

Dated 4th November, 2019

Barnsley Metropolitan Borough Council

and

Keepmoat Homes Limited

DEED

**Pursuant to Section 111 Local Government Act
1972 (as amended) in relation to Land at Brunswick
Street, Thurnscoe**

2019/0431

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This Deed is made on

4th November,

2019

Between

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall Church Street Barnsley S70 2DR of (hereinafter referred to "the Council"); and
- (2) **KEEPMOAT HOMES LIMITED** Company Registration Number 2207338) whose registered office is at The Waterfront, Lakeside Boulevard, Doncaster, DN4 5PL ("the Developer")

Whereas

- (A) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 for the area within which the Land is situated and is the authority.
- (B) The Council is the owner of an estate in fee simple absolute in possession of the Land under freehold title numbers SYK85252.
- (C) The Developer is desirous to acquire the Land.
- (D) The Developer submitted the Planning Application to the Council for permission to carry out the Development.
- (E) The Council has decided to grant planning permission for the Development subject to the completion of this Deed without which planning permission for the Development would not be granted.

This Deed is made in pursuance of Section 111 of the Act and witnesses as follows

1. DEFINITIONS AND INTERPRETATION

1.1. The definitions and rules of interpretation shall apply as follows:-

Act

the Local Government Act 1972 (as amended)

Development

means residential development of 49 homes comprising two, three and four bed houses and two bed bungalows and associated

	infrastructure
Land	the land at Brunswick Street, Thurnscoe and shown edged red on the Plan
Plan	the plan which is annexed to this Deed.
Planning Agreement	the Agreement in the form of that appended to the Schedule hereto to be duly entered into with the Council pursuant to the terms of Section 106 of the Town and Country Planning Act 1990 (as amended).
Planning Application	the application (including plans and drawings) submitted by the Developer to the Council for permission to carry out the Development (reference:2019/0431).
Planning Permission	the planning permission granted by the Council pursuant to the Planning Application.

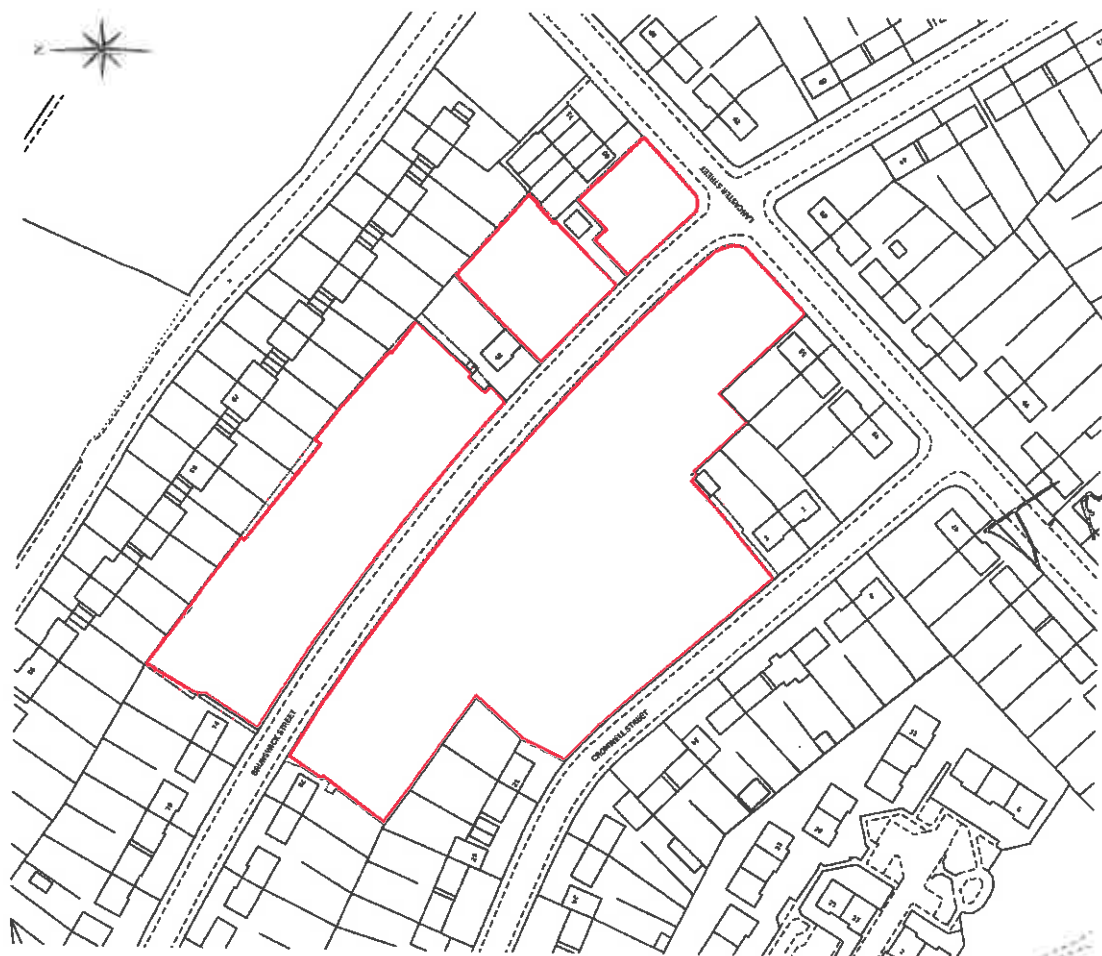
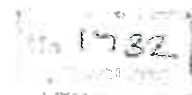
2. **INTERPRETATION**

- 2.1. Reference to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed by or under any other enactment and shall include all instruments orders and regulations.
- 2.2. Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.
- 2.3. Reference to a clause or schedule shall unless the context otherwise admits be a reference to a clause or schedule of this Deed.

3. **COMMENCEMENT AND LEGAL EFFECT**

- 3.1. The provisions hereof shall take effect on the date hereof.
- 3.2. Save as provided for by this Deed nothing in this Deed shall be treated as giving rise to any rights or to third parties under the Contracts (Rights of Third Parties) Act 1999.

Gary K.
SIGNED
SIGNATORY



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Client: Keepmoat Homes Ltd

File: KEE061.40

Land at Brunswick Street
Thameside
Rotherham

Section 106 Plan

Scale: 1:1250 @ A3

Date 23/10/19

Drawn By: CS

- 3.3. If any provision of this Deed is held to be invalid illegal or unenforceable under any enactment or rule of law that term or provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remainder of this Deed shall remain unaffected.
- 3.4. If the Planning Permission expires through operation of law or is otherwise quashed or revoked such that it may no longer be implemented this Deed shall forthwith determine and cease to have effect.

4. **JURISDICTION**

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

5. **COVENANTS**

- 5.1. The Developer hereby covenants to enter into the Planning Agreement in the form of that appended to the Schedule hereto on the date that it acquires the freehold interest in the Land.
- 5.2. The Council hereby covenants as follows:
- 5.2.1. to issue the Planning Permission on the date hereof or as soon as reasonably practicable thereafter;
- 5.2.2. to enter in to the Planning Agreement with the Developer on the date that the Developer acquires the Land in the form of that appended to the Schedule hereto.

6. **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.

³
Schedule – Planning Agreement

DATED

2019

BARNSELY METROPOLITAN BOROUGH COUNCIL

And

KEEPMOAT HOMES LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 relating to land
at Brunswick Street, Thurnscoe
2019/0431

A.C. Frosdick, LL.B. DipLG,
Executive Director Core Services
Solicitor to the Council
Barnsley Metropolitan Borough Council
Town Hall,
Barnsley, S70 2TA.

THIS DEED OF AGREEMENT is made the day of
Two Thousand and Nineteen

BETWEEN

(1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall
Barnsley South Yorkshire S70 2TA ("the Council") of the first part, and

(2) **KEEPMOAT HOMES LIMITED** (Company Registration Number
2207338) whose registered office is at The Waterfront, Lakeside Boulevard,
Doncaster, DN4 5PL ("the Owner") of the second part.

RECITALS

- (1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the land described in the First Schedule hereto ("the Land") is situated and is the Authority by whom the obligations contained in this Agreement are enforceable
- (2) The Owner is the registered proprietor of the Land registered under Land Registry Title Number SYK85252 pursuant to a transfer of the date hereof.
- (3) Planning Permission for the Development was granted by the Council on [].
- (4) The parties entered into an agreement pursuant to s111 of the Local Government Act 1972 dated [] in order to secure the planning obligations herein contained upon acquisition by the Owner of the Land.
- (5) The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Agreement and agree that the

obligations comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.

NOW THIS DEED WITNESSETH AS FOLLOWS:-

1. DEFINITIONS

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

"the 1990 Act" means the Town and Country Planning Act 1990 (as amended)

"the Application" means the planning Application with the reference numbers 2019/0431 submitted to the Council for residential development of 49 homes comprising, two, three and four bed houses and two bed bungalows and associated infrastructure.

"the Commencement of Development" the date on which development pursuant to the Planning Permission is commenced on the Site within the meaning of Section 56 of the Act provided that the following shall not amount to the Commencement of Development:- operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly

"the Development" means the development of the Land in accordance with the Planning Permission

"Dwelling Units" means the houses, bungalows and other forms of residential accommodation to be created on the Land pursuant to the Planning Permission

"Education Contribution" means the sum of £144,000. (one hundred and forty four thousand pounds) to be paid by the Owner to the Council in accordance with the terms of this Deed and to be applied by the Council towards additional places at the following schools; The Hill, Goosacre or The Dearne Academy with priority to be given to The Dearne Academy

"the Offsite Greenspace Contribution" means the sum of £81,093.35. (eighty one thousand, ninety three pounds and thirty five pence) to be paid by the Owner to the Council in accordance with the terms of this Deed and to be applied by the Council towards the provision of and/or improvement to informal open space and/or sports and/or recreation facilities within the administrative areas of Thurnscoe, Goldthorpe and Bolton Upon Dearne in accordance with Local Plan Policy I1 and the Councils Supplementary Planning Document '*Open Space Provision on New Housing Developments*'

"Index" means 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 that Price Index ceases to exist such index as the Council reasonably nominates

"Interest" means interest at 4 per cent per annum above the base lending rate of Barclays Bank Plc from time to time or should this rate cease to exist such other bank lending rate as the Council may reasonably nominate

"the Land" means the freehold land described in the First Schedule hereto against which this Agreement may be enforced.

"Occupation and Occupied": means occupation for the purposes permitted by the Planning Permission from which the Development benefits but not including occupation by personnel engaged in construction fitting out or

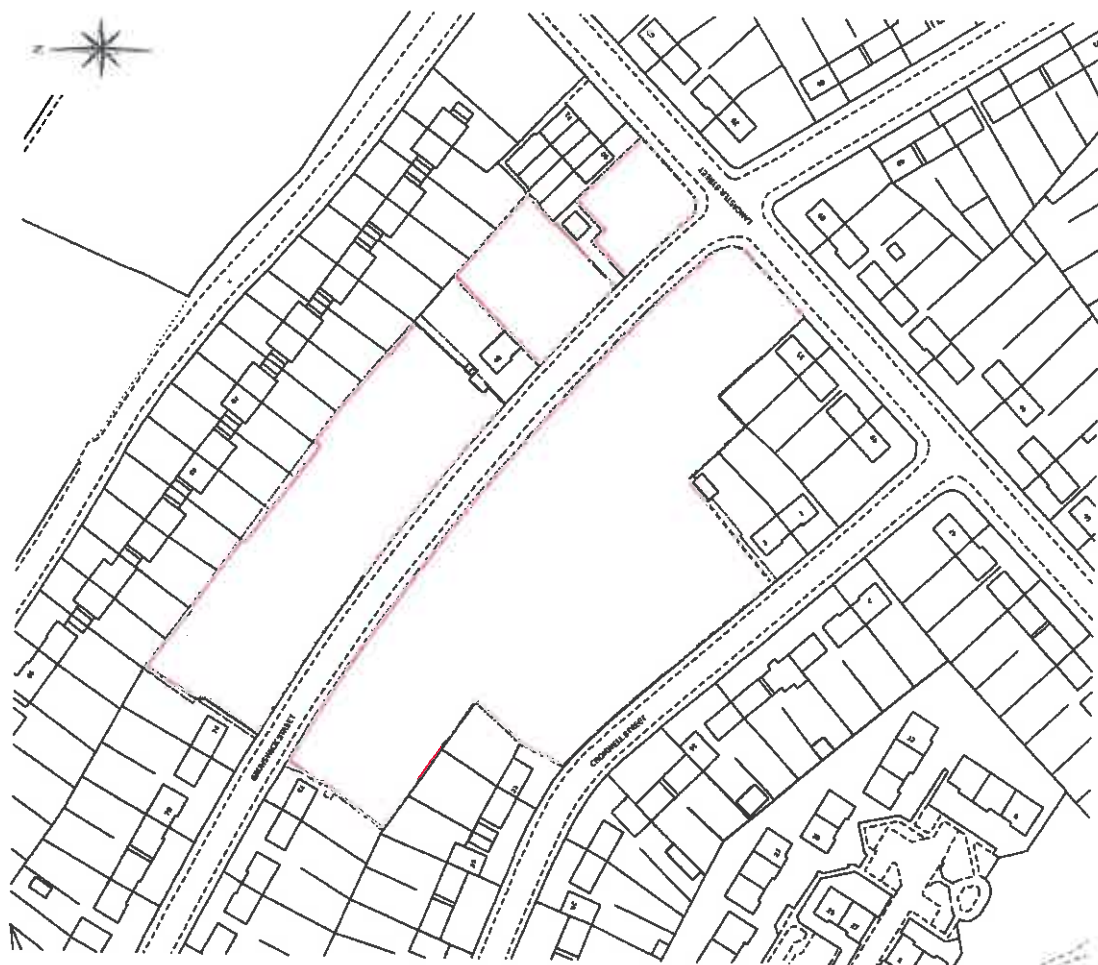
decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" shall be construed accordingly.

"the Plan" means the plan annexed hereto

"the Planning Permission" means the planning permission dated [] and granted pursuant to the Application.

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.



Client: Keepmoat Homes Ltd	Title: Section 106 Plan		
File: KEE061.40	Rev:	Land at Brunswick Street Thurnscoe Rotherham	
 wardhadaway Planning & Design Services Tel: 01971 244600 Fax: 01971 244610		Scale: 1:1250 @ A3	Date 23/10/19
		Drawn By: CS	

0 10 20 30 40 50
Scale: 1:1250

- 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 statutory functions.

3. LEGAL BASIS

This Agreement is made pursuant to section 106 of the Town and Country Planning Act 1990 section 111 of the Local Government Act 1972 section 2 of the Local Government Act 2000 and all other enabling powers and is a planning obligation for the purposes of and as defined in the said Section 106 and the covenants restrictions and requirements imposed on the Owner herein are enforceable by the Council as the local planning authority against the Owner

4. COMMENCEMENT

4. The provisions of this Deed shall have immediate effect upon the
- 4.1 grant of Planning Permission, and
- 4.2 Commencement of Development,
- save for clauses 6, 9, 10 and 11 which shall come into effect on the date hereof

5. OWNER AND COUNCIL COVENANTS

- 5.1 The Owner covenants with the Council as set out paragraph 1 of the Second Schedule
- 5.2 The Council covenants with the Owner as set out in paragraph 2 of the Second Schedule

6. MISCELLANEOUS

- 6.1 The Owner shall pay to the Council on completion of this Deed the sum of £1000.00 (on which no VAT shall be payable) in respect of the legal

costs of the Council incurred in the negotiation, preparation and execution of this Deed.

- 6.2 Save as provided in respect of successors in title to the land or any successor to the relevant statutory function of the Council of this Deed this Deed shall not be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit, rights or claims thereto.
- 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 Owner from the Council or by the Council from the Owner 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 Head of Planning and Building Control and any notices shall be deemed to have been properly served if sent by recorded delivery or special 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 receipt of a written request by the Owner 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 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 all or part of its interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 6.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.9 No waiver (whether expressed or implied) by the Council 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 from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.
- 6.10 No purchaser or tenant of an individual Dwelling to be constructed on the Site nor any person deriving title under them and no mortgagee or chargee of any such Dwelling or a statutory undertaker shall be liable for any of the covenants contained in this Deed.
- 6.11 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 (without the consent of the Owner) or it is modified by any statutory procedure or expires prior to the Commencement of Development

7. INDEXATION

Any sum payable under this deed by the Owner remaining unpaid twelve months following the date hereof shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable

8. INTEREST

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

9. DISPUTE PROVISIONS

- 9.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed (save as to matters of law which shall remain the jurisdiction of the Courts) such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 9.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 9.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 9.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more

than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

- 9.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

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 these presents have been duly executed as a Deed by the parties hereto the day and year first before written

FIRST SCHEDULE

All that land adjoining Brunswick Street, Thurnscoe and for the purpose of identification shown edged red on the Plan

SECOND SCHEDULE

- 1 The Owner covenants with the Council as follows:
 - 1.1 to pay the Education Contribution prior to the Occupation of the 30th Dwelling;
 - 1.2 to pay the Offsite Greenspace Contribution prior to the Occupation of the 30th Dwelling Unit.
 - 1.3 Not to Occupy more than 30 Dwelling Units unless the Education Contribution and the Offsite Greenspace Contribution have been paid to the Council
- 2 The Council covenants with the Owner as follows:
 - 2.1 at the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
 - 2.2 To use (or procure the use of) all sums received under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.
 - 2.3 to repay the Education Contribution and/or the Offsite Green Space Contribution to the Owner upon written request if the Contribution has not been expended or committed to be expended within 10 years from its receipt by the Council.

- 2.4 The Council should provide to the person making the payment any evidence that the person making the payment shall reasonably require in order to confirm the expenditure of sums paid by that person under this Deed.

THE COMMON SEAL of BARNSELY)

METROPOLITAN BOROUGH)

COUNCIL was hereunto affixed to this)

Deed in the presence of:-)

Executive director Core Services/

Legal Services Director /

Authorised Signatory

Executed as a deed by

KEEPMOAT HOMES LIMITED acting by)

In the presence of:

) Director (name)

)

)

(signature)

Witness signature

Name

Address

.....

Occupation

OR

Executed as a deed by

[] as attorney for)
KEEPMOAT HOMES LIMITED

) Attorney for Keepmoat Homes Limited

Under a power of attorney dated **20 May**
2019

)

In the presence of:

)

)

Witness signature

Name

Address

.....

Occupation

IN WITNESS of the above the parties have executed this Deed as a deed and the same has been delivered by them or on their behalf on the above date

Executed as a deed by

**BARNSELY METROPOLITAN BOROUGH
COUNCIL**

in the presence of: *cf*



Executive Director Core Services/
Legal Services Director/
Authorised Signatory

No. 173
IN REGIST

Executed as a deed by

KEEPMOAT HOMES LIMITED acting by)

T.M. Beale

In the presence of:

) Director (name)

) TIM BEALE

)

(signature)

Witness signature

HB

Name

CAROLYNNE HANSON

Address

.....

Occupation

RH TO CEO



OR

Executed as a deed by

[] as attorney for)
KEEPMOAT HOMES LIMITED

) Attorney for Keepmoat Homes Limited

Under a power of attorney dated 20 May
2019)

In the presence of:

)

)

Witness signature

Name

.....

Address

.....

.....

Occupation

.....