



Registration of a Charge

Company name: **KEEPMOAT HOMES LIMITED**

Company number: **02207338**



X6LKJ7EZ

Received for Electronic Filing: **18/12/2017**

Details of Charge

Date of creation: **14/12/2017**

Charge code: **0220 7338 0159**

Persons entitled: **HOMES AND COMMUNITIES AGENCY**

Brief description: **THE LAND AND BUILDINGS ON THE SOUTH SIDE OF MOUNT PLEASANT DRIVE, WINSFORD, CHESHIRE AND THE LAND AND BUILDINGS AT WOODFORD LODGE HIGH SCHOOL, DOVER DRIVE, WINSFORD, CHESHIRE SHOWN SHADED RED ON THE ATTACHED PLAN, WITH REGISTERED TITLE NUMBER CH652050**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL
INSTRUMENT.**

Certified by:

PINSENT MASONS LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2207338

Charge code: 0220 7338 0159

The Registrar of Companies for England and Wales hereby certifies that a charge dated 14th December 2017 and created by KEEPMOAT HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 18th December 2017 .

Given at Companies House, Cardiff on 20th December 2017

The above information was communicated by electronic means and authenticated
by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED 14 DECEMBER 2017

(1) KEEPMOAT HOMES LIMITED

(2) HOMES AND COMMUNITIES AGENCY

LEGAL CHARGE AND ASSIGNMENT

WOODFORD LODGE

CONTENTS

Clause		Page
1	INTERPRETATION	3
2	COVENANT TO PAY	7
3	CHARGES	7
4	PERFECTION OF SECURITY	8
5	FURTHER ASSURANCE	9
6	RESTRICTIONS ON DEALING	10
7	INSURANCES	10
8	LAND	10
9	DEMAND AND ENFORCEMENT	12
10	RECEIVERS	13
11	POWER OF ATTORNEY	14
12	APPLICATION OF MONEYS	14
13	CONSOLIDATION	15
14	PROTECTION OF THIRD PARTIES	15
15	PROTECTION OF THE AGENCY AND ANY RECEIVER	16
16	PROVISIONS RELATING TO THE AGENCY	17
17	PRESERVATION OF SECURITY	18
18	REINSTATEMENT AND CONSOLIDATION	20
19	MISCELLANEOUS PROVISIONS	21
20	NOTICES	22
21	GOVERNING LAW AND ENFORCEMENT	22
	SCHEDULE 1 – DETAILS OF LAND	23
	SCHEDULE 2 - SPECIFIC CONTRACTS	24
	SCHEDULE 3 - FORM OF NOTICE OF ASSIGNMENT OF INSURANCE	25
	SCHEDULE 4 - FORM OF NOTICE OF ASSIGNMENT OF SPECIFIC CONTRACT	27

THIS DEED is made on 14 December 2017

BETWEEN:-

- (1) **KEEPMOAT HOMES LIMITED** (company number: 02207338) whose registered office is at The Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire, DN4 5PL (the "**Chargor**"); and
- (2) **HOMES AND COMMUNITIES AGENCY** of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH and shall include all successors, assigns and transferees (the "**Agency**").

THIS DEED WITNESSES as follows:-

1. INTERPRETATION

1.1 Definitions

In this Deed:-

"Agency"	means the Agency and includes the Agency's successors in title, assigns and transferees and any successor, assignee or transferee appointed in accordance with the Finance Documents
"Agreement for Sale"	means the Agreement for Sale dated 23 October 2015 made between (1) Cheshire West and Chester Borough Council, (2) the Chargor and (3) Keepmoat Limited.
"Appointments"	means the appointments and PI cover in relation to each Consultant and all replacement and additional appointments and PI cover relating to each Consultant from time to time and shall also include all related deeds of novation, in each case in relation to the Land and the Project
"Building Contract"	means any building contracts relating to the Land and the Project from time to time and shall also include all parent guarantees and performance bonds granted in favour of the Chargor in connection therewith
"Charged Property"	means all the assets and undertaking of the Chargor which from time to time are, or purport to be, the subject of the security created in favour of the Agency by or pursuant to this Deed
"Collateral Warranties"	means all collateral warranties granted in favour of the Chargor in connection with the Land and the Project from time to time
"Construction Documents"	means: <ol style="list-style-type: none"> (a) any Building Contract; (b) the Appointments; (c) the Collateral Warranties; (d) any other building contracts, collateral

warranties, guarantees or indemnities, grant agreements, professional or sub-contractor appointments and any novation agreements relating thereto, any outline planning permission, any detailed planning permission, any section 106 agreements, any development appraisal, any specifications, any plans, any reports relating to the Land and the Project from time to time;

- (e) all drawings, plans and specifications relating to the Land and the Project;
- (f) all planning permissions required for the Project and all compulsory purchase orders, road closures and approvals of reserved matters or details provided pursuant to them and all other licences and approvals under any applicable planning legislation or regulations, the building and fire regulations and any other statute or bylaw of any relevant authority which are necessary to carry out and complete the Project;
- (g) all guarantees, warranties and representations given or made by and any rights or remedies against all or any of the valuers, professional advisers, contractors or sub-contractors or manufacturers, suppliers and installers of any Fixtures in each case in connection with the Land; and
- (h) all rights and claims to which the Chargor is now or may hereafter become entitled in relation to any infrastructure, development, demolition, site clearance, remediation, construction, redevelopment, re-instatement, refurbishment, repair or improvement works of, on or at the Land

"Consultant"

means in relation to the Project, each Contractor including, without limitation, those contractors engaged on the Land to provide the following:

- (a) roads and sewers;
- (b) groundworks;
- (c) brickwork; and
- (d) plumbing

"Deed of Priorities"

means the deed of priorities dated on or about the date of this Deed and made between (1) the Agency, (2) the Senior Lenders (as defined therein) and (3) the Chargor

"Default Rate"

means the rate referred to in Clause 2.2

"Event of Default"

means as defined in the Facility Agreement

"Facility Agreement"	means the facility agreement relating to the Land and the Project dated on or about the date of this Deed and made between (1) the Chargor and (2) the Agency
"Finance Documents"	means as defined in the Facility Agreement
"Fixtures"	means all things of any kind now or at any time affixed to the Land for any purpose, including, without limitation, trade and tenants fixtures
"Insurances"	means the Chargor's insurance policy number 53/NT/27677267/12 with Allianz (and as renewed from time to time) and all other contracts and policies of insurance or assurance in which the Chargor has an interest in relation to the Land and the Project and all claims and rebates of premium under any such policy
"Land"	means the land specified in Schedule 1 and shall include any estate, right or interest of the Chargor in or over such Land, whether legal or equitable including, without limitation, any buildings and Fixtures on such Land, and the benefit of any covenants or rights owed to any person or enforceable by him by virtue of the ownership possession or occupation of such Land
"LPA"	means the Law of Property Act 1925
"Notice of Assignment"	means a notice of assignment and charge in substantially the form set out in Schedule 3 (<i>Form of Notice of Assignment of Insurance</i>), Schedule 4 (<i>Form of Notice of Assignment of Specific Contract</i>) or in such form as may be specified by the Agency
"Occupational Lease"	means any lease, licence, building licence, tenancy, option, easement or right or other occupational arrangement (and shall include any agreement to enter into or grant any of the same) granted or otherwise acquired by the Chargor in connection with the Land from time to time
"Party"	means a party to this Deed
"Plan"	means the plan attached at Schedule 5 to this Deed
"Project"	means as defined in the Facility Agreement
"Receiver"	means any receiver or receiver and manager of the whole or any part of the Charged Property
"Related Rights"	means in relation to any Charged Property: <ul style="list-style-type: none"> (a) the proceeds of sale of any part of that Charged Property; (b) all rights under any licence, agreement for sale or agreement for lease in respect of that Charged Property; (c) all licences, consents and authorisations held or utilised by the Chargor in connection with

the Charged Property or the use of any of the Charged Property;

- (d) all rights, covenants, easements, benefits, claims, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of that Charged Property;
- (e) all rents receivable from any lease granted out of the Land and the benefit of all guarantees, indemnities, rent deposits, agreements, undertakings and warranties relating to the same;
- (f) any income, moneys and proceeds paid or payable in respect of that Charged Property; and
- (g) all claims, remedies, awards or judgements paid or payable to the Chargor (including, without limitation, all liquidated and ascertained damages payable to the Chargor under the above) in each case relating to the Charged Property

"Secured Liabilities"

means all present and future liabilities and obligations of the Chargor to the Agency (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever and whether or not the Agency was the original creditor in respect thereof) under or in connection with the Finance Documents, including, without limitation, all interest, commission, costs, charges and expenses incurred by the Agency in connection with the protection, preservation and/or enforcement of its rights under any document evidencing or securing any such liabilities and obligations, whatever their nature or basis, in any currency or currencies, and however they are described

"Security"

means a mortgage, charge, pledge, lien or any other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

"Specific Contracts"

means the agreements specified in Schedule 2 (*Specific Contracts*) and all income payable to the Chargor in connection therewith and each other document, agreement, contract or deed entered into by the Chargor from time to time in connection with the Land and the Project and all income payable to the Chargor in connection therewith.

1.2 Incorporation of terms

Unless the context otherwise requires or unless defined in this Deed, all words and expressions defined or whose interpretation is provided for in the Facility Agreement shall have the same meanings in this Deed.

1.3 Interpretation

- 1.3.1 The principles of interpretation set out in clause 1.2 (*Interpretation*) of the Facility Agreement shall apply to this Deed insofar as they are relevant to it; and
- 1.3.2 in this Deed, unless the context otherwise requires, a reference to the "**Facility Agreement**", any other "**Finance Document**", any "**Specified Contract**" or any other deed, agreement or instrument is a reference to that Finance Document or other deed, agreement or instrument as amended, novated, supplemented, restated or replaced (however fundamentally) and includes any increase in, extension of, or change to, any facility or service made available under the Facility Agreement, Finance Document, Specified Contract or other deed, agreement or instrument.

1.4 Effect as a deed

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Agency.

1.5 Law of Property (Miscellaneous Provisions) Act 1989

The terms of the other Finance Documents and of any side letters between any parties in relation to any Finance Document are incorporated in this Deed to the extent required to ensure that any purported disposition of an interest in Land contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

2. COVENANT TO PAY

2.1 Secured Liabilities

The Chargor covenants with the Agency that it will, on demand of the Agency, pay and discharge the Secured Liabilities when due.

2.2 Interest

If the Chargor fails to pay any sum on the due date for payment of that sum, the Chargor will pay interest on such sum (before and after any judgment) from the date of demand until the date of payment calculated on a daily basis at the default rate referred to in the Facility Agreement compounded (if unpaid) at such intervals as the Agency may determine. Such interest will be calculated on the basis of a 360 day year according to the usual practice of the Agency.

3. CHARGES

3.1 Mortgages and Fixed Charges

As a continuing security for payment of the Secured Liabilities, the Chargor with full title guarantee charges to the Agency all its right, title and interest from time to time in each of the following assets:-

- 3.1.1 by way of first legal mortgage all of the Land which is described in Schedule 1;
- 3.1.2 by way of first fixed charge:-
- (a) the Related Rights under or in connection the Land, the Project and the Insurances; and

- (b) to the extent not assigned or effectively assigned by Clause 3.2 (*Assignments*), the Specific Contracts, the Insurances and other agreements and all Related Rights in respect of any Charged Property.

3.2 **Assignments**

As continuing security for payment of the Secured Liabilities, the Chargor with full title guarantee assigns absolutely in favour of the Agency, but subject to the right of the Chargor to redeem such assignment upon the full payment or discharge of the Secured Liabilities, its right, title and interest from time to time in each of the following assets:-

3.2.1 the Specific Contracts; and

3.2.2 the Insurances,

together with all Related Rights in respect of such Charged Property.

3.3 **Trust**

If or to the extent that for any reason the assignment or charging of any Charged Property is prohibited, the Chargor shall hold it on trust for the Agency.

4. **PERFECTION OF SECURITY**

4.1 **Notices of Assignment**

The Chargor shall deliver to the Agency (or procure delivery of) Notices of Assignment duly executed by, or on behalf of, the Chargor:-

4.1.1 in respect of any Specific Contract:

- (a) in existence at the date of this Deed which is a Material Contract, on the date of this Deed; and
- (b) in respect of any Specific Contract in existence at the date of this Deed which is not a Material Contract, upon the written request from the Agency to do so; and
- (c) promptly upon entering into any further Specific Contract which is a Material Contract after the date of this Deed; and
- (d) upon the written request from the Agency to do so in relation to any further Specific Contract which is entered into after the date of this Deed and which is not a Material Contract.

4.1.2 in respect of the Insurances, on the date of this Deed and promptly upon purchasing any further Insurance after the date of this Deed; and

4.1.3 in respect of any other asset which is the subject of an assignment pursuant to Clause 3.2 (*Assignments*), promptly upon the request of the Agency from time to time,

and, in each case, the Chargor shall procure that each Notice of Assignment is acknowledged (in substantially the same forms as set out in this Deed) by the party to whom such Notice of Assignment is addressed on the date of this Deed or on such later date as may be agreed by the Agency in writing from time to time.

4.2 **Delivery of Documents of Title**

The Chargor shall upon the execution of this Deed (or, if later, upon the acquisition or receipt or other entitlement thereto) deposit with the Agency and the Agency during the continuance of this security shall be entitled to hold all deeds, certificates and other documents of title relating to the Land and the Insurances.

4.3 **Application to the Land Registry**

The Chargor and the Agency apply to the Land Registry for the following to be entered on the register of title to any Land now or in the future owned by the Chargor:-

4.3.1 a restriction in the following terms:

"No disposition of the registered estate 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 written consent signed by the proprietor for the time being of the charge dated *[insert date]* in favour of the Homes and Communities Agency referred to in the charges register (Form P)".

4.3.2 a notice that the Agency is under an obligation to make further advances on the terms and subject to the conditions of the Finance Documents and the security created by the charge dated *[insert date]* in favour of the Homes and Communities Agency has been created for the purpose of securing such further advances.

5. **FURTHER ASSURANCE**

5.1 **General**

The Chargor shall, at its own expense, at any time when reasonably required by the Agency, execute and deliver to the Agency:-

5.1.1 a valid legal mortgage of the Land;

5.1.2 a legal assignment or other fixed Security over all or any of the Charged Property;

5.1.3 where any Charged Property is situated outside England and Wales, such fixed security (or such security in that jurisdiction most closely akin to fixed security) under the law of the place where the asset is situated as the Agency may require; and

5.1.4 a notice to any third party of any of the charges or assignments created by or pursuant to this Deed,

in each case, in the Agency's standard form or such other form as the Agency may require.

5.2 **Other acts**

Without prejudice to Clause 5.1 (*General*), the Chargor shall, at its own expense, at any time when required by the Agency, do and concur in all acts or things as the Agency may deem necessary or desirable for the purpose of the creation, perfection, protection or maintenance of any of the Security intended to be created by this Deed over all or any of the Charged Property or to facilitate the enforcement of that Security, or the exercise of any powers or discretions intended to be vested in the Agency or any Receiver by this Deed.

6. RESTRICTIONS ON DEALING

6.1 Negative Pledge

The Chargor undertakes that it shall not, at any time during the subsistence of this Deed, create or permit to subsist any Security over all or any part of the Charged Property except as expressly permitted under the terms of the Finance Documents.

6.2 Disposals

The Chargor undertakes that it shall not (and shall not agree to) at any time during the subsistence of this Deed, except as expressly permitted under the terms of the Finance Documents, sell, transfer, assign, lease or hire out, factor, discount, licence, lend, part with its interest in or otherwise dispose of any of the Charged Property or permit the same to occur, or agree to do any of the foregoing.

7. INSURANCES

7.1 Insurances: Undertakings

The Chargor shall at all times during the subsistence of this Deed comply with all of its insurance obligations in the Facility Agreement.

7.2 Insurance: Default

If the Chargor defaults in complying with Clause 7.1 (*Insurance: Undertakings*), the Agency may effect or renew any such Insurance on such terms, in such name(s) and in such amount(s) as it considers appropriate, and all moneys expended by the Agency in doing so shall be reimbursed by the Chargor to the Agency on demand and shall carry interest from the date of payment by the Agency until reimbursed at the rate specified in Clause 2 (*Covenant to Pay*).

7.3 Application of Insurance Proceeds

All moneys received under any Insurance relating to the Charged Property shall, prior to the occurrence of an Event of Default, be applied in accordance with the terms of the Finance Documents. After the occurrence of an Event of Default the Chargor shall hold such moneys which the Chargor is not required to pay to a third party upon trust for the Agency pending payment to the Agency for application in accordance with Clause 12 (*Application of Moneys*) and the Chargor waives any right it may have to require that any such moneys are applied in reinstatement of any part of the Charged Property.

8. LAND

The Chargor shall in relation to the Land:-

8.1 Repair and Alterations

- 8.1.1 keep or cause to be kept all buildings and Fixtures from time to time on or in the Land save where required to develop the land in the manner contemplated by the Finance Documents;
- 8.1.2 develop the land in the manner contemplated by the Finance Documents; and
- 8.1.3 permit any authorised representative of the Agency at any time to enter the Land for any purpose without becoming liable to account as a mortgagee in possession and to inspect and test any work being carried out and, where any breach of covenant, defect, disrepair or unauthorised alteration,

improvement or addition shall be found, remedy all such breaches and execute all such repairs or removals as the Agency may require within 28 days after notice (or immediately, in case of emergency);

8.2 Statutes

comply with the provisions of all statutes and the requirements of any competent authority affecting the Land or the use of the Land or anything done on the Land.

8.3 Leases

8.3.1 pay the rents and observe and perform all covenants, conditions, agreements or obligations on its part to be observed and performed contained in any lease under which the Land is held by the Chargor and any licence, consent or approval given under any lease relating to the Land, and use its best endeavours to enforce observance and performance of the lessor's covenants in any lease relating to the Land;

8.3.2 not accelerate or defer payment of any moneys payable under any such lease relating to the Land and where any lease relating to the Land contains a provision for the review of rent promptly notify the Agency of any attempt by the lessor to implement a review but not agree the reviewed rent or appoint or agree to the appointment of a third party to determine a rent review without the prior written consent of the Agency;

8.3.3 not to apply for any licence, consent or approval under any lease or any superior lease relating to the Land without the prior written consent of the Agency; and

8.3.4 promptly give notice to the Agency if the Chargor receives notice under section 146 of the LPA or any proceedings are commenced for forfeiture of any lease or superior lease relating to the Land or the lessor or any superior lessor re-enters or attempts to re-enter thereunder and at the request of the Agency but at the cost of the Chargor take such steps as the Agency may require in relation thereto;

8.4 Power of Leasing

not, without the prior written consent of the Agency, exercise any of the powers of leasing or agreeing to lease vested in or conferred on mortgagors by common law or by statute in relation to the Land or create or suffer to be created a tenancy of any description of the Land or confer or permit to be conferred upon any person any contractual licence, right or interest to occupy or use or grant any licence or permission to assign, underlet or part with possession of the whole or any part of the Land or agree to do any of the foregoing, and sections 99 and 100 of the LPA shall not apply to this Deed provided that this provision shall not prevent the disposal by the Chargor of any Residential Unit by way of Long Lease provided such disposal is permitted by the Facility Agreement;

8.5 Compulsory Acquisition

not without the prior written consent of the Agency enter into any negotiations with any competent authority with regard to the compulsory acquisition of the Land or consent to the compulsory acquisition of the Land, and, if so requested by the Agency, permit the Agency or its authorised representatives to conduct such negotiations or to give such consent on the Chargor's behalf;

8.6 Outgoings

pay as and when the same become due all rates, taxes, duties, charges, assessments and other outgoings payable in respect of the Land; and

8.7 Encumbrances

comply with all obligations, covenants, exceptions, reservations, licences, approvals, consents, stipulations, restrictions and conditions to which it is subject including, but without limitation, those relating to the Land or the use or enjoyment of the Land or imposed upon the Chargor as owner, occupier or user, as the case may be, of the Land.

9. DEMAND AND ENFORCEMENT

9.1 Enforcement

This Deed shall become enforceable upon:-

- 9.1.1 the occurrence of an Event of Default which is continuing;
- 9.1.2 any request being made by the Chargor to the Agency for the appointment of a Receiver, or for the Agency to exercise any other power or right available to it; or
- 9.1.3 upon the passing of any resolution, or the presentation of a petition, for winding up of the Chargor or the making of an application by any person for an administration order in relation to the Chargor or the taking by any person of any steps in relation to the appointment of an administrator of the Chargor.

9.2 Demand for payment

Any demand for payment, and any other notice to be given by the Agency under this Deed, shall be in writing and may be signed by any authorised signatory on behalf of the Agency, and may be made or given to the Chargor at any place of business of the Chargor, or the registered office of the Chargor:-

- 9.2.1 by delivering it to any such place; or
- 9.2.2 by sending it by first class post to any such place (in which case it shall be deemed received at 10.00am on the next Business Day after posting, and proof of posting shall be proof of delivery); or
- 9.2.3 by sending it by fax to any fax number of the Chargor (in which case it shall be deemed received when sent, and proof of sending shall be proof of receipt).

9.3 Powers on enforcement

At any time after this Deed has become enforceable, the Agency may (without prejudice to any other rights and remedies and without notice to the Chargor) do all or any of the following:-

- 9.3.1 exercise the power of sale under section 101 of the LPA together with all other powers and rights conferred on mortgagees by the LPA, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the LPA;

- 9.3.2 exercise the power of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases in relation to any Charged Property, without the restrictions imposed by sections 99 and 100 of the LPA;
- 9.3.3 exercise or nominate a third party to exercise all or any rights of the Chargor under and in connection with any Specified Contract; and
- 9.3.4 at the election of the Agency, itself step in or nominate a third party to step in and exercise all or any rights and undertake all or any obligations of the Chargor under or in connection with any Specified Contract.

9.4 **Disposal of the Charged Property**

In exercising the powers referred to in this Deed, the Agency or any Receiver may sell or dispose of all or any of the Charged Property at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

9.5 **Same rights as Receiver**

Any rights conferred by any Finance Document upon a Receiver may be exercised by the Agency after the Security created by this Deed has become enforceable, whether or not the Agency shall have taken possession or appointed a Receiver of the Charged Property.

10. **RECEIVERS**

10.1 **Appointment**

At any time after this Deed has become enforceable in respect of and against the Chargor, the Agency may appoint any person or persons to be a Receiver or Receivers of all or any part of the Charged Property. An appointment over part only of such Charged Property shall not preclude the Agency from making any subsequent appointment over any other part of such Charged Property.

10.2 **Appointment in writing**

The appointment of a Receiver shall be in writing, and may be signed by any authorised signatory on behalf of the Agency. Where more than one person is acting at any time as Receiver, they shall have power to act severally as well as jointly.

10.3 **Remuneration and Removal**

The Agency may from time to time determine the remuneration of the Receiver (which shall not be subject to the limit in section 109(6) of the LPA) and the Agency may (subject to the application of section 45 of the Insolvency Act 1986) remove any person from office in relation to all or any part of the Charged Property of which he is the Receiver and at any time appoint a further or other Receiver or Receivers over all or any part of such Charged Property.

10.4 **Powers**

- 10.4.1 The Receiver shall be the agent of the Chargor (which shall be solely liable for his acts, defaults, remuneration, losses and liabilities) unless and until the Chargor goes into liquidation, from which time he shall act as principal and shall not become the agent of the Agency.
- 10.4.2 Every Receiver shall have and be entitled to exercise all the powers:-
 - (a) of the Agency under this Deed;

- (b) conferred by the LPA on mortgagees in possession and on receivers appointed under the LPA;
- (c) of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986, whether or not the Receiver is an administrative receiver;
- (d) rights that an absolute owner would have in relation to any Charged Property; and
- (e) to do all things incidental or conducive to any functions, powers, authorities or discretions conferred or vested in the Receiver.

11. POWER OF ATTORNEY

11.1 Appointment

The Chargor hereby irrevocably and by way of security appoints:-

- 11.1.1 the Agency (whether or not a Receiver has been appointed);
- 11.1.2 any delegate or sub delegate of, or other person nominated in writing by, an officer of the Agency; and
- 11.1.3 (as a separate appointment) each Receiver,

severally as the attorney and attorneys of the Chargor with power to do any act, and execute and deliver any deed or other document, on behalf of and in the name of the Chargor, which the Chargor could be required to do or execute under any provision of this Deed and the Chargor has failed to do so within 5 Business Days of being requested to do so, or which the Agency in its sole opinion may consider necessary or desirable for perfecting its title to any of the Charged Property of the Chargor or enabling the Agency or the Receiver to exercise any of its or his rights or powers under this Deed.

11.2 Ratification

The Chargor ratifies and confirms and agrees to ratify and confirm whatever such attorney appointed pursuant to Clause 11.1 (*Appointment*) shall do or purport to do in the exercise or purported exercise of all or any of the powers, acts or other matters referred to in Clause 11.1 (*Appointment*).

12. APPLICATION OF MONEYS

12.1 Application of moneys

All sums received by virtue of this Deed by the Agency or any Receiver shall be paid or applied in the following order of priority:-

- 12.1.1 **first**, in or towards satisfaction of all costs, charges and expenses incurred and payments made by the Agency or by any Receiver (including, without limitation, legal expenses) and the remuneration of any Receiver;
- 12.1.2 **secondly**, in or towards payment of the Secured Liabilities in such order as the Agency may at its discretion require; and
- 12.1.3 **thirdly**, as to the surplus (if any), to any other person or persons entitled to such surplus,

and section 109(8) of the LPA shall not apply.

13. CONSOLIDATION

13.1 Combination of accounts

In addition to any general lien, right to combine accounts, right of set-off or other right which it may at any time have, the Agency may at any time after an Event of Default has occurred and is continuing, without notice to the Chargor, to combine or consolidate (or to direct and/or instruct any of the same) all or any accounts of the Chargor (in whatever name) and any Secured Liabilities owed by the Chargor to the Agency, and/or to set-off or transfer (or to direct and/or instruct any of the same) any amounts standing to the credit of any relevant account (including for the avoidance of doubt, the Escrow Account) and apply the same in or towards satisfaction of any Secured Liabilities.

13.2 Application

The Agency's rights under Clause 13.1 (*Combination of accounts*) apply:-

- 13.2.1 whether or not any demand has been made under this Deed, or any liability concerned has fallen due for payment;
- 13.2.2 whether or not any credit balance is immediately available or subject to any restriction;
- 13.2.3 irrespective of the currencies in which any balance or liability is denominated, and the Agency may for the purpose of exercising its right elect to convert any sum or liability in one currency into any other at its spot rate applying at or about 11.00am on the date of conversion; and
- 13.2.4 in respect of any Secured Liabilities owed by the Chargor, whether owed solely or jointly, certainly or contingently, presently or in the future, as principal or surety, and howsoever arising.

14. PROTECTION OF THIRD PARTIES

14.1 Statutory powers

In favour of any purchaser, the statutory powers of sale and of appointing a Receiver which are conferred upon the Agency, as varied and extended by this Deed, and all other powers of the Agency, shall be deemed to arise (and the Secured Liabilities shall be deemed due and payable for that purpose) immediately after the execution of this Deed.

14.2 Purchasers

No purchaser from or other person dealing with the Agency, any person to whom it has delegated any of its powers, or the Receiver shall be concerned:-

- 14.2.1 to enquire whether any of the powers which the Agency or a Receiver have exercised has arisen or become exercisable;
- 14.2.2 to enquire whether the Secured Liabilities remain outstanding or whether any event has happened to authorise the Receiver to act; or
- 14.2.3 as to the propriety or validity of the exercise of those powers,

and the title and position of a purchaser or such person shall not be impeachable by reference to any of those matters.

14.3 Receipts

The receipt of the Agency or the Receiver shall be an absolute and conclusive discharge to a purchaser or any other person dealing with the Agency.

15. PROTECTION OF THE AGENCY AND ANY RECEIVER

15.1 No liability

None of the Agency, any Receiver or any of their respective officers, employees or delegates shall be liable in respect of any cost, liability, expense, loss or damage which arises out of the exercise, or attempted or purported exercise of, or the failure to exercise, any of their respective rights or powers under this Deed.

15.2 Not mortgagee in possession

Without prejudice to any other provision of this Deed, entry into possession of any Charged Property shall not render the Agency, any Receiver or any of their respective officers or employees liable:-

15.2.1 to account as mortgagee in possession;

15.2.2 for any loss on realisation; or

15.2.3 for any default or omission for which a mortgagee in possession might be liable,

and if and whenever the Agency or any Receiver enters into possession of any Charged Property it shall be entitled at any time it or he thinks fit to relinquish possession.

15.3 Indemnity

The Chargor shall, notwithstanding any release or discharge of all or any part of any Security, be liable and indemnify and keep indemnified the Agency, any Receiver and any person who acts as the servant, agent, delegate or attorney of any of them and their respective officers and employees, in full against all claims, costs, expenses and liabilities incurred by them in respect of all or any of the following:-

15.3.1 the taking or holding of this Deed;

15.3.2 any act or omission by any of them in relation to this Deed and/or all or any of the Charged Property;

15.3.3 any payment relating to or in respect of all or any of the Charged Property which is made at any time by any of them;

15.3.4 any stamp, registration or similar Tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed;

15.3.5 exercising or purporting to exercise or failing to exercise any of the rights, powers, authorities and/or discretions conferred on them or permitted under this Deed;

15.3.6 any breach by the Chargor of any of its covenants or other obligations to the Agency;

15.3.7 any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person

whomsoever or loss of or damage to property whether belonging to the Agency or otherwise or any claim by any third party arising out of or in the course of or caused or contributed to by the Chargor and/or the performance or non performance or delay in performance by the Chargor of its obligations under this Deed; and

- 15.3.8 any expense, liability, loss, claim or proceedings arising directly or indirectly from or in connection with any breach of the terms of this Deed by or otherwise through the default or negligence of the Chargor.

15.4 Interest

The Chargor shall pay interest at the Default Rate on the sums payable under this Clause 15 (*Protection of the Agency and any Receiver*) from the date on which the liability was incurred to the date of actual payment (both before and after judgment).

15.5 Indemnity out of the Charged Property

The Agency, any Receiver and their respective officers, employees and delegates shall be entitled to be indemnified out of the Charged Property in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 15.3 (*Indemnity*).

15.6 Currency protection

If any amount due to be paid to the Agency is, for any reason, paid in a currency (the "**currency of payment**") other than the currency in which it was expressed to be payable (the "**contractual currency**"), the Agency may wherever it thinks fit apply the amount of the currency of payment received by it in the purchase, in accordance with its normal practice, of the contractual currency, and if this results in any shortfall below the amount due in the contractual currency, after deducting all taxes, costs and commissions payable in connection with that purchase, the Chargor shall indemnify the Agency against the amount of the shortfall.

15.7 Continuing protection

The provisions of this Clause 15 (*Protection of the Agency and any Receiver*) shall continue in full force and effect notwithstanding any release or discharge of this Deed or the discharge of any Receiver from office.

16. PROVISIONS RELATING TO THE AGENCY

16.1 Powers and discretions

The rights, powers and discretions given to the Agency in this Deed:-

- 16.1.1 may be exercised as often as, and in such manner as, the Agency thinks fit;
- 16.1.2 are cumulative, and are not exclusive of any of its rights under the general law; and
- 16.1.3 may only be waived in writing and specifically, and any delay in exercising, or non-exercise of, any right, is not a waiver of it.

16.2 Certificates

A certificate by an officer of the Agency:-

- 16.2.1 as to any amount for the time being due to the Agency; or

16.2.2 as to any sums payable to the Agency under this Deed,

shall (save in the case of manifest error) be conclusive and binding upon the Chargor for all purposes.

16.3 **Assignment and Transfer**

16.3.1 Save in the case of statutory transfers and subject to clause 16.3.2, the Agency may not assign or transfer its rights and/or obligations under this Deed to any other party without the Chargor's consent (such consent not to be unreasonably withheld or delayed).

16.3.2 Notwithstanding clause 16.3.1, the Agency may assign its rights or transfer its rights and obligations under this Deed to any financial institution without the consent of the Chargor provided that the Agency has first given the Chargor at least 3 months prior notice of such assignment or transfer.

16.3.3 The Chargor may not at any time assign, novate or otherwise transfer all or any part of its rights and/or obligations under this Deed.

16.4 **Delegation**

The Agency may delegate in any manner to any person any rights, powers and discretions exercisable by the Agency under any Finance Document (including this Deed). Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Agency thinks fit.

16.5 **Trusts**

The perpetuity period for the trusts constituted by this Deed shall be 125 years.

16.6 **Deed of Priorities**

This Deed is subject to the Deed of Priorities.

17. **PRESERVATION OF SECURITY**

17.1 **Continuing Security**

This Deed shall be a continuing security to the Agency and shall remain in force until expressly discharged in writing by the Agency notwithstanding any intermediate settlement of account or other matter or thing whatsoever.

17.2 **Additional Security**

This Deed is without prejudice and in addition to any other right, remedy or Security of any kind which the Agency may have now or at any time in the future for or in respect of any of the Secured Liabilities.

17.3 **No Merger**

This Deed is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee or Security which the Agency may at any time hold for any other Secured Liabilities.

17.4 **Waiver of Defences**

Neither the Security created by this Deed nor the obligations of the Chargor under this Deed will be affected by an act, omission, matter or thing which, but for this Clause,

would reduce, release or prejudice that Security or any of those obligations (whether or not known to it or the Agency) including:-

- 17.4.1 any time, waiver or consent granted to, or composition with, the Chargor or other person;
- 17.4.2 the release of the Chargor or any other person under the terms of any composition or arrangement with any person;
- 17.4.3 the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of the Chargor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 17.4.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- 17.4.5 any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Finance Document or any other document or Security;
- 17.4.6 any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Finance Document or any other document; or
- 17.4.7 an insolvency, liquidation, administration or similar procedure.

17.5 **Order of recourse**

The Chargor waives any right it may have of first requiring the Agency (or any trustee or agent on its behalf) to proceed against or enforce any other rights of Security or under any guarantee or claim payment from any person before claiming from the Chargor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

17.6 **Appropriations and Suspense Accounts**

The Agency may:-

- 17.6.1 refrain from applying or enforcing any monies, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or, subject to Clause 12.1 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to the same; and
- 17.6.2 without prejudice to any other rights it may have, at any time and from time to time place (and keep for such time as it may think prudent) any moneys received, recovered or realised under or by virtue of this Deed on a separate or suspense account to the credit either of the Chargor or, at the sole discretion of the Agency if an Event of Default has occurred and is continuing, of the Agency as the Agency shall think fit without any intermediate obligation on the Agency's part to apply the same or any part of it in or towards the discharge of the Secured Liabilities.

19. MISCELLANEOUS PROVISIONS

19.1 Severability

If any provision of this Deed is illegal, invalid or unenforceable in any jurisdiction, that shall not affect:-

19.1.1 the validity or enforceability of any other provision, in any jurisdiction; or

19.1.2 the validity or enforceability of that particular provision, in any other jurisdiction.

19.2 Costs, charges and expenses

All costs, charges and expenses incurred or paid by the Agency or by any Receiver in the exercise of any power or right given by this Deed or in relation to any consent requested by the Chargor, or in perfecting or otherwise in connection with this Deed, the other Finance Documents or the Charged Property, all sums recoverable under Clause 15 (*Protection of the Agency and any Receiver*) and all costs of the Agency (on an indemnity basis) of all proceedings for the enforcement of this Deed or for obtaining payment of monies by this Deed secured, shall be recoverable from the Chargor as debts and may, in the discretion of the Agency, be debited by the Agency at any time to any account of the Chargor and shall bear Default Interest until payment.

19.3 Contracts (Rights of Third Parties) Act 1999

The Agency, any Receiver and their respective officers, employees and agents may enforce any term of this Deed which purports to confer a benefit on that person, but no other person who is not a party to this Deed has any right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Deed.

19.4 Counterparts

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

19.5 Reorganisation

This Deed will remain binding on the Chargor notwithstanding any change in the constitution of the Agency or its absorption by, or amalgamation with, or the acquisition of all or part of its undertaking by, any other person, or any reconstruction or reorganisation of any kind. The Security granted by this Deed will remain valid and effective in all respects in favour of the Agency and for any assignee, transferee or other successor in title of the Agency.

19.6 Date for payment

Where neither the relevant Finance Document nor this Deed specified the due date for payment of any monies owed by the Chargor to the Agency such monies will be due and payable to the Agency by the Chargor on demand.

19.7 Constitutive documents

The Chargor hereby certifies that its creation of this Deed in favour of the Agency does not contravene any of the provisions of the Companies Acts 1985 to 2006 or its memorandum and articles of association or rules or, in the case of a limited liability partnership or limited partnership, the partnership deed constituting the Chargor.

20. NOTICES

20.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by the recorded delivery service addressed in the case of any party to the other party's registered office as set out at the beginning of this Deed or to such other addresses a party may from time to time notify to the other in writing provided that such other address is within England and Wales.

20.2 Any notice shall be deemed to be given by the sender and received by the recipient:

20.2.1 if delivered by hand, when delivered to the recipient;

20.2.2 if delivered by the recorded delivery service, three (3) Business Days after delivery including the date of postage;

provided that if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm it is to be regarded as received at 9.00am on the following Business Day.

20.3 Each communication to the Agency will become effective only when actually received by the Agency and then only if expressly marked for the attention of the department or officer identified on the signature page to this Deed (or any substitute department or officer as the Agency may specify for such purpose from time to time).

21. GOVERNING LAW AND ENFORCEMENT

21.1 This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

21.2 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").

21.3 The Parties agree that the courts of England are the most appropriate and convenient courts to settle disputes and accordingly no such Party will argue to the contrary.

21.4 This Clause 21 (*Governing Law and Enforcement*) is for the benefit of the Agency only. As a result, the Agency shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Agency may take concurrent proceedings in any number of jurisdictions.

21.5 The Chargor expressly agrees and consents to the provisions of this Clause 21 (*Governing Law and Enforcement*).

EXECUTED AND DELIVERED AS A DEED on the date set out at the beginning of this Deed.

Schedule 1
DETAILS OF LAND

Title numbers	Description
CH652050	The land and buildings on the south side of Mount Pleasant Drive, Winsford, Cheshire and the land and buildings at Woodford Lodge High School, Dover Drive, Winsford, Cheshire shown shaded red on the Plan

Schedule 2

SPECIFIC CONTRACTS

1. Each Occupational Lease.
2. Each of the Construction Documents.
3. The Sale Agreement
4. Any other agreement designated by the Agency and the Chargor in writing as a "Specific Contract" for the purposes of this Deed from time to time.

Schedule 3

FORM OF NOTICE OF ASSIGNMENT OF INSURANCE

To: [Insurer]

Date: []

Dear Sirs,

We give you notice that we have assigned and charged to the Homes and Communities Agency (the "**Agency**") pursuant to a legal charge and assignment entered into by us in favour of the Agency dated [DATE] 2016 (the "**Legal Charge and Assignment**") all our right, title and interest in and to the proceeds of *[insert details of relevant insurance policy]* (the "**Policy of Insurance**").

With effect from your receipt of this notice we instruct you to:

- (1) following the Agency's further notification to you that an Event of Default (as defined in the Legal Charge and Assignment) has occurred make all payments and claims under or arising from the Policy of Insurance to the Agency to its order as it may specify in writing from time to time; and
- (2) disclose to the Agency, without further approval from us, such information regarding the Policy of Insurance as the Agency may from time to time request and to send it copies of all notices issued by you under the Policy of Insurance.

With effect from your receipt of this notice all rights, interests and benefits whatsoever accruing to or for the benefit of ourselves arising from the Policy of Insurance (including all rights to compel performance) belong to and are exercisable by the Agency.

Please accept this notice by signing the enclosed acknowledgement and returning it to the Agency at [] marked for the attention of [].

Yours faithfully

for and on behalf of
Keepmoat Homes Limited

[On copy only:

To: []

We acknowledge receipt of a notice in the terms set out above and confirm that we have not received notice of any previous assignments or charges of or over any of the rights, title and interests and benefits referred to in such notice and that we will comply with the terms of that notice.

We further confirm that no amendment or termination of the Policy of Insurance shall be effective unless we have given the Agency thirty days written notice of it or, if it is not possible to comply with such notification to the Agency in accordance with the provisions of the relevant Policy of Insurance, the notice will be provided to the Agency in relation to such termination as soon as possible.

For and on behalf of []

By: []

Dated: []

Schedule 4

FORM OF NOTICE OF ASSIGNMENT OF SPECIFIC CONTRACT

To: []

Date: []

Dear Sirs,

We give you notice that we have assigned and charged to the Homes and Communities Agency (the "**Agency**") pursuant to a legal charge and assignment entered into by us in favour of the Agency dated [DATE] 2016 (the "**Legal Charge and Assignment**") all our right, title and interest in and to [details of contract] (the "**Contract**") including all moneys which may be payable in respect of the Contract.

With effect from your receipt of this notice:-

- (1) following the Agency's notification to you that an Event of Default (as defined in the Legal Charge and Assignment) has occurred all payments by you to us under or arising from the Contract should be made to the Agency or to its order as it may specify in writing from time to time;
- (2) all remedies provided for in the Contract or available at law or in equity are exercisable by the Agency or, at the election of the Agency, its nominee for such purpose;
- (3) all rights to compel performance of the Contract are exercisable by the Agency or, at the election of the Agency, its nominee for such purpose although the Company shall remain liable to perform all the obligations assumed by it under the Contract unless the Agency or its nominee has elected in writing to step in and has agreed in writing to perform the obligations of the Company under the Contract;
- (4) all rights, interests and benefits whatsoever accruing to or for the benefit of ourselves arising from the Contract belong to the Agency and no changes may be made to the terms of the Contract nor may the Contract be terminated without the Agency's consent; and
- (5) you are authorised and instructed, without requiring further approval from us, to provide the Agency with such information relating to the Contract as it may from time to time request and to send it copies of all notices issued by you under the Contract to the Agency as well as to us.

These instructions may not be revoked, nor may the terms of the Contract be amended, varied or waived without the prior written consent of the Agency.

Please accept this notice by signing the enclosed acknowledgement and returning it to the Agency at [] marked for the attention of [].

Yours faithfully,

for and on behalf of
Keepmoat Homes Limited

[On copy only:]

To: []

We acknowledge receipt of a notice in the terms set out above and confirm that we have not received notice of any previous assignments or charges of or over any of the rights, interests and benefits in and to the Contract and that we will comply with the terms of that notice.

We further confirm and agree that:-

- (1) no amendment, waiver or release of any of such rights, interests and benefits shall be effective without the prior written consent of the Agency;
- (2) no termination of such rights, interests or benefits shall be effective unless we have given the Agency thirty days written notice of the proposed termination (or if notice is not possible within that period, as soon as possible), specifying the action necessary to avoid such termination;
- (3) no breach or default on the part of the Keepmoat Homes Limited of any of the terms of the Contract shall be deemed to have occurred unless we have given thirty days notice of such breach to the Agency specifying how to make good such breach;
- (4) following the Agency's notification to us that an Event of Default has occurred all payments under or arising from the Contract will be made to the Agency or to its order as it may specify in writing from time to time;
- (5) all remedies provided for in the Contract or available at law or in equity are exercisable by the Agency or, at the election of the Agency, its nominee for such purpose; and
- (6) all rights to compel performance of the Contract are exercisable by the Agency or, at the election of the Agency, its nominee for such purpose although the Company shall remain liable to perform all the obligations assumed by it under the Contract unless the Agency or its nominee has elected in writing to step in and has agreed in writing to perform the obligations of the Company under the Contract.

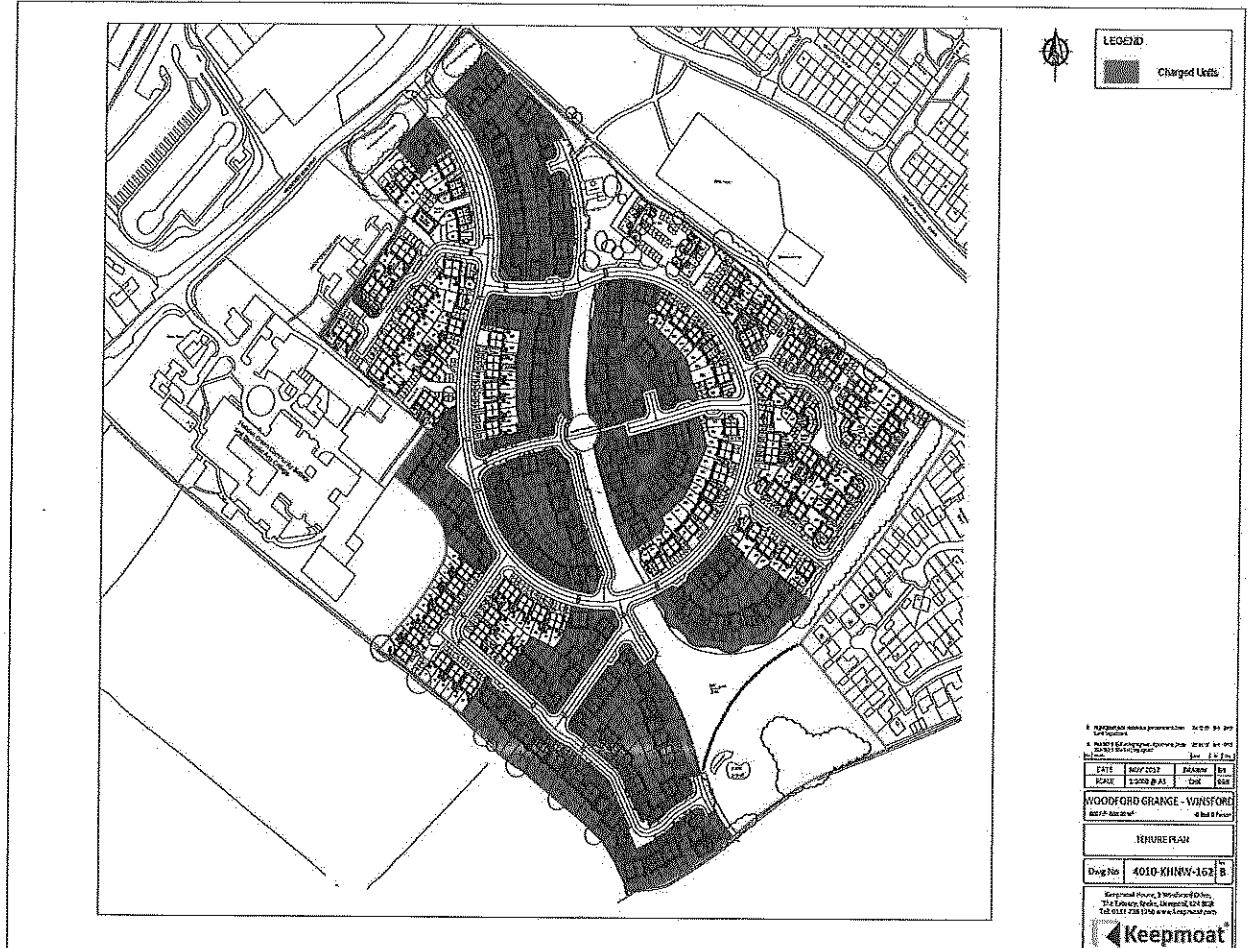
For and on behalf of []

By: []

Dated: []

SCHEDULE 5

THE PLAN



SIGNATURE PAGE

The Chargor

EXECUTED as a Deed by
KEEPMOAT HOMES LIMITED
acting by two Directors or a Director and its
Secretary or a Director and a Witness:-

.....
Director

.....
*Director/Secretary

in the presence of:

Witness signature

Name

Address

Occupation PAT COO

The Waterfront
Lakeside Boulevard
Doncaster
DN4 5PL

The Agency

The common seal of
HOMES AND COMMUNITIES AGENCY
is hereunto affixed in the presence of:

Witness signature

Name

Address

Occupation

signed by:

SIGNATURE PAGE

The Chargor

EXECUTED as a Deed by)
KEEPMOAT HOMES LIMITED)
acting by two Directors or a Director and its)
Secretary or a Director and a Witness:-)

.....
Director

.....
*Director/Secretary

in the presence of:

Witness signature

Name

Address

Occupation

The Agency

The common seal of)
HOMES AND COMMUNITIES AGENCY)
is hereunto affixed in the presence of:)

Witness signature


Name

Address

Occupation

signed by:

.....


Jackie Jacob
General Manager
Housing Programmes

