



Registration of a Charge

Company Name: **S&K PROPERTIES LTD**

Company Number: **NI690531**



XBVAZ3Q1

Received for filing in Electronic Format on the: **16/01/2023**

Details of Charge

Date of creation: **09/01/2023**

Charge code: **NI69 0531 0001**

Persons entitled: **HOLD CO 4416 LTD**

Brief description: **ANGEL PLACE SHOPPING CENTRE, BRIDGWATER (TA6 3TQ),
REGISTERED AT THE LAND REGISTRY WITH TITLE NUMBER ST105309**

Contains fixed charge(s).

**Contains floating charge(s) (floating charge covers all the property or
undertaking of the company).**

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 SAVE FOR MATERIAL REDACTED PURSUANT
TO S. 859G OF THE COMPANIES ACT 2006 THE ELECTRONIC
COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION
FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL
INSTRUMENT.**

Certified by: **PINSENT MASONS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: NI690531

Charge code: NI69 0531 0001

The Registrar of Companies for Northern Ireland hereby certifies that a charge dated 9th January 2023 and created by S&K PROPERTIES LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th January 2023 .

Given at Companies House, Belfast on 16th January 2023

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 9 January 2023

**(1) S&K PROPERTIES LTD
(AS CHARGOR)**

**(2) HOLD CO 4416 LTD
(AS LENDER)**

DEBENTURE



Pinsent Masons

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THIS DEED is made on 9 January 2023

BETWEEN:-

- (1) **S&K PROPERTIES LTD** incorporated in Northern Ireland with registered number NI690531 (the "Chargor") and
- (2) **HOLD CO 4416 LTD** incorporated in Northern Ireland with registered number NI690002 (the "Lender").

THIS DEED WITNESSES as follows:-

1. INTERPRETATION

1.1 Definitions

In this Deed:-

"Account" means any account opened or maintained by the Chargor at any bank or financial institution

"Charged Property" means all the assets and undertaking of the Chargor which from time to time are, or purport to be, the subject of the security created in favour of the Lender by or pursuant to this Deed

"Default Rate" means the rate specified in clause 5.3 of the Facility Agreement

"Enforcement Action" means:-

- (a) the acceleration of any Secured Liabilities or any declaration that any Secured Liabilities are prematurely due and payable or payable on demand
- (b) the taking of any steps to enforce or require the enforcement of this Deed (including the crystallisation of any floating charge)
- (c) the making of any demand against the Chargor in relation to any guarantee, indemnity or other assurance against loss in respect of any Secured Liabilities
- (d) the exercise of any right of set-off against the Chargor in respect of any Secured Liabilities excluding any right of set off under a netting arrangement with the Chargor's clearing bank
- (e) the suing for, commencing or joining of any legal or arbitration proceedings against the Chargor to recover any Secured Liabilities or
- (f) the petitioning, applying or voting for, or the taking of any steps which may lead to any administration, winding-up, insolvency or dissolution of or in relation to the Chargor

"Enforcement Date" means the date on which the Lender first takes Enforcement Action

"Facility Agreement"	means the facility agreement dated 3 August 2022 between the Principal Company and the Lender
"Fixed Plant and Equipment"	means all plant, machinery or equipment of the Chargor of any kind which does not for any reason constitute a Fixture, but is now or at any time directly or indirectly attached by any means and for any purpose to any land or building, whether or not it is removable or intended to form part of the land or building
"Fixtures"	means all things of any kind now or at any time affixed to the Land for any purpose, including, without limitation, trade and tenants fixtures
"Insurances"	means any policy of insurance or assurance in which the Chargor has an interest and all claims and rebates of premium under any such policy
"Intellectual Property"	means any of the following in which the Chargor has an interest:- <ul style="list-style-type: none"> (a) any registered intellectual property right in any territory or jurisdiction, including, without limitation, patents, trade marks, service marks, registered designs, and any similar right in any territory or jurisdiction and any applications or right to apply for any of the above (b) any invention, copyright, design right or performance right (c) any trade secrets, know-how and confidential information and (d) the benefit of any agreement or licence for the use of any such right
"Land"	means any estate, right or interest in or over land, whether legal or equitable, and wherever the land is situated including, without limitation, any buildings and Fixtures on the Land, and the benefit of any covenants or rights owed to any person or enforceable by him by virtue of the ownership possession or occupation of land but for these purposes "Land" excludes heritable property situated in Scotland
"Loose Plant and Equipment"	means, in relation to the Chargor, all plant, machinery, equipment and motor vehicles now or at any time owned by the Chargor as a capital asset which is not Fixed Plant and Equipment
"LPA"	means the Law of Property Act 1925
"Monetary Claims"	means all book and other debts and monetary claims now or in the future owing to the Chargor (whether alone or jointly with any other person), whenever payable and whether liquidated or unliquidated, certain or contingent including, without limitation, credit

	balances on any Account, and together with all cheques, bills of exchange, negotiable instruments, credits and securities at any time given in relation to, or to secure payment of, any such debt
"Notice of Charge"	means a notice of charge in such form as may be specified by the Lender
"Principal Company"	means REI Nederland BV
"Receiver"	means any receiver, receiver and manager or, to the extent permitted by law, an administrative receiver (whether or not appointed pursuant to this Deed or any statute, by a court or otherwise) of the whole or any part of the Charged Property
"Related Rights"	means in relation to any Charged Property <ul style="list-style-type: none"> (a) the proceeds of sale of all of any part of that Charged Property (b) allotments, rights, money or property arising from that Charged Property, by way of conversion, exchange, redemption, bonus, preference, option or otherwise; (c) all rights under any licence, agreement for sale or agreement for lease in respect of that Charged Property (d) all rights, powers, benefits, claims, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of that Charged Property and (e) any moneys and proceeds or income paid or payable in respect of that Charged Property
"Secured Liabilities"	means all present and future obligations and liabilities expressed to be due, owing or payable by the Principal Company and/or the Chargor to the Lender (whether present or future, actual or contingent and whether incurred solely or jointly (or jointly and severally) with any other person) including without limitation interest, commission, costs, charges and expenses charged by the Lender at rates agreed between it and the Chargor
"Securities"	means all or any stocks, shares (other than any shares) or other financial instruments (as defined in the UK Financial Collateral Regulations) including those held via a nominee, trustee or clearing system
"Security"	means a mortgage, charge, pledge, lien or any other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect
"UK Financial Collateral Regulations"	means the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I.2003/3226) as amended by the Financial Collateral Arrangements (No. 2) Regulations

2003 (Amendment) Regulations 2009 (S.I.2009/2462), the Financial Markets and Insolvency (Settlement Finality and Financial Collateral Arrangements) (Amendment) Regulations 2010, the European Union (Withdrawal) Act 2018 (as amended) and the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I.2019/341) and "UK Financial Collateral Regulation" means any of them

1.2 Incorporation of terms

Unless the context otherwise requires or unless defined in this Deed, all words and expressions defined or whose interpretation is provided for in the Facility Agreement shall have the same meanings in this Deed.

1.3 Interpretation

The principles of interpretation set out in clause 1.2 of the Facility Agreement shall apply to this Deed insofar as they are relevant to it.

1.4 Effect as a deed

This Deed shall take effect as a deed even if it is executed under hand on behalf of the Lender.

1.5 Statutes and headings

In this Deed:-

1.5.1 any reference to any statute or statutory instrument includes any enactment replacing or amending it or any instrument, order or regulation made under it and also includes any past statutory provisions (as from time to time modified or re-enacted) which such provision has directly or indirectly replaced; and

1.5.2 headings are for reference purposes only and shall not affect the construction of anything in this Deed.

1.6 Clauses and Schedules

In this Deed references to "Clauses" are to the clauses or sub-clauses of this Deed and references to the "Schedule" are to the schedule to this Deed. The Schedule shall be treated as an integral part of this Deed and references to this Deed shall include the Schedule.

1.7 Law of Property (Miscellaneous Provisions) Act 1989

The terms of the Facility Agreement and of any side letters between any parties in relation to the Facility Agreement are incorporated in this Deed to the extent required to ensure that any purported disposition of an interest in Land contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

1.8 Third party rights

1.8.1 The Lender, any Receiver and their respective officers, employees and agents may enforce any term of this Deed which purports to confer a benefit on that person, but no other person who is not a party has any right under

the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

- 1.8.2 Notwithstanding any term of any Facility Agreement, the parties and any Receiver may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Deed without the consent of any person who is not a party.

1.9 Nominees

If the Lender causes or requires shares or any other asset to be registered in the name of its nominee, any reference in this Deed to the Lender shall, if the context permits or requires, be construed as a reference to the Lender and its nominee.

2. COVENANT TO PAY

2.1 Secured Liabilities

The Chargor covenants that it will on demand of the Lender pay and discharge any or all of the Secured Liabilities when due.

2.2 Interest

The Chargor covenants to pay interest at the Default Rate to the Lender upon any sum not paid in accordance with Clause 2.1 (*Secured Liabilities*) until payment (both before and after any judgment).

3. CHARGES

3.1 Mortgages and Fixed Charges

As a continuing security for payment of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender all its right, title and interest from time to time in each of the following assets:-

- 3.1.1 by way of first legal mortgage all Land which is described in Schedule 1 (if any) and all other Land now vested in the Chargor;
- 3.1.2 by way of first fixed charge all other Land now vested in the Chargor (to the extent not effectively charged by Clause 3.1.1) and all Land acquired by the Chargor after the date of this Deed;
- 3.1.3 by way of first fixed charge:-
 - (a) the Securities;
 - (b) the Intellectual Property;
 - (c) the Monetary Claims;
 - (d) the Fixed Plant and Equipment;
 - (e) the Loose Plant and Equipment;
 - (f) the Accounts;
 - (g) the Insurances;

- (h) the Related Rights under or in connection with the Securities, the Accounts, the Insurances, the Intellectual Property, the Monetary Claims, the Fixed Plant and Equipment and the Loose Plant and Equipment; and
- (i) its present and future goodwill and uncalled capital.

3.2 Floating Charge

As continuing security for payment of the Secured Liabilities, the Chargor with full title guarantee charges by way of first floating charge all of its present and future business, undertaking and assets wherever situated, which are not for any reason effectively mortgaged, charged or assigned by way of fixed security by this Deed, including, without limitation, any heritable property situated in Scotland.

3.3 Trust

If or to the extent that for any reason the assignment or charging of any Charged Property is prohibited, the Chargor:-

- 3.3.1 hold it on trust for the Lender as security for the payment and discharge of the Secured Liabilities; and
- 3.3.2 take such steps as the Lender may require to remove the impediment to assignment or charging it.

3.4 Qualifying floating charge

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 will apply to any floating charge created by this Deed.

4. CRYSTALLISATION OF FLOATING CHARGE

4.1 Crystallisation: By Notice

4.1.1 Subject to Clause 4.4 (*Crystallisation: Moratorium*), the Lender may at any time by notice in writing to the Chargor convert the floating charge created by Clause 3.2 (*Floating Charge*) with immediate effect into a fixed charge as regards any property or assets specified in the notice if:-

- (a) the Enforcement Date has occurred;
- (b) the Lender considers that any of the Charged Property may be in jeopardy or in danger of being seized, attached, charged, taken possession of or sold pursuant to any form of distress, sequestration, execution or other process or otherwise be in jeopardy; or
- (c) the Lender considers that it is necessary in order to protect the priority of the Security created by or pursuant to this Deed.

4.1.2 If no specific assets subject to the floating charge in Clause 3.2 (*Floating charge*) are identified in the notice referred to in Clause 4.1.1 then the crystallisation shall take effect over all of the assets subject to the floating charge in Clause 3.2 (*Floating charge*).

4.2 Crystallisation: Automatic

Subject to Clause 4.4 (*Crystallisation: Moratorium*), the floating charge created by Clause 3.2 (*Floating Charge*) will automatically be converted (without notice) with

immediate effect into a fixed charge as regards all of the undertaking and assets subject to the floating charge if:-

- 4.2.1 the Chargor creates or attempts to create any Security (other than as permitted pursuant to the terms of the Facility Agreement) over any of the Charged Property; or
- 4.2.2 any person levies or attempts to levy any distress, execution or other process against any of the Charged Property; or
- 4.2.3 the Lender receives notice of an intention to appoint an administration of the Chargor; or
- 4.2.4 any step is taken (including the presentation of a petition, the passing of a resolution or the making of an application) to appoint a liquidator, provisional liquidator, administrator or Receiver in respect of the Chargor, over all or any part of its assets, or if such person is appointed; or
- 4.2.5 on the crystallisation of any other floating charge over the Charged Property; or
- 4.2.6 in any other circumstance provided by law.

4.3 Assets acquired post-crystallisation

Any assets acquired by the Chargor after crystallisation has occurred (and that are not effectively charged by way of legal mortgage or fixed charge, or assigned under Clause 3 (*Charges*)), shall become subject to the floating charge created by Clause 3.2 (*Floating charge*) so that the crystallisation shall be effective as if such assets were owned by the Chargor at the date of crystallisation.

4.4 Crystallisation: Moratorium

- 4.4.1 Notice may not be given to cause the floating charge over the assets of a Chargor created by Clause 3.2 (*Floating Charge*) to crystallise into a fixed charge whilst that Chargor is subject to a moratorium under Part A1 to the Insolvency Act 1986.
- 4.4.2 The floating charge created by Clause 3.2 (*Floating Charge*) may not be crystallised into a fixed charge solely by reason of:-
 - (a) the obtaining of a moratorium; or
 - (b) anything done with a view to obtaining a moratorium,under Part A1 to the Insolvency Act 1986.

4.5 Partial crystallisation

The giving of a notice by the Lender pursuant to Clause 4.1 (*Crystallisation: By Notice*) in relation to any class of assets of the Chargor shall not be construed as a waiver or abandonment of the rights of the Lender to serve similar notices in respect of any other class of assets or of any other right of the Lender.

4.6 De-crystallisation of floating charge

Any charge that has crystallised under this Clause may by notice in writing (given at any time by the Lender to the Chargor), be reconverted into a floating charge in relation to the assets or class of assets specified in that notice.

5. PERFECTION OF SECURITY

5.1 Notices of Charge

The Chargor shall deliver to the Lender (or procure delivery of) Notices of Charge duly executed by, or on behalf of, the Chargor:-

- 5.1.1 in respect of the Insurances, on the date of this Deed and promptly upon purchasing any further insurance after the date of this Deed;
- 5.1.2 in respect of each Account, on the date of this Deed and promptly upon the opening of any further Account after the date of this Deed; and
- 5.1.3 in respect of any other asset which is the subject of a charge pursuant to Clause 3.1.3, promptly upon the request of the Lender from time to time,

and in each case shall use all reasonable endeavours to procure that each notice is acknowledged by the party to whom such Notice of Charge is addressed.

5.2 Delivery of Documents of Title

The Chargor shall upon the execution of this Deed (or, if later, upon receipt or entitlement thereof), deposit with the Lender and the Lender during the continuance of this security shall be entitled to hold all deeds, certificates and other documents of title relating to Land, the Securities and the Insurances. In the case of the Securities, the Chargor shall also deliver such stock transfer forms or other instruments of transfer (stamped and executed in blank by the Chargor) as the Lender may request.

5.3 Application to the Land Registry

The Chargor and the Lender apply to the Land Registry for a restriction in the following terms to be entered into on the register of the title to any Land now or in the future owned by the Chargor:-

"No disposition of the registered estate by the proprietor of the registered estate [or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction,] is to be registered without a written consent signed by the proprietor for the time being of the charge dated *[insert date of charge]* in favour of *[insert name of Lender]* referred to in the charges register (Form P)".

6. FURTHER ASSURANCE

6.1 General

The Chargor shall, at its own expense, at any time when required by the Lender, execute and deliver to the Lender:-

- 6.1.1 a valid legal mortgage of any Land now or in the future owned by the Chargor;
- 6.1.2 a fixed charge over any interest, not capable of being charged by way of legal mortgage, in any Land now or in the future belonging to the Chargor;
- 6.1.3 a legal assignment or other fixed Security over all or any of the Charged Property;
- 6.1.4 where any of its assets are situated outside England and Wales, such fixed security (or such security in that jurisdiction most closely akin to fixed

security) under the law of the place where the asset is situated as the Lender may require; and

- 6.1.5 a notice to any third party of any of the charges or assignments created by or pursuant to this Deed,

in each case, in the Lender's standard form or such other form as the Lender may require.

6.2 Other acts

Without prejudice to Clause 6.1 (*General*), the Chargor shall, at its own expense, at any time when required by the Lender, do and concur in all acts or things as the Lender may deem necessary or desirable for the purpose of the creation, perfection, protection or maintenance of any of the Security intended to be created by this Deed over all or any of the Charged Property or to facilitate the enforcement of that Security, or the exercise of any powers or discretions intended to be vested in the Lender or any Receiver by this Deed.

7. RESTRICTIONS ON DEALING

7.1 Negative Pledge

The Chargor undertakes that it shall not, at any time during the subsistence of this Deed, create or permit to subsist any Security over all or any part of the Charged Property, except as expressly permitted under the terms of the Facility Agreement.

7.2 Disposals

The Chargor undertakes that it shall not (and shall not agree to) at any time during the subsistence of this Deed, except as expressly permitted under the terms of the Facility Agreement, sell, transfer, assign, lease or hire out, factor, discount, licence, lend, part with its interest in or otherwise dispose of any of the Charged Property or permit the same to occur, or agree to do any of the foregoing, provided that, until:-

- 7.2.1 the floating charge created by Clause 3.2 (*Floating Charge*) is converted into a fixed charge; or

- 7.2.2 the occurrence of the Enforcement Date,

the Chargor may hold, enjoy and deal with, in accordance with the Facility Agreement, the Charged Property which is not at the relevant time expressed to be subject to a fixed charge or mortgage.

8. SECURITIES

8.1 Securities: Before Enforcement Date

Prior to the occurrence of the Enforcement Date, the Chargor shall exercise all voting rights in relation to the Securities for any purpose not inconsistent with the terms of the Facility Agreement.

8.2 Securities: After Enforcement Date

After the occurrence of the Enforcement Date, the Lender may at its discretion (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor):-

- 8.2.1 exercise (or refrain from exercising) any voting rights in respect of the Securities;

- 8.2.2 apply all dividends, interest and other monies arising from the Securities in accordance with Clause 16 (*Application of Moneys*);
- 8.2.3 transfer the Securities into the name of such nominee(s) of the Lender as it shall require; and
- 8.2.4 exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Securities,

in each case, in such manner and on such terms as the Lender may think fit and the proceeds of any such action shall form part of the Charged Property.

8.3 Securities: Payment of Calls

The Chargor shall pay when due all calls or other payments which may be or become due in respect of any of the Securities and shares which are not fully paid (unless reasonably contested), and in any case of default by the Chargor in such payment, the Lender may, if it thinks fit, make such payment on behalf of the Chargor in which case any sums paid by the Lender shall be reimbursed by the Chargor to the Lender on demand and shall carry interest from the date of payment by the Lender until reimbursed at the rate notified to the Chargor by the Lender.

8.4 Securities: Exercise of Rights

The Chargor shall not exercise any of its respective rights and powers in relation to any of the Securities in any manner which, in the opinion of the Lender, would prejudice the effectiveness of, or the ability of the Lender to realise, the security created by or pursuant to this Deed.

9. ACCOUNTS

9.1 Accounts: Notification and Variation

The Chargor, during the subsistence of this Deed:-

- 9.1.1 shall promptly deliver to the Lender on the date of this Deed (and, if any change occurs after the date of this Deed, on that date), details of each Account maintained by it with any bank or financial institution; and
- 9.1.2 shall not, without the Lender's prior written consent, permit or agree to any variation of the rights attaching to any Account or close any Account unless such account closure is notified in advance to the Lender.

9.2 Accounts: Operation Before Enforcement Date

The Chargor shall, prior to the occurrence of the Enforcement Date, be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Account.

9.3 Accounts: Operation After Enforcement Date

After the occurrence of the Enforcement Date, the Chargor shall not be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Account except with the prior consent of the Lender.

9.4 Accounts: Application of Moneys

The Lender shall, upon the occurrence of the Enforcement Date, be entitled without notice to apply, transfer or set-off any or all of the credit balances from time to time on

any Account in or towards the payment or other satisfaction of all or part of the Secured Liabilities in accordance with Clause 16 (*Application of Moneys*).

10. MONETARY CLAIMS

10.1 No dealing with Monetary Claims

The Chargor shall not at any time during the subsistence of this Deed, without the prior written consent of the Lender or as permitted pursuant to the terms of the Facility Agreement, sell, factor, discount, transfer, assign, lend or otherwise dispose of any of the Monetary Claims or enter into any agreement to do any of the foregoing.

10.2 Proceeds of Monetary Claims

The Chargor shall get in and realise the Monetary Claims in the ordinary course of business and pay the proceeds of those Monetary Claims into an Account.

11. INSURANCES

11.1 Insurances: Undertakings

The Chargor shall at all times during the subsistence of this Deed:-

11.1.1 keep the Charged Property insured with those insurances normally maintained by prudent companies carrying on a similar business and with an insurance office or underwriters to be approved by the Lender in writing from time to time and otherwise in accordance with the terms of the Facility Agreement;

11.1.2 if required by the Lender, cause each Insurance relating to the Charged Property to contain (in form and substance satisfactory to the Lender) an endorsement naming the Lender as sole loss payee in respect of all claims;

11.1.3 promptly pay all premiums and other moneys payable under all its Insurances or procure that such is done and, promptly upon request, produce to the Lender a copy of each policy and evidence (acceptable to the Lender) of the payment of such sums (or procure that such is done) and not do or omit to do or permit or suffer to be done or omitted to be done, anything which might render any Insurance required by this clause void, voidable or unenforceable; and

11.1.4 if required by the Lender, provide a copy of all Insurances relating to the Charged Property to the Lender.

11.2 Insurance: Default

If the Chargor defaults in complying with Clause 11.1 (*Insurance: Undertakings*), the Lender may effect or renew any such Insurance on such terms, in such name(s) and in such amount(s) as it considers appropriate, and all moneys expended by the Lender in doing so shall be reimbursed by the Chargor to the Lender on demand and shall carry interest from the date of payment by the Lender until reimbursed at the rate specified in Clause 2 (*Covenant to Pay*).

11.3 Application of Insurance Proceeds

All moneys received under any Insurance relating to the Charged Property shall, prior to the occurrence of the Enforcement Date, be applied in accordance with the terms of the Facility Agreement. After the occurrence of the Enforcement Date, the Chargor shall hold such moneys upon trust for the Lender pending payment to the Lender for application in accordance with Clause 16 (*Application of Moneys*) and the Chargor

waives any right it may have to require that any such moneys are applied in reinstatement of any part of the Charged Property.

12. LAND

The Chargor shall (with the intent that this Clause 12 (*Land*) shall apply in relation to all Land now vested in the Chargor or acquired by the Chargor after the date of this Deed):-

12.1 Repair and Alterations

- 12.1.1 keep or cause to be kept all buildings and Fixtures from time to time on or in any of its Land and all other plant, machinery and equipment belonging to it in good and substantial repair and good working order;
- 12.1.2 not, without the prior written consent of the Lender, make or permit the making of any alteration or addition to any of its Land (other than internal non-structural alterations) or commit or permit any person to commit any waste upon or injure or in any manner or by any means lessen the value of its Land or sever or permit to be severed from any of its Land any Fixtures except for the purpose of replacing them as soon as practicable with others of equal or greater value; and
- 12.1.3 permit any authorised representative of the Lender at any time to enter any of its Land for any purpose without becoming liable to account as a mortgagee in possession and to inspect and test any work being carried out and, where any breach of covenant, defect, disrepair or unauthorised alteration, improvement or addition shall be found, remedy all such breaches and execute all such repairs or removals as the Lender may require within 28 days after notice (or immediately, in case of emergency);

12.2 Statutes

- 12.2.1 comply with the provisions of all statutes and the requirement of any competent authority affecting any of its Land or the use of any of its Land or anything done on any Land; and
- 12.2.2 ensure that all consents and approvals under all statutes and the regulations and codes of practice of any competent authority affecting any of its Land have been obtained and are complied with, and produce on demand such evidence as the Lender may require to satisfy itself that such consents and approvals have been obtained and are complied with;

12.3 Leases

- 12.3.1 pay the rents and observe and perform all covenants, conditions, agreements or obligations on its part to be observed and performed contained in any lease under which any of its Land is held by the Chargor and any licence, consent or approval given under any lease, and use its best endeavours to enforce observance and performance of the lessor's covenants in any lease;
- 12.3.2 not accelerate or defer payment of any moneys payable under any such lease and where any lease contains a provision for the review of rent promptly notify the Lender of any attempt by the lessor to implement a review but not agree the reviewed rent or appoint or agree to the appointment of a third party to determine a rent review without the prior written consent of the Lender;

12.3.3 not to apply for any licence, consent or approval under any such lease or any superior lease without the prior written consent of the Lender; and

12.3.4 promptly give notice to the Lender if the Chargor receives notice under section 146 of the LPA or any proceedings are commenced for forfeiture of any such lease or any superior lease or the lessor or any superior lessor re-enters or attempts to re-enter thereunder and at the request of the Lender but at the cost of the Chargor take such steps as the Lender may require in relation thereto;

12.4 Power of Leasing

not, without the prior written consent of the Lender, exercise any of the powers of leasing or agreeing to lease vested in or conferred on mortgagors by common law or by statute or create or suffer to be created a tenancy of any description of any of its Land or confer or permit to be conferred upon any person any contractual licence, right or interest to occupy or use or grant any licence or permission to assign, underlet or part with possession of the whole or any part of its Land or agree to do any of the foregoing, and sections 99 and 100 of the LPA shall not apply to this Deed;

12.5 Compulsory Acquisition

not without the prior written consent of the Lender enter into any negotiations with any competent authority with regard to the compulsory acquisition of any of its Land or consent to the compulsory acquisition of any of its Land, and, if so requested by the Lender, permit the Lender or its authorised representatives to conduct such negotiations or to give such consent on the Chargor's behalf;

12.6 Outgoings

pay as and when the same become due all rates, taxes, duties, charges, assessments and other outgoings payable in respect of its Land; and

12.7 Encumbrances

comply with:-

12.7.1 all obligations, covenants, exceptions, reservations, licences, approvals, consents, stipulations, restrictions and conditions to which it is subject including, but without limitation, those relating to any of its Land or the use or enjoyment of any of its Land or imposed upon the Chargor as owner, occupier or user, as the case may be, of any of its Land; and

12.7.2 its obligations under any Security having priority to the Security created by or pursuant to this Deed.

13. DEMAND AND ENFORCEMENT

13.1 Enforcement

This Deed shall become enforceable in respect of and against the Chargor:-

13.1.1 upon any demand being made by the Lender under the Facility Agreement for payment of any of the Secured Liabilities by the Principal Company or the Chargor;

13.1.2 the occurrence of an Event of Default (as defined in the Facility Agreement) which is continuing;

- 13.1.3 upon any request being made by the Chargor or the Principal Company to the Lender for the appointment of a Receiver or an administrator, or for the Lender to exercise any other power or right available to it; or
- 13.1.4 upon the occurrence of any event causing, or purporting to cause, the floating charge created by this Deed to become fixed in relation to any Charged Property.

13.2 Powers on enforcement

At any time after this Deed has become enforceable, the Lender may (without prejudice to any other rights and remedies and without notice to the Chargor) do all or any of the following:-

- 13.2.1 exercise the power of sale under section 101 of the LPA together with all other powers and rights conferred on mortgagees by the LPA, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the LPA; and
- 13.2.2 exercise the power of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases in relation to any Charged Property, without the restrictions imposed by sections 99 and 100 of the LPA;
- 13.2.3 to the extent that any Charged Property constitutes "Financial Collateral" and this Deed constitutes a "security financial collateral arrangement" each as defined in the UK Financial Collateral Regulations, appropriate all or any part of the Charged Property in or towards satisfaction of the Secured Liability (including transferring the title in and to it to the Lender insofar as not already transferred, subject to paragraphs (1) and (2) of UK Financial Collateral Regulation 18), the value of the property so appropriated being the amount standing to the credit of the relevant Account (where the property is the benefit of an Account) or, in any other case, such amount as the Lender shall determine in a commercially reasonable manner;
- 13.2.4 subject to Clause 14.1 (*Appointment*), appoint one or more persons to be a Receiver or Receivers of all or any of the Charged Property; and
- 13.2.5 appoint an administrator of the Chargor.

14. RECEIVERS

14.1 Appointment

At any time after this Deed has become enforceable in respect of and against the Chargor, the Lender may appoint any person or persons to be a Receiver or Receivers of all or any part of the Charged Property of the Chargor charged under this Deed or an administrator of the Chargor. An appointment over part only of such Charged Property shall not preclude the Lender from making any subsequent appointment over any other part of such Charged Property.

14.2 Appointment in writing

The appointment of a Receiver shall be in writing, and may be signed by any authorised signatory on behalf of the Lender. Where more than one person is acting at any time as Receiver, they shall have power to act severally as well as jointly.

14.3 Remuneration

The Lender may from time to time determine the remuneration of the Receiver (which shall not be subject to the limit in section 109(6) of the LPA) and may (subject to the application of section 45 of the Insolvency Act 1986) remove any person from office in relation to all or any part of the Charged Property of which he is the Receiver and at any time appoint a further or other Receiver or Receivers over all or any part of such Charged Property.

14.4 Powers

The Receiver shall be the agent of the Chargor (which shall be solely liable for his acts, defaults and remuneration) unless and until the Chargor goes into liquidation from which time he shall act as principal and shall not become the agent of the Lender, and the Receiver shall have and be entitled to exercise in relation to the Charged Property all the powers:-

14.4.1 of the Lender under this Deed;

14.4.2 conferred by the LPA on mortgagees in possession and on receivers appointed under the LPA (in each case as extended by this Deed);

14.4.3 in relation to, and to the extent applicable to, the Charged Property or any of them, of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986, whether or not the Receiver is an administrative receiver;

14.4.4 in relation to any Charged Property, which he would have if he were its only beneficial owner; and

14.4.5 to do all things incidental or conducive to any functions, powers, authorities or discretions conferred or vested in the Receiver.

15. POWER OF ATTORNEY

15.1 Appointment

The Chargor hereby irrevocably and by way of security appoints:-

15.1.1 the Lender (whether or not a Receiver has been appointed);

15.1.2 any delegate or sub delegate of, or other person nominated in writing by, an officer of the Lender; and

15.1.3 (as a separate appointment) each Receiver,

severally as the attorney and attorneys of the Chargor with power to do any act, and execute and deliver any deed or other document, on behalf of and in the name of the Chargor, which the Chargor could be required to do or execute under any provision of this Deed, or which the Lender in its sole opinion may consider necessary or desirable for perfecting the Lender's title to any of the Charged Property of the Chargor or enabling the Lender or the Receiver to exercise any of its or his rights or powers under this Deed.

15.2 Ratification

The Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney as is mentioned in Clause 15.1 (*Appointment*) shall do or purport to do in the exercise or purported exercise of all or any of the powers, acts or other matters referred to in Clause 15.1 (*Appointment*).

16. APPLICATION OF MONEYS

16.1 Application of moneys

All sums received by virtue of this Deed by the Lender or the Receiver shall, subject to the payment of any claim having priority to this Deed, be paid or applied in the following order of priority:-

16.1.1 first, in or towards satisfaction of all costs, charges and expenses incurred and payments made by the Lender, or the Receiver (including, without limitation, legal expenses) and of the remuneration of the Receiver;

16.1.2 secondly, in or towards payment of the Secured Liabilities in such order as the Lender may at its discretion require; and

16.1.3 thirdly, as to the surplus (if any), to the person or persons entitled to such surplus,

and section 109(8) of the LPA shall not apply.

17. PROTECTION OF THIRD PARTIES

17.1 Statutory powers

In favour of any purchaser, the statutory powers of sale and of appointing a Receiver which are conferred upon the Lender, as varied and extended by this Deed, and all other powers of the Lender, shall be deemed to arise (and the Secured Liabilities shall be deemed due and payable for that purpose) immediately after the execution of this Deed.

17.2 Purchasers

No purchaser from or other person dealing with the Lender, any person to whom it has delegated any of its powers, or the Receiver shall be concerned to enquire whether any of the powers which they have exercised has arisen or become exercisable, or whether the Secured Liabilities remain outstanding or whether any event has happened to authorise the Receiver to act or as to the propriety or validity of the exercise of any such power, and the title and position of a purchaser or such person shall not be impeachable by reference to any of those matters.

17.3 Receipts

The receipt of the Lender or the Receiver shall be an absolute and conclusive discharge to a purchaser or any other person dealing with the Lender.

18. PROTECTION OF THE LENDER AND ANY RECEIVER

18.1 No liability

The Lender and any Receiver shall not be liable in respect of any loss or damage which arises out of the exercise, or attempted or purported exercise of, or the failure to exercise any of their respective powers under this Deed.

18.2 Not mortgagee in possession

Without prejudice to any other provision of this Deed, entry into possession of any Charged Property shall not render the Lender or the Receiver liable:-

18.2.1 to account as mortgagee in possession;

18.2.2 for any loss on realisation; or

18.2.3 for any default or omission for which a mortgagee in possession might be liable,

and if and whenever the Lender or the Receiver enters into possession of any Charged Property it shall be entitled at any time it or he thinks fit to go out of such possession.

18.3 Indemnity

The Chargor shall indemnify and keep indemnified the Lender, every Receiver, and any person who acts as the servant, agent, delegate or attorney of any of them, against all claims, costs, expenses and liabilities which they may suffer or incur arising in any way out of the taking or holding of this Deed, the exercise or purported exercise of any right, power, authority or discretion given by it, or any other act or omission in relation to this Deed or the Charged Property.

18.4 Currency protection

If any amount due to be paid to the Lender is, for any reason, paid in a currency (the "currency of payment") other than the currency in which it was expressed to be payable (the "contractual currency"), the Lender may wherever it thinks fit apply the amount of the currency of payment received by it in the purchase, in accordance with its normal practice, of the contractual currency, and if this results in any shortfall below the amount due in the contractual currency, after deducting all taxes, costs and commissions payable in connection with that purchase, the Chargor shall indemnify the Lender against the amount of the shortfall.

18.5 Continuing protection

The provisions of this Clause 18 shall continue in full force and effect notwithstanding any release or discharge of this Deed, or the discharge of any Receiver from office.

19. PROVISIONS RELATING TO THE LENDER

19.1 Powers and discretions

The rights, powers and discretions given to the Lender in this Deed:-

19.1.1 may be exercised as often as, and in such manner as, the Lender thinks fit;

19.1.2 are cumulative, and are not exclusive of any of its rights under the general law; and

19.1.3 may only be waived in writing and specifically, and any delay in exercising, or non-exercise of, any right, is not a waiver of it.

19.2 Certificates

A certificate by an authorised officer of the Lender as to any sums payable to the Lender under this Deed shall (save in the case of manifest error) be conclusive and binding upon the Chargors for all purposes.

19.3 Assignment

The Lender may assign this Deed to any successor in title to any of the Secured Liabilities and the Lender may disclose any information in its possession relating to the Chargor, its affairs or the Secured Liabilities to any actual or prospective assignee.

19.4 Delegation

The Lender may at any time and from time to time delegate by power of attorney or in any other manner to any person or persons all or any of the rights, powers and discretions which are for the time being exercisable by it under this Deed.

20. PRESERVATION OF SECURITY

20.1 Continuing Security

This Deed shall be a continuing security to the Lender and shall remain in force until expressly discharged in writing by the Lender notwithstanding any intermediate settlement of account or other matter or thing whatsoever and shall be without prejudice and in addition to any other right, remedy or Security of any kind which the Lender may have now or at any time in the future for or in respect of any of the Secured Liabilities.

20.2 No Merger

This Deed is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee or Security which the Lender may at any time hold for any other Secured Liabilities.

20.3 Additional Security

This Deed is without prejudice and in addition to, and shall not merge with, any other right, remedy or Security of any kind which the Lender may have now or at any time in the future for or in respect of any of the Secured Liabilities.

20.4 Waiver of Defences

Neither the Security created by this Deed nor the obligations of the Chargor under this Deed will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to it or the Lender) including:-

- 20.4.1 any time, waiver or consent granted to, or composition with, the Chargor or other person;
- 20.4.2 the release of the Chargor or any other person under the terms of any composition or arrangement with any person;
- 20.4.3 the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of the Chargor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 20.4.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- 20.4.5 any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of the Facility Agreement or any other document or Security;
- 20.4.6 any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under the Facility Agreement or any other document; or

20.4.7 an insolvency, liquidation, administration or similar procedure.

20.5 Order of Recourse

This Deed may be enforced against the Chargor without the Lender first having recourse to any other right, remedy, guarantee or Security held by or available to any of them.

20.6 Suspense Accounts

The Lender may, without prejudice to any other rights it may have, at any time and from time to time place (and keep for such time as it may think prudent) any moneys received, recovered or realised under or by virtue of this Deed on a separate or suspense account to the credit either of the Chargor or, at the sole discretion of the Lender if the Enforcement Date has occurred, of the Lender as the Lender shall think fit without any intermediate obligation on the Lender's part to apply the same or any part of it in or towards the discharge of the Secured Liabilities.

20.7 New Accounts

If the Lender receives notice of any subsequent charge or other security interest affecting any of the Charged Property, the Lender shall be entitled to close the Chargor's then current account or accounts and to open a new account or accounts for the Chargor. If the Lender does not open a new account or accounts immediately on receipt of such notice it shall nevertheless be treated as if it had done so at the time when it received such notice, and as from that time all payments made for the credit of the Chargor shall be credited or be treated as having been credited to such new account or accounts and shall not operate to reduce the amount due from the Chargor to the Lender at the time when it received such notice.

20.8 Tacking

For the purposes of section 94(1) of the LPA and section 49(3) of the Land Registration Act 2002 the Lender confirms that it shall make further advances to the Chargor on the terms and subject to the conditions of the Facility Agreement.

20.9 Reinstatement

If any payment by the Chargor or discharge given by the Lender (whether in respect of the obligations of the Chargor or any Security for those obligations or otherwise) is avoided or reduced as a result of insolvency, liquidation, administration or any similar event:-

20.9.1 the liability of the Chargor and the Security created by this Deed shall continue as if the payment, discharge, avoidance or reduction had not occurred; and

20.9.2 the Lender shall be entitled to recover the value or amount of that Security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

21. RELEASE

21.1 Upon the irrevocable and unconditional payment and discharge in full of the Secured Liabilities, the Lender shall, or shall procure that its appointees will, at the request and cost of the Chargor:-

21.1.1 release the Charged Property from this Deed; and

- 21.1.2 re-assign the Charged Property that has been assigned to the Lender under this Deed.
- 21.2 Section 93 of the LPA dealing with the consolidation of mortgages shall not apply to this Deed.
22. **MISCELLANEOUS PROVISIONS**
- 22.1 **Severability**
- If any provision of this Deed is illegal, invalid or unenforceable in any jurisdiction, that shall not affect:-
- 22.1.1 the validity or enforceability of any other provision, in any jurisdiction; or
- 22.1.2 the validity or enforceability of that particular provision, in any other jurisdiction.
- 22.2 **Costs, charges and expenses**
- All costs, charges and expenses incurred or paid by the Lender or by the Receiver in the exercise of any power or right given by this Deed or in relation to any consent requested by the Chargor, or in perfecting or otherwise in connection with this Deed, the Facility Agreement or the Charged Property, all sums recoverable under Clause 18 (*Protection of the Lender and any Receiver*) and all costs of the Lender (on an indemnity basis) of all proceedings for the enforcement of this Deed or for obtaining payment of moneys by this Deed secured, shall be recoverable from the Chargor as debts and shall bear interest until payment at the Default Rate.
- 22.3 **Contracts (Rights of Third Parties) Act 1999**
- The Lender, any Receiver and their respective officers, employees and agents may enforce any term of this Deed which purports to confer a benefit on that person, but no other person who is not a party to this Deed has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.
- 22.4 **Counterparts**
- This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.
23. **GOVERNING LAW**
- This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.
24. **ENFORCEMENT**
- 24.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").
- 24.2 The parties to this Deed agree that the courts of England are the most appropriate and convenient courts to settle disputes and accordingly no such party will argue to the contrary.
- 24.3 This Clause 24 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with

jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

EXECUTED AND DELIVERED AS A DEED by the Chargor and executed by the Lender on the date set out at the beginning of this Deed.

SCHEDULE 1

DETAILS OF LAND

REGISTERED LAND

Angel Place Shopping Centre, Bridgwater (TA6 3TQ), registered at the Land Registry with title number ST105309

UNREGISTERED LAND

None specifically listed.

EXECUTION PAGE

THE CHARGOR

Executed as a Deed (but not delivered until the date of this Deed) by **S&K PROPERTIES LTD** acting by

RAYMOND CARLIN
Full Name (Director)



Signature of Director

in the presence of:

FERN McMAHON
Full Name (Witness)



Address



Signature of Witness

THE LENDER

Signed by **HOLD CO 4416 LTD** acting by

GARY MARTIN
Full Name (Director)



Signature of Director