Thomas Eggar

Date: 11th June 2012

The Trustees of The Latham Management Limited Special Pension Scheme
and
Havant Borough Council

Deed of Variation Agreement
Relating to the land at the Interbridges Site, New Brighton Road, Emsworth

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CONTENTS

Clause **Page Number**

1 Definitions and Interpretation..... 2
2 Recitals 4
3 Variation of the s.106 Agreement 5

Schedule 1: The S.106 Agreement

Schedule 2: The location plan

Schedule 3; Certificate of Ownership

ated 11th June 2012 2012

PARTIES:

(1) **THE TRUSTEES OF THE LATHAM MANAGEMENT LTD SPECIAL PENSION SCHEME** whose registered office is situated at 122 Belgrave Court, Canary Riverside, London E14 8RJ ('**Owner**')

(2) **COUNCIL OF THE BOROUGH OF HAVANT** of the Public Service Plaza, Civic Centre Road, Havant, Hampshire PO9 2AX ('**Council**').

WHEREAS

1. This Deed incorporates and is supplemental to a Deed of Agreement dated 21 April 2008 made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) and Section 111 of the Local Government Act 1972 between the Owner (1) and the Council (2) in relation to the development of land at the Interbridges Site New Brighton Road Emsworth Hampshire ("the Section 106 Agreement")

2. The Parties hereto agree and consent to the terms of the Section 106 Agreement being varied in respect of the site as hereinafter provided

1 DEFINITIONS AND INTERPRETATION

1.1 In this deed the following words and expressions have the following meanings:

1.1.1 'this Deed' means this Deed of Variation;

1.1.2 'Council' means the person named as Council in the parties clause of this deed and its successors in title

1.1.3 'First Planning Permission' means the planning permission granted under planning reference 07/54901/007

1.1.4 'Owner' means the registered proprietor named as Owner in the parties clause of this deed and its successors in title

1.1.5 'Property' means the freehold property known as the Land at Interbridges, New Brighton Road, Emsworth (registered with Title Number SH11646) shown outlined in red on the location plan attached to this document at Schedule 2

1.1.6 's.106 Agreement' means the agreement, attached to this document at Schedule 1, dated 21 April 2008 and made between the Council and the Owner which binds the Property.

1.1.7 'the Second Planning Application' means the application for planning permission under the Council's reference number APP/10/00912 for renewal of the First Planning Permission;

1.1.8 'the Second Planning Permission' means the planning permission which may be granted pursuant to the Second Planning Application;

1.1.9 'VAT' means value added tax or any tax replacing it

1.2 In this deed:

1.2.1 the headings are for convenience only and do not affect its construction or interpretation and references to a clause are references (unless otherwise stated) to a clause in this deed

1.2.2 words of one gender include all other genders and any reference to a person includes a reference to a company authority board department or other body

1.2.3 if an obligation is owed to or by more than one person that obligation is owed to or by those persons separately jointly or in any combination

1.2.4 any obligation on a party to do any act or thing includes an obligation to procure that it is done and any obligation not to do any act or thing includes an obligation not to permit the doing of the act or thing

1.2.5 any consent approval authorisation or notice required or given under this deed will only take effect if given in writing

1.2.6 references to 'statute' are references to any statute or statutory provision for the time being in force and any regulations orders byelaws or other subordinate legislation made under any such statute or statutory provision from time to time

1.2.7 unless expressly stated to the contrary any reference to a specific statute includes any statutory extension or modification amendment or re-enactment of that statute and any regulations or orders made under it

2 **RECITALS**

2.1 The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 (as amended) ("TCPA 1990") in respect of the Property

3 The Owner is the registered freehold owner of the Property and a certificate from the Solicitor to the Owner has been produced to the Council and is appended at Schedule 3 that the Owner is immediately entitled to possession and subject only to the mortgage (if any) no other person having an interest therein at law or in equity.

3.1 On 16 November 2010, the Owner submitted the Second Planning Application to the Council.

3.2 On 10 February 2011, the Council has resolved to grant the Second Planning Permission subject to the satisfactory completion of this Deed

3.3 On 21 April 2011, the First Permission expired. Under clause 16(2) of the s.106 Agreement, the s.106 Agreement also ceased to have legal effect on that date.

3.4 The Council has retained jurisdiction to grant the Second Planning Permission even though the First Planning Permission expired after the Second Planning Application was submitted, in accordance with the decisions in Pye v Secretary of State for the Environment [1998] 3 P.L.R 72 and R v Leicester City Council Ex p. Powergen UK Plc (2001) 81 P &CR5.

3.5 Issuing the Second Planning Permission will produce a new planning permission which will be bound by the time limits contained within that permission.

3.6 The Council and the Owner have agreed to incorporate the terms of the s.106 Agreement into this Deed, subject to the variations set out in Clause 3, below, so that the terms of the s.106 Agreement, as varied, shall apply with full force and effect to the Second Planning Permission.

3.7 Words and phrases whose meanings are not varied by this Deed have the same meanings as in the s.106 Agreement

4 VARIATION OF THE S.106 AGREEMENT

4.1 The parties agree that upon the date of this Deed the definitions within the s.106 Agreement shall be varied by substituting the words in the left hand column with the words in the right hand column of this clause:

Definitions in s.106 Agreement	Replacement Definitions
"the Application" Shall mean the application submitted to the Council by the Owner given reference number 07/54901/007 for the Development	"the Application" means the planning application (referenced APP/10/00912) Extension of time limit for the implementation of Planning Permission 07/54901/007 for development comprising 12 No. industrial units (1822.6 sqm) within B 1 (b & c) and 3 No. office units (395 sqm). Open storage and provision of commuter car park with new access to New Brighton Road.
"the Planning Permission" means the Planning Permission for the Development	"Planning Permission" means a planning permission granted pursuant to the Application

3.2 The parties agree that the s.106 Agreement shall be further varied as of the date of this Deed as follows:

3.2.1 Clause 4 shall be deleted in full and replaced with:

"4. Covenants Binding on Commencement

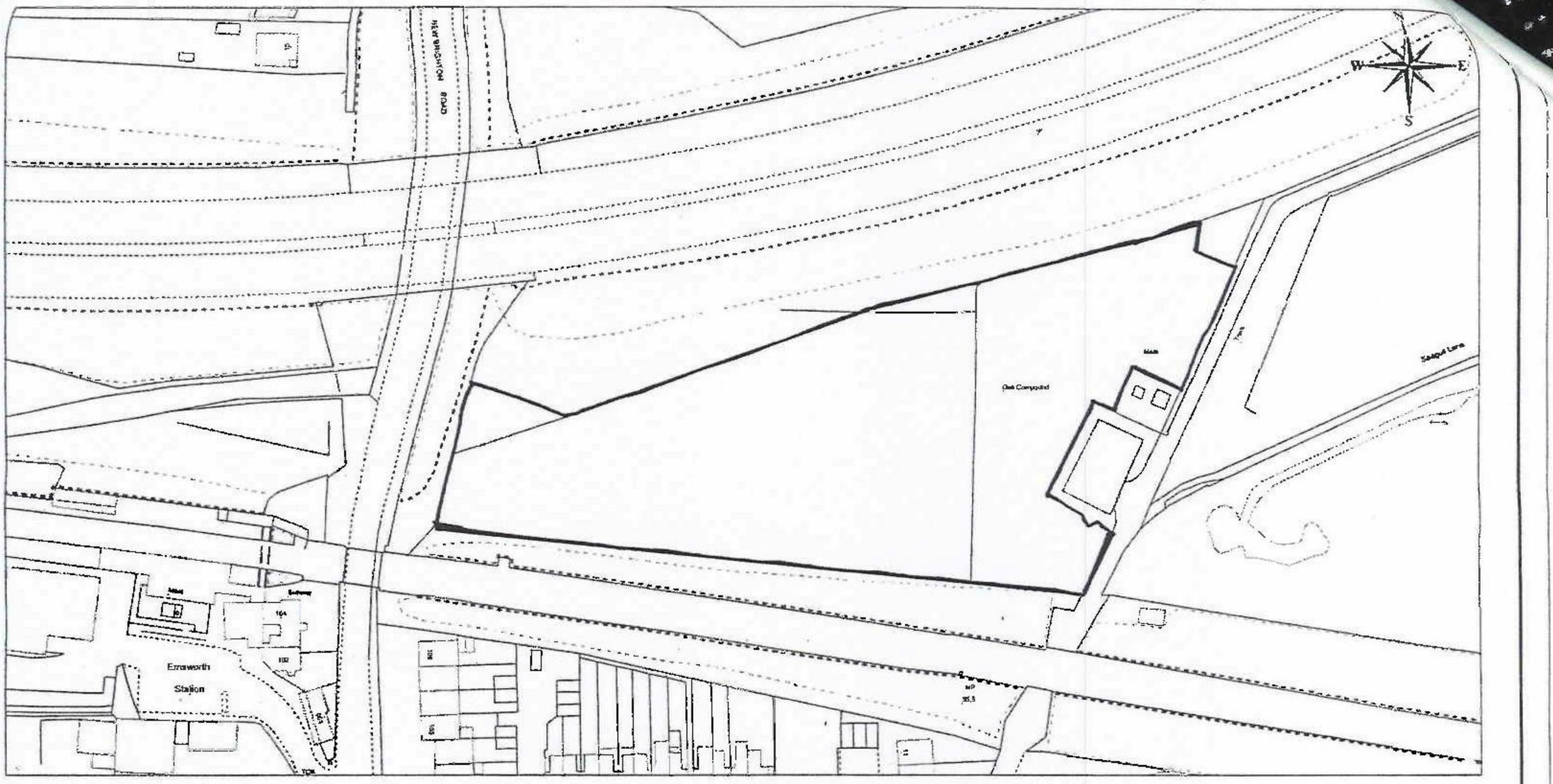
4.1 The covenants undertakings obligations and restrictions in this Agreement shall become binding on the parties to this Agreement upon Commencement."

3.2.2 Clause 7 shall be deleted in full and replaced with:

" 7. Commencement

The Owner will notify the Council in writing at least 14 days before Commencement "

4.3 The Council and the Owner confirm that the covenants and conditions contained in the s.106 Agreement except as varied by this Deed shall apply with full force and effect to the Second Planning Permission



Civic Offices, Civic Centre Road, Havant, Hampshire PO9 2AX t: 023 9247 4174

Havant BOROUGH COUNCIL

Title:

Town and Country Planning Act 1990
S106 Agreement
Interbridges Site, New Brighton Road
Emsworth
07/54901/007
Drawing No. PC44/0287

Drawn By:

Scale: 1:1250

Drawing No:

Cleaner, Safer, More Prosperous

PLAN '

[redacted]

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[redacted]

Application Boundary

Intervisibility line

Pedestrian barrier extended

C

D

E

F

Unit 1

Unit 2

Unit 3

Unit 4

Unit 5

Unit 6

Unit 7

Unit 8

Unit 9

Unit 10

Unit 11

Unit 12

Unit 13

Unit 14

Unit 15

Mast

Gas Compound

235.2m2 (16.80x14.00)

235.2m2 (16.80X14.00)

2No. open Yard Storage area

109

103

MP 35.5

PLAN 'B'

INTERBRIDGES SITE
NEW BRIGHTON ROAD
EMSWORTH

S 106 PLAN

APRIL 2008

AEW

1:500

08/39/K-17

NASH & PARTNERS LIMITED

NASH

- ARCHITECTS
- SURVEYORS
- PROJECT MANAGERS
- PROPERTY CONSULTANTS

construction or interpretation of any of the provisions of this Agreement

2.3 In this Agreement where the context so admits:

2.3.1 words importing one gender shall include all other genders

2.3.2 words importing the singular shall include the plural and vice versa

3. Planning Obligations

The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Town and Country Planning Act 1990 and are enforceable by the Council

4. Covenants Binding on Implementation

4.1 The covenants undertakings obligations and restrictions in this Agreement shall become binding on the parties to this Agreement upon Implementation

5. Definitions

In this Agreement the following expressions shall unless the context shall otherwise require have the following meanings:

"the Act"	Means the Town and country Planning Act 1990 as amended.
"the Application"	Shall mean the application submitted to the Council by the Owner given reference number 07/54901/007 for the Development
"Commencement"	Means the commencement of the Planning Permission by the carrying out of a material operation under Section 56(4) of the Act excluding operations consisting of site clearance, demolition work on the Land, archaeological investigations, investigations for the purpose of assessing contamination, remedial action in respect of contamination, diversion and laying of services and the erection of means of enclosure for the purposes of site security and/or the display of advertisements
"the Development"	Means Development authorised by the Permission consisting of the construction of 12No. industrial units (1822.64 sqm) within B1 (b & c), 3 No. office units (394.6 sqm),

	open storage and the provision of a commuter car park, with new access to New Brighton Road.
"the Land"	Means the Land at Interbridges, New Brighton Road, Emsworth shown for identification purposes only edged heavily in black on the Site Plan
"Occupation"	Means takes occupation (including causing permitting or suffering the taking of occupation) for any purpose permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the expression Occupy Occupied Occupier and Occupiers shall be construed accordingly
"the Plan B"	Means the plan reference number 0839/SK-17 annexed hereto marked Plan B
"the Planning Permission"	Means the planning permission for the Development.
"the Solicitor"	Means the solicitor giving the certificate annexed hereto.
"the Site Plan"	Means the plan reference number PC44/0287 annexed hereto marked Plan A

6 Obligations

6.1 The Owner covenants with the Council not to Commence or cause permit or suffer the Commencement of the Development before the Owner shall have submitted to the Council

a) a Footway Type (black top) construction specification to be approved in writing by the Council

b) a Footway Type (hoggin) construction specification to be approved in writing by the Council

c) a Car Park Specification to be approved in writing by the Council

such approvals not to be unreasonably withheld.

6.2 The Owner covenants with the Council not to Occupy or cause permit or suffer the Occupation of the Development before

(a) a footpath has been provided on the Land along the route shown on Plan B annexed hereto and marked with a dotted red line between points "C" and "D", "E" and "F". That part of the said footpath as is shown on Plan B between points "C" and "D" to be constructed in accordance with the Footway Type (black top) construction specification as approved by the Council. That part of the said footpath as shown on the Plan B between points "E" and "F" to be constructed in accordance with the Footway Type (hoggin) construction specification as approved by the Council and

(b) the whole of the said footpath (between points "C" "D" "E" and "F") has been made available for the free passage of the public at large and maintained by the Owner hereafter.

6.3 The Owner covenants with the Council not to Occupy or cause permit or suffer the Occupation of the Development before a 24 space commuter car park sited as shown edged with a red line on Plan B annexed hereto has been provided, surfaced and marked out ready for use having been constructed in accordance with the Car Park Specification as approved by the Council, such car park to be kept available at all times after its provision for use as a commuter car park to the satisfaction of the Council (subject to such closure (in whole or in part) as may be necessary from time to time for such expeditious carrying out of such maintenance works as are required to discharge this obligation)

6.4 The Owner covenants with the Council not at any time permit or suffer the Occupation of any of the industrial units or any part thereof within the Development when the footpath described in clause 6.2 above is not available for the free and satisfactory passage of the public at large (subject only to such closure as may be necessary from time to time for the expeditious carrying out of maintenance works as are required to discharge this obligation) and/or when the car park described in clause 6.3 above is available for use in accordance with that clause.

7. Implementation

The Owner will notify the Council in writing at least 14 days before implementation

8. Council Discretion

Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Town and Country Planning Act 1990 or under any other Act PROVIDED ALWAYS THAT this Deed shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may or have been at any time issued by the Council or any other appropriate person pursuant to the provisions of the said Act

9. Disputes

Any dispute or difference between the parties in connection with this Agreement (which shall include any matter hereunder which the Council has the discretion to agree or approve but does not do so) shall be referred to and determined by a single arbitrator to be appointed by agreement by the parties to the dispute or in default of agreement to be either an independent and duly qualified surveyor to be appointed by the President for the time being of the Royal Institution of Chartered Surveyors or a member of any other appropriate professional body as may be agreed between the parties and any person appointed shall act as arbitrator under the Arbitration Act 1996 Such arbitrator's decision (including without limitation as to the payment of costs of the arbitration) shall be final and binding upon the parties save in respect of any decision which is founded upon error in law or legal interpretation by such arbitrator

10. No Waiver

No waiver (whether expressed or implied) by the Council of any breach or default by the Owner in performing or observing any of the terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing at any time any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owner

11. Costs

The Owner hereby agrees to pay the Council's reasonable legal and other costs in connection with the preparation and stamping of this Deed such costs to be paid on completion of this Deed

12. Successors

The expression "the Owner" and "the Mortgagee" shall include their respective successors in title and assigns.

13. Council Successors

The expression "the Council" shall include successors to its functions as Local Planning Authority for the purposes of the Town and Country Planning Act 1990

14. Notices

Save where particular clauses specify otherwise all notices to be served and notifications to be given for the Council shall be marked for the attention of the Head of Development and Technical Service and those for the Owner be marked for the attention of the Trustees of The Latham Management Limited Special Pension Scheme at 122 Belgrave Court, Canary Riverside, London E14 8RJ

15. Third Parties

The Contracts Rights of Third Parties Act 1999 shall not apply to this Agreement.

16. Liability

(1) No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

(2) If the planning permission shall expire before implementation or shall at any time be revoked modified or otherwise withdrawn then this Agreement shall immediately determine and cease to have further effect but in ceasing to have further effect shall not prejudice any express or implied rights accrued or accruing to the Owner by virtue of anything by the covenant in connection with or arising from the terms of this Agreement

(3) The Council will on the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation of it and cancel all related entries in the Register of Local Land Charges

(4) This Agreement is a local land charge and shall be registered as such

IN WITNESS whether the parties hereto have executed this document as a Deed delivered the day and year first before written

EXECUTED as a DEED by affixing
THE COMMON SEAL of)
THE COUNCIL OF THE BOROUGH)
OF HAVANT)
in the presence of:)

[redacted]

Solicitor to the Council

SIGNED as a DEED BY
THE TRUSTEES OF THE LATHAM)
MANAGEMENT LIMITED SPECIAL)
PENSION SCHEME)
in the presence of:

[redacted]

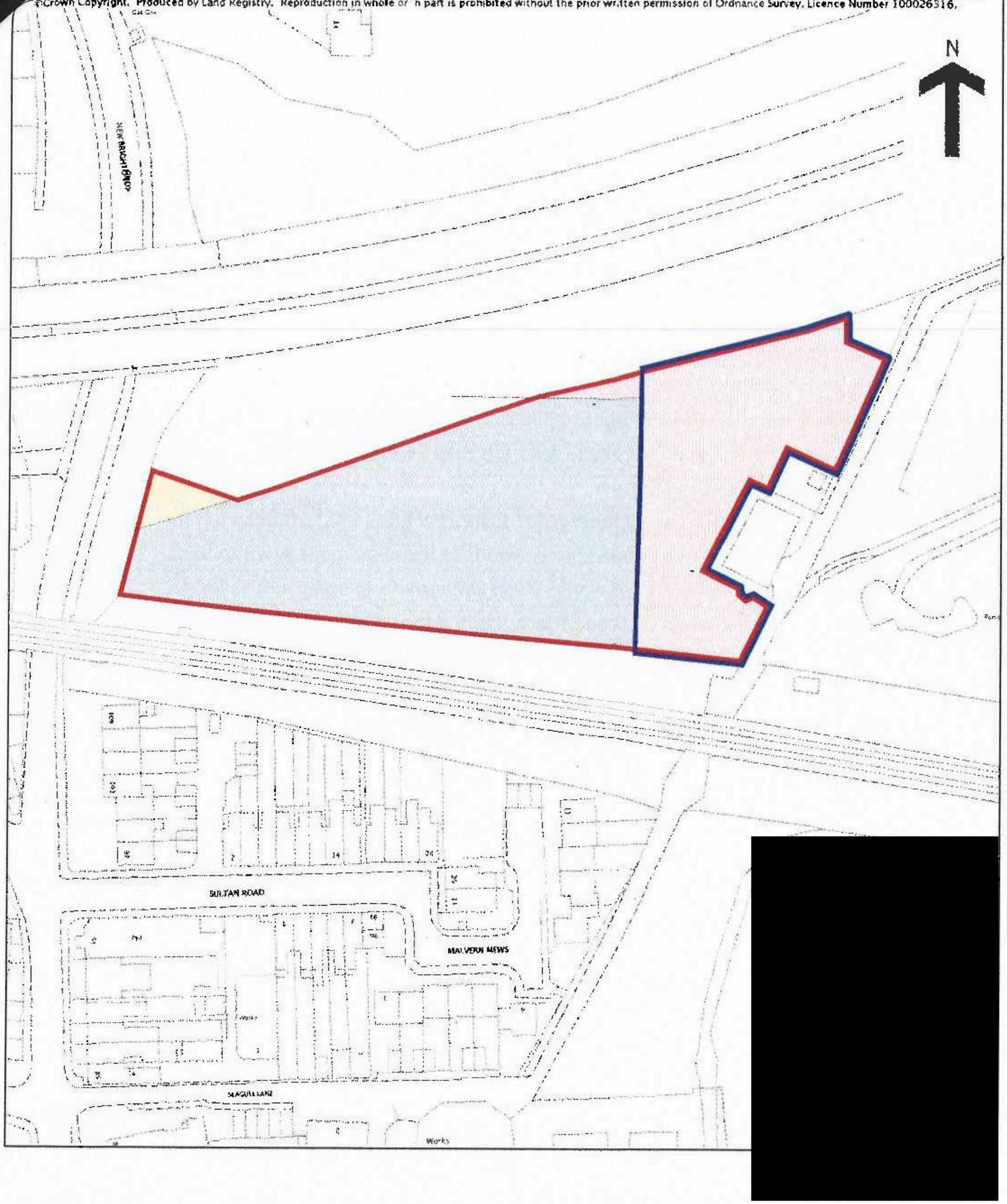
Schedule 2

Location Plan

...istry
...copy of
...plan

Title number **SH11646**
Ordnance Survey map reference **SU7406SE**
Scale **1:1250**
Administrative area **HAVANT**

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Schedule 3

CERTIFICATE OF OWNERSHIP

Planning Obligation Deed of Variation pursuant to Section 106A of the Town and Country Planning Act 1990 (as amended) relating to

Land at the Interbridges Site New Brighton Road Emsworth Hampshire
Planning application reference: **APP/10/00912**

As Solicitor for the Owner we hereby certify that on the date of the Planning Obligation Deed of Variation what is set out below is true

1.1 The Owner (and each of them acting in concert in the case of more than one joint owner) is immediately entitled to possession and occupation of a freehold estate in the Land subject only to the Mortgage (if any) no other person having an interest therein at law or (to the best of the Owner's knowledge and belief) in equity

1.2 In the case that the Land is subject to any mortgage the Mortgage (or in the case of more than one each of them) is described at Paragraph Four below and no other mortgage or charge has been concluded which affects the Land other than the Mortgage and in the event that none is so described that there is no such mortgage or charge affecting the Land

2. the Owner(s):
THE TRUSTEES OF THE LATHAM MANAGEMENT LTD SPECIAL PENSION SCHEME
122 Belgrave Court, Canary Riverside, London E14 8RJ

3. the Mortgagee(s) (if any):
"None"

4. the Mortgage(s) (if any):
"None"

[redacted]

Dated: 29/05/2012

IN WITNESS whereof the parties hereto have executed and delivered this instrument or document as a Deed the day and year first before written

Signed as a **DEED** by)
THE TRUSTEES OF THE LATHAM)
MANAGEMENT LTD SPECIAL PENSION)
SCHEME:

[redacted]

In the presence of

[redacted]

Executed as a **DEED** by affixing hereto)
the **COMMON SEAL** of **THE COUNCIL OF**)
THE BOROUGH OF HAVANT)

Solicitor to the Council: