001472 H46X2

In accordance with Sections 859A & 859J of the Companies Act 2006.

MR01

Particulars of a charge

Oyez

Go online to file this information
www.gov.uk/companieshouse

A fee is payable with this form
Please see 'How to pay' on the

FRIDAY

A6AO0VR3
A06 14/07/2017 #40
COMPANIES HOUSE

✔ **What this form is for**
You may use this form to register a charge created or evidenced by an instrument.

✕ **What this form is NOT for**
You may not use this form to register a charge where there is instrument. Use form MR08.

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery.

You **must** enclose a certified copy of the instrument with this form. This will be scanned and placed on the public record. **Do not send the original.**

For official use 12

► **Filling in this form**
Please complete in typescript or in bold black capitals.

All fields are mandatory unless specified or indicated by *

1 Company details

Company number: 0 3 0 3 1 8 0 1

Company name in full: Benchmark Leisure Limited

2 Charge creation date

Charge creation date: d1 d2 m0 m7 y2 y0 y1 y7

3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees entitled to the charge.

Name: Abbey Commercial Investments Limited

Name:

Name:

Name:

If there are more than four names, please supply any four of these names then tick the statement below.

☐ I confirm that there are more than four persons, security agents or trustees entitled to the charge.

C:\Users\Stacey Moore\Desktop\Legal Charge\MR01.pdf

MR01

Particulars of a charge

4 Brief description

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument.

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument".

Please limit the description to the available space.

Brief description

By way of legal mortgage, the property known as the premises being the Sands Development at Peasholme Gap, North Bay, Scarborough.

5 Other charge or fixed security

Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box.

☒ **Yes**

☐ **No**

6 Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box.

☐ **Yes** Continue

☒ **No** Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ **Yes**

7 Negative Pledge

Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge?
Please tick the appropriate box

☒ **Yes**

☐ **No**

8 Trustee statement [1]

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge.

☐

[1] This statement may be filed after the registration of the charge (use form MR06).

9 Signature

Please sign the form here.

Signature

Signature

X X

acting as solicitor for the lender

This form must be signed by a person with an interest in the charge.

MR01

Particulars of a charge

Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name
Piet van Gelder

Company name
Spearing Waite LLP

Address
34 Pocklingtons Walk

Post town
Leicester

County/Region
Leicestershire

Postcode
L E 1 6 B U

Country
United Kingdom

DX
10837 Leicester 1

Telephone
0116 242 1208

Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.

Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ The company name and number match the information held on the public Register.
- ☐ You have included a certified copy of the instrument with this form.
- ☐ You have entered the date on which the charge was created.
- ☐ You have shown the names of persons entitled to the charge.
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8.
- ☐ You have given a description in Section 4, if appropriate.
- ☐ You have signed the form
- ☐ You have enclosed the correct fee.
- ☐ Please do not send the original instrument; it must be a certified copy.

Important information

Please note that all information on this form will appear on the public record.

How to pay

A fee of £23 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House.'

Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:

For companies registered in England and Wales:
The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ.
DX 33050 Cardiff.

For companies registered in Scotland:
The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post).

For companies registered in Northern Ireland:
The Registrar of Companies, Companies House,
Second Floor, The Linenhall, 32-38 Linenhall Street,
Belfast, Northern Ireland, BT2 8BG.
DX 481 N.R. Belfast 1.

Further information

For further information, please see the guidance notes on the website at www.gov.uk/companieshouse or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.gov.uk/companieshouse

FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3031801

Charge code: 0303 1801 0012

The Registrar of Companies for England and Wales hereby certifies that a charge dated 12th July 2017 and created by BENCHMARK LEISURE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 14th July 2017.

Given at Companies House, Cardiff on 20th July 2017

Companies House

THE OFFICIAL SEAL OF THE REGISTRAR OF COMPANIES

DATED 12 JULY 2017

(1) ABBEY COMMERCIAL INVESTMENTS LIMITED

and

(2) BENCHMARK LEISURE LIMITED

LEGAL MORTGAGE

in respect of

---

spearingwaite

We hereby certify this to be a true copy of the original.
Spearing Waite LLP, 34 Pocklingtons Walk, Leicester LE1 6BU

Spearing Waite LLP
34 Pocklingtons Walk, Leicester, LE1 6BU

+44 (0)116 242 1208
+44 (0)771 835 1844
piet.vangelder@spearingwaite.com

THIS LEGAL MORTGAGE is made on 12 **JULY 2017**

BETWEEN

(1) **ABBEY COMMERCIAL INVESTMENTS LIMITED** (Company Number 00442441) whose registered office is at Devonshire House, 1 Devonshire Street, London, W1W 5DR ("**ACI**"); and

(2) **BENCHMARK LEISURE LIMITED** (Company Number 03031801) whose registered office is at Devonshire House, 1 Devonshire Street, London, W1W 5DR ("**BLL**").

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Deed, unless the context otherwise requires, the following expressions have the following meanings:

"Business Day"	a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London.
"Charged Property"	means all the assets, property and goodwill of BLL charged to ACI pursuant to the terms of this Deed and any part of such assets, property and goodwill.
"Delegate"	any person appointed by ACI or any Receiver pursuant to clause 18 and any person appointed as attorney of ACI, or any Receiver or Delegate.
"Default Rate"	means the rate of default interest applicable to the Secured Obligations in accordance with their terms.
"Direction"	any notice or order served on BLL or issued to it by any local or other authority (whether under the Planning Acts or otherwise) in respect of the Charged Property.
"Environment"	means all of the air, water and land including (without limitation) the air within buildings and other natural or man-made structures above or below ground, ground and surface water and surface and subsurface soil.
"Environmental Law"	means all applicable statutes, treaties, regulations, directives or similar measures relating to the pollution or protection of the Environment that affect the Charged Property.
"Finance Documents"	has the meaning ascribed to it in the Main Agreement.

"Insurance Policy"	each contract or policy of insurance effected or maintained from time to time in respect of the Charged Property.
"Main Agreement"	means the main agreement between (1) BLL and (2) ACI and dated on or about the date of this Deed.
"Planning Acts"	means the Town and Country Planning Acts 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991 and any regulations or subordinate legislation made pursuant to them or any other statute or regulation governing or controlling the use or development of land and buildings.
"Property"	means the property described in the schedule and any part or parts of it and including all rights attached or appurtenant to it, and shall include all buildings and fixtures on it from time to time.
"Receiver"	means any receivers or receivers and managers appointed by ACI pursuant to this Deed in respect of BLL or over the Charged Property.
"Rent"	means all amounts payable to or for the benefit of BLL by way of rent, licence fee, service charge, dilapidations, ground rent and rent charge in respect of any part of the Property and other monies payable to or for the benefit of BLL in respect of occupation or usage of the Property, including (without limitation) for display of advertisements on licence or otherwise
"Secured Obligations"	means in respect of BLL all money and liabilities now or after the date of this Deed due, owing or incurred to ACI by BLL whatsoever (including the benefit of all debts and other payments assigned to ACI pursuant to the Finance Documents) in any manner and in any currency or currencies whether present or future, actual or contingent, whether incurred solely or jointly with any other person and/or in any other capacity, under or in connection with the Finance Documents or this Deed and whether as principal or surety together with all interest accruing on such moneys and liabilities.
"Security Interest"	means a mortgage, charge, pledge, lien, assignment or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

1.2. **Interpretation**

1.2.1. a reference to any party to this Deed is, where relevant, deemed to be a reference to or to include, as appropriate, that party's respective successors and, in the case of ACI, its successors or assigns;

1.2.2. references to clauses and the schedule are references to, respectively, clauses of and the schedule to this Deed and references to this Deed include its schedule;

1.2.3. the index to and the headings in this Deed are inserted for convenience only and are to be ignored in construing this Deed;

1.2.4. a reference to (or to any specified provision of) any agreement, deed or other instrument is to be construed as a reference to that agreement, deed or other instrument or that provision as it may have been or will be, from time to time, amended, varied, supplemented, replaced, restated or novated but excluding for this purpose any amendment, variation, supplement or modification which is contrary to any provision of this Deed;

1.2.5. a reference to a statute or statutory instrument or any provision of it/them is to be construed as a reference to that statute or statutory instrument or such provision of it/them as the same may have been, or may from time to time after this Deed be, amended or re-enacted;

1.2.6. the terms of the documents under which the Secured Obligations arise and of any side letters between BLL and ACI relating to the Secured Obligations are incorporated in to this Deed to the extent required for any purported disposition of the Charged Property contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989;

1.2.7. the parties intend that this document shall take effect as a Deed;

1.2.8. words importing the plural shall include the singular and vice versa and a reference to one gender shall include a reference to other genders;

1.2.9. a reference to a person shall include a reference to an individual, firm, company, partnership, corporation, unincorporated body of persons, or any state or any agency of any person.

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

a) all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery which are situated

on or form part of the Property at any time;

b) the proceeds of sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;

c) the benefit of any covenants for title given, or entered into, by any predecessor in title of BLL in respect of the Property and any monies paid or payable in respect of those covenants; and

d) all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

1.3. If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

2. COVENANT TO PAY

BLL covenants with ACI that it will on demand pay and discharge the Secured Obligations.

3. CHARGING CLAUSE

3.1. As a continuing security for the payment and discharge of the Secured Obligations BLL charges in favour of ACI with full title guarantee:

3.1.1. by way of first legal mortgage the Property;

3.1.2. by way of first fixed charge all the present and future goodwill of any business carried on at the Property by or on behalf of BLL;

3.1.3. by way of first fixed charge the proceeds of any claim under each Insurance Policy and all BLL's rights in each Insurance Policy;

3.1.4. by way of first fixed charge the Rent and the benefit of any guarantee or security in respect of the Rent; and

3.1.5. the benefit of all other contracts, guarantees, appointments and warranties relating to the Charged Property and other documents to which BLL is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Charged Property or otherwise relating to the Charged Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them).

3.2. **Assignment**

As a continuing security for the payment and discharge of the Secured Obligations, BLL with full title guarantee assigns to ACI, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Obligations:

(a) all its rights in each Insurance Policy, including the proceeds of any claims under each Insurance Policy; and

(b) the Rent and the benefit of any guarantee or security in respect of the Rent; and

provided that nothing in this clause 3.2 shall constitute ACI as mortgagee in possession, and BLL shall remain liable to perform all its obligations under each Insurance Policy.

4. CONTINUING SECURITY

4.1. This security is a continuing security which shall remain in full force and effect notwithstanding any intermediate payment or settlement of account or other matter or thing whatsoever and in particular the intermediate satisfaction by BLL or any other person of the whole or any part of the Secured Obligations.

4.2. This security is to be in addition and without prejudice to any other security or securities which ACI may now or after the date of this Deed hold for the Secured Obligations or any part of them and this security may be enforced against BLL without first having recourse to any other rights of ACI.

5. LIABILITY OF BLL

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

(a) any security, guarantee, indemnity, remedy or other right held by, or available to, ACI that is or becomes wholly or partially illegal, void or unenforceable on any ground;

(b) ACI 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

(c) any other act or omission, which but for this clause 5 might have discharged, or otherwise prejudiced or affected, the liability of BLL.

BLL waives any right it may have to require ACI to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Deed against BLL.

6. FURTHER ASSURANCE

6.1. General

6.1.1. BLL will at its own expense promptly execute such deeds, assurances, agreements, instruments and otherwise do such acts and things as ACI may reasonably require for perfecting and protecting the security created (or intended to be created) by this Deed or facilitating the realisation of such security or otherwise for enforcing the same or exercising any of ACI's rights under this Deed.

6.1.2. Any document required to be executed by BLL pursuant to this clause 6.1 will be prepared at the cost of BLL.

6.2. Land Registry

6.2.1. BLL consents to the application to the Land Registry by or on behalf of ACI for the entry of the following restriction on the register of title of the Property in the following terms:

"No disposition of the registered estate by the proprietor of the registered *estate or by the proprietor of any registered charge is to be registered* without a written consent signed by the proprietor for the time being of the charge dated ( ) in favour of ACI Limited referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its secretary or conveyancer".

6.2.2. ACI is under an obligation to make further advances to BLL.

6.2.3. For the purposes of sub-section 94(1)(c) of the Law of Property Act 1925, subsection 49(3) of the Land Registration Act 2002 and Rule 108 of the Land Registration Rules 2003, the obligation on ACI to make further advances will be deemed to be incorporated in this Deed as if the same were set out in this Deed.

6.2.4. For the purposes of Rule 108 of the Land Registration Rules 2003 and sub-section 49(3) of the Land Registration Act 2002, BLL consents to the lodgement at the Land Registry of an application by or on behalf of ACI for the entry of a note of the obligation to make further advances on the register of title of the Property.

6.2.5. If the title to the Property is not registered at the Land Registry, BLL shall ensure that no person (other than itself) shall be registered under the Land Registration Act 2002 as the proprietor of all or any part of the Property, without the prior written consent of ACI.

6.2.6. 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 BLL's title to the Property, BLL shall immediately provide ACI 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, BLL shall immediately, and at its own expense, take such steps as ACI may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

7. NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS

BLL will not during the continuance of the security created by this Deed, without the prior consent in writing of ACI:

7.1. create or agree or attempt to create or permit to subsist (in favour of any person other than ACI) any Security Interest over the whole or any part of the Charged Property; or

7.2. (whether by a single transaction or a number of related or unrelated transactions and whether at the same time or over a period of time) sell, transfer, lease out, lend or otherwise dispose of or cease to exercise direct control over all or any part of the Charged Property or any interest in the Charged Property or the right to receive or to be paid the proceeds arising on the disposal of the same or agree or attempt to do so; or

7.3. dispose of the equity of redemption in respect of all or any part of the Charged Property.

8. REPRESENTATIONS AND WARRANTIES

BLL represents and warrants to ACI on the date of this Deed (and the representations and warranties contained in this clause 8 are deemed to be repeated on each day after the date of this Deed with reference to the facts and circumstances existing at the time of repetition for so long as the security created by this Deed or any part of it remains in force) that:

8.1. BLL has a good and marketable title to the Charged Property;

8.2. there are to its knowledge no proceedings, actions or circumstances relating to the Charged Property which materially and adversely affect its value or the ability of BLL to use the Charged Property for the purposes for which it is required to be used by it;

8.3. BLL is the legal and beneficial owner of the Charged Property;

8.4. the Charged Property is free from any Security Interest other than the Security Interest created by this Deed;

8.5. BLL has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Property or any interest in it;

8.6. there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever, which materially and adversely affect the Charged Property;

8.7. there is no breach of any law or regulation, which materially and adversely affects the Charged Property;

8.8. no facility necessary for the enjoyment and use of the Charged Property is subject to terms entitling any person to terminate or curtail its use;

8.9. nothing has arisen, has been created or is subsisting which would be an overriding interest in the Property;

8.10. there is no prohibition on BLL assigning its rights in any of the Charged Property and the entry into of this Deed by BLL does not and will not constitute a breach of any policy, agreement, document, instrument or obligation binding on BLL or its assets;

8.11. BLL has, at all times, complied in all material respects with all applicable Environmental Law;

8.12. no Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of BLL or otherwise; and

8.13. this Deed constitutes and will constitute legal, valid, binding and enforceable obligations of BLL and is and will continue to be effective security over all and every part of the Charged Property in accordance with its terms.

9. UNDERTAKINGS

9.1. Duration of undertakings

BLL undertakes to ACI in the terms of the following provisions of this clause 9, such undertakings to commence on the date of this Deed and to continue for so long as the security constituted by this Deed (or any part of such security) remains in force.

9.2. Undertakings

9.2.1. It will not do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value to ACI of the security constituted by this Deed.

9.2.2. It will observe and perform all covenants and stipulations from time to time affecting the Charged Property (including, without limitation, any lease) or the mode of user or the enjoyment of the same, make all payments, carry out all registrations or renewals and generally use all reasonable endeavours to preserve and maintain the Charged Property.

9.2.3. It will keep the Property in a good and substantial state of repair and not erect any buildings or structures on the Property or demolish all or any part of the Property or make any additions or structural or other alteration to or

change the use of the Property or do or suffer to be done anything in relation to the Property which constitutes development (as that expression is defined in the Planning Acts).

9.2.4. It will observe and perform all covenants, agreements and stipulations from time to time affecting its interest in the Property and not do or suffer to be done any act or thing whereby any of its leasehold interest in the Property may become liable to forfeiture or otherwise be determined.

9.2.5. It will punctually pay and indemnify ACI and any Receiver against all present and future rents, rates, taxes, assessments and outgoings of whatsoever nature imposed upon or payable in respect of the Property or by the owner or occupier.

9.2.6. It will not do or allow or omit to be done any act, matter or thing whereby any provisions of or regulations made under the Planning Acts shall be infringed nor contravene any other statutory provision or regulation or order of any local or other authority whatever affecting the Property nor make any application for the grant of planning permission within the meaning of the Planning Acts and BLL shall comply with all statutory requirements laws and regulations affecting or relating to the Charged Property.

9.2.7. It will within seven days after receipt by it of any Direction:

a) give full particulars of the Direction to ACI and, if so requested by ACI, produce the Direction or a copy of it to ACI; and

b) advise ACI from time to time of the steps taken or proposed to be taken by it to comply with the terms of the Direction; and

c) as soon as reasonably practicable take all reasonable or necessary steps to comply with the Direction; and

d) at the request of ACI (but at the cost of BLL) make or join with ACI in making such objections or representations against or in respect of any proposal contained in the Direction as ACI shall deem expedient in order to protect ACI's security interest in the Charged Property.

9.2.8. It will permit ACI and such person or persons as it shall nominate at all reasonable times during business hours to enter into and upon the Property to view the state and condition of the Property and forthwith after service by ACI of notice of any defect or want of repair without delay promptly remedy such defect or want of repair.

9.2.9. Without prejudice to the provisions of clause 9.2.8, to permit ACI, its agents and their respective officers, agents and employees to enter onto the Property for the purpose of remedying any breach of BLL's obligations in this Deed and to take any action as ACI may reasonably consider

necessary or desirable including, without limitation, carrying out any repairs, other works or development.

9.2.10. It will not without the prior written consent of ACI grant any lease or tenancy of the Property or grant any person any contractual licence or the right to occupy the Property or otherwise part with possession of the Property.

9.2.11. It will pay the rents reserved by and observe and perform the covenants, stipulations and conditions contained in any leases comprised in the Property and on its part as tenant to be paid, observed and performed and to use all reasonable endeavours to procure the observance and performance by the landlord under the said leases of the covenants, stipulations and conditions to be performed on the part of the landlord.

9.2.12. It will not without the prior written consent of ACI alter or vary or agree to alter or vary the terms of any lease or surrender, cancel, dispose of or permit to be forfeited any leasehold interest under which the Property is held whether such lease be a lease under which it holds the Property or a superior lease or a lease which it has (with ACI's consent) granted.

9.2.13. It will to the extent that there are any leases granted by it (with the consent of ACI), use all reasonable endeavours to procure payment by such tenants to whom such leases have been granted of the rents reserved by and the observance and performance of the covenants, stipulations and conditions contained in such leases and to be performed by such tenants and to observe and perform the covenants, stipulations and conditions on its part to be observed and performed under such leases.

9.2.14. It will give immediate notice to ACI if it receives any notice under section 146 of the Law of Property Act 1925 or any proceedings are commenced against it for the forfeiture of any lease comprised in the Property.

9.2.15. It shall not, without the prior written consent of ACI:

(a) exercise any value added tax option to tax in relation to the Property; or

(b) revoke any value added tax option to tax exercised prior to and disclosed to ACI in writing prior to the date of this Deed.

9.3. **Insurances**

9.3.1. BLL shall effect:

a) insurance of the Property and the plant and machinery on the Property on a full reinstatement basis, including, without limitation, site clearance, professional fees, VAT, subsidence and not less than 3 years' loss of rent on all leases or tenancies applicable to any of the Property;

b) third party liability insurances in respect of the Property;

c) insurance against acts of terrorism in respect of the Property; and

d) such insurances in relation to its business or assets as a prudent company in the same business would effect,

all such insurances to be in amount and in form and with an insurance company or underwriters acceptable to ACI (acting reasonably).

9.3.2. BLL shall procure that ACI is noted as mortgagee and loss payee on each such insurance policy and that every such policy shall contain:

a) a standard mortgagee clause whereby such insurance shall not be vitiated or avoided as against a mortgagee in the event or as a result of any misrepresentation, act or neglect or failure to make disclosure on the part of the insured party or any circumstance beyond the control of the insured party; and

b) terms providing that it shall not be invalidated so far as ACI is concerned for failure to pay any premium due without the insurer first giving to ACI not less than 14 days' notice.

9.3.3. BLL shall use its best endeavours to procure that there be given to ACI copies of all policies of insurance in which BLL has an interest and such other information in connection with those policies as ACI may reasonably require and will notify ACI of all renewals, material variations and cancellations of policies made or, to the knowledge of BLL, threatened or pending.

9.3.4. BLL shall not do or permit to be done anything which may make void or voidable any of the policies of insurance in which it has an interest.

9.3.5. BLL shall promptly pay all premiums and do all other things necessary to keep all of the policies of insurance in which it has an interest in full force and effect.

9.4. **Deposit of documents**

Subject to the rights of any prior mortgagee, BLL will promptly on request deposit with ACI (or as it shall direct) all deeds and documents of title relating to the Property and all such other documents relating to the Charged Property as ACI may from time to time reasonably require.

9.5. **Retention of documents**

ACI may retain any document delivered to it pursuant to clause 9.4 or otherwise until the security created by this Deed is released and if, for any reason it ceases to hold any such document before such time, it may by notice to BLL require that the

relevant document be redelivered to it and BLL shall immediately comply (or procure compliance) with such notice.

9.6. **Power to remedy**

If BLL fails to comply with any of the covenants set out in clauses 9.1 to 9.5 BLL will allow (and irrevocably authorises) ACI and/or such persons as it shall nominate to take such action on behalf of BLL as shall be necessary to ensure that such covenants are complied with. In particular but without limitation, if BLL shall be in default of effecting or maintaining insurances or in producing any such policy or receipt to ACI on demand, ACI may take out or renew such insurances in any sum which ACI may think expedient and all money expended and costs incurred by ACI under this provision shall form part of the Secured Obligations.

9.7. **Indemnity**

BLL will indemnify ACI and will keep ACI indemnified against all losses and reasonable costs, charges and expenses properly incurred by ACI as a result of a breach by BLL of its obligations under clauses 9.1 to 9.5 and in connection with the exercise by ACI of its rights contained in clause 9.6 above (other than those which arise due to ACI's negligence or wilful default). All sums the subject of this indemnity will be payable by BLL to ACI on demand and if not so paid will bear interest at the Default Rate. Any unpaid interest will be compounded as provided for in the Finance Documents.

10. POWER OF ATTORNEY

10.1. **Appointment of Attorney**

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

10.1.1. BLL is required to execute and do under this Deed, including execute any document required by ACI; and

10.1.2. any attorney may deem proper or desirable in exercising any of the powers, authorities and discretions conferred by this Deed or by law on ACI and any Receiver and any Delegate.

10.2. **Ratification of Acts of Attorneys**

BLL ratifies and confirms, and agrees to ratify and confirm, anything which any of its attorneys may do in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in clause 10.1.

11. ENFORCEMENT AND POWERS OF ACI

11.1. The security created by and under this Deed is immediately enforceable:

11.1.1. after any demand being made by ACI for payment of any of the Secured Obligations; or

11.1.2. if any step is taken by BLL or any other person to appoint an administrator of BLL including without limitation, the making of an application to court or giving or filing of notice of intention to appoint an administrator; or

11.1.3. if any step is taken by BLL or any other person to wind up BLL including, without limitation, the presentation of a petition for a winding up order or the giving of notice of a resolution to wind up BLL; or

11.1.4. if any step is taken by BLL or any other person to appoint a liquidator, provisional liquidator, trustee, receiver, Law of Property Act receiver, administrative receiver or similar officer of or in relation to BLL, or

11.1.5. if any step is taken by BLL or its committee members or trustees to propose a voluntary arrangement, scheme of arrangement or other formal or informal arrangement with BLL's creditors or;

11.1.6. if so requested by BLL; or

11.1.7. if BLL is in breach of any of the provisions of this Deed or any of the Finance Documents; or

11.1.8. if any enforcement action (including without limitation distress execution, careful seizure or any remedies or proceedings with analogous effect) is taken against any of BLL's assets; or

11.1.9. if any event occurs or circumstances arise which in ACI's reasonable opinion gives reasonable grounds for believing that BLL may not, or may be unable to, perform or comply with any one of its obligations under this Deed or the Finance Documents; or

11.1.10. if BLL is, or is adjudicated or found to be, insolvent or trading on an insolvent basis, or suspends payments of its respective debts or is (or is deemed to be) unable to or admits inability to pay its respective debts as they fall due or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or proceedings are commenced in relation to BLL under any law regulation or procedure relating to reconstruction or adjustment of debt.

11.2. **Demand for payment**

Any demand for payment to be made by ACI under this Deed, shall be in writing and may be signed by any authorised signatory on behalf of ACI, and may be made or given to BLL at any place of business of BLL, or the registered office of BLL:-

11.2.1. by delivering it to any such place; or

11.2.2. by sending it by first class post to any such place (in which case it shall be deemed received at 10.00am on the second Business Day after posting, and proof of posting shall be proof of delivery); or

11.2.3. by sending it by fax to any fax number of BLL (in which case it shall be deemed received when sent, and proof of sending shall be proof of receipt).

11.3. The restriction on the consolidation of mortgages imposed by section 93 of the Law of Property Act 1925 shall not apply to this Deed or to any security given to ACI pursuant to this Deed.

11.4. Section 103 of the Law of Property Act 1925 shall not apply to the charges created by this Deed and the power of sale and other powers conferred by section 101 of such Act (as varied or extended by this security) shall arise on the date of this Deed and shall be immediately exercisable at any time after the security created by this Deed has become enforceable.

11.5. The powers conferred on mortgagees or receivers or administrative receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (as the case may be) shall apply to the security constituted by this Deed except insofar as they are expressly or impliedly excluded and where there is ambiguity or conflict between the powers contained in such Acts and those contained in this Deed, those contained in this Deed shall prevail.

11.6. The statutory power of sale exercisable by ACI under this Deed is extended by this Deed so as to authorise ACI to sever any fixtures from the Property and sell them separately from the Property.

11.7. At any time after this security has become enforceable or if so requested by BLL, ACI may by writing under hand signed by any officer or manager of ACI appoint any person (or persons) to be a Receiver of all or any part of the Charged Property.

11.8. The statutory powers of leasing and accepting surrenders conferred upon ACI by the Law of Property Act 1925 shall be extended so as to authorise ACI to lease, make agreements for leases at a premium or otherwise, accept surrenders of leases and grant options or vary or reduce any sum payable under any leases or tenancy agreements as ACI thinks fit without the need to comply with any of the provisions of sections 99 and 100 of such Act.

11.9. All or any of the powers conferred upon mortgagees by the Law of Property Act 1925 as varied or extended by this Deed and all or any of the rights and powers conferred by this Deed on a Receiver (whether expressly or impliedly) may be exercised by ACI without further notice to BLL at any time after this security shall have become enforceable and ACI may exercise such rights and powers irrespective of whether ACI has taken possession or has appointed a Receiver of the Charged Property.

11.10. At any time after the security constituted by this Deed has become enforceable, or

after any powers conferred by any Security Interest having priority to this Deed shall have become exercisable, ACI may:

(a) redeem such or any other prior Security Interest;

(b) procure the transfer of that Security Interest to itself; and/or

(c) settle any account of the holder of any prior Security Interest.

The settlement of any such account shall be, in the absence of any manifest error, conclusive and binding on BLL. All monies paid by BLL to an encumbrancer in settlement of such an account shall be, as from its payment by ACI, due from BLL to ACI on current account and shall bear interest at the default rate of interest specified in the Finance Documents and be secured as part of the Secured Obligations.

11.11. For the purposes of all powers implied by statute the Secured Obligations are deemed to have become due and payable on the date of this Deed.

12. STATUS, POWERS, REMOVAL AND REMUNERATION OF RECEIVER

12.1. Any Receiver appointed under this Deed shall be the agent of BLL and BLL shall be solely responsible for his acts or defaults and for his remuneration and liable on any contracts or engagements made or entered into by him and in no circumstances whatsoever shall ACI be in any way responsible for any misconduct, negligence or default of the Receiver. The agency of each Receiver shall continue until BLL goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of ACI.

12.2. Any Receiver appointed under this Deed shall have power in addition to the powers conferred by the Law of Property Act 1925 and Schedule 1 of the Insolvency Act 1986 (which are hereby incorporated in this Deed) and notwithstanding the liquidation of BLL:

12.2.1. to take possession of, collect and get in all or any part of the Charged Property and for that purpose to take any proceedings in the name of BLL or otherwise as he thinks fit and exercise all powers, authorisations and rights he would be capable of exercising, and do all such acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Charged Property or any part of the Charged Property.

12.2.2. generally to manage the Charged Property and to manage or carry on, reconstruct, amalgamate, diversify or concur in carrying on the business or any part of the business of BLL as he may think fit;

12.2.3. to make any arrangement or compromise or enter into or cancel any contracts which he shall think expedient in the interests of ACI;

12.2.4. for the purpose of exercising any of the powers, authorities and discretions conferred on him by this Deed and/or defraying any costs or expenses which may be incurred by him in the exercise of such powers, authorities

and discretions or for any other purpose to raise or borrow money or incur any other liability on such terms whether secured or unsecured as he may think fit and whether to rank for payment in priority to the security created by this Deed or not;

12.2.5. without restriction to sell, let or lease, or concur in selling, letting or leasing, and to vary the terms of, determine, surrender or accept surrenders of leases or tenancies of, or grant options and licences over or otherwise dispose of or deal with, all or any part of the Charged Property without being responsible for loss or damage, and so that any such sale, lease or disposition may be made for cash payable by instalments, loan stock or other debt obligations or for shares or securities of another company or other valuable consideration, and the Receiver may form and promote, or concur in forming and promoting, a company or companies to purchase, lease, licence or otherwise acquire interests in all or any of the Charged Property or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease, license or otherwise acquire all or any of the Charged Property on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit;

12.2.6. to make and effect all repairs, renewals and improvements to the Charged Property or any part of it as he may think fit and maintain, renew, take out or increase insurances;

12.2.7. to redeem any prior encumbrance and settle and pass the accounts of the person entitled to the prior encumbrance so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on BLL and the money so paid shall be deemed to be an expense properly incurred by the Receiver;

12.2.8. to appoint and discharge employees, officers, managers, agents, professionals and others for any of the purposes of this Deed or to guard or protect the Charged Property upon such terms as to remuneration or otherwise as he may think fit and to dismiss the same or discharge any persons appointed by BLL;

12.2.9. to settle, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or body who is or claims to be a creditor of BLL or relating to any way to the Charged Property;

12.2.10. to bring, prosecute, enforce, defend and discontinue all such actions and proceedings or submit to arbitration in the name of BLL in relation to the Charged Property as he shall think fit;

12.2.11. to sever and sell plant, machinery or other fixtures sold separately from the property to which they may be annexed;

12.2.12. to implement or continue the development of (and obtain all consents required in connection therewith) and/or complete any buildings or structures on, any real property comprised in the Charged Property and do all acts and things incidental to such matters;

12.2.13. to purchase or acquire any land and purchase, acquire or grant any interest in or right over land;

12.2.14. to exercise on behalf of BLL and without the consent of or notice to BLL all the statutory powers conferred on a landlord or a tenant by landlord and tenant legislation, rent acts legislation and/or housing legislation, or any other comparable legislation from time to time in force in any relevant jurisdiction; and

12.2.15. to do all such other acts and things (including, without limitation, signing and executing all documents and deeds) as may be considered by the Receiver to be incidental or conducive to any of the matters or powers aforesaid or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property and to use the name of BLL for all such purposes.

12.2.16. to effect any policy of insurance in respect of the Charged Property.

12.2.17. to delegate his powers in accordance with this Deed.

12.2.18. to exercise or revoke any value added tax option as he thinks fit.

12.3. ACI may by written notice remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated, for whatever reason.

12.4. ACI may from time to time fix the remuneration of any Receiver appointed by it, any such remuneration shall be a debt secured by this Deed and shall be due and payable immediately on it being paid by ACI.

12.5. If at any time there is more than one Receiver of all or any part of the Charged Property, each Receiver may exercise individually all of the powers conferred on a Receiver under this Deed and to the exclusion of the other Receiver or Receivers (unless the document appointing such Receiver states otherwise).

13. APPLICATION OF MONIES

13.1. All monies received by ACI or any Receiver appointed under this Deed or by a Delegate shall be applied in the following order:

13.1.1. in payment of the costs, charges and expenses incurred, and payments made, by ACI and/or any Receiver or Delegate;

13.1.2. in payment of remuneration to the Receiver at such rates as may be agreed

between him and ACI at or any time after his appointment;

13.1.3. in or towards satisfaction of the Secured Obligations (in such order as ACI shall require); and

13.1.4. the surplus (if any) shall be paid to BLL or other person entitled to it.

13.2. Following the enforcement of this Deed in accordance with clause 11 (Enforcement and powers of ACI), all moneys received by virtue of any insurance maintained or effected in respect of the Charged Property shall be paid to ACI (or if not paid by the insurers directly to ACI shall be held on trust for ACI) and shall, at the option of ACI, be applied in replacing or reinstating the property or assets destroyed, damaged or lost (any deficiency being made good by BLL) or (except in the case of leasehold Property) in reduction of the Secured Obligations.

13.3. Sections 109(6) and (8) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Deed.

13.4. Subject to clause 13.1, any moneys received or realised by ACI from BLL or a Receiver or Delegate under this Deed may be applied by ACI to any item of account or liability or transaction to which they may be applicable in such order or manner as ACI may determine.

13.5. All monies received by ACI or a Receiver or a Delegate under this Deed (other than sums received pursuant to any Insurance Policy which are not going to be applied in or towards discharge of the Secured Obligations):

13.5.1. may, at the discretion of ACI or the Receiver be credited to any suspense or securities realised account;

13.5.2. shall bear interest at such rate, if any, as may be agreed in writing between ACI and BLL; and

13.5.3. may be held in such account for so long as ACI or the Receiver or Delegate thinks fit.

14. PROTECTION OF THIRD PARTIES

14.1. No purchaser from, or other person dealing with, ACI and/or any Receiver or Delegate shall be obliged or concerned to enquire whether the right of ACI or any Receiver or Delegate to exercise any of the powers conferred by this Deed has arisen or become exercisable, or whether any of the Secured Obligations remain outstanding or be concerned with notice to the contrary, or whether any event has happened to authorise the Receiver or Delegate to act or as to the propriety or validity of the exercise or purported exercise of any such power and the title of such a purchaser and the position of such a person shall not be impeachable by reference to any of those matters.

14.2. The receipt of ACI or any Receiver or Delegate shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any moneys paid to or by the direction of ACI or any Receiver or Delegate.

14.3. In clauses 14.1 and 14.2 "purchaser" includes any person acquiring, for money or money's worth, any lease of, or Security Interest over, or any other interest or right whatsoever in relation to, the Charged Property.

15. PROTECTION OF ACI AND RECEIVER

15.1. Neither ACI nor any Receiver shall be liable in respect of all or any part of the Charged Property or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers, unless such loss or damage is caused by its or his gross negligence or wilful acts of default and recklessness.

15.2. Without prejudice to the generality of clause 15.1, entry into possession of the Property shall not render ACI or the Receiver or any Delegate liable to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable and if and whenever ACI or the Receiver or any Delegate enters into possession of the Property, it shall be entitled at any time at its discretion to go out of such possession.

15.3. Each Receiver and ACI is entitled to all rights powers privileges and immunities conferred by the Law of Property Act 1925 on mortgagees or receivers.

16. COSTS AND EXPENSES

16.1. BLL will fully indemnify each of ACI and any Receiver appointed under this Deed or Delegate on demand from and against any loss, cost, charge, expense, claim, tax, damage or liability (and any value added tax chargeable on any such item) which ACI (or any Receiver or Delegate) may incur in connection with the negotiation, preparation, execution, modification, amendment, release and/or enforcement or attempted enforcement of, or preservation of ACI's (or any Receiver's or Delegate's) rights under, this Deed or in relation to any of the Charged Property, including any present or future stamp or other taxes or duties and any penalties or interest with respect to them which may be imposed by any competent jurisdiction in connection with the execution or enforcement of this Deed or in consequence of any payment being made pursuant to this Deed (whether made by BLL or a third person) being impeached or declared void for any reason whatsoever.

16.2. The amounts payable under clause 16.1 above shall carry default interest at the Default Rate as well after as before judgment, from the dates on which they were paid or, incurred by or charged to ACI or the Receiver or the Delegate (as the case may be) and shall form part of the Secured Obligations and accordingly be secured on the Charged Property under the charges contained in this Deed. All such default interest shall be compounded as provided for in the Finance Documents.

16.3. ACI and any Receiver, Delegate, attorney, agent or other person appointed by ACI under this Deed and the officers and employees of ACI (each an **Indemnified Party**) shall be entitled to be indemnified out of the Charged Property in respect of all costs, claims, expenses, liabilities and losses, which may be incurred by, or made against, any of them (or by or against any manager, agent, officer or employee for whose liability, act or omission any of them may be answerable) at any time relating to or arising out of or as a consequence of:

16.3.1. anything done or omitted in the exercise, or purported exercise, of the powers contained in this Deed; or

16.3.2. any breach by BLL of any of its obligations under this Deed; or

16.3.3. any claim made or asserted against any Indemnified Party under Environmental Law which would not have arisen if this Deed had not been executed and which was not caused by the gross negligence or wilful default of the relevant Indemnified Party.

17. MISCELLANEOUS

17.1. This security is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by ACI.

17.2. The powers which this Deed confers on ACI and any Receiver appointed under this Deed are cumulative, without prejudice to their respective powers under the general law, and may be exercised as often as ACI or the Receiver thinks appropriate. ACI or the Receiver may, in connection with the exercise of their powers, join or concur with any person in any transaction, scheme or arrangement whatsoever. BLL acknowledges that the respective powers of ACI and the Receiver will in no circumstances whatsoever be suspended, waived or otherwise prejudiced by anything other than an express waiver or variation in writing.

17.3. Any settlement or discharge between BLL and ACI shall be conditional upon no security or payment to ACI by BLL or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limiting the other rights of ACI under this Deed) ACI shall be entitled to recover from BLL the value which ACI has placed upon such security or the amount of any such payment as if such settlement or discharge had not occurred.

18. Delegation

18.1. ACI 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 by this Deed (including the power of attorney granted under clause 10.1).

18.2. **Terms**

18.3. Any delegation may be made on such terms and conditions (including the power to sub-delegate) as ACI or any Receiver may think fit.

18.4. **Liability**

18.5. Neither ACI nor any Receiver shall be in any way liable or responsible to BLL for any loss or liability arising from any act, default, omission or misconduct on the part of any person appointed by ACI or the Receiver pursuant to this clause 18 and any person appointed as attorney of ACI or the Receiver.

19. NOTICE OF SUBSEQUENT CHARGE

If ACI receives notice of any subsequent Security Interest or other interest affecting the Charged Property as from the time of receipt of such notice by ACI all payments made by BLL to ACI (in the absence of any express appropriation to the contrary) shall be treated not as having been applied in reduction of the Secured Obligations.

20. EXCLUSION OF POWERS OF LEASING

During the continuance of this security the statutory and other powers of leasing, letting, entering into agreements for leases or lettings and accepting or agreeing to accept surrenders of leases or tenancies shall not be exercisable by BLL in relation to the Property.

21. REDEMPTION OF PRIOR CHARGES

ACI may at any time following the security constituted by this Deed becoming enforceable redeem any and all prior Security Interest on or relating to the Charged Property or procure the transfer of such Security Interest to itself and may settle and pass the accounts of the person or persons entitled to the prior Security Interest. Any account so settled and passed shall be conclusive and binding on BLL. BLL will on demand pay to ACI all principal monies, interest, costs, charges, losses, liabilities and reasonable expenses of and incidental to any such redemption or transfer.

22. SET-OFF

22.1. ACI may (without notice to BLL) set off any other obligations (whether or not then due for performance) owed by ACI to BLL in or towards satisfaction of the Secured Obligations.

22.2. **New accounts**

(a) If ACI receives, or is deemed to have received, notice of any subsequent Security Interest or other interest, affecting all or part of the Charged Property, ACI may open a new account for BLL in ACI's books. Without prejudice to ACI's right to combine accounts, no money paid to the credit of

BLL in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Obligations.

(b) If ACI does not open a new account immediately on receipt of the notice, or deemed notice, referred to in clause 22.2 (a) then, unless ACI gives express written notice to the contrary to BLL, all payments made by BLL to ACI shall be treated as having been credited to a new account of BLL and not as having been applied in reduction of the Secured Obligations, as from the time of receipt or deemed receipt of the relevant notice by ACI.

22.3. **ACI's set-off rights**

If ACI has more than one account for BLL in its books, ACI may at any time after:

(a) the security constituted by this Deed has become enforceable; or

(b) ACI has received, or is deemed to have received, notice of any subsequent Security Interest or other interest affecting all or any part of the Charged Property,

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account which may be in debit (but ACI shall notify BLL of the transfer once made).

23. NOTICES

23.1. **Delivery**

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

23.1.1 in writing;

23.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax or (in the case of ACI only) by email; and

23.1.3 sent to the parties' registered address or to any other address or fax number or email address as is notified in writing by one party to the other from time to time.

23.2. **Receipt by BLL**

Any notice or other communication that ACI gives to BLL shall be deemed to have been received:

23.2.1 if delivered by hand, at the time it is left at the relevant address;

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

23.2.3 if sent by fax, when received in legible form; and

23.2.4 if sent by email, at the time sent provided that a "Delivery Receipt" is requested.

A notice or other communication given as described in clause 23.2.1 or clause 23.2.3 or clause 23.2.4 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

23.3. **Receipt by ACI**

Any notice or other communication given to ACI shall be deemed to have been received only on actual receipt.

23.4. **Service of proceedings**

This clause 23 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.

23.5. **Notice by e-mail**

A notice or other communication given under or in connection with this deed by BLL is not valid if sent by e-mail.

24. NO IMPLIED WAIVERS

24.1. No failure or delay by ACI in exercising any right, power or privilege under this Deed shall operate as a waiver of such right power or privilege nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise of such right power or privilege or the exercise of any other right, power or privilege.

24.2. The rights and remedies of ACI provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

24.3. A waiver given or consent granted by ACI under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

25. INVALIDITY

If any provision of this Deed is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions will not be affected or impaired in any way.

26. ASSIGNMENT

26.1. **Assignment by ACI**

(a) At any time, without the consent of BLL, ACI may assign or transfer the whole or any part of ACI's rights and/or obligations under this Deed to any person.

(b) ACI may disclose to any actual or proposed assignee or transferee such information about BLL, the Charged Property and this Deed as ACI considers appropriate.

26.2. **Assignment by BLL**

BLL may not assign any of its rights, or transfer any of its obligations, under this Deed or enter into any transaction that would result in any of those rights or obligations passing to another person.

27. DETERMINATION CONCLUSIVE

A determination, notification or opinion of ACI as to any amount payable under this Deed will be prima facie evidence thereof except in the case of manifest error.

28. COUNTERPARTS

This Deed may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

29. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A third party (being any person other than BLL, ACI, and its permitted assigns and successors, any Receiver and any Delegate) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

30. GOVERNING LAW

This Deed (and any dispute, proceedings or claims of whatever nature arising out of or in any way relating to this Deed) shall be governed by and construed in all respects in accordance with English law.

This Deed has been entered into on the date stated at the beginning of this Deed.

THE SCHEDULE

The Property

Freehold premises being the Sands Development at Peasholme Gap, North Bay, Scarborough.

SIGNATURES TO THE LEGAL MORTGAGE

BENCHMARK LEISURE LIMITED

Executed as a deed by

in the presence of

Director

Signature of witness

Name STEPHEN SIMON

Address DEVONSHIRE HOUSE

1 DEVONSHIRE STREET, LONDON W1W 5DR

Occupation ACCOUNTANT

Executed as a deed by

ABBEY COMMERCIAL INVESTMENTS LIMITED in the presence of

Director

Signature of witness

Name STEPHEN SIMON

Address DEVONSHIRE HOUSE

1 DEVONSHIRE STREET, LONDON W1W 5DR

Occupation ACCOUNTANT