DATED 2024

UNILATERAL UNDERTAKING

**GIVEN BY:**

1. **KARUNA KISHOR JOTANGIA**
2. **SANDEEP JOTANGIA**
3. **JIGNA JOTANGIA**

**TO:**

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON**

made pursuant to Section 16 of the Greater London Council (General Powers Act) 1974, Section 106 of the Town and Country Planning Act 1990 (as amended), Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all enabling powers

**Application Reference: 23/033346/FUL**

**Appeal Ref : APP/L5240/W/23/3335733**

**Land at: 13A Russell Hill Purley CR8 2JA**

LBC draft 26th February 2024

Legal Services Division

London Borough of Croydon

Bernard Weatherill House

8 Mint Walk

Croydon

CR0 1EA

**THIS DEED OF UNILATERAL UNDERTAKING** is given the day of Two Thousand and Twenty Four

**BY :**

1. **KARUNA KISHOR JOTANGIA** of 13A Russell Hill Purley CR8 2JB (the “ **First**  **Owner**”)
2. **SANDEEP JOTANGIA** of 13A Russell Hill Purley CR8 2JB (the “ **Second**  **Owner**”)
3. **JIGNA JOTANGIA** of 13A Russell Hill Purley CR8 2JB (the “ **Third** **Owner**”)

**(**Hereinafter referred to as **“**the **Owners”** and whose liability is joint and several**)**

**TO :**

**THE MAYOR AND BURGESSES** of **THE LONDON BOROUGH OF CROYDON** of Bernard Weatherill House 8 Mint Walk Croydon CR0 1EA (the “**Council**”)

Recitals

1. **The Council**
2. The Council is the Local Planning Authority for the purposes of Section 106 of the Town and Country Planning Act 1990 (as amended) for 13A Russell Hill Purley CR8 2JB (the “**Planning Application** **Site**”).
3. The Council is the highway authority for the purposes of the Highways Act 1980 (as amended) for roads other than trunk and special roads within the area within which the Planning Application Site is located.
4. **The Owners**
5. The Owners are the registered proprietor with freehold absolute title under title number SY 275519 of the Planning Application Site.

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1. **Planning Permission**
2. An Application for full planning permission was submitted to the Council and was registered under reference number 23/03346/FUL

 to develop the Planning Application Site by Demolition of existing dwelling and erection of a part-2, part-3 storey building with habitable roofspace above to create 8 flats, with associated access, parking, cycle storage, bin & recycling storage and landscaping. (the **“Planning Application”**).

1. On 26th October 2023 the Council at its delegated business meeting made a decision to refuse planning permission for the Planning Application.
2. The applicant has appealed against the refusal of the planning permission to the Secretary of State and the appeal was registered under reference number APP/L5420/W/23/333 5733 (the **“Appeal”**)
3. This Unilateral Undertaking has been prepared in anticipation of the event that the Planning Inspector appointed by the Secretary of State to determine the appeal is minded to grant planning permission for the Planning Application subject to the completion of a section 106 Deed to make the Planning Application acceptable in planning terms.
4. The Parties are satisfied that the planning obligations (except for obligations at clauses 4.21 (Legal Costs) contained in this Unilateral Undertaking are necessary to make the Development acceptable in planning terms directly related to the Development and fairly and reasonably related in scale and kind to such Development and thus satisfy the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

# Statutory Authority

## This Unilateral Undertaking is given pursuant to Section 106 of the 1990 Act, Section 16 of the Greater London Council (General Powers) Act 1974, Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all enabling powers.

## To the extent that this Unilateral Undertaking contains obligations on the part of the Owners which fall within descriptions set out in Section 106(1) (a)-(d) of the 1990 Act (inclusive), those obligations are planning obligations pursuant to Section 106 of the 1990 Act.

## To the extent that this Unilateral Undertaking contains obligations on the part of the Owners which are not within the descriptions set out in Section 106(1) (a)-(d) of the 1990 Act (inclusive), those obligations are undertakings or Unilateral Undertaking binding on successors in title of the Owners and persons claiming through or under them within the meaning of Section 16 of the Greater London Council (General Powers) Act 1974.

# Legal Effect

## The obligations of the Owners (with the exception of clause 4.21) shall be enforceable only upon:

### the grant of Planning Permission upon Appeal ; and

### the Implementation Date

## In the event that there is an express finding within the decision of a Court, planning inspector or Secretary of State that one or more of the obligations in this Unilateral Undertaking does not meet the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010/948), or alternatively is not in accordance with the provisions of Section 16 of the Greater London Council (General Powers) Act 1974, then (without prejudice to the legal effect of the remainder of this Unilateral Undertaking) the relevant individual obligation shall not take effect.

# Interpretation

## In this Unilateral Undertaking the following expressions (arranged in alphabetical order) shall unless the context shall otherwise require have the following meanings:

|  |  |
| --- | --- |
| **“1980 Act”** | means the Highways Act 1980 (as amended); |
| **“1990 Act”** | means the Town and Country Planning Act 1990 (as amended); |
| **“Borough”** | means the London Borough of Croydon  |
| **“Completion”** | means the issue of the Certificate of Practical Completion and the expression "**Completed**" shall be construed accordingly |
| **“Unilateral Undertaking”** | means this Unilateral Undertaking as given by the Owners to the Council |
| **“Development”** | means the development which is the subject of the Planning Application; |
| **“First Occupation”** | means first Occupation for the purposes permitted pursuant to the Planning Application and the expressions “**First Occupy**” and “**First Occupied**” shall be construed accordingly |
| **“Implementation Date”**  | means the carrying out in relation to the Development of any Material Operation and the expressions “**Implemented Developments**” and “**Implements Development**” shall be construed accordingly |
| **“Material Operation”**  | means any operation within the meaning of Section 56(4) of the 1990 Act (as amended) but disregarding for the purposes of this Unilateral Undertaking and for no other purpose 1. any demolition or site clearance operations,
2. archaeological or ground investigations, investigations for the purpose of assessing contamination,
3. remedial action in respect of contamination,
4. erection of any fences and hoardings or means of enclosure around the Planning Application Site;
 |
| **“Monitoring Fee”** | means the sums due to the Council in accordance with Schedule 3 in respect of the costs of monitoring compliance with obligations as set out in this Unilateral Undertaking |
| **“Parties”** | means the Owners giving this Unilateral Undertaking and the Council being the receiving party  |
| **“Plan ”** | means the plan attached to this Unilateral Undertaking at Annex being the Planning Application Site |
| **“Planning Permission”** | means the permission granted by the Secretary of State in the event that the Appeal is successful  |
| **“Practical Completion”** | means in relation to any works the issue of a certificate of Practical Completion by the architect or project manager certifying that the works have been practically completed and the certificate to be provided to the council and the expression “**Practically Completed**” shall be construed accordingly |
| **“Retail Prices Index”** | means the All Items Retail Prices Index including mortgage interest payments (RPI) contained in the Monthly Bulletin of Indices published by the Office of National Statistics (or such other publication as may from time to time supersede the same); |
| **“Working Day”** | means any day apart from a Saturday Sunday or any statutory bank holiday in England |

## The clause headings in this Unilateral Undertaking are for reference only and do not affect its construction or interpretation.

## References to clauses and schedules are to the clauses and Schedules of this Unilateral Undertaking, unless stated otherwise.

## A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.

## Words importing one gender include any other genders and words importing the singular include the plural and vice versa.

## A reference to a person includes a reference to persons acting jointly or in partnership, a firm, company, authority, board, department or other body and vice versa.

## Unless this Unilateral Undertaking states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all statutorily enforceable instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.

## References to the Planning Application Site include any part of it.

## References to any party in this Unilateral Undertaking include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the Planning Acts.

## If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Unilateral Undertaking shall be unaffected.

# It is hereby undertaken and declared

Miscellaneous Undertakings and declarations

## Nothing contained or implied in this Unilateral Undertaking shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority and its rights, powers duties and obligations under all public and private statutes bye-laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Unilateral Undertaking.

## In so far as any clause or clauses in this Unilateral Undertaking are found (for whatever reason) to be invalid or unenforceable, then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Unilateral Undertaking.

Local Land Charges

## This Unilateral Undertaking shall be registered in the Council’s Register of Local Land Charges.

Reference to statutes and statutory instruments

## References in this Unilateral Undertaking to any statutes or statutory instruments shall include reference to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force.

Liability of subsequent Owners and release of former Owners

## The provisions in this Unilateral Undertaking shall be enforceable by the Council against the Owners and all persons who shall have derived title through or under the Owners in respect of the Planning Application Site.

## The Owners undertakes to the Council in this Unilateral Undertaking to the intent that the undertakings given by the Owners in this Unilateral Undertaking shall be planning obligations/obligation and enforceable without limit of time (other than as expressly mentioned in this Undertaking) against the Owners and any person deriving title through or under the Owners to the Planning Application Site (or any part or parts of it) as if that person had also been an original party giving the Unilateral Undertaking to the Council

## No persons shall be liable to the Council for any breach of the provisions of this Unilateral Undertaking committed after such person has parted with all of its interest in the Planning Application Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

Variations

## In the event of any subsequent planning permission being granted by the Council pursuant to an application under s73 of the 1990 Act for the removal or variation of any conditions attached to the Planning Permission the obligations contained in this Unilateral Undertaking shall apply to the subsequent planning permission (without the need for a further deed unless required by the Council exercising absolute discretion ) and terms of this Unilateral Undertaking shall continue in full force and effect at all times regardless

English Law Applicable

## The construction validity and performance of this Unilateral Undertaking shall be governed by English law.

Reconciliation of plans and property descriptions

## All references in this Unilateral Undertaking to the identification of the Planning Application Site or parts thereof by colour delineations or colourings on Plan 1 shall be for the purposes of identification only.

Service of Notices

## All notices including Notice of Intention to Implement the Development and Notice of Intention of First Occupation and Notice of Practical Completion and Notice of Change in Ownership served pursuant to this Unilateral Undertaking shall be in writing and shall in the absence of a contrary direction having been received in writing by the sender of the relevant notice be deemed duly served if delivered or sent:

### In the case of a notice to be served on the Council to the address as stated above and also electronically by e-mail to Development.Management@croydon.gov.uk addressed to the Head of Development management

### In the case of a notice to be served on the Owners to the address as stated above.

Effect of revocation of Planning Permission

## In the event of the Planning Permission for the Development being revoked by the Council or any other authority having powers in relation to planning matters the obligations of the Owners under this Unilateral Undertaking shall thereupon cease absolutely.

Waivers not to be of a continuing nature

## No waiver (whether express or implied) by the Council of any breach or default by the Owners in performing or observing any of the terms and conditions of this Unilateral Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Owners.

Rights of Third Parties

## It is the intention of the parties that no person who is not a party to this Unilateral Undertaking shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Unilateral Undertaking.

Joint and Several Liability

## Where two or more persons are liable in respect of an obligation, they are jointly and severally liable unless there is an express provision otherwise.

General

## Words denoting an obligation on a party to do an act matter or thing shall include, an obligation to procure that is done and words placing a party under a restriction shall include an obligation not to cause permit or suffer infringement of the restriction whether direct or indirect on its own account or through another person

### Where an obligation must be complied with:

1. Prior to or upon Implementation Date that shall additionally include a restriction that no Development can be Implemented until such obligation has been satisfied
2. Prior to or upon First Occupation that shall additionally include a restriction that no Occupation can take place until such obligation has been satisfied

### All the obligations on part of the Owners are to be undertaken at the Owners’ expense

## Rights of Inspection

### Without prejudice to the Council’s statutory rights of entry the Owners shall permit any person duly authorised by the Council during the period when the Development is being constructed to enter at reasonable times and on reasonable notice any part of the Planning Application Site which is not First Occupied to ascertain whether there is or has been any breach of the obligations hereunder PROVIDED THAT any person so authorised shall observe all reasonable security access and health and safety arrangements as required by the Owners.

## VAT

### All consideration given in accordance with the terms of this Unilateral Undertaking shall be exclusive of any value added tax properly payable in respect thereof

### If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Unilateral Undertaking then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

## Interest

### If the Owners shall fail to pay to the Council any payment due under this Unilateral Undertaking in full by the due date the Owners shall in addition pay to the Council interest calculated at a rate equivalent to four per centum (4%) per annum over the basic lending rate from time to time of the Bank of England such interest to be calculated from the date on which the payment should have been received in full by the Council and the date that the payment was received in full.

## Indexation

### The Owners hereby undertakes that any payment due shall be subject to indexation so that such sums or values shall be increased by the percentage change in the Retail Prices Index from time to time in force from the date of this Unilateral Undertaking until the date of receipt of the payment by the Council

## Legal Costs

### The Owners undertakes to pay the Council’s reasonable legal costs in negotiating and preparing this Unilateral Undertaking upon completion of this Unilateral Undertaking.

### The Owners further undertakes to pay the Council’s legal costs incurred by or on behalf of the Council in connection with recovering and/or enforcing any planning obligations in this Unilateral Undertaking

## Charges Register

### The Owners shall within 28 days of completion of this Unilateral Undertaking (apply at its own expense including paying the requisite fee) to the Land Registry to register this Unilateral Undertaking in the Charges Register of the title number SY275519 and the Owners shall also supply (at its own expense) to the Council upon written demand office copies of such titles to show the entry of this Unilateral Undertaking in the Charges Register of the title to the Planning Application Site.

# Dispute Resolution

## Without prejudice to any of the parties’ or the Council’s right to seek redress through the courts the parties hereto hereby agree that any differences and questions which arise between the parties in connection with this Unilateral Undertaking shall be referred for determination by an independent person who is qualified to act as an expert in relation to the dispute having not less than ten years professional experience in relation to matters relating to planning developments (whose decision shall be binding save in the case of manifest error in respect of the matters referred to him) in accordance with the following provisions:

## where such dispute relates to the construction of this or any other Unilateral Undertaking or document it shall be referred to a solicitor or barrister agreed upon by the parties or in default of Unilateral Undertaking appointed on the application of either party by or at the direction of the President for the time being of the Law Society; and

## where such dispute relates to engineering construction or highway works it shall be referred to a Chartered Civil Engineer agreed upon by the parties or in default of Unilateral Undertaking appointed on the application of either party by or at the direction of the President for the time being of the Institution of Civil Engineers; and

## where such dispute relates to the valuation of property it shall be referred to a Chartered Surveyor agreed upon by the parties or in default of Unilateral Undertaking appointed on the application of either party by or at the direction of the President for the time being of the Royal Institution of Chartered Surveyors;

## in any reference to an independent person under this clause such person shall (unless the parties otherwise conclude) act as expert and not as arbitrator and the following provisions shall apply to their appointment:

## the independent person shall allow the parties to make representations and to comment on each other’s representations;

## the independent person shall give written notice as to their decision within 30 Working Days of his appointment (or within such longer period as the parties shall agree);

## the costs of the independent person shall be borne by the parties in such proportion as he directs or in the absence of any direction equally. If one party shall pay more than their due proportion they shall be entitled to recover the excess from the other on demand;

## if the independent person refuses to act, is incapable of acting, dies or fails to give notice of his decision within the required period, then the procedure referred to in clause 5 may be repeated.

**Schedule 1 – Notices**

1. **Definitions**

|  |  |
| --- | --- |
| **Notice of Change in Ownership** | means a notice notifying the Council of the change in Ownership |
| **Notice of Intention to Implement the Development** | means a notice stating the date on which the Owners intends to Implement the Development |
| **Notice of Intention of First Occupation** | means a notice stating the date on which it is intended that First Occupation will occur |
| **Notice of Practical Completion of the Development** | means a notice containing the date on which Practical Completion of the Development occurred |

1. **Notices**
	1. Notice of Change in Ownership

The Owners undertake to the Council to give the Council immediate written notice in any change in Ownership of the Owners’ interest in the Planning Application Site occurring before all of the obligations under this Unilateral Undertaking have been discharged. Such notice shall include details of the transferees’ full name and registered office (if a company or a usual address if not) together with the area of the Planning Application Site or unit of occupation purchased by reference to a plan.

* 1. Notice of Intention to Implement the Development

The Owners shall prior to Implementation Date serve the Notice of Intention to Implement the Development giving at least 5 Working Days' notice of the intended Implementation Date.

* 1. Notice of Intention of First Occupation

The Owners undertake to serve the Notice of Intention of First Occupation on the Council at least 5 Working Days' prior to First Occupation date.

* 1. Notice of Practical Completion of the Development

The Owners undertake to serve the Notice of Practical Completion on the Council within 5 Working Days of Practical Completion of the Development.

**Schedule 2 – Sustainable Transport Contribution**

1. **Definitions**

|  |  |
| --- | --- |
| **Sustainable Transport Contribution**  | means the sum of £12,000 (Twelve Thousand Pounds) (index –linked) to be utilised towards (including but not limited to and Council exercising absolute discretion) on-street car clubs with EVCP's and / or highway changes such as on-street restrictions, car clubs, highway transport initiative measures, removal of residential parking permit entitlement for new residential units to the present, and any future, CPZs within the area, pedestrian / cycling improvements  |
| **EVCP’s** | means Electric Vehicle Charging Points |
| **CPZs** | means Controlled Parking Zones |

1. **Sustainable Transport Contribution**
	1. The Owners undertake to pay the Sustainable Transport Contribution on or prior to the Implementation Date and there can be no Implementation until such sum has been received in full by the Council

**Schedule 3 - Monitoring Fee**

1. The Owners shall pay to the Council the following sum upon the Implementation Date as a contribution towards the costs of monitoring compliance:
	* + 1. The sum of £1,500 (One Thousand Five Hundred Pounds) for monitoring the Sustainable Transport Contribution obligation
2. The Parties hereby acknowledge that the monitoring fee is being sought under Section 111 of the Local Government Act 1972 Section 16 of the Greater London Council (General Powers) Act 1974 and Section 1 of the Localism Act 2011 and additionally the monitoring fee is a contractual obligation and, in each case, the Parties hereby further acknowledge that the monitoring fee is justified and reasonably referable to the obligation monitoring which is the responsibility of the Council following completion of this Unilateral Undertaking.

**IN WITNESS** whereof the parties hereto have executed this Unilateral Undertaking as a Unilateral Undertaking the day and year first before written

Signed as a deed by: **KARUNA KISHOR JOTANGIA**

in the presence of:

Signature of witness:

Name (IN BLOCK CAPITALS):

Address:

Signed as a deed by: **SANDEEP JOTANGIA**

in the presence of:

Signature of witness:

Name (IN BLOCK CAPITALS):

Address:

Signed as a deed by: **JIGNA** **JOTANGIA**

in the presence of:

Signature of witness:

Name (IN BLOCK CAPITALS):

Address:

**ANNEX – PLAN : PLANNING APPLICATION SITE**