

03/344

07/676

**THIS DEED** is made the 9<sup>th</sup> day of APRIL 2008

**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 **RUBRIK HOMES LIMITED** (Company Registration Number 05970177) Registered Office Manor Farm, Main Road, Brompton-by-Sawdon, Scarborough YO13 9DP ("the Owner")
- 3 **HSBC BANK** (Company Registration Number 14259 of Securities Processing Centre PO Box 3924 79 Hoyle Street Sheffield S1 9BD ("the Mortgagee")

#### **DEFINITIONS**

In this Agreement the following expressions shall have the following meanings:-

- "Affordable Rent" means a rent which is comparable to the rents charged in the Ryedale District Council administrative area by Registered Social Landlords for properties of an equivalent type, age and floor area and location and which sum shall be agreed for lettings between the Housing Services Manager and the Owner and thereafter any increases or decreases in accordance with the Housing Corporation guidance at the time.
- "Affordable Rented Dwellings" means the one 2 bedroom and four three bedroom dwellings constructed in accordance with the provisions of the Fourth Schedule to this Agreement.
- Council Solicitor means the Council Solicitor of 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
- "Eligible Occupier" means a person or persons identified in accordance with the provisions of the Sixth Schedule to this Agreement
- "Housing Services Manager" means the Housing Services Manager of 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
- "Open Market Dwellings" means dwellings erected on the Property excluding the Affordable Rented Dwellings
- "Open Market Value" means the value calculated in accordance with the provisions of Clause 2 of the Fifth Schedule to this Agreement.

The Housing Association means Yorkshire Housing Limited of Yorkshire House 6 Innovation Close Heslington York YO10 52F or such alternative Registered Social Landlord as may be previously approved in writing by the Housing Services Manager (such approval not to be unreasonably withheld or delayed)

#### **RECITALS**

- (1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the property described in the First Schedule ("the Property") is situated
- (2) The Owner is the owner in fee simple in possession of the Property subject to the matters referred to in the registers of Title Number NYK 332518 but otherwise free from encumbrances
- (3) The Owner has applied to the Council for permission ("the Planning Application") to develop the Property 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 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 has agreed to enter into this Agreement with the Council and be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained and on his part to be observed and performed
- (6) The Mortgagee has agreed to join herein in the manner hereinafter appearing

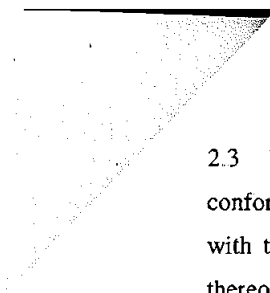
**NOW THIS DEED WITNESSES** as follows:-

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 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 **IT** is agreed and declared as follows:-

2.1 The expressions "the Council" "the Owner" and "the Mortgagee" shall include their respective successors in title and assigns

2.2 The Owner and the Mortgagee covenant with the Council that the Property shall be permanently subject to the restrictions and provisions regulating the Proposed Development and use thereof specified in the Schedules hereto



2.3 The Owner hereby agrees to carry out the Proposed Development in strict conformity with the plans and specifications and particulars submitted in connection with the Planning Application and to use the Property and all erections to be made thereon in strict accordance with this Agreement and not otherwise

2.4 For the purpose of such parts of this Agreement as may be subject to the rule against perpetuities such parts of the Agreement shall remain in force for the period of eighty years from the date hereof

2.5 The Owner shall on execution of this Agreement pay to the Council a fee of £300 plus VAT to cover the Council's legal costs

2.6 The Owner shall indemnify and keep indemnified the Council against all damages costs charges losses demands expenses or action sustained by the Council arising from any breach of this Agreement by the Owner

2.7 In this Agreement 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 Mortgagee" covenants expressed to be made by or with the Owner or the Mortgagee shall be deemed joint and several

2.8 A person who is not a party to this Deed 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 Deed from being able to benefit from or to enforce any of the obligations in this Deed

2.9 For the purpose of avoidance of doubt and subject to clause 2.11 hereof the requirements of this Agreement shall bind the Property and remain in full force and effect until formally varied by agreement of the parties or by the Secretary of State notwithstanding that the Planning Application and any plans submitted with the same shall have lapsed or shall have been amended superseded renewed or resubmitted

2.10 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

2.11 If the Planning Permission granted pursuant to the Planning Application shall expire before the Proposed Development is commenced or shall at any time be revoked this Agreement shall forthwith be annulled and cease to have any effect and the Council shall immediately remove any entry relating to this Agreement from the Register of Local Land Charges

2.12 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with his interest in the Property or part of the Property in respect of which that breach occurs

2.13 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with a Planning Permission (other than one relating to the Proposed Development) granted (whether or not on Appeal) after the date of this Agreement

2.14 The Mortgagee consents to the Owner entering into this Agreement to the intent that the Property shall hereafter always be subject to the terms of the Agreement PROVIDED THAT the Mortgagee shall only be liable for any breach caused by the Mortgagee occurring by reason of any act default or omission in respect of any provisions of this Agreement during such period (if any) as the Mortgagee is a mortgagee in possession of the Property PROVIDED ALWAYS that the successors in title to the Mortgagee shall become fully liable for any breach of this Agreement

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

**THE FIRST SCHEDULE**  
[the Property]

ALL THAT piece of land TOGETHER WITH buildings erected thereon situate at and known as land at Manor Farm, Main Street, Foxholes, Drifffield, North Yorkshire, shown edged in red on the attached plan which is registered at the Land Registry under title number NYK 332518

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

Erection of 1 no two-bedroom dwelling, 7 no three-bedroom dwellings, 7 no four-bedroom dwellings with associated garages and/or parking spaces and formation of two vehicular accesses (outline approval 03/00344/OUT dated 21.12.2005 and 07/00676/MREM)

### **THE THIRD SCHEDULE**

[Negative Obligations]

#### **COMMUTED SUM**

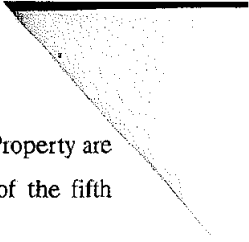
1. The Owner covenants with the Council not to commence construction of the last Open Market Dwellings on the Property until the sum of Nineteen Thousand Five Hundred pounds (£19,500) has been paid to the Council for enhancing and providing open space in the vicinity of the Property.
2. The Owner covenants with the Council not to permit the occupation of more than 5 of the Open Market Dwellings constructed on the Property pursuant to the Planning Permission until the Owner has constructed and completed and made available for occupation at their own cost the Affordable Rented Dwellings on the Property

### **THE FOURTH SCHEDULE**

[Positive Obligations]

#### **AFFORDABLE HOUSING**

- 1.1 The Owner covenants to provide the Affordable Rented Dwellings in accordance with the provisions of this schedule:-
  - 1.1.1 to build the Affordable Rented Dwellings in accordance with the Planning Permission.
  - 1.1.2 to ensure that no Open Market Dwelling is occupied until he has entered an agreement with the nominated Housing Association and approved by the Council Solicitor (such approval not to be unreasonably withheld or delayed) for the construction by him for that Housing Association of the Affordable Rented Dwellings and the transfer of these Affordable Rented Dwellings to the Housing Association Provided That if the Council does not approve or notify the Owner of its approval to the Housing Association nominated by the Owner within 20 working days of such nomination the Owner will be entitled to enter into negotiations with the nominated Housing Association.

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- 1.1.3 to ensure that the Affordable Rented Dwellings to be built on the Property are completed and available for occupation prior to the occupation of the fifth Open Market Dwelling.
- 1.1.4 to offer to transfer the Affordable Rented Dwellings on or prior to the occupation of the twelfth Open Market Dwelling to the Housing Association at a price of £75,000 per dwelling which enables the Housing Association to charge an Affordable Rent.
- 1.1.5 to ensure that it is a term of the sale of the Affordable Rented Dwellings that the Housing Association shall not dispose of or cause or permit the disposal of the Affordable Rented Dwellings other than for the purpose of providing tenancies at an Affordable Rent to Eligible Occupiers as determined by The Sixth Schedule to this Agreement.
- 1.1.6 that before the Affordable Rented Dwellings are transferred pursuant to clause 1.1.4 of this schedule they are fully serviced and accessible by vehicles and pedestrians
- 1.1.7 to supply within 14 working days from the date of the transfer of the Affordable Rented Dwellings to the Housing Association a copy of that transfer to the Council.
- 1.2 In the event that the Owner fails to transfer the Affordable Rented Dwellings to a Housing Association within six months of the Affordable Rented Dwellings being completed and available for occupation and the Council Solicitor acting reasonably is satisfied that the Owner has used his reasonable endeavours to secure the transfer of the Affordable Rented Dwellings to a Housing Association the Owner will be entitled to dispose of the Affordable Rented Dwellings (or any individual Affordable Rented Dwellings that has / have not been transferred to a Housing Association) on the open market upon such terms as he thinks fit and shall pay to the Council within 28 working days of the sale of the final Affordable Rented Dwelling on the open market a commuted sum in lieu of the provision of the Affordable Rented Dwellings (or any individual Affordable Rented Dwellings that has / have not been transferred to a Housing Association) calculated in accordance with the Fifth Schedule to this Agreement ("the Affordable Housing Commuted Sum")

## THE FIFTH SCHEDULE

### Affordable Housing Commuted Sum

1. The commuted sum payable in lieu of any Affordable Rented Dwelling shall be calculated as follows:-

The Open Market Value of the relevant Affordable Rented Dwelling on the date it is transferred pursuant to clause 1.2 of the Fourth Schedule to this Agreement

minus

The purchase price of such relevant Affordable Rented Dwelling as stated in the Fourth Schedule to this Agreement which would have been paid by the Housing Association had the Affordable Rented Dwelling been provided in accordance with the provisions of the Fourth Schedule.

2. For the purposes this Schedule above
  - 2.1 the Open Market Value shall be agreed by the Owner and the Council and in default of agreement determined by an independent chartered surveyor appointed by agreement between the Owner and the Council whose fees shall lie in the said surveyor's award or in the absence of such award be borne equally between the parties
  - 2.2 in the absence of agreement as to appointment the surveyor shall (upon the application of either party) be appointed by the President of the Royal Institute of Chartered Surveyors
  - 2.3 the surveyor shall act as an expert and his decision shall be final and binding

#### Part 2

#### Affordable Housing Provision.

- 2 The Council covenants that
  - 2.1 the Affordable Housing Commuted Sum will be used on a broad range of schemes and initiatives, linked to housing needs which may include but not be limited to the following
    - 2.1.1 support for housing associations for both the development and acquisition of affordable housing including facilitating any necessary works of improvement or repair.

- 2.1.2 support for specific initiatives to regenerate the existing housing stock eg. Empty Property Grants and Houses in Multiple Occupation Grants which give the Council tenancy nomination rights for qualifying individuals.
- 2.1.3 support for specific schemes which are developed to meet an identified need eg the lack of suitable temporary accommodation for homeless families or a scheme to meet the accommodation needs of young single people, the Rural Housing Enabler scheme
- 3 that in the event that all or part of the Affordable Housing Commuted Sum has not been committed by the Council as detailed above within 5 years from the date on which it is received by the Housing Services Manager the Council will re-pay to the Owner the amount (if any) of the Affordable Housing Commuted Sum which has not been committed provided that the Owner will not be entitled to claim any interest on such returned sum
- 4 it will provide to the Owner a certificate prepared by the Housing Services Manager detailing how the Affordable Housing Commuted Sum has been spent on the initiatives detailed in this Schedule

## **THE SIXTH SCHEDULE**

### Eligibility Criteria

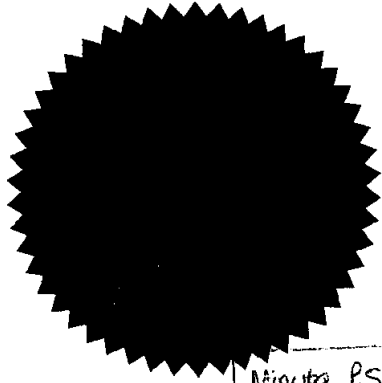
#### Occupation by persons:

1. who have for a period of at least 2 years been ordinarily resident within the village of Foxholes
2. who have been permanently employed in the village of Foxholes for 2 years or more,  
or
3. if no such person qualifies under paragraphs 1 or 2 above for occupation a person ordinarily resident in one or more of the following parishes Willerby and Staxton, Ganton, Sherburn, Weaverthorpe, Luttons for a period of at least 2 years;
4. then any area in the District of Ryedale
5. if no such person qualifies under paragraph 4 above then persons who have a strong local connection with Ryedale District by one of the following means:-
  - 5.1 family association in the area of Ryedale District,
  - 5.2 any period of ordinary residence in the area of Ryedale District not immediately before the date on which any affordable housing unit becomes vacant, or



5.3 through their work provide important services to Ryedale District and who need to live closer to the local community or who have employment within the area of Ryedale District

THE COMMON SEAL of THE )  
RYEDALE DISTRICT COUNCIL )  
was hereunto affixed and )  
is authenticated by: )



VICE Chairman

Council Solicitor  
CHIEF EXECUTIVE

Minute P.53 (2007)  
Reg No. 6299  
Initials ew

EXECUTED AS A DEED )  
by RUBRIK HOMES )  
and signed by )

Director

Secretary

IN WITNESS WHEREOF this document which is intended to take effect as a deed has been duly executed by a duly authorised Official of the Bank as Attorney of the Bank the day and year first above written.

SIGNED AND DELIVERED

by  
Paul Lawrence Brown

Attorney of  
HSBC Bank plc

in the presence of:

BRETT JAMES LAKING

Witness:

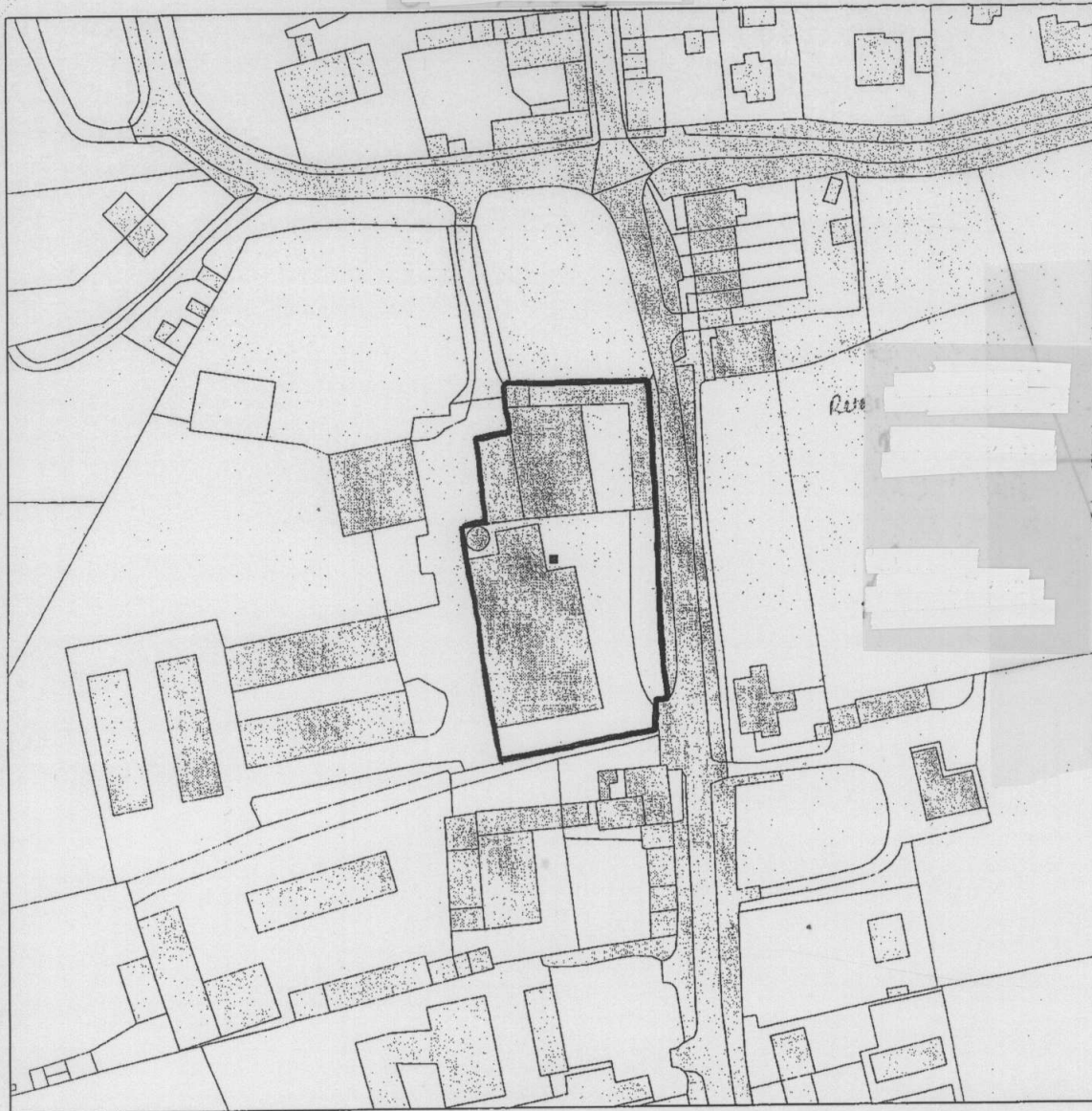
Address:

Occupation

HSBC BANK PLC  
SHEFFIELD SECURITIES  
PROCESSING CENTRE  
Bank Official



GIS by ESRI (UK)



Scale : 1:1250

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Organisation	Ryedale District Council
Department	Planning Services
Comments	
Date	14 November 2007
SLA Number	100019406

DATED 9 APRIL

2009

**THE RYEDALE DISTRICT COUNCIL**

and

**RUBRIK HOMES**

and

**HSBC BANK plc**

**A G R E E M E N T**

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 Manor Farm, Main Street, Foxholes, Driffield in  
the County of North Yorkshire

K A Winship  
Council Solicitor  
M A L T O N