

DATED *26<sup>th</sup> September*

2011

**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 situate at and known as land at OS Field 7357, St Hilda's Street, Sherburn in  
the County of North Yorkshire

K A Winship  
Council Solicitor  
MALTON

**THIS DEED** is made the 26<sup>th</sup> day of September 2011

**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**

**"Social Rented Dwellings"**

means the 4 dwellings consisting of 2no two bedroom dwellings and the 2no three bedroom dwellings to be constructed in accordance with the Planning Permission and to be made available at a Social Rent to persons in housing need and in accordance with the Housing Associations policy and eligibility criteria (Fourth Schedule) reference to "Social Rented Dwelling" shall be construed accordingly;

**"Social Rent"**

Social rent/Target Rent shall mean the rents arrived at in accordance with any formula for target rents published by the Homes and Communities Agency prior to the introduction of the Affordable Homes Programme or its successors and which sum shall be amended from time to time or other proposed rental levels previously agreed with the District Council from time to time.

**"Homes and Communities Agency"**

means the Homes and Communities Agency or any bodies undertaking the existing functions of the Homes and Communities Agency within the meaning of Part 1 of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act);

**" Intermediate Dwellings"**

means the 6 dwellings consisting of 2no two bedroom dwellings and 4no three bedroom dwellings to be constructed in accordance with the Planning Permission and to be made available as shared ownership housing or shared equity housing or such other form of intermediate affordable housing, such as Affordable Rent Model (other than Social Rented Dwellings) that meets the criteria of Annex B to PPS3 (or any future guidance or initiative that replaces or supplements it) agreed in writing with the Council and which, for the avoidance of doubt, may include any initiative subject to receipt of Homes and Communities Agency funding suitable for those unable to meet their housing needs on the open market and allocated in accordance with the eligibility criteria (Fourth Schedule)such properties to be made available as Shared Ownership or Shared equity, in the event that this is not possible then at an Affordable Rent to persons in housing need and in accordance with the Housing Associations policy and eligibility criteria within the (Fourth Schedule) and reference to "Affordable / Intermediate Dwelling" shall be construed accordingly;

**"Affordable Rent"**

Means: -

In the event that the Housing Association is

unable to dispose of the Intermediate dwellings as Shared Ownership then there is the ability to rent the properties at an "Affordable Rent", a rent up to 80% of the open market rent for Sherburn and in accordance with the HAs rent fixing policy. Or such price that is in accordance with government policy relating to Housing Association rent levels at the time and first approved by the Council.

**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 who 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")
- (3) The Council is satisfied that the performance by the Owner and or 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
- (4) 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 £250 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 at OS Field 7357, St Hilda's Street, Sherburn, Malton, North Yorkshire.

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

Erection of 6 no. three bedroom semi-detached dwellings, 4 no. two bedroom semi-detached dwellings with associated garden sheds, parking spaces and amenity areas and formation of vehicular access

**THE THIRD SCHEDULE**  
[Negative Obligations]

The Owner covenants with the Council that the Property will be not be used only for any other purpose other than providing 4 Social Rented Dwellings for occupation only by Eligible Occupiers who are in housing need and 6 Intermediate/ Affordable Dwellings for occupation only by Eligible Occupiers who are in housing need.

**THE FOURTH SCHEDULE**  
[Eligibility Criteria]

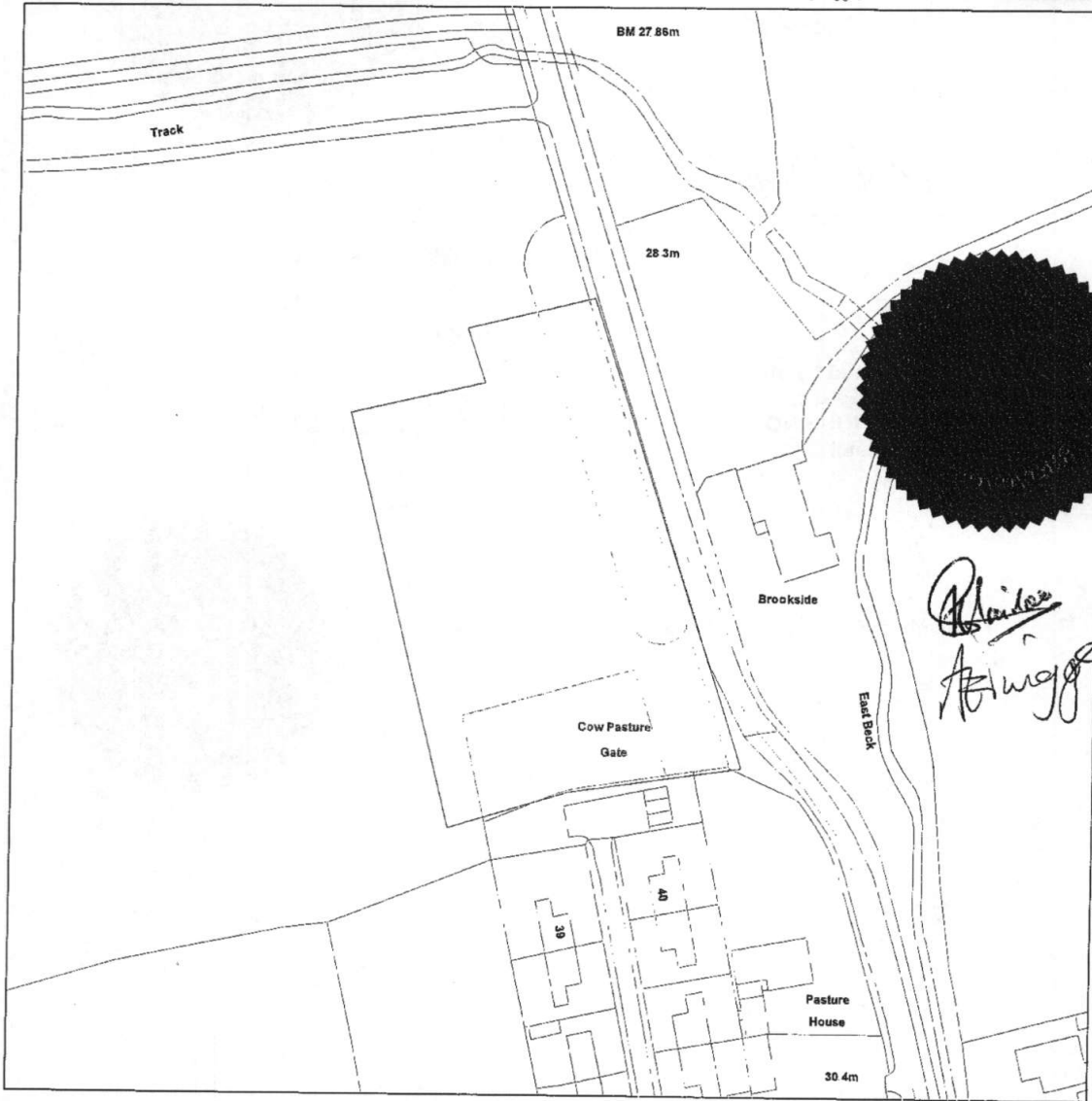
- 1 Occupation by persons where the applicant or the applicant's partner satisfy the following conditions on submission of an application to the Owner to occupy an Affordable Rented Dwelling:
  - 1.1 who have for a period of at least three years immediately prior to their application to occupy been ordinarily resident within the parish of Sherburn; or

- 1.2 who have been permanently/Self employed in the parish of Sherburn for 3 years or more immediately prior to their application to occupy; or
- 1.3 has within the last ten years prior to such allocation been ordinarily resident in the Parish of Sherburn for a period of at least 3 years then;
- 1.4 who has been ordinarily resident in one or more of the following parishes, Heslerton, Ganton, Foxholes, Weaverthorpe or Luttons 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 have a close family connection (parents, children or siblings) who have been ordinarily resident within the parish of Sherburn for at least five years immediately prior to the application being made and whose case is accepted by the Council as having a need to return to the parish of Sherburn. If the Council does not respond to a statement of need submitted pursuant to this clause 1.6 by or on behalf of an Applicant, within seven working days of receiving such statement or request, the Council 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 1.5 and provided the Council 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 Sherburn in the above criteria
- 3 For the purposes of paragraph 1.2 above 'permanently/self employed' means the main or sole employment being for more than 22 hours per week

10/01318/MFUL

Land at St Hilda's Street, Sherburn

*S. C. ...*  
Chairman  
*...*  
Council Solicitor



Scale : 1:1250

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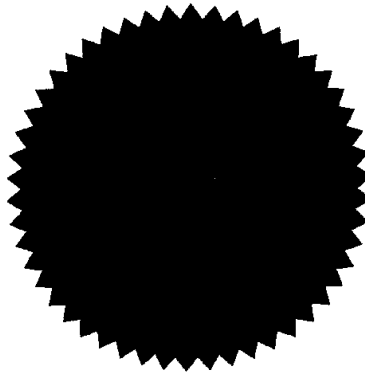
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Organisation	Not Set
Department	Not Set
Comments	Not Set
Date	20 September 2011
SLA Number	Not Set



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



*S. Scott*

Chairman

*V. Smith*

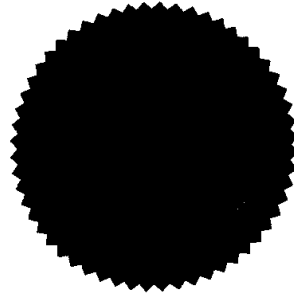
Council Solicitor

Minute 167/2011  
Reg No. 6344  
Initials *Am*

Executed as a deed by affixing )  
THE COMMON SEAL of )  
BROADACRES HOUSING )  
ASSOCIATION LIMITED )  
in the presence of: )

*A. Mejer*

Member of the Board of Management



Secretary

*R. Hildes*

THIS DEED is made on the 20<sup>th</sup> day of February 2012  
BETWEEN

- 1 THE RYEDALE DISTRICT COUNCIL whose principal office is at Ryedale House Malton in the County of North Yorkshire YO17 7HH ("the Council") and
- 2 BROADACRES HOUSING ASSOCIATION LIMITED, Registered Office, Broadacre House, Mount View, Standard Way, Northallerton, North Yorkshire. DL7 2YD ("the Owner")

NOW THIS DEED WITNESSES as follows:

**1 Definitions and Interpretations**

In this Deed the following words and expressions have the following meanings:

- 1.1 The Agreement means an Agreement dated 26 September 2011 made between the Council and the Owner
- 1.2 The Property means the property known as land at OS Field 7357, St Hilda's Street, Sherburn, Malton, North Yorkshire, as registered at HM Land Registry under title number: NYK387002
- 1.3 The clause headings do not form part of this deed and shall not be taken into account in its construction or interpretation.

**2 Recitals**

- 2.1 This deed is supplemental to the Agreement
- 2.2 The parties desire to alter the terms of the Agreement as mentioned below

**3 Variation**

It is mutually agreed that the Agreement shall be varied as follows:-

The following additions shall be made as though they had been contained in the Agreement at the date of execution:

The following Definitions shall be added to the definitions in the Agreement:

'Public Open Space' means the landscaped area shown edged in red on drawing number 979\_AR10\_01\_A attached to this Deed

'On- Site Contribution' means the sum of £3000 (three thousand pounds)

'Parish Council' means the Sherburn Parish Council

'Completion' means the completion of all the construction of the dwelling that has to be done, notwithstanding that there may be latent defects, for the purpose of allowing an eligible occupier to take possession of the dwelling and use it as intended

There shall be added to the Agreement a Fifth Schedule

The Owner Covenants with the Council that prior to Completion of the final dwelling on the site

1.1 To provide and layout the Public Open Space and to maintain the Public Open Space in a good condition until such time as it is transferred to the Parish Council pursuant to clause 1.2 below.

1.2 Within six months of occupation of the 9<sup>th</sup> dwelling on the Site to transfer title of the on-site public open space to the Parish Council on terms to be agreed by the Owners and the Parish Council PROVIDED always that the transfer shall be for the sum of £1 (one pound only)

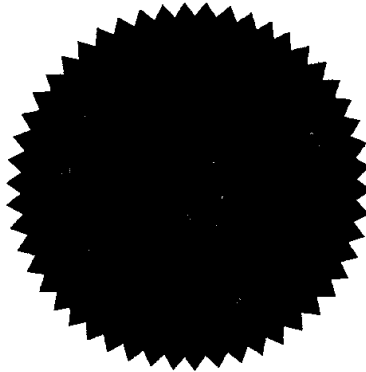
1.3 Immediately prior to completion of the transfer pursuant to clause 1.2 above to pay to the Parish Council the On-site Contribution.

**4 Confirmation of the Agreement**

Save as modified by this deed the Agreement shall continue in full force and affect in all respects.

**IN WITNESS** whereof the parties hereto have executed this Deed the day and year first before written

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



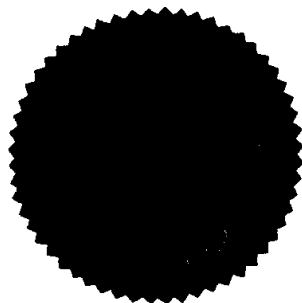
*[Signature]*  
Council Solicitor

Minute 167/2011  
Reg No. 6369  
Initials ew

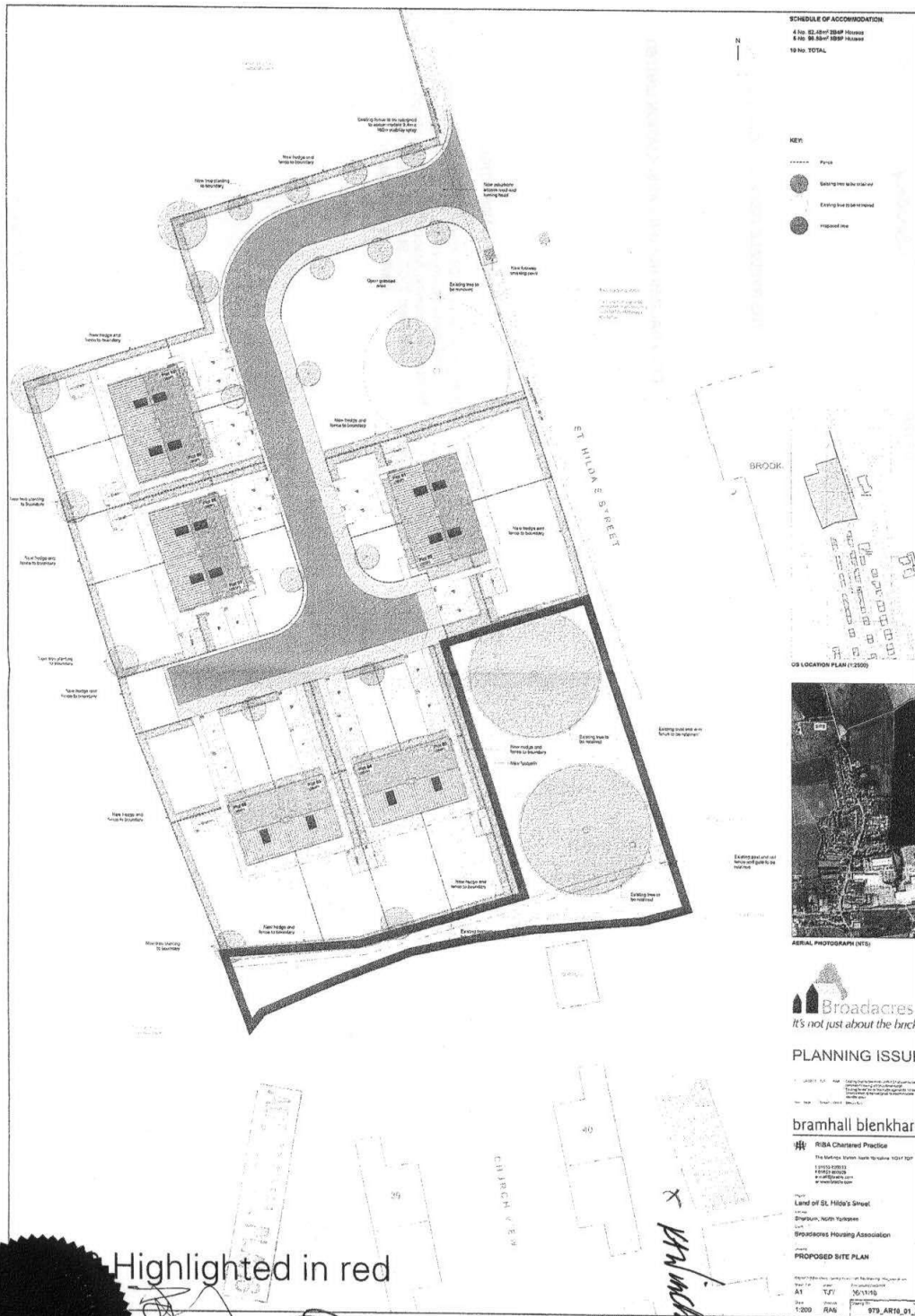
Executed as a deed by affixing  
THE COMMON SEAL of  
BROADACRES HOUSING  
ASSOCIATION LIMITED  
In the presence of

*[Signature]*  
Member of the Board of Management

*[Signature]*  
Secretary



FOR IDENTIFICATION PURPOSES ONLY



Highlighted in red



*D. Long*  
*D. M. 2012*

*bramhall blenkharn*

DATED

29<sup>th</sup> February

2012

**THE RYEDALE DISTRICT COUNCIL**

and

**BROADACRES HOUSING ASSOCIATION LIMITED**

**DEED of VARIATION**

Relating to a Section 106 Agreement dated 26 September 2011  
and made between Ryedale District Council and  
Broadacres Housing Association Limited relating to land at  
OS Field 7357, St Hilda's Street, Sherburn  
Malton, North Yorkshire

K A WINSHIP  
Council Solicitor  
MALTON

DV 132 12