

**THIS DEED** is made the 04 day of MAY 2011

**BETWEEN**

- 1 **THE RYEDALE DISTRICT COUNCIL** whose principal office is at Ryedale House Malton in the County of North Yorkshire YO17 7HH ("the Council")
- 2 **SCOTHERN DEVELOPMENTS LIMITED** whose registered office is The Old Vicarage Sand Hutton York YO41 1 LB ("the Owner")
- 3 **SCOTHERN CONSTRUCTION LIMITED** whose registered office is 3 York Road Industrial Park Rye Close Malton North Yorkshire YO17 6YD ("the Developer")

**1 DEFINITIONS**

- |     |                                |   |
|-----|--------------------------------|---|
| 1.1 | "Commencement of Development": | the carrying out on the Land of a material operation pursuant to the Planning Permission as defined in Section 56 (i) of the Act save for the purpose of this Agreement when of determining whether or not a material operation has been carried out there shall be disregarded the following operations marking out surveying ground investigations archaeological investigations demolition site clearance site preparation, provision of security fencing and "Commence" "Commenced" and "Commencement" shall be construed accordingly |
| 1.2 | "Planning Application"         | Application Number 09/00282/MOUT  |
| 1.3 | Section 151 Officer            | means the Section 151 Officer for Ryedale District Council or such other Officer as may from time to time be nominated by him or carry out the functions at the date hereof carried out by him  |

- 1.4 "Strategic Transport Contribution " The sum of £172,500 towards the proposed improvements to the A64 Brambling Fields junction pursuant to the Malton and Norton Transportation Strategy as outlined in the Draft Supplementary Planning Document: Developer Contributions towards Strategic Transport Improvements at Malton and Norton (Interim Version) July 2007 and for no other purpose.
- 1.5 "the Land": The land as described in the First Schedule to this Agreement

#### **RECITALS**

- (1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within the Land is situated
- (2) The Owner is the Owner in fee simple in possession of the Land (subject as hereinafter mentioned) but otherwise free from encumbrances
- (3) The Developer has applied to the Council for permission to develop the Land in the manner and for the uses set out in Second Schedule hereto ("the Proposed Development")
- (4) The Council is satisfied that the performance by the Owner and Developer of the covenants herein will remove certain arguments against or objections to the Proposed Development which would without the execution of this Agreement have led to the refusal of consent for the Planning Application
- (5) The Owner and the Developer have agreed to enter into this Agreement with the Council and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained and his part to be observed and performed

#### **NOW THIS DEED WITNESSES** as follows:-

1 **THIS** Agreement is made pursuant to Section 106 of the Town & Country Planning Act 1990 as amended ("the 1990 Act") Section 111 of the Local Government Act 1972 and all other enabling powers the parties hereunto enabling and the covenants in this Agreement are planning obligations for the purpose of the 1990 Act which are enforceable by the Council

2 **THE** Owner and the Developer (subject to clause 3.10 below) hereby covenant with the Council that the Land shall be bound by the planning obligations specified in the Third

Schedule hereto which shall be enforceable by the Council against the Owner, the Developer and their successors in title

3 IT is agreed and declared as follows:-

3.1 The expressions "the Council" and "the Owner" and "the Developer" shall include their respective successors in title and assigns

3.2 For the purpose of such parts of this Agreement as may be subject to the Rule against Perpetuities that part of the Agreement shall remain in force for the period of eighty years from the date hereof which shall be the Perpetuity Period applicable to this Agreement

3.3 The Developer shall on execution of this Agreement pay to the Council a fee to cover the Council's reasonable legal costs in connection with the negotiation and completion of this Agreement

3.4 In this Agreement:

3.4.1 The clause headings do not affect its interpretation

3.4.2 Unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a paragraph are to paragraph of that Schedule;

3.4.3 References to any statute or statutory provision include references to:

3.4.3.1 All Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement; and

3.4.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision; and

3.4.3.3 includes any amendment extension or re-enactment of it for the time being in force

3.4.4 references to the Land include any part of it;

3.4.5 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected

3.4.6 words importing the masculine gender shall include the feminine gender and vice versa and words importing the singular number shall include the plural number and where there are two or more persons included in the expression "the Owner" or the "Developer" covenants expressed to be made by or with the Owner or the Developer shall be deemed joint and several

3.5 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any of its terms but for the avoidance of doubt it is agreed that the exclusion of the application of the Act shall not prevent all or any future successors in title to any of the parties to this Agreement from being able to benefit from or to enforce any of the obligations in this Agreement

3.6 This Agreement is a local land charge and shall be registered as such and shall come into full force and effect when the Proposed Development is Commenced and not otherwise

3.7 No party to this Agreement shall be liable for the performance or observance of the covenants on his its or their part contained in this Agreement after he she or they shall have parted with all interest in his her or their part of the Land. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute an interest for the purposes of this clause 3.7

3.8 This Agreement shall cease to have effect, in so far only as it has not already been complied with if:

3.8.1 subject to clause 3.9, the Planning Permission is quashed, revoked or otherwise withdrawn at any time so as to render this Agreement or any part of it irrelevant, impractical or unviable; or

3.8.2 the Planning Permission is modified by any statutory procedure without the consent of the Owner and Developer; or

3.8.3 the Planning Permission expires before the Commencement of Development occurs

3.9 Where the Agreement comes to an end under clause 3.8:

3.9.1 the Council is to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Land ;and

3.9.2 any monies paid under this Agreement to the Council, with the exception of fees paid under clause 3.3, are to be returned to the party that made the payment within one month of the Agreement coming to an end together with interest accrued on the monies from and including the date of payment to and including the date of repayment at the base rate from time to time of the National Westminster Bank.

3.10 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales.

**IN WITNESS** whereof the parties hereto have executed this Agreement as a Deed the day and year first before written

82/MOUT

Chairman  
*[Signature]*  
Council Solicitor



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Organisation	Not Set
Department	Not Set
Comments	Not Set
Date	02 November 2010
SLA Number	Not Set

**THE FIRST SCHEDULE**  
**The Land**

ALL THAT piece of land TOGETHER WITH buildings erected thereon situate at and known as land at the Former Malton Clothing Ltd, 5 Welham Road, Norton, Malton, North Yorkshire, YO17 9DP shown for the purposes of identification edged in red on the Plan

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**THE SECOND SCHEDULE**  
**Particulars of the Proposed Development**

Erection of food store (Use Class A1) and day nursery (Use Class D1) with associated parking and vehicular access.

**THE THIRD SCHEDULE**  
**Owner's and Developer's Obligations**

**Strategic Transport Contribution**

- 1 The Owner and the Developer covenant not to open the food store to the general public as permitted by the Planning Permission unless and until they have first paid to the Council the Strategic Transport Contribution

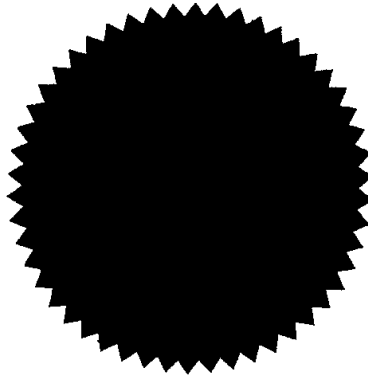


## **THE FOURTH SCHEDULE**

### **Council's Obligations**

1. The Council hereby covenants with the Owner and the Developer to use the Strategic Transport Contribution for the sole purposes specified in this Agreement
2. The Council covenants with the Owner and the Developer that it will repay to the party that paid the Strategic Transport Contribution such amount of any payment made by the Owner or Developer to the Council under this Agreement which has not been expended in accordance with the provisions of this Agreement within Ten (10) years of the date of receipt by the Council of such payment. The date of receipt to be certified by the Council's Section 151 Officer
3. The Council shall provide to the Owner or Developer such evidence, as they shall reasonably require in order to confirm the expenditure of the sums paid by the Owner or Developer under this Agreement.

EXECUTED as a deed by affixing  
THE COMMON SEAL of THE  
RYEDALE DISTRICT COUNCIL  
authenticated by:



*[Handwritten signature]*

Chairman

*[Handwritten signature]*  
Council Solicitor

Minute	69/2010
Reg No.	6225
Initials	AM

EXECUTED as a deed by  
SCOTHERN DEVELOPMENTS LIMITED  
acting by:

Director

*[Handwritten signature]*

Director/Secretary

*[Handwritten signature]*

EXECUTED as a deed by  
SCOTHERN CONSTRUCTION LIMITED  
acting by:

Director

*[Handwritten signature]*

Director/Secretary

*[Handwritten signature]*

**DATED** 04 **MAY** 2011

**THE RYEDALE DISTRICT COUNCIL**

and

**SCOTHERN DEVELOPMENTS LIMITED**

and

**SCOTHERN CONSTRUCTION LIMITED**

**AGREEMENT**

pursuant to Section 106 of the  
Town and Country Planning Act 1990 as amended  
and Section 111 of the Local Government Act 1972  
in respect of land at Welham Road, Norton, Malton in  
the County of North Yorkshire

K A Winship  
Council Solicitor  
MALTON