

Dated _____ 2015

DWR CYMRU CYFYNGEDIG

and

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

and

~~**THE HEREFORDSHIRE COMMUNITY LEISURE TRUST**~~

and

HALO LEISURE [] SERVICES LIMITED

AGREEMENT

relating to the ~~diversion of a~~ public sewer at:
ROSS ON WYE SWIMMING POOL, ROSS ON WYE

Hugh James
Hodge House
114-116 St Mary Street
Cardiff
CF10 1DY
Ref: PH/DWR/6[]

THIS DEED is made the day of 2015

BETWEEN

DWR CYMRU CYFYNGEDIG (Company Number 2366777) whose registered office is situate at **Pentwyn Road, Nelson, Treharris, CF46 6LY** (hereinafter referred to as "the Company") of the one part and

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL of Legal Services, Blackfriars, Blackfriars Street, Hereford HR9 9RZ (hereinafter referred to as "the Owner" which expression shall include his successors in title and assigns) of the second part

~~**THE HEREFORDSHIRE COMMUNITY LEISURE TRUST of Grange House, PO Box 44 Leominster, Herefordshire HR6 8ZD** (hereinafter referred to as "the Leaseholder" which expression shall include his successors in title and assigns) of the second part~~

HALO LEISURE []SERVICES LIMITED (Company Number 4335715) whose registered office is situate at **Halo Support Centre, Lion Yard, Broad Street, Leominster, HR6 8BT []** (hereinafter referred to as "the ~~Leaseholder~~**Developer**" which expression shall include his successors in title and assigns) of the ~~third~~**second** part

WHEREAS:

- (1) The Owner is the freehold owner of the Premises
- (2) The Leaseholder is the leasehold owner of **part of** the Premises
- (3) The Sewer (as hereinafter defined) vested in the Company runs through the Premises in the approximate position indicated by a red line on Plan ~~1[]~~ and is shown on the map of sewers required to be kept by the Company under section 199 of the Water Industry Act 1991
- (4) Planning Permission has been granted for the carrying out of the Development on over or in proximity to the Sewer.
- (5) But for the covenants, obligations and indemnities on the part of the ~~Developer~~**Owner** and the acknowledgements and acceptances on the part of the Owner ~~and~~, the Leaseholder ~~and the Developer~~ contained in this Deed of Agreement, the Company would not (without such acknowledgements, covenants and indemnities) otherwise consent to the carrying out of the Development on over or in proximity to the Sewer
- (6) The Owner ~~and~~ ~~the~~ Leaseholder ~~and the Developer~~ have agreed to join in this Deed of Agreement on the terms hereinafter contained, to secure the Company's consent to the carrying out of the Development on over or in proximity to the Sewer in accordance with the terms of this Deed of Agreement.

INTERPRETATION:

In this Deed of Agreement the following expressions shall have the following meanings:

"the Arbitration Act" means the Arbitration Act 1996

"the Building" means the building (forming part of the Development) constructed or to be constructed on the Premises, the proposed footprint of which is shown on Plan 2 edged red

"Council" means The County of Herefordshire District Council

"Deed of Easement" means the agreed form of deeds of easement between the Company and the Owner and separately the Company and the Leaseholder as attached at Schedule 2

~~"Design Notes" means []~~

"Development" means the construction and development by the Developer Owner of the [] internal and external refurbishment of an existing leisure and swimming pool centre, including the provision of replacement pool hall windows, new single and double storey extensions to main entrance area on the Premises

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"Diversion" means the diversion of such length of the Sewer as the Company, in its absolute discretion, considers necessary (if at all)

"Lease" means the Lease of the Premises dated 4th June 2003 [] and made between the Owner (1) and the Leaseholder (2)

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"Nominated Officer" means the Company's engineer for the time being or such other person as the Company may from time to time direct

~~["Plan 1" "Plan 2" and "Plan 3"]~~ means the plans so numbered and annexed to this Deed of Agreement at Schedule 1

"Planning Permission" means detailed planning permission reference P133505/F [] issued by the Council

"Premises" means the land at Ross-on-Wye registered at the Land Registry with title number HE34252 and therein named land and buildings on the north side of Kyrle Street, Ross-on-Wye [] whose boundaries are shown edged red on Plan 32

"Restricted Areas" means those parts of the Premises shown coloured yellow on Plan [] being a strip of land [] metres in width either side of the Sewer

"the Sewer" means the public sewer vested in the Company and indicated by a red line on Plan 13

"Working Day" means any day of the week which is not a Saturday, Sunday, bank or other holiday in England and Wales

NOW THIS DEED WITNESSETH as follows:

1. The Owner Developer hereby covenants with the Company as follows:

1.1 The Development shall be erected in strict conformity with ~~h:~~

~~1.1.1~~ the Planning Permission as has been approved by the Council; and

~~1.1.2~~ the Design Notes as has been approved by the Company; and

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~~1.1.3 any plans and other documents annexed to this Deed of Agreement.~~

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and for the avoidance of doubt this Deed of Agreement does not authorise the erection of any other structure over the Sewer or the Restricted Areas unless approved in writing by the Company in its absolute discretion

1.2 The Development shall be carried out and completed to the reasonable satisfaction of the Nominated Officer in such a way that no load or weight or increased earth pressure shall be transferred directly to any part or parts of the Sewer and in particular the ~~Developer~~Owner shall procure and provide for the protection of the Sewer in the manner approved by the Nominated Officer in the Nominated Officer's absolute discretion and all manholes required for the proper operation of the Sewer shall be accessible at all times so as to enable personnel with or without equipment plant machinery or vehicles to inspect cleanse maintain repair and renew the Sewer.

1.3 The Development shall be carried out and completed in such a way as not to cause the settlement or subsidence of soil in or under which the Sewer is laid or any escape of effluent noxious gas or other matter from the Sewer or any leakage into or from the Sewer or failure thereof or defect therein of any kind whatsoever.

2. In consideration of the Owner ~~and~~; the Leaseholder ~~and the Developer~~ entering into this Agreement the Company hereby consents to the carrying out and retention of the Development and the Building on over or in proximity to the Sewer on the terms of this Deed of Agreement.

3.1 The Owner ~~and~~; the Leaseholder ~~and the Developer~~ acknowledge and accept on behalf of themselves and their successors in title and all persons deriving any interest under each or any of them that no liability shall rest on the Company in respect of any damage resulting to the Development or the Building as a result of the presence of the Sewer ~~unless it is caused by the negligence of the Company~~

3.2 The ~~Owner~~Developer will indemnify and keep the Company fully and effectively indemnified in respect of any and all damage to the Sewer arising directly or indirectly out of or caused by the construction of the Development and/or the Building.

3.3 The ~~Owner~~Developer will indemnify and keep the Company fully and effectively indemnified in respect of any and all damage to the Sewer arising directly or indirectly out of or caused by the retention of the Development and/or the Building.

3.4 Notwithstanding any other provision in this Deed of Agreement and for the avoidance of doubt, the Company shall not be deemed whether by admission, approval, consent, confirmation, acknowledgement, inspection or otherwise to have assumed any responsibility for the ~~Design Notes, the~~ Development or any works (without limitation) carried out in respect thereof nor to have accepted, acknowledged or given or made any representation that the Development shall not cause any damage to the Sewer

4. **IT IS FURTHER AGREED** between the parties hereto that:-

4.1 any machinery plant or anything which in the proper and reasonable opinion of the Nominated Officer shall be so heavy or be of such a nature as to damage or injure the Sewer shall not be erected or placed or caused to be erected or placed over or within such distance as the Nominated Officer may from time to

time stipulate (save as may be previously approved in writing by the Nominated Officer during the carrying out of the Development only).

- 4.2 Pending the Diversion (if ever), the servants and agents of the Company shall be entitled at all times with or without plant equipment machinery and vehicles to enter on the Restricted Areas or such other part or parts of the Premises as may be reasonably required for all purposes connected with inspecting maintaining repairing cleansing renewing altering or removing the Sewer upon reasonable prior notice and so far as may be reasonably necessary for any such purposes to break up the whole or any portion of the surface of the Restricted Areas or such other part or parts of the Premises as may be reasonably required and do all such acts as may be reasonably necessary for the execution of such work.
- 4.3 The ~~Owner/Developer~~ will indemnify and keep the Company fully and effectually indemnified from and against the reasonable and proper cost of any works carried out under clause 4.2 hereof as may be due to the increased difficulty of executing such work in consequence of the existence of the Development and/or the Building and the certificate of the Company as to all matters in relation to such costs shall be final and binding on the parties (save in the case of manifest error).
5. The Owner ~~and~~ the Leaseholder ~~and the Developer~~ for themselves and their successors in title and all and any persons deriving any interest under each or any of them shall not be entitled and shall not make any claim against the Company in respect of any loss injury cost fees or expenses whatsoever which they may sustain by reason or in consequence of the settlement or subsidence of the soil in or under which the Sewer is laid or any nuisance in respect thereof by reason of the escape of effluent noxious gas or other matter from the Sewer or any leakage into or from the Sewer or failure thereof or defect therein of any kind whatsoever so far as the same arises directly or indirectly as a result of the Development or the construction of the Building and affects the Development, the Building or any activity thereon or therein and the Owner ~~and~~ the Leaseholder ~~and the Developer~~ will keep the Company indemnified against all claims demands proceedings damages expenses costs or liability by or at the instance of any person or body in relation thereto.
6. The Owner ~~and~~ the Leaseholder ~~and the Developer~~ covenant with the Company that the Owner ~~and~~ the Leaseholder ~~and the Developer~~ will at all times indemnify the Company and keep the Company fully and effectually indemnified from and against any claims demands losses costs actions proceedings expenses and liabilities of any kind whatsoever that the Company may have or sustain or for which the Company may become liable as the result directly or indirectly of any damage or claim for damages or any fine penalty or prosecution brought against the Company by any third party or by any authority or other regulatory body (whether statutory or otherwise) arising as a result of any damage caused to the Sewer by virtue of the Development or construction of the Building thereover.
7. The ~~Developer/Owner~~ hereby unconditionally and irrevocably undertakes to the Company:-
 - 7.1 the due and punctual payment of all sums payable under or pursuant to this Deed of Agreement to the Company as and when the same fall ~~due~~; and

- 7.2 the due and punctual performance and observance by the ~~OwnerDeveloper~~ of all other acts, covenants and obligations to be performed or observed by those parties under or pursuant to this Deed of Agreement;
8. The obligations of the ~~OwnerDeveloper~~ under or pursuant to this Deed of Agreement shall not be discharged except by performance or the procurement of performance by the ~~OwnerDeveloper~~.
9. The rights of the Company and the obligations of the ~~DeveloperOwner~~ under or pursuant to this Deed of Agreement shall not be prejudiced or affected by:
- 9.1 any extension of time, indulgence, forbearance or concession given to the ~~OwnerDeveloper~~ or any assertion of or failure to assert any right or remedy against the ~~OwnerDeveloper~~ or by the administration, receivership, insolvency, liquidation, dissolution, reconstruction, amalgamation or incapacity of the ~~OwnerDeveloper~~; or
- 9.2 by the Company holding or taking any other or further security or by the invalidity of any such security or by the Company varying, releasing, exchanging, enforcing or omitting or neglecting to enforce any such securities, or by any other thing which might otherwise wholly or partially discharge the ~~OwnerDeveloper~~ from its obligations under this Deed of Agreement.
10. Any payment due to the Company under this Deed of Agreement shall be payable within 14 days of a written demand. Should any amount to which the Company is entitled to demand payment not be paid by the due date then the payment due shall bear interest at four percent above the base lending rate from time to time of Barclays Bank plc from the date of service of the invoice up to the date of payment. Payment shall be subject to the addition of Value Added Tax at the rate currently in force if and where applicable on production of a valid Value Added Tax invoice.
11. Any notice to be given by the Company to the Owner ~~or~~ the Leaseholder ~~or the Developer~~ in connection with this Deed of Agreement shall be deemed to be sufficiently served upon them if forwarded to them at the respective address given at the head of this Deed of Agreement or if the parties are registered as companies in England or Wales if forwarded to them at their registered offices (or as otherwise notified to the Company from time to time) by registered post.
12. Any dispute or difference between the Company and the ~~Owner or the LeaseholderDeveloper~~ (except as to matters which are to be solely determined by the Nominated Officer) shall be determined by a single arbitrator to be appointed failing agreement between the parties by the President for the time being of the Institution of Civil Engineers and the provisions of the Arbitration Acts ~~or~~ any statutory modification or re-enactment thereof for the time being in force shall apply.
13. The Owner ~~and the~~ Leaseholder ~~and the Developer~~ shall disclose the existence of this Deed of Agreement in any dealing with the Premises and a suitable Memorandum of this Deed of Agreement shall be endorsed on the appropriate documents of title.
14. The ~~OwnerDeveloper~~ covenants with the Company to pay to the Company all legal costs, engineering costs, fees and expenses reasonably and properly incurred by the Company in and in connection with the negotiation completion and implementation of this Deed of Agreement.

15. ~~Simultaneous with the completion of this Deed of Agreement the Owner and the Leaseholder will enter into a Deed of Easement with the Company.~~

156.1 At any time after the date hereof and subject to all requisite consents being in place or being obtained the Company (in its entire discretion) shall be entitled (but not obliged) at its own cost (save where such Diversion is carried out as a result of a breach of any obligation on the part of the Owner ~~or~~, the Leaseholder ~~or the Developer~~) to carry out and complete the Diversion.

156.2 If and to the extent that the Company, in its absolute discretion determines to proceed with the Diversion, the Owner and the Leaseholder hereby consent and irrevocably grant to the Company all necessary rights for the Company its agents, contractors, employees and others with or without vehicles machinery plant and equipment to enter onto the Restricted Areas or such other part or parts of the Premises as may be reasonably required for the purpose of carrying out and completing the Diversion.

156.3 Where the Diversion is carried out as a result of a breach of any obligation on the part of the Owner ~~or~~, the Leaseholder ~~or the Developer~~ herein, the ~~Developer~~Owner will indemnify and keep the Company fully and effectively indemnified in respect of any and all costs incurred in connection with the Diversion

16.4 The ~~Owner~~Developer shall take out and maintain third party public liability and legal liability insurance through an insurance office of repute for a minimum amount of five million pounds (£5,000,000) sterling in respect of any one occurrence per policy period (being such 12 month period as the ~~Developer~~Owner may notify to the Company in writing) against legal liability claims and demands arising out of any act, operation, neglect or default of the ~~Developer~~Owner, its agents, servants, employees, licensees or contractors in connection with its obligations under this Deed of Agreement and shall provide a copy of such policy to the Company on demand

17. This Deed of Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same Deed of Agreement

IN WITNESS whereof the parties have executed this document as a deed the day and year first before written

Executed as a deed by affixing the
Common Seal of
DWR CYMRU CYFYNGEDIG
In the presence of:

Authorised Signatory

Executed as a deed by affixing the
Common Seal of
**THE COUNTY OF HEREFORDSHIRE
DISTRICT COUNCIL**

In the presence of:

Committee Member

~~Executed as a deed by affixing the
Common Seal of
THE HEREFORDSHIRE COMMUNITY
LEISURE TRUST
In the presence of:~~

~~Committee Member~~

Executed as a deed by
HALO LEISURE SERVICES LIMITED [—————]
acting by the signature ~~In the presence of:~~

Director:

Director/Secretary:

