DATED 6th December 2013

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

TURVAN ASSETSLIMITED

and

CHRISTOPHER LITTLE

and

RICHARD RYDER

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to development on land at Lilac Garage Lilac Farm Church Street Brierley Barnsley S72 9JG 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 6th day of December Two Thousand and Thirteeen

BETWEEN

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

(2) **TURVAN ASSETS LIMITED** (Company Number 07530743) whose registered office is situate at 8 Westgate Rippon North Yorkshire HG4 2AT ("the First Owner") of the second part and

(3) **CHRISTOPHER LITTLE** of The Bungalow, Church Street, Brierley, Barnsley ("the Second Owner") of the third part and

(4) **RICHARD RYDER** of Apartment 6 The Pavilions Stoneleigh Bryan Road Edgerton Huddersfield West Yorkshire HD2 2AH ("the Third Owner") of the fourth 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 First Owner is the registered proprietor with Title Absolute of part of the Land under Land Registry Title Number SYK596079.

(3) The Second Owner is the registered proprietor with Title Absolute of part of the Land under Title Numbers SYK408551, SYK408554 and SYK408549.

(4) The Third Owner is the registered proprietor with Title Absolute of part of the Land under Land Registry Title Number SYK519783.

(5) The Land has the benefit of a planning permission for residential development granted under planning reference number 2011/1341 ("the Planning Permission").

(6) The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed and compliance with conditions 14 and 19 of the Planning Permission

NOW THIS DEED WITNESSETH AS FOLLOWS:-

DEFINITIONS

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

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

"**Affordable Housing**"- Has the meaning given to it in Annex 2 of the National Planning Policy Framework as published by the Department for Communities and Local Government

"**Affordable Housing Commuted Sum**" means the sum of £81,000 (eighty one thousand pounds only) to be applied towards affordable housing in Brierley ward, Grimethorpe ward and/or Shafton ward, which includes for the avoidance of doubt expenditure on improvement or effective use of empty or derelict housing in accordance with the Council's Empty Homes Strategy conditional upon the improved housing being let at less than open market rents to those in affordable housing need for a period of up to five years following improvement

"**Affordable Housing Units**- that part of the Development comprising three bedroom residential units consisting of three Social Rented Housing units (plots 12, 21 and 30) and one Shared Ownership unit (plot 27) (shown for the purpose of identification shaded grey on Plan 2) with a garden and car parking space

"**the Chargee**" means any mortgagee or chargee of the Registered Provider of Social Housing 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

"**the Chargee's Duty**" means the tasks and duties set out in paragraph 2.4 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 save that the term "material operation" shall not include operations in connection with any work of or associated with demolition, site clearance, remediation works, environmental investigation site and soil surveys, erection of contractors work compound, erection of site office and erection of fencing to the site boundary 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 Dwellings**" means the the Market Housing Units and "Dwelliing" shall be construed accordingly;

"**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

"Occupation" and "Occupy" means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, occupation for marketing or display or occupation in relation to security operations and reference to "Occupants" shall be construed accordingly;

"the Owners" means the First Owner the Second Owner and the Third Owner collectively;

"Phase 1 Land" means the part of the Land edged red and shown for illustrative purposes on Plan 3 including a strip of land 300mm wide between the points A and B shown on Plan 4 and comprised in title number SYK519783.

"Phase 2 Land" means the part of the Land edged red and shown for illustrative purposes on Plan 5.

"Practical Completion" means issue of a certificate of practical completion by the Owners' architect or in the event that the Development is constructed by a party other than the Owners 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 £54,844 (fifty four thousand eight hundred and forty four pounds only) to be spent on the provision improvement and/or maintenance of public open space within the administrative area of the Council;

"the Public Open Space Maintenance Sum" means the sum of £18,582 (eighteen thousand five hundred and eighty two pounds only) to be spent on maintenance or

improvement of any public open space within the administrative area of the Council;

"Registered Provider of Social Housing" means Wakefield and District Housing Limited or another 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 Regulation Committee of the Homes and Communities Agency, referred to as the Regulator of Social Housing in other enactments or instruments, pursuant to section 116 of the 2008 Act and has not been removed from the register pursuant to 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 Annex 2 of the National Planning Policy Framework as published by the Department for Communities and Local Government

"Social Rented" has the same meaning as that ascribed to it under Annex 2 of the National Planning Policy Framework as published by the Department for Communities and Local Government

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 Owners herein are enforceable by the Council as local planning authority against the Owners

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

OWNERS' COVENANTS

5 The First Owner the Second Owner and the Third Owner covenant with the Council as set out in the Second Schedule. For the avoidance of doubt, the First and Second Owner's and the Third Owner's liability should be restricted to that arising in respect of the Development on the Phase 1 Land and the Second Owner's liability should be restricted to that arising in respect of the Development on the Phase 2 Land.

MISCELLANEOUS

6.1 The Owners 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 Owners from the Council or by the Council from the Owners 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 Owners 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 Owners 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 Owners 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 Lilac Garage Lilac Farm Church Street Brierley Barnsley S72 9JG for the purpose of identification shown edged red on Plan 1

SECOND SCHEDULE

The First Owner and the Second Owner and the Third Owner covenant with the Council to observe and perform the following obligations:

Public Open Space

1.1 The Owners shall pay to the Council the Public Open Space Commuted Sum as follows:

(i) 25% upon Commencement of Development and

(ii) 25% on Practical Completion of 9 of the Dwellings

(iii) the remaining 50% on Occupation of 20 of the Dwellings

1.2 The Owners shall pay to the Council Public Open Space Maintenance Sum upon Practical Completion of the 20th Dwelling.

Affordable Housing

2.1 The Affordable Housing Units shall be 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 in accordance with the following:

2.1.1 One Affordable Housing Unit shall be provided and transferred in the Phase 1 Land on Practical Completion of the 19th Dwelling in the Phase 1 Land.

2.1.2 Two Affordable Housing Units shall be provided and transferred in the Phase 2 Land on Practical Completion of the 10th Dwelling in the Phase 2 Land.

2.1.3 The remaining Affordable Housing Unit in the Phase 2 Land shall be completed and transferred on Practical Completion of the 15th Dwelling in the Phase 2 Land.

2.2 The Affordable Housing Units shall be constructed to a standard and quality at least equal to the Market Housing Units and must be constructed to a minimum of Code 3 of the Code for Sustainable Homes unless otherwise agreed in writing by the Council

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

2.3.1 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

2.3.2 Any Chargee provided that the Chargee shall have first complied with the Chargee's Duty; or

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

2.4 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:

2.4.1 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

2.4.2 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

2.4.3 If the Council or any other person cannot within six months of the date of service of its response under paragraph 2.4.1 secure such transfer then then provided that the Chargee shall have complied with its obligations under paragraph 5 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 2.4 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

2.5 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 Owners have produced evidence in writing to the reasonable written satisfaction of the Council that he has made all reasonable endeavours to secure a transfer of the Affordable Housing Units to a Registered Provider of Social Housing then the Owners will be free to offer such dwellings for sale on the open market free from the obligations in this Schedule subject to paragraph 2.6 below

2.6 In the event that the Owners are free to offer the Affordable Housing Units for sale on the open market pursuant to the provisions of paragraph 2.5 above, the Owners shall prior to any sale pay to the Council £270,000 (two hundred and seventy thousand pounds only) in lieu of all the Affordable Housing Units

2.7 The Affordable Housing Units shall be located in the positions identified on Plan 2 unless otherwise approved in writing by the Local Planning Authority

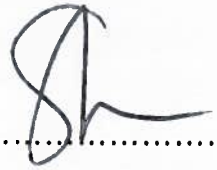
2.8 The Owners shall pay the Affordable Housing Commuted Sum upon Practical Completion of the 19th Dwelling and one Affordable Housing Unit having been transferred to a Registered Provider of Social Housing in accordance with paragraph 2.1.1.

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

~~Borough Secretary~~/Authorised Signatory

No. 498
IN REGISTER

EXECUTED as a **DEED** by **TURVAN**)
ASSETS LIMITED acting by either two)
Directors or Director and Company)
Secretary:)



.....

Director



.....

Director/Secretary

EXECUTED as a **DEED** by)
CHRISTOPHER LITTLE in the)
presence of:)



.....

Witness Name: S JENKINSON
Witness Signature:
Witness Address: 17/19 Regent Street
Barnsley
Witness Occupation: Clerk to Solicitor

EXECUTED as a **DEED** by)
RICHARD RYDER in the)
presence of:)



.....

Witness Name:
Witness Signature:
Witness Address:

STEFAN PTYCIA
LICENSED CONVEYANCER
GROUND FLOOR
4 RAILWAY STREET
HUDDERSFIED
WEST YORKSHIRE
HD1 1JP

Witness Occupation:

PHASE II, CHURCH STREET, BRIERLEY

Landscaping Schedule

All plant stock to be to BS3936 1965 Part 1
All landscape work to comply with BS4428 & 1989

Trees

Trees to be standard 8-10cm stem circumference 1m from ground level with 3 stems and 3 ties per tree

T1 Betula Pendula 'Silver Birch'
T2 Prunus Avium 'Plena'
T3 Sorbus Aria 'Chrysophylla'
T4 Sorbus Aucuparia 'Mountain Ash

Shrubs

Berberis x Stenophylla	600-800mm 3L
Berberis Thunbergii	450-600mm 3L
Cotoneaster Conspicuus Decorus	300-450mm 2L
Cornus Alba	600-800mm 3L
Cornus Sanguinea	600-800mm 3L
Viburnis Tinoides	450-600mm 3L
Prunus Laurocerasus 'Otto Luyken'	450-600mm 3L
Pyracantha 'Mojave'	600-800mm 3L
Rosa Canina	450-600mm 3L
Rosa Rugosa 'Max Graf'	450-600mm 3L
Cytisus Praecox	450-600mm 3L

Climbers

Clematis Montana - Rubens
Lonicera Japonica 'Halliana'
Parthenocissus Tricuspidata Veitchii

Ground Cover

Hypericum Calycinum	150-200mm 2L
Vinca Minor	200-300mm 2L

Density 3 per square metre, unless otherwise stated.
Shrubs to BS 3936 to be planted in fabric & weed backed 30cm deep. Topsoil to BS 3882. Beds to be softly structured with broader species to front and edges. Plants to be set out whilst still in pots, under supervision to ensure optimum composition prior to planting.

Legend

- 1800mm high screen fence
- 1800mm wall / fence detail
- 1500mm high plot divisional fence
- 900mm high railings painted black
- 900mm high post and 2 rail fence



Schedule of Accommodation

Houses			
4 Bed Town House	6	1200	7200
4 Bed Detached House	77	1676	129052
3 Bed Detached House	9	1210	10890
	92		147142
Balance	92		147142

Site Details
Total Site Area 7.9 Acres
Undevelopable Area 0.80 Acres
Net Site Area 7.04 Acres

Acreage Approx 147142 sq ft
Units/Acre 13.19

North

APPROVED PLANS

Revision

17 Hesley Thorpe Hesley
Rother m S61 2PP
Tel/FAX. 01142 9. 6 MOB 07968 450454
email. karl.loaft @blueyonder.co.uk

client
Richard Ry Partnership

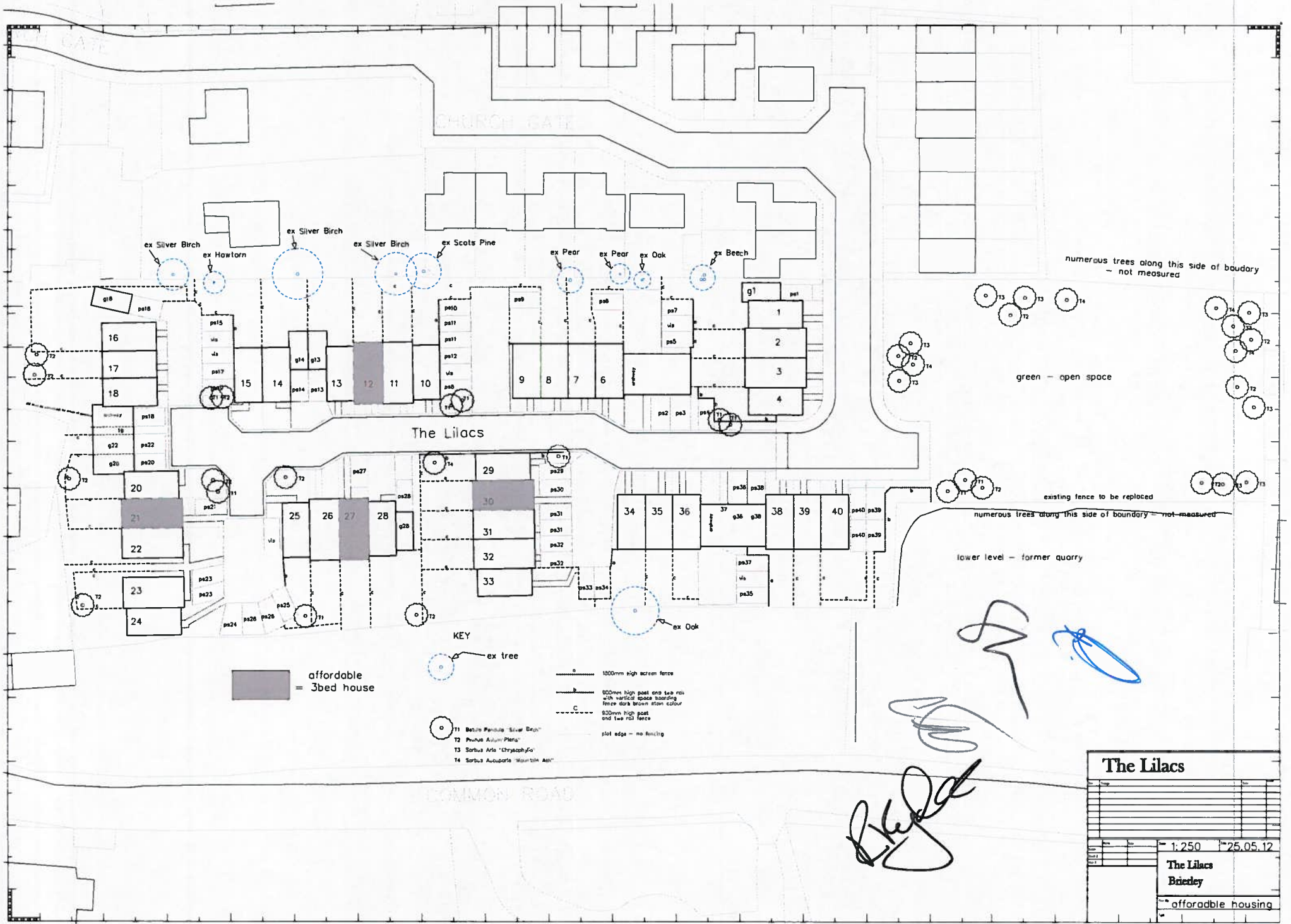
project
Church Street
Brierley

title
Planning Layout

scale 1:500 date March 08 dwg no. RR/BY-01 revision B 06 OCT 08

Planning & Landscape Layout

PLAN 1


ex Silver Birch
ex Hawtorn
ex Silver Birch
ex Silver Birch
ex Scots Pine
ex Pear
ex Pear
ex Oak
ex Beech
numerous trees along this side of boudary
– not measured
green – open space
The Lilacs
existing fence to be reploced
numerous trees along this side of boundary – not measured
lower level – former quarry
ex Oak
KEY
ex tree
affordable
= 3bed house
1800mm high screen fence
900mm high post and two rail with vertical space boarding fence dark brown stain colour
900mm high post and two rail fence
plot edge – no fencing
T1 Betula Pendula 'Silver Birch'
T2 Prunus Autum Plena'
T3 Sorbus Aria 'Chrysophylla'
T4 Sorbus Aucuparia 'Mountain Ash'
The Lilacs
1:250
25.05.12
The Lilacs
Brierley
affordable housing
PLAN 2

PLAN 3

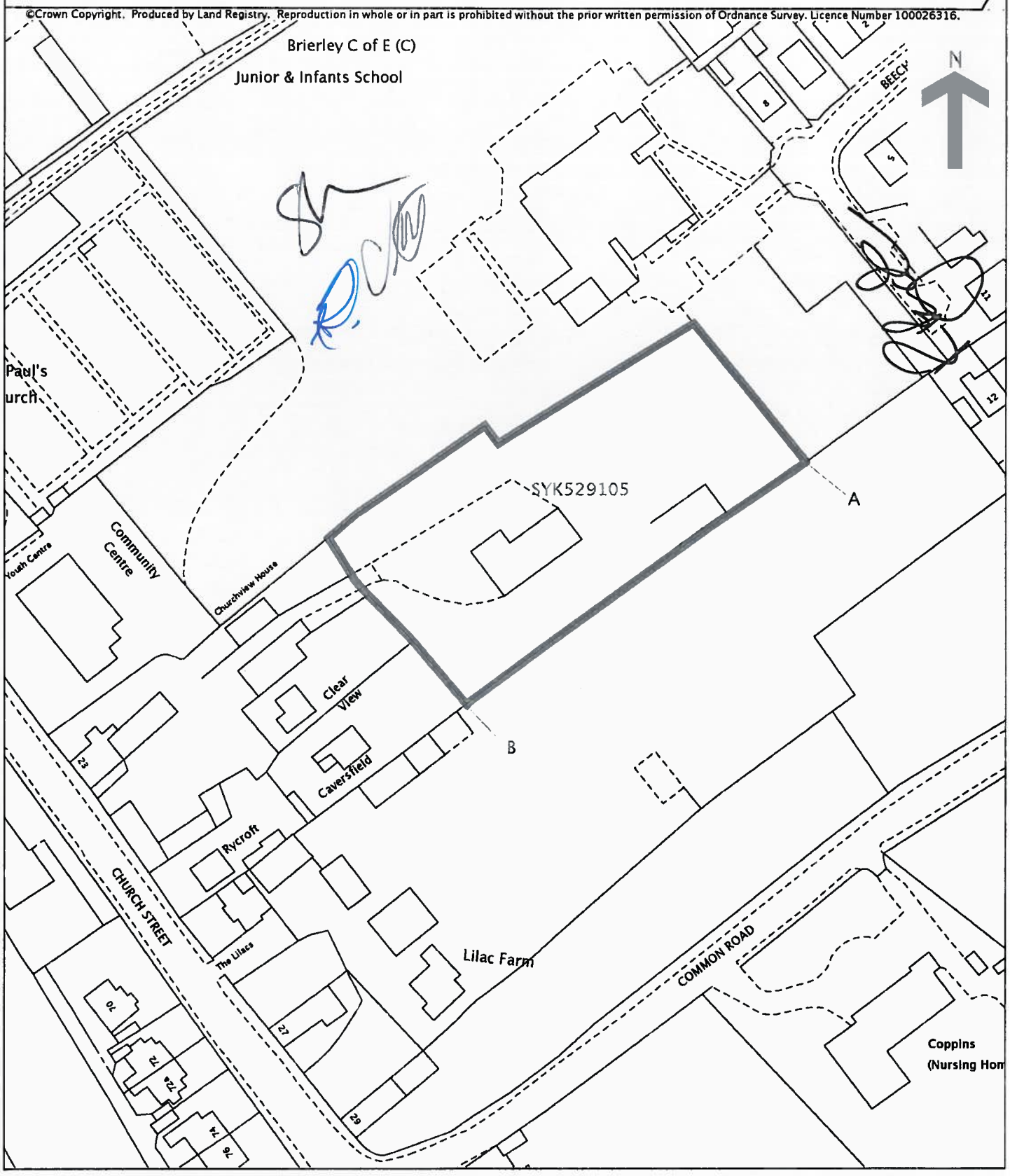


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Land Registry
Official copy of title plan

Title number **SYK519783**
Ordnance Survey map reference **SE4111SW**
Scale **1:1250 enlarged from 1:2500**
Administrative area **South Yorkshire : Barnsley**

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PLAN 5



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