

PT107486

09/1127

DATED 29 January 2010

**THE RYEDALE DISTRICT COUNCIL**

And

**BROADACRES HOUSING ASSOCIATION LIMITED**

**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 the former Askham Bryan College, Swainsea Lane, Pickering, in  
the County of North Yorkshire

K A Winship  
Council Solicitor  
MALTON

**THIS DEED** is made the 29<sup>th</sup> day of January 2010

**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 **BROADACRES HOUSING ASSOCIATION LIMITED**, Registered Office Broadacre House, Mount View, Standard Way, Northallerton, North Yorkshire. DL6 2YD ("the Owner")

**DEFINITIONS**

- Affordable Rented Dwellings** means the 7no. three bedroom dwellings and 5no. two bedroom dwellings constructed in accordance with planning application 09/1127/MFUL, each dwelling to be held on an Assured Tenancy at 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 Owner and thereafter any increases or decreases in accordance with the Tenants Services Agency guidance at the time and "Affordable Rented Dwelling" shall be construed accordingly.
- Shared Ownership Dwellings** means the 1no. three bedroom dwelling and 2no. 2 bedroom dwellings constructed in accordance with planning application 09/1127/MFUL, each dwelling to be held on a Shared Ownership basis by Eligible Purchasers in accordance with the Shared Ownership Scheme and "Shared Ownership Dwelling" shall be construed accordingly.
- Shared Ownership Scheme** means the Homes and Communities Agency's grant funded shared ownership scheme 'New Build HomeBuy' operated by the Owner
- Eligible Purchasers** means a person or household identified in accordance with the provisions of the Fourth Schedule to this Agreement and in addition who cannot ordinarily afford to purchase a property equivalent to the Shared Ownership Dwelling on the open market.
- Eligible Occupiers** means a person or household identified in accordance with the provisions of the Fourth 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

## **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 Owner has applied to the Council for permission 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
- (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 their 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 **THE** Owner 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 Third Schedule hereto Save that these restrictions and provisions shall not be binding on a mortgagee or chargee or a receiver appointed by a mortgagee or chargee or any successors in title to such mortgagee, chargee or receiver

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

3.1 The expressions "the Council" and "the Owner" 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 Property 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

3.4 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

3.5 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

3.6 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

3.7 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

3.8 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

3.9 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

**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 north of the former Askham Bryan College, Swainsea Lane, Pickering, North Yorkshire.

#### **THE SECOND SCHEDULE**

[Particulars of the Proposed Development]

Erection of 8 no. three bedroom dwellings, 7 no. two bedroom dwellings associated with parking and amenity areas and formation of vehicular access

**THE THIRD SCHEDULE**  
[Negative Obligations]

The Owner covenants with the Council that the Property will be used only for the purpose of providing the 12 Affordable Rented Dwellings for occupation only by Eligible Occupiers and 3 Shared Ownership Dwellings for occupation only by Eligible Purchasers

**THE FOURTH SCHEDULE**  
[Eligibility Criteria]

1 Occupation by persons where the applicant or the applicant's partner satisfy the following conditions on submission of an application to the Owner to occupy an Affordable Rented Dwelling or a Shared Ownership Dwelling

- 1.1 who have for a period of at least three years immediately prior to their application to occupy been ordinarily resident within the parish of Pickering; or if no such person qualifies pursuant to this paragraph 1.1 then;
- 1.2 who have been permanently employed in the parish of Pickering for 3 years or more immediately prior to their application to occupy; or if no such person qualifies pursuant to this paragraph 1.2 then;
- 1.3 who are former residents of the parish of Pickering with at least 3 years continuous residency in the parish in the last 10 years whose case is accepted in writing by the Housing Service Manager as having a need to return to the parish of Pickering. If the Housing Services Manager does not respond to a statement of need submitted pursuant to this clause 1.3 by or on behalf of an Applicant, within ten working days of receiving such statement or request, the Housing Services Manager shall be deemed to be satisfied with that statement and have evidenced that satisfaction in writing, or if no such person qualifies pursuant to this clause 1.3 then;
- 1.4 who has been ordinarily resident in one or more of the following parishes, Aislaby, Middleton, Wrelton or Thornton-Le-Dale for a continuous period of at least 3 years; or if no such person qualifies pursuant to this clause 1.4 then;
- 1.5 who has been ordinarily resident in one or more of the following parishes, Kirbymisperton, Lockton, Levisham, Cropton, Newton-on-Rawcliffe or Stape for a continuous period of at least 3 years; or if no such person qualifies pursuant to this clause 1.5 then;

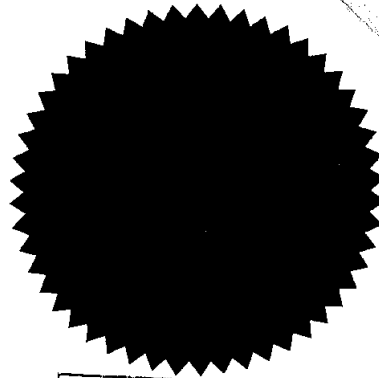
- 
- 1.6 who have a close family connection (parents, children or siblings) who have been ordinarily resident within the parish of Pickering for at least five years immediately prior to the application being made and whose case is accepted in writing by the Housing Services Manager as having a need to return to the parish of Pickering. If the Housing Services Manager does not respond to a statement of need submitted pursuant to this clause 1.6 by or on behalf of an Applicant, within ten working days of receiving such statement or request, the Housing Services Manager shall be deemed to be satisfied with that statement and have evidenced that satisfaction in writing.
  - 2 If no such person qualifies under 1.1 to 1.6 and provided the Housing Services Manager is satisfied that the dwelling has been marketed for a period of at least four weeks in a manner which would attract any potential occupants who meet the Eligibility Criteria then "Ryedale" may be substituted for the parish of Pickering in the above criteria
  - 3 For the purposes of paragraph 1.2 above 'permanently employed' means the main or sole employment being for more than 30 hours per week
  - 4 The Owner will consult the Housing Services Manager prior to the letting of any Affordable Rented Dwelling or disposal of a Shared Ownership Dwelling in order to verify that the applicant satisfies the criteria in clause 1 above and will not grant any occupation or changes to occupation of any of the Affordable Rented Dwellings or Shared Ownership Dwellings without the prior written approval of the Housing Services Manager. If the Housing Services Manager does not respond to a request by the Owner for approval of a new occupant or of a change of occupant within ten working days of receiving such request, then consent shall be deemed to have been given.

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

*Dinah Keel*

Chairman

*KAWindship*  
Council Solicitor

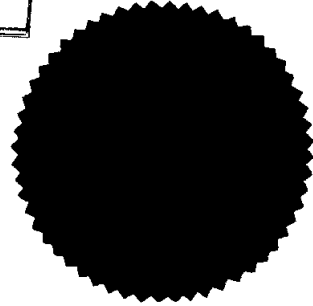


Minute P88/2009  
Reg No. 6252  
Initials *ew*

THE COMMON SEAL of )  
BROADACRES HOUSING )  
ASSOCIATION LIMITED )  
was hereunto affixed in the )  
presence of: )

*[Signature]*  
Member of the Board of Management

*[Signature]*  
Secretary



1127/MFUL

Chairman  
Dinah Keal  
Council Solicitor

Not Set

K. Winkler



Scale : 1:2500

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| Department   | Not Set         |
| Comments     | Not Set         |
| Date         | 05 January 2010 |
| SLA Number   | Not Set         |