

UK-PRove01

Overage agreement: seller version

This agreement is dated: [date]
It is made between [Company name]
of [address] (the “Seller”)
and [name]
of [address] (the “Buyer”)

These are the terms of the agreement

1. Definitions

These definitions apply unless the context :

“Assessment Date” means the date when payment is due by the Buyer to the Seller

“Base Value” means the Market Value of the Land and any building on its immediately before Permission is granted on the assumption that there is no

“Deed of Covenant” means a deed of covenant with the prospective transferee containing covenants in the same terms as those given by the Buyer in

“Development” means any development of the whole or any part of the Land, that increases the

“Expenditure” means any fees and charges reasonably and properly incurred by

“Increased Value” means the Market Value of the Land as at the date of, and with the benefit of, a Permission, assuming that the Land has the benefit of whatever rights are

| | |
|---------------------------|--|
| “Land” | means [full address and description, example: 2.4 acres of grazing land on the 3QE]. |
| “Market Value” | means the estimated price which should be agreed between a willing buyer and a willing seller, dealing at arm’s length, when both have full knowledge and information of all matters relevant to the value and the open market value |
| “Original Purchase Price” | means the sum £ [100,000] paid by Buyer to |
| “Overage Payment” | means the sum due on the Assessment Date and shall be calculated as: $(A - B) \times [50]\%$, = |
| “Overage Period” | means [25] years from and including |
| “Permission” | means outline OR detailed Planning Permission for Development |
| “Surveyor” | means an associate or fellow of the 5 |
| “Transfer” | means a disposition of the Land as defined in 205 1925 27 (2) 2002 . |
| “Trigger Event” | means either the grant of Permission 2 |

2. Interpretation

Unless the context clearly requires otherwise,

2.1. A reference to one gender shall include any or

2.2. A reference to a person includes a ,

2.3. A reference to a person includes reference to that person's successors, legal representatives,

2.4. Any agreement by either party not to do or

2.5. In this agreement Permission, Development and material operations ()

1990 .

2.6. A reference to an act or regulation

2.7. All money sums mentioned in this agreement (" "),

3. The basic contract

- 3.1. After entering into this agreement the Buyer must:
- 3.1.1 upon each Assessment ,
;
 - 3.1.2 inform the Seller about each Trigger Event;
 - 3.1.3 not Transfer
;
 - 3.1.4 upon written request by the Seller [not more than once in every twelve months]
;
 - 3.1.5 If the Buyer makes any default as required in last
-
[
].
- 3.2. The Buyer undertakes to provide to the Seller all information coming into his knowledge , ,
, .
- 3.3. The Buyer shall permit the Seller and its
.

4. Overage Payment: payment terms

- 4.1. Upon happening of any Trigger Event
,
- 4.2. The Assessment Date shall be the later of:
- 4.2.1 [60]
;

4.2.2 [30] days after

4.3. [An Overage Payment shall be

].

4.4. In calculation the Overage Payment,

4.5. Insofar as an Overage Payment has been paid in respect of
Permission on all or part

4.6. If an Overage Payment is due on a second or subsequent grant of
Permission, and the land over which

4.7. The Buyer covenants with the Seller that he shall pay to the Seller
interest at the

[]%

4.8. The Buyer covenants that he will:

4.8.1 supply the Seller with a copy of any planning application and

7

:

4.8.2 supply the Seller with a copy

7

4.9. The benefit of the Buyer's covenant

()

5. The Overage Payment: Surveyor's valuation

- 5.1. If the Buyer and the Seller fail to agree on
[30]
- 5.2. The Seller shall provide to the Buyer
- 5.3. The Buyer shall select any one of them
- 5.4. The instructions to the Surveyor shall provide for each party to be able to
- 5.5. The instruction to the Surveyor shall provide that he shall act as
- 5.6. Before the Surveyor submits his report,
“
”
- 5.7. The Buyer and the Seller shall be jointly and severally liable to pay the
- 5.8.
- 5.9. If the Buyer or the Seller pays the whole sum due by both

6. Registration of restriction

6.1.

6.2.

7. Buyer's obligations to preserve Seller's rights

7.1.

7.1.1

7.1.2

6.2

8. Release to enable Transfer

8.1.

8.2. The above promise is conditional on:

8.2.1

;

8.2.2

()

9. Seller's costs

][

[]

9.1. each Deed of Covenant;

9.2.

;

9.3. the Seller granting written consent to each Transfer.

9.4.

9.5.

10. Indemnity

10.1. the Buyer's breach of this agreement;

10.2.

;

10.3.

11. Miscellaneous matters

11.1.

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11.2.

11.3.

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11.4.

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11.5.

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11.8.

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11.9.

11.10.

It shall be deemed to have been delivered:

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72 ;

- : 24 .[

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11.11.

11.12.

11.13.

11.14.

11.15. ,

Signed by Seller [name]

Signed by the Buyer [name]

OR

/ [] []
[] .

Signed by [personal name] on behalf of [the Buyer] as its / his representative who personally accepts liability for the proper authorisation by [the Buyer] to enter into this agreement.

Explanatory Notes:

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General notes:

Powerful terms favour the seller.

This agreement is extremely favourable to the seller. If you are the seller, do not be surprised if the buyer seeks to edit it. We mention this because you may decide that you do not need some of the stronger provisions. It is sensible to avoid a

Paragraph specific notes:

Drafting notes following the numbered paragraphs

1. Definitions

You should first decide on the contents of the document, then return to check what definitions are needed and whether they really

By all means use the find /replace function in your word processor to change the defined terms. If you do change a defined term, make sure

Remember too, that when a word or phrase is defined, the defined meaning capitalised, takes precedence over the common meaning of that word or phrase. It is essential

2. Interpretation

Leave these items in place unless there is a good reason to edit or remove. Each of these items has been carefully considered

3. The basic contract

This is the basic agreement.

4. Overage Payment: payment terms

This is the essence of the agreement. Note that the definition of base value gives no credit for any expense by the buyer in achieving the

5. The Overage Payment: Surveyor's valuation

We provide here a sensible and precise procedure for calculation of the overage payment. Of course, this will

6. Registration of restriction

Registration is important for the seller. He should attempt to register this document. If the agreement is registered, a later buyer of the land will buy subject to it. However, depending on the

If the agreement is not registered it will be far more difficult for the seller to control future entitlement to overage. If a future buyer failed to inform the present seller of a successful application, there would be no mechanism whereby he could discover that money was due to him. To

7. Buyer's obligations to preserve Seller's rights

We have set up the present buyer to be responsible for

However, if the buyer's buyer fails in future to pay overage, the present seller is likely to be successful in a claim against ?

“ ”

,

If we assess this point practically, we have drawn the agreement in the strongest

8. Release to enable Transfer

See

9. Seller's costs

There is no

10. Indemnity

We suggest no edits.

11. Miscellaneous matters

A number of special points. We have identified each of these as important to

End of notes