
Dated: 2019

- (1) UNIGATE DAIRIES LIMITED
- (2) TOTNES COMMUNITY DEVELOPMENT SOCIETY LIMITED
-

**Overage agreement
Amended Devonshires 6i20**

relating to property known as land and buildings lying to the south and east of Weirfields,
Totnes

CONTENTS

Clause		Page
1	DEFINITIONS AND INTERPRETATION	3
2	BUYER'S OBLIGATIONS.....	5
5	LAND REGISTRY APPLICATIONS.....	6
6	DUTY OF GOOD FAITH	6
7	ADDITIONAL CONSIDERATION	6
8	DETERMINATION OF DISPUTES.....	7

BETWEEN

- (1) **Unigate Dairies Limited** (registered number 00367806) whose registered office is at 5 The Heights, Brooklands, Weybridge, Surrey, KT13 0NY (the **"Seller"**) and
- (2) **Totnes Community Development Society Limited** a registered society as defined in section 1(1) of the Co-operative and Community Benefit Societies Act 2014 (registered number 031671R) whose registered office is at The Atmos Project, Station Yard, Station Road, Totnes, Devon, TQ9 5JR (the **"Buyer"**)

BACKGROUND

- (A) By a transfer dated the same date as this Agreement, the Seller transferred the Property to the Buyer in consideration of the Purchase Price.
- (B) The Buyer has agreed to pay the Additional Consideration to the Seller on any Disposition of the whole or any part of the Property on the terms of this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions have the following meanings:

- "Additional Consideration"** the additional consideration to be calculated in accordance with **clause 6**

- "Base Rate"** 4% per annum above the base lending rate from time to time of Barclays Bank PLC or such other clearing bank nominated by the Seller at any time or, if the clearing banks cease at any time to publish a base lending rate, such comparable rate of interest as the Seller may reasonably determine

- "Deed of Covenant"** a deed of covenant substantially in the form attached to this Agreement

- "Determination Date"** the date, if any, on which the Additional Consideration is agreed, or determined pursuant to **clause 7**.

- "Disposal Consideration"** the value paid or given by the Successor for the relevant Disposition

- "Disposal Property"** any part or parts of the Property or the whole of the Property, as the case may be, in respect of which a Disposition has occurred

- "Disposition"** one or more of the following in respect of the Property whether by the registered proprietor of the Property or by the registered proprietor of any Security:
 - (a) the transfer or assent of the whole or any part of Property, whether or not for valuable consideration; or
 - (b) the grant of a lease for a premium over the whole or any part of the Property

“Disposition Date”	the date of the document effecting the relevant Disposition
“Gross Development”	£460,000 plus the total cost of all reasonable works and fees in respect of the Property incurred in respect of works above the foundation level by the Buyer prior to the Disposition Date plus any expense to be incurred by the Buyer in respect of works and fees as a condition of the Disposal and evidence of such costs given to the Seller on an open book basis
“Measurement Code”	the RICS Property Measurement 2 nd edition
“Open Market Value”	<p>the price at which the Property might reasonably be expected to be sold at arm’s length in the open market on the Payment Date assuming:</p> <ul style="list-style-type: none"> (a) a willing seller and buyer; (b) there has been a reasonable period prior to the Payment Date within which to negotiate the sale taking into account the nature of the Property and the state of the market; (c) values remained static throughout that period; (d) the Property will be freely exposed to the market; (e) no account has to be taken of any additional bid by a buyer with a special interest; (f) both the buyer and the seller acted knowledgeably, prudently and without compulsion; (g) the buyer owns the unencumbered freehold title to any additional land required for any proposed development of the Property; (h) the buyer has the benefit of all rights and easements required for any proposed development of the Property; (i) the buyer has the benefit of planning permission for any proposed development; and (j) the Property is free from the terms of this Agreement
“Overage Period”	the period of 20 years from and including the date of this Agreement
“Payment Date”	<p>the later of:</p> <ul style="list-style-type: none"> (a) the Disposition Date; and (b) the Determination Date

"Property"	all that freehold property edged red on the plan annexed hereto [<i>the former McCarthy Stone site with consent under the made Community right to Build Order for 37 flats</i>] registered under the Title Number
"Residential Unit"	a dwelling house as defined by the Housing Act 1985 constructed of to be constructed by the Buyer on the Property
"Security"	any legal charge, debenture, mortgage, lien or other form of security granting any legal or equitable charge over the Property whether fixed or floating
"Seller's Solicitors"	Eversheds Sutherland (International) LLP of 1 Callaghan Square, Cardiff, CF10 5BT (Ref: HOLDENM/137206.000053)
"Successor"	any person to whom a Disposition is made
"Title Number"	DN555970
"working day"	any day other than a Saturday, Sunday or a bank or public holiday in England and Wales.

- 1.2 All headings are for ease of reference only and will not affect the construction or interpretation of this Agreement.
- 1.3 References to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule.
- 1.4 References to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.
- 1.5 **"Indemnify"** means to indemnify against all actions, claims, demands and proceedings taken or made against the Seller and all costs, damages, expenses, liabilities and losses incurred by the Seller.
- 1.6 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each individually.
- 1.7 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement will be unaffected.

2. **BUYER'S OBLIGATIONS**

The Buyer agrees with the Seller that during the Overage Period the Buyer:

- 2.1 will not make any application to HM Land Registry to remove or vary the restriction on title and unilateral notice referred to in **clause 4.1** and **clause 4.2**;
- 2.2 will not make any Disposition without complying with the provisions of **clause** Error! Reference source not found.;
- 2.3 will not grant any rights or easements over the Property or enter into any restrictive covenants binding the Property which would or may reduce the Open Market Value of the Property;
- 2.4 will pay the Additional Consideration to the Seller on the terms of this Agreement if and when it becomes due; and

2.5 will indemnify the Seller against any breach of the Buyer's obligations in this Agreement.

3. **SELLERS OBLIGATIONS**

3.1 At the end of the Overage Period the Seller will at their own expense take all steps necessary to remove the restriction referred to in clause 5.1 and the notice referred to in clause 5.2.

4. **LAND REGISTRY APPLICATIONS**

The Buyer must:

4.1 apply to HM Land Registry for a restriction to be entered onto the proprietorship register of the Title Number in the following form (unless such a restriction is already registered against that title);

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge is to be registered without a certificate signed by Unigate Dairies Limited (company number 00367806) of 5 The Heights, Brooklands, Weybridge, Surrey, KT13 0NY or its conveyancers that the provisions of clause 6 of an agreement dated [] made between Unigate Dairies Limited (1) and Totnes Community Development Society Limited (2) have been complied with or that they do not apply to the disposition."

4.2 note by way of unilateral notice this Agreement at HM Land Registry against the Title Number at the same time as it applies to be registered as the proprietor of the Property;

4.3 not send this Agreement or any copy of it to HM Land Registry; and

4.4 provide to the Seller updated official copies of the title to the Property showing the restriction and unilateral notice duly registered as soon as reasonable practicable.

5. **DUTY OF GOOD FAITH**

The Buyer acknowledges that it owes the Seller a duty of good faith when taking any action or deciding to refrain from taking any action under the terms of this Agreement.

6. **ADDITIONAL CONSIDERATION**

6.1 Additional Consideration will become payable in accordance with this **clause 6**, if a Disposition is made during the Overage Period. For the avoidance of doubt once a Disposition has occurred the Disposal Property shall be released from the overage and no further Additional Consideration shall be payable by the Buyer in respect of the Disposal Property.

6.2 Where the Disposition is not of a Residential Unit or Units the Additional Consideration will be calculated in accordance with the following formula:

$$AC = 0.9 (RLA \times (OMV - GD))$$

PLA

Where:

6.2.1 AC is the Additional Consideration;

6.2.2 RLA is the gross external area of the Disposal Property in square metres measured in accordance with the Measurement Code;

6.2.3 GD is the Gross Development;

6.2.4 OMV is the higher of:

- (i) the Open Market Value of the Disposal Property per square metre; and
- (ii) on a Disposition, the price per square metre obtained by the Buyer for the Disposal Property; and

6.2.5 PLA is the gross external area of the Property in square metres measured in accordance with the Measurement Code.

6.3 Where the Disposition is of a Residential Unit or Units the Additional Consideration will be calculated in accordance with the following formula:

$$AC = 0.9 \frac{R \times (OMV - GD)}{N}$$

Where:

- 6.3.1 AC is the Additional Consideration;
- 6.3.2 R is the number of Residential Units the subject of the Disposition;
- 6.3.3 GD is the Gross Development;
- 6.3.4 N is the number of Residential Units
- 6.3.5 OMV is the price achieved by the Buyer for the Residential Unit(s) the subject of the Disposition as a consequence of the open proper and fair marketing of the Residential Unit(s) judged by the standards of a commercial house-builder and if not so marketed the Open Market Value if higher.

6.4 The Additional Consideration will be rounded up to the nearest £100 with the minimum value for the Additional Consideration being £100.

6.5 The Buyer must pay the Additional Consideration to the Seller within ten working days of the Payment Date together with any value added tax payable on it and the Seller must provide the Buyer with a valid invoice in respect of any value added tax payable on the Additional Consideration as soon as reasonably practicable.

6.6 If the Additional Consideration:

- 6.6.1 has not been agreed or determined by the Disposition Date, it will bear interest at the Base Rate from and including the Disposition Date to and including the Payment Date and after the Payment Date it will bear interest at the contract rate, both before and after judgment, until and including the date of actual payment; or
- 6.6.2 has been agreed or determined by the Disposition Date, it will bear interest at the contract rate from and including the Payment Date to and including the date of actual payment.

6.7 The Seller and the Buyer agree that the Seller will have no vendor's lien on the Property.

6.8 Any dispute about the calculation of the Additional Consideration may be referred by the Seller or the Buyer to the decision of an independent arbitrator in accordance with **clause 7**.

7. DETERMINATION OF DISPUTES

7.1 If any dispute arises between the Seller and the Buyer relating to or arising out of the calculation of the Additional Consideration, the Seller or the Buyer may give to the other written notice requiring the dispute to be determined by an independent surveyor under this **clause 7**.

- 7.2 The surveyor:
- 7.2.1 must be a professionally qualified surveyor having extensive experience in the subject matter of the dispute; and
 - 7.2.2 will be appointed by agreement between the parties or, in the absence of agreement, appointed pursuant to **clause 7.3**.
- 7.3 Any dispute over the appointment of the surveyor will be referred at the request of the Seller or the Buyer to the President or other most senior available officer of the Royal Institution of Chartered Surveyors who may appoint a surveyor to determine the dispute and the Seller and the Buyer agree to accept the appointment of the surveyor.
- 7.4 The surveyor will act as an arbitrator and:
- 7.4.1 all submissions made or evidence supplied to him must be in writing unless the parties agree within ten working days of his appointment that this requirement does not apply;
 - 7.4.2 the date of his award will be deemed to be the date on which he serves a copy of the award on the Seller;
 - 7.4.3 he will not be entitled to order the rectification, setting aside or cancellation of this Agreement or any other deed or document;
 - 7.4.4 he will not be entitled to direct that the recoverable costs of the arbitration, or any part of it, be limited to a specified amount; and
 - 7.4.5 he will not be entitled to require that security be provided in respect of the costs of the arbitration.
- 7.5 Responsibility for the costs of referring a dispute to a surveyor under this **clause 7**, including costs connected with the appointment of the surveyor but not the legal and other professional costs of any party in relation to a dispute, will be decided by the surveyor.
- 7.6 This **clause 7** does not apply to disputes in relation to matters of law which will be subject to the jurisdiction of the courts.

The parties have executed this Agreement as a deed and it is delivered on the date stated at the beginning of this document.

Executed as a deed by)
UNIGATE DAIRIES LIMITED)
acting by two directors or)
one director and its secretary)

Signature of director

Signature of director/secretary

Executed as a deed by)
TOTNES COMMUNITY DEVELOPMENT)
SOCIETY LIMITED)
acting by two directors or)
one director and its secretary)

Signature of director

Signature of director/secretary