

**THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE**

**and**

**KEEPMOAT HOMES LIMITED**

**And**

**CUSSINS (NORTH EAST) LIMITED**

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**Agreement**

pursuant to Section 106 of the Town and Country  
Planning Act 1990 relating to land to the West of  
Commercial Road, South Shields , Tyne and Wear  
NE33 1RN

Planning Application: [            ]

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**This Agreement** is made the

day of

2021

**By**

1. **THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE** of Town Hall & Civic Offices, Westoe Road, South Shields, Tyne and Wear, NE33 2RL (**"the Council"**); and
2. **KEEPMOAT HOMES LIMITED** (company reg. no. 01998780 ) whose registered office is at The Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire, DN4 5PL (**"the First Developer"**); and
3. **CUSSINS (NORTH EAST) LIMITED** (company registration no. ) whose registered office is at (**"the Second Developer"**)

**Whereas**

- A. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and is the authority by whom the obligations hereby created are enforceable and is also the freehold owner of the Site which is registered at the Land Registry under title numbers TY523891, TY526469, TY430855, TY430937, TY430128, TY244440, TY156747, TY164971, TY82926, TY79486, TY325565, TY140302, TY97731, TY554390, TY244066, TY249729 and the Site also includes land within the Councils leasehold title TY380677.
- B. The First Developer has the benefit of a [conditional contract] to acquire part of the the Site from the Council dated [ ]
- C. The Second Developer has the benefit of a [conditional contract] to acquire part of the Site from the Council dated [ ]
- D. The First Developer and the Second Developer jointly submitted the Application dated 16<sup>th</sup> December 2020 to the Council
- E. The Council has resolved to grant the Planning Permission subject to the prior completion of this Deed.
- F. The First Developer and the Second Developer have agreed to enter into this Deed with the intention that the obligations contained in this Deed (subject to clauses 12.3, 12.4 and 12.5) may be enforced by the Council against the First Developer and the Second Developer as set out in Clause 5 of this Deed and against their successors in title.

**Now this Deed witnesses as follows:**

**1. Definitions**

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

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

<b>“Application”</b>	the hybrid application for planning permission submitted to the Council on 16 <sup>th</sup> December 2020 for the Development and allocated reference number [                    ]
<b>"Commencement of Development"</b>	the implementation of the Planning Permission by the carrying out of any material operation as defined by Section 56 of the Act but, for the avoidance of doubt, the Planning Permission is deemed not to be implemented for the purposes of this definition by any works of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, the carrying out of any decontamination or landfill works, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements;
<b>“Development”</b>	the development of the Site for full planning permission for 53 dwellings, associated car parking, access, landscaping and outline planning permission for approximately 302 dwellings and access, landscaping as set out in the Application;
<b>"Dwelling"</b>	Means a residential Dwelling constructed on the Site in accordance with the Planning Permission;
<b>"Ecological Contribution"</b>	Means a contribution of £403 per Dwelling to be paid to the Council and applied by the Council towards [                    ]
<b>“Occupied”</b>	shall mean occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration, marketing, display or security of the Development;
<b>"Phase"</b>	A phase of the Planning Permission as shown on Plan 2
<b>"Phase 1"</b>	That Phase of the Development which forms the detailed Phase of the Planning Permission as shown on Plan 2
<b>“Plan 1”</b>	the plan attached to this Deed at the First

	Schedule;
<b>"Plan 2"</b>	The plan attached to this Deed at the First Schedule
<b>"Planning Permission"</b>	the planning permission subject to conditions to be granted by the Council pursuant to the Application in substantially the same form as set out in the Second Schedule together with any non-material amendment thereto pursuant to section 96A of the Act;
<b>"Site"</b>	the land to the West of Commercial Road, South Shields, Tyne and Wear NE33 1RN as shown edged red on Plan 1 and against which the obligations contained in this Deed may be enforced;
<b>"Working Day"</b>	any day apart from Saturday and Sunday and statutory bank holidays.

## **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 (unless the context otherwise requires).
- 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 Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly, or against each of them individually unless there is 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 their respective statutory functions.

- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 Any covenant by the First Developer and / or Second Developer or the Council not do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.9 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.
- 2.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

### **3. LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the First Developer and the Second Developer under this Deed create planning obligations pursuant to Section 106 of the Act and, subject to clause 12, are enforceable by the Council as local planning authority against the First Developer and Second Developer as set out in this Deed.

### **4. CONDITIONALITY**

- 4.1 The obligations contained within this Deed are conditional upon:
  - 4.1.1 the grant of the Planning Permission; and
  - 4.1.2 the Commencement of Developmentsave for the provisions of Clause 7, 8, 10, 11, 12, 14, 17, 18 and 19 which shall come into effect immediately upon the completion of this Deed.

### **5. THE DEVELOPER'S COVENANTS**

- 5.1 Subject to clause 12.3 the First Developer covenants with the Council to fully observe and perform the obligation in this Deed at para 1.1 of the Third Schedule and hereby agrees that the Site shall be subject to the obligations, restrictions and covenants herein, such obligations being planning obligations for the purposes of section 106 of the Act as set out in para 1.1 of the Third Schedule
- 5.2 Subject to clause 12.3 and 12.4 the First Developer and the Second Developer jointly covenant with the Council to fully observe and perform the obligation in this Deed at paras 1.2 and 1.3 of the Third Schedule and hereby agree that the Site shall be subject to the obligations, restrictions and covenants herein, such obligations being planning obligations for the purposes of section 106 of the Act as set out in para 1.2 and 1.3 of the Third Schedule

## **6. THE COUNCIL'S COVENANTS**

- 6.1 The Council covenants with the First Developer and the Second Developer to observe and perform the obligations set out in the Fourth Schedule.

## **7. FEES**

- 7.1 The First Developer and Second Developer jointly covenant to pay to the Council on completion of this Deed the sum of £[ ] incurred in the negotiation, preparation and execution of this Deed.

## **8. LOCAL LAND CHARGE**

- 8.1 This Deed shall be registrable as a local land charge by the Council.
- 8.2 Following the performance and satisfaction of all the obligations contained in this Deed or where the obligations under this Deed are no longer enforceable the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed against the Site (or relevant part).

## **9. COMMUNICATION AND COUNCIL'S CONSENT OR APPROVAL**

- 9.1 Where the agreement, approval, consent or expression of satisfaction is required by the First Developer and / or Second Developer from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any 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.

## **10. TERMINATION OF THIS DEED**

- 10.1 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 First Developer and Second Developer ) or it is modified by any statutory procedure or expires prior to the Commencement of Development.

## **11. THE CONTRACTS ACT**

- 11.1 Save as provided in respect of successors in title to the Site or any successor to the relevant statutory function of the Council this Deed shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit, rights or claims whatsoever thereto.

## **12. LIABILITIES**

- 12.1 No person shall be liable for any breach, non-performance and non-observance of any covenant, obligation or restriction or other provision of this Deed after it shall have parted with its entire interest in the Site or the part in respect of which such breach occurs (save for any easement or like right) but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 12.2 No purchaser or tenant of an individual dwelling or their mortgagee or their successors shall be bound by the covenants contained in this Deed.
- 12.3 The First Developer shall not be liable for the covenant in para 1.1 of the Third Schedule of this Deed unless and until the First Developer acquires a freehold or leasehold interest in the Site pursuant to its contractual interest or otherwise
- 12.4 The First Developer shall not be liable for the covenant in para 1.2 and 1.3 of the Third Schedule of this Deed unless and until the First Developer acquires a freehold or leasehold interest in the Site pursuant to its contractual interest or otherwise
- 12.5 The Second Developer shall not be liable for the covenant in para 1.2 and 1.3 of the Third Schedule of this Deed unless and until the Second Developer acquires a freehold or leasehold interest in the Site pursuant to its contractual interest or otherwise

## **13. COUNCIL'S POWERS**

- 13.1 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes bye-laws statutory instruments orders and regulations in the exercise of their functions as local authority.

## **14. STATUTORY UNDERTAKERS**

- 14.1 The obligations in this Deed shall not bind or be enforceable against any statutory undertaker who has or takes in future an interest in the Site for the purpose of providing apparatus pursuant to its statutory undertaking for the Development.

## **15. WAIVER**

- 15.1 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 from acting upon any subsequent breach or default.

## **16. VAT**

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



## **17. JURISDICTION**

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

## **18. DELIVERY**

18.1 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.

## **19. FUTURE PERMISSIONS**

19.1 Subject to clause 19.2 below, in the event that an application is made pursuant to Section 73 of the Act for an amendment to the Planning Permission and planning permission is granted in respect of that application references to the Planning Permission in this Deed shall be construed so as to include reference to the new planning permission granted pursuant to Section 73 of the Act, and the remaining terms of this Deed shall be construed mutatis mutandis, and this Deed shall apply to and remain in full force and effect in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the Act.

19.2 The Council may, upon receipt of any application made under Section 73 of the Act for an amendment to the Planning Permission notify the applicant at any time prior to the grant of planning permission pursuant to the aforementioned application that the provisions of clause 19.1 of this Deed shall not apply in respect of that application, and that a further agreement pursuant to Section 106 of the Act shall be required prior to the grant of any such planning permission.

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

**FIRST SCHEDULE**

**Plans**

**SECOND SCHEDULE**

**Draft planning permission**

## **THIRD SCHEDULE**

### **Covenants with the Council**

#### **Ecological Contribution**

- 1.1. In respect of Phase 1 the First Developer covenants to pay the Ecological Contribution to the Council in the following two equal instalments:-
  - 1.1.1. 50% prior to the Occupation of 50% of the Dwellings within Phase 1 and
  - 1.1.2. 50% prior to the Occupation of the final Dwelling in Phase 1
- 1.2. In respect of Phase 2 the First Developer and the Second Developer jointly covenant to pay the Ecological Contribution to the Council in the following two equal instalments:-
  - 1.2.1. 50% prior to the Occupation of 50% of the Dwellings in Phase 2
  - 1.2.2. 50% prior to the Occupation of the final Dwelling in Phase 2
- 1.3. In respect of Phase 3 the First Developer and the Second Developer covenant to pay the Ecological Contribution to the Council in the following two equal instalments:-
  - 1.3.1. 50% prior to the Occupation of 50% of the Dwellings in Phase 3
  - 1.3.2. 50% prior to the Occupation of the final Dwelling in Phase 3

## **FOURTH SCHEDULE**

### **The Council's covenants with the First Developer and the Second Developer**

The Council covenants with the First Developer and the Second Developer as follows:

At the written request of the First Developer and / or the Second Developer the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

Not to use the Ecological Contribution other than for the purposes specified in this Deed.

To repay to the person who makes any payment under this Deed such amount which has not been spent or allocated for expenditure within five years of the date of receipt by the Council of such payment.

At the written request of the First Developer and / or the Second Developer the Council shall provide such evidence as is reasonably requested in relation to the expenditure of the Ecological Contribution.

**Executed** as a Deed (but not delivered

Until the date of it) by the affixing of

**THE COMMON SEAL of**

**THE COUNCIL OF THE BOROUGH OF**

**SOUTH TYNESIDE COUNCIL**

In the presence of:

Mayor/Authorised Signatory

Head of Legal Services/Authorised  
Signatory

Executed as a deed by )  
**KEEPMOAT HOMES LIMITED** acting by ) Director  
In the presence of: )  
)

Witness signature.....

Name

.....

Address

.....

.....

Occupation

.....

Executed as a deed by )  
as attorney for **KEEPMOAT** ) Attorney for Keepmoat Homes Limited  
**HOMES LIMITED** )  
Under a power of attorney dated )  
In the presence of: )

Witness signature.....

Name

.....

Address

.....

.....

Occupation

.....

EXECUTED as a DEED by  
Cussins (North East) Limited  
Acting by:-