

DATED

1990

PORT SOLENT LIMITED

to

POSOL RESIDENTS MANAGEMENT COMPANY LIMITED

U N D E R L E A S E

of

Residential Mooring Area adjoining Area D

at Port Solent

North Harbour, Portsmouth, Hampshire

First Draft 15.01.90

Second draft 23.01.90

UNDRLSED/Area D/S/15.01.90/23/01/90

THIS UNDERLEASE made the day of 1990
Between PORT SOLENT LIMITED whose registered office is at 1 Brewer's
Green Buckingham Gate London SW1H 0RH (hereinafter called "the
Lessor" which expression shall where the context so admits include
the estate owner or estate owners for the time being of the
reversion of the premises hereby demised expectant on the term
hereby granted) of the one part and POSOL RESIDENTS MANAGEMENT
COMPANY LIMITED whose registered office is at Crown House Kingston
Road New Malden Surrey KT3 3ST (hereinafter called "the Lessee"
which expression shall where the context so admits include the
persons deriving title under it) of the other part

W I T N E S S E T H as follows:

INTERPRETATION

1.1 In this Underlease the following expressions shall unless the
context otherwise admits or requires have the meanings
respectively assigned to them as follows:-

"the Residential Site" - the Residential Site shown on the
Plan to be developed for housing

"Demised Premises" - the land forming the bed of the Marina
and the water space and the air space above the bed of the
Marina being that part of the Marina as is described as the
Residential Mooring Area more particularly delineated by
reference to Plan Number AR108 (Revision) ("the Lease
Plan") and thereon edged in red and including for the
purposes of this demise (but not so as to imply any covenant
to Maintain the same on the part of the Lessee) the walls of
the Marina (described as "Marina Containment" and shown on
the Lease Plan in Section [A-A]) forming the boundary on one
or more sides of the Demised Premises

"Insured Risks" - such of the risks of damage by fire storm
tempest lightning thunderbolt flood earthquake heave
subsidence landslip explosion aircraft vehicle boat marine
craft aerial objects impact strikes labour or political
disturbance riot civil commotion and malicious persons and
accidental damage to underground pipes and cables as are
normally insurable from time to time throughout the term
hereby granted with insurance offices of repute in the United
Kingdom or through underwriters at Lloyds and where the
context so admits or requires shall include any one or more
of such risks

"Interest" - interest at the rate of 4% per annum above
National Westminster Bank Plc base rate (or its replacement
having the same commercial effect) in force from time to time
in respect of the period from the due date for payment down
to the date of actual payment as well before as after any
judgment

"the Lease" - a Lease of the Marina granted by the Superior
Lessor to the Lessor on the Eleventh day of August 1988 for a
term of one hundred and fifty years from the 1st day of
January 1988 at the rents therein mentioned and such
expression includes the Lease and Deed of Variation between
the Superior Lessor and the Lessor dated the Twenty second
day of December 1989

"Lessor's Berthing Year" - the annual period determined by
the Lessor at its discretion of which notice shall have been

given in writing by the Lessor to the Lessee and which until otherwise notified shall be 1st April to 31st March in the following calendar year. Where there is reference in this Underlease to the 1st April such reference shall be deemed to be a reference to the first day of the Lessor's Berthing Year

"Maintain" or "Maintenance" - (as the case may be) includes inspection rebuilding repairing renewing redecoration restoration replacement cleansing and keeping tidy

"Management Company" - the Lessee or any company or unincorporated association formed by or on behalf of and of which the residents of the Residential Site are or are to be the shareholders

"the Marina" - the Marina basin and Marina associated land at Port Solent comprising water areas, pontoons, promenades, landscaped areas, bunds, revetments, Marina walls and Southern Road shown on the Plan with all buildings structures or facilities built thereon including the Marina control building and the toilet and ablution blocks the lock and lock gates and the dredged access channel ("the access channel") (which is the channel dredged and to be dredged by the Lessor to a depth of 1.5 m below chart datum from the outer cill of the lock to a line between the existing location of piles numbered 72 and 76 at the southern end of the access channel) to Portsmouth Harbour and waiting pontoons inside and outside the Marina basin and such other facilities provided from time to time by the Lessor or by others providing services at the Marina all of which land and water area (excluding the access channel) is shown on the Plan

"Mooring Area" - an area within the Demised Premises the location of which is to be approved by the Lessor pursuant to Clause 3.5 hereof in which a Vessel or Vessels may be moored subject to the provision by or on behalf of the Lessee of Mooring Equipment pursuant to Clause 3.5.2 hereof

"Mooring Equipment" - all necessary equipment, cleats, bollards and pontoonery by means of which a Vessel may be moored or berthed and access thereto of pedestrians and services from the land may be obtained

"Perpetuity Period" - the period of 80 years commencing on the date hereof

"Port Solent" - all the area (including the Marina) known as Port Solent, North Harbour, Portsmouth, Hampshire shown on the Plan

"the Port Solent Charge" - an amount computed and paid in accordance with the Fourth Schedule hereto

"the Plan" - Plan number AR179 (Revision C) annexed hereto

"the Superior Lessor" - Portsmouth City Council or their successors in title the estate owners for the time being of the reversion of the premises demised by the Lease expectant on the term thereby granted

"the Term" - the term of 150 years (less the last two days) calculated from the 1st day of January 1988

"Vessel" - a marine pleasure craft boat or yacht

- 1.2 Any reference herein to any statute or statutes shall include any statutory extension modification and re-enactment of such statute or statutes and any order regulation and bye-law thereunder

- 1.3 Wherever in this Underlease any consent or approval of any party hereto is provided for there shall be implied a covenant to the effect that such consent or approval shall not be unreasonably withheld or delayed and furthermore that no consent or approval shall be withheld in respect of any matter or thing necessary to comply or permit compliance with the requirements of any public authority or statute
- 1.4 The expressions "the Lessor" and "the Lessee" wherever the context so admits include their respective successors in title
- 1.5 Where the Lessee for the time being is two or more individuals the term "the Lessee" include the plural number and obligations expressed or implied to be made by or with such party are deemed to be made by or with such individuals jointly and severally
- 1.6 Words importing the one gender include all other genders and words importing the singular include the plural and vice versa
- 1.7 References to "the last year of the Term" include the last year of the Term if the same shall determine otherwise than by effluxion of time and references to "the expiration of the Term" include such sooner determination of the term
- 1.8 References to any rights of the Lessor or the Lessee include the like right of all persons reasonably authorised by the Lessor or Lessee (including agents professional advisers contractors workmen guests and others)
- 1.9 Any covenant by the Lessee not to do any act or thing shall be deemed to include an obligation not to knowingly permit such act or thing to be done and to use its reasonable endeavours to prevent such act or thing being done by a third party under his control
- 1.10 The paragraph headings do not form part of this Underlease and shall not be taken into account in its construction or interpretation

DEMISE

2. In consideration of the rent and covenants on the part of the Lessee hereinafter reserved and contained the Lessor hereby demises unto the Lessee the Demised Premises TOGETHER with the rights and privileges set forth in Part I of the First Schedule EXCEPTING AND RESERVING as set forth in Part II of the First Schedule TO HOLD the Demised Premises unto the Lessee for the Term YIELDING AND PAYING therefor unto the Lessor throughout the Term by way of rent the Port Solent Charge reviewable and payable in accordance with the Fourth Schedule hereto

LESSEE'S COVENANTS

3. The Lessee hereby covenants with the Lessor that the Lessee:

Pay the Port Solent Charge

- 3.1 Shall pay the Port Solent Charge hereby reserved at the times and in manner herein provided for Provided that the Port Solent Charge shall be apportioned on a daily basis in respect of the period from 1st day of May 1990 until the 1st day of April next and shall be apportioned in like manner from the 1st day of April to the last day of the Term and as may be Agreed or Determined in accordance with the Fourth Schedule on the occasion of any change in the Lessor's Berthing Year

Pay Rates

- 3.2.1 From time to time and at all times during the Term shall pay and discharge all rates taxes duties charges assessments and outgoings whatsoever of a recurring nature (whether parliamentary parochial local or of any other description) which are now or may at any time hereafter be assessed charged or imposed upon or payable in respect of the Demised Premises save for any such charges as arise out of any act or default of the Lessor
- 3.2.2 Shall pay all proper and reasonable standing and consumption charges for services supplied to Mooring Areas

Pay Interest

- 3.3 Shall pay Interest on the Port Solent Charge hereby reserved or on any other sums or sums due and payable by the Lessee hereunder if at any time the same shall improperly be unpaid for a space of fourteen days next after the due date for payment Provided that nothing in this Underlease shall entitle the Lessee to withhold or delay any payment of the Port Solent Charge or any other payment after the date of first demand or in any way prejudice affect or derogate from the rights of the Lessor under the proviso for re-entry hereinafter contained

Yield Up

- 3.4 At the expiration or sooner determination of the Term shall quietly yield up the Demised Premises to the Lessor

Not Carry Out Any Alterations

- 3.5.1 Shall not use the Demised Premises for the mooring or berthing of Vessels until practical completion by or on behalf of the Lessee of the installation of Marina Equipment approved as hereinafter set out
- 3.5.2 Shall not carry out any alterations or additions to the Demised Premises nor affix any Marina Equipment thereto nor create any further Mooring Areas therein or alter the layout of the Marina Equipment or the Mooring Areas without the consent in each case of the Lessor nor carry out any activity whatsoever to the Marina walls whether or not the same might be affected weakened or put under additional or different stress Provided however that nothing in this sub-clause shall operate so as to prevent the Lessee from affixing Mooring Equipment to the Marina wall or driving piles within the Demised Premises in manner so approved by the Lessor and so long as the integrity of the Marina wall shall not be adversely affected
- 3.5.3 Shall repay to the Lessor on demand the proper cost of

Maintenance of such part of the Marina as shall be damaged by the Lessee except insofar as the Lessor is entitled to recover such cost under any insurance policy maintained by the Lessor

- 3.5.4 Shall not discharge any effluent or rubbish or noxious substance into the Marina basin

Comply with Statute and Rules

- 3.6.1 Shall comply (save to the extent that the need for compliance arises from any duty imposed by statute on the Lessor or from any breach or non-observance or non-performance on the part of the Lessor of any of the covenants on the part of the Lessor hereinafter contained) with all relevant statutes and execute (save as aforesaid) all works required thereby and (save as aforesaid) shall observe and perform all the regulations and bye laws and other requirements of any public authority in respect of the Demised Premises

- 3.6.2 In particular but without prejudice to the generality of the foregoing shall use all reasonable endeavours to ensure that its sub-lessees and others using the Mooring Areas observe and perform the Lessor's Rules and Regulations from time to time in force in respect of the Marina as are proper reasonable and consistent with the terms of this Underlease and are reasonably publicised and apply equally to the whole of the Marina (the current Rules and Regulations being set out in the Third Schedule hereto). In the case of conflict between the Rules and Regulations and the terms of this Underlease, this Underlease shall prevail

Pay Expenses of Applications

- 3.7 Shall pay all expenses (including solicitors' costs and surveyors' fees) reasonably incurred by the Lessor:-

- 3.7.1 Incidental to the preparation of and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court or

- 3.7.2 Resulting from all applications by the Lessee for any consent of the Lessor required by this Underlease including stamp duty on licences and any duplicates thereof and the reasonable costs and disbursements of the solicitors and surveyors of the Lessor and the Superior Lessor and including all such costs and disbursements properly and actually incurred in cases where consent is lawfully or in accordance with this Underlease refused or the application is withdrawn but not otherwise

Use of Demised Premises

- 3.8.1 Shall not at any time during the Term use or permit or suffer the Demised Premises or any part thereof to be used for any purpose other than for the mooring of Vessels of an appropriate size for the Mooring Areas and subject always to Clause 3.5 hereof

- 3.8.2 Shall not in any event use the Demised Premises in such a manner as to cause actionable nuisance or annoyance to the Lessor or to other tenants of the Lessor or to any other users of the Marina or to other owners or occupiers of Port Solent

- 3.8.3 Shall not use or permit or suffer the use of the Demised Premises for any illegal or immoral purpose

Alienation

- 3.9.1 Shall not assign this Underlease as a whole or underlet the Demised Premises as a whole to any company or persons who has or have not entered into a direct covenant with the Lessor for the observance and performance of all obligations covenants and conditions herein contained (save in the case of an underletting the covenant to pay the Port Solent Charge) nor unless such company or persons constitutes a Management Company and otherwise not without the prior consent of the Lessor
- 3.9.2 Shall not assign or part with possession (save by way of a sub-underletting of part as hereinafter mentioned) of part only (as opposed to the whole) of the Demised Premises
- 3.9.3 Shall not grant sub-underleases of part or parts of the Demised Premises except of a Mooring Area or Mooring Areas and except to shareholders or to persons who shall be entitled to be registered as shareholders of the Management Company
- 3.9.4 Shall not grant sub-underleases of Mooring Areas unless and until in each case the sub-underlessee has entered into a direct covenant with the Lessor to observe and perform (so far as applicable to the Mooring Area or Mooring Areas to be sub-underlet) the terms and provisions of this Underlease save for the payment of the Port Solent Charge and in its place to covenant to pay a proportionate part of the Port Solent Charge such proportionate part to be determined by the Lessee pursuant to the contractual arrangements made or to be made between the Lessee and the sub-Underlessee
- 3.9.5 Shall not grant sub-underleases of Mooring Areas unless the same shall contain a prohibition on assignment unless and until the assignee has entered into a deed of covenant with the Lessor in like form to that prescribed by the foregoing sub-clause Provided however that nothing in this Underlease shall operate so as to require the Lessee to impose in any sub-underlease of a Mooring Area a prohibition against the grant by the sub-underlessee of a licence for a period of less than one year in favour of a third party for the use of such Mooring Area for the berthing of a Vessel but upon terms otherwise consistent and in accordance with the terms of this Underlease and the sub-underlease
- 3.9.6 Within twenty one days of any permitted assignment of this Underlease or the grant of or assignment of any sub-underlease or other permitted dealing (including the grant of a licence in accordance with clause 3.9.5 hereof) with the whole or any part of the Demised Premises shall notify the Lessor in writing of such assignment or other dealing and the name type and dimension port of registry registered number and full insurance details and the name and address of the owner of the Vessel which is to be moored within the Mooring Area (if relevant) and to pay to the Lessor a reasonable registration fee which shall during the first ten years of the Term be £30

Performance of Lease

- 3.10 Shall observe and perform such of the tenant's covenants in

the Lease as are applicable to this Underlease and to the Demised Premises save to the extent that the observance and performance of such covenants is made the liability of the Lessor hereunder

Indemnity

- 3.11.1 Shall indemnify and keep indemnified the Lessor from all liability claims costs demands or actions arising out of any breach of any of the Lessee's covenants herein contained
- 3.11.2 Save to the extent (if any) that the Lessor is entitled to be and is indemnified under any policy of insurance maintained by the Lessor shall indemnify and keep the Lessor indemnified from and against all actions proceedings claims demands costs expenses losses and liabilities occasioned by or arising from any damage or injury suffered by any person whomsoever or any property whatsoever by or in the course of the exercise of the Lessee's rights under this Underlease or the use by the Lessee of the Marina so far as they may result from any act or default or culpable omission of the Lessee

Notification of Details of Vessel

- 3.12 At all times shall notify the Lessor in writing of, and of any change in, the name, type and dimension, port of registry, registered number, and full insurance details of Vessels moored at the Demised Premises and the names and addresses of their owners [? pay something]

Procure Insurance of Vessels

- 3.13 At all times shall procure that all Vessels are insured against liability to third parties and against damage to the Marina

Pay VAT

- 3.14 Shall pay the Value Added Tax (or any similar tax which shall replace Value Added Tax) on all taxable supplies received by the Lessee under or in connection with this Underlease and to indemnify the Lessor in respect of any Value Added Tax on any Port Solent Charge costs expenses registration fees or other monies payable by the Lessee pursuant to the terms of this Underlease but only to the extent that such Value Added Tax is not recoverable by the Lessor from the Commissioners of Customs and Excise.

RIGHT OF RE-ENTRY

- 4. It is hereby agreed and declared that if the Port Solent Charge reserved or any part thereof shall be unpaid for the period of thirty days next after becoming payable (whether the same shall be legally demanded or not but subject as provided for in the Fourth Schedule hereto) or if default shall be made by the Lessee in the performance or observance of any of the covenants herein contained then and in any such case it shall be lawful for the Lessor to re-enter upon the Demised Premises or any part thereof in the name of the whole and the same to have again and repossess and enjoy as in its first and former estate anything herein contained to the contrary notwithstanding and thereupon the Term hereby created shall cease but without prejudice to the right of action or remedy of either party to this Underlease in

respect of any antecedent breach of any of the covenants on the part of the other herein contained Provided however that if there shall be any dispute as to the amount of the Port Solent Charge which either the Lessor or the Lessee shall have referred to the Referee under clause 8 of the Fourth Schedule hereto the Lessor shall not seek to exercise its rights under this clause or to distrain for recovery of the Port Solent Charge or refuse to carry out its obligations in accordance with this Underlease unless the Port Solent Charge or part thereof in dispute remains outstanding and unpaid for more than 14 days after the date of Agreement or Determination as to the amount payable to the Lessor

LESSOR'S COVENANTS

5. The Lessor hereby covenant with the Lessee that:-

Quiet Enjoyment

5.1 The Lessee paying the Port Solent Charge hereby reserved as and when the same ought to be paid and observing and performing all the covenants herein contained and on the part of the Lessee to be performed and observed the Lessee shall peaceably hold and enjoy the Demised Premises and the easements rights and privileges hereby granted without any disturbance or interruption by the Lessor or any person or persons rightly claiming through under or in trust for it or by virtue of title paramount

Observe and Perform Lease

5.2 The Lessor will throughout the Term punctually pay the rents reserved by the Lease and will duly observe and perform the tenant's covenants agreements and conditions therein contained in so far as the observance and performance of such covenants agreements and conditions is not expressly or in specified terms made the liability of the Lessee under this Underlease and save as aforesaid will indemnify and will keep indemnified the Lessee against all actions claims proceedings costs expenses and demands in any way relating thereto

Carry Out Second Schedule Obligations

5.3.1 The Lessor will throughout the Term but subject to the prompt payment by the Lessee or by the permitted sub-underlessees (in the case of default) of the Port Solent Charge carry out comply with or supply in a prompt efficient and economical and prudent manner the works obligations and services set out in the Second Schedule hereto

5.3.2. The Lessor will throughout the Term apply the Port Solent Charge solely towards performance of its works obligations and services set out in the Second Schedule hereto

5.3.3 The Lessor acting prudently and in accordance with the principles of good estate management may create and maintain in accordance with the Fifth Schedule a reserve fund against future liabilities of the Lessor in relation to the obligations of the Lessor set out in the Second Schedule hereto and shall invest any such reserve funds in a secure interest bearing trust account (being a deposit account at a London or Scottish clearing bank or building society or

being a United Kingdom Government Security) unavailable to creditors chargees trustees in Bankruptcy or liquidators of the Lessor and apply all monies in such account (including interest thereon) towards the cost of complying with the obligations of the Lessor set out in the Second Schedule hereto

- 5.3.4 The reserve fund shall be created out of a proportion of the Port Solent Charge identified for that purpose by the Lessor

Have Regard to Representations

- 5.4 The Lessor will throughout the Term have reasonable regard to and act upon the reasonable recommendations of the Lessee concerning the carrying out of the Lessor's obligations specified in the Second Schedule hereto

Not Vary Restriction in Headlease

- 5.5 The Lessor will not vary or release and will (if appropriate) enforce the covenant on the part of the Council contained in the proviso to clause (2) of the Fifth Schedule to the Lease

AGREEMENTS AND DECLARATIONS

6. It is further agreed and declared as follows:-

As to Disputes

- 6.1.1 Save for any matter to be Agreed or Determined in accordance with the Fourth Schedule hereto if any dispute or difference shall arise between the parties hereto on the subject matter of this Underlease or as to their respective rights duties or obligations hereunder such dispute or difference shall be referred to the determination of a sole suitably qualified and experienced arbitrator (assisted by an assessor if appropriate) to be appointed as the parties hereto may agree within fourteen days of the said dispute or difference arising or failing such agreement to be appointed on the application of either party by the President for the time being of the Royal Institution of Chartered Surveyors and this clause shall be deemed to be a submission to arbitration within the Arbitration Acts 1950-1979

- 6.1.2 Where any arbitrator or assessor shall die refuse or be unable to act or shall fail to proceed with reasonable speed to discharge his duties a fresh appointment may be made in accordance with the foregoing procedure as often as such appointment shall be necessary

Notices

- 6.2 For the purpose of service of all notices hereby or by statute authorised to be served the regulations as to service of notices contained in Section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962) shall be deemed to be incorporated herein

Abatement of Port Solent Charge

- 6.3 There shall be a fair abatement of the Port Solent Charge for the duration of any period during which the Demised Premises shall be incapable of reasonable use for the purpose hereby authorised or Vessels shall be unable to gain reasonable access to the Demised Premises through the Marina

because of damage by an insured risk or because of any defect in the Marina or because of any unreasonable delay on the part of the Lessor in approving the constructional details or layout of Marina Equipment or Mooring Areas and such abatement shall be credited against the Port Solent Charge for the Lessor's Berthing Year next following

I N W I T N E S S whereof the parties hereto have caused their respective common seals to be hereunto affixed the day and year first above written

THE FIRST SCHEDULE

Part I

Easements rights and privileges granted to the Lessee and their respective tenants agents licencees and invitees

1. The right subject to any temporary restriction necessarily imposed by the Lessor or the Superior Lessor to pass and repass with Vessels over the Marina and through the lock and lock gates
2. The right to pass or repass over and to the Common Parts of the Marina (as defined in the Second Schedule) and over all such roads and paths within Port Solent to the extent in each case as necessary with Vessels (in the case of water) and vehicles (in the case of roads and vehicular accesses and car parks) to enable the full use and enjoyment of the Demised Premises but not further or otherwise
3. A right of passage at all times and for all purposes connected with the full use and enjoyment of the Demised Premises over and within the access channel together with any additional dredged area which the Lessor may from time to time provide
4. The right in common with all others entitled thereto to use at all times the toilets and ablution facilities provided by the Lessor for the use of all persons using the Marina

Part II

Easements rights and privileges reserved to the Lessor and the Superior Lessor

1. And their respective tenants agents and licensees the right now or during the Perpetuity Period to lay use and maintain any services within the Demised Premises which serve other premises within Port Solent with all necessary rights of access thereto subject to the giving of adequate notice and details of the intended exercise of the rights hereby reserved making all necessary payments and subject to causing as little inconvenience to the Lessee as possible and to making good any damage or disturbance caused to the Demised Premises in the exercise of such rights
2. And their respective agents the right of access at all reasonable times to the Demised Premises for the purposes of ensuring that the Lessee has carried out its obligations

herein contained and for the purposes of carrying out the Lessor's obligations set out in the Second Schedule hereto and in furtherance thereof and whenever necessary and after reasonable endeavours have been made to give notice thereof the right to move and moor or berth elsewhere in the Marina (subject to prior notice save in the case of emergency) any Vessel in any Mooring Area and any extension of the rights reserved to the Lessor in this Part II of the First Schedule contained in the Rules and Regulations of the Port Solent Marina from time to time in force shall not apply

THE SECOND SCHEDULE

The Obligations of the Lessor

In this Schedule "the Common Parts of the Marina" are shown on the Plan edged where possible with a thick black line and include the access channel, the lock area including the lock and associated control equipment make up pumps and the public area to the north of the lock, the common fairways within the Marina basin, the administration and the Marina control building, and the toilets and ablution blocks, Marina containment, the Southern Road and the southern West Bund Road leading to the Marina control building, and the public promenades on the southern and western side of the Marina basin within the Marina associated land and the lower promenade around the Retail Site, and the Marina car parking

1. General
Without prejudice to the specific matters referred to in the following paragraphs of this Second Schedule to Maintain the Common Parts of the Marina
2. Access Channel
To Maintain the piling, lighting and navigational aids, and queuing and waiting berths in the access channel
3. The Lock Area
 - 3.1 To Maintain the lock structure, the lock pontoonery, the lock machinery; electrics, gates, and make up pumps and navigational aids within the Marina basin
 - 3.2 To Maintain and administer the Marina control building and associated external works and infrastructure
4. Marina Containment
To Maintain Marina Containment, meaning the Marina basin walls, revetments and sheet steel piling, and also the boat hoist quay
5. Pontoonery
To Maintain the inner waiting pontoons and visitors pontoons
6. Refuelling Facility
To Maintain the refuelling and bunkering facility (including its pontoonery)
7. Dredging
To Maintain (by dredging or other means of excavation) the

access channel at a minimum depth of minus 1.5 metres Chart Datum and to ensure that the Marina basin is in a usable state at all times by all Vessels with draughts not exceeding 2 metres and to ensure the removal of siltation from the lock area

8. Southern Road/Southern West Bund Road
To Maintain the Southern Road and southern West Bund Road and its associated landscaping and street lighting and to Maintain all such other roads and footpaths as give access to the Marina and to the Marina car parking and to the toilet and ablution blocks within the Marina and as shall not from time to time be adopted as highways maintainable at public expense
9. Promenade
To Maintain the promenade along the southern side of the Marina basin, the lower promenade along the Retail Site and the area to the north of the lock and its associated landscaping and the lighting thereto and the service ducts and media thereunder
10. Landscaping
To Maintain all common areas of landscaping (in addition to those mentioned above) including landscaping to the lock area and to Marina car parking
11. Marina Car Parking
To Maintain the Marina car parking (other than that exclusively servicing the Port House and the Boat Centre) and to keep it available for use by those entitled to use the Marina
12. Signs etc
To Maintain all signs, noticeboards, safety equipment and fire fighting equipment necessary or appropriate to the Common Parts of the Marina
13. Scavenging
 - 13.1 To scavenge the Marina basin including the Demised Premises and the Marina associated land including the provision and Maintenance of all necessary refuse bins in particular within the lock area and the public promenade Marina car parking and Southern Road and southern West Bund Road
 - 13.2 To take appropriate measures (at the cost of the relevant parties) to enforce the control of oil and grease emission from the surface water outlets into the Marina
14. Leachate Barrier
To Maintain the leachate barrier and associated drains and inspection chambers throughout the entire length thereof subject (in the case of such engineering works lying outside the Marina associated land) to the Lessor being afforded all necessary rights of access thereto Provided that the Lessor shall not cause undue disturbance and shall make good all damage caused thereby

15. Methane Emission
To Maintain the system of monitoring and treatment of methane emission other than that related to the specific developments of the Port House and the Boat Centre
16. Security
To Maintain adequate security to Common Parts of the Marina
17. Plant and Equipment
To provide and Maintain all equipment necessary for the proper performance of the obligations set out in this Schedule including Vessels vehicles and machinery
18. Insurance
To insure or cause to be insured the Common Parts of the Marina and keep the same insured with insurers of repute in the United Kingdom against loss or damage by any of the Insured Risks and such other risks as the Lessor shall reasonably consider desirable in an adequate and appropriate sum which will not be less than the full reinstatement cost together with architects consultants and surveyors fees and loss of the Port Solent Charge for a period of three years and pay or cause to be paid all premiums and other monies necessary for this purpose and whenever required to produce to all persons making a contribution thereto evidence of the policy or policies of such insurance and evidence of the payment of the then current year's premium and in the event of the Common Parts of the Marina or any part thereof at any time being destroyed or damaged by way of any of the Insured Risks then and as often as the same may happen with all reasonable despatch to rebuild repair or otherwise reinstate the Common Parts of the Marina or the relevant part thereof in a good and substantial manner and to ensure that the said insurance policy contains a non-invalidating clause and waiver by the insurer of its rights of subrogation against the Lessee
19. Administrative Function
To employ or to engage the services of such persons as may be necessary for the administration and Maintenance of the Common Parts of the Marina and for the proper performance of the obligations within this Schedule and for the recovery of the Port Solent Charge
20. Keep Marina Open
To keep the Marina open for use at all times so far as is practicable
21. Make Rules
To make and enforce suitable rules and regulations for the use of the Marina consistent with the National Yacht Harbour Association's Code of Practice, and in particular for the movement of Vessels within the Marina and outside it but within the access channel, and for hygiene within the Marina including rules preventing the discharge of effluent from Vessels, and relating to the proper management and administration of the Marina, and to use reasonable endeavours to ensure that copies of all such rules and

regulations are available to any person using berths at the Marina for inspection at all reasonable times

22. Discharge Rates etc
To discharge all rates taxes duties charges and assessments and outgoings whatsoever of a recurring nature (whether parliamentary local or of any other description) from time to time payable in respect of the Common Parts of the Marina other than those which are the direct responsibility of the Lessee hereunder including (but without prejudice to the generality of the foregoing) the consumption of all electricity gas water telephone and similar services general and water rates and charges of a like nature imposed on the Lessor in respect of the Common Parts of the Marina
23. Comply with Statute
To comply with statute and execute all works required thereby in relation to the Common Parts of the Marina save to the extent that the Lessee is responsible hereunder
24. Maintain Sea Defences
To cause to be Maintained by the proper authority or in default or in an emergency to Maintain the sea defences
25. Other Unforeseen Activities
To take all such other action and do such works and things in relation to the Common Parts of the Marina as the Lessor acting reasonably and prudently and economically shall consider desirable or expedient and which benefits all occupiers at Port Solent

THE THIRD SCHEDULE

There is annexed hereto a copy of the Rules and Regulations of the Port Solent Marina which shall form the Third Schedule to this Underlease and expressions used therein shall have the appropriate or nearest meaning or definition provided by this Underlease and:-

"the Company" means the Lessor and

"the Owner" means the Lessee

"berthing fees" includes inter alia the Port Solent Charge

THE FOURTH SCHEDULE

1. In this Schedule the following expressions shall (unless the context otherwise admits or requires) have the meanings respectively assigned to them as follows:-
 - 1.1 "the Base Charge" means a sum equal to the Port Solent Charge payable in the immediately preceding Lessor's Berthing Year
 - 1.2 "the New Charge" means (subject to any limitation imposed by paragraph 2.3) the greater of:-
 - 1.2.1 a sum equal to 104% of the Base Charge or
 - 1.2.2 a sum equal to the Base Charge plus a sum calculated in accordance with the following formula:-
$$\left(\frac{A - B}{B} \times 100 \right) \% \times \text{Base Charge}$$

where

A is the Berth Charge for the Lessor's Berthing Year under review and

B is the Berth Charge for the immediately preceding Lessor's Berthing Year

1.3 "the Berth Charge" means the average linear rate ("Linear Rate") published by the Lessor for each Lessor's Berthing Year for domestic Vessels of lengths between 10 metres and 12 metres in the Public Marina at Port Solent on an annual licence but:-

- (a) insofar as the same may be reflected therein deducting any charge for the supply of services to such Vessels such as electricity use of hoist or lifting facilities, security services and the like and deducting any special rate greater than such Linear Rate
- (b) insofar as the same may not be reflected therein adding back any introductory discount or special rate lesser than such Linear Rate
- (c) adjusting for any other component of the Linear Rate which it is not fair or equitable to take into account for computation of the Port Solent Charge

2.1 The Port Solent Charge for the Lessor's Berthing Year commencing on 1st April 1990 shall be [£21,252.00]

2.2 The Port Solent Charge for the Lessor's Berthing Year commencing on 1st April 1991 and for each successive Lessor's Berthing Year (save as provided for in paragraph 2.3 of this Schedule) shall be the New Charge provided that (save as aforesaid) the New Charge shall never exceed 112% of the Base Charge and provided that any dispute as to the calculation of the New Charge in accordance with this Schedule shall be Agreed or Determined

2.3.1 Without prejudice to paragraph 5 hereof the Lessor and the Lessee shall Agree or Determine the Port Solent Charge for the Lessor's Berthing Year commencing on 1st April 1995 and thereafter on every fifth anniversary of that date (the said date of 1st April 1995 and each fifth anniversary thereof being called "the Review Date") throughout the Term by comparing the Base Charge to the Lessor's actual expenditure incurred in accordance with the terms of this Underlease in complying with its obligations in the Second Schedule hereto for the Lessor's Berthing Year immediately preceding the Review Date and so that the Port Solent Charge for the Lessor's Berthing Year commencing on each Review Date (subject to adjustment by reference to the matters set out in paragraph 2.3.2 of this Schedule) shall be a sum equal to 4.10% of the Lessor's expenditure incurred as aforesaid in such immediately preceding Lessor's Berthing Year

2.3.2 In Agreeing or Determining the Port Solent Charge as set out in paragraph 2.3.1 the Lessor the Lessee and the Referee (if appropriate) shall:-

- (a) take into account and make adjustments by reference to any Port Solent Charge reserves held at the Review Date
- (b) take into account and make adjustments by reference to any Port Solent Charge reserves that a landlord acting

reasonably and prudently should have credited to a reserve fund for known or reasonably anticipated future expenditure

- (c) take into account and make adjustments by reference to any items of expenditure actually incurred during the period since the date of commencement of the Term or (as the case may be) since the previous Review Date for which reserves were not created (or the balance thereof if such reserves were inadequate)
- (d) apportion items of expenditure falling in that year of review or any subsequent Lessor's Berthing Year to the following Lessor's Berthing Years according to the anticipated frequency of expenditure relating to such items in order to create reserves to be identified and held in accordance with Clause 5.3

2.4 In order to facilitate reviews pursuant to paragraph 2.3 of this Schedule the Lessor shall produce to the Lessee and/or the Referee all such relevant information as may be necessary or desirable or only insofar as this cannot be separately provided its full profit and loss account in each case for the Lessor's Berthing Year immediately preceding the Review Date and all accounts and vouchers evidencing such expenditure together with such further information (including save as aforesaid profit and loss accounts from previous years) as may be necessary to give full force and effect to paragraph 2.3 of this Schedule

2.5 Insofar as the Lessor's Berthing Year is a different period from the Lessor's accounting period the relevant profit and loss accounts shall be for the accounting period which covers the majority of the Lessor's Berthing Year and the remainder of the information necessary for the purpose of review shall be evidenced by all relevant information supported by unaudited management accounts apportioned and accrued as appropriate for the Lessor's Berthing Year

3. As soon as practicable and in any event not later than two months before the commencement of each Lessor's Berthing Year the Lessor shall provide the Lessee with a certificate of the published Linear Rate which the Lessor acting in good faith intends to implement for the duration of the forthcoming Lessors's Berthing Year together with details of its computation of the New Charge and such certificate shall be a proper and legal demand therefor

4. The Lessee shall pay two thirds of the Port Solent Charge within 30 days of the first day of each Lessor's Berthing Year and the remaining one third thereof 6 months after the first day of such Lessor's Berthing Year

5. If the Port Solent Charge has not been Agreed or Determined on the first day of each Lessor's Berthing Year the Lessee shall pay on account of such Port Solent Charge two thirds of 104% of the Base Charge and if still not Agreed or Determined 6 months after the first day of such Lessor's Berthing Year the Lessee shall pay the remaining one third of 104% of the Base Charge on that date

6. In the circumstances set out in Clause 5 hereof upon the date on which the New Charge has been Agreed or Determined it shall be a debt immediately due and payable to the Lessor by the Lessee and the Lessee shall pay the balance of the Port Solent Charge after crediting all payments made under Clause 5 hereof with interest on such balance at two percent below the Interest Rate from the first day of such Lessor's Berthing Year until the date of actual payment
7. If the Linear Rate shall not be published for any Lessor's Berthing Year or if the number of berths in the Marina in any Lessor's Berthing Year available for letting or let at the Berth Charge during the immediately preceding Lessor's Berthing Year falls below 50 then either the Lessor or the Lessee may by notice in writing elect to require that the Berth Charge is not used in the computation of the Port Solent Charge (whether under paragraph 2.2 or paragraph 2.3 hereof) and that there is substituted for the Berth Charge such other comparable annual or rentalised berth charges in respect of Vessels at Port Solent or such other comparable marina or marinas or an amalgam or average thereof as shall be Agreed or Determined ("the Alternative Berth Charge") and such Alternative Berth Charge shall thereafter (until further varied or until the Berth Charge shall once again apply) be substituted for the Berth Charge for the purposes of computation of the Port Solent Charge (whether under paragraph 2.2 or paragraph 2.3 hereof)
- 8.1 If the Lessor and the Lessee are unable to agree any matter which is to be Agreed or Determined either party may refer such matter to and it shall then be conclusively determined by a member of the Institute of Chartered Accountants for England and Wales ("the Referee") nominated in the absence of agreement and upon the application of either the Lessor or the Lessee by or on behalf of the President for the time being of such Institute and such appointment shall be final and binding upon the Lessor and the Lessee
- 8.2 Any Referee appointed hereunder shall act as an expert and not as an arbitrator and shall be entitled to call for such evidence as he may require in connection with such matter in such form and manner as he shall in his absolute discretion think fit and his determination on such matter and to the award of costs shall be treated as final and binding on the Lessor and the Lessee without further recourse
- 8.3 The Lessor and the Lessee agree that the Referee may be requested by the Lessor to determine any matter referred to him by the Lessor and the Lessee at the same time and in like manner as any matter between the Lessor and any other tenants of a berth in the Marina of a like nature or arising out of like circumstances

THE FIFTH SCHEDULE

"The Reserve Fund"

1. The reserve fund shall be set up and held as a reserve against the anticipated future costs of meeting the Lessor's obligations set out in the Second Schedule hereto with a view to equalising so far as practicable the annual expenditure of the Lessor in performing such obligations and to comply and administer the said sums (the "reserve fund") and the income thereof as follows:-
2. Until the reserve fund is wound up as hereinafter provided:
 - 2.1 The Lessor may in its absolute discretion apply the whole or any part of the income of the reserve fund in or towards the meeting of the Lessor's obligations set out in the Second Schedule hereto and shall so apply all such income within not more than 5 years of the date on which it is received by the Lessor
 - 2.2 The Lessor may in its reasonable discretion at any time or times apply the whole or any part of the capital of the reserve fund in or towards the meeting of the Lessor's obligations set out in the Second Schedule hereto and shall so apply every sum set aside as part of the reserve fund (or the property representing it) within 80 years of its being so set aside (which shall be the Perpetuity Period applicable thereto)
3. Subject as aforesaid the Lessor shall upon the winding up of the reserve fund apply the reserve fund and the income thereof as follows:-
 - 3.1 First in discharging all accrued costs and expenses properly payable out of the reserve fund and the costs of winding up
 - 3.2 Second in making and setting aside reasonable provisions as may be determined by the Lessor for the cost of meeting the Lessor's obligations set out in the Second Schedule hereto during the year after the date of winding up
 - 3.3 Third in paying and distributing the balance to the Lessee or at its direction
4. The reserve fund shall be wound up at the date of the expiration or sooner determination of the Term
5. In the administration of the reserve fund:
 - 5.1 The Lessor shall keep the reserve fund and the property from time to time representing it in a secure interest bearing trust account as aforesaid separate from the other moneys and property of the Lessor and unavailable to the creditors of the Lessor
 - 5.2 The Lessor shall keep proper books of account and records of all property comprised in and transactions affecting the reserve fund
 - 5.3 The Lessor may employ upon such terms as it thinks fit and pay all such agents and professional persons as it considers appropriate for the proper and efficient administration of

the reserve fund as a separate fund and in particular shall employ a qualified accountant to audit annually the accounts of the reserve fund and may employ independent agents nominees or trustees to hold or manage the reserve fund or any part of it

6. The costs of managing and administering the reserve fund and all taxes payable in respect of the reserve fund or its income shall be paid out of the reserve fund

THE COMMON SEAL of PORT SOLENT)
LIMITED was hereunto affixed in)
the presence of:-)

Director

Secretary

THE COMMON SEAL of POSOL RESIDENTS)
MANAGEMENT COMPANY LIMITED was)
hereunto affixed in the presence)
of:-)

Director

Secretary