

DATED

7 FEBRUARY

2006

EXMOOR NATIONAL PARK AUTHORITY

- and -

NORTH DEVON DISTRICT COUNCIL

AGREEMENT

relating to the erection of five dwellinghouses at
Hobbs Yard, Burvill Street, Lynton

Final, 12/01/06

THIS AGREEMENT made the 7th day of February Two thousand and six

BETWEEN:

- (1) EXMOOR NATIONAL PARK AUTHORITY whose principal offices are at Exmoor House, Dulverton, Somerset TA22 9HL ("the Authority"), and
- (2) NORTH DEVON DISTRICT COUNCIL whose principal offices are at The Civic Centre, Barnstaple, Devon EX31 1EA ("the Applicant")

WITNESSES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.01 In this Agreement the following words and phrases shall unless the context otherwise requires have the following meanings:

"the Act of 1990" means the Town and Country Planning Act 1990

"Adjoining Parish" means any parish contiguous to the Parish insofar only as the Parish and any Adjoining Parish are situated wholly or partly within the boundary of the National Park

"the Application" means the planning application submitted by the Applicant to the Authority dated 7 October 2005 and numbered 62/41/05/032 whereby the Applicant sought planning permission for the Development

"Cascade Provisions" means the provisions set out in the Second Schedule

"the Commencement of Development"	means the implementation of the Permission by the carrying out of a material operation as defined at section 56 of the Act of 1990 which is exclusively referable to the Permission other than works of site clearance, archaeological research, ground investigation and decontamination or the erection of site hoardings, and the phrase "commence development" shall be construed accordingly
"the Defined Area"	has the meaning ascribed to it by whichever of paragraphs 2(2), 2(3), 2(4), 2(5), 2(6), 2(7) or 3(4) of Schedule 2 is for the time being applicable to the Dwelling
"dependant"	has the meaning ascribed to it by paragraph 15 of Part 2 of the 28 th Schedule to the Finance Act 2004, subject to the deletion of all references to "the member", "the date of the member's death" and "the administrator", and the substitution for them respectively of references to the occupier of the Dwelling, the date on which the occupier's occupation of the Dwelling commenced, and the Authority
"the Development"	means the erection on the Land or on some part thereof of five units of residential accommodation in accordance with the Permission
"the Dwellings"	means all the units of residential accommodation to be provided upon the Land in pursuance of the Permission or, where the context so admits or requires, any one or more of them
"the Land"	means the land the subject of this Agreement being the plot of land situate at Hobbs Yard, Burvill Street in the Parish of Lynton in the County of Devon as the same is described in the First Schedule and is shown edged red on the Plan, and this term shall following the completion of the Development whether in whole or in part include the Dwellings

"Letting"	means a letting of the Dwellings by the Applicant to a tenant on a tenancy at will or on a periodic or assured shorthold tenancy, and the term "let" when used in relation to the Dwellings shall be construed accordingly
"Local Plan"	means the Local Plan (First Alteration) adopted by the Authority under the Act of 1990 on the 1 st day of March 2005
"the National Park"	means the Exmoor National Park
"the Obligations"	means each and all of the undertakings, conditions, restrictions and other matters set out in the Second Schedule
"occupier"	has the meaning ascribed to it by Section 262(6) of the Housing Act 2004 and the terms "occupy" and "occupied" when used in relation to the Dwellings shall be construed accordingly
"the Parish"	means the Parish of Lynton
"the Permission"	means the planning permission to be issued by the Authority by way of determination of the Application and all approvals granted thereunder
"A person who satisfies the Local Occupancy Definition"	

means a person who cannot afford to rent or buy accommodation in the locality on the open market and who:

- (i) is currently resident in the Defined Area and will have been so resident permanently and continuously during the period of 10 years immediately preceding the proposed Sale or Letting of the Dwelling to him or her and is forming a household for the first time, or is currently

homeless or living in otherwise unsatisfactory accommodation; or

(ii) is not currently resident in the Defined Area but has a strong local connection with the Parish or an Adjoining Parish, including a period of permanent and continuous residence of 10 years or more within the last 20 years; or

(iii) has an essential need to live close to another person who is currently resident in the Defined Area and will have been so resident permanently and continuously during the period of 10 years immediately preceding the proposed Sale or Letting of the Dwelling to the first such person, such essential need arising from the proven age of either such person or from medical reasons relating to either such person; or

(iv) needs to live close to his or her place of work in the Defined Area.

“the Plan” means the Ordnance Survey Plan attached hereto

“Registered Social Landlord” means a Housing Association, or a not for profit company registered by the Housing Corporation (or by any other public body with functions corresponding for the time being to those of the Housing Corporation) to provide social housing.

“Sale” means any disposition or disposal of the Dwellings other than a Letting and whether for value or not, and includes (without prejudice to the generality of this definition) the transfer of the freehold or of a leasehold for a term of years certain in the Dwellings. The term “sell” when used in relation to the Dwellings shall be construed accordingly

“Staircasing” means, where the Owner for the time being of the Dwellings is a Registered Social Landlord, an arrangement under which the ownership of the Dwellings is shared between the Owner and the tenant

- 1.02 References in this Agreement to an Act of Parliament include a reference to any Regulations made under it and to any statutory provision for the time being in force amending re-enacting or replacing it or them
- 1.03 The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament
- 1.04 Words in this Agreement importing persons shall where the context so admits or requires be construed as importing corporate bodies and partnerships and shall where importing one gender be construed as importing any other gender
- 1.05 References in this Agreement to the parties shall include their assigns successors in title and any successors in function
- 1.06 All covenants obligations and other commitments contained in this Agreement and expressed to be given or entered into by the more than one party hereto shall be joint and several and may be enforced by the Authority against any one or more of such parties
- 1.07 All covenants and obligations contained in this Agreement and requiring any party hereto to issue any authorisation, approval, consent or certificate shall be subject to the proviso that the issue of such authorisation or other matter is not to be unreasonably withheld or delayed
- 1.08 References in this Agreement to a clause, sub-clause or Schedule are (unless otherwise stated) references to the correspondingly numbered clause, sub-clause or Schedule of this Agreement, and references in any Schedule to a paragraph or sub-paragraph are (unless otherwise stated) references to the correspondingly numbered paragraph or sub-paragraph of that Schedule
- 1.09 The paragraph headings in this Agreement are included solely for ease of reference and shall not affect its construction or interpretation

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Please Note that the current O.S. mapping bases are being reviewed for positional accuracy.
Consequently it is not advisable to rely on any boundary information for purposes other than for identification.



Civic Centre, Barnstaple.
EX31 1EA

SCALE:

COPY SUPPLIED TO:

DATE 16th December 2005

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2. RECITALS

- 2.01 The Authority is the National Park Authority for the National Park and is the Local Planning Authority within the area of the National Park so that all powers and functions conferred by the Act of 1990 upon a Local Planning Authority are powers and functions of the Authority
- 2.02 The Applicant is registered as proprietor of the Land with an absolute freehold title under title numbers DN500554 and DN287754
- 2.03 The Applicant wishes to carry out the Development on the Land and has to that end submitted the Application to the Authority
- 2.04 The Authority is satisfied that the Application may be granted subject to conditions and to the prior execution of an Agreement (being this Agreement) ensuring that the Development will meet a local need for affordable housing in accordance with the provisions of the Local Plan relating to housing

3. STATUTORY POWERS

- 3.01 The Authority enters into this Agreement in pursuance of its powers under Section 106 of the Act of 1990 and all other powers enabling it in that regard
- 3.02 It is HEREBY AGREED by and between the Applicant and the Authority that the covenant on the part of the Applicant contained at clause 4 is a planning obligation for the purposes of Section 106 of the Act of 1990 and is enforceable by the Authority without limit of time against any person deriving title under the Applicant to the Land or to any part of the Land pursuant to sub-section (3) of the said Section 106 PROVIDED HOWEVER that no person shall be liable for any breach of the said covenant occurring 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 the Authority's rights in relation to any antecedent breach

4. APPLICANT'S COVENANT

- 4.01 The Applicant HEREBY COVENANTS with the Authority to observe and perform each and all of the Obligations

5. AUTHORITY'S COVENANT

- 5.01 The Authority hereby covenants with the Applicant to issue the Permission within ten working days following the completion of this Agreement

6. GENERAL PROVISIONS

- 6.01 It is HEREBY AGREED AND DECLARED by and between the parties hereto that:

- (i) This Agreement is not and shall not operate or be construed as or be deemed to be a grant of planning permission for the purposes of Part III of the Act of 1990 or for any other purpose
- (ii) Except as herein specifically provided, nothing in this Agreement confers any approval consent or permission required from the Authority in the exercise of any of its statutory functions
- (iii) Except as herein specifically provided, nothing in this Agreement shall be taken by the Applicant as diminishing or derogating from any of the rights powers or prerogatives conferred on the Authority by any Act of Parliament or by any Orders or Regulations made thereunder whether now or hereafter
- (iv) No forbearance or indulgence (whether express or implied) granted by the Authority to the Applicant in respect of any breach of the terms of this Agreement shall prevent the Authority from enforcing its rights in relation to any subsequent breach
- (v) This Agreement is not made for the benefit of nor shall any of its provisions be

enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties hereto, but for the avoidance of doubt the exclusion of the application of that Act shall not prevent any future successor 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

- (vi) This Agreement is intended to take effect as a Deed
- (vii) Subject to the provisions of Sections 106(A) and 106(B) of the Act of 1990 the terms and conditions of this Agreement shall only be capable of being varied by a Supplemental Agreement executed by the parties hereto or their successors in title
- (viii) This Agreement is a Local Land Charge and shall be registered as such

7. RESOLUTION OF DISPUTES

- 7.01 The validity construction and performance of this Agreement shall be governed by English law.
- 7.02 If any dispute or difference shall at any time hereafter arise between the parties hereto as to the construction or effect of this Agreement or as to the rights and liabilities of the parties under it or any other matter of whatsoever nature arising out of or in relation to its subject matter, then such dispute or difference shall be referred to the English Courts to whose exclusive jurisdiction the parties hereby submit

8. ENTRY INTO FORCE AND DURATION

- 8.01 The covenant on the part of the Applicant contained at sub-clause 4.02 and the covenant on the part of the Authority contained at sub-clause 5.01 shall take effect immediately upon the execution of this Agreement
- 8.02 The covenant on the part of the Applicant and the Owners contained at sub-clause

4.01 shall take effect upon the Commencement of Development

- 8.03 If the Permission shall expire or be revoked or quashed prior to the Commencement of Development this Agreement shall forthwith determine and cease to have effect but without prejudice to any rights previously acquired under it by either party thereto

IN WITNESS whereof the parties hereto have executed and delivered this Agreement as a Deed the day and year first before written

THE FIRST SCHEDULE

(The Land)

All that plot piece or parcel of land situate between Burvill Street and Cross Street in the Parish of Lynton, as the same is more particularly delineated on the Plan and thereon edged red

THE SECOND SCHEDULE

(The Obligations)

1. **No Sale or Letting of the Dwellings without Authority's approval**
 - 1(1) Not less than 28 days before the date on which the Dwellings are to become available for Sale or Letting, both on the first and on all subsequent occasions, the Applicant shall notify the Authority in writing of such date and of the terms and conditions on which the dwelling is to be made so available.
 - 1(2) The Dwellings shall not be sold or let otherwise than in accordance with the Cascade Provisions.
 - 1(3) The Dwellings shall not (save as provided by sub-paragraph 3(4)(v) of this Schedule)

be occupied otherwise than as the sole or principal residence of a person who satisfies the Local Occupancy Definition, and every disposition of the Dwelling whether by way of Sale or Letting shall be subject to a specific condition to that effect in a form to be approved by the Authority.

2. Cascade Provisions – Private Owners

- 2(1) The provisions of this paragraph shall apply where the owner for the time being of the Land (hereafter referred to in this paragraph 2 as “the Owner”, which term shall where the context so admits or requires include the Applicant) is any person or body other than a Registered Social Landlord.

Lettings

- 2(2) During the period of two months commencing on the date notified to the Authority under paragraph 1(1) (“the first two months”), the Dwellings shall not be let except on the basis that the Defined Area consists of the Parish and the Adjoining Parishes.
- 2(3) If the Owner has been unable to let the Dwellings in accordance with paragraph 2(2) by the expiry of the first two months, then during the two months next following (“the second two months”) the Dwellings may be let on the basis that the Defined Area consists of any part of the area of the North Devon District Council situated within the Park.
- 2(4) If the Dwellings have not been let at the expiry of the second two months, then they may be let on the basis that the Defined Area consists of any part of the area of the Park.

Sales

- 2(5) During the period of six months commencing on the date notified to the Authority under paragraph 1(1) ("the first six months"), the Dwellings shall not be sold except on the basis that the Defined Area consists of the Parish and the Adjoining Parishes.
- 2(6) If the Owner has been unable to sell the Dwellings in accordance with paragraph 2(5) by the expiry of the first six months, then during the six months next following ("the second six months") the Dwellings may be sold on the basis that the Defined Area consists of any part of the area of the North Devon District Council situated within the Park.
- 2(7) If the Dwellings have not been sold at the expiry of the second six months, then they may be sold on the basis that the Defined Area consists of any part of the area of the Park.

All disposals

- 2(8) Before entering into any contract for the Sale or Letting of the Dwellings, the Owner shall notify the Authority in writing of the identity of the proposed buyer or tenant. No such Sale or Letting shall proceed unless and until it has been demonstrated to the satisfaction of the Authority that the proposed buyer or tenant is a person who satisfies the Local Occupancy Definition and will occupy the Dwelling concerned as his or her sole or principal residence, and that the terms of the proposed Sale or Letting are such as to ensure that the requirements of paragraph 1(3) will continue to be complied with, and the Authority has issued the Owner with a certificate in writing to that effect.

3. Cascade Provisions – Registered Social Landlords

- 3(1) The provisions of this paragraph shall apply where (and only where) the Owner for the time being of the Dwellings (hereafter referred to in this paragraph 3 as "the Owner") is a Registered Social Landlord.
- 3(2) In the event that the Dwellings are or are to be subject to a staircasing arrangement,

this paragraph shall apply if the Owner's share of the Ownership thereof will not be permitted to fall below 20% and if the Owner will retain control of any future sale or letting. If the staircasing arrangement does not satisfy those conditions, paragraphs 2(2) to 2(8) (both numbers inclusive) and not this paragraph will apply in all respects to any sale or letting of the Dwellings.

3(3) At the same time as it notifies the Authority under paragraph 1(1) that the Dwellings will become available for letting at the expiry of a period of not less than 28 days ("the specified period"), the Owner shall issue a notification in the same terms to the North Devon District Council and to the Parish Councils of the Parish and of the Adjoining Parishes, and shall publish an advertisement to the same effect in at least one newspaper circulating in the locality.

3(4) Upon the expiry of the specified period, the Owner shall let the Dwellings in accordance with the following order of priority:-

(i) to tenants who satisfy the Local Occupancy Definition on the basis that the Defined Area consists of the Parish and the Adjoining Parishes or, if no such tenants are available,

(ii) to tenants who satisfy the Local Occupancy Definition on the basis that the Defined Area consists of any part of the area of the North Devon District Council situated within the Park PROVIDED ALWAYS that the Owner shall not less than 28 days previously have notified the North Devon District Council and the Parish Councils of all the other Parishes within the Defined Area as so extended that the Dwellings have become available for letting on that basis or, if no such tenants are available,

(iii) to tenants who satisfy the Local Occupancy Definition on the basis that the Defined Area consists of any part of the area of the Park PROVIDED ALWAYS that the Owner shall not less than 28 days previously have notified the North Devon District Council and the Parish Councils of all the other Parishes within the Defined Area as so extended that the Dwellings have become available for letting on that basis or, if no such tenants are available,

(iv) to tenants who satisfy the Local Occupancy Definition on the basis that the Defined Area consists of any part of the area of the Park or of the North Devon District Council PROVIDED ALWAYS that the Owner shall not less than 28 days previously have notified the North Devon District Council and the Parish Councils of all the other Parishes within the Defined Area as so extended that the Dwellings have become available for letting on that basis or, if no such tenants are available,

(v) to tenants who do not satisfy the Local Occupancy Definition but who have established a proven housing need in accordance with the Owner's normal letting criteria, PROVIDED HOWEVER that the terms on which the Dwellings are to be let will under no circumstances permit any staircasing arrangement under which the tenants' share of the Ownership thereof may be increased to 100%.

3(5) At the same time as it issues the notification referred to at paragraph 3(2) the Owner may, if it so chooses, issue the same notification to the North Devon District Council and to all the other Parish Councils entitled to be so notified under paragraphs 3(4) (ii), (iii) and (iv), and state in all such notifications and in the newspaper advertisement referred to at paragraph 3(2) that the Dwellings are to be let in accordance with the Cascade Provisions immediately following the expiry of the specified period. Where the Owner has taken that course it may, at the expiry of the specified period, let the Dwellings in accordance with the order of priorities set out at paragraphs 3(4) (i) to (v) (both numbers inclusive) without further notification or delay.

3(6) Before entering into any contract for the Letting of the Dwellings, the Owner shall notify the Authority in writing of the identity of the proposed tenant. The Authority shall be entitled to be satisfied that the requirements of paragraphs 3(3) and 3(4) or (as the case may be) 3(5) have been complied with, and to that end the Owner shall comply with any reasonable request made by the Authority for the production of documentary or other evidence demonstrating that the proposed tenant has been selected in accordance with the order of priorities set out at paragraph 3(4), and that any person satisfying the Local Occupancy Definition who might have wished to

apply for the tenancy has had a reasonable opportunity to do so.

- 3(7) Nothing in this Agreement shall restrict or otherwise affect the right of the Owner to sell the Dwellings to another Registered Social Landlord on such terms as may be agreed between them. In the event of the Owner's proposing to sell the Dwellings to a person or body who is not a Registered Social Landlord, however, paragraphs 2(5), 2(6) and 2(7) will apply to any such proposed sale in all respects.

4. Certificates

- 4(1) The decision of the Authority as to whether any certificate sought by the Owner under paragraph 2(8) should be issued or withheld shall be final. Any certificate issued by the Authority under that paragraph shall specify the name of the proposed purchaser or tenant and the address of the Dwelling concerned, and shall not authorise the disposal to the person so specified of any other dwelling within the Park or the disposal of that Dwelling to any other person.
- 4(2) Upon the completion of any disposal of the Dwellings whether by way of Sale or Letting the Owners shall forthwith supply to the Authority a certified copy of the instrument of disposal.

5. Dependants

- 5(1) For the avoidance of doubt, nothing in this Agreement shall be construed as limiting or restricting the right of any person by whom any of the Dwellings is occupied in conformity with the provisions of this Agreement to occupy it in common with any other person who is for the time being a dependant of him or her.

THE COMMON SEAL of THE EXMOOR)
NATIONAL PARK AUTHORITY was hereunto)
affixed in the presence of:)

THE COMMON SEAL of NORTH DEVON)
DISTRICT COUNCIL was hereunto)
affixed in the presence of:)

