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

relating to Former Belmont Care Home and adjacent Farm Land between Garden House Close and Back Lane, Monk Bretton, Barnsley, S71 2DY

Date: 31st March 2021

Barnsley Metropolitan Borough Council (1)

Eric James Lidster (2)

Anthony John Lidster (3)

Harvey James Lidster (4)

Charlotte Marie Lidster (5)

HACE (UK) Limited (6)

Blacks Solicitors LLP
City Point
29 King Street
Leeds
LS1 2HL

DATE 31st March 2021

PARTIES

(1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire, S70 2TA (hereinafter referred to as **"the Council"**) of the first part;

(2) **ERIC JAMES LIDSTER** of Arunden House, Lund Lane, Burton Grange, Barnsley, S71 5PA (hereinafter referred to as **"the First Owner"**) of the second part;

(3) **ANTHONY JOHN LIDSTER** of Albro House, 30 Worsborough Village, Barnsley, S70 5LS (hereinafter referred to as **"the Second Owner"**) of the third part;

(4) **HARVEY JAMES LIDSTER** of Woodcote, Lund Lane, Lundwood, Barnsley, S71 5PE (hereinafter referred to as **"the Third Owner"**) of the fourth part;

(5) **CHARLOTTE MARIE LIDSTER** of 23 Worsborough Village, Barnsley, S70 5LW ("hereinafter referred to as **"the Fourth Owner"**) of the fifth part;

(6) **HACE (UK) LIMITED** (Company No. 08195596) whose registered office is situated at Marland House, 13 Huddersfield Road, Barnsley, S70 2LW (hereinafter referred to as **"the Fifth Owner"**) of the sixth part.

INTRODUCTION AND BACKGROUND

1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and is the authority by whom the planning obligations hereby created are enforceable.

2 The Council is also the local highway authority for the purposes of the Highways Act 1980 for the area in which the Site is situated.

3 The First Owner is the freehold owner of that part of the Site registered with title absolute under Land Registry Title Number SYK617175.

4 The Second Owner, the Third Owner and the Fourth Owner are together the freehold owners of that part of the Site registered with title absolute under Land Registry Title Numbers SYK587101 and SYK400225.

5 The Fifth Owner is the freehold owner of that part of the Site registered with title absolute under Land Registry Title Number SYK583282.

6 The Council resolved on 29th October 2020 to grant the Planning Permission subject *inter alia* to the completion of this Deed.

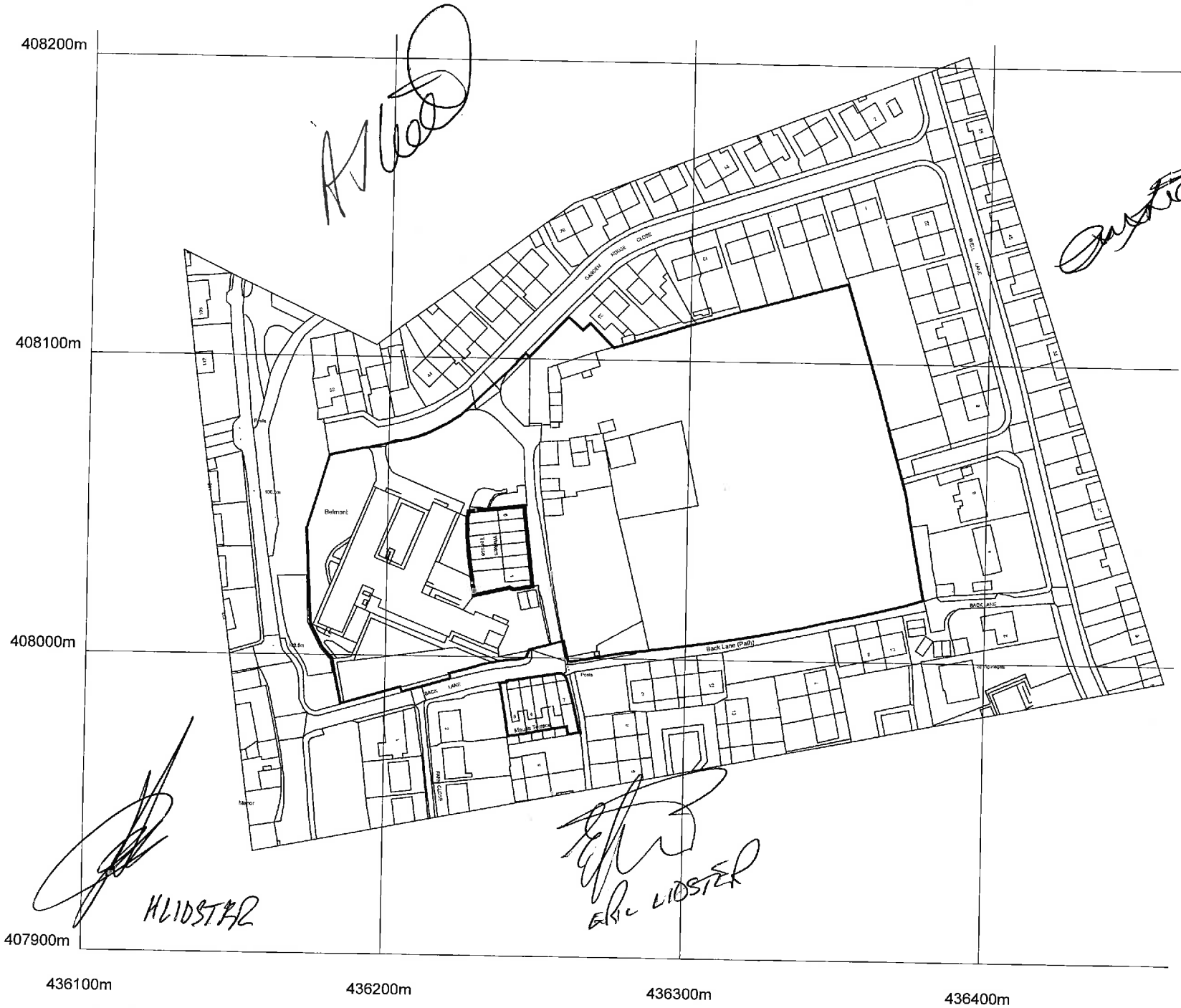
NOW THIS DEED WITNESSES AS FOLLOWS:

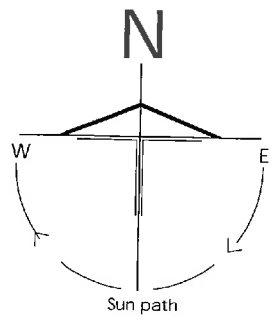
OPERATIVE PART

1 DEFINITIONS

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

"Act"	means the Town and Country Planning Act 1990;
"Application"	means outline planning application reference 2019/0991 which was validated by the Council on 15 October 2019 for Demolition of former care home, existing farm house and farm buildings and erection of residential development of up to 82 no. dwellings (Outline with all matters reserved apart from means of access);
"Commencement of Development"	means for the purposes of this Deed only 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 pursuant to the Planning Permission other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the extraction of coal, the diversion and laying





REVISIONS:

Residential Development

at Land & Buildings between
Garden House Close &
Bank Lane
Monk Bretton

for HACE (UK) Ltd

OS Location Plan

Farrar Bamforth Associates Ltd.

Chartered Architectural Technologists

51, Trinity Street, Huddersfield HD1 4DN
Tel. (01484) 424008 Fax. (01484) 512305
E-mail : design@farrarbamforth.co.uk
Website : www.farrarbamforth.co.uk

Drawn	PLG
Date	January 2018
Scales	1:1250 @ A3
Drawing No.	17-D15-01 Rev.

	of services, the erection of any temporary means of enclosure and the temporary display of site notices or advertisements and **"Commencement"**, **"Commence Development"** and **"Commence the Development"** shall be construed accordingly;
"Development"	means the development of the Site pursuant to the Planning Permission;
"Dwelling"	means any dwelling (including a house flat or maisonette) to be constructed on the Site pursuant to the Planning Permission;
"Index"	means the All Items Retail Price Index published by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore), or any replacement or modification of such index in force from time to time;
"Interest"	means interest at 4 per cent above the base lending rate of the Barclays Bank PLC from time to time;
"Occupation" and "Occupied"	means the first beneficial occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, occupation for marketing or display or occupation in relation to security operations and **"Occupy"** shall be construed accordingly;

"Owners"	means the First Owner, the Second Owner, the Third Owner, the Fourth Owner and the Fifth Owner collectively and "Owner" shall mean any one of them;
"Plan"	means the plan attached to this Deed at the First Schedule and numbered 17-D15-01;
"Planning Permission"	means the outline planning permission subject to conditions to be granted pursuant to the Application;
"Reserved Matter"	means any one of appearance, landscaping, layout and scale as defined by Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 and **"Reserved Matters"** shall be construed accordingly;
"Reserved Matters Approval"	means the approval or approvals pursuant to the Planning Permission of some or all of the Reserved Matters required for the carrying out of the Development (as the context requires);
"Site"	means the land which is described in the First Schedule and which is (together with other land which is also subject to the Application) shown edged red on the Plan;
"Working Day"	means any day of the week other than Saturday Sunday or any bank holiday.

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 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.

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

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Deed are not made under Section 106 of the Act they are made under Section 111 of the Local Government Act 1972.

3.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed are planning obligations pursuant to Section 106 of the Act which bind the Site and each and every part thereof and are enforceable against the Owners and their successors in title by the Council in its capacity as local planning authority.

4 CONDITIONALITY

4.1 This Deed shall take effect upon the date hereof but clause 5 shall be conditional upon:

(a) the grant of the Planning Permission; and

(b) the Commencement of Development on the Site.

5 THE OWNERS' COVENANTS

5.1 The Owners covenant with the Council that the Site shall be subject to the restrictions and provisions set out in the Second Schedule.

6 THE COUNCIL'S COVENANTS

6.1 The Council covenants with the Owners to comply with the restrictions and provisions as set out in the Third Schedule.

7 MISCELLANEOUS

7.1 Upon completion of this Deed the Owners shall pay to the Council the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £1,000.00 (one thousand pounds).

7.2 A person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

7.3 This Deed shall be registrable as a local land charge by the Council.

7.4 The parties agree with one another to act reasonably and in good faith in fulfilment of the objectives of this Deed and in particular where the agreement, approval, consent or expression of satisfaction is required by the Owners 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 Head of Planning & Building Control or other appropriate manager or delegated officer within the Council from time to time.

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) to be invalid illegal or unenforceable then 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 Owners) it is modified by any statutory procedure (except any modification pursuant to section 96A of the 1990 Act) or expires prior to the Commencement of Development on the Site.

7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed:

(a) to the extent that such breach relates to any part of the Site in which that person has no interest; and/or

(b) (in respect of this Deed as a whole) which occurs after that person has parted with their interest in the Site or if it be part only of the Site the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest for which they shall continue to be liable.

7.9 The obligations contained in this Deed shall not be binding on or enforceable against:

(a) any owner, occupier, tenant of any of the Dwellings nor their mortgagee or chargee or any person deriving title from them;

(b) any mortgagee or chargee from time to time which shall have the benefit of a mortgage or charge over the Site or over any part or parts thereof unless (but subject always to the preceding and remaining provisions of this Deed) such mortgagee or charge has entered into possession of the Site or any part thereof to which such obligation relates; and/or

(c) a statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services.

7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission other than the Planning Permission.

8 WAIVER

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

9 JURISDICTION

This Deed is governed by and interpreted in accordance with the laws of England.

10 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.

11 DISPUTES

11.1 Where the parties are in dispute or disagreement as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with this Deed or its meaning or construction then the parties shall use their reasonable endeavours to resolve the same within 20 Working Days of the dispute or disagreement arising.

11.2 Failing the resolution of any such dispute or disagreement within the said 20 Working Days the dispute or disagreement may be referred for determination in accordance with the provisions of this clause 11 on the reference of either of the parties to the dispute or disagreement.

11.3 The dispute or disagreement shall be referred to the decision of a reputable Chartered Surveyor unconnected to any of the parties and qualified to deal with the subject matter of the dispute or disagreement who shall either be jointly appointed by the parties within a period of 5 Working Days following a failure of the parties to resolve the dispute or disagreement pursuant to clause 11.2 above or failing agreement on such nomination appointed by the President for the time being of the Royal Institution of Chartered Surveyors.

11.4 The determination of the independent Chartered Surveyor (including any determination as to the responsibility for payment of their costs and those of the parties) shall be final and binding upon the parties.

11.5 The reference shall be deemed to be a reference to any expert (and not an arbitrator).

11.6 The terms of reference of the Chartered Surveyor as an expert shall include the following:

(a) they shall call for representations from all parties with 10 Working Days of a reference to them under this Deed and shall require the parties to exchange representations within this period;

(b) they shall allow the parties 10 Working Days from the expiry of the 10 Working Days period referred to in sub-clause (a) above to make counter representations;

(c) any representations or counter representations received out of time shall be disregarded by the independent Chartered Surveyor;

(d) they shall provide the parties with a written decision (including their reasons) within 10 Working Days of the last date for receipt of counter-representations;

(e) they shall be entitled to call for such independent expert advice as they shall think fit; and

(f) their costs those of the parties and the costs of any independent expert advice called for by the Chartered Surveyor shall be included in their award.

12. INDEXATION AND INTEREST

12.1 All payments to be made by the Owner to the Council pursuant to the Second Schedule shall be increased or decreased by an amount equivalent to any percentage increase or decrease in the Index from the date of this Deed to the date on which such payment is paid.

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

FIRST SCHEDULE

The Site

The land edged red on the Plan which comprises the former Belmont Care Home and adjacent Farm Land between Garden House Close and Back Lane, Monk Bretton, Barnsley, S71 2DY and which is registered in the names of the Owners at the Land Registry under Title Numbers SYK617175, SYK400225, SYK587101 and SYK583282.

SECOND SCHEDULE

The Owners Covenants with the Council

1. **Definitions**

1.1 For the purposes of this Second Schedule (and this Deed as a whole) the following definitions shall apply in addition to those set out in clause 1:

"Contributions"	means the Education Contribution, the Open Space Contribution and the Sustainable Travel Contribution and "**Contribution**" means any one of them;
"Education Contribution"	means such sum to be calculated in accordance with the Council's supplementary planning document entitled "Financial Contributions to Schools" adopted May 2019 on the basis of the number of Dwellings (which have more than one bedroom and which are not specifically designed for elderly people nor sheltered or student accommodation) comprised in the Development as detailed in the relevant Reserved Matters Approval, **SUBJECT ALWAYS TO** being no more than the maximum figure of £464,000.00 (four hundred and sixty four thousand pounds), such sum to be used by the Council towards the provision of school places within a 2 mile radius of the Site;

"Open Space Contribution"	means such sum to be calculated in accordance with the Council's supplementary planning document entitled "Open Space Provision on New Housing Developments" adopted May 2019 on the basis of the number of Dwellings and number of bedrooms in those Dwellings comprised in the Development as detailed in the relevant Reserved Matters Approval, **SUBJECT ALWAYS TO** being no more than the maximum figure of £175,129.86 (one hundred and seventy five thousand one hundred and twenty nine pounds and eighty six pence) such sum to be used by the Council towards the provision or enhancement of public open space within 5km of the boundary of the Site the need for which is required in order to mitigate impacts arising from the Development;
"Sustainable Travel Contribution"	means such sum to be calculated in accordance with the Council's supplementary planning document entitled "Sustainable Travel" adopted November 2019 on the basis of the number and type of Dwellings comprised in the Development as detailed in the relevant Reserved Matters Approval, **SUBJECT ALWAYS TO** being no more than the maximum figure of £61,500.00 (sixty one thousand five hundred pounds) such sum to be used by the Council

towards helping finance and deliver the programme of public transport improvements and enhancements identified in the Infrastructure Delivery Plan, the updated Barnsley Rail Vision, and other relevant documents in accordance with the Councils SPD 'Sustainable Travel' (November 2019).

The Owners covenant with the Council as follows:

2. Education Contribution

2.1 To pay 50% of the Education Contribution to the Council prior to the Occupation of any of the Dwellings.

2.2 Not to Occupy any of the Dwellings until 50% of the Education Contribution has been paid to the Council.

2.3 To pay the remaining 50% balance of the Education Contribution to the Council prior to Occupation of 50% of the Dwellings.

2.4 Not to Occupy more than 50% of the Dwellings until the remaining 50% balance of the Education Contribution has been paid to the Council.

3. Open Space Contribution

3.1 To pay 50% of the Open Space Contribution to the Council prior to the Occupation of any of the Dwellings.

3.2 Not to Occupy any of the Dwellings until 50% of the Open Space Contribution has been paid to the Council.

3.3 To pay the remaining 50% balance of the Open Space Contribution to the Council prior to Occupation of 50% of the Dwellings.

3.4 Not to Occupy more than 50% of the Dwellings until the remaining 50% balance of the Open Space Contribution has been paid to the Council.

4. Sustainable Travel Contribution

4.1 To pay 50% of the Sustainable Travel Contribution to the Council prior to the Occupation of any of the Dwellings.

4.2 Not to Occupy any of the Dwellings until 50% of the Sustainable Travel Contribution has been paid to the Council.

4.3 To pay the remaining 50% balance of the Sustainable Travel Contribution to the Council prior to Occupation of 50% of the Dwellings.

4.4 Not to Occupy more than 50% of the Dwellings until the remaining 50% balance of the Sustainable Travel Contribution has been paid to the Council.

THIRD SCHEDULE

Council's Covenants with the Owners

The Council hereby covenants with the Owners in the following terms:

General

1. To use all Contributions paid to the Council under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.
2. To provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of any one or more of the Contributions within 20 Working Days of receipt of such request.
3. At the written request of the Owner to provide written confirmation of the discharge of the obligations contained in this Deed when the Council is satisfied that such obligations have been performed.

Repayment of contributions

4. The Council further covenants with the Owner that it will pay to the Owner any part of any Contribution which has not been expended or committed for expenditure in accordance with the provisions of this Deed within ten years of the date of receipt by the Council of such payment together with all interest accrued thereon from the date of payment to the date of refund.

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

THE COMMON SEAL OF **BARNSLEY METROPOLITAN**)
BOROUGH COUNCIL)
was affixed in the presence of:)

No. 2343
IN REGISTER

Authorised Signatory: JASON FIELD
HEAD OF LEGAL

EXECUTED as a **DEED** by
ERIC JAMES LIDSTER
in the presence of:

.....

Witness .....
Name FRED TAYLOR
Address 36, ST MICHAELS AVE
MONK BRETTON
BARNSLEY
.....

Occupation MANAGER

EXECUTED as a **DEED** by
ANTHONY JOHN LIDSTER
in the presence of:

.....

Witness .....
Name FRED TAYLOR
Address 36 ST MICHAELS AVE
MONK BRETTON
BARNSLEY
.....

Occupation MANAGER

EXECUTED as a **DEED** by

HARVEY JAMES LIDSTER

in the presence of:

Witness .....

Name FRED TAYLOR

Address 36 ST MICHAELS AVE
MONK BRETTON
BARNSLEY
.....

Occupation MANAGER

EXECUTED as a **DEED** by

CHARLOTTE MARIE LIDSTER

in the presence of:

Witness .....

Name FRED TAYLOR

Address 36 ST MICHAELS AVE
MONK BRETTON
BARNSLEY
.....

Occupation MANAGER

EXECUTED AS A DEED by **HACE (UK) LIMITED**)

acting by two Directors or a Director and the)

Secretary)

Director:

Director/Secretary: