

# M

CHWP000

COMPANIES FORM No. 466(Scot)

## Particulars of an instrument of alteration to a floating charge created by a company registered in Scotland

# 466

A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge.

COMPANIES HOUSE  
EDINBURGH

24 SEP 2018

Pursuant to section 410 and 466 of the Companies Act 1985

Please do not  
write in  
this margin

Please complete  
legibly, preferably  
in black type, or  
bold block lettering

\* insert full name  
of company

To the Registrar of Companies  
(Address overleaf - Note 6)

FRONT DESK For official use

Company number

135

SC057709

Name of company

\* Stewart Milne Group Limited (the "Debtor")

Date of creation of the charge (note 1)

07/11/2013

Description of the instrument creating or evidencing the charge or of any ancillary document which has been altered (note 1)

Debenture (charge code SC05 7709 0135)

Names of the persons entitled to the charge

Bank of Scotland plc ("Security Agent")

Short particulars of all the property charged

The whole assets of the Debtor

Presenter's name address and  
reference (if any):

Shepherd and Wedderburn LLP  
5th Floor, 1 Exchange Crescent  
Conference Square  
Edinburgh EH3 8UL

ref B3315.475/CORM/DXL

For official use (02/06)

Charges Section

Post room

MONDAY



SCT \*S7F5Y78Y\* 24/09/2018 #15  
COMPANIES HOUSE

Names, and addresses of the persons who have executed the instrument of alteration (note 2)

See Paper Apart

*Please do not  
write in  
this margin*

***Please complete  
legibly, preferably  
in black type, or  
bold block lettering***

Date(s) of execution of the instrument of alteration

Executed on the following dates: 29 August 2018, 4 September 2018 and 7 September 2018

A statement of the provisions, if any, imposed by the instrument of alteration prohibiting or restricting the creation by the company of any fixed security or any other floating charge having, priority over, or ranking pari passu with the floating charge

9.2 The Debtor undertakes to the Security Agent that it shall not grant any further security, charge or other encumbrance over any of the Assets including but without prejudice to the foregoing generality its heritable, real or leasehold property without the prior written consent of the Security Agent.

9.3 The Debtor undertakes to the Priority Creditor that it shall not grant any further security, charge or encumbrance over the Development Subjects without the prior written consent of the Priority Creditor, declaring however that no consent will be required in the case of further security, charge of encumbrance over the Development Subjects in favour of the Security Agent where that further security ranks subsequent to the Priority Creditor Fixed Security and does not prejudice the ability of the Priority Creditor or its successors to enforce the same.

Short particulars of any property released from the floating charge

N/A

The amount, if any, by which the amount secured by the floating charge has been increased

N/A

A statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

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write in  
this margin*

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legibly, preferably  
in black type, or  
bold block lettering*

See Paper Apart

Continuation of the statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

*Please do not  
write in  
this margin*

*Please complete  
legibly, preferably  
in black type, or  
bold block lettering*

*A fee is payable to  
Companies House  
in respect of each  
register entry for a  
mortgage or  
charge.  
(See Note 5)*

Signed GROUNE BALGONER, MEMBER OF THE FIRM OF GROUNE BALGONER & CO. LLP Date 24/09/11

On behalf of company (chargee) WIDENBURG LLP

#### Notes

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc as the case may be, should be given. For the date of creation of a charge see section 410(5) of the Companies Act. ☐ delete as appropriate
2. In accordance with section 466(1) the instrument of alteration should be executed by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.
3. A certified copy of the instrument of alteration, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of execution of that instrument.
4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.
5. A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge. Cheques and Postal Orders are to be made payable to **Companies House**.
6. The address of the Registrar of Companies is: Companies Registration Office, 139 Fountainbridge, Edinburgh EH3 9FF  
DX 235 Edinburgh or LP - 4 Edinburgh 2

**This is the paper apart referred to in the foregoing form M466**

**Names, and addresses of the persons who have executed the instrument of alteration**

1. Stewart Milne Group Limited, a company incorporated under the Companies Act 2006 (registered number SC057709) and having its registered office at Peregrine House, Mosscroft Avenue, Westhill Business Park, Westhill, Aberdeen, AB32 6JQ (the **"Debtor"**);
2. Bryce Cunningham, residing at West Hillhead Farm, by Mauchline (the **"Priority Creditor"**);
3. Bank Of Scotland PLC, a company incorporated under the Companies Act 2006 (registered number SC327000) and having its registered office at The Mound, Edinburgh, EH1 1YZ as Senior Lender as defined in the Intercreditor Agreement (the **"Lender"**); and
4. Bank Of Scotland PLC, a company incorporated under the Companies Act 2006 (registered number SC327000) and having its registered office at The Mound, Edinburgh, EH1 1YZ as security trustee for the Secured Parties (the **"Security Agent"**)

**A statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges**

**3 RANKING OF SECURITIES**

- 3.1 With effect from the last date of execution of the Agreement, the Securities shall rank *inter se* in point of security in the following order of priority.
  - 3.1.1 the Priority Creditor Fixed Security to the extent of the Priority Creditor Debt;
  - 3.1.2 the Security Agent Fixed Security to the extent of the Secured Obligations; and
  - 3.1.3 the Security Agent Floating Charge to the extent of the balance (if any) of the Secured Obligations.
- 3.2 The ranking and priority set out in Clause 3.1 shall take effect notwithstanding any of the following:
  - 3.2.1 the nature of the securities created by the Security Agent Securities and the Priority Creditor Fixed Security and the dates of execution, perfection or registration of them;
  - 3.2.2 any provision contained in any of the Securities;
  - 3.2.3 the date or dates on which sums have been or may be advanced or become due, owing or payable under the Security Agent Securities and, the Priority Creditor Fixed Security, respectively;
  - 3.2.4 any fluctuation from time to time in the amounts secured by the Security Agent Securities and the Priority Creditor Fixed Security including any reduction of those amounts to nil;
  - 3.2.5 the existence of any credit balance on any current or other account of any of the Obligors with the Security Agent;

- 3.2.6 the appointment of a liquidator, administrative receiver, receiver, administrator or other similar officer in respect of the Debtor or any of the other Obligors or over all or any part of the Assets;
  - 3.2.7 the granting of time or any other indulgence to the Debtor or any of the other Obligors or any other person or the release, compounding or otherwise dealing with the Debtor or any of the other Obligors or any other person;
  - 3.2.8 the taking, variation, compromise, renewal or release of, or refusal or neglect to perfect or enforce any rights or remedies against the Debtor or any of the other Obligors or any other person by the Security Agent; or
  - 3.2.9 the provisions of Section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970, Sections 464 and 466 of the Companies Act 1985 or any other rule of law which might operate to the contrary.
- 3.3. Without prejudice to the other provisions of the Agreement, the Security Agent shall have and retain the right to exercise full discretion as to:
- 3.3.1. the order in which it enforces any one or more of the Security Agent Securities;
  - 3.3.2. whether to enforce any one or more of the Security Agent Securities without enforcing the others; and
  - 3.3.3. the order in which the amounts due to it are applied in satisfaction of the amounts secured under the Security Agent Securities or any of them.

## DEFINITIONS AND INTERPRETATION

In this Paper Apart and in the foregoing form M466:

**“Agreement”** means the Ranking Agreement between Ranking Agreement between Stewart Milne Group Limited as the debtor, Bryce Cunningham as the priority creditor, Bank of Scotland PLC as the security agent and Bank of Scotland PLC as the lender dated 29 August, 4 September and 7 September, all dates in 2018;

**“Assets”** means the whole of the property (including uncalled capital) which is or may be from time to time comprised in the Debtor’s property and undertaking;

**“Business Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in Edinburgh, Glasgow and Aberdeen;

**“Creditors”** means the Priority Creditor and the Security Agent;

**“Development Subjects”** means ALL and WHOLE that plot or area of ground at Mauchline extending to 4.0 hectares (10.06 acres) or thereby forming part of West Hillhead, Mauchline, being the subjects shown outlined in red on Plan 1; and which subjects form part and portion of ALL and WHOLE the farm and lands at West Hillhead in the Parish of Mauchline and County of Ayr extending to 125 acres and 15 decimal or on hundredth parts of an acre or thereby Imperial Standard Measure, being the subjects described in, disposed by and shown outlined in red on the plan annexed and subscribed as relative to Disposition by Sir Claude Hagart-Alexander of

Ballochmyle in favour of Nominations (Glasgow) Limited dated 30 March and recorded in the Division of the General Register of Sasines applicable to the County of Ayr on 5 April 1967 ;

**“Intercreditor Agreement”** means the Intercreditor Agreement dated 7 November 2013 between, amongst others, Bank of Scotland plc (as Agent, Senior Lender, Hedge Counterparty, Security Agent and Working Capital Bank), Stewart Milne Group Limited and others;

**“Obligors”** means each member of the Group and each Debtor, both as defined in the Intercreditor Agreement.

**“Plan 1”** means the plan marked "Plan 1" annexed and signed as relative to the Agreement;

**“Priority Creditor Debt”** means the sum of £600,000 due to the Priority Creditor in terms of the Purchase Contract and secured by the Priority Creditor Fixed Security (together with any interest on the same and any costs incurred by the Priority Creditor in recovering the same);

**“Priority Creditor Fixed Security”** means the standard security by the Debtor in favour of the Priority Creditor over the Development Subjects executed by the Debtor on or around the date of its execution of the Agreement and about to be registered in the Land Register of Scotland;

**“Priority Creditor Fixed Security Subjects”** means those parts of the Development Subjects shown shaded green on Plan 2;

**“Purchase Contract”** means the purchase contract constituted by formal letters between Macdonalds Solicitors and D W Shaw, Solicitors dated 25 May 2012 and 28 May 2012 as amended by formal letters between Morton Fraser, Solicitors and D W Shaw, Solicitors dated 27 October 2016 and 31 October 2016 and further amended by formal letters between Morton Fraser, Solicitors and D W Shaw, Solicitors dated 7 September 2018;

**“Secured Obligations”** means all or any money and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to the Security Agent and the other Secured Parties by the Debtor, whether actually or contingently, solely or jointly and whether as principal, guarantor, cautioner or surety including any money and liabilities of the Debtor to a third party which have been assigned or novated to or otherwise vested in the Secured Parties, and including any liability for any further advances or credit made or to be made (at the time of the Agreement or in the future) by the Secured Parties and any interest, discount, commission and other lawful charges or expenses which the Secured Parties may in the course of its business charge or incur in respect of any of those matters or for keeping the Debtor's, and so that interest shall be computed and compounded according to the usual Secured Parties rates and practice as well after as before any demand made or decree obtained;

**“Secured Parties”** is as defined in the Intercreditor Agreement;

**“Securities”** means the Security Agent Securities and the Priority Creditor Fixed Security;

**“Security Agent Fixed Security”** means the standard security over the Development Subjects to be granted by the Debtor in favour of the Security Agent and executed by the Debtor on or

around the date of its execution of the Agreement and about to be registered in the Land Register of Scotland;

**“Security Agent Floating Charge”** means (a) the floating charge granted by the Debtor in favour of The Governor and Company of the Bank of Scotland dated 29 March 1996 and registered with the Registrar of Companies on 9 April 1996; (b) the floating charge granted by the Debtor in favour of the Security Agent dated 7 November 2013 and registered with the Registrar of Companies at Edinburgh on 11 November 2013 and (c) the Debenture granted by the Debtor in favour of the Security Agent dated 7 November 2013 and registered with the Registrar of Companies at Edinburgh on 11 November 2013; and

**“Security Agent Securities”** means the Security Agent Fixed Security and the Security Agent Floating Charge.



CERTIFIED A TRUE COPY



Date: 24/09/2011.

Shepherd and Wedderburn LLP

**STEWART MILNE GROUP LIMITED**

as the Debtor

**BRYCE CUNNINGHAM**

as the Priority Creditor

**BANK OF SCOTLAND PLC**

as the Security Agent

and

**BANK OF SCOTLAND PLC**

as the Lender

**RANKING AGREEMENT**

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## **RANKING AGREEMENT**

among

- (1) **STEWART MILNE GROUP LIMITED**, a company incorporated under the Companies Act 2006 (registered number SC057709) and having its registered office at Peregrine House, Mosscroft Avenue, Westhill Business Park, Westhill, Aberdeen, AB32 6JQ (the "**Debtor**");
- (2) **BRYCE CUNNINGHAM**, residing at West Hillhead Farm, by Mauchline (the "**Priority Creditor**");
- (3) **BANK OF SCOTLAND PLC**, a company incorporated under the Companies Act 2006 (registered number SC327000) and having its registered office at The Mound, Edinburgh, EH1 1YZ as Senior Lender as defined in the Intercreditor Agreement (the "**Lender**"); and
- (4) **BANK OF SCOTLAND PLC**, a company incorporated under the Companies Act 2006 (registered number SC327000) and having its registered office at The Mound, Edinburgh, EH1 1YZ as security trustee for the Secured Parties (the "**Security Agent**").

### **CONSIDERING THAT:**

- (a) the Debtor has granted or is about to grant in favour of the Security Agent the Security Agent Securities;
- (b) the Debtor has granted or is about to grant in favour of the Priority Creditor the Priority Creditor Fixed Security;
- (c) the Priority Creditor and the Security Agent wish to regulate the ranking of the Securities; and
- (d) the Debtor has agreed to acknowledge the terms of this Agreement.

### **NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:**

#### **1 DEFINITIONS AND INTERPRETATION**

##### **1.1 In this Agreement:**

**"Assets"** means the whole of the property (including uncalled capital) which is or may be from time to time comprised in the Debtor's property and undertaking;

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in Edinburgh, Glasgow and Aberdeen;

**"Creditors"** means the Priority Creditor and the Security Agent;

**"Development Subjects"** means ALL and WHOLE that plot or area of ground at Mauchline extending to 4.0 hectares (10.06 acres) or thereby forming part of West Hillhead, Mauchline, being the subjects shown outlined in blue on Plan 1; and which subjects form part and portion of ALL and WHOLE the farm and lands at West Hillhead in the Parish of Mauchline and County of Ayr extending to 125 acres and 15 decimal or on hundredth parts of an acre or thereby Imperial Standard Measure, being the subjects described in, disposed by and shown outlined in red on the plan annexed and subscribed as relative to Disposition by Sir Claude Hagart-Alexander of Ballochmyle in favour of Nominations (Glasgow) Limited dated 30 March and recorded in the Division of the General Register of Sasines applicable to the County of Ayr on 5 April 1967 ;

**"Intercreditor Agreement"** means the Intercreditor Agreement dated 7 November 2013 between, amongst others, Bank of Scotland plc (as Agent, Senior Lender, Hedge Counterparty, Security Agent and Working Capital Bank), Stewart Milne Group Limited and others;

**"Obligors"** means each member of the Group and each Debtor, both as defined in the Intercreditor Agreement.

**"Plan 1"** means the plan marked "Plan 1" annexed and signed as relative hereto;

**"Priority Creditor Debt"** means the sum of £600,000 due to the Priority Creditor in terms of the Purchase Contract and secured by the Priority Creditor Fixed Security (together with any interest on the same and any costs incurred by the Priority Creditor in recovering the same);

**"Priority Creditor Fixed Security"** means the standard security by the Debtor in favour of the Priority Creditor over the Development Subjects executed by the Debtor on or around the date of its execution of this Agreement and about to be registered in the Land Register of Scotland;

**"Purchase Contract"** means the purchase contract constituted by *formal letters between Macdonalds Solicitors and D W Shaw, Solicitors dated 25 May 2012 and 28 May 2012 as amended by formal letters between Morton Fraser, Solicitors and D W Shaw, Solicitors dated 27 October 2016 and 31 October 2016 and further amended by formal letters between Morton Fraser, Solicitors and D W Shaw, Solicitors dated 7 September 2018;*

**"Secured Obligations"** means all or any money and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to the Security Agent and the other Secured Parties by the Debtor, whether actually or contingently, solely or jointly and whether as principal, guarantor, cautioner or surety including any money and liabilities of the Debtor to a third party which have been assigned or novated to or otherwise vested in the Secured Parties, and including any liability for any further advances or credit made or to be made (at the time of this Agreement or in the future) by the Secured Parties and any interest, discount, commission and other lawful charges or expenses which the Secured Parties may in the course of its business charge or incur in respect of any of those matters or for keeping the Debtor's, and so that interest shall be computed and compounded according to the usual Secured Parties rates and practice as well after as before any demand made or decree obtained;

**"Secured Parties"** is as defined in the Intercreditor Agreement;

**"Securities"** means the Security Agent Securities and the Priority Creditor Fixed Security;

**"Security Agent Fixed Security"** means the standard security over the Development Subjects to be granted by the Debtor in favour of the Security Agent and executed by the Debtor on or around the date of its execution of this Agreement and about to be registered in the Land Register of Scotland;

**"Security Agent Floating Charge"** means (a) the floating charge granted by the Debtor in favour of The Governor and Company of the Bank of Scotland dated 29 March 1996 and registered with the Registrar of Companies on 9 April 1996; (b) the floating charge granted by the Debtor in favour of the Security Agent dated 7 November 2013 and registered with the Registrar of Companies at Edinburgh on 11 November 2013 and (c) the Debenture granted by the Debtor in favour of the Security Agent dated 7 November 2013 and registered with the Registrar of Companies at Edinburgh on 11 November 2013; and

**"Security Agent Securities"** means the Security Agent Fixed Security and the Security Agent Floating Charge.

1.2 Unless a contrary indication appears, any reference in this Agreement to:

1.2.1 the **"Priority Creditor"** and the **"Security Agent"** shall be construed so as to include their respective successors in title, permitted assignees and permitted transferees provided such assignee or transferee undertakes in writing to the Priority Creditor and/or the Security Agent, as the case may be, to be bound by the provisions of this Agreement; and

1.2.2 a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint

venture, consortium or partnership (whether or not having separate legal personality).

- 1.3 Unless any provision of this Agreement or the context otherwise requires, any reference in this Agreement to a provision of law is a reference to that provision as amended or re-enacted.
- 1.4 In this Agreement the singular includes the plural and *vice versa*. Clause headings are for ease of reference only and a reference to a Clause is to be construed as a reference to a clause of this Agreement.
- 1.5 Any reference in this Agreement to a document of any kind whatsoever (including this Agreement and the Purchase Contract) is to that document as amended or varied or supplemented or novated or substituted from time to time declaring however that the Debtor and the Priority Creditor shall not amend the Purchase Contract or any other contract or agreement relating to the Priority Creditor Debt without the prior written consent of the Security Agent and on no account shall the Priority Creditor Debt be increased.

## **2 CONSENT TO CREATION OF SECURITIES**

Notwithstanding the date of execution, recording or registration thereof or any provisions contained therein, the Priority Creditor, the Lender and the Security Agent each hereby consent to the creation of the Securities by the Debtor.

## **3 RANKING OF SECURITIES**

- 3.1 With effect from the last date of execution of this Agreement, the Securities shall rank *inter se* in point of security in the following order of priority.
  - 3.1.1 the Priority Creditor Fixed Security to the extent of the Priority Creditor Debt;
  - 3.1.2 the Security Agent Fixed Security to the extent of the Secured Obligations; and
  - 3.1.3 the Security Agent Floating Charge to the extent of the balance (if any) of the Secured Obligations.
- 3.2 The ranking and priority set out in Clause 3.1 shall take effect notwithstanding any of the following:
  - 3.2.1 the nature of the securities created by the Security Agent Securities and the Priority Creditor Fixed Security and the dates of execution, perfection or registration of them;

- 3.2.2 any provision contained in any of the Securities;
  - 3.2.3 the date or dates on which sums have been or may be advanced or become due, owing or payable under the Security Agent Securities and, the Priority Creditor Fixed Security, respectively;
  - 3.2.4 any fluctuation from time to time in the amounts secured by the Security Agent Securities and the Priority Creditor Fixed Security including any reduction of those amounts to nil;
  - 3.2.5 the existence of any credit balance on any current or other account of any of the Obligors with the Security Agent;
  - 3.2.6 the appointment of a liquidator, administrative receiver, receiver, administrator or other similar officer in respect of the Debtor or any of the other Obligors or over all or any part of the Assets;
  - 3.2.7 the granting of time or any other indulgence to the Debtor or any of the other Obligors or any other person or the release, compounding or otherwise dealing with the Debtor or any of the other Obligors or any other person;
  - 3.2.8 the taking, variation, compromise, renewal or release of, or refusal or neglect to perfect or enforce any rights or remedies against the Debtor or any of the other Obligors or any other person by the Security Agent; or
  - 3.2.9 the provisions of Section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970, Sections 464 and 466 of the Companies Act 1985 or any other rule of law which might operate to the contrary.
- 3.3. Without prejudice to the other provisions of this Agreement, the Security Agent shall have and retain the right to exercise full discretion as to:
- 3.3.1. the order in which it enforces any one or more of the Security Agent Securities;
  - 3.3.2. whether to enforce any one or more of the Security Agent Securities without enforcing the others; and
  - 3.3.3. the order in which the amounts due to it are applied in satisfaction of the amounts secured under the Security Agent Securities or any of them.

#### **4 SECURITY TO BE CONTINUING**

The Securities shall rank as provided in this Agreement as continuing securities for repayment of the amounts owing to each of the Priority Creditor and the Secured Parties from time to time by the Debtor or by any person or company whose obligations to the Priority Creditor or the Security Agent are guaranteed by the Debtor.

#### **5 VARIATIONS OF SECURITIES**

Insofar as necessary to give effect to the provisions of this Agreement, the Securities are hereby varied and this Agreement shall constitute:

- 5.1 an instrument of alteration for the purposes of Section 466 of the Companies Act 1985; and

- 5.2 a variation of a standard security within the meaning of Section 16 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

## **6 EXERCISE OF RIGHTS**

Whilst any sums remain outstanding to the Secured Parties which are subject to the Security Agent Securities, the Priority Creditor undertakes to the Security Agent that it shall, in respect of the Debtor consult with (but not be bound to act on the views of) the Security Agent for a period of not less than 14 days prior to:

- 6.1 initiating any insolvency procedures in relation to the Debtor including for the avoidance of doubt applying to the Court to appoint a liquidator; or
- 6.2 exercising its rights on default pursuant to the Priority Creditor Fixed Security.

## **7 COMPENSATION**

- 7.1 Each of the Creditors hereby undertakes to the others that in the event of a liquidator or administrator of the Debtor or a receiver of all or any part of its assets distributing the proceeds of sale of those assets otherwise than in accordance with the terms of this Agreement and the other being prejudiced thereby, it will compensate the party so prejudiced to the extent to which it is *lucratus* by such prejudice, but no further.
- 7.2 No purchaser dealing with any of the Creditors or with a receiver appointed by any of them shall be concerned in any way with the provisions of this Agreement but shall assume that such Creditor or receiver as the case may be is acting in accordance with the provisions of this Agreement and the Securities.

## **8 AUTHORITY TO RELEASE INFORMATION**

During the continuance of each of the Priority Creditor Fixed Security and the Security Agent Securities, the Priority Creditor and the Security Agent may disclose to each other information concerning the Debtor and its affairs in such manner and to such extent as the Priority Creditor and the Security Agent may wish and the Debtor consents to such disclosure.

## **9 OTHER SECURITIES**

- 9.1 For the avoidance of doubt, the parties acknowledge and agree that the ranking of the Securities shall not be prejudiced or affected in any way by any right competent to any of the parties to this Agreement to recover all or any part of the sums secured by the Securities from any third party, cautioner or guarantor.
- 9.2 The Debtor undertakes to the Security Agent that it shall not grant any further security, charge or other encumbrance over any of the Assets including but without prejudice to



the foregoing generality its heritable, real or leasehold property without the prior written consent of the Security Agent.

- 9.3 The Debtor undertakes to the Priority Creditor that it shall not grant any further security, charge or encumbrance over the Development Subjects without the prior written consent of the Priority Creditor, declaring however that no consent will be required in the case of further security, charge or encumbrance over the Development Subjects in favour of the Security Agent where that further security ranks subsequent to the Priority Creditor Fixed Security and does not prejudice the ability of the Priority Creditor or its successors to enforce the same.
- 9.4 Each of the Creditors undertakes that it will not transfer the benefit of any of the Securities unless the proposed transferee undertakes to be bound by the provisions of this Agreement.
- 9.5 The Security Agent shall be entitled at any time at its discretion and without consulting the Debtor or the Priority Creditor to transact and deal with any other securities or guarantees of any kind that may be held by it in respect of the Debtor's or any of the other Obligors' obligations to it and may sell, dispose of or realise such other securities in any order which it may determine and this Agreement shall remain in full force and effect notwithstanding such transactions or dealings.

#### **10. PREFERENTIAL PAYMENTS**

The foregoing provisions as to ranking shall not prejudice the right of the Security Agent to receive payments to which a preference attaches in terms of Sections 175 and 386 and Schedule 6 to the Insolvency Act 1986, provided that any such preferential payments received by the Security Agent shall not be deemed to have been applied towards repayment of the Secured Obligations for the purposes of calculating the extent of any priority to which the Security Agent is entitled under Clause 3 (Ranking of Securities).

#### **11 DISCHARGE**

In the event that it is agreed or determined that no sums in respect of which the Priority Creditor Fixed Security have been granted are due or payable, the Priority Creditor undertakes to deliver a valid discharge of the Priority Creditor Fixed Security as soon as reasonably practicable following request to do so and in that event the parties hereto agree that the terms of this Ranking Agreement shall be of no effect with the parties being obliged to take such steps as may be required to give effect to the foregoing statement.

## **12 NOTICE**

### **12.1 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 made by fax (provided the party has provided a fax number below) or letter.

### **12.2 Addresses**

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

#### **12.2.1 in the case of the Debtor:**

Address: Peregrine House, Mosscroft Avenue, Westhill  
Business Park, Westhill, AB32 6TQ

Attention: Stuart MacGregor

Facsimile: 01224 747099

#### **12.2.2 in the case of the Priority Creditor:**

Address: West Hillhead Farm, By Mauchline

#### **12.2.4 in the case of the Security Agent:**

Address: Transaction Execution, Corporate Real Estate, Bank  
of Scotland, 1st Floor, New Ueberior House, 11 Earl  
Grey Street, Edinburgh, EH3 9BN

Attention: Steven Kerr

or any substitute address or fax number or department or officer as an party may notify to each of the other parties by not less than 5 Business Days' notice.

### **12.3 Delivery**

Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

12.3.1 if by way of fax, when received in legible form; or

12.3.2 if by way of letter, when it has been left at the relevant address or 5 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 12.2 (Addresses), if addressed to that department or officer.

#### 12.4 English language

Any notice given under or in connection with this Agreement must be in English.

#### 13. GOVERNING LAW

This Agreement shall be governed by, and construed in all respects in accordance with, the law of Scotland.

#### 14. CONSENT TO REGISTRATION

The parties to this Agreement consent to its registration for preservation: IN WITNESS WHEREOF these presents consisting of this and the preceding eight pages and the ~~two~~ plans annexed are executed as follows:

##### THE DEBTOR

SUBSCRIBED for and on behalf of  
the said STEWART MILNE GROUP  
LIMITED

at UDDINGSTON

on 4 SEPTEMBER 2012

by

JAMES CRAWFORD

Print Full Name

before this witness

CHRISTINE BISSET

Print Full Name

Address

Kestrel House

3 Kilmartin Place

Uddingston G71 5PH

Director/Authorised Signatory

Witness

**THE PRIORITY CREDITOR**

SUBSCRIBED by

BRYCE CUNNINGHAM

at MAUCHLINE

on 29 AUGUST 2018

by

BRYCE CUNNINGHAM

Print Full Name

before this witness

ALASTAIR HAMILTON MURPHY

Print Full Name

Address

5 KILMARNOCK ROAD

MAUCHLINE

[REDACTED]

[REDACTED]

Witness

**THE SECURITY AGENT**  
SUBSCRIBED for and on behalf of  
the said BANK OF SCOTLAND PLC  
as Security Agent  
at GLASGOW

on 7 SEPTEMBER 2018

by STEVEN KERR

Print Full Name  
before this witness

ROBERT SWINDELL

Print Full Name

Address

145 ST. VINCENT STREET

GLASGOW



Authorized Signatory



Witness

**THE LENDER**  
SUBSCRIBED for and on behalf of  
the said BANK OF SCOTLAND PLC  
as Lender  
at GLASGOW

on 7, SEPTEMBER 2018

by STEVEN KERR

Print Full Name  
before this witness

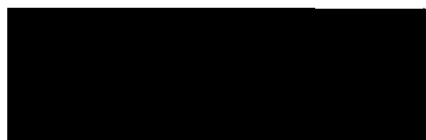
ROBERT SWINDELL

Print Full Name

Address

145 ST VINCENT STREET

GLASGOW



Authorized Signatory



Witness

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**DO NOT scale from this drawing**

Notes:  
**LEGEND:**

DENOTES EXTENT OF LAND OWNERSHIP

*This is Plan Number 1 -  
referred to in the foregoing  
Linking Agreement.*

AREA SHOWN AND SCALE ADJUSTED			
PLAN	DATE	BY	DATE
30.05.18	30.05.18		
Rev.	Revision details	By	Checked

Client: STEWART MILNE HOMES

Project: MAUCHLINE

Drawing Title: TITLE PLAN

Drawn: S. McD.	Checked: F. G.A.
Date: 30.05.18	Date: 30.05.18
Scale: 1:1250 @A3	Date: 1729-SK-09
Per Scale: INFORMATION	Per: COLOUR

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