.9, to pay the Monitoring and Administration Costs to the Council on a monthly basis within 20 working days of receiving an invoice from the Council with this obligation beginning from the date on which the Owners or Developer (as the case may be) gives notice to the Council under clause 11.1.1 or the appointment of the Independent Surveyor (whichever is the earlier) until the end of the Aftercare Period.
- 5.2. The liability on the part of the Owners or Developer (as the case may be) to pay the Monitoring and Administration Costs under this Deed shall be subject to the following:-
 - 5.2.1 the financial liability of the Owners and/or the Developer (as the case may be) shall not in any one calendar year exceed the sum of £15,000 plus up to an additional £15,000 in any year in which there is a Proposed GHG Report or Extraordinary GHG Report submitted to the Council pursuant to paragraph 12 hereof (provided that the limit per review initiated pursuant to the provisions of paragraph 12 shall be £15,000 per review if the said review takes place over more than one calendar year). For the avoidance of doubt, the liability shall also not exceed the Monitoring and Administration Costs actually incurred by the Council;
 - 5.2.2 the charging relates exclusively to the Council's recovery of its costs for the provision of services associated with the

Monitoring and Administration Costs in relation to this Deed which it is authorised to provide;

- 5.2.3 the payments are on a not for profit basis (year by year) and, taking one year with another, the income from the charges for such services must not exceed the cost of providing them;
- 5.2.4 there shall be full transparency between the Council and the Owners or Developer (as the case may be) with regard to costs incurred;
- 5.2.5 the sole basis for charging is that the Council can recover resources expended on the services associated with the Monitoring and Administration Costs and carry out the monitoring, implementation and administering of the provisions in this Deed including in respect of the Restoration Securities and Reviews in accordance with the terms of this Deed;
- 5.2.6 the Council shall use all reasonable endeavours to keep costs payable by the Owners and/or Developer (as the case may be) under this Deed to a minimum including but not limited to making the best use of available information having due regard to statutory obligations; and
- 5.2.7 the Owners or Developer (as the case may be) and the Council shall use reasonable endeavours to agree the scope of forthcoming work for the Council's monitoring, implementation and administering of the provisions in this Deed including in respect of the Restoration Securities and Reviews and the Owners and/or Developer (as the case may be) do not have to pay for any work forming part of (or contributing to the development of) work outside of that scope on which the Owners or Developer (as the case may be) have not given their prior written approval.

- 5.3. In the event that anticipated resource expenditure required to complete any agreed scope of work is reasonably expected to exceed the authorised expenditure limit, the Council shall immediately notify the Owners or

Developer (as the case may be) in writing and no further financial commitment shall be entered into in respect of the relevant work stream within that scope of work until either the Owners or Developer (as the case may be) have agreed in writing or the Council has chosen to pursue that work stream (or relevant part of it) using its/their own sources of funding.

5.4. Subject to paragraph 5.5, costs eligible for charging to the Owners and/or Developer (as the case may be) shall be based on the following:

5.4.1. where the work is carried out by third parties under contract, on the amounts invoiced to the Council (accompanied by appropriate narratives and timesheets) up to and not exceeding the value agreed upon on letting the contract, except for work that is additional and necessary but not previously agreed PROVIDED ALWAYS that the Owners or the Developer (as the case may be) have first of all given their approval to the appointment of such advisors or contractors and the terms on which such advisors or contractors are so appointed; and

5.4.2. where the work is carried out by the Council's employees, on the normal rates used for such employees under planning performance agreements or as otherwise agreed between the Owners or Developer (as the case may be) and the Council, and on the internal staff resources necessary and committed in the agreed scope of work.

5.5. Any charging by the Council and agreed by the Owners or Developer (as the case may be) shall be carried out in accordance with the charging principles in this paragraph 5 and the provisions of section 93 of the Local Government Act 2003, any relevant Government guidance and the guidance and requirements of the professional codes of practice issued by CIPFA from time to time.

5.6. For the avoidance of doubt the Owners and Developer offer no commitment to fund any part of the Council's expenditure in respect of any scope of work which exceeds the authorised expenditure limit for the agreed scope of work until the Owners or Developer (as the case may be) have approved such expenditure but notwithstanding that the Council shall be free to continue

with any work under such scope of work as it sees fit and at its own cost. The Council will similarly limit work to remain within the limits of the agreed scope of work and where it becomes necessary to utilise additional resources shall seek agreement for further funding from the Owners or Developer (as the case may be) separately as appropriate.

- 5.7. The parties agree that nothing in this paragraph 5 shall require the Owners and/or Developer (as the case may be) to fund any other mitigation measures related to the Development. Such matters are to be dealt with separately as appropriate.
- 5.8. The parties acknowledge the right of the Owners or Developer (as the case may be) to perform regular audits of any matter relating to this paragraph 5 and the Council will provide the Owners or Developer (as the case may be) with all necessary assistance, including but not limited to access to information, staff, contractors and premises.
- 5.9. The obligations in paragraph 5 shall take effect from the date the Owners or Developer (as the case may be) give the Council notice under clause 11.1.1 or the appointment of the Independent Surveyor (whichever is the earlier).

6. Extension to the Aftercare Period

The Owners and Developer covenant as follows:

- 6.1. The parties agree that the 'Aftercare Period' shall apply for a term of 10 years from the end of the Restoration Period or the issue of a certificate by the Council certifying that all required aftercare has been carried out to its reasonable satisfaction (whichever is the later). The first 5 years of which shall ensue in relation to the Aftercare Land in full accordance with and pursuant to the terms of the Aftercare Condition and the later period after that in relation to the Aftercare Land shall proceed in accordance with the terms of that or those planning condition(s) as applied by this obligation (but with the terms of that or those condition(s) to be read with all necessary consequential amendments for the purposes of this obligation as if it relates to the Aftercare Period after the first 5 years).

7. Heritage Asset Enhancements

The Owners and Developer covenant as follows:

- 7.1. To pay the Annual Heritage Contribution prior to the start of Production.
- 7.2. To pay further Annual Heritage Contributions on every anniversary of the start of Production until the ninth such anniversary so that the last Annual Heritage Contribution to be paid to the Council shall fall due on the ninth anniversary of the start of Production (10 Annual Heritage Contributions in total).
- 7.3. Not to start Production unless and until the first Annual Heritage Contribution has been paid to the Council.
- 7.4. Where the Owners and/or Developer have an interest in or control of any of the 3 heritage assets covered by the Heritage Payment Purpose, not to unreasonably withhold or delay consent to the carrying out of enhancements, restoration and/or activities specified in the Heritage Payment Purpose in respect of such heritage asset(s) to be paid for by any Annual Heritage Contribution(s).

8. Cycle Paths

Cycle Path Contribution

- 8.1. If planning permission has been obtained for the whole of the St Bees – Mirehouse Road Cycle Path (excluding existing paths such as Cycle Path Part 1) and the works to construct or provide Cycle Path Part 2 have begun (should any such works be required) within 10 years from the date of this Agreement, and it is verified that Cycle Path Part 2 will form part of the St Bees – Mirehouse Road Cycle Path the Owners and Developer covenant they shall pay the Cycle Path Contribution to the Council within 30 days of such works beginning or on the date that is 5 years from the date of this Agreement (whichever is the later).

Cycle Path Part 1

8.2. If planning permission has been obtained for the whole of the St Bees – Mirehouse Road Cycle Path (excluding existing paths such as Cycle Path Part 1) and the works to construct or provide Cycle Path Part 2 have begun (should such works be required) within 10 years from the date of this Agreement, the Second Owner, Eighth Owner and Developer covenant with the Council as follows:

8.2.1. Following the completion of any works by the Owners or Developer (as the case may be) to complete the access to the Rail Loading Facility from Mirehouse Road, the Council may give the relevant Owners and Developer no less than 3 months' prior written notice as follows:

8.2.1.1. notifying whether the whole or part of the Cycle Path Part 1 land shown indicatively on Plan 2 is required to form part of the St Bees – Mirehouse Road Cycle Path such notification to include the provision of a plan of the relevant land required;

8.2.1.2. requiring the whole or part of the Cycle Path Part 1 land shown indicatively on Plan 2 to be open to the public on bicycles and foot providing such access is required to integrate with the overall right of access for cyclists pursuant to the St Bees – Mirehouse Road Cycle Path.

8.2.2. Within 1 month of the issue of a notice under the preceding paragraph, the relevant Owners and Developer shall submit to and agree in writing with the Council appropriate wayfinding signage to be erected on the Cycle Path Part 1 (including subsequent further submissions if a previous one is not agreed by the Council).

8.2.3. Subject always to the provisions of paragraph 8.5 below, from the expiry of any 3 month or longer period specified in the notice under paragraph 8.2.1, the relevant Owners and Developer shall open and keep open Cycle Path Part 1 (or such part thereof) to

the public in accordance with the Council notice under that paragraph as follows:

- 8.2.3.1. members of the public shall be entitled to pass and re-pass without any charge along Cycle Path Part 1 (or such relevant part thereof) on foot and bicycle subject to and in accordance with any agreed Path Rules;
- 8.2.3.2. the relevant Owners and Developer shall not obstruct or block Cycle Path Part 1 (or such relevant part thereof) except with the Council's prior written agreement or in accordance with any agreed Path Rules;
- 8.2.3.3. the relevant Owners and Developer shall maintain Cycle Path Part 1 (or such relevant part thereof) in good repair at their own cost;
- 8.2.3.4. the relevant Owners and Developer shall use reasonable endeavours to maintain as part of their overall scheme of insurance in relation to the carrying out and/or use of the Development an insurance policy against any liability, loss or damage to property or personal injury or death of any person caused in carrying out any works to or maintenance of the Cycle Path Part 1 or arising out of its use by the public with (i) employer's insurance with an indemnity cover of £5 million and (ii) public liability insurance with indemnity cover of £5 million in respect of all claims arising out of any one occurrence; and
- 8.2.3.5. the relevant Owners and Developer hereby permit the Council and/or its agents and employees (at no charge or cost to the Council or its agents) to enter upon the Cycle Path Part

1 with and without vehicles, machinery and equipment to inspect the Cycle Path Part 1 providing always that reasonable notice in writing is first of all served on the Developer and the affected Owners duly bringing to those parties' attention the rights of access which the Council intends to exercise, when and by what means such rights are to be exercised and for what reasons such action is being taken; and

8.2.3.6. the relevant Owners and Developer shall erect and retain the signage agreed with the Council under the above provisions unless variations are agreed in writing with the Council.

8.3. The relevant Owners or Developer (as the case may be) may submit proposed Path Rules to the Council for written agreement and may submit variations to the Council for written agreement from time to time (such rules to be determined by an expert under clause 15 in the event of a dispute).

8.4. Within 10 working days of any written request to do so, the relevant Owners and Developers shall supply the Council in writing with any reasonable information and documentation requested by the Council in relation to the obligations in this paragraph 8.

8.5. Subject always to paragraph 8.6 hereof it is hereby agreed as follows:

8.5.1. The relevant Owners and / or Developer (as the case may be) shall not be required by the terms hereof to carry out any works for upgrading or improving any existing path (other than maintenance and repairs), nor shall they be required pursuant to the terms hereof to lay out or construct any new such path.

8.5.2. No term hereof shall be taken to suggest that any path or route is to be dedicated as a highway and it shall not be implied by any terms hereof that the relevant Owners and / or Developer intends

to dedicate or create any part of the Cycle Path Part 1 as a public right of way.

8.5.3. The relevant Owners reserve the right to temporarily alter, temporarily divert or temporarily close the Cycle Path Part 1 or any adjoining part of the Site or any part or parts thereof for any bona fide health and safety public disorder and/or antisocial behaviour reasons or upon the direction of emergency services and such action may be taken without prior recourse to the Council (but shall give the Council written notice of any such diversion or closure or substantial alteration on the next working day and shall re-open it as soon as practicable).

8.6. If planning permission has been obtained for the whole of the St Bees – Mirehouse Road Cycle Path (excluding existing paths such as Cycle Path Part 1) and the works to construct or provide Cycle Path Part 2 have begun (should any such works be required) within 10 years from the date of this Agreement, the relevant Owners and the Developer covenant to cooperate as far as reasonably practicable with any reasonable request by the Council to carry out works (and to facilitate such works) to tie in and integrate such part or parts of Cycle Way 1 with such part or parts of Cycle Way 2 and/or with such part or parts of the St Bees – Mirehouse Road Cycle Path for which planning permission has been granted, subject to adequate assurances being afforded to the relevant Owners and the Developer in relation to the following:

8.6.1. The timescales in relation to such works;

8.6.2. The basis on which the Council shall indemnify the relevant Owners and the Developer against any damages or losses suffered as a result of those works; and

8.6.3. the appropriate safeguards risk assessments and methodologies to be adhered to and/or performed pursuant to any appropriate legislative requirements and/or up to date government guidance and industry approved standards in relation to such works.

9. Restoration Securities

The Owners the Developer and the Fifth Owner (albeit in the case of the Fifth Owner for the purposes of paragraphs 9.40.2, 9.41 and 9.47 only in respect of the Council accessing the Site) covenant as follows:

9.1. The Restoration Securities required by this Deed are as follows:

- 9.1.1. A Restoration Security is required from the Developer prior to the start of the Preliminary Period;
- 9.1.2. Annual Index Payments to the Council are required for holding in one or more Escrow Accounts or the Owners or Developer (as the case may be) shall otherwise cause the value of the Restoration Securities to increase by an equivalent amount;
- 9.1.3. The total amount of the Restoration Securities (collectively) will be reviewed and decreased or increased prior to the start of each Period in relation to the Development (a "**Period Review**");
- 9.1.4. The total amount of the Restoration Securities (collectively) will additionally be reviewed every 5 years (a "**5 Year Review**") and remain unchanged or be increased or decreased as a result of the review save that a 5 Year Review shall not be required to be held in the event that it falls due within 12 months of a Period Review or an Extraordinary Review;
- 9.1.5. Extraordinary Reviews if the Independent Surveyor determines one is required following a written request by the Owners or Developer (as the case may be) or the Council (but a request for one cannot be made more than once in any 12 month period or within the 12 month period of a prior Review);
- 9.1.6. Any Restoration Security required under this Deed shall always be sought from the Developer in the first instance and only in the event that the Developer cannot or does not in accordance with this Deed provide a Restoration Security shall the Council be entitled to seek a Restoration Security from the Owners (but

without prejudice to the Council's ability to choose to enforce this Deed against the Developer);

- 9.1.7. Any Annual Index Payment required under this Deed shall always be sought from the Developer in the first instance and only in the event that the Developer cannot or does not in accordance with this Deed pay the Annual Index Payment shall the Council be entitled to seek the Annual Index Payment from the Owners (but without prejudice to the Council's ability to choose to enforce this Deed against the Developer).

Independent Surveyor

- 9.2. The Owners or Developer (as the case may be) and the Council shall jointly appoint and retain at all times during the Preliminary Works and Development up until the end of the Aftercare Period an appropriately experienced Independent Surveyor at the expense of the Owners or Developer (including the appointment of a replacement if the previous Independent Surveyor's appointment terminates for whatever reason) to perform the role set out in this paragraph 9 of Schedule 1 and in the absence of agreement on the appointment of such surveyor the appointment will be referred to the President of the Royal Institution of Chartered Surveyors who shall nominate the person to be appointed and whose decision shall be final and binding.
- 9.3. The terms of appointment of the Independent Surveyor pursuant to paragraph 9.2 above (save as where otherwise agreed in writing between the Owners or Developer as the case may be and the Council) shall be subject to the following express requirements:
- 9.3.1. the Independent Surveyor shall owe a duty of care to the Owners or Developer (as the case may be) and Council;
- 9.3.2. the Independent Surveyor shall have and retain professional indemnity insurance of no less than 200% of the cost of the Restoration Security for any one claim;

9.3.3. the Independent Surveyor shall provide a determination of the amount of the Restoration Security in accordance with the provisions set out in this Deed and the following time periods:

9.3.3.1. within 25 working days of receiving the Owners' or Developer's (as the case may be) undertaking pursuant to paragraph 9.4 below having been jointly appointed by the Owners or Developer (as the case may be) and the Council pursuant to paragraph 9.2; and

9.3.3.2. within 25 working days of having received written notification from the Owners or the Developer (as the case may be) or the Council that a Period Review of the amount of the Restoration Securities is required in accordance with the relevant provisions of paragraph 9;

9.3.3.3. no later than each 5 Year Review Date; and

9.3.3.4. within 25 working days of the Independent Surveyor having determined that an Extraordinary Review is required in accordance with the relevant provisions of paragraph 9 having received a request for the determination by the Owners or Developer (as the case may be) or the Council

Provided that such dates shall be extended as reasonably necessary and appropriate to the extent that any information or documentation requested by the Independent Surveyor has not been provided by the parties in accordance with this Deed or if the Independent Surveyor does not have an extant undertaking for his or her fees and expenses or any invoices of the Independent Surveyor are overdue and unpaid;

9.3.4. for the avoidance of doubt, the Owners and/or Developer (as the case may be) shall not be absolved from liability for providing any Restoration Security in accordance with this Deed if the Independent Surveyor does not meet the dates mentioned in the

preceding sub-paragraph, but provided that the Independent Surveyor has received the information required by this Deed his or her appointment may be reviewed and terminated and a replacement Independent Surveyor appointed with the written agreement between the Owners and/or Developer (as the case may be) and the Council; and

9.3.5. in reaching a determination on the amount of the Restoration Security the Independent Surveyor shall properly take into account any written and/or oral representations made by the Owners or Developer (as the case may be) and the Council providing that the Independent Surveyor shall share such representations with the Owners or Developer (as the case may be) and the Council (as relevant).

9.4. Within 10 working days of the receipt of written request from the Independent Surveyor, which request shall be issued as soon as reasonably practicable, the Owners or Developer (as the case may be) shall enter into provide or otherwise agree with the Independent Surveyor legally binding terms to pay the Independent Surveyor's reasonably and properly incurred fees and expenses referred to in paragraph 9.2.

Information to be Submitted to Independent Surveyor

9.5. Prior to the assessment of the Restoration Security for the Preliminary Period and each Review, the Owners or Developer (as the case may be) shall supply the following information and documents to the Independent Surveyor for the purposes of the Independent Surveyor performing his or her functions under this Deed (and send a copy to the Council):

9.5.1. The current detailed restoration and aftercare methodology for the Site as evidenced through the terms of which the Default Reinstatement Conditions are (or are to be) discharged by the Council;

9.5.2. The current bills of quantity and costs for the restoration and aftercare of the Site;

- 9.5.3. Information on the detailed conditions on the Site;
 - 9.5.4. Any other supporting plans and information required to understand the bills of quantity and costs and the Owners' or Developer's (as the case may be) calculation of the proposed Restoration Security amount; and
 - 9.5.5. The Owners' or Developer's (as the case may be) proposed amount of the Restoration Security for verification and determination by the Independent Surveyor along with a detailed breakdown of how the amount has been calculated.
- 9.6. The Council shall have 15 working days from receiving a copy of the information and documentation submitted by the Owners or Developer under the preceding paragraph to submit any written information, documentation or representations to the Independent Surveyor (and at the same time send a copy to the Owners or Developer as the case may be) provided that for the avoidance of doubt the Independent Surveyor may proceed to make his or her determination in the event that nothing is received from the Council.
- 9.7. The Council, Owners and Developer (as the case may be) shall provide any additional information and documentation in their possession within 5 working days of a written request from the Independent Surveyor for the purposes of the Independent Surveyor performing his or her functions under this Deed and at the same time send a copy to the other party.

General Provisions relating to each Restoration Securities

- 9.8. Each Restoration Security (save where it entails the deposit of monies) will be provided by or administered by an Investment Grade Rating Body in accordance with the Principles of Staged Draw Down with the effect that upon the occurrence of a Default Event, the Council may call on and/or withdraw the Restoration Security subject to paragraph 9.37 below.
- 9.9. The Restoration Security or Securities shall cover the longest possible period available to the Owners or Developer (as the case may be) and if

obtainable in accordance with the terms and obligations of this Deed and in an acceptable form to the Council:

- 9.9.1. a single Restoration Security shall cover the entire remaining time of the Development at any given time up until the end of the Aftercare Period;
 - 9.9.2. if that is not obtainable, a number of Restoration Securities shall cover the entire remaining time of the Development at any given time up until the end of the Aftercare Period; and
 - 9.9.3. where a Restoration Security or Securities covering the entire remaining time of the Development are obtained it shall be permissible for such Restoration Security or Securities to fluctuate according to the terms and obligations in this Deed including the determinations of the Independent Surveyor provided that Restoration Security or Securities provide for increases and decreases in the security amount in accordance with this Deed.
- 9.10. If any Restoration Security is time limited, the Owners or Developer (as the case may be) must:
- 9.10.1. apply to obtain a replacement Restoration Security for the full amount from an Investment Grade Rating Body no less than 1 year in advance of the expiry of the existing Restoration Security and send a copy of the application to the Council (or if a deposit of monies into an Escrow Account is proposed, the Owners or Developer (as the case may be) must inform the Council in writing of this and provide written evidence to the Council's reasonable satisfaction that the monies proposed are available and will be so deposited);
 - 9.10.2. make further application/s to other Investment Grade Rating Bodies if any application is refused and send a copy to the Council;

- 9.10.3. keep the Council fully informed and updated on the progress of the application or applications (as relevant) including in particular to inform the Council in writing on the progress made in arranging the replacement Restoration Security at least 6 months prior to the expiring of the existing one;
- 9.10.4. the executed replacement Restoration Security must be provided to the Council in the form agreed in accordance with this Deed (including paragraphs 9.8 and 9.9) no later than 3 months prior to the expiry of the existing Restoration Security;
- 9.10.5. in the event that a replacement Restoration Security is provided in the form agreed to the Council pursuant to the terms of this paragraph 9.10.5 in accordance with this Deed (including paragraphs 9.8 and 9.9) in advance of the expiry of the existing Restoration Security, the Council will agree in writing to the release of that existing Restoration Security within 5 working days of receiving that executed replacement Restoration Security; and
- 9.10.6. in the event that the executed replacement Restoration Security is not provided 3 months before the existing Restoration Security expires in accordance with the provisions above, that shall constitute a Default Event and the Owners or Developer (as the case may be) shall be deemed to be in breach of this Deed save that such breach shall be capable of rectification in the event that within 20 working days the executed Restoration Security has been provided to the Council (or the required amount of monies placed on deposit) during which period the Council shall refrain from calling on and/or withdrawing the funds secured by the Restoration Security.
- 9.11. Within 10 working days of a written request from the Council, the Owners or Developer (as the case may be) shall provide written evidence of the matters referred to in the paragraphs 9.9 and 9.10 including the securities available in the market to the Owners or Developer (as the case may be) and the terms and conditions of those securities.

- 9.12. If requested in writing by the Council due to any unforeseen events (but such request shall not be made more than once in any 12 month period), the Owners or Developer (as the case may be) shall provide a progress report and relevant associated documentation requested updating the Council on any changes to the costs and liabilities in respect of the Default Reinstatement Works.
- 9.13. A time limited Restoration Security shall not expire if before its expiry date the Council has lodged a claim against or requested in writing money from the Restoration Security which remains outstanding until such time as the claim or request is finally resolved and disposed of.

First Restoration Security

- 9.14. Not to start the Preliminary Works until:
- 9.14.1. the Independent Surveyor has been appointed;
 - 9.14.2. the Independent Surveyor has assessed and determined the amount of the Restoration Security in accordance with paragraph 9.15 below and notified the Owners or Developer (as the case may be) and the Council in writing accordingly;
 - 9.14.3. a draft form of the Restoration Security (where it does not comprise a Bond substantially in the form set out in Schedule 4) covering the period set out in paragraph 9.15 below has been submitted to and approved in writing by the Council acting reasonably; and
 - 9.14.4. the Restoration Security for the amount determined by the Independent Surveyor has been put in place, executed and delivered to the Council in accordance with the Council's approval.
- 9.15. The Restoration Security provided pursuant to paragraph 9.14.4 will secure a sum equal to an assessment on the basis of the costs of the Default Reinstatement Works during the Preliminary Period such sum to be assessed by the Independent Surveyor and include an Appropriate

Contingency subject to the subsequent Annual Index Payments and Reviews below (but for the avoidance of doubt the Restoration Security shall otherwise continue to cover and remain in effect up until the completion of the Aftercare Period).

- 9.16. If within 15 working days of the date of the Independent Surveyor's notice to the parties of the amount of the Restoration Security under paragraph 9.14.2 the Owners or Developer (as the case may be) or Council give the other party and the Independent Surveyor written notice requesting the Independent Surveyor to review that amount then:
- 9.16.1. the Independent Surveyor shall review and determine again the sum of money to be secured and notify the Owners or Developer (as the case may be) and the Council in writing accordingly;
 - 9.16.2. on such a review, the Independent Surveyor may decide in writing to provide the parties with an opportunity to submit representations and counter representations within such periods as are to be determined by the Independent Surveyor; and
 - 9.16.3. the figure determined by the Independent Surveyor on the review will be substituted for the figure in paragraph 9.14.2 and such decision shall be final and binding (except in the case of a manifest error).

Annual Index Payment

- 9.17. On the anniversary of the beginning of each Period and on each subsequent anniversary until the end of the said Period, the Owners or Developer shall pay to the Council the Annual Index Payment for the Council to hold in an Escrow Account as Restoration Security or shall otherwise cause the value of the Restoration Security to be increased by an amount equating to the Annual Index Payment and they shall at the same time notify the Council in writing as to the amount of the Annual Index Payment
- 9.18. If the Council does not agree the amount of the Annual Index Payment the Council shall provide a written reasoned justification for such disagreement

and what figure in the Council's view should be represented by the Annual Index Payment

- 9.19. If pursuant to paragraph 9.18 hereof the Council notifies the Owners and Developer that a different Annual Index Payment should apply to that which has been paid or procured by the Owners or the Developer's pursuant to paragraph 9.17 hereof, the Owners or the Developer shall within 10 working days thereafter either
- 9.19.1. pay to the Council any additional amount needed for the total annual payment to equate to the Annual Index Payment that is the subject of the Council's notice pursuant to paragraph 9.18 hereof for the Council to hold in an Escrow Account as Restoration Security or shall otherwise cause the value of the Restoration Security to be increased by such an amount, or
- 9.19.2. refer the matter for expert determination pursuant to the provisions of clause 15 of this Deed

Reviews of Restoration Securities

- 9.20. The amount of Restoration Securities (collectively) for the Default Reinstatement Works will be reviewed and determined following the Commencement of Development by the Independent Surveyor as provided for in paragraphs 9.21 to 9.36:
- 9.20.1. A Period Review will be carried out prior to the start of each Period;
- 9.20.2. Additionally, a 5 Year Review will be carried out every 5 years save where the 5 Year Review coincides within 12 months of any other Review (including an Extraordinary Review); and
- 9.20.3. If the Independent Surveyor determines that an Extraordinary Review is required in accordance with the relevant provisions in paragraph 9 following a written request from the Owners or Developer (as the case may be) or the Council (but a request for

one cannot be made more than once in any 12 month period or within 12 months of a prior Review).

Period Reviews of Restoration Securities

9.21. Not to Commence Construction until:

- 9.21.1. the Independent Surveyor has assessed and determined the amount of the Restoration Security in accordance with paragraph 9.23 below for the Construction Period and notified the Owners or Developer (as the case may be) and the Council in writing accordingly;
- 9.21.2. a draft form of the Restoration Security (where it does not comprise a Bond substantially in the form set out in Schedule 4) covering the period set out in paragraph 9.23 below has been submitted to and approved in writing by the Council acting reasonably; and
- 9.21.3. the Restoration Security for the amount determined by the Independent Surveyor has been put in place, executed and delivered to the Council in accordance with the Council's approval.

9.22. Not to begin Production until:

- 9.22.1. the Independent Surveyor has assessed and determined the amount of the Restoration Security in accordance with paragraph 9.23 below for the Production Period and notified the Owners or Developer (as the case may be) and the Council in writing accordingly;
- 9.22.2. a draft form of the Restoration Security (where it does not comprise a Bond substantially in the form set out in Schedule 4) covering the period set out in paragraph 9.23 below has been submitted to and approved in writing by the Council acting reasonably; and

- 9.22.3. the Restoration Security for the amount determined by the Independent Surveyor has been put in place, executed and delivered to the Council in accordance with the Council's approval.
- 9.23. Prior to the start of each Period, the Independent Surveyor will carry out a Period Review to assess and determine the amount required to be secured under the Restoration Securities (collectively) in accordance with this Deed on the basis of the assessed cost of the Default Reinstatement Works and including an Appropriate Contingency for the relevant Period subject to subsequent Annual Index Payments and Reviews and subject also to such prior ongoing Restoration Securities that are surplus to the assessment of the reasonable costs associated with the Default Reinstatement Works to which they relate provided they are of sufficient duration for the Owners or Developer (as the case may be) to comply with paragraphs 9.9 and 9.10 (but for the avoidance of doubt the Restoration Securities shall otherwise continue to cover and remain in effect up until the completion of the Aftercare Period).
- 9.24. Following each Period Review, the Independent Surveyor shall notify the Owners or Developer (as the case may be) and the Council in writing accordingly of the total cumulative amount of the Restoration Securities required and the amount of increase or decrease.

5 Year Reviews of Restoration Security

- 9.25. Prior to each 5 Year Review Date the Independent Surveyor will carry out a 5 Year Review to assess and determine in writing the amount required to be secured under the Restoration Securities (collectively) in accordance with this Deed on the basis of the assessed cost of the Default Reinstatement Works and including an Appropriate Contingency for the relevant Period subject to subsequent Annual Index Payments and Reviews (but for the avoidance of doubt the Restoration Securities shall otherwise continue to cover and remain in effect up until the completion of the Aftercare Period).
- 9.26. Following each 5 Year Review, the Independent Surveyor shall notify the Owners or Developer (as the case may be) and the Council in writing

accordingly of the total cumulative amount of the Restoration Securities required and the amount of any increase or decrease.

Extraordinary Reviews

- 9.27. If either the Owners or Developer (as the case may be) or Council believe that an extraordinary circumstance has arisen or occurred they may request in writing that the Independent Surveyor determine whether such a circumstance has arisen or occurred justifying the carrying out of an Extraordinary Review (and they must at the same time send copy to the other party) but a request for one cannot be made more than once in any 12 month period or within a 12 month period of a prior Review.
- 9.28. The Independent Surveyor shall take into account the representations received from the parties within 10 working days of the request and notify in writing the Owners or Developer (as the case may be) and the Council of his or her decision (which shall be final and binding except in the case of a manifest error).
- 9.29. If the Independent Surveyor determines that an extraordinary circumstance has arisen or occurred, the Independent Surveyor shall carry out a Review of the Restoration Securities in accordance with this Deed as soon as reasonably practicable.
- 9.30. On an Extraordinary Review the Independent Surveyor will assess and determine in writing the amount required to be secured under the Restoration Securities (collectively) in accordance with this Deed on the basis of the assessed cost of the Default Reinstatement Works and including an Appropriate Contingency for the relevant Period subject to subsequent Annual Index Payments and Reviews (but for the avoidance of doubt the Restoration Securities shall otherwise continue to cover and remain in effect up until the completion of the Aftercare Period).
- 9.31. Following each Extraordinary Review, the Independent Surveyor shall notify the Owners or Developer (as the case may be) and the Council in writing accordingly of the total cumulative amount of the Restoration Securities required and the amount of any increase or decrease.

General Provisions relating to Reviews

- 9.32. If within 15 working days of the date of the Independent Surveyor's notice under paragraph 9.21.1, 9.22.1, 9.24, 9.26 or 9.31 the Owners or Developer (as the case may be) or the Council give the other party and the Independent Surveyor written notice requesting the Independent Surveyor to Review the amount again, then:
- 9.32.1. the Independent Surveyor shall Review and determine again in accordance with this Deed the adjustment (if any) in the total sum of money to be secured by the Restoration Securities (collectively) and notify the Owners or Developer (as the case may be) and the Council in writing accordingly;
 - 9.32.2. on such a Review the Independent Surveyor may decide in writing to provide the parties with an opportunity to submit representations and counter representations within such periods as are to be determined by the Independent Surveyor; and
 - 9.32.3. the figure determined by the Independent Surveyor will be substituted for the figure in paragraph 9.21.1, 9.22.1, 9.24, 9.26 or 9.31 (as the case may be) and such decision shall be final and binding (except in the case of a manifest error).
- 9.33. The total cumulative amount of the Restoration Securities shall remain unchanged or be adjusted according to the determinations of the Independent Surveyor on the Reviews in accordance with this Deed.
- 9.34. If following a Review the Independent Surveyor notifies the Owners or Developer (as the case may be) in writing that the total amount required to be secured under the Restoration Securities (collectively) has increased:
- 9.34.1. if variable Restoration Securities exist that are sufficient to cover the increase, those Restoration Securities shall automatically increase if capable of doing so to the amount determined by the Independent Surveyor; or

- 9.34.2. alternatively the Owners or Developer (as the case may be) shall provide to the Council an increase to the Restoration Securities or an additional Restoration Security for that additional amount within 40 working days of the date of the Independent Surveyor's notice (having first agreed a draft form of the Restoration Security with the Council in accordance with this Deed).
- 9.35. Subject to paragraph 9.20, if following any Review the Independent Surveyor decides that the total amount required to be secured under the Restoration Securities (collectively) is to decrease:
- 9.35.1. any security provided by a bond, surety or similar instrument shall reduce first; and
- 9.35.2. if all such instruments have reduced to zero and further reduction is required in accordance with the Independent Surveyor's decision, the Council shall return a commensurate amount of money held in any Escrow Accounts (including any interest actually accrued) to the Owners or Developer (as the case may be) who paid such money; and
- 9.35.3. the Owners or Developer (as the case may be) and Council shall accordingly arrange for such decreases and/or return of monies held on deposit without undue delay.
- 9.36. For the avoidance of doubt any reasonably and properly incurred fees and expenses associated with the assessments, determinations and Reviews of the Restoration Securities by the Independent Surveyor under this paragraph 9 whether instigated by the Owners, Developer or Council will be paid by the Owners or Developer (as the case may be).

Reinstatement Requirements and Default Events

- 9.37. On a Default Event occurring the Council will be entitled to call on and/or withdraw from the Restoration Securities (as the case may be) and carry out the Default Reinstatement Works thereby secured save that before doing so the Council must give the Owners or Developer (as the case may be) notice

in writing providing a reasonable opportunity for the Owners or Developer (as the case may be) to carry out the Default Reinstatement Works (or other actions specified in writing by the Council) at their own cost in accordance with a programme to be agreed in writing with the Council, the Planning Permission, its conditions including the Default Reinstatement Conditions and this Deed within 60 working days of the Council's notice (except that the 60 working day notice period shall not apply in relation to a Default Event under paragraph 9.10.6).

9.38. If within the notice period referred to in the preceding paragraph the Owners or Developer (as the case may be) rectify the Default Event to which the relevant notice relates, the Council shall refrain from calling on and/or withdrawing the funds secured by the Restoration Security.

9.39. If the Owners or Developer (as the case may be) do not properly or completely carry out the Default Reinstatement Works (or other actions specified in writing by the Council) having elected to do so in accordance with the agreed programme, the Planning Permission, its conditions including the Default Reinstatement Conditions and this Deed, a Default Event shall be deemed to have occurred and the Council may call on and/or withdraw from the Restoration Securities (as the case may be) and undertake the Default Reinstatement Works (or such other actions the Council considers necessary to remedy the breach) itself or through its nominee or agent/s (having first given the Owners or Developer as the case may be as applicable not less than 10 working days written notice that it intends to do so and having complied with paragraph 9.37).

9.40. In the event that the Council calls on and/or withdraws from the Restoration Securities in accordance with either paragraph 9.37 or 9.39 due to a Default Event:

9.40.1. the Owners and Developer shall be construed and treated as in breach of the obligations in this Deed; and

9.40.2. the Council and/or its agents and employees are hereby permitted by the Owners the Fifth Owner and/or Developer for themselves and all persons deriving title under them (at no charge or cost to the Council or its nominee or agents) to enter

on and/or into all and any part or parts of the Site with and without vehicles, machinery and equipment and to carry out the Default Reinstatement Works (having given no less than 10 working days written notice to the Owners the Fifth Owner and/or Developer before entering onto the land) causing as little damage as possible and making good and reinstating all damage as soon as reasonably practicable PROVIDED THAT in the case of the parts of the Site owned by the Fifth Owner the right to enter in and/or into the Site applies only to the part of the access track on that land which is on the date of this Agreement metalled.

- 9.41. None of the Owners, the Fifth Owner the Developer and/or any persons deriving title under them shall prevent or obstruct the Council (and/or its nominee and/or its agents and employees) from entering on and/or into all and any parts of the Site in respect of which a right of access is granted pursuant to paragraph 9.40.2 and carrying out such works as are reasonably necessary there in relation to or for the purpose of carrying out the Default Reinstatement Works in accordance with this Deed (or such other actions the Council considers necessary to remedy the breach) if any Default Event has occurred.
- 9.42. Upon the Council or its nominee or agents commencing the Default Reinstatement Works in accordance with this Deed, the Owners and Developer shall not carry out any further Development unless otherwise first agreed in writing with the Council.

Owners' Reliance on Developer's Restoration Security

- 9.43. Where the Restoration Securities secure only the Developer's performance of the obligations in this Deed (and not that of the Owners) and a Default Event occurs, the Owners shall be entitled to request in writing of the Council as follows:
- 9.43.1. requesting the Council to agree (in its absolute discretion and not subject to expert determination) that the Council call upon and/or withdraw the Restoration Securities;

9.43.2. if money is received by the Council, place that money in an Escrow Account for the benefit of the relevant Owners (but which can only be withdrawn by the Council) to enable those Owners to carry out and complete the Default Reinstatement Works (or such other actions specified in writing by the Council); and

9.43.3. the Owners request under this paragraph:

9.43.3.1. must be for the Owners acting collectively and all together or under such other arrangements agreed in writing by the Council in its absolute discretion to carry out the Default Reinstatement Works which if satisfied will achieve the comprehensive restoration and aftercare of the whole of the above ground parts of the Site; and

9.43.3.2. must include a programme for the Default Reinstatement Works or such other actions specified in writing by the Council and a commitment to carrying out such works or actions in full accordance with this Deed, the Planning Permission and its conditions.

9.44. If the Council agrees in writing to the Owners' request and receives the money from the Restoration Securities, the relevant Owners shall carry out the Default Reinstatement Works (or such other actions specified in writing by the Council) in accordance with the programme agreed by the Council as part of its agreement under this paragraph and in full accordance with this Deed, the Planning Permission and its conditions unless otherwise agreed in writing by the Council.

9.45. If the Owners then carry out and complete the restoration works for the Site (or such other actions specified in writing by the Council) in full accordance with this Deed, the Planning Permission, its conditions including the Default Reinstatement Conditions and the agreed programme to the Council's reasonable satisfaction, the Council will within 20 working days of receiving all receipts, a detailed breakdown of costs and detailed evidence of the costs

incurred by the Owners reimburse the relevant Owners for the costs they incurred in carrying out and completing the restoration works approved as part of the Default Reinstatement Works (or such other actions specified in writing by the Council) (provided that the Council shall not be obliged to reimburse the Owners for more than the Restoration Security monies held in the Escrow Account including any interest actually accrued).

- 9.46. If the Owners then carry out and complete the aftercare of the Site on an annual basis in accordance with the Default Reinstatement Conditions to the Council's reasonable satisfaction, the Council will annually at the end of each calendar year within 20 working days of receiving receipts, a detailed breakdown of costs and detailed evidence of the costs incurred by the Owners reimburse the relevant Owners for the costs they incurred in carrying out the aftercare works for the previous year as part of the Default Reinstatement Works (provided that the Council shall not be obliged to reimburse the Owners for more than the remaining Restoration Security monies held in the Escrow Account including any interest actually accrued).
- 9.47. If the Owners fail to carry out the Default Reinstatement Works (or such other actions specified in writing by the Council) in full accordance with this Deed, the Planning Permission, its conditions including the Default Reinstatement Conditions and the agreed programme, the Council shall not be obliged to reimburse the Owners, the relevant Owners shall be deemed to be in breach of this Deed and a Default Event shall be deemed to have occurred, which the Council may remedy by withdrawing the money from the Escrow Account and carrying out the Default Reinstatement Works itself (or such other actions the Council considers necessary to remedy the breach) (having first given the relevant Owners no less than 10 working days' written notice of the same and having complied with paragraph 9.37) and sub-paragraph 9.40.2 shall apply with similar effect with respect to the Owners, the Developer, the Firth Owner and any persons deriving title under them.
- 9.48. If within the notice period referred to in the preceding paragraph the relevant Owners rectify the Default Event to which the relevant notice relates, the Council shall refrain from withdrawing the funds in the Escrow Account.

Commencement of Restoration Provisions

- 9.49. Paragraphs 9.2 – 9.19 and 9.27 – 9.48 above to the extent that they relate to the Preliminary Works shall take effect on the date the Owners or Developer (as the case may be) give the Council notice under clause 11.1.1 or the appointment of the Independent Surveyor (whichever is the earlier).
- 9.50. Paragraphs 9.2 – 9.19 and 9.27 – 9.48 in relation to other Periods of the Development and the remaining Review provisions shall take effect from the Commencement of Development.

10. Drains

- 10.1. The Owners and Developer shall not Commence Construction until:
- 10.1.1. The Drain Surveys and the Drain Maintenance Schemes have been carried out and submitted to and approved in writing by the Council; and
 - 10.1.2. Any repairs and/or other works to the Drains (if any) identified in the approved Drain Surveys have been carried out to the Council's reasonable satisfaction and written notice of the completion of such repairs and a contractor's or engineer's certificate certifying such completion has been issued to the Council.
- 10.2. From the Commencement of Construction until the completion of the Restoration, the First Owner and Developer shall at all times maintain in a good condition and manage the Western Outfall Drain in accordance with the relevant approved Drain Maintenance Scheme unless otherwise agreed in writing with the Council.
- 10.3. From the Commencement of Construction until the completion of the Restoration, the Second Owner and Developer shall at all times maintain in a good condition and manage the Eastern Drain in accordance with the relevant approved Drain Maintenance Scheme unless otherwise agreed in writing with the Council.

11. Additional Main Band Colliery Land

The Second Owner and Developer covenant as follows:

- 11.1. Subject always to paragraph 11.7 the Additional Main Band Colliery Land shall be restored at the same time as the remainder of the main band colliery (located within the Site) in accordance with the Main Band Colliery Restoration Scheme.
- 11.2. Subject always to paragraph 11.7 the Second Owner, or Developer (as the case may be) shall apply for and use all reasonable endeavours to obtain the Council's certification that the Additional Main Band Colliery Land has been restored in accordance with the Main Band Colliery Restoration Scheme.
- 11.3. Subject always to paragraph 11.7 the aftercare works in respect of the Additional Main Band Colliery Land shall be undertaken in accordance with the Main Band Colliery Aftercare Scheme for a period of five years from the date that the Council certifies in writing that the works of restoration for the Additional Main Band Colliery Land are complete.
- 11.4. Subject always to paragraph 11.7 on the first anniversary of the Council's certification of completion of the restoration of the Additional Main Band Colliery Land and at annual intervals afterwards for the five year period an inspection of the restored Additional Main Band Colliery Land involving representatives of the Second Owner and Developer and the Council shall be undertaken at the same time as for the remainder of the main band colliery (located within the Site).
- 11.5. Subject always to paragraph 11.7 within one month of each inspection, a schedule of aftercare works to be undertaken for the Additional Main Band Colliery Land in conjunction with any aftercare works for the remainder of the main band colliery (located within the Site) in the following year in accordance with the Main Band Colliery Aftercare Scheme and the requirements of the Council as a result of the inspection shall be submitted to and approved in writing by the Council.
- 11.6. Subject always to paragraph 11.7 each approved schedule of aftercare works for the Additional Main Band Colliery Land shall be carried out in conjunction with any aftercare works for the remainder of the main band

colliery (located within the Site) in the following year (or any other period approved in writing by the Council) in accordance with the Council's written approval.

11.7. Subject always to Paragraph 11.8 the Second Owner and Developer shall not be obliged to comply with any foregoing sub-paragraph of this paragraph 11 unless the following applies:

11.7.1. The Council pays to the Second Owner and/or Developer (as the case may be) the monies payable in full accordance with paragraph 3.2 of Schedule 3 hereof

11.7.2. Any relevant works are duly authorised in planning terms and benefit from all other forms of statutory consent authorisations and permitting

11.8. The Second Owner or the Developer shall use reasonable endeavours to obtain planning permission for any works required by sub paragraphs 11.1 to 11.6 as they affect the Additional Main Band Colliery Land.

12. GHG Review

The Owners and Developer covenant as follows:

12.1. Not to cause or permit the GHG Emissions to exceed the Net Zero Emissions Limit in respect of the Preliminary Works from the beginning of such works and in respect of the Construction Period, the Production Period and the Restoration Period of the Development from Commencement of ~~Development~~Construction through the employment of a combination of the following measures (and in the following order or priority):

12.1.1. Primary GHG Mitigation Measures in respect of Controlled GHG Emissions and Secondary GHG Mitigation Measures in respect of the Sphere of Influence GHG Emissions as the first priority ;
and

12.1.2. Acquisition of Carbon Offsets as a second priority.
SAVE THAT the Acquisition of Carbon Offsets shall only be used as a last resort to offset any GHG Emissions that are not capable

of being mitigated by Primary GHG Mitigation Measures and Secondary GHG Mitigation Measures which may be because:

12.1.2.1. the said mitigation measures are not technically possible; and/or

12.1.2.2. such measures are outside the control of the Owners and/or the Developer (as relevant) and the Owners and/or Developer (as relevant) have used their best endeavours to secure such Primary GHG Mitigation Measures and/or Secondary GHG Mitigation Measures (as the case may be) but have not succeeded in doing so

For the avoidance of doubt, the obligation in this paragraph 12.1 shall be enforceable pursuant to the range of provisions and/or powers in paragraphs 12.6, 12.10, 12.14 and 12.15 and without prejudice to the Council's statutory powers of enforcement and any other enforcement powers to the extent applicable and available to the Council in respect of the specific breach or breaches in question.

12.2. Save where agreed otherwise with the Council in writing no sooner than 12 months prior to any GHG Review Date and no later than 8 months prior to any GHG Review Date, the Owners or Developer (as the case may be) shall submit a Proposed GHG Report to the Council for the Council's approval.

12.3. The Council shall no later than 3 months after the Owners or Developer (as the case may be) serve on the Council a Proposed GHG Report for the purposes of paragraph 12.2 serve on the relevant Owners or Developer (as the case may be) either a GHG Approval or a GHG Rejection Notice.

12.4. The Council shall serve a GHG Rejection Notice pursuant to paragraph 12.3 above where:

12.4.1. the proposed GHG Mitigation is not considered to be achievable;

- 12.4.2. the proposed GHG Mitigation is not considered to be sufficient or acceptable; and/or
 - 12.4.3. the Owners or Developer (as the case may be) remain in breach of the Net Zero Emissions Limit and GHG Mitigation as identified by the Council following a preceding Emissions Monitoring Report or as the Council has otherwise become reasonably aware of such breach
- 12.5. In the event that the Council serves a GHG Rejection Notice pursuant to paragraph 12.3 above, the Owners or Developer (as the case may be) may submit a further Proposed GHG Report to the Council for their GHG Approval and the provisions of paragraphs 12.3 to 12.4 hereof shall apply mutatis mutandis to that further Proposed GHG Report.
- 12.6. Unless otherwise agreed in writing with the Council, the Owners or Developer (as the case may be) shall cease the Preliminary Works or the carrying out, use and operation of the Development (as applicable) and shall not recommence the Preliminary Works or the carrying out, use and operation of the Development (as applicable) beyond any GHG Review Date in respect of which a Proposed GHG Report has not been approved by the Council in the event of the following:
- 12.6.1. The Owners or Developer (as the case may be) do not comply with its obligation in paragraph 12.2 to serve on the Council a Proposed GHG Report; or
 - 12.6.2. Alternatively (if such Proposed GHG Report is duly served on the Council):
 - 12.6.2.1. the Council serves on the Owners or Developer (as the case may be) a GHG Rejection Notice;
and
 - ~~12.6.2.2. the said GHG Rejection Notice is served on the Owners or Developer no later than 3 calendar~~

~~months after the Proposed GHG Report was first served on the Council for the purposes of paragraph 12.2 or if any significant amendment is made to the Proposed GHG Report, then 3 calendar months after the last significant amendment; and~~

~~12.6.2.3.12.6.2.2.~~ the Council does not subsequently issue a GHG Approval (which it may do at its discretion at any point before or after the GHG Review Date) ~~+~~.

- 12.7. The Owners and Developer shall not start the Preliminary Works until full details as to the process to be undertaken to monitor the GHG Emissions and full details of the matters to be covered by the Emissions Monitoring Report have been submitted to and approved in writing by the Council in accordance with up to date legislation government policy national guidance and other nationally accepted standards as shall be in force and/or published from time to time.
- 12.8. From the start of the Preliminary Works the Owners and/or Developer as relevant shall monitor the GHG Emissions during the Preliminary Period, the Construction Period, the Production Period and the Restoration Period of the Development and shall provide the Council with an annual Emissions Monitoring Report no later than six weeks after the first anniversary of the start of the Preliminary Works and every anniversary thereafter until the expiry of the Restoration Period.
- 12.9. If within one month of receipt of an Emissions Monitoring Report the Council requests in writing further information and a further or updated Emissions Monitoring Report, the Owners or Developer (as the case may be) shall submit such further information or updated Emissions Monitoring Report (as relevant) as requested no later than six weeks after such request.
- 12.10. Where the Council become reasonably aware of a failure to secure and provide the GHG Mitigation which is the subject of the GHG Assessment or the latest Approved GHG Report (whichever is the later) or where an Emissions Monitoring Report identifies that the Net Zero Emissions Limit has been exceeded (or where the Council become reasonably aware that

the said limit has been exceeded through their own investigation) the Council shall be entitled within one calendar month of becoming so reasonably aware or receipt of the Emissions Monitoring Report (as the case may be) to serve a GHG Mitigation Failure Notice upon the Owners and/or the Developer requiring any or all of the following:

- 12.10.1. immediate remedial action to bring the GHG Emissions to the Net Zero Emissions Limit including any GHG Mitigation required by the Council in writing to the Owners or Developer (as the case may be);
 - 12.10.2. works and/or Production to cease on the Site until such time as the Owners and/or Developer has taken such steps as are necessary to bring the GHG Emissions back within the Net Zero Emissions Limit and any other remedial steps and/or actions in accordance with paragraph 12.15 including any GHG Mitigation required by the Council in writing to the Owners or Developer (as the case may be) ;
 - 12.10.3. the submission of an Extraordinary GHG Report to be submitted to the Council for their review and approval within three calendar months of receipt of the GHG Mitigation Failure Notice; and or
 - 12.10.4. a further or updated Emissions Monitoring Report to be submitted to the Council for their review and approval within six weeks of receipt of the GHG Mitigation Failure Notice
- 12.11. Where the Council requires immediate remedial action to be undertaken pursuant to paragraph 12.10.1 above, the GHG Mitigation Failure Notice shall specify what remedial action is to be undertaken and within what timescales. Thereafter the Owners and/or Developer shall undertake those specified remedial actions to the satisfaction of the Council within the specified timescales and if there is any breach on the part of the Owners and/or the Developer of the provisions of this paragraph 12.11 the Council shall be entitled to issue a further GHG Mitigation Failure Notice requiring works and/or Production to cease on the Site (unless the GHG Mitigation Failure Notice issued pursuant to paragraph 12.10 already required works

or Production to cease pursuant to paragraph 12.10.2) and thereafter the provisions of paragraph 12.15 shall apply.

- 12.12. Where the Council require an Extraordinary GHG Report to be submitted for their approval pursuant to paragraph 12.10.3 above then the Owners and/or Developer shall submit an Extraordinary GHG Report within three calendar months of receipt of the GHG Mitigation Failure Notice and thereafter the provisions of paragraphs 12.3 to 12.6 and 12.10 shall apply mutatis mutandis to that Extraordinary GHG Report and references to the Proposed GHG Report or Approved GHG Report (as the case may be) shall be to the Extraordinary GHG Report as proposed or approved (as the case may be).
- 12.13. Where the Council require a further or updated Emissions Monitoring Report to be submitted for their approval pursuant to paragraph 12.10.4 above, then the Owners and/or Developer (as relevant) shall submit a further or updated Emissions Monitoring Report to the Council within six weeks of receipt of the GHG Mitigation Failure Notice and thereafter the provisions of paragraphs 12.9 and 12.10 shall apply mutatis mutandis to that further or updated Emissions Monitoring Report and references to the Emissions Monitoring Report shall be to that further or updated Emissions Monitoring Report.
- 12.14. The Owners and/or Developer (as the case may be) shall cease the Preliminary Works or the carrying out, use and operation of the Development (as applicable) and shall not recommence the Preliminary Works or the carrying out, use and operation of the Development (as applicable_) where an Extraordinary GHG Report and/or a further or updated Emissions Monitoring Report as relevant has not been submitted in accordance with the obligations and timescales as referenced in paragraphs 12.12 and 12.13 and the Preliminary Works or carrying out, use and operation of the Development (as applicable) shall not recommence until such time as any further or updated Emissions Monitoring Report and/or Extraordinary GHG Report (as relevant) has been submitted to and approved in writing by the Council.
- 12.15. Where a GHG Mitigation Failure Notice requires works and/or Production to cease pursuant either to paragraph 12.10.2 or paragraph 12.11 the

Preliminary Works or the carrying out, use and operation of the Development (as applicable) is to cease within 3 months of the service on the relevant Owners or Developer (as the case may be) of the GHG Mitigation Failure Notice by the Council (or such longer period as is stipulated by the Council in the GHG Mitigation Failure Notice) and shall not recommence unless and until the Owners or Developer have remedied all failures to secure and provide approved GHG Mitigation and carried out all other remedial measures and/or actions as identified in the GHG Mitigation Failure Notice and notified the Council accordingly in writing and the Council has confirmed in writing that the the Preliminary Works or carrying out, use and operation of the Development (as applicable) may recommence.

12.16. For the avoidance of doubt the Council may (of its own motion or at the request of the Owners or Developer) at any point before or after the GHG Review Date grant a GHG Approval from which date the Owners or Developer (as the case may be) may continue and/or recommence the Preliminary Works or the carrying out operation and use of the Development (as applicable).

12.17. Within one month from receiving written notice from the Council, the Owners or Developer (as the case may be) shall provide such information as reasonably is requested by the Council in writing for the purposes of this paragraph 12, so that the Council can properly review and assess any documentation submitted to the Council and/or for the purposes of the Owners or Developer (as the case may be) demonstrating and satisfying the Council of the full compliance with their obligations and/or to enable the Council to effectively monitor and if necessary enforce the obligations.

13. Eight Owner's Mortgage – Restriction on Commencement

The Owners and Developer covenant as follows:

13.1. Not to Commence Construction unless Santander's Mortgage is released and discharged from titles CU269803 and CU229393 in relation to the Residential Land without their having to enforce their security, or Santander (or its successor in title) enters in to and delivers to the Council a deed pursuant to section 106 of the 1990 Act by which Santander (or its successor in title) acknowledges and accepts that its interest will be bound by and take

effect subject to the provisions (or provisions substantially similar to them having previously agreed a draft in writing with the Council) under clause 2.7 and Schedule 2 of this Deed

14. AMC's Mortgage – Restriction on Commencement

The Owners and Developer covenant as follows:

- 14.1. Not to Commence Construction on the whole or any part of the Site unless AMC's Mortgage is released and discharged from titles CU99323 and CU255418 in relation to the Site without their having to enforce their security, or AMC (or its successor in title) enters in to and delivers to the Council a deed pursuant to section 106 of the 1990 Act by which AMC (or its successor in title) acknowledges and accepts that its interest will be bound by and take effect subject to the provisions (or provisions substantially similar to them having previously agreed a draft in writing with the Council) of this Deed

15. Training and Employment Management Plan

The Owners and Developer covenant as follows:

- 15.1. Prior to Commencement of Development, the Owners and/or the Developer (as relevant) shall submit to the Council in writing for the Council's approval a Training and Employment Management Plan in respect of the Construction Period, the Production Period and the Restoration Period. The Owners and/or the Developer shall not Commence Development until the Council has approved in writing the Training and Employment Management Plan (such approval not to be unreasonably withheld or delayed).
- 15.2. Following the submission of the Training and Employment Management Plan by the Owners and/or the Developer, the Council shall consider and approve in writing the Training and Employment Management Plan (such approval not to be unreasonably withheld or delayed) making such amendments as it considers necessary.
- 15.3. From the Commencement of Development the Owners and/or the Developer (as relevant) shall use all reasonable endeavours to comply with the Approved Training and Employment Management Plan in respect of the Construction Period, the Production Period and the Restoration Period and

thereafter maintain and monitor the Approved Training and Employment Management Plan.

- 15.4. The Owners and/or the Developer (as relevant) and the Council, covenant to review and agree in writing on the form and content of the Approved Training and Employment Management Plan at five (5) yearly intervals from the Commencement of Development or such other date as the parties may agree in writing until the expiry of the Restoration Period to ensure that it continues to provide an appropriate framework for recruitment and training with regard to the progress of the Development, the local labour context and in the context of current commercial business practices.
- 15.5. From 6 months after the Commencement of Construction until the expiry of the Restoration Period, the Owners and/or the Developer (as relevant) will provide an annual report to the Council or such other timescales as the parties may agree in writing showing the achievements against each of the agreed targets.
- 15.6. The covenants and agreements on the part of the Owners and/or the Developer in this paragraph 15 are subject to compliance by the Owners and/or the Developer with their legal obligations including without limitation their obligations under applicable guidance, policies and procedures and similar requirements applying from time to time.
- 15.7. In the event of any inconsistency between the matters referred to in paragraph 15.6 and the other obligations in this paragraph 15 of Schedule 1, the matters referred to in paragraph 15.6 will prevail.

SCHEDULE 2

The Residential Owners' and Developer's Covenants in respect of Residential Land

1. The Residential Land Restriction

- 1.1. The Residential Owners being the freehold owners of the Residential Land and the Developer covenant that from the Commencement of Construction until Production at the Site ceases, not to allow the Residential Land to be occupied other than by persons solely or mainly employed on the Development.

SCHEDULE 3

The Council's Covenants

1. Restoration Securities

- 1.1. The Council covenants to approve or reject the form, content and type of any Restoration Security which is not a Bond or deposit for an Escrow Account within 15 working days of receipt of the details of the proposed Restoration Security and a draft of the Restoration Security from the Developer and to furnish the Developer with a detailed explanation in relation to any such decision in the event that it amounts to a rejection of the Restoration Security and/or draft Restoration Security.
- 1.2. The Council covenants to place and retain each Annual Index Payment (in the form of a deposit sum) and any other deposit of money received by the Council as Restoration Security in an interest bearing Escrow Account of its choice until withdrawn by the Council or returned with any interest actually accrued to the person(s) who paid such money

2. Obligations on the Council

- 2.1. At the completion of the Aftercare Period with all required aftercare carried out to the reasonable satisfaction of the Council, all remaining Restoration Securities shall be fully released and discharged and/or in respect of any Escrow Accounts held as Restoration Security the money held including any interest accrued shall be repaid to the person(s) who paid such money
- 2.2. To release return and/or refund as appropriate such Restoration Security and/or monies held on deposit in full accordance with the terms of paragraph 9 of Schedule 1

3. Additional Main Band Colliery Land

- 3.1. The Council shall continue to hold the money obtained by the Council for the restoration of the main band colliery pursuant to the 1988 S33 Agreement (including interest accrued) in a bank account until:

- 3.1.1. The money (or the relevant part of it) payable to the Second Owner or Developer (as the case may be) has been paid pursuant to paragraph 3.2; and / or
 - 3.1.2. The restoration and aftercare of the Additional Main Band Colliery Land has been completed in accordance with this Deed (with any remaining money payable to the Second Owner or Developer as the case may be having been paid).
- 3.2. Within 20 working days of receipt of an account of the amount of money spent by the Second Owner or Developer (as the case may be) in carrying out the restoration and/or aftercare of the Additional Main Band Colliery Land and copies of accompanying invoices and records of the expenditure, the Council shall reimburse the Second Owner or Developer (as the case may be) for such expenditure incurred up to a maximum amount of money (including interest) held by the Council at the time in the bank account holding the money obtained by the Council for the restoration of the main band colliery pursuant to the 1988 S33 Agreement.
- 3.3. The Council agrees to the extent legally permissible without fettering its statutory discretion to discharge condition 43 of the planning permission ref: 4/088/0064 dated 5 August 1988 and Draft Condition C of the Planning Permission relating to the restoration and aftercare of the Main Band Colliery (as identified in Schedule 6) in a way that is consistent with the Main Band Colliery Restoration Scheme and the Main Band Colliery Aftercare Scheme.

4. Contributions

- 4.1. The Council covenants to use monies paid to it under Schedule 1 for their respective purposes only and for no other purpose and in particular the Council covenants to use the Annual Heritage Contribution for no purpose other than the Heritage Payment Purpose.
- 4.2. The Council covenants that if any of the monies paid to it pursuant to the obligations in Schedule 1 (excluding any Restoration Securities and the Travel Plan Monitoring Fee) remain unspent at the expiration of 10 years from the last instalment, the Council shall repay those monies to the Owners (including any interest accrued) upon a written request by the relevant Owners or Developer (as the case may be) who paid the relevant money.

5. GHG Assessment

5.1. The Council covenants in accordance with all those covenants entered in to in favour of the Owners or Developer (as the case may be) for the purposes of paragraph 12 of Schedule 1 hereof and more particularly as follows –

5.1.1. To serve on the relevant Owners or Developer (as the case may be) either a GHG Approval or a GHG Rejection Notice no later than 3 months after the Owners or Developer serves on the Council a Proposed GHG Report for the purposes of paragraph 12.2 of Schedule 1.

SCHEDULE 4

Form of bond for Restoration Security (if provided by a bond)

(Other forms of security to be provided on equivalent terms in so far as applicable)

THIS GUARANTEE BOND is made as a Deed **BETWEEN** the following parties whose names and [registered office] addresses are set out in the Schedule to this Guarantee Bond ("the Schedule"):-

- (1) WEST CUMBRIA MINING LIMITED (Company Registration Number: 07144109) whose registered office is situated at Belmont House, Station Way, Crawley, RH10 1JA (The "Principal")
- (2) [] (Company Registration Number: []) whose registered office is situated at [] (The "Guarantor"), and
- (3) CUMBRIA COUNTY COUNCIL of Cumbria House, 107 – 117 Botchergate, Carlisle, CA1 1RZ ("the Council")

WHEREAS

- (1) By an agreement (the "Agreement") entered into *inter alia* between the Council and the Principal (particulars of which are set out in the Schedule) the Principal has agreed with the Council to procure a Restoration Security in respect of the Restoration Security Amount (as such terms are defined for the purposes of the Agreement and subject to the terms and conditions therein set out) ("the Obligations")
- (2) The Guarantor has agreed with the Council that this instrument shall comprise [in whole/in part] the Restoration Security for the purposes of the Agreement subject to the limitation set out in Clause 2 below.

NOW THIS DEED WITNESSES as follows:-

1. The Guarantor guarantees to the Council with effect from the last date of execution hereof that in the event of the occurrence of a Default Event as such term is defined for the purposes of the Agreement the Guarantor shall subject to the provisions of this Guarantee Bond pay to the Council such amount/s and on such date/s as specified in any claim under Clause 4.
2. The maximum aggregate liability of the Guarantor and the Principal under this Guarantee Bond shall not exceed the sum set out in the Schedule or as varied pursuant to a letter or notice sent under clause 3 below (the "Bond Amount").
3. In the event that:
 - (a) the Restoration Security Amount is to reduce following a final determination (including any requested second reviews) of the Independent Surveyor under the Agreement (as such terms are defined in the Agreement), the Council may by a letter or notice sent to the Guarantor and the Principal agree to a reduction in the Bond Amount of this Guarantee Bond to the extent of any reduction as finally determined by the Independent Surveyor (but for the avoidance of doubt where there is more than one Restoration Security in place the Council shall be entitled to determine whether to reduce the Bond Amount of this Guarantee and/or other Restoration Security in accordance with the terms of the Agreement);

- (b) the Restoration Security Amount is to increase in accordance with the terms of the Agreement, the Guarantor may by a letter or notice sent to the Council (with the written consent of the Principal) increase the Bond Amount of this Guarantee Bond (but for the avoidance of doubt not so that it exceeds the amount specified in the Schedule below).
4. Any claim by the Council against the Guarantor will be in writing and will: (1) identify the relevant Default Event to which the claim relates; (2) specify the amount due in terms of the Agreement pursuant to such Default Event; and (3) specify the date/s on which such amount requires to be paid to the Council pursuant to the Agreement (and if the Agreement doesn't specify such date/s then the date/s will be deemed to be the date/s on which the Council would reasonably require to be in funds in accordance with paragraph 9.8 of Schedule 1 and Schedule 7 (containing the Principles of Staged Draw Down) in the Agreement to enable the Council or such other person in accordance with the provisions of paragraphs 9.43 – 9.48 of Schedule 1 of the Agreement to meet the costs, as such cost falls due, of taking the action envisaged in the Agreement as a consequence of the Default Event).
 5. If following payment by the Guarantor pursuant to a claim under this Guarantee Bond there is a change of circumstances which retrospectively cures the Default Event to the satisfaction of the Council (acting reasonably), the Council shall repay such amount to the Guarantor under deduction of (1) any amounts which the Council has properly and reasonably spent and/or legally committed to spend in taking action envisaged in the Agreement as a consequence of the Default Event and (2) the proper and reasonable costs, outlays and expenses incurred by the Council in making the claim.
 6. Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon: (1) the Bond Amount having been paid in full to the Council; or (2) the Council confirming in writing that the Principal has fulfilled the obligations in the Agreement to which this Guarantee Bond relates in full; or (3) the Principal procuring a replacement Guarantee Bond or other Restoration Security for this Bond in accordance with the provisions of the Agreement on terms *mutatis mutandis* with this Guarantee Bond; or (4) the Expiry Date (as defined in the Schedule) save in respect of any antecedent Default Event as such term is defined for the purposes of the Agreement which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before the Expiry Date.
 7. The Principal having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Council or the Guarantor against the Principal) to perform and discharge the covenants on its part set out in the Agreement to which this Guarantee Bond relates.
 8. This Guarantee Bond and the benefits thereof shall not be assigned without the prior written consent of the Guarantor and the Principal.
 9. A variation of the Agreement shall not discharge the Guarantor's guarantee or liability under this Guarantee Bond which shall remain in full force and effect.
 10. Any notice or other communication to be given under or in connection with matters contemplated by this Guarantee Bond shall be in writing and signed for and on behalf of the party giving it and shall be served by delivering it personally or sending it by Recorded Delivery or Registered Post to the address specified in the Schedule.
 11. The parties to this Guarantee Bond do not intend that any of its terms will be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.
 12. This Guarantee Bond shall be governed by and construed in accordance with the laws of England and only the courts of England shall have jurisdiction hereunder.

THE SCHEDULE

Part 1
Details of S106 Agreement

The Principal: WEST CUMBRIA MINING LIMITED (Company Registration Number: 07144109) whose registered office address is at Belmont House, Station Way, Crawley, RH10 1JA

The Council: CUMBRIA COUNTY COUNCIL of Cumbria House, 107 – 117 Botchergate, Carlisle, CA1 1RZ

The Agreement: An Agreement dated the day of
to be entered into between *inter alia* the Council and the Principal in terms of Section 106 of the Town and Country Planning Act 1990 in respect of land at the former Marchon Works Site, Whitehaven, Cumbria

Part 2
Bond details

The Bond Amount: The sum of £ (**Pounds**)

The Expiry Date: [Further date to be inserted to include such earlier date as agreed between the parties or as evident through the renewal or replacement of this bond in accordance with the terms of the Agreement]

IN WITNESS whereof the Guarantor, the Principal and the Council have executed and delivered this Guarantee Bond as a Deed this day of 20[].

EXECUTED AND DELIVERED as a deed by **West Cumbria Mining Limited**

in the presence of:

Director

Secretary

[SIGNATURE BLOCK OF GUARANTOR TO BE INSERTED]

EXECUTED AND DELIVERED as a deed by affixing

THE COMMON SEAL of

Cumbria County Council

in the presence of:

Authorised Signatory

SCHEDULE 5

Plans

- Plan 1 - Plan of the Site, Residential Land, Aftercare Land and Additional Main Band Colliery Land
- Plan 2 - Plan of Cycle Path Part 1 across part of the Site etc
- Plan 3 - Public Rights of Ways Maps annotated with improvements for the Public Rights of Way Contribution expenditure
- Plan 4 - Western Outfall Drain
- Plan 5 - Eastern Drain

SCHEDULE 6

Main Band Colliery Restoration Scheme

And

Main Band Colliery Aftercare Scheme

SCHEDULE 7

Restoration Security - Principles of Staged Draw Down

In the event of a Default Event and the terms and conditions of any Restoration Security being met for the Council to withdraw or draw down money from the Restoration Security, the money payable to the Council shall be paid in accordance with the following principles:

1. All costs and expenses to be incurred by the Council are to be paid as they fall due, but such payments are to be paid by the relevant security provider/s in advance of the Council being contractually committed to pay or paying the respective sum or sums (whichever is the earlier) (or, for in-house Council costs and expenses, before they are incurred).
2. The Council will follow its normal procurement procedure in respect of external costs and expenses to be incurred.
3. If any external costs or expenses do not require procurement, the Council will obtain 3 quotes (or a lesser number after reasonable endeavours have been used by the Council to obtain 3 quotes) unless otherwise agreed in writing between the Council and the relevant security provider/s.
4. For consultants and external advisors, 3 quotes (or a lesser number after reasonable endeavours have been used by the Council to obtain 3 quotes) will only be required at the outset before the appointment for the period or scope of the appointment.
5. The Council will select the winning bid/s under paragraphs 2 – 4 above according to its usual procedures and practice.
6. Contract payments – The full contract payment is to be paid by the relevant security provider/s to the Council in advance of completion of the contract to be entered into by the Council once the contract, including contract sums, are agreed.
7. Council in-house costs and expenses – The Council will provide a written estimate of its costs and expenses to be incurred and the relevant security provider/s will pay those costs and expenses (such costs and expenses to be reasonable and proper).
8. The relevant security provider/s will pay the sum/s payable upon receipt of notice within 10 working days and evidence of the costs and expenses to be incurred by the Council.

9. In the event that Council happens to incur costs and expenses in advance or additional reasonable and proper costs and expenses are incurred or to be incurred above any estimated or anticipated costs and expenses, the relevant security provider/s will still be liable to pay them.

SCHEDULE 8
GHG Assessment

SCHEDULE 9
Draft Conditions

A.	<p>No development shall take place until a Construction and Environment Management Plan (CEMP) has been submitted to and approved in writing by the Mineral Planning Authority. The CEMP shall, for the Preliminary and Construction Phases, include details of all on-site Construction Works, including remediation works, post-construction reinstatement, drainage, mitigation, and other restoration, together with details of their timetabling including details of:</p> <ul style="list-style-type: none">a) roles and responsibilities for the developer and its contractors regarding environmental compliance including environmental training and management procedures;b) provisions for environmental emergency planning and environmental incident response arrangements;c) Considerate Constructors scheme and compliance arrangements;d) Environmental Permits, Licences and Consents required;e) Code of Construction Practice (relating specifically to local community impacts and management);f) liaison with the public and contact information for community concerns;g) the programme of Construction Works;h) parking areas for the vehicles of construction workers and visitors;i) areas to be used for the loading and unloading of plant and materials;j) details of site offices and welfare facilities;k) areas for the storage of plant and materials used in construction of the development;l) formation of the construction compound(s) and access tracks and any areas of hardstanding;m) a scheme for the management of noise during construction;n) a scheme for the management of air quality and dust during construction;o) site signage;p) how the environmental aspects of historic environment works will be managed;q) the management of waste on site, including provision for waste segregation, compliance with Duty of Care regulations;r) how water pollution risks and flood risks will be minimised including
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	<p>measures to prevent the development causing pollution to Pow Beck, waterbodies or the marine environment;</p> <p>s) management of construction traffic;</p> <p>t) ecological management including plans for the monitoring of:</p> <ul style="list-style-type: none"> i) Pow Beck surface water discharge flows and water quality; ii) surface water quality in attenuation pond(s) on Main Mine Site prior to discharge to the Surface Water Outfall; iii) marine water quality and scouring around the surface water discharge pipe; <p>u) seasonal and daytime restrictions on certain activities to mitigate for effects on ecological receptors;</p> <p>v) covering or infilling of any trenches overnight to prevent animals being trapped and/or provision of a ramp to allow escape;</p> <p>w) contaminated land management</p> <p>x) sustainability measures including minimising and monitoring resource use including energy & water consumption, incorporating re-use wherever practicable;</p> <p>y) the appearance, erection and maintenance of boundary treatments and security fencing & site signage and the timescales for their erection and removal;</p> <p>z) the management of vermin;</p> <p>aa) working hours;</p> <p>bb) pollution prevention measures including storage of fuels and oils and measures to prevent, contain and manage refuelling of plant and vehicles;</p> <p>cc) details of wheel washing facilities including any drainage requirements and maintenance;</p> <p>dd) cleaning of site entrances and the adjacent public highway;</p> <p>ee) the sheeting of all HGVs taking materials to / from the site to prevent spillage or deposit of any materials on the highway;</p> <p>ff) all fixed lighting and procedures to ensure temporary lighting equipment is positioned so as not to create nuisance or disturbance to surrounding properties, public highways or wildlife; and</p> <p>gg) post-construction restoration / reinstatement of any temporary working areas.</p> <p>Once approved, the CEMP shall be implemented and the development shall be undertaken in accordance with the approved CEMP.</p>
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	<p><i>Reason: To provide the management framework needed for the planning and implementation of construction activities in accordance with environmental commitments identified in the ES in accordance with policy DC6 of the Cumbria Minerals and Waste Local Plan, and to ensure the construction activities associated with the proposed development do not pose an unacceptable risk of pollution to controlled waters in accordance with policy DC20 of the Cumbria Minerals and Waste Local Plan.</i></p> <p>[Condition 6 of the Council Committee Report dated 2 October 2020]</p>
B.	<p>No development shall take place until a scheme for the restoration of the site which would be implemented in the event that the development does not progress beyond the Preliminary Phase (Preliminary Phase Restoration Scheme) has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include the following:</p> <ul style="list-style-type: none"> a) The ground levels / landform to be created; b) Measures to ensure that no new pathways have been created to allow legacy contamination to migrate from the site; c) The depths of subsoils and topsoils to be placed or replaced over the site area; d) The cultivation steps and soil treatments to be carried out following soils placement; e) Seed mixes and seeding application rates; f) Tree/shrub planting species mix, spacing, size, method of planting, protection measures; and g) A programme for carrying out the steps above. <p>In the event that the development does not progress beyond the Preliminary Phase the Preliminary Phase Restoration Scheme implemented in full and undertaken fully in accordance with the approved scheme and programme, followed by the aftercare approved under Draft Condition [H].</p> <p><i>Reason: To ensure that the site is appropriately restored in accordance with policies SP16 and DC22 of the Cumbria Minerals and Waste Local Plan.</i></p> <p>[Condition 13 of the Council Committee Report dated 2 October 2020]</p>
C.	<p>Prior to the commencement of Construction Works at the Rail Loading Facility, a scheme and programme of works to restore the Main Band Colliery Site shall be submitted to and approved in writing by the Mineral Planning Authority. The</p>

	<p>scheme and programme shall comprise:</p> <ul style="list-style-type: none"> a) The method for the breaking up of the existing concrete pads; b) The depth of subsoil to be spread over the site; c) The depth of topsoil to be spread over the site; d) The work to prepare the soils to alleviate soils compaction, remove from soils any potential impediments to cultivation, works to prepare a tilth suitable for seeding; and e) A programme for the works set out above and for the planting and seeding of the site. <p>The restoration of the part of the former Main Band Colliery site within the application site shall be implemented in full and undertaken fully in accordance with the approved scheme and programme, followed by the aftercare approved under condition H.</p> <p><i>Reason: To require the submission of details not submitted with the application for planning permission and to secure the satisfactory and early restoration of the Main Band Colliery site within the application site.</i></p> <p>[Condition 27 of the Council Committee Report dated 2 October 2020]</p>
<p>D.</p>	<p>Prior to the commencement of the Construction Phase a scheme for the restoration of the site which would be implemented in the event that the development does not progress beyond the Construction Phase (Construction Phase Restoration Scheme) shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include the following:</p> <ul style="list-style-type: none"> a) The methods for the removal of all buildings, equipment, plant and hardstandings from the site for each stage of construction; b) The ground levels/landform to be created for each stage of construction; c) The depths of subsoils and topsoils to be placed over the site area; d) The cultivation steps and soil treatments to be carried out following soils placement; e) Seed mixes and seeding application rates; f) Tree/shrub planting species mix, spacing, size, method of planting and protection measures; and g) A programme for carrying out the steps above.

	<p>In the event that the development does not progress beyond the Construction Phase, the Construction Phase Restoration Scheme shall be implemented in full and undertaken fully in accordance with the approved scheme and programme, followed by the aftercare approved under Draft Condition H</p> <p><i>Reason: To ensure that the site is appropriately restored in accordance with policies SP16 and DC22 of the Cumbria Minerals and Waste Local Plan.</i></p> <p>[Condition 48 of the Council Committee Report dated 2 October 2020]</p>
<p>E.</p>	<p>A Decommissioning and Restoration Scheme (DARS) shall be submitted to and approved in writing by the Mineral Planning Authority, for approval by the earlier of:</p> <ul style="list-style-type: none"> a) 3 months from the end of a continuous period of twelve months throughout which the Winning and Working of mineral has ceased; or b) two years before the expiry of this planning permission. <p>The decommissioning and restoration scheme shall be in accordance with the Main Mine Site Restoration Plan drawing reference 869/AM/042 Rev E and the Rail Loading Facility Post Decommissioning Restoration Plan drawing reference 869/AR/014 Rev H and shall include, but need not be restricted to:</p> <ul style="list-style-type: none"> a) The removal of buildings, railway sidings and other built infrastructure; b) Removal of plant, equipment and above ground structures; c) Treatment/capping of mine shafts; d) Treatment and capping of the underground conveyor including the removal of all conveying equipment and plant and associated above ground buildings; e) The number of vehicle movements at each site during the Restoration Phase; f) Ground levels and landform to be created at the Main Mine Site and Rail Loading Facility to be illustrated by drawings with proposed contours and cross and long sections; g) The methods and depths of soil replacement; h) Cultivation, seeding and planting measures; and i) A programme setting out the timescales within which restoration will occur.

	<p>The restoration scheme shall be implemented in full and undertaken fully in accordance with the approved scheme and programme, followed by the aftercare approved under Draft Condition H</p> <p><i>Reason: To ensure that the surface development is returned to beneficial use accordance with policy DC22 of the Cumbria Minerals and Waste Local Plan.</i></p> <p>[Condition 93 of the Council Committee Report dated 2 October 2020]</p>
F.	<p>A Decommissioning and Restoration Environment Management Plan (DREMP) for the restoration operations following decommissioning shall be submitted to and approved in writing by the Mineral Planning Authority by the earlier of:</p> <p>a) 3 months from the end of a continuous period of twelve months throughout which the Winning and Working of mineral has ceased; or</p> <p>b) two years before the expiry of this planning permission.</p> <p>The DREMP shall include, but need not be restricted to:</p> <ul style="list-style-type: none"> i) roles and responsibilities for the developer and its contractors regarding environmental compliance including environmental training and management procedures; ii) provisions for environmental emergency planning and environmental incident response arrangements; iii) Considerate Constructors scheme and compliance arrangements; iv) Environmental Permits, Licences and Consents required; v) Code of Construction Practice (relating specifically to local community impacts and management); vi) liaison with the public and contact information for community concerns; vii) the programme of works; viii) parking areas for the vehicles of workers and visitors; ix) areas to be used for the loading and unloading of plant and materials; x) details of site offices and welfare facilities; xi) areas for the storage of plant and materials; xii) formation of the construction compound(s) and access tracks and any areas of hardstanding;

- xiii) a scheme for the management of noise;
- xiv) a scheme for the management of air quality and dust;
- xv) site signage;
- xvi) the management of waste, including provision for waste segregation,
- xvii) compliance with Duty of Care regulations;
- xviii) how water pollution risks and flood risks will be minimised including measures to prevent the development causing pollution to Pow Beck, waterbodies or the marine environment; management of traffic;
- xix) ecological management including plans for the monitoring of:
 - xx) Pow Beck surface water discharge flows and water quality;
 - xxi) surface water quality in attenuation pond(s) on Main Mine Site prior to discharge to the Surface Water Outfall;
 - xxii) marine water quality and scouring around the surface water discharge pipe;
 - xxiii) seasonal and daytime restrictions on certain activities to mitigate for effects on ecological receptors;
 - xxiv) covering or infilling of any trenches overnight to prevent animals being trapped and/or provision of a ramp to allow escape;
 - xxv) contaminated land management
 - xxvi) sustainability measures including minimising and monitoring resource use including energy & water consumption, incorporating re-use wherever practicable;
 - xxvii) the appearance, erection and maintenance of boundary treatments and security fencing & site signage and the timescales for their erection and removal;
 - xxviii) the management of vermin;
 - xxix) working hours;
 - xxx) pollution prevention measures including storage of fuels and oils and measures to prevent, contain and manage refuelling of plant and vehicles;
 - xxxi) details of wheel washing facilities including any drainage requirements and maintenance;
 - xxxii) cleaning of site entrances and the adjacent public highway;
 - xxxiii) the sheeting of all HGVs taking materials to / from the site to prevent spillage or deposit of any materials on the highway;
 - xxxiv) all lighting including procedures to ensure temporary lighting

	<p>equipment required is positioned so as not to create nuisance or disturbance to surrounding properties, public highways or wildlife; and xxxv) post-construction restoration / reinstatement of the working areas.</p> <p>Once approved, the DREMP shall be implemented and the all works shall be undertaken in accordance with the approved DREMP.</p> <p><i>Reason: To ensure that the surface development is returned to beneficial use accordance with policy DC22 of the Cumbria Minerals and Waste Local Plan.</i></p> <p>[Condition 94 of the Council Committee Report dated 2 October 2020]</p>
G.	<p>Prior to the commencement of decommissioning the Rail Loading Facility (RLF), details of the following decommissioning and reinstatement works shall be submitted to and approved in writing by the Mineral Planning Authority:</p> <ul style="list-style-type: none"> a) The removal of the underbridge under the proposed rail siding and appropriate reinstatement of the original underbridge; b) The removal of the rail sidings and appropriate reinstatement of the existing Network Rail embankment; and c) A review of the drainage systems to determine whether the removal of the underbridge and the sidings necessitates changes to the surface water drainage infrastructure installed to ensure surface water is effectively drained from the site. Where that review reveals that the installed drainage system is inappropriate a revised surface water drainage system shall be submitted to and approved in writing by the Mineral Planning Authority. <p>Once approved the reinstatement works shall be carried out in accordance with approved details within 2 years of the commencement of decommissioning.</p> <p><i>Reason: to ensure the ongoing safety and functionality of the operational railway.</i></p> <p>[Condition 95 of the Council Committee Report dated 2 October 2020]</p>
H.	<p>Within six months of the date of the written approval of each of the restoration schemes required under Draft Conditions B, C, D and E above, a scheme and programme for the aftercare of the site for a period of 5 years to promote the agricultural and ecological after-uses of the site, shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme and</p>

programme shall contain details of the following:

- a) the management of the site to promote its agricultural use including details of seeding, grazing, cultivation or cropping;
- b) details for soil sampling in each year of the aftercare period to determine requirements for fertilizer and lime application and provision for the submission of annual soil sampling results and proposed fertilizer/lime application to the Mineral Planning Authority for approval in writing;
- c) the management of ecological and recreational areas;
- d) details of any drainage installation including measures for replacement of any field drainage system damaged during the development;
- e) details of any further works to relieve compaction or regrading to alleviate surface ponding;
- f) details of any measures required to control noxious weeds;
- g) details for the maintenance of any grassland, tree or hedge planting including replacement of failures, weed control, maintenance of protection measures, thinning works and cutting or laying regimes to be followed; and
- h) management of any surface water run off including maintenance of surface water ditches and repair of any damage caused by surface water runoff.

Thereafter, aftercare works shall be undertaken in accordance with the approved scheme and programme for a period of five years from the date that the Mineral Planning Authority certifies in writing that the works of restoration are complete. On the first anniversary of the certification of completion of restoration and at annual intervals thereafter an inspection of restored areas of the site involving representatives of the operator and Mineral Planning Authority shall be undertaken. Within one month of each inspection, a schedule of aftercare works to be undertaken in the following year in accordance with the above shall be submitted to and approved in writing by the Mineral Planning Authority. The approved schedule of aftercare works shall be carried out.

Reason: To ensure that the site is restored and that appropriate aftercare provision is in place in accordance with policy DC22 of the Cumbria Minerals and Waste Local Plan.

[Condition 96 of the Council Committee Report dated 2 October 2020]

EXECUTED as a DEED by affixing
THE COMMON SEAL OF
CUMBRIA COUNTY COUNCIL
in the presence of: -

Authorised Signatory

EXECUTED as a DEED by
WEST CUMBRIA MINING LIMITED
acting by a Director in the presence of:

.....
Director

Witness' Signature:
Witness' Name:
Witness' Address:
.....
Witness' Occupation:

EXECUTED as a DEED by
WHITEHAVEN DEVELOPMENTS LIMITED
acting by a Director in the presence of :

.....
Director

Witness' Signature:
Witness' Name:
Witness' Address:
.....
Witness' Occupation:

**SIGNED as a DEED by
GRAHAM STANLEY BARWISE**

In the presence of:

Witness' Signature:
Witness' Name:
Witness' Address:
.....
Witness' Occupation:

**SIGNED as a DEED by
BARBARA BARWISE**

In the presence of:

Witness' Signature:
Witness' Name:
Witness' Address:
.....
Witness' Occupation:

**SIGNED as a DEED by
STELLA MARGARET BARWISE**

In the presence of:

Witness' Signature:
Witness' Name:
Witness' Address:
.....
Witness' Occupation:

**SIGNED as a DEED by
MARTIN BARWISE**

In the presence of:

Witness' Signature:
Witness' Name:
Witness' Address:
.....
Witness' Occupation:

**SIGNED as a DEED by
TIMOTHY WILLIAM WEST**

In the presence of:

Witness' Signature:
Witness' Name:
Witness' Address:
.....
Witness' Occupation:

**SIGNED as a DEED by
DAVID ANDERSON BOWICK**

In the presence of:

Witness' Signature:
Witness' Name:
Witness' Address:
.....
Witness' Occupation:

**SIGNED as a DEED by
WILLIAM HERBERT ATKINSON**

In the presence of:

Witness' Signature:

Witness' Name:

Witness' Address:

.....

Witness' Occupation:

**SIGNED as a DEED by
JOHN DEREK KELLETT**

In the presence of:

Witness' Signature:

Witness' Name:

Witness' Address:

.....

Witness' Occupation:

**SIGNED as a DEED by
JULIE NICHOL**

In the presence of:

Witness' Signature:

Witness' Name:

Witness' Address:

.....

Witness' Occupation: