

OVERAGE DEED

Land to the West of New House Farm, Guilsfield, Welshpool, Powys

This deed is dated 2025

Parties

(1) JEAN ELIZABETH BALMER of Ty Canol, Guilsfield, Welshpool, Powys, SY21 9PS (the 'Seller')

(2) [] of [] (the 'Buyer')

BACKGROUND

- (A) By a transfer dated the same date as this deed, the Seller has transferred the Property to the Buyer.
- (B) On the terms of this deed, the Buyer agrees to pay an Overage Payment to the Seller on the earlier of the following events occurring during the Overage Period in relation to each Planning Permission granted during the Overage Period:
- (a) implementation of that Planning Permission; and
 - (b) completion of an Overage Disposal where the land disposed of includes the whole or any part(s) of the Property with the benefit of that Planning Permission.

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Assignee: in relation to each Assignment, the person to whom that Assignment has been made.

Assignee Deed of Covenant: a deed of covenant with the Buyer containing covenants in the same terms as those given by the Seller in this deed with such minor modifications as the Buyer may agree.

Assignment: an assignment of the benefit of the Buyer's covenants in relation to any matters contained in this deed.

Base Value: where an Overage Payment has become due under clause 2.1 due to the occurrence of a Trigger Date, the Market Value at that Trigger Date of all the Development Land:

- a) disregarding any effect on value of the Relevant Planning Permission; and
- b) assuming that:
 - (i) there is no expectation of the grant of any Planning Permission
 - (ii) it is used or occupied only for the Permitted Use;

- (iii) it is not lawful to change the state or use of the Development Land by whatever means from the Permitted Use; and
- (iv) that any unlawful (whether actually unlawful or deemed unlawful by virtue of (b(iii)) above) Development or unlawful Relevant Occupation of the Development Land that has occurred is ignored.

Deed of Covenant: a deed of covenant with the Seller containing covenants in the same terms as those given by the Buyer in this deed with such minor modifications as the Seller may agree (acting reasonably).

Default Rate: three percent (3%) per annum above the Interest Rate.

Determining Authority: the local planning authority or other appropriate determining body or person.

Development: any development within the meaning of section 55 of the TCPA 1990 (except for any 'Permitted Use') of the whole or any part or parts of the Property, with or without other land.

Development Land: the whole or any part or parts of the Property with the benefit of a Relevant Planning Permission.

Disposal: a disposition which is required to be completed by registration as set out in section 27(2) of the Land Registration Act 2002 other than a 'Permitted Disposal'.

End Date: subject to the Release Date, the date on which the Overage Period ends.

Enhanced Value: where an Overage Payment has become due under clause 2.1 due to the occurrence of a Trigger Date, the Market Value at that Trigger Date of all the Development Land with the benefit of the Relevant Planning Permission for which that Overage Payment has become due.

Existing Restriction: a restriction which is on the registered title to the Property pursuant to this deed immediately prior to the date of completion of an Assignment.

Implementation: the implementation of a Relevant Planning Permission by the carrying out of a Material Operation provided that, for the purposes of this deed, implementation of a Relevant Planning Permission shall be deemed to have occurred notwithstanding any breach of a condition to which that Relevant Planning Permission is subject.

Independent Surveyor: a Fellow of the Royal Institution of Chartered Surveyors with at least ten years' experience in valuing properties similar to the Property, for uses similar to the Development, and whose usual place of practice is within a twenty (30) mile radius of the Development Land.

Interest Rate: the base rate from time to time of Barclays Bank plc.

Market Value: the estimated amount for which the Development Land in respect of which an Overage Payment is being calculated should exchange between a willing buyer and a willing

seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion, on the basis that:

- a) it is assessed in accordance with paragraph 4 of VPS 2 of the RICS Valuation – Global Standards (December 2024);
- b) the provisions of this deed are disregarded; and
- c) that Development Land has vacant possession; and
- d) that Development Land is assumed to be free from all encumbrances; and
- e) any damage to or destruction of that Development Land occurring after the date of this deed is assumed to have been fully reinstated.

Material Operation: has the same meaning as in section 56 of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations:

- a) ground investigations;
- b) site survey works;
- c) temporary access construction works;
- d) archaeological investigation; and
- e) erection of any fences and hoardings.

Overage Disposal: a Disposal where the land disposed of includes any Development Land (part or whole).

Overage Payment: a sum calculated in accordance with the following formula:

(A - B) x 50%

Where:

A = Enhanced Value; and

B = Base Value.

Overage Period: subject to the End Date, twenty (20) years starting on the date of this deed and ending at midnight on 2045.

Payment Date: the date on which an Overage Payment is to be made in accordance with clause 2.2.

Permitted Disposal: any of the following:

- a) the grant of easements or rights, transfer, lease or dedication to a local or other public authority of the whole or any part or parts of the Property pursuant to a requirement in an agreement or unilateral undertaking under section 106 of the TCPA 1990;
- b) the grant of easements or rights, transfer, lease or dedication to a highways authority of the whole or any part or parts of the Property to comply with highways requirements or in connection with the adoption or dedication of public highway;

- c) the grant of easements or rights, transfer, lease or dedication to a utilities company of the whole or any part or parts of the Property for an electricity substation, gas governor, sewage or water pumping station, drainage balancing device or other similar matters for the provision of services;
- d) the grant of a lease (including any farm business tenancy) or licence (being less than twenty (20) years in length) of the whole or any part of the Property for the Permitted Use; or
- e) any charge or mortgage of the Property or any part thereof;

Planning Permission: any of the following which are granted during the Overage Period for the Development by a Determining Authority:

- a) an outline planning permission;
- b) a detailed planning permission; or
- c) a technical details consent.

including a planning permission issued pursuant to an application under section 73 of the TCPA 1990

Permitted Use: means agricultural, horticultural, garden amenity or equestrian use and any development (including but not limited to the erection of agricultural buildings, ménage, stabling services and access) associated only with such aforesaid uses;

Property: the freehold property known as the land to the West of New House Farm, Guilsfield, Welshpool as shown edged red on the plan to the Transfer dated [].

Release Date: means the End Date except where at the End Date there is a Relevant Planning Permission in existence in respect of which Implementation has not yet occurred, the Release Date shall be such date as is the earlier of:

- a) the date that such Relevant Planning Permission is implemented and an Overage Payment has been paid in respect of the same; and
- b) the date that is three (3) years from the date of grant of such Relevant Planning Permission

If at the End Date there is more than one Relevant Planning Permission in existence then for the purposes of (a) and (b) (above) the date shall be calculated by reference to the later of such Relevant Planning Permissions.

Relevant Occupation: means the first taking of beneficial occupation of the Property or any part of it on or after any change of use from the Permitted Use whether or not such change of use is authorised by a Relevant Planning Permission or is permitted under the Town and Country Planning Act (General Development Order) Order 2015 (as amended from time to time) or the Town and Country Planning (Use Classes) Order 2020 (as amended from time to time) or is unauthorised.

Relevant Planning Permission: a Planning Permission in respect of which an Overage Payment has not previously become due under the terms of this deed.

Satisfactory Consent: a consent in accordance with the requirements of the restriction referred to in clause 3.3 and the requirements of HM Land Registry from time to time.

TCPA 1990: Town and Country Planning Act 1990.

Trigger Date: in respect of each Relevant Planning Permission, the earlier of the date of:

- a) Relevant Occupation;
- b) Implementation of that Relevant Planning Permission; and
- c) completion of an Overage Disposal where the land disposed of includes the whole or any part or parts of the Property with the benefit of that Relevant Planning Permission.

VAT: value added tax chargeable in the UK.

Working Day: any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 Unless expressly provided otherwise in this deed, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.4 Unless expressly provided otherwise in this deed, a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.5 Unless the context otherwise requires, references to clauses are to the clauses of this deed.
- 1.6 Clause headings shall not affect the interpretation of this deed.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
- 1.9 Unless the context otherwise requires, any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.10 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.11 A reference to **writing** or **written** excludes fax and email.
- 1.12 In this deed, a reference to:

- (a) the Seller includes its personal representatives, heirs and permitted assigns but not other successors; and
- (b) the Buyer includes its successors in title.

2. Overage Payment

- 2.1 On each occasion that a Trigger Date occurs prior to the End Date, an Overage Payment shall immediately become due from the Buyer to the Seller.
- 2.2 The Buyer covenants that it shall pay each Overage Payment due under clause 2.1 to the Seller on the later of:
 - (a) the date which is twenty (20) Working Days from and including the relevant Trigger Date for that Overage Payment; and
 - (b) the date which is twenty (20) Working Days from and including the date on which the amount of that Overage Payment is agreed or determined in accordance with the terms of this deed.
- 2.3 An Overage Payment shall be due in respect of each and every Trigger Date that occurs prior to the End Date notwithstanding that a Trigger Date may have previously occurred for the Property or any part or parts of it.
- 2.4 The Buyer covenants with the Seller that it shall pay interest at the Interest Rate to the Seller on each Overage Payment that becomes due under clause 2.1. Such interest shall accrue on a daily basis for the period from and including the Trigger Date in respect of that Overage Payment to but excluding the Payment Date in respect of that Overage Payment.
- 2.5 The Buyer further covenants with the Seller that it shall pay interest at the Default Rate to the Seller on any Overage Payment that is not paid on its Payment Date. Such interest shall accrue on a daily basis for the period from and including the relevant Payment Date to and including the date of payment (whether before or after any judgment) and shall not affect any other remedy the Seller may have.
- 2.6 The Buyer covenants with the Seller that it shall:
 - (a) supply the Seller with a copy of any planning application in relation to the Property submitted by or on behalf of the Buyer prior to the End Date within five (5) Working Days of its submission to the Determining Authority;
 - (b) supply the Seller with a copy of any Planning Permission within ten (10) Working Days of the date of its grant;
 - (c) allow the Seller and its surveyor access to the Property at all reasonable times and on reasonable prior written notice to inspect whether Implementation of any Relevant Planning Permission has occurred.
 - (d) supply the Seller with a copy of any agreement for a Disposal of the whole or any part or parts of the Property or Permitted Disposal that is entered into by the Buyer prior to the End Date within five (5) Working Days of that agreement being entered into;

- (e) notify the Seller in writing within five (5) Working Days of completion of any Permitted Disposal and at the same time supply the Seller with:
 - (i) a copy of the instrument effecting that Permitted Disposal; and
 - (ii) appropriate evidence that is satisfactory to the Seller (acting reasonably) that such Permitted Disposal is not a Disposal of the whole or any part or parts of the Property; and
- (f) notify the Seller in writing within five (5) Working Days of completion of any Disposal of the whole or any part or parts of the Property prior to the End Date that the Buyer considers is not an Overage Disposal and at the same time supply the Seller with:
 - (i) a copy of the instrument effecting that Disposal; and
 - (ii) appropriate evidence that is satisfactory to the Seller (acting reasonably) that such Disposal is not an Overage Disposal; and
- (g) notify the Seller in writing of the occurrence of any Trigger Date prior to the End Date within five (5) Working Days of that Trigger Date occurring and at the same time supply the Seller with:
 - (i) where that Trigger Date has occurred due to the completion of an Overage Disposal, a copy of the instrument effecting that Overage Disposal;
 - (ii) a statement of the amount of the Overage Payment that the Buyer considers is due; and
 - (iii) appropriate evidence that is satisfactory to the Seller (acting reasonably) of how the figure in clause 2.6(g)(ii) was calculated.

3. Seller can assign benefit

- 3.1 Subject to clause 3.2, the benefit of the Buyer's covenants in relation to any matters contained in this deed is assignable by the Seller.
- 3.2 The Seller covenants with the Buyer not to make any Assignment at any time prior to the End Date without first procuring that the prospective Assignee has executed an Assignee Deed of Covenant.
- 3.3 The Buyer covenants with the Seller that following an Assignment and receipt by the Buyer of an Assignee Deed of Covenant properly executed by the Assignee:
 - (a) the Buyer shall:
 - (i) not object to an application by the Seller or Assignee to cancel an Existing Restriction; or
 - (ii) in relation to any application by the Seller or Assignee to withdraw an Existing Restriction, immediately on receipt of a written request from the Seller or Assignee provide its consent to that withdrawal in accordance with the requirements of HM Land Registry from time to time and to provide the Seller

or Assignee with all necessary assistance and documentation to permit withdrawal of that Existing Restriction; and

(b) immediately on receipt of a written request from the Seller or Assignee, the Buyer shall provide:

(i) its consent in accordance with the requirements of HM Land Registry from time to time to the entry of the following restriction against the registered title to the Property at HM Land Registry:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by [ASSIGNEE] of [address] or their personal representatives or their conveyancer."; and

(ii) the Seller or Assignee with all necessary assistance and documentation to permit entry of that restriction.

4. Amount of Overage Payment

4.1 If the parties agree the amount of an Overage Payment at any time after the relevant Trigger Date for that Overage Payment, the Buyer and the Seller shall immediately sign and date a memorandum recording the amount of that Overage Payment and the date of the memorandum shall be the date of agreement for the purposes of clause 2.2(b).

4.2 If the Buyer and the Seller fail to agree on the amount of an Overage Payment within fifteen (15) Working Days from and including the relevant Trigger Date for that Overage Payment, either party may refer the matter for determination by an Independent Surveyor.

4.3 The parties shall agree on the appointment of the Independent Surveyor and shall agree with the Independent Surveyor the terms of the appointment.

4.4 If the parties are unable to agree on an Independent Surveyor or the terms of the appointment within ten (10) Working Days from and including the date on which the matter was referred for determination under clause 4.2, either party shall then be entitled to request the President for the time being of the Royal Institution of Chartered Surveyors to appoint the Independent Surveyor and to agree with the Independent Surveyor the terms of the appointment.

4.5 The Independent Surveyor is required to prepare a written decision and give notice (including a written copy) of the decision on the amount of the Overage Payment to the parties within twenty (20) Working Days from and including the date of the Independent Surveyor's appointment.

4.6 If the Independent Surveyor dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

(a) either party may apply to the President of the Royal Institution of Chartered Surveyors to discharge the Independent Surveyor and to appoint a replacement Independent Surveyor; and

(b) this clause shall apply to the new Independent Surveyor as if they were the first Independent Surveyor appointed.

- 4.7 The parties are entitled to make submissions to the Independent Surveyor including oral submissions and shall provide (or procure that others provide) the Independent Surveyor with such assistance and documents as the Independent Surveyor reasonably requires for the purpose of reaching a decision.
- 4.8 The Independent Surveyor shall act as an expert and not as an arbitrator. The Independent Surveyor's written decision shall be final and binding on the parties in the absence of manifest error or fraud.
- 4.9 The Buyer and the Seller agree to pay the Independent Surveyor's costs in the proportions determined by the Independent Surveyor within ten (10) Working Days from and including a demand for payment. If they are not so paid, the party against whom the costs were not awarded shall be entitled to pay the Independent Surveyor the sums due and recover the amount from the other party on demand.
- 4.10 In default of agreement pursuant to clause 4.1, the Overage Payment shall be the amount determined by the Independent Surveyor and the date of issue of the Independent Surveyor's written decision shall be taken as the date of determination for the purposes of clause 2.2(b).

5. Disposals and restriction

- 5.1 The Buyer covenants with the Seller not to make any Disposal of the whole or any part or parts of the Property at any time prior to the End Date without first procuring that the person to whom that Disposal is being made has executed a Deed of Covenant.
- 5.2 The Buyer shall apply for the entry of the following restriction against the Buyer's title to the Property at HM Land Registry simultaneously with the registration of the transfer of the Property to the Buyer and shall procure that the restriction has priority to any mortgage or charge entered into by the Buyer:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by [ASSIGNEE] of [address] or their personal representatives or their conveyancer".

- 5.3 The provisions of this deed shall endure for a period from the date hereof until the Release Date (which shall for the purpose of this deed be the applicable perpetuity period) and on the expiration of the said period all the provisions of this deed shall cease to operate and be of no effect save in relation to any outstanding obligations of the Buyer and any outstanding claim or right of action of the Beneficiary and without prejudice to the rights and liabilities of the parties which shall have accrued before the Release Date.

6. Unlawful development

The Buyer covenants with the Seller that, before carrying out any Development prior to the End Date, the Buyer shall comply with the requirements of the TCPA 1990 to apply for and obtain

any of the following by way of a grant by a Determining Authority that may be required for that Development:

- (a) an outline planning permission;
- (b) a detailed planning permission; or
- (c) a technical details consent.

including a planning permission issued pursuant to an application under section 73 of the TCPA 1990.

7. Seller's obligations

The Seller covenants with the Buyer that the Seller shall:

- (a) provide Satisfactory Consent for the registration of a Permitted Disposal of the whole or any part or parts of the Property at HM Land Registry immediately on receipt of a written request from the Buyer;
- (b) following a Permitted Disposal, if reasonably required by the Buyer in order to ensure that the same restriction (or a new restriction in the same terms) as the restriction referred to in clause 3.3 is not entered against the registered title to the Property (or relevant part of the Property in the case of the Permitted Disposal of part of the Property) once the disponee under that Permitted Disposal is registered as the registered proprietor of that title:
 - (i) not object to an application by the Buyer or that disponee to cancel that restriction in relation to the Property (or part of the Property) disposed of under that Permitted Disposal; or
 - (ii) in relation to any application by the Buyer or that disponee to withdraw that restriction, provide immediately on receipt of a written request from the Buyer or that disponee a consent to that withdrawal in accordance with the requirements of HM Land Registry from time to time;
- (c) provide Satisfactory Consent for the registration of a Disposal of the whole or any part or parts of the Property at HM Land Registry immediately on receipt of a Deed of Covenant properly executed by the person to whom that Disposal is being made provided that there are then no outstanding sums due from the Buyer under the terms of this deed; and
- (d) apply for the withdrawal of the restriction entered against the title to the Property pursuant to clause 3.3 within ten (10) Working Days after the End Date if there are no outstanding sums due from the Buyer under the terms of this deed.

8. Seller's costs

The Buyer covenants with the Seller that it shall pay the Seller's reasonable and proper legal and surveyor's costs and disbursements incurred in connection with:

- (a) each Deed of Covenant;

- (b) the entry and withdrawal of each restriction against the title to the Property except for any entry or withdrawal of any restriction pursuant to clause 3.3; and
- (c) the Seller granting written consent to each Permitted Disposal or Disposal of the whole or any part or parts of the Property.

9. VAT

- 9.1 Each amount stated to be payable by the Buyer to the Seller under or pursuant to this deed is exclusive of VAT (if any).
- 9.2 If any VAT is chargeable on any supply made by the Seller under or pursuant to this deed, the Buyer shall on receipt of a valid VAT invoice, pay the Seller an amount equal to that VAT.

10. Notices

- 10.1 Any notice given under this deed must be in writing and signed by or on behalf of the party giving it.
- 10.2 Any notice or document to be given or delivered under this deed must be:
 - (a) delivered by hand; or
 - (b) sent by pre-paid first-class post or other next Working Day delivery service.
- 10.3 Any notice or document to be given or delivered under this deed must be sent to the relevant party as follows:
 - (a) to the Seller at:

Ty Canol, Guilsfield, Welshpool, Powys, SY21 9PS

marked for the attention of **JEAN ELIZABETH BALMER;**
 - (b) to the Buyer at:

[]

marked for the attention of []

or as otherwise specified by the relevant party by notice in writing to the other party.
- 10.4 Any change of the details in clause 10.3 specified by the relevant party by notice in writing to the other party will take effect for the party notified of the change at 9.00 am on the later of:
 - (a) the date, if any, specified in the notice as the effective date for the change; or
 - (b) the date three (3) Working Days after deemed receipt of the notice.
- 10.5 Any notice or document given or delivered in accordance with clause 10.1, clause 10.2 and clause 10.3 will be deemed to have been received:
 - (a) if delivered by hand, on signature of a delivery receipt provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day

which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;

- (b) if sent by pre-paid first-class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting; or

10.6 In proving delivery of a notice or document, it will be sufficient to prove that:

- (a) a delivery receipt was signed or that the notice or document was left at the address; or
- (b) the envelope containing the notice or document was properly addressed and posted by pre-paid first-class post or other next Working Day delivery service.

10.7 A notice given or document delivered under this deed will not be validly given or delivered if sent by email.

10.8 This clause 10 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11. Third party rights

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

12. Entire agreement

12.1 This deed and the documents annexed to it constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to their subject matter.

12.2 Each party acknowledges that in entering into this deed and any documents annexed to it it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made negligently or innocently) other than those set out in this deed or the documents annexed to it.

13. Joint and several liability

Where the Buyer comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of the Buyer arising under this deed and the Seller may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons without affecting the liability of any other of them.

14. Governing law

This deed 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.

15. Jurisdiction

Subject to clause 4.2 to clause 4.10 (inclusive), each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of

or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

in the presence of

Signature of witness:

Address:

in the presence of

Signature of witness:

Address: