

7th November  
**DATED 7<sup>th</sup> November 2023**

**DEALING WITH ROUNDABOUT/HIGHWAYS  
THE COUNCIL OF THE BOROUGH OF KIRKLEES (1)**

**-and-**

**EBORACUM 3 LIMITED (2)**

**-and-**

**KCS DEVELOPMENTS LIMITED (3)**

**AGREEMENT**

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Under Section 106 of the Town & Country Planning Act 1990 (as amended)  
relating to  
Land at Penistone Road and Rowley Lane

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THIS AGREEMENT is made the 7<sup>th</sup> day of November Two Thousand and Twenty Three

**BETWEEN: -**

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Civic Centre 3, Market Street, Huddersfield, HD1 1WG (hereinafter called "the **Council**") of the first part; and
- (2) **EBORACUM 3 LIMITED** (Company No.08499658) whose registered office is situate at 12 Helmet Row, London, United Kingdom, EC1V 3QJ (hereinafter called "the **Owner**") of the second part; and
- (3) **KCS DEVELOPMENT LIMITED** (Company No. 07777073) whose registered office is at 3rd Floor Goodbard House, Infirmary Street, Leeds LS1 2JP (the "**Developer**").

together the "**Parties**" and reference to "**Party**" shall be construed accordingly.

**WHEREAS**

1. The Council is the local planning authority for the Kirklees District within which the Site is situated and by whom the planning obligations within this Agreement are enforceable.
2. The Owner is the registered freehold proprietor of the Site registered with HM Land Registry under title registration number WYK842381 (which title also includes land that is not the subject of the Application)
3. The Developer has submitted the Application to the Council for planning permission in relation to the Development.
4. The Council resolved on that subject to the completion of this Agreement the Planning Permission should be granted.

5. By the provisions of Section 106 of the 1990 Act any person interested in land in the area of a local planning authority may by agreement or otherwise enter into a planning obligation in respect of the land.

**NOW IT IS HEREBY AGREED** as follows:

1. **INTERPRETATION**

- 1.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this clause:

<b>"1990 Act"</b>	means the Town and Country Planning Act 1990 (as amended);
<b>"Additional First Homes Contribution"</b>	means the sum payable in accordance with the First Schedule
<b>"Affordable Housing"</b>	means for the purpose of this Agreement housing as defined in Annex 2 of the National Planning Policy Framework (as may be updated or superseded) that will be made available to people whose income is insufficient to enable them to afford housing locally on the open market and being 20% of dwellings on the Site with a split of 55% social or affordable rent to 45% intermediate housing (including 25% First Homes);
<b>"Affordable Housing Plan"</b>	means the plan approved by the Council showing the number, location, type, and tenure of the Affordable Housing on the Development
<b>"Application"</b>	means the outline planning application access registered by the Council under reference number 2022/91735 for the erection of 80 dwellings and associated work

**Appointed Agent**

means either a developer that is party to and has entered into a s.278 Highways Agreement with the Council to carry out the Highway Works or the Contractor

**“Armed Services Member”**

means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the 5 (five) years prior to the purchase of the First Home, or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service;

**“Close Family”**

means a spouse, civil partner, partner, son, daughter, sibling, grandparent, parent;

**“Commencement of Development”**

means the actual date upon which the Development is begun by the carrying out on the Site of any material operation as defined by Section 56(4) of the 1990 Act save that the term "*material operation*" shall not for the purpose of this Agreement include operations in connection with any work of or associated with demolition, site clearance, remediation works, environmental or archaeological investigation, site and soil surveys, construction of access road, erection of contractors' work compound, erection of site office, construction of access road, erection of fencing to site boundary and reference to "**Commence Development**" shall be construed accordingly;

**“Compliance Certificate”**

means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 1.1.2 of the First Schedule applies the

Eligibility Criteria (Local) and the cost of any subsequent Compliance Certificate that may arise on subsequent disposal of a Dwelling as a First Home will be borne by the purchaser of that Dwelling;

**Contractor**

means a contractor appointed by the Council as the principal contractor under the CDM Regulations to carry out the Highway Works on the Council's behalf

**"Contributions"**

means the Sustainable Travel, Contribution, the Highways Contribution, the Public Open Space Contribution, and the Education Contribution and reference to "**Contribution**" shall be construed accordingly;

**"Development"**

means the development of the Site in pursuance of the Planning Permission;

**"Disposal"**

means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:

- (a) a letting or sub-letting in accordance with paragraph 1.2 of the First Schedule;
- (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner;
- (c) a First Homes Exempt Disposal

and reference to "**Disposed**" shall be construed accordingly;

**"Dwelling"**

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

**Education Contribution**

means the sum payable in accordance with the First Schedule

**"Eligibility Criteria (Local)"**

means criteria (if any) published by the Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:

- (a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and
- (b) any or all of criteria (i) and (ii) below are met:
  - (i) the purchaser meets the First Homes Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or
  - (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member.

**"Eligibility Criteria (National)"**

means criteria which are met in respect of a purchase of a First Home if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and

- (b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National);

**"Exempt Disposal"**

means the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner;
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner;
- (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order;
- (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 1.3 of the First Schedule shall apply to such sale);

**PROVIDED THAT** in each case other than (d) the person to whom the Disposal is made complies with the terms of paragraph 1.2 of the First Schedule;

**Final Certificate**

means the certificate given by the Council as highways authority approving the implementation and completion of the Roundabout Highways Scheme

**“First Homes”**

means Dwellings of Affordable Housing as shown on the Affordable Housing Plan or in such other locations that may be agreed in writing between the Council and the Owner to be provided as First Homes as defined in the Department for Levelling Up, Housing and Communities 'First Homes' guidance published in May 2021 (or any future guidance or initiative that replaces or supplements it) and which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the First Home Sale Price and which on its first Disposal does not exceed the Price Cap and reference to **"First Home"** shall be construed accordingly;

**“First Homes Administration Charge”**

means £350 per applicable First Home or the reasonable and proper costs incurred by the Council ) in consideration of the following:

- (a) evidence supplied by any purchaser meeting the First Home Eligibility Criteria (National) and (Local)
- (b) evidence supplied by the Owner of the First Home in relation to the First Homes sales Price
- (c) provision of the Compliance Certificate

**“First Homes Owner”**

means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- (a) the Owner; or
- (b) another developer or other entity to which the freehold interest or leasehold interest in a First

Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or

- (c) a tenant or sub-tenant of a permitted letting under paragraph 1.2 of the First Schedule;

**“First Home Sale Price”** means the price of the First Homes to be agreed with the Council prior to the Disposal of any of the First Homes but that shall be a price equal to the Market Value of an equivalent Market Housing Unit less a discount equal to 30% (thirty percent) of the Market Value;

**“First Time Buyer”** means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003 and reference to **“First Time Buyers”** shall be construed accordingly.

**Highway Works** The highway improvement works required by future phases of development, in order to improve the capacity of the Rowley Lane/Penistone Road junction and to create a new vehicular access to future phases of HS2 and HS3, as shown indicatively on drawing ref 11340/002 Rev B by virtue of policy LP5 (Masterplanning) of the Kirklees Local Plan

**Highway Works Contribution** means the sum payable in accordance with the First Schedule

**“Income Cap (Local)”** means £80,000.00 (eighty thousand pounds) or such other local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home;

**"Income Cap (National)"** means:

- (a) in the case of a First Home situated within the administrative area of any London Borough Council (including the City of London) – £90,000.00 (ninety thousand pounds)); and
- (b) in the case of any other First Home –£80,000.00 (eighty thousand pounds))

or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home;

**"Independent Surveyor"** means an independent chartered surveyor of no less than 10 (ten) years post qualification experience unconnected to any of the Parties hereto and experienced in residential development matters who shall be appointed at the Owner's cost but first approved by the Council;

**"Index Linked"** means an increase or decrease to the Contributions on an annual basis or pro rata per diem from the date of this Agreement to the date of payment (or calculation as the case may be) in accordance with the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if the All In Tender Price Index ceases to exist such index as the Council reasonably nominates;

**"Inspection Fee"** means the sum of £1000 (one Thousand Pounds ) for the inspection of the **Public Open Space Areas**

**"Local Connection  
Criteria"**

means a person or a member of their household having a connection to the Locality by reason of the following:

- (a) currently lives in the Locality as their primary residence and has done so for the past 3 years;
- (b) previously lived in the Locality as the primary residence for at least 5 years cumulatively in the past 10 years;
- (c) has Close Family ordinarily resident in the Locality and that Close Family has been ordinarily resident in the Locality for the past 3 years;
- (d) need to move to the Locality to receive or provide care or support;
- (e) is employed on a permanent basis for more than 16 hours per week in the Locality or is about to take up an offer of permanent employment in the Locality;
- (f) needs to move to the Locality to be close to local facilities because of a specific identified need;
- (g) has some other connection to the Locality as approved by the Council in writing.

**"Management Company"**

means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner for the purposes carrying out future maintenance of the POS, the On-Site Drainage Works and the On-Site Biodiversity Net Gain Area, in accordance with paragraph 7 of the First Schedule and:

1. which is incorporated in England and Wales or Scotland;

2. which has its registered office in England or Scotland;  
and
3. whose primary objects permit it to maintain and  
renew the POS and the On-Site Drainage Works;

**"Market Dwellings"**

means those Dwellings within the Development excluding the Dwellings which are Affordable Housing

**"Mortgagee"**

means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home;

**"Occupation"**

means the beneficial occupation under a sale lease licence or other arrangement for the purpose for which the Dwelling was granted planning permission but shall exclude occupation for the purposes of fit out or marketing or security and reference to and **"Occupy"** shall be construed accordingly;

**"Off site Public Open Space Contribution"**

means the sum payable in accordance with the First Schedule

**"On-Site Drainage Management and Maintenance Plan"**

means a detailed management plan setting out measures to be undertaken to ensure the On-Site Drainage Works are properly maintained and managed in perpetuit

**“Public Open Space Areas Landscaping and Management Scheme”**

means a scheme for the future maintenance and management of the **Public Open Space Areas** to be submitted by the Owner and approved by the Council (together with any variation of such scheme agreed in writing from time to time between the Owner and the Council);

**“Public Open Space Areas”**

means those areas of public open space on the Site and shown as per the legend on Plan 338-UW-P-010 rev. A and laid out and landscaped in accordance with the approved Public Open Space Areas Landscaping and Management Scheme

**“On-Site Drainage Works”**

means a sustainable urban drainage system (“**SUDS**”), together with associated infrastructure, to be installed within the Site in accordance with paragraph x of Schedule XX and the approved On Site Drainage Scheme

**“On Site Biodiversity Net Gain Area”**

means the on-site Biodiversity Net Gain (“**BDNG**”) area to be provided within the Site in accordance with details to be approved pursuant to condition 27 of the Planning Permission

**“Plan 1”**

means the plan so marked and attached hereto at Annex 1;

**“Planning Permission”**

means a planning permission which may be granted by the Council pursuant to the Application;

**“Price Cap”**

means the amount for which the First Home is sold after the application of the First Home Sale Price which on its first Disposal shall not exceed £250,000.00 (two hundred

and fifty thousand pounds) or such other amount as may be published from time to time by the Secretary of State;

**"Reasonable Endeavours"**

means that it is agreed by the Parties that the Party under such an obligation will not be required to take proceedings (including any appeal) in any court, public inquiry, or other hearing (unless specified to the contrary) but subject to these and to other terms of this Agreement such Party will be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may be reasonable to expect;

**"SDLT"**

means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;

**"Secretary of State"**

means the Secretary of State for the Department of Levelling Up, Housing and Communities or any substitute or any Inspector appointed by him;

**"Site"**

means the land known as Penistone Lane and Rowley Lane which is shown edged red on Plan 1;

**"Sustainable Travel Contribution"**

means the sum payable in accordance with paragraph 2 of the First Schedule

**"Travel Plan"**

means the travel plan prepared by Optima dated January 2022 revision 3 submitted by the Developer to the Council as part of the Application and which summarises the accessibility of the Site and outlines a range of travel plan measures which will be promoted to residents to encourage sustainable travel patterns at the Site, together

with providing an outline of the proposed measures and monitoring strategy, which will be implemented at the Site;

**"Travel Plan Monitoring Fee"** means the sum of £10,000.00 (ten thousand pounds) Index Linked to be paid to the Council by the Owner in accordance with paragraph 3 of the First Schedule and applied by the Council towards the monitoring of the Travel Plan the need for which is to mitigate the effects of the Development;

**"Valid Invoice"** means an invoice prepared by the Appointed Agent in accordance with the terms of the s.278 Agreement or the programme(s) prepared by the Contractor and agreed from time to time in writing by the Council for the carrying out of the Highway Works showing the sequence in which the Highway Works are to be carried out with an estimate of time that will be spent, and costs involved in carrying out each stage of the Highway Works

**"Water Company"** means:

- (i) Yorkshire Water; or
- (i) such other licenced water company that is regulated by The Water Services Regulation Authority (OFWAT);

**"Working Day"** means any day except Saturdays Sundays or bank holidays and reference to **"Working Days"** shall be construed accordingly;

**Works Costs** means the of the entire costs of all works deemed necessary by the Council for the Highway Works.

**"Yorkshire Water"**

means Yorkshire Water Service Limited or any successor authority to its statutory functions under the Water Industry Act 1991.

1.2 Clause headings are for reference only and shall not affect the construction of this Agreement.

1.3 Where more than one person is included in the expressions "the Council", "the Owner", and "the Developer" agreements and obligations expressed to be made or assumed by such Party are made or assumed and are to be construed as made or assumed by all such persons jointly and each of them severally.

1.4 Any covenant by the Owner not to 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.

1.5 The masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa.

1.6 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it and any regulations or statutory instrument made under it which is for the time being in force.

1.7 A reference to a clause or schedule or paragraph is a reference to a clause or schedule or paragraph contained in this Agreement and does not affect the interpretation or construction of this Agreement.

**2. GENERAL**

2.1 This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 of the

Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.

- 2.2 Subject to clause 2.5 the Owner covenants with the Council to observe the restrictions and perform the obligations contained in paragraphs 1 to 6 (inclusive) of the First Schedule with the intent that those restrictions and obligations shall bind the Owner and each and every part of the Site and the Developer acknowledges that its interest in the Site will be bound by the obligations contained in the First Schedule.
- 2.3 The Council covenants with the Owner to observe the restrictions and perform the obligations contained in the Second Schedule and where applicable in the First Schedule.
- 2.4 The expression " Owner" and "the Developer" shall include their successors in title and assigns and the expression "the Council" shall include its respective successor authority.
- 2.5 No person shall be bound by the terms of this Agreement or shall be liable for breach of any covenants, restrictions, duties, provisions or obligations contained in this Agreement after he or it shall have parted with his or its interest in the Site 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.
- 2.6 This Agreement shall not be binding upon:
  - 2.6.1 a purchaser an occupier or a tenant of individual Dwellings or if it shall be a mortgagee and / or chargee and / or their respective successors in title and / or receiver appointed by the mortgagee and / or chargee of a Dwelling; or
  - 2.6.2 with regard to paragraphs 2 to 6 (inclusive) of the First Schedule if he or she shall be a purchaser an occupier or a tenant of any of the First Homes or a purchaser of an individual First Home or in the event of default under a mortgage or charge or upon any receiver appointed

by them its successors in title to such mortgagee, chargee or receiver;  
or

- 2.6.3 (save for the provisions of paragraph 5 of the First Schedule) if it shall be a Management Company or the mortgagee and / or chargee of a Management Company and / or in the event of default under a mortgage or charge or upon any receiver appointed by them its successors in title to such mortgagee, chargee or receiver; or
- 2.6.4 an occupier or tenant or a purchaser of a site or sites required for statutory infrastructure purposes in relation to the Development.
- 2.7 Paragraphs 1.1 and 1.2 of the First Schedule apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner.
- 2.8 This Agreement shall not become effective until the following conditions are satisfied:
- 2.8.1 the Planning Permission has been granted; and
- 2.8.2 the Commencement of Development has occurred
- (except where otherwise specifically stated in this Agreement).
- 2.9 If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner or its successors in title this Agreement shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any Party prior to such date.
- 2.10 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Agreement.

- 2.11 This Agreement is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registered as such on completion.
- 2.12 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.
- 2.13 Wherever this Agreement requires the approval agreement determination or consent of the Council such approval agreement determination or consent shall be provided in writing and is not to be unreasonably withheld or delayed.
- 2.14 Unless otherwise stated this Agreement is governed by and interpreted with the law of England.
- 2.15 It is agreed that any mortgagee and / or chargee and / or their respective successors in title and / or receiver appointed by the mortgagee and / or chargee of the Owner or the Owner' successors in title shall have no liability under this Agreement unless and until it becomes a mortgagee in possession of the Site or the part of the Site in relation which its charge relates in which case it too will be bound by the obligations as if it were a person deriving title from the Owner or the Owner' successors in title as the case may be.
- 2.16 The Developer shall pay the Council's reasonable legal costs incurred in the preparation of this Agreement.

### **3 VAT**

- 3.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any Value Added Tax properly payable.

### **4 WAIVER**

- 4.1 No waiver (whether expressed or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants, terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owner from enforcing any of the

relevant terms or conditions or for acting upon any subsequent breach or default.

## 5 **NOTICES**

5.1 All notices, requests and demands or other written communications to or upon the Parties pursuant to this Agreement shall be deemed to have been properly given or made if dispatched by first class letter or facsimile transmission to the Party to which such notice, request, demand or other written communication is to be given or made under this Agreement and addressed as follows (or to such other address as the Party to whom the notices, requests, demands or other written communication is to be given or made shall from time to time notify in writing to the other Parties as its address for the purposes of this Clause 5.1):

5.1.1 To the Council: Service Director: Legal Governance and Commissioning Legal Services, Legal Services Kirklees Council PO Box 1720 Huddersfield HD1 9EL

5.1.2 In respect of First Homes/Affordable Housing to Housing Officer, Regeneration and Housing on email ref: Housing.Regeneration@kirklees.gov.uk

## 6 **DISPUTES**

6.1 Any dispute arising between the Parties as to their respective rights, duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with Clause 6.2 below to the determination of an Independent Surveyor.

6.2 Any reference to an Independent Surveyor in accordance with Clause 6.1 above shall be to a reputable Independent Surveyor unconnected to any of the Parties hereto and experienced in developments of this nature who shall be agreed between the Parties to the dispute or appointed on the application

of any party to the dispute made at any time by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such Independent Surveyor shall be final and binding upon the Parties to the dispute and the Parties hereby agree to act in accordance with the decision (save for manifest error) and if the Parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Independent Surveyor shall act as an expert pursuant to the terms of this Clause 6.2 then each of the Parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the Parties to the dispute or the Independent Surveyor himself) shall be paid.

## **7 JURISDICTION**

7.1 This Agreement is governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

## **8 DELIVERY**

8.1 The provisions of this Agreement (other than this Clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be executed as a Deed

**FIRST SCHEDULE**  
**(Owner' Planning Obligations)**

The Owner covenant with the Council as follows:

**1 FIRST HOMES**

**1.1. First Homes – Delivery Mechanism**

1.1.1. The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

1.1.1.1. the Eligibility Criteria (National); and

1.1.1.2. the Eligibility Criteria (Local) (if any).

1.1.2. If after a First Home has been actively marketed for 3 (three) months (such period to expire no earlier than 3 (three) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 1.1.1.2 of this Schedule shall cease to apply.

1.1.3. Subject to paragraphs 1.1.6 to 1.1.10 of this Schedule, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% (fifty percent) of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee.

1.1.4. No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

1.1.4.1. The Council has been provided with evidence that:

- (a) the intended purchaser meets the First Homes Eligibility Criteria (National) and unless paragraph 1.1.2 of this Schedule applies meets the First Homes Eligibility Criteria (Local);
- (b) the Dwelling is being Disposed of as a First Home at the First Home Sale Price; and
- (c) the transfer of the First Home includes:
  - (i) a definition of the "Council" which shall be "The Council of the Borough of Kirklees";
  - (ii) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in paragraphs 1.1.1 to 1.1.9 of the First Schedule to the Section 106 Agreement;"
  - (iii) a definition of "Section 106 Agreement" in the following terms:

"means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [            ] made between (1) The Council of the Borough of Kirklees (2) Eboracum 3 Limited and (3) KCS Developments Limited
  - (iv) a provision that the First Home is sold subject to and with the benefit of the First Homes Provisions and the transferee acknowledges that it may not transfer or otherwise Dispose of the First Home or any part of it other than in accordance with the First Homes Provisions.

(v) a copy of the First Homes Provisions in an Annexure to the transfer.

(vi) The First Homes Administration Charge has been paid to the Council by the Developer on the first Disposal and by the transferor on any subsequent Disposal

1.1.4.2. The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within 14 (fourteen) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 1.1.3 and 1.1.4.1 of this Schedule have been met.

1.1.5. On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

*"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by The Council of the Borough of Kirklees of Town Hall Ramsden Street, Huddersfield, HD1 2TA or a conveyancer that the provisions of clause XX (the First Homes Provision) of the Transfer dated [ Date ] referred to in the Charges Register have been complied with or that they do not apply to the disposition"*

1.1.6. The owner of a First Home (which for the purposes of this clause shall include the Owner, the Developer and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

1.1.6.1. the Dwelling has been actively marketed as a First Home for 6 (six) months in accordance with paragraphs 1.1.1 and 1.1.2

of this Schedule (and in the case of a first Disposal the 6 (six) months shall be calculated from a date no earlier than 6 (six) months prior to Practical Completion) and Reasonable Endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 1.1.3 and 1.1.4.1 of this Schedule; or

1.1.6.2. requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 1.1.6.1 of this Schedule before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship.

1.1.7. Upon receipt of an application served in accordance with paragraph 1.1.6 of this Schedule the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the First Home Sale Price.

1.1.8. If the Council is satisfied that either of the grounds in paragraph 1.1.6 of this Schedule have been made out it shall confirm in writing within 28 (twenty eight) days of receipt of the written request made in accordance with paragraph 1.1.6 of this Schedule that the relevant Dwelling may be Disposed of:

1.1.8.1. to the Council at the First Home Sale Price; or

1.1.8.2. (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home;

and on the issue of that written confirmation the obligations in this Agreement which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 1.1.10 of this Schedule which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home.

1.1.9. If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied acting reasonably that either of the grounds in paragraph 1.1.6 of this Schedule have been made out then it shall within 28 (twenty eight) days of receipt of the written request made in accordance with paragraph 1.1.6 of this Schedule serve notice on the Owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than 6 (six) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 1.1.6 of this Schedule following which the Council must within 28 (twenty eight) days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.

1.1.10. Where a Dwelling is Disposed of other than as a First Home or to the Council at the First Home Sale Price in accordance with paragraphs 1.1.8 or 1.1.9 of this Schedule the owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the lower of the following two amounts ("Additional First Homes Contribution")

(a) 30% (thirty percent) of the proceeds of sale; and

(b) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home;

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home;

1.1.11. Upon receipt of the Additional First Homes Contribution the Council shall:

1.1.11.1. within 28 (twenty-eight) working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 1.1.5 of this Schedule where such restriction has previously been registered against the relevant title;

1.1.11.2. apply all monies received as Local Housing Authority for the provision and enabling of housing accommodation pursuant to the Housing Act 1985 the Housing Act 1988 the Housing Act 1989 (or as any of the same may be subsequently amended) and all other enabling powers the nature of such payments being within the absolute discretion of the Council.

1.1.12. Any person who purchases a First Home free of the restrictions in this First Schedule pursuant to the provisions in paragraphs 1.1.9 and 1.1.10 of this Schedule shall not be liable to pay the Additional First Homes Contribution to the Council.

1.1.13. To enable to Council to comply with its obligations in relation to monitoring Affordable Housing for Central Government, on completion of the first Disposal of a First Home, the Owner shall within 14 days of receipt of the Council's request, provide a copy of the transfer deed effecting the Disposal or such other information that the Council requests, acting reasonably, in connection with the Disposal.

## 1.2. **First Homes – Use**

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Agreement **PROVIDED THAT** letting or sub-letting shall be permitted in accordance with paragraphs 1.2.1 – 1.2.4 of this Schedule:

- 1.2.1. A First Homes Owner may let or sub-let their First Home for a fixed term of no more than 2 (two) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed 2 (two) years.
- 1.2.2. A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances of paragraphs 1.2.2.1 to 1.2.2.6 of this Schedule:
  - 1.2.2.1. the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
  - 1.2.2.2. the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
  - 1.2.2.3. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
  - 1.2.2.4. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
  - 1.2.2.5. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
  - 1.2.2.6. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
  - 1.2.2.7. A letting or sub-letting permitted pursuant to paragraph 1.2.1 or 1.2.2 of this Schedule must be by way of a written lease or

sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

- 1.2.3. Nothing in this paragraph 1.2 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

1.3. **First Homes – Mortgagee Exclusion**

The obligations in paragraphs 1.1 and 1.2 of this Schedule in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (**each a Receiver**))) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver **PROVIDED THAT:**

- 1.3.1. such Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
- 1.3.2. once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 1.3.3 of this Schedule;
- 1.3.3. following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution;
- 1.3.4. following receipt of notification of the Disposal of the relevant First Home the Council shall:
- 1.3.4.1. forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 1.1.5 of this Schedule; and
- 1.3.4.2. apply all such monies received towards the provision of Affordable Housing.

2. **SUSTAINABLE TRANSPORT**

### Sustainable Travel Fund Contribution

- 2.1. To pay the sum of £40,920 (Forty Thousand Nine Hundred and Twenty Pounds) Index Linked to the Council, 50% of which to be paid prior to Occupation of any Dwelling on the Development and the remaining 50% of which is to be paid prior to Occupation of the 40<sup>th</sup> Dwelling on the Development, and not to Occupy any further Dwelling until the Sustainable Travel Fund Contribution has been paid to the Council, which is to be applied by the Council towards the procurement or implementation of measures to encourage residents of the Development to use sustainable modes of transport which may include off-site measures and funding of relevant projects.

### **3. TRAVEL PLAN**

- 3.1. To pay the Travel Plan Monitoring Fee to the Council prior to the Occupation of any Dwelling and not to Occupy any Dwelling until the Travel Plan Monitoring Fee has been paid to the Council.

### **4. PUBLIC OPEN SPACE CONTRIBUTION**

- 4.1. To pay a sum of £72,724.00 Index (Seventy Two Thousand Seven Hundred and Twenty Four Pounds) Index Linked (or such other sum as recalculated at the Reserved Matters stage based upon final number of units and the level of on-site provision at that time and agreed in writing by the Council ) to the Council as a contribution towards improvements to publicly accessible open space within the vicinity of the Development, in order to address impacts which directly arises from the Development;("the Public Open Space Contribution") in the phased instalments and before the deadlines specified in paragraphs 4.2 of this Schedule.
- 4.2. To pay of the Off-Site Public Open Space Contribution Index Linked to the Council prior to the Occupation of 50% of any Dwellings and not to Occupy more than 50% of the Dwellings until the Off-Site Public Open Space Contribution Index Linked has been paid to the Council.

### **5. HIGHWAY WORKS CONTRIBUTION**

- 5.1 To pay the sum of £422,224.00 Index Linked (Four Hundred and Twenty-Two Thousand Two Hundred and Twenty Four Pounds) being 13.4% of the anticipated Highways Works Costs to the Council prior to the Commencement of Development which is to be applied by the Council towards the Highways Works Costs as set out in in paragraph 5 of Schedule 2

## **6. EDUCATION CONTRIBUTION**

- 6.1 To pay the sum of £225,821.00 (Two Hundred and Twenty Five Thousand Eight Hundred and Twenty One Pounds ) Index Linked to the Council, 50% of which to be paid prior to Occupation of any Dwelling on the Development and the remaining 50% of which to be paid prior to Occupation of the 40th Dwelling on the Development and , and not to Occupy further Dwelling until the Education Contribution has been paid to the Council, which is to be applied by the Council towards improvements to education provisions within the vicinity of the Development, in order to address impacts which directly arise from the Development

## **7. ON-SITE MANAGEMENT**

### **On-Site Drainage Works**

#### On-Site Drainage Maintenance and Management Plan

- 7.1. To provide the On-Site Drainage Works in accordance with the Planning Permission and condition(s) thereto to the reasonable satisfaction of the Council.
- 7.2. Not to Commence Development until the On-Site Drainage Management and Maintenance Plan has been submitted to the Council for approval.
- 7.3. The On-Site Drainage Management and Maintenance Plan will include detailed measures setting out how the On-Site Drainage Works will be maintained and managed to include:
- 7.3.1. details and a programme for the long-term management and maintenance to cover all aspects of the On-Site Drainage Works;

- 7.3.2. detailed maintenance schedules which must include details of the frequency of all actions and routine maintenance activities, the timings of all inspections (including annual inspections) and the timing of management works arising from inspections;
  - 7.3.3. details of the maintenance regime that will be adopted during the construction phase up until the point that the On-Site Drainage Works are signed off as complete in accordance with the approved design;
  - 7.3.4. details of vehicular and pedestrian access arrangements relating to the inspection and maintenance of the On-Site Drainage Works; and
  - 7.3.5. a submission of risk assessments and method statements concerning access to and into confined spaces and carrying out of defined maintenance and management operations associated with surface water sewerage, as sanctioned by the Principal Designer under CDM Regulations 2015.
- 7.4. In the event that the Council considers (acting reasonably) that it is unable to approve the submitted version of the On-Site Drainage Management and Maintenance Plan then the Owner shall submit a revised version to the Council taking into account any reasonable comments that the Council has provided, for their approval, and this procedure shall be repeated as often as is necessary until the Council approves the On-Site Drainage Management and Maintenance Plan.
- 7.5. Unless otherwise first agreed in writing by the Council, not to carry out any above ground works comprised in the Development unless and until the On-Site Drainage Management and Maintenance Plan has been approved by the Council.
- 7.6. The approved On-Site Drainage Management and Maintenance Plan shall only be varied or amended with the written approval of the Council.

Maintenance and Management of the On-Site Drainage Works

- 7.7. To fully comply with the approved On-Site Drainage Management and Maintenance Plan from the date that it is approved by the Council in accordance with paragraph 6.4 of this Schedule and at all times thereafter to manage and maintain the On-Site Drainage Works in accordance with the details set out in the approved On-Site Drainage Management and Maintenance Plan until the earlier of the date that the On-Site Drainage Works are transferred to a Management Company and the date that the On-Site Drainage Works have been adopted by Yorkshire Water.
- 7.8. Until such time as the On-Site Drainage Works are adopted by Yorkshire Water the Council may upon reasonable notice enter the Site in order to check and monitor compliance with the approved On-Site Drainage Management and Maintenance Plan.
- 7.9. In the event that the Council considers (acting reasonably) that the requirements of the approved On-Site Drainage Management and Maintenance Plan are not being complied with and unless the On-Site Drainage Works have been adopted by Yorkshire Water then the Council may serve a notice on the Owner or the Management Company (as the case may be) requiring the Owner or the Management Company (as appropriate) to undertake such remedial steps as are specified in the notice.
- 7.10. The Owner or the Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to paragraph 7.9 of this Schedule within 20 (twenty) Working Days of the date of service by the Council of the said notice or within such other fair and reasonable period that may be agreed by the Council in writing.
- 7.11. No part of the Site upon which the On-Site Drainage Works are located shall be transferred or leased to any Management Company (as apart from Yorkshire Water in which case any transfer or lease may proceed without the approval of the Council) unless the identity of that Management Company has been approved by the Council (acting reasonably) in writing.
- 7.12. In seeking approval from the Council to any Management Company to whom the Owner intends to transfer or lease the On-Site Drainage Works they shall

provide the Council with details of the assets, how the ongoing maintenance and management works will be funded, structure, voting rights and such other information as the Council (acting reasonably) shall require.

- 7.13. The Owner shall ensure that the Council is provided with up-to-date contact details (including a contact name, address, telephone number and e-mail address) of any third party or person who is engaged or contracted to carry out any maintenance or management works in respect of the On-Site Drainage Works.
- 7.14 For the avoidance of doubt, upon receipt by the Council of satisfactory evidence that the On-Site Drainage Works have been completed and the Council has so approved in writing, and upon completion of the transfer or lease of the On Site Drainage Works to any Management Company, the Owner shall not be liable for any breach of a covenant, restriction or obligation contained in this paragraph 7 of the First Schedule.

#### Adoption by a Water Company

- 7.15 Upon adoption by a Water Company under an agreement by way of s104 Water Industry Act 1990\_the obligations in paragraphs 7.7 to 7.14 (inclusive) of this Schedule shall thereafter cease and not be applicable.

#### **PUBLIC OPEN SPACE ON SITE**

- 7.16 To provide the Public Open Space Area in accordance with the Planning Permission and condition(s) thereto.
- 7.17 Not to Occupy any of the Dwellings until it has submitted for the written approval of the Council a **Public Open Space Areas Landscaping Management Scheme** for the future maintenance and management of the **Public Open Space Areas**.
- 7.18 Not at any time to use or knowingly allow the Public Open Space Area to be used as a site compound for the storage of construction materials and plant

and/or the location of a site office in connection with the Development (unless otherwise agreed in writing with the Council).

- 7.19 To implement the approved Public Open Space Area Landscaping and Management Scheme in conjunction with and as part of the Development and shall in any event complete the same to the satisfaction of the Council no later than Occupation of 75% of the Dwellings on the Site
- 7.20 As soon as is reasonably practicable after the completion of the Public Open Space Area Landscaping and Management Scheme the Owner shall notify the Council in writing that such works have been completed.
- 7.21 Not later than one calendar month following receipt of the relevant notice referred to in clause 7.19 above the Council shall inspect the Public Open Space Area and if the **Public Open Space Area Landscaping and Management Scheme** have been carried out to the reasonable satisfaction of the Council it shall notify the Owner in writing within 5 Working Days of the inspection
- 7.22 If, upon inspection by the Council, the Council (acting reasonably) find that the Public Open Space Area Landscaping and Management Scheme has not been carried out to its reasonable satisfaction it shall within 5 Working Days of the inspection, notify the Owner in writing specifying the measures necessary to satisfactorily complete the Public Open Space Area Landscaping and Management Scheme and the Owner shall within such period as specified by the Council (acting reasonably) in the notice carry out those works and shall notify the Council under clause 7.19, such procedure being repeated as often as is necessary until such time as the Council confirms satisfactory completion under clause 7.20.

- 7.23 The Owner shall until such time as the Public Open Space Area is transferred to the Management Company under clause 8.5 below, maintain the Public Open Space Area in accordance with the rules of good horticulture and husbandry keeping it properly maintained and shall replace trees shrubs and plants which shall die or become diseased or are damaged or removed and shall trim prune mow and feed the Public Open Space Area and shall repair replace and maintain any hard surfaces fences walls drains or play equipment which are damaged or removed
- 7.24 The Owner shall pay the Inspection Fee to the Council no later than the execution of the transfer under clause 8.5 below

#### **ON SITE BIODIVERSITY NET GAIN AREA**

- 7.25 To provide the Biodiversity Net Gain Area in accordance with the Planning Permission and condition(s) thereto to the satisfaction of the Council.
- 7.26 Not to Commence Development until the BDNG plan has been submitted to the Council for approval.
- 7.27 The BDNG plan will include detailed measures setting out how the On-Site Biodiversity Net Gain Area will be maintained and managed to include:
- 7.27.1 Risk assessment of potentially damaging construction activities
  - 7.27.2 Identification of biodiversity protection zones
  - 7.27.3 details and a programme for the management and maintenance of the Biodiversity Net Gain Area for a period of 30 years;
  - 7.27.4 detailed of mechanisms to ensure any planning authority monitoring and reporting requirements are satisfied including schedules providing details of the frequency of all actions and activities, the timings of all inspections (including annual inspections) and the timing of any remedial works arising from inspections;
  - 7.27.5 Maintenance and Management of the On-Site Biodiversity Net Gain Area

- 7.27.6 To fully comply with the approved BDNG plan from the date that it is approved by the Council and subject to paragraph 5.21.7 of this schedule 2, at all times thereafter to manage and maintain the On-Site Biodiversity Net Gain Area in accordance with the details set out in the approved BDNG Plan until the end of the 30 year BDNG maintenance period or earlier if by mutual agreement.
- 7.27.7 Within 3 (three) months (or within such other period of time that may be agreed in writing by the Council) of the On Site Biodiversity Net Gain Area having been provided in accordance with the Planning Permission and condition(s) thereto the Owner shall transfer the On-Site Biodiversity Net Gain Area to the Management Company PROVIDED THAT it is agreed that the transfer shall contain a covenant so as to bind the On-Site Biodiversity Net Gain Area into whomsoever hands the same may be transferred to maintain the On-Site Biodiversity Net Gain Area in accordance with the BDNG plan

#### **PUBLIC FOOTPATH- ON SITE**

- 7.28. to manage and maintain the public access footpath ("Public Accessway" shown coloured pink on the Drawing 3284-0-002 Rev. II attached as Annex 2) in a safe condition, to the standard of repair required to prevent unreasonable interference with the rights of the persons using the Public Accessway and fit for the type of traffic which ordinarily is expected to use it until the earlier of the date that the management and maintenance of the Public Accessway is transferred to a Management Company and the date that the Public Accessway is adopted or dedicated and added to the definitive map.

#### **8. OWNERS COVENANTS-Management Company.**

- 8.1 The Owner shall not cause or permit or suffer Occupation of any Dwelling permitted by the Planning Permission until the Management Company has been incorporated

8.2 On the Disposal of each Dwelling permitted by the Planning Permission to transfer a share in the Management Company to the purchaser of each Dwelling

8.3 The transfer for each Dwelling shall contain a covenant on the part of the Management Company to maintain the Public Open Space Area in accordance with the rules of good horticulture and husbandry keeping it properly maintained and shall contain a further covenant on the part of each Dwelling purchaser to pay a service charge in respect of the Management Company's maintenance of the Public Open Space Area

8.4 The transfer shall further contain appropriate provisions to ensure that successors in title to each Dwelling on the date of their acquisition of the Dwelling enter into a deed of covenant with the Management Company to discharge and perform the covenants referred to in clause 7.3

8.5 To transfer the Public Open Space Area to the Management Company on the later of the sale of the final Dwelling permitted by the Planning Permission or within 3 months from the date of the notice given by the Council under clause 7.20 above that the Public Open Space Area has been carried out to its satisfaction whichever is the later and will not to cause permit or suffer occupation of the final Dwelling until the Management Company has accepted such a transfer

8.6 The transfer of the Open Space Area to the Management Company shall contain the following covenants for the benefit of the Council:

- (i) To maintain the Public Open Space Area in perpetuity in accordance with the rules of good horticulture and husbandry, and through regular inspection planting cultivating fertilising watering draining or otherwise treating (as the case may be), keeping it properly maintained
- (ii) To keep in good repair the western embankment boundary structure so as to ensure the structural integrity of the Public Open Space Area

8.7 As soon as is reasonably practicable after the completion of the transfer of the Public Open Space the Owner shall notify the Council in writing and provide to the Council a copy of the Transfer.

8.8 Responsibility for the maintenance of the Public Open Space Area shall not at any time be transferred to an alternative management company unless firstly the Council has been given a minimum of 28 Working Days written notice that such a transfer is to take place and has issued its approval in writing thereto and secondly as part of the terms of the transfer the alternative management company supplies the Council with a deed of covenant whereby the alternative management company agrees to discharge and perform the obligations contained in clause 8.7

**SECOND SCHEDULE**  
**(Council's Covenants)**

The Council hereby covenants with the Owner:

**General**

1. That on the reasonable written request of the Owner at any reasonable time or times after any of the planning obligations under this Agreement have been fulfilled issue written confirmation thereof and / or at any reasonable time after all of the planning obligations under this Agreement have been fulfilled or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the register of local land charges.

**Contributions**

2. To issue a receipt on request in writing for the Contributions.
3. Upon receipt to place the Contributions in a separate interest bearing account
4. Subject to paragraph 5 of this Second Schedule, to apply the Contributions and any interest accrued towards the purposes specified in this Agreement in order to address impacts which directly arises from the Development and not to apply the Contributions for any other purposes and the Council shall (on the reasonable written request of the payee or the payee's nominee) provide evidence that the Contributions have been so applied.

**5. Highways Contributions**

5.1 To hold the Highways Contribution in a separate interest bearing account until a s278 agreement of the Highways Act 1980 is made between the Council and the Appointed Agent in respect of the Highway Works

5.2 Upon completion of the S278 agreement referred to in clause 5.1 above the Council may withdraw a sum equivalent to 13.4% of the sum due under a Valid Invoice from the account in which the Contributions are held as the

Owners contribution towards the payment of the Valid Invoice for the Highway Works

**Repayment**

6. In the event the Contributions or any part or parts thereof are not expended within 10 (ten) years of the date of final payment of the relevant Contribution then the sum or sums not expended plus interest accrued (if applicable) will be repaid to the person who paid the sum or sums or its nominee.

**THIRD SCHEDULE  
(HIGHWAY WORKS)**

[Excavation to reduce levels including breaking out existing carriageways and footways where necessary

Carriageway construction

Footway construction

Kerbing

Tactile paving

Verges

Road drainage

Operational street lighting

Road markings and signing

Soft landscaping

Hard landscaping

Traffic signals and all associated equipment

Traffic islands

Carriageway resurfacing

Footway resurfacing

Reinstatement of existing carriageway footway and verge to the satisfaction of the Proper Officer

Vision splays and service strips.

Street name plates.

All other Highway Works described in the detailed design and [the Specification and] shown in the Drawings.

Such other ancillary works as may reasonably be required

Works which may as a consequence of any of the above be reasonably necessary to Statutory Undertakers' apparatus and all other equipment or structures under in or over the highway land.

THE CORPORATE COMMON SEAL of )  
THE COUNCIL OF THE BOROUGH )  
OF KIRKLEES was hereunto affixed )  
but not delivered until the date hereof) )  
In the presence of: - )



020878

Assistant Director: Legal and Governance and Commissioning /  
Authorised Signatory

EXECUTED as a DEED on behalf of )  
EBORACUM 3 LIMITED ) -  
acting by a director )  
the presence of: - )

Witness's signature:

Name (print):

Occupation: F

Address: \_\_\_\_\_

EXECUTED as a DEED on behalf of  
KCS DEVELOPMENT LTD

acting by a director  
the presence of: -

Witness's signature: \_\_

Name (print): \_

Occupation: F

Address: \_

**Annex 1**  
(Plan 1-Site location plan)



**Annex 2**

(Drawing 3284-0-002 Rev. II)

