DATED 5th November 2013

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

TAYLOR ESTATES LIMITED

# AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to development on land at 155 Wakefield Road Barnsley S72 9JG in the County of South Yorkshire

A.C. Frosdick, LL.B. DipLG,
Borough Secretary,
Town Hall,
Barnsley S70 2TA.

**THIS DEED OF AGREEMENT** is made the 5th day of November Two Thousand and Thirteen

**BETWEEN**

(1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA ("the Council") of the one part and

(2) **TAYLOR ESTATES LIMITED** (Company Number 04260959) whose registered office is situate at Brookdale 41 Clarence Road Chesterfield S40 1LH ("the Owner") of the other part

**RECITALS**

(1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the land described in the First Schedule hereto ("the Land") is situated and is the authority by whom the obligations contained in this Agreement are enforceable

(2) The Owner is the registered proprietor with Title Absolute of the Land under Land Registry Title Number SYK78588.

(3) The Land has the benefit of a planning permission for residential development granted under planning reference number 2008/1700 (**"the Planning Permission"**).

(4) The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed and compliance with condition 10 of the Planning Permission

**NOW THIS DEED WITNESSETH AS FOLLOWS:-**

**DEFINITIONS**

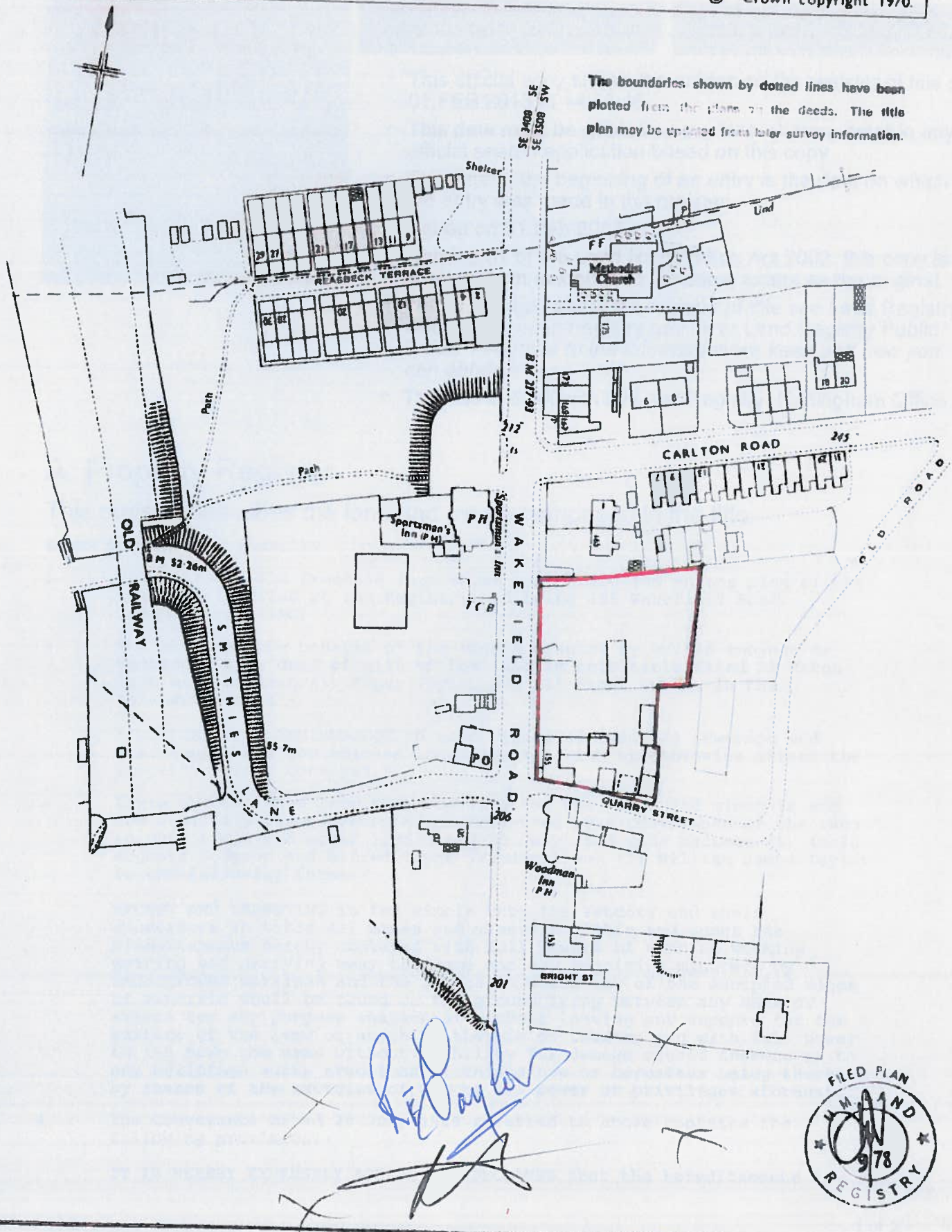
1 For the purposes of this Deed the following expressions shall have the following meanings

# H.M. LAND REGISTRY

| ORDNANCE SURVEY PLAN REFERENCE | COUNTY | SHEET | TITLE NUMBER | |
|---|---|---|---|---|
| | SOUTH YORKSHIRE | | SYK78588 | |
| | | | NATIONAL GRID | SECTION |
| Scale: 1/1250 | BARNSLEY DISTRICT | | SE 3408 | B |

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The boundaries shown by dotted lines have been plotted from the plans on the deeds. The title plan may be updated from later survey information.




FILED PLAN
H.M. LAND REGISTRY
978

This official copy is incomplete without the preceding

"**the 1990 Act**" means the Town and Country Planning Act 1990 (as amended)

"**the Commencement of Development**" means the actual date upon which the Development is begun by the carrying out of any material operation as defined by Section 56(4) of the Town and Country Planning Act 1990 and "Commence Development" is to be construed accordingly

"**the Development**" means the development of the Land for residential development in accordance with the Planning Permission

"**Index**" means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if that Price Index ceases to exist such index as the Council reasonably nominates

"**Interest**" means interest at 4 per cent above the base lending rate of Barclays Bank Plc from time to time or should this rate cease to exist such other bank lending rate as the Council may reasonably nominate

"**the Plan**" means the plan annexed hereto

"**the Public Open Space Commuted Sum**" means the sum of £26,484 (twenty six thousand four hundred and eighty four pounds only) to be spent in the first instance on the improvement of public open space at Dearne Way within Dearne Valley park (GS reference 1549) or otherwise on any other public open space provision or improvements (including their maintenance thereafter) that are likely to be of benefit to those within or affected by the development

**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 against each individually 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 deriving title through or under that party and in the case of the Council the successors to its statutory functions.

**LEGAL BASIS**

3 This Agreement is made pursuant to section 106 of the Town and Country Planning Act 1990 section 111 of the Local Government Act 1972 section 2 of the Local Government Act 2000 and all other enabling powers and is a planning obligation for the purposes of and as defined in the said Section 106 and the covenants restrictions and requirements imposed on the Owner herein are enforceable by the Council as local planning authority against the Owner

**COMMENCEMENT**

4 The provisions of this Deed shall have immediate effect upon the completion of this Deed other than the obligations in Clause 5 which shall have effect upon the Commencement of Development

**OWNER COVENANTS**

5 The Owner covenants with the Council as set out in the Second Schedule

**MISCELLANEOUS**

6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

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

6.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or by the Council from the Owner 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 Assistant Director of Planning and Regulatory Services 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.

6.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon receipt of a written request by the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

6.5 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.

6.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.7 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings

constructed pursuant to the Planning Permission nor against those deriving title from them.

6.8 Nothing in this Deed shall prohibit or limit the 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 Deed.

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

6.10 This Deed is governed by and interpreted in accordance with the law of England and Wales.

**INDEXATION**

7 Any sum payable under this deed by the Owner shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

**INTEREST**

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

**IN WITNESS** whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written

**FIRST SCHEDULE**

All that land and buildings situate at 155 Wakefield Road Barnsley S71 1NG for the purpose of identification shown edged red on the Plan and which is registered at the Land Registry under title number SYK 78588.

**SECOND SCHEDULE**

The Owner covenants with the Council to observe and perform the following obligations:

Public Open Space

1.1 The Owner shall pay to the Council the Public Open Space Commuted Sum prior to occupation of 75% of the dwellings provided under the Planning Permission

**THE COMMON SEAL** of **BARNSLEY METROPOLITAN BOROUGH COUNCIL** was hereunto affixed to this Deed in the presence of:- )

Authorised Signatory

No. 448
IN REGISTER

**EXECUTED** as a **DEED** by **TAYLOR ESTATES LIMITED** )

Acting by

Director

Director/Secretary