

DATED:

2015

MILLER ARGENT (SOUTH WALES) LIMITED

CAERPHILLY COUNTY BOROUGH COUNCIL

AGREEMENT UNDER SECTION 2 OF THE LOCAL GOVERNMENT ACT 2000

**Relating to the establishment of a community benefit fund in connection with the
development of Nant Llesg Surface Mine Incorporating Land Remediation**

**Geldards LLP
Dumfries House
Dumfries Place
Cardiff
CF10 3ZF**

C:4332853v3

THIS AGREEMENT is made this day of 2015

BETWEEN: MILLER ARGENT (SOUTH WALES) LIMITED a company (Company Number 4261274) having its registered office at Cwmbargoed Disposal Point, Fochriw Road, Cwmbargoed, Merthyr Tydfil CF48 4AE (“Developer”)

AND: CAERPHILLY COUNTY BOROUGH COUNCIL of Pontllanfraith House, Pontllanfraith, Blackwood, NP12 2YW (“Council”)

WHEREAS:

- (1) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 in respect of the Site (herein after defined).
- (2) The Developer (a) is the freehold owner of part of the Site registered under titles CYM143367, CYM154070, CYM826687, WA570492, WA607976, WA611923, WA612554, WA640380, WA673739, WA778130, WA778642, WA837110 and WA916562, (b) is the leasehold owner of part of the Site registered under title WA825857 and CYM437721, (c) holds the benefit of options to lease land registered under titles WA452578, WA778616, WA553745 and CYM47235, and (d) has the benefit of a licence to occupy part of the Site owned by the Council.
- (3) The Developer has made the Planning Application to the Council.
- (4) The Council enters into this agreement under its powers under Section 2 of the Local Government Act 2000.

NOW THIS DEED WITNESSETH AS FOLLOWS:-

1. In this Agreement the following words and expressions shall, where the context so requires or admits have the following meanings:

“Act” means the Town and Country Planning Act 1990

“CDP”	means the area known as the Cwmbargoed Disposal Point shown coloured orange on Plan 1
“Coal”	means the coal that has been extracted from the Site in accordance with the Planning Permission as shown on the Developer’s weighbridge records
“Development”	means the development of the Site authorised by the Planning Permission
“Fund”	means a community benefit fund to be established under this Agreement for the purpose of supporting local community projects with a preference towards (but not limited to) educational, environmental, sport, or leisure projects.
“Implementation”	means the commencement of development by the carrying out of a material operation on the Site pursuant to the Planning Permission in accordance with section 56(4) of the Act other than (for the purposes of this Deed and no other purposes) of site clearance, demolition work, archaeological investigations, investigations for the purpose of locating and/or assessing ground conditions and features, remedial work in respect of any contamination or other adverse ground conditions and features, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the carrying out of any ecological surveys and ecological mitigation works (including for the avoidance of any doubt the Bryn Caerau Ecological Works, implementation of the Bryn Caerau Management Plan and the carrying out of other ecological works on site including the erection of Great Crested Newt fencing and the digging of ponds for the translocation of Great Crested Newts and the mitigation of impacts on reptiles

and Odonata) and “Commence Development” shall be construed accordingly.

“Parties”	means the Developer and the Council
“Plan 1”	means the plan of the Site showing the location and extent of the Site annexed hereto
“Plan 2”	means the plan showing the communities of the Council which are to benefit from the community benefit fund established under this Agreement annexed hereto
“Planning Application”	means the written application by the Developer for planning permission dated 10 October 2013 given the reference number 13/0732/MIN, together with further information submitted on 9 th January and 16 th October 2014 by the Developer
“Planning Permission”	means the planning permission granted by the Council pursuant to the Planning Application
“Site”	The Site extends over 478.06 ha and is shown delineated in red on Plan 1 and lies to the west and south west of Rhymney and to the north and west of Pontlottyn and Fochriw in the County Borough of Caerphilly. It consists primarily of previously mined and industrially disturbed upland urban common land and agricultural grazing land on the western side of the Upper Rhymney Valley. The south western sector of the Site includes part of Cwmbargoed Disposal Point (CDP). The entire Site lies within the administrative area of the Council.

STATUTORY PROVISIONS

2. This is entered into by the Council pursuant to the provisions of section 2 of the Local Government Act 2000.

CONDITIONS PRECEDENT

3. Clause 5 of this Agreement is conditional and shall only take effect upon Implementation of the Planning Permission by the Developer

DEVELOPER'S OBLIGATIONS

4. The Developer agrees to perform the obligations set out in Schedule 1.

COUNCIL'S OBLIGATIONS

5. The Council agrees to perform the obligations set out in Schedule 2.

DETERMINATION

6. If the Planning Permission shall expire before it is implemented or shall at any time be revoked or otherwise withdrawn or modified by any statutory procedure this Agreement shall immediately determine and cease to have effect

HEADINGS

7. The headings in this Unilateral Undertaking are for convenience only and shall not be taken into account in the construction or interpretation hereof

EXPRESSIONS

8. The expressions "the Developer" and "the Council" shall where the context so requires and admits include their respective successors in title and assigns

ENFORCEABILITY

9. In so far as any clause or clauses of this Agreement may be found to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

INTEREST ON PAYMENTS

10. If any payment due under this Agreement is paid late, interest at the rate of 4% above the Barclays Bank Plc base rate shall be payable from the date payment is due to the date of payment.

VAT

11. All payments due under this Agreement shall be exclusive of any value added tax properly payable.

JURISDICTION

12. This Agreement shall be governed by the laws of England and Wales.

THIRD PARTIES

13. Nothing in this Agreement is intended to confer any rights in favour of third parties pursuant to the Contracts (Rights of Third Parties) Act 1999.

COUNCIL'S APPROVAL

14. Reference to the Council's approval in this Agreement shall mean the Council's approval in writing in advance.

IN WITNESS WHEREOF the Developer and the Council have executed this Agreement as a Deed on the day and year first before written

SCHEDULE ONE
DEVELOPER'S OBLIGATIONS

The Developer hereby agrees with the Council as follows:

- 1.1 Prior to the Commencement of Development the Developer shall provide details of its proposals to establish the Fund with the intent to benefit the inhabitants of the Twyn Carno, Moriah, Pontllytyn and northern part of the Darran Valley wards as are more particularly delineated on Plan 2 edged red for the Council's approval, such details to include a detailed constitution as to how such fund shall be operated, which shall include details of the appointment of representatives of the Developer, the Council and the communities to be members of a decision making panel in respect of the Fund and meeting procedures.
- 1.2 The Developer shall pay to the Council for the purpose of the Fund an amount per tonne of Coal that is subsequently despatched from the CDP for the purposes of distribution in accordance with the decisions of the decision making panel referred to above, calculated as follows:
- (a) subject to paragraph 1.2(d) payments shall be made by the Developer for each tonne of washed and unwashed Coal that is subsequently shipped from the CDP in the periods from the beginning of June to the end of August, the beginning of October to the end of December, the beginning of January to the end of March and the beginning of April to the end of June in each year within 28 days of the end of each of these periods.
- (b) the payments shall be calculated from the coal price obtained for the shipment of coal from the CDP subject to paragraph 1.2(c) below as follows:

Washed Coal price per tonne	Contribution per tonne of Washed Coal
Up to £95	£0.50
Over £95 up to £105	£0.60
Over £105 up to £115	£0.70

Over £115 up to £125	£0.80
Over £125 up to £135	£0.90
Over £ 135	£1.00

Unwashed Coal price per tonne	Contribution per tonne of Unwashed Coal
Up to £60	£0.50
Over £60 up to £70	£0.60
Over £70 up to £80	£0.70
Over £80 up to £90	£0.80
Over £90 up to £100	£0.90
Over £100	£1.00

- (c) The quantity of Coal that is subsequently shipped from the CDP from which the amount to be paid shall be calculated shall be derived proportionally from records of coal delivered to the CDP from the Development, the Ffos-y-fran Land Remediation Scheme and any other source such that only Coal from the development shall be used to calculate payments.
- (d) Prior to Commencement of Coaling the Developer shall pay to the Council the sum of [£500,000.00 (five hundred thousand pounds)] and the Developer shall not be liable to make any payments under paragraph 1.2(a) until the cumulative value of the amounts that should have been paid under paragraph 1.2(a) exceeds this amount.

**SCHEDULE TWO
COUNCIL'S OBLIGATIONS**

1. To meet regularly and at least twice a year with the Developer to make decisions on how the Fund shall be expended, in accordance with the constitution of the fund, referred to in paragraph 1 of Schedule One.

EXECUTED as a **DEED** by
**MILLER ARGENT (SOUTH
WALES) LIMITED** acting by:

.....
Director

.....
Director/Secretary

The **COMMON SEAL** of **CAERPHILLY
COUNTY BOROUGH COUNCIL** was
affixed to this **DEED** in the presence
of:

.....
Authorised Signatory

