

DATED 23rd October 2015

**THE BOROUGH COUNCIL OF
CHRISTCHURCH**

and

BEACH HOUSE (MUDEFORD) LIMITED

and

MACEMADE LIMITED

UNDERLEASE

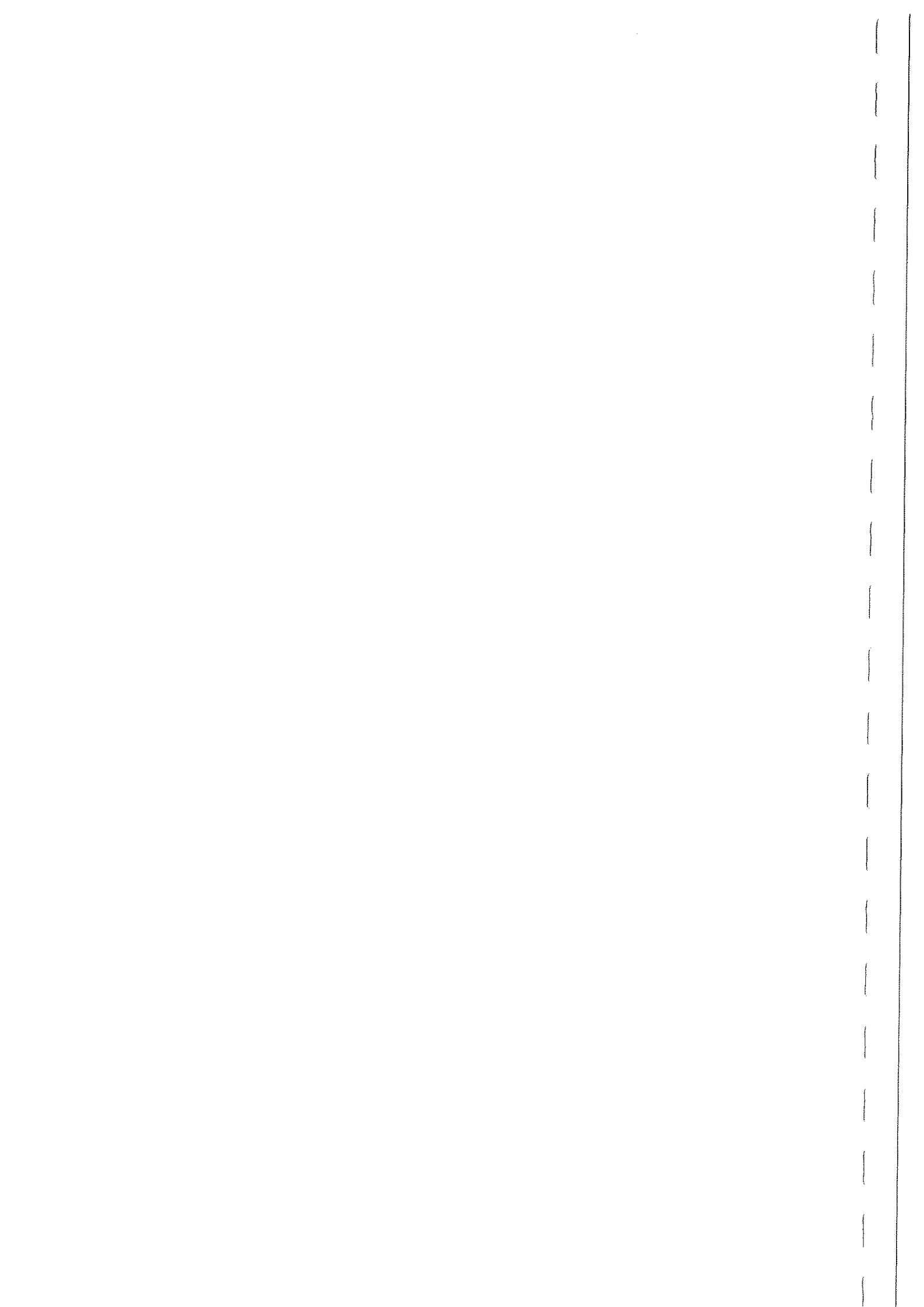
of

The Beach House, Mundeford Sandbank,
Bournemouth Dorset

Sophia Nartey
Solicitor
Legal Services Manager
Christchurch Borough Council

Ref: SB/CBC 000003

Deed Pkt:



LR1. Date of lease

23 October 2015

LR2. Title number(s)

LR2.1 Landlord's title number(s)

Title number(s) out of which this lease is granted. Leave blank if not registered.

LR2.2 Other title numbers

Existing title number(s) against which entries of matters referred to in LR9, LR10, LR11 and LR13 are to be made.

LR3. Parties to this lease

Landlord

THE BOROUGH COUNCIL OF CHRISTCHURCH
of Civic Offices Bridge Street Christchurch Dorset
BH23 1AZ

Tenant

BEACH HOUSE (MUDEFORD) LIMITED
(Company Registration Number: 08345849) whose
registered office is situate at Midland House, 2 Poole
Road, Bournemouth, Dorset, BH2 5QY

Guarantor

MACEMADE LIMITED (Company Registration
Number: 03479536) whose registered office is situate
at Midland House, 2 Poole Road, Bournemouth,
Dorset, BH2 5QY

LR4. Property

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

Clause 1.1.18

LR5. Prescribed statements etc.

***LR5.1 Statements prescribed under rules 179
(dispositions in favour of a charity), 180 (dispositions
by a charity) or 196 (leases under the Leasehold
Reform, Housing and Urban Development Act 1993)
of the Land Registration Rules 2003.***

None

***LR5.2 This lease is made under, or by reference to,
provisions of:***

Leasehold Reform Act 1967

Housing Act 1985

Housing Act 1988

Housing Act 1996

LR6. Term for which the Property is leased	The term as specified in this lease at clause 1.1.6
LR7. Premium	None
LR8. Prohibitions or restrictions on disposing of this lease	This lease contains a provision that prohibits or restricts dispositions.
LR9. Rights of acquisition etc.	LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land None LR9.2 Tenant's covenant to (or offer to) surrender this lease None LR9.3 Landlord's contractual rights to acquire this lease None
LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property	Clause 5.2
LR11. Easements	LR11.1 Easements granted by this lease for the benefit of the Property Schedule 1 LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property Schedule 2
LR12. Estate rentcharge burdening the Property	N/A
LR13. Application for standard form of restriction	N/A
LR14. Declaration of trust where there is more than one person comprising the Tenant	N/A

THIS UNDERLEASE is made the 23rd day of October 2015

BETWEEN:-

- (1) **THE BOROUGH COUNCIL OF CHRISTCHURCH** of Civic Offices, Bridge Street, Christchurch, Dorset, BH23 1AZ ("**the Council**" referred to in Clause LR3 as the Landlord),
- (2) **BEACH HOUSE (MUDEFORD) LIMITED** (Company Registration Number: 08345849) whose registered office is situate at Midland House, 2 Poole Road, Bournemouth, Dorset, BH2 5QY ("**the Tenant**") and
- (3) **MACEMADE LIMITED** (Company Registration Number: 03479536) whose registered office is situate at Midland House, 2 Poole Road, Bournemouth, Dorset, BH2 5QY

NOW THIS DEED WITNESSES as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For all purposes of this Underlease the terms defined in this Clause have the meanings specified.

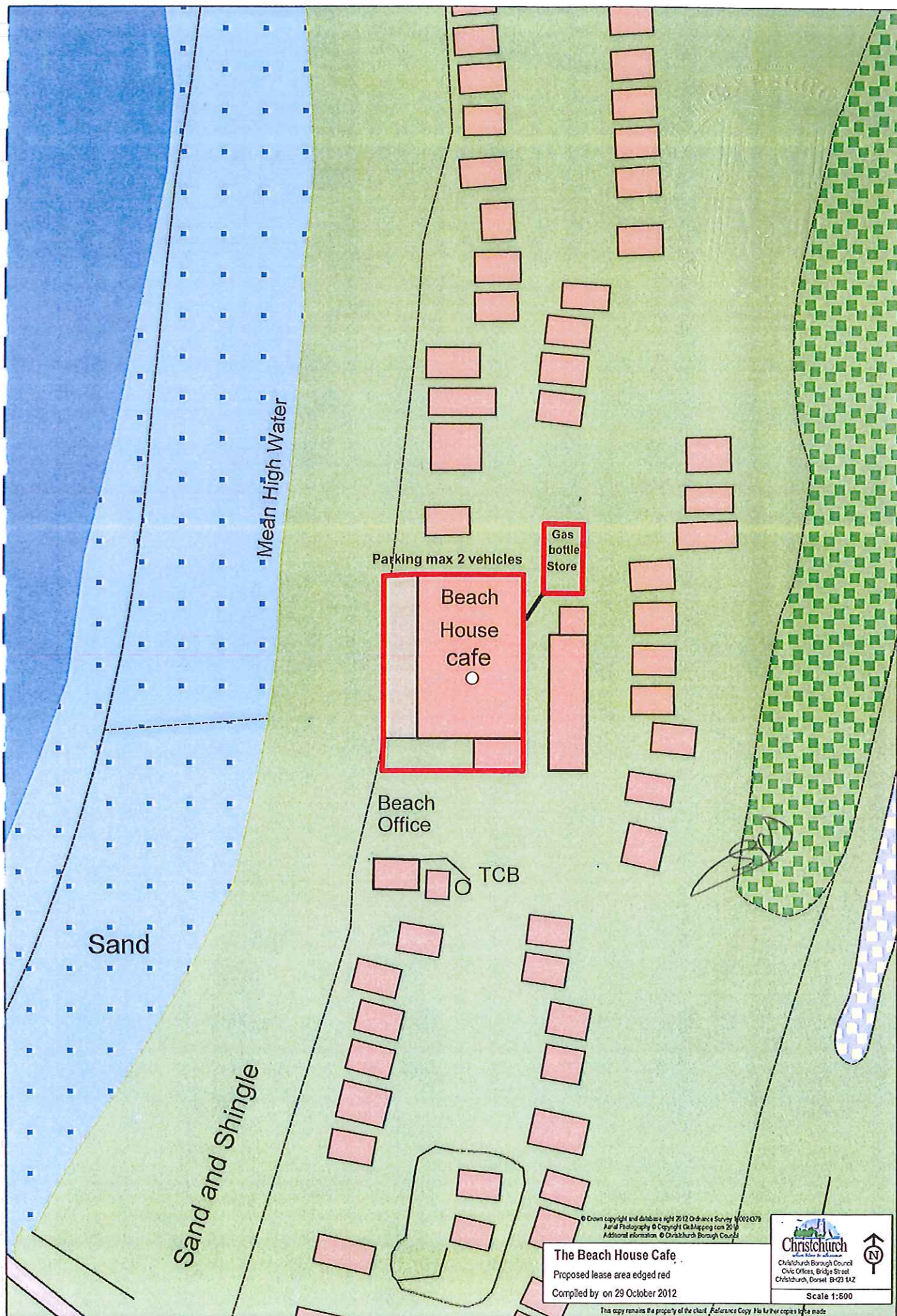
1.1.1 "**the Adjoining Property**" means each and every part of the land neighbouring or adjoining the Premises comprised in the Headlease.

1.1.2 "**Beach Huts**" means the beach huts sited on Mudeford Sandbank.

1.1.3 "**CDM Regulations**" means the Construction (Design and Management) Regulations 2007.

1.1.4 "**Commercial Waste Bins**" means the bins referred to in Paragraph 7 of Schedule 1.

- 1.1.5 **"Conduits"** means pipes, sewers, drains, mains, ducts, conduits, gutters, watercourses, wires, cables, laser optical fibres, data or impulse transmission, communication or reception systems, channels, flues and all other conducting media (including any fixings, louvers, cowls, covers and any other ancillary apparatus).
- 1.1.6 **"Contractual Term"** means the period from and including the First day of January 2013 until the Twenty Third day of March 2029.
- 1.1.7 **"the Council"** includes the person or persons from time to time entitled to possession of the Premises when this Underlease comes to an end.
- 1.1.8 **"Fire Safety Regulations"** means the Regulatory Reform (Fire Safety) Order 2005.
- 1.1.9 **"the Guarantor"** includes not only the person named above as the Guarantor, but also any person who enters into covenants with the Council pursuant to Clause 4.35.
- 1.1.10 **"the Headlease"** means a Lease dated the Ninth day of October 1931 and made between (1) The Mayor Aldermen and Burgesses of the Borough of Bournemouth and (2) The Mayor Aldermen and Burgesses of the Borough of Christchurch under which the Council holds the Premises (together with the Adjoining Property) as successors in title to The Mayor Aldermen and Burgesses of the Borough of Christchurch by virtue of the provisions of the Local Government Act 1972



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The Beach House Cafe
Proposed lease area edged red
Compiled by on 29 October 2012



Christchurch
Christchurch Borough Council
 Civic Offices, Bridge Street
 Christchurch, Dorset BH23 1AZ



Scale 1:500

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- 1.1.11 **"include" "includes" and "including"** are deemed to be followed by the words **"without limitation"**.
- 1.1.12 **"Insurance Rent"** means the sums that the Council from time to time pays by way of premium for insuring the Premises during the Term, including insuring for loss of rent, in accordance with its obligations contained in this Lease;
- 1.1.13 **"Insured Risks"** means the risks of loss or damage by fire, storm, tempest earthquake, lightning, explosion, riot, civil commotion, malicious damage, terrorism and by aircraft and articles dropped from aircraft, flood damage and bursting and overflowing of water pipes and tanks and such other risks as the Council acting reasonably from time to time decides to insure against and which is available at reasonable rates.
- 1.1.14 **"losses"** means any liabilities, damages or losses, awards of damages or compensation, penalties, costs, disbursements and expenses arising from any claim, demand, action or proceedings.
- 1.1.15 **"Mudeford Sandbank"** means the Mudeford Sandbank, Christchurch/Bournemouth, Dorset
- 1.1.16 **"Plan"** means the plan annexed to this Underlease.
- 1.1.17 **"Planning Acts"** means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation

Act 1991, the Planning and Compulsory Purchase Act 2004 and all statutes, regulations and orders included by virtue of Clause 1.2.9.

1.1.18 **"Premises"** means ALL THAT piece or parcel of land situate at Mudeford Sandbank shown edged red on the Plan, together with the building erected thereon known as The Beach House, Hengistbury Head, Bournemouth, Dorset, BH6 4EW and includes:-

1.1.18.1 all buildings, erections, structures, fixtures, fittings and appurtenances on the Premises from time to time,

1.1.18.2 all additions, alterations and improvements carried out during the Term and

1.1.18.3 the Conduits serving solely the Premises.

Unless the contrary is expressly stated "the Premises" includes any part or parts of the Premises.

1.1.19 **"Premises Licence"** means the premises licence for the Premises issued under the Licensing Act 2003 for the use of the Premises for the sale of alcohol for consumption either on or off the Premises.

1.1.20 **"Rent"** means the rent reserved by this Underlease.

1.1.21 **"Roads"** means the roads from time to time available within the Adjoining Property and serving the Premises.

1.1.22 **"Superior Landlord"** means The Borough Council of Bournemouth which expression includes its successors in title.

1.1.23 **"the Tenant"** includes any person who is for the time being bound by the tenant covenants of this Underlease.

1.1.24 **"The Term"** means the Contractual Term and any period of holding over or extension or continuance of the Contractual Term by statute or common law.

1.1.25 **"VAT"** means value added tax or any other tax of a similar nature that may be substituted for it or levied in addition to it and unless otherwise expressly stated all references to rents or other sums payable by the Tenant are exclusive of VAT.

1.2 Interpretation

1.2.1 **Clauses, Paragraphs and Schedules**

Any reference in this Underlease to a Clause, Paragraph or Schedule without further designation is to be construed as a reference to the Clause, Paragraph or Schedule of this Underlease so numbered.

1.2.2 **Consent and Approval**

References to a requirement for the consent or approval of the Council or words to similar effect in this Underlease mean the prior written consent or approval of the Council as landlord.

1.2.3 **Calculation of Periods of Time**

Unless expressly stated to the contrary any reference in this Underlease to a period of time by reference to hours, days or months is deemed to be an inclusive period.

1.2.4 **Gender and Number**

Wherever the context admits in this Underlease, words that indicate one gender include all other genders, words that indicate the singular include the plural and vice versa and words that indicate persons

shall be interpreted as extending to a corporate body or a partnership and vice versa.

1.2.5 Headings

The Clause, Paragraph and Schedule headings do not form part of this Underlease and are not to be taken into account in its construction or interpretation.

1.2.6 Joint and Several Liability

Where any party to this Underlease for the time being comprises two or more persons, obligations expressed or implied to be made by or with that party are deemed to be made by or with the persons comprising that party jointly and severally.

1.2.7 Obligation not to permit or suffer

Any covenant by the Tenant not to do anything includes an obligation to use best endeavours not to permit or suffer that thing to be done by another person where the Tenant is aware that thing is being done.

1.2.8 Rights of Access

References to any right of the Council to have access to the Premises are to be construed as extending to all persons authorised in writing by the Council including its officers, agents, professional advisers, contractors, workmen and others.

1.2.9 Statutes

Unless expressly stated to the contrary any references to a specific statute includes any statutory extension or modification, amendment

or re-enactment of that statute and any regulations or orders made under it and any general reference to a statute includes any regulations or orders made under that statute.

2. DEMISE

In consideration of the Rent and the Tenant's covenants contained in this Underlease the Council HEREBY DEMISES the Premises to the Tenant TOGETHER WITH (so far as the Council can lawfully grant the same) the rights specified in Schedule 1 but EXCEPTING AND RESERVING to the Council and all persons entitled thereto the rights specified in Schedule 2 TO HOLD the Premises to the Tenant for the Contractual Term SUBJECT to all rights, easements, privileges, restrictions, covenants and stipulations of whatever nature affecting the Premises YIELDING AND PAYING to the Council:-

- 2.1 For the first three years of the Term the yearly rent of [REDACTED]
[REDACTED]
- 2.2 For the next three year period of the Term and for each successive period of years thereafter until the Thirty First day of December 2027 and for the period from the First day of January 2028 until the expiration of the Contractual Term the yearly rent ascertained in accordance with Schedule 3.
- 2.3 By way of further rent, the Insurance Rent, payable on demand in accordance with Clause 4.1.2

3. RENT PAYMENT DATES

The Rent is to be paid, without any deduction or set off, by equal monthly payments in advance on the First day of each month in every year and

proportionately for any period of less than a year, the first such payment to be paid on the date of this Underlease.

4. THE TENANT'S COVENANTS

The Tenant covenants with the Council to observe and perform the requirements of this Clause 4.

4.1 Payment of the Rent

The Tenant must pay:-

4.1.1 the Rent on the days and in the manner set out in this Underlease and must not exercise or seek to exercise any right or claim to withhold rent or any right or claim to legal or equitable set-off and

4.1.2 the Insurance Rent for the period starting on the date hereof and ending on the day before the next policy renewal date on the date of this Lease and subsequently to pay the Insurance Rent on demand.

4.2 Outgoings and VAT

The Tenant must pay and must indemnify the Council against:-

4.2.1 All rates, taxes, assessments, duties, charges, impositions and outgoings that are now or may at any time during the Term be charged, assessed or imposed upon the Premises or on the owner or occupier of them ;

4.2.2 All VAT that may from time to time be charged on the Rent or other sums payable by the Tenant under this Underlease; and

4.2.3 All VAT incurred in relation to any costs that the Tenant is obliged to pay or in respect of which the Tenant is required to indemnify the Council under the terms of this Underlease.

4.3 Services

The Tenant must pay to the suppliers and indemnify the Council against all charges for electricity, water, telecommunications and other services consumed or used at or in relation to the Premises (including meter rents and standing charges) and must comply with the lawful requirements and regulations of their respective suppliers.

4.4 User

4.4.1 The Tenant must use the Premises only for the business or businesses of:-

4.4.1.1 a shop for the sale of ice-cream, refreshments, groceries, newspapers, bread, milk, alcohol of all descriptions (for consumption off the Premises), calor gas cylinders and any other commodities reasonably required by the occupiers of the Beach Huts and other premises at Mudeford Sandbank and

4.4.1.2 a restaurant and café with a Premises Licence authorising the sale by retail of alcohol of all descriptions for consumption on or off the Premises.

4.4.2 The Tenant must use the internal toilets forming part of the Premises (and must allow and permit the same to be used) as customers' and staff toilet.

4.4.3 The Tenant must only use the store forming part of the Premises and marked on the Plan as a "Gas bottle Store" for the purpose of storing

calor gas cylinders ancillary to the business referred to in Clause 4.4.1.

4.5 Opening Hours

The Tenant must trade actively throughout the Term and except with the prior consent of the Council must keep the Premises open for business at least during the times specified in this Clause as follows:-

- 4.5.1 during the months of April, May, June and September in every year during the normal trading hours for the Christchurch area;
- 4.5.2 during the months of July and August in every year during the hours from 9am to 7pm each day and
- 4.5.3 during the remaining months of every year at such times as the Tenant may in its discretion decide in order to serve the needs of the Beach Hut licensees, the other owners and occupiers of Mudeford Sandbank and visitors to Mudeford Sandbank.

4.6 Goodwill

- 4.6.1 The Tenant must at all times keep the Premises well stocked (including ensuring that at all times the Premises is well stocked with bread, milk, newspapers and other essential goods).
- 4.6.2 The Tenant must not by charging unreasonably high prices or otherwise do anything likely to injure the connection or goodwill of the business or businesses carried on or to be carried out on the Premises.

4.7 Repair and Decoration

- 4.7.1 The Tenant must repair the Premises and keep them in good and tenantable repair and condition.
- 4.7.2 The Tenant must ensure that all works of maintenance and repair to any electrical apparatus are carried out only by NICEIC, ECA or other suitably qualified electrical contractors and to any gas apparatus are carried out only by gas engineers who are registered on the Gas Safe Register.
- 4.7.3 The Tenant must redecorate the exterior of the buildings forming part of the Premises in every third year of the Term and must redecorate the interior of the buildings forming part of the Premises in every seventh year and in the last year of the Term in a proper and workmanlike manner in colours to the reasonable satisfaction of the Council.

4.8 Cleaning and Litter

- 4.8.1 The Tenant must at all times keep the Premises in a clean and tidy condition.
- 4.8.2 Without prejudice to Clause 4.8.1 the Tenant must ensure at its own expense that all waste, rubbish and refuse is properly stored in the Commercial Waste Bins and is regularly collected and disposed of to the satisfaction of the Council (and where practicable but subject to such service being offered at a reasonably competitive commercial rate to arrange for the Tenant's commercial waste to be collected by the same operator and at the same time as the Council's refuse is collected from Mudeford Sandbank).

4.8.3 The Tenant must not deposit any waste, rubbish or refuse from the Premises in the public waste bins.

4.8.4 The Tenant must not drop or deposit litter on the Adjoining Property and must remove any litter so dropped or deposited.

4.9 Fire Safety

4.9.1 The Tenant must comply with the requirements of and the duties imposed by the Fire Safety Regulations as to fire safety at the Premises. In particular the Tenant must keep the Premises supplied with such fire fighting equipment as is necessary to comply with the Fire Safety Regulations and as the insurers may require and maintain the equipment to their satisfaction and in efficient working order and cause any fire fighting equipment to be inspected by a competent person at least once in every six months.

4.9.2 The Tenant must not obstruct the access to any fire equipment or the means of escape from the Premises or lock any fire door whilst the Premises are occupied.

4.10 Alterations and Additions

4.10.1 The Tenant must not make any alterations, additions or improvements to the Premises (including erecting any new buildings or other structures on the Premises), without the previous consent of the Council.

4.10.2 Without prejudice to Clause 4.10.1 the Tenant must not install any new exterior security equipment (including CCTV equipment, audible alarm boxes, strobe boxes or movement sensitive lighting) without

the previous consent in writing of the Council (which shall not be unreasonably withheld or delayed).

- 4.10.3 The Tenant must not make any connection with the Conduits that serve the Premises except in accordance with plans and specifications approved by the Council and subject to consent to make the connection having previously been obtained from the competent authority, undertaker or supplier.

4.11 Drainage

- 4.11.1 The Tenant must ensure that the Premises are adequately drained to the satisfaction of the local drainage undertaker or any other competent authority from time to time having jurisdiction in this respect.
- 4.11.2 The Tenant must not use any discharge pipe into Christchurch Harbour now existing.
- 4.11.3 Without prejudice to Clause 4.11.2 the Tenant must not discharge any waste water or rainwater from the Premises into Christchurch Harbour.

4.12 Aerials, Signs and Advertisements

- 4.12.1 The Tenant must not erect any pole or mast or install any wire or cable on the Premises, whether in connection with radio, television, telecommunications or otherwise.
- 4.12.2 The Tenant must not without the Council's consent and if necessary the consent of the Superior Landlord fix to or exhibit on the outside of the Premises or fix to or exhibit through any window of the Premises

or display anywhere on other land forming part of or surrounding the Premises any placard, sign, notice, fascia board or advertisement.

4.13 Statutory Obligations

- 4.13.1 The Tenant must comply in all respects with the requirements of any statutes and any other obligations imposed by law or by any byelaws applicable to the Premises or the trade or business or use for the time being carried on there and in particular including any such statutes, obligations or byelaws relating to the preparation, storage and sale of food.
- 4.13.2 Without prejudice to the generality of Clause 4.13.1 the Tenant must execute all works and provide and maintain all arrangements on or in respect of the Premises or the use to which they are being put that are required in order to comply with the requirements of any statute already or in the future to be passed or the requirements of any government department, local authority or other public or competent authority or court of competent jurisdiction regardless of whether the requirements are imposed on the owner, the occupier or any other person.
- 4.13.3 Without prejudice to the generality of Clause 4.13.1 the Tenant must not do in on or near the Premises anything by reason of which the Council may incur any losses under any statute.
- 4.13.4 Without prejudice to the generality of Clause 4.13.1, the Tenant must comply with the provisions of the CDM Regulations, must be the only client as defined in the provisions of the CDM Regulations, must fulfil

in relation to all and any works all the obligations of the client as set out in or reasonably to be inferred from the CDM Regulations and make a declaration to that effect to the Health and Safety Executive in accordance with the Approved Code of Practice published from time to time by the Health and Safety Executive in relation to the CDM Regulations.

4.13.5 At the end of the Term the Tenant must forthwith deliver to the Council any and all health and safety files relating to the Premises required to be maintained under the CDM Regulations.

4.14 Entry to inspect and notice to repair

4.14.1 The Tenant must permit the Council on reasonable notice at all reasonable times except in emergency:-

4.14.1.1 to enter the Premises to ascertain whether or not the covenants and conditions of this Underlease have been observed and performed and for inspecting the arrangements made for the preparation, storage and sale of food, and

4.14.1.2 to view the state of repair and condition of the Premises and to open up floors and other parts of the Premises where that is necessary in order to do so provided that any opening up must be made good by and at the cost of the Council if it reveals no breach of the Underlease and

4.14.1.3 to give to the Tenant or leave on the Premises a notice ("the notice to repair") specifying the works required to

remedy any breach of the Tenant's obligations in this Underlease as to the repair and condition of the Premises.

4.14.2 The Tenant must carry out the works specified in the notice to repair within the time period specified in the notice to repair (including making good any opening up that revealed a breach of the terms of this Underlease).

4.14.3 If within the period specified in the notice to repair the Tenant has not started to execute the work referred to in that notice or is not proceeding diligently with it or fails to finish the work within the period specified in the notice to repair, then the Tenant must permit the Council to enter the Premises to execute the outstanding work and must within twenty one days of a written demand pay to the Council the cost of so doing and all expenses incurred by the Council, including legal costs and surveyor's fees.

4.15 Alienation

4.15.1 Subject to Clauses 4.15.2 and 4.15.3 the Tenant must not assign sublet or part with the possession of the whole or any part of the Premises without the consent of the Council whose consent may not be unreasonably withheld or delayed, such consent to be given by formal deed of licence only.

4.15.2 If any of the following circumstances (which are specified for the purposes of Section 19(1)(A) of the Landlord and Tenant Act 1927) applies either at the date when application for consent to assign is made to the Council, or after that date but before the Council's

consent is given, the Council may withhold its consent and if, after the Council's consent has been given but before the assignment has taken place, any such circumstances apply, the Council may revoke its consent, whether its consent is expressly subject to a condition as referred to in Clause 4.15.3 or not. The circumstances are:-

4.15.2.1 that any sum due from the Tenant under this Underlease remains unpaid;

4.15.2.2 that in the Council's reasonable opinion the assignee is not a person who is likely to be able to comply with the tenant covenants of this Underlease and to continue to be able to comply with them following the assignment; and

4.15.2.3 that the assignee or any guarantor for the assignee (other than any guarantor under an authorised guarantee agreement) is a corporation registered or otherwise resident in a jurisdiction in which the order of a court obtained in England and Wales will not necessarily be enforced against the assignee or guarantor without any consideration of the merits of the case.

4.15.3 The Council may impose any or all of the following conditions (which are specified for the purposes of Section 19(1A) of the Landlord and Tenant Act 1927) on giving any consent for an assignment by the Tenant and any such consent is to be treated as being subject to each of the following conditions:-

- 4.15.3.1 A condition that on or before any assignment and before giving occupation to the assignee, the Tenant requesting consent to assign, together with any former tenant who by virtue of Section 11 of the Landlord and Tenant (Covenants) Act 1995 was not released on an earlier assignment of this Underlease, must enter into an authorised guarantee agreement in favour of the Council in the terms set out in Schedule 4.
- 4.15.3.2 A condition that if reasonably so required by the Council on an assignment to a limited company, the assignee must ensure that at least two directors of the company, or some other guarantor or guarantors reasonably acceptable to the Council, enter into direct covenants with the Council to guarantee the performance and observance of the tenant covenants and all other provisions of this Underlease during the residue of the Term.
- 4.15.3.3 A condition that on or before any assignment the Tenant making the request for consent to assign must give to the Council a copy of any health and safety file required to be maintained under the CDM Regulations containing full details of all works undertaken to the Premises by that Tenant.
- 4.15.3.4 A condition that if at any time before the assignment the circumstances specified in Clause 4.15.2 or any of them

apply the Council may revoke the consent by written notice to the Tenant.

4.15.4 Every permitted sublease must contain provisions:-

4.15.4.1 prohibiting the subtenant from doing or allowing anything in relation to the sublease premises inconsistent with or in breach of the provisions of this Underlease;

4.15.4.2 for re-entry by the sublandlord on breach of any covenant by the subtenant;

4.15.4.3 imposing an absolute prohibition against all dealings with the sublease premises other than assignment of the whole;

4.15.4.4 prohibiting assignment of the whole of the sublease premises without the consent of the Council under this Underlease;

4.15.4.5 prohibiting the subtenant from holding on trust for another or permitting another to share or occupy the whole or any part of the sublease premises; and

4.15.4.6 imposing in relation to any permitted assignment the same obligations for registration with the Council as are contained in this Underlease in relation to dispositions by the Tenant.

4.15.5 Within one month of any assignment, sublease, charge or any transmission or other devolution relating to the Premises, the Tenant

must produce a certified copy of any relevant document for registration with the Council.

4.16 Nuisance and Restrictions

- 4.16.1 The Tenant must not do anything on the Premises or allow anything to remain on them that may be or become or cause a nuisance, annoyance, disturbance, inconvenience, injury or damage to the Council or its tenants or the owners or occupiers of any adjoining or neighbouring premises (including the Beach Huts) or other persons lawfully using Mudeford Sandbank.
- 4.16.2 The Tenant must not use the Premises for residential purposes.
- 4.16.3 The Tenant must not permit any touting in connection with the use of the Premises or the sale of any commodities.
- 4.16.4 In exercising the rights granted by Paragraph 4 of Schedule 1 the Tenant must not use any motorised vehicle to deliver calor gas cylinders to any Beach Hut at Mudeford Sandbank and for the avoidance of doubt such delivery may only be made by using a hand pulled cart or trolley.
- 4.16.5 The Tenant must not use or keep or permit to be used or kept in the Premises any generator or other mechanical device for the generation of electricity.
- 4.16.6 The Tenant must not take into or store on or in the Premises any motor fuel or lubricating oil.
- 4.16.7 Except as permitted in accordance with the rights granted by this Underlease, the Tenant must not permit any vehicles driven by or

belonging to the Tenant or the Tenant's staff or any person or persons visiting the Premises to stand or park on any part of the Adjoining Property.

4.16.8 The Tenant must not do anything to interfere with the lawful use of any part of Mudeford Sandbank.

4.16.9 The Tenant must comply with the Council's management plan for Mudeford Sandbank so far as the same affects the Premises (and as may from time to time be amended or varied by the Council and notified to the Tenant in writing) provided always that the obligations imposed on the Tenant in the Council's management plan for the time being shall not impose on the Tenant any more onerous obligations than are expressly set-out in this Underlease and in the event of discrepancy or inconsistency between the provisions of the said management plan and the obligations of the Tenant under this Underlease the obligations expressly set-out in this Underlease shall take precedence.

4.17 Insurance of Contents

The Tenant must insure and keep insured the contents of the Premises at its own expense.

4.18 Third Party Liability Insurance

The Tenant must effect and throughout the Term keep in force a policy of insurance with a reputable insurance company (approved in writing by the Council) to cover all claims arising from the use of the Premises or the exercise of any of the rights granted by this Underlease in the amount of not

less than Five Million Pounds (or such other sum as may from time to time be reasonably required by the Council and notified in writing to the Tenant by the Council) in respect of any one claim for bodily injury or disease or damage to property and must make available to the Council on demand a copy of the policy or a summary of its terms and reasonable evidence that the premium has been paid.

4.19 Other Insurance Obligations

4.19.1 The Tenant must observe the conditions of any insurance policy effected in accordance with this Underlease and must comply with all reasonable requirements and recommendations of the insurers advised to it in writing and must not do or omit to do anything that could cause any insurance policy effected in accordance with this Underlease to become wholly or partly invalidated.

4.19.2 The Tenant must as soon as practicable give notice to the Council of anything that might affect any insurance policy effected in accordance with this Underlease and of any destruction of or damage to the Premises whether or not caused by one or more of the Insured Risks.

4.19.3 If at any time the Tenant is entitled to the benefit of any insurance of the Premises that is not effected or maintained in pursuance of any obligation contained in this Underlease the Tenant must apply all money received by virtue of that insurance in making good the loss or damage in respect of which the money is received.

4.19.4 The Tenant must effect and throughout the Term keep in force a policy of insurance sufficient to cover all claims for the contents of the Premises.

4.20 Costs of applications notices and recovery of arrears

The Tenant must pay to the Council on an indemnity basis all costs, fees, charges, disbursements and expenses (including those payable to counsel, solicitors, surveyors and bailiffs) properly and reasonably incurred by the Council in relation to or incidental to:-

4.20.1 every application made by the Tenant for a consent or licence required by the provisions of this Underlease, whether it is granted, refused or offered subject to any lawful qualification or condition or the application is withdrawn unless such refusal, qualification or condition is unlawful whether because it is unreasonable or otherwise;

4.20.2 the preparation and service of a notice under Section 146 of the Law of Property Act 1925 or the contemplation or taking of proceedings under Section 146 or 147 of that Act, even if forfeiture is avoided otherwise than by relief granted by the court;

4.20.3 the recovery or attempted recovery of any sums due under this Underlease; and

4.20.4 the preparation and service of Schedules of dilapidations.

4.21 Planning and Development

The Tenant must observe and comply with the provisions and requirements of the Planning Acts affecting the Premises and their use and must indemnify and

keep the Council indemnified (both during the Term and following the end of it) against all losses in respect of any contravention of those Acts.

4.22 Plans Documents and Information

4.22.1 If so requested, the Tenant must produce to the Council any plans, documents and other evidence the Council reasonably requires in order to satisfy itself that the provisions of this Underlease have been complied with.

4.22.2 If so requested, the Tenant must produce to the Council or any person acting as the third party determining the Rent in default of agreement between the Council and the Tenant under any provisions for rent review contained in this Underlease any information reasonably requested in writing in relation to any pending or intended step under the Landlord and Tenant Act 1954 or the implementation of any provisions for rent review.

4.23 Indemnity

The Tenant must indemnify and keep the Council indemnified against all losses arising out of the use of the Premises and against any liability arising by virtue of the Tenant's failure to observe and perform the covenants, conditions and other terms herein contained and on the Tenant's part to be observed or performed.

4.24 Statutory Notices

The Tenant must give full particulars to the Council of any notice, direction, order or proposal relating to the Premises made, given or issued to the Tenant by any government department or local, public, regulatory or other authority or

court within seven days of receipt and if so requested by the Council must produce it to the Council. The Tenant must without delay take all necessary steps to comply with the notice, direction or order.

4.25 Compliance with Headlease

The Tenant must not do or omit to do in relation to the Premises anything which would or might cause the Council to be in breach of the Headlease (or which if done, omitted, suffered or permitted by the Council would or might constitute a breach of the covenants on the part of the lessee and the conditions contained in the Headlease) .

4.26 Reletting Boards and Viewing

Unless a valid court application under the Landlord and Tenant Act 1954 has been made or the Tenant is otherwise entitled to remain in occupation or to a new tenancy of the Premises at any time during the last six months of the Contractual Term and at any time thereafter the Tenant must permit the Council to enter the Premises and fix and retain anywhere on them a board advertising them for reletting. While any such board is on the Premises the Tenant must permit viewing of the Premises at reasonable times of the day.

4.27 Vehicular Movements

At the Tenant's own expense to use all reasonable endeavours to reduce vehicular movements over and along the Roads in accordance with the proviso in Paragraph 4 of Schedule 1 AND with the object of ensuring that the limits referred to therein shall not be exceeded to maintain records as to the number of vehicular movements over and along the Roads such records to be in such a form as the Council may agree with the Tenant (such agreement not to be

unreasonably withheld or delayed) and to allow the Council to inspect any such records upon request from time to time.

4.28 Asbestos

4.28.1 The Tenant must supply the Council with an assessment report, and survey into the presence of asbestos at the Premises.

4.28.2 Without prejudice to the generality of Clause 4.13.1 the Tenant must comply with the provisions of any statute relating to the inspection and management of asbestos at the Premises (including fulfilling the obligations of a dutyholder for the purposes of the Control of Asbestos at Work Regulations 2006).

4.29 Electrical Equipment Safety Test

The Tenant must have all electrical equipment on the Premises (including all appliances) safety checked annually during the Term and must supply a copy of the test certificates to the Council and must repair or replace any such equipment as necessary as a result of such checks.

4.30 Licensing

The Tenant must:

4.30.1 do all such things and acts as are requisite to obtain and preserve the Premises Licence;

4.30.2 not surrender or agree to surrender the Premises Licence nor do anything which might cause the Premises Licence to be revoked;

- 4.30.3 on the expiration or sooner determination of the Term (at the Tenant's own expense) consent to the transfer of the Premises Licence;
- 4.30.4 pay all fees in respect of any application or notice under Part 3 of the Licensing Act 2003 and all annual fees in respect of the Premises Licence; and
- 4.30.5 indemnify and keep the Council indemnified in respect of any loss, damage or expense suffered by the Council as a result of:
 - 4.30.5.1 the commission of any offence under the Licensing Act 2003;
 - 4.30.5.2 any failure to comply with the conditions to which the Premises Licence is subject; and
 - 4.30.5.3 any steps taken on any determination of an application for a review of the Premises Licence which is a consequence of any act or omission by the Tenant or the designated premises supervisor (as that term is defined in the Licensing Act 2003).

4.31 Exercise of the Council's Rights

The Tenant must permit the Council to exercise any of the rights granted to it by virtue of the provisions of this Underlease at all times during the Term without interruption or interference.

4.32 Yielding Up

At the end of the Term, the Tenant must yield up the Premises with vacant possession, decorated and repaired in accordance with and in the condition

required by the provisions of this Underlease and give up all keys of the Premises.

4.33 Interest on Arrears

The Tenant must pay to the Council interest on any of the Underlease rents or other sums due under this Underlease that are not paid within fourteen days of the date due, whether formally demanded or not, from the date when they were due to the date of payment at the rate of four per centum per annum above the base lending rate from time to time of Lloyds Bank plc (or such other bank that is a member of the British Banks Association (or its successor) as the Council from time to time nominates in writing), such interest to be recoverable as rent. Nothing in this Clause entitles the Tenant to withhold or delay any payment of the Rent or any other sum due under this Underlease or affects the Council's rights in relation to any non-payment.

4.34 Energy Certificates

4.34.1 The Tenant must produce to the Council a copy of any Energy Performance Certificate or Display Energy Certificate prepared pursuant to the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 within twenty one days of its receipt.

4.34.2 The Tenant must produce any information reasonably requested in writing and co-operate with the Council and any person authorised by the Council to enable the Council to comply with any duty imposed on the Council under the Energy Performance of Buildings

(Certificates and Inspections) (England and Wales) Regulations 2007.

4.35 Replacement Guarantor

In the case of an individual, in the event of the death of the Guarantor or of the Guarantor becoming bankrupt or having a receiving order made against him or having a deputy appointed under the Mental Capacity Act 2005 or entering into a voluntary arrangement and, in the case of a company, in the event of the Guarantor passing a resolution to wind up, entering into liquidation, a voluntary arrangement or administration or having a receiver appointed, the Tenant must give notice of this event to the Council within fourteen days of becoming aware of it. If so required by the Council, the Tenant must within twenty eight days obtain some other person or entity reasonably acceptable to the Council to execute a guarantee in the form of the Guarantor's covenants in Clause 6 for the residue of the Guarantee Period specified in Clause 6.

5. THE COUNCIL'S COVENANTS

The Council hereby covenants with the Tenant to observe and perform the requirements of this Clause 5.

5.1 Quiet Enjoyment

The Council must permit the Tenant peaceably and quietly to hold and enjoy the Premises without any interruption or disturbance from or by the Council or any person rightfully claiming under or in trust for the Council.

5.2 Trading Concession

The Council must not during the Term carry on or allow to be carried on the business or businesses referred to in Clause 4.4.1 or any branch of it on any

part of the Adjoining Property and if at any time during the Term the Adjoining Property shall be assigned, sub-leased or otherwise disposed of by the Council or become vested by the Council in any other person, this covenant shall bind every other such person and shall be enforceable by the Tenant against all persons hereafter claiming any interest or estate in any part of the Adjoining Property.

5.3 Headlease

The Council must pay the rents reserved by the Headlease and must perform (so far as the Tenant is not liable for such performance under the terms of this Underlease) the covenants and conditions on the part of the lessee contained in the Headlease and must indemnify the Tenant and keep the Tenant indemnified against all actions, claims, proceedings, costs, expenses and demands in any way relating to the Headlease.

5.4 Consents under the Headlease to be obtained

The Council must use its best endeavours to obtain at the Tenant's expense the consent of the Superior Landlord whenever the Tenant makes application for any consent required under this Underlease where the consent of both the Council and the Superior Landlord is needed by virtue of this Underlease or the Headlease.

5.5 Insurance of the Premises

5.5.1 The Council will insure and keep insured the Premises against:-

5.5.1.1 damage, loss or destruction by the Insured Risks in an amount equal to the full cost of rebuilding and reinstating the Premises in the event of their damage or destruction

together with VAT and architects, surveyors, engineers and solicitors and all other professional persons' fees, the fees payable on any applications for planning permission or other permits or consents that may be required in relation to rebuilding or reinstating the Premises the cost of preparation of the site including shoring-up, debris removal, demolition, site clearance and any works that may be required by statute and incidental expenses and

5.5.1.2 loss of the Rent payable under this Underlease from time to time (having regard to any review of Rent which may become due under this Underlease) for two years.

5.5.2 The Council must ensure that the interest of the Tenant is noted or endorsed on the insurance policy.

5.5.3 The Council must make all payments necessary to effect and maintain the insurance referred to in this Clause and must produce to the Tenant on demand the policy or policies of such insurance.

5.5.4 If and whenever the Premises or any part of them are damaged or destroyed so that the Premises or any part of them are unfit for occupation or use by one or more of the Insured Risks - except one against which insurance may not ordinarily be arranged with a substantial and reputable insurer for properties such as the Premises unless the Council has in fact insured against that risk, then the provisions of Clause 5.5.5 are to have effect.

5.5.5 In the circumstances mentioned in Clause 5.5.4 then the Rent, or a fair proportion of it according to the nature and the extent of the damage sustained, is to cease to be payable until the Premises, or the affected part, have been rebuilt or reinstated so as to render the Premises, or the affected part, fit for occupation and use, or until the end of 2 years from the destruction or damage, whichever period is the shorter, any dispute as to the proportion of the Rent suspended or the period of the suspension to be determined in accordance with Clause 9.2.

5.5.6 If and whenever during the Term, the Premises or any part of them are destroyed or damaged by one or more of the Insured Risks then:-

5.5.6.1 The Council must use its best endeavours to obtain the planning permissions and other permits and consents ("Permissions") necessary to enable the Premises to be rebuilt and reinstated to its former state or in accordance with plans, elevations and details approved by the local planning authority (subject to the terms of the Headlease), having regard to the statutory provisions, bye-laws and regulations affecting the Premises.

5.5.6.2 As soon as reasonably practicable after all the necessary Permissions have been obtained, the Council must apply all monies received in respect of such insurance in rebuilding or reinstating the Premises so destroyed or damaged and for the avoidance of doubt it is agreed that

in case the monies received from the insurance policy is insufficient for that purpose the Tenant must make up out of its own money the deficiency (including the fees of any architect surveyor or assessor for acting in connection with the claim and any sums in respect of any excesses exclusions or limitations of the insurance policy).

5.5.7 The Council need not rebuild or reinstate the Premises if and for so long as rebuilding or reinstatement is prevented because:-

5.5.7.1 the Council despite using its best endeavours cannot obtain any necessary Permissions;

5.5.7.2 any Permissions are granted subject to a lawful condition with which it is impossible or unreasonable for the Council to comply

5.5.7.3 there is some defect or deficiency in the site on which the rebuilding or reinstatement is to take place that renders it impossible or means that it could only be undertaken at a cost that would be unreasonable in all the circumstances;

5.5.7.4 the Council is unable to obtain access to the site to rebuild or reinstate

5.5.7.5 the rebuilding or reinstating is prevented by war act of God or Government action or

5.5.7.6 of the occurrence of any other circumstances beyond the Council's control.

5.5.8 If at the end of a period of two years starting on the date of the damage or destruction the Premises are still not fit for the Tenant's occupation and use, either the Council or the Tenant may by notice served at any time within six months of the end of that period ("a notice to terminate following failure to reinstate") implement the provisions of Clause 5.5.9.

5.5.9 On service of a notice to terminate following failure to reinstate the Term is to cease absolutely but without prejudice to any rights or remedies that may have accrued to either party against the other and all money received in respect of the insurance effected by the Council pursuant to this Clause is to belong to the Council absolutely.

6. THE GUARANTOR'S COVENANTS

The Guarantor covenants with the Council to observe and perform the requirements of this Clause 6.

6.1 Nature and Duration

The Guarantor's covenants with the Council are given as sole or principal debtor or covenantor with the Council and with all its successors in title without the need for any express assignment and the Guarantor's obligations to the Council will last throughout the period during which Beach House (Mudeford) Limited is bound by the tenant covenants of this Underlease ("the **Guarantee Period**").

6.2 The Covenants

The Tenant must pay the Rent (including any VAT chargeable) punctually and observe and perform the tenant covenants, conditions and other terms of this

Underlease, and if, at any time during the Guarantee Period while the Tenant is bound by the tenant covenants of this Underlease, the Tenant defaults in paying the rents or in observing or performing any of the covenants, conditions or other terms of this Underlease, then the Guarantor must pay the Rent and observe or perform the covenants, conditions or terms in respect of which the Tenant is in default and make good to the Council on demand, and indemnify the Council against, all losses resulting from such non-payment, non-performance or non-observance notwithstanding:

- 6.2.1 any time or indulgence granted by the Council to the Tenant, any neglect or forbearance of the Council in enforcing the payment of the Rent or the observance or performance of the covenants, conditions or other terms of this Underlease or any refusal by the Council to accept rent tendered by or on behalf of the Tenant at a time when the Council is entitled (or will after the service of a notice under the Law of Property Act 1925 Section 146 be entitled) to re-enter the Premises;
- 6.2.2 that the terms of this Underlease may have been varied by agreement between the Council and the Tenant, provided that no variation is to bind the Guarantor to the extent that it is materially prejudicial to him;
- 6.2.3 that the Tenant has surrendered part of the Premises in which event the liability of the Guarantor under this Underlease is to continue in respect of the part of the Premises not surrendered after making any

necessary apportionments under Section 140 of the Law of Property Act 1925; and

6.2.4 anything else (other than a release by deed) by which, but for this Clause 6.2.4, the Guarantor would be released.

6.3 New Underlease following disclaimer

If, at any time during the Guarantee Period while the Tenant is bound by the tenant covenants of this Underlease, any trustee in bankruptcy or liquidator of the Tenant disclaims this Underlease, the Guarantor must, if so required by notice served by the Council within 60 days of the Council's becoming aware of the disclaimer, take from the Council forthwith a Underlease of the Premises for the residue of the Contractual Term as at the date of the disclaimer, at the rent then payable under this Underlease and subject to the same covenants, conditions and terms as in this Underlease (except that the Guarantor need not ensure that any other person is made a party to that Underlease as guarantor), the new Underlease to commence on the date of the disclaimer. The Guarantor must pay the costs of the new Underlease and VAT charged thereon, and execute and deliver to the Council a counterpart of the new Underlease.

6.4 Payments following disclaimer

If this Underlease is disclaimed and the Council does not require the Guarantor to accept a new Underlease of the Premises in accordance with Clause 6.3, the Guarantor must pay to the Council on demand an amount equal to the difference between any money received by the Council for the use or occupation of the Premises and the Rent in both cases for the period

commencing with the date of the disclaimer and ending on whichever is the earlier of the date six months after the disclaimer or the date, if any, upon which the Premises are relet.

6.5 Severance

6.5.1 Any provision of this Clause 6 rendered void by virtue of the Section 25 of the Landlord and Tenant (Covenants) Act 1995 is to be severed from all remaining provisions and the remaining provisions are to be preserved.

6.5.2 If any provision in this Clause 6 extends beyond the limits permitted by Section 25 of the Landlord and Tenant (Covenants) Act 1995, that provision is to be varied so as not to extend beyond those limits.

7. FORFEITURE

If and whenever during the Term:-

- 7.1 the Underlease Rents or any of them or any part of them or any VAT payable on them are outstanding for twenty one days after becoming due (whether formally demanded or not), or
- 7.2 the Tenant or the Guarantor breaches any covenant, condition or other term of this Underlease or any document supplemental to this Underlease, or
- 7.3 the Tenant being a company or limited liability partnership enters into liquidation whether compulsory or voluntary (but not if the liquidation is for amalgamation or reconstruction of a solvent entity) or enters into administration or has a receiver appointed over all or any part of the Tenant's assets, or

- 7.4 the Tenant being an individual or individuals becomes subject to a bankruptcy order or has an interim receiver appointed to the Tenant's property, or
- 7.5 the Tenant enters into or makes a proposal to enter into any voluntary arrangement pursuant to the Insolvency Act 1986 or any other arrangement or composition for the benefit of the Tenant's creditors, or
- 7.6 the Tenant has any distress, sequestration or execution levied on the Tenant's goods and,
- 7.7 where the Tenant is more than one person, if and whenever any of the events referred to in this Clause happens to any one or more of them,
- then the Council may at any time re-enter the Premises or any part of them in the name of the whole (even if any previous right of re-entry has been waived) and thereupon the Term is to cease absolutely but without prejudice to any rights or remedies that may have accrued to the Council against the Tenant in respect of any breach of covenant, condition or other term of this Underlease (including the breach in respect of which the re-entry is made).

8. NOTICES

Service of Notices

The provisions of Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply to any notice under this Underlease.

9. MISCELLANEOUS

9.1 Non-Fettering of Statutory Powers

For the avoidance of doubt nothing contained in or implied by this Underlease is to prejudice or affect the Council's rights, powers, duties and obligations in

the exercise of its functions as a local authority and the rights, powers, duties and obligations of the Council under all public and private statutes, byelaws, orders and regulations may be as fully and effectually exercised in relation to the Premises as if the Council was not the owner of the Premises and as if this Underlease had not been executed by the Council.

9.2 Arbitration

9.2.1 If any dispute or question whatever arises between the parties to this Underlease with respect to the construction or effect of the rights, duties or obligations of the parties to this Underlease or any other matters in any way arising out of or connected with this Underlease it must be determined by a single arbitrator.

9.2.2 The arbitrator is to be appointed by agreement between the parties to the dispute or question or if they do not agree within fourteen days of one of them giving notice to the other of its nomination by or on behalf of the President for the time being of the Law Society (in case of matters of law) or of the Royal Institution of Chartered Surveyors (in other cases) on the application of any party to the dispute or question.

9.2.3 The arbitration is to be conducted in accordance with the Arbitration Act 1996.

9.2.4 This arbitration provision does not apply to forfeiture of this Underlease, relief against forfeiture of this Underlease or any dispute or question for which another method of resolution is expressly provided by this Underlease.

9.3 Exclusions

Nothing in this Underlease is to be read or construed as excluding any liability or remedy in respect of fraud.

9.4 Third Party Rights

Nothing in this Underlease is intended to confer any benefit on any person who is not a party to it, the Superior Landlord or a lawful successor to them.

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Tenant and the Guarantor have executed this Deed the day and year first above written

SCHEDULE 1

(Easements and Rights Granted to the Tenant)

1. Gas Pipe

The right to enter upon the Adjoining Property to maintain, repair and replace the gas pipe through or under the Adjoining Property in the approximate position shown by a blue line on the Plan Provided that the person or persons exercising such right complies with the provisions of Paragraphs 3.1, 3.2 and 3.3.

2. Services

The right to free and uninterrupted passage of water, soil, gas, electricity, telephone and other services or supplies to and from the Premises in and through the Conduits which now are or may hereafter during the Term be in, upon, through, under or over the Adjoining Property (in common with the

Council and all other persons having a like right) SUBJECT TO the Tenant paying a fair proportion according to user of the cost of the maintenance, renewal and repair of such Conduits and PROVIDED ALWAYS that where such Conduits do not at present exist or such services are not at present available then the Tenant shall first pay a fair and reasonable proportion of the costs of providing the same should it be decided by the Council to provide any of such Conduits or services during the Term.

3. Right of entry onto Adjoining Property

The right (in common with the Council and all other persons having a like right) at any time during the Term to enter the Adjoining Property to inspect, cleanse, lay, repair, remove, relay, replace with others, alter or execute any works whatever to or in connection with the Conduits SUBJECT TO the Tenant:-

- 3.1 giving reasonable prior notice (except in emergency)
- 3.2 causing as little damage as possible and making good any damage caused to the reasonable satisfaction of the Council
- 3.3 complying with all the requirements of the Council in connection therewith (including any special requirements arising from the use of any part of the Adjoining Property as public open space and giving adequate warnings to occupiers of and members of the public visiting the Adjoining Property and taking all necessary health and safety precautions in respect of such works)

PROVIDED ALWAYS in respect of any Conduits not now existing that the Tenant shall have paid a fair and reasonable proportion of the cost of providing them as required in accordance with Paragraph 2.

4. Right of Access

The right (subject to the Tenant paying a fair and reasonable proportion according to user of the cost of the repair and maintenance of the Roads and to the Tenant complying with the provisions of Clause 4.27 and all other requirements of the Council or the Superior Landlord in connection with the exercise of this right) for the Tenant and all persons expressly or by implication authorised by them (in common with the Council and all other persons having the like right) to pass and repass over and along the Roads as may from time to time be available within the Adjoining Property to and from the Premises with or without vehicles (but which shall at any one time be limited in number to one motor vehicle, one staff or service vehicle and one delivery vehicle) for all purposes connection with the use and enjoyment of the Premises (but not otherwise) PROVIDED ALWAYS that:-

- 4.1 The total number of vehicle movements over and along the Roads shall not exceed 1,430 in the first year of the Term.
- 4.2 The total number of vehicle movements in each subsequent year of the Term shall be reduced by 1% for each year of the Term from the total of 1,430 vehicle movements in 2013 to a total of 1,218 vehicle movements in 2029, so that the total number of vehicle movements over and along the Roads shall not exceed the revised total for each year calculated in accordance with this Paragraph.

For the avoidance of doubt, for the purposes of this Paragraph a return vehicle journey to and from the Premises shall count as one vehicle movement, and

the Council and/or the Superior Landlord shall be permitted to erect a lockable gate or barrier across any of the Roads.

5. Delivery of Calor Gas Cyclinders

The right (in common with the Council and all other persons having a like right) to pass over and along such routes on the Adjoining Property as may be first designated from time to time by the Council on foot with or without a hand pulled cart or trolley from or to the Premises to and from the Beach Huts for the purpose of delivering calor gas cylinders to the Beach Huts only.

6. Parking

The right (in common with the Council and all other persons having a like right) for the Tenant to park motor vehicles (but which shall at one time be limited in number to one designated staff or service vehicle and one other vehicle except that in addition one delivery vehicle may also be permitted to park whilst goods being delivered to the Premises are being unloaded for a maximum period of 30 minutes at any one time) in connection with its use of the Premises in the area immediately adjoining the north of the Premises and indicated on the Plan as a parking area or in such other parking area as the Council may from time to time specify during the Term.

7. Commercial Waste Bins

The right (in common with the Council and all other persons having a like right) to place and retain in such positions on the Adjoining Property as shall from time to time be specified by the Council Commercial Waste Bins of a size, type and number to be first agreed by the Council for use ancillary to the use of the Premises only.

8. **Other Rights**

All other rights, licences, easement or quasi-easements as are at present appurtenant to or enjoyed with the Premises.

SCHEDULE 2

(Exceptions and Reservations Reserved unto the Council and its successors in title and all others authorised by them)

1. **Right of Entry for Works**

The right to enter the Premises on giving reasonable notice to execute works on any adjoining or neighbouring property subject to the person exercising such right making good any damage thereby caused to the Premises.

2. **Right of Entry as Headlessee**

The right to enter upon the Premises for any purpose which in the opinion of the Council is necessary to enable the Council to comply with the covenants on the Council's part contained in the Headlease so far as the same are not performed by the Tenant.

3. **Reservation of Light and Air**

The right at any time hereafter to build on or to execute any works or erections upon (including sea defence and coast protection works) or to carry out any repairs to or to alter or rebuild any buildings erected on any adjoining and neighbouring land and to use such land and buildings in any manner and for any purpose as the Council may think fit notwithstanding that the access of light and air to the Premises may thereby suffer interference.

4. Services

The right of free passage and running of water and soil in and through any Conduits made or to be made upon, through or under the Premises and the free and uninterrupted use of any gas, electric, telephone and other pipes, wires and cables in, through or under the Premises.

5. Other Rights

All rights, licences, easement or quasi-easements to which the Premises are subject and which are at present appurtenant to or enjoyed with any adjoining and neighbouring property.

SCHEDULE 3

(Rent Review)

1. Definitions

For all purposes of this Schedule the terms defined in this Paragraph have the meanings specified.

1.1 "the Assumptions" means:-

- 1.1.1 the assumption that no work has been carried out on the Premises during the Term by the Tenant, its subtenants or their predecessors in title that has diminished the rental value of the Premises;
- 1.1.2 the assumption that if the Premises have been destroyed or damaged they have been fully rebuilt or reinstated;
- 1.1.3 the assumption that the covenants contained in this Underlease on the part of the Council and the Tenant have been fully performed and observed;

- 1.1.4 the assumption that the Premises are available to let by a willing landlord to a willing tenant in the open market by one lease ("the **Hypothetical Underlease**") without a premium being paid by either party and with vacant possession;
- 1.1.5 the assumption that the Premises have already been fitted out and equipped by and at the expense of the incoming tenant so that they are capable of being used by the incoming tenant from the beginning of the Hypothetical Underlease for all purposes required by the incoming tenant that would be permitted under this Underlease;
- 1.1.6 the assumption that the Hypothetical Underlease contains the same terms as this Underlease except the amount of the rent payable for the first three years of the Term but including the provisions for rent review on the Review Dates and at similar intervals after the last Review Date and except as set out in Paragraph 1.1.7;
- 1.1.7 the assumption that the term of the Hypothetical Underlease is equal in length to the Contractual Term and that such term begins on the relevant Review Date, that the rent commences to be payable on that date and that the years during which the Tenant covenants to decorate the Premises are at the same intervals after the beginning of the term of the Hypothetical Underlease as those specified in this Underlease;
- 1.1.8 the assumption that the Premises may be used for any of the purposes permitted by this Underlease as varied or extended by any consent or licence granted pursuant thereto; and

1.1.9 the Assumption that no reduction is to be made to take account of any rental concession which on a new letting with vacant possession might be granted to the incoming tenant for a period during which its fitting out works would take place.

1.2 "the Disregards' " means:-

1.2.1 disregard of any effect on rent of the fact that the Tenant, its subtenants or their predecessors in title have been in occupation of the Premises;

1.2.2 disregard of any goodwill attached to the Premises because the business of the Tenant, its subtenants or their predecessors in title in their respective businesses is or was carried on there; and

1.2.3 disregard of any increase in rental value of the Premises attributable at the relevant review date to any improvement in the Premises carried out, with consent where required since the Seventeenth day of March 1994 otherwise that the improvements effected pursuant to the provisions of a Deed of Variation made the Fourth day of April 2001 between (1) the Council and (2) Robert Anderton and Susan Delafield and any improvements effected at the expense of the Council or in pursuance of an obligation to the Council or its predecessors in title (other than obligations requiring compliance with statutes or directions of a local authority or other body exercising powers under statute or Royal Charter) either:-

- 1.2.3.1 by the Tenant, its subtenants or their predecessors in title during the Term or any period of occupation before the Term; or
 - 1.2.3.2 by any tenant or subtenant of the Premises before the commencement of the Term, provided that the Council or its predecessors in title have not since the improvement was carried out had vacant possession of the relevant part of the Premises.
- 1.3 **"Expert"** means an independent valuer appointed by agreement between the Council and the Tenant or, in the absence of agreement within fourteen days of one of them giving notice to the other of its nomination, nominated by the President on the application of either party made not earlier than six months before the relevant Review Date or at any time thereafter to determine the Rent under this Schedule.
- 1.4 **"the President"** means the President for the time being of the Royal Institution of Chartered Surveyors or any person authorised by him to make appointments on his behalf
- 1.5 **"Review Dates"** means the First day of January 2016 and every third anniversary of that date during the Contractual Term and any other date from time to time specified under Paragraph 9 and references to a review date are references to any one of the Review Dates.
- 1.6 **"Review Period"** means the period beginning on any Review Date and ending on the day before the next Review Date or beginning on the last Review Date and ending on the expiry of the Contractual Term.

2. Ascertaining the Rent

2.1 The Rent during each successive Review Period is to be a sum equal to the greater of:

2.1.1 the Rent payable under this Underlease immediately before the relevant Review Date or if payment of Rent has been suspended as provided for in this Underlease, the Rent that would have been payable had there been no such suspension OR

2.1.2 the revised Rent ascertained in accordance with this Schedule

2.2 The Rent for any Review Period may be agreed in writing at any time or, in the absence of agreement, is to be determined by an Expert not earlier than the relevant Review Date.

3. Open Market Rent

The sum to be determined by the Expert must be the sum at which, acting as an expert and not as an arbitrator or quasi-arbitrator, he decides the Premises might reasonably be expected to be let in the open market at the relevant Review Date making the Assumptions but disregarding the Disregards.

4. Conduct of the determination

4.1 The fees and expenses of the Expert and any VAT payable on them, including the cost of his appointment, are to be borne equally by the Council and the Tenant, who must otherwise bear their own costs.

4.2 The Expert must give each of the parties an opportunity to make written representations to him but is not to be in any way limited or fettered by such representations and is to be entitled to rely on his own judgement and opinion.

- 4.3 If the Expert dies, declines to act or becomes incapable of acting, either party may apply to the President to discharge him and appoint another in his place.

5. Memoranda of Agreement

Whenever the Rent has been ascertained in accordance with this Schedule, memoranda to that effect must be signed by or on behalf of the Council and the Tenant and annexed to this Underlease and its counterpart. The Council and the Tenant must bear their own costs in this respect.

6. Reimbursement of Costs

If on publication of the Expert's determination, the Council or the Tenant pays all his fees and expenses, the paying party may, in default of payment within twenty one days of a demand to that effect, recover half of them from the other party in the case of the Council as rent arrears or in the case of the Tenant by deduction from the Rent.

7. Where the Rent is not ascertained by a Review Date

If the Rent payable during any Review Period has not been ascertained by the relevant Review Date, then rent is to continue to be payable at the rate previously payable, such payments being on account of the Rent for that Review Period.

8. Payment of the Rent as ascertained

If the Rent payable during any Review Period has not been ascertained by the relevant Review Date, then the Tenant must pay to the Council within seven days of the date on which the Rent is agreed or the Expert's determination is received by the Tenant:-

- 8.1 any shortfall between the Rent that would have been paid for that period had it been ascertained on or before the relevant Review Date and the payments made by the Tenant on account and any VAT payable thereon and
- 8.2 interest, at the base lending rate from time to time of the bank referred to in or nominated pursuant to Clause 4.33, in respect of each instalment of the Rent due on or after that Review Date on the amount by which the instalment of the Rent that would have been paid had it been ascertained exceeds the amount paid by the Tenant on account, the interest to be payable for the period from the date on which the instalment was due up to the date of payment of the shortfall.

9. Effect on counter-inflation provisions

If at any Review Date, a statute prevents, restricts or modifies the Council's right either to review the Rent in accordance with this Underlease or to recover any increase in the Rent, then the Council may, when the restriction or modification is removed, relaxed or varied (without prejudice to its rights, if any, to recover any rent the payment of which has only been deferred by statute) on giving not less than one month's nor more than three months' notice to the Tenant at any time within six months of the restriction or modification being removed, relaxed or varied, time being of the essence, require the Tenant to proceed with any review of the Rent that has been prevented or to review the Rent further where the Council's right was restricted or modified. The date of expiry of the notice is to be treated as a Review Date (provided that nothing in this Paragraph is to be construed as varying any

subsequent Review Date). The Council may recover any increase in the Rent with effect from the earliest date permitted by law.

SCHEDULE 4

(Authorised Guarantee Agreement)

The Tenant covenants with the Council in pursuance of Clause 4.15.4.1 of the Underlease and with all its successors in title without the need for any express assignment to observe and perform the requirements of this Schedule and the Tenant's obligations to the Council will last throughout the period during which the Assignee is bound by the Tenant's covenants of the Underlease ("**the Liability Period**").

1.1 Payment of Rent and Performance of the Underlease

The Assignee must punctually pay the rent reserved by the Underlease (including any VAT chargeable) and observe and perform the tenant covenants, conditions and other terms of the Underlease throughout the Liability Period and if the Assignee should fail to do so the Tenant must pay the rents and observe and perform the tenant covenants, conditions or other terms in respect of which the Assignee is in default.

1.2 Indemnity

The Tenant must make good to the Council on demand and indemnify the Council against all liabilities, damages or losses, awards of damages or compensation, penalties, costs, disbursements and expenses arising from any claim, demand, action or proceedings resulting from any failure of the Assignee to pay the rent reserved by the Underlease or observe and perform

the Tenant's conditions, covenants and other terms of the Underlease during the Liability Period.

2. New Underlease following disclaimer

If at any time during the Liability Period, any trustee in bankruptcy or liquidator of the Assignee disclaims the Underlease, the Tenant must, if so required by notice in writing served by the Council within 60 days of the disclaimer, take from the Council forthwith a Underlease of the Premises for the residue of the Contractual Term as at the date of the disclaimer, at the rent then payable under the Underlease and subject to the same covenants, conditions and terms as in the Underlease, the new Underlease to commence on the date of the disclaimer. The Tenant must pay the costs of the new Underlease and VAT charged thereon, and execute and deliver to the Council a Counterpart of the new Underlease.

3. Payments following disclaimer

If the Underlease is disclaimed and the Council does not require the Tenant to accept a new Underlease of the Premises in accordance with Clause 2, the Tenant must pay to the Council on demand an amount equal to the difference between any money received by the Council for the use or occupation of the Premises and the rent reserved by the Underlease in both cases for the period commencing with the date of the disclaimer and ending on whichever is the earlier of the following dates:

- 3.1 the date six months after the disclaimer,
- 3.2 the date (if any) upon which the Premises are relet.

4. Discharge

Without prejudice to Section 18(3) of the Landlord and Tenant (Covenants) Act 1995, the Tenant will not be released from any liability under this authorised guarantee agreement nor shall any such liability be affected or any way exonerated by:-

- 4.1 any time or indulgence granted by the Council to the Assignee or any neglect or forbearance of the Council in enforcing the payment of the rent reserved by the Underlease or the observance or performance of the covenants, conditions or other terms of the Underlease or any refusal by the Council to accept rent tendered by or on behalf of the Assignee at a time when the Council is entitled (or will after the service of a notice under Section 146 of the Law of Property Act 1925 be entitled) to re-enter the Premises,
- 4.2 the terms of the Underlease having been varied by agreement between the parties provided no variation is to bind any Guarantor to the extent it is materially prejudicial to him,
- 4.3 the Assignee surrendering part of the Premises in which event the liability of the Tenant under the Underlease is to continue in respect of the part of the Premises not surrendered after making any necessary apportionments under Section 140 of the Law of Property Act 1925 or
- 4.4 anything else (other than a release by deed) by which but for this Clause 4 the Tenant would have been released.

5. **Release**

Where the Tenant is more than one person the release of one or more of them shall not release the others.

EXECUTED as a Deed by affixing the
COMMON SEAL of THE BOROUGH
COUNCIL OF CHRISTCHURCH
in the presence

)
)
)
)



Duly Authorised Signatory

