

17 July
DATED 2024

THE COUNCIL OF THE BOROUGH OF KIRKLEES (1)

-and-

**THE RIGHT HONOURABLE WILLIAM TENTH EARL OF DARTMOUTH AND
DUCKMORE LIMITED (2)**

-and-

KCS DEVELOPMENT LIMITED (3)

AGREEMENT

Under Section 106 of the Town & Country Planning Act 1990 (as amended)

relating to

Land lying to the West of Roslyn Avenue Huddersfield

THIS AGREEMENT is made the 17 day of July Two Thousand and Twenty Four

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;
- (2) **THE RIGHT HONOURABLE WILLIAM TENTH EARL OF DARTMOUTH of Whiteway House, Newton Abbot TQ13 0DY and DUCKMORE LIMITED** (Company No.10176744) 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 numbers WYK872093 and YY139841.
3. The Developer has submitted the Application to the Council for planning permission in relation to the Development.

4. The Council resolved 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:

"1990 Act"	means the Town and Country Planning Act 1990 (as amended);
"Additional First Homes Contribution"	means the sum payable in accordance with the First Schedule
"Administration Charge"	means 1% (one percent) of the Financial Contribution
"Affordable Housing"	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 11% Social Rented Dwellings or Affordable Rented Dwellings to 9% Intermediate Dwellings (including 5% First Homes);
"Affordable Housing Plan"	means Drawing No: 2246PL 116A which has been approved by the Council showing the number, location,

type, and tenure of the Affordable Housing on the Development and attached hereto at Annex 2.

“Affordable Housing Price”

means the price to be paid by the Registered Provider to the Owner for the Affordable Rented Dwellings, the Social Rent Dwellings and the Shared Ownership Dwellings to be agreed at a price that is based upon the transfer values set out in the Council’s **SPD**.

“Affordable Rent”

means a rent which is no more than 80% of the local market rent (including service charges, where applicable) calculated using RICS approved valuation methods;

“Affordable Rented Dwellings”

means 9 Dwellings as shown on the Affordable Housing Plan provided in accordance with the following conditions (i) at an Affordable Rent (ii) the landlord is a Registered Provider and (iii) which complies with the definition of ‘Affordable Housing for Rent’ in annex 2 of the NPPF;

“Contract”

means a contract or contracts with a Registered Provider(s) for the construction and subsequent transfer at the Affordable Housing Price of the unencumbered freehold or long-leasehold interest in the relevant Affordable Housing;

“Application”

means the outline planning application registered by the Council under reference number 2023/93503 for the erection of 82 dwellings and associated works;

“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;

"Authority to Exchange" means a notice served by the Council to the Developer in the form set out by the Developer or such other form as the Council may from time to time reasonably require providing the Council's consent to exchange contracts on the Eligible Dwelling such notice to be issued after:

- (a) an Authority to Proceed has been issued; and
- (b) the Developer has submitted a request to the Council for an Authority to Exchange to be issued following a mortgage offer having been received by the intended purchaser and contracts having been agreed between the Developer and the intended purchaser;

"Authority to Proceed" means a notice issued by the Council to the Developer in the form set out by the Developer or such other form as the Council may from time to time reasonably required, notifying the Developer following receipt of the Developer's application form that the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 4.2 of Schedule 1 applies, meets the Eligibility Criteria (Local);

BDNG Plan means a plan which includes the following elements;

- (i) risk assessment of potentially damaging construction activities;
- (ii) identification of biodiversity protection zones
- (iii) details and a programme for the management and maintenance of the Biodiversity Net Gain Area for a period of 30 years;

(iv) details 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;

(v) Maintenance and Management of the Biodiversity Net Gain Area

“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 29 of the Planning Permission.

“Bus Stop Improvement Contribution”

means the sum of £21,000 (Twenty One Thousand Pounds) Index Linked payable as a contribution towards the provision of real-time displays at bus stops 19220 and 19219, or such other bus stops within the vicinity of the Development and in accordance with the First Schedule;

“Chargee”

means any mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a “Receiver”) of the Affordable Housing Units or any part thereof or any persons or bodies deriving title through such mortgagee or chargee or Receiver;

“Close Family”

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

“Committed”

means monies shall be deemed to have been committed if the Council has entered into any contract or given any undertaking (whether enforceable in law or otherwise) the performance or fulfillment of which will require the Council to expend funds in the future and such monies are so expended no later than 12 (twelve) months beyond the specified repayment date;

“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 1.1.4 of Part 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;

"Contributions"

means the Public Open Space Contribution, the Sustainable Travel Contribution, the Bus Stop Improvement Contribution and the Education Contribution

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

"Definitive Map"

means the map of public rights of way maintained by the Council in accordance with the Wildlife and Countryside Act 1981;

"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; or
- (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 of £134,748.00 (One Hundred and Thirty Four Thousand Seven Hundred and Forty Eight Pounds) Index Linked 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 and 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);

“Eligible Person”

an individual who is unable to afford a home that meets their needs on the open market

“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; and
 - (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.

“Financial Contribution” means the payment to be made in lieu of the provision of on-site Affordable Housing calculated as described in the SPD;

“First Homes” means Dwellings of Affordable Housing as shown on the Affordable Housing Plan (being plot numbers 10, 45, 46, 63) 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 (or the figure as may be updated by the Council Annually) 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; and
- (c) provision of the Compliance Certificate;

“First Homes Owner”	<p>means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:</p> <ul style="list-style-type: none"> (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 Homes Qualifying Person”	<p>means a person who meets the First Homes Eligibility Criteria (National) and (unless paragraph 1.1.4 of Part 2 of the First Schedule applies) the Eligibility Criteria (Local)</p>
“First Home Sale Price”	<p>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;</p>
“First Time Buyer”	<p>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.</p>
“Income Cap (Local)”	<p>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;</p>

- “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**
- “Intermediate Dwelling”** means First Homes, and Shared Ownership Dwellings;

**“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;

(a) previously lived in the Locality as the primary residence for at least 5 years cumulatively in the past 10 years;

(b) has Close Family ordinarily resident in the Locality and that Close Family has been ordinarily resident in the Locality for the past 3 years;

(c) need to move to the Locality to receive or provide care or support;

(d) 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;

(e) needs to move to the Locality to be close to local facilities because of a specific identified need; or

(f) has some other connection to the Locality as approved by the Council in writing.

“Locality”

means The district of Kirklees

“Managed Areas”

means the Public Open Space Area, the Biodiversity Net Gain Area, the On-Site Drainage Works and the Public Accessway;

“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 and Wales 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

“Marketing Strategy”

Means the strategy to be approved by the Council pursuant to paragraph 1.1.2 and 1.1.3 of Part 2 of the First Schedule of this Deed and to detail the marketing measures to be undertaken to dispose of the First Home to a First Homes Qualifying Person upon a first disposal.

“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;

“Nominations Agreement”

Means an agreement between the Council and the Registered Provider setting out the selection and prioritisation of tenants and occupiers of the Affordable Housing Units.

NPPF means the National Planning Policy Framework published by the Department for Levelling Up, Housing and Communities dated December 2023 and any document that supplements or replaces it.

"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 of £75,695.00 (Seventy Five Thousand Six Hundred and Ninety Five Pounds) Index Linked (or such other sum as recalculated at the Reserved Matters Approval stage based upon final number of units and the level of on-site provision at that time and agreed in writing by the Council) as a contribution towards improvements to publicly accessible open space within the vicinity of the Development and 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 perpetuity (unless adopted);

"On-Site Drainage Works" ~~means a drainage system, together with associated infrastructure, to be installed within the Site in accordance with the drainage scheme contained within Fortem's Flood Risk Assessment dated March 2024 and attached as Annex 3;~~

to be installed in accordance with the details to be approved pursuant to condition 21 of the Planning Permission

“Open Market Value”

means the open market value as assessed by a Valuer in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and agreed between the Council and the Owner as being the open market value of an Affordable Housing Dwelling at which the sale of an interest in the Affordable Housing Dwelling would have been completed unconditionally for cash consideration on the date of the valuation assuming:

- (a) a willing seller;
- (b) that any restrictions imposed on the Dwelling by reason of this Agreement are disregarded;
- (c) that there are no restrictions as to the persons who may occupy the dwelling or to whom a transfer or lease may be granted or assigned; and

that both parties to the transaction had acted knowledgeably prudently and without compulsion;

“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 and any permissions granted in relation to the Development under Section 73 of the 1990 Act.;

“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;

“Public Accessway” means the pathways available to be used by the public on foot shown coloured purple on the plan attached as Annex ~~4~~³ hereto;

“Public Open Space Areas” means those areas of public open space on the Site and shown on the attached landscaping plan drawing number POS. 115 rev. B attached as Annex ~~5~~⁴ hereto and laid out and landscaped in accordance with the approved Public Open Space Areas Landscaping and Management Scheme.

“Practical Completion” means the issue of a certificate of practical completion by the Owner's architect certifying the completion of any part of the Development so that such part can be used for the purpose and operate in the manner for which it was designed and Practically Complete and Practically Completed shall be construed accordingly;

“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);

“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;

“Registered Provider”		means a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes England for receipt of social housing grant as may be proposed by the Owner and approved by the Council;.
“RP Dwellings”		means the Affordable Rented Dwellings, the Social Rented Dwellings and the Shared Ownership Dwellings which are to be transferred to a Registered Provider;
“Reserved Matters Approval”	Matters	means the approval of reserved matters for the Development pursuant to the Planning Permission under Article 6 of The Town and Country Planning (Development Management Procedure) (England) Order 2015;
“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;
“Shared Lease”	Ownership	means such lease as shall substantially be in accordance with the Homes England model form of shared ownership lease or such other successor bodies model form of lease current at the date of this Agreement;
Shared Dwellings	Ownership	means Plots 33, 43 and 44) as shown on the Affordable Housing Plan and being a Dwelling to be provided in accordance with the following condition (i) sold on the

basis of a Shared Ownership Lease (ii) the landlord is Registered Provider and (iii) which complies with the definition of 'Other affordable routes to home ownership' in Annex 2 of the NPPF and reference to "Shared Ownership Dwelling" shall be construed accordingly;

"Site"

means the land known as land lying to the West of Roslyn Avenue, Huddersfield and shown edged red on Plan 1;

"Social Rent"

means a rent set in line with the Government's rent policy for social rented affordable housing to be owned and let by a Registered Provider.

"Social Rented Dwellings"

means **Plots 6, 7,27,28,67,68,74, 76 and 77 shown on the Affordable Housing Plan** and being a Dwelling to be provided in accordance with the following condition (i) let at a Social Rent (ii) the landlord is Registered Provider and (iii) which complies with the definition of 'Affordable Housing for Rent' in annex 2 of the NPPF and reference to "Social Rented Dwelling" shall be construed accordingly;

SPD

means the Council's Affordable Housing and Housing Mix supplementary planning document dated March 2023 or any such document that supersedes this

"Sustainable Travel Contribution"

means the sum of £41,943 (Forty One Thousand Nine Hundred and Forty Three Pounds) Index Linked which is to be applied by the Council towards sustainable travel measures to help improve sustainable travel / accessibility from the site (for metro cards, bicycles, footpath creation / improvements or other sustainable transport related measures) to be administered as set out in the Travel Plan and payable in accordance with paragraph 2 of the First Schedule;

“Travel Plan”	means the travel plan to be approved by the Council pursuant to the Planning Permission and its conditions which shall summarise 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, which will be implemented at the Site;
“Travel Plan Co-ordinator”	means a travel plan coordinator or travel plan co-ordinators to be appointed by the Owner to have the responsibilities set out in the Travel Plan;
“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 as a contribution towards the cost of monitoring the Sustainable Travel Contribution and compliance with the Travel Plan for a period of no less than 5 years
“Valuation”	means a report prepared by a Valuer containing details of the surveyor’s opinion as to the Open Market Value in respect of a Dwelling
“Valuer”	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a valuer appointed by (in the case of an RP Dwelling/Social/Affordable Rent Dwellings) the Registered Provider; (in the case of a Rent to Buy Dwelling) the Rent to Buy Landlord; (in the case of a First Home) the First Home Owner and (in the case of a DMS Dwellings) the Owner and (in each case) acting in an independent capacity;.

“Water Company”

means:

(i) Yorkshire Water; or

(ii) 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;.

"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 by the Council 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.

2.17 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of the application (and the Council is satisfied in its reasonable discretion that no revised planning obligations are required as a result of such amendment) references to Planning Permission in this Agreement shall be to both the Planning Permission and a new planning permission granted pursuant to Section 73 of the 1990 Act and this Agreement shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.

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

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

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:

Part 1 GENERAL AFFORDABLE HOUSING

1. To provide the Affordable Housing in accordance with the Affordable Housing Plan and in in accordance with the Planning Permission.

2. The Owner shall notify the Council of the Practical Completion of each Affordable Housing Dwelling within 14 days thereof.
3. In order to enable the Council to comply with its obligations in relation to monitoring Affordable Housing for the Government the Owner shall provide information regarding start of site, completion and sale of each Affordable Housing Dwelling to the Council when requested
4. The Owner shall not cause or permit the Occupation of more than:
 - 4.1 25% of the Market Dwellings until 15% of the Affordable Housing Dwellings have been constructed and are ready for Occupation;
 - 4.2 50% of the Market Dwellings until 40% of the Affordable Housing Dwellings have been constructed and are ready for Occupation;
 - 4.3 75% of the Market Dwellings until 80% of the Affordable Housing Dwellings have been constructed and are ready for Occupation; and
 - 4.4 90% of the Market Dwellings until 100% of the Affordable Housing Dwellings have been constructed and are ready for Occupation;
5. Nothing in this Schedule shall prevent any of the Market Dwellings from being voluntarily provided as Affordable Housing in addition to the Affordable Housing Dwellings and in such case such Market Dwellings the Owner will notify the Council in writing of any such change and any additional Affordable Housing Dwellings shall not be an obligation for the purposes of this Agreement .
6. Not later than the Commencement of Development, the Owner shall offer the RP Dwellings to one or more Registered Provider(s) at the Affordable Housing Price together with providing details to the Council of the Registered Provider(s) to whom the RP Dwellings have been offered (the "**Initial Offer**").
7. Following the date of the Initial Offer the Owner shall use Reasonable Endeavours to enter into a Contract of the RP Dwellings to a Registered Provider(s) at the Affordable Housing Price. This provision may be repeated as often as is necessary (subject to paragraph 8 of this Part 1 of The First Schedule) until such time as a Registered Provider shall have confirmed its willingness subject to contract to purchase the RP Dwellings at the Affordable Housing Price.
8. In the event that:

- 8.1 despite using its Reasonable Endeavours, the Owner has not entered into a binding contract with a Registered Provider(s) for the transfer of the RP Dwellings within a period of 24 (twenty four) calendar months from the date of the Initial Offer (or such shorter period of time that may be agreed in writing by the Council); and
- 8.2 the Owner has produced evidence in writing to the reasonable satisfaction of the Council that it has used all reasonable endeavours throughout the 24 (twenty four) month period to enter into such binding contract, the Owner will be free to offer such dwellings for sale on the open market but subject to the provisions of paragraph 8.3 -8.5 of this Schedule:
- 8.3 the Owner shall serve a written notice on the Council confirming that they intend to sell some or all of the RP Dwellings on the open market ("**Owner's Notice**")
- 8.4 the Owner shall within 28 (twenty eight) Working Days of the date of the Owner's Notice pay to the Council the relevant Financial Contribution and the Administration Charge; and
- 8.5 following written confirmation by the Council upon receipt of the Financial Contribution and Administration Charge, such confirmation to be provided as soon as possible upon receipt (and in any event within 10 Working Days) the Owner may dispose of such RP Dwelling(s) on the open market free of the provisions of this Schedule.
9. **Affordable Rented Dwellings**
- 9.1 The following provisions of this paragraph 9 shall apply to any Affordable Housing Dwellings that are to be provided as Affordable Rented Dwellings in accordance with an approved Affordable Housing Plan.
- 9.2 The Owner shall not let or otherwise permit the letting of any Affordable Rented Dwellings to any person(s) other than in accordance with the following
- (a) at an Affordable Rent; and
- (b) the rent of each letting shall be calculated prior to the grant of any new tenancy to ensure that it is an Affordable Rent
- 9.3. The Owner shall not cause or permit the occupation of any Affordable Rented Dwellings other than by an Eligible Person(s) in accordance with the Council's

Choice Based Letting System “Choose ‘n’ Move” or such successor policy and the Registered Provider shall enter into a Nominations Agreement to be agreed with the Council.

10. Social Rented Dwellings

- 10.1 The following provisions of this paragraph 10.2 and 10.3 shall apply to any Affordable Housing Dwellings that are to be provided as Social Rented Dwellings in accordance with an approved Affordable Housing Plan
- 10.2 The Owner shall not let or otherwise permit the letting of any Social Rented Dwellings to any person(s) other than at a Social Rent.
- 10.3 The Owner shall not cause or permit the occupation of any Social Rented Dwellings other than by an Eligible Person(s) and the Registered Provider shall enter into a Nominations Agreement to be agreed with the Council.

11. Shared Ownership Dwellings

- 11.1 The following provisions of this paragraphs 11.2 to 11.3 (inclusive) shall apply to any Affordable Housing Dwellings that are to be provided as Shared Ownership Dwellings in accordance with an approved Affordable Housing Plan
- 11.2 No Shared Ownership Dwelling shall be Occupied otherwise than pursuant to a Shared Ownership Lease.
- 11.3 Allocation of the Shared Ownership Dwelling shall be in accordance with the Registered Provider’s own allocations policy.
- 11.4 Every time a Shared Ownership Dwelling shall become available for Occupation again in the future it shall be allocated on the same terms as expressed in paragraph 11.2 and 11.3 above.

Part 2 FIRST HOMES

1.1. **First Homes – Delivery Mechanism**

- 1.1.1. The Owner (which for the purposes of this clause shall include the Developer and any First Homes Owner) shall not Dispose of or Occupy any Affordable Housing Dwellings that are to be provided as First Homes other than in accordance with the provisions of this Part 2 of the First schedule related to First Homes
- 1.1.2. Prior to Commencement of Development the Developer shall submit to the Council the First Homes Marketing Strategy for the Council's approval and the Developer shall not commence development unless and until such Marketing Strategy has been approved by the Council such approval not to be unreasonably withheld or delayed
- 1.1.3. The First Homes shall be marketed for sale and shall only be sold in accordance with the terms of the Marketing Strategy." (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
- 1.1.3.1. the Eligibility Criteria (National); and
 - 1.1.3.2. the Eligibility Criteria (Local) (if any).
- 1.1.4. 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 1.1.3.2 of Part 2 of this Schedule shall cease to apply.
- 1.1.5. Subject to paragraphs 1.1.6 to 1.1.10 of Part 2 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.

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

1.1.6.1. 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 Part 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) The Right Honourable William Tenth Earl of Dartmouth and Duckmore Limited and (3) KCS Development 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

1.1.6.2. 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 Part 2 of this Schedule have been met.

1.1.6.3. In respect of the Initial Disposal only the Council has issued the Authority to Proceed and the Authority to Exchange and the Council hereby covenants that it shall issue:

1.1.6.3.1 the Authority to Proceed within 15 (fifteen) Working Days of being provided with the relevant information required pursuant to paragraph 4.4.1.1 and 4.4.1.2 above; and

1.1.6.3.2 the Authority to Exchange within 20 (twenty) Working Days of receiving a request from the Developer to issue the Authority to Exchange

- 1.1.7. 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"

- 1.1.8. 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:

1.1.8.1. 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 Part 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 Part 2 of this Schedule; or

1.1.8.2. requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 1.1.6.1 of Part 2 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.

1.1.9. Upon receipt of an application served in accordance with paragraph 1.1.6 of Part 2 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.

1.1.10. If the Council is satisfied that either of the grounds in paragraph 1.1.6 of Part 2 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 Part 2 of this Schedule that the relevant Dwelling may be Disposed of:

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

1.1.10.2. (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 Part 2 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.

1.1.11. 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 Part 2 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 Part 2 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.

1.1.12. 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 Part 2 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;

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

1.1.13.1. 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 Part 2 of this Schedule where such restriction has previously been registered against the relevant title;

1.1.13.2. 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.

1.1.14. 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 Part 2 of this Schedule shall not be liable to pay the Additional First Homes Contribution to the Council.

1.1.15. 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 Part 2 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 Part 2 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 Part 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 Part 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 Part 2 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 Part 2 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 Sustainable Travel Fund Contribution 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 40th Dwelling on the Development, and not to Occupy any further Dwelling as specified above until the respective instalment of the Sustainable Travel Fund Contribution has been paid to the Council.

3. BUS STOP IMPROVEMENTS

- 3.1 To pay the Bus Stop Improvements Contribution to the Council, prior to the Occupation of any Dwelling, and not to Occupy any Dwellings until the Bus Stop Improvements Contribution has been paid to the Council

4. TRAVEL PLAN

- 4.1. 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.
- 4.2. To appoint a nominated Travel Plan Co-Ordinator(s) and notify the details of the Travel Plan Co-Ordinator(s), including any change in appointment thereafter, to the Council in accordance with the provisions of the Travel Plan to be approved.

5. PUBLIC OPEN SPACE CONTRIBUTION

- 5.1. To pay the Off Site Public Open Space Contribution (or such other sum as recalculated and agreed by the Council at the Reserved Matters Approval 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 5.2 of this Schedule.
- 5.2. To pay of the Off-Site Public Open Space Contribution 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.

6. EDUCATION CONTRIBUTION

- 6.1 To pay the Education Contribution to the Council, of which 50% is to be paid prior to Occupation of any Dwelling on the Development and the remaining 50% is to be paid prior to Occupation of the 40th Dwelling on the Development and, and not to Occupy further Dwellings as specified herein until the related instalment of the Education Contribution has been paid to the Council.

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 the 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 7.4 of Part 2 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 or 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 not less than 48 hours prior 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 (without prejudice to any other remedies available to the Council for breach of this Agreement) 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 Part 2 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 this Part 2 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 1991 the obligations in paragraphs 7.7 to 7.14 (inclusive) of this Part 2 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 including conditions and details contained within the Reserved Matters Approval in respect of the Public Open Space Area

7.17 The Public Open Space Area shall not be deemed to be provided in accordance with paragraph 7.16 until the same has been inspected and approved by the Council in accordance with paragraphs 7.22 and 7.23 below

7.18 As soon as is reasonably practicable after the completion of the Public Open Space Area the Owner shall notify the Council in writing that such works have been completed and pay the Inspection Fee to the Council.

7.19 Not to Occupy any of the Dwellings until it has submitted and obtained the written approval of the Council to a Public Open Space Areas Landscaping

Management Scheme for the future maintenance and management of the Public Open Space Areas.

- 7.20 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).
- 7.21 To comply with the approved Public Open Space Area Landscaping and Management Scheme in conjunction with and as part of the Development
- 7.22 Not later than one calendar month following receipt of the relevant notice and the Inspection Fee referred to in clause 7.18 above the Council shall inspect the Public Open Space Area and if it has been carried out in accordance with paragraph 7.16 above and to the reasonable satisfaction of the Council it shall notify the Owner in writing within 15 Working Days of the inspection
- 7.23 If, upon inspection by the Council, the Council (acting reasonably) find that the Public Open Space Area has not been carried out to its reasonable satisfaction it shall within 15 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 7.18, such procedure being repeated as often as is necessary until such time as the Council confirms satisfactory completion under clause 7.22.
- 7.24 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 approved Public Open Space Areas Landscaping Management Scheme and rules of good

horticulture and husbandry keeping it properly maintained and without prejudice thereto 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

BIODIVERSITY NET GAIN AREA

7.25 To provide the Biodiversity Net Gain Area in accordance with the Planning Permission and the approved BDNG Plan to the satisfaction of the Council.

7.26 The BDNG Plan will include detailed measures setting out how the Biodiversity Net Gain Area will be maintained and managed to include:

7.26.1. To fully comply with the approved BDNG plan from the date that it is approved by the Council and 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 written agreement.

7.26.2 Within 3 (three) months (or within such other period of time that may be agreed in writing by the Council) of the 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

7.27. To keep the Public Accessway open to use by the public on foot and to manage and maintain the Public Accessway 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 or 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 Managed Areas in accordance with the Planning Permission and condition(s) thereto including conditions and details contained within the Reserved Matters Approval and where applicable relevant approved schemes and 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 Managed Areas

8.4 The transfer of each Dwelling 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 8.3

8.5 To transfer the Public Open Space Area to the Management Company prior to the sale of the final two Dwellings permitted by the Planning Permission and will not to cause permit or suffer occupation of the final two Dwellings until the said transfer to the Management Company has been completed

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 approved Public Open Space Areas Landscaping Management Scheme and 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 this agreement in relation to the performance of the requirements of the approved Public Open Space Areas Landscaping Management Scheme

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.

Repayment

5. In the event the Contributions or any part or parts thereof are not Committed or 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.

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: -)



~~Assistant Director: Legal and Governance and Commissioning /~~

Authorised Signatory

SIGNED as a **DEED** by T

—

the presence of: -

Witness's signature:

Name (print): _

Occupation: __

Address: .

EXECUTED as a **DEED** on behalf of

DUCKMORE LIMITED) _____

acting by a director) Director

the presence of: -)

Witness's signature: _____

Name (print): _____

Occupation: _____

Address:

EXECUTED as a **DEED** on behalf of)

KCS DEVELOPMENT LTD)

acting by a director) Director

the presence of: -)

Witness's signature: _____

Name (print): _____

Occupation: _____

Address: _____

EXECUTED as a **DEED** on behalf of _____)

DUCKMORE LIMITED _____)

acting by a director _____) Director

the presence of: - _____)

Witness's signature: _____

Name (print): _____

Occupation: _____

Address: _____

EXECUTED as a **DEED** on behalf of _____)

KCS DEVELOPMENT LTD _____)

acting by a director _____) Director

the presence of: - _____)

Witness's signature: _

Name (print): _

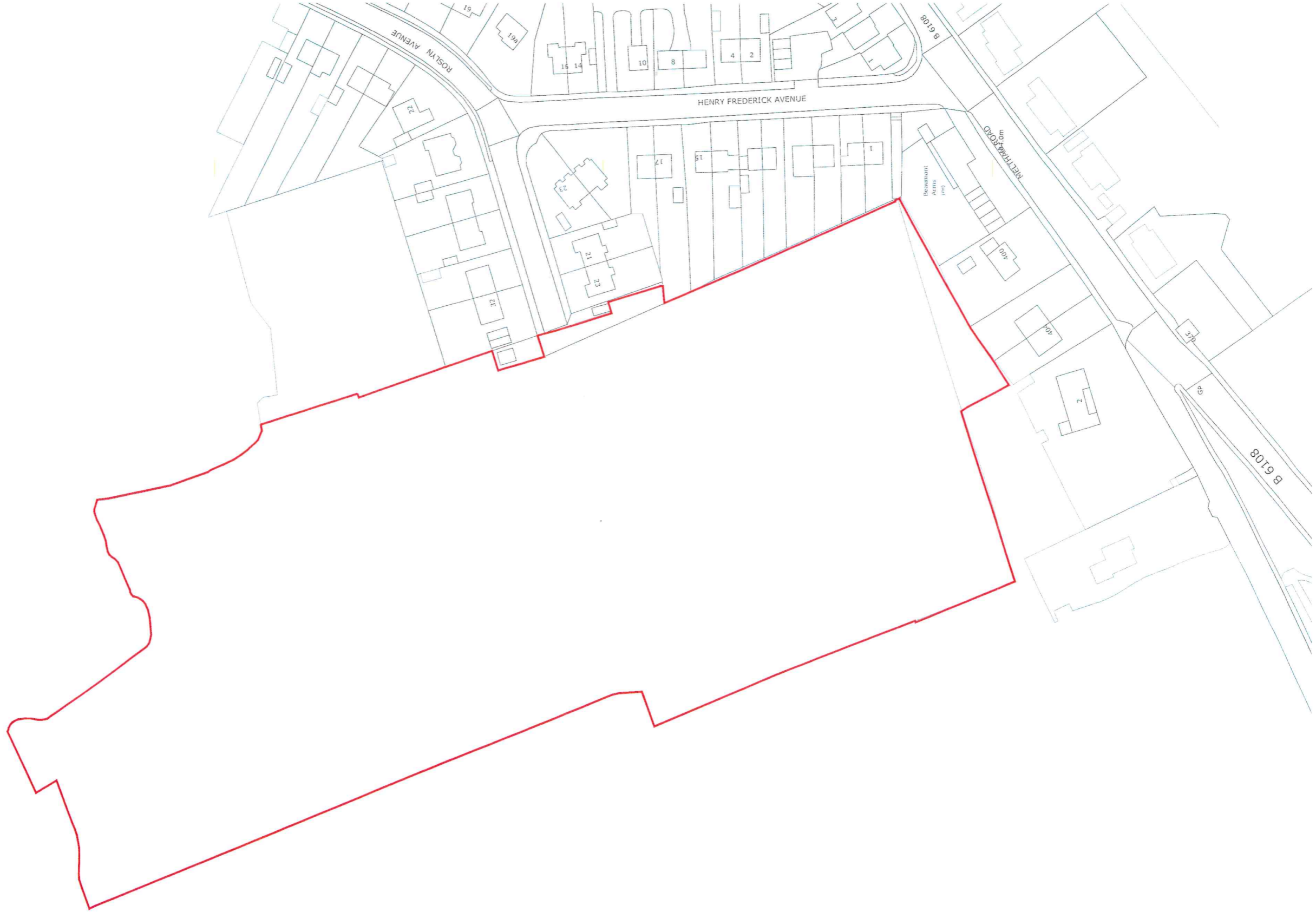
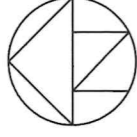
Occupation: _

Address:

Annex 1
(Plan 1-Site location plan)

All dimensions shall be verified by the contractor on site prior to work commencing.
Do not scale from this drawing.
Only work to written dimensions.
This drawing is the property of Ellis Healey Architecture and is to be used only for the project and site specified. It is not to be copied or reproduced in any form without the prior written consent of Ellis Healey Architecture.

NOTES



PLANNING

PROJECT	PROPOSED DEVELOPMENT LAND OFF ROSLYN AVENUE NETHERTON
TITLE	PROPOSED LOCATION PLAN
DRAWING NO	2246 PL 100
BY-CHECKED	DPE
DATE	NOV 2023
SCALE	1:1250

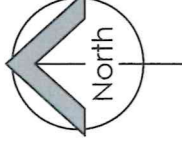
© Ellis Healey Architecture
18/11/2023 11:58:58 AM

Annex 2

(Affordable Housing plan)

All side dimensions shall be verified by the contractor on site prior to work commencing.
 Do not scale from this drawing.
 Only work to written dimensions.
 The drawings are the property of Ellis Healey Architecture and copyright is reserved by them. The drawings are not to be copied or disclosed by or to any unauthorised persons without the prior written consent of Ellis Healey Architecture.

NOTES



SCHEDULE OF ACCOMMODATION	
TYPE 1A - 1 BED APARTMENT - 560 SQ FT (52 sq m) (2 person) - 1no. off street parking spaces	6
TYPE 2A - 2 BED SEMI-DETACHED - 775 SQ FT (72 sq m) (3 person) - Off street parking spaces - varies	28
TYPE 2B - 2 BED TERRACE - 850 SQ FT (79 sq m) (4 person) - Off street parking spaces - varies NOTE - Integral access at ground floor level	4
TYPE 2C - 2 bed bungalow 675 sq ft (62.7 sqm) (3 person) (1 storey) 1 no. off street parking space	1
TYPE 3A - 3 BED SEMI-DETACHED - 931 SQ FT (86.5 sq m) (4 person) - 2no. off street parking spaces	8
TYPE 3B - 3 BED DETACHED - 1,029 sq ft (95.8 sqm) (5 person) - 2 no. off street parking spaces	20
TYPE 3C - 3 bed bungalow 842 sq ft (78.2 sqm) (4 person) (1 storey) 2 no. off street parking space	1
TYPE 4A - 4 BED DETACHED - 1,076 sq ft (100 sqm) (5 person) - 3 no. off street parking spaces	14
TOTAL	82
21 no. visitors parking spaces	

	1 bed (%)	2 bed (%)	3 bed (%)	4 bed (%)	Total
MARKET HOUSING	3no. (5%)	25no. (37.5%)	13no. (20%)	66no.	66no.
AFFORDABLE HOUSING	2no. (22%)	4no. (44%)	2no. (22%)	1no. (12%)	9no.
	1no. (25%)	2no. (66%)	1no. (34%)	3no.	3no.
	1no. (25%)	2no. (50%)	1no. (25%)	4no.	4no.
	6no. (7%)	33no. (40%)	29no. (36%)	14no. (17%)	82no.
TOTAL HOUSING					



Rev A	Layout Updated	27/02/24	EP1
Preparation	Date of Preparation	Date	Initials/Sign

ellis healey
 architecture
 PLANNING

PROJECT
 PROPOSED DEVELOPMENT
 LAND OFF ROSLYN AVENUE
 NEITHERTON

TITLE
 PROPOSED SITE LAYOUT
 AFFORDABLE HOUSING PLAN

DRAWING NO
 2246 PL 116A

BY/CHECKED
 DPE DATE
 NOV 2023

SCALE @A3
 1:1250

Ellis Healey, Colton Road, Leeds, LS1 5SE
 Tel: 0113 2635000 E: ellis@ellishealey.com

Annex 3

(PROW plan)

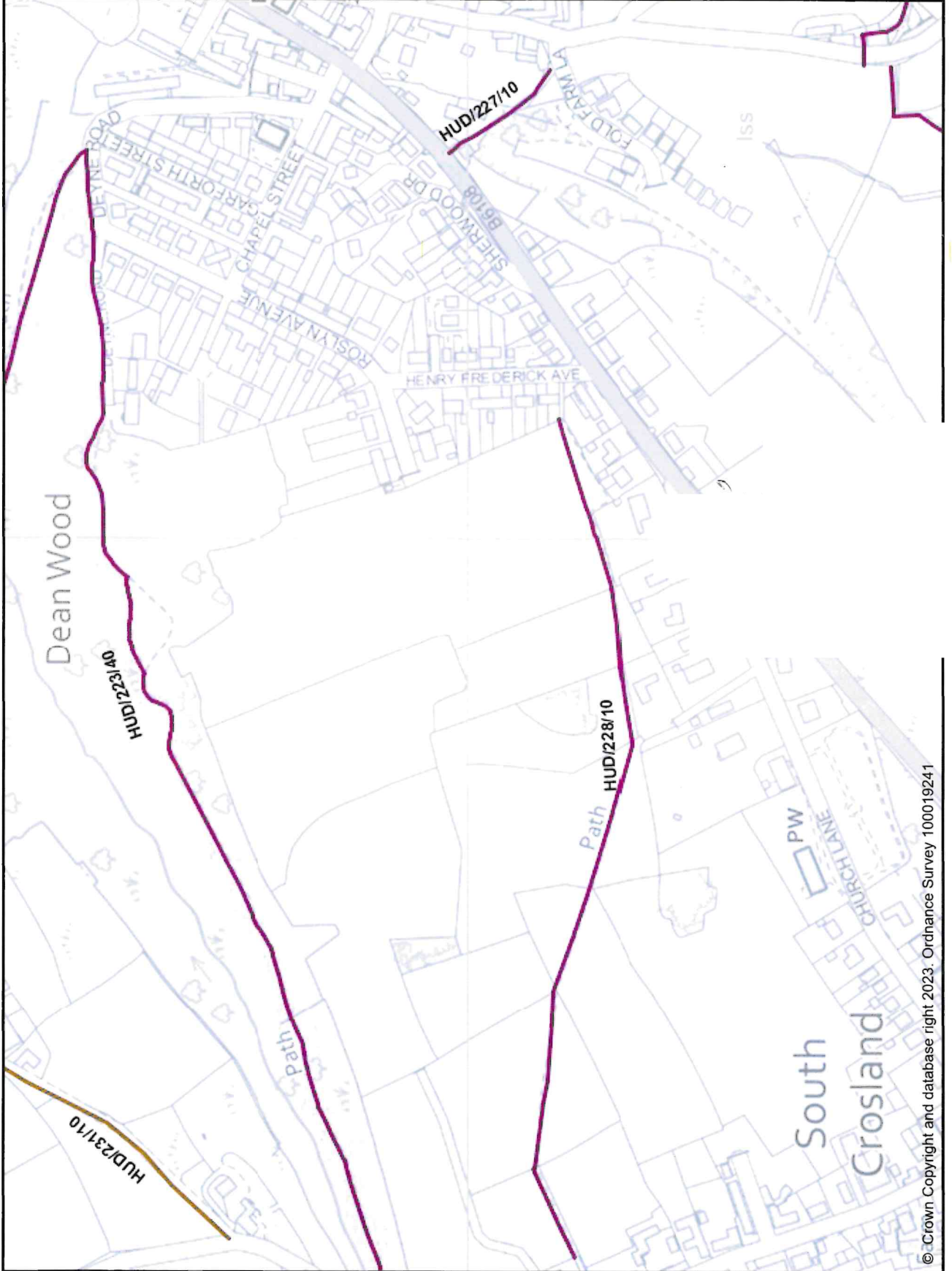


Kompass
Kirklees Mapping Service

Scale = 1:3800,460

© Crown Copyright and
database right 2020.
Ordnance Survey
100019241

maps@kirklees.gov.uk



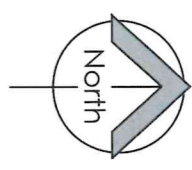
Handwritten scribble

Annex 54

(Landscape plan)



All sea dimensions shall be verified by the contractor on site prior to work commencing.
Do not scale from this drawing.
Only work to written dimensions.
This drawing is the property of Ellis Healey Architecture and copyright is reserved by them. The drawing is not to be copied or distributed by any unauthorised person without the prior written consent of Ellis Healey Architecture.
10/15



LANDSCAPING AREAS KEY	Kiddees requirement	Proposed
Natural and semi natural green space (17.2 sq m per dwelling)	3985 SQ M	4189 SQ M
Parks and recreation (17.2 sq m per dwelling)	1594 SQ M	N/A
Amenity green space (14.59 sq m per dwelling)	1195 SQ M	3019 SQ M
Alcove's & community food growing (4.91 sq m per dwelling)	410 SQ M	673 SQ M
Children and Young people (13.2 sq m per dwelling)	1098 SQ M	762 SQ M
Outdoor Sports Facilities	Provided off site	N/A
Total	8292 SQ M	8543 SQ M



Rev	Description	Date	By
Rev. B	Final and contractor reviewed	18/11/23	GHF
Rev. A	Issued for construction	27/10/23	GHF
0	Original	01/11/23	GHF

ellis healey
architecture

PLANNING

PROJECT: PROPOSED DEVELOPMENT
RETHURTON, SOUTH DEVON
TITLE: PROPOSED SITE LAYOUT
COS TYPOLOGIES PLAN
DRAWING NO: 2346 PL 115B
DRAWN BY: GHF
CHECKED BY: GHF
DATE: NOV 2023
SCALE: 1:1250
1st Floor, 100, South Road, Lark, L11 1 500
Tel: 01753 343300 & Fax: 01753 343300