

[FOR DEEDS PACKET]

DATED

15TH JULY

2015

CONTRACT

FOR THE SALE AND PURCHASE OF FREEHOLD LAND

at Knowle, Sidmouth, EX10 8HL

Between

EAST DEVON DISTRICT COUNCIL

AND

PEGASUS LIFE LIMITED

CLAUSE

1.	Interpretation	1
2.	Condition Precedent	10
3.	Risk, condition and access	11
4.	Buyer's specific obligations	12
5.	Seller's specific obligations	13
6.	Third Party Applications	15
7.	Reporting and meetings.....	15
8.	Approval of Planning Permission and CIL	15
9.	Planning Agreements	16
10.	Right to waive Unacceptable Conditions	16
11.	Disputes.....	17
12.	Third party land.....	18
13.	Termination	18
14.	Sale and purchase	21
15.	Planning overage.....	22
16.	Sale overage	24
17.	Standard Commercial Property conditions.....	24
18.	Deposit	25
19.	Deducing title	25
20.	Vacant possession	25
21.	Title guarantee.....	26
22.	Matters affecting the Property.....	26
23.	Transfer	26
24.	Completion.....	28
25.	VAT	29
26.	Buyer's acknowledgement of condition	29
27.	Non-assignment.....	29
28.	Termination on Buyer's insolvency or breach.....	29
29.	Effect of termination	30
30.	Entire agreement	30
31.	Joint and several liability.....	31
32.	Notices	31
33.	Severance	32
34.	Rights of third parties.....	32
36.	Governing law and jurisdiction	32

EXCHANGED UNDER "Formula A" AT 1522 ON 15 JULY 2015:
PETRA HANTAKOVA (CLARKE WILLMOTT) /
BRYAN WILKES (ENDX LEGAL SERVICES)

THIS CONTRACT is made as a Deed on

15TH JULY

2015

PARTIES

- (1) EAST DEVON DISTRICT COUNCIL, of Knowle, Sidmouth, EX10 8HL (Seller).
- (2) PEGASUS LIFE LIMITED, incorporated and registered in England and Wales with company number 8221003 and whose registered office is at Unit 3 Royal Court, Church Green Close, Kings Worthy, Winchester, SO23 7TW (Buyer).

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation set out in this clause apply in this Contract.

Adjusted Base Purchase Price: the sum higher of:

- a) the Base Purchase Price or;
- b) the output of the Adjusted Base Purchase Price calculated pursuant to the following formula :

$$ABPP = £7,505,000 + (50\% \times (£850,000 - A))$$

ABPP = Adjusted Base Purchase Price; and

A = the aggregate of any section 106 financial contributions (to include off site commuted sum for affordable housing, if this requirement is instigated by the LPA) and CIL liability

(exclusive of VAT).

Asset of Community Value Registration: the registration of any part of the Property as an Asset of Community Value pursuant to the Localism Act 2011 and Asset of Community Value Regulations 2012

Base Purchase Price: £7,505,000.00 (exclusive of VAT).

Base Rate: the higher of 3% and the base rate from time to time of Lloyds Bank PLC.

Buyer's Solicitors: Clarke Willmott LLP, 138 Edmund Street, Birmingham, B3 2ES reference: 409743.30

Buyer's Unacceptable Condition: a Planning Requirement which the Parties agree (or in the event that they cannot agree is considered by an Independent Surveyor):

- (a) will increase Materially the cost of carrying out the Development; or
- (b) would be likely to reduce Materially the profitability of the Development to make it materially uneconomical to proceed with the Development or it is unreasonable or unduly restrictive of the Development or the use or operation of the Development or part of parts of; or
- (c) will reduce Materially the capital value or the rack rental value of the Development; or
- (d) is, or has the same effect as, any of the conditions referred to in Appendix B of Circular 11/95, The Use of Planning Conditions in Planning Permission; or
- (e) requires the execution of an agreement under Section 106 of the Town and Country Planning Act 1990 (“a Section 106 Agreement”) in relation to land other than (and whether or not also including) the Property; or
- (f) requires a contribution or the expenditure of money by way of (a) affordable housing (b) CIL or (c) any payment under a Section 106 Agreement totalling £850,000 or more; or
- (g) requires affordable housing to be built on the Property; or
- (h) will limit the occupation or use of the whole or any part of the Development to any designated person or occupier or class of occupier or to any specific period of time (whether by imposing a geographical qualification upon the proposed occupier or otherwise) Provided that a condition restricting occupation to persons aged over the age of 60 (or a lower age) shall not be a Buyer’s Unacceptable Condition; or
- (i) prevents Development without the agreement or co-operation of an independent third party which cannot be obtained by the Buyer on terms or at a cost or within a time that in any such case the Buyer considers reasonable in the circumstances (excluding for this purpose any consent or co-operation of the Seller in its capacity as a Local Planning Authority or the Secretary of State in relation to the approval of the design or external appearance of the Development or the landscaping of the same); or
- (j) will cause the Planning Permission to be for a limited period only; or
- (k) requires the payment or expenditure of money or other consideration by way of planning gain or on works upon the Property (not being works shown on the Planning Application) or outside the Property (excluding for this purpose expenditure or works relating to the connection of the Property to existing adopted foul or surface water sewers or to any existing water gas telephone or electricity cables of a public utility service)
- (l) causes any material variation in the location of any building or buildings and/or pedestrian or vehicular points or access to and/or egress from the Property and any part or parts thereof from that shown in the Planning Application.

Charges: the entries in the Registers of title number DN328461 at the Land Registry as at 14:13:24 on 2 April 2015, insofar as they affect the Property.

CIL: the Community Infrastructure Levy introduced by sections 205-225 of the Planning Act 2008 payable in respect of the Development.

Clearing Bank: a bank which is a shareholder in CHAPS Clearing Co. Ltd.

Completion Date: the tenth (10th) Working Day after the latest date of the following:

- (a) the date on which the Parties signify to each other in writing that the amount of the Final Purchase Price is now agreed between them; or
- (b) the date on which the Independent Surveyor issues to both Parties written determination of the amount of the Final Purchase Price; or
- (c) the date for the granting of vacant possession specified in the Vacant Possession Notice.

Condition: any one of the Part 1 Conditions.

Condition Precedent: the arrival of the Unconditional Date.

Contract Rate: 3% per annum above the Base Rate.

Counsel: a barrister practising in England and Wales with not less than 10 years' call experience in planning matters relating to developments of a similar type to the Development, nominated for the circumstance in question by the Buyer and approved by the Seller (who may withhold approval in their absolute discretion on no more than two occasions in respect of the same circumstance).

Court Confirmatory Decision: either:

- (a) a judgment of the High Court or Court of Appeal confirming the grant of Satisfactory Planning Permission by the LPA or by the Secretary of State following a Planning Appeal, and the period for a Planning Appeal against such a decision has expired without a further Third Party Application being made; or
- (b) a judgment of the Supreme Court confirming the grant of Satisfactory Planning Permission by the Council or by the Secretary of State following a Planning Appeal.

Deposit: £375,250.00 (exclusive of VAT).

Destination Planning Approvals: full planning permissions for the development of land and premises owned by the Seller in Honiton and Exmouth in a manner enabling vacant possession of the Property to be given (the terms of such permissions and of any requested Planning Agreement such that the parties agree, or if they cannot agree such that an Independent Surveyor considers to be appropriate for the purposes of the Seller's intended replacement office accommodation), such permissions being granted pursuant to applications made by the Seller (whether by the LPA, the Secretary of State or any other body or person with the power to effect such grant).

Development: the construction on the Property of an extra care/assisted living scheme, the key components of which are:

- (a) 116 extra care units providing an aggregate gross internal area of approximately 132,868 square feet, with an aggregate net internal area of approximately 102,691 square feet;
- (b) a restaurant;
- (c) a gymnasium;
- (d) a spa;
- (e) a swimming pool;
- (f) a well-being suite; and
- (g) 116 car parking spaces

all such components being substantially in accordance with the development plans and drawings to be approved by the Seller pursuant to the provisions of clauses 4.1 and 4.3.

Direct Credit: a direct transfer of cleared funds to an account nominated by the Seller's Solicitors and maintained at a Clearing Bank.

Enabling Date: the latest of the latest of the following dates:

- (a) the date on which it is established under this Contract that both of the Destination Planning Approvals have been granted; or
- (b) the next Working Day after the expiry of the Review Period (provided that no Third Party Application is commenced by such date); or
- (c) in the event that any Third Party Application is commenced, the next Working Day after the date on which:
 - (i) the Third Party Application is Finally Determined; and/or
 - (ii) any of the Destination Planning Approvals to which the Third Party Application relates is finally granted or upheld, whether after a reference back to the Secretary of State or the LPA or any other relevant authority (as the case may be), so that both of the Destination Planning Approvals are no longer open to challenge in any way; or
- (d) the date on which the Seller (it having been established that a Satisfactory Planning Permission and Destination Planning Approvals now exist)

determines that all requisite internal authorisations have been given so as to place the Seller in a position to accept contractor tenders enabling them to enter with immediate effect into all of the construction contracts required for implementation of the Destination Planning Approvals

Finally Determined: where a Third Party Application has been made, the first of the following events to occur:

- (a) permission to bring a Third Party Application (where required) has not been granted and the period within which an application for permission to appeal against such refusal has expired without a further Third Party Application being made; or
- (b) all Third Party Applications have been withdrawn; or
- (c) a Court Confirmatory Decision has been issued; or
- (d) if relevant, a Quashing Order has been issued and the LPA or the Secretary of State has issued whichever may be appropriate of:-
 - (i) a further Planning Permission which is a Satisfactory Planning Permission and the Review Period in respect of that Satisfactory Planning Permission has expired; or
 - (ii) a further planning approval which is a satisfactory Destination Planning Approval and the Review Period in respect of that Destination Planning Approval has expired.

Final Purchase Price: the amount (exclusive of VAT) calculated pursuant to the following formula:

$$FPP = (ABPP \times (\frac{LRHPID1}{LRHPID2})) - TPLC$$

FPP = the Final Purchase Price

ABPP = the Adjusted Base Purchase Price

TPLC = the cost of acquiring Third Party Land as previously approved by the Seller

LRHPID = Land Registry House Price Index Devon

LRHPID1 = the last LRHPID published prior to the date 2 months after the date that the Buyer has declared or (in the event of a dispute) an Independent Surveyor has determined that the Planning Permission is a Satisfactory Planning Permission.

LRHPID2 = the last LRHPID published prior to the date of this Contract.

Independent Surveyor: the independent surveyor appointed pursuant to clause 11.

JR: Judicial Review by the High Court.

JR Period: the period of time during which a legal challenge to a decision of a public authority may be instigated by way of JR proceedings.

Long Stop Date 1: the date of expiration of the period of 34 months beginning on the date of this Contract.

Long Stop Date 2: whichever is the later of the following dates:

(a) 15th May 2018; or

(b) the Unconditional Date: or

(c) the expiration of 18 months following the Enabling Date.

LPA: the local planning authority by whom the Planning Application is determined at first instance (and for the avoidance of doubt the Seller acting as such shall not be included within this definition for any purpose).

Materially: by an amount that exceeds the allowances for the factor in question that the Buyer had anticipated, as demonstrated by the allowances shown in a planning application, supporting documents and final scheme produced to the Seller as part of the material supplied to them by the Buyer pursuant to clause 4.3.

Part 1 Conditions: the conditions in Part 1 of the Standard Commercial Property Conditions (Second Edition).

Part 2 Conditions: the conditions in Part 2 of the Standard Commercial Property Conditions (Second Edition).

Planning Agreement: means any agreement or unilateral undertaking in respect of or affecting the Property under section 106 of the TCPA 1990, section 33 of the Local Government (Miscellaneous Provisions) Act 1982, section 38 and/or section 278 of the Highways Act 1980, section 104 of the Water Industry Act 1991 or in each case any provision to similar intent, any agreement with any appropriate company authority or body concerning a water supply to or drainage from the Property, any agreement with any appropriate company authority or body relating to any other services to or from the Property or any access serving the Property and any other agreement with any appropriate company authority or body which is required for the grant or implementation of a Planning Permission (but where this definition is employed in the context of either of the Destination Planning Approvals (rather than the Planning Permission), the references in the definition to “the Property” shall be construed instead as references to “any of the property to which the Destination Planning Approvals relate”);

Planning Appeal: an appeal against:

(a) in the case of the Buyer:

(i) the refusal of the LPA to grant Planning Permission;

(ii) the non-determination of the Planning Application; or

(iii) any one or more conditions attached to the Planning Permission; or

(b) in the case of the Seller:

(i) the refusal of the LPA to grant either of the Destination Planning Approvals;

(ii) the non-determination of an application made by the Seller for either of the Destination Planning Approvals; or

- (iii) any one or more conditions attached to either of the Destination Planning Approvals

Planning Appeal Decision: the written decision of the Secretary of State on the Planning Appeal.

Planning Application: any application for Planning Permission in the name of the Buyer which has been approved by the Seller pursuant to clause 4 and any further, substitute or varied application for planning permission made pursuant to the provisions of this contract which has been approved by the Seller pursuant to clause 4.

Planning Overage: the amount agreed or determined in accordance with clause 16.

Planning Permission: full planning permission for the Development granted pursuant to the Planning Application (whether by the LPA, the Secretary of State or any other body or person with the power to effect such grant).

Planning Requirement: any of the following:

- (a) a condition attached to a Planning Permission; or
- (b) a provision of a Planning Agreement that requires financial contributions to be made on implementation of the related permission and/or a requirement to pay CIL if the aggregate amount of such contribution and/or payment exceeds £850,000.00.

President: the president for the time being of the RICS

Price: whichever is the higher of the Adjusted Base Purchase Price and the Final Purchase Price (exclusive of VAT)

Property: the freehold property known as Knowle, Sidmouth, EX10 8HL, the position and extent of which is indicated by red edging on the Sale Plan, being part of the land registered at the Land Registry with title absolute under title number DN328461.

Public Footpath Extinguishment or Diversion Order: a written order made by the LPA pursuant to section 257 of the Town and Country Planning Act 1990 at the instigation of the Buyer:

- a) extinguishing the public footpath between points N – M – L – K coloured yellow and green and diverting the public footpath between points E – F – G coloured red on the plan at Appendix 2 to enable the Development to be carried out by the Seller in accordance with the Planning Permission and the layout and footpath diversion shown broadly indicated by broken blue on line on the plan at Appendix 3 or;
- b) diverting the public footpath between points N – M – L – K coloured yellow and green and the public footpath between points E – F – G coloured red on the plan at Appendix 2 to enable the Development to be carried out by the Seller in accordance with the Planning Permission and the layout and proposed footpath diversion shown broadly indicated by broken blue line on the plan at Appendix 3.

Qualified Approval: the written approval of the Seller the giving of which cannot be withheld or delayed unreasonably if requested by the Buyer in writing pursuant to the provisions of this Contract.

Quashing Order: the decision of the court to nullify either the Satisfactory Planning Permission granted by:

- (c) the LPA; or
- (d) the Secretary of State following a Planning Appeal.

Review Period: either:

- (a) six weeks following the date of issue of a Satisfactory Planning Permission by the LPA; or
- (b) six weeks following the date of issue of a Planning Appeal decision.

RICS: the Royal Institution of Chartered Surveyors.

Sale Overage: the amount agreed or determined in accordance with clause 17.

Sale Plan: the plan attached to this Contract as Appendix 1.

Satisfactory Planning Permission: a Planning Permission and Planning Agreement (if any) free from any Buyer's Unacceptable Condition (unless such Buyer's Unacceptable Condition is waived by the Buyer in accordance with this Contract) and implementation of which the Parties agree (or in the event that they cannot agree is considered by an Independent Surveyor) is not prevented by an Asset of Community Value Registration.

Secretary of State: the Secretary of State for Communities and Local Government or other appropriate Minister including (where relevant) any inspector appointed to determine any Planning Appeal.

Seller's Solicitors: Legal Services, East Devon District Council, Knowle, Sidmouth, EX10 8HL (reference: OFF.1-0013.bjw).

Third Party: a person other than:

- (a) the Seller;
- (b) the Buyer; or
- (c) anyone acting on the Seller's or Buyer's behalf.

Third Party Application: either of the following:

- (a) a Third Party's application for JR of a decision by the LPA to grant Satisfactory Planning Permission; or
- (b) a Third Party's application under section 288 of the Town and Country Planning Act 1990 in respect of a decision by the Secretary of State to grant Satisfactory Planning Permission following a Planning Appeal; or
- (c) a Third Party's application for JR of a decision by the LPA to grant either of the Destination Planning Approvals, or of a decision of the Seller (acting in such capacity) to apply for either of the Destination Planning Approvals or

to enter into this Contract and/or the construction contracts required for implementation of the Destination Planning Approvals;

including an application to a higher court appealing against a judgment in respect of an application made under (a) or (b) above, given in a lower court.

Third Party Land: land belonging to a Third Party that is encompassed by a Planning Application.

Unconditional Date: the latest of the following dates:

- (a) the Unconditional Planning Date;
- (b) the Enabling Date;
- (c) the date of the receipt by both the Seller and the Buyer of a copy of the final Public Footpath Extinguishment or Diversion Order; and
- (d) the date of the removal of the caution registered at Entry 3 of the Proprietorship register of title number DN328461 as at 2 April 2015 at 14:13:24

Unconditional Planning Date: the latest of the following dates:

- m* (a) ~~(a)~~ the date on which it is established under this Contract that a Satisfactory Planning Permission has been granted;
- w* (b) ~~(b)~~ the next Working Day after the expiry of the Review Period (provided that no Third Party Application is commenced by such date); and
- w* (c) ~~(c)~~ in the event that any Third Party Application is commenced, the next Working Day after the date on which:
 - (i) the Third Party Application is Finally Determined; and
 - (ii) a Satisfactory Planning Permission is finally granted or upheld whether after a reference back to the Secretary of State or the LPA or any other relevant authority (as the case may be);

so that the Satisfactory Planning Permission is no longer open to challenge in any way.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement and any additional replacement tax.

Vacant Possession Notice: a written notice served by the Seller on the Buyer specifying a date no more than three (3) months after the date of service of the notice on which the Seller will be in a position to grant vacant possession of the whole of the Property.

Working Day: has the same meaning given to the term "working day" in the Part 1 Conditions, except that no day between 22 December in any year and 2 January in the next following year (both dates inclusive) shall constitute a "working day".

1.2 The rules of interpretation in this clause apply in this Contract.

- 1.3 A **person** includes a corporate or unincorporated body.
- 1.4 Unless otherwise specified, a reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any sub-ordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.
- 1.6 **Writing** or **written** does not include faxes or e-mail.
- 1.7 Except where a contrary intention appears, a reference to a clause is a reference to a clause of this Contract.
- 1.8 Clause headings do not affect the interpretation of this Contract.
- 1.9 All references in this Contract to the Seller are to East Devon District Council in their landowner and estates capacity and not to their function as LPA and accordingly:
- 1.9.1. Nothing undertaken or attributed to the Seller in this document shall be regarded as an approval in or by that latter function, nor shall in any way fetter the powers and discretions of East Devon District Council as LPA nor make any representation as to or have any bearing on how that function must or will be discharged; and
- 1.9.2 Nothing done or undertaken by East Devon District Council as LPA and none of its policies, decisions, approvals or programmes in that capacity, nor actions or statements by its Officers or Members in relation to that function shall be attributed to, jeopardise or having any bearing on the position of the Seller within the context of this Contract, nor be regarded as an approval, acquiescence or relaxation by the Seller pursuant to this Contract, nor shall in any way fetter the powers and discretions of the Seller under this Contract, nor make any representation as to or have any influence on how that the Seller's rights and obligations arising in this Contract must or will be discharged
2. **CONDITION PRECEDENT**
- 2.1 This Contract is conditional upon

the satisfaction of the Condition Precedent.

2.2 This Contract shall become unconditional on the Unconditional Date.

2.3 This Contract does however come into force on the date of the Contract.

3. RISK, CONDITION AND ACCESS

3.1 Between the date of this Contract and the Unconditional Date the Property shall remain at the risk of the Seller, but in light of the extent of demolition that execution of the Development will entail the Seller shall not be under any obligation to the Buyer to repair, maintain or insure any element of the Property.

3.2 The Buyer is purchasing the Property in no better state and condition than as existing at the date of this Contract and the Seller gives no warranties whatsoever in respect of any element of the Property to the Buyer (which must rely on its own inspections, tests and evaluations in all respects).

3.3 The Seller will grant a licence on the usual restricted basis (requiring method statement production and mitigating practical inconvenience such as disruption to business access, parking, noise, dust) for the Buyer to access the open areas of the Property (but not the buildings) comprised in the Property for agreed technical testing and evaluation purposes between the date of this Contract and completion of the purchase.

3.4 The Buyer will be permitted to access the buildings comprised in the Property for the purpose of undertaking occasional visual inspections and non intrusive surveys only, by prior appointment with the Seller or its agent, subject to providing at least five Working Days notice and subject to the proposed date of the inspection being convenient to the Seller in their absolute discretion.

3.5 With effect from (and including) the date on which the vacant possession is given, the Property shall be at the Buyer's risk and the Seller is under no obligation to the Buyer to insure the Property.

3.6 No damage to or destruction of the Property nor any deterioration in its condition, however caused, will entitle the Buyer either to any reduction of the Price, nor to refuse to complete or to delay completion.

3.7 Conditions 7.1.2, 7.1.3 and 7.1.4(b) do not apply to this Contract.

4. BUYER'S SPECIFIC OBLIGATIONS

The Buyer shall have the following specific obligations:

- 4.1 To provide to the Seller within three (3) months after the date of this Contract an indicative masterplan for their Qualified Approval within fifteen (15) Working Days (in their capacity of Seller and not of LPA).
- 4.2 To hold a formal pre-application meeting with the LPA and subsequent public consultation events within five (5) months after the date of this Contract.
- 4.3 To provide to the Seller for their Qualified Approval (within twenty (20) Working Days of receipt by them) prior to its submission a copy of the proposed planning application, supporting documents, and final scheme layout.
- 4.4 To submit a Planning Application to be provided within the Class C2 Use Class, together with supporting documentation to enable registration, within eight (8) months after the date of this Contract (except to the extent of any delay resulting directly from the Seller withholding their Qualified Approval to a request for it made by the Buyer).
- 4.5 To disclose to the Seller key correspondence, representations, plans, documents and notification of meetings relating to all aspects of the planning process.
- 4.6 To use reasonable endeavours to secure a Planning Permission on or before 31 August 2016.
- 4.7 In the event that a planning application that complies with all requirements of this Contract is refused by the LPA, the Buyer will lodge an appeal as soon as reasonably practicable, provided that it shall not be obliged to appeal if it has received Counsel's Opinion indicating that the percentage chance of success is lower than 60% (but the absence of such an Opinion shall not preclude the Buyer electing to lodge such an appeal nevertheless).
- 4.8 In the event that a planning permission is granted but is declared not to be a Satisfactory Planning Permission (whether by the Buyer, or in the event of a dispute, by an Independent Surveyor), the Buyer will as soon as reasonably practicable lodge an appeal against the planning conditions and /or obligations which are viewed as onerous by the Buyer or Independent Surveyor, provided that the Buyer shall not be obliged to appeal if it has received Counsel's Opinion indicating that the chance of success is lower than 60% (but the absence of such an Opinion shall not preclude the Buyer electing to lodge such an appeal nevertheless).
- 4.9 If in the event that the proposed footpaths shown on Appendix 2 are confirmed and the footpaths between points N-M-L-K and E-F-G are added to the Definitive Map

and Statement of Public Rights of Way for Devon, then the Buyer shall make an application to the Seller in its capacity as LPA for an order pursuant to section 257 of the Town and Country Planning Act 1990 to:

- (a) Stop up the sections of footpath N-M-L-K and E-F-G;
- (b) Divert the sections of footpath N-M-L-K and E-F-G onto the line shown by a broken blue line on the plan at Appendix 3 or as otherwise may be agreed by the parties;
- (c) A combination of a) and b) as the parties may agree

4.10 If the Buyers receives notification of objections received by the LPA to the Public Footpath Extinguishment or Diversion Order, the Buyer will:

- (a) inform the Seller party of such objections;
- (b) use all reasonable endeavours to resolve the objections in conjunction with the LPA; and
- (c) if any objections cannot be resolved and so the LPA are obliged to refer the matter to the Secretary of State to decide whether it will confirm or make the Public Footpath Extinguishment or Diversion Order with or without modifications, at no stage to withdraw or modify the application referred to in clause 4.9 .

5. SELLER'S SPECIFIC OBLIGATIONS

The Seller will be required:

5.1 Not unreasonably to withhold or delay giving approval to requests for their Qualified Approval made by the Buyer and in such connection:

- (a) The Seller will use reasonable endeavours to respond to requests for approval as soon as is practicable, given the constraints imposed by its local authority character, composition and status.
- (b) The Seller will have a maximum of twenty (20) Working Days from the date of receipt of the Buyer's request for Qualified Approval to grant or withhold it
- (c) Any request for Qualified Approval must be supported by such information as the Seller reasonably requires and such information will be deemed to be sufficient if the Seller does not request additional information within five (5) Working Days of receiving the Buyer's request for Qualified Approval.
- (d) If the Seller does not respond within twenty (20) Working Days after receiving a written request for Qualified Approval, the Buyer will be deemed to have been granted it.

- (e) If the Seller decides to withhold its approval to a request for Qualified Approval, the Buyer may refer the matter to an Independent Surveyor, whose determination will be final and binding on both parties.
 - (f) The Seller shall be entitled in their absolute discretion to withhold approval to any planning application which proposes a development that is materially different from the Development (and so the concept of Qualified Approval shall have no relevance to any such request for approval).
- 5.2 Not to object to any application made for Planning Permission for the Development
- 5.3 To submit a planning application for the development of land and premises owned by the Seller in Honiton and Exmouth to obtain the Destination Planning Approvals within eight (8) months after the date of this contract.
- 5.4 To enter in their capacity of owner of the Property (as opposed to their capacity as LPA) into any Planning Agreements required to enable Planning Permission to be granted, subject to compliance with the terms of clause 9.
- 5.5 Not to enter into a new lease of any part of the Property at any time between the date of this Contract and the date on which the Buyer completes the purchase of the Property.
- 5.6 Once there exists a Planning Permission that is declared by the Parties (or, if they cannot agree, determined by an Independent Surveyor) to be a Satisfactory Planning Permission, as soon as is reasonably practicable thereafter and provided that the Enabling Date has arrived, to appoint a contractor to procure the delivery by construction and refurbishment (as appropriate) of alternative office premises for occupation by the Seller and to commence material development operations pursuant to such implementation.
- 5.7 To serve the Vacant Possession Notice as soon as is reasonable practicable and in any event before whichever is the later of Long Stop Date 1 and Long Stop Date 2.
- 5.8 Within five (5) Working Days of receiving written notification of the outcome of the public enquiry scheduled to be held on 16 September 2015 in respect of the proposal to register three footpaths shown on plan at Appendix 2 the Seller will inform the Buyer of such outcome.
- 5.9 If before the Completion Date the Seller (in their capacity as landowner) receives notification of any nomination for an Asset of Community Value Registration, from the relevant Registering Officer the Seller will forward a copy of such notification to the Buyer within five (5) Working Days of receipt of the same from such Registering Officer.

- 5.10 If the Seller receives notification of objections received by the LPA to the Public Footpath Extinguishment or Diversion Order, the Seller will inform the Buyer of such objections.

6. THIRD PARTY APPLICATIONS

If a Third Party Application is made, the Buyer shall within five (5) Working Days after receiving notification of it give the Seller a copy of any judgment issued by the court in relation to the Third Party Application proceedings.

7. REPORTING AND MEETINGS

The Buyer will keep the Seller regularly informed as to progress of the Planning Application, Planning Agreement, Planning Appeal or any Third Party Application and will:

- (a) supply the Seller with copies of all correspondence to or from the Buyer or to or from the Buyer's Solicitors or Buyer's planning consultants in connection with the Planning Application, Planning Agreement, Planning Appeal or any Third Party Application (including accompanying plans and other documents, but excluding correspondence exclusively between the Buyer and the Buyer's Solicitors) within five (5) Working Days after either:
 - (i) the date of any correspondence sent by the Buyer or the Buyer's Solicitors or Buyer's planning consultants; or
 - (ii) the date of receipt of any correspondence by the Buyer or the Buyer's Solicitors or Buyer's planning consultants.
- (b) give the Seller at least five (5) Working Days' notice of any meetings to be held in connection with the LPA, highways authority, service undertakers, local residents or local traders in connection with the Planning Application, Planning Agreement, Planning Appeal or any Third Party Application and will give the Seller and the Seller's representatives and consultants the opportunity to attend and a copy of any minutes.

8. APPROVAL OF PLANNING PERMISSION AND CIL

- 8.1 The Buyer shall notify the Seller in writing within twenty (20) Working Days of the receipt of any planning decision resulting from the Planning Application (whether original, amended or resubmitted) or from the making of a Planning Appeal.
- 8.2 At the same time as the Buyer notifies the Seller under clause 8.1 of the grant of a Planning Permission, the Buyer shall notify the Seller in writing whether or not it considers a condition imposed on the Planning Permission or a requirement to pay CIL is a Buyer's Unacceptable Condition and, if so, its reasons.

- 8.3 Planning Requirements may at the Buyer's election constitute a Buyer's Unacceptable Condition if they provide for total financial contributions (including any commuted sum for offsite affordable housing if that requirement is initiated by the LPA) in excess of an aggregate figure of £850,000.00.

9. PLANNING AGREEMENTS

- 9.1 If a Planning Agreement is required, the Buyer shall in consultation with the Seller (acting as such and not as the LPA) use all reasonable endeavours to negotiate and agree the terms of the Planning Agreement free from any Buyer's Unacceptable Condition as quickly as reasonably possible.
- 9.2 Within five (5) Working Days of the final draft of the Planning Agreement being agreed, the Buyer shall send a copy of it to the Seller (acting as such and not as LPA).
- 9.3 At the same time as the Buyer sends the final draft of the Planning Agreement to the Seller in accordance with clause 9.2. The Buyer shall notify the Seller in writing whether or not it considers any provision of the final draft of any Planning Agreement (if completed in that form) would be a Buyer's Unacceptable Condition and, if so, its reasons.
- 9.4 The Buyer shall keep the Seller indemnified against all liabilities, proceedings, costs, claims, demands and expenses incurred or arising as a result of a Planning Agreement.
- 9.5 If requested by the Buyer, the Seller (acting as such and not as LPA) shall enter into any Planning Agreement provided that any liabilities of the Seller in the Planning Agreement:
- (i) are expressed to be dependent on the implementation of the Planning Permission; and
 - (ii) shall cease on disposal of the Seller's interest in the Property;

10. RIGHT TO WAIVE BUYER'S UNACCEPTABLE CONDITIONS

The Buyer may waive its right to treat any Planning Requirement as a Buyer's Unacceptable Condition by giving written notice to the Seller on or before any of the following dates:

- 10.1 the date which is ten (10) Working Days after the date on which the Buyer serves a notice under clause 8.1 that the condition or requirement is a Buyer's Unacceptable Condition;

- 10.2 the date which is ten (10) Working Days after the date on which the Buyer serves a notice under clause 9.3 that the provision of the final draft of a Planning Agreement (if completed in that form) would be a Buyer's Unacceptable Condition; and
- 10.3 the date which is ten (10) Working Days after the date on which it receives the Independent Surveyor's written decision pursuant to clause 11 that the Planning Requirement is a Buyer's Unacceptable Condition.

11. DISPUTES

- 11.1 In the event of any dispute arising between the Seller and the Buyer on a subject matter for which this Contract provides for determination in such circumstances, the Seller and the Buyer shall use reasonable endeavours to seek to settle the dispute as quickly as possible. If the dispute has not been settled within a period of twenty (20) Working Days of the dispute arising then it shall be referred to an Independent Surveyor to determine.
- 11.2 An Independent Surveyor shall be appointed by agreement between the Seller and the Buyer. If the Seller and Buyer are unable to agree an appointment, either of them may request the President to make such appointment.
- 11.3 An Independent Surveyor must be a Fellow of the RICS with at least ten years' post qualification experience including experience in development of the same type as the Development.
- 11.4 If an Independent Surveyor appointed dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause, then:
 - (a) either the Seller or the Buyer may apply to the President to discharge the appointed Independent Surveyor and to appoint a replacement Independent Surveyor; and
 - (b) this clause shall apply in relation to the replacement Independent Surveyor as if the first appointed Independent Surveyor.
- 11.5 The Independent Surveyor shall act as an expert and shall be instructed to:
 - (a) decide the issue that is the subject of the dispute; and
 - (b) prepare a written note of the decision and give a copy of the decision to both the Seller and the Buyer within fifteen (15) Working Days of the date of the Independent Surveyor's appointment.
- 11.6 The Seller and the Buyer shall each be entitled to make submissions to the Independent Surveyor and shall provide (or procure that others provide) the

Independent Surveyor with the assistance and documents that the Independent Surveyor reasonably requires to reach a decision.

- 11.7 The Independent Surveyor's written decision shall be final and binding, in the absence of manifest error or fraud.
- 11.8 The costs of the Independent Surveyor shall be borne equally by the Seller and the Buyer, or in such different proportions as the Independent Surveyor shall direct.
- 11.9 The Independent Surveyor shall act as an expert and not as an arbitrator.

12. THIRD PARTY LAND

- 12.1 The Buyer will be required to obtain Qualified Approval from the Seller regarding the inclusion of any Third Party Land within a planning application and, for this purpose, will be required to demonstrate that the inclusion of Third Party Land is essential to obtain a Satisfactory Planning Permission.
- 12.2 In the event that the Buyer demonstrates that Third Party Land is required to obtain a Satisfactory Planning Permission, the cost (if previously approved by the Seller pursuant to clause 12.3) of acquiring the Third Party Land will be deductible from the Base Purchase Price.
- 12.3 The Buyer shall use reasonable endeavours to keep the cost of acquisition of Third Party Land to a minimum. The Seller will have the right (but not a duty) to be involved in the negotiations for its purchase (including but not limited to making representations to the Buyer). The Buyer must obtain the Seller's Qualified Approval to the cost ultimately negotiated by the Buyer with the Third Party concerned.

13. ASSIGNMENT OF SURVEYS AND DRAWINGS

- 13.1 Seller assigns the benefit of the following surveys and reports at Appendix 4 to the Buyer as far as the surveys and reports can be assigned according to their terms and the Seller has the power to assign them.
- 13.2 Notwithstanding assignments made or purported to be made pursuant to the provisions of clause 13.1, the Seller accepts no liability for any of the surveys and reports and the Buyer will be placing reliance on them at its own risk in all respects.

14. TERMINATION

- 14.1 If on the expiration of fifteen (15) months after the date of this Contract, the Buyer has not secured Planning Permission, the Seller may at any time after that date give written notice to the Buyer terminating this Contract, except in the following circumstances listed in clause 14.2
- 14.2 The date on which right to terminate arises shall be deferred (but in no circumstances beyond Longstop Date 1, on which date it shall arise nonetheless irrespective of the position with the Planning Application and/or Planning Permission):
- a) if the Buyer produces to the Seller conclusive evidence that submission of the Planning Application was delayed by more than two months as a direct result of the Seller withholding Qualified Approval and that such withholding necessitated material changes to the original content of the Planning Application;
 - b) if the Planning Application was submitted by the Buyer and validated by the LPA within eight (8) months of the date of this Contract, but the decision of the LPA has still not been issued;
 - c) if the Planning Application was submitted by the Buyer and validated by the LPA within eight (8) months of the date of this Contract and a subsequent appeal to the Secretary of State (supported by Counsel's Opinion within the meaning of clauses 4.7 or 4.8), or a decision is awaited in respect of non-determination, a refusal notice or a deemed onerous planning condition.
 - d) If the Planning Application was submitted by the Buyer and validated by the LPA within eight (8) months of the date of this Contract and the LPA has resolved to grant Planning Permission subject to completion of a Planning Agreement the format of which is in negotiation with the LPA but has still not been finally settled.
 - e) If the Planning Application was been submitted by the Buyer and validated by the LPA within eight (8) months of the date of this Contract and the LPA has resolved to grant Planning Permission, but the parties are awaiting Counsel's Opinion within the meaning of clause 4.8 in respect of the chances of successfully appealing a condition and/or obligation.
 - f) If the Planning Application was been submitted by the Buyer and validated by the LPA within eight (8) months of the date of this Contract and the LPA has resolved to grant Planning Permission or an appeal has been allowed but the Planning Permission remains subject to Judicial Review.
 - g) If there is a dispute between the parties as to whether a Planning Permission constitutes a Satisfactory Planning Permission and such dispute has been referred to an Independent Surveyor for determination.
 - h) If the Public Footpath Extinguishment or Diversion application was submitted by the Buyer but not yet confirmed by the LPA and/or the Secretary of State (as

appropriate) and the Seller and the Buyer has not yet received a copy of the final Public Footpath Extinguishment or Diversion Order.

- 14.3 In the event of an unsuccessful appeal or where an appeal results in grant of a Planning Permission which the Buyer declares (or, in the event of a dispute, an Independent Surveyor determines) to be unsatisfactory Planning Permission, the Seller or the Buyer will have the right to (but shall not be bound to) terminate the agreement forthwith by serving written notice on the other party.
- 14.4 In respect of the circumstances in clause 14.2(f), in the event that there is no successful challenge made during the JR Period or if a legal challenge is lodged and the court subsequently rejects the challenge, then provided that the Planning Permission has previously been declared or determined as being a Satisfactory Planning Permission, the Unconditional Planning Date will have arrived.
- 14.5 In respect of the circumstances in clause 14.2(g), if the Planning Permission is determined to be a Satisfactory Planning Permission by the Independent Surveyor, the Unconditional Planning Date will have arrived.
- 14.6 In the event that the court upholds any legal challenge lodged during the JR Period, which results in either Planning Permission not having been granted or any decision made by the Seller otherwise than as LPA being determined by the court as having been incorrectly made, either the Seller or the Buyer may terminate this Contract forthwith.
- 14.7 If the Unconditional Date has not occurred by whichever is the later of Long Stop Date 1 and Long Stop Date 2, either the Seller or the Buyer may at any time after the later of those Longstop Dates give written notice to the other to terminating the sale and purchase obligations expressed in clause 15.1 of this Contract.
- 14.8 If notice of termination is given by either of the Parties pursuant to clause 14.7 in the circumstance that the Unconditional Date has not occurred solely because the Enabling Date has not arrived, the Seller shall within 20 Working Days of service of that termination notice pay the Buyer £250,000.00 on account of the expenses the Seller incurred in obtaining Satisfactory Planning Permission.
- 14.9 If notice of termination is given by either of the Parties pursuant to clause 14.7 in the circumstance that the Unconditional Date has not occurred solely because the Enabling Date has not arrived, the Seller shall not within the period of three years from the effective date of grant of the Satisfactory Planning Permission complete the sale of the Property as a whole to a third party without first proposing to the Buyer in writing (“the Proposal”) to reactivate the sale and purchase provisions of clause 15.1 of this Contract in the manner described in clause 14.10.

14.10 If the Buyer shall accept the Proposal within 15 Working Days of receiving it, the sale and purchase to the Buyer shall proceed at the Price on the Completion Date but on the bases that:-

- (a) for the purposes of the calculation in the "Final Purchase Price" definition, the sub-definition "LRHPID1" shall thenceforth mean the last LRHPID published prior to the date on which the Vacant Possession Notice is served; and
- (b) the Buyer shall on the Completion Date refund to the Seller the payment of £250,000.00 previously made by the Seller pursuant to clause 14.8.

14.11 If the Buyer shall not accept the Proposal within 15 Working Days of receiving it:-

- (a) the Seller shall with immediate effect be free to sell the Property to a third party on such terms as they wish and freed from any continuing or contingent interest of the Buyer's; and
- (b) the Seller shall nevertheless pay the Buyer the amount, in excess of the £250,000.00 already paid on account pursuant to clause 14.8, of the direct costs attributable to reasonable expenses necessarily incurred by the Buyer with third parties external to its group of companies since the date of this Contract in order to obtain Satisfactory Planning Permission, the amount of such excess to be established by the Seller's inspection of the Buyer's financial records of such activities conducted on an "open book" basis and, consequent on satisfactory completion of such inspection, then to be paid to the Buyer within 20 Working Days of completion of the sale of the Property to a third party.

15. SALE AND PURCHASE

15.1 The Seller will sell and the Buyer will buy the Property for the Price on the terms of this Contract.

15.2 The Buyer cannot require the Seller to:

- (a) transfer the Property or any part of it to any person other than the Buyer; or
- (b) transfer the Property in more than one parcel or by more than one transfer; or
- (c) apportion the Price between different parts of the Property.

15.3 In order to establish the Price, the Parties shall agree the Final Purchase Price between them.

- 15.4 If the Final Purchase Price is not agreed in writing within ten (10) Working Days of the Unconditional Date (or, in circumstances where the Proposal has been made, then within twenty (20) Working Days of the Vacant Possession Notice being served), determination of the Final Purchase Price and thereby the Price shall be referred to an Independent Surveyor who shall be appointed and operate pursuant to the provisions of clause 11.

16. PLANNING OVERAGE

- 16.1 If within ten years after the date on which this Contract is completed, the Buyer or its successor in title (which shall not include individual purchasers of residential units):

- a) secures a revised planning permission in respect of all or part of the Property for:
- i. a development which includes a use or uses that are not included in the Development; and/or
 - ii. a development which includes the same uses as the Development but which provides a total Net Internal Area (as defined in the latest version of the RICS Code of Measuring Practice) in excess of 7.5% higher than the Development which formed the basis of the Satisfactory Planning Permission,

or,

- b) renegotiates the terms of the original S106 agreement which enabled the relevant Satisfactory Planning Permission to be granted or agrees a reduction in the level of CIL originally agreed with the LPA

then this will trigger an overage calculation:

In respect of a) ii), the formula for calculating the overage is set out below:

$$\text{Overage Payment} = (\text{FPP} / \text{ONIA}) \times (\text{RNIA} - (1.075 \times \text{ONIA}))$$

where,

FPP = Final Purchase Price

ONIA = Original Net Internal Area (102,691 sq ft)

RNIA = Revised Net Internal Area (sq ft)

In respect of a) i) and b), the formula for calculating the overage is set out below:

$$\text{Overage Payment} = (\text{MV2} - \text{MV1} - \text{Costs}) \times 50\%$$

where,

MV1 = Market Value of the Relevant Property as at the Completion Date based on the Satisfactory Planning Permission. Where a revised planning permission has been secured in respect of all of the Property, MV1 will be the Final Purchase Price.

MV2 = Market Value of the Relevant Property as at the Completion Date based on a Qualifying Revised Planning Permission/S106.

Costs = All costs reasonably incurred by the Buyer (or a successor in title) (to be supported by invoices) associated with securing the Qualifying Revised Planning Permission/S106 and in agreeing MV1 and MV2.

Market Value will be as defined in the RICS Valuation – Professional Standards published January 2014 or such other definition as exists in any subsequent version of the RICS ‘Red Book’ at the time.

The Parties’ respective surveyors will seek to agree Market Value but in the event that agreement cannot be reached, the matter will be referred to an Independent Surveyor, who shall be appointed and operate pursuant to the provisions of clause 11.

Qualifying Revised Planning Permission is any planning permission secured in respect of the site which meets any of the criteria set out in this clause 15.1 or a renegotiated Planning Agreement and/or CIL liability.

Relevant Property is the extent of the part of the Property which forms the basis of the assessment of Market Value for both MV1 and MV2.

Where a Qualifying Revised Planning Permission has been secured after development has commenced, the assessment of Market Value will be undertaken assuming that development has not commenced (i.e. ignoring any value attributable to the development).

Following the Overage Calculation, any agreed or determined Overage Payment will become payable 10 Working Days following the expiry of the JR Period relative to the Qualifying Revised Planning Permission or (if later) determination of the amount of the Overage Payment.

- 16.2 In the event (prior to the expiry of the ten year period) that the Development or a subsequently consented alternative development has been completed in respect of the whole site and any overage which may be due paid in full, the Planning Overage provision will no longer take effect.**
- 16.3 The amount of the Overage Payment shall be agreed in writing at any time between the Seller and the Buyer or, in the absence of agreement within twenty Working Days after the grant of a planning permission during the ten year period, will be determined by an Independent Surveyor who shall be appointed and shall operate pursuant to the provisions of clause 11.**
- 16.4 The Buyer shall make the Overage Payment to the Seller in cleared funds by no later than whichever is the later of the following dates:-**
- (a) the twentieth Working Day after its amount has been agreed between the parties or determined by the Independent Surveyor; and**

- (b) the next Working Day following the date of expiration of the period of three months from the date of the grant of the planning permission that generated the entitlement.

17. SALE OVERAGE

17.1 In the event that the Buyer disposes of the whole or any part of the Property within three years after the date on which this Contract is completed and the disposal is by way of freehold sale, the Seller will receive an overage payment calculated as follows:

$50\% \times (SP - PP)$

where:

SP = Sale Price of the whole or part in question, net of the Buyer's reasonable sale costs; and

PP = Purchase Price under this agreement (or the relevant pro-rata amount in the case of a sale of part).

17.2 In the event that the Buyer disposes of the whole or any part of the Property within three years after the date on which this Contract is completed and the disposal is otherwise than by way of a freehold sale, the provisions of clause 16.1 shall apply but with "SP" meaning the value of the estate or interest disposed of (to be determined by an Independent Surveyor within the framework established by clause 11 if the Parties cannot agree on it).

17.3 The Sale Overage will be paid by the Buyer to the Seller within 10 Working Days after completion of each disposal in question.

18. STANDARD COMMERCIAL PROPERTY CONDITIONS

- 18.1 The Part 1 Conditions are incorporated in this Contract so far as they:
- (a) apply to a sale by private treaty;
 - (b) relate to freehold property;
 - (c) are not inconsistent with the other clauses in this Contract; and
 - (d) have not been modified or excluded by any of the other clauses in this Contract.
- 18.2 The Part 2 Conditions are not incorporated into this Contract.
- 18.3 Condition 1.1.1(e) is amended so that reference to the Contract rate in the Condition 1.1.1(e) refers instead to the Contract Rate as defined in this Contract.

19. DEPOSIT

19.1 On the date of this Contract, the Buyer will pay the Deposit (namely £375,250.00) to the Seller, on terms that it will belong to the Seller absolutely:-

- (a) as to £50,000.00 with immediate effect and on a non-returnable basis; and
- (b) as to the balance on this Contract being completed, but on the basis that if either party has meanwhile given notice to the other terminating this Contract pursuant to clause 14, the Seller shall within twenty (20) Working Days after such notice has been served on or by them (and unless the Buyer is in breach of any term of this Contract) return such balance of the Deposit to the Buyer without deduction or interest.

19.2 The Deposit must be paid by a method that gives immediately available funds.

19.3 Conditions 2.2.1 and 2.2.2 do not apply to this Contract.

20. DEDUCING TITLE

20.1 The Seller's title to the Property has been deduced to the Buyer's Solicitors before the date of this Contract.

20.2 The Buyer is deemed to have full knowledge of the title and is not entitled to raise any objection, enquiry or requisition in relation to it.

20.3 Conditions 6.1, 6.2, 6.3.1 and do not apply to this Contract.

21. VACANT POSSESSION

21.1 The Property will be sold with vacant possession on completion.

21.2 Excluded from the sale are the fireplace and Dutch tiles in the Committee Room of the Property and the Dutch tiles on the fireplace in Room 73 of the Property

21.3 The Sid Vale Association or their agents (including Sidmouth Museum or the Seller on their behalf) shall have access to the Property at any time before demolition of the building commences to remove all or any of them, without the need to subsequently make good the fabric of the building which has been disturbed as a consequence of the removal (and the Buyer shall raise no objections to such access and removal).

22. TITLE GUARANTEE

22.1 The Seller will transfer the Property with full title guarantee.

23. MATTERS AFFECTING THE PROPERTY

23.1 The Seller will sell the Property free from incumbrances other than the following matters and all implications arising from them:

- (a) The matters contained or referred to in the entries or records made in registers maintained by the Land Registry under title number DN71461 as at 2 April 2015 at 14:13:24;
- (b) any matters discoverable by inspection of the Property before the Unconditional Date;
- (c) any matters which the Seller does not and could not reasonably know about;
- (d) any matters disclosed by searches or enquiries made before the Unconditional Date or which would have been disclosed by the searches and enquiries that a prudent buyer would have made before the Unconditional Date;
- (e) public requirements;
- (f) any matters which are unregistered interests which override registered dispositions under Schedule 3 to the Land Registration Act 2002;
- (g) any agreements entered into pursuant to clause 9 of this Contract;
- (h) the prescriptive right of way (pedestrian and vehicular) believed to have been obtained by the owner of The Lodge over the land indicated by orange colouring on the Sale Plan; and

23.2 Condition 3.3 does not apply to this Contract.

23.3 The Buyer is deemed to have full knowledge of the matters referred to in clause 23.1 and will not raise any enquiry, objection, requisition or claim in respect of any of them except for the pre-completion searches in respect of the Property at the Land Registry.

24. TRANSFER

24.1 The transfer to the Buyer will be prepared by the Buyer's Solicitors and approved by the Seller's Solicitors, drawn in accordance with usual conveyancing practice applicable to this particular context and so as to include:

- (a) a declaration as to the title guarantee with which the transfer is made as stated in this Contract;

- (b) a provision that lists each of the matters subject to which the disposition effected by the transfer is made, which matters are identified in clause 23.
- (c) a provision that all matters recorded at the date of the transfer in registers open to public inspection, are deemed to be within the actual knowledge of the Buyer for the purposes of section 6(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1994, notwithstanding section 6(3) of that Act;
- (d) a provision that the Property will not, by virtue of the transfer, have any rights or easements or the benefit of any other matters over land retained by the Seller other than those (if any) which are expressly mentioned in or granted by the transfer and a provision that section 62 of the Law of Property Act 1925 is qualified so as not to include any liberties, privileges, easements, rights or advantages over land retained by the Seller except as expressly mentioned in or created by the transfer;
- (e) the grant and reservation of appropriate mutual easements and other rights as between the Property and adjoining or neighbouring land owned by the Seller;
- (f) a covenant by the Buyer by way of indemnity only, on its own behalf and on behalf of its successors in title, to observe and perform the charges, incumbrances, covenants, restrictions and all other matters contained or referred to in the property and charges registers of title number DN71461, insofar as they are subsisting and capable of taking effect in respect of the Property and will keep the Seller indemnified against all proceedings, costs, claims and expenses arising from any failure to do so;
- (g) a covenant by the Buyer by way of indemnity only, on its own behalf and on behalf of its successors in title, to observe and perform the covenants and restrictions contained in or referred to in any agreement entered into by the Seller pursuant to clause 9;
- (h) restrictive covenants given by the Buyer, binding on successors in title to the Property and benefitting the Seller and its successors in title to adjacent and neighbouring land owned by the Seller on Completion, such covenants to include limiting the user of the Property to the implementation and onwards use of the Development, constraints and controls concerning conduct of site operations and signage and usual estate management and good neighbourliness considerations;
- (i) positive covenants given by the Buyer as to timetable for execution of the Development, concerning conduct of site operations and signage, requiring payment of contributions for any facilities used jointly with neighbouring land and securing payment to the Seller of the Planning Overage and the Sale Overage;
- (j) mechanics for the obtaining of a fresh Deed of Covenant renewing direct with the Seller all positive covenants from the disponee on all dispositions of title to the Property and imposing a Restriction on the title to the Property

in the Land Registry's standard Form N to enforce the provision of such Deeds of Covenant;

- (k) covenants by the Guarantor with the Seller effectively guaranteeing performance by the Buyer of all covenants it has given and other obligations it has undertaken in the transfer document;
- (l) the area shown hatched blue on the Sale Plan will be subject to a restrictive covenant which will prohibit any form of development, construction works or civil engineering works save as to those required to provide services and road improvements which the Buyer can unequivocally demonstrate are essential to deliver the Proposed Development;
- (m) The Seller (and any successor in title) to be granted a right of way at all times and for all purposes across the section of the current internal access road cross hatched yellow on the Sale Plan; and
- (n) the transfer will include a positive obligation on the Buyer to maintain the existing landscaping of the area hatched blue on the Sale Plan and to use all reasonable endeavours to protect trees/shrubs and their roots during any permitted works.

24.2 The Buyer and the Seller will at their own expense execute the transfer document in duplicate.

25. COMPLETION

25.1 Completion will take place on the Completion Date.

25.2 Conditions 8.1.2 and 8.1.3 are varied by the deletion of 2.00 pm as the stipulated time and the substitution of 1.00 pm.

25.3 Condition 1.1.3(b) is amended to read: "in the case of the seller, even though a mortgage remains secured on the property, if the amount to be paid on completion enables the property to be transferred freed of all mortgages, (except those to which the sale is expressly subject) or if the seller produces reasonable evidence that this is the case."

25.4 Condition 8.4 is amended to add, "(d) any other sum which the parties agree under the terms of the Contract should be paid or allowed on completion".

25.5 Condition 8.7 is amended to read: "The buyer is to pay the money due on completion by a method that gives immediately available funds".

26. VAT

- 26.1 Each amount stated to be payable by the Buyer to the Seller under or pursuant to this Contract is exclusive of VAT (if any).
- 26.2 The Seller warrants that it has not made a VAT election in respect of the Property. The Seller hereby warrants that it shall not opt to tax the Property prior to the Actual Completion Date for the purposes of VAT unless compelled to do so by law.

27. BUYER'S ACKNOWLEDGEMENT OF CONDITION

Subject to clause 3, the Buyer acknowledges that before the date of this Contract, the Seller has given the Buyer and others authorised by the Buyer, permission and the opportunity to inspect, survey and carry out investigations as to the condition of the Property. The Buyer has formed its own view as to the condition of the Property and the suitability of the Property for the Buyer's purposes.

28. NON-ASSIGNMENT

This Contract is personal to the Buyer and the Buyer may not assign, sublet, share or part with the benefit of this Contract or any part of it, except to another company within its Group (as defined in the Companies Acts) that it can demonstrate to the Seller's satisfaction is of a comparable size, financial status and experience for the purposes of executing the Development and honouring all other obligations of the Buyer in this Contract.

29. TERMINATION ON BUYER'S INSOLVENCY OR BREACH

The Seller may terminate this agreement immediately by notice to the Buyer without affecting any other rights it may have if any of the following events occur:

- (a) the Buyer is in fundamental breach of any of its obligations in this agreement;
- (b) the Buyer is in substantial breach of any of its obligations in this agreement and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Seller;
- (c) any step is taken in connection with any voluntary arrangement or any compromise or arrangement for the benefit of any creditors of the Buyer;
- (d) an application is made for an administration order in relation to the Buyer;
- (e) in relation to the Buyer, there is the appointment of an administrator, the filing of documents with the court for the appointment of an administrator or the giving of notice of intention to appoint an administrator by the Buyer or its directors, or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);

- (f) a receiver or manager is appointed in relation to any property or income of the Buyer;
- (g) a liquidator is appointed in respect of the Buyer;
- (h) a voluntary winding up of the Buyer is commenced, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;
- (i) a petition is made for a winding-up order for the Buyer;
- (j) the Buyer is struck off from the Register of Companies; or
- (k) the Buyer otherwise ceases to exist.

30. EFFECT OF TERMINATION

If this Contract terminates, then:

- (a) within ten Working Days after the termination, the Buyer shall remove all entries relating to this Contract registered against the Seller's title to the Property;
- (b) neither party shall have any further rights or obligations under this Contract but such termination shall be without prejudice to:
 - (i) the Buyer's obligations in clause 9.4 and clause 30(a); and
 - (ii) the rights of either party in respect of any earlier breach of this Contract.

31. ENTIRE AGREEMENT

- 31.1 This Contract and the documents annexed to it constitute the entire agreement and understanding of the parties and supersede any previous agreement between them relating to the subject matter of this Contract.
- 31.2 The Buyer acknowledges and agrees that in entering into this Contract, it does not rely on and shall have no remedy in respect of any statement, representation, warranty, collateral agreement or other assurance (whether made negligently or innocently) of any person (whether party to this Contract or not) other than as expressly set out in this Contract, written replies, the documents annexed to it or in any written replies which the Seller's Solicitors has given to any written enquiries raised by the Buyer's Solicitors before the date of this Contract. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.
- 31.3 As from the Unconditional Date when the Conditions are incorporated into this Contract in accordance with clause 17, Condition 9.1.1 is varied to read, "If any plan or statement in the Contract, or in written replies which the seller's Solicitors

has given to any written enquiry raised by the buyer's Solicitors before the date of the Contract, is or was misleading or inaccurate due to any error or omission, the remedies available are as follows."

- 31.4 This Contract may be signed in triplicate parts all of which taken together will on exchange constitute one Contract.

32. JOINT AND SEVERAL LIABILITY

- 32.1 If there is more than one seller or more than one buyer, the obligations which they undertake can be enforced against them all jointly or against each individually.

- 32.2 Where the Buyer is more than one person, the Seller may release or compromise the liability of any of those persons under this Contract or grant time or other indulgence without affecting the liability of any other of them.

33. NOTICES

- 33.1 Any notice given under this Contract must be in writing and signed by or on behalf of the party giving it.

- 33.2 Any notice or document to be given under this Contract must be given by sending it by pre-paid Royal Mail Recorded Delivery or Special Delivery post to the address and for the attention of the relevant party, both as follows:

- (a) to the Seller at:

Knowle, Sidmouth, EX180 8HL

marked for the attention of the Chief Executive;

- (b) to the Buyer at:

Unit 3 Royal Court, Church Green Close, Kings Worthy, Winchester,
Hampshire, SO23 7TW

marked for the attention of Ed Garcia;

- 33.3 A notice or document given under this Contract will not have been validly given or delivered if sent by fax or e-mail.

- 33.4 Any notice or document given in accordance with this clause will be deemed to have been received on the second Working Day after posting.

33.5 In proving delivery, it will be sufficient to prove that the envelope containing the notice or document was properly addressed and posted in accordance with clause 33.2.

33.6 Condition 1.3 does not apply to this Contract.

34. SEVERANCE

34.1 If any provision or part of a provision of this Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

34.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.

35. RIGHTS OF THIRD PARTIES

A person who is not a party to this Contract will not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

36. GOVERNING LAW AND JURISDICTION

36.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-Contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

36.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-Contractual disputes or claims).

36.3 Each party irrevocably consents to any process in proceedings under clause 36.2 being served on it in accordance with the provisions of this Contract relating to service of notices. Nothing contained in this Contract will affect the right to serve process in any other manner permitted by law.

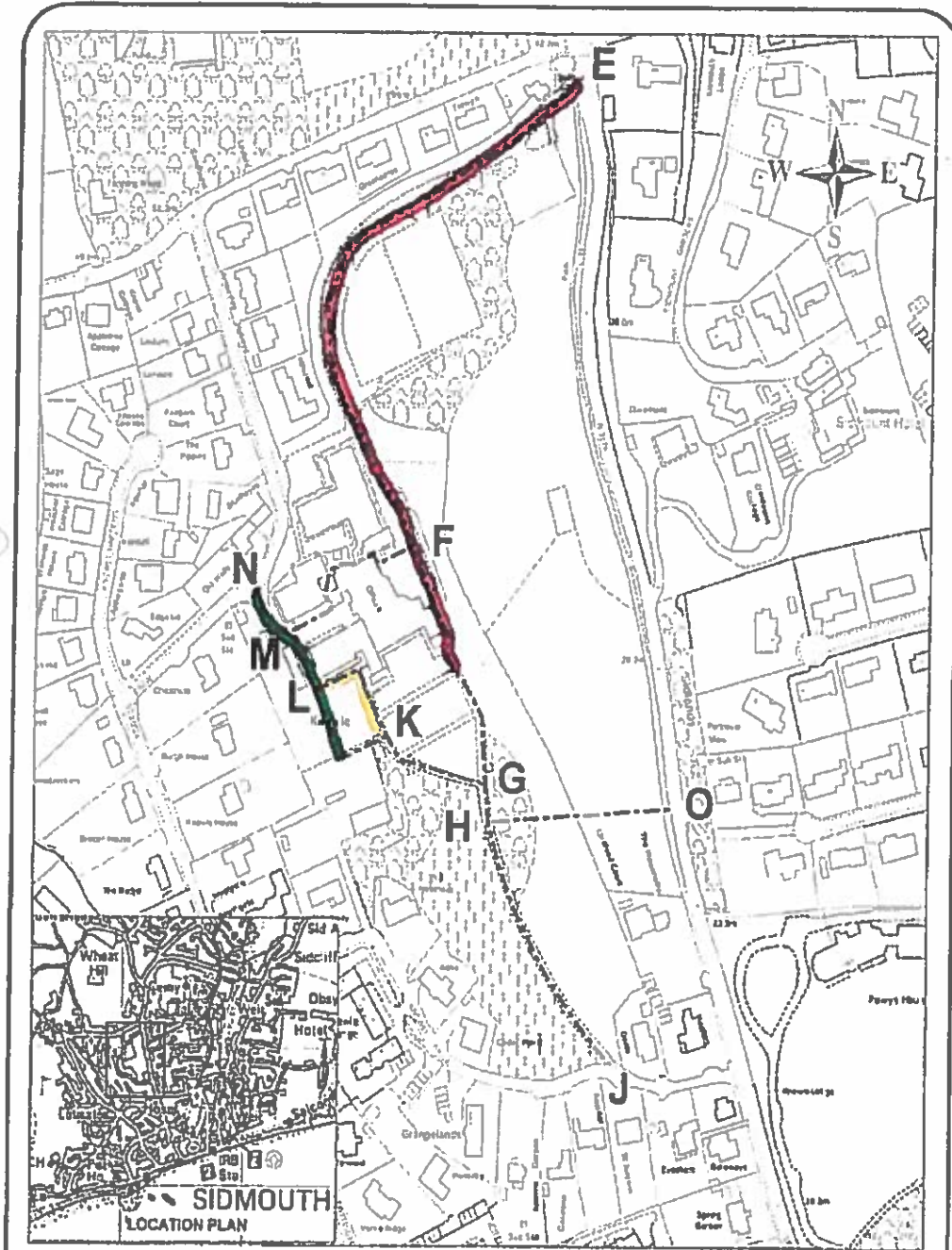
37. CONFIDENTIALITY

The terms of this agreement shall be confidential and neither party hereto shall without the approval of the other disclose the terms of this agreement to any third party (except for employees and professional consultants who have agreed to respect the confidential nature of this agreement) save for the purpose of complying with the

requirements of this agreement or where disclosure is required by law or the rules of the Stock Exchange.

This Contract has been entered into as a Deed on the date stated at the beginning of it.

Appendix 2



map ref SY1188/1288/1187/1287

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DEVON COUNTY COUNCIL
 Definitive Map Review, Sidmouth parish
 Informal Consultations, Proposal 3:
 Schedule 14 applications - claimed footpaths, Knowle

drawing number HTM/PROW/13/29
 date Mar 2013
 scale 1:2500
 drawn by NSC

Notation Claimed footpaths
 E - F - G - H - J (515 metres)
 G - K - L - M - N (165 metres)
 H - O (85 metres) F - M (75 metres)

Devon
 County Council
 Lester Willmington
 HEAD OF HIGHWAYS & TRAFFIC MANAGEMENT

Appendix 3

054 0002
 Gairburn 12.05.15
 Proposed footpath routes as DCC detail of MTM/FROM/14/5
 and P1 proposed overall area Proposed Site Plan
 1:1000 at A3
 - - - - - Footpath routes
 DCC prepared (March 2014)
 - - - - - Proposed alternative footpath routes



Scale 1:1000 at A3

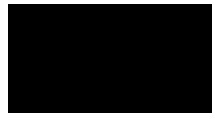
© Sarah Wigglesworth Architects
 T +44 (0)20 7627 0020 F +44 (0)20 7627 0020
 E sarah@wigglesworth.co.uk W www.wigglesworth.co.uk

Appendix 4

NAME OF REPORT	REPORT REFERENCE NUMBER	SUPPLIER	DATE
Knowle Topographic CAD Survey	APLS-0145-004	AP Land Surveys Ltd	May 2012
Extended Phase 1 Habitat Survey	12/1558a	Devon Wildlife Consultants	June 2012
Extended Phase 1 Habitat Survey Map	12/1558a-01	Devon Wildlife Consultants	June 2012
Flood Risk Assessment	12.05.142	Sands Civil & Structural Chartered	July 2012
HSG 264 Management of Asbestos Survey	10085	Environmental Services	1 August 2012
Phase 1 Geo-environmental Desk Study Report	Job No: 60268584 / Reference: DS/60268584/Sid/G1	AECOM	20 August 2012
Protected Species Survey of Buildings, Bat Emergence & Dawn Re-Entry Surveys and Remote Detector Surveys	12/1809	Devon Wildlife Consultants	20 August 2012
Protected Species Survey of Buildings, Bat Emergence & Dawn Re-Entry Surveys and Remote Detector Surveys Addendum	12/1809	Devon Wildlife Consultants	20 August 2012
Topographic Survey	1135 L01.05	Kensington Taylor	20 August 2012
Arboricultural Survey (British Standard 5837: 2012)	TH/X005/0612	Advanced Arboriculture	27 September 2012
Tree Assessment for Roosting Bat Species	12/1906a	Devon Wildlife Consultants	October 2012
Habitat's Directive Derogation Test		Bell Cornwell	October 2012
Transport Statement	12.05.142 Revision P07	Sands Civil & Structural Chartered	October 2012
Bat Mitigation Requirements to Inform Design	12/1959rev01	Devon Wildlife Consultants	December 2012
Remote Detector Survey (Summer, Autumn & Winter)	12/1906b	Devon Wildlife Consultants	December 2012
Balfour Lodge Knowle - Heritage Appraisal & Impact Assessment	FINAL SUBMISSION V1	Heritage Vision Ltd	August 2014
Knowle - Heritage Statement of Significance		Kensington Taylor	Un-dated
Site Waste Management Plan		Kensington Taylor	Un-dated

[TO BE EXECUTED BY BOTH PARTIES AS DUPLICATE DOCUMENTS,
WITH EDDC SEALING LAST CHRONOLOGICALLY]

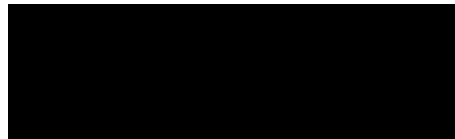
Executed as a Deed by EAST DEVON
DISTRICT COUNCIL in the presence
of:-



Authorised Officer



Executed as a Deed by PEGASUS
LIFE LIMITED, acting by two
Directors, or by one Director and its
Secretary



Director



.....
Director/ Secretary