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Legal & Democratic Services  
Surrey County Council  
Kingston upon Thames, KT1 2DN

*18.10.13*  
*SOLICITOR*

DATED

*17th October 2013*

**PRE-EMPTION AGREEMENT**

relating to

**LAND AT SOUTHFIELD PARK SCHOOL**

**EPSOM**

between

**SURREY COUNTY COUNCIL**

and

**EPSOM AND EWELL BOROUGH COUNCIL**



ANN CHARLTON  
HEAD OF LEGAL SERVICES  
COUNTY HALL  
KINGSTON UPON THAMES  
KT1 2DN

REF: CGL/DCO/55101

## CONTENTS

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### CLAUSE

1.	Interpretation .....	1
2.	Grant of the right of pre-emption .....	3
3.	Registration of the right of pre-emption .....	3
4.	Offer .....	4
5.	Acceptance .....	4
6.	Purchase price .....	4
7.	Title guarantee .....	5
8.	Conditions .....	5
9.	Vacant possession .....	6
10.	Completion .....	6
11.	VAT .....	6
12.	Entire agreement .....	6
13.	Notices .....	6
14.	Rights of third parties .....	8

### SCHEDULE

SCHEDULE	THE OFFER NOTICE .....	9
1.	Offer .....	9
2.	Endorsement of purchase price .....	9
3.	Acceptance .....	10

THIS AGREEMENT is dated 17th October 2013

## **PARTIES**

- (1) SURREY COUNTY COUNCIL of County Hall, Penrhyn Road, Kingston upon Thames KT1 2DN (**Seller**).
- (2) EPSOM AND EWELL BOROUGH COUNCIL of Town Hall, The Parade, Epsom, Surrey KT18 5BY (**Buyer**).

## **BACKGROUND**

- (A) The Seller owns the freehold property known as land adjoining Southfield Park Primary School, Long Grove Road, Epsom Surrey KT19 8TP and has agreed to grant the Buyer a right of pre-emption in the event of the Seller wishing to make a disposal of it during a specified period.
- (B) The Buyer's right of pre-emption is subject to the terms contained in this agreement.

## **AGREED TERMS**

### **1. INTERPRETATION**

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

**Acceptance Notice:** the duplicate of the Offer Notice signed and dated by the Buyer.

**Acceptance Period:** the period commencing on, and including, the date of service of the Offer Notice and ending at midnight on the expiry of six (6) weeks;

**Buyer's Conveyancer:** Head of Legal of Epsom and Ewell Borough Council, Town Hall, The Parade, Epsom, Surrey KT18 5BY.

**Completion Date:** the day that is four (4) weeks after the date of service of an Acceptance Notice by the Buyer on the Seller.

**Disposal:** a disposition or an agreement for a disposition of the whole or any part of the Property including (but not limited to):

- (a) a sale (whether or not at open market value);
- (b) a gift;
- (c) an exchange in return for other property;
- (d) a declaration of trust;
- (e) a grant of a lease;

other than a Permitted Disposal.

**Offer Notice:** written notice in the form set out in the Schedule to this agreement.

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

**Part 2 Conditions:** Part 2 of the Standard Commercial Property Conditions (Second Edition).

**Permitted Disposal:** a Disposal to another education authority or such other governing body, academy trust or other form of educational establishment as is required by law to hold the freehold or leasehold interest in the land comprising the School for the purpose of continuing to run the School as an educational establishment.

**Pre-emption Period:** the period from the date of this agreement until the expiry of the Acceptance Period.

**Pre-emption Sum:** A PEPPERCORN (if demanded).

**Property:** the freehold property adjoining the School shown more particularly tinted green on the plan attached to this agreement and being part of the property registered at the date of this agreement at the Land Registry with title absolute under title number SY682265.

**Purchase Price:** the amount that is agreed or determined in accordance with clause 6 at the date the Offer Notice is served (exclusive of VAT).

**Right of Pre-emption:** the right for the Buyer to buy the Property, in accordance with the terms of this agreement, in the event of the Seller wishing to make a Disposal during the Pre-emption Period.

**School:** Southfield Park Primary School, Long Grove Road, Epsom, Surrey KT19 8TF.

**Seller's Conveyancer:** Head of Legal Services of Surrey County Council, County Hall, Penrhyn Road, Kingston upon Thames KT1 2DN.

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

**Working Day:** any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday.

- 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 Unless expressly stated to the contrary, a reference to the **Property** is to the whole only.
- 1.10 Any reference to the **Seller** includes its successors in title and any reference to the **Buyer** is personal to the party named above.

## 2. GRANT OF THE RIGHT OF PRE-EMPTION

- 2.1 On the date of this agreement the Buyer will pay the Pre-emption Sum to the Seller.
- 2.2 In return for the Pre-emption Sum, the Seller will grant the Buyer the Right of Pre-emption.

## 3. REGISTRATION OF THE RIGHT OF PRE-EMPTION

- 3.1 The Seller consents to the following entries being made against the Seller's title to the Property at the Land Registry in order to protect this agreement:
  - (a) An agreed notice; and
  - (b) A restriction in the following terms:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by the Head of Legal of Epsom and Ewell Borough Council, Town Hall, The Parade, Epsom, Surrey KT18 5BY that the provisions of an agreement dated [ 17 October 2013 ] and made between Surrey County Council and Epsom and Ewell Borough Council have been complied with or that they do not apply to the disposition".
- 3.2 Immediately at the end of the Pre-emption Period, the Buyer will cancel all entries relating to this agreement registered against the title to the Property.

**4. OFFER**

- 4.1 If the Seller wishes to make a Disposal during the Pre-emption Period, it must first offer to sell the Property to the Buyer on the terms of this agreement and serve an Offer Notice in duplicate on the Buyer.
- 4.2 The offer contained in the Offer Notice will be irrevocable and not capable of any amendment by the Seller during the Acceptance Period (except for the endorsement of the Purchase Price pursuant to clause 6.3).
- 4.3 The Seller must not make a Disposal during the Pre-emption Period unless either the Buyer has declined the offer contained in the Offer Notice or the Acceptance Period has expired without the Buyer serving an Acceptance Notice and any Disposal will then be subject to the provisions of clause 5.3.

**5. ACCEPTANCE**

- 5.1 If the Buyer wishes to accept the offer contained in the Offer Notice, it must serve an Acceptance Notice on the Seller within the Acceptance Period.
- 5.2 If an Acceptance Notice is served, the Seller will sell the Property and the Buyer will buy the Property in accordance with the terms of this agreement.
- 5.3 If the Buyer has not served an Acceptance Notice by the end of the Acceptance Period:
- (a) the Right of Pre-emption will terminate on the expiry of the Acceptance Period, clause 4 will cease to apply and the Seller may make a Disposal free of the Right of Pre-emption; and
  - (b) the Buyer will remove all entries relating to this agreement registered against the title to the Property.

**6. PURCHASE PRICE**

- 6.1 Following service of the Offer Notice, the parties will use all reasonable endeavours promptly to agree the market value of the Property as at the date of service of the Offer Notice.
- 6.2 Notwithstanding clause 6.1, if the parties fail to agree the market value of the Property within two (2) weeks after the date of service of the Offer Notice, the following provisions will apply:
- (a) the determination of the market value of the Property as at the date of service of the Offer Notice will be referred to a surveyor who is a Fellow or

Associate of the Royal Institution of Chartered Surveyors with at least ten years experience in valuing properties similar to the Property;

- (b) the surveyor will be appointed jointly by the parties;
- (c) if the parties have not agreed on the surveyor's identity within three (3) weeks of service of the Offer Notice, the surveyor will be appointed, on either party's request, by the President for the time being of the Royal Institution of Chartered Surveyors;
- (d) the surveyor will act as an expert and allow the parties each to make representations and submissions;
- (e) the surveyor's costs will be payable equally by the parties; and
- (f) The surveyor's decision as to the market value of the Property as at the date of service of the Offer Notice will be final and conclusive as to the Purchase Price payable.

- 6.3 Immediately upon the agreement or determination of the Purchase Price, the parties will endorse a note of the Purchase Price on each copy of the Offer Notice and will initial the endorsement.

**7. TITLE GUARANTEE**

The Seller will sell the Property with limited title guarantee.

**8. CONDITIONS**

- 8.1 Following service of an Acceptance Notice, the Part 1 Conditions will be incorporated in this agreement in so far as they:

- (a) Apply to a sale by private treaty;
- (b) Relate to freehold property;
- (c) Are not inconsistent with the other clauses in this agreement; and
- (d) Have not been modified or excluded by any of the other clauses in this agreement.

- 8.2 Following service of an Acceptance Notice, the Part 2 Conditions will not be incorporated into this agreement.

- 8.3 The following Part 1 Conditions will not apply:

- (a) Conditions 1.1.4(a), 1.3 and 1.5;
- (b) Condition 2.2;
- (c) Conditions 3.1.4 and 3.3;
- (d) Conditions 6.2, 6.3.1, 6.4.1 and 6.6.2; and



(e) Condition 7.1.3.

**9. VACANT POSSESSION**

The Property will be sold with vacant possession on completion subject only to any rights created by a Permitted Disposal.

**10. COMPLETION**

10.1 Completion will take place on the Completion Date.

10.2 On completion the Buyer will pay the Purchase Price to the Seller.

**11. VAT**

11.1 Each amount stated to be payable by the Buyer to the Seller under or pursuant to this agreement is exclusive of VAT (if any).

11.2 If any VAT is chargeable on any supply made by the Seller under or pursuant to this agreement, the Buyer will pay the Seller an amount equal to that VAT, subject to the Seller supplying the Buyer with a VAT invoice at the time of payment.

**12. ENTIRE AGREEMENT**

12.1 This agreement and the plan annexed to it constitute the whole agreement between the parties and supersede all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to their subject matter.

12.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) other than those:

- (a) set out in this agreement; or
- (b) contained in any written replies that the Seller's Conveyancer has given to any written enquiries raised by the Buyer's Conveyancer before the date of this agreement.

**13. NOTICES**

13.1 Any notice (including the Offer Notice and an Acceptance Notice) given to a party under or in connection with this agreement:

- (a) shall be in writing;

- (b) shall be signed by or on behalf of the party giving it;
- (c) shall be sent to the party for the attention of the contact and at the address or listed in clause 13.2;
- (d) shall be sent by a method listed in clause 13.4; and
- (e) unless proved otherwise is deemed received as set out in clause 13.4 if prepared and sent in accordance with this clause.

13.2 The parties' addresses and contacts are as set out in this table:

Party	Contact	Address
Surrey County Council	Head of Legal Services	Legal and Democratic Services, Surrey County Council, County Hall, Penrhyn Road, Kingston upon Thames KT1 2DN.
Epsom and Ewell Borough Council	Head of Legal	Legal Services, Epsom and Ewell Borough Council, Town Hall, The Parade, Epsom, Surrey KT18 5BY.

13.3 A party may change its details given in the table in clause 13.2 by giving notice, the change taking effect for the party notified of the change at 9.00 am on the later of:

- (a) the date, if any, specified in the notice as the effective date for the change; or
- (b) the date five Working Days after deemed receipt of the notice.

13.4 This table sets out:

- (a) delivery methods for sending a notice to a party under this agreement; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt.
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of delivery.	9.00 am on the second Working Day after posting.

13.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13.6 A notice given under this agreement is not valid if sent by e-mail.

14. RIGHTS OF THIRD PARTIES

14.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

14.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any person that is not a party to this agreement.

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

EXECUTED as a DEED by affixing )  
THE COMMON SEAL of SURREY )  
COUNTY COUNCIL in the presence )  
of and attested by: )

*[Signature]*  
Authorised Signatory

*Lead Partner, Legal Services*  
Position

EXECUTED as a DEED by affixing )  
THE COMMON SEAL of EPSOM )  
AND EWELL BOROUGH COUNCIL )  
in the presence of and attested by: )

Authorised Signatory

Authorised Signatory

*[Signature]*

*Francis A. Rutter*

Schedule	The offer notice
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To: Epsom and Ewell Borough Council

At: Town Hall, The Parade, Epsom, Surrey KT18 5BY.

For the attention of: Head of Legal

[OR SUCH OTHER ADDRESS OR FOR THE ATTENTION OF SUCH OTHER PERSON AS WAS LAST NOTIFIED IN WRITING BY THE BUYER]

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

IN DUPLICATE

## 1. OFFER

- 1.1 This notice is given pursuant to a Pre-emption agreement ('the **Agreement**') dated [ ] made between Surrey County Council and Epsom and Ewell Borough Council relating to land at Southfield Park School, Epsom, the terms of which are incorporated into this notice.
- 1.2 Surrey County Council gives Epsom and Ewell Borough Council notice that it wishes to make a Disposal (as defined by the Agreement).
- 1.3 The Seller offers to sell the Property to the Buyer in accordance with the terms of the Agreement.

**Dated** .....

Authorised Signatory .....

**Position** .....

for and on behalf of

**Surrey County Council**

## 2. ENDORSEMENT OF PURCHASE PRICE

**THIS OFFER NOTICE CONSISTS OF 2 PAGES**

3. ACCEPTANCE

To: Surrey County Council

At: County Hall, Penrhyn Road, Kingston upon Thames KT1 2DN

for the attention of the Head of Legal Services

[OR SUCH OTHER ADDRESS OR FOR THE ATTENTION OF SUCH OTHER  
PERSON AS WAS LAST NOTIFIED IN WRITING BY THE SELLER]

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

Epsom and Ewell Borough Council accepts the offer of Surrey County  
Council to sell the Property to the Buyer in accordance with the terms of the  
Agreement.

Dated .....

DO NOT  
SIGN

Authorised Signatory .....

Position .....

for and on behalf of

Epsom and Ewell Borough Council

**SURREY COUNTY COUNCIL**

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No. IN SEALING  
REGISTER

8639-8642

ORDERED TO  
BE SEALED

V. No. 3/2013

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Notes:

*Francis A. Putter*  
CHIEF EXECUTIVE

*[Signature]*  
THE MAYOR

Rev.	Description	Date	By	Chk'd
A	Green area altered	12.08.13	KBD	



**SURREY**  
COUNTY COUNCIL

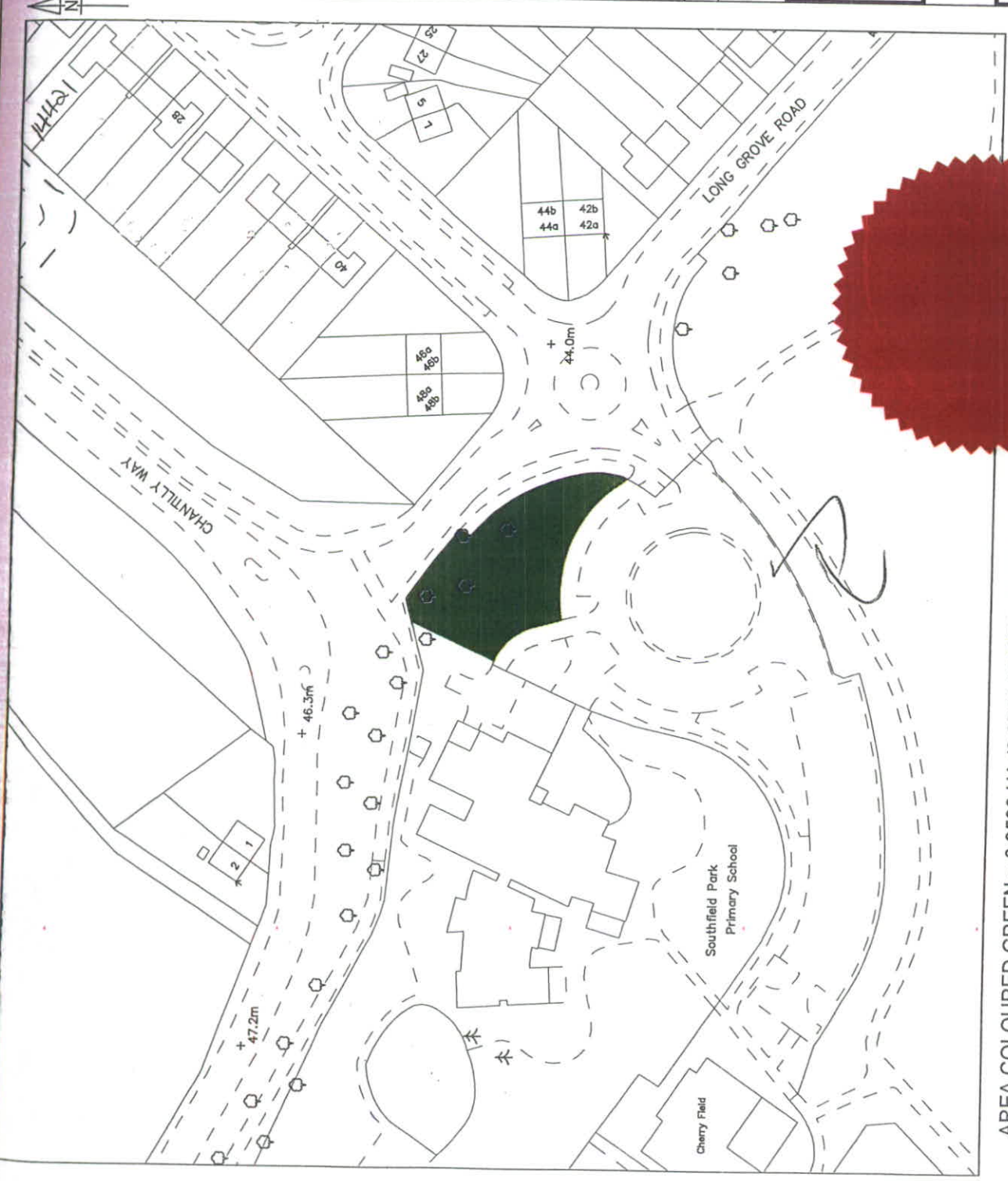
Estates Planning & Management, County Hall,  
Penryn Road, Kingston upon Thames, Surrey, KT1 2DW.  
Tel : 020 8541 7233

O.S. Ref.	TQ 2061
Scale	1:1250 @ A4
Surveyed by	Drawn by
Date	Checked by
	KBD
	Date 08.01.13
	Date

Location	LAND AT SOUTHFIELD PARK PRIMARY SCHOOL LONG GROVE ROAD EPSOM
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Title	ACQUISITION PLAN
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Plan Reg. No.	CM 2984A
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AREA COLOURED GREEN = 0.9596 HA (2.3712 ACRES) APPROX.

