

BOROUGH SECRETARY'S DEPARTMENT
LEGAL SERVICES DIVISION



To: (see below)

My Ref: JF/ST/CT/936/00691

Your Ref:

Date: 25th June 2010

Enquiries to: Jason Field

Ext: 2651

Rec:

Ack:

**Subject: Re: Reema Estate, Thurnscoe, Barnsley
Section 106 Agreement**

Attached is a copy of the completed Section 106 Agreement for your records. The Agreement achieves the following:-

Public Open Space

There is a requirement for the Developer to use the land identified in the Plan as Public Open Space and undertakes some works to that land and there is a restriction on the amount of units that can be occupied until that work is completed detailed in paragraph 1.3. There is a requirement for the Developer to use all reasonable efforts to transfer the Public Open Space to a Community Managed Trust which you should find in the definitions section of the Agreement. If that Transfer hasn't occurred before practical completion of all the Housing then the Developer can propose other long term maintenance arrangements but its for the Council to give its written approval to. Until that time the Developer has the responsibility for maintaining the Public Open Space. Should the public open space be transferred to the community managed trust then it will continue to have responsibility in default of the community managed trust for a period of 15 years unless a payment is made which is pro rated accordingly to how long the period of years has expired but this payment is subject to other conditions or if the Council is happy that the Community Management Trust can now discharge its obligations in perpetuity.

Highways

1. Bridleway – The Developer has to pay £8,800 to the Council when the land is transferred to the Developer for Bridleway enhancement works and long term maintenance thereafter.

2. Bus shelters – As soon as the development is commenced the Developer has to pay the Council £12,000 as a contribution towards bus shelter improvements to the bus stops at School Street/ Ashbury Grove and School Street/Orchard Way, Thurnscoe. It is expected that the Council will pass this payment onto SYPTE for them to fulfil.

General

There are interest requirements if the payments are late which are 4% of base lending rate.

Regards

Thanks.

Jason Field
for the Borough Secretary

To: Shaun Wright, Neighbourhood Services
Ian Wilson, Highways
Andrew Burton, Planning
Thomas Hawley & Helen Tate, Strategic Housing

DATED 24th June 2010

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

KEEPMOAT HOMES LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)
relating to development on land at Thurnscoe, Barnsley in the County of South
Yorkshire

A.C. Frosdick, LL.B. DipLG,
Borough Secretary,
Town Hall,
Barnsley S70 2TA.

THIS DEED OF AGREEMENT is made the 24th day of June Two Thousand and Ten

BETWEEN

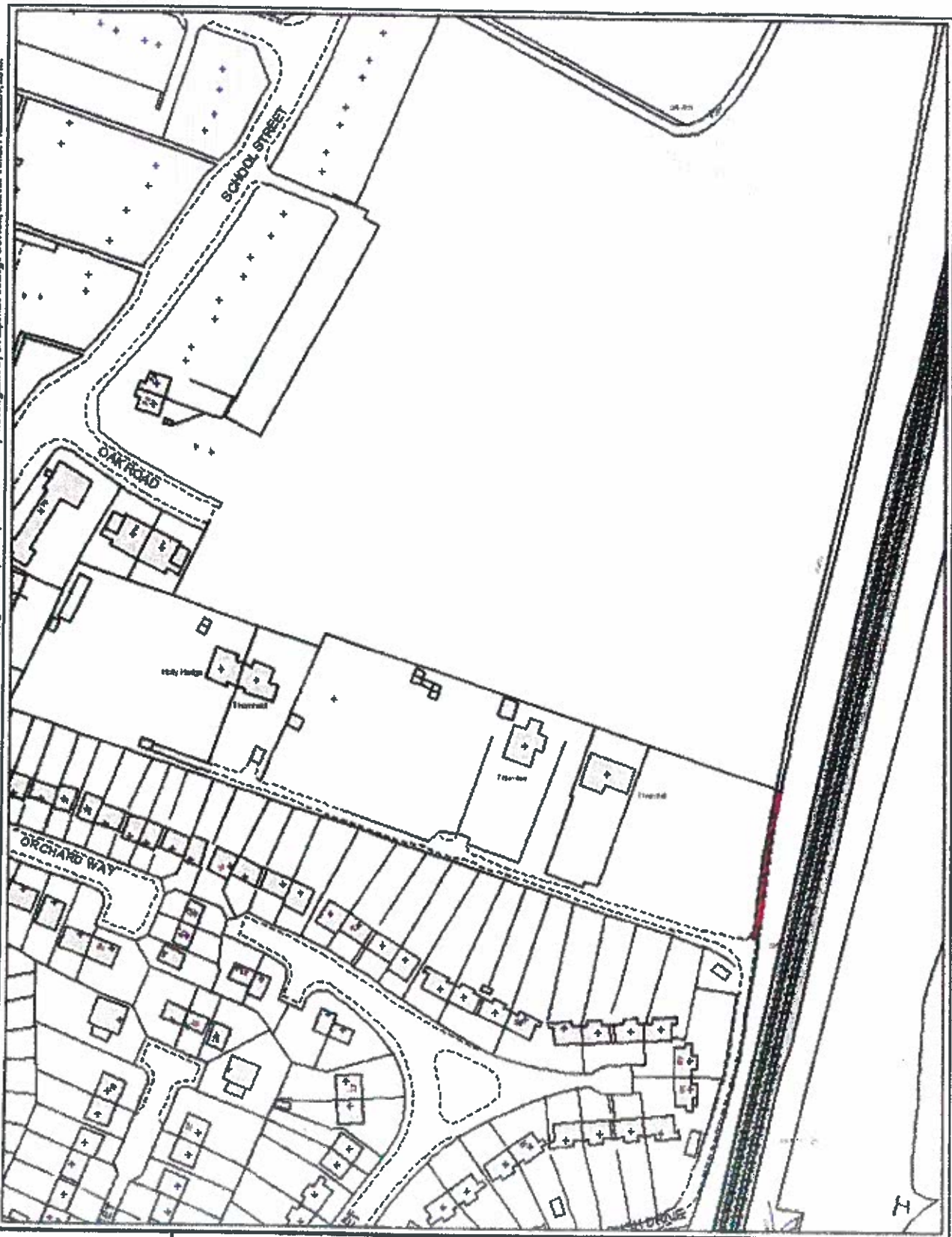
(1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA ("the Council") of the first part and

(2) **KEEPMOAT HOMES LIMITED** (Company Number 2207338) whose registered office is situate at The Waterfront Lakeside Doncaster South Yorkshire DN4 5PL ("the Developer") 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 Council is the registered proprietor with Title Absolute of the Land under Land Registry Title Number SYK536243
- (3) The Developer and Keepmoat Homes have entered into a conditional contract with the Council for the Developer to purchase the Land dated 18 March 2010
- (4) The Land is part of a larger site ("the Site") that has the benefit of an outline planning permission reference 2009/1408 to redevelop the Reema Estate Thurnscoe ("the Outline Planning Permission).
- (5) The Developer has the benefit of a reserved matters permission reference 2010/0178 pursuant to the Outline Planning Permission which enables the development of the Land subject to conditions ("the Reserved Matters Approval")
- (6) The Developer has agreed to enter into this Deed in order to secure the planning obligations contained in this Deed
- (7) These obligations are entered into with the intent to discharge conditions 9, 11 and 12 of the Outline Planning Permission in respect of the Land
- (8) The Council acknowledges that its interest in the Land shall be bound by the obligations contained in this Deed upon disposal of that interest in whole or in part.
- (9) The Developer intends to enter into further planning obligations in order to develop the other parts of the Site, which will include providing further public open space to ensure that 15% of Public Open Space is delivered on the Site overall and the full upgrade of the

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Scale 1:50 	Project: T1	 BARNSLEY Metropolitan Borough Council
Drawn by: ES Drwg No: 001 Date: .Da	Drawing: T2 PLAN 2	Strategic Housing Executive Director: Dr. Asa Goss Barnsley MBC, PO Box 603, Strategic Housing, Barnsley S10 9FD Tel: 01226 772742 Fax: 01226 772896 email: strategic1011@barnsley.gov.uk

existing bus stops at Leys Lingamore/Willows Road Thurnscoe as part of the development of Site 2 of the Outline Planning Permission

NOW THIS DEED WITNESSETH AS FOLLOWS:-

DEFINITIONS

1 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 Commencement of Development" means the actual date upon which the Development is begun by the carrying out of any material operation as defined by Section 56(4) of the Town and Country Planning Act 1990 and "Commence Development" is to be construed accordingly

"Community Managed Trust" means a Community Land Trust as defined in section 79 of the Housing and Regeneration Act 2008 or a legal entity with a similar aim and structure that has in the opinion of the Council adequate managerial and financial arrangements to be able discharge any responsibilities it proposes to undertake in connection with the Public Open Space including the long term maintenance of that Public Open Space

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

"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 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

"Plan 1" means the plan annexed hereto and so marked

"Plan 2" means the plan annexed hereto and so marked

"Public Transport Contribution" means £12,000 (twelve thousand pounds only)

"Public Open Space" means the area coloured green and marked A or b on Plan 1

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.

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.

LEGAL BASIS

3 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 Developer herein are enforceable by the Council as local planning authority against the Developer

COMMENCEMENT

4.1 The provisions of this Deed shall have immediate effect upon the completion of this Deed other than the obligations in Clause 5 which shall have effect upon the Commencement of Development

4.2 If the Planning Permission is quashed or revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure or expires before the Commencement of Development this Deed shall cease to have effect (except as regards any part of the Development which has by then been implemented)

DEVELOPER COVENANTS

5 The Developer covenants with the Council to perform and comply with the obligations as set out in the Second Schedule

MISCELLANEOUS

6.1 The Developer shall pay to the Council on completion of this Deed the legal costs of the Council in the sum of £1000 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 other than by a Registered Social Landlord

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 or by the Council from the Developer 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 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 receipt of a written request by the Developer 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 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 This Deed is governed by and interpreted in accordance with the law of England and Wales.

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

6.12 Any sum payable under this deed by the Developer 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.

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 at the Reema Estate Thurnscoe, Barnsley registered at the Land Registry under title number SYK536243 for the purpose of identification shown edged red on Plan 1

SECOND SCHEDULE

The Developer covenants with the Council that:-

Public Open Space

1.1 The Public Open Space shall be used for public open space recreation and amenity purposes only

1.2 The Developer shall ensure that the general public have unimpeded access to the Public Open Space at all times following the completion of the Public Open Space Works.

1.3 Before occupation of the first dwelling on the Development the Developer shall submit to the Council a scheme of works and landscaping within the Public Open Space for the Council's written approval and the Developer shall implement the approved scheme ("the Public Open Space Works ") within the following timescale

1.3.1 the area marked A on Plan 1 shall be completed within 2 months of the practical completion of units marked X on plan 1 and when 50% of the units marked X on Plan 1 are occupied

1.3.2 the area marked B on Plan 1 shall be completed within 2 months of the practical completion of the units marked Y on plan 1 and when 50% of the units marked Y on Plan 1 are occupied

1.4 The Developer shall rectify any want or defect in the Public Open Space Works that the Council identifies within the period of 12 months from the date the Council gives their written approval that the Public Open Space Works have been satisfactorily completed

1.5 The Developer shall maintain the Public Open Space and the Public Open Space Works until the Public Open Space is transferred to a Community Managed Trust in accordance with this Agreement (subject to paragraph 1.8) or should no such transfer occur before practical completion of all the housing granted permission under the Reserved Matters Approval the Developer shall maintain the Public Open Space until some other long term maintenance arrangements for the Public Open Space to which the Council has given its prior written agreement has been fully implemented (and for the avoidance of doubt if the Council gives its agreement to the payment of a commuted sum for maintenance of the Public Open Space, that payment shall be no more than up to £21,319).

1.6 The Developer shall use all reasonable endeavours to transfer the Public Open Space to a Community Managed Trust

1.7 The Developer shall not transfer the Public Open Space to a Community Managed Trust until it has obtained the written confirmation of the Council that the Community managed Trust is an appropriate body with appropriate financial and managerial arrangements to ensure the long term maintenance of the Public Open Space.

1.8 The Developer shall continue to have responsibility for maintenance of the Public Open Space after transferring the Public Open Space to the Community Managed Trust should the Community Managed Trust default on any of its responsibilities for a period of 15 years from when the Public Open Space is Completed unless;

1.8.1 the Council provides written confirmation to the Developer that it is satisfied that the Community Managed Trust is sufficiently established and has sufficient funds and managerial experience to perform its obligations in perpetuity OR

1.8.2 the Developer makes a payment of £21,319 to the Council (as the local planning authority) as a commuted sum for the maintenance of the Public Open Space (or pro-rata payment reducing over a 15 year period from the date the Public Open Space is completed), PROVIDED THAT this option can only be exercised where the Community Managed Trust has ceased to exist or has consistently failed to perform its obligations and the Developer has made all reasonable endeavours to assist the Community Managed Trust in functioning and performing maintenance of the Public Open Space and the Local Planning Authority determine that that there are no other viable alternative long term maintenance arrangements for the Public Open Space given the financial budget of £21,319.

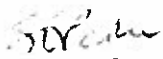
Bridleway

- 2.1 The Developer covenants to pay £8800 to the Council upon transfer of the Land to the Developer towards works to enhance the bridleway shown coloured red on Plan 2 (such works to include resurfacing of the bridleway along the length shown on the plan) and the long term maintenance of the enhancements thereafter [which for the avoidance of doubt may include further resurfacing]
- 2.2 The Council agrees pursuant to condition 11 that no other enhancements to any other part of the bridleway route between the South East corner of the Land and Houghton Road Thurnscoe are necessary

Bus Shelters

- 3.1 The Developer shall pay to the Council upon Commencement of Development the Public Transport Contribution to be applied towards the upgrading of the bus stops at School Street/Ashberry Grove and School Street/Orchard Way Thurnscoe to bus shelters and the maintenance of the bus shelters thereafter
- 3.2 The Developer shall make arrangements to provide a full upgrade of the existing bus stops at Leys Lingamore/Willows Road before the occupation of any houses within site 2 of the Outline Planning Permission and the Council agrees this obligation pursuant to condition 12 of the Outline Planning Permission

THE COMMON SEAL of **BARNSELY**)
METROPOLITAN BOROUGH)
COUNCIL was hereunto affixed to this)
Deed in the presence of:-)

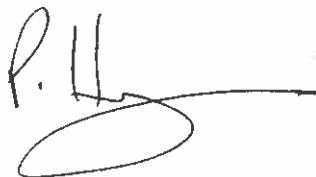

Borough Secretary/Authorised Signatory

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P

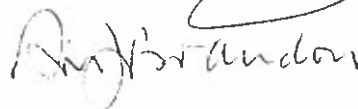
EXECUTED as a DEED by KEEPMOAT HOMES)
LIMITED)

Acting by

Director

A handwritten signature in black ink, appearing to be 'P. H. L.' with a long horizontal stroke extending to the right.

Director/Secretary

A handwritten signature in black ink, appearing to be 'R. H. L.' with a large circular flourish.

