

HEADS OF TERMS FOR SURRENDER OF THE EXISTING LEASE AND GRANT OF A NEW LONG LEASE AT LONGLEY

[DRAFT FOR DISCUSSION ONLY – BHCC FULLY RESERVES ITS POSITION IN RELATION TO ANY COMMERCIAL POINT SET OUT BELOW]

SECTION A – AGREEMENT FOR SURRENDER AND LEASE

- (a) Maplebright will assign the existing lease to L&G after L&G has secured satisfactory planning permission for the proposed development of the Property and L&G will then immediately surrender the existing lease and BHCC will accept the surrender.
- (b) BHCC will immediately following the surrender grant a new lease to L&G on the following heads of terms. These heads of terms are not intended to create any legally binding obligations. They are subject to contract.
- (c) The heads of terms are confidential to the intended parties to the proposed sale and to their professional advisors.
- (d) The documentation for the proposed sale may contain further terms as BHCC may require, including additional terms on matters that are covered in this document.

AGREED TERMS

- 1. **SELLER: BRIGHTON & HOVE CITY COUNCIL OF HOVE TOWN HALL, NORTON ROAD, HOVE BN3 3BQ**
- 2. **BUYER: CETZA TRUSTEES V3 LIMITED AND CETZA TRUSTEES V4 LIMITED, EACH A COMPANY INCORPORATED UNDER THE LAWS OF JERSEY WITH REGISTERED NUMBERS 118521 AND 118522 RESPECTIVELY, AND EACH OF WHOSE REGISTERED OFFICE IS AT 11-15 SEATON PLACE, ST HELIER JE4 0QH IN THEIR CAPACITY AS JOINT TRUSTEES OF THE LONGLEY HOUSE UNIT TRUST**
- 3. **PROPERTY AND TENURE**
 - 3.1 The Property is the land contained within title number ESX81326.
 - 3.2 The Seller will grant a new 250 year lease to the Buyer.
- 4. **PREMIUM FOR THE NEW LEASE**
 - 4.1 The parties note that the premium which the Buyer will pay to Maplebright for the assignment of the lease is not covered by these HOT.

4.2 The premium which will be paid by the Buyer to the Seller for the new lease will be £[Redacted] , exclusive of any VAT (which is not due as the Property is not elected for VAT) that may be payable on the transaction, subject to any adjustment in accordance with paragraph 4.3, below.

4.3 [Redacted]

5. EXCHANGE AND COMPLETION

5.1 The parties will endeavour to exchange contracts within 4 weeks of the Seller's conveyancer having received the contract documentation from the Buyer's conveyancer.

5.2 Completion will take place on or before 15 working days after the satisfaction of the Conditions Precedent (see below).

6. CONDITION(S) PRECEDENT

6.1 Completion will be conditional upon the satisfaction of both of the following conditions prior to a longstop date to be set out in the contract:

- (a) the Buyer obtaining Satisfactory Planning Permission for the permitted use which remains in place after the expiry of the judicial review period
- (b) the provision by the Buyer to the Seller of evidence that the Buyer has internal or third party funding available, which is of an amount which would enable the development to be lawfully and fully constructed and occupied, and which is satisfactory to the Seller (acting reasonably)

Note, that there will be no provision for the condition(s) precedent to be waived by the Buyer.

6.2 If the Conditions Precedent are not satisfied within 18 months from the date of exchange, the Seller may terminate the agreement, save where the judicial review period has not expired or where there is an appeal that is in progress in which case the longstop date shall be extended until the appeal is finally determined and/or the JR period has expired and there have been no challenges or any challenges have been finally dealt with.

7. SURRENDER AND GRANT OF LEASE

7.1 On the Completion Date:

- (a) the existing lease will be assigned by Maplebright to the Buyer;

- (b) the existing lease will immediately be surrendered by the Buyer and the Seller will accept the Surrender
- (c) the Seller will grant to the Buyer a new 250 year lease on the terms set out in Section B (below).

8. PLANNING PROVISIONS

- 8.1 Within 2 months of the date of these Heads of Terms, the Buyer may submit the draft Planning Application to the Seller for approval.
- 8.2 Where the Buyer has submitted such draft Planning Application for approval, the Seller shall respond within 20 Working Days to approve the Planning Application (and if it doesn't respond within such period of time, it shall be deemed to have approved the Planning Application) and shall only withhold or delay giving approval to any draft planning application submitted to it if that draft planning application does not satisfy the Agreed Requirements.
- 8.3 The Agreed Requirements are that the scheme provides a minimum of 3000 sq m of lettable B1 employment space and 200 residential units. In all circumstances the draft Planning Application must clearly specify the areas in square feet that are to be subject to different use classes (B1, C3 etc).
- 8.4 Within 15 Working Days after the Seller has approved in writing the draft Planning Application, the Buyer shall submit the Planning Application to the Planning Authority and shall use their reasonable endeavours to obtain the grant of a Satisfactory Planning Permission as soon as reasonably possible. Satisfactory Planning Permission will have the same meaning as in the contract between the Buyer and Maplebright – to be provided separately.
- 8.5 If it appears necessary to obtain a Satisfactory Planning Permission, the Buyer may amend the Planning Application or withdraw and submit in substitution a revised Planning Application. Any such amendment, withdrawal and substitution shall be approved in writing by the Seller only where there is a change to any of the Agreed Requirements (such approval not to be unreasonably withheld or delayed and a response provided within 20 Working Days of a request for approval and the Seller shall be deemed to have approved the change if it does not respond within this period).
- 8.6 If requested by the Buyer, the Seller shall enter into any Planning Agreement in its capacity as landowner provided that the Planning Agreement does not contain any obligation or restriction which has the effect that the Development no longer meets the Agreed Requirements and any liabilities of the Seller in the Planning Agreement:

- (a) being expressed to be dependent on the implementation of the Planning Permission; and
- (b) ceasing on disposal of the Seller's interest in the Property.

8.7 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.

8.8 The Buyer shall have discretion as to whether they wish to submit a planning appeal following a refusal of the Planning Application, but the contract shall expire if there is no appeal.

9. COSTS

Each party is responsible for its own legal costs in connection with the transaction.

Section B – Long Lease

Landlord: Brighton & Hove City Council

Tenant: CETZA 3 and CETZA 4

Term: 250 years

Rent: Peppercorn

Alienation/Assignment: the Tenant is not to assign, underlet, transfer, charge, share or part with possession of any part of the land, save that the Tenant shall be permitted to enter into Authorised Disposals until the development has been practically completed. After practical completion, the Tenant is free to deal with the Property as it sees fit and to assign, charge or underlet without the Council's consent provided that assignment of part is not permitted.

Alterations: the Tenant shall not make any alterations to the building which increase the height of the building by a further four storeys beyond the height of the building at the commencement of the lease.

Authorised Disposals: either the grant of an under lease to the purchaser of an individual residential unit, or the charging of the Property to a person, firm or company providing finance for the acquisition of the land and the construction of the

development or the grant of commercial leases at open market rent and on standard market terms.

Development Requirements: any development must be carried out in accordance with the Planning Permission and Section 106 Agreement, together with all other requisite consents.

Force Majeure:

- (a) the discovery of fossils or antiquities on or in excavating the Premises during the progress of the Development and any instructions issued in relation to them by the Landlord or any competent authority;
- (b) exceptionally adverse weather conditions (which shall mean weather conditions that occur on average less frequently than once in ten years at the Premises, assessed by reference to the Met Office's records);
- (c) fire, frost, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, epidemic, natural physical disaster, aircraft and other aerial devices or articles dropped therefrom;
- (d) physical obstructions in the ground at the Premises which would have been unforeseeable by a contractor experienced in carrying out works of a similar scope, complexity, value and nature to the Development;
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (f) the exercise by the United Kingdom Government of any statutory power which directly affects the execution of the Development;
- (g) except to the extent caused by the Tenant, any negligence, breach of contract, breach of statutory duty, breach of this Lease or other default by the Landlord or any person for whom it is responsible in connection with this Lease;
- (h) any delay arising in relation to rights of light;
- (i) epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions,

embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination, damage or destruction by an Insured Risk;

- (j) insolvency of the building contractor carrying out the Development;
- (k) preparation and submission of a new planning application and receiving planning permission for rebuilding following damage or destruction of the Development prior to practical completion;
- (l) except to the extent caused by the Tenant, any denial of use of, failure or shortage of power, fuel or transport and/or non-availability of labour, materials and/or plant and equipment to complete the Development in accordance with the Planning Permission which endures for a longer period than 4 hours in any 24 hour period;
- (m) any delay caused by the carrying out of work by any statutory undertaker, utility company, service provider or other entity discharging the rights and obligations of a statutory undertaker or utility company of work in pursuance of statutory obligations in relation to the Development and/or the carrying out of any work by any statutory undertaker or utility company or service provider or other entity in relation to the Development, or the failure to carry out such work or provide services.

Forfeiture: the Landlord shall be entitled to forfeit the lease if (1) there shall be a material breach, non performance or non observance of the terms of the lease which the Tenant shall fail to remedy within a reasonable period of time from service of a written notice specifying the same,

Longstop Date: five (5) years from the date of the Lease, extendable by Force Majeure and by agreement between the parties.

Landlord's Options to break:

Where the Tenant has not completed the building works (and received a certificate of practical completion in respect of the works) by the Longstop Date (subject to Force Majeure) the Landlord may by written notice break the lease.

In compensation for exercising either option the landlord shall pay to the tenant a sum being the lesser of: (1) the value of the site on the date on which the Option to Break notice is served or (2) the Premium.

Permitted Use: the lease will include a covenant by the Tenant, which will restrict the use of the property to a minimum of 3000 sq m of lettable B1 employment space and a minimum of 200 residential units and ancillary amenity space.

Premium: [Redacted] – this will be the premium (together with any adjustment) as calculated pursuant to the agreement for lease.

Indemnity: the Tenant will indemnify the Landlord against all claims, demands and liabilities arising from the use or occupation of the land, or its condition, or any breach by the Tenant of the provisions of the lease.

Planning: the Tenant is responsible for the discharge of all planning conditions and technical consents.

Property: the land edged red on the plan attached to the Agreement for Lease, with common rights of access (where applicable) as hatched in blue on the plan attached to the Agreement to Lease/Variation.

Rights Reserved and Granted: A right for the Tenant to carry out development works

Legal Costs: the Tenant to pay all of their own legal costs in connection with completing the Lease on completion of the Lease.

Pre-Emption Right: the Tenant is granted a right of first refusal should the Landlord wish to sell the freehold of the Property. The Landlord must first offer to dispose of the Property to the Tenant at the price it wishes to sell it for. If the Tenant fails to accept the offer within 20 working days the Landlord may then dispose of it on the open market at no less than 80% of the offered price provided that completion of the sale takes place within 6 months of the expiry of the 20 working day period.

