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**1. GREENFOUR LIMITED**

**In favour of**

**2. THE LORD MAYOR AND CITIZENS OF THE CITY OF WESTMINSTER**

**With the consent of**

**3. AVIVA COMMERCIAL FINANCE LIMITED**

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**S106 UNILATERAL UNDERTAKING**

**Relating to 12 Queensway, London W2 3RX**

THIS UNDERTAKING is made the            day of

BY

- (1)     **GREENFOUR LIMITED** (Co. Regn. No.03925670) of 73 Cornhill, London, United Kingdom, EC3V 3QQ (“the Owner”)

**In favour of**

- (2)     **THE LORD MAYOR AND CITIZENS OF THE CITY OF WESTMINSTER** of City Hall, 64 Victoria Street London SW1E 6QP (“the City Council”)

**With the consent of**

- (3)     **AVIVA COMMERCIAL FINANCE LIMITED** (Company registration number 02559391) whose registered office is at St Helen's, 1 Undershaft, London, United Kingdom, EC3P 3DQ (“the Mortgagee”)

**WHEREAS:**

- (1)     The Owner is the freehold owner of the Property and the Proposed Property registered at the Land Registry under Title Number NGL743331 and the Mortgagee is similarly registered as the proprietor of the Mortgage
- (2)     The Tenant currently occupies the Property for the Use
- (3)     The Owner intends to transfer occupation by the Tenant of the Property to the Proposed Property
- (4)     The Owner intends to change the use of the Proposed Property to the Use pursuant to the Planning Permission and has submitted the Application to the Council
- (5)     The City Council is the local planning authority for the purposes of the Act and for the area in which the Property is located, the highway authority for the purposes of the Highways Act 1980 and is the local authority for the purposes of the Greater London Council (General Powers) Act 1974, Local Government Act 1972 and the Localism Act 2011
- (6)     The Owner has submitted the Application to the Council and has entered into this Deed in order to secure the planning obligations contained in it so that it may be taken into account as a material consideration in the determination of the Application by the Council

THIS DEED W I T N E S S E S the following:-

**1. Interpretation**

- 1.1     In this Agreement unless the context demands otherwise the following expressions shall have the meanings set out below:

- |                       |  |
|-----------------------|--|
| "Act"                 | the Town and Country Planning Act 1990   |
| "Application"         | the application for change of use submitted by the Owner in relation to the Proposed Property  |
| "Commencement of Use" | the date upon which a material change of use as defined in Section 56(4) of the Act shall be commenced in respect of the Proposed Property and the words "Commence" and "Commenced" shall be construed accordingly |
| "Mortgage"            | the legal charge dated 21 December 2018 made between (1) the Owner and (2) the Mortgagee and which affects the Property  |
| "Planning Permission" | a planning permission that may be granted by the Council pursuant to the Application   |
| "Property"            | all that land and buildings at <b>12 Queensway, London W2 3RX</b> all of which for the purposes of identification are shown edged red on Plan 1  |
| "Proposed Property"   | all that land and buildings at <b>22 Queensway, London W2 3RX</b> all of which for the purposes of identification are shown edged red on Plan 2  |
| "Tenant"              | William Hill Limited (Co. Regn. No.04212563) of 1 Bedford Avenue, London, United Kingdom, WC1B 3AU   |
| "Use"                 | use as a sui generis betting office within the Town and Country Planning Use Classes Order 1987 (as amended) (previously Class A2).  |
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- 1.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
  - 1.3 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies the City Council and firms and all such words shall be construed interchangeably in that manner
  - 1.4 Words denoting an obligation on a party to do any act manner or thing include an obligation to procure that it be done and any words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of that restriction.
  - 1.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment thereof 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 thereunder or deriving validity therefrom.
  - 1.6 Headings in this Agreement are for reference purposes only and are not incorporated into this Agreement and shall not be deemed to be an indication of the meaning of the parts of the Agreement to which they relate.

## 2. **Legal Effect**

- 2.1 To the extent that the obligations in this Undertaking are capable of being so made, they are made pursuant to Section 106 of the Act and the obligations and covenants herein contained:-
- (a) are covenants and planning obligations to which this statutory provision applies; and
  - (b) relates to the Property; and
  - (c) are enforceable by the City Council as the local planning authority; and
  - (d) are for the purposes of regulation 122 of the Community Infrastructure Levy Regulations 2010 necessary, directly related to the Development, and fairly and reasonably related in scale and kind.
- 2.2 The obligations in this Undertaking shall be binding on the Owner together with its successors in title and assigns and those deriving title under it provided that no person shall be liable for any breach of any covenant or obligation contained in this Undertaking after it has parted with all of its interest in the Property or in the part of the Property to which the relevant obligation relates save in relation to any antecedent breach prior to parting with such interest.
- 2.3 Notwithstanding the foregoing sub clause 2.2 of this Undertaking the obligations under this Undertaking shall not be enforceable against any statutory undertaker or public authority which acquires any part of the Property or an interest in it for the purposes of its statutory function or function.
- 2.4 References in this Undertaking to the City Council shall include any successor to its statutory functions.
- 2.5 Reference in this Undertaking to the Mortgagee shall include any successors in title.
- 2.6 Nothing in this Undertaking shall fetter prejudice or affect any provisions rights powers duties and obligations of the City Council in the exercise of its functions as a local planning authority for the purposes of the Act or otherwise as a local authority.
- 2.7 No waiver (whether express or implied) by the City Council of any breach or default in performing or observing any of the covenants terms or conditions of this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the City Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
- 2.8 If any provision in this Undertaking shall in whole or in part be found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Undertaking.

2.9 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Undertaking.

2.10 Any future mortgagee, chargee or receiver of the Property or any part of the Property acknowledges and declares that the Property shall be bound by the obligations contained in this Undertaking and that the security of the charge over the Property shall take effect subject to this Undertaking PROVIDED THAT the mortgagee, chargee or receiver shall otherwise have no liability under this Undertaking until or unless it enters into possession of the Property as a mortgagee in possession in which case it too will be bound by the obligations in relation to the Property as if it were the person deriving title from the Owner.

### 3. **Commencement**

3.1 The obligations in clause 5 of this Undertaking are conditional:-

- (i) on the issue of Planning Permission by the City Council; and
- (ii) Commencement of Use in accordance with the Planning Permission

3.2 If the Planning Permission is quashed revoked expires or is modified without Undertaking before Commencement of Use the obligations in this Undertaking shall cease to have effect.

### 4. **Contracts (Rights of Third Parties) Act 1999**

It is hereby declared that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Undertaking and no person other than the Owner, the Mortgagee and the City Council (and any successors in title assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this Undertaking.

### 5. **Indemnity for Mortgagee**

Notwithstanding the terms contained herein the Mortgagee shall only be liable for any breach of any provision of this Deed during such period (if any) as it is mortgagee in possession of the Property and then only if it shall have caused such breach or breaches to have been occasioned and PROVIDED THAT for the avoidance of doubt it shall not in any event be liable for any breach of this Deed arising prior to its becoming mortgagee in possession of the Property unless such breach continues during such period as it is a mortgagee in possession.

### 6. **Covenants**

6.1 The Owner covenants with the City Council:-

- (a) not to use the Property for the Use once Commencement of Use has taken place in accordance with the Planning Permission.

(b) to provide seven (7) days prior written notice of the intended date of Commencement of Use and a further written notice of the actual date of Commencement of Use within seven (7) days of the same.

6.2 The Mortgagee hereby consents to the Owner completing this Deed with the intention that notwithstanding Section 104 of the Law of Property Act 1925 its interest in the Property shall be bound by the terms of this Deed as if it had been executed and registered as a local land charge prior to the execution of the Mortgage

## 7. **Notices**

7.1 All notices or documents provided under or in connection with this Undertaking shall be sent to the City Council and addressed to the Section 106 Monitoring Officer within the Directorate of Policy, Performance & Communications City Hall, 64 Victoria Street, London SW1E 6QP and shall cite the Planning Application reference number.

7.2 The Owner requests that any notice or communication regarding this Undertaking be sent by the City Council to 73 Cornhill, London, United Kingdom, EC3V 3QQ marked with the Owner's name and the name of the Property.

## 8. **Local Land Charges**

This Undertaking is registerable as a local land charge by the City Council and the Owner requests that the City Council register it as such.

## 9. **Jurisdiction**

This Undertaking is governed by the law of England and Wales and the parties agree in the case of a dispute not capable of being resolved by them to submit to the jurisdiction of English Court.

## 10. **Electronic Execution and Completion**

10.1 For the purposes of the execution of this Undertaking the Owner confirms:

10.1.1 that the methods of signature used in this Undertaking are conclusive evidence of the Owner's intention to be bound by the Undertaking as if signed by the Owner's manuscript signature; and

10.1.2 this Undertaking may be electronically dated and completed; and

10.1.3 that an electronic copy of the executed and completed Undertaking can be accepted in lieu of a hardcopy document.

IN WITNESS of the above the Owner has executed this document as a Deed the day and year above written

**EXECUTED** as a deed by  
**GREENFOUR LIMITED**  
acting by a director, in the presence  
of:

<i>Signature</i>	
	Director
<i>Print name</i>	

Witness signature

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Name (in BLOCK  
CAPITALS)

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Address

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