

DATED 11 February. 2016

**NORTH YORK MOORS NATIONAL PARK AUTHORITY**

**and**

**BULLITT ASSOCIATES LIMITED**

**and**

**CANONS GARTH LLP**

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**AGREEMENT**  
**pursuant to Section 106**  
**of the Town and Country Planning Act 1990 (as amended)**  
**relating to land at the rear of the Black Swan Hotel**  
**and Crown Hotel, Market Place, Helmsley**

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THIS DEED is made the 11<sup>th</sup> day of February 2016

**BETWEEN: -**

- (1) **NORTH YORK MOORS NATIONAL PARK AUTHORITY** of The Old Vicarage, Bondgate, Helmsley, York, YO62 5BP ("**National Park Authority**");
- (2) **BULLITT ASSOCIATES LIMITED** (Company number 09322254 whose registered office is at 33 George Street, Wakefield, West Yorkshire WF1 1LX ("**Owner**"); and.
- (3) **CANONS GARTH LLP (LLP NUMBER OC400437) WHOSE REGISTERED OFFICE IS AT 33 GEORGE STREET, WAKEFIELD, WEST YORKSHIRE WF1 1LX ("CHARGEES").**

**WHEREAS**

- A. The National Park Authority is the local planning authority for the purposes of this Deed 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 NYK392261.
- C. Ryedale District Council ( "Housing Authority") is the local housing authority for the purposes of this Deed for the area within which the Land is situated.
- D. The Chargee has the benefit of a legal charge over the Land dated 9 July 2015 and registered at the Land Registry against Title Number NYK392261.
- E. The National Park Authority resolved on 19 June 2014 to grant planning permission for the Development subject to the making of this Deed without which Planning Permission would not be granted.
- F. The Owner by entering into this Deed does so to create planning obligations in favour of the National Park Authority 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:

## DEFINITIONS AND INTERPRETATION

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

- "Act"** means the Town and Country Planning Act 1990 (as amended);
- "Affordable Housing Commuted Sum"** means such sum (if any) calculated in accordance with the Third Schedule to be paid by the Owner to the National Park Authority in lieu of the provision of affordable housing on-site the need for which directly arises from the Development to be applied by the National Park Authority towards schemes and initiatives linked to providing, supporting and maintaining affordable housing within the National Park Authority administrative area;
- "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 erection of fencing to site boundary laying of any service media and reference to "Commence Development" shall be construed accordingly;
- "Design and Quality Standards"** means the Homes and Communities Agency's Design and Quality Standards document (April 2007) for Affordable Housing and any subsequent standard as the Homes and

Communities Agency may require;

**"Development"**

means the residential development to be carried out on the Land pursuant to the Planning Permission;

**"Discounted Market Sale Restrictions"**

means the restrictions set out in the Sixth Schedule which bind the Discounted Market Sale Units in perpetuity;

**"Discounted Market Sale Units"**

means 4no leasehold flats being Plots 14, 14A, 15 and 15A on drawing No. TCA/288/003 100 in the Planning Application or such alternative plots as may be agreed in writing between the Owner and the National Park Authority (such agreement not to be unreasonably withheld or delayed) to be constructed in accordance with the Planning Permission and to be made available at the Discounted Market Sale Units Price and to be Occupied in accordance with the First Schedule;

**"Dwelling"**

means a residential unit that may be built on the Land as part of the Development and reference to "Dwellings" shall be construed accordingly;

**"Discounted Market Sale Units Price"**

means Market Value with a discount of 50% ( fifty percent)

**"Full Time Employment"**

means the main or sole employment of at least 30 hours each week;

**"Homes and Communities Agency "**

means the Homes and Communities Agency or the Tenant Services Authority as may be applicable or any bodies undertaking the existing functions of the Homes and Communities Agency within the meaning of Part I of the Housing and Regeneration Act



2008 (or as redefined by any amendment, replacement or re-enactment of such Act);

**"Housing Need"**

means the housing need criteria set out in the Fourth Schedule;

**"Index"**

means the 12 month percentage change in the All Items Retail Price Index published by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution therefore;

**"Index Linked"**

means such increase or decrease to sums payable pro rata per diem from the date of this Deed until such date that payment of the sum is made based upon the difference between the Index at the date of this Deed and the Index at the date of payment;

**"Interest"**

means interest at the rate of 2% above the base lending rate of the Bank of England in force for the period when interest is payable;

**"Land"**

means the land at the rear of the Black Swan Hotel and Crown Hotel, Market Place, Helmsley, contained in title number NYK392261 and which is shown edged red on the Plan for the purposes of identification only;

**"Local Connection"**

means the local connection criteria set out in the Fourth Schedule;

**"Market Value"**

means the estimated amount for which a relevant Dwelling should exchange on the open market between a willing buyer and a willing seller in an

arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion;

**"Occupy"**

means occupation of a Dwelling for the purposes permitted by the Planning Permission but not including temporary occupation by persons legitimately engaged in the construction and fitting out of the Dwelling, and "Occupied" and "Occupation" shall be construed accordingly;

**"Open Market Dwelling"**

means a Dwelling that is built on the Land as part of the Development which is not an Discounted Market Sale Unit and reference to "Open Market Dwellings" shall be construed accordingly;

**"Open Space Contribution "**

means the sum of £46,370 (forty six thousand, three hundred and seventy pounds) (Index Linked) to be paid by the Owner to the National Park Authority towards extensions and improvements to the existing open space, community and leisure facilities, and schools and educational facilities in the administrative area of the National Park Authority, the need for which directly arises from the Development;

**"Plan"**

means the plan attached to this Deed at the Fifth Schedule;

**"Planning Application"**

means the application for conversion of barn to form 4 no. flats together with construction of 17 no. dwellings following demolition of accommodation block and storage barn and extension to hotel parking area with reference NYM/2012/0355/FL submitted by the Owner to the National Park Authority;

**“Planning Permission”**

means the planning permission issued by the National Park Authority for the Development pursuant to the Planning Application;

**“Practical Completion”**

means the issue of a certificate(s) of practical completion in relation to a Dwelling by an architect or such other person who has been supervising the Development;

**“Registered Provider”**

means a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant and approved by the National Park Authority;

**“Social Rent”**

means a rent which is comparable to the average rents charged in the Housing Authority’s administrative area by Registered Providers for properties of an equivalent type, age and floor area to the Discounted Market Sale Unit;

**“Transfer Rights”**

means,

- rights of access from the public highway to the boundary of the Discounted Market Sale Unit and (if appropriate) with such access road or roads maintained by the Owner or by a management company,

- foul and surface water sewers constructed to the requirements of the local sewerage undertaker ready for use at a depth and capacity sufficient to serve the Discounted Market Sale Unit and connecting to foul and

surface water sewers maintainable at public expense and maintained by the Owner or by a management company,

- supplies of services of water gas electricity and telephone up to the boundary of the Discounted Market Sale Unit,

- adequate provision for easements and other like rights to be granted or reserved by the parties as are necessary to ensure the practicable efficient and economical development of the Discounted Market Sale Unit and the remainder of the Land and to comply with the requirements of all public authorities and statutory undertakers;

- those rights and obligations relating to the management company, repair and maintenance of the communal facilities and areas, and financial provision for the funding of the management company, as required by condition 41 of the Planning Permission if appropriate and applicable to the Discounted Market Sale Unit;

**"Viability Assessment"**

means the viability assessment of the Development carried out by Roger Barnsley of Ryedale District Council on behalf of the National Park Authority in March 2014 as part of the Planning Application and based on the 'Residual Development Appraisal' (16 September 2013) and 'Budget Estimate' (11 September 2013) produced by Banks Smith Partnership;

**CONSTRUCTION OF THIS DEED**

- 1.2. For the purposes of this Deed the singular includes the plural and vice versa.
- 1.3. The expression "person" means any person, firm, authority or company or other legal entity.
- 1.4. Unless otherwise stated, references to clause numbers are references to the clauses in this Deed.
- 1.5. Unless otherwise stated, references to schedules and paragraph numbers are references to the schedules and paragraphs of schedules in this Deed.
- 1.6. Any covenant by the Owner not to knowingly do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing.

### **LEGAL BASIS**

2. This Deed is a planning obligation made pursuant to Section 106 of the Act and all other powers so enabling and may be enforced by the National Park Authority against the Owner and, where the obligation binds their land, any persons deriving title from them.

### **PARTIES COVENANTS**

- 3.1 The Owner covenants with the National Park Authority to perform the obligations and observe the restrictions specified in the First Schedule and that all the interest which the Owner has in the Land shall be subject to those obligations and restrictions.
- 3.2 The National Park Authority covenants with the Owner to perform the obligations and observe the restrictions specified in the Second Schedule.
- 3.3 The Chargee acknowledges and declares that this Deed has been entered into by the Owner with the Chargees consent to the intent that the planning obligations shall be binding on the Land and the security of the Chargee over the Land shall take effect subject to this Deed.

### **MISCELLANEOUS**

- 4 It is declared as follows: -

- 4.1. The obligations in the Deed shall be enforceable in accordance with the provisions of section 106(3) of the Act.
- 4.2. The expression "National Park Authority" shall include its successor(s) to its statutory functions and the expressions "Owner" and "Chargee" shall include their successors in title to the Land and any part thereof.
- 4.3. The parties to this Deed hereto covenant on behalf of themselves and their successors in title that no person shall be liable for breach of a covenant contained in this Deed after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 4.4. The planning obligations contained in this Deed shall not become effective until the earliest date on which the following conditions are satisfied: -
  - (a) The Planning Permission has been granted; and
  - (b) save where otherwise stated in this Agreement the Commencement of Development
5. The covenants contained in this Deed shall not be enforceable against purchasers' lessees or mortgagees of individual Open Market Dwellings.
6. This Deed shall have effect as from the date specified in clause 4.4 until discharged but shall cease to have effect if the Planning Permission shall lapse or expire or be revoked or modified without the consent of the Owner or for any reason cease to have effect before the Commencement of Development.
7. 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 after the date of this Deed.
8. This Deed is a Local Land Charge and shall be registered as such.
9. 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.
10. In the event that the Owner fails to make payment in accordance with its obligations set out in this Deed it shall pay Interest on the sum due from the date it becomes payable until actual payment thereof.

11. Any notice agreement consent 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.
12. The address for service of any such notice consent or approval as aforesaid shall be the parties' addresses stated in the parties clause of this Deed.
13. The parties to this Deed have given due consideration to the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010 No. 948) and agree that the planning obligations it contains are :
  - (a) necessary to make the Development acceptable in planning terms;
  - (b) directly and fairly related to the Development; and
  - (c) fairly and reasonably related in scale and kind to the Development.
14. Where a mortgagee of a Discounted Market Sale Unit disposes of the Discounted Market Sale Unit pursuant to its power of sale the Discounted Market Sale Unit Price for that unit shall be increased to a sum equal to Market Value with a discount of 40% (forty percent) and that increase shall apply to subsequent disposals of that unit but **PROVIDED ALWAYS** that any such mortgagee exercising its power of sale must be a body corporate registered by the Financial Services Authority (or any successor body whose function is to regulate mortgages and loans).
15. The Owner shall pay to the National Park Authority prior to the completion of this Deed £1,410-00 (One thousand four hundred and ten pounds) (no vat) being the reasonable legal costs of the National Park Authority incurred in the negotiation, preparation and execution of this Deed.

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

**FIRST SCHEDULE  
(Covenants by the Owner)**

**DISCOUNTED MARKET SALE UNITS**

- 1.1 To construct and provide the Discounted Market Sale Units in accordance with this Schedule, in accordance with the Planning Permission, and in accordance with Design and Quality Standards.
- 1.2 Not to allow the Occupation of more than 8 of the Open Market Dwellings within the Development until construction of the Discounted Market Sale Units has been commenced.
- 1.3 Not to sell or allow the Occupation of more than 15 of the Open Market Dwellings within the Development until the Practical Completion of all of the Discounted Market Sale Units to be provided within the Development.
- 1.4 To notify the National Park Authority in writing of the date of Commencement of Development within seven days of the Commencement of Development.
- 1.5 Within nine months of Commencement of Development to place the Discounted Market Sale Units on the market at the Discounted Market Sale Units Price and to use reasonable endeavours to transfer unencumbered leasehold title (of a term not less than 125 years) of the Discounted Market Sale Units to buyers with a Local Connection and in Housing Need at the Discounted Market Sale Units Price together with the Transfer Rights and subject to the Discounted Market Sale Restrictions.
- 1.6 Not to allow the Occupation of any Discounted Market Sale Unit other than by an Occupier who has a Local Connection at the date of first Occupation
- 1.7 Not to allow the Occupation of any Discounted Market Sale Unit other than by an Occupier who is in Housing Need immediately prior to Occupation

**AFFORDABLE HOUSING COMMUTED SUM**

2. To pay the Affordable Housing Commuted Sum to the National Park Authority prior to the completion of the sale of the 17<sup>th</sup> Open Market Dwelling.

## **OPEN SPACE CONTRIBUTION**

3. To pay the Open Space Contribution to the National Park Authority within 28 days of the Practical Completion of the 6<sup>th</sup> Open Market Dwelling within the Development.

**SECOND SCHEDULE**  
**(Covenants by the National Park Authority)**

**Affordable Housing Commuted Sum**

1. To ensure that the Affordable Housing Commuted Sum is used for schemes and initiatives linked to providing, supporting and maintaining affordable housing within the National Park Authority administrative area.

**Open Space Contribution**

2. To ensure that the Open Space Contribution is used towards extensions and improvements to the existing open space, community and leisure facilities, and schools and educational facilities in the administrative area of the National Park Authority, the need for which directly arises from the Development.

**Discharge of Obligations**

3. At the written request of the Owner the National Park Authority shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

**THIRD SCHEDULE  
(AFFORDABLE HOUSING COMMUTED SUM)**

1. The Affordable Housing Commuted Sum shall be calculated by,
  - (a) repeating the method of the Viability Assessment within 28 days after the completion of the sale of the 16th Open Market Dwelling, and
  - (b) applying the method to the whole of the Development, and
  - (c) with all inputs to be re-assessed as part of the repeated assessment, and
  - (d) the assessment to be carried out by an independent party agreed between the National Park Authority and the Owner, and
  - (e) the cost of the repeated assessment to be paid by the Owner.
  
2. The Affordable Housing Commuted Sum shall only be paid if, applying the process in paragraph 1 above, the gross profit for the Development is shown to exceed 20% of the total build cost of the Development.
  
3. The amount of the Affordable Housing Commuted Sum shall be 50% of the amount by which the gross profit for the Development exceeds 20% of the total build cost of the Development, but subject to the combination of Affordable Housing Commuted Sum and on site provision of the Affordable Housing Units not exceeding the National Park Authority's planning policy affordable housing requirement of 40% of the Dwellings on the Development.

## FOURTH SCHEDULE

### LOCAL CONNECTION CRITERIA

An Occupier of a Discounted Market Sale Unit,

- i. must have been ordinarily resident or in Full Time Employment in the Parish of Helmsley for at least five years immediately prior to occupation, or failing that,
- ii. be Ordinarily resident or in Full Time Employment in the Parish of Helmsley for at least 5 years within the last ten years immediately prior to Occupation, or failing that,
- iii. have parents, children or siblings who have been (and remain) ordinarily resident within the Parish of Helmsley for at least five years immediately prior to occupation; or failing that,
- iv. be a head of household who is in Full Time Employment in an already established business within the Parish of Helmsley subject to that employment being the main or sole employment within the household and further subject to the contract of employment being for no less than 24 months; or failing that,
- v. satisfy the hierarchy (in order) in paragraphs i to iv above to include the Parishes of Pockely and Rievaulx; or failing that,
- vi. satisfy the hierarchy (in order) in paragraphs i to iv above to include the parishes of Sproxton, Beadlam and Nawton or failing that,
- vii. satisfy the hierarchy (in order) in paragraphs i to iv above to include the whole of the National Park.

### HOUSING NEED

- i. A person is in housing need if,
  - (a) their social and economic circumstances are such that they have difficulty securing

accommodation on the open market, AND

(b) if they or a member of their household:-

- is occupying unsanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions; or
- is living in accommodation which is temporary or occupied on insecure terms; or
- needs alternative accommodation on medical or welfare grounds; or
- needs to move to receive or provide support; or
- is establishing a separate household; or
- needs to move to be able to take up or sustain permanent employment; or
- is an existing tenant of a Registered Provider whose move will enable the optimum use of affordable housing stock.

**FIFTH SCHEDULE**  
**(Plan)**



**SIXTH SCHEDULE**  
**(Discounted Market Sale Restrictions)**

1. No Discounted Market Sale Unit shall be Occupied following the first or any subsequent sale thereof unless:-
  - 1.1 The sale price for the Discounted Market Sale Unit on the first and any subsequent sale is no more than the Discounted Market Sale Unit Price;
  - 1.2 The transferee shall send to the Housing Authority (marked for the attention of the housing services manager) within 14 (fourteen) days of completion of the transfer of each Discounted Market Sale notice stating the total price paid;
  - 1.3 Every Discounted Market Sale Unit shall be subject to a restriction to be entered in the Proprietorship Register at the Land Registry in the following terms (subject to any amendment therefore required by the Land Registry and agreement between the parties hereto):

“No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by the solicitor of the disponor or the donee that the provisions of the Sixth Schedule of an Agreement pursuant to Section 106 of the Town and Country Planning Act 1990 and dated [                    ] containing planning obligations relating to land at the rear of the Black Swan Hotel and Crown Hotel, Market Place, Helmsley between North York Moors National Park Authority (1) Bullitt Associates Limited (2) and Canon Garth LLP (3) have been complied with”
  - 1.4 A copy of the relevant restriction and the certificate referred to therein has been supplied to the Housing Authority (marked for the attention of the housing services manager) on each such disposition of such unit.
  - 1.5 The Occupier has a Local Connection at the date of first Occupation.
  - 1.6 The Occupier is in Housing Need immediately prior to Occupation.

1.7 If the Occupation is other than by the owner of the Unit the rent or fee paid by the Occupier to the owner does not exceed an amount equal to the Social Rent

THE COMMON SEAL OF  
THE NATIONAL PARK AUTHORITY  
was affixed in the presence of:

2039.



Authorised Signatory

(RICHARD (SMITH))

EXECUTED AS A DEED BY  
THE OWNER

Acting by a Director

In the presence of:

Witness signature

Name

Address

AJ GOUGHTLY

4 EASTCROFT, STANTHOPE,

CO DURHAM DL13 2NT

EXECUTED AS A DEED BY  
THE CHARGE

Acting by a <sup>member</sup> Director

In the presence of:

Witness signature

Name

Address

AJ GOUGHTLY

4 EASTCROFT, STANTHOPE,

CO DURHAM DL13 2NT