

DATED 21st JUNE 2013

(1) D.A. & J. J. COLLIVER LTD

and

(2) HAVANT BOROUGH COUNCIL

SUPPLEMENTAL AGREEMENT AND RELEASE
made pursuant to Section 106 and 106A of
the Town and Country Planning Act 1990
and relating to land at
254A Havant Road, Hayling Island. PO11 0LW

DATE:

2013

PARTIES:

- (1) **D.A. and J.J. COLLIVER LIMITED** (Company Registration Number 01484986 whose registered office is at The Briers, Queensway, Hayling Island, Hampshire, PO11 0LY) ("The Owner")
- (2) **COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant Hampshire PO9 2AX ("the Council")

RECITALS:

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (B) The ownership interests of the Owner are as described in the recitals to the Original Agreement.
- (C) The Application has been submitted to the Council on behalf of the Owner in order to vary condition 9 of the Planning Permission and the parties have agreed to enter into this Agreement in order to bind the development carried out pursuant to the New Permission to the obligations contained in the Original Agreement and this, the Present Agreement.

1. DEFINITIONS

For the purposes of this Agreement the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990
"Application"	the application to vary condition 9 of planning permission 08/50176/006 in order to permit uses within use classes B1(C), B2 and B8 of the Use Classes Order, and relief from a section 106 agreement associated with planning permission 90/50176/2
"New Permission"	the planning permission to be granted by the Council pursuant to the Application given planning reference APP/12/01167
"Original Agreement"	an agreement relating to the Land and entered into by the parties on 11 th September 1991 pursuant to Section 106 of the Act
"Original Obligations"	means those obligations contained in the Original Agreement above, specifically (a)(i) and (a)(ii).

"Original Permission"	the planning permission granted by the Council under reference 90/50176/2
"Overall Workplace Travel Plan"	a plan for the encouragement of sustainable travel to and from the Property that takes account of the current policies of the Council and/or County Council, and statutory requirements and guidance issued from time to time (including guidance issued by the Department for Transport or their successors).
"Present Agreement"	means this agreement
"Specific Workplace Travel Plan"	a plan for the encouragement of sustainable travel to and from a building comprised within the Development that takes account of the Overall Workplace Travel Plan.
"The Plan"	means the plan marked "Plan A"
"Workplace Travel Plans"	both the Overall Workplace Travel Plan and the Specific Workplace Travel Plan.

2. CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement 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 Agreement.
- 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 severally 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 Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its statutory functions.

2.7 The headings and contents list are for reference only and shall not affect construction.

2.8 Unless otherwise stated defined terms used in this Agreement shall have the meanings given to them in the Original Agreement and the terms of the Original Agreement shall apply to this Agreement mutatis mutandis.

3. **LEGAL BASIS**

3.1 This Agreement is made pursuant to Section 106 and 106A of the Act and Section 111 of the Local Government Act 1972.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council or County Council (as appropriate) as local planning authority.

4. **LEGAL EFFECT**

This Agreement shall take effect from the date hereof.

5. **RELEASE FROM THE ORIGINAL OBLIGATIONS**

5.1 With agreement from the Council and pursuant to section 106A of the Act the Owners are released from the Original Obligations contained in the Original Agreement. The Owners hereby observe that the New Permission shall be bound in the terms of Schedule 1 of the Present Agreement and undertake and covenant with the Council to perform the obligations listed in Schedule 1.

6.1 **MISCELLANEOUS**

6.1 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.2 This Agreement shall be registerable as a local land charge by the Council.

6.3 Insofar as any clause or clauses of this Agreement 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 Agreement.

- 6.4 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the New Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Implementation of Development.
- 6.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site or such part of the Site in respect of which the breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the New Permission.
- 6.7 Nothing contained or implied in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council and/or County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

7. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

8. DELIVERY

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

9. FEES

The Owner agrees to pay the Council its reasonable legal fees for the drafting, preparation and completion of this Deed.

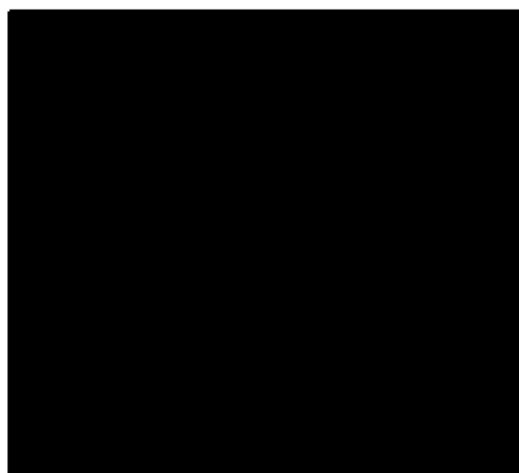
IN WITNESS whereof the parties hereto have executed this Agreement as a deed on the day and year first before written.

Signed as a DEED by

D. A. and J.J. COLLIVER LIMITED

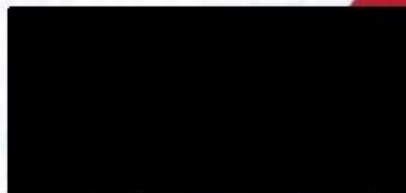
Acting by a Director and its Secretary/

Director



12814
EXECUTED under the Common Seal of
THE COUNCIL OF THE BOROUGH OF HAVANT

in the presence of:



Solicitor to the Council:

Schedule 1

Covenants to the Council

The Owners covenant:

1. WORKPLACE TRAVEL PLANS

- 1.1 No later than six months after the first occupation of the site, the Overall Workplace Travel Plan shall be submitted to the Council for written approval. The Overall Workplace Travel Plan shall include a selection of measures (examples of which are set out in Annex 1) and a timetable for the implementation of those measures.
- 1.2 The Overall Workplace Travel Plan shall address how the proposed tenants, owner-occupiers and licensees of the Development will take steps to:
 - (a) encourage employees working within the Property to travel by means other than private car;
 - (b) encourage the use of staggered start and finishing times of employees to reduce peak hour flows.
 - (c) that parking on site shall be adequate for the new occupier
- 1.3 Those parts of the approved Overall Workplace Travel Plan capable of implementation only after occupation shall be implemented in accordance with the timetable contained in the Overall Workplace Travel Plan and shall continue to be implemented as long as any part of the building is occupied.

- 1.4 Within six months of occupation of any commercial building (or part thereof) a Specific Workplace Travel Plan relating to that particular building shall be submitted to and approved in writing by the Council. Such approval from the Council shall not be unreasonably withheld or delayed.
- 1.5 At no cost to the Council to implement, procure and maintain the implementation of all measures identified in the Workplace Travel Plans.
- 1.6 To pay to the Council £250 a year, for a period of 3 years for the monitoring of the Travel Plan. The first year's payment to be paid to the Council no later than three months after occupation of any building on the site.
- 1.7 To co-operate with the Council in such manner and on such occasions as the Council reasonably require in the verification of the accuracy of any data used to assess the extent to which the objectives of the Workplace Travel Plans have been achieved.
- 1.8 To notify the Council in writing within 2 weeks of actual occupation the site, including any commercial buildings (or part thereof).

ANNEX 1

OVERALL WORKPLACE TRAVEL PLAN

The objective of the Overall Workplace Travel Plan is to introduce a travel management regime which will (without compromising the viability of the business use of the site):

- Reduce the need to travel to and from the Property.
- Reduce the need to generate car based trips (especially single-occupant car trips).
- Maximise the use of more sustainable means of travel including walking, cycling, use of public transport and car sharing.

The success of the Overall Workplace Travel Plan will be measured by comparing actual performance against the performance targets set out in the Overall Workplace Travel Plan.

Proposed measures (by way of example but not limitation)

Types of Initiative

Specific measures

Assistance to users of public transport

- Promote walking.
- Interest free loans on season tickets.
- Promote use of public transport.

Assistance to cyclists and powered two wheelers

- Promote cycling.
- Provision of changing rooms, showers and storage facilities.
- The loan of push bikes.
- Secure powered two wheelers and push bike parking.

Car sharing

- Car share scheme/database.
- Preferential parking for "high occupancy vehicles".
- Marketing and promotional activities.

Teleworking

- Support for homeworking via provision of computer and network facilities, reimbursement for heating and lighting and so on.

Working hours

- Flexitime working hours to discourage peak hour travel.

Review of car parking

- Reviewing parking to staff ratio and business operation.

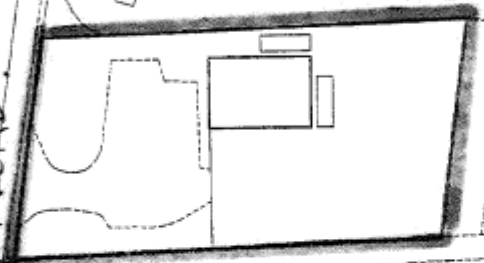
Review of company car policy

- Offer of cash/public transport alternative.
- Central car pool for use during working day.

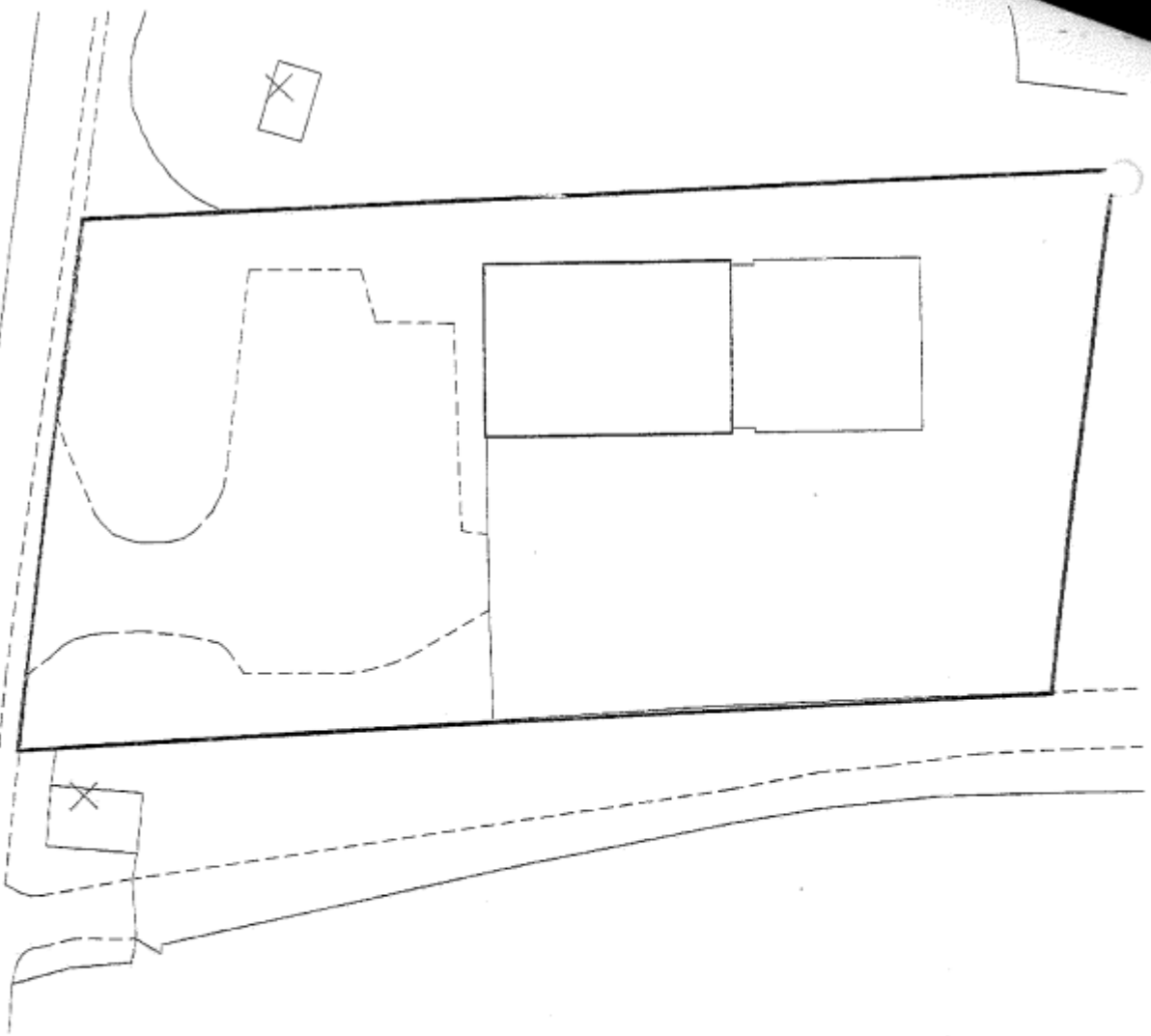
TEXACO + HAYLING BRIDGE

4.2m

HAVANT ROAD



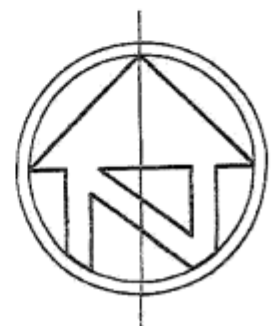
SITE PLAN
1:500



LOCATION PLAN
1:1250

(SUPPLIED BY GO-PRO MAPPING)

HAVANT TOWN COUNCIL
DEVELOPMENT CONTROL
09 NOV 2012
RECEIVED



"Plan A"