



23rd September 2011

**HEADS OF TERMS
Sale Agreement**

Botley, Oxford
Westminster Way

Vale of White Horse District Council
Willow Partnership
Siemens Benefits Scheme Limited

AND

Doric Properties Ltd

AGREED,
REDACTIONS WITH
MATT
FRANKS
23/9/15.

Subject to Contract
And Without Prejudice

Cushman & Wakefield
43-45 Portman Square
London
W1A 3BG

**SALE AGREEMENT
HEADS OF TERMS**

PREAMBLE

The Parties will seek to enter into a Sale Agreement by no later than 30 days from agreement of these Heads of Terms and receipt of the legal documentation by the Purchasers solicitors.

The Development concerns a new food store and associated uses on the Site identified on Plan No1. The Parties shall use reasonable endeavours to diligently pursue the satisfaction of the Conditions Precedent which are within their responsibility.

The following Heads of Terms sets out the basis of the Sale Agreement.

1.0 PARTIES

- (1) Vale of White Horse District Council (the '**Council**'), Willow Partnership, Siemens Pension Trustees, (together known as the '**Vendors**'); and
- (2) Doric Properties Ltd (the '**Purchaser**')
- (3) (the '**Guarantor**')

2.0 DEFINITIONS

The following expressions shall have the following meanings:-

- 2.1 "**Completion Date**" means the date of the grant of the Planning Consent without challenge and satisfaction of the Conditions Precedent.
- 2.2 "**Conditions Precedent**" means the following conditions:

- (a) The grant of Planning Consent;

- (b) The ability to secure Vacant Possession of the Site;
 - (c) Verification of ground conditions prior to exchange of contracts (Purchaser to carry out investigations within 4 weeks from exchange of these heads of terms); and
 - (d) The obtaining of any stopping up order that is required to enable the Development to proceed.
 - (e) Section 278 costs to be no more than [REDACTED]
- 2.3 **“Date of Possession”** means the date upon which the Purchaser takes the transfer of the title of the Site which in any event must be within three months of the Unconditional Date.
- 2.4 **“Development”** means the development of the Food Store Scheme and associated car parking.
- 2.5 **“Food Store Scheme”** means the scheme of development as outlined in the drawings to be appended to the Agreement broadly comprising a [REDACTED] GIA food store, associated car parking, public WC’s and circa [REDACTED] residential units which is complementary to the existing Westway Centre or such other scheme as the Parties may agree (in their absolute discretion) during the life of the Sale Agreement.

2.6 **“Highway Works”** means any highway works required by the Highway Authority to be carried out by the Purchaser as a result of the Development whether on the Site or elsewhere, as defined in the Highway Agreement (Section 278 Agreement or S106 Agreement).

2.7 **“Independent Expert”** shall, as per the relevant issue, be a member of the RTPI, RIBA, ACE, RICS or ICA, of at least 10 years standing with appropriate expertise and shall, in default of agreement, be appointed by the relevant president of the professional body. The Independent Expert shall act as an Expert and not as an Arbitrator but shall allow written representations and opportunity to reply thereto. He shall provide reasons for the decision and award costs as deemed appropriate.

2.8 **“Long Stop Date”** means [REDACTED] or such other date as may be agreed by the Parties so as to satisfy the Conditions Precedent. In the event that an application for a CPO has been made, and a decision is pending, it is agreed that this date may be extended appropriately.

2.9 **“Planning Application”** means a detailed planning application pursuant to the Food Store Scheme.

2.10 **“Planning Consent”** means a detailed planning permission granted pursuant to a Planning Application for a Food Store Scheme.

2.11 **“Price”** means the sum of [REDACTED]

2.12 **“Purchasers Solicitors”** means...

2.13 **“Required Consents”** means all detailed planning permissions required to implement and complete the Development in accordance the Planning Consent and including any necessary Road Closure Orders.

2.14 **“Site”** means the Site of the Development shown edged red on plan No 1 annexed to the Agreement.

2.15 **“The Unconditional Date”** means the date upon which the Conditions Precedent have been satisfied.

2.16 **“Third Party Rights”** means all rights easements covenants and other interests belonging to third parties which may adversely affect the Site.

2.17 **“Vendors Agent”** means Cushman & Wakefield of 43-45 Portman Square, London, W1A 3BG

2.18 **“Vendors Solicitor”** means Bridgehouse Partners, Lancaster House, 67 Newhall Street, Birmingham, B3 1 NQ (fao: Mark Dakeyne email md@bridgehousepartners.com)

3.0 SALE AGREEMENT

3.1 The Sale Agreement will be prepared by the Vendors Solicitor and will contain such additional terms and provisions as are appropriate to supplement and, having regard to, these heads of terms.

4.0 RESERVATION

4.1 These Heads of Terms are not intended to and shall not create or be deemed to create any Agreement binding in law between the parties.

5.0 OBLIGATIONS

- 5.1 The Sale Agreement will be conditional upon the Conditions Precedent being satisfied on or before the Long Stop Date.
- 5.2 The Purchaser shall be responsible for submitting a planning application within [REDACTED] weeks of exchange of contracts, subject to extensions of time as shall be agreed by the Parties so as to maximise the potential to secure a Planning Consent for the Development.
- 5.3 The Purchaser will be responsible for all costs incurred and associated with the preparation and submission of the Planning Application and for securing all the Required Consents for the Development.
- 5.4 In relation to obtaining vacant possession of the Site where the appropriate statutory grounds exist and subject to an appropriate agreement regarding indemnification for costs and CPO compensation, the Council will put a resolution to its Members for a CPO if the Site could not be acquired to assist in obtaining vacant possession of the Site and if ultimately required. The Purchaser will be required to underwrite the costs (however so arising) of any CPO that is promoted by the Council such to be payable upon demand by the purchaser. All such costs shall be deducted from the Price.
- 5.5 If the Conditions Precedent are not fulfilled or waived by the Long Stop Date then either Party may terminate the Sale Agreement on giving twenty working days written notice to the other.

6.0 FINANCIAL PROVISIONS

- 6.1 Upon exchange of this Sale Agreement, the Purchaser shall pay to the Vendors Solicitor firstly, the sum of [REDACTED] as a non refundable deposit and secondly, reimburse the Vendors professional and legal costs pursuant to this Agreement subject to a cap of [REDACTED].
- 6.2 Within ten working days of the Unconditional Date the Purchaser will pay to the Vendors Solicitor the sum of [REDACTED] in consideration of the transfer of the Site as set out in 8.0, less any costs reimbursed by the Purchaser to the Council as a direct result of the Council being required to seek to use its statutory acquisition powers to secure VP of the Site.

6.3 The Purchaser agrees to work on an open book basis and will pay to the Joint Vendors [REDACTED] of any additional site residual value achieved above the Price, such overage to be calculated within 6 months of PC of the Food Store Scheme and paid as a capital sum within 9 months of PC. Any dispute shall be referred to an Expert for determination. A copy of the current appraisal is attached for illustrative purposes.

7.0 COSTS

7.1 During negotiations of these Heads of Terms and the Sale Agreement all costs incurred by the Purchaser will be at its own risk and responsibility.

8.0 POSSESSION/TRANSFER OF TITLE

8.1 On the Date of Possession (ie within three months after the Unconditional Date) the freehold interests in the Site shall be transferred to the Purchaser.

9.0 BUILDING OBLIGATIONS

9.1 The Purchaser shall diligently commence, carry out and complete the Development on the Site in accordance with the Required Consents, within a period of [REDACTED] from the Unconditional Date. The Purchaser will be permitted such extensions of time as are properly given under the terms of the building contract for the Development and are notified to the Vendors.

9.2 The Purchaser will warrant to the Vendors the carrying out and to complete the Development and all accommodation works relevant to the Development in a good and substantial manner using good quality materials and that the design and materials used are appropriate for their intended purpose in accordance with the Required Consents.

9.3 The Purchaser shall be responsible, at its own cost, for the diversion, stopping up and provision of all services and the application to the relevant Statutory Authorities and Undertakers, required for the Development both on and off Site. The Purchaser shall be responsible, at its own cost, for the stopping up of any highways required to implement the Development.

9.4 The Purchaser will procure the Highway Works and any accommodation works relevant to the Development both on and off site and execute all required agreements in respect thereof and take all necessary

precautions over the demolition of any properties so that matters of stability, rights of support and light, public services and safety are all protected from damage and are adequately safeguarded.

- 9.5 The Purchaser shall not use any material which, at the time the materials are specified for use, are not in conformity with the British Standards or Codes of Practice of the British Standards Institution current at that time.
- 9.6 The Purchaser shall indemnify the Vendors in respect of any claims as a result of the carrying out of the Development and/or its occupation of the Site.
- 9.7 All landscaping and public realm works required as part of the Development shall be completed as required by any statutory consent.
- 9.8 The Purchaser shall ensure that the Development is carried out in accordance with the appropriate British Standards (where applicable) and Codes of Practice and generally recognised good building practice current at that time.

10.0 TITLE

- 10.1 The Vendors will deduce title to the land in their ownership in the Site prior to the Unconditional Date and the Purchaser will be required to accept the title.
- 10.2 There will be a restrictive covenant placed on the Site in favour of the Council and its interest in the Westway Shopping Centre that the Site will not be used for a period of [REDACTED] from the Sale completion date for any other use other than that for which the Required Consents is given.
- 10.3 The Council will have an option to buy back that part of the Site within its current ownership in the event that the Development has not been commenced within [REDACTED] from the Date of Possession.

11.0 ASSIGNMENT

- 11.1.1 The Purchaser may charge the Sale Agreement solely for the purpose of securing finance or funding for the Development and such chargee(s) shall be obliged to enter into a direct deed with the Vendors covenanting to observe and perform the obligations contained in the Sale Agreement. Any such covenant/deed shall not exonerate the Purchaser from obligations under the Sale Agreement.

12.0 DEFAULT

12.1 The Sale Agreement shall be capable of determination by the Vendors where the Purchaser commits a breach of any of the provisions of the Sale Agreement and which in the case of a remediable breach is not remedied within a reasonable period after service of notice upon the Purchaser or where the Purchaser commits an act of insolvency

13.0 GUARANTORS

13.1 The Guarantor shall enter into an appropriate covenant guaranteeing the performance by the Purchaser of its obligations under the Sale Agreement indemnifying the Vendor against any loss arising as a result of the Purchaser's default.

14.0 GENERAL PROVISIONS

14.1 The Parties shall work together and use all reasonable endeavours to maximise prospects for securing development of the Food Store Scheme. The Council shall enter into the Sale Agreement as landowner and not in any statutory capacity.

Plan No1The Site
Appraisal