

DATED 01 SEPTEMBER

2015

THE RYEDALE DISTRICT COUNCIL

AND

MS TRACY ANN MCNELIS AND MR JOHN FREDERICK WRIGLEY

AND

CLYDESDALE BANK PLC

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 CLAXTON GRANGE, CLAXTON, YORK IN
THE COUNTY OF NORTH YORKSHIRE

K A WINSHIP
COUNCIL SOLICITOR
MALTON

THIS DEED is made the 01 day of SEPTEMBER 2015

BETWEEN

- (1) **RYEDALE DISTRICT COUNCIL** of Ryedale House, Malton, North Yorkshire, YO17 7HH ("Council")
- (2) **MS TRACY ANN MCNELIS** of Green Close Driffield YO25 8HS and **JOHN FREDERICK WRIGLEY** of 23 Woodvale, Coulby Newham, TS8 0SH ("Owner")
- (3) **CLYDESDALE BANK PLC** whose registered office is at Yorkshire Bank, 20 Merrion Way, Leeds, LS2 8NZ ("Mortgagee")

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The Owner is the freehold owner of the Site Registered at HM Land Registry with Title Number NYK235738 and NYK235737
- 3 The Mortgagee is the proprietor of a registered charge dated 30 March 2005 and listed at number 8 and 6 of the Charges Register of Title Number NYK235738 and NYK235737
- 4 The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- 5 The Council resolved on 28 April 2015 to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

- | | |
|-------------------------------|---|
| "Act" | the Town and Country Planning Act 1990. |
| "Application" | the application for outline full planning permission dated 29 January 2015 submitted to the Council for the Development and allocated reference number 15/00014/MFUL. |
| "Commencement of Development" | the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or |

other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.

"Development"	the Development of the Site with Change of use with alterations of 13no. holiday cottages to form 1no. four bedroom dwelling, 4no. three bedroom dwellings, 7no. two bedroom dwellings and 1no. one bedroom dwellings with parking and amenity areas and communal facilities as set out in the Application.
"Dwelling"	any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission and 'first Dwelling' shall be construed accordingly
"Index"	All Items Index of Retail Prices issued by the Office for National Statistics.
"Interest"	interest at 4 per cent above the base lending rate of the National Westminster Bank Plc from time to time.
"Occupation" and "Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
"Off-Site Public Open Space Commuted Sum"	the sum of £28,500 (Twenty Eight Thousand Five Hundred Pounds) to be used by the Council in accordance with the provisions of paragraph 3 of the Fourth Schedule.
"Plan"	the plan attached to this Deed.
"Planning Permission"	the outline full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Second Schedule.
"Site"	the land against which this Deed may be enforced as shown edged red on the Plan.

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 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 Council and County Council the successors to their respective statutory functions.
- 2.7 The headings and contents list 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 Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and Section 1 of the Localism Act 2011 and all other enabling powers.
- 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.

4 CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 8.1, 11, 15, 16 and 17 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council as set out in the Third Schedule.

6 THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the Fourth Schedule.

8 MISCELLANEOUS

- 8.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.
- 8.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 8.3 This Deed shall be registrable as a local land charge by the Council.
- 8.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of:
- (i) the Council by the Council Solicitor;

And any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

- 8.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 8.6 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.
- 8.7 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.
- 8.8 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 Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.9 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 8.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 8.11 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.

9 MORTGAGEE'S CONSENT

- 9.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

10 WAIVER

No waiver (whether expressed or implied) by the Council or 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 Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

11 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 Site 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 Site or unit of occupation purchased by reference to a plan.

12 INDEXATION

Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

13 INTEREST

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

14 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

15 DISPUTE PROVISIONS

- 15.1 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.
- 15.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 15.1 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.
- 15.3 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.
- 15.4 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.
- 15.5 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.

16 JURISDICTION

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

17 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

Particulars Of The Proposed Development

ALL THAT piece of land TOGETHER WITH buildings erected thereon situate at and known as land at Claxton Grange, Malton Road, Claxton, York, YO60 7RE shown for the purposes of identification edged in red on the Plan

**SECOND SCHEDULE
DRAFT DECISION NOTICE**

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: 15/00014/MFUL

Proposal: Change of use with alterations of 13no. holiday cottages to form 1no. four bedroom dwelling, 4no. three bedroom dwellings, 7no. two bedroom dwellings and 1no. one bedroom dwellings with parking and amenity areas and communal facilities

at: Claxton Grange Malton Road Claxton Malton YO60 7RE

for: Mrs Tracey McNellis

Decision Date: 5 May 2015

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:

National Planning Policy Framework
National Planning Policy Guidance
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 SP3 Affordable 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 SP13 Landscapes
Local Plan Strategy - Policy SP16 Design
Local Plan Strategy - Policy SP17 Managing Air Quality, Land and Water Resources
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

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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C/O AAH Planning Consultants (Ms Claire Richards)
2 Bar Lane
York
YO1 6JU

APPN NO: 15/00014/MFUL

02 The 13 no. dwellings hereby approved shall only be occupied by a person(s) together with his/her spouse and dependants, or a widow/widower of such a person, who:

- Have permanently resided in the Parish, or 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
- Are taking up full time permanent employment in an already established business which has been located within the parish, or 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.

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 The development hereby permitted shall not be commenced until such time as a scheme to dispose of foul drainage has been submitted to and approved in writing by the Local Planning Authority. Any such scheme shall be supported by detailed information, include a maintenance programme and establish current and future ownership of the facilities to be provided. The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme or any changes as may subsequently be agreed in writing by the Local Planning Authority.

Reason:- Foul drainage from the development will be discharged to the environment via a specific tank. The development is located on the Sherwood Sandstone Principal Aquifer. Principal Aquifers provide significant quantities of water for people and also sustain rivers, lakes and wetlands. It is therefore very important that the Sherwood Sandstone Principal Aquifer is protected from pollution associated with the foul drainage scheme.

05 Prior to the commencement of development a report showing details of the existing septic tank installed and any proposals to replace it shall be submitted to and approved in writing by the Local Planning Authority. The details shall include:

1. Plan showing the location of the tank and the proximity of inhabited buildings and any well, stream, or river in the locality;
2. The capacity of the tank and number of persons using it;
3. Vehicular access for emptying of the tank, and;
4. Porosity and percolation test results to establish the suitability of land to be used for soakaway/land drainage of effluent.

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Reason:- The change of use is likely to result in a large increase in the volume of foul effluent due to increase in occupancy of the cottages. It is therefore considered necessary for the applicant to demonstrate that the arrangements for foul drainage are satisfactory and unlikely to be a source of nuisance, danger to health or cause of pollution and to satisfy Policies SP17 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 06 Before any part of the development hereby approved commences, plans showing details of landscaping and planting schemes shall be submitted to and approved in writing by the Local Planning Authority. The schemes shall provide for the planting of trees and shrubs and show areas to be grass seeded or turfed where appropriate to the development. The submitted plans and/or accompanying schedules shall indicate numbers, species, heights on planting, and positions of all trees and shrubs including existing items to be retained. All planting, seeding and/or turfing comprised in the above scheme shall be carried out in the first planting season following the commencement of the development, or such longer period as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of five years from being planted, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar sizes and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To enhance the appearance of the development hereby approved and to comply with the requirements of Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 07 Prior to the commencement of the development hereby approved a car parking plan showing the parking plan for all units and visitor parking shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be undertaken in accordance with the details thereby agreed.

Reason:- In order to ensure that there is sufficient parking to serve the development and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 08 Prior to the commencement of the development a 10 year management plan for all the existing communal areas (including the swimming pool) shall be submitted to and approved in writing by the Local Planning Authority. The management plan shall include details of the maintenance of such areas.

Reason:- In order to ensure a satisfactory appearance and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 09 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

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APPN NO: 15/00014/MFUL

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.

- 10 Prior to the commencement of the development hereby permitted a scheme for the maintenance and improvement for the existing access track between the A64 and Claxton Grange shall be submitted to and approved in writing by the Local Planning Authority, and thereafter fully implemented in accordance with those aforementioned details.

Reason: In order to protect and improve the means of access to the site, and in the interests of visual amenity and to comply with Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 11 Prior to the commencement of the development hereby permitted precise details of the external lighting shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be undertaken in accordance with the details thereby agreed.

Reason: In order to protect the character and appearance of the open countryside and to satisfy Policy SP20 of the Ryedale Plan - Local Plan Strategy.

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

Site location plan;
Drawing No. M02/985/01;
Drawing No. M02/985/02;
Drawing No. M02/985/03;
Drawing No. M02/985/04; and
Drawing No. M02/985/06

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

INFORMATIVE(S)

- 01 Clean roof water may be discharged to ground provided that all roof water downpipes are sealed against pollutants entering the system from surface run-off, effluent or other forms of discharge. The method of discharge must not create new pathways or pollutants to groundwater.

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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.

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

Mrs Tracey McNellis
C/O AAH Planning Consultants (Ms Claire Richards)
2 Bar Lane
York
YO1 6JU

THIRD SCHEDULE
The Owner's Covenants with the Council

Off-Site Public Open Space

- 1 The Owners covenant not to permit Occupation of more than six Dwellings on the Site unless and until the Owners have paid to the Council the Public Open Space Commuted Sum

FOURTH SCHEDULE
The Council's Covenants

Repayment of Commuted Sums

The Council hereby covenants with the Owner

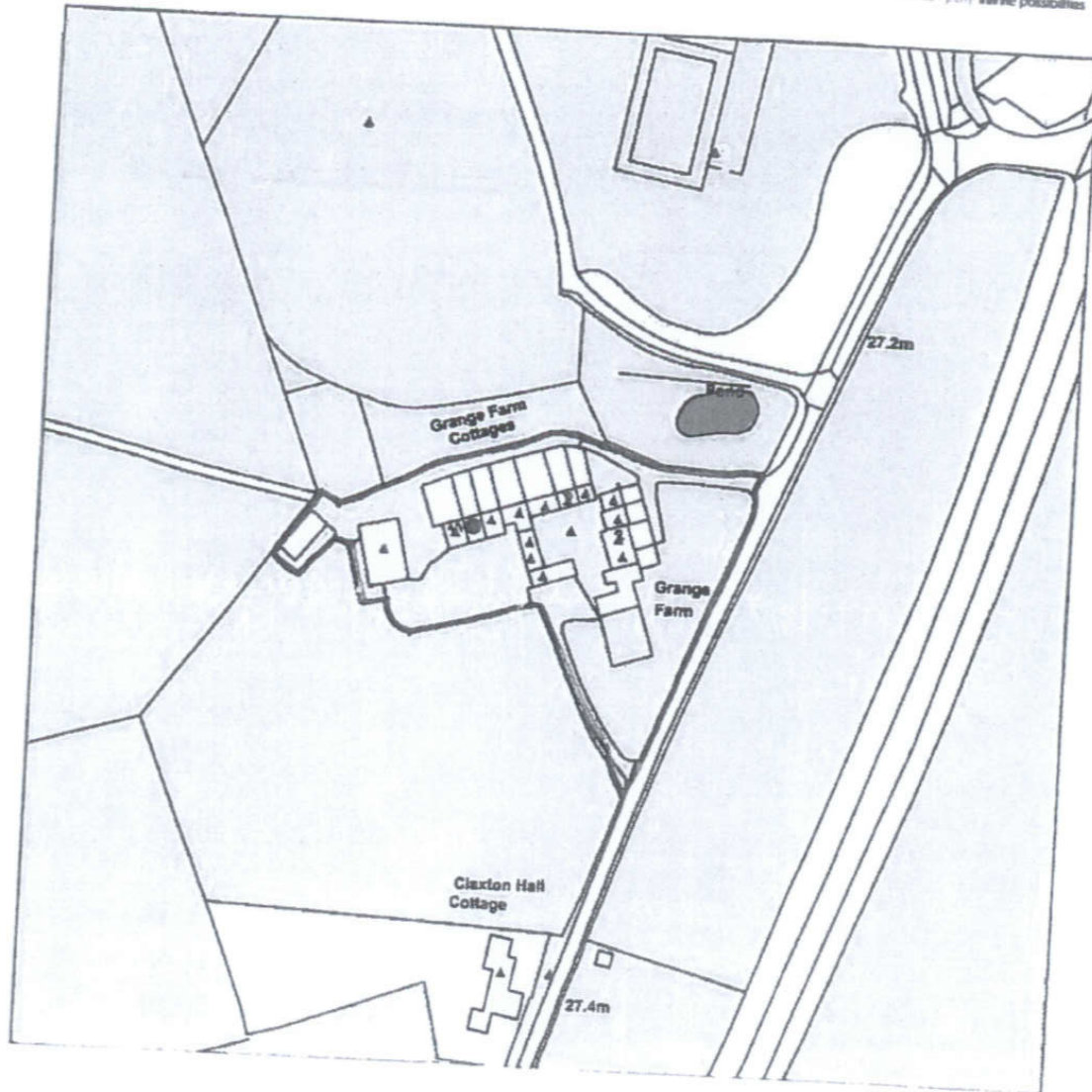
- 1 to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.
- 2 that it will use the off-site Public Open Space Commuted Sum towards the provision of Public Open Space within the vicinity of the Site.
- 3 that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within five years of the date of receipt by the Council of such payment together with interest at the National Westminster Bank Plc base rate from time to time for the period from the date of payment to the date of refund.
- 4 that it shall provide to the Owner with such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.

Discharge of obligations

- 5 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed

Claxton Grange Cottages

Not Set



Scale : 1:1732

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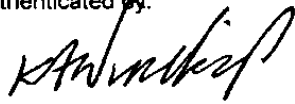
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Organisation	Ryedale District Council
Department	Planning
Comments	Not Set
Date	13 July 2015
SLA Number	Not Set

EXECUTED as a deed by affixing

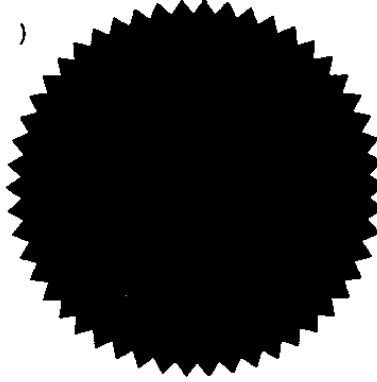
THE COMMON SEAL of THE
RYEDALE DISTRICT COUNCIL

authenticated by:



Council Solicitor

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Minute
25/15/16
Reg No.
6862
Initials
awb

SIGNED as a Deed by the said

Tracy Ann McNells in the

presence of

)
)
)



SEN

SARAH ELIZABETH NEWLOVE
20 MEADOW ROAD
DRIFFIELD
EAST YORKSHIRE
DEVELOPMENT MANAGER

SIGNED as a Deed by the said

John Frederick Wrigley in the

presence of

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)
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ABridley


21 Viador
Chester-le-Street
Co. Durham
Nurse

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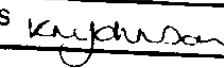
THE COMMON SEAL of THE
CLYDESDALE BANK PLC

authenticated by:

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CLYDESDALE BANK PLC <small>(trading as Clydesdale Bank and Yorkshire Bank)</small>	
	
<small>Duty Authorised Official</small>	
Full Name	MICHAEL DAVID FROST
Position	SPECIALIST OFFICER

Authorised Signatory

WITNESS	
Full Name	Kimberley Johnson
Ref.	of 20 Merrion Way LEEDS LS2 8NZ

Authorised Signatory