A SHORT BRIEFING FOR KENT & SOUTH-EAST LANDOWNERS

Five things to check on your promotion agreement before you sign.

A 30-page Promotion Agreement is not a "won't commit you to anything" document. Five clauses do most of the work, and a careful read of them — before the meeting with the promoter's solicitor — will save you either a percentage point of headroom, or a year of frustration later. This is what I check first, in plain English.

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1. The Promoter's costs cap — and how the "deductions" stack

Most agreements give the Promoter the right to recover their planning, legal and consultant costs from the gross sale price before the Landowner takes their share. That sounds reasonable. What to look for:

- ✓ Is there an *overall cap* on the Promoter's recoverable costs, or only category caps that add up to "everything"?
- ✓ Are the categories *defined* — or can the Promoter put HQ overheads and finance costs into "consultant fees"?
- ✓ Is there an *audit right* for the Landowner to inspect the cost ledger before deduction?
- ✗ If "abortive costs" are recoverable on termination, is the Landowner ever exposed to a cash payment — or is it limited to set-off against a future sale?

> **Drafting tip.** The single most useful clause for a Landowner is a hard cash cap on recoverable costs, expressed as a percentage of the eventual sale price (typically 7.5% – 12.5%), with an absolute ceiling. Promoters resist this; if you ask for it early, you usually get it.

2. The minimum price / agreed minimum value

The Promoter's incentive is to maximise the sale price. The Landowner's incentive is to *guarantee a floor*. Without a floor, the Promoter is theoretically free to accept any price the market will pay — including, in stressed markets, lower than you expected.

- ✓ Is there an *agreed minimum value* per acre / per plot / per consented unit?
- ✓ Is the minimum value *index-linked* (RPI / CPI) so that it doesn't get eaten by inflation if the planning period takes years?
- ✓ If the market falls below the minimum, what is the *process* — does the Landowner get a release right, a re-promotion right, or a Promoter top-up obligation?

3. Planning conditions, milestones and longstop dates

A Promotion Agreement is a long-dated contract. Two questions you must answer:

1. **What planning outcome triggers the obligation to market?** The trigger is usually "Satisfactory Planning Permission." But "satisfactory" is defined by the Promoter (sometimes including substantive conditions you would never accept). Read this definition carefully.
2. **What happens if planning is refused, or takes too long?** Most agreements have a *Longstop Date* (typically 5–10 years). After the Longstop, the Landowner is usually entitled to terminate. Check whether the Promoter can *extend* the Longstop unilaterally — and how often.

4. Restrictive covenants and exclusivity

Most Promotion Agreements ask the Landowner to grant *exclusivity* — i.e. you won't promote, sell, lease, mortgage or otherwise deal with the land while the agreement is on foot. That is normal. But check:

- ✓ The exclusivity area is clearly defined and limited to the *actual* promotion area (some drafts cover all your adjoining land too).
- ✓ You retain the right to use, farm or rent the land in the meantime, on existing terms.
- ✓ Tenant farmer / Agricultural Tenancy interplay is dealt with explicitly — a sitting agricultural tenant can complicate marketing and timing.
- ✗ Any restrictive covenant that *survives* termination (e.g. you cannot promote with anyone else for X years afterwards) is unusual and worth pushing back on.

5. The "back-to-back" sale process and your level of consent

When marketing finally starts, the Promoter sells the land — but the Landowner is the seller of record. The agreement should say clearly:

- ✓ **What approvals you keep.** Do you have a final right to accept or reject an offer? Or only a "reasonable consent" right?
- ✓ **What "reasonable" means.** Some drafts say your consent cannot be unreasonably withheld and then make it unreasonable to refuse a sale that meets the minimum value. That is more limited than it sounds.
- ✓ **Who appoints solicitors.** The Landowner usually instructs the conveyancing solicitor on the eventual sale; but the Promoter sometimes proposes a panel of "approved" firms — read this carefully.
- ✓ **Tax structuring.** Roll-over relief, replacement of business assets relief, Inheritance Tax planning — none of these survive a sale carried out in the wrong order. Speak to your tax adviser *before* you sign, not after.

> **Worth saying out loud.** A Promotion Agreement is a long-term partnership between the Landowner and the Promoter. The clauses above are not just about avoiding loss — they are about setting the relationship up so that, five or ten years later, you and the Promoter are still talking. The cheapest agreement to sign is usually the most expensive to live with.

Where I come in

I'm Dmytro Taran — a foreign-qualified property and commercial lawyer based in Tunbridge Wells, with twenty years' practice across property, land, planning and commercial work. Ten of those years were inside a major city council's planning division. The last two years I have been Land Promotion Manager at a UK strategic land developer in the South East, reading these agreements every week from the Promoter's side.

If a Promotion or Option Agreement has landed on your desk, send it. The first 20 minutes are free; a full review and redline (with a short plain-English pushback note) is fixed-fee from £900, typically back within 24–48 hours of receipt.

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