Companies House

MR01(ef)

Registration of a Charge

Company name: **SANDS HERITAGE LTD**

Company number: **09094163**

Received for Electronic Filing: **27/03/2017**

X634H19U

Details of Charge

Date of creation: **10/03/2017**

Charge code: **0909 4163 0013**

Persons entitled: **ARROWGRASS MASTER FUND LIMITED**

Brief description: **THE FREEHOLD PROPERTY SITUATE AT AND KNOWN AS DREAMLAND AMUSEMENT CENTRE, MARINE TERRACE, MARGATE CT9 1XL REGISTERED WITH ABSOLUTE TITLE UNDER TITLE NUMBER K853360**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **SQUIRE PATTON BOGGS (UK) LLP**

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9094163

Charge code: 0909 4163 0013

The Registrar of Companies for England and Wales hereby certifies that a charge dated 10th March 2017 and created by SANDS HERITAGE LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 27th March 2017 .

Given at Companies House, Cardiff on 28th March 2017

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

Companies House

THE OFFICIAL SEAL OF THE REGISTRAR OF COMPANIES

DATED 10th March 2017

SANDS HERITAGE LIMITED (IN ADMINISTRATION)
(as Mortgagor)

- and -

ARROWGRASS MASTER FUND LIMITED
(as Mortgagee)

- and –

BENJAMIN WILES AND PAUL DAVID WILLIAMS
(as Administrators)

LEGAL MORTGAGE

Wedlake Bell

71 Queen Victoria Street
London
EC4V 4AY

Tel: 020 7395 3000
Fax: 020 7395 3100
Ref: ARR/11/1/WB1-15637900

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THIS LEGAL MORTGAGE is made on the 10th day of March 2017

BETWEEN:-

1. **SANDS HERITAGE LIMITED (in Administration)**, a company incorporated under the laws of England and Wales, (company registration number 09094163) whose registered office is at (or is in the process of being changed to) Level 14,The Shard, 32 London Bridge Street, London SE1 9SG (the **"Mortgagor"**) (acting by the Administrators); and

2. **ARROWGRASS MASTER FUND LIMITED**, a company incorporated under the laws of the Cayman Islands (company registration number MC193941) whose registered office is at PO Box 242 45 Market Street Gardenia Court Camana Bay KY1-1104 (the **"Mortgagee"**); and

3. **BENJAMIN WILES AND PAUL DAVID WILLIAMS** of Duff and Phelps Ltd, Level 14, The Shard, 32 London Bridge Street, London SE1 9SG acting in their capacity as joint administrators of the Borrower (**"the Administrators"**).

WHEREAS:-

(A) The Mortgagee has agreed to make available to the Mortgagor a loan facility in a maximum aggregate principal amount of £15,000,000 (fifteen million pounds sterling) upon and subject to the terms of an Amended and Restatement Agreement dated 28 February 2017 between the Mortgagee and the Mortgagor (acting by the Administrators) (as borrower) and as amended, novated, supplemented, extended, or restated (however fundamentally) including (without limiting the generality of the foregoing) any variation, increase, extension, or addition to any loan facility or amount made available under any such document or any variation of the purpose for which such loan facility or amount may be made available from time to time (the **"Facility Agreement"**).

(B) It is a condition of the Mortgagee making the loan facility available to the Mortgagor that the Mortgagor enters into this Deed.

(C) It is intended that this Deed takes effect as a deed notwithstanding the fact that a party may only execute this Deed under hand.

NOW THIS DEED WITNESSES:-

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Terms defined in the Facility Agreement shall, unless the context otherwise requires, have the same meanings when used in this Deed. In addition, in this Deed the following expressions have the following meanings:-

"Act" means the Law of Property Act 1925.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"Event of Default" means any event or circumstance specified as such in Clause 9 (*Default*) of the Facility Agreement.

"Hazardous Materials" means and includes chemicals, pollutants, contaminants, wastes, petroleum, petroleum products, distillates, dangerous, hazardous or toxic substances and materials (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) and all hazardous substances defined or

regulated as such under any Environmental Law, including in particular, but without limitation, the substances prescribed in Schedules 4, 5 and 6 of the Environmental Protection (Prescribed Processes and Substances) Regulations 1991.

"Insurances" means all contracts and policies of insurance taken out by or on behalf of the Mortgagor or (to the extent of its interest) in which the Mortgagor has an interest.

"Lease Document" means:

(a) an Occupational Lease; or

(b) any other document designated as such by the Mortgagee and the Mortgagor.

"Mortgaged Property" means any freehold or leasehold property the subject of the security created by this Deed.

"Occupational Lease" means any lease or licence or other right of occupation or right to receive rent to which a Property may at any time be subject and includes any guarantee of a tenant's obligations under the same.

"Planning Acts" means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008 and all regulations and orders made or confirmed under any of them.

"Property" means the leasehold property details of which are set out in Schedule 1 hereto (as the same may from time to time be supplemented and/or amended) together with all buildings fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery thereon belonging to the Mortgagor.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

"Rental Income" means the aggregate of all amounts paid or payable to or for the account of the Mortgagor in connection with the letting, licence or grant of other rights of use or occupation of any part of the Property, including each of the following amounts:

(a) rent, licence fees and equivalent amounts paid or payable;

(b) any sum received or receivable from any deposit held as security for performance of a tenant's obligations;

(c) a sum equal to any apportionment of rent allowed in favour of the Mortgagor;

(d) any other moneys paid or payable in respect of occupation and/or usage of the Property and any fixture and fitting on the Property including any fixture or fitting on the Property for display or advertisement, on licence or otherwise;

(e) any sum paid or payable under any policy of insurance in respect of loss of rent or interest on rent;

(f) any sum paid or payable, or the value of any consideration given, for the grant, surrender, amendment, supplement, waiver, extension or release of any Lease Document;

(g) any sum paid or payable in respect of a breach of covenant or dilapidations under any Lease Document;

(h) any sum paid or payable by or distribution received or receivable from any guarantor of any occupational tenant under any Lease Document; and

(i) any interest paid or payable on, and any damages, compensation or settlement paid or payable in respect of, any sum referred to above less any related fees and expenses incurred (which have not been reimbursed by another person) by the Mortgagor.

"Secured Liabilities" means all present and future obligations and liabilities whether actual or contingent and whether owed jointly or severally and whether as principal or surety or in any other capacity whatsoever of the Mortgagor to the Mortgagee under the Facility Agreement and this Deed and all interest, commission, fees and all legal and other charges and expenses which the Mortgagee may charge the Mortgagor or incur in relation to the Facility Agreement and this Deed on a full indemnity basis and also interest on the foregoing to the date of payment at the highest rate specified in the Facility Agreement.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Security Assets" means all the assets of the Mortgagor the subject of any security created by this Deed and references to the Security Assets include references to any part of them.

"Security Period" means the period commencing on the date of this Deed and ending on the date upon which the Mortgagee certifies in writing that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Unenforceable" means void, voidable, invalid, unenforceable or otherwise irrecoverable (whether or not known to the Mortgagee or the Mortgagor) and **"Unenforceability"** will be construed accordingly.

"VAT" means:

(a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

(b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

1.2 **Construction**

1.2.1 Unless a contrary indication appears, a reference in this Deed to:-

(a) the **"Mortgagor"**, the **"Mortgagee"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations;

(b) a document in **"agreed form"** is a document which is previously agreed in writing by or on behalf of the Mortgagor and the Mortgagee or, if not so agreed, is in the form specified by the Mortgagee;

(c) **"assets"** includes present and future properties, revenues and rights of every description;

(d) **"disposal"** includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and "**dispose**" will be construed accordingly;

(e) **"guarantee"** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

(f) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

(g) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);

(h) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

(i) a provision of law is a reference to that provision as amended or re-enacted;

(j) a **"mortgage"** includes a transfer or assignment by way of mortgage; and

(k) an **"overriding interest"** means an unregistered interest which would override first registration or, as the case may be, a registered disposition as set out in Schedule 1 and Schedule 3 to the Land Registration Act 2002.

1.2.2 Section, Clause and Schedule headings are for ease of reference only.

1.2.3 The terms of the Facility Agreement and any other document and of any side letters between any parties are incorporated into this Deed to the extent required to ensure that any purported disposition of any freehold or leasehold property contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

1.2.4 **"£"**, **"GBP"** and **"pounds sterling"** denote the lawful currency of the United Kingdom.

2. COVENANT TO PAY

The Mortgagor covenants with the Mortgagee to pay and discharge the Secured Liabilities in the manner provided for in the Facility Agreement.

3. SECURITY

The Mortgagor, with full title guarantee and to the intent that the security hereby created shall rank as a continuing security for the payment and discharge of the Secured Liabilities:

3.1 **Mortgage**

charges in favour of the Mortgagee:

3.1.1 by way of first legal mortgage, all its estate and interest in the Property;

3.1.2 by way of first equitable mortgage, all estates or interests in any freehold or leasehold property (except any Security Assets specified in sub-clause 3.1.1 above) now or at any time hereafter belonging to it and including all buildings, fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery thereon belonging to the Mortgagor;

3.2 **Assignment**

assigns absolutely in favour of the Mortgagee by way of first-ranking security:-

3.2.1 (to the extent that the same may lawfully be assigned) all and any rights (whether in contract, tort or otherwise) which the Mortgagor has or may hereafter have against any third party (including without prejudice to the generality of the foregoing any professional advisers) arising from any building, construction, alteration, refurbishment or other works to the Mortgaged Property or any part thereof or any defect therein;

3.2.2 the benefit of all guarantees, sureties and other covenants and liabilities on the part of third parties in favour of the Mortgagor and the Mortgagor's predecessors in title so far as it has title to assign the same (and each of them) under any lease or tenancy of the Mortgaged Property and any part or parts thereof granted as well before as after the date hereof and all rights arising thereunder;

3.2.3 all and any rights and interests in and benefit in respect of the Insurances and all claims and returns of premiums in respect of them;

3.2.4 the benefit of all other contracts, agreements, rights, securities, covenants, guarantees, bonds and indemnities of any nature now and at any time enjoyed or held by the Mortgagor;

3.2.5 all Rental Income and the benefit of any guarantee or security for the performance of payment of the Rental Income provided that if any lease, guarantee or security is expressed to be non-assignable then the Mortgagor charges to the Mortgagee by way of first fixed charge its interest in and benefit of the same;

4. APPLICATION TO LAND REGISTRY

4.1 In the case of any part of the Security Assets consisting of land for the time being registered at the Land Registry the Mortgagor and the Mortgagee hereby jointly apply to the Chief

Land Registrar to enter a restriction in the Proprietorship Register of the relevant titles (the **"Register"**) in the following terms:-

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the registered charge dated [■] in favour of Arrowgrass Master Fund Limited referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its secretary or conveyancer."

5. MORTGAGOR'S COVENANTS

The covenants set out in this Clause 6 remain in force throughout the Security Period in favour of the Mortgagee and any Receiver appointed by the Mortgagee.

5.1 Performance

The Mortgagor shall observe and perform all the terms and conditions (express or implied) of this Deed and the Facility Agreement and any other document relating to the Secured Liabilities and the Security Assets and all other material conditions and obligations relating to any Security Asset. Neither the Mortgagee nor any Receiver shall be required in any manner to perform or fulfil any obligations of the Mortgagor in respect of any Security Asset, or to make any payment, or to make any enquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or take any other action to collect or enforce any of the Security Assets.

5.2 LEASES

The Mortgagor shall at all times observe and perform the obligations on its part as tenant contained or incorporated in the Leases under which the Mortgagor holds the Property.

5.3 Rental Income

5.3.1 The Mortgagor shall without prejudice to Clause 5.9 (*Negative Pledge*), not, without the prior written consent of the Mortgagee, sell, assign, charge, factor or discount, or in any other manner deal with, any Rental Income; and

5.3.2 The Mortgagor shall, as and when required by the Mortgagee or any Receiver execute and deliver to any tenant of the Mortgaged Property as the Mortgagee may direct a notice of the assignment of the Rental Income made pursuant to sub-clause 3.2.5 in such form as the Mortgageee shall reasonably require and procure that the addressee of such notice signs and delivers to the Mortgagee an acknowledgement.

5.4 Repair and Alteration of Mortgaged Property

5.4.1 The Mortgagor shall keep:-

(a) the Mortgaged Property in a good and substantial state of repair and condition and properly painted and decorated; and

(b) the fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery belonging to the Mortgagor and which are in or on the Mortgaged Property in a good and substantial state of repair and condition and in good working order.

Without prejudice to the generality of the foregoing the Mortgagor shall undertake (at the Mortgagor's expense) any works in relation to the Mortgaged Property as may be recommended by a surveyor appointed by the Mortgagee pursuant to sub-clause 5.4.3.

5.4.2 The Mortgagor shall not without the prior consent in writing of the Mortgagee, carry out or permit or suffer to be carried out alterations to or pull down or remove any building or erection for the time being forming part of the Mortgaged Property nor the fixtures annexed to the same,

5.4.3 For the purpose of ascertaining due observance and performance by the Mortgagor of sub-clauses 5.4.1 and 5.4.2 the Mortgagee shall be entitled from time to time to enter any part of the Mortgaged Property to examine its condition, such entry to be made with or without workmen, plant and materials and without rendering the Mortgagee liable as mortgagee in possession and the Mortgagee shall also be entitled from time to time and for such purpose to cause any such buildings to be surveyed by a surveyor to be appointed by the Mortgagee and to pay reasonable and proper remuneration to such surveyor. Any such surveyor shall be entitled without rendering the Mortgagee liable as mortgagee in possession to enter upon the Mortgaged Property for the purpose of making his survey and his certificate shall be conclusive as to the adequacy of the repair of such buildings and his remuneration shall be debited to the Mortgagor's account with the Mortgagee and shall be deemed to be an expense properly incurred in relation to the security constituted by this Deed.

5.5 **Mortgagor's Failure**

If default shall be made by the Mortgagor in keeping any Security Asset repaired and in good working order and condition or insured in accordance with Clause 5.4 or there is a breach of any other covenants on the part of the Mortgagor herein contained it shall be lawful for (but not obligatory upon) the Mortgagee to repair and keep repaired and in good working order and condition or insured all or any part of the Security Assets in accordance with the requirements of Clauses 5.4 or to perform such other covenants and for such purposes to enter upon the Mortgaged Property (without thereby becoming liable as mortgagee in possession) and any monies expended for that purpose shall be paid to the Mortgagee on the Mortgagee's first written demand together with interest thereon calculated at the rate of default interest specified in the Facility Agreement from the date the Mortgagee incurs the relevant cost until the date of actual payment (whether before or after judgment) and may be debited to the Mortgagor's account with the Mortgagee and shall be deemed to be an expense properly incurred in relation to the security constituted by this Deed.

5.6 **Planning**

5.6.1 The Mortgagor shall not make nor permit to be made any application for planning permission in respect of any development of the Mortgaged Property or any part thereof within the meaning of the Planning Acts.

5.6.2 The Mortgagor shall not undertake or carry out any development of the Mortgaged Property or any part thereof, nor suffer or knowingly permit the same to be undertaken or carried out without the prior written consent of the Mortgagee and the necessary planning permission prescribed in the Planning Acts having been first obtained and approved by the Mortgagee.

5.6.3 In the event of such planning permission of the type described in sub-clause 5.6.1 being obtained, the Mortgagor shall, when carrying out any such development, observe and perform strictly all conditions (if any) subject to which such permission is granted.

5.6.4 Within ten Business Days of the receipt of any requirement, order, notice or direction of any competent authority pursuant to the Planning Acts, the Mortgagor shall supply full particulars thereof to the Mortgagee who shall be entitled to decide whether such requirement, notice, order or direction shall:

(a) be complied with, in which case the Mortgagor will at the direction of the Mortgagee take such steps as the competent authority shall require; or

(b) be resisted, in which case the Mortgagor will at the direction of the Mortgagee take such steps (including by way of appeal if required) as the Mortgagee may direct in order to obtain the variation or rescission of such requirement, notice, order or direction.

5.6.5 The Mortgagor shall not, without the prior written consent of the Mortgagee, use or permit or cause the Mortgaged Property to be used other than as at the date hereof.

5.6.6 Any costs incurred or monies expended by the Mortgagee (including surveyors' and/or architects' fees and legal costs) in connection with the matters referred to in this Clause 5.6 may be debited to the Mortgagor's account with the Mortgagee or at the Mortgagee's option paid to the Mortgagee on the Mortgagee's first written demand and in either case shall be deemed to be an expense properly incurred in relation to the security constituted by this Deed.

5.7 **Deposit of Certificates**

If the Mortgagee so requires, the Mortgagor shall deposit with the Mortgagee all certificates and other documents of title or evidence of ownership in relation to all or any of the Security Assets and shall execute and deliver to the Mortgagee all such transfers and other documents as may be necessary to enable the Mortgagee or its nominees to be registered as the owner or otherwise obtain a legal title to the same.

5.8 **Negative Pledge**

The Mortgagor shall not:-

5.8.1 without the prior written consent of the Mortgagee, create, incur or permit to exist any Security in, over or affecting any of the Security Assets unless permitted by the Facility Agreement;

5.8.2 without the prior written consent of the Mortgagee, sell, assign, lend, transfer or otherwise dispose of the whole or any part of the Security Assets or any interest therein (whether by one transaction or a series of transactions and whether related or not) unless permitted by the Facility Agreement;

5.8.3 without the prior written consent of the Mortgagee:-

(a) grant to any third party any right, licence or interest whatsoever in or over the Security Assets; or

(b) exercise any of the powers of leasing or of agreeing to lease or of accepting surrenders conferred on mortgagors by the Act; or

(c) release or vary or agree to release or vary any terms of, any Lease Documents; or

(d) grant any licences or consents (including for the avoidance of doubt licences or consents for the assignment or subletting of the whole or any part of the Mortgaged Property) under, any Lease Documents for the time being affecting the Mortgaged Property; or

(e) terminate or extend any Lease Document,

unless, in the case of any of the matters referred to in this Clause 6.8.3, permitted by the Facility Agreement.

6. PRESERVATION OF SECURITY

6.1 Continuing Security

The Mortgagor declares and agrees that:-

6.1.1 the security created by and covenants and provisions contained in this Deed shall be held by the Mortgagee as a continuing security and for securing further advances and shall not be satisfied by any intermediate payment or satisfaction of any part of the Secured Liabilities and shall remain in full force and effect until the Secured Liabilities hereby secured have been unconditionally and irrevocably paid and discharged in full to the satisfaction of the Mortgagee;

6.1.2 the Mortgagee shall not be bound to enforce any guarantee or other security or proceed or take any other steps against any other person before enforcing this Deed; and

6.1.3 this Deed shall be in addition to, and not in substitution for, any other rights which the Mortgagee may now or hereafter have under or by virtue of any guarantee or other security or agreement or any lien or by operation of law or under any collateral or other security now or hereafter held by the Mortgagee or to which the Mortgagee may be entitled.

6.2 Avoidance of Payments

6.2.1 Any settlement, discharge or release under this Deed between the Mortgagee and the Mortgagor shall be conditional upon no security or payment to the Mortgagee by the Mortgagor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation for the time being in force. If any such security or payment to the Mortgagee is avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation, the Mortgagee shall be entitled to recover from the Mortgagor on demand the value of such security or the amount of any such payment as if such settlement, discharge or release had not occurred.

6.2.2 The Mortgagee shall be at liberty at its absolute discretion to retain the security created by this Deed as security for the Secured Liabilities for a period of one

month plus such statutory period within which any security or payment given or made pursuant to this Deed may be avoided or invalidated after the Secured Liabilities shall have been paid in full, notwithstanding any release, settlement, discharge or arrangement given or made with the Mortgagee on or as a consequence of such termination of liability. If at any time within such period after such termination a petition shall be presented to a competent court for an order for the bankruptcy, insolvency, winding up or similar process of the Mortgagor or the appointment of an administrator in respect of the Mortgagor or the Mortgagor shall commence to be wound up voluntarily, the Mortgagee shall be at liberty and notwithstanding as before mentioned to continue to retain such security or any part thereof for and during such further period as the Mortgagee in its absolute discretion shall determine. The Mortgagor agrees that such security shall be deemed to have been and to have remained held by the Mortgagee as and by way of security for the payment to the Mortgagee of all or any sums which may become due and owing to the Mortgagee in respect of the Secured Liabilities.

6.3 **Subsequent Charges**

The Mortgagee shall in the event of its receiving or being deemed to have received notice:-

6.3.1 that the Mortgagor has created any further or subsequent mortgage, charge, lien or encumbrance over or has disposed of any Security Asset or any part thereof; or

6.3.2 that any guarantor of the Mortgagor's indebtedness to the Mortgagee has created any further charge, lien or encumbrance over or has disposed of any property charged to the Mortgagee by such guarantor as a security for the Mortgagor's indebtedness,

be entitled to open a new account or accounts with the Mortgagor. If the Mortgagee does not in fact open such new account or accounts, it shall nevertheless be treated as if it had done so at the time of receipt or deemed receipt of such notice. As from that time all payments made by the Mortgagor to the Mortgagee shall be credited or be treated as having been credited to the new account(s) and shall not operate to reduce the amount due from the Mortgagor to the Mortgagee at the time when the Mortgagee received or was deemed to have received such notice.

7. ENFORCEMENT

7.1 **Enforceability of Security**

Upon the occurrence of an Event of Default, the security constituted by this Deed shall become immediately enforceable and the power of sale and other powers conferred on mortgagees by the Act as varied or amended by this Deed shall be immediately exercisable upon and at any time thereafter. After the security constituted by this Deed has become enforceable, the Mortgagee may in its discretion enforce all or any part of such security in such manner as the Mortgagee sees fit.

7.2 **Exclusion of Certain Provisions of the Act**

For the purposes of all powers implied by statute the Secured Liabilities shall be deemed to have become due and payable on the date hereof and Section 103 of the Act (restricting the power of sale) and Section 93 of the Act (restricting the right of consolidation) shall not apply to this Deed. The statutory powers of leasing conferred on the Mortgagee shall be extended so as to authorise the Mortgagee to lease, make agreements for leases, accept surrenders

of leases and grant options as the Mortgagee shall think fit and without the need to comply with any of the provisions of Sections 99 and 100 of the Act.

7.3 **Redemption of Prior Charges**

At any time after the security constituted by this Deed shall have become enforceable, the Mortgagee may redeem any prior Security against all or any of the Security Assets or procure the transfer thereof to itself and may settle or pass the accounts of any holder of such Security and any accounts so settled and passed shall be conclusive and binding on the Mortgagor. All principal monies, interest, costs, charges and expenses of and incidental to the redemption and transfer shall be Secured Liabilities.

7.4 **Appointment of Receiver**

At the request of the Mortgagee or at any time after the security constituted by this Deed becomes enforceable the Mortgagee may:-

7.4.1 without further notice appoint by writing one or more persons to be a Receiver of the Security Assets or any part thereof; or

7.4.2 appoint (or apply to a court of competent jurisdiction to appoint) any person or persons to be an Administrator of the Mortgagor,

in each case, upon such terms as to remuneration and otherwise as it shall think fit and shall agree with such Receiver and may from time to time remove any Receiver so appointed and appoint another in his stead. A Receiver so appointed shall give notice of his appointment (inter alia) to the Mortgagor and shall be deemed to act as the agent of the Mortgagor in the exercise of the powers granted hereunder or by statute or otherwise and the Mortgagor shall be responsible for such Receiver's acts and defaults and for his remuneration, costs, charges and expenses to the exclusion of liability on the part of the Mortgagee.

7.5 **Joint Receivers**

Where more than one person is appointed as a Receiver the powers of such persons may be exercised either jointly or individually by any one of such persons.

7.6 **Receiver's Powers**

A Receiver appointed in accordance with Clause 8.4 hereof (and the Mortgagee if it goes into possession as mortgagee) shall have all the powers conferred on a Receiver by the Act and all such powers as are set out in Schedule 1 to the Insolvency Act 1986 notwithstanding that such Receiver may not be an administrative receiver and in addition shall have power to:-

7.6.1 take possession of and get in all or any of the Security Assets and for this purpose to make demands and take proceedings as he may think fit in respect thereof in such manner as he thinks fit;

7.6.2 carry on or concur in carrying on such of the business of the Mortgagor (and for this purpose to borrow money on the security of any Security Asset in priority to this charge or otherwise as he may consider expedient and carrying interest at such rate as he may consider necessary) and manage, conduct, amalgamate, develop and reconstruct the same (and concur in so doing) in such manner and to such extent as he may think fit;

7.6.3 make and effect all repairs and maintain, renew, increase or surrender insurances and do all such other acts and things which the Mortgagor might do in the ordinary course of its or their business for the protection and/or for the improvement of any Security Assets;

7.6.4 sell by public auction or private contract, grant licences or options or otherwise assign any of the Security Assets in such manner and on such terms as he shall think proper; lease and accept surrenders of leases of any of the Mortgaged Property and with respect thereto make provision for and effect rent reviews (or concur in so doing); any such sale, lease, licence, option, surrender or assignment may be for cash, loan capital, debentures, shares, stock, securities or other consideration and be payable immediately or by instalments deferred and spread over such period as he shall think fit and may be on terms whereby the total amount of the consideration is to be ascertained by reference to the turnover or profits of the purchaser;

7.6.5 without any further consent by or notice to, as the case may be, the Mortgagor, exercise on its or their behalf all the powers and provisions conferred on a landlord or a tenant pursuant to any legislation from time to time in force relating to rents in respect of any part of the Mortgaged Property but without any obligation to exercise any of such powers and without any liability in respect of powers so exercised or omitted to be exercised;

7.6.6 purchase any additional land adjacent to or in the vicinity of the Mortgaged Property for the purpose of enhancing the value of such property or facilitating the disposal thereof and for such purposes borrow further monies from the Mortgagee on such terms as the Receiver may think fit;

7.6.7 make allowances to and re-arrangements with any lessees, tenants of the Mortgaged Property or other persons from whom any rents and profits may be receivable and to negotiate and agree or refer to arbitration any revision of rent under any Lease Documents in respect of which the rental may fall to be reviewed and to accept service of or serve any notice received or required or deemed desirable in connection with any such review or with the exercise of any options;

7.6.8 do any repairs and make any structural or other alterations, improvements or additions in or to the Mortgaged Property and purchase or otherwise acquire any materials, articles or things and do anything else in connection therewith which the Receiver may think desirable for the purpose of making productive or increasing the letting or market value thereof;

7.6.9 institute, arrange, carry on and conduct services of lighting, heating and cleansing and all other services which may be deemed proper for the efficient use or management of the Mortgaged Property;

7.6.10 reconstruct, alter, improve, decorate, furnish and maintain the whole or any part of the buildings on the Mortgaged Property;

7.6.11 sell all or any of the fixtures (other than tenants' trade fixtures) either as a part of and/or together with or separately and detached from the Mortgaged Property;

7.6.12 perform, treat as repudiated, rescind or vary any contract or agreement for or which relates in any way to any development, improvement, reconstruction or

repair of the Mortgaged Property or any part thereof or which is in any other way connected therewith;

7.6.13 without prejudice to the generality of any of the foregoing powers continue and perform any development of any part of the Mortgaged Property to enter into a building contract or any other contract or agreement for or relating to any development for any such purposes as aforesaid to purchase such materials and other articles and things as he may think fit to discontinue such development or any part thereof and to repudiate and rescind any building contract or any such contract or agreement as aforesaid;

7.6.14 in connection with any development obtain planning permissions, bye law consents and any other permissions, enter into agreements under the Highways Act 1980 and any other agreements requisite for the development, to enter into and arrange bonds and in particular road bonds and indemnities in connection therewith and to dedicate any part of the Mortgaged Property as a public highway or grant any other rights over under or relating to the Mortgaged Property;

7.6.15 promote the formation of companies with a view to the same purchasing, leasing, licensing, managing or otherwise acquiring interests in all or any of the Mortgaged Property or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease, license or otherwise acquire all or any of the Mortgaged Property on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit;

7.6.16 make calls conditionally or unconditionally on the members of the Mortgagor concerned in respect of uncalled capital;

7.6.17 effect any policy or policies of insurance for any purpose in connection with the receivership and without prejudice to the generality of the foregoing particularly to support and underwrite any indemnity given by the Mortgagor hereunder;

7.6.18 make any arrangement or compromise or disclaim, alter, enter into or cancel any contract or liability which he shall think expedient;

7.6.19 sign any document execute any deed and do all such other acts and things as he may in his absolute discretion consider to be incidental or conducive to any of the matters and powers aforesaid or to the realisation of the security constituted by this Deed;

7.6.20 present or, as the case may be, defend a petition for the winding up of the Mortgagor;

7.6.21 employ or engage, upon such terms (as to remuneration or otherwise) as he may think proper, such professional advisers, managers, servants and agents as he considers necessary including without limiting the generality of the foregoing architects, estate agents, quantity surveyors, solicitors, valuers auctioneers, surveyors and accountants;

7.6.22 bring or defend any action or legal proceedings or discontinue the same on behalf of the Mortgagor;

7.6.23 exercise any option or right of election available at law to the Mortgagor or the Mortgagee or a Receiver that the supplies made in respect of any lease or

tenancy hereby charged shall be chargeable or taxable for VAT purposes at the standard or any other applicable rate of tax;

7.6.24 obtain, renew, extend, amend or otherwise deal with such permissions, consents and/or licences for the benefit of or otherwise connected with or ancillary to all or part of the Security Assets or its use or development of the Mortgagor's business;

7.6.25 do all such other acts and things as may be considered to be expedient for the protection of the Security Assets or to be incidental or conducive to any of the above matters and powers or any other act or thing which he could do if he were absolutely entitled to the Security Assets and which the Receiver may lawfully do as agent for the Mortgagor;

7.6.26 use the name of the Mortgagor for all or any of the above purposes with full power to convey, transfer or assign the whole or any part of the Security Assets sold in the name of the Mortgagor.

7.7 **Protection of Third Parties**

No person or persons (including a purchaser) dealing with the Mortgagee or any Receiver shall be concerned to enquire whether any event has happened upon which any of the powers herein contained may have arisen or be exercisable or otherwise as to the propriety or regularity of any exercise thereof or of any act purporting or intended to be in exercise thereof or whether any monies remain owing upon the security of this Deed and all the protection of the Act shall apply to any person purchasing from or dealing with the Mortgagee or any Receiver.

7.8 **Delegation**

The Mortgagee and any Receiver may at any time and from time to time delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by the Mortgagee under this Deed. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) and subject to any regulations which the Mortgagee or such Receiver (as the case may be) may think fit. Neither the Mortgagee nor any Receiver will be in any way liable or responsible to the Mortgagor for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

7.9 **Mortgagee's Liability**

Neither the Mortgagee nor any Receiver nor any of their respective agents, managers, officers, employees, delegates or advisers shall in any circumstances be liable to the Mortgagor for any claim, demand, liability, loss, damage, cost or expense from any exercise, purported exercise or non-exercise by the Mortgagee or any Receiver of any power, authority, right or discretion conferred upon it in relation to any Security Asset or any part thereof by or pursuant to this Deed or by the Act or the Insolvency Act 1986.

7.10 **Vacation of Possession**

If the Mortgagee or any Receiver appointed by the Mortgagee or any such delegate as aforesaid shall enter into possession of the Mortgaged Property or any part thereof it or he may from time to time at pleasure go out of such possession.

7.11 **Not Mortgagee in Possession**

Neither the Mortgagee nor any Receiver shall by reason of the taking of possession of the whole or any part of the Security Assets by any of them be liable to account as mortgagee-in-possession or for anything except actual receipts or be liable for any loss upon realisation or for any default or omission for which a mortgagee-in-possession might be liable.

8. APPLICATION OF PROCEEDS

Subject to claims having priority to the charges created by this Deed and to any applicable statutory requirement as to the payment of preferential debts, all monies received under the powers conferred by this Deed shall be applied in the following order:-

8.1 in payment of all costs, charges and expenses and payments (including payments made in accordance with paragraphs (i), (ii) and (iii) of Section 109(8) of the Act) made or incurred by the Mortgagee, the Receiver or the Administrator and in payment of remuneration to the Receiver or the Administrator at such rate as the Mortgagee shall in its absolute discretion decide;

8.2 in or towards satisfaction of the Secured Liabilities; and

8.3 the surplus (if any) shall be paid to the Mortgagor or to whomsoever else may be entitled thereto in priority to the Mortgagor,

save that the Mortgagee may credit any monies received under this Deed to a suspense account for so long and in such manner as the Mortgagee may from time to time determine and the Receiver may retain the same for such period as he and the Mortgagee consider expedient.

9. EXPENSES AND INDEMNITY

9.1 The Mortgagor shall promptly on demand pay the Mortgagee the amount of all costs, fees and expenses (including legal fees) and Taxes thereon incurred by the Mortgagee or for which the Mortgagee may become liable in connection with:-

9.1.1 any variation of, or amendment or supplement to, any terms of this Deed; and/or

9.1.2 any consent or waiver required from the Mortgagee in relation to this Deed; and/or

9.1.3 any settlement, discharge or release of this Deed.

9.2 The Mortgagor further covenants with the Mortgagee that it shall on demand reimburse or pay to the Mortgagee or any Receiver and each agent, attorney, manager or other person appointed by the Mortgagee under this Deed (on the basis of a full indemnity) the amount of all costs (including legal costs), charges and expenses incurred or sustained by the Mortgagee or the Receiver (including, for the avoidance of doubt, any such costs, charges and expenses arising from any act or omission of, or proceedings involving, any third person) in connection with:-

9.2.1 the investigation of title to or any survey, inspection or valuation of the Mortgaged Property under or in connection with this Deed, and the preparation, registration or perfecting of this Deed (or any of the charges contained in it), or any other document entered into between the Mortgagor and the Mortgagee; and/or

9.2.2 the exercise, or the attempted or purported exercise, by or on behalf of the Mortgagee or any Receiver of any of the powers of the Mortgagee, any Receiver or any agent or attorney; and/or

9.2.3 the enforcement, preservation or attempted preservation of the Mortgagee's rights under this Deed or any other action taken by or on behalf of the Mortgagee with a view to or in connection with the recovery by the Mortgagee of the Secured Liabilities from the Mortgagor or any other person; and/or

9.2.4 the carrying out of any other act or matter which the Mortgagee, any Receiver or agent or attorney may consider to be necessary or desirable for the preservation, improvement or benefit of the Security Assets.

9.3 The Mortgagor shall on demand pay any stamp, documentary and other similar duties and taxes to which this Deed or any related documents may be subject or give rise and shall fully indemnify the Mortgagee from and against any losses or liabilities which it may incur as a result of any delay or omission by the Mortgagor to pay any such duties or taxes.

10. FURTHER ASSURANCE

The Mortgagor hereby covenants that it and all other necessary parties (if any) immediately on demand at the Mortgagor's expense will:-

10.1 execute and deliver to the Mortgagee or the Mortgagee's nominees such further mortgages, fixed or floating charges or assignments comprising any Security Asset or any part thereof for further securing the Secured Liabilities in such form as shall be consistent with this Deed;

10.2 execute and do all such assurances acts and things as the Mortgagee or any Receiver may in its absolute discretion require for:-

10.2.1 perfecting, preserving or protecting the security created (or intended to be created) by this Deed or any of the rights of the Mortgagee or any Receiver under this Deed; or

10.2.2 facilitating the appropriation or realisation of any Security Asset or any part thereof and enforcing the security constituted by this Deed in either case on or at any time after the same shall have become enforceable; or

10.2.3 the exercise of any power, authority or discretion vested in the Mortgagee or any Receiver under this Deed.

11. POWER OF ATTORNEY

The Mortgagor, by way of security, irrevocably and severally appoints the Mortgagee, each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which the Mortgagor is obliged to take under this Deed, including, without limitation, under Clause 11. The Mortgagor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this Clause and the exercise by the Mortgagee (or a Receiver of such power shall be conclusive evidence of its right to exercise the same.

12. ASSIGNMENT

12.1 This Deed shall be binding upon and shall enure to the benefit of the Mortgagee and the Mortgagor and their respective successors and, in the case of the Mortgagee, its assigns and transferees and references in this Deed to any of them shall be construed accordingly.

12.2 The Mortgagor may not assign or transfer all or any part of its rights and/or obligations under this Deed.

12.3 The Mortgagee may assign or transfer by novation all or any part of its rights and/or obligations hereunder in accordance with the terms of the Facility Agreement.

13. MISCELLANEOUS

13.1 Giving of Time

The Mortgagee shall be at liberty from time to time to give time for payment of any liability of the Mortgagor to the Mortgagee as the Mortgagee shall in its discretion think fit without in any manner releasing the Mortgagor or affecting the security hereby made.

13.2 No other Registered Proprietor

During the Security Period no person other than the Mortgagor shall be registered under the Land Registration Act 2002 as proprietor of the Mortgaged Property or any part thereof without the prior written consent of the Mortgagee and the costs incurred by the Mortgagee of lodging from time to time a caution against the registration of the Mortgaged Property shall be deemed to be an expense properly incurred by the Mortgagee in relation to this Deed.

13.3 Discharge

Subject to Clause 7.2 above, upon the Mortgagee being satisfied that the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full, and following a written request therefor from the Mortgagor, the Mortgagee will forthwith release the security created by this Deed.

13.4 Perpetuity Period

If applicable, the perpetuity period under the rule against perpetuities shall be 125 years from the date of this Deed.

14. LAW, JURISDICTION

14.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

14.2 In relation to any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed), and for the exclusive benefit of the Mortgagee, the Mortgagor hereby irrevocably and unconditionally submits to the jurisdiction of the English courts and waives any objection to proceedings with respect to this Deed in such courts on the grounds of venue or inconvenient forum.

14.3 Nothing in this Clause shall affect the right of the Mortgagee to serve process in any manner permitted by law or limit the right of the Mortgagee to take proceedings with respect to this Deed against the Mortgagor in any jurisdiction nor shall the taking of proceedings with respect to this Deed in any jurisdiction preclude the Mortgagee from taking proceedings with respect to this Deed in any other jurisdiction, whether concurrently or not.

15. THIRD PARTY RIGHTS

15.1 Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or enjoy the benefit of any term of this Deed.

15.2 Notwithstanding any term of this Deed, the consent of any person who is not a party to this Deed is not required to rescind or vary this Deed at any time.

15.3 The Mortgagee and any Receiver may, subject to this Clause 16 and the Third Parties Act, rely on any Clause of this Deed which expressly confers rights on it.

16. ADMINISTRATORS

16.1 The Administrators act as agent for the Borrower and will not incur any personal liability under or by virtue of this Deed, nor in relation to any related documents, matters or claims whatsoever.

16.2 The Administrators have entered into this Deed solely for the purpose of obtaining the benefit of the provisions of this Deed that are in their favour.

17. COUNTERPARTS

This Deed may be executed in any number of counterparts and by different Parties on separate counterparts each of which, when executed and delivered, shall constitute an original but all the counterparts shall together constitute but one and the same instrument.

IN WITNESS whereof the parties hereto have caused this Deed to be duly executed and delivered (in the case of the Mortgagor, as its deed) on the day and year first before written.

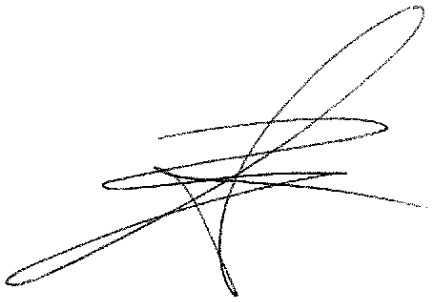
SCHEDULE 1

DESCRIPTION OF THE PROPERTY

The freehold property situate at and known as Dreamland Amusement Centre, Marine Terrace, Margate CT9 1XL registered with absolute title under title number K853360

THE MORTGAGOR

EXECUTED as a **DEED**)
by **SANDS HERITAGE LIMITED** acting by)
BENJAMIN WILES as its Administrator (who)
acts as agent only and without personal liability))
in the presence of: -)



Signature of witness:

Name of witness: LUCY EGGINTON

Address of witness: THE SHARD, 32 LONDON BRIDGE STREET, LONDON SE1 9SG

Occupation of witness ACCOUNTANT

THE ADMINISTRATORS

EXECUTED as a **DEED**)
by BENJAMIN WILES as Administrator)
in the presence of: -)



Signature of witness:

Name of witness: LUCY EGGINTON

Address of witness: THE SHARD, 32 LONDON BRIDGE STREET, LONDON SE1 9SG

Occupation of witness: ACCOUNTANT.

THE MORTGAGEE

SIGNED as a **DEED** on behalf of)
Arrowgrass Master Fund Limited, a company)
incorporated in the Cayman Islands)
by)
being a person who, in accordance with)
the laws of that territory, is acting)
under the authority of the company)

THE MORTGAGOR

EXECUTED as a **DEED**)
by **SANDS HERITAGE LIMITED** acting by)
as its Administrator (who)
acts as agent only and without personal liability))
in the presence of: -)

Signature of witness:

Name of witness:

Address of witness:

Occupation of witness

THE ADMINISTRATORS

EXECUTED as a **DEED**)
by as Administrator)
in the presence of: -)

Signature of witness:

Name of witness:

Address of witness:

Occupation of witness:

THE MORTGAGEE

SIGNED as a **DEED** on behalf of)
Arrowgrass Master Fund Limited, a company)
incorporated in the Cayman Islands)
by LEE GOBLE)
being a person who, in accordance with)
the laws of that territory, is acting)
under the authority of the company)



Lee Goble
Authorised Signatory