

08/266

THIS DEED is made the 7th day of October 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 **A & D STURDY LTD** Registered Office 26 Scarborough Road, Rillington, Malton, North Yorkshire, YO17 8LH. ("the Developer")

3 **THE CLYDESDALE BANK plc** (Trading as Yorkshire Bank plc), Second Floor, 20 Merrion Way, Leeds, LS2 8NZ ("the Mortgagee")

DEFINITIONS

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

"Affordable Rented Dwelling" means two 2 bedroom dwellings constructed in accordance with the provisions of the Fourth Schedule to this Agreement

"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 Developer and thereafter any increases or decreases in accordance with 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 Dwellings

"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.
- “Chief Financial Officer” means the Chief Financial Officer 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

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 Developer is the owner in fee simple in possession of the Property (subject as hereinafter mentioned but otherwise) free from encumbrances
- (3) 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 Second Schedule hereto (“the Proposed Development”)
- (4) The Council is satisfied that the performance by the Developer 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 Developer 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 Developer" and "the Mortgagee" shall include their respective successors in title and assigns

2.2 The Developer 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 Developer 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 Developer shall on execution of this Agreement pay to the Council a fee of £200 plus VAT to cover the Council's legal costs

2.6 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 Agreement by the Developer

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 Developer" covenants expressed to be made by or with 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 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 Site or part of the Site in respect of the Site 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 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 to the south of 34 and 38 Scarborough Road, Malton, North Yorkshire, shown edged in red on the attached plan

THE SECOND SCHEDULE
[Particulars of the Proposed Development]

Erection of 2 no three bedroom detached dwellings, and 2 no pairs of two bedroom semi-detached dwellings with garages (application number 08/00266/FUL)

THE THIRD SCHEDULE
[Negative Obligations]

COMMUTED SUM

- 1 The Developer covenants with the Council not to commence construction of more than 2 of the dwellings on the Property until the sum of Twelve Thousand Seven Hundred and Eighty pounds (£12,780) (the Open Space Commuted Sum) has been paid to the Council for enhancing and providing open space in the vicinity of the Property.

AFFORDABLE HOUSING

- 2 The Developer covenants with the Council not to permit the occupation of more than 2 of the Open Market Dwellings constructed on the Property pursuant to the Planning Permission until the Developer has constructed and completed and made available at their own cost the Affordable Rented Dwellings on the Property

THE FOURTH SCHEDULE
[Positive Obligations]

AFFORDABLE HOUSING

- 1 The Developer covenants to provide the Affordable Rented Dwellings in accordance with the provisions of this schedule

The Developer covenants:-

- 1.1 to build the Affordable Rented Dwellings in accordance with the Planning Permission and,
- 1.1.1 that the Developer shall not dispose of or cause or permit the disposal of the Affordable Rented Dwellings 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 Dwellings are 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 Dwellings
- 1.1.5 to give the Council not less than twenty working days notice in writing of the availability of the Affordable Rented Dwellings for occupation for the first letting and then any subsequent letting of the Affordable Rented Dwellings 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 a Nominated Tenant by the Developer 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 a 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 Developer 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 an Affordable Rented Dwelling becoming available for occupation the Council will advise the Developer in writing of the details of up to three prospective Nominated Tenants
- 2 The Developer may select a Nominated Tenant and should carry out any reference checks which he feels necessary to appoint a Nominated Tenant for each Affordable Rented Dwelling
- 3 Within seven working days of appointing a Nominated Tenant the Developer must advise the Housing Services Manager in writing of the name of the Nominated Tenant.
- 4 The Developer will require no more than one months rent as a deposit and one months rent in advance from a Nominated Tenant
- 5 Any costs incurred by the Developer in carrying out reference checks or otherwise on prospective Nominated Tenants must be borne by the Developer
- 6 In the event of the Developer 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 final decision as to the suitability of prospective Nominated Tenants shall rest with the Council and the Developer shall abide by that decision.
- 7 Twice in any calendar year the Council will carry out a compliance check on the Affordable Rented Dwellings to ensure that they are being occupied in accordance with the terms of this Agreement.

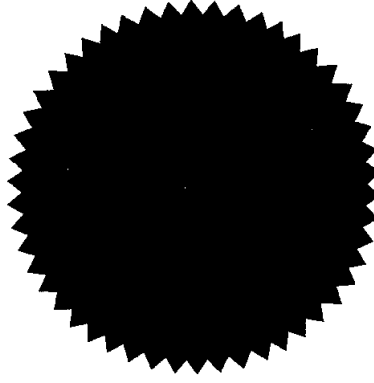
THE SIXTH SCHEDULE

(The Council's Covenants)

In the event that the Open Space Commuted Sum has not been expended by the Council for the purpose stipulated in Paragraph 1 of the Third Schedule above within a period of five years from the date on which receipt by the Council is certified by the

Chief Financial Officer the Council will repay to the Developer the Open Space Commuted Sum or any unexpended part thereof PROVIDED THAT the Developer shall not be entitled to any interest on the returned portion of the Open Space Commuted Sum

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



Minute 934/82
Reg No 6174
Initials CW

Chairman

Council Solicitor

EXECUTED AS A DEED)
by the above-named)
A & D STURDY Limited)
and signed by)

Director

Director/Secretary

THE COMMON SEAL of
CLYDESDALE BANK PLC
was affixed in the presence of:-

SIGNED AS A DEED AND DELIVERED BY

on behalf of CLYDESDALE BANK PLC
trading as Clydesdale Bank
in the presence of

Witness Signature

Full Name

Ref 05-70 35429806

of 20 Meriton Way
London E16 2NE

Signature of Director

Signature of Secretary

06/00161/FUL

Not Set



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Legend

Scale : 1:1250

Organisation	Ryedale District Council
Department	Planning Services
Comments	Not Set
Date	30 June 2008
SLA Number	100019406

DATED 7th October 2008

THE RYEDALE DISTRICT COUNCIL

and

A & D STURDY LIMITED

and

CLYDESDALE 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 34 and 38, Scarborough Road, Rillington, Malton
in the County of North Yorkshire

K A Winship
Council Solicitor
MALTON