

# 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

Please do not  
write in  
this margin

Pursuant to section 410 and 466 of the Companies Act 1985

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

\* insert full name  
of company

To the Registrar of Companies  
(Address overleaf - Note 5)

For official use

Company number

10

SC224807

Name of company

\* Kingdom Park Limited (the "Company")

Date of creation of the charge (note 1)

28 February 2014

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

Floating Charge (SC22 4807 0010) (the "Senior Floating Charge")

Names of the persons entitled to the charge

Murray Capital Limited (the "Senior Lender")

Short particulars of all the property charged

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

**COMPANIES HOUSE  
EDINBURGH**

**17 JUN 2019**

**FRONT DESK**

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

Addleshaw Goddard LLP.  
Exchange Tower,  
19 Canning St,  
Edinburgh EH3 8EH  
REF: POUNJ/355717-13

For official use (02/06)

Charges Section

Post room

MONDAY



SCT

\*S87UAZY3\*

17/06/2019

#64

COMPANIES HOUSE

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

Please see Paper Apart 1

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this margin*

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

Date(s) of execution of the instrument of alteration

Date(s) of execution: 31 May, 5 and 6 June 2019

Date of Delivery: 10 June 2019

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

5.1 During the Security Period, the Company shall not (and the Senior Lender or the Subordinated Creditors will not require the Company to):-

5.1.1 create or permit to subsist any security over any of its assets for all or part of the Senior Debt or the Subordinated Debt or any guarantee (or other assurance against financial loss) for or in respect of all or any part of the Senior Debt or the Subordinated Debt, in either case other than by the security or guarantees conferred by the Senior Security Documents or the Subordinated Security Documents entered into on or before the date of the instrument of alteration.

6.1 At any time following the expiry of the Security Period, the Company shall not (and the Subordinated Creditors will not require the Company to):-

6.1.1 create or permit to subsist any security over any of its assets for all or part of the Subordinated Debt or any guarantee (or other assurance against financial loss) for or in respect of all or any part the Subordinated Debt other than by the security or guarantees conferred by the Subordinated Security Documents entered into on or before the date of the instrument of alteration.

Please see Paper Apart 2 for additional defined terms.

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

4.1 The Creditors agree and the Company acknowledges that the charges in the Securities shall rank and all receipts, recoveries and realisations pursuant to any enforcement of the Securities (the "Realisations") shall be applied in satisfying the monies, obligations and liabilities thereby secured as follows:-

4.1.1 in respect of Realisations solely attributable to the Aitken Secured Land,

4.1.1.1 the Scottish Ministers Standard Security shall rank first to the extent of the Scottish Ministers Debt;

4.1.1.2 the Senior Standard Securities shall rank second to the extent of the Senior Aitken Secured Land Priority Debt;

4.1.1.3 the Aitken Standard Security shall rank third to the extent of the Aitken Debt;

4.1.1.4 the FC Standard Security shall rank fourth to the extent of the FC Aitken Secured Land Priority Debt;

4.1.1.5 the Senior Standard Securities shall rank fifth to the extent of any remaining Senior Debt;

4.1.1.6 the FC Standard Security shall rank sixth to the extent of any remaining FC Debt;

4.1.1.7 the Senior Floating Charge shall rank seventh to the extent of any remaining Senior Debt.

4.1.2 in respect of Realisations solely attributable to the Remaining Land;

4.1.2.1 the Scottish Ministers Standard Security shall rank first to the extent of the Scottish Ministers Debt;

4.1.2.2. the Senior Standard Securities shall rank second to the extent of any Senior Remaining Land Priority Debt;

4.1.2.3 the FC Standard Security shall rank third to the extent of any remaining FC Remaining Land Priority Debt;

4.1.2.4 the Senior Standard Securities shall rank fourth to the extent of any remaining Senior Debt;

4.1.2.5 the FC Standard Security shall rank fifth to the extent of any remaining FC Debt; and

4.1.2.6 the Senior Floating Charge shall rank sixth to the extent of any remaining Senior Debt.

Please see Paper Apart 2 for additional defined terms.

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*

Signed Adoleshaw Goddard LLP Date 17/6/14

On behalf of [company] [chargee]

**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. The address of the Registrar of Companies is: Companies Registration Office, 139 Fountainbridge, Edinburgh EH3 9FF DX 235 Edinburgh

Paper Aparts 1 and 2 – with respect to a Form 466 being lodged against Kingdom Park Limited (SC224807)

### **Paper Apart 1**

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

(1) The Scottish Ministers, acting through the More Homes Division of the Housing and Social Justice Directorate, at 5th Floor, Atlantic Quay, 150 Broomielaw, Glasgow G2 8LA (the "**Scottish Ministers**");

(2) Senior Lender, at 26 Charlotte Square, Edinburgh EH2 4ET;

(3) Fife Council, Fife House, North Street, Glenrothes KY7 5LT (the "**FC**");

(4) Caroline Docherty, Solicitor of Quartermile Two, 2 Lister Square, Edinburgh, Elaine Jane McInroy of Edinburgh Quay, 133 Fountainbridge, Edinburgh and Pagan Osborne & Grace Trustees Limited, Whitehall House, 33 Yeaman Shore, Dundee DD1 4BJ as trustees of JH Aitken's Liferent Trust (the "**Aitken Trustees**"); and

(5) Company, at 26 Charlotte Square, Edinburgh EH2 4ET.

Paper Apartments 1 and 2 – with respect to a Form 466 being lodged against Kingdom Park Limited (SC224807)

## **Paper Apartment 2**

### **Defined Terms:**

**"Aitken Agreement"** means the Deed of Conditions and Servitude relating to the Property between the Company and the Aitken Trustees with the consent of the Senior Lender registered in the Land Register of Scotland under Title Number FFE54929 on 22 October 2014;

**"Aitken Debt"** means all present and future sums, liabilities and obligations (whether actual or contingent, present or future) payable or owing by the Company to the Aitken Trustees under the Aitken Agreement;

**"Aitken Secured Land"** means all subjects hatched blue on Title Plan FFE54929;

**"Aitken Standard Security"** means the standard security granted by the Company in favour of the Aitken Trustees over the Aitken Secured Land registered in the Land Register of Scotland under Title Number FFE54929 on 22 October 2014;

**"Creditors"** means the Scottish Ministers, Senior Lender and each of the Subordinated Creditors;

**"FC Agreement"** means the development agreement relating to the development of the Property between the Company and FC dated 18 September and 10 October 2014;

**"FC Aitken Secured Land Priority Debt"** means the FC Debt up to a maximum of 10% of the Realisations from the sale of the Aitken Secured Land or the enforcement of the Securities in so far as relating and directly attributable to the Aitken Secured land;

**"FC Debt"** means all present and future sums, liabilities and obligations (whether actual and contingent, present or future) payable or owing by the Company to FC under the FC Agreement;

**"FC Remaining Land Priority Debt"** means the FC Debt up to maximum of 10% of the Realisations from the sale of the Remaining Land or the enforcement of the Securities in so far as relating and directly attributable to the Remaining Land;

**"FC Standard Security"** means the standard security granted by the Company in favour of FC over the Property dated 10 October 2014 and registered in the Land Register of Scotland under Title Number FFE54929 on 11 November 2014;

**"Property"** means ALL and WHOLE the subjects on the north side of Randolph Road Kirkcaldy registered in the Land Register of Scotland under Title Number FFE54929;

**"Remaining Land"** means the Property under exception of the Aitken Secured Land;

**"Scottish Ministers Debt"** means all present and future sums, liabilities and obligations (whether actual and contingent, present or future) payable or owing by the Company to the Scottish Ministers under the Scottish Ministers Loan Agreement;

**"Scottish Ministers Loan Agreement"** means the loan agreement relating to a loan for the purpose of works to be carried out at the Property between the Company and the Scottish Ministers dated 1 and 2 April 2019 as amended by agreement between the Company and the Scottish Ministers dated on or around the date of the instrument of alteration;

Paper Apartments 1 and 2 – with respect to a Form 466 being lodged against Kingdom Park Limited (SC224807)

**"Scottish Ministers Standard Security"** means the standard security granted by the Company in favour of the Scottish Ministers over the Property dated on or around the date of the instrument of alteration and to be registered in the Land Register of Scotland under Title number FFE54929;

**"Securities"** means any or all, as the context requires, of the Scottish Ministers Standard Security, the Senior Security Documents and the Subordinated Standard Securities;

**"Security Period"** means the period from the date of the instrument of alteration to the date on which both the Scottish Minister Debt is repaid in full and no commitment by the Scottish Ministers to provide facilities to the Company remains in effect;

**"Senior Aitken Secured Land Priority Debt"** means the Senior Debt up to a maximum of 90% of the Realisations from the sale of the Aitken Secured Land and/or the enforcement of the Securities in so far as relating and directly attributable to the Aitken Secured Land;

**"Senior Debt"** means all sums of principal and interest, actual or contingent, which are now or which may at any time hereafter become due to the Senior Lender in any manner of way by the Company, either solely or jointly with any person or persons or corporation or other body and whether as principal or surety, with interest on such sums severally from the respective dates of advance or becoming due until payment;

**"Senior Remaining Land Priority Debt"** means the Senior Debt up to a maximum of 90% of the Realisations from the sale of the Remaining Land or the enforcement of the Securities in so far as relating and directly attributable to the Remaining Land;

**"Senior Security Documents"** means the Senior Floating Charge and the Senior Standard Securities and, at any time following the end of the Security Period, all fixed and floating charges and other security and all collateral, additional or substituted securities being held by the Senior Lender and granted by the Company as security for the payment and discharge of any part of the Senior Debt;

**"Senior Standard Securities"** means:-

- (a) the standard security granted by the Company in favour of the Senior Lender dated 28 February 2014 and registered in the Land Register of Scotland under Title Number FFE54929 on 6 March 2014 in respect of subjects tinted blue and pink on Title Plan FFE54929; and
- (b) the standard security granted by the Company in favour of the Senior Lender dated 10 October 2014 and registered in the Land Register of Scotland under Title Number FFE54929 on 22 October 2014 in respect of subjects tinted brown, yellow and mauve on Title Plan FFE54929;

**"Subordinated Creditors"** means FC and the Aitken Trustees and **"Subordinated Creditor"** means either of them;

**"Subordinated Debt"** means the FC Debt and the Aitken Debt;

**"Subordinated Standard Securities"** means the FC Standard Security and the Aitken Standard Security;



**FILE COPY**

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

COMPANY NO. 224807  
CHARGE CODE SC22 4807 0010

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 10 JUNE 2019 WERE DELIVERED  
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985  
ON 17 JUNE 2019

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 28  
FEBRUARY 2014

BY KINGDOM PARK LIMITED

IN FAVOUR OF  
MURRAY CAPITAL LIMITED

GIVEN AT COMPANIES HOUSE, EDINBURGH 18 JUNE 2019



**Companies House**



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



Certified as a true copy of  
the original subject to the  
exclusion of personal  
information permitted by  
Section 859G of the Companies Act 2006

  
.....  
Addleshaw Goddard LLP

**THIS RANKING AGREEMENT IS DELIVERED ON**     *10th JUNE*     **2019**

**RANKING AGREEMENT**

**among**

**(1) THE SCOTTISH MINISTERS**

**(2) MURRAY CAPITAL LIMITED**

**(3) FIFE COUNCIL**

**(4) THE TRUSTEES OF JH AITKEN'S LIFERENT TRUST**

**and**

**(5) KINGDOM PARK LIMITED**

## TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	1
2.	CONSENTS AND AGREEMENTS .....	5
3.	RANKING OF DEBTS .....	5
4.	RANKING OF SECURITIES.....	5
5.	UNDERTAKINGS – SECURITY PERIOD.....	7
6.	UNDERTAKINGS – POST SECURITY PERIOD .....	8
7.	PERMITTED PAYMENTS .....	9
8.	CONTINUING SECURITY.....	9
9.	ENFORCEMENT OF SECURITY .....	10
10.	INSOLVENCY PROCEEDINGS.....	10
11.	FILING OF CLAIMS AND VOTING – SECURITY PERIOD.....	11
12.	FILING OF CLAIMS AND VOTING – POST SECURITY PERIOD .....	12
13.	COMPLIANCE WITH COVENANTS .....	12
14.	WAIVER OF DEFENCES .....	12
15.	TERMINATION .....	13
16.	THE COMPANY'S ACKNOWLEDGEMENTS .....	13
17.	INFORMATION.....	13
18.	ENTIRE AGREEMENT .....	14
19.	WAIVERS .....	14
20.	VARIATIONS.....	14
21.	SEVERABILITY .....	14
22.	FACILITIES .....	14
23.	TRANSFER .....	14
24.	TIME AND INDULGENCE .....	15
25.	COMPENSATION.....	15
26.	NOTICES.....	15
27.	COUNTERPARTS AND DELIVERY .....	16
28.	LAW AND JURISDICTION.....	17

**THIS RANKING AGREEMENT IS DELIVERED ON 10<sup>th</sup> JUNE 2019 AND MADE BETWEEN**

- (1) THE SCOTTISH MINISTERS** acting through the More Homes Division of the Housing, and Social Justice Directorate, having its place of business at 5<sup>th</sup> Floor, Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU (the "**Scottish Ministers**");
- (2) MURRAY CAPITAL LIMITED** (Registered Number SC206168) whose registered office was at 11 Charlotte Square, Edinburgh EH2 4DR and is now at 26 Charlotte Square, Edinburgh, EH2 4ET (the "**Senior Lender**");
- (3) FIFE COUNCIL** having its principal offices at Fife Council, Fife House, North Street, Glenrothes, KY7 5LT ("**FC**");
- (4) CAROLINE DOCHERTY**, Solicitor of Quartermile Two, 2 Lister Square, Edinburgh, **ELAINE JANE McINROY** of Edinburgh Quay, 133 Fountainbridge, Edinburgh and **PAGAN OSBORNE & GRACE TRUSTEES LIMITED** (Registered Number SC053687) whose registered office was at 12 St Catherine Street, Cupar, Fife and is now at Whitehall House, 33 Yeaman Shore, Dundee DD1 4BJ as trustees of JH Aitken's Liferent Trust dated 1 June and registered in the Books of Council and Session on 9 July both 2004 (the "**Aitken Trustees**"); and
- (5) KINGDOM PARK LIMITED** (Registered Number. SC224807) whose registered office was at 10 Charlotte Square, Edinburgh EH2 4DR and is now at 26 Charlotte Square, Edinburgh, EH2 4ET (the "**Company**").

NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE as follows:-

**1. DEFINITIONS AND INTERPRETATION**

- 1.1** In this Agreement, except where the context otherwise requires, each of the expressions set out below shall have the following meanings:-

"**Administrator**" has the same meaning as in Schedule B1 to the Insolvency Act 1986;

"**Aitken Agreement**" means the Deed of Conditions and Servitude relating to the Property between the Company and the Aitken Trustees with the consent of the Senior Lender registered in the Land Register of Scotland under Title Number FFE54929 on 22 October 2014;

"**Aitken Debt**" means all present and future sums, liabilities and obligations (whether actual and contingent, present or future) payable or owing by the Company to the Aitken Trustees under the Aitken Agreement;

"**Aitken Secured Land**" means the subjects hatched blue on Title Plan FFE54929;

"**Aitken Standard Security**" means the standard security granted by the Company in favour of the Aitken Trustees over the Aitken Secured Land registered in the Land Register of Scotland under Title Number FFE54929 on 22 October 2014;

"**Creditor**" means the Scottish Ministers, the Senior Lender and each of the Subordinated Creditors;

"**Debt**" means the Scottish Ministers Debt, the Senior Debt and the Subordinated Debt;

"**Enforcement Action**" means any action whatsoever to:-

- (a) demand payment of, declare prematurely due and payable or otherwise seek to accelerate payment of or place on demand, all or any part of the Senior Debt or the Subordinated Debt;
- (b) recover all or any part of the Senior Debt or the Subordinated Debt (including, without limitation, by exercising any right of set-off or combination of accounts);
- (c) exercise or enforce any security right or rights against guarantors or sureties or any other rights under any other document or agreement in relation to (or given in support of) all or any part of the Senior Debt or the Subordinated Debt (including, without limitation, under the Senior Security Documents or the Subordinated Security Documents);
- (d) petition for (or take any other steps or action which may lead to) an Insolvency Event in relation to Company; or
- (e) commence legal proceedings against the Company;

**"FC Agreement"** means the development agreement relating to the development of the Property between the Company and FC dated 18 September and 10 October 2014;

**"FC Aitken Secured Land Priority Debt"** means the FC Debt up to a maximum of 10% of the Realisations from the sale of the Aitken Secured Land or the enforcement of the Securities in so far as relating and directly attributable to the Aitken Secured Land;

**"FC Debt"** means all present and future sums, liabilities and obligations (whether actual and contingent, present or future) payable or owing by the Company to FC under the FC Agreement;

**"FC Remaining Land Priority Debt"** means the FC Debt up to a maximum of 10% of the Realisations from the sale of the Remaining Land or the enforcement of the Securities in so far as relating and directly attributable to the Remaining Land;

**"FC Standard Security"** means the standard security granted by the Company in favour of FC over the Property dated 10 October 2014 and registered in the Land Register of Scotland under Title Number FFE54929 on 11 November 2014;

**"Insolvency Event"** means:-

- (a) any application, notice, resolution or order is made, passed or given for or in connection with the winding up, liquidation, dissolution, administration or reorganisation of the Company;
- (b) the Company becomes subject to any insolvency, reorganisation, receivership (whether relating to all or some only of its assets), liquidation, dissolution or other similar proceedings, whether voluntary or involuntary and whether or not involving insolvency;
- (c) the Company assigns all or any of its assets for the benefit of its creditors generally (or any class thereof) or enters into any composition or arrangement with its creditors generally or any arrangement is ordered or declared by a court of competent jurisdiction whereby all or any of its affairs and/or assets are submitted to the control of, or are protected from, its creditors;
- (d) the Company becomes subject to any distribution of its assets in consequence of insolvency, reorganisation, liquidation, dissolution or administration; or
- (e) any event analogous to any of the foregoing shall occur in relation to the Company or any of its assets in any jurisdiction;

**"Murray Capital Group"** means Murray Capital Group Limited (Registered Number SC375630) whose registered office is at 26 Charlotte Square, Edinburgh, EH2 4ET and any of its Subsidiaries from time to time including, for the avoidance of doubt, the Company;

**"Permitted Payments"** means:-

- (a) at any time during the Security Period:
  - a. any sums due by the Company to any other member of the Murray Capital Group which have funded VAT payments in respect of the Works;
  - b. any payment due by the Company pursuant to the Aitken Agreement; and
  - c. any payment due by the Company pursuant to the FC Agreement; and
- (b) at any time following the expiry of the Security Period
  - a. any payment due by the Company pursuant to the Aitken Agreement; and
  - b. any payment due by the Company pursuant to the FC Agreement;

**"Property"** means ALL and WHOLE the subjects on the north side of Randolph Road, Kirkcaldy registered in the Land Register of Scotland under Title Number FFE54929;

**"Realisations"** has the meaning given in Clause 4.1;

**"Receiver"** means an administrative receiver, a receiver and manager or a receiver;

**"Remaining Land"** means the Property under exception of the Aitken Secured Land;

**"Scottish Ministers Debt"** means all present and future sums, liabilities and obligations (whether actual and contingent, present or future) payable or owing by the Company to the Scottish Ministers under the Scottish Ministers Loan Agreement;

**"Scottish Ministers Documents"** means the Scottish Ministers Loan Agreement and the Scottish Ministers Standard Security;

**"Scottish Ministers Loan Agreement"** means the loan agreement relating to a loan for the purpose of works to be carried out at the Property between the Company and the Scottish Ministers dated 1 and 2 April 2019 as amended by agreement between the Company and the Scottish Ministers dated on or around the date hereof;

**"Scottish Ministers Standard Security"** means the standard security granted by the Company in favour of the Scottish Ministers over the Property dated on or around the date of this Agreement and to be registered in the Land Register of Scotland under Title Number FFE54929;

**"Securities"** means any or all, as the context requires, of the Scottish Ministers Standard Security, the Senior Security Documents and the Subordinated Standard Securities;

**"Security Period"** means the period from the date of this Agreement to the date on which both the Scottish Ministers Debt is repaid in full and no commitment by the Scottish Ministers to provide facilities to the Company remains in effect;

**"Senior Aitken Secured Land Priority Debt"** means the Senior Debt up to a maximum of 90% of the Realisations from the sale of the Aitken Secured Land and/or the enforcement of the Securities in so far as relating and directly attributable to the Aitken Secured Land;

**"Senior Debt"** means all sums of principal and interest, actual or contingent, which are now or which may at any time hereafter become due to the Senior Lender in any

manner of way by the Company, either solely or jointly with any person or persons or corporation or other body and whether as principal or surety, with interest on such sums severally from the respective dates of advance or becoming due until payment;

**"Senior Documents"** means any facility letter, facility agreement or other documentation relating to the Senior Debt and the Senior Security Documents;

**"Senior Floating Charge"** means the floating charge granted by the Company in favour of the Senior Lender dated 28 February 2014;

**"Senior Remaining Land Priority Debt"** means the Senior Debt up to a maximum of 90% of the Realisations from the sale of the Remaining Land or the enforcement of the Securities in so far as relating and directly attributable to the Remaining Land;

**"Senior Standard Securities"** means:-

- (a) the standard security granted by the Company in favour of the Senior Lender dated 28 February 2014 and registered in the Land Register of Scotland under Title Number FFE54929 on 6 March 2014 in respect of subjects tinted blue and pink on Title Plan FFE54929; and
- (b) the standard security granted by the Company in favour of the Senior Lender dated 10 October 2014 and registered in the Land Register of Scotland under Title Number FFE54929 on 22 October 2014 in respect of the subjects tinted brown, yellow and mauve on Title Plan FFE54929;

**"Senior Security Documents"** means the Senior Floating Charge and the Senior Standard Securities and, at any time following the end of the Security Period, all fixed and floating charges and other security and all collateral, additional or substituted securities being held by the Senior Lender and granted by the Company as security for the payment and discharge of any part of the Senior Debt;

**"Subordinated Creditors"** means FC and the Aitken Trustees and **"Subordinated Creditor"** means either of them;

**"Subordinated Debt"** means the FC Debt and the Aitken Debt;

**"Subordinated Documents"** means the FC Agreement, the Aitken Agreement and the Subordinated Standard Securities;

**"Subordinated Standard Securities"** means the FC Standard Security and the Aitken Standard Security;

**"Subsidiary"** shall be construed in accordance with section 1159 and 1173 of the Companies Act 2006 and **"Subsidiaries"** shall be construed accordingly;

**"VAT"** means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere; and

**"Works"** means the works to be carried out at the Property and as more particularly described in the Scottish Ministers Loan Agreement.

**1.2 In this Agreement, unless the context otherwise requires:-**

- 1.2.1** references to the parties shall be construed so as to include their respective successors and permitted assigns;

- 1.2.2 references to a "business day" shall be construed as a reference to a day (other than a Saturday or a Sunday) on which banks are generally open for the transaction of business in Pounds Sterling in London;
  - 1.2.3 references to Clauses are references to clauses of this Agreement;
  - 1.2.4 references to this Agreement shall be to this Agreement as amended, varied, supplemented or novated from time to time;
  - 1.2.5 headings are inserted for ease of reference only and shall be ignored in the construction of this Agreement;
  - 1.2.6 references to any statute or law shall be to such statute or law as re-enacted, amended, extended or replaced from time to time; and
  - 1.2.7 the singular includes the plural and vice versa and any gender includes the other.
- 1.3 If there is any conflict or inconsistency between any provision of this Agreement and any provision contained within a Security, the provisions of this Agreement shall prevail.
- 1.4 This Agreement constitutes the entire agreement and understanding between the parties to this Agreement and supersedes all prior understandings and agreements between the parties including, for the avoidance of doubt, the ranking agreement amongst the Senior Lender, FC, the Aitken Trustees and the Company dated 10 October 2014.

## **2. CONSENTS AND AGREEMENTS**

Insofar as consent is required under the terms of the Securities or otherwise, each Creditor hereby confirms its consent to the creation and continuance of the Securities in favour of each other Creditor.

## **3. RANKING OF DEBTS**

- 3.1 The Debt shall rank for all purposes and at all times in the following order of priority:-
- 3.1.1 first, the Scottish Ministers Debt;
  - 3.1.2 second, the Senior Debt; and
  - 3.1.3 third, the Subordinated Debt.
- 3.2 A certificate signed by a duly authorised signatory of the Scottish Ministers will, except in the case of manifest error, be conclusive evidence of the amount of the Scottish Ministers Debt which is outstanding
- 3.3 A certificate signed by a duly authorised signatory of the Senior Lender will, except in the case of manifest error, be conclusive evidence of the amount of the Senior Debt which is outstanding.

## **4. RANKING OF SECURITIES**

- 4.1 The Creditors agree and the Company acknowledges that the charges in the Securities shall rank and all receipts, recoveries and realisations pursuant to any enforcement of the Securities (the "Realisations") shall be applied in satisfying the monies, obligations and liabilities thereby secured as follows:-
- 4.1.1 in respect of Realisations solely attributable to the Aitken Secured Land,
    - 4.1.1.1 the Scottish Ministers Standard Security shall rank first to the extent of the Scottish Ministers Debt;

- 4.1.1.2 the Senior Standard Securities shall rank second to the extent of the Senior Aitken Secured Land Priority Debt;
- 4.1.1.3 the Aitken Standard Security shall rank third to the extent of the Aitken Debt;
- 4.1.1.4 the FC Standard Security shall rank fourth to the extent of the FC Aitken Secured Land Priority Debt;
- 4.1.1.5 the Senior Standard Securities shall rank fifth to the extent of any remaining Senior Debt;
- 4.1.1.6 the FC Standard Security shall rank sixth to the extent of any remaining FC Debt; and
- 4.1.1.7 the Senior Floating Charge shall rank seventh to the extent of any remaining Senior Debt.
- 4.1.2 in respect of Realisations solely attributable to the Remaining Land;
  - 4.1.2.1 the Scottish Ministers Standard Security shall rank first to the extent of the Scottish Ministers Debt;
  - 4.1.2.2 the Senior Standard Securities shall rank second to the extent of the Senior Remaining Land Priority Debt;
  - 4.1.2.3 the FC Standard Security shall rank third to the extent of the FC Remaining Land Priority Debt;
  - 4.1.2.4 the Senior Standard Securities shall rank fourth to the extent of any remaining Senior Debt;
  - 4.1.2.5 the FC Standard Security shall rank fifth to the extent of any remaining FC Debt; and
  - 4.1.2.6 the Senior Floating Charge shall rank sixth to the extent of any remaining Senior Debt.
- 4.2 The amount of any Administrator's or Receiver's remuneration and all outgoings, costs, charges, expenses, liabilities and payments ranking by statute for payment in priority to the amount secured by the Securities shall be deducted from all receipts and recoveries under the Security under which he is appointed prior to their application towards the discharge or satisfaction of the amount secured by the Securities.
- 4.3 For the purposes of the Insolvency Act 1986 the Creditors hereby confirm that any qualifying floating charges within the meaning of paragraph 14 of Schedule B1 to the Insolvency Act 1986 contained in the Securities shall rank in the order set out in Clause 4.1 notwithstanding the date of creation of such floating charges.
- 4.4 Nothing contained within this Agreement is intended to rank any floating charge in the Securities before any fixed charge in the Securities. If the result of the operation of Clause 4.1 is to:-
  - 4.4.1 rank a floating charge ahead of a fixed charge; or
  - 4.4.2 cause any surplus proceeds of realisation of a fixed charge to fall due to a floating chargeholder;
 then, the parties agree that in the circumstances contemplated by Clause 4.4.1 the floating charge shall be postponed to the fixed charge and that in both cases the holder of that fixed charge (and the Company) agrees that:-
  - 4.4.3 all Realisations from its fixed charge shall be applied in the order set out in Clause 4.1; and



- 4.4.4 it (and any Administrator or Receiver) will hold any Realisations from its fixed charge on trust for the Creditors to be applied in the order set out in Clause 4.1.
- 4.5 No Creditor shall be entitled to the proceeds of realisation from any assets over which it does not hold effective security.

**5. UNDERTAKINGS – SECURITY PERIOD**

- 5.1 During the Security Period, the Company shall not (and the Senior Lender or the Subordinated Creditors will not require the Company to):-
- 5.1.1 create or permit to subsist any security over any of its assets for all or part of the Senior Debt or the Subordinated Debt or any guarantee (or other assurance against financial loss) for or in respect of all or any part of the Senior Debt or the Subordinated Debt, in either case other than by the security or guarantees conferred by the Senior Security Documents or the Subordinated Security Documents entered into on or before the date of this Agreement;
  - 5.1.2 pay, repay, prepay, redeem, purchase or otherwise discharge or release any of the Senior Debt or the Subordinated Debt, other than in respect of any Permitted Payments in accordance with the terms of Clause 7;
  - 5.1.3 amend any of the terms of the Senior Documents or the Subordinated Documents, save with the prior written consent of the Scottish Ministers;
  - 5.1.4 discharge any of the Senior Debt or the Subordinated Debt by set-off or any right of combination of accounts save only to the extent it may be required to do so or if the same occurs automatically by operation of law (but not, in either case, by reason of any contract or agreement);
  - 5.1.5 give any financial support to any person to enable it to do any of the things referred to in Clause 5.1.1 to 5.1.4 (inclusive) above; or
  - 5.1.6 take or omit to take any action whereby the ranking and/or subordination arrangements provided for herein in relation to the Senior Debt or the Subordinated Debt or any part thereof may be impaired or adversely affected.
- 5.2 During the Security Period, the Senior Lender will not and no Subordinated Creditor will:-
- 5.2.1 demand or (except in respect of any Permitted Payment in accordance with the terms of Clause 7) accept payment, repayment, prepayment or any distribution in respect of, or on account of, any Senior Debt or Subordinated Debt in cash or in kind or accelerate, declare payable on demand or enforce by execution or otherwise any principal, interest, cost or other sums in respect of the Senior Debt or the Subordinated Debt or part thereof;
  - 5.2.2 exercise any right of set-off, combination of accounts or lien or exercise or accept any transfer of rights, property or assets from the Company (or any other source) in satisfaction of the Senior Debt or the Subordinated Debt or part thereof;
  - 5.2.3 claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of any of the Company, other than in accordance with Clause 10;
  - 5.2.4 take, receive or permit to subsist any security right or any guarantee (or other assurance against financial loss) for, or in respect of, any Senior Debt or any Subordinated Debt, other than in terms of the Senior Security

Documents or the Subordinated Security Documents entered into on or before the date of this Agreement;

- 5.2.5 amend, vary, waive or release any provision of the terms of the Senior Documents or the Subordinated Documents in any way which, in the opinion of the Scottish Ministers, is likely to have an adverse effect upon the interests of the Scottish Ministers in relation to the Scottish Ministers Debt;
  - 5.2.6 sell, transfer or otherwise dispose of any of the Senior Debt or the Subordinated Debt;
  - 5.2.7 take any Enforcement Action involving the Company, other than in terms of Clause 9;
  - 5.2.8 take or omit to take any action whereby the ranking and/or subordination arrangements provided for herein in relation to the Senior Debt or the Subordinated Debt or any part thereof may be impaired or adversely affected.
- 5.3 During the Security Period, (i) the Senior Lender and each Subordinated Creditor undertakes to the Scottish Ministers that it shall comply with its obligations under this Agreement and (subject to such obligations) the Senior Documents and the Subordinated Documents (as applicable) and (ii) each Subordinated Creditor undertakes to the Senior Lender that it shall comply with its obligations under this Agreement and (subject to such obligations) the Subordinated Documents.

## **6. UNDERTAKINGS – POST SECURITY PERIOD**

- 6.1 At any time following the expiry of the Security Period, the Company shall not (and the Subordinated Creditors will not require the Company to):-
- 6.1.1 create or permit to subsist any security over any of its assets for all or part of the Subordinated Debt or any guarantee (or other assurance against financial loss) for or in respect of all or any part the Subordinated Debt other than by the security or guarantees conferred by the Subordinated Security Documents entered into on or before the date of this Agreement;
  - 6.1.2 pay, repay, prepay, redeem, purchase or otherwise discharge or release any of the Subordinated Debt, other than in respect of any Permitted Payments in accordance with the terms of Clause 7;
  - 6.1.3 amend any of the terms of the Subordinated Documents, save with the prior written consent of the Senior Lender;
  - 6.1.4 discharge any of the Subordinated Debt by set-off or any right of combination of accounts save only to the extent it may be required to do so or if the same occurs automatically by operation of law (but not, in either case, by reason of any contract or agreement);
  - 6.1.5 give any financial support to any person to enable it to do any of the things referred to in Clause 6.1.1 to 6.1.4 (inclusive) above; or
  - 6.1.6 take or omit to take any action whereby the ranking and/or subordination arrangements provided for herein in relation to the Subordinated Debt or any part thereof may be impaired or adversely affected.
- 6.2 At any time following the expiry of the Security Period, no Subordinated Creditor will:-
- 6.2.1 demand or (except in respect of any Permitted Payment in accordance with the terms of Clause 7) accept payment, repayment, prepayment or any distribution in respect of, or on account of, any Subordinated Debt in cash or in kind or accelerate, declare payable on demand or enforce by execution or

otherwise any principal, interest, cost or other sums in respect of the Subordinated Debt or part thereof;

- 6.2.2 exercise any right of set-off, combination of accounts or lien or exercise or accept any transfer of rights, property or assets from the Company (or any other source) in satisfaction of the Subordinated Debt or part thereof;
  - 6.2.3 claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of any of the Company, other than in accordance with Clause 10;
  - 6.2.4 take, receive or permit to subsist any security right or any guarantee (or other assurance against financial loss) for, or in respect of, any Subordinated Debt, other than in terms of the Subordinated Security Documents entered into on or before the date of this Agreement;
  - 6.2.5 amend, vary, waive or release any provision of the terms of the Subordinated Documents in any way which, in the opinion of the Senior Lender, is likely to have an adverse effect upon the interests of the Senior Lender in relation to the Senior Debt;
  - 6.2.6 sell, transfer or otherwise dispose of any of the Subordinated Debt;
  - 6.2.7 take any Enforcement Action involving the Company, other than in terms of Clause 9;
  - 6.2.8 take or omit to take any action whereby the ranking and/or subordination arrangements provided for herein in relation to the Subordinated Debt or any part thereof may be impaired or adversely affected.
- 6.3 At any time following the expiry of the Security Period, each Subordinated Creditor undertakes to the Senior Lender that it shall comply with its obligations under this Agreement and (subject to such obligations) the Subordinated Documents

## **7. PERMITTED PAYMENTS**

- 7.1 During the Security Period, the Company may make Permitted Payments when the same are due and payable until the Scottish Ministers and/or the Senior Lender notifies the Company that an event of default (howsoever described) under any facility letter, facility agreement or other documentation relating to (i) the Scottish Ministers Debt or the Scottish Ministers Documents or (ii) the Senior Debt or the Senior Documents, has occurred.
- 7.2 At any time following the expiry of the Security Period, the Company may make Permitted Payments when the same are due and payable until the Senior Lender notifies the Company that an event of default (howsoever described) under any facility letter, facility agreement or other documentation relating to the Senior Debt or the Senior Documents, has occurred.

## **8. CONTINUING SECURITY**

- 8.1 The Securities shall be continuing securities for repayment to the Creditors of the money and liabilities thereby secured and the priority arrangements herein contained shall not be affected by the date(s) of any advances made to the Company by any of the Creditors, by any fluctuations in the amount from time to time due owing or incurred by the Company to any of the Creditors or by the existence at any time of a credit or nil balance on any relevant account of the Company with any Creditor.
- 8.2 The provisions of this Agreement shall apply and the Securities shall be given effect in accordance with the terms of this Agreement notwithstanding (i) the date(s) of their creation, registration or intimation or (ii) the provisions of Section 13 of the

Conveyancing and Feudal Reform (Scotland) Act 1970 or (iii) the provisions of Sections 464 or 466 of the Companies Act 1985. The Securities are hereby 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 and Feudal Reform (Scotland) Act 1970 and as an instrument of alteration within the meaning of Section 466 of the Companies Act 1985.

**9. ENFORCEMENT OF SECURITY**

- 9.1 Neither the Senior Lender nor the Subordinated Creditors shall take any Enforcement Action prior to the expiry of the Security Period without the prior written consent of the Scottish Ministers and, in respect of the Subordinated Creditors only, the prior written consent of both the Scottish Ministers and the Senior Lender.
- 9.2 At any time following the expiry of the Security Period, the Subordinated Creditors shall not take any Enforcement Action without the prior written consent of the Senior Lender.

**10. INSOLVENCY PROCEEDINGS**

- 10.1 If an Insolvency Event occurs in respect of the Company during the Security Period then:-
- 10.1.1 the Senior Debt and the Subordinated Debt will be postponed and subordinated to the Scottish Ministers Debt and (if required by the Scottish Ministers but not otherwise) the Senior Lender and each of the Subordinated Creditors will file any proof or other claim necessary for the recovery of the Senior Debt and the Subordinated Debt;
  - 10.1.2 any payment or distribution of any kind or character and all and any rights in respect of such payment or distribution, whether in cash, securities or other property, which is payable or deliverable upon or with respect to all or part of the Senior Debt or the Subordinated Debt by a liquidator, Administrator, or Receiver (or equivalent) of the Company or its estate made or paid to or received by the Senior Lender or any of the Subordinated Creditors or to which the Senior Lender or any of the Subordinated Creditors are entitled, will be held in trust by its recipient for the Scottish Ministers and will immediately be paid or, transferred or assigned to the Scottish Ministers for application in the order set out in Clause 4 of this Agreement, while any Scottish Ministers Debt remains outstanding; and
  - 10.1.3 if the trust referred to in Clause 10.1.2 above fails or cannot be given effect to, the Senior Lender and each Subordinated Creditor (and any agent or trustee on their behalf) receiving any such payment or distribution will pay an amount equal to such payment or distribution to the Scottish Ministers for application in the order set out in Clause 4 of this Agreement.
- 10.2 If an Insolvency Event occurs in respect of the Company at any time following the expiry of the Security Period then:-
- 10.2.1 the Subordinated Debt will be postponed and subordinated to the Senior Debt and (if required by the Senior Lender but not otherwise) each of the Subordinated Creditors will file any proof or other claim necessary for the recovery of the Subordinated Debt;
  - 10.2.2 any payment or distribution of any kind or character and all and any rights in respect of such payment or distribution, whether in cash, securities or other property, which is payable or deliverable upon or with respect to all or part of the Subordinated Debt by a liquidator, Administrator, or Receiver (or equivalent) of the Company or its estate made or paid to or received by any

of the Subordinated Creditors or to which any of the Subordinated Creditors are entitled, will be held in trust by its recipient for the Senior Lender and will immediately be paid or, transferred or assigned to the Senior Lender for application in the order set out in Clause 4 of this Agreement, while any Senior Debt remains outstanding; and

- 10.2.3 if the trust referred to in Clause 10.2.2 above fails or cannot be given effect to, each Subordinated Creditor (and any agent or trustee on their behalf) receiving any such payment or distribution will pay an amount equal to such payment or distribution to the Senior Lender for application in the order set out in Clause 4 of this Agreement.
- 10.3 If, prior to the expiry of the Security Period, the Senior Lender or any Subordinated Creditor receives or recovers any proceeds of Enforcement Action or a payment or distribution in respect of the Senior Debt or the Subordinated Debt other than a Permitted Payment or in accordance with the ranking set out in Clause 4, it will promptly pay such amount to the Scottish Ministers for application in the order set out in Clause 4 and, pending such payment, will hold these amounts and distributions on trust (or otherwise separated from its assets) on behalf of the Scottish Ministers (and the Scottish Ministers acknowledge notice of such trust).
- 10.4 If, at any time following the expiry of the Security Period, any Subordinated Creditor receives or recovers any proceeds of Enforcement Action or a payment or distribution in respect of the Subordinated Debt other than a Permitted Payment or in accordance with the ranking set out in Clause 4, it will promptly pay such amount to the Senior for application in the order set out in Clause 4 and, pending such payment, will hold these amounts and distributions on trust (or otherwise separated from its assets) on behalf of the Senior Lender (and the Senior Lender acknowledges notice of such trust).

## **11. FILING OF CLAIMS AND VOTING – SECURITY PERIOD**

- 11.1 Upon the occurrence of an Insolvency Event in relation to the Company at any time during the Security Period, the Scottish Ministers may and are irrevocably authorised by the Senior Lender and each Subordinated Creditor to:-
  - 11.1.1 demand, claim, enforce and prove for;
  - 11.1.2 on their behalf, exercise all powers of convening meetings, voting and representation in respect of;
  - 11.1.3 file claims and proofs, give receipts and take all proceedings and do all other things which the Scottish Ministers consider reasonably necessary or advisable to recover; and
  - 11.1.4 collect and receive all payments and distributions of any kind in respect of or on account of,the Senior Debt and the Subordinated Debt.
- 11.2 The Senior Lender and each Subordinated Creditor undertakes not to take any of the actions referred to in Clause 11.1 during the Security Period.
- 11.3 The Senior Lender and each Subordinated Creditor will provide all forms of proxy and of representation requested by the Scottish Ministers for the purpose of Clause 11.1 and do all other things that the Scottish Ministers reasonably requests in order to give effect to Clause 11.1 during the Security Period.
- 11.4 If, for whatever reason, the Scottish Ministers are not entitled to take, or do not wish to take, any of the actions listed in Clause 11.1, the Senior Lender and each Subordinated Creditor undertakes promptly to take any action and give any notices which the Scottish Ministers require at any time during the Security Period.

- 11.5 Nothing in this Clause 11 will entitle the Scottish Ministers to exercise or require the Senior Lender or each Subordinated Creditor to exercise such power of voting or representation to waive or amend any of the provisions relating to the Senior Debt or the Subordinated Debt or waive, reduce, discharge or extend the due date for payment of or reschedule any of the Senior Debt or the Subordinated Debt.

**12. FILING OF CLAIMS AND VOTING – POST SECURITY PERIOD**

- 12.1 Upon the occurrence of an Insolvency Event in relation to the Company at any time following the expiry of the Security Period, the Senior Lender may and is irrevocably authorised by each Subordinated Creditor to:-
- 12.1.1 demand, claim, enforce and prove for;
  - 12.1.2 on their behalf, exercise all powers of convening meetings, voting and representation in respect of;
  - 12.1.3 file claims and proofs, give receipts and take all proceedings and do all other things which the Senior Lender considers reasonably necessary or advisable to recover; and
  - 12.1.4 collect and receive all payments and distributions of any kind in respect of or on account of,
- the Subordinated Debt.
- 12.2 Each Subordinated Creditor undertakes not to take any of the actions referred to in Clause 12.1.
- 12.3 Each Subordinated Creditor will provide all forms of proxy and of representation requested by the Senior Lender for the purpose of Clause 12.1 and do all other things that the Senior Lender reasonably requests in order to give effect to Clause 12.1.
- 12.4 If, for whatever reason, the Senior Lender is not entitled to take, or does not wish to take, any of the actions listed in Clause 12.1, each Subordinated Creditor undertakes promptly to take any action and give any notices which the Senior Lender requires from time to time.
- 12.5 Nothing in this Clause 12 will entitle the Senior Lender to exercise or require a Subordinated Creditor to exercise such power of voting or representation to waive or amend any of the provisions relating to the Subordinated Debt or waive, reduce, discharge or extend the due date for payment of or reschedule any of the Subordinated Debt.

**13. COMPLIANCE WITH COVENANTS**

Provided that the Company observes and performs:-

- 13.1 all the covenants in the Scottish Ministers Documents then during the Security Period the Company shall be deemed to have complied with all or any corresponding covenants in the Senior Documents and the Subordinated Documents; and
- 13.2 all the covenants in the Senior Documents then at any time following the expiry of the Security Period the Company shall be deemed to have complied with all or any corresponding covenants in the Subordinated Documents.

**14. WAIVER OF DEFENCES**

- 14.1 The subordination effected or intended to be effected by this Agreement and the obligations of the Senior Lender and the Subordinated Creditors under it shall not be affected by any act, omission or circumstances which but for this provision might

operate to release any of the Senior Lender or the Subordinated Creditors from their obligations or affect such obligations or such subordination including, without limitation and whether or not known to the Senior Lender or the Subordinated Creditors or any other person:-

- 14.1.1 any time, indulgence or waiver granted to, or composition with the Company or any other person;
  - 14.1.2 the taking, variation, compromise, renewal or release of, or refusal or neglect to perfect or enforce, any rights, remedies or securities against or granted by the Company or any other person;
  - 14.1.3 any unenforceability, illegality, invalidity or frustration of any obligation of the Company under the Scottish Ministers Documents or of any other person under any other document;
  - 14.1.4 any amendment to or variation of the terms of the Scottish Ministers Documents or any other document;
  - 14.1.5 any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of the Company under any of the Scottish Ministers Documents resulting from any insolvency, liquidation or dissolution proceedings or from any law or regulation.
- 14.2 This Agreement shall apply in respect of the Scottish Ministers Debt and the Senior Debt irrespective of any intermediate payment of any of the Scottish Ministers Debt or the Senior Debt and shall apply to the ultimate balance of the Scottish Ministers Debt and the Senior Debt.
- 14.3 Notwithstanding any of the provisions of this Agreement postponing, subordinating or delaying the payment of all or any of the Senior Debt or the Subordinated Debt, such Senior Debt or Subordinated Debt shall as between the Company and the Senior Lender or the relevant Subordinated Creditor remain owing or due and payable in accordance with the terms of the Senior Documents or the Subordinated Documents.

## **15. TERMINATION**

This Agreement shall cease to have effect when all of the Securities of the Creditors shall have been fully discharged.

## **16. THE COMPANY'S ACKNOWLEDGEMENTS**

- 16.1 The Company acknowledges and consents to the ranking of the Securities herein recorded.
- 16.2 The Company acknowledges that this Agreement does not create any rights in its favour and that it shall not be entitled to enforce any of the terms of this Agreement against any of the Creditors.

## **17. INFORMATION**

- 17.1 Whilst this Agreement subsists the Scottish Ministers, the Senior Lender and the Subordinated Creditors may from time to time disclose to the other information concerning the Company and its affairs in such manner and to such extent as such Creditor shall from time to time think fit. The Company consents to such disclosure.
- 17.2 Each Creditor acknowledges the right of the other Creditor to the production and delivery of copies of the documents comprising or referred to in its Security.

**18. ENTIRE AGREEMENT**

This Agreement forms the entire agreement between the parties relating to the priority of their respective Securities and the application of the proceeds thereof and supersedes all previous ranking agreements of any kind between all or any of the Creditors in respect of all or any of the Securities, all earlier meetings, discussions, correspondence, e-mails, facsimile transmissions, telexes, letters and communications, understandings and arrangements of any kind so relating.

**19. WAIVERS**

- 19.1 No forbearance or failure by any party to exercise or assert or claim any right or entitlement hereunder shall be construed (in the absence of a written agreement to waive or a written confirmation of a past waiver) as a waiver of that right or entitlement.
- 19.2 No waiver of any breach of any term of this Agreement shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.
- 19.3 None of the terms of this Agreement is enforceable by any person other than a Creditor and their respective successors in title. No purchaser dealing with any of the Creditors or any Administrator or Receiver shall be concerned in any way with the provisions of this Agreement and shall assume that the Creditors or any such Administrator or Receiver is acting in accordance with the provisions of this Agreement.

**20. VARIATIONS**

Any variation of this Agreement shall be binding only if it is recorded in a document signed by or on behalf of each Creditor.

**21. SEVERABILITY**

The provisions of this Agreement shall be severable and distinct from each other and if at any time any one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of each of the remaining provisions of this Agreement shall not in any way be affected, prejudiced or impaired thereby.

**22. FACILITIES**

Nothing contained in this Agreement shall bind any Creditor to make any advance or prepayment or to grant any credit or other facilities to the Company.

**23. TRANSFER**

- 23.1 The Company shall not be entitled to assign or transfer all or any of its rights, benefits or obligations under this Agreement.
- 23.2 During the Security Period, neither the Senior Lender nor the Subordinated Creditors shall be entitled to assign or transfer all or any of their rights, benefits or obligations under this Agreement without the prior written consent of the Scottish Ministers and, in respect of the Subordinated Creditors only, the additional prior written consent of the Senior Lender.
- 23.3 At any time following the expiry of the Security Period, none of the Subordinated Creditors shall be entitled to assign or transfer all or any of their rights, benefits or obligations under this Agreement without the prior written consent of the Senior Lender.



- 23.4 The Scottish Ministers may at any time assign all or any of its respective rights and benefits under this Agreement to any party to whom the Scottish Ministers transfer or assigns all or any part of the Scottish Ministers Debt.
- 23.5 At any time following the expiry of the Security Period, the Senior Lender may assign all or any of its respective rights and benefits under this Agreement to any party to whom the Senior Lender transfer or assigns all or any part of the Senior Debt.
- 23.6 The Senior Lender and each of the Subordinated Creditors hereby undertakes to the Scottish Ministers, and, in respect of the Subordinated Creditors only, additionally hereby undertake to the Senior Lender, that it shall not sell, transfer or otherwise dispose of all or any part of the Senior Debt or its Subordinated Debt (as applicable) to any person.

**24. TIME AND INDULGENCE**

Each Creditor shall be entitled to grant time or indulgence or to release or compound with the Company or otherwise deal with its Security without reference to the other Creditors except to the extent regulated by this Agreement.

**25. COMPENSATION**

The Creditors hereby agree that, if this Agreement is regarded by any one or more liquidators, Receivers or Administrators of the Company as failing to bind him or them, any party or parties who will have benefited as a result of any action by any one or more of such liquidators, Receivers or Administrators will forthwith compensate the party or parties who will have been correspondingly prejudiced to the extent of the provisions as to ranking set out in Clause 4.

**26. NOTICES**

- 26.1 Any notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing.

- 26.2 Any such notice or other communication shall, subject to Clause 26.4, be addressed to the relevant party at its address stated below in relation to each party:-

26.2.1 in the case of the Scottish Ministers:-

address: More Homes Division of the Housing and Social Justice Directorate, 5th Floor, Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU

marked for the attention of: Alan Ross

26.2.2 in the case of the Senior Lender its registered office address for the time being, marked for the attention of the Group Finance Director

26.2.3 in the case of FC:-

address: Fife House, North Street, Glenrothes KY7 5LT

marked for the attention of: Chief Legal Officer

26.2.4 in the case of the Aitken Trustees:-

address: c/o Morton Fraser LLP, Quartermile Two, 2 Lister Square, Edinburgh

marked for the attention of: Caroline Docherty;

26.2.5 in the case of the Company its registered office for the time being, marked for the attention of Russell Wilkie.

- 26.3 Provided a notice is addressed in accordance with Clause 26.2, it shall be deemed to have been duly given or made as follows:-
- 26.3.1 if sent by personal delivery, upon delivery at the address of the relevant party;
  - 26.3.2 if sent by first class pre-paid letter post, two clear business days after the date of posting.
- 26.4 A party may notify the other parties to this Agreement of a change to its name or address for the purposes of Clause 26.2 provided that such notification shall only be effective on:-
- 26.4.1 the date specified in the notification as the date on which the change is to take place; or
  - 26.4.2 if no date is specified or the date specified is less than five clear business days after the date on which notice is given, the date falling five clear business days after notice of any such change has been given.
- 26.5 Notices under this Agreement may not be given by fax or email.
- 26.6 For the avoidance of doubt, the parties agree that the provisions of this Clause shall not apply in relation to the service of any document by which any legal proceedings are commenced or continued or forming any part of such proceedings.

## **27. COUNTERPARTS AND DELIVERY**

- 27.1 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts.
- 27.2 Where executed in counterpart:
- 27.2.1 this Agreement shall not take effect until all of the counterparts have been delivered;
  - 27.2.2 each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered;
  - 27.2.3 the parties may choose to evidence the date of delivery of this Agreement by inserting this on the front page of this Agreement;
- 27.3 If this Agreement is not executed in counterparts, this Agreement shall be delivered on the date inserted on the front page of this Agreement or, if no such date is inserted, the date on which the last Party has signed this Agreement.
- 27.4 The Parties to this Agreement, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (Counterparts Act), nominate Addleshaw Goddard LLP to take delivery of all counterparts of this Agreement. The Parties agree that the provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Agreement

28. **LAW AND JURISDICTION**

28.1 This Agreement is governed by, and shall be construed in accordance with, Scots law.

28.2 The parties to this Agreement irrevocably submit to the exclusive jurisdiction of the Scottish courts to settle any disputes which may arise out of or in connection with this Agreement. **IN WITNESS WHEREOF** this and the preceding 16 pages are executed as follows:-

Subscribed for and on behalf of **THE SCOTTISH MINISTERS** by *ALAN ROSS*  
, Authorised Signatory at *GLASGOW* on the *31* day of *MAY*  
2019 before this witness:-

Witness ..... 

Full Name ... *ANDREW LOBBAN*

Address .....



Authorised Signatory

Subscribed for and on behalf of **MURRAY CAPITAL LIMITED** by  
, Director at ..... on the ..... day of .....  
2019 before this witness:-

Witness .....

Full Name .....

Address .....

Director

Sealed with the Common Seal of **THE FIFE COUNCIL** and signed for and on its  
behalf by ..... a Proper Officer at ..... on the ..... day  
of ..... 2019 before this witness:-

Witness .....

Full Name .....

Address .....

Proper Officer

28. **LAW AND JURISDICTION**

- 28.1 This Agreement is governed by, and shall be construed in accordance with, Scots law.
- 28.2 The parties to this Agreement irrevocably submit to the exclusive jurisdiction of the Scottish courts to settle any disputes which may arise out of or in connection with this Agreement. **IN WITNESS WHEREOF** this and the preceding 16 pages are executed as follows:-

Subscribed for and on behalf of **THE SCOTTISH MINISTERS** by  
, Authorised Signatory at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_  
2019 before this witness:-

Witness .....

Full Name .....

Address .....

.....  
Authorised Signatory

Subscribed for and on behalf of **MURRAY CAPITAL LIMITED** by **DAVID . D. MURRAY**  
, Director at ~~Edinburgh~~ on the **5<sup>th</sup>** day of **June**  
2019 before this witness:-

Witness .....

Full Name **SARAH COPLAND**

Address **26 Charlotte Square**

**Edinburgh, EH2 4ET**

.....  
Director

Sealed with the Common Seal of **THE FIFE COUNCIL** and signed for and on its  
behalf by \_\_\_\_\_, a Proper Officer at \_\_\_\_\_ on the \_\_\_\_\_ day  
of \_\_\_\_\_ 2019 before this witness:-

Witness .....

Full Name .....

Address .....

.....  
Proper Officer

28. **LAW AND JURISDICTION**

- 28.1 This Agreement is governed by, and shall be construed in accordance with, Scots law.
- 28.2 The parties to this Agreement irrevocably submit to the exclusive jurisdiction of the Scottish courts to settle any disputes which may arise out of or in connection with this Agreement. **IN WITNESS WHEREOF** this and the preceding 16 pages are executed as follows:-

Subscribed for and on behalf of **THE SCOTTISH MINISTERS** by  
, Authorised Signatory at \_\_\_\_\_ on the \_\_\_\_\_ day of  
2019 before this witness:-

Witness .....

Full Name .....

Address .....

.....  
Authorised Signatory

Subscribed for and on behalf of **MURRAY CAPITAL LIMITED** by  
, Director at \_\_\_\_\_ on the \_\_\_\_\_ day of  
2019 before this witness:-

Witness .....

Full Name .....

Address .....

.....  
Director

Sealed with the Common Seal of **THE FIFE COUNCIL** and signed for and on its  
behalf by ~~JUNE ANNE BARRIE~~, a Proper Officer at ~~GLASGOW~~ on the ~~5<sup>TH</sup>~~ day  
of ~~JUNE~~ 2019 ~~before this witness:-~~


Witness .....

Full Name .....

Address .....

  
Proper Officer

Subscribed by **CAROLINE DOCHERTY** in her capacity as a trustee of JH Aitken's Liferent Trust at ~~EDINBURGH~~ on the 31<sup>st</sup> day of MAY 2019 before this witness:-

Witness .....  .....

Full Name ... ALICE HARDY .....

Address ... QUARTER MILE TWO .....

..... 2 LISTER SQ., EDINBURGH .....

  
Trustee

Subscribed by **ELAINE JANE MCINROY** in her capacity as a trustee of JH Aitken's Liferent Trust at ..... on the ..... day of ..... 2019 before this witness:-

Witness .....

Full Name .....

Address .....

.....  
Trustee

Subscribed for and on behalf of **PAGAN OSBORNE & GRACE TRUSTEES LIMITED** in its capacity as a trustee of JH Aitken's Liferent Trust by ..... , Director of Pagan Osborne & Grace Trustees Limited at ..... on the ..... day of ..... 2019 before this witness:-

Witness .....

Full Name .....

Address .....

.....  
Director

Subscribed by **CAROLINE DOCHERTY** in her capacity as a trustee of JH Aitken's Liferent Trust at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2019 before this witness:-

Witness .....

Full Name .....

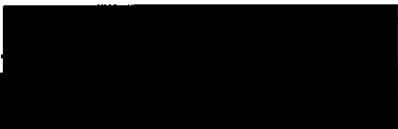
Address .....

Trustee

Subscribed by **ELAINE JANE McINROY** in her capacity as a trustee of JH Aitken's Liferent Trust at Edinburgh on the 31 day of May 2019 before this witness:-

Witness ..... 

Full Name KEVIN MARTIN

Address ..... 

Trustee 

Subscribed for and on behalf of **PAGAN OSBORNE & GRACE TRUSTEES LIMITED** in its capacity as a trustee of JH Aitken's Liferent Trust by \_\_\_\_\_, Director of Pagan Osborne & Grace Trustees Limited at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2019 before this witness:-

Witness .....

Full Name .....

Address .....

Director

Subscribed by **CAROLINE DOCHERTY** in her capacity as a trustee of JH Aitken's Liferent Trust at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2019 before this witness:-

Witness .....

Full Name .....

Address .....

Trustee

Subscribed by **ELAINE JANE McINROY** in her capacity as a trustee of JH Aitken's Liferent Trust at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2019 before this witness:-

Witness .....

Full Name .....

Address .....

Trustee

Subscribed for and on behalf of **PAGAN OSBORNE & GRACE TRUSTEES LIMITED** in its capacity as a trustee of JH Aitken's Liferent Trust by *Morna Jane Conliffe*, Director of Pagan Osborne & Grace Trustees Limited at *Edinburgh* on the *01* day of *June* 2019 before this witness:-

Witness .....

Full Name *Grace Rose Campbell Dobson*

Address *Cityport, 3rd Floor*

*65 Haymarket Terrace, Edinburgh  
EH12 5ND*

Director



Subscribed for and on behalf of KINGDOM PARK LIMITED by ~~RAYMOND WILKIE~~ <sup>RUSSELL WILKIE</sup>  
, Director at Edinburgh on the 5<sup>th</sup> day of June 2019 before this  
witness:-

Witness ...

Full Name JEREMY ROWLAND DAVIES

Address at 26 Charlotte Square

EDINBURGH EH2 4RT

Director

RUSSELL WILKIE