DATED 20th December 2013

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

LO'S PHARMACY LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to development on land adjacent to Woodland Drive Barnsley S70 6PQ in the County of South Yorkshire

A.C. Frosdick, LL.B. DipLG,
Assistant Chief Executive Legal and Governance
Town Hall,
Barnsley S70 2TA.

THIS DEED OF AGREEMENT is made the 20 day of December 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) **LO'S PHARMACY LIMITED** (Company registration number 03584267) whose registered office is situate at Unit 5 Fairfield Park Manvers Rotherham South Yorkshire S70 2NE ("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 has purchased the Land from the Council by virtue of a Transfer of even date ("the Transfer")

(3) The Land has the benefit of planning permission under planning reference 2012/0236 for a GP surgery and pharmacy with associated car parking ("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

"**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 a GP surgery and pharmacy with associated car parking 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

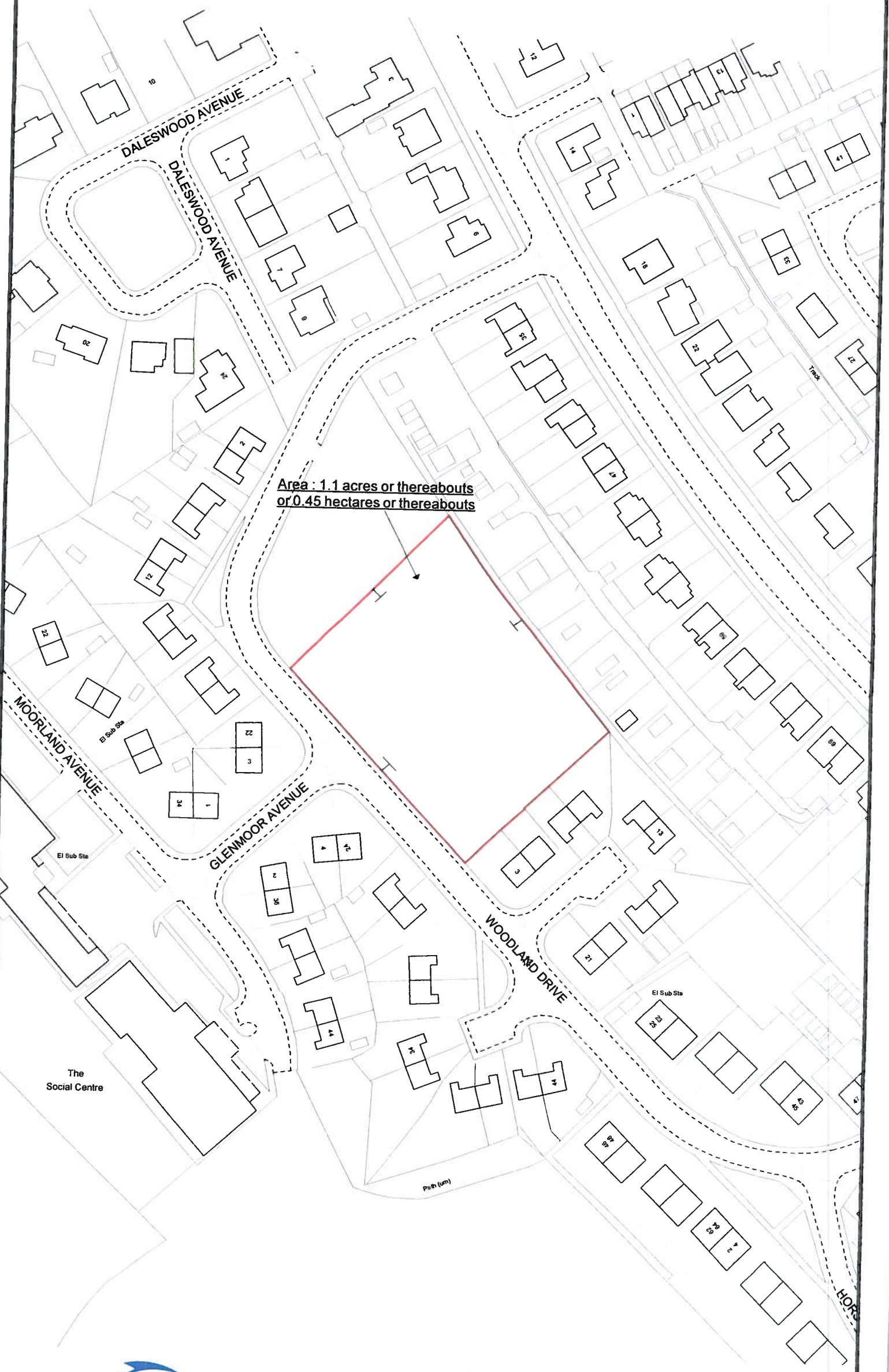
"**the Public Open Space Commuted Sum**" means the sum of £32,000 (thirty two thousand pounds only)

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.

PLAN REFERRED TO:

BARNSLEY



nps group

NPS Barnsley Ltd
PO Box 634
Barnsley
S70 9GG

Tel: 01226 774605
Fax: 01226 774399
Email: enquiries@nps.co.uk
www.nps.co.uk

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Scale 1: 1,250

Plan No:SH4991 Date:30/05/2012

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 the 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 The Owner shall pay to the Council on completion of this Deed the sum of £1000 (on which no VAT shall be payable) in respect of the legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

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

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

6.4 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 or special delivery to the principal address or registered office (as appropriate) of the relevant party.

6.5 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.

6.6 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.

6.7 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.

6.8 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.

INDEXATION

7 Any sum payable under this deed by the Owner remaining unpaid six months following the date hereof 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 adjacent to Woodland Drive Barnsley S70 6PQ the subject of the Transfer and for the purpose of identification shown edged red on the Plan

SECOND SCHEDULE

The Owner covenants with the Council to pay to the Council upon Commencement of Development the Public Open Space Commuted Sum to be spent on improving or maintaining public open space within the administrative area of the Council.

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

Authorised Signatory

No. 520
IN REGISTER

EXECUTED as a Deed by the above-named **LO'S PHARMACY LIMITED** and signed by a single Director signing in the presence of a witness who attests the signature and expresses the document to be executed by the Company)

.....

BEN JACKSON
SOLICITOR

BURY & WALKERS
BRITANNIC HOUSE
REGENT STREET, BARNSLEY
SOUTH YORKSHIRE S70 2EQ