

07/716

DATED 10th March 2008

THE RYEDALE DISTRICT COUNCIL

and

**MICHAEL ANTHONY KENDRA
LESLIE KENDRA
SHEILAKENDRA**

and

THE 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 Salents Lane, Wharram Le Street, Malton in
the County of North Yorkshire

K A Winship
Council Solicitor
MALTON

THIS DEED is made the 10th day of March 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 **MICHAEL ANTHONY KENDRA AND LESLIE KENDRA AND SHEILA KENDRA** all of Meadow Bank, Melbourne, York YO42 4QQ ("the Owner")
- 3 **THE HSBC BANK PLC** of Securities Processing Centre, P O Box 3924, Sheffield S1 9BD ("The Mortgagee")

DEFINITIONS

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

"Affordable Rented

Dwelling"

means the three bed dwelling constructed in accordance with the provisions of the Fourth Schedule to this Agreement on that part of the Property shown hatched red on the Plan ("the Restricted Property")

"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 Registered Social Landlord and thereafter any increases or decreases in accordance with the Registered Social Landlords rent setting policy and the Housing Corporation guidance at the time.

"Nominated Tenant"

means a person or household identified in accordance with the provisions of the Fifth Schedule to this Agreement

- “Open Market Dwellings” means dwellings erected on the Property excluding the Affordable Rented Dwelling
- “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
- “Assured Tenancy” means a tenancy within the terms of the Housing Act 1988 as amended.
- “Compliance Fee” means the fee paid by the Owner in accordance with Clauses 1.1.7 and 1.1.8 of the Fourth Schedule.

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 as hereinafter mentioned but otherwise) free from encumbrances
- (3) The Mortgagee is a Mortgagee at the Property under a Legal Charge/Mortgage dated the first day of May 2007 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 (“the Planning Application”) to develop the Property 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 be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained and on his part to be observed and performed

(7) 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 **THE** Owner and the Mortgagee covenant with the Council as follows:

2.1 to perform the obligations contained in the Fourth Schedule

2.2 to perform the obligations contained in the Third Schedule

2.3 that the Restricted Property shall be permanently subject to the restrictions and provisions regulating the Proposed Development and use thereof specified in the Fourth and Fifth Schedules hereto

3 **THE** Council covenants with the Owner as follows:

3.1 Not to apply the said Commuted Sum for any purpose other than that set out in the Third Schedule

3.2 To provide the Owner with details of how the Commuted Sum has been utilised in the provision of or enhancement of open space within the vicinity of the Property

3.3 To repay to the Owner (and in this context the provisions of clause 3.1 shall not apply) all or any part of the said Commuted Sum that within a period of 5 years from the date of the payment of the said Commuted Sum has not been expended for purposes set out in the Third Schedule

3.4 Upon the completion of this Agreement to procure the issue of the Planning Permission relating to the Proposed Development in the form of the draft annexed in the Sixth Schedule hereto

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

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

4.2 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 Property and all

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

4.3 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

4.4 The Owner shall on execution of this Agreement pay to the Council a fee to cover the Council's legal costs

4.5 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

4.6 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 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

4.7 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

4.8 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

4.9 For the purpose of avoidance of doubt and subject to clause 4.9 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

4.10 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

4.11 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

4.12 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

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 Salents Lane, Wharram Le Street, Malton, North Yorkshire, shown edged in red on the attached plan

THE SECOND SCHEDULE
[Particulars of the Proposed Development]

Erection of 1 no. five bed dwelling, 2 no. four bed dwellings and 2 no three bed dwellings with detached garages (plot 4 parking space only) and formation of vehicular accesses (revised details to approval 04/00769/FUL dated 14.11.2005)

THE THIRD SCHEDULE
[Negative Obligations]

COMMUTED SUM

Not to commence construction of more than 50% of the dwellings on the Property until the sum of Nine Thousand pounds (£9,000) has been paid to the

Fiona S106 Wharram le Street

Council for enhancing and providing open space in the vicinity of the Property.

THE FOURTH SCHEDULE

[Positive Obligations]

AFFORDABLE HOUSING

1 The Owner covenants to provide the Affordable Rented Dwelling in accordance with the provisions of this schedule.

The Owner covenants:-

1.1 to build the Affordable Rented Dwelling in accordance with such specifications and standards as may from time to time be published by the Housing Corporation and,

1.1.1 to ensure that the Affordable Rented Dwelling to be built on the Property is completed and available for occupation prior to the completion of the third Open Market Dwelling

1.1.2 that the Owner shall not dispose of or cause or permit the disposal of the Affordable Rented Dwelling other than for the purpose of providing an Assured Tenancy at an Affordable Rent to a Nominated Tenant.

1.1.3 that the Affordable Rented Dwelling is fully serviced and accessible by vehicles and pedestrians prior to occupation by the Nominated Tenant.

1.1.4 that he will comply with the Nomination Process set out in the Fifth Schedule to this Agreement for the first and any subsequent letting of the Affordable Rented Dwelling

1.1.5 to give the Council not less than twenty working days notice in writing of the availability of the Affordable Rented Dwelling for occupation for the first letting and then any subsequent letting of the Affordable Rented Dwelling and at the same time supply to the Council for the attention of the Housing Services Manager a copy of the proposed tenancy agreement which the Nominated Tenant will be required to enter into for approval by the Housing Services Manager.

1.1.6 to give to the Council a copy of any notice served on the Nominated Tenant by the Owner seeking possession under the

terms of the Housing Act 1988, within seven working days of the date of service of the notice on the Nominated Tenant.

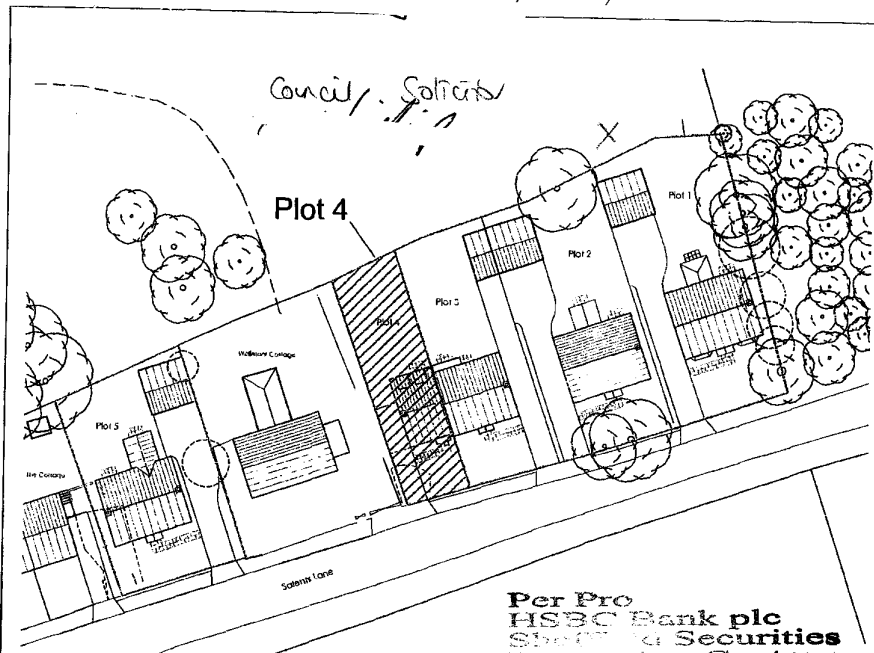
1.1.7 to supply within 14 working days from the date of the letting of the Affordable Rented Dwelling to the Nominated Tenant a certified copy of the tenancy agreement to the Council, together with the sum of £50.00 plus VAT as the Compliance Fee.

1.1.8 to pay to the Council on the date of each anniversary of the date of the first tenancy agreement the sum of £50.00 plus VAT as the Compliance Fee for the following year

THE FIFTH SCHEDULE NOMINATION PROCESS.

- 1 Within seven days of receipt of a notice from the Owner served pursuant to Clause 1.1.5 of Schedule 4 to this Agreement the Council will approach and advise prospective tenants and not less than 14 days prior to the Affordable Rented Dwelling becoming available for occupation the Council will advise the Owner in writing of the details of up to three prospective Nominated Tenants
- 2 The Owner may select a Nominated Tenant and should carry out any reference checks which he feels necessary to appoint a Nominated Tenant.
- 3 Within seven working days of appointing a Nominated Tenant the Owner must advise the Housing Services Manager in writing of the name of the Nominated Tenant.
- 4 The Owner will require no more than one months rent as a deposit and one months rent in advance from the Nominated Tenant.
- 5 Any costs incurred by the Owner in carrying out reference checks or otherwise on prospective Nominated Tenants must be borne by the Owner.
- 6 In the event of the Owner finding all of the prospective Nominated Tenants unsuitable, reasonable grounds for making such a decision should be forwarded in writing to the Housing Services Manager. The

X 9 X



Council - Salents

Plot 4

Plot 3

Plot 2

Plot 1

Plot 5

Wolfehouse Cottage

The Conary

Salents Lane

Per Pro
 HSBC Bank plc
 HSBC Securities
 Processing Centre
 200 White Street
 Sheffield S1 7EW

Legal Plan

1:500

North
 NORTH

Rev A - plots 3 & 4 redesigned - 04/10/07 - sj

Issue Status
Planning

Drawing No.	Scale @ A4	Drawn
337/06A	1:500	sj
	Date	Checked
	September 2007	

Drawing Title
**Legal Plan
 Plot 4 - Affordable Unit**

Client
L & S Kendra & Sons

Project
**Residential Development
 Salents Lane
 Wharram-le-Street
 Malton**

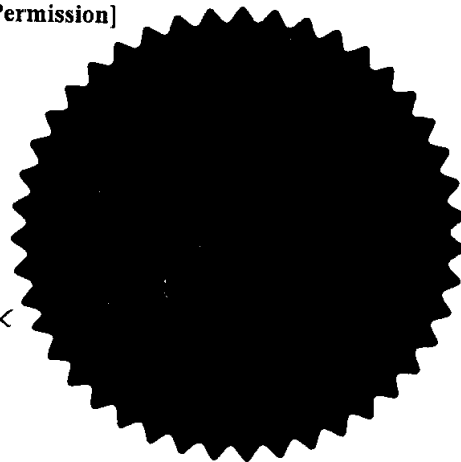
 JENNESON ASSOCIATES	Jenneson Associates Ltd Chartered Architect 8 Nicholson Court Pocklington York YO42 2PF
	Tel : 01759 303738
	www.jennesonassociates.co.uk
	e-mail enquiries@jennesonassociates.co.uk

- final decision as to the suitability of prospective Nominated Tenants shall rest with the Council and the Owner shall abide by that decision.
- 7 Twice in any calendar year the Council will carry out a compliance check on the Affordable Rented Dwelling to ensure that it is being occupied in accordance with the terms of this Agreement.

THE SIXTH SCHEDULE
[Draft Planning Permission]

Min...
 Reg No. 6189
 12/11/15 EW

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



Chairman

Council Solicitor

SIGNED as a Deed by the said)
 Michael Anthony Kendra In the)
 presence of)

A. J. TREZISE
 7. NORTHFIELD RD.
 ROCKINGTON
 YO42 2ER

SIGNED as a Deed by the said)
 Leslie Kendra In the)
 presence of)

A. J. TREZISE
 7. NORTHFIELD RD
 ROCKINGTON
 YO42 2ER

SIGNED as a Deed by the said)
Sheila Kendra In the)
presence of)

A'S TREZISE,
7 NORTHFIELD RD.
ROCKLINGTON,
YO42 2EF.

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:

Witness:

Joyce Simmons

Address:

HSBC Bank plc
SHEFFIELD SECURITIES
PROCESSING CENTRE

Occupation

BANK OFFICIAL

L735-6 (1/99) - UOI - 1 x PK250