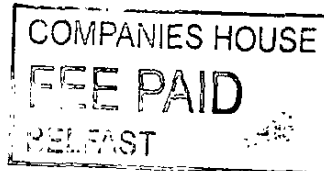


# MR01

## Particulars of a charge



Companies House

A fee is payable with this form.  
Please see 'How to pay' on the  
last page.

You can use the WebFiling service to file this form online.  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

☒ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument.

☐ **What this form is NOT for**  
You may not use this form to  
register a charge where there is no  
instrument. Use form MR08.

For further information, please  
refer to our guidance at:  
[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

This form must be delivered to the Registrar for registration within  
21 days beginning with the day after the date of creation of the charge. If  
delivered outside of the 21 days it will be rejected unless it is accompanied  
by a court order extending the time for delivery.

You must enclose a certified copy of the instrument with this form. This will  
be scanned and placed on the public record.

MONDAY



\*J35ALPI9\*

JNI

07/04/2014

#21

COMPANIES HOUSE

### 1 Company details

Company number

Company name in full

for official use

#### → Filling in this form

Please complete in typescript or in  
bold black capitals.

All fields are mandatory unless  
specified or indicated by \*

### 2 Charge creation date

Charge creation date

### 3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees  
entitled to the charge.

Name

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below.

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge.

COMPANIES HOUSE

7 APR 2014

BELFAST

# MRO1

## Particulars of a charge

4

### Description

Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security.

#### Continuation page

Please use a continuation page if you need to enter more details.

Description

1. By way of Fixed Charge the premises situate at and known as 121 Drumaness Road, Drumaness being all of the lands comprised in a sub-lease dated 3 April 2014 and made between Henderson Wholesale Limited (1) and O'Hares Drumaness Limited (2).

2. By way of fixed charge all buildings, fixtures, fittings, equipment, utensils, implements, furniture, plant, computers, vehicles and machinery now or from time to time placed in or used about the Property.

3. By way of fixed charge all rental income present or future whether payable now or in the future and the proceeds of any sale, lease or other disposition of the Property and all rights and claims of the Company against all lessees, sub-lessees, licensees or occupiers of the Property and all guarantors and sureties for the obligations of any such person or other third parties in relation to the Property now or in the future existing and capable of being satisfied by the payment of money.

5

### Fixed charge or fixed security

Does the instrument include a fixed charge or fixed security over any tangible or intangible (or in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box.

☒ **Yes**

☐ **No**

6

### Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box.

☒ **Yes** Continue

☐ **No** Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ **Yes**

7

### Negative Pledge

Do any of the terms of the charge prohibit or restrict the chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box.

☒ **Yes**

☐ **No**

# MR01 - continuation page

## Particulars of a charge

4	Description
	<p>Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security.</p>
Description	<p>4. By way of fixed charge:</p> <p>a) all the goodwill of the business (meaning the retail supermarket/convenience store, post office and any other businesses carried on from the Property ("the Business"));</p> <p>b) the full benefit of all contracts entered into by or with the Company in respect of the Business;</p> <p>(c) all those the book debts and other moneys which are now or may hereafter become owing to the Company in connection with the Business;</p> <p>(d) all capital profits and other moneys received by the Company in respect of the Business.</p> <p>5. By way of floating charge all stock in trade of the Business.</p> <p>6. By way of floating charge all the property, assets and rights referred to at paragraphs 1 to 4 (inclusive) if and insofar as such charges or any part or parts thereof shall be for any reason ineffective as specific or fixed charges.</p> <p>The floating charges contained in the Mortgage and Charge shall be converted into fixed charges automatically if without the prior written consent of the Henderson Wholesale Limited the Company charges pledges or otherwise encumbers (whether by fixed or floating security) any of the charged assets subject to a floating charge under this Mortgage and Charge or attempts to do so if any person levies or attempts to levy any execution sequestration or other process against any of such charged assets.</p>

MR01

Particulars of a charge

8

**Trustee statement<sup>1</sup>**

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge.

☐

<sup>1</sup> This statement may be filed after the registration of the charge (use form MR06).

9

**Signature**

Please sign the form here.

Signature

Signature

X  X

This form must be signed by a person with an interest in the charge.

**Presenter information**

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name **TIM BRADSHAW**

Company name **HEWITT & GILPIN SOLICITORS LIM**

Address **14/16 JAMES STREET SOUTH**

Post town **BELFAST**

County/Region

Postcode **B T 2 7 G A**

Country **NORTHERN IRELAND**

DX **2000 NR BELFAST 2**

Telephone **028 90573573**

**Certificate**

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.

**Checklist**

**We may return forms completed incorrectly or with information missing.**

**Please make sure you have remembered the following:**

- ☐ The company name and number match the information held on the public Register.
- ☐ You have included a certified copy of the instrument with this form.
- ☐ You have entered the date on which the charge was created.
- ☐ You have shown the names of persons entitled to the charge.
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8.
- ☐ You have given a description in Section 4, if appropriate.
- ☐ You have signed the form.
- ☐ You have enclosed the correct fee.
- ☐ Please do not send the original instrument; it must be a certified copy.

**Important information**

**Please note that all information on this form will appear on the public record.**

**How to pay**

**A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.**

Make cheques or postal orders payable to 'Companies House.'

**Where to send**

**You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:**

**For companies registered in England and Wales:**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ.  
DX 33050 Cardiff.

**For companies registered in Scotland:**  
The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post).

**For companies registered in Northern Ireland:**  
The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG.  
DX 481 N.R. Belfast 1.

**Further information**

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)**



**FILE COPY**

## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: NI622787

Charge code: NI62 2787 0003

The Registrar of Companies for Northern Ireland hereby certifies that a charge dated 3rd April 2014 and created by O'HARES DRUMANESS LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 7th April 2014.

Given at Companies House, Belfast on 8th April 2014



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

Dated the 3 day of April 2014

**O'HARES DRUMANESS LIMITED**

To

**HENDERSON WHOLESALE LIMITED**

**MORTGAGE AND CHARGE**

Hewitt & Gilpin  
Solicitors Limited  
Thomas House  
14/16 James Street South  
BELFAST  
BT2 7GA

We hereby certify this to be a true  
and accurate copy of the original

Dated this 4 day of April 2014

Signed Hewitt & Gilpin

**THIS MORTGAGE** is dated the <sup>3</sup> day of April 2014 and made **BETWEEN:**

(1) **O'HARES DRUMANESS LIMITED** (registration number NI622787) whose registered office is at 37 Newry Road, Mayobridge, Newry, County Down BT34 2ET ("the Borrower")

(2) **HENDERSON WHOLESALE LIMITED** having its registered office situate at 9 Hightown Avenue, Newtownabbey, BT36 4RT ("the Lender")

**WHEREAS**

- (a) The Borrower is now seized and possessed of or otherwise entitled to the hereditaments and premises described in the Schedule hereto (hereinafter referred to as "Property" (which term shall include any part or parts of such hereditaments and premises and all rights attached or appurtenant thereto) and is the registered owner of such part or parts thereof as are registered in the Land Registry free from encumbrances.
- (b) The Borrower carries on the Business upon the Property.
- (c) The Lender has agreed to grant or continue loan facilities or other trading facilities or accommodation to the Borrower or at the request of the Borrower to other persons firms or companies, the liabilities of which said persons, firms or companies the Borrower may now be surety or hereinafter may become surety and/or to open or continue a trading account with the Borrower or at the request of the Borrower any of the said persons, firms or companies for whom the Borrower may now be surety or may become surety upon having the repayment thereof secured on the terms and conditions set out in this Mortgage and Charge.

**NOW THIS DEED WITNESSES** and it is agreed and declared as follows:-

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Mortgage and Charge:

'1881 Act' means the Conveyancing and Law of Property Act 1881.

'Mortgage and Charge' means this mortgage and charge and includes any instrument supplemental to or which is expressed to be collateral or entered into pursuant to or in accordance with the terms of this legal charge.

'Business' means the retail supermarket/convenience store, post office and any other businesses carried on by the Borrower at the Property.

'Charged Assets' means the property assets debts rights and goodwill mortgage of or charged to the Lender by this Mortgage and Charge and includes any part or interest therein and, for the avoidance of doubt, includes the Property.

'Encumbrance' means any mortgage charge pledge lien assignment hypothecation security interest preferential right or trust arrangement or other encumbrance security agreement or arrangement of any kind or any right conferring a priority of payment.



'Enforcement Event' means any of the events or circumstances described in clause 9.

'Expenses' means all interest commission fees and legal and other costs charges and expenses which the Lender or any Receiver may charge or incur in relation to the Borrower or this Mortgage and Charge and/or in relation to the Charged Assets and/or breach of any provision of, and the protection realisation or enforcement of, this Mortgage and Charge in each case on a full indemnity basis.

'Insured Risks' means fire storm lightning earthquake explosion aircraft riot civil commotion malicious damage impact terrorism aircraft and other aerial devices or articles dropped therefrom tempest flood bursting and overflowing of water tanks apparatus or pipes and damage by or resulting from vehicular impact and such other risks as the Lender shall approve (such approval not to be unreasonably withheld or delayed) including demolition and site clearance costs and expenses architects surveyors and other professional fees and all other incidental expenses and loss of rents payable by the tenants or other occupiers of the Property for a period of three years or for such other period as the Lender shall from time to time reasonably require.

'Lease' means where the Property is leasehold the leases under which the Borrower holds the Property and any instrument supplemental to them or which is expressed to be collateral to them or entered into pursuant to or in accordance with their terms.

'Planning Acts' means the Planning (Northern Ireland) Order 1991 and all regulations and orders made or confirmed thereunder.

'Receiver' means a receiver and/or manager or receivers and any substitute for any such person and whether appointed under this Mortgage and Charge or pursuant to any statute or otherwise.

'Rental Income' means the gross rents licence fees and other moneys receivable now or hereafter at any time by the Borrower in respect of or arising out of any lease of the Property or any agreement for lease or otherwise without limitation derived by the Borrower from the Property or otherwise paid to or received by the Borrower in respect of the Property (including without limitation all mesne profits) but save for insurance rents or service charges or the like.

'Secured Liabilities' means all moneys obligations and liabilities whatsoever whether for principal interest or otherwise in whatever currency which may now are or at any time hereafter may become due owing or incurred by the Borrower to the Lender whether actual or contingent and whether alone or jointly with any person or company as principal guarantor surety or otherwise and in whatever name or style and whether on any current or other account or in any other manner whatsoever and including but without limitation all moneys which may now or at any time in the future be due owing or incurred by the Borrower to the Lender on foot of any loan, credit or any trading or other account and all Expenses and so that interest shall be computed and compounded on the terms agreed between the parties or if not agreed according to the usual practice of the Lender as well after as before any demand or judgment.

## **1.2 Interpretation**

In this Mortgage and Charge:

- (a) references to Clauses and Schedules are to be construed as references to the clauses of and schedules to this Mortgage and Charge;
- (b) references to any provisions of this Mortgage and Charge or to any other document or agreement are to be construed as references to those provisions or that document or agreement as is in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;
- (c) words importing the singular are to include the plural and vice versa;
- (d) references to a person are to be construed to include references to a corporation, firm, company, partnership, joint venture, unincorporated body of persons, individual or any state or any agency of a state, whether or not a separate legal entity;
- (e) references to any person are to be construed to include that person's assigns or transferees or successors in title, whether direct or indirect;
- (f) references to any statutory provision are to be construed as references to that statutory provision as amended, supplemented, re-enacted or replaced from time to time (whether before or after the date of this Mortgage and Charge) and are to include any orders regulations instruments or other subordinate legislation made under or deriving validity from that statutory provision;
- (g) Clause headings are for ease of reference only and are not to affect the interpretation of this Mortgage and Charge;
- (h) where the 'Borrower' consists of two or more parties:
  - i. such expression shall in this Mortgage and Charge mean and include such two or more parties and each of them or (as the case may require) any of them;
  - ii. all covenants charges agreements and undertakings expressed or implied on the part of the Borrower in this Mortgage and Charge shall be deemed to be joint and several covenants, charges, agreements and undertakings by such parties;
  - iii. each shall be bound even if any other of them intended or expressed to be bound by this Mortgage and Charge shall not be so bound; and
  - iv. the Lender may release or discharge any one or more of them from all or any liability or obligation under this Mortgage and Charge or may make any arrangement or composition with any such person without thereby releasing any other or others of them or otherwise prejudicing any of its rights under this Mortgage and Charge or otherwise.

## 2. **COVENANT TO PAY**

- 2.1 The Borrower covenants with the Lender that the Borrower will pay to the Lender or discharge all Secured Liabilities on the due date or dates for payment or discharge or, in the absence of an agreed or specified due date, immediately on demand by the Lender.

## 3. **SECURITY**

- 3.1 The Borrower as beneficial owner and as continuing security for the payment and discharge of the Secured Liabilities hereby:
- (a) demises unto the Lender such of the Property as is not registered in the Land Registry **TO HOLD** such of the same as are of freehold tenure unto the Lender for the term of 10000 years from the date hereof and **TO HOLD** such of the same as are of leasehold tenure unto the Lender for the residue of the respective terms of years for which the Borrower now

holds the same respectively (less the last day of each of the such terms) and short particulars of which are set out at the Schedule hereto subject as to all such Property to the proviso for redemption set out in clause 5 hereof provided that the Borrower shall stand possessed of the reversion immediately expectant on the term of years hereby granted in any freehold and leasehold land hereby mortgaged in trust for the Lender and shall assign, convey or dispose of the same as the Lender may direct (subject to the said proviso for redemption) and the Lender may at any time during the continuance of the security hereby created remove the Borrower or any other person, persons or body corporate from being a trustee of the trust declared by this clause and on the removal of the Borrower or such other person, persons or body corporate appoint a new trustee or trustees in the Borrower's, their or its place;

- (b) as registered owner, charges to the Lender such of the Property as is registered in the Land Registry with payment performance and discharge of the Secured Liabilities and hereby assents to the registration of the charge as a burden on the said lands;
- (c) charges in favour of the Lender all buildings fixtures fittings equipment utensils implements furniture plant computers vehicles and machinery now or from time to time placed on or used in or about the Property;
- (d) charges in favour of the Lender all Rental Income present or future and whether payable now or in the future and the proceeds of any sale lease or other disposition of the Property and all rights and claims of the Borrower against all lessees, sub-lessees, licensees or occupiers of the Property and all guarantors and sureties for the obligations of any such person or other third parties in relation to the Property now or in the future existing and capable of being satisfied by the payment of money provided that nothing in this sub-clause shall constitute the Lender as a mortgagee in possession.
- (e) charges in favour of the Lender:
  - (i) all the goodwill of the Business;
  - (ii) the full benefit of all contracts entered into by or with the Borrower in respect of the Business;
  - (iii) all those the book debts and other moneys which now are or may hereafter become owing to the Borrower in connection with the Business;
  - (iv) all capital profits and other moneys received by the Borrower in respect of the Business.
- (f) charges in favour of the Lender by way of floating charge all stock in trade of the Business;
- (g) charges in favour of the Lender by way of floating charge all the property, assets and rights referred to in Clauses 3.1(a) to (e) (inclusive) if and insofar as such charges or any part or parts of the same shall be for any reason ineffective as specific or fixed charges.

- 3.2 The mortgages or charges created by clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d) and 3.1(e) shall constitute fixed mortgages and charges. The charge created by clause 3.1(f) and (g) shall be floating charges unless and until they are converted into fixed charges pursuant to clause 3.4 or by operation of law.
- 3.3 The Borrower shall promptly on demand and at its own cost execute and do all such assurances acts and things including without limitation execute all transfers conveyances assignments and assurances of the Charged Assets and give all notices orders and directions which the Lender may require for perfecting or protecting this Mortgage and Charge or the priority of this Mortgage and Charge or for facilitating the realisation of the Charged Assets or the exercise of any of the rights vested in the lender or any Receiver.
- 3.4 The Lender may at any time by notice in writing to the Borrower convert the floating charges contained in clauses 3.1(f) and (g) into a fixed charge as regards any Charged Assets specified in such notice. A notice under this Clause may be served by the Lender only if, in the sole judgment of the Lender, the Lender considers that the property, assets and rights described or referred to in the notice are in any way in jeopardy. The floating charges contained in this Deed shall, in any event, stand converted into fixed charges automatically upon the following events:
- (a) the occurrence of an Enforcement Event;
  - (b) if without the prior written consent of the Lender the Borrower charges pledges or otherwise encumbers whether by way of fixed or floating security) any of the Charged Assets subject to a floating charge under this Mortgage and Charge or attempts to do so if any person levies or attempts to levy any execution sequestration or other process against any of such Charged Assets;
  - (c) possession being taken of any property by or on behalf of the holders of any debentures of the Borrower secured by a floating charge;
  - (d) the appointment of a Receiver on behalf of the holders of any debentures of the Borrower secured by a floating charge.
- 3.5 The Borrower shall at any time on written demand by the Lender procure that the Rental Income shall be paid directly to such account as the Lender may from time to time direct and the Borrower shall forthwith upon any such demand so instruct its lessees and occupiers of the Property by notice in writing. Following any such demand the Borrower shall hold all Rental Income on trust for the Lender.

#### **4. FURTHER ADVANCES**

This Mortgage and Charge is intended to secure further advances but the Lender is not obliged to make them.

#### **5. DISCHARGE**

If the Borrower shall pay to the Lender the Secured Liabilities in accordance with the covenants contained in this Mortgage and Charge the Lender at the request and cost of the Borrower will duly discharge this Mortgage and Charge.

#### **6. RESTRICTIONS**

The Borrower shall not without the prior written consent of the Lender:

- (a) create or permit to subsist or arise any Encumbrance or any right or option on the Charged Assets or any part thereof. Subject as aforesaid, any mortgage of or charge on the Charged Assets created by the Borrower (otherwise than in favour of the Lender) shall be expressed to be subject to this Mortgage and Charge;
- (b) sell, convey, assign or transfer the Charged Assets or any interest therein or otherwise part with or dispose of any Charged Assets or assign or otherwise dispose of any moneys payable to the Borrower in relation to Charged Assets or agree to do any of the foregoing;
- (c) exercise any of the powers of leasing or agreeing to lease vested in or conferred on mortgagors by common law or by statute or accept the surrender of any lease, underlease or tenancy or agree to do any of the foregoing;
- (d) part with or share possession or occupation of the Property or any part of it or grant any tenancy or licence to occupy the Property or agree to do any of the foregoing;
- (e) compound release exchange set-off grant time or indulgence in respect of or otherwise deal with any of the Rental Income or the debts or policies charged to the Lender under this Mortgage and Charge or do anything whereby the recovery of the same may be impeded delayed or prevented and the Borrower shall enforce its rights in respect of the same.

## **7. COVENANTS BY THE BORROWER**

The Borrower covenants with the Lender at all times during the continuance of this security:

- (a) To keep the buildings installations and structures (whether fully built or in course of construction) and all fixtures fittings equipment utensils implements furniture plant and machinery therein or thereon from time to time upon the Property in good and substantial repair and condition and fully protected from damage or deterioration as a result of weather or malicious damage or any other cause and replace any fixtures fittings equipment utensils implements furniture plant and machinery which have become worn out or otherwise unfit for use by others of a like nature and equal value.)
- (b)
  - (i) To keep the said buildings installations and structures and all fixtures fittings equipment utensils implements furniture plant and machinery situate thereon insured against loss or damage by the Insured Risks in the full replacement value for the time being in such office or offices and on such terms as the Lender shall approve (such approval not to be unreasonably withheld or delayed) with the Lender's interest noted on the policy provided that where the insurance on the Property is effected by a prior charge or some other third party the Lender shall not require the Borrower to effect separate insurance on the Property so long as such insurance complies with the provisions of this Clause and is on terms reasonably satisfactory to the Lender;
  - (ii) to maintain such insurance over the stock in trade from time upon the Property as the Lender shall reasonably require;
  - (iii) to maintain in such office or offices as the Lender shall approve such insurance in respect of employers' liability public liability and liability

under the Defective Premises (Northern Ireland) Order 1975 as the Lender shall reasonably require;

- (iv) punctually to pay all premiums (and other moneys) in respect of such insurances and on demand to deliver to the Lender the policy or policies of all such insurances and the receipt for every such payment and all moneys received under any policy or policies of insurance whether maintained or effected by the Borrower, the Lender or by a third party and whether or not in pursuance of the Borrower's obligations under this Mortgage and Charge shall be applied, at the Lender's option but subject to the rights of any Lessor under the Lease or the rights of any prior charge either in making good the loss or damage to the Property (any deficiency being made good by the Borrower) or towards the discharge or the Secured Liabilities and any such moneys received by the Borrower shall be held by the Borrower on trust for the Lender accordingly;
  - (v) to comply with the terms and conditions of any policy of insurance on the Property or otherwise contemplated by this Clause and not to do or omit to do anything whereby any such insurance may become void or avoidable wholly or in part.
- (c) To pay when due all rents, rent charges (if any), rates, taxes, charges, duties, assessments, impositions and other outgoings whatsoever charged assessed levied or imposed upon the Property or upon the owner or occupier thereof or payable in respect of the Property.
  - (d) To perform and observe all covenants, restrictions, stipulations, provisions, regulations and conditions affecting the Property or the use or enjoyment of it.
  - (e) Not without the previous written consent of the Lender to demolish pull down remove or permit or suffer to be demolished pulled down or removed any building installation or structure for the time being upon the Property or except in connection with the renewal or replacement thereof any fixtures or erect or make or suffer to be erected or made on the Property any building installation structure or alteration or a change of use thereof within the meaning of the Planning Acts or otherwise commit any waste upon or destroy or injure in any manner or by any means lessen or suffer to be lessened the value of the Property.
  - (f) Where at the date of this Mortgage and Charge or at any time during the continuance of this security the Property or any part of it is intended to be developed or is in the course of development, to proceed diligently and to the satisfaction of the Lender and any competent authority with such development in all respects in conformity with the planning and bye-law consents therefore to produce all plans and specifications in relation to such development to the Lender for approval and not to amend such plans and specifications without the Lender's approval.
  - (g)
    - (i) to comply in all respects with the Planning Acts and all licences, consents, permissions or conditions granted or imposed thereunder;
    - (ii) not to make any application for planning permission without the prior consent of the Lender and not to enter into or agree to enter into any agreement under the Planning Acts or any similar Act;
    - (iii) to comply with the requirements of any valid enforcement or other notice or order (whether issued under the Planning Acts or any other statute) within such time as may be specified therein or if no time is specified within such period as may be required by the Lender and to pay to the Lender in reduction of other Secured Liabilities any compensation received as a result of any such notice or order.

- (h) To permit representatives of the Lender with or without workmen or others to enter the Property at all reasonable times to view the state of repair and condition of the Property;
- (i) Within four days of receipt to produce to the Lender a copy of any notice order direction permission or proposal affecting the Property or its use or value and to comply immediately with the terms thereof or if the Lender so requires or approves and at the Borrower's cost to make such objections representations against or in respect of such notice order proposal permission or consent as aforesaid as the Lender may reasonably require;
- (j) On request to produce to or provide for the Lender such documents or information relating to the Property or its development as the Lender may reasonably require;
- (k) To comply (in all material respects) with all obligations imposed under any present or future statute regulation order or instrument or under any bye-laws regulations or requirements of any competent authority or approvals licences or consents relative to the Property or its use or enjoyment or to the Business;
- (l) Where the Property is leasehold or subject to any lease agreement for lease or tenancy (referred to below as an 'occupational lease'):
  - (i) to perform and observe all covenants and conditions contained in the Lease to be performed and observed by the lessee or contained in any occupational lease to be observed by the lessor;
  - (ii) to enforce the due observance and performance of all obligations of all other parties to the Lease and any occupational lease;
  - (iii) not to waive, release or vary any of the terms of the Lease or any occupational lease or exercise any power to determine or extend the same or grant any consent or licence or conclude any rent review under the same without, in each case, the consent of the Lender which consent is not to be unreasonably withheld or delayed in circumstances in which the Borrower may not unreasonably withhold or delay its consent;
  - (iv) if the Borrower shall receive any notice served under section 14 of the 1881 Act or any proceedings shall be commenced for forfeiture of the Lease or any superior lease or the landlord or any superior landlord shall attempt to re-enter under the provisions of the Lease or any superior lease the Borrower shall give immediate notice of such event in writing to the Lender and at the request of the Lender and at the expense of the Borrower take such steps as the Lender may require.
- (m) To keep the Lender (and any Receiver appointed by the Lender) fully and effectively indemnified from and against all actions, proceedings, costs, charges, claims, demands, expenses and liabilities (including Value Added Tax and any other taxes and/or legal and other professional fees) whatsoever in respect of any breach or non-observance or non-performance of any covenants obligations warranties or undertakings on the part of the Borrower contained in this Mortgage and Charge or the making good of any such breach or non-observance or non-performance.
- (n)
  - (i) to keep proper books of account of the Business and duly enter therein particulars of all deals and transactions of the Business and keep full books and all correspondence and other documents belonging or relating to the Business upon the Property and to permit the Lender or any person appointed by the Lender for that purpose to examine such books and documents at all reasonable times and make copies of extracts

- therefrom and give to the Lender all information with regard to the Business which the Lender may reasonably require;
- (ii) to devote himself actively to the conduct of the Business;
  - (iii) to keep the Property open for business as a retail supermarket/convenience store and will so manage and conduct or cause to be managed or conducted the same so that nothing may be done or omitted which is or may be detrimental to the Business.

## **8. POWER TO REMEDY**

8.1 If any building operations on the Property are not carried out in a proper and workmanlike manner and with diligent progress to the reasonable satisfaction of the Lender or its surveyor the Lender may (but shall not be under any obligation to do so) serve a written notice on the Borrower advising it of such failure and the Borrower shall have such period as the Lender may reasonably specify to remedy the same failing which:

- (a) the Borrower shall if required by written notice from the Lender within seven days assign to the Lender or as it may direct all the benefit and interest of the Borrower in any building contract sub-contract appointment of professional advisers and such other contracts or agreements as the Borrower may have relating to such building operations and will take or procure such action as is necessary or desirable to provide the Lender or the nominee of the Lender as aforesaid with privity of contract with such parties or contractors with whom the Borrower may have privity of contract and take all such other steps as the Lender may reasonably require to enable the Lender to procure the completion of the said building operations; and
- (b) the Borrower shall permit the Lender at the Borrower's cost to complete or procure the completion of the said building operations

in both cases with power for the Lender and any persons authorised by the Lender to enter upon the Property for any of the above purposes without thereby becoming a mortgagee in possession.

8.2 If the Borrower fails to perform or observe any covenant or condition on its part contained in this Mortgage or Charge, it shall be lawful for but not obligatory upon the Lender in order to make good such failure in whole or in part and at the Borrower's cost:

- (a) to enter upon the Property and effect such repairs and other works thereon as the Lender considers necessary;
- (b) to take such steps, give such notices, execute such works and do such things as the lender considers necessary to comply with any requirements of or any notice, order, direction permission or proposal, given, served or made under the Planning Acts or otherwise affecting or likely to affect the Property or its value;
- (c) to insure and keep insured the Property in such amount and in such manner as the Lender considers necessary;
- (d) to admit, settle, liquidate, compound or contest in such manner as the Lender thinks fit any claim or liabilities in relation to the Property whether or not the Lender is expressly indemnified in this Mortgage and Charge against the same and to make such payments and expend or



debit on account such moneys as the Lender considers necessary in that behalf but without thereby becoming a mortgagee in possession.

#### **9. ENFORCEMENT EVENTS**

If any of the following events shall occur then the Secured Liabilities shall become immediately due and payable at any time on demand by the Lender and the Lender may in its absolute discretion enforce all or any part of the security constituted by or pursuant to this Mortgage and Charge in any manner it sees fit or as provided for in this Mortgage and Charge:

- (a) the Borrower fails to pay any of the Secured Liabilities when due;
- (b) The Borrower commits any breach of any of the covenants or any other provisions of this Mortgage and Charge and either such breach is in the reasonable opinion of the Lender not capable of remedy or such breach is in the reasonable opinion of the Lender capable of remedy and is not remedied within 21 days after the earlier of the date of notice by the Lender requiring such remedy or the date on which the Borrower first becomes aware of the breach;
- (c) Any representation or warranty made or deemed to be made or repeated by the Borrower in or pursuant to this Mortgage and Charge is or proves to have been untrue or incorrect in any material respect when made or when deemed to be repeated with reference to the facts and circumstances existing at such time;
- (d) Any Encumbrance on or over the business assets rights or revenues of the Borrower becomes enforceable;
- (e) An encumbrancer takes possession or a receiver or administrative receiver or manager or sequestrator is appointed of the whole or any part of the assets, undertaking, rights or revenues of the Borrower or process is levied or enforced upon any of the assets rights or revenues of the Borrower;
- (f) the Borrower suspends payment of its debts or is (or is deemed to be) unable to or admits inability to pay its debts as they fall due or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or proceedings are commenced in relation to the Borrower under any law regulation or procedure relating to reconstruction or adjustment of debts;
- (g) (in the case of an individual or individuals) any bankruptcy petition is presented in respect of the Borrower or the Borrower is, or is adjudicated or found to be bankrupt;
- (h) The Borrower (in the case of an individual or individuals) shall die or become mentally incapacitated;
- (i) (in the case of a company) a petition is presented by any person for an administration order in relation to the Borrower;
- (j) (in the case of a company) any petition is presented by any person and/or any order is made by any competent Court or any resolution is passed by the Borrower for its winding-up or dissolution or for the appointment of a liquidator of the Borrower;
- (k) if an order for compulsory acquisition or requisition of the Property shall be made and confirmed and the same shall in the opinion of the Lender materially affect the value of the Property as a whole;
- (l) if the Borrower ceases or threatens to cease to carry on the Business; or
- (m) if any circumstance shall occur which in the sole judgment of the Lender is prejudicial to or imperils or is likely to prejudice or imperil the security created hereby.

#### **10. ENFORCEMENT**

Sections 20 and 24 of the 1881 Act shall not apply to this Mortgage and Charge and the statutory powers of sale and appointing a Receiver under Sections 19 and 24 of the 1881 Act (as varied and extended under this Mortgage and Charge) shall arise on the execution of this Mortgage and Charge and shall become immediately exercisable without the restrictions contained in the 1881 Act as to the giving of notice or otherwise at any time after the Lender shall have demanded payment of any of the Secured Liabilities or after any breach by the Borrower of any of the provisions of this Mortgage and Charge or the occurrence of an Enforcement Event.

## **11. APPOINTMENT AND POWERS OF RECEIVER**

- 11.1 At any time after the Lender shall have demanded payment of any of the Secured Liabilities or after any breach by the Borrower of any of the provisions of this Mortgage and Charge or the occurrence of an Enforcement Event or if requested by the Borrower, the Lender may appoint by writing any person or persons (whether an officer of the Lender or not) to be a Receiver of all or any part of the Charged Assets and where more than one Receiver is appointed they may be given power to act either jointly or severally.
- 11.2 The Lender may from time to time determine the remuneration of the Receiver and may remove the Receiver and appoint another in his place.
- 11.3 The Receiver shall (so far as the law permits) be the agent of the Borrower (who shall alone be personally liable for his acts, defaults, omissions and remuneration) and shall have and be entitled to exercise all powers conferred by the 1881 Act in the same way as if the Receiver had been duly appointed thereunder and in particular by way of addition to, but without limiting any general powers referred to above (and without prejudice to any of the Lender's powers) the Receiver shall have power in the name of the Borrower or otherwise to do the following things, namely:
  - (a) to take possession of collect and get in all or any part of the Charged Assets and for that purpose to take any proceedings as he shall think fit;
  - (b) to commence and/or complete any building operations on the Property and to apply for and obtain any planning permissions, building regulation approvals and any other permissions, consents or licences in each case as he may in his absolute discretion think fit;
  - (c) for the purpose of exercising any of the rights, powers, authorities and discretions conferred on him by or pursuant to his Mortgage and Charge or for any other purpose to borrow moneys from the Lender or others on the security of the Charged Assets or otherwise on such terms as he may in his absolute discretion think fit;
  - (d) generally to manage the Charged Assets in such manner as he shall think fit;
  - (e) if the Property is leasehold to vary the terms of or surrender any lease and/or to take a new lease of it or of any part of it on such terms as he shall think fit and so that any such new lease shall ipso facto become charged to the Lender on the terms of this Mortgage and Charge so far as applicable and to execute a formal legal charge over any such new lease in favour of the Lender in such form as the Lender may reasonably require;
  - (f) to sell, transfer, assign, let or lease or concur in selling, letting or leasing the Property or any part of it and the grant of any rights over the Property (either by public auction or private contract or otherwise) on

such terms and conditions and for such consideration including without limitation shares, securities (or any other Borrower) or other investments payable at such time or times as he may in his absolute discretion think fit;

- (g) to vary the terms of, terminate, grant renewals of or accept surrenders of leases or tenancies of the Property or any part of it in such manner and for such terms with or without a premium or other compensation or consideration including the payment of money to a lessee or tenant on a surrender with such rights relating to other parts of the Property and containing such covenants on the part of the Borrower or otherwise and generally on such terms and conditions as in his absolute discretion he shall think fit;
- (h) to make any arrangements or compromise which the Lender or as he shall think fit whether in relation to any lease of the Property or to any covenants, conditions or restrictions relating to the Property or without limitation otherwise;
- (i) to make and effect all repairs and improvements;
- (j) to enter into bonds, covenants, commitments, guarantees, indemnities and like matters and to make all payments needed to effect, maintain, or satisfy the same;
- (k) to settle adjust refer to arbitration compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Borrower or relating in any way to the Charged Assets;
- (l) to effect such insurances of or in connection with the Charged Assets as he shall in his absolute discretion think fit;
- (m) to appoint managers officers contactors and agents for the aforesaid purposes upon such terms as to remuneration or otherwise as he may determine;
- (n) to do all such other acts and things as may be considered to be incidental or conducive to any of the matters or powers aforesaid and which he lawfully may or can do.

Provided nevertheless that the Receiver shall not be authorised to exercise any of the above powers if and insofar and so long as the Lender shall in writing exclude the same whether in or at the time of his appointment or subsequently.

- 11.4 Any moneys received by the Receiver in the exercise of his powers under this Mortgage and Charge and under general law shall be (so far as the law permits) applied by him as follows:

- (a) in payment of the costs, charges and expenses of and incidental to his appointment and the exercise of all or any of his powers;
  - (b) in payment of his remuneration;
  - (c) in payment to the Lender of moneys whether for principal, interest or otherwise in arrear or accruing due under this Mortgage and Charge.
- and any balance shall be paid to the person or persons entitled to it.

## 12. **LENDER'S LIABILITY**

- 12.1 In no circumstances shall the Lender be liable to account to the Borrower as a mortgagee in possession or otherwise for any moneys not actually received unconditionally and irrevocably by the Lender.
- 12.2 In no circumstances shall the Lender be liable to the Borrower or any other persons for any costs, charges, losses, damages, liabilities or expenses arising from or connected with any realisation of the Charged Assets or from any act, default, omission, or misconduct of the Lender its officers employees or agents in relation to the Charged Assets or in connection with this Mortgage and Charge except to the extent that they shall be caused by the Lender's own fraud negligence or wilful misconduct or that of its officers or employees.

**13. PROTECTION OF THIRD PARTIES**

Any purchaser or any other person dealing with the Lender or any Receiver shall not be concerned to enquire whether the Secured Liabilities have become payable or whether any power which it or he is purporting to exercise has become exercisable or whether any money is due under this Mortgage and Charge or as to the application of any money paid, raised or borrowed or as to the propriety or regularity of any sale by or other dealing with the Lender or such Receiver. All the protection to purchasers contained in Section 21 and 22 of the 1881 Act shall apply to any person purchasing from or dealing with the Lender or any Receiver.

**14. POWERS OF LEASING**

The statutory powers of sale leasing and accepting surrenders exercisable by the Lender are hereby extended so as to authorise the Lender whether in the name of the Lender or in that of the Borrower to grant a lease or leases of the whole or any part or parts of the Property with such rights relating to other parts of it and containing such covenants on the part of the Borrower and generally on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) and whether or not at a premium as the Lender (in its absolute discretion) shall think fit.

**15. POWER OF ATTORNEY**

- 15.1 The Borrower hereby irrevocably appoints the Lender and the Receiver jointly and also severally the Attorney and Attorneys of the Borrower for the Borrower and either in the name of the Lender or the Receiver (as the case may be) or in the name and on behalf of the Borrower and as the act and deed of the Borrower or otherwise to sign seal and deliver execute as a deed and otherwise perfect any deed assurance agreement instrument or act which may be required or may be deemed proper for any of the purposes referred to in or otherwise in connection with this Mortgage and Charge including without limitation to convey or assign any freehold or leasehold reversion in the Property to a purchaser thereof or to his heirs, executors, administrators and assigns or as he or they shall direct. The Borrower ratifies and confirms and agrees to ratify and confirm whatever any attorney appointed under this Clause properly does or purports to do in the exercise of ally or any of the powers, authorities and discretions granted or referred to in this Mortgage and Charge.
- 15.2 The power of attorney hereby granted is irrevocable and for value as part of the security constituted by this Mortgage and Charge.

**16. LENDER'S RIGHTS**

- 16.1 At any time after this Mortgage and Charge becomes enforceable all powers of the Receiver may be exercised by the Lender whether as attorney of the Borrower or otherwise.
- 16.2 The Borrower agrees that at any time after this Mortgage and Charge becomes enforceable:
- (a) upon any sale or other disposition in exercise of the powers contained or implied by this Mortgage and Charge the Lender may sever any fixtures from the Property and sell the same apart from the Property without taking possession of the Property and apply the net proceeds of such sale in or towards satisfaction of the Secured Liabilities;
  - (b) the Lender may as agent of the Borrower remove and sell any chattels on the Property and the Lender shall have the right to retain or set-off such proceeds of sale against any indebtedness of the Borrower to the Lender;
  - (c) it shall be lawful for the Lender to enter into any arrangement or accept any composition in relation to the debts hereby charged without the concurrence of the Borrower and any such arrangement or composition shall be binding on the Borrower,
- 16.3 The Lender shall, on receiving notice that the Borrower has encumbered or disposed of the Charged Assets or any part thereof or any interest therein, be entitled to close any account or accounts of the Borrower and to open a new account or accounts with the Borrower and (without prejudice to any right of the Lender to combine accounts) no money paid into or carried to the credit of any such new account shall be appropriated towards or have the effect of discharging any part of the amount due to the Lender on any such closed account. 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 by the Borrower to the Lender 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 Borrower to the Lender when it received such notice.

## **17. COSTS AND EXPENSES**

- 17.1 The Borrower shall, on demand and on a full indemnity basis, pay to the Lender:
- (a) the amount of all costs and expenses (including legal and out-of-pocket expenses and any Value Added Tax on such costs and expenses) which the Lender and any Receiver appointed by the Lender and any Receiver appointed by the Lender incurs in connection with:
    - (i) any stamping or registration of this Mortgage and Charge;
    - (ii) any actual or proposed amendment of or waiver or consent under or in connection with this Mortgage and Charge;
    - (iii) any discharge or release of this Mortgage and Charge;
    - (iv) the preservation or exercise (or attempted preservation or exercise) of any rights under or in connection with, and the enforcement (or attempted enforcement) of, this Mortgage and Charge and any related document;
    - (v) obtaining payment of the Secured Liabilities;

- (vi) dealing with or obtaining advice about any other matter or question arising out of or in connection with this Mortgage and Charge and any related document;
  - (b) all other moneys paid by the Lender in perfecting or otherwise in connection with this Mortgage and Charge or in respect of the Charged Assets including without limitation all moneys expended by the Lender under clause 8 and all moneys advanced or paid by the Lender to any Receiver for the purposes set out in clause 11.
- 17.2 Such costs expenses and other moneys shall be recoverable from the Borrower as a debt and may be debited to any account of the Borrower and shall bear interest accordingly and shall be charged on the Charged Assets.

## **18. CONTINUING SECURITY**

- 18.1 This Mortgage and Charge shall be a continuing security to the Lender notwithstanding any settlement of account or other matter or thing whatsoever and shall be in addition to and shall not prejudice or affect or be prejudiced or affected by any security relating to the Charged Assets or to any other property or any other security which the Lender may now or at any time in the future hold in respect of the Secured Liabilities or any of them and shall continue in full force and effect as a continuing security until discharged.
- 18.2 The continuing nature of the security hereby created shall not be determined or affected by notice to the Lender of the death or mental incapacity of the Borrower.
- 18.3 Section 17 of 1881 Act shall not apply to this Mortgage and Charge.

## **19. SET-OFF**

- 19.1 The Lender may, without notice to the Borrower, apply any credit balance (whether or not then due and in whatever currency) which is at any time held by any office or branch of the Lender for the account of the Borrower in or towards satisfaction of the Secured Liabilities of any of them.
- 19.2 For the purposes of exercising any rights either under this Clause, or any rights under the general law, the Lender may convert or translate all or any part of such a credit balance into another currency applying a rate which in the Lender's opinion fairly reflects prevailing rates of exchange.
- 19.3 The Lender is not obliged to exercise any of its rights under this Clause, which shall be without prejudice and in addition to any rights under the general law
- 19.4 In this Clause 'rights under the general law' means any right of set-off, combination or consolidation of accounts, lien or similar right which the Lender has under any applicable law.

## **20. NOTICES**

- 20.1 Every notice demand or other communication under this Mortgage and Charge shall be in writing and may be delivered personally or by letter or facsimile transmission despatched as follows:
  - (a) if to the Lender, to its registered office;
  - (b) if to the Borrower, to the Property or any other place of business of the Borrower or (in the case of a company) to the Borrower's registered office or (in the case of an individual) to the Borrower's home address;

or to such other address as may be notified in accordance with this Clause by the relevant party to the other party for such purpose.

20.2 Every notice demand or other communication shall be deemed to have been received (if send by post) 24 hours after despatch and (if delivered personally or despatched by facsimile transmission) at the time of delivery or despatch if during normal business hours in the place of intended receipt on a working day in that place and otherwise at the opening of business in that place on the next succeeding such working day.

20.3 Any notices demands or other communication as aforesaid to be given by the Lender may be made by any officer of the Lender or by any person or firm acting as solicitor or solicitors for the Lender.

## **21. TRANSFERS**

21.1 This Mortgage and Charge is freely assignable or transferable by the Lender.

21.2 The Borrower may not assign or transfer any of its obligations under this Mortgage and Charge or enter into any transaction which would result in any of those obligations passing to another person.

21.3 The Lender may disclose to any person related to the Lender and/or any person to whom it is proposed to transfer to assign or has transferred or assigned this Mortgage and Charge any information about the Borrower and the Business.

## **22. MISCELLANEOUS**

22.1 No delay or omission on the part of the Lender exercising any right or remedy under this Mortgage and Charge shall impair that right or remedy or operate as or be taken to be a waiver of it; nor shall any single partial or defective exercise of any such right or remedy preclude any other or further exercise under this Mortgage and Charge of that or any other right or remedy.

22.2 The Lender's rights under this Mortgage and Charge, are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Lender deems expedient.

22.3 Any waiver by the Lender of any terms of this Mortgage and Charge, or any consent or approval given by the Lender under it, shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

22.4 If at any time any one or more of the provisions of this Mortgage and Charge is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality validity and enforceability of the remaining provisions of this Mortgage and Charge nor the legality validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result.

22.5 Any certificate or determination of the Lender as to the amount of the Secured Liabilities or without limitation any matter provided for in this Mortgage and Charge shall, in the absence of manifest error, be conclusive and binding on the Borrower.

## **23. INHIBITION**

23.1 The Borrower covenants with the Lender in respect of such of the Property as is registered in the Land Registry that he will as soon as reasonably possible after the date hereof apply to the Registrar of Titles for an inhibition in the form set

out at 23.2 below to be placed on the folio or folios forming the Property and the Borrower further covenants that he will use all reasonable endeavours to ensure that the said inhibition is placed upon the folio or folios including the payments of all fees in respect of such application.

- 23.2 The wording of the inhibition is as follows: "All dealings with the land herein (save and except dealings overriding the registered ownership) are inhibited unless consented to by Henderson Wholesale Limited whose address for service is 9-11 Hightown Avenue, Newtownabbey BT36 4RT."

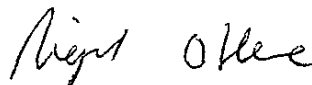
**24. LAW AND JURISDICTION**

- 24.1 This Mortgage and Charge is governed by and shall be construed in accordance with the law of Northern Ireland.
- 24.2 The Borrower irrevocably agrees for the benefit of the Lender that the Courts of Northern Ireland shall have jurisdiction to hear and determine any suit action or proceeding, and to settle any dispute, which may arise out of or in connection with this Mortgage and Charge and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 24.3 Nothing contained in this Clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of any such proceedings in more or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 24.4 The Borrower irrevocably waives any objection which it may have now or in the future to the Courts of Northern Ireland being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

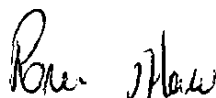
**IN WITNESS** whereof this Mortgage and charge has been duly executed as a deed and is intended to be and is delivered on the date first above written.

EXECUTED as a DEED by  
**O'HARES DRUMANESS LIMITED** acting by:

Director



Director/Secretary





EXECUTED as a DEED by  
**HENDERSON WHOLESALE LIMITED** acting by:

Director



Director/Secretary



**SCHEDULE**

**The Property**

Petrol filling station supermarket convenience store and premises situate at and known as 121 Drumaness Road, Drumaness being all of the lands comprised in a sub-lease of even date made between Henderson Wholesale Limited (1) and O'Hares Drumaness Limited (2)