



Registration of a Charge

Company name: **ABILITY HOTELS (SOUTHPORT) HOLDINGS LIMITED**
Company number: **09069855**



X3I3FT2W

Received for Electronic Filing: **08/10/2014**

Details of Charge

Date of creation: **07/10/2014**
Charge code: **0906 9855 0001**
Persons entitled: **QIB (UK) PLC**
Brief description:
Contains fixed charge(s).
Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **FOOT ANSTEY LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9069855

Charge code: 0906 9855 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 7th October 2014 and created by ABILITY HOTELS (SOUTHPORT) HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th October 2014 .

Given at Companies House, Cardiff on 9th October 2014

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

Charge Over Shares

Dated *07 October 2014*

Ability Hotels (Southport) Holdings Limited as
Chargor (1)
QIB (UK) PLC as Financier (2)

Draft:
Ref:

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DATE

07 october

2014

PARTIES

- (1) ABILITY HOTELS (SOUTHPORT) HOLDINGS limited, a company incorporated and registered in England and Wales with number 09069855 and with its registered office at Top Floor Hampton By Hilton, 42-50 Kimpton Road, Luton, Bedfordshire LU2 0NB (the "Chargor"); and
- (2) QIB (UK) PLC (Company number 04656003) whose registered office is at 4th Floor, Berkeley Square House, Berkeley Square, London, W1J 6BX (the "Financier").

AGREED TERMS

1 Definitions and interpretation

1.1 Definitions

In this Deed:

- (a) terms defined in, or construed for the purposes of, the Master Murabaha Agreement (as defined below) have the same meanings when used in this Deed (unless the same are otherwise defined in this Deed); and
- (b) at all times the following terms have the following meanings:

"Act" means the Law of Property Act 1925;

"Aberdeen Property" means Doubletree by Hilton, Beach Boulevard, Aberdeen, AB24 5EF;

"Aberdeen Purchaser" means Ability Hotels (Aberdeen) Limited;

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

"Charged Investments" means the Charged Securities and all present and future Related Rights accruing to all or any of the Charged Securities;

"Charged Securities" means the securities specified in the schedule (*Details of Charged Securities*);

"Commodities" means:

- (a) platinum, palladium and/or rhodium, that is segregated and held in allocated accounts and that meet the specifications of the London Platinum and Palladium Market to qualify for good delivery; and/or
- (b) any base metal that meets the specification requirements of the London Metal Exchange for such metal; and
- (c) in each case provided that such commodities are:
 - (i) allocated commodities physically located outside the EU; and
 - (ii) in the case of LME metal in a LME approved bonded warehouse; and
 - (iii) in the case of Platinum Group Metals in a secure vault; and

(iv) acceptable to the Financier and its Shari'ah board;

"Commodity Seller" means a commodity broker selected by the Financier from time to time;

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

"Duty of Care Agreement" means a duty of care agreement entered into or to be entered into by a Managing Agent, a Chargor and the Financier in agreed form;

"Event of Default" means any event or circumstance specified as such in clause 19 of the Master Murabaha Agreement;

"Fee Letter" means any letter or letters dated on or about the date of the Master Murabaha Agreement between the Financier and the Purchaser setting out any of the fees referred to in clause 21.4 of the Master Murabaha Agreement;

"Finance Document" means the Master Murabaha Agreement, any Security Document, the Subordination Agreement, the Intercreditor Deed, the Ranking Agreement when entered into, each Purchase Contract and each Purchase Replacement Contract; any Fee Letter or any other document designated as such by the Financier and the Purchaser;

"Hotel Manager" means Hilton UK Manage Limited (Company No. 06398401) having its registered office at Maple Court, Central Park, Reeds Crescent, Watford, Herts WD24 4QQ or any other Hotel Manager appointed in respect of the Aberdeen Property;

"Intercreditor Deed" means the intercreditor deed dated on or about the date of this Agreement between the Financier as financier, Agent as senior agent, the Security Agent as security agent, the Original Lenders as senior lender, the Shareholders as shareholders and the Purchasers;

"Managing Agent" means any managing agent appointed by a Purchaser in respect of a Property;

"Master Murabaha Agreement" means the master murabaha agreement dated on or about the date of this Deed and made between the (1) Financier and (2) the Purchasers;

"Non Disturbance Agreement" means a subordination and non-disturbance agreement entered into between the Hotel Manager, the Aberdeen Purchaser and the Financier in the agreed form;

"Party" means a party to this Deed;

"Permitted Security" means any Security permitted pursuant to clause 17.3 of the Master Murabaha Agreement;

"Profit" has the meaning given in clause 5.2(f) of the Master Murabaha Agreement;

"Profit Period" means each period from the Transaction Date to the Deferred Payment Date of a Purchase Contract or any Purchase Replacement Contract during which Profit shall accrue on the Cost Price outstanding under a Purchase Contract or such Purchase Replacement Contract;

"Property" means the Aberdeen Property and/or Land and buildings known as Ribble Building, Garrick Parade, Lord Street, Southport, PR8 1RH;

"Purchase Contract" means an agreement for the sale by the Financier of Commodities and the purchase of those Commodities by the Purchaser pursuant to clause 5 of the Master Murabaha Agreement;

"Purchase Replacement Contract" means an agreement for the sale by the Financier of Commodities and the purchase of those Commodities by the Purchaser pursuant clause 5 of the Master Murabaha Agreement;

"Purchasers" means the Southport Purchaser and the Aberdeen Purchaser (each a Purchaser);

"Ranking Agreement" means the agreement dated on or about the date of this Agreement ranking the priority of the Standard Security and the Senior Standard Security;

"Receiver" means any receiver or receiver and manager or administrative receiver appointed by the Financier of the whole or any part of the Security Assets under this Deed;

"Related Rights" means, in relation to any Charged Security:

- (a) all dividends, distributions and other income paid or payable on the relevant Charged Security or on any asset referred to in paragraph (b) of this definition;
- (b) all rights, monies or property accruing or offered at any time in relation to such Charged Security whether by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise; and
- (c) all rights, powers, benefits, claims, contracts, warranties, remedies, covenants for title, security, guarantees or indemnities in respect of any part of the Charged Securities;

"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 Purchaser, Shareholder, Subordinated Creditor, Managing Agent and Hotel Manager to the Financier under or pursuant to any Finance Document (including all monies covenanted to be paid under this Deed);

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

"Security Agent" means Mount Street Loan Solutions LLP;

"Security Agreement" means a Security over the assets of the Purchasers entered into or to be entered into by that Purchaser in favour of the Financier in an agreed form;

"Security Assets" means all property and assets from time to time mortgaged, charged or assigned (or expressed to be mortgaged, charged or assigned) by or pursuant to this Deed; and

"Security Document" means

- (a) the Standard Security;
- (b) the Security Agreement;
- (c) the Share Charges;
- (d) the Non Disturbance Agreement;
- (e) the Duty of Care Agreement; and
- (f) the Intercreditor 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) the Financier has no further commitment, obligation or liability under or pursuant to the Finance Documents.

"Senior Standard Security" means a standard security over the Aberdeen Property entered into or to be entered into by the Aberdeen Purchaser in favour of the Security Agent in an agreed form;

"Share Charges" means the share charges in favour of the Financier granted by the Shareholders in respect of its shares in each of the Purchasers in such form as the Financier shall require;

"Shareholders" means Ability Hotels (Aberdeen) Holdings Limited a company registered in England and Wales with registered number 09030824 or Ability Hotels (Southport) Holdings Limited a company registered in England and Wales with registered number 09069855;

"Southport Purchaser" means Ability Hotels (Southport) Limited (Company Number 09071406) whose registered office is at Top Floor, Hampton by Hilton, 42 – 50 Kimpton Road, Luton, Bedfordshire, LU2 0NB;

"Standard Security" means a standard security over the Aberdeen Property entered into or to be entered into by the Aberdeen Purchaser in favour of the Financier in an agreed form;

"Subordinated Creditor" means:

- (a) a Shareholder; or
- (b) any other person who becomes a Subordinated Creditor in accordance with the Master Murabaha Agreement;

"Subsidiary" means a subsidiary within the meaning of section 1159 of the Companies Act 2006;

"Transaction Date" means the date on which a Purchase Contract or, as applicable, a Purchase Replacement Contract is, or is proposed to be, made, being the same date as the Offer Letter corresponding to a Purchase Contract or that Purchase Replacement Contract; and

"Transaction Request" means a request from a Purchaser to the Financier to make a Purchase Contract or a Purchase Replacement Contract, substantially in the form set out in Schedule 3 of the Master Murabaha Agreement.

1.2 Interpretation

- (a) Unless a contrary indication appears in this Deed, the provisions of clause 1.1 (*Construction*) of the Master Murabaha Agreement 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
- (b) Unless a contrary indication appears, any reference in this Deed to:
 - (i) the "Chargor", the "Financier" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;;
 - (ii) "this Deed", the "Master Murabaha Agreement", any other "Finance Document" or any other agreement or instrument is a reference to this Deed, the Master Murabaha 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 Purchaser or provides for further advances);

- (iii) "assets" includes present and future properties, revenues and rights of every description and includes uncalled capital;
 - (iv) "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 Purchaser;
 - (v) "reasonable endeavours" includes payment by the relevant person of all its own and any third party's reasonable and necessary costs, fees and expenses;
 - (vi) "including" or "includes" means including or includes without limitation;
 - (vii) "this Security" means the Security created or evidenced by or pursuant to this Deed; and
 - (viii) the singular includes the plural and vice versa.
- (c) References to clauses and the schedule are to be construed, unless otherwise stated, as references to clauses and the schedule to this Deed and references to this Deed include its schedule unless otherwise stated.
- (d) Each undertaking of the Chargor (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 the Chargor for the benefit of the Financier.
- (e) If the Financier reasonably considers that an amount paid by any Purchaser to the Financier under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of such Purchaser, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.
- (f) 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 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.

1.4 Delivery

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

2 Late payment

The Chargor will pay late payment charges on any unpaid sums (whether before or after judgment) in accordance with clause 6.5 (*Late Payment*) of the Master Murabaha Agreement as though such sums were an "unpaid amount" pursuant to that clause.

3 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 Financier;
- (b) with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994; and
- (c) as continuing security for payment of the Secured Liabilities.

4 Grant of security

The Chargor charges and agrees to charge by way of fixed charge all of its present and future right, title and interest in and to:

- (a) all the Charged Securities which are at any time owned by the Chargor or in which the Chargor from time to time has an interest; together with
- (b) all present and future Related Rights from time to time accruing to those Charged Securities and all rights which the Chargor may have at any time against any clearance or settlement system or custodian in respect of any Charged Investments.

5 Continuing security

5.1 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.

5.2 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 Financier may at any time hold for any Secured Liability.

5.3 Right to enforce

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

6 Liability of the Chargor relating to security assets

Notwithstanding anything contained in this Deed or implied to the contrary, the Chargor remains liable to observe and perform all conditions and obligations assumed by it in relation to the Security Assets. The Financier 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.

7 Representations

7.1 General

The Chargor makes the representations and warranties set out in this clause 7 to the Financier.

7.2 No Security

No Security (other than that created by this Deed) exists over any Charged Investment.

7.3 Ownership of Security Assets

It is the sole legal and beneficial owner of all the Security Assets.

7.4 Charged Securities fully paid

The Charged Securities are fully paid.

7.5 Entire share capital

The Charged Securities constitute the entire share capital owned by the Chargor in the Southport Purchaser.

7.6 Status

(a) It is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

(b) It has the power to own its assets and carry on its business as it is being conducted.

7.7 Binding obligations

Subject to the Legal Reservations:

(a) The obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations of the Chargor; and

(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.

7.8 Non-conflict with other obligations

The entry into and performance by it 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 it;

(b) its constitutional documents; or

(c) any agreement or instrument binding upon it or any of its assets.

7.9 Power and authority

(a) It 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 its powers will be exceeded as a result of the grant of security contemplated by this Deed.

(c) It 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.

7.10 Validity and admissibility in evidence

All Authorisations required or desirable:

- (a) to enable it 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.

7.11 Governing law and enforcement

- (a) The choice of English law as the governing law of this Deed will be recognised and enforced in the Chargor's jurisdiction of incorporation.
- (b) Any judgment obtained in England in relation to this Deed will be recognised and enforced in its jurisdiction of incorporation.

7.12 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in clause 19.7 (*Insolvency proceedings*) of the Master Murabaha Agreement; or
- (b) creditor's process described in clause 19.8 (*Creditor's process*) of the Master Murabaha Agreement,

has been taken or threatened in relation to it and none of the circumstances described in clause 19.6 (*Insolvency*) of the Master Murabaha Agreement applies to it.

7.13 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 Charged Investments.

7.14 Ranking

This Security has a second ranking priority.

7.15 Centre of main interest and establishments

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "Regulation"), its "*centre of main interest*" (as that term is used in Article 3(1) of the Regulation) is situated in England and Wales and it has no "*establishment*" (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

7.16 Time when representations made

All the representations and warranties in this clause 7 are made by the Chargor on the date of this Deed and (except for the representation in clause 7.12 (*Insolvency*)) are also deemed to be made by the Chargor:

- (a) on the date of each Transaction Request and each Transaction Date; and
- (b) on the first day of each Profit Period.

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.

8 Undertakings by the Chargor

8.1 Negative pledge and disposals

The Chargor shall not do or agree to do any of the following without the prior written consent of the Financier:

- (a) create or permit to subsist any Security over any Security Asset except a Permitted Security as permitted by the Master Murabaha Agreement; or
- (b) sell, transfer, lease, lend or otherwise dispose of (whether by a single transaction or a number of transactions and whether related or not), the whole or any part of its interest in any Security Asset (except as permitted by the Master Murabaha Agreement); or
- (c) take or permit the taking of any action which may result in:
 - (i) the rights attaching to any Charged Investment being altered; or
 - (ii) further shares in the Southport Purchaser being issued,

(except as permitted by the Master Murabaha Agreement).

8.2 Protection of security

The Chargor shall immediately upon execution of this Deed or (if later) as soon as practicable after the acquisition of any Charged Investments by way of security for the Secured Liabilities:

- (a) deposit with the Financier (or as the Financier may direct) all certificates and other documents of title or evidence of ownership to the Charged Securities and their Related Rights; and
- (b) execute and deliver to the Financier:
 - (i) instruments of transfer in respect of the Charged Securities (executed in blank and left undated); and/or
 - (ii) such other documents as the Financier shall require to enable it (or its nominees) to be registered as the owner of or otherwise to acquire a legal title to the Charged Securities and their Related Rights (or to pass legal title to any purchaser).

8.3 Notification

The Chargor shall:

- (a) notify the Financier within 14 days of receipt of every material notice, order, application, requirement or proposal given or made in relation to the Charged Investments by any competent authority; and
- (b) (if required by the Financier) immediately provide it with a copy of the same and either (A) comply with such notice, order, application, requirement or proposal or (B) make such objections to it as the Financier may require or approve.

8.4 Compliance with laws and obligations

The Chargor shall comply with:

- (a) all obligations in relation to the Charged Investments under any present or future law, regulation, order or instrument or under bye-laws, regulations or requirements of any competent authority or any other Authorisation; and
- (b) all other conditions and obligations assumed by it in respect of the Charged Investments.

8.5 Calls

The Chargor shall promptly pay all calls or other payments which may become due in respect of the Charged Investments.

8.6 Companies Act 2006

- (a) The Chargor shall not nominate another person to enjoy or exercise all or any of its specified rights in relation to any Charged Investment, as contemplated by section 145 of the Companies Act 2006 or otherwise.
- (b) Without limiting its obligation under clause 8.7(b), the Chargor shall promptly copy to the Financier and comply with all requests for information within its knowledge relating to the Charged Investments and which are made under section 793 of the Companies Act 2006 or which could be made under section 793 if the relevant company were a public limited company or under any similar provision contained in any articles of association or other constitutional document of the relevant company relating to the Charged Investments and if it fails to do so the Financier may provide such information as it may have on behalf of the Chargor.

8.7 General provisions relating to the Charged Investments

- (a) The Chargor shall not, except with the prior written consent of the Financier, enter into any onerous or restrictive obligation affecting any of the Charged Investments.
- (b) The Chargor shall provide the Financier with all information which it may reasonably request in relation to the Charged Investments.
- (c) The Chargor shall not do, cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any Charged Investment (or make any omission which has such an effect).

9 Rights of the parties in respect of Charged Investments

9.1 Dividends and voting rights

Until an Event of Default occurs, the Chargor shall be entitled to:

- (a) receive and retain all dividends, distributions and other monies paid on or derived from the Charged Securities; and
- (b) exercise all voting and other rights and powers attaching to the Charged Securities, provided that it must not do so in a manner which:
 - (i) has the effect of changing the terms of the Charged Securities (or any class of them) or of any Related Rights unless permitted by the Finance Documents; or
 - (ii) is prejudicial to the interests of the Financier.

9.2 Authority to complete transfers

At any time following the occurrence of an Event of Default, the Financier may (if the relevant Event of Default is then continuing) complete the instrument(s) of transfer for all or any Charged Securities on behalf of the Chargor in favour of itself or such other person as it may select.

9.3 Exoneration of the Financier

At any time when any Charged Security is registered in the name of the Financier or its nominee, the Financier shall be under no duty to:

- (a) ensure that any dividends, distributions or other monies payable in respect of such Charged Security are duly and promptly paid or received by it or its nominee;
- (b) verify that the correct amounts are paid or received; or
- (c) take any action in connection with the taking up of any (or any offer of any) Related Rights in respect of or in substitution for such Charged Security.

10 Power to remedy

10.1 General power to remedy

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

10.2 Mortgagee in possession

The exercise of the powers of the Financier under this clause 10 shall not render it liable as a mortgagee in possession.

10.3 Monies expended

The Chargor shall pay to the Financier on demand any monies which are properly expended by the Financier in exercising its powers under this clause 10.

11 When security becomes enforceable

11.1 When enforceable

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

11.2 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.

11.3 Enforcement

After this Security has become enforceable the Financier may enforce all or any part of this Security in such manner as it sees fit.

12 Enforcement of security

12.1 General

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. Sections 93 and 103 of the Act shall not apply to this Security.

12.2 Powers of Financier

At any time after this Security becomes enforceable (or if so requested by the Chargor by written notice at any time), the Financier may without further notice (unless required by law):

- (a) appoint any person (or persons) to be a receiver, receiver and manager or administrative receiver of all or any part of the Security Assets and/or of the income of the Security Assets; and/or
- (b) appoint or apply for the appointment of any person who is appropriately qualified as administrator of the Chargor;
- (c) 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
- (d) exercise (in the name of the Chargor and without any further consent or authority of the Chargor) any voting rights and any powers or rights which may be exercised by any person(s) in whose name any Charged Investment is registered or who is the holder of any of them.

12.3 Redemption of prior security

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

- (a) redeem any prior Security against any Security 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 the Chargor.

All principal, costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the Chargor to the Financier on demand.

12.4 Privileges

- (a) Each Receiver and the Financier 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 Security Assets constitute "*financial collateral*" and this Deed and the obligations of the Chargor 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 Financier 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 12.4(b), the value of the financial collateral appropriated shall be such amount as the Receiver or Financier reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it.

12.5 No liability

- (a) Neither the Financier nor any Receiver shall be liable:
 - (i) in respect of all or any part of the Charged Investments; or
 - (ii) 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).

Without prejudice to the generality of clause 12.5(a), neither the Financier nor any Receiver shall be liable, by reason of entering into possession of a Security 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.

12.6 Protection of third parties

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

- (a) whether the Secured Liabilities have become payable;
- (b) whether any power which the Financier 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 Financier or to the Receiver is to be applied.

13 Receiver

13.1 Removal and replacement

The Financier 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.

13.2 Multiple Receivers

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

13.3 Remuneration

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

13.4 Payment by Receiver

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

13.5 Agent of Chargor

- (a) Any Receiver shall be the agent of the Chargor.
- (b) The Chargor shall (subject to the Companies Act 2006 and the Insolvency Act 1986) be solely responsible for his acts and defaults and for the payment of his remuneration. The Financier shall not incur any liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason.

14 Powers of receiver

14.1 General powers

Any Receiver shall have:

- (a) all the powers which are conferred on the Financier by clause 12.2 (*Powers of Financier*)
- (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.

14.2 Additional powers

In addition to the powers referred to in clause 14.1 (*General powers*), a Receiver shall have the following powers:

- (a) to take possession of, collect and get in all or any part of the Security Assets and/or income in respect of which he was appointed;
- (b) to manage the Security Assets as he thinks fit;
- (c) to redeem any Security and to 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 Security 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 Security Assets by conveying, transferring, assigning or leasing the same in the name of the Chargor and, for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, the Chargor;

- (f) to take any such proceedings (in the name of the Chargor or otherwise) as he shall think fit in respect of the Security Assets and/or income in respect of which he was appointed;
- (g) to enter into or make any such agreement, arrangement or compromise as he shall think fit in respect of the Security Assets and/or income in respect of which he was appointed;
- (h) 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);
- (i) to form one or more Subsidiaries of the Chargor and to transfer to any such Subsidiary all or any part of the Security Assets; 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 Security Assets;
 - (ii) exercise in relation to the Security Assets or any part of them all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Security Assets; and
 - (iii) use the name of the Chargor for any of the above purposes.

15 Application of proceeds

15.1 Application

All monies received by the Financier 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 Master Murabaha 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 Financier, or any Receiver or Delegate and of all remuneration due to the Receiver in connection with this Deed or the Security Assets;
- (b) *secondly* in or towards the satisfaction of the remaining Secured Liabilities in accordance with clause 15.3 (*Appropriation and suspense account*); and
- (c) *thirdly* in payment of any surplus to the Chargor or other person entitled to it.

15.2 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 Financier or a Receiver may pay the proceeds of any recoveries effected by it into a blocked suspense account).

15.3 Appropriation and suspense account

- (a) Subject to the Master Murabaha Agreement and clause 15.1 (*Application*), the Financier 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 the Chargor.

- (c) All monies received, recovered or realised by the Financier under or in connection with this Deed may be credited to a separate suspense account by the Financier for so long as the Financier determines without the Financier having any obligation to apply such monies 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.

16 Set-off

- 16.1 The Financier may (but shall not be obliged to) set off any obligation which is due and payable by the Chargor and unpaid (whether under the Finance Documents or which has been assigned to the Financier by the Chargor) against any obligation (whether or not matured) owed by the Financier to the Chargor, regardless of the place of payment, booking branch or currency of either obligation.
- 16.2 At any time after this Security has become enforceable (and in addition to its rights under clause 15.3), the Financier may (but shall not be obliged to) set-off any contingent liability owed by the Chargor under any Finance Document against any obligation (whether or not matured) owed by the Financier to the Chargor, regardless of the place of payment, booking branch or currency of either obligation.
- 16.3 If the obligations are in different currencies, the Financier may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- 16.4 If either obligation is unliquidated or unascertained, the Financier may set off in an amount estimated by it in good faith to be the amount of that obligation.

17 Delegation

Each of the Financier 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 Financier nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

18 Further assurances

18.1 Further action

The Chargor shall at its own expense, immediately do all acts and execute all documents as the Financier or a Receiver may reasonably specify (and in such form as the Financier 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 Security Asset;
- (c) facilitating the exercise of any rights, powers and remedies exercisable by the Financier, or any Receiver or any Delegate in respect of any Security Asset or provided by or pursuant to the Finance Documents or by law.

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 Financier 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 Financier may think expedient.

18.2 Finance Documents

The Chargor 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 Financier by or pursuant to the Finance Documents.

18.3 Specific security

Without prejudice to the generality of clause 18.1 (*Further action*), the Chargor will immediately upon request by the Financier execute any document contemplated by that clause over any Security Asset which is subject to or intended to be subject to any fixed security under this Deed.

19 Power of attorney

The Chargor, by way of security, irrevocably and severally appoints the Financier, 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 the Chargor is obliged to take under this Deed, including under clause 18 (*Further assurances*), or, if no Event of Default is continuing, which the Chargor has failed to take. The Chargor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause 19.

20 Currency Conversion

All monies received or held by the Financier or any Receiver under this Deed may be converted from their existing currency into the currency of account pursuant to the Master Murabaha Agreement at the Agent's spot rate of exchange. The Chargor shall indemnify the Financier against all costs, charges and expenses incurred in relation to such conversion. Neither the Financier nor any Receiver shall have any liability to the Chargor in respect of any loss resulting from any fluctuation in exchange rates after any such conversion.

21 Changes to the Parties

- (a) The Chargor may not assign any of its rights or obligations under this Deed.
- (b) The Financier may assign or transfer all or any part of its rights under this Deed pursuant to the resignation or removal of the Financier in accordance with the Master Murabaha Agreement. The Chargor shall, immediately upon being requested to do so by the Financier, enter into such documents as may be necessary or desirable to effect such assignment or transfer.

22 Indemnity

The Chargor shall promptly indemnify the Financier, every Receiver and Delegate and the Financier'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 Financier and each Receiver and Delegate by this Deed (or any other Finance Document in connection with the Security Assets) or by law;

- (c) the Security Assets or the use or holding of them by any person; or
- (d) any Event of Default or any default by the Chargor in the performance of any of the obligations expressed to be assumed by it in this Deed.

23 Miscellaneous

23.1 New accounts

- (a) If the Financier receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent Security (other than a Permitted Security) affecting any Security Asset and/or the proceeds of sale of any Security Asset or any guarantee under the Finance Documents ceases to continue in force, it may open a new account or accounts for the Chargor. 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 Financier 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.

23.2 Tacking

- (a) The Financier shall perform its obligations under the Master Murabaha Agreement (including any obligation to make available further advances).
- (b) This Deed secures advances already made and further advances to be made.

23.3 Protective clauses

- (a) The Chargor is deemed to be a principal debtor in relation to this Deed. The obligations of the Chargor 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 Financier which would otherwise have reduced, released or prejudiced this Security or any surety liability of the Chargor (whether or not known to it or to the Financier).
- (b) Clause 22 of the Master Murabaha Agreement (*Indemnities*) applies in relation to this Deed as if references to the obligations referred to in such clause were references to the obligations of the Chargor under this Deed.

24 Third party clauses

24.1 Waiver of defences

The obligations of the Chargor under this Deed shall not be discharged, impaired or otherwise affected by an act, omission, matter or thing which, but for this clause 24.1, 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 it) including:

- (a) any time, waiver or consent granted to, or composition with, any Purchaser or other person;
- (b) the release of any Purchaser, any other surety or any other person under the terms of any composition or arrangement with any creditor of any Purchaser 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 Purchaser, 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 the Chargor, any Purchaser, 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.

24.2 Chargor intent

Without prejudice to the generality of clause 24.1 (*Waiver of defences*), the Chargor 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.

24.3 Immediate recourse

The Chargor waives any right it may have of first requiring the Financier (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.

24.4 Application

Until the Secured Liabilities have been irrevocably paid in full, the Financier (or any trustee or agent on its behalf) may refrain from applying or enforcing any other monies, Security or rights held or received by the Financier (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 the Chargor shall not be entitled to the benefit of the same.

24.5 Deferral of Chargor's rights

Until the end of the Security Period and unless the Agent otherwise directs, the Chargor shall not 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 Purchaser;
- (b) to claim any contribution from any guarantor of any Purchaser'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 Financier under the Finance Documents or of any other guarantee or Security taken pursuant to, or in connection with, the Finance Documents by the Financier;
- (d) to bring legal or other proceedings for an order requiring any Purchaser to make any payment, or perform any obligation, in respect of which the Chargor has given Security under this Deed;
- (e) to exercise any right of set-off against any Purchaser; and/or
- (f) to claim or prove as a creditor of any Purchaser in competition with the Financier.

If the Chargor 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 Financier by the Purchasers under or in connection with the Finance Documents to be repaid in full shall promptly pay or transfer the same to the Financier or as the Financier may direct for application in accordance with this Deed (subject to the terms of the Master Murabaha Agreement).

25 Notices

25.1 Master Murabaha Agreement

Subject to clause 25.2 (*Notices through Southport Purchaser*):

- (a) clause 27 (*Notices*) of the Master Murabaha Agreement 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 Master Murabaha Agreement or this Deed.

25.2 Notices through Southport Purchaser

- (a) All communications and documents from the Chargor shall be sent through the Southport Purchaser and all communications and documents to the Chargor may be sent through the Southport Purchaser.
- (b) Any communication or document made or delivered to the Southport Purchaser in accordance with this clause 25 will be deemed to have been made or delivered to the Chargor.

26 Calculations and certificates

Any certificate of or determination by the Financier specifying the amount of any Secured Liability due from the Chargor (including details of any relevant calculation thereof) is in the absence of manifest error conclusive evidence against the Chargor of the matters to which it relates.

27 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.

28 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Financier, 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.

29 Amendments and waivers

Any provision of this Deed may be amended only if the Financier and the Chargor so agree in writing and any breach of this Deed may be waived before or after it occurs only if the Financier so agrees in writing. A waiver given or consent granted by the Financier 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.

30 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.

31 Intercreditor Deed

This Deed is subject to the terms of the Intercreditor Deed.

32 Release

32.1 Release

Upon the expiry of the Security Period (but not otherwise), the Financier shall, at the request and cost of the Chargor, take whatever action is necessary to release the Security Assets (without recourse or warranty) from this Security.

32.2 Reinstatement

Where any discharge (whether in respect of the obligations of the Chargor 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 the Chargor under this Deed shall continue as if the discharge or arrangement had not occurred. The Financier may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

33 Governing law

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

33.2 The Parties recognise and agree that the principle of the payment of interest is prohibited under Shariah and accordingly, to the extent that any legal system would (but for the provisions of this Clause) impose (whether by contract or by statute) any obligation to pay interest, the Parties hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover interest from each other.

IN WITNESS of which this Deed has been duly executed by the Chargor as a deed and duly executed by the Financier and has been delivered on the first date specified on page 1 of this Deed.

**The Schedule
Details of Charged Securities**

Name of company in which shares are held	Class of shares held	Number of shares held	Issued share capital
Ability Hotels (Southport) Limited	Ordinary	100	100

EXECUTION PAGE

THE CHARGOR

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

Director _____

Witness signature _____

Witness name: KIRYACOS PALLANGLIDIS

Witness address: 76 CHARLOTTE STREET LONDON W1T 4QG

Address: Top Floor Hampton by Hilton, 42-50 Kimpton Road, Luton, Beds LU2 0NB

THE FINANCIER

Executed as a deed by QIB (UK) PLC acting by an authorised signatory in the presence of a witness:

Authorised Signatory

Name

Signature

Address

Occupation