



**Registration of a Charge**

Company name: **CAPITAL INDUSTRIAL 2 LIMITED**

Company number: **12898572**

Received for Electronic Filing: **31/12/2020**



X9L2EDHM

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**Details of Charge**

Date of creation: **30/12/2020**

Charge code: **1289 8572 0001**

Persons entitled: **THE PRUDENTIAL INSURANCE COMPANY OF AMERICA AS SECURITY TRUSTEE FOR THE SECURED PARTIES**

Brief description: **NOT APPLICABLE**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**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: **SIMMONS & SIMMONS LLP**



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

Company number: 12898572

Charge code: 1289 8572 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th December 2020 and created by CAPITAL INDUSTRIAL 2 LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 31st December 2020 .

Given at Companies House, Cardiff on 4th January 2021

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**

EXECUTION VERSION

# Subordination Agreement

between

Capital Industrial 1 Limited  
as Borrower

Capital Industrial 2 Limited  
as Original Subordinated Creditor

and

PGIM Real Estate Finance<sup>1</sup>  
as Security Agent

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<sup>1</sup> PGIM REAL ESTATE FINANCE IS A TRADING NAME OF THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, A COMPANY INCORPORATED IN NEW JERSEY, USA THAT IS NOT AFFILIATED IN ANY MANNER WITH PRUDENTIAL PLC, A COMPANY INCORPORATED IN THE UNITED KINGDOM.

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SCHEDULE 1 : SUBORDINATED CREDITOR ACCESSION AGREEMENT ..... 19

**THIS AGREEMENT** is dated

30 December 2020 and made

**BETWEEN:**

- (1) **CAPITAL INDUSTRIAL 1 LIMITED**, (the "Borrower"), a private limited company incorporated in England and Wales with registered number 12898563 and having its registered office at 17c Curzon Street, London, United Kingdom, W1J 5HU;
- (2) **CAPITAL INDUSTRIAL 2 LIMITED** (the "Original Subordinated Creditor"), a private limited company incorporated in England and Wales with registered number 12898572 and having its registered office at 17c Curzon Street, London, United Kingdom, W1J 5HU;
- (3) **THE PRUDENTIAL INSURANCE COMPANY AMERICA**, (the "Security Agent"), a corporation established in the State of New Jersey and registered with the New Jersey Secretary of State with number 0900050867 and whose registered office is at 751 Broad Street, Newark, New Jersey, 07102, USA as security trustee for the Secured Parties.

**1. Definitions, Construction and Third Party Rights**

**1.1 Definitions**

Terms defined in the Facility Agreement shall, unless otherwise defined in this Agreement or unless a contrary intention appears, bear the same meaning when used in this Agreement and the following terms shall have the following meanings:

"Additional Subordinated Creditor" means any person who becomes a Subordinated Creditor pursuant to Clause 21.6 (*Additional Subordinated Creditor*).

"Ancillary Liabilities" in relation to any of the Senior Debt or the Subordinated Debt means:

- (A) any refinancing, novation, refunding, restructuring, deferral or extension of any of those liabilities;
- (B) any further advance which may be made under any agreement supplemental to the relevant facilities or credit agreement plus all interest, indemnities, fees and costs in connection therewith;
- (C) any claim for damages or restitution in the event of rescission of any such liabilities or otherwise in connection with any relevant facilities or credit agreement;
- (D) any claim against the Borrower flowing from any recovery by the Borrower of a payment or discharge in respect of those liabilities on the grounds of preference or otherwise; and
- (E) any amounts (including post-insolvency interest) which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings.

"Assigned Assets" means all the rights, interests, causes of action and remedies assigned pursuant to Clause 5.1 (*Assignment*).

"Debt" means:

- (A) the Senior Debt; and

(B) the Subordinated Debt.

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

"Facility Agreement" means the up to £115,000,000 facility agreement between, among others, (1) the Borrower; (2) The Prudential Insurance Company of America as Agent; (3) The Prudential Insurance Company of America as Arranger; (4) the Security Agent and (5) The Prudential Insurance Company of America as the Original Lender originally dated 26 March 2020 and as amended and restated on 5 March 2020 and on or about the date of this Deed.

"LPA" means the Law of Property Act 1925.

"Party" means a party to this Agreement.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Assigned Assets.

"Senior Debt" means all present and future sums, liabilities and obligations (actual or contingent) payable, owing, due or incurred by the Borrower to a Secured Party under or in connection with a Finance Document together with all Ancillary Liabilities relating thereto.

"Senior Discharge Date" means the date, as determined by the Agent (acting reasonably), on which all Senior Debt has been unconditionally and irrevocably paid and discharged in full to the satisfaction of the Agent whether or not by enforcement and on which no commitment is in force under the Finance Documents.

"Senior Security Documents" means the Security Documents as defined in the Facility Agreement.

"Subordinated Creditors" means the Original Subordinated Creditor and any Additional Subordinated Creditor.

"Subordinated Creditor Accession Agreement" means an agreement substantially in the form set out in Schedule 3 (*Subordinated Creditor Accession Agreement*) with such amendments as the Agent may approve or reasonably request.

"Subordinated Debt" means all present and future sums, liabilities and obligations whatsoever (actual or contingent) payable, owing due or incurred by the Borrower to the Subordinated Creditor together with all Ancillary Liabilities relating thereto.

"Subordinated Document" means any document evidencing or recording the terms of any Subordinated Debt.

## 1.2 Construction

The provisions of clause 1.2 (*Construction*) of the Facility Agreement apply to this Agreement as though they were set out in full in this Agreement.

## 1.3 Third Party Rights

Except as otherwise expressly provided in this Agreement, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

#### 1.4 Effect as a Deed

This Agreement is intended to take effect as a deed notwithstanding that the Security Agent may have executed it under hand only.

## 2. Ranking of Debt

### 2.1 Ranking of Debt

Subject to the terms of this Agreement, the Debt shall rank in the following order:

- |               |                    |
|---------------|--------------------|
| <b>First</b>  | Senior Debt        |
| <b>Second</b> | Subordinated Debt. |

### 2.2 Application of ranking

The ranking in Clause 2.1 (*Ranking of Debt*) shall apply regardless of:

- (A) the order of registration, delivery of, notice or execution of any document;
- (B) the date upon which any Debt arises;
- (C) whether a Lender is obliged to advance moneys included in any Debt; or
- (D) any fluctuations in the outstanding amount of, or any intermediate discharge of, any Debt in whole or in part.

## 3. Undertakings of the Borrower

Until the Senior Discharge Date, the Borrower undertakes to each Finance Party that it will not:

- (A) discharge any of the Subordinated Debt by set-off;
- (B) create or permit to subsist any security over any of its assets for, or any guarantee, indemnity or other assurance against financial loss in respect of, any of the Subordinated Debt;
- (C) pay, repay, prepay, redeem, pay any interest, fees, dividends or commission on or by reference to any of the Subordinated Debt in cash or in kind nor allow any other person to do so except to the extent it is permitted by Clause 5 (*Security*);
- (D) *Assignment*

Each Subordinated Creditor assigns to the Security Agent by way of security for the payment and discharge of the Senior Debt:

- (E) its rights and interests (but not obligations) in respect of each Subordinated Agreement and the Subordinated Debt from time to time; and
- (F) all causes of action and other rights and remedies (but no obligations) relating to each Subordinated Agreement and the Subordinated Debt from time to time.



### 3.2 Enforcement

- (A) Clause 5.1 (*Assignment*) will become immediately enforceable if an Event of Default occurs and is continuing.
- (B) The Security Agent shall be entitled, upon enforcement, without prior notice to any Subordinated Creditor or prior authorisation from any court, to sell or otherwise dispose of all or any part of the Assigned Assets (at the times, in the manner and on the terms it thinks fit).
- (C) The statutory powers of sale, of appointing a receiver and the other powers conferred on mortgagees by Section 101 of the LPA as varied and extended by this Deed shall arise on the date of this Deed.
- (D) Section 103 of the LPA (restricting the power of sale) shall not apply to this Deed.
- (E) Section 93 of the LPA (restricting the right of consolidation) shall not apply to this Deed.
- (F) Neither the Security Agent, a Receiver nor any Delegate is:
  - (1) liable to account as mortgagee in possession in respect of the Assigned Assets; nor
  - (2) liable for any loss upon realisation or exercise of any power, authority or right of the Security Agent, a Receiver or any Delegate arising under this Deed, nor for any act, default, neglect, or misconduct of any nature whatsoever.
- (G) The Security Agent, each Receiver and each Delegate is entitled to all the rights, powers and immunities conferred by the LPA on mortgagees and receivers duly appointed under the LPA.
- (H) No person dealing with the Security Agent, any Receiver or any Delegate shall be concerned to enquire:
  - (1) whether the rights conferred by or pursuant to any Finance Document are exercisable;
  - (2) whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with;
  - (3) otherwise as to the propriety or regularity of acts purporting or intended to exercise any such rights; or
  - (4) as to the application of any money borrowed or raised.
- (I) All the protection to purchasers contained in Sections 104 (relating to a conveyance on sale) and 107 (relating to mortgagee's receipts, discharges etc.) of the LPA, Section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Security Agent, any Receiver or any Delegate.

### 3.3 Security Agent's and Receiver's powers and rights

- (A) Following the occurrence of an Event of Default which is continuing, whether or not the Security Agent has entered into or taken possession of the whole or any part of the Assigned Assets pursuant to this Deed and subject to any applicable insolvency law:
- (1) the Security Agent may, by writing under the hand of any authorised officer of the Security Agent, appoint a Receiver in relation to all or any part of the Assigned Assets;
  - (2) subject to the Insolvency Act 1986, the Security Agent may, from time to time, in similar manner, remove a Receiver and appoint another in his place;
  - (3) the Security Agent may, either at the time of appointment or at any time thereafter, fix the remuneration of a Receiver; and
  - (4) the Security Agent and any agent or nominee wherever situated may, without further notice, exercise all powers conferred on mortgagees by the LPA as varied or extended by this Deed.

None of the restrictions imposed by the LPA in relation to the appointment of receivers, the giving of notice or otherwise shall apply.

- (B) A Receiver may from time to time delegate, by power of attorney or otherwise, to any person any of his powers and discretions, whether arising by statute, the provisions of this Deed or otherwise, upon such terms and for such periods of time as he may in his discretion think fit and may from time to time terminate any such delegation. The Security Agent shall not be liable for any loss or damage arising from any such delegate's act, default, neglect or misconduct of any nature whatsoever unless by reason of such delegate's gross negligence or wilful misconduct.
- (C) The Security Agent (without becoming a mortgagee in possession) and/or any Receiver (without personal liability) shall have the powers to do or abstain from doing anything which a Subordinated Creditor could do or abstain from doing including, without limitation, the powers conferred by Section 109 of the LPA and, in the case of a Receiver who is an administrative receiver the powers conferred by Section 29 of the Insolvency Act 1986 and by Schedule 1 to the Insolvency Act 1986 whether or not the Security Agent and/or any Receiver is an administrative receiver. Such powers and rights may be exercised in the name of the relevant Subordinated Creditor and in such manner and on such terms as the person exercising them shall in its sole absolute discretion consider appropriate.

### 3.4 Receiver as agent

A Receiver is for all purposes the agent of each relevant Subordinated Creditor. Subject to the provisions of the Insolvency Act 1986, the relevant Subordinated Creditors are solely responsible for all of a Receiver's acts, defaults, neglect and misconduct of any nature whatsoever (except in the case of gross negligence or wilful misconduct) and for his remuneration and costs, to the exclusion of liability on the part of the Security Agent.

### 3.5 No obligation

No Receiver is obliged to exercise any of the powers set out in this clause.

### 3.6 Several power

Where more than one Receiver is appointed, each Receiver has the power to act severally unless the Security Agent specifies otherwise in the appointment of such Receiver.

### 3.7 Powers exercisable by the Security Agent

- (A) The Security Agent may exercise all powers granted to a Receiver by this Deed, whether as attorney of the relevant Subordinated Creditor or otherwise.
- (B) The powers of a Receiver set out above are in addition to, and without prejudice to, all statutory and other powers of the Security Agent and so that, without limitation, such powers are and remain exercisable by the Security Agent in respect of that part of the Assigned Assets in respect of which no appointment of a Receiver by the Security Agent is from time to time subsisting.
- (C) Permitted Payments);
- (D) purchase or acquire any of the Subordinated Debt or any interest therein nor allow any other person to do so;
- (E) amend, waive or release any term of the Subordinated Documents, except for an amendment, waiver or release which does not prejudice any Senior Debt, any Secured Party or impair the subordination contemplated by this Agreement; or
- (F) take or omit to take any action whereby the subordination contemplated by this Agreement may be impaired.

## 4. Undertakings of Subordinated Creditors

Until the Senior Discharge Date, each Subordinated Creditor undertakes to each Finance Party:

- (A) not to demand or receive payment, prepayment or repayment of, or any distribution in respect of (or on account of) any of the Subordinated Debt in cash or in kind from the Borrower or any other source or apply any money or property in discharge of any Subordinated Debt except to the extent it is permitted by Clause 5 (Security
- (B) *Assignment*

Each Subordinated Creditor assigns to the Security Agent by way of security for the payment and discharge of the Senior Debt:

- (C) its rights and interests (but not obligations) in respect of each Subordinated Agreement and the Subordinated Debt from time to time; and
- (D) all causes of action and other rights and remedies (but no obligations) relating to each Subordinated Agreement and the Subordinated Debt from time to time.

### 4.2 Enforcement

- (A) Clause 5.1 (*Assignment*) will become immediately enforceable if an Event of Default occurs and is continuing.

- (B) The Security Agent shall be entitled, upon enforcement, without prior notice to any Subordinated Creditor or prior authorisation from any court, to sell or otherwise dispose of all or any part of the Assigned Assets (at the times, in the manner and on the terms it thinks fit).
- (C) The statutory powers of sale, of appointing a receiver and the other powers conferred on mortgagees by Section 101 of the LPA as varied and extended by this Deed shall arise on the date of this Deed.
- (D) Section 103 of the LPA (restricting the power of sale) shall not apply to this Deed.
- (E) Section 93 of the LPA (restricting the right of consolidation) shall not apply to this Deed.
- (F) Neither the Security Agent, a Receiver nor any Delegate is:
  - (1) liable to account as mortgagee in possession in respect of the Assigned Assets; nor
  - (2) liable for any loss upon realisation or exercise of any power, authority or right of the Security Agent, a Receiver or any Delegate arising under this Deed, nor for any act, default, neglect, or misconduct of any nature whatsoever.
- (G) The Security Agent, each Receiver and each Delegate is entitled to all the rights, powers and immunities conferred by the LPA on mortgagees and receivers duly appointed under the LPA.
- (H) No person dealing with the Security Agent, any Receiver or any Delegate shall be concerned to enquire:
  - (1) whether the rights conferred by or pursuant to any Finance Document are exercisable;
  - (2) whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with;
  - (3) otherwise as to the propriety or regularity of acts purporting or intended to exercise any such rights; or
  - (4) as to the application of any money borrowed or raised.
- (I) All the protection to purchasers contained in Sections 104 (relating to a conveyance on sale) and 107 (relating to mortgagee's receipts, discharges etc.) of the LPA, Section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Security Agent, any Receiver or any Delegate.

#### 4.3 Security Agent's and Receiver's powers and rights

- (A) Following the occurrence of an Event of Default which is continuing, whether or not the Security Agent has entered into or taken possession of the whole or any part of the Assigned Assets pursuant to this Deed and subject to any applicable insolvency law:

- (1) the Security Agent may, by writing under the hand of any authorised officer of the Security Agent, appoint a Receiver in relation to all or any part of the Assigned Assets;
- (2) subject to the Insolvency Act 1986, the Security Agent may, from time to time, in similar manner, remove a Receiver and appoint another in his place;
- (3) the Security Agent may, either at the time of appointment or at any time thereafter, fix the remuneration of a Receiver; and
- (4) the Security Agent and any agent or nominee wherever situated may, without further notice, exercise all powers conferred on mortgagees by the LPA as varied or extended by this Deed.

None of the restrictions imposed by the LPA in relation to the appointment of receivers, the giving of notice or otherwise shall apply.

- (B) A Receiver may from time to time delegate, by power of attorney or otherwise, to any person any of his powers and discretions, whether arising by statute, the provisions of this Deed or otherwise, upon such terms and for such periods of time as he may in his discretion think fit and may from time to time terminate any such delegation. The Security Agent shall not be liable for any loss or damage arising from any such delegate's act, default, neglect or misconduct of any nature whatsoever unless by reason of such delegate's gross negligence or wilful misconduct.
- (C) The Security Agent (without becoming a mortgagee in possession) and/or any Receiver (without personal liability) shall have the powers to do or abstain from doing anything which a Subordinated Creditor could do or abstain from doing including, without limitation, the powers conferred by Section 109 of the LPA and, in the case of a Receiver who is an administrative receiver the powers conferred by Section 29 of the Insolvency Act 1986 and by Schedule 1 to the Insolvency Act 1986 whether or not the Security Agent and/or any Receiver is an administrative receiver. Such powers and rights may be exercised in the name of the relevant Subordinated Creditor and in such manner and on such terms as the person exercising them shall in its sole absolute discretion consider appropriate.

#### **4.4 Receiver as agent**

A Receiver is for all purposes the agent of each relevant Subordinated Creditor. Subject to the provisions of the Insolvency Act 1986, the relevant Subordinated Creditors are solely responsible for all of a Receiver's acts, defaults, neglect and misconduct of any nature whatsoever (except in the case of gross negligence or wilful misconduct) and for his remuneration and costs, to the exclusion of liability on the part of the Security Agent.

#### **4.5 No obligation**

No Receiver is obliged to exercise any of the powers set out in this clause.

#### **4.6 Several power**

Where more than one Receiver is appointed, each Receiver has the power to act severally unless the Security Agent specifies otherwise in the appointment of such Receiver.

#### **4.7 Powers exercisable by the Security Agent**

- (A) The Security Agent may exercise all powers granted to a Receiver by this Deed, whether as attorney of the relevant Subordinated Creditor or otherwise.
- (B) The powers of a Receiver set out above are in addition to, and without prejudice to, all statutory and other powers of the Security Agent and so that, without limitation, such powers are and remain exercisable by the Security Agent in respect of that part of the Assigned Assets in respect of which no appointment of a Receiver by the Security Agent is from time to time subsisting.
- (C) Permitted Payments);
- (D) not to discharge any of the Subordinated Debt by set-off;
- (E) not to permit to subsist or receive the benefit of any security interest, guarantee, indemnity or other assurance against financial loss for, or in respect of, any of the Subordinated Debt;
- (F) not to take or omit to take any action whereby the subordination contemplated by this Agreement may be impaired;
- (G) not to amend, waive or release any term of the Subordinated Documents, except for an amendment which does not prejudice any Senior Debt, any Secured Party or impair the subordination contemplated by this Agreement; and
- (H) not to convert any of the Subordinated Debt into shares of the Borrower..

## 5. **Security**

### 5.1 **Assignment**

Each Subordinated Creditor assigns to the Security Agent by way of security for the payment and discharge of the Senior Debt:

- (A) its rights and interests (but not obligations) in respect of each Subordinated Agreement and the Subordinated Debt from time to time; and
- (B) all causes of action and other rights and remedies (but no obligations) relating to each Subordinated Agreement and the Subordinated Debt from time to time.

### 5.2 **Enforcement**

- (A) Clause 5.1 (*Assignment*) will become immediately enforceable if an Event of Default occurs and is continuing.
- (B) The Security Agent shall be entitled, upon enforcement, without prior notice to any Subordinated Creditor or prior authorisation from any court, to sell or otherwise dispose of all or any part of the Assigned Assets (at the times, in the manner and on the terms it thinks fit).
- (C) The statutory powers of sale, of appointing a receiver and the other powers conferred on mortgagees by Section 101 of the LPA as varied and extended by this Deed shall arise on the date of this Deed.
- (D) Section 103 of the LPA (restricting the power of sale) shall not apply to this Deed.

- (E) Section 93 of the LPA (restricting the right of consolidation) shall not apply to this Deed.
- (F) Neither the Security Agent, a Receiver nor any Delegate is:
  - (1) liable to account as mortgagee in possession in respect of the Assigned Assets; nor
  - (2) liable for any loss upon realisation or exercise of any power, authority or right of the Security Agent, a Receiver or any Delegate arising under this Deed, nor for any act, default, neglect, or misconduct of any nature whatsoever.
- (G) The Security Agent, each Receiver and each Delegate is entitled to all the rights, powers and immunities conferred by the LPA on mortgagees and receivers duly appointed under the LPA.
- (H) No person dealing with the Security Agent, any Receiver or any Delegate shall be concerned to enquire:
  - (1) whether the rights conferred by or pursuant to any Finance Document are exercisable;
  - (2) whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with;
  - (3) otherwise as to the propriety or regularity of acts purporting or intended to exercise any such rights; or
  - (4) as to the application of any money borrowed or raised.
- (I) All the protection to purchasers contained in Sections 104 (relating to a conveyance on sale) and 107 (relating to mortgagee's receipts, discharges etc.) of the LPA, Section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Security Agent, any Receiver or any Delegate.

### 5.3 Security Agent's and Receiver's powers and rights

- (A) Following the occurrence of an Event of Default which is continuing, whether or not the Security Agent has entered into or taken possession of the whole or any part of the Assigned Assets pursuant to this Deed and subject to any applicable insolvency law:
  - (1) the Security Agent may, by writing under the hand of any authorised officer of the Security Agent, appoint a Receiver in relation to all or any part of the Assigned Assets;
  - (2) subject to the Insolvency Act 1986, the Security Agent may, from time to time, in similar manner, remove a Receiver and appoint another in his place;
  - (3) the Security Agent may, either at the time of appointment or at any time thereafter, fix the remuneration of a Receiver; and

- (4) the Security Agent and any agent or nominee wherever situated may, without further notice, exercise all powers conferred on mortgagees by the LPA as varied or extended by this Deed.

None of the restrictions imposed by the LPA in relation to the appointment of receivers, the giving of notice or otherwise shall apply.

- (B) A Receiver may from time to time delegate, by power of attorney or otherwise, to any person any of his powers and discretions, whether arising by statute, the provisions of this Deed or otherwise, upon such terms and for such periods of time as he may in his discretion think fit and may from time to time terminate any such delegation. The Security Agent shall not be liable for any loss or damage arising from any such delegate's act, default, neglect or misconduct of any nature whatsoever unless by reason of such delegate's gross negligence or wilful misconduct.
- (C) The Security Agent (without becoming a mortgagee in possession) and/or any Receiver (without personal liability) shall have the powers to do or abstain from doing anything which a Subordinated Creditor could do or abstain from doing including, without limitation, the powers conferred by Section 109 of the LPA and, in the case of a Receiver who is an administrative receiver the powers conferred by Section 29 of the Insolvency Act 1986 and by Schedule 1 to the Insolvency Act 1986 whether or not the Security Agent and/or any Receiver is an administrative receiver. Such powers and rights may be exercised in the name of the relevant Subordinated Creditor and in such manner and on such terms as the person exercising them shall in its sole absolute discretion consider appropriate.

#### **5.4 Receiver as agent**

A Receiver is for all purposes the agent of each relevant Subordinated Creditor. Subject to the provisions of the Insolvency Act 1986, the relevant Subordinated Creditors are solely responsible for all of a Receiver's acts, defaults, neglect and misconduct of any nature whatsoever (except in the case of gross negligence or wilful misconduct) and for his remuneration and costs, to the exclusion of liability on the part of the Security Agent.

#### **5.5 No obligation**

No Receiver is obliged to exercise any of the powers set out in this clause.

#### **5.6 Several power**

Where more than one Receiver is appointed, each Receiver has the power to act severally unless the Security Agent specifies otherwise in the appointment of such Receiver.

#### **5.7 Powers exercisable by the Security Agent**

- (A) The Security Agent may exercise all powers granted to a Receiver by this Deed, whether as attorney of the relevant Subordinated Creditor or otherwise.
- (B) The powers of a Receiver set out above are in addition to, and without prejudice to, all statutory and other powers of the Security Agent and so that, without limitation, such powers are and remain exercisable by the Security Agent in respect of that part of the Assigned Assets in respect of which no appointment of a Receiver by the Security Agent is from time to time subsisting.



## 6. Permitted Payments

Subject to Clause 7 (*Turnover of Receipts*), the Borrower may make payments of amounts due to the Subordinated Creditors in respect of the Subordinated Debt from the General Account in accordance with the Facility Agreement and the Subordinated Creditors may receive and retain payment of such amounts in respect of Subordinated Debt in each case if no Default is continuing or would result from the payment.

## 7. Turnover of Receipts

### 7.1 Non-permitted payments

If before the Senior Discharge Date:

- (A) a Subordinated Creditor receives a payment or distribution in cash or in any other form in respect of, or on account of the Subordinated Debt not permitted by Clause 5 (*Security*)
- (B) *Assignment*

Each Subordinated Creditor assigns to the Security Agent by way of security for the payment and discharge of the Senior Debt:

- (C) its rights and interests (but not obligations) in respect of each Subordinated Agreement and the Subordinated Debt from time to time; and
- (D) all causes of action and other rights and remedies (but no obligations) relating to each Subordinated Agreement and the Subordinated Debt from time to time.

### 7.2 Enforcement

- (A) Clause 5.1 (*Assignment*) will become immediately enforceable if an Event of Default occurs and is continuing.
- (B) The Security Agent shall be entitled, upon enforcement, without prior notice to any Subordinated Creditor or prior authorisation from any court, to sell or otherwise dispose of all or any part of the Assigned Assets (at the times, in the manner and on the terms it thinks fit).
- (C) The statutory powers of sale, of appointing a receiver and the other powers conferred on mortgagees by Section 101 of the LPA as varied and extended by this Deed shall arise on the date of this Deed.
- (D) Section 103 of the LPA (restricting the power of sale) shall not apply to this Deed.
- (E) Section 93 of the LPA (restricting the right of consolidation) shall not apply to this Deed.
- (F) Neither the Security Agent, a Receiver nor any Delegate is:
  - (1) liable to account as mortgagee in possession in respect of the Assigned Assets; nor

- (2) liable for any loss upon realisation or exercise of any power, authority or right of the Security Agent, a Receiver or any Delegate arising under this Deed, nor for any act, default, neglect, or misconduct of any nature whatsoever.
- (G) The Security Agent, each Receiver and each Delegate is entitled to all the rights, powers and immunities conferred by the LPA on mortgagees and receivers duly appointed under the LPA.
- (H) No person dealing with the Security Agent, any Receiver or any Delegate shall be concerned to enquire:
  - (1) whether the rights conferred by or pursuant to any Finance Document are exercisable;
  - (2) whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with;
  - (3) otherwise as to the propriety or regularity of acts purporting or intended to exercise any such rights; or
  - (4) as to the application of any money borrowed or raised.
- (I) All the protection to purchasers contained in Sections 104 (relating to a conveyance on sale) and 107 (relating to mortgagee's receipts, discharges etc.) of the LPA, Section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Security Agent, any Receiver or any Delegate.

### 7.3 Security Agent's and Receiver's powers and rights

- (A) Following the occurrence of an Event of Default which is continuing, whether or not the Security Agent has entered into or taken possession of the whole or any part of the Assigned Assets pursuant to this Deed and subject to any applicable insolvency law:
  - (1) the Security Agent may, by writing under the hand of any authorised officer of the Security Agent, appoint a Receiver in relation to all or any part of the Assigned Assets;
  - (2) subject to the Insolvency Act 1986, the Security Agent may, from time to time, in similar manner, remove a Receiver and appoint another in his place;
  - (3) the Security Agent may, either at the time of appointment or at any time thereafter, fix the remuneration of a Receiver; and
  - (4) the Security Agent and any agent or nominee wherever situated may, without further notice, exercise all powers conferred on mortgagees by the LPA as varied or extended by this Deed.

None of the restrictions imposed by the LPA in relation to the appointment of receivers, the giving of notice or otherwise shall apply.
- (B) A Receiver may from time to time delegate, by power of attorney or otherwise, to any person any of his powers and discretions, whether arising by statute, the provisions of this Deed or otherwise, upon such terms and for such periods of time

as he may in his discretion think fit and may from time to time terminate any such delegation. The Security Agent shall not be liable for any loss or damage arising from any such delegate's act, default, neglect or misconduct of any nature whatsoever unless by reason of such delegate's gross negligence or wilful misconduct.

- (C) The Security Agent (without becoming a mortgagee in possession) and/or any Receiver (without personal liability) shall have the powers to do or abstain from doing anything which a Subordinated Creditor could do or abstain from doing including, without limitation, the powers conferred by Section 109 of the LPA and, in the case of a Receiver who is an administrative receiver the powers conferred by Section 29 of the Insolvency Act 1986 and by Schedule 1 to the Insolvency Act 1986 whether or not the Security Agent and/or any Receiver is an administrative receiver. Such powers and rights may be exercised in the name of the relevant Subordinated Creditor and in such manner and on such terms as the person exercising them shall in its sole absolute discretion consider appropriate.

#### **7.4 Receiver as agent**

A Receiver is for all purposes the agent of each relevant Subordinated Creditor. Subject to the provisions of the Insolvency Act 1986, the relevant Subordinated Creditors are solely responsible for all of a Receiver's acts, defaults, neglect and misconduct of any nature whatsoever (except in the case of gross negligence or wilful misconduct) and for his remuneration and costs, to the exclusion of liability on the part of the Security Agent.

#### **7.5 No obligation**

No Receiver is obliged to exercise any of the powers set out in this clause.

#### **7.6 Several power**

Where more than one Receiver is appointed, each Receiver has the power to act severally unless the Security Agent specifies otherwise in the appointment of such Receiver.

#### **7.7 Powers exercisable by the Security Agent**

- (A) The Security Agent may exercise all powers granted to a Receiver by this Deed, whether as attorney of the relevant Subordinated Creditor or otherwise.
- (B) The powers of a Receiver set out above are in addition to, and without prejudice to, all statutory and other powers of the Security Agent and so that, without limitation, such powers are and remain exercisable by the Security Agent in respect of that part of the Assigned Assets in respect of which no appointment of a Receiver by the Security Agent is from time to time subsisting.
- (C) Permitted Payments) from the Borrower or any other source;
- (D) a Subordinated Creditor receives the proceeds of any enforcement of any security, or payment under any guarantee, for any Subordinated Debt; or
- (E) the Borrower makes any payment or distribution in cash or in any other form on account of the purchase or other acquisition of any of the Subordinated Debt,

the receiving Subordinated Creditor will promptly pay any and all such amounts to the Security Agent for application against the Senior Debt and until it does so shall hold all such amounts on trust for the Secured Parties.

## 7.8 Non-permitted set-off

for any reason, any of the Subordinated Debt is discharged in whole or in part by set-off, the relevant Subordinated Creditor will promptly pay an amount equal to the amount of the Subordinated Debt discharged by the set-off to the Security Agent for application against the Senior Debt.

## 8. Subordination

### 8.1 Subordination events

If:

- (A) any distribution, assignment, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the assets of the Borrower, by reason of the liquidation, dissolution or other winding-up of the Borrower or its businesses or any sale, receivership, administration or insolvency proceeding for the benefit of creditors in respect of the Borrower is made or occurs; or
- (B) an Event of Default is continuing,

the provisions of Clause 8.2 (Subordination) shall apply.

### 8.2 Subordination

In any of the circumstances mentioned in Clause 8.1 (Subordination events):

- (A) the Subordinated Debt shall be postponed and subordinated in right of payment to the Senior Debt;
- (B) the Security Agent may, and is irrevocably authorised on behalf of the Subordinated Creditors to:
  - (1) claim, enforce and prove for the Subordinated Debt;
  - (2) file claims and proofs, give receipts and take all such proceedings and do all such things as the Security Agent sees fit to recover the Subordinated Debt; and
  - (3) receive all distributions on the Subordinated Debt for application towards the Senior Debt;
- (C) if and to the extent that the Security Agent is not entitled to claim, enforce, prove, file claims or proofs, or take proceedings for the Subordinated Debt, the Subordinated Creditors shall do so in good time as requested by the Security Agent and shall act in accordance with the instructions of the Security Agent;
- (D) each Subordinated Creditor shall:

- (1) hold any payment or distribution in cash or in kind received or receivable by it in respect of the Subordinated Debt from the Borrower or its estate or from any other source on trust for the Secured Parties; and
  - (2) upon demand promptly pay and transfer any such payment to the Security Agent for application against the Senior Debt; and
- (E) the trustee in bankruptcy, liquidator, assignee or other person distributing the assets of the Borrower or their proceeds is directed to pay distributions on the Subordinated Debt direct to the Security Agent on behalf of the Secured Parties until the Senior Debt is irrevocably paid in full.

## 9. **Voting**

If any of the events referred to in Clause 8.1 (*Subordination events*) occurs:

- (A) the Security Agent may (and is hereby irrevocably authorised to) exercise all powers of convening meetings, voting and representation in respect of the Subordinated Debt and each Subordinated Creditor shall provide the Security Agent with all necessary forms of proxy and of representation; and
- (B) if and to the extent that the Security Agent is not entitled to exercise a power conferred by the above, each Subordinated Creditor:
  - (1) shall exercise the power as the Security Agent directs; and
  - (2) shall not exercise any power so as to impair this subordination.

## 10. **Treatment of Distributions**

### 10.1 **Realisation of non-cash distributions**

If the Security Agent or any other Secured Party receives any distribution otherwise than in cash in respect of the Subordinated Debt from the Borrower or any other source, the Security Agent or other Secured Party may realise the distribution as it sees fit, the Senior Debt shall not be deemed reduced by the distribution until and except to the extent that the realisation proceeds are applied towards the Senior Debt and the Security Agent will apply the realisation proceeds in accordance with clause 28.1 of the Facility Agreement.

### 10.2 **Transfer of distributions**

Each Subordinated Creditor shall do all such things as the Security Agent may require as being necessary or desirable to transfer to the Security Agent all payments and distributions which must be turned over or held in trust for the Secured Parties, including endorsements and execution of formal transfers, and shall pay all costs and stamp duties in connection therewith.

### 10.3 **Currencies**

If the Security Agent receives any payment required to be paid by a Subordinated Creditor under this Agreement or paid in respect of the Subordinated Debt in a currency other than the currency of the Senior Debt, the Security Agent may convert the currency received into the currency of the Senior Debt at a prevailing market rate of exchange and the Senior Debt shall not be deemed reduced by the payment until and except to the extent that the proceeds of conversion are applied towards the Senior Debt.

#### 10.4 Failure of trust

If for any reason, a trust in favour of, or a holding of property for, the Secured Parties under this Agreement is invalid or unenforceable, each Subordinated Creditor shall pay and deliver to the Security Agent an amount equal to the payment, receipt or recovery in cash or in kind (or its value, if in kind) which that Subordinated Creditor would otherwise have been bound to hold on trust for or as property of the Secured Parties.

#### 11. Enforcement

Until the Senior Discharge Date, no Subordinated Creditor shall be entitled:

- (A) to accelerate any of the Subordinated Debt or otherwise declare any of the Subordinated Debt prematurely payable;
- (B) either alone or in conjunction with any other person, to commence or take any action against the Borrower for the enforcement of, or in connection with, any Subordinated Document (including for the payment of any amount thereunder or in respect of a breach of a term thereunder) or for the termination thereof;
- (C) to initiate or support or take any steps with a view to any insolvency, liquidation, reorganisation, receivership, administration, winding-up or dissolution proceedings or any voluntary arrangement or assignment for the benefit of creditors or any similar proceedings involving the Borrower, whether by petition, convening a meeting, voting in support of a resolution or otherwise;
- (D) without prejudice to Clause 4.7(E) (*Undertakings of Subordinated Creditors*), to enforce any Security which secures any Subordinated Debt by foreclosure or otherwise or to exercise any right of marshalling; or
- (E) otherwise to exercise any remedy for the recovery of the Subordinated Debt.

#### 12. Enforcement by Secured Parties

The Subordinated Creditors agree that the Secured Parties may enforce, or refrain from enforcing, the security created by any of the Senior Security Documents in accordance with their terms and the terms of the Facility Agreement:

- (A) in such manner as they see fit;
- (B) solely having regard to their interests; and
- (C) without any liability or duty to any of the Subordinated Creditors.

#### 13. Consents

##### 13.1 New transactions

No Subordinated Creditor shall have any remedy against the Borrower or any Secured Party by reason of any transaction entered into between the Secured Parties (or any of them) and the Borrower which violates, does not comply with or is a potential event of default or an event of default (however described) under any Subordinated Document. No Subordinated Creditor may object to any such transaction by reason of any provision of any of the Subordinated Documents.

## 13.2 Waivers

Any waiver or consent granted by any Finance Party in respect of any Finance Document shall also be deemed to have been given by each Subordinated Creditor if any transaction or circumstances would, in the absence of that waiver or consent, violate or not comply with any Subordinated Document or result in a potential event of default or an event of default (however described) under any Subordinated Document.

## 14. Representations and Warranties

Each Subordinated Creditor represents and warrants to each Finance Party that:

- (A) it is a limited liability company, duly incorporated and validly existing under the law of its jurisdiction of incorporation;
- (B) it has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of, this Agreement;
- (C) the obligations expressed to be assumed by it in this Agreement are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.
- (D) the entry into and performance by it of, and the transactions contemplated by, this Agreement do not and will not conflict with:
  - (1) any law or regulation or judicial or official order applicable to it; or
  - (2) its constitutional documents; or
  - (3) any agreement or instrument binding upon it or any of its assets or cause a termination event or default (howsoever described) under any such agreement or instrument;
- (E) it has obtained all necessary consents and authorisations for the performance by it of this Agreement;
- (F) it is the sole legal and beneficial owner of the Subordinated Debt owed to it and of the benefit of the Subordinated Documents free from any security interest, declaration of trust, option and subordination in favour of any person other than the Finance Parties;
- (G) the Subordinated Debt is not subject to any set-off, counterclaim or other defence;
- (H) its payment obligations under this Agreement rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally;
- (I) under the law of its jurisdiction of incorporation it is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority in any jurisdiction or that any stamp, registration or similar tax be paid on or in relation to this Agreement or the transactions contemplated by this Agreement;
- (J) all information provided by it or on its behalf to any Finance Party in connection with or pursuant to this Agreement or any other Transaction Document was true, complete and accurate in all respects as at the date it was provided or as at the date

(if any) at which it was stated and nothing was omitted from such information that results in such information being untrue or misleading in any respect;

- (K) no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it;
- (L) the execution by it of this Agreement constitutes, and the exercise by it of its rights and performance of its obligations under this Agreement will constitute, private and commercial acts performed for private and commercial purposes and it will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to this Agreement;
- (M) its:
  - (1) irrevocable submission under this Agreement to the jurisdiction of the courts of England;
  - (2) agreement that this Agreement is governed by English law; and
  - (3) agreement not to claim any immunity to which it or its assets may be entitled, are legal, valid and binding under the laws of its jurisdiction of incorporation and any judgment obtained in England in relation to this Agreement will be recognised and enforced in its jurisdiction of incorporation; and
- (N) Subject to the Legal Reservations and Perfection Requirements, this Deed:
  - (1) creates (or, once entered into, will create) in favour of the Security Agent, the Security which it is expressed to create fully perfected and with the ranking and priority it is expressed to have;
  - (2) is not subject to any prior or pari passu ranking Security other than any Security created pursuant to the Finance Documents; and
  - (3) is not liable to be avoided or set aside on its liquidation, administration or otherwise; and
  - (4) it is the absolute legal and beneficial owner of all the Assigned Assets over which this Deed purports to create any Security.

14.2 The representations set out in this Clause 14 are made on the date of this Agreement and are deemed to be repeated by each Subordinated Creditor on each Interest Payment Date until the Senior Discharge Date with reference to the facts and circumstances then existing.

## 15. Information by Subordinated Creditors

### 15.1 Defaults

Each Subordinated Creditor will, promptly upon becoming aware of the same, notify the Security Agent of the occurrence of any event of default or potential event of default (howsoever described) or mandatory prepayment event or other event entitling that Subordinated Creditor to demand prepayment or repayment of any Subordinated Debt prior to its specified maturity under the Subordinated Documents.



## 15.2 Amounts of debt

Each Subordinated Creditor will on the written request by the Security Agent notify the Security Agent in writing of details of the amount of the Subordinated Debt.

## 16. Subrogation by Subordinated Creditors

If the Senior Debt is wholly or partially paid out of any proceeds received of or on account of the Subordinated Debt, each Subordinated Creditor (as the case may be) will to that extent be subrogated to the Senior Debt so paid (and all securities and guarantees for that Senior Debt) but not before the Senior Discharge Date.

## 17. Protection of Subordination

### 17.1 Continuing subordination

The subordination provisions in this Agreement constitute continuing subordination arrangements and benefit the ultimate balance of the Senior Debt, regardless of any intermediate payment or discharge of the Senior Debt in whole or in part.

### 17.2 Waiver of defences

The subordination arrangements in this Agreement and the obligations of each Subordinated Creditor under this Agreement will not be affected by (and the intent of each Subordinated Creditor is that the subordination and priority provisions and its obligations shall continue in full force and effect notwithstanding) any act, omission, matter or thing which but for this provision, might operate to reduce, release or prejudice the subordination or any of those obligations in whole or in part, including without limitation:

- (A) any time, waiver or indulgence granted to or composition with the Borrower, any other Transaction Obligor or any other person;
- (B) the release of the Borrower, any other Transaction Obligor or any other person under the terms of any composition or arrangement;
- (C) the taking of any other security interest from the Borrower, any other Transaction Obligor or any other person or the 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, the Borrower, any other Transaction Obligor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instruments 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 or status of the Borrower, any other Transaction Obligor 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 any change in the purpose of any extension of or any 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 winding-up, insolvency or similar proceedings in relation to any person.

### 17.3 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 claiming the benefit of this subordination, of the security conferred by the Senior Security Documents or of the obligations of the Subordinated Creditors under this Agreement. Each Secured Party (or any trustee or agent on its behalf) may refrain from applying or enforcing any money, rights or security.

### 17.4 Borrower's acknowledgement

The Borrower recognises the undertakings and obligations to and on the parts of each Subordinated Creditor herein contained and irrevocably waives any rights which it may now or in the future have to challenge or have set aside any arrangement relating to:

- (A) the placing in a suspense account of any moneys or distributions received from a Subordinated Creditor or on account of the liability of any Subordinated Creditor under this Agreement; and
- (B) any other matter or thing regarding the order of enforcement of the Senior Security Documents and the priority of the application of the proceeds of such enforcement,

and the Borrower confirms that it does not have any right to enforce or sue in respect of any agreement, arrangement or understanding herein contained or to claim any right of estoppel in relation hereto.

## 18. Preservation of Subordinated Debt

The Subordinated Debt shall, solely as between the Borrower and the Subordinated Creditors, remain owing or due and payable in accordance with the terms of the Subordinated Documents and interest and default interest will accrue on missed payments accordingly.

## 19. Power of Attorney

By way of security for the obligations of each Subordinated Creditor under this Agreement, each Subordinated Creditor irrevocably appoints the Security Agent as its attorney to do anything which that Subordinated Creditor is required to do by this Agreement but has failed to do. The Security Agent may delegate this power. Each Subordinated Creditor ratifies and confirms and agrees to ratify and confirm all acts and things which any attorney mentioned in this Clause 19 does or purports to do in exercise of the powers granted by this Clause 19.

## 20. Expenses, Default Interest etc

### 20.1 Enforcement costs

Each Subordinated Creditor shall, within three Business Days of written demand, pay to the Security Agent the amount of all costs and expenses incurred by it in connection with the preservation or enforcement against the Borrower or any Subordinated Creditor (as the case may be) of any of the rights of the Secured Parties against it under this Agreement.

## 20.2 Legal expenses and taxes

The costs and expenses referred to in Clause 20.1 above include, without limitation, the fees and expenses of legal advisers and any value added tax or similar tax, and are payable in the currency in which they are incurred.

## 20.3 Default interest

- (A) If a Subordinated Creditor fails to pay any amount payable by it under this Agreement to a Secured Party, it must, on demand by the Security Agent, pay interest on the overdue amount from the due date up to the date of actual payment (both before and after judgment).
- (B) Interest on an overdue amount is payable at a rate equal to the applicable rate set out in clause 8.3 (*Default interest*) of the Facility Agreement.
- (C) Interest (if unpaid) on an overdue amount will be compounded at the end of the period selected by the Security Agent but will remain immediately due and payable.
- (D) Any interest accruing under this Clause 20 accrues from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 or 365 days or otherwise, depending on what the Security Agent determines is market practice for the currency of the amount due.

## 20.4 Certificates and Determinations

Any certification or determination by the Security Agent of a rate or amount under this Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## 20.5 No Deduction

All payments to be made by a Subordinated Creditor under this Agreement shall be made without any set-off, counterclaim or equity and (subject to the following sentence) free from, clear of and without deduction for any taxes, duties, levies, imposts or charges whatsoever, present or future. If a Subordinated Creditor is compelled by the law of any applicable jurisdiction (or by an order of any regulatory authority in such jurisdiction) to withhold or deduct any sums in respect of taxes, duties, levies, imposts or charges from any amount payable to a Secured Party under this Agreement or, if any such withholding or deduction is made in respect of any recovery from a Subordinated Creditor under this Agreement, such Subordinated Creditor shall pay such additional amount so as to ensure that the net amount received by that Secured Party shall equal the full amount due to it under the provisions of this Agreement (had no such withholding or deduction been made).

## 20.6 Currency of Payment

The obligation of a Subordinated Creditor under this Agreement to make payments in any currency shall not be discharged or satisfied by any tender, or recovery pursuant to any judgment or otherwise, expressed in or converted into any other currency, except to the extent that tender or recovery results in the effective receipt by a Secured Party of the full amount of the currency expressed to be payable under this Agreement.

## 20.7 Currency Indemnity

- (A) If any sum due from a Subordinated Creditor under this Agreement (a "Sum"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "First Currency") in which that Sum is payable into another currency (the "Second Currency") for the purpose of:
- (1) making or filing a claim or proof against that Subordinated Creditor;
  - (2) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings; or
  - (3) applying the Sum in satisfaction of any amount due under this Agreement,
- such Subordinated Creditor shall, as an independent obligation, within three Business Days of demand, indemnify the relevant Secured Party against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that Secured Party at the time of its receipt of that Sum.
- (B) Each Subordinated Creditor waives any right it may have in any jurisdiction to pay any amount under this Agreement in a currency or currency unit other than that in which it is expressed to be payable.

## 21. Changes to the Parties

### 21.1 Successors and assigns

This Agreement is binding on the successors and assigns of the Parties.

### 21.2 Borrower

The Borrower may not assign or transfer any of its rights (if any) or obligations under this Agreement.

### 21.3 Subordinated Creditor

No Subordinated Creditor shall:

- (A) assign or dispose of, or create or permit to subsist any security or trust over, any of the Subordinated Debt owing to it or its proceeds or any interest in that Subordinated Debt or its proceeds, or any security therefor, to or in favour of any person or attempt to do any of the foregoing; or
- (B) subordinate any of the Subordinated Debt owing to it or its proceeds to any sums owing by the Borrower to any person other than the Secured Parties; or
- (C) transfer by novation or otherwise any of its rights or obligations under the Subordinated Documents or this Agreement to any person.

### 21.4 The Secured Parties

Any Secured Party may assign or otherwise dispose of all or any of its rights under this Agreement in accordance with the Finance Documents to which it is a party.

## 21.5 The Security Agent

The Security Agent may assign and transfer all or any part of its rights and obligations under this Agreement to a replacement security trustee appointed pursuant to the terms of the Facility Agreement. Such replacement security trustee will, from the date of such assignment or transfer be the security trustee for the Secured Parties instead of the previous security trustee.

## 21.6 Additional Subordinated Creditor

The Borrower may request that a person who proposes to become a creditor of the Borrower becomes an Additional Subordinated Creditor. That person shall become an Additional Subordinated Creditor if:

- (A) the Agent has given its written consent to such person becoming an Additional Subordinated Creditor;
- (B) the Borrower delivers to the Agent a duly completed and executed Subordinated Creditor Accession Agreement in respect of such person;
- (C) the Borrower confirms that no Default is continuing or would occur as a result of that person becoming an Additional Subordinated Creditor; and
- (D) the Agent has received all of the documents and other evidence to be delivered in relation to that Additional Subordinated Creditor (being the items listed in Schedule 2 (*Conditions Precedent*) to the Facility Agreement at paragraphs 1.1 to 1.2 (inclusive), paragraph 1.4 and paragraph 1.5 and a legal opinion of legal advisers in the country of incorporation of the proposed Additional Subordinated Creditor addressed to the Secured Parties, each in form and substance satisfactory to the Agent).

## 22. Status of Borrower

### 22.1 Priorities

The Borrower joins in this Agreement for the purpose of acknowledging the priorities, rights and obligations recorded in this Agreement and undertakes with each of the other parties hereto to observe the provisions of this Agreement at all times and not in any way to prejudice or affect the enforcement of such provisions or do or suffer anything which would be inconsistent with the terms of this Agreement.

### 22.2 No rights

The Borrower shall not have any rights hereunder and none of the undertakings herein contained on the part of the Secured Parties or the Subordinated Creditor are given (or shall be deemed to have been given) to, or for the benefit of, the Borrower.

## 23. The Security Agent

### 23.1 Security Trust

Each Subordinated Creditor and the Borrower acknowledges that:

- (A) the undertakings given by them and contained in this Agreement;

- (B) the other rights, title and interests constituted by this Agreement; and
- (C) all other monies and assets paid to, held by or received or recovered by the Security Agent under or in connection with this Agreement,

are held by the Security Agent on trust for the Secured Parties.

## 23.2 Liability

The Security Agent shall have no liability to the Borrower or the Subordinated Creditors for any omission or any act taken by it in connection with its rights, powers, duties or obligations under this Agreement.

## 24. Miscellaneous

### 24.1 Further assurance

The Borrower and each Subordinated Creditor must promptly upon request by the Security Agent execute (in such form as the Security Agent may reasonably require) such documents in favour of the Security Agent or its nominees and do all such assurances and things as the Security Agent may reasonably require for protecting or validating the subordination arrangements created or intended to be created by this Agreement.

### 24.2 Avoidance of payments

- (A) No amount paid, repaid or credited to a Secured Party shall be deemed to have been irrevocably paid if the Security Agent considers that the payment or credit of such amount is capable of being avoided or reduced because of any laws applicable on bankruptcy, insolvency, liquidation or any similar laws.
- (B) If any amount paid, repaid or credited to a Secured Party is avoided or reduced because of any laws applicable on bankruptcy, insolvency, liquidation or any similar laws then any release, discharge or settlement between that Secured Party and any of the Subordinated Creditors shall be deemed not to have occurred and the Security Agent shall be entitled to enforce its rights under this Agreement subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made.

### 24.3 Set-off

A Secured Party may set-off any matured obligation due from any Subordinated Creditor to that Secured Party under this Agreement against any matured obligation owed by that Secured Party to that Subordinated Creditor, regardless of the place of payment, booking, branch or currency of either obligation. If the obligations are in different currencies, a 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 and such cost shall form part of the Senior Debt.

### 24.4 Additional security

This Agreement shall be in addition to and not be affected by any security or guarantee now or hereafter held by a Secured Party for all or any part of the Senior Debt.

## 24.5 No conflict

Each Subordinated Creditor and the Borrower each agree that any Subordinated Documents to which it is a party shall operate subject to the terms of this Agreement and, accordingly, if there is any conflict or inconsistency between the terms of such Subordinated Document and this Agreement, the terms of this Agreement shall prevail.

## 25. Notices

### 25.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be given in person, by post or fax.

### 25.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

- (A) in the case of the Borrower and each Subordinated Creditor, that identified with its name below;
- (B) in the case of the Security Agent, that identified with its name below; and
- (C) in the case of any other Subordinated Creditor, that notified in writing to the Security Agent on or prior to the date on which it becomes a Party,

or any substitute address, fax number or department or officer as one Party may notify to the other Parties by not less than five Business Days' notice.

### 25.3 Delivery

- (A) Any communication or document made or delivered by the Security Agent under or in connection with this Agreement will only be effective:
  - (1) if by way of fax, when received in legible form; or
  - (2) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 25.2 (*Addresses*), if addressed to that department or officer.

- (B) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (C) Any communication or document which becomes effective, in accordance with Clauses (A) to (B) above, after 5.00p.m. in the place of receipt shall be deemed only to become effective on the following day.

## 25.4 Electronic communication

- (A) Any communication to be made between any parties under or in connection with this Agreement may be made by electronic mail or other electronic means (including by way of posting to a secure website) if those parties:
  - (1) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (2) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (B) Any such electronic communication as specified in Clause (A) to be made between the Borrower or a Subordinated Creditor and the Security Agent may only be made in that way to the extent that those parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (C) Any such electronic communication as specified in Clause (A) made between any two parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (D) Any electronic communication which becomes effective, in accordance with Clause (C), after 5.00pm in the place in which the party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (E) Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 25.4.

## 25.5 English language

- (A) Any notice given under or in connection with this Agreement must be in English.
- (B) All other documents provided under or in connection with this Agreement must be:
  - (1) in English; or
  - (2) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## 25.6 Voice recording

Each Party acknowledges and agrees that telephone calls may be recorded for regulatory or monitoring purposes.

## 26. Partial Invalidity

- 26.1 at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law or any jurisdiction, neither the legality, validity or enforceability



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.

**27. Remedies and Waivers Cumulative**

27.1 The rights of each Secured Party under this Agreement:

- (A) are cumulative and not exclusive of its rights under the general law;
- (B) may be exercised as often as necessary; and
- (C) may be waived only in writing and specifically.

27.2 Delay in exercising or non-exercise of any such right is not a waiver of that right.

**28. Counterparts**

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

**29. Governing Law**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

**30. Jurisdiction**

**30.1 Jurisdiction of English courts**

- (A) Subject to Clause (C) below, the courts of England have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual dispute or claim) (a "Dispute").
- (B) Subject to Clause (C) below, the Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly neither the Borrower nor a Subordinated Creditor will:
  - (1) argue to the contrary; or
  - (2) initiate or pursue any proceedings relating to a Dispute in any jurisdiction other than England.
- (C) Notwithstanding Clauses (B) and (C) above, no Secured Party shall be prevented from initiating or pursuing proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may initiate or pursue:
  - (1) proceedings in any other court; and
  - (2) concurrent proceedings in any number of jurisdictions,

irrespective of whether proceedings have already been initiated by any Party in England. The Borrower and each Subordinated Creditor irrevocably waives

any right that it may have to claim that the action has been brought in an inconvenient forum.

**IN WITNESS** whereof this Agreement has been duly executed and delivered as a deed on the date stated at the beginning of this Agreement.

## SCHEDULE 1 : SUBORDINATED CREDITOR ACCESSION AGREEMENT

**THIS DEED OF ACCESSION** is dated [ ] between:

- (1) [ ] (a company incorporated in [ ] with company registration number [ ]) (the "Additional Subordinated Creditor"); and
- (2) **THE PRUDENTIAL INSURANCE COMPANY OF AMERICA** a corporation established in the State of New Jersey and registered with the New Jersey Secretary of State with number 0900050867 and whose registered office is at 751 Broad Street, Newark, New Jersey, 07102, USA as security trustee for the Secured Parties (the "Security Agent") as security agent for the Secured Parties.

### BACKGROUND:

- (A) A Subordination Agreement (the "Subordination Agreement") was entered into on [ ] between, among others, (1) [ ], (2) the companies listed therein as Subordinated Creditors and (3) the Security Agent.
- (B) The Additional Subordinated Creditor will become a creditor of the Borrower [an Obligor].
- (C) The board of directors of the Additional Subordinated Creditor is satisfied that entering into this Deed of Accession is for the purposes and to the benefit of the Additional Subordinated Creditor and its business.
- (D) The Security Agent holds the benefit of this Deed of Accession on trust for the Secured Parties on the terms of the Finance Documents.

**IT IS AGREED** as follows:

#### 1. Interpretation

- 1.1 In this Deed of Accession, unless a contrary intention appears, terms defined or used in the Subordination Agreement have the same meaning and construction.
- 1.2 The Security Agent and the Additional Subordinated Creditor intend this document to take effect as a deed (even though the Security Agent only executes it under hand).

#### 2. Incorporation of Additional Subordinated Creditor

##### 2.1 Additional Subordinated Creditor

With effect from the date of this Deed of Accession, the Additional Subordinated Creditor becomes a party to, and will be bound by the terms of, and assume obligations and duties as a Subordinated Creditor under, the Subordination Agreement as if it had been an original party to the Subordination Agreement as a Subordinated Creditor.

##### 2.2 Binding Obligations

The Additional Subordinated Creditor and the Security Agent agree to be bound by the Subordination Agreement on this basis.

### 3. **Representations by the Additional Subordinated Creditor**

The Additional Subordinated Creditor confirms in respect of itself that the representations in Clause 14 (*Representations and Warranties*) of the Subordination Agreement stated at the date of this Deed of Accession with reference to the Additional Subordinated Creditor and the facts subsisting on the date of this Deed of Accession, are true and not misleading.

### 4. **Power of Attorney**

By way of security for its obligations, the Additional Subordinated Creditor irrevocably appoints the Security Agent as its attorney to do anything which it:

- (A) has authorised the Security Agent to do under the Subordination Agreement; and
- (B) is required to do by the Subordination Agreement but has failed to do.

### 5. **Construction**

#### 5.1 **One Document**

- (A) This Deed of Accession is supplemental the Subordination Agreement and will be read and construed as one document with the Subordination Agreement. References in the Subordination Agreement to the Subordination Agreement (however expressed) will be read and construed as references to the Subordination Agreement and this Deed of Accession.
- (B) The Subordination Agreement remains in full force and effect.

#### 5.2 **Incorporation of Provisions**

The provisions of Clause 2 (*Ranking of Debt*) to Clause 28 (*Counterparts*) of the Subordination Agreement shall be deemed to be incorporated in this Deed of Accession as if set out in full in this Deed of Accession (with such changes as are reasonably necessary in the context).

### 6. **Notices**

The notice details for the Additional Subordinated Creditor for the purpose of the Subordination Agreement are as follows:

Address: [ ]

Fax Number: [ ]

Attention: [ ]

### 7. **Governing Law**

This Deed of Accession and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

## 8. **Jurisdiction**

### 8.1 **Jurisdiction of English courts**

- (A) Subject to Clause (C), the courts of England have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed of Accession or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual dispute or claim) (a "Dispute").
- (B) Subject to Clause (C), the Additional Subordinated Creditor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly will not:
  - (1) argue to the contrary; or
  - (2) initiate or pursue any proceedings relating to a Dispute in any jurisdiction other than England.
- (C) This Clause 8.1 is for the benefit of the Secured Parties only. As a result no Secured Party shall be prevented from initiating or pursuing proceedings relating to a Dispute in any other courts with jurisdiction nor from contending that such courts are appropriate and convenient. To the extent allowed by law, the Secured Parties may initiate or pursue:
  - (1) proceedings in any other court; and
  - (2) concurrent proceedings in any number of jurisdictions,
 irrespective of whether proceedings have already been initiated by any Party in England.

### 8.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Additional Subordinated Creditor:

irrevocably appoints [the Borrower]/[ ] as its agent for service of process in relation to any proceedings before the English courts in connection with any Dispute; and

agrees that failure by a process agent to notify the Additional Subordinated Creditor of the process will not invalidate the proceedings concerned.

[●] expressly agrees and consents to the provisions of this Clause.

This Deed of Accession has been executed and delivered as a deed on the date stated at the beginning of this Deed of Accession.

ADDITIONAL SUBORDINATED CREDITOR

[EITHER]

EXECUTED AS A DEED by )  
[ ] )  
 )  
acting by [Name of ) Director  
a director] )  
in the presence of: )

Signature of witness

.....

Name of witness  
(in BLOCK CAPITALS)

.....

Address of witness

.....

.....

.....

.....

[OR]

EXECUTED AS A DEED by )  
[ADDITIONAL SUBORDINATED CREDITOR] )  
 )  
acting by [Name of two of its directors/a )  
director and its secretary] )

Director .....

Director/Secretary .....

THE SECURITY AGENT

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA


by:


SIGNATORIES

THE BORROWER

EXECUTED as a DEED by acting by CAPITAL INDUSTRIAL 1 LIMITED, acting by

Jeff Schwartz \_\_\_\_\_ a director and  
H McCarney \_\_\_\_\_ a director


DocuSigned by:  
  
.....88E962110EA94DD.....  
Signature of first Director


DocuSigned by:  
  
.....B704BB749FB340D.....  
Signature of second Director

THE SUBORDINATED CREDITOR

EXECUTED as a DEED by acting by CAPITAL INDUSTRIAL 2 LIMITED, acting by

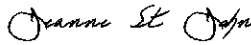
Jeff Schwartz \_\_\_\_\_ a director and  
H McCarney \_\_\_\_\_ a director

DocuSigned by:  
  
.....88E962110EA94DD.....  
Signature of first Director

DocuSigned by:  
  
.....B704BB749FB340D.....  
Signature of second Director

**THE SECURITY AGENT**

**SIGNED** by Jeanne St John )  
 )  
for and on behalf of **THE PRUDENTIAL** )  
**INSURANCE COMPANY OF AMERICA** )  
a company incorporated in New )  
Jersey by )  
being a person who in accordance with )  
the laws of that territory acting under the )  
authority of that company )

DocuSigned by:  
  
6AA63384D9B4447.....  
Authorised signatory

**Notice details for The Prudential Insurance Company of America:**

Address: Prudential Asset Resources, Inc., 2100 Ross Avenue, Suite 2500, Dallas TX 75201,  
USA

Attention: Asset Management Department/Legal Department

E-mail: servicing@pgim.com