

DATED 10 DAY OF JANUARY 2023

PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING

**UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO LAND AT 2 VALE ROAD, NORTHFLEET, GRAVESEND, KENT**

given by

BRT Properties (Kent) Ltd

Kamaljit Sangha and Bhajan Singh Sangha

To

Gravesham Borough Council

This deed of unilateral undertaking is given the 10 day of January 2023 by:

- (1) BRT Properties (Kent) Ltd (co Reg No 8658819) of 2 Vale Rd Northfleet Kent DA11 9RE(**Owner**)
- (2) Kamaljit Sangha and Bhajan Singh Sangha (**Mortgagee**)

To:

- (3) Gravesham Borough Council of Civic Centre, Windmill Street, Gravesend, Kent DA12 1AU (**Council**)

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner is the freehold owner of the Property subject to a mortgage in favour of the Mortgagee but otherwise free from encumbrances.
- (C) The Owner has made the Planning Application and is proposing to carry out the Development.
- (D) The Mortgagee is the registered proprietor of the charge dated 10 September 2019 referred to in entry number 2 of the charges register of Title number K157361 and has agreed to enter into this deed to give its consent to the terms of this deed.
- (E) The Council have decided to grant Planning Permission for the Development subject to the Owner entering into this deed.

Operative Provisions

1. Interpretation

The following definitions and rules of interpretation apply in this deed:

1.1. Definitions:

Application Site: means the part of the Property shown edged red on the Plan.

Base Rate: the higher of 4% and the base rate from time to time of Barclays Bank plc.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations:

- demolition works;

- site clearance;
- ground investigations;
- site survey works;
- temporary access construction works;
- archaeological investigation; and
- erection of any fences and hoardings around the Property.

Commence and Commences shall be construed accordingly.

Contribution: the sum payable in accordance with the Schedule of this deed.

Commencement Date: the date Development Commences.

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Property authorised by the Planning Permission.

Index Linked: increased in accordance with the following formula:

Amount payable = the payment specified in this deed x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date the payment is due.

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this deed.

Plan: the plan attached as ANNEX A.

Planning Application: the application for full planning permission relating to the residential development at Top Yard, Hardys Corner 2 Vale Road Northfleet Gravesend Kent DA11 8BZ and comprising: 14 new household registered by the Council under reference number 20211582.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application

Property: the land at Hardys Corner, 2 Vale Road, Northfleet, Gravesend DA11 8BZ shown edged red on the Plan and registered at HM Land Registry with absolute title under title number K157361

TCPA 1990: Town and Country Planning Act 1990.

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

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2. Clause headings shall not affect the interpretation of this deed.
- 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9. Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10. A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11. A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12. References to clauses and Schedules are to the clauses and Schedules of this deed.
- 1.13. An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15. Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. Statutory provisions

- 2.1. This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and section 2 of the Local Government Act 2000 and any other enabling powers.
- 2.2. The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3. The covenants, restrictions and obligations contained in this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. Conditionality

With the exception of clause 2, clause 3, clause 6, clause 9, clause 11, clause 12, clause 14, clause 15, clause 17, clause 18, clause 19, clause 20 and clause 22 (which take effect immediately), this deed is conditional on the grant and issue of the Planning Permission.

4. Covenants with the Council

The Owner covenants with the Council to:

- (a) observe and perform the covenants, restrictions and obligations contained in Schedule 1.
- (b) give at least 14 Working Days written notice to the Council of the intended Commencement Date.

5. Indexation

- 5.1. All financial contributions payable to the Council shall be Index Linked.
- 5.2. Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

6. Mortgagee's consent

- 6.1. The Mortgagee consents to the completion of this deed and declares that its interest in the Property shall be bound by the terms of this deed as if it had been executed and

registered as a land charge prior to the creation of the Mortgagee's interest in the Property.

- 6.2. The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.

7. Release

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

8. Determination of deed

The obligations in this deed (with the exception of clause 11) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

9. Local land charge

This deed is a local land charge and shall be registered as such by the Council.

10. Interest on late payment

If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

11. Council's Costs

- 11.1. The Owner shall pay to the Council on or before the date of this deed:

- (a) the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed.
- (b) the sum of £500.00 as a contribution towards the Council's costs of monitoring the implementation of this deed.

12. Ownership

- 12.1. The Owner warrants that no person other than the Owner and the Mortgagee has any legal or equitable interest in the Property.

13. Reasonableness

Any approval, consent, direction, authority, agreement or action to be given by the Council under this deed shall not be unreasonably withheld or delayed.

14. Cancellation of entries

- 14.1. On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.
- 14.2. Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to clause 9 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

15. Disputes

Any dispute, controversy or claim arising out of or relating to this deed, including any question regarding its breach, existence, validity or termination or the legal relationships established by this deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- (a) the tribunal shall consist of one arbitrator appointed jointly by the parties;
- (b) in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;
- (c) the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and
- (d) the seat of the arbitration shall be Kent.

16. No fetter of discretion

Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

17. Waiver

No failure or delay by the Council to exercise any right or remedy provided under this deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. Future Permissions

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

19. Agreements and Declarations

The parties agree that:

- (a) nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

20. Notices

20.1. Any notice to be given under this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

20.2. Any notice to be given under this deed must be sent to the relevant party as follows:

- (a) to the Council at their address noted above
- (b) to the Owner at their address noted above marked for the attention of the Directors
- (c) to the Mortgagee at their address noted above marked for their attention

or as otherwise specified by the relevant party by notice in writing to each other party.

20.3. Any notice given in accordance with clause 21.1 and clause 21.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00

am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

20.4. A notice given under this deed shall not be validly given if sent by e-mail.

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

21. Third party rights

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

22. Value added tax

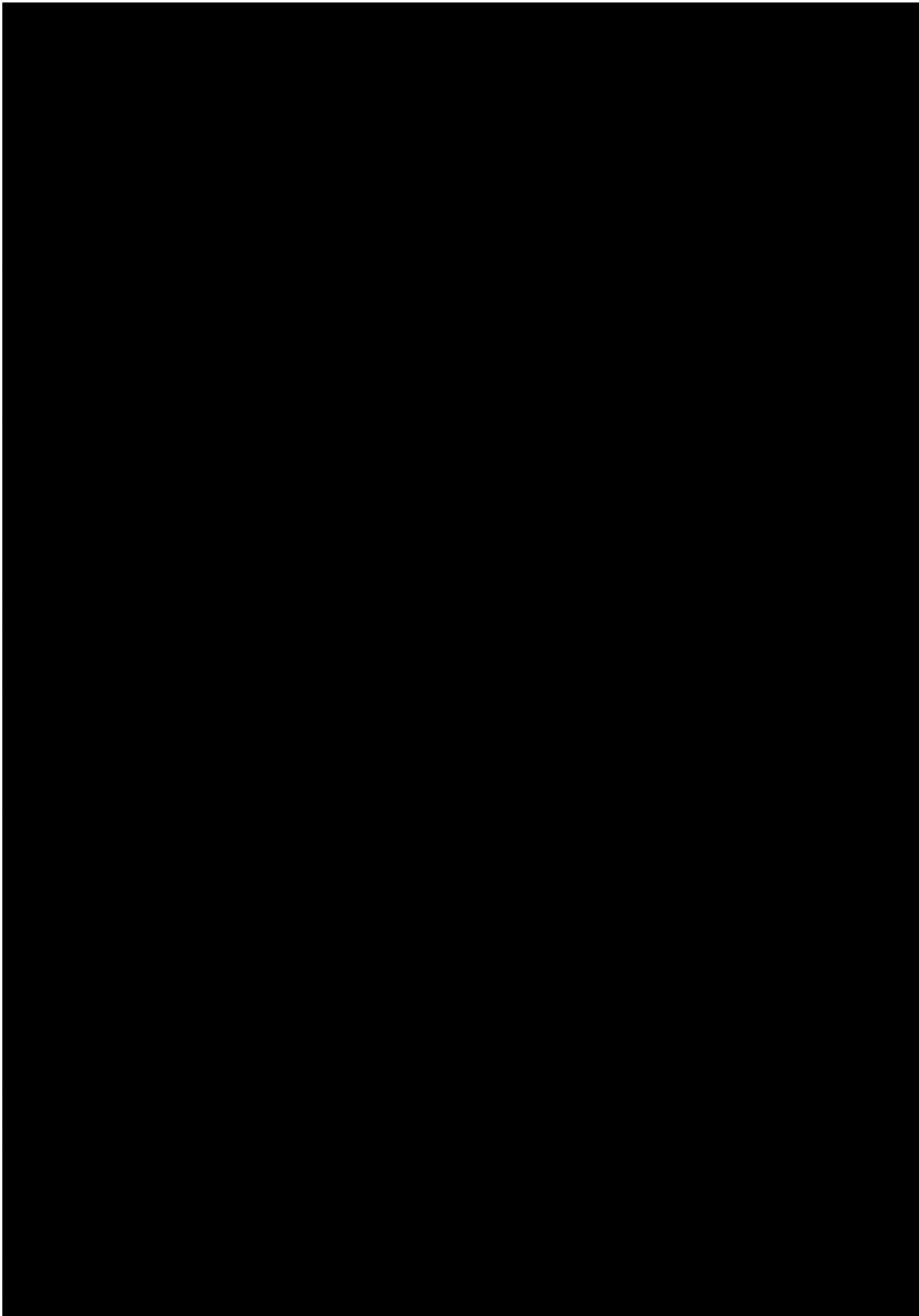
22.1. Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this deed is exclusive of VAT (if any).

22.2. If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

23. Governing Law

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.



A. Plan



A. SITE PLAN: SUBMITTED FOR PLANNING PERMISSION ON 11/11/2021

Rev. Date: 11/11/2021

Comments: PLANNING

Client: BRT Properties Ltd

Project No: 7985

Date: DEC 2021

Project Name: 7985-PD-01

Location: A

Down: AN

Circle: BR

Project No: 7985

Date: DEC 2021

Project Name: 7985-PD-01

Location: A

Down: AN

Circle: BR

Project No: 7985

Date: DEC 2021

Project Name: 7985-PD-01

Location: A

Down: AN

Circle: BR

Schedule 1 – Covenants to the Council

1. Prior to Commencement of Development to pay the Council the sum of £3,862.32 as a total contributions towards the costs of Strategic Access Management and Monitoring (SAMM) measures.
2. Prior to Commencement of Development to pay the Council the following sums: -
 - a) Primary Education contribution towards the new Rosherville School in the sum of £23,800.00
 - b) Special Education contribution towards either Ilfield Special School expansion or a new build special school in the sum of £3,681.44
 - c) Secondary Education contribution towards expansion of Mayfield Grammar in the sum of £15,890.00
 - d) Community Learning contribution towards additional resources for Adult Education "Victoria Centre" Darnley Road, Gravesend DA11 0RX in the sum of £229.88
 - e) Youth Service contribution towards additional resources for Northfleet Youth Centre, Hall Road, Northfleet, Gravesend, Kent DA11 8AJ in the sum of £917.00
 - f) Library Bookstock contribution towards additional services, resources and stock required to mitigate the impact of the new borrowers from this development at Coldharbour Library, Coldharbour Road, Northfleet, Kent, DA11 8AE in the sum of £776.30