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27th January 2016

Agreement pursuant to Section 106 Town and Country Planning Act 1990 (as amended) relating to Land at Cross Street Monk Bretton

Barnsley Metropolitan Borough Council (1) and
Bellway Homes Limited (2)

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THIS DEED DATED 27th January **2016 IS MADE BETWEEN**

PARTIES

(1) BARNSLEY METROPOLITAN BOROUGH COUNCIL of the Town Hall Church Street Barnsley S70 2TA (**Council**); and

(2) BELLWAY HOMES LIMITED (CN 00670176) whose registered office is at Seaton Burn House Dudley Lane Seaton Burn Newcastle upon Tyne NE13 6BE (**Owner**).

WHEREAS

(A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated and is the authority by whom this Planning Obligation is enforceable.

(B) The Owner is the owner of an estate in fee simple absolute in possession of the Land under [part of] freehold title numbers SYK626593, SYK622424 and SYK620199.

(C) The Owner submitted the Planning Application to the Council for permission to carry out the Development.

(D) The Council has decided to grant planning permission for the Development subject to conditions and the making of this Deed without which planning permission for the Development would not be granted.

(E) The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Agreement and agree that the obligations comply with regulation 122 of the Community Infrastructure Levy Regulations 2010

THIS DEED IS MADE IN PURSUANCE OF SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) AND WITNESSES AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in Clause 2 apply:

Act	the Town and Country Planning Act 1990 (as amended).
Affordable Housing	as defined for the purposes of the National Planning Policy Framework published by DCLG at the date of this Agreement.
Affordable Housing Commuted Sum	means the sum of £973,120.00 (nine hundred and seventy three thousand one hundred and twenty pounds) that may be paid to the Council by the Owner and used by the Council in lieu of the provision of Affordable Housing on the Land for the provision of, or improvements to, existing Affordable Housing elsewhere within the Council's area;
Affordable Housing Units	means 14 Dwellings of Affordable Housing comprising of the Intermediate Dwellings and the Affordable Rented Dwellings to be provided in accordance with paragraph 3 of the Schedule and **Affordable Housing Unit** shall be construed accordingly;
Affordable Housing Unit Prices	means the prices of the Affordable Housing Units that shall be (inclusive of any fees or charges which the Owner or their agent requires the Registered Provider to pay as part of the process of submitting bids for or acquiring the Affordable Housing Units) 1. £56,480 (fifty six thousand four hundred and eighty pounds)

in respect of the 2 bed house Affordable Rented Dwellings;

2. £64,063 (sixty four thousand and sixty three pounds) in respect of the 3 bed house Affordable Rented Dwellings; and

3. £54,700 (fifty four thousand seven hundred pounds) in respect of the 2 bed bungalow Affordable Rented Dwelling; and

4. £56,688 (fifty six thousand six hundred and eighty eight pounds) in respect of the 2 bed house Intermediate Dwelling;

5. £71,421 (seventy one thousand four hundred and twenty one pounds) in respect of the 3 bed house Intermediate Dwelling;

Affordable Rent means an affordable rent of no more than 80% of the Market Rent;

Affordable Rented Dwellings has the same meaning as the term "affordable rented housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework and comprises 11 Dwellings in total consisting of 9 x 2 bed houses to be constructed on plots 66-72 and 13-12; 1 x 3 bed house to be constructed on plot 9 and 1 x 2 bed bungalow to be constructed on plot 7or such other locations and / or house types that may be agreed in writing between the Owner and the Council from time to time such properties to be made available at an Affordable Rent to persons in accordance with the Registered Provider's policy, and Affordable Rented Dwelling shall be construed accordingly;

Chargee means any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;

Commencement of Development the date upon which the Development commenced within the meaning of section 56 of the Act provided that for the avoidance of doubt the following shall not be taken to be a material operation and shall not amount to Commencement of the Development:

(a) works of site clearance including demolition;

(b) ground investigation and site survey work;

(c) construction of boundary fencing or hoarding;

(d) archaeological investigation;

(e) works of decontamination or remediation;

and where the term "Planning Permissions" applies to more than one planning permission "Commencement" shall be construed to relate to the first of those planning permissions under which works commenced.

Council's Approved List means the following Registered Providers: Berneslai Homes Limited; South Yorkshire Housing Association Limited; Yorkshire Housing Limited; Guinness Northern Counties Limited; Equity

	Housing Group Limited; Leeds and Yorkshire Housing Association Limited; Chevin Housing Association Limited; and Wakefield and District Housing Limited or such other Registered Provider(s) that may be agreed in writing between the Owner and the Council from time to time;
Development	Demolition of existing dwelling and residential development consisting of 95 dwellings pursuant to the Planning Permission.
Dwelling	any residential unit whether in the form of a home, bungalow, apartment or maisonette constructed on the Land pursuant to the Development.
Education Payment	the sum of £140,480.00 plus any sums due under clauses 8 and 9
Education Payment Purpose	the acquisition construction improvement or refurbishment of primary school facilities or land in the Monk Bretton ward
Index	All Items Index of Retail Prices issued by the Office for National Statistics or if no longer published the Consumer Price Index or if neither indices are published such comparable index as the local planning authority reasonably nominates.
Interest	Interest at 4 per cent above the base lending rate of Barclays Bank plc from time to time
Intermediate Dwellings	has the same meaning as the term "intermediate housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework and comprises 3 Dwellings in total consisting of 2 x 2 bed houses to be constructed on plots 15-14] and 1 x 3 bed house to be constructed on plot 10or such other locations and / or house types that may be agreed in writing between the Owner and the Council from time to time such properties to be made available at an Intermediate Rent to persons in accordance with the Registered Provider's policy;
Land	the land and premises against which the obligations herein may be enforced known as Land at Cross Street, Monk Bretton registered at HM Land Registry under part of title numbers SYK626593, SYK622424 and SYK620199 which for the purposes of identification only is shown edged red on the Plan annexed to this Deed.
Intermediate Rent	means an intermediate rent up to 80% of the Market Rent;
Market Rent	means the average local market rent for a Dwelling in Barnsley with that number of bedrooms that would be leased between a willing lessor and willing lessee on appropriate lease terms in an arms-length transaction after proper marketing, and where the parties have each acted knowledgeably, prudently and without compulsion;
Occupation and Occupied	the first occupation and/or bringing into use of the Development (or as the context permits) any part thereof for the purposes permitted by the Planning Permission (or the relevant purpose or purposes as the context permits) but not including occupation by personnel engaged in construction fitting out decoration or occupation for marketing display or occupation in relation to security operations.
Offer Period	a period running from Commencement of Development and expiring six calendar months from Commencement of Development.

Open Market Dwelling	those Dwellings that do not comprise Affordable Housing Units.
Public Open Space Payment	£174,776.40 plus any payments under clause 8 and 9
Public Open Space Payment Purpose	the provision of or improvement to sports and/or recreation facilities in the Council's administrative area
Plan	the plan which is annexed to this Deed.
Planning Application	the planning application (including plans and drawings) submitted by the Owner to the Council on 22 May 2015 for permission to carry out the Development (reference: 2015/0646.
Planning Obligations	the planning obligations set out in the Schedule to this Deed.
Planning Permission	the planning permission granted by the Council pursuant to the Planning Application and any non-material amendment.
Protected Tenant	means any tenant who: (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or (c) has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit;
Registered Provider	a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 who is registered with the social housing regulator known as the Homes and Communities Agency established by the Housing and Regeneration Act 2008 providing that such organisation is not one that has not been removed from the register.
Transfer	A transfer of the freehold beneficial interest in the Affordable Dwellings and reference to Transfer shall include the term "Transferred"

2. INTERPRETATION

2.1 Reference to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed by or under any other enactment and shall include all instruments orders and regulations.



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Drawing Number: 1505.02	**Project:** Monk Bretton	**Date:** April 2015	STEN ARCHITECTURE
Client: Bellway Homes	**Drawing Title:** Street scenes	**Scale @ A3:** 1:2500	
		Revision: --	

2.2 Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.

2.3 Reference to a clause or schedule shall unless the context otherwise admits be a reference to a clause or schedule of this Deed.

2.4 The expressions the Owner and the Council shall include their successors in title and assigns.

3. COMMENCMENT AND LEGAL EFFECT

The provisions hereof shall take effect on the date that this Deed is entered into save in respect of Clause 4.1 which shall be conditional on the grant of Planning Permission.

3.1 This Deed constitutes a planning obligation for the purposes of Section 106 of the Act.

3.2 This Deed is made pursuant to Section 106 of the Act and all other enabling powers and binds the Land and is enforceable against any person corporate or otherwise claiming or deriving title through or under the Owner as owner of the Land or any part or parts thereof as if that person had been an original covenanting party to this Deed.

3.3 No person shall be liable for the breach of a Planning Obligation after they have parted with their interest in the Land or the part of the Land in respect of which the breach occurs but this shall be without prejudice to their liability for any subsisting breach of covenant occurring prior to when they parted with such interest.

3.4 No individual owner-occupier (or his mortgagee) of any Dwelling] nor any statutory undertaker which has an interest in any part of the Land for the purposes of its undertaking shall be liable for any breach of this Agreement

3.5 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.

3.6 This Deed is a local land charge and shall be registered as such.

3.7 Save as provided for by this Deed nothing in this Deed shall be treated as giving rise to any rights to third parties under the Contracts (Rights of Third Parties) Act 1999.

3.8 If any provision of this Deed is held to be invalid illegal or unenforceable under any enactment or rule of law that term or provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remainder of this Deed shall remain unaffected.

3.9 If the Planning Permission expires before the Commencement of Development or shall at any time be revoked this Deed shall forthwith determine and cease to have effect.

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

4. COVENANTS

4.1 The Owner hereby covenants to perform and observe the Planning Obligations.

4.2 The Council hereby covenants as follows:

4.2.1 to issue the Planning Permission as soon as reasonably practicable;

4.2.2 on receipt of a written request by or on behalf of the Owner after the Planning Obligations have been wholly discharged or performed the Council will cancel any entry made in the Local Land Charges Register in respect of this Deed;

4.2.3 upon written request to account to the Owner for the application of money paid to the Council pursuant to Part 1 of the Schedule to this Deed;

4.2.4 To use all such sums received from the Owner for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree;

4.2.5 to repay to the Owner any money paid to the Council under Schedule 1 which has not by the expiry of 10 years from the date of payment been spent or committed for the purpose for which it was paid (together with Interest on the remaining money from the date that the sum/those sums of money were paid to the Council);

4.2.6 where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of the Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed

5. ARBITRATION

In the event of any dispute or difference arising from the application of this Deed and of the obligations hereunder the same may be referred for determination by a person to be agreed between the parties hereto (or in default á person nominated by the President for the time being of the Royal Institution of Chartered Surveyors) in accordance with and subject to the provisions of the Arbitration Act 1996.

6. COSTS

The Owner hereby covenants with the Council to pay upon completion of this Deed to the Council agreed legal costs of£1000 relating to the preparation and execution of this Deed.

7. FUTURE/AMENDED PLANNING PERMISSION(S)

In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the Act this Deed shall continue in full force in respect of the Planning Permission with the relevant condition or conditions so varied.

8 INDEXATION

Any sum referred to in the Schedule 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.

9 INTEREST

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

10 NOTICE

Where any notice or confirmation is to be served on the Council under the terms of this Agreement such notice or confirmation shall be sent to Head of Planning and Building Control at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the Application reference number 2015/0646schedule

SCHEDULE

Planning Obligations

Part 1

Education and Public Open Space Payments

1. The Owner hereby covenants with the Council to pay on Commencement of Development the Education Payment for the purposes of the Council using such payment for the Education Purpose

2. The Owner hereby covenants with the Council to pay the Public Open Space Payment for the purposes of the Council using such payment for the Public Open Space Purpose as follows:

2.1 50% of the Public Open Space Payment shall be paid to the Council on Commencement of Development.

2.2 The remaining 50% of the Public Open Space Payment shall be paid to the Council no later than first Occupation of the Dwellings.

Part 2

Affordable Housing

3. ON-SITE AFFORDABLE HOUSING PROVISION

3.1 The Affordable Rented Dwellings shall not be used or Occupied other than as Affordable Rented Dwellings and the Intermediate Dwellings shall not be used or Occupied other than as Intermediate Dwellings save that the Affordable Rented Dwellings may be used as Intermediate Dwellings and the Intermediate Dwellings may be used as Affordable Rented Dwellings with the written permission of the Head of Planning and Building Control and further this obligation shall not be binding on:

3.1.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and charges;

3.1.2 any Chargee subject to prior compliance with paragraphs 3.2 to 3.5 below; or

3.1.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.

3.2 A Chargee shall prior to seeking to dispose of any Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than 30 Working Days prior notice to the Council of its intention to dispose and:

3.2.1 in the event that the Council responds within 30 Working Days from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and shall use its best endeavours to secure such transfer;

3.2.2 if the Council does not serve its response to the notice served under paragraph 3.2.1 of this Schedule within 30 Working Days then the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Schedule as Open Market Dwellings;

3.2.3 if the Council or any other person cannot within 30 Working Days of the date of service of its response under paragraph 3.2.1 of this Schedule secure such transfer then

provided that the Chargee shall have complied with its obligations under paragraph 3.2 of this Schedule the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule as Open Market Dwellings

3.3 Provided that at all times the rights and obligations upon the Chargee in this Schedule shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

3.4 Subject to paragraph 3.10 of this Schedule not to cause or permit more than:

3.4.1 30 of the Open Market Dwellings to be Occupied until 7 of the Affordable Housing Units; and

3.4.2 60 of the Open Market Dwellings to be Occupied until all of the Affordable Housing Units

have been constructed to the same external standard as the Open Market Dwellings and transferred to a Registered Provider at the Affordable Housing Unit Prices and on terms that accord with the Homes and Communities Agency funding requirements current at the date of this Agreement.

3.5 The Affordable Housing Units shall be transferred to a Registered Provider with the benefit of the following:

3.5.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units; and

3.5.2 full and free rights to the passage of water soil electricity gas and other services through the pipes channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the Affordable Housing Units all such services to be connected to the mains.

3.6 The Owner shall use its Reasonable Endeavours to market the Affordable Housing Units to a Registered Provider appearing on the Council's Approved List and must offer the Affordable Housing Units to a minimum of two Registered Providers on the Council's Approved List one of which must be Berneslai Homes.

3.7 The Owner will promptly upon agreeing heads of terms for a transfer of the Affordable Housing Units to the Registered Provider submit to the Council the name of the chosen Registered Provider for the Council's approval (such approval not to be unreasonably withheld or delayed) ("the Initial Registered Provider Transfer Terms"). For the avoidance of doubt, the Owner shall not transfer the Affordable Housing Units to a Registered Provider not appearing on the Council's Approved List subject to any variations to the Council's Approved List that may be agreed in writing between the Council and the Owner from time to time.

3.8 The Owner will thereafter use reasonable endeavours to exchange contracts with the Registered Provider for the sale of the Affordable Housing Units and will keep the Council informed on the Owner's progress.

3.9 If the proposed sale does not proceed in accordance with the Initial Registered Provider Transfer Terms the Owner will continue to use reasonable endeavours to exchange contracts with an alternative Registered Provider appearing on the Council's Approved List (subject to any variations to the Council's Approved List that may be agreed in writing between the Council and the Owner from time to time) and will keep the Council informed of the Owner's progress.

3.10 In the event that:

3.10.1 No Registered Provider shall offer to take a Transfer of the Affordable Dwellings within the Offer Period; or

3.10.2 Following the agreement of heads of terms for a Transfer with a Registered Provider pursuant to paragraph 3.7 of this Schedule, the Registered Provider fails to exchange contracts within 56 days of a draft contract evidence of title and replies to enquiries before contract being submitted to the Registered Provider's solicitors on behalf of the Owner

the Owner shall be entitled to pay to the Council the Affordable Housing Commuted Sum in lieu of the transfer of the Affordable Housing Units on producing evidence in writing to the reasonable satisfaction of the Council that it has made reasonable endeavours to secure a Transfer and the Owner shall upon payment of the Affordable Housing Commuted Sum be free to use and dispose of the Affordable Housing Units free from the obligations set out in Part 2 of this Schedule.

3.11 In the event that the Owner is entitled to pay the Affordable Housing Commuted Sum it may pay it in two equal instalments the first of which is to be paid prior to first Occupation of 30 of the Open Market Dwellings and the second instalment to be paid prior to the first Occupation of 60 of the Open Market Dwellings

3.12 Any agreement to sell or transfer the Affordable Housing Units to a Registered Provider shall contain the following minimal provisions:

3.12.1 The grant by the Owner of all rights of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Housing Unit; and

3.12.2 A reservation of all rights of access and passage of services and rights of entry reasonably necessary for the benefit of the remainder of the Open Market Dwellings.

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

The common seal of **Barnsley Metropolitan Borough Council** was hereunto affixed in the presence of:

Assistant Chief Executive, Legal and Governance/Authorised Signatory

No. 1960 IN REGISTER

Executed as a deed by **Bellway Homes Limited** acting by:

.....
Director

.....
Director/Secretary