

DATED

22nd May

2009

**THE RYEDALE DISTRICT COUNCIL**

and

**RUBRIK HOMES LIMITED**

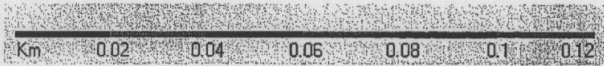
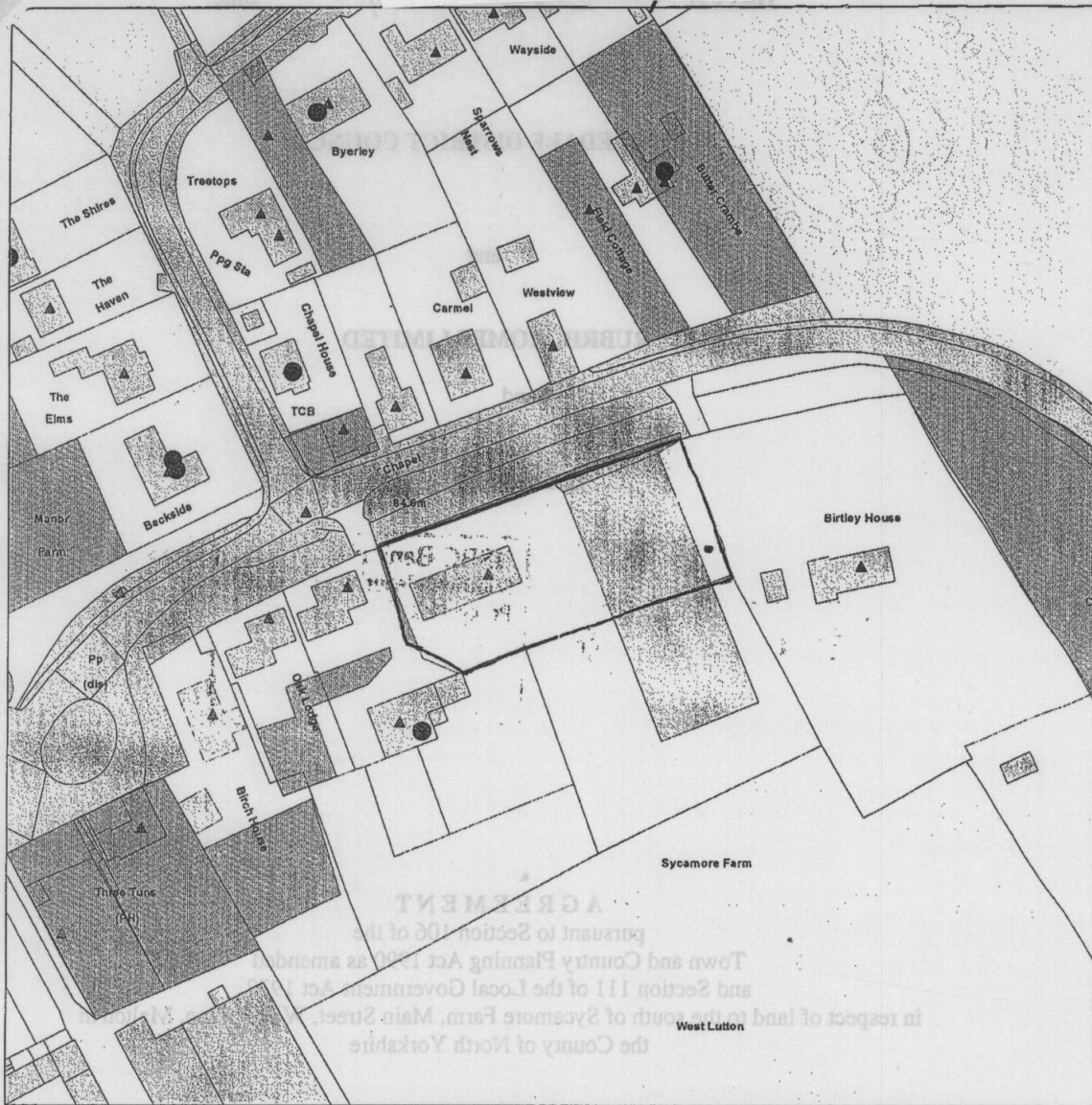
and

**HSBC BANK plc**

**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 south of Sycamore Farm, Main Street, West Lutton, Malton in  
the County of North Yorkshire

K A Winship  
Council Solicitor  
MALTON



36/11/06  
 13/06/06  
 13/06/06

K A Winship  
 Council Solicitor  
 MALTON

Produced using ESRI (UK)'s MapExplorer 2 0 - <http://www.esriuk.com>

Per Pro  
 HSBC Bank plc  
 Securities Processing Centre  
 PO Box 3924  
 Sheffield  
 S1 9BD

Manager

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



Chairman

Council Solicitor

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 ROBERT HAMMAN

in the presence of.

Witness:

Address:

Annette Jane Mackintosh

Attorney of  
HSBC Bank plc  
Sheffield Securities  
Processing Centre  
Bank Official

Minutes 934/82  
Ref No. 6207  
Init: EWN

Signed by )  
a Director and its Secretary )  
RUBRIK HOMES LIMITED )

Director

Secretary

The Open Market Value of the 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 the 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.

## **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

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 Sixth Schedule to this Agreement ("the Affordable Housing Commuted Sum").

## **THE FIFTH SCHEDULE**

### **Eligibility Criteria**

Purchase by persons:

1. who have for a period of at least 2 years been ordinarily resident within the village of West Lutton
2. who have been permanently employed or whose principal place of work is in the village of West Lutton 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 parishes of Willerby and Staxton, Ganton, Sherburn, Weaverthorpe, Foxholes 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 SIXTH SCHEDULE**

### **Part 1**

#### **Affordable Housing Commuted Sum**

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

## **PART 2**

### **Affordable Rented Dwellings**

The Owner covenants to provide the Affordable Rented Dwellings in accordance with the following provisions.

- 1 The Owners covenants:-
  - 1.1 to build the Affordable Rented Dwellings in accordance with the Planning Permission and,
  - 1.2 to ensure that no Open Market Dwelling is completed until he has entered an agreement with the nominated Housing Association and approved by the Council Solicitor for the construction by him for that the Housing Association of the Affordable Rented Dwellings and the transfer of these Unit to the Housing Association
  - 1.3 to transfer the Affordable Rented Dwellings on or before the occupation of the first Open Market Dwellings to the Housing Association at a price of £75,000.00 per dwelling which enables the Housing Association to charge an Affordable Rent
  - 1.4 to ensure that it is the term of the sale of the Affordable Rented Dwelling 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
  - 1.5 that before the Affordable Rented Dwellings are transferred pursuant to clause 1.3 of this schedule they are fully serviced and accessible by vehicles and pedestrians
  - 1.6 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
  - 1.7 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

Planning Permission until the Owner has constructed and completed and made available for occupation at their own cost the Affordable Rented Dwellings

## **THE FOURTH SCHEDULE**

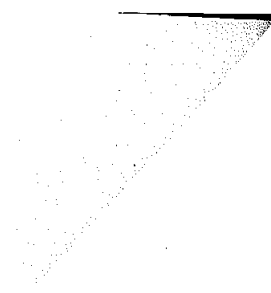
[Positive Obligations]

### **AFFORDABLE HOUSING**

#### **PART 1**

##### Affordable Housing Appraisal

- 1 The Owner covenants with the Council that the District Valuer will be appointed to conduct a financial appraisal of the Development to determine the level of Affordable Housing provision for the Development.
- 2 The Owner covenants that he will supply to the District Valuer the following information within 14 days of being requested to do so
  - 2.1 Scheme drawings, layouts, brief specifications and house/building sizes
  - 2.2 Anticipated sale prices or lease rents with evidence of the values of similar schemes in the locality so far as available.
  - 2.3 Land cost and fees
  - 2.4 Build costs of the houses/units and site infrastructure supported by independent quantity surveyor estimates.
  - 2.5 Cost of abnormalities, if any, with supporting reports and independent estimates
  - 2.6 Design and project management fees, planning and building regulation fees
  - 2.7 Cost of geotechnical and environmental surveys together with a summary of the findings.
  - 2.8 Interim/development finance calculation with details of the loan facility from the funder.
- 3 In supplying the above information the Owner will act in good faith and fully disclose and justify all cost and revenue items.
- 4 The Owner will pay the District Valuer's reasonable fees for conducting the Affordable Housing Appraisal.
- 5 Save in the case of manifest error the Owner and the Council agree to accept the District Valuer's recommendation following the Affordable Housing Appraisal.



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 Sycamore Farm, Main Street, West Lutton, Malton, North Yorkshire shown edged in red  
on the attached plan.

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

Erection of 1no. four bedroom dwelling with detached double garage with store above, 4no.  
three bedroom semi-detached dwellings and 2 no. two bedroom semi-detached dwellings  
with formation of vehicular access (outline approval 04/01052/OUT dated 01.04.2005)

**THE THIRD SCHEDULE**  
[Negative Obligations]

**COMMUTED SUM**

1. The Owner covenants with the Council not to commence construction of the last open  
market dwelling on the Property until the sum of nine thousand, five hundred pounds  
(£9,500) has been paid to the Council for enhancing and providing open space in the  
vicinity of the Property.

**AFFORDABLE HOUSING**

2. The Owner covenants with the Council not to Commence Development until an  
Affordable Housing Appraisal has been undertaken
3. The Owner covenants with the Council not to commence construction of more than  
50% of the Open Market Dwellings constructed on the Property pursuant to the



- PROVIDED ALWAYS that the successors in title to the Mortgagee shall become fully liable for any breach of this Agreement
- 2.8 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
- 2.9 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
- 2.10 For the purpose of avoidance of doubt and subject to clause 2.12 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
- 2.11 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
- 2.12 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
- 2.13 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 Site or part of the Site in respect of the Site in respect of which that breach occurs
- 2.14 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

- (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

**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" and shall include their respective successors in title and assigns
  - 2.2 The Owner and the Mortgagee covenants 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 and the Mortgagee 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 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 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

- “Eligible Occupiers” means a person or persons identified in accordance with the provision of the Fifth 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 the Sixth Schedule to this Agreement.
- “The Housing Association” means Yorkshire Housing Limited of Yorkshire House 6 Innovation Close Heslington, York YO10 5ZF or 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 and approved in writing by the Housing Services Manager (such approval not to be unreasonably withheld or delayed)
- “The Planning Permission” means Outline Approval 04/01052/OUT & 08/00049/MREM

#### **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 NYK356674 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

**THIS DEED** is made the *22nd* day of *May* 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 **RUBRIK HOMES LIMITED (Company Registration Number 05970177)** Registered Office Manor Farm, Main Road, Brompton-by-Sawdon, Scarborough. YO13 9DP ("the Owner")
- 3 **HSBC BANK plc (Company Registration Number 14259)** of Securities Centre, PO Box 3942 70 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 Association and the Housing Services Manager and thereafter any increases or decreases in accordance with the Housing Corporation guidance at the time.
- "Affordable Rented"  
Dwellings means a maximum of two 2 bed dwellings or such alternative provision as determined by Part 1 of the Fourth Schedule to this Agreement and constructed in accordance with the provisions of Part 2 the Fourth Schedule to this Agreement
- "Affordable Housing  
Appraisal" means the financial appraisal conducted in accordance with the provisions of Part 1 of the Fourth Schedule
- "Council Solicitor" means the Council Solicitor for the time being for Ryedale District Council or such other Officer as may from time to time be primarily responsible for the provision of legal services to the Council
- "Commence Development" means the complete construction of concrete foundations, completion of walling up to damp proof course and completion of construction of sub-floor on at least one dwelling on the Property