

# 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

5

SC283168

Name of company

\* The Malcolm Group Limited

Date of creation of the charge (note 1)

30 October 2012

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

Floating Charge

Names of the persons entitled to the charge

HSBC Equipment Finance (UK) Limited

Please see the appendix attached for additional defined terms.

Short particulars of all the property charged

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

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

Addleshaw Goddard LLP  
DX: ED27 Edinburgh

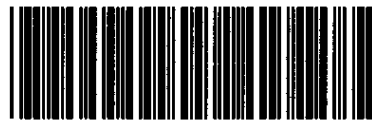
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For official use (02/06)

Charges Section

Post room

FRIDAY



\*S99H1Q1E\*

SCT

17/07/2020

#51

COMPANIES HOUSE

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

Please see part 1 of the appendix attached.

*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

HSBC - 2 July 2020  
HEF - 2 July 2020  
Santander - 6 July 2020  
Group - 2 July 2020  
Date of delivery - 6 July 2020

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

N/A

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

*Please do not  
write in  
this margin*

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

Please see part 2 of the appendix attached.

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

Signed  Date 16 July 2020  
On behalf of ~~company~~ [chargee] Addleshaw Goddard LLP

**Notes**

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc as the case may be, should be given.  
For the date of creation of a charge see section 410(5) of the Companies Act.
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

delete as  
appropriate

**Appendix to Form 466**

**Part 1**

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

1.	HSBC UK Bank plc (" <b>HSBC</b> ")	8 Canada Square, London, E14 5HQ
2.	HSBC Equipment Finance (UK) Limited (" <b>HEF</b> ")	1 Centenary Square, Birmingham, United Kingdom B1 1HQ
3.	Santander UK PLC (" <b>Santander</b> ")	2 Triton Square, Regent's Place, London, NW1 3AN
4.	The Malcolm Group Limited (" <b>Parent</b> ")	Brookfield House, Burnbrae Drive Linwood Industrial Estate, Linwood, PA3 3BU
5.	W. H. Malcolm Limited (" <b>WHM</b> ")	Brookfield House, Burnbrae Drive Linwood Industrial Estate, Linwood, PA3 3BU
6.	Charles Lawrence Surfaces Limited (" <b>Surfaces</b> ")	Brunel House, Jessop Way, Northern Road Industrial, Newark, Nottinghamshire, NG24 2ER
7.	Malcolm of Brookfield (Holdings) Limited (" <b>Brookfield</b> ")	Brookfield House, Burnbrae Drive Linwood Industrial Estate, Linwood, PA3 3BU
8.	CLS Surfaces (Holdings) Limited (" <b>Surfaces Holdings</b> ")	Brookfield House, Burnbrae Drive Linwood Industrial Estate, Linwood, PA3 3BU
9.	White Island Enterprises (Scotland) Limited (" <b>White Island</b> ")	Brookfield House, Burnbrae Drive Linwood Industrial Estate, Linwood, PA3 3BU

## **Part 2**

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

### **3 Priorities**

**3.1** Notwithstanding the terms of the Securities, any provisions as to ranking contained in them and their respective dates of creation, each of the parties agree that the Securities shall, subject to clause 3.1(a), rank in the following order of priority:

(a) Securities over and realisations of the HEF Priority Assets and on the proceeds thereof shall rank and be applied in the following order:

- (i) first, the HEF Security shall rank on the HEF Priority Assets and on the proceeds thereof prior and preferably to the HSBC Security and Santander Floating Security to an unlimited extent;
- (ii) second, the HSBC Security shall rank on the HEF Priority Assets and on the proceeds thereof to an unlimited extent; and
- (iii) third, the Santander Floating Security shall rank on the HEF Priority Assets and on the proceeds thereof to an unlimited extent.

(b) Securities over and realisations of the Santander Priority Assets and on the proceeds thereof shall rank and be applied in the following order:

- (i) first, Santander's Fixed Security shall rank on the Santander Priority Assets and on the proceeds thereof prior and preferably to the other Securities to an unlimited extent; and
- (ii) second the HEF Security, the HSBC Security and the Santander Floating Security shall rank together *pari passu* on the Santander Priority Assets and on the proceeds thereof to an unlimited extent.

(c) Securities over the and realisations of the Charged Property (other than the HEF Priority Assets and the Santander Priority Assets) shall rank and be applied in the following order:

- (i) first, the HSBC Security shall rank on the Charged Property (other than the HEF Priority Assets and the Santander Priority Assets) and on the proceeds thereof to an unlimited extent;
- (ii) second, the HEF Security shall rank on the Charged Property (other than the HEF Priority Assets and the Santander Priority Assets) and on the proceeds thereof to an unlimited extent; and
- (iii) third, the Santander Floating Charge shall rank on the Charged Property (other than the HEF Priority Assets and the Santander Priority Assets) and on the proceeds thereof to an unlimited extent.

**3.2** The Financiers hereby agree that any fixed security (as defined in section 70 of the Insolvency Act 1986) held by any of them over any property, rights or assets of the Group shall rank in priority to any floating security created by way of the Securities.

3.3 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.

3.4 Notwithstanding the provisions of Section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970 or any other rule of law which might operate to the contrary effect, the provisions of clause 3.1 as to priority and ranking of the Securities shall be valid and effective irrespective of the dates or times at which the Securities were executed or constituted or registered and irrespective of the dates on which sums have been or may be advanced to or otherwise drawn by the Group, none of the other parties hereto having any concern with the composition of or fluctuations in the sums due to the Financiers.

3.5 Subject to clause 3.4, nothing contained within the 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 3.1 is to:

- (a) rank a floating charge ahead of a fixed charge; or
- (b) 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 3.5(a), the floating charge shall be postponed to the fixed charge and that in both cases the holder of that fixed charge (and the Group) agree that:

- (c) all receipts, recoveries and realisations from its fixed charge shall be applied in the order set out in clause 3.1; and
- (d) it (and any Administrator or Receiver) will hold any realisations from its fixed charge on trust for the Financiers to be applied in the order set out in clause 3.1

## Defined Terms

Additional defined terms used in this form 466:

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

**Agreement** means the intercreditor agreement delivered on 6 July 2020 between the Financiers and the Group

**Charged Property** means any assets, property and undertaking of the Group over which any of the Securities have been granted by any member of the Group

**Financiers** means any or all, as the context requires, of HEF, HSBC or Santander and **Financier** shall be construed accordingly

**Group** means the Parent, WHM, Surfaces, Brookfield, Surfaces Holdings and White Island and, as the context permits or requires, any or all of them and **member of the Group** shall be construed accordingly

**HEF Agreements** means the following agreements made between WHM and HEF (each as amended and/or restated from time to time):

- (a) the asset finance facility letter dated 31 October 2012 in terms of which HEF has agreed to provide WHM with a revolving asset finance hire purchase facility of up to £27,500,000, together with any utilisation requests issued by WHM to HEF from time to time under such facility letter;
- (b) the hire purchase master agreement dated 31 October 2012; and
- (c) any hire purchase schedules entered into between WHM and HEF from time to time under the terms of such facility letter and/or hire purchase master agreement, including the hire purchase schedule dated 31 October 2012

**HEF Priority Assets** means the plant, equipment, vehicles and other assets which have been financed (or which are intended to be financed) under the HEF Agreements and to which HEF has not acquired title for any reason

**HEF Security** means:

- (a) the bond and floating charges granted by the Parent, WHM, Brookfield and Surfaces Holdings in favour of HEF dated 30 October 2012
- (b) the debenture granted by Surfaces in favour of HEF dated 31 October 2012 and
- (c) the bond and floating charge granted by White Island in favour of HEF on or around the date of the Agreement

**HSBC Security** means:

- (a) the bond and floating charges granted or to be granted by the Parent, WHM, Brookfield Surfaces Holdings and White Island in favour of HSBC dated on or about the date of the Agreement and
- (b) the debenture granted or to be granted by Surfaces in favour of HSBC dated on or about the date of the Agreement

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



**Santander Fixed Security** means:

- (c) the standard security granted by WHM in favour of Alliance and Leicester plc (whose interest was transferred to Santander with effect from 28 May 2010 pursuant to a bank business transfer scheme under Part VII of the Financial Services and Markets Act 2000) dated 20 May 2010 and registered in the Land Register of Scotland under Title Number REN95055 on 27 May 2010 and registered in the Register of Charges at Companies House on 28 May 2010; and
- (d) the standard security granted by WHM in favour of Santander dated 29 June 2010 and registered in the Land Register of Scotland under Title Number AYR89686 on 6 July 2010 and registered in the Register of Charges at Companies House on 21 July 2010

**Santander Floating Security** means the floating charge granted by WHM in favour of Santander and dated 31 October 2012

**Santander Priority Assets** means each of the properties secured by way of the Santander Fixed Security

**Santander Security** means the Santander Fixed Security and the Santander Floating Security

**Securities** means any or all, as the context requires, of the HSBC Security, the HEF Security and the Santander Security



**FILE COPY**

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

**COMPANY NO. 283168  
CHARGE NO. 5**

**I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 6 JULY 2020 WERE DELIVERED  
PURSUANT TO SECTION 878 OF THE COMPANIES ACT 2006  
ON 17 JULY 2020**

**THE INSTRUMENT RELATES TO A CHARGE CREATED ON 30  
OCTOBER 2012**

**BY THE MALCOLM GROUP LIMITED**

**IN FAVOUR OF  
HSBC EQUIPMENT FINANCE (UK) LIMITED**

**FOR SECURING ALL SUMS DUE OR TO BECOME DUE**

**GIVEN AT COMPANIES HOUSE, EDINBURGH 20 JULY 2020**



**Companies House**



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



Dated

6 July

2020

**HSBC UK BANK PLC**

**HSBC EQUIPMENT FINANCE (UK) LIMITED**

**SANTANDER UK PLC**

**THE MALCOLM GROUP LIMITED**

**W. H. MALCOLM LIMITED**

**CHARLES LAWRENCE SURFACES LIMITED**

**MALCOLM OF BROOKFIELD (HOLDINGS) LIMITED**

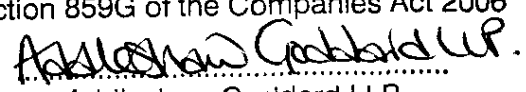
**CLS SURFACES (HOLDINGS) LIMITED**

**WHITE ISLAND ENTERPRISES (SCOTLAND) LIMITED**

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**INTERCREDITOR  
AGREEMENT**

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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

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This Agreement is made on

6 July

2020

**Between**

- (1) **HSBC UK Bank Plc** (Company Number 09928412) whose registered office is at 8 Canada Square, London, E14 5HQ (**HSBC**);
- (2) **HSBC Equipment Finance (UK) Limited** (Company Number 1503727) whose registered office is at 1 Centenary Square, Birmingham, United Kingdom B1 1HQ (**HEF**);
- (3) **Santander UK PLC** (Company Number 02294747) whose registered office is at 2 Triton Square, Regent's Place, London, NW1 3AN (**Santander**);
- (4) **The Malcolm Group Limited**, (Company Number SC283168) whose registered office is at Brookfield House, Burnbrae Drive Linwood Industrial Estate, Linwood, PA3 3BU (**Parent**);
- (5) **W. H. Malcolm Limited**, (Company Number SC035770) Brookfield House, Burnbrae Drive Linwood Industrial Estate, Linwood, PA3 3BU (**WHM**);
- (6) **Charles Lawrence Surfaces Limited**, (Company Number 00932266) Brunel House, Jessop Way, Northern Road Industrial, Newark, Nottinghamshire, NG24 2ER (**Surfaces**);
- (7) **Malcolm of Brookfield (Holdings) Limited**, (Company Number SC271036) Brookfield House, Burnbrae Drive Linwood Industrial Estate, Linwood, PA3 3BU (**Brookfield**);
- (8) **CLS Surfaces (Holdings) Limited**, (Company Number SC277048) Brookfield House, Burnbrae Drive Linwood Industrial Estate, Linwood, PA3 3BU (**Surfaces Holdings**); and
- (9) **White Island Enterprises (Scotland) Limited** (Company Number SC137893), Brookfield House, Burnbrae Drive Linwood Industrial Estate, Linwood, PA3 3BU (**White Island**).

**Whereas**

- (A) The Group has entered or is about to enter into the Agreements with HSBC, HEF and Santander respectively.
- (B) The Group has granted the Securities in favour of the Financiers as security for the obligations arising under the Agreements.
- (C) The Financiers have agreed to enter into this Agreement to regulate the ranking of the Securities.

**It is agreed**

**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

**Agreements** means each of the HEF Agreements, the HSBC Agreement and the Santander Agreement

**Charged Property** means any assets, property and undertaking of the Group over which any of the Securities have been granted by any member of the Group

**Financiers** means any or all, as the context requires, of HEF, HSBC or Santander and **Financier** shall be construed accordingly

**Group** means the Parent, WHM, Surfaces, Brookfield, Surfaces Holdings and White Island and, as the context permits or requires, any or all of them and **member of the Group** shall be construed accordingly

**HEF Agreements** means the following agreements made between WHM and HEF (each as amended and/or restated from time to time):

- (a) the asset finance facility letter dated 31 October 2012 in terms of which HEF has agreed to provide WHM with a revolving asset finance hire purchase facility of up to £27,500,000, together with any utilisation requests issued by WHM to HEF from time to time under such facility letter;
- (b) the hire purchase master agreement dated 31 October 2012; and
- (c) any hire purchase schedules entered into between WHM and HEF from time to time under the terms of such facility letter and/or hire purchase master agreement, including the hire purchase schedule dated 31 October 2012

**HEF Security** means:

- (a) the bond and floating charges granted by the Parent, WHM, Brookfield and Surfaces Holdings in favour of HEF dated 30 October 2012
- (b) the debenture granted by Surfaces in favour of HEF dated 31 October 2012 and
- (c) the bond and floating charge granted by White Island in favour of HEF on or around the date of this Agreement

**HEF Priority Assets** means the plant, equipment, vehicles and other assets which have been financed (or which are intended to be financed) under the HEF Agreements and to which HEF has not acquired title for any reason

**HSBC Agreement** means the revolving facility agreement between HSBC and each member of the Group dated on or around the date of this Agreement

**HSBC Security** means:

- (a) the bond and floating charges granted or to be granted by the Parent, WHM, Brookfield Surfaces Holdings and White Island in favour of HSBC dated on or about the date of this Agreement and
- (b) the debenture granted or to be granted by Surfaces in favour of HSBC dated on or about the date of this Agreement

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

**Santander Agreement** means the £3,000,000 property term loan agreement made between Santander and WHM and dated on or about the date of this Agreement

**Santander Fixed Security means:**

- (a) the standard security granted by WHM in favour of Alliance and Leicester plc (whose interest was transferred to Santander with effect from 28 May 2010 pursuant to a bank business transfer scheme under Part VII of the Financial Services and Markets Act 2000) dated 20 May 2010 and registered in the Land Register of Scotland under Title Number REN95055 on 27 May 2010 and registered in the Register of Charges at Companies House on 28 May 2010; and
- (b) the standard security granted by WHM in favour of Santander dated 29 June 2010 and registered in the Land Register of Scotland under Title Number AYR89686 on 6 July 2010 and registered in the Register of Charges at Companies House on 21 July 2010

**Santander Floating Security** means the floating charge granted by WHM in favour of Santander and dated 31 October 2012

**Santander Priority Assets** means each of the properties secured by way of the Santander Fixed Security

**Santander Security** means the Santander Fixed Security and the Santander Floating Security

**Securities** means any or all, as the context requires, of the HSBC Security, the HEF Security and the Santander Security

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

- (a) references to the parties shall be construed so as to include their respective successors and permitted assigns;
- (b) 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 Sterling in London;
- (c) references to clauses are references to clauses of this Agreement;
- (d) references to this Agreement shall be to this Agreement as amended, varied, supplemented or novated from time to time;
- (e) headings are inserted for ease of reference only and shall be ignored in the construction of this Agreement;
- (f) 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
- (g) 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.**

**2 Consents and Agreements**

Insofar as consent is required under the terms of the Securities or otherwise, each Financier hereby confirms its consent to the creation and continuance of each other Financier's Securities.

### **3 Priorities**

**3.1** Notwithstanding the terms of the Securities, any provisions as to ranking contained in them and their respective dates of creation, each of the parties agree that the Securities shall, subject to clause 3.1(a), rank in the following order of priority:

- (a) Securities over and realisations of the HEF Priority Assets and on the proceeds thereof shall rank and be applied in the following order:
  - (i) first, the HEF Security shall rank on the HEF Priority Assets and on the proceeds thereof prior and preferably to the HSBC Security and Santander Floating Security to an unlimited extent;
  - (ii) second, the HSBC Security shall rank on the HEF Priority Assets and on the proceeds thereof to an unlimited extent; and
  - (iii) third, the Santander Floating Security shall rank on the HEF Priority Assets and on the proceeds thereof to an unlimited extent.
- (b) Securities over and realisations of the Santander Priority Assets and on the proceeds thereof shall rank and be applied in the following order:
  - (i) first, Santander's Fixed Security shall rank on the Santander Priority Assets and on the proceeds thereof prior and preferably to the other Securities to an unlimited extent; and
  - (ii) second the HEF Security, the HSBC Security and the Santander Floating Security shall rank together *pari passu* on the Santander Priority Assets and on the proceeds thereof to an unlimited extent.
- (c) Securities over the and realisations of the Charged Property (other than the HEF Priority Assets and the Santander Priority Assets) shall rank and be applied in the following order:
  - (i) first, the HSBC Security shall rank on the Charged Property (other than the HEF Priority Assets and the Santander Priority Assets) and on the proceeds thereof to an unlimited extent;
  - (ii) second, the HEF Security shall rank on the Charged Property (other than the HEF Priority Assets and the Santander Priority Assets) and on the proceeds thereof to an unlimited extent; and
  - (iii) third, the Santander Floating Charge shall rank on the Charged Property (other than the HEF Priority Assets and the Santander Priority Assets) and on the proceeds thereof to an unlimited extent.

**3.2** The Financiers hereby agree that any fixed security (as defined in section 70 of the Insolvency Act 1986) held by any of them over any property, rights or assets of the Group shall rank in priority to any floating security created by way of the Securities.

**3.3** 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.

- 3.4 Notwithstanding the provisions of Section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970 or any other rule of law which might operate to the contrary effect, the provisions of clause 3.1 as to priority and ranking of the Securities shall be valid and effective irrespective of the dates or times at which the Securities were executed or constituted or registered and irrespective of the dates on which sums have been or may be advanced to or otherwise drawn by the Group, none of the other parties hereto having any concern with the composition of or fluctuations in the sums due to the Financiers.
- 3.5 Subject to clause 3.4, 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 3.1 is to:
- (a) rank a floating charge ahead of a fixed charge; or
  - (b) 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 3.5(a), the floating charge shall be postponed to the fixed charge and that in both cases the holder of that fixed charge (and the Group) agree that:

- (c) all receipts, recoveries and realisations from its fixed charge shall be applied in the order set out in clause 3.1; and
- (d) it (and any Administrator or Receiver) will hold any realisations from its fixed charge on trust for the Financiers to be applied in the order set out in clause 3.1.

#### **4 Continuing Security**

- 4.1 The Securities shall be continuing securities for repayment to the Financiers 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 Group by any of the Financiers, by any fluctuations in the amount from time to time due owing or incurred by the Group to any of the Financiers or by the existence at any time of a credit or nil balance on any relevant account of the Group with any Financier.
- 4.2 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 and/or 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.

#### **5 Enforcement of Security**

- 5.1 The Financiers shall consult and co-operate with each other to the intent (without any requirement) that:

- (a) the Securities shall so far as practicable be enforced by the same method and at the same time;
- (b) in the case of an appointment of a Receiver or an Administrator by any Financier under its Securities the same person shall be appointed Receiver or Administrator by the other of them (if the other of them shall also make such an appointment).

5.2 The provisions of clause 5.1 shall not affect clauses 3.1 or 3.2 nor prevent a Financier from appointing a Receiver or an Administrator under its Security or from the exercise or enforcement of its Security or any rights thereunder or at law without any consultation if it considers it expedient to do so.

5.3 If any Financier shall appoint a Receiver or an Administrator under its Security or shall otherwise enforce or exercise its Security it shall promptly give written notice thereof to the other Financier.

5.4 HEF shall be entitled, notwithstanding any other provision of this Agreement, to demand, receive and retain any sums due to it in respect of the HEF Agreements and to enforce all or any of its rights under the HEF Agreements in respect of the HEF Priority Assets (but shall not be entitled to enforce any HEF Security other than in accordance with this clause 5).

## **6 Termination**

This Agreement shall cease to have effect when all of the Securities of all of the Financiers shall have been irrevocably and unconditionally discharged in full.

## **7 The Group's Acknowledgements**

7.1 The Group acknowledges and consents to the ranking of the Securities herein recorded.

7.2 The Group 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 Financiers.

## **8 Information**

8.1 Whilst this Agreement subsists the Financiers may from time to time disclose to the others of them information concerning the Group and its affairs in such manner and to such extent as such Financier shall from time to time think fit. The Group consents to such disclosure.

8.2 Each Financier acknowledges the right of the other Financier to the production and delivery of copies of the documents comprising or referred to in its Securities.

## **9 Entire Agreement**

9.1 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 earlier ranking agreements affecting any of the Securities, meetings, discussions, correspondence, e-mails, facsimile transmissions, telexes, letters and communications, understandings and arrangements of any kind so relating.

## **10 Waivers**

10.1 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.

10.2 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.

10.3 None of the terms of this Agreement is enforceable by any person other than a Financier and their respective successors in title. No purchaser dealing with any of the Financiers or any Administrator or Receiver shall be concerned in any way with the provisions of this Agreement and shall assume that the Financiers or any such Administrator or Receiver is acting in accordance with the provisions of this Agreement.

## **11 Variations**

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

## **12 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.

## **13 Facilities**

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

## **14 Transfer and accession**

14.1 The members of the Group shall not be entitled to assign or transfer all or any of their rights, benefits or obligations under this Agreement.

14.2 The Financiers may at any time assign all or any of their respective rights and benefits under this Agreement to any transferee of any of the relevant Financier's debt or other finance facility provided that such transferee agrees to be bound by the terms of this Agreement as they apply to such transferring Financier.

## **15 Time and Indulgence**

Each Financier shall be entitled to grant time or indulgence or to release or compound with the Group or otherwise deal with its Securities without reference to the other except to the extent regulated by this Agreement.

## **16 Compensation**

The Financiers hereby agree that, if this Agreement is regarded by any one or more liquidators, Receivers or Administrators of the Group 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 3.

## **17 Notices**

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

**17.2 Any such notice or other communication shall, subject to clause 17.4, be addressed to the relevant party at its address stated below in relation to each party:**

**(a) in the case of HSBC:**

**Address:** HSBC UK Bank plc, Scotland Corporate Banking Centre, First Floor, 141 Bothwell Street, Glasgow G2 7EQ

**Marked for the attention of:** Stephen Leckie, Relationship Director, Large Corporates Scotland

**(b) in the case of the HEF:**

**Address:** HSBC Equipment Finance (UK) Ltd, 1 Centenary Square, Birmingham, B1 1HQ

**Marked for the attention of:** Michael Proctor, Relationship Director, Large Corporate

**(c) in the case of the Santander:**

**Address:** Santander UK plc, First Floor, 301 St Vincent Street, Glasgow G2 5NB

**Marked for the attention of:** Jonathan Kelly, Relationship Director, Scotland Large Corporate Group

**(d) in the case of each member of the Group, its registered office address for the time being marked for the attention of David Archer and/or Alan Palmer.**

**17.3 Provided a notice is addressed in accordance with clause 17.2, it shall be deemed to have been duly given or made as follows:**

- (a) if sent by personal delivery, upon delivery at the address of the relevant party;**
- (b) if sent by first class pre-paid letter post, 2 clear business days after the date of posting;**
- (c) if sent by facsimile transmission, it shall be deemed to have been received by the addressee as soon as sent, save that if it is sent outside the addressee's normal business hours on a day which is not a working day in the place of receipt it shall be deemed to have been received at 10am on the next following working day.**

**17.4 A party may notify the other parties to this Agreement of a change to its name or address for the purposes of clause 17.2 provided that such notification shall only be effective on:**

- (a) the date specified in the notification as the date on which the change is to take place; or**
- (b) if no date is specified or the date specified is less than 5 clear business days after the date on which notice is given, the date falling 5 clear business days after notice of any such change has been given.**

- 17.5 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.

**18 Counterparts and delivery**

- 18.1 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts.

- 18.2 Where executed in counterpart:

- (a) this Agreement shall not take effect until all of the counterparts have been delivered;
- (b) each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and
- (c) the parties may choose to evidence the date of delivery of this Agreement by inserting this on the front page of this Agreement.

- 18.3 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 signed this Agreement.

- 18.4 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.

**19 Law and Jurisdiction**

- 19.1 This Agreement and any non-contractual obligation arising out of or in connection with it shall be governed by, and shall be construed in accordance with, Scots law.

19.2 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 9 pages are executed as follows

Subscribed for and on behalf of  
The Malcolm Group Limited  
at LINWOOD  
on 2 JULY 2020



Authorised Signatory

DAVID ARCHER

Full Name

in the presence of



Witness signature

Full name

ALAN PALMER

Address

CP BROOKFIELD HOUSE  
2 BURNARAE DRIVE  
LINWOOD PA3 3BU

Subscribed for and on behalf of  
Malcolm of Brookfield (Holdings) Limited  
at LINWOOD  
on 2 JULY 2020



Authorised Signatory

DAVID ARCHER

Full Name

in the presence of



Witness signature

Full name

ALAN PALMER

Address

CP BROOKFIELD HOUSE  
2 BURNARAE DRIVE  
LINWOOD PA3 3BU

Subscribed for and on behalf of  
**W. H. Malcolm Limited**  
at LINWOOD  
on 2 JULY 2020



Authorised Signatory

DAVID ARCHER

Full Name

in the presence of



Witness signature

Full name

ALAN PALMER

Address

c/o BROOKFIELD HOUSE  
2 BURNBRAE DRIVE  
LINWOOD PA3 3BU

Subscribed for and on behalf of  
**CLS Surfaces (Holdings) Limited**  
at LINWOOD  
on 2 JULY 2020

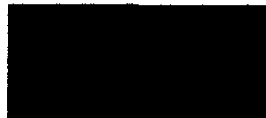


Authorised Signatory

DAVID ARCHER

Full Name

in the presence of



Witness signature

Full name

ALAN PALMER

Address

c/o BROOKFIELD HOUSE  
2 BURNBRAE DRIVE  
LINWOOD PA3 3BU

Subscribed for and on behalf of  
Charles Lawrence Surfaces Limited  
at LINWOOD  
on 2 JULY 2020



Director

ANDREW MALCOLM

Full Name

in the presence of



Witness signature

Full name

ALAN PALMER

Address

c/o BROOKFIELD HOUSE

2 BURNCLIFF DRIVE

LINWOOD PA3 3BU

Subscribed for and on behalf of  
White Island Enterprises (Scotland) Limited  
at LINWOOD  
on 2 JULY 2020



Authorised Signatory

DAVID ARCHER

Full Name

in the presence of



Witness signature

Full name

ALAN PALMER

Address

c/o BROOKFIELD HOUSE

2 BURNCLIFF DRIVE

LINWOOD PA3 3BU



Subscribed for and on behalf of  
HSBC UK Bank plc  
at Motherwell  
on 2 July 2020



Authorised Signatory

STEPHEN LEALIE

Full Name

in the presence of

Witness signature



Full name

SHIRLEY LEALIE

Address

10 Motherwell Street

Glasgow

Subscribed for and on behalf of  
HSBC Equipment Finance (UK) Limited  
at  
on

Authorised Signatory

Full Name

in the presence of

Witness signature

Full name

Address

Subscribed for and on behalf of  
**HSBC UK Bank plc**  
at  
on

.....  
Authorised Signatory

.....  
Full Name

in the presence of

Witness signature

Full name

Address

Subscribed for and on behalf of  
**HSBC Equipment Finance (UK) Limited**  
at *Birmingham*  
on *2 July 2020*

  
.....  
Authorised Signatory

*DANIEL STEPHEN ROBERTS*  
.....  
Full Name

in the presence of

Witness signature

Full name

Address

  
.....  
*DENIS CAMPBELL*  
.....  
  
.....  
.....

Subscribed for and on behalf of  
Santander UK plc

at GLASGOW

on 04 JULY 2020

[Redacted Signature]

Authorised Signatory

JONATHAN KELLY

Full Name

in the presence of

Witness signature

Full name

Address

[Redacted Signature]

DOUGLAS DUNLOP

301 ST VINCENT STREET

GLASGOW

G2 5NB