

# 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

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

For official use

Company number

		7
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SC601160

Name of company

\* Drum 18 Limited

\* insert full name  
of company

Date of creation of the charge (note 1)

22 December 2020

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

Bond and floating charge

Names of the persons entitled to the charge

LendInvest Security Trustees Limited (08743617)

Short particulars of all the property charged

All assets, property and undertaking (including uncalled capital) from time to time of Drum 18 Limited.

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

BRODIES LLP  
110 QUEEN STREET  
GLASGOW  
G1 3BX  
Ref: MJME/MPA/LEN41.941

For official use (02/06)

Charges Section

Post room

THURSDAY



\*SBV34WWW\*

SCT

12/01/2023

#21

COMPANIES HOUSE

(1) DRUM 18 LIMITED (registered number SC601160) and having its registered office at 46 Charlotte Square, Edinburgh, United Kingdom, EH2 4HQ (the "Company");

(2) LENDINVEST SECURITY TRUSTEES LIMITED (registered number 08743617) having its registered office at 8 Mortimer Street, London, England, W1T 3JJ (the "Senior Lender"); and

(3) RAGL (EDINBURGH) LIMITED (registered number SC615248) and having its registered office at 6 India Street, Edinburgh, United Kingdom, EH3 6EZ (the "Subordinated Lender").

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

Date(s) of execution of the instrument of alteration

Executed on 21 December 2022 and 10 January 2023 and delivered on 10 January 2023

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

### 3 Company's undertakings

3.1 Until the irrevocable payment in full of the outstanding Senior Priority Debt or the cancellation or expiry of any commitment to provide the Senior Priority Debt, the Company will not (and the Subordinated Lender will not require the Company to):-

3.1.2 create or permit to subsist any Security Interest 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 of the Subordinated Debt, in either case other than by the security conferred by the Subordinated Lender's Securities.

### 4 Subordinated Lender's Undertakings

4.1 Until the irrevocable payment in full of the outstanding Senior Priority Debt or the cancellation or expiry of any commitment to provide the Senior Priority Debt, the Subordinated Lender will not:-

4.1.2 take, receive or permit to subsist any Security interest or any guarantee (or other assurance against financial loss) for, or in respect of, any Subordinated Debt, other than in terms of the Subordinated Lender's Securities.

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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this margin*

See Paper Apart

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

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legibly, preferably  
in black type, or  
bold block lettering

Signed Mark McIlroy Date 12 January 2023

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. ☐ delete as appropriate  
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

Form 466 – Paper apart

**Company – Drum 18 Limited (SC601160)**

**Charge relating to Form 466** altering the Floating Charge granted by the Company in favour of LendInvest Security Trustees Limited created on 22 December 2020.

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

## **2. Ranking**

**2.1 Notwithstanding the respective dates of creation or registration of the Securities or any of them or any provisions as to ranking contained in any of the Securities, the Securities and any sums secured by them shall rank in the following order of priority:-**

**2.1.1 with regard to the Property:-**

**2.1.1.1 (First) The Senior Lender's Standard Securities (and all sums secured or to be secured by the Senior Lender's Standard Securities on the Property and on the proceeds or any part of the proceeds in the event of a sale of the same to the extent of the Senior Priority Debt;**

**2.1.1.2 (Second) The Senior Lender's Floating Charges (and all sums secured or to be secured by the Senior Lender's Floating Charges) on the property and undertaking secured by the Senior Lender's Floating Charges and on the proceeds or any part of the proceeds in the event of a sale of the same (after deduction of sums recovered or to be recovered under Clause 2.1.1.1) to the extent of the Senior Priority Debt;**

**2.1.1.3 (Third) The Subordinated Lender's Standard Security (and all sums secured or to be secured by the Subordinated Lender's Standard Security) on the Property and on the proceeds or any part of the proceeds in the event of a sale of the same to the extent of all sums secured or to be secured by the Subordinated Lender's Standard Security;**

**2.1.1.4 (Fourth) The Subordinated Lender's Floating Charge (and all sums secured or to be secured by the Subordinated Lender's Floating Charge) on the property and undertaking secured by the Subordinated Lender's Floating Charge and on the proceeds or any part of the proceeds in the event of a sale of the same to the extent of all sums secured or to be secured by the Subordinated Lender's Floating Charge;**

**2.1.1.5 (Fifth) The Senior Lender's Standard Securities (and all sums secured or to be secured by the Senior Lender's Standard Securities) on the Property and on the proceeds or any part of the proceeds in the event of a sale of the same to the extent of all sums secured or to be secured by the Senior Lender's Standard Securities;**

**2.1.1.6 (Sixth) The Senior Lender's Floating Charges (and all sums secured or to be secured by the Senior Lender's Floating Charges) on the property and undertaking secured by the Senior Lender's Floating Charges**

and on the proceeds or any part of the proceeds in the event of a sale of the same (after deduction of sums recovered or to be recovered under Clause 2.1.1.5) to the extent of all sums secured or to be secured by the Senior Lender's Floating Charges;

2.1.2 and otherwise:

2.1.2.1 (First) The Senior Lender's Floating Charges (and all sums secured or to be secured by the Senior Lender's Floating Charges) on the property and undertaking secured by the Senior Lender's Floating Charges and on the proceeds or any part of the proceeds in the event of a sale of the same to the extent of the Senior Priority Debt;

2.1.2.2 (Second) The Subordinated Lender's Securities (and all sums secured or to be secured by the Subordinated Lender's Securities) on the property and undertaking secured by the Subordinated Lender's Securities and on the proceeds or any part of the proceeds in the event of a sale of the same to the extent of all sums secured or to be secured by the Subordinated Lender's Securities;

2.1.2.3 (Third) The Senior Lender's Floating Charges (and all sums secured or to be secured by the Senior Lender's Floating Charges) on the property and undertaking secured by the Senior Lender's Floating Charges and on the proceeds or any part of the proceeds in the event of a sale of the same to the extent of all sums secured or to be secured by the Senior Lender's Floating Charges.

2.2 If, at any time while the Senior Priority Debt is outstanding, the Senior Lender agrees to release any of the assets of the Company from the Senior Lender's Securities (or any of them) the Subordinated Lender shall promptly execute such documents as may be required to enable those assets to be held by the Company (or any purchaser from the Company) free from the Subordinated Lender's Securities.

2.3 While the Senior Priority Debt is outstanding, the Subordinated Lender agrees that documents of title to the property and assets secured by or pursuant to the Senior Lender's Securities shall be held by the Senior Lender and may be dealt with by the Senior Lender without reference to or consent of the Subordinated Lender.

Definitions:

**"Agreement"** means the Ranking Agreement among Drum 18 Limited, LendInvest Security Trustees Limited and RAGL (Edinburgh) Limited delivered on 10 January 2023.

**"Property"** means ALL and WHOLE the subjects known as (i) 6 Bells Brae, Edinburgh, EH4 3BJ and (ii) the east or northeast part of the middle floor of 4 Bell's Brae, Edinburgh (together with rights in common to the middle floor of 4 Bell's Brae, Edinburgh as narrated in the Deed of Conditions by Hornbuckle Mitchell Trustees Limited and Sir Alexander Fraser Morrison as Trustees of the Private Pension- A F Morrison registered 18 February 2016 under Title Number MID21487) being the subjects registered in the Land Register of Scotland under Title Number MID21487; and (2) the subjects being 4 and 10 Bells Brae, Edinburgh, EH4 3BJ being the subjects now registered in the Land Register of Scotland under Title Number MID21487.

**"Securities"** means the Senior Lender's Securities and the Subordinated Lender's Securities.

**"Security Interest"** means a floating charge, mortgage, standard security, assignment by way of security, assignation in security, charge, pledge, lien, hypothec, security interest or any other agreement or arrangement securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Senior Debt"** means all present and future sums (actual or contingent) payable or owing by the Company to LendInvest Bridge Limited.

**"Senior Facility Agreement"** means the loan facility agreement between the Company, LendInvest Bridge Limited and the Senior Lender dated 22 December 2022 (as amended, restated, modified or supplemented from time to time) pursuant to which LendInvest Bridge Limited made available a loan facility to the Company for the purposes of funding the redevelopment of the Property.

**"Senior Lender's Floating Charges"** means (i) the bond and floating charge granted by the Company in favour of the Senior Lender over the whole of the Company's property and undertaking, present and future, dated 22 December 2022 and registered at Companies House on 9 January 2023 and (ii) the bond and floating charge granted by the Company in favour of the Senior Lender over the whole of the Company's property and undertaking, present and future, dated 22 December 2020 and registered at Companies House on 23 December 2020.

**"Senior Lender's Securities"** means the Senior Lender's Standard Securities and the Senior Lender's Floating Charges.

**"Senior Lender's Standard Securities"** means (i) the standard security granted by the Company in favour of the Senior Lender over the Property, dated 22 December 2022 and (ii) the standard security granted by the Company in favour of the Senior Lender over the Property, dated 22 December 2020 and registered at Companies House on 23 December 2020.

**"Senior Priority Debt"** means all present and future sums (actual or contingent) payable or owing by the Company to LendInvest Bridge Limited in terms of the Senior Facility Agreement to the extent such sums have been made available to the Company for the purpose of refinancing the existing facility and developing the Property and for no other purpose.

**"Subordinated Debt"** means all present and future sums (actual or contingent) payable or owing by the Company to the Subordinated Lender in terms of the Subordinated Facility Agreement.

**"Subordinated Facility Agreement"** means the loan facility agreement between the Company and the Subordinated Lender dated 24 March 2020.

**"Subordinated Lender's Floating Charge"** means the floating charge granted by the Company in favour of the Subordinated Lender over the whole of the Company's property and undertaking, present and future, dated 24 March 2020 and registered with the Registrar of Companies in Scotland on 24 March 2020.

**"Subordinated Lender's Securities"** means the Subordinated Lender's Floating Charge and the Subordinated Lender's Standard Security.

**"Subordinated Lender's Standard Security"** means the standard security granted by the Company in favour of the Subordinated Lender over the Property dated 18 December 2020 and registered with the Registrar of Companies in Scotland on 12 January 2021.





**FILE COPY**

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

COMPANY NO. 601160  
CHARGE CODE SC60 1160 0007

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 10 JANUARY 2023 WERE DELIVERED  
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985  
ON 12 JANUARY 2023

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 22  
DECEMBER 2020

BY DRUM 18 LIMITED

IN FAVOUR OF  
LENDINVEST SECURITY TRUSTEES LIMITED

GIVEN AT COMPANIES HOUSE, EDINBURGH 17 JANUARY 2023



**Companies House**



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

We hereby certify this to be a true copy of the original.

*Mark McKelvey*

Brodies LLP Solicitors

11 January 2023

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**RANKING AGREEMENT**

**among**

**DRUM 18 LIMITED**

**and**

**LENDINVEST SECURITY TRUSTEES LIMITED**

**and**

**RAGL (EDINBURGH) LIMITED**

**2022**

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FOR THE PURPOSES OF THE LEGAL WRITINGS (COUNTERPARTS AND DELIVERY) (SCOTLAND)  
ACT 2018 THIS AGREEMENT IS DELIVERED ON 10 January 2023 2022

## **RANKING AGREEMENT**

among

**DRUM 18 LIMITED**, a company incorporated in Scotland with registered number SC601160 and having its registered office at 46 Charlotte Square, Edinburgh, United Kingdom, EH2 4HQ (the "Company");

**LENDINVEST SECURITY TRUSTEES LIMITED**, a company incorporated in England with registered number 08743617 and having its registered office at 8 Mortimer Street, London, England, W1T 3JJ (the "Senior Lender"); and

**RAGL (EDINBURGH) LIMITED**, a company incorporated in Scotland with registered number SC615248 and having its registered office at 6 India Street, Edinburgh, United Kingdom, EH3 6EZ (the "Subordinated Lender")

### **WHEREAS:**

- A. The Company has granted the Securities (as defined in clause 25).
- B. The Senior Lender, the Subordinated Lender and the Company intend to regulate the ranking inter se of each of the Securities and the debt secured by them in the manner set out below.

NOW THEREFORE IT IS AGREED AND DECLARED as follows:-

#### **1 Consent**

The Senior Lender and the Subordinated Lender for their respective right, title and interest consent to the constitution by the Company of the Securities.

#### **2 Ranking**

- 2.1 Notwithstanding the respective dates of creation or registration of the Securities or any of them or any provisions as to ranking contained in any of the Securities, the Securities and any sums secured by them shall rank in the following order of priority:-

##### **2.1.1 with regard to the Property:**

2.1.1.1 (First) The Senior Lender's Standard Securities (and all sums secured or to be secured by the Senior Lender's Standard Securities on the Property and on the proceeds or any part of the proceeds in the event of a sale of the same to the extent of the Senior Priority Debt;

2.1.1.2 (Second) The Senior Lender's Floating Charges (and all sums secured or to be secured by the Senior Lender's Floating Charges) on the property and undertaking secured by the Senior Lender's Floating

Charges and on the proceeds or any part of the proceeds in the event of a sale of the same (after deduction of sums recovered or to be recovered under Clause 2.1.1.1) to the extent of the Senior Priority Debt;

2.1.1.3 (Third) The Subordinated Lender's Standard Security (and all sums secured or to be secured by the Subordinated Lender's Standard Security) on the Property and on the proceeds or any part of the proceeds in the event of a sale of the same to the extent of all sums secured or to be secured by the Subordinated Lender's Standard Security;

2.1.1.4 (Fourth) The Subordinated Lender's Floating Charge (and all sums secured or to be secured by the Subordinated Lender's Floating Charge) on the property and undertaking secured by the Subordinated Lender's Floating Charge and on the proceeds or any part of the proceeds in the event of a sale of the same to the extent of all sums secured or to be secured by the Subordinated Lender's Floating Charge;

2.1.1.5 (Fifth) The Senior Lender's Standard Securities (and all sums secured or to be secured by the Senior Lender's Standard Securities) on the Property and on the proceeds or any part of the proceeds in the event of a sale of the same to the extent of all sums secured or to be secured by the Senior Lender's Standard Securities.

2.1.1.6 (Sixth) The Senior Lender's Floating Charges (and all sums secured or to be secured by the Senior Lender's Floating Charges) on the property and undertaking secured by the Senior Lender's Floating Charges and on the proceeds or any part of the proceeds in the event of a sale of the same (after deduction of sums recovered or to be recovered under Clause 2.1.1.5) to the extent of all sums secured or to be secured by the Senior Lender's Floating Charges;

**2.1.2 and otherwise:**

2.1.2.1 (First) The Senior Lender's Floating Charges (and all sums secured or to be secured by the Senior Lender's Floating Charges) on the property and undertaking secured by the Senior Lender's Floating Charges and on the proceeds or any part of the proceeds in the event of a sale of the same to the extent of the Senior Priority Debt;

2.1.2.2 (Second) The Subordinated Lender's Securities (and all sums secured or to be secured by the Subordinated Lender's Securities) on the property and undertaking secured by the Subordinated Lender's Securities and on the proceeds or any part of the proceeds in the event of a sale of the

same to the extent of all sums secured or to be secured by the Subordinated Lender's Securities;

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~~2.1.2.3 (Third) The Senior Lender's Floating Charges (and all sums secured or to be secured by the Senior Lender's Floating Charges) on the property and undertaking secured by the Senior Lender's Floating Charges and on the proceeds or any part of the proceeds in the event of a sale of the same to the extent of all sums secured or to be secured by the Senior Lender's Floating Charges.~~

2.2 If, at any time while the Senior Priority Debt is outstanding, the Senior Lender agrees to release any of the assets of the Company from the Senior Lender's Securities (or any of them) the Subordinated Lender shall promptly execute such documents as may be required to enable those assets to be held by the Company (or any purchaser from the Company) free from the Subordinated Lender's Securities.

2.3 While the Senior Priority Debt is outstanding, the Subordinated Lender agrees that documents of title to the property and assets secured by or pursuant to the Senior Lender's Securities shall be held by the Senior Lender and may be dealt with by the Senior Lender without reference to or consent of the Subordinated Lender.

### **3 Company's undertakings**

3.1 Until the irrevocable payment in full of the outstanding Senior Priority Debt or the cancellation or expiry of any commitment to provide the Senior Priority Debt, the Company will not (and the Subordinated Lender will not require the Company to):-

3.1.1 pay, repay, prepay, redeem, purchase or otherwise discharge or release any of the Subordinated Debt;

3.1.2 create or permit to subsist any Security Interest 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 of the Subordinated Debt, in either case other than by the security conferred by the Subordinated Lender's Securities;

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~~3.1.3 permit any company which is a member of the same group of companies as the Company to purchase or acquire any of the Subordinated Debt;~~

3.1.4 amend any of the terms of the Subordinated Facility Agreement and the Subordinated Lender's Securities;

3.1.5 discharge any of the Subordinated Debt by set-off, counterclaim, retention 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); or

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- 3.1.6 take or omit to take any action whereby the ranking and/or subordination arrangements provided for in this Agreement in relation to the Subordinated Debt or any part thereof may be impaired or adversely affected.

#### **4 Subordinated Lender's Undertakings**

- 4.1 Until the irrevocable payment in full of the outstanding Senior Priority Debt or the cancellation or expiry of any commitment to provide the Senior Priority Debt, the Subordinated Lender will not:-
- 4.1.1 demand, sue for or 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;
  - 4.1.2 take, receive or permit to subsist any Security Interest or any guarantee (or other assurance against financial loss) for, or in respect of, any Subordinated Debt, other than in terms of the Subordinated Lender's Securities;
  - 4.1.3 amend, vary, waive or release any provision of the Subordinated Facility Agreement or the Subordinated Lender's Securities 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;
  - 4.1.4 exercise any right of set-off, counterclaim, retention or combination of accounts or lien or exercise or accept any transfer of rights, property or assets from the Company in satisfaction of the Subordinated Debt or part thereof;
  - 4.1.5 claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of the Company, other than in accordance with Clause 8;
  - 4.1.6 be subrogated to any rights, security monies held, received or receivable by the Senior Lender or be entitled to any right of contribution in respect of any payment made or money received under the Senior Facility Agreement in so far as this relates to the Senior Priority Debt;
  - 4.1.7 sell, transfer, assign or otherwise dispose of any of the Subordinated Debt;
  - 4.1.8 exercise any remedy for recovery of the Subordinated Debt, including by attachment, arrestment, execution, distress or otherwise;
  - 4.1.9 take any steps with a view to:
    - 4.1.9.1 any composition, assignation or arrangement with any creditor of the Company;

- 4.1.9.2 exercising or enforcing any security right or rights against any guarantor in relation to, or in support of, all or any part of the Subordinated Debt (including, without limitation) under the Subordinated Documents;
- 4.1.9.3 the appointment of a receiver, administrator, administrative receiver, compulsory manager or liquidator in respect of the Company or any of its assets other than in accordance with Clause 6; or
- 4.1.9.4 any event or procedure analogous to any of the foregoing in any jurisdiction;
- 4.1.10 apply for any order for specific performance in respect of the Company in relation to any of the Subordinated Debt;
- 4.1.11 accept payment of any sum in respect of any dividend or other distribution in respect of any of the shares of the Company;
- 4.1.12 take or omit to take any action whereby the ranking and/or subordination arrangements provided for in this Agreement in relation to the Subordinated Debt or any part thereof may be impaired or adversely affected.

## **5 Enforcement**

- 5.1 The Subordinated Lender may not appoint a receiver or administrator of the Company's property and undertaking or petition or take any steps which may lead to any resolution or order being made in connection with the winding up of the Company for so long as any part of the Senior Priority Debt is outstanding, without the prior written consent of the Senior Lender.
- 5.2 Clause 5.1 will not apply if:-
  - 5.2.1 the Senior Lender has enforced the Senior Lender's Securities (or any of them) other than by exercise by the Senior Lender of any set-off or similar rights; or
  - 5.2.2 a court makes a winding up order or an order for the dissolution or liquidation of the Company or a liquidator or an administrator or equivalent is appointed to the Company, other than in any such case as a result of action taken by the Subordinated Lender; or
  - 5.2.3 the Senior Lender demands payment of or declares payable all or any part of the Senior Priority Debt owed to it (other than any part of the Senior Priority Debt repayable on demand).

## **6 Release of Security and Consents**

- 6.1 If any assets of the Company are being sold pursuant to a power of sale or otherwise in terms of the Senior Lender's Securities at a time when a default under the Senior Facility Agreement is continuing, the Subordinated Lender shall on the written request of the Senior Lender (in favour of



the Senior Lender and the Company) provide a consent in writing to the sale and release of the assets which are the subject of the sale from the security constituted by the Subordinated Lender's Securities.

- 6.2 The Subordinated Lender undertakes to do such things and execute all such documents as the Senior Lender may reasonably require to give effect to Clause 6.1

**7 Subordination on Insolvency**

- 7.1 If an Insolvency Event occurs in respect of the Company before the Senior Debt is irrevocably paid in full then:-

7.1.1 the Subordinated Debt will be postponed and subordinated to the Senior Priority Debt but the Subordinated Lender will be entitled to file any proof or other claim necessary for the recovery of the Subordinated Debt;

7.1.2 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 Subordinated Debt by a liquidator, administrator, administrative receiver or receiver (or equivalent) of the Company or its estate made or paid to or received by the Subordinated Lender or to which the Subordinated Lender is entitled (or, if less, such amount of any such payment or distribution as is necessary to discharge the Senior Priority Debt), will be held in trust by the Subordinated Lender for the Senior Lender and will immediately be paid or transferred or assigned to the Senior Lender; and

7.1.3 if the trust referred to in Clause 7.1.2 fails or cannot be given effect to, the Subordinated Lender (and any agent or trustee on its behalf) will pay an amount equal to such payment or distribution (or, if less, such amount of any such payment or distribution as is necessary to discharge the Senior Priority Debt) to the Senior Lender.

- 7.2 The Subordinated Lender irrevocably authorises the Senior Lender to demand, sue and prove for, collect and receive every payment or distribution referred to in Clause 7.1 and discharge liability therefor and to file claims and take such other proceedings, in the name of the Senior Lender or in the name of the Subordinated Lender or otherwise, as the Senior Lender may deem necessary or advisable for the enforcement of this Agreement.

- 7.3 The Subordinated Lender will execute and deliver to the Senior Lender such powers of attorney, assignments or other instruments as may be requested by the Senior Lender to enable the Senior Lender to enforce any claims upon or with respect to all or part of the Subordinated Debt, and to collect and receive any payments or distributions which may be payable or deliverable at any time upon or with respect to all or part of the Subordinated Debt.

- 7.4 The liquidator or other insolvency representative or trustee of the Company or its estate is authorised by the Subordinated Lender to apply any assets or monies received by him in accordance with the terms of this Agreement.

- 7.5 If at any time while the Senior Priority Debt is outstanding, any of the Subordinated Debt is discharged by way of set-off, retention, counterclaim or combination of accounts, the Subordinated Lender will immediately pay an amount equal to the amount discharged (or, if less, such amount of as is necessary to discharge the Senior Priority Debt) to the Senior Lender.

- 7.6 If the Senior Lender receives or recovers an amount in excess of the amount required to discharge the Senior Priority Debt and the Subordinated Lender is entitled to receive such excess amount, the Senior Lender shall hold the same in trust for the Subordinated Lender and will promptly pay or transfer such excess amount to the Subordinated Lender.

## 8 Subrogation

If, at any time while the Senior Priority Debt is outstanding, the Senior Priority Debt is wholly or partially repaid from any moneys or other distributions received in respect of the Subordinated Debt, the Subordinated Lender shall to that extent be subrogated to the Senior Priority Debt so paid, following the irrevocable payment in full of the Senior Priority Debt.

## 9 Contravention

- 9.1 If at any time prior to the irrevocable payment in full of the Senior Priority Debt:

9.1.1 the Subordinated Lender receives or recovers a payment or distribution of any kind whatsoever in respect of or on account of any Subordinated Debt;

9.1.2 the Company makes any payment or distribution of any kind whatsoever in respect of, or on account of the purchase or other acquisition of, any Subordinated Debt;

9.1.3 all or any of the Subordinated Debt is discharged by set-off, combination of accounts or otherwise,

the Subordinated Lender will promptly pay all such amounts or distributions to the Senior Lender for application in the order set out in Clause 11 of this Agreement after deducting the costs, liabilities and expenses (if any) reasonably incurred in recovering or receiving such payment or distribution and, pending such payment, will hold these amounts and distributions on trust (or otherwise separated from its assets) and on behalf of the Senior Lender.

- 9.2 The Subordinated Debt will, as between the Company and the Subordinated Lender, be deemed not to have been reduced or discharged to the extent of any payment or distribution to the Senior Lender under Clause 9.1.

## **10 New Money**

- 10.1 The Subordinated Lender agrees that the Senior Priority Debt may be refinanced and/or that its ~~terms may be amended or restated and that any amounts borrowed or obligations incurred by the~~ Company in refinancing the Senior Priority Debt (whether or not the amount of such Senior Priority Debt is greater than the amount made available at the date of this Agreement) will be Senior Priority Debt within the meaning of this Agreement and will rank in priority to the Subordinated Debt on the terms set out in this Agreement provided always that the obligations and liabilities forming the Senior Priority Debt (as so amended, restated, increased and/or refinanced) are for the purpose of refinancing the existing facility and developing the Property and for no other purpose.
- 10.2 The Subordinated Lender agrees that the Senior Lender may, at its discretion, make further advances to the Company pursuant to the Senior Facility Agreement for the purpose of developing the Property and each such advance will be deemed to constitute Senior Priority Debt for the purposes of this Agreement.

## **11 Application of Monies**

- 11.1 All monies received by the Senior Lender under or by virtue of the Senior Lender's Securities following enforcement thereof shall be applied, subject to the claims of any creditors ranking in priority to or *pari passu* with the claims of the Senior Lender hereunder, in the following order:-
- 11.1.1 in or towards payment of all costs, charges and expenses of or incidental to the enforcement of the Senior Lender's Securities;
  - 11.1.2 in or towards satisfaction of the Senior Priority Debt in such order as the Senior Lender may from time to time require;
  - 11.1.3 in payment to the Subordinated Creditor for application in or towards satisfaction of the Subordinated Debt;
  - 11.1.4 in or towards satisfaction of the Senior Debt in such order as the Senior Lender may from time to time require; and
  - 11.1.5 any surplus shall be paid to the Company (or any other person) entitled to such surplus.
- 11.2 The Company and the Senior Lender agree that nothing contained in this Agreement shall limit the right of the Senior Lender, if and for so long as any Senior Priority Debt is outstanding (or there is any commitment to make the same available), to place all or any money arising from the enforcement of the Senior Lender's Securities into a suspense account, without any obligation to apply the same or any part of such money in or towards the discharge of any of the Senior Priority Debt.

- 11.3 The Senior Lender may apply any monies received by it to any liability in respect of the Senior Priority Debt in such order or manner as it may determine and once the Subordinated Debt is extinguished in full, may thereafter apply any surplus monies to any other liability in respect of the Senior Debt in such order or manner as it may determine.
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## **12 Alteration of securities**

- 12.1 The Senior Lender's Floating Charges and the Subordinated Lender's Floating Charge are varied to the extent specified in this Agreement and this Agreement so far as affecting the Senior Lender's Floating Charges and the Subordinated Lender's Floating Charge shall be construed and receive effect as an instrument of Alteration within the meaning of Section 466 of the Companies Act 1985.
- 12.2 The Senior Lender's Standard Security and the Subordinated Lender's Standard Security are hereby varied to the extent specified in this Agreement and this Agreement so far as affecting the Senior Lender's Standard Security and the Subordinated Lender's Standard Security shall be construed and receive effect as variations of each of the Senior Lender's Standard Security and the Subordinated Lender's Standard Security within the meaning of Section 16 of the Conveyancing and Feudal Reform (Scotland) Act 1970.
- 12.3 The Subordinated Lender confirms and undertakes to the Senior Lender that it will within 21 days of the date of this Agreement register the required details of this Agreement at Companies House.
- 12.4 The Senior Lender confirms and undertakes to the Subordinated Creditor that it will within the applicable statutory period register the required details of this Agreement at Companies House.

## **13 Exclusion of legal rules**

- 13.1 Notwithstanding rule of law which might operate to the contrary effect, the provisions of Clause 2.1 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 Company, none of the other parties to this Agreement having any concern with the composition of or fluctuations in the sums due to the Subordinated Lender or the Senior Lender.
- 13.2 Subject to the terms of this Agreement, the Securities shall rank as continuing security for the payment and discharge of all the liabilities and obligations the payment and/or discharge of which are secured by them. The Securities shall not be affected by any fluctuation in the Senior Debt or by the existence at any time of a credit balance of any account of the Company with the Senior Lender.
- 13.3 The Subordinated Lender will not in any way or at any time be subrogated to any of the rights of the Senior Lender whether by way of security, guarantee or otherwise.

**14 Preferential payments**

The provisions set out in this Agreement as to ranking shall not prejudice the right of the Senior Lender or the Subordinated Lender to receive payments to which a preference attaches in terms of Section 59, 175, 386 and Schedule 6 to the Insolvency Act 1986 or any other applicable legislation.

**15 Assignment**

15.1 The Subordinated Lender shall not assign or otherwise transfer or dispose of the rights, obligations or benefits of the Subordinated Debt, the Subordinated Lender's Securities or this Agreement or agree to do so unless the proposed assignee or transferee has undertaken to the Senior Lender and the Company to be bound by the terms of this Agreement and to enter into all necessary documentation to give effect to the terms of this Agreement.

15.2 The Senior Lender may assign or otherwise transfer the whole or any part of the rights, obligations or benefits under this Agreement to any person to whom all or a corresponding part of its rights, obligations or benefits under the Senior Facility Agreement or the Senior Lender's Securities (or any of them) are assigned or transferred.

**16 Warranties**

16.1 The Senior Lender and the Subordinated Lender represent and warrant to each other that this Agreement:

16.1.1 is within its power and has been duly authorised by it;

16.1.2 constitutes its legal, valid and binding obligations; and

16.1.3 does not conflict in any material respect with any law or regulation or its constitutional documents or any document binding on it and that it has obtained all necessary consents for the performance by it of this Agreement.

**17 Disclosure of Information**

During the joint continuance of (1) the Senior Lender's Securities or any of them and (2) the Subordinated Lender's Securities or any of them, the Subordinated Lender and the Senior Lender shall be at liberty from time to time to disclose to each other information concerning the Company and its affairs in such manner and to such extent as the Senior Lender and the Subordinated Lender shall from time to time desire and agree.

**18 Compensation**

As between the Senior Lender and the Subordinated Lender, it is agreed that in the event of this Agreement being regarded by a receiver, administrator or liquidator of the Company or any of them as failing to bind him or them in the distribution of the proceeds of sale of the assets of the

Company, or any of them, the Senior Lender and the Subordinated Lender will compensate each other *inter se* to the effect that in so far as the refusal of the receiver, administrator or liquidator to be bound by these presents shall cause prejudice to the Senior Lender or the Subordinated Lender each will compensate the other to the extent to which either may be *lucratu*s by such prejudice but no further.

## **19 Waiver of defences**

19.1 The ranking and subordination provisions in this Agreement constitute a continuing ranking/subordination for the benefit of the ultimate balance of the Senior Debt, notwithstanding any intermediate payment or discharge in whole or in part.

19.2 The ranking and subordination provisions in this Agreement and the obligations of the Subordinated Lender under it shall not be affected by any act, omission or circumstances which but for this provision might operate to release the Subordinated Lender from its obligations either in whole or in part, including:

19.2.1 any time, indulgence or waiver granted to, or composition with the Company or any other person;

19.2.2 any termination, amendment, supplement, restatement, novation or replacement of the Senior Facility Agreement or any of the Senior Lender's Securities;

19.2.3 any unenforceability, illegality, invalidity or frustration of any obligation of the Company to the Senior Lender under the Senior Facility Agreement or any of the Senior Lender's Securities or otherwise;

19.2.4 any amendment to or variation of the terms of the Senior Facility Agreement, any of the Senior Lender's Securities or any other document.

19.3 The Senior Lender shall be under no obligation to demand payment from or raise any proceedings or enforce any Security Interest or other rights or claims against any person before relying on the provisions of this Agreement.

## **20 Severability**

Each of the provisions in this Agreement shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes or is declared null and void, invalid, illegal or unenforceable in any respect under any law or otherwise, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.

## **21 Waiver**

No failure on the part of the Senior Lender to exercise and no delay on its part in exercising any right, remedy, power or privilege under or pursuant to this Agreement will operate as a waiver

thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any right or remedies provided by law.

## **22 Notices**

**22.1** Any communication to be made under or in connection with this Agreement shall be made (in English) in writing and, unless otherwise stated, may be made by letter.

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

**22.2.1 Senior Lender:**

Address: 8 Mortimer Street, London, W1T 3JJ

For the attention of: LendInvest Legal

**22.2.2 Subordinated Lender:**

Address: 6 India Street, Edinburgh EH3 6EZ

For the attention of: Rupert Lumsden

**22.2.3 Company:**

Address: 46 Charlotte Square, Edinburgh, United Kingdom, EH2 4HQ

For the attention of: William John Gray Muir

**22.3** Any notice or other communication given to a party shall be deemed to have been received:-

**22.3.1** in the case of a written notice given by hand, on the day of actual delivery; and

**22.3.2** if posted, on the second Business Day following the day on which it was despatched by first class mail postage prepared following the date of despatch by prepaid first class postage,

provided that a notice given in accordance with the above but received on a day which is not a Business Day or after normal business hours in the place of receipt shall only be deemed to have been received on the next Business Day.

## **23 Currency conversion**

For the purpose of calculating any sums outstanding to the Senior Lender or the Subordinated Lender any amount so outstanding which is expressed in a currency other than Sterling shall be converted from such currency into its Sterling Equivalent on the first Business Day immediately after the date on which such sums become payable to the Senior Lender or the Subordinated Lender.

## 24 Expenses

All fees and expenses of the Senior Lender and the Subordinated Lender in connection with the preparation, execution and enforcement of this Agreement shall be promptly paid by the Company upon receipt of an invoice.

## 25 Definitions

### 25.1 In this Agreement:-

25.1.1 "Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London;

25.1.2 "Insolvency Event" means:

25.1.2.1 an application, notice, resolution or order is made or given for or in connection with the winding up, liquidation, dissolution, administration or reorganisation of the Company;

25.1.2.2 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;

25.1.2.3 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; or

25.1.2.4 the Company becomes subject to any distribution of its assets in consequence of insolvency, reorganisation, liquidation, dissolution or administration.

25.1.3 "Property" means ALL and WHOLE the subjects known as (i) 6 Bells Brae, Edinburgh, EH4 3BJ and (ii) the east or northeast part of the middle floor of 4 Bell's Brae, Edinburgh (together with rights in common to the middle floor of 4 Bell's Brae, Edinburgh as narrated in the Deed of Conditions by Hombuckle Mitchell Trustees Limited and Sir Alexander Fraser Morrison as Trustees of the Private Pension- A F Morrison registered 18 February 2016 under Title Number MID21487) being the subjects registered in the Land Register of Scotland under Title Number MID21487; and (2) the subjects being 4 and 10 Bells Brae, Edinburgh, EH4 3BJ being the subjects now registered in the Land Register of Scotland under Title Number MID21487.



- 25.1.4 **"Securities"** means the Senior Lender's Securities and the Subordinated Lender's Securities.
- 25.1.5 **"Security Interest"** means a floating charge, mortgage, standard security, assignment by way of security, assignation in security, charge, pledge, lien, hypothec, security interest or any other agreement or arrangement securing any obligation of any person or any other agreement or arrangement having a similar effect.
- 25.1.6 **"Senior Debt"** means all present and future sums (actual or contingent) payable or owing by the Company to LendInvest Bridge Limited.
- 25.1.7 **"Senior Facility Agreement"** means the loan facility agreement between the Company, LendInvest Bridge Limited and the Senior Lender dated on or around the date hereof (as amended, restated, modified or supplemented from time to time) pursuant to which LendInvest Bridge Limited made available a loan facility to the Company for the purposes of funding the redevelopment of the Property.
- 25.1.8 **"Senior Lender's Floating Charges"** means (i) the bond and floating charge granted by the Company in favour of the Senior Lender over the whole of the Company's property and undertaking, present and future, dated on or around the date hereof and (ii) the bond and floating charge granted by the Company in favour of the Senior Lender over the whole of the Company's property and undertaking, present and future, dated 22 December 2020 and registered at Companies House on 23 December 2020.
- 25.1.9 **"Senior Lender's Securities"** means the Senior Lender's Standard Securities and the Senior Lender's Floating Charges.
- 25.1.10 **"Senior Lender's Standard Securities"** means (i) the standard security granted by the Company in favour of the Senior Lender over the Property, dated on or around the date hereof and (ii) the standard security granted by the Company in favour of the Senior Lender over the Property, dated 22 December 2020 and registered at Companies House on 23 December 2020.
- 25.1.11 **"Senior Priority Debt"** means all present and future sums (actual or contingent) payable or owing by the Company to LendInvest Bridge Limited in terms of the Senior Facility Agreement to the extent such sums have been made available to the Company for the purpose of refinancing the existing facility and developing the Property and for no other purpose.
- 25.1.12 **"Subordinated Debt"** means all present and future sums (actual or contingent) payable or owing by the Company to the Subordinated Lender in terms of the Subordinated Facility Agreement.
- 25.1.13 **"Subordinated Facility Agreement"** means the loan facility agreement between the Company and the Subordinated Lender dated 24 March 2020.

25.1.14 "Subordinated Lender's Floating Charge" means the floating charge granted by the Company in favour of the Subordinated Lender over the whole of the Company's property and undertaking, present and future, dated 24 March 2020 and registered with the Registrar of Companies in Scotland on 31 March 2020.

25.1.15 "Subordinated Lender's Securities" means the Subordinated Lender's Floating Charge and the Subordinated Lender's Standard Security.

25.1.16 "Subordinated Lender's Standard Security" means the standard security granted by the Company in favour of the Subordinated Lender over the Property dated 18 December 2020 and registered with the Registrar of Companies in Scotland on 12 January 2021

## 26 Interpretation

26.1 Unless otherwise indicated any reference in this Agreement to:

26.1.1 a "fixed security" shall be construed as a reference to a fixed security as defined by Section 486 of the Companies Act 1985;

26.1.2 a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (in each case whether or not having separate legal personality);

26.1.3 any person shall include that person's successor in title, permitted assignees or permitted transferees;

26.1.4 a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;

26.1.5 words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;

26.1.6 a clause heading is a reference to a clause or sub-clause of this Agreement and is for ease of reference only;

26.1.7 this Agreement (and any provisions of it) or any other document referred to in this Agreement shall be construed as references to it for the time being as amended, varied, supplemented, restated, substituted or novated from time to time.

## 27 Governing law

This Agreement shall be governed by and construed in accordance with the law of Scotland and each of the parties to this Agreement prorogates and accepts the jurisdiction of the Court of Session in Scotland.

## 28 Counterparts

This Agreement may be executed in any number of counterparts, and on such execution, the counterparts shall be treated as a single document pursuant to the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015. Delivery of a counterpart of this Agreement by e-mail attachment shall be an effective mode of delivery.

## 29 Consent to registration

The parties to this Agreement consent to the registration of this Agreement for preservation and execution: IN WITNESS WHEREOF these presents consisting of this and the preceding 15 pages are executed as follows:

For DRUM 18 LIMITED

Signature of  
Director/secretary/authorised signatory/witness

BRYON ANDERSON

full name of above (print)

address of witness

Signature of  
Director/secretary/authorised signatory

William John Gray MBE

full name of above (print)

21/12/2022

Date of signing

Edinburgh

Place of signing

For LENDINVEST SECURITY TRUSTEES LIMITED

Signature of authorised signatory/witness

full name of above (print)

WARREN PARKS

address of witness

Signature of authorised signatory

Darren Anderson

full name of above (print)

10/1/23

Date of signing

London

Place of signing

For RAGL (EDINBURGH) LIMITED

signature of witness

RYAN ALDERSON

full name of above (print)

address of witness

signature of director

RUPERT EDWARD CHARLES LYMSTON

full name of above (print)

21/17/12/2022  
Date of signing

CVNDIAL, EDINBURGH

Place of signing