

07/397

DATED 25 FEBRUARY 2008

**THE RYEDALE DISTRICT COUNCIL**

and

**McCARTHY & STONE (DEVELOPMENTS) LIMITED**

and

**BANK OF SCOTLAND 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 Malton in  
the County of North Yorkshire

K A Winship  
Council Solicitor  
MALTON

**THIS DEED** is made the *25<sup>th</sup>* day of *February* 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 **McCARTHY & STONE (DEVELOPMENTS) LIMITED** whose registered office is at Homelife House 26/32 Oxford Road Bournemouth BH8 8EZ ("the Owner")
- 3 **BANK OF SCOTLAND plc** whose registered office is at Level 3, New Ueberior House, 11 Earl Grey Street, Edinburgh EH3 9BN ("the Mortgagee"))

**DEFINITIONS**

- |       |  |   |
|-------|--|---|
| 1.1.1 | "the Act":                             | The Town and Country Planning Act 1990  |
| 1.1.3 | "the Affordable Housing Contribution": | the sum of £400,000.00 (Four Hundred Thousand Pounds)   |
| 1.1.4 | "the Application":                     | the planning application made by or on behalf of the Applicant dated 30 April 2007 and bearing the Local Authority reference number 07/00397/MFUL   |
| 1.1.5 | "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 determining whether or not a material operation has been carried out there shall be disregarded such operations as marking out surveying ground investigations archaeological investigations demolition site clearance site preparation and "commence" and "commencement" shall be construed accordingly |

- 1.1.6 "the Contributions": The Affordable Housing Contribution and the Public Open Space Contribution together
- 1.1.7 "the Development": Category II sheltered accommodation comprising 48 apartments associated communal facilities house manager's accommodation landscaping car parking and vehicular access
- 1.1.8 "Dwellinghouse": any unit of residential accommodation forming part of the Development for the sole use as a private residence of the occupier other than house manager's accommodation
- 1.1.9 "First Occupation": the first occupation of a Dwellinghouse at the Development
- 1.1.10 "the Land": The land as described in the First Schedule to this Agreement
- 1.1.11 "the Plan": the plan annexed to this Deed
- 1.1.12 "the Planning Permission": the permission granted pursuant to the Application
- 1.1.13 "the Public Open Space Contribution": the sum of £9,800 00 (Nine Thousand Eight Hundred Pounds)

#### **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 Registered Proprietor of the Land (subject as hereinafter mentioned) but otherwise free from encumbrances
- (3) The Mortgagee is mortgagee of the Property under a Legal Charge/Mortgage dated the 28th day of January 2008 and made between the Owner of the one part and the Mortgagee of the other part
- (4) The Owner 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")

- (5) 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
- (6) The Owner has 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
- (7) The Mortgagee has agreed to join herein in 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 **THE** Owner (subject to clause 3.11 below) and the Mortgagee hereby covenant with the Council that the Land shall be permanently subject to the restrictions and provisions regulating the Proposed Development and use thereof specified in the Third Schedule hereto

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

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

3.2 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 Land and all erections to be made thereon in strict accordance with this Agreement and not otherwise

3.3 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

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

3.5 The Owner shall (subject to clause 3.11 below) 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

3.6 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

Chairman

Council. Society



the Mortgagee shall only be liable for any breach 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

3.7 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" covenants expressed to be made by or with the Owner shall be deemed joint and several

3.8 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

3.9 For the avoidance of doubt and subject to clause 3.10 hereof the requirements of this Agreement shall bind the Land and remain in full force and effect unless and 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

3.10 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

3.11 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

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

**THE FIRST SCHEDULE**  
**[The Land]**

ALL THAT piece of land TOGETHER WITH buildings erected thereon situate at and known as land to the rear of Barton Cottage, Castle Howard Road, Malton, North Yorkshire shown for the purposes of identification edged in red on the Plan

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

Erection of 33 one bedroom and 15 two bedroom sheltered apartments for the elderly, 1 house manager's two bedroom apartment, communal facilities, parking area and formation of vehicular access

### **THE THIRD SCHEDULE [Negative Obligations]**

The Owner covenants with the Council not to permit First Occupation unless and until the Affordable Housing Contribution and the Public Open Space Contribution have both been paid in full to the Council

### **THE FOURTH SCHEDULE (The Council's Covenants)**

#### **Affordable Housing Provision**

1.1 The Council covenants that the Affordable Housing Contribution 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:-

- 1.1.1 Support for housing associations for both the development and acquisition of affordable housing including facilitating any necessary works of improvement or repair
- 1.1.2 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; grants to address fuel poverty and grant assistance to carry out essential repairs for vulnerable households and those on limited incomes
- 1.1.3 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
- 1.1.4 Support for the Rural Housing Enabler function at the Council

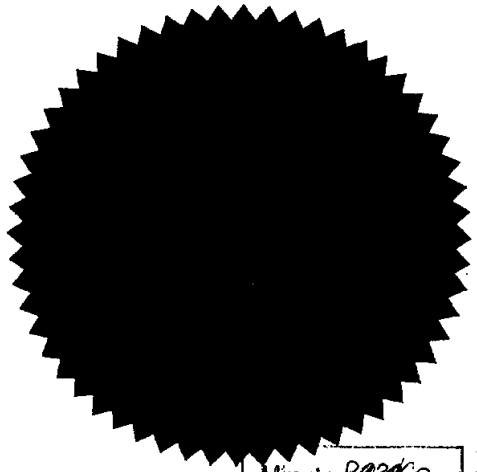
1.2 The Council covenants that in the event that all or part of the Affordable Housing Contribution has not been committed by the Council as detailed above within 5 years from the date on which it is received by the Housing Services Manager the Council will re-pay to the Owner the amount (if any) of the Affordable Housing Contribution which has not been committed provided that the Owner will not be entitled to claim any interest on such returned sum

#### **2. The Public Open Space Contribution**

2.1 The Public Open Space Contribution shall be used by the Council towards the provision or enhancement of public open space within the vicinity of the Land within a period of 5 years from the date of receipt of it by the Council and in the event of any part of the Public Open Space Contribution not being used by the Council within this period it shall be returned to the Owner provided that the Owner will not be entitled to claim interest on such returned sum

2.2 The Council shall if requested in writing keep the Owner advised as to the manner in which the Contributions are being used

**EXECUTED** as a **DEED** by  
affixing  
**THE COMMON SEAL** of **THE** )  
**RYEDALE DISTRICT COUNCIL** )  
is authenticated by: )



Chairman

Council Solicitor

Minto P93/2007  
Reg No. 6138  
Initials ew

**EXECUTED** as a **DEED** by the said )  
**McCARTHY & STONE** )  
**(DEVELOPMENTS)** )  
**LIMITED** acting by a Director )  
and the secretary or by two )  
Directors:- )

Director

Secretary/Director

**EXECUTED** as a **DEED** by **BANK OF** )  
**SCOTLAND plc** )  
in the presence of: )

Authorised signatory