

07/1133.

DATED 22 October 2009

THE RYEDALE DISTRICT COUNCIL

and

LINDRICK HOMES LIMITED

and

S HARRISON DEVELOPMENTS LIMITED

and

MRS CAROLINE MARY BOOTHBY

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 to the north of Wains Field,
Kirkbymoorside in the County of North Yorkshire

K A Winship
Council Solicitor
MALTON

THIS DEED is made the 22 day of October, 2009

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 **LINDRICK HOMES LIMITED** Registered Office Stanley Harrison House, The Chocolate Works, Bishopthorpe Road, York YO23 1DE ("the Developer")
- 3 **S HARRISON DEVELOPMENTS LIMITED** Registered Office Stanley Harrison House, The Chocolate Works, Bishopthorpe Road, York YO23 1DE ("the First Owner")
- 4 **CAROLINE MARY BOOTHBY** of 36 Holbeck Avenue, Scarborough, YO11 2XQ ("the Second Owner")

DEFINITIONS

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

"Affordable Rented Dwellings"

means the 2 No two bedroom apartments and the 4 No two bedroom houses and 4 No three bedroom houses constructed in accordance with the provisions of the Fourth Schedule to this Deed

"Affordable Rent"

means a rent which is comparable to the average rents charged in the Council's 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 Association and the Owners/and or the Developer and thereafter any increases or decreases in accordance with the Housing Corporation or any successor authority guidance at the time

"Commencement of Development"

means the date upon which the Proposed Development shall commence by the carrying out on the Property pursuant to planning permission of a material operation as specified in Section 56(2) of the Town and Country Planning Act 1990

"Open Market Dwellings"

means dwellings erected on the Property excluding the Affordable Rented Dwellings

"Open Space"

means that part of the Property shown edged in yellow on the Plan

“Housing Services Manager”	means the Housing Services Manager of the Council or such other Officer as may from time to time be nominated by him or carries out the functions at the date hereof carried out by him
“Council Solicitor”	means the Council Solicitor for the time being for the Council or such other Officer as may from time to time be primarily responsible for the provision of legal services to the Council
“Eligible Occupiers”	means a person or household identified in accordance with the provisions of the Fifth Schedule to this Deed
“The Housing Association”	means Yorkshire Community Housing or an alternative registered social landlord registered in accordance with Part 1 Chapter 1 of the Housing Act 1996 (or as redefined by any amendments, replacement or re-enactment of such Act) and registered by the Housing Corporation under the provisions of Chapter 1 Part 1 of the Housing Act 1996 or any successor authority and approved in writing by the Housing Services Manager (such approval not to be unreasonably withheld or delayed)
“Head of Planning”	means the Head of Planning for the time being for the Council or such other Officer as may from time to time be primarily responsible for the provision of planning services to the Council
“Planning Conditions”	means the draft planning conditions in the form set out in the Seventh Schedule to this Deed
“Chargee”	(solely in relation to the Affordable Rented Dwellings) means any mortgagee or chargee of the Housing Association or the successor in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

RECITALS

- (1) The Council is the local planning authority for the purposes of this Deed for the area within which the property described in the First Schedule to this Deed (“the Property”) is situated

- (2) The First Owner is the Owner in fee simple in possession of that part of the Property shown edged in blue on the Plan subject as hereinafter mentioned but otherwise free from encumbrances
- (3) The Second Owner is the Owner in fee simple in possession of that part of the Property shown edged in green on the Plan subject as hereinafter mentioned but otherwise free from encumbrances
- (4) The First Owner and the Second Owner together shall be known as "the Owners"
- (5) The Developer has applied to the Council for permission ("the Planning Application") to develop the Property in the manner and for the uses set out in the Second Schedule to this Deed ("the Proposed Development")
- (6) The Council is satisfied that the performance by the Owners and the Developer of the covenants herein will remove certain arguments against or objections to the Proposed Development which would without the execution of this Deed have led to the refusal of consent for the Planning Application
- (7) The Owners and the Developer have agreed to enter into this Deed with the Council and be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained and on their part to be observed and performed

NOW THIS DEED WITNESSES as follows:-

- 1 **THIS** Deed 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 Deed 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 Owners" and "the Developer" shall include their respective successors in title and assigns other than the first and all subsequent owners of individually transferred Open Market Dwellings and the first and all subsequent owners of Affordable Rented Dwellings which are not transferred to the Housing Association pursuant to clause 2.1.2 of Part 2 of the Fourth Schedule to this Deed
 - 2.2 The Owners and the Developer 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 Owners and the Developer hereby agree 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 Deed and not otherwise

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

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

2.6 The Owners and the Developer 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 Deed by the Owners and or the Developer

2.7 In this Deed 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 Owners" or "the Developer" covenants expressed to be made by or with the Owners or the Developer 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 Deed shall bind the Property and remain in full force and effect until formally varied by the 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 Deed 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 Deed shall forthwith be annulled and cease to have any effect and the Council shall immediately remove any entry relating to this Deed from the register of local land charges

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"Open Space"

means that part of the Property shown edged in yellow on the Plan

2.12 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Deed 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 Deed 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 Deed

2.14 The Council shall within 5 days from completion of this Agreement procure the issue of planning permission relating to the Proposed Development in the form of the draft annexed in the Seventh Schedule to this Deed (“the planning permission”)

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 any buildings erected thereon situate at and known as land to the north of Wains Field, Kirkbymoorside, North Yorkshire shown edged in blue and green on the plan attached hereto (“the Plan”)

THE SECOND SCHEDULE

[Particulars of the Proposed Development]

Erection of 16 no four-bedroom dwellings, 7 no three bedroom dwellings, 4 no two bedroom dwellings, and 2 no two bedroom apartments, together with associated garages, parking and area of open public space in accordance with Planning Application Number 07/01133/MFUL

THE THIRD SCHEDULE

[Negative Obligations]

AFFORDABLE HOUSING

The Owners and the Developer covenant with the Council not to permit the occupation of more than 15 of the Open Market Dwellings constructed on the Property pursuant to the planning permission until the Owners and the Developer have constructed and physically completed and made available at their own cost the Affordable Rented Dwellings on the Property

THE FOURTH SCHEDULE

[Positive Obligations]

OPEN SPACE

PART 1

Open Space

- 1 The Owners and the Developer covenant:-
 - 1.1 1 to implement and complete the approved landscaping specification for the Open Space to the reasonable satisfaction of the Head of Planning prior to the occupation of the first dwelling to be erected on the Property
 - 1.1 2 to maintain the Open Space in good condition for a period of twelve months from the date of completion of the approved specification works to the reasonable satisfaction of the Head of Planning and to re-sow any grass and replace any trees plants or shrubs thereon that have died or become diseased within that period
 - 1.1 3 that immediately following the twelve months maintenance period to transfer the Open Space for the sum of one pound (£1.00) to the ownership of the Council or its nominee, together with the payment of the commuted sum for future maintenance of the Open Space in the sum of £19,200 (nineteen thousand two hundred pounds)

Part 2

Affordable Rented Dwellings

- 2 The Owners and the Developer covenant to provide ten Affordable Rented Dwellings in accordance with the following provisions:

The Owners and the Developer covenant:-

 - 2.1 to build the Affordable Rented Dwellings in accordance with the planning permission and,
 - 2.1 1 to ensure that not more than 10 Open Market Dwellings are occupied until they have entered an agreement with the Housing Association and approved by the Council Solicitor for the construction by the Developer for the Housing Association of the Affordable Rented Dwellings and the transfer thereafter of these Affordable Rented Dwellings to the Housing Association
 - 2.1 2 to transfer the Affordable Rented Dwellings on or before the occupation of fifteen of the Open Market Dwellings to the Housing Association for a price which enables the Housing Association to charge an Affordable Rent

- 2.1.3 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
- 2.1.4 that before the Affordable Rented Dwellings are transferred pursuant to clause 2.1.2 of this Schedule they are fully serviced and accessible by vehicles and pedestrians
- 2.1.5 to supply within 14 working days from the date of the transfer transferring the Affordable Rented Dwellings to the Housing Association a copy of that transfer to the Council
- 2.2 In the event that the Owners or the Developer fail to enter into an agreement with the Housing Association pursuant to clause 2.1.1 of this Schedule within 12 months from Commencement of Development and the Council Solicitor is satisfied that the Owners and Developer have exhausted every avenue available to them to secure the transfer the Owners and Developer will pay the Council a commuted sum in lieu of the provision of the Affordable Rented Dwellings calculated in accordance with Part 1 of the Sixth Schedule to this Deed and shall thereafter be at liberty to dispose of the Affordable Rented Dwellings free from all of the covenants conditions restrictions provisions and obligations imposed by this Deed
- 2.3 The obligations in this Part of this Schedule shall not apply to a Chargee who has complied with the following:-
 - 2.3.1 The Chargee shall prior to seeking to dispose of any of the Affordable Rented Dwellings pursuant to any default under the terms of its mortgage or charge give not less than three months prior notice in writing to the Council Solicitor of its intention to dispose of some or all of the Affordable Rented Dwellings (and in the case of some only clearly identifying the same) and:
 - (a) in the event that the Council Solicitor responds within three months from receipt of the said written notice indicating that arrangements for the transfer of the Affordable Rented Dwellings so indicated can be made in such a way as to safeguard them for occupation within the terms of this Part of this Schedule then the Chargee shall co-operate with such arrangements and use its best endeavours to secure such transfer
 - (b) if the Council Solicitor does not serve its response to the said written notice served under paragraph (a) above within three months from

receipt of the same then the Chargee shall be entitled to dispose of the Affordable Rented Dwellings so indicated free of the restrictions set out in this Part of this Schedule

- (c) if the Council or any other person cannot within three months of the date of service of its response under paragraph (a) secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph (a) the Chargee shall be entitled to dispose of the Affordable Rented Dwellings so indicated free from the restrictions set out in this Part of this Schedule

PROVIDED THAT at all times the rights and obligations set out in this paragraph 2.3 shall not require the Chargee to act contrary to its duties under any charge or mortgage and by the signing hereof the Council acknowledges that it must give full consideration to protecting the interests of the Chargee in respect of monies outstanding under any charge or mortgage

THE FIFTH SCHEDULE

[Eligibility Criteria]

Rental by persons:

- 1 who have for a period of at least 2 years been ordinarily resident within Kirkbymoorside; or
- 2 who have been permanently employed in Kirkbymoorside 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 Edstone, Sinnington, Appleton-Le-Moors, Hutton-Le-Hole, Gillamoor, Fadmoor, Nawton, Welburn, Nunnington for a period of at least 2 years; or
- 4 if no such person qualifies under paragraphs 1 or 2 or 3 above for occupation a person ordinarily resident in any area in the District of Ryedale; or
5. if no such person qualifies under paragraphs 1 or 2 or 3 or 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; or
 - 5.2 any period of ordinary residence in the area of Ryedale District not immediately before the date on which any Affordable Rented Dwelling 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 SIXTH SCHEDULE

PART 1

Affordable Housing Commuted Sum

1 The commuted sum payable in lieu of the Affordable Rented Dwellings shall be calculated as follows:-

The Open Market Value of the Affordable Rented Dwellings
minus

The price the Housing Association would have paid for the Affordable Rented Dwellings had they been transferred to the Housing Association in accordance with clause 2.1 2 of Part 2 of the Fourth Schedule to this Deed

PART 2

Determination of Open Market Value

2 For the purposes of Part 1 of this Schedule

2.1 the Open Market Value shall be agreed by the Owners and the Developer and the Council and in default of agreement determined by an independent chartered surveyor appointed by agreement between the Owners and the Developer 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 any party) be appointed by the President of the Royal Institution of Chartered Surveyors

2.3 the surveyor shall act as an expert and his decision shall be final and binding

2.4 In determining Open Market Value for the purposes of paragraphs 2.1 and 2.2 above the surveyor shall be concerned to establish the estimated amount for which the property in question should exchange on the date of valuation between a willing buyer and a willing seller in an arms length transaction after proper marketing wherein the parties had each acted knowledgeably prudently and without compulsion and disregarding the provisions of this Deed in so far

as they have the effect of limiting the value of the Affordable Rented Dwellings.

PART 3

Affordable Housing Provision

3. The Council covenants that:
- 3.1 any commuted sum paid in lieu of the provision of the Affordable Rented Dwellings in accordance with this Schedule will be used on a broad range of schemes and initiatives, linked to housing needs
- 3.2 in the event that all or part of any commuted sum paid in lieu of the provision of the Affordable Rented Dwellings in accordance with this Schedule has not been committed by the Council as detailed in paragraph 3.1 above within five years from the date on which it is received by the Housing Services Manager the Council will repay to the Developer the amount (if any) which has not been so committed provided that the Developer shall not be entitled to claim any interest on such returned sum
- 3.3 it will provide to the Developer a certificate prepared by the Housing Services Manager detailing how any commuted sum paid in lieu of the provision of the Affordable Rented Dwellings has been spent

THE SEVENTH SCHEDULE

[Draft Planning Conditions]

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

Dual Keal

Chairman

K. Lindrick

Council Solicitor

Signed as a Deed by)
LINDRICK HOMES LIMITED)
acting by a Director and a)
Director/Secretary)

Director

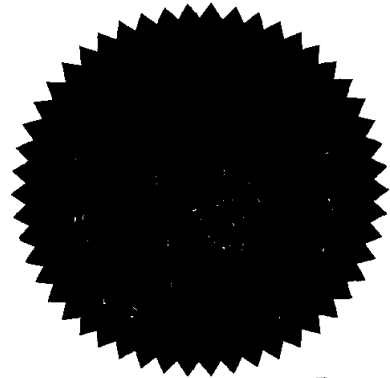
Director/Secretary

Signed as a Deed by)
S HARRISON DEVELOPMENTS LIMITED)
acting by a Director and a)
Director/Secretary)

Director

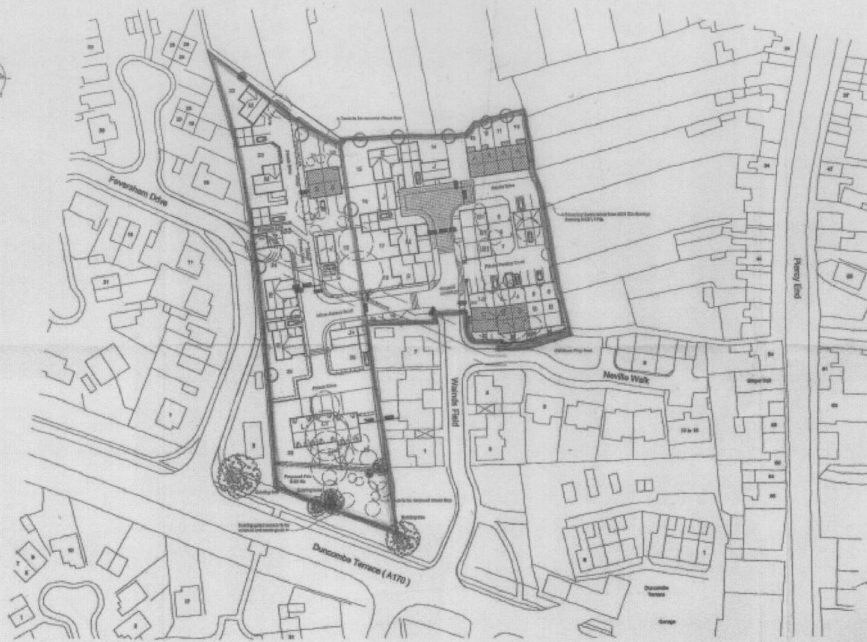
Director/Secretary

Signed as a Deed by CAROLINE)
MARY BOOTHBY in the presence of)
of)



Minute P. 195 (2008)
Reg No. 6215
Initials *ew*

Proposed Development at Wainds Field, Kirkbymoorside.



Chairman
Derek West
Council Clerk
Shirley

Schedule Of Accommodation

Houses		
A	2 Bed 2 Storey	4
B	3 Bed 2 Storey	8
BT	4 Bed 2.5 Storey	2
C	2 Bed Apt	2
E	4 Bed 2 Storey	2
F	4 Bed 2 Storey	1
J	4 Bed 2.5 Storey	2
L	4 Bed 2 Storey	2
LI	3 Bed 2 Storey	1
M	4 Bed 2 Storey	8
Total		29



Affordable units hatched area

Area for vehicle bins on collection day only for plots 22 & 23

Proposed Sketch Layout

1 : 500 @ A1 21st Nov. 2008