

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

Relating to the Development of Nant Llesg Surface Mine Incorporating Land Remediation

Dated : 2015

Caerphilly County Borough Council (1)
Dowlais Top Investments Limited (2)
Lorraine Howells (3)
Merthyr Industrial Services Limited (4)
Alun Jones and Martin Jones (5)
Miller Argent (South Wales) Limited (6)

C:3548378v1

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PARTIES

- (1) **CAERPHILLY COUNTY BOROUGH COUNCIL** of Pontllanfraith House, Pontllanfraith, Blackwood, NP12 2YW (“Council”)
- (2) **DOWLAIS TOP INVESTMENT COMPANY LIMITED** a company (Company Number 770366) having its registered office at First Floor, 24 St Andrews Crescent, Cardiff CF10 3DD (“First Owner”)
- (3) **LORRAINE HOWELLS** of Upper Cwm Carno Farm, Rhymney NP22 5QY (“Second Owner”)
- (4) **MERTHYR INDUSTRIAL SERVICES Limited** a company (Company Number 2016463) having its registered office at Plot 2, Penygarddu Business Park, Merthyr Tydfil, CF48 2TA (“Third Owner”)
- (5) **ALUN JONES** of Graig House Graig Close Abercanaid Merthyr Tydfil and **MARTIN JONES** of Westwood House Mountain Hare Merthyr Tydfil (“Fourth Owner”)
- (6) **BARCLAYS BANK PLC** a company (Company Number 01026167) having its registered office at 1 Churchill Place, London E14 5HP (“Chargee”)
- (7) **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”)

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 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 shown on Plan 5.
- 3 The First Owner is the freehold owner of part of the Site registered under titles CYM269171, CYM269830 and CYM273301.

4 The Second Owner is the freehold owner of part of the Site registered under title
WA452578 and WA778616 and is the freehold owner of an unregistered part of the Site as
shown on Plan 6.

5 The Third Owner is the freehold owner of part of the Site registered under title number
CYM47235

6 The Fourth Owner is the freehold owner under title WA553745 which is subject to a charge
in favour of the Chargee.

7 The Council is the freehold owner of part of the Site registered under titles WA669235,
WA672666, WA672691, WA684155, WA684168 and WA684171 and is the freehold
owner of an unregistered part of the Site as shown on Plan 6.

8 The Developer has submitted the Application to the Council and the parties have agreed to
enter into this Deed in order to secure the planning obligations contained in this Deed.

9 The Council resolved on [insert date] to grant the Planning Permission subject to the prior
completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

“1980 Act” the Highways Act 1980.

“Act” the Town and Country Planning Act 1990.

“Aftercare” the process carried out to bring the Site to the required
standard suitable for its subsequent use for agricultural
grazing, woodland and (in respect of the areas of
common land within the site) public recreation including
planting, cultivating fertilising (where appropriate),
watering, draining (where appropriate) or otherwise
treating the land

“Aftercare Contribution” the amount of £26,400.00 Index Linked to be paid
annually ten times, as a contribution towards
enhancements of the Wet Heath (excluding restrictions
on grazing) or alternatively other ecological
enhancements in the local area..

“Annual Progress Plan”	means a plan prepared annually and adjusted from time to time by the Developer in order to estimate the target tonnage for extraction of Coal and the proposals for any Return of Overburden and the carrying out of Restoration and Aftercare in the following year; The Annual Progress Plan will include an up to date model to show actual excavation, a back fill survey showing Overburden returned from the Overburden mounds, Restoration and overburden mound surveys.
“Agreement”	means this Agreement.
“Application”	the application for full planning permission dated 10 th October 2013 submitted to the Council for the Development and allocated reference number 13/0732/MIN, together with further information submitted on 9 th January and 16 th October 2014.
“Bryn Caerau Management Plan”	<p>a strategy containing details of works to enhance and manage existing habitats within the areas of land shown on Plan 2 together with the new habitats created by carrying out the Bryn Caerau Ecological Works to include:</p> <ul style="list-style-type: none"> • Control of grazing in woodland, grassland, marshy grassland and swamp habitats • Thinning of woodlands • Cutting of grassland, marshy grassland, and swamp habitats • Hedge laying/coppicing/trimming • Pond clearance
“Bryn Caerau Ecological Works”	<p>a scheme for the phased creation of new habitats within the areas of land shown on Plan 2.to include:</p> <ul style="list-style-type: none"> • Woodland planting

- Gapping up/replanting existing hedge lines
- Planting new hedgerows
- Bracken clearance
- Scrub clearance
- Re-excavation of existing ponds
- Creation of new ponds
- Fencing
- Rebuilding dry stone walls
- Installing bat boxes
- Installing barn owl boxes

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“Business Day”	means a day (other than a Saturday, Sunday or public holiday in Wales) when banks are open for business.
“Call to Comply Notice”	means a notice served by the Council on the Developer calling upon the Developer to undertake the extraction of Coal or the whole or part of the Restoration following the Developer’s failure to undertake the Works in compliance with the Annual Progress Plan such that the ability to achieve completion of the Works in accordance with the Planning Permission will be prejudiced.
“Coal”	means the coal that has been extracted from the Site in carrying out the Works as shown on the Developer’s weighbridge records.
“Commencement of Development”	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting 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.

“Commencement of Coaling”	the date on which coal is first extracted from the void within the Site and moved across the weighbridge at the Site for processing and sale.
“Cwmbargoed Disposal Point”	means the area known as the Cwmbargoed Disposal Point shown coloured orange on Plan 1 and “CDP” shall have the same meaning
“Developer’s Default”	means a failure of the Developer to undertake the works set out in a Call to Comply Notice served by the Council.
“Development”	the Development of the Site as a surface mine incorporating land remediation as set out in the Application.
“Early Remediation Works”	a scheme for the carrying out of remediation works generally in accordance with the Planning Permission on the land shown coloured purple, yellow and light blue on Plan 1 attached to this Agreement and as described in the Application.
“Ecological Compensation Sum”	The amount of £113,000.00 payable in stages as set out in this Agreement as compensation for the impact during the carrying out of the Works on peat resources within the Site
“End of Coaling”	means the stage of the Works that has been reached when the excavation of coal has finished.
“End of Restoration”	means the stage of the Works where Restoration has finished.
“Escrow Account“	means one or more bank accounts or other financial products referred to in paragraph 6 of the Third Schedule.
“Escrow Bank”	means one or more commercial banks or financial institutions that has a rating from Moody’s Investor Services of [to be discussed with CCBC].
“Escrow Payments”	means all monies due to be paid by the Developer as security for the Restoration and Aftercare into the

Escrow Account.

“Escrow Sum”	means the principal amount standing to the credit of the Escrow Account from time to time.
“Index Linked”	means the Aftercare Contribution adjusted to take into account changes in the Consumer Price Index published by the Office for National Statistics or such other index as may replace the same or an alternative index as may be agreed between the parties from the date of this Agreement to the date of payment
“Interest”	interest at four per cent above the base lending rate of the Barclays Bank Plc from time to time.
“Local Candidate”	means a candidate for an employment or training opportunity that lives within 10 miles of the Site
“Overburden”	means the arisings from the Works removed before Coal can be worked, used for progressive restoration or placed in the overburden mound or storage mounds and to be replaced on completion of extraction of Coal to fill the void and create a final landform upon Restoration, including without limitation soil, clay, sand, stone, rock and shale.
“Owners”	the First Owner, Second Owner, Third Owner, Fourth Owner and the Developer.
“Partnership Organisations”	includes such local Job Centre Plus and other local work programme providers, local Schools, local Colleges and other local training providers, local employment agencies and local voluntary and community sector organisations, Careers Wales, local business bodies and local business advice agencies in relation to the likely employment and training opportunities at the Site identified in accordance with paragraph 7.1 of the Third Schedule.
“Plan 1”	the plan numbered MA/NL/PA/003 attached to this Deed showing the area of the Site edged red and the areas of land on which the Early Remediation Works are

to be carried out coloured purple , yellow and light blue.

“Plan 2”	the plan numbered MA/NL/PA/040 attached to this Deed showing the areas within which the Bryn Caerau Ecological Works are to be carried out.
“Plan 3”	the plan numbered MA/NL/PA/036 attached to this Deed showing the areas of land numbered 9 and 14 over which common rights are to be granted upon completion of Restoration of the Site and the areas of land numbered 7, 8, 9, 11 and 12 to be made available for temporary grazing and/or public access while the Development is carried out.
“Plan 4”	the plan numbered MA/NL/PA/039 attached to this Deed showing the indicative layout of footpaths and bridleways to be dedicated upon completion of Restoration of the Site.
“Plan 5”	the plan numbered MA/NL/CCBC/L/001 attached to this Deed showing the part of the Site owned by the Council over which the Developer has the benefit of a license to occupy.
“Plan 6”	the plan numbered MA/NL/s106/06 attached to this Deed showing the extent of the Council’s and the Second Owner’s unregistered land interests within the Site
“Plan 7”	the Plan numbered 607808801 attached to this Deed showing the extent of Woodland and Wet Heath areas to be subject to extended Aftercare
“Planning Permission”	the full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Second Schedule.
“Restoration”	means the process of progressive restoration of the land while the Works continue and the return of Overburden from the Overburden mounds and creation of the final restoration landform for the site, to be determined in accordance with planning conditions attached to the

Planning Permission.

“Return of Overburden”	means the phase of Restoration where Overburden is removed from the overburden mounds and replaced on completion of extraction of Coal to fill the void and create a final landform
“Site”	the land against which this Deed may be enforced as shown edged red on Plan 1.
“Woodland”	The area of woodland to be planted during Restoration as shown on Plan 7
“Wet Heath”	The area of wet heath to be reinstated during Restoration as shown on Plan 7
“Works”	means the carrying out of surface mining, restoration and aftercare and all ancillary works and remediation works on the Site in accordance with the Planning Permission .

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.

2.7 The headings and contents list are for reference only and shall not affect construction.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council.

4 CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 7.1, 9, 13, 14 and 15 which shall come into effect immediately upon completion of this Deed.

5 THE COUNCIL'S, DEVELOPER'S AND OWNER'S COVENANTS

5.1 The Developer and the Council covenant with each other as set out in the Third Schedule.

5.2 The Developer acknowledges that the First Owner, Second Owner, Third Owner and Fourth Owner have entered into this Agreement and that the Site will be bound by this Agreement accordingly.

5.3 The First Owner, Second Owner, Third Owner and Fourth Owner covenant with the Council as set out in the Fifth Schedule.

6 CHARGEES' CONSENT

The Chargee acknowledges and declares that this Deed has been entered into by the Fourth Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the charge over the Site shall take effect subject to this Deed PROVIDED THAT the Chargee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Fourth Owner.

7 MISCELLANEOUS

- 7.1 The Developer shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.
- 7.2 No provisions of this Deed shall be enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999
- 7.3 This Deed shall be registrable as a local land charge by the Council.
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Regeneration and Planning and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.6 Insofar as any clause or clauses of this Deed are found (for whatever reason including, without limitation, non-compliance with Regulation 122 of the Community Infrastructure Levy Regulations 2010) to be invalid illegal or unenforceable then the relevant provision shall cease to have effect and the Developer shall be under no obligation to comply with the same but such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.7 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 or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after the person shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.10 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.

7.11 At the written request of the Developer the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

8 WAIVER

No waiver (whether expressed or implied) by the Council, Developer or Owner 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, Developer or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The Owner and Developer agree with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under 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 or unit of occupation purchased by reference to a plan.

10 INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

11 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable, with the exception of payments to the Community Benefit Fund referred to in the Third Schedule where the payment shall be inclusive of VAT (if applicable).

12 USE OF MONIES

The Council shall use all sums received from the Developer (or the Escrow Bank as defined in the Third Schedule) under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Developer and the Council shall agree.

13 DISPUTE RESOLUTION

- 13.1 Both parties shall endeavour to notify each other of any anticipated dispute so that any potential dispute can be avoided by negotiation between them.
- 13.2 Both parties shall endeavour to resolve any disputes which arise by direct negotiations in good faith between senior executives of their respective organisations and shall give serious consideration to any request by either of them to refer the dispute to mediation.
- 13.3 Any dispute arising under or in connection with this Agreement shall be resolved in one of the following three ways:

(a) Expert Determination

- (i) Any dispute between the parties arising under clauses [to be discussed further and inserted once agreement is in a more final form] shall be submitted by either party for determination by an Expert in accordance with this Clause 12.3;
- (ii) The Expert shall be appointed by agreement between the parties and in the event of disagreement by the nomination of the President for the time being of the Institute of Civil Engineers or such other body as may be agreed between the parties in writing;
- (ii) The Expert shall act as an independent expert and not an adjudicator or arbitrator and his reasoned decision shall be final and binding;
- (iii) The Expert so appointed shall give the parties a reasonable opportunity to make representations to him including the opportunity of making one set of written representations and one set of written counter-representations to him;
- (iv) The fees and expenses of the Expert including the cost of his nomination shall unless the Expert determines otherwise be borne equally by the parties who (unless they otherwise agree) shall bear their own costs with respect to the determination of the issue by the Expert
- (v) If the Expert is ready to make his determination but is unwilling to do so due to the failure of one party to pay its share of the Expert's fees and expenses the other party may serve upon the party in default a notice requiring the party in default to pay such share of the Expert's fees and expenses within 10 Working Days and if the party in default fails to comply with that notice the other party may pay to the Expert the fees and

expenses payable by the party in default and any amount so paid shall be a debt due forthwith from the party in default to the other party

- (vi) If the Expert dies or becomes unwilling to act or becomes incapable of acting or does not give his decision within a reasonable time the President for the time being of the Institute of Civil Engineers or such other in writing body as may be agreed between the parties may upon the application of either party discharge him and appoint another Expert to act in his place and in the same capacity (and this shall be repeated as many times as the circumstances may require)

(b) Adjudication

- (i) Any dispute between the parties arising under clauses [to be discussed further and inserted once agreement is in a more final form] shall be referred by either party to adjudication in accordance with the Scheme for Construction Contracts.
- (ii) In the absence of agreement between the parties as to the choice of adjudicator, the adjudicator shall be appointed by the Chairman for the time being of the Technology and Construction Solicitors Association or his nominated representative.
- (iii) The decision of any adjudicator shall be binding on, and implemented by, both parties pending final determination of the relevant dispute by the courts of England and Wales.

(c) Arbitration

- (i) Any dispute between the parties arising under clauses [to be discussed further inserted once agreement is in a more final form] shall be referred to arbitration by either party.
- (ii) The seat of the arbitration shall be England and Wales.
- (iii) The arbitration shall be governed by both the Arbitration Act 1996 and rules as agreed between the parties.
- (iv) Should the parties be unable to agree on an arbitrator or arbitrators, or be unable to agree on the rules for Arbitration, any party may, upon giving written notice to other parties, apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary.

- (v) Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief.

14 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

15 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

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FIRST SCHEDULE

Description of the Site

1. The Site extends over 478.06 ha and is shown delineated in red on Plan 1.
2. The Site 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.
3. In addition to unregistered land interests held by the Council and the Second Owner as shown on Plan 6, the Site includes all or part of the following registered titles:

CYM47235	WA553745	WA684155
CYM82687	WA570492 (Part)	WA684168
CYM93862 (Part)	WA607976 (Part)	WA684171 (Part)
CYM143367 (Part)	WA611923 (Part)	WA778130 (Part)
CYM154070	WA612554	WA778616 (Part)
CYM268359 (Part)	WA640380 (Part)	WA778642
CYM269171 (Part)	WA664242	WA825857 (Part)
CYM269830 (Part)	WA669235 (Part)	WA837110 (Part)
CYM273301 (Part)	WA672666	WA916562 (Part)
CYM437721 (Part)	WA672691 (Part)	
WA452578	WA673739 (Part)	

4. The Site includes land in the ownership of the Council as shown on Plan 5 in respect of which the Developer benefits from a license to occupy.

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SECOND SCHEDULE

Form of notice of planning permission

[Caerphilly CBC to provide]

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THIRD SCHEDULE

The Developer's Covenants

The Developer and the Council covenant with each other as follows:-

1. FOOTPATHS AND BRIDLEWAYS

- 1.1 Prior to completion of Restoration to submit to the Council a detailed scheme for the creation of footpaths and bridleways in the locations shown indicatively on Plan 4 for approval and upon completion of Restoration to create the footpaths and bridleways in accordance with the approved scheme and to enter into an agreement or agreements under section 25 of the Highways Act 1980 to dedicate the footpaths and bridleways.

2. EARLY REMEDIATION WORKS

- 2.1 Prior to the extraction of any Coal from the Site to submit a scheme for the investigation of the land coloured light blue, yellow and purple on Plan 1 for the requirement to carry out Early Remediation Works and a strategy for the carrying out of the Early Remediation Works to the Council for their approval.
- 2.2 To carry out in accordance with the approved scheme the investigation of the land coloured light blue, yellow and purple on Plan 1 to determine the detailed requirements for Early Remediation Works and to complete the required Early Remediation Works in accordance with the approved strategy for the carrying out of the same within a period of 2 years from the Commencement of Coaling and to carry out Aftercare of the areas within which Early Remediation Works take place for a period of 5 years from the date of completion of the relevant part of the Early Remediation Works, with the exception of any Woodland in respect of which Aftercare would take place for a period of 10 years from the date of completion of the relevant part of the Early Remediation Works.

3. ECOLOGICAL MITIGATION WORKS

- 3.1 Prior to the Commencement of Development to submit a detailed scheme for the phased implementation of the Bryn Caerau Ecological Works and a Bryn Caerau Management Plan for the approval of the Council
- 3.2 To complete the Bryn Caerau Ecological Works in accordance with the approved detailed scheme and within the timescales referred to in the detailed scheme.
- 3.3 To manage the existing habitats in the area shown on Plan 2 from Commencement of Development along with the approved Bryn Caerau Ecological Works from the date of

their completion in accordance with the approved Bryn Caerau Management Plan until completion of Restoration

3.4 To pay the Ecological Compensation Sum to the Council for the Council to use either in funding the Pumlumon Peat Restoration Scheme run by the Montgomeryshire Wildlife Trust or in funding an alternative local scheme for the enhancement of biodiversity, with the approval of the Developer, in the following stages:

(a) Prior to Commencement of Coaling £32,200.00

(b) On the first annual anniversary from the Commencement of Coaling £32,200.00

(c) On the third to the fourteenth annual anniversary of the Commencement of Coaling £4,050.00 each year

or such other stages as may be agreed between the Developer and the Council.

3.5 Prior to Commencement of Development to submit a detailed scheme to undertake works to the northern margin of the pond situated in the west of the Ffos-y-fran Land Reclamation Scheme Central Ecological Area consisting of light cultivation of the exposed former bed during the late winter to create bare gravelly ground at the margin of the pond, ahead of the bird breeding season, so as to make this area more attractive to breeding Little Ringed Plover and Ringed Plover, for approval and to carry out the approved scheme prior to Commencement of Development.

3.6 Prior to Commencement of Development to submit a detailed scheme to undertake works to provide gravel covered nesting rafts at Jepson's Pond to the north of the Site to make this more attractive to Little Ringed Plover and Ringed Plover, for approval and to carry out the approved scheme prior to Commencement of Development.

3.7 To manage the Great Crested Newt receptor sites identified and constructed pursuant to condition [XXX] of the Planning Permission in accordance with a management plan approved pursuant to condition [XXX] of the Planning Permission for a period of 25 years from the date of first translocation of Great Crested Newts to such receptor sites.

4. COMMON LAND

4.1 In the event that the Developer obtains consent under section 38 of the Commons Act 2006 to the carrying out of the Development on any common land within the Site then from the Commencement of Development to procure the availability of:

(a) the area of land numbered 9 on Plan 3 as grazing land for the use by commoners and as land to which permissive access to members of the public will be allowed until the grant of rights of common provided that for the avoidance of any doubt

the making available of such land as temporary grazing land shall proceed on the basis that there shall be no increase in the amount of stock which commoners may graze on the common or any other change to rights that the commoners may have; and until

- (b) the area of land numbered 11 on Plan 3 as grazing land for use by the commoners and as land to which permissive access to members of the public will be allowed until the reinstatement of commons grazing to the Wet Heath, which shall be for a maximum period of 25 years from the completion of the relevant part of Restoration, or such earlier time as may be determined by the review mechanism referred to in paragraph 7.5(c)(ii) – (v).
- (c) the area of land numbered 12 on Plan 3 as grazing land for use by commoners and as land to which permissive access to members of the public will be allowed until the reinstatement of commons grazing to the parts of the common that do not consist of Wet Heath, which shall be for a maximum period of 5 years from the completion of the relevant part of the relevant part of Restoration, or such earlier time as may be determined under the Aftercare programme approved in accordance with condition [XX]
- (d) the areas of land numbered 7 and 8 on Plan 3 as land to which permissive access to members of the public on foot will be allowed until the reinstatement of public access to the common which shall be a maximum period of 5 years from the date of completion of the relevant part of Restoration or such earlier time as may be determined under the Aftercare programme approved in accordance with condition [XX]

provided however that permissive access to parts of the above areas of land may be restricted with the agreement of the Council for land management reasons.

- 4.2 Upon completion of Restoration (in respect of the land numbered 9 on Plan 2) and 5 years Aftercare (in respect of land numbered 14 on Plan 2) to grant rights of common over each of the areas of land numbered 9 and 14 on Plan 3 and to apply to register the same as common land under section 6 of the Commons Act 2006 and to use reasonable endeavours to achieve the same. For the avoidance of any doubt the registration of such land as common land shall proceed on the basis that it is an extension to the common and that there shall be no increase to the numbers of stock which commoners may graze on the common or any other change to rights that the commoners may have as a result of the registration of grazing rights

5. AFTERCARE

5.1 Aftercare shall be carried out in accordance with the programme approved by the Council in accordance with condition [XXX] attached to the Planning Permission by the Developer for:

- (a) a maximum of twenty five years from the date of completion of the relevant part of the Restoration in respect of the Wet Heath, or such earlier time that may be determined in accordance with the review mechanism set out in paragraphs 7.5(c)(ii) – (v) below;
- (b) ten years from the date of completion of the relevant part of the Restoration in respect of Woodland; and
- (c) five years from the date of completion of the relevant part of the Restoration in respect of all other land within the Site

Provided that for the avoidance of any doubt it is acknowledged by the Council that Restoration on the Site may be progressive and the relevant time periods for Aftercare shall commence from the date of the completion of the relevant part of the Restoration.

5.2 Public access to all common land within the Site shall be reinstated by the Developer a maximum of 5 years from the date of completion of the relevant part of the Restoration or such earlier time as may be determined in accordance with the Aftercare programme approved under condition [XX] attached to the Planning Permission.

5.3 Grazing on common land within the Site shall be reinstated following a maximum of 25 years of the approved Aftercare programme in respect of the Wet Heath, or such earlier period as may be determined in accordance with the review mechanism set out at paragraphs 7.5(c)(ii) – (v) and a maximum of 5 years of the approved Aftercare programme in respect of the remainder of the common land within the Site, or such earlier time as may be approved under condition [XX] attached to the Planning Permission. For the avoidance of doubt the reinstatement of grazing on common land within the Site during Aftercare may take place on a managed basis in accordance with the approved Aftercare programme.

6. RESTORATION AND AFTERCARE SECURITY

6.1 Escrow Account

- (a) Prior to the Commencement of Development the Developer and the Council will open an interest-bearing instant access deposit account with an Escrow Bank in their joint names and such account shall form a part of the Escrow Account;
- (b) In the event that the balance of the interest bearing instant access deposit account opened under paragraph 6.1(a) exceeds any current demand or anticipated demand for payment from the Council or the Developer the Council and the Developer may open a longer term interest bearing deposit account with an Escrow Bank or purchase such other financial products as may be agreed between the Council and the Developer in their joint names from an Escrow Bank into which the Escrow Sum may be invested and such accounts and products shall form a part of the Escrow Account and shall only be operated in accordance with this Agreement and the balance of such accounts and products shall be included in the Escrow Sum.
- (c) Any sums that are paid into the Escrow Account shall be deemed to form part of the Escrow Sum for the purposes of this Agreement and the parties shall retain the Escrow Sum until it is eventually drawn by either the Council or the Developer in accordance with this Agreement.
- (d) Any withdrawals from the Escrow Account shall be made from the interest bearing instant access account opened pursuant to clause 6.1(a) and only in the event that the funds in the same are not sufficient to meet any demand for payment or anticipated demand for payment then sufficient funds shall be moved from any interest bearing long term deposit account or other financial product opened or purchased pursuant to paragraph 6.1(b) to the interest bearing instant access deposit account opened pursuant to clause 6.1(a) to enable such demand for payment to be met.
- (e) Any payments of part of the Escrow Sum between the instant access deposit account and any long term deposit account or other financial product by the Developer shall only be made with the agreement of the Council, such agreement not to be unreasonably or arbitrarily withheld.
- (f) The Developer and the Council shall meet regularly and at least twice a year to review and agree upon the best investment strategy for the Escrow Sum. The Developer and the Council shall implement the agreed investment strategy.

6.2 Interest

- (a) All interest that accrues from time to time in respect of the Escrow Account shall be added to the Escrow Sum and shall be deemed to form part of it.

- (b) The Developer shall be solely liable for any tax incurred on interest earned on the Escrow Account [Note: this provision is subject to the Developer's tax advice – alternatively, the tax incurred should be deducted from the interest received].

6.3 General Operation of the Escrow Account

- (a) The Developer and the Council agree to hold the Escrow Sum in trust on their joint behalf and to accept payments in, make payments from, and otherwise operate the Escrow Account in accordance with the terms and conditions of this Agreement and their relevant joint (or where appropriate sole) written instructions given in accordance with this Agreement. The Developer or the Council may replace a signatory by serving a prior written notice to each other and the Bank.

6.4 Payments into the Escrow Account

- (a) Prior to the Commencement of Development the Developer shall provide an estimate of the costs of Return of Overburden, Restoration and Aftercare and an estimate of the tonnage of Coal that it expects to be able to deliver from the Site up to the End of Coaling for the approval of the Council in an Annual Business Plan. The approved estimated costs of Return of Overburden, Restoration and Aftercare shall be divided by the approved estimate of the tonnage of Coal that the Developer expects to be able to deliver from the Site up to the End of Coaling so as to derive the amount of payment per tonne of Coal to be made into the Escrow Account as security for Return of Overburden, Restoration and Aftercare. The Council may take advice from any statutory body and/or such other experts as it may deem necessary in considering the estimates provided by the Developer.
- (b) Between the Start of Coaling and the End of Coaling the Developer shall submit on the anniversary of the Commencement of Development an Annual Progress Plan that sets out the actual quantities of Coal expected to be delivered from the Site and the estimated costs of Return of Overburden, Restoration and Aftercare for the approval of the Council and, where necessary, the Developer shall make such adjustments as may approved by the Council as to the amount of payment per tonne of Coal to be made into the Escrow Account as security for Return of Overburden, Restoration and Aftercare. The Council may take advice from any statutory body and/or such other experts as it may deem necessary in considering any adjustments suggested by the Developer.
- (c) During the phase of work from the Start of Coaling up and until the End of Coaling the Developer shall make Escrow Payments into the Escrow Account on the basis of the rate agreed per tonne of coal under clause 6.4(a) and (b) multiplied by the quantity of coal extracted from the void and delivered from the Site as indicated by the weighbridge records such payments to be quarterly in arrears.

- (d) On the first annual anniversary of the Start of Coaling and annually thereafter for 9 further years the Developer shall make payments of the Aftercare Contribution to the Escrow Account.

6.5 Payments out of the Escrow Account

(a) Return of Overburden to End of Restoration

- (i) During the phase of work from the commencement of Return of Overburden until the end of Restoration the Developer shall be entitled to payments out of the Escrow Account at a rate per cubic metre of Overburden returned, together with interest which has accrued on that part of the Escrow Sum that is being released, such payments to be made monthly.
- (ii) Prior to the commencement of Return of Overburden the Developer will submit to the Council, for its approval its calculation of the total of the Aftercare Contributions together with interest earned thereon, its estimate of the cost of Aftercare and its estimate of the quantity of material to be returned from the overburden mound during Return of Overburden and Restoration in its Annual Business Plan. The total of the Aftercare Contributions together with interest earned thereon and the approved estimate of the cost of Aftercare shall be deducted from the Escrow Sum and the remainder divided by the estimate of the approved quantity of Return of Overburden and Restoration, and the result shall be the rate of payment per cubic metre for Return of Overburden and Restoration to be paid to the Developer. The Council may take advice from any statutory body and/or such other experts as it may deem necessary in considering the estimates provided by the Developer.
- (iii) The monthly payments out of the Escrow Account from the commencement of Return of Overburden to the end of Restoration shall be calculated by the Developer with reference to the rate per cubic metre referred to in clause 6.5(a)(i) and the actual extent of Return of Overburden or Overburden used for Restoration, calculated from topographical surveys of the volume of Overburden remaining in the Overburden mounds, carried out at the end of each month, compared with the previous months survey results.
- (iv) Between the commencement of the return of Overburden and the end of Restoration, the Developer shall, in its Annual Progress Plan set out the estimated quantity of Return of Overburden, estimated quantity of Overburden to be used in Restoration, calculate the total of the Aftercare Contributions together with interest earned thereon and estimated costs of Aftercare for the approval of the Council and shall, make such adjustments

with reference to the calculation described in paragraph 6.5(a)(ii) to the amount of payment per cubic metre of Overburden to be made out of the Escrow Account.

- (v) To receive the payment from the Bank, the Developer shall, on its own account, send a notice signed by a signatory on behalf of the Developer instructing the Bank to pay any part of the Escrow Sum standing in credit in the Escrow Account calculated in accordance with paragraph 6.5(a)(iii) to the Developer. Such a notice shall attach a copy of a certificate signed by the Developer that the amount of Overburden in respect of which the payment to the Developer is to be made has been returned from the Overburden storage mounds to the Site or used in Restoration.
- (vi) The payments to the Developer may be audited by the Council every six months and the Council may seek the advice of any statutory body or any expert it may deem necessary to determine the correctness of the payments. In the event of overpayment from the Escrow Sum to the Developer, the amount of such overpayment shall be taken into account by a reduction in the rate of payment agreed under paragraph 6.5(a)(i) for the next six months.
- (vii) At the End of Restoration a calculation in accordance with paragraph 6.5(b)(ii) will be carried out and any amounts remaining in the Escrow Account over and above the amount so calculated will be returned to the Developer.

(b) Aftercare Phase

- (i) During the phase of work from the end of Restoration until the Completion of Aftercare the Developer shall be entitled to payments out of the Escrow Account at a monthly rate, together with interest which has accrued on that part of the Escrow Sum that is being released, such payments to be made monthly.
- (ii) Prior to the end of Restoration the Developer will submit to the Council an Annual Progress Plan to the Council which sets out the estimate of the cost for Aftercare for the approval of the Council and the approved estimate shall be used to determine the monthly rate of payment to the Developer from the end of Restoration to the completion of Aftercare. For the avoidance of doubt, the payments are to be determined in line with the anticipated dates of expenditure, as shown in the estimates of the costs of Aftercare, rather than averaged over the period of Aftercare.

- (iii) The monthly payments to the Developer out of the Escrow Account shall be made at the monthly rate approved by the Council under clause 6.5(b)(ii).
- (iv) Between the end of Restoration and the completion of Aftercare, the Developer shall, submit on the anniversary of the Commencement of Development an Annual Progress Plan that sets out the estimated costs of Aftercare and, where necessary, make adjustments to amount of payment per month to be made out of the Escrow Account such that prior to the completion of Aftercare the Escrow Sum shall at no time fall below the Developers reasonable estimate of the costs of completing Aftercare together with the total of the Aftercare Contributions and interest earned thereon.
- (v) To receive the payment from the Bank, the Developer shall, on its own account, send a notice signed by a signatory on behalf of the Developer instructing the Bank to pay any part of the Escrow Sum calculated in accordance with paragraph 6.5(b)(i) including interest) standing in credit in the Escrow Account to the Developer.
- (vi) The payments to the Developer may be audited by the Council every six months and the Council may seek the advice of any statutory body or any expert it may deem necessary to determine the correctness of the payments. In the event of overpayment from the Escrow Sum to the Developer, the amount of such overpayment shall be taken into account by a reduction in the rate of payment agreed under paragraph 6.5(b)(i) for the next six months.

(c) Completion of Aftercare Phase

- (i) Prior to commencement of restoration of the Wet Heath, the Developer shall submit to the Council for its approval a methodology for annual surveys to be followed to determine whether the Aftercare of the Wet Heath has been successful, having regard to the criteria in the Sixth Schedule. The Developer shall undertake annual surveys for the first ten years of Aftercare of the Wet Heath in accordance with the approved methodology and provide the results to the Council.
- (ii) Upon completion of 10, 15 and 20 years of Aftercare in respect of the Wet Heath the Developer and the Council shall review the data from the annual surveys against the criteria contained within the Sixth Schedule to determine whether the Aftercare of the Wet Heath has been successful. In the event of any dispute in respect of whether the survey data shows the Aftercare of the Wet Heath to be successful, having regard to the criteria in the Sixth

Schedule the same shall be referred to expert determination in accordance with clause 12.3(a).

- (iii) The options available to the Council upon completion of the review process after the completion of 10,15 and 20 years of Aftercare are as follows:-
 - (a) for the Council to conclude that the Aftercare of the Wet Heath has been successful (having regard to the criteria in the Sixth Schedule) and that no further Aftercare is required in which case the Council shall notify the Developer, no further Aftercare of the Wet Heath or review of data shall be required and the Developer may instruct the Bank to pay to it the total of the Aftercare Contributions together with Interest thereon from the Escrow Account.
 - (b) for the Council to conclude that that the Aftercare has not been successful (having regard to the criteria in the Sixth Schedule) but that it is possible that further Aftercare will result in a conclusion at a subsequent review that Aftercare of the Wet Heath will be successful (having regard to the criteria in the Sixth Schedule) in which case the Council shall notify the Developer, Aftercare shall continue until the next review and the process described in paragraph 6.5(c)(ii) shall be repeated until a conclusion is reached under sub-paragraph 6.6(c)(iii) (a) or (c) or a maximum of 25 years of Aftercare has been carried out.
 - (c) for the Council to conclude that the Aftercare has not been satisfactory (having regard to the criteria in the Sixth Schedule) and that there is no possibility that further Aftercare will result in a conclusion that Aftercare will be successful (having regard to the criteria in the Sixth Schedule) in which case the Council shall notify the Developer, no further Aftercare or review shall be required and the Council shall be entitled to instruct the Bank to pay to it the total of the Aftercare Contributions together with interest thereon from the Escrow Account.
- (iv) In the event that, following reviews, 25 years of Aftercare of the Wet Heath is carried out and the Council conclude that the survey data shows that the Aftercare of the Wet Heath is not successful (having regard to the criteria in the Sixth Schedule) regardless of whether the Council is of the opinion that it is possible that further Aftercare will result in a conclusion at a later date that Aftercare of the Wet Heath has been satisfactory (having regard to the criteria in the Sixth Schedule), or not, the Council may send a notice on its

own account, signed by a signatory on behalf of the Council, instructing the Bank to pay to the Council the total of the Aftercare Contributions and interest earned thereon from the Escrow Account and the Council shall either use the same to carry out continued enhancement of the Wet Heath (excluding restrictions on grazing) or alternatively use the same to carry out other biodiversity enhancements in the local area and upon withdrawal of the total of the Aftercare Contributions together with interest thereon by the Council the Developer may, on its own account, send a notice signed by a signatory on behalf of the Developer instructing the Bank to pay any remaining Escrow Sum (including interest) standing in credit in the Escrow Account to the Developer.

- (v) If however, following reviews, 25 years of Aftercare of the Wet Heath is carried out and the Council conclude that the survey data shows that the Aftercare of the Wet Heath has been successful (having regard to the criteria in the Sixth Schedule) then the Council shall not be entitled to use the Aftercare Contributions together with interest thereon and the Developer may, on its own account, send a notice signed by a signatory on behalf of the Developer instructing the Bank to pay any remaining Escrow Sum (including the total of the Aftercare Contributions and interest) standing in credit in the Escrow Account to the Developer.

6.6 Closure of the Escrow Account

Once all payments out have been made under paragraph 6.5 or otherwise and the balance on the Escrow Account is nil, either party may instruct the Bank to close the Escrow Account.

6.7 Developer's Default

- (a) The Developer shall prior to the Commencement of Development prepare an Annual Progress Plan for the following year which shall include a description of the part of the Works proposed to be carried out in the following year such that the completion of the Works in accordance with the Planning Permission shall be achieved and shall submit the same to the Council for approval. Thereafter the Developer shall prepare and submit an Annual Progress Plan on each anniversary of the Commencement of Development until completion of the Aftercare Phase, containing the information set out above.
- (b) The Developer may, with the agreement of the Council, such agreement not to be unreasonably or arbitrarily withheld, make amendments to an Annual Progress Plan from time to time.

- (c) The Council may serve a Call to Comply Notice on the Developer following the Developer's failure to either extract Coal or Return of Overburden or undertake Restoration or Aftercare in compliance with the Annual Progress Plan for the relevant year such that the ability to achieve completion of the Works in accordance with the Planning Permission will be prejudiced.
- (d) The Call to Comply Notice shall set out the failure to comply with the Annual Progress Plan, how the ability to achieve completion of the Works in accordance with the Planning Permission will be prejudiced, the Works required to remedy the failure and the time period (being a reasonable period having regard to the nature of the required works to remedy the failure) within which the required works are to be carried out.
- (e) The Developer may challenge the Call to Comply Notice by reference to the dispute resolution provisions of this Agreement. In the event of such challenge the time period within which the required works are to be carried out shall be suspended until such time as the dispute is determined.
- (f) The Council shall withdraw a Call to Comply Notice at any time in the event that the works required to remedy the failure are carried out within the time period within which the required works are to be carried out set out in the Call to Comply Notice and may withdraw a Call to Comply Notice at any other time and for any other reason.
- (g) In the event that a Developer's Default occurs and the Developer fails to remedy such default within the time period set out in the Call to Comply Notice, the Council may step in to remedy the default in accordance with the step in provisions in paragraph 6.8 below and instruct the Bank, on its own account, by sending a notice signed by a signatory on behalf of the Council to pay any part of the Escrow Sum to the Council in compensation for any loss and expense suffered by the Council as a result of the failure by the Developer to remedy a Developer Default. An instruction from the Council to the Bank in those circumstances shall be deemed to comply with this Agreement (but not otherwise) if it:
- (i) attaches a copy of the Developer's Default Notice;
 - (ii) provides evidence of the Developer's failure to remedy such notice;
 - (iii) attaches evidence that relates to the loss and expense suffered by the Council as a result of the failure to remedy a Developer's Default;
 - (iv) confirms that payment for the sum demanded has not been sought or made in whole or part from any other source;

- (v) specifies the sum to be paid from the Escrow Account; and
- (vi) warrants so far as the Council is aware that the information in the notice to the Bank is true, complete and accurate.

6.8 Council's Right of Step In

- (a) The Council has no authority to step in or issue any direction or instruction in relation to the Works unless and until the Council has given notice under paragraph 6.8(b) below.
- (b) In the event that the Developer fails to remedy a Developer's Default within the time period set out in the Council's Call to Comply Notice then on each and every occasion that the Council so considers a Developer's Default to have occurred that has not been remedied the Council may serve a step in notice whereupon the Council or any person nominated by the Council and agreed by the Developer to be of sufficient capitalisation, resource and experience to complete the Works ("the Nominee") shall assume the rights and obligations on the part of the Developer such that the Council or the Nominee (as the case may be) shall be substituted for the Developer. In the event as to dispute between the parties as to the appointment of any nominee by the Council, the same shall be referred to expert determination in accordance with clause 12.3(a).
- (c) If the Council shall give a notice referred to in paragraph 6.8(b) then the Council or the Nominee (as the case shall be) shall remedy any outstanding Developer's Default which shall have been referred to in any notice served pursuant to paragraph 6.8(b) which shall be capable of remedy by it.
- (d) It shall be a condition of any notice given by the Council that the Council or its Nominee (as the case may be) accepts liability for the performance of the Developer's obligations to carry out Restoration and Aftercare save that the time for performance by the Council or the Nominee of the Developer's obligations shall be extended by a period that is fair and reasonable in all the circumstances.
- (e) For the avoidance of doubt any works required to remedy a Developer's Default could include restoration of the Site, notwithstanding that the same shall not be referred to in the relevant Annual Progress Plan and subject to the obtaining of any requisite approvals and consents, notwithstanding that the same shall not accord with the Restoration approved by the Planning Permission. Such works may also include extraction of Coal from the Site and the sale of the same, followed by Restoration and Aftercare in accordance with the Planning Permission.

- (f) For the avoidance of any doubt in the event that after 10 years of Aftercare of the Wet Heath, the Aftercare of Wet Heath is not successful, having regard to the criteria in the Sixth Schedule, then the Council may step in and carry out further enhancement on the Wet Heath (excluding restrictions on grazing).

6.9 Liability of the Parties under the Escrow Account

- (a) The Council and the Developer undertake to perform only such duties as are specifically set out in this Agreement. In connection with such duties, neither shall be liable for any mistake of fact, error of judgment or act or omission of any kind unless caused by wilful misconduct or gross negligence, and both shall be entitled to rely on any written notice, instruction, instrument or signature believed by the Council or the Developer as the case may be to be genuine and believed to have been signed or presented by the proper party or person duly authorised to do so.
- (b) The Council and the Developer jointly and severally agree to indemnify each of other and hold each other harmless against any and all liabilities (including the Escrow Bank's charges incurred in operating the Escrow Account) incurred by either as a result of actions taken pursuant to paragraph 6 of this Agreement except for liabilities incurred by either of us resulting from either party's wilful misconduct or gross negligence.

6.10 Audit

- (a) No coal extracted from the Site shall be removed from the Site without first being weighed at the Developer's weighbridge at the Site and full and accurate records of the operation of the weighbridge shall be kept by the Developer.
- (b) The parties shall keep or cause to be kept full and accurate records of all information relating to:
- (i) The preparation of the Annual Progress Plan;
 - (ii) the excavation of Coal and Overburden, the movement of Overburden to the overburden mounds, the Return of Overburden, the carrying out of the Restoration and the Aftercare of the Owners land;
 - (iii) The operation and accuracy of the weighbridge for the Site;
 - (iv) The operation of the Escrow Account
- (c) Each party and their auditors are permitted access to any and all documentation in the possession, custody or control of the parties in relation to the Works that is material to the operation of or payments into or out of the Escrow Account. For the

avoidance of doubt, this right will include the power to interview staff, view copies of any and all material documentation and to view any material computer data held for the purposes of the project.

6.11 Freedom of Information

- (a) The Developer and the Council recognise that:-
- (i) The Annual Progress Plan and any records of the Developer viewed by the Council in carrying out any audit under paragraph 12 contain information that is confidential and/or commercially sensitive to the Developer.
 - (ii) The Council is subject to legal duties which may require the release of information under the Freedom of Information Act 2004 or the Environmental Information Regulations 1992 or any other applicable legislation or codes governing access to information and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under paragraph 6 of this Agreement, the Annual Progress Plan and any audit carried out pursuant to paragraph 6.10.
- (b) In the event that the Council receives a request for disclosure of any information that is potentially confidential and commercially sensitive to the Developer the Council shall consult the Developer as soon as reasonably practicable and shall not:-
- (i) confirm or deny that the information in question is held by the Council; or
 - (ii) disclose the information requested
- in the event that (having taken into account the views of the Developer) an exemption to disclosure is or may be applicable in the circumstances.
- (c) In the event of dispute as to whether an exemption to disclosure may be applicable the matter shall be referred to expert determination in accordance with this Agreement

7.0 JOBS AND TRAINING

- 7.1 Prior to the commencement of Development the Developer shall submit a schedule of likely employment and training opportunities at the Site and a list of appropriate Partner Organisations to be consulted on each opportunity, including the Council, the local Job Centre Plus and other work programme providers, Local Schools, Colleges and Training providers, Local employment agencies, voluntary

and community sector organisations, Careers Wales, local business bodies and business advice agencies to bring forward local employment and training opportunities.

7.2 The Developer will work in partnership with the appropriate approved Partner Organisations in the recruitment of Local Candidates to employment and training opportunities arising at the Site by using reasonable endeavours to take the following steps:-

7.2.1 supplying to the appropriate approved Partner Organisations a job description and person specification in relation to any employment opportunity and a training description in relation to any training opportunity advertised generally at the Site;

7.2.2 not advertise generally any employment opportunity or training opportunity in relation to the Site unless the appropriate approved Partnership Organisations have either been given the chance to nominate Local Candidates for the opportunity or where applicable the appropriate approved Partnership Organisations have been informed that the Developer does not wish to restrict the pool of potential candidates to Local Candidates, along with the Developers reasons why;

7.2.3 interviewing those Local Candidates identified by the appropriate approved Partnership Organisations that the Developer considers to be job or training ready and who the Developer considers meets the requirements of the person specification and the job description relating to the employment opportunity and in relation to the relevant training opportunity consider offering a place on any training course where the Developer considers that the Local Candidate identified by the appropriate Partnership Organisation can demonstrate suitability for the particular training opportunity;

7.2.4 providing feedback to the appropriate approved Partnership Organisations in relation to Local Candidates who were interviewed and were unsuccessful in their applications for employment or who were trained and were not successful in obtaining employment with the Developer;

7.3 The provisions of this paragraph 8 shall not oblige the Developer to do anything that is contrary to good business practice and it is acknowledged by the Council that the decision to employ or provide training to a Local Candidate or not rests with the Developer in its absolute discretion.

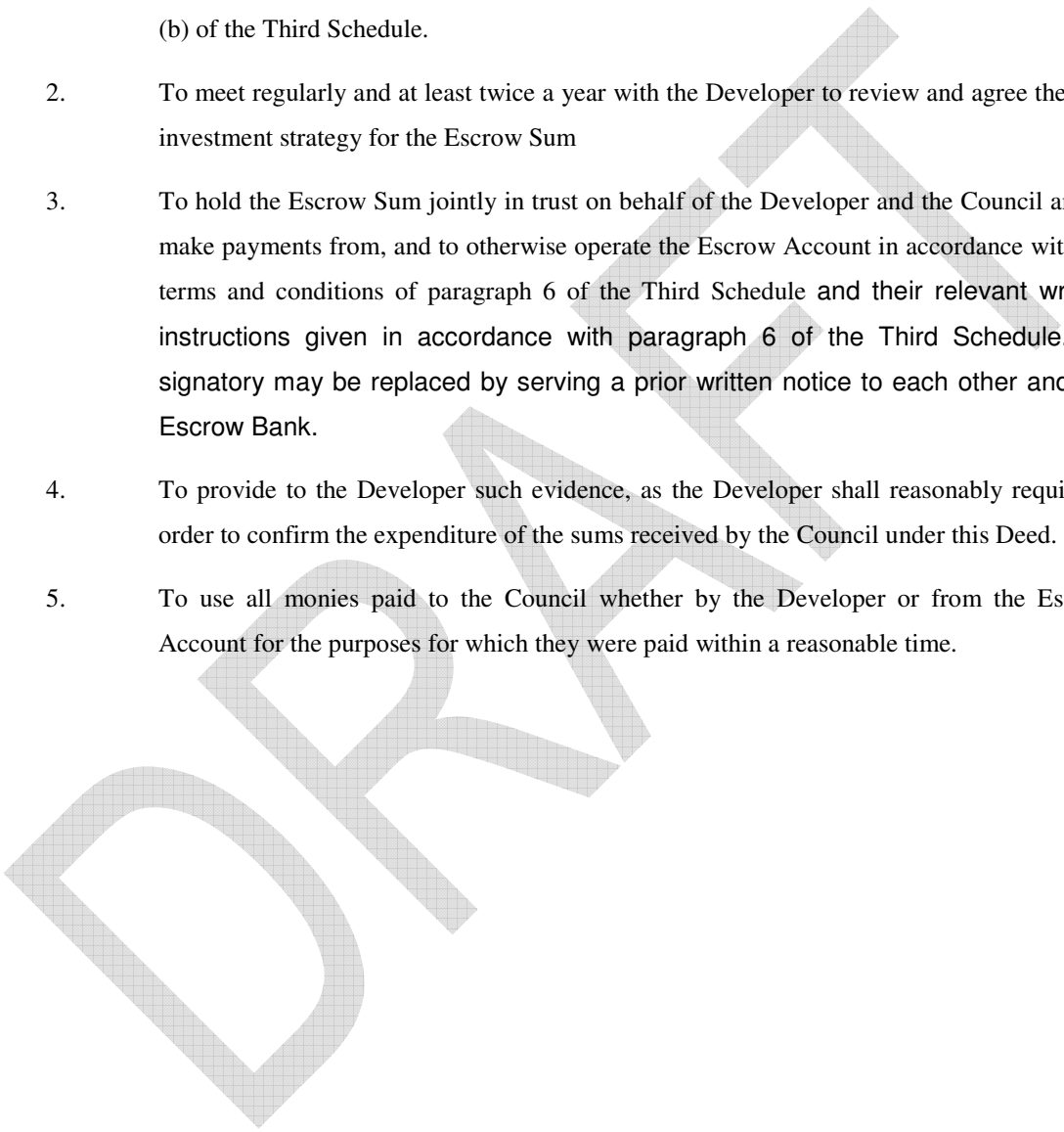
DRAFT

FOURTH SCHEDULE

Council's Covenants

The Council covenants with the Developers as follows:-

1. To enter into such agreements with the Developer and the Escrow Bank as may be required to open the interest bearing instant access deposit account,, the longer term interest bearing deposit account or such other financial products as are referred to in paragraphs 6.1 (a) and (b) of the Third Schedule.
2. To meet regularly and at least twice a year with the Developer to review and agree the best investment strategy for the Escrow Sum
3. To hold the Escrow Sum jointly in trust on behalf of the Developer and the Council and to make payments from, and to otherwise operate the Escrow Account in accordance with the terms and conditions of paragraph 6 of the Third Schedule and their relevant written instructions given in accordance with paragraph 6 of the Third Schedule. A signatory may be replaced by serving a prior written notice to each other and the Escrow Bank.
4. To provide to the Developer such evidence, as the Developer shall reasonably require in order to confirm the expenditure of the sums received by the Council under this Deed.
5. To use all monies paid to the Council whether by the Developer or from the Escrow Account for the purposes for which they were paid within a reasonable time.



FIFTH SCHEDULE

Owners Covenants

The First Owner, Second Owner, Third Owner and Fourth Owner covenant with the Council and Developer as follows:-

1. Not to carry out any part of the Development itself unless it has first entered into a further section 106 agreement with the Council containing the same covenants as are entered into by the Developer in this Deed.
2. To enter into any agreement to dedicate any land as may be required to create any path or bridleway in the indicative location set out on Plan 4 or as subsequently approved by the Council at the request of the Developer and or the Council.
3. To consent to any application to the Welsh Ministers for consent to carrying out of the Development on any common land within the Site.

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SIXTH SCHEDULE

Criteria for Wet Heath Restoration

The following criteria for determining the success of wet heath restoration over the Aftercare period of the Nant Llesg project are derived from the JNCC Common Standards Monitoring Guidance for Upland Habitats for wet heath.

1) Extent:

There is no measurable decline in the extent of wet heath vegetation.

2) Vegetation composition – frequency of indicator species:

The frequency of Cross-leaved heath (*Erica tetralix*) in the vegetation shows a consistent and continuing increase.

3) Vegetation composition – cover:

- i) The total percentage cover of the following species shows a consistent and continuing increase:

Calluna vulgaris

Carex spp

Empetrum nigrum

Erica tetralix

Eriophorum angustifolium

Narthecium ossifragum

Sphagnum spp

Tricophorum cespitosum

Vaccinium myrtillus

- ii) The total percentage cover of ericoid species shows a consistent and continuing increase.

- iii) Less than 20% of vegetation cover is made up of scattered native trees and scrub.

- iv) Less than 10% of vegetation cover is bracken.

- v) Less than 1% of vegetation cover is non-native species.
- vi) The total percentage of vegetation cover consisting collectively of *Agrostis capillaris*, *Holcus lanatus* and *Ranunculus repens*. shows a consistent and continuing decrease.
- vii) Less than 10% of the vegetation cover consists of *Juncus effusus*
- viii) Neither dwarf shrubs nor graminoids make up more than 75% of the vegetation cover.

4) Vegetation structure – indicators of browsing:

Less than 66% of the last complete growing season's shoots of dwarf-shrub species show signs of browsing.

5) Physical structure – indicators of increased active drainage and drying out, and peat erosion.

- i) Less than 10% of the total area shows signs of active drainage resulting from drainage, or heavy trampling or tracking.
- ii) The extent of eroding peat and/or mineral soil is less than the extent of re-deposited peat and/or mineral soil and new growth of wet heath and/or bog vegetation.

6) Physical structure – indicators of ground disturbance due to herbivore and human activity

- i) Less than 10% of the *Sphagnum* cover is crushed, broken and/or pulled up.
- ii) Less than 10% of the ground is disturbed bare ground.

THE COMMON SEAL OF)
CAERPHILLY COUNTY BOROUGH)
COUNCIL was affixed in the)
presence of:)

Authorised Signatory:

EXECUTED AS A DEED on behalf of)
MILLER ARGENT (SOUTH WALES))
LIMITED by)

Director

Director/Secretary

EXECUTED AS A DEED on behalf of)
DOWLAIS TOP INVESTMENT COMPANY)
LIMITED by)

Director

Director/Secretary

EXECUTED AS A DEED on behalf of)
MERTHYR INDUSTRIAL SERVICES)
LIMITED by)

Director

Director/Secretary

EXECUTED AS A DEED by ALUN)
JONES in the presence of)

EXECUTED AS A DEED by MARTIN)
JONES in the presence of)

EXECUTED AS A DEED by LORRAINE)
HOWELLS in the presence of)

EXECUTED on behalf of BARCLAYS BANK)
PLC by an authorised signatory in the)
presence of:)