DATED 16th of May 2002 – details updated November 2021

DECLARATION OF TRUST

IN RESPECT OF

**THE WHATLEY COMMON GOOD TRUST**

THIS DECLARATION OF TRUST is made the 16th of May 2002

1. Peter Lugg of The Old Post Office, Whatley, near Frome, Somerset

BA11 3LA *(“the A Trustee”*) (appointed trustee)

1. Andrew Prince of The Warrens, Chantry, near Frome, Somerset

BA4 3LJ *(“the B Trustee”)* (appointed trustee)

WHEREAS

It is desired to establish a Trust for the benefit of the area currently within the boundary of Whatley Parish (or any part of it) or some of its inhabitants; following the making of the Gift by Hanson Quarry Products (South West) Limited.

Hanson Quarry Products (South West) Limited has paid the sum of one hundred and forty eight thousand pounds plus the accrued interest (£148,000 plus the accrued interest) to the Trustees.

NOW THIS DEED WITNESSES as follows:

1 **Definitions and Interpretation**

1.1 In this Trust Deed the following expressions have the following meaning:

“Annual report and Accounts” - the annual report and accounts prepared by the trustees according to the procedure under Clause 12 below

“Appointed Trustee” – means a Trustee appointed by the Parish Council according to the procedure in Clause 5.11

“Appointing Body” – the Parish Council

“the A Trustee” – the appointed Trustee first named above and his successors and references to the “B Trustee” have a corresponding meaning. References to the “C Trustee”, the “D Trustee” and the “E Trustee” shall refer to the initial 3 elected Trustees

“Continuing Trustees” – In relation to the retirement of a Trustee, those Trustees who will remain in office after his or her retirement

“Elected Trustee” – means a Trustee elected by public vote according to the procedure in Clause 5.7

“the Gift” – the sum paid to the Trustees by Hanson Quarry Products (South West) Limited

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“New Trustee” – in relation to the appointment or re-appointment of a Trustee, the Trustee being appointed

“the Parish” – the parish of Whatley in the County of Somerset, determined by its geographical boundaries at the date of this Deed

“the Parish Council” – Whatley Parish Council and any statutory body succeeding to its functions

“Public Proposal Process” – the process by which the Trustees may make proposals under Clause 15

“the Publicity Provisions” – means the provisions for Parish Councils made by s.228 Local Government Act 1972 (as amended by Local Government (Access to Information) Act 1985 Schedule 2 Part 6) a copy of which is attached to this Deed at Schedule 3

“Registered Elector” – any person whose name appears in the Register of Electors for the Parish (determined in accordance with the provisions of this Deed) maintained under the Representation of the People Acts 1983 and 1985 (as amended from time to time) in force on any date on which the same needs to be ascertained

“the Trust” – the Whatley Common Good Trust as established by this Deed

“the Trustees” – the trustees of this Deed from time to time and their successors and any one of them

“Trustees Correspondence Address” – the address from time to time published by the trustees as their address for correspondence etc. under Clause 20

1.2 Unless the context requires the singular includes the plural and the masculine includes the feminine and vice versa

1.3 Clause headings are for reference only and shall not be taken into consideration in interpretation

1.4 The phrase “including” means “…including but not limited to…”

**2 Establishment of the Trust**

The Trust is established by, on and with effect from the date of this Deed.

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**3 Trust Funds**

3.1 The Trustees shall hold the capital and income and all other money

received by the Trust to incur expenditure to incur expenditure which in the Trustees’ reasonable opinion is in the interests of and will bring direct benefit to the area currently within the boundaries of Whatley Parish (or any part of it) or all or some of its inhabitants, as the Trustees shall from time to time, in their discretion, decide.

3.2 Trustees are under no obligation resulting from their position as Trustees or otherwise to raise further funds for the Trust.

**4 Appointment of Officers**

4.1 The Trustees shall have power to appoint a secretary, a treasurer and any other officers to assist in the management of the Trust and to pay for the services of such secretary, treasurer and other officers out of Trust funds and also to pay for any other expenses incidental to the establishment and management of the Trust.

4.2 The secretary, treasurer and any other officer appointed may already be a Trustee or may subsequently become one.

**5 Appointment of Trustees**

5.1 The initial A and B Trustees were appointed by the Parish Council and their successors are to be appointed by the Parish Council.

5.2 The initial C, D and E Trustees shall be elected by the people of the Parish according to the procedure in Clause 5.10 and their successors are to be elected according to the same procedure.

5.3 Within three months of the date of this deed an election is to be held to elect the initial C D and E Trustees.

5.4 The replacement of the elected Trustees shall take place according to the procedure specified in Clauses 5.7, 5.9 and 5.10.

5.5 New Trustees are to be appointed in writing by the Continuing Trustees in such manner as the law prescribes or permits, following appointment by the Parish Council in accordance with the procedure specified in Clause 5.7 and receipt by the Continuing Trustees of written confirmation addressed to the Continuing Trustees signed by the nominee in question that he or she is:

 5.5.1 ready, willing and able to act as a Trustee and

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5.5.2 not barred from acting as a Trustee by the general law or by the terms of this Deed.

5.6 The Continuing Trustees are not obliged to appoint a Trustee who is not eligible to be a Trustee under the terms of this Deed or any applicable law. If the Continuing Trustees decide to appoint someone selected by private ballot under this Clause 5, they are to state their reasons for doing so at the end of the next meeting of the Trustees.

5.7 An Elected Trustee must be nominated by at least two Registered Electors. The election of Trustees will take place at the Sun Inn, Whatley (or other suitable place to be determined by the Trustees in accordance with the provisions of Clause 19.5) by secret ballot box.

5.8 Any Registered Elector is entitled to vote.

5.9 The Trustees shall appoint an independent returning officer to oversee the election procedure for Elected Trustees set out in Clause 5.10.

5.10 **Elected Trustees**

Publicity for the election of Elected Trustees, the procedure followed at election and the subsequent counting of votes shall follow, as far as possible, the rules of procedure set out in Schedule 2 Local Elections (Parishes and Communities) Rules 1986 (SI No. 1986/2215) a copy of which is attached to this Deed at Schedule 2. Where there is a conflict between those rules and the provisions of this Deed, the provisions of this Deed shall prevail.

5.11 **Appointed Trustees**

 Appointed Trustees shall be selected and appointed by the Parish Council at Parish Council Meeting. For avoidance of doubt the Parish Council may appoint as Trustees, individuals who are not Registered Electors in the Parish.

**6 Term of Office**

6.1 The appointed Trustees shall serve for a one year term.

6.2 The initial C Trustee shall serve for a three year term.

 The initial D Trustee shall serve for a three year term.

 The initial E Trustee shall serve for a three year term.

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6.3 Thereafter, all elected Trustees shall serve for a three year term.

6.4 A Trustee retiring at the end of his or her term is eligible to be re-elected or re-appointed as a Trustee any number of times provided that he or she remains eligible to be a Trustee under the terms of this Deed or any applicable law.

**7 Eligibility to be a Trustee etc**

7.1 A Trustee shall automatically cease to hold office if he or she:

7.1.1 becomes incapable of managing his or her affairs by reason of mental disorder, illness or injury; or

7.1.2 is disqualified from holding the office as a Parish Councillor by law; or

7.1.3 is absent, without the permission of the other Trustees, from the Trustees’ meetings for more that two consecutive meetings and the other Trustees unanimously decide that he or she should, as a result, cease to be a Trustee.

7.2 No person shall be appointed to be a Trustee who is:

 7.2.1 under 18 years of age;

7.2.2 incapable of managing his or her affairs by reason of mental disorder, illness or injury; or

7.2.3 disqualified from holding the office as a Parish Councillor by law.

7.3 No person who is not a Registered Elector at the time of his or her election or re-election including a Trustee retiring by rotation, shall be elected to be a Trustee.

7.4 For avoiding doubt, no Trustee shall cease to be a Trustee simply because, after his or her appointment (or re-appointment), he or she subsequently ceases to be a Registered Elector, even if this results in more that tow Appointed Trustees being persons who are not Registered Electors.

7.5 For the avoidance of doubt, a Parish Councillor may be appointed as a Trustee and if not appointed, may offer him or herself for election as a Trustee.

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**8 Retirement of Trustees**

A Trustee may retire at any time by not less that three months’ written notice given to the Trustees collectively, provided that at least three Trustees remain in office when such retirement takes place.

**9 Management by Trustees**

9.1 The Trustees shall administer and manage the Trust.

9.2 The Trustees shall make decisions by a majority vote.

9.3 For so long as at least three Trustees hold office, a quorum shall consist of three Trustees present at any meeting. If less than three Trustees hold office, a quorum shall consist of two Trustees present at any meeting.

9.4 A sole surviving Trustee shall, after consultation with the Parish Council and in writing co-opt a second Trustee for a period not exceeding six months from his or her appointment. The decision shall be published in accordance with the Publicity Provisions.

9.5 Once a year the Trustees shall appoint a Chair, for a one year term among their number and such a Chair shall have a casting vote on any decision in the event of a tie.

9.6 Trustees shall make their decisions impartially and strictly on the basis of the best interests of the inhabitants of the Parish.

9.7 Trustees shall not (and shall not regard themselves as) the agent, representative or delegate of the Parish Council and are to make their decisions in accordance with Clause 9.6.

9.8 Before any decision is made by the Trust, any Trustee having an interest in that decision, whether pecuniary or by reason of an office held, must declare that interest and:

9.8.1 a Trustee who has declared an interest by reason of an office held may take part in the discussion and vote on the decision in question but

9.8.2 a Trustee who has declared a pecuniary interest in a decision may neither take part in the discussion of nor vote on the decision in question.

9.9 The rules of law applicable to Parish Councillors shall apply to the determination of whether or not a Trustee has a pecuniary interest and, so far as applicable and permitted by law (other than as those relating

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to penalties), to all other matters relating to Trustees that have a pecuniary interest in any decision.

9.10 The Trustees may decide when their financial year is to begin and end, but until decided by the Trustees, the Trust’s financial year is to end on 5 April.

**10 Liability of and to Trustees etc**

10.1 No Trustee shall be liable for any loss of or damage to the Trust or the property of the Trust by reason of:

10.1.1 any investment made in good faith so long as he or she or they obtained independent professional advice before making such investment

10.1.2 the negligence or fraud of any agent or person employed In good faith by the Trust or the Trustee, provided reasonable supervision has been executed

10.1.3 any mistake or omission by him or her (but not so as to exclude any Trustee’s liability for fraud or wilful or reckless wrongdoing or omission on his or her own part).

10.2 No Trustee shall acquire property of any kind from the Trust.

10.3 The Trustees shall be entitled to be indemnified out of Trust funds for all personal losses sustained by them in carrying out their duties as Trustees (but not so as to and indemnity for fraudulent, wilful or reckless wrongdoing or omission by a Trustee).

10.4 The Trustees may decline to enter into any contractual or legally binding obligation with anyone who refuses to waive or disclaim the Trustees’ personal liability under that contract or obligation.

**11 Trustees’ expenses etc**

11.1 The Trustees shall be entitled to all reasonable out of pocket expenses properly incurred by them in connection with the Trust but, subject to Cause 11.2 below, may not be paid for undertaking the duties of a Trustee, whether by way of salary or otherwise.

11.2 Any Trustee who provides or sells goods or provides services to the Trust as part of his or her ordinary course of trade or business shall be entitled to be paid at the proper rate for those goods or services. The amounts of such payments and the identity of the Trustee recipients shall be separately identified in the Annual Report and Accounts.

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**12 Annual Report and Accounts**

12.1 The Trustees shall make and publish an annual report including as soon as reasonably practical after the Trustees’ accounts have been audited.

12.2 The Trustees shall procure that the Trust’s accounts are independently audited in such manner as the Trustees reasonably think fit.

12.3 Every Registered Elector shall be entitled to one free copy of each Annual Report and Accounts upon written request, made within three months of the publication of the relevant year’s Annual Report and Accounts, such copies to be supplied at the Trust’s expense.

**13 Trustees’ Powers**

13.1 The Trustees shall have power to do anything not prohibited by law, including powers to:

13.1.1 invest Trust funds in such manner as they reasonably think fit;

13.1.2 transfer investments and other Trust property, whether consisting of stocks, bonds, shares or land or other property or otherwise, into the name of a reputable nominee;

13.1.3 open and close bank and other accounts;

13.1.4 acquire and dispose of land or buildings in any way;

13.1.5 borrow or raise money and to mortgage or charge Trust assets, including land, with the repayment of money borrowed by the Trust;

13.1.6 lend money, whether secured or unsecured;

13.1.7 co-operate with other bodies or persons in furtherance of the Trust’s objects and exchange information with them;

13.1.8 engage or appoint advisors and pay their reasonable fees;

13.1.9 raise funds in any way permitted by law;

13.1.10 accept and receive other funds beside the Gift;

13.1.11 insure Trust property

13.1.12 pay insurance against the Trust’s liability, including Trust’s general public and third party liability as property owners and the

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personal liability of Trustees as the persons responsible for

managing and directing the affairs of the Trust; and

13.1.13 do other lawful acts and things reasonably necessary for the achievement of the Trust’s objects.

**14 Changes to the Trust’s Constitution**

14.1 The Trustees shall have power to change the terms of this Deed, whether in order to achieve charitable status under the Charities Act in force from time to time or for any other good or sufficient reason.

14.2 The Trustees shall not exercise the powers conferred by Clause 14.1 above, unless the Public Proposal Process has been applied to the decision and the decision is made in accordance with the Public Proposal Process.

**15 Public Proposal Process**

15.1 If the Trustees decide to propose an amendment to this Deed the Trustees shall notify each Registered Elector in writing of their proposal, the amended wording proposed (if relevant) and the reasons for the proposal. Such written notice shall specify a date, not less than three months after the date on which the Trustees written notices were posted (or the last such date if posted on more than one day), as the date by which written objections must be received by the Trustees.

15.2 If more than ten Registered Electors notify the Trustees that they object to the Trustees’ proposal by the date specified in the notice given by the Trustees, the Trustees shall in writing invite all Registered Electors and representatives of the Parish Council to a public meeting, at a convenient place within the Parish (or as near as reasonably possible to it if there is no such convenient place in the Parish); such meeting to be held at least one month after the date on which the invitation to the meeting is posted.

15.3 The public meeting shall be held at the Trust’s expense and shall be chaired by one of the Trustees. The meeting shall as far as possible be conducted in accordance with the rules applicable to Parish Councils.

15.4 The Trustees shall procure that minutes of the meeting are recorded and that a poll of those present at the meeting is taken and recorded. For avoiding doubt no-one shall have more that one vote in such poll but Trustees may vote, whether or not they are Registered Electors.

15.5 The Trustees shall procure that copies of minutes of the public meeting and the result of the poll are sent to every Registered Elector who, within one month after the date of the meeting, shall so request in writing.

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15.6 The Trustees shall meet within one month after the date of the public meeting in order to decide whether to:

15.6.1 proceed with the proposal without alteration; or

15.6.2 put forwarded an amended proposal; or

15.6.3 to withdraw the proposal.

 and shall publish their decision in accordance with the Publicity Provisions.

15.7 If the Trustees decide to proceed with the proposal without amendment, the Trustees may do so in accordance with the original proposal, unless by the expiry of the next calendar month after the Trustees’ notice under Clause 15.6 above was given more than 25% of all Registered Electors have objected to the proposal.

15.8 Objections under Clause 15.7 are to be made in writing and, in the case of objections by Registered Electors, signed by them.

15.9 If the Trustees decide to proceed with an amended proposal or a new proposal, the procedure in this Clause shall be repeated and the Trustees shall publish their decision in such way as they reasonably think fit.

15.10 If the Trustees decide to withdraw the proposal, they will publish their decision in accordance with the Publicity Provisions.

**16 Discontinuance of Trust**

 This Trust shall be discontinued upon the expenditure of all Trust funds.

**17 Trust Funds**

All cheques and other orders of payment of Trust funds are to be signed by at least two Trustees. The signatories to the bank account are mandated to sign cheques up to £100 without authorisation by all trustees. Bids over £100 up to £5000 must be agreed at committee meetings. Bids over £5000 shall be referred for comment using the village email list with residents on the list asked to refer the matter to others they believe have no email access. Responses to be received before the next meeting either in writing or in person at the meeting.

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**18 Regulations**

Within the limits prescribed by this Deed, the Trustees shall have full power from time to time to make regulations for the management of the

Trust and for the conduct of their business including the summoning of meetings, the deposit of money at a proper bank and the custody of documents and shall have power to vary or rescind any rules so made.

**19 Trustees’ Meetings**

19.1 Once a year the Trustees shall hold an Annual Trust Meeting open to the public. The meeting shall be publicised in accordance with the provisions specified in Part III of the Schedule 12 to the Local Government Act 1972 (paragraphs 15(3) and (4)) a copy of which is attached to this Deed at Schedule 4. The purpose of this meeting will be for the Trust to report to the Parish on its activities during the preceding year.

19.2 The Trustees shall meet at least four times in every year. These meetings will be open to the public and shall be publicised according to the procedure in Clause 19.1. Each meeting will commence with an open forum at which members will be allowed to speak. Each meeting will then proceed to the agenda, during which time members of the public shall not have the right to speak.

19.3 Any Trustee may at any time call a Special Meeting of the Trustees on not less than 14 days’ notice being given to all the other Trustees (unless all Trustees agree to shorter notice) of the matter or matters to be discussed. These meetings shall not be open to the public.

19.4 If the Trust’s secretary and/or treasurer is not a Trustee, they may attend and participate in (but not vote at) Trustees’ meetings, to such extent as the Trustees determine.

19.5 The Trustees have the exclusive right to determine where within five miles of the boundary of the Parish (other than in a private home) and when their meetings including the Annual Trust Meeting take place and who, other than the Trustees themselves, may attend at those meetings.

**20 Address for Correspondence**

20.1 The Trustees shall from time to time nominate and publish an address within the Parish, as their address for service of notices on and correspondence with the Trustees.

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20.2 The Trustees’ Correspondence Address is to be stated in the Annual Report and Accounts and in any Public Proposal notices.

20.3 Until further notice, the Trustees’ Correspondence Address is to be:

 ogoodden@yahoo.co.uk, Haha House, Whatley BA11 3LA.

**IN WITNESS** of which the Trustees have executed this Deed

Executed as a Deed by

PETER LUGG

in the presence of R S Prince, Solicitor, 35 Colston Avenue, Bristol

Executed as a Deed by

ANDREW PRINCE

in the presence of R S Prince, Solicitor, 35 Colston Avenue, Bristol

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