

FREETHS

Dated

5th APRIL

2019

SUMMIT REAL ESTATE LIMITED

TO ASHFIELD DISTRICT COUNCIL

**UNILATERAL UNDERTAKING PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990**

**Relating to land on the south east side of
Hamilton Road, Sutton in Ashfield,
Nottinghamshire.**

**Ref: 1599/2099305/4
Direct Tel: +44 (0)845 050 3691
Mobile: +44 (0)782 489 3349
Email: heather.davies@freeths.co.uk**

THIS DEED OF UNDERTAKING is dated

5th APRIL

2019

and is given by

The Owner

SUMMIT REAL ESTATE LIMITED

Company Number: 8598644

Registered Office: Maisie House, 8 Maisies Way, South Normanton, Alfreton DE55 2DS

TO

The Council

ASHFIELD DISTRICT COUNCIL

Of Council Offices, Urban Road, Kirkby-in-Ashfield, Nottinghamshire NG17 8DA

BACKGROUND



- (A) The Council is the local planning authority ~~and highways authority~~ for the purposes of the 1990 Act for the area within which the Site is situated
- (B) The Owner is registered at the Land Registry with title absolute for the Site free from encumbrances
- (C) The Planning Application was made to the Council by the Applicant and was considered under delegated authority
- (D) The Council has (by delegated authority) resolved that planning permission be granted for the Planning Application subject to conditions and to the prior completion of an obligation pursuant to Section 106 of the 1990 Act to ensure that payment is made to the Council towards the improvement of the junction of Sherwood Road South and Hamilton Road

1. DEFINITIONS

In this deed the following words and phrases have the meanings shown opposite

1990 Act	the Town and Country Planning Act 1990 as amended
the Applicant	Peveril Securities Limited and Sladen Estates Limited
Commencement of the Development	the beginning of the Development by the carrying out of an operation referred to in Section 56 (4) (a) – (d) of the 1990 Act save that for the purposes of this Agreement the term is not to include operations in connection with site clearance, demolition, archaeological investigation, for the purposes of assessing contamination, remedial

	action in respect of any contamination, or of assessing the need for any diversion and laying of services and the erection of means of enclosure for the purposes of site security and / or the display of advertisements and the expression "Commence" and "Commencement of Development" is to be construed accordingly
the Development	the development of the Site in accordance with the Planning Permission
the Plan	the plan at the Appendix to this deed
the Planning Application	the application for planning permission under Council reference number V/2019/0101 for a distribution warehouse (B8) including ancillary B1 business use including new access, ancillary gatehouses, landscaping, parking and services
the Planning Permission	a planning permission granted pursuant to the Planning Application which is free from a condition requiring any works of improvement to Hamilton Road and or Sherwood Road South
the Site	the land the subject of the Planning Application shown on the Plan for the purposes of identification only outlined red comprising part of the land within the title registered at the Land Registry under Title Number NT393064
the Contribution	means the sum of £200,000.00 towards the improvement of the junction of Sherwood Road South and Hamilton Road

2. FORMAL PROVISIONS

This deed is

- 2.1. given by the Owner to the Council
- 2.2. given pursuant to and for the purposes of Section 106 of the 1990 Act
- 2.3. given with intent to bind the owners of the freehold interest in the Site and successors in title
- 2.4. enforceable by the Council as the local planning authority
- 2.5. executed by the Owner as a deed

3. CONDITIONS PRECEDENT

The covenants by the Owner in Clause 4 are conditional and shall not take effect until:

- 3.1. the Planning Permission is issued; and
- 3.2. the Commencement of Development has taken place

but if the Planning Permission is at any time quashed, revoked or otherwise withdrawn or (without the consent of the Owner and the Applicant) it is modified by any statutory procedure or expires before Commencement of the Development then the covenants on the part of the Owner will cease to have effect

4. OWNER'S COVENANTS

The Owner covenants:

- 4.1. to pay the Contribution to the Council on or prior to commencement of any part of the Development above the floor slab.
- 4.2. not to commence or permit the commencement of any part of the Development above the floor slab unless and until the Contribution has been paid to the Council

5. DECLARATIONS

The Owner declares:

- 5.1. for the purposes of avoiding doubt, nothing in this deed is intended to prohibit or restrict or limit the right of any person to develop the Site in accordance with any planning permission (other than the Planning Permission) granted after the date of this deed SAVE THAT this Deed shall apply to any planning permission subsequently granted under section 73 or 73A of the 1990 Act ("Subsequent Permission") which permits non-compliance with any of the conditions attached to the Planning Permission and the Planning Permission shall be construed to include the Development as stated in the Subsequent Permission
- 5.2. the Owner enters into this deed of obligation on the basis that it will not be enforced against any person after it has parted with all interest in the Site or the part in respect of which the breach occurs except in respect of any liability arising prior to such disposal
- 5.3. this deed is a Local Land Charge
- 5.4. it is not the intention of the Owner that any of the terms of this deed can be enforced by a third party as defined in Section 1 (1) of the Contracts (Rights of Third Parties) Act 1999
- 5.5. it is not the intention of the Owner that any of the terms of this deed shall be enforceable against any statutory body acquiring any part of the Development to be held for public purposes, any owner of any electricity sub-station and/or gas

governor site and/or pumping station to other supply installation nor those deriving title from them.

5.6. The obligations on the part of the Owner in clause 4 are given on the proviso that if the Secretary of State's inspector in any decision letter shall record a finding, conclusion or decision to the effect that the payment of the Contribution obligations in clause 4 or any part of them is:

5.6.1. not a material consideration; or

5.6.2. is material but that nil weight has been ascribed thereto

by him in determining that the Planning Permission shall be granted the Owner shall not be liable to observe and perform any obligation in respect of such disregarded or nil-weighted planning benefit and the Property shall be unconditionally released from any such obligation to the extent that such finding, conclusion or decision is so recorded

6. OWNERSHIP

6.1. The Owner warrants that no person other than the Owner has any legal or equitable interest in the Site.

6.2. Until the obligations in Clause 4 have been complied with the Owner will give to the Council within **20 Working Days**, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

6.2.1. the name and address of the person to whom the disposition was made;
and

6.2.2. the nature and extent of the interest disposed of.

Provided That such notice need not be given where the transfer is to a person who will not be bound by the planning obligations in this deed.

7. JURISDICTION

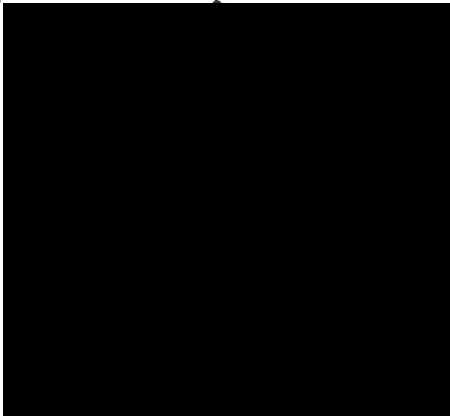
This deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the jurisdiction of the courts of England and Wales.

8. DELIVERY

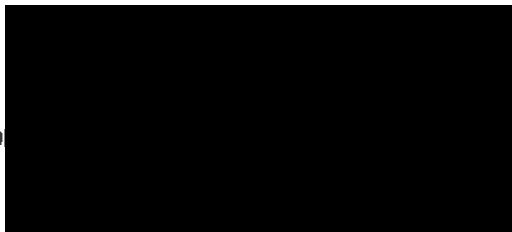
The provision of this deed (other than this clause which shall be of immediate effect) shall be no effect until this deed has been dated.

Executed as a Deed by the Owner on the date stated at the beginning of it

**SIGNED as a DEED by
SUMMIT REAL ESTATE LIMITED**
acting by a Director



Director



in the presence of:

Witness' Signature:
Witness' Name:
Witness' Address:

APPENDIX THE PLAN

