DATE: **20**

UK Coal PLC / CISWO

AND

Barnsley MBC

AGREEMENT

SECTION 106

TOWN AND COUNTRY PLANNING ACT 1990

RELATING TO:

Former North Gawber Colliery, Carr Green Lane Spark Lane Mapplewell

Barnsley.

File Ref.

Planning Application Ref.

Contents

		Page No.
Clause 1	Parties	1
Clause 2	Definitions	1
Clause 3	Interpretation	3
Clause 4	Information	4
Clause 5	Statutory Authority and Legal Effect	5
Clause 6	Condition Precedent	6
Clause 7	Obligations	6
Clause 8	Costs	6
Clause 9	The Chargee	7
Clause 10	Invalidity	7
Clause 11	Contracts (Rights of Third Parties) Act 1999	7
Clause 12	Other Matters	7
Schedule 1	General Obligations	
Schedule 2		

THIS AGREEMENT is made as a deed the day of 20

1 PARTIES

1.1 [***NAME OF OWNER***] [of / whose registered office is situate at] [*address of Owner*] [(Company Registration Number [*insert number*])] **("the Owner")**.

1.2 [[***NAME OF CHARGEE***] [of / whose registered office is situate at] [*address of Chargee*] [(Company Registration Number [*insert number*])] **("the Chargee")**.]

1.3 **Barnsley MBC** whose principal office is at Barnsley MBC Town Hall BARNSLEY South Yorkshire S70 2TA **("the Council")**.

2 DEFINITIONS

In this Agreement (except where the context otherwise requires):

2.1 **"the Act"** means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991**).**

2.2 [**"the Application"** means the application in outline only numbered OU dated].

[**"the Application"** means planning application number PA dated].

[**"the Application"** means the reserved matter application number RM pursuant to the Outline Consent"].

2.3 [**"the Charge"** means the Legal Charge dated [20] made between the Owner (1) and the Chargee (2) by which the Land became charged with the repayment of certain monies to the Chargee].

2.4 **"Commencement of the Development"** means the earliest date upon which any material operations are begun in accordance with the provisions of Section 56(4) of the Act save

for the purposes of this Agreement none of the following operations shall constitute a material operation:

2.4.1 site preparation works;

2.4.2 archaeological investigations;

2.4.3 site investigation works (including environmental investigations);

2.4.4 [works of demolition;]

and **"Commence the Development"** shall be construed accordingly.

2.5 **"the Development"** means the development authorised by the Planning Permission.

2.6 [**"Dwellings"** means all houses, maisonettes, flats, bungalows and all other varieties of accommodation which may be built or are intended to be built on the Land to be used as individual units of accommodation for independent occupation by one or more people.]

2.7 **"the Head of Planning Services"** means the person the Council shall appoint as the Head of the Department responsible for Planning Services for the time being.

2.8 **"the Index**" means the All Items Group (item reference CHAW) of the Retail Prices Index published by H M Government Office for National Statistics provided that during any period where no such index exists, the index which replaces the same or is the nearest equivalent thereto (which shall be agreed by the parties or, in default of agreement, fixed by the President for the time being of the Law Society on the application of any party) shall be used.

2.9 **"Index Linked"** means adjusted in proportion to movements in the Index between the date of this Agreement and the date the particular payment is made.

2.10 **"the Land"** means the Land shown for the purposes of identification only edged red on Plan Number [ ] known as [ ].

2.11 "**Occupation of the Development**" means beneficial occupation of any part of the Development for any purpose other than the carrying out of the Development and "**Occupy the Development**" shall be construed accordingly.

2.12 [**"the Outline Consent"** means the approval of planning permission in outline only under application number OU dated the day of 20].

2.13 **"Plan Number"** means the plan annexed to this Agreement of that number.

2.14 **"Planning Permission"** means the planning permission to be granted by the Council pursuant to the Application in substantially the form of the draft annexed to this Agreement.

2.15 **"Satisfaction of the Council"** means to the normal standards of the Council applied elsewhere within their administrative area in respect of similar matters.

2.16 [**"Satisfaction of the County"** means to the normal standards of the County applied elsewhere within their administrative area in respect of similar matters.]

3 INTERPRETATION

3.1 References to the masculine, feminine and neuter genders shall include the other genders.

3.2 References to the singular include the plural and vice versa unless the contrary intention is expressed.

3.3 References to natural persons are to include corporations and vice versa.

3.4 Headings in this Agreement are for reference purposes only and shall not be taken into account in its construction or interpretation.

3.5 The expressions "the Owner"[, the Chargee][, "the County"] and "the Council" shall include their respective successors in title and assigns.

3.6 A reference to a Clause, Paragraph or Schedule is (unless the context otherwise requires) a reference to a Clause, Paragraph or Schedule of this Agreement.

3.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of such restriction.

3.8 Where in this Agreement a party includes more than one person any obligations of that party shall be joint and several.

3.9 Any reference in this Agreement to any statute, or to any section of a statute, includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

4 INFORMATION

4.1 The Owner owns the freehold interest in the Land and is [entitled to be] registered as proprietor of it with Title Absolute at H M Land Registry free from incumbrances other than those matters contained or referred to in the Property and Charges Registers of Title Number [SF] at the date of this Agreement].

4.2 The Council is the local planning authority for the purposes of the Act for the Land.

4.3 [The County is [the Local Highway Authority for the purposes of the Highways Act 1980 (and considers that the Development will necessitate the highway obligations contained in this Agreement)][and][the Local Education Authority within the meaning of S12 Education Act 1996 for Staffordshire (and considers that the Development will necessitate a requirement for a contribution towards the provision of educational facilities in the vicinity of the Development)].]

4.4 [The Owner] has by the Application applied to the Council for approval [of matters reserved under the Outline Consent / to carry out development on the Land].

4.5 The Council is satisfied that the Development is such as may be approved by the Council under the Act and planning permission granted (subject to conditions) subject to the Owner covenanting in the terms of this Agreement.

5 STATUTORY AUTHORITY AND LEGAL EFFECT

5.1 This Agreement is made pursuant to:

5.1.1 Section 106 of the Act; and

5.1.2 Section 111 of the Local Government Act 1972

and all other enabling powers and enactments which may be relevant for the purpose of giving validity to this Agreement.

5.2 The obligations of the Owner in this Agreement are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority.

5.3 [Subject to clause 5.4,] the Owner covenants with the Council to the intent that this Agreement shall be enforceable without limit of time (other than as expressly mentioned in this Agreement) against the Owner and any person deriving title through or under it to the Land or any part or parts of it as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.

5.4 [No person shall be bound by any obligations, rights and duties contained in this Agreement and/or be liable for any breach of a covenant and/or obligation contained in this Agreement after they shall have parted with all interest in the Land or the part in respect of which such obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest.]

5.5 No statutory undertaker shall be bound by any obligations, rights and duties contained in this Agreement and/or be liable for any breach of a covenant and/or obligation contained in this Agreement in respect of any site used only as an electricity substation, gas governor or pumping station.

5.6 If the Planning Permission expires (within the meaning of Sections 91, 92 or 93 of the Act) or is revoked or otherwise withdrawn before Commencement of the Development, this Agreement shall forthwith determine and cease to have effect.

5.7 Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

5.8 Nothing in this Agreement shall be construed as restricting the exercise by the Council [or the County] of any powers exercisable by [it/them] under the Act or under any other Act or any statutory instrument, order or byelaw in the exercise of their functions as a local authority.

6 CONDITION PRECEDENT

The planning obligations contained in this Agreement shall not be enforceable by the Council until the grant of the Planning Permission by the Council.

7 OBLIGATIONS

7.1 The Owner[, the County] and the Council further covenant, agree and declare in respect of the Land as set out in the Schedules.

7.2 The Council agrees with the Owner to grant the Planning Permission as soon as is reasonably practicable after completion of this Agreement.

8 COSTS

8.1 The Owner agrees to pay to the Council [and the County] on the signing of this Agreement [the Council's / their] reasonable costs and disbursements of and incidental to the preparation and execution of this Agreement.

8.2 The Owner agrees to pay to the Council [and the County] on demand [the Council's / their] reasonable costs and disbursements of and incidental to the monitoring of this Agreement.

9 THE CHARGEE

The Chargee for itself and its successors in title consents to the Owner entering into this Agreement and covenants with the Council (and the County) that in the event that the Chargee takes possession of the Land or any part of it and/or exercising its power of sale under the provisions of the Charge then the Chargee and its successors in title will observe and perform and be bound by the terms and conditions of this Agreement so far as the same remain to be observed and performed.

10 INVALIDITY

It is agreed and declared that if any clause or sub-clause of this Agreement shall be deemed to be unenforceable or ultra vires the remainder of this Agreement shall remain in full force and effect provided severance from this Agreement is possible.

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Nothing contained in this Agreement shall give, or be construed as giving, any rights, privileges, powers or enforceability other than to the Council[, the County] and to the specific person executing this Agreement as the Owner and its successors (if any) as defined in this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Agreement.

12 OTHER MATTERS

12.1 The Owner shall indemnify the Council[and the County] for any expenses or liability arising to [it/them]in respect of breach by the Owner of any obligations contained in this Agreement.

12.2 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and

parties to this Agreement and shall cite the number and clause of this Agreement to which it relates.

12.3 Payment of any money under this Agreement shall be made by the Owner sending the full amount payable in the form of a Banker's Draft or Solicitors' client account cheque within the time specified in this Agreement together with a letter specifically referring the name, date and parties to this Agreement and citing the number and clause of this Agreement to which the relevant sum relates and identifying which portion of the amount relates to any sum calculated to take account of Index Linking.

12.4 This Agreement shall be registered as a Local Land Charge.

IN WITNESS of which the Parties have executed this Agreement as a deed and have delivered it upon dating the day and year first before written.

SCHEDULE 1

General Obligations

The Owner covenants with the Council [and the County] with the intent that these are planning obligations for the purposes of Section 106 of the Act:

1. To permit the Head of Planning Services and any person or persons authorised by him access to the Land or any part of it at all reasonable times, on reasonable notice and in compliance with the Owner's reasonable requirements, and to permit him or them to inspect the Development and all materials intended for use in it.

2. To give the Council [and the County] notice in writing no later than 7 days prior to the anticipated Commencement of the Development.

3. To give the Council [and the County] notice in writing of the Commencement of the Development within 7 days of Commencement of the Development.

4. To give the Council [and the County] notice in writing no later than 7 days prior to the anticipated Occupation of the Development.

5. To give the Council [and the County] notice in writing of the Occupation of the Development within 7 days of Occupation of the Development.

[*Insert other Schedules as required*]

THE COMMON SEAL of)
THE OWNER was affixed to this)
deed in the presence of:)

Director

Director / Secretary

EXECUTED as a deed by **THE**)
OWNER acting by)
)

Director

Director / Secretary

SIGNED AND DELIVERED as a)
deed by **THE OWNER** in the)
presence of:)

Witness: signature

name
address

occupation

EXECUTED as a deed by)
for and on behalf [ )
BANK PLC])
in the presence of:)

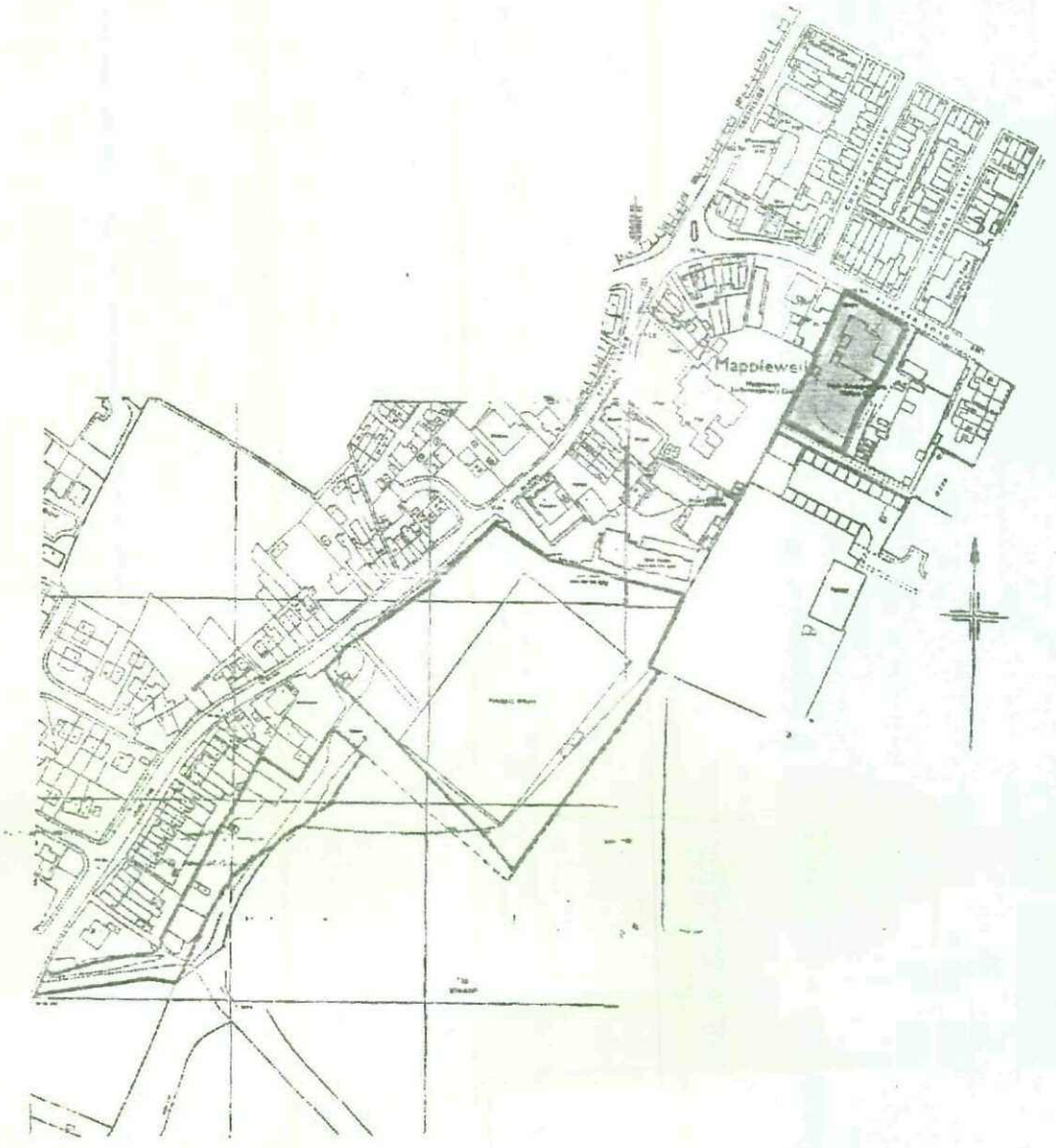
THE COMMON SEAL of
was affixed to this))
Barnsley MBC
deed in the presence of:)

Authorised Signatory

THE COMMON SEAL of)
Barnsley MBC
was affixed to this)
deed in the presence of:)

Authorised Signatory

H.M. LAND REGISTRY		TITLE NUMBER SYK 394459	
ORDNANCE SURVEY PLAN REFERENCE	SE3209 SE3309 SE3310	SECTION	Scale 1/2500
COUNTY SOUTH YORKSHIRE	DISTRICT BARNSLEY		© Crown copyright 1998



This title plan shows the general position of the boundaries; it does not show the exact line of boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground.
For more information see Land Registry Explanatory Leaflet 24.
This office copy shows the state of the title plan on 19/6/03 at 16:20:23. It may be subject to distortions in scale.
Under s.113 of the Land Registration Act 1925, this copy is admissible in evidence to the same extent as the original.
Issued on 19/6/03
This title is dealt with by the NOTTINGHAM (EAST) DISTRICT LAND REGISTRY
© Crown copyright. Produced by HMLR. Further reproduction in whole or part is prohibited without the prior written permission of Ordnance Survey. Licence Number GD272728.

Land Registry Official copy of title plan

Title number **SYK479616**
Ordnance Survey map reference **SE3208NW**
Scale **1:5000** reduced from 1:2500
Administrative area **South Yorkshire: Barnsley**

© Crown Copyright. Produced by Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026316.

