

DATED _____ 20

BRB (RESIDUARY) LIMITED

- and -

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DRAFT

SALE CONTRACT

- for -

property off Ashdown Road, Bexhill, East Sussex

THOMAS EGGAR LLP

76 Shoe Lane
London
EC4A 3JB

Reference: PPG/0561-38030259

15/04/2010

Contract Date :
Completion Date : In accordance with Paragraph 3.7 of the Schedule and pages 5 and 12
The Seller : **BRB (RESIDUARY) LIMITED**
Buyer :
Seller's Surveyor's Fees : £ together with value added tax
Seller's Solicitor's Costs : £ together with value added tax

IT is agreed between the Seller and the Buyer as follows:

1. **Definitions**

In this contract:

- 1.1. "Transfer" means the attached form of transfer which forms part of this contract
- 1.2. "the Property" means the property which is described as being transferred under the Transfer
- 1.3. "the Purchase Price" means the price for which in the Transfer the Property is stated to be sold
- 1.4. "Completion Date" is as given above
- 1.5. "the General Railway Sale Conditions" means the conditions so headed in this contract
- 1.6. "the Standard Conditions" means the Standard Conditions of Sale (Third Edition)
- 1.7. "Deed of Covenant" means the attached form of covenant which forms part of this Contract whereby the Buyer covenants with Network Rail Infrastructure Limited in respect of obligations in the demarcation agreement referred to in the Schedules to the Transfer

1.8. words and expressions defined in the Standard Conditions shall (where the context admits and subject to the terms of this contract) bear the same meanings here

2. **Sale**

The Seller will sell and the Buyer will buy the Property for the Purchase Price subject to the General Railway Sale Conditions for completion on the Completion Date and the interest(s) in the Property to be sold shall be as described in the Transfer

3. **Conditions**

This contract also incorporates the Standard Conditions and where there is any conflict between the Standard Conditions and the remainder of this contract then the latter prevails

4. **Conditionality**

This Agreement is conditional upon the Buyer obtaining an Acceptable Planning Permission in accordance with the term of the Schedule hereto

5. **Deed of Covenant**

At completion of the Transfer the Buyer shall execute and deliver to the Seller the Deed of Covenant which shall be completed with the Transfer. In the event that Railtrack's Land (as defined in the relevant demarcation agreement) or any part has been disposed of the name of the covenantee in the Deed of Covenant shall be amended accordingly

6. **Costs**

In addition to the Purchase Price the Buyer will upon completion pay the Seller's Surveyor's fees and the Seller's Solicitor's costs in connection with this sale in the amounts specified above

AS WITNESS the hands of
and

duly authorised on behalf of the Seller
duly authorised on behalf of the Buyer

THE SCHEDULE

1 Definitions

In this Schedule:

- 1.1 **"Acceptable Planning Permission"** means a Planning Permission for the Development not imposing any Onerous Conditions
- 1.2 **"Appeal"** means a reference to the Secretary of State pursuant to Section 77 of the Planning Act or an appeal to the Secretary of State in accordance with Section 78 of the Planning Act against a Planning Refusal
- 1.3 **"Development"** means the development of the Property for residential purposes within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended comprising not less than [] Residential Units (or such lesser number as the Seller and the Buyer shall agree both acting reasonably)
- 1.4 **"End Date"** means the date that is [] months from the date hereof
- 1.5 **"Leading Counsel"** means the Leading Counsel identified in accordance with Paragraph 3.5.1.2 of this Schedule
- 1.6 **"Onerous Condition"** means a condition obligation or restriction regulating the Development or the use of the Property imposed in any Planning Permission or required as an obligation by agreement to be entered into pursuant to Section 106 (1) of the Planning Act or an Agreement pursuant to Sections 38 and/or 278 of the Highways Act 1980 or and/or Section 104 of the Water Industry Act 1991 or any other statutory power which:
 - 1.6.1 imposes any requirement for planning gain beyond that which is lawful and/or

- 1.6.2 prevents the Development being completed substantially in accordance with the proposals shown in the Planning Application and/or
 - 1.6.3 prevents the Development being completed without the agreement or co-operation of an independent third party which cannot be obtained at a reasonable cost or which cannot be obtained within a reasonable time
 - 1.6.4 authorises the use permitted for a limited period only
 - 1.6.5 limit or qualify the identity of the occupier of the Development other than in relation to the affordable housing element
 - 1.6.6 restricts or materially delays the implementation of the Development pending any archaeological investigation which is in all the circumstances unreasonable and/or
 - 1.6.7 be materially detrimental to the implementation and completion of the Development in an economic and efficient manner
 - 1.6.8 [requires more than []% of the Development to be on-site affordable housing]
 - 1.6.9 any other condition which the Buyer and the Seller acting reasonably consider to be ultra vires the local planning authority or the imposition of which would otherwise be unlawful
- 1.7 **“Planning Act”** means the Town and Country Planning Act 1990 and includes any statute amending or replacing that Act and any Order Regulation or Direction made by the Secretary of State pursuant to the powers contained in the Planning Act

- 1.8 **"Planning Application"** means an application or applications for planning permission for the Development of the Property in the form to which the Seller shall have given approval pursuant to Paragraph 3.1 below
- 1.9 **"Planning Permission"** means a planning permission issued and permitting the Development whether granted by the local planning authority or by the Secretary of State on Appeal
- 1.10 **"Planning Refusal"** means:
- 1.10.1 an actual refusal of an application pursuant to the Planning Application or
- 1.10.2 on the grant and issue of planning permission for the Development subject to Onerous Conditions or
- 1.10.3 a deemed refusal of such application under Section 78b (2) of the Planning Act **BUT** so that the Buyer shall be entitled (acting reasonably) after such deemed refusal to extend the usual period of 8 weeks to a further 16 weeks in order to negotiate an Acceptable Planning Permission provided that if it becomes or ought to have become reasonably apparent that it will not be able to negotiate an Acceptable Planning Permission in such period it shall determine whether or not to appeal against deemed refusal and thereafter to pursue such appeal in accordance with clause 3.5 hereof
- 1.11 **"Residential Unit"** shall mean an individual unit (whether house flat bungalow maisonette studio apartment or otherwise) designed for private residential occupation
- 1.12 **"the Secretary of State"** means the Secretary of State for the Environment or such other minister or authority for the time being having

or entitled to exercise the powers conferred by Sections 77 78 and 79 of the Planning Act

2 **Conditions Precedent**

2.1 The sale of the Property is conditional upon the grant and issue of the Acceptable Planning Permission on or before the End Date

2.2 If the sale of the Property has not become unconditional in terms of the condition in Paragraph 2.1 above on or before the End Date or if there is a Planning Refusal sooner (subject always to extension under Paragraph 1.10.3 above) then unless the Seller agrees to extend the End Date this agreement automatically comes to an end either on the End Date or upon the relevant Planning Refusal (subject always to extension under Paragraph 1.10.3) together with all obligations under it except that:-

2.2.1 this shall be without prejudice to any liability for earlier breach of obligation and

2.2.2 the Buyer shall without expense to the Seller forthwith cancel any registration of this contract (including any notice caution or land charge entry) and shall return the abstract of title to the Property and other papers provided to it by the Seller and

2.2.3 the Seller shall refund to the Buyer the Deposit but without liability for interest and

2.2.4 the Buyer may not waive the condition in this Schedule

2.3 Notwithstanding that the sale of the Property is stated to be conditional the rights and obligations of the parties under this Paragraph 2 and Paragraphs 3 and 4 shall have immediate effect.

3 **Satisfaction of Planning Condition Precedent**

- 3.1 The Buyer shall so far as it has not already so done within 20 working days of the date hereof submit a Planning Application to the Seller (addressed to its Agent, Lambert Smith Hampton Limited of United Kingdom House, 180 Oxford Street, London W1D 1NN marked for the attention of David Gent, by recorded delivery) and for approval (such approval not to be unreasonably withheld or delayed and if not approved within 15 working days thereafter the same shall be deemed to be approved but if substantive reasons are given for disapproval then the Buyer shall repeat such process as often as may be necessary and within 5 working days after such approval or deemed approval the Buyer shall submit the Planning Application (which may be in duplicate) to the local authority and in the joint names of the Buyer and the Seller unless the application relates additionally to other land not in the Seller's ownership and the Buyer shall thereafter then diligently pursue such application and use all reasonable endeavours to obtain an Acceptable Planning Permission prior to the End Date **AND** for the avoidance of doubt the Buyer shall be entitled to amend or vary the Planning Application or make another Planning Application in order to obtain an Acceptable Planning Permission (subject as aforesaid)
- 3.2 In conducting discussions or negotiations with the local planning authority the Buyer will keep the Seller reasonably informed of all applications the progress of the applications correspondence meetings negotiations proposals and proceedings and have due regard to (but not be bound by) the reasonable requirements of the Seller
- 3.3 The Buyer shall without expense to the Seller furnish the Seller with copies of all notices received or given in respect of such applications and the planning permission generally and with copies of all drawings employed in relation to such applications

3.4 The Buyer shall within 5 working days of receipt of the Planning Permission notify the Seller of the result, send a copy of it to the Seller and state in writing to the Seller whether or not the permission in its view constitutes the Acceptable Planning Permission and if the Buyer considers that it does not then such statement shall include the Buyer's reasons for its views Provided always that if the Buyer fails to comply with such requirement within ten working days of the issue of the Planning Permission the Seller may (but is not required to) by notice in writing to the Buyer elect to treat the Planning Permission either as an Acceptable Planning Permission or not but an election by the Seller to treat such permission as an Acceptable Planning Permission shall not imply that implementation of the permission is acceptable for the purposes of the Transfer

3.5 In the event of a Planning Refusal (save in respect of a deemed refusal/non-determination in which event the Buyer shall be entitled to Appeal without reference to the Seller)

3.5.1 the Buyer and the Seller shall seek to agree within 21 days after the Planning Refusal (subject to extension as provided in Paragraph 1.10.3 above)

3.5.1.1 the form and content of instructions to be referred to Leading Counsel pursuant to Paragraph 3.5.2 below

3.5.1.2 the identity of the Leading Counsel to whom those instructions are to be referred

And any dispute on either matter shall on the application of either the Seller or the Buyer to be made at any time after the expiry of the period of twenty working days from the date of the Planning Refusal be referred to the decision of the expert pursuant to Paragraph 4 hereof

- 3.5.2 As soon as reasonably practicable after the identity of Leading Counsel and the form and content of the said instructions have been agreed or determined in accordance with the provisions of Paragraph 3.5.1 above the Seller and the Buyer shall instruct jointly Leading Counsel (at the cost of the Buyer) to advise whether an Appeal against the Planning Refusal would have no less than a fifty per cent (50%) chance of achieving an Acceptable Planning Permission
- 3.5.3 In the event that the opinion obtained from Leading Counsel is to the effect that an Appeal against the Planning Refusal would have more than a fifty per cent chance of achieving an Acceptable Planning Permission then the Buyer shall appeal against the Planning Refusal in accordance with Paragraph 3.5.4 below
- 3.5.4 In the circumstances referred to in Paragraph 3.5.3 the Buyer shall:-
- 3.5.4.1 appeal against a Planning Refusal of the Application at its own expense within the time limit prescribed by the Planning Act for lodging such an Appeal (but as soon as practicable)
 - 3.5.4.2 prosecute the Appeal with all due diligence and in a good and efficient manner
 - 3.5.4.3 keep the Seller reasonably informed with respect to the Appeal including all correspondence, notifications, instructions to and advice of Leading Counsel, and evidence of expert and other witnesses, the dates of any inquiry, hearing or for the submission of written representations and

- 3.5.4.4 allow the Seller and any surveyor solicitor and/or planning consultants nominated by it to attend at conferences with Leading Counsel and other relevant meetings and to make representations (after prior notice to the Buyer (approval thereof not to be unreasonably withheld or delayed)) as are appropriate to protect the Seller's retained land (if any)
- 3.5.5 (Subject to the Buyer first advising the Seller of the opinion so received and providing copies of a written opinion to that effect from Leading Counsel) the Buyer may at any time during the progress of an Appeal withdraw the Appeal if the Buyer receives an opinion from Leading Counsel that the Appeal will have less than a fifty per cent (50%) chance of success and this Agreement shall automatically come to an end ten working days from the withdrawal of the Appeal at which time the Deposit shall be repaid to the Buyer without interest less such amount as is payable pursuant to the Deed of Release)
- 3.5.6 In the event that the opinion of Leading Counsel is to the effect that an Appeal against the Planning Refusal concerned would have less than a fifty per cent chance of achieving an Acceptable Planning Permission then this Agreement shall come to an end twenty working days thereafter (and the Deposit refunded without interest unless the Buyer within such period by notice in writing to the Seller elects to complete the purchase of the Property)
- 3.6 If necessary in relation to the obtaining of the Acceptable Planning Permission the Seller shall at the request and cost of the Buyer enter into any agreement or agreements relating to the Property required by the relevant planning authority pursuant to Section 106 of the Planning Act

1990 or Sections 38 and 278 Highways Act 1980 or Section 104 Water Industry Act 1991 and/or any other statutory powers Provided always that the Seller shall not be obliged to enter into any agreement

3.6.1 which relates also to any land of the Seller other than the Property or

3.6.2 which is ultra vires the Seller or

3.6.3 which would result in any continued liability on the part of the Seller after the disposal of the Property or the relevant part of it (unless the Buyer shall have given supported by such security as the Seller shall reasonably require in respect of such indemnity an indemnity to the Seller in respect of such liability and anything resulting therefrom for which the Seller would be liable)

3.6.4 which would or might result in the incurral by the Seller of any costs or expenditure unless the Buyer shall be willing to and shall indemnify the Seller and if requested the Buyer shall first provide the Seller with funds (in cash or by bank bond or bank guarantee) to meet this

3.6.5 which in the opinion of the Seller (acting reasonably) might substantially prejudice or affect the present or future use or development of any retained land of the Seller or materially increase the cost of maintenance of any works of the Seller thereon or

3.6.6 which might have the effect of removing any control the Seller might otherwise be able to exercise over the use and development of adjoining or neighbouring land not in the Seller's ownership or

- 3.6.7 under which the obligations contained in the Statutory Agreement shall operate before the Acceptable Planning Permission is implemented
- 3.6.8 **PROVIDED ALWAYS** that nothing in this Paragraph 3.6 shall oblige the Seller to enter into any planning obligation by way of a unilateral undertaking in favour of the local planning authority pursuant to Section 106 (2) of the Planning Act in relation to the Property which does not exclude the matters set out in Paragraphs 3.6.1 - 3.6.7 (inclusive) hereof unless the Buyer offers to the Seller a full and sufficient indemnity in respect of the costs and consequences of any such planning obligation
- 3.7 Completion of the sale and purchase hereby agreed shall be effected at the offices of the Seller's solicitors 20 working days after the later of
- 3.7.1 the grant of an Acceptable Planning Permission or
- 3.7.2 the determination by an expert whether a Planning Permission is an Acceptable Planning Permission or
- 3.7.3 the date when the Buyer waives its rights in respect of any Onerous Condition pursuant to Paragraph 3.9 below
- 3.8 The Buyer shall not apply for any planning permission other than for an Acceptable Planning Permission without the approval of the Seller (such approval not to be unreasonably withheld or delayed).
- 3.9 The Buyer may waive its right to treat a Planning Permission as a Planning Refusal because of the presence of any Onerous Condition by giving to the Seller written notice to that effect and the Planning Permission will then be deemed to be free of Onerous Conditions.

3.10 In the event of any dispute as to whether any condition sought to be imposed in a Planning Permission is an Onerous Condition or the question has not been agreed in writing within 10 working days from the grant of Planning Permission then (without prejudice to any other remedies subsisting) the Buyer or the Seller may refer the question to an expert for determination.

3.11 The Seller agrees:-

3.11.1 that it shall not object to cause or permit to be made on its behalf any objection to any Application made in accordance with the provisions of this contract by the Buyer or anyone on its behalf, and

3.11.2 that it will at the request and cost of the Buyer co-operate and give all such assistance and make such representation in relation to any such Application as the Buyer shall reasonably require; and

3.11.3 generally that it will use all reasonable endeavours at the request and cost of the Buyer to assist the Buyer to obtain an Acceptable Planning Permission;

4 **Expert Determination**

Where in this contract provision is made for the resolution of a dispute by an expert the following points shall apply:

4.1 The expert shall act as an expert and not as an arbitrator or quasi arbitrator.

4.2 The fees and expenses of an expert and any value added tax payable on them, including the cost of his appointment, are to be borne equally by the parties, who must otherwise each bear their own costs. If either party pays all the expert's fees and expenses the paying party may in default of

payment within 21 days of a demand to that effect recover half of them from the other party.

- 4.3 An expert must afford each of the parties an opportunity to make written representations to him and also an opportunity to make written counter-representations on any representations made to him by the other party but is not to be in any way limited or fettered by such representations and counter-representations and is to be entitled to reply on his own judgement and opinion. The expert shall give reasons in writing for any decision.
- 4.4 If an expert dies or refuses to act or becomes incapable of acting or if he fails to publish his determination within 2 months of the date on which he accepted the appointment, either party may apply to the President for the time being of the Royal Institution of Chartered Surveyors to discharge him and appoint another in his place.
- 4.5 The expert shall be an independent valuer appointed by agreement between the parties or, in the absence of agreement within 14 days of one of them giving notice to the other of their nomination, nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of either party.

Signed

For the Seller

Signed

For the Buyer

GENERAL RAILWAY SALE CONDITIONS

1. Value Added Tax

ALL sums payable by the Buyer under this contract in consideration of any taxable supply (including payments of or towards fees and costs) shall be paid by the Buyer together also with value added tax where applicable (whether or not expressly mentioned elsewhere in this contract)

2. Deposit

THE Buyer shall pay the deposit to the Seller's Solicitors as Stakeholders and any limitation in the Standard Conditions in the period after notification of dishonour of a deposit cheque within which the Seller may discharge this contract shall not apply

3. Interest

THE contract rate is 4% above the base lending rate from time to time of The Royal Bank of Scotland plc and notwithstanding anything contained in the Standard Conditions if the purchase shall not be completed on the Completion Date then

3.1. completion shall be without prejudice to the rights of either party to recover from the other damages for delay in fulfilling obligations under this contract

3.2. interest shall only be payable as provided below

3.3. if the purchase shall not be completed on the Completion Date the Buyer shall pay interest on the remainder of the Purchase Price at the contract rate from and including that date until the purchase shall actually be completed provided that

3.3.1. such interest will not be payable so long as or to the extent that delay in completion is attributable to any act or default of the Seller

3.3.2. this shall not affect the Seller's right to receive income from the Property for this period

4. Title

THE following provisions apply to title:

4.1. Title to the Property is registered with freehold title absolute under title number and proof of title shall be in accordance with the Standard Conditions

4.2. The Buyer shall assume without evidence that the Seller has full power to sell and convey the Property to the Buyer

5. **Matters subject to which the Property is sold**

THE Property is sold subject to and (where applicable) with the benefit of the matters and upon the terms set out in the Transfer and

5.1. save as so specified the Property is sold free from incumbrances and vacant possession shall be given on completion

5.2. if the Property is sold subject to the existence of any electricity cables or other apparatus of electricity undertakers then the Buyer shall make his own arrangements with the undertakers after completion

5.3. if the Property is sold subject to existing leases or tenancies the Buyer will notwithstanding completion of the sale take or join in such actions claims and proceedings as the Seller shall desire in order to seek recovery of any sum or sums of money that may be due to the Seller on account of rent service charge insurance premium or otherwise the Seller nevertheless indemnifying the Buyer against any legal costs occasioned by this

5.4. notwithstanding the Standard Conditions no rights shall be granted over or reserved for the benefit of the retained land of the Seller other than as may be expressly provided in the Transfer

6. **Errors Misstatements or Omissions**

THE Buyer shall be treated as purchasing subject to his acknowledgement that this contract is not entered into in reliance upon any representation (whether written or oral) made by or on behalf of the Seller but not contained in this contract or in replies to preliminary enquiries made of the Seller by the Buyer or his solicitor and it is agreed that this contract represents the entire contract between the Seller and the Buyer and any term not incorporated in this contract shall (without prejudice to any status which it may enjoy as a collateral contract) be treated as of no effect

7. **The Transfer**

THE title guarantee (if any) with which the Seller sells is as specified in the Transfer and

7.1. the Buyer shall execute and deliver to the Seller at completion a duplicate of the Transfer executed by the Buyer

7.2. the Seller shall not be required to execute more than one transfer of the Property and shall not be obliged to transfer it to anyone other than the Buyer

8. **Responsibility for Property**

THE provisions of the Standard Conditions in relation to responsibility for the Property pending completion shall not apply (including any right to rescind related to the physical state of the Property) and the Property shall be at the Buyer's risk as from the date of this contract and the Buyer shall make his own arrangements for insurance

9. **Acknowledgement by Buyer**

THE Buyer acknowledges that prior to the date of this contract:

9.1. the Buyer has been informed that the Property has been in railway use and that such use is capable of having resulted in the substantial presence of a range of pollutants at the Property as detailed in Department of the Environment Industry Profiles (1) Railway Land and (2) Engineering Works: Railway Engineering Works (both Crown Copyright, obtainable from the Department's Publications Sales Centre, Unit 21, Goldthorpe Industrial Estate, Goldthorpe, Rotherham S63 9BL);

9.2. the Buyer has been informed that the Property has previously been let to BP and such could have resulted in the substantial presence of pollutants at the Property

9.3. the terms of the sale of the Property, including as to price, take into account this capability;

9.4. the Buyer has been at liberty to carry out such soil and other tests as may be requisite in relation to the matters mentioned in 9.1 and 9.2 above for

the Buyer's purposes in assuming responsibility for the Property upon completion of this sale.

10. **Contracts (Rights of Third Parties) Act 1999**

This document gives no rights under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any rights which are available apart from that Act.

[form of transfer to be added]

[form of Deed of Covenant to be added]