

DATED

26th August

2001

THE ENVIRONMENT AGENCY (1)

SOVEREIGN HARBOUR LIMITED(2)

EASTBOURNE HARBOUR COMPANY LIMITED(3)

CARILLION CONSTRUCTION LIMITED (4)

SOVEREIGN HARBOUR MARINA LIMITED (5)

AND

SOVEREIGN HARBOUR TRUST (6)

SOVEREIGN HARBOUR BEACHES SEA DEFENCE DEED



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THIS DEED is made on 26th day of August 2001

BETWEEN:

- (1) **THE ENVIRONMENT AGENCY** of Rio House, Waterside Drive, Aztec West, Almondsbury, Bristol BS12 4UD (the "**Agency**");
- (2) **SOVEREIGN HARBOUR LIMITED** (Company No.2217605) of Birch Street, Wolverhampton WV1 4HY ("**SHL**")
- (3) **EASTBOURNE HARBOUR COMPANY LIMITED** (Company No.1141203) of Birch Street, Wolverhampton WV1 4HY ("**EHCL**")
- (4) **CARILLION CONSTRUCTION LIMITED** (Company No. 00594581) of Birch Street, Wolverhampton WV1 4HY ("**Carillion**");
- (5) **SOVEREIGN HARBOUR MARINA LIMITED** (Company No. 2742959) of Birch Street, Wolverhampton WV1 4HY (the "**Harbour Company**"); and
- (6) **SOVEREIGN HARBOUR TRUST** (Company No.4125834) of Windsor House, 6-10 Mount Ephraim Road, Tunbridge Wells, Kent TN1 1EE (the "**Trust Company**");

WHEREAS:

- (A) the objective of the Agency is to secure, subject to its statutory functions and to instructions and guidance by the relevant ministers, under the most economically advantageous, technically sound and environmentally acceptable circumstances, the establishment and maintenance of flood defences in England and Wales in a manner consistent with the conservation of natural resources and applicable legislation and bye-laws;
- (B) certain of the functions of Southern Water Authority were first transferred to the National Rivers Authority pursuant to the Water Act 1989 and the Water Act 1989 (Commencement No. 1) Order 1989 (1989/1146) from 1st September 1989 and were subsequently transferred to the Agency pursuant to the Environment Agency (Transfer Date) Order 1996 (1996/234) from 1st April 1996;
- (C) the Southern Water Authority, SHL EHCL, Carillion and others entered into the 1988 Deed in contemplation of the construction of a harbour pursuant to the Eastbourne Harbour Acts 1980 and 1988;
- (D) on 22 November 1991 Crumbles Harbour Village Limited changed its name to Sovereign Harbour Limited;
- (E) on 30 July 1999 Tarmac Construction Limited changed its name to Carillion Construction Limited;
- (F) on completion of a conditional sale and purchase agreement dated 1 June 1988 EHCL became a wholly owned subsidiary of SHL;
- (G) the Trust Company wishes to enter into this Agreement in pursuance of its objects.
- (H) the parties wish to set out their agreement as to Sovereign Harbour.

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Deed the following words shall have the following meanings:

"Access Method Statement" means the statement set out in Schedule 6 as the same may from time to time be revised to take account of any necessary changes pursuant to Clause 3.2.2, any such change to be agreed between SHL, the Harbour Company and the Agency which shall be binding on all parties to this agreement;

"Agreement" means this deed including the recitals and schedules hereto;

"AOD" means above ordnance datum;

"Beach Defence Material" means shingle with a median diameter of 12 mm or greater of similar origin, colour and petrological composition to that found on the beaches at Pevensy Bay and Eastbourne;

"Contract Year" means the period of time from 1st April to 31st March with the exception of (a) the first contract year which shall start on the date of Handover and end on the following 31st March, and (b) the final contract year which shall end on the date of termination of this Agreement and commence on 1st April preceding it;

"Dwelling" means a house, flat, apartment, maisonette or other residential accommodation designed for use as a separate unit of accommodation (whether or not it or its residents also enjoy the use of any communal rooms or areas and whether or not it forms part of a larger building);

"Handover" means the handover of the Rock Revetment Works and the Key Physical Features in accordance with the Handover Procedure;

"Handover Procedure" means the procedure set out in Schedule 7;

"Harbours" means the following structures at Sovereign Harbour: the outer harbour breakwaters including any new spur and any other additions or modifications thereto, the inner and outer harbours and the locks connecting them, the west and north harbours, harbour walls, bridges and associated structures and all connecting waterways;

"Harbour Maintenance Account" means the account referred to at Clause 10.2.1(e)(iii);

"Harbour Maintenance Works" means such works as may from time to time be considered necessary by the Harbour Company for the maintenance of the Harbours;

"Householder" means the person who for the time being owns a freehold estate in a Dwelling or a lease of a Dwelling granted for a term of at least 99 years at a premium in the area shown in drawing SH3 forming Schedule 5;

"Key Physical Features" means the features of the North East Beach described in Schedule 1;

"Littoral Drift Provisions" means the provisions set out in Clause 3 of this Agreement;

"Rentcharge" means a rentcharge in one of the forms set out in Schedule 2;

"Rock Revetment Works" means the works described in Schedule 3;

"1988 Deed" means the agreement dated 9th June 1988 between (1) Crumbles Harbour Village Limited, (2) Tarmac Construction Limited, (3) Eastbourne Harbour Company Limited, (4) Thomas Sydney Egerton and Ian Hamish Leslie Melville, (5) Andrew Robert Buxton Duke of Devonshire, and (6) Southern Water Authority;

"North East Beach" shall have the meaning ascribed to it in Schedule 1;

"Sea Defence Works" means the works specified in Clause 4.3;

"Southern Water Rentcharge" or **"SW Rentcharge"** means that part of the payments secured by the Rentcharges as shall equal the sum calculated by multiplying £75 by A/B where A is the index of retail prices last published by 1st December immediately preceding the due date for payment and B is 103.4 being the amount of such index as at 1st December 1987;

"South West Beach" shall have the meaning ascribed to it in Schedule 1;

"Sovereign Harbour" means the marina and mixed use development at Sovereign Harbour, Pevensey Bay Road, Eastbourne, East Sussex shown within the black line on drawing SH3 at Schedule 5;

"Stockpile" means the Beach Defence Material Standing to the South West side of the Harbour shown with the black line and labelled "Stockpile" on drawing SH4 at Schedule 5;

"Surplus Beach Defence Material" means any Beach Defence Material which is excess of that which is required to maintain the volume of the South West Beach as set out in Schedule 1;

"Table" means the table set out in Schedule 4 and references to **"columns"** means columns in such table;

"Trust Account" means a bank account held in the name of the Trust Company for the purpose of holding the Trust Fund Income;

"Trust Fund Income" means the income of the Trust Company from the Southern Water Rentcharges in any Contract Year;

"Working Day" means any day excluding Saturday, Sunday and any public holiday in England;

1.2 Interpretation

1.2.1 References to amounts expressed to be **"Indexed"** are references to such amounts multiplied by:

$$\frac{\text{Index1}}{\text{Index2}}$$

where **Index1** is the value of retail price index (published in Table 5 of Business Monitor (MM23) published by the Office of National Statistics (or any index that replaces it, in connection with the Rentcharges being that fixed under Clause 3.2 of the Rentcharges) most recently published prior to the relevant payment date. **Index 2** is the value of the same index published November 2000 being 172.1.

- 1.2.2 References to the singular (including references to defined terms) shall include references to the plural and vice versa, words denoting one gender shall include all genders and references to persons shall include corporations and vice versa.
- 1.2.3 References to **Clauses** are to clauses in this Agreement, to **Schedules** are to schedules in this Agreement and to **Paragraphs** are to paragraphs in the schedules and schedule, clause or paragraph headings shall not affect the construction of this Agreement or the schedules.
- 1.2.4 References to a document being in the **agreed form** means that the draft of such document has been agreed between the parties and initialled by them for identification purposes only, prior to the execution of this Agreement.
- 1.2.5 Any party to this Agreement shall be construed so as to include its successors, transferees and assigns save that (i) in the case of the Agency its successors, transferees and assigns shall be limited to its statutory successors from time to time in respect of the Agency's flood defence functions and (ii) in the case of the Harbour Company such shall mean any person to whom land which is the site of the Harbours and/or the operation thereof is transferred and to which the provisions of the Eastbourne Harbour Acts 1980 and 1988 apply.

2. THE 1988 DEED

2.1 During the currency of this Agreement:-

- (a) clause 3 of the 1988 Deed, is replaced by the provisions of this Agreement as between the parties hereto.
- (b) Each of the parties shall use its reasonable endeavours to assist each of the other parties in relation to the implementation of this Agreement;
- (c) The parties hereby waive any and all rights that they have or may have against any of the other parties in respect of clause 3 of the 1988 Deed. Subject to the provisions of (a) and (b) above, the 1988 Deed shall remain in full force and effect notwithstanding this Agreement.

2.2 Not used

2.3 Notwithstanding that clause 9(1) of the 1988 Deed requires that the Developers (as such expression is defined in the 1988 Deed) procure the creation and funding of a trust by 9th June 1997 and that the Trust Company was not incorporated until 14th December 2000, the Agency agrees that, for the purpose of Clause 9(2) of the 1988 Deed, its rights are hereby waived but the Guarantor (being Carillion Construction Limited) is not released from its obligations arising from Clause 9(5) of the 1988 Deed (which Guarantee will apply to the Harbour Company in substitution for SHL

and EHCL in the event of the proposed transfer referred to in Clause 15 hereof), until 6 years from 31st July 2001.

- 2.4 Nothing in this Agreement shall be taken as an acceptance by any party to this Agreement that Clause 3 of the 1988 Deed imposes any obligation, or acknowledges the existence of any obligation, on any party to this Agreement (or its predecessors) in relation to the maintenance of sea defences and/or the prescribed foreshore as such term is defined in the 1988 Deed.

3. LITTORAL DRIFT PROVISIONS

3.1 Surplus Beach Defence Material

3.1.1

(a) The Harbour Company shall, to the extent that such access is not over an adopted highway, at its own expense provide or procure the provision to the Agency of access consistent with the Access Method Statement from the South West Beach to the North East Beach and back for up to 700 return journeys each Contract Year and in addition up to 4000 return journeys in aggregate in the first three Contract Years in order to permit the removal of the Surplus Beach Defence Material it being the present intention that, subject to the Agency's permissive powers, the Stockpile is removed by the Agency no later than three years from the date of Handover.

(b) On or about the date hereof the Agency, SHL and EHCL shall enter into or procure that their respective successors in title shall enter into an agreement made under s47 of the Southern Water Act 1982 in the form set out in Schedule 10. For the avoidance of doubt entry into such agreement or any future agreements of a similar nature shall not be deemed to be either a waiver of or in satisfaction of the Harbour Company's obligation in clause 3.1.1(a) above which the parties acknowledge is a continuing obligation throughout the currency of this agreement.

3.1.2 Subject to Clauses 3.2 and 4.3, the Agency shall, subject to receiving any necessary consents, remove or shall procure the removal of the Surplus Beach Defence Material from time to time but shall not necessarily do so in each Contract Year, circumstances being such that no Surplus Beach Defence Material is removed from the South West Beach having regard to the relevant accretion parameters. In such circumstances, the Agency shall nevertheless be regarded as having performed the Littoral Drift Provisions and shall remain entitled to the contribution pursuant to Clause 3.2 in each Contract Year, given it is agreed that the contributions by the Trust Company are for the long term implementation of the Littoral Drift Provisions by the Agency in the exercise of its statutory functions. The Agency may utilise the access provided in accordance with Clause 3 in order so to do and to the extent that it does so, the Agency shall comply with the Access Method Statements.

3.1.3 During the currency of this Agreement the parties consent to the removal of the Surplus Beach Defence Material and the transfer of the Stockpile under this Agreement.

- 3.1.4 As between the parties for the purposes of this Agreement the Agency shall have full and unencumbered title to the Stockpile.
- 3.1.5 Subject to Clause 3.1.6, if Beach Defence Material accumulates on the South West Beach to such an extent that the Harbour Company reasonably considers that if such Beach Defence Material is not removed from the South West Beach it is likely to cause an obstruction to the Harbours, then the Harbour Company shall be entitled to remove such Surplus Beach Defence Material to the extent necessary to remove the likelihood of such obstruction.
- 3.1.6 Prior to taking any action to remove Surplus Beach Defence Material from the South West Beach pursuant to Clause 3.1.5, the Harbour Company shall provide not less than 30 Working Days notice to the Agency of its intention to do so. If, within such 30 Working Days the Agency removes sufficient Surplus Beach Defence Material to remove the risk of an obstruction to the Harbours, or if the Agency is taking such steps as it can reasonably be expected to take so as to remove such risk as soon as reasonably possible, then the Harbour Company shall not be entitled to remove Surplus Beach Defence Material from the South West Beach.
- 3.1.7 If the Harbour Company removes Surplus Beach Defence Material from the South West Beach in accordance with Clause 3.1.5 then the Agency shall pay from the monies received under Clause 3.2.1. (limited to the amount so received in any one year) the reasonable costs of such action. Such Surplus Beach Defence Material as is so removed shall be deposited at such place as the Agency may reasonably nominate or, in default of such nomination, on the North East Beach.
- 3.1.8 The right to remove Surplus Beach Defence Material at the Agency's cost in accordance with Clause 3.1.5 shall not be interpreted to confer on the Harbour Company a right to dredge the Harbours or elsewhere at the Agency's cost or to carry out any other works at the Agency's expense.
- 3.1.9 If the Harbour Company requires the Stockpile to be removed at any time it may deposit it (all at the Harbour Company's own cost and expense) on 30 days prior written notification to the Agency, at the North East Beach or at such place as the Agency may reasonably nominate within a 6 kilometre travel distance thereof.
- 3.1.10 the Agency shall have no liability for making good any damage to any unadopted road arising through removal of the Stockpile and the Surplus Beach Defence Material by the Agency or its sub-contractors in compliance with the Access Method Statement;

3.2 Contribution in respect of the Littoral Drift Provisions

- 3.2.1 Subject to Clauses 10 and 14, for each Contract Year, the Trust Company shall pay to the Agency in each Contract Year the relevant amount set out in Column D of the Table as a contribution to the ongoing costs of the Littoral Drift Provisions. Such sum shall be Indexed.
- 3.2.2 All liabilities, proceedings, costs, claims and other expenditure incurred as a result of:

- (a) the use of the access as set out in the Access Method Statement or any access required in substitution therefor, to the extent that the same are not caused by the Agency acting outside the terms of the Access Method Statement.
- (b) any change to the Access Method Statement necessitated by (i) any third party action, (ii) any determination of legal rights by any court, tribunal or any other body or forum having the power to make a legally binding decision (whether or not that decision can be appealed) and (iii) any environmental impact assessment.

are not included in the fixed sum provided for under Clause 3.2.1 and accordingly shall (subject to Clause 14.2) be payable by the Trust Company to the Agency pursuant to Clause 10.2.1(c) to the extent funds are available in accordance with the terms of Clause 10.2.1.

- 3.2.3 During the period of 4 years from the date of Handover, the Harbour Company will indemnify the Agency in connection with any shortfall in each Contract Year (including in relation to any lack of capacity of the Trust Company to enter into or to perform its obligations under this Agreement), being a sum equal to the difference between the amount due from the Rentcharges in respect of the Littoral Drift Provisions and the amount actually received by the Agency in respect of the Littoral Drift Provisions calculated and paid in accordance with Clause 7 provided that this indemnity shall not apply to any breach by the Trust Company under this Agreement for reasons other than lack of capacity.
- 3.2.4 To the extent that the Trust Company is in receipt of funds in relation to which the Harbour Company has indemnified the Agency pursuant to Clauses 3.2.3 or 4.2.3 the Harbour Company shall be entitled to recover the amounts so indemnified from the Trust Company.
- 3.2.5 To the extent that any shortfall referred to at Clause 3.2.3 is due to non-collection of Rentcharges, the Trust Company shall assign to the Harbour Company its right to collect and retain such uncollected Rentcharges.

4. SEA DEFENCE WORKS

4.1 Nature of Agency's General Sea Defence Functions

- 4.1.1 Notwithstanding Clauses 3.1.2 and 4.3, all parties accept and agree that the Agency has permissive powers only. However, the Agency acknowledges that in the exercise of its discretion it will have regard to the terms of this agreement.

4.2 Contribution for and Performance of Sea Defence Works

- 4.2.1 Subject to Clause 10, the Trust Company shall pay to the Agency in each Contract Year the relevant amount set out in Column F of the Table.
- 4.2.2 The parties acknowledge that in any given Contract Year circumstances may be such that there is no Beach Defence Material deposited on the North East Beach. Subject to performance by the Agency of its obligations pursuant to Clause 4.3, in such circumstances the Agency shall be regarded as having performed the Sea Defence Works and shall

remain entitled to the contribution pursuant to Clause 4.2.1 in each Contract Year, given it is agreed that the contributions by the Trust Company are for the long term implementation of the Sea Defence Works by the Agency in the exercise of its statutory functions.

4.2.3 During the period of 4 years from the date of Handover, the Harbour Company will indemnify the Agency in connection with any shortfall in each Contract Year (including in relation to any lack of capacity of the Trust Company to enter into or to perform its obligations under this Agreement), being a sum equal to the difference between the amount that would be due from the Rentcharges in respect of Sea Defence Works in accordance with Clause 10.2 and the amount actually received by the Agency in respect of Sea Defence Works calculated and paid in accordance with Clause 7 provided that this indemnity shall not apply to any breach by the Trust Company under this Agreement for reasons other than such lack of capacity.

4.2.4 To the extent that any shortfall referred to at Clause 4.2.3 is due to non-collection of Rentcharges, the Trust Company shall assign to the Harbour Company its right to collect and retain such uncollected Rentcharges, it being agreed that payment by the Harbour Company under Clause 3.2.3 and 4.2.3 are made on behalf of the Trust Company and represent advance payment of uncollected SW Rentcharges due under the Rentcharges.

4.3 The Sea Defence Works

With effect from the date on which the Handover of the Key Physical Features and Rock Revetment Works is completed in accordance with the Handover Procedure and Clause 5, the Agency shall carry out such works along the North East Beach as may be considered necessary in its complete discretion to satisfy the Agency's own criteria from time to time as to the level of sea defence required to alleviate the risk of tidal flooding to coastal developments.

4.4 Information

The Agency shall provide the Trust Company with such information relating to the carrying out of the Sea Defence Works from time to time as is within the Agency's possession and control provided that the provision of such information would not put the Agency in breach of its contractual or statutory obligations to any third party as to confidentiality or otherwise.

4.5 Consequences

- (a) All Parties accept and agree that the only consequence which flows from a failure, or refusal, by the Agency to carry out the Sea Defence Works, for whatever reason, shall be non-payment by the Trust Company of the sums set out in Clause 4.2.1 and/or termination under Clause 12.2(a).
- (b) All Parties accept and agree that the only consequence which flows from a failure, or refusal, by the Agency to carry out the Littoral Drift Provisions, for whatever reason, shall be non-payment by the Trust Company of the sums set out in Clause 3.2.1 and/or exercise of the Harbour Company's rights under Clause 3.1.5.

- (c) Without prejudice to the discretion of the Trust Company or other rights of the Trust Company, if it is determined by judicial review that the Agency has been unreasonable in exercising its discretion not to carry out the Littoral Drift Provisions or the Sea Defence Works, the Trust Company shall be entitled not to pay the corresponding Contribution and/or (in the case of the Sea Defence Works) to terminate under Clause 12.2(a).

5. THE ROCK REVETMENT WORKS AND INSTALLATION OF KEY PHYSICAL FEATURES

- 5.1 The Harbour Company shall at its own cost and expense (subject to Clause 5.3):
- (a) use all reasonable endeavours to obtain as soon as reasonably practicable all necessary consents to carry out the Rock Revetment Works;
 - (b) subject to obtaining those consents procure the carrying out and achievement of Handover of the Rock Revetment Works as soon as reasonably practicable having regard to weather and other conditions which entitle the contractor to an extension of time under the contract for the Rock Revetment Works other than breach by the Harbour Company; and
 - (c) install and complete the installation of the Key Physical Features as soon as reasonably practicable having regard to weather and other conditions as aforesaid at (b) above using Beach Defence Material which may be sourced from the stockpile of material existing to the North East side of the Harbours to the extent that such stockpile comprises Beach Defence Material

all in accordance with this Agreement

- 5.2 The Harbour Company shall provide the Agency with copies of the contract and the tender evaluation document written by Halcrow, both in relation to the Rock Revetment Works.
- 5.3 The Trust Company shall pay to the Harbour Company £575,000 by instalments as set out in Clause 9 as a contribution towards the Rock Revetment Works.
- 5.4 The Harbour Company shall procure that the collateral warranties in favour of the Agency substantially in the form set out in Schedule 8 are obtained from the contractor(s) carrying out the Rock Revetment Works and from the consulting engineers advising the Harbour Company in relation to the performance of the contract for the carrying out of the Rock Revetment Works.
- 5.5 The Harbour Company shall procure that the benefit of the construction contract (to the extent of the Rock Revetment Works) is assigned to the Agency with effect from the date of Handover by means of a deed of assignment in the form attached hereto as Schedule 12.

6. HARBOUR MAINTENANCE WORKS

- 6.1 The Harbour Company shall construct a new spur to the harbour breakwater as detailed in Schedule 3.

- 6.2 The Harbour Company shall maintain the outer harbour (including the new spur) in accordance with Clause 10 of the 1988 Deed with a substitution of 5.5 metres AOD for 5.0 metres AOD and shall also maintain either the locks giving access to the inner harbour or the emergency barrier used in place of the locks (all of which forms part of the Harbour Maintenance Works under Clause 10.2.1(e)(iii)).

7. CONTRIBUTIONS TO THE AGENCY

7.1

- (a) The Trust Company shall provide bank statements in relation to the Trust Account on 1st of each March, June, September and December in any Contract Year commencing on 1st March 2002, together with a list of Rentcharges executed or assigned in favour of the Trust Company for the previous quarter, the first such list to be provided pursuant to this Agreement to contain a list of all Rentcharges executed and assigned, up to the date of provision of the list.
- (b) Prior to May 1st in each Contract Year the Trust Company shall pay to the Agency and the Harbour Maintenance Account those amounts due to the Agency and due for Harbour Maintenance Works respectively under Clause 10.
- (c) Prior to April 10th in each Contract Year the Trust Company shall provide to the Agency details of all amounts allocated under Clause 10 on March 31st of the previous Contract Year.

- 7.2 Any shortfall payments due under each of Clauses 3.2.3 and 4.2.3 shall be calculated as follows:

- (a) in order to calculate the difference between the SW Rentcharges due and the SW Rentcharges actually collected the Agency shall recalculate all of the allocations made under Clause 10 substituting the total value of the SW Rentcharges due in the previous Contract Year (calculated from the Rentcharge list dated 1st March in that previous Contract Year) for the balance of the Trust account as at 31st March in that previous Contract Year. The Agency will provide a statement of the recalculation to the Trust Company and the Harbour Company by 30th April in each Contract Year.
- (b) Prior to 31st May in each Contract Year the Harbour Company shall pay to the Agency any shortfall between those amounts calculated as due to the Agency under sub-clause 7.2(a) above and those amounts received by the Agency under sub-clause 7.1(b) above.

8. THE RENTCHARGE AND DEED OF ASSIGNMENT

SHL, EHCL the Harbour Company and the Trust Company agree on or before the date of this Agreement to enter into the deed of assignment of rentcharges in the form set out at Schedule 2.

9. **PAYMENTS FOR THE ROCK REVETMENT WORKS/INITIAL ALLOCATION FOR HARBOUR MAINTENANCE**

9.1 The following payments shall be made subject to receipt by the Trust Company of corresponding sums from SHL under the Deed of Assignment of Rentcharges:-

- (a) the sum of £200,000 (gross of any tax) is to be paid by the Trust Company towards the cost of the Rock Revetment Works within 30 days from the date of the contract for such works; and
- (b) the sum of £200,000 (gross of any tax) is to be paid by the Trust Company into its Harbour Maintenance Account upon receipt thereof.

9.2 From the date of this Agreement, the sum of £375,000 for the balance of the cost of the Rock Revetment Works shall (subject to clause 9.3) be paid by the Trust Company to the Harbour Company in instalments at the rate of £75,000 a year and proportionately less for a period of less than a year in respect of the first instalment for the period from the date of Handover to 31 March 2002, which first instalment is to be paid on 1 April 2002, and thereafter £75,000 on each succeeding 1 April, the final instalment being the remaining unpaid balance from the original sum of £375,000.

9.3 To the extent that, pursuant to Clause 10, there is insufficient money in the Trust Account in any Contract Year to pay an instalment (as referred to at Clause 9.2) in full then, subject to Clause 10.2.2(a) and notwithstanding Clause 14.3, the shortfall shall be accumulated and paid in the next following Contract Year and in each subsequent Contract Year until the whole amount of any shortfall is discharged. However, unless there is an accelerated payment under Clause 10.2.2(a) no more than £75,000 shall be paid by the Trust Company to the Harbour Company in any Contract Year in respect of payments due under this Clause 9. Any Instalment or part thereof that is so accumulated shall not incur interest during the period in which it is accumulated or otherwise.

10. **TRUST FUND INCOME AND PAYMENTS**

10.1 **Collection of Trust Fund Income**

The Harbour Company and/or the Trust Company shall take reasonable measures to promptly collect or procure the prompt collection of the Southern Water Rentcharges and to the extent that the same is so received shall pay the same into the Trust Account but without liability (in the case of the Trust Company) other than as trustees therefor.

10.2 **Payment Cascade (Maintenance)**

10.2.1 On 31st March in each Contract Year, the Trust Company shall allocate the balance of the Trust Account in or towards payment of the amounts referred to in (a) to (e) inclusive below in the following order:

- (a) proper collection and administration costs including accruals as appropriate by the Trust Company during that Contract Year;
- (b) payment to the Agency of the amount (Indexed) specified in column D of the Table;

- (c) payment to the Agency of all costs arising during that Contract Year from implementation of clause 3.2.2;
- (d) an amount not exceeding £20,000 Indexed together with the accruals referred to at Sub-clause (a) above which the parties acknowledge shall be accumulated as a credit balance in the Trust Account to provide for Trust Company expenditure in the next subsequent Contract Year;
- (e) each of the following on a *pari passu* basis (that is simultaneously and to an equal extent);
 - (i) payment of the sums under Clause 9.2 up to an amount not exceeding the amount specified in column E of the Table;
 - (ii) payment to the Agency for the Sea Defence Works up to an amount not exceeding the amount specified in column F of the Table ; and
 - (iii) payment for the Harbour Maintenance Works up to an amount not exceeding the amount specified in column G of the Table, which shall be paid into a separate bank account.

10.2.2 To the extent that the Trust Account balance in any Contract Year exceeds £20,000 after the payment of the sums specified in Clause 10.2.1, then such excess shall be allocated to each of the following on a *pari passu* basis (that is simultaneously and to an equal extent):

- (a) the acceleration of payment of the deferred payment. (Such acceleration shall not reduce the sum total of the Instalments);
- (b) payment for the Sea Defence Works; and
- (c) payment for the Harbour Maintenance Works.

10.2.3 To the extent the Trust is in receipt of funds in relation to which the Harbour Company has indemnified the Agency pursuant to Clauses 3.2.3 or 4.2.3, the Harbour Company shall be entitled to recover the amounts so indemnified from the Trust Company.

11. GUARANTEE

Carillion hereby unconditionally and irrevocably guarantees (notwithstanding any insolvency, winding-up, liquidation or other similar event in relation to SHL, EHCL and the Harbour Company) to the Agency the due and punctual performance and observance by the Harbour Company of its obligations under Clauses 3.1.9, 3.2.3, 4.2.3, 5, 6.1 and 8 of this Agreement and the payment of costs under Clause 13.1 of this Agreement.

12. TERM AND TERMINATION

12.1 This Agreement continues in force until it is terminated in accordance with this Clause 12.

12.2

- (a) This Agreement may not be terminated except with the agreement of all parties or as set out in sub-Clauses (b), (c) or (d) of this Clause or Clause 14.2. The Trust Company and the Agency shall only have the right to terminate this Agreement in accordance with this Clause 12 or Clause 14.2.
- (b) If either the Agency or the Trust Company gives notice of its intention to terminate this Agreement then, subject to Clause 12.3, this Agreement shall terminate 12 months from the date of such notice. Such notice shall not be given before the 5th anniversary of this Agreement unless all the parties agree otherwise. The Trust Company shall not be entitled to give such notice unless the Agency is in default of its obligations set out in this Agreement.
- (c) If the circumstances set out in Clause 14.2 arise, this Agreement shall automatically terminate on the expiry of the 6 month period referred to therein.
- (d) If access in accordance with the Access Method Statement is not available to the Agency to enable it to carry out the Littoral Drift Provisions, the Agency shall notify the Harbour Company in writing and the Agency and the Harbour Company shall discuss alternative methods of access for a period of 60 days. If arrangements for suitable alternative access are not agreed and provided within that period the Agency shall be entitled to terminate this Agreement on notice in writing, such notice to be of immediate effect.
- (e) If it is established that the SW Rentcharges (rather than interest on them) become subject to Corporation Tax in the hands of the Trust Company (without deduction for payments allocated and made under Clause 10) the Agency shall be entitled to terminate this Agreement by Notice in writing, such Notice to be of immediate effect.

12.3 The rights of the parties under this Clause 12 shall be without prejudice to any claim that any party may have against any other for damages for any prior breach of contract.

13. COSTS

13.1 The Harbour Company shall pay the Agency's reasonable legal costs in relation to the negotiation and completion of this Agreement and associated agreements to the extent that such costs are incurred prior to the execution of this Agreement.

14. TRUST COMPANY CONSTITUTION

14.1 The Trust Company shall amend its Articles of Association (subject to the approval of the Charity Commissioners) to enable the Agency and the Harbour Company (if and so long as they so desire) to appoint an equal number of persons both as members and directors of the Trust Company to the intent that those appointed by such parties shall have an equality of votes and with the chairman not being entitled to a casting vote. The Agency and the Harbour Company and the current members of the Trust Company shall take all such steps as may be reasonably required to achieve this entitlement.

14.2 Without prejudice to Clauses 3.2.3 and 4.2.3, if for any reason the Trust is unable and is likely to remain unable to collect the SW Rentcharges for a continuous period of 90 days or more or in the event of the winding up or insolvency of the Trust Company then (i) the Agency shall have the right to require the Harbour Company to serve written notice on the Trust Company in accordance with Clause 6.1 of the Deed of Assignment and the Harbour Company shall forthwith serve such notice on the Trust Company (with a copy to the Agency), or (ii) the Harbour Company shall have the right to serve notice on the Trust Company in accordance with Clause 6.1 of the Deed of Assignment (with a copy to the Agency), to the effect that such circumstances have arisen. Forthwith upon the service of such notice the Rentcharges and all sums held by the Trust Company shall be assigned and transferred to the Harbour Company for the Harbour Company to hold on trust and apply for the purposes of this Agreement. Provided that the Trust Company will then be released by the Harbour Company from all obligations in connection with such Rentcharges and their application. The Harbour Company shall pay such monies in accordance with the provisions of this Agreement as though the provisions as to payment named the Harbour Company instead of the Trust Company. For a period of six months from the date of such notice the parties will use their reasonable endeavours to reach an alternative solution to achieve the provisions of this Agreement. If an alternative solution acceptable to both parties has not then been reached, this Agreement shall be terminated in accordance with Clause 12.2(c).

14.3 It is agreed that the liability of the Trust Company under this Agreement in any Contract Year shall be limited to the funds standing to the credit of the Trust Account from time to time over and above the £20,000 credit balance to be held in the Trust Account as provided for by Clause 10.2.1(d).

15. HARBOUR COMPANY RESTRUCTURING

15.1 The Agency hereby consents pursuant to clause 5 of the 1988 Deed to the proposed transfer of the Harbours by SHL and EHCL to the Harbour Company and (with effect from the date that such transfer takes place) in consideration of the Harbour Company entering into this Agreement the Agency releases SHL and EHCL from further liability under the 1988 Deed to the extent that such liability relates to the Harbours and to the extent that such liability has been assumed by the Harbour Company. The Harbour Company hereby covenants with the Agency to be bound by Clause 3 of the 1988 Deed if the suspension referred to in Clause 2.1(a) hereof ceases to apply, and confirms that it is bound by the provisions of Clause 5 of the 1988 Deed. This Clause shall survive any termination of this Agreement.

15.2 During the currency of this Agreement, on the occasion of any future disposal by the Harbour Company of the Harbours, the Harbour Company shall procure that its successor covenants by deed with the Agency to observe and perform the obligations of the Harbour Company under this Agreement and, the provisions of Clauses 5(1) and 5(2) of the 1988 Deed shall apply to such disposal as if references to Clause 3 therein were references to the obligations of the Harbour Company under this Agreement and references to the Harbour therein were to the Harbours under this Agreement. In addition, on the occasion of any such future disposal, the obligations of Carillion under Clauses 2.3 and 11 shall continue unless and until a substitute guarantor satisfactory to the Agency covenants by deed with the Agency to observe and perform the obligations of Carillion under Clauses 2.3 and 11 of this Agreement.

16. MISCELLANEOUS

16.1 Alterations or Variations

No purported alteration/variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each party hereto.

16.2 Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

16.3 Entire Agreement

This Agreement (together with the 1988 Deed and all documents which are required by the terms of this Agreement to be entered into by the parties or any of them and all other documents that are in the agreed form), sets out the entire agreement and understanding between the parties in connection with the matters described in this Agreement.

16.4 Force Majeure

If and to the extent that any party is hindered or prevented by circumstances not reasonably foreseeable and not within its reasonable ability to control, from performing any of its obligations under this Agreement and promptly so notifies the other parties, giving full particulars of the circumstances in question, then the party so affected shall be relieved of liability to the other parties for failure to perform such obligations, but shall nevertheless use its best endeavours to resume full performance thereof without avoidable delay, and pending such resumption shall permit and shall use its best endeavours to facilitate any efforts that the other parties may make to procure alternatives to the affected party's performance.

16.5 Further Assurance

Each of the parties shall, and shall use their respective reasonable endeavours to procure that any necessary third parties shall, execute and deliver to the other parties such other instruments and documents and take such other action as may reasonably be required to fulfil the provisions of this Agreement in accordance with its terms.

16.6 Notice

All notices under this Agreement are to be in writing. They are to be sent to the addressees stated below, unless those addresses are subsequently revised by written notice. They may be delivered by hand or by first class post only. A notice delivered by hand is deemed to have been served when delivered (if within business hours) or otherwise when business hours next commence. A notice sent by first class post is deemed to have been served when business hours next commence after a period of 48 hours from posting. Business hours are 9.30 a.m. to 5.00 p.m. on any Working Day.

If to the Agency:

To: The Environment Agency (Sussex Area)
Saxon House

Little High Street
Worthing
West Sussex BN11 1DH
For the attention of the Area Manager

If to any of the other parties:

If to any of SHL, EHCL, Carillion or the Harbour Company, addressed to such company at

Birch Street
Wolverhampton
WV1 4HY
For the attention of the Company Secretary

and if to the Trust Company, addressed to it at

Windsor House
6-10 Mount Ephraim Road
Tunbridge Wells
Kent TN1 1EE
For the attention of the Company Secretary

16.7 Third Party Rights

This Agreement does not create any right under the Contracts (Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

16.8 Preservation of Rights

The waiver by any party of any right and the failure by any party to exercise any right or to insist on the strict performance of any provision of this Agreement shall not operate as a waiver of, or preclude any further exercise or enforcement of, that or any other right. All waivers shall be in writing.

16.9 Press Statements

The Agency and Carillion will use their reasonable endeavours to agree the content of any written statement or any pre-prepared written statement which is read out, issued by either of them to the press at any time up to 31st July 2005 or until Carillion is released from its obligations as Guarantor under the terms hereof, whichever is the sooner, where any such written statement specifically mentions this Agreement but not merely the subject matter of this Agreement save that nothing in this clause shall prevent or restrict the Agency from complying with any statutory obligation imposed on it or with European Community law.

16.10 Reference to Expert

16.10.1 Any question arising in connection with this Agreement which concerns the performance of the Littoral Drift Provisions or the Sea Defence Works, shall be referred to an expert to be agreed or (in default of express agreement within 10 Working Days of nomination of an expert by either party) appointed at the request of either party by the President for the time being of the Institution of Civil Engineers.

16.10.2 The written report of the expert so agreed or appointed shall as between the parties be conclusive evidence of:

- (a) All matters of fact therein found; and
- (b) All matters of opinion therein expressed as to which the evidence of an expert would be admissible in a court of law.

16.10.3 The charges of the expert shall be shared equally between the parties, who shall jointly and severally undertake liability to the expert for the payment thereof.

16.11 Agency Rights, Powers, Duties

For the avoidance of doubt, nothing herein continued or implied shall prejudice or affect the Agency's rights powers duties in the performance of its statutory functions and the powers duties and rights of the Agency may be fully and effectually exercised as if this Agreement had not been executed;

16.12 Prevention of Corruption

The Agency shall be entitled to cancel this Agreement and to recover from any Relevant Party the amount of any loss resulting from such cancellation, if any other party to this Agreement (the "Relevant Party") shall have offered or given or agreed to give any person any gift or consideration of any kind or if any Relevant Party shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916.

16.13 Jurisdiction and Applicable Law

This Agreement shall be governed by English law. Subject to Clause 16.10 and to the Housing Grants, Construction and Regeneration Act 1996, the parties irrevocably submit to the exclusive jurisdiction of the High Court of Justice of England in relation to any dispute arising out of or in connection with this Agreement.

IN WITNESS whereof this deed has been executed and delivered on the day and year first above written

Schedule 1

The North East Beach and the South West Beach

In this Agreement the following words shall have the following meanings:

"ABMS" means the Environment Agency aerial annual beach monitoring survey. Definition of the South West Beach and the North East Beach is made by reference to the ABMS section lines. Monitoring of the South West Beach and the North East Beach is made by topographical survey of the ABMS section lines. Additional lines 565A and 565B have been included for this purpose (see drawing SH4).

"Crest of the Defences" means all the area between the Front of the Crest of the Defences and Rear of the Crest of the Defences which area shall as at the time that the Agency commences the provision of the Sea Defence Works in accordance with Clause 4.3 be at a level between 6.0 and 6.5 mOD;

"Design Profile of the Defences" means the profile shown on Drg. No. SH1 annexed to this Schedule which profile shall be achieved as at the time that the Agency commences the provision of the Sea Defence Works in accordance with Clause 4.3;

"Front of Crest of the Defences" means the seaward edge of the Crest of the Defences at a level of between 6.0 and 6.5 mOD and is defined on drawing SH2 annexed to this Schedule and by the following points on the ABMS section lines:

<u>ABMS Section Line No.</u>	<u>Distance seawards from ABMS origin to Front of Crest (m)</u>
569	2.75
570	17
571	13
572	24
573	20
574	27
575	28

"North East Beach" means all that area bounded by:

- (a) To the south west, the centre line of the northern outer harbour arm.
- (b) To the north west (landwards), the Rear of Crest of the Defences
- (c) To the north east, a line on a bearing of 113 degrees through the origin of ABMS line 575 OS grid ref. 564869 102526
- (d) To the south east (seawards), the water level defined by Mean Low Water Springs at Eastbourne;

"North East Total Volume of Material" above 0.0 mOD shall be the sum of the Volumes of Material for ABMS sections 569 to 575 inclusive and as at the time that the Agency commences the provision of the Sea Defence Works in accordance with Clause 4.3 shall be equal to or greater than 257,000 m³

"Profile Area" for a particular ABMS line means the area seawards of the origin of that ABMS line bounded by the vertical line through the origin, a horizontal line at 0.0 mOD and the Profile of the Sea Defence through the origin;

"Profile of the Sea Defence" means the surveyed levels of the surface of the sea defence plotted to form a continuous outline along a line generally perpendicular to the Front of Crest

"Rear of Crest of the Defences" means a line parallel to and a minimum distance 40 m. landward of the Front of Crest of the Defences;

"South West Beach" means an area bounded by:

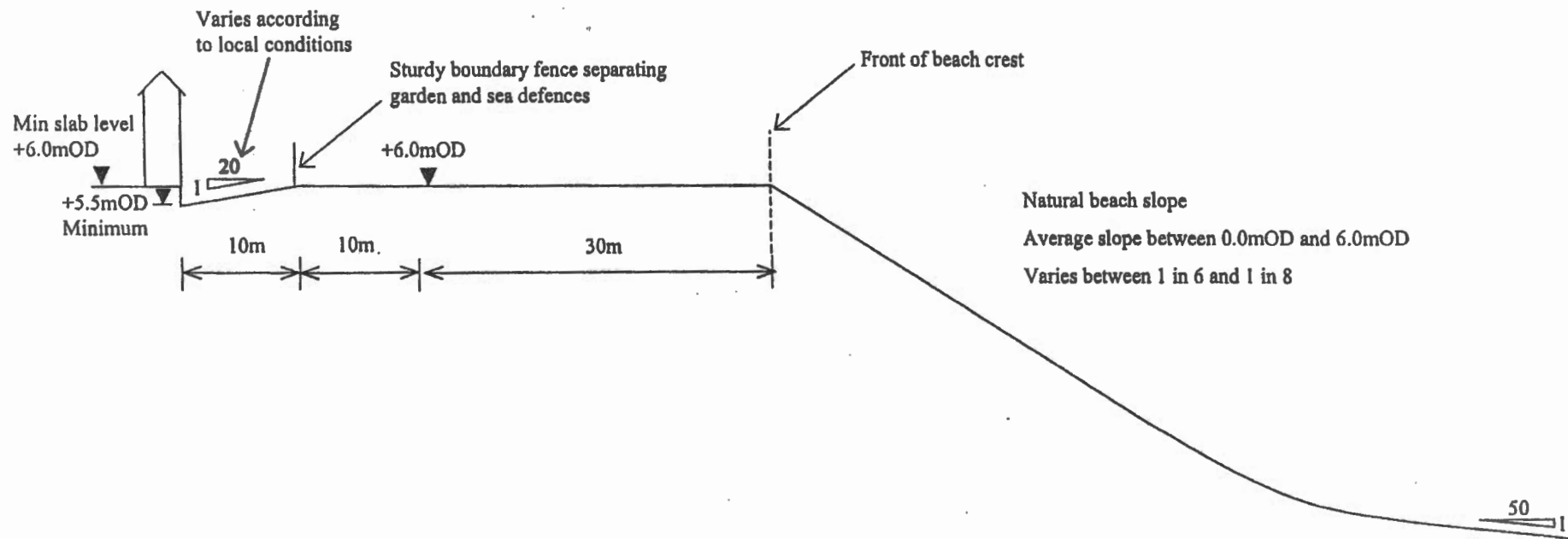
- (a) to the south west, a line on a bearing of 125 degrees through the origin of ABMS line 563 OS grid ref. 564254 101026;
- (b) To the north west by the black line shown on drawing SH4 to exclude the site of the Stockpile after the same has been removed;
- (c) To the north east, the centre line of the southern outer harbour arm;
- (d) To the south east (seawards), a line extending from the new rock spur to the Mean Low Water Springs level along ABMS line 563;

"South West Total Volume of Material" shall be that volume of material above 0.0 mOD calculated using ABMS sections 565, 565A, 565B and 566 and shall lie between 35,000m³ and 60,000m³;

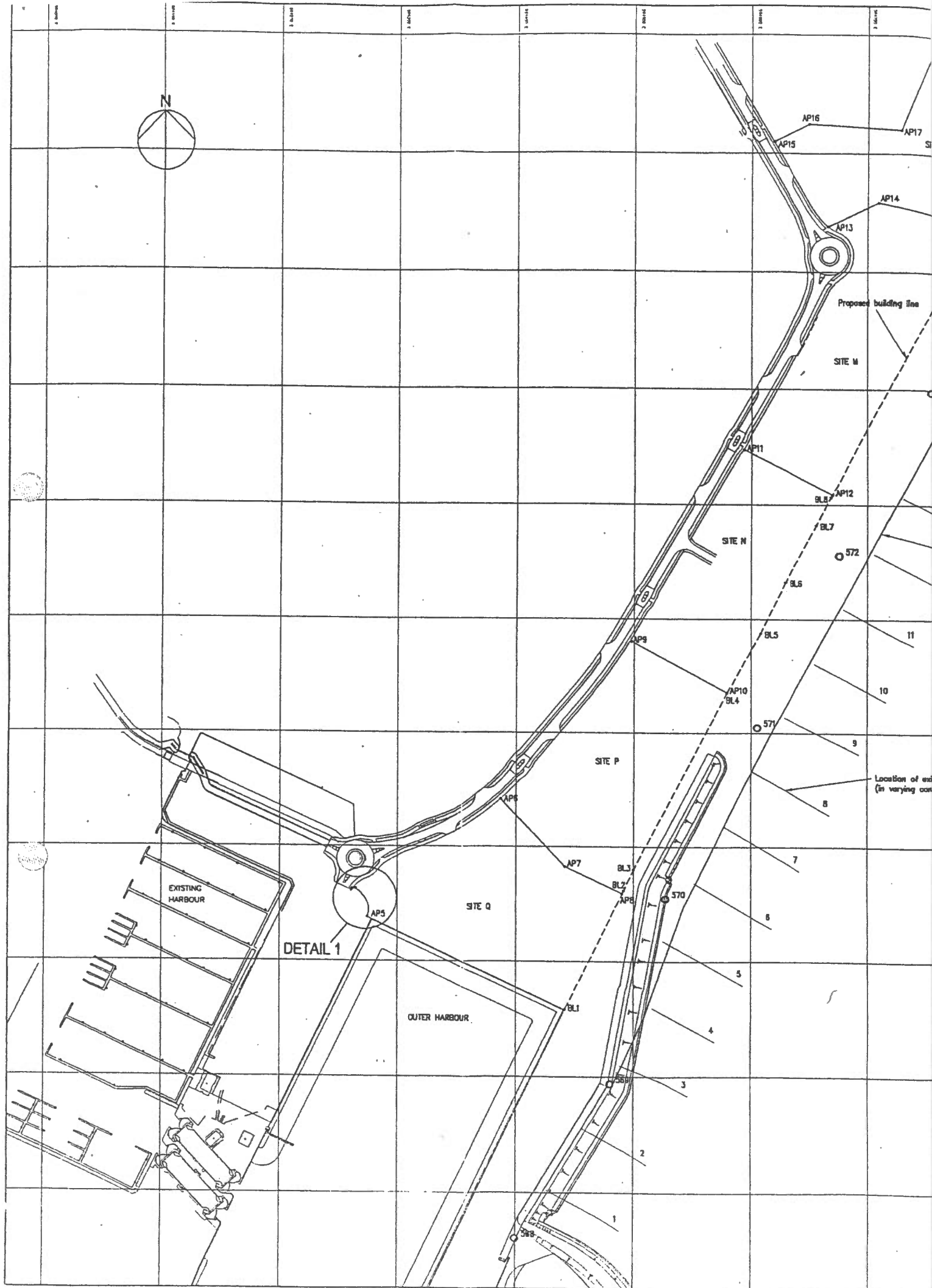
"Volume of Material" means the following volumes of Beach Defence Material above 0.0 mOD for a particular ABMS line present as at the time that the Agency commences the provision of the Sea Defence Works in accordance with Clause 4.3 and calculated by multiplying the appropriate Profile Area by the sum of half the distance between the origin of that ABMS line and the origin of the previous ABMS line and half the distance between the origin of that ABMS line and the origin of the next ABMS line:

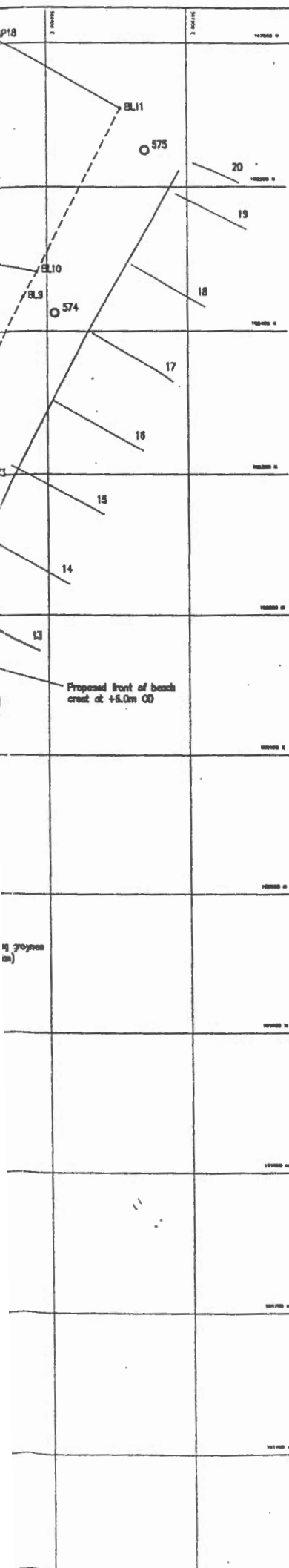
ABMS Section Number	Agreed Volume of Material (m ³)
569	23000
570	38000
571	34000
572	44000
573	35500
574	37500
575	45000
TOTAL	257,000

Design Profile of the Defences

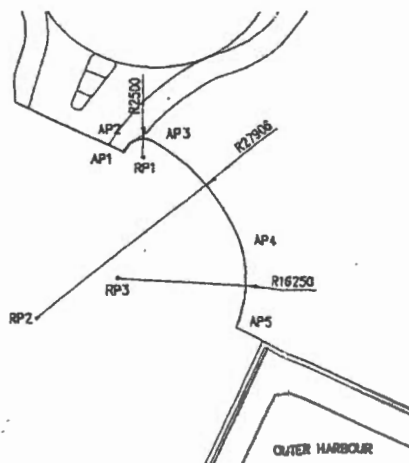


Drawing No. SH1

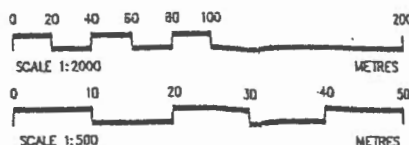




POINT	NORTHINGS	EASTINGS
SITE AREA CO-ORDINATES		
RP1	101860.637	564262.577
RP2	101839.417	564248.794
RP3	101844.702	564259.294
AP1	101861.382	564260.158
AP2	101862.532	564260.881
AP3	101862.821	564263.992
AP4	101849.425	564274.843
AP5	101837.728	564273.972
AP6	101941.557	564387.395
AP7	101882.539	564441.828
AP8	101858.253	564480.404
AP9	102082.400	564497.758
AP10	102035.511	564579.282
AP11	102247.848	564593.343
AP12	102208.815	564669.217
AP13	102438.557	564665.306
AP14	102458.914	564708.775
AP15	102509.831	564818.885
AP16	102525.081	564848.253
AP17	102520.233	564727.102
AP18	102804.585	564781.222
BUILDING LINE CO-ORDINATES		
BL1	101758.062	564441.562
BL2	101861.798	564491.891
BL3	101860.085	564499.894
BL4	102035.206	564579.095
BL5	102087.707	564607.885
BL6	102132.723	564628.938
BL7	102182.392	564655.581
BL8	102208.850	564668.186
BL9	102424.128	564782.179
BL10	102441.372	564792.358
BL11	102554.833	564852.103



DETAIL 1
Scale 1:500



NOTES

1. Do not scale off this drawing.
2. All dimensions are in millimetres unless otherwise stated.
3. All Site area co-ordinates, landward of the building line have been extracted from TPS Consult Survey Drawings (07/99)
4. 573 denotes location of origin for ABMS profile number 573

A	AB	FW	NC	SH/WT/WH	BUILDING LINE CO-ORDINATES REVISION
Revised	By	Checked	Approved	Date	Description

Status **FOR CONSTRUCTION**

Client
SOVEREIGN HARBOUR MARINA LTD.
SOVEREIGN

Halcrow Maritime
Building Plot Details (Ships 500 000
14 07/99 02/00 For 07/99 02/00
00/00/00/00/00

Halcrow

Project
SOVEREIGN HARBOUR
SPUR AND COASTAL DEFENCES

Drawing
BUILDING LINE AND
FRONT OF BEACH CREST

Drawn by	PJB	Date	26/08/01
Checked by	PDT	Date	26/08/01
Authorised by	NC	Date	26/08/01

Drawing No.	SH2	Revision	A
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Drawing Scale	1:500 1:2000 @ A1		
CAD Filename	SH2.DWG	Plot Scale	1:1 @

Schedule 2

Deed of Assignment of Rentcharge and Deed of Grant and Covenant (Rentcharge)



BETWEEN

1. **SOVEREIGN HARBOUR LIMITED** (company number 2217605) of Birch Street, Wolverhampton, West Midlands WV1 4HY (**SHL**)
2. **SOVEREIGN HARBOUR MARINA LIMITED** (company number 2742959) also of Birch Street (**Harbour Company**)
3. **EASTBOURNE HARBOUR COMPANY LIMITED** (company number 1141203) also of Birch Street (**EHCL**)
4. **SOVEREIGN HARBOUR TRUST** (company number 4125834) of Wallside House, 12 Mount Ephraim Road, Tunbridge Wells, Kent TN1 1EE (the **Trust Company**)

RECITALS

(A) Under an agreement dated 9 June 1988 (the **1988 Agreement**) made between SHL (then called Crumbles Harbour Village Limited) (1) Carillion Construction Limited (then called Tarmac Construction Limited) (2) EHCL (3) the then Trustees of the Chatsworth Settlement (4) the Duke of Devonshire (5) and the Southern Water Authority (6) SHL covenanted to obtain a yearly estate rentcharge on the sale of each Dwelling at Sovereign Harbour.

(B) SHL has transferred land for residential development to residential developers who have covenanted to procure on the sale of each Dwelling a yearly estate rentcharge in favour of SHL as a result of which over 1000 estate rentcharges have been created in favour of SHL and further estate rentcharges will be created until all Dwellings developed on those areas of land have been sold.

(C) All the estate rentcharges reserve an annual charge to be applied (less reasonable collection and administration costs) towards the cost of execution of the Littoral Drift Obligations (as defined in the 1988 Agreement) and of the maintenance and improvement of the beach and sea defences within the vicinity of the Harbour and towards Harbour maintenance or any one or more of such objects (called the **SW Charge**).

(D) Most of the estate rentcharges also reserve a **Marina Charge** to be applied towards the cost of harbour maintenance. Where a Dwelling is sold together with a berth a **Berth Charge** is also reserved.

(E) The Trust Company has been established inter alia for the maintenance of the environment in the area known as Sovereign harbour, Eastbourne, East Sussex

(F) The Marina Charges and the Berth Charges are to fund the costs of services which the Harbour Company provides

(G) SHL has agreed to assign all the Existing Rentcharges and Future Rentcharges to the Trust Company to enable the Trust Company

(a) to apply the SW Charge under the 1988 Agreement and

(b) to pay the Marina Charge and the Berth Charge to the Harbour Company to enable the Harbour Company to perform its functions as described in recital (F)

(H) SHL has also agreed that on completion of all future sales of land at Sovereign Harbour for residential development or a disposal of a Dwelling by SHL the form of rentcharge deed will be changed such that the rentcharge is created in favour of the Trust Company. In relation to land already transferred for residential development SHL has agreed to use reasonable endeavours to persuade the transferees similarly to vary the form of rentcharge deed which they have covenanted to procure on the sale of each Dwelling.

(I) The Harbour Company and EHCL are joining in this agreement in respect of the land each of them owns at Sovereign Harbour

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS

In this deed:

Berth Charge has the same meaning as in the Rentcharges

Dwelling means a house (whether detached, semi-detached or terraced), flat, apartment, maisonette or other residential accommodation designed for use as a separate unit of accommodation (whether or not it or its residents also enjoy the use of any communal rooms or areas and whether or not it forms part of a larger building)

Existing Rentcharges means the rentcharges which have already been granted to SHL all of which are based on Form A and are listed in the schedule to this deed

Form A means form A annexed

Form B means form B annexed

Future Rentcharge means a rentcharge deed executed after the date of this deed whether in Form A or Form B

Harbour has the same definition as in the Rentcharges

Houseowner has the same definition as in the Rentcharges

Marina Charge has the same definition as in the Rentcharges

Marina Costs has the same definition as in the Rentcharges

Rentcharges means the Existing Rentcharges and the Future Rentcharges

Sovereign Harbour means the land edged green on the annexed plan.

Trust Obligations means the obligations contained in clause 6.1 of each of the Rentcharges

Waterways has the same definition as in the Rentcharges

2. ASSIGNMENT

2.1. In consideration of the covenant in clause 3 SHL assigns to the Trust Company with full title guarantee (except that SHL has no obligation to seek registration of any Rentcharge unless it needs to be enforced in which event SHL will use all reasonable endeavours to assist the Trust Company in effecting registration)

(a) by way of legal assignment all its estate and interest in the Existing Rentcharges absolutely together with the benefit of the covenants on the part of each Houseowner including the right to recover any arrears and the right of re-entry reserved by each of the Existing Rentcharges

(b) by way of equitable assignment all (if any) its estate and interest in any Future Rentcharges in Form A together with the benefit of the covenants on the part of each Houseowner and the right of re-entry reserved by each of the Existing Rentcharges

and transfers £400,000 to the Trust Company and by 30 September 2001 agrees to transfer to the Trust Company the balance of the amount it has collected in respect of the SW Charge under the Rentcharges (and which it currently holds as implied trustee on the trusts set out in the Rentcharges) net of reasonable administration expenses and at the same time provide a statement of account and sufficient supporting evidence reasonably to vouch the amount properly due and payable.

- 2.2. For the avoidance of doubt the Trust Company shall not by virtue of these assignments assume the obligations of SHL under clause 6.2 of the Rentcharges.

3. TRUST COVENANT

In consideration of the assignment under clause 2 and to the extent of the amounts collected by it under the Rentcharges the Trust Company covenants with SHL and with the Harbour Company:

- 3.1. to perform (or procure the performance of) the Trust Obligations;
- 3.2. to instruct the Harbour Company or such other agent as the Trust Company in the proper exercise of its discretion from time to time appoints to collect the Rentcharges on behalf of the Trust Company; and
- 3.3. to pay regularly to the Harbour Company or as the Harbour Company may direct all Marina Charges and Berth Charges, net of reasonable collection and administration charges, as soon as reasonably practicable after receipt.

4. COVENANTS BY SHL, THE HARBOUR COMPANY AND EHCL

SHL, the Harbour Company and EHCL respectively covenant with the Trust Company (to the intent that each covenants in respect of its own obligations only):

- 4.1. to procure that in any transfer or other disposition (except for the grant of a lease for 25 years or less reserving an open market rent) after the date of this deed by any of them of any part of Sovereign Harbour the transferee or other disponent

(a) covenants with the Trust Company in the following terms:

- (i) "not to sell or otherwise dispose of any Dwelling without procuring in favour of the Trust Company and delivering to the Trust Company within 14 days of the disposition a deed of grant and covenant in the form set out in the Schedule to this transfer in a manner which is binding not only on the owners from time to time of that Dwelling but also their mortgagees (but this covenant does not require subsequent transferees of a Dwelling which is already subject to such a deed of grant and covenant to enter into a new one)" (the deed of grant and covenant being in Form B and, in the case of a transfer or disposition for non- residential purposes, the covenant may commence "if the land is at any future time used for residential purposes ... ")

- (ii) "not to sell or otherwise dispose of any interest in the land hereby transferred other than by way of a completed Dwelling without procuring in favour of the Trust Company and delivering to the Trust Company within 14 days of the disposition a deed of covenant under which that further disponee covenants to comply with the covenants in this and the previous subclause"

- (b) applies to the Chief Land Registrar to enter on the proprietorship register of the land disposed of a restriction in the following terms:

"Except under an order of the Registrar no disposition by the proprietors of the land is to be registered unless the disponee has entered into a deed of covenant with Sovereign Harbour Trust in the form contained in the [transfer][disposition]"

- 4.2. that if SHL, the Harbour Company or EHCL carries out any residential development on any part of Sovereign Harbour it will not sell or otherwise dispose of any Dwelling without procuring in favour of the Trust Company and delivering to the Trust Company within 14 days of the disposition a deed of grant and covenant in Form B in a manner which is binding not only on the owners from time to time of that Dwelling but also their mortgagees (but this covenant does not require subsequent transferees of a Dwelling which is already subject to such a deed of grant and covenant to enter into a new one)
- 4.3. on reasonable request from time to time to execute such further deeds of assignment to the Trust Company of all Future Rentcharges in Form A as may be required to perfect a legal assignment of them
- 4.4. to hold to the order of the Trust Company absolutely all monies paid to any of them under the Rentcharges and all Rentcharges which may from time to time be in their possession
- 4.5. to use all reasonable endeavours to procure that all Future Rentcharges are entered into in Form B and delivered to the Trust Company within 14 days of execution.
- 4.6. to give notice of the assignment as soon as reasonably practicable to all Houseowners who have entered into the Existing Rentcharges, and to those who enter into a Future Rentcharge in Form A.

5. COVENANT BY THE HARBOUR COMPANY

The Harbour Company further covenants with the Trust Company:

- 5.1. while so instructed by the Trust Company to collect the Rentcharges on behalf of and in accordance with the proper instructions from time to time of the Trust Company in consideration of the payment by the Trust Company of proper and reasonable collection charges such charges, if not agreed, to be determined by an independent chartered surveyor of at least ten years' qualification acting as an expert and appointed, in default of agreement, on the application of either the Harbour Company or the Trust Company by the President or other appointing officer of the Royal Institution of Chartered Surveyors whose decision and award as to costs shall be conclusive and binding on the parties;
- 5.2. on behalf of itself and its successors in title to the Harbour
- (a) to provide to the Trust Company from time to time such evidence of expenditure on harbour maintenance and of berthing charges and other information as the Trust Company may reasonably require to enable it (a) to supply a statement of Marina Costs as required by the Rentcharges and to calculate the Marina Charges (b) to calculate the Berth Charges and (c) to deal with queries from those paying the Rentcharges
 - (b) to apply the Marina Charges and the Berth Charges and such sums as it may receive from time to time for harbour maintenance for their respective purposes so as to ensure that the Trust Company is not in breach of trust in relation to the application of these funds and to indemnify the Trust Company against all claims, demands, liabilities, losses, costs and expenses in respect of any breach of this clause by the Harbour Company or by anyone for whom the Harbour Company is responsible
 - (c) to provide an annual statement of the expenditure referred to in clause 5.2 (a) certified by an independent chartered accountant or chartered surveyor.

6. REVERTER

- 6.1 If for any reason the Trust Company is unable and is likely to remain unable to collect the Rentcharges for a continuous period of 90 days or more or in the event of the winding up or insolvency of the Trust Company the Trust Company shall serve notice on the then owner of the Harbour (which if not the Harbour Company will be its successor in title to the Harbour, the "**Harbour Owner**") and the Harbour Owner may (whether or not it has received such notice from the Trust Company) serve notice on the Trust Company that such circumstances have arisen.
- 6.2 Forthwith on the service of such notice from the Harbour Owner the Rentcharges and all funds which at that time are held by the Trust Company shall be assigned and transferred to the Harbour Owner for the following purposes: (a) to apply the SW

Charges to the Trust Obligations and (b) to apply the Marina Charges and the Berth Charges as provided by clause 5.2(b) of this Deed.

- 6.3 Following such assignment the Trust Company shall be released from all further obligations in connection with such Rentcharges and their application.

7. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contract (Rights of Third Parties) Act 1999 the parties declare that no-one other than they and their successors and assigns is intended to benefit from this deed.

8. HM LAND REGISTRY

SHL, the Harbour Company and EHCL as owners of land at Sovereign Harbour under titles numbered respectively ESX160682, ESX201008 and ESX7978 apply to the Chief Land Registrar to note this deed against those titles and agree to deposit their land certificates for that purpose as soon as reasonably practicable.

9. CERTIFICATE FOR VALUE

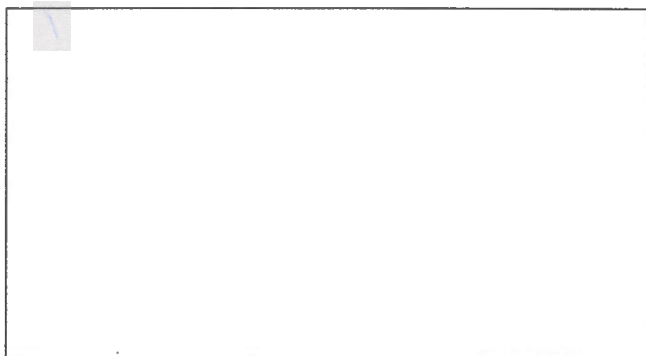
It is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions the amount or value or the aggregate amount or value of which exceeds £60,000.

EXECUTED as a Deed the day and year first before written

EXECUTED AS A DEED by **SOVEREIGN HARBOUR LIMITED** acting by:

Director

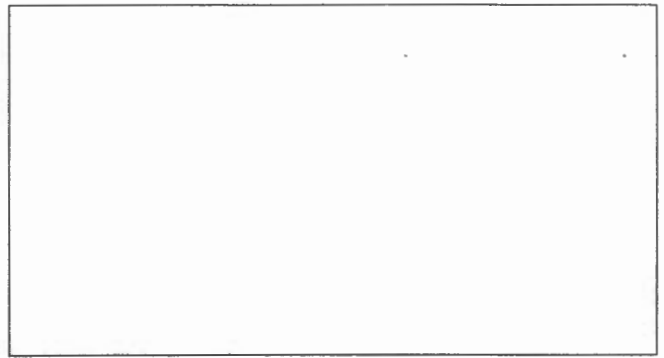
Secretary (or Director)



**EXECUTED AS A DEED by SOVEREIGN
HARBOUR MARINA LIMITED acting by:**

Director

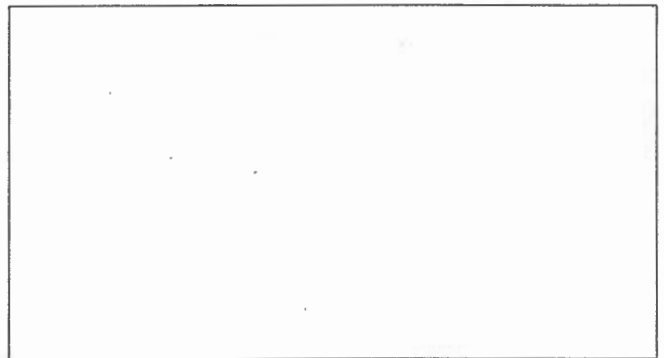
Secretary (or Director)



**EXECUTED AS A DEED by EASTBOURNE
HARBOUR COMPANY LIMITED acting by:**

Director

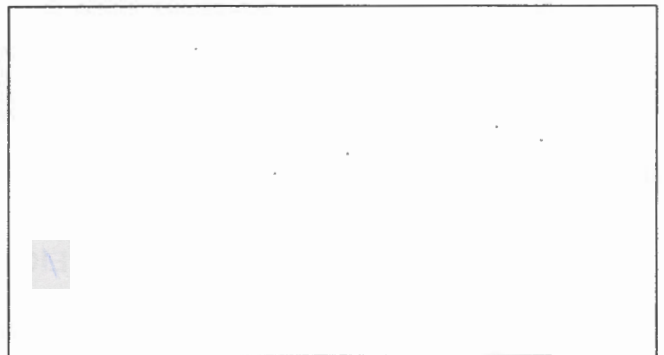
Secretary (or Director)



**EXECUTED AS A DEED by SOVEREIGN
HARBOUR TRUST acting by:**

Director

Secretary (or Director)



Date

BETWEEN

- (1) The **Houseowner:** *name and address*
- (2) The **Company:** **SOVEREIGN HARBOUR LIMITED** of Construction House,
Birch Street, Wolverhampton, West Midlands

WHEREAS

- (A) By a *[transfer][lease]* of even date the Houseowner has purchased the plot of land and dwelling known as *[short description]* and shown for purposes of identification edged red on the annexed plan.
- (B) Under an agreement dated 9 June 1988 made between the Company (then Crumbles Harbour Village Ltd) (1) Tarmac Construction Limited (2) Eastbourne Harbour Company Limited (3) the then Trustees of the Chatsworth Settlement (4) the Duke of Devonshire (5) and the Southern Water Authority (6) the Company covenanted (inter alia) to obtain a yearly estate rent charge upon the sale of each dwelling at Sovereign Harbour such rent charge to be applied as set out in the SW Agreement.

NOW THIS DEED WITNESSES as follows:-

1. DEFINITIONS

Where in this deed the following words in bold type begin with a capital letter they have the following meanings unless the context otherwise requires:

[**Berth** means the berth included in the Premises;]

[**Berth Charge** means the charge defined in Clause 4.4;]

Clause means a clause of this deed;

Harbour means all the works authorised by the Eastbourne Harbour Acts 1980 and 1988 and all associated locks, channels, walls and ancillary structures and equipment;

[**Lease** means the recited lease granted for a term of ___ years from _____]

Marina Charge means the charge defined in Clause 4.1;

Marina Costs means the costs defined in Clause 4.2;

Premises means the recited plot of land and dwelling and all other buildings from time to time on the land;

Rentcharge means the rent charge reserved by Clause 2;

SW Agreement means the recited agreement dated 9 June 1988;

SW Charge means the charge defined in Clause 3;

Waterways means all areas of water at Sovereign Harbour, Eastbourne linking with (but excluding) the Harbour.

2. RESERVATION OF RENTCHARGE

In consideration of the covenants by the Company contained in Clause 6 the Houseowner with full title guarantee hereby grants to the Company *[a perpetual][for a term equivalent to the term of the Lease a]* yearly estate rent charge payable on 1 January each year (and proportionately for less than a year) of an amount equal to the aggregate of:

- 2.1. the SW Charge (payable annually in advance); and
- 2.2. the Marina Charge (payable annually in arrears); and
- 2.3. the Berth Charge (payable annually in advance)].

such yearly rent charge ("the Rent charge") to issue and be payable out of all the Premises TO HOLD the Rentcharge unto the Company *[in fee simple][for the term of the grant]*.

3. THE SW CHARGE

- 3.1. The SW Charge is to be the amount calculated by the formula

$$\frac{A}{B} \times £75$$

where A = the index of retail prices last published by the 1 December immediately preceding the due date for payment

and B = 103.4 being the amount of such index as at 1 December 1987.

- 3.2. If the basis for computation of the index of retail prices changes materially or the index ceases to exist or for any other reason it is not possible to ascertain the

relevant index the Company is entitled to nominate some other similar index but if none exists in the opinion of the Company then the Rentcharge is to increase annually at a rate fixed (at the date of first payment on the new basis) at the average annual rate of increase of the index of retail prices up to that date since 1 December 1987 or over the previous ten years whichever is the shorter.

4. THE MARINA CHARGE

- 4.1. The Marina Charge is to be £10 or such greater amount each year as results from the calculation

$$\frac{M}{N}$$

where N = the number of separate Dwellings liable to pay the Marina Charge or 1500 (whichever is the greater)

and M = the total amount of the Marina Costs for the year ending on the 30th September immediately preceding the due date for payment of the relevant Rentcharge.

- 4.2. The Marina Costs are all costs and expenses (including non-recoverable VAT) reasonably and properly incurred by the Company in connection with or incidental to the cleansing, repair and maintenance of the Harbour and the Waterways (including reasonable collection and administration costs) but (for the avoidance of doubt) not including the cost of maintaining any berths or moorings (and associated facilities) privately owned or intended for private hire or letting nor the costs of operating and managing the Harbour and Waterways or of controlling navigation.
- 4.3. Each Rentcharge demand must be accompanied by a statement of the Marina Costs for the year ending on the 30th September immediately preceding the due date for payment such statement to be certified by an accountant or chartered surveyor and to be accepted by the parties as conclusive in the absence of obvious error.

[where there is also a berth ...

- 4.4. [The Berth Charge shall be £10 or such greater amount as represents the lower of:
- (a) 20% of the total annual rent and other charges (as at the date the Rentcharge is due) at which a berth in the Inner Harbour of equivalent size to the Berth is available for letting or hire to a member of the general public and
 - (b) 20% of the average total annual rent and other charges (as at the date the Rentcharge is due) at which a berth of equivalent size to the Berth is available for letting or hire to a member of the general public at the marinas at Brighton and Port Solent or (should any one or more of such marinas cease to exist or

cease in the reasonable opinion of the Company to be equivalent to Sovereign Harbour) such other marina or marinas as is or are reasonably equivalent so that (if possible) an average of not less than two marinas is taken

- 4.5. Each Rentcharge demand shall be accompanied by appropriate evidence of the manner in which the Berth Charge has been assessed]

5. **HOUSEOWNER'S COVENANTS**

The Houseowner hereby covenants with the Company:

- 5.1. to pay the Rentcharge to the Company at the times and in the manner set out in Clause 1 of this deed without any set-off or deduction;
- 5.2. to maintain the exterior appearance of the Premises in good condition;
- 5.3. to pay all taxes (including VAT) and outgoings which may from time to time be assessed or charged on or payable in respect of the Rentcharge;
- 5.4. to pay interest at the rate of 4% over the base lending rate from time to time of HSBC Bank plc (or of such other clearing bank as the Company may from time to time notify the Houseowner) on any Rentcharge not paid within 14 days of the due date such interest to be calculated on a daily basis (and compounded with quarterly rests on the usual quarter days) from the due date until the date of payment;
- 5.5. to give notice to the Company within 28 days of any transfer of the legal estate in the Premises giving the full name and address of the new Houseowner.

6. **THE COMPANY'S COVENANTS**

In consideration of the Houseowner's covenants and subject to payment of the Rentcharge and to the due observance and performance of the Houseowner's covenants the Company hereby covenants with the Houseowner:

- 6.1. to apply the SW Charge (less reasonable collection and administration costs) towards the cost of execution of the Littoral Drift Obligations (as defined in the SW Agreement) and of the maintenance and improvement of the beach and sea defences within the vicinity of the Harbour and towards Harbour maintenance or any one or more of such objects;
- 6.2. to use all reasonable endeavours to maintain and cleanse the Harbour and those parts of the Waterways owned by the Company (without however incurring any liability to the Houseowner for the consequences of any failure so to do).

7. RIGHT OF RE-ENTRY

7.1. If at any time:

- (a) the Rentcharge is in arrear and unpaid in whole or part for two years after any of the due dates for payment (whether legally demanded or not); or
- (b) any other covenant by the Houseowner in this deed is not performed or observed

then, whether or not any previous default has been waived, the Company as owner of the Rentcharge may at any time enter the Premises (or any part in the name of the whole) and from that time have, hold and enjoy the Premises as their owner *[in fee simple][for the residue of the term of the Lease]*

- 7.2.** It is, however, agreed that the Houseowner and any mortgagee of the Houseowner have the same right to apply to the Court for relief from forfeiture as if the Company had re-entered as landlord under a lease of the Premises.

8. SUCCESSORS IN TITLE

Unless the context otherwise requires and without prejudice to the operation of Section 79 of the Law of Property Act 1925 "the Houseowner" includes successors in title to and those claiming title through or under the Houseowner and "the Company" includes those from time to time entitled to the benefit of the Rentcharge.

9. NOTICES

Section 196 of the Law of Property Act 1925 applies to the service of notices. In particular any notice to the Houseowner or demand for payment is sufficiently served if it is left at the Premises addressed to "The Occupier".

10. CERTIFICATE OF VALUE

It is hereby certified that the transaction hereby 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 £60,000.

[to be executed as a deed]

Date

BETWEEN

- (1) The Houseowner: *name and address*
- (2) The Company: **SOVEREIGN HARBOUR MARINA LIMITED** (company number 2742959) of Birch Street, Wolverhampton, West Midlands WV1 4HY
- (3) The Trust: **SOVEREIGN HARBOUR TRUST** (company number 4125834) of Wallside House, 12 Mount Ephraim Road, Tunbridge Wells, Kent TN1 1EE

WHEREAS

- (A) By a *[transfer][lease]* of even date the Houseowner has purchased the plot of land and dwelling known as *[short description]* and shown for purposes of identification edged red on the annexed plan.
- (B) Under an agreement dated 9 June 1988 made between Crumbles Harbour Village Limited (now called Sovereign Harbour Limited) (1) Tarmac Construction Limited (now called Carillion Construction Limited) (2) Eastbourne Harbour Company Limited (3) the then Trustees of the Chatsworth Settlement (4) the Duke of Devonshire (5) and the Southern Water Authority (6) the Company covenanted (inter alia) to obtain a yearly estate rent charge upon the sale of each dwelling at Sovereign Harbour such rent charge to be applied as set out in the SW Agreement.
- (C) The Trust has been established inter alia for the maintenance of the environment in the area known as Sovereign Harbour, Eastbourne, East Sussex
- (D) The Company manages the marina at Sovereign Harbour including the Harbour and the Waterways.

NOW THIS DEED WITNESSES as follows:-

1. DEFINITIONS

Where in this deed the following words in bold type begin with a capital letter they have the following meanings unless the context otherwise requires:

[Berth] means the berth included in the Premises;

[Berth Charge] means the charge defined in Clause 4.4.;

Clause means a clause of this deed;

Harbour means all the works authorised by the Eastbourne Harbour Acts 1980 and 1988 and all associated locks, channels, walls and ancillary structures and equipment;

[Lease means the recited lease granted for a term of years from]

Marina Charge means the charge defined in Clause 4.1;

Marina Costs means the costs defined in Clause 4.2;

Premises means the recited plot of land and dwelling and all other buildings from time to time on the land;

Rentcharge means the rent charge reserved by Clause 2;

SW Agreement means the recited agreement dated 9 June 1988;

SW Charge means the charge defined in Clause 3;

Waterways means all areas of water at Sovereign Harbour, Eastbourne linking with (but excluding) the Harbour.

2. RESERVATION OF RENTCHARGE

In consideration of the covenants by the Company and the Trust contained in Clause 6 the Houseowner with full title guarantee hereby grants to the Trust *[a perpetual][for a term equivalent to the term of the Lease a]* yearly estate rent charge payable on 1 January each year (and proportionately for ~~less~~ than a year) of an amount equal to the aggregate of:

- 2.1. the SW Charge (payable annually in advance); and
- 2.2. the Marina Charge (payable annually in arrear); and
- 2.3. the Berth Charge (payable annually in advance)].

such yearly rent charge to issue and be payable out of all the Premises free from all deductions TO HOLD the Rentcharge unto the Trust *[in fee simple][for the term of the grant]*.

3. THE SW CHARGE

- 3.1. The SW Charge is to be the amount calculated by the formula

$$\frac{A}{B} \times £75$$

where A = the index of retail prices last published by the 1 December immediately preceding the due date for payment

and B = 103.4 being the amount of such index as at 1 December 1987.

- 3.2. If the basis for computation of the index of retail prices changes materially or the index ceases to exist or for any other reason it is not possible to ascertain the relevant index the Trust is entitled to nominate some other similar index but if none exists in the opinion of the Trust then the Rentcharge is to increase annually at a rate fixed (at the date of first payment on the new basis) at the average annual rate of increase of the index of retail prices up to that date since 1 December 1987 or over the previous ten years whichever is the shorter.

4. THE MARINA CHARGE

- 4.1. The Marina Charge is to be £10 or such greater amount each year as results from the calculation

$$\frac{M}{N}$$

where N = the number of separate Dwellings liable to pay the Marina Charge or 1500 (whichever is the greater)

and M = the total amount of the Marina Costs for the year ending on the 30th September immediately preceding the due date for payment of the relevant Rentcharge.

- 4.2. The Marina Costs are all costs and expenses (including non-recoverable VAT) reasonably and properly incurred by the Company in connection with or incidental to the cleansing, repair and maintenance of the Harbour and the Waterways (including reasonable collection and administration costs) but (for the avoidance of doubt) not including the cost of maintaining any berths or moorings (and associated facilities) privately owned or intended for private hire or letting nor the costs of operating and managing the Harbour and Waterways or of controlling navigation.
- 4.3. Each Rentcharge demand must be accompanied by a statement of the Marina Costs for the year ending on the 30th September immediately preceding the due date for payment such statement to be certified by an accountant or chartered surveyor and to be accepted by the parties as conclusive in the absence of obvious error.

[where there is also a berth ...

4.4. [The Berth Charge shall be £10 or such greater amount as represents the lower of:

- (a) 20% of the total annual rent and other charges (as at the date the Rentcharge is due) at which a berth in that part of the Harbour known as the Inner Harbour of equivalent size to the Berth is available for letting or hire to a member of the general public and
- (b) 20% of the average total annual rent and other charges (as at the date the Rentcharge is due) at which a berth of equivalent size to the Berth is available for letting or hire to a member of the general public at the marinas at Brighton and Port Solent or (should any one or more of such marinas cease to exist or cease in the reasonable opinion of the Company to be equivalent to Sovereign Harbour) such other marina or marinas as is or are reasonably equivalent so that (if possible) an average of not less than two marinas is taken

4.5. Each Rentcharge demand shall be accompanied by appropriate evidence of the manner in which the Berth Charge has been assessed]

5. HOUSEOWNER'S COVENANTS

The Houseowner hereby covenants with the Company and the Trust:

- 5.1. to pay the Rentcharge to the Trust at the times and in the manner set out in Clause 2 of this deed without any set-off or deduction;
- 5.2. to maintain the exterior appearance of the Premises in good condition;
- 5.3. to pay all taxes (including VAT) and outgoings which may from time to time be assessed or charged on or payable in respect of the Rentcharge;
- 5.4. to pay to the Trust interest at the rate of 4% over the base lending rate from time to time of HSBC Bank plc (or of such other clearing bank as the Trust may from time to time notify the Houseowner) on any Rentcharge not paid within 14 days of the due date such interest to be calculated on a daily basis (and compounded with quarterly rests on the usual quarter days) from the due date until the date of payment;
- 5.5. to give notice to the Trust within 28 days of any transfer of the legal estate in the Premises giving the full name and address of the new Houseowner.

6. COVENANTS BY THE TRUST AND THE COMPANY

In consideration of the Houseowner's covenants and subject to payment of the Rentcharge and to the due observance and performance of the Houseowner's covenants:

- 6.1. the Trust hereby covenants with the Houseowner to apply the SW Charge (less reasonable collection and administration costs) towards the cost of execution of the Littoral Drift Obligations (as defined in the SW Agreement) and of the maintenance and improvement of the beach and sea defences within the vicinity of the Harbour and towards Harbour maintenance or any one or more of such objects;
- 6.2. the Company hereby covenants with the Houseowner to use all reasonable endeavours to maintain and cleanse the Harbour and those parts of the Waterways owned or managed by the Company (without however incurring any liability to the Houseowner for the consequences of any failure so to do) and otherwise to apply the Marina Charges towards payment of the Marina Costs[; *berth charge only*]
- 6.3. the Company covenants to apply the Berth Charges towards the cost of operating the marina operations at the Harbour].

7. RIGHT OF RE-ENTRY

7.1. If at any time:

- (a) the Rentcharge is in arrear and unpaid in whole or part for two years after any of the due dates for payment (whether legally demanded or not); or
- (b) any other covenant by the Houseowner in this deed is not performed or observed

then, whether or not any previous default has been waived, the Trust as owner of the Rentcharge may at any time enter the Premises (or any part in the name of the whole) and from that time have, hold and enjoy the Premises as their owner *[in fee simple][for the residue of the term of the Lease]*

- 7.2. It is, however, agreed that the Houseowner and any mortgagee of the Houseowner have the same right to apply to the Court for relief from forfeiture as if the Trust had re-entered as landlord under a lease of the Premises.

8. SUCCESSORS IN TITLE

Unless the context otherwise requires and without prejudice to the operation of Section 79 of the Law of Property Act 1925 "the Houseowner" includes successors in title to and those claiming title through or under the Houseowner and "the Trust" includes those from time to time entitled to the benefit of the Rentcharge.

9. **NOTICES**

Section 196 of the Law of Property Act 1925 applies to the service of notices. In particular any notice to the Houseowner or demand for payment is sufficiently served if it is left at the Premises addressed to "The Occupier".

10. **H M LAND REGISTRY**

The Houseowner hereby applies to the Chief Land Registrar to enter a note of this deed in the Charges Register of the Houseowner's title to the Dwelling

11. **CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties do not intend that any third party (other than successors in title) should benefit under this deed.

12. **CERTIFICATE OF VALUE**

It is hereby certified that the transaction hereby 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 £60,000.

[to be executed as a deed]

