

DATED

28th October

2014

LINDEN LIMITED

(1)

and

THE COUNCIL OF THE BOROUGH OF HAVANT

(2)

**DEED OF VARIATION
AND PLANNING OBLIGATION**

Pursuant to (inter alia)

Section 106 and Section 106A of the Town and Country Planning Act 1990
Relating to land at Havant Retail Park, Portsdown Hill Road, Havant
in Hampshire

Mrs J Barden-Hernandez
Solicitor to the Council
Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant, Hampshire
PO9 2AX

THIS DEED OF VARIATION is made the 28th day of October 2014
BETWEEN:

- (1) **LINDEN LIMITED** (Company Registered Number 01108676) of Cowley Business Park Cowley Uxbridge Middlesex UB8 2AL ("the Owner")
- (2) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Civic Offices Civic Centre Road Havant Hampshire PO9 2AX ("the Council")

WHEREAS:

- (1) This Deed is supplemental to a Deed of Agreement dated 3rd February 2014 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 Ankers and Rawlings Developments Limited (1) the Owner (2) the Council (3) and HSBC Bank Plc (4) in relation to the development of land at Havant Retail Park Portsdown Hill Road Havant in Hampshire ("the Section 106 Agreement")
- (2) Linden Limited as successor in title to Ankers and Rawlings Developments Limited is the freehold owner of the Land which is registered at Land Registry under Title Number HP306963 and is no longer subject to the Charge in favour of HSBC Bank Plc.
- (3) The Parties hereto agree and consent to the terms of the Section 106 Agreement being varied in respect of the Land as hereinafter provided.

NOW THIS DEED WITNESSETH as follows:

PRELIMINARY AND RECITALS

A Definitions

- A.1 Words and phrases used in this Deed are defined at Clause 1.1. Save as otherwise provided words and phrases in this Deed shall have the meanings contained in the Section 106 Agreement.

B Purpose of Deed

- B.1 This Deed is supplemental to and varies the Section 106 Agreement in the manner hereinafter appearing.
- B.2 The provisions of this Deed bind the Land (and each and every part of it) the parties and their successors in title save where this Deed expressly provides to the contrary

C Statutory Authorities

- C.1 The Council is for the purposes of Sections 106 and 106A of the Act the authority which can enforce the terms of this Agreement
- C.2 This Deed is made pursuant to the provisions Section 106 and 106A of the 1990 Act Section 111 of the Local Government Act 1972 the Housing Acts and Section 1 of the Localism Act 2011 and all other powers enabling

D Planning

- D.1 This Deed is supplemental to the Section 106 Agreement which is varied by the provisions of this Deed

E Liability for this Deed

- E.1 The Planning Obligations restrictions covenants limitations and obligations in this Deed relating to clause 3.2 are binding in their entirety upon the Owner and their interest in the Land save as otherwise provided shall bind and run with the land and each and every part of it.
- E.2 The Planning Obligations restrictions covenants limitations and obligations in this Deed relating to all other clauses within the Section 106 Agreement and this Deed of Variation relate to and are binding in their entirety upon the Owner and their successors in title and assigns and their interest in the Land save as otherwise provided shall bind and run with the land and each and every part of it.

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed (including the Recitals) the following expressions shall have the following meanings:

"the Section 106 Agreement"	Means the Agreement dated 3 rd February 2014 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 Ankers and Rawlings Developments Limited (1) Linden Limited (2) the Council of the Borough of Havant (3) and HSBC Bank Plc (4) in relation to the development of land at Havant Retail Park Portsdown Hill Road Havant in Hampshire
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- 1.2 The definitions contained in the Section 106 Agreement apply unless the context otherwise requires
- 1.3 The provisions of this Deed shall unless the context otherwise requires be construed as follows:
 - 1.3.1 Words importing one gender shall include all other genders
 - 1.3.2 The singular includes the plural and vice versa
 - 1.3.3 Reference to a statute includes any amendment, modification, extension consolidation or re-enactment of it and any statutory instrument, regulation or order made under it which is for the time being in force
 - 1.3.4 References to any "Clause" or "Sub-Clause" (or any part of them) shall (unless the context otherwise requires) be references to a Clause Sub-Clause (or any part of them) of this Deed
 - 1.3.5 Headings to clauses of this Deed do not affect the interpretation or construction of this Deed

2 EFFECT OF AGREEMENT

- 2.1 The covenants restrictions and requirements imposed upon the Owner and under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Owner and its successors in title.
- 2.2 This Deed also varies certain of the provisions of the Section 106 Agreement.

3 LAND BOUND AND ENFORCING AUTHORITY

- 3.1 The provisions of this Deed and the covenants restrictions limitations and obligations given by the Owner shall bind and run with the Land and each and every part of it and shall be binding against the Owner and its successors in title and assigns to the Land and each and every part of it save as provided elsewhere in this Deed.
- 3.2 The Owner agrees and acknowledges that it remains liable under the Section 106 Agreement (as amended by this Agreement) and the obligations contained in this Agreement provided that it retains a relevant interest in the Land.

4 LOCAL LAND CHARGE REGISTRATION

- 4.1 This Deed is registerable by the Council as a local land charge in the Register of Local Land Charges kept by the Council.

5 THE OWNER COVENANTS

- 5.1 The Owner for itself and its successors in title to the Land and each and every part of it hereby covenants in favour of the Council to observe perform and abide by the obligations restrictions limitations and covenants contained in this Deed and in the Section 106 Agreement as varied by this Deed and the said obligations restrictions limitations and covenants shall run with and bind with the Land and each and every part of it as set out below.

6 VARIATIONS TO THE SECTION 106 AGREEMENT

- 6.1 The variations set out in the Schedule hereto shall have effect from the date hereof.

7 AGREEMENTS AND DECLARATIONS

It is hereby agreed and declared by the parties hereto that:

- 7.1 Except in so far as legally or equitably permitted this Deed shall not prejudice fetter or affect the exercise of any statutory power duty or discretion of the Council
- 7.2 The terms of the Section 106 Agreement except as varied by this Deed are confirmed as if the same were set out in this Deed in full and that such terms as so varied shall for all purposes be deemed incorporated in this Deed.
- 7.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

IN WITNESS whereof this Deed has been executed as a Deed by the parties hereto the day and year first before written

Signed as a DEED by)
LINDEN LIMITED)
acting by two directors or by one director)
and the company secretary)



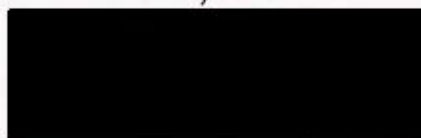
Director **DAVID COLE**



Director/Company Secretary

MML (17/10/2014)

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



129 18

Authorised signatory

SCHEDULE

Variation of Section 106 Agreement

1 Definitions

- 1.1 The Definitions set out in Clause 1.1 above shall be deemed to have been included in the Section 106 Agreement
- 1.2 The following definitions in Clause 1 of the Section 106 Agreement shall be amended as set out below:-

Defined Term in Section 106 Agreement	Amended Defined Term	Amendment to definition
"Planning Permission"	"Planning Permission"	"means the grant of full conditional planning permission pursuant to the Application and/or the grant of full conditional planning permission pursuant to the Second Application"

2 Other Variations

- 2.1 Where a defined term which is amended in 1.3 above appears in the Section 106 Agreement it shall be deemed to include a reference to the amended defined term as set out in 1.3 above.
- 2.2 A new definition shall be inserted into clause 1 of the Section 106 Agreement as set out below:

New Defined Term in Section 106 Agreement	New Definition
"Second Application"	"means the planning application reference number APP/14/00724 registered on 24 July 2014 in respect of the Land"