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

relating to the development of land to the south-east of Dearne Hall Road & 1 and 3 Claycliffe Road, Barnsley

Dated : 23rd January 2014 ~~2013~~

Barnsley Metropolitan Borough Council (1)

Hallam Land Management Limited (2)

Commercial Estates Projects Limited (3)

Walton & Co

2 Queen Street

Leeds

LS1 2TW

DATE 23rd January 2014 ~~2013~~

PARTIES

(1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of Civic Hall, Eldon Street, Barnsley, S70 2JL (hereinafter referred to as **"the Council"**)

(2) **HALLAM LAND MANAGEMENT LIMITED** (Company Registration Number 02456711) whose registered office is situated at Banner Cross Hall, Eccleshall Road South, Sheffield, S11 9PD (hereinafter referred to as **"the First Owner"**)

(3) **COMMERCIAL ESTATES PROJECTS LIMITED** (Company Registration Number 02731442) whose registered office is situated at Sloane Square House, 1 Holbein Place, London, SW1W 8NS (hereinafter referred to as the **"Second Owner"**)

INTRODUCTION

1 The Council is the local planning authority for the purposes of the Act for the area in which Site is situated.

2 The First Owner is the freehold owner with title absolute of that part of the Site registered under Land Registry Title Numbers SYK255710 and SYK81220.

3 The Second Owner is the freehold owner with title absolute of that part of the Site registered under Land Registry Title Number SYK257441.

4 The Application has been submitted to the Council by the First Owner and the Second Owner and the and the Council would not grant planning permission for the Development unless the planning obligations contained in this Deed were entered into by the Owners

5 The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

6 The Council has resolved to grant the Planning Permission subject to *inter alia* the prior 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 the application for outline planning permission submitted to the Council for the Development, registered by the Council on 19 March 2013 and allocated the Council reference number 2013/0280;

"**Commencement of Development** means for the purposes of this Deed the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development of the Development pursuant to the Planning Permission begins to be carried out other than operations consisting of site clearance, demolition work, archaeological investigations, site preparation including earthworks, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, works for the formation of the access to the Development, the erection of any temporary means of enclosure and the temporary display of site notices or advertisements and "**Commence Development**" and "**Commence the Development**" shall be construed accordingly;

"**Development**" means the development of the Site with residential development with associated public open space, landscaping and link road pursuant to the Planning Permission and as set out in the Application;

"**Dwelling**" means a dwelling (including a house flat or maisonette) to be constructed pursuant to 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 any replacement or modification thereof in place from time to time;

"**Occupation**" **and** "**Occupied**" means 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;

"**Owners**" means subject to Clause 7.8 the First Owner and the Second Owner together;

"**Plan**" means the plan attached to this Deed numbered A21235/02 Rev G;

"**Planning Permission**" means the outline planning permission subject to conditions to be granted pursuant to the Application;

"**Primary Education Contribution**" means the sum of £190,000 (one hundred and ninety thousand pounds) such sum to be used by the Council solely for the provision of additional primary school places at existing primary schools within a two mile radius of the Site, the need for which arises from the Development;

"**Site**" means the land more particularly described in the First Schedule;

"**Working Days**" 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 Section 111 of the Local Government Act 1972 and all other enabling powers.

3.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the Act which bind the Site and each and every part thereof and are (subject to the terms of this Deed) 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 the Owners' covenant in Clause 5 of this Deed is conditional upon:

(i) the grant of the Planning Permission; and

(ii) the Commencement of Development.

5 THE OWNERS' COVENANT

5.1 The Owners covenant with the Council as set out in the Second Schedule.

6 THE COUNCIL'S COVENANTS

6.1 The Council covenants with the Owners as set out in the Third Schedule.

7 MISCELLANEOUS

7.1 Upon completion of this Deed the Owners shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the maximum sum of £1,000.00.

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 the Head of Planning, Building Control and Sustainability 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.

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 or expires prior to the Commencement of Development.

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) which occurs after it shall have parted with its interest in the Site or if it be part only 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 it shall continue to be liable.

7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

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

(i) lessees or purchasers Occupying or entitled to Occupy the Dwellings;

(ii) any mortgagee or chargee from time to time which shall have the benefit of a mortgage or charge of or on any part or parts of the Site unless such mortgagee or chargee has entered into possession of the Site or any part thereof to which such obligation relates.

8 WAIVER

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.

9 INDEXATION

Any sum referred to in the Second Schedule or any part of any such sum which remains outstanding shall be increased by an amount equivalent to the percentage increase or decrease (if any) in the Index from the date hereof until the date on which such sum or part of such sum is paid.

10 JURISDICTION

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

11 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.

12 DISPUTES

12.1 Where the parties are in dispute or disagreement or have any differences relating to any matter the subject 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, disagreement or difference arising.

12.2 Failing the resolution of any such dispute, disagreement or difference within the said 20 Working Days the dispute, disagreement or difference shall be referred for determination in accordance with the provisions of this clause 12 on the reference of any of the parties to the dispute, disagreement or difference.

12.3 The dispute, disagreement or difference shall be referred to the decision of a single expert (the **"Expert"**) qualified to deal with the subject matter of the dispute, disagreement or difference who shall either be jointly nominated by the parties within a period of 5 Working Days following a failure of the parties to resolve the dispute, disagreement or difference pursuant to clause 12.2 above or failing agreement on such nomination the Expert shall be nominated by the President for the time being of the Law Society.

12.4 The determination of the Expert (including any determination as to the responsibility for payment of his own costs and those of the parties) shall be final and binding upon the parties.

12.5 The terms of reference of any Expert appointed to determine a dispute, disagreement or difference shall include the following:

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

(b) he 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 Expert;

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

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

(f) his costs and the costs of any independent expert advice called for by the Expert shall be included in his award.

12.6 Unless the Expert shall decide otherwise the costs of any reference to the Expert shall be borne equally by the parties to the dispute, disagreement or difference in question.

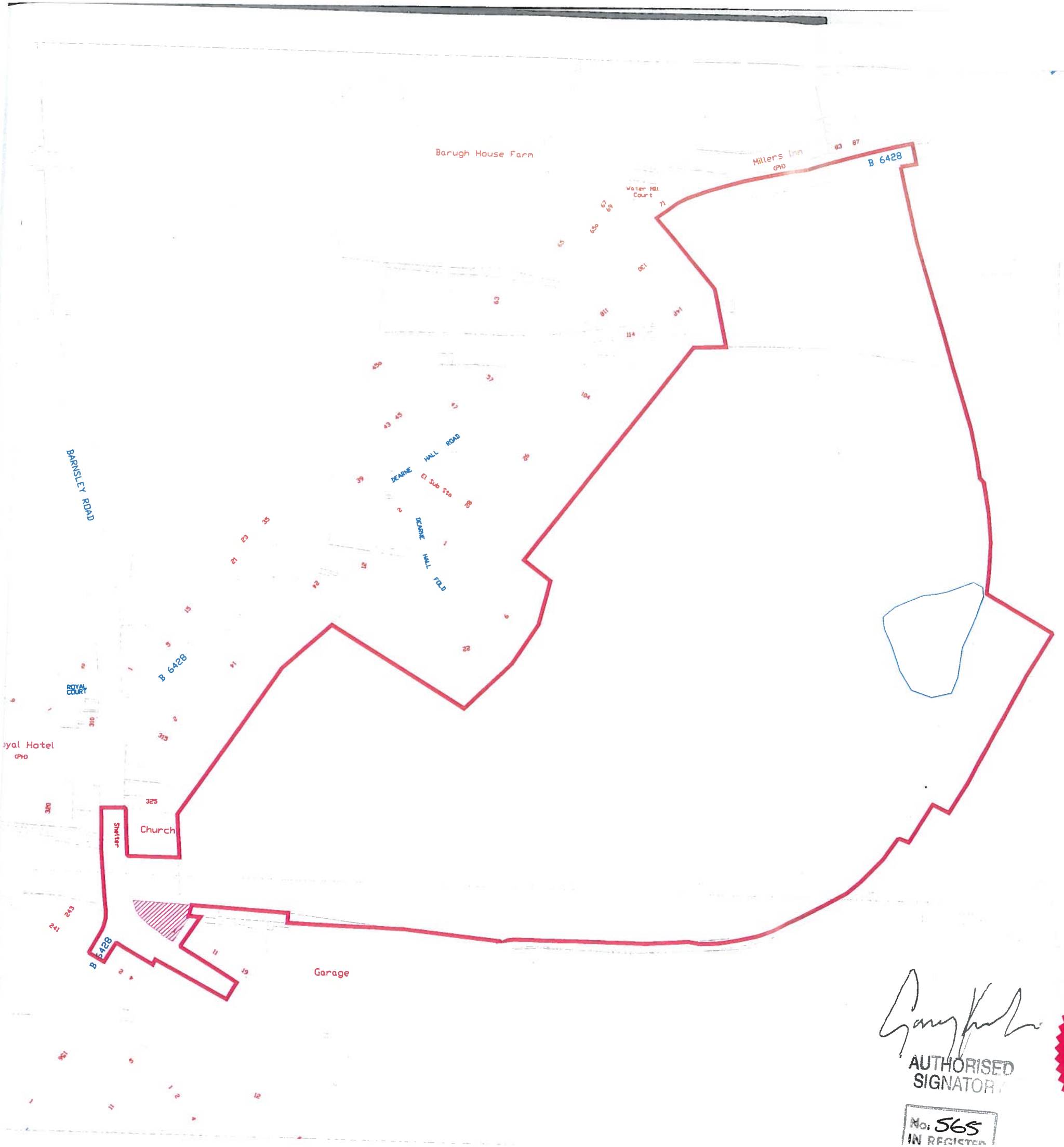
13 COMMUNITY INFRASTRUCTURE LEVY

13.1 For the purposes of this clause 13, "CIL" means a tax, tariff or charge introduced by the Council pursuant to regulations enabled by the Planning Act 2008 or any subsequent proposed legislation to fund the delivery of infrastructure known as the "community infrastructure levy" or known by any other name.

13.2 If, after the date of this Agreement, a CIL is introduced that is applicable to the Development then the parties to this Agreement will use reasonable endeavours to agree variations to this Agreement with the intent that:

13.2.1 the planning benefits secured by this Agreement should continue to be secured and delivered; and

13.2.2 the Owners should not be in a position where it is in a financially worse position because of CIL in respect of the obligations contained in the Schedules than it would be if it performed the obligations in this Agreement and no CIL had been introduced.



KEY

Boundary of Application Site

Title plan for No 1 Claycliffe

Director

Secretary

AUTHORISED SIGNATORY

No: 565
IN REGISTER

nlp Nathaniel Lichfield and Partners

Project	Low Barugh
Title	**Location Plan**
Client	Commercial Estates Projects & Hallam Land Management
Date	April 2013
Scale	1:2000 @ A3
Drawn by	CP
Drg No	A21235/02 Rev G

NE21235

SECOND SCHEDULE

The Owners' Covenants with the Council

The Owners covenant with the Council in the following terms:-

1. **Primary Education Contribution**

1.1 To pay a first instalment of £95,000 (ninety five thousand pounds) of the Primary Education Contribution to the Council upon the Occupation of any of the Dwellings.

1.2 To pay a second and final instalment of a further £95,000 (ninety five thousand pounds) of the Primary Education Contribution to the Council upon the Occupation of 75 (seventy five) Dwellings.

THIRD SCHEDULE

Council's Covenants

1. The Council hereby covenants with the Owners to use all sums received from the Owners under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.

2. The Council shall provide to the Owners such evidence as the Owners shall reasonably require in order to confirm the expenditure of the sums paid by the Owners under this Deed within 20 Working Days of receipt of such request.

3. At the written request of the Owners the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

4. The Council covenants with the Owners that it will pay to the Owners such amount of any payment made by the Owners to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within ten years of the date of payment or (where such payment is made in instalments) within ten years of the payment of the final instalment of such contribution together with all interest accrued thereon from time to time for the period 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:)

Authorised Signatory:

No. 565
IN REGISTER

EXECUTED AS A DEED by **HALLAM LAND**)

MANAGEMENT LIMITED)

acting by two Directors or a Director and the)

Secretary)

Director:

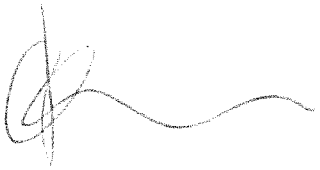
~~Director~~/Secretary:

EXECUTED AS A DEED by **COMMERCIAL**)

ESTATES PROJECTS LIMITED)

acting by two Directors or a Director and the)

Secretary)

Director: 

Director/Secretary: 