DATED 18th May 2012

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

SAUL CONSTRUCTION LIMITED

AGREEMENT

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

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

THIS DEED OF AGREEMENT is made the 15th day of May Two Thousand and Twelve

BETWEEN

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

(2) **SAUL CONSTRUCTION LIMITED** (Company Number 01106632) whose registered office is situate at Burtonwood Office park Brierley Common Barnsley South Yorkshire S72 9ET ("the Owner") of the second part

RECITALS

(1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the land described in the First Schedule hereto ("the Land") is situated and is the authority by whom the obligations contained in this Agreement are enforceable

(2) The Owner is the registered proprietor with Title Absolute of the Land under Land Registry Title Number SYK564527

(3) The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed

NOW THIS DEED WITNESSETH AS FOLLOWS:-

DEFINITIONS

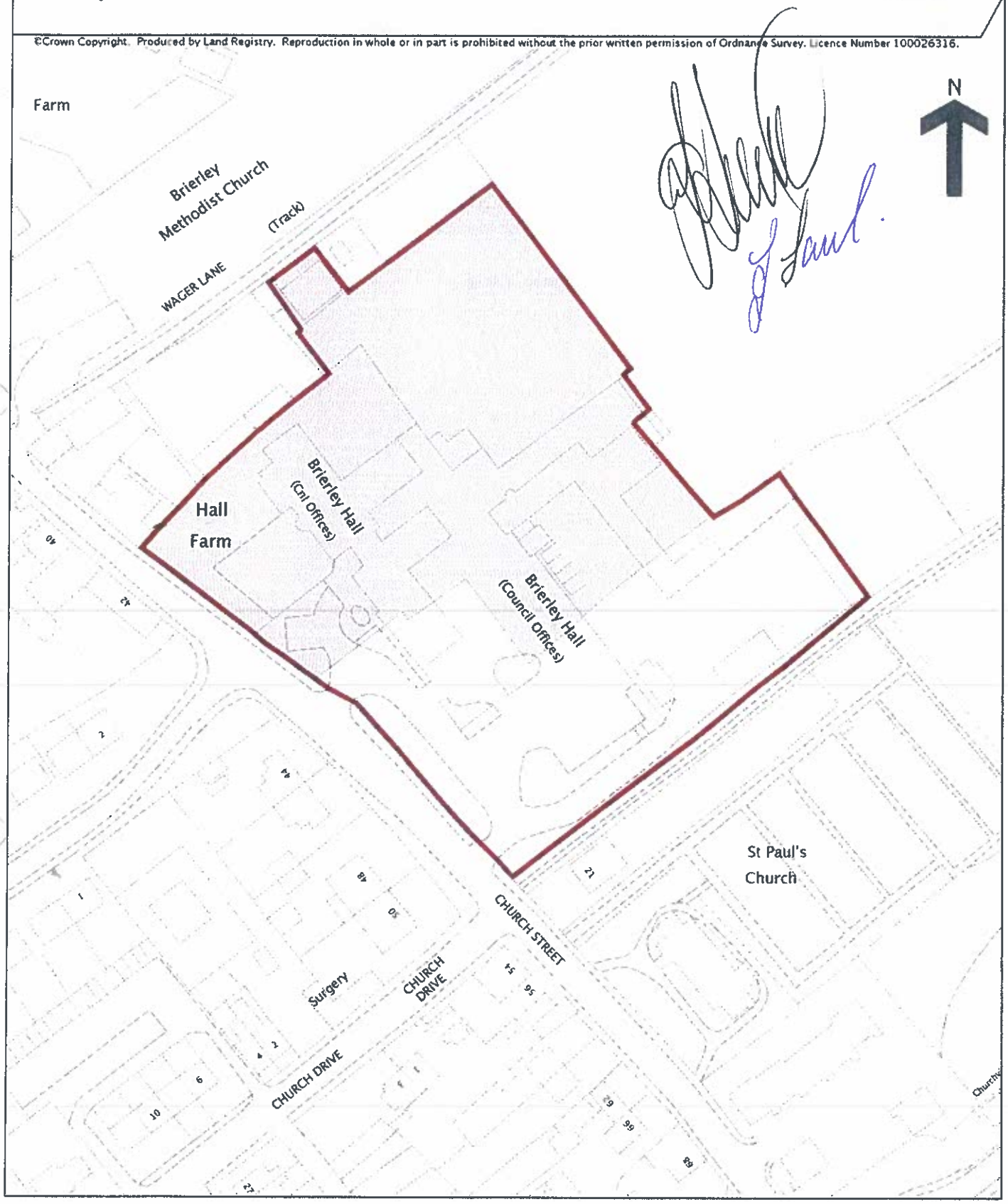
1 For the purposes of this Deed the following expressions shall have the following meanings

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

Land Registry Official copy of title plan

Title number **SYK564527**
Ordnance Survey map reference **SE4111SW**
Scale **1:1250**
Administrative area **BARNSLEY**

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PLAN 1

This official copy is incomplete without the preceding notes page.

"Affordable Housing"- subsidised housing (as defined in the Department of Communities and Local Government Planning Policy Statement 3) that will be available to persons who cannot afford to rent or buy housing generally available on the open market

"Affordable Housing Commuted Sum" means £260,000 (two hundred and sixty thousand pounds) to be applied towards the provision of affordable housing in the local area

"Affordable Housing Units"- that part of the Development comprising four residential units consisting of three Social Rented Housing units (plots 17, 18 and 19 identified on Plan 2) and one Shared Ownership unit (plot 20 identified on Plan 2) further details of which are set out in paragraph 5 of the Second Schedule

"the Application" means the application for planning permission submitted to the Council for residential development with the reference number 2010/0413

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

"the Chargee's Duty means the tasks and duties set out in paragraph 4.4 of the Second Schedule

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

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

"the Hall Conversion Works" means the inner and outer refurbishment of Brierley Hall and its conversion into three dwellings as outlined in the drawings and plans submitted as part of the Application, namely "Block plan showing demolition and proposed boundary treatments (ref SC/B/10) "Draft Site Layout" (ref P1/D), "3 no elevations of Brierley Hall Conversion to form 3 dwellings" [P8/B] and "outline plans for conversion of Brierley Hall to form 3 dwellings" (ref P7/B) and in accordance with the conditions on listed building consent application reference 2010/0432

"**Index**" means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if that Price Index ceases to exist such index as the Council reasonably nominates

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

"the Market Housing Units" means that part of the Development which is general market housing for sale on the open market and which is not the Affordable Housing Units

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

"Plan 2" means the plan marked plan 2 annexed hereto (ref P1/D)

"the Planning Permission" means the planning permission granted or to be granted pursuant to the Application

"**Practical Completion**" means issue of a certificate of practical completion by the Owner's architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect;

"**Protected Tenant**" – 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

b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit

c) has been granted a shared ownership lease by a Registered Provider of Social Housing (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant or a share is owned by the Registered Provider of Social Housing) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider of Social Housing all the remaining shares so that the tenant owns the entire Affordable Housing Unit

"**the Public Open Space Commuted Sum**" means the sum of £20,000 (twenty thousand pounds only) to be applied towards the construction improvement or maintenance of public open space within 0.6 mile of the boundary of the Land or if any of this sum remains uncommitted expenditure 18 months after receipt that remaining sum can also be spent for the same purposes elsewhere within the administrative area of Brierley Town Council

"**Registered Provider of Social Housing**" means a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 ("the 2008 Act") who is registered with the regulator of social housing called the Office for Tenants and Social Landlords in the 2008 Act, referred to as the Regulator of Social Housing in other enactments or instruments, and known as the Tenant Services Authority pursuant to section 3 of the Housing Act 1996 ("the 1996 Act") or section 116 of the 2008 Act and has not been removed from the register pursuant to section 4 of the 1996 Act or section 118 of the 2008 Act who is approved by the Council (such approval not to be unreasonably withheld or delayed)

"**Shared Ownership**" has the same meaning as that ascribed to it under the definition of Intermediate Housing contained in Annex B of the Department for Communities and Local Government's "Delivering Affordable Housing" (November 2006)

CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.

LEGAL BASIS

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

COMMENCEMENT

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

OWNER COVENANTS

5 The Owner covenants with the Council as set out in the Second Schedule

MISCELLANEOUS

6.1 The Owner shall pay to the Council on completion of this Deed the sum of £1,000 (on which no VAT shall be payable) in respect of the legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

6.3 This Deed shall be registrable as a local land charge by the Council.

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or by the Council from the Owner under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Assistant Director of Planning and Regulatory Services and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon receipt of a written request by the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

6.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

6.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.8 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.

6.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

6.10 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

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

INDEXATION

7 Any sum payable under this deed by the Owner 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.

INTEREST

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

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

FIRST SCHEDULE

All that land at Brierley Hall Church Street Brierley Barnsley for the purpose of identification shown edged red on Plan 1

SECOND SCHEDULE

The Owner covenants with the Council to observe and perform the following obligations:

Public Open Space

1 The Owner shall pay to the Council upon Commencement of Development the Public Open Space Commuted Sum

Community Facilities

2.1 The Owner shall pay £10,000 to the Council upon Commencement of Development £30,000 six months after Commencement of Development £30,000 twelve months after Commencement of Development and £30,000 eighteen months after Commencement of Development

2.2 The payments in paragraph 2.1 above shall be spent by the Council towards the construction improvement or maintenance of community facilities in the administrative area of Brierley Town Council

Hall Conversion

3.1 No more than 50% of the Market Housing Units may be occupied until the until the Local Planning Authority confirm in writing that the Hall Conversion Works have been satisfactorily completed, such confirmation not to be unreasonably delayed

Affordable Housing

4.1 No more than 18 of the Market Housing Units shall be occupied until all the Affordable Housing Units have been constructed in accordance with the Planning Permission and this Schedule and transferred to a Registered Provider of Social Housing on terms that accord with the Homes and Communities Agency funding requirements current at the date of this Agreement

4.2 The Affordable Housing Units shall be constructed to a standard and quality at least equal to the Market Housing Units and must achieve code for sustainable homes level 3 unless otherwise agreed in writing by the Council

4.3 The Affordable Housing Units shall not be used for any purposes other than Affordable Housing save that this obligation shall not be binding on:

4.3.1 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 chargees;or
4.3.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty ;or
4.3.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor

4.4 The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than six months' prior notice to the Council of its intention to dispose and:

4.4.1 in the event that the Council responds within six months 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

4.4.2 if the Council does not serve its response to the notice served under paragraph 2.4 within two months then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule

4.4.3 if the Council or any other person cannot within six months of the date of service of its response under paragraph 4.4.1 secure such transfer then then provided that the Chargee shall have complied with its obligations under paragraph 4.4.1 the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule

PROVIDED THAT at all times the rights and obligations in this paragraph 4.4 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage

4.5 If any of the Affordable Housing Units shall not have been transferred to the Registered Provider of Social Housing within eighteen calendar months of the date of Practical Completion of all the Affordable Housing Units or such earlier date agreed in writing by the Council and the Owner has produced evidence in writing to the reasonable written satisfaction of the Council that they have made all reasonable endeavours to secure a transfer of the Affordable Housing Units to a Registered Provider of Social Housing then the Owner will be free to offer such dwellings for sale on the open market free from the obligations in this Schedule subject to prior payment by the Owner to the Council of the Affordable Housing Commuted Sum.

5 Schedule of Accommodation

Brierley Hall, Church Road, Brierley, Barnsley
Schedule of Accommodation

Plot	House Type	Size	Tenure	Market Value (£)	Transfer Value (£)
17	4 bed Berkeley	1,141 ft^2 (106m^2)	Social Rent	135,000	65,000
18	3 bed Saville	915 ft^2 (85m^2)	Social Rent	130,000	62,500
19	3 bed Saville	915 ft^2 (85m^2)	Social Rent	130,000	62,500
20	3 bed Saville	915 ft^2 (85m^2)	Intermediate Rent / SO	130,000	75,000

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

Borough Secretary/Authorised Signatory

No. 2141
IN REGISTER

EXECUTED as a **DEED** by **SAUL**)
CONSTRUCTION LIMITED)

Acting by

Director

Director/Secretary