

DATED

18<sup>th</sup> July

2014

**PROLOGIS UK CCXLV SARL**

TO

**THE LONDON BOROUGH OF HILLINGDON**

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PLANNING OBLIGATION BY UNILATERAL UNDERTAKING  
PURSUANT TO SECTION 106  
OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND ASSOCIATED  
POWERS RELATING TO THE DEVELOPMENT OF LAND AT

**Former MOD Document Record Office  
Bourne Avenue  
Hayes**

**18399/APP/2013/3449**

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Attn: The Principal Lawyer,  
Planning & Corporate Team  
London Borough of Hillingdon  
Civic Centre 3E/04  
High Street  
Uxbridge  
Middlesex

THIS **PLANNING OBLIGATION** by **UNILATERAL UNDERTAKING** is dated  
the 18<sup>th</sup> day of July Two Thousand and Fourteen

And is **GIVEN BY:**

- (1) **PROLOGIS UK CCXLV SARL** whose registered office is situate at 34-38  
Avenue de la Liberte L-1930 Luxembourg ("the Owner ")

**TO:**

- (2) **THE LONDON BOROUGH OF HILLINGDON** of the Civic Centre,  
High Street, Uxbridge, Middlesex, UB8 1UW ("the Council")

## **BACKGROUND**

- A) The Council is the local planning authority for the purposes of the Act in respect of the Land and is the authority by whom the obligations in this Undertaking are enforceable
- B) The Owner has the freehold interest in Obligation Land registered at HM Land Registry under title number AGL190531
- C) By means of the Planning Application the Planning Permission was sought to develop the Land for the purposes and in the manner described in the Planning Application
- D) The Owner intends to develop the Land pursuant to the Planning Permission and has submitted the Discharge Application to the Council

THIS UNDERTAKING WITNESSES AS FOLLOWS: -

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 For the purposes of the recitals and this Undertaking, the following expressions shall have the following meaning:

<b>“Act”</b>	means the Town and Country Planning Act 1990 as amended;
<b>“Allowable Solutions Contribution”</b>	means the sum of twenty one thousand seven hundred and eighty nine pounds (£21,789.00) payable by the Owner to the Council in accordance with the provisions of the Schedule hereto towards the investment in local energy efficiency and carbon reduction measures within Authority's Area;
<b>“Authority's Area”</b>	means the administrative area of the Council;
<b>“Commencement of Development”</b>	means the date on which any material operation as defined in Section 56(4) of the Act forming part of the Development begins to be carried out other than (for the purposes of this Deed) 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, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence” and “Commencement” shall be construed accordingly;
<b>"Development"</b>	means the development authorised by the Planning Permission;

<b>“Discharge Application”</b>	means the application for the discharge of conditions 5, 6, 7, 10, 12, 13 and 15 of the Planning Permission;
<b>“Discharge Permission”</b>	means the permission to be granted by the Council pursuant to the Discharge Application;
<b>“Form PO1”</b>	means the form in the substantial format set out in Appendix 1;
<b>“Index”</b>	means the Index of Retail Prices (All Items) published by the Office for National Statistics;
<b>“Interest”</b>	means interest at 4% above the base lending rate of HSBC Bank PLC from time to time;
<b>“Land”</b>	means the land at Former MOD Document Record Office Bourne Avenue Hayes shown edged red on the Plan;
<b>“Monitoring Sum”</b>	means the sum of one thousand and eighty nine pounds and forty five pence (£1,089.45) to be used by the Council at its discretion for its costs incurred in administering, monitoring, reviewing and implementing this Undertaking;
<b>“Obligation Land”</b>	means the land against which the provisions of this Deed may be enforced being the land shown being part of the land registered at HM Land Registry under title number AGL190531;

<b>"Plan"</b>	means the plan attached to this Undertaking at Appendix 2;
<b>"Planning Application"</b>	means the application for planning permission for the erection of distribution warehouse units (Use Class B8) with ancillary offices associated car parking access and associated landscape works within the existing Prologis Park development under the Council's reference number 18399/APP/2013/1019;
<b>"Planning Permission"</b>	means the planning permission that may be granted pursuant to the Planning Application;
<b>"Section 106 Reference"</b>	means the planning application reference number 18399/APP/2013/3449;
<b>"Specified Date"</b>	means the date upon which an obligation arising under this Deed is due to be performed;
<b>"Undertaking"</b>	means this Deed;
<b>"Unit"</b>	means a unit to be constructed as part of the Development pursuant to the Planning Permission being Unit C or Unit D or Unit G as the case may be;
<b>"Unit C"</b>	means the unit marked as such on the Plan;
<b>"Unit D"</b>	means the unit marked as such on the

	Plan;
<b>“Unit G”</b>	means the unit marked as such on the Plan;
<b>“VAT”</b>	means Value Added Tax.

- 1.2 Unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting any one gender shall include all genders and words denoting persons shall include bodies corporate, unincorporated associations and partnerships
- 1.3 References in this Undertaking to any statute or statutory provision shall be construed as a reference to the same as it may from time to time be amended, extended, modified, consolidated or re-enacted whether before or at the date of this Undertaking
- 1.4 Unless the context otherwise requires, reference to any clause, paragraph, sub-clause or schedule or appendix is a reference to a clause, paragraph, sub-clause, schedule or appendix of or to this Undertaking
- 1.5 The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of this Undertaking
- 1.6 Where a party includes more than one person named as a party any obligations of that party shall be joint and several unless there is an express provision otherwise
- 1.7 References to any party to this Undertaking 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 the successors to the Council's respective functions

- 1.8 Where the agreement, approval, consent or an expression of satisfaction is required by the Owner under the terms of this Undertaking from the Council that agreement, approval, consent or satisfaction shall be given in writing and shall not be unreasonably withheld or delayed
- 1.9 Without prejudice to the terms of any other provision contained in this Undertaking the Owner shall pay all costs charges and expenses (including without prejudice to legal costs and Surveyor's fees) reasonably incurred by the Council for the purpose of or incidental to the enforcement of any right or power of the Council or any obligation of the Owners arising under this Undertaking

## **2. STATUTORY PROVISIONS**

- 2.1 This Undertaking is made pursuant to section 106 of the Act, 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 to the intent that it will bind the Owner and its successors in title to the Obligation Land
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Undertaking create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority against the Owner without limit of time

## **3. CONDITIONALITY**

- 3.1 The obligations in the Schedule to this Undertaking are subject to and conditional upon:
- (i) the grant of the Discharge Permission; and
  - (ii) the Commencement of Development

and all other parts of this Undertaking shall be of immediate force and effect

#### **4. MISCELLANEOUS**

- 4.1 If any provision in this Undertaking shall be held to be invalid, illegal or unenforceable then the validity, legality and enforceability shall not affect the validity or enforceability of the remaining provisions of this Undertaking
- 4.2 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants undertakings obligations or restrictions contained in this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants undertaking or obligation from acting upon any subsequent breach or default in respect thereof by the Owner
- 4.3 Unless expressly agreed otherwise in this Undertaking, the covenants in this Undertaking shall be enforceable without any limit of time against the Owner and any successors in title to the Obligation Land and assigns of the Owner or any person corporate or otherwise claiming title through or under the Owner an interest or estate to the Obligation Land or any part or parts of the Land as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person
- 4.4 No party to this Undertaking nor any of its successors in title nor any person deriving title from or under them shall be liable for any breach of any of the planning obligations or other obligations contained in this Undertaking after it shall have parted with its entire interest in the Obligation Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest



- 4.5 This Undertaking shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is quashed or revoked or otherwise withdrawn or (without the consent of the Owner or its successors in title) is modified by any statutory procedure or expires prior to Commencement of Development
- 4.6 This Undertaking shall not be binding upon any statutory undertakers who acquire any part of the Land or any interests in the Land for the purposes of their statutory duties
- 4.7 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Undertaking
- 4.8 This Undertaking cannot be amended or discharged without the prior consent in writing of the Owner and the Council
- 4.9 In the event of the planning obligations contained in this Undertaking being modified a note or memorandum thereof shall be endorsed upon this Undertaking
- 4.10 For the avoidance of doubt this Deed does not extinguish any of the covenants, requirements or obligations contained within the section 106 agreement made between the Council, Prologis (HAYES) Limited and the Secretary of State for Defence dated 11<sup>th</sup> August 2005 as varied by the deed of variation dated 22<sup>nd</sup> March 2012.

## **5. THE OWNER'S PLANNING OBLIGATIONS**

- 5.1 The Owner covenants with the Council so as to bind its interest in the Obligation Land to observe and perform the obligations contained in the Schedule hereto

## **6. COSTS**

- 6.1 The Owner hereby covenants with the Council that on execution of this Undertaking it will pay the Council's costs incurred in the negotiation, preparation and execution of this Undertaking in the sum of five hundred pounds (£500.00)
- 6.2 Upon Commencement of Development the Owner shall pay to the Council the Monitoring Sum

## **7. REGISTRATION OF UNDERTAKING**

- 7.1 The Owner recognises and agrees that covenants in this Undertaking shall be treated and registered as local land charges for the purposes of the Local Land Charges Act 1975

## **8. RIGHT OF ACCESS**

- 8.1 Without prejudice to the Council's statutory rights of entry the Owner shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Obligation Land at all reasonable times for the purpose of verifying whether or not any obligation arising under this Undertaking has been performed or observed.

## **9. ARBITRATION**

- 9.1 All disputes, differences or questions arising out of this Undertaking or as to the rights or obligations of the parties under it or in connection with its construction shall be referred to arbitration by a single arbitrator to be agreed between the parties or, failing agreement, within 21 days by an arbitrator to be appointed at the request of any party by the President of The Royal Institute of Chartered Surveyors as the case may be having due regard to any representations made to him as to the appropriate qualifications of such arbitrator

- 9.2 The arbitration shall take place in London and shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of such Act for the time being in force, unless otherwise agreed in writing by the Council

**10. THIRD PARTIES**

- 10.1 A party who is not named in this Undertaking does not have any right to enforce any term of this Undertaking under the Contracts (Rights of Third Parties) Act 1999

**11. NOTICES**

- 11.1 All notices served under or in connection with this Undertaking shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party
- 11.2 Unless otherwise stated in this Undertaking any notice to be served under or in connection with this Undertaking shall be sent to the:
- a) Deputy Chief Executive and Corporate Director of Residents Services, London Borough of Hillingdon, Civic Centre, High Street, Uxbridge, Middlesex, UB8 1UW and shall cite the Section 106 Reference for this Undertaking; and
  - b) to the Owner at 1 Monkspath Hall Road Solihull West Midlands B90 4FY and at 34-38 Avenue de la Liberte, L-1930, Luxembourg or such other address as shall be previously notified to the Council

**12. FORM PO1**

- 12.1 Upon Commencement of the Development the Owners shall notify the Council by completing and sending Form PO1 to the Council addressed to the Director of Planning and Community Services, 3

North, London Borough of Hillingdon, High Street Uxbridge UB8 1UW  
and shall cite the Section 106 Reference

**13. CHANGE IN OWNERSHIP**

- 13.1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interest in the Obligation Land occurring before all the obligations under this Undertaking have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Obligation Land or Unit purchased by reference to a plan and the Section 106 Reference

**14. CONTRIBUTIONS**

- 14.1 Payment of the Allowable Solutions Contribution shall be made on the following basis:

- (a) The Contributions due under this Undertaking shall be delivered to the person and address specified in clause 11 above; and
- (b) pursuant to the Local Government Act 2003, the Council shall be at liberty to charge the Allowable Solutions Contribution to a Council revenue account and for the avoidance of doubt this shall be without prejudice to the Council's right to apply the Allowable Solutions Contribution or any part or parts thereof to revenue purposes or to capital purposes or partly to the one and partly to the other.

**15. INDEX LINKING**

- 15.1 The Owner undertakes to the Council that any sums payable by the Owner under this Undertaking shall be increased by the application of the formula  $A=B \times C/D$  where:
- (a) A is the sum actually payable on the Specified Date;

- (b) B is the original sum as set out in paragraph 1 of the Schedule;
- (c) C is the Index of Retail Prices (All Items) for the month 2 months before the Specified Date;
- (d) D is the Index of Retail Prices (All Items) for the month 2 months before the date of this Agreement; and
- (e) C/D is equal to or greater than 1

**16. INTEREST**

- 16.1 All costs, contributions and expenses payable to the Council under this Deed shall bear the Interest rate from time to time being charged from the date such payment is due until the payment is received by the Council

**17. VAT**

- 17.1 All consideration given in accordance with the terms of this Undertaking shall be exclusive of any VAT properly payable in respect thereof
- 17.2 The Owner hereby acknowledges and agrees that if at any time VAT is required to be paid in respect of any Land and the Allowable Solutions Payments then to the extent that VAT had not been previously charged in respect of that payment the Council shall have the right to issue a VAT invoice to the Owner and the VAT shall be paid accordingly

**18. JURISDICTION**

- 18.1 This Undertaking is governed by and interpreted in accordance with the law of England and Wales

IN WITNESS of which this Undertaking has been duly executed as a Deed and has been delivered once dated

## **SCHEDULE**

### **ALLOWABLE SOLUTIONS CONTRIBUTION**

The Owner covenants with the Council as follows:

1. To pay the Allowable Solutions Contribution on completion of this Deed; and
2. Not to Commence the Development or allow the Commencement of Development unless and until the Allowable Solutions Contribution has been paid to the Council.

APPENDIX 1

PO1 FORM

TO: HEAD OF DEVELOPMENT CONTROL  
ENVIRONMENTAL SERVICES  
LONDON BOROUGH OF HILLINGDON  
CIVIC CENTRE ROOM A357  
HIGH STREET UXBRIDGE  
MIDDLESEX UB8 1UW

FORM

SECTION 106/278 LEGAL AGREEMENT

SITE ADDRESS: \_\_\_\_\_

PLANNING REFERENCE: \_\_\_\_\_

DESCRIPTION OF DEVELOPMENT: \_\_\_\_\_

DATE OF COMMITTEE AUTHORISATION: \_\_\_\_\_

SECTION 106 OBLIGATIONS:

\_\_\_\_\_

DATE OF IMPLEMENTATION OF DEVELOPMENT: \_\_\_\_\_

**SECTION 106/278 OBLIGATION:**

(i) NOTIFIED TO THE COUNCIL: \_\_\_\_\_

(ii) SUBMITTED TO THE COUNCIL WITH THIS FORM: \_\_\_\_\_

NB: Please continue of separate sheet(s) if necessary.

TICK BOX IF THIS FORM IS TO CONSTITUTE THE "FIRST NOTICE"  
UNDER THE SECTION 278 HIGHWAY AGREEMENT IF THIS IS THE  
"FIRST NOTICE" PLEASE ATTACH THE "FIRST PAYMENT" AS  
SPECIFIED IN THE AGREEMENT

☐

FOR COUNCIL USE

NB: IF THIS IS THE FIRST NOTICE PASS IMMEDIATELY TO HIGHWAYS ENGINEERS

**COST CODE:** \_\_\_\_\_

**PLANNING COSTS:** \_\_\_\_\_

**LEGAL COSTS:** \_\_\_\_\_

**OTHER COSTS (IDENTIFY):** \_\_\_\_\_

**MAINTENANCE COSTS (COMMUTED SUM)**

**INTEREST BEARING ACCOUNT FOR BENEFIT OF OBLIGATIONS** \_\_\_\_\_ **YES/NO**

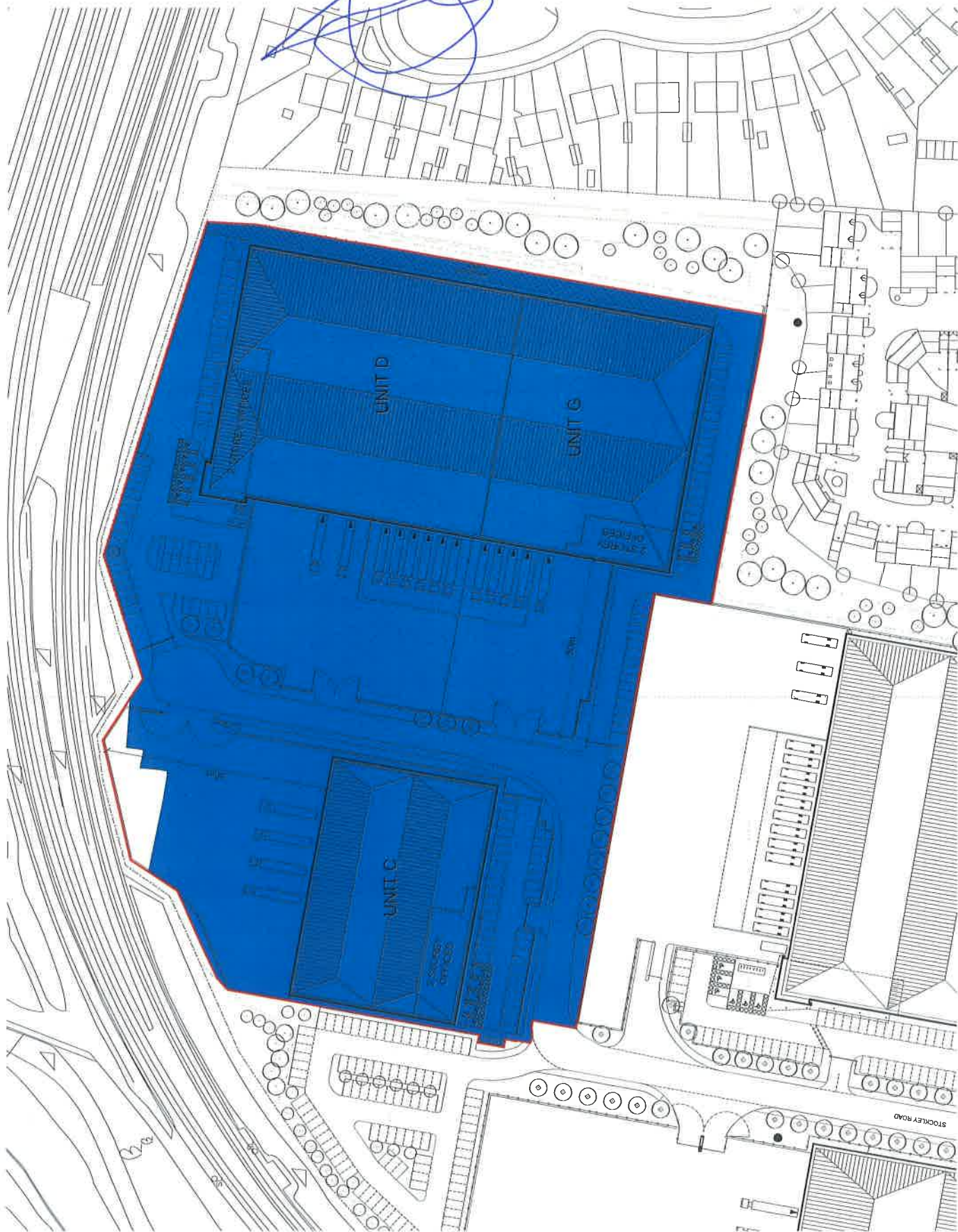


## **APPENDIX 2**

### **Plan**

# NOTES:

- 1. SUBJECT TO DEVELOPER'S CONSENT
- 2. THIS PLAN IS A PRELIMINARY PLAN AND IS NOT A FINAL PLAN. IT IS SUBJECT TO THE APPROVAL OF THE LOCAL AUTHORITY AND THE ENVIRONMENTAL AGENCY.
- 3. THE PLAN IS A PRELIMINARY PLAN AND IS NOT A FINAL PLAN. IT IS SUBJECT TO THE APPROVAL OF THE LOCAL AUTHORITY AND THE ENVIRONMENTAL AGENCY.
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- 10. THE PLAN IS A PRELIMINARY PLAN AND IS NOT A FINAL PLAN. IT IS SUBJECT TO THE APPROVAL OF THE LOCAL AUTHORITY AND THE ENVIRONMENTAL AGENCY.



NO.	DATE	REVISION	BY	CHKD
1	12.12.2014	ISSUE	PW	AC
2	12.12.2014	ISSUE	PW	AC



1. PLAN NO.  
2. SCALE  
3. DATE  
4. DRAWN BY  
5. CHECKED BY  
6. APPROVED BY

TITLE: PHASE 3 - PROLOGIS PARK, HEATHROW  
DRAWN: SITE LAYOUT PLAN

PROLOGIS UK LTD.

DATE: APRIL 2014

SCALE: 1:500 @ A1

STATUS: LEGAL

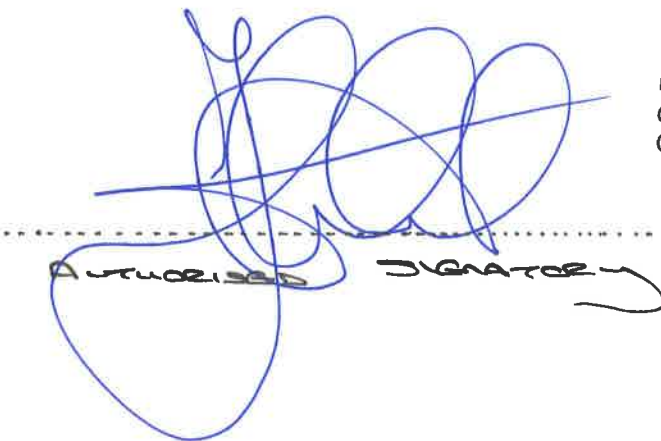
30587-1E-001

Executed as a Deed by  
**PROLOGIS UK CCXLV SARL**  
acting by:-

~~DIRECTOR~~

~~DIRECTOR/SECRETARY~~

Executed AS A DEED FOR AND ON  
BEHALF OF PROLOGIS UK CCXLV SARL  
A COMPANY INCORPORATED IN LUXEMBOURG  
By PROLOGIS DIRECTORSHIP SARL, MANAGER,  
Duly represented by GERRIT JAN MEERKERK,  
MANAGER, BEING A PERSON WHO IN  
ACCORDANCE WITH THE LAWS OF  
LUXEMBOURG IS ACTING UNDER THE  
AUTHORITY OF THE COMPANY



AUTHORIZED SIGNATORY

ProLogis Directorship S.à.r.l. Director,  
duly represented by:  
Gerrit Jan Meerkerk, Manager