

DATED

3 FEBRUARY

2021

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) HAMPSHIRE COUNTY COUNCIL

and

(3) RAYMOND ARTHUR TIER, CATHERINE VERONICA HOPE, ROSAMUND JULIA PHOEBE
PREUSS

and

(4) METIS HOMES LIMITED

AGREEMENT

Under Section 106 Town and Country Planning Act 1990
relating to land at the rear of 15-27 Horndean Road, Emsworth

Ref: RB/013500

THIS AGREEMENT is made on

3 FEBRUARY

2021

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**);
2. **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ (**County Council**);
3. **RAYMOND ARTHUR TIER** of 22 Beach Road, Emsworth PO10 7JS, **CATHERINE VERONICA HOPE** of 129 Lunedale Road, Dartford DA2 6JX and **ROSAMUND JULIA PHOEBE PREUSS** of 5 The Cleavers, Burbage, Marlborough SN8 3TH (**Owners**); and
4. **METIS HOMES LIMITED** incorporated and registered in England and Wales with company number 06428968 whose registered office is at Graham House, 7 Wyllyotts Place, Potters Bar, Hertfordshire, EN6 2JD (**Developer**).

BACKGROUND

- (A) For the purposes of the Act, the Council and the County Council are the local planning authorities for the area within which the Land is situated.
- (B) The County Council is also the Local Highway Authority for Hampshire (save for trunk roads and special roads) and the Transport Authority for Hampshire for the purpose of the Transport Act 1985 and 2000.
- (C) The Owners are the freehold owners of the whole of the Land.
- (D) The Developer is the beneficiary of a unilateral notice registered under title number SH41421 in respect of a contract for sale dated 11 September 2018 made between the Developer and the Owners for the Land.
- (E) The Developer has submitted the Application to the Council for permission to develop the Land in accordance with the Planning Permission.
- (F) The Owners and the Developer enter into this Agreement in anticipation of the grant of Planning Permission being made subject to the Owners and the Developer having entered into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (G) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council and the County Council against the Owners and the Developer and their successors in title.

The parties agree as follows:

1 DEFINITIONS

From the date of this Agreement unless the context otherwise requires, the following definitions apply to this Agreement.

"Act" means the Town and Country Planning Act 1990.

"Affordable Dwellings"	means 5 Dwellings to be constructed on the Land to be provided as units of Affordable Housing as part of the Development and in accordance with the Affordable Housing Mix and the Affordable Housing Plan and any reference to "Affordable Dwelling" will be interpreted accordingly.
"Affordable Housing"	means Dwellings that: (a) meets the needs of Eligible Persons including availability at a cost low enough for them to afford determined with regard to the local incomes local house prices and local rents; and (b) includes provisions for the housing to remain at an affordable cost for future Eligible Persons.
"Affordable Housing Mix"	means the mix of Affordable Dwellings, in terms of the quantum, size and tenure and set out at paragraph 1 of Schedule 1 or such other quantum, size and tenure as agreed in writing with the Council.
"Affordable Housing Plan"	means the plan identifying the siting of the Affordable Dwellings shown edged red on the drawing titled "Housing Ass Tenure" revision 12/11/2020 at Appendix 4 to this Agreement or such alternative plan as may be agreed in writing with the Council.
"Affordable Housing Provider"	means either one or a combination of: (a) a body registered as a provider of social housing with the Regulator of Social Housing under Part 2 of the Housing and Regeneration Act 2008 or such other class of body approved by the Council as may be constituted under any legislation replacing that provision; or (b) such other body eligible to receive grant monies from the Council or Homes England and able lawfully to own or manage housing for Eligible Persons and approved by the Council; or (c) any company or organisation specialising in the delivery of Affordable Housing and approved by the Council.
"Affordable Rent"	means rent inclusive of service charge which does not exceed: a) 80% of the local gross open market rent; and b) the local housing allowance rates, unless otherwise agreed in writing with the Council;

and shall only be increased annually in accordance with arrangements made for such rent increases established by Homes England.

"Affordable Rented Dwellings"

means any Affordable Dwellings let on a fixed term tenancy agreement at an Affordable Rent.

"Agreement"

means this deed of Agreement.

"Application"

means the application submitted by the Developer to the Council for planning permission to carry out the Development and given the Council's reference number APP/19/00768.

"Bond"

means a bond issued by a Surety in the form annexed at Appendix 5 to this Agreement for the Bond Amount.

"Bond Amount"

means 10% of the open book construction costs for the SuDs as approved in accordance with Schedule 2.

"Cash Deposit"

means a lump sum payment in cash of a sum being 10% of the open book construction costs for the SuDs as approved in accordance with Schedule 2.

"Commencement of Development"

means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Agreement and for no other purpose) operations consisting of: site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, and "Commence" and similar expressions shall be construed accordingly.

"Common Parts"

means the parts of the Land which are intended to benefit the Occupiers of the Dwellings as a whole or to enhance their Occupation and shall without prejudice to the generality thereof include the Permissive Paths, Open Space Land, communal parking areas, any landscaped areas, amenity spaces, street lighting, street furniture, boundary treatments and the SuDs but not including:

- (a) a Dwelling or the curtilage of a Dwelling; or
- (b) communal areas forming part of any residential block of flats, such as stairwells, lifts, lighting etc; or
- (c) any other buildings or structure to be transferred with a Dwelling; or
- (d) any communal parking areas, street lighting, street furniture and boundary treatments or other areas that are adopted by agreement made pursuant to the Highways Act 1980; or

(e) any SuDs adopted by a statutory undertaker.

"Compensation Land"

means the land shown edged red on the drawing marked "Compensating Area" and attached as Appendix 3 to this Agreement or such other land as the Council may provide.

"CPI"

means the consumer prices index published by the Office of National Statistics.

"Development"

means the erection of 16 Dwellings with associated access parking and Open Space and in accordance with the Planning Permission.

"Disposal"

means in relation to each Dwelling:

- (a) the first Occupation by anyone permitted or suffered to Occupy the Dwelling whether by:
 - I. a person who has acquired or has contracted to acquire any of the estates further defined in this definition at (b) (c) and (d) below in the Dwelling; or
 - II. who otherwise Occupies the Dwelling;
- (b) the creation of a legal term of years in respect of the Dwelling; or
- (c) the transfer of a freehold interest in respect of the Dwelling; or
- (d) the creation of a freehold interest in the Dwelling by constituting the Dwelling as commonhold land for the purposes of the Commonhold and Leasehold Reform Act 2002; and/or whichever shall first occur;

and "Dispose" and "Disposed of" shall be construed accordingly

"Dwelling"

means a self-contained unit of residential accommodation (including houses, flats and maisonettes) constructed on the Land pursuant to the Planning Permission and "Dwellings" shall be construed accordingly.

"Eligible Persons"

means persons with a Local Connection who are unable to afford housing accommodation on the open market (whether by renting or purchasing) within the administrative area of the Council and the expression "Eligible Person" shall be construed accordingly.

"Expert"

means an independent and suitable person holding appropriate professional qualifications and of at least 10 years' post qualification experience in the area of ex-

pertise relevant to the dispute and appointed in accordance with the provisions of clause 10 to determine a dispute

"Health Contribution"

means the sum of £2,560 payable to the Council as a contribution towards increasing the capacity of existing health care facilities in the vicinity of the Development to accommodate the increased demand for such services as a result of the Development.

"Help to Buy Agent"

means the body nominated by the Homes England to be responsible for Low Cost Home Ownership nominations within the administrative area of the Council or in the event that nobody has been nominated such other body or organisation as the Council shall first approve in writing.

"Highway Works"

means a new vehicular access formed from Horndean Road as shown in principle on Plan 2.

"Highway Works Licence"

means a licence made under section 184 of the Highways Act 1980 to secure the Highway Works.

"Homes England"

means the body corporate charged under the Housing and Regeneration Act 2008 with the functions of regulating the provision of Affordable Housing within the Council's administrative area by any registered provider or if such body ceases to exist or is superseded or any such successor body or organisation and including the Regulator of Social Housing where the context so requires.

"Index"

means CPI in respect of all financial obligations payable to the Council (except for the SRMS Contribution where RPI shall apply).

"Index Linked"

means increased in accordance with the following formula:

Amount payable = the payment specified in this Agreement x (A/B) where:

A = the last figure published for the Index that applied immediately preceding the date that payment was due.

B = the last figure published for the Index that applied immediately prior to the date of this Agreement.

"Interest"

means interest at 4% above the base lending rate of the Barclays Bank PLC from time to time.

"Land"

means the freehold property known as land at the rear of 15-27 Horndean Road, Emsworth shown edged red on the Plan and registered at the Land Registry with title number SH41421.

"Local Connection"	means a connection to the administrative area of the Council by virtue of: (a) existing or previous residence; (b) employment; (c) close family links through parents, siblings or off-spring; or (d) any other connection as agreed with the Affordable Housing Provider and the Council.
"Low Cost Home Ownership Dwellings"	means Help to Buy products as defined by Homes England including Shared Ownership Dwellings.
"Management Agreement"	means an agreement made between the Owners and the Management Company setting out the terms of appointment of the Management Company with respect to the Development, including the Management Company's responsibilities in implementing and performing the obligations as contained within the Management Plan
"Management Company"	means a company limited by guarantee or by shares and established or appointed in accordance with the provisions of Schedule 2 to be charged with implementing and performing the obligations as contained within the Management Plan.
"Management Plan"	means a plan for the maintenance and management of all of the Common Parts and SuDs for the lifetime of the Development including details of how the costs of maintenance and management shall be met by owner-occupiers of the Dwellings to be proposed by the Owners and approved by the Council in accordance with the provisions of Schedule 2 and includes any variation to the approved Management Plan as may be agreed in writing between the Owners and the Council from time to time.
"Monitoring Fee"	means the sum of £3103.80 as a contribution towards the costs incurred by the Council in the provision of a suitably qualified and experienced person whose function is to monitor, coordinate and enforce the obligations contained within this Agreement.
"Nutrient Mitigation Contribution"	means the sum of £24,085 payable to the Council towards the costs to be incurred by the Council in providing measures to offset the nutrient load of the Development as mitigation against the water quality impacts arising from the Development on the Solent European Protected Sites.
"Occupation"	means occupation for the purposes 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 "Occupy" shall be similarly construed.

"Open Market Dwellings"

means Dwellings which are not Affordable Dwellings

"Open Space Land"

means the public open space land provided as part of the Development having an area of approximately 0.27 hectares and shown marked "area to be used as open space" and the Shared Use Paths shown on Plan 2.

"Permissive Paths"

means any unadopted road, footpath, footway or other means of access constructed on the Land to serve the Development and the public.

"Plan 1"

means the plan titled "location plan" with drawing number L01 Revision A attached at Appendix 1 to this Agreement.

"Plan 2"

means the plan titled "proposed site plan" with drawing number 1862_02 Revision H attached at Appendix 2 to this Agreement.

"Planning Permission"

means the planning permission that may be granted in pursuance of the Application.

"Practical Completion"

means the issue of a certificate of practical completion of the Dwellings by the Owners' architect or in the event that the Dwellings are constructed by a party other than the Owners the issue of a certificate of practical completion by that other party's architect.

Rented Dwellings

means Affordable Rented Dwellings and/or Social Rented Dwellings.

"RPI"

means the retail price index published by the Office of National Statistics.

"Shared Ownership Dwellings"

means Affordable Housing leased to Eligible Persons who purchase a percentage of the equity of the Affordable Dwelling and pay a rent in relation to the share of the equity retained by the Affordable Housing Provider.

"Shared Use Paths"

means the two paths forming part of the Development and more particularly shown marked "pedestrian/cycle path" on Plan 2. The northern path to provide pedestrian and cycle access from the development to the Emsworth Recreation Ground and the southern path to serve as a pedestrian and cycle access to the future Southleigh development.

"SINC"

means land that is designated by a local authority as a Site of Importance for Nature Conservation.

"SINC Contribution"	means the sum of £12,880.05 to be paid to the Council as mitigation for the loss of part of the SINC as a consequence of the Development and to be applied by the Council towards the creation, provision, enhancement and maintenance of the Compensation Land in accordance with the Briefing Note: Guiding Principles for Lowland Meadow Restoration (MG5 Community).
"Social Rent"	means rent set in accordance with the Government's policy for social rent.
"Social Rented Dwellings"	means any Affordable Dwellings let at a Social Rent.
"Solent Recreation Mitigation Partnership"	means the partnership of local planning authorities bordering the Solent formed to develop the Solent Recreation Mitigation Strategy.
"Solent Recreation Mitigation Strategy"	means the framework to mitigate potential impacts on the Solent Special Protection Area from increased visitor pressure arising from housebuilding adopted by the Solent Recreation Mitigation Partnership in December 2017.
"Solent Special Protection Areas"	means the Special Protection Areas (designated under the Wildlife and Countryside Act 1981) in the Solent covered by the Solent Recreation Mitigation Strategy.
"SRMS Contribution"	means the sum of £10,554.50 payable to the Council as a contribution towards measures to mitigate against the impact of the Development to the Solent Special Protection Areas in accordance with the Solent Recreation Mitigation Strategy.
"SuDs"	means a sustainable drainage system for the Development in accordance with the specification agreed in writing by the Council.
"Surety"	means a bank or other financial institution as may be nominated by the Owners and approved by the Council for the Bond.
"Working Day"	means a day other than a Saturday, Sunday or public holiday in England.

2 INTERPRETATION

- 2.1 The clause and paragraph headings in this Agreement are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.

- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Land include any part of it.
- 2.8 References to any party in this Agreement include the successors in title of that party and any references to the Council and County Council include any successor local planning authority exercising planning powers under the Act and any successor Local Highway Authority.
- 2.9 References to "including" mean "including, without limitation".
- 2.10 Any covenant by the Owners and the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement shall be unaffected.

3 STATUTORY PROVISIONS

- 3.1 This Agreement is made by deed 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 To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of those sections of the Act and are enforceable by the Council and the County Council.
- 3.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.
- 3.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

4 COMMENCEMENT OF AGREEMENT

This Agreement shall have effect from the date hereof.

5 OWNERS AND DEVELOPER COVENANTS

The Owners and the Developer covenant with the Council and the County Council to comply, observe and perform the obligations as set out in this Agreement.

6 REGISTRATION

This Agreement shall be registered by the Council as a Local Land Charge in the Register of Local Land Charges maintained by the Council.

7 RELEASE

7.1 No party shall be liable for any breach of covenant, restriction or obligation contained in this Agreement after parting with all their interest in the Land except in respect of any breach on their part subsisting prior to parting with such interest.

7.2 No planning obligations contained in this Agreement shall be binding on any land held by any of the statutory undertakers for their operational purposes.

7.3 the obligations contained in this Agreement shall not be enforceable against any individual owner-occupier or tenant of any Dwelling constructed pursuant to the Planning Permission, or their mortgagees, nor against those deriving title from them with the exception of any owner, occupier or tenant of an Affordable Dwelling who shall be bound by the obligations contained in Schedule 1 to the extent that they apply to the occupation of an Affordable Dwelling.

7.4 Any legal charge entered into in respect of the Land or any part of the Land after this Agreement has been completed shall take effect subject to this Agreement PROVIDED THAT the mortgagee under such a legal charge shall have no liability under this Agreement unless it becomes a mortgagee in possession of all or any part of the Land in which case the mortgagee shall be bound by the obligations in this Agreement.

8 NOTICES

8.1 The Owners and the Developer agree to give the Council and the County Council written notice within 10 Working Days of any change in ownership of any of its interests in the Land occurring before all the obligations under this Agreement have been discharged and such notice shall give details of the transferee's full name and

8.1.1 registered office where the transferee Owner is a company

8.1.2 usual address where the transferee is not a company

together with details of the area of the Land or unit of occupation transferred by reference to a plan.

8.2 Any notice, demand or any other communication to be given under or in connection with this Agreement shall be in writing and will be effective only if delivered by hand or sent by recorded delivery to the party due to receive the notice, demand or communication.

8.3 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service and in the case of service upon the Council and the County Council shall be marked for the attention of the Head of Legal.

8.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:

8.4.1 if delivered by hand, at the time of delivery; or

8.4.2 if sent by recorded delivery, at the time delivery was signed for.

8.5 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.

8.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

9 COSTS OF THIS AGREEMENT

Upon completion of this Agreement the Owners shall pay to the Council and the County Council their reasonable and proper legal costs, in connection with the preparation, negotiation and completion of this Agreement.

10 DETERMINATION OF DISPUTES

10.1 Subject to clause 10.6, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other not less than ten Working Days' written notice requiring the dispute to be determined under this clause. The notice shall propose an appropriate Expert and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

10.2 Any dispute over the appointment of the Expert appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society of England and Wales who will have the power, with the right to take such further advice as he may require, to determine the appropriate Expert and to arrange his nomination.

10.3 The Expert shall act as an independent expert and:

10.3.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

10.3.2 each party shall have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;

10.3.3 the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

10.3.4 the Expert shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;

10.3.5 the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and shall give reasons for his decision; and

10.3.6 the Expert shall use all reasonable endeavours to publish his decision within thirty Working Days' of his appointment.

10.4 Responsibility for the costs of referring a dispute to an Expert under this clause, including costs connected with the appointment of the Expert and the Expert's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Expert.

10.5 This clause 10 does not apply to disputes touching or concerning the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

10.6 The provisions of this clause 10 shall not affect the ability of the Council to apply for and be granted declaratory relief injunction specific performance payment of any sum damages or any other means of enforcing this Agreement and consequential and interim orders and relief.

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to his Agreement and their successors in title.

12 INDEXATION

12.1 All sums payable pursuant to this Agreement shall be Index Linked.

12.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council or the County Council (as appropriate) shall advise the Owners in writing.

13 INTEREST

If any sums due under this Agreement is paid late Interest will be payable from the date payment is due until the date of payment.

14 VAT

The parties to this Agreement acknowledge and agree the sums payable under this Agreement are not subject to VAT and no VAT should be charged or recoverable in addition to the amount of the sums specified in the Agreement.

15 WAIVER

No failure or delay by the Council or County Council to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver (whether express or implied) for any breach or default by the Owners in performing or observing any of the covenants, restrictions or obligation contained in this Agreement. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16 TERMINATION

16.1 The obligations in this Agreement (with the exception of clause 9) shall cease to have effect if before the Commencement of Development, the Planning Permission:

16.1.1 expires;

16.1.2 is varied or revoked other than at the request of the Owners; or

16.1.3 is quashed following a successful legal challenge.

17 FUTURE PERMISSIONS

17.1 Subject to clause 17.2, nothing in this Agreement 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 Agreement.

17.2 This Agreement shall apply to any planning permission subsequently granted under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission and any other planning permission granted under such powers (a "Subsequent Permission") and the Planning Permission shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the Council or the circumstances in clause 16.1.2 arise.

18 JURISDICTION

18.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.

18.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

SCHEDULE 1

Affordable Housing

The Owners and the Developer covenant with the Council as follows:

1 AFFORDABLE HOUSING MIX

- 1.1 To provide the Affordable Dwellings as part of the Development in accordance with the Affordable Housing Mix and the Affordable Housing Plan.
- 1.2 That the Affordable Housing Mix shall consist of:
 - 1.2.1 5 Rented Dwellings; or
 - 1.2.2 3 Rented Dwellings and 2 Shared Ownership Dwellings; or
 - 1.2.3 such other mix of type, tenure and numbers as may be agreed in writing with the Council at its absolute discretion.

2 PROVISION OF AFFORDABLE DWELLINGS

- 2.1 Not to Dispose nor permit Disposal of more than 5 Open Market Dwellings until the Affordable Dwellings:
 - 2.1.1 are completed and are ready for Occupation; and
 - 2.1.2 have been transferred (by either a transfer or transfers of the freehold interest or long leasehold interest with a term of not less than 125 years) to an Affordable Housing Provider.

3 OCCUPATION OF AFFORDABLE DWELLINGS

- 3.1 Subject to the provisions of this Agreement and the exceptions in it not to permit or otherwise allow any Affordable Dwellings to be let or Occupied for any purpose other than:
 - 3.1.1 as Affordable Housing; and
 - 3.1.2 as the sole private residence of the Occupier; and
 - 3.1.3 by Eligible Persons.
- 3.2 Subject to paragraphs 5 and 6 of this Schedule 1 not to allow or permit any Low Cost Home Ownership Dwellings to be let, transferred or Occupied by persons other than persons nominated by the Help to Buy Agent.
- 3.3 Subject to paragraphs 5 and 6 of this Schedule 1 not to permit or otherwise allow any Rented Dwellings to be let or Occupied for any purpose other than:
 - 3.3.1 at a sum not exceeding the Affordable Rent or Social Rent as the case may be; and
 - 3.3.2 to persons other than persons nominated by the Council.

4 TRANSFER OF AFFORDABLE DWELLINGS

4.1 That the deed of transfer or lease (as applicable) to the Affordable Housing Provider of the Affordable Dwellings shall contain the following (or such other alternative provisions as the Council may agree in writing):

- 4.1.1 a covenant not to use the Affordable Dwellings otherwise than for the provision of Affordable Housing subject to the terms of this Agreement and the exceptions in it; and
- 4.1.2 a covenant not to Dispose of any of the Affordable Dwellings other than for the purpose of providing Affordable Housing to Eligible Persons subject to the terms of this Agreement and the exceptions in it; and
- 4.1.3 a covenant requiring the Affordable Housing Provider to enter into an agreement with the Council granting the Council the right to nominate 100% of the Occupiers of the Rented Dwellings when initially let and all subsequent true voids.

5 100% EQUITY SHARE

5.1 The provisions in paragraph 3 of Schedule 1 shall cease to have effect in respect of:

- 5.1.1 any Affordable Dwelling where a leaseholder of that Affordable Dwelling held under Low Cost Home Ownership has purchased 100% of the equity in the relevant Affordable Dwelling; or
- 5.1.2 in respect of any Affordable Dwelling where the Occupier has exercised a statutory right to buy, including the preserved right to buy or a right to acquire in respect of such Affordable Dwelling.

6 CHARGEES IN POSSESSION

6.1 For the purpose of this paragraph Chargee means:

- any mortgagee or chargee;
- any receiver, administrative receiver or administrator appointed under the Law of Property Act 1925 or other statutory enactment;
- any housing administrator appointed under the Housing and Planning Act 2016; or
- any other person appointed under any security document to enable a Chargee to realise its security

of the Affordable Housing Provider and the whole or any one or more of the Affordable Dwellings.

6.2 The provisions of this Agreement relating to Affordable Dwellings shall not be binding on a Chargee (or any person or bodies deriving title through such Chargee) PROVIDED THAT the Chargee will have first:

- 6.2.1 given written notice to the Council of its intention to exercise its powers of sale to Dispose of any of the Affordable Dwellings ("Notice"); and
- 6.2.2 used reasonable endeavours over a period of three months from the date the Notice is served to complete a Disposal of the relevant Affordable Dwelling(s) to either:
 - 6.2.2.1 another Affordable Housing Provider; or

6.2.2.2 to the Council.

- 6.3 Any Disposal referred to in paragraph 6.2.2 shall be for a consideration not less than the amount properly due and outstanding under the terms of the Chargee's relevant security documentation. This sum shall include all accrued principal monies, interest and the Chargee's reasonable costs and expenses.
- 6.4 In the event that a Disposal referred to in paragraph 6.2 shall not have been completed within the period of three months referred to in paragraph 6.2.2, the Chargee will be entitled to Dispose of the relevant Affordable Dwelling(s) free from the provisions of this Agreement relating to Affordable Housing which shall determine absolutely in respect of the relevant Affordable Dwelling(s).
- 6.5 For the avoidance of doubt in respect of the relevant Affordable Dwelling(s) Disposed of in accordance with paragraph 6.4 above the purchaser (or any person deriving title from them or any successor in title thereto together with their respective mortgagees and chargees) shall not be subject to the obligations of this Schedule 1 to this Agreement.

SCHEDULE 2

MANAGEMENT OF THE DEVELOPMENT

The Owners and the Developer (and the Council where relevant) covenant as follows:

1 MANAGEMENT COMPANY AND MANAGEMENT PLAN

- 1.1 Not later than three months following Commencement of Development to submit to the Council in writing the Owner's proposal for the formation of the Management Company and such proposal shall include full details of the proposed structure and voting rights of the Management Company.
- 1.2 The Council covenants that it will notify the Owner that it either approves or rejects the proposal referred to in paragraph 1.1 of Schedule 1 within one month of receipt. If notification is not received within that time, the proposal/s will be deemed to be approved. If notification of a refusal is received by the Owner within the aforementioned time period, the Owner shall continue to comply with the obligation at paragraph 1.1 of Schedule 2 and submit a further proposal or proposals until such time as the Council approves the proposals for the Management Company.
- 1.3 In the event that the Council fails to notify the Owners in accordance with paragraph 1.2 of this Schedule 2, the proposal for the formation of the Management Company as submitted in accordance with paragraph 1.1 of this Schedule 2 (or as resubmitted) will be deemed approved for the purposes of paragraph 1.1.
- 1.4 Not later than three months following Commencement of Development to submit to the Council in writing the Owner's proposal for the Management Plan.
- 1.5 Not later than six months from Commencement of Development the Owner shall take all necessary steps to secure the formation and registration of the Management Company at Companies House (taking into account any modifications reasonably required by the Council) and to notify the Council accordingly within fourteen days of the completion of the registration of the Company.
- 1.6 Not to Dispose or permit Disposal of any Dwellings until:
 - 1.6.1 the Management Company has been formed in accordance with the approved proposal; and
 - 1.6.2 the Management Plan has been approved in writing by the Council.
- 1.7 To secure the proper maintenance of the Common Parts to the reasonable satisfaction of the Council until such time as:
 - 1.7.1 the Management Company is registered and the Management Plan has been approved by the Council; and
 - 1.7.2 the maintenance arrangements for the Common Parts in accordance with the Management Plan have been fully implemented; and
 - 1.7.3 the transfer or the granting of a long leasehold interest of the Common Parts (except for the SuDs) to the Management Company is completed; and
 - 1.7.4 in respect of the SuDs:

- (a) the transfer of the SuDs to the Management Company is completed; or
- (b) the SuDs is adopted by a statutory undertaker.

1.8 That if the Management Company ceases to exist as a company or if the Management Company at any time defaults in the performance of any of its covenants or obligations on its part as contained in the Management Plan and/or Management Agreement then the Owners shall (without prejudice to any other right or remedy of the Owners against the Management Company or any other person) perform the said covenants and obligations until the appointment by the Owners of a successor to the Management Company.

2 SuDs

2.1 Not less than two months prior to Commencement of Development to submit to the Council for its approval a bill of quantities detailing the open book construction costs for the SuDs.

2.2 The Council covenants that it shall within ten Working Days' notify the Owners that it either approves the bill of quantities for the SuDs as submitted or proposes such reasonable amendments as are considered necessary.

2.3 Where reasonable amendments to the open book construction costs for the SuDs are proposed by the Council, the Owners shall not more than ten Working Days' after receiving the Council's proposed amendments revise the bill of quantities for the SuDs in accordance with the proposed amendments.

2.4 On or before Commencement of Development to:

2.4.1 provide to the Council a Bond for the Bond Amount; or

2.4.2 pay the Cash Deposit.

2.5 The Bond shall endure, or the Cash Deposit shall be retained by the Council until the earlier of:

2.5.1 the SuDS being adopted by a statutory undertaker; or

2.5.2 the date of completion of construction of the SuDS to the reasonable satisfaction of the Council.

2.6 The Council shall within 10 Working Days of the event in paragraph 2.5 occurring either:

2.6.1 release the Owners and the Surety from the Bond; or

2.6.2 repay the Cash Deposit (or if the Council has realised part of the Cash Deposit in accordance with paragraph 2.7 the unexpended amount) to the Owners.

2.7 If the Owners:

2.7.1 fail to construct the SuDs in accordance with the details approved by the Council in writing; or

2.7.2 prior to completion of the SuDs are adjudicated bankrupt or go into liquidation voluntarily or otherwise; or

2.7.3 have executed a deed of assignment for the benefit of or otherwise compound with their creditors (except for the purpose of reconstruction or amalgamation),

the Council may (without prejudice to the Council's other rights remedies and powers against the Owners);

2.7.4 by written notice, require the Surety to pay for; or

2.7.5 require the Cash Deposit be applied to,

any reasonable and proper expenditure (including legal costs) which the Council may incur in carrying out the construction of the SuDs to serve the Development its own design or the Owners' design to return the Land to the level of hydrological response as existed before Commencement.

SCHEDULE 3

HIGHWAY

The Owners and Developer covenant as follows with the County Council

1 HIGHWAY WORKS

- 1.1 Not to Commence the Development until a Highway Works Licence has been completed with the County Council in respect of the Highway Works.
- 1.2 Not to Occupy the Development unless and until the Highway Works have been completed in accordance with the Highway Works Licence.

SCHEDULE 4
CONTRIBUTIONS

The Owners and the Developer covenant with the Council as follows:

1 MONITORING FEE

Not to Commence or permit Commencement of Development until the Monitoring Fee has been paid to the Council.

2 SRMS CONTRIBUTION

Not to Commence or permit Commencement of Development until the SRMS Contribution has been paid to the Council.

3 NUTRIENT MITIGATION CONTRIBUTION

Not to Commence or permit Commencement of Development until the Nutrient Mitigation Contribution has been paid to the Council.

4 SINC CONTRIBUTION

Not to Commence or permit Commencement of Development until the SINC Contribution has been paid to the Council.

5 HEALTH CONTRIBUTION

Not to Occupy or permit Occupation of any Dwelling until the Health Contribution has been paid to the Council.

SCHEDULE 5
MISCELLANEOUS COVENANTS

The Owners and the Developer covenant as follows:

1 COMMENCEMENT OF DEVELOPMENT

- 1.1 To give to the Council and the County Council not less than ten Working Days written notice of Commencement of Development.

2 SUBMISSION OF DOCUMENTS

- 2.1 To provide when submitting documents or details to the Council or the County Council pursuant to the Schedules of this Agreement a reference to the Planning Permission, the date and parties to this Agreement, and the paragraph and Schedule under which approval is sought, together with a statement of the date by which a decision must be given by the Council or the County Council.

3 OPEN SPACE LAND SUDS AND COMMON PARTS

- 3.1 Not to Commence or permit Commencement of Development until the Council have been provided with details and specification of the Open Space Land and Common Parts and such details shall include the works required to be undertaken to the Open Space Land to retain, enhance and improve its existing designation as a SINC and a timetable for delivery of the Open Space Land and Common Parts.
- 3.2 Not to Occupy the Development until the Common Parts and Open Space Land have been provided to the reasonable satisfaction of the Council in accordance with the details, specification and timetable submitted pursuant to paragraph 3.1 above.

4 PUBLIC ACCESS

- 4.1 Not to Occupy or permit Occupation of any Dwelling until the Permissive Paths serving that Dwelling have been laid out, constructed and made available for use in accordance with the details approved by the Council.
- 4.2 To ensure that the Permissive Paths following construction are available for use by owner-occupiers of the Dwellings and the public at large and to include in any transfer or lease of the Permissive Paths covenants requiring the Permissive Paths to be made and kept available for use by the public in perpetuity.

5 SHARED USE PATHS

- 5.1 Not to Occupy or permit Occupation of more than 11 Dwellings until the Shared Use Paths have been laid out, constructed and made available for use in accordance with the details approved by the Council.
- 5.2 To ensure that the Shared Use Paths following construction are available for use by owner-occupiers of the Dwellings and the public at large and to include in any transfer or lease of the Shared Paths covenants requiring the Shared Use Paths to be made and kept available for use by the public in perpetuity.

SCHEDULE 6
COUNCIL COVENANTS

The Council covenants with the Owner:

1 USE OF CONTRIBUTIONS

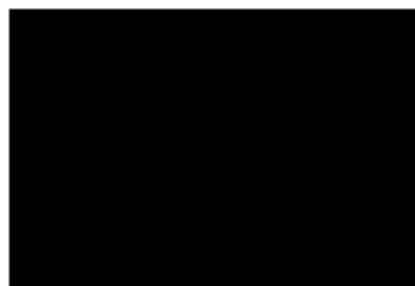
- 1.1 That it shall use the contributions paid to it pursuant to Schedule 3 of this Agreement for the purposes specified in this Agreement and for no other purpose.

2 REPAYMENT OF UNSPENT CONTRIBUTIONS

- 2.1 Following receipt of a written request to do so to repay to the person who paid the contributions pursuant to Schedule 3 of this Agreement such amount of those contributions which remain unspent or is not committed for expenditure (and the contributions shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the contributions for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) on the tenth anniversary of the date of receipt by the Council of the last instalment (where applicable) of such contribution, together with interest accrued (if any) from the date of payment of the contribution until the date of request for refund

**EXECUTED as a DEED by affixing
THE COMMON SEAL of the COUNCIL OF THE
BOROUGH OF HAVANT**

in the presence of:



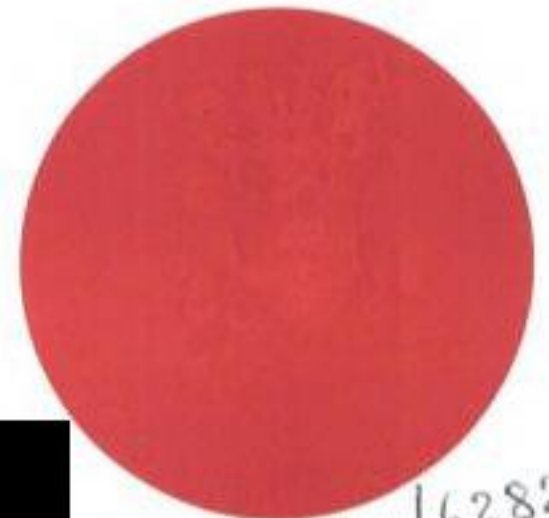
Authorised Signatory

**EXECUTED as a DEED by affixing
THE COMMON SEAL of
HAMPSHIRE COUNTY COUNCIL**

in the presence of



Authorised Signatory



37/6282

13597

Executed as a Deed by **RAYMOND**)
)
ARTHUR TIER in the presence of:)
)

Witness
Witness

Name:

Address:

Occupation:

Executed as a Deed by **CATHERINE**)
)
VERONICA HOPE in the presence of:)
)

Witness
Witness

Name:

Address:

Occupation:

Executed as a Deed by **ROSAMUND**)
)
JULIA PHOEBE PREUSS in the)
 presence of:)

Witness
Witness

Name:

Address:

Occupation:

EXECUTED as a DEED by

METIS HOMES acting by

[DIRECTORS NAME]

Director

[DIRECTORS NAME OR SECRETARY]

ALISTAIR HARRIS

Director

APPENDIX 1

PLAN 1

Drawing No: L01 Revision A



architects ltd

architects & urban designers

tel: 01489 564303

email: info@adp-bd.co.uk

www.adparchitects.co.uk

Richmond Court, 94 Bailey Road, Park Gate, Southampton, SO31 1BA

project name/address:

**Residential Development on
Land Off Horndean Road
Emsworth**

client:

Metis Homes Ltd

drawing title:

Location Plan

job number:

1862

drawing number:

L01

revision:

A

drawing scale(s):

1:1250 (A4)

date:

Feb 19

drawn:

PRW

Copyright

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ADP Architects Ltd AR 100010061

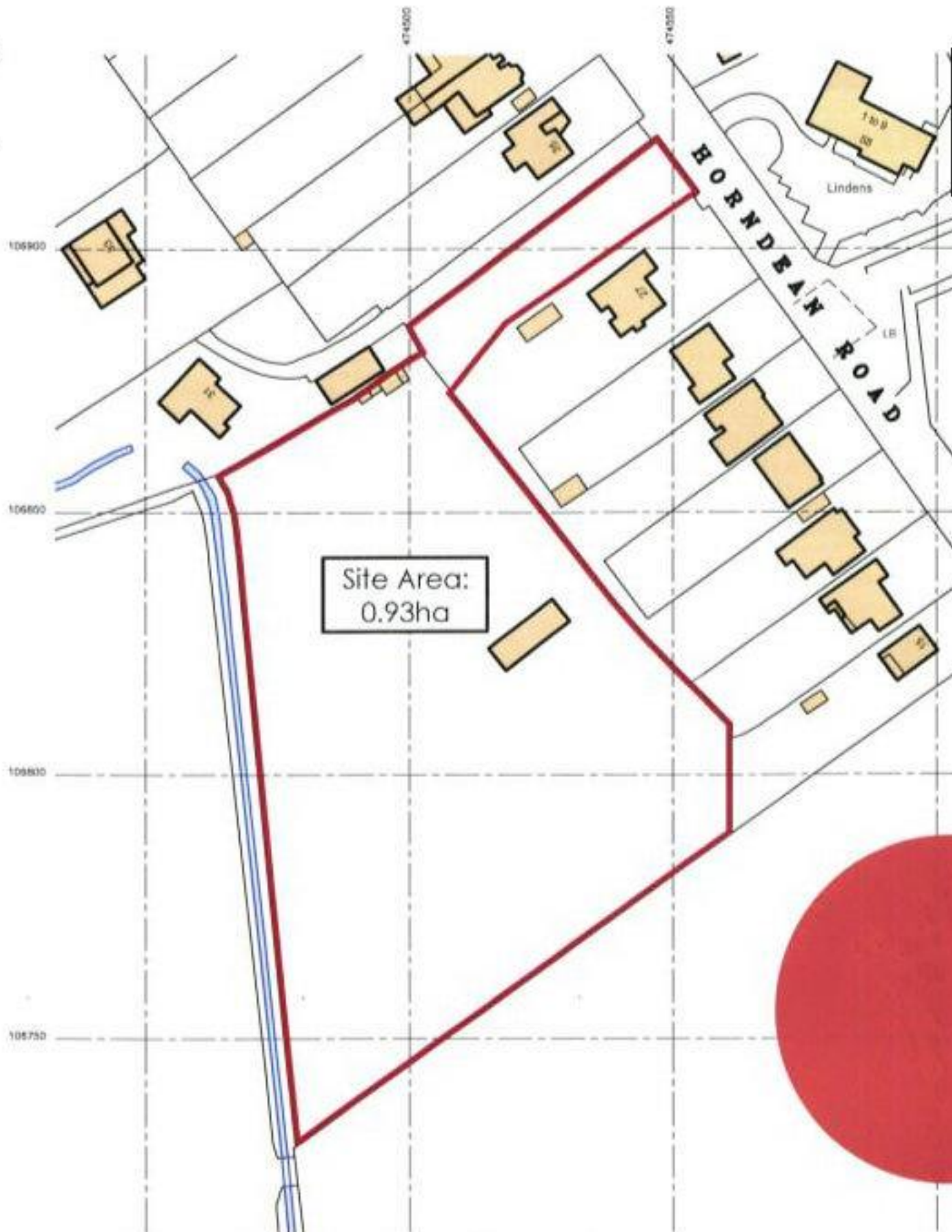
rev:

date:

A 20/7/19

note:

Issued for planning application



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APPENDIX 2

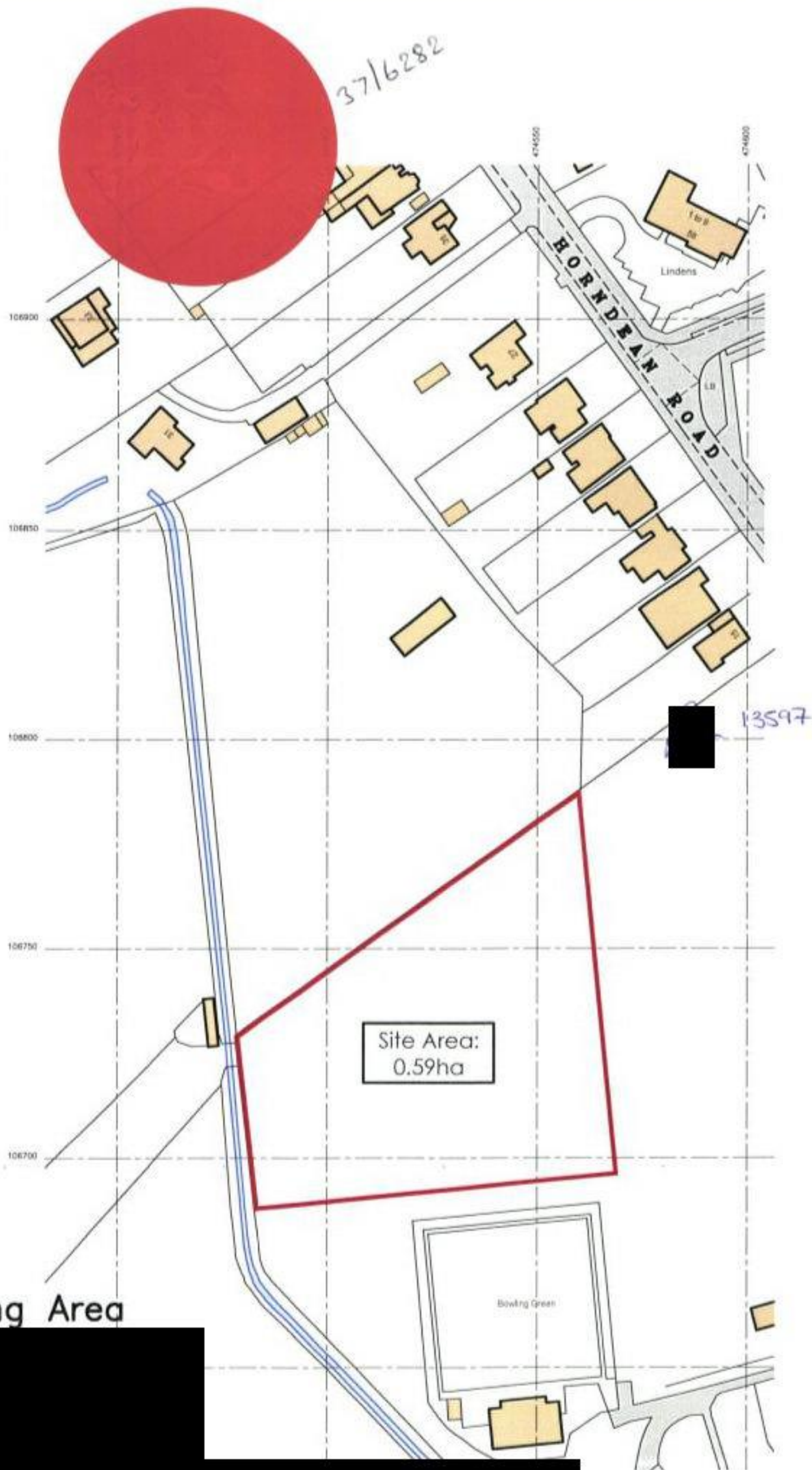
PLAN 2

Drawing number 1862_02 Revision H

APPENDIX 3
COMPENSATION LAND PLAN



Scale 1:1250 (A4)



Compensating Area

Revision: 30/10/2020

Land at Emsworth
Recreation Ground
Hordean Road
Emsworth

APPENDIX 4
AFFORDABLE HOUSING PLAN

METIS HOMES

Modern Homes. Traditional Values.



Title Plan

1 to 9
58

Lindens

HORDEAN ROAD

Bungalow

Chalet

Chalet

Chalet

Chalet

Bungalow

Chalet

Extent of Flood
Zone 3
(Area to be used as open space)

Refuse/Fire
Vehicle Turning

Access to
area of open space



Scale 1:500 (A3)

0 5 25m
SCALE

Title Plan
[Housing Ass Tenure]

Revision: 12/11/2020

[Metis Homes]

Residential Development

16no Units
Land off Hordean Road
Emsworth

13547

5716282

APPENDIX 5
FORM OF BOND

The Guarantee Bond is made as a deed between the following parties whose names and addresses are set out in the Schedule to this Bond (the 'Schedule'):-

- (1) The 'Contractor' as principal
- (2) The 'Guarantor' as guarantor, and
- (3) The 'Employer'

Whereas

- (1) By a contract (the 'Contract') entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the 'Works') upon and subject to the terms and conditions therein set out.
- (2) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2.

Now this deed witnesses as follows:-

- 1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge any damages sustained by the Employer ("the Damages") which relate to the obligation to carry out the works.
- 2 The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the 'Bond Amount') but subject to such limitation and to clause 4 the liability of the Guarantor to pay the Bond Amount shall be co-extensive with the liability of the Contractor to pay the Damages under the Contract.
- 3 The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Guarantee Bond.
- 4 Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach and stating that the amount being demanded has been established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and takes into account all sums due or to become due to the Contractor has been made upon and received by the Guarantor before Expiry.
- 5 The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.

- 6 The Guarantee Bond and the benefit thereof shall not be transferred or assigned without the
prior written consent of the Guarantor and the Contractor.
- 7 The parties to this Guarantee Bond do not intend that any of its terms will be enforceable, by
virtue of The Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a
party to it.
- 8 This Guarantee Bond shall be governed by and construed in accordance with the laws of
England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

The Schedule

The Contractor: **Developer's details**

The Guarantor: **Bank's details**

The Employer: **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service
Plaza Civic Centre Road Havant Hampshire PO9 2AX

The Contract: *insert details of the S106 Agreement*

The Works the construction of a Sustainable Drainage system in accordance with paragraphs xxx of Schedule xxxxx to the Contract

The Bond Amount: The sum of (£xxxxxxx) xxxxxxxx pounds sterling only

The Expiry Date: This Bond will expire for receipt of demands upon the Issue of a certificate of Practical Completion by the Council upon presentation to the Guarantor, by the Contractor of a certified true and correct copy of the Practical Completion Certificate purporting to have been signed under the Contract which shall be conclusive for the purposes of this Guarantee Bond

In witness whereof the Contractor and the Guarantor have executed and delivered this Guarantee Bond as a Deed this _____ day of _____ 20xx

EXECUTED as a DEED by **DEVELOPER**)
in the presence of:-)

Director

Director/Secretary

EXECUTED as a DEED by affixing the)
COMMON SEAL of xxxxxxxxxx)
BANK)
in the presence of:-)

Director
Director/Secretary