

MR01

Particulars of a charge

700619/65



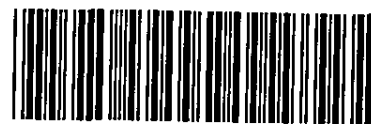
A fee is payable with this form  
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☒ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument

☒ **What this form is NOT**  
You may not use this form to  
register a charge where  
instrument Use form M

WEDNESDAY



A04 02/07/2014 #61  
COMPANIES HOUSE

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. **Do not send the original**

**1 Company details**

Company number 0 6 5 8 9 1 8 0  
Company name in full Ability Hotels (Luton) Limited

0002 For official use  
→ Filing 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 d 2 d 6 m 0 m 6 y 2 y 0 y 1 y 4 ✓

**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 Mount Street Loan Solutions LLP ✓

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

MR01

Particulars of a charge

4

**Brief description**

Brief description

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument

N/A

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument"

Please limit the description to the available space

5

**Other charge or fixed security**

Does the instrument include a charge (which is not a floating 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 company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ Yes

☐ No

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**

Signature

Please sign the form here

Signature

X DUA Rps UK LLP

X

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

# MR01

## Particulars of a charge



### Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record

Contact name Preeya Gupta

Company name DLA Piper UK LLP

Address 3 Noble Street

Post town London

County/Region

Postcode E C 2 V 7 E E

Country UK

DX DX: 33866 Finsbury Square

Telephone 020 7796 6107



### 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: 6589180

Charge code: 0658 9180 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 26th June 2014 and created by ABILITY HOTELS (LUTON) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd July 2014

Given at Companies House, Cardiff on 7th July 2014

DX



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**



I CERTIFY THAT SAVE FOR MATERIAL REDACTED  
PURSUANT TO s859G OF THE COMPANIES ACT 2006,  
THIS IS A TRUE COMPLETE AND CORRECT COPY  
OF THE ORIGINAL INSTRUMENT

DATE 17/12/2014  
SIGNED DLA Piper UK LLP  
DLA PIPER UK LLP

DATED 26 JUNE

2014

(1) THE COMPANIES LISTED IN PART 1 OF SCHEDULE 1  
as Subordinated Creditors

(2) THE COMPANIES LISTED IN PART 2 OF SCHEDULE 1  
as Debtors

- and -

(3) MOUNT STREET LOAN SOLUTIONS LLP  
as Security Agent

## SECURITY ASSIGNMENT

relating to  
subordinated debt

*This Security Assignment is subject to and has the benefit of an Intercreditor Agreement dated 26 JUNE 2014 and made between, Mount Street Loan Solutions LLP as Senior Agent, (2) the financial institutions named on the signing pages as Senior Lenders, (3) LaSalle Investment Management as Mezzanine Agent, (4) the financial institutions named on the signing pages as Mezzanine Lenders (5) Ability (Hotels) Limited as the original mezzanine shareholder, (6) Ability Hotels (Luton) Limited as the Mezzanine Borrower, (7) Ability Hotels (Luton Inn) Limited and Ability Hotels (Cambridge) Limited as Senior Borrowers, (8) the entities named on the signing pages to it as original debtors, (9) the entities named on the signing pages to it as original subordinated creditors, (10) Mount Street Loan Solutions LLP as Security Agent and (11) LaSalle Investment Management Limited as security trustee for the mezzanine creditors; as each such term is defined in this Deed.*

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THIS DEED is made on 26 JUNE

2014

**BETWEEN:**

- (1) THE COMPANIES LISTED IN PART 1 OF SCHEDULE 1 (the "Subordinated Creditors");
- (2) THE COMPANIES LISTED IN PART 2 OF SCHEDULE 1 (the "Debtors"); and
- (3) MOUNT STREET LOAN SOLUTIONS LLP (as security trustee for the Secured Parties (as defined below)) (in such capacity, the "Security Agent")

**IT IS AGREED**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed

- (a) until the Senior Discharge Date, terms defined in, or construed for the purposes of, the Senior Facility Agreement (as defined below) have the same meanings when used in this Deed (unless the same are otherwise defined in this Deed),
- (b) after the Senior Discharge Date, terms defined in or construed for the purposes of the Mezzanine Facility Agreement (as defined below) have the same meanings when used in this Deed (unless the same are otherwise defined in this Deed), and
- (c) at all times the following terms have the following meanings

"Act" means the Law of Property Act 1925,

"Assigned Assets" means those rights, assets and income assigned or charged or purported to be assigned or charged pursuant to clause 3.1 and clause 3.3 and includes any part thereof and any interest therein and, where the context permits, the proceeds of sale of such rights, assets and income,

"Default Rate" means the rate of interest determined in accordance with clause 8.3 (*Default interest*) of the Senior Facility Agreement or (after the Senior Discharge Date) in accordance with clause 8.3 (*Default interest*) of the Mezzanine Facility Agreement except that references to an Obligor are to be construed as references to a Subordinated Creditor,

"Delegate" means any delegate, sub-delegate, agent, attorney or co-trustee appointed by the Security Agent or by a Receiver,

"Finance Documents" means the Senior Finance Documents and the Mezzanine Finance Documents,

"Intercreditor Agreement" means the intercreditor agreement dated on or about the date of this Deed and made between, Mount Street Loan Solutions LLP as Senior Agent, (2) the financial institutions named on the signing pages as Senior Lenders, (3) LaSalle Investment Management as Mezzanine Agent, (4) the financial institutions named on the signing pages as Mezzanine Lenders (5) Ability (Hotels) Limited as the original mezzanine shareholder, (6)



Ability Hotels (Luton) Limited as the Mezzanine Borrower, (7) Ability Hotels (Luton Inn) Limited and Ability Hotels (Cambridge) Limited as Senior Borrowers, (8) the entities named on the signing pages to it as original debtors, (9) the entities named on the signing pages to it as original subordinated creditors, (10) Mount Street Loan Solutions LLP as Security Agent and (11) LaSalle Investment Management Limited as security trustee for the mezzanine creditors,

**"Mezzanine Agent"** means the *"Agent"* as that term is defined in the Mezzanine Facility Agreement,

**"Mezzanine Borrower"** means the *"Borrower"* as that term is defined in the Mezzanine Facility Agreement,

**"Mezzanine Facility Agreement"** means the mezzanine facility agreement dated on or about the date of this Deed and made between (1) Ability Hotels (Luton) Limited as borrower, (2) Ability Hotels (Luton Inn) Limited and Ability Hotels (Cambridge) Limited as guarantors, (3) LREDS II Sterling Holdings 2 S a r l (as original lender) and (4) LaSalle Investment Management as agent and security agent, pursuant to which certain credit facilities were made available to Ability Hotels (Luton) Limited,

**"Mezzanine Finance Documents"** means each *"Finance Document"* as that term is defined in the Mezzanine Facility Agreement

**"Mezzanine Finance Party"** means each *"Finance Party"* as that term is defined in the Mezzanine Facility Agreement,

**"Mezzanine Lender"** means the *"Lender"* as that term is defined in the Mezzanine Facility Agreement,

**"Party"** means a party to this Deed,

**"Receiver"** means any receiver or receiver and manager or administrative receiver appointed by the Security Agent of the whole or any part of the Assigned Assets under this Deed,

**"Relevant Agent"** means

- (a) until the Senior Discharge Date, the Senior Agent, and
- (b) thereafter, the Mezzanine Agent,

**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or alone or in any other capacity whatsoever) of each Transaction Obligor to the Security Agent and/or the other Secured Parties (or any of them) under or pursuant to any Finance Document (including all monies covenanted to be paid under this Deed),

**"Secured Parties"** has the meaning given to that term in the Intercreditor Agreement,

**"Security"** means any mortgage, pledge, lien, charge, assignment by way of security, hypothecation, security interest, title retention, preferential right or trust arrangement or any other security agreement or arrangement having the effect of security,

**"this Security"** means the Security created or evidenced by or pursuant to this Deed,

**"Security Period"** means the period beginning on the date of this Deed and ending on the date on which.

- (a) all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full, and
- (b) no Secured Party has any further commitment, obligation or liability under or pursuant to the Finance Documents,

**"Senior Agent"** means the *"Agent"* as that term is defined in the Senior Facility Agreement,

**"Senior Borrowers"** means the *"Borrowers"* as that term is defined in the Senior Facility Agreement,

**"Senior Discharge Date"** has the meaning given to that term in the Intercreditor Agreement,

**"Senior Facility Agreement"** means the senior facility agreement dated on or about the date of this Deed and made between (1) the Senior Borrowers, (2) Renshaw Bay LLP as Investment Manager, (3) the financial institution listed in part 2 and part 3 of schedule 1 thereto as the Original Lenders, (4) Mount Street Loan Solutions LLP as Agent and (5) the Security Agent, pursuant to which the Original Lenders agreed to make certain facilities available to the Senior Borrowers;

**"Senior Finance Documents"** means each *"Finance Document"* as that term is defined in the Senior Facility Agreement;

**"Senior Finance Party"** means any *"Finance Party"* as such term is defined in the Senior Facility Agreement,

**"Senior Lenders"** means the *"Lenders"* as such term is defined in the Senior Facility Agreement,

**"Subordinated Documentation"** means the documents specified in schedule 2 (*Subordinated Documentation*) and all other agreements and/or security evidencing or recording the terms of the Subordinated Liabilities from time to time;

**"Subordinated Liabilities"** has the meaning given to that term in the Intercreditor Agreement, and

**"Transaction Obligor"** means each *"Transaction Obligor"* as such term is defined in the Senior Facility Agreement together with each *"Transaction Obligor"* as such term is defined in the Mezzanine Facility Agreement

## 1.2 Interpretation

- (a) Unless a contrary indication appears, in this Deed
  - (i) until the Senior Discharge Date, the provisions of clause 1.2 (*Construction*) of the Senior Facility Agreement (other than clause 1.2(c)) apply to this Deed as though they were set out in full in this Deed, except that references to *"this Agreement"* will be construed as references to this Deed, and

- (ii) after the Senior Discharge Date, the provisions of clause 1.2 (*Construction*) of the Mezzanine Facility Agreement (other than clause 1.2(c)) will apply to this Deed as though they were set out in full in this Deed, except that references to "*this Agreement*" will be construed as references to this Deed
- (b) Unless a contrary indication appears, any reference in this Deed to
  - (i) the "**Subordinated Creditor**", the "**Debtors**", the "**Security Agent**" or any other "**Secured Party**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents,
  - (ii) "**this Deed**", the "**Senior Facility Agreement**", the "**Mezzanine Facility Agreement**", any other "**Finance Document**" or any other agreement or instrument is a reference to this Deed, the Senior Facility Agreement, the Mezzanine Facility Agreement, that other Finance Document or that other agreement or instrument as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the obligations of any Transaction Obligor or provides for further advances),
  - (iii) "**Secured Liabilities**" includes obligations and liabilities which would be treated as such but for the liquidation, administration or dissolution of or similar event affecting any Transaction Obligor,
  - (iv) "**reasonable endeavours**" includes payment by the relevant person of all its own and any third party's reasonable costs, fees and expenses, and
  - (v) "**including**" or "**includes**" means including or includes without limitation
- (c) Each undertaking of a Subordinated Creditor (other than a payment obligation) contained in this Deed
  - (i) must be complied with at all times during the Security Period, and
  - (ii) is given by such Subordinated Creditor for the benefit of the Security Agent and each other Secured Party
- (d) If the Security Agent or the Relevant Agent reasonably considers, that an amount paid by any Transaction Obligor to a Secured Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of such Transaction Obligor, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed
- (e) The Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand

### 1.3 Joint and several

The liabilities and obligations of each Subordinated Creditor under this Deed are joint and several. Each Subordinated Creditor agrees to be bound by this Deed notwithstanding that any

other Subordinated Creditor which was intended to sign or be bound by this Deed did not sign or is not bound by this Deed

#### **1.4 Inconsistency between this Deed and the Intercreditor Agreement**

If there is any conflict or inconsistency between any provision of this Deed and any provision of the Intercreditor Agreement, the provision of the Intercreditor Agreement shall prevail

#### **1.5 Trust**

All Security and dispositions made or created, and all obligations and undertakings contained, in this Deed to, in favour of or for the benefit of the Security Agent are made, created and entered into in favour of the Security Agent as trustee for the Secured Parties from time to time on the terms of the Intercreditor Agreement

#### **1.6 Third party rights**

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed

#### **1.7 Delivery**

The Parties intend this Deed to be delivered on the first date specified on page 1 of this Deed

### **2. COVENANT TO PAY AND DEFAULT INTEREST**

#### **2.1 Covenant to pay**

- (a) Each Subordinated Creditor as principal obligor and not merely as surety covenants in favour of the Security Agent that it will pay and discharge the Secured Liabilities from time to time when they fall due
- (b) Every payment by a Subordinated Creditor of a Secured Liability which is made to or for the benefit of a Secured Party to which that Secured Liability is due and payable in accordance with the Finance Document under which such sum is payable to that Secured Party shall operate in satisfaction to the same extent of the covenant contained in clause 2.1(a)

#### **2.2 Default interest**

Any amount which is not paid under this Deed when due shall bear interest (both before and after judgment and payable on demand) from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis

- (a) at the rate and in the manner agreed in the Finance Document under which such amount is payable, or
- (b) (in the absence of such agreement) at the Default Rate from time to time. In such a case default interest will accrue from day to day on a year of 365 days and will be compounded at such intervals as the Security Agent (acting on the instructions of the Relevant Agent) states are appropriate

### **3. GRANT OF SECURITY**

#### **3.1 Nature of security**

All Security and dispositions created or made by or pursuant to this Deed are created or made

- (a) in favour of the Security Agent,
- (b) over the rights, title and interest in and to the present and future assets of each Subordinated Creditor;
- (c) with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994, and
- (d) as continuing security for payment of the Secured Liabilities

#### **3.2 Assignment**

- (a) Each Subordinated Creditor, assigns and agrees to assign absolutely (subject to a proviso for reassignment on redemption) all of its present and future right, title and interest in and to and under
  - (i) the Subordinated Liabilities,
  - (ii) the Subordinated Documentation, and
  - (iii) all present and future claims, causes of action, payments and proceeds in respect thereof
- (b) To the extent that any such right, title, benefit and interest described in clause 3.2(a) is not assignable or capable of assignment, such assignment purported to be effected by clause 3.2(a) shall operate, as continuing security for the payment, discharge, performance and satisfaction of the Secured Obligations, as an assignment of any and all proceeds of such right, title, benefit or interest paid or payable thereunder

#### **3.3 Charge**

Each Subordinated Creditor, charges and agrees to charge in favour of the Security Agent by way of a first fixed charge (to the extent the same are not effectively assigned under clause 3.2 (*Assignment*))

- (a) the Subordinated Liabilities,
- (b) the Subordinated Documentation, and
- (c) all present and future claims, causes of action, payments and proceeds in respect thereof

#### **3.4 Notice of assignment and/or charge**

Immediately upon execution of this Deed, each Subordinated Creditor shall in respect of each Subordinated Document, deliver a duly completed notice of assignment to each other party to that document, and procure that each such party executes and delivers to the Security Agent an acknowledgement, in each case in the respective forms set out in schedule 3 (*Form of*

*notice to and acknowledgement by party to Subordinated Document)* or, in each case, in such other form as the Security Agent shall agree.

### **3.5 Assigned Assets**

The Security Agent is not obliged to take any steps necessary to preserve any Assigned Asset, to enforce any term of any Subordinated Documentation against any person or to make any enquiries as to the nature or sufficiency of any payment received by it pursuant to this Deed

## **4. CONTINUING SECURITY**

### **4.1 Continuing security**

This Security is continuing and will extend to the ultimate balance of the Secured Liabilities regardless of any intermediate payment or discharge in whole or in part. This Deed shall remain in full force and effect as a continuing security for the duration of the Security Period

### **4.2 Additional and separate security**

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

### **4.3 Right to enforce**

This Deed may be enforced against any Subordinated Creditor without the Security Agent and/or any other Secured Party first having recourse to any other right, remedy, guarantee or Security held by or available to it or any of them.

## **5. LIABILITY OF THE SUBORDINATED CREDITORS RELATING TO ASSIGNED ASSETS**

Notwithstanding anything contained in this Deed or implied to the contrary, each Subordinated Creditor remains liable to observe and perform all conditions and obligations assumed by it in relation to the Assigned Assets. The Security Agent is under no obligation to perform or fulfil any such condition or obligation or to make any payment in respect of any such condition or obligation

## **6. REPRESENTATIONS**

### **6.1 General**

Each Subordinated Creditor makes the representations and warranties set out in this clause 6 to the Security Agent and to each other Secured Party

### **6.2 No Security**

No Security (other than that created by this Deed) exists over any Assigned Asset

### **6.3 Ownership of Assigned Assets**

Each Subordinated Creditor is the sole legal and beneficial owner of all of the Assigned Assets identified against its name in schedule 2

#### **6.4 Binding obligations**

- (a) The obligations expressed to be assumed by each Subordinated Creditor in this Deed are legal, valid, binding and enforceable obligations of that Subordinated Creditor
- (b) This Deed creates the security interests which it purports to create, and those security interests are valid and effective and are not liable to be avoided or otherwise set aside on its liquidation or administration or otherwise

#### **6.5 Non-conflict with other obligations**

The entry into and performance by each Subordinated Creditor of, and the transactions and granting of Security contemplated by, this Deed do not and will not conflict with

- (a) any law or regulation applicable to that Subordinated Creditor,
- (b) that Subordinated Creditor's constitutional documents, or
- (c) any agreement or instrument binding upon that Subordinated Creditor or any of that Subordinated Creditor's assets

#### **6.6 Power and authority**

- (a) Each Subordinated Creditor has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed
- (b) No limit on any Subordinated Creditor's powers will be exceeded as a result of the grant of security contemplated by this Deed
- (c) Each Subordinated Creditor is acting in all matters relating to this Deed for its own account and not as trustee, nominee or agent or any other capacity whatsoever

#### **6.7 Validity and admissibility in evidence**

All Authorisations required or desirable

- (a) to enable each Subordinated Creditor lawfully to enter into, exercise its rights and comply with its obligations in this Deed, and
- (b) to make this Deed admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect

#### **6.8 No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings or investigations are currently taking place or threatened in relation to any of the Assigned Assets

#### **6.9 Ranking**

This Security has a first ranking priority and is not subject to any prior ranking or pari passu Security

#### **6.10 Time when representations made**

- (a) All the representations and warranties in this clause 6 are made by each Subordinated Creditor on the date of this Deed and are also deemed to be made by each Subordinated Creditor
  - (i) on the date of each Utilisation Request and each Utilisation Date under the Senior Facility Agreement and the Mezzanine Facility Agreement, and
  - (ii) on the first day of each Interest Period under the Senior Facility Agreement and the Mezzanine Facility Agreement
- (b) Each representation or warranty deemed to be made after the date of this Deed shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made

### **7. UNDERTAKINGS BY THE SUBORDINATED CREDITORS**

#### **7.1 Negative Pledge and Disposals**

No Subordinated Creditor shall do or agree to do any of the following without the prior written consent of the Security Agent

- (a) create or permit to subsist any Security on any Assigned Asset other than as created by this Deed, or
- (b) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to dispose of all or any part of any Assigned Asset

#### **7.2 Nature of Security**

Each Subordinated Creditor hereby represents and warrants to the Security Agent on behalf of the Secured Parties that this Deed creates those security interests it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of such Subordinated Creditor or otherwise

### **8. POWER TO REMEDY**

#### **8.1 General power to remedy**

If at any time a Subordinated Creditor does not comply with any of its obligations under this Deed, the Security Agent (without prejudice to any other rights arising as a consequence of such non-compliance) shall be entitled (but not bound) to rectify that default. Each Subordinated Creditor irrevocably authorises the Security Agent and its employees and agents by way of security to do all things (including entering the property of the relevant Subordinated Creditor) which are necessary or desirable to rectify that default.

#### **8.2 Mortgagee in possession**

The exercise of the powers of the Security Agent under this clause 8 shall not render it or any other Secured Party liable as a mortgagee in possession.



### **8.3 Monies expended**

Each Subordinated Creditor shall pay to the Security Agent on demand any monies which are expended by the Security Agent in exercising its powers under this clause 8, together with interest at the Default Rate from each date on which those monies were expended by the Security Agent (both before and after judgment) and otherwise in accordance with clause 2.2 (*Default interest*).

## **9. WHEN SECURITY BECOMES ENFORCEABLE**

### **9.1 When enforceable**

This Security shall become immediately enforceable upon and at any time after the occurrence of an Event of Default.

### **9.2 Statutory powers**

The power of sale and other powers conferred by section 101 of the Act (as amended or extended by this Deed) shall be immediately exercisable upon and at any time after the occurrence of any Event of Default.

### **9.3 Enforcement**

After this Security has become enforceable, the Security Agent may in its absolute discretion enforce all or any part of this Security in such manner as it sees fit.

## **10. ENFORCEMENT OF SECURITY**

### **10.1 General**

- (a) For the purposes of all rights and powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.
- (b) Sections 93 (restricting the right of consolidation) and 103 of the Act (restricting the power of sale) shall not apply to this Deed.
- (c) Each Subordinated Creditor shall provide the Security Agent and/or any Receiver and their respective representatives all assistance requested by such party to enforce all or any rights in or in respect of the Assigned Assets.
- (d) Without limiting any powers of the Security Agent hereunder, the Security Agent shall be entitled at any time after this Security has become enforceable (without any further consent or authority on the part of the Subordinated Creditor and irrespective of any direction given by the Subordinated Creditor (unless required by law)) to
  - (i) (or if so requested by the Subordinated Creditor by written notice at any time may) appoint any person or persons to be a receiver, receiver, and manager or administrative receiver of all or any part of the Assigned Assets and/or of the income of the Assigned Assets, and/or
  - (ii) appoint or apply for the appointment of any person who is appropriately qualified as administrator of the Subordinated Creditor, and/or

- (iii) exercise (in the name of the Subordinated Creditor and without any further consent or authority of the Subordinated Creditor) in relation to the Subordinated Documentation and the Subordinated Liabilities all of the rights of an absolute owner, and/or
- (iv) assign any or all of the Assigned Assets to any person on such terms as the Security Agent considers appropriate, and/or
- (v) exercise all or any of the powers conferred on mortgagees by the Act (as amended or extended by this Deed) and/or all or any of the powers which are conferred by this Deed on a Receiver, in each case without first appointing a Receiver or notwithstanding the appointment of any Receiver; and/or
- (vi) collect, recover or compromise, and give a good discharge for, any monies paid or payable to the Subordinated Creditor under or in respect of the Assigned Assets, and enforce (in any way whatsoever, including (without limitation) by way of instituting proceedings in the Subordinated Creditor's name) any rights or claims arising under or in respect of the Assigned Assets

## 10.2 Redemption of prior mortgages

At any time after this Security has become enforceable, the Security Agent may

- (a) redeem any prior Security against any Assigned Asset, and/or
- (b) procure the transfer of that Security to itself, and/or
- (c) settle and pass the accounts of the holder of any prior Security and any accounts so settled and passed shall be conclusive and binding on each Subordinated Creditor

All principal, interest, costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the relevant Subordinated Creditor to the Security Agent on demand

## 10.3 Privileges

- (a) Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, except that section 103 of the Act does not apply
- (b) To the extent that the Assigned Assets constitute "*financial collateral*" and this Deed and the obligations of the Subordinated Creditor under this Deed constitute a "*security financial collateral arrangement*" (in each case for the purpose of and as defined in the Financial Collateral Arrangements (No 2) Regulations 2003) (SI 2003 No 3226) each Receiver and the Security Agent shall have the right after this Security has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Liabilities
- (c) For the purpose of clause 10 3(b), the value of the financial collateral appropriated shall be such amount as the Receiver or Security Agent reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it.

#### **10.4 No liability**

- (a) Neither the Security Agent, any other Secured Party nor any Receiver shall be liable (A) in respect of all or any part of the Assigned Assets or (B) for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, its or his respective powers (unless such loss or damage is caused by its or his gross negligence or wilful misconduct).
- (b) Without prejudice to the generality of clause 10.4(a), neither the Security Agent, any other Secured Party nor any Receiver shall be liable, by reason of entering into possession of an Assigned Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable

#### **10.5 Protection of third parties**

No person (including a purchaser) dealing with the Security Agent or any Receiver or Delegate will be concerned to enquire

- (a) whether the Secured Liabilities have become payable,
- (b) whether any power which the Security Agent or the Receiver is purporting to exercise has become exercisable,
- (c) whether any money remains due under any Finance Document, or
- (d) how any money paid to the Security Agent or to the Receiver is to be applied

The receipt of the Security Agent or any Receiver shall be an absolute and conclusive discharge and shall relieve any person dealing with the Security Agent or that Receiver of any obligation to see to the application of any moneys paid to or by the direction of the Security Agent or any Receiver

### **11. RECEIVER**

#### **11.1 Removal and replacement**

The Security Agent may from time to time remove any Receiver appointed by it (subject, in the case of an administrative receivership, to section 45 of the Insolvency Act 1986) and, whenever it may deem appropriate, may appoint a new Receiver in the place of any Receiver whose appointment has terminated

#### **11.2 Multiple Receivers**

If at any time there is more than one Receiver of all or any part of the Assigned Assets and/or the income of the Assigned Assets, each Receiver shall have power to act individually (unless otherwise stated in the appointment document)

#### **11.3 Remuneration**

Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Security Agent (or, failing such agreement, to be fixed by the Security Agent)

#### **11.4 Payment by Receiver**

Only monies actually paid by a Receiver to the Security Agent in relation to the Secured Liabilities shall be capable of being applied by the Security Agent in discharge of the Secured Liabilities

#### **11.5 Agent of Subordinated Creditor**

- (a) Any Receiver shall be the agent of the Subordinated Creditor in respect of which it is appointed
- (b) Each Subordinated Creditor shall (subject to the Companies Act 2006 and the Insolvency Act 1986) be solely responsible for a Receiver's acts and defaults and for the payment of the Receiver's remuneration. No Secured Party shall incur any liability (either to any Subordinated Creditor or to any other person) by reason of the appointment of a Receiver or for any other reason

### **12. POWERS OF RECEIVER**

#### **12.1 General powers**

Any Receiver shall have

- (a) all the powers which are conferred on the Security Agent pursuant to this Deed,
- (b) all the powers which are conferred by the Act on mortgagees in possession and receivers appointed under the Act,
- (c) (whether or not he is an administrative receiver) all the powers which are listed in schedule 1 of the Insolvency Act 1986, and
- (d) all powers which are conferred by any other law conferring power on receivers

#### **12.2 Additional powers**

In addition to the powers referred to in clause 12.1 (*General powers*), a Receiver shall have the following powers

- (a) to take possession of, collect and get in all or any part of the Assigned Assets and/or income in respect of which he was appointed,
- (b) to manage the Assigned Assets as he thinks fit,
- (c) to redeem any Security and to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise,
- (d) to sell or concur in selling or otherwise disposing of all or any part of the Assigned Assets in respect of which he was appointed without the need to observe the restrictions imposed by section 103 of the Act, and without limitation
  - (i) the consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration (and the

amount of such consideration may be dependent upon profit or turnover or be determined by a third party), and

- (ii) any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit,
- (e) to carry out any sale or other disposal of all or any part of the Assigned Assets by conveying, transferring, assigning or leasing the same in the name of the relevant Subordinated Creditor and, for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, such Subordinated Creditor;
- (f) to take any such proceedings (in the name of any Subordinated Creditor or otherwise) as he shall think fit in respect of the Assigned Assets and/or income in respect of which he was appointed (including proceedings for recovery of rent or other monies in arrears at the date of his appointment);
- (g) to enter into or make any such agreement, arrangement or compromise as he shall think fit,
- (h) to insure, and to renew any insurances in respect of, the Assigned Assets as he shall think fit (or as the Security Agent shall direct);
- (i) to appoint and employ such managers and officers and engage such professional advisers as he shall think fit (including, without prejudice to the generality of the foregoing power, to employ his partners and firm), and
- (j) to
  - (i) give valid receipts for all monies and to do all such other things as may seem to him to be incidental or conducive to any other power vested in him or necessary or desirable for the realisation of any Assigned Asset,
  - (ii) exercise in relation to each Assigned Asset all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Assigned Assets, and
  - (iii) use the name of any Subordinated Creditor for any of the above purposes

### 12.3 Application of proceeds and Intercreditor Agreement

All monies received by the Security Agent or any Receiver after this Security has become enforceable shall (subject to the rights and claims of any person having a security ranking in priority to this Security and subject to the Intercreditor Agreement) be applied in the following order

- (a) *first*, in satisfaction of, or provision for, all costs, charges and expenses properly incurred, and payments properly made, by the Security Agent, any other Secured Party or any Receiver or Delegate and of all remuneration due to the Receiver in connection with this Deed or the Assigned Assets,
- (b) *secondly*, in or towards satisfaction of the remaining Secured Liabilities in accordance with clause 12.5 (*Appropriation, Intercreditor Agreement and suspense account*), and

- (c) *thirdly*, in payment of any surplus to the Subordinated Creditor or other person entitled to it

#### 12.4 Contingencies

If this Security is enforced at a time when no amounts are due under the Finance Documents (but at a time when amounts may become so due), the Security Agent or a Receiver may pay the proceeds of any recoveries effected by it into a blocked suspense account (bearing interest at such rate as the Security Agent may determine)

#### 12.5 Appropriation, Intercreditor Agreement and suspense account

- (a) Subject to the Intercreditor Agreement and to clause 12.3 (*Application of proceeds and Intercreditor Agreement*), the Security Agent shall apply all payments received in respect of the Secured Liabilities in reduction of any part of the Secured Liabilities in any order or manner which it may determine
- (b) Any such appropriation shall override any appropriation by any Subordinated Creditor
- (c) All monies received, recovered or realised by the Security Agent under or in connection with this Deed may at the discretion of the Security Agent be credited to a separate interest-bearing suspense account for so long as the Security Agent determines (with interest accruing thereon at such rate (if any) as the Security Agent may determine) without the Security Agent having any obligation to apply such monies and interest or any part of it in or towards the discharge of any of the Secured Liabilities unless such monies would clear all Secured Liabilities in full

#### 13. SET-OFF

- (a) The Security Agent and each other Secured Party may (but shall not be obliged to) set off any obligation which is due and payable by any Subordinated Creditor and unpaid (whether under the Finance Documents or which has been assigned to the Security Agent or such other Secured Party by any other Subordinated Creditor) against any obligation (whether or not matured) owed by the Security Agent or such other Secured Party to such Subordinated Creditor, regardless of the place of payment, booking branch or currency of either obligation
- (b) At any time after this Security has become enforceable (and in addition to its rights under clause **Error! Reference source not found.**(a)), the Security Agent and each other Secured Party may (but shall not be obliged to) set-off any contingent liability owed by a Subordinated Creditor under any Finance Document against any obligation (whether or not matured) owed by the Security Agent or such other Secured Party to such Subordinated Creditor, regardless of the place of payment, booking branch or currency of either obligation
- (c) If the obligations are in different currencies, the Security Agent or such other Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off
- (d) If either obligation is unliquidated or unascertained, the Security Agent or such other Secured Party may set off in an amount estimated by it in good faith to be the amount of that obligation

#### **14. DELEGATION**

Each of the Security Agent and any Receiver may delegate, by power of attorney (or in any other manner) to any person, any right, power or discretion exercisable by it under this Deed upon any terms (including power to sub-delegate) which it may think fit. Neither the Security Agent nor any Receiver shall be in any way liable or responsible to any Subordinated Creditor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

#### **15. FURTHER ASSURANCE**

##### **15.1 Further action**

Each Subordinated Creditor shall at its own expense, immediately do all acts and execute all documents as the Security Agent or a Receiver may reasonably specify (and in such form as the Security Agent or a Receiver may reasonably require) for

- (a) creating, perfecting or protecting the Security intended to be created by this Deed or any other Security Document,
- (b) facilitating the realisation of any Assigned Asset,
- (c) facilitating the exercise of any rights, powers and remedies exercisable by the Security Agent, any other Secured Party or any Receiver or any Delegate in respect of any Assigned Asset or provided by or pursuant to the Finance Documents or by law; or
- (d) creating and perfecting Security in favour of the Security Agent or the other Secured Parties over any property and assets of such Subordinated Creditor located in any jurisdiction outside England and Wales equivalent or similar to this Security or any other Security Document.

This includes

- (i) the re-execution of this Deed or such Security Document;
- (ii) the execution of any legal mortgage, charge, transfer, conveyance, assignment, assignation or assurance of any property, whether to the Security Agent or to its nominee, and
- (iii) the giving of any notice, order or direction and the making of any filing or registration,

which, in any such case, the Security Agent may think expedient

## **15.2 Finance Documents**

Each Subordinated Creditor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to this Deed

## **15.3 Specific security**

Without prejudice to the generality of clause 15.1 (*Further action*), each Subordinated Creditor will immediately upon request by the Security Agent execute any document contemplated by that clause over any Assigned-Asset which is subject to or intended to be subject to any fixed security under this Deed

## **16. POWER OF ATTORNEY**

Each Subordinated Creditor, by way of security, irrevocably and severally appoints the Security Agent, each Receiver and any Delegate to be its attorney to take any action whilst an Event of Default is continuing or enforcement of this Security has occurred which such Subordinated Creditor is obliged to take under this Deed, including under clause 15 (*Further Assurance*), or if no Event of Default is continuing, which such Subordinated Creditor has failed to take. Each Subordinated Creditor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause

## **17. CURRENCY CONVERSION**

All monies received or held by the Security Agent or any Receiver under this Deed may be converted from their existing currency into the currency of account pursuant to the Senior Facility Agreement prior to the Senior Discharge Date and the Mezzanine Facility Agreement thereafter at the Relevant Agent's spot rate of exchange. Each Subordinated Creditor shall indemnify the Security Agent against all costs, charges and expenses incurred in relation to such conversion. Neither the Security Agent nor any Receiver shall have any liability to any Subordinated Creditor in respect of any loss resulting from any fluctuation in exchange rates after any such conversion

## **18. CHANGES TO THE PARTIES**

### **18.1 Subordinated Creditors and Debtors**

No Subordinated Creditor or Debtor may assign any of its rights or obligations under this Deed

### **18.2 Security Agent**

The Security Agent may assign or transfer all or any part of its rights under this Deed pursuant to the resignation or removal of the Security Agent in accordance with the Intercreditor Agreement. Each Subordinated Creditor and Debtor shall, immediately upon being requested to do so by the Security Agent, enter into such documents as may be necessary or desirable to effect such assignment or transfer



## **19. INDEMNITY**

Each Subordinated Creditor shall promptly indemnify the Security Agent, each Secured Party and every Receiver and Delegate and the Security Agent's officers and employees against any cost, loss, or liability incurred by any of them as a result of or in connection with:

- (a) the taking, holding protection or enforcement of this Security
- (b) anything done or omitted in the exercise or purported exercise of any of the rights, powers, discretions and remedies vested in the Security Agent and each Receiver and Delegate by this Deed (or any other Finance Document in connection with the Assigned Assets) or by law,
- (c) the Assigned Assets or the use or holding of them by any person, or
- (d) any Event of Default or any default by a Subordinated Creditor in the performance of any of the obligations expressed to be assumed by it in this Deed.

## **20. MISCELLANEOUS**

### **20.1 New accounts**

- (a) If the Security Agent or any other Secured Party receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent Security affecting any Assigned Asset and/or the proceeds of sale of any Assigned Asset or any guarantee under the Finance Documents ceases to continue in force, it may open a new account or accounts for any Subordinated Creditor. If it does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice
- (b) As from that time all payments made to the Security Agent or such other Secured Party will be credited or be treated as having been credited to the new account and will not operate to reduce any amount of the Secured Liabilities

### **20.2 Tacking**

- (a) Each Senior Finance Party and each Mezzanine Finance Party shall perform its obligations under the Senior Facility Agreement and the Mezzanine Facility Agreement (including any obligation to make available further advances)
- (b) This Deed secures advances already made and further advances to be made

### **20.3 Articles of association**

Each Subordinated Creditor certifies that the Security does not contravene any of the provisions of its articles of association

### **20.4 Protective clauses**

- (a) Each Subordinated Creditor is deemed to be a principal debtor in relation to this Deed. The obligations of each Subordinated Creditor under, and the Security intended to be created by, this Deed shall not be impaired by any forbearance, neglect, indulgence, extension or time, release, surrender or loss of securities, dealing, amendment or arrangement by the Security Agent or any other Secured Party which

would otherwise have reduced, released or prejudiced this Security or any surety liability of a Subordinated Creditor (whether or not known to it or to the Security Agent or to any other Secured Party)

- (b) Clause 17 (*Guarantee and indemnity*) of the Senior Facility Agreement and clause 17 (*Guarantee and indemnity*) of the Mezzanine Facility Agreement applies in relation to this Deed as if references to the obligations referred to in such clauses respectively were references to the obligations of each Subordinated Creditor under this Deed

## **21. THIRD PARTY CLAUSES**

### **21.1 Waiver of defences**

The obligations of each Subordinated Creditor under this Deed shall not be discharged, impaired or otherwise affected by an act, omission, matter or thing which, but for this clause 21.1, would reduce, release or prejudice any of its obligations, or the Security intended to be granted, under this Deed (without limitation and whether or not known to any Secured Creditor or any Secured Party) including

- (a) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person,
- (b) the release of any Transaction Obligor, any other surety or any other person under the terms of any composition or arrangement with any creditor of any Transaction Obligor or such other surety or other person,
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, any Transaction Obligor, any other surety or any 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,
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members, name or status or constitution of any Subordinated Creditor, any Transaction Obligor, any Secured Party or any other person,
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or Security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or Security,
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security, or
- (g) any insolvency, administration or similar proceedings

### **21.2 Subordinated Creditor intent**

Without prejudice to the generality of clause 21.1 (*Waiver of defences*), each Subordinated Creditor expressly confirms that it intends that this Security shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following. property

acquisitions of any nature, carrying out restructurings, refinancing existing facilities; refinancing any other indebtedness, making facilities available to new borrowers, any other variations or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing

### **21.3 Immediate recourse**

Each Subordinated Creditor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before exercising any right under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary

### **21.4 Application**

Until the Secured Liabilities have been irrevocably paid in full, each Secured Party (or any trustee or agent on its behalf) may refrain from applying or enforcing any other monies, Security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Subordinated Creditor shall be entitled to the benefit of the same

### **21.5 Deferral of Subordinated Creditors' rights**

Until the end of the Security Period and unless the Relevant Agent otherwise directs, no Subordinated Creditor shall exercise any rights which it may have by reason of performance by it of its obligations under this Deed

- (a) to be indemnified by a Transaction Obligor;
- (b) to claim any contribution from any guarantor of any Transaction Obligor's obligations under the Finance Documents or any other person giving Security for the Secured Liabilities under the Finance Documents,
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or Security taken pursuant to, or in connection with, the Finance Documents by any Secured Party,
- (d) to bring legal or other proceedings for an order requiring any Transaction Obligor to make any payment, or perform any obligation, in respect of which a Subordinated Creditor has given Security under this Deed,
- (e) to exercise any right of set-off against any Transaction Obligor; and/or
- (f) to claim or prove as a creditor of any Transaction Obligor in competition with any Secured Party.

If any Subordinated Creditor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Transaction Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Agent or as the

Security Agent may direct for application in accordance with this Deed (subject to the terms of the Intercreditor Agreement).

## **22. NOTICES**

### **22.1 Senior Facility Agreement**

Until the Senior Discharge Date and subject to clause 22.3 (*Notices through Senior Borrowers/Mezzanine Borrower*).

- (a) clause 31 of the Senior Facility Agreement (*Notices*) (other than clause 31.3(c) and 31.5 (*Electronic communication*)) is incorporated into this Deed as if fully set out in this Deed, and

the address and fax numbers of each Party for all communications or documents given under or in connection with this Deed are those identified with its name in the execution pages to this Deed or subsequently notified from time to time by the relevant Party for the purposes of the Senior Facility Agreement or this Deed

### **22.2 Mezzanine Facility Agreement**

After the Senior Discharge Date and subject to clause 22.3 (*Notices through Senior Borrowers/Mezzanine Borrower*)

- (a) clause 32 of the Mezzanine Facility Agreement (*Notices*) (other than clause paragraph (c) of 32.3 (*Delivery*) and clause 32.5 (*Electronic communication*)) is incorporated into this Deed as if fully set out in this Deed, and
- (b) the address and fax numbers of each Party for all communications or documents given under or in connection with this Deed are those identified with its name in the execution pages to this Deed or subsequently notified from time to time by the relevant Party for the purposes of the Mezzanine Facility Agreement or this Deed.

### **22.3 Notices through Senior Borrowers/Mezzanine Borrower**

- (a) All communications and documents from the Subordinated Creditors shall be sent through the Senior Borrowers (prior to the Senior Discharge Date) and thereafter through the Mezzanine Borrower and all communications and documents to the Subordinated Creditors may be sent through the Senior Borrowers (prior to the Senior Discharge Date) and thereafter through the Mezzanine Borrower
- (b) Any communication or document made or delivered to the Senior Borrowers (prior to the Senior Discharge Date) and thereafter to the Mezzanine Borrower in accordance with this clause 22 will be deemed to have been made or delivered to each of the Subordinated Creditors

## **23. CALCULATIONS AND CERTIFICATES**

Any certificate of or determination by a Secured Party, the Security Agent or the Relevant Agent specifying the amount of any Secured Liability due from the Subordinated Creditors (including details of any relevant calculation thereof) is, in the absence of manifest error, conclusive evidence against the Subordinated Creditors of the matters to which it relates

**24. PARTIAL INVALIDITY**

All the provisions of this Deed are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of any of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired

**25. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Security Agent (or any other Secured Party), any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise, or the exercise of any other right or remedy. The rights and remedies provided are cumulative and not exclusive of any rights or remedies provided by law

**26. AMENDMENTS AND WAIVERS**

Any provision of this Deed may be amended only if the Security Agent and the Subordinated Creditors so agree in writing and any breach of this Deed may be waived before or after it occurs only if the Security Agent so agrees in writing. A waiver given or consent granted by the Security Agent under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given

**27. COUNTERPARTS**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures (and seals, if any) on the counterparts were on a single copy of this Deed

**28. RELEASE**

**28.1 Release**

Upon the expiry of the Security Period (but not otherwise) the Security Agent shall, at the request and cost of the Subordinated Creditors, take whatever action is necessary to release or re-assign (without recourse or warranty) the Assigned Assets from this Security

**28.2 Reinstatement**

Where any discharge (whether in respect of the obligations of any Transaction Obligor, any Subordinated Creditor or any Security for those obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise (without limitation), the liability of each Subordinated Creditor under this Deed shall continue as if the discharge or arrangement had not occurred. The Security Agent may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration

**29. GOVERNING LAW**

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

**IN WITNESS** of which this Deed has been duly executed by each Subordinated Creditor and the Debtors as a deed and duly executed by the Security Agent and has been delivered on the first date specified on page 1 of this Deed

**SCHEDULE 1 :**

**Part 1: Subordinated Creditors**

<b>Name</b>	<b>Jurisdiction of incorporation</b>	<b>Registration number</b>
Ability Developments Limited	England and Wales	03280282
Ability Hotels (Luton) Limited	England and Wales	06589180

**Part 2: Debtors**

<b>Name</b>	<b>Jurisdiction of incorporation</b>	<b>Registration number</b>
Ability Hotels (Luton Inn) Limited	England and Wales	05342812
Ability Hotels (Cambridge) Limited	England and Wales	06418183

## **SCHEDULE 2 : SUBORDINATED DOCUMENTATION**

<b>Date of Subordinated Document</b>	<b>Parties</b>
21 October 2008	(1) Ability Developments Limited and (2) Ability Hotels (Cambridge) Limited
1 June 2008	(1) Ability Hotels (Luton) Limited and (2) Ability Hotels (Luton Inn) Limited



**SCHEDULE 3 : FORM OF NOTICE TO AND ACKNOWLEDGEMENT BY PARTY TO  
SUBORDINATED DOCUMENT**

To: [Insert name and address of relevant party]

Dated [◆ ] 20[◆]

Dear Sirs

Re [describe Subordinated Document] dated [◆ ] 20[◆] between (1) you and (2) [◆ ] (the "Subordinated Creditor")

- 1 We give notice that, by a security assignment dated [◆ ] 2014 (the "Security Assignment"), we have assigned to Mount Street Loan Solutions LLP (the "Security Agent") as Security Agent for certain banks and others (as referred to in the Security Assignment) all our present and future right, title and interest in and to [insert details of Subordinated Document] together with any other agreement supplementing or amending the same (together, the "Agreement") including all rights and remedies in connection with the Agreement and all proceeds and claims arising from the Agreement
2. We irrevocably authorise and instruct you from time to time
  - (a) to disclose to the Security Agent at our expense (without any reference to or further authority from us and without any enquiry by you as to the justification for such disclosure), such information relating to the Agreement as the Security Agent may from time to time request,
  - (b) to hold all sums from time to time due and payable by you to us under the Agreement to the order of the Security Agent,
  - (c) to pay or release all or any part of the sums from time to time due and payable by you to us under the Agreement only in accordance with the written instructions given to you by the Security Agent from time to time;
  - (d) to comply with any written notice or instructions in any way relating to, or purporting to relate to, the Security Assignment or the Agreement or the debts represented thereby which you receive at any time from the Security Agent without any reference to or further authority from us and without any enquiry by you as to the justification for or validity of such notice or instruction, and
  - (e) to send copies of all notices and other information given or received under the Agreement to the Security Agent
3. We are not permitted to receive from you, otherwise than through the Security Agent, any amount in respect of or on account of the sums payable to us from time to time under the Agreement or to agree any amendment or supplement to, or waive any obligation under, the Agreement without the prior written consent of the Security Agent
- 4 This notice may only be revoked or amended with the prior written consent of the Security Agent
- 5 Please confirm by completing the enclosed copy of this notice and returning it to the Security Agent (with a copy to us) that you agree to the above and that

- (a) you accept the instructions and authorisations contained in this notice and you undertake to comply with this notice,
  - (b) you have not, at the date this notice is returned to the Security Agent, received notice of the assignment or charge, the grant of any security or the existence of any other interest of any third party in or to the Agreement or any proceeds of it and you will notify the Security Agent promptly if you should do so in future,
  - (c) you will not permit any sums to be paid to us or any other person (other than the Security Agent) under or pursuant to the Agreement without the prior written consent of the Security Agent, and
  - (d) you will not exercise any right to terminate the Agreement or take any action to amend or supplement the Agreement without the prior written consent of the Security Agent
6. This notice, and any acknowledgement in connection with it, and any non-contractual obligations arising out of or in connection with any of them, shall be governed by English law

Yours faithfully

\_\_\_\_\_  
for and on behalf of  
[NAME OF SUBORDINATED CREDITOR]

*[On copy]*

To                    MOUNT STREET LOAN SOLUTIONS LLP  
                         as Security Agent  
                         [ADDRESS]

Copy to            [NAME OF SUBORDINATED CREDITOR]

We acknowledge receipt of the above notice and consent and agree to its terms We confirm and agree to the matters set out in paragraph [5] of the above notice

\_\_\_\_\_  
for and on behalf of  
[◆                    ]

Dated [◆                    ] 20[◆]

EXECUTION PAGES

THE SUBORDINATED CREDITORS

Executed as a deed, but not delivered until the first date )  
specified on page 1 by ABILITY DEVELOPMENTS )  
LIMITED acting by )

Director ANDREW PANAMISTON  
Witness signature [REDACTED]  
Witness name KIRK SAUNDERS  
Witness address 70 CHARLOTTE STREET  
LONDON W1T 4QY

Address: Top Floor Hampton by Hilton, 42-50 Kimpton Road,  
Luton, Beds LU2 ONB

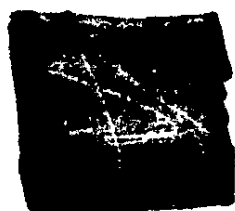
Fax No: 01582 277 778

Executed as a deed, but not delivered until the first date )  
specified on page 1 by ABILITY HOTELS (LUTON) )  
LIMITED acting by )

Director ANDREW PANAMISTON  
Witness signature [REDACTED]  
Witness name KIRK SAUNDERS  
Witness address 70 CHARLOTTE STREET  
LONDON W1T 4QY

Address: Top Floor Hampton by Hilton, 42-50  
Kimpton Road, Luton, Beds LU2 ONB

Fax No: 01582 277 778



**THE DEBTORS**

Executed as a deed, but not delivered until the first date )  
specified on page 1 by **ABILITY HOTELS (LUTON INN)** )  
**LIMITED** acting by )

Director ANDREAS PANAYIOTOU  
Witness signature [REDACTED]  
Witness name KIRKOS SPANAGIS  
Witness address 70 CHARLOTTE STREET  
LONDON W1T 4QG

**Address: Top Floor Hampton by Hilton, 42-50 Kimpton Road,  
Luton, Beds LU2 ONB**

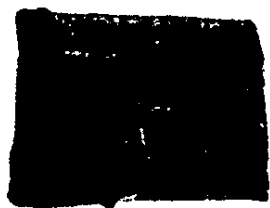
**Fax No: 01582 277 778**

Executed as a deed, but not delivered until the first date )  
specified on page 1 by **ABILITY HOTELS (CAMBRIDGE)** )  
**LIMITED** acting by )

Director ANDREAS PANAYIOTOU  
Witness signature [REDACTED]  
Witness name KIRKOS SPANAGIS  
Witness address 70 CHARLOTTE STREET  
LONDON W1T 4QG

**Address: Top Floor Hampton by Hilton, 42-50 Kimpton Road,  
Luton, Beds LU2 ONB**

**Fax No: 01582 277 778**



**THE SECURITY AGENT**

Executed as a deed, but not delivered until the )  
first date specified on page 1, by MOUNT )  
**STREET LOAN SOLUTIONS LLP** by a )  
member in the presence of a witness )  
)

Signature

Name  
(block capitals) .. . . .

**Member**

Witness  
signature -----

Witness name -----  
(block capitals)

Witness address -----  
-----  
-----

**Address:** First Floor  
Connaught House  
1-3 Mount Street  
London  
W1K 3NB

**Facsimile No:** +44 (0) 20 3004 1472

**Attention:** Mark Burt