



UNILATERAL UNDERTAKING

SALFORD CITY COUNCIL

DATED

1st June

2000

RJB Mining (UK) Ltd

UNILATERAL UNDERTAKING

relating to

The proposed Cutacre Tip Reclamation and Opencast Coal Site
(Salford City Council)

A D West, Solicitor
RJB Mining PLC
Harworth Park, Blyth Road
Harworth, Doncaster
South Yorkshire DN11 8DB

THIS DEED is made the *first* day of *June* Two Thousand

by RJB Mining (UK) Ltd whose registered office is situate at Harworth Park, Blyth Road, Harworth, Doncaster, South Yorkshire, DN11 8DB ("the Company")

DEFINITIONS:

In this Deed the following terms and expressions shall have the following meanings:-

- "the 1990 Act" the Town and Country Planning Act 1990 (as amended)
- "the Adjoining Authorities" the Bolton Metropolitan Borough Council and the Wigan Borough Council
- "the Application Land" such part of the Development Site as lies within the administrative area of the City Council
- "the City Council" the Salford City Council
- "the Commencement Date" the date (if any) on which the Development shall be begun (within the meaning of Section 56 of the 1990 Act) in accordance with a Planning Permission
- "the Development" the winning and working of coal by opencast methods, extraction of coal by washing methods from Cutacre and Wharton Colliery Site Spoil Tips, and the reclamation and restoration of the land for a mixture of amenity (ecology and woodland) and agricultural uses
- "the Development Site" land to the north east of Atherton and to the south east of Over Hulton lying within the administrative areas of the Metropolitan Borough of Wigan, the Metropolitan Borough of Bolton and the City of Salford which is for the purposes of identification only shown coloured red on the Plan
- "the Plan" drawing No.58/D03A annexed hereto

"the Planning Application"	the written application for planning permission submitted to the City Council which is the subject of an appeal against non-determination allocated Planning Inspectorate reference number APP/U4230/A/98/291846
"the Planning Conditions"	the conditions attached to a Planning Permission
"the Planning Permission"	a planning permission granted by the Secretary of State pursuant to the Company's appeal against the non-determination of the Planning Application
"the Secretary of State"	the Secretary of State for the Environment, Transport and the Regions or one of his officers or inspectors acting on his behalf
"the Woodland Areas"	such areas of the Application Land as shall be restored to woodland use in accordance with the Planning Application or as otherwise agreed with the City Council

WHEREAS:-

- A. That part of the Development Site which comprises the Application Land is situated within the administrative area of the City of Salford.
- B. The Company is the freehold owner of the Application Land.
- C. By means of the Planning Application the Company applied for planning permission to carry out the Development on the Application Land being part of the Development Site.
- D. The Company has appealed against the failure of the City Council to determine the Planning Application.
- E. The Company has entered into this Deed under Section 106 of the 1990 Act to the intent that the provisions hereof shall constitute a planning obligation for the purposes of that section.

NOW THIS DEED WITNESSETH as follows:-

1 This Deed is made pursuant to Section 106 of the 1990 Act and the covenants on the part of the Company contained within it are planning obligations for the purposes of the 1990 Act which apply to the Application Land and are enforceable by the City Council.

2 This Deed and the obligations herein (other than the obligation contained in clause 3 hereof which is conditional only upon the events set out in clauses 2.1 and 2.2) are conditional upon:-

2.1 the granting by the Secretary of State of the Planning Permission;

2.2 the granting by the Secretary of State of planning permission for the carrying out of the Development on those parts of the Development Site not comprised within the Application Land;

2.3 the Development being begun (within the meaning of Section 56 of the 1990 Act) pursuant to a planning permission issued pursuant to the Planning Application

and until all such events have occurred the obligations on the part of the Company contained in this Deed (other than the obligation contained in clause 3 hereof) shall be of no effect.

3 The Company hereby undertakes with the City Council prior to the commencement of the Development to establish in conjunction with the City Council and thereafter participate fully in a "Liaison Committee" whose membership shall be open to representatives of the Company, the City Council, the Adjoining Authorities and such representatives of local communities as those aforementioned representatives shall determine and whose terms of reference shall be decided by the City Council and the representatives of the other local authority members after consultation with the Company and whose general purpose shall be to act as a forum for discussion and consultation with regard to all matters relating to the Development between the Company, the relevant local authorities and representatives of the local communities

4 The Company hereby further undertakes with the City Council as follows:-

4.1 in respect of the Woodland Areas and other features and areas within the Application Land comprising hedgerows, herb-rich grasslands and wetlands as shown on the Plan to implement and carry out an aftercare scheme ("the Aftercare Scheme") approved pursuant to the Planning Conditions at the Company's expense for a period of ten years from the date upon which such a scheme is required to be commenced in accordance with the Planning Conditions

4.2 for a period of twenty years from the first date of tree planting within the Woodland Areas not to fell, remove or destroy the woodlands within the Woodland Areas or any part thereof nor to authorise any other person to fell, remove or destroy the same apart from those operations required for the management of the woodland as agreed by the City Council.

4.3 not to begin the Development without having first given or procured the giving in favour of the City Council (together with the Adjoining Authorities) of approved security of appropriate value (taking into account any interest or other income earned in respect of the approved security) in respect of the restoration of the Application Land in accordance with the Planning Conditions and for the purposes of this clause:-

4.3.1 "approved security" means security either:-

(a) by way of a legally binding obligation on the Company to contribute (at an agreed rate per tonne of coal extracted from the Application Land) to a designated bank account in the names of the Company, the City Council and the Adjoining Authorities upon terms:-

(i) authorising the use of the amount standing to the credit of such account from time to time by the City Council (together with the Adjoining Authorities) by way of reimbursement of the expenses incurred by them in carrying out the restoration of the Development Site in accordance with the Planning Conditions in circumstances where the Company has defaulted in the restoration of the Development Site (or part

thereof) and the City Council and/or the Adjoining Authorities have exercised any enabling powers to carry out such works

- (ii) authorising the release to the City Council and the Adjoining Authorities of the whole of the amount standing to the credit of such account in the event of the making of an order of the Court for the winding-up of the Company or the passing of a resolution of the Company that it be wound-up (other than a voluntary winding-up for the purposes of any amalgamation or reconstruction) provided that the City Council and the Adjoining Authorities shall repay to the Company any part of such amount as is in excess of the amount necessary for the restoration of the Development Site
- (iii) authorising the release to the Company from such account from time to time (following the completion of coal recovery by opencast methods comprised within the Development) of all amounts incurred by the Company from time to time in the carrying out of the restoration of the Development Site (or part thereof) in accordance with the Planning Conditions but without reducing the amount standing to the credit of such account below the outstanding cost of the restoration of the Development Site from time to time
- (iv) authorising the release to the Company, following the completion of the carrying out of the restoration of the Development Site in accordance with the Planning Conditions, of any amount remaining to the credit of such account
- (v) that all interest earned upon such account shall not be paid out but shall be retained in such account for the purposes of this clause

- (vi) without prejudice to the remainder of this clause 4.3.1, that the Company shall be solely beneficially entitled to the amount standing to the credit of such account from time to time (including interest earned thereon)
- (vii) that the Company shall on the date of the setting up of such account execute and deliver to the City Council and the Adjoining Authorities a fixed charge over (i) any interest of the Company in those monies represented by the credit balance of such account from time to time and (ii) any interest of the Company in the book or other debt constituted by the credit balance of such account from time to time as security in favour of the City Council and the Adjoining Authorities for all amounts payable to them from such account as provided for by this clause 4.3.1, such charge to expressly exclude any counterclaim, set-off, abatement or any other right or remedy in favour of the Company (or any office holder appointed under the Insolvency Act 1986 or any receiver appointed under the Law of Property Act 1925 or otherwise) which might operate to impeach the claim or claims of the City Council and the Adjoining Authorities under such interest
- (viii) providing for such account to be operated generally upon the instructions of authorised signatories on behalf of any three of the Company, the City Council and the Adjoining Authorities without implication of any term to the effect that such instruction is not to be unreasonably withheld.
- (ix) save as provided for in clause 4.3.1(viii), prohibiting absolutely the sale, disposition, charging of or any other form of dealing by the Company in or in connection with any or all of any interest in the monies standing to the credit of such account from time to time or of the book or other debt arising by virtue of such credit balance from time to time save with

the consent in writing to such effect of the City Council and each of the Adjoining Authorities

(x) as otherwise agreed between the Company, the City Council and the Adjoining Authorities (including as to the amounts and timing of releases from such account as referred to in sub-clause (iii) above); or

(b) of such other type and form as may be approved by the City Council

4.3.2 "appropriate value" means:-

(a) an increasing value (in accordance with a rate per tonne of production agreed with the City Council) provided that at the stage of the Development where the maximum void has been created in accordance with the Planning Permission such value shall be not less than the proper cost of restoring the maximum void in accordance with the Planning Conditions (to be determined by arbitration if not agreed between the Company and the City Council); or

(b) such other value as shall be agreed between the Company and the City Council

4.3.3 in sub-clause 4.3.2 "determined by arbitration" shall mean referred for determination to an arbitrator who shall be experienced in planning and mineral extraction to be agreed between the parties and failing agreement within two months to be nominated at the request of either of the parties by the President (or failing that the Vice President) for the time being of the Royal Institution of Chartered Surveyors, such reference to be in accordance with and subject to the provisions of the Arbitration Act 1996 and any statutory modification or re-enactment thereof for the time being in force

4.4 not to make any further application for planning permission for the extraction of coal within the Application Land nor to carry out or permit any other person to carry out any opencast coal mining operations within the Application Land which:-

- (a) are not authorised by the Planning Permission or any variation thereto; or
- (b) are carried out after the completion of the opencast coal mining operations permitted by the Planning Permission or any variation thereto.

4.5 that no further opencast coal mining operations shall be carried out within the Application Land after the completion of opencast coal mining operations permitted by the Planning Permission or any variation thereto

4.6 not to transport by or allow to be transported from the Development Site by means of road traffic on public highways in any year any greater tonnage of coal than the amounts set out in the following sub-clauses, namely:-

4.6.1 in the first of 12 months commencing on the date on which coal shall first be delivered from the Development Site ("the coal delivery date"), two hundred and fifty thousand tonnes of coal;

4.6.2 in the second period of 12 months after the coal delivery date, fifty thousand tonnes of coal;

4.6.3 in the third period of 12 months after the coal delivery date, fifty thousand tonnes of coal;

4.6.4 in the fourth period of 12 months after the coal delivery date, one hundred thousand tonnes of coal

provided that the Company shall use all reasonable endeavours to obtain all necessary consents and authorisations required for the construction, connection to main railway running lines and use of a suitable rail-loading facility

but provided further that for so long as the Company shall not have obtained all such necessary consents or authorisations the obligations contained in this clause 4.6 shall be suspended (and not enforceable) and if all such necessary consents and authorisations have not been obtained within twelve months after the Commencement Date the obligations contained in this clause 4.6 shall be discharged

(and of no further effect)

- 4.7 to use all reasonable endeavours during the continuation of the Development to restrict all coal-haulage traffic entering and leaving the Development Site to the most direct route from the Development Site to Junction 4 of the M61 Motorway ("the Approved Route"), such endeavours to include:-
- 4.7.1 the provision of appropriate directions signing of the Approved Route to ensure as far as practicable that all such vehicles observe the routing restrictions;
 - 4.7.2 the issue of directives to all drivers of coal-haulage traffic under the direct control of the Appellant restricting such vehicles entering and leaving the Development Site to the Approved Route;
 - 4.7.3 the inclusion of such requirements within the conditions of contract with all haulage contractors and other bodies of whatsoever description employed or instructed by the Appellant to provide coal-haulage traffic travelling to and from the Development Site
- 4.8 following completion of the Development and if so requested by the City Council, to enter into an agreement with the City Council (on terms to be agreed) under Section 64 of the National Parks and Access to the Countryside Act 1949 or Section 39 of the Wildlife and Countryside Act providing for free public access to the areas of land designated as woodland or grasslands on the Plan at all reasonable times and following the completion of the Development until such time as such agreement is concluded the Company shall permit members of the public to have access to and across such areas of land as if such agreement had been entered into
- 4.9 following completion of all restoration and landscaping works required by the Planning Permission and Planning Conditions (as certified by the City Council) to make available to the City Council and its licensees for use as a fishing lake the areas of water proposed to be known as 'Lidworth Lakes' (shown on the Plan at approximate grid references 370600E/403800N and 370700E/403900N) together with such means of access thereto as shall be appropriate upon terms (including as

to arrangements and responsibility for the stocking of the said lake with fish) as the Company and the City Council may agree

4.10 within six months of the completion of all restoration and landscaping works required by the Planning Permission and Planning Conditions (as certified by the City Council) to construct in the positions shown by blue dashed lines on the Plan and to dedicate for use by the public under Section 25 of the Highways Act 1980 public rights of way as designated on the Plan

5 The Company declares that it enters into the obligations in this deed subject to and upon the basis of the following provisions:-

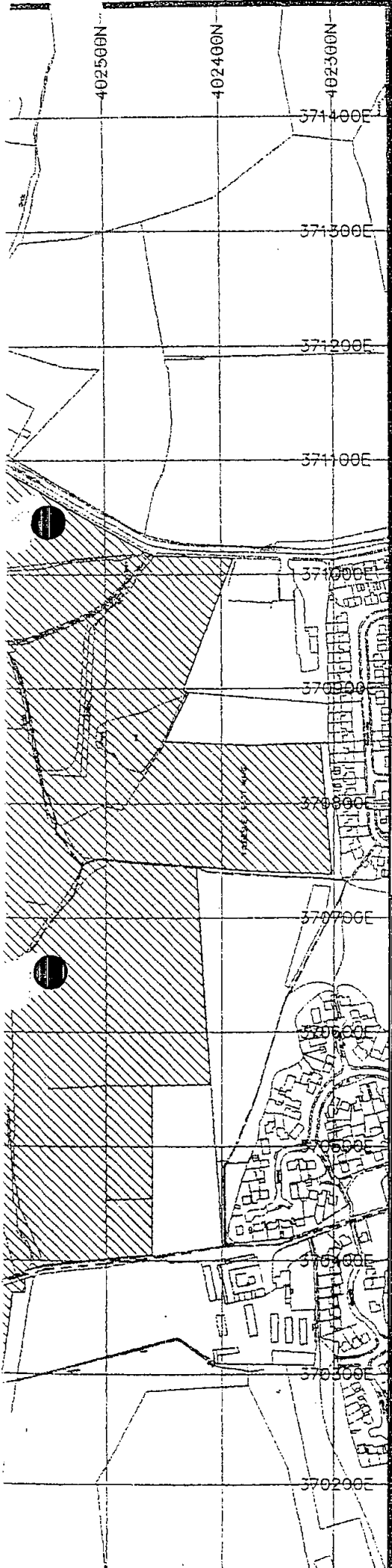
5.1 The obligations in this Deed shall be enforceable against the successors in title of the Company;

5.2 No person shall be liable for breach of a covenant contained in this Deed after he shall have parted with all interest in the Application Land or the part in respect of which such breach occurs but without prejudice to his liability for any subsisting breach prior to his parting with such interest;

5.3 If the permission granted pursuant to the Planning Application shall expire before the Development is begun as defined above or shall at any time be revoked this Deed shall forthwith determine and cease to have effect

5.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Land in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed (provided always that the provisions of this Deed shall apply to, and shall limit development pursuant to, the Planning Permission or any other permission authorising the carrying out of opencast coal mining operations);

5.5 If any provision of this Deed is held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired



R.J.B. Mining (U.K.) Ltd.,
 HARWORTH PARK BLYTH ROAD HARWORTH DONCASTER S.YORKS DN11 8DB

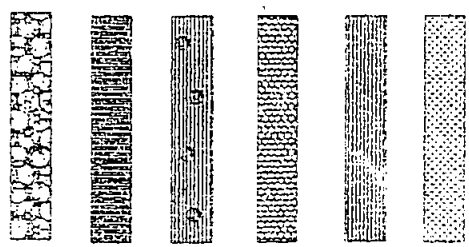
SITE NAME
CUTACRE
[Signature]
 TITLE
RESTORATION AND LANDSCAPING PLAN

COUNTY Greater Manchester DISTRICT Bolton, Wigan & Salford CIVIL PARISH
 LOCATION 6km South West of Bolton

O.S. SHEETS USED
 Prefix SD
 [Grid of O.S. sheet numbers]
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 Drawn by S.J.E. Date 11.03.96
 Checked by J.W.G. Date 17.05.96
 Scale 1:5000 Sheet 1 of 1
 Drawing No. **58/D03A** Contract Drawing No.



- W7b WOOD
- W8 WOOD
- W10e WOOD
- W16 WOOD
- RETAINED ACID GRASSLAND SCRUB
- SPECIES RICH ACIDIC GRASSLAND



AMENDMENTS

REVISED	DESCRIPTION	DRAWN	DATE
J.G.	WILDLIFE ENHANCEMENT AREA AMENDED	S.J.E.	06.07.98
	PROPOSED INDUSTRIAL LAND AMENDED		