Peter Barnett
Planning Officer
Adur and Worthing Council

DX 142965 Worthing

Governance & Law
Sessions House
County Hall
Maidstone
Kent ME14 1XQ
DX: 123693 Maidstone 6
www.kent.gov.uk/legal

Fax No:
Direct Dial/Ext: [redacted]
E-mail address:
Ask for: Victoria Clothier
Your Ref:
Our Ref: LS/A/22886/462
Date: 4 April 2012

Dear Peter

UNILATERAL UNDERTAKING NORFOLK HOUSE SHOREHAM BY SEA

I confirm that this matter was completed on 4 April 2012 and I enclose a copy of the Agreement in counterpart for your records. Please note that when I am in attendance at Adur and Worthing's offices on Tuesday next I shall bring the original to be stored in the deeds packet and I will also send the completion memo to Sarah Woodflowers requesting that the Agreement is registered at the Local Land Charges.

Thank you for your assistance relating to this matter.

Yours sincerely

[redacted]
Victoria Clothier
for Director of Law & Governance
pl

This communication may contain advice or information that attracts legal professional privilege and may be exempt from disclosure under the Data Protection Act 1998 or the Freedom of Information Act 2000. Accordingly, do not disclose this communication to a third party without first taking legal advice from the sender.

Geoff Wild LL.B, Dip.LG, Solicitor
Director of Governance & Law

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THE LAWYER AWARDS 2009 TRAVELERS WINNER
THE MJ 2009 FINALIST
LGC Awards 2009 WINNER
Excellence Awards 2011 WINNER
LGC Awards 2012 Finalist

I HEREBY CERTIFY THIS TO
BE A TRUE COPY 9. D. Wild.

DATED 4TH April **2012**

UNILATERAL UNDERTAKING

BY

FREEBROOK LIMITED (1)

AND

AVIVA COMMERCIAL FINANCE LIMITED (2)

TO

ADUR DISTRICT COUNCIL (3)

Relating to

Norfolk House, High Street, Shoreham-by-Sea

Adur and Worthing Legal Services
Portland House, Worthing, West Sussex

TABLE OF CONTENTS

INTRODUCTION

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

THIS UNILATERAL UNDERTAKING is given the 4th day of April Two Thousand and Twelve

BY

1) **FREEBROOK LIMITED** (Co. Regn 02435311) who registered office is at 98 New Bond Street London W15 1SN ("the Owner")

2) **AVIVA COMMERICIAL FINANCE LIMITED** (Co. Regn. 02559391) whose registered office is 2 Rougier Street York YO90 1UU ("the Mortgagee"

TO

3) **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 subject to a mortgage in favour of the Mortgagee.

(2) The Mortgagee holds a legal charge dated 12th May 2008 registered against the interest in the site held by the Owner

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

(4) Mr Richard Gillam submitted the Application for the Development to the Council

(5) The Council resolved to grant planning permission for the Development on 06 February 2012 subject to completion of this Deed without which planning permission would have been refused

(6) The Owner considers the Site should be bound by this Deed and has agreed to enter into this Deed in order to secure the planning obligations contained in this Deed

(7) The Owner considers that the obligations in this Deed are necessary to make the Development acceptable in planning terms directly related to the Development and fairly and reasonably related in scale and kind to the Development

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 and being a minimum of 2 metres in width
"Act"	the Town and Country Planning Act 1990
"Application"	the application for full planning permission dated 27th October 2011 submitted to the Council for the Development and allocated reference number AWDM/ 0871/11
"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 the conversion of an existing office block into 8 three-bedroom terraced house (remodelled into a flat-roofed four story building) with addition of a three-bedroom house at east end; redevelopment of garage block at west end with two-story flat roofed offices; including provision of 23 car parking spaces and 10 cycle spaces.
"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 the Mortgagee and/or the Council
"Plan"	the plan attached to this Deed
"Planning Permission"	the full planning permission subject to conditions granted pursuant to the Application
"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 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

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Bridge Hotel
The
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HIGH STREET
SHIP STREET
Riverside House
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Flats

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 Town and Country Planning Act 1990 (as amended) Section 111 of the Local Government Act 1972 and all other powers and enactments thereby enabling and which may be relevant for the purposes of the enforcement of covenants and or obligations contained herein to the intent that it shall bind the Owner and its successors in title and assigns each and every part of the Site

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:

4.1 the grant of the Planning Permission; and

4.2 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:

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

.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;

.3 reasonable maintenance and repair for limited durations with prior written approval from the Council;

.4 1 day a year to prevent the creation of public rights of way over the land.

6. MISCELLANEOUS

.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

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

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

.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

.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 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

.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

.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

.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. **MORTGAGEE'S CONSENT**

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

8. **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

9. **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

10. **JURISDICTION**

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

11. **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 acting by a Director and
its Secretary or two Directors

[redacted]
Director

[redacted]
Director/Secretary

EXECUTED AS A DEED BY:

AS ATTORNEY FOR AND ON BEHALF OF)
AVIVA COMMERCIAL FINANCE LIMITED)

IN THE PRESENCE OF:

NAME:
ADDRESS:
OCCUPATION:

AVIVA

DATED 4TH April 2012

UNILATERAL UNDERTAKING

BY

FREEBROOK LIMITED (1)

AND

AVIVA COMMERCIAL FINANCE LIMITED (2)

TO

ADUR DISTRICT COUNCIL (3)

Relating to

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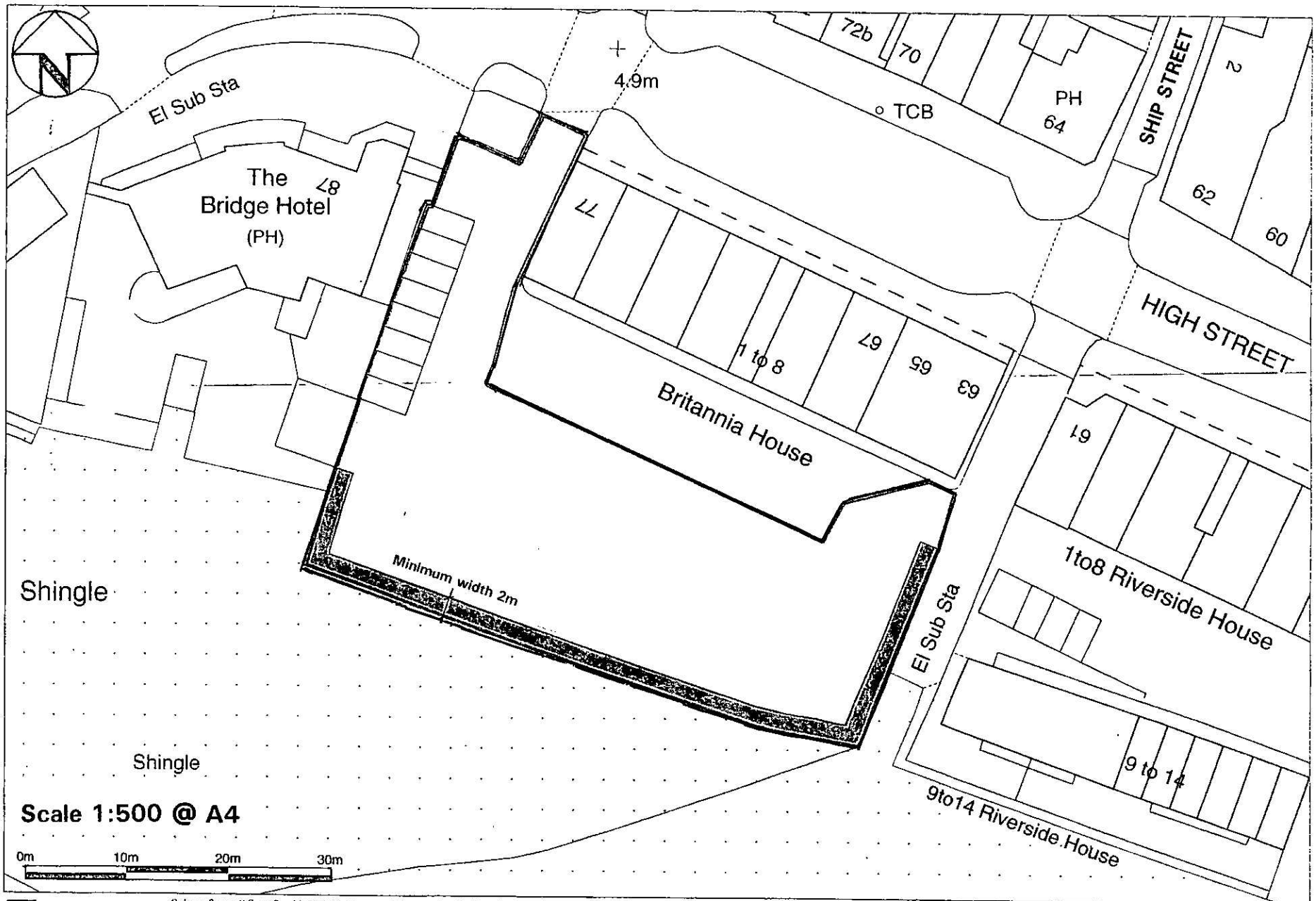

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IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

EXECUTED AS A DEED by
FREEBROOK LIMITED acting by a Director and
its Secretary or two Directors

Director

Director/Secretary

EXECUTED AS A DEED BY:

AS ATTORNEY FOR AND ON BEHALF OF)
AVIVA COMMERCIAL FINANCE LIMITED)

IN THE PRESENCE OF:

NAME: E JAN POINTER
ADDRESS: 37 SURREY STREET NORWICH
OCCUPATION: ADMINISTRATIVE ASSISTANT

UKCF 12 | 2596