BRIGHTON & HOVE CITY COUNCIL
as Local Planning Authority and Owner

KARIS (KING ALFRED
DEVELOPMENTS) LIMITED
as Developer

AGREEMENT
under (inter alia) section 106 of the Town and
Country Planning Act 1990 relating to King Alfred Centre
DATED

PARTIES

(1) BRIGHTON & HOVE CITY COUNCIL of King’s House Grand Avenue Hove East Sussex BN3 2SR in its capacity as local planning authority (the “Council”)

(2) KARIS (KING ALFRED DEVELOPMENTS) LIMITED (company no 4907559) whose registered office is at 29 Gildredge Road Eastbourne East Sussex BN21 4RU (the “Developer”)

(3) BRIGHTON & HOVE CITY COUNCIL of King’s House aforesaid in its capacity as freehold owner of the Property (as hereinafter defined) (“the Owner”)

BACKGROUND

(A) The Owner is the freeholder of the Property which (save for the public highway known as Hove Street South and St Aubyns South) is registered at HM Land Registry under title numbers ESX 213260 ESX 227745 and SX 113690.

(B) The Owner entered into an agreement with (1) the Developer (2) ING Real Estate (B). B.V and (3) Karis Developments Limited dated 12 November 2004 to enable the Developer to redevelop the Property and at clause 20 thereof agreed at the request of the Developer to enter into this Agreement subject to certain conditions which the Developer and the Owner acknowledge are satisfied by the terms set out herein.

(C) By the Application (as hereinafter defined) the Developer applied for planning permission to develop the Property by the Proposed Development (as hereinafter defined).

(D) For the area within which the Property is situated Brighton & Hove City 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”) section 2 of the Local Government Act 2000 (“the 2000 Act”) and the Highways Act 1980 (the “1980 Act”) respectively a local planning authority local authorities and the highway authority.

(E) 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 2 of the 2000 Act and the 1980 Act and all other powers them enabling for the purposes of requiring certain monies to be paid restricting the use of the Property requiring certain operations to be carried out at the Property and requiring the Property to be used in the way specified.

(F) In the interests of the good planning of the area and to secure an acceptable form of development the purpose of this Agreement is to secure the following (as hereinafter defined or referred to):

(i) Education Payment;

(ii) CCTV System;

(iii) Radio/TV reception management;

(iv) Doctor’s Surgery;
(v) Police Office;
(vi) public toilets and recycling facilities;
(vii) Public Art;
(viii) Play Area Improvement Payment;
(ix) Sea-front Improvement Payment;
(x) Play Area Maintenance Payment;
(xi) Concessionary access to sports centre;
(xii) Transport Measures Payment and highway improvements (including signage);
(xiii) Affordable Housing;
(xiv) Section 106 Monitoring and employee contribution;
(xv) Travel Plan;
(xvi) Car Club;
(xvii) Disabled car parking payment and relocation;
(xviii) Car-free housing;
(xix) TRO payment;
(xx) Charging scheme for public car park;
(xxi) Construction workers’ travel scheme;
(xxii) Construction environmental management plan;
(xxiii) Cleaning and maintenance strategy; and

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires:

"Additional Primary School Places" means any additional primary school places provided at primary schools within the administrative area of the Council after the date that the Education Payment has been fully paid to the Council.

"Affordable Housing" means residential accommodation provided by an approved Registered Social Landlord with subsidy to ensure rents/prices are genuinely affordable to Local People whose income means they are unable to meet their housing needs through the housing market. Those people eligible for Affordable Housing will include tenants in Council or housing association

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accommodation in the City and those on the City Council’s Housing Register for such accommodation.

“Affordable Housing Unit” means any dwelling to be provided within the Proposed Development as Affordable Housing.

“Air Quality Action Plan Contribution” means the sum of £20,000 which shall be adjusted in line with the annual movement in the Retail Prices Index from the date 12 months after the date of this Agreement until the date of payment thereof.

“Application” means the application for planning permission received by the Council on 13 October 2006 and allocated reference number BH2006/03429 for mixed use development comprising new public sports centre 751 residential units, commercial uses within classes A1 (retail) A3 (restaurants and cafes) and A4 (drinking establishments) basement car parking doctor’s surgery, police office and public toilets.

“Car Club” means a “pay as you drive” car club offering members access to a vehicle without ownership.

“Car Club Operator” means the person appointed by the Developer to administer and manage the Car Club.

“CCTV System” means a closed circuit television system covering the public realm elements and all entrances to buildings within the Proposed Development.

“Commencement of Development” and “Commence Development” shall refer to the Proposed Development and shall mean the carrying out of a Material Operation as defined in section 56(4) of the 1990 Act provided that (save for clauses 4 (a) and 18.1 (a) and (b) where this proviso shall not apply) works of ground investigation or site survey work construction of boundary fencing or hoardings archaeological investigation works and works exclusively of decontamination demolition remediation or works by or associated with utilities shall not be taken to be a material operation.

“Commencement of Development Notice” means a written notice served by the Developer on the Council giving the Council at least 14 days prior notice of Commencement of Development.

“Completion” means the completion of works to such a stage that a certificate of practical completion could be issued but the for the avoidance of doubt this shall not apply to any certificate issued in respect of the Highway Improvements.

“Director of Environment” or “Director” means the Director of Environment for the time being of the Council and shall include her duly authorised agents representatives and any successor.

“Disabled Parking Payment” means the sum of £5000 which shall be adjusted in line with the annual movement in the Retail Price Index from the date 12 months after the month of this Agreement until the date of payment thereof.

“Doctor’s Surgery” means the unit of up to 257 square metres in the location shown on drawing number GP-11202-X1-0090-FP-A annexed hereto.

“Education Payment” means the sum of £400,000 which shall be adjusted in line with the annual movement in the Retail Price Index from the date 12 months after the month of this Agreement until the date of payment thereof.
"First Interference Survey" means a survey compiled by a suitably qualified electronics / radio engineer of baseline terrestrial television and radio reception to properties within the area shown on the plan contained in the Technical Annexe 4 page 18 Figure 1 of the Environmental Impact Assessment submitted as part of the Application unless otherwise agreed in writing by the Director.

"Health Body" means any national health service body as the same is defined in section 4 of the National Health Service and Community Care Act 1990 (as amended by the Health Act 1999).

"Highway Improvements" means the following highway improvement measures to be carried out by the Developer as shown on the drawings forming part of the Application:-

(a) Footpath to the rear edge of the kerb forming the bus lane and bus pick up/drop off facilities on south side of Kingsway outside of the development;

(b) Covered bus waiting facility (including CCTV real time information maps and timetables for buses and rail services and ticket machine);

(c) Realignment of the kerb and footpath at the junction of Hove Street South and the Kingsway to accommodate HGV turning movements together with junction reconfigurations including radii increase;

(d) VMS system compatible with existing BHCC VMS system and minimum of 3 signs on the approaches to the car park;

"Highway Improvements Agreement" means an agreement between the Developer and the Council pursuant to the 1980 Act to regulate the construction and (where appropriate) adoption as public highway of the Highway Improvements.

"Housing Corporation" means the Housing Corporation of Maple House, 149 Tottenham Court Road London W1T 7BN being the regulatory body that funds and regulates RSL.

"Interest" means the base lending rate of the Co-Operative Bank P.L.C.

"Karis Agreement" means the agreement between the Council the Developer and Transport and General Workers' Union dated 14 July 2004.

"Local People" means households that live or work within the administrative boundary of Brighton & Hove City Council.

"Occupy" or "Occupation" means occupation of either the residential elements and/or the commercial elements of the Proposed Development other than occupation for the purposes of fitting out merchandising or site security and "Occupied" shall be construed accordingly.

"Owner's Offsite Public Realm Highways Commitment" means a unified series of offsite public realm works in the vicinity of the Property to bond and unify the Proposed Development and the surrounding area upgrade the quality and safety of the public realm and improve pedestrian connections in accordance with the King Alfred Public Realm Strategy submitted as part of the Application including the following:
(i) Bus gate facility at eastern approach to the Hove Street/Hove Street South Junction;

(ii) Advanced Stop lines at Hove Street/Kingsway/Hove Street South Junction;

(iii) Resurfacing and traffic calming of Hove Street South;

(iv) Pedestrian crossing upgrade on Kingsway between Vallance Gardens and St Aubyns;

(v) Turning head for refuse vehicles in Hove Street South;

(vi) Bus pull in lane;

(vii) Taxi rank;

(viii) Coach / taxi drop off point;

(ix) Coach / bus stand; and

(x) The provision of a bus shelter and a taxi shelter on the north side of Kingsway.

“Phase” and “Phases” means the Phase(s) of the Proposed Development to be built in accordance with the Phasing Plan and “Phased” shall be construed accordingly.

“Phasing Plan” means a phasing plan to be agreed with the Council under the Planning Permission.

“Plan No. 1” means the plan so marked annexed hereto.

“Planning Permission” means a planning permission granted by the Council or the Secretary of State pursuant to the Application.

“Play Area Improvement Payment” means the sum of £110,000 which sum shall be adjusted in line with the annual movement in the Retail Price Index from the date 12 months after the month of this Agreement until the date of payment thereof.

“Play Area Maintenance Payment” means the sum of £15,000 to be paid annually which sum shall be adjusted in line with the annual movement in the Retail Price Index from the date 12 months after the month of this Agreement until the date of payment thereof.

“Police” means Sussex Police Force.

“Police Office” means the unit equivalent to 48 square metres of floorspace in the location shown on drawing number GP-11202-X1-0090-FP-A annexed hereto.

“Preferred RSL” means any of the following Registered Social Landlords: The Guinness Partnership Downland/Affinity Sutton Hyde Housing Group Southern Housing Group Moat Housing Group Horizon Housing Group Places for People.
"Private Dwelling" means a dwelling within the Proposed Development which is not an Affordable Housing Unit.

"Property" means the land known as King Alfred Centre Kingsway Hove East Sussex shown edged red on Plan No. 1.

"Proposed Development" means such development as may be granted planning permission pursuant to the Application.

"Public Art" means the expression of artistic influence in accordance with Schedule 3 to enhance the public realm and environment of the Property the total of cost of which shall not be less than £1,000,000.

"Public Toilets" means the unit of 38 square metres in the location shown on drawing number GP-11202-X2-0090-FP-A annexed hereto.

"Recycling Facilities" means the recycling units shown on drawing number GP-11201-P1-0049-FP-A.

"Registered Social Landlord" and "RSL" means a social landlord registered with the Housing Corporation as defined in the Housing Act 1996 that has been approved by the Council as a Preferred RSL and who has entered into one or more nomination agreements with the Council.

"Rented Housing" means an Affordable Housing Unit let at a Housing Corporation target rent exclusive of any service charge or estate charge.

"Residential Accommodation" means the 751 residential units to be constructed on the Property pursuant to the Application.

"Restricted Equity Shared Ownership" means that form of ownership whereby an RSL grants a share in a lease of a property whereby the lease contains restricted equity provisions providing that the RSL shall retain equity in the shared ownership units throughout the terms of the shared ownership leases in the following proportions:-

a) At the date of grant of the shared ownership unit lease and for the first ten years of its term 25% retained equity by the RSL

b) From the tenth anniversary of the commencement date of the term of the shared ownership unit lease until the twentieth anniversary of the commencement date of the term of the shared ownership unit lease 10% retained equity by the RSL.

c) From the twentieth anniversary of the commencement date of the term of the shared ownership unit lease until the end of the term 1% retained equity by the RSL.

"Retail Price Index" means the Index of Retail Prices (All Items) produced by the Office of National Statistics.

"Scheme Development Specification" means in respect of each Affordable Housing Unit that construction standards are to accord with the then current Housing Corporation Scheme Development Standards (currently 5th Edition (2003)) Eco Homes Very Good or better rating Lifetime Homes Standards and Building Regulations.
“Sea-front Improvement Payment” means the sum of £40,000 which sum shall be adjusted in line with the annual movement in the Retail Price Index from the date 12 months after the month of this Agreement until the date of payment thereof.

“Second Interference Survey” means the survey carried out on the same assessment basis as the First Interference Survey to assess terrestrial television and radio reception to property within the administrative area of the Council.

“Section 106 Employee Contribution” means the sum of £20,000 which sum shall be adjusted in line with the annual movement in the Retail Prices Index from the date 12 months after the month of this Agreement until the date of payment thereof.

“Shared Ownership” means that form of ownership whereby an RSL grants a share in a lease of a property for a premium less than its initial market value and whereby the remaining unpurchased share is rented from the RSL with an option to increase the part purchase share staircasing ultimately to outright ownership and these units will be sold using the Standard Housing Corporation New Build Homebuy Flat Lease unless otherwise agreed by the Director.

“Transport Measures” means the provision of sustainable traffic measures in the vicinity of the Property consisting of either the provision of a rapid transit system or (in the event that the aforementioned rapid transit system shall fail to come forward) the extension of existing bus services and associated works or (in the event that neither the rapid transit system is provided or the existing bus services extended) the provision of new public transport services and associated works and for the avoidance of doubt physical highways infrastructure and associated works shall not constitute such measures.

“Transport Measures Payment” means the sum of £1,000,000 which sum shall be adjusted in line with the annual movement in the Retail Price Index from the date 12 months after the month of this Agreement until the date of payment thereof.

“Travel Plan” means in relation to the Proposed Development a survey of staff sports centre users and residents travel patterns and commitments to procuring measures to reduce reliance on the private car to include as a minimum the measures at Schedule 2

“Travel Plan Coordinator” means an employee of the Developer whose role is to co-ordinate implement and monitor the approved Travel Plan at the Property;

“TRO Contribution” means the sum of £5000 which sum shall be adjusted in line with the annual movement in the Retail Price Index from the date 12 months after the month of this Agreement until the date of payment thereof.


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.

1.4 A reference to any statute or statutory section shall be taken to include a reference to any statutory amendment modification or re-enactment of it for the time being in force and shall include all instruments orders notices regulations directions bylaws permissions and plans for the time being made issued or given thereunder deriving validity therefrom.

1.5 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.

1.6 The expression the "Council" shall include any statutory successor authority of it and the expressions the "Owner" and the "Developer" shall include all persons deriving title to the Property under them and shall include (if appropriate) two or more owners of the legal estate.

1.7 For the avoidance of doubt nothing contained in this Agreement shall by implication or otherwise require Brighton & Hove City Council to implement the Proposed Development.

2 PRELIMINARY

2.1 Enforceability

The various covenants restrictions requirements stipulations and other obligations on the parts of the Developer and the Owner contained in this Agreement are entered into under the provisions and powers referred to in recital (E) 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 the Owner and any person deriving title therefrom PROVIDED THAT no person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Property or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

2.2 Persons not bound by this Agreement

Subject to Clause 2.1 this Agreement and each and every term obligation and covenant contained herein binds the Developer and the Owner and/or their successors in title to their interest in the Property and any other person or persons claiming an interest through or under the Developer and the Owner provided that this Agreement does not bind:

(a) any person with a short term lease of less than seven years in any part of the Property as at the date of this Agreement;

(b) the owners or occupiers of any Private Dwellings constructed on the Property or their mortgagees;

(c) any Statutory Undertakers or local authorities or any management companies having an interest in the Property for the purposes of providing services to or for the Proposed Development;

(d) any mortgagee of a Registered Social Landlord to whom one or more Affordable Housing Units shall be charged exercising the statutory power of
sale or appointment of a receiver under the provisions of the Law of Property Act 1925 in the following circumstances:-

(i) the mortgagee shall have given to the Council notice of its intention to dispose of the Affordable Housing Unit.

(ii) the mortgagee shall have used its reasonable endeavours to dispose of the Affordable Housing Unit at open market value without reference to this Agreement to a Registered Social Landlord

(iii) the mortgagee shall have failed to exchange contracts with Registered Social Landlord for the disposal of the Affordable Housing Unit within a period of 12 weeks from the date of service of notice upon the Council pursuant to sub-clause (i).

if any mortgagee has followed the above procedure and no sale has been achieved not only shall this Agreement not affect the mortgagee but it shall cease to apply to the Affordable Housing Unit sold by the mortgagee to the intent that it shall not bind any successors in title

(e) in respect of any Affordable Housing Unit which may be sold to a tenant who acquires rights to staircase to full ownership from a shared ownership basis or a tenant exercising a right to buy or acquire an interest in the Affordable Housing Unit under the Housing Act 1985 or the Housing Act 1996 or any statutory modification or extension amendment or re-enactment thereof or any regulations or orders made thereunder AND FOR THE AVOIDANCE OF DOUBT the exclusion contained in this clause 2.2(e) shall apply to all successors in title of the aforementioned tenants

2.3 Expiry

If the Planning Permission shall expire or shall have been revoked before Commencement of Development this Agreement shall forthwith determine and cease to have effect.

2.4 Commencement

The parties’ obligations contained in this Agreement save for those contained in Clause 1 this Clause 2.4 and Clauses 2.10 3.1 3.3 4(a) 13.1 17.2 18.1 (a) – (d) (inclusive) 18.4 and 19.1 (which shall take effect on the execution hereof) shall have no effect until the conditions in Clause 2.4(a) and (b) (the “Conditions”) have been satisfied in accordance with their terms which Conditions are:-

(a) the valid grant of the Planning Permission in relation to which either:

(i) the opportunity for any person to challenge the Planning Permission by judicial proceedings has ended; or

(ii) if judicial proceedings are commenced the proceedings have been exhausted leaving the Planning Permission finally upheld as valid; and

(b) following satisfaction of the Condition in Clause 2.4(a) the Developer has served the Commencement of Development Notice but if the Developer undertakes a Material Operation (within the meaning of Section 56(4) of the 1990 Act) implementing the Planning Permission without serving the Commencement of Development Notice service of the Commencement of
Development Notice shall be deemed to have occurred on the date of the undertaking of the Material Operation.

2.5 **Registration**

2.5.1 This Agreement is a local land charge and on completion hereof shall be registered by the Council in the Council’s register of local land charges.

2.5.2 On compliance by the Developer and the Owner with all their obligations herein or if the said obligations have ceased to have effect the Developer and/or the Owner may request that the Council remove any references to this Agreement or its content from the register.

2.6 **Fettering of discretion**

Nothing in this Agreement shall fetter or restrict the discretion of the Council in the exercise of its powers under any statutory enactment or other enabling power for the time being in force.

2.7 **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.

2.8 **Requirements to be reasonable**

Subject to Clause 2.6:

(a) 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;

(b) where any requirements or decisions are to be made by the Director of Environment under the terms of this Agreement they shall be made or imposed upon reasonable grounds; and

(c) where any payment is required to be made by the Developer under the terms of this Agreement the Developer shall be entitled to require the Council first to produce to it a statement of account in that respect.

2.9 **Payment of sums due**

2.9.1 All sums payable under this Agreement shall (unless otherwise stated in this Agreement) become due 14 days after the date of the relevant notice and/or request (“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.

2.9.2 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 P.L.C. base rate in force from time to time from the Due Date to the date of payment thereof.

2.10 Agreement costs

The Developer shall pay the Council’s reasonable costs legal and other fees and any value added tax thereupon for the preparation and completion of this Agreement on the date of this Agreement.

2.11 Agreement and declaration

2.11.1 The provisions of this Agreement are not intended to 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 and Owner) pursuant to the Contracts (Rights of Third Parties) Act 1999.

2.11.2 Where the Council’s or the Director’s approval is given to any plan or document submitted for approval the approved plan or document shall thereafter be implemented in accordance with its terms by the Developer or Owner as the case may be unless otherwise agreed in writing by the Director.

2.12 Force majeure

If a party is prevented or delayed from performing any of its obligations in this Agreement either by an emergency or by a cause outside its direct control then that party shall:

(a) give notice of the circumstances of the prevention or delay to the other parties to this Agreement; and

(b) be relieved from the performance of the obligation for such period as is reasonable in the circumstances.

2.13 No restriction

This Agreement does not prohibit or restrict the development of any part of the Property in accordance with a planning permission (other than the Planning Permission) granted by the Council or by the Secretary of State on appeal or following a reference to or call-in by the Secretary of State after the date of this Agreement.

2.14 Dispute resolution

Any dispute or difference between any of the parties in connection with this Agreement shall be resolved by arbitration under the rules of the Chartered Institute of Arbitrators and otherwise upon the following terms:

(a) the arbitrator shall be the President of the Royal Town Planning Institute or a fellow of the Royal Institution of Chartered Surveyors at least ten years qualified and who is either agreed between the parties to the dispute or difference but in default of agreement appointed at the request of any of the parties by or on behalf of the President of the Royal Institution of Chartered Surveyors or his deputy;

(b) the award of the arbitrator shall be final on all matters referred to him; and
any costs payable by reason of the provisions of this Clause 2.14 shall be borne initially by each party at its own cost, except that the fees of the President of the Royal Institution of Chartered Surveyors shall be borne in equal proportions but thereafter all such costs and fees shall be adjusted to accord with the award of the arbitrator.

2.15 **Severance and performance**

2.15.1 Each provision in this Agreement is severable from the others so that if any provision is or becomes illegal invalid or unenforceable the legality validity and enforceability of other provisions is not affected.

2.15.2 The failure of any party hereto at any time to require performance by any other party or parties of any of the terms obligations and/or covenants of this Agreement shall in no way affect the right of such party or parties to require performance of those terms covenants and/or obligations.

2.16 **Entire agreement**

2.16.1 This Agreement (and any documents annexed to or incorporated in it) constitutes the entire agreement between the Council (for the avoidance of doubt being the local planning authority) and the Developer with respect to the grant of the Planning Permission and supersedes any previous agreement between the parties in relation thereto.

2.16.2 Each party to this Agreement acknowledges that this Agreement has not been entered into in reliance on any statement or representation made by or on behalf of any other party and nothing in this clause limits or excludes liability for fraud.

3 **THE OWNER’S COVENANTS**

3.1 The Owner covenants not to Commence Development or (save in the case where Brighton & Hove City Council is the Owner) procure the Commencement of Development without complying with the obligations on the Developer contained in this Agreement.

3.2 For the avoidance of doubt where covenants are expressed to be given by the Council in the following Clauses such covenants are given by the Council in its capacity as local planning authority only and not in its capacity as the Owner and where covenants are expressed to be given by the Owner in the following Clauses such covenants are given by the Owner in its capacity as the freehold owner of the Property only and not in its capacity as the Council.

3.3 The Owner covenants to the Developer that it shall:

3.3.1 duly observe and perform the obligations on the part of the Owner contained in this Agreement; and

3.3.2 indemnify the Developer against all actions costs claims and demands made against the Developer arising out of the breach or non-observance by the Owner of any provision of this Agreement
4 THE DEVELOPER’S COVENANTS

4.1 The Developer covenants to the Owner that it shall:

4.1.1 duly observe and perform the obligations on the part of the Developer contained in this Agreement; and

4.1.2 indemnify the Owner against all actions costs claims and demands made against the Owner arising out of the breach or non-observance by the Developer of any provision of this Agreement

5 IMPLEMENTATION NOTICE

The Developer covenants with the Council:

(a) to serve the Commencement of Development Notice on the Council at least 14 days prior to Commencement of Development;

(b) to give the Council at least 14 days’ prior written notice of commencement of construction of each Phase of the Residential Accommodation; and

(c) to give the Council at least 14 days prior written notice of the date on which each Phase of the Residential Accommodation will the first occupied.

6 EDUCATION PAYMENT

6.1 The Developer covenants with the Council to pay the Education Payment prior to first Occupation of the Residential Accommodation

6.2 The Council covenants with the Developer:

(a) to expend the Education Payment as a contribution towards the provision of Additional Primary School Places; and

(b) to expend the Education Payment within twelve years of payment and if at the end of twelve years all or any portion of the Education Payment has not been expended or committed then it shall return the same to the Developer with Interest.

7 CCTV SYSTEM

The Developer covenants with the Council to implement that part of the CCTV System to a specification approved by the Council that it is reasonable to implement given the phasing of the project within six months of first Occupation of the Residential Accommodation such system to be fully implemented prior to first Occupation of the final Phase of the Proposed Development.

8 RADIO/TV RECEPTION

The Developer covenants with the Council:

(a) that they shall submit to the Director for approval within 28 days of service of the Commencement of Development Notice the First Interference Survey and thereafter during the construction of the Proposed Development the
Developer shall submit annual reviews of the First Interference Survey to the Director for approval;

(b) within six months following Completion of Tower 1 as referred to in the Application or at any such other time as might reasonably be requested by the Developer and agreed by the Council to procure the carrying out of the Second Interference Survey by a suitably qualified electronics / radio engineer and procure that the results are submitted to the Director; and

(c) in the event that the Second Interference Survey or annual reviews reveal a significant deterioration in terrestrial television or radio reception to a particular residential property or properties within the area shown on Plan No. 2 of the Property (but within the administrative area of the Council) since the date of the First Interference Survey which in the reasonable opinion of the engineer instructed to carry out the Second Interference Survey or annual reviews is directly attributable to the Proposed Development but not otherwise to thereafter as soon as reasonably practicable and upon obtaining all necessary consents undertake or procure the undertaking of any mitigation measure identified by the engineer as reasonably necessary and appropriate at the identified residential property or properties to alleviate the deterioration in terrestrial television or radio (as the case may be) reception which mitigation measures shall (for the avoidance of doubt) be at the Developer’s expense.

9 DOCTOR’S SURGERY POLICE OFFICE AND PUBLIC TOILETS/RECYCLING FACILITIES

9.1 The Developer covenants with the Council:

(a) to construct the Doctor’s Surgery to shell and core standard prior to the first Occupation of the building within which it is located.;

9.2 The Developer covenants with the Council:

(a) to construct the Police Office to shell and core standard prior to the first Occupation of the building within which it is located.;

9.3 The Developer covenants with the Council:

(a) to construct the Public Toilets and Recycling Facilities to a standard agreed with the Owner prior to the Occupation of the building within which they are located

(b) thereafter to grant a long lease of the Public Toilets and Recycling Facilities to the Council on terms to be agreed between the parties hereto.

10 PUBLIC ART

10.1 The Developer covenants with the Council to prepare a schedule of proposals for the Public Art together with a timetable for the implementation of the same which proposals and timetable shall be submitted to the Council for approval

10.2 The proposals and timetable for the Public Art referred to in clause 10.1 shall (subject to the Developer obtaining all necessary consents) be implemented as agreed by the Council and shall in any event be fully implemented prior to the first occupation of the final phase of the Proposed Development
10.3 The Developer shall provide the Council with invoices on a two yearly basis to demonstrate expenditure on the Public Art

11 OUTDOOR RECREATION/OPEN SPACE

11.1 The Developer covenants with the Council:

(a) to pay the Play Area Improvement Payment to the Council within 28 days of first Occupation of the Residential Accommodation;

(b) to pay the Sea-front Improvement Payment to the Council within 28 days of first Occupation of the Residential Accommodation; and

(c) to pay the Play Area Maintenance Payment to the Council upon each anniversary of first Occupation of the Residential Accommodation.

11.2 The Council covenants with the Developer:

(a) to expend the Play Area Improvement Payment for the provision or enhancement of children’s play areas;

(b) to expend the Sea-front Improvement Payment on enhancements to the sea-front;

(c) to expend the Play Area Maintenance Payment on the maintenance of children’s play areas;

(d) if at the end of ten years from the date of payment all or any portion of the Play Area Improvement Payment has not been expended or committed then it shall return the same to the Developer with Interest;

(e) if at the end of ten years from date of payment all or any portion of the Sea-front Improvement Payment has not been expended or committed then it shall return the same to the Developer with Interest; and

(f) if at the end of ten years from the date of each payment of the Play Area Maintenance Payment all or any portion of that Play Area Maintenance Payment has not been expended or committed then it shall return the same to the Developer with Interest.

11.3 The Owner covenants with the Developer and the Council to allow residential occupiers of the Proposed Development aged less than 8 years old concessionary access to the soft play area in the sports centre within the Proposed Development.

12 TRANSPORT AND HIGHWAY IMPROVEMENTS (INCLUDING SIGNAGE)

12.1 The Owner covenants with the Developer and the Council to pay the Transport Measures Payment prior to Occupation of the sports centre within the Proposed Development.

12.2 The Council covenants with the Owner and the Developer:

(a) to expend the Transport Measures Payment on the provision of the Transport Measures and associated consultation; and
(b) not to expend any part of the Transport Measures Payment on the provision of any part of the Owner’s Offsite Public Realm Highways Commitment

12.3 The Developer covenants with the Council to enter into the Highways Improvements Agreement with the Council and to carry out the Highway Improvements in accordance with the terms thereof prior to first Occupation of the Proposed Development.

12.4 The Owner covenants with the Developer and the Council to

(a) submit a schedule of the Owner’s Offsite Public Realm Highways Commitment to the Council for approval within 3 years of first Occupation of the Sports Centre within the Proposed Development; and

(b) carry out the Owner’s Offsite Public Realm Highways Commitment within 5 years of first Occupation of the sports centre within the Proposed Development.

12.5 Prior to Occupation of the sports centre within the Proposed Development the Developer covenants with the Council to install within the immediate vicinity of the Proposed Development clear directional signage to assist pedestrians accessing and egressing the sports centre within the Proposed Development subject to the Developer first being able to obtain any consents that may be necessary to enable such signage to be installed.

12.6 Following Occupation of the Proposed Development the Council will review the cycle route along Hove Street South and the promenade and the Developer hereby covenants that it will pay the Council’s costs of widening the same should the Council consider such widening works necessary.

13 HOUSING

13.1 The Developer covenants with the Council:

(a) To provide at least 276 Affordable Housing Units as part of the Proposed Development in accordance with Schedule 1.

(b) The Affordable Housing Units shall not be used other than as Affordable Housing of which no less than 76 Affordable Housing Units shall be Rented Housing and the remainder of the Affordable Housing Units shall be divided equally between Shared Ownership and Restricted Equity Shared Ownership save that should the RSL be unable to obtain public subsidy for the Rented Housing and shall have demonstrated the same to the Council’s satisfaction the Rented Housing may thereafter be leased on a Shared Ownership basis.

(c) Not to permit the Occupation of any Private Dwelling in any Phase until such time as the Affordable Housing Units in that Phase have been built transferred to an RSL and are ready for Occupation.

(d) To procure that the leases of the Affordable Housing Units let as Shared Ownership and Restricted Equity Shared Ownership shall contain provisions requiring that upon a resale of an existing equity share and sale of the relevant Unit in such case where the tenant has staircased to full ownership if no nominee can be found in accordance with the standard provisions of the lease then the RSL shall have a right of pre-emption (subject to the RSL having funding available) and only following failure of both nominations and
pre-emption by the RSL will the tenant be permitted to sell on the open market.

(e) the Affordable Housing Units shall be constructed to Scheme Development Specification

(f) to ensure that at least 36 car parking spaces in the private residential carpark shall be made available to the RSL for the Affordable Housing Units.

(g) to ensure that at least 24 of the Private Dwellings and at least 28 of the Affordable Housing Units shall be built to a Wheelchair Accessible Standard agreed in writing by the Council.

(h) to let or sell the Affordable Housing Units in accordance with a Local Lettings Plan agreed with the Council

13.2 It is hereby agreed and declared that a mortgagee of a Restricted Equity Shared Ownership Unit shall be entitled to fully staircase in exercise of a right of sale provided that the mortgagee gives the RSL a right of pre-emption of the staircased unit before any sale on the open market

14 **SECTION 106 MONITORING**

14.1 The Developer covenants with the Council to pay the Section 106 Employee Contribution to the Council on completion of this Agreement

14.2 The Council covenants with the Developer to expend the Section 106 Employee Contribution as a contribution towards the employment of a Section 106 and Conditions Co-ordinator who should be employed by the Council as soon as practicable and in any event from the Commencement of Development and whose role will be to use their reasonable endeavours to ensure that this Deed and conditions associated with Planning Permission for the Proposed Development are monitored, co-ordinated and implemented during the period of construction of the Proposed Development

15 **TRAVEL PLAN**

15.1 The Developer covenants with the Council:

(a) That from first Occupation of the Residential Accommodation they shall distribute to all occupiers a Travel Pack which shall have been approved in writing by the Director which shall include measures and information to promote and enable increased use of walking cycling and public transport as alternatives to the car

(b) At least 6 months prior to the first Occupation of each individual building which comprises the Proposed Development the Developer shall draw up and submit for approval by the Council a detailed Travel Plan which should include (in relation to travel to and from the Property) as a minimum matters which meet the objectives of the items set out at Schedule 2

(c) That on receipt of written confirmation from the Council stating approval of each travel plan submitted under clause 15.1 (b) the Developer shall use all reasonable endeavours to implement the commitments set out in that travel plan insofar as they can be performed on the Property within such timescale as shall be agreed by the Council and within one month of said written
confirmation the Developer shall send to the Council a copy of the final form of the relevant Travel Plan for retention by the Council

15.2 The Council covenants with the Developer that it shall confirm its approval or otherwise in writing to the Developer within six weeks of receipt of each travel plan to be submitted under clause 15.1(b)

15.3 Prior to First Occupation of the Proposed Development to employ a Travel Plan Coordinator the job specification of whom shall have been approved in writing by the Council prior to appointment.

16 CAR CLUB

16.1 The Developer covenants with the Council:

(a) Not to Occupy or cause or permit the Occupation of any unit of the Residential Accommodation until it has entered into an agreement with a Car Club Operator for the establishment of a Car Club for occupants of the Residential Accommodation having submitted details of and obtained the prior written approval of the Director of Environment to the terms of such agreement which terms shall include provision for a total of 3 cars for the sole use of members of the Car Club to be stationed in the dedicated car parking spaces in St Aubyns South and that membership of the Car Club shall be free to residents of the Proposed Development and shall ensure Car Club membership shall be available to all residents

(b) That the car parking spaces referred to in clause 16.1 (a) shall be available for the use of the Car Club Operator and residents

(c) That it shall promote membership of the Car Club to prospective residents of the Residential Accommodation through marketing materials as part of the Travel Pack referred to in clause 15.1(a) above

17 DISABLED PARKING

17.1 The Developer covenants with the Council to pay the Disabled Parking Payment to the Council within 28 days of Commencement of Development

17.2 The Developer covenants to provide car parking spaces within the Proposed Development to wheelchair using residents on the same terms as to all other residents and shall provide additional car parking spaces at the Developer’s expense if required to do so by the Council

17.3 The Council covenants with the Developer:

(a) To expend the Disabled Parking Payment only on the cost of altering road-markings and signage to facilitate the relocation of the 13 existing disabled parking spaces on King’s Esplanade to another location on the public highway in the vicinity of the Property, which cost shall include all associated consultation and promotion of requisite traffic regulation orders; and

(b) If at the end of three years from the date of payment all or any portion of the Disabled Parking Payment has not been expended or committed then it shall return the same to the Developer with Interest.

17.4 The Developer covenants with the Council:-
(a) That in the event that any such traffic regulation orders cannot be obtained or implemented the Developer shall identify alternative disabled parking to the satisfaction of the Council and where land is within the Developer’s control the Developer shall implement such alternative disabled parking at its own cost such parking to be free of charge to users

18 CAR-FREE HOUSING AND PARKING

18.1 The Developer acknowledges that residential occupiers of the Residential Accommodation shall not be entitled to residents parking permits for parking bays on the public highway in the vicinity of the Proposed Development and the Developer covenants to make residents of the Proposed Development aware of this via the Travel Pack referred to in clause 15.1(a)

18.2 The Developer covenants with the Council to pay the TRO Contribution to the Council 3 months prior to Commencement of Development

18.3 The Council covenants with the Owner:

(a) To expend the TRO Contribution only on the cost of obtaining the traffic regulation orders necessary to re-designate car parking spaces for motorcycle parking coach waiting areas car club spaces service bays and taxi ranks including waiting/loading ban on Kingsway between St Aubyns South and Hove Street South and the exclusion of residents as referred to in Clause 18.1;

(b) If at the end of 5 years from the date of payment all or any portion of the TRO contribution has not been expended or committed then it shall return the same to the Developer with interest.

18.4 The Council agrees to implement and maintain a charging regime for the public car park within the Proposed Development with punitive charges for long stay car parking

19 CONSTRUCTION AND ENVIRONMENT

19.1 The Developer covenants with the Council:

(a) Not to Commence Development until it has submitted to the Council a construction worker’s travel scheme detailing how construction workers will travel to the Property and the same has been approved by the Director;

(b) Not to Commence Development until it has submitted to the Director of Environment for her approval a Construction Environmental Management Plan (CEMP) in accordance with proposals set out in the Environmental Statement in support of the Application and which shall include (but not by way of limitation) details of routing of construction vehicles so as to avoid the Air Quality Management Area set out in the Brighton & Hove City Council Air Quality Management Area Order 2004, hours and method of constriction, dust and noise monitoring and mitigation, drainage and run-off mitigation, oil spillage mitigation, materials to be transported by sea, road/footpath closures, impact on marine archaeology, COPA s.61 Agreement and such CEMP has been agreed in writing by the Director of Environment and the CEMP shall thereafter be implemented according to its terms;
(c) Prior to Commencement of Development to submit to the Council a cleaning and maintenance strategy (including bird control measures) to maintain the appearance of the Proposed Development and thereafter to implement the same as approved by the Council;

(d) Prior to Commencement of Development to submit to the Council a green procurement procedure to ensure that materials options for the Proposed Development are determined with regard to the Green Guide to Specification and to thereafter implement the same as approved by the Council; and

(e) To provide construction training opportunities for local people in accordance with the Karis Agreement

(f) To provide that at least 10% of the Proposed Development’s energy demand shall be generated on site from renewable sources

19.2 The Developer covenants to the Council to pay the Air Quality Action Plan Contribution prior to first Occupation of the Sports Centre forming part of the Proposed Development

19.3 The Council covenants to the Developer:

(a) To expend the Air Quality Action Plan Contribution only as a contribution towards the monitoring and/or implementation of works associated with the existing Air Quality Action Plan and/or the proposed Air Quality Action Plan for the Sackville Road/Hove Street area and/or area of elevated pollution along the Kingsway/Kings; and

(b) If at the end of ten years from the date of payment all or any portion of the Air Quality Action Plan Contribution has not been committed or expended then it shall return the same to the Developer with Interest.

19.4 Prior to Commencement of Development to submit to the Director for her approval a specification and implementation programme for improved lighting around the perimeter of the Proposed Development such lighting to be installed in accordance with the approved details

20 PROJECT ARCHITECTS

20.1 Unless the Council otherwise agrees in writing (such agreement not to be unreasonably withheld or delayed) and subject to compliance with all statutory provisions the Developer hereby agrees that it will use reasonable endeavours to retain Gehry Partners LLP and HOK as project architects PROVIDED THAT Gehry Partners LLP and HOK at all times:

(a) are in practice as architectural firms;

(b) behave reasonably;

(c) accept instructions within 28 days of receiving the same; and

(d) can agree a fee with the Developer in accordance with their scope of duties

Executed as a deed by the Developer and the Council (in its capacities as planning authority and freeholder) by their duly authorised representatives on the date of this Agreement.
### Schedule 1

**Affordable Housing Units**

<table>
<thead>
<tr>
<th>Building</th>
<th>1 Bed flats (51 sq metres)</th>
<th>2 bed flats (66 sq metres, wheelchair 71 sq metres)</th>
<th>3 bed flats (76 sq metres)</th>
<th>Total</th>
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<tbody>
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<td>Building 3</td>
<td>46</td>
<td>8</td>
<td>-</td>
<td>54</td>
</tr>
<tr>
<td>Building 4</td>
<td>74</td>
<td>6</td>
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<td>80</td>
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<td>Building 5</td>
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<tr>
<td>Building 6</td>
<td>42</td>
<td>24</td>
<td>-</td>
<td>66</td>
</tr>
</tbody>
</table>
Schedule 2

Travel Plan

1. Promote and enable increased use of walking, cycling and public transport as alternatives to the car

2. (In relation to the Residential Accommodation) 6 monthly public transport leaflet drops to all residents commencing from first Occupation and continuing for at least two years after final Occupation

3. Increase awareness of and improve road safety and personal safety

4. Dialogue and consultation with adjacent/neighbouring tenants/businesses

5. Identify targets focussed on reductions in the level of car use

6. Identify a monitoring framework, based on an annual survey, to enable the Travel Plan to be annually reviewed and updated as required by the Council as appropriate

7. Inclusion of annual monitoring of availability and use made of disabled spaces in both public and residential car parks


**Schedule 3**

**Public Art**

The artistic influence proposed will include the finishes, features and structures within the public piazzas including the treatment of paved surfaces, shaped canopies and feature planters providing visual interest and variation. The Public spaces will be shaped to provide areas for functional purposes including the performance space. The features will incorporate elements that:

- Guide the pedestrian walking and viewing routes through the eastern piazza
- Shape and encircle the smaller performance space in the western piazza, with for example walls incorporating seating shapes around the performance space
- Wide stairs and entrances to and from the promenade designed to provide informal seating and performance spaces
- The provision of 3 phase power within the piazzas and adjacent to the seafront to enable the facilitation of public events and performances.
- The provision of localised feature lighting to enhance the use and design of the spaces
- Provide for informal play for young children
EXECUTION PAGE

Executed as a deed by BRIGHTON & HOVE CITY COUNCIL
affixing the common seal of
in the presence of:

Authorised Officer

Executed as a deed by KARIS (KING ALFRED DEVELOPMENTS) LIMITED
acting by:

Director
Director/Secretary

Executed as a deed by affixing the common seal of BRIGHTON & HOVE CITY COUNCIL
as freehold owner in the presence of:

Authorised Officer