

DATED

21st June.

2023

(1) FKY LIMITED

-to-

(2) UTTLESFORD DISTRICT COUNCIL

PLANNING OBLIGATION BY DEED OF UNDERTAKING

Under Section 106 of the Town and Country Planning Act 1990 (as amended)

Relating to Land at Tilekiln Green, Start Hill, Great Hallingbury CM22 7TA

Application No. S62A/2023/0017

Walton & Co
2 Queen Street
Leeds
LS1 2TW



THIS DEED OF UNILATERAL UNDERTAKING is given the 21st day of June 2023

BY

- (1) **FKY LIMITED** (Company registration number 7597842) of PO Box 95, York, YO43 4YZ (“the Owner”)

TO

- (2) **UTTLESFORD DISTRICT COUNCIL** of London Road, Saffron Walden, Essex, CB11 4ER (“the Council”).

WHEREAS

- (1) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated and is the authority by whom the obligations hereby created are enforceable.
- (2) The Owner is the freehold owner of the Site registered at HM Land Registry under title numbers EX480603 and EX943887.
- (3) The Planning Application has been submitted to the Secretary of State pursuant to section 62A of the 1990 Act.
- (4) The Owner has agreed to enter into this Deed so as to create planning obligations in favour of the Council pursuant to section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements and stipulations hereinafter contained.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

“1990 Act” means the Town and Country Planning Act 1990 (as amended)

“Commencement of Development” means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purposes 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 and "Commence Development" shall be construed accordingly

"Decision Letter"

means the decision letter to be issued by the Planning Inspector confirming whether or not planning permission is granted

"Development"

means the creation of an open logistics facility with associated new access and ancillary office with amenity facilities

"Flitch Way Contribution"

means the sum of £40,500.00 (forty thousand five hundred pounds) to be paid to the Council for the purposes of the Flitch Way Improvements

"Flitch Way Improvements"

means the provision of improvements to the surfacing, drainage and signage of part of public right of way 20/44 known as "Flitch Way" as shown coloured red on Plan 2 the need for which arises directly from the Development

"Index"

means the Consumer Price index (CPI) or in the event that CPI is discontinued then the nearest equivalent index

"Index Linked"

means an increase by an amount equivalent to an increase in the Index from the date of this Deed until the date on which the sum is payable

"Interest"

means interest at 4 per cent per annum above the base lending rate of the Bank of England from time to time

"NPPF"

means the National Planning Policy Framework published by The Ministry of Housing, Communities and Local Government in February 2019 (as updated in July 2021) (or any future guidance or initiative that replaces or supplements it)

"Occupation"

means beneficial occupation of the Development but not including occupation by personnel engaged in construction, fitting out or decoration or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly

"Planning Application"

means the application for planning permission for the Development made by the Owner and

registered by the Planning Inspectorate with reference number S62A/2023/0017

“Planning Inspector”	means the planning inspector appointed by the Secretary of State for Levelling Up, Housing and Communities to determine the Planning Application
“Planning Permission”	means the planning permission granted by the Planning Inspector pursuant to the Planning Application
“Plan 1”	means the plan annexed to this Deed and marked “Plan 1”
“Plan 2”	means the plan annexed to this Deed and marked “Plan 2”
“Site”	means land at Tilekiln Green, Start Hill, Great Hallingbury shown for identification purposes only edged red on Plan 1
“Secretary of State”	means the Secretary of State for Levelling Up, Housing and Communities
“Travel Plan”	means a working plan to include all measures to ensure sustainable means of travel are available to employees of the Development within the requirements of the NPPF
“Travel Plan Monitoring Fee”	means the sum of £6,132.00 (six thousand one hundred and thirty two pounds) (Index Linked) be paid to the Council for the purpose of monitoring the implementation of the Travel Plan the need for which arises directly from the Development

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.



SP00(Site Location Plan)(PL - 1-1250)
1 : 1250

Offices
 Woking
 London
 Milton Keynes
 Warsaw

Architecture
 Planning
 Master Planning
 Urban Design
 Interiors

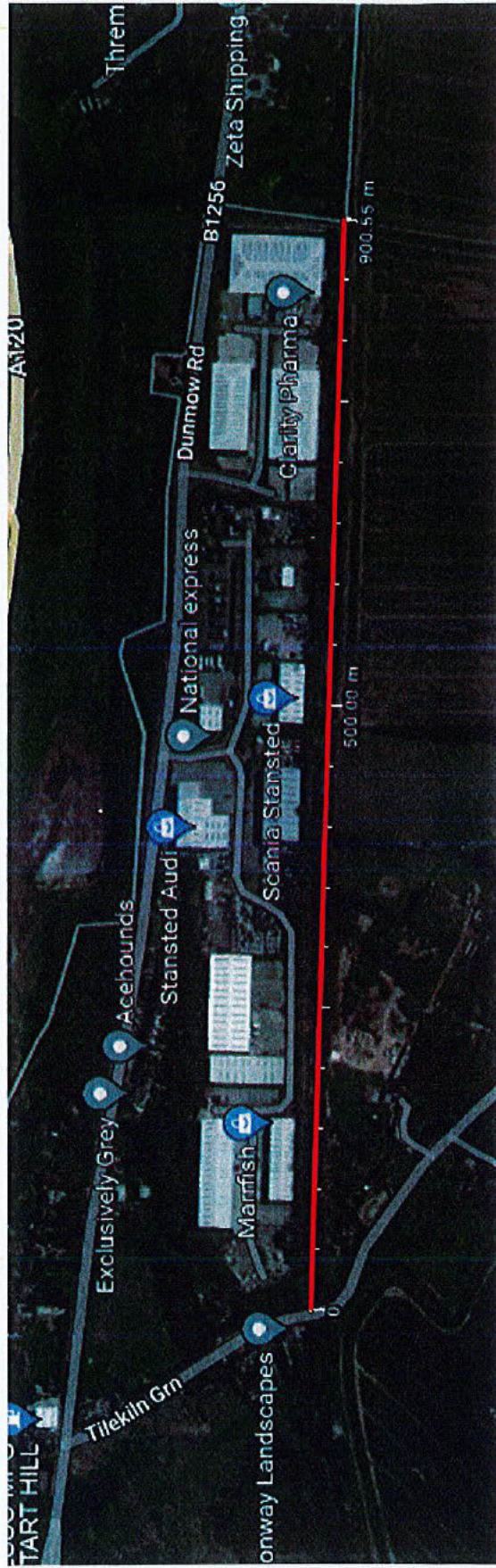
24 Church St. West
 Woking, Surrey,
 GU21 6HT
 01483 494 350

Revisions:

Drawn / Chkd: Date:

info@prc-group.com

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2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council any successor to its statutory functions.

3. LEGAL BASIS

3.1 This Deed is made pursuant to section 106 of the 1990 Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the 1990 Act which bind the Site and are enforceable by the Council in its capacity as local planning authority against the Owner.

4. CONDITIONALITY

4.1 Subject to clause 4.2 below this Deed shall take effect upon the date hereof but the covenant from the Owner in clause 5 of this Deed is conditional upon:

- (a) the grant of the Planning Permission by the Secretary of State; and
- (b) the Commencement of Development

4.2 If the Planning Inspector in his/her Decision Letter concludes that the planning obligations contained within this Deed (or relevant part of the planning obligations) is incompatible with any one of the tests for planning obligations set out in Regulation 122 of the CIL Regulations and accordingly expressly states in his/her Decision Letter that he/she attaches no weight to that obligation in determining the Planning Application then the relevant obligation (or part of the obligation as appropriate) shall from the date of the Decision Letter immediately cease to have effect and the Owner shall be under no obligation to comply with it.

5. COVENANTS

5.1 The Owner hereby covenants with the Council to observe and perform the covenants contained within Schedule 1 to this Deed.

6. MISCELLANEOUS

6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

- 6.2 This Deed shall be registrable as a local land charge by the Council.
- 6.3 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 6.4 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or in the event that part (or parts) of the Site has been parted with, it shall not be liable for any breach in respect of that part (or parts) of the Site) but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.6 No person shall be liable for breach of the covenants contained in this Agreement if he or it shall be an occupier or tenant or a purchaser of a site or sites required for statutory undertaker infrastructure purposes in relation to the Development.
- 6.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

7. WAIVER

- 7.1 No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

8. INTEREST

- 8.1 If any payment due to the Council under this Deed is not paid by the date it is due then Interest will be payable from the due date to the date of payment

9. DISPUTE RESOLUTION

- 9.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed which cannot be resolved by prior agreement between the parties such dispute or difference shall be referred to an independent and suitable person (the "Expert") holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with experience of resolving such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such

proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 9.2 In the absence of an agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 9.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 9.3 Any Expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 28 (twenty-eight) Working Days after the conclusion of any hearing that takes place or 28 (twenty-eight) Working Days after he has received any file or written representation.
- 9.4 The Expert shall be required to give notice to each of the said parties requiring them to submit to him within 10 (ten) Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter submission within a further 10 (ten) Working Days.

10. JURISDICTION

- 10.1 This Deed is governed by and interpreted in accordance with the laws of England.

11. DELIVERY

- 11.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

SCHEDULE 1

Owner's Covenants to the Council

The Owner hereby covenants with the Council as follows:

1. The Owner shall pay to the Council the Flich Way Contribution prior to first Occupation of the Development.
2. The Owner shall submit the Travel Plan to the Council prior to the first Occupation of the Development.
3. The Owner shall pay to the Council the Travel Plan Monitoring Fee prior to the first Occupation of the Development.

EXECUTED AS A DEED by the Owner on the day and year first hereinbefore appearing

EXECUTED AS A DEED by

FKY LIMITED

acting by one Director

in the presence of a witness

Witness signature:

Witness Name:

Witness Address:

Witness Occupation: