

DATED



[REDACTED] FOXON (1)

DB SYMMETRY (HINCKLEY) LIMITED (2)

OPTION AGREEMENT

RELATING TO

FREEHOLT LODGE, HINCKLEY ROAD, SAPCOTE LEICESTERSHIRE LE9 4LH

spratt endicott
SOLICITORS

52 – 54 The Green, Banbury, OX16 9AB

TEL: 01295 204000

FAX: 01295 204080

E-MAIL: enquiries@se-law.co.uk

REF: AAW.113594.64

THIS AGREEMENT is dated

15th October

2017

PARTIES

- (1) [REDACTED] **FOXON** of Freeholt Lodge, Hinckley Road, Sapcote, Leicester LE9 4LH (the **Owner**); and
- (2) **DB SYMMETRY (HINCKLEY) LIMITED** incorporated and registered in England and Wales with company number 10885167 whose registered office is at 6th Floor, Lansdowne House, Berkeley Square, London, W1J 6ER (the **Developer**)

BACKGROUND

- (A) The Owner owns the Property and has agreed to grant the Developer an option to buy it in accordance with the terms of this Agreement.
- (B) The Developer wishes to promote the Property and apply for a Development Consent Order for the Proposed Development on (inter alia) the Property.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions in this clause apply in this Agreement.

Act of Insolvency means

In relation to a party which is a company or a partnership or if more than one company and/or partnership then any one of them:

1. the making of an administration order; or
2. the appointment of an administrator; or
3. the appointment of a receiver or manager or an administrative receiver in relation to any property or income; or
4. the commencement of a voluntary winding-up, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies; or
5. the making of a winding-up order; or
6. the party otherwise ceasing to exist;

The paragraphs above shall apply in relation to a partnership or limited partnership (as defined in the Partnership Act 1890 and the Limited Partnerships Act 1907 respectively) subject to the modifications referred to in the Insolvent Partnerships Order 1994 (*SI 1994/2421*) (as amended), and a limited liability partnership (as defined in the Limited Liability Partnerships Act 2000) subject to the modifications referred to in the Limited Liability Partnerships Regulations 2001 (*SI 2001/1090*) (as amended).

In relation to a party who is an individual or if more than one individual then any one of them:

1. a voluntary arrangement is proposed and/or an interim order is applied for; or
2. a bankruptcy petition is presented or he is adjudged bankrupt or a trustee in bankruptcy is appointed; or
3. a receiver is appointed (including any such appointment over any assets of the Tenant or the guarantor); or
4. the individual shall be unable to pay his debts or be otherwise insolvent or be deemed to be so; or
5. the individual applies for a debt relief order or an interim receiver is appointed; or
6. a bankruptcy restriction order or undertaking or a debt relief order or undertaking is made or given;

Act of Insolvency includes any analogous proceedings or events that may be taken pursuant to the legislation of another jurisdiction in relation to a party incorporated or domiciled in such relevant jurisdiction.

Application means an application for a Development Consent Order by the Developer.

Completion Date means the later of either the date 4 weeks after the date of service of an Option Notice or the date on which the Price is agreed or determined pursuant to this Agreement or such other date as may be agreed by the parties.

Developer's Conveyancer means Spratt Endicott of 52-54 The Green, Banbury, Oxon OX16 9AB (ref: AAW.113594.64)

Development Area means the area comprised in the Development Consent Order.

Development Consent Order means either a development consent order or on appropriate planning permission for the Proposed Development

Expert means an independent chartered surveyor of not less than 20 years relevant experience appointed pursuant to clause 19

Land Payments [REDACTED]

Option means the option granted by the Owner to the Developer by this Agreement.

Option Notice means written notice exercising the Option in the form set out in Schedule 1 to this Agreement.

Option Period means the period of [REDACTED]

Option Sum means the sum of [REDACTED]

Owner's Agent [REDACTED]
[REDACTED]

Owner's Conveyancer [REDACTED]
[REDACTED]

Part 1 Conditions means the conditions in Part 1 of the Standard Commercial Property Conditions (Second Edition) and **Condition** means any one of them.

Part 2 Conditions means the conditions in Part 2 of the Standard Commercial Property Conditions (Second Edition).

Plan mean the relevant plan annexed to this Agreement being:-

- Plan 1 showing the Property
- Plan 2 showing the proposed Development Area

Planning Challenge shall mean any application or challenge including call-in, statutory challenge or judicial review to any court government department or body of competent jurisdiction concerning the grant or refusal of any Development Consent Order

Planning Obligation means a statutory obligation that (having regard to the Developer's obligations contained in clause 3 in the Developer's reasonable opinion) is necessary for or is reasonably required in either:

- (a) the obtaining of a Development Consent Order; or
- (b) the carrying out of the Proposed Development;

including an obligation under section 106 of the Town and Country Planning Act 1990, sections 38 or 278 of the Highways Act 1980 or section 104 of the Water Industry Act 1991.

Property means the freehold property in the ownership of the Owner known as Freeholt Lodge, Hinckley Road, Sapcote, Leics LE9 4LH shown more particularly delineated in red on Plan 1 and being the property registered at the Land Registry with title absolute under title number LT264055.

Proposed Development means the development of the Property, the Development Area or any part of the Development Area and any adjoining property as a strategic rail freight interchange together with uses within either of Use Classes B2 or B8 of the Town and Country Planning (Use Classes) Order 1987 together with ancillary B1 use.

Purchase Price (or Price) means [REDACTED]

[REDACTED]

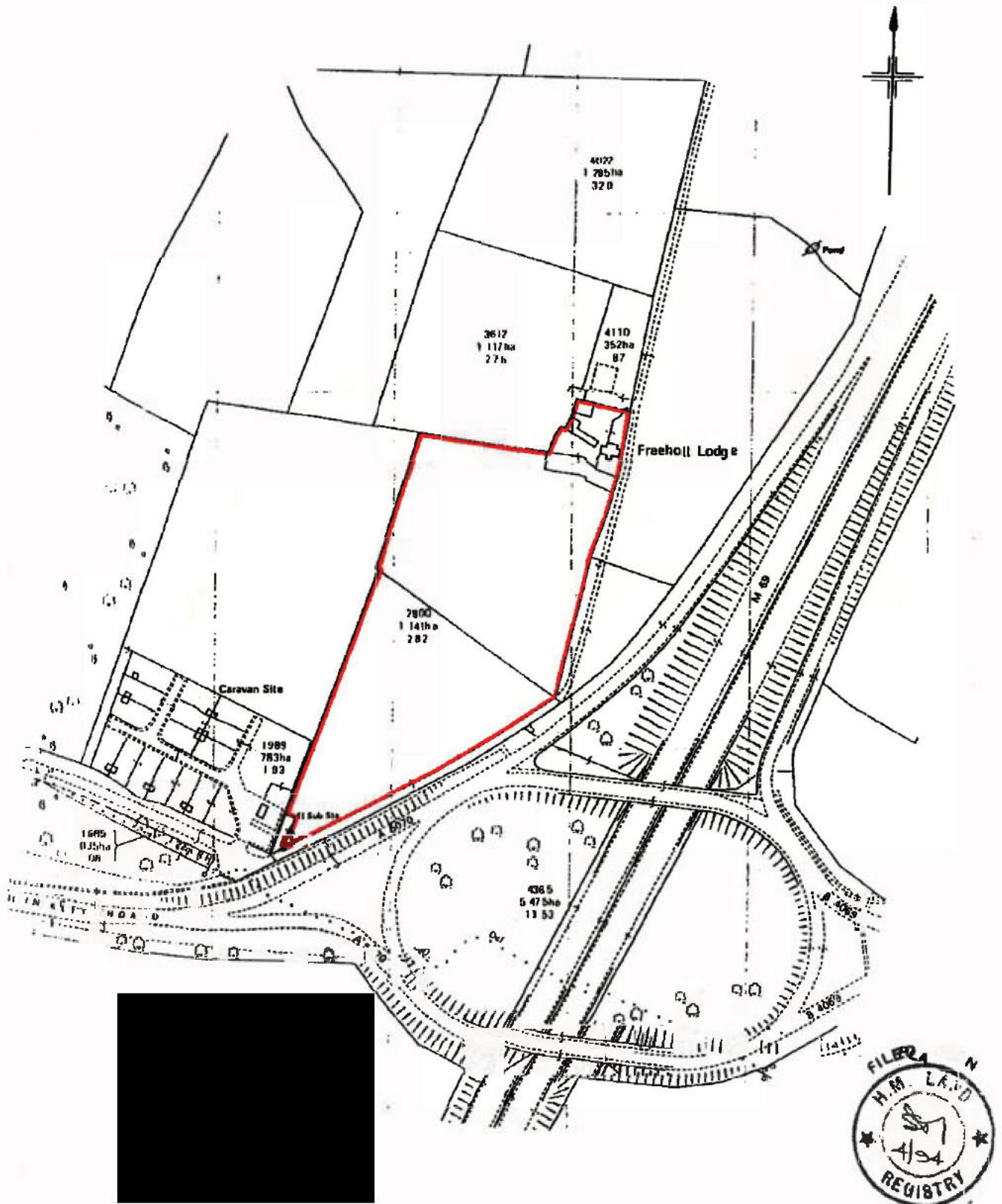
[REDACTED]

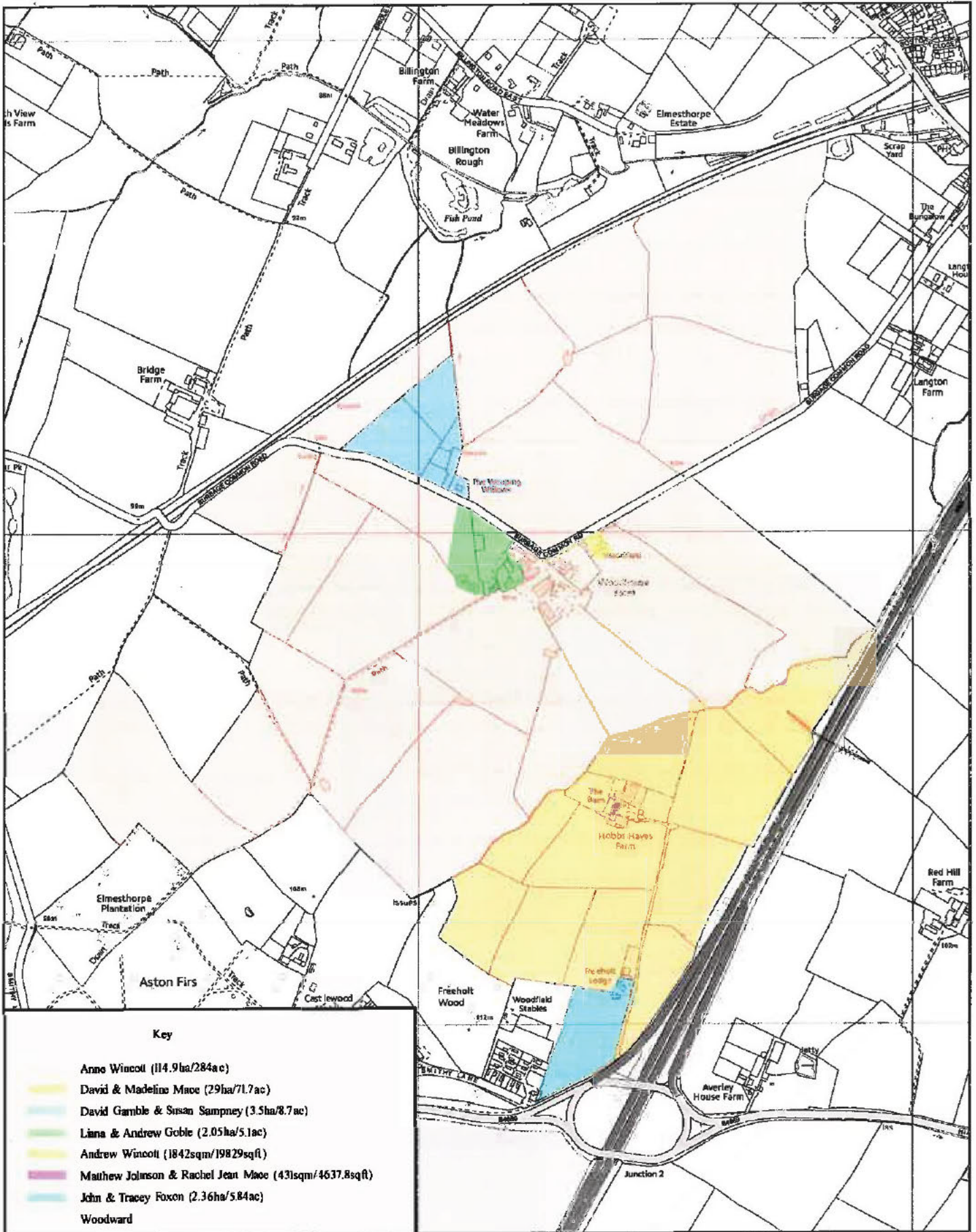
Railhead Property means the part of the Development Area to be developed as a railhead forming part of the Proposed Development being a large multipurpose freight interchange and distribution centre linked into both the rail and trunk road system to include handling facilities to load and unload containers from freight trains with supporting hard standing yard areas for storing containers.

Today the date of this Agreement

PLAN 1

H.M. LAND REGISTRY		TITLE NUMBER	
		LT204055	
ORDNANCE SURVEY PLAN REFERENCE	SP4693 SP4694		Scale 1/2500
COUNTY LEICESTERSHIRE	DISTRICT	BLABY	© Crown Copyright 1994





Hinckley West Ownership Plan

This plan is published for the convenience of the purchaser only. Its accuracy is not guaranteed and it is expressly excluded from any contract.

Scale
1:10,000
@ A4

db symmetry

Survey Vectormap
permission of
the Controller of HMSO
© Crown Copyright
Licence No. VA 100 033416

Drawing No. Q8698-01 Date 23.11.16

VAT means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Working Day means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday or is not considered to be a working day in the jurisdiction in which the Developer is incorporated.

- 1.2 The rules of interpretation in this clause apply in this Agreement.
- 1.3 Clause and Schedule headings do not affect the interpretation of this Agreement.
- 1.4 Except where a contrary intention appears, a reference to a clause or a Schedule is a reference to a clause of, or Schedule to this Agreement.
- 1.5 Unless otherwise specified, a reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 A **person** includes a corporate or unincorporated body.
- 1.7 **Writing** or **written** includes faxes but not e-mail.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 Any reference to the **Owner** or to the **Developer** includes their respective successors in title.

2. OPTION

- 2.1 On the date of this Agreement the Developer will pay

[REDACTED]

[REDACTED]

- 2.2

[REDACTED]

- 2.3 Until the expiry of the Option Period the Developer covenants and agrees not to commence the Proposed Development on either the land shown coloured pink or coloured orange on Plan 2 without first serving an Option Notice pursuant to this Agreement.

- 2.4 The Developer is entitled to assign the benefit of this Agreement.

3. PLANNING

- 3.1 The Developer shall keep the Owner regularly and reasonably informed as to the progress of its attempts to obtain a Development Consent Order.
- 3.2 The Owner will give all reasonable assistance to the Developer in trying to obtain a Development Consent Order at the Developer's cost.

4. PLANNING OBLIGATIONS

4.1 At the Developer's request, the Owner will promptly deduce title to the Property to the local planning authority or other relevant authority in connection with any proposed Planning Obligation.

4.2 The Developer shall keep the Owner reasonably informed of progress concerning the negotiation of any proposed Planning Obligation and shall take proper account of all reasonable comments made by the Owner.

4.3 [REDACTED]

4.4 The Owner will enter into any Planning Obligation immediately upon request by the Developer and will execute it as a deed provided that:

4.4.1 any liabilities in the Planning Obligation are expressed to be subject to the grant and implementation of the Development Consent Order; and

4.4.2 the Owner shall be relieved of all liability for the Planning Obligation after the Owner has parted with all interest in the Property or in the part to which it relates.

4.5 [REDACTED]

5. OWNER'S UNDERTAKINGS

5.1 The Owner undertakes that during the Option Period it will not:-

5.1.1 Object to the local planning authority or the Secretary of State or any authority carrying out an equivalent function against any Application submitted by the Developer; or

5.1.2 object or take part in any proceedings to challenge the decision of the Secretary of State in relation to the Development Consent Order for judicial review, or

5.1.3 do anything to hinder or obstruct the Developers in bringing a challenge to the refusal of the Application for the Development Consent Order, or

5.1.4 implement the Development Consent Order or do anything whereby the Development Consent Order could be construed as having been implemented.

5.2 The Owner undertakes that during the Option Period it will not:

5.2.1 submit any planning application in respect of the Property; or

5.2.2 grant any charge, easement, right, licence, tenancy or other encumbrance affecting the Property; or

5.2.3 release or surrender any easement, right, licence, tenancy or other benefit relating to the Property or any part

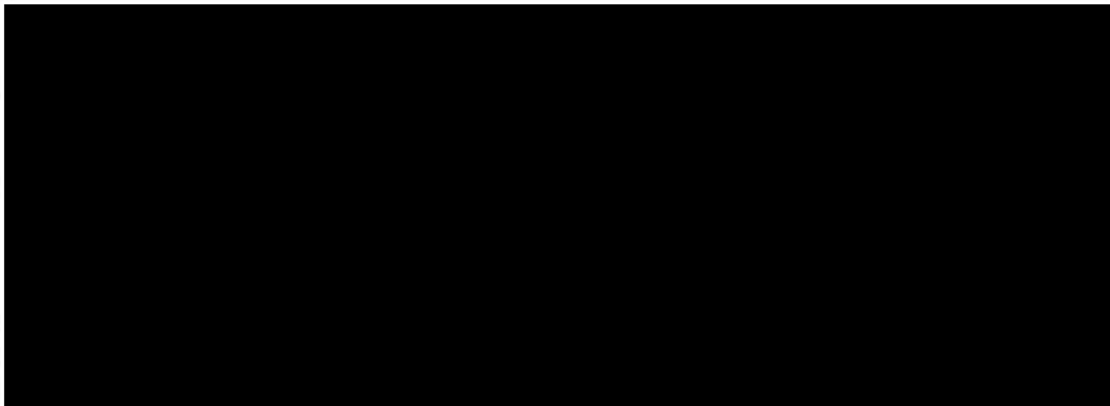
if to do so might prejudice any Application or otherwise be detrimental to the Proposed Development and/or Developer's obligations under this Agreement in relation to planning and

obtaining a Development Consent Order Provided Always that nothing shall prevent the Owner from submitting an application for, obtaining a consent for and constructing a building to be used for agricultural purposes on any part of the Property or any other land belonging to the Owner.

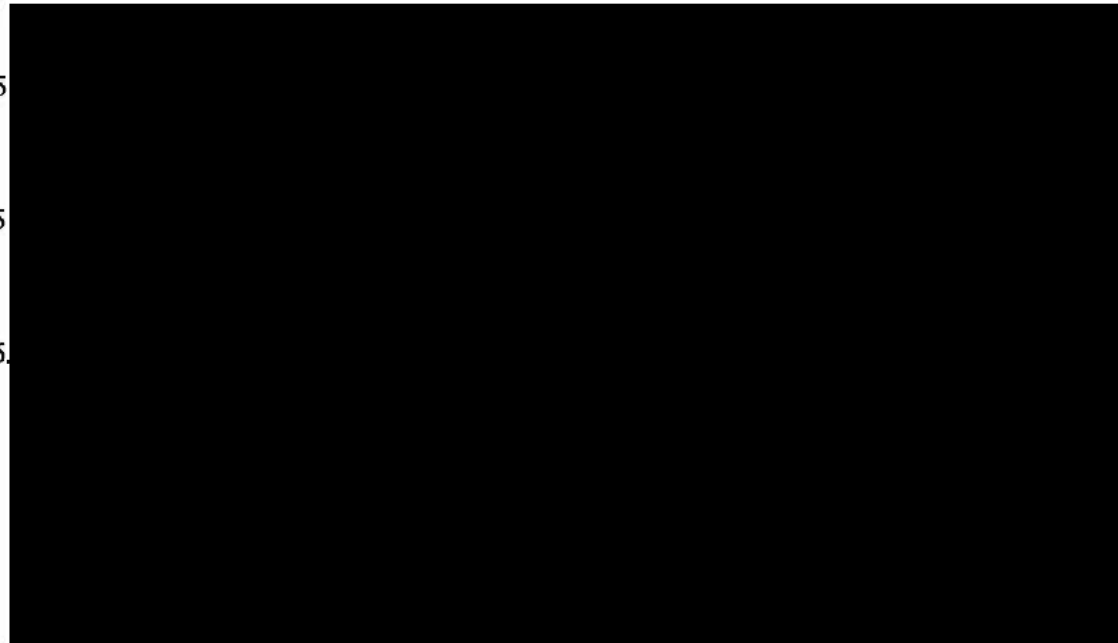
5.3 The Owner grants a licence for the Developer and its agents and contractors to enter the Property at all times during the Option Period, after giving not less than 14 days notice to the Owner, to carry out soil, water and environmental tests, inspections, archaeological trenching and surveys or any other investigations or works. The Developer will cause as little damage as reasonably possible and make good any damage caused to the Property as soon as reasonably practicable or otherwise pay fair and reasonable compensation for loss damage or interference with growing crops and/or livestock caused in the exercise of this licence and will provide reasonable notice to the Owner for the purposes contemplated together with a full risk assessment associated with the works contemplated and compliance with all statutory requirements including but not limited to health and safety.

5.4 The Owner will supply the Developer with a copy of any notice, correspondence or other written material which in the Buyer's opinion acting reasonably is likely to have an effect on the Proposed Development within five Working Days of receipt by the Owner

5.5



5.6



5.7 On a sale or transfer of the Property pursuant to clause 5.6.3 the Owner shall procure that prior to the completion of such sale the third party shall execute and deliver to the

Developer a deed of covenant in a form reasonably required by the Developer whereby the third party covenants to be bound by and perform and observe the provisions of this Agreement to be performed and observed by the Owner

5.8 The Owner shall notify the Developer immediately of becoming aware of any application to register all or part of the Property as a town or village green under the Commons Act 2006 and shall take all steps reasonably required by the Developer at the Developer's cost to defeat any such application

5.9 The Owner consents to the Developer and shall if required by the Developer assist the Developer in making an application for:

5.9.1 a unilateral notice; and

5.9.2 the entry in Land Registry Form RX1 of the following restriction upon the proprietorship register of title to the Property "No disposition of the registered estate, by the registered proprietor or by the proprietor of any charge not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by db symmetry limited or its conveyancer"

with such variations to the form of this wording as may be required to comply with any Land Registration Act requirements and the Owner will not apply to the Land Registry to cancel the notice while this Agreement subsists

6. TITLE DEDUCTION

The Owner's title to the Property has been deduced to the Developer before the date of this Agreement.

7. EXERCISE OF THE OPTION

7.1 The Developer may serve an Option Notice at any time during the Option Period in respect of the whole of the Property (and not in respect of part only of the Property) but the Option Notice shall only be valid if:

7.1.1 it is served upon the Owner or the Owner's Conveyancer in accordance with Clause 15;

7.1.2 it is served during the Option Period.

7.2 The Option Notice shall include the Developers calculation of the Price and any dispute concerning the price shall be referred to the Expert.

7.3

[REDACTED]

7.4 The Developer may and is entitled to nominate in such Option Notice a third party who shall enter into the transfer of the Property in its place.

E GUARANTEE

the Option is exercised in accordance with the terms of this Agreement the Owner will sell the Property to the Developer for the Purchase Price.

8.2 The Owner will sell the Property with full title guarantee.

9. CONDITIONS

9.1 Upon exercise of the Option, the Part 1 Conditions will be incorporated into this Agreement in so far as they:

9.1.1 apply to a sale by private treaty;

9.1.2 relate to freehold property;

9.1.3 are not inconsistent with the other clauses in this Agreement; and

9.1.4 have not been modified or excluded by any of the other clauses in this Agreement.

9.2 Upon exercise of the Option, the Part 2 Conditions will not be incorporated into this Agreement.

9.3 The following Conditions will not apply:

9.3.1 Conditions 1.1.4(a), 1.3, 1.4.3 and 1.5.2;

9.3.2 Condition 2.2;

9.3.3 Conditions 3.1.4 and 3.3;

9.3.4 Conditions 6.2 and 6.4.1; and

9.3.5 Condition 7.1.3.

10. VACANT POSSESSION

10.1 The Property will be sold with vacant possession on completion.

10.2 [REDACTED] Foxon agrees with the Owner and the Developer, in consideration of their entering into this agreement, that [REDACTED] Foxon concurs in the Option created by this Agreement and the Sale of the Property on the terms of the Agreement, undertakes to vacate the Property on or before the Completion Date and releases the Property and any included fixtures and contents from any right or interest that [REDACTED] Foxon may have.

11. TRANSFER


11.1 The transfer will contain:

11.1.1 a declaration as to the title guarantee with which the transfer is made in the terms of clause 8.2;

11.1.2 a covenant by the Developer by way of indemnity only, on its own behalf and on behalf of its successors in title, to observe and perform the charges, encumbrances,

covenants and restrictions contained or referred to in the property and charges registers of title number LT264055 in so far as they affect the land being transferred are subsisting and capable of taking effect and to keep the Owner indemnified against all proceedings, costs, claims and expenses on account of any breach.

12. COMPLETION

- 12.1 Completion will take place on the Completion Date.
- 12.2 On completion the Developer will pay the Purchase Price to the Owner.
- 12.3 

13. VAT

- 13.1 Each amount stated to be payable by the Developer to the Owner under or pursuant to this Agreement is exclusive of VAT (if any).
- 13.2 If any VAT is chargeable on any supply made by the Owner under or pursuant to this Agreement, the Developer will pay the Owner an amount equal to that VAT, subject to the Owner supplying the Developer with a VAT invoice at the time of payment.

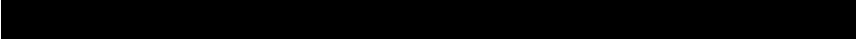
14. ENTIRE AGREEMENT

- 14.1 This Agreement and the documents annexed to it constitute the entire agreement and understanding of the parties and supersedes any previous agreement or understanding between them relating to the subject matter of this Agreement.
- 14.2 This Agreement does not create any relationship of partnership between the parties.

15. NOTICES

- 15.1 Any notice (including the Option Notice) given under this Agreement must be in writing and signed by or on behalf of the party giving it.
- 15.2 Any notice or document to be given or delivered under this Agreement must be given by delivering it personally or sending it by pre-paid first class post or recorded delivery to the address and for the attention of the relevant party as follows:

15.2.1 to the Owner at:


or to such other address or for the attention of such other person, as was last notified in writing by the Owner to the Developer;



[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



[Redacted]

[Redacted]

18. RIGHTS OF THIRD PARTIES

A person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights) of Third Parties Act 1999.

19. DISPUTES

19.1 Any disagreement between the parties to be resolved under this agreement shall be referred for determination to a person of appropriate professional qualification and expertise appointed jointly by the parties or in default of agreement within 5 Working Days by the current President of the Royal Institution of Chartered Surveyors on the application of either party. The Expert shall act as an expert not an arbitrator. His decision will be final and binding. The following terms shall apply:

19.1.1 the Expert's fee will be borne as the Expert directs or otherwise equally;

19.1.2 the Expert will give written reasons for his determination;

19.1.3 the Expert will invite representations from both parties;

19.1.4 the Expert will comply with any time limits reasonably specified by the parties; and

19.1.5 if the Expert's own decision would be outside the range of the parties' representations then the Expert will adopt as his published opinion the representation of the party which is closest to his own decision

20. NON-MERGER

20.1 Insofar as any obligations covenants and conditions contained in this Agreement remain at completion to be observed or performed this agreement shall continue in full force and effect notwithstanding completion.

21. TERMINATION

21.1 Either party may give notice to the other terminating this Agreement with immediate effect if:

21.1.1 a party commits any fundamental breach of the terms of this Agreement and that breach (if capable of remedy) is not remedied within a reasonable time of notice being given by the innocent party requiring it to be remedied

21.1.2 An Act of Insolvency occurs in relation to the other party

21.2 If this Agreement shall be determined pursuant to this clause or if the rights of the Developer pursuant to this Agreement shall come to an end as a result of expiry of the Option Period

21.2.1 the Owner shall be free to deal with or dispose of the Property or any part thereof free in all respects from the rights of the Developer

21.2.2 the Developer acknowledges that it has no right or claim in respect of the Property which is freed and released from the terms of this Agreement

21.2.3 the Developer shall forthwith remove or cancel any restriction or other registration at the Land Registry in respect of this Agreement and at its cost furnish evidence thereof to the Owner

21.2.4 the Owner and the Developer shall have no further obligations under this Agreement save for (i) those of the Developer under clause 21.2.3 and (ii) save in relation to any claim which the Developer may have against the Owner and/or which the Owner may have against the Developer in relation to any prior breach of any of the terms of this Agreement and which claim is notified by either party to the other no later than the date that is 6 months from the date of termination of the Agreement.

This Agreement has been entered into on the date stated at the beginning of it.

Schedule 1

The option notice

To: [OWNER/ SUCCESSOR IN TITLE] at:

[ADDRESS]

[Fax No: [NUMBER]]

for the attention of [POSITION]

[SUCH OTHER ADDRESS/ FAX NUMBER/ FOR THE ATTENTION OF SUCH OTHER PERSON, AS WAS LAST NOTIFIED IN WRITING BY THE OWNER/ SUCCESSOR IN TITLE]

[BY HAND]

[BY PRE-PAID FIRST CLASS POST][BY RECORDED DELIVERY]

Pursuant to an Option agreement ("the Agreement") dated 2017 made [REDACTED] [REDACTED] Foxon (1) DB Symmetry (Hinckley) Limited (2) relating to Freeholt Lodge, Hinckley Road, Sapcote Leicestershire, LE9 4LH

[DEVELOPER/ SUCCESSOR IN TITLE] gives [OWNER/ SUCCESSOR IN TITLE] notice of the exercise of the Option contained in the Agreement to buy the Property on the terms set out in the Agreement.

[REDACTED]

DATE:

SIGNED BY [NAME OF DIRECTOR OR OFFICER] for and on behalf of

[DEVELOPER/ SUCCESSOR IN TITLE]

Signed as a Deed by **DB SYMMETRY (HINCKLEY) LIMITED** acting by a Director, in the presence of:-

.....

Witness

Signature

Name

Address

.....

Occupation



Signed as a Deed by [Redacted] **FOXON**

Witness

Signature [Redacted]

Name

Address [Redacted]

[Redacted]

Occupation [Redacted]



Signed as a Deed by [Redacted]

Witness

Signature [Redacted]

Name

Address [Redacted]

.....

Occupation [Redacted]

.....