

Land Registry
Transfer of whole of registered title(s)

TR1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

1	Title number(s) of the property: HD490269
2	Property: Land on the east side of Mill Road, Hertford
3	Date:
4	Transferor: BRB (Residuary) Limited <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: 4146505 <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in the United Kingdom including any prefix:
5	Transferee for entry in the register: [] <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: [] <u>For overseas companies</u> (a) Territory of incorporation:

11 Additional provisions

11.1 **DEFINITIONS**

In this deed, unless the context otherwise requires the following definitions apply:

“1994 Act” the Law of Property (Miscellaneous Provisions) Act 1994;

“Act of Circumvention” an act or omission of the Transferee or a transaction or series of transactions entered into by the Transferee with any person or persons the purpose or effect of which is either to avoid or depress or reduce the size of the Overage Payment which might otherwise fall due to the Transferor and/or to delay or postpone the Trigger Date to a date later than the date on which it would otherwise fall;

“Base Rate” the Base Rate from time to time of Royal Bank of Scotland plc provided that if Royal Bank of Scotland plc ceases to exist or if Base Rate ceases or is abandoned or abolished Base Rate shall be such equivalent rate as the Transferor and the Transferee shall agree (acting reasonably);

“Base Value” the Market Value of the Relevant Land for the Permitted Use on the assumption that it is not lawful to undertake the Material Development permitted by the relevant Planning Permission and there is no prospect of the relevant Planning Permission being granted;

“Costs” any reasonable and proper expenditure (or a fair and proper proportion of the same where the same are not incurred exclusively in relation to the Relevant Land) incurred by or on behalf of the Transferee in connection with any of the following (to the extent they have not been taken into account previously in any calculation of an Overage Payment);

- a) all reasonable and proper costs incurred in connection with any application for the relevant Planning Permission and in relation to any abortive applications, appeal, calling in, enquiry or further appeal which are a forerunner to obtaining the relevant Planning Permission including all costs and sums which have been paid pursuant to or in connection with any agreement reasonably and properly entered into or procured by the Transferee in order to obtain any Planning Permission (but not any fee or charge or profit share to the extent receivable directly or indirectly by the Transferee or a connected person (as defined in section 839 of the Income and Corporation Taxes Act 1988) for carrying out any planning promotion) or required as a condition of the grant of Planning Permission or as a condition of any resolution to grant Planning Permission;
- b) all reasonable and proper professional charges, fees, duties and other disbursements (including abortive work charges) charged or made by all professional consultants, professional advisers, project managers, agents solicitors employed by the Transferee in relation to the grant of the relevant Planning Permission;
- c) any other items of expenditure reasonably and properly incurred by the Transferee which are properly attributable to the grant of the relevant

Planning Permission;

- d) land surveys and soil investigations;
- e) decontaminating or carrying out remediation works on the Relevant Land;
- f) the amount of value added tax on the above heads of expenditure to the extent that it is irrecoverable by the Buyer from H M Revenue and Customs.

“Development” development of the whole or any part or parts of the Property with or without other land for any development within the meaning given to it by the Planning Acts;

“Development Value” the difference between the Enhanced Value of the Relevant Land and the Base Value of the Relevant Land;

“Disposal” a disposition within the meaning of Section 205 (1)(ii) of the Law of Property Act 1925 and the expressions “Disposition” and “Dispose” shall be construed accordingly;

“Enhanced Value” means:

- a) if Planning Permission has been granted for the Material Development in question the Market Value of the Relevant Land with the benefit of that Planning Permission PROVIDED THAT if the Planning Permission also relates to adjoining or neighbouring property Enhanced Value means the result of applying the following formula:

$$A \times (B \div C)$$

Where:

“A” means the Market Value of the whole of the Property that is the subject of the Planning Permission

“B” means the total gross acreage (calculated to 3 decimal places) of the Relevant Land

“C” means the total gross acreage (calculated to 3 decimal places) of the property that is the subject of the Planning Permission

- b) if Planning Permission for the Material Development in question is required but has not been obtained the Market Value of the Relevant Land on the assumption that Planning Permission for the Material Development in question has been granted;
- c) in both cases the Relevant Land being valued on the assumptions (whether or not such be the case) that it is free from encumbrances (save for any easements or covenants affecting the same at the date hereof or granted under this Transfer) and that the Relevant Land is to be sold with vacant possession.

“Excepted Disposal”

means one or more of the following:

- a) any mortgage or charge of the Property or any part of it to any recognised lending institution participating in the financing of the Transferee’s purchase and/or development of the Property or part or parts thereof and/or ancillary arrangements;
- b) a disposal to a service authority or utility company which acquires an interest in the Property in order to provide water gas electricity or foul or surface water disposal facilities to or from the Property;
- c) a disposal or dedication for a highway purpose (excluding roads forming part of a Material Development);

“Independent Surveyor”

a Fellow of the Royal Institution of Chartered Surveyors with at least 10 years experience in valuing properties similar to the Relevant Land for uses similar to the Material Development;

“Market Value” the price at which the sale of the freehold interest in the Relevant Land and any other land (if applicable) calculated in accordance with the market value basis (as described in Practice Statement 3.2 in the RICS Appraisal and Valuations Standards 6th Edition (March 2009) (as updated from time to time)) will have been completed unconditionally for cash consideration if sold as a whole by private treaty in the open market on the Trigger Date but in the absence of agreement to be determined on the application of either party pursuant to clause 11.6 of this Transfer;

“Material Development”

any Development of the Relevant Land for which Planning Permission is required (including Development for which at the relevant time Planning Permission has been granted by means of a development order which comes within the scope of Section 59(2)(a) of the Town and Country Planning Act 1990) which would when implemented increase the value of the Relevant Land but does not include any Development consisting solely of the laying of pipes cables or other media for the purposes of meeting statutory obligations in relation to the supply of gas water electricity or other services to the general public;

“Overage Payment”

the [] period commencing on the date of this Transfer and expiring on [] PROVIDED THAT if on [] Property or part thereof has the benefit of a Planning Permission or Planning Permissions but the Trigger Date has not occurred in respect thereof the Overage Period shall be extended to the date being 10 Working Days after the date such Planning Permission or Planning Permissions are liable to expire in accordance with the terms thereof;

“Permitted Use” means:

- a) from the date of this Transfer until the first Trigger Date [];
- b) following each and every subsequent Trigger Date the use permitted by the relevant Planning Permission used to calculate the Enhanced Value on the preceding Trigger Date;

“Planning Acts” include the Town and Country Planning Act 1990 the Planning (Listed Buildings and Conservation Areas) Act 1990; the Planning (Hazardous Substances) Act 1990; the Planning (Consequential Provisions) Act 1990, the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008 and any subsequent legislation of a similar nature and any regulation or direction in pursuance of any of them;

“Planning Permission” a permission for Development required by reason of the Planning Acts (including one granted by means of a development order which comes within the scope of Section 59(2)(a) of the Town and Country Planning Act 1990);

“Property” the freehold property described in panel 3;

“Qualifying Disposal” any Disposal of any part of the Property or any interest in it whether by sale or lease or gift or otherwise other than an Excepted Disposal;

“Relevant Percentage” is [] per cent []%

“Relevant Land” the Property or a part of the Property for which Planning Permission has been granted or on which any Material Development is begun;

“Trigger Date” means:

- a) if Planning Permission has been obtained for a Material Development the date on which the Development is commenced or if earlier the date on which any Qualifying Disposal of any part of the Relevant Land or any interest in it takes place;
- b) if Planning Permission is required for a Material Development but no Planning Permission has been obtained therefor the date on which the Material Development in question is commenced,

PROVIDED THAT no date after the Overage Period has expired will be a Trigger Date

For the purposes of ascertaining when Material Development commenced any work operation or action carried out on the Relevant Land which would be treated as implementation of a Planning Permission for the Material Development in question on the assumption (if not a fact) that Planning Permission had been granted therefor (excluding operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial

work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements) will be deemed to be a commencement of that Material Development;

“VAT” Value Added Tax as provided for in the Value Added Tax Act 1994 or any similar tax replacing or introduced in addition to it.

“Working Day” any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory bank holiday in England and excluding the period 23 December to 2 January (inclusive) in any year.

11.2 **INTERPRETATION**

11.2.1 Unless this deed states otherwise:

- a) references to clauses and Schedules are to the clauses and schedules of this deed; and
- b) reference to any legislation (whether specifically named or to legislation in general) shall include any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, regulations or other subordinate legislation for the time being made, issued or given under that legislation or deriving validity from it, and also reference to legislation in general is to all local, national and directly applicable supra-national laws for the time being in force.

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

11.2.3 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.

11.2.4 The clause headings in this deed are for reference only and do not affect its construction or interpretation.

11.2.5 Where any party to this deed comprises more than one person, the obligations and liabilities of that party under this deed shall be joint and several obligations and liabilities of those persons.

11.2.6 Unless the context requires otherwise, the words “include” and “including” shall be deemed to be followed by the words “without limitation”.

11.3 **TRANSFER**

The transfer of the Property to the Transferee is made subject to the matters contained or referred to in the agreement for sale between the Transferor and the Transferee providing for this transfer.

11.4 **OVERAGE PAYMENT**

11.4.1 The Transferee covenants with the Transferor that it will within 15 Working Days following a Trigger Date produce a statement to the Transferor in writing showing

the Transferee's calculation of:

- a) the Costs;
- b) the Base Value;
- c) the Enhanced Value;
- d) the Development Value;

(the "**Statement**").

11.4.2 The Transferee and the Transferor shall use all reasonable endeavours to agree the Overage Payment within 15 Working Days of the date of the Statement and the Transferor shall be entitled to such information from the Transferee and to inspect all invoices, statements, orders, estimates and the like as it might reasonably require to verify the sums referred to in the Statement and calculate the Overage Payment.

11.4.3 Within 20 Working Days of agreement or determination of the Overage Payment the Transferee shall pay to the Transferor by direct credit to such account as the Transferor shall reasonably direct in writing the sums so agreed or determined.

11.4.4 In the event and to the extent that any monies to be paid by the Transferee pursuant to clause 11.4.3 are not paid on the due date to pay to the Transferor interest at the rate of 4% per annum above the Base Rate on such amounts as are from time to time due to the Transferor until payment is made in full such interest to be compounded within half yearly rests.

11.4.5 (Subject to the proviso below) an Overage Payment shall be due after each and every Trigger Date occurring during the Overage Period PROVIDED THAT the provisions of clause 11.4 shall not continue in respect of the same part or parts of the Property for which an Overage Payment has been previously paid in respect of the Disposal of:

- a) any plot of land comprising a completed house flat apartment maisonette or other dwelling unit with or without ancillary gardens driveways and any buildings belonging to it together with any parking spaces or spaces;
- b) the freehold reversion of a completed block of flats apartments or maisonettes;
- c) any plot of land comprising a completed shop office factory warehouse or other commercial or industrial unit together with or without ancillary grounds accessways and any buildings belonging to it together with any parking space or spaces;
- d) the freehold reversion of any completed unit or units of the nature described in the immediately preceding clause;

constructed pursuant to a Planning Permission to which such previous Overage Payment was made; and

subject to such Overage Payment in respect thereof having been previously paid to

the Transferor.

11.5 TRANSFEREE'S COVENANTS

The Transferee covenants with the Transferor that it shall:

- 11.5.1 supply the Transferor with a copy of any application for Planning Permission submitted on behalf of the Transferee during the Overage Period within 10 Working Days of its submission to the local planning authority;
- 11.5.2 supply the Transferor with a copy of any Planning Permission granted during the Overage Period within 10 Working Days of the date of grant; and
- 11.5.3 not to enter into any Act of Circumvention and not to procure that any other person enters into any Act of Circumvention.

11.6 DISPUTE RESOLUTION

- 11.6.1 If the Transferor and the Transferee are unable to agree on the amount of the Overage Payment in accordance with clause 11.4.2 either party may refer the matter to an Independent Surveyors.
- 11.6.2 The Independent Surveyor shall be appointed jointly by the parties but in default of agreement within 10 Working Days either party may apply to the President of the Royal Institution of Chartered Surveyors requesting the appointment of an Independent Surveyor.
- 11.6.3 If the appointed Independent Surveyor dies or becomes unwilling or incapable of acting or does not deliver the decision within the time required by 11.6.4 then either the Transferor or the Transferee may apply to the President of the Royal Institution of Chartered Surveyors to discharge the appointed Independent Surveyor and to appoint a replacement.
- 11.6.4 The Independent Surveyor shall act as an expert and shall give a written copy of the decision on the amount of the Overage Payment to both the Transferee and the Transferor within 10 Working Days after the date of the Independent Surveyor's appointment.
- 11.6.5 The Transferee and the Transferor shall each be entitled to make submissions to the Independent Surveyor and shall provide or procure that others provide the Independent Surveyor with the assistance and documents that the Independent Surveyor reasonably requires to reach a decision.
- 11.6.6 The Independent Surveyor's written decision shall be final and binding in the absence of manifest error or fraud.
- 11.6.7 The Transferee and the Transferor agree to pay the Independent Surveyor's costs in the proportions determined by the Independent Surveyor within 10 Working Days after a demand for payment. If they are not paid the party against whom the costs were not awarded shall be entitled to pay the Independent Surveyor the sums due and recover the amount from the other part on demands.

11.6.8 In default of an agreement pursuant to clause 11.4.2 the Overage Payment shall be the amount determined by the Independent Surveyor and the date of issue of the Independent Surveyor's written decision shall be taken as a date of determination for the purposes of clause 11.4.3.

11.7 DISPOSALS

11.7.1 The Transferee covenants with the Transferor that on any Qualifying Disposal or the granting of any mortgage or charge of the Property or any part of it it will procure that the person in whose favour the Qualifying Disposal or mortgage or charge (as the case may be) is made enters into a deed in the form set out in Schedule 1 in the case of a Qualifying Disposal or in the form set out in Schedule 2 in the case of a mortgage or charge.

11.7.2 The parties apply to the Chief Land Registrar to enter on the title to the Overage Land a restriction in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate or the proprietor of any registered charge, not being a charge registered before entry of this restriction, is to be registered without a certificate signed by BRB (Residuary) Limited (Company Number 4146505) or its coveyancer that the provisions of clause 11.7.1 of a Transfer dated [] made between BRB (Residuary) Limited (1) and [] (2) have been complied with or that they do not apply to the disposition".

11.7.3 The benefit of the covenants contained in clause 11.4, 11.5 and 11.7.1 and of the restriction may be freely assigned by the Transferor.

11.7.4 The Transferor or other person or persons entitled to the benefit of the restriction will consent to the registration of a Disposition of the Property or any part of it or of any interest in it within 15 Working Days of written request either if the disponee of it has entered into a deed with the Transferor in accordance with clause 11.7.1 and the Transferor has received the new deed from the disponee or if by reason of the nature of the Disposition in question no such deed is required (and for the avoidance of doubt the restriction will remain on the register following the Disposition except where the proviso in clause 11.4.5 applies) provided that there are then no outstanding sums due from the Transferee under the terms of this Transfer.

11.8 TRANSFEREE'S INDEMNITY COVENANT

The Transferee, with the object and intent of affording to the Transferor a full and sufficient indemnity (but not further or otherwise), covenants with the Transferor that the Transferee and its successors in title will perform and observe all the covenants, agreements and other matters contained or referred to in the registers of Title Number HD490269 as at the date hereof (save for those relating to mortgages or financial charges) so far as they relate to the Property and are still subsisting and capable of taking effect and to indemnify and keep the Transferor indemnified from and against all actions, claims, losses, costs, expenses and liability in any way relating to any of them.

11.9 IMPLIED COVENANTS

The covenants implied by the 1994 Act are varied as follows:

11.9.1 the words "at his own cost" are deleted from the covenant set out in section 2(1)(b)

and the words "at the cost of the person to whom he disposes of the property" substituted for them;

11.9.2 the words "and could not reasonably be expected to" are deleted from the covenant set out in section 3(1); and

11.9.3 the covenants set out in section 2(1)(a) and section 3 are construed so that matters recorded in registers open to public inspection are considered to be within the actual knowledge of the person to whom the disposition is made.

11.10 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

SCHEDULE 1

DEED OF COVENANT FOR QUALIFYING DISPOSAL

THIS DEED is made on []

BETWEEN

(1) [] [(registered in England No: []) [of] [whose registered office is at] [] ("New Owner")

(2) [] [(registered in England No: []) [of] [whose registered office is at] [] ("Previous Owner")

(3) [] [(registered in England No: []) [of] [whose registered office is at] [] (the "Grantee")

WHEREAS

1. This Deed is supplemental to a transfer (the "Overage Deed") dated [] 20[] and made between (1) BRB (Residuary) Limited ("BRB") [the Grantee] and (2) [] [the Previous Owner] wherein (inter alia) [the Previous Owner] agreed with [BRB] [the Grantee] to pay the Overage Payment as defined in the Overage Deed to [BRB] [the Grantee] in the circumstances therein more particularly described.
2. Words and expressions defined in the Overage Deed shall have the same meaning when used in this Deed.
3. The Previous Owner intends by a deed of even date to Dispose of [a part][the whole] of the Property or of any interest in it (the "Affected Land") to the New Owner particulars of which Disposal are set out in the Schedule hereto subject to the Overage Deed securing the Overage Payment insofar as it relates to the Affected Land.

NOW THIS DEED WITNESSETH as follow:

1. The New Owner hereby covenants with the Grantee at all times hereafter during the Overage Period to observe and perform the provisions of the Overage Deed and will do and perform all acts and things as will be necessary or appropriate to enable [BRB] [the Grantee] to exercise its right to receive the Overage Payment insofar as it relates to the Affected

Land.

2. The parties apply forthwith to the Chief Land Registrar to enter a restriction relating to this Supplemental Deed on the Register of the title number[s] allocated to the Affected Land such restriction to be in the same form mutatis mutandis as that contained in clause 11.7.2 of the Overage Deed and upon completion of registration the New Owner covenants with [BRB] [the Grantee] to supply [BRB] [the Grantee] or [BRB's] [the Grantee's] solicitors with official copies of the registers of title and (if the Affected Land is less than the whole) with a copy of the title plan.
3. [BRB] [the Grantee] will consent to the registration of a Disposition of the Affected Land or any part of it or of any interest in it within 15 Working Days of written request either if the disponee of the same has entered into a deed with [BRB] [the Grantee] in the form set out in Schedule 1 Part 1 or Part 2 of the Overage Deed (as applicable) and [BRB] [the Grantee] has received the same from the disponee or if by reason of the nature of the Disposition in question no such deed is required.
4. [Nothing herein contained shall affect the validity of the Overage Deed so far as it relates to the remainder of the Property retained by the Previous Owner].
5. Where two or more parties comprise the New Owner the covenant on their part herein contained shall be joint and several.
6. This instrument:

is executed as a deed and by its execution the parties authorise their solicitors to deliver it to them when it is dated;

was delivered when it was dated

SCHEDULE

[insert details of the Property and the interest disposed of]

[insert due attestation]

SCHEDULE 2

DEED OF COVENANT FOR MORTGAGE OR CHARGE

THIS DEED is made on []

BETWEEN

(1) [] [(registered in England No: []) [of] [whose registered office is at] [] (the "Grantee")

(2) [] [(registered in England No: []) [of] [whose registered office is at] [] (the "Chargee")

DEFINITIONS

"Overage Deed" means a transfer dated [] 20[] and made between (1) BRB

(Residuary) Limited and (2) [] [the Owner]

“Owner” means []

“Affected Land” means [the whole][a part] of the Property [shown for the purpose of identification only edged red on the plan annexed]/[registered at the Land Registry with title absolute under title number[s] []]

WHEREAS

1. The Owner is the estate owner in fee simple of the Affected land which is subject to the Overage Deed.
2. By a Legal Charge of even date herewith and executed immediately prior to this Deed the Owner charged [inter alia] the Affected Land to the Chargee by way of Legal Mortgage.
3. Words and expressions defined in the Overage Deed shall have the same meaning when used in this Deed.

NOW THIS DEED WITNESSETH as follow:

1. The Chargee hereby covenants with the Grantee that in the event of the Chargee entering into possession of the Affected Land as mortgagee in possession or appointing a receiver administrator liquidator or such other person to deal with its interest in the Affected Land or any part or parts thereof the Chargee shall (where acting itself or through a third party) in the event that the Overage Payment has become due or becomes due pursuant to the provisions of the Overage Deed after it either entered into possession of the Affected Land or any part or parts thereof or appointed a third party to deal with the Affected Land or any part or parts thereof the Chargee shall observe and perform the provisions of the Overage Deed including the payment of the Overage Payment.
2. The Chargee further covenants with the Grantee that in the event of a Qualifying Disposal of the Affected Land or any part or parts thereof by the Chargee or any third party appointed by it the Chargee shall simultaneously on completion of the Qualifying Disposal procure:
 - 2.1 from the disponee the execution delivery and the release to the Grantee of a Deed of Covenant in the form set out in Schedule 1 of the Overage Deed and/or;
 - 2.2 from the disponee’s mortgagee (if applicable) the execution delivery and release to the Grantee of a Deed of Covenant in the form set out in Schedule 2 of the Overage Deed
3. This instrument:
 - 3.1 is executed as a Deed and by its execution the parties authorise their respective solicitors to deliver it for them when it is dated; and
 - 3.2 was delivered when it was dated.

[insert appropriate attestation for mortgagee]

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