

DATED

20<sup>th</sup> October

2006

- (1) **THANET DISTRICT COUNCIL**
- (2) **S F P VENTURES (UK) LIMITED**

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## **DEVELOPMENT AGREEMENT**

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relating to the development and sale of property at Ramsgate  
Boulevard, Ramsgate, Kent

**EVERSHEDS LLP**

Senator House  
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London EC4V 4JL  
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THIS AGREEMENT is made on the 20<sup>th</sup> day of October 2006

**BETWEEN**

- (1) **THANET DISTRICT COUNCIL** of Cecil Street Margate Kent CT9 1XZ (“**the Council**”); and
- (2) **SFP VENTURES (UK) LIMITED** (registered number 05666803) whose registered office is at Lakeview House, 4 Lake Meadows Office Park, Woodbrook Crescent, Billericay, Essex, CN12 OEQ (“**the Developer**”);

**BACKGROUND**

- (A) The Council is the freehold owner of (inter alia) the Property.
- (B) The Developer has (subject as herein provided) agreed to carry out development works on the Property in accordance with this Agreement.
- (C) The Council has (subject as herein provided) agreed to grant site leases to the Developer of the Property and to transfer the freehold interest thereof to the Developer when development works have been carried out thereon in accordance with this Agreement.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

1.2 In this Agreement, the following words and expressions have the following meanings:

**“Agreement Date”** the date of this Agreement

**“Approved Funder”** a UK clearing bank or such other reputable bank or financial institution as shall first be approved in writing by the Council such approval not to be unreasonably withheld or delayed where the Council acting reasonably is satisfied that the bank or other financial Institution will comply with all current United Kingdom regulations and requirements relating to money laundering in relation to the

	provision of finance for the development or any payments to be made to the Council under this Agreement.
<b>“Approved Operator”</b>	has the meaning given to that expression in the Hotel Site Lease
<b>“Architect”</b>	such architect or firm of architects as the Developer may from time to time appoint in relation to the Development Works or any part of them;
<b>“the Basic Price”</b>	the sum of Five hundred and fifty thousand pounds (£550,000);
<b>“As-Built Drawings”</b>	a complete set of documentation to record the state and condition of any building or engineering works as at Practical Completion of the same including all relevant drawings, plans, specifications calculations, bill of quantities, and all Statutory Consents together with details of any relaxations or amendments or any clearance of conditions thereto;
<b>“Building Contract”</b>	the building contract or contracts for the carrying out of the Development Works or any relevant part of them or where the Developer performs the role of main contractor, this Agreement;
<b>“Building Contractor”</b>	such building contractor or building contractors as the Developer appoints for the purposes of the Development Works or any relevant part of them;
<b>“CDM Regulations”</b>	the Construction (Design and Management) Regulations 1994;
<b>“Cliff Wall”</b>	the cliff wall running along the north western boundary of the Property between points A and B on Site Plan 1;

<b>“Cliff Wall Schedule Condition”</b>	of the Principal Condition Report relating to the Cliff Wall prepared by Jacobs Babbie dated April 2005 (reference INSP/101726/1277)
<b>“Commercial Conditions”</b>	the Standard Commercial Property Conditions (First Edition);
<b>“Commercial Units”</b>	the Retail Units the Health Club and the Play Area
<b>“Commercial Unit Overage”</b>	a sum payable in respect of each Commercial Unit calculated as being 50% of all proceeds received or receivable (or deemed receivable in accordance with <b>paragraph 15</b> of <b>Schedule 5</b> as the case may be) on completion of the Permitted Disposal of the Commercial Unit in question (but less reasonable legal and agent’s fees incurred in relation to the Permitted Disposal up to an amount not exceeding 3% of the proceeds from such Permitted Disposal);
<b>“Completion Default”</b>	the failure of the Developer to pay the Basic Price under <b>clause 3</b> within 7 days of the due date for payment and/or to comply with <b>clauses 3.4, 3.5</b> and <b>3.6</b> of this Agreement;
<b>“Council’s Representative”</b>	such representative as the Council may appoint from time to time and notify in writing to the Developer;
<b>“Council’s Solicitors”</b>	Eversheds LLP of Senator House 85 Queen Victoria Street London EC4V 4JL (Reference: JSP);
<b>“Date of Actual Completion”</b>	the date on which completion of the Site Leases takes place;
<b>“Date of Practical Completion”</b>	the date on which all the Development Works have been certified as being Practically Complete in accordance with this Agreement;

<b>“Defects Liability Period”</b>	the defects liability period under the relevant Building Contract;
<b>“Deleterious Materials”</b>	any materials or substances that are not approved or recommended under British standards or codes of building practice at the time of their specification or use including, without limitation, the materials mentioned in <b>Schedule 12</b> ;
<b>“Deposit”</b>	the sum of fifty five thousand pounds (£55,000)
<b>“Developer’s Representative”</b>	such representative as the Developer may appoint and notify in writing to the Council;
<b>“Developer’s Solicitors”</b>	Prettys of Elm House 25 Elm Street Ipswich Suffolk IP1 2AD (Reference David Clark);
<b>“Development Specification”</b>	the drawings and specification (if any) for the Works contained in the agreed bundle signed on behalf of the parties on or prior to the date hereof and any further drawings or specifications approved by the Council under <b>Schedule 11</b> (subject to any variations permitted under <b>Schedule 11</b> );
<b>“Development Works”</b>	<p>the Works and:</p> <p>(a) any other works to be carried out by the Developer as provided for in this Agreement</p> <p>(b) any works to be carried out pursuant to any other deed or document entered into by the Developer with any other person directly or indirectly related to the Development Works;</p> <p>and includes (unless the context otherwise requires) any relevant part of such works;</p>
<b>“Dispose”</b>	has the meaning given in Schedule 5 and

<b>“Dispute Procedure”</b>	“disposition” shall be construed accordingly; the Dispute Procedure in <b>clause 13</b> ;
<b>“Event of Default”</b>	one or more of the following events occurs:  <ul style="list-style-type: none"> <li>(a) an Insolvency Default;</li> <li>(b) a Completion Default;</li> <li>(c) the Developer commits a material breach of this Agreement which cannot be remedied; or</li> <li>(d) the Developer commits a material breach of this Agreement which is capable of being remedied (not being a Completion Default) and: <ul style="list-style-type: none"> <li>(i) does not begin diligently to remedy that breach within ten Working Days, or immediately in case of emergency, of written notice from the Council; and</li> <li>(ii) does not remedy the breach within a reasonable period of time, to be specified in the notice, to the reasonable satisfaction of the Council;</li> </ul> </li> </ul>

**“Floor Area”**

“Gross Internal Area” as defined in the Code of Measuring Practice prepared by the Royal Institution of Chartered Surveyors (Fifth Edition dated 2002) or successor Code

**“Force Majeure”**

any one or more of the following:-

- (a) fire or flooding
- (b) lightning storm or other exceptionally

adverse weather conditions

- (c) war, hostilities, rebellion, insurrection, military or usurped power or civil war, revolution, invasion, act of foreign enemies;
- (d) labour lockouts, strikes or other industrial disputes;
- (e) civil unrest, riot, terrorist action (including an imminent threat), commotion, disorder;
- (f) decree of government;
- (g) non-availability of labour, materials or equipment;
- (h) articles falling from aircraft or impact of satellites or aircraft or parts thereof;
- (i) an extension permitted by the building contract unless due to the default of the Developer; or
- (j) any other matter which is beyond the Developer's reasonable control provided always that any failure on the part of the Developer to raise the requisite finance for the Development Works shall not be a circumstance beyond the control of the Developer for the purpose of this definition.

**“Freehold Transfers”**

the freehold transfers of the Property pursuant to **Schedule 4** of this Agreement and “Freehold Transfer” shall have a corresponding meaning

**“Freehold Transfers Completion Date”**

the date ten working days after the later of:



- (a) the Date of Practical Completion; and
- (b) the date on which the Council has received a Further Payment in accordance with this Agreement in respect of each Residential Unit and each Commercial Unit and all other monies due to the Council under this Agreement have been paid

<b>“Freehold Transfer Price”</b>	the sum of ten pounds (£10) for each Freehold Transfer;
<b>“Funder Deed of Covenant”</b>	a deed in the form set out in Appendix 10;
<b>“Further Payments”</b>	the further sums to be paid by the Developer pursuant to <b>Schedule 5</b> and “Further Payment” shall have a corresponding meaning;
<b>“Group Company”</b>	any holding company of the Developer or any subsidiary of the Developer or of any such holding company (“ <b>subsidiary</b> ” and “ <b>holding company</b> ” being as defined in the Companies Act 1985);
<b>“Health and Safety Executive”</b>	the Health and Safety Executive or any successor department or organisation having responsibility for the administration of the CDM Regulations;
<b>“Health and Safety File”</b>	the health and safety file to be maintained in respect of the Development Works and the completed Development or any relevant part of it under regulation 14(d) of the CDM Regulations;
<b>“Health and Safety Plan”</b>	any health and safety plan to be prepared in respect of the Development Works under regulation 15 of the CDM Regulations;
<b>“Health Club Works”</b>	that part of the Works comprising the construction of a health club as described in Part 5 of Schedule 2 and the expression “Health Club”

	means the health club to be constructed as part of the Health Club Works
<b>“Highways Agreement Completion Date”</b>	the date of actual completion of the Highways Agreement as defined in Schedule 6
<b>“Highway Works”</b>	the works described in <b>Part 8 of Schedule 2</b> ;
<b>“Highway Authority”</b>	Kent County Council or (if different) the highway authority for the area in which the Property is situated
<b>“Hotel Site”</b>	that part of the Property on which the Hotel is to be constructed and shown edged green on Site Plan 2
<b>“Hotel Site Lease”</b>	the Lease of the Hotel Site to be granted by the Council to the Developer pursuant to <b>Schedule 3</b>
<b>“Hotel Works”</b>	that part of the Works comprising the construction of an hotel as described in Part 2 of <b>Schedule 2</b> and the expression <b>“Hotel”</b> means the hotel to be constructed as part of the Hotel Works
<b>“Insolvency”</b>	has the meaning given to it in <b>Schedule 13</b> ;
<b>“Insolvency Default”</b>	the Insolvency of the Developer;
<b>“Insured Risks”</b>	the risks of: <ul style="list-style-type: none"> <li>(a) fire, subterranean fire, lightning, storm, tempest, flood and explosion;</li> <li>(b) bursting or overflowing of water tanks, apparatus or pipes or the escape of water from any of them;</li> <li>(c) aircraft or other aerial devices or articles dropped or falling from any of them;</li> </ul>

(d) riot, civil commotion and malicious damage;

(e) impact, earthquake, heave, landslip, subsidence; and

such other risks which the Council reasonably requires from time to time;

**“Local Planning Authority”**

Thanet District Council in its capacity as local planning authority for the Property or any such other authority which may from time to time replace Thanet District Council in its capacity as the local planning authority for the Property;

**“Main Professional Team”**

the Architect the Structural Engineer the M&E Engineer the Quantity Surveyor and the Planning Supervisor

**“Main Sub-Contractors”**

any sub-contractors appointed by the Building Contractor in relation to the Works as having responsibility for the design of any part of the Works and in addition any sub-contractors appointed in relation to the structural steelwork and piling;

**“Main Sub-Contract”**

a contract entered into with a Main Sub-Contractor;

**“M & E Engineers”**

such mechanical and electrical engineers or firm of mechanical and electrical engineers as the Developer may from time to time appoint in relation to the Development Works or any part of them;

**“Mixed Use Site”**

that part of the Property on which the Residential Works, the Retail Works, the Health Club Works and the Play Area Works are to be carried out and shown edged pink on Site Plan 2;

**“Mixed Use Site Lease”**

the lease of the Mixed Use Site to be granted by

	the Council to the Developer pursuant to <b>Schedule 3</b> ;
<b>“Option Agreement”</b>	an Option Agreement to be granted by the Developer in favour of the Council in the form of the draft annexed to this Agreement as Appendix 6;
<b>“Overage”</b>	Residential Unit Overage and/or Commercial Unit Overage as the case may be;
<b>“Performance Bond”</b>	a performance bond from National Westminster Bank plc for the Developer’s obligations hereunder in relation to the Development Works in the form annexed hereto at Appendix 7 for an amount of not less than £5,600,000;
<b>“Planning Permission”</b>	the planning permission for the Works dated 28th January 2004 issued by Thanet District Council under reference F/TH/03/1200 (incorporating the amendments to the approved plans set out in the letter dated 30 September 2005 from the Council’s Development Control Section (reference JE/F/TH/03/1200) to P. Rutter of PRC Architects and the further amendments to the approved plans set out in the letter dated 12th September 2006 from the Council’s Development Control Section (reference DB/F/TH/03/1200) to Mr S Wood of PRC Fewster).
<b>“Planning Supervisor”</b>	such planning supervisor as the Developer may from time to time appoint to be the Planning Supervisor for the purposes of the CDM Regulations in accordance with <b>Schedule 10</b> ;
<b>“Play Area Works”</b>	that part of the Works comprising the construction of a children’s play area in accordance with <b>Part 6 of Schedule 2</b> and “Play Area” means the play area to be constructed as part of the Play Area Works

**“Practical Completion” or  
“Practically Complete”**

in relation to the whole or any relevant section of the Development Works the date specified in a certificate to be issued in accordance with the relevant Building Contract certifying that the works in question are substantially complete; and “Certificate of Practical Completion” shall have a corresponding meaning

**“Professional Team”**

each and any such of the consultants engaged by the Developer for the purposes of this Agreement and the Development Works (or any relevant part of them);

**“Programme of Works”**

the programme of works relating to the Development Works as set out in **Schedule 8** subject to extensions of time permitted thereunder;

**“Proceeds”**

the total amount of the premium and all other proceeds received or receivable and the amount of any other valuable consideration received or receivable from a Disposal;

**“Property”**

the land briefly described in **Schedule 1** and shown edged red on Site Plan 1;

**“Reinstatement Cost”**

the costs, allowing for inflation during the period of reinstatement, of:

- (a) debris removal, demolition, site clearance and complete reinstatement of the Development Works, assuming their total destruction;
- (b) and all fees of the Professional Team and legal and other professional fees;

**“Residential Premises”**

the residential premises to be constructed over part of the Hotel Site as more particularly described in the Residential Site Lease;

<b>“Residential Site Lease”</b>	the lease of the Residential Premises to be granted by the Council to the Developer pursuant to <b>Schedule 3</b> ;
<b>“Residential Unit Overage”</b>	the sum of £15,585 for each Residential Unit
<b>“Residential Works”</b>	that part of the Works comprising the construction of residential units as described in part 3 of <b>Schedule 2</b> and the expression “Residential Units” means the residential units to be constructed as part of the Residential Works;
<b>“Retail Works”</b>	that part of the Works comprising the construction of retail/restaurant units as described in part 4 of <b>Schedule 2</b> and the expression “Retail Units” means the retail units to be constructed as part of the Retail Works;
<b>“Retained Land”</b>	the Council’s retained land as more particularly described in the forms of transfer annexed hereto (but excluding the Hotel Site and the Mixed Use Site).
<b>“Services Works”</b>	the installation, commissioning and connection to the mains of electricity, foul and surface water drainage, gas, water, cable television and public telephone services within the Property and includes the installation of all pipes, wires, ducts and other conduits for the passage of such services;
<b>“Site Leases”</b>	the Hotel Site Lease the Mixed Use Site Lease and the Residential Site Lease (but not the Stairway Lease);
<b>“Site Lease Completion Date”</b>	the date 10 working days after the Highways Agreement Completion Date;
<b>“Site Plans”</b>	the plans marked “Site Plan 1” and “Site Plan 2” contained in Appendix 1;

<b>“Stairway Land”</b>	the land shown edged yellow on Site Plan 2
<b>“Stairway Lease”</b>	the lease of the cliff stairway to be granted by the Council to the Developer in accordance with <b>clause 5</b> and <b>Schedule 7</b>
<b>“Stairway Lease Completion Date”</b>	the date of actual completion of the Freehold Transfers
<b>“Stairway Land Licence”</b>	the licence granted to the Developer to enter onto the Stairway Land by <b>clause 3</b> of this Agreement
<b>“Stairway Works”</b>	that part of the Works comprising the construction of a cliff stairway on the Stairway Land (being the works referred to in Condition 15(iii) of the Planning Permission) and the expression “Stairway” means the cliff stairway to be constructed as part of the Stairway Works
<b>“Start Date”</b>	the date on which the Development Works or the relevant part of them materially commence and for this purpose “materially commence” means substantial commencement of construction of buildings on the Property or the relevant part of it being agreed that site preparation works and commencement of laying/construction of roads or services does not constitute material commencement for the purpose of this definition;
<b>“Statutory Consents”</b>	any statutory approvals, consents, licences or permissions required from any local or other competent authority to enable the Developer lawfully to carry out and complete the Development Works or to reinstate them following their damage or destruction and includes the Planning Permission and the approval of reserved matters under it;
<b>“Statutory Requirements”</b>	all or any of the following:

- (a) any Acts of Parliament and any statutory instruments, rules, orders, regulations, notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from any Act of Parliament; and
- (b) any European directive or regulations and rules having the force of law in the United Kingdom; and
- (c) any regulations, orders, bye-laws or codes of practice of any local or statutory authority having jurisdiction over the Development Works;

<b>“Stipulated Rate”</b>	has the meaning assigned thereto in the Site Leases;
<b>“Structural Engineer”</b>	such structural engineer or firm of structural engineers as the Developer may from time to time appoint for the purpose of the Development Works or any part of them;
<b>“Title Matters”</b>	the agreements, covenants, declarations, easements, exceptions, provisions, reservations, stipulations and other matters referred to in the deeds and documents briefly described in Part 2 of <b>Schedule 3</b> ;
<b>“Traffic Regulation Order”</b>	the Traffic Regulation Order referred to in Informative (F) of the Planning Permission
<b>“Use Classes Order”</b>	the Town and Country Planning (Use Classes) Order 1987 (as enacted on the date hereof)
<b>“VAT”</b>	Value Added Tax;
<b>“VAT Act”</b>	the Value Added Tax Act 1994;
<b>“VAT Election”</b>	an election to waive exemption from VAT in respect of the Property within the meaning of



**paragraph 2 of Schedule 10** to the VAT Act;

**“the Works”**

the works to be carried out by the Developer on the Property as briefly described in Part 1 of **Schedule 2** to this Agreement and as more particularly described by the Development Specification (subject to such minor variations thereto as shall be permitted by this Agreement) and the Works include any other works which are stated in this Agreement to form part of the Works;

**“Working Day”**

a day between Monday and Friday (inclusive) on which clearing banks are open for business in the City of London.

1.3 In this Agreement unless the context otherwise requires:

1.3.1 the expression “the Council” shall include the Council’s successors in title and statutory successors;

1.3.2 the Clause headings do not affect its interpretation;

1.3.3 unless otherwise indicated, references to Clauses and Schedules are to Clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;

1.3.4 references to any statute or statutory provision include references to:

1.3.4.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and

1.3.4.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;

1.3.5 references to the Property include any part of it;

1.3.6 “including” means “including, without limitation”;

1.3.7 “indemnify the Council” means to indemnify the Council against all actions, claims, demands and proceedings taken or made against the

Council and all costs, damages, expenses, liabilities and losses incurred by the Council;

1.3.8 if there is more than one Developer the obligations which they undertake can be enforced against them all jointly or against each individually; and

1.3.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

1.3.10 any words or terms defined in any Schedule to this Agreement shall have the same meaning or meanings where used elsewhere in this Agreement.

1.4 Any rights of any person to enforce the terms of this Agreement (or any document to be entered into pursuant to it) pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

## 2. DEPOSIT AND HIGHWAYS AGREEMENT

2.1 The Developer is to pay the Deposit to the Council on the signing of the Agreement. The Council's Solicitors are to hold the Deposit as stakeholders and all interest earned on the deposit shall accrue to the Council.

2.2 The Developer shall with effect from the date of this Agreement use its best endeavours to enter into the Highways Agreement as soon as possible after the date of this Agreement in accordance with Paragraph 2 of Part 2 of Schedule 6 and shall comply with its obligations in Paragraph 3 of Part 2 of Schedule 6.

2.3 In the event that the Highways Agreement has not been completed within three months after the date of this Agreement either party shall be entitled at any time thereafter to determine this Agreement with immediate effect by notice in writing to that effect to the other (unless the Highways Agreement has been completed in the meantime) provided that the Developer shall not be entitled to determine this Agreement if it has not complied with its obligations under **clause 2.2**.

2.4 In the event that this Agreement is determined under **clause 2.3**.

2.4.1 the Council shall repay the Deposit to the Developer unless the Developer has not complied with **clause 2.2** in which case the Council shall be entitled to retain the Deposit absolutely

- 2.4.2 the Developer shall forthwith remove any entry relating to this Agreement registered against the Council's title at the Land Registry
- 2.4.3 Determination of this Agreement shall be without prejudice to any accrued rights of either party against the other arising prior to determination
- 2.5 In the event that the Highways Agreement is completed and completion of the Site Lease does not take place in accordance with **clause 3** the provisions of **clause 11.1** shall apply

### 3. GRANT OF SITE LEASES

- 3.1 On the Site Lease Completion Date the Developer shall pay to the Council the Basic Price less the Deposit.
- 3.2 Subject to payment by the Developer of the Basic Price and in consideration thereof (and subject as provided in **clause 3.6**) the Council shall on the Site Lease Completion Date grant the Site Leases to the Developer and the Developer shall accept the same in accordance with Parts 1 and 2 of **Schedule 3** and the Developer shall then be entitled (and obliged) to enter the Property to carry out the Works in accordance with the provisions of this Agreement.
- 3.3 As further consideration for the grant of the Site Leases the Developer shall pay the Further Payments to the Council in respect of the Property in accordance with the provisions of **Schedule 5**.
- 3.4 The Developer shall provide the Performance Bond in favour of the Council on the Site Lease Completion Date and the Performance Bond shall remain valid and subsisting until the Development Works have been completed by the Developer in accordance with this Agreement (or by or on behalf of the Council where the Developer is in breach of its obligations hereunder) and all payments due to the Council under the Performance Bond have been made.
- 3.5 The Developer shall enter into the Option Agreement on the Site Lease Completion Date simultaneously with the grant of the Site Leases.
- 3.6 The Council shall not be obliged to grant the Site Leases unless the Performance Bond is provided and the Option Agreement is entered into as aforesaid..
- 3.7 The Developer shall comply with the obligations contained in the Site Leases when granted.

3.8 If any payment due under this **clause 3** or **Schedule 5** or any other provision of this Agreement is not made by the Developer on the due date the Developer shall in addition pay to the Council interest thereon at the Stipulated Rate from the due date for payment (whether before or after judgment) until the date of payment to the Council.

3.9 Any monies payable to the Council under this Agreement (whether the Basic Price or any Further Payments or otherwise) shall be paid to the Council by CHAPS transfer direct from the client account of the Developer's Solicitors or from an account maintained at a UK Clearing Bank and the Council shall not be obliged to accept any payment which is not so made.

#### 4. **GRANT OF STAIRWAY LAND LICENCE**

With effect from the date of actual completion of the Site Leases until the grant of the Stairway Lease or (if earlier) the date of determination of this Agreement the Developer shall have a licence from the Council to enter onto the Stairway Land for the sole purpose of carrying out the Stairway Works on the terms and conditions set out in this Agreement and for no other purpose whatsoever and for the avoidance of doubt until the grant of the Stairway Lease nothing contained in this Agreement or otherwise shall be construed as creating any lease or tenancy of the Stairway Land or the relationship of landlord and tenant between the parties in respect thereof.

#### 5. **GRANT OF STAIRWAY LEASE**

5.1 The Council shall on the Stairway Lease Completion Date grant the Stairway Lease to the Developer and the Developer shall accept the same in accordance with **Schedule 7**.

5.2 The Developer shall comply with the obligations contained in the Stairway Lease with effect from the Stairway Lease Completion Date.

#### 6. **DEVELOPMENT OF THE PROPERTY**

6.1 The Developer shall following the grant of the Site Leases carry out the Development Works in accordance with the following:

6.1.1 the programme for the Works contained in **Schedule 9**; and

6.1.2 the Development Obligations contained in **Schedule 11**.

6.2 The Council and the Developer are to comply with their respective obligations in the Schedules to this Agreement.

6.3 In carrying out the Development Works the Developer shall not be entitled to have access onto the Retained Land or any part thereof unless permitted under the Highways Agreement or otherwise permitted in writing to do by the Council and without prejudice to the foregoing if in carrying out any part of the Development Works the Developer or its contractors or others engaged by any Building Contractor in relation to the Development Works (or any part of them) shall cause any damage to the Retained Land or the Cliff Wall the Developer shall at the request in writing of the Council forthwith take such steps as the Council may reasonably require to make good such damage or alternatively shall pay to the Council the cost of making good such damage.

## 7. **TRANSFER OF THE FREEHOLD**

On the Freehold Transfer Completion Date the provisions contained in **Schedule 4** shall have effect in relation to the Property and the parties agree to comply with their respective obligations therein.

## 8. **ENVIRONMENTAL ISSUES**

8.1 The Developer acknowledges that for the purpose of the exclusion and apportionment of liability of contaminated land (and in particular the test “sold with information” as provided in the relevant Statutory Guidance) it has inspected and investigated the presence or potential presence of Hazardous Substances (meaning any natural or artificial substance or combination of substances wherever situate (whether in solid or liquid form or in the form of gas or vapour) capable of causing harm to the Environment (meaning land, water or air wherever situate or human, plant or animal life) including but not limited to waste of any nature and any hazardous, toxic or dangerous substance or article in, on or under some of the Property.

8.2 The Council and the Developer agree that as between them the sole responsibility for complying with any notice or paying any costs in relation to or arising out of the presence of Hazardous Substances on the Property shall rest with the Developer to the exclusion of the Council.

8.3 The acknowledgement and agreement in this sub-clause are made in accordance with the relevant Statutory Guidance to exclude the Council from liability as an appropriate person to bear any responsibility in relation to any Hazardous

Substances on the Property or any liability or costs in relation thereto and the Developer shall indemnify the Council in respect thereof.

**9. DEVELOPER'S INDEMNITY**

9.1 The Developer is to indemnify the Council in respect of any of the following matters arising directly or indirectly in relation to the Development Works, or any operations conducted by or on behalf of the Developer on the Property or any adjoining land:

9.1.1 the death of, injury to or accident to any person;

9.1.2 the damage to or loss of any property;

9.1.3 any breach of the Statutory Consents or Statutory Requirements; and

9.1.4 the infringement of the rights of any third party caused by the carrying out of the Development Works; and

9.1.5 any nuisance or disturbance suffered by any third party caused by the carrying out of the Development Works; and

9.1.6 any fine or penalty; and

any other claims.

**10. VALUE ADDED TAX**

10.1 The Developer warrants to the Council that:

10.1.1 it is registered as a taxable person for the purposes of VAT as provided for by the VAT Act under registration number 882746678; and

10.1.2 it has validly made a VAT Election; and

10.1.3 it has not revoked the VAT Election pursuant to paragraph 3(5)(a)(i) of Schedule 10 to the VAT Act and will not do so.

10.2 Save as otherwise stated herein all references to payments or amounts made in this Agreement are references to such payments or amounts exclusive of VAT chargeable in respect of the supply of goods or services for which the payments or amounts are or are deemed to be consideration

- 10.3 Save as otherwise stated herein insofar as any payment falls to be made under this Agreement any VAT chargeable in respect of any supply for which that payment is or is deemed to be the consideration shall be added to the amount and against provision of a proper tax invoice therefor paid in addition thereto
- 10.4 Without prejudice to the generality of the preceding sub-clause where any taxable supply of goods or services is made or deemed to be made pursuant to this Agreement the recipient of such supply shall against provision of a proper tax invoice therefor pay to the supplier the amount of any VAT chargeable in respect thereof.
- 10.5 Where under the terms of this Agreement any cost or expense is to be reimbursed refunded paid or borne by any person other than the person who originally incurred it or taken account of in any computation or allocation that cost or expense shall be taken net of any VAT comprised therein save to the extent that the person liable for such cost or expense is unable to recover such VAT as input tax under the provisions of the VAT Act.
- 10.6 The Developer hereby warrants to the Council that it intends to use the interest obtained in buildings to be constructed on the Property for residential use for the purpose only of making a supply which is zero-rated by virtue of paragraph (b) of Item 1 of Group 5 of Schedule 8 of the VAT Act.
- 10.7 In consequence of any of the following:
- 10.7.1 a breach by the Developer of the Warranty specified in **sub-clause 10.6**
- 10.7.2 a grant of any of the Site Leases to the Developer pursuant to this Agreement not being a taxable grant for VAT purposes

the Council is unable to recover any VAT as input under the provisions of the VAT Act in relation to the Property or the Retained Land or any part thereof or any works carried out now or hereafter thereon the Developer shall indemnify the Council from and against the cost of any VAT which is in consequence of any such matters rendered irrecoverable.

## 11. TERMINATION RIGHTS

- 11.1 If at any time before completion of the Site Leases an Event of Default shall occur in relation to the Developer or if a Completion Default shall occur the Council shall be entitled by notice in writing to the Developer to terminate this Agreement forthwith and in that event the Developer shall immediately procure the cancellation of any

land charge at the Land Charges Registry or any notice registered at the Land Registry in respect of this Agreement

11.2 Subject as provided in **clause 15.3**

11.2.1 (in the case of an Event of Default which is not an Insolvency Default) if at any time after completion of the Site Leases an Event of Default shall occur the Council shall be entitled to give written notice (“preliminary notice”) to the Developer specifying the Event of Default and requiring the relevant default to be remedied within 30 working days (or such longer period of time as may be specified in the notice) of giving of the notice to the Developer excluding the day on which the notice is given and if the Developer shall fail to remedy the relevant default within such period the Council shall be entitled at any time after the expiration of such period to give a further notice to terminate this Agreement forthwith and

11.2.2 in the case of an Insolvency Default the Council shall be entitled to determine this Agreement forthwith by notice in writing to that effect to the Developer

and in either case the Council shall not be obliged to repay to the Developer any monies paid by the Developer under this Agreement or any interest thereon and the Developer shall immediately procure that cancellation of any land charge at the Land Charges Registry or any notice at the Land Registry in respect of this Agreement.

11.3 Subject as provided in **clause 15** this Agreement shall determine automatically if the Site Leases or any of them shall be determined and the Stairway Land Licence shall determine automatically if this Agreement is determined.

11.4 If the Council shall fail to give notice of termination following the giving of any notice under **clause 11.2** nothing shall preclude the Council from giving any further notice hereunder on any number of occasions and the like provisions as are contained in this **clause 11** shall continue to have effect.

11.5 The termination of this Agreement or any part of it will not prejudice any rights or remedies which the Council may have against the Developer in respect of any breach of this Agreement and any claim for any loss which the Council suffer which they would not have suffered had the Event of Default not occurred and the Council’s rights of termination not been exercised and (without prejudice to the foregoing) where this Agreement is determined by the Council pursuant to this



**clause 11** after the Development Works have commenced the Developer shall pay to the Council on demand all costs and expenses incurred in removing any uncompleted building works and returning the Property to its condition at the date of this Agreement or (at the Option of the Council) all costs and expenses incurred by the Council or any third party in completing the Development Works in accordance with this Agreement (including professional fees in either case)

- 11.6 Without prejudice to the Council's right to determine this Agreement as aforesaid where there is any material breach by the Developer of its obligations under this Agreement which are not remedied by the Developer within the time period specified in any notice given under **clause 11.2** the Council shall be entitled to enter onto the Property prior to termination of this Agreement to carry out and/or complete the Works or part of them and/or remedying any other breach of the Developer's obligations under this Agreement and the Council shall be entitled to recover all costs and expenses incurred in so doing under the Performance Bond in accordance with its terms.
- 11.7 For the avoidance of doubt following termination of this Agreement the Council shall be entitled to complete any part of the Works as are then incomplete and/or as the case may be demolish and/or remove any uncompleted works from the Property and/or deal with the Property as it thinks fit and to recover any costs and expenses incurred in so doing under the Performance Bond in accordance with its terms.
- 11.8 The provisions of this **clause 11** shall not affect the termination rights of the parties under **clause 2.3**.

## 12. ANTI CORRUPTION CLAUSE

The Council shall have the right to terminate this Agreement forthwith by notice in writing to the Developer (and recover from the Developer the amount of any loss resulting from such termination) if the Developer shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Agreement or other agreement with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other agreement with the Council or if the like act shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Developer) or of or in relation to any contract with the Council the Developer or any person employed by it or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts

1889 – 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972

### **13. DISPUTE PROCEDURE**

#### **13.1 Disputes generally**

Any dispute or difference arising under this Agreement may on written notice given by a party to the dispute or difference at any time and served on the other(s) (the “Determination Notice”) be referred to and determined by an independent person (the “Independent Person”) who shall have been qualified in respect of the general subject matter of the dispute or difference for not less than ten (10) years and who shall be a specialist in relation to such subject matter

#### **13.2 Appointment of Independent Person by Agreement**

The Independent Person shall be appointed by agreement between the relevant parties or (if within ten (10) Working Days after service of the Determination Notice they have been unable to agree) on the application of any of them by such one of the following persons as they shall agree to be appropriate having regard to the nature of the dispute or difference in question

13.2.1 the President for the time being of the Royal Institute of British Architects

13.2.2 the President for the time being of the Institute of Civil Engineers

13.2.3 the President for the time being of the Royal Institution of Chartered Surveyors

13.2.4 the President for the time being of the Law Society or (in each such case) the duly appointed deputy of such President or any other person authorised by him or her to make appointments on his or her behalf

13.3 **Appointment of Independent Person by third party**

If within fifteen (15) Working days after service of the Determination Notice the relevant parties have been unable to agree which of the persons referred to in **clause 13.2** is appropriate to appoint the Independent Person, then the Independent Person shall be appointed, on the application of any of them by the President for the time being of the Law Society or his or her duly appointed deputy or any other person authorised by him or her to make appointments on his or her behalf

13.4 **Appointment of Expert**

Any person appointed under this **clause 13** shall act as an expert and the following provisions shall have effect:

13.4.1 the Independent Person shall act as an expert and not as an arbitrator and his or her decision shall be final and binding upon the parties and the Independent Person shall be asked to give a reasoned award

13.4.2 the Independent Person shall consider (inter alia) any written representations made on behalf of any party (if made reasonably promptly) but shall not be bound by them

13.4.3 the Council and the Developer shall use all reasonable endeavours to procure that the Independent Person shall give his or her decision as speedily as possible

13.4.4 the costs of appointing the Independent Person and his or her costs and disbursements in connection with his or her duties under this Agreement shall be shared between the Council and Developer in such proportions as the Independent Person shall determine or, in the absence of such determination equally between them and

if the Independent Person shall be or become unable or unwilling to act then the above procedure for the appointment of an expert may be repeated as often as necessary until a decision is obtain

13.5 The parties each undertake to use reasonable endeavours to procure that the procedures under this clause and the resolution of any disputes are carried out as expeditiously as possible

14. **COPYRIGHT**

In the event of termination of this Agreement for whatever reason the Developer (insofar as it is able) will at the request of the Council grant to the Council an irrevocable, royalty-free licence to use and reproduce the designs and documentation prepared by or on behalf of the Developer in relation to the Development and each part of it

15. **DEALINGS BY DEVELOPER**

15.1 Save only as provided in **clause 15.2** this Agreement and the Site Leases shall not be assigned charged or held on trust or otherwise dealt with by the Developer and the Council shall not be obliged to grant the Site Leases to any party other than to the Developer named in this Agreement.

15.2 The Developer shall be entitled to charge this Agreement and the Site Leases once only to an Approved Funder (but not otherwise) subject as provided below provided that notice in writing of the identity of the Approved Funder has first been given to the Council and the Approved Funder has first entered into an agreement under seal with the Council in the form attached to this Agreement as Appendix 9 and where the Approved Funder (if not registered in the United Kingdom) provides to the Council on an irrevocable basis

15.2.1 an address for service on the Approved Funder in the United Kingdom of all notices and proceedings relating to the Agreement or any document granted or entered into pursuant to it; and

15.2.2 an opinion letter from a reputable firm of lawyers in the jurisdiction in which the Approved Funder is incorporated in a form approved by the Council (such approval not to be unreasonably withheld) to confirm that the approved Funder has power to enter in to the said agreement has validly executed it and that the said agreement is valid and binding on and enforceable against the Approved Funder.

15.3 The Council shall not be entitled to determine this Agreement pursuant to **clause 11.2** unless it has given not less than 45 working days prior notice in writing of the Council's intention to do so (with details of the breach or breaches of this Agreement) to any Approved Funder of whom notice in writing has previously been given to the Council under **clause 15.2** Notice to the Approved Funder may be given at the same time or at any time after the giving of any preliminary notice to

the Developer under **clause 11.2** and the period of 45 working days shall run concurrently with the period of 30 working days referred to in **clause 11.2**.

15.4 The Approved Funder shall be entitled within the period of 45 working days to enter into a Funder Deed of Covenant (time being of the essence ) and in the event that the Funder shall do so then the following provisions shall apply:-

15.4.1 this Agreement shall continue in full force and effect and shall thereafter be construed and have effect on the basis that the Approved Funder had been substituted for the Developer throughout this Agreement;

15.4.2 the Approved Funder shall be obliged to comply with all obligations on the part of the Developer contained in this Agreement and the Site Leases and to remedy any breach thereof by the Developer provided that any time periods specified in Schedule 9 of this Agreement shall be extended by such period or periods as the Council shall in its discretion determine and/or agree with the Approved Funder during the said period of 45 working days;

15.4.3 the Approved Funder shall have the same rights as those granted to the Developer under this Agreement;

15.4.4 the Council shall not be entitled to determine this Agreement in respect of the breach specified in the notice served by the Council pursuant to **clause 15.3.1** unless the Approved Funder shall fail to remedy such breaches to the satisfaction of the Council within a reasonable time following delivery to the Council of the Funder Deed of Covenant provided for in this **clause 15.3.1**;

15.4.5 the Approved Funder shall procure that the rights of the Developer under the Site Leases vests in the Approved Funder when the Funder Deed of Covenant is entered into and the Approved Funder shall forthwith provide evidence to the Council that this has occurred; and

15.4.6 the Approved Funder shall continue to be bound by the terms of the Option Agreement in relation to the Hotel Site

15.5 In the event that the Approved Funder shall not enter into a Funder Deed of Covenant in accordance with **clause 15.3.1** within the said period of 45 working days (time being of the essence) the Council shall be at liberty at any time thereafter

- to determine this Agreement and/or the Site Leases in accordance with **clause 11** on any of the grounds referred to in the notice given to the Approved Funder.
- 15.6 For the avoidance of doubt, the Performance Bond shall continue in full force and effect notwithstanding that the Approved Funder has entered into a Funder Deed of Covenant in accordance with **clause 15.3.2**.
- 15.7 The Council agrees that in the event that a Funder Deed of Covenant is entered into by the Approved Funder in accordance with **clause 15.3.2** then any step in rights under any warranty given by the Contractor or any member of the professional team under Schedule 11 may be exercised by the Approved Funder in priority to any step in rights granted thereunder in favour of the Council provided that the Council shall be entitled to exercise its step in rights thereunder in priority to those of the Approved Funder in the event that there is any breach by the Approved Funder of its obligations under this Agreement and/or the Council determines this Agreement following any breach by the Approved Funder.
- 15.8 For the avoidance of doubt the provisions of **clause 11** of this Agreement shall apply in relation to breaches of this Agreement by the Approved Funder following the execution of the Funder Deed of Covenant in like manner (*mutatis mutandis*) as they apply it to breaches by the Developer save that the provisions of this **clause 15.3** shall not apply in relation to the carrying out of the Development by the Approved Funder.
- 15.9 The Developer agrees that in the event of any Approved Funder entering into a Funder Deed of Covenant the rights of the Developer under this Agreement will be at an end and (without prejudice to any claim the Council may have against the Developer for any prior breach of this Agreement) the Developer will not have any claim against the Council in respect of any matters arising from the exercise of any step in rights by any Approved Funder and/or any Approved Funder entering into a Funder Deed of Covenant (whether or not the Approved Funder was entitled (as between the Developer and the Approved Funder) to take such action).
- 15.10 Where an Approved Funder is registered overseas the Approved Funder shall provide to the Council with the Funder Deed of Covenant an opinion letter from lawyers based in the jurisdiction in which the Approved Funder is registered in the like form (*mutatis mutandis*) as is provided for in **clause 15.1** to confirm the validity of the Approved Funder's obligations under the Funder Deed of Covenant and as tenant under the Site Leases and an irrevocable authority in such form as the Council shall reasonably require for all notices and proceedings under this

Agreement or any document entered into pursuant to it to be served on the Approved Funder at an address within the United Kingdom

- 15.11 The Developer shall not grant any lease of or enter into any other disposition of any Residential Unit until Practical Completion of the Hotel Works.
- 15.12 The Developer is not to grant any lease or enter into any other disposition of any Residential Unit or Commercial Unit otherwise than in accordance with **Schedule 5**.
- 15.13 The Developer shall not enter into any lease or other disposition of the Hotel Site other than an underlease of the Hotel Site to an Approved Operator which complies with the provisions of clause 3.13.3 of the Hotel Site Lease and the Option Agreement
- 15.14 The Developer shall prior to and following Practical Completion of the Hotel Works use its best endeavours to let the Hotel Site following Practical Completion on terms which comply with **clause 15.13**.
- 15.15 The Developer shall during the period prior to Practical Completion of the Hotel Works and the period of 2 years subsequent to Practical Completion (unless the Hotel has been let in the meantime to an Approved Operator in accordance with this Agreement) liaise closely and co-operate with the Council with regard to the marketing and letting of the Hotel Site and shall adopt any reasonable proposals suggested by the Council for such marketing and without prejudice to the foregoing the Developer shall advise the Council of any expressions of interest received and/or offers made and keep the Council fully informed of the progress of any negotiations for the letting of the Hotel Site.

## 16. **INSURANCE**

- 16.1 It is agreed that the risk of damage to or loss or destruction of the Property, including all buildings, fixtures, fittings, plant and equipment, is to pass to the Developer on the Site Lease Completion Date and unless Building Contractor is responsible for the insurance of the Development Works under the Building Contract and **Clause 16.2**, the Developer is to insure the Property until the Freehold Transfer Date:

16.1.1 in the joint names of the Developer and the Council (with the Approved Funder's interest being noted on the policy if required);

16.1.2 in their Reinstatement Cost;

- 16.1.3 against the Insured Risks;
  - 16.1.4 with reputable insurance offices in or having a business office in the United Kingdom or through underwriters at Lloyd's; and
  - 16.1.5 on reasonable commercial terms and subject only to reasonable excesses, exclusions and conditions of such cover.
- 16.2 Where the Building Contractor is responsible for insurance of any Development Works under the Building Contract the Developer is to procure that the Building Contractor keeps the Development Works and all unfixed goods and materials insured under the terms of the Building Contract:
- 16.2.1 In the joint names of the Developer the Council and the Building Contractor
  - 16.2.2 in their Reinstatement Cost;
  - 16.2.3 against the Insured Risks;
  - 16.2.4 with reputable insurance offices in or having a business office in the United Kingdom or through underwriters at Lloyd's; and
  - 16.2.5 on reasonable commercial terms and subject only to reasonable excesses, exclusions and conditions of such cover.
- 16.3 The Developer is to use all reasonable endeavours to procure that any exclusion in respect of terrorist activity is removed from the insurance maintained under **clauses 16.1 and 16.2**.
- 16.4 The Developer is to use all reasonable endeavours to procure that the insurers of the Property under **clause 16.1** and the Development Works under **clause 16.2** undertake with the Council not to cancel the insurance without first giving to the Council 15 working days' prior written notice of their intention to do so.
- 16.5 The Developer is to provide the Council with:
- 16.5.1 a copy of the insurance policies maintained under **clauses 16.1 and 16.2** and evidence for the payment of the premium for the insurance;
  - 16.5.2 evidence of its renewal when reasonably requested by the Council; and



- 16.5.3 any endorsements or other amendments to the relevant policies of insurance or of any notification or other correspondence received from the insurers.
- 16.6 If the Property or the Development Works are damaged or destroyed by any of the Insured Risks:
- 16.6.1 the Developer is to use its best endeavours promptly to obtain the maximum payment of insurance moneys;
- 16.6.2 the Developer is to procure that the Development Works and the Property are rebuilt repaired or otherwise reinstated as soon as possible in a good and substantial manner in accordance with the terms of this Agreement and the Building Contract;
- 16.6.3 if the moneys received in respect of such insurance are insufficient for the purpose of rebuilding, repairing or reinstating the Development Works and the Property, the Developer is to make good any deficiency out of its own moneys; and
- 16.6.4 Practical Completion is not to take place unless and until the rebuilding, repairing and reinstating the Development Works and the Property has been completed.
- 16.7 During the carrying out of the Development Works, the Developer is to maintain:
- 16.7.1 public liability insurance against liability to the public and to third parties in such sum as may be prudent being however for not less than £10,000,000 (ten million pounds) in respect of any one claim; and
- 16.7.2 non-negligence insurance under the Building Contract.
- 16.8 If the Developer does not insure or procure all or any of the insurances required by this **clause 16** or fails to produce reasonable evidence that such insurances are in force, the Council may itself effect such insurance cover as it may consider prudent and the cost of so doing together with the Council's management and administrative costs for so doing will be payable by the Developer to the Council on written demand (and evidence in writing having been supplied to the Developer).
17. **EFFECT OF THIS AGREEMENT**
- 17.1 The parties acknowledge that this Agreement forms the entire agreement between them relating to its subject matter.

- 17.2 No modification, variation or waiver of any of the terms of this Agreement will be effective unless made in writing and signed by the parties to this Agreement.
- 17.3 This Agreement does not create and is not in any circumstances to be taken as having created a partnership between the Council and the Developer.
- 17.4 The Developer is not and will not at any time hold itself out as the agent of the Council for any purposes and under no circumstances will the Developer have the authority to bind the Council or hold itself out to the public, the Building Contractor or any member of the Professional Team as having such authority.
- 17.5 All contracts and agreements entered into by the Developer pursuant to this Agreement will be contracts or agreements between the Developer as principal and the respective third parties and the Council will have no obligation or liability under them.
- 17.6 For the avoidance of doubt where the Council's consent is required to any act matter or thing under this Agreement or any document supplemental hereto (other than any Statutory Agreement entered into pursuant to **Schedule 6**) such consent is required from the Council as landowner and not as Local Authority and nothing herein contained or implied shall prejudice or affect the Council's rights powers duties and obligations in the exercise of its functions as a Local Authority and the rights powers duties and obligations of the Council under all public and private statutes bylaws orders and regulations may be as fully and effectually exercised in relation to the Property and the Development Works as if it was not the owner of the Property and as if this Agreement had not been executed by it.

## 18. ENFORCEMENT

- 18.1 This Agreement is to be governed by and interpreted in accordance with English law.
- 18.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement. This clause operates for the benefit of the Council who retains the right to sue the Developer and enforce any judgment against the Developer in the courts of any competent jurisdiction.

## 19. NOTICES

- 19.1 Form and Delivery

All notices, requests, demands, approvals, consents and other communications under this Agreement (“Notices”) shall be in writing and shall be duly and validly given or made if given or served by personal delivery or sent by pre-paid, registered or recorded delivery mail to the persons and the addresses specified below or to such other person and/or address as a party may specify from time to time by written notice to the other parties

19.2 Notices given or served by personal delivery shall be deemed to be given or served on the date of delivery. Notices sent by pre-paid registered or recorded delivery mail shall be deemed to be given or served on the second Working Day after the day of posting unless they are proved to have been received later, in which case they shall be treated as given or served on receipt

19.3 Addresses

Notices shall (unless otherwise notified in writing by any party from time to time) be addressed as follows:

19.3.1 To the Council at Cecil Street Margate Kent CT9 1XZ

For the attention of: Head of Legal Services

(with a copy to Eversheds Senator House 85 Queen Victoria Street London EC4V 4JL (Ref: JSP)

19.3.2 To the Developer at Prettys/the Developers Solicitors

For the attention of: The Senior Partner/ D C Clark (Ref DCC)

## 20. **PRESS RELEASES**

No press release or other public announcement shall be issued by either party in relation to this Agreement or the terms hereof without first giving the other party the opportunity to comment on (and reject where appropriate) the proposed wording of the press release or other public announcement.

## 21. **MISCELLANEOUS**

21.1 No approval by the Council or the Council’s Representative hereunder or by or on behalf of the Council shall in any way absolve or relieve the Developer from its responsibility for carrying out the Development Works in a good and workmanlike manner with due expedition and otherwise in accordance with the provisions of this Agreement.

- 21.2 The Developer acknowledges that as between itself and the Council the Developer acquires the Property or any relevant part of it with full knowledge of the state and condition of any existing buildings forming part of the Property and the ground conditions of the Property and no warranty is given by the Council in relation to such matters or as to the suitability or otherwise of the Property for the purposes of the Development Works or any part of them.
- 21.3 Where the Council issues any consent or approval under this Agreement or the Developer is otherwise under an obligation to comply with conditions imposed by the Council as a term or condition of any licence or any other relevant provision of this Agreement, the Developer will comply with such conditions which will be deemed to be incorporated in this Agreement.
- 21.4 This Agreement incorporates any side letters referred to in **Schedule 14** and any agreed amendments or supplemental provisions contained in any other correspondence between Eversheds and Prettys (or other authorised representatives of the parties) entered into contemporaneously with this Agreement and expressly referring to this **sub-clause 21.4**

## 22. EXECUTION

The Council and the Developer have executed this Agreement as a deed on the date set out in the Particulars.

## **SCHEDULE 1**

### **DESCRIPTION OF THE PROPERTY**

Land at Ramsgate Boulevard Ramsgate Kent shown edged red on Site Plan 1 and comprising part of the land registered at the Land Registry under Title Number K838703 and for the avoidance of doubt the Property does not include any land not within title K838703 at the date of this Agreement or any part of the Cliff Wall and (in the event that the boundaries of the Property as shown on any of the plans attached to this Agreement include land not within the Land Registry title as shown on the title plan for title K838703) the Land Registry title plan shall prevail in this respect

## **SCHEDULE 2**

### **DESCRIPTION OF THE WORKS**

#### **PART 1**

### **DESCRIPTION OF THE WORKS**

Redevelopment of the property in accordance with the Planning Permission and the Development Specification to include the Hotel Works the Retail Works the Residential Works the Health Club Works the Play Area Works the Staircase Works the and the Highway Works and 184 car parking spaces within the boundaries of the Property

#### **PART 2**

### **DESCRIPTION OF THE HOTEL WORKS**

60 bedroom hotel with conference and function facilities having a Floor Area of 3581 square metres and with 67 car parking spaces of which 7 are reserved for members of staff.

#### **PART 3**

### **DESCRIPTION OF THE RESIDENTIAL WORKS**

107 Residential apartments comprising 1, 2 and 3 bed units and penthouses having an aggregate Floor Area (including common parts) of 10,905 square metres and with 107 car parking spaces.

#### **PART 4**

### **DESCRIPTION OF THE RETAIL WORKS**

7 units for use within Use Classes A1, A3, A4 and A5 of the Use Classes Order having an aggregate Floor Area of not less than 1810 square metres and 7 car parking spaces

#### **PART 5**

## **DESCRIPTION OF THE HEALTH CLUB WORKS**

The construction of a health and fitness centre having a floor area of 97 square metres

## **PART 6**

### **DESCRIPTION OF THE PLAY AREA WORKS**

The construction of a children's play area having a Floor Area of 244 square metres

## **PART 7**

### **DESCRIPTION OF THE STAIRWAY WORKS**

The construction of a new staircase link between Harbour Parade and Wellington Crescent in accordance with condition 15(iii) of the Planning Permission

## **PART 8**

### **DESCRIPTION OF THE HIGHWAY WORKS**

The relocation of the roundabout and bus lay-by in Marina Esplanade in accordance with Conditions 15(i) and 15(ii) of the Planning Permission and Informative (D) thereto.

## SCHEDULE 3

### GRANT OF SITE LEASES

#### PART 1: GENERAL PROVISIONS

##### 1. AGREEMENT FOR SITE LEASES

1.1 Subject to and conditional upon:

1.1.1 the Basic Price having been paid in full in accordance with **clause 3**

1.1.2 the Developer having complied with its obligations under this Agreement (including **clause 3.6**)

the Council shall grant and the Developer shall accept the Site Leases in accordance with this Agreement and for the avoidance of doubt the Council shall not be obliged to grant the Site Leases unless and until all such conditions have been met.

1.2 Subject as provided in **paragraph 1.1** of this Part of this Schedule completion of the Site Leases shall take place on the Site Lease Completion Date

1.3 The Site Leases are to be granted with vacant possession on completion.

1.4 The Developer shall not be entitled to enter upon the Property until the Site Leases have been granted provided that (without prejudice to the provisions of **clause 8.1**) the Developer shall be entitled with the prior agreement of the Council (which shall not be unreasonably withheld) to have access to the Property for the purpose only of carrying out ground and soil testing and surveys subject to the Developer forthwith making good all damage caused at its own expense and indemnifying the Council against all costs claims liabilities and demands thereby arising

1.5 The Commercial Conditions (varied as provided in **Part 3** of this **Schedule**) apply to the grant of the Site Leases so far as they are applicable and are consistent with the express terms of this Agreement.

1.6 The Developer shall have no estate or interest in the Property until the conditions mentioned in **paragraph 1.1** have been satisfied and the Site Leases have been granted to the Developer.

1.7 The Developer shall have no estate or interest in the Retained Land in any event and shall not apply for registration of any entry at the Land Registry against the Retained Land.



1.8 The Site Leases are to be granted with full title gurantee.

2. **TITLE**

2.1 Title to the Property is registered at the Land Registry (together with other land) under title number K838703.

2.2 The Council has deduced title to the Property to the Developer and the Developer is not entitled to raise any requisition or objection to the title save for matters arising in respect of the said title after the date of this Agreement and not contemplated and/or referred to in this Agreement.

2.3 The Council shall at its own expense take out an indemnity policy substantially in the form of (or otherwise on term not materially less reasonable to the Developer than) the draft contained in Appendix 12 by not later than the Date of Practical Completion and provide a certified copy thereof to the Developer's Solicitors.

3. **TITLE MATTERS**

3.1 The Site Leases shall be granted subject to the Title Matters as set out in Part 2 of this Schedule.

3.2 The Developer's Solicitors have been provided with copies of the Title Matters and the Developer is to be treated as having entered into the Site Leases with full knowledge of them and will not raise any requisition or objection to them.

3.3 The Site Leases shall be granted subject to

3.3.1 the matters contained or referred to in Commercial Condition 3.1.2;

3.3.2 any registered local land charges;

3.3.3 any notice, order or proposal given or made by a government department or by any public or local authority, statutory undertaker or other competent body or person;

3.3.4 all charges, orders, proposals, restrictions, agreements, notices or other matters arising under the town and country planning or highways legislation which affect or relate to a Phase Site and to any orders or regulations made under that or any other legislation;

3.3.5 all rates, charges and other outgoings which affect or are charged on the Property;

- 3.3.6 all unregistered interests which override registered dispositions under Schedule 3 of the Land Registration Act 2002;
- 3.3.7 all public or private rights of way and other rights, easements or quasi-easements and wayleaves affecting the Property; and
- 3.3.8 all liability to repair and maintain roads, paths, conduits, fences and other like matters or to contribute to the cost of their repair and maintenance.

#### 4. **THE SITE LEASES**

- 4.1 The Hotel Site Lease is to be in the form of the draft lease annexed to this Agreement as Appendix 2 the Mixed Use Site Lease is to be in the form of the draft lease annexed to this Agreement as Appendix 3 and the Residential Site Lease is to be in the form annexed to this Agreement as Appendix 4 subject in each case to any changes which the Council may reasonably require in order to give effect to the terms of this Agreement .
- 4.2 From the date upon which the Council shall be liable to grant and the Developer shall be liable to take up the Site Leases the Developer shall comply with the obligations under the Site Leases as if the same had been granted and shall indemnify the Council in respect of any breach thereof.
- 4.3 The Site Leases will be granted subject to any rights which any statutory undertaker utility company or drainage authority may have in relation to any conduits and associated apparatus.

#### **PART 2: TITLE MATTERS**

- 1. The matters contained or referred to in the Property and Charges Registers of the Title Number K838703 as at the date hereof.
- 2. Any Statutory Agreement or any other document (including the indemnity policy referred to in **paragraph 2.3** of this Schedule) contemplated by this Agreement.
- 3. Any further documents referred to in the Site Leases.

#### **PART 3: VARIATIONS TO COMMERCIAL CONDITIONS**

##### 1. **EXCLUSION OF COMMERCIAL CONDITIONS**

Commercial Conditions 2.2, 3.3, 4.1.1, 4.3.2, 6.3.7, 6.3.8, 6.3.9 and 8.3 are excluded.

## 2. **VARIATION OF COMMERCIAL CONDITIONS**

- 2.1 Commercial Condition 3.1.1 reads, “The seller is selling the property subject to all incumbrances, whether or not disclosed to the buyer (but without prejudice to the Seller’s duty of disclosure in relation to matters of which it is aware).”
- 2.2 In Commercial Condition 4.2.3, the Seller’s obligations extend only to documents in the possession of the Seller or its mortgagee.
- 2.3 In Commercial Condition 4.5.2, the reference to Condition 4.5.4 is a reference to Condition 4.5.3.
- 2.4 In Commercial Condition 5.1.2, the words “but the buyer is to be credited with any contributions to the premium receivable by the seller from a tenant or other third party so far as they are attributable to that period” are included at the end of that condition.
- 2.5 In Commercial Condition 5.1.2(c), the words “at any time” are replaced by the words “on reasonable prior notice during normal business hours, but not more than once between exchange and completion unless the terms of the policy change.”
- 2.6 In Commercial Condition 5.1.2(d), the words “obtain or” are deleted.
- 2.7 In Commercial Condition 5.2.1, the words “the buyer ... property, and” are deleted.
- 2.8 In Commercial Condition 6.1.2, the words “for the purposes only of conditions 6.3 and 6.7” are deleted.
- 2.9 In Commercial Condition 6.3.1, the words “Subject to Condition 6.3.7” are deleted.
- 2.10 Commercial Condition 6.3.2 reads “Apportionment is to be made with effect from the date of actual completion.”
- 2.11 In Commercial Condition 7.3.2, the words “between completion date and actual completion” are replaced by “from and including the completion date to and including actual completion”.

## SCHEDULE 4

### FREEHOLD TRANSFER PROVISIONS

#### 1. FREEHOLD TRANSFERS

1.1 The Council shall subject as provided in **paragraph 1.2** and in **paragraph 4** of this **Schedule** transfer the freehold interest in the Property to the Developer on the Freehold Transfer Completion Date on payment of the Freehold Transfer Price.

1.2 The Council shall not be obliged to complete the Freehold Transfer unless and until:

1.2.1 The Freehold Transfer Price has been paid for each Freehold Transfer;

1.2.2 All appropriate documentation is completed to ensure that the Hotel Site Lease and the Mixed Use Site Lease have merged with the freehold reversion in the Property and have been determined and appropriate steps have been taken to close the titles to these Site Leases at the Land Registry following completion of the Freehold Transfer;

1.2.3 The transfer of the Hotel Site takes effect subject to and with the benefit of the Residential Site Lease which is to continue in full force and effect;

1.2.4 The Developer has complied with its obligations under this Agreement and the Council has received from the Developer a Further Payment in accordance with the Agreement in respect of each Residential Unit and each Commercial Unit and all other monies due to the Council under this Agreement have been paid;

1.2.5 Completion of the Stairway Lease has taken place in accordance with this Agreement;

1.2.6 The Developer has paid all monies due to the Council under the Cliff Wall Agreement.

#### 2. ENCUMBRANCES AND DISPOSALS

2.1 The freehold interest in the Property shall be transferred subject to:

2.1.1 all matters subject to which the Site Leases were granted

2.1.2 the like matters (mutatis mutandis) as are referred to in **paragraph 3.3** of **Schedule 3** as at the Freehold Transfer Completion Date

- 2.1.3 all documents entered into pursuant to or contemplated by this Agreement (including any Statutory Agreements)
- 2.1.4 the Site Leases (subject to **paragraph 1.2.2** of this **Schedule**)
- 2.2 The Council shall be entitled to transfer or deal with its interest in the Property notwithstanding that the Freehold Transfers have not been completed.
- 2.3 The Developer shall not raise any requisition or objection in relation to the Council's title.

3. **FORMS OF TRANSFER**

The Freehold Transfers of the Hotel Site and Mixed Use Site shall be in the forms annexed to this Agreement as Appendix 5 and for the avoidance of doubt the provisions of Section 62 of the Law of Property Act 1925 shall be excluded and save where rights are expressly granted the Freehold Transfers shall not grant any rights or easements over the Retained Land or any other land.

4. **MISCELLANEOUS**

- 4.1 The like provisions as are contained in **paragraphs 1 to 6** (inclusive) of **Part 1 of Schedule 3** shall apply (mutatis mutandis) in the like manner to the Freehold Transfers as they apply to the grant of the Site Leases.
- 4.2 The Developer shall if required in writing by the Council execute a declaration on completion confirming that the Freehold Transfer of the Hotel Site was entered into prior in time to the Freehold Transfer of the Mixed Use Site.
- 4.3 The Council shall be under no further obligation to complete the Freehold Transfer of the Hotel Site if the Council has exercised its option under the Option Agreement and in that event the provisions of this Schedule shall relate to the transfer of the freehold interest in the Mixed Use Site only.

## SCHEDULE 5

### FURTHER PAYMENTS

1. In this Schedule the following expressions have the following meanings
  - 1.1 **“Long Lease”** means a lease granted for a term which has not less than 125 years to run as at the date of grant;
  - 1.2 **“Disposal ”** means any disposal of the Property or any part thereof including (but not by way of limitation) any freehold transfer or the grant of any lease or licence to occupy and/or any agreement to enter into any such transaction and “dispose” shall have a corresponding meaning;
  - 1.3 **“Permitted Disposal”** the Disposal by way of the grant of a Long Lease at a premium at a nominal rent not exceeding £100 per annum and with provision for payment by the tenant of a reasonable and proper contribution towards the cost of insurance and services;
  - 1.4 **“Residential Units”** has the meaning given to that expression in **clause 1.1** of this Agreement and “Residential Unit” shall have a corresponding meaning;
  - 1.5 **“Commercial Units”** has the meaning given to that expression in **clause 1.1** of this Agreement and “Commercial Unit” shall have a corresponding meaning;
  - 1.6 **“Units”** means the Commercial Units and the Residential Units and “Unit” shall have a corresponding meaning.
2. Without prejudice to **paragraph 2** of **Schedule 11** the Developer agrees that it will not make any reduction in the number or Floor Area of any of the Units below the number specified in Schedule 2 and will not make any other changes to the Works which might reduce the amount of Overage payable to the Council .
3. The Developer agrees with the Council that it will not dispose of any Unit otherwise than by way of Permitted Disposal on an arms length basis and on open market terms

4. The Developer shall pay to the Council on completion of each Disposal the full amount of the Overage payable to the Council in respect of that Disposal and the Developer shall not be entitled to Dispose of any Unit unless on completion of the Disposal the Overage is so paid.
5. The Developer shall be responsible for marketing the Development and the Developer covenants with the Council to take all reasonable and appropriate steps to market the Units.
6. The Developer shall take all reasonable steps to dispose of all of the Units by way of Permitted Disposal on an arms length open market basis as soon as possible following the Date of Practical Completion and in the case of each Commercial Unit to obtain the best price reasonably obtainable in the open market.
7. The Developer shall produce to the Council a bi-monthly report setting out all progress made in marketing the Units together with a progress report on the completion of all Disposals which are under offer and not yet the subject of a binding agreement for sale by way of Long Lease.
8. The Developer shall give to the Council not less than seven days prior written notice of the date on which the Disposal of a Unit by way of Permitted Disposal is due to take place.
9. Without prejudice to **paragraph 3** of this **Schedule** where the Developer enters into any Disposal of any Residential Unit which is not a Permitted Disposal the Developer shall upon the date on which such unauthorised disposal is entered into pay to the Council the Residential Unit Overage in respect of each unit for which an unauthorised disposal has been made.
10. Where any payment due to the Council under this Schedule is not paid on the due date the Developer shall pay to the Council interest thereon at the Contract Rate from the due date for payment down to the date of payment to the Council and such interest shall be payable to the Council on demand.
11. The Developer shall forthwith notify the Council in writing of all prospective and completed disposals (including any agreements for disposal) and shall supply to the Council or its solicitors copies of all relevant documents.
12. The Council confirms that for the purpose of the restriction registered against the title to the Property the Council will give its consent to the registration of a

Permitted Disposal upon payment of all monies payable to the Council under this Schedule in relation to such Permitted Disposal.

13. The Developer shall not enter into any agreement for a Permitted Disposal which provides for completion of the Permitted Disposal to take place more than four weeks after the agreement is entered into provided that this restriction shall not apply to agreements entered into prior to the Date of Practical Completion provided that the date of completion of the Permitted Disposal takes place not less than 21 days after the Date of Practical Completion.
14. Without prejudice to **paragraph 2** of this **Schedule** where there is any Disposal of a Commercial Unit which is not a Permitted Disposal or where in the reasonable opinion of the Council there is a Permitted Disposal of a Commercial Unit which is not on open market terms in an arms length transaction or is made to a group company or any person firm connected or associated with the Developer it shall be assumed for the purpose of calculating the Commercial Unit Overage payable to the Council in respect of that Disposal that the Disposal was made at the highest premium which would have been obtained on a Permitted Disposal of that Commercial Unit in the open market on arms length terms (as determined by the Council acting reasonably) and Commercial Unit Overage shall be payable accordingly.
15. Without prejudice to any other right or remedy of the Council if the Developer shall be in breach of any of the obligations on its part contained in this Schedule and in consequence thereof the Council reasonably considers that the amount of Residential Unit Overage or Commercial Unit Overage is lower than it would otherwise have been the Developer shall pay to the Council on demand such additional amount of Overage as would have been payable had the breach not occurred (as determined by the Council acting reasonably) provided that if the Developer shall object to any amount determined by the Council under **paragraph 14** or this **paragraph 15** the amount or amounts payable by the Developer shall be determined in accordance with the Dispute Procedure.
16. Without prejudice to the Developer's obligation to pay all Further Payments due hereunder in the event that the tenants of any Residential Units exercise any right to collective enfranchisement under the Leasehold Reform Housing and Urban Development Act 1993 or otherwise before all Overage payable or to become payable to the Council under this Agreement has been paid the Developer shall pay to the Council on demand and indemnify the Council against all loss of Overage or



potential Overage and other sums suffered or to be suffered by the Council as a result of the exercise of such right.

## SCHEDULE 6

### STATUTORY AGREEMENTS HIGHWAY WORKS AND TRAFFIC REGULATION ORDER

#### PART 1: DEFINITIONS

1.

1.1 In this Agreement the following words and expression shall have the following meanings unless the context requires otherwise:

**“the Planning Act”** the Town and Country Planning Act 1990 and includes any statute amending, consolidating or replacing it for the time being in force;

**“Highways Agreement”** means such agreement as the Highway Authority shall require to be entered into under Section 38 and/or 278 of the Highway Act 1980 pursuant to Informative (D) of the Planning Permission

**“Statutory Agreement”** any agreement which is expressed to be made pursuant to any one or more of the following provisions:

- (a) Section 106 of the Planning Act;
- (b) Section 33 of the Local Government (Miscellaneous Provisions) Act 1982;
- (c) Section 111 of the Local Government Act 1972;
- (d) Sections 38 or 278 of the Highways Act 1980; or
- (e) Section 104 of the Water Industry Act 1991;

or any provision of similar intent, or any agreement with the water or sewerage undertaker or other appropriate authority or company as to the supply of water to or drainage of surface

water and effluent from the Property or any part of it or any adjoining property or any agreement with any competent authority or body relating to other services which is required to be entered into in connection with the Development;

## **PART 2: STATUTORY AGREEMENTS**

1. The Developer shall on the signing of this Agreement enter into an Agreement under Section 106 of the Planning Act in the form contained in Appendix 11 (“the Section 106 Agreement”) and shall promptly enter into all Statutory Agreements as shall be necessary in order to carry out and complete the Development Works
2. Without prejudice to the generality of the foregoing the Developer shall use its best endeavours to enter into the Highways Agreement within 8 weeks after the date of this Agreement or as soon as possible thereafter in a form required by the Highway Authority in accordance with Informative (D) of the Planning Permission and approved by the Council (such approval not to be unreasonably withheld or delayed).
3. The Developer shall keep the Council informed on a regular basis (and supply to the Council copies of all relevant correspondence and copy documentation including any drafts of the Highways Agreement on request) and shall notify the Council in writing forthwith upon the Highways Agreement being completed accompanied by a certified copy of the Agreement
4. Subject to the Council having approved the form of the Highways Agreement the Council agrees to join in as party to the Highways Agreement for the purposes of offering for adoption such of the land within Title K838703 (and any adjoining land to the extent (if at all) owned by the Council but without any obligation on the part of the Council to deduce title thereto) as shall be required by the Highway Authority to be offered for adoption in connection with the Highway Works and shall not be obliged to enter into any further obligations thereunder unless the Council in its discretion (acting reasonably) agrees to do so. The Council shall not otherwise be obliged to enter into any Statutory Agreement. The Developer shall be responsible for complying at its own expense with all obligations under the Highways Agreement (other than the obligation to offer land for adoption as aforesaid) and shall indemnify the Council from and against all cost claims and liabilities arising from such obligations or any breach thereof by the Developer.

### **PART 3: HIGHWAY WORKS**

1. The Developer shall at its own expense promptly carry out and complete the Highway Works to an adoptable standard in accordance with the Highways Agreement and the requirements of the Highway Authority and to the satisfaction of the Council and the Highway Authority and otherwise in accordance with **Schedule 11** of this Agreement.
2. The Developer shall not commence works on or obstruct any part of the existing Marina Esplanade Roundabout unless and until the Highway Works have been carried out to the satisfaction of the Highway Authority in accordance with the Highways Agreement unless Council (having first obtained approval from the Highway Authority) agrees otherwise.

### **PART 4: ROAD TRAFFIC ORDER**

1. Following completion of the Highway Works the Developer shall at its own expense promptly apply to the Highway Authority for and obtain the Road Traffic Order. The Council shall in its capacity as landowner lend reasonable assistance to the Developer in obtaining such licence but without obliging the Council to incur any expense in so doing.

### **PART 5: MISCELLANEOUS**

1. For the avoidance of doubt the Developer shall be responsible for obtaining from the Highway Authority at its own expense any licence required for chairs tables or scaffolding in accordance with Informative (F) of the Planning Permission.
2. The Developer shall comply with its obligations contained in the Section 106 Agreement and in any other Statutory Agreements entered into pursuant to this Schedule

## SCHEDULE 7

### GRANT OF STAIRWAY LEASE

1. On the Stairway Lease Completion Date the Council shall grant and the Developer shall accept the Stairway Lease.
2. The Stairway Lease shall be in the form of the draft Lease contained in Appendix 9 subject to any changes which the Council may reasonably require in order to give effect to the terms of this Agreement and incorporating appropriate Land Registry prescribed lease clauses.
3. The like provisions as are contained in **paragraphs 1 to 6** (inclusive) of **Part 1 of Schedule 3** shall apply (mutatis mutandis) in like manner to the Stairway Lease as they apply to the grant of the Site Leases.
4. The Developer shall with effect from completion of the Stairway Works until actual completion of the Stairway Lease comply with the like obligations (mutatis mutandis) as are contained in the Stairway Lease as if the Stairway Lease had been completed on completion of the Stairway Works (save that the Developer shall not be entitled to assign its interest thereunder).
5. The Stairway Lease shall be granted with full title guarantee to the extent that the premises to be demised thereby are within Land Registry title K838703 and to the extent that the premises to be demised thereby are not within title K838703 the Council grants the same insofar as it has power to do so.

## SCHEDULE 8

### STATUTORY CONSENTS

1. In relation to all parts of the Development Works the Developer shall make application for any necessary Statutory Consents at such time as shall be necessary to ensure that the Development Works or the relevant part thereof can be carried out in accordance with the Programme of Works referred to in Schedule 10
2. In relation to all Statutory Consents the Developer is to:
  - 2.1 make an application for and use all reasonable endeavours to obtain the Statutory Consents or obtain lawful relaxations or waivers of them;
  - 2.2 provide copies of the Statutory Consents obtained to the Council; and
  - 2.3 keep all Statutory Consents obtained valid and unrevoked and use all reasonable endeavours to renew any that become invalid or revoked.
3. Each application for any Statutory Consents shall be consistent with the Development Specification subject however to any variations thereto as shall be approved by the Council as mentioned in **Schedule 11**. If any Statutory Consent is refused the Developer is to use all reasonable endeavours to obtain the relevant consents.

STEVE WOOD - FAX  
"SITE LEASE  
COMPLETION DATE"  
WILL BE THREE (3)  
MONTHS FROM  
EXCHANGE (TODAY?)  
0208-399-3863

## SCHEDULE 9

### PROGRAMME OF DEVELOPMENT WORKS

1. Without prejudice to **paragraphs 9 and 10** of this **Schedule** the Start Date for each part of the Works shall be as follows:
  - 1.1 Highway Works – 26 weeks after the Site Lease Completion Date
  - 1.2 Hotel Works – 11 months after the Site Lease Completion Date
  - 1.3 Residential Works - 17 months after the Site Lease Completion Date
  - 1.4 Retail Works – 11 months after the Site Lease Completion Date
  - 1.5 Health Club Works – 11 months after the Site Lease Completion Date
  - 1.6 Play Area Works – 11 months after the Site Lease Completion Date
  - 1.7 Stairway Works – 17 months after the Site Lease Completion Date
2. The Developer shall procure that (subject only as provided in **paragraphs 3 and 4** of this Schedule) Practical Completion of each part the Development Works and all relevant ancillary works takes place as follows:
  - 2.1 Highway Works – 10 months after the Site Lease Completion Date
  - 2.2 Hotel Works – 37 months after the Site Lease Completion Date
  - 2.3 Residential Works – 50 months after the Site Lease Completion Date
  - 2.4 Retail Works – 31 months after the Site Lease Completion Date
  - 2.5 Health Club Works – 31 months after the Site Lease Completion Date
  - 2.6 Play Area Works – 31 months after the Site Lease Completion Date
  - 2.7 Stairway Works – 50 months after the Site Lease Completion Date
3. Without prejudice to **paragraphs 1 and 2** of the **Schedule** the Developer shall procure that the Development Works shall be progressed in accordance with the programme contained in Appendix 13 to this Agreement.
4. If any extension of time is granted under the Building Contract that does not result from the act, omission or default of the Developer, the period or periods of time for

carrying out and completing relevant part of the Development Works under **paragraph 2** of this Schedule is to be extended by the extension of time granted to the Building Contractor under the Building Contract.

5. If there is any delay in completing the Development Works arising from:
  - 5.1.1 any default of the Building Contractor under the terms of the Building Contract;
  - 5.1.2 the Insolvency of the Building Contractor;
  - 5.1.3 Force Majeure, to the extent not covered under **paragraph 4**; or
  - 5.1.4 any loss or damage caused by any of the Insured Risks

the period or periods of time for carrying out and completing the relevant part or parts of the Development Works is to be extended by such period as the Council's Representative certifies as being reasonable and proper in the light of the reasons for the delay.

6. Where the Developer is entitled to claim an extension of time under both **paragraph 4** and **paragraph 5**, **paragraph 5** will take priority and the Developer will not be entitled to any additional extension of time under **paragraph 4**.
7. The Developer shall not be entitled to an extension of time to the extent that the Developer has failed to take action in due time to apply for any necessary Statutory Consents or otherwise is the cause of the delay or has contributed to it.
8. The Council shall have the right to extend any of the time periods referred to above (and whether or not the time period in question has expired) and in that event this Schedule shall be construed accordingly.
9. Unless otherwise agreed in writing by the Council the Highway Works shall be carried out and completed in accordance with this Agreement and Informative (D) of the Planning Permission before any other part of the Development Works is commenced.
10. The Council and the Developer agree to comply with their respective obligations contained in the agreement of the same date as this Agreement made between the Council (1) and the Developer (2) relating to the repair of the Cliff Wall ("the Cliff Wall Agreement") and where the Council exercises its option under clause 2.1.2 of



the Cliff Wall Agreement to carry out works to the Cliff Wall prior to completion Structural Development Works (as defined in the Cliff Wall Agreement) and as a direct result thereof delay is caused to the Developer in carrying out the Development Works under this Agreement the Council shall allow the Developer a reasonable extension (as determined by the Council acting reasonably and confirmed by the Council in writing to the Developer) of the dates (or some of them) referred to in **paragraphs 1 and 2** of this **Schedule**.

## SCHEDULE 10

### CDM REGULATIONS

#### 1. APPOINTMENTS

- 1.1 The Developer shall act as the only client in respect of the Development Works in accordance with regulation 4(1) of the CDM Regulations.
- 1.2 The Developer is to appoint a Planning Supervisor as the planning supervisor and a principal contractor for the Development Works in accordance with regulation 6 of the CDM Regulations.

#### 2. OBLIGATIONS

- 2.1 The Developer is to:

give notice to the Health and Safety Executive in accordance with regulation 4(4) of the CDM Regulations of its appointment as the only client in respect of the Development Works;

- 2.1.1 comply with its obligations as the only client under the CDM Regulations;
- 2.1.2 ensure that the persons appointed under 2 comply with their obligations under the CDM Regulations;
- 2.1.3 ensure that designers and contractors for the purposes of the CDM Regulations comply with their obligations in the CDM Regulations; and
- 2.1.4 in conjunction with the Planning Supervisor ensure that:
  - 2.1.4.1 full details of the Development Works are given to the Health and Safety Executive in accordance with regulation 7 of the CDM Regulations; and
  - 2.1.4.2 a Health and Safety Plan is prepared and submitted to the Health and Safety Executive in accordance with regulation 15 of the CDM Regulations.

- 2.2 The Developer is not to start the Development Works until:

- 2.2.1 it has complied with **paragraph 2.1.1**;

2.2.2 the Health and Safety Executive have been provided with the information required under **paragraph 2.1.4.**

## SCHEDULE 11

### DEVELOPMENT OBLIGATIONS

#### 1. CARRYING OUT THE DEVELOPMENT WORKS

The Developer is to proceed diligently with and carry out and complete the Development Works:-

- 1.1 in a good and workmanlike manner, free from defects (save in respect of anything which may otherwise be deemed a defect had not its presence in the Property been the result of compliance with any requirement of a Statutory Consent) and using good quality and suitable materials; and
- 1.2 in accordance with:
  - 1.2.1 the Planning Permission (including Informatives (A) to (H) thereto and any details approved thereunder)
  - 1.2.2 the Programme of Works;
  - 1.2.3 the Development Specification;
  - 1.2.4 all requisite planning listed building and conservation area consents;
  - 1.2.5 the Statutory Consents;
  - 1.2.6 all Statutory Requirements, including the CDM Regulations;
  - 1.2.7 the requirements, if any, of the insurers of the Property;
  - 1.2.8 British and European standards and any applicable codes of building practice (including all relevant NHBC and other similar requirements in relation to the Residential Units);
  - 1.2.9 without using or specifying the use of any Deleterious Materials; and
  - 1.2.10 any relevant Statutory Agreements insofar as the same relate to the Works or any part of the Works
  - 1.2.11 in the case of the Highway Works in accordance with **Schedule 6** of this Agreement
- 1.3 In accordance with all other relevant provisions of this Agreement.

## 2. VARIATIONS

2.1 No variations in the Programme of Works will be permitted without the prior written consent of the Council.

2.2 The Developer shall prior to commencing any works in respect of which approval of details is required under the Planning Permission obtain the Council's written approval thereto under this Agreement (such approval not to be unreasonably withheld or delayed)

### 2.3

2.3.1 there shall be no change to the Development Specification (including the materials to be used) without the prior written consent of the Council which (subject as provided in **paragraph 2.3.2**) shall not be unreasonably withheld or delayed

2.3.2 the Council shall not be required to approve a variation which will comprise any alteration of a material nature or any change to any materials plant or equipment which is of a lesser quality than the materials plant and equipment they replace

2.3.3 for the avoidance of doubt any change to the following shall be considered to be material:

2.3.3.1 any change to the location height massing or external elevations of any building.

2.3.3.2 Any change to the Floor Area or number of bedrooms in the Hotel.

2.3.3.3 Any change to the Floor Area of or the number of Retail Units.

2.3.3.4 Any change to the number or size of the Residential Units.

2.3.3.5 Any change to the materials which affect the external appearance of any building.

2.3.3.6 Any reduction in the number of car parking spaces.

2.3.3.7 Any change in the size of the Play Area or Health Club.

2.3.3.8 Any change to the Highway Works or the Stairway Works.

2.3.4 The Developer is to provide the Council with written details of the proposed changes together with copies of any plans, drawings and specifications showing the proposed changes.

### 3. INSPECTION BY THE COUNCIL

3.1 During the carrying out of the Development Works, the Council and the Council's Representative may enter upon the Property to view the state and progress of the Development Works and to inspect the same against the obligations of this Schedule.

3.2 The Council and the Council's Representative will:

3.2.1 give reasonable prior notice to the Developer before exercising the rights unless prior arrangements have been made with the Developer for regular visits;

3.2.2 exercise the rights at reasonable times and reasonable intervals;

3.2.3 be accompanied by the Developer's Representative if the Developer so requires;

3.2.4 comply with the reasonable requirements of the Building Contractor; and

3.2.5 refer all matters arising to the Developer and not to the Building Contractor or its agents, workmen or sub-contractors.

3.3 The Developer is, upon the reasonable written request by the Council, to give the Council full written details and copies of the results of any inspection or test of the Development Works carried out by or on behalf of the Developer.

3.4 If the Council gives notice to the Developer that any works or materials are not in accordance with this Schedule, the Developer is promptly take the appropriate action to remove the defective works or materials and make good the defects as soon as practicable to the reasonable satisfaction of the Council. Any notice served under this **paragraph 3.4** is to give proper and detailed reasoning to the Developer of the complaint or defect referred to.

### 4. AS TO THE BUILDING CONTRACT:

4.1 The Developer shall not appoint any Building Contractor in relation to the Development Works or any part of them unless the Building Contractor has first

been approved in writing by the Council (such consent not to be unreasonably withheld or delayed).

- 4.2 The Developer shall not change the Building Contractor or appoint any other Building Contractor in relation to the Works or any part of them without the prior written approval of the Council (such consent not to be unreasonably withheld).
- 4.3 The Developer shall notify the Council within 10 working days of the entering of any Building Contract or any variations thereof accompanied by a certified copy of the Building Contract or variations.
- 4.4 The Developer shall notify the Council in writing within 10 Working Days of the entering into of any Main Sub-Contract or variation thereof accompanied by a copy of the Main Sub-Contract or variation.
- 4.5 Any Building Contract and each Main Sub-Contract shall contain provision for warranties to be provided in favour of the Council in accordance with **paragraph 6** of this **Schedule**.
- 4.6 The Developer shall procure that each Building Contractor complies with its obligations under the Building Contract.

5. **AS TO THE PROFESSIONAL TEAM:**

- 5.1 The Developer shall not appoint or change the Architect or appoint any new architect in relation to the Development Works without the prior written approval of the Council such approval not to be unreasonably withheld or delayed. The Council hereby confirms its consent for the purpose of this **paragraph 5.1** to the appointment of PRC Fewster of 28 Brook Street London W1K 5DH as the Architect.
- 5.2 The Developer shall notify the Council in writing within 10 Working Days of the appointment of each member of the Professional Team or material variation of any appointment accompanied by a certified copy of the appointment or variation
- 5.3 The appointment of the Architect shall be on terms no more favourable to the Architect than those contained in the RIBA Standard Form of Agreement for the appointment of an Architect (SFA/99 updated 2004) and the appointments of the other members of the Professional Team shall be in such form as the Developer acting reasonably shall determine but all appointments (including the appointment of the Architect) shall in any event contain provisions for warranties to be provided in favour of the Council in accordance with **paragraph 6** of this Schedule

5.4 The Developer shall procure that the Professional Team comply with the terms of their appointments).

5.5 Without prejudice to the foregoing each appointment shall provide for warranties to be provided to the Council in accordance with **paragraph 6** of this **Schedule**.

## 6. **WARRANTIES**

6.1 The Developer shall provide to the Council prior to the commencement of the Development warranties (under seal or otherwise executed as a deed) from each member of the Main Professional Team on terms not more favourable to the warrantor than those contained in the Construction Industry Council form of warranty (CIC/CONSWa/F) (with paragraph (a) of clause 2 omitted and permitting assignment by the Council to any third party stepping in to complete the Development or part thereof and a further assignment by that third party) and otherwise in a form approved by the Council (such approval not to be unreasonably withheld) together with certified copies of their appointments.

6.2 The Developer shall prior to letting any Building Contract (or entering into any letter of intent) provide to the Council a warranty from the Building Contractor on terms not more favourable to the Contractor than those contained in the form of contractor collateral warranty in form CWa/F (2005 edition) published by The Joint Contracts Tribunal Limited (with clause 1.1 omitted and permitting assignment by the Council to a third party stepping in to complete the Development or part thereof and a further assignment by that third party) and otherwise in a form approved by the Council (not to be unreasonably withheld) together with a certified copy of the Building Contract.

6.3 Upon the appointment of any new Building Contractor or any new member of the Main Professional Team the Developer shall forthwith procure that the new Building Contractor and each new member of the Main Professional Team provides a warranty in favour of the Council in the form provided for in this **paragraph 6** and provide the Council with a certified copy of the Building Contract or appointment as the case may be.

6.4 The Developer shall provide to the Council a warranty from each of the Main Sub-contractors before they commence work on terms not more favourable to the sub-contractor than those contained in the form of sub-contractor collateral warranty in form SCWa/F (2005 edition) published by The Joint Contracts Tribunal Limited (with clause 1.1 omitted and permitting assignment by the Council to a third party stepping in to complete the Development or part thereof and a further assignment by



that third party) and otherwise in a form approved by the Council (such approval not to be unreasonably withheld) together with a certified copy of the sub-contract.

## 7. **SITE MEETINGS**

7.1 The Developer will hold regular site meetings and ensure that the Building Contractor and relevant members of the Professional Team attend such meetings to review or plan progress or deal with any other matter relating to the carrying out of the Development Works. The Council's Representative shall be invited to attend such meetings as observer only

7.2 The Developer is to:

7.2.1 give the Council not less than 5 days written notice of any site meetings called under **paragraph 7.1** unless it has been agreed that site meetings will be held at regular intervals on dates and at times agreed in advance;

7.2.2 permit the Council and the Council's Representative, if they so desire, to attend those site meetings;

7.2.3 permit the Council and the Council's Representative to make representations in connection with the Development Works ;

7.2.4 supply the Council and the Council's Representative with copies of such minutes of the site meetings as are produced, whether or not they attend.

7.3 In respect of any representations made by the Council or the Council's Representative under **paragraph 7.2.3**:

7.3.1 the Developer is to have due regard to them;

7.3.2 the Developer is to ensure that the members of the Professional Team and the Building Contractor take proper account of those representations; and

7.3.3 the Developer is to notify the Council and the Council's Representative of any observations made by the members of the Professional Team or the Building Contractor on the Council's representations.

## 8. **PROVISION OF INFORMATION**

8.1 The Developer is:

8.1.1 to be available at the reasonable request of the Council to inform, consult, report to and liaise with the Council and comply with the proper requests by and notices from the Council consistent with the provisions of this Agreement;

8.1.2 promptly to supply to the Council copies of all written material relevant to the obligations of the Developer in favour of the Council as soon as is practicable after it is received or produced by or on behalf of the Developer.

## 9. PRACTICAL COMPLETION

9.1 The Developer is to procure that the Developer's Representative inspects each part of the Development Works with a view to the issue of the Certificate of Practical Completion relevant thereto in accordance with the terms of the Building Contract. The Developer is to give the Council's Representative not less than ten working days' prior written notice of the date and time, being a working day during the hours of daylight, when the Developer's Representative will carry out each such inspection.

9.2 The Council and the Council's Representative will be entitled to accompany the Developer's Representative on each inspection of the Development Works and to make representations on the proposal to issue any Certificate of Practical Completion and the Developer is to procure that the Developer's Representative takes proper account of any representations made by them.

9.3 If there are any defects in the Development Works or any part of them (other than defects in the nature of minor snagging items which would not be an impediment to the issue of a Certificate of Practical Completion in accordance with the terms of the Building Contract) the Developer is to procure that Developer's Representative does not issue the relevant Certificate of Practical Completion until those defects have been made good.

9.4 Subject to **paragraph 9.3**, the Developer is to serve a copy of each Certificate of Practical Completion on the Council and the Council's Representative as soon as reasonably practicable after the date of the inspection of the Development Works or this relevant part of them.

9.5 Provided that in relation to the Highway Works the Developer shall in addition comply with the requirements of the Highway Authority.

10. **DEFECTS**

The Developer is to ensure and procure that all defects in the Development Works or any relevant part of them for which the Building Contractor is responsible under the Building Contract or for which the Developer is responsible hereunder that arise within the Defects Liability Period are made good provided that in relation to the Highway Works the Developer shall in addition comply with the provisions of the Highways Agreement and comply with the requirements of the Highway Authority.

11. **MISCELLANEOUS**

11.1 In carrying out the Development Works;

11.1.1 The Developer shall not do any act matter or thing which affects or may affect the structural integrity or cause any damage to the Cliff Wall and the Developer shall comply with all reasonable requirements of the Council to protect the same and without prejudice to the foregoing the Developer shall within 3 months of completion of all structural parts of the Development Works (for this purpose meaning all of the Development Works excluding fitting out and other internal works) make good any damage caused to the Cliff Wall to the intent that the Cliff Wall at such date is in no worse a state of repair and condition than it is on the date of this Agreement as evidenced by the Cliff Wall Schedule of Condition.

11.1.2 The Developer shall comply with all proper and reasonable requirements and regulations imposed by the Council from time to time in relation to the Development Works.

11.2 The Developer is to procure that:

11.2.1 proper provision is made for the security of the Property during the carrying out of the Development Works and for the protection of any materials, plant and equipment in or on it;

11.2.2 proper precautions are taken for the safety of all persons upon or in the vicinity of the Property including maintaining such hoardings, fences, security patrols, safeguards and arrangements of lighting the Development Works as may be necessary or desirable in the interest of public safety;

11.2.3 the Development Works are carried out in a manner which does not cause any nuisance, annoyance, inconvenience, injury, loss or danger to or

interference with the public or any owners or occupiers of adjoining or neighbouring property; and

11.2.4 proper provision is made for the support of land, buildings and boundaries adjoining the Property and for the protection of all services benefiting land adjoining or near to the Property.

11.3 The Developer is to:

11.3.1 procure that the rights and interests of third parties are not infringed by the carrying out of the Development Works;

11.3.2 comply with any agreements, deeds, documents, rights, easements, exceptions, reservations and covenants, restrictive or otherwise, affecting the Property or the title to it (save as covered by the title indemnity policy to be provided by the Council under Schedule 3)

11.3.3 not permit any encroachment or easement to be made or acquired against or over the Property;

11.3.4 negotiate the terms of agreements with owners and occupiers of neighbouring property for the release of rights of way, light and air or any other legal or equitable rights over the Property which would be infringed by the Development or prevent or impede the carrying out of the Development Works;

11.3.5 apply for and use all reasonable endeavours to obtain any orders which may be required for the temporary stopping-up or temporary diversion of any highways, footpaths or public rights of way to the extent that these may be required to enable the Development Works to be carried out

## **SCHEDULE 12**

### **DELETERIOUS MATERIALS**

Save as to any such materials as may be required in order to satisfy any Statutory Consent, any other materials which are not in accordance with recommendations within a booklet entitled "Good Practice in the Selection of Construction Materials" written by Ove Arup & Partners and sponsored by the British Property Federation, statutory requirements, British Standards, Codes of Practice and good building practice at the time of specification.

## **SCHEDULE 13**

### **INSOLVENCY DEFAULT**

#### **1. DEFINED TERMS**

In this Schedule, the following words and expressions have the following meanings:

“1986 Act”	Insolvency Act 1986
“1994 Order”	Insolvent Partnerships Order 1994
“LPA”	Law of Property Act 1925

#### **2. INSOLVENCY DEFAULT**

##### **2.1 Insolvency occurs if:**

- 2.1.1 a person is a company and:
- 2.1.2 it enters into a voluntary arrangement under Part I of the 1986 Act or it enters into a scheme of arrangement with its creditors in satisfaction or composition of its debt;
- 2.1.3 an administration order is made under Part II of the 1986 Act;
- 2.1.4 a receiver or manager, including an administrative receiver, is appointed whether under Part III of the 1986 Act, under the LPA or otherwise;
- 2.1.5 a resolution to wind-up is passed or a provisional liquidator is appointed or a winding-up order is made under Part IV of the 1986 Act unless for the purpose of a solvent amalgamation or reconstruction of the company;
- 2.1.6 a scheme of arrangement is made under section 425 Companies Act 1985;
- 2.1.7 it changes its status from unlimited to limited; or
- 2.1.8 it is struck off the register of companies or otherwise ceases to exist;
- 2.1.9 a person is an individual and:
- 2.1.10 an interim order or voluntary arrangement is made under Part VIII of the 1986 Act;

- 2.1.11 a trustee in bankruptcy is appointed or the individual is otherwise declared to be bankrupt;
- 2.1.12 the individual enters into a deed of arrangement or composition with his or her creditors;
- 2.1.13 a receiver is appointed under the Mental Health Act 1983 or the individual becomes incapable of managing his or her affairs; or
- 2.1.14 the individual dies;
- 2.1.15 two or more people are in partnership and:
- 2.1.16 they enter into a voluntary arrangement under Part II of the 1994 Order;
- 2.1.17 an administration order is made under Part III of the 1994 Order; or
- 2.1.18 a winding up order is made under Parts IV or V of the 1994 Order; or
- 2.1.19 a person is incorporated or resident in a jurisdiction outside England and Wales and any event or circumstance occurs which under the laws of that jurisdiction has an analogous or equivalent effect to any of the events in this **paragraph 2.1.**

## **SCHEDULE 14**

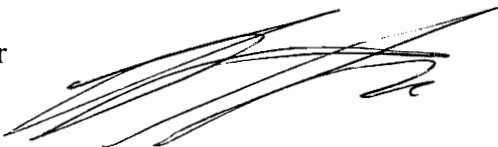
### **SIDE LETTERS**

A side letter to be provided by the Council to the Developer on the Site Lease Completion Date dealing with the release of the Council's option over the Hotel Site in certain circumstances in the form of the draft attached to this Agreement as Appendix 14.




**EXECUTED** as a Deed by )  
S F P VENTURES (UK) LIMITED )  
acting by two Directors or a )  
Director and the Secretary )

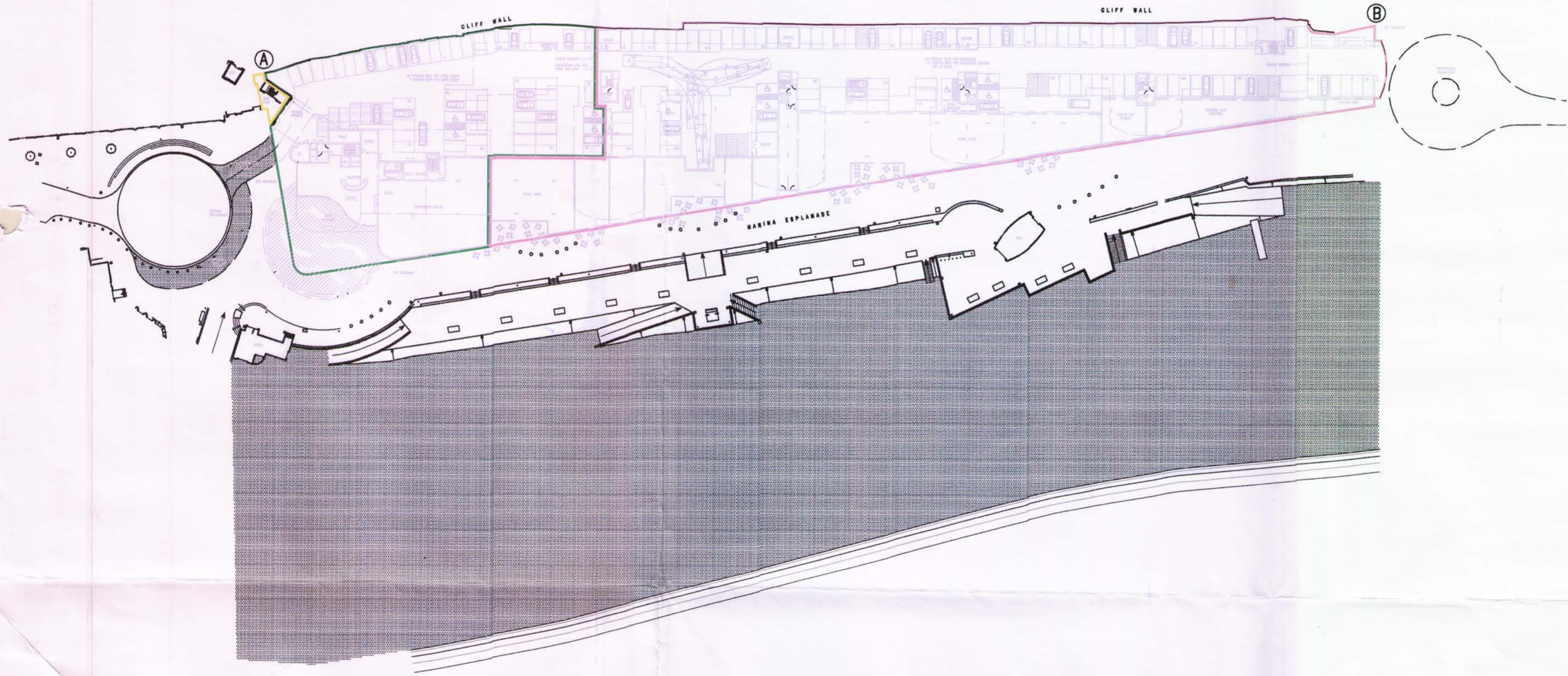
Director



Director/Secretary







Client:  
SFP VENTURES (UK) Ltd

Project:  
RAMSGATE MARINA ESPLANADE

Drawing Title:  
DEVELOPMENT AGREEMENT  
SITE PLAN 2

Scale @ A1: 1:500  
Project Co-ordinator: SW  
Date: 09/06

Job No: 5598  
Stage: LE 102  
Drawing No: Rev:

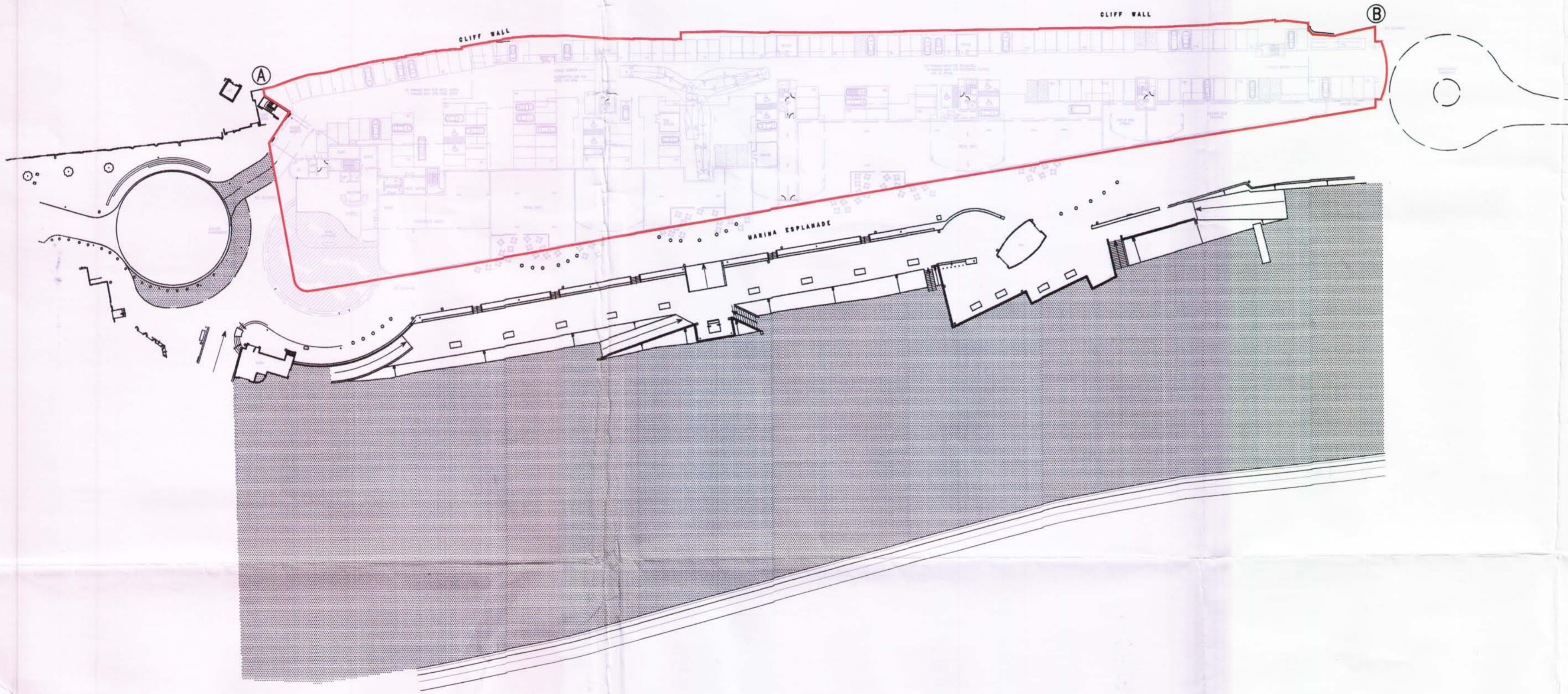
Issue Status:  
Construction  Preliminary   
Information  Approval   
Tender

**PRC**  
32 Victoria Road,  
Surrey, Surrey,  
KT6 4JT  
020 8399 5188  
Fax: 020 8399 3863  
info@prc-group.com  
www.prc-group.com

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Cork  
Warsaw  
Shanghai





Client:  
SFP VENTURES (UK) Ltd

Project:  
RAMSGATE MARINA ESPLANADE

Drawing Title:  
DEVELOPMENT AGREEMENT  
SITE PLAN 1

Scale @ A1: 1:500  
Project Co-Ordinator: SW  
Date: 09/06

Job No: 5598  
Stage: LE 101  
Drawing No: \_\_\_\_\_  
Rev: \_\_\_\_\_

Issue Status:  
Construction  Preliminary   
Information  Approval   
Tender

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Cork  
Warsaw  
Shanghai



**RAMSGATE – FORM OF SITE LEASE -  
HOTEL SITE**

---

DATED

2006

---

- (1) **THANET DISTRICT COUNCIL**  
(2) **SFP VENTURES (UK) LIMITED**

---

**LEASE**

---

Land and premises at Ramsgate Boulevard  
Ramsgate Kent

TERM: 199 years

FROM: 1st January 2006

**EVERSHEDS LLP**

Senator House  
85 Queen Victoria Street  
London EC4Y 4JL  
Tel: 020 7919 4500  
Fax: 020 7919 4919

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## LAND REGISTRY PARTICULARS

<b>LR1.</b>	<b>Date of lease</b>	2006
<b>LR2.</b>	<b>Title number(s)</b>	
<b>LR2.1</b>	<b>Landlord's title number(s)</b>	K838703
<b>LR2.2</b>	<b>Other title numbers</b>	None
<b>LR3.</b>	<b>Parties to this lease</b>	
	<b>Landlord</b>	<b>THANET DISTRICT COUNCIL</b> of Cecil Street Margate Kent CT9 1X2
	<b>Tenant</b>	<b>SFP VENTURES (UK) LIMITED</b> (Company Registration Number 05666803) whose registered office is at Lakeview House, Lake Meadows Office park, Woodbrook Crescent Billericay Essex CM12 0EQ
<b>LR4</b>	<b>Property</b>	<b>In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.</b>  The premises (referred to in this Lease as "the Premises") comprising land and premises at Ramsgate Boulevard, Ramsgate, Kent shown edged red on the attached plan and described in more detail in <b>clause 1.1</b>
<b>LR5.</b>	<b>Prescribed statements etc</b>	
<b>LR5.1</b>	<b>Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of</b>	Not applicable

**the Land Registration Rules 2003**

<b>LR5.2</b>	<b>This lease is made under, or by reference to, provisions of:</b>	Not applicable
<b>LR6.</b>	<b>Term for which the Property is leased</b>	One hundred and ninety nine years from and including 1 January 2006 (referred to in this Lease as "the Term Commencement Date")  To and including 31 December 2204.  (This term is referred to in this Lease as "the Term")
<b>LR7.</b>	<b>Premium</b>	<del>£</del> 183,333 [£[AMOUNT IN FIGURES] ([AMOUNT IN WORDS] pounds) together with VAT of £[AMOUNT IN FIGURES] ([AMOUNT IN WORDS] pounds).]  [£[AMOUNT IN FIGURES] ([AMOUNT IN WORDS] pounds) on which no VAT is payable.]
<b>LR8.</b>	<b>Prohibitions or restrictions on disposing of this lease</b>	This Lease contains a provision that prohibits or restricts dispositions.
<b>LR9.</b>	<b>Rights of acquisition etc</b>	
<b>LR9.1</b>	<b>Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land</b>	None
<b>LR9.2</b>	<b>Tenant's covenant to (or offer to) surrender this lease</b>	None
<b>LR9.3</b>	<b>Landlord's contractual rights to acquire this lease</b>	None
<b>LR10.</b>	<b>Restrictive covenants given in this</b>	None

**lease by the Landlord in respect  
of land other than the Property**

- |                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>LR11. Easements</b>                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>LR11.1 Easements granted by this lease for the benefit of the Property</b>                                 | The rights specified in <b>Schedule 1</b>                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property</b> | The rights specified in <b>clauses 3.9.2 and 3.14 and Schedule 2</b>                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>LR12. Estate rentcharge burdening the Property</b>                                                         | None                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>LR13. Application for standard form of restriction</b>                                                     | <p>The Parties to this Lease apply to enter the following standard form of restriction against the title of the Property.</p> <p>“No transfer assignment lease charge or other disposition of the registered estate by the proprietor of the registered estate or the proprietor of any registered charge shall be registered without a written consent signed on behalf of Thanet District Council of Cecil Street Margate Kent CT9 IX2 by its solicitor”</p> |
| <b>LR14. Declaration of trust where there is more than one person comprising the Tenant</b>                   | Not applicable                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

**THIS LEASE** is made on the date set out in clause LR1 of the Land Registry Particulars

**BETWEEN**

- (1) The Landlord named in clause LR3 of the Land Registry Particulars; and
- (2) The Tenant named in clause LR3 of the Land Registry Particulars

**NOW THIS DEED WITNESSETH AS FOLLOWS:**

**1. DEFINITION AND INTERPRETATION**

**1.1 Definitions**

In this Lease the following expressions have the following meanings:

- 1.1.1 The Land Registry Particulars form part of this Lease and words and expressions set out in the Land Registry Particulars are to be treated as defined terms in this Lease.
- 1.1.2 **“the 1995 Act”** means the Landlord and Tenant (Covenants) Act 1995
- 1.1.3 **“Approved Operator”** means a hotel operator approved in writing by the Landlord (such approval not to be unreasonably withheld or delayed in the case an operator with a proven track record of running good quality hotels and who owns not less than three such hotels (in addition to the hotel on the Premises) at the time of the application for Landlord’s consent)
- 1.1.4 **“Blue Land”** means that part of the Premises comprising the strip of land approximately 4 metres wide shown coloured blue on the Plan
- 1.1.5 **“Building”** means the building or buildings now or at any time during the Term erected on the whole or part of the Premises
- 1.1.6 **“Cliff Wall”** means the Cliff Wall between (inter alia) the points marked A and B on the Plan and includes all foundations footings buttresses overhangs and all other parts thereof
- 1.1.7 **“Conduits”** means pipes wires ducts cables (including optical fibres) channels sewers drains watercourses gutters shafts flues or other conducting media (and includes any fixings louvres cowls and any other ancillary apparatus) under through along over or by means of which any gas

electricity or other power source or any air water soil and the like or any electronic or telephonic signal and the like or other thing may pass

- 1.1.8 **Construction Regulations**” means the Construction (Design and Management) Regulations 1994 (as extended by sub-clause 1.2.3 of this Lease)
- 1.1.9 **“Date of Practical Completion”** means the Date of Practical Completion (as defined in the Development Agreement) of the Works
- 1.1.10 **“Development Agreement”** means the Agreement dated [                    ] 2006 made between Thanet District Council (1) and SFP Ventures (UK) Limited (2) relating to the development and sale of the Premises the Mixed Use Site and the Residential Premises
- 1.1.11 **“Initial Period”** means the period commencing on the date of this Lease and expiring on the date (10) years after the date of this Lease or (if later) the date of completion of the transfer of the freehold interest in the Premises pursuant to Schedule 4 of the Development Agreement
- 1.1.12 **“Insured Risks”** means the risks in respect of loss or damage by fire lightning storm tempest flood explosion earthquake (fire and shock) impact from vehicles aircraft and articles dropped therefrom riot civil commotion malicious damage bursting or overflowing of water tanks apparatus or pipes and such other risks as the Landlord or the Tenant may from time to time reasonably deem expedient
- 1.1.13 **“Landlord’s Surveyor”** means any person or firm appointed to perform the functions of the Landlord’s Surveyor under this Lease or any of them including any surveyor architect valuer managing agent or other agent (and also including any employee of the Landlord or a company that is a member of the same group as the Landlord within the meaning of Section 42 of the Landlord and Tenant Act 1954)
- 1.1.14 **“Mixed Use Site”** means the land shown edged blue on the Plan comprising part of the land registered at the Land Registry under title K838703
- 1.1.15 **“Mixed Use Site Lease”** means the lease of the Mixed Use Site of the same date as this Lease and made between the Landlord (1) and the Tenant (2)

- 1.1.16 **“Option Agreement”** means the option agreement dated with the same date as this Lease made between the Tenant (1) and the Landlord (2) under which the Landlord was granted an option to acquire the term granted by this Lease and (following transfer thereof to the Tenant) the freehold interest in the Premises
- 1.1.17 **“Permitted Use”** use as a good quality hotel with conference and other ancillary facilities appropriate to a good quality hotel (but (for the avoidance of doubt and without prejudice to the foregoing) not including (a) use as a boarding house or similar use and/or (b) use for occupation by benefit claimants) or such other use as the Landlord approves in writing
- 1.1.18 **“Perpetuity Period”** means the period of eighty years commencing on the date of this Lease which shall be the perpetuity period applicable hereto
- 1.1.19 **“Plan”** means the plans annexed to this Lease
- 1.1.20 **“Planning Acts”** means the Town and Country Planning Acts 1990 and other Acts of Parliament defined as “the planning Acts” in Section 336 of the Town and Country Planning Act 1990 and every other Act of Parliament and legislation relating to the use development and occupation of land and buildings for the time being in force (and as extended by sub-clause 1.2.3)
- 1.1.21 **“the Premises”** means all that piece or parcel of land (together with any building or buildings from time to time erected thereon or upon some part thereof) situate at Ramsgate Boulevard Ramsgate Kent which piece of land is shown edged red on the Plan (but excluding the Residential Premises) the freehold interest to which is registered at HM Land Registry (with other land) under title K838703 all additions and alterations which may be carried out during the Term and all landlord’s fixtures and fittings from time to time in or about the same provided that:
- 1.1.21.1 the boundary between the Premises and the Cliff Wall marked on the Plan is shown for identification purposes only (and not by way of delineation); and
- 1.1.21.2 the Premises do not include any part of the Cliff Wall and the Cliff Wall shall not be a party structure

- 1.1.22 **“Public Authority”** means any Minister Secretary of State and any Government Department and any public and/or local and/or fire and/or other authority or institution or corporation having functions which extend to the Premises or their use and occupation or the supply of services to the Premises or anything done thereon or thereto and includes any of their duly authorised officers
- 1.1.23 **“Quarter”** means the period of a quarter commencing on a Quarter Day and ending on the day before the next Quarter Day
- 1.1.24 **“Quarter Days”** means 31st March 30th June 30th September and 31st December in each year
- 1.1.25 **“Regulations”** means the regulations set out in **Schedule 3**
- 1.1.26 **“Relevant documents”** means
- 1.1.26.1 The Conveyance referred to in entry 1 of the Charges Register of title K838703
- 1.1.26.2 Option Agreement of even date between (SFP Ventures (UK) Limited) (1) and Thanet District Council (2)
- 1.1.26.3 Agreement dated [ ]2006 made between Thanet District Council (1) and SFP Ventures (UK) Limited relating to repairs to the Cliff Wall
- 1.1.26.4 *[Add details of statutory agreements entered into under Schedule 6 to the Development Agreement]*
- 1.1.27 **“Residential Premises”** means the residential premises erected or to be erected at first floor level and above over the land shown edged orange on the Plan and supporting columns as more particularly described in and demised by the Residential Lease
- 1.1.28 **“the Residential Premises Lease”** means the lease of the Residential Premises of the same date as this Lease and made between the Landlord (1) and the Tenant (2)
- 1.1.29 **“Retained Land”** means the land comprised in title number K838703 (including the Stairway Land, the Residential Premises and Mixed Use Site) excluding the Premises and all other land owned by the Landlord at

the date of this Lease lying adjacent to or in the vicinity of the Premises including the Cliff Wall and land and property owned by the Landlord above the top of the Cliff Wall and includes any buildings or structures erected on the Retained Land from time to time

- 1.1.30 **“Stairway”** means the cliff stairway constructed or to be constructed on the Stairway Land in accordance with the Development Agreement
- 1.1.31 **“Stairway Land”** means the land shown edged green on the Plan
- 1.1.32 **“Stairway Lease”** means the lease to be granted of the Stairway Land under the term of the Development Agreement
- 1.1.33 **“Stipulated Interest”** means interest at the Stipulated Rate (as well after as before judgement) for the period from the date on which the relevant payment is due (unless otherwise provided for herein) to the date of receipt by the Landlord (compounded with rests on the Quarter Days)
- 1.1.34 **“the Stipulated Rate”** means four per centum per annum (4%) above the base lending rate of Barclays Bank plc (or such other major clearing bank as may be nominated from time to time by the Landlord) for the time being in force or (if at any time no rate shall be ascertainable under this formula) the Stipulated Rate shall be such reasonably equivalent rate of interest as the Landlord shall from time to time specify
- 1.1.35 **“Superior Landlord”** means any person holding an estate or interest in reversion (whether immediate or mediate) to the estate or interest of the Landlord under this Lease and includes the successors in title and assigns of such person
- 1.1.36 **“Superior Lease”** means any lease or leases under which the Landlord and/or any Superior Landlord may from time to time hold the estate or interest to which it is entitled
- 1.1.37 **“termination of the Term”** means the determination of the Term whether by effluxion of time re-entry or otherwise howsoever
- 1.1.38 **“Use Classes Order”** means the Town and Country Planning (Use Classes) Order 1987 (as amended) as enacted on the date of this Lease
- 1.1.39 **“the Works”** has the meaning given to that expression in the Development Agreement



## 1.2 Interpretation

- 1.2.1 The expressions “the Landlord” and “the Tenant” include (unless the context otherwise requires) the person for the time being entitled to the reversion immediately expectant on the determination of the Term and the Tenant’s successors in title and those deriving title under the Tenant respectively
- 1.2.2 Where there are two or more persons included in the expression “Tenant” covenants expressed to be made by the Tenant deemed to be made by such persons jointly and severally
- 1.2.3 Any reference to any Act or Acts of Parliament or legislation generally shall include any European Community legislation or decree or other supranational legislation or decree having effect in law in the United Kingdom and shall (unless expressly specified to the contrary) include any modification extension or re-enactment of any of the foregoing for the time being in force and shall also include all instruments orders plans regulations bye-laws permissions licences consents notices and directions or other things for the time being made issued or given thereunder or deriving authority therefrom
- 1.2.4 Any reference to any insurance premium shall also include any insurance premium tax payable in respect thereof
- 1.2.5 Any covenant or obligation by or of the Tenant not to do or omit to be done any act matter or thing shall be deemed to include an obligation not to permit or suffer such act matter or thing to be done or not to permit or suffer the omission of such act matter or thing as the case may be
- 1.2.6 Reference to any permission for or right of the Landlord to enter upon or to have access to the Premises shall be construed as extending to all persons authorised from time to time by the Landlord (including agents professional advisers contractors workmen and others) with all necessary appliances and materials
- 1.2.7 Any provision of this Lease requiring the consent of the Landlord shall be deemed to require also the consent of any superior landlord from time to time

- 1.2.11 Words importing one gender include all other genders and words importing the singular include the plural and vice versa
- 1.2.12 The terms “the parties” or “party” mean the Landlord and/or the Tenant
- 1.2.13 References in this Lease to any clause sub-clause paragraph or schedule is a reference to the relevant clause sub-clause paragraph or schedule of this Lease and the clause or paragraph headings or marginal notes and the Index (if any) to this Lease shall not affect the construction thereof

**2. DEMISE - HABENDUM - REDDENDA**

- 2.1 IN CONSIDERATION of the Premium referred to in clause LR7 of the Land Registry Particulars and of the rents and covenants on the part of the Tenant hereinafter contained the Landlord hereby demises the Premises to the Tenant
- 2.2 TOGETHER WITH the rights mentioned in **Schedule 1**
- 2.3 EXCEPTING AND RESERVING for the benefit of the Landlord and all those deriving title through or otherwise authorised by the Landlord and all others having an interest in or who may become entitled to an interest in the Retained Land or any part thereof from time to time the easements and rights specified in **Schedule 2**
- 2.4 SUBJECT to (a) all easements quasi easements rights privileges covenants and restrictions to which the Premises are or may be subject and (b) the provisions of the Relevant Documents specified in the Particulars
- 2.5 TO HOLD (except and reserved as aforesaid) unto the Tenant for the Term
- 2.6 YIELDING AND PAYING during the Term (exclusive of Value Added Tax (or any similar tax) which shall be payable in addition as hereinafter provided) the following rents namely:
- 2.6.1 The yearly rent of a peppercorn (if demanded) payable on the First day of January in each year during the Term
- 2.6.2 Any Value Added Tax payable under clause 3.3
- 2.6.3 Any interest payable under clause 3.2
- 2.6.4 Any other sums payable from time to time by the Tenant under this Lease

- 1.2.8 If at any time or times there shall be a Superior Landlord or Superior Landlords the following provisions of this sub-clause 1.2.8 shall have effect:
- 1.2.8.1 References (however expressed) in this Lease to any matter which is required to be carried out to the satisfaction or with the approval of the Landlord shall be construed as including in addition a requirement that the matter shall be carried out to the satisfaction or with the approval of the Superior Landlord where the same is required by virtue of any corresponding terms of the Superior Lease
- 1.2.8.2 Where under this Lease the Tenant is under an obligation (however expressed) to the Landlord to pay any costs fees and expenses incurred by the Landlord in relation to any matter or to indemnify the Landlord against liability or damage in respect of any matter such obligation shall be deemed to include also an obligation to pay all costs fees and expenses incurred (in respect of such matter) by the Superior Landlord and an obligation to indemnify the Superior Landlord against such liability or damage as the case may be
- 1.2.8.3 The rights of entry and other rights reserved or otherwise permitted by this Lease shall (where the Superior Lease contains a corresponding reservation or permission) be exercisable by the Superior Landlord and others authorised by it and references to the Landlord in **Schedule 2** hereto shall be deemed to include also references to the Superior Landlord
- 1.2.8.4 Where in this Lease the Tenant covenants not to do any act matter or thing to the prejudice of or to affect adversely the Landlord such covenant shall be deemed to include also an obligation not to do any such act matter or thing to prejudice or adversely affect the Superior Landlord
- 1.2.9 The expression "Premises" (except in clause 3.13) and unless the context otherwise requires) shall be construed as extending to any part of the Premises
- 1.2.10 Any expression defined in any Schedule to this Lease shall have the same meaning where used in any other part of this Lease

### **3. TENANT'S COVENANTS WITH THE LANDLORD**

The Tenant hereby covenants with the Landlord as follows:

#### **3.1 To pay rents**

To pay all the rents hereby reserved at the times and in manner herein provided without any deduction or set off whatsoever save where required by statute notwithstanding any stipulation to the contrary

#### **3.2 To pay interest**

Without prejudice to any other right remedy or power herein contained or otherwise available to the Landlord if the Rent or any additional rents hereby reserved or any part thereof or any other sums payable to the Landlord pursuant to this Lease or any part thereof shall have become due and shall remain unpaid after the due date for payment (or in the case of sums other than the Rent fourteen days after the due date for payment) to pay to the Landlord on demand Stipulated Interest thereon

#### **3.3 To pay Value Added Tax**

To pay to the Landlord in addition to any rents or other sums payable under or by virtue of this Lease the amount of any value added tax (or similar tax whether in substitution for or in addition to it) which shall be chargeable in respect of any supply made by the Landlord to the Tenant under or by virtue of this Lease whether or not the same is chargeable by reference to the amount of such rents or other sums and whether or not as a result of the making of any election and so that amounts under this clause shall be payable

3.3.1 if chargeable by reference to rents or other sums at the same times as those rents or other sums are respectively payable

3.3.2 in any other case on demand in writing from time to time by the Landlord

#### **3.4 To pay outgoings**

To pay all rates taxes community charges duties levies charges assessments impositions and outgoings whatsoever whether parliamentary county municipal parochial local or of any other description which are now or hereafter during the Term may be taxed assessed charged or imposed in respect of the Premises or on the owner or occupier in respect thereof (other than income tax and corporation tax on

the receipt by the Landlord of income from the Premises and taxes payable in respect of any dealing with any reversion to this Lease)

### **3.5 As to insurance**

- 3.5.1 At all times during the Term to keep the Premises insured at the Tenant's expense in the joint names of the Landlord and the Tenant in the full cost of reinstatement against loss or damage by the Insured Risks together with architects' surveyors' engineers' and other professional fees and also the cost of site clearance
- 3.5.2 The insurance to be effected by the Tenant pursuant to clause 3.5.1 shall be with a UK insurance office of repute
- 3.5.3 The Tenant shall supply to the Landlord upon written request from time to time (but not more frequently than once a year) a copy of the insurance policy for the Premises and evidence that all premiums due have been paid
- 3.5.4 In the event of the Premises being destroyed or damaged by any of the Insured Risks the Tenant shall procure that all necessary building licences and permits under regulations or enactments for the time being in force are obtained to enable the Tenant to rebuild and reinstate the Premises and shall (subject to such licences and permits being forthcoming) pay out (or procure the payment out of) all moneys received in respect of such insurance (other than for architects' surveyors' and other professional fees) in rebuilding reinstating replacing and making good the Premises in accordance with the then existing statutory provisions bye-laws and regulations affecting the same or any necessary planning approval And in case the insurance moneys shall be insufficient for that purpose the Tenant shall make up the deficiency out of the Tenant's own moneys
- 3.5.5 Provided that in the event that the Tenant shall fail to effect insurance of the Premises in accordance with the foregoing provisions or to pay the premiums the Landlord shall be entitled to effect the same and/or pay the premiums as the case may be and in that event the Tenant shall pay to the Landlord on demand a sum equivalent to all premiums and other expenses incurred by the Landlord
- 3.5.6 Not to do or omit to be done any act matter or thing whatsoever the doing or omission of which would make void or voidable the insurance of the Premises or the Retained Land or whereby any payment thereunder may be

refused in whole or in part or whereby the premium payable in respect of any such policy may be increased

**3.6 To pay common costs**

To pay to the Landlord on demand a fair proportion (to be determined by the Landlord or the Landlord's Surveyor acting reasonably) of the costs and expenses of maintaining, inspecting, cleaning, repairing, servicing, altering, renewing, rebuilding or replacing any party walls, Conduits and other party structures or means of access used in common between the Premises and any other property

**3.7 To comply with statutes**

To comply with (and carry out all works acts deeds matters or things required by) all Acts of Parliament including the Planning Acts (and all subordinate legislation made under all Acts of Parliament) and the requirements of every Public Authority in respect of the Premises their use occupation and employment of persons therein and any works thereto and anything done therein (whether or not such compliance shall be the responsibility of the owner, the landlord, the tenant or occupier) and at all times to keep the Landlord indemnified against all costs claims demands and liability in respect thereof

**3.8 As to the Planning Acts**

3.8.1 During the Initial Period not to make any application for planning permission in respect of the Premises save in accordance with the Development Agreement and without prejudice to the foregoing not to implement any planning permission or approval until the same has been submitted to and approved by the Landlord (such approval not to be unreasonably withheld or delayed)

3.8.2 During the Initial Period not to enter into any agreement with any Public Authority regulating the development or use of the Premises save in accordance with the Development Agreement

**3.9 As to repairs and decoration**

3.9.1 The Tenant shall throughout the Term keep in good repair and condition (pending the grant of the Stairway Lease and thereafter whilst the Stairway Lease submits) and the exterior of all buildings from time to time erected on the Premises or any part thereof and the Stairway (but in the case of the Stairway only pending the grant of the Stairway Lease and thereafter whilst

the Stairway lease remains in existence) and shall keep all external parts of the Premises which are from time to time unbuilt upon in a well maintained and tidy condition

- 3.9.2 The Tenant shall allow the Landlord to have access to the Premises to view their state of repair and condition at all reasonable times during the Term on giving not less than 7 days prior written notice to the Tenant (or without notice in emergency) and shall commence any works required to remedy any breach of the Tenant's obligations under **clause 3.9** of this Lease within three months after the service of any notice specifying the works required or sooner in case of emergency and shall following commencement diligently proceed with and complete the same within 3 months after service of the notice (or sooner in case of emergency). In default, the Landlord with its contractors may enter and remain upon the Premises to carry out those works itself and all costs incurred by the Landlord shall be a debt payable on demand to the Landlord by the Tenant on a full indemnity basis

**3.10 As to alterations/additions**

- 3.10.1 Without prejudice to the obligations on the part of the Tenant contained in the Development Agreement and subject and without prejudice to **clause 3.10.2** of this Lease not at any time during the Initial Period to make any alteration or addition to the Premises without the prior written consent of the Landlord save that the Tenant shall carry out the Works in accordance with the Development Agreement

- 3.10.2 Not at any time to:

3.10.2.1 construct or place any new buildings or other temporary or permanent structures on the Premises or make any external alteration or addition to buildings on the Premises which is/are higher than the top of the Cliff Wall; or

3.10.2.2 construct or place any new building or other temporary or permanent structures of any description on the Blue Land other than removable car ports and bin stores (such approval not to be unreasonably withheld or delayed) which have been approved in writing by the Landlord and which are attached to the ground and are not in any way touching attached to or supported by the Cliff Wall; or

3.10.2.3 construct any new buildings on the Premises or rebuild extend alter or carry out any other works to any buildings from time to time on the Premises in a manner which interferes with damages or affects the structural integrity of the Cliff Wall;

3.10.2.4 attach any buildings structures or other items to or otherwise penetrate in any way the surface of the Cliff Wall

### **3.11 As to the Construction Regulations**

3.11.1 In relation to any works to the Premises which the Tenant may at any time carry out the Tenant shall comply with the Construction Regulations and shall at all times indemnify and keep the Landlord indemnified against all costs claims liabilities and demands in respect of any breach thereof

3.11.2 To procure that the Tenant or its representative shall act as sole "client" for the purpose of the Construction Regulations and that a declaration to that effect will be made by the Tenant under the Construction Regulations

### **3.12 As to User**

3.12.1 Not to use the Premises otherwise than for the Permitted Use

3.12.2 At all times following practical completion of the Hotel Works (as defined in the Development Agreement) to take all reasonable steps to procure that the Premises are fitted out and kept opened for trade for the Permitted Use

3.12.3 Not at any time during the Term to carry on upon the Premises any noisy or offensive trade business or occupation nor to do any act or thing which is or may be or become a nuisance annoyance disturbance or damage to the Landlord or the occupiers of any other part of the Retained Land and not to use the Premises at any time for any illegal or immoral purpose nor for a sale by auction

3.12.4 Not to use the Premises in any manner which obstructs the exercise of the rights reserved by this Lease and not to grant or permit any new right or easement to be granted or arise over the Premises

3.12.5 Without prejudice to the foregoing not at any time during the Term to carry on upon the Premises any of the following uses:-

(a) use as an amusement arcade or for the siting of gaming machines



(b) use as a casino or any other use relating to gambling; and

(c) use as a lap dancing club or other sex establishment.

### 3.13 As to Dealings

3.13.1 In this sub-clause (unless expressly provided to the contrary) the expression “sub-lease” means a sub-lease whether immediately or mediately derived out of this Lease and “sub-let” or “sub-letting” or “sub-lessor” or “sub-lessee” shall be construed accordingly

3.13.2 There shall not be an assignment of part only of the Premises at any time

3.13.3 During the Initial Period there shall not be any transfer assignment charge sub-letting or parting with or sharing possession or occupation of the whole or any part of the Premises Provided that this covenant shall not preclude

3.13.3.1 occupation of the Premises by building contractors and others engaged in carrying out the Works in accordance with the Development Agreement provided no sub-tenancy is created

3.13.3.2 the grant of an underlease of the whole of the Premises at a full open market rack rent with rent reviews at 5 yearly intervals granted for a term of not less than 15 years and not exceeding 35 years to an Approved Operator which contains an obligation by the tenant thereunder to keep the Premises fitted out equipped and open for trade for the Permitted Use (with a proviso for re-entry for (inter alia) breach thereof) which otherwise complies with the Development Agreement and which is in a form approved in writing by the Landlord (such approval not to be unreasonably withheld or delayed)

3.13.3.3 A charge over this Lease in favour of an Approved Funder (as defined in the Development Agreement) who has complied with the provisions of clause 15.2 of the Development Agreement

3.13.4 Within twenty-eight days after any assignment transfer sub-lease charge or other devolution of the title to the Premises (or any part thereof) to give written notice in duplicate thereof to the solicitor for the time being of the Landlord with a certified copy of the relevant instrument (certified by a solicitor) and to pay each of them their reasonable fee (not being less than Twenty pounds (£20)) for the registration of each such deed or document

### **3.14 To permit entry by the Landlord and others**

To permit the Landlord and other persons authorised by the Landlord in writing at all reasonable times (but after at least ten working days prior written notice except in emergency) to enter and remain upon the Premises with all necessary appliances where the works in question cannot reasonably and conveniently be carried out without entering onto the Premises for any of the following purposes:

- (a) to execute work to any part of the Retained Land (including the Residential Premises) and to erect scaffolding for this purpose
- (b) to construct alter maintain repair renew or fix any thing (including any Conduits) serving or intended to serve the Retained Land (including the Residential Premises) and running through or intended to run through under on or over the Premises
- (c) for the purpose of complying with any covenant on the part of the Landlord herein contained
- (d) to remove (and not reinstate) any car ports or bin stores erected on the Blue Land where access is required to the Cliff Wall and the Tenant does not remove the same within 7 days of a request by the Landlord to do so

the persons entering causing as little disturbance to the Tenant as reasonably practicable and making good as soon as practicable any damage caused to the Premises

### **3.15 As to the payment of certain costs and as to indemnities**

3.15.1 To pay to the Landlord on an indemnity basis all reasonable and proper costs fees expenses and commission (including bailiff's commission) (including VAT and disbursements) incurred by the Landlord of and incidental to or in connection with any of the following:

- (a) the preparation and service of any notice under Section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under Section 146 or 147 of that Act or under the Leasehold Property (Repairs) Act 1938 notwithstanding in any such case that forfeiture may be avoided otherwise than by relief granted by the Court

- (b) any application for a licence or consent required hereunder from the Landlord whether or not such licence or consent shall be forthcoming
- (c) the recovery or attempted recovery of arrears of rent or other sums due from the Tenant

3.15.2 To pay and make good to the Landlord all and every loss and damage whatsoever incurred or sustained by the Landlord as a consequence of any breach or non-observance of the Tenant's covenants herein contained and to indemnify the Landlord from and against all actions claims liability costs and expenses thereby arising

3.15.3 Without prejudice to any other right or remedy available to the Landlord to indemnify and keep the Landlord effectually indemnified from and against all expenses proceedings claims damages costs demands loss and any other liabilities as a consequence of or in respect of:

- (a) damage to the Premises or any part of the Retained Land caused by any act default or negligence of the Tenant or the servants agents licensees or invitees of the Tenant
- (b) (as far as the law allows) any injury to or death of any person damage to any property the infringement disturbance or destruction of any right easement or privilege or otherwise by reason of or arising directly out of the state of repair and condition of the Premises

### 3.16 **Regulations**

To comply with the Regulations

### 3.17 **To comply with the provisions of other Documents**

3.17.1 To observe and perform the provisions of the Relevant Documents insofar as the same affect the Premises and to indemnify the Landlord against all actions proceedings costs claims and demands in respect thereof

3.17.2 To comply with the obligations on the part of SFP Ventures (UK) Limited (as Developer) contained in the Development Agreement and without prejudice to the foregoing to carry out the Works on the Premises in accordance with the Development Agreement and to pay to the Landlord all

sums due under the Development Agreement insofar as they relate to the Premises at the times and in the manner provided for therein

3.17.3 To comply with the obligations on the part of the tenant contained in the Mixed Use Site Lease and the Residential Lease

3.17.4 To comply with the obligations on the part of the Seller contained in the Option Agreement

**3.18 Consent to Landlord's Release**

Without prejudice to the provisions of clauses 5 and 7.4 where the Landlord assigns its reversion to this Lease the Tenant shall not unreasonably withhold its consent to a request made by the Landlord under Section 8 of the 1995 Act for a release from the Landlord's covenants under this Lease

**4. LANDLORD'S COVENANT FOR QUIET ENJOYMENT**

The Landlord hereby covenants with the Tenant (but so that neither the Landlord named in the Particulars nor any successor in title (whether mediate or immediate) of the Landlord shall remain personally liable after it has disposed of the reversionary interest in the Premises save for any breach occurring prior to such disposal) that if Tenant pays the rents hereby reserved and performs and observes its obligations contained in the Lease the Tenant shall be entitled quietly to enjoy the Premises during the Term without interruption or disturbance by the Landlord or by any persons lawfully claiming through or under it

**5. PROVISOS AND DECLARATIONS**

**PROVIDED ALWAYS AND IT IS HEREBY AGREED that:**

**5.1 Re-entry**

5.1.1 If the rents hereby reserved or any part thereof or any other sum payable by the Tenant pursuant to any provision contained in this Lease or any part thereof shall at any time be in arrear and unpaid for twenty-one days after the same shall have become due (whether or not any formal or legal demand therefor shall have been made); or

5.1.2 if the Tenant shall at any time fail to perform or observe any of the covenants conditions or agreements herein contained and on the part of the Tenant to be performed and observed; or

- 5.1.3 if the Development Agreement is determined for any reason; or
- 5.1.4 if the Mixed Use Site Lease or the Residential Premises Lease or either of them is forfeited or otherwise determined for any reason

THEN (subject to the Landlord having given not less than 245days prior written notice to any Approved Funder who has taken a charge over this Lease and of whom the Landlord has received notice in writing under clause 3.12.4) it shall be lawful for the Landlord or any persons duly authorised by the Landlord to re-enter upon the Premises or any part thereof in the name of the whole and peaceably to hold and enjoy the same thenceforth as if this Lease had not been made but without prejudice to any right of action or remedy of the Landlord in respect of any antecedent breach of any of the covenants on the part of the Tenant herein contained or in respect of any obligation of the Tenant which arises or continues following re-entry

**5.2 Demise not to confer rights to enforce covenants against others or to grant further rights**

Nothing herein contained shall confer on the Tenant any right to the benefit of or to enforce any covenant or agreement contained in any lease or other instrument relating to the following Premises any other premises belonging to the Landlord or limit or affect the right of the Landlord to deal with the same now or at any time hereafter in any manner which may be thought fit and the demise made by this Lease shall not be deemed to include and shall not operate to convey or demise any ways conduits lights liberties privileges easements rights or advantages whatsoever in through over or upon any land adjoining or near to the Premises and (without prejudice to the foregoing) the provisions of Section 62 of the Law of Property Act 1925 are excluded from this Lease

**5.3 No warranty as to the Permitted Use**

Nothing herein contained or implied nor any statement or representation made by or on behalf of the Landlord shall be taken to be a covenant warranty or representation that the Premises can lawfully be used for the Permitted Use

## 5.4 Service of notices

5.4.1 Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply to all notices demands requests or other communications given or made pursuant to this Lease and in addition

- (a) the reference in such section to a registered letter shall also include a pre-paid first class ordinary letter
- (b) any notice or document shall also be sufficiently served if sent by telegraphic facsimile transmission to the party to be served and that service shall be deemed to be effective on the day of transmission if transmitted before 4pm on a working day (meaning Monday to Friday inclusive but excluding Christmas Day Good Friday and any statutory bank holiday) and to be effected on the next following such working day if transmitted at any other time

5.4.2 Provided that whilst Thanet District Council is the Landlord hereunder any notice to be served on Thanet District Council shall be served at Cecil Street Margate Kent CT9 1X2 and marked for the attention of the Head of Legal Services or at such other address and/or marked for the attention of such other individual as shall be notified in writing from time to time to the Tenant

5.4.3 If the Tenant shall comprise more than one person the service of any such notice demand request or other communication on any one of such persons shall constitute good service on all of them

## 5.5 As to Value Added Tax

5.5.1 Without prejudice to any statutory rights which the Landlord have in this respect it is confirmed that the Landlord reserves the right in its absolute discretion from time to time to exercise or not as the case may be

- (a) any option which results in Value Added Tax being charged on any supply made by the Landlord or
- (b) any election to waive exemption from Value Added Tax with respect to any supply made by the Landlord

and nothing in this Lease shall create any implication as to how the Landlord may exercise that discretion from time to time

- 5.5.2 (Without prejudice to the liability imposed on the Tenant under the terms of this Lease to pay an amount equal to any Value Added Tax which may be chargeable in respect of any supply made by the Landlord to the Tenant under or by virtue of this Lease) where under this Lease the Tenant agrees to pay or contribute to (or indemnify the Landlord or any other person in respect of) any costs fees expenses outgoings or other liability of whatsoever nature whether of the Landlord or any third party reference to such costs fees expenses outgoings and other liability shall (for the avoidance of doubt) be taken to be increased by such a sum as to include any Value Added Tax (or any similar tax or taxes whether in substitution thereof or in addition thereto) charged or to be charged in relation thereto except to the extent and only to the extent that the Landlord obtains a credit for the same as allowable input tax

#### **5.6 As to arbitration in certain events**

Where in this Lease provision is made for the appointment of some person to act as an expert or arbitrator to determine a matter of difference between the Landlord and the Tenant and such provision proves ineffective to secure such appointment then the difference in question shall if the Landlord so requires be settled by a single arbitrator under the Arbitration Act 1996

#### **5.7 Contracts (Rights of Third Parties) Act 1999**

Any rights of any person to enforce the terms of this Lease pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded

#### **5.8 As to the 1995 Act**

5.8.1 The tenancy created by this Lease is a "new tenancy" for the purposes of the 1995 Act

5.8.2 No covenant or provision of this Lease shall be construed as making any person in whom the Term is for the time being vested (or any guarantor of such person) liable under the covenants or provisions of this Lease (or such guarantee) to a greater extent than such person (or the guarantor of such person) shall be liable by virtue of the 1995 Act and such covenant or provision shall be deemed to be modified in such manner as shall be

necessary to ensure that it imposes on such person (or guarantor) no greater liability than it has by virtue of the 1995 Act

## 5.9 **Option Agreement**

This Lease is granted subject to the option in favour of the Landlord contained in the Option Agreement and the interest of the Tenant hereunder and of any party having the benefit of a charge over this Lease shall be subject to the terms of the Option Agreement.

## 5.10 **Party Wall**

Such of the walls (if any) of the Premises as divide the Premises from other premises of the Landlord shall be deemed to be party walls severed medially and shall be incorporated in the Premises only so far as the medial plane thereof

## 5.11 **Land Registry Applications**

5.11.1 In this clause 5.10 the expression "Landlord's Title" means the Landlord's freehold title to the Premises registered at the Land Registry under title number K838703.

5.11.2 As soon as reasonably practicable after the date of this Lease the Tenant named in the Particulars is to apply to the Land Registry for first registration of the title to this Lease and to apply for a note of this Lease to be entered on the Landlord's title. As part of the application the Tenant is to use all reasonable endeavours to ensure that the Land Registry notes both the benefit of the rights specified in Schedule 1 and the burden of the reserved rights specified in Schedule 2 on the leasehold title. On completion of the registration the Tenant is to provide official copies of the new title to the Landlord showing the Tenant registered as proprietor together with a copy of the Title Plan.

### 5.11.3 **Registration**

As part of the Tenant's application for first registration of the title to this Lease under clause 5.10.2 the Tenant shall apply to the Land Registry on Form RX4 (or other appropriate form) for registration against the leasehold title of the restriction contained in clause 3.12.5 of this Lease and the Option Agreement.



#### **5.11.4 Exclusion of liability**

The Landlord will not be liable to the Tenant for any failure by the Tenant to register this Lease at the Land Registry or to register or note any of the rights granted or reserved at the Land Registry.

#### **5.12 Enforcement**

5.12.1 This Lease is to be governed by and interpreted in accordance with English law.

5.12.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or relating to this Lease. This clause operates for the benefit of the Landlord who retains the right to sue the Tenant and enforce any judgment against the Tenant in the Courts of any competent jurisdiction.

**IN WITNESS** whereof this Deed has been executed by the Landlord and the Tenant and is intended to be and is hereby delivered on the date first before written

## **SCHEDULE 1**

### **Rights Granted**

1. Full right and liberty at all times to build upon the Premises or otherwise deal with the Premises as the Tenant may think fit notwithstanding that the access of light and air to the Mixed Use Site of the Residential Premises may be affected.
2. Full and free right (in common with all others from time to time entitled to the same):
  - 2.1 Of running of water, soil, gas, electricity or other power source and any electronic or telephonic signal and the like, the flow of air and the passage of smoke or other effluxion from and to the Premises and the buildings which now are or may hereafter during the Perpetuity Period be erected thereon through the Conduits which now are or may hereafter at any time during the Perpetuity Period be upon, in, over or under the Mixed Use Site or the Residential Premises.
  - 2.2 During the Perpetuity Period to build additional or relay any Conduits upon, in, over through or under the Mixed Use Site or the Residential Premises in connection with the Premises and to enter the Mixed Use Site and the Residential Premises for that purpose subject to making good all damage to the Mixed Use Site and the Residential Premises caused thereby as soon as practicable.
  - 2.3 To make connections with any Conduits which now are or may hereafter during the Perpetuity Period be upon, in, over or under the Mixed Use Site or the Residential Premises and to enter upon the Mixed Use Site and the Residential Premises for that purpose subject to making good any damage to the Mixed Use Site and the Residential Premises as aforesaid as soon as practicable.
3. A right of way (in common as aforesaid) with or without vehicles at all times and for all purposes over that part of the Mixed Use Site shown hatched black on the Plan.
4. Full right and liberty to enter upon the Mixed Use Site and the Residential Premises at any time during the Term (after at least seven days prior written notice to the owners and occupiers thereof except in case of emergency) in order to build on or into any party or boundary wall on the boundary between the Premises and the Mixed Use Site or the Residential Premises the persons exercising such right making good all damage to the Mixed Use Site and the Residential Premises caused thereby as soon as practicable.

5. Rights of support and protection for the Premises from the Mixed Use Site and the Residential Premises.

## SCHEDULE 2

### Exceptions and Reservations

**EXCEPT AND RESERVED** unto the Landlord and all other persons at any time authorised by the Landlord or otherwise entitled thereto

1. Full right and liberty at all times to build upon the Retained Land or on any land now or hereafter during the Perpetuity Period belonging to the Landlord or any other person (adjoining or near to the Premises) or otherwise deal with or use such land as the Landlord or such other persons may think fit notwithstanding that the access of light and air to the Premises may be affected
2. Full and free right
  - 2.1 of running of water soil gas electricity or other power source and any electronic or telephonic signal and the like the flow of air and the passage of smoke or other effluvia from and to any other parts of the Retained Land and the buildings which now are or may hereafter during the Perpetuity Period be erected thereon through the Conduits which now are or may hereafter at any time during the Perpetuity Period be upon in over or under the Premises
  - 2.2 during the Perpetuity Period to build additional or relay any Conduits upon in over through or under the Premises in connection with the Retained Land any adjoining or neighbouring property now or hereafter during the Perpetuity Period belonging to the Landlord and to enter upon the Premises for that purpose subject to making good all damage to the Premises caused thereby as soon as practicable
  - 2.3 to make connections with any conduits which now are or may hereafter during the Perpetuity Period be upon in over or under the Premises and to enter upon the Premises for that purpose and subject to making good damage to the Premises as aforesaid as soon as practicable
3. Full right and liberty to enter upon the Premises at any time during the Term (but after at least 7 days prior written notice to the Tenant except in case of emergency) in order to build on or into any party or boundary wall of the Premises the persons exercising such right making good all damage to the Premises caused thereby as soon as practicable
4. The right for the landlord and those authorised by the Landlord to:

- 4.1 enter and remain upon the Blue Land or land adjacent to the Stairway Land with or without workmen plant and equipment to repair maintain decorate replace rebuild renew and clean the Cliff Wall and any stairway from time to time erected on the Stairway Land and to erect and retain scaffolding on the Blue Land or land adjacent to the Stairway Land (and to remove any car ports or bin stores erected thereon where the Tenant does not remove the same within 7 days of a request to do so by the Council) for any of these purposes
- 4.2 retain on over or under the Blue Land buttresses foundations footings drains and overhangs forming part of the Cliff Wall and the right to erect and retain on the Blue Land new buttresses foundations footings drains and overhangs for the Cliff Wall as required by the Council from time to time
5. Rights of support and protection for the Retained Land (including the Cliff Wall) from the Premises
6. Full right and liberty to enter upon the Premises at any time during the Term in connection with the exercise of the rights of entry authorised by the covenants on the part of the Tenant hereinbefore contained
7. A right of way of vehicular access over such part of the premises as the Tenant (acting reasonably) shall designate from time to time from the public highway in Harbour Parade to the rear of that part of the Mixed Use Site shown edged brown on the Plan for the purpose only of making deliveries thereto and to remain on the premises for brief temporary periods whilst loading and unloading
8. A right of escape on foot only in case of fire or other emergency over such parts of the Premises as are from time to time unbuilt upon from the Residential Premises and the adjoining parts of the Mixed Use Site shown edged brown on the Plan and any other parts of the Mixed Use Site from time to time requiring a right of escape over the Premises.
9. A right of access for emergency vehicles over such parts of the Premises as are from time to time not built upon or laid out as car parking spaces.
10. Full right and liberty to enter onto any part of the Premises from time to time unbuilt upon at any time during the Term (but after at least 7 days prior written notice to the Tenant except in case of emergency) to carry out works to the Residential Premises and to erect scaffolding for that purpose the person exercising such right making good all damage caused thereby as soon as practicable



## **SCHEDULE 3**

### **Regulations**

#### **1. Open Land**

Other than during the carrying of construction works under the Development Agreement and then only in accordance therewith:

- 1.1 To keep any part of the Premises which are not built upon ("the Open Land") adequately surfaced in good condition and free from weeds and all landscaped areas properly cultivated
- 1.2 Not to bring keep store stack or lay out upon the Open Land any materials equipment plant bins crates cartons boxes or any receptacle for waste or any other item become untidy unclean unsightly or in any way detrimental to the Premises or the area generally
- 1.3 Not to deposit or permit to be deposited any waste rubbish or refuse on the Open Land
- 1.4 Not to keep or store on the Open Land any vehicle caravan or movable dwelling
- 1.5 Not to cause any land roads or pavements abutting the Premises to be untidy or in a dirty condition and in particular (but without prejudice to the generality of the above) not to deposit on them refuse or other materials
- 1.6 Not to store any materials or goods outside the Building

#### **2. Pollution and Nuisance**

- 2.1 Not to burn rubbish or waste materials paper wood and other combustible matter on the Premises except within boilers or incinerators provided for that purpose and approved by the Landlord or the Landlord's Surveyor
- 2.2 Not to emit any smoke fumes or smells from the Premises or to do any matter or thing on the Premises so as to cause in the opinion of the Landlord or the Landlord's Surveyor annoyance or interference with the proper enjoyment of the Retained Land

#### **3. Refuse**

To provide facilities within the Building for the keeping of refuse in proper receptacles readily accessible for collection

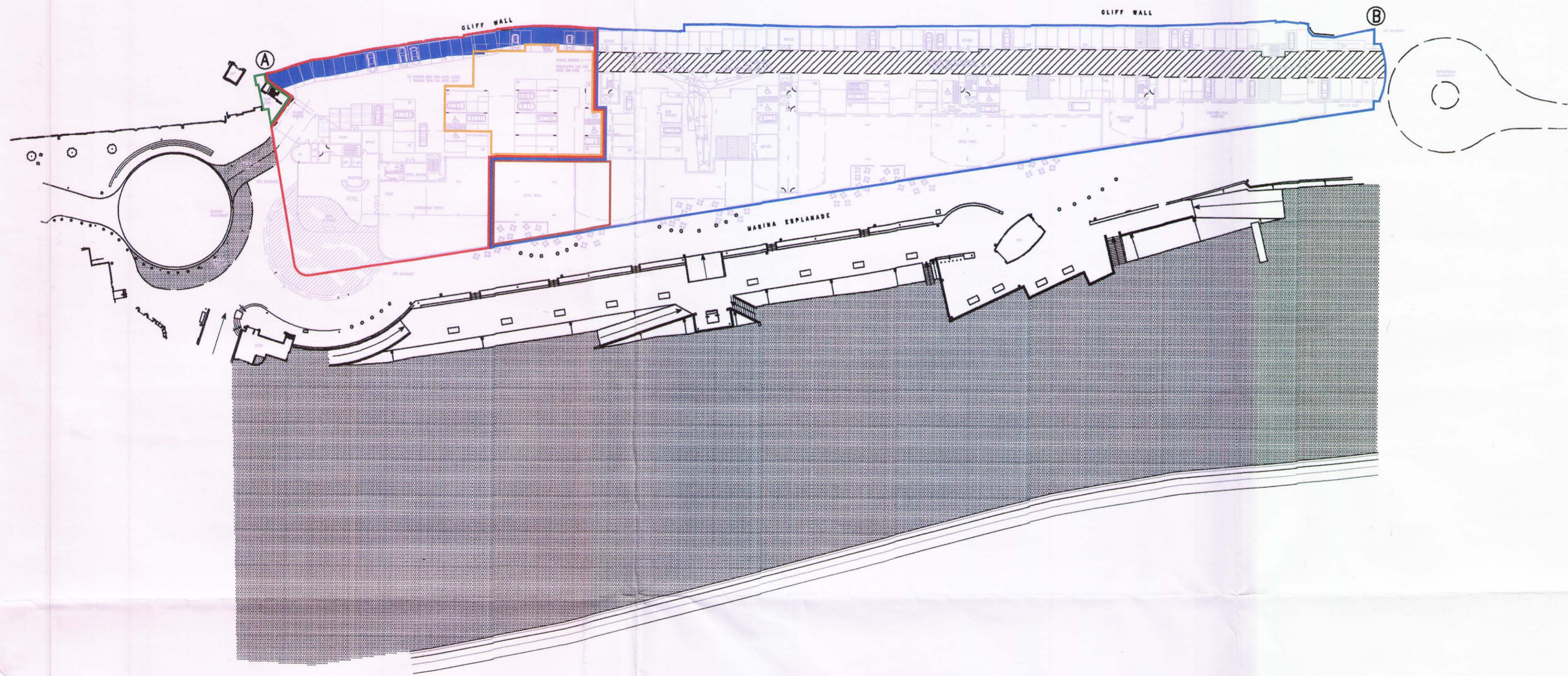
4. **As to Conduits**

Not to obstruct or discharge any deleterious matter into any Conduits serving the Premises or the Retained Land and keep the same clear and functioning properly

5. **As to Dangerous Items**

Not knowingly to bring onto or store on the Premises anything of a dangerous nature or which in the opinion of the Landlord is or may become unclean unsightly or detrimental to the Premises or the Retained Land





Client:  
SFP VENTURES (UK) Ltd

Project:  
RAMSGATE MARINA ESPLANADE

Drawing Title:  
HOTEL BUILDING LEASE

Scale: A1: 1:500    Project Co-Ordinator: SW    Date: 09/06

Job No: 5598    Stage: Drawing No: LE 105

Issue Status:  
 Construction  Preliminary   
 Information  Approval   
 Tender

Architecture  
 Planning  
 Urban Design  
 Engineering  
 Landscape  
 Interiors

Offices  
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**RAMSGATE – FORM OF SITE LEASE -  
MIXED USE SITE**

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DATED 2006

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- (1) **THANET DISTRICT COUNCIL**  
(2) **SFP VENTURES (UK) LIMITED**

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**LEASE**

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Land and premises at Ramsgate Boulevard  
Ramsgate Kent

TERM: 199 years  
FROM: 1st January 2006

**EVERSHEDS LLP**

Senator House  
85 Queen Victoria Street  
London EC4Y 4JL  
Tel: 020 7919 4500  
Fax: 020 7919 4919

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**LAND REGISTRY PARTICULARS**

**LR1. Date of lease** 2006

**LR2. Title number(s)**

**LR2.1 Landlord's title number(s)** K838703

**LR2.2 Other title numbers** None

**LR3. Parties to this lease**

**Landlord**

**THANET DISTRICT COUNCIL** of  
Cecil Street Margate Kent CT9 1X2

**Tenant**

**SFP VENTURES (UK) LIMITED**  
(Company Registration Number  
05666803) whose registered office is at  
Lakeview House, Lake Meadows Office  
park, Woodbrook Crescent Billericay  
Essex CM12 0EQ

**LR4 Property**

**In the case of a conflict between this  
clause and the remainder of this lease  
then, for the purposes of registration,  
this clause shall prevail.**

The premises (referred to in this Lease as  
"the Premises") comprising land and  
premises at Ramsgate Boulevard,  
Ramsgate, Kent shown edged red on the  
attached plan numbered [NUMBER] and  
described in more detail in **clause 1.1**

**LR5. Prescribed statements etc**

**LR5.1 Statements prescribed under  
rules 179 (dispositions in favour  
of a charity), 180 (dispositions by  
a charity) or 196 (leases under the  
Leasehold Reform, Housing and  
Urban Development Act 1993) of** Not applicable

**the Land Registration Rules 2003**

<b>LR5.2</b>	<b>This lease is made under, or by reference to, provisions of:</b>	Not applicable
<b>LR6.</b>	<b>Term for which the Property is leased</b>	One hundred and ninety nine years from and including 1 January 2006 (referred to in this Lease as “the Term Commencement Date”)  To and including 31 December 2204.  (This term is referred to in this Lease as “the Term”)
<b>LR7.</b>	<b>Premium</b>	<del>£183,334</del> [£[AMOUNT IN FIGURES] ([AMOUNT IN WORDS] pounds) together with VAT of £[AMOUNT IN FIGURES] ([AMOUNT IN WORDS] pounds).]  [£[AMOUNT IN FIGURES] ([AMOUNT IN WORDS] pounds) on which no VAT is payable.]
<b>LR8.</b>	<b>Prohibitions or restrictions on disposing of this lease</b>	This Lease contains a provision that prohibits or restricts dispositions.
<b>LR9.</b>	<b>Rights of acquisition etc</b>	
<b>LR9.1</b>	<b>Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land</b>	None
<b>LR9.2</b>	<b>Tenant's covenant to (or offer to) surrender this lease</b>	None
<b>LR9.3</b>	<b>Landlord's contractual rights to acquire this lease</b>	None
<b>LR10.</b>	<b>Restrictive covenants given in this lease by the Landlord in respect</b>	None

**of land other than the Property**

**LR11. Easements**

**LR11.1 Easements granted by this lease for the benefit of the Property** The rights specified in **Schedule 1**

**LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property** The rights specified in **clauses 3.9.2 and 3.14 and Schedule 2**

**LR12. Estate rentcharge burdening the Property** None

**LR13. Application for standard form of restriction** The Parties to this Lease apply to enter the following standard form of restriction against the title of the Property.

“No transfer assignment lease charge or other disposition of the registered estate by the proprietor of the registered estate or the proprietor of any registered charge shall be registered without a written consent signed on behalf of Thanet District Council of Cecil Street Margate Kent CT9 IX2 by its solicitor”

**LR14. Declaration of trust where there is more than one person comprising the Tenant** Not applicable

**THIS LEASE** is made on the date set out in clause LR1 the Land Registry Particulars

**BETWEEN**

- (1) The Landlord named in clause LR3 of the Land Registry Particulars; and
- (2) The Tenant named in clause LR3 of the Land Registry Particulars

**NOW THIS DEED WITNESSETH AS FOLLOWS:**

**1. DEFINITION AND INTERPRETATION**

**1.1 Definitions**

In this Lease the following expressions have the following meanings:

- 1.1.1 The Land Registry Particulars form part of this Lease and words and expressions set out in the Land Registry Particulars are to be treated as defined terms in this Lease.
- 1.1.2 “**the 1995 Act**” means the Landlord and Tenant (Covenants) Act 1995
- 1.1.3 “**Blue Land**” means that part of the Premises comprising the strip of land approximately 4 metres wide shown coloured blue on the Plan
- 1.1.4 “**Building**” means the building or buildings now or at any time during the Term erected on the whole or part of the Premises
- 1.1.5 “**Cliff Wall**” means the Cliff Wall between (inter alia) the points marked A and B on the Plan and includes all foundations footings buttresses overhangs and all other parts thereof
- 1.1.6 “**Conduits**” means pipes wires ducts cables (including optical fibres) channels sewers drains watercourses gutters shafts flues or other conducting media (and includes any fixings louvres cowls and any other ancillary apparatus) under through along over or by means of which any gas electricity or other power source or any air water soil and the like or any electronic or telephonic signal and the like or other thing may pass
- 1.1.7 “**Construction Regulations**” means the Construction (Design and Management) Regulations 1994 (as extended by sub-clause 1.2.3 of this Lease)



- 1.1.8 **“Date of Practical Completion”** means the Date of Practical Completion (as defined in the Development Agreement) of the Works
- 1.1.9 **“Development Agreement”** means the Agreement dated [ ] 2006 made between Thanet District Council (1) and SFP Ventures (UK) Limited (2) relating to the development and sale of the Premises the Residential Site and the Hotel Site
- 1.1.10 **“Hotel Site”** means the land shown edged blue on the Plan comprising part of the land registered at the Land Registry under title K838703
- 1.1.11 **“Hotel Site Lease”** means the lease of the Hotel Site of the same date as this Lease and made between the Landlord (1) and the Tenant (2)
- 1.1.12 **“Initial Period”** means the period commencing on the date of this Lease and expiring on the date 10 years after the date of this Lease or (if later) the date of actual completion of the transfer of the freehold interest in the Premises pursuant to Schedule 4 of the Development Agreement
- 1.1.13 **“Insured Risks”** means the risks in respect of loss or damage by fire lightning storm tempest flood explosion earthquake (fire and shock) impact from vehicles aircraft and articles dropped therefrom riot civil commotion malicious damage bursting or overflowing of water tanks apparatus or pipes and such other risks as the Landlord or the Tenant may from time to time reasonably deem expedient
- 1.1.14 **“Landlord’s Surveyor”** means any person or firm appointed to perform the functions of the Landlord’s Surveyor under this Lease or any of them including any surveyor architect valuer managing agent or other agent (and also including any employee of the Landlord or a company that is a member of the same group as the Landlord within the meaning of Section 42 of the Landlord and Tenant Act 1954)
- 1.1.15 **“Overage”** has the meaning given to that expression in the Development Agreement
- 1.1.16 **“Permitted Use”** means
- 1.1.16.1 In relation to the Commercial Units (as defined in the Development Agreement) for any purpose within any of Use Classes A1, A3, A4 or A5 of the Use Classes Order.

- 1.1.16.2 In relation to the children's play area referred to in Part 6 of Schedule 2 to the Development Agreement as a children's play area within Use Class D2 of the Use Classes Order.
- 1.1.16.3 In relation to the Health Club referred to in Part 5 of Schedule 2 to the Development Agreement as a good quality health and fitness centre.
- 1.1.16.4 In relation to the residential premises to be constructed under the Development Agreement for residential purposes and ancillary common parts.
- 1.1.16.5 In relation to other parts of the Premises for the purposes contemplated by the Development Agreement.
- 1.1.17 **"Perpetuity Period"** means the period of eighty years commencing on the date of this Lease which shall be the perpetuity period applicable hereto
- 1.1.18 **"Plan"** means the plan attached to this Lease
- 1.1.19 **"Planning Acts"** means the Town and Country Planning Acts 1990 and other Acts of Parliament defined as "the planning Acts" in Section 336 of the Town and Country Planning Act 1990 and every other Act of Parliament and legislation relating to the use development and occupation of land and buildings for the time being in force (and as extended by sub-clause 1.2.3)
- 1.1.20 **"the Premises"** means all that piece or parcel of land (together with any building or buildings from time to time erected thereon or upon some part thereof) situate at Ramsgate Boulevard Ramsgate Kent which piece of land is shown edged red on the Plan and the freehold interest to which is registered at HM Land Registry (with other land) under title K838703 provided that:
1. The boundary between the Premises and the Cliff Wall marked on the Plan is shown for identification purposes only (and not by way of delineation); and
  2. The Premises do not include any part of the Cliff Wall and the Cliff Wall shall not be a party structure.

- 1.1.21 **“Public Authority”** means any Minister Secretary of State and any Government Department and any public and/or local and/or fire and/or other authority or institution or corporation having functions which extend to the Premises or their use and occupation or the supply of services to the Premises or anything done thereon or thereto and includes any of their duly authorised officers
- 1.1.22 **“Quarter”** means the period of a quarter commencing on a Quarter Day and ending on the day before the next Quarter Day
- 1.1.23 **“Quarter Days”** means 31st March 30th June 30th September and 31st December in each year
- 1.1.24 **“Regulations”** means the regulations set out in the Second Schedule
- 1.1.25 **“Relevant Documents”** means
1. The Conveyance referred to in entry 1 of the Charges Register of title K838703
  2. The Agreement dated [ ] 2006 made between Thanet District Council (1) and SFP Ventures (UK) Limited relating to the repair of the Cliff Wall
  3. *[Add any statutory agreements entered into under Schedule 6 of the Development Agreement]*
- 1.1.26 **“Residential Premises”** means the residential premises erected or to be erected at first floor level and above over the land shown edged orange on the Plan and supporting columns as more particularly described in and demised by the Residential Lease
- 1.1.27 **“Residential Premises Lease”** means the lease of the Residential Premises of the same date as this Lease and made between the Landlord (1) and the Tenant (2)
- 1.1.28 **“Retained Land”** means the land comprised in title number K838703 (including the Stairway Land, the Hotel Site and the Residential Premises but excluding the Premises) and all other land owned by the Landlord at the date of this Lease lying adjacent to or in the vicinity of the Premises including the Cliff Wall and land and property owned by the Landlord

above the top of the Cliff Wall and includes any buildings or structures erected on the Retained Land from time to time

- 1.1.29 “**Stipulated Interest**” means interest at the Stipulated Rate (as well after as before judgement) for the period from the date on which the relevant payment is due (unless otherwise provided for herein) to the date of receipt by the Landlord (compounded with rests on the Quarter Days)
- 1.1.30 “**the Stipulated Rate**” means Four per centum per annum (4%) above the base lending rate of Barclays Bank plc (or such other major clearing bank as may be nominated from time to time by the Landlord) for the time being in force or (if at any time no rate shall be ascertainable under this formula) the Stipulated Rate shall be such reasonably equivalent rate of interest as the Landlord shall from time to time specify
- 1.1.31 “**Superior Landlord**” means any person holding an estate or interest in reversion (whether immediate or mediate) to the estate or interest of the Landlord under this Lease and includes the successors in title and assigns of such person
- 1.1.32 “**Superior Lease**” means any lease or leases under which the Landlord and/or any Superior Landlord may from time to time hold the estate or interest to which it is entitled
- 1.1.33 “**termination of the Term**” means the determination of the Term whether by effluxion of time re-entry or otherwise howsoever
- 1.1.34 “**Use Classes Order**” means the Town and Country Planning (Use Classes) Order 1989 (as amended) as enacted on the date of the Development Agreement
- 1.1.35 “**the Works**” has the meaning given to that expression in the Development Agreement

## 1.2 Interpretation

- 1.2.1 The expressions “the Landlord” and “the Tenant” include (unless the context otherwise requires) the person for the time being entitled to the reversion immediately expectant on the determination of the Term and the Tenant’s successors in title and those deriving title under the Tenant respectively

- 1.2.2 Where there are two or more persons included in the expression "Tenant" covenants expressed to be made by the Tenant deemed to be made by such persons jointly and severally
- 1.2.3 Any reference to any Act or Acts of Parliament or legislation generally shall include any European Community legislation or decree or other supranational legislation or decree having effect in law in the United Kingdom and shall (unless expressly specified to the contrary) include any modification extension or re-enactment of any of the foregoing for the time being in force and shall also include all instruments orders plans regulations bye-laws permissions licences consents notices and directions or other things for the time being made issued or given thereunder or deriving authority therefrom
- 1.2.4 Any reference to any insurance premium shall also include any insurance premium tax payable in respect thereof
- 1.2.5 Any covenant or obligation by or of the Tenant not to do or omit to be done any act matter or thing shall be deemed to include an obligation not to permit or suffer such act matter or thing to be done or not to permit or suffer the omission of such act matter or thing as the case may be
- 1.2.6 Reference to any permission for or right of the Landlord to enter upon or to have access to the Premises shall be construed as extending to all persons authorised from time to time by the Landlord (including agents professional advisers contractors workmen and others) with all necessary appliances and materials
- 1.2.7 Any provision of this Lease requiring the consent of the Landlord shall be deemed to require also the consent of any superior landlord from time to time
- 1.2.8 If at any time or times there shall be a Superior Landlord or Superior Landlords the following provisions of this sub-clause 1.2.8 shall have effect:
- 1.2.8.1 References (however expressed) in this Lease to any matter which is required to be carried out to the satisfaction or with the approval of the Landlord shall be construed as including in addition a requirement that the matter shall be carried out to the satisfaction or with the approval of the Superior Landlord where

the same is required by virtue of any corresponding terms of the Superior Lease

- 1.2.8.2 Where under this Lease the Tenant is under an obligation (however expressed) to the Landlord to pay any costs fees and expenses incurred by the Landlord in relation to any matter or to indemnify the Landlord against liability or damage in respect of any matter such obligation shall be deemed to include also an obligation to pay all costs fees and expenses incurred (in respect of such matter) by the Superior Landlord and an obligation to indemnify the Superior Landlord against such liability or damage as the case may be
- 1.2.8.3 The rights of entry and other rights reserved or otherwise permitted by this Lease shall (where the Superior Lease contains a corresponding reservation or permission) be exercisable by the Superior Landlord and others authorised by it and references to the Landlord in **Schedule 2** hereto shall be deemed to include also references to the Superior Landlord
- 1.2.8.4 Where in this Lease the Tenant covenants not to do any act matter or thing to the prejudice of or to affect adversely the Landlord such covenant shall be deemed to include also an obligation not to do any such act matter or thing to prejudice or adversely affect the Superior Landlord
- 1.2.9 The expression "Premises" (except in clause 3.13) and unless the context otherwise requires) shall be construed as extending to any part of the Premises
- 1.2.10 Any expression defined in any Schedule to this Lease shall have the same meaning where used in any other part of this Lease
- 1.2.11 Words importing one gender include all other genders and words importing the singular include the plural and vice versa
- 1.2.12 The terms "the parties" or "party" mean the Landlord and/or the Tenant
- 1.2.13 References in this Lease to any clause sub-clause paragraph or schedule is a reference to the relevant clause sub-clause paragraph or schedule of this

Lease and the clause or paragraph headings or marginal notes and the Index (if any) to this Lease shall not affect the construction thereof

**2. DEMISE - HABENDUM - REDDENDA**

2.1 IN CONSIDERATION of the premium referred to in clause LR7 of the Land Registry Particulars and of the rents and covenants on the part of the Tenant hereinafter contained the Landlord hereby demises the Premises to the Tenant

2.2 SUBJECT to (a) all easements quasi easements rights privileges covenants and restrictions to which the Premises are or may be subject and (b) the provisions of the Relevant Documents specified in the Particulars

2.3 TOGETHER WITH the rights mentioned in Schedule 1

2.4 EXCEPTING AND RESERVING for the benefit of the Landlord and all those deriving title through or otherwise authorised by the Landlord and all others having an interest in or who may become entitled to an interest in the Retained Land or any part thereof from time to time the easements and rights specified in the **Schedule 2.**

2.5 TO HOLD (except and reserved as aforesaid) unto the Tenant for the Term

2.6 YIELDING AND PAYING during the Term (exclusive of Value Added Tax (or any similar tax) which shall be payable in addition as hereinafter provided) the following rents namely:

2.6.1 The yearly rent of a peppercorn (if demanded) payable on the First day of January in each year during the Term

2.6.2 Any Value Added Tax payable under clause 3.3

2.6.3 Any interest payable under clause 3.2

2.6.4 Any other sums payable from time to time by the Tenant under this Lease

**3. TENANT'S COVENANTS WITH THE LANDLORD**

The Tenant hereby covenants with the Landlord as follows:

**3.1 To pay rents**

To pay all the rents hereby reserved at the times and in manner herein provided without any deduction or set off whatsoever save where required by statute notwithstanding any stipulation to the contrary

**3.2 To pay interest**

Without prejudice to any other right remedy or power herein contained or otherwise available to the Landlord if the Rent or any additional rents hereby reserved or any part thereof or any other sums payable to the Landlord pursuant to this Lease or any part thereof shall have become due and shall remain unpaid after the due date for payment (or in the case of sums other than the Rent fourteen days after the due date for payment) to pay to the Landlord on demand Stipulated Interest thereon

**3.3 To pay Value Added Tax**

To pay to the Landlord in addition to any rents or other sums payable under or by virtue of this Lease the amount of any value added tax (or similar tax whether in substitution for or in addition to it) which shall be chargeable in respect of any supply made by the Landlord to the Tenant under or by virtue of this Lease whether or not the same is chargeable by reference to the amount of such rents or other sums and whether or not as a result of the making of any election and so that amounts under this clause shall be payable

3.3.1 if chargeable by reference to rents or other sums at the same times as those rents or other sums are respectively payable

3.3.2 in any other case on demand in writing from time to time by the Landlord

**3.4 To pay outgoings**

To pay all rates taxes community charges duties levies charges assessments impositions and outgoings whatsoever whether parliamentary county municipal parochial local or of any other description which are now or hereafter during the Term may be taxed assessed charged or imposed in respect of the Premises or on the owner or occupier in respect thereof (other than income tax and corporation tax on the receipt by the Landlord of income from the Premises and taxes payable in respect of any dealing with any reversion to this Lease)



### 3.5 As to insurance

- 3.5.1 At all times during the Term to keep the Premises insured at the Tenant's expense in the joint names of the Landlord and the Tenant in the full cost of reinstatement against loss or damage by the Insured Risks together with architects' surveyors' engineers' and other professional fees and also the cost of site clearance
- 3.5.2 The insurance to be effected by the Tenant pursuant to clause 3.5.1 shall be with a UK insurance office of repute
- 3.5.3 The Tenant shall supply to the Landlord upon written request from time to time (but not more frequently than once a year) a copy of the insurance policy for the Premises and evidence that all premiums due have been paid
- 3.5.4 In the event of the Premises being destroyed or damaged by any of the Insured Risks the Tenant shall procure that all necessary building licences and permits under regulations or enactments for the time being in force are obtained to enable the Tenant to rebuild and reinstate the Premises and shall (subject to such licences and permits being forthcoming) pay out (or procure the payment out of) all moneys received in respect of such insurance (other than for architects' surveyors' and other professional fees) in rebuilding reinstating replacing and making good the Premises in accordance with the then existing statutory provisions bye-laws and regulations affecting the same or any necessary planning approval And in case the insurance moneys shall be insufficient for that purpose the Tenant shall make up the deficiency out of the Tenant's own moneys
- 3.5.5 Provided that in the event that the Tenant shall fail to effect insurance of the Premises in accordance with the foregoing provisions or to pay the premiums the Landlord shall be entitled to effect the same and/or pay the premiums as the case may be and in that event the Tenant shall pay to the Landlord on demand a sum equivalent to all premiums and other expenses incurred by the Landlord
- 3.5.6 Not to do or omit to be done any act matter or thing whatsoever the doing or omission of which would make void or voidable the insurance of the Premises or the Retained Land or whereby any payment thereunder may be refused in whole or in part or whereby the premium payable in respect of any such policy may be increased

**3.6 To pay common costs**

To pay to the Landlord on demand a fair proportion (to be determined by the Landlord or the Landlord's Surveyor acting reasonably) of the costs and expenses of maintaining, inspecting, cleaning, repairing, servicing, altering, renewing, rebuilding or replacing any party walls, Conduits and other party structures or means of access used in common between the Premises and any other property

**3.7 To comply with statutes**

To comply with (and carry out all works acts deeds matters or things required by) all Acts of Parliament including the Planning Acts (and all subordinate legislation made under all Acts of Parliament) and the requirements of every Public Authority in respect of the Premises their use occupation and employment of persons therein and any works thereto and anything done therein (whether or not such compliance shall be the responsibility of the owner, the landlord, the tenant or occupier) and at all times to keep the Landlord indemnified against all costs claims demands and liability in respect thereof

**3.8 As to the Planning Acts**

3.8.1 During the Initial Period not to make any application for planning permission in respect of the Premises save in accordance with the Development Agreement and without prejudice to the foregoing not to implement any planning permission or approval until the same has been submitted to and approved by the Landlord (such approval not to be unreasonably withheld or delayed)

3.8.2 During the Initial Period not to enter into any agreement with any Public Authority regulating the development or use of the Premises save in accordance with the Development Agreement

**3.9 As to repairs and decoration**

3.9.1 The Tenant shall throughout the Term keep in good repair and condition the exterior of all buildings from time to time erected on the Premises or any part thereof and shall keep all external parts of the Premises which are from time to time unbuilt upon in a well maintained and tidy condition

3.9.2 The Tenant shall allow the Landlord to have access to the Premises to view their state of repair and condition at all reasonable times during the Term on giving not less than 7 days prior written notice to the Tenant (or without

notice in emergency) and shall commence any works required to remedy any breach of the Tenant's obligations under clause 3.9 of this Lease within three months after the service of any notice specifying the works required or sooner in case of emergency and shall following commencement diligently proceed with and complete the same within 3 months after service of the notice (or sooner in case of emergency). In default, the Landlord with its contractors may enter and remain upon the Premises to carry out those works itself and all costs incurred by the Landlord shall be a debt payable on demand to the Landlord by the Tenant on a full indemnity basis

**3.10 As to alterations/additions**

3.10.1 Without prejudice to the obligations on the part of the Tenant contained in the Development Agreement and subject to and (without prejudice to clause 3.9.2 of this Lease) not at any time during the Initial Period to make an alteration or addition to Premises without the prior written consent of the Landlord save that the Tenant shall carry out the Works in accordance with the Development Agreement

3.10.2 Not at any time to:

3.10.2.1 construct or place any new buildings or other temporary or permanent structures on the Premises or make any external alteration or addition to buildings on the Premises which is/are higher than the top of the Cliff Wall; or

3.10.2.2 construct or place any new building or other temporary or permanent structures of any description on the Blue Land other than removable car ports and bin stores which have been approved in writing by the Landlord and which are attached to the ground and are not in any way touching, attached to or supported by the Cliff Wall; or

3.10.2.3 construct any new buildings on the Premises or rebuild extend alter or carry out any other works to any buildings from time to time on the Premises in a manner which interferes with damages or affects the structural integrity of the Cliff Wall; or

3.10.2.4 attach any buildings structures or other items to or otherwise penetrate in any way the surface of the Cliff Wall

### **3.11 As to the Construction Regulations**

- 3.11.1 In relation to any works to the Premises which the Tenant may at any time carry out the Tenant shall comply with the Construction Regulations and shall at all times indemnify and keep the Landlord indemnified against all costs claims liabilities and demands in respect of any breach thereof
- 3.11.2 To procure that the Tenant or its representative shall act as sole "client" for the purpose of the Construction Regulations and that a declaration to that effect will be made by the Tenant under the Construction Regulations

### **3.12 As to User**

- 3.12.1 Not to use the Premises otherwise than for the Permitted Use
- 3.12.2 Not at any time during the Term to carry on upon the Premises any noisy or offensive trade business or occupation nor to do any act or thing which is or may be or become a nuisance annoyance disturbance or damage to the Landlord or the occupiers of any other part of the Retained Land and not to use the Premises at any time for any illegal or immoral purpose nor for a sale by auction
- 3.12.3 Not to use the Premises in any manner which obstructs the exercise of the rights reserved by this Lease and not to grant or permit any new right or easement to be granted or arise over the Premises
- 3.12.4 Without prejudice to the foregoing not at any time during the Term to carry on upon the Premises any of the following uses:-
  - (a) use as an amusement arcade or for the siting of gaming machines
  - (b) use as a casino or any other use relating to gambling; and
  - (c) use as a lap dancing club or other sex establishment.

### **3.13 As to Dealings**

- 3.13.1 In this sub-clause (unless expressly provided to the contrary) the expression "sub-lease" means a sub-lease whether immediately or mediately derived out of this Lease and "sub-let" or "sub-letting" or "sub-lessor" or "sub-lessee" shall be construed accordingly

- 3.13.2 There shall not be an assignment of part only of the Premises at any time
- 3.13.3 During the Initial Period there shall not be any transfer assignment charge sub-letting or parting with or sharing possession or occupation of the whole or any part of the Premises Provided That the covenant shall not preclude
- 3.13.3.1 occupation of the Premises by building contractors and others engaged in carrying out the Works in accordance with the Development Agreement provided no sub-tenancy is created;
  - 3.13.3.2 the grant of underleases in accordance with Schedule 5 of the Development Agreement; and
  - 3.13.3.3 the grant of a charge over this Lease in favour of an Approved Funder (as defined in the Development Agreement) who has complied with the provisions of clause 15.2 of the Development Agreement
- 3.13.4 Within twenty-eight days after any assignment transfer sub-lease charge or other devolution of the title to the Premises (or any part thereof) to give written notice in duplicate thereof to the solicitor for the time being of the Landlord with a certified copy of the relevant instrument (certified by a solicitor) and to pay each of them their reasonable fee (not being less than Twenty pounds (£20)) for the registration of each such deed or document
- 3.13.5 The Landlord and the Tenant hereby apply to the Chief Land Registrar to note a Restriction in the Proprietorship Register of the title relating to this Lease in the form set out in clause LR13 of the Land Registry Particulars:

**3.14 To permit entry by the Landlord and others**

To permit the Landlord and other persons authorised by the Landlord in writing at all reasonable times (but after at least seven days prior written notice except in emergency) to enter and remain upon the Premises with all necessary appliances where the works in question cannot reasonably and conveniently be carried out without entering onto the Premises for any of the following purposes:

- (a) to execute work to any part of the Retained Land
- (b) to construct alter maintain repair renew or fix any thing (including any Conduits) serving or intended to serve the

Retained Land and running through or intended to run through under on or over the Premises

- (c) for the purpose of complying with any covenant on the part of the Landlord herein contained

the persons entering causing as little disturbance to the Tenant as reasonably practicable and making good as soon as practicable any damage caused to the Premises

### **3.15 As to the payment of certain costs and as to indemnities**

3.15.1 To pay to the Landlord on an indemnity basis all reasonable and proper costs fees expenses and commission (including bailiff's commission) (including VAT and disbursements) incurred by the Landlord of and incidental to or in connection with any of the following:

- (a) the preparation and service of any notice under Section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under Section 146 or 147 of that Act or under the Leasehold Property (Repairs) Act 1938 notwithstanding in any such case that forfeiture may be avoided otherwise than by relief granted by the Court
- (b) any application for a licence or consent required hereunder from the Landlord whether or not such licence or consent shall be forthcoming
- (c) the recovery or attempted recovery of arrears of rent or other sums due from the Tenant

3.15.2 To pay and make good to the Landlord all and every loss and damage whatsoever incurred or sustained by the Landlord as a consequence of any breach or non-observance of the Tenant's covenants herein contained and to indemnify the Landlord from and against all actions claims liability costs and expenses thereby arising

3.15.3 Without prejudice to any other right or remedy available to the Landlord to indemnify and keep the Landlord effectually indemnified from and against all expenses proceedings claims damages costs demands loss and any other liabilities as a consequence of or in respect of:

- (a) damage to the Premises or any part of the Retained Land caused by any act default or negligence of the Tenant or the servants agents licensees or invitees of the Tenant
- (b) so far as the law allows any injury to or death of any person damage to any property the infringement disturbance or destruction of any right easement or privilege or otherwise by reason of or arising directly out of the state of repair and condition of the Premises

### **3.16 Regulations**

To comply with the Regulations

### **3.17 To comply with the provisions of the other Documents**

3.17.1 To observe and perform the provisions of the Relevant Documents insofar as the same affect the Premises and to indemnify the Landlord against all actions proceedings costs claims and demands in respect thereof

3.17.2 To comply with the obligations on the part of SFP Ventures (UK) Limited (as Developer) contained in the Development Agreement and without prejudice to the foregoing to carry out the Works on the Premises in accordance with the Development Agreement and to pay to the Landlord all Overage and other sums due under the Development Agreement insofar as they relate to the Premises at the times and in the manner provided for therein

3.17.3 To comply with the obligations on the part of the tenant contained in the Hotel Site Lease and the Residential Lease

### **3.18 Consent to Landlord's Release**

Without prejudice to the provisions of clauses 5 and 7.4 where the Landlord assigns its reversion to this Lease the Tenant shall not unreasonably withhold its consent to a request made by the Landlord under Section 8 of the 1995 Act for a release from the Landlord's covenants under this Lease

## **4. LANDLORD'S COVENANT FOR QUIET ENJOYMENT**

The Landlord hereby covenants with the Tenant (but so that neither the Landlord named in the Particulars nor any successor in title (whether mediate or immediate)

of the Landlord shall remain personally liable after it has disposed of the reversionary interest in the Premises save for any breach occurring prior to such disposal) that if Tenant pays the rents hereby reserved and performs and observes its obligations contained in the Lease the Tenant shall be entitled quietly to enjoy the Premises during the Term without interruption or disturbance by the Landlord or by any persons lawfully claiming through or under it

**5. PROVISOS AND DECLARATIONS**

**PROVIDED ALWAYS AND IT IS HEREBY AGREED** that:

**5.1 Re-entry**

5.1.1 If the rents hereby reserved or any part thereof or any other sum payable by the Tenant pursuant to any provision contained in this Lease or any part thereof shall at any time be in arrear and unpaid for twenty-one days after the same shall have become due (whether or not any formal or legal demand therefor shall have been made) or

5.1.2 if the Tenant shall at any time fail to perform or observe any of the covenants conditions or agreements herein contained and on the part of the Tenant to be performed and observed or

5.1.3 if the Development Agreement is determined for any reason

5.1.4 if the Hotel Lease or the Residential Lease is forfeited or is otherwise determined for any reason

THEN it shall be lawful for the Landlord or any persons duly authorised by the Landlord to re-enter upon the Premises or any part thereof in the name of the whole and peaceably to hold and enjoy the same thenceforth as if this Lease had not been made but without prejudice to any right of action or remedy of the Landlord in respect of any antecedent breach of any of the covenants on the part of the Tenant herein contained or in respect of any obligation of the Tenant which arises or continues following re-entry

**5.2 Demise not to confer rights to enforce covenants against others or to grant further rights**

Nothing herein contained shall confer on the Tenant any right to the benefit of or to enforce any covenant or agreement contained in any lease or other instrument relating to the following Premises any other premises belonging to the Landlord or



limit or affect the right of the Landlord to deal with the same now or at any time hereafter in any manner which may be thought fit and the demise made by this Lease shall not be deemed to include and shall not operate to convey or demise any ways conduits lights liberties privileges easements rights or advantages whatsoever in through over or upon any land adjoining or near to the Premises and (without prejudice to the foregoing) the provisions of Section 62 of the Law of Property Act 1925 are excluded from this Lease

### **5.3 No warranty as to the Permitted Use**

Nothing herein contained or implied nor any statement or representation made by or on behalf of the Landlord shall be taken to be a covenant warranty or representation that the Premises can lawfully be used for the Permitted Use

### **5.4 Service of notices**

5.4.1 Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply to all notices demands requests or other communications given or made pursuant to this Lease and in addition

(a) the reference in such section to a registered letter shall also include a pre-paid first class ordinary letter

(b) any notice or document shall also be sufficiently served if sent by telegraphic facsimile transmission to the party to be served and that service shall be deemed to be effective on the day of transmission if transmitted before 4pm on a working day (meaning Monday to Friday inclusive but excluding Christmas Day Good Friday and any statutory bank holiday) and to be effected on the next following such working day if transmitted at any other time

5.4.2 Provided that whilst Thanet District Council is the Landlord hereunder any notice to be served on Thanet District Council shall be served at Cecil Street Margate Kent CT9 1X2 and marked for the attention of the Head of Legal Services or at such other address and/or marked for the attention of such other individual as shall be notified in writing from time to time to the Tenant

5.4.3 If the Tenant shall comprise more than one person the service of any such notice demand request or other communication on any one of such persons shall constitute good service on all of them

## 5.5 **As to Value Added Tax**

5.5.1 Without prejudice to any statutory rights which the Landlord have in this respect it is confirmed that the Landlord reserves the right in its absolute discretion from time to time to exercise or not as the case may be

- (a) any option which results in Value Added Tax being charged on any supply made by the Landlord or
- (b) any election to waive exemption from Value Added Tax with respect to any supply made by the Landlord

and nothing in this Lease shall create any implication as to how the Landlord may exercise that discretion from time to time

5.5.2 (Without prejudice to the liability imposed on the Tenant under the terms of this Lease to pay an amount equal to any Value Added Tax which may be chargeable in respect of any supply made by the Landlord to the Tenant under or by virtue of this Lease) where under this Lease the Tenant agrees to pay or contribute to (or indemnify the Landlord or any other person in respect of) any costs fees expenses outgoings or other liability of whatsoever nature whether of the Landlord or any third party reference to such costs fees expenses outgoings and other liability shall (for the avoidance of doubt) be taken to be increased by such a sum as to include any Value Added Tax (or any similar tax or taxes whether in substitution thereof or in addition thereto) charged or to be charged in relation thereto except to the extent and only to the extent that the Landlord obtains a credit for the same as allowable input tax

## 5.6 **As to arbitration in certain events**

Where in this Lease provision is made for the appointment of some person to act as an expert or arbitrator to determine a matter of difference between the Landlord and the Tenant and such provision proves ineffective to secure such appointment then the difference in question shall if the Landlord so requires be settled by a single arbitrator under the Arbitration Act 1996

## 5.7 **Contracts (Rights of Third Parties) Act 1999**

Any rights of any person to enforce the terms of this Lease pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded

**5.8 As to the 1995 Act**

5.8.1 The tenancy created by this Lease is a “new tenancy” for the purposes of the 1995 Act

5.8.2 No covenant or provision of this Lease shall be construed as making any person in whom the Term is for the time being vested (or any guarantor of such person) liable under the covenants or provisions of this Lease (or such guarantee) to a greater extent than such person (or the guarantor of such person) shall be liable by virtue of the 1995 Act and such covenant or provision shall be deemed to be modified in such manner as shall be necessary to ensure that it imposes on such person (or guarantor) no greater liability than it has by virtue of the 1995 Act

**5.9 Party Walls**

Such of the walls (if any) of the Premises as divide the Premises from other premises of the Landlord shall be deemed to be party walls severed medially and shall be incorporated in the Premises only so far as the medial plane thereof

**5.10 Land Registry Applications**

5.10.1 In this clause 5.9 the expression “Landlord’s Title” means the Landlord’s freehold title to the Premises registered at the Land Registry under title number K838703

5.10.2 As soon as reasonably practicable after the date of this Lease the Tenant named in the Particulars is to apply to the Land Registry for first registration of the title to this Lease and to apply for a note of this Lease to be entered on the Landlord’s title. As part of the application the Tenant is to use all reasonable endeavours to ensure that the Land Registry notes both the benefit of the rights specified in Schedule 1 and the burden of the reserve rights specified in Schedule 2 on the leasehold titles. On completion of the registration the Tenant is to provide official copies of the new title to the Landlord showing the Tenant registered as proprietors together with a copy of the Title Plan.

5.10.3 As part of the Tenant’s application for first registration of the title to this Lease under clause 5.10.2 the Tenant shall apply to the Land Registry on

Form RX4 (or other appropriate form) for registration against the leasehold title of the restriction contained in clause LR13 of the Land Registry Particulars

5.10.4 The Landlord will not be liable to the Tenant for any failure by the Tenant to register this Lease at the Land Registry or to register or note any of the rights granted or reserved at the Land Registry

**5.11 Jurisdiction clause**

5.11.1 This Lease is to be governed by and interpreted in accordance with English law

5.11.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or relating to this Lease. This clause operates for the benefit of the Landlord who retains the right to sue the Tenant and enforce any judgment against the Tenant in the Courts of any competent jurisdiction

**5.12 Non-waiver of forfeiture**

The Developer's obligations hereunder to pay Overage (and any VAT and/or interest thereon) shall be deemed to arise afresh on each day that the same remains unpaid (without prejudice to the Landlord's right in its discretion to charge interest on and exercise any other remedies for non payment with effect from and on the basis that such monies become payable on the first day on which the same became due) to the intent that (to the extent permitted by law) non-payment of any Overage (and VAT and/or interest thereon) shall be a continuing breach of this Lease and the Landlord's right of re-entry under clause 5.1 shall not be waived by any affirmation of this Lease after the due date for payment under the Development Agreement

**IN WITNESS** whereof this Deed has been executed by the Landlord and the Tenant and is intended to be and is hereby delivered on the date first before written

# **SCHEDULE 1**

## **Rights Granted**

1. Full right and liberty at all times to build upon the Premises or otherwise deal with the Premises as the Tenant may think fit notwithstanding that access of light and air to the Hotel Site and the Residential Premises may be affected.
2. Full and free right (in common as aforesaid).
  - 2.1 of running of water soil gas electricity or other power source and any electronic or telephonic signal and the like the flow of air and the passage of smoke or other effluvia from the Premises and the buildings which now are or may hereafter during the Perpetuity Period be erected thereon through the Conduits which now are or may hereafter at any time during the Perpetuity Period be upon in over or under the Hotel Site the Residential Premises and the land shown coloured green on the Plan ("the green land")
  - 2.2 during the Perpetuity Period to build additional or relay any Conduits upon in over through or under the Hotel site the Residential Premises and the green land and to enter upon the Hotel Site the Residential Premises and the green land for that purpose subject to making good all damage caused thereby
  - 2.3 to make connections with any conduits which now are or may hereafter during the Perpetuity Period be upon in over or under the Hotel Site the Residential Premises and the green land and to enter upon the Hotel Site the Residential Premises and the green land for that purpose subject to making good all damage as aforesaid
3. Full right and liberty to enter upon the Hotel site and the Residential Premises at any time during the Term (but after at least 7 days prior written notice to the owners and occupiers thereof except in case of emergency) in order to build on or into any party or boundary wall of the Premises the persons exercising such right making good all damage to the Premises caused thereby
4. The right for the owners and occupiers of the Commercial Units referred to in the definition of Permitted Use on that part of the Premises shown edged brown on the Plan to use such part of the car park on the Hotel Site as is not built upon from time to time or laid out as car parking spaces and designated by the Landlord this purpose for the purpose of making deliveries to that part of the Premises provided that any vehicles making deliveries shall not be entitled to park on the car park on the Hotel

Site and shall be entitled to remain there only for such short temporary periods as are necessary in order for deliveries to be made.

5. A right of escape on foot only in case of fire or other emergency over such parts of the Hotel Site as are from time to time unbuilt upon from those parts of the Premises shown edged brown on the Plan.
6. A right of way at all times and for all purposes with or without vehicles until the same becomes adopted as part of the public highway over the green land

## **SCHEDULE 2**

### **Exceptions and Reservations**

**EXCEPT AND RESERVED** unto the Landlord and all other persons at any time authorised by the Landlord or otherwise entitled thereto

1. Full right and liberty at all times to build upon the Retained Land or on any land now or hereafter during the Perpetuity Period belonging to the Landlord or any other person (adjoining or near to the Premises) or otherwise deal with or use such land as the Landlord or such other persons may think fit notwithstanding that the access of light and air to the Premises may be affected
2. Full and free right
  - 2.1 of running of water soil gas electricity or other power source and any electronic or telephonic signal and the like the flow of air and the passage of smoke or other effluvia from and to any other parts of the Retained Land and the buildings which now are or may hereafter during the Perpetuity Period be erected thereon through the Conduits which now are or may hereafter at any time during the Perpetuity Period be upon in over or under the Premises
  - 2.2 during the Perpetuity Period to build additional or relay any Conduits upon in over through or under the Premises in connection with the Retained Land any adjoining or neighbouring property now or hereafter during the Perpetuity Period belonging to the Landlord and to enter upon the Premises for that purpose subject to making good all damage to the Premises caused thereby as soon as practicable
  - 2.3 to make connections with any conduits which now are or may hereafter during the Perpetuity Period be upon in over or under the Premises and to enter upon the Premises for that purpose and subject to making good damage to the Premises as aforesaid
3. Full right and liberty to enter upon the Premises at any time during the Term (but after at least 7 days prior written notice to the Tenant except in case of emergency) in order to build on or into any party or boundary wall of the Premises the persons exercising such right making good all damage to the Premises caused thereby as soon as practicable
4. The right for the landlord and those authorised by the Landlord to:

- 4.1 enter and remain upon the Blue Land with or without workmen plant and equipment to repair maintain decorate replace rebuild renew and clean the Cliff Wall and to erect and retain scaffolding on the Blue Land (and to remove any car ports and bin stores erected thereon) for any of these purposes
- 4.2 retain on over or under the Blue Land buttresses foundations footings drains and overhangs forming part of the Cliff Wall and the right to erect and retain on the Blue Land new buttresses foundations footings drains and overhangs for the Cliff Wall as required by the Council from time to time
5. Rights of support and protection for the Retained Land (including the Cliff Wall) from the Premises
6. Full right and liberty to enter upon the Premises at any time during the Term in connection with the exercise of the rights of entry authorised by the covenants on the part of the Tenant hereinbefore contained
7. A right of way for the owners, lessees and occupiers from time to time of the Hotel Site (including the Residential Premises) with or without vehicles at all times and for all purposes over that part of the Premises shown hatched black on the Plan subject to the right of the Tenant to vary the route of the right of way from time to time provided that the route as varied is no less commodious and suitable that it was prior to the variation
8. A right of escape on foot only in case of fire or other emergency over such parts of the Premises as are from time to time unbuilt upon from the Residential Premises and any adjoining parts of the Hotel Site requiring a right of escape over the Premises.
9. A right of access for emergency vehicles over such parts of the Premises as are from time to time not built upon or laid out as car parking spaces.

### **SCHEDULE 3**

#### **Regulations**

##### **1. Open Land**

Other than during the carrying out of construction works under the Development Agreement and then only in accordance therewith:-



- 1.1 To keep any part of the Premises which are not built upon ("the Open Land") adequately surfaced in good condition and free from weeds and all landscaped areas properly cultivated
- 1.2 Not to bring keep store stack or lay out upon the Open Land any materials equipment plant bins crates cartons boxes or any receptacle for waste or any other item become untidy unclean unsightly or in any way detrimental to the Premises or the area generally
- 1.3 Not to deposit or permit to be deposited any waste rubbish or refuse on the Open Land
- 1.4 Not to keep or store on the Open Land any vehicle caravan or movable dwelling
- 1.5 Not to cause any land roads or pavements abutting the Premises to be untidy or in a dirty condition and in particular (but without prejudice to the generality of the above) not to deposit on them refuse or other materials
- 1.6 Not to store any materials or goods outside the Building

2. **Pollution and Nuisance**

- 2.1 Not to burn rubbish or waste materials paper wood and other combustible matter on the Premises except within boilers or incinerators provided for that purpose and approved by the Landlord or the Landlord's Surveyor
- 2.2 Not to emit any smoke fumes or smells from the Premises or to do any matter or thing on the Premises so as to cause in the opinion of the Landlord or the Landlord's Surveyor annoyance or interference with the proper enjoyment of the Retained Land

3. **Refuse**

To provide facilities within the Building for the keeping of refuse in proper receptacles readily accessible for collection

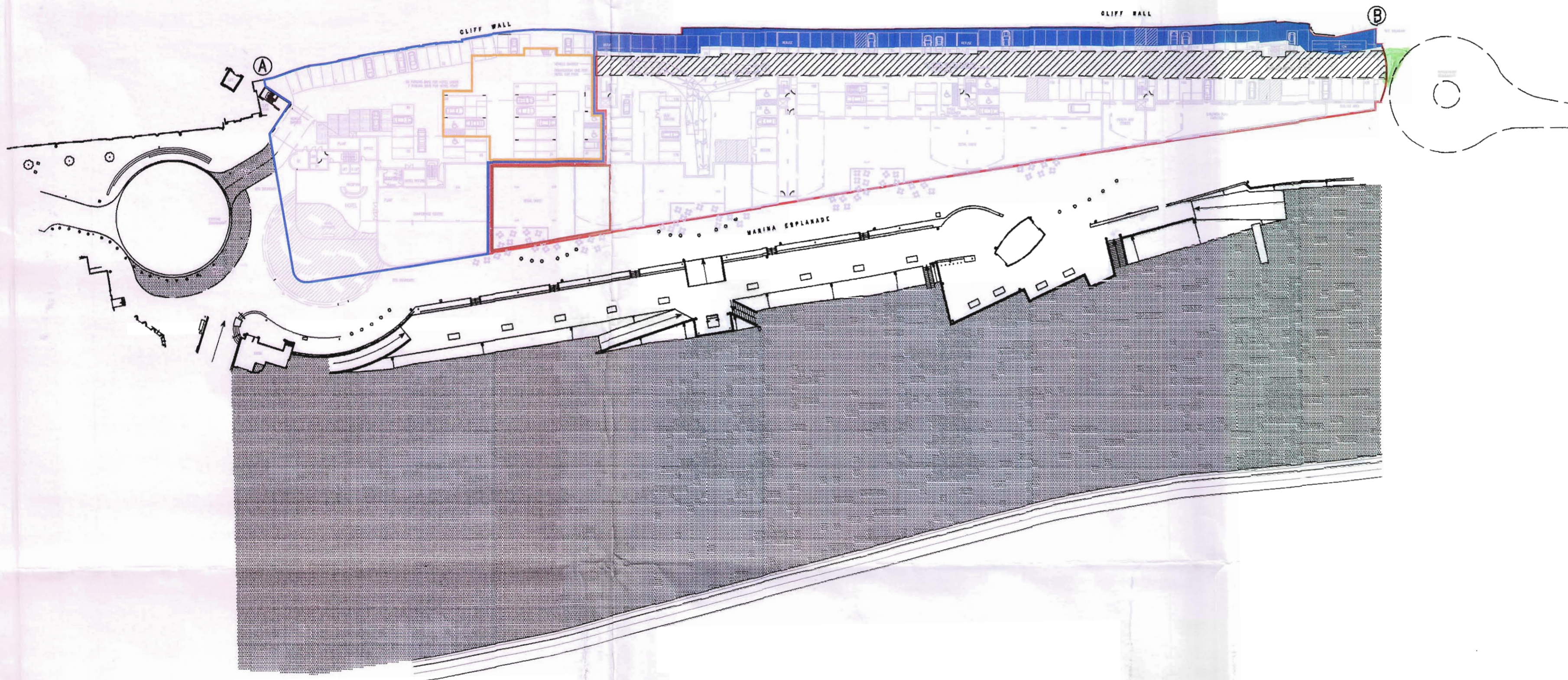
4. **As to Conduits**

Not to obstruct or discharge any deleterious matter into any Conduits serving the Premises or the Retained Land and keep the same clear and functioning properly

5. **As to Dangerous Items**

Not knowingly to bring onto or store on the Premises anything of a dangerous nature or which in the opinion of the Landlord is or may become unclean unsightly or detrimental to the Premises or the Retained Land

[Both parties to execute as a Deed]



Client:  
SFP VENTURES (UK) Ltd

Project:  
RAMSGATE MARINA ESPLANADE

Drawing Title:  
MIXED USE BUILDING LEASE

Scale @ A1: 1:500  
Project Co-Ordinator: SW  
Date: 09/06

Job No: 5598  
Stage: LE 104

Issue Status:  
Construction  Preliminary   
Information  Approval   
Tender

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**RAMSGATE – FORM OF SITE LEASE -  
RESIDENTIAL PREMISES**

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DATED 2006

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- (1) **THANET DISTRICT COUNCIL**  
(2) **SFP VENTURES (UK) LIMITED**

---

**LEASE**

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Residential premises at Ramsgate Boulevard  
Ramsgate Kent

TERM: 199 years  
FROM: 1st January 2006

**EVERSHEDS LLP**

Senator House  
85 Queen Victoria Street  
London EC4Y 4JL  
Tel: 020 7919 4500  
Fax: 020 7919 4919

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## LAND REGISTRY PARTICULARS

LR1.	Date of lease	2006
LR2.	Title number(s)	
LR2.1	Landlord's title number(s)	K838703
LR2.2	Other title numbers	None
LR3.	Parties to this lease	
	Landlord	THANET DISTRICT COUNCIL of Cecil Street Margate Kent CT9 1X2
	Tenant	SFP VENTURES (UK) LIMITED (Company Registration Number 05666803) whose registered office is at Lakeview House, Lake Meadows Office Park, Woodbrook Crescent Billericay Essex CM12 0EQ
LR4	Property	<b>In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.</b>  The premises (referred to in this Lease as "the Premises") comprising airspace above land at Ramsgate Boulevard, Ramsgate, Kent shown edged red on the attached plan and described in more detail in <b>clause 1.1</b>
LR5.	Prescribed statements etc	
LR5.1	Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of	Not applicable

**the Land Registration Rules 2003**

<b>LR5.2</b>	<b>This lease is made under, or by reference to, provisions of:</b>	Not applicable
<b>LR6.</b>	<b>Term for which the Property is leased</b>	One hundred and ninety nine years from and including 1 January 2006 (referred to in this Lease as "the Term Commencement Date")  To and including 31 December 2204.  (This term is referred to in this Lease as "the Term")
<b>LR7.</b>	<b>Premium</b>	£184,333 [£[AMOUNT IN FIGURES] ([AMOUNT IN WORDS] pounds) together with VAT of £[AMOUNT IN FIGURES] ([AMOUNT IN WORDS] pounds).]  [£[AMOUNT IN FIGURES] ([AMOUNT IN WORDS] pounds) on which no VAT is payable.]
<b>LR8.</b>	<b>Prohibitions or restrictions on disposing of this lease</b>	This Lease contains a provision that prohibits or restricts dispositions.
<b>LR9.</b>	<b>Rights of acquisition etc</b>	
<b>LR9.1</b>	<b>Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land</b>	None
<b>LR9.2</b>	<b>Tenant's covenant to (or offer to) surrender this lease</b>	None
<b>LR9.3</b>	<b>Landlord's contractual rights to acquire this lease</b>	None
<b>LR10.</b>	<b>Restrictive covenants given in this lease by the Landlord in respect</b>	None



**of land other than the Property**

**LR11. Easements**

**LR11.1 Easements granted by this lease for the benefit of the Property** The rights specified in **Schedule 1**

**LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property** The rights specified in **clauses 3.9.2 and 3.14 and Schedule 2**

**LR12. Estate rentcharge burdening the Property** None

**LR13. Application for standard form of restriction** The Parties to this Lease apply to enter the following standard form of restriction against the title of the Property.

“No transfer assignment lease charge or other disposition of the registered estate by the proprietor of the registered estate or the proprietor of any registered charge shall be registered without a written consent signed on behalf of Thanet District Council of Cecil Street Margate Kent CT9 IX2 by its solicitor”

**LR14. Declaration of trust where there is more than one person comprising the Tenant** Not applicable

**THIS LEASE** is made on the date shown in clause LR1 of the Land Registry Particulars

**BETWEEN**

- (1) The Landlord named in clause LR3 of the Land Registry Particulars; and
- (2) The Tenant named in clause LR3 of the Land Registry Particulars

**NOW THIS DEED WITNESSETH AS FOLLOWS:**

**1. DEFINITION AND INTERPRETATION**

**1.1 Definitions**

In this Lease the following expressions have the following meanings:

- 1.1.1 The Land Registry Particulars form part of this Lease and the words and expressions set out in the Land Registry Particulars are to be treated as defined terms in this Lease
- 1.1.2 **“the 1995 Act”** means the Landlord and Tenant (Covenants) Act 1995
- 1.1.3 **“Building”** means the building or buildings now or at any time during the Term erected on the whole or part of the Premises
- 1.1.4 **“Cliff Wall”** means the Cliff Wall between (inter alia) the points marked A and B on the Plan and includes all foundations footings buttresses overhangs and all other parts thereof
- 1.1.5 **“Conduits”** means pipes wires ducts cables (including optical fibres) channels sewers drains watercourses gutters shafts flues or other conducting media (and includes any fixings louvres cowls and any other ancillary apparatus) under through along over or by means of which any gas electricity or other power source or any air water soil and the like or any electronic or telephonic signal and the like or other thing may pass
- 1.1.6 **“Construction Regulations”** means the Construction (Design and Management) Regulations 1994 (as extended by sub-clause 1.2.3 of this Lease)
- 1.1.7 **“Date of Practical Completion”** means the Date of Practical Completion (as defined in the Development Agreement) of the Works

- 1.1.8 **“Development Agreement”** means the Agreement dated [ ] 2006 made between Thanet District Council (1) and SFP Ventures (UK) Limited (2) relating to the development and sale of the Premises and the Hotel Site
- 1.1.9 **“Hotel Site”** means the land shown edged blue on the Plan comprising part of the land registered at the Land Registry under title K838703 (excluding the Premises)
- 1.1.10 **“Hotel Site Lease”** means the lease of the Hotel Site of the same date as this Lease and made between the Landlord (1) and the Tenant (2)
- 1.1.11 **“Initial Period”** means the period commencing on the date of this Lease and expiring on the date 10 years after the date of this Lease or (if later) the date of actual completion of the transfer of the freehold interest in the Premises pursuant to Schedule 4 of the Development Agreement
- 1.1.12 **“Insured Risks”** means the risks in respect of loss or damage by fire lightning storm tempest flood explosion earthquake (fire and shock) impact from vehicles aircraft and articles dropped therefrom riot civil commotion malicious damage bursting or overflowing of water tanks apparatus or pipes and such other risks as the Landlord or the Tenant may from time to time reasonably deem expedient
- 1.1.13 **“Landlord’s Surveyor”** means any person or firm appointed to perform the functions of the Landlord’s Surveyor under this Lease or any of them including any surveyor architect valuer managing agent or other agent (and also including any employee of the Landlord or a company that is a member of the same group as the Landlord within the meaning of Section 42 of the Landlord and Tenant Act 1954)
- 1.1.14 **Mixed Use Site”** means the land shown edged green on the Plan comprising part of the land registered at the Land Registry under title K838703
- 1.1.15 **“Mixed Use Site Lease”** means the lease of the Mixed Use Site of the same date as this Lease and made between the Landlord (1) and the Tenant (2)
- 1.1.16 **“Overage”** has the meaning given to that expression in the Development Agreement
- 1.1.17 **“Permitted Use”** for residential purposes and ancillary common parts

- 1.1.18 **“Perpetuity Period”** means the period of eighty years commencing on the date of this Lease which shall be the perpetuity period applicable hereto
- 1.1.19 **“Plan”** means the plans attached to this Lease
- 1.1.20 **“Planning Acts”** means the Town and Country Planning Acts 1990 and other Acts of Parliament defined as “the planning Acts” in Section 336 of the Town and Country Planning Act 1990 and every other Act of Parliament and legislation relating to the use development and occupation of land and buildings for the time being in force (and as extended by sub-clause 1.2.3)
- 1.1.21 **“Premises”** means the airspace above the land situate at Ramsgate Boulevard Ramsgate Kent shown edged red on the Plan (together with any building or buildings from time to time erected therein or thereon or some part thereof and including all additions and alterations which may be carried out during the Term and all landlord’s fixtures and fittings from time to time in or about the same) the freehold interest to which is registered at the Land Registry (with other land) under title K838703 but excluding from this Lease all airspace above the land shown edged red on the Plan up to a height of 3 (three) metres above ground level at the date of this Lease (other than the airspace occupied or to be occupied by the columns shown coloured black on the Plan which shall be included in the Premises)
- 1.1.22 **“Public Authority”** means any Minister Secretary of State and any Government Department and any public and/or local and/or fire and/or other authority or institution or corporation having functions which extend to the Premises or their use and occupation or the supply of services to the Premises or anything done thereon or thereto and includes any of their duly authorised officers
- 1.1.23 **“Quarter”** means the period of a quarter commencing on a Quarter Day and ending on the day before the next Quarter Day
- 1.1.24 **“Quarter Days”** means 31st March 30th June 30th September and 31st December in each year
- 1.1.25 **“Regulations”** means the regulations set out in the Schedule 3
- 1.1.26 **“Relevant Documents”**

1. The Conveyance referred to in entry 1 of the Chares Register of title K838703
  2. The Agreement dated [            ] 2006 made between Thanet District Council (1) and SFP Ventures (UK) Limited (2) relating to the repair of the Cliff Wall
  2. *[Add any statutory agreements entered into under Schedule 6 of the Development Agreement]*
- 1.1.27 “**Retained Land**” means the land comprised in title number K838703 (including Stairway Land, the Hotel Site and the Mixed Use Site but excluding the Premises) and all other land owned by the Landlord at the date of this Lease lying adjacent to or in the vicinity of the Premises including the Cliff Wall and land and property owned by the Landlord above the top of the Cliff Wall and includes any buildings or structures erected on the Retained Land from time to time
- 1.1.28 “**Stipulated Interest**” means interest at the Stipulated Rate (as well after as before judgement) for the period from the date on which the relevant payment is due (unless otherwise provided for herein) to the date of receipt by the Landlord (compounded with rests on the Quarter Days)
- 1.1.29 “**the Stipulated Rate**” means Four per centum per annum (4%) above the base lending rate of Barclays Bank plc (or such other major clearing bank as may be nominated from time to time by the Landlord) for the time being in force or (if at any time no rate shall be ascertainable under this formula) the Stipulated Rate shall be such reasonably equivalent rate of interest as the Landlord shall from time to time specify
- 1.1.30 “**Superior Landlord**” means any person holding an estate or interest in reversion (whether immediate or mediate) to the estate or interest of the Landlord under this Lease and includes the successors in title and assigns of such person
- 1.1.31 “**Superior Lease**” means any lease or leases under which the Landlord and/or any Superior Landlord may from time to time hold the estate or interest to which it is entitled
- 1.1.32 “**termination of the Term**” means the determination of the Term whether by effluxion of time re-entry or otherwise howsoever

- 1.1.33 “**Use Classes Order**” means the Town and Country Planning (Use Classes) Order 1989 (as amended) as enacted on the date of the Development Agreement
- 1.1.34 “**the Works**” has the meaning given to that expression in the Development Agreement

## 1.2 **Interpretation**

- 1.2.1 The expressions “the Landlord” and “the Tenant” include (unless the context otherwise requires) the person for the time being entitled to the reversion immediately expectant on the determination of the Term and the Tenant’s successors in title and those deriving title under the Tenant respectively
- 1.2.2 Where there are two or more persons included in the expression “Tenant” covenants expressed to be made by the Tenant deemed to be made by such persons jointly and severally
- 1.2.3 Any reference to any Act or Acts of Parliament or legislation generally shall include any European Community legislation or decree or other supranational legislation or decree having effect in law in the United Kingdom and shall (unless expressly specified to the contrary) include any modification extension or re-enactment of any of the foregoing for the time being in force and shall also include all instruments orders plans regulations bye-laws permissions licences consents notices and directions or other things for the time being made issued or given thereunder or deriving authority therefrom
- 1.2.4 Any reference to any insurance premium shall also include any insurance premium tax payable in respect thereof
- 1.2.5 Any covenant or obligation by or of the Tenant not to do or omit to be done any act matter or thing shall be deemed to include an obligation not to permit or suffer such act matter or thing to be done or not to permit or suffer the omission of such act matter or thing as the case may be
- 1.2.6 Reference to any permission for or right of the Landlord to enter upon or to have access to the Premises shall be construed as extending to all persons authorised from time to time by the Landlord (including agents professional

advisers contractors workmen and others) with all necessary appliances and materials

- 1.2.7 Any provision of this Lease requiring the consent of the Landlord shall be deemed to require also the consent of any superior landlord from time to time
- 1.2.8 If at any time or times there shall be a Superior Landlord or Superior Landlords the following provisions of this sub-clause 1.2.8 shall have effect:
- 1.2.8.1 References (however expressed) in this Lease to any matter which is required to be carried out to the satisfaction or with the approval of the Landlord shall be construed as including in addition a requirement that the matter shall be carried out to the satisfaction or with the approval of the Superior Landlord where the same is required by virtue of any corresponding terms of the Superior Lease
- 1.2.8.2 Where under this Lease the Tenant is under an obligation (however expressed) to the Landlord to pay any costs fees and expenses incurred by the Landlord in relation to any matter or to indemnify the Landlord against liability or damage in respect of any matter such obligation shall be deemed to include also an obligation to pay all costs fees and expenses incurred (in respect of such matter) by the Superior Landlord and an obligation to indemnify the Superior Landlord against such liability or damage as the case may be
- 1.2.8.3 The rights of entry and other rights reserved or otherwise permitted by this Lease shall (where the Superior Lease contains a corresponding reservation or permission) be exercisable by the Superior Landlord and others authorised by it and references to the Landlord in of the First Schedule hereto shall be deemed to include also references to the Superior Landlord
- 1.2.8.4 Where in this Lease the Tenant covenants not to do any act matter or thing to the prejudice of or to affect adversely the Landlord such covenant shall be deemed to include also an

obligation not to do any such act matter or thing to prejudice or adversely affect the Superior Landlord

- 1.2.9 The expression "Premises" (except in clause 3.13) and unless the context otherwise requires) shall be construed as extending to any part of the Premises
- 1.2.10 Any expression defined in any Schedule to this Lease shall have the same meaning where used in any other part of this Lease
- 1.2.11 Words importing one gender include all other genders and words importing the singular include the plural and vice versa
- 1.2.12 The terms "the parties" or "party" mean the Landlord and/or the Tenant
- 1.2.13 References in this Lease to any clause sub-clause paragraph or schedule is a reference to the relevant clause sub-clause paragraph or schedule of this Lease and the clause or paragraph headings or marginal notes and the Index (if any) to this Lease shall not affect the construction thereof

## **2. DEMISE - HABENDUM - REDDENDA**

- 2.1 IN CONSIDERATION of the premium referred to in clause LR7 of the Land Registry Particulars and of the rents and covenants on the part of the Tenant hereinafter contained the Landlord hereby demises the Premises to the Tenant
- 2.2 SUBJECT to (a) all easements quasi easements rights privileges covenants and restrictions to which the Premises are or may be subject and (b) the provisions of the Relevant Documents specified in the Particulars
- 2.3 TOGETHER WITH the rights specified in Schedule 1
- 2.4 EXCEPTING AND RESERVING for the benefit of the Landlord and all those deriving title through or otherwise authorised by the Landlord and all others having an interest in or who may become entitled to an interest in the Retained Land or any part thereof from time to time the easements and rights specified in the Schedule 2
- 2.5 TO HOLD (except and reserved as aforesaid) unto the Tenant for the Term
- 2.6 YIELDING AND PAYING during the Term (exclusive of Value Added Tax (or any similar tax) which shall be payable in addition as hereinafter provided) the following rents namely:



- 2.6.1 The yearly rent of a peppercorn (if demanded) payable on the First day of January in each year during the Term
- 2.6.2 Any Value Added Tax payable under clause 3.3
- 2.6.3 Any interest payable under clause 3.2
- 2.6.4 Any other sums payable from time to time by the Tenant under this Lease

### 3. **TENANT'S COVENANTS WITH THE LANDLORD**

The Tenant hereby covenants with the Landlord as follows:

#### 3.1 **To pay rents**

To pay all the rents hereby reserved at the times and in manner herein provided without any deduction or set off whatsoever save where required by statute notwithstanding any stipulation to the contrary

#### 3.2 **To pay interest**

Without prejudice to any other right remedy or power herein contained or otherwise available to the Landlord if the Rent or any additional rents hereby reserved or any part thereof or any other sums payable to the Landlord pursuant to this Lease or any part thereof shall have become due and shall remain unpaid after the due date for payment (or in the case of sums other than the Rent fourteen days after the due date for payment) to pay to the Landlord on demand Stipulated Interest thereon

#### 3.3 **To pay Value Added Tax**

To pay to the Landlord in addition to any rents or other sums payable under or by virtue of this Lease the amount of any value added tax (or similar tax whether in substitution for or in addition to it) which shall be chargeable in respect of any supply made by the Landlord to the Tenant under or by virtue of this Lease whether or not the same is chargeable by reference to the amount of such rents or other sums and whether or not as a result of the making of any election and so that amounts under this clause shall be payable

3.3.1 if chargeable by reference to rents or other sums at the same times as those rents or other sums are respectively payable

3.3.2 in any other case on demand in writing from time to time by the Landlord

### 3.4 **To pay outgoings**

To pay all rates taxes community charges duties levies charges assessments impositions and outgoings whatsoever whether parliamentary county municipal parochial local or of any other description which are now or hereafter during the Term may be taxed assessed charged or imposed in respect of the Premises or on the owner or occupier in respect thereof (other than income tax and corporation tax on the receipt by the Landlord of income from the Premises and taxes payable in respect of any dealing with any reversion to this Lease)

### 3.5 **As to insurance**

3.5.1 At all times during the Term to keep the Premises insured at the Tenant's expense in the joint names of the Landlord and the Tenant in the full cost of reinstatement against loss or damage by the Insured Risks together with architects' surveyors' engineers' and other professional fees and also the cost of site clearance

3.5.2 The insurance to be effected by the Tenant pursuant to clause 3.5.1 shall be with a UK insurance office of repute

3.5.3 The Tenant shall supply to the Landlord upon written request from time to time (but not more frequently than once a year) a copy of the insurance policy for the Premises and evidence that all premiums due have been paid

3.5.4 In the event of the Premises being destroyed or damaged by any of the Insured Risks the Tenant shall procure that all necessary building licences and permits under regulations or enactments for the time being in force are obtained to enable the Tenant to rebuild and reinstate the Premises and shall (subject to such licences and permits being forthcoming) pay out (or procure the payment out of) all moneys received in respect of such insurance (other than for architects' surveyors' and other professional fees) in rebuilding reinstating replacing and making good the Premises in accordance with the then existing statutory provisions bye-laws and regulations affecting the same or any necessary planning approval And in case the insurance moneys shall be insufficient for that purpose the Tenant shall make up the deficiency out of the Tenant's own moneys

3.5.5 Provided that in the event that the Tenant shall fail to effect insurance of the Premises in accordance with the foregoing provisions or to pay the premiums the Landlord shall be entitled to effect the same and/or pay the

premiums as the case may be and in that event the Tenant shall pay to the Landlord on demand a sum equivalent to all premiums and other expenses incurred by the Landlord

3.5.6 Not to do or omit to be done any act matter or thing whatsoever the doing or omission of which would make void or voidable the insurance of the Premises or the Retained Land or whereby any payment thereunder may be refused in whole or in part or whereby the premium payable in respect of any such policy may be increased

**3.6 To pay Common Costs**

To pay to the Landlord on demand a fair proportion (to be determined by the Landlord or the Landlord's Surveyor acting reasonably) of the costs and expenses of maintaining, inspecting, cleaning, repairing, servicing altering, renewing, rebuilding or replacing any party walls, Conduits and other party structures or means of access used in common between the Premises and other property

**3.7 To comply with statutes**

To comply with (and carry out all works acts deeds matters or things required by) all Acts of Parliament including the Planning Acts (and all subordinate legislation made under all Acts of Parliament) and the requirements of every Public Authority in respect of the Premises their use occupation and employment of persons therein and any works thereto and anything done therein (whether or not such compliance shall be the responsibility of the owner, the landlord, the tenant or occupier) and at all times to keep the Landlord indemnified against all costs claims demands and liability in respect thereof

**3.8 As to the Planning Acts**

3.8.1 During the Initial Period not to make any application for planning permission in respect of the Premises save in accordance with the Development Agreement and without prejudice to the foregoing not to implement any planning permission or approval until the same has been submitted to and approved by the Landlord (such approval not to be unreasonably withheld or delayed)

3.8.2 During the Initial Period not to enter into any agreement with any Public Authority regulating the development or use of the Premises save in accordance with the Development Agreement

**3.9 As to repairs and decoration**

- 3.9.1 The Tenant shall throughout the Term keep in good repair and condition all structural parts and the exterior of all buildings from time to time erected on the Premises or any part thereof
- 3.9.2 The Tenant shall allow the Landlord to have access to the Premises to view their state of repair and condition at all reasonable times during the Term on giving not less than 7 days prior written notice to the Tenant (or without notice in emergency) and shall commence any works required to remedy any breach of the Tenant's obligations under clause 3.9 of this Lease within three months after the service of any notice specifying the works required or sooner in case of emergency and shall following commencement diligently proceed with and complete the same within 3 months after service of the notice (or sooner in case of emergency). In default, the Landlord with its contractors may enter and remain upon the Premises to carry out those works itself and all costs incurred by the Landlord shall be a debt payable on demand to the Landlord by the Tenant on a full indemnity basis

**3.10 As to alterations/additions**

- 3.10.1 Without prejudice to the obligations on the part of the Tenant contained in the Development Agreement and subject to and without prejudice to clause 3.10.2 of this Lease, not at any time during the Initial Period to make any alteration or addition to Premises without the prior written consent of the Landlord (such consent not to be unreasonably withheld after the expiry of the Initial Period) save that the Tenant shall carry out the Works in accordance with the Development Agreement
- 3.10.2 Not at any time to:
- 3.10.2.1 construct or place any new buildings or other temporary or permanent structures on the Premises or make any external alteration or addition to buildings on the Premises which is/are higher than the top of the Cliff Wall; or
- 3.10.2.2 construct or place any new building or other temporary or permanent structures of any description on or over the Blue Land; or

3.10.2.3 construct any new buildings on the Premises or rebuild extend alter or carry out any other works to any buildings from time to time on the Premises in a manner which interferes with damages or affects the structural integrity of the Cliff Wall

### **3.11 As to the Construction Regulations**

3.11.1 In relation to any works to the Premises which the Tenant may at any time carry out the Tenant shall comply with the Construction Regulations and shall at all times indemnify and keep the Landlord indemnified against all costs claims liabilities and demands in respect of any breach thereof

3.11.2 To procure that the Tenant or its representative shall act as sole "client" for the purpose of the Construction Regulations and that a declaration to that effect will be made by the Tenant under the Construction Regulations

### **3.12 As to User**

3.12.1 Not to use the Premises otherwise than for the Permitted Use

3.12.2 Not at any time during the Term to carry on upon the Premises any noisy or offensive trade business or occupation nor to do any act or thing which is or may be or become a nuisance annoyance disturbance or damage to the Landlord or the occupiers of any other part of the Retained Land and not to use the Premises at any time for any illegal or immoral purpose nor for a sale by auction

3.12.3 Not to use the Premises in any manner which obstructs the exercise of the rights reserved by this Lease and not to grant or permit any new right or easement to be granted or arise over the Premises

3.12.4 Without prejudice to the foregoing not at any time during the Term to carry on upon the Premises any of the following uses:-

- (a) use as an amusement arcade or for the siting of gaming machines
- (b) use as a casino or any other use relating to gambling; and
- (c) use as a lap dancing club or other sex establishment.

### **3.13 As to Dealings**

- 3.13.1 In this sub-clause (unless expressly provided to the contrary) the expression “sub-lease” means a sub-lease whether immediately or mediately derived out of this Lease and “sub-let” or “sub-letting” or “sub-lessor” or “sub-lessee” shall be construed accordingly
- 3.13.2 There shall not be an assignment of part only of the Premises at any time
- 3.13.3 During the Initial Period there shall not be any transfer assignment charge sub-letting or parting with or sharing possession or occupation of the whole or any part of the Premises Provided That the covenant shall not preclude
- 3.13.3.1 occupation of the Premises by building contractors and others engaged in carrying out the Works in accordance with the Development Agreement provided no sub-tenancy is created;
- 3.13.3.2 the grant of underleases in accordance with Schedule 5 of the Development Agreement; and
- 3.13.3.3 the grant of a charge over this Lease in favour of an Approved Funder (as defined in the Development Agreement) who has complied with the provisions of clause 15.2 of the Development Agreement
- 3.13.4 Within twenty-eight days after any assignment transfer sub-lease charge or other devolution of the title to the Premises (or any part thereof) to give written notice in duplicate thereof to the solicitor for the time being of the Landlord with a certified copy of the relevant instrument (certified by a solicitor) and to pay each of them their reasonable fee (not being less than Twenty pounds (£20)) for the registration of each such deed or document

**3.14 To permit entry by the Landlord and others**

To permit the Landlord and other persons authorised by the Landlord in writing at all reasonable times (but after at least seven days prior written notice except in emergency) to enter and remain upon the Premises with all necessary appliances where the works in question cannot reasonably and conveniently be carried out without entering onto the Premises for any of the following purposes:

- (a) to execute work to any part of the Retained Land
- (b) to construct alter maintain repair renew or fix any thing (including any Conduits) serving or intended to serve the

Retained Land and running through or intended to run through under on or over the Premises

- (c) for the purpose of complying with any covenant on the part of the Landlord herein contained

the persons entering causing as little disturbance to the Tenant as reasonably practicable and making good as soon as practicable any damage caused to the Premises

### **3.15 As to the payment of certain costs and as to indemnities**

3.15.1 To pay to the Landlord on an indemnity basis all reasonable and proper costs fees expenses and commission (including bailiff's commission) (including VAT and disbursements) incurred by the Landlord of and incidental to or in connection with any of the following:

- (a) the preparation and service of any notice under Section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under Section 146 or 147 of that Act or under the Leasehold Property (Repairs) Act 1938 notwithstanding in any such case that forfeiture may be avoided otherwise than by relief granted by the Court
- (b) any application for a licence or consent required hereunder from the Landlord whether or not such licence or consent shall be forthcoming
- (c) the recovery or attempted recovery of arrears of rent or other sums due from the Tenant

3.15.2 To pay and make good to the Landlord all and every loss and damage whatsoever incurred or sustained by the Landlord as a consequence of any breach or non-observance of the Tenant's covenants herein contained and to indemnify the Landlord from and against all actions claims liability costs and expenses thereby arising

3.15.3 Without prejudice to any other right or remedy available to the Landlord to indemnify and keep the Landlord effectually indemnified from and against all expenses proceedings claims damages costs demands loss and any other liabilities as a consequence of or in respect of:

- (a) damage to the Premises or any part of the Retained Land caused by any act default or negligence of the Tenant or the servants agents licensees or invitees of the Tenant
- (b) so far as the law allows any injury to or death of any person damage to any property the infringement disturbance or destruction of any right easement or privilege or otherwise by reason of or arising directly out of the state of repair and condition of the Premises

### **3.16 Regulations**

To comply with the Regulations

### **3.17 To comply with the provisions of the other Documents**

3.17.1 To observe and perform the provisions of the Relevant Documents insofar as the same affect the Premises and to indemnify the Landlord against all actions proceedings costs claims and demands in respect thereof

3.17.2 To comply with the obligations on the part of SFP Ventures (UK) Limited (as Developer) contained in the Development Agreement and without prejudice to the foregoing to carry out the Works on the Premises in accordance with the Development Agreement and to pay to the Landlord all Overage and other sums due under the Development Agreement insofar as they relate to the Premises at the times and in the manner provided for therein

3.17.3 To comply with the obligations on the part of the tenant contained in the Hotel Site Lease and the Mixed Use Site Lese

### **3.18 Consent to Landlord's Release**

Without prejudice to the provisions of clauses 5 and 7.4 where the Landlord assigns its reversion to this Lease the Tenant shall not unreasonably withhold its consent to a request made by the Landlord under Section 8 of the 1995 Act for a release from the Landlord's covenants under this Lease

## **4. LANDLORD'S COVENANT FOR QUIET ENJOYMENT**

The Landlord hereby covenants with the Tenant (but so that neither the Landlord named in the Particulars nor any successor in title (whether mediate or immediate)



of the Landlord shall remain personally liable after it has disposed of the reversionary interest in the Premises save for any breach occurring prior to such disposal) that if Tenant pays the rents hereby reserved and performs and observes its obligations contained in the Lease the Tenant shall be entitled quietly to enjoy the Premises during the Term without interruption or disturbance by the Landlord or by any persons lawfully claiming through or under it

## 5. **PROVISOS AND DECLARATIONS**

**PROVIDED ALWAYS AND IT IS HEREBY AGREED** that:

### 5.1 **Re-entry**

5.1.1 If the rents hereby reserved or any part thereof or any other sum payable by the Tenant pursuant to any provision contained in this Lease or any part thereof shall at any time be in arrear and unpaid for twenty-one days after the same shall have become due (whether or not any formal or legal demand therefor shall have been made) or

5.1.2 if the Tenant shall at any time fail to perform or observe any of the covenants conditions or agreements herein contained and on the part of the Tenant to be performed and observed or

5.1.3 if the Development Agreement is determined for any reason

5.1.4 if the Hotel Lease or the Mixed Use Lease is forfeited or is otherwise determined for any reason

THEN it shall be lawful for the Landlord or any persons duly authorised by the Landlord to re-enter upon the Premises or any part thereof in the name of the whole and peaceably to hold and enjoy the same thenceforth as if this Lease had not been made but without prejudice to any right of action or remedy of the Landlord in respect of any antecedent breach of any of the covenants on the part of the Tenant herein contained or in respect of any obligation of the Tenant which arises or continues following re-entry

### 5.2 **Demise not to confer rights to enforce covenants against others or to grant further rights**

Nothing herein contained shall confer on the Tenant any right to the benefit of or to enforce any covenant or agreement contained in any lease or other instrument relating to the following Premises any other premises belonging to the Landlord or

limit or affect the right of the Landlord to deal with the same now or at any time hereafter in any manner which may be thought fit and the demise made by this Lease shall not be deemed to include and shall not operate to convey or demise any ways conduits lights liberties privileges easements rights or advantages whatsoever in through over or upon any land adjoining or near to the Premises and (without prejudice to the foregoing) the provisions of Section 62 of the Law of Property Act 1925 are excluded from this Lease

### **5.3 No warranty as to the Permitted Use**

Nothing herein contained or implied nor any statement or representation made by or on behalf of the Landlord shall be taken to be a covenant warranty or representation that the Premises can lawfully be used for the Permitted Use

### **5.4 Service of notices**

5.4.1 Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply to all notices demands requests or other communications given or made pursuant to this Lease and in addition

- (a) the reference in such section to a registered letter shall also include a pre-paid first class ordinary letter
- (b) any notice or document shall also be sufficiently served if sent by telegraphic facsimile transmission to the party to be served and that service shall be deemed to be effective on the day of transmission if transmitted before 4pm on a working day (meaning Monday to Friday inclusive but excluding Christmas Day Good Friday and any statutory bank holiday) and to be effected on the next following such working day if transmitted at any other time

5.4.2 Provided that whilst Thanet District Council is the Landlord hereunder any notice to be served on Thanet District Council shall be served at Cecil Street Margate Kent CT9 1X2 and marked for the attention of the Head of Legal Service or at such other address and/or marked for the attention of such other individual as shall be notified in writing from time to time to the Tenant

- 5.4.3 If the Tenant shall comprise more than one person the service of any such notice demand request or other communication on any one of such persons shall constitute good service on all of them

## **5.5 As to Value Added Tax**

- 5.5.1 Without prejudice to any statutory rights which the Landlord have in this respect it is confirmed that the Landlord reserves the right in its absolute discretion from time to time to exercise or not as the case may be

- (a) any option which results in Value Added Tax being charged on any supply made by the Landlord or
- (b) any election to waive exemption from Value Added Tax with respect to any supply made by the Landlord

and nothing in this Lease shall create any implication as to how the Landlord may exercise that discretion from time to time

- 5.5.2 (Without prejudice to the liability imposed on the Tenant under the terms of this Lease to pay an amount equal to any Value Added Tax which may be chargeable in respect of any supply made by the Landlord to the Tenant under or by virtue of this Lease) where under this Lease the Tenant agrees to pay or contribute to (or indemnify the Landlord or any other person in respect of) any costs fees expenses outgoings or other liability of whatsoever nature whether of the Landlord or any third party reference to such costs fees expenses outgoings and other liability shall (for the avoidance of doubt) be taken to be increased by such a sum as to include any Value Added Tax (or any similar tax or taxes whether in substitution thereof or in addition thereto) charged or to be charged in relation thereto except to the extent and only to the extent that the Landlord obtains a credit for the same as allowable input tax

## **5.6 As to arbitration in certain events**

Where in this Lease provision is made for the appointment of some person to act as an expert or arbitrator to determine a matter of difference between the Landlord and the Tenant and such provision proves ineffective to secure such appointment then the difference in question shall if the Landlord so requires be settled by a single arbitrator under the Arbitration Act 1996

## **5.7 Contracts (Rights of Third Parties) Act 1999**

Any rights of any person to enforce the terms of this Lease pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded

**5.8 As to the 1995 Act**

5.8.1 The tenancy created by this Lease is a “new tenancy” for the purposes of the 1995 Act

5.8.2 No covenant or provision of this Lease shall be construed as making any person in whom the Term is for the time being vested (or any guarantor of such person) liable under the covenants or provisions of this Lease (or such guarantee) to a greater extent than such person (or the guarantor of such person) shall be liable by virtue of the 1995 Act and such covenant or provision shall be deemed to be modified in such manner as shall be necessary to ensure that it imposes on such person (or guarantor) no greater liability than it has by virtue of the 1995 Act

**5.9 Land Registry Applications**

5.9.1 In this clause 5.9 the expression “Landlord’s Title” means the Landlord’s freehold title to the Premises registered at the Land Registry under title number K838703

5.9.2 As soon as reasonably practicable after the date of this Lease the Tenant named in the Particulars is to apply to the Land Registry for first registration of the title to this Lease and to apply for a note of this Lease to be entered on the Landlord’s title. As part of the application the Tenant is to use all reasonable endeavours to ensure that the Land Registry notes both the benefit of the rights specified in Schedule 1 and the burden of the reserved rights specified in Schedule 2 on the leasehold titles. On completion of the registration the Tenant is to provide official copies of the new title to the Landlord showing the Tenant registered as proprietors together with a copy of the Title Plan.

5.9.3 As part of the Tenant’s application for first registration of the title to this Lease under clause 5.10.2 the Tenant shall apply to the Land Registry on Form RX4 (or other appropriate form) for registration against the leasehold title of the restriction contained in clause 3.13 of the Land Registry Particulars

5.9.4 The Landlord will not be liable to the Tenant for any failure by the Tenant to register this Lease at the Land Registry or to register or note any of the rights granted or reserved at the Land Registry

**5.10 Party Walls**

Such of the walls (if any) of the Premises as divide the Premises from other premises of the Landlord shall be deemed to be party walls severed medially and shall be included in the Premises as far only as the medial plane thereof

**5.11 Jurisdiction clause**

5.11.1 This Lease is to be governed by and interpreted in accordance with English law

5.11.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or relating to this Lease. This clause operates for the benefit of the Landlord who retains the right to sue the Tenant and enforce any judgment against the Tenant in the Courts of any competent jurisdiction

**5.12 Non-waiver of forfeiture**

The Developer's obligations hereunder to pay Overage (and any VAT and/or interest thereon) shall be deemed to arise afresh on each day that the same remains unpaid (without prejudice to the Landlord's right in its discretion to charge interest on and exercise any other remedies for non payment with effect from and on the basis that such monies become payable on the first day on which the same became due) to the intent that (to the extent permitted by law) non-payment of any Overage (and VAT and/or interest thereon) shall be a continuing breach of this Lease and the Landlord's right of re-entry under clause 5.1 shall not be waived by any affirmation of this Lease after the due date for payment under the Development Agreement

**IN WITNESS** whereof this Deed has been executed by the Landlord and the Tenant and is intended to be and is hereby delivered on the date first before written

## **SCHEDULE 1**

### **Rights Granted**

1. Full and free right (in common with all others from time to time entitled to the same):
  - 1.1 of running of water, soil, gas, electricity or other power source and any electronic or telephonic signal and the like, the flow of air and the passage of smoke or other effluvia from and to the Premises and the buildings which now are or may hereafter during the Perpetuity Period be erected thereon through the Conduits which now are or may hereafter at any time during the Perpetuity Period be upon, in, over or under the Hotel Site the Mixed Use Site and the land coloured green on the Plan (“the green land”)
  - 1.2 during the Perpetuity Period to build additional or relay any Conduits upon, in, over through or under the Hotel Site the Mixed Use Site and the green land in connection with the Premises and to enter the Hotel Site the Mixed Use Site and the green land for that purpose subject to the persons exercising such right causing as little inconvenience as possible and forthwith making good all damage caused thereby.
  - 1.3 to make connections with any Conduits which now are or may hereafter during the Perpetuity Period be upon, in, over or under the Hotel Site the Mixed Use Site and the green land and to enter upon the Hotel Site the mixed use site and the green land for that purpose (subject as aforesaid).
2. A right of escape (in common as aforesaid) on foot only in case of fire or other emergency over the car park of the Hotel Site over such reasonable route as the Landlord shall designate from time to time.
3. Full right and liberty (subject as aforesaid) to enter upon a part of the Hotel Site which is not from time to time built upon at any time during the Term (after at least twenty eight days prior written notice to the owners and occupiers thereof except in case of emergency) in order to repair maintain and decorate the Building (and to erect scaffolding for that purpose) where the works cannot otherwise be carried out and to build on or into any party or boundary wall on the boundary between the Premises and the Hotel Site and the Premises and the Mixed Use Site.
4. Rights of support and protection for the Premises from the Hotel Site and the Mixed Use Site.

5. The right for emergency vehicles to use such parts of the Hotel Site as are from time to time unbuilt upon and not laid out as car parking spaces.
6. A right of way (in common as aforesaid) with or without vehicles and at all times and for all purposes over and along that part of the Mixed Use Site shown hatched black on the Plan and (until the same is adopted as part of the public highway) the green land

## **SCHEDULE 2**

### **Exceptions and Reservations**

**EXCEPT AND RESERVED** unto the Landlord and all other persons at any time authorised by the Landlord or otherwise entitled thereto

1. Full right and liberty at all times to build upon the Retained Land or on any land now or hereafter during the Perpetuity Period belonging to the Landlord or any other person (adjoining or near to the Premises) or otherwise deal with or use such land as the Landlord or such other persons may think fit notwithstanding that the access of light and air to the Premises may be affected
2. Full and free right
  - 2.1 of running of water soil gas electricity or other power source and any electronic or telephonic signal and the like the flow of air and the passage of smoke or other effluvia from and to any other parts of the Retained Land and the buildings which now are or may hereafter during the Perpetuity Period be erected thereon through the Conduits which now are or may hereafter at any time during the Perpetuity Period be upon in over or under the Premises
  - 2.2 during the Perpetuity Period to build additional or relay any Conduits upon in over through or under the Premises in connection with the Retained Land any adjoining or neighbouring property now or hereafter during the Perpetuity Period belonging to the Landlord and to enter upon the Premises for that purpose subject to making good all damage to the Premises caused thereby as soon as practicable
  - 2.3 to make connections with any conduits which now are or may hereafter during the Perpetuity Period be upon in over or under the Premises and to enter upon the Premises for that purpose and subject to making good damage to the Premises as aforesaid
3. Full right and liberty to enter upon the Premises at any time during the Term (but after at least 7 days prior written notice to the Tenant except in case of emergency) in order to build on or into any party or boundary wall of the Premises the persons exercising such right making good all damage to the Premises caused thereby as soon as practicable
4. Rights of support and protection for the Retained Land from the Premises



5. Full right and liberty to enter upon the Premises at any time during the Term in connection with the exercise of the rights of entry authorised by the covenants on the part of the Tenant hereinbefore contained

## **SCHEDULE 3**

### **Regulations**

#### **1. Open Land**

Other than during the carrying out of construction works under the Development Agreement and then only in accordance therewith:-

- 1.1 To keep any part of the Premises which are not built upon ("the Open Land") adequately surfaced in good condition and free from weeds and all landscaped areas properly cultivated
- 1.2 Not to bring keep store stack or lay out upon the Open Land any materials equipment plant bins crates cartons boxes or any receptacle for waste or any other item become untidy unclean unsightly or in any way detrimental to the Premises or the area generally
- 1.3 Not to deposit or permit to be deposited any waste rubbish or refuse on the Open Land
- 1.4 Not to keep or store on the Open Land any vehicle caravan or movable dwelling
- 1.5 Not to cause any land roads or pavements abutting the Premises to be untidy or in a dirty condition and in particular (but without prejudice to the generality of the above) not to deposit on them refuse or other materials
- 1.6 Not to store any materials or goods outside the Building

**2. Pollution and Nuisance** Not to burn rubbish or waste materials paper wood and other combustible matter on the Premises except within boilers or incinerators provided for that purpose and approved by the Landlord or the Landlord's Surveyor

2.2 Not to emit any smoke fumes or smells from the Premises or to do any matter or thing on the Premises so as to cause in the opinion of the Landlord or the Landlord's Surveyor annoyance or interference with the proper enjoyment of the Retained Land

#### **3. Refuse**

To provide facilities within the Building for the keeping of refuse in proper receptacles readily accessible for collection

#### **4. As to Conduits**

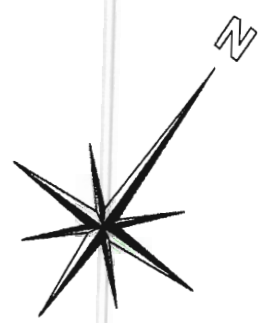
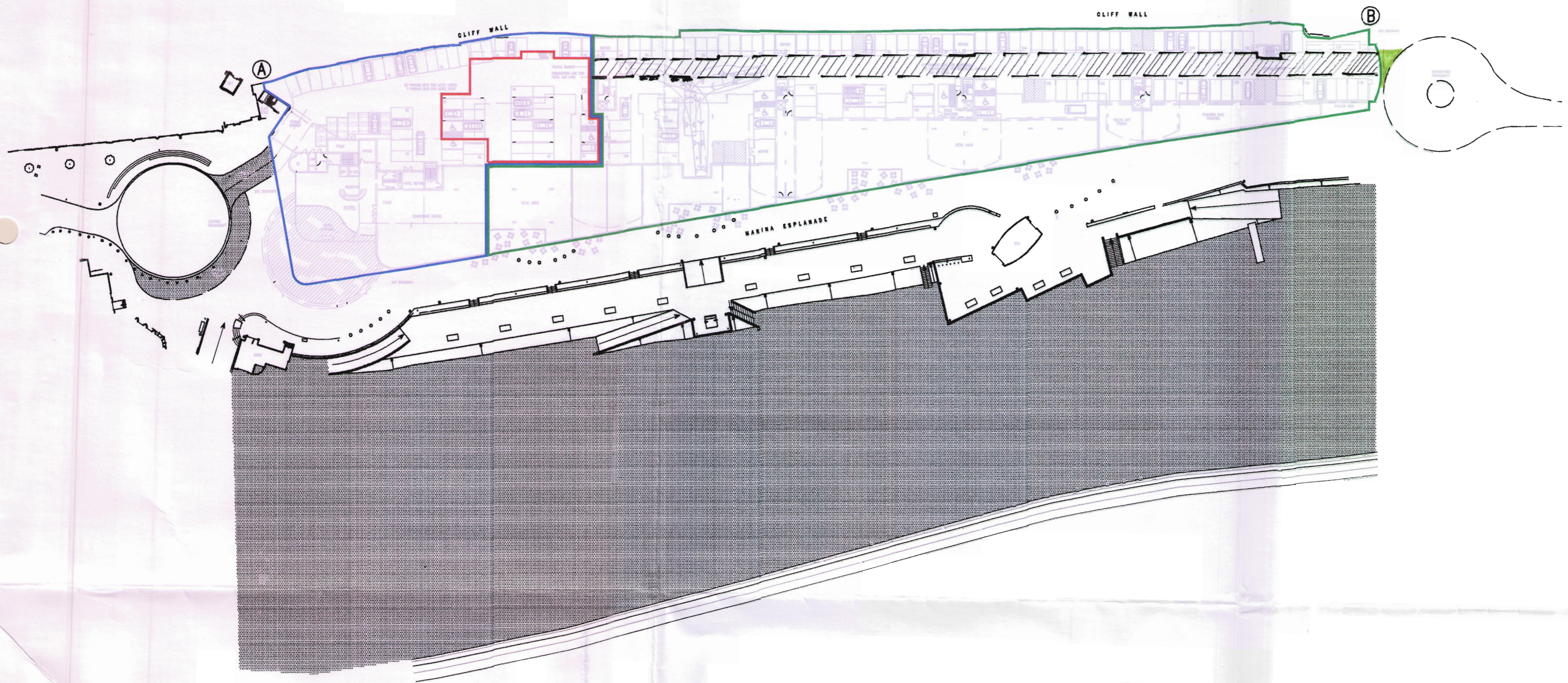
Not to obstruct or discharge any deleterious matter into any Conduits serving the Premises or the Retained Land and keep the same clear and functioning properly

5. **As to Dangerous Items**

Not knowingly to bring onto or store on the Premises anything of a dangerous nature or which in the opinion of the Landlord is or may become unclean unsightly or detrimental to the Premises or the Retained Land

[Both parties to execute as a Deed]





Client:  
SFP VENTURES (UK) Ltd

Project:  
RAMSGATE MARINA ESPLANADE

Drawing Title:  
RESIDENTIAL LEASE

Scale @ A1: 1:500  
Project Co-Ordinator: SW  
Date: 09/06

Job No: 5598  
Stage: LE 107  
Drawing No: Rev:

Issue Status:  
Construction  Preliminary   
Information  Approval   
Tender

**PRC**  
32 Victoria Road,  
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Dublin  
Cork  
Warsaw  
Shanghai



**Transfer of part  
of registered title(s)**

**HM Land Registry**

**TP1**

*(If you need more room than is provided for in a panel, use continuation sheet CS and staple to this form)*

**1. Stamp Duty**

**HOTEL SITE**

*Place "X" in the box that applies and complete the box in the appropriate certificate.*

It is certified that this instrument falls within category \_\_\_\_\_ in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987

It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of \_\_\_\_\_

**2. Title number out of which the Property is transferred** *(leave blank if not yet registered)*

K838703

**3. Other title number(s) against which matters contained in this transfer are to be registered** *(if any)*

**4. Property transferred** *(Insert address, including postcode, or other description of the property transferred. Any physical exclusions, e.g. mines and minerals, should be defined. Any attached plan must be signed by the transferor and by or on behalf of the transferee.)*

Land at Ramsgate Boulevard Ramsgate Kent

The Property is defined: *(place "X" in the box that applies and complete the statement)*

- on the attached plan and shown *(state reference e.g. "edged red")* edged red
- on the Transferor's filed plan and shown *(state reference e.g. "edged and numbered 1 in blue")*

**5. Date**

**6. Transferor** (give full names and Company's Registered Number if any)

Thanet District Council Cecil Street Margate Kent CT9 1X2

**7. Transferee for entry on the register** (Give full names and Company's Registered Number if any; for Scottish Co. Reg. Nos., use an SC prefix. For foreign companies give territory in which incorporated.)

SFP Ventures (UK) Limited

*Unless otherwise arranged with Land Registry Headquarters, a certified copy of the transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.*

**8. Transferee's intended address(es) for service in the U.K.** (including postcode) **for entry on the register**

**9. The Transferor transfers the Property to the Transferee.**

**10. Consideration** (Place "X" in the box that applies. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.)

The Transferor has received from the Transferee for the Property the sum of (in words and figures)

Ten pounds (£10) exclusive of Value Added Tax

(insert other receipt as appropriate)



The transfer is not for money or anything which has a monetary value

**11.** The Transferor transfers with *(place "X" in the box which applies and add any modifications)*

full title guarantee  limited title guarantee

11.1 The covenants implied under section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 are varied by the replacement of the words "at his own cost" by the words "at the cost of the person requiring compliance with this covenant"

**12.** Declaration of trust *Where there is more than one transferee, place "X" in the appropriate box*

The Transferees are to hold the Property on trust for themselves as joint tenants

The Transferees are to hold the Property on trust for themselves as tenants in common in equal shares

The Transferees are to hold the Property *(complete as necessary)*

## 13. Additional Provisions

1. Use this panel for:  
definitions of terms not defined above  
rights granted or reserved  
restrictive covenants  
other covenants  
agreements and declarations  
other agreed provisions  
required or permitted statements, certificates or applications.  
The prescribed subheadings may be added to, amended, repositioned or omitted.

### 13.1 Definitions

13.1.1 In this transfer, the following words and expressions have the following meanings:

<b>“Blue Land”</b>	that part of the Property comprising the strip of land approximately 4 metres wide shown coloured blue on the Plan.
<b>“Cliff Wall”</b>	the cliff wall between (inter alia) the points marked A and B on the Plan and includes all foundations footings buttresses overhangs drains and all other parts thereof.
<b>“Conduits”</b>	sewers, drains, watercourses, pipes, cables, wires and other channels or conduits now present or installed during the Perpetuity Period for the passage of Services.
<b>“Council”</b>	Thanet District Council (or any statutory successor) but (unless the transfer expressly provides otherwise) shall not include its successors in title to the Retained Land or any other party
<b>“Hotel Use”</b>	Use as a good quality hotel with conference and other ancillary facilities appropriate to a good quality hotel but (for the avoidance of doubt and without prejudice to the foregoing) not including (a) use as a boarding house or similar use and/or (b) use for occupation by benefit claimants.
<b>“Hotel Lease”</b>	means the lease of the Property dated [            ] made between Thanet District Council (1) and SFP Ventures (UK) Limited (2) title to which is registered under title number [            ]
<b>“Mixed Use Site”</b>	means that part of the Retained land shown edged blue on the Plan
<b>“Option Agreement”</b>	means the option agreement dated [            ] 2006 made between SFP Ventures (UK) Limited (1) and Thanet District Council (2)
<b>“Perpetuity Period”</b>	the period of 80 years from the date of this transfer which will be the perpetuity period for the purposes of the Perpetuities and Accumulations Act 1964.

<b>“Plan”</b>	the plan attached to this transfer.
<b>“Residential Premises”</b>	the residential premises erected at first floor level and above over the land shown edged [            ] on the Plan and supporting columns as more particularly described by the Residential Premises Lease
<b>“Residential Premises Lease”</b>	the lease of the residential premises dated [        ] 2006 made between Thanet District Council (1) and SFP Ventures (UK) Limited (2)
<b>“Retained Land”</b>	the land comprised in the Title Number (excluding the Property) and all other land owned by the Transferor at the date of this Transfer lying adjacent to or in the vicinity of the Property including the Cliff Wall and land and property owned by the Transferor above the top of the Cliff Wall and the Retained Land includes any buildings from time to time thereon.
<b>“Services”</b>	water, gas, electricity, telecommunications, surface water drainage, foul drainage, fuel oil and other similar services.
<b>“Stairway”</b>	means any stairway erected from time to time on the Stairway Land
<b>“Stairway Land”</b>	means the land shown edged green on the Plan
<b>“Stairway Lease”</b>	means the lease of the cliff stairway dated [            ] and made between the Transferor (1) and the Transferee (2)
<b>“Title Matters”</b>	the agreements, covenants, restrictions, stipulations and other matters contained or referred to in the title registered under the Title Number.

13.1.2 References to the owners of the Property are to the Transferee and its successors in title to the Property and references to the owners of the Retained Land are to the Transferor and its successors in title to the Retained Land.

13.1.3 References to the Council do not include the Council’s successor in title to the Retained Land or any other party other than statutory successors to Thanet District Council.

13.1.4 References to the Property include the whole and every part of the Property and references to the Retained Land include the whole and every part of the Retained Land.

13.1.5 Unless otherwise indicated, references to paragraphs are to paragraphs in this panel 13.

**13.2 Rights granted for the benefit of the Property**

13.2.1 The following rights are granted for the benefit of the Property over the Mixed Use Site

13.2.1.1 **Services** - the right in common with the owners of the Mixed Use Site and those authorised by them to connect to and use any Conduits in on under or over the Mixed Use Site for the passage of services to and from the Property.

13.2.1.2 **Entry for Conduits** - the right for the owners of the Property and those authorised by them to enter and to remain upon so much as is necessary of the Mixed Use Site on reasonable prior written notice (except in case of emergency) with or without workmen plant and equipment to repair maintain replace renew cleanse connect to and sever connections with any conduits over which rights are granted by this transfer

13.2.1.3 **Support** - the right of support for the Property and any buildings on from the Mixed Use Site and any buildings on it.

13.2.1.4 **Light and Air** - the right to construct new buildings and/or to existing buildings on the Property notwithstanding that the access of light and/or air to the building from time to time on the Mixed Use Site may be affected.

13.2.1.5 **Right of Way** - in common with the owners of the Mixed Use Site and those authorised by them with or without vehicles at all times and for all purposes over that part of the Mixed Use Site shown hatched black on the plan

13.2.2 The rights of entry granted by this transfer are subject to the owners of the Property:

13.2.2.1 causing as little inconvenience as reasonably practical to the owners of the Mixed Use Site and the exercise of these rights; and

13.2.2.2 making good as soon as reasonably practicable all damage caused to the Mixed Use Site and any building from time to time on it to the reasonable satisfaction of the owners of the Property.

### 13.3 Rights reserved for the benefit of the Retained Land

13.3.1 The following rights over the Property are reserved for the benefit of the Retained Land:

13.3.1.1 **Services** - the right in common with the owners of the Property and those authorised by them to connect to and use any Conduits in, on, under or over the Property for the passage of Services to and from the Retained Land;

13.3.1.2 **Entry for Conduits**- the right for the owners of the Retained Land and those authorised by them to enter and remain upon so much as is necessary of the Property (excluding the Hotel building itself) on reasonable prior notice (except in case of emergency) with or without workmen, plant and equipment to repair, maintain, replace, renew, clean, connect to and sever connections with any Conduits over which rights are reserved by this transfer;

13.3.1.3 **Cliff Wall and Stairway** -- the right for the Council and those

authorised by the Council to enter and remain upon the Blue Land and land adjacent to the Stairway Land on reasonable prior written notice (save in emergency) with or without workmen plant and equipment to repair maintain decorate replace rebuild renew and clean the Cliff Wall and /or the Stairway and to erect and retain scaffolding on the Blue Land and to remove any car ports and/or bin stores erected on the Blue Land for any of these purposes.

13.3.1.4 **Footings and Overhangs** – the right to retain on over or under the Blue Land buttresses foundations footings drains and overhangs forming part of the Cliff Wall and the right to erect and retain on the Blue Land new buttresses foundations footings drains and overhangs for the Cliff Wall as required by the Council from time to time.

13.3.1.5 **Support** - the right of support for the Retained Land (including the Cliff Wall) and any buildings on it from the Property and any buildings on it.

13.3.1.6 **Light and air** – the right to construct new buildings and/or alter existing buildings on the Retained Land notwithstanding that the access of light and/or air to the buildings from time to time on the Property may be affected.

13.3.1.7 **Stairway Land** - a right of way for the freehold owner from time to time of the Stairway Land (and all persons authorised by such freehold owner from time to time in common with all others entitled to use the same) at all times on foot only to and from the Stairway Land over that part of the Property shown coloured orange on the plan or over such reasonable alternative route across the Property between the Stairway Land and the public highway in Harbour Parade or Marina Esplanade as the freehold owner of the Property shall designate from time to time (acting reasonably).

13.3.1.8 **Escape** - a right of escape on foot only in case of fire or other emergency for the owners and occupiers of the Residential Premises an that part of the Mixed Use Site shown edged brown on the Plan over that part of the Property which is from time to time unbuilt upon and from to time designated by the freehold owner of the Property for this purpose.

13.3.1.9 **Access for Servicing** - a right of vehicular access over such part of the Property on the freehold owner of the Property shall designate from time to time from Harbour Parade to the rear of that part of the Mixed Use Site shown edged brown on the Plan for the purpose only of making deliveries thereto and to remain on the Property for brief temporary periods only whilst loading and unloading

13.3.2 The rights of entry reserved by this transfer are subject to the owners of the Retained Land:

13.3.2.1 Causing as little inconvenience as reasonably practicable to the owners of the Property in the exercise of these rights; and

13.3.2.2 Making good as soon as reasonably practicable all damage caused to the Property and any buildings from time to time on it to the reasonable satisfaction of the owners of the Property.

#### 13.4 Restrictive covenants by the Transferee

The Transferee covenants with the Council for the benefit of the Retained Land and so to bind the Property and the owners lessees and occupiers thereof that the owners of the Property will not without the prior written consent of the Council:

13.4.1 use or permit the Property to be used:

13.4.1.1 otherwise than for Hotel Use

13.4.1.2 in a manner which may be or become a nuisance (whether or not amounting to a legal nuisance), annoyance, disturbance or cause damage to the owners of the Retained Land; or

13.4.1.3 in any manner which obstructs the exercise of the rights reserved by this Transfer; or

13.4.1.4 (without prejudice to the foregoing) for any of the following purposes:

(a) use as an amusement arcade or for the siting of gaming machines

(b) use as a casino or any other use relating to gambling and

(c) use as a lap dancing club or other sex establishment.

13.4.2

13.4.2.1 construct or place any new buildings or other temporary or permanent structures on the Property or make any external alteration or addition to the buildings on the Property which is/are higher than the top of the Cliff Wall; or

13.4.2.2 construct or place any new buildings or other temporary or permanent structures of any description on the Blue Land other than removable car ports and bin stores which have been approved in writing by the Council and which are attached to the ground and are not in any way touching attached to or supported by the Cliff Wall; or

13.4.2.3 construct any new buildings on the Property or rebuild, extend, alter or carry out any other works to any buildings from time to time on the Property in a manner which interferes with or affects the structural integrity of the Cliff Wall.

13.4.3 transfer the Property except as a whole and (whilst the Stairway Lease subsists) to a transferee who simultaneously takes an assignment of the Stairway Lease and (whilst the Option Agreement is still subsisting) to a transferee who simultaneously enters into a Deed of Covenant with the Council in such form as the Council shall reasonably require to comply with the provisions of the Option Agreement.

#### 13.5 Declarations

The Transferor and the Transferee declare that:

- 13.5.1 section 62 of the Law of Property Act 1925, Rule 251 Land Registration Rule 1925 and the rule in "*Wheeldon v Burrows*" do not apply to this transfer and no legal or other rights are granted over the Retained Land for the benefit of the Property by this transfer except for those expressly granted by this transfer;
- 13.5.2 this transfer does not include any part of the Cliff Wall and the Cliff wall shall not be a party structure
- 13.5.3 the boundary between the Property and the Cliff Wall marked on the Plan is shown for the purpose of identification only (and not by way of delineation).
- 13.5.4 they do not intend that any of the terms of this transfer will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 13.5.5 the Council shall have an absolute discretion in relation to any consent to be issued under clause 13.4 and no term is to be implied that such consent is not to be unreasonably withheld.
- 13.5.6 the Property is transferred subject to and with the benefit of the Hotel Lease and the Residential Lease and the parties agree that (i) the term granted by the Hotel Lease shall on the completion of this Transfer forthwith merge with and be extinguished in the freehold reversion transferred by this Transfer (and the Transferor and the Transferee hereby apply to the Chief Land Registrar to close title [ ] ) and (ii) the Term granted by the Residential Premises Lease shall not merge with the freehold reversion transferred by this Transfer and shall continue in full force and effect.
- 13.5.7 The Property is transferred subject to the provisions of the Option Agreement and the Council shall have the option to purchase the Property in accordance with the provisions thereof

### 13.6 **Indemnity covenants**

- 13.6.1 The Transferee covenants with the Council that the Transferee and its successors in title to the Property will comply with the Title Matters so far as they are enforceable and affect the Property and are not covered by an indemnity policy obtained by the Council and will indemnify the Council against all actions, claims, demands and proceedings taken or made against the Council and all costs, damages, expenses, liabilities and losses incurred by the Council arising from their breach.
- 13.6.2 The Transferee hereby covenants with the Council that the Transferee and its successors in title will observe and perform the covenants and other obligations on the part of the Landlord contained in the Hotel Lease and the Residential Premises Lease and will indemnify the Council against all actions claims demands and proceedings taken or made against the Council and all costs damages repairs liabilities and losses incurred by the Council arising from their breach.

### 13.7 **Restriction and Land Registry Applications**

- 13.7.1 The Transferor and the Transferee hereby apply to the Chief Land Registrar to note the following restriction in the Proprietorship Register of the title to the Property hereby transferred:

"No transfer assignment lease charge or other disposition of the registered estate by the registered proprietor or the proprietor of any registered charge shall be registered

without the consent in writing of Thanet District Council of Cecil Street Margate  
Kent CT9 1X2”

- 13.7.2 The Transferee shall as part of its application to register this Transfer include an application to register the restriction in clause 13.7.1 on Form RX4 (or other appropriate form) and an application to note the provisions of the Option Agreement against the Transferee’s title to the intent that the Transferee’s title to the property shall be subject to the restriction in clause 13.7.1 and to the provisions of the Option Agreement.



**14. The Transferors and all other necessary parties (including the proprietors of all the titles listed in panel 3) should execute this transfer as a deed using the space below and sign the plan.** *Forms of execution are given in Schedule 3 to the Land Registration Rules 1925. If the transfer contains transferees' covenants or declarations or contains an application by them (e.g. for a restriction), it must also be executed by the Transferees.*

The common seal of **THANET DISTRICT COUNCIL** was affixed in the presence of:

*Common seal of the Council*

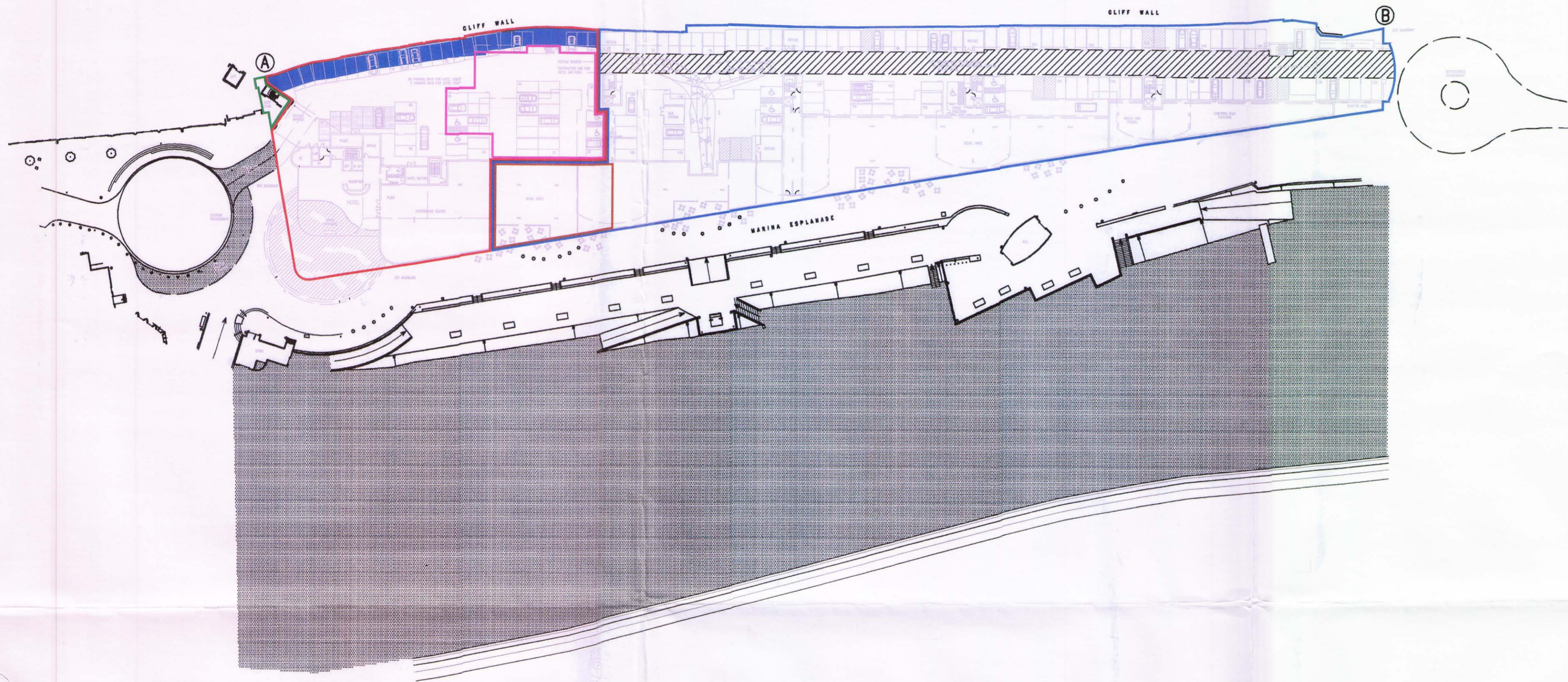
Sealing Officer

Executed as a deed by **SFP VENTURES (UK) LIMITED** acting by a director and its secretary or two directors *Sign here*

Director

Director / Secretary





Client:  
**SFP VENTURES (UK) Ltd**

Project:  
**RAMSGATE MARINA ESPLANADE**

Drawing Title:  
**TRANSFER OF PART  
HOTEL SITE**

Scale @ A1: **1:500** Project Co-Ordinator: **SW** Date: **09/06**

Job No: **5598** Stage: **LE 109** Drawing No: **Rev:**

Issue Status:  
Construction  Preliminary   
Information  Approval   
Tender

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Dublin  
Cork  
Warsaw  
Shanghai



**Transfer of part  
of registered title(s)**

*(If you need more room than is provided for in a panel, use continuation sheet CS and staple to this form)*

**HM Land Registry**

**TP1**

**1. Stamp Duty**

**MIXED USE SITE**

*Place "X" in the box that applies and complete the box in the appropriate certificate.*

It is certified that this instrument falls within category \_\_\_\_\_ in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987

It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of \_\_\_\_\_

**2. Title number out of which the Property is transferred** *(leave blank if not yet registered)*

K838703

**3. Other title number against which matters contained in this transfer are to be registered** *(if any)*

**4. Property transferred** *(Insert address, including postcode, or other description of the property transferred. Any physical exclusions, e.g. mines and minerals, should be defined. Any attached plan must be signed by the transferor and by or on behalf of the transferee.)*

Land at Ramsgate Boulevard Ramsgate Kent

**The Property is defined:** *(place "X" in the box that applies and complete the statement)*

on the attached plan and shown *(state reference e.g. "edged red")* edged red

on the Transferor's filed plan and shown *(state reference e.g. "edged and numbered 1 in blue")*

**5. Date**

**6. Transferor** (give full names and Company's Registered Number if any)

Thanet District Council Cecil Street Margate Kent CT9 1X2

**7. Transferee for entry on the register** (Give full names and Company's Registered Number if any; for Scottish Co. Reg. Nos., use an SC prefix. For foreign companies give territory in which incorporated.)

SFP Ventures (UK) Limited

*Unless otherwise arranged with Land Registry Headquarters, a certified copy of the transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.*

**8. Transferee's intended address(es) for service in the U.K. (including postcode) for entry on the register**

**9. The Transferor transfers the Property to the Transferee.**

**10. Consideration** (Place "X" in the box that applies. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.)

The Transferor has received from the Transferee for the Property the sum of (in words and figures)

Ten pounds (£10) exclusive of Value Added Tax

(insert other receipt as appropriate)

The transfer is not for money or anything which has a monetary value

**11.** The Transferor transfers with *(place "X" in the box which applies and add any modifications)*

full title guarantee  limited title guarantee

11.1 The covenants implied under section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 are varied by the replacement of the words "at his own cost" by the words "at the cost of the person requiring compliance with this covenant"

**12.** Declaration of trust *Where there is more than one transferee, place "X" in the appropriate box*

The Transferees are to hold the Property on trust for themselves as joint tenants

The Transferees are to hold the Property on trust for themselves as tenants in common in equal shares

The Transferees are to hold the Property *(complete as necessary)*

### 13. Additional Provisions

1. Use this panel for:  
definitions of terms not defined above  
rights granted or reserved  
restrictive covenants  
other covenants  
agreements and declarations  
other agreed provisions  
required or permitted statements, certificates or applications.

The prescribed subheadings may be added to, amended, repositioned or omitted.

#### 13.1 Definitions

13.1.1 In this transfer, the following words and expressions have the following meanings:

- “Blue Land”** that part of the Property comprising the strip of land approximately 4 metres wide shown coloured blue on the Plan.
- “Cliff Wall”** the cliff wall between (inter alia) the points marked A and B on the Plan and includes all foundations footings buttresses overhangs drains and all other parts thereof.
- “Conduits”** sewers, drains, watercourses, pipes, cables, wires and other channels or conduits now present or installed during the Perpetuity Period for the passage of Services.
- “Council”** Thanet District Council (or any statutory successor) but (unless this transfer expressly provides otherwise) shall not include its successors in title to the Retained Land or any other party
- “Hotel Site”** means that part of the Retained Land shown edged blue on the Plan
- “Mixed Use Site Lease”** means the lease of the Property dated [ ] made between Thanet District Council (1) and SFP Ventures (UK) Limited (2) title to which is registered under title number [ ]
- “Perpetuity Period”** the period of 80 years from the date of this transfer which will be the perpetuity period for the purposes of the Perpetuities and Accumulations Act 1964.
- “Plan”** the plan attached to this transfer.
- “Retained Land”** the land comprised in the Title Number (excluding the Property) and all other land owned by the Transferor at the date of this Transfer lying adjacent to or in the vicinity of the Property including the Cliff Wall and land and property owned by the Transferor above the top of the Cliff Wall and the Retained Land includes any buildings from time to time thereon.
- “Services”** water, gas, electricity, telecommunications, surface water drainage, foul drainage, fuel oil and other similar



services.

**“Title Matters”**

the agreements, covenants, restrictions, stipulations and other matters contained or referred to in the title registered under the Title Number.

**“Use Classes Order”**

means the Town and County Planning (Use Classes) Order 1987 (as amended) (as enacted on [*insert date of development agreement*])

13.1.2 References to the owners of the Property are to the Transferee and its successors in title to the Property and references to the owners of the Retained Land are to the Transferor and its successors in title to the Retained Land.

13.1.3 References to the Council do not include the Council’s successor in title to the Retained Land or any other party other than statutory successors to Thanet District Council.

13.1.4 References to the Property include the whole and every part of the Property and references to the Retained Land include the whole and every part of the Retained Land.

13.1.5 Unless otherwise indicated, references to paragraphs are to paragraphs in this panel 13.

**13.2 Rights granted for the benefit of the Property**

The following rights are granted for the benefit of that part of the Property shown edged green on the Plan:

13.2.1 **Escape** - a right of escape on foot only in case of fire or other emergency over that part of the Hotel Site which is from time to time unbuilt upon and designated from time to time by the freehold owner of the Hotel Site for this purpose.

13.2.2 **Access for services** - a right of vehicular access over such part of the Hotel Site as the freehold owner of the Hotel Site shall designate from time to time for the purpose only of making deliveries to that part of the Property shown edged green on the Plan and to remain on the Hotel Site for brief temporary periods only whilst loading and unloading.

*[To be added - Right of way and for conduits over land coloured green on the Plan in the same form (mutatis mutandis) as Paragraphs 2 and 6 of Schedule 1 to the Mixed Use Site Lease]*

**13.3 Rights reserved for the benefit of the Retained Land**

13.3.1 The following rights over the Property are reserved for the benefit of the Retained Land:

13.3.1.1 **Services** - the right in common with the owners of the Property and those authorised by them to connect to and use any Conduits in, on, under or over the Property for the passage of Services to and from the Retained Land;

13.3.1.2 **Entry for Conduits**- the right for the owners of the Retained Land and

those authorised by them to enter and remain upon so much as is necessary of the Property except where buildings are positioned or situated on reasonable prior notice (except in case of emergency) with or without workmen, plant and equipment to repair, maintain, replace, renew, clean, connect to and sever connections with any Conduits over which rights are reserved by this transfer;

13.3.1.3 **Cliff Wall** – the right for the Council and those authorised by the Council to enter and remain upon the Blue Land on reasonable prior notice (except in emergency) with or without workmen plant and equipment to repair maintain decorate replace rebuild renew and clean the Cliff Wall and to erect and retain scaffolding on the Blue Land and to remove any car ports or bin stores erected on the Blue Land for any of these purposes.

13.3.1.4 **Footings and Overhangs** – the right to retain on over or under the Blue Land buttresses foundations footings drains and overhangs forming part of the Cliff Wall and the right to erect and retain on the Blue Land new buttresses foundations footings drains and overhangs for the Cliff Wall as required by the Council from time to time.

13.3.1.5 **Support** - the right of support for the Retained Land (including the Cliff Wall) and any buildings on it from the Property and any buildings on it.

13.3.1.6 **Light and air** - the right to construct new buildings and/or alter existing buildings on the Retained Land notwithstanding that the access of light and/or air to the buildings from time to time on the Property may be affected.

13.3.1.7 **Right of Way** - a right of way for the owners of the Hotel Site and those authorised by them in common with the owners of the Property and those authorised by them with or without vehicles at all times and for all purposes over that part of the Property shown hatched black on the plan.

13.3.2 The rights of entry reserved by paragraphs 13.3.1.1 to 13.3.1.6 (inclusive) of this transfer are subject to the owners of the Retained Land:

13.3.2.1 Causing as little inconvenience as reasonably practicable to the owners of the Property in the exercise of these rights; and

13.3.2.2 Making good as soon as reasonably practicable all damage caused to the Property and any buildings from time to time on it to the reasonable satisfaction of the owners of the Property.

#### 13.4 **Restrictive covenants by the Transferee**

The Transferee covenants with the Transferor for the benefit of the Retained Land and to bind the Property and the owners lessees and occupiers thereof that the owners of the Property will not without the prior written consent of the Council:

13.4.1 use or permit the Property to be used:

13.4.1.1 (as to those parts of the buildings erected on the Property at the date of

this transfer and designed as a dwelling for residential use or any buildings replacing them from time to time) other than for residential purposes

- 13.4.1.2 (as to the ground floor of any buildings from time to time erected on the Property) for any purpose other than a purpose within any of Use Classes A1, A3, A4 or A5 of the Use Classes Order;
- 13.4.1.3 (as to any building or part thereof or other part of the Property constructed or used as a children's play area on the date of this Transfer or any building replacing it from time to time) for any purpose other than as a children's play area within Use Class D2 of the Use Classes Order and;
- 13.4.1.4 (as to any building or part thereof constructed on the property as a health and fitness centre at the date of this Transfer or any building replacing it from time to time) for any purpose other than as a good quality health and fitness centre;
- 13.4.1.5 in a manner which may be or become a nuisance (whether or not amounting to a legal nuisance), annoyance, disturbance or cause damage to the owners of the Retained Land; or
- 13.4.1.6 in any manner which obstructs the exercise of the rights reserved by this Transfer;
- 13.4.1.7 without prejudice to the foregoing for any of the following purposes
  - (a) use as an amusement arcade or for the siting of gaming machines
  - (b) use as a casino or any other use relating to gambling; and
  - (c) use as a lap dancing club or other sex establishment.

#### 13.4.2

- 13.4.2.1 construct or place any new buildings or other temporary or permanent structures on the Property or make any external alteration or addition to the buildings on the Property which is/are higher than the top of the Cliff Wall; or
- 13.4.2.2 construct or place any new buildings or other temporary or permanent structures of any description on the Blue Land other than removeable car ports and bin stores which have been approved in writing by the Council and which are attached to the ground and are not in any way touching or attached to or supported by the Cliff Wall; or
- 13.4.2.3 construct any new buildings on the Property or rebuild, extend, alter or carry out any other works to any buildings from time to time on the Property in a manner which interferes with or affects the structural integrity of the Cliff Wall.

### 13.5 **Declarations**

The Transferor and the Transferee declare that:

- 13.5.1 section 62 of the Law of Property Act 1925, Rule 251 Land Registration Rule 1925 and the rule in "*Wheeldon v Burrows*" do not apply to this transfer and no legal or other rights are granted over the Retained Land for the benefit of the Property by this transfer except for those expressly granted by this transfer;
- 13.5.2 this transfer does not include any part of the Cliff Wall and the Cliff wall shall not be a party structure
- 13.5.3 the boundary between the Property and the Cliff Wall marked on the Plan is shown for the purpose of identification only (and not by way of delineation).
- 13.5.4 they do not intend that any of the terms of this transfer will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 13.5.5 the Council shall have an absolute discretion in relation to any consent to be issued under clause 13.3 and no term is to be implied that such consent is not to be unreasonably withheld.
- 13.5.6 the Property is transferred subject to and with the benefit of the Mixed Use Site Lease and the parties agree that the term granted by the Mixed Use Site Lease shall on the completion of this Transfer forthwith merge with and be extinguished in the freehold reversion transferred by this Transfer and the Transferor and the Transferee hereby apply to the Chief Land Registrar to close title [            ]

### 13.6 Indemnity covenant

- 13.6.1 The Transferee covenants with the Transferor that the Transferee and its successors in title to the Property will comply with the Title Matters so far as they are enforceable and affect the Property and are not covered by any indemnity policy obtained by the Council and will indemnify the Transferor against all actions, claims, demands and proceedings taken or made against the Transferor and all costs, damages, expenses, liabilities and losses incurred by the Transferor arising from their breach.
- 13.6.2 The Transferee hereby covenants with the Council that the Transferee and its successors in title will comply with the covenants on the part of the landlord contained in the Mixed Site Lease and will indemnify the Council against all actions claims demands and proceedings taken or made against the Council and all costs damages expenses liabilities and losses incurred by the Council arising from their breach

### 13.7 Restriction and Land Registry Application

- 13.7.1 The Transferor and the Transferee hereby apply to the Chief Land Registrar to note the following restriction in the Proprietorship Register of the title to the Property hereby transferred:

"No transfer assignment lease charge or other disposition of the registered estate by the registered proprietor or the proprietor of any registered charge of land in this title or any part thereof shall be registered without the consent in writing of Thanet District Council of Cecil street Margate Kent CT9 IX2"

- 13.7.2 The Transferee shall as part of its application to register this Transfer apply to register the restriction in clause 13.6.1 on Form RX4 (or other appropriate form) against the

Transferee's title to the Property to the intent that the Transferee's title to the Property shall be subject to the restriction in clause 13.6.1.

**14. The Transferors and all other necessary parties (including the proprietors of all the titles listed in panel 3) should execute this transfer as a deed using the space below and sign the plan.** *Forms of execution are given in Schedule 3 to the Land Registration Rules 1925. If the transfer contains transferees' covenants or declarations or contains an application by them (e.g. for a restriction), it must also be executed by the Transferees.*

The common seal of **THANET DISTRICT COUNCIL** was affixed in the presence of:

*Common seal of the Council*

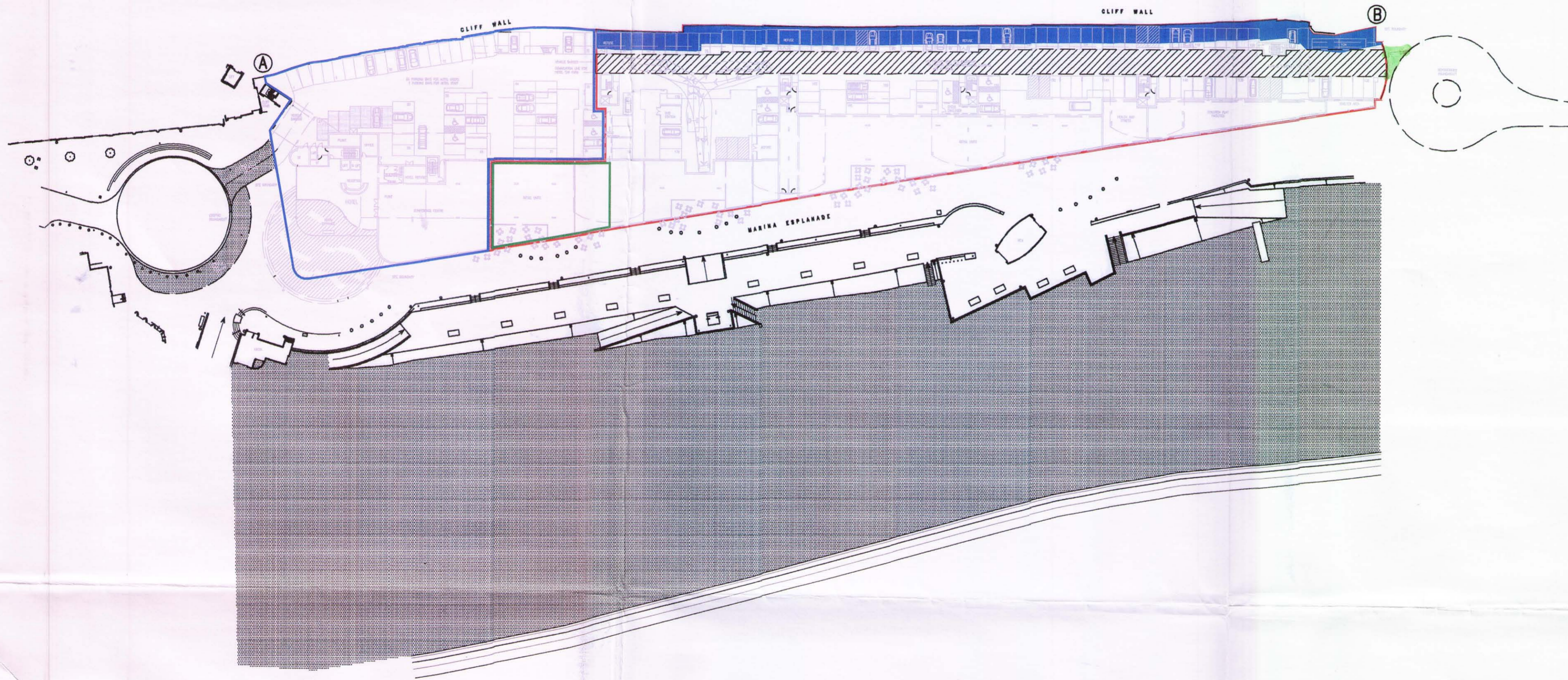
Sealing Officer

Signed as a deed by **SFP VENTURES (UK) LIMITED** acting by a director and its secretary or two directors

*Sign here*

Director

Director / Secretary



Client:  
SFP VENTURES (UK) Ltd

Project:  
RAMSGATE MARINA ESPLANADE

Drawing Title:  
TRANSFER OF PART  
MIXED USE SITE

Scale @ A1: 1:500  
Project Co-Ordinator: SW  
Date: 09/06

Job No: 5598  
Stage: LE 108  
Drawing No: LE 108  
Rev:

Issue Status:  
Construction  Preliminary   
Information  Approval   
Tender

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Shanghai





**DATED**

**2006**

- (1) S F P VENTURES (UK) LIMITED
- (2) THANET DISTRICT COUNCIL

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## **OPTION AGREEMENT**

---

relating to property at Ramsgate Boulevard Ramsgate Kent

Eversheds LLP  
Senator House  
85 Queen Victoria Street  
London EC4V 4JL  
Tel +44 (0) 20 7919 4500  
Fax +44 (0) 20 7919 4919

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## PARTICULARS

**DATE**

2006

**Seller**

**SFP VENTURES (UK) LIMITED** (a company registered with registered number 5666803) whose registered office is at Lakeview House, Lake Meadows Office Park, Woodbrook Crescent Billericay Essex CM12 0EQ.

**Buyer**

**THANET DISTRICT COUNCIL** of Cecil Street Margate Kent CT9 1XZ

**Buyer's Solicitors**

Eversheds LLP of Senator House 85 Queen Victoria Street London EC4V 4JL (Ref: JSP) or such other solicitors as the Buyer notifies in writing to the Seller.

**Completion Date**

twenty working days after the date of service of the Option Notice.

**End Date**

the date 10 years after the date of this Agreement.

**Freehold Transfer**

the freehold transfer of the Hotel Site pursuant to Schedule 4 of the Development Agreement.

**Freehold Transfer Date**

means the date of actual completion of the Freehold Transfer.

**Hotel Site**

has the meaning given to that expression in the Development Agreement.

**Interest**

means (pending completion of the Freehold Transfer) the term granted by the Hotel Lease and (following completion of the Freehold Transfer) the freehold interest in the Property and the terms granted by the Stairway Lease and the Hotel Lease (in either case if still subsisting)

**Hotel Lease**

the lease of the Hotel Site dated [ ] 2006

granted pursuant to the Development Agreement and made between the Buyer (1) and the Seller (2).

<b>Option Fee</b>	£1.00 (the sum of one pound).
<b>Option Period</b>	the period from and including the Start Date to and including the End Date.
<b>Price</b>	the price agreed or determined in accordance with <b>Schedule 3</b> .
<b>Property</b>	the property at Ramsgate Boulevard Ramsgate Kent comprising the Hotel Site and shown more particularly edged red on the Plan.
<b>Residential Lease</b>	has the meaning given to that expression in the Development Agreement
<b>Seller's Solicitors</b>	Prettys of Elm House 25 Elm Street Ipswich Suffolk IP1 2AD (Ref: David Clark) or such other solicitors as the Seller notifies in writing to the Buyer.
<b>Start Date</b>	the date 2 years after the date of this Agreement.
<b>Stairway Lease</b>	has the meaning given to that expression in the Development Agreement.
<b>Title Numbers</b>	means the title numbers to be allocated to the Hotel Lease and the Stairway Lease and (following the Freehold Transfer Date) the title number to be allocated to the freehold interest transferred by the Freehold Transfer.

**THIS AGREEMENT** is made on the date set out in the Particulars

**BETWEEN**

- (1) the Seller; and
- (2) the Buyer.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

1.1 In this Agreement, the following words and expressions have the following meanings:

<b>“Actual Completion”</b>	actual completion of the sale and purchase of the Interest and <b>“Date of Actual Completion”</b> is to be interpreted accordingly
<b>“Approved Funder”</b>	has the same meaning as in the Development Agreement
<b>“Approved Operator”</b>	means a hotel operator approved in writing by the Buyer (such approval not to be unreasonably withheld or delayed in the case of an operator with a proven track record of running good quality hotels and who owns not less than three such hotels (in addition to the hotel on the Hotel Site) at the time the application for the Buyer’s consent is made.
<b>“Commercial Conditions”</b>	the Standard Commercial Property Conditions (First Edition)
<b>“Contract Rate”</b>	4% per annum above the base lending rate from time to time of National Westminster Bank PLC
<b>“Development Agreement”</b>	means the agreement dated 2006 relating to the development and sale of land and premises at Ramsgate Boulevard Ramsgate Kent (including the Property) and made between the

Buyer (1) and the Seller (2).

<b>“Election”</b>	an election to waive exemption from VAT in respect of the Property pursuant to paragraph 2(1) Schedule 10 to the Value Added Tax Act 1994
<b>“Option”</b>	the option granted by <b>clause 2</b>
<b>“Option Notice”</b>	the notice exercising the Option served in accordance with <b>clause 3</b>
<b>“Particulars”</b>	the Particulars set out at the front of this Agreement
<b>“Permitted Use”</b>	use as a good quality hotel with conference and other ancillary facilities appropriate to a good quality hotel (but (for the avoidance of doubt and without prejudice to the foregoing) not including (a) use as a boarding house or similar use and/or (b) use for occupation by benefit claimants)
<b>“Plan”</b>	the plan or plans attached to this Agreement
<b>“Title Matters”</b>	the matters set out in <b>paragraph 1 of Part 4 of Schedule 2</b> and <b>paragraph 2 of Part 4 of Schedule 2</b> in each case so far as they are subsisting, capable of taking effect and affect the Property but not including any mortgages or financial charges
<b>“VAT”</b>	Value Added Tax

1.2 In this Agreement:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:

- 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and
  - 1.2.3.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;
  - 1.2.4 references to the Property include any part of it;
  - 1.2.5 “including” means “including, without limitation”;
  - 1.2.6 “indemnify” means to indemnify against all actions, claims, demands and proceedings taken or made against the Seller and all costs, damages, expenses, liabilities and losses incurred by the Seller;
  - 1.2.7 “working day” has the meaning given to it in the Commercial Conditions; and
  - 1.2.8 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.
- 1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 1.4 References in this Agreement to the Buyer include any person to whom the benefit of the Agreement has been assigned and references to the Seller include the Seller’s successors in title to the Interest.
- 1.5 The Particulars form part of this Agreement and words and expressions set out in the Particulars are to be treated as defined terms in this Agreement.
- 2. OPTION TO BUY**
- 2.1 In consideration of the Option Fee, which the Seller has received, the Seller grants the Option to the Buyer.
- 2.2 The Option confers the right on the Buyer during the Option Period to require the Seller to sell the Interest in the whole of the Property to the Buyer at the Price on the terms of this Agreement.

- 2.3 The Option is binding on the Seller and the Seller's successors in title to the Interest.
- 2.4 The Buyer may assign the benefit of this Agreement.

### 3. EXERCISE OF THE OPTION

- 3.1 The obligation to complete the sale and purchase of the Interest is subject to the Buyer exercising the Option during the Option Period in accordance with this **clause 3**.
- 3.2 The Option may only be exercised by the Buyer serving an Option Notice in writing on the Seller during the Option Period.
- 3.3 The Buyer agrees not to exercise the Option unless and until the Hotel is closed for trade and/or not operated for the Permitted Use for a continuous period of 56 days during the Option Period and in that event the Buyer shall be entitled to exercise the Option at any time thereafter during the Option Period provided that in the event that such an event occurs and the Buyer does not exercise the Option this shall not preclude the Buyer from exercising the Option if such an event occurs subsequently.
- 3.4 The Option Notice is to be substantially in the form set out in **Schedule 1**.
- 3.5 No deposit will be payable on the exercise of the Option.
- 3.6 The Seller is to provide details of its solicitor's client account to the Buyer on written request.
- 3.7 The Seller is to sign and return a copy of the Option Notice to the Buyer within two working days of its receipt but the absence of the Seller's signature to the Option Notice will not invalidate the Option Notice.
- 3.8 If the service of an Option Notice in the exercise or attempted exercise of the Option is not sufficient to create a legally binding and enforceable contract for the sale of the Interest, the Seller and the Buyer will execute all such further documents as either of them may reasonably require to create a legally binding and enforceable contract for the sale of the Interest on the terms of this Agreement.

### 4. REGISTRATION OF THE OPTION

- 4.1 The Seller agrees to the registration of a restriction on the proprietorship register of each of the Title Numbers in the following Land Registry standard form:



“No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without the written consent of Thanet District Council of Cecil Street Margate Kent CT9 1XZ or its statutory successor.”

4.2 The Seller consents in addition to the registration of an Agreed Notice against the Title Numbers relating to the Hotel Lease and the Freehold Transfer.

## 5. TERMINATION

5.1 This Agreement will end if the Seller has not received a valid Option Notice by 4.00 pm on the End Date.

5.2 The Buyer may serve notice in writing on the Seller at any time before the service of a valid Option Notice specifying that it does not wish to exercise the Option. On the service of notice under this **clause 5.2**, this Agreement will end.

5.3 If this Agreement ends without the parties completing the sale of the Property, the Buyer is at its own expense to remove any notice or restriction made against the Interest in respect of this Agreement.

5.4 The obligations in **clause 5.3** will continue notwithstanding the ending of this Agreement.

5.5 The Option Fee will not be repayable on the ending of this Agreement.

5.6 The ending of this Agreement will be without prejudice to any claims, liabilities or rights of the Seller or the Buyer existing at the date on which this Agreement ends.

## 6. RIGHT OF ENTRY

6.1 During any period before the exercise of the Option by the Buyer, the Seller is to allow the Buyer to enter and remain on the Property as often as reasonably necessary at all reasonable times and upon reasonable prior written notice for the purpose of preparing any drawings, reports and applications or carrying out surveys subject to the Buyer:

6.1.1 making good any physical damage to the Property caused in the exercise of these rights and leaving the Property in a safe and satisfactory condition; and

6.1.2 causing as little inconvenience as reasonably practicable to the Seller and to the business of any tenants or other occupiers of the Property.

6.2 The Buyer entering and remaining on the Property pursuant to this **clause 6** will not constitute the Buyer being treated as being let into occupation for the purposes of Commercial Condition 5.2 or as an exercise of the Option.

7. **ENCUMBRANCES AND DISPOSALS**

7.1 Unless and until this Agreement has come to an end without the exercise of the Option, the Seller is not (save only as expressly provided in this clause 7) to create any further encumbrance over the Interest or the Property without the prior written consent of the Buyer (such approval not to be unreasonably withheld where the encumbrance will not adversely affect the value of the interest or adversely affect the use of the Property for the permitted use and does not comprise a lease or charge

7.2 An encumbrance includes any charge, easement, restrictive covenant, lease or other right of occupation use or enjoyment of the whole or any part of the Property, except a lease granted in accordance with **clause 7.3** or a charge granted in accordance with **clause 7.6**.

7.3 Prior to the exercise of the Option the Seller may grant a lease of the whole of the Property at a full open market rack rent with five yearly rent reviews which is :

7.3.1 granted for a term of not less than 15 years and not exceeding 50 years;

7.3.2 granted to a hotel operator approved by the Buyer (such approval not to be unreasonably withheld or delayed where the hotel operator is an Approved Operator);

7.3.3 on terms which oblige the tenant to keep the Property fitted out and open for trade for the Permitted Use with a right of re-entry upon (inter alia) breach of such covenant; and

7.3.4 is otherwise in a form and on terms approved by the Buyer (such approval not to be unreasonably withheld or delayed)

7.4 Following the Freehold Transfer Date the Seller is not to sell or otherwise dispose of its freehold interest in the Property except as a whole and unless the Seller procures that:

7.4.1 the new owner of the freehold interest in the Property executes and delivers a deed of covenant to the Buyer in the form required by the Buyer under

which the new owner covenants with the Buyer to observe and perform the obligations on the part of the Seller contained in this Agreement;

7.4.2 the new owner of the freehold interest in the Property simultaneously takes a transfer of the Stairway Lease (if still subsisting); and

7.4.3 upon any subsequent sale or other disposal by the new owner of the freehold interest in the Property, the same obligations as are contained in this **clause 7.4** apply.

7.5 The Seller may charge the whole of the Property to an Approved Funder or otherwise with the prior written consent of the Buyer (not to be unreasonably withheld or delayed) if (in any case) the Approved Funder or other mortgagee has first entered into a deed of agreement with the Seller in the like form (mutatis mutandis) as provided for in **clause 15.2** of the Development Agreement and (the Approved Funder or other mortgagee) (if not registered in the United Kingdom) has provided to the Buyer an opinion letter (in a form approved by the Buyer acting reasonably) in relation to the deed of agreement in similar form (mutatis mutandis) to the opinion letter referred to in **paragraph 5.4** of **Schedule 2** and (on an irrevocable basis) an address within the United Kingdom for service of notices and proceedings on the Approved Funder or other mortgagee.

7.6 The Seller shall not take a surrender of or otherwise terminate the Residential Lease without the prior written consent of the Buyer.

## 8. **SALE CONDITIONS**

The provisions of **Schedule 2** apply and the Seller and the Buyer are to comply with their obligations in that Schedule.

## 9. **VALUE ADDED TAX**

Sums payable under this Agreement are exclusive of VAT. An obligation to pay money includes an obligation to pay any VAT chargeable on that payment. When a taxable supply is made for the purposes of VAT under this Agreement, a valid VAT invoice is to be issued in respect of that supply.

## 10. SERVICE OF NOTICES

- 10.1 An Option Notice served under this Agreement is to be delivered by hand or sent by first class post, pre-paid or recorded delivery to the address of the Seller set out above or to the address of the Seller's Solicitors set out above.
- 10.2 Unless the time of actual receipt is proved, an Option Notice sent by the following means is to be treated as having been served:
- 10.2.1 if delivered by hand, at the time of delivery; or
- 10.2.2 if sent by post, on the second working day after posting.
- 10.3 If an Option Notice is served after 4.00 pm on a working day, or on a day which is not a working day, it is to be treated as having been served on the next working day.
- 10.4 Service by fax or e-mail is not a permitted form of service under this Agreement.

## 11. DETERMINATION OF DISPUTES

- 11.1 The provisions of this clause 11 apply where a dispute under this Agreement is to be determined by an independent expert.
- 11.2 The independent expert is to be appointed by agreement between the Seller and the Buyer but if they cannot reach an agreement, either of them may ask the President for the time being of the Royal Institution of Chartered Surveyors to nominate an expert and if he is unable or unwilling to do so, the next most senior officer may make the nomination.
- 11.3 The following provisions apply to the independent expert:
- 11.3.1 he is to act as an expert and not as an arbitrator;
- 11.3.2 he is to give the Seller and the Buyer an opportunity to make written representations and to comment on each other's representations;
- 11.3.3 another expert may replace him if he dies, becomes unwilling or incapable of acting or it becomes apparent for any other reason that he will be unable to determine the matter referred to him within a reasonable time;
- 11.3.4 he will be instructed to make his determination within 20 working days of the matter being referred to him;

11.3.5 his decision is to be final and binding on the Seller and the Buyer; and

11.3.6 his fees, including those of his appointment, are to be borne between the Seller and the Buyer as he determines or, in the absence of a determination, shared equally between the Seller and the Buyer.

## 12. **ADDITIONAL PROVISIONS**

12.1 The Seller irrevocably appoints the Buyer named in this Agreement as its attorney for the purpose of executing all documents necessary for the purpose of transferring the Interest to the Buyer following the exercise of the Option under this Agreement should the Seller fail to do so within 28 days of the due date for completion of such documents under the Agreement.

12.2 This Agreement constitutes the entire contract between the parties and may be varied or modified only in writing by the parties or their authorised representatives specifically referring to this clause and stating that this Agreement is varied in the manner specified.

## 13. **LAW AND JURISDICTION**

13.1 This Agreement is to be governed by and interpreted in accordance with English law.

13.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement. This clause operates for the benefit of the Buyer who retains the right to sue the Seller and enforce any judgment against the Seller in the courts of any competent jurisdiction.

## 14. **SIGNING**

This Agreement has been signed under hand by or on behalf of the Seller and the Buyer and it is exchanged on the date set out in the Particulars.

# SCHEDULE 1

## Form of option notice

To: [NAME OF SELLER]

Dated: [DATE]

**Agreement (“the Agreement”) dated [DATE] made between (1) S F P Ventures (UK) Limited (“the Seller”) and (2) Thanet District Council (“the Buyer”)**

We give you notice that, pursuant to **clause 3** of the Agreement, we as the Buyer exercise the Option and call on you to complete the sale and purchase of the Property in accordance with the terms of the Agreement.

In accordance with the terms of the Agreement, you should sign and date the attached duplicate of this Notice and return it to the address given below where our solicitors will receive it on our behalf.

Yours faithfully

**Signed by [NAME]**

Authorised signatory for and on behalf of the Buyer

*OR*

Buyer’s Solicitors duly authorised for and on behalf of the Buyer

[Address]

We as the Seller acknowledge receipt of this Option Notice and confirm the agreement to sell the Property in accordance with the terms of the Agreement.

**Signed by [NAME]**

Authorised signatory for and on behalf of the Seller

*OR*

Seller’s Solicitors duly authorised for and on behalf of the Seller

## SCHEDULE 2

### Sale conditions

#### PART 1: GENERAL

##### 1. Commercial conditions

The Commercial Conditions, as varied by **Part 2** of this Schedule, form part of this Schedule so far as they are applicable to the sale of the Interest and are consistent with the express terms of this Agreement.

##### 2. Completion

2.1 Subject to the exercise of the Option, completion of the sale of the Interest will take place on the Completion Date.

2.2 The Option Fee is to be deducted from the Price payable on completion.

2.3 The Interest is sold subject to any lease granted in accordance with clause 7.3 but otherwise with vacant possession on completion.

##### 3. Title

3.1 The Seller shall if required by the Buyer at any time during the Option Period before exercise of the Option within 28 days of written request by the Buyer:

3.1.1 provide to the Buyer written replies to the then current editions of enquiries CPSE1 and CPSE2 in relation to the Property;

3.1.2 deduce title to the Interest to the Buyer; and

3.1.3 provided a complete copy of any lease (together with copies of all deeds and documents supplemental thereto) to which the Interest is then subject.

3.2 The Buyer shall be entitled to raise proper and reasonable requisitions in relation to the title or any lease to which the Interest is then subject except in respect of any entries registered against the title K838703 at the date of this Agreement.

3.3 The Seller sells with full title guarantee.

3.4 The Buyer shall be entitled to raise observations on any replies to enquiries or requisitions and the Seller shall reply promptly to such observations.

4. **Title matters**

- 4.1 The Property is sold subject to and, to the extent that the Seller is able to transfer them, with the benefit of the Title Matters.
- 4.2 The Buyer's Solicitors have been provided with copies of the Title Matters and the Buyer is to be treated as buying the Property with full knowledge of them and will not raise any requisition or objection to them.
- 4.3 The Property is also sold subject to the matters contained or referred to in Commercial Condition 3.1.2 but without prejudice to the Seller's duty of disclosure.

5. **The transfer**

- 5.1 The transfer is to be prepared by the Buyer's Solicitors. The transfer is to be executed in duplicate and the Buyer is to ensure that the duplicate is returned to the Seller's Solicitors as soon as possible after completion.
- 5.2 The transfer is to contain a covenant by the Buyer that it and its successors in title to the Property will by way of indemnity only comply with and indemnify the Seller against any future breach of the Title Matters in so far as they relate to the Property and remain binding on the Seller, any future breach of the tenant's covenants in the Hotel Lease and the Stairway Lease (if still subsisting) and any future breach of the landlord's covenants in any lease granted in accordance with **clause 7.3**
- 5.3 Any party that executes the transfer pursuant to a power of attorney is to provide a copy of that power of attorney in English, certified in accordance with section 3 Powers of Attorney Act 1971, to the other parties on the Date of Actual Completion.
- 5.4 On the Date of Actual Completion, (if the Seller is not registered in the United Kingdom) the Seller is to provide the Buyer with an opinion letter from a reputable firm of lawyers in the jurisdiction in which the Seller is incorporated to confirm that the Seller:
- 5.4.1 is properly incorporated and registered in that jurisdiction;
- 5.4.2 has power to enter into its obligations under the transfer and any other documentation entered into under this Agreement and to hold land in the England and Wales;
- 5.4.3 has validly executed this Agreement, the transfer and any other documents entered into on the Date of Actual Completion.



- 5.5 On the Date of Actual Completion the Seller is to provide the Buyer with a duly executed release of any charge or mortgage over the Property

## **PART 2: VARIATIONS TO THE COMMERCIAL CONDITIONS**

### **1. Exclusion of Commercial Conditions**

Commercial Conditions 1.1.2, 2.2, 3.3, 4.1.1, 4.2.1, 6.3.7, 6.3.8, 6.3.9, 8.2.4 and 8.3 are excluded.

### **2. Variation of Commercial Conditions**

- 2.1 In Commercial Condition 4.5.2, the reference to Condition 4.5.4 is a reference to Condition 4.5.3.
- 2.2 In Commercial Condition 5.1.2, the words “but the buyer is to be credited with any contributions to the premium receivable by the seller from a tenant or other third party so far as they are attributable to that period” are included at the end of that condition.
- 2.3 In Commercial Condition 5.1.2(c), the words “at any time” are replaced by the words “on reasonable prior notice during normal business hours, but not more than once between exchange and completion unless the terms of the policy change.”
- 2.4 In Commercial Condition 5.1.2(d), the words “obtain or” are deleted.
- 2.5 In Commercial Condition 5.2.1, the words “the buyer ... property, and” are deleted.
- 2.6 In Commercial Condition 6.3.1, the words “Subject to Condition 6.3.7” are deleted.
- 2.7 Commercial Condition 6.3.2 reads “Apportionment is to be made with effect from the date of actual completion.”

## **PART 3: TITLE MATTERS**

### **1. Register entries**

The matters contained or referred to in the Property and Charges Registers of the title number K838703 as at the date of this Agreement.

2. **Other deeds and documents**

The matters contained or referred to in the following deeds and documents:

<b>Date</b>	<b>Document</b>	<b>Parties</b>
-------------	-----------------	----------------

*[Insert details of any documents affecting the Property entered into pursuant to the Development Agreement].*

3. **Residential Site Lease**

The Residential Site Lease (where the option is exercised after completion of the freehold transfer).

4. Any encumbrance to which the Buyer has consented in writing under clause 7.1

**PART 4: INSURANCE**

1. **Maintenance of the insurance**

1.1 The Seller is to maintain insurance of the Property in accordance with clause 16.1 of the Development Agreement until the End Date or (if earlier) the Date of Actual Completion and to supply written evidence that such insurance is in place upon written request from time to time by the Buyer.

1.2 The Seller is to cancel its insurance cover for the Property on or as soon as practicable after the Date of Actual Completion.

2. **Insurance claims**

2.1 If the Property is damaged or destroyed before the Date of Actual Completion by any of the risks covered by the Seller's policy or policies of insurance in respect of the Property:

2.1.1 the Seller is to apply all insurance proceeds in making good the damage or destruction; and

2.1.2 the Seller is to pay or provide that there is released to the Buyer on Actual Completion the amount of the policy moneys which the Seller has received to the extent that they have not been applied in making good the damage or destruction; and

2.1.3 if no final payment has been received by the Date of Actual Completion the Seller is to assign to the Buyer (insofar as its insurers allow) all rights to claim under the Seller's insurance policy in such form as the Buyer reasonably requires.

## SCHEDULE 3

### Calculation of the Price

#### 1. Defined terms

In this Schedule the following words and expressions have the following meanings

**“Price”**

means a sum equivalent to the Construction Cost provided that where at the date of exercise of the Option the Seller has entered into a disposition of the Property or any part thereof in breach of the terms of this Agreement the Price shall be the lesser of:

- (a) the Construction Cost; and
- (b) the open market value of the Interest on the date of the Option Notice;

**“Construction Cost”**

means the aggregate of all sums paid by the Seller under the building contract or contracts for the carrying out of the Hotel Works provided that where any such building contract or contracts relates to both the Hotel Works and other works the Construction Cost shall include such proportion of the sums payable under such building contract or contracts as shall fairly and properly be attributable to the Hotel Works.

**“Open Market Value”**

is the price at which the Interest might reasonably be expected to be sold at arms length on the open market at the date of the Option Notice assuming:

- (i) a willing seller and buyer;
- (ii) there has been a reasonable period prior to the valuation date within which to negotiate the sale taking into account the nature of the Interest and the state of the market;

- (iii) values remain static throughout that period;
- (iv) the Interest will be freely exposed to the market;
- (v) no account is taken of any additional bid by a buyer with a special interest;
- (vi) both the Buyer and the Seller acted knowledgeably prudently and without compulsion.

## 2. Calculation of the Construction Cost

- 2.1 The Seller shall both during the carrying out of the Hotel Works and following practical completion thereof keep the Buyer informed on a regular basis (accompanied by such vouchers invoices receipts and such other information as the Buyer shall reasonably require) of the monies expended under the building contract or building contracts for the Hotel Works and shall provide to the Buyer all information that the Buyer shall require to enable the Buyer to ascertain the Construction Cost for the purpose of this Agreement.
- 2.2 The Seller and the Buyer shall as soon as practicable after the date of practical Completion of the Hotel Works co-operate with each other with a view to agreeing the amount of the Construction Cost for the purpose of this Agreement and in the event that such Construction Cost is not agreed within three months following the date of practical completion either party may on notice to the other require the dispute to be resolved in accordance with **clause 11** of this Agreement.
- 2.3 In the event that the Seller shall not supply to the Buyer such information as the Buyer shall reasonably require in order to ascertain the amount of the Construction Cost the Construction Cost for the purpose of determining the Price to be paid on exercise of the Option shall be such amount as the Buyer acting reasonably shall determine by notice in writing to the Seller to that effect but without prejudice to the right of the Seller to refer any dispute in relation to such amount (within the period of 2 months after the Date of Actual Completion) to an independent expert in accordance with **paragraph 2.4** of this Schedule and where the independent expert determines that the Construction Cost is greater than that determined by the Buyer under **paragraph 2.3** the Buyer shall pay to the Seller an amount equivalent to the excess with 28 days of determination by the independent expert.

2.4 Any dispute between the Seller and the Buyer under this **Schedule 3** is to be determined by an independent expert in accordance with **clause 11** of the Agreement.

SIGNED by )

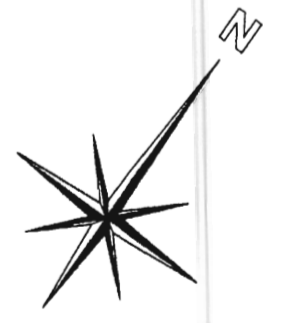
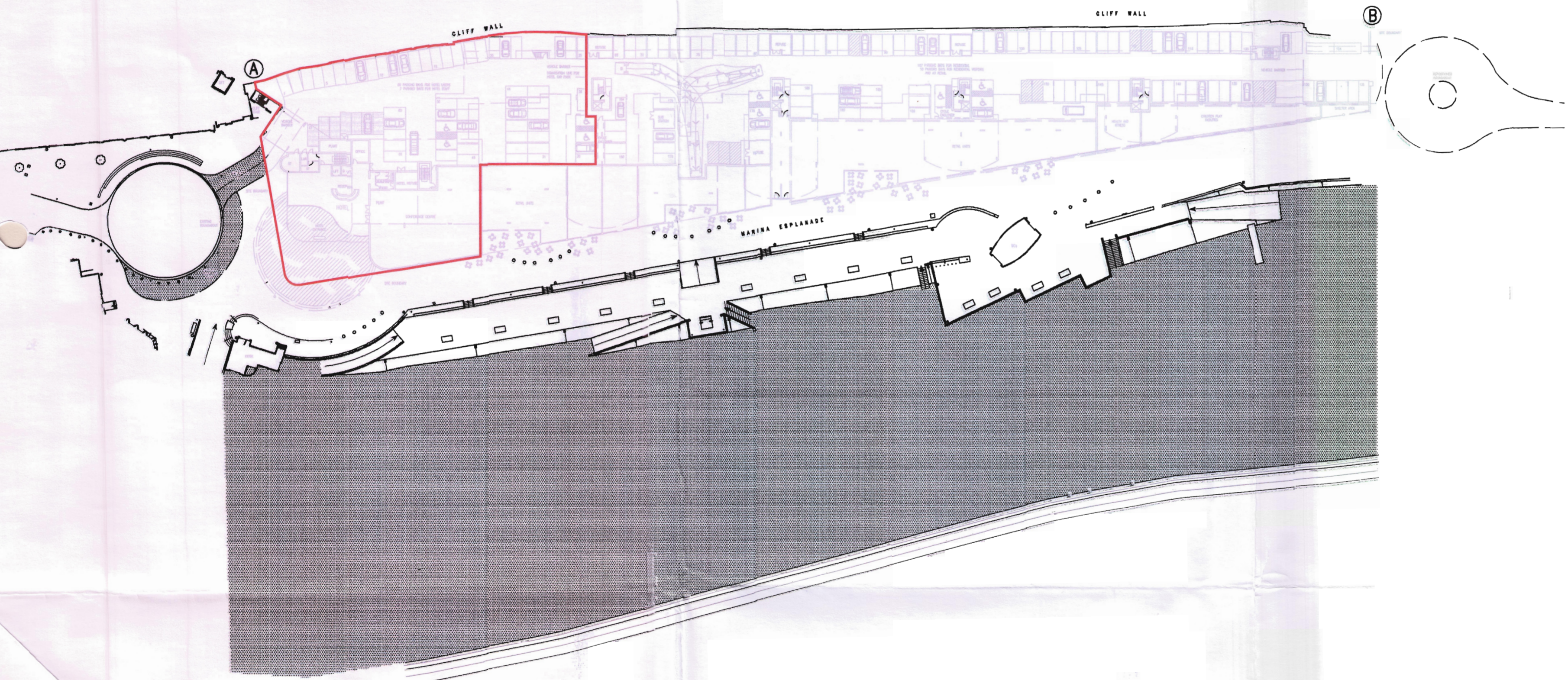
For and on behalf

SIGNED by )

For and on behalf of







Client:  
SFP VENTURES (UK) Ltd

Project:  
RAMSGATE MARINA ESPLANADE

Drawing Title:  
OPTION AGREEMENT  
HOTEL SITE

Scale @ A1: 1:500  
Project Co-Ordinator: SW  
Date: 09/06

Job No: 5598  
Stage: LE 103  
Drawing No: 103  
Rev: \_\_\_\_\_

Issue Status:  
Construction  Preliminary   
Information  Approval   
Tender

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Shanghai



**DATED**

**2006**

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- (1) SFP VENTURES (UK) LIMITED
- (2) [SURETY]
- (3) THANET DISTRICT COUNCIL

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**PERFORMANCE BOND**

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relating to  
an agreement for the development and sale of land and  
premises at Ramsgate Boulevard, Ramsgate, Kent

Eversheds LLP  
Senator House  
85 Queen Victoria Street  
London EC4V 4JL  
Tel +44 (0) 20 7919 4500  
Fax +44 (0) 20 7919 4919

**PARTIES:**

- (1) **SFP VENTURES (UK) LIMITED** (Company Registration Number 05666803) whose registered office is at Lakeview House, Lake Meadows Office Park Woodbrook Crescent Billericay Essex CM12 0EQ (hereinafter called “the Developer”); and
- (2) [NAME] whose registered office is situate at [ADDRESS] (hereinafter called “the Surety”); and
- (3) **THANET DISTRICT COUNCIL** of Cecil Street Margate Kent CT9 1X2 (hereinafter called “the Council”, which expression shall include its successors and assigns).

**DEFINITION AND BACKGROUND:**

- (A) In this Bond the following expressions have the following meanings:-
  - (i) “the Property” means the freehold property at Ramsgate Boulevard, Ramsgate, Kent shown edged red on the plan attached to the Development Agreement.
  - (ii) “the Development Agreement” means the Agreement dated [ ] 2006 made between the Council (2) and the Developer (2) relating to the development and sale of the Property
  - (iii) “Development Works” means the works to be carried out by the Developer on the Property in accordance with the Development Agreement briefly comprising the construction of a 60 bedroom hotel, 107 residential apartments, 7 retail/restaurant units, a health and fitness centre and a children’s play area together with car parking and ancillary facilities.
- (B) The Council and the Developer have entered into the Development Agreement which provides for the grant of site leases of the Property to the Developer, for the carrying out of the Development Works by the Developer and for the transfer of the freehold interest in the Property to the Developer when the Development Works have been

carried out and all overage and other payments due to the Council under the Development Agreement have been paid.

- (C) The Surety has agreed at the request of the Developer to guarantee the Developer's obligations under the Development Agreement in relation to the carrying out and completion of the Development Works up to the sum of five million and six hundred thousand pounds (£5,600,000) ("the Bond Amount")

**NOW THIS DEED WITNESSES** as follows:

1. The Surety hereby irrevocably and unconditionally gives the Council its bond and guarantees and undertakes to pay to the Council within 3 working days of receipt of each demand in writing sent by the Council (a "Demand") to the Surety stating that the Developer is in breach of its obligations under the Development Agreement the sums stated in such Demand provided that:
  - 1.1 the Surety shall not pay any sum or sums to the Council in respect of a Demand unless it is accompanied by a certificate ("the Certificate") from [*insert relevant Council officer*] stating that in his/her opinion:
    - 1.1.1 the Developer is in breach of its obligations under the Development Agreement and
    - 1.1.2 that the sum or sums stated in the Demand which accompanies the certificate are appropriate recompense for such breach or is/are required to be/ has been expended by the Council or a third party nominated by the Council in carrying out and/or completing the Development Works or any part of them or any other works which the Developer has failed to carry out in accordance with its obligations under the Development Agreement
  - 1.2 a Demand must be signed on behalf of the Council, and presented to [*full name and address of relevant branch of the bank*]; and
  - 1.3 the Surety's total aggregate liability in respect of Demands under this Bond shall not exceed the Bond Amount.
2. The Surety will be released from all further liability under this Bond on the earlier of the following:-
  - 2.1 when it has paid the Bond Amount in full; or

2.2 on the date when the Developer has completed the Development Works in accordance with the Development Agreement and upon that date this Bond will become null and void save in relation to:

2.2.1 any Demand made by the Council prior to the date on which the Surety would otherwise be released; or

2.2.2 claims relating to events which occurred prior to that date and which the Council has notified to the Surety in writing by that date and which are reasonably expected to give rise to a breach of the Development Agreement by the Developer .

3. The liability of the Surety will not be discharged or affected in any way by:

3.1 any novation, assignment, termination (whether automatic or otherwise and whether by reason of the Developer's insolvency or otherwise), amendment, or extension of time of, or variation of or under the Development Agreement or any site lease, or any act carried out in performance or purported performance of the Development Agreement or any forbearance or forgiveness by the Council of the Developer; or

3.2 any fact event or rule of law which results in any total or partial invalidity, illegality or unenforceability of the Development Agreement or any other document which the Developer has entered into in relation to the Property; or

3.3 the occurrence of any liquidation receivership administration or other insolvency event in relation to the Developer (or any event or circumstance occurs which under the laws of the jurisdiction in which the Developer is incorporated has an analogous or equivalent effect);or

3.4 a legal limitation, disability or incapacity of the Developer; or

3.5 the Developer is dissolved, struck off or has otherwise ceased to exist; or

3.6 any other event fact rule of law act matter or thing (whether or not of the same type or kind as any of the foregoing) which but for this clause 3 might operate to release the Surety from its obligations under this Bond in whole or in part

4. The Surety hereby agrees that it will fulfil its obligations under this Bond without proof or conditions save as expressly provided herein and that the receipt by the Surety of a Demand and Certificate in accordance with the terms of this Bond shall be conclusive evidence of the Surety's liability to pay the Council the sums stated.

5. The Council is entitled to assign the benefit of and its rights under this Bond (whether as a whole only or in parts) at any time without the consent of the Surety or the Developer being required to any person to whom the benefit of the Development Agreement is assigned or to any person providing finance in connection with the Development Agreement.
6. The Developer undertakes to the Surety (without limitation to any other rights or remedies of the Council or Surety) to perform and discharge the obligations on its part set out in the Development Agreement.
7. The parties to this Bond do not intend that any of its terms will be enforceable by virtue of the Development Agreements (Rights of Third Parties) Act 1999 by any person not a party to it.
8. [This Bond shall be governed by and construed in accordance with the laws of England.

For the benefit of the Council the Surety agrees that the courts of England have jurisdiction to settle any disputes in connection with this Bond and accordingly submits to the jurisdiction of the English Courts.

The Courts of England shall have non-exclusive jurisdiction in relation to any claim, dispute or difference concerning this Bond and the Surety waives any right to object to an action being brought in those Courts or to claim that the action has been brought in an inconvenient forum or to claim that those Courts do not have jurisdiction.]

**IN WITNESS** of which the Developer and the Surety have executed this Bond as a deed with the intention that it be delivered on the day and year stated at the beginning of this Bond.

To be executed as a deed by the  
Surety and the Developer



## RAMSGATE – FORM OF STAIRWAY LEASE

DATED \_\_\_\_\_ 200[ ]

- (1) **THANET DISTRICT COUNCIL**
- (2) **SFP VENTURES (UK) LIMITED**

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### LEASE

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of  
Cliff Stairway at Ramsgate Boulevard  
Ramsgate Kent

TERM: 199 years

FROM: [1st January 2006]

## EVERSHEDS LLP

Senator House  
85 Queen Victoria Street  
London EC4Y 4JL  
Tel: 020 7919 4500  
Fax: 020 7919 4919

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## LAND REGISTRY PARTICULARS

LR1.	Date of lease	200[ ]
LR2.	Title number(s)	
LR2.1	Landlord's title number(s)	K838703
LR2.2	Other title numbers	None
LR3.	Parties to this lease	
	Landlord	THANET DISTRICT COUNCIL of Cecil Street Margate Kent CT9 1X2
	Tenant	SFP VENTURES (UK) LIMITED (Company Registration Number 05666803) whose registered office is at Lakeview House, Lake Meadows Office park, Woodbrook Crescent Billericay Essex CM12 0EQ
LR4	Property	<b>In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.</b>  The premises (referred to in this Lease as "the Premises") comprising land and premises at Ramsgate Boulevard, Ramsgate, Kent shown edged red on the Plan and described in more detail in <b>clause 1.1</b>
LR5.	Prescribed statements etc	
LR5.1	Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of	Not applicable

**the Land Registration Rules 2003**

<b>LR5.2</b>	<b>This lease is made under, or by reference to, provisions of:</b>	Not applicable
<b>LR6.</b>	<b>Term for which the Property is leased</b>	One hundred and ninety nine years from and including 1 January 2006 (referred to in this Lease as “the Term Commencement Date”)  To and including 31 December 2204.  (This term is referred to in this Lease as “the Term”)
<b>LR7.</b>	<b>Premium</b>	£1 (one pound).
<b>LR8.</b>	<b>Prohibitions or restrictions on disposing of this lease</b>	This Lease contains a provision that prohibits or restricts dispositions.
<b>LR9.</b>	<b>Rights of acquisition etc</b>	
<b>LR9.1</b>	<b>Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land</b>	None
<b>LR9.2</b>	<b>Tenant's covenant to (or offer to) surrender this lease</b>	None
<b>LR9.3</b>	<b>Landlord's contractual rights to acquire this lease</b>	None
<b>LR10.</b>	<b>Restrictive covenants given in this lease by the Landlord in respect of land other than the Property</b>	None
<b>LR11.</b>	<b>Easements</b>	
<b>LR11.1</b>	<b>Easements granted by this lease for the benefit of the Property</b>	The rights specified in <b>Schedule 1</b>

- |               |                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------|--------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>LR11.2</b> | <b>Easements granted or reserved by this lease over the Property for the benefit of other property</b> | The rights specified in <b>clauses 3.9.5 and 3.14</b> and <b>Schedule 2</b>                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>LR12.</b>  | <b>Estate rentcharge burdening the Property</b>                                                        | None                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>LR13.</b>  | <b>Application for standard form of restriction</b>                                                    | <p>The Parties to this Lease apply to enter the following standard form of restriction against the title of the Property.</p> <p>“No transfer assignment lease charge or other disposition of the registered estate by the proprietor of the registered estate or the proprietor of any registered charge shall be registered without a written consent signed on behalf of Thanet District Council of Cecil Street Margate Kent CT9 IX2 by its solicitor”</p> |
| <b>LR14.</b>  | <b>Declaration of trust where there is more than one person comprising the Tenant</b>                  | Not applicable                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

**THIS LEASE** is made on the date shown in clause LR1 of the Land Registry Particulars

**BETWEEN**

- (1) The Landlord named in clause LR3 of the Land Registry Particulars; and
- (2) The Tenant named in clause LR3 of the Land Registry Particulars

**NOW THIS DEED WITNESSETH AS FOLLOWS:**

**1. DEFINITION AND INTERPRETATION**

**1.1 Definitions**

In this Lease the following expressions have the following meanings:

- 1.1.1 The words and expressions in Column 1 of the Particulars (meaning the details and descriptions appearing in the foregoing pages and which comprise part of this Lease) shall (subject as herein provided) have the meanings respectively set against them in Column 2 of the Particulars
- 1.1.2 “**the 1995 Act**” means the Landlord and Tenant (Covenants) Act 1995
- 1.1.3 “**Building**” means the building or buildings now or at any time during the Term erected on the whole or part of the Premises
- 1.1.4 “**Cliff Wall**” means the cliff wall at Ramsgate Boulevard between (inter alia) the points marked A and B on the Plan and includes all foundations footings buttresses overhangs and all other parts thereof
- 1.1.5 “**Conduits**” means pipes wires ducts cables (including optical fibres) channels sewers drains watercourses gutters shafts flues or other conducting media (and includes any fixings louvres cowls and any other ancillary apparatus) under through along over or by means of which any gas electricity or other power source or any air water soil and the like or any electronic or telephonic signal and the like or other thing may pass
- 1.1.6 “**Construction Regulations**” means the Construction (Design and Management) Regulations 1994 (as extended by **sub-clause 1.2.3** of this Lease)

- 1.1.7 **“External Decoration Years”** means 2010 and each subsequent third year of the Term
- 1.1.8 **“Internal Decoration Years”** means 2012 and each subsequent fifth year of the Term
- 1.1.9 **“Hotel Premises”** means the land shown edged blue on the Plan on which a hotel is constructed on the date of this Lease
- 1.1.10 **“Hotel Premises Owner”** means the freehold owner from time to time of the Hotel premises
- 1.1.11 **“Insured Risks”** means the risks in respect of loss or damage by fire lightning storm tempest flood explosion earthquake (fire and shock) impact from vehicles aircraft and articles dropped therefrom riot civil commotion malicious damage bursting or overflowing of water tanks apparatus or pipes and such other risks as the Landlord may from time to time reasonably require
- 1.1.12 **“Landlord’s Surveyor”** means any person or firm appointed to perform the functions of the Landlord’s Surveyor under this Lease or any of them including any surveyor architect valuer managing agent or other agent (and also including any employee of the Landlord or a company that is a member of the same group as the Landlord within the meaning of Section 42 of the Landlord and Tenant Act 1954)
- 1.1.13 **“Perpetuity Period”** means the period of eighty years commencing on the date of this Lease which shall be the perpetuity period applicable hereto
- 1.1.14 **“Plan”** means the plans attached to this Lease
- 1.1.15 **“Planning Acts”** means the Town and Country Planning Acts 1990 and other Acts of Parliament defined as “the planning Acts” in Section 336 of the Town and Country Planning Act 1990 and every other Act of Parliament and legislation relating to the use development and occupation of land and buildings for the time being in force (and as extended by **sub-clause 1.2.3**)
- 1.1.16 **“Permitted Use”** use as a staircase for use by the general public providing access between the top and the bottom of the Cliff Wall

1.1.17 “**the Premises**” means all that piece or parcel of land (together with any buildings from time to time erected thereon or upon some part thereof) comprising a cliff stairway at Ramsgate Boulevard Ramsgate Kent which piece of land is shown edged red on the plan attached to this Lease and the freehold interest to which is registered at the Land Registry (with other land) under title K838703 provided that in relation to the land shown edged red and coloured green on the Plan the Premises only include the walkway between the stair core and the top of the cliff at cliff top level and do not include any airspace above or below the same and the Premises also do not include:

(i) any part of the Cliff Wall and the Cliff Wall shall not be a party structure; and

(ii) any air space above the top of the staircase as erected on the date of this Lease

1.1.18 “**Public Authority**” means any Minister Secretary of State and any Government Department and any public and/or local and/or fire and/or other authority or institution or corporation having functions which extend to the Premises or their use and occupation or the supply of services to the Premises or anything done thereon or thereto and includes any of their duly authorised officers

1.1.19 “**Quarter**” means the period of a quarter commencing on a Quarter Day and ending on the day before the next Quarter Day

1.1.20 “**Quarter Days**” means 31st March 30th June 30th September and 31st December in each year

1.1.21 “**Relevant Documents**”

1. The Conveyance referred to in entry 1 of the Charges Register of title K838703

2. *[Add any other documents entered into under the Development Agreement and affecting the Premises]*

1.1.22 “**Retained Land**” means the land comprised in title number K838703 (excluding the Premises) and all other land owned by the Landlord at the date of this Lease lying adjacent to or in the vicinity of the Premises including the Cliff Wall and land and property owned by the Landlord



above the top of the Cliff Wall and includes any buildings or structures erected on the Retained Land from time to time

- 1.1.23 “**Stipulated Interest**” means interest at the Stipulated Rate (as well after as before judgement) for the period from the date on which the relevant payment is due (unless otherwise provided for herein) to the date of receipt by the Landlord (compounded with rests on the Quarter Days)
- 1.1.24 “**the Stipulated Rate**” means Four per centum per annum (4%) above the base lending rate of Barclays Bank plc (or such other major clearing bank as may be nominated from time to time by the Landlord) for the time being in force provided that if at any time no rate shall be ascertainable under this formula the Stipulated Rate shall be such reasonably equivalent rate of interest as the Landlord shall from time to time specify
- 1.1.25 “**Superior Landlord**” means any person holding an estate or interest in reversion (whether immediate or mediate) to the estate or interest of the Landlord under this Lease and includes the successors in title and assigns of such person
- 1.1.26 “**Superior Lease**” means any lease or leases under which the Landlord and/or any Superior Landlord may from time to time hold the estate or interest to which it is entitled
- 1.1.27 “**termination of the Term**” means the determination of the Term whether by effluxion of time re-entry or otherwise howsoever

## 1.2 Interpretation

- 1.2.1 The expressions “the Landlord” and “the Tenant” include (unless the context otherwise requires) the person for the time being entitled to the reversion immediately expectant on the determination of the Term and the Tenant’s successors in title and those deriving title under the Tenant respectively
- 1.2.2 Where there are two or more persons included in the expression “Tenant” covenants expressed to be made by the Tenant deemed to be made by such persons jointly and severally
- 1.2.3 Any reference to any Act or Acts of Parliament or legislation generally shall include any European Community legislation or decree or other supranational legislation or decree having effect in law in the United

Kingdom and shall (unless expressly specified to the contrary) include any modification extension or re-enactment of any of the foregoing for the time being in force and shall also include all instruments orders plans regulations bye-laws permissions licences consents notices and directions or other things for the time being made issued or given thereunder or deriving authority therefrom

1.2.4 Any reference to any insurance premium shall also include any insurance premium tax payable in respect thereof

1.2.5 Any covenant or obligation by or of the Tenant not to do or omit to be done any act matter or thing shall be deemed to include an obligation not to permit or suffer such act matter or thing to be done or not to permit or suffer the omission of such act matter or thing as the case may be

1.2.6 Reference to any permission for or right of the Landlord to enter upon or to have access to the Premises shall be construed as extending to all persons authorised from time to time by the Landlord (including agents professional advisers contractors workmen and others) with all necessary appliances and materials

1.2.7 Any provision of this Lease requiring the consent of the Landlord shall be deemed to require also the consent of any superior landlord from time to time

1.2.8 If at any time or times there shall be a Superior Landlord or Superior Landlords the following provisions of this **sub-clause 1.2.8** shall have effect:

1.2.8.1 References (however expressed) in this Lease to any matter which is required to be carried out to the satisfaction or with the approval of the Landlord shall be construed as including in addition a requirement that the matter shall be carried out to the satisfaction or with the approval of the Superior Landlord where the same is requisite by virtue of any corresponding terms of the Superior Lease

1.2.8.2 Where under this Lease the Tenant is under an obligation (however expressed) to the Landlord to pay any costs fees and expenses incurred by the Landlord in relation to any matter or to indemnify the Landlord against liability or damage in respect

of any matter such obligation shall be deemed to include also an obligation to pay all costs fees and expenses incurred (in respect of such matter) by the Superior Landlord and an obligation to indemnify the Superior Landlord against such liability or damage as the case may be

1.2.8.3 The rights of entry and other rights reserved or otherwise permitted by this Lease shall (where the Superior Lease contains a corresponding reservation or permission) be exercisable by the Superior Landlord and others authorised by it and references to the Landlord in Schedule 2 hereto shall be deemed to include also references to the Superior Landlord

1.2.8.4 Where in this Lease the Tenant covenants not to do any act matter or thing to the prejudice of or to affect adversely the Landlord such covenant shall be deemed to include also an obligation not to do any such act matter or thing to prejudice or adversely affect the Superior Landlord

1.2.9 The expression "Premises" (except in **clause 3.13**) and unless the context otherwise requires) shall be construed as extending to any part of the Premises

1.2.10 Any expression defined in any Schedule to this Lease shall have the same meaning where used in any other part of this Lease

1.2.11 Words importing one gender include all other genders and words importing the singular include the plural and vice versa

1.2.12 The terms "the parties" or "party" mean the Landlord and/or the Tenant

1.2.13 References in this Lease to any clause sub-clause paragraph or schedule is a reference to the relevant clause sub-clause paragraph or schedule of this Lease and the clause or paragraph headings or marginal notes and the Index (if any) to this Lease shall not affect the construction thereof

## **2. DEMISE - HABENDUM - REDDENDA**

2.1 IN CONSIDERATION of the sum of the premium specified in clause LR7 of the Land Registry Particulars (receipt of which the Landlord hereby acknowledges) and of the rents and covenants on the part of the Tenant hereinafter contained the Landlord hereby demises the Premises to the Tenant

- 2.2 SUBJECT to (a) all easements quasi easements rights privileges covenants and restrictions to which the Premises are or may be subject and (b) the provisions of the Relevant Documents specified in the Particulars
- 2.3 TOGETHER WITH the rights mentioned in Schedule 1
- 2.4 EXCEPTING AND RESERVING for the benefit of the Landlord and all those deriving title through or otherwise authorised by the Landlord and all others having an interest in or who may become entitled to an interest in the Retained Land or any part thereof from time to time the easements and rights specified in Schedule 2
- 2.5 TO HOLD (except and reserved as aforesaid) unto the Tenant for the Term
- 2.6 YIELDING AND PAYING during the Term (exclusive of Value Added Tax (or any similar tax) which shall be payable in addition as hereinafter provided) the following rents namely:
- 2.6.1 The yearly rent of a peppercorn (if demanded) payable on the First day of January in each year during the Term
- 2.6.2 Any Value Added Tax payable under **clause 3.3**
- 2.6.3 Any interest payable under **clause 3.2**
- 2.6.4 Any other sums payable from time to time by the Tenant under this Lease
- 2.7 Provided that insofar as any part of the Premise is not within title K838703 at the date of this lease the same is demised to the Tenant to the extent only that the Landlord has power to demise the same

### 3. **TENANT'S COVENANTS WITH THE LANDLORD**

The Tenant hereby covenants with the Landlord as follows:

#### 3.1 **To pay rents**

To pay all the rents hereby reserved at the times and in manner herein provided without any deduction or set off whatsoever save where required by statute notwithstanding any stipulation to the contrary

#### 3.2 **To pay interest**

Without prejudice to any other right remedy or power herein contained or otherwise available to the Landlord if the Rent or any additional rents hereby reserved or any

part thereof or any other sums payable to the Landlord pursuant to this Lease or any part thereof shall have become due and shall remain unpaid after the due date for payment (or in the case of sums other than the Rent fourteen days after the due date for payment) to pay to the Landlord on demand Stipulated Interest thereon

### **3.3 To pay Value Added Tax**

To pay to the Landlord in addition to any rents or other sums payable under or by virtue of this Lease the amount of any value added tax (or similar tax whether in substitution for or in addition to it) which shall be chargeable in respect of any supply made by the Landlord to the Tenant under or by virtue of this Lease whether or not the same is chargeable by reference to the amount of such rents or other sums and whether or not as a result of the making of any election and so that amounts under this clause shall be payable

3.3.1 if chargeable by reference to rents or other sums at the same times as those rents or other sums are respectively payable

3.3.2 in any other case on demand in writing from time to time by the Landlord

### **3.4 To pay outgoings**

To pay all rates taxes community charges duties levies charges assessments impositions and outgoings whatsoever whether parliamentary county municipal parochial local or of any other description which are now or hereafter during the Term may be taxed assessed charged or imposed in respect of the Premises or on the owner or occupier in respect thereof (other than income tax and corporation tax on the receipt by the Landlord of income from the Premises and taxes payable in respect of any dealing with any reversion to this Lease)

### **3.5 As to insurance**

3.5.1 At all times during the Term to keep the Premises insured at the Tenant's expense in the joint names of the Landlord and the Tenant in the full cost of reinstatement against loss or damage by the Insured Risks together with:

3.5.1.1 architects' surveyors' engineers' and other professional fees and also the cost of site clearance;

3.5.1.2 third party liability in such amount as the Landlord from time to time reasonably determines.

- 3.5.2 The insurance to be effected by the Tenant pursuant to **clause 3.5.1** shall be with a UK insurance office of repute approved by the Landlord such approval not to be unreasonably withheld or delayed.
- 3.5.3 The Tenant shall supply to the Landlord upon written request from time to time a copy of the insurance policy for the Premises and evidence that all premiums due have been paid
- 3.5.4 In the event of the Premises being destroyed or damaged by any of the Insured Risks the Tenant shall procure that all necessary building licences and permits under regulations or enactments for the time being in force are obtained to enable the Tenant to rebuild and reinstate the Premises and shall (subject to such licences and permits being forthcoming) pay out (or procure the payment out of) all moneys received in respect of such insurance (other than for architects' surveyors' and other professional fees) in rebuilding reinstating replacing and making good the Premises in accordance with the then existing statutory provisions bye-laws and regulations affecting the same or any necessary planning approval And in case the insurance moneys shall be insufficient for that purpose the Tenant shall make up the deficiency out of the Tenant's own moneys
- 3.5.5 Provided that in the event that the Tenant shall fail to effect insurance of the Premises in accordance with the foregoing provisions or to pay the premiums the Landlord shall be entitled to effect the same and/or pay the premiums as the case may be and in that event the Tenant shall pay to the Landlord on demand a sum equivalent to all premiums and other expenses incurred by the Landlord
- 3.5.6 Not to do or omit to be done any act matter or thing whatsoever the doing or omission of which would make void or voidable the insurance of the Premises or the Retained Land or whereby any payment thereunder may be refused in whole or in part or whereby the premium payable in respect of any such policy may be increased

### 3.6 **To pay common costs**

To pay to the Landlord on demand a fair proportion (to be determined by the Landlord or the Landlord's Surveyor acting reasonably) of the costs and expenses of maintaining, inspecting, cleaning, repairing, servicing, altering, renewing, rebuilding or replacing any party walls, Conduits and other party structures or means of access used in common between the Premises and any other property

### **3.7 To comply with statutes**

To comply with (and carry out all works acts deeds matters or things required by) all Acts of Parliament including the Planning Acts (and all subordinate legislation made under all Acts of Parliament) and the requirements of every Public Authority in respect of the Premises their use occupation and employment of persons therein and any works thereto and anything done therein (whether or not such compliance shall be the responsibility of the owner, the landlord, the tenant or occupier) and at all times to keep the Landlord indemnified against all costs claims demands and liability in respect thereof

### **3.8 As to the Planning Acts**

3.8.1 Not to make any application for planning permission in respect of the Premises

3.8.2 Not to enter into any agreement with any Public Authority regulating the development or use of the Premises

### **3.9 As to repairs and decoration**

3.9.1 The Tenant shall throughout the Term keep the Premises (including the Building) in good and substantial repair and condition and shall keep any parts of the Premises which are from time to time unbuilt upon in a well maintained and tidy condition

3.9.2 Not less often than once in each External Decoration Year as to the external parts of the Premises and not less often than once in each Internal Decoration Year in relation to all internal parts of the Premises (or at shorter intervals where necessary) and (in the case of all parts of the Premises) in the last year of the Term the Tenant shall paint or otherwise treat all internal and external parts of the Premises requiring to be so painted or otherwise treated in a colour scheme approved by the Landlord (such approval not to be unreasonably withheld)

3.9.3 Without prejudice to the foregoing the Tenant shall keep the premises regularly and properly cleaned internally and externally and upon written request by the Landlord to remove as soon as possible any graffiti and/or other defacement of the walls floors or ceilings of the Premises

3.9.4 To take such measures and/or carry out such works as the Landlord may from time to time reasonably require (including erection of gates or notices)

to prevent vandalism (including graffiti) or other inappropriate uses at the Premises

3.9.5 The Tenant shall allow the Landlord to have access to the Premises to view their state of repair and condition at all reasonable times during the Term on giving not less than 7 days prior written notice to the Tenant (or without notice in emergency) and shall commence any works required to remedy any breach of the Tenant's obligations under **clauses 3.9.1 to 3.9.4** (inclusive) of this Lease within three months after the service of any notice specifying the works required or sooner in case of emergency and shall following commencement diligently proceed with and complete the same within 3 months after service of the notice (or sooner in case of emergency). In default, the Landlord with its contractors may enter and remain upon the Premises to carry out those works itself and all costs incurred by the Landlord shall be a debt payable on demand to the Landlord by the Tenant on a full indemnity basis

**3.10 As to alterations/additions**

Not at any time during the Term to make any alterations or additions to Premises save for any measures required by the Landlord under any other provision of this Lease

**3.11 As to the Construction Regulations**

3.11.1 In relation to any works to the Premises which the Tenant may at any time carry out the Tenant shall comply with the Construction Regulations and shall at all times indemnify and keep the Landlord indemnified against all costs claims liabilities and demands in respect of any breach thereof

3.11.2 To procure that the Tenant or its representative shall act as sole "client" for the purpose of the Construction Regulations and that a declaration to that effect will be made by the Tenant under the Construction Regulations

**3.12 As to User**

3.12.1 Not at any time during the Term to use the Premises otherwise than for the Permitted Use

3.12.2 At all times during the Term (other than during such times of the day or night and/or for such periods as the Landlord shall in its absolute discretion determine by notice in writing to the Tenant) to keep the Premises open for



use as a staircase by the general public and not to close or prevent access to the same Provided that the Tenant shall close the Premises for use by the general public for such periods and/or for such times of the day or night as the Landlord shall from time to time determine by notice in writing to the Tenant where required by the Landlord for security reasons or to prevent vandalism or other criminal activity or lewd immoral or inappropriate behaviour

- 3.12.3 Without prejudice to **clauses 3.12.1** and **3.12.2** not at any time during the Term to carry on upon the Premises any noisy or offensive trade business or occupation nor to do any act or thing which is or may be or become a nuisance annoyance disturbance or damage to the Landlord or the occupiers of any other part of the Retained Land and not to use the Premises at any time for any illegal or immoral purpose nor for a sale by auction
- 3.12.4 Not to use the Premises in any manner which obstructs the exercise of the rights reserved by this Lease and not to grant or permit any new right or easement to be granted or arise over the Premises

### 3.13 **As to Dealings**

- 3.13.1 In this sub-clause (unless expressly provided to the contrary) the expression "sub-lease" means a sub-lease whether immediately or mediately derived out of this Lease and "sub-let" or "sub-letting" or "sub-lessor" or "sub-lessee" shall be construed accordingly
- 3.13.2 There shall not be any transfer assignment charge sub-letting or parting with or sharing possession or occupation of the whole or any part of the Premises save for an assignment of the whole of the Premises which complies with the provisions of **sub-clause 3.13.4** shall be permitted with the prior written consent of the Landlord.
- 3.13.3 The Tenant shall not assign this Lease except to an assignee who simultaneously with the assignment takes a transfer of the freehold interest of the Hotel Premises or to the Landlord if the Landlord exercises its option under the option agreement dated [ ] made between the Landlord (1) and the Tenant (2) and without prejudice to the foregoing in the event that there shall be a transfer of the freehold interest in the Hotel Premises the Tenant shall simultaneously transfer the Term granted by this Lease to the transferee thereof to the intent that the freehold interest in the

Hotel Premises and the Term granted by this Lease are at all times in the same ownership

3.13.4 Without prejudice to the foregoing within twenty-eight days after any assignment transfer sub-lease charge or other devolution of the title to the Premises (or any part thereof) to give written notice in duplicate thereof to the solicitor for the time being of the Landlord with a certified copy of the relevant instrument (certified by a solicitor) and (in the case of an assignment of this Lease) a certified copy of the transfer of the Hotel Land completed simultaneously with the assignment and to pay each of them their reasonable fee (not being less than Twenty pounds (£20)) for the registration of each such deed or document

3.13.5 The Landlord and the Tenant hereby apply to the Chief Land Registrar to note a Restriction in the Proprietorship Register of the title relating to this Lease in the form set out in clause LR13 of the Land Registry Particulars.

### 3.14 To permit entry by the Landlord and others

To permit the Landlord and other persons authorised by the Landlord in writing at all reasonable times after at least seven days prior written notice (save in case of emergency or where paragraph (d) of this **clause 3.14** applies when entry shall be permitted at all times without prior notice) to enter and remain upon the Premises with all necessary appliances:

- (a) to execute work to any part of the Retained Land (including the Cliff Wall)
- (b) to construct alter maintain repair renew or fix any thing (including any Conduits) serving or intended to serve the Retained Land and running through or intended to run through under on or over the Premises
- (c) for the purpose of complying with any covenant on the part of the Landlord herein contained
- (d) to remedy any breach by the Tenant of **clause 3.12.2**

the persons entering causing as little disturbance to the Tenant as reasonably practicable and making good as soon as practicable any damage caused to the Premises

### 3.15 As to the payment of certain costs and as to indemnities

- 3.15.1 To pay to the Landlord on an indemnity basis all reasonable and proper costs fees expenses and commission (including bailiff's commission) (including VAT and disbursements) incurred by the Landlord of and incidental to or in connection with any of the following:
- (a) the preparation and service of any notice under Section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under Section 146 or 147 of that Act or under the Leasehold Property (Repairs) Act 1938 notwithstanding in any such case that forfeiture may be avoided otherwise than by relief granted by the Court
  - (b) any application for a licence or consent required hereunder from the Landlord whether or not such licence or consent shall be forthcoming
  - (c) the recovery or attempted recovery of arrears of rent or other sums due from the Tenant
- 3.15.2 To pay and make good to the Landlord all and every loss and damage whatsoever incurred or sustained by the Landlord as a consequence of any breach or non-observance of the Tenant's covenants herein contained and to indemnify the Landlord from and against all actions claims liability costs and expenses thereby arising
- 3.15.3 Without prejudice to any other right or remedy available to the Landlord to indemnify and keep the Landlord effectually indemnified from and against all expenses proceedings claims damages costs demands loss and any other liabilities as a consequence of or in respect of:
- (a) damage to the Premises or any part of the Retained Land caused by any act default or negligence of the Tenant or the servants agents licensees or invitees of the Tenant
  - (b) any injury to or death of any person damage to any property the infringement disturbance or destruction of any right easement or privilege or otherwise by reason of or arising directly out of the state of repair and condition of the Premises

### 3.16 Regulations

To comply with all regulations as the Landlord may from time to time make for the use and enjoyment of the Premises or the management thereof

**3.17 To comply with the provisions of the Relevant Documents**

To observe and perform the provisions of the Relevant Documents insofar as the same affect the Premises and to indemnify the Landlord against all actions proceedings costs claims and demands in respect thereof

**3.18 Consent to Landlord's Release**

Without prejudice to the provisions of **clauses 5 and 7.4** where the Landlord assigns its reversion to this Lease the Tenant shall not unreasonably withhold its consent to a request made by the Landlord under Section 8 of the 1995 Act for a release from the Landlord's covenants under this Lease

**4. LANDLORD'S COVENANT FOR QUIET ENJOYMENT**

The Landlord hereby covenants with the Tenant (but so that neither the Landlord named in the Particulars nor any successor in title (whether mediate or immediate) of the Landlord shall remain personally liable after it has disposed of the reversionary interest in the Premises save for any breach occurring prior to such disposal) that if Tenant pays the rents hereby reserved and performs and observes its obligations contained in the Lease the Tenant shall be entitled quietly to enjoy the Premises during the Term without interruption or disturbance by the Landlord or by any persons lawfully claiming through or under it

**5. PROVISOS AND DECLARATIONS**

**PROVIDED ALWAYS AND IT IS HEREBY AGREED** that:

**5.1 Re-entry**

5.1.1 If the rents hereby reserved or any part thereof or any other sum payable by the Tenant pursuant to any provision contained in this Lease or any part thereof shall at any time be in arrear and unpaid for twenty-one days after the same shall have become due (whether or not any formal or legal demand therefor shall have been made) or

5.1.2 if the Tenant shall at any time fail to perform or observe any of the covenants conditions or agreements herein contained and on the part of the Tenant to be performed and observed

5.1.3 THEN it shall be lawful for the Landlord or any persons duly authorised by the Landlord to re-enter upon the Premises or any part thereof in the name of the whole and peaceably to hold and enjoy the same thenceforth as if this Lease had not been made but without prejudice to any right of action or remedy of the Landlord in respect of any antecedent breach of any of the covenants on the part of the Tenant herein contained or in respect of any obligation of the Tenant which arises or continues following re-entry

**5.2 Demise not to confer rights to enforce covenants against others or to grant further rights**

Nothing herein contained shall confer on the Tenant any right to the benefit of or to enforce any covenant or agreement contained in any lease or other instrument relating to the following Premises any other premises belonging to the Landlord or limit or affect the right of the Landlord to deal with the same now or at any time hereafter in any manner which may be thought fit and the demise made by this Lease shall not be deemed to include and shall not operate to convey or demise any ways conduits lights liberties privileges easements rights or advantages whatsoever in through over or upon any land adjoining or near to the Premises and (without prejudice to the foregoing) the provisions of Section 62 of the Law of Property Act 1925 are excluded from this Lease

**5.3 No warranty as to the Permitted Use**

Nothing herein contained or implied nor any statement or representation made by or on behalf of the Landlord shall be taken to be a covenant warranty or representation that the Premises can lawfully be used for the Permitted Use

**5.4 Service of notices**

5.4.1 Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply to all notices demands requests or other communications given or made pursuant to this Lease and in addition

(a) the reference in such section to a registered letter shall also include a pre-paid first class ordinary letter

(b) any notice or document shall also be sufficiently served if sent by telegraphic facsimile transmission to the party to be served and that service shall be deemed to be effective on the day of transmission if transmitted before 4pm on a working day

(meaning Monday to Friday inclusive but excluding Christmas Day Good Friday and any statutory bank holiday) and to be effected on the next following such working day if transmitted at any other time

- 5.4.2 Provided that whilst Thanet District Council is the Landlord hereunder any notice to be served on Thanet District Council shall be served at Cecil Street Margate Kent CT9 1X2 and marked for the attention of the Head of Legal Services or at such other address and/or marked for the attention of such other individual as shall be notified in writing from time to time to the Tenant
- 5.4.3 If the Tenant shall comprise more than one person the service of any such notice demand request or other communication on any one of such persons shall constitute good service on all of them

## 5.5 **As to Value Added Tax**

- 5.5.1 Without prejudice to any statutory rights which the Landlord have in this respect it is confirmed that the Landlord reserves the right in its absolute discretion from time to time to exercise or not as the case may be
- (a) any option which results in Value Added Tax being charged on any supply made by the Landlord or
  - (b) any election to waive exemption from Value Added Tax with respect to any supply made by the Landlord

and nothing in this Lease shall create any implication as to how the Landlord may exercise that discretion from time to time

- 5.5.2 (Without prejudice to the liability imposed on the Tenant under the terms of this Lease to pay an amount equal to any Value Added Tax which may be chargeable in respect of any supply made by the Landlord to the Tenant under or by virtue of this Lease) where under this Lease the Tenant agrees to pay or contribute to (or indemnify the Landlord or any other person in respect of) any costs fees expenses outgoings or other liability of whatsoever nature whether of the Landlord or any third party reference to such costs fees expenses outgoings and other liability shall (for the avoidance of doubt) be taken to be increased by such a sum as to include any Value Added Tax (or any similar tax or taxes whether in substitution

thereof or in addition thereto) charged or to be charged in relation thereto except to the extent and only to the extent that the Landlord obtains a credit for the same as allowable input tax

**5.6 As to arbitration in certain events**

Where in this Lease provision is made for the appointment of some person to act as an expert or arbitrator to determine a matter of difference between the Landlord and the Tenant and such provision proves ineffective to secure such appointment then the difference in question shall if the Landlord so requires be settled by a single arbitrator under the Arbitration Act 1996

**5.7 Contracts (Rights of Third Parties) Act 1999**

Any rights of any person to enforce the terms of this Lease pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded

**5.8 As to the 1995 Act**

5.8.1 The tenancy created by this Lease is a “new tenancy” for the purposes of the 1995 Act

5.8.2 No covenant or provision of this Lease shall be construed as making any person in whom the Term is for the time being vested (or any guarantor of such person) liable under the covenants or provisions of this Lease (or such guarantee) to a greater extent than such person (or the guarantor of such person) shall be liable by virtue of the 1995 Act and such covenant or provision shall be deemed to be modified in such manner as shall be necessary to ensure that it imposes on such person (or guarantor) no greater liability than it has by virtue of the 1995 Act

**5.9 Enforcement**

5.9.1 This Lease is to be governed by and interpreted in accordance with English law.

5.9.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Lease. This clause operates for the benefit of the Landlord who retains the right to sue the Tenant and enforce any judgment against the Tenant in the courts of any competent jurisdiction.

**IN WITNESS** whereof this Deed has been executed by the Landlord and the Tenant and is intended to be and is hereby delivered on the date first before written



**SCHEDULE 1**  
**RIGHTS GRANTED**

1. Full and free right (in common as aforesaid) to connect to and use any Conduits in on under or over the Hotel Site for the passage of services (here meaning water gas electricity telecommunications surface water drainage foul drainage fuel oil and other similar services) to and from the Premises
  
2. The right for the Tenant and those authorised by the tenant to enter and remain upon so much as is necessary of the Hotel Site on reasonable prior notice except in case of emergency with or without workmen plant and equipment to repair maintain replace renew clean connect to and sever connections with the Conduits in respect of which rights are reserved by this Lease and to repair maintain replace renew and clean the Building and (provided such scaffolding does not take support from lean against or otherwise touch the Cliff Wall) to erect scaffolding for reasonable periods for this purpose for this purpose provided that the persons entering the Hotel Site shall cause a little disturbance and convenience as possible and forthwith make good any damage caused

## SCHEDULE 2

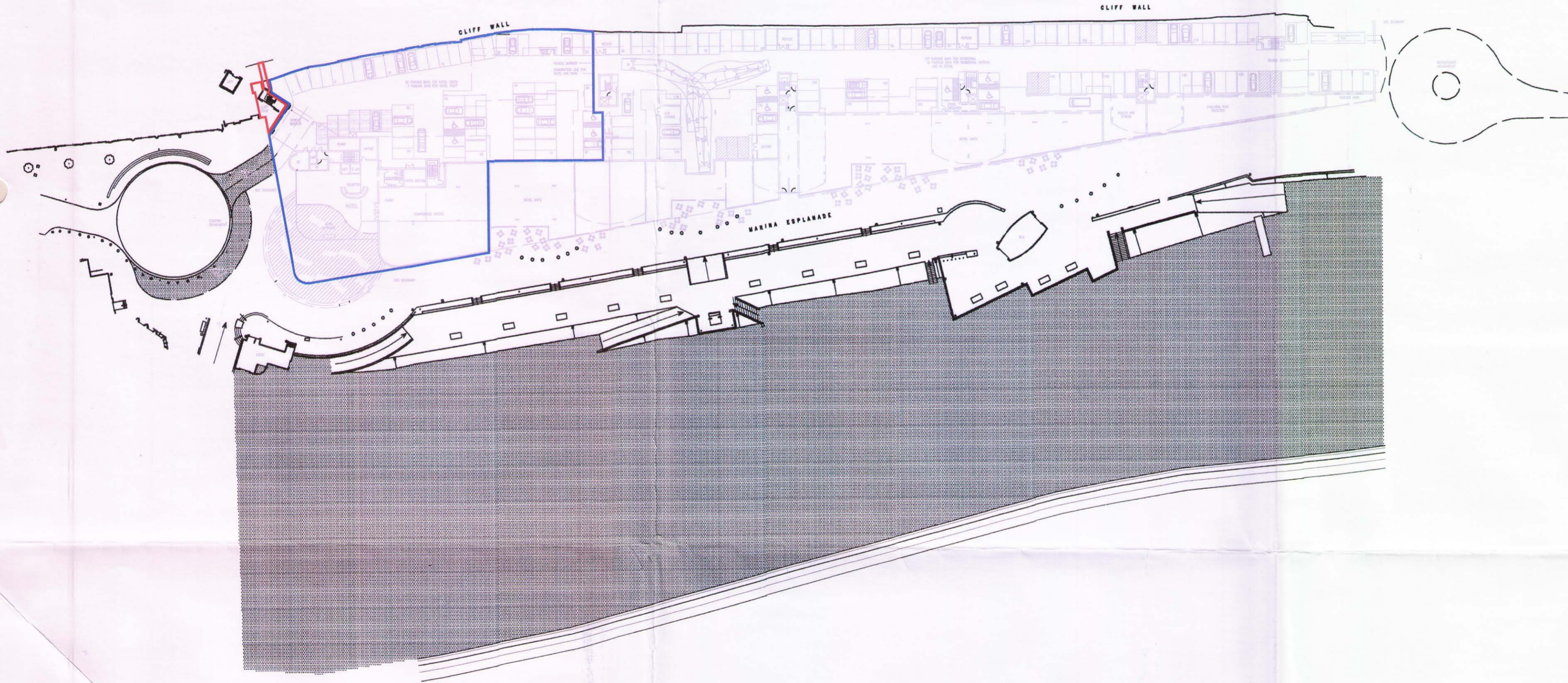
### Exceptions and Reservations

**EXCEPT AND RESERVED** unto the Landlord and all other persons (including members of public) at any time authorised by the Landlord or otherwise entitled thereto

1. Full right of way over the Premises at all times and for all purposes on foot only
2. Full right and liberty at all times to build upon the Retained Land or on any land now or hereafter during the Perpetuity Period belonging to the Landlord or any other person (adjoining or near to the Premises) or otherwise deal with or use such land as the Landlord or such other persons may think fit notwithstanding that the access of light and air to the Premises may be affected
3. Full and free right
  - 3.1 of running of water soil gas electricity or other power source and any electronic or telephonic signal and the like the flow of air and the passage of smoke or other effluvia from and to any other parts of the Retained Land and the buildings which now are or may hereafter during the Perpetuity Period be erected thereon through the Conduits which now are or may hereafter at any time during the Perpetuity Period be upon in over or under the Premises
  - 3.2 during the Perpetuity Period to build additional or relay any Conduits upon in over through or under the Premises in connection with the Retained Land any adjoining or neighbouring property now or hereafter during the Perpetuity Period belonging to the Landlord and to enter upon the Premises for that purpose subject to making good all damage to the Premises caused thereby
  - 3.3 to make connections with any conduits which now are or may hereafter during the Perpetuity Period be upon in over or under the Premises and to enter upon the Premises for that purpose and subject to making good damage to the Premises as aforesaid
4. Full right and liberty to enter upon the Premises at any time during the Term (but after at least 7 days prior written notice to the Tenant except in case of emergency) in order to build on or into any party or boundary wall of the Premises the persons exercising such right making good all damage to the Premises caused thereby
5. The right for the landlord and those authorised by the Landlord to:

- 5.1 enter and remain upon the Premises with or without workmen plant and equipment to repair maintain decorate replace rebuild renew and clean the Cliff Wall and to erect/attach and retain scaffolding on the Premises for any of these purposes
- 5.2 retain over or under the Premises foundations footings and overhangs forming part of the Cliff Wall and the right to erect and retain on the Premises new footings foundations and overhangs for the Cliff Wall as required by the Landlord from time to time
6. Rights of support for the Retained Land (including the Cliff Wall) from the Premises
7. Full right and liberty to enter upon the Premises at any time during the Term in connection with the exercise of the rights of entry authorised by the covenants on the part of the Tenant hereinbefore contained

[Both parties to execute as a Deed]



Client:  
SFP VENTURES (UK) Ltd

Project:  
RAMSGATE MARINA ESPLANADE

Drawing Title:  
STAIRWAY LEASE

Scale @ A1: 1:500  
Project Co-ordinator: SW  
Date: 09/06

Job No: 5598  
Stage: LE 106  
Drawing No: Rev:

Issue Status:

Construction	<input type="checkbox"/>	Preliminary	<input type="checkbox"/>
Information	<input type="checkbox"/>	Approval	<input type="checkbox"/>
Tender	<input type="checkbox"/>		



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## DEED OF AGREEMENT

To: Thanet District Council of Cecil Street Margate Kent CT9 1XZ

and

The Chief Land Registrar

In consideration of the Council approving [ ] as an Approved Funder under the terms of the Development Agreement and of the payment by the Council of the sum of one pound (receipt of which we hereby acknowledge) we hereby confirm as follows:-

1. In this Deed the following expressions have the following meanings:-
  - 1.1 "the Council" means Thanet District Council of Cecil Street Margate Kent CT9 1XZ or any statutory successor.
  - 1.2 "SFP" means SFP Ventures (UK) Limited (company number 05666803) whose registered office is at Lakeview House, 4 Lake Meadows Office Park, Woodbrook Crescent, Billericay, Essex CM12 0EQ.
  - 1.3 "Funder" means [ ] of [ ].
  - 1.4 "the Site" means the land at Ramsgate Boulevard, Ramsgate, Kent forming part of the land registered at the Land Registry under title number K838703 and shown edged [ ] and [ ] on the Site Plan attached to the Development Agreement.
  - 1.5 "the Development Agreement" means the agreement dated [ ] 2006 made between the Council (1) and SFP (2) relating to (inter alia) the development letting and sale of the Site.
  - 1.6 "Option Agreement" has the same meaning as in the Development Agreement.
  - 1.7 "Funder's Security Documents" means any charge charges or other security documents in favour of the Funder granted over the Development Agreement, the Site Leases (or either of them) or any other interest in the Site or part thereof and any collateral additional or substituted security which the Funder may now or may hereafter have or obtain thereover

and other expressions defined by the Development Agreement shall where used in this Deed have the like meanings

2. The Funder agrees and undertakes as follows:-

- 2.1 In the event of any enforcement by the Funder of its security all Further Payments and other monies due to the Council under the Development Agreement will rank in priority to any monies secured by the Funder's Security Documents or otherwise due to the Funder.
- 2.2 The Funder's Security Documents shall be subject to the provisions of the Option Agreement and shall at all times have effect subject thereto (whether or not the Option Agreement is entered into before at the same time as or after the Funder's Security Document) and that the Funder will:-
  - 2.2.1 comply with the provisions of the Option Agreement
  - 2.2.2 if required by the Council enter into a Deed of Novation of the Option Agreement
  - 2.2.3 (if the Council exercises the option under the Option Agreement) the Funder will release any charge and all other security over the Hotel Site upon payment of the option price (whether or not the option price is sufficient to discharge any indebtedness to the Funder).
  - 2.2.4 provide to the Council such documents as the Council shall reasonably require to procure that the priority of the Option Agreement referred to above is preserved at the Land Registry
- 2.3 Not to do anything in breach of the provisions of the Development Agreement the Site Leases and/or the Option Agreement and without prejudice to the foregoing nor to effect any disposal of the Site or any interest therein pursuant to the Funder's Security Documents or otherwise without compliance with the provisions of the Development Agreement the Site Leases and (where applicable) the Option Agreement.
- 2.4 Not to transfer sub-charge or otherwise dispose of the benefit of the Funder's Security Documents to any third party
- 2.5 In the event that the Council determines the Development Agreement in accordance with its terms prior to completion of the transfer of the freehold interest in the Site the Funder agrees (save where the Funder has provided to the Council a Funder Deed of Covenant and has otherwise complied with clause 15 of the Development Agreement) to release its charges and any other security over the Site Leases and any step in rights under any warranties (if requested to do so by the Council) and not to apply for relief from forfeiture.
- 2.6 The Funder will if required by the Council enter into any documents to be entered into under the Development Agreement (including the proposed Section 106 Agreement and the Highways Agreement) for the purpose of giving its consent to their terms.



- 2.7 The Funder agrees to the registration of the restrictions contemplated by the Development Agreement the Site lease and the Option Agreement against the title to the Site Leases or the Site or any part of it and shall provide such consents or other documents as the Land Registry shall require to effect such registrations
3. The provisions of this Agreement shall be in addition to and not in substitution for any obligations of the Funder under any Funder Deed of Covenant entered into under the Development Agreement and (where the Funder has provided the Performance Bond) in addition to the obligations of the Funder under the Performance Bond.
4. The benefit of this Deed is assignable by the Council and shall be enforceable by its assignees but shall not otherwise be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.
5. This Deed shall be governed by and construed in accordance with the laws of England.

For the benefit of the Council the Funder agrees that the courts of England have jurisdiction to settle any disputes in connection with this Deed and accordingly submits to the jurisdiction of the English Courts.

The Courts of England shall have non-exclusive jurisdiction in relation to any claim, dispute or difference concerning this Deed and the Funder waives any right to object to an action being brought in those Courts or to claim that the action has been brought in an inconvenient forum or to claim that those Courts do not have jurisdiction.

[ The Funder hereby irrevocably appoints [ ] of [ ] as its address for service in the United Kingdom of all notices and proceeding arising under this Agreement or the Development Agreement or any deed or document entered into pursuant thereto]

In witness whereof the Funder has executed this Deed this                      day of  
2006

*[Insert attestation clause for Funder to execute as a Deed]*

*[Opinion Letter required for this Deed where Funder is an overseas entity]*



**FUNDER DEED OF COVENANT - clause 15.3 of the Development Agreement**

**DATED**

**2006**

- (1)
- (2) THANET DISTRICT COUNCIL

---

**DEED OF COVENANT**

---

relating to an agreement for the development and sale of  
property at Ramsgate Boulevard,  
Ramsgate, Kent

**EVERSHEDS**

Eversheds LLP  
Senator House  
85 Queen Victoria Street  
London EC4V 4JL  
Tel: +44 (0) 20 7919 4500  
Fax: +44 (0) 20 7919 4919

**DEED OF COVENANT** made this \_\_\_\_\_ day of

2006

**BETWEEN:**

- (1) [ \_\_\_\_\_ ] [company number \_\_\_\_\_ ] [Company registered in [ \_\_\_\_\_ ] with registered number [ \_\_\_\_\_ ] whose registered office is at [ \_\_\_\_\_ ] and whose address for service in the United Kingdom is at [ \_\_\_\_\_ ] ("the Covenantor"); and
- (2) THANET DISTRICT COUNCIL of Cecil Street, Margate, Kent CT4 1XZ ("**the Council**").

**DEFINITIONS**

In this deed the following expressions have the following meanings:-

- "Development Agreement"** means the agreement made the \_\_\_\_\_ day of \_\_\_\_\_ between Thanet District Council (1) and SFP Ventures (UK) Limited (2) relating to the Development and sale of the Property
- "the Property"** means the land at Ramsgate Boulevard, Ramsgate Kent shown edged red on the plan attached to the Development Agreement
- "Site Leases"** has the same meaning as given to that expression in the Development Agreement

Other expressions used in this deed shall have the same meanings as are given to them in the development agreement unless expressly stated to the contrary.

**BACKGROUND**

1. The Covenantor is an Approved Funder for the purpose of clause 15.1 of the Development Agreement.
2. The Council has served a termination notice under clause 11 of the Development Agreement and has also served section 146 Notices under the site lease. The Covenantor as approved funder has decided that it wishes to step in as developer under the Development Agreement and has entered into this deed of covenant pursuant to clause 15.3 of the Development Agreement.

3. The Covenantor's obligations:
  - 3.1 The Covenantor hereby covenants with the Council to comply with all the obligations on the part of the Developer contained in the Development Agreement as if the Covenantor had been named therein as original developer.
  - 3.2 The obligations of the Covenantor under clause 3.1 shall include remedying any breach of the Developer's obligations contained in the Development Agreement which have occurred prior to the date of this Deed of Covenant.
  - 3.3 The Covenantor confirms that the terms granted by the Site Leases have been assigned to the Covenantor simultaneously with the entering into of this Deed of Covenant and the Covenantor agrees to procure that such transfers are registered at the Land Registry as soon as possible after the date hereof and to supply to the Council up-to-date official copies of the titles to the Site Lease as soon as the Covenantor has registered as proprietor thereof.

#### **GENERAL**

4. Any rights of any person to enforce the terms of this Deed of Covenant (or any document entered into pursuant to it) pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.
5. This Deed of Covenant and the obligations entered into under it are to be governed by and interpreted in accordance with English law.
6. The Courts of England are to have exclusive jurisdiction in relation to any disputes between the parties arising out of related to this Deed of Covenant. This clause operates for the benefit of the Council who has the right to sue the Covenantor and enforce any judgement against the Covenantor in the course of any competent jurisdiction.
7. The Covenantor irrevocably appoints its solicitor (being [ ] as its agent for the service of any notices or proceedings relating to this Deed of Covenant.



Dated

2006

- (1) THANET DISTRICT COUNCIL
- (2) SFP VENTURES (UK) LIMITED

---

Agreement

---

under section 106 Town and Country Planning Act 1990 relating to  
Property at Ramsgate Boulevard, Ramsgate, Kent

**Eversheds LLP**  
Senator House  
85 Queen Victoria Street  
London EC4V 4JL

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[www.eversheds.com](http://www.eversheds.com)

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**BETWEEN:**

- (1) **THANET DISTRICT COUNCIL** of Cecil Street, Margate, Kent CT4 1XZ ("**the Council**"); and
- (2) **SFP VENTURES (UK) LIMITED** (Company Number 05666803) whose registered office is at Lakeview House 4 Lake Meadows Office Park Woodbrook Crescent Billericay Essex CM12 0EQ ("**the Developer**").

**BACKGROUND**

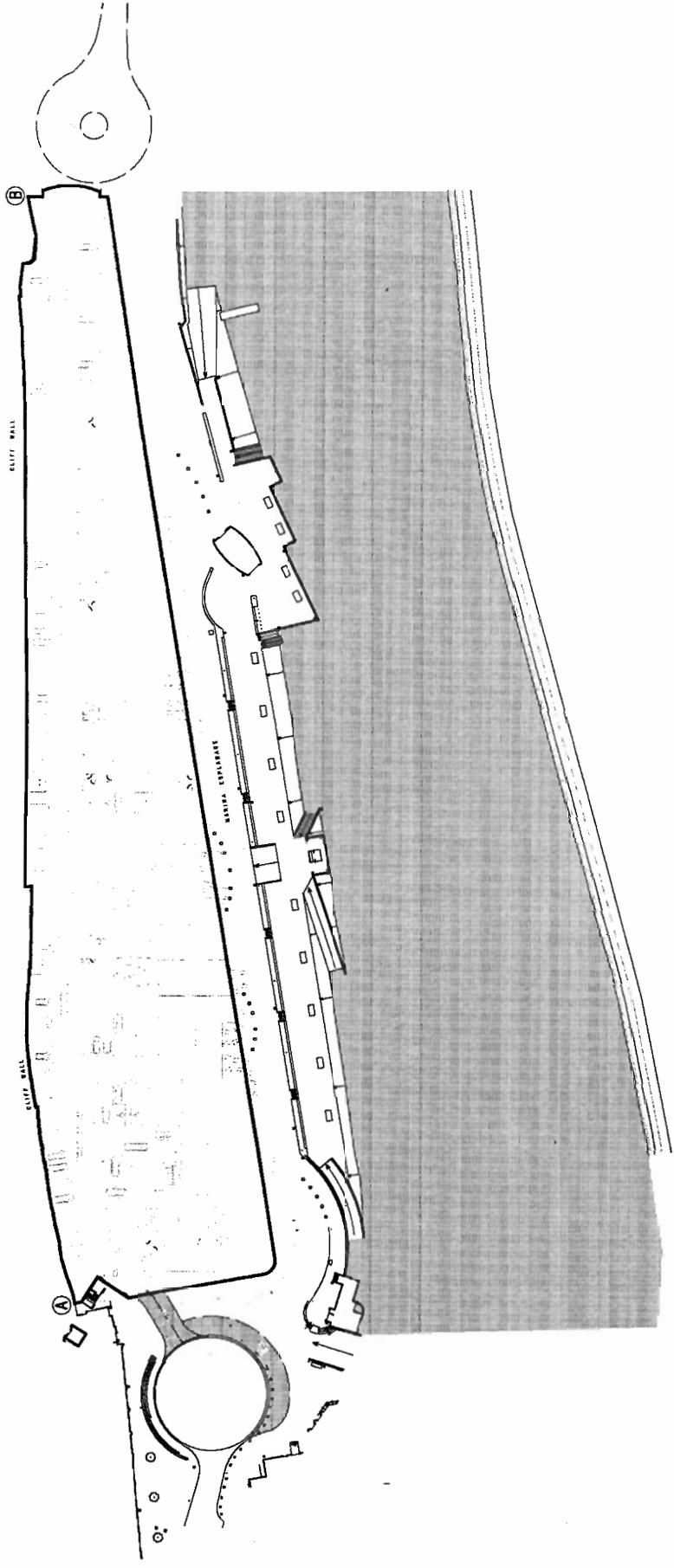
- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement.
- (B) The Developer has entered into a Development Agreement for the purchase of the Property from the Council.
- (C) On 28 January 2004 the Council granted the Planning Permission for the Development.
- (D) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Developer and its successors in title.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

- 1.1 In this Agreement, the following words and expressions have the following meanings:

<b>"1990 Act"</b>	the Town and Country Planning Act 1990
<b>"Cliff Wall"</b>	the Cliff Wall running along the north western boundary of the Property between points A and B on the Plan
<b>"Cliff Wall Works"</b>	the repair works to the top of the Cliff Wall and to the wall façade to secure the structural integrity of the Cliff Wall
<b>"Cliff Wall Contribution"</b>	the sum of One hundred thousand pounds (£100,000).



**CLIENT:** SPY VENTURES (U) LLC

**PROJECT:** PARKGATE MARINA ESPLANADE

**Drawing Title:** DEVELOPMENT AGREEMENT SITE PLAN 1

**Scale:** 1:500 SW 08/08

**Author:** [Name]

**Checker:** [Name]

**Approver:** [Name]

**Date:** 08/08

**Sheet:** LE 101

**Revision:** [Number]

**Notes:** [List of notes]

**Legend:** [List of symbols]

<b>"Commencement Date"</b>	the date on which the Development commences by the carrying out on the Property pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act
<b>Development</b>	the development on the Property of up to 5 storeys in length or 107 residential apartments comprising 1, 2 and 3 bed units and penthouses, a 60 bed hotel with conference function facilities and health and fitness centre; retail and food and drink units; a children's play area and 204 ancillary parking spaces together with provision of means of access from Harbour Parade and Marina Parade including the stopping up of Marina Esplanade with the relocation of the eastern roundabout and reconfiguration of the western open area
<b>"Enhanced Cliff Wall Works"</b>	those works to the Cliff Wall which comprise the installation of the coloured plastic coating and any other works over and above the works comprising the Cliff Wall Works
<b>"Plan"</b>	the plan attached to this Agreement
<b>"Planning Permission"</b>	the planning permission for the Development dated 28 January 2004 being reference F/TH 03/1200
<b>"Property"</b>	land at Ramsgate Boulevard, Ramsgate Kent forming part of Title Number K838703 and shown for identification edged red on the Plan

1.2 In this Agreement:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and the Schedule are to clauses of and the Schedule to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of the Schedule;
- 1.2.3 references to any statute or statutory provision include references to:

- 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
  - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
  - 1.2.4 references to the Property include any part of it;
  - 1.2.5 references to any party in this Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;
  - 1.2.6 "including" means "including, without limitation";
  - 1.2.7 any covenant by the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
  - 1.2.8 where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
  - 1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.
- 1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## **2. EFFECT OF THIS AGREEMENT**

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.
- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 2 Local Government Act 2000 and all other enabling powers.

2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Property or otherwise.

2.4 This Agreement will be registered as a local land charge by the Council.

2.5 Nothing in this Agreement prohibits or limits the right to develop any part of the Property in accordance with a planning permission other than one relating to the Development granted after the date of this Agreement, whether or not pursuant to an appeal.

### 3. **COMMENCEMENT DATE**

3.1 The obligations contained in this Agreement will come into effect on the Commencement Date unless otherwise specifically indicated in this Agreement.

### 4. **OBLIGATIONS OF THE PARTIES**

4.1 The Developer agree with the Council to comply with the obligations set out in the **Schedule** in relation to the Development.

4.2 The Council agrees with the Developer to comply with the obligations set out in the **Schedule**.

4.3 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Property or the part of the Property in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this **clause 4.3**.

### 5. **TERMINATION OF THIS AGREEMENT**

5.1 This Agreement will come to an end if:

5.1.1 subject to **clause 5.2**, the Planning Permission is quashed, revoked or otherwise withdrawn before the Commencement Date so as to render this Agreement or any part of it irrelevant, impractical or unviable; or

5.1.2 the Planning Permission expires before the Commencement Date without having been implemented;

5.2 **Clause 5.1.1** will not apply in respect of any minor modifications to the Planning Permission or the Development agreed from time to time between the Council and the Developer prior to the Commencement Date.

## 6. **NOTICES**

6.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

6.2 Any notice, demand or any other communication served on the Council is to be sent to the address of the Council set out at the beginning of this Agreement or to such other address as the Council may notify in writing to the Developers at any time as its address for service.

6.3 The Developer irrevocably appoints The Senior Partner of Prettys Solicitors of 25 Elm Street, Ipswich IP1 2AD as its agent for the service of any notice or demand proceedings or other communications in relation to this Agreement.

6.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

6.4.1 if delivered by hand, at the time of delivery;

6.4.2 if sent by post, on the second working day after posting; or

6.4.3 if sent by recorded delivery, at the time delivery was signed for.

6.5 If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a working day, it is to be treated as having been served on the next working day.

6.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

## 7. **JURISDICTION**

7.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales.

7.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement. This clause operates for the benefit of the Council who retains the right to sue the Developer and enforce any judgment against the Developer in the courts of any competent jurisdiction.

**8. EXECUTION**

The parties have executed this Agreement as a deed and it is delivered on the date set out above.

**SCHEDULE**

**Obligation**

**Cliff Wall Contribution**

1. The Developer agrees with the Council that it will promptly notify the Council in writing of the occurrence of the Commencement Date and that it will pay the Cliff Wall Contribution to the Council on or before the date twelve months after the Commencement Date.
2. The Council agrees with the Developer to use the Cliff Wall Contribution solely towards the Enhanced Cliff Wall Works but to utilise any unexpended portion of the Cliff Wall Contribution towards other environmental improvements in the Ramsgate seafront area which (as far as possible) are of direct benefit to the Development.

**THE COMMON SEAL of THANET** )  
**DISTRICT COUNCIL** )  
was affixed to this deed in the presence of: )

**Sealing Officer**

**Director**

**SIGNED** as a deed by **SFP VENTURES** )  
**(UK) LIMITED** )  
acting by a director and its secretary )  
or two directors )

**Director**

**Director / Secretary**



# Defective Title Indemnity Policy

## A warm welcome to Zurich

Thank you for taking out your Defective Title Insurance Policy with us – and welcome to Zurich Insurance Company.

As one of the largest general insurers in the UK, we have a wealth of expertise and experience backed up to the global strength of the Zurich Financial Services Group. Zurich is renowned for innovation and customer dedication – our experts are constantly reviewing how we can update and improve our products and services for you.

At Zurich Insurance we have your future in mind and look forward to working closely with you.

## Cancellation rights

If you decide you do not want to accept the Policy please tell us (or your insurance intermediary), within fourteen days of receiving the Policy. We may, at our discretion, charge you for the time that you have been on cover, including insurance premium tax. Any refund will be made to the party who paid the Premium. If you do cancel, you may be in breach of the terms of your mortgage or the terms of the contract for the sale of your property. If you are in doubt, you may wish to seek legal advice prior to cancellation.

## How we will use your data

Zurich Insurance Company holds data in accordance with the Data Protection Act 1998. It may be necessary for us to pass data to other organisations that supply products and services associated with this contract of Insurance. In order to verify information, or to prevent and detect fraud, we may share information you give us with other organisations and public bodies, including the Police, accessing and updating various databases. If you give us false or inaccurate information and we suspect fraud, we will record this and the information will be available to other organisations that have access to the database(s). We can supply details of the databases we access or contribute to, on request.

# Cover

This Policy and Schedule shall be read together and any word or expression to which a specific meaning has been attached in either shall bear such meaning wherever it may appear.

## Whereas

1. By a proposal and/or particulars in writing (which it is agreed shall be the basis of this contract and shall be held to be incorporated herein) the Insured has applied to the Zurich Insurance Company (hereinafter called 'the Company') for insurance in the terms hereinafter stated and has paid or agreed to pay the single Premium
2. The Insured is or is about to become the owner of the Property the title to which is considered to be defective (hereinafter called 'the Defect').
3. It is intended to develop the Property by erecting the Development thereon or on some part thereof

## Now it is agreed

That in the event of any person claiming with a view to the enforcement of any estate right or interest adverse to or in derogation of the freehold title of the Insured to the Property or any right of way easement or service relating to the use and enjoyment of the Property which was subsisting and capable of arising at the date hereof which the Insured is unable to rebut or is prejudiced in rebutting by reason of the Defect the Company will subject to the terms Provisions and Conditions contained herein or endorsed hereon indemnify the Insured against:

- a) all sums which the Insured shall become legally liable to pay as damages or compensation in any consequent action or proceedings including costs and expenses in connection therewith
- b) the loss of market value of the Property at the date of (i) any court order under which the Insured may be dispossessed of the Property or (ii) the surrender of the Property to the claimant with the written consent of the Company or should the Insured be dispossessed of only part of the Property or deprived of the use of any right of way or easement the difference between the market value of the entire Property and the market value of so much of the Property with such rights or easements as may be retained by the Insured such values to be determined by a surveyor appointed by agreement between the parties hereto or in default of agreement to be appointed by the President for the time being of the Royal Institution of Chartered Surveyors
- c) in the event of any right of way easement or service adversely affecting the Property being enforced by court order or acknowledged with the written consent of the Company:
  - 1) the difference between the market value of the Property free from such right of way easement or service and the market value subject to such right of way easement or service at the date of such enforcement or acknowledgement

- 2) the cost of altering or demolishing any building or development on the Property so that the claimant may exercise any such right of way easement or service
- d) the cost of works (including architects' and surveyors' fees) for the purpose of any development to be carried out on the Property begun or contracted for before the commencement of proceedings regarding the title to the Property or relating to any right of way easement or service to the extent that such cost is rendered abortive by court order and insofar as it is not reflected in the value of the Property
- e) all sums paid with the written consent of the Company to free the Property from any adverse estate right or interest
- f) all other costs and expenses incurred by the Insured with the written consent of the Company.

**Provided always** that the liability of the Company hereunder shall not exceed in the aggregate the Limit of Indemnity.

## Law applicable to the Policy

UK law allows both you and us to choose the law applicable to the Policy. The Policy will be subject to the relevant law of the United Kingdom, the Isle of Man or the Channel Islands relating to the Property address as shown in the Schedule. If there is any dispute as to which law applies it shall be English law.

The parties agree to submit to the exclusive jurisdiction of the English courts.

For and on behalf of the Zurich Insurance Company



**Ian Stuart**  
Chief Executive UK General Insurance

This is a legal document and should be kept in a safe place.

Please read the Policy and Schedule carefully.

If they do not meet your needs, it should be returned to us or the intermediary who arranged the Policy for you.

# How to claim

- 1 The Insured must:
  - i) give the Company written notice as soon as possible of any potential or actual claim or any circumstances likely to result in a claim. Notifications should be sent to the Contingency Department, Zurich Commercial, The Grange, Bishops' Cleeve, Cheltenham, Gloucestershire, GL52 8XX. Tel: (01242) 263875.
  - ii) pass all court documents and/or other communications to the Company as soon as possible after receipt.
  - iii) not deal with, make any admission of liability or attempt to settle a claim without our prior written agreement.
  - iv) agree to and carry out at our expense all things necessary to minimise any loss.
  - v) provide all information and assistance that we may require to help defend and settle the claim.
- 2 Provide the Policy number, the Insured's name and a brief description of the incident that has occurred.
- 3 We are entitled to:
  - i) conduct in the Insured's name the defence and settlement of any claim or the prosecution of any claim for indemnity, damages or otherwise.
  - ii) have full discretion in the defence proceedings and settlement of claims.
  - iii) pay the Insured at any time, an amount equal to the Limit of Indemnity or any lower amount for which the claim can be settled, after deduction of any sum already paid. We may then give up control of and have no further liability in connection with the claim.
- 4 If we accept liability but the Insured disagrees with the amount we offer to pay, the claim will be referred to an arbitrator who will be jointly appointed in accordance with statutory provisions. In such cases, an award made by the arbitrator will be a condition precedent to any right of legal action against us.

# Conditions

- 1 The liability of the Company to make any payment under this Policy will be conditional upon the compliance with the terms and Conditions of this Policy and the truth of the statements contained in the proposal and/or particulars in writing (which it is agreed shall be the basis of this contract and shall be held to be incorporated herein).
- 2 The Insured or anyone acting on the Insured's behalf must not disclose the existence of this Policy to any third party other than bona fide prospective purchasers lessees and tenants of the Property their mortgagees and legal advisers.
- 3 Upon becoming aware of any occurrence affecting the risk insured against or likely to give rise to a claim under this Policy the Insured shall not admit any liability nor take any steps to compromise or settle any claim without the consent in writing of the Company but shall with all due diligence give to the Company particulars in writing of such occurrence and shall thereupon give all due and proper information and assistance to the Company or its Solicitors in or about the conduct of any proceedings which the Company may think fit to take at its own expense either in the name of the Insured or in the name of the Company (whether before or after settlement of any claim) including any steps the Company may wish to take for the purpose of enforcing any rights and remedies or of obtaining any relief or indemnity from other parties to which the Company may be or would become entitled by subrogation or otherwise upon payment or satisfaction of any claim under this Policy.
- 4 If any step action or proceedings by any third party likely to give rise to a claim under this Policy shall be induced either wholly or partly by or through any wilful act or neglect of the Insured (other than such as has already occurred and is recorded in this Policy) this Policy shall be forfeited.
- 5 If at the time of any claim being made under this Policy there be any other insurance or insurances subsisting whether effected by the Insured or by any other person covering the claimant either wholly or partly in respect of the same risk or interest as is covered by this Policy the Company shall be liable to pay or contribute in respect of such claim only rateably with such other insurance or insurances.
- 6 If any difference shall arise as to the amount to be paid under this Policy (liability being otherwise admitted) such difference shall be referred to an arbitrator to be appointed by the parties in accordance with the statutory provisions in that behalf for the time being in force. Where any difference is by this Condition to be referred to arbitration the making of an award shall be a condition precedent to any right of action against the Company.

# Complaints procedures

We want to provide a first class service. If you have any cause for complaint you should, in the first instance, contact either the intermediary who arranged the Policy for you, or the Contingency Manager, Contingency Department at The Grange (see full address below). Please quote the details of your Policy (surname and initials, Policy number, departmental reference, etc).

If the matter is not resolved to your satisfaction, please write to the Head of Property Investors at:

120 New Cavendish Street  
London  
W1W 6XX

Tel: (020) 7631 1818

If you are still not satisfied with the action taken, please write to the Chief Executive at:

The Grange  
Bishops' Cleeve  
Cheltenham  
Gloucestershire  
GL52 8XX

Tel: (01242) 263875

You may have a right of referral to the Financial Ombudsman Service at:

Financial Ombudsman Service  
South Quay Plaza  
183 Marsh Wall  
London  
E14 9SR

Tel: (0845) 080 1800

E-Mail: [enquiries@financial-ombudsman.org.uk](mailto:enquiries@financial-ombudsman.org.uk)

We are covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation should we be unable to meet our obligations. You may contact the FSCS on (020) 7892 7300 or further information is available at [www.fscs.org.uk](http://www.fscs.org.uk)

## Zurich Insurance Company

A limited company incorporated in Switzerland. Registered in the canton of Zurich no CH-020.3.929.583.0.  
UK branch registered in England no. BR 105. UK Head Office: Zurich House, Stanhope Road, Portsmouth, Hampshire PO1 1DU.

Authorised and regulated by the Financial Services Authority.



**ZURICH**

# The Schedule

**Policy Number** DRAFT - 41551

**The Insured** Thanet District Council  
and the Insured's successors in title to the Property or any part or parts thereof and any mortgagee chargee or lessee thereof all of whom shall be bound by the terms conditions and provisions of this Policy.

**Insurance**  
**Premium:** £31,250.00  
**IPT:** £1,562.50  
**Total Premium:** £32,812.50

**The Property** land at Ramsgate Boulevard Ramsgate Kent shown edged red on the Plan annexed hereto

**The Defect** the Property is subject to a Conveyance dated 28 October 1929 made between (1) The Southern Railway Company and (2) The Mayor Aldermen and Burgesses of the Borough of Ramsgate the land in title and other land was conveyed subject to the provisions of "an Order of the Chancery Division of the High Court of Justice made by the Honourable Mr Justice Chitty on the 1 April 1882 in an action shortly entitled The Attorney General v The London Chatham and Dover Railway Company (1881 A. No 205)"

**The Development** redevelopment of the site, up to five-storey in height, for 107 residential apartments comprising one, two and three-bed units and penthouses, a 60-bed hotel (Use Class C1) with conference and function facilities, (3,581 sq metres), and health and fitness centre (97 sq metres) (Use Class D2), retail (Use Class A1) or food/drink (Use Class A3) (1,810 sq metres), a children's play area (244 sq metres) (Use Class D2) and 204 ancillary parking spaces, together with external staircase access to Wellington Crescent and means of access from Harbour Parade and Marina Esplanade including the stopping up of Marina Esplanade with the relocation of the roundabout further east, and the reconfiguring of the western open area in accordance with planning permission numbered F/TH/03/1200

**Limit of Indemnity** £25,000,000.00 (twenty five million pounds)

**Policy Dated**

## Zurich Insurance Company

A limited company incorporated in Switzerland. Registered in the canton of Zurich no CH-020.3.929.583.0.  
UK branch registered in England no. BR 105. UK Head Office: Zurich House, Stanhope Road, Portsmouth, Hampshire PO1 1DU.

Authorised and regulated by the Financial Services Authority.



**ZURICH**





Job no: 5598 RAMSGATE

PRELIMINARY ON SITE CONTRACT PROGRAMME

	Months 1 to 5 inclusive	Months 6 to 10 inclusive	Months 11 to 16 inclusive	Months 17 to 31 inclusive	Months 32 to 37 inclusive	Months 38 to 50 inclusive
DESIGN / TENDER PERIOD	Blue shaded	Blue shaded				
HIGHWAYS WORKS						
DESIGN / TENDER PERIOD	Blue shaded	Blue shaded				
HOTEL WORKS				Pink shaded		
RETAIL WORKS			Red shaded			
HEALTH CLUB WORKS						
PLAY AREA WORKS				Pink shaded		
RESIDENTIAL WORKS						
STAIRCASE WORKS						Green shaded

NOTE: THE TIME PERIODS ON THIS CHART RUN FROM THE 'SITE LEASE COMPLETION DATE'

10/11/15  
12/11/15