

# M

COMPANIES FORM No. 466(Scot)

# 466

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

CHFP025

*Please do not  
write in this  
margin*

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

Pursuant to section 410 and 466 of the Companies Act 1985

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

For official use

Company number

1414

SC090866

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

Name of company

\* Dawn Homes Limited (the "Company")

*\* insert full name  
of Company*

Date of creation of the charge (note 1)

13 February 2014

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

Floating Charge (the "Charge")

Names of the persons entitled to charge

Bank of Scotland PLC (the "Bank")

Short particulars of all the property charged

The whole of the property (including uncalled capital) which is or may be  
from time to time comprised in the property and undertaking of the Company.

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

CMS Cameron McKenna Nabarro  
Olswang LLP  
20 Saltire Court  
Castle Terrace  
Edinburgh  
EH1 2EN  
(James Horton - 034409.00235)

For official use (06/2005)

Charges Section

Post room

THURSDAY



SCT 16/11/2017 #110  
COMPANIES HOUSE

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

1. Bank of Scotland Plc (Company Number SC327000) whose registered office is at The Mound, Edinburgh EH1 1YZ.
2. William McKerrow Cuthbertson and Mrs Margaret Howie Morrison Cuthbertson residing at 1 Paddock View, Thorntoun, Crosshouse, Kilmarnock, Ayrshire KA2 0BH.
3. William Daniel Cuthbertson residing at Balcanquhal Farm, by Gateside, Strathiglo, Fife.
4. Dawn Homes Limited (Company Number SC0908666) whose registered office is at 220 West George Street, Glasgow G2 2PG.

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

5 October 2017, 9 October 2017, 25 October 2017 and 2 November 2017.

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

None

Short particulars of any property released from the floating charge

None

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

None

Please do not  
write in  
this margin

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

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

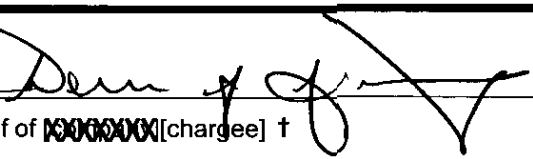
#### Ranking of Securities

The Bank, Cuthbertson, and the Company agree that the sums secured or to be secured by the Bank Securities and the Cuthbertson Fixed Security shall rank in the following order of priority:

- A) Bank Securities to the extent of the Bank Priority Debt; then
- B) Cuthbertson Fixed Security to the extent of Cuthbertson Debt; then
- C) Bank Securities to the extent of the balance of the Bank Debt.

See Clauses 2 and 4 of the attached instrument of alteration for full details and the definitions section of the attached instrument of alteration for defined terms.

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

Signed   
On behalf of ~~XXXXXX~~ [chargee] †

Date 14 November 2017

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

### 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.
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 House, 139 Fountainbridge, Edinburgh, EH3 9FF DX 235 Edinburgh or LP - 4 Edinburgh 2

† delete as  
appropriate



**FILE COPY**

**CERTIFICATE OF THE REGISTRATION  
OF AN ALTERATION TO A FLOATING CHARGE**

COMPANY NO. 90866  
CHARGE CODE SC09 0866 0044

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 2 NOVEMBER 2017 WERE DELIVERED  
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985  
ON 16 NOVEMBER 2017

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 13  
FEBRUARY 2014

BY DAWN HOMES LIMITED

IN FAVOUR OF  
BANK OF SCOTLAND PLC

GIVEN AT COMPANIES HOUSE, EDINBURGH 24 NOVEMBER 2017



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**RANKING AGREEMENT**

among

**BANK OF SCOTLAND PLC**

and

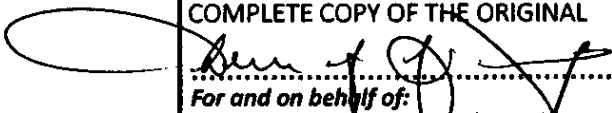
**FIRM OF WILLIAM MC. CUTHBERTSON & CO**

and

**DAWN HOMES LIMITED**

**PROPERTY: Phase 2 of land at Perceton Mains, Irvine**

I CERTIFY THAT, SAVE FOR MATERIAL  
REDACTED PURSUANT TO S.859G OF THE  
COMPANIES ACT 2006, THIS COPY  
INSTRUMENT IS A CORRECT COPY OF THE  
ORIGINAL CERTIFIED TO BE A TRUE AND  
COMPLETE COPY OF THE ORIGINAL

  
.....  
For and on behalf of:

CMS Cameron McKenna Nabarro Olswang LLP  
Saltire Court, 20 Castle Terrace, Edinburgh EH1 2EN

Date: 14<sup>th</sup> November 2017

**Brodies LLP**  
110 Queen Street  
Glasgow G1 3BX  
T: 0141 248 4672  
F: 0141 221 9270  
DX GW 11  
Ref: BHM.DAW31.507  
FAS 0468  
2017

## **RANKING AGREEMENT**

among

**BANK OF SCOTLAND PLC**, incorporated under the Companies Acts (Company Number SC327000) and having their registered office at The Mound, Edinburgh, EH1 1YZ ("**Bank**")

and

**WILLIAM MCKERROW CUTHBERTSON** and **Mrs MARGARET HOWIE MORRISON WRIGHT** or **CUTHBERTSON**, Spouses, residing together formerly at Warwickdale Farm, Springside, Kilmarnock, Ayrshire KA2 0DN and now at 1 Paddock View, Thornhout, Crosshouse, Kilmarnock, Ayrshire KA2 0BH and **WILLIAM DANIEL CUTHBERTSON**, residing formerly at Warwickdale Farm aforesaid and now at Balcanquhall Farm, by Gateside, Strathmiglo, Fife as Partners of and Trustees for the **FIRM OF WILLIAM MC. CUTHBERTSON & CO**, having their place of business at Warwickdale Farm aforesaid ("**Cuthbertson**")

and

**DAWN HOMES LIMITED**, incorporated under the Companies Acts (Company Number SC090866) and having their Registered Office at 220 West George Street, Glasgow G2 2PG ("**Company**")

### **WHEREAS:**

the Company has granted in favour of the Bank (i) a fixed security over the Property; and (ii) a bond and floating charge over the Assets;

the Company has granted in favour of Cuthbertson a fixed security over the Property;

the Bank and Cuthbertson wish to regulate the ranking of the Securities; and

the Company has agreed to acknowledge the terms of this Agreement;

### **NOW IT IS AGREED** as follows:

#### **1 Definitions and Interpretation**

##### **1.1 Definitions**

In the interpretation of this Agreement:

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

- 1.1.2 **"Bank Debt"** means all or any monies 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 Bank by the Company, whether actually or contingently, solely or jointly and whether as principal or surety and whether or not the Bank shall have been an original party to the relevant transaction, and including interest, discount, commission and other lawful charges or expenses which the Bank may in the course of its business charge or incur in respect of any of those matters or for keeping the Company's account, and so that interest shall be computed and compounded according to the usual Bank rates and practice as well after as before any demand made or decree obtained;
- 1.1.3 **"Bank Fixed Security"** means the standard security over the Property granted by the Company in favour of the Bank dated on 21 July 2017 and undergoing registration in the Land Register of Scotland under Title Number AYR99476 in security for the Bank Debt;
- 1.1.4 **"Bank Floating Charge"** means (i) the bond and floating charge granted by the Company in favour of the Bank over the Assets dated 16 October 2002 and registered with the Registrar of Companies on 22 October 2002; (ii) the bond and floating charge granted by the Company in favour of the Bank over the Assets dated 13 February 2014 and registered with the Registrar of Companies on 18 February 2014; and (iii) the bond and floating charge granted by the Company in favour of the Bank over the Assets dated 28 July 2017 and registered with the Registrar of Companies on 1 August 2017, each in security for the Bank Debt;
- 1.1.5 **"Bank Priority Debt"** means One million Pounds Sterling plus all interest payable thereon and all outlays, costs, charges, breakage costs and expenses;
- 1.1.6 **"Bank Securities"** means the Bank Fixed Security and the Bank Floating Charge;
- 1.1.7 **"Cuthbertson Debt"** means the Deferred Price attributable to the Property by virtue of and as defined in the missives between the Company and Cuthbertson dated 16 and 22, both November 2012 and any variation thereof and which sum shall be capped at £350,976 for the purpose of this Agreement;
- 1.1.8 **"Cuthbertson Fixed Security"** means the standard security over the Property granted by the Company in favour of Cuthbertson dated 3 August 2016 and registered in the Land Register of Scotland under Title Number AYR99476 on 13 September 2016 in security for the Cuthbertson Debt;



1.1.9 **"enforce"** (and all derivations from it) means the taking of any of the following actions:

- 1.1.9.1 appointing a receiver pursuant to or in respect of any of the Securities;
- 1.1.9.2 exercising a power of sale or otherwise utilising the rights given to a creditor under any of the Securities;
- 1.1.9.3 suing for payment of the Bank Debt or the Cuthbertson Debt;
- 1.1.9.4 petitioning for an administration order; or
- 1.1.9.5 exercising of any rights of set-off, retention, combination of accounts or similar right in respect of the Bank Debt or the Cuthbertson Debt;

1.1.10 **"Property"** means the subjects known as Phase 2, Perceton edged brown on the plan executed and annexed as relative hereto forming PART AND PORTION of ALL AND WHOLE those subjects registered in the Land Register of Scotland under Title Number AYR99476;

1.1.11 **"Securities"** means the Bank Securities and the Cuthbertson Fixed Security.

## 1.2 Interpretation

1.2.1 References to this Agreement and to any provisions of it shall be construed as references to it in force for the time being and as amended, varied, supplemented, substituted or novated from time to time.

1.2.2 References to:

- 1.2.2.1 statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force;
- 1.2.2.2 **control** of any company shall be interpreted in accordance with Section 995 of the Income Tax Act 2007;
- 1.2.2.3 **including** shall not be construed as limiting the generality of the words preceding it;
- 1.2.2.4 any term or phrase defined in the Companies Act 1985 or the Companies Act 2006 (each as amended from time to time) shall bear the same meaning in this Agreement;

- 1.2.2.5 words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- 1.2.2.6 this Agreement and to any provisions of it or to any other document referred to in this Agreement shall be construed as references to it in force for the time being as amended, varied, supplemented, restated, substituted or novated from time to time;
- 1.2.2.7 any person are to be construed to include references to a corporation, firm, company, partnership, joint venture, unincorporated body of persons, individual or any state or agency of a state, whether or not a separate legal entity;
- 1.2.2.8 any person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.2.2.9 clause headings are for ease of reference only and are not to affect the interpretation of this Agreement.

- 1.2.3 For the avoidance of doubt, this Agreement supersedes any previous agreement, whether written or oral, express or implied, between the parties to it (or any of them) in relation to the subject matter of this Agreement.

## **2 Ranking of Securities**

- 2.1 The Bank, Cuthbertson, and the Company agree that the sums secured or to be secured by the Bank Securities and the Cuthbertson Fixed Security shall rank in the following order of priority:
  - 2.1.1 Bank Securities to the extent of the Bank Priority Debt; then
  - 2.1.2 Cuthbertson Fixed Security to the extent of Cuthbertson Debt; then
  - 2.1.3 Bank Securities to the extent of the balance of the Bank Debt.
- 2.2 The ranking and priority set out in Clause 2.1 shall take effect notwithstanding any of the following:
  - 2.2.1 the nature of the securities created by the Bank Securities and Cuthbertson Fixed Security and the dates of execution and registration of them;
  - 2.2.2 any provision contained in any of the Securities;

- 2.2.3 the date or dates on which moneys have been or may be advanced or become due, owing or payable under the Bank Securities and Cuthbertson Fixed Security respectively;
- 2.2.4 the existence of any credit balance on any current or other account of the Company with the Bank;
- 2.2.5 the appointment of a liquidator, administrative receiver, receiver, administrator or other similar officer in respect of the Company or over all or any part of the Assets;
- 2.2.6 the granting of time or any other indulgence to the Company or any other person or the release, compounding or otherwise dealing with the Company or any other person or the receipt of moneys whether arising from a voluntary sale of any Assets subject to any of the Securities or in respect of any security or guarantee held by either of Cuthbertson in respect of the Cuthbertson Debt, the Bank in respect of the Bank Debt or otherwise prior to enforcement;
- 2.2.7 the taking, variation, compromise, renewal or release of, or refusal or neglect to perfect or enforce any rights or remedies against the Company or any other person by either of the Bank or Cuthbertson;
- 2.2.8 the provisions of Section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970 or of Sections 464 and 466 of the Companies Act 1985 or any other rule of law which might operate to the contrary.

### **3 Debt Fluctuation**

Each of the Bank and Cuthbertson agree that the Bank may, at their discretion, make further advances to the Company and each such advance will be deemed to constitute Bank Debt for the purposes of this Agreement, provided that all such further advances of Bank Debt shall rank in accordance with the provisions of Clause 2.1.

### **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 Cuthbertson and the Bank from time to time by the Company or by any person or company whose obligations to Cuthbertson or the Bank are guaranteed by the Company.

### **5 Agreement**

If a receiver or liquidator or administrator of the Company regards this Agreement as failing to bind him in the distribution of the proceeds of sale of the assets of the Company (and in

as far as the refusal of the receiver or liquidator or administrator to be bound by this Agreement causes prejudice to the Bank or Cuthbertson), the Bank and Cuthbertson will compensate each other to the extent to which they have benefited as a result of this refusal.

**6 Enforcement**

If either the Bank or Cuthbertson wishes to exercise its power of sale over the Property or to appoint a receiver of the Company's Assets, the Bank and Cuthbertson shall consult together with a view to agreeing upon either the terms of such sale or upon a suitable person to be appointed as receiver, provided always that this agreement to consult will not prejudice the right of the Bank or Cuthbertson to take action to sell the Property under its powers of sale or to appoint a receiver under the Bank Floating Charge without prior consultation in case of need. If the Bank or Cuthbertson takes any such action or appoints a receiver without consultation it shall immediately advise the other that it has done so.

**7 Authority to Release Information**

During the continuance of each of the Bank Securities and Cuthbertson Fixed Security, the Bank and Cuthbertson may disclose to each other information concerning the Company and its affairs in such manner and to such extent as the Bank and Cuthbertson may wish and the Company consents to such disclosure.

**8 Consent**

The Bank and Cuthbertson consent to the grant by the Company of the Securities and each acknowledge the right of the other to production and delivery of copies of the Securities.

**9 Variation**

The Bank Securities and Cuthbertson Fixed Security are varied to the extent specified in this Agreement and this Agreement shall be construed and receive effect as a variation within the meaning of Section 16 of the Conveyancing & Feudal Reform (Scotland) Act 1970 and an Instrument of Alteration within the meaning of Section 466 of the Companies Act 1985.

**10 Transfers**

The Bank shall not assign or transfer the benefit of any of the Bank Securities and Cuthbertson shall not assign or transfer the benefit of the Cuthbertson Fixed Security unless the assignee or transferee first agrees in writing with the Bank or Cuthbertson, as the case may be, to be bound by the provisions of this Agreement.

**11 Miscellaneous**

Unless and until the Bank Securities are discharged, Cuthbertson agrees that the proceeds of any insurance policy in respect of any Assets shall, notwithstanding any endorsement or notation on any such policy to the contrary, prior to enforcement by the Bank be used by the Company in repair and reinstatement or replacement of such Assets. The Company acknowledges by its execution of this Agreement that it has no right, title or interest to enforce this sub-clause for its own benefit.

**12 Notices**

12.1 All notices or other communications to be made or given under this Agreement shall be in writing and shall be by first-class pre-paid post or by fax.

12.2 Receipt shall be deemed to have occurred forty-eight hours after posting (unless hand-delivered and then at the time of delivery) and if by fax when sent provided a transmission report is received.

12.3 Any notice to the Bank shall be addressed to:

**Bank of Scotland  
110 St Vincent Street  
Glasgow  
G2 5ER  
FAO Andy Seaton**

12.4 Any notice to Cuthbertson shall be addressed to:

**Ian Wilson  
James Guthrie & Co LLP  
3 Portland Road  
KILMARNOCK  
KA1 2AN**

**Fax No.** [REDACTED]

12.5 Any notice to the Company shall be addressed to:

**The Managing Director  
Dawn Homes Limited  
220 West George Street  
Glasgow  
G2 2PG**

**Fax No.** [REDACTED]

**13 Other Security**

Each of the Bank and Cuthbertson shall be entitled at any time at its discretion and without consulting the other parties hereto to transact and deal with any other securities or guarantees of any kind that may be held by it in respect of the Company's 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.

**14 Negative Pledge**

The Company shall not grant any further fixed or floating charges over all or any of its Assets including its heritable, real or leasehold property without the written consent of the Bank and shall not grant any further fixed charges over the Property without the written consent of Cuthbertson.

**15 Separate Provisions**

If any provision of this Agreement is or becomes invalid, illegal or unenforceable that shall not affect the validity, legality or enforceability of any other provision.

**16 Governing Law**

This Agreement shall be governed by and construed according to Scots law and each of the parties submits to the exclusive jurisdiction of the Scottish courts.

**17 Testing Clause**

This document is executed as follows:

  
signature of witness

IAN WILSON  
full name of above (print)

  
signature of William McKerrow Cuthbertson

WILLIAM MCKERROW CUTHBERTSON  
full name of above (print)

5<sup>th</sup> OCTOBER 2017  
date of signing

KILMARNOCK  
place of signing

signature of witness

IAN URSW  
full name of above (print)

signature of Mrs Margaret Howie Morrison Wright or Cuthbertson

MRS MARGARET HOWIE MORRISON WRIGHT or CUTHBERTSON  
full name of above (print)

5<sup>th</sup> OCTOBER 2017  
date of signing

KILMARNOCK  
place of signing

signature of witness

ANNE M. CUTHBERTSON  
full name of above (print)

signature of William Daniel Cuthbertson

WILLIAM DANIEL CUTHBERTSON  
full name of above (print)

9/10/17  
date of signing

GATESIDE, GLASGOW  
place of signing

signature of witness

EMILY PERRETT  
full name of above (print)

110 Queen Street, Glasgow  
G1 3BX

address of witness

signature of Director of Dawn Homes Limited

MARTIN RONALD EGAN  
full name of above (print)

25/10/17  
date of signing

Glasgow  
place of signing

signature of witness

CONSTANCE RUTH PRIOR  
full name of above (print)

SALTIRE COURT, 20 CASTLE  
TERRACE, EDINBURGH.

address of witness

signature of Bank Authorised Signatory

RICHARD JAMES ROBINSON  
full name of above (print)

2<sup>ND</sup> NOVEMBER 2017  
date of signing

EDINBURGH  
place of signing