



**Registration of a Charge**

Company Name: **MACMILLAN SPIRITS CO. LTD**

Company Number: **SC649933**



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**Details of Charge**

Date of creation: **03/04/2024**

Charge code: **SC64 9933 0002**

Persons entitled: **HIGHLANDS AND ISLANDS ENTERPRISE**

Brief description: **ALL AND WHOLE THE PREMISES COMPRISING BENBECULA DISTILLERY, GRAMSDALE, ISLE OF BENBECULA BEING THE SUBJECTS REGISTERED IN THE LAND REGISTER OF SCOTLAND UNDER TITLE NUMBER INV32451. FOR FURTHER DETAILS OF THE PROPERTIES PLEASE SEE THE INSTRUMENT.**

**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: **ALAN CASSELS**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 649933

Charge code: SC64 9933 0002

The Registrar of Companies for Scotland hereby certifies that a charge dated 3rd April 2024 and created by MACMILLAN SPIRITS CO. LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th April 2024 .

Given at Companies House, Edinburgh on 8th April 2024

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



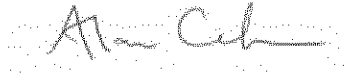
Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

I certify that, save for the material redacted pursuant to section 859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.

 Burness Paull



**MACMILLAN SPIRITS CO. LTD**  
as Chargor

and

**HIGHLANDS AND ISLANDS ENTERPRISE**

**STANDARD SECURITY**

in respect of leasehold subjects at Gramsdale, Isle of Benbecula

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## **INSTRUMENT**

by

- (1) **MACMILLAN SPIRITS CO. LTD**, a company incorporated under the Companies Acts with registered number SC649933 and having its registered office at Bornish House, Bornish, Isle Of South Uist, Scotland, HS8 5SA (the “**Chargor**”)

in favour of

- (2) **HIGHLANDS AND ISLANDS ENTERPRISE**, established by the Enterprise and New Towns (Scotland) Act 1990 and having its registered office at An Lòchran, 10 Inverness Campus, Inverness, Highland IV2 5NA (“**HIE**”)

### **CONSIDERING THAT:**

- (A) HIE has agreed or will agree to make certain loans available to the Chargor; and
- (B) one of the conditions precedent to the availability of the facilities referred to in paragraph (A) above is that the Chargor grants to HIE this standard security.

**NOW IT IS HEREBY AGREED AND DECLARED** as follows:

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 In this Instrument:**

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Edinburgh;

“**Event of Default**” means any of the events referred to in paragraph 3 (*Default*) of Section FOURTH (*General Conditions*) of the Undertaking;

“**Security Subjects**” means the Chargor’s interest in the lease of the Property between Angus Andrew MacMillan, Elizabeth Julia MacMillan, and Alltrust SSAS Limited as Trustees for the Uist Distilling Pension Trust and the Chargor dated on or around the date hereof and about to be registered in the Land Register of Scotland;

“**Secured Liabilities**” means all present and future obligations and liabilities of the Chargor to HIE, whether actual, contingent, sole, joint and/or several or otherwise, under or in connection with the Undertaking;

“**Security**” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**“Property”** means ALL and WHOLE the premises comprising Benbecula Distillery, Gramsdale, Isle of Benbecula being the subjects registered in the Land Register of Scotland under Title Number INV32451 UNDER EXCEPTION OF the substation site leased under and in terms of the Minute of Agreement comprising a Lease between Highlands and Islands Development Board and North of Scotland Hydro Electric Board recorded in the Division of the General Register of Sasines for the County of Inverness on 20 August 1986 (and which substation site is shown tinted blue on the cadastral map applicable to Title Number INV32451), Isle of Benbecula registered in the Land Register of Scotland under Title Number INV32451;

**“Undertaking”** means the undertaking by the Chargor (as obligant) in favour of HIE dated on or about the date of this Instrument.

## **1.2 Construction**

- 1.2.1 Unless a contrary indication appears, any reference in this Instrument to the **“Chargor”** and **“HIE”** shall be construed so as to include their respective successors in title, permitted assignees and permitted transferees and each is a **“Party”** to this Instrument.
- 1.2.2 a **“person”** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality).
- 1.2.3 Unless any provision of this Instrument or the context otherwise requires, any reference in this Instrument to a provision of law is a reference to that provision as amended or re-enacted.
- 1.2.4 In this Instrument the singular includes the plural and *vice versa*. Other than with reference to Clause 1.2.5 below, clause headings are for ease of reference only and a reference to a Clause is to be construed as a reference to a clause of this Instrument.
- 1.2.5 For cross references in this Instrument where a clause number is referred to, along with the clause heading and there is an inconsistency between the clause number and the heading, the clause heading shall prevail.

## **1.3 Third party rights**

- 1.3.1 This Instrument does not confer on any person who is not a Party any right to enforce or otherwise invoke this Instrument or any part of it under the Contract (Third Party Rights) (Scotland) Act 2017.
- 1.3.2 The consent of any person who is not a Party is not required to rescind or vary this Instrument at any time.

## **2 BOND**

The Chargor undertakes to HIE that it will pay or discharge to HIE all the Secured Liabilities on demand in writing when the Secured Liabilities become due for payment or discharge (whether by acceleration or otherwise).

## **3 CHARGE**

The Chargor hereby in security of the Secured Liabilities grants a standard security in favour of HIE over the Security Subjects.

## **4 STANDARD CONDITIONS**

The Standard Conditions specified in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970, and any lawful variation thereof operative for the time being, shall apply. And we agree that such Standard Conditions shall be varied to the effect that:

- 4.1 the Chargor shall not create or agree to create any subsequent security over the Security Subjects or any part thereof except with the prior written consent of HIE;
- 4.2 the insurance to be effected in terms of Standard Condition 5(a) shall provide cover to the extent of the reinstatement value of the Security Subjects and not their open market value; and
- 4.3 the Chargor shall be held to be in default for the purposes of Standard Condition 9(1)(b) if an Event of Default occurs.

## **5 ENFORCEMENT**

Upon the occurrence of an Event of Default and HIE giving notice to the Chargor that this Instrument is enforceable:

- 5.1 the Chargor, shall be held to be in default within the meaning of Standard Condition 9(1)(b) of the Standard Conditions; and
- 5.2 the Chargor shall vacate the Security Subjects and shall procure HIE is given immediate possession thereof at any time after HIE has become entitled to enter into possession of the Security Subjects, and the Chargor agrees that a warrant of summary ejection may proceed competently against it in the Sheriff Court of the Sheriff Court District in which the Security Subjects are situated at the request or instance of HIE, for the purposes of obtaining possession of the Security Subjects; HIE may at any time after entering into possession of the Security Subjects relinquish such possession on giving written notice to this effect to the Chargor.

## **6 NOTICE OF SUBSEQUENT CHARGE**

If HIE receives notice of any subsequent charge or other interest affecting all or any part of the Security Subjects HIE may open a new account or accounts in the name of the Chargor

and, if or insofar as HIE does not open a new account or accounts, it shall nevertheless be treated as if it had done so at the time when it receives such notice and as and from that time all payments made by the Chargor to HIE shall, notwithstanding any instructions by the Chargor to the contrary, be credited or treated as having been credited to the new account or accounts and shall not operate to reduce the amount due by the Chargor to HIE at the time the notice was received.

## **7 APPLICATION OF ENFORCEMENT PROCEEDS**

7.1 All monies received by HIE under or by virtue of this Instrument following enforcement of the security hereby granted or of any security interest constituted pursuant hereto shall be applied, subject to the claims of any creditors ranking in priority to or *pari passu* with the claims of HIE under this Instrument, in the following order:

7.1.1 first, in or towards satisfaction of the Secured Liabilities in such order as HIE shall in its absolute discretion decide; and

7.1.2 secondly, any surplus shall be paid to the Chargor or any other person entitled thereto.

7.2 Nothing contained in this Instrument shall limit the right of HIE (and the Chargor acknowledges that HIE is so entitled) if and for so long as HIE, in its discretion, shall consider it appropriate, to place all or any monies arising from the enforcement of the security interest hereby granted or any security created pursuant to this Instrument into a suspense account, without any obligation to apply the same or any part thereof in or towards the discharge of any of the Secured Liabilities.

## **8 NOTICES**

### **8.1 Communications in writing**

Any communication to be made under or in connection with this Instrument shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **8.2 Addresses**

The address (and the department or officer, if any, for whose attention the communication is to be made) of the Chargor and HIE for any communication or document to be made or delivered under or in connection with this Instrument:

8.2.1 in the case of the Chargor:

Address:	Bornish House
	Bornish
	Isle Of South Uist
	HS8 5SA



Attention: Chief Executive Officer  
8.2.2 in the case of HIE:

Address: An Lòchran  
10 Inverness Campus  
Inverness  
IV2 5NA

Attention: HIE Area Manager, Innse Gall

or any substitute address or department or officer as the Chargor may notify to HIE (or HIE may notify to the Chargor if a change is made by HIE) by not less than 5 Business Days' notice.

### 8.3 Delivery

8.3.1 Any communication or document made or delivered by one person to another under or in connection with this Instrument will only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter, when it has been left at the relevant address or 5 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 8.2 (Addresses), if addressed to that department or officer.

8.3.2 Any communication or document to be made or delivered to HIE will be effective only when actually received by HIE and then only if it is expressly marked for the attention of the department or officer specified as part of its address details provided under Clause 8.2 (Addresses) (or any substitute department or officer as HIE shall specify for this purpose).

### 8.4 English language

Any notice given under or in connection with this Instrument must be in English.

## 9 GOVERNING LAW AND JURISDICTION

This Instrument shall be governed by, and construed in all respects in accordance with, the law of Scotland and, for the benefit of HIE, the Chargor irrevocably submits to the non-

exclusive jurisdiction of the Scottish Courts but without prejudice to the ability of HIE to proceed against the Chargor in any other appropriate jurisdiction.

**10 WARRANDICE AND CONSENT TO REGISTRATION**

10.1 The Chargor hereby grants warrandice.

10.2 A certificate signed by any official, manager or equivalent account officer of HIE shall, in the absence of manifest error, conclusively determine the Secured Liabilities at any relevant time and shall constitute a balance and charge against the Chargor, and no suspension of a charge or of a threatened charge for payment of the balance so constituted shall pass nor any sist of execution thereon be granted except on consignment. The Chargor hereby consents to the registration of this Instrument and of any such certificate for preservation and execution: IN WITNESS WHEREOF these presents consisting of this and the preceding 5 pages are executed as follows:

SUBSCRIBED for and on behalf of  
the said MACMILLAN SPIRITS CO.  
LTD

at GLASGOW

on 24 MARCH 2024

by ANGUS ANDREW MACMILLAN

Print Full Name

Director

before this witness

DOAN GERARD MEEHAN

Print Full Name

Witness

Address

