ur Case Number: ABP-313828-22

Planning Authority Reference Number: SD21A/0271

An Bord Pleanála

Land Use Planning ... ation

3 1 AUG 2022

South Dublin County Council

South Dublin County Council
Planning Department
County Hall
Tallaght
Dublin 24

Date: 30 August 2022

Re: Demolition of existing building and construction of 5 storey over partial basement mixed use development comprising gastro pub/restaurant with off-licence, 2 retail units, 50 apartments, parking and associated site development works.
Lands at the Silver Granite pub, Palmerstown, Dublin 20

Dear Sir / Madam,

I have been asked by An Bord Pleanála to refer to the above mentioned appeal.

The Board is of the opinion that, in the particular circumstances of this appeal, it is appropriate in the interests of justice to request you to make submissions or observations in relation to the enclosed submission dated 20th July, 2022 received from Hughes Planning & Development Consultants on behalf of the Moriarty Group.

In accordance with section 131 of the Planning and Development Act, 2000, (as amended), you are requested to make any submissions or observations that you may have in relation to this enclosure **on or before 19 September 2022.** The Board cannot consider comments that are outside the scope of the matter in question. Your submission in response to this notice must be received by the Board not later than **5:30pm on the date specified above.**

If no submission or observation is received before the end of the specified period, the Board will proceed to determine the appeal without further notice to you, in accordance with section 133 of the 2000 Act.

Teil	**Tel**	(01) 858 8100
Glao Áitiúil	**LoCall**	1890 275 175
Facs	**Fax**	(01) 872 2684
Láithreán Gréasáin	**Website**	www.pleanala.ie
Ríomhphost	**Email**	bord@pleanala.ie

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Please quote the above appeal reference number in any further correspondence.

Yours faithfully,

P.P. Karen Byrne

Mary Tucker
Executive Officer
Direct Line: 01-8737132

BP70 Registered Post

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HUGHES
PLANNING
& DEVELOPMENT CONSULTANTS

The Secretary,
An Bord Pleanála,
No. 64 Marlborough Street,
Dublin 1

20th July 2022

Re: Application by Hollyville Ltd. for demolition of existing building and construction of 5 storey over partial basement, mixed use development comprising gastro pub/restaurant with off-licence, 2 retail units, 50 apartments parking and associated site development works Lands at the Silver Granite Pub, Palmerston, Dublin 20

An Bord Pleanála Ref. ABP-313828-22
South Dublin County Council Ref. SD21A/0271

Dear Sir/Madam,

I refer to the Board's letter, dated 23rd June 2022, in respect of the Third Party appeals received from Brendan Buck on behalf of Kennelsfort Management Company Ltd; Dermot Keogh, and Joan Sheehan in relation to Hollyville Ltd.'s application (An Bord Pleanála Ref. ABP-313828-22) for the proposed development at Lands at the Silver Granite Pub, Palmerston, Dublin 20. Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, have been instructed by our client, Kennelsfort Management Company Limited, Palmerstown Shopping Centre, Kennelsfort Road, Palmerstown, Dublin 20, to prepare an observation regarding the submissions for the consideration of the Board, as invited to in the aforementioned letter.

It is submitted, from the outset, that our client concurs with the arguments put forward by the three additional third-party appellants. South Dublin County Council's decision to grant permission for the proposed development will result in significant impediments to the operation of the existing Shopping Centre whilst also potentially creating hazardous car parking arrangements.

In addition to the previously submitted third-party appeal, our client also wishes to submit further concerns which have been noted throughout the various other third-party appeals which relate to traffic, road safety and car parking. Please refer to Appendix B which includes a report prepared by Tent for a full description of the key concerns which we request is read in tandem with the previously submitted documents. The concerns may be summarised as follows:

Health and Safety Risk

The development creates a significant health and safety risk by proposing cars exiting the residents car park should drive the wrong way down a 1 way lane. This creates significant road safety concerns. In the event the Moriarty Group being the largest shareholder in Kennelsfort Management Company Ltd allowed the residents to exit through their property the car park would require a resurface and re-planning to observe fundamental health and safety requirements.

Further, the management plan for the car park is likely to rely on a new entrance and exit point which will be a significant deviation from the current planning application, making the current approval not viable. This would constitute a material change to the development and would necessitate a revised planning application. This is unreasonable.

85 Merrion Square, Dublin 2, D02 FX60
+353 (0)1 539 0710 info@hpdc.ie www.hpdc.ie
H.P.D.C Limited Company Number 517203

Blocking of Existing Service Entrance

It is submitted that the proposal results in a block of existing service entrance. Car Park space No. 10 will block rear service access route and disrupt the operations of the shopping centre, demonstrating that no attempt has been made by the Applicant to understand the servicing strategy for the shopping centre. The Applicant has made no attempt to understand this exit has been used daily as part of the waste management strategy. The loss of this access is unauthorised and has significant consequences to the safe management and operation of the shopping facility and, accordingly, it is requested that An Bord Pleanála refuse permission.

Blocking of Emergency Exit

The FI Stage proposal confirms that the entire removal of the emergency vehicular exist from the Palmerstown shopping centre which was constructed on foot of its own planning permission. The blocking of this existing emergency entrance will create significant health and safety risk. The application has failed to address how emergency vehicles will continue to use this entrance. The blocking of this entrance contravenes a previous planning permission pertained to the shopping centre and to which the applicant raised no objections. The application was then and remains fully aware of the emergency entrance/exit onto Kennelsfort Road from the shopping centre was granted planning permission and was built in compliance with its planning permission

Further to the above traffic and safety implications arising from the proposal, our client also wishes to submit their concerns that the Applicant purports to include in its application proposals as to traffic and car parking relating to adjoining lands in which it has no legal interest, and which proposals lack the consent of the owners, our client.

We request that An Bord Pleanála refer to Appendix C to Appendix G which contain a number of documents relating to the title of the lands, and several relevant easements thereon. It is submitted that the Applicant has not demonstrated sufficient legal interest in the lands to lodge a valid planning application. The appendices date from 1987 to 2018. The documents demonstrate that the car park on Kennelsfort Road which is comprised of Folio DN63697F, is owned by Kennelsfort Management Company Limited. The applicant enjoys no legal estate, ownership or interest in those lands and therefore is not in a position to make an application that is reliant on the use of those lands for the access and egress to its proposed new car park.

In *Frescati Estates v. Walker* [1975] I.R. 177 the Supreme Court set out the circumstances in which a person has sufficient interest to make a valid application for planning permission. In his judgment, with which the other four judges of the Supreme Court agreed, Henchy J. stated as follows:

> "To sum up, while the intention of the Act is that persons with no legal interest (such as would-be purchasers) may apply for development permission, the operation of the Act within the scope of its objects and the limits of constitutional requirements would be exceeded if the word "applicant" in the relevant sections is not given a restricted connotation. The extent of that restriction must be determined by the need to avoid unnecessary or vexatious applications, with consequent intrusions into property rights and demands on the statutory functions of planning authorities beyond what could reasonably be said to be required, in the interests of the common good, for proper planning and development.
>
> I consider that an application for development permission, to be valid, must be made either by or with the approval of a person who is able to assert sufficient legal estate or interest to enable him to carry out the proposed development, or so much of the proposed development as relates to the property in question. There will thus be sufficient privity between the applicant (if he is not a person entitled) and the person entitled to enable the applicant to be treated, for practical purposes, as the person entitled." (Emphasis added)

This point has been clarified most recently in *Pembroke Road Association v. An Bord Pleanála* [2021] IEHC 403 where Owens J. made the following observation in respect of sufficiency of interest to ground a planning application:

> "An interest in land sufficient to give an applicant standing may be ownership, or consent of another person who is an owner."

The applicant is not the owner of the relevant car park. Nor has it secured the consent of the owner of that car park for its use in the manner proposed. As a result, our client submits that the applicant's interest in the lands is insufficient to meet the threshold required by law.

Furthermore, our client have procured a Report from Tent Engineering regarding the impracticality and unviability of the applicant's proposed car park arrangements. The exit from the proposed residents' car park relies on access through Folio DN63697F owned by our client. Our client were not consulted by the developer about this proposed access route and do not give consent to it. The proposal creates significant traffic engineering and health and safety issues as set out in the Report. Most concerningly, the applicant's proposal blocks the current emergency service access to the Palmerstown Shopping Centre, with no alternative means of emergency access provided. This access is a legal right of our client, enforceable at law, and is reflected in the Mutual Easment Agreement of 1988 at Appendix D. The use of the proposed car park in the dangerous manner contended for by the applicant would clearly be contrary to the principles of proper planning.

A final concern our client relates to Condition No. 4 attached to the grant of permission by South Dublin County Council. The condition relates to the purported exclusivity of use of the proposed car park by resident and users of the proposed development:

4. *(a) Prior to the commencement of development the applicant/developer shall submit for the written agreement of the Planning Authority a management plan detailing how the car parking area within the red line on the western side of Kennelsfort Road Upper will be managed in conjunction with the development. This plan shall include how the car parking spaces will be delineated from the adjacent car parking spaces. It should be ensured that these car parking spaces are designated for the development and remain available for the users/residents of the development.*

   (b) Prior to the occupation of the development the applicant/developer shall submit for the written agreement of the Planning Authority documentation and drawings showing the works that has been carried out as per the management plan, to delineate the car parking spaces.

   (c) The location of these car parking spaces may be amended subject to planning permission.

REASON: To ensure sufficient car parking provision for the development.

The above condition requirements are impossible to meet. Our client enjoys the benefit of several easements over the proposed car park. These are set out in the comprehensive Mutual Easement Agreement dated 18 November 1988, a copy of which appears at Appendix D. The benefit of those easements devolved on Kennelworth Management Company Limited via the Settlement Agreement at Appendix G. Those easements include:

(a) The right of way with or without vehicles;
(b) To park vehicles in the car park at any time of the day or night;
(c) The right to enter with workmen or other nominees for the purpose of repairing and maintaining the said car park and roadway;
(d) The right to enter workmen or other nominees for the purposes of repairing and maintaining the shop premises;
(e) The right to enter the said lands for the purpose of laying all necessary pipes and electricity cables, cables, sewers and services and completing the necessary works to the car park and roadway;
(f) The right to enter the said lands for the purpose of repairing and maintaining all necessary pipes and electricity cables, cables, sewers and services.

In the circumstances it is clear that the applicant is simply not in a position to reserve, designate, or protect the proposed car parking spaces for the exclusive use of the residents and users of the proposed development where our client has an absolute right of access for itself and its customers. The applicant simply cannot ensure or guarantee in any way that the car parking spaces are exclusively designated for the development and remain available for the users/residents of the development where our client enjoys an easement of access enforceable in law.

Any grant of permission made on the basis that the applicant is able to ensure or guarantee in any way the use of the car parking spaces for the proposed development and for users and residents of that development, will have been arrived at in manifest error, where the existence of our client's legally enforceable easements

have been flagged to the Board. With respect, we submit that no reasonable planning authority can make a grant of permission predicated on exclusivity of use of a car park by an applicant where third parties have enforceable and effectively unlimited rights of access to, and use of, that car park for their own purposes.

We trust that the Board will have regard to this submission and **refuse** permission for the proposed development. We look forward to An Bord Pleanála's decision in due course.

Regards,

Kevin Hughes MIPI MRTPI
for HPDC Ltd.

Appendix A

Letter from An Bord Pleanála dated 23rd June

Appendix B

Assessment prepared by Tent Engineering

Appendix C

Contract dated 28.10.1987

Appendix D

Mutual Easements Agreement dated 18.11.1988

Appendix E

Agreement dated 18.11.1988 pertaining to the Car Park

Appendix F

Agreement dated 12.12.2012 pertaining to the Off-Licence

Appendix G

Settlement Agreement dated 05.03.2018

Our Case Number: ABP-313828-22

Planning Authority Reference Number: SD21A/0271

Your Reference: The Moriarty Group

An Bord Pleanála

Hughes Planning & Development Consultants
85 Merrion Square
Dublin 2
D02 FX60

Date: 23 June 2022

Re: Demolition of existing building and construction of 5 storey over partial basement mixed use development comprising gastro pub/restaurant with off-licence, 2 retail units, 50 apartments, parking and associated site development works.
Lands at the Silver Granite pub, Palmerstown, Dublin 20

Dear Sir / Madam,

An Bord Pleanála has received your appeal and will consider it under the Planning and Development Act, 2000, (as amended). A receipt for the fee lodged is enclosed.

You are reminded that section 127(3) of the Planning and Development Act, 2000, (as amended), provides that an appellant shall not be entitled to elaborate in writing upon or make further submissions in writing in relation to, the grounds of appeal stated in the appeal or to submit further grounds of appeal unless requested to do so by An Bord Pleanála.

Also, enclosed is a copy of other appeals and a request for an oral hearing received in relation to the planning authority's decision.

Any submission or observation you wish to make in relation to these appeals should be made in writing to the Board within a period of 4 weeks beginning on the date of this letter. Any submissions or observations received by the Board outside of that period shall not be considered and where none have been validly received, the Board may determine the appeal without further notice to you.

Please quote the above appeal reference number in any further correspondence.

Yours faithfully,

Daniel O'Connor

Daniel O'Connor
Direct Line:

BP01M

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64 Marlborough Street
Dublin 1
D01 V902

Silver Granite Pub Proposed Mixed/ Residential Development Traffic and Transport Observations

20.07.2022

22058-TNT-XX-XX-RP-T-00001

TENT ENGINEERING

Site Address:

Supervalu,

Palmersown,
Dublin 20.

Client:

Luke Moriarty

Managing Director of Moriarty Group
owner of Supervalu Palmerstown
secretary and largest shareholder of
Kennelsfort Management Company Ltd.

Office Address:

Tent Engineering Ltd.
Studio 1, Cork Street Studios
115 Cork Street, Dublin 8
Dublin, D08EWX2, IE

Revision and Review

This report has been prepared for the sole benefit, use and information of the client. The liability of Tent engineering with respect to the information contained in this report will not extend to any third party.

REVISION(S)

Rev.	Description	Date
P01	1st issue	20.06.2022
P02	Textual Amendments	20.06.2022
P03	Further Observations	20.07.2022
P04	Textual Amendments	20.07.2022

AUTHOR(S)

Name and qualifications

Diarmuid Healy
Co-founder, Director
Structural Engineer

BEng (Hons) MIEI CEng MIStructE FIStructE

REVIEWER(S)

Name

Edward Heukers
Co-founder, Director

BEng MIEI

Contents

Office Address

Tent Engineering Ltd
Studio 1, 115 Cork Street
Dublin 8, D08EWX2, IE

1 Executive Summary

We, Tent Engineering are instructed by our Client, Luke Moriarty , Managing Director of Moriarty Group , owner of Supervalu Palmerstown , secretary and largest shareholder of Kennelsfort Management Company Ltd, whose existing car park will be significantly impacted as a result of the proposed planning application register reference SD21A/0271.

The purpose of this report is to express significant failings to the planing application with respect to traffic and transport which make the scheme fundamental flawed and ultimately undeliverable. The grant of permission has a car movement arrangement failing and as a consequence has serious implication for the viability of the whole scheme.

The required amendments to address the car movement flaws is likely to reduce parking numbers and rely on a new entrance and exit point. These changes will be a significant deviation from the current planning application, making the current approval not viable. This would constitute a material change to the development and would necessitate a revised planning application.

Key Points:

Impact on local Community

Moriarty Group being the largest shareholder in Kennelsfort Management Company Ltd, have supported the local community since 1988 with unrestricted parking on their 330 existing established spaces.

The existing car-park is over utilised and loss of parking will be detrimental to the existing business.

The direct loss of parking spaces associated with the planned development, coupled with the high likelihood the car park will become an uncontrolled overflow parking for the residents and their visitors parking, may force Kennelsfort Management Company Ltd with Moriarty Group being the largest shareholder, in the first time of their 34yr history to consider controlling the car park. This will only hurt the local community.

Health and Safety

The development creates a significant **health and safety** risk by proposing cars exiting the residents car park should drive the wrong way down a 1 way lane. This creates significant road safety concerns.

As shown in Fig 4.0 within this report the exit from the proposed residents car park relies on access through an area under control of Kennelsfort Management Company Ltd with the Moriarty Group being the largest shareholder. Kennelsfort Management Company Ltd with Moriarty Group being the largest shareholder were not consulted by the developer about this proposed access route.

The vehicle tracking appears to use an inaccurate back ground which renders the exercise of no value to the planners. Refer to fig 4.1 which demonstrate the significant discrepancies between the back ground they assumed in their desktop exercise vs the actual car park layout. The developer failed to address basic rules of the road in preparing their application. This creates significant road safety concerns.

The FI Stage proposal confirm the entire removal of the emergency vehicular exist from the Palmerstown shopping centre which was constructed on foot of its own planning permission. The blocking of this existing emergency entrance will create significant health and safety risk. The application has failed to address how emergency vehicles will continue to use this entrance.

The applicant's FI Stage pedestrian crossing is not detailed appropriately to serve safe crossing of the Kennelsfor Road which is a high capacity and busy thoroughfare.

Undeliverable Application

A key planning condition as set out on decision order No. 0568 are described below.

Car Parking.

(a) Prior to the commencement of development the applicant/developer shall submit for the written agreement of the Planning Authority a management plan detailing how the car parking area within the red line on the western side of Kennelsfort Road Upper will be managed in conjunction with the development. This plan shall include how the car parking spaces will be delineated from the adjacent car parking spaces. It should be ensured that these car parking spaces are designated for the development and remain available for the users/residents of the development.

(b) Prior to the occupation of the development the applicant/developer shall submit for the written agreement of the Planning Authority documentation and drawings showing the works that has been carried out as per the management plan, to delineate the car parking spaces.

(c) The location of these car parking spaces may be amended subject to planning permission.

REASON: To ensure sufficient car parking provision for the development

Our client would like to draw attention to the planners the Moriarty Group being the largest shareholder in Kennelsfort Management Company Ltd, do not support the access and egress routes through the shared lands of the shopping centre.

The management plan for the car park is likely to rely on a new entrance and exit point which will be a significant deviation from the current planning application, making the current approval is not viable. This would constitute a material change to the development and would necessitate a revised planning application.

Blocking of Existing Service Entrance

Car Park space No 10 will blocks rear service access route and disrupt the operations of the shopping centre. This is illustrated on fig 4.4 within this report. The developer made no attempt to contact our client to advise the development will block this existing entrance.

The developer has made no attempt to understand the servicing strategy for the shopping centre.

The developer has made no attempt to understand this exit has been used daily as part of the waste management strategy

The developer has made no attempt to understand the emergency services access and egress strategy.

The loss of this access is unauthorised and has significant consequences to the safe management and operation of the shopping facility.

2 Introduction and Site Description

We, Tent Engineering are instructed by our Client, Luke Moriarty , Managing Director of Moriarty Group, owner of Supervalu Palmerstown, secretary and largest shareholder of Kennelsfort Management Company Ltd, who's existing car park will be significantly impacted as a result of the proposed planning application register reference SD21A/0271.

The purpose of this report is to express significant failings to the planing application with respect to traffic and transport which we feel make the scheme fundamental flawed and ultimately undeliverable.

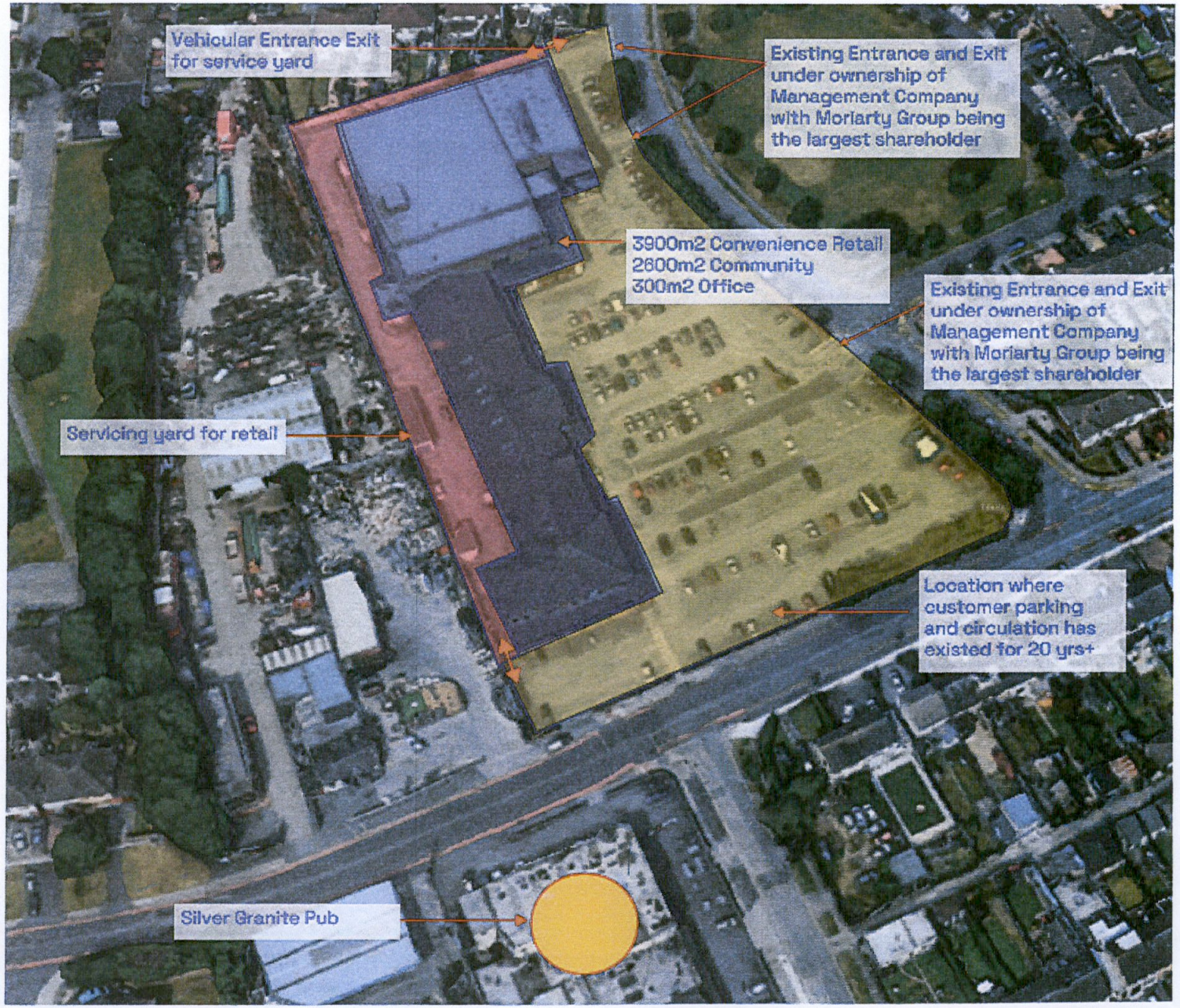
Tent Engineering is currently retained by the Moriarty Group being the largest shareholder in Kennelsfort Management Company Ltd, to optimise the existing car park to improve efficiency, layouts and help improve customers experience.

Where relevant details of this study are presented within this report to further demonstrate the fundamental failings with the planning application.

Fig 2.0 outlines the current land use for the shopping centre and car park.

The planning application as granted cannot be delivered in its current form for reasons set out in this technical document.

Fig 2.0 - Site location and land use



3 Role of the car park in the community

The Moriarty Group being the largest shareholder in Kennelsfort Management Company Ltd, have supported the local community since 1988 with unrestricted parking on their 330 spaces.

Palmerstown Burial ground is located less than 100m from the shopping centre car park.

The shopping centre car park has indirectly supported countless funerals throughout years despite the strain it can have on their own parking facilities.

The Managing Director of Moriarty Group , owner of Supervalu Palmerstown , secretary and largest shareholder of Kennelsfort Management Company Ltd is known to frequently act as traffic marshal on the busy Kennelsfort Road Upper road during particularly large funerals.

Across from the car park entrance there is a GP practice and dentist with insufficient parking for their patents who also frequently avail of the uncontrolled parking. The Moriarty Group being the largest shareholder in Kennelsfort Management Company Ltd, are currently working closely with this business owner to find a permanent solution which involves them taking a large space in the shopping facility for a medical centre. construction starts in September.

Kennelsfort Management Company Ltd with the Moriarty Group being the largest shareholder have invested in excess of €300k in recent years to ensure the car park and public lighting is of the highest quality.

The existing car-park is over utilised and loss of parking will be detrimental to the existing business.

The direct loss of parking spaces associated with the planned development, coupled with the high likelihood the car park will become an overflow parking for the residents and resident's visitors the Kennelsfort Management Company Ltd with the Moriarty Group being the largest shareholder, in the first time of their 34yr history on the site may need to consider controlling the car park. This will only hurt the local community.

Fig 3.0 - Site proximity to medical use and burial ground with existing parking deficiencies

Tent Engineering have been engaged by Moriarty Group being the largest shareholder in Kennelsfort Management Company Ltd to investigate optimisations that exist that may help improve parking numbers, thus helping to avoid creating a barrier entry system. As part of this study Tent Engineering have witnessed significant traffic congestion along Kennelsfort Road Upper.

4 Failings of the proposed car parking

The development creates a significant **health and safety** risk by proposing cars exiting the residents car park should drive the wrong way down a 1 way lane. This creates significant road safety concerns.

The planning file details additional information requested in relation to access for car parking facilities via the existing shopping centre.

"2(5): A revised layout of not less than 1:100 scale, showing a swept path analysis drawing (i.e Autotracking or similar) demonstrating that fire tenders and large refuse vehicles can access/ egress the site. An Autotrack demonstrating how vehicles access the parking facilities within the shopping centre"

Drawing NRB-RFI-004 indicates Autotracking of a large saloon car accessing the parking facilities within the shopping centre.

As shown in Fig 4.0 within this report the exit from the proposed residents car park relies on access through an area under the control of Kennelsfort Management Company Ltd with The Moriarty Group being its largest shareholder. To date there has been no consultation approach to either party by the developer about this proposed access route.

The vehicle tracking appears to use an inaccurate back ground which renders the exercise of no value to the planners. Refer to fig 4.1 which demonstrate the significant discrepancies between the back ground they assumed in their desktop exercise versus the actual car park layout. The developer failed to address basic rules of the road in preparing their application. This creates significant road safety concerns.

In the event the Moriarty Group being the largest shareholder in Kennelsfort Management Company Ltd allowed the residents to exit through their property the car park would require a resurface and re-planning to observe fundamental health and safety requirements.

Fig 4.0 - Planned unauthorised exit route through lands controlled by Moriarty Group

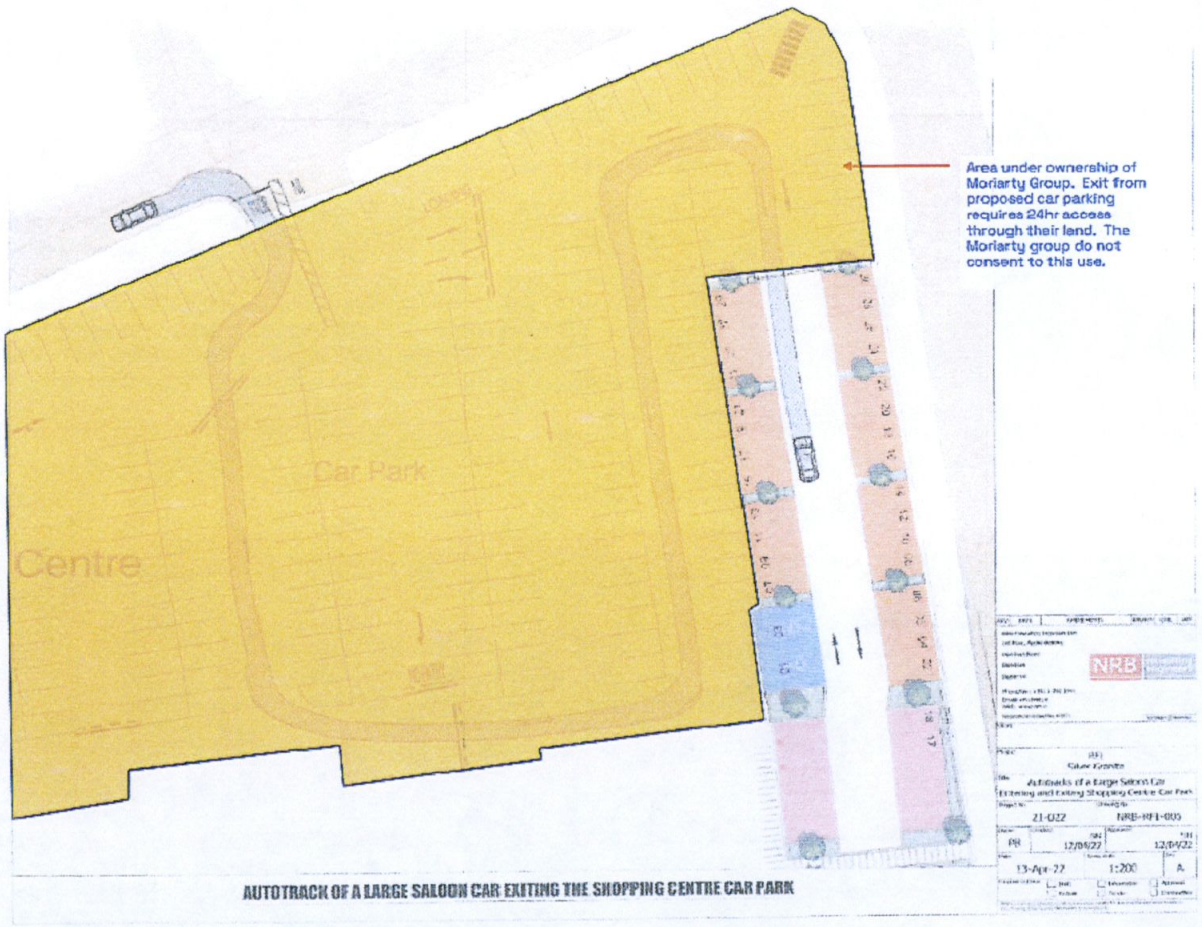
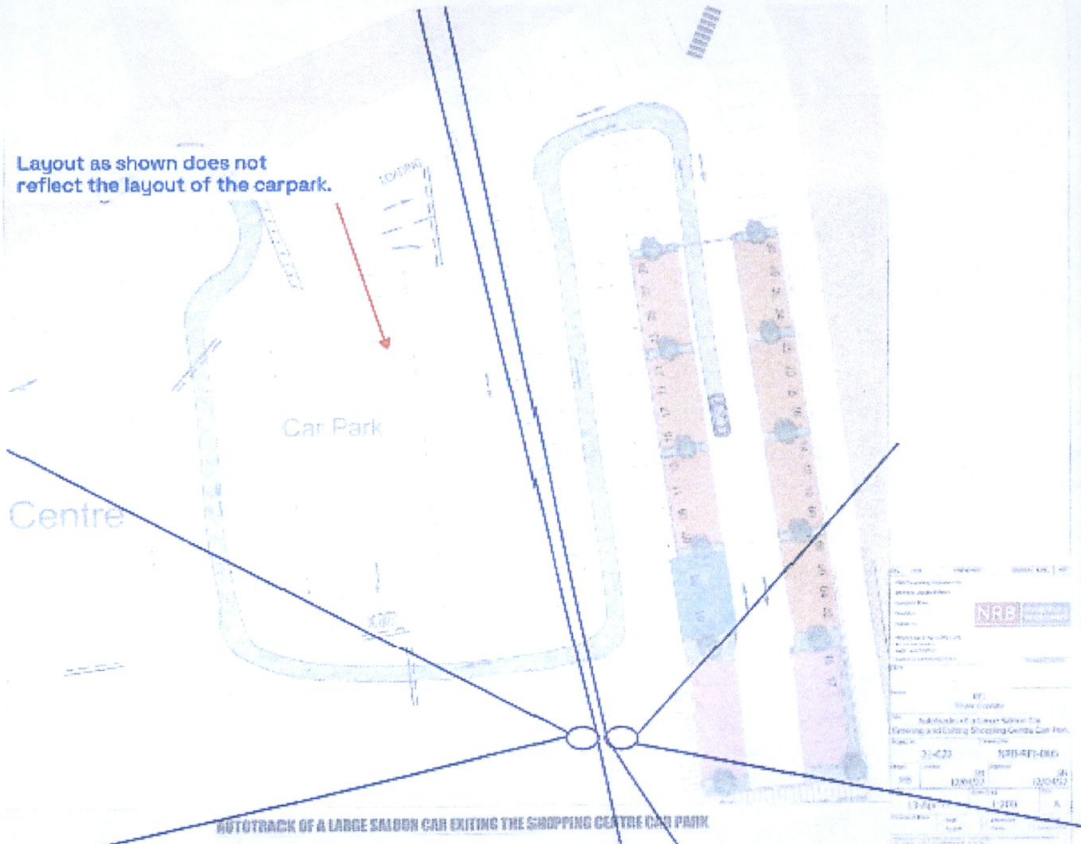
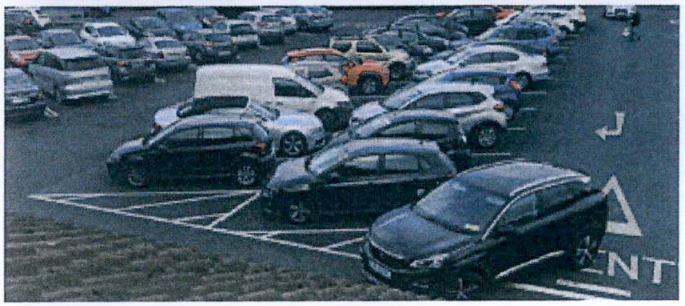


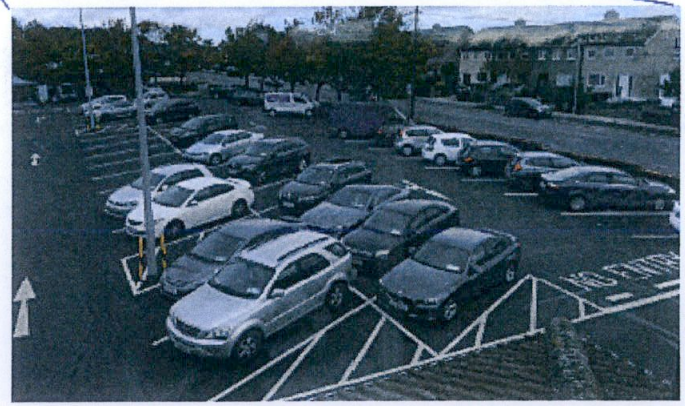
Fig 4.1 - Inaccurate background used at FI stage by developer. Cars expected to travel wrong way down one-way system leading to a traffic hazard



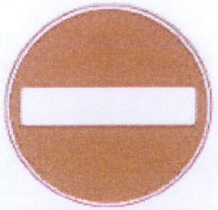


Spaces at angle to assist reduced aisle width show as 90deg spaces on tracking plan.

Photos October 2021



Tracking assumes the cars can exit by going the wrong way on a 1 way route. In the event the Moriarty Group allowed the residents to exit through their property the carpark would require a resurface and re-planning to observe fundamental health and safety requirements



As noted in section 3, Kennelsfort Management Company Ltd with Moriarty Group being its largest shareholder have invested in excess of €300,000 maintaining the quality of the car park with no contribution from the applicant who now proposes to cordon off spaces. The Moriarty Group being the largest shareholder in Kennelsfort Management Company Ltd have no appetite to re-plan to car park to accommodate this unauthorised proposed entrance.

A key planning condition as set out on decision order No. 0568 are described below.

Car Parking.

(a) Prior to the commencement of development the applicant/developer shall submit for the written agreement of the Planning Authority a management plan detailing how the car parking area within the red line on the western side of Kennelsfort Road Upper will be managed in conjunction with the development. This plan shall include how the car parking spaces will be delineated from the adjacent car parking spaces. It should be ensured that these car parking spaces are designated for the development and remain available for the users/residents of the development.

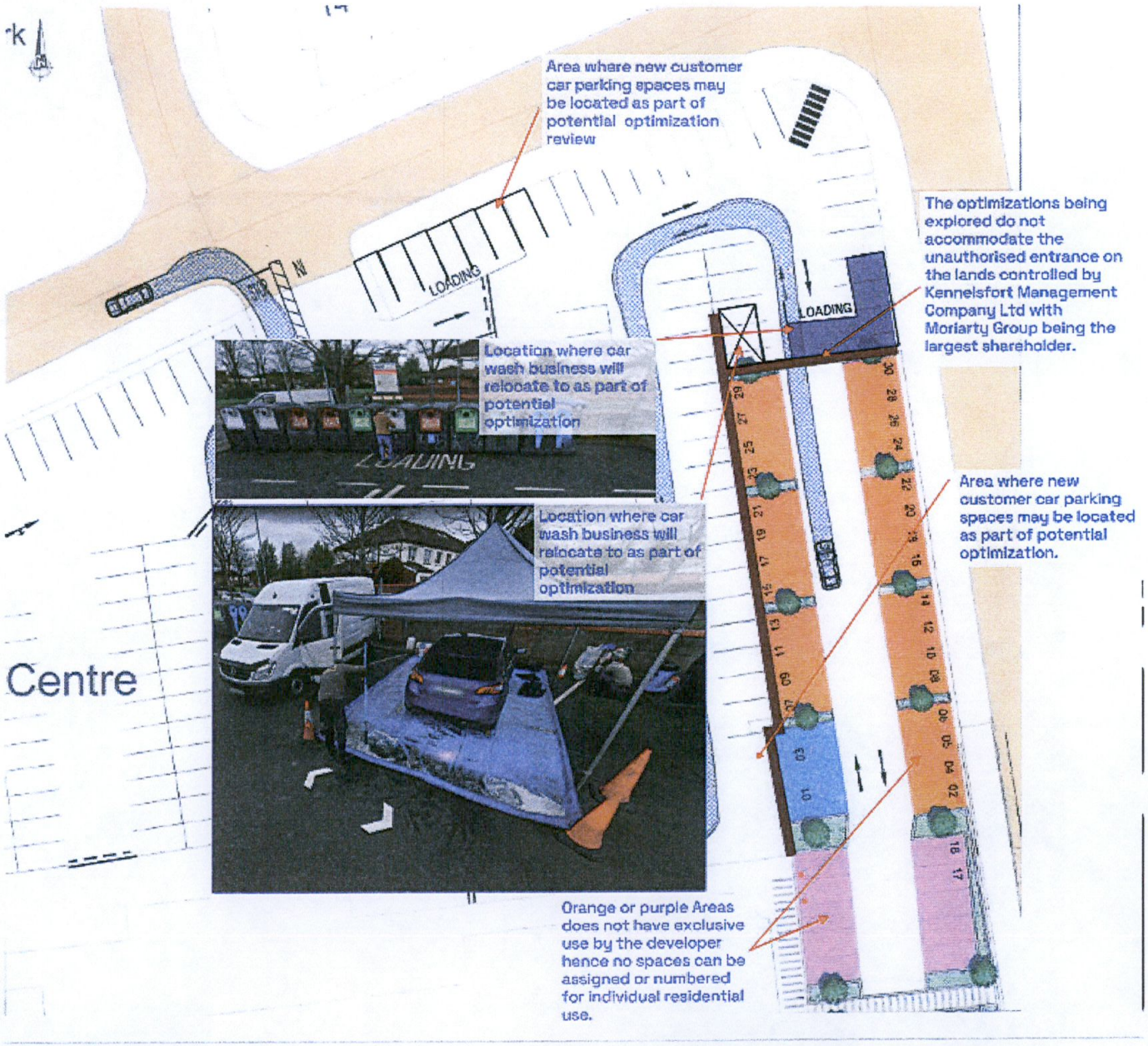
(b) Prior to the occupation of the development the applicant/developer shall submit for the written agreement of the Planning Authority documentation and drawings showing the works that has been carried out as per the management plan, to delineate the car parking spaces.

(c) The location of these car parking spaces may be amended subject to planning permission.

REASON: To ensure sufficient car parking provision for the development

Our client would like to draw attention to the planners the Moriarty Group being the largest shareholder in Kennelsfort Management Company Ltd do not support the access and egress routes through the shared lands of the shopping centre.

Fig 4.2 - Future layout options being explored by the Moriarty Group which to not accommodate the access and egress proposed.



The management plan for the car park is likely to rely on a new entrance and exit point which will be a significant deviation from the current planning application, making the current approval not viable. This would constitute a material change to the development and would necessitate a revised planning application.

Blocking of Existing Service Entrance

Car Park space No 10 will blocks rear service access route and disrupt the operations of the shopping centre. This is illustrated on fig 4.4 within this report. The developer made no attempt to contact our client to advise the development will block this existing entrance.

The developer has made no attempt to understand the servicing strategy for the shopping centre.

The developer has made no attempt to understand this exit has been used daily as part of the waste management strategy

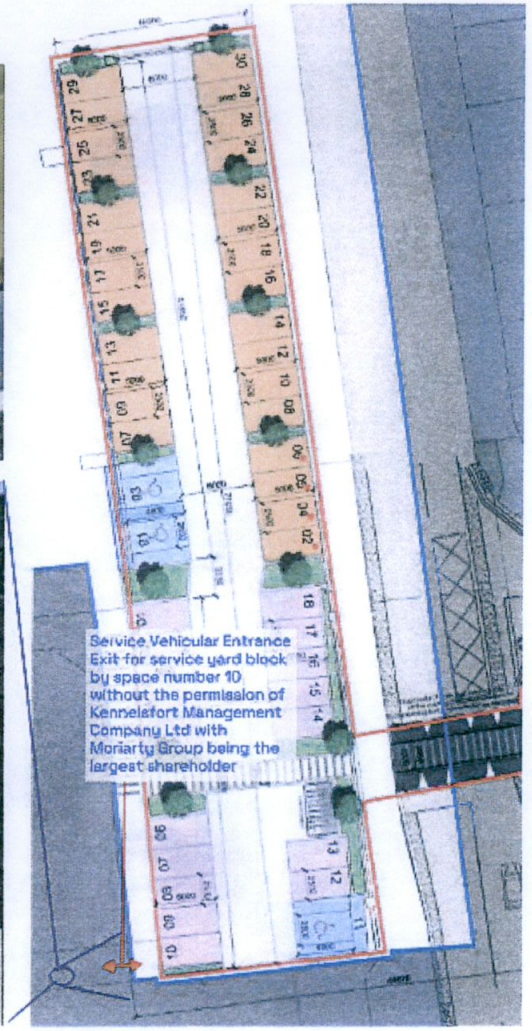
The developer has made no attempt to understand the emergency services access and egress strategy.

The loss of this access is unauthorised and has significant consequences to the safe management and operation of the shopping facility.

The Moriarty Group being the largest shareholder in Kennelsfort Management Company Ltd have a legitimate expectation to continue to use this access point.

Maintaining this entrance will result in loss of car parking spaces for the proposed development.

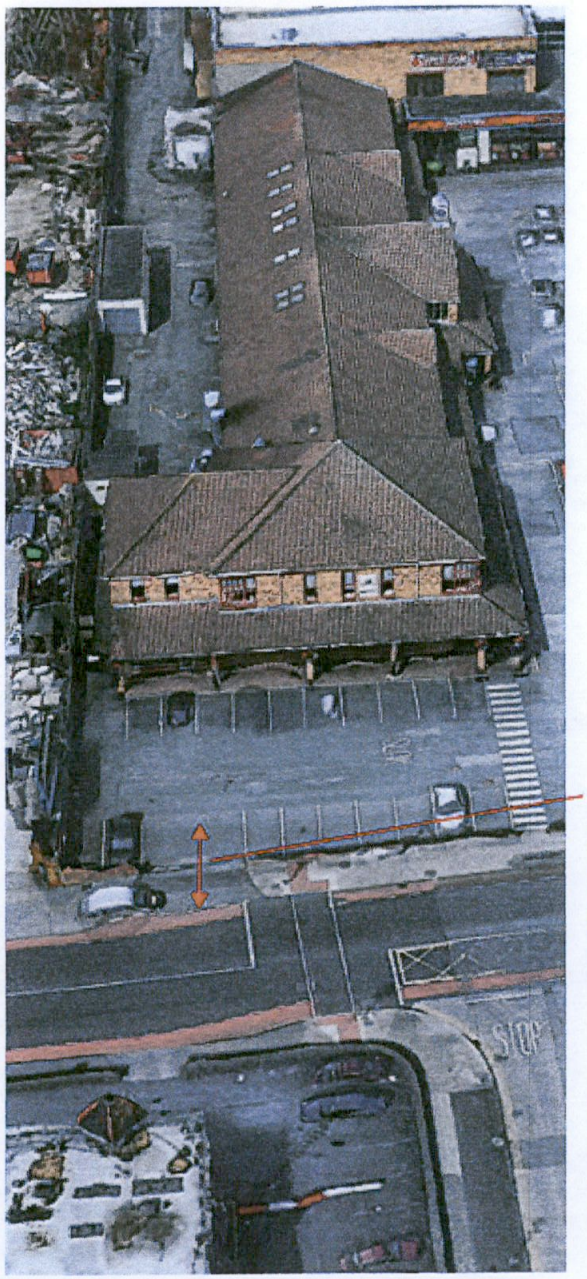
Fig 4.3 - Existing access in daily use since 1988 is being blocked by the development in an unauthorised manner



Blocking of Existing Emergency

The FI Stage proposal confirm the entire removal of the emergency vehicular exist from the Palmerstown shopping centre which was constructed on foot of its own planning permission. The blocking of this existing emergency entrance will create significant health and safety risk. The application has failed to address how emergency vehicles will continue to use this entrance. The blocking of this entrance contravenes a previous planning permission pertained to the shopping centre and to which the applicant raised no objections. The application was then and remains fully aware of the emergency entrance/exit onto Kennelsfort Road from the shopping centre was granted planning permission and was built in compliance with its planning permission.

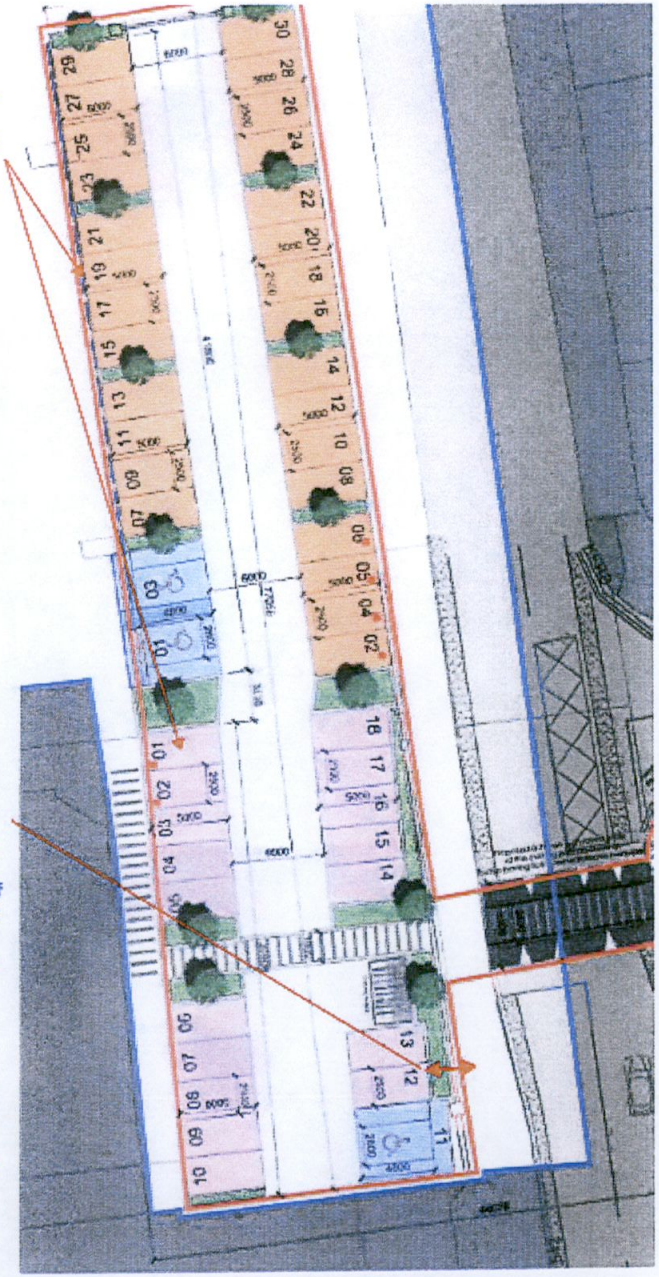
Fig 4.4 - Existing emergency access which will be blocked



Orange or purple Areas does not have exclusive use by the developer hence no spaces can be assigned or numbered for individual residential use.

Established Emergency Vehicular Entrance/Exit for service yard block by space number 12&13 without the permission of Kennelsfort Management Company Ltd with Morlarty Group being the largest shareholder

The blocking of this entrance contravenes a previous planning permission pertained to the shopping centre and to which the applicant raised no objections.



In appropriate crossing point

The applicant's FI Stage pedestrian crossing is not detailed appropriately to serve safe crossing of the Kennelsfor Road which is a high capacity and busy thoroughfare.

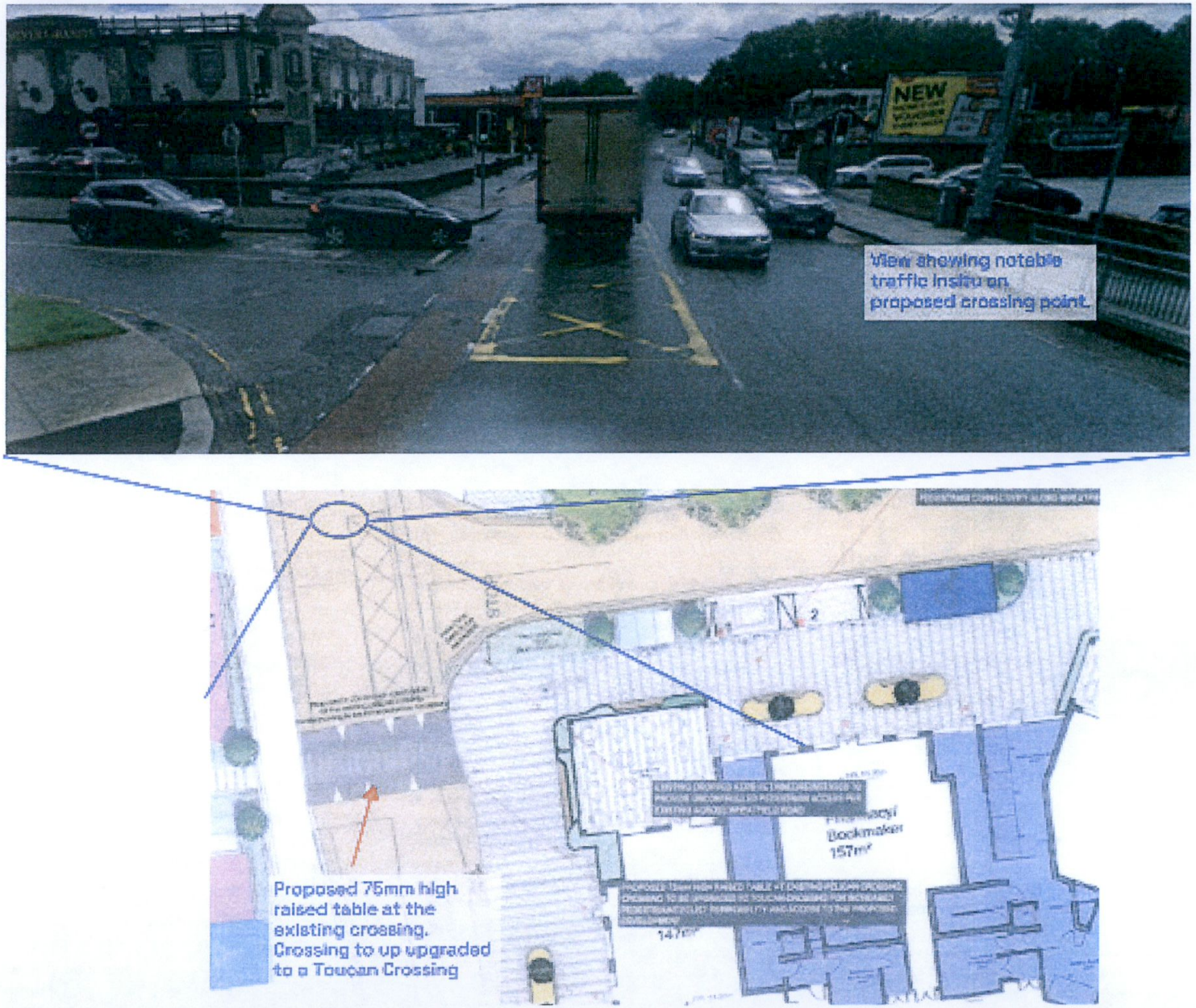
The existing junction is served by a pelican crossing. It is proposed to upgrade this to a Toucan crossing in an attempt to address any safety concerns associated with residents having to cross a busy junction to travel from their car space to their apartment.

Drivers tend to behave at toucan crossings in much the same way they would at pelican crossing.

Toucan crossings tend to be wider than pelican crossings in order to accommodate cyclists. They also feature an additional green signal for cyclists alongside the pedestrian one, although the two are synchronised with each other.

The augmentation to this crossing can be reconsidered minor and we fail to see how it is appropriate for a dedicated residents access route.

Fig 4.5 - In adequate crossing point in respect to the high capacity busy thoroughfare



5 Conclusion

We, Tent Engineering are instructed by our Client, Luke Moriarty , Managing Director of Moriarty Group , owner of Supervalu Palmerstown , secretary and largest shareholder of Kennelsfort Management Company Ltd, who's existing car park will be significantly impacted as a result of the proposed planning application register reference SD21A/0271.

The purpose of this report is to express significant failings to the planing application with respect to traffic and transport which make the scheme fundamental flawed and ultimately undeliverable. The grant of permission has a car movement arrangement failing and as a consequence has serious implication for the viability of the whole scheme.

The required amendments to address the car movement flaws is likely to reduce parking numbers and rely on a new entrance and exit point. These changes will be a significant deviation from the current planning application, making the current approval not viable. This would constitute a material change to the development and would necessitate a revised planning application.

Key Points:

Impact on local Community

Moriarty Group being the largest shareholder in Kennelsfort Management Company Ltd, have supported the local community since 1988 with unrestricted parking on their 330 existing established spaces.

The existing car-park is over utilised and loss of parking will be detrimental to the existing business.

The direct loss of parking spaces associated with the planned development, coupled with the high likelihood the car park will become an uncontrolled overflow parking for the residents and their visitors parking, may force Kennelsfort Management Company Ltd with Moriarty Group being the largest shareholder, in the first time of their 34yr history to consider controlling the car park. This will only hurt the local community.

Health and Safety

The development creates a significant **health and safety** risk by proposing cars exiting the residents car park should drive the wrong way down a 1 way lane. This creates significant road safety concerns.

As shown in Fig 4.0 within this report the exit from the proposed residents car park relies on access through an area under control of Kennelsfort Management Company Ltd with the Moriarty Group being the largest shareholder. Kennelsfort Management Company Ltd with Moriarty Group being the largest shareholder were not consulted by the developer about this proposed access route.

The vehicle tracking appears to use an inaccurate back ground which renders the exercise of no value to the planners. Refer to fig 4.1 which demonstrate the significant discrepancies between the back ground they assumed in their desktop exercise vs the actual car park layout. The developer failed to address basic rules of the road in preparing their application. This creates significant road safety concerns.

The FI Stage proposal confirm the entire removal of the emergency vehicular exist from the Palmerstown shopping centre which was constructed on foot of its own planning permission. The blocking of this existing emergency entrance will create significant health and safety risk. The application has failed to address how emergency vehicles will continue to use this entrance.

The applicant's FI Stage pedestrian crossing is not detailed appropriately to serve safe crossing of the Kennelsfor Road which is a high capacity and busy thoroughfare.

Undeliverable Application

A key planning condition as set out on decision order No. 0568 are described below.

Car Parking.

(a) Prior to the commencement of development the applicant/developer shall submit for the written agreement of the Planning Authority a management plan detailing how the car parking area within the red line on the western side of Kennelsfort Road Upper will be managed in conjunction with the development. This plan shall include how the car parking spaces will be delineated from the adjacent car parking spaces. It should be ensured that these car parking spaces are designated for the development and remain available for the users/residents of the development.

(b) Prior to the occupation of the development the applicant/developer shall submit for the written agreement of the Planning Authority documentation and drawings showing the works that has been carried out as per the management plan, to delineate the car parking spaces.

(c) The location of these car parking spaces may be amended subject to planning permission.

REASON: To ensure sufficient car parking provision for the development

Our client would like to draw attention to the planners the Moriarty Group being the largest shareholder in Kennelsfort Management Company Ltd, do not support the access and egress routes through the privately controlled lands of the shopping centre. We cannot see how the applicant can discharge this condition. Thus the planning application is undeliverable.

The management plan for the car park is likely to rely on a new entrance and exit point which will be a significant deviation from the current planning application, making the current approval is not viable. This would constitute a material change to the development and would necessitate a revised planning application.

Blocking of Existing Service Entrance

Car Park space No 10 will blocks rear service access route and disrupt the operations of the shopping centre. This is illustrated on fig 4.4 within this report. The developer made no attempt to contact our client to advise the development will block this existing entrance.

The developer has made no attempt to understand the servicing strategy for the shopping centre.

The developer has made no attempt to understand this exit has been used daily as part of the waste management strategy

The developer has made no attempt to understand the emergency services access and egress strategy.

The loss of this access is unauthorised and has significant consequences to the safe management and operation of the shopping facility.

TENT ENGINEERING

I being the Spouse of the under-named Vendor hereby, for the purposes of Section 3, Family Home Protection Act, 1976, consent to the proposed sale of the property described in the within Particulars at the price mentioned below

SIGNED by the said Spouse
in the presence of:-

MEMORANDUM OF AGREEMENT made this 29th day of October 1987
BETWEEN

FRANK TOWEY (IN TRUST)

of VENDOR

and

LUKE MORIARTY (IN TRUST)

of PURCHASER

whereby it is agreed that the Vendor shall sell and the Purchaser shall purchase in accordance with the annexed Special and General Conditions of Sale the property described in the within Particulars at the purchase price mentioned below

Purchase Price	£ 217,000-00	Closing Date:	23rd December 1987
less deposit	£ 21,700-00	Interest Rate: 16	per cent per annum
Balance	£ 196,300-00		

SIGNED Frank Towey (Vendor)

SIGNED Luke Moriarty (Purchaser) per Frank

Witness Denis McLoughlin

Occupation Solicitor

Address 94 Lower Baggot Street Dublin 2

Witness Colin Murphy

Occupation Solicitor

Address 10 Clare St, D.2.

As Stakeholder I/We acknowledge receipt of Bank Draft/Cheque for £ in respect of deposit

SIGNED

PARTICULARS AND TENURE

ALL THAT AND THOSE part of the lands comprises in folios 3982F, 1452F and 42047F of the Register of Freeholders, County Dublin more particularly described and delineated on the Map attached hereto and thereon outlined in red together with the right of the Purchaser his agents, asigns, licensees, invitees to pass and repass over the roadway coloured yellow on the Map attached hereto.

DOCUMENTS SCHEDULE

1. Copy folio 145F County Dublin together with file plan.
2. Copy folio 3982F County Dublin together with file.
3. Copy folio 42047F County Dublin together with file plan.

SEARCHES SCHEDULE

1. Negative Search in the Registry of Deeds on the Index of Names only for all acts affecting the subject property by the Vendor from the day of

and

SPECIAL CONDITIONS

1. Save where the context otherwise requires or implies or the text hereof expresses to the contrary, the definitions and provisions as to interpretation set forth in the within General Conditions shall be applied for the purposes of these Special Conditions

2. The said General Conditions shall:-
   (a) apply to the sale in so far as the same are not hereby altered or varied, and these Special Conditions shall prevail in case of any conflict between them and the General Conditions
   (b) be read and construed without regard to any amendment therein, unless such amendment shall be referred to specifically in these Special Conditions.

(Delete, if inappropriate)

3. In addition to the purchase price, the Purchaser shall pay to the Vendor an amount equivalent to such Value Added Tax as shall be exigible in relation to the sale, same to be calculated in accordance with the provisions of the Value-Added Tax Act 1972, and to be paid on completion of the sale or forthwith upon receipt by the Purchaser of an appropriate invoice (whichever shall be the later)

3. The Title shall commence with the registration of the Vendors as registered owners on folios hereinbefore referred to. No requisition or objection shall be raised as to the right of the Vendors to be so registered.

4. The Purchaser hereby agrees to construct surface and maintain the roadway which is hatched in yellow on the Map annexed and to install all footpaths roads and services along this roadway to a standard approved by the Vendors' Engineers which said roadway footpaths and services shall be installed prior to the opening of the shopping centre herein or within one year from the date hereof whichever shall be the first to accur. The Purchaser hereby agrees to construct the boundary wall with the Kennelsfort Road to the front of the Vendors retained car park to a standard approved by the Vendors' Engineers. The purchaser shall furnish an indemnity to the Vendors in respect of the maintenance and upkeep of the said roadway, footpaths kerbs and services until such time as they are taking in charge by the relevant local authority.

5. On being furnished with a further £78,300-00 on the closing date herein, the Vendors will allow the Purchasers into possession of the property and will execute a Transfer of the site in sale and will procure the release of the site charged held by the Industrial Credit Corporation PLC or alternatively the Agreement of Industrial Credit Corporation to share their charge in respect of the sites herein with the Bank of Ireland. In the alternative I.C.C. shall agree to the postponement of ther Charge in favour of the Bank of Ireland who shall have first Charge on the property. The balance of the purchase monies will be paid as to a further £100,000 on the 30th April, 1988 togther with interest accrued thereon at the rate of 16% froom the 30th April 1988 in the event that the sale does not close on that particular date and as to a further sum of £17,000 not later than the 31st July, 1988 together with interest accrued thereon at the rate of 16% from the 31st July 1988, in the event of the sale does not close on that date. In the event of the purchaser defaulting on any of the instalments hereinbefore referred to, interest will continue to accrue at the rate of 16% from the appointed closing date to the date of actual closing of the transaction.

SPECIAL CONDITIONS

5 (a) In the event of any of the aforementioned instalments being overdue for a period of 7 days the Vendor, without prejudice to his remedies under these conditions of sale and at common law shall have, upon giving the Purchaser 7 days notice, the option to request and obtain a Lease for a term of 999 years of Unit 3 Palmerstown Shopping Centre (comprising 1000 square feet) which Lease shall be free of rent but otherwise subject to the normal standard conditions inculded in such a Lease in full or partial discharge as the case may be of such monies as are outstanding to him by the Purchaser under the terms of this contract. The value of such Lease shall be determined by a mutually agreed Arbitrator or Valuer and in default of agreement by an Arbitrator appointed by the President of the Institute of Auctioneers and Valuers of Ireland.

6. The Purchaser hereby covenants (which covenant shall be binding on the Purchaser his successors, admininstrators and assigns) not to construct or erect or have a public house or licenced premises or any nature on the property herein so long as Frank Towey his successors or assigns remain the proprietor of the public house opposite the site or so long as any Company or individual holds the said public house on his behalf. This covenant shall extend to the administrators successors and assigns of the said Frank Towey. Licenced premises shall include a licenced restaurant.

7. The Purchasers agrees to allow access to the vendors and or his agents and invitee to the car parking area attached to the shopping centre incovenants that this car parking area will not be sold or reduced in area without the prior consent of the Vendor and shall agree to a covenant being inserted in the Transfer to this effect.The Car parking area is delineated with a red verge line on the map annexed hereto.

8. The Purchaser to allow the Vendor access to sewers and sanitary and other public services are as required by the Vendor for the adjoining housing development project subject to the Vendor being responsible for the reinstatment of the site to its original state consequent on any work being carried out within the confines of the sites in sale.
The sale is subject to the obtaining of the necessary Section 12 and Section 45 Consents (pursuant to the Land Act 1965 but the delay in the obtaining of same shall not cause the postponement of the closing of this transaction.

9. The site in sale is defined by reference to a map or plan prepared by the Vendors' Architect and agreed to by the Purchasers' Architect.

NOTE: These General Conditions are not to be altered in any manner. Any required variation or addition should be dealt with by way of Special Condition

GENERAL CONDITIONS OF SALE

DEFINITIONS

1. In these General Conditions:-

"the Conditions" means the attached Special Conditions and these General Conditions

"the Documents Schedule", "the Searches Schedule" and "the Special Conditions" mean respectively the attached Documents Schedule, Searches Schedule and Special Conditions

"the Memorandum" means the Memorandum of Agreement on Page 1 hereof

"the Particulars" means the Particulars and Tenure on Page 2 hereof and any extension of the same

"the Purchaser" means the party identified as such in the Memorandum

"the sale" means the transaction evidenced by the Memorandum, the Particulars and the Conditions

"the subject property" means the property or interest in property which is the subject of the sale

"the Vendor" means the party identified as such in the Memorandum

2. In the Conditions save where the context otherwise requires or implies:-

"Apportionment Date" means either (a) the later of (i) the closing date (as defined hereunder) and (ii) such subsequent date from which delay in completing the sale shall cease to be attributable to default on the part of the Vendor or (b) in the event of the Vendor exercising the right to elect referred to in Condition 25 hereunder, the date of actual completion of the sale or (c) such other date as may be agreed by the Vendor and the Purchaser to be the Apportionment Date for the purpose of this definition

"Assurance" means the document or documents whereby the sale is to be carried into effect

"closing date" means the date specified as such in the Memorandum, or, if no date is specified, the first working day after the expiration of five weeks computed from the date of sale.

"Competent Authority" includes the State, any Minister thereof, Government Department, State Authority, Local Authority, Planning Authority, Sanitary Authority, Fire Authority, Statutory Undertaker or any Department or Body by statutory provision or other for the time being in force authorised directly or indirectly to control, regulate, modify or restrict the development, use or servicing of land or empowered to acquire land by compulsory process such Authorities and Undertaker having the meanings conferred on them (as appropriate) by the Local Government (Planning and Development) Acts, 1963 and 1976 and the Fire Services Act, 1981

"date of sale" means the date of the auction when the sale shall have been by auction, and otherwise means the date upon which the contract for the sale shall have become binding on the Vendor and the Purchaser

"development" has the same meaning as that conferred by the Local Government (Planning and Development) Act, 1963

"lease" includes (a) a fee farm grant and every contract (whether or not in writing or howsoever effected, derived or evidenced) whereby the relationship of Landlord and Tenant is or is intended to be created and whether for any freehold or leasehold estate or interest and (b) licences and agreements relating to the occupation and use of land, cognate words being construed accordingly

"purchased chattels" means such chattels, fittings, tenant's fixtures and other items as are included in the sale

"purchase price" means the purchase price specified in the Memorandum PROVIDED HOWEVER that, if the sale provides for additional moneys to be paid by the Purchaser for goodwill, crops or purchased chattels, the expression "purchase price" shall be extended to include such additional moneys

"Requisitions" include Requisitions on the title or titles as such of the subject property and with regard to rents, outgoings, rights, covenants, conditions, liabilities (actual or potential), planning and kindred matters and taxation issues material to such property

"stipulated interest rate" means the interest rate specified in the Memorandum, or, if no rate is so specified, such rate as shall equate to 4% per centum per annum over the rate (as annualised) of interest payable upon tax chargeable under the Capital Acquisitions Tax Act, 1976 and ruling at the date from which interest hereunder is to run

"working day" does not include any Saturday, Sunday nor any Public Holiday

INTERPRETATION

3. In the Conditions save where the context otherwise requires or implies:-

Words importing the masculine gender only include the feminine, neuter and common genders, and words importing the singular number only include the plural number and vice versa

The words "Vendor" and "Purchaser" respectively include (where appropriate) parties deriving title under them or either of them, and shall apply to any one or more of several Vendors and Purchasers as the case may be, and so that the stipulations in the Conditions contained shall be capable of being enforced on a joint and several basis

Unless the contrary appears, any reference hereunder:-

(a) to a particular Condition shall be to such of these General Conditions of Sale as is identified by said reference

(b) to a Statute or a combination of Statutes shall include any extension, amendment, modification or re-enactment thereof, and any Rule, Regulation, Order or Instrument made thereunder, and for the time being in force

Headings inserted in the Conditions shall not affect the construction thereof, nor shall the same have any contractual significance

AUCTION

4. Where the sale is by auction, the following provisions shall apply:-

(a) the Vendor may divide the property set forth in the Particulars into lots and sub-divide, consolidate or alter the order of sale of any lots

(b) there shall be a reserve price for the subject property whether the same shall comprise the whole or any part of the property set forth in the Particulars AND the Auctioneer may refuse to accept any bid. If any dispute shall arise as to any bidding, the Auctioneer shall (at his option) either determine the dispute or again put up the property in question at the last undisputed bid. No person shall advance at a bidding a sum less than that fixed by the Auctioneer, and no accepted bid shall be retracted. Subject to the foregoing, the highest accepted bidder shall be the Purchaser

(c) the Vendor may:

(i) bid himself or by an agent up to the reserve price

(ii) withdraw the whole of the property set forth in the Particulars or, where such property has been divided into lots, withdraw any one or more of such lots at any time before the same has been sold without disclosing the reserve price

(d) the Purchaser shall forthwith pay to the Vendor's Solicitor as stakeholder a deposit of fifteen per centum (15%) of the purchase price in part payment thereof, and shall execute an agreement in the form of the Memorandum to complete the purchase of the subject property in accordance with the Conditions

PRIVATE TREATY SALE

5. Where the sale is by private treaty, the Purchaser shall on or before the date of the sale pay to the Vendor's Solicitor as stakeholder a deposit of the amount stated in the Memorandum in part payment of the purchase price

THE FOLLOWING CONDITIONS APPLY WHETHER THE SALE IS BY AUCTION OR BY PRIVATE TREATY

PURCHASER ON NOTICE OF CERTAIN DOCUMENTS

6. The documents specified in the Documents Schedule or copies thereof, have been available for inspection by the Purchaser or his Solicitor prior to the sale. If all or any of the subject property is stated in the Particulars or in the Special Conditions to be held under a lease or to be subject to any covenants, conditions, rights, liabilities or restrictions and the lease or other document containing the same is specified in the Documents Schedule, the Purchaser, whether availing of such opportunity of inspection or not, shall be deemed to have purchased with full knowledge of the contents thereof, notwithstanding any partial statement of such contents in the Particulars or in the Conditions

DELIVERY OF TITLE

7. Within seven working days from the date of sale, the Vendor shall deliver or send by post to the Purchaser or his Solicitor copies of the documents necessary to vouch the title to be shown in accordance with the Conditions

TITLE

8. The Title to be shown to the subject property shall be such as is set forth in the Special Conditions

9. Where any of the subject property is held under a Lease, the Purchaser shall not call for or investigate the title of the grantor or lessor to make the same, but shall conclusively assume that is was well and validly made, and is a valid and subsisting lease

10. Where any of the subject property is stated to be held under a lease or an agreement therefor then:-

    (a) no Objections or Requisition shall be made or indemnity required on account of such lease or agreement being (if such is the case) a sub-lease or agreement therefor, or on account of any superior lease comprising other property apart from the subject property or reserving a larger rent, or on the ground of any superior owner not having concurred in any apportionment or exclusive charge of rent

    (b) no Objections or Requisition shall be made by reason of any discrepancy between the covenants, conditions and provisions contained in any sub-lease and those in any superior lease, unless such as could give rise to forfeiture or a right of re-entry

    (c) the production of the receipt for the last gale of rent reserved by the lease or agreement therefor, under which the whole or any part of the subject property is held, (without proof of the title or authority of the person giving such receipt) shall (unless the contrary appears) be accepted as conclusive evidence that all rent accrued due has been paid and all covenants and conditions in such lease or agreement and in every (if any) superior lease have been duly performed and observed or any breaches thereof (past or continuing) effectively waived or

sanctioned up to the actual completion of the sale, whether or not it shall appear that the lessor or reversioner was aware of such breaches. If the said rent (not being a rack rent) shall not have been paid in circumstances where the party entitled to receive the same is not known to the Vendor, or if the subject property shall be indemnified against payment of rent, the production of a Statutory Declaration so stating shall (unless the contrary appears) be accepted as such conclusive evidence, provided that the Declaration further indicates that no notices or rent demands have been served on or received by the Vendor under the Lease or Agreement on foot of which the subject property is held; that the Vendor has complied with all the covenants (other than those in respect of payment of rent) on the part of the lessee and the conditions contained in such Lease or Agreement, and that he is not aware of any breaches thereof either by himself or by any of his predecessors in title

(d) if any of the subject property is held under a lease or agreement for lease requiring consent to alienation, the Vendor shall apply for and endeavour to obtain such consent, and the Purchaser shall satisfy all reasonable requirements of the Lessor in relation to the application therefor, but the Vendor shall not be required to institute legal proceedings to enforce the issue of any such consent or otherwise as to the witholding of the same. If such consent shall have been refused or shall not have been procured and written evidence of the same furnished to the Purchaser on or before the closing date, or if any such consent is issued subject to a condition, which the Purchaser on reasonable grounds refused to accept, either party may rescind the sale by seven days prior notice to the other

PRIOR TITLE

11. The title to the subject property prior to the date of the instrument specified in the Special Conditions at the commencement of title, whether or not appearing by recital, inference or otherwise, shall not be required, objected to or investigated

INTERMEDIATE TITLE

12. Where in the Special Conditions it is provided that the title is to commence with a particular instrument and then to pass to a second instrument or to a specified event, the title intervening between the first instrument and the second instrument or the specified event, whether or not appearing by recital, inference or otherwise, shall not be required, objected to or investigated

REGISTERED LAND

13. Where all or any of the subject property consists of freehold or leasehold registered land registered under the Registration of Title Acts, 1891 to 1942 ("the Acts of 1891 to 1942") or the Registration of Title Act, 1964 ("the Act of 1964") then:-

(a) if the registration is subject to equities under the Acts of 1891 to 1942, the Purchaser shall not require the equities to be discharged, but the Vendor shall,

with the copy documents to be delivered or sent in accordance with Condition 7, furnish sufficient evidence of title prior to first registration or otherwise to enable the Purchaser to procure their discharge

(b) if the registration is with a possessory title under the Act of 1964 the Purchaser shall not require the Vendor to be registered with an absolute title, but the Vendor shall, with the copy documents to be delivered or sent in accordance with Condition 7, furnish sufficient evidence of the title prior to such registration or otherwise to enable the Purchaser to be registered with an absolute title

(c) the Vendor shall, with the copy documents to be delivered or sent in accordance with Condition 7, furnish to the Purchaser a copy of the Land Registry Folio or Folios relating to the subject property written up-to-date (or as nearly as practicable up-to-date), together with a copy of the relevant Land Registry map or file plan

(d) the Vendor shall furnish a Statutory Declaration, by some person competent to make it, confirming that there are not in existence any burdens which under the Act of 1964 affect registered land without registration, save such (if any) as are specifically mentioned in the Particulars or the Special Conditions

(e) if the Land Certificate has been issued to the Land Commission or if no such Certificate has been issued, the Purchaser shall not be entitled to require such Certificate to be produced, handed over on completion or issued.

(f) the Purchaser shall procure himself to be registered as owner of the subject property at his own expense

(g) the Vendor shall not be obliged to seek the removal from the Register of any Sporting Rights reserved to the Land Commission

IDENTITY

14. The Purchaser shall accept such evidence of identity as may be gathered from the descriptions in the documents of title plus (if circumstances require) a Statutory Declaration to be made by a competent person, at the Purchaser's expense, that the subject property has been held and enjoyed for at least twelve years in accordance with the title shown. The Vendor shall be obliged to furnish such information as is in his possession relative to the identity and extent of the subject propertry, but shall not be required to define exact boundaries, fences, ditches, hedges or walls or to specify which (if any) of the same are of a party nature, nor shall the Vendor be required to identify parts of the subject property held under different titles

RIGHTS - LIABILITIES - CONDITION OF SUBJECT PROPERTY

15. The Vendor shall disclose before the sale, in the Particulars, the Special Conditions or otherwise, all easements, rights, privileges and liabilities (not already known to the Purchaser or apparent from inspection) which are known by the Vendor to affect the subject property or which are likely to affect it

16. Subject to Condition 15, the Purchaser shall be deemed to buy:-

(a) with full notice of the actual state and condition of the subject property

and

(b) subject to (i) all leases (if any) mentioned in the Particulars or in the Special Conditions and (ii) all rights of way, water, light, drainage and other easements, rights, reservations, privileges, liabilities, covenants, rents, outgoings and all incidents of tenure

REQUISITIONS

17 The Purchaser shall, within fourteen working days after the delivery of the copy documents of title in accordance with Condition 7, send to the Vendor's Solicitor a written statement of his Objections (if any) on the title and his Requisitions. Any Objection or Requisition not made within the time aforesaid and not going to the root of the title shall be deemed to have been waived. The Vendor's Replies to any Objections or Requisitions shall be answered by the Purchaser in writing within seven working days after the delivery thereof and so on toties quoties, and, if not so answered, shall be considered to have been accepted as satisfactory. In all respects time shall be deemed to be of the essence of this Condition

18 If the Purchaser shall make and insist on any Objection or Requisition as to the title, the Assurance to him or any other matter relating or incidental to the sale, which the Vendor shall, on the ground of unreasonable delay or expense or other reasonable ground, be unable or unwilling to remove or comply with, the Vendor shall be at liberty (notwithstanding any intermediate negotiation or litigation or attempts to remove or comply with the same) by giving to the Purchaser or his Solicitor not less than five working days notice to rescind the sale. In that case, unless the Objection or Requisition in question shall in the meantime have been withdrawn, the sale shall be rescinded at the expiration of such notice

SEARCHES

19. The Purchaser shall be furnished with the searches (if any) specified in the Searches Schedule and any searches already in the Vendor's possession, which are relevant to the title or titles on offer. Any other searches required by the Purchaser must be obtained by him at his own expense. Where the Special Conditions provide that the title shall commence with a particular instrument and then pass to a second instrument or to a specified event, the Vendor shall not be obliged to explain and discharge any act which appears on a search covering the period between such particular instrument and the date of the second instrument or specified event, unless same goes to the root of the title. Subject as aforesaid the Vendor shall explain and discharge any acts appearing on Searches covering the period from the date stipulated or implied for the commencement of the title to the date of actual completion

ASSURANCE

20. Subject to the provisions of Paragraph 11, Schedule 4, Capital Gains Tax Act, 1975 (as substituted), on payment of all moneys payable by him in respect of the sale, the Purchaser shall be entitled to a proper Assurance of the subject property from the

Vendor and all other (if any) necessary parties, such Assurance to be prepared by and at the expense of the Purchaser. The draft thereof shall be submitted to the Vendor's Solicitor not less than seven working days, and the engrossment not less than four working days, before the closing date. The delivery of the said draft or engrossment shall not prejudice any outstanding Objection or Requisition validly made

VACANT POSSESSION

21. Subject to any provisison to the contrary in the Particulars or in the Conditions or implied by the nature of the transaction, the Purchaser shall be entitled to vacant possession of the subject property on completion of the sale

LEASES

22. Where the subject property is sold subject to any lease, a copy of the same (or, if the provisions thereof have not been reduced to writing, such evidence of its nature and terms as the Vendor shall be able to supply) together with copies of any notices in the Vendor's possession served by or on the lessee shall, prior to the sale, be made available for inspection by the Purchaser or his Solicitor

23. Unless the Special Conditions provide to the contrary, the Purchaser shall be entitled to assume that, at the date of sale, the terms and conditions of any such lease (as is referred to in Condition 22) have been complied with; that the lessee therein named is the actual lessee, and that there has been no variation in the said terms and conditions (other than such as may be apparent from the Particulars or the documents furnished to the Purchaser prior to the sale)

COMPLETION AND INTEREST

24. (a) The sale shall be completed and the balance of the purchase price paid by the Purchaser on or before the closing date

    (b) Completion shall take place at the office of the Vendor's Solicitor

25. If by reason of any default on the part of the Purchaser, the purchase shall not have been completed on or before the later of (a) the closing date or (b) such subsequent date whereafter delay in completing shall not be attributable to default on the part of the Vendor

    (a) the Purchaser shall pay interest to the Vendor on the balance of the purchase money remaining unpaid at the stipulated interest rate for the period between the closing date (or as the case may be such subsequent date as aforesaid) and the date of actual completion of the sale. Such interest shall accrue from day to day and shall be payable before and after any judgment

OR, alternatively

(b) the Vendor may, in lieu of interest, elect to take the rents and profits less the outgoings of the subject property up to the date of actual completion of the sale

26. The submission of an Apportionment Account made up to a particular date or other corresponding step taken in anticipation of completing the sale shall not per se preclude the Vendor from exercising his rights under the provisions of Condition 25 AND in the event of such exercise the said Apportionment Account or the said other corresponding step shall (if appropriate) be deemed not to have been furnished or taken, and the Vendor shall be entitled to furnish a further Apportionment Account

APPORTIONMENT AND POSSESSION

27. Subject to the stipulations contained in the Conditions, the Purchaser, on paying the purchase price, shall be entitled to possession of the subject property or (as the case may be) the rents and profits thereout with effect from the Apportionment Date, to which date all rents, rates, taxes and other outgoings thereon shall be discharged and all incoming rents and other moneys payable thereout shall be received by the Vendor. For the purpose of this Condition all such rents, outgoings and moneys (including rents, outgoings, and money payable in advance) shall be apportioned (on a day to day basis) as at the Apportionment Date, whether apportionable by law or not. If then unknown (notwithstanding reasonable endeavours to ascertain same), the said rents, outgoings and moneys shall be apportioned provisionally on a fair estimate thereof, and, upon ascertainment of the actual figures, a final apportionment shall be made, and the difference between it and the provisional apportionment shall be met by the Vendor or the Purchaser (as the case may be)

CONSENT

28. Where Section 45 Land Act, 1965 applies, the Purchaser shall, at his own expense, procure any such Certificate or Consent as may be necessary thereunder for the vesting of the subject property in him or his nominee

COMPULSORY REGISTRATION

29. If all or any of the subject property is unregistered land, the registration of which shall, under the Registration of Title Act, 1964, become compulsory on completion of the sale, the Purchaser shall be bound, at his own expense, to procure such registration as the title to be shown under the Conditons may enable him to obtain AND the Vendor shall, if so requested, within two years after completion of the sale, by and at the expense of the Purchaser, supply any additional information, which he may reasonably be able to supply, and produce and furnish any further documents in his possession that may be required to effect such registration

SIGNING "IN TRUST" or "AS AGENT"

30. A Purchaser who signs the Memorandum "in Trust" "as Trustee" or "as Agent" or with any similar qualification or description without therein specifying the identity of

the principal or other party for whom he so signs, shall be personally liable to complete the sale, and to fulfil all such further stipulations on the part of the Purchaser as are contained in the Conditions, unless and until he shall have disclosed to the Vendor the name of his principal or other such party

FAILURE TO PAY DEPOSIT

31. The failure by the Purchaser to pay in full the deposit hereinbefore specified as payable by him shall constitute a breach of condition entitling the Vendor to terminate the sale or to sue the Purchaser for damages or both but such entitlement shall be without prejudice to any rights otherwise available to the Vendor

32. In case of a cheque taken for the deposit (having been presented and whether or not it has been re-presented) shall not have been honoured, then and on that account the Vendor may (without prejudice to any rights otherwise available to him) elect either:-

    (a) to treat the Contract evidenced by the Memorandum, the Particulars and the Conditions as having been discharged by breach thereof on the Purchaser's part

    or

    (b) to enforce payment of the deposit as a deposit by suing on the cheque or otherwise

ERRORS

33. (a) Nothing in the Memorandum, the Particulars or the Conditions shall:-

    (i) entitle the Vendor to require the Purchaser to accept, or entitle the Purchaser to require the Vendor to assure (with or without compensation), property which differs substantially from the property agreed to be sold whether in quantity, quality, tenure or otherwise, if the Purchaser or the Vendor (as the case may be) would be prejudiced materially by reason of any such difference

    or

    (ii) affect the right of the Purchaser to rescind or repudiate the sale where compensation for a claim attributable to a material error communicated to him by or on behalf of the Vendor cannot be reasonable assessed

    (b) Save as aforesaid, no error shall annul the sale or entitle the Vendor or the Purchaser (as the case may be) to be discharged therefrom

    (c) No compensation shall be payable in respect of any matter of which the Purchaser is deemed to have notice under Condition 16 (a) or in relation to any error in a location or similar plan furnished for identification only

    (d) The Purchaser shall be entitled to be compensated by the Vendor for any loss suffered by the Purchaser in his bargain relative to the sale as a result of an error communicated to him by or on behalf of the Vendor

(e) In this Condition "error" includes any mistake, ommission, discrepancy, inaccuracy mis-statement or mis-representation published or communicated in Memorandum, the Particulars or the Conditions or in the course of any representation or negotiations leading to the sale, and whether in respect of measurements quantities or otherwise

DOCUMENTS OF TITLE RELATING TO OTHER PROPERTY

34. (a) Documents of title relating to other property as well as to the subject property shall be retained by the Vendor or other person entitled to the possession thereof

(b) Where the property is sold in lots, all documents of title relating to more than one lot shall be retained by the Vendor, until the completion of the sales of all the lots comprised in such documents, and shall then (unless they also relate to any property retained by the Vendor) be handed over to such of the Purchasers as the Vendor shall consider best entitled thereto

(c) The Vendor shall give to the Purchaser (and where the property is sold in lots, to the Purchaser of each lot) certified copies of all documents retained under this Condition and pertinent to the title to be furnished (other than documents of record, of which plain copies only will be given)

(d) Subject as hereinafter provided, the Vendor shall give the usual statutory acknowledgment of the right of production and undertaking for safe custody of all documents (other than documents of record) retained by him under this Condition and pertinent to the title to be furnished. Such acknowledgement and undertaking shall be prepared by and at the expense of the Purchaser. Where any document is retained by the Vendor or any other person in a fiduciary or official capacity, or by a mortgagee, no undertaking for safe custody shall be required

(e) If the Vendor is retaining any unregistered land held wholly or partly under the same title as the subject property, the Assurance shall be engrossed in duplicate by and at the expense of the Purchaser, who shall deliver to the Vendor the Counterpart thereof, same having been stamped and registered and (if appropriate) executed by the Purchaser

DISCLOSURE OF NOTICES

35. Where prior to the date of sale

(a) any closing order, demolition order or clearance order or any dangerous building notice issued by or at the behest of a Competent Authority affecting the subject property at the date of sale has been notified to the Vendor (whether personally or by advertisment or posting on the property), or

(b) any notice of a proposed requisition, compulsory acquisition or resumption by any Competent Authority has been given to the Vendor in any such manner as aforesaid, or

(c) any notice, enforceable under the Local Government (Planning and Development) Acts, 1963 to 1983 (not being part of the contents of a Development Plan other than an actual or proposed designation of all or any part of the subject property for compulsory acquisition) or under the Fire Services Act, 1981 has been so given as aforesaid to the Vendor,

then, if the Vendor fails to show that before the date of the sale the Purchaser received notice or was aware of the matter in question, the Purchaser may by notice given to the Vendor rescind the sale

DEVELOPMENT

36. (a) Unless the Special Conditions contain a provision to the contrary, the Vendor warrants either:-

(i) that there has been no development of, or execution of works on or to, the subject property since the 1st. day of October, 1964, for which Planning Permission or Building Bye-Law Approval was required by law

or

(ii) that all Planning Permissions and Building Bye-Law Approvals required by law for the development of, or the execution of works on or to, the subject property as at the date of sale, or for any change in the use thereof to that ruling at the date of sale, were obtained (save in respect of matters of trifling materiality), and where implemented the conditions thereof complied with substantially

(b) The Vendor shall, with the copy documents to be delivered or sent in accordance with Condition 7, furnish to the Purchaser copies of all such Permissions and Approvals as are referred to in Condition 36(a)

(c) The Vendor shall, prior to completion of the sale, furnish to the Purchaser:-

(i) written confirmation from the Local Authority of compliance with all conditions involving financial contributions or the furnishing of bonds in any such Permission or Approval issued since the 1st. day of January 1970

(ii) a Certificate by an Architect or an Engineer confirming that, in relation to any such Permission or Approval as has been issued since the 1st. day of January,1970, the same relates to the subject property; that the development of the subject property has been carried out in substantial compliance therwith and that all conditions (other than financial conditions) thereof have been complied with substantially (and, in the event of the subject property forming part of a larger development, so far as was reasonably possible in the context of such development)

RESCISSION

37. Upon rescission of the sale in accordance with any of the provisions herein or in the Special Conditions contained or otherwise:-

(a) the Purchaser shall be entitled to a return of his deposit (save where it shall lawfully have been forfeited) but without interest thereon

(b) the Purchaser shall remit to the Vendor all documents in his possession belonging to the Vendor AND the Purchaser shall at his expense (save where Special Conditions otherwise provide) procure the cancellation of any entry relating to the sale in any register

38. If any such deposit as is to be returned pursuant to Condition 37 shall not have been returned to the Purchaser within five working days from the date upon which the sale shall have been rescinded, the Purchaser shall be entitled to interest thereon at the stipulated interest rate from the expiration of the said period of five working days to the date upon which the deposit shall have been so returned

39. The right to rescind shall not be lost by reason only of any intermediate negotiations or attempts to comply with or to remove the issue giving rise to the exercise of such right

COMPLETION NOTICES

40. Save where time is of the essence in respect of the closing date, the following provisions shall apply:-

(a) If the sale be not completed on or before the closing date either party may on or after that date (unless the sale shall first have been rescinded or become void) give to the other party notice to complete the sale in accordance with this condition, but such notice shall be effective only if the party giving it shall then either be able, ready and willing to complete the sale or is not so able, ready or willing by reason of the default or misconduct of the other party

(b) Upon service of such notice the party upon whom it shall have been served shall complete the sale within a period of twenty-eight days after the date of such service (excluding the date of service), and in respect of such period time shall be of the essence of the contract BUT without prejudice to any intermediate right of rescission by either party

(c) The recipient of any such notice shall give to the party serving the same reasonable advice of his readiness to complete

(d) If the Purchaser shall not comply with such a notice within the said period (or within any extension thereof which the Vendor may agree) he shall be deemed to have failed to comply with these Conditons in a material respect AND the Vendor may enforce against the Purchaser, without further notice, such rights and remedies as may be available to the Vendor at law or in equity, or (without prejudice to such rights and remedies) may invoke and impose the provisions of Condition 41

(e) If the Vendor does not comply with such a notice within the said period (or within any extension thereof which the Purchaser may agree), then the Purchaser may elect either to enforce against the Vendor, without further notice, such rights and remedies as may be available to the Purchaser at law or in equity or (without prejudice to any right of the Purchaser to damages) to give notice to the Vendor requiring a return to the Purchaser of all moneys paid by him, whether by way of deposit or otherwise, on account of the purchase price. Conditon 38 shall apply to all moneys so to be returned, the period of five working days therein being computed from the date of the giving of such last mentioned notice. If the Purchaser gives such a notice and all the said moneys and interest (if any) are remitted to him, the Purchaser shall no longer be entitled to specific performance of the sale, and shall return forthwith all documents in his possession belonging to the Vendor, and (at the Vendor's expense) procure the cancellation of any entry relating to the sale in any register

(f) The party serving a notice under this Condition may, at the request of or with the consent of the other party, by written communication to the other party extend the term of such notice for one or more specified periods of time, and, in that case, the term of the notice shall be deemed to expire on the last day

of such extended period or periods, and the notice shall operate as though such extended period or periods has been specified in this Condition in lieu of the said period of twenty-eight days, and time shall be of the essence in relation to such extended period

(g) The Vendor shall not be deemed to be other than able, ready and willing to complete for the purposes of this Condition:-

(i) by reason of the fact that the subject property has been mortgaged or charged, provided that the funds (including the deposit) receivable on completion shall (after allowing for all prior claims thereon) be sufficient to discharge the aggregate of all amounts payable in satisfaction of such mortgages and charges to the extent that they relate to the subject property

OR

(ii) by reason of being unable not ready or unwilling at the date of service of such notice to deliver vacant possession of the subject property provided that (where it is a term of the sale that vacant possession therof be given) the Vendor is, upon being given reasonable advice of the other party's intention to close the sale on a date within the said period of twenty-eight days or any extension thereof pursuant to Conditon 40 (f), able ready and willing to deliver vacant possession of the subject property on that date

FORFEITURE OF DEPOSIT AND RESALE

41. If the Purchaser shall fail in any material respect to comply with any of these Conditions, his deposit shall be forfeited absolutely and the Vendor (without prejudice to any rights or remedies available to him at law or in equity) shall be at liberty (without being obliged to tender an Assurance) to re-sell the subject property, with or without notice to the Purchaser, either by public auction or private treaty. In the event of the Vendor re-selling the subject property within one year after the closing date (or within one year computed from the expiration of any period by which the closing may have been extended pursuant to Condition 40), the deficiency(if any) arising on such re-sale and all costs and expenses attending the same or on any attempted re-sale shall (without prejudice to such damages to which the Vendor shall otherwise be entitled) be made good to the Vendor by the Purchaser, who shall be allowed credit against same for the deposit so forfeited. Any increase in price obtained by the Vendor on any re-sale, whenever effected, shall belong to the Vendor.

DAMAGES FOR DEFAULT

42. Neither the Vendor nor the Purchaser, in whose favour an order for specific performance has been made, shall be precluded from an award of damages at law or in equity, in the event of such order not being complied with

RISK

43. Subject as hereinafter provided, the Vendor shall be liable for any loss or damage howsoever occasioned to the subject property (and the purchased chattels) between the date of sale and the actual completion of the sale

44. The liability imposed on the Vendor by Condition 43 shall not apply:-

(a) to inconsequential damage or insubstantial deterioration from reasonable wear and tear in the course of normal occupation and use, and not materially affecting value

(b) to damage occasioned by operations reasonably undertaken by the Vendor in his removal from, and vacation of, the subject property, provided that the same are so undertaken with reasonable care

(c) where any such loss or damage has resulted from a requirement restriction or obligation imposed by a Competent Authority after the date of sale

45. Nothing in Conditions 43 and 44 shall affect:-

(a) the Purchaser's right to specific performance in an appropriate case

(b) the operation of the doctrine of conversion

(c) the Purchaser's right to gains accruing to the subject property (or the purchased chattels) after the date of sale

(d) the Purchaser's right to effect on or after the date of sale his own insurance against loss or damage in respect of the subject property or any part of the same (or the purchased chattels)

(e) the rights and liabilites of parties other than the Vendor and the Purchaser

(f) the rights and liabilities of the Purchaser on foot of any lease subsisting at the date of sale, or of any arrangement whereby the Purchaser shall prior to the actual completion of the sale have been allowed into occupation of the subject property or any part thereof (or into possession of the purchased chattels)

CHATTELS

46. Unless otherwise disclosed to the Purchaser prior to the sale, the Vendor warrants that, at the actual completion of the sale, all the purchased chattels shall be his unencumbered property and that same shall not be subject to any lease, rental hire, hire-purchase or credit sale agreement or chattel mortgage

INSPECTION

47. The Vendor shall accede to all such requests as may be made by the Purchaser for the inspection on a reasonable number of occasions and at reasonable times of the subject property (and the purchased chattels)

NON-MERGER

48. Notwithstanding delivery of the Assurance of the subject property to the Purchaser on foot of the sale, all obligations designed to survive completion of the sale and all warranties in the Conditions contained, which shall not have been implemented by the said Assurance, and which shall be capable of continuing or taking effect after such completion, shall enure and remain in full force and effect

NOTICES

49. Unless otherwise expressly provided, any notice to be given on foot of the Conditions shall be in writing, and may (in addition to any other prescribed mode of service) be given:-

(a) by handing same to the intended recipient, and shall be deemed to have been delivered when so handed

(b) by directing it to the intended recipient, and delivering it by hand, or sending same by prepaid post to:-

(i) such address as shall have been advised by him to the party serving the notice as being that required by the intended recipient for the service of notices, or

(ii) (failing such last mentioned advice) to the address of the intended recipient as specified in the Memorandum, or

(iii) (in the event of the intended recipient being a Company) to its Registered Office for the time being, or

(iv) to the office of the Solicitor representing the intended recipient in relation to the sale

AND any such notice shall be deemed to have been given, when delivered, at the time of delivery, and, when posted, at the expiration of three working days after the envelope containing the same, and properly addressed, was put in the post

TIME LIMITS

50. Where the last day for taking any step on foot of the Conditons would, but for this provision. be a day other than a working day, such last day shall instead be the next following working day

ARBITRATION

51. All differences and disputes between the Vendor and the Purchaser as to

(a) whether a rent is or is not a rack rent for the purpose of Condition 10(c), or

(b) the amount of any interest payable pursuant to Conditon 25, or the date from which the same shall be exigible, or

(c) the identification of the Apportionment Date, or the treatment or quantification of any item pursuant to the provisions for apportionment in the Conditions, or

(d) any issue on foot of Condition 33, including the applicability of said Condition, and the amount of compensation payable thereunder, and the determination of liability therefor, or

(e) the materiality of any matter for the purpose of Condition 36 (a), or

(f) the materiality of damage or any other question involving any of the provisions in Conditions 43, 44, and 45, or

(g) whether any particular item or thing is or is not included in the sale, or otherwise as to the nature or condition thereof

shall be submitted to arbitration by a sole Arbitrator to be appointed (in the absence of agreement between the Vendor and the Purchaser upon such appointment and on the application of either of them) by the President for the time being of the Incorporated Law Society of Ireland such arbitration to be governed by the Arbitration Acts, 1954 and 1980.

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THIS INDENTURE made the 18th day of December 1988 BETWEEN PALMERSTOWN CENTRE DEVELOPMENT LIMTED having its Registered Office at 10 Clare Street in the City of Dublin Limited Liability Company (hereinafter called the"First Owner") of the One Part and SIBRA BUILDING COMPANY LIMITED having its Registered Office at ~~49 Clontarf Road, Dublin 3~~ 130 Lr Drumcondra Road Dublin 7 Limited Liability Company, BUNKER ESTATES LIMITED having its Registered Office at Hollyville House, 1 Lucan Road, Palmerstown, in the County of Dublin Limited Liability Company and SILVER BIRCH ESTATES LIMITED having its Registered Office at Hollyville House, 1 Lucan Road, Palmerstown in the County of Dublin Limited Liability Company (hereinafter collectively called the "Second Owner" which expression shall include their and each of their successors and assigns) of the Other Part.

W H E R E A S:-

1. The First Owner is ~~entitled to be~~ registered as absolute Owner in fee simple of **ALL THAT AND THOSE** that part of the lands coloured green on the map or plan annexed hereto being part of the lands comprised in Folio 63697F of the Register, County Dublin.

2. The Second Owner is registered as absolute owner in fee simple of **ALL THAT AND THOSE** the lands more particularly delineated on the Maps annexed hereto and thereon colured red and yellow being part of the lands comprised in folios 1452F, 3982F, 42047F of the Register County Dublin.

3. The First and Second Owner have agreed that the lands coloured red and green on the maps or plan to be developed for the purpose of a carpark (hereinafter called "the carpark") for the benefit of their respective properties and to grant for the purpose of the development and user of the

Ashlin, Coleman
Heelan & Partners
11 FEB 1993
Received

said carpark the rights and privileges hereinafter contained.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration of the terms and conditions herein contained the First Owner as beneficial owner doth **HEREBY GRANT** unto the Second Owner its Grantees Assignees Lessees Invitees Licencees Servants and Agents the rights and privileges more particularly described and contained in the Schedule hereto.

NOW THIS INDENTURE FURTHER WITNESSETH that in pursuance of the said Agreement and for the consideration aforesaid the Second Owner as beneficial owner doth **HEREBY GRANT** to the First Owner its Grantees Assignees Lessees Invitees Licencees Servants and Agents the rights and privileges particularly described in the Schedule hereto.

AND the First Owner does hereby for itself its successors and assigns hereby covenants and agrees with the Second Owner that it will indemnify and keep indemnified he second owners its successors and assigns from all actions claims and demands arising by reason of the construction maintenance repair of the roadway footpaths public lighting and service coloured yellow on the map annexed hereto aforesaid until the same shall have been taken in charge by the local authority.

The First Owner hereby assents to the registration of this Agreement as a burden on that part of the lands of Folio 63697F of the Register County Dublin coloured green on the Map annexed hereto and the Second Owner hereby assent to the registration of this Agreement as a burden on that part of the lands of folios 1452F 3982F and 42047F of the Register County Dublin coloured red and yellow on the map annexed hereto.

SCHEDULE

Rights and privileges herein granted to the First Owner:-

(a) The right of way with or without vehicles over all parts of the lands coloured red and yellow on the plan annexed hereto.

(b) To park vehicles in the carpark at any time of the day or night on those parts of the lands coloured red.

(c) The right to enter with workmen or other nominees upon the lands coloured red and yellow for the purposes of repairing and maintaining the said carpark and roadway.

(d) The right to enter workmen or other nominees upon the lands coloured red for the purposes of repairing and maintaining the shop premises abutting those lands coloured red.

(e) The right to enter the said lands coloured red and yellow for the purposes of laying all necessary pipes, electricity cables,cables, sewers and services and completing the necessary works to the carpark and roadway.

(f) The right to enter the workmen or other nominees upon the said lands coloured red and yellow for the purposes of repairing and maintaining the said pipes electricity cables,cables, sewers and services.

Rights and privileges granted to the Second Owner:-

(a) To enter the said Lands coloured green by access points to be provided as indicated on the plan annexed

hereto with or without vehicles at the points marked Y and Z.

(b) The right of way with or without vehicles over all parts of the lands coloured green on the plan annexed hereto.

(c) To park vehicles in the carpark at any time of the day or night on those parts of the lands coloured green.

IN WITNESS whereof the parties hereto have caused their common seal to be affixed the day and year first herein **WRITTEN**

PRESENT when the Common Seal
of PALMERSTOWN CENTRE DEVELOPMENT
LIMITED was affixed hereto:-

Solicitor
Dublin

DIRECTOR

DIRECTOR

PRESENT when the Common Seal
of SIBRA BUILDING COMPANY LIMITED
was affixed hereto:-

Solicitor
Dublin

DIRECTOR

DIRECTOR

Site Location Map 1:100
O.S. ref. 3262-1

PRESENT when the Common Seal
of BUNKER ESTATES LIMITED
was affixed hereto:-

Denis McLoughlin
Solicitor
Dublin 2

Frank Lowey
DIRECTOR

Frank Lowey Jnr.
DIRECTOR

PRESENT when the Common Seal
of SILVER BIRCH ESTATES LIMITED
was affixed hereto:-

Denis McLoughlin
Solicitor
Dublin 2

Frank Lowey
DIRECTOR

Frank Lowey Jnr.
DIRECTOR

MEMORANDUM OF AGREEMENT made the 18th day of November 1988 BETWEEN SIBRA BUILDING COMPANY LIMITED having its Regisered Office at 130 Lower Drumcondra Road, in the City of Dublin Limited Liability Company, BUNKER ESTATES LIMITED having its Registerd Office at Hollyville House, 1 Lucan Road, Palmerstown, in the County of Dublin Limited Liability Company and SILVER BIRCH ESTATES LIMITED having its Registered Office at Hollyville House, 1 Lucan Road, Palmerstown, in the County of Dublin Limited Liability Company (hereinafter collectively called "The Companies")of the One Part and PALMERSTOWN CENTRE DEVELOPMENT LIMITED having its Registered Office at 10 Clare Street, in the City of Dublin Limited Liability Company (hereinafter called "Palmerstown Centre") of the Other Part.

WHEREBY IT IS AGREED AS FOLLOWS:-

1. These presents are supplemental to three contracts dated the 21st day of December, 1987 and made between Sibra Building Company Limited and Palmerstown Centre, Bunker Estates Limited and Palmerstown Centre, and Silver Birch Estates Limited and Palmerstown Centre.

PALMERSTOWN CENTRE AGREES WITH THE COMPANIES AS FOLLOWS:-

(a) Palmerstown Centre shall remove all waste materials and building debris from the lands of the companies and leave the said lands in a clean and tidy condition

(b) The lands retained by Silver Birch Estates Limited and Bunker Estate Limited fronting on the Shop premises the property of Palmerstown Centre and marked red on the said map attached hereto (hereinafter called "the Carpark") shall be raised by Palmerstown Centre to a level specified by the

Architect of the Companies. All drains and gulleys on the carpark shall be raised to the same level.

(c) The wall shown on the said Map attached hereto and marked with the letters "C D" shall be raised by Palmerstown Centre to a level so that after the works to the carpark have been completed it shall be the same height as it was prior to the said works to the carpark having being carried out. The said Wall to be capped and plastered.

(d) To complete in a proper and worklikemanner all other works to the car park to include the tarmacadaming of same, landscaping thereof and the provision of adequate lighting for same. The said lighting shall be kept on during all periods of darkness until one hour after the finish of the official licencing hours Palmerstown Centre shall maintain and keep in proper repair the said carpark and shall indemnify and keep indemnified the Companies its successors and assigns from all actions claims and demands, howsoever arising by reason of the failure to maintain and keep the said carpark in good and proper repair. The said works to the carpark shall commenced and be completed on a date to be agreed between the Architect of the Companies and the Architect of Palmerstown Centre.

(e) Palmerstown Centre shall pay the sum of £70,000-00 to Sibra Building Company Limited (the receipt whereof is hereby acknowledged by Sibra Building Company Limited) by way of liquidated damages and compensation in respect of the breach of contract, nuisance, annoyance, and damages heretofore caused by Palmerstown Centre to the Lands of Sibra Building Company Limited, and in respect of Sibra Building Company Limited having to remove soil dumped by Palmerstown Centre on its lands.

(f) Palmerstown Centre shall pay the sum of £20,000-00 to Bunker Estates Limited (the receipt whereof is hereby acknowledged by Bunker Estates Limited) by way of liquidated damages and compensation in respect of the breach of contract, nuisance, annoyance, and damages heretofore caused by Palmerstown Centre to the Lands of Bunker Estates Limited.

(g) Palmerstown Centre shall pay the sum of £10,000-00 to Silver Birch Estates Limited (the receipt whereof is hereby acknowledged by Silver Birch Estates Limited) by way of liquidated damages and compensation in respect of the breach of contract, nuisance, annoyance, and damages heretofore caused by Palmerstown Centre to the lands of Silver Birch Estates Limited.

(h) Palmerstown Centre will build and construct a footpath on the axis marked with the letters "J K L " width of approximately ~~seven~~ NINE feet (~~four~~ six feet of the said path being on the lands of Bunker Estates Limited).

IT IS HEREBY AGREED BETWEEN THE COMPANIES AND PALMERSTOWN CENTRE:-

3.

(a) To execute and complete the Rights and Privileges Agreement as already approved by parties hereto and hereby annexed whereby the said sums referred to in clauses 2(e), 2(f) and 2(g) hereof shall be paid as damages and compensation.

(b) That all the works specified in this Agreement shall be carried out to the satisfaction and subject to the approval

of the Architect of the Companies and that the said works shall not be deemed complete until so certified by the said Architect in writing.

(c) For the removal of doubt it is hereby acknowledged by Palmerstown Centre that the benefits granted by this Agreement are limited to the above clauses and that no further building operations of any nature whatsoever (to include the erection of advertising signs) shall be carried out on the lands of the Companies without the express approval, in writing, of the Companies.

(d) The Companies and Palmerstown Centre hereby undertake to indemnify and keep indemnified each other their respective successors and assigns against and from all actions claims and demands in respect of any damage loss or injury caused by their respective customers employees servants agents licencees and invitees by reason of the user of the carpark aforesaid and to give proper effect to such undertaking and each of them will effect all necessary public liability insurance with a reputable Insurance Company, the Insurance Company of Palmerstown Centre and the Companies to be approved by the other party. The interest of the parties hereto shall be noted on each others Policy.

IN WITNESS whereof the parties hereto have hereunto set their hands and affixed their seals the day and year first herein WRITTEN

PRESENT when the Common Seal of SIBRA BUILDING COMPANY was affixed hereto:-

Solicitor
Dublin 2

Frank Lowey
DIRECTOR

Frank Lowey Jnr.
DIRECTOR

PRESENT when the Common Seal
of **BUNKER ESTATES LIMITED** was
affixed hereto:-

Denis McLoughlin
Solicitor
Dublin 2

Frank Lowey
DIRECTOR

Frank Lowey Jnr.
DIRECTOR

PRESENT when the Common Seal
of **SILVER BIRCH ESTATES LIMITED**
was affixed hereto:-

Denis McLoughlin
Solicitor
Dublin 2

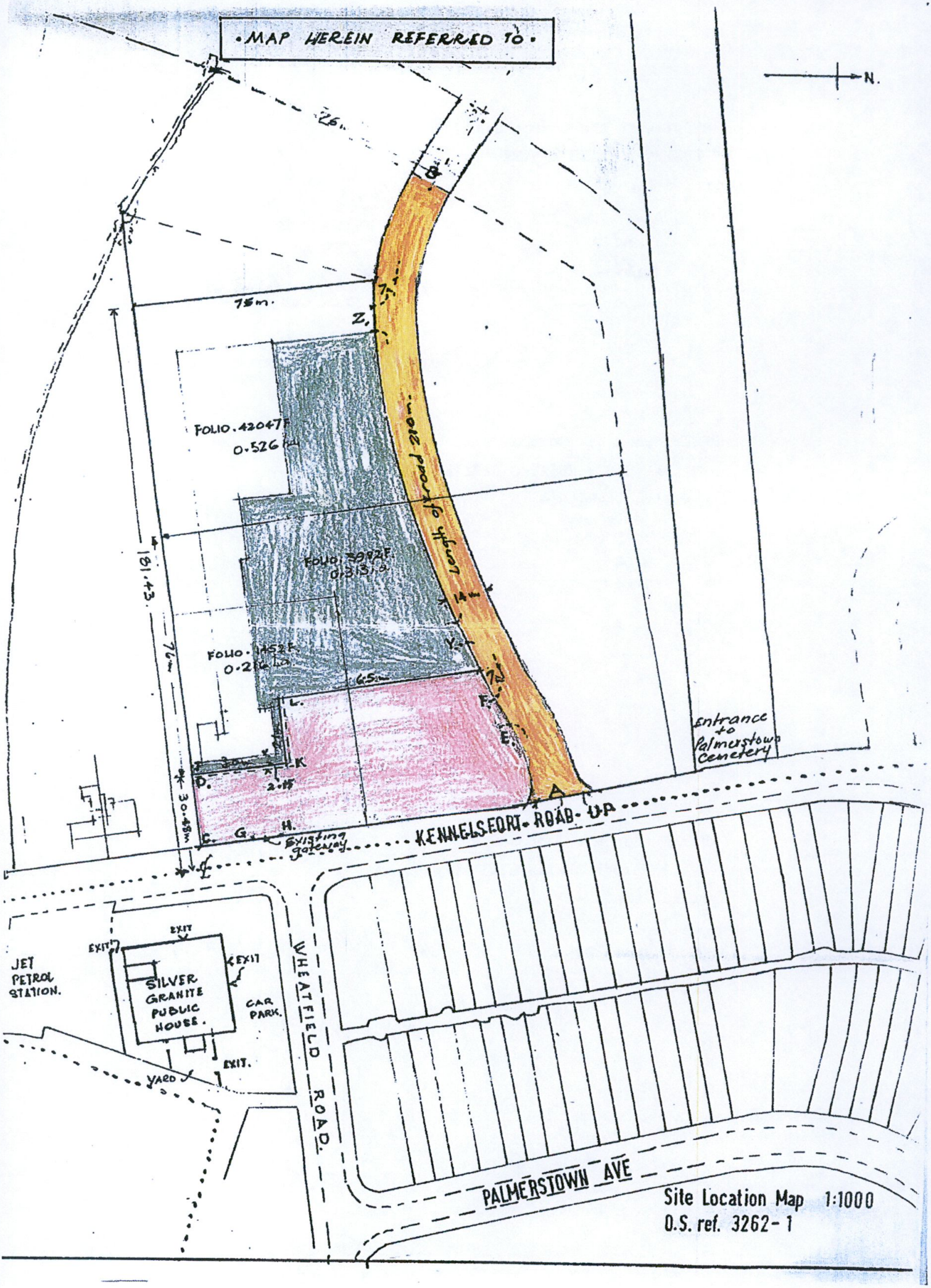
Frank Lowey
DIRECTOR

Frank Lowey Jnr.
DIRECTOR

PRESENT when the Common Seal
of **PALMERSTOWN CENTRE LIMITED** was
affixed hereto:-

Shirley
Solicitor
Dublin 2

Carol Moriarty



Site Location Map 1:1000
O.S. ref. 3262-1

DATED THIS DAY OF 1988

BETWEEN/

SIBRA BUILDING COMPANY
LIMITED
BUNKER ESTATES LIMITED
SILVER BIRCH ESTATE
LIMITED

AND

PALMERSTOWN CENTRE
DEVELOPMENT LIMITED

A G R E E M E N T

AGREEMENT

This Agreement is made the 12th day of December 2012
BETWEEN:

SIBRA BUILDING COMPANY LIMITED having its registered office at LIFFEY VALLEY HOUSE HOTEL, ST. CATHERINE'S PARK, LEIXLIP CO. KILDARE of the First Part and SILVER BIRCH ESTATES LIMITED having its registered office at LIFFEY VALLEY HOUSE HOTEL, ST. CATHERINE'S PARK, LEIXLIP, CO. KILDARE of the Second Part and BUNKER ESTATES LIMITED having its registered office at LIFFEY VALLEY HOUSE HOTEL, ST. CATHERINE'S PARK, LEIXLIP, CO. KILDARE of the Third Part

(hereinafter collectively called "the Towey Companies")

and

PALMERSTOWN CENTRE DEVELOPMENT LIMITED having its registered office at PALMERSTOWN CENTRE, KENNELSFORT ROAD, DUBLIN 20 of the Fourth Part and LADGROVE STORES LIMITED having its registered office at PALMERSTOWN CENTRE, KENNELSFORT ROAD, DUBLIN 20 of the Fifth Part

(hereinafter collectively called "the Moriarty Companies") which expression shall include their/it's successors and assigns, tenants and under-tenants.

1. Whereas pursuant to a contract for sale dated the 21 December 1987 and made between SIBRA BUILDING COMPANY LIMITED of the One Part and PALMERSTOWN CENTRE DEVELOPMENT LIMITED of the Second Part it was agreed that Sibra Building Company Limited would sell and Palmerstown Centre Development Limited would purchase the property as described therein, which said property now comprises portion of Palmerstown Shopping Centre comprised in Folios 63697F, 67152F and 194786F of the Register of Freeholders. Co. Dublin. (hereinafter called "the First Contract")

2. Whereas pursuant to a contract for sale dated the 21 December 1987 and made between SILVER BIRCH ESTATES LIMITED of the One Part and PALMERSTOWN CENTRE DEVELOPMENT LIMITED of the Second Part it was agreed that Silver Birch Estates Limited would sell and Palmerstown Centre Development Limited would purchase the property as described therein, which said property now comprises portion of Palmerstown Shopping Centre comprised in Folios 63697F, 67152F and 194786F of the Register of Freeholders. Co. Dublin. (hereinafter called "the Second Contract")

3. Whereas pursuant to a contract for sale dated the 21 December 1987 and made between BUNKER ESTATES LIMITED of the One Part and PALMERSTOWN CENTRE DEVELOPMENT LIMITED of the Second Part it was agreed that Bunker Estates Limited would sell and Palmerstown Centre Development Limited would purchase the property as described therein, which said property now comprises portion of Palmerstown Shopping Centre comprised in Folios 63697F, 67152F and 194786F of the Register of Freeholders. Co. Dublin. (hereinafter called "the Third Contract")

4. Palmerstown Centre Development Limited and Ladgrove Stores Limited are between them the registered owners of all of the lands comprised in the above three contracts, which

property is commonly known as Palmerstown Shopping Centre, Kennelsfort Road, Palmerstown, Dublin 20 being the property comprised in Folios 63697F, 67152F and 194786F of the Register of Freeholders, County Dublin (subject to such leases and rights granted).

5. Ladgrove Stores Limited is the Owner of the Supermarket situate at Palmerstown Shopping Centre.

6. Pursuant to Special Condition 6 of each of the First Contract, the Second Contract and the Third Contract recited above (hereinafter collectively called "Special Condition 6") it was agreed as follows:-

   "The Purchaser hereby covenants (which covenant shall be binding on the Purchaser his successors, administrators and assigns) not to construct or erect or have a public house or licenced premises of any nature on the property herein so long as Frank Towey his successors or assigns remain the proprietor of the public house opposite the site or so long as any company or individual holds the said public house on his behalf. This covenant shall extend to the administrators, successors and assigns of the said Frank Towey. Licenced premises shall include a licenced restaurant."

7. It is agreed by all the parties hereto that the public house referred to in Special Condition 6 is the Silver Granite Public House, Kennelsfort Road, Palmerstown, Dublin 20 and Bunker Estates Limited confirms that it is the registered and beneficial owner of the property.

8. Pursuant to certain proceedings entitled Sibra Building Company Limited, Silver Birch Estates Limited and Bunker Estates Limited as plaintiffs and Palmerstown Centre Development Limited and Ladgrove Stores Limited as defendants bearing record number High Court 1991/11920P and Supreme Court 189/93 it was ordered "that Ladgrove Stores Limited its servants or agents be permanently restrained from using the premises situate at Kennelsfort Road, Palmerstown, Co. Dublin and known as Palmerstown Shopping Centre from being used as a licenced premises for the sale of beer and spirits" (hereinafter referred to as "the Court Order").

9. The parties hereto have now agreed that in consideration of the payment by the Moriarty Companies to the Towey Companies of the sum of €350,000.00 the Towey Companies agree to amend the provisions of Special Condition 6 and the Court Order in the manner hereinafter appearing.

NOW THIS INDENTURE WITNESSETH that in consideration of the payment by the Moriarty Companies to the Towey Companies of the sum of €350,000.00 (Three Hundred and Fifty Thousand Euro) (the receipt whereof the Towey Companies do hereby acknowledge) the Towey Companies and each of them as beneficial owners do hereby agree:

1. To the amendment of Special Condition 6 by the deletion of the words "or licenced premises of any nature" in the third line thereof and replacing same with the words " or other premises of any nature licensed for the sale of beer and spirits for consumption on the premises".

2. To the amendment of the Court Order by the deletion of the words "licenced premises for the sale of beer and spirits" and replacing same with the words "public house or other premises of any nature licensed for the sale of beer and spirits for consumption on the premises" such that the Court Order shall henceforth be read as if it were in the following terms, namely:

"that Ladgrove Stores Limited it's servants or agents be permanently restrained from using the premises situate at Kennelsfort Road, Palmerstown, Dublin 20 and known as Palmerstown Shopping Centre from being used as a public house or other premises of any nature licensed for the sale of beer and spirits for consumption on the premises".

3. It is agreed that the benefit of Special Condition 6 and the Court Order is personal to the Towey Companies and cannot be assigned and that Special Condition 6 and the Court Order will cease to have effect should:

a) the Towey Companies and/or the Towey family at any time hereafter sell the Silver Granite public house or
b) the Towey Companies and/or the Towey family at any time hereafter retain a minority shareholding in Bunker Estates Limited and/or any other company within the Towey Companies which owns the Silver Granite public house.

4. The Towey Companies and each of them do hereby jointly and severally COVENANT AND AGREE with the Moriarty Companies and each of them their successors and assigns that they will not either directly or indirectly object or make any submission or cause any objection or submission to be made to or in respect of any planning, licensing or other application whatsoever which may be made or required in respect of any licensed premises other than a public house or other premises licensed for the sale of beer and spirits for consumption on the premises on or in any part of Palmerstown Shopping Centre.

The Towey Companies and each of them do hereby jointly and severally COVENANT AND AGREE with the Moriarty Companies and each of them their successors and assigns:

a. not to object to any court application which may at any time hereafter be required or deemed appropriate by the Moriarty Companies to formally amend the Court Order to reflect the terms of this agreement and
b. that they will not at any time hereafter enforce or seek to enforce the Court Order in any manner contrary to or inconsistent with the provisions of this agreement.

It is noted that Silver Birch Estates Limited (company registration number 46997) was dissolved on the 15 January 1999. Sibra Building Company Limited and Bunker Estates Limited hereby irrevocably and unconditionally jointly and severally COVENANT AND AGREE at their expense to take all steps necessary to procure compliance by Silver Birch Estates Limited with, and to procure its ratification of, the terms of this agreement and to indemnify and keep the Moriarty Companies and each of them effectually indemnified against all loss, damages, claims and expenses which may at any time be suffered by the Moriarty Companies or either of them arising directly or indirectly out of any breach of the within covenant or from any claim by or on behalf of Silver Birch Estates Limited or by any receiver, liquidator, examiner or other administrator of the company or by any director or shareholder of the company.

PRESENT WHEN THE COMMON SEAL OF
SIBRA BUILDING COMPANY LIMITED
Was affixed hereto:

DIRECTOR

DIRECTOR/SECRETARY

PRESENT WHEN THE COMMON SEAL OF
SILVER BIRCH ESTATES LIMITED
Was affixed hereto:

DIRECTOR

DIRECTOR/SECRETARY

PRESENT WHEN THE COMMON SEAL OF
BUNKER ESTATES LIMITED
Was affixed hereto:

DIRECTOR

DIRECTOR/SECRETARY

PRESENT WHEN THE COMMON SEAL OF
PALMERSTOWN CENTRE DEVELOPMENT LIMITED
Was affixed hereto:

DIRECTOR

DIRECTOR/SECRETARY

PRESENT WHEN THE COMMON SEAL OF
LADGROVE STORES LIMITED
Was affixed hereto:

DIRECTOR

DIRECTOR/SECRETARY

Record No. 2011/7947P

THE HIGH COURT

Between/

KENNELSFORT MANAGEMENT COMPANY LIMITED

Plaintiff

And

PALMERSTOWN CENTRE DEVELOPMENT LIMITED, LADGROVE STORES LIMITED and LUKE MORIARTY

Defendants

SETTLEMENT AGREEMENT

The Plaintiff and the Defendants hereby settle the following matters, namely:

(a) the above proceedings,
(b) All claims by the Plaintiff against the second named defendant for service charges up to 31st December 2014 and
(c) The defendants' claim for set off in respect of various expenses incurred by the defendants.

on the terms set out hereunder.

1. The Defendants will, contemporaneous with the exchange of this Agreement, pay to the Plaintiff the sum of €100,000.00 in respect of an agreed figure for arrears of service charges. This sum will be paid to the Plaintiff's solicitors on the exchange of this agreement and will constitute full payment of the obligations of the Defendants in relation to service charges at the Palmerstown Centre for all years up to 31st December 2013.

2. The second named Defendant has paid to the Plaintiff all service charges and all arrears of service charges which are due to the Plaintiff for the year 2014, in an agreed amount of €45,769.51.

3. The Defendants and each of them hereby irrevocably waive all claims and demands in relation to all credits (other than VAT credits raised to all tenants in the normal course for 2015 and future years) or allowances or other sums howsoever claimed or computed in relation to their, and each of their, dealings with the Plaintiff or the affairs of the management of the Palmerstown Centre to the Closing Date. For the avoidance of any doubt in relation to possible claims for credits, it is

expressly agreed that when the Plaintiff receives the sum of €100,000.00 which is referred to in paragraph 1 of this Agreement, same shall be allocated by the Plaintiff as a credit to the individual accounts with the Plaintiff of all of the other shop units at Palmerstown Shopping Centre apart from the Defendants, and the Defendants shall not be entitled to any credit in respect of same save that their accounts with the Plaintiff for the period up to 31st December 2013 shall be set at zero.

4. The Defendants and each of them will, contemporaneously with the execution of this agreement, transfer ("the Transfer") the freehold interest and all other rights and interests which they may have as of the date hereof in the Palmerstown Centre comprised in Folios 67152F, 63697F, 194786F, 3982F and 1452F County Dublin (including for the avoidance of doubt, all car parks, all common areas, stairways, corridors, structures and the reversionary interest in all leases) to the Plaintiff which the parties note will include the assignment of the benefit of the Mutual Easements Agreement dated 18 November 1988 in respect of the part or parts of the Palmerstown Centre not owned by the defendants. Particulars of the title of the Defendants and of the leases and burdens to which that title is subject are set out in the Statement of Title annexed to this Agreement.

5. The Plaintiff will contemporaneous with the Transfer grant;

   a. A lease to Ladgrove Stores Limited of ALL THAT AND THOSE the property and premises situate at Palmerstown Centre, Kennelsfort Road, Dublin 20 being that part of the property and premises comprised in Folio 194786F of the Register County Dublin and referred to in Part 1(A) of the said folio as identified on the Land Registry Maps as Unit 14A_1, Unit 14A_2, Stairwell 4, Unit 14B, Unit 14C, Ramp, Unit 14D, Unit 14E_1, and Unit 14E_2, on the ground floor, Unit 24_1 (marked "CIDCB" on the Registry Map), Unit 24_2 (marked "CIDCD" on the Registry Map) and Stairwell 4 on the first floor Unit 26_1, Unit 26_2, Stairwell 4 and Stairwell (Unit 26) on the second floor" in the terms of the draft lease prepared on 20th January 2015 (but amended to reflect the correct service charge payable as set out in clause 6 hereof), and

   b. A lease to Palmerstown Centre Developments Ltd of Unit 16 in the terms of the draft lease prepared on 20th January 2015 (but amended to reflect the correct service charge payable as set out in clause 6 hereof).

6.

   a. The Leases referred to in paragraph 5 hereof shall include provision for payment of a service charge assessed on the ground floor part thereof at a rate of 1.41 per square

foot to arrive at the adjusted percentage of the overall service charges which are to be paid by that Lease. These rates shall apply as and from 1st January 2014.

b. The Leases referred to in paragraph 5 shall include provision for payment of a service charge payable on the first floor parts thereof at a rate of 1.67 per square foot to arrive at the adjusted percentage of the overall service charges which are to be paid by that Lease.

c. The provisions of the lease referred to at paragraph 5a above (which includes the community centre) shall include provision for payment of a service charge payable on the second floor part thereof at a rate of 1.00 per square foot for so long as that unit remains solely and wholly and exclusively in community use (but which shall be at a rate of 1.67 if at any time the Unit is not solely and wholly and exclusively used for community use) to arrive at the adjusted percentage of the overall service charges which are to be paid by that Lease.

7. The Defendants shall ensure that any subsequent assignment (as opposed to subletting) of the Community Centre lease is made to South Dublin County Council or to a person or organisation of substance to be nominated by it and agreed between the parties which will have the capacity to pay the service charges.

8. There shall be included in the transfer of the common areas of the Palmerstown Centre (as described above) all usual evidence of compliance with planning permission and building regulations in accordance with best commercial practice.

9. The Defendants will, contemporaneously with the exchange of this Agreement, transfer the 51 developer shares which they own or control (being currently registered in the names of Luke Moriarty and Carol Moriarty) in whatever manner is directed by the Plaintiff so that the shareholding in the Plaintiff is re-arranged as per the attached Spreadsheet of Shareholding.

10. The Defendants shall pay all of the costs and expenses necessary for the preparation of maps and drawings and documents and title deeds and certificates of compliance and all associated documents necessary to effect the transfer of the common areas to the Plaintiff, and to put into effect the terms of this agreement, other than the Plaintiff's solicitors' costs.

11. The first and Second Named Defendants hereby grant to the Plaintiff a full and complete and unrestricted and irrevocable **INDEMNITY** against all liability and adverse consequences of all and every nature (and including for the avoidance of any possible doubt, all debts, costs, damages, expenses (including legal expenses) judgments, decrees,

Orders of Court or of any competent authority) arising from or in connection with the High Court proceedings entitled The High Court, Record No. 2007/2920P, between Sibra Building Company Ltd, Silver Birch Estates Ltd and Bunker Estates Ltd Plaintiffs, and Palmerstown Centre Development Ltd, Defendant.

12. Save as provided for in the immediately preceding paragraph, all parties will pay their own costs of these proceedings and of the implementation of this agreement.

Dated this 5th day of March 2018.

Present when the Common Seal
of **KENNELSFORT MANAGEMENT COMPANY LIMITED**
Was affixed hereto:

Solicitor
6 Sandford Road
Ranelagh
Dublin 6.

Present when the Common Seal
of **PALMERSTOWN CENTRE DEVELOPMENT LIMITED**
Was affixed hereto:

Present when the Common Seal
of **LADGROVE STORES LIMITED**
Was affixed hereto:

Signed, Sealed and Delivered
by **Luke Moriarty**
in the presence of:

STATEMENT OF TITLE

Palmerstown Centre Development Ltd and Ladgrove Stores Ltd

Vendors

To

Kennelsfort Management Company Ltd

Purchaser

The following is the title which is being sold by the above named Vendors to the above named Purchaser.

All that and those the lands outlined in red on the map attached hereto;

1) Being in part the lands comprised in Folios 67152F and 63697F County Dublin and HELD by Palmerstown Centre Development Limited as therein, and

2) Being in part the lands comprised in Folio 194786F County Dublin and HELD by Ladgrove Stores Limited as therein, and

3) As to the lands comprised in Folio 1452F County Dublin,

   a) being in part enjoyed by Palmerstown Centre Development Limited as freehold owner under possessory title to that part of the structure of the shopping centre building which is built on those folios, and

   b) Being in part enjoyed by Palmerstown Centre Development Limited under the terms of a wayleave agreement dated the 18th day of November 1988 between Palmerstown Centre Development Limited and Sibra Building Company Ltd and Bunker Estates Ltd and Silver Birch Estates Ltd

   c) And with the benefit of, and subject to the terms of, a further Agreement dated the 18th day of November 1988 between Sibra Building Company Ltd and Bunker Estates Ltd and Silver Birch Estates Ltd and Palmerstown Centre Development Limited in specific relation to a footpath which is partially constructed on the lands of Bunker Estates Ltd.

SUBJECT TO

a. the **25** leases listed in the Schedule of Leases attached hereto, and

b. A covenant against having a public house or licenced premises on the lands in sale as set out in three contracts

for sale each dated 29th October 1987 and one thereof having been made between Sibra Building Company Ltd of the one part and Luke Moriarty (in trust) for Palmerstown Centre Development Ltd of the other part, and the second one being between Silver Birch Estates Limited of the one part and Luke Moriarty (in trust) for Palmerstown Centre Development Ltd of the other part and the third one being between Bunker Estates Ltd of the one part and Luke Moriarty (in trust) for Palmerstown Centre Development Ltd of the other part as such contracts have been modified by;

i. The High Court and Supreme Court Orders in the proceedings entitled 1991, No 11920P Between Sibra Building Company Ltd, Silver Birch Estates Ltd and Bunker Estates Ltd Plaintiffs and Palmerstown Centre Development Ltd and Ladgrove Stores Ltd, Defendants and

ii. The terms of an agreement made between Sibra Building Company Ltd, Silver Birch Estates Ltd and Bunker Estates Limited of the one part and Palmerstown Centre Development Ltd and Ladgrove Stores Ltd dated 12th December 2012 in relation to the sale of alcoholic beverages, and the contracts for sale of 1987 between the same parties.

c. The ESB substation as described in the document C1 for Substation 81,521X and as outlined on the Land Registry map as "ESB" and "switch room"

d. The rights of Dublin Cemeteries Committee as described in Instrument 83DN00183.

And otherwise free from burdens or incumbrances.

PROVIDED HOWEVER that contemporaneously with the transfer of ownership of the above lands to Kennelsfort Management Company Ltd, it will grant;

i. A lease to Ladgrove Stores Limited of ALL THAT AND THOSE the property and premises situate at Palmerstown Centre, Kennelsfort Road, Dublin 20 being that part of the property and premises comprised in Folio 194786F of the Register County Dublin and referred to in Part 1(A) of the said folio as identified on the Land Registry Maps as Unit 14A_1, Unit 14A_2, Stairwell 4, Unit 14B, Unit 14C, Ramp, Unit 14D, Unit 14E_1, and Unit 14E_2, on the ground floor, Unit 24_1 (marked "CIDCB" on the Registry Map), Unit 24_2 (marked "CIDCD" on the Registry Map) and Stairwell 4 on the first floor Unit 26_1, Unit 26_2, Stairwell 4 and Stairwell

(Unit 26) on the second floor in the terms of the draft lease agreed between the parties, and

ii. A lease to Palmerstown Centre Development Ltd of Unit 16 in the terms of the draft lease agreed between the parties.

PALMERSTOWN SHOPPING CENTRE

SCHEDULE OF LEASES

1. Lease dated 30th January 1989 to Ladbroke (Ireland) Limited for Unit 1.

2. Lease dated 6th January 1989 to Xtra-Vision Properties Limited for Unit 2.

3. Lease dated 1st February 1989 to Burgermaster Limited for Unit 3.

4. Lease dated 27th July 1995 to Sam Man Tsang and others for Unit 4.

5. Lease dated 2nd July 1999 to Roger Berkeley and Brenda Berkeley for Unit 5.

6. Lease dated 30th November 1988 to Supersmart Cleaners Limited for Unit 6.

7. Lease dated 23rd February 1990 to Michael Hussey and Bernadette Hussey for Unit 7.

8. Lease dated 2nd December 1988 to Francis Foley Community Pharmacy Limited for Unit 8.

9. Lease dated 6th March 1997 to Jennifer Toner and Michael Toner for Unit 9.

10. Lease dated 15th December 1988 to Gilmartin Shoes Limited for Unit 10.

11. Lease dated 20th December 1988 to Park Newsagents Limited for Unit 11.

12. Lease dated 8th December 1988 to T.J. McLoughlin (Butchers) Limited for Unit 12.

13. Lease dated 17th November 1989 to Kevin Cronin and Suzanne Cronin for Unit 13.

14. Lease dated 22nd November 1988 to Ladgrove Stores Limited for Unit 14.

15. Lease dated 20th December 1989 to Mandolin Limited for Unit 15.

16. Lease dated 21st November 2009 to Ladgrove Stores Limited for attic space for Unit 15.

17. Plain copy Lease dated 9th June 1989 to Lawrence Power for Unit 17.

18. Lease dated 8th February 2000 to John Harnett for Units 18/19/24 and corridor adjacent thereto (no counterpart held)

19. Lease dated 23rd August 1995 to Brian Wallace and Anthony Johnston for Unit 20, 22 and corridor fronting Units 20, 21 and 22 (no counterpart held)

20. Lease dated 14th June 1991 to Gregory Geoghagan for Unit 21 (since assigned to Brian Wallace and Anthony Johnston).

21. Lease dated 1st June 1989 to Brian Wallace and Anthony Johnston for Unit 23 (no counterpart held))

22. Lease dated 25th January 1990 to Padraig McLoughlin and Anne McLoughlin for Unit 7 for 35 years. (no counterpart held)

23. Lease dated 29th December 1989 to Luva Cupa Ltd for Unit 13 for 35 years. (no counterpart held)

24. Lease dated 27th March 1991 to Computer City Ltd for Unit 21 for 35 years. (no counterpart held)

25. Lease in relation to stairway 5 entrance to bowling alley to Anthony Johnston and Brian N Wallace (currently missing).

Dated this 5 day of MARCH 2018

Present when the Common Seal
of **PALMERSTOWN CENTRE DEVELOPMENT LIMITED**
Was affixed hereto:

Director

Director/Secretary

Present when the Common Seal
of **LADGROVE STORES LIMITED**
Was affixed hereto:

Director

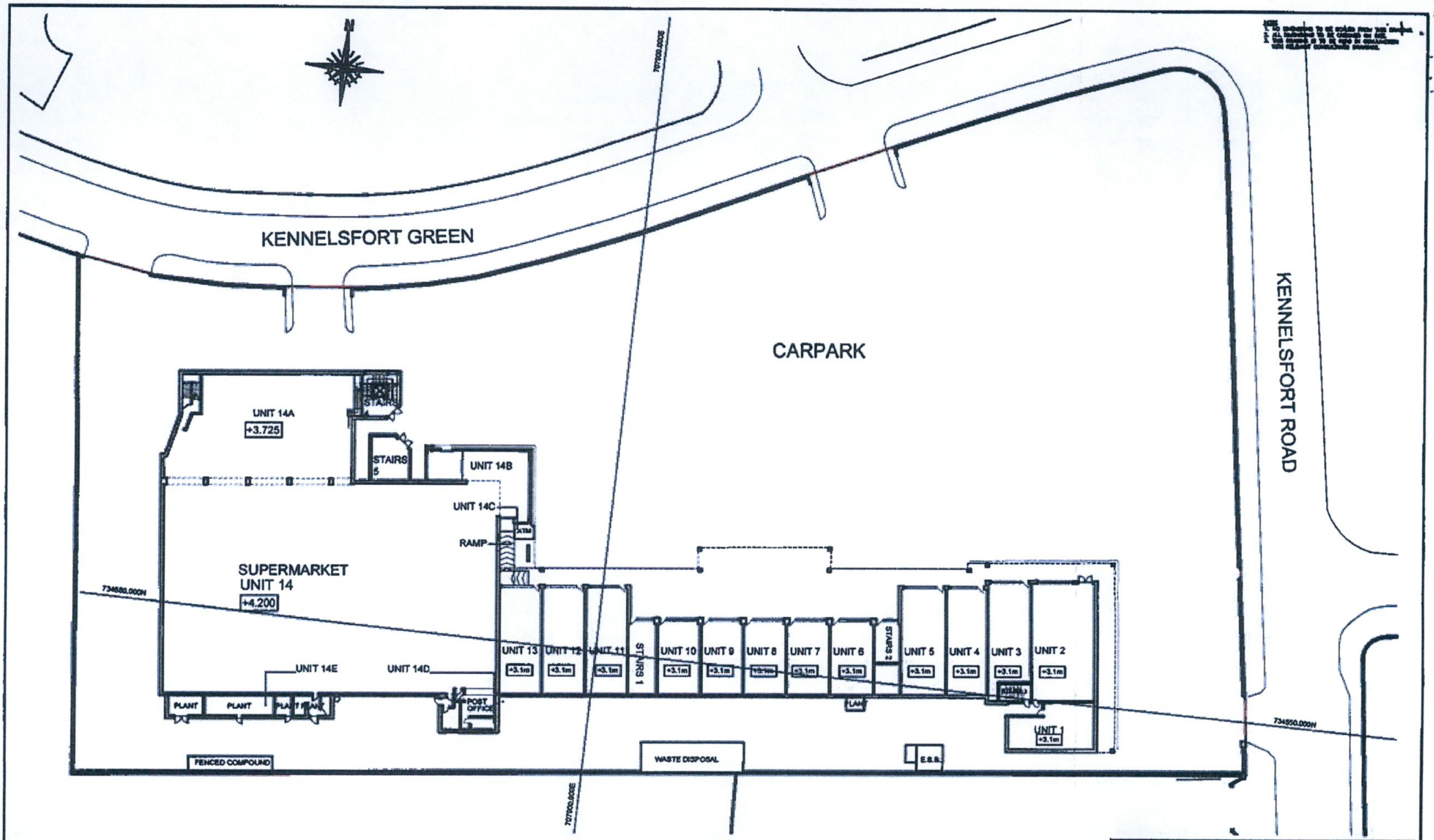
Director/Secretary

Present when the Common Seal
of **KENNELSFORT MANAGEMENT COMPANY LIMITED**
Was affixed hereto:

Solicitor
6 Sandford Road
Ranelagh
Dublin 6.

Director

Director/Secretary



Suite 304, Q House, Furze Road, Sandyford Business Park, Dublin 18

Tel: (01) 293 9170
Fax: (01) 293 4804
Email: info@acharchitects.com
Web: www.acharchitects.com

CLIENT: PALMERSTOWN CENTRE DEVELOPMENT LTD.

PROJECT: COMMON AREAS AT PALMERSTOWN CENTRE

DRAWING: GROUND FLOOR PLAN

SCALE	DATE	CAD FILE	CAD REF.	DRAWN		JOB NO.	DWG. NO.	REV.
1:500A3	05/10/17			MD		894	L-04	

REV.	DATE	DESCRIPTION	DRAWN	REV.	DATE	DESCRIPTION	DRAWN	REV.	DATE	DESCRIPTION	DRAWN	REV.	DATE	DESCRIPTION	DRAWN

Record No. 2011/7947P

THE HIGH COURT

Between/

KENNELSFORT MANAGEMENT COMPANY LIMITED

Plaintiff

And

PALMERSTOWN CENTRE DEVELOPMENT LIMITED, LADGROVE STORES LIMITED and LUKE MORIARTY

Defendants

SETTLEMENT AGREEMENT

Michael Nugent & Co.
Solicitors for the Plaintiff
6 Sandford Road
Ranelagh
Dublin 6.

Telephone No. 4974 888
Fax No. 4974 828