



Registration of a Charge

Company Name: **MACDONALD FOREST HILLS (ABERFOYLE) LIMITED**

Company Number: **SC308947**



Received for filing in Electronic Format on the: **11/05/2023**

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Details of Charge

Date of creation: **05/05/2023**

Charge code: **SC30 8947 0006**

Persons entitled: **THE ROYAL BANK OF SCOTLAND PLC AS SECURITY TRUSTEE FOR THE SECURED PARTIES**

Brief description:

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S. 859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **PINSENT MASONS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 308947

Charge code: SC30 8947 0006

The Registrar of Companies for Scotland hereby certifies that a charge dated 5th May 2023 and created by MACDONALD FOREST HILLS (ABERFOYLE) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th May 2023 .

Given at Companies House, Edinburgh on 11th May 2023

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



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

DELIVERED ON 5 MAY 2023

FLOATING CHARGE

by

MACDONALD FOREST HILLS (ABERFOYLE) LIMITED

in favour of

THE ROYAL BANK OF SCOTLAND PLC
as Security Agent

**re: £56,300,000 TERM AND REVOLVING LOAN
FACILITIES AGREEMENT**



Pinsent Masons

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FLOATING CHARGE (delivered on the 5th day of May 2023) by

- (1) **MACDONALD FOREST HILLS (ABERFOYLE) LIMITED** incorporated in Scotland (Company Number SC308947) whose registered office is at Whiteside House, Whiteside Industrial Estate, Bathgate, West Lothian, EH48 2RX (the "**Company**")

in favour of

- (2) **THE ROYAL BANK OF SCOTLAND PLC** as security trustee for the Secured Parties under and as defined in the Facilities Agreement (defined below) (the "**Security Agent**")

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Floating Charge unless the context requires otherwise:-

"Act"	means the Insolvency Act 1986 as amended
"Facilities Agreement"	means the £56,300,000 term and revolving facilities agreement dated on or around the date of this Floating Charge entered into between (among others) the Company and the Security Agent as amended, supplemented, novated, extended or restated from time to time
"Floating Charge"	means these presents (and, as the context may require or imply, the floating charge hereby created) as amended, supplemented, novated, extended or restated from time to time
"Intercreditor Agreement"	means the intercreditor agreement dated on or around the date of this deed entered into between (among others) the Security Agent and the Borrower as amended, supplemented, novated, extended or restated from time to time
"Receiver"	means any receiver or administrative receiver appointed in respect of the Secured Assets under this Floating Charge (whether by the Company or the Court) and includes joint receivers
"Secured Assets"	means the whole of the property (including uncalled capital) which is or may from time to time, while this Floating Charge is in force, be comprised in the property and undertaking of the Company
"Secured Liabilities"	means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to any Secured Party under each Finance Document

1.2 **Facilities Agreement definitions**

In this Floating Charge, unless the context requires otherwise terms defined in Clause 1.1 (*Definitions*) of the Facilities Agreement shall have the same meaning in this Floating Charge.

1.3 Interpretation

1.3.1 The provisions of Clause 1.2 (*Construction*) of the Facilities Agreement apply to this Floating Charge as though they were set out in full in this Floating Charge except that references to the Facilities Agreement will be construed as references to this Floating Charge.

1.3.2 In this Floating Charge unless the context requires otherwise:-

- (a) words importing the singular shall include the plural and vice versa;
- (b) references to this Floating Charge or any other document shall be construed as references to this Floating Charge or such other document as amended, supplemented, novated, extended or restated from time to time;
- (c) references to any statute or statutory provision (including any subordinate legislation) shall include any statute or statutory provision for the time being in force which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- (d) references to a "**person**" shall include any individual, firm, company, corporation, body, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality);
- (e) references to a "**fixed security**" mean a fixed security as defined by Section 486 of the Companies Act 1985;
- (f) any reference to the Security Agent includes its permitted successors, transferees and assignees; and
- (g) "**tax**" means all forms of taxation, duties, imposts and levies whatsoever in the nature of taxation whenever and wherever imposed, including (but without limitation) all stamp duties, imposts, duties, capital and revenue taxes and value added tax, and "**taxes**" and "**taxation**" shall be construed accordingly.

1.4 Headings

The table of contents and the headings in this Floating Charge are included for convenience only and shall be ignored in construing this Floating Charge.

1.5 Conflict

This Floating Charge is subject to the terms of the Facilities Agreement and Intercreditor Agreement. In the event of a conflict or any inconsistency between the terms of:

- (a) this Floating Charge and the Intercreditor Agreement, the Intercreditor Agreement will prevail; and
- (b) this Floating Charge and the Facilities Agreement, the Facilities Agreement shall prevail.

1.6 Third Party Rights

This Floating Charge does not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any provision of this Floating Charge.

2. FLOATING CHARGE

2.1 Payment

The Company undertakes to the Security Agent that it will pay and discharge the Secured Liabilities in the manner provided for in the Finance Documents.

2.2 Floating Charge

In security for the payment and discharge of the Secured Liabilities, the Company hereby GRANTS a FLOATING CHARGE over the Secured Assets in favour of the Security Agent.

2.3 Negative pledge and ranking

Save as otherwise provided in the Intercreditor Agreement and subject to Section 464(2) of the Companies Act 1985:-

2.3.1 the Company shall not create any fixed security or other floating charge over any part of the Secured Assets ranking in priority to or equally with this Floating Charge after its execution of this Floating Charge except any fixed security in favour of the Security Agent; and

2.3.2 this Floating Charge shall rank in priority to any fixed security or other floating charge created by the Company after its execution of this Floating Charge except any fixed security in favour of the Security Agent.

3. PROTECTION OF SECURITY

3.1 Continuing security

This Floating Charge shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Liabilities and shall remain in force until the Secured Liabilities have been fully and unconditionally paid and discharged.

3.2 No prejudice

This Floating Charge shall be in addition to and shall not in any way prejudice or be prejudiced by any other security, right or remedy which the Finance Parties may now or at any time hereafter hold for all or any part of the Secured Liabilities.

3.3 No waiver

Failure or delay on the part of the Security Agent in exercising any right, power or discretion under or pursuant to this Floating Charge shall not operate as a waiver thereof, nor will any single or partial exercise of any such right, power or discretion preclude any other or further exercise thereof. The rights, powers and discretions contained in this Floating Charge are in addition to and not substitution for any right of set-off, compensation, retention, combination of accounts, lien or other right or remedy provided by law.

3.4 Severability

The provisions of this Floating Charge shall be severable and distinct from one another and if at any time one or more of such provisions is or becomes or is declared void, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Floating Charge shall not in any way be affected or impaired thereby.

3.5 Non impairment

The Company agrees that none of its obligations or the Security Agent's rights, powers and discretions under this Floating Charge shall be reduced, discharged or otherwise adversely affected by:-

- 3.5.1 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any security or any right or remedy which the Security Agent may have now or in the future from or against the Company or any other person in respect of any of the Secured Liabilities; or
- 3.5.2 any failure, act or omission by the Security Agent or any other person in taking up, perfecting or enforcing any security or guarantee from or against the Company or any other person in respect of the Secured Liabilities; or
- 3.5.3 any increase in or waiver or discharge of the Secured Liabilities or any termination, amendment, variation, supplement, restatement, novation or replacement of the Facilities Agreement or any other Finance Document; or
- 3.5.4 any grant of time, indulgence, waiver or concession to the Company or any other person; or
- 3.5.5 any of the administration, receivership, liquidation, winding-up, insolvency, bankruptcy, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name or style of the Company or any other person; or
- 3.5.6 any invalidity, illegality, unenforceability, irregularity or frustration of the Secured Liabilities; or
- 3.5.7 anything done or omitted to be done by the Security Agent or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Company under this Floating Charge.

3.6 Further assurance

- 3.6.1 The Company must promptly, at its own expense, take whatever action the Security Agent or a Receiver may require for:-
 - (a) creating, perfecting or protecting any security over any Secured Asset; or
 - (b) facilitating the realisation of any Secured Asset, or after this Floating Charge has become enforceable, the exercise of any right, power or discretion exercisable, by the Security Agent or any Receiver or any of their respective delegates or sub-delegates in respect of any Secured Asset.
 - 3.6.2 The action that may be required under paragraph 3.6.1 above includes:
 - 3.6.3 the execution of all documents whether to the Security Agent or to its nominees; or
 - 3.6.4 the giving of any notice, order or direction and the making of any filing or registration,
- which, in any such case, the Security Agent may consider necessary.

3.7 New accounts

- 3.7.1 If any subsequent charge or other interest affects any Secured Asset, the Security Agent may open a new account with any Chargor.

3.7.2 If the Security Agent does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other interest.

3.7.3 As from that time all payments made to the Security Agent will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Liability.

4. POWER OF ATTORNEY

4.1 The Company, by way of security, hereby irrevocably appoints the Security Agent, each Receiver and any of their respective delegates or sub-delegates to be its attorney with the full power and authority of the Company to execute, deliver and perfect all instruments and other documents in its name and otherwise on its behalf and to do or cause to be done all acts and things, in each case which may be required or which any attorney may in its absolute discretion deem necessary for carrying out any obligation of the Company under or pursuant to this Floating Charge or generally for enabling the Security Agent or any Receiver to exercise the respective powers conferred on them under this Floating Charge or by law. The Company ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause 4.

4.2 The power given under Clause 4.1 above will take effect immediately, but may only be exercised at any time after this Floating Charge becomes enforceable.

5. UNDERTAKINGS

The Company hereby undertakes to the Security Agent that it will comply with all its obligations under the Facilities Agreement and the other Finance Documents to which it is a party

6. ENFORCEMENT

6.1 Enforceable

This Floating Charge shall be enforceable immediately upon, or at any time after:-

6.1.1 an Event of Default occurring which is continuing;

6.1.2 the Company requesting the appointment of a Receiver or administrator;

6.1.3 an administration application being made in respect of the Company;

6.1.4 any person giving notice of intention to appoint an administrator;

6.1.5 any document is filed at court initiating or applying for a moratorium or an order is made for a moratorium to come into force in relation to the Company.

6.2 **Discretion**

After this Floating Charge has become enforceable, the Security Agent may enforce all or any part of this Security in any manner it sees fit or as instructed in accordance with the Facilities Agreement.

6.3 **Appointment of Receiver or administrator**

6.3.1 At any time after this Floating Charge has become enforceable the Security Agent shall be entitled:-

(a) to appoint one or more persons as a Receiver or Receivers in respect of the Secured Assets, or apply to the Court for such appointment;

- (b) to appoint one or more persons as an administrator or administrators of the Company;
- (c) to make an administration application in respect of the Company; or
- (d) to give notice of intention to appoint an administrator or administrators in respect of the Company.

6.3.2 The appointment of a Receiver or Receivers or an administrator or administrators, or the giving of notice of intention to appoint an administrator or administrators shall be effected by the Security Agent by written instrument or notice in accordance with and in such form as may be prescribed under the Act. If any such person so appointed as Receiver or administrator is removed from office by the Court or otherwise ceases to act, the Security Agent shall be entitled (subject to the provisions of the Act) to appoint a replacement in the same manner.

6.3.3 Paragraph 14 of Schedule B1 to the Act shall apply to this Floating Charge.

6.4 Powers of Receiver

A Receiver appointed under this Floating Charge shall have the following powers in addition to those specified in Schedule 2 to the Act:-

- 6.4.1 to promote or procure the incorporation of any new company (whether or not a subsidiary of the Company), to transfer any part of the Secured Assets to such company for any form of consideration (including shares, debentures, loan stock or loan capital in such company), and/or to subscribe for or otherwise acquire shares, debentures, loan stock or loan capital in such company in name of the Company, or the Receiver, or its or his/her nominee or trustee;
- 6.4.2 subject to the articles of association, to convene extraordinary general meetings of the Company;
- 6.4.3 generally, without prejudice to the other provisions of this Clause 6 to exercise all the rights, powers and discretions in respect of the Secured Assets it would be entitled to exercise if it were the absolute owner thereof and to do all acts and things the Receiver may consider necessary or expedient for the realisation of the Secured Assets and the application of the proceeds in or towards satisfaction of or their retention as continuing security for the Secured Liabilities; and
- 6.4.4 in respect of any of the Secured Assets situated in England and Wales (or any other jurisdiction) to exercise in addition to the foregoing powers, all the powers conferred by the Act or any other enactment or rule of law on receivers or receivers and managers (or analogous officers) in that jurisdiction.

6.5 Agent of Company

A Receiver shall be the agent of the Company for all purposes of and in all respects arising under this Floating Charge and, except as otherwise provided by the Act, the Company alone shall be responsible for his/her acts, omissions, neglects and defaults and for all liabilities and obligations incurred by him/her, and his/her remuneration costs, charges and expenses.

6.6 Application of proceeds

All amounts from time to time received or recovered by the Security Agent or any Receiver pursuant to the terms of this Floating Charge or in connection with the realisation or enforcement of all or part

of this Security will be held by the Security Agent and applied in accordance with the Facilities Agreement. This Clause 6.6:-

6.7 is subject to the payment of any claims having priority over this Security; and

6.8 does not prejudice the right of any Secured Party to recover any shortfall from any Company.

6.9 Monies on suspense account

Nothing in this Floating Charge shall limit the right of a Receiver and/or the Security Agent (and the Company acknowledges that a Receiver and/or the Security Agent are so entitled) if and for so long as the Receiver and/or the Security Agent in his/her/its discretion shall consider it appropriate, to place all or any monies arising from the enforcement of this Floating Charge into a suspense account or accounts (which may be an account or accounts with the Security Agent), without any obligation to apply the same or any part thereof in or toward the discharge of the Secured Liabilities provided that if the aggregate of such monies so placed to the credit of such suspense account or accounts shall equal or exceed the Secured Liabilities, the Receiver and/or the Security Agent shall, subject always to Clause 7 (*Discharge*), forthwith apply the same towards settlement of the Secured Liabilities.

6.10 Balance

The rights powers and discretions conferred on a Receiver under this Clause are subject only to his/her obligation to account to the Company or any other person entitled thereto for any balance of the Secured Assets or their proceeds remaining in his/her hands after the Secured Liabilities have been fully and unconditionally paid and discharged.

6.11 Third parties

6.11.1 No purchaser from or other person dealing with a Receiver in relation to the Secured Assets shall be concerned to enquire whether any of the powers exercised or purported to be exercised by him/her hereunder has become exercisable, whether any of the Secured Liabilities remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any power hereunder.

6.11.2 The receipt or discharge of a Receiver shall be an absolute discharge to any purchaser or other person dealing with the Receiver in relation to the Secured Assets and any such purchaser or third party shall not have any obligation to enquire after or see to the application of any payments made by it to the Receiver or at his/her direction.

7. DISCHARGE

7.1 Discharge

When the Secured Liabilities have been fully and unconditionally paid or discharged the Security Agent shall at the Company's request, and at its expense, discharge this Floating Charge. Any payment or realisation in respect of the Secured Liabilities which in the reasonable opinion of the Security Agent is liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, shall not be regarded as having been irrevocably settled or discharged until the expiry of the period during which it may be challenged on any such ground.

7.2 Retention of Security

If any payment or realisation in respect of the Secured Liabilities is, in the Security Agent's reasonable opinion, liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, the Security Agent shall be entitled to retain this

Floating Charge undischarged until the expiry of the period during which it may be challenged on any such ground.

7.3 Avoidance of payments

The Security Agent's right to recover the Secured Liabilities in full shall not be affected or prejudiced by any payment or realisation which is avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, or by any release or discharge given by the Security Agent on the faith of any such payment or realisation.

8. LIABILITY OF RECEIVER AND SECURITY AGENT

A Receiver and the Security Agent shall not in any circumstances be liable to the Company or any other person for any losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Floating Charge or any realisation, appropriation or application of the Secured Assets or from any act, default or omission of the Receiver or the Security Agent, or his/her or its officers, employees or agents in relation to the Secured Assets or otherwise in connection with this Floating Charge, except to the extent caused by the wilful neglect or default of the Receiver or the Security Agent or his/her or its officers, employees or agents.

9. MISCELLANEOUS

9.1 Non-reliance

Each of the parties acknowledges and agrees that in entering into this Floating Charge it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether a party to this Floating Charge or not) other than as expressly set out in this Floating Charge.

9.2 Facilities Agreement provisions

The provisions of Clauses 16.4 (*Indemnity to the Security Agent*), Clause 17 (*Costs and Expenses*), 26 (*Changes to the Lenders*), Clause 28 (*Role of the Agent, the Security Agent and the Arrangers*), 29.4 (*Currency conversion*), Clause 34 (*Notices*), 35.2 (*Certificates and determinations*), 38 (*Amendments and waivers*) and 39.4 (*Entire agreement*), of the Facilities Agreement shall apply *mutatis mutandis* to this Floating Charge as if set out in full herein.

10. DELIVERY

This Floating Charge IS DELIVERED on the date inserted in the blank provided for that purpose on page 1.

11. GOVERNING LAW

This Floating Charge and any non-contractual obligations arising out of or in connection with it are governed by the law of Scotland.

12. **ENFORCEMENT**

- 12.1 The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Floating Charge (including a dispute regarding the existence, validity or termination of this Floating Charge or any non-contractual obligation arising out of or in connection with this Floating Charge) (a "Dispute").
- 12.2 The parties to this Floating Charge agree that the courts of Scotland are the most appropriate and convenient courts to settle disputes and accordingly no such party will argue to the contrary.
- 12.3 This Clause 12.1 is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

IN WITNESS WHEREOF these presents consisting of this and the 8 preceding pages are executed as follows:-

SUBSCRIBED for and on behalf of
MACDONALD FOREST HILLS (ABERFOYLE) LIMITED

at EAST KILBRIDE

on the 4th day
of May 2023

by  Director

ROBERT GORGON FRASER Full Name

before this witness

 Witness

LAURA DONOHUE Full Name

Address

Burness Paul LLP
2 Atlantic Square
31 York Street
Glasgow G2 8AS