

BOROUGH SECRETARY'S
DEPARTMENT



LEGAL SERVICES DIVISION

To: Executive Director (Planning and Transportation)
(FAO Elaine Ward, Alexandra Cotton)
Neighbourhood Services (FAO Shaun Wright)

My Ref: JF/LMH/PG/254/00257

Your Ref:

Date: 12th February 2010 Enquiries to: Jason Field

Ext: 2651

Re: Section 106 Agreement
Land at Leslie Road, Kendray, Barnsley
Planning Reference No. 2009/1287
Completion Memo

This matter completed on the 10th February. The developer has to pay £125,820 towards the provision and/or improvement of open space facilities in the local area and any related maintenance costs. Half of that payment is to be paid prior to practical completion of the 50th dwelling. The remainder is to be paid prior to completion of the 95th dwelling. If the Council fails to spend the money within 15 years then it must pay the remainder plus any interest accrued back to the developer. If the payment is late interest is payable at 3% above the base lending rate of Barclays Bank Plc.

Jason Field
for the Borough Secretary.

DATED

10th February

2009

(1) BARNSELY METROPOLITAN BOROUGH COUNCIL

- and -

(2) KEEPMOAT HOMES LIMITED

**PLANNING OBLIGATION BY
DEED OF AGREEMENT
UNDER SECTION 106 OF THE
TOWN AND COUNTRY
PLANNING ACT 1990**

relating to

the development of land at Leslie Road,
Raymond and Reginald Road, Kendray

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	2
2.	LEGAL BASIS	4
3.	CONDITIONALITY	4
4.	THE DEVELOPER'S COVENANTS	5
5.	THE COUNCIL'S COVENANTS	5
6.	MISCELLANEOUS	5
7.	WAIVER.....	6
9.	INTEREST.....	6
10.	VAT	6
11.	JURISDICTION.....	6
12.	DELIVERY	7
	SCHEDULE 1	8
	Details of the Title, and description of the Site.....	8
	SCHEDULE 2.....	9
	Form of notice of planning permission	9
	SCHEDULE 3	10
	The Developer 's Covenants with the Council	10
	SCHEDULE 4.....	11
	Council's Covenants.....	11

THIS DEED is made on

2009/10

BETWEEN

- (1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, S70 2TA ("**Council**"); and
- (2) **KEEPMOAT HOMES LIMITED** of The Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire DN4 5PC ("**Developer**");

BACKGROUND

- A The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- B The Developer is the freehold owner of the Site.
- C The Council granted Planning Permission on 15 December 2009.
- D Condition 3 to the Planning Permission requires a scheme to be submitted to and approved by the Council for the provision of off site public space.
- E The Council agrees that by entering into this deed the Developer will satisfy the requirements of condition 3.

THIS DEED WITNESSES as follows:

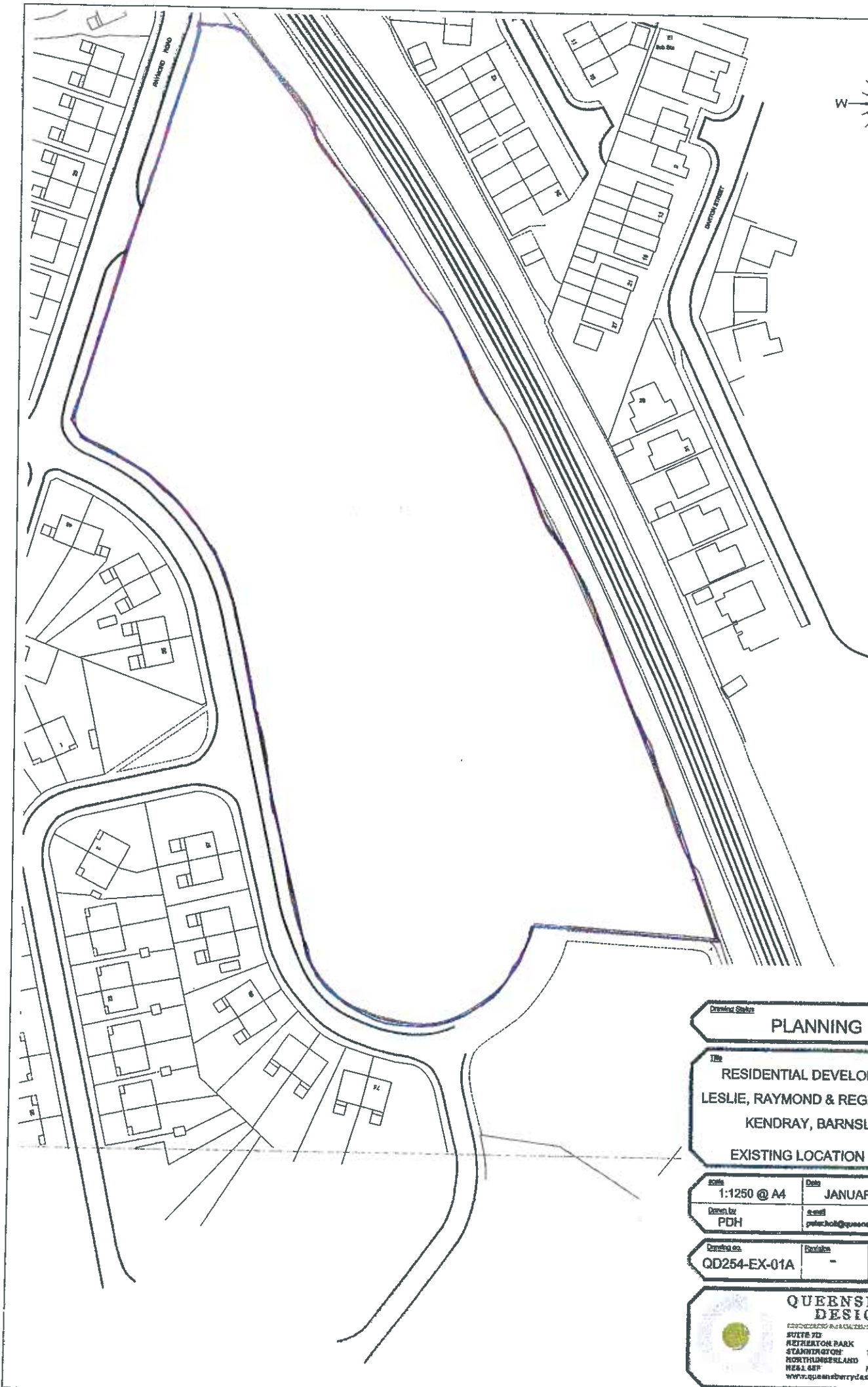
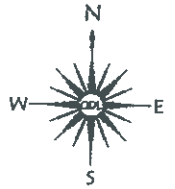
1. DEFINITIONS AND INTERPRETATION

- 1.1 In this deed, unless the context otherwise requires, the following words have the following meanings:

"**Act**" means the Town and Country Planning Act 1990;

"**Application**" means the application for full planning permission submitted to the Council for the Development and allocated reference number 2009/1287;

"**Commencement of Development**" means the date on which any material operation (as defined in section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological



Drawing Stage
PLANNING

Title
**RESIDENTIAL DEVELOPMENT
LESLIE, RAYMOND & REGINALD RD.
KENDRAY, BARNSELEY
EXISTING LOCATION PLAN**

Scale 1:1250 @ A4	Date JANUARY 2009
Drawn by PDH	Drawn by peter.holt@queensberrydesign.co.uk

Drawing no. QD254-EX-01A	Revision -	Client Contract no. -
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**QUEENSBERRY
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www.queensberrydesign.co.uk

investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly;

"Development" means the Development of the Site with the erection of 100 no. dwellings consisting of 2 and 3 bedroom units with associated car parking, garaging and stopping up of Leslie Road as set out in the Application;

"Dwelling" means a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission;

"Interest" means interest at 3 per cent above the base lending rate of the Barclays Bank Plc from time to time;

"Occupation" and **"Occupied"** means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;

"Open Space Contribution" means the sum of £125,820 towards the provision and/or improvement of open space facilities in the local area and any related maintenance costs payable in accordance with paragraph 1 of schedule 3.

"Plan" means the plan attached to this deed;

"Planning Permission" means the full planning permission subject to conditions granted by the Council pursuant to the Application as set out in schedule 2;

"Practical Completion" means the date when a Dwelling has been fully constructed and is suitable for Occupation; and

"Site" means the land against which this deed may be enforced as shown edged red on the Plan and described in more detail in Schedule 1.

- 1.2 The interpretation and construction of this deed shall be subject to the following provisions:

- 1.2.1 where in this deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this deed;
- 1.2.2 words importing the singular meaning where the context so admits include the plural meaning and vice versa;
- 1.2.3 words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner;
- 1.2.4 wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise;
- 1.2.5 any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it;
- 1.2.6 references to any party to this deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its respective statutory functions.

2. LEGAL BASIS

- 2.1 This deed is made pursuant to section 106 of the Act Section 111 of the Local Government Act 1972 and section 2 of the Local Government Act 2000.
- 2.2 The covenants, restrictions and requirements imposed upon the Developer under this deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority against the Developer.

3. CONDITIONALITY

This Deed is conditional upon:

- 3.1 the grant of the Planning Permission; and

3.2 the Commencement of Development.

save for the provisions of clauses 6.1, 10 and 11 which shall come into effect immediately upon completion of this deed.

4. THE DEVELOPER'S COVENANTS

The Developer covenants with the Council as set out in schedule 3.

5. THE COUNCIL'S COVENANTS

The Council covenants with the Developer as set out in schedule 4.

6. MISCELLANEOUS

- 6.1 The Developer shall pay to the Council on completion of this deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this deed.
- 6.2 No provisions of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.3 This deed shall be registrable as a local land charge by the Council.
- 6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Developer from the Council under the terms of this deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Assistant Director of Planning and Transportation or the Development Control Manager and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 6.5 Following the performance and satisfaction of all the obligations contained in this deed the Council shall upon written request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this deed.
- 6.6 Insofar as any clause or clauses of this deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.

- 6.7 This deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Developer) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.9 This deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 6.10 Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.

7. WAIVER

No waiver (whether expressed or implied) by the Council or Developer of any breach or default in performing or observing any of the covenants terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council or Developer from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8. INTEREST

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

9. VAT

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

10. JURISDICTION

This deed is governed by and interpreted in accordance with the law of England and Wales.

11. DELIVERY

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

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

SCHEDULE 1

Details of the Title, and description of the Site

Land at Leslie Road, Kendray, Barnsley with registered title number SYK570674

SCHEDULE 2

Form of notice of planning permission



GRANT OF PLANNING PERMISSION

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO. 2009/1287

To Mr Lewis John Ray
Queensberry Design Ltd
Netherton Park
Stannington
Northumberland
NE61 6EF

DESCRIPTION Residential development of 100 no. 2 & 3 bedroomed dwellings (Resubmission of application no: 2009/0657)

LOCATION Land at Leslie, Raymond & Reginald Road, Kendray, Barnsley

Permission is granted for the proposals which were the subject of the Application and Plans registered by the Council on 20 October 2009 and described above.

The approval is subject on compliance with the following conditions:

- 1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
Reason: In order to comply with the provision of Section 91 of the Town and Country Planning Act 1990.
- 2 The development hereby approved shall be carried out in strict accordance with the approved plans and specifications (Drawing No's : QS309-01-01 Rev. H; QD309-665-01; QD309-665-02; QD309-665-04; QD309-665-03; QD309-763-01; QD309-763-03; QD309-771-01; QD309-771-02; QD309-771-04; QD309-771-03; QD309-836-01; QD309-8936-02; QD309-844SE-01; QD309-1011-01; QD309-765DQS-02; QD309-765DQS-02; QD309-765DQS-01; QD309-765DQS-02; QD309-988DQS-02; QD309-988DQS-03; DQ309-988DQS-01; QD-309-90-01 Rev. C; QD309-65-01 Rev. A; Qd309-66-01 Rev. B) unless prior written consent has been given by the Local Planning Authority to any minor variation.
Reason: For the avoidance of doubt as amendments have been submitted during the course of processing the application and in accordance with Barnsley UDP Policy BE6, Design Standards.

The grant of this consent does not constitute or imply permission, approval or consent by the Local Authority for any other purpose.

Signed *Stephen Morales*
Assistant Director, Planning and Transportation

Dated 11 January 2010

8 No development shall take place until:

(a) Full foul and surface water drainage details, including a scheme for surface water run-off limitation and a programme of works for implementation, have been submitted to and approved in writing by the Local Planning Authority:

(b) Porosity tests are carried out in accordance with BRE 365, to demonstrate that the subsoil is suitable for soakaways;

(c) Calculations based on the results of these porosity tests to prove that adequate land area is available for the construction of the soakaways;

Thereafter no part of the development shall be occupied or brought into use until the approved scheme has been fully implemented. The scheme shall be retained throughout the life of the development, unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure proper drainage of the area

9 Within 28 days of works commencing on-site, a condition survey (including structural integrity) of the highways to be used by construction traffic shall be carried out in association with the Local Planning Authority. The methodology of the survey shall be approved in writing by the Local Planning Authority and shall assess the existing state of the highway. Within 28 days of completion of the development a second condition survey shall be carried out and shall be submitted for the written approval of the Local Planning Authority, which shall identify defects attributable to the traffic ensuing from the development. Any necessary remedial works shall be completed at the developers expense in accordance with a scheme to be agreed in writing by the Local Planning Authority.

Reason: In the interest of highway safety.

10 The parking/manoeuvring facilities, indicated on the submitted plan, shall be surfaced in a solid bound material (i.e. not loose chippings) and made available for the manoeuvring and parking of motor vehicles prior to the development being brought into use, and shall be retained for that sole purpose at all times.

Reason: In the interest of highway safety.

11 Vehicular and pedestrian gradients within the site shall not exceed 1 in 12 to ensure safe and adequate access.

Reason: In the interest of highway safety and in accordance with Barnsley UDP Policy T2, Development and the Highway Network.

12 Visibility splays, having the dimensions of 2.4m x 90m, shall be safeguarded at the Raymond Road/Leslie Road junction such that there is no obstruction to visibility and forming part of the adopted highway.

Reason: In the interest of highway safety and in accordance with Barnsley UDP Policy T2, Development and the Highway Network.

Reason(s) for Granting Permission

- 1 Unique The proposal complies with Policies H8A and H9 in that the scale, layout, height and design of the new dwellings will not cause any significant detriment to residential amenity for new or existing residents and the scheme, as proposed, will improve the quality of the Boroughs housing stock.

Informative(s)

- 1 The proposed development lies within an area which could be subject to current coal mining or hazards resulting from past coal mining. Such hazards may currently exist, be caused as a result of the proposed development, or occur at some time in the future. These hazards included:
 - Collapse of shallow coal mine workings;
 - Collapse of, or risk of entry into, mine entries (shafts and adits);
 - Gas emissions from coal mines including methane and carbon dioxide;
 - Spontaneous combustion or ignition of coal which may lead to underground heatings and production of carbon monoxide;
 - Transmission of gases into adjacent properties from underground sources through ground fractures;
 - Coal mining subsidence
 - Water emissions from coal mine workings.

Applicants must take account of these hazards which could affect stability, health & safety, or cause adverse environmental impacts during the carrying out their proposals and must seek specialist advice where required. Additional hazards or stability issues may arise from development on or adjacent to restored opencast sites or quarries and former colliery spoil tips.

Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. In the interests of public safety the Coal Authority is concerned that risks specific to the nature of coal and coal mine workings are identified and mitigated.

The above advice applies to the site of your proposal and the surrounding vicinity. You must obtain property specific summary information on any past, current and proposed surface and underground coal mining activity and other ground stability information in order to make an assessment of the risks. This can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com

- 2 The provision or enhancement of public open space may be met through the payment of a commuted sum, obligation or other legal agreement.

SCHEDULE 3

The Developer 's Covenants with the Council

1. The Developer covenants to pay the Open Space Contribution to the Council as follows:
 - 1.1 £62,910 prior to the Practical Completion of the 50th Dwelling; and
 - 1.2 £62,910 prior to the Practical Completion of the 95th Dwelling.

SCHEDULE 3

The Developer 's Covenants with the Council

1. The Developer covenants to pay the Open Space Contribution to the Council as follows:
 - 1.1 £62,910 prior to the Practical Completion of the 50th Dwelling; and
 - 1.2 £62,910 prior to the Practical Completion of the 95th Dwelling.

SCHEDULE 4

Council's Covenants

1. REPAYMENT OF CONTRIBUTIONS

- 1.1 The Council hereby covenants with the Developer to use all sums received from the Developer under the terms of this deed for the purposes specified in this deed for which they are to be paid.
- 1.2 The Council covenants with the Developer that it will pay to the Developer such amount of any payment made by the Developer to the Council under this deed which has not been expended in accordance with the provisions of this deed within fifteen years of the date of receipt by the Council of such payment together with interest for the period from the date of payment to the date of refund.
- 1.3 The Council shall provide to the Developer such evidence, as the Developer shall reasonably require in order to confirm the expenditure of the sums paid by the Developer under this deed.

2. DISCHARGE OF OBLIGATIONS

At the written request of the Developer the Council shall provide written confirmation of the discharge of the obligations contained in this deed when satisfied that such obligations have been performed.

The Common Seal of **BARNSLEY**)
METROPOLITAN BOROUGH)
COUNCIL was hereunto affixed to this deed)
in the presence of:)

Director

Director/Secretary

Debra Bill

No. 857
IN REGISTER

The Common Seal of **KEEPMOAT**)
HOMES LIMITED was hereunto affixed to)
this deed in the presence of:)

Director

Director/Secretary

Andy Tardan

P. Kelly

