

DATED 08 March

2013

THE RYEDALE DISTRICT COUNCIL

and

ASKHAM BRYAN COLLEGE

and

YORVIK HOMES 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 at Askham Bryan College, Swainsea Lane, Pickering in
the County of North Yorkshire

K A Winship
Council Solicitor
MALTON

THIS DEED is made the 08 day of March 2013

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 **ASKHAM BRYAN COLLEGE** of Askham Bryan, York, YO23 3FR ("The Owner")
- 3 **YORVIK HOMES LIMITED** OF First Floor, 4 Audax Court, Audax Close, Clifton Moor, York, YO30 4RB ("The Developer")

1. DEFINITIONS

- | | | |
|-----|-----------------------------------|--|
| 1.1 | "Commencement of Development": | the carrying out on the Land of a material operation pursuant to the Planning Permission as defined in Section 56 (i) of the Act save for the purpose of this Agreement when determining whether or not a material operation has been carried out there shall be disregarded the following operations marking out surveying ground investigations archaeological investigations demolition site clearance site preparation, provision of security fencing and "Commence" and "Commencement" shall be construed accordingly |
| 1.2 | "Planning Application" | Application Number 12/00479/MFUL |
| 1.3 | "Planning Permission" | The planning permission to be granted by the Council in respect of the Planning Application in the draft form attached. |
| 1.4 | "Proposed Development" | The works and development detailed in the Second Schedule here to. |
| 1.5 | "Public Open Space Commuted Sum " | The sum of £28,360 for the provision or enhancement of open space within the vicinity of the Land. |
| 1.6 | "the Land": | The land as described in the First Schedule to this Agreement |

RECITALS

- (1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within the Land is situated

- (2) The Owners are the owners in fee simple in possession of the Land and Registered Proprietors of Title Number NYK316472 (subject as hereinafter mentioned) but otherwise free from encumbrances
- (3) The Developer has submitted the Planning Application
- (4) The Council is satisfied that the performance by the Owners and or 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 Owners and the Developer have agreed to enter into this Agreement with the Council and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained and 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 enabling 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
- 2.1 **THE** Owner (subject to clause 3.10 below) hereby covenant with the Council that the Land shall be bound by the planning obligations specified in the Third Schedule hereto which shall be enforceable by the Council against the Owner and their successors in title
- 2.2 The Council covenants with the Owners and the Developer to observe and perform the covenants, restrictions and obligations contained in the Fourth Schedule
- 3 **IT** is agreed and declared as follows:-
 - 3.1 The expressions "the Council" "the Owner" and "the Developer" shall include their respective successors in title and assigns
 - 3.2 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 which shall be the Perpetuity Period applicable to this Agreement
 - 3.3 The Owner or Developer shall on execution of this Agreement pay to the Council a fee of £300 plus VAT to cover the Council's legal costs in connection with the negotiation and completion of this Agreement
 - 3.4 In this Agreement:
 - 3.4.1 the clause headings do not affect its interpretation

- 3.4.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a paragraph are to paragraph of that Schedule;
- 3.4.3 references to any statute or statutory provision include references to:
- 3.4.3.1 All Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement; and
- 3.4.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision; and
- 3.4.3.3 includes any amendment extension or re-enactment of it for the time being in force
- 3.4.4 references to the Land include any part of it;
- 3.4.5 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected
- 3.4.6 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
- 3.5 A person who is not a party to this Agreement 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 Agreement from being able to benefit from or to enforce any of the obligations in this Agreement
- 3.6 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
- 3.7 No party to this Agreement shall be liable for the performance or observance of the covenants on his its or their part contained in this Agreement after he she or they shall have parted with all interest in his her or their part of the Land. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute an interest for the purposes of this clause 3.7
- 3.8 This Agreement shall cease to have effect, in so far only as it has not already been complied with if:
- 3.8.1 subject to clause 3.9, the Planning Permission is quashed, revoked or otherwise withdrawn at any time so as to render this Agreement or any part of it irrelevant, impractical or unviable; or

- 3.8.2 the Planning Permission is modified by any statutory procedure without the consent of the Owner and Developer; or
- 3.8.3 the Planning Permission expires before the Commencement of Development occurs
- 3.9 Where the Agreement comes to an end under clause 3.8:
 - 3.9.1 the Council is to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Land ;and
 - 3.9.2 any monies paid under this Agreement to the Council , with the exception of fees paid under clause 3.3, are to be returned to the party that made the payment within one month of the Agreement coming to an end
- 3.10 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales.

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

THE FIRST SCHEDULE
The Land

ALL THAT piece of land TOGETHER WITH buildings erected thereon situate at and known as land at Askham Bryan College, Swainsea Lane, Pickering, North Yorkshire, YO18 8NE shown for the purposes of identification edged in red on the Plan.

THE SECOND SCHEDULE
Particulars of the Proposed Development

Proposal Description

Demolition of existing agricultural centre and erection of 2 four-bed dwellings with detached garages, 2 four-bed dwellings with attached garages, 2 four-bed dwellings with integral garages, 3 three-bed semi-detached dwellings with attached garages, 1 three-bed semi-detached dwelling and 3 two-bedroom terraced dwellings together with formation of vehicular site access and vehicular access to Plots 3 and 11.

**THE THIRD SCHEDULE
Owner and Developers Obligations**

Open Space Commuted Sum

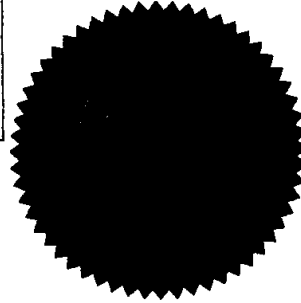
- 1 The Owner and the Developer each covenant with the Council
 - Not to complete the sale of the 7th dwelling on the Development until the sum of £14,180 (being the first half of the Open Space Commuted Sum) has been paid to the Council; and
 - Not to complete the sale of the 12th dwelling on the Development until the sum of £14,180 (being the second half of the Open Space Commuted Sum) has been paid to the Council.

**THE FOURTH SCHEDULE
Councils Obligations**

- 1 Not to use any part of the Public Open Space Commuted Sum other than for the purposes for which it was paid.
- 2 In the event that the Public Open Space Commuted Sum has not been spent or commuted for expenditure by the Council within 5 years of receipt of the said payment the Council shall refund to the party that made that payment any part of the Public Open Space Commuted Sum which has not been spent on commuted for expenditure together with any accrued interest.

EXECUTED AS A DEED BY
AFFIXING
THE COMMON SEAL OF THE
RYEDALE DISTRICT COUNCIL
is authenticated by:

M... 338 12/13
Reg... 645
In... } CS



K. W. ...

Council Solicitor

EXECUTED as a deed by
ASKHAM BRYAN COLLEGE

) *glhwp*
J. Stames

WITNESS J. Clapham
JUDITH CLAPHAM
ASKHAM BRYAN COLLEGE
ASKHAM BRYAN
YORK
YO23 3FR

EXECUTED as a deed by
YORVIK HOMES LIMITED

) *M. ...*

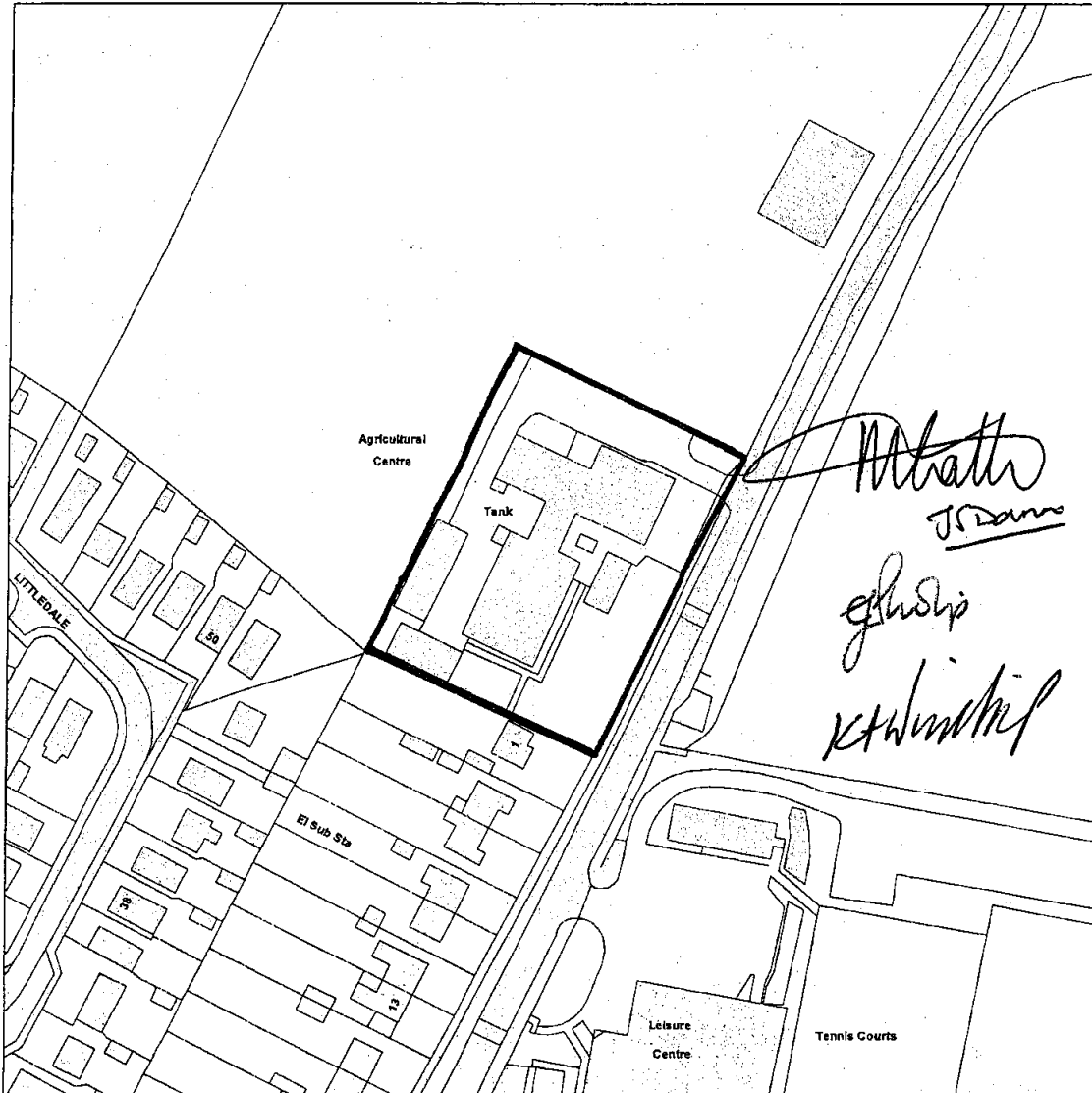
WITNESS :

[Signature]

STUART SHARPLEY
86 WESTGATE
NORTH CAVE
HU15 2NJ



CIS by ESRI (UK)



Scale : 1:1250

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Organisation	Not Set
Department	Not Set
Comments	
Date	07 November 2012
SLA Number	Not Set