

**THIS DEED** is made the 18<sup>th</sup> day of September 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")
- 2 **O'TOOLE PROPERTIES LIMITED** whose registered office is 30 Yorkersgate Malton North Yorkshire YO17 7AW ("the Owner")
- 3 **MARK SIDAWAY and ELIZABETH SIDAWAY** of 6 Slyes Close, West Haddon, Northampton, NN6 7AZ ("the Mortgagee")

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 of 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" "Commenced" and "Commencement" shall be construed accordingly |
| 1.2 | "Planning Application"            | Application Number 10/00913/FUL   |
| 1.3 | Section 151 Officer               | means the Section 151 Officer for 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  |
| 1.5 | "Affordable Housing Contribution" | The sum of up to £60,000.00 (Sixty Thousand Pounds) for the provision of affordable housing which may include but not be limited to the following: <ol style="list-style-type: none"><li>1. Support for Housing Associations for both the development and acquisition of Affordable Housing, including facilitating any necessary works of improvement or repair</li></ol>  |

2. Support for specific initiatives to regenerate the existing housing stock e.g. Empty Property Grants and Houses in Multiple Occupation Grants which give the Council tenancy nomination rights for qualifying individuals.
3. Support for specific schemes which are developed to provide permanent homes to meet an identified need e.g. the lack of suitable accommodation for homeless families or a scheme to meet the accommodation needs of young single people.
4. Support for Rural Housing Enabler / Affordable Development Officer functions at the Council

- 1.6 "The Land": The land as described in the First Schedule to this Agreement
- 1.7 "The Disposal" means a transfer by way of sale, gift, lease or exchange.

#### **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 Owner is the Owner in fee simple in possession of the Land (subject as hereinafter mentioned) but otherwise free from encumbrances
- (3) The Mortgagee is at the Property under a Legal Charge dated 29 June 2011 Between O'Toole Properties Limited and Mark Sidaway and Ellizabeth Sidaway
- (4) The Owner has applied to the Council for permission to develop the Land in the manner and for the uses set out in Second Schedule hereto ("the Proposed Development")
- (5) The Council is satisfied that the performance by the Owner 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

- (6) The Owner has 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
- (7) The Mortgagee has agreed to join herein in the manner hereinafter appearing

**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 **THE** Owner and the Mortgagee (subject to clause 3.10 below) hereby covenants 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 Mortgagee and their successors in title.

3 IT is agreed and declared as follows:-

3.1 The expressions "the Council", "the Owner" and "the Mortgagee" 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 shall on execution of this Agreement pay to the Council a fee to cover the Council's reasonable legal costs in connection with the negotiation and completion of this Agreement

3.4 The Mortgagee consents to the Owner entering into this Agreement to the intent that the Property shall hereafter always be subject to the terms of the Agreement PROVIDED THAT the Mortgagee shall only be liable for any breach occurring by reason of any act default or omission in respect of any provisions of this Agreement during such period (if any) as the Mortgagee is a mortgagee in possession of the Property PROVIDED ALWAYS that the successors in title to the Mortgagee shall become fully liable for any breach of this Agreement

3.5 In this Agreement:

3.5.1 The clause headings do not affect its interpretation

3.5.2 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;

3.5.3 References to any statute or statutory provision include references to:

3.5.3.1 All Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement; and

3.5.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision; and

3.5.3.3 includes any amendment extension or re-enactment of it for the time being in force

3.5.4 references to the Land include any part of it;

3.5.5 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

3.5.6 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 are expressed to be made by or with the Owner shall be deemed joint and several

3.6 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

3.7 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

3.8 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

3.9 This Agreement shall cease to have effect, in so far only as it has not already been complied with if:

3.9.1 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

3.9.2 the Planning Permission is modified by any statutory procedure without the consent of the Owner; or

3.9.3 the Planning Permission expires before the Commencement of Development occurs

3.10 Where the Agreement comes to an end under clause 3.8:

3.10.1 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

3.10.2 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 together with interest accrued on the monies from and including the date of payment to and including the date of repayment at the base rate from time to time of the National Westminster Bank.

3.11 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 White Horse Hotel, 5 Market Place, Kirbymoorside, York, YO62 6AB shown for the purposes of identification edged in red on the Plan

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

Change of use with alterations of hotel to form 2no. ground floor retail units with 1no. three-bed and 1no. two-bed flats at first and second floor levels together with change of use and alterations of rear function room/kitchen/letting bedrooms to form 2no. three-bed and 2no. two-bed dwellings with associated parking and amenity areas formed by erection of 1.2m high brick walls.

**THE THIRD SCHEDULE**  
**Owner's and Developer's Obligations**

**Affordable Housing Contribution**

- 1 The Owner covenants as follows:
- 2 Within 28 days of Disposal of the second dwelling constructed by the Owner on the Property the Owner will pay the sum of £20,000 to the Council as the first instalment of the Affordable Housing Contribution.
- 3 Within 28 days of Disposal of the fourth dwelling constructed by the Owner on the Property;

3.1 the Owner will pay the sum of £20,000 to the Council as the second instalment of the Affordable Housing Contribution.

3.2 Submit to the Council evidence of the sale price achieved for each of the four dwellings in the form of either a certified copy the Council for Mortgage Lenders return form or certified copy transfer document. Together with the estimated Market Value of the two remaining dwellings on the Property current at that time.

4 Prior to occupation of the last dwelling on the Property, however that is determined the Owner will pay to the Council the remaining Affordable Housing Contribution calculated in accordance with the Fifth Schedule.

#### **THE FOURTH SCHEDULE**

##### **Council's Obligations**

1. The Council hereby covenants with the Owner to use the Affordable Housing Contribution for the sole purposes specified in this Agreement
2. The Council shall provide to the Owner such evidence, as they shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Agreement.

#### **THE FIFTH SCHEDULE**

The sum of -

the sale price of each of the four dwellings + the estimated Market Values of the remaining two dwellings

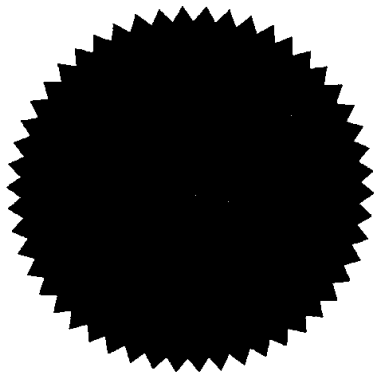
minus £665,000.

For every £30,000 achieved in excess of £665,000 the Owner will pay to the Council the sum of £5000 up to a maximum amount of £20,000.

EXECUTED as a deed by affixing

THE COMMON SEAL of THE  
RYEDALE DISTRICT COUNCIL  
authenticated by:

Minute 88/2009  
Reg No. 6394  
Initials TH



Chairman

*[Handwritten signature]*

Council Solicitor

EXECUTED as a deed by  
O'TOOLE PROPERTIES LIMITED  
acting by:

)  
)  
)

Director

*[Handwritten signature]*  
PATRICK W LAVERS

Director/Secretary

SIGNED as a Deed by the said  
MARK SIDAWAY in the  
presence of

)  
)  
)

*[Handwritten signature]*

Witness:

*[Handwritten signature]*

Name:

GRAHAM DIXON

Address:

23 WEST END  
WEST HADDON  
NW 6 7AL

SIGNED as a Deed by the said  
ELIZABETH SIDAWAY In the  
presence of

} *Elizabeth Sidaway*

Witness: *Michael Dixon*

Name: *Michael Dixon*

Address: *23 WEST LIND  
WEST MADISON  
NW 67AY*



DATED 18 September

2012

**THE RYEDALE DISTRICT COUNCIL**

and

**O'TOOLE PROPERTIES LIMITED**

and

**MARK SIDAWAY and ELIZABETH SIDAWAY**

**AGREEMENT**

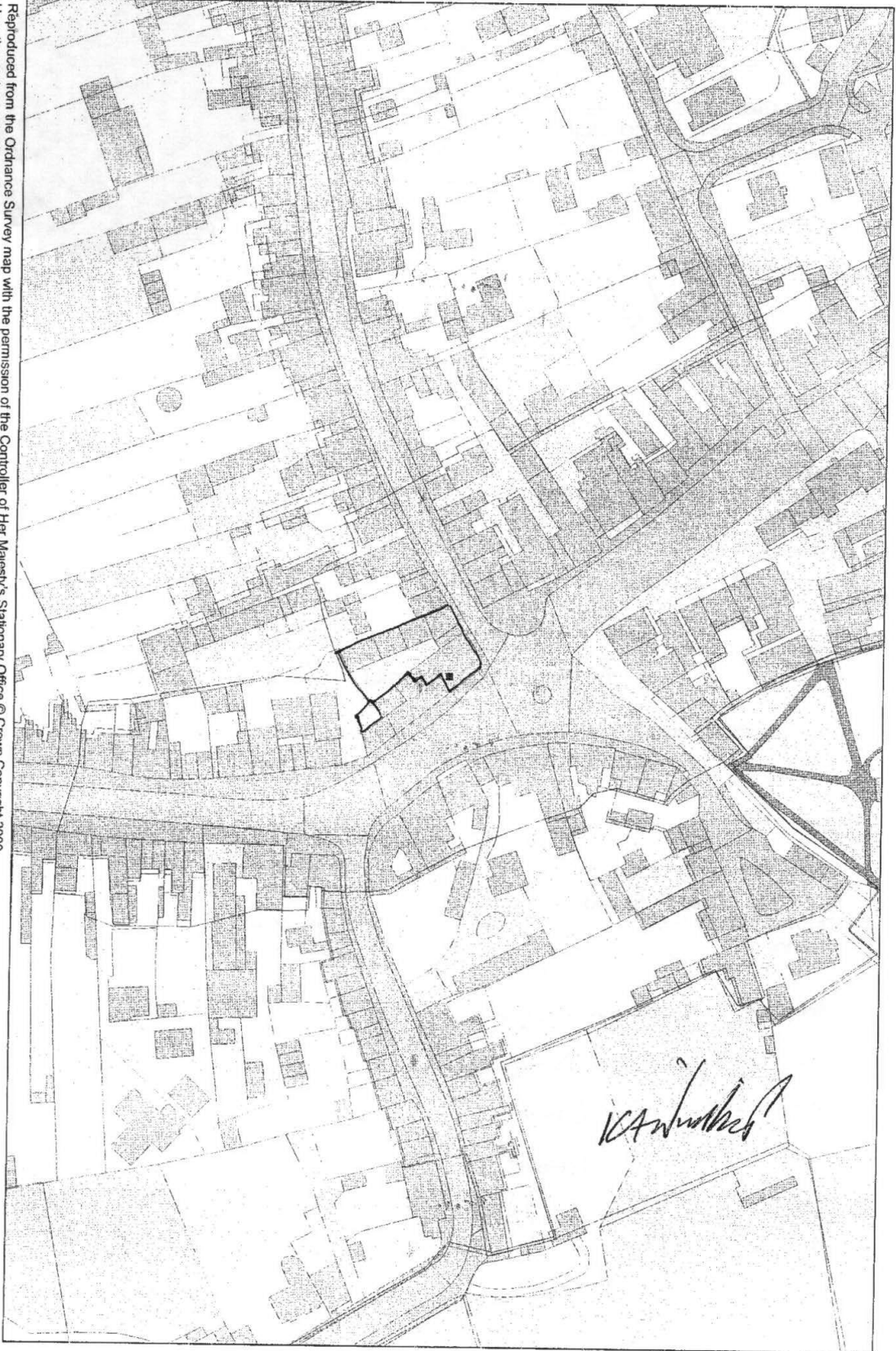
pursuant to Section 106 of the  
Town and Country Planning Act 1990 as amended  
and Section 111 of the Local Government Act 1972  
in respect of White Horse Hotel 5 Market Place  
Kirkbymoorside York, YO62 6AB

K A Winship  
Council Solicitor  
MALTON

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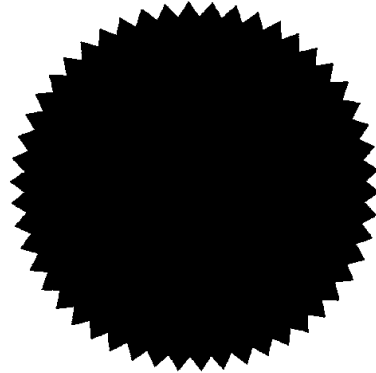
*McKinnon*  
*Scott*  
*Johnston*

Date: 09 May 2011  
SLA: 100019406  
Scale: 1:1750



EXECUTED as a deed by affixing  
THE COMMON SEAL of THE  
RYEDALE DISTRICT COUNCIL  
authenticated by:

Minute 88/2000  
Reg No. 6399  
Initials TH



Chairman

Council Solicitor

EXECUTED as a deed by  
O'TOOLE PROPERTIES LIMITED  
acting by:

)  
)  
)

Director

PATRICK W LAVERS

Director/Secretary

SIGNED as a Deed by the said  
MARK SIDAWAY In the  
presence of

)  
)

Witness:

Name:

GRAHAM DIXON

Address:

23 WEST END  
WEST HADDON  
NN 6 7AY