

DATED 19th April 2016

BRIGHTON & HOVE CITY COUNCIL (1)

and

BRIGHTON SEAFRONT REGENERATION LIMITED (2)

and

PRECINCT INVESTMENT COMPANY LIMITED (3)

A G R E E M E N T

**under (inter alia) Section 106 of the
Town and Country Planning Act 1990**

**relating to
land at Units 2-8 the Terraces, Madeira Drive**

**Brighton & Hove City Council
King's House
Grand Avenue
HOVE
BN3 2SR**

THIS AGREEMENT is made the 19th day of April Two thousand and sixteen

BETWEEN:

- (1) **BRIGHTON & HOVE CITY COUNCIL** of King's House Grand Avenue Hove BN3 2SR (hereinafter called "the Council") in its capacity as local planning authority of the first part
- (2) **BRIGHTON SEAFRONT REGENERATION LTD** (Company registration number 05901058) whose registered office is situated at 148-150 St John Street, London, EC1V 4UD (hereinafter called "the Developer") of the second part
- (3) **PRECINCT INVESTMENT COMPANY LIMITED** (incorporated in Jersey) of Elizabeth House, 9 Castle Street, St Helier, Jersey JE2 3RT (hereinafter called "the Mortgagee") of the third part
- (4) **BRIGHTON & HOVE CITY COUNCIL** of King's House Grand Avenue Hove BN3 2SR (hereinafter called "the Owner") in its capacity as landowner of the fourth part

RECITALS

WHEREAS:

- (1) The Developer is the registered proprietor of the leasehold interest of the Property (as hereinafter defined) that is registered at HM Land Registry under title number ESX230992 free from encumbrances which would inhibit the making or implementation of this obligation by virtue of the Headlease
- (2) The Mortgagee is the registered proprietor of the charge dated (and being contained in Debenture) 26 June 2013 referred to in the Charges Register
- (3) The Owner is the freehold reversioner under the Headlease and joins into the Agreement for the purposes of giving consent to the Developer to enter into this Agreement and bind the Property
- (4) By the Application (as hereinafter defined) the Developer has applied for planning permission to develop the Property by the Proposed Development (as hereinafter defined)
- (5) For the area within which the Property is situated the Council is for the purposes of Section 106 of the Town and Country Planning Act 1990 ("the 1990 Act") Section 111 of the Local Government Act 1972 ("the 1972 Act")

and the Highways Act 1980 ("1980 Act") respectively a local planning authority a local authority and the highway authority

- (6) The parties hereto have agreed to enter into this Agreement pursuant to Section 106 of the 1990 Act Section 111 of the 1972 Act Section 1 of the Localism Act 2011 ("the 2011 Act") and the 1980 Act and all other powers them enabling for the purposes specified in Clause 2.1
- (7) The Council consider it will be necessary in the interest of the good planning of the area and to secure an acceptable form of the development that there should be a Walkways Agreement, financial contribution towards sustainable transport in the vicinity of the Proposed Development and the provision of a Local Employment Scheme and financial contribution towards that scheme

IT IS HEREBY AGREED as follows:

1. INTERPRETATION

1.1. In this Agreement unless the context otherwise requires:

"Alternative Route(s)" means such route(s) within title number ESX230992 as shall be approved by the Council as a suitable alternative for a Walkway

"Application" means the application for planning permission received by the Council on the 3rd July 2015 and allocated reference number BH2015/02443 for development comprising demolition and replacement of existing oval glass pavilion on lower tier level to form new café (A3). Demolition of existing circular building on upper tier level. Change of use of units 6-8 on lower tier level from restaurants (A3) to Members Club (SG) together with construction of two new pavilions above at upper tier level consisting of restaurant and bar (A3/A4) with indoor and outdoor seating, open air plunge pool with changing facilities and terraced area with sunbeds solely for the use of the Members Club (SG). Alterations and refurbishment of existing public restaurants (A3) at lower tier units 2-5 including revised fenestration. Other associated works including the external and internal refurbishment of the existing 1920s pavilion.

"Commencement of Development" and shall refer to the Proposed Development and shall have the same meaning as ascribed to a

“Commence Development”	"material operation" by Section 56(4) of the 1990 Act other than (for the purposes of this Agreement and for no other purpose) operations consisting of archaeological investigations site clearance 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 and the temporary display of site notices or advertisements
“Director”	means the Executive Director of Environment Development and Housing for the time being of the Council and shall include any duly authorised agents and representatives or successor
“Headlease”	means a lease dated 2 July 1998 and made between the Council (1) Aquarium Entertainments Limited (2) Compco Holdings PLC (3) which is now vested in the Developer
“Local Employment Scheme”	means a scheme set up by the Council which aims to increase the employment and training opportunities for residents of Brighton & Hove who wish to work in the construction industry, provides support to building firms which operate wholly or mainly in Brighton & Hove in order to secure contracts on developments of 10 units and above and assists developers and contractors with their workforce needs
“Local Employment Scheme Coordinator”	means the Local Employment Scheme Co-ordinator for the time being of the Council and shall include any successor of his/ hers
“Local Employment Scheme Contribution”	means the sum of £32,080 (thirty two thousand and eighty pounds) which sum shall be adjusted in line with the movement in the published Retail Prices Index - X (All Items) from the month in which the date of this Agreement falls to the month in which the date of payment falls
“Monitoring Officer”	means the planning officer or other officer of the Council from time to time allocated to deal with all planning obligations pursuant to Section 106 of the 1990 Act to whom all notices correspondence reports etc must be sent

“Occupy” “Occupation” or “Occupied”	shall refer to occupation of the Proposed Development for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for sales and/or marketing or display or occupation in relation to security operations
“Plan”	means the location plan annexed hereto
“Planning Permission”	means the planning permission to be granted by the Council or the Secretary of State pursuant to the Application
“Property”	means the land at 2-8 The Terraces, Madeira Drive as shown for the purposes of identification only edged red on the Plan attached hereto
“Proposed Development”	means such development as may be granted Planning Permission pursuant to the Application
“Section 73 Consent”	means a planning permission granted pursuant to Section 73 of the 1990 Act which varies and /or removes any condition subject to which the Planning Permission and/or such planning permission pursuant to Section 73 of the 1990 Act was granted
“Sustainable Transport Contribution”	means the sum of £50,000 (fifty thousand pounds) which sum shall be adjusted in line with the movement in the published Retail Prices Index - X (All Items) from the month in which the date of this Agreement falls to the month in which the date of payment falls
“the Walkways”	means the pedestrian walkway shown with a dotted green line on the Plan
“Walkways Agreement”	means an agreement made pursuant to Section 35 of the 1980 Act to secure permanent public access to the Walkways (subject to the terms of this Agreement) a draft of which is attached at Annex 1
“Walkways Scheme”	means a scheme for the Walkways which shall include a timetable for the implementation of the Walkways which links the implementation of the Walkways to the development of and first

occupation of Proposed Development and which should include details of any temporary surfacing works along with the permanent works.

- 1.2 Unless the context requires otherwise references in this Agreement to a clause schedule or paragraph are references respectively to a clause schedule or paragraph of this Agreement
- 1.3 Where any party to this Agreement comprises two or more persons any obligations on the part of that party contained or implied in this Agreement shall be deemed to be joint and several obligations on the part of those persons and references to that party shall include references to each or any of those persons and all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise
- 1.4 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
- 1.5 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 1.6 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
- 1.7 The headings to this Agreement do not and will not by implication form any part of this Agreement and shall have no legal force whatsoever
- 1.8 The expressions "the Council" and "the Owner" shall include successors in title and any statutory successor authority of it and the expression "the Developer" shall include all persons deriving title to the Property under the Headlease and shall include (if appropriate) two or more owners of the legal estate

2 PRELIMINARY

2.1 Legal Powers

THIS Agreement is made pursuant to Section 106 of the 1990 Act Section 111 of the 1972 Act the 1980 Act Section 1 of the Localism Act 2011 and all other powers enabling for the purpose of restricting the development of the Property and requiring sums to be paid to the Council

DO NOT use drawing for construction
Used for Design Intent purposes only

DO NOT SCALE FROM THE DRAWING

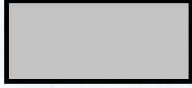
SOHO HOUSE TO APPROVE ALL FINISHES SAMPLES
AND SHOP DRAWINGS PRIOR TO MANUFACTURE.
ALL DIMENSIONS DISCREPANCIES TO BE REPORTED
TO SOHO HOUSE PRIOR TO MANUFACTURE.

S106 PLAN

FIRST ISSUE
Date: 30/01/2016
Revision: /
Comments: /

LEGEND:

- WALKWAYS
- SITE DEMISE



44211

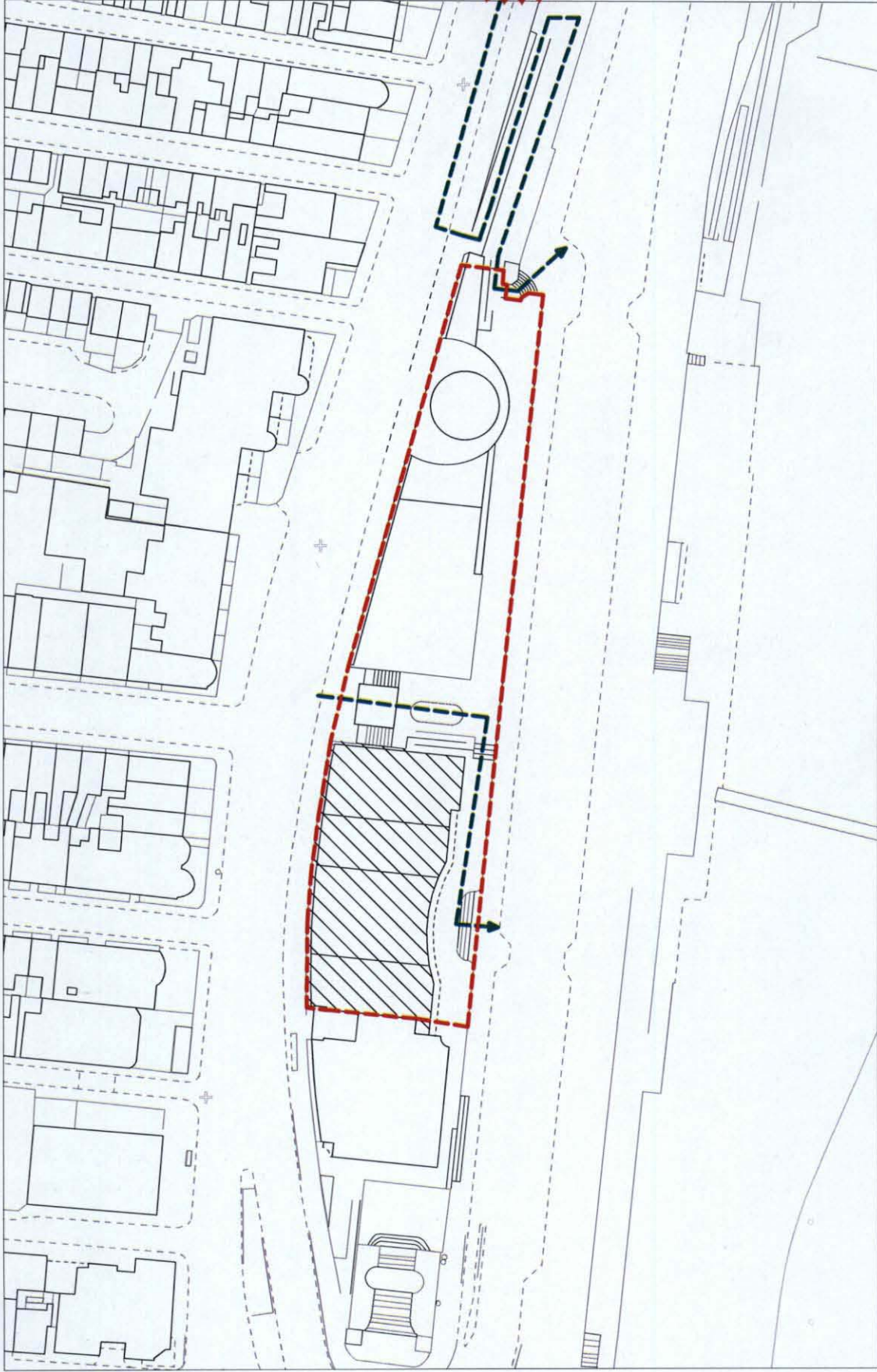
SOHO HOUSE GROUP

BRIGHTON THE TERRACES
MADERA DRIVE UNITS 2-5

SITE PLAN_S106 WALKWAYS PLAN

Original Issue	Drawn By	Date	Checked By	Date
	MP	2015/12		

Drawing Number: 124_SHG_001



2.2 Enforceability

The various covenants restrictions requirements stipulations and other obligations on the part of the Developer contained in this Agreement are entered into under the provisions and powers referred to in subclause 2.1 and are planning obligations for the purposes of Section 106 of the 1990 Act whether expressed to be planning obligations or not and are enforceable by the Council against the Developer and any person deriving title from the Developer PROVIDED THAT no person shall be liable for breach of a covenant contained in this Agreement after it shall have parted with its entire interest in the Property or the part in respect of which breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest

2.3 Expiry

2.3.1 The obligations in this deed (with the exception of clause 2.11) shall cease to have effect in so far only as the Planning Permission is concerned if before the Commencement of Development the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge

but will remain in full force and effect so far as any subsisting Section 73 Consent is concerned

2.3.2 The obligations in this deed (with the exception of clause 2.11) shall cease to have effect in so far only as the relevant Section 73 Consent is concerned if before the Commencement of Development the relevant Section 73 Consent:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge

but will remain in full force and effect so far as the Planning Permission and any other subsisting Section 73 Consent is concerned

2.4 Commencement

This Agreement is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 1 and 2 and Schedule 1 which shall come into effect on the date of this Agreement

2.5 Registration

This Agreement is a local land charge and shall be registered as such by the Council

2.6 Fettering of discretion

Nothing contained or implied in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations or other enabling power in the exercise of its functions as a local authority

2.7 Validity

Insofar as any clause or clauses of this Agreement 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 Agreement

2.8 Service of Notices

Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by prepaid registered or recorded delivery post to the party to be delivered at its address herein specified or such other address as may from time to time be notified for the purpose by notice in writing

2.9 Requirements to be Reasonable

Subject to Clause 2.6:-

2.9.1 where any agreement certificate consent permission expression of satisfaction or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed and

2.9.2 where any requirements or decisions are to be made by the Director under the terms of this Agreement they shall be made or imposed upon reasonable grounds

2.10 Payment of Sums Due

2.10.1 All sums payable under this Agreement shall (unless otherwise stated in this Agreement) become due fourteen days after the date of the relevant notice and/or request ("the Due Date") and shall henceforth be debts due to the Council recoverable by action as a simple contract debt and may be deducted from any monies due to the Developer from the Council under any contract agreement or arrangement whatsoever

2.10.2 If any such sums are not paid by the Due Date then the Developer shall thereafter be liable to pay to the Council interest on the same calculated on a daily basis at a daily rate of 1/365th of the annual rate of interest of 4% per annum greater than the

Co-operative Bank PLC base rate in force from time to time from the Due Date to the date of payment thereof

2.11 **Agreement Costs**

The Developer shall pay to the Council on or before the date of this Agreement all reasonable and proper legal costs of the Council incurred in the negotiation preparation and completion and registration of this Agreement

3 AGREEMENT AND DECLARATION

3.1. Nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and

3.2 Nothing in this deed grants planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function

3.3 The provisions of this Agreement shall not be enforceable by any third party (which for the avoidance of doubt shall exclude any statutory successor authority to the Council and successors in title to the Developer) pursuant to the Contracts (Rights of Third Parties) Act 1999

4 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 Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

5 OWNERSHIP

5.1 The Developer warrants that no person other than the Developer the Owner and the Mortgagee has any legal or equitable interest in the Property

5.2 Until the covenants restrictions and obligations in this Agreement have been complied with the Developer will give to the Monitoring Officer within five 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

- (a) the name and address of the person and registered office (if a company or usual address if not) to whom the disposition was made; and

- (b) the nature and extent of the interest disposed of by reference to a plan

6 VAT

All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable

7 JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

8 DELIVERY

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated

9 FUTURE PERMISSIONS

Nothing in this deed shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or any modification variation or amendment thereof) granted after the date of the Planning Permission

10 FURTHER SECTION 73 CONSENTS

- 10.1 Subject to the proviso to this clause if any Section 73 Consent is granted after the date of this deed:

- 10.1.1 the obligations in this deed shall relate to and bind such Section 73 Consent; and

- 10.1.2 the definitions of Planning Application, Development and Planning Permission (other than for the purposes of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself

PROVIDED THAT:

- 10.2 nothing in this clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;

- 10.3 to the extent that any of the obligations in this deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and
- 10.4 the Council reserves the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it desirable to do so

11 MORTGAGEE'S CONSENT

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

12 COVENANTS

The Developer hereby covenants with the Council as specified in Schedules 1 and 2 and the Council hereby covenants with the Developer as specified in Schedule 3

13 ALTERNATIVE ROUTE(S)

If any part of the land comprised in title number title number ESX230992 is proposed to be redeveloped and the presence of the Walkway prevents such development then the Developer shall provide Alternative Route(s) for the Walkway to the satisfaction of the Director in which event the terms of this deed shall apply equally thereto

SCHEDULE 1
(Notice and Contributions)

1. Not to Commence Development until the Developer has given the Council at least 14 days prior written notice of the date of Commencement of Development such notice to be addressed to the Council's Development Control Manager at Hove Town Hall Norton Road Hove BN3 3BQ
2. The Developer covenants not to Commence Development until the following sums have been paid to the Council :
 - (i) Local Employment Scheme Contribution
 - (ii) Sustainable Transport Contribution

SCHEDULE 2
(Construction Training and Employment Strategy)

1. Not to Commence Development until the Developer has submitted to the Council in writing for approval a strategy demonstrating how the Developer and any subcontractors will source local labour (the "Employment Strategy") during demolition and construction of the Proposed Development such strategy to be submitted one month before the intended date of Commencement of Development with the intention that it shall be approved by the Council by such date as is before the intended date of Commencement of Development.

2. The Employment Strategy shall:
 - (i) set out how the Developer or its subcontractors will work with the Council and its partners to encourage employment of local construction workers during the demolition and construction of the Proposed Development with a target that at least 20% of the temporary and permanent job opportunities created by the construction of the Proposed Development shall be taken by the Brighton & Hove workforce

 - (ii) include a list of skills and the number of different construction workers estimated as being required during the different development phases; and

 - (iii) require the Developer or its subcontractors to provide monthly figures on the number of employees from the Brighton & Hove workforce to the Local Employment Scheme Co-ordinator to enable the Council to monitor the impact of the construction of the Proposed Development on the local labour market.

 - (iv) promote education and training opportunities in construction linked to the Proposed Development in conjunction with the Council's Local Employment Scheme Co-ordinator and local colleges (via open days presentations and general marketing)

3. The Developer shall use reasonable endeavours to implement the approved Employment Strategy (or any variation to the Employment Strategy approved by the Council)

4. Prior to submission of the Employment Strategy the Developer shall liaise with the Council's Economic Development team so as to obtain timely information and support from the Council and its partners

SCHEDULE 3
(Walkways Agreement)

1. Not to Commence Development until the Walkways Scheme has been submitted to and agreed in writing by the Director.
2. Not to Commence Development until a Walkways Agreement (in the form annexed to the Agreement) has been entered into with the Council in relation to the Walkways which form part of Proposed Development
3. To provide and make the Walkways available for public use by pedestrians accessing the Proposed Development in accordance with the Walkways Agreement provided that the Walkways may be closed or restricted for any one or more of the following reasons:
 - (i) security reasons where such reasons have (save in the case of emergency) been notified to the Council and are only of such duration as is necessary to address (if possible) the security issues; or
 - (ii) reasonable maintenance and repair for limited durations; or
 - (iii) one day a year to prevent the creation of public rights of way across the Property; or
 - (iv) to comply with any pre-existing covenants or regulations contained in any lease of any commercial or residential unit within the Property; or
 - (v) the requirements of good estate management, redevelopment or operational and regulatory requirements
4. Not to permit any part of the Walkways to be open for public use unless a Walkways Agreement has been entered into in relation to that part and not to Occupy or cause or permit the Occupation of any building in the Proposed Development until the Walkways have been completed in accordance with the approved Walkways Scheme PROVIDED THAT the approved Walkways Scheme shall not be amended without the further written approval of the Council

SCHEDULE 4
(Council's covenants)

1. To use the Local Employment Scheme Contribution received from the Developer under the terms of this Agreement to help sustain the delivery of the Local Employment Scheme and provide specialist and/or bespoke support that local residents may need or would benefit from whether

unemployed, under-employed or with low or no skills and where other sources of funding cannot be identified or secured. The support may include elements such as:

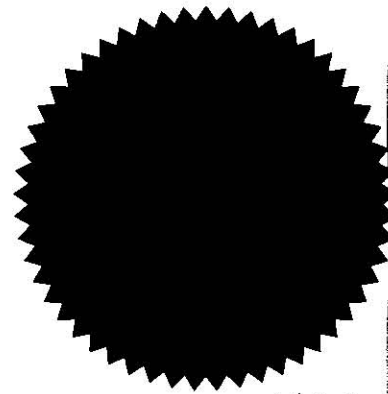
- Construction Skills Certification Scheme cards
 - Health & Safety and First Aid training
 - Equipment and/ or tools for trainees
 - Modules of training that are not delivered locally or are not available locally within a required timeframe; or where courses delivered by the local college incur fees that cannot be funded by any other means
 - Transport costs to and from training and work experience where applicable
2. To use the Sustainable Transport Contribution received from the Developer under the terms of this Agreement for the purpose of improving the sustainable transport infrastructure in the vicinity of the Proposed Development and in particular on public transport infrastructure (accessible bus stop kerbs and Real Time Information signs and footway improvements) in the local area. These improvements will be focussed on the following:
- Bus stop opposite New Steine – Real Time Passenger Information sign and accessible kerb
 - Bus stop adjacent New Steine – Real Time Passenger Information sign and accessible kerb
 - Bus stop Sealife Centre (Stop L) – Real Time Passenger Information sign

IN WITNESS whereof as a Deed the Council the Developer the Mortgagee and the Owner have executed or caused their respective Common Seals to be hereto affixed the day and year first before written

Executed as a deed by affixing
the **COMMON SEAL** of
BRIGHTON & HOVE CITY COUNCIL
In its capacity as local planning authority
in the presence of:-




Authorised Officer

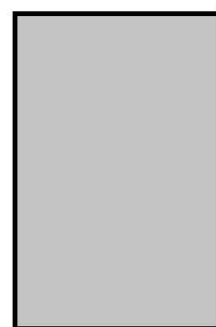



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Executed as a deed by)
BRIGHTON SEAFRONT REGENERATION LIMITED)
acting by two Directors or by one Director)
and a Secretary)


Director 

Director/Secretary 

 
for and on behalf of
JTC Directors Limited
Director

Executed as a deed by)
PRECINCT INVESTMENT COMPANY LIMITED)
acting by two Directors or by one Director)
and a Secretary)

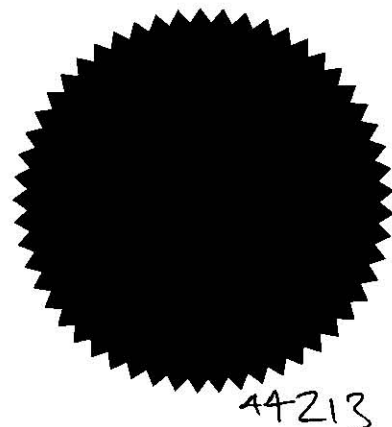
Director

 for and on behalf of
JTC (Jersey) Limited
as Secretary

Director/Secretary

Executed as a deed by affixing)
the **COMMON SEAL** of)
BRIGHTON & HOVE CITY COUNCIL)
In its capacity as freehold owner)
in the presence of:-)

Authorised Officer 



**ANNEX 1
(WALKWAYS AGREEMENT)**

DATED

2016

BRIGHTON SEAFRONT REGENERATION LTD

and

PRECINCT INVESTMENT COMPANY LIMITED

and

BRIGHTON & HOVE CITY COUNCIL

WALKWAYS AGREEMENT

**relating to land at
Units 2-8 The Terraces Madeira Drive
Brighton**

**Brighton & Hove City Council
King's House
Grand Avenue
HOVE
BN3 2SR**

Between

- (1) **BRIGHTON SEAFRONT REGENERATION LTD** (Company registration number 05901058) whose registered office is situated at 148-150 St John Street, London, EC1V 4UD (hereinafter called "the Owner") of the first part
- (2) **PRECINCT INVESTMENT COMPANY LIMITED** (incorporated in Jersey) of Elizabeth House, 9 Castle Street, St Helier, Jersey JE2 3RT (hereinafter called "the Mortgagee") of the second part
- (3) **BRIGHTON & HOVE CITY COUNCIL** of King's House, Grand Avenue, Hove, N3 2SR (referred to in this Agreement as "the Council") of the third part
jointly referred to in this Agreement as "the Parties"

Recitals

- (1) The Owner is the registered proprietor of the leasehold interest of the land at Units 2-8 The Terraces, Madeira Drive Brighton (referred to in this Agreement as "the Property") as shown for the purposes of identification only edged red on the plan reference annexed hereto ("the Walkway Plan") which is registered at HM Land Registry under title number ESX230992
- (2) The Owner has developed the Property under a planning permission granted on and allocated reference BH2015/02443 including such amendments thereto as may be approved by the Council on a subsequent application (referred to in this Agreement as "the Development")
- (3) This Agreement is supplemental to an agreement dated made between the Owner and the Council pursuant to Section 106 of the Town and Country Planning Act 1990 whereby the Owner agreed for itself and the persons deriving title under or through it to dedicate the land forming part of the Development shown hatched/coloured pink on the Walkway Plan as a walkway (referred to in this Agreement as "the Walkway") over and along which the public shall have the right to pass and repass.
- (4) That the Walkway shown coloured pink is for the use of pedestrians only and will be provided in accordance with Clause 2
- (5) The Council is the highway authority for the area within which the Property is situated for the purposes of Section 35 of the Highways Act 1980 (hereinafter referred to in this Agreement as "the Act")

- (6) The Parties consider that the Walkways should be dedicated as a walkway pursuant to Section 35 of the Act upon their practical completion and that provision should be made for maintenance of the Walkway by the Owner and the controlled use of the Walkway by members of the public on foot only and have entered into this Agreement for such purpose

NOW THIS DEED WITNESSETH as follows:-

1. Statutory Provisions

This Agreement is made pursuant to Section 35 of the Act and of all other enabling powers

IT IS HEREBY AGREED AND DECLARED that:-

2. Dedication

The Owner dedicates the Walkway as a footpath over and along which the public shall have the right to pass and repass on foot only subject to:-

(a) The Walkways Regulations 1973 (S/ 1973/686)

(b) Section 35 of the Highways Act 1980

(c) The provisions of this deed

3. Owner's Covenants

3.1 The Owner hereby covenants with the Council so as to bind the Property that from the date of completion of this Agreement the Owner shall :

3.1.1 subject to clauses 4 and 5 ensure that the Walkway is kept open at all times 364 days a year for use by pedestrians only;

3.1.2 subject to clause 4 keep the Walkway clear and unobstructed when the Walkway is open to the public

3.1.3 maintain and keep in safe condition the Walkway (including though not limited to any structure which gives support to the Walkway so as to protect and preserve such support for the Walkway insofar as it lies within the control of the Owner to do so) and all buildings or structures above below and adjoining the Walkway which form part of the Development

3.1.4 cleanse the Walkway and use its reasonable endeavours to keep the Walkway in a clean and tidy condition

3.1.5 maintain and pay for a supply of electricity and water for the purposes of lighting and cleansing the Walkway

3.1.6 keep the Walkway illuminated so far as is reasonably necessary during the hours when the Walkway is open to the public

4. Closure of the Walkway

The Owner shall be entitled:

4.1. to temporarily close part or the whole of the Walkway:-

4.1.1 where it is reasonably necessary for the purpose of cleaning maintaining repairing or renewing the Walkway (or any part thereof) or cleaning maintaining repairing decorating recladding or refurbishing any of the Owner's buildings or land which adjoin the Walkway for such period or periods as may reasonably be required to carry out and complete such works; and/or

4.1.2 when and for as long as congestion of the Walkway is likely to occur; and/or

4.1.3 where it is necessary to comply with any pre-existing covenants or regulations contained in any lease of any commercial or residential unit within the Property or the Landlord's Adjoining Land, the needs of good estate management, redevelopment or operational and regulatory requirements

4.2 to erect scaffolding on the Walkway if it is necessary in order to clean maintain or repair the Walkway (or any part thereof) or clean maintain repair decorate reclad or refurbish any of the Owner's buildings or land which adjoin the Walkway for such period or periods as may be required to carry out and complete such works;

4.3 to place structures soft landscaping gates seats tables and chairs in the Walkway;

4.4 to exhibit upon or abutting the Walkway such lighting notices signs and advertising material as the Owner may wish;

4.5 to construct erect and retain in the Walkway any statue sculpture or other work of art as the Owner may wish;

4.6 to eject from or refuse access to the Walkway to any person or persons who in the Owner's reasonable opinion is or are conducting themselves in any excessively noisy or disorderly manner or indecently behaving or causing any nuisance or annoyance;

4.7 subject to obtaining all requisite statutory consents to erect structures overhanging or under the Walkway or any part or parts thereof including though without limitation on any of the buildings or parts thereof forming part of the Development;

5. Emergency Closure

In the event of an emergency security risk or alert in the vicinity of the Property or the Landlord's Adjoining Land or for reasons of health and safety the Owner may close the Walkway for a period of up to 7 days having given notice to the Council within 24 hours of the start of such closure

6. Sub-soil

Nothing herein contained shall be construed as affecting or interfering with the ownership of the soil of the Property (except so much of the sub-soil of the Property as is required to support the Walkway) which shall still form part of the Property subject to the statutory powers of the Council as highway authority

7. Disposal of Interest

Save in respect of liability for any prior breach of this Agreement the Owner shall upon parting with its interest in part or all of the Property be released from all obligations rights and duties under the terms of this Agreement in so far as they are referable to the ownership of or relate to such part of the Property

8. Breach

8.1 Subject to clause 7 of this Agreement where the Owner has or is in breach of any covenants contained in this Agreement the Council may by its servants contractors or agents enter upon the Walkway to undertake itself any necessary and reasonable works for remedying such breach or breaches and the reasonable and proper cost of such works shall be paid by the Owner to the Council within 28 days of the submission of the Council's account for such works provided that:

8.1.1 the Council shall have served written notice on the Owner notifying the Owner of the full nature and extent of the work that the Council proposes to carry out in accordance with the terms of this Agreement at least 28 days before starting such works (referred to in this Agreement as "the Notice Period"); and

8.1.2 where before the expiry of the Notice Period the Owner serves written notice upon the Council that the Owner intends to execute or procure the execution of the works specified in the Council's notice the Council shall not be entitled to execute the relevant part or parts of the works specified in the Owner's notice unless the Owner thereafter fails to execute those works in which case the Owner shall pay to the Council in addition to the cost of the works carried out by the Council any reasonable and proper costs incurred by the Council in serving the Council's notice

Provided that any persons so entering on behalf of the Council shall do so causing as little disturbance as possible and shall make good all damage caused to the Property and the chattels equipment fixtures fittings in or on the Property belonging to the Owner (or any lawful occupier) or for which the Owner (or any lawful occupier) is responsible.

9. Approval

Where under the terms of this Agreement the approval, agreement, consent or certificate of the Council regarding any matter is required such approval, agreement, consent or certificate shall be in writing under the hand of the Director of Environment or other proper officer for the time being of the Council and shall not be unreasonably withheld or delayed

10 Arbitration

Any dispute, controversy or claim arising out of or relating to this deed, including any question regarding its breach, existence, validity or termination or the legal relationships established by this deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- 10.1 the tribunal shall consist of one arbitrator appointed jointly by the parties; in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;
- 10.2 the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and
- 10.3 the seat of the arbitration shall be London.

11. Mortgagees Consent

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

12. Local Land Charge

This deed is a local land charge and shall be registered as such by the Council.

13. Termination

- 13.1 The Owner's obligations in this Agreement in respect of the whole or any part of the Walkway shall automatically determine upon notice from the with a subsequent planning permission or permissions granted after the date of this Agreement or that the Walkway has been destroyed or damaged
- 13.2 If this deed is determined pursuant to clause 13 .1 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

14. Regulations

The Owner shall be entitled to make such reasonable regulations as it may publish from time to time and affix the same to some part of the Walkway and notwithstanding the generality of the foregoing such regulations may prohibit the playing of any games, skateboarding and require any member of the public with a dog that has fouled the Walkway to remove such dog immediately and if necessary prohibit such dog from using the Walkway with its owner at any time in the future.

15. Governing Law

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

IN WITNESS whereof as a Deed the Owner the Mortgagee and the Council have executed or caused their respective Common Seals to be hereto affixed the day and year first before written

Executed as a deed by)
BRIGHTON SEAFRONT REGENERATION LIMITED)
acting by two Directors or by one Director)
and a Secretary)

Director

Director/Secretary

Executed as a deed by)
PRECINCT INVESTMENT COMPANY LIMITED)
in the presence of:-)

Witness

Witness name:

Witness address:

Executed as a deed by affixing)
the **COMMON SEAL** of)
BRIGHTON & HOVE CITY COUNCIL)
in the presence of:-)

Authorised Officer