

DATED

26th August

2001

THE ENVIRONMENT AGENCY (1)

SOVEREIGN HARBOUR LIMITED(2)

EASTBOURNE HARBOUR COMPANY LIMITED(3)

CARILLION CONSTRUCTION LIMITED (4)

SOVEREIGN HARBOUR MARINA LIMITED (5)

AND

SOVEREIGN HARBOUR TRUST (6)

SOVEREIGN HARBOUR BEACHES SEA DEFENCE DEED



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THIS DEED is made on 26th day of August 2001

BETWEEN:

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

WHEREAS:

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

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

"AOD" means above ordnance datum;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Interpretation

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

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

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

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

2. THE 1988 DEED

2.1 During the currency of this Agreement:-

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

2.2 Not used

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

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

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

3. LITTORAL DRIFT PROVISIONS

3.1 Surplus Beach Defence Material

3.1.1

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

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

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

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

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

3.2 Contribution in respect of the Littoral Drift Provisions

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

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

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

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

4. SEA DEFENCE WORKS

4.1 Nature of Agency's General Sea Defence Functions

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

4.2 Contribution for and Performance of Sea Defence Works

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

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

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

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

4.3 **The Sea Defence Works**

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

4.4 **Information**

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

4.5 **Consequences**

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

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

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

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

all in accordance with this Agreement

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

6. HARBOUR MAINTENANCE WORKS

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

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

7. CONTRIBUTIONS TO THE AGENCY

7.1

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

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

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

8. THE RENTCHARGE AND DEED OF ASSIGNMENT

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

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

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

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

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

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

10. TRUST FUND INCOME AND PAYMENTS

10.1 Collection of Trust Fund Income

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

10.2 Payment Cascade (Maintenance)

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

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

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

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

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

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

11. GUARANTEE

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

12. TERM AND TERMINATION

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

12.2

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

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

13. COSTS

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

14. TRUST COMPANY CONSTITUTION

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

- 14.2 Without prejudice to Clauses 3.2.3 and 4.2.3, if for any reason the Trust is unable and is likely to remain unable to collect the SW Rentcharges for a continuous period of 90 days or more or in the event of the winding up or insolvency of the Trust Company then (i) the Agency shall have the right to require the Harbour Company to serve written notice on the Trust Company in accordance with Clause 6.1 of the Deed of Assignment and the Harbour Company shall forthwith serve such notice on the Trust Company (with a copy to the Agency), or (ii) the Harbour Company shall have the right to serve notice on the Trust Company in accordance with Clause 6.1 of the Deed of Assignment (with a copy to the Agency), to the effect that such circumstances have arisen. Forthwith upon the service of such notice the Rentcharges and all sums held by the Trust Company shall be assigned and transferred to the Harbour Company for the Harbour Company to hold on trust and apply for the purposes of this Agreement. Provided that the Trust Company will then be released by the Harbour Company from all obligations in connection with such Rentcharges and their application. The Harbour Company shall pay such monies in accordance with the provisions of this Agreement as though the provisions as to payment named the Harbour Company instead of the Trust Company. For a period of six months from the date of such notice the parties will use their reasonable endeavours to reach an alternative solution to achieve the provisions of this Agreement. If an alternative solution acceptable to both parties has not then been reached, this Agreement shall be terminated in accordance with Clause 12.2(c).
- 14.3 It is agreed that the liability of the Trust Company under this Agreement in any Contract Year shall be limited to the funds standing to the credit of the Trust Account from time to time over and above the £20,000 credit balance to be held in the Trust Account as provided for by Clause 10.2.1(d).

15. **HARBOUR COMPANY RESTRUCTURING**

- 15.1 The Agency hereby consents pursuant to clause 5 of the 1988 Deed to the proposed transfer of the Harbours by SHL and EHCL to the Harbour Company and (with effect from the date that such transfer takes place) in consideration of the Harbour Company entering into this Agreement the Agency releases SHL and EHCL from further liability under the 1988 Deed to the extent that such liability relates to the Harbours and to the extent that such liability has been assumed by the Harbour Company. The Harbour Company hereby covenants with the Agency to be bound by Clause 3 of the 1988 Deed if the suspension referred to in Clause 2.1(a) hereof ceases to apply, and confirms that it is bound by the provisions of Clause 5 of the 1988 Deed. This Clause shall survive any termination of this Agreement.
- 15.2 During the currency of this Agreement, on the occasion of any future disposal by the Harbour Company of the Harbours, the Harbour Company shall procure that its successor covenants by deed with the Agency to observe and perform the obligations of the Harbour Company under this Agreement and, the provisions of Clauses 5(1) and 5(2) of the 1988 Deed shall apply to such disposal as if references to Clause 3 therein were references to the obligations of the Harbour Company under this Agreement and references to the Harbour therein were to the Harbours under this Agreement. In addition, on the occasion of any such future disposal, the obligations of Carillion under Clauses 2.3 and 11 shall continue unless and until a substitute guarantor satisfactory to the Agency covenants by deed with the Agency to observe and perform the obligations of Carillion under Clauses 2.3 and 11 of this Agreement.

16. MISCELLANEOUS

16.1 Alterations or Variations

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

16.2 Counterparts

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

16.3 Entire Agreement

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

16.4 Force Majeure

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

16.5 Further Assurance

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

16.6 Notice

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

If to the Agency:

To: The Environment Agency (Sussex Area)
Saxon House

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

If to any of the other parties:

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

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

and if to the Trust Company, addressed to it at

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

16.7 Third Party Rights

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

16.8 Preservation of Rights

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

16.9 Press Statements

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

16.10 Reference to Expert

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

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

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

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

16.11 Agency Rights, Powers, Duties

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

16.12 Prevention of Corruption

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

16.13 Jurisdiction and Applicable Law

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

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