

THIS DEED is dated the 12TH day of MARCH 2012

BETWEEN:

- (1) **THE NORTH YORK MOORS NATIONAL PARK AUTHORITY** of The Old Vicarage, Bondgate, Helmsley, York YO62 5BP ("the **National Park Authority**"); and
- (2) **SANCTUARY HOUSING ASSOCIATION** whose registered office is situate at Chamber Court, Castle Street, Worcester WR1 3ZQ ("**Sanctuary**").

DEFINITIONS

1972 Act	the Local Government Act 1972
1990 Act	the Town and Country Planning Act 1990
S56	Section 56 of the 1990 Act
S106	Section 106 of the 1990 Act
S111	Section 111 of the 1972 Act
Affordable Housing	means Affordable Rented Housing, Social Rented Housing or Intermediate Affordable Housing as defined in Annex B of Planning Policy Statement no. 3 of June 2011
Affordable Rented Dwelling	means any one or more of the Dwellings to be let to an Occupant on terms by which the rent and any charges payable does not exceed 80% of the cost of local market rents inclusive of service charges
Application	an application by Sanctuary for planning permission made to the National Park Authority under reference NYM/2011/0633/FL for the Development on the Land
Commencement of the Development	means the date upon which any works comprising a material operation pursuant to S56 are begun and Commence and Commenced shall be construed accordingly
Council	means Scarborough Borough Council
Development	the erection of six affordable dwellings on the Land consisting of 3 (three) two-bedroomed houses and 3 (three) three-bedroomed houses in accordance with the Application
Dwellings	any of the dwellings comprised in the Development
Full Time Employment	means the main or sole employment being for more than 32 hours per week
Geographical Area	means the parish of Hawsker cum Stainsacre; but if after a Dwelling has been available for 25 days no eligible person has been found from that parish then the Geographical Area shall be extended to include the parishes of Sneaton, Fylingdales and Fylingdales Moor; but if after a further 25 days no eligible person has been found from these parishes then the

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Geographical Area shall be extended to the whole of the National Park.

Housing Need

is met by a person who in the reasonable opinion of the National Park Authority:

- i. Is currently occupying unsanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions; or,
- ii. Is currently occupying housing accommodation which is temporary or occupied on insecure terms; or
- iii. Has a particular need for permanent accommodation on medical or welfare grounds; or,
- iv. Has social or economic circumstances which are such that there is difficulty in securing permanent accommodation.

Intermediate Rent

means a rent above the Target Rent but below market rent and which in the opinion of the Council will meet the needs of persons in Housing Need and constitute Affordable Housing and **Intermediate Rented Dwelling** shall be construed accordingly

Land

the land off Scraper Lane, Stainsacre, North Yorkshire edged **RED** on the Plan

Local Connection

means being:-

- i. ordinarily resident or in Full Time Employment in the relevant Geographical Area for at least five years immediately prior to Occupation; or,
- ii. ordinarily resident or in Full Time Employment in the relevant Geographical Area for at least five years within the last ten years immediately prior to Occupation; or,
- iii. having a close family connection (parents, children or siblings) who have been ordinarily resident within the relevant Geographical Area for at least five years immediately prior to Occupation; or,
- iv. being a head of a household who or whose partner is in or who is taking up permanent Full Time Employment in an already established business within the relevant Geographical Area



Minimum Provisions

mean, in the case of a Shared Ownership Lease, provisions in compliance with the relevant requirements of the Schedule to this Agreement

National Park

means the geographical confines of the North York Moors National Park

Occupant	means a person or persons occupying any of the Dwellings and shall include that person or person's dependants and Occupancy and Occupation shall be construed accordingly
Plan	the Plan attached
Registered Provider	means Sanctuary or any provider or manager of affordable housing registered under Section 80 of the Housing and Regeneration Act 2008.
Schedule	the Schedule to this Agreement
Shared Ownership Dwelling	means any one or more of the Dwellings (but being not more than 2 (two) two-bedroomed Dwellings and 1 (one) three-bedroomed Dwelling) and which are to be notified by the Registered Provider to the National Park Authority in writing as to their location and which are intended to be occupied on the terms of a Shared Ownership Lease or otherwise available for rent at a cost not exceeding the Intermediate Rent
Shared Ownership Lease	means a lease upon which the Shared Ownership Dwellings shall be let containing the Minimum Provisions
Social Rented Dwelling	means any one or more of the Dwellings to be let to an Occupant on an Assured Shorthold Tenancy or Assured Tenancy (upon payment of rent not exceeding the Target Rent) without payment of a premium or fine
Target Rent	means the target rent published by the Council from time to time as being the maximum permitted rent for the Dwelling (based upon the Target Rent Calculator set by the Tenant Services Authority or its statutory successor in title)

RECITALS

1. The National Park Authority is the local planning authority for the purposes of section 106 of the 1990 Act by whom the provisions of this Agreement are enforceable
2. Sanctuary is the proprietor of the freehold interest in the Land as registered at the Land Registry (together with other land) under title number NYK389439.
3. The National Park Authority has resolved to approve the Application subject to the prior execution of this Agreement without which planning permission for the Development would not be granted
4. The parties to this Agreement 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.

THE AGREEMENT:-

1. This Agreement:-
 - (a) constitutes a planning obligation for the purposes of S106 and is made pursuant to the powers in S106 and S111
 - (b) does not operate to grant any consent or approval under the 1990 Act or any other legislation
 - (c) shall be registered as a local land charge
 - (d) may only be varied by a Deed executed by the parties and expressed to be supplementary to this Agreement
- 2.1 The expressions "the National Park Authority" "Sanctuary" and "the Council" shall include their respective successors in title and persons respectively claiming through or under them and in the case of the National Park Authority and the Council the successors to their statutory functions
- 2.2 All references to statutory provisions in this Agreement shall be construed as including references to any statutory modification consolidation or re-enactment of such provision
3. Sanctuary covenants with the National Park Authority that all the interest which they have in the Land shall be subject to the restrictions and provisions regulating the Development which are contained in the Schedule
4. The planning obligations contained in this Agreement shall take effect only when the planning permission granted pursuant to the Application is implemented by the carrying out of a material operation within the meaning of S56
5. If the permission granted pursuant to the Application expires or is revoked or otherwise withdrawn or modified without the consent of Sanctuary and before the Development is begun or shall at any time be revoked this Agreement shall immediately cease to have effect
6. The parties agree that this Agreement will not operate to bind Sanctuary after it shall have parted with its interest in the Land provided that the obligations in this Agreement are transferred to any successor in title of Sanctuary provided always that no person shall be liable for breach of any covenant contained in this Agreement after he shall have parted with all interest in the Land or the part of it in respect of which such breach occurs but without prejudice to liability for any subsisting breach prior to parting with such interest
7. Where under this Agreement any approval consent certificate direction authority action expression is required to be given or reached or taken by any party or any response is requested any such approval consent certificate direction authority action expression of satisfaction shall not be unreasonably withheld or delayed
8. Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land (save for the Development) in accordance with a planning permission granted (whether or not on appeal) after the date of this Agreement
9. A person who is not a party to this Agreement is not intended under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement

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10. The parties shall each bear their own costs in the preparation and completion of this Agreement

EXECUTED as a Deed on the date which first appears

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SCHEDULE

Restrictions on Occupancy

1. No Dwelling shall be occupied except by an Occupant who at the time of first occupation is in Housing Need
2. No Dwelling shall be occupied except by an Occupant who at the time of first occupation has a Local Connection.
3. No Dwelling shall be occupied except as the sole residence of an Occupant.
4. No Dwelling (save for the Shared Ownership Dwellings which shall number no more than three) shall be occupied except as an Affordable Rented Dwelling or as a Social Rented Dwelling.
5. No Shared Ownership Lease shall be granted or assigned except to an Occupant who at the time of first occupation is in Housing Need
6. No Shared Ownership Lease shall be granted or assigned except to an Occupant who at the time of first occupation has a Local Connection

Restrictions on Staircasing

7. The transferees of any of the Shared Ownership Dwellings to be transferred under a Shared Ownership Lease shall not have the right to staircase beyond a maximum of 80% of the freehold interest and the Shared Ownership Lease shall contain a provision to this effect

Waiver of Requirements

- 8.1 The National Park Authority may at any time by written notification to the Registered Provider which at that time is landlord of the Development waive any of the requirements set out in this Agreement with regard to any single prospective occupancy of any Dwelling subject to receiving a written application from that Registered Provider prior to issuing such notification
- 8.2 If any Dwelling remains unoccupied after being available for a further period of 25 days following the end of all the periods specified in the definition of "Geographical Area" of this Agreement and no eligible person can be found any Dwelling may be occupied by any person nominated by the Registered Provider or the National Park Authority PROVIDED THAT they are in Housing Need and PROVIDED FURTHER that the National Park Authority is notified in writing 28 days of the occupancy concerned commencing.

Mortgagee-in-Possession

- 9.1 The provisions of paragraphs 1 and 5 of this Schedule shall not be binding against any mortgagee or chargee of the purchaser of any Shared Ownership Dwelling exercising a power to assign the Shared Ownership Lease in respect of that Shared Ownership Dwelling (and also upon and following the appointment of a receiver by any such mortgagee or chargee) who shall be permitted to sell free from those provisions but only so long as the said mortgagee or chargee is a body corporate registered by the Financial Services Authority (or any successor body whose function is to regulate mortgages and loans) and not otherwise; and

SUBJECT TO

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- 9.2 prior to seeking to dispose of any Shared Ownership Lease under any of the circumstances set out in paragraph 9.1 above the intended transferor shall have offered to surrender the Shared Ownership Lease to the Registered Provider in accordance with the provisions applicable to Occupants under paragraph 10 below; and
- 9.3 prior to seeking to dispose of any Shared Ownership Lease under any of the circumstances set out in paragraph 9.1 above the intended transferor shall give not less than four (4) months' prior notice (which may run concurrently with the establishment of the Geographical Area and with the offer of surrender under paragraph 9.2 above) to the National Park Authority of its intention to dispose (the "Disposal Notice"); and
- 9.4 in the event that the National Park Authority responds within two (2) months from receipt of the Disposal Notice indicating that arrangements for the transfer of the Shared Ownership Lease can be made in such a way to safeguard it as Affordable Housing then the intended transferor shall cooperate with such arrangements so far as is reasonably practicable to secure a transfer that will achieve that outcome;
- 9.5 if the National Park Authority does not respond to the Disposal Notice as set out in 9.4 above or, if it does respond but no arrangements to secure a transfer pursuant to 9.4 above are completed within four (4) months of the service of the Disposal Notice, then the intended transferor shall be entitled to Dispose free from the restrictions provided for in paragraphs 1 and 5 of this Schedule

PROVIDED THAT

- 9.6 no transfer of any Dwelling shall without the consent of the National Park Authority take place until the expiry of the steps required to establish the Geographical Area; and
- 9.7 when the Dwelling becomes available for Occupation subsequently all of the provisions of this Agreement (including paragraphs 1 and 5 of this Schedule) shall again apply.

Surrender of Lease

10. No Shared Ownership Lease shall be assigned by an Occupant except by a surrender to Sanctuary (or for the avoidance of doubt its successor Registered Provider as the case may be) **SAVE THAT** when an Occupant has given Sanctuary not less than six weeks' prior written notice of his intention to surrender the Shared Ownership Lease and Sanctuary has declined to purchase the Occupant's interest or has not responded to the Occupant's written notice the Occupant may dispose of his interest in compliance with the remaining provisions of this Agreement

Terms of Occupancy

11. Notwithstanding paragraphs 4, 5, 6 and 7 of this Schedule, if at the date of practical completion of the Shared Ownership Dwellings the Registered Provider has not entered into a binding contract for the granting of a Shared Ownership Lease to an Occupant, the Registered Provider may at any time thereafter make available the Shared Ownership Dwelling for letting as an Affordable Rented Dwelling or as a Social Rented Dwelling or as an Intermediate Rented Dwelling

IN WITNESS WHEREOF the parties hereto have executed these presents as a deed and delivered the same the day and year first before written

**THE COMMON SEAL OF THE NORTH YORK
MOORS NATIONAL PARK AUTHORITY**
was affixed in the presence of:-



Authorised Signatory

**THE COMMON SEAL OF
SANCTUARY HOUSING ASSOCIATION**
was affixed in the presence of:-



✓
Authorised Signatory

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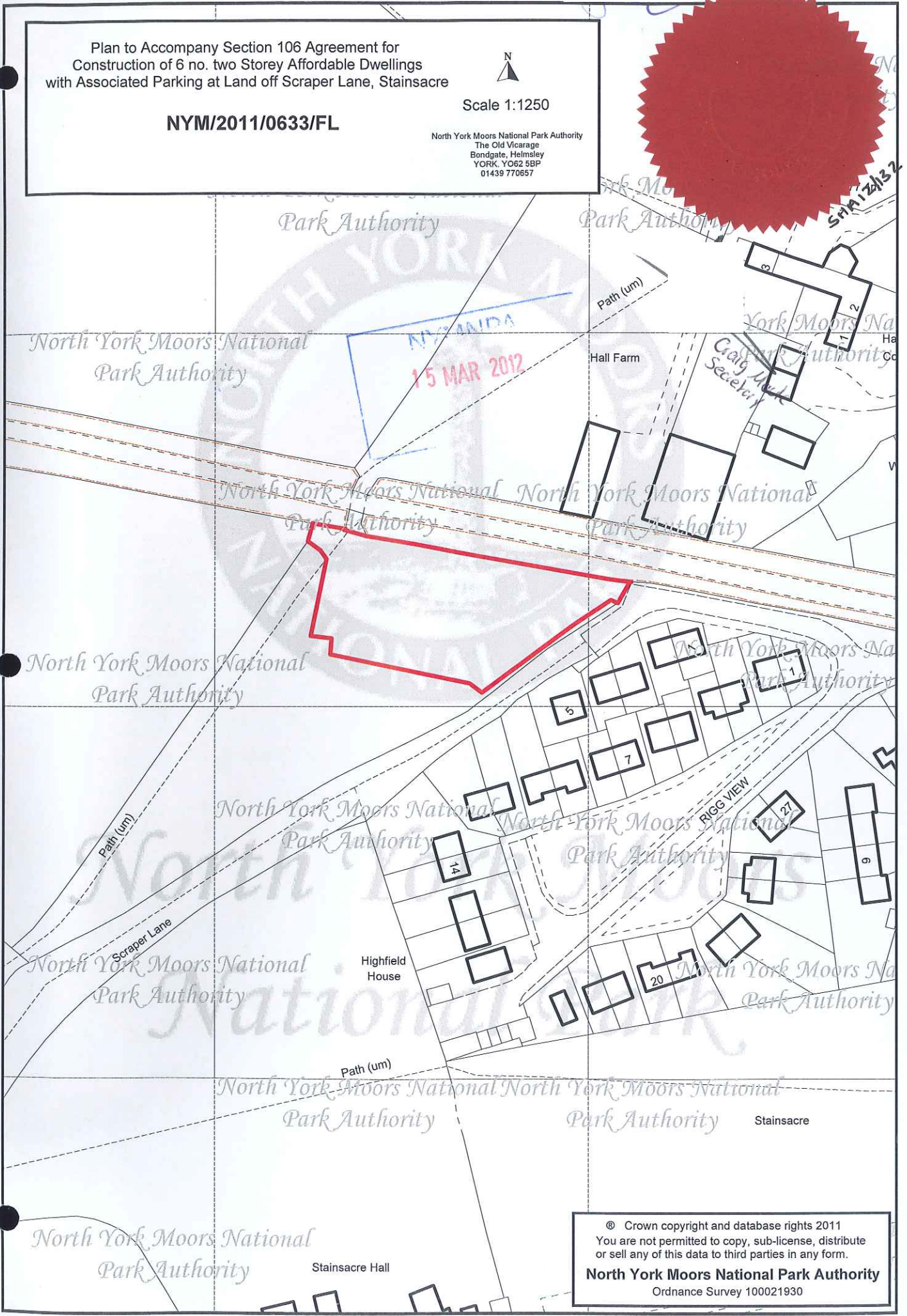
Plan to Accompany Section 106 Agreement for
Construction of 6 no. two Storey Affordable Dwellings
with Associated Parking at Land off Scaper Lane, Stainsacre



Scale 1:1250

NYM/2011/0633/FL

North York Moors National Park Authority
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North York Moors National Park Authority
Ordnance Survey 100021930

NORTH YORK MOORS NATIONAL PARK AUTHORITY

- and -

SANCTUARY HOUSING ASSOCIATION

SECTION 106 AGREEMENT

relating to land off Scrapper Lane, Stainsacre, North Yorkshire