



Registration of a Charge

Company Name: **SANDS RESORT HOTEL LIMITED**

Company Number: **04658829**



Received for filing in Electronic Format on the: **20/12/2022**

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Details of Charge

Date of creation: **16/12/2022**

Charge code: **0465 8829 0001**

Persons entitled: **DAVID NICHOLAS MALCOLM
SUSAN HODGES**

Brief description: **LAND AT SANDS RESORT HOTEL NEWQUAY BEING PART OF THE TITLE
REGISTERED AT THE LAND REGISTRY UNDER TITLE NUMBER CL43108
AND WHICH IS SHOWN EDGED IN RED ON THE PLAN ANNEXED TO THE
CHARGE**

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED
AS PART OF THIS APPLICATION FOR REGISTRATION IS A
CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **CHARLES FRENCH & CO LTD**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 4658829

Charge code: 0465 8829 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 16th December 2022 and created by SANDS RESORT HOTEL LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th December 2022 .

Given at Companies House, Cardiff on 22nd December 2022

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED 16 December

2022

Sands Resort Hotel Limited

- and -

David Malcolm and Susan Hodges

LEGAL MORTGAGE

THIS SECURITY IS SUBJECT TO AND HAS THE BENEFIT OF THE INTERCREDITOR AGREEMENT AS DEFINED IN THE FACILITY AGREEMENT (AS DEFINED HEREIN)

Certified to be a true copy of the original
dated this 16th day of December 2022,

Wilde Law

Wilde Law

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THIS DEED is dated 16 December 2022.

Parties:

- (1) **SANDS RESORT HOTEL LIMITED** incorporated and registered in England and Wales with company number 04658829 whose registered office is at Sands Resort, Watergate Road, Porth, Cornwall, TR7 3LX (Mortgagor).
- (2) **DAVID NICHOLAS MALCOLM** of Laveddon Barn, Laveddon, Bodmin, Cornwall, PL30 5JU (1) and **SUSAN HODGES** of 5 Mica House, Barnsbury Square, London, N1 1RN (2) (together the Lender).

Background:

- (A) The Lender has agreed, under the Facility Agreement, to provide the Borrower with loan facilities on a secured basis.
- (B) The Mortgagor owns the Property and is a wholly owned subsidiary of the Borrower. It is a condition of the Facility Agreement that the Borrower procures that the Mortgagor provides security for the loan.
- (C) This Deed provides security, which the Borrower has agreed to ensure is provided to the Lender for the loan facilities made or to be made available to the Borrower under the Facility Agreement.

Operative Provisions:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Terms defined in the Facility Agreement shall, unless otherwise defined in this Deed, have the same meaning in this Deed. In addition, the following definitions apply in this Deed:

"Borrower"	Watergate Bay Hotel Limited incorporated and registered in England and Wales with company number 03709185 whose registered office is at Watergate Bay Hotel, Watergate Bay, Newquay, Cornwall, TR8 4AA.
"Business Day"	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"Charged Assets"	all the assets, property and undertaking of the Mortgagor which are, or are expressed to be, subject to the Security created by, or pursuant to,

	this Deed (and references to the Charged Assets shall include references to any part of them) but, for the avoidance of doubt, no other assets of the Mortgagor other than those specifically set out in clause 3
"Delegate"	any person appointed by the Lender or any Receiver under clause 14 and any person appointed as attorney of the Lender, or any Receiver or Delegate.
"Environment"	the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.
"Environmental Law"	all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.
"Environmental Licence"	any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Assets.
"Facility Agreement"	the facility agreement dated on or around the date of this Deed between the Borrower and the Lender for the provision of the loan facilities secured by this Deed.
"Financial Collateral"	has the meaning given to that expression in the Financial Collateral Regulations.
"Financial Collateral Regulations"	the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226).
"LPA 1925"	the Law of Property Act 1925.
"Mortgagor's Property"	means the property owned by the Mortgagor being the freehold land and buildings known as Sands Resort Hotel, Watergate Road, Porth, Newquay, Cornwall, TR7 3LX and registered at HM Land Registry with title numbers CL43108 and

	CL222824 and, where the context so requires, includes the buildings on that property.
"Plan"	means the plan appended to this Deed at Schedule 1 (Plan).
"Property"	means that part of the of the Mortgagor's Property registered at HM Land Registry with title number CL43108 and shown edged red on the Plan.
"Receiver"	a receiver or receiver and manager appointed by the Lender under clause 12.
"Rights"	any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise.
"Secured Liabilities"	all present and future obligations and liabilities of either the Borrower or the Mortgagor to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Finance Documents (including, without limitation, those arising under clause 25.3.2).
"Security"	any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.
"Security Financial Collateral Arrangement"	has the meaning given to that expression in the Financial Collateral Regulations.
"Security Period"	the period starting on the date of this Deed and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.
"VAT"	value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 Interpretation

In this Deed:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this Deed;
- 1.2.2 a **person** includes an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party and the **Borrower** shall include that party's or the Borrower's successors, permitted assigns and permitted transferees and this Deed shall be binding on, and enure to the benefit of, the parties to this Deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** includes fax and email;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this Deed** (or any provision of it) or to any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- 1.2.12 any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, supplement or variation (and **amend** and **amended** shall be construed accordingly);

- 1.2.14 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration or resolution;
- 1.2.15 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- 1.2.16 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

1.3 Clawback

If the Lender considers that an amount paid by the Borrower or the Mortgagor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or the Mortgagor, or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

1.4 Nature of security over real property

A reference in this Deed to a **charge or mortgage of or over the Property** includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of the Property at any time;
- 1.4.2 the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Mortgagor in respect of the Property, and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

1.5 Law of Property (Miscellaneous Provisions) Act 1989

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Finance Documents and of any side letters between any parties in relation to the Finance Documents are incorporated into this Deed.

1.6 Intercreditor Agreement

This Deed is subject to the terms of the Intercreditor Agreement.

1.7 Schedules

The Schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedules.

2. COVENANT TO PAY

Covenant to pay

The Mortgagor shall, pay to the Lender and discharge the Secured Liabilities when they become due under the Facility Agreement.

3. GRANT OF SECURITY

3.1 Legal mortgage and fixed charges

As a continuing security for the payment and discharge of the Secured Liabilities, the Mortgagor with full title guarantee charges to the Lender by way of a first legal mortgage, the Property.

4. PERFECTION OF SECURITY

4.1 Registration of legal mortgage at the Land Registry

The Mortgagor consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to the Property:

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE] in favour of David Malcolm and Susan Hodges referred to in the charges register or their conveyancer."

4.2 Cautions against first registration and notices

Whether or not title to the Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Mortgagor's title to the Property, the Mortgagor shall immediately provide the Lender with full particulars of the circumstances relating to such caution or notice. If such caution or notice was registered to protect a purported interest the creation of which is not permitted under this Deed, the Mortgagor shall immediately, and at its own expense, take such steps as the Lender may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

5. LIABILITY OF THE MORTGAGOR AND LENDER'S PROTECTIONS

5.1 Liability not discharged

The Mortgagor's liability under this Deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 5.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 5.1.3 any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower..

5.2 Immediate recourse

The Mortgagor waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Mortgagor.

6. WARRANTIES

6.1 Times for giving warranties

The Mortgagor gives the warranties set out in this clause 6 to the Lender on the date of this Deed.

6.2 Due incorporation

The Mortgagor is a duly incorporated limited liability company validly existing under the law of its jurisdiction of incorporation.

6.3 Powers

6.3.1 The Mortgagor has the power to own its assets and carry on its business as it is being conducted, enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of this Deed and the transactions contemplated by it.

6.3.2 No limit on its powers will be exceeded as a result of the grant of Security contemplated by this Deed.

6.4 Binding obligations

Subject to any general principles of law and the terms of the Intercreditor Deed:

6.4.1 the Mortgagor's obligations under this Deed are legal, valid, binding and enforceable; and

6.4.2 this Deed creates:

- (a) valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and
- (b) subject to registration in accordance with the Companies Act 2006 and, in the case of real property, registration at the Land Registry, perfected Security over the assets expressed to be subject to Security in it,

in favour of the Lender, having the priority and ranking expressed to be created by this Deed and ranking ahead of all (if any) Security and rights of third parties, except those preferred by law.

7. GENERAL COVENANTS

7.1 Negative pledge and disposal restrictions

The Mortgagor shall not at any time, except with the Lender's prior written consent:

- 7.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Charged Asset other than any Security created by this Deed or the Permitted Security;
- 7.1.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Charged Assets; or
- 7.1.3 create or grant (or purport to create or grant) any interest in the Charged Assets in favour of a third party.

7.2 Compliance with laws and regulations

- 7.2.1 The Mortgagor shall not, without the Lender's prior written consent, use or permit the Charged Assets to be used in any way contrary to law.
- 7.2.2 The Mortgagor shall comply with the requirements of any law or regulation relating to or affecting the Charged Assets or the use of them or any part of them.

7.3 Enforcement of rights

The Mortgagor shall use its reasonable endeavours to:

- 7.3.1 procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Mortgagor and forming part of the Charged Assets of the covenants and other obligations imposed on such counterparty; and
- 7.3.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Assets that the Lender may require from time to time.

8. PROPERTY COVENANTS

8.1 Repair and maintenance

The Mortgagor shall keep all premises, and fixtures and fittings on the Property, in good and substantial repair and condition and shall keep all premises adequately and properly painted and decorated and replace any fixtures and fittings that have become unfit for use with others of a like nature and equal value.

8.2 No alterations

8.2.1 The Mortgagor shall not, without the Lender's prior written consent:

- (a) pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or
- (b) make or permit to be made any material alterations to the Property or sever or remove, or permit to be severed or removed, any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with clause 8.1).

8.2.2 The Mortgagor shall promptly give notice to the Lender if the premises or fixtures or fittings forming part of the Property are destroyed or damaged.

8.3 Development restrictions

The Mortgagor shall not, without the Lender's prior written consent (not to be unreasonably withheld):

- 8.3.1 make or, in so far as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or
- 8.3.2 carry out, or permit or suffer to be carried out, on the Property any development (as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008) or change or permit, or suffer to be changed, the use of the Property.

8.4 Leases and licences affecting the Property

The Mortgagor shall not, without the Lender's prior written consent:

- 8.4.1 dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property);
- 8.4.2 grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under

section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925).

8.5 No restrictive obligations

The Mortgagor shall not, without the Lender's prior written consent, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property.

8.6 Proprietary rights

The Mortgagor shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the Lender's prior written consent.

8.7 Compliance with and enforcement of covenants

The Mortgagor shall:

- 8.7.1 observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed; and
- 8.7.2 diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

8.8 Notices or claims relating to the Property

8.8.1 The Mortgagor shall:

- (a) give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a Notice) that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and
- (b) (if the Lender so requires) immediately, and at the cost of the Mortgagor, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Lender in making, any objections or representations in respect of that Notice that the Lender thinks fit.

8.8.2 The Mortgagor shall give full particulars to the Lender of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

8.9 Payment of outgoings

The Mortgagor shall pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on the Property or on its occupier.

8.10 Environment

The Mortgagor shall in respect of the Property:

8.10.1 comply in all material respects with all the requirements of Environmental Law; and

8.10.2 obtain and comply in all material respects with all Environmental Licences.

8.11 Conduct of business on Property

The Mortgagor shall carry on its trade and business on those parts (if any) of the Property as are used for the purposes of a garden area in accordance with the standards of good management from time to time current in such trade or business.

8.12 Inspection

The Mortgagor shall permit the Lender, any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice.

8.13 VAT option to tax

The Mortgagor shall not, without the Lender's prior written consent:

8.13.1 exercise any VAT option to tax in relation to the Property; or

8.13.2 revoke any VAT option to tax exercised, and disclosed to the Lender in writing, before the date of this Deed.

9. POWERS OF THE LENDER

9.1 Power to remedy

9.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Mortgagor of any of its obligations contained in this Deed.

9.1.2 The Mortgagor irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.

9.1.3 The Mortgagor shall reimburse the Lender, on a full indemnity basis, for any monies the Lender properly expends in remedying a breach by the Mortgagor of its obligations contained in this Deed.

9.1.4 In remedying any breach in accordance with this clause 9.1, the Lender, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Lender may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

9.2 Exercise of rights

The rights of the Lender under clause 9.1 are without prejudice to any other rights of the Lender under this Deed. The exercise of any rights of the Lender under this Deed shall not make the Lender liable to account as a mortgagee in possession.

9.3 Lender has Receiver's powers

To the extent permitted by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver may, after the security constituted by this Deed has become enforceable, be exercised by the Lender in relation to any of the Charged Assets whether or not it has taken possession of any Charged Asset and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

9.4 Indulgence

The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this Deed (whether or not any such person is jointly liable with the Mortgagor) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this Deed or to the liability of the Mortgagor for the Secured Liabilities.

10. WHEN SECURITY BECOMES ENFORCEABLE

10.1 Security becomes enforceable on Event of Default

The security constituted by this Deed shall become immediately enforceable if an Event of Default occurs.

10.2 Discretion

After the security constituted by this Deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Assets.

11. ENFORCEMENT OF SECURITY

11.1 Enforcement powers

- 11.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.
- 11.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall be immediately exercisable at any time after the security constituted by this Deed has become enforceable under clause 10.1.
- 11.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.

11.2 Extension of statutory powers of leasing

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this Deed has become enforceable, whether in its own name or in that of the Mortgagor, to:

- 11.2.1 grant a lease or agreement for lease;
- 11.2.2 accept surrenders of leases; or
- 11.2.3 grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Mortgagor, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender), as the Lender or Receiver thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

11.3 Redemption of prior Security

- 11.3.1 Subject to the terms of the Intercreditor Agreement, at any time after the security constituted by this Deed has become enforceable the Lender may:
 - (a) redeem any prior Security over any Charged Asset;
 - (b) procure the transfer of that Security to itself; and
 - (c) settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Mortgagor).
- 11.3.2 The Mortgagor shall pay to the Lender immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such

redemption or transfer, and such amounts shall be secured by this Deed as part of the Secured Liabilities.

11.4 Protection of third parties

No purchaser, mortgagee or other person dealing with the Lender, any Receiver or any Delegate shall be concerned to enquire:

- 11.4.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 11.4.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- 11.4.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

11.5 Privileges

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

11.6 Exclusion of liability

Neither the Lender, nor any Receiver or Delegate, shall be liable to the Mortgagor or any other person:

- 11.6.1 (by reason of entering into possession of a Charged Asset, or for any other reason) to account as mortgagee in possession in respect of all or any of the Charged Assets;
- 11.6.2 for any loss on realisation, or for any act, default or omission for which a mortgagee in possession might be liable; or
- 11.6.3 for any expense, loss or liability:
 - (a) relating to the enforcement of, or any failure to enforce or delay in enforcing, any security constituted by or pursuant to this Deed;
 - (b) relating to an exercise of rights, or by any failure to exercise or delay in exercising, rights under this Deed; or
 - (c) arising in any other way in connection with this Deed,

except that this does not exempt the Lender or any Receiver or Delegate from liability for losses caused by the gross negligence, fraud or wilful misconduct of the Lender or the relevant Receiver or Delegate.

11.7 Relinquishing possession

If the Lender, any Receiver or Delegate enters into or takes possession of a Charged Asset, it or they may at any time relinquish possession.

11.8 Conclusive discharge to purchasers

The receipt of the Lender, or any Receiver or Delegate, shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Assets or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or they think fit.

11.9 Right of appropriation

11.9.1 To the extent that:

- (a) the Charged Assets constitute Financial Collateral; and
- (b) this Deed and the obligations of the Mortgagor under it constitute a Security Financial Collateral Arrangement,

the Lender shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any of those Charged Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Lender may, in its absolute discretion, determine.

11.9.2 The value of any Charged Assets appropriated in accordance with this clause shall be, in the case of cash, the amount standing to the credit of the Rent Account, together with any accrued but unpaid interest, at the time the right of appropriation is exercised.

11.9.3 The Mortgagor agrees that the method of valuation provided for in this clause is commercially reasonable for the purposes of the Financial Collateral Regulations.

12. RECEIVERS

12.1 Appointment

At any time after the security constituted by this Deed has become enforceable, or at the request of the Mortgagor, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Charged Assets.

12.2 Removal

The Lender may, without further notice, from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint

a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

12.3 Remuneration

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925 and the remuneration of the Receiver shall be a debt secured by this Deed, to the extent not otherwise discharged.

12.4 Power of appointment additional to statutory powers

The power to appoint a Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

12.5 Power of appointment exercisable despite prior appointments

The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Charged Assets.

12.6 Agent of the Mortgagor

Any Receiver appointed by the Lender under this Deed shall be the agent of the Mortgagor and the Mortgagor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Mortgagor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

13. POWERS OF RECEIVER

13.1 Powers additional to statutory powers

13.1.1 Any Receiver appointed by the Lender under this Deed shall, in addition to the rights, powers and discretions conferred on them by statute, have the rights, powers and discretions set out in clause 13.2 to clause 13.19.

13.1.2 A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether they are an administrative receiver or not.

13.1.3 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing them states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.

13.1.4 Any exercise by a Receiver of any of the powers given by clause 13 may be on behalf of the Mortgagor, the directors of the Mortgagor or himself.

13.2 Repair and develop the Property

A Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

13.3 Grant or accept surrenders of leases

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms, and subject to any conditions, that they think fit.

13.4 Employ personnel and advisers

13.4.1 A Receiver may provide services and employ, or engage, any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that they think fit.

13.4.2 A Receiver may discharge any such person or any such person appointed by the Mortgagor.

13.5 Make and revoke VAT options to tax

A Receiver may make, exercise or revoke any VAT option to tax as they think fit.

13.6 Charge for remuneration

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by them) that the Lender may prescribe or agree with them.

13.7 Take possession

A Receiver may take immediate possession of, get in and realise any Charged Asset.

13.8 Manage or reconstruct the Mortgagor's business

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Mortgagor carried out at the Property.

13.9 Dispose of Charged Assets

A Receiver may grant options and licences over all or any part of the Charged Assets, grant any other interest or right over, sell, exchange, assign or lease (or concur in

granting options and licences over all or any part of the Charged Assets, granting any other interest or right over, selling, exchanging, assigning or leasing) all or any of the Charged Assets in respect of which they are appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as they think fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Assets to be disposed of by them.

13.10 Sever fixtures and fittings

A Receiver may sever and sell separately any fixtures or fittings from the Property without the consent of the Mortgagor.

13.11 Give valid receipts

A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Charged Assets.

13.12 Make settlements

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Mortgagor or relating in any way to any Charged Asset.

13.13 Bring legal action

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Charged Assets as they think fit.

13.14 Form subsidiaries

A Receiver may form a subsidiary of the Mortgagor and transfer to that subsidiary any Charged Asset.

13.15 Borrow

A Receiver may, for whatever purpose they think fit, raise and borrow money either unsecured or on the security of all or any of the Charged Assets in respect of which they are appointed on any terms that they think fit (including, if the Lender consents, terms under which that security ranks in priority to this Deed).

13.16 Redeem prior Security

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Mortgagor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

13.17 Delegation

A Receiver may delegate their powers in accordance with this Deed.

13.18 Absolute beneficial owner

A Receiver may, in relation to any of the Charged Assets, exercise all powers, authorisations and rights they would be capable of exercising as, and do all those acts and things, an absolute beneficial owner could exercise or do in the ownership and management of all or any part of the Charged Assets.

13.19 Incidental powers

A Receiver may do any other acts and things that they:

13.19.1 may consider desirable or necessary for realising any of the Charged Assets;

13.19.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or law; or

13.19.3 lawfully may or can do as agent for the Mortgagor.

14. DELEGATION

14.1 Delegation

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it or them by this Deed (including the power of attorney granted under clause 18.1).

14.2 Terms

The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it or they think fit.

14.3 Liability

Neither the Lender nor any Receiver shall be in any way liable or responsible to the Mortgagor for any loss or liability of any nature arising from any act, default, omission or misconduct on the part of any Delegate.

15. APPLICATION OF PROCEEDS

15.1 Order of application of proceeds

Subject to the Intercreditor Agreement, all monies received or recovered by the Lender, a Receiver or a Delegate under this Deed or in connection with the realisation or enforcement of all or part of the security constituted by this shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied

in the following order of priority (but without prejudice to the Lender's right to recover any shortfall from the Mortgagor or the Borrower:

- 15.1.1 in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this Deed and of all remuneration due to any Receiver under or in connection with this Deed;
- 15.1.2 in or towards payment of the Secured Liabilities in any order and manner that the Lender determines; and
- 15.1.3 in payment of the surplus (if any) to the Mortgagor or other person entitled to it.

15.2 Appropriation

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

15.3 Suspense account

All monies received by the Lender, a Receiver or a Delegate under this Deed:

- 15.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to a suspense account;
- 15.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Mortgagor; and
- 15.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

16. COSTS AND INDEMNITY

16.1 Costs

The Mortgagor shall, within five Business Days of demand, pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) properly incurred by the Lender, any Receiver or any Delegate in connection with:

- 16.1.1 the Charged Assets;
- 16.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this Deed;

- 16.1.3 any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) under or in connection with this Deed;
- 16.1.4 any release of any security constituted by this Deed; or
- 16.1.5 taking proceedings for, or recovering, any of the Secured Liabilities.

16.2 Indemnity

16.2.1 The Mortgagor shall, within five Business Days of demand, indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses, and all other professional costs and expenses) suffered or properly incurred by any of them arising out of or in connection with:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Charged Assets;
- (b) taking, holding, protecting, perfecting, preserving, releasing or enforcing (or attempting to do so) the security constituted by this Deed; or
- (c) any default or delay by the Mortgagor in performing any of its obligations under this Deed.

16.2.2 Any past or present employee or agent may enforce the terms of this clause 16.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

17. FURTHER ASSURANCE

17.1 Further assurance

The Mortgagor shall promptly, at its own expense, take whatever action the Lender or any Receiver may reasonably require for:

- 17.1.1 creating, perfecting or protecting the security intended to be created by this Deed;
- 17.1.2 facilitating the realisation of any Charged Asset; or
- 17.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Charged Asset,

including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Charged Assets (whether to the Lender or to its nominee) and the giving

of any notice, order or direction and the making of any filing or registration which, in any such case, the Lender may consider necessary or desirable.

18. POWER OF ATTORNEY

18.1 Appointment of attorneys

By way of security, the Mortgagor irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Mortgagor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

18.1.1 the Mortgagor is required to execute and do under this Deed; or

18.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by law on the Lender, any Receiver or any Delegate.

18.2 Ratification of acts of attorneys

The Mortgagor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 18.1.

19. RELEASE

19.1 Release

Subject to clause 25.3, at the end of the Security Period, the Lender shall, at the request and cost of the Mortgagor, take whatever action is necessary to:

19.1.1 release the Charged Assets from the security constituted by this Deed; and

19.1.2 reassign the Charged Assets to the Mortgagor.

20. NO ASSIGNMENT AND TRANSFER

20.1 The Borrower shall not, without the consent of the Lender, assign any of its rights or transfer any of its rights and obligations under this deed.

20.2 The Lender may assign any of its rights or transfer any of its rights and obligations under this deed subject to the Intercreditor Deed.

21. AMENDMENTS, WAIVERS AND CONSENTS

21.1 Amendments

No amendment of this Deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

21.2 Walvers and consents

21.2.1 A waiver of any right or remedy under this Deed or by law, or any consent given under this Deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any subsequent right or remedy. It only applies to the circumstances in relation to which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

21.2.2 A failure by the Lender to exercise, or delay by it in exercising any right or remedy provided under this Deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Deed. No single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Deed by the Lender shall be effective unless it is in writing.

21.3 Rights and remedies

The rights and remedies provided under this Deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

22. PARTIAL INVALIDITY

If, at any time, any provision of this Deed is or becomes invalid, illegal or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

23. COUNTERPARTS

23.1 Counterparts

23.1.1 This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

23.1.2 Transmission of an executed counterpart of this agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. Regardless of the method of delivery adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

23.1.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

24. THIRD PARTY RIGHTS

No party may at any time, without the consent of the parties, assign any of its rights or transfer any of its rights and obligations under this the Finance Documents

25. FURTHER PROVISIONS

25.1 Independent security

The security constituted by this Deed shall be in addition to, and independent of, any other security or guarantee that the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Charged Assets shall merge in the security created by this Deed.

25.2 Continuing security

The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this Deed in writing.

25.3 Discharge conditional

Any release, discharge or settlement between the Mortgagor and the Lender shall be conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced, set aside or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or for any other reason. Despite any such release, discharge or settlement:

25.3.1 the Lender or its nominee may retain this Deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Charged Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

25.3.2 the Lender may recover the value or amount of such security or payment from the Mortgagor subsequently as if the release, discharge or settlement had not occurred.

25.4 Notices

Any notice or other communication given to a party under or in connection with this deed shall be:

25.4.1 in writing;

25.4.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by email; and

25.4.3 sent to:

(a) the Lender:

(i) address: Laveddon Barn, Bodmin, Cornwall, PL30 5JU

(ii) name: David Nicholas Malcolm

(iii) email address: mr.m3@btopenworld.com

and

(iv) name: Susan Hodges

(v) address: 5 Mica House Barnsbury Square London N1 1RN

(vi) email addresses: susan@thehodes.net and susan@ardernhodes.co.uk

(b) the Mortgagor at:

(i) address: c/o Watergate Bay Hotel, Watergate Bay, Newquay, Cornwall, TR8 4AA

(ii) for the attention of: Ben Harper (Director)

(iii) email address: ben@watergatebayhotel.co.uk

or to any other address or email address as is notified in writing by one party to the others from time to time.

25.4.4 Any notice or other communication that one party gives to the others under or in connection with, any Finance Document shall be deemed to have been received:

(a) if delivered by hand, at the time it is left at the relevant address;

(b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

(c) if sent by email, when transmitted.

25.4.5 A notice or other communication given as described in clause 25.4.4(a) or clause 25.4.4(c) on a day that is not a Business Day, or after normal business hours (between 9.00 a.m. and 5.00 p.m.), in the place it is received, shall be deemed to have been received on the next Business Day.

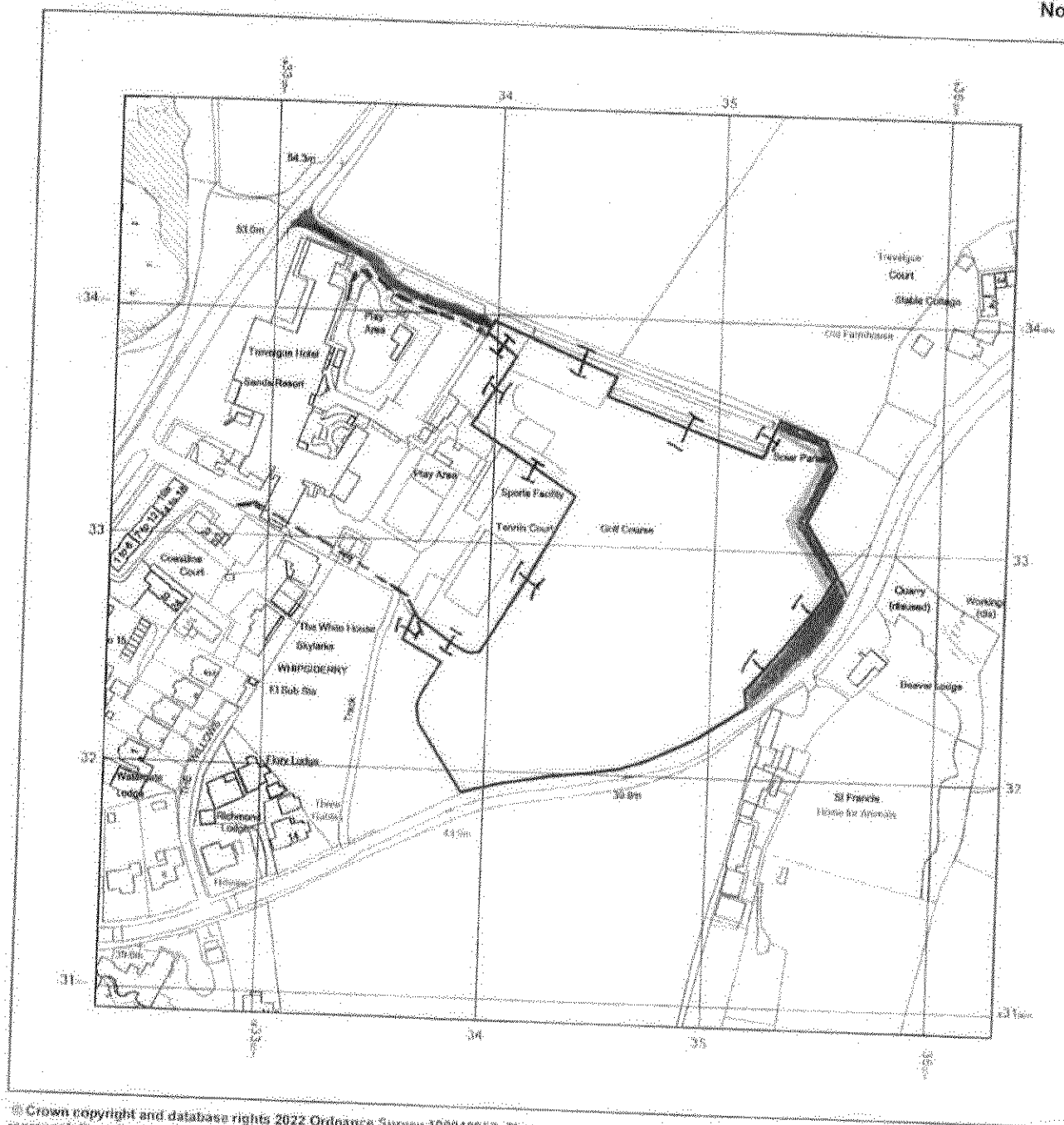
25.4.6 This clause 25.4 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26. GOVERNING LAW AND JURISDICTION

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

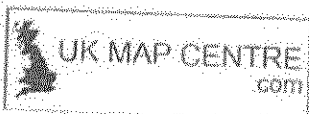
26.2 Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

IN WITNESS of which this Deed has been executed and is delivered on the date appearing as the date of this Deed.

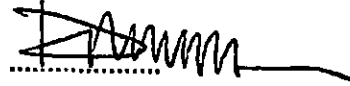


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 Scale 1:2500



Executed as a deed by **DAVID
NICHOLAS MALCOLM** in the
presence of:


.....

NAME, ADDRESS AND
OCCUPATION OF WITNESS


.....

JONATHAN WILDE
.....

SOLICITOR
.....

Executed as a deed by **SUSAN
HODGES** in the presence of:

Wilde Law
Lower Ground Floor
31 Lemon Street
Truro
TR1 2LS

NAME, ADDRESS AND
OCCUPATION OF WITNESS

.....

.....

.....

Executed as a deed by **SANDS
RESORT HOTEL LIMITED**
acting by two directors or one
director and its secretary:

Director

.....

Director/Secretary

.....

Executed as a deed by **DAVID
NICHOLAS MALCOLM** in the
presence of:

NAME, ADDRESS AND
OCCUPATION OF WITNESS

Executed as a deed by **SUSAN
HODGES** in the presence of:

NAME, ADDRESS AND
OCCUPATION OF WITNESS

Paula Kahn
PAULA KAHN

Executed as a deed by **SANDS
RESORT HOTEL LIMITED**
acting by two directors or one
director and its secretary:

Director

Director/Secretary

[Signature]

4 MICA HOUSE
BARNSBURY SQUARE
LONDON N1 1RN
Retired

Executed as a deed by **DAVID
NICHOLAS MALCOLM** in the
presence of:

.....

NAME, ADDRESS AND
OCCUPATION OF WITNESS

.....

.....

.....

Executed as a deed by **SUSAN
HODGES** in the presence of:

.....

NAME, ADDRESS AND
OCCUPATION OF WITNESS

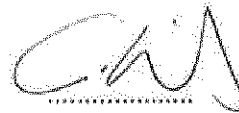
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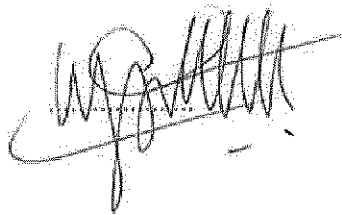
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Executed as a deed by **SANDS
RESORT HOTEL LIMITED**
acting by two directors or one
director and its secretary:

Director


.....

Director/Secretary


.....