

Dated 21 Dec

2007

Ivan George Baker Nicholas Paul Baker and Andrea Clarice Williams (1)
Nailsea Town Council (2)

Agreement for Sale

relating to

land on the west side of Engine Lane Nailsea

~~Draft~~

Memorandum of Exchange

Formula: A/B

Time: 12.15

For the Seller: Joanne Roe

For the Buyer: Clive Westmore

Convey Direct Orchard Court Orchard Lane Bristol BS1 5WS
Tel: 0117 925 2525 Fax: 0117 929 1818 DX 7831 Bristol
web: www.vwl.co.uk

12.15 B varied
James Roe
Clive Westlake.

This Agreement is made 21 Dec 2007

between

- (1) The Seller: Ivan George Baker
Andrea Clarice Williams

- (2) The Buyer: Nailsea Town Council

1. Definitions

In this Agreement the following expressions have the following meanings :-

"Buyer's Solicitors" : Westlakes 21 Somerset Square Nailsea Bristol BS48 1RQ

"Competent Authority": any local authority or government department or any other body exercising powers under statute or by Royal Charter or any utility service or supply company.

"Completion": the date of actual completion of the transfer of the Property.

"Completion Date": 25 Jun 2008

"Event of Insolvency": means

- (1) the Buyer being a company :-
- (a) goes into liquidation whether compulsory or voluntary (save for the purpose of reconstruction or amalgamation of a solvent company forthwith carried into effect);
 - (b) is deemed unable to pay its debts as defined in Section 123 of the Insolvency Act 1986;
 - (c) has a receiver manager or administrative receiver or provisional liquidator or administrator appointed;
 - (d) makes or suffers to be made a proposal for a voluntary arrangement under Part I of the Insolvency Act 1986 or for a compromise or arrangement under Section 425 of the Companies Act 1985 in relation to it;
 - (e) presents or suffers to be presented an application for an administration order in relation to it; or
 - (f) is removed from the register of companies; or
- (2) the Buyer being an individual or being more than one individual any one of them :-
- (a) presents or has presented to the court a bankruptcy petition or is in circumstances such that a bankruptcy petition could be presented under Part IX of the Insolvency

Act 1986; or

- (b) makes or suffers to be made a proposal for a voluntary arrangement or an application for an interim order under the Insolvency Act 1986.

"Price": One Hundred and Fourteen Thousand Pounds (£114,000.00).

"Property": the freehold property known as land on the west side of Engine Lane Nailsea and registered at HM Land Registry under title number ST202738 with Title Absolute

"Title" the Property registered under Title number ST202738

"Seller's Solicitors": Convey Direct of Orchard Court, Orchard Lane, Bristol BS1 5WS.

"Standard Condition(s)": the Standard Commercial Property Conditions (Second Edition).

"Working Day": has the meaning defined in the Standard Conditions.

2. Agreement for Transfer

The Seller will transfer and the Buyer will take a transfer of the Property for the Price upon the terms of this Agreement.

3. Deposit

- 3.1 A deposit of 10% of the Price is paid to the Seller's solicitors on the signing of this Agreement.
- 3.2 Section 49(2) of the Law of Property Act 1925 does not apply.
- 3.3 If the deposit actually paid on exchange of contracts is less than 10% of the Price then the balance of such 10% shall nevertheless remain due to the Seller and shall be paid by the Buyer to the Seller forthwith upon service of a notice to complete.

4. Standard Conditions

This Agreement incorporates the Standard Conditions with the variations set out in the First Schedule to this Agreement. Where there is a conflict between the Standard Conditions and this Agreement, this Agreement prevails.

5. Value Added Tax

Paragraph A1 of Part 2 of the Standard Conditions is incorporated in this Agreement.

6. Incumbrances

The Property is sold subject to :-

- 6.1 those matters referred to in Standard Condition 3.1.2;
- 6.2 all matters registrable by any Competent Authority pursuant to statute;
- 6.3 all requirements, notices, orders or proposals (whether or not subject to confirmation) of any Competent Authority given or made before or after the date of this Agreement;

- 6.4 all matters disclosed or reasonably to be expected to be disclosed by searches or as the result of enquiries formal or informal and whether made in person by writing or orally by or for the Buyer or which a prudent buyer ought to make;
- 6.5 all easements, quasi-easements, rights, or other similar matters whether or not apparent on inspection or disclosed in any of the documents referred to in this Agreement;
- 6.6 all matters contained or referred to in the Title to the Property (other than financial charges)

7. Title

- 7.1 Title has been deduced by provision of Official Copy Entries of the Title.
- 7.2 The Buyer shall raise no objection or requisition in respect of the Title or the matters referred to in clause 6.
- 7.3 The Property is sold with vacant possession on Completion.
- 7.4 The Seller will transfer the Property with full title guarantee except that the words "at his own cost" in s2 (1)(b) Law of Property (Miscellaneous Provisions) Act 1994 are replaced by the words "at the cost of the person to whom he disposes of the property".

8. Completion

- 8.1 Completion will take place on the Completion Date.
- 8.2 The money due to the Seller on Completion shall be deemed to have been received when the bank or banks to which it was transferred notifies the Seller's Solicitors that it has been received.
- 8.3 The Seller's Solicitors shall not act as agents for the Buyer's Solicitors in relation to Completion and the Seller's Solicitors shall send to the Buyer's Solicitors the deeds and documents to which the Buyer is entitled by unregistered and uninsured post or by a document exchange and neither the Seller nor the Seller's Solicitors shall be liable for their subsequent loss.
- 8.4 If due to the default of the Buyer Completion does not take place on the Completion Date the Buyer shall (without prejudice to any other remedy) forthwith pay the reasonable legal costs incurred by the Seller by reason of the delay including in respect of legal advice and the preparation and service of a notice to complete.

9. Non-Merger

Insofar as they remain to be observed and performed the provisions of this Agreement will remain in full effect notwithstanding Completion.

10. Representations

The Buyer admits that it has entered into this Agreement solely on the terms of this Agreement and its own inspection of the Property and not in reliance upon any representations made by or on behalf of the Seller except any written representations made by the Seller's Solicitors to the Buyer's Solicitors before today in reply to written enquiries raised by the Buyer's Solicitors.

11. Default

If an Event of Insolvency in relation to the Buyer shall occur or if the Buyer shall die the Seller (in addition to any other remedy available to it) shall be entitled by notice in writing served on the Buyer (or its personal representatives) to determine this Agreement; and

- 11.1 in the case of an Event of Insolvency the Seller shall retain the Deposit plus all interest accrued thereon absolutely; but
- 11.2 in the case of death of the Buyer the Seller shall forthwith return the Deposit (but not any interest accrued) to the Buyer's personal representatives;

and upon service of such notice:

- 11.3 subject to sub-clause 11.4 this Agreement shall determine but any such determination shall be without prejudice to any pre-existing right of action of any party in respect of any breach by any other party of its obligations under this Agreement;
- 11.4 the Buyer shall within five Working Days after such determination remove any entry registered against the Seller at H M Land Charges Department or the Land Registry in respect of this Agreement.

12. Land Registration

The Buyer shall:

- 12.1 make a proper application to the Land Registry within 20 Working Days after Completion for registration of its title to the Property; and
- 12.2 supply official copies of the register and the title plan to the Seller within 10 Working Days after completion of such registration.

13. Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

14. Jurisdiction

This Agreement shall be governed by and construed in accordance with English law.

First Schedule (variations to the Standard Conditions)

1. The following Standard Conditions do not apply: 1.3.3(b); 3.1.3; 6.1; 6.4.2; 6.6.2; 6.6.5.
2. In Standard Condition 1.1.1(e) the "*contract rate*" is 4% per annum above the base rate of HSBC Bank plc from time to time in force.
3. In Standard Condition 1.1.1(o) a "*working day*" expires at 5pm.
4. In Standard Condition 1.1.3(b) the following words are added after the words "*free of all mortgages*":

"or if reasonable evidence is produced that the property would be released from all such mortgages"

5. The following words are added to the end of Standard Condition 1.3.2:
"so long as such notice or document or letter accompanying the same quotes the recipient conveyancer's correct reference".
6. In Standard Condition 3.1.2(c) the words *"and could not reasonably"* are deleted.
7. After Standard Condition 6.2.3 the following is added:
"6.2.4 Where the seller is unable or on reasonable grounds unwilling to satisfy any requisition he may give the buyer notice of that fact and of his reasons and require the buyer within seven working days to withdraw the requisition. Unless the buyer withdraws it, the seller may rescind the contract notwithstanding any intermediate negotiation or litigation".
8. The following words are added to the end of Standard Condition 7.1.4(b):
"or the amount of the insurance monies received by the seller whichever is less".
9. In Standard Conditions 8.1.2 and 8.1.3 (b) 1 pm is substituted for 2.00pm.
10. In Standard Condition 9.1.1 the words *"or in negotiations leading to it"* and *"or was"* are deleted.
11. The Transfer to the Buyer shall contain the overage provisions set out in Schedule 1 annexed hereto.

Signed by the Sellers:

In the presence of:

Andrea Clarice Williams

Nicholas Paul Baker

D. S. BELLEW

E. K. CAREY


Ivan George Baker

Signed by the Buyer:

.....
Nailsea Town Council

Acting by:

Signed as a deed by NICHOLAS PAUL BAKER

In the presence of:

Signature of witness:.....

Name (in BLOCK CAPITALS):.....

Address:.....

Signed as a deed by ANDREA CLARICE WILLIAMS

In the presence of:

Signature of witness:.....

Name (in BLOCK CAPITALS):.....

Address:.....

Signed as a deed by

NAILSEA TOWN COUNCIL

In the presence of:



Cllr M. Ponsoby
CHAIRMAN OF NAILSEA TOWN COUNCIL



TOWN CLERK



ASSISTANT TOWN CLERK

21 December 2007

1 Definitions

In this Schedule the following expressions have the following meanings:

"Current Use Value": £114,000 or the amount substituted by clause 3.8;

"Development": has the meaning given to it by section 55 of the Planning Act;

"Development Value": the difference between the Enhanced Value and the Current Use Value of the Property;

"Disposal": the transfer of a freehold interest in the Property or any part thereof or the grant of a lease of the Property or any part thereof for a term equal to or exceeding 20 years where the person to whom the disposal is made intends a use for the Property other than as a recreational ground, for sport or as a public open space;

"End Date": the date falling 30 years after the date of this Transfer;

"Enhanced Value": the Market Value of the Property at the relevant Trigger Date and with the benefit of any Relevant Planning Permission.

"Expert": a chartered surveyor with not less than 15 years' experience in the development market in the North Somerset area who is appointed (in default of agreement between the parties) by the President of the Royal Institution of Chartered Surveyors on the application of either party;

"Interest": interest during the period from the date on which the payment is due to the date of payment both before and after any judgment at the yearly rate of 4% above the base rate published by the Bank of England from time to time or if such rate is not published at any time such other comparable rate of interest as the Transferor may then in writing specify having regard to interest current at such time;

"Market Value": has the same meaning as the definition of "Market Value" in Practice Statement 3.2 of the Royal Institution of Chartered Surveyors' Appraisal and Valuation Standards as at the date of this Transfer and assuming that:

- (1) no previous Trigger Event has occurred that has reduced the market value of the Property
- (2) no act or omission by the Transferee has occurred since the date of this Transfer which has reduced the market value of the Property and
- (3) the value attributable to any buildings and works of infrastructure and improvement carried out by the Transferee since the date of this Transfer is disregarded.

"Overage": is the Relevant Percentage of the aggregate of:

- (1) Development Value attributable to the relevant Trigger Event agreed or determined in accordance with paragraph 3 of this Schedule less
- (2) the costs reasonably and properly incurred by or on behalf of the Transferee in obtaining the Relevant Planning Permission or the professional costs incurred in direct relation to the Disposal of the Property (as relevant to the Trigger Event);

"Permitted Disposal": any Disposal to the buyer or lessee of a single physically completed Residential Unit (provided that any land comprised within a Residential Unit which is capable of being developed as a separate Residential Unit will not form part of a Permitted Disposal);

"Planning Act": the Town and Country Planning Act 1990;

"Planning Permission": any permission granted pursuant to Part III of the Planning Act or the issue of any certificate under sections 191 or 192 of the Planning Act;

"Relevant Percentage":

- (1) for the period until the 15th anniversary of this Transfer: 50%
- (2) for the period from the 15th to the 25th anniversary of this Transfer: 25% and
- (3) for the period from the 25th to the 30th anniversary of this Transfer: 15%;

"Relevant Planning Permission": the Planning Permission granted on the relevant Trigger Date;

"Residential Unit": any house, flat, maisonette or other unit (and its curtilage) intended for residential occupation and any associated car parking space;

"Transferee's Surveyor": a chartered surveyor with not less than 15 years' experience in the residential development market in the North Somerset area;

"Trigger Date": the date of any and each Trigger Event;

"Trigger Event": means any happening of either:

- (1) the grant and implementation of any Planning Permission permitting or certifying the lawfulness of Development of the Property for a use or buildings for a use other than as a recreational ground, for sport or as a public open space or
- (2) a Disposal of the Property

after the date of this Transfer but before the End Date;

"Working Day": any day other than Saturday, Sunday and any Bank or Public Holiday.

2 Interpretation

- 2.1 The expressions "Transferor" and "Transferee" includes their respective successors in title.
- 2.2 Any covenant to do any act or thing includes an obligation to procure that it be done and any covenant not to do any act or thing includes a covenant not to allow such act or thing to be done by a third party.
- 2.3 Where the Transferor or the Transferee for the time being are two or more individuals the terms the Transferor and the Transferee include the plural number and obligations expressed or implied to be made by or with such party are deemed to be made by or with such individuals jointly and severally.
- 2.4 Unless otherwise specified, a reference to legislation (including subordinate legislation) is to that legislation as extended, amended, modified, consolidated, or re-enacted from time to time and includes any instrument, order, regulation, permission, consent, licence, notice, direction, byelaw, statutory guidance or code of practice made or granted under such legislation.

3 Overage

- 3.1 The Transferee must pay Overage to the Transferor in respect of any and each Trigger Event in accordance with this paragraph 3.
- 3.2 Within 30 Working Days after any and each Trigger Date the Transferee must serve notice of the Trigger Event on the Transferor accompanied by:
 - 3.2.1 a copy of the Relevant Planning Permission and a copy of the planning application and any relevant supporting documentation pursuant to which the Relevant Planning Permission was granted or a copy of the document effecting the Disposal;
 - 3.2.2 a reasoned valuation of the Development Value by the Transferee's Surveyor;
 - 3.2.3 the Transferee's calculation of Overage and payment of such amount; and
 - 3.2.4 evidence of the cost reasonably and properly incurred by or on behalf of the Transferee in obtaining the relevant Planning Permission or incurred in relation to the Disposal of the Property.
- 3.3 If the Transferor reasonably disputes the Transferee's Surveyor's valuation or the Transferee's calculation of Overage, it must within 20 Working Days after receipt of the Transferee's notice (time being of the essence) serve a counter-notice on the Transferee of the Transferor's valuation and/or calculation of Overage.
- 3.4 If the Transferor and the Transferee have not agreed the amount of the Overage within 20 Working Days after service of the Transferor's counter-notice either party may require that the amount of the Overage be referred to the Expert for determination.
- 3.5 If the Transferor fails to serve a counter-notice within the 20 Working Day period referred to in paragraph 3.3 it is deemed to have accepted the Transferee's valuation and calculation of Overage.
- 3.6 If the Transferee fails to serve the notice required by paragraph 3.2 the Transferor may instruct an Expert to undertake a reasoned valuation of the Development Value and:
 - 3.6.1 such valuation will be deemed to be the Development Value for the relevant Trigger Event; and
 - 3.6.2 the cost of preparing such valuation must immediately be reimbursed by the Transferee to the Transferor.
- 3.7 Within five Working Days after the Expert's determination the Transferee must pay to the Transferor any shortfall against the Overage determined by the Expert together with Interest (less 4%) thereon calculated from the date 30 Working Days after the Trigger Date until payment.
- 3.8 Upon full payment of any Overage, the Enhanced Value shall become the Current Use Value under the terms of this Transfer.

4 Disposals

The Transferee covenants with the Transferor as follows:

- 4.1 The Transferee will not make a Disposal without procuring on or prior to completion of such Disposal that the person in whose favour the Disposal is made executes and delivers to the

Transferor a new deed of covenant in the terms of this Schedule and the new deed of covenant will contain such provisions as the Transferor reasonably considers necessary to take into account the nature of the Disposal.

4.2 The requirements of paragraph 4.1 do not apply to a Permitted Disposal.

4.3 The Transferee must within two weeks after this Transfer apply to HM Land Registry for registration of its title to the freehold interest in the Property and to enter in the Register of the title of the Property a restriction in the following terms:

"No transfer or grant of a lease for a term exceeding 10 years of the registered estate or (in both cases) any part thereof is to be completed by registration without a certificate signed by [the Transferor] of [Transferor's address] or his solicitor to that effect that either:

(a) the disponee has entered into a deed of covenant in the terms required by the Schedule to a transfer dated [date of Transfer] and made between [Transferor] (1) and [Transferee] (2); or

(b) no such deed is required".

4.4 The Transferor or other person or persons entitled to the benefit of the restriction in paragraph 4.3 will consent to the registration of a transfer of the Property or the grant of a lease of the Property for a term exceeding 10 years or (in both cases) any part thereof if all (if any) payments of Overage in respect of any prior Trigger Event have been paid and either:

4.4.1 the transferee or lessee has entered into a deed of covenant with the Transferor in accordance with paragraph 4.1 and the Transferor has received the new deed of covenant from the transferee or lessee; or

4.4.2 the Disposal is a Permitted Disposal

but consent to such registration is not to be treated as prior approval of the identity of the transferee or lessee for the purposes of paragraph 4.5.

4.5 Where all outstanding (if any) payments of Overage in respect of any prior Trigger Event have been paid and:

4.5.1 the Transferee complies with paragraph 4.1 and obtains the prior approval of the Transferor to the identity of the transferee or lessee (such approval not to be unreasonably withheld or delayed having regard to the likely level of Overage due or in future to be payable hereunder); or

4.5.2 the Disposal is a Permitted Disposal

the Transferee will cease to have any liability under this Schedule for any matter arising after the Disposal in respect of that part of the Property which is the subject of the Disposal (but without prejudice to the Transferee's continuing liability for prior breaches).

4.6 The Transferee must pay all professional and other costs, charges, fees and expenses incurred by the Transferor arising out of the operation of this paragraph 4.

5 Assignment by Transferor

The benefit of the covenants contained in this Schedule may be assigned by the Transferor.

6 Interest

The Transferee covenants to pay Interest on any monies payable pursuant to this Schedule calculated from the due date until payment.

7 Expert

Any dispute concerning any sums payable pursuant to this Schedule must be determined by the Expert in accordance with the following provisions:

- 7.1 he will act as an expert and his decision will be final and binding on the parties;
- 7.2 he will be instructed to consider all written representations made on behalf of the Transferor and/or the Transferee which are delivered to him within such period or periods as he stipulates (having regard to the parties' wish for a quick determination);
- 7.3 he will be instructed to use all reasonable endeavours to give his decision as speedily as possible;
- 7.4 if he dies or refuses or is unable to act the procedure for appointment will be repeated as often as necessary;
- 7.5 his fees and the costs of his appointment will be payable by the parties in such proportions as he determines (or in default of such determination by the parties equally);
- 7.6 if he is ready to make his determination but is unwilling to do so due to the failure of one party to pay its share of the costs in connection with the determination the other party may serve upon the party in default of a notice requiring the party in default to apply such costs within seven working days and if the party in default fails to comply with such notice the other party may pay to the Expert the costs payable thereby the party in default and any amount so paid by the other party will be a debt due forthwith from the party in default to the other party together with Interest.

8 VAT

The sums payable pursuant to this Schedule are exclusive of any VAT. Accordingly the Transferee will in addition pay any VAT chargeable or payable in respect of such sums.

9 Perpetuity Period

The perpetuity period for this overage agreement expires on the date falling thirty years after the date of this Transfer.