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FORM No. LLP 466(Scot)

LLP466

Particulars of an instrument of alteration to a floating charge created by a limited liability partnership registered in Scotland

A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge.

LLP Number

SO306576

For official use

Full Name of Limited Liability Partnership

MSC DEVELOPMENT LLP

Date of creation of the charge (note 1)

30 October 2020

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

Floating charge (charge no: SO30 6576 0006)

Names of the persons entitled to the charge

Close Brothers Limited

Short particulars of all the property charged

All of the property (including uncalled capital) which may from time to time be comprised in the company's property and undertaking.

Please give the name, address, telephone number and e-mail (if available) of the person Companies House should contact if there is any query. (DX addresses are acceptable for this purpose if you have one).

Mikela Rochford c/o DWF LLP

110 Queen Street, Glasgow G1 3HD

Tel 0141 228 8068

E-mail



SCT

S9HQH4QW

13/11/2020

#66

COMPANIES HOUSE

When you have completed and signed the form on page 4 please send it to the Registrar of Companies at:

Companies House, 139 Fountainbridge, Edinburgh, EH3 9FF
DX ED235 Edinburgh or LP - 4 Edinburgh 2

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

Close Brothers Limited (company no. 00195626) registered office at 10 Crown Place, London, EC2A 4FT;
The Welch Group Developments Limited (company no. SC536134) registered office at Floor 3, 1-4 Atholl Crescent, Edinburgh, EH3 8HA;
MSC Development LLP (registered no: SO306576), registered office at 18 Walker Street, Edinburgh, EH3 7LP

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Date(s) of execution of the instrument of alteration

Intercreditor Agreement executed by Close Brothers Limited on 28 October 2020; The Welch Group Developments Limited on 28 October 2020; and MSC Development LLP on 28 October 2020

A statement of the provisions, if any, imposed by the instrument of alteration prohibiting or restricting the creation by the LLP of any fixed security or any other floating charge having, priority over, or ranking pari passu with the floating charge

Please refer to the certified copy of the Instrument of Alteration.

Short particulars of any property released from the floating charge

Please refer to the certified copy of the Instrument of Alteration.

The amount, if any, by which the amount secured by the floating charge has been increased

Please refer to the certified copy of the Instrument of Alteration.

***Please complete
in typescript, or in
bold black
capitals***

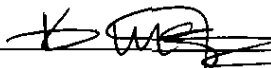
A statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

Please refer to the certified copy of the Instrument of Alteration.

*Please complete
in typescript, or
in bold black
capitals*

N/A

*A fee is payable
to Companies
House in respect
of each register
entry for a mort-
gage or charge.
(See Note 5)*

Signed  Date 12/11/2020
On behalf of LLP [chargee]

Notes

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

☐ delete as
appropriate

2. In accordance with section 466(1) * the instrument of alteration should be executed by the LLP, 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. A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge. Cheques and Postal Orders must be made payable to **Companies House**.

* **As applied to LLPs by Schedule 2 of the Limited Liability Partnerships Regulations 2001**



FILE COPY

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

LLP NO. SO306576
CHARGE CODE SO30 6576 0006

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 28 OCTOBER 2020 WERE DELIVERED
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985 AS
APPLIED BY THE LIMITED LIABILITY PARTNERSHIPS
REGULATIONS 2001 ON, 13 NOVEMBER 2020

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 30
OCTOBER 2020

BY MSC DEVELOPMENT LLP

IN FAVOUR OF CLOSE BROTHERS LIMITED

GIVEN AT COMPANIES HOUSE, EDINBURGH 19 NOVEMBER 2020



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES



(1) MSC DEVELOPMENT LLP

(2) THE WELCH GROUP DEVELOPMENTS LIMITED

and

(3) CLOSE BROTHERS LIMITED

INTERCREDITOR AGREEMENT – 1 & 45 MELVILLE STREET, EDINBURGH

**CERTIFIED A TRUE AND COMPLETE
COPY OF THE ORIGINAL**

A handwritten signature in black ink, appearing to be 'K. W. S.', written over a horizontal line.

**FOR DWF LLP No 2 LOCHRIN SQUARE
96 FOUNTAINBRIDGE
EDINBURGH
EH3 9QA**

**DWF LLP
110 Queen Street
Glasgow
G1 3HD**

This **INTERCREDITOR AGREEMENT** with date of delivery of 30 October 2020 is made between:

- (A) **CLOSE BROTHERS LIMITED**, incorporated in England & Wales (registered number: 00195626) and having its registered office at 10 Crown Place, London, United Kingdom, EC2A 4FT (the "**Senior Lender**").
- (B) **THE WELCH GROUP DEVELOPMENTS LIMITED**, incorporated in Scotland under the Companies Acts (registered number SC536134) and having its registered office at Floor 3, 1-4 Atholl Crescent, Edinburgh EH3 8HA (the "**Junior Lender**"); and
- (C) **MSC DEVELOPMENT LLP**, incorporated under the Limited Liability Partnerships Act 2000 (Partnership Number SO306576) and having its registered office at 18 Walker Street, Edinburgh EH3 7LP (the "**Borrower**").

NOW IT IS AGREED as follows:-

1. Interpretation

1.1. Definitions

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:-

"Accession Agreement" means an accession agreement substantially in the form set out in the Schedule (or in such other form as the Creditors shall approve in writing);

"Affiliate" means, in relation to any person, (i) a company subject to the Control of that person; (ii) a subsidiary of that person or of any company subject to the Control of that person; (iii) or a holding company of that person or of any company subject to the Control of that person; or (iv) any other subsidiary of that holding company;

"Business Day" means a day on which the London inter-bank markets are open for dealings between banks;

"Control" means in relation to any company:-

- (a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (i) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company; or
 - (ii) appoint or remove all, or the majority of the directors or other equivalent officers of the company; or
 - (iii) give directions with respect to the operating and financial policies of the company with which the director or other equivalent officers of the company are obliged to comply; or
- (b) the holding beneficially of more than 50% of the issued share capital of the company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);

"Creditors" means together the Senior Lender and the Junior Lender;

"Documents" means together the Senior Lender Documents and the Junior Lender Documents;

"Enforcement Action" means any action whatsoever to:

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

"Facility Letter" means the facility letter dated 20 October 2020 addressed by the Senior Lender to and accepted by the Borrower on 28 October 2020, under which the Senior Lender has agreed to make available a term loan facility in the maximum amount of £4,440,000 (as further amended, restated, supplemented, novated or replaced from time to time);

"Insolvency Event" means:

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

"Junior Debt" means all present and future sums, liabilities and obligations (whether actual or contingent, present or future) payable or owing by the Borrower to the Junior Lender under the Junior Lender Documents;

"Junior Lender Documents" means Junior Lender Security Documents and the Junior Lender Loan Agreement;

"Junior Lender Floating Charge" means the floating charge granted by the Borrower in

favour of the Junior Lender dated 21 December 2018;

"Junior Lender Loan Agreement" means the facility letter dated 20 December 2018 between the Junior Lender and the Borrower under which the Junior Lender has agreed to make available term loan facilities in the total maximum amount of £1,800,000;

"Junior Lender Priority Limit" means the aggregate of:

- (i) the total Junior Lender Debt outstanding from time to time pursuant to the Junior Lender Loan Agreement up to the principal amount of £1,500,000; and
- (ii) all interest on or attributable to the Junior Lender Debt from time to time; and
- (iii) all reasonable and proper costs and fees (including the additional priority guaranteed return pursuant to clause 6 of the Junior Lender Loan Agreement, from time to time due pursuant to Junior Lender Documents;

"Junior Lender Security Documents" means together the Junior Lender Standard Security and the Junior Lender Floating Charge;

"Junior Lender Standard Security" means the standard security over the Property created on 7 January 2019 by the Borrower in favour of the Junior Lender to secure the Junior Lender Debt;

"Project" means the conversion of the Property to form 11 apartments, each with a parking space;

"Property" means ALL and WHOLE the subjects known as 45 Melville Street and 1 Melville Crescent, Edinburgh EH3 7HW registered in the Land Register of Scotland under Title Number MID85466;

"Security Right" means any mortgage, charge, standard security, right in security, security, pledge, lien, right of set-off, right to retention of title or other encumbrance, whether fixed or floating, over any present or future property, assets or undertaking;

"Security Period" means the period from the date of this Agreement to the Senior Discharge Date;

"Senior Debt" means all present and future sums, liabilities and obligations (whether actual or contingent, present or future) payable or owing by the Borrower to the Senior Lender under the Senior Lender Documents or otherwise payable or owing by the Borrower to the Senior Lender in connection with the Property or the Project;

"Senior Discharge Date" means the date on which the Senior Debt is repaid in full and no commitment by the Senior Lender to provide facilities to the Borrower remains in effect;

"Senior Lender Debt Documents" means the Facility Letter, and any other facility letters or loan agreements between the Borrower and the Senior Lender in respect of loans made to the Borrower in relation to the Property;

"Senior Lender Documents" means the Senior Lender Debt Documents and the Senior Lender Security Documents;

"Senior Lender Floating Charge" means the floating charge granted by the Borrower in favour of the Senior Lender on or around the date of this Agreement;

"Senior Lender Priority Limit" means the aggregate of:

- (i) the total Senior Debt outstanding from time to time pursuant to the Facility Letter up

to the principal amount of £4,615,000;

- (ii) all interest on or attributable to the Senior Debt from time to time; and
- (iii) all reasonable and proper costs and fees from time to time due pursuant to the Senior Lender Documents

"Senior Lender Security Documents" means the Senior Lender Floating Charge, the Senior Lender Standard Security and any other document entered into between the Senior Lender and the Borrower pursuant to which the Borrower has granted a Security Right in favour of the Senior Lender in security for the payment and/or discharge of the Senior Debt; and

"Senior Lender Standard Security" means the standard security over the Property granted or to be granted on or around the date of this Agreement by the Borrower in favour of the Senior Lender.

1.2. Interpretation

In this Agreement, unless a contrary intention appears:-

- 1.2.1. a reference to statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant legislation;
- 1.2.2. a reference to "control" of any company shall be interpreted in accordance with Section 995 of the Income Tax Act 2007;
- 1.2.3. a reference to "including" shall not be construed as limiting the generality of the words preceding it;
- 1.2.4. a reference to this Agreement shall include the schedule;
- 1.2.5. any term or phrase defined in the Companies Act 2006 (as amended from time to time) shall bear the same meaning in this Agreement;
- 1.2.6. words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- 1.2.7. a reference to this Agreement and to any provisions of it or to any other document referred to in this Agreement shall be construed as references to it in force for the time being as amended, varied, supplemented, restated, substituted or novated from time to time;
- 1.2.8. a reference to any person is to be construed to include references to a corporation, firm, company, partnership, joint venture, unincorporated body of persons, individual or any state or agency of a state, whether or not a separate legal entity;
- 1.2.9. a reference to any person is to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.2.10. clause headings are for ease of reference only and are not to affect the interpretation of this Agreement;
- 1.2.11. words and expressions defined in the Facility Letter shall bear the same meanings when used in this Agreement.

2. Purpose of this Agreement

- 2.1. In consideration of the Senior Lender entering into the Senior Lender Documents and the Junior Lender entering into the Junior Lender Documents, the Senior Lender and the Junior Lender each agree to regulate their rights under the Documents as set out in this Agreement.
- 2.2. The Borrower enters into this Agreement to acknowledge and agree the arrangements between itself and each of the Creditors and none of the undertakings given in this Agreement are given to or enforceable by the Borrower.
- 2.3. For the avoidance of doubt each of the Creditors and the Borrower agree that this Agreement supersedes any previous agreement or arrangement pursuant to which the parties regulated their rights under any of the Documents.

3. Ranking of Debt

- 3.1. Prior to the Senior Discharge Date, the Senior Lender and the Junior Lender hereby agree, and the Borrower acknowledges, that the Senior Debt and the Junior Debt shall rank in the following order:
 - 3.1.1. FIRST, the Senior Debt up to the Senior Lender Priority Limit;
 - 3.1.2. SECOND, the Junior Debt up to the Junior Lender Priority Limit;
 - 3.1.3. THIRD, the balance of the Senior Debt; and
 - 3.1.4. FOURTH, the balance of the Junior Debt.

4. Ranking of Security

- 4.1. The Creditors agree and the Borrower acknowledges that the Documents shall rank as follows:-
 - 4.1.1. FIRST, the Senior Lender Standard Security to the extent of the Senior Lender Priority Limit;
 - 4.1.2. SECOND, the Senior Lender Floating Charge to the extent of the Senior Lender Priority Limit to the extent not already exhausted under clause 4.1.1;
 - 4.1.3. THIRD, upon the satisfaction of the Senior Debt to the extent of the Senior Lender Priority Limit, the Junior Lender Standard Security to the extent of the Junior Lender Priority Limit;
 - 4.1.4. FOURTH, the Junior Lender Floating Charge to the extent of the Junior Lender Priority Limit to the extent not already exhausted under clause 4.1.3
 - 4.1.5. FIFTH, upon the satisfaction of the Junior Debt to the extent of the Junior Lender Priority Limit, the Senior Lender Security Documents pari passu to the extent of the balance of the Senior Debt; and
 - 4.1.6. SIXTH, upon satisfaction in full of the Senior Debt, the Junior Lender Security Documents to the extent of the balance of the Junior Debt;
- 4.2. The Junior Lender agrees that during the Security Period documents of title to the property and assets charged by the Junior Lender Security Documents shall be held by the Senior Lender and may be dealt with by the Senior Lender without reference to or consent of the Junior Lender. The Senior Lender agrees to deliver all such documents to the Junior Lender or such other person entitled to them at the end of

the Security Period.

- 4.3. Subject to the provisions of this Agreement, the Documents shall rank as continuing security for the payment and discharge of all the liabilities and obligations the payment and/or discharge of which are thereby secured and shall not be affected by any fluctuation in the moneys, obligations and liabilities from time to time due, owing or incurred to the Senior Lender or the Junior Lender as the case may be or by the existence at any time of a credit balance on any current or other account of the Borrower with the Senior Lender or the Junior Lender as the case may be.
- 4.4. Monies received by any administrator, administrative receiver, receiver and/or manager appointed under the Senior Lender Security Documents, or the Junior Lender Security Documents or from realisation of the security and guarantees conferred by the Senior Lender Security Documents or the Junior Lender Security Documents or otherwise shall be applied in the order set out in clause 13 of this Agreement.
- 4.5. Each of the Creditors hereby consents to the creation of the security and guarantees conferred by each of the Documents.
- 4.6. The Junior Lender will not in any circumstances be subrogated to any of the rights of the Senior Lender (whether by way of security, guarantee or otherwise) under the Senior Lender Documents.

5. Undertakings of the Borrower

- 5.1. During the Security Period and subject to clause 7.3 below the Borrower will not (and the Junior Lender will not require the Borrower to):-
 - 5.1.1. create or permit to subsist any Security Right over any of its assets for all or part of the Junior Debt or any guarantee (or other assurance against financial loss) for or in respect of all or any part of the Junior Debt, in either case other than by the security or guarantees conferred by the Junior Lender Security Documents entered into on or before the date of this Agreement;
 - 5.1.2. pay, repay, prepay, redeem, purchase or otherwise discharge or release any of the Junior Debt other than (i) a repayment by the Borrower of up to £300,000 of the Junior Debt provided such payment is made on or around the date of this Agreement following the utilisation of the Facility Letter and (ii) the interest payment due and payable pursuant to clause 5.2 of the Junior Lender Loan Agreement;
 - 5.1.3. amend any of the terms of the Junior Lender Documents, save to the extent expressly permitted by the Senior Lender Documents;
 - 5.1.4. discharge any of the Junior Debt by set-off or any right of combination of accounts save only to the extent it may be required to do so or if the same occurs automatically by operation of law (but not, in either case, by reason of any contract or agreement);
 - 5.1.5. give any financial support to any person to enable it to do any of the things referred to in clause 5.1.1 to 5.1.4 (inclusive) above; or
 - 5.1.6. take or omit to take any action whereby the ranking and/or subordination arrangements provided for herein in relation to the Junior Debt or any part thereof may be impaired or adversely affected.

6. Undertakings of the Junior Lender:

6.1. During the Security Period the Junior Lender will not:-

- 6.1.1. demand or accept payment, repayment, prepayment or any distribution in respect of, or on account of, any Junior 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 Junior Debt or part thereof, other than (i) the repayment by the Borrower of up to £300,000 in terms of clause 5.1.2, (ii) the interest payment in terms clause 5.1.2; and (iii) in terms of clause 7;
- 6.1.2. exercise any right of set-off, combination of accounts or lien or exercise or accept any transfer of rights, property or assets from the Borrower (or any other source) in satisfaction of the Junior Debt or part thereof;
- 6.1.3. claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of the Borrower, other than in accordance with clause 9;
- 6.1.4. take, receive or permit to subsist any Security Right or any guarantee (or other assurance against financial loss) for, or in respect of, any Junior Debt, other than in terms of the Junior Lender Security Documents entered into on or before the date of this Agreement;
- 6.1.5. amend, vary waive or replace any provision of the Junior Lender Documents, save to the extent expressly permitted by the Senior Lender Documents;
- 6.1.6. sell, transfer or otherwise dispose of any of the Junior Debt, other than in accordance with clause 14.5;
- 6.1.7. take any Enforcement Action involving the Borrower, other than in terms of clause 7;
- 6.1.8. take or omit to take any action whereby the ranking and/or subordination arrangements provided for herein in relation to the Junior Debt or any part thereof may be impaired or adversely affected.

6.2. During the Security Period, the Junior Lender undertakes to the Senior Lender that it shall comply with its respective obligations under this Agreement and (subject to such obligations) the relevant Junior Lender Documents.

7. Permitted Enforcement

7.1. Subject to clause 7.2 below, the Junior Lender may not take any Enforcement Action prior to the Senior Discharge Date without the prior written consent of the Senior Lender.

7.2. The restriction in clause 7.1 will not apply to the Junior Lender if:-

- 7.2.1. the Senior Lender has enforced the security conferred by the Senior Lender Security Documents (or any of them) other than by the exercise by the Senior Lender of any set-off or similar rights; or
- 7.2.2. a court makes a winding-up order or an order for the dissolution or liquidation of the Borrower or a liquidator or an administrator or equivalent is appointed to the Borrower, other than in any such case as a result of action taken by (or on behalf of) of the Junior Lender.

7.3 The Senior Lender agrees that, prior to taking Enforcement Action, it shall give the

Junior Lender at least seven (7) days' prior notice and shall give the Junior Lender the opportunity within such time to either procure that the Borrower repays the Senior Debt or else purchase the Senior Debt from the Senior Lender at par. The Borrower irrevocably and unconditionally consents to the Senior Lender giving such notice to the Junior Lender and to such sale and purchase but (for the avoidance of doubt) the Borrower shall not be obliged to repay the Senior Debt following a request to do so pursuant to this clause 7.3 if the Senior Debt has not become due and payable in accordance with the terms of the Senior Lender Documents at the time of such request.

8. Release of Security and Consents

- 8.1. If, during the Security Period, any assets of the Borrower are being sold pursuant to a power of sale or otherwise in terms of the Senior Lender Security Documents, the Junior Lender shall on the written request of the Senior Lender (in favour of the Senior Lender and the Borrower) provide a consent in writing to the sale and release of the assets which are the subject of the sale from any security constituted by the Junior Lender Security Documents, provided that any funds recovered by the Borrower as a result of such sale shall be applied in the order set out in clause 13.
- 8.2. If during the Security Period, the Senior Lender has agreed any amendment, consent, approval or waiver with or in connection with the Senior Lender Security Documents, the Junior Lender will not unreasonably withhold its consent to the equivalent or equal amendment, consent, approval or waiver under, of, or in respect of, the Junior Lender Documents.
- 8.3. The Junior Lender hereby undertakes to do such things and execute all such documents as the Senior Lender may reasonably require to give effect to clauses 8.1 and/or 8.2.
- 8.4. Nothing in clauses 8.1 or 8.2 shall result in the reduction in the amount of the Junior Debt or in any delay or postponement of the payment of all or any part of the Junior Debt.

9. Subordination on Insolvency

- 9.1. If an Insolvency Event occurs in respect of the Borrower during the Security Period then:
 - 9.1.1. the Junior Debt shall be postponed and subordinated to the Senior Debt to the extent provided for in clause 3 and (if required by the Senior Lender but not otherwise) the Junior Lender will file any proof or other claim necessary for the recovery of the Junior Debt;
 - 9.1.2. 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 Junior Debt by a liquidator, administrator, administrative receiver or receiver (or equivalent) of the Borrower or its estate made or paid to or received by the Junior Lender or to which the Junior Lender entitled, will be held in trust by its recipient for the Senior Lender and will immediately be paid or, transferred or assigned to the Senior Lender for application in the order set out in clause 13 of this Agreement; and
 - 9.1.3. if the trust referred to in clause 9.1.2 above fails or cannot be given effect to, the Junior Lender upon (and any agent or trustee on their behalf) receiving any such payment or distribution will pay an amount equal to such payment or distribution to the Senior Lender for application in the order set out in clause 13 of this Agreement but not so as to allow the Senior Lender to recover twice in respect of any such amount.

- 9.2. The Junior Lender hereby irrevocably authorises the Senior Lender to demand, sue and prove for, collect and receive every payment or distribution referred to in clause 9.1 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 Junior Lender or otherwise, as the Senior Lender may deem necessary or advisable, acting reasonably, for the enforcement of this Agreement.
- 9.3. The Junior Lender will execute and deliver to the Senior Lender such assignments or other instruments as may be requested by the Senior Lender, acting reasonably, to enable the Senior Lender to enforce any claims upon or with respect to all or part of the Junior 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 Junior Debt in accordance with the terms of this Agreement.
- 9.4. The liquidator or other insolvency representative or trustee of the Borrower or its estate is hereby authorised by the Creditors to apply any assets or monies received by him in accordance with the terms of this Agreement.

10. Contravention

- 10.1. If at any time prior to the expiry of the Security Period:-

- 10.1.1. the Junior Lender receives or recovers a payment or distribution of any kind whatsoever in respect of or on account of the Junior Debt other than in accordance with the provisions of clause 6.1.1;
- 10.1.2. the Junior Lender receives or recovers any proceeds pursuant to any Enforcement Action in respect of or on account of the Junior Debt;
- 10.1.3. the Borrower makes any payment or distribution of any kind whatsoever in respect of, or on account of the purchase or other acquisition of, the Junior Debt other than in accordance with the provisions of clause 5.1.2;
- 10.1.4. all or any of the Junior Debt is discharged by set-off, combination of accounts or otherwise;

the recipient or beneficiary of such payment, distribution, set-off or combination will promptly pay all such amounts or distributions to the Senior Lender for application in the order set out in clause 13 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 or his assets) and on behalf of the Senior Lender.

- 10.2. The Junior Debt will, as between the Borrower and the Junior Lender, be deemed not to have been reduced or discharged to the extent of any payment or distribution to the Senior Lender under clause 10.1.

11. New Money

- 11.1. The Junior Lender agrees that the Senior Debt may be refinanced and/or that its terms may be amended and that any amounts borrowed or obligations incurred by the Borrower in refinancing the Senior Debt (provided that the amount of such Senior Debt is not greater than the amount made available at the date of this Agreement) will be Senior Debt within the meaning of this Agreement and will rank in priority to the Junior Debt in accordance with the terms set out in this Agreement. Without limit to the generality of the foregoing, all amounts made available by the Senior Lender to the Borrower from time to time by way of working capital (howsoever described) in connection with the Property and the Project will be Senior Debt within the meaning of this Agreement but subject always to the Senior Lender Priority Limit.

- 11.2. Notwithstanding the provisions of clause 11.1, the Senior Lender agrees that, prior to refinancing the Senior Debt, it shall give the Junior Lender at least ten (10) days' prior notice and shall give the Junior Lender the opportunity within such time to either procure that the Borrower repays the Senior Debt or else purchases the Senior Debt from the Senior Lender at par. The Borrower irrevocably and unconditionally consents to the Senior Lender giving such notice to the Junior Lender and to such sale and purchase but (for the avoidance of doubt) the Borrower shall not be obliged to repay the Senior Debt following a request to do so pursuant to this clause 11.2 if the Senior Debt has not become due and payable in accordance with the terms of the Senior Lender Documents at the time of such request..
- 11.3. Notwithstanding the provisions of clause 11.1 the Junior Lender agrees that the Senior Lender may, at its discretion, make further advances to the Borrower in connection with the Property and the Project where there are any abnormal works required for the development of the Property which are not provided for in the Building Contract and which are not included in the Appraisal (as defined in the Facility Agreement) and each such advance will be deemed to constitute Senior Debt for the purposes of this Agreement but subject always to the Senior Lender Priority Limit.
- 11.4. The Senior Lender shall promptly notify the Junior Lender of any further advances made to the Borrower in terms of clause 11.2.

12. Waiver of Defences

- 12.1. The subordination effected or intended to be effected by this Agreement and the obligations of each of the Creditors under it shall not be affected by any act, omission or circumstances which but for this provision might operate to release any of the Creditors from their obligations or affect such obligations or such subordination including, without limitation and whether or not known to any of the Creditors or any other person:-
- 12.1.1. any time, indulgence or waiver granted to, or composition with the Borrower or any other person;
 - 12.1.2. the taking, variation, compromise, renewal or release of, or refusal or neglect to perfect or enforce, any rights, remedies or securities against or granted by the Borrower or any other person;
 - 12.1.3. any unenforceability, illegality, invalidity or frustration of any obligation of the Borrower under the Documents or of any other person under any other document;
 - 12.1.4. any amendment to or variation of the terms of the Documents or any other document;
 - 12.1.5. any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of the Borrower under any of the Documents resulting from any insolvency, liquidation or dissolution proceedings or from any law or regulation.
- 12.2. This Agreement shall apply in respect of the Senior Debt irrespective of any intermediate payment of any of the Senior Debt and shall apply to the ultimate balance of the Senior Debt.
- 12.3. This Agreement shall apply in respect of the Junior Debt irrespective of any intermediate payment of any of the Junior Debt and shall apply to the ultimate balance of the Junior Debt.
- 12.4. Notwithstanding any of the provisions of this Agreement postponing, subordinating or

delaying the payment of all or any of the Junior Debt, such Junior Debt shall, as between the Borrower and the Junior Lender, remain owing or due and payable in accordance with the terms of the Junior Lender Documents.

13. Application of Monies

- 13.1. All monies received by the Senior Lender under or by virtue of the Senior Lender Security Documents 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:-
 - 13.1.1. in or towards payment of all costs, charges and expenses of or incidental to the enforcement of the Senior Lender Security Documents;
 - 13.1.2. in or towards satisfaction of the Senior Debt up to the Senior Lender Priority Limit in such order as the Senior Lender may from time to time require;
 - 13.1.3. in or towards payment of all costs, charges and expenses of or incidental to the enforcement of the Junior Lender Security Documents, *pari passu*;
 - 13.1.4. in or towards satisfaction of the Junior Debt up to Junior Lender Priority Limit;
 - 13.1.5. in or towards satisfaction of the balance of the Senior Debt in such order as the Senior Lender may from time to time require;
 - 13.1.6. in or towards satisfaction of the balance of the Junior Debt;
 - 13.1.7. any surplus shall be paid to the Borrower (or any other person entitled to such surplus).
- 13.2. The Borrower and the Senior Lender hereby agree that nothing contained in this Agreement shall limit the right of the Senior Lender, if and for so long as the Senior Lender (in its discretion) shall consider it appropriate, pending the payment and discharge of all of the Senior Debt, to place all or any money arising from the enforcement of the Senior Lender Security Documents 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 Debt.
- 13.3. Any amount received hereunder by the Senior Lender in a currency other than that in which the Senior Debt is denominated and payable shall be converted into Sterling at such rate of exchange as on the date of payment and in such market as is determined by the Senior Lender to be appropriate for such conversion. The Borrower shall pay the costs of such conversion and nothing in this Agreement shall entitle the Borrower to pay the Senior Debt in a currency other than Sterling.
- 13.4. The Senior Lender may apply any monies received by it to any liability in respect of the Senior Debt in such order or manner as it may determine.

14. Assignment and Transfer

- 14.1. This Agreement shall enure to and be binding on the permitted successors and assignees of the parties to this Agreement.
- 14.2. The Borrower may not assign, transfer or otherwise dispose of all or any of its rights, obligations or benefits under this Agreement.
- 14.3. The Senior Lender shall be entitled to assign, transfer, securitise or otherwise dispose of the whole or any part of the benefit of this Agreement to any person to which it transfers all of its rights and benefits under the Facility Letter in any manner

that it sees fit to whom all or a corresponding part of its rights and benefits and, where applicable, obligations under any Senior Lender Document are assigned, transferred, securitised or otherwise disposed of in accordance with the provisions of them.

- 14.4. The Senior Lender will be entitled to disclose to its advisors and to any prospective or actual assignee, any party to a securitisation, transferee or participant, any Affiliate of the Senior Lender, its auditors, advisors or applicable regulatory authority, any rating agency, or any other person or entity who enters or proposes to enter into any transaction as referred to in this clause 14 with the Senior Lender in relation to the Senior Lender Documents (in each case, together with their professional advisors) all information, including any confidential information, financial information and any other information given to the Senior Lender in relation to this Agreement.
- 14.5. The Junior Lender shall be entitled to assign, transfer, securitise or otherwise dispose of the whole or any part of the benefit of this Agreement to any person to which it transfers all of its rights and benefits under the Junior Lender Loan Agreement in any manner that it sees fit to whom all or a corresponding part of its rights and benefits and, where applicable, obligations under any Junior Lender Loan Agreement are assigned, transferred, securitised or otherwise disposed of in accordance with the provisions of them, subject to any such purchaser or transferee of the Junior Debt entering into an Accession Agreement.

15. Miscellaneous

- 15.1. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction shall in any way be affected or impaired.
- 15.2. No failure to exercise, nor delay in exercising, any right or remedy under this Agreement by the Senior Lender or the Junior Lender will operate as a waiver of such rights and remedies, nor will any single or partial exercise of any other right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
- 15.3. During the Security Period, the Creditors may disclose to each other information concerning the Borrower and its affairs in such manner and to such extent as the Creditors may wish and the Borrower consents to such disclosure.
- 15.4. If there is any conflict between the terms of this Agreement, the Senior Lender Documents or any of the Junior Lender Documents, this Agreement shall prevail.
- 15.5. The Borrower shall be responsible for the reasonable and properly incurred costs of the Creditors in connection with this Agreement and the Documents, which it shall pay on demand by the relevant Creditor.

16. Amendment

This Agreement shall not be varied or amended in any way except in writing signed by each of the Creditors and the Borrower.

17. Instrument of Alteration

The parties acknowledge and agree that this Agreement is an instrument of alteration in terms of Section 466 of the Companies Act 1985 and shall also receive effect as a variation of standard security within the meaning of section 16 of The Conveyancing and Feudal Reform (Scotland) Act 1970.

18. Notices

18.1. The address and fax number of each party hereto for all notices under, or in connection with, this Agreement, are:-

18.1.1. Senior Lender

Address: 10 Crown Place, London, EC2A 4FT

Fax: 020 7247 1205

For the attention of: Sue Saich

18.1.2. Junior Lender

Address: 16 Charlotte Square, Edinburgh EH2 4DF

Fax: N/A

For the attention of: Paul Jarman-Williams

18.1.3. Borrower

Address: 18 Walker Street, Edinburgh EH3 7LP

For the attention of: Simon Cook/Euan Marshall

18.2. A party may change the above by prior written notice to the other parties.

19. Execution and counterparts

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

19.2. Where executed in counterpart:

19.2.1. this Agreement will not take effect until each of the counterparts has been delivered;

19.2.2. each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and

19.2.3. the date of delivery may be inserted on the first page of this Agreement in the blank provided.

20. Third Party Rights

Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Third Party Rights) (Scotland) Act 2017 to enforce or enjoy the benefit of any term of this Agreement.

21. Governing Law

This Agreement shall be governed by and construed according to Scots law.

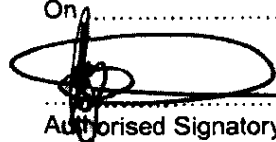
IN WITNESS WHEREOF this Agreement consisting of this and the 13 preceding pages together with the attached Schedule are executed as follows:-

Lender

Signed for and on behalf of CLOSE BROTHERS LIMITED by its authorised signatory pursuant to a Power of Attorney dated 14 October 2020

At GLASGOW

On 28 October 2020 (date of Execution)



Authorised Signatory (print name) Signed

GEOFF STANSFIELD

Authorised Signatory

in the presence of

Witness: 

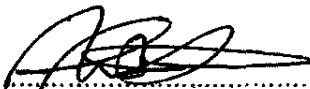
Full name: EMMA FRIZZLE

Address: 110 QUEEN STREET

GLASGOW

Borrower

Signed for and on behalf of MSC DEVELOPMENT LLP, acting by Simon cook, a director of Square and Crescent Group Ltd, in its capacity as member of MSC Development LLP



 Signature

At 18 WALKER STREET, Edinburgh

on 28.10. 2020

in the presence of

Witness: D. Nelson

Full name: DONNA NELSON

Address: 18 WALKER STREET

EDINBURGH

EH3 7UP

Junior Lender

Signed for and on behalf of THE WELCH GROUP DEVELOPMENTS LIMITED

by

one of its directors

.....
 Director

At

on 2020

in the presence of

Witness:

Full name:

Address:

.....

.....

Borrower

Signed for and on behalf of MSC DEVELOPMENT LLP, acting by Simon cook, a director of Square and Crescent Group Ltd, in its capacity as member of MSC Development LLP

.....
Signature

At

on 2020

in the presence of

Witness:.....

Full name:.....

Address:.....

.....

.....

Junior Lender

Signed for and on behalf of THE WELCH GROUP DEVELOPMENTS LIMITED

by MICHAEL WELCH

one of its directors

At EDINBURGH

on 28 OCTOBER 2020

in the presence of

Witness: 

Full name: PAUL JARMAN WILLIAMS

Address: 26 DUDLEY Gdns

EDINBURGH

.....

.....

Director

This is the Schedule referred to in the preceding Intercreditor Agreement between Close Brothers Limited, MSC Development LLP and The Welch Group Developments Limited

THE SCHEDULE

Accession Agreement

This Agreement is made

BY: [] of [] (the "Acceding Party") in favour of each of Close Brothers Limited, MSC Development LLP and The Welch Group Developments Limited

and is SUPPLEMENTAL to an intercreditor agreement (the "Intercreditor Agreement") dated 2020 and made between (1) MSC Development LLP as the Borrower (as defined therein), (2) The Welch Group Developments Limited as the Junior Lender (as defined therein) and (3) Close Brothers Limited as the Senior Lender.

NOW IT IS AGREED AS FOLLOWS

- 1. Words and expressions defined in the Intercreditor Agreement shall have the same meaning in this Agreement.**
- 2. The Acceding Party confirms it has been supplied with a copy of the Intercreditor Agreement and that The Welch Group Developments Limited (the "Transferor") has agreed to transfer to it the Junior Debt detailed in the Schedule to this Agreement.**
- 3. The Acceding Party undertakes to the Senior Lender (including its respective assignees, transferees and successors in title) to be bound by all the terms of the Intercreditor Agreement capable of applying to it to the intent and effect that the Acceding Party shall accede to the Intercreditor Agreement in the capacity of the Junior Lender and shall be a party to the Intercreditor Agreement with effect from the date of this Agreement.**
- 4. This Agreement shall be governed by and construed according to Scots law.**

IN WITNESS WHEREOF [insert appropriate signing blocks]