Adur & Worthing councils

Legal and Democratic Services

# Internal Memo

| | | |
|---|---|---|
| **From:** | Satinder Tamber | Our Ref: 004054-st/ph/093435 |
| **To:** | Attn. Hannah Barker<br>Planning, Regeneration & Wellbeing: Adur Civic Centre | Your ref: |
| **Cc:** | Sarah Woodflowers, Senior Land Charges Officer, Town Hall | |
| **Date:** | **25 May, 2010** | |
| **Re:** | **S106: Norfolk House, High Street, Shoreham ADC/0252/09** | |

I have now received the completed Unilateral Undertaking for the Norfolk House matter. I enclose herewith a copy for your perusal. This is the Unilateral Undertaking in readiness for the appeal due to take place on this matter. I would be grateful if you could let me have the dates of the appeal, as I will keep my files open until the appeal has been completed.

Should you have any queries please do not hesitate to contact me.

Sarah, please register this charge on the Land Charges Register. Please note this Unilateral Undertaking has not yet taken effect as we are awaiting an appeal and therefore if there is a separate procedure for registering a potential Unilateral Undertaking then please let me know.

Kind regards,

[redacted]

Satinder Tamber
Solicitor
Town Hall, Chapel Road
Tel: 01903 221029
Fax: 01903 221161
e-mail: satinder.tamber@worthing.gov.uk

Enc.

**DATED** 19th May **2010**

# UNILATERAL UNDERTAKING

BY

Freebrook Limited (1)

TO

Adur District Council (2)

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relating to

Norfolk House, High Street, Shoreham-by-Sea

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Jeremy Cook
Executive Head of Legal and
Democratic Services
Town Hall
Chapel Road
Worthing
West Sussex BN11 1HA

TABLE OF CONTENTS

INTRODUCTION

1. DEFINITIONS
2. CONSTRUCTION OF THIS DEED
3. LEGAL BASIS
4. CONDITIONALITY
5. THE OWNER'S COVENANTS
6. MISCELLANEOUS
7. WAIVER
8. CHANGE IN OWNERSHIP
9. JURISDICTION
10. DELIVERY

**THIS UNILATERAL UNDERTAKING** is given the 19th day of May Two thousand and ten

**BY**

1) FREEBROOK LIMITED (Company Registration Number 2435311) whose registered office is at 98 New Bond Street London W1S 1SN (the "Owner")

**TO**

2) ADUR DISTRICT COUNCIL of Civic Centre Ham Road Shoreham-by-Sea West Sussex BN43 6PR (the "Council")

**WHEREAS:**

(1) THE Owner is the freehold owner of the Site which interest is registered under Title No. WSX34531 at the Land Registry

(2) The Owner intends to develop the Site pursuant to the Planning Permission

(3) Aviva Commercial Finance Limited holds a legal charge dated 12 May 2008 registered against the interest in the Site held by the Owner

(4) The Council is the local planning authority for the purposes of the Act and for the area in which the Site is located

(5) The Owner submitted the Application for the Development to the Council

(6) The Council refused to grant planning permission for the Development by notice dated 16 September 2009

(7) The Owner has submitted the Appeal (as hereinafter defined) against the refusal of planning permission

(8) The Owner has agreed to enter into this Deed in the event that the Planning Permission (as hereinafter defined) is granted for the Development pursuant to the Appeal in order to secure the planning obligations contained in this Deed

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**OPERATIVE PART**

**1 DEFINITIONS**

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

"Access Way" the area of land shown for the purposes of identification only coloured blue on the Plan

"Act" the Town and Country Planning Act 1990

"Appeal" the Owner's appeal to the Secretary of State for Communities and Local Government under reference number APP/Y3805/E/10/2124627/NWF

"Application" the application for full planning permission dated 14 July 2009 submitted to the Council for the Development and allocated reference number ADC/0252/09

"Commencement of Development" 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 and for no other purpose) 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 and "Commence Development" shall be construed accordingly

"Development" the Development of the Site by re-development of office block with a 72 bedroom hotel and 17 car and 4 cycle parking spaces as set out in the Application

"Executive Head of Planning

Regeneration & Wellbeing" the Executive Head of Planning Regeneration & Wellbeing for the time being or such other proper officer of the Council responsible for planning functions

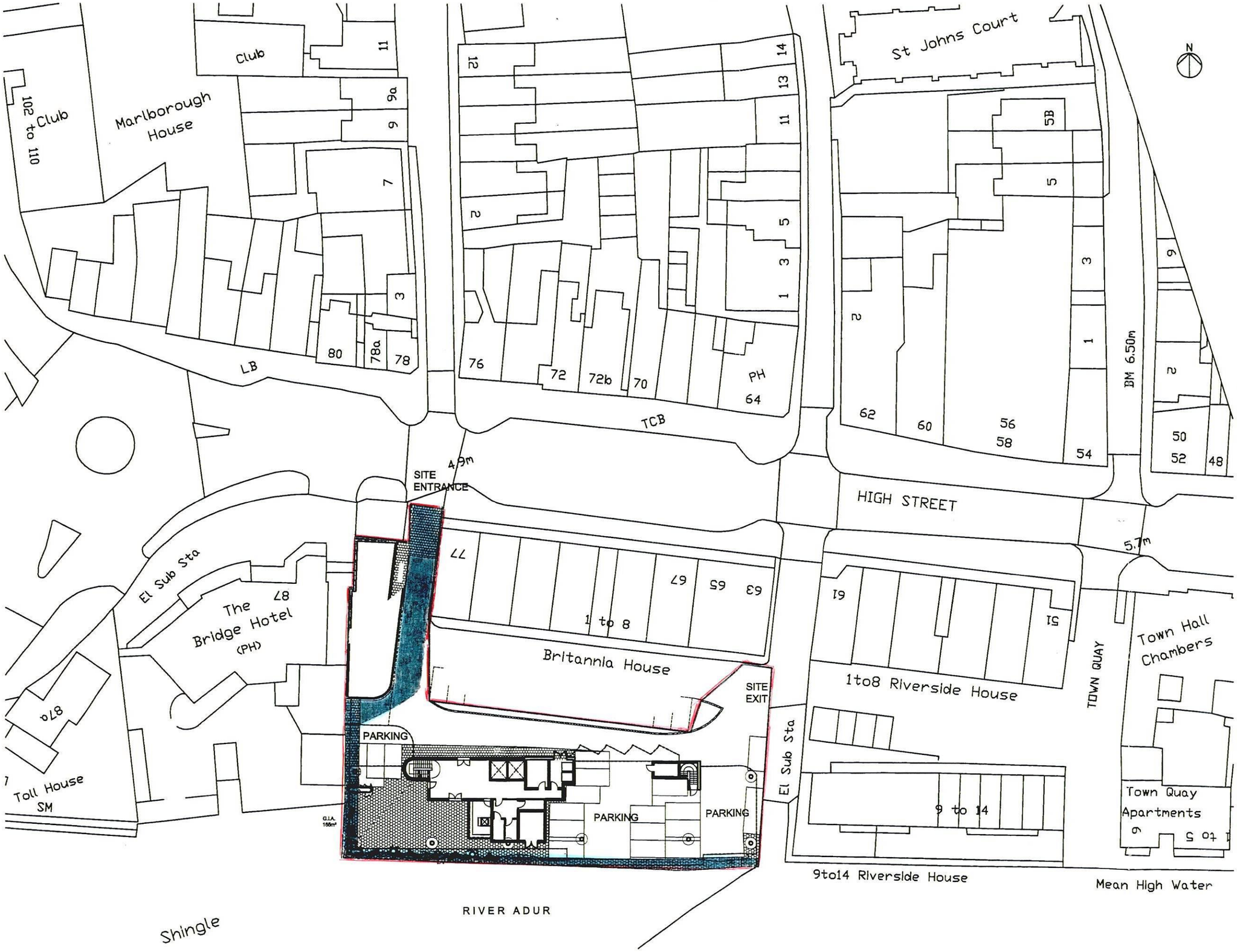
"Occupation" and "Occupied" occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

"Party and Parties" means the Owner and or the Council

"Plan" the plan attached to this Deed

"Planning Permission" the full planning permission subject to conditions granted pursuant to the Appeal

"Site" the land against which this Deed may be enforced known as Norfolk House High Street Shoreham-by-Sea as shown for the purposes of identification only edged red on the




Site Plan

© josef - whiteman architects llp

F16 Britannia Wharf, Britannia Rd
Banbury, Oxfordshire,OX16 5D8, UK
Registration No: OC329512

mail@josefwhiteman.com
www.josefwhiteman.com

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0 5 10 15 20

| Rev/date | Comments | Drn | Chk |
|---|---|---|---|
| A:-.-.09 | - | - | - |

Do not scale off this drawing
Report all errors and omissions to the Architect
Dimensions to be checked on site

Client
FREEBROOK LIMITED

Project
NORFOLK HOUSE, SHOREHAM-BY-SEA

Title
Proposed New Hotel: SITE PLAN

Drawing status
PLANNING

josef - whiteman architects llp

| Scale @ A3 | Date |
|---|---|
| 1:500 | 15 06 2009 |
| Drawing no. | Rev |
| 0803-4-P-100 | - |

19.5.10 S.ASKAR Director Freebrook Ltd

WITNESSED BY: K. KORBELOVA

Plan and registered at the Land Registry under title number WSX34531

## 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

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 the successors to their respective statutory functions

## 3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner

## 4 CONDITIONALITY

This Deed is conditional upon:

(i) the grant of the Planning Permission; and

(ii) the Commencement of Development

save for the provisions of Clauses 6.1, 9 and 10 legal costs, jurisdiction and delivery clauses and any other relevant provisions which shall come into effect immediately upon completion of this Deed

## 5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the Council on or prior to Occupation and for as long as the Development shall be Occupied as follows:

5.1.1 To make the Access Way open to the public at all times save that the Access Way may be closed for the following:

5.1.2 security reasons where such reasons (save in the case of emergency) have been notified to and approved by the Council in writing and are of such limited duration as is necessary to address (if possible) the security issues;

5.1.3 reasonable maintenance and repair for limited durations with prior written approval from the council;

5.1.4 1 day a year to prevent the creation of public rights of way over the land;

## 6 MISCELLANEOUS

6.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed

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

6.3 This Deed shall be registerable as a local land charge by the Council

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Executive

Head of Planning Regeneration and Wellbeing and any notices 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

6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed

6.6 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

6.7 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

6.8 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 but without prejudice to liability for any subsisting breach arising prior to parting with such interest

6.9 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

No waiver (whether expressed 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 for acting upon any subsequent breach or default

## 8 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed 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 Site or unit of occupation purchased by reference to a plan

## 9 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales

## 10 DELIVERY

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



**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written

**EXECUTED AS A DEED BY** )
**FREEBROOK LIMITED** )
)

STEVEN ASKAR Director [redacted]

IN THE PRESENCE OF: Katarina

NAME: KATARINA KORBELOVA
ADDRESS: 20 Westbury Avenue, N22 6RS
OCCUPATION: Secretary