

009/194267/C

ISSUE

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Dated this 4<sup>th</sup> day of March 2004

1. KILLULTAGH PROPERTIES LIMITED  
AND  
SNODDONS (HILLSBOROUGH) LIMITED

2. DEPARTMENT FOR SOCIAL DEVELOPMENT

DEBENTURE



R F Cole Esq  
Department of Finance & Personnel  
Departmental Solicitor's Office  
Victoria Hall  
12 May Street  
BELFAST  
BT1 4NL

**THIS DEBENTURE is made**

**BETWEEN:-**

1. KILLULTAGH PROPERTIES LIMITED and SNODDONS (HILLSBOROUGH) LIMITED ("the Company") having their registered offices at Lamont Buildings 44 Stranmillis Embankment Belfast and 10 Ballynahinch Street Hillsborough County Down respectively
2. THE DEPARTMENT FOR SOCIAL DEVELOPMENT ("the Department")

### **PART I**

#### **RECITALS**

1. Under the terms and conditions of a Letter of Offer of financial assistance ("the Financial Assistance Letter") particulars of which are set forth in the First Schedule hereto the Department agreed to make available to the Company the financial assistance therein mentioned upon the obligation of the Company to repay such financial assistance being secured as hereinafter provided

**NOW THIS DEBENTURE WITNESSES as follows:**

### **PART 2**

#### **CHARGES**

1. As security for the obligations of the Company to repay the financial assistance (or any part or parts thereof) under the Financial Assistance Letter and the payments agreed to be made to the Department under this Debenture the Company as beneficial owner and as registered owner as the case may be hereby:-
  - 1.1 Grants and conveys unto the Department ALL THAT AND THOSE the freehold hereditaments and premises (if any) set forth in the Second Schedule hereto TO

HOLD the same unto and to the use of the Department in fee simple subject to the proviso for redemption hereinafter contained;

- 1.2 Demises unto the Department ALL THAT AND THOSE the leasehold hereditaments and premises (if any) set forth in the Second Schedule hereto TO HOLD the same unto and to the use of the Department henceforth for all the residue of the terms of years now unexpired (save the last day thereof) granted by the Lease or Leases (if any) set forth and described in the Second Schedule hereto AND the Company hereby declares that it shall henceforth hold the reversion of the said terms of years demised by the said Lease or Leases upon trust for the Department subject to any equity of redemption subsisting therein and upon trust to dispose thereof as the Department may from time to time direct AND the Company hereby authorises the Department and does hereby appoint the Department to be the attorney of the Company in its name and on its behalf to appoint a new trustee or trustees in place of the Company or any trustee or trustees appointed under this power as if the Company or such other trustee or trustees were incapable of acting in the trusts of the reversion or in any of them hereby declared;

- 1.3 Charges all its registered lands (if any) described and set forth in the Second Schedule hereto and hereby assents to the registration of the charge hereby created as a burden on the lands comprised in Folio or Folios (if any) so set forth and described in the Second Schedule and the address of the Department for the service of notices in connection therewith is c/o The Solicitor, Departmental Solicitor's Office, Victoria Hall, 12 May Street, Belfast;

## **RESTRICTION ON FURTHER CHARGES**

2. The Company hereby covenants that it shall not create any mortgage or charge whether floating or specific on the whole or any part of the undertaking, goodwill, property and assets for the time being of the Company or its subsidiaries to rank in priority to or pari passu with this Debenture without the prior consent in writing of the Department

## **PART 3**

### **PAYMENTS**

All payments made by the Company (whether as principal debtors or sureties) under this Debenture on account of principal interest or otherwise shall be made to the Department in sterling free of all deductions and without set-off or counter-claim and without deduction for or on account of any present or future taxes, levies, imposts, duties, deductions, withholdings or other charges of whatsoever nature imposed levied, collected, withheld or assessed unless the Company is compelled by law to deduct the same and if so compelled, the Company shall pay such additional amounts as may be necessary in respect of principal, interest or otherwise in order that the net amounts which shall remain and be paid after such taxes, levies, imposts, duties, deductions, withholdings or other charges shall equal to respective amounts due hereunder

## **PART 4**

### **COVENANTS BY THE COMPANY**

1. The Company hereby covenants with the Department that so long as any moneys remain owing to the Department under this Debenture the Company shall:-
  - 1.1 Comply with the terms and conditions of the Financial Assistance Letter;



- 1.2 Not use the Financial Assistance or any part save for the purposes for which the Financial Assistance was offered to the Company; under the Financial Assistance Letter;
- 1.3 Carry on its business and undertaking in an effective and proper manner and procure that the Company's subsidiaries do likewise;
- 1.4 Furnish the Department with such information as the Department shall reasonably require (i) as to all matters relating to its business and affairs and (ii) as to the business and affairs of its subsidiaries and (iii) as to any after-acquired property of the Company or any of its subsidiaries;
- 1.5 Pay all rents, taxes, duties, assessments and other outgoings and perform all covenants and comply with all restrictions and stipulations affecting any land or building for the time being owned by it, and shall comply with all planning requirements, regulations, bye-laws affecting such land or buildings and (save in the case of assets not having a value) keep all such land and buildings and all machinery, plant, tools, fixtures and implements for the time being owned by the Company in good and proper repair and condition;
- 1.6 Keep all its property and assets of an insurable nature insured with a good and solvent insurance office to be approved of by the Department against loss or damage by fire, explosion, lightning, aircraft, storm and tempest and such other risks which are in accordance with sound commercial practice normally insured against by companies carrying on similar business in and to a value such as a prudent company carrying on a similar business or businesses in Northern Ireland would normally insure such property and assets and shall maintain and keep up a

policy or policies of insurance indemnifying the Company to such amount as the Department may reasonably require against all claims under the Employers' Liability Acts, Fatal Injuries Acts, Fatal Injuries Acts and actions at Common Law and shall likewise effect such other insurances in respect of its business as the Department may reasonably require (including insurance against loss arising from interruption or interference with the Company's business consequent upon any loss or damage by fire explosion or such other risks as aforesaid) and produce the policies written up to date issued in relation thereto for all such insurance to the Department for inspection on demand and duly pay or cause to be paid the premiums and other sums of money payable in respect of all such insurances and if required produce to the Department on demand the receipts for the same and such evidence as the Department shall reasonably require concerning the effectiveness of such insurances and shall ensure that at all times the interest of the Department is noted on all such policies of insurance.

2. If default should be made at any time by the Company in:-

- 2.1 Making all such payments as are specified in Clause 1.6 hereof the Department may pay the same or;
- 2.2 Effecting or keeping up such policies of insurance as are specified in Clause 1.6 hereof the Department may effect and keep up the same or;
- 2.3. Keeping all its land, buildings and other property in good and proper repair and condition the Department shall be at liberty to enter upon such property and put the said land, buildings and other property into repair;

- 2.4 The Company shall on demand pay to the Department any sums of money expended for any purposes specified in Clauses 2.1, 2.2 and 2.3 hereof with interest thereon at the same rate as is specified in the Financial Assistance Letter from the time of the same respectively having been expended and until such payment and any such monies (including interest) payable to the Department shall be a charge on the property of the Company
3. The Company hereby covenants with the Department that it shall not (and shall procure that every Company which is or becomes its subsidiary shall not) without the previous consent in writing of the Department transfer, sell, lease, assign, licence or otherwise dispose of its respective freehold, leasehold or registered lands, its business, undertakings or assets as a whole or substantially as a whole.

## **PART 5**

### **WARRANTIES, REPRESENTATIONS AND INDEMNITIES**

1. The Company hereby warrants and represents to the Department that to the best of its knowledge and belief having made all due and proper enquiries as follows:-
- 1.1 The making and performance of this Debenture will not contravene its Memorandum and Articles of Association nor any agreement, indenture or other instrument which is binding upon the Company or any of its subsidiaries and are within the Company corporate powers and have been authorised by all necessary corporate action;
- 1.2 Save as disclosed in writing prior to the execution hereof, neither the Company nor any of its subsidiaries is engaged nor is about to engage in any litigation or



arbitration of any material importance and no such litigation or arbitration is pending or threatened against it;

1.3 Neither the Company nor any of its subsidiaries is in default under a contractual or statutory obligation whatsoever (including the payment of any due taxes which materially and adversely affect the business or financial condition of the Company or any such subsidiary);

1.4 Full disclosure has been made to the Department prior to the date hereof of all facts in relation to the Company and each of its subsidiaries and their respective business and affairs are material and ought properly to be made known to any person proposing to lend money to the Company; and

1.5 The Company is not in default of any of the terms or conditions of the Debenture.

2. The Company hereby agrees to indemnify and keep the Department indemnified against:-

2.1 Any loss or damage which may be incurred or suffered by the Department as a result of the breach of any covenant, undertaking, representation or warranty herein contained; and

2.2 All actions, proceedings, costs, damages, expenses, claims and demands howsoever arising in connection therewith.

## **PART 6**

### **ENFORCEMENT OF SECURITY**

1. Upon non compliance by the Company with a written demand by the Department under the Financial Assistance Letter under provision for Repayment of Financial Assistance on Default) the Department may forthwith or at any time thereafter without any further notice appoint by instrument in writing a Receiver (which expression shall include an



Administrative Receiver, a Manager or Receivers and Managers as the case may be) of the lands, assets and undertakings hereby charged and may remove any Receiver so appointed and may appoint another in his place and may fix (at or after the time of his appointment) the remuneration of any such Receiver (subject to Article 46 of the Insolvency (Northern Ireland) Order 1989 or any statutory modification or re-enactment thereof) Provided Always that any such Receiver shall be the agent of the Company and the Company shall be solely responsible for his acts and defaults and for his remuneration

2. A Receiver appointed in accordance with the provisions of Clause 1 of this Part shall have power:-

- 2.1 To take possession of, collect and get in the property hereby charged and for that purpose to take any proceedings in the name of the Company;
- 2.2 To carry on or concur in carrying on the business of the Company and for that purpose to raise money on the property hereby charged in priority to this security or otherwise;
- 2.3 Forthwith and without any of the restrictions imposed by Section 20 of the Conveyancing and Law of Property Act 1881 to sell or concur in selling (but when necessary with the leave of the Court) and to let or lease or concur in letting or leasing and to accept surrenders of leases or tenancies of all or any of the property hereby charged and to carry any such sale, letting, leasing or surrender into effect by conveying, leasing, letting or accepting surrenders in the name and on behalf of the Company or other estate owner. Any such sale price or any fine on the grant of a lease or tenancy may be satisfied in cash, debenture or other obligations, shares, stocks or other valuable consideration and may be payable in

a lump sum or by instalments spread over such period as the Receiver shall think fit. Plant, machinery and other fixtures may be severed and sold separately from the premises containing them without the consent of the Company or of any other person firm or corporation;

2.4 To make any arrangements or compromises which such Receiver may think expedient in the interest of the Department

3. Section 19, 21, 22 and Section 24 sub-sections (3) to (5) and (7) to (8) inclusive of the Conveyancing and Law of Property Act 1881 and the powers thereby or by any statutory modification or extension thereof from time to time in force or any other statutory power or powers conferred on a Mortgagee or Receiver shall apply to such Receiver as if such provisions were incorporated herein save that all moneys received by such Receiver after providing for the matters specified in paragraphs (i) and (ii) of Section 24(8) aforesaid and for all costs, charges and expenses of or incidental to the exercise of any of the powers of such Receiver shall be applied in or towards the satisfaction of the moneys hereby secured
4. It is hereby declared that any such Receiver may be appointed either before or after the Department shall enter into or take possession of the property hereby mortgaged or charged or any part thereof
5. The Company hereby irrevocably appoints any Receiver so appointed as aforesaid the Attorney or Attorneys of the Company and in its name and on its behalf and as its act and deed to execute, deal and deliver and otherwise perfect any deed, assurance agreement, instrument or act which may be required or may be deemed proper for any of the purpose aforesaid



6. In addition to any power hereby or by law given to the Department; the Department may enter into possession of any part of the property hereby mortgaged or charged which may at any time appear to the Department to be in danger of being taken under any process of law or by any creditor of the Company or otherwise howsoever in jeopardy and where any Receiver is appointed under this clause the provision of the preceding clause hereof shall apply mutatis mutandis and the Department may at any time give up possession or withdraw such Receivership
7. After the security hereby constituted has become enforceable the Company shall from time to time at all times execute and do all such assurances, acts, deeds and things (and including where necessary applying to the Court) as the Department may require for facilitating the realisation of the property hereby mortgaged or charged or any part thereof and for exercising all the powers, authorities and discretions hereby or by law conferred on the Department and in particular the Company shall:-
- 7.1 Execute all transfers, conveyances, assignments and assurances of the property hereby mortgaged or charged or any part or parts thereof whether to the Department or to its nominees or to any other person or persons as the Department shall direct;
- 7.2 Perform or cause to be performed all acts and things requisite or desirable according to the law of the country in which the property mortgaged or charged or any part thereof is situate for the purpose of giving effect to the exercise of any of the said powers authorities and discretions;
- 7.3 Give all notices, orders and directions which the Department may think expedient.



8. Neither the Department nor any Receiver appointed as aforesaid shall by reason of the Department or of such Receiver entering or taking possession of the property hereby mortgaged or charged or any part thereof be liable to account as mortgagees in possession or for anything save actual receipts or be liable for any loss on realisation of assets or for any default or omission for which a mortgagee in possession might be liable
9. Upon payment of the entire of the moneys hereby secured together with all interest which may be due thereon and upon payment of all costs, charges and expenses incurred by the Department and by any Receiver in relation to these presents or otherwise arising hereout the Department shall at any time thereafter at the request and expense of the Company discharge all property hereby mortgaged or charged from the terms and provisions hereof so that the same shall henceforth be held by the Company for their own absolute use and benefit freed and discharged from these presents
10. The Department without prejudice at any time and from time to time with or without the assent or knowledge of the Company grant time or indulgence to or compound with any person, firm or company liable to the Department on any guarantee or security for the time being held by the Department or to which the Department may be entitled and may make and release securities without affecting the liability of the Company hereunder or the right or title of the Department to the security hereby created

## **PART 7**

### **GENERAL**

1. Captions:

The captions in this Debenture are for the convenience of reference only and shall not define or limit the provisions hereof

**2. Evidence of Indebtedness:**

For all purposes of or in connection with this Debenture including any legal proceedings hereunder a certificate of the Department signed by a duly authorised officer of the Department shall be conclusive evidence of any sums owed by the Company to the Department

**3. No Waivers:**

No expressed or implied waiver by the Department of any term provision or condition upon which they are entitled to rely as against the Company shall be deemed or be construed as a further or continuing waiver of such term, provision or condition unless so provided in writing by the party in question. The rights and remedies provided herein are cumulation and not exclusive of any right or remedies provided by law

**4. Assignment:**

The Company shall not be entitled to assign the benefit of this Debenture

**5. Saturdays, Sundays and Public Holidays:**

Any payments to be made or notice or other communication to be served or other obligation to be performed or any other thing to be done hereunder on a date which falls a Saturday, Sunday or Public Holiday shall be deemed to be made, or performed if carried out on the business days next following

**6. Governing Law:**

This Debenture shall be governed and construed in accordance with the law of Northern Ireland

7. Time of Essence:

In the construction of all provisions hereunder relating to the payment of moneys time shall be of the essence of the contract

8. Severability:

If for illegality or any other reason any particular provisions of this Debenture shall become illegal or unenforceable this shall not affect the remaining provisions which shall remain in full force and effect

9. Expenses:

The Company shall on demand pay all the legal and other costs, charges and expenses reasonably and properly incurred by the Department in and about the acceptance, preparation, implementation, performance and execution of these presents and the Company shall further on demand pay all legal and other costs, charges and expenses whatsoever reasonably and properly incurred by the Department in and about the protection and enforcement of its securities hereunder or otherwise and in connection with any act, matter or thing made, done or executed by the Department or any of its servants or agents in or about the matters dealt with or arising out of this Debenture and shall pay interest thereon at the same rate as is applicable to the Financial Assistance by virtue of the Financial Assistance Letter hereto computed from the date of demand until the date upon which the same shall have been recovered by or paid to the Department

10. Notices:

Any notice or demand to be given hereunder shall be in writing and shall be deemed duly given upon being delivered or transmitted by telex, or 48 hours after having been posted by prepaid registered post, to the party to which it is to be given at its address herein set



out or such other address as such party shall have previously communicated by notice to the party giving such first mentioned notice or demand

11. Continuing Security:

These presents shall be a continuing security to the Department and the same shall not be prejudiced by the settlement of any account or by any collateral or other security being taken for any of the moneys intended to be secured hereby even if they shall not be payable until a further date

12. No Merger:

These presents shall not operate as a merger or defeasance of any prior charge or estate, legal or equitable, lien, guarantee or security of the Department upon or in the security hereby created or any part thereof

**FIRST SCHEDULE**

Letter of Offer of Financial Assistance dated 18 December 2003 from the Department for Social Development to the Company

**SECOND SCHEDULE**

The premises known as Hillview Retail Park Crumlin Road Belfast comprised in Folios AN29354L, AN1079 and AN 103234L County Antrim as shown edged blue on the attached plan

**IN WITNESS** whereof the parties hereto have affixed their respective Seals the days and year first herein written

PRESENT when the Common Seals of  
the Company were affixed hereto:-

*Jh Byl*  
Director

*E Cardy*  
Secretary

*S Ham*  
Director

*Ambrosio*  
(Director)

PRESENT when the Official Seal of  
THE DEPARTMENT FOR SOCIAL  
DEVELOPMENT was affixed hereto:-

**FORM OF RELEASE FOR REGISTERED LAND**

**LAND REGISTRY**

Folio Number: AN29354L, AN1079 and AN103234L all County Antrim

Registered Owner: KILLULTAGH PROPERTIES LIMITED -and-  
SNODDONS (HILLSBOROUGH) LIMITED

Registered Owner of Charge: DEPARTMENT FOR SOCIAL DEVELOPMENT

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The Department for Social Development the above named registered owner  
of a charge registered on *1st December* 2005 as a burden  
on the lands comprised in the above mentioned folios hereby releases the  
said charge from the said lands.

Dated this *9th* day of *July* 2008.

**PRESENT** when the Official Seal  
of **THE DEPARTMENT FOR  
SOCIAL DEVELOPMENT**  
was affixed hereto:-

*Christie Porter*  
DSO.

*Aime Williams*



