

DATED 12 July

2006

**BRIGHTON & HOVE CITY COUNCIL**

and

**CHERRYWOOD INVESTMENTS LIMITED**

and

**BRIGHTON & HOVE CITY COUNCIL**

and

**HSBC BANK PLC**

**A G R E E M E N T**

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

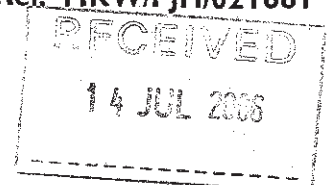
relating to

**Stanmer House, Stanmer Park, Brighton**

**M A Ghebre-Ghiorghis**  
Head of Law  
Brighton & Hove City Council  
King's House  
Grand Avenue  
HOVE, BN3 2SR

Ref: HKW/PJH/021681

CHE018/1/2390NE-1.DOC



**THIS AGREEMENT** is made the

12<sup>th</sup>

day of July

Two thousand and six

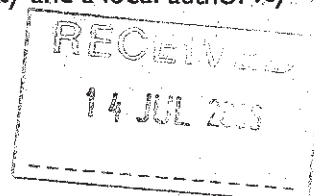
**BETWEEN:**

- (1) **BRIGHTON & HOVE CITY COUNCIL** of King's House, Grand Avenue, Hove, BN3 2SR in its capacity as local planning authority (hereinafter called "the Council") of the first part
- (2) **CHERRYWOOD INVESTMENTS LIMITED** of 75 Church Road, Hove, BN3 2BB (hereinafter called "the Developer") of the second part and
- (3) **BRIGHTON & HOVE CITY COUNCIL** of King's House aforesaid in its capacity as freehold owner of the Property (as hereinafter defined) (hereinafter called "the Owner") of the third part and
- (4) **HSBC BANK PLC** of Sheffield Securities Processing Centre Ground Floor 79 Hoyle Street, Sheffield S3 7EVV (hereinafter called "the Mortgagee") of the fourth part

**RECITALS**

**WHEREAS:**

- (1) The Owner is the freehold owner of the land known as Stanmer House and ancillary buildings, Stanmer Park Brighton shown for the purposes of identification only edged red on the plan marked "A" annexed hereto ("the Property")
- (2) By a Lease dated the 21<sup>st</sup> day of November 2002 made between the Owner and the Developer the Owner has granted to the Developer a Lease of the Property for a term of 125 years from 21<sup>st</sup> November 2002 ("the Term")
- (3) By the Application (as hereinafter defined) the Developer has applied for planning permission to develop the Property by the Proposed Development (as hereinafter defined)
- (4) The Council consider that before the Proposed Development is occupied certain restrictions should be placed on the use of the Property and the Council should be satisfied that an element of public access shall be provided for the duration of the use of the Property and a fund set up for the maintenance of the building for the purposes of ensuring the proper restoration of the Property and the amenity of the local area
- (5) For the area within which the Property is situated the Council is for the purposes of Section 106 of the Town and Country Planning Act 1990 ("the 1990 Act") and Section 111 of the Local Government Act 1972 ("the 1972 Act") respectively a local planning authority and a local authority



# LR

TITLE NUMBER

ESX264309

BRIGHTON AND HOVE



ORDNANCE SURVEY MAP REFERENCE: TQ3309SE

SCALE: 1:1250

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PLAN A

*MT HLP (Director)*PCs  
(dis)

Stanner House

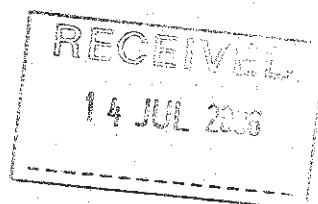
Museum

Fountain

5139

Per Pro  
HSBC Bank plc  
Sheffield Securities  
Processing Centre  
79 Hoyle Street  
Sheffield S3 7EW

Manager



*Handwritten:* 2-13-82

*Plan B*

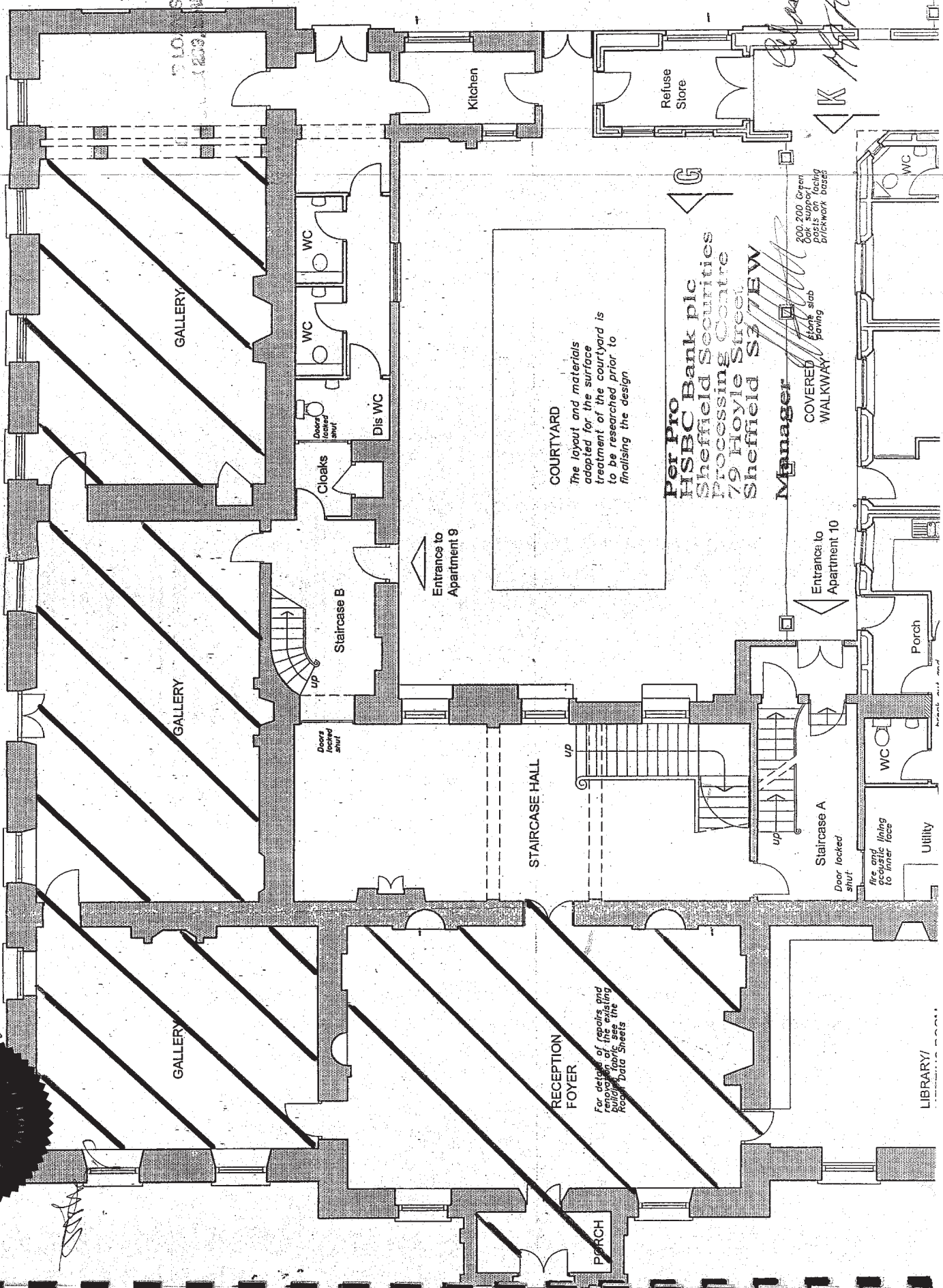
SERVING CENTRE  
STANDARD UNIT  
NAD

*2000*

EXISTING STRUCTURE

PROPOSED STRUCTURE

RECEIVED  
14 JUL 2005



**Per Pro**  
HSBC Bank plc  
Sheffield Securities  
Processing Centre  
79 Hoyle Street  
Sheffield S3 7EW

**Manager**



PLAN C

Per Pro  
HSBC Bank plc  
Sheffield Securities  
Processing Centre  
79 Hoyle Street  
Sheffield S3 7EW  
Manager

PROPOSED BOUNDARY LINE

GARDENS

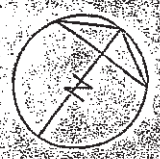
3m wide

20907

STAI

*Plans*  
*M. H. H.*

LOAN SECURITIES CENTRE  
PO BOX 230, BIRMINGHAM B1 1PF  
*M. H. H.*



- (6) The parties hereto have agreed to enter into this Agreement pursuant to Section 106 of the 1990 Act and Section 111 of the 1972 Act and all other powers then enabling for the purposes specified in Clause 2.1

**IT IS HEREBY AGREED** as follows:

**1. INTERPRETATION**

- 1.1 In this Agreement unless the context otherwise requires:

**"Application"**

means the application for planning permission submitted to the Council received on the 23 November 2004 and allocated reference number BH2004/03712/FP for development comprising the change of use of the ground floor from office use to art gallery public exhibition conference and reception rooms for public and private functions and for the first and second floor to retain existing office use

**"Commencement of Development"**

shall refer to the Proposed Development and shall have the same meaning as ascribed to a "material operation" by Section 56(4) of the 1990 Act

**"the horse engine"**

means the horse engine situated on the Property

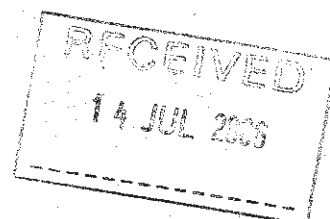
**"the House"**

means that part of the Property shown for identification purposes only hatched black on the plan marked "A" annexed hereto

**"Proposed Development"**

means such development as may be granted planning permission pursuant to the Application

- 1.2 Unless the context requires otherwise references in this Agreement to a clause schedule or paragraph are references respectively to a clause schedule or paragraph of this Agreement
- 1.3 Where any party to this Agreement comprises two or more persons any obligations on the part of that party contained or implied in this Agreement shall be deemed to be joint and several obligations on the part of those persons and references to that party shall include references to each or any of those persons



- 1.4 A reference to any statute or statutory section shall be taken to include a reference to any statutory amendment modification or re-enactment of it for the time being in force
- 1.5 The headings to this Agreement do not and will not by implication form any part of this Agreement and shall have no legal force whatsoever
- 1.6 The expression "the Council" shall include its successors in title and any statutory successor authority of it and the expression "the Developer" and "the Owner" shall include all persons deriving title to the Property under them respectively and shall include (if appropriate) two or more owners of the legal estate
- 1.7 Brighton and Hove City Council as Owner executes this Deed as freehold owner of the Property only and shall not be required to implement the Proposed Development

## **2. PRELIMINARY**

### **2.1 Legal Powers**

THIS Agreement is made pursuant to Section 106 of the 1990 Act and Section 111 of the 1972 Act and all other powers enabling for the purpose of restricting the use of the Property requiring the Property to be used in the way specified herein and requiring sums to be paid

### **2.2 Enforceability**

The various covenants restrictions requirements stipulations and other obligations on the part of the Developer and the Owner contained in this Agreement are entered into under the provisions and powers referred to in subclause 2.1 and are planning obligations for the purposes of Section 106 of the 1990 Act whether expressed to be planning obligations or not and are enforceable by the Council against the Developer and the Owner and any person deriving title from the Developer and the Owner

### **2.3 Expiry**

If the permission granted pursuant to the Application shall expire or shall have been revoked before the Proposed Development has been commenced this Agreement shall forthwith determine and cease to have effect

### **2.4 Commencement**

The obligations contained in this Agreement save for those contained in Clauses 1 2 and Clause 3.4 (which shall take effect on the execution hereof) shall take effect only on the Commencement of Development

### **2.5 Registration**

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



2.6 **Fettering of discretion**

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

2.7 **Service of Notices**

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

2.8 **Requirements to be Reasonable**

Subject to Clause 2.6:-

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

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

2.9 **Covenants**

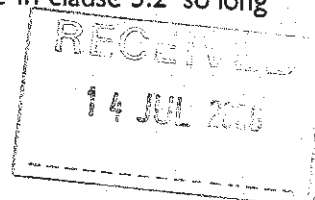
The Developer and the Owner hereby covenant with the Council as specified in Clause 3

3. **COVENANTS ON BEHALF OF THE OWNER AND THE DEVELOPER:-**

3.1 The Developer shall not grant any sub-lease of part or parts only of the Property having a term of 21 years or more without procuring that it shall contain terms satisfactory to the Council to ensure the sustained repair of the House for the duration of the sub-lease and payment by the sub-tenant for such repair by way of service charge including (at the discretion of the landlord under the sub-lease) provision for a sinking or reserve fund to meet anticipated future expenditure and contain terms satisfactory to the Council to control activities that could adversely affect the character of the House

3.2 The Developer shall ensure that that part of the House comprising the ground floor rooms shown hatched red on the plan marked "B" annexed hereto shall remain open to members of the public free of charge on at least 50 occasions per year for at least 2 hours per day but being in any event between the hours of 10.00am and 4.00pm and being on such day of the week as the Developer shall from time to time specify for the purposes only of viewing the said rooms

3.3 The Developer shall be taken to have complied with the obligation set out in clause 3.2 so long





as public access as detailed is available for at least 2 hours per week between the months of March and September (inclusive) (such day and the hours of opening to be advertised to the Council's satisfaction) and such other times as the Developer shall by prior appointment with the public agree

3.4 The Developer shall ensure that the part of the Property shown for identification purposes coloured purple on the attached plan marked "C" (having a width of 3 metres) or such alternate route as may be agreed by the Council subject to any necessary consents shall remain open to the public at all times from dawn until dusk for the purposes of access to the adjacent land edged in part yellow on the said plan marked "C" subject to those using that means of access not causing any nuisance disturbance or annoyance to the Developer or any occupiers of or visitors to the House, provided always that nothing in this sub clause 3.4. will permit the Developer to terminate the right of way but shall entitle the Developer to seek injunctions and/or damages against any member of the public causing such nuisance, disturbance or annoyance

3.4 the proper professional and administrative costs of the Council of preparing this Agreement amounting to £1,000 shall be paid on the execution hereof

#### 4. CONSENT OF MORTGAGEES

4.1 The Mortgagee enters into this Agreement for the purposes of consenting to its terms and conditions and hereby agrees to be bound by the said terms and conditions only in the event that it becomes a mortgagee in possession and that such liability will cease once it has parted with its interest in the Property save for any breach occurring whilst it is in possession

#### 5. THIRD PARTY RIGHTS

5.1 A person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms

IN WITNESS whereof the Developer the Council (as freeholder and as local planning authority) and the Mortgagee have duly executed this Deed the day and year first before written

THE COMMON SEAL of BRIGHTON )  
& HOVE CITY COUNCIL as local )  
planning authority was hereunto affixed )  
in the presence of:- )

Authorised Signatory

CHE018/1/2390NE-1.DOC

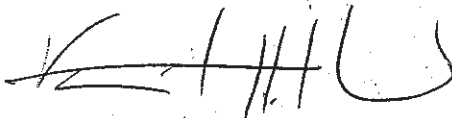


EXECUTED AS A DEED by )  
CHERRYWOOD INVESTMENTS )  
LIMITED acting by:- )

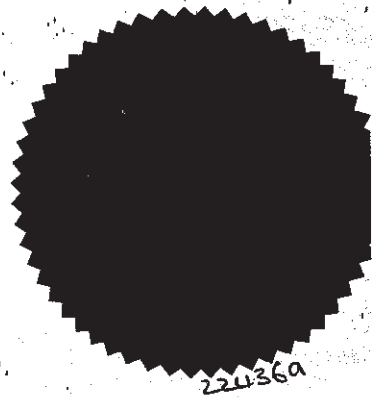
Director



Director/Secretary



THE COMMON SEAL of BRIGHTON )  
& HOVE CITY COUNCIL as freehold )  
owner was hereunto affixed in the )  
presence of:- )



  
Authorised Signatory

IN WITNESS WHEREOF this document which is intended to take effect as a deed has  
been duly executed by a duly authorised Official of the Bank as Attorney of the Bank the day  
and year first above written.

SIGNED AND DELIVERED

by

  
STEPHEN ROY CATHERINES

Attorney of  
HSBC Bank plc

in the presence of:

  
Michael Gerard Long

Witness:

Address:



Occupation

HSBC Bank plc  
SHEFFIELD SECURITIES  
PROCESSING CENTRE  
  
BANK OFFICIAL

1735-6 (7/99 - UOI = 1 x PK250

