

DATED 24 JULY 2014

RYEDALE DISTRICT COUNCIL (1)

AND

MR SIMON NOEL ROY THACKRAY AND

MRS JENNIFER HELEN THACKRAY (2)

AGREEMENT

pursuant to section 106
of the Town and Country Planning Act 1990 (as amended)
relating to the development of land adjacent to Cro's Nest, Brawby Lane,
Brawby, Malton, North Yorkshire

K A Winship
Council Solicitors
Malton

1.1 In this D
requires d

THIS DEED is made the 24 day of JULY 2014

BETWEEN: -

(1) **RYEDALE DISTRICT COUNCIL** of Ryedale House, Malton, North Yorkshire, North Yorkshire, YO17 7HH (the "Council");

AND

(2) **Mr Simon Noel Roy Thackray and Mrs Jennifer Helen Thackray** both of Sweetpea Cottage, Moor Lane, Brawby, Malton, North Yorkshire, YO17 6PY (the "Owner")

WHEREAS:

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Land is situated and by whom the obligations contained in this Deed are enforceable.
- (B) The Owner is registered at the Land Registry as proprietor of the Land with title absolute under Title Number NYK398473
- (C) The Owner submitted the Planning Application to the Council for permission to carry out the Development on the Land.
- (D) The Council resolved on 3 June 2014 to grant the Planning Permission for the Development subject to the making of this Deed without which Planning Permission would not be granted.
- (E) The Owner by entering into this Deed does so to create planning obligations in favour of the Council pursuant to section 106 of the Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Deed.

NOW THIS DEED WITNESSES as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed the following words and expressions shall where the context so requires or admits have the following meanings: -

- "Act"** means the Town and Country Planning Act 1990 (as amended);
- "Commencement of Development"** means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56 of the Act **save that** the term "*material operation*" shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office or erection of fencing to site boundary and reference to "**Commence Development**" shall be construed accordingly;
- "Development"** means the development to be carried out on the Land pursuant to the Planning Permission;
- "Index"** means the Building Costs Information All in Tender Price Index published by the Royal Institution of Chartered Surveyors (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution thereof;
- "Index Linked"** means increased on an annual basis or pro rata per diem from the date of this Deed until such time that payment of any sum in this Deed is

made such index linking to be equivalent to any inflationary increase in such sums taking as the basis for the measure of inflation the Index last published before the date of this Deed or any publication substituted for it.

"Interest" means interest at the rate of 4% above the base lending rate of the Bank of England in force at the due date which shall mean the date when interest first becomes payable;

"Land" means the land Adjacent to Cro's Nest, Brawby Lane, Brawby, Malton, North Yorkshire which is for the purposes of identification shown edged in red on the Plan

"Plan" means the plan attached at the First Schedule;

"Planning Application" means the application submitted by the Owner to the Council for development and allocated reference number 14/00412/FUL.

"Planning Permission" means a planning permission issued by the Council pursuant to the Planning Application substantively in the form attached at the Second Schedule

"Practical 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 a prospective purchaser to take possession of the dwelling and use it as intended.

"Public Open Space" Means the sum of £ 2120.00 (two thousand, one

Commuted Sum" hundred and Twenty pounds) to be paid towards the provision of Public Open Space within the vicinity of the Land

"Working Day" Means any day except Saturdays Sunday or a bank holiday and reference to "Working Days" shall be construed accordingly.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning shall where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Borough Council the successors to its statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and all other powers so enabling.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner and any person deriving title under him.

4 CONDITIONALITY

- 4.1 The planning obligations contained in this Deed shall not become effective until the following conditions are satisfied: -
 - 4.1.1 the Planning Permission has been granted; and
 - 4.1.2 unless otherwise stated the Commencement of Development save for the provisions of clauses 7.1, 8, 11, 15 and 16 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

The Owner hereby covenants with the Council so as to bind the Land to perform the obligations and observe the restrictions specified in the Third Schedule.

6 THE COUNCIL'S COVENANTS

The Council covenants with the Owner to perform the obligations and observe the restrictions specified in the Fourth Schedule.

7 MISCELLANEOUS

- 7.1 The Owner shall pay to the Council on completion of this Deed the sum of £350.00 plus VAT (Three Hundred and Fifty pounds plus VAT) being a contribution to the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed
- 7.2 This Deed does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This Deed shall be registered as a local land charge by the Council.
- 7.4 Following the performance and satisfaction of all the planning obligations contained in this Deed the Council shall following receipt of a written request forthwith effect the cancellation of all related entries in the Register of Local Land Charges in respect of this Deed.
- 7.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.8 The covenants contained in this Deed shall not be enforceable against a statutory undertaker holding an interest in the Land for the purposes of his or its undertaking

7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

7.10 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

7.11 Any notice agreement consent acknowledgment or approval required to be given under this Deed shall not be unreasonably withheld or delayed and shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or facsimile transmission.

7.12 The address for service of any such notice consent acknowledgment or approval as aforesaid shall: -

7.12.1 in the case of service upon the Council be at its address aforesaid or such other address for service as shall have been previously notified by the Council; and

7.12.2 in the case of service upon the Owner, be the address given at the head of this deed or such other address for service as shall have subsequently be notified by the Owner to the Council.

7.13 A notice agreement consent acknowledgment or approval under this Deed shall be deemed to have been served as follows: -

7.13.1 if personally delivered at the time of delivery;

7.13.2 if posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom;

7.13.3 if sent by facsimile transmission at the time of successful transmission on the day of transmission if sent before 3.30pm otherwise the following working day;

and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid or recorded delivery envelope (as appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be.

8 DISPUTE RESOLUTION

- 8.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 8.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 8.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within

the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

- 8.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.
- 8.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

9 WAIVER

No waiver (whether expressed or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company) or usual address if not together with the area of the Land or unit of occupation purchased by reference to a plan.

11 INDEXATION

Any sum referred to in the Third Schedule shall be Index Linked.

12 INTEREST

If any payment due under this Deed is paid late, Interest shall be payable from the date payment is due to the date of payment.

13 VAT

The amount of all considerations, contributions and payments referred to in this Deed shall be increased by any value added tax properly payable on the consideration, contribution or payment.

14 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-executive jurisdiction of the courts of England and Wales.

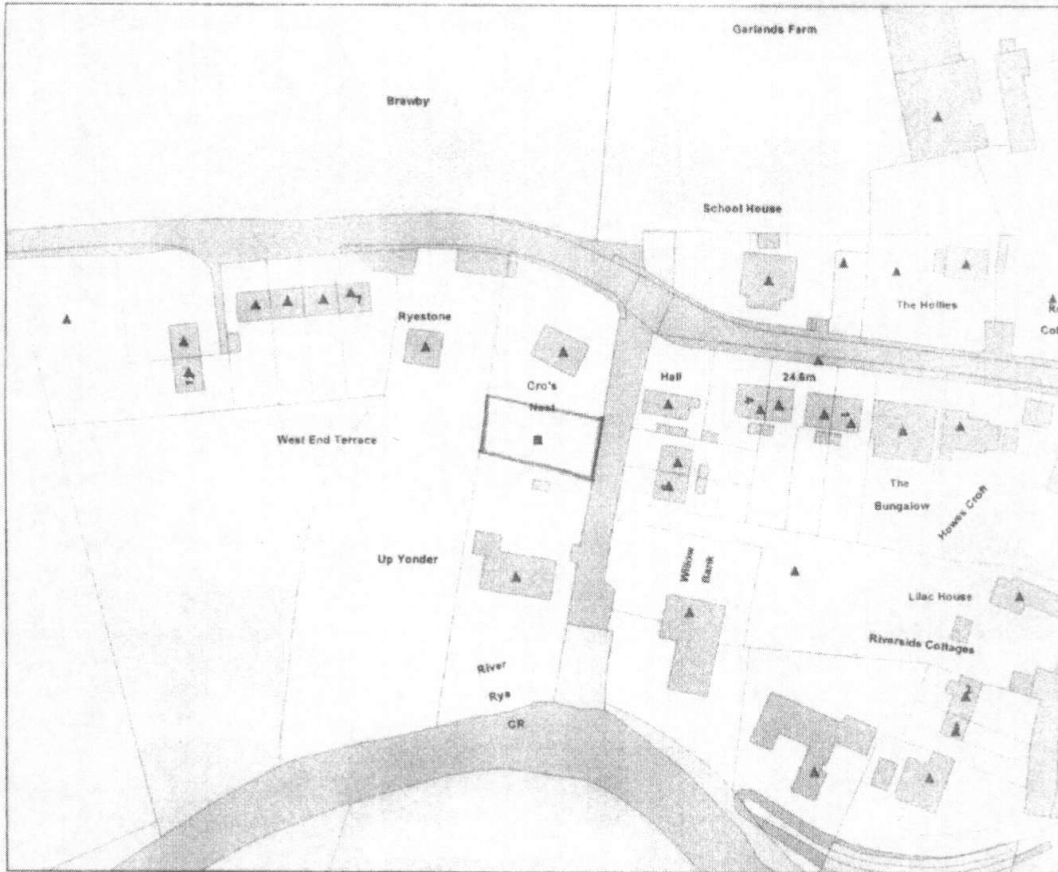
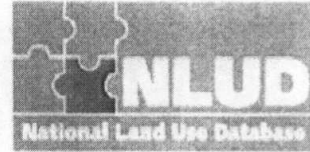
15 DELIVERY

The provisions of this Deed shall be of no effect until this Deed has been delivered and dated.

FIRST SCHEDULE
The Plan

13/582

Not Set



Legend

M. Chadway
Tennison
Baker



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Organisation	Ryedale District Council
Department	Planning Services
Comments	Not Set
Date	22 July 2014
SLA Number	100019406

SECOND SCHEDULE
Draft Decision Notice

THIRD SCHEDULE

Owner's Covenants

The Owner hereby covenants with the Council as follows: -

Public Open Space Commuted Sum

To pay the Public Open Space Commuted Sum to the Council upon Practical Completion.

RYEDALE DISTRICT COUNCIL

TOWN & COUNTRY PLANNING ACT 1990 FULL APPLICATION FOR PERMISSION TO CARRY OUT DEVELOPMENT

RYEDALE DISTRICT COUNCIL, THE LOCAL PLANNING AUTHORITY, HAS CONSIDERED THIS APPLICATION AND HAS DECIDED IT SHOULD BE APPROVED SUBJECT TO THE CONDITIONS STATED BELOW:

Application No: 14/00412/FUL
Proposal: Erection of a two-bedroom bungalow, detached garden store and formation of 2no. parking spaces
at: Land Adj Cro's Nest Brawby Lane Brawby Malton North Yorkshire
for: Mr S Thackray

Decision Date:

REASON FOR APPROVAL

The proposed development is in accord with the following development plan policies and there are no other material considerations that outweigh those listed development plan policies:

Local Plan Strategy - Policy SP1 General Location of Development and Settlement Hierarchy
Local Plan Strategy - Policy SP2 Delivery and Distribution of New Housing
Local Plan Strategy - Policy SP4 Type and Mix of New Housing
Local Plan Strategy - Policy SP11 Community Facilities and Services
Local Plan Strategy - Policy SP16 Design
Local Plan Strategy - Policy SP19 Presumption in Favour of Sustainable Development
Local Plan Strategy - Policy SP20 Generic Development Management Issues
Local Plan Strategy - Policy SP21 Occupancy Restrictions
National Planning Policy Framework

CONDITIONS AND ASSOCIATED REASONS

01 The development hereby permitted shall be begun on or before .

Reason:- To ensure compliance with Section 51 of the Planning and Compulsory Purchase Act 2004

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North Yorkshire
YO17 6PY

- 02 Before the development hereby permitted is commenced, or such longer period as may be agreed in writing with the Local Planning Authority, details and samples of the materials to be used on the exterior of the building the subject of this permission shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure a satisfactory external appearance and to satisfy the requirements of Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 03 Before the commencement of the development hereby permitted, or such longer period as may be agreed in writing with the Local Planning Authority, full details of the materials and design of all means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. Thereafter these shall be erected prior to the occupation of any dwelling to which they relate.

Reason:- To ensure that the development does not prejudice the enjoyment by the neighbouring occupiers of their properties or the appearance of the locality, as required by Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 04 Notwithstanding the provisions of Schedule 2, Part 1 of the Town & Country Planning (General Permitted development) Order 1995 (or any Order revoking, re-enacting or amending that Order), development of the following classes shall not be undertaken other than as may be approved in writing by the Local Planning Authority following a specific application in that respect:

Class A: Enlargement, improvement or alteration of a dwellinghouse

Class B: Roof alteration to enlarge a dwellinghouse

Class C: Any other alteration to the roof of a dwellinghouse

Class D: Erection or construction of a domestic external porch

Class E: Provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of a dwellinghouse or the maintenance, improvement or other alteration of such a building or enclosure.

Reason:- To ensure that the appearance of the area is not prejudiced by the introduction of unacceptable materials and/or structure(s) and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 05 Notwithstanding the provision of any Town & Country Planning General Permitted or Special Development Order for the time being in force, the areas shown on Drawing Number 030 414 1A for parking spaces, turning areas and access shall be kept available for their intended purpose at all times.

Reason:- In accordance with Policy SP20 of the Ryedale Plan - Local Plan Strategy and to ensure these areas are kept available for their intended use in the interests of highway safety and the general amenity of the development.

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- 06 There shall be no access or egress by any vehicles between the highway and the application site until details of the precautions to be taken to prevent the deposit of mud, grit and dirt on public highways by vehicles travelling to and from the site have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. These facilities shall include the provision of wheel washing facilities where considered necessary by the Local Planning Authority in consultation with the Highway Authority. These precautions shall be made available before any excavation or depositing of material in connection with the construction commences on the site, and be kept available and in full working order and used until such time as the Local Planning Authority in consultation with the Highway Authority agrees in writing to their withdrawal.

Reason:- In accordance with Policy SP20 of the Ryedale Plan - Local Plan Strategy and to ensure that no mud or other debris is deposited on the carriageway in the interests of highway safety.

- 07 Unless approved otherwise in writing by the Local Planning Authority, there shall be no establishment on a site compound, site clearance, demolition, excavation or depositing of material in connection with the construction of the site, until proposals have been submitted to and approved in writing by the Local Planning Authority for the provision of:

- (i) on-site parking capable of accommodating all staff and sub-contractors vehicles clear of the public highway
- (ii) on-site materials storage area capable of accommodating all materials required for the operation of the site.

The approved areas shall be kept available for their intended use at all times that construction works are in operation. No vehicles associated with on-site construction works shall be parked on the public highway or outside the application site.

Reason:- In accordance with Policy SP20 of the Ryedale Plan - Local Plan Strategy and to provide for appropriate on-site vehicle parking and the storage facilities, in the interests of highway safety and the general amenity of the area.

- 08 The dwelling hereby approved shall only be occupied by a person(s) who:

- Have permanently resided in the Parish, or an adjoining parish, for at least three years and are now in need of new accommodation, which cannot be met from the existing housing stock; or
- Do not live in the Parish but have a long standing connection to the local community, including a previous period of residence of over three years but have moved away in the past three years; or service men or women returning to the Parish after leaving military service; or

Mr S Thackray
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YO17 6PY

- Are taking up full time permanent employment in an already established business which has been located within the Parish, or an adjoining Parish, for at least the previous three years; or
- Have an essential need arising from age or infirmity to move to be near relatives who have been permanently resident within the District for at least the previous three years.

Reason: To meet the requirements of Policies SP2 and SP21 of the Ryedale Plan – Local Plan Strategy.

- 09 Prior to the commencement of the development hereby approved precise details of the existing ground levels and proposed finished ground floor levels measured in relation to fixed datum point shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In order to ensure a satisfactory external appearance and to satisfy Policy SP20 of The Ryedale Plan – Local Plan Strategy.

- 10 The development hereby permitted shall be carried out in accordance with the following approved plan(s):

APP; 030 414 1A; SITE LOCATION PLAN

Reason: For the avoidance of doubt and in the interests of proper planning.

INFORMATIVE(S)

- 01 You should satisfy yourself, prior to commencement of any work related to this project, that no part of the works hereby approved (including foundations and/or guttering) extended onto or over adjoining land unless you have first secured the agreement of the appropriate landowner(s).

Footnote :

In dealing with and determining this application, the Local Planning Authority have sought to take a positive approach to foster the delivery of sustainable development in accordance with the requirements of the National Planning Policy Framework. As such, the Local Authority has taken steps to work proactively with the applicant to seek solutions to problems that may have arisen in dealing with this application with a view to improving local economic, social and environmental conditions.

Mr S Thackray
Sweetpea Cottage
Moor Lane
Brawby
Malton
North Yorkshire
YO17 6PY

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2/FUL

APPN NO: 14/00412/FUL

NO CONSENT OR APPROVAL HEREBY GIVEN REMOVES ANY REQUIREMENT TO SERVE NOTICES OR SEEK APPROVAL FROM THE DISTRICT COUNCIL WHERE SUCH ACTION IS REQUIRED BY THE BUILDING ACT 1984 OR OF ANY OTHER STATUTORY PROVISION. NO PART OF THE PROPOSED DEVELOPMENT SHOULD BE STARTED WITHOUT COMPLYING WITH SUCH REQUIREMENT.

HEAD OF PLANNING & HOUSING

DRAFT

Mr S Thackray
Sweetpea Cottage
Moor Lane
Brawby
Malton
North Yorkshire
YO17 6PY

FOURTH SCHEDULE
(Council's Covenants)

The Council covenants with the Owner: -

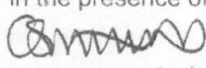
- 1 To apply the Public Open Space Commuted Sum towards procuring new or improving existing Public Open Space within the vicinity of the Development and (on the reasonable request of the payer) to provide evidence that the monies have been so applied
- 2 The Council shall on receipt of any sum or sums referred to in this Schedule place the same into an interest bearing account or in separate accounts as the Council shall in its discretion decide from which any expended part may be readily identified.
- 3 In the event the Public Open Space Commuted Sum, and any part or parts thereof are not expended within ten years after Practical Completion of the Development then the sum or sums not expended plus interest accrued will be repaid to the person who paid the sum or sums.

IN WITNESS whereof this Deed has been duly executed by the parties the day and year first before written:

EXECUTED AS A DEED BY
RYEDALE DISTRICT COUNCIL

whose COMMON SEAL was
hereunto affixed

in the presence of


C/O Ryedale District Council
Ryedale House
Malton
YO17 7HH

Baceen
LEGAL SERVICES MANAGER



Minute
12-14/15
Reg No.
6754
Initials CMS

EXECUTED as a DEED by

Mr Simon Noel Roy Thackray

in the presence of: -

P. S. Lawrence
Solicitor

Simon Thackray

WARE & KAY
SENTINEL HOUSE
PEASHOLME GREEN
YORK
YO1 7PP

EXECUTED as a DEED by

Mrs Jennifer Helen Thackray

in the presence of: -

P. S. Lawrence
Solicitor

Jennifer Thackray

WARE & KAY
SENTINEL HOUSE
PEASHOLME GREEN
YORK
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