

Date:

23rd June

2011

- (1) SOUTH EAST ENGLAND DEVELOPMENT AGENCY
AND
- (2) THE COUNCIL OF THE BOROUGH OF HAVANT
AND
- (3) HAMPSHIRE COUNTY COUNCIL

DEED OF VARIATION TO SECTION 106 AGREEMENT

under Section 106 and 106A of the Town and Country Planning Act
and all other powers so enabling relating to
land at Havant Borough Council Depot Site 4 Harts Farm Way Havant
Hampshire PO9 1JN

 **Blake
Lapthorn**

New Kings Court
Tollgate
Chandler's Ford
Eastleigh
SO53 3LG

Reference: CJT/76631-201

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New Kings Court
Tollgate
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THIS DEED OF VARIATION is made the
2011

23rd day of June

BETWEEN:

- (1) **SOUTH EAST ENGLAND DEVELOPMENT AGENCY** whose principal office is situate at Seeda Headquarters Cross Lanes Guildford GU1 1YA (hereinafter called "the Owner" which expression where the context so admits shall include its successors in title and persons deriving title through it) and
- (2) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Civic Offices Havant Hampshire PO9 2AX (hereinafter called "the Council" which expression shall include any successor local planning authority exercising planning powers under the 1990 Act) and
- (3) **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester Hampshire SO23 8UJ (hereinafter called "the County Council" which expression shall include any successor local highway authority exercising highway powers under the 1980 Act or any successor local planning authority exercising planning powers under the 1990 Act)

WHEREAS:

1. The Owner is registered at the Land Registry under Title Number SH11401 as freehold owner of the Land
2. The Council is the local planning authority for the purposes of the 1990 Act for the area of the Borough of Havant within which the Land is situated
3. The County Council is the local highway authority for the purposes of the 1980 Act for the area within which the Land is situated and is also a local planning authority for the purposes of the 1990 Act for the area within which the Land is situated
4. This Deed is supplemental to an Agreement ('the Principal Agreement') under Section 106 of the Town and Country Planning Act 1990 dated 19 December 2007 between the Owner (1) Edgmond Holdings Limited (hereinafter referred to as 'Edgmond') (2) the Council (3) and the County Council (4) in relation to the development of land at **Havant Borough Council Depot Harts Farm Way Havant Hampshire**
5. At the time of completion of the Principal Agreement Edgmond had entered into a contract dated 31 March 2006 to buy the Land from the Owner The

said contract was rescinded by Edgmond on 1 April 2009 and Edgmond therefore has no interest of any kind in the Land. For the avoidance of doubt the Council and the County Council have agreed to release Edgmond from all obligations under the Principal Agreement.

6. The Planning Permission referred to in the Principal Agreement was granted under reference 02/52646/016 on 20 December 2007. Under condition 2 of the said Planning Permission all applications for approval of Reserved Matters were to be made to the Council before the expiration of three years from the date of grant of the Planning Permission. All the necessary Reserved Matters Applications will not have been submitted by such date.
7. The Owner has by an application planning reference number APP/10/00737 dated 7 October 2010 applied to extend the time limits within the said Planning Permission both for the submission of Reserved Matters Applications and for the commencement of development. The said Application is referred to in this Deed as 'the Extension Application' and the planning permission to be granted pursuant to the Extension Application is herein referred to as the 'Extension Permission'.
8. The Owner, the Council and the County Council intend that all the provisions of the Principal Agreement should apply equally to the development of the Property pursuant to the Extension Permission and have therefore agreed to enter into this Deed of Variation.
9. The Owner has submitted detailed proposals for the Rusty Cutter Works as defined in the Principal Agreement to the County Council; such proposals have been approved in writing by the County Council and on 28 September 2010 the Owner entered into an Agreement under Section 278 of the Highways Act 1980 with the County Council to carry out the Rusty Cutter Works and such Agreement constitutes the New Section 278 Agreement as defined in the Principal Agreement.
10. This Deed of Variation relates to the Extension Permission granted or to be granted for the Development.
11. The Council and the County Council consider it expedient in the interests of the proper planning of the Council's area and having regard to the provisions of its development plan that provision should be made for regulating or facilitating the Development of the Land in the manner set out in this Deed of Variation.

12. The Owner is willing to carry out and complete at its own expense the Highway Junction Works referred to in the Principal Agreement the cost of which works is estimated to exceed the developer contribution which would otherwise be required to be paid by the Owner in connection with the Development under and in accordance with the Broadmarsh Transportation Strategy

NOW THIS DEED WITNESSES as follows:

1 SECTION 106 PLANNING OBLIGATIONS

- 1.1 This Deed is executed by the parties hereto as a deed and is made pursuant to Section 106A of the 1990 Act and Section 111 of the Local Government Act 1972 and all other powers so enabling
- 1.2 The positive and restrictive covenants on the part of the Owner in this Deed shall be taken to be planning obligations for the purposes of Section 106 of the 1990 Act and so as to bind the Owner's interest in the Land and shall be enforceable by the Council and the County Council
- 1.3 The obligations entered into by the Council in this Deed are entered into by the Council pursuant to its functions as local planning authority
- 1.4 The obligations entered into by the County Council in this Deed are entered into pursuant to its functions as local planning authority and local highway authority

2 LIABILITY AFTER DISPOSAL AND RELEASE OF EDMOND

- 2.1 It is hereby agreed between the parties hereto that a person shall upon transferring the whole or any part of its interest in the Land be released from all obligations and duties under this Deed in relation to the said interest or part thereof as the case may be but without prejudice to any right of action or remedy that the Council and/or the County Council might have in relation to any subsisting breach of any obligation or covenant contained in this Deed
- 2.2 To avoid any question that it may be necessary for Edgmond to consent to the variation of the Principal Agreement pursuant to Section 106A (1)(a) of the 1990 Act the Council and the County Council hereby release Edgmond from all covenants and obligations entered into by Edgmond in the Principal Agreement but this release shall not affect the obligations of the Owner under the Principal Agreement

INTERPRETATION

- 3.1 All expressions defined in the Principal Agreement shall where the context so admits have the same meanings in this Deed as in the Principal Agreement with the exception of the following expressions which shall have the following meanings:-

New Section 278 Agreement	means the said Agreement dated 28 September 2010 with the County Council under Section 278 of the Highways Act 1980 in respect of the Rusty Cutter Works
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Planning Permission	means either the grant of planning permission by the Council in response to the Planning Application (including any grant of approval of reserved matters thereunder) or the grant of the Extension Permission (including any grant of approval of reserved matters thereunder) and wherever the expression 'Planning Permission' appears in the Principal Agreement it shall be deemed to have this amended meaning
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- 3.2 All references to Edmond in the definitions of expressions in the Principal Agreement and in the Principal Agreement itself shall be deemed to have been deleted

- 3.3 Words in this Deed importing the singular meaning where the context so admits include the plural meaning and vice versa

- 3.4 Words in this Deed of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies Councils and firms and all such words shall be construed interchangeably in that manner

- 3.5 Words in this Deed denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not knowingly to cause permit or suffer any infringement of the restriction

- 3.6 Any reference in this Deed to an Act of Parliament shall include any modification extension re-enactment or substitution thereof 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 thereunder or deriving validity therefrom

3.7 Where any approval consent agreement confirmation expression of satisfaction or any other act of co-operation is required under the terms of this Deed from any party that approval consent agreement confirmation expression of satisfaction or other act of co-operation shall be given in writing and shall not be unreasonably withheld or delayed

3.8 Headings contained in this Deed are for reference purposes only and are not incorporated into this Deed and shall not be deemed to be an indication of the meaning of the parts of this Deed to which they relate

4 COMMENCEMENT

4.1 It is hereby agreed between the parties hereto that this Deed is conditional upon the Extension Permission being granted by the Council and where such Planning Permission is granted then this Deed shall have full force and effect but not otherwise save that clauses 8-12 inclusive shall have full force and effect from the date hereof

5 THE OWNER'S COVENANTS

5.1 The Owner hereby covenants with the Council and the County Council and so as to bind the Land and each and every part of it to observe and perform all the obligations and covenants on the part of the Owner contained in the Principal Agreement (save only as varied hereby) as if the same had been set out in this Deed in full (subject to such variations)

6 THE COUNCIL'S COVENANTS

6.1 The Council hereby covenants with the Owner to observe and perform all the obligations and covenants on the part of the Council contained in the Principal Agreement (save only as varied hereby) as if the same had been set out in this Deed in full (subject to such variations)

7 THE COUNTY COUNCIL'S COVENANTS

7.1 The County Council hereby covenants with the Owner to observe and perform all the obligations and covenants on the part of the County Council contained in the Principal Agreement (save only as varied hereby) as if the same had been set out in this Deed in full (subject to such variations)

8 THE HIGHWAY JUNCTION WORKS

- 8.1 The Council and the County Council acknowledge with reference to clause 7.1 of the Principal Agreement that the detailed proposals for the Rusty Cutter Works have been submitted to and approved in writing by the County Director and that the New Section 278 Agreement with the County Council has been completed and that the part of the Highway Junction Works comprising the Teardrop Works have been constructed pursuant to the Existing Section 278 Agreement (albeit the Teardrop Works remain the maintenance responsibility of the Owner and the County Council has not issued the final Certificate of Maintenance confirming its satisfaction with the Teardrop Works) (but that the Rusty Cutter Works are now in the course of construction)

9 CERTIFICATE OF OWNERSHIP

- 9.1 The Owner has produced a certificate of title prepared by its property solicitors set out in Schedule 1 upon which said certificate the Council and the County Council relies that the Owner is the owner of the freehold of the Land free from any mortgage or charge and the Owner states and the solicitors as aforesaid certify with the intent that the Council and the County Council shall rely upon the statement and certificate respectively that no mortgage or charge has been concluded which affects the Land and no other person has any relevant interest in the Land whether legal or equitable.

10 LOCAL LAND CHARGE

- 10.1 The Council shall as soon as reasonably practicable after the date of this Deed register this Deed as a local land charge
- 10.2 In accordance with the requirements of the Land Registration Act 2002 the Owner hereby consents to the noting of this Deed in the Charges Register of title number SH11401

11 COSTS

- 11.1 The Owner hereby covenants with the Council and the County Council that it will on the date hereof pay the Council's and the County Council's reasonable legal and technical costs in connection with the negotiation and completion of this Deed

12 INCORPORATION OF TERMS OF THE PRINCIPAL AGREEMENT

- 12.1 For the avoidance of doubt the parties agree and declare that all the conditions interpretation clauses and other provisions of the Principal Agreement (including the provisions of clauses 4.1-4.4 inclusive) are hereby incorporated as if they had been set out herein in full subject only to the variations made by this Deed

IN WITNESS whereof these presents have been executed by the parties hereto as a deed and delivered on the day and year first before written

Schedule 1
Certificate of Title

- 1.1 As property solicitors for the Owner we hereby certify that on the date of this Deed what is set out at Recital (1) and clause 9 are true and certify respectively that no mortgage or charge has been concluded which affects the Land and no other person has any relevant interest in the Land whether legal or equitable.

Signed.....*Blake Lapthorn*.....

Name:

Address:

 **Blake
Lapthorn**

.....
New Kings Court, Tollgate
Chandler's Ford, Eastleigh SO53 3LG
DX 155850 Eastleigh

Executed as a Deed by affixing the common
seal of
SOUTH EAST ENGLAND DEVELOPMENT AGENCY
in the presence of :



Authorised Signatory

Executed as a Deed by affixing the common
seal of **THE COUNCIL OF THE BOROUGH OF
HAVANT**
in the presence of :



Solicitor to the Council

Executed as a Deed by affixing the common
seal of **HAMPSHIRE COUNTY COUNCIL**
in the presence of :



Authorised Signatory

36/2083