

M

COMPANIES FORM No. 466(Scot)

466

Particulars of an instrument of alteration to a floating charge created by a company registered in Scotland

CHFP025

Please do not
write in this
margin

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

Pursuant to section 410 and 466 of the Companies Act 1985

To the Registrar of Companies
(Address overleaf - Note 6)

For official use

Company number

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

1217

SC005863

Name of company

* Heart of Midlothian plc (in administration) (the "Borrower")

* insert full name
of Company

Date of creation of the charge (note 1)

09 May 2014

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

Floating Charge (the "Floating Charge")

Names of the persons entitled to charge

Foundation of Hearts Limited (SC387126)

Short particulars of all the property charged

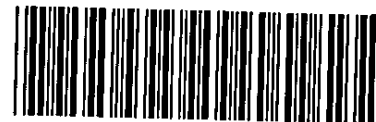
The whole of the property (including uncalled capital) which is or may from
time to time, while the Floating Charge (as amended or supplemented from
time to time) is in force, be comprised in the property and undertaking of
the Borrower.

Presentor's name address and
reference (if any):
CMS Cameron McKenna LLP
Saltire Court
20 Castle Terrace
Edinburgh EH1 2EN

DX 553001 EDINBURGH 18

For official use (06/2005)
Charges Se

FRIDAY



S381914G

SCT

16/05/2014

#105

COMPANIES HOUSE

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

*Please do not
write in
this margin*

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

* See paper apart 1

Date(s) of execution of the instrument of alteration

09 May 2014

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

See paper apart.

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

*Please do not
write in
this margin*

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

See paper apart.

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

Please do not write in this margin

See paper apart.

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

Signed _____

For and on behalf of: Date _____

On behalf of [company] [chargee] †

CMS Cameron McKenna LLP,
Saltire Court, 20 Castle Terrace,
Edinburgh EH1 2EN

Notes

1. A description of the instrument e.g. "Instrument of Charge" "Deed of Security" etc, as the case may be, should be given. For the date of creation of a charge see section 410(5) of the Companies Act.
2. In accordance with section 466(1) the instrument of alteration should be executed by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.
3. A certified copy of the instrument of alteration, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of execution of that instrument.
4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.
5. A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge. Cheques and Postal Orders are to be made payable to **Companies House**.
6. The address of the Registrar of Companies is: Companies House, 139 Fountainbridge, Edinburgh, EH3 9FF DX 235 Edinburgh or LP - 4 Edinburgh 2

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

† delete as appropriate

This is the paper apart referred to in the preceding Form 466 relative to Heart of Midlothian plc (in administration)

NAMES AND ADDRESSES OF PEOPLE WHO HAVE EXECUTED THE INSTRUMENT OF ALTERATION

BIDCO (1874) LIMITED, (company number SC416630) having its registered office at Collins House, Rutland Square, Edinburgh EH1 2AA (as "**Lender**");

FOUNDATION OF HEARTS LIMITED a company limited by guarantee and incorporated and registered under the laws of Scotland (company number SC387126) and with its registered office at 23 Melville Street, Edinburgh EH 3 7PE (as "**Subordinated Creditor**");

HEART OF MIDLOTHIAN PLC (IN ADMINISTRATION), a company incorporated in Scotland (company number SC005863) having its registered office at c/o BDO LLP, Citypoint, 65 Haymarket Terrace, Edinburgh EH2 5HD, acting by its administrators, Bryan Jackson, Trevor Birch and James Stephen all of BDO LLP appointed to act as joint administrators on 19 June 2013 (as "**Borrower**"); and

BRYAN JACKSON, TREVOR BIRCH AND JAMES STEPHEN all of BDO LLP whose office is at City Point, 65 Haymarket Terrace, Edinburgh EH2 5HD ("**Administrators**").

A STATEMENT OF THE PROVISIONS, IF ANY, IMPOSED BY THE INSTRUMENT OF ALTERNATION 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:

Prior to the Senior Discharge Date, the Borrower will not (and the Subordinated Creditor will not require the Borrower to) unless otherwise agreed in writing by the Lender, secure or grant any guarantee or security in respect of all or part of the Subordinated Debt, other than by the Subordinated Security entered into on or before the date of the Intercreditor Agreement.

A STATEMENT OF THE PROVISIONS, IF ANY, IMPOSED BY THE INSTRUMENT OF ALTERATION VARYING OR OTHERWISE REGULATING THE ORDER OF RANKING OF THE FLOATING CHARGE IN RELATION TO FIXED SECURITIES OR TO OTHER FLOATING CHARGES.

The Subordinated Creditor agrees, and the Borrower acknowledges, that the security created (or expressed to be created) by the Senior Security shall rank in priority to the security created (or expressed to be created) by the Subordinated Security in all respects regardless of the date or order of registration or the execution of the Senior Security or Subordinated Security.

DEFINITIONS

"Intercreditor Agreement" means the intercreditor agreement dated 09 May 2014 between the parties listed at page 1 of this Paper Apart.

"Senior Debt" means the aggregate amount from time to time outstanding of all monies, obligations and liabilities, whether actual or contingent, due, owing or incurred by the Borrower to the Lender.

"Senior Discharge Date" means the date on which all Senior Debt has been fully and irrevocably paid or discharged whether or not as the result of an enforcement of security, and the Lender is under no obligation (either actual or contingent) to provide any Senior Debt.

"Senior Security" means all fixed and floating charges and other guarantee or security documents (including without limitation, the security listed in part 2 of the schedule to the Intercreditor Agreement (*Security*) as Senior Security) which are from time to time entered into by the Borrower in favour of the Lender as security for, or guaranteeing, any or all monies and liabilities due, owing or incurred by the Borrower to the Lender.

"Subordinated Debt" means the aggregate amount from time to time outstanding of all monies, obligations and liabilities, whether actual or contingent, due, owing or incurred by the Borrower to the Subordinated Creditor including without limitation any Senior Debt which the Subordinated Creditor may acquire or which is otherwise transferred to the Subordinated Creditor.

"Subordinated Security" means all fixed and floating charges and other security documents (including, without limitation, the security listed in part 2 of the schedule to the Intercreditor Agreement (*Security*) as Subordinated Security) which are from time to time entered into by the Borrower in favour of the Subordinated Creditor as security for any or all of the Subordinated Debt.



FILE COPY

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

COMPANY NO. 5863
CHARGE CODE SC00 5863 0027

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 9 MAY 2014 WERE DELIVERED
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985
ON 16 MAY 2014

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 9
MAY 2014

BY HEART OF MIDLOTHIAN PLC

IN FAVOUR OF
FOUNDATION OF HEARTS LIMITED

GIVEN AT COMPANIES HOUSE, EDINBURGH 21 MAY 2014



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

CERTIFIED AS A TRUE AND
COMPLETE COPY OF THE
ORIGINAL SAVE FOR
REDACTIONS UNDER
S.859G COMPANIES ACT 2006

Date: 16 May 2015
CMS Cameron McKenna LLP,
Saltire Court, 20 Castle Terrace,
Edinburgh EH1 2EN

INTERCREDITOR AGREEMENT

among

(1) BIDCO (1874) LIMITED
as Lender

and

(2) FOUNDATION OF HEARTS LIMITED
as Subordinated Creditor

and

(3) HEART OF MIDLOTHIAN PLC (IN ADMINISTRATION)
as Borrower

and

(4) BRYAN JACKSON, TREVOR BIRCH AND JAMES STEPHEN
as Administrators

DLA Piper Scotland LLP
Collins House
Rutland Square
Edinburgh
EH1 2AA
Tel: +44 (0) 8700 111 111
Fax: +44 (0) 131 242 5555

Date of Original: 2 April 2014
Draft No: 1

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INTERCREDITOR AGREEMENT

BETWEEN

- (1) **BIDCO (1874) LIMITED**, (company number SC416630) having its registered office at Collins House, Rutland Square, Edinburgh EH1 2AA (as "**Lender**");
- (2) **FOUNDATION OF HEARTS LIMITED** a company limited by guarantee and incorporated and registered under the laws of Scotland (company number SC387126) and with its registered office at 23 Melville Street, Edinburgh EH 3 7PE (as "**Subordinated Creditor**");
- (3) **HEART OF MIDLOTHIAN PLC (IN ADMINISTRATION)**, a company incorporated in Scotland (company number SC005863) having its registered office at c/o BDO LLP, Citypoint, 65 Haymarket Terrace, Edinburgh EH2 5HD, acting by its administrators, Bryan Jackson, Trevor Birch and James Stephen all of BDO LLP appointed to act as joint administrators on 19 June 2013 (as "**Borrower**"); and
- (4) **BRYAN JACKSON, TREVOR BIRCH AND JAMES STEPHEN** all of BDO LLP whose office is at City Point, 65 Haymarket Terrace, Edinburgh EH2 5HD ("**Administrators**").

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Intercreditor Agreement the following terms have the following meanings:

"Charged Property" means all of the assets which from time to time are, or are expressed to be, the subject of the Security Documents;

"Creditors" means the Lender and the Subordinated Creditor (each a "**Creditor**");

"Debt" means the Senior Debt and the Subordinated Debt;

"Deed of Accession" means a deed of accession, substantially in the form set out in part 1 of the schedule (*Deed of Accession*), pursuant to which a person accedes to the provisions of this Intercreditor Agreement;

"Enforcement Action" means, in relation to any Debt, any action whatsoever to:

- (a) demand payment, declare prematurely due and payable or otherwise seek to accelerate payment of or place on demand all or any part of the Debt; or
- (b) recover all or any part of the Debt (including by exercising any right of set-off or combination of accounts); or
- (c) exercise or enforce directly or indirectly any right against 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 Debt (including under the Security Documents); or
- (d) petition or apply for, vote in favour of, 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;

"Insolvency Event" means:

- (a) any resolution is passed or order made for the winding up, liquidation, dissolution, administration or reorganisation of the Borrower (save in connection with an amalgamation or reconstruction previously approved in writing by the Lender); or
- (b) the Borrower becomes subject to any insolvency, bankruptcy, administration, reorganisation, receivership, liquidation, dissolution or other similar proceedings, whether voluntary or involuntary (and whether or not involving insolvency) (save in connection with an amalgamation or reconstruction previously approved in writing by the Lender); or
- (c) the Borrower assigns its assets, or enters into any arrangement, for the benefit of its creditors generally (other than a solvent reorganisation previously approved by the Lender); or
- (d) the Borrower becomes subject to any distribution of its assets, or if any analogous event occurs in any jurisdiction; or
- (e) the directors of the Borrower take any formal step in relation to obtaining a moratorium or making a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986 or any other suspension of payments with its creditors;

"Property" means the subjects comprising (1) Tynecastle Stadium, McLeod Street, Edinburgh, (2) the subjects known as Gerard's Yard, Wheatfield Street, Edinburgh and (3) the roadway and footpath leading from McLeod Street, Edinburgh.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property;

"Security Documents" means the Senior Security and the Subordinated Security;

"Senior Debt" means the aggregate amount from time to time outstanding of all monies, obligations and liabilities, whether actual or contingent, due, owing or incurred by the Borrower to the Lender;

"Senior Discharge Date" means the date on which all Senior Debt has been fully and irrevocably paid or discharged whether or not as the result of an enforcement of security, and the Lender is under no obligation (either actual or contingent) to provide any Senior Debt;

"Senior Security" means all fixed and floating charges and other guarantee or security documents (including without limitation, the security listed in part 2 of the schedule (Security) as Senior Security) which are from time to time entered into by the Borrower in favour of the Lender as security for, or guaranteeing, any or all monies and liabilities due, owing or incurred by the Borrower to the Lender;

"Subordinated Debt" means the aggregate amount from time to time outstanding of all monies, obligations and liabilities, whether actual or contingent, due, owing or incurred by the Borrower to the Subordinated Creditor including without limitation any Senior Debt which the Subordinated Creditor may acquire or which is otherwise transferred to the Subordinated Creditor ;

"Subordinated Security" means all fixed and floating charges and other security documents (including, without limitation, the security listed in part 2 of the schedule (*Security*) as Subordinated Security) which are from time to time entered into by the Borrower in favour of the Subordinated Creditor as security for any or all of the Subordinated Debt.

1.2 Interpretation

- (a) Unless a contrary indication appears, any reference in this Intercreditor Agreement to:
 - (i) defined parties in this Intercreditor Agreement shall be construed (subject to the provisions of clause 15 (*Changes to the parties*)) so as to include their respective successors in title, permitted transferees and permitted assigns (whether immediate or derivative);
 - (ii) to **"this Agreement"** or **"this Intercreditor Agreement"** includes any document expressed to be supplemental to this Intercreditor Agreement or expressed to be collateral with it or which is entered into pursuant to or in accordance with the provisions of this Intercreditor Agreement;
 - (iii) any other documents referred to in this Intercreditor Agreement shall be references to such documents as amended and/or restated from time to time and be deemed to include any instruments amending, varying, supplementing, novating or replacing the terms thereof from time to time (in each case where any necessary consents or waivers have been obtained pursuant to the terms of this Intercreditor Agreement);
 - (iv) any statute or statutes or section or sections of any statute shall be deemed to be a reference to legislation of the United Kingdom or any statutory modification, re-enactment or replacement of it for the time being in force; and
 - (v) the singular includes the plural and vice versa.
- (b) References to schedules and clauses are to the schedules and clauses of this Intercreditor Agreement.
- (c) Clause and schedule headings are for convenience only and shall not affect the construction of this Intercreditor Agreement.

2. PURPOSE OF THIS INTERCREDITOR AGREEMENT

2.1 Agreement to regulate claims

Each of the Creditors agrees to regulate any claim it may now or hereafter have against the Borrower in the manner set out in this Intercreditor Agreement.

2.2 Purpose

The Borrower:

- (a) enters into this Intercreditor Agreement for the purpose of acknowledging the arrangements between the Creditors and regulating their respective claims against the Borrower; and

- (b) in furtherance thereof irrevocably waives any rights which it may now or in the future have to challenge or have set aside any arrangement agreed between the Creditors (or any of them).

2.3 Borrower not beneficiary of Creditor undertakings

None of the undertakings in this Intercreditor Agreement on the part of any Creditor is given to or for the benefit of the Borrower or shall be enforceable by the Borrower.

2.4 Borrower undertaking

The Borrower undertakes to each of the Creditors to observe the provisions of this Intercreditor Agreement at all times and not in any way to prejudice or affect the enforcement of such provisions or the subordinations contemplated by this Intercreditor Agreement or to do or suffer anything to be done which would be a breach of the terms of this Intercreditor Agreement.

3. RANKING OF DEBT

The Debt will rank for all purposes and at all times in the following order:

- (a) *first*, the Senior Debt; and
- (b) *second*, the Subordinated Debt.

4. UNDERTAKINGS OF THE BORROWER

Prior to the Senior Discharge Date, the Borrower will not (and the Subordinated Creditor will not require the Borrower to) unless otherwise agreed in writing by the Lender:

- (a) secure or grant any guarantee or security in respect of all or part of the Subordinated Debt, other than by the Subordinated Security entered into on or before the date of this Intercreditor Agreement; or
- (b) pay, prepay, redeem, purchase or otherwise discharge or release any of the Subordinated Debt; or
- (c) amend any of the terms attaching to the Subordinated Debt or the Subordinated Security if such amendment would make such terms more onerous to the Borrower.

5. UNDERTAKINGS OF SUBORDINATED CREDITOR

5.1 Restrictions on enforcement

Prior to the Senior Discharge Date, neither the Subordinated Creditor nor any agent or trustee for it will:

- (a) take or receive from the Borrower, by cash receipt, set-off or otherwise, the whole or any part of the Subordinated Debt; and/or
- (b) take any Enforcement Action in relation to any Subordinated Debt without the prior written consent of the Lender.

5.2 No Security or amendment

Prior to the Senior Discharge Date, the Subordinated Creditor will not, unless otherwise agreed in writing by the Lender:

- (a) seek to secure or obtain the benefit of any guarantee or security in respect of all or any part of the Subordinated Debt, other than by the Subordinated Security entered into on or before the date of this Intercreditor Agreement; or
- (b) amend any of the terms attaching to the Subordinated Debt or the Subordinated Security if such amendment would make such terms more onerous to the Borrower.

6. SECURITY RANKING

6.1 Priority

The Subordinated Creditor agrees, and the Borrower acknowledges, that the security created (or expressed to be created) by the Senior Security shall rank in priority to the security created (or expressed to be created) by the Subordinated Security in all respects regardless of the date or order of registration or the execution of the Senior Security or Subordinated Security.

6.2 Release

If the Lender agrees to release the assets of the Borrower from the Senior Security in circumstances where either (1) the Subordinated Creditor is being repaid in full as a direct consequence of such release; or (2) following an Insolvency Event affecting the Borrower, the release is to enable a sale for value on arm's length terms to a third party purchaser of the business and/or assets of the Borrower where proceeds are applied as if the releases had not been effected, the Subordinated Creditor in each such case shall promptly execute such releases and any other necessary documents to permit those assets to be held by the Borrower, or any acquirer from it, free from the Subordinated Security.

6.3 Documents of title

The Subordinated Creditor agrees that, until the Senior Discharge Date, all documents of title to the property and assets charged to the Subordinated Creditor shall be held by the Lender and the Lender agrees to deliver all such documents to the Subordinated Creditor, or other person entitled to them, following the Senior Discharge Date.

6.4 No default under Subordinated Security

The Subordinated Creditor agrees and acknowledges that the Borrower shall not be deemed to be in default under any of the provisions of the Subordinated Security to the extent that the Borrower is at such time in compliance with the corresponding or similar provisions of the Senior Security.

6.5 Continuing Security

Subject to the provisions of this Intercreditor Agreement, the Senior Security and the Subordinated Security shall rank as continuing securities 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 monies, obligations and liabilities from time to time due, owing or incurred to the Lender or the Subordinated Creditor.

7. TURNOVER

7.1 Trust of receipts

If, prior to the Senior Discharge Date:

- (a) the Subordinated Creditor receives from the Borrower (or any other source) a payment or distribution in cash or in kind in respect of, or on account of, any of the Subordinated Debt; or
- (b) the Borrower or any other Group Company makes any other payment or distribution in cash or in kind on account of the purchase or other acquisition of any of the Subordinated Debt,

the Subordinated Creditor will hold the same in trust for, and pay and distribute upon demand to, the Lender an amount equal to the lesser of:

- (c) the outstanding amount of the Senior Debt; and
- (d) the amount so received,

such amount to be applied towards the Senior Debt until the Senior Debt is irrevocably paid in full.

7.2 Discharge by set-off

If, prior to the Senior Discharge Date, any Subordinated Debt is discharged by set-off or combination of accounts the Subordinated Creditor will immediately pay to the Lender an amount equal to the lesser of:

- (a) the outstanding amount of the Senior Debt; and
- (b) the amount so discharged,

such amount to be applied towards the Senior Debt until the Senior Debt is irrevocably paid in full.

8. SUBORDINATION ON INSOLVENCY

8.1 Subordination

If an Insolvency Event shall occur in relation to the Borrower, the claims against the Borrower in relation to the Subordinated Debt will be subordinate in right of payment to the claims against the Borrower in respect of the Senior Debt.

8.2 Rights of the Lender

Following the occurrence of an Insolvency Event in relation to the Borrower:

- (a) the Lender is irrevocably authorised by the Subordinated Creditor on its behalf to:
 - (i) demand, claim, enforce and prove for the Subordinated Debt due from the Borrower; and

- (ii) file claims and proof, give receipts and take all such proceedings and do all such things as the Lender reasonably sees fit to recover the Subordinated Debt due from the Borrower; and
- (iii) receive distributions of any kind whatsoever in respect or on account of the Subordinated Debt due from the Borrower; and
- (b) the trustee in bankruptcy, liquidator, administrator, assignee or other person distributing the assets of the Borrower or their proceeds is directed by the Subordinated Creditor to pay distributions on the Subordinated Debt direct to the Lender for application in accordance with clause 9 (*Application of recoveries*). The Subordinated Creditor will give all such notices and do all such things as the Lender may reasonably request to give effect to this provision.

8.3 Action by the Lender

- (a) Following the occurrence of an Insolvency Event in relation to the Borrower, the Lender may, and is irrevocably authorised by the Subordinated Creditor on its behalf to, exercise all powers of convening meetings, voting and representation in respect of the Subordinated Debt.
- (b) The Subordinated Creditor will provide all forms of proxy and representation required by the Lender to effect such rights.

8.4 Directions by the Lender

If the Lender is not, for any reason, entitled to take any such action or exercise any such powers in accordance with clauses 8.2 (*Rights of the Lender*) or 8.3 (*Action by the Lender*), or, at its discretion, elects not to do so, the Subordinated Creditor undertake to take any action and exercise any powers which the Lender reasonably requires from time to time.

9. APPLICATION OF RECOVERIES

Subject to the rights of any prior or preferential encumbrancers or creditors, and save as provided by law, the net proceeds of enforcement of the security conferred by the Senior Security and the Subordinated Security and all amounts paid to the Lender under this Intercreditor Agreement shall be applied in the following order:

- (a) firstly, in payment of all costs, charges and expenses incurred by or on behalf of the Lender or any Receiver appointed under the Security Documents (or any part of them) and of the remuneration of the Receiver in connection with such enforcement;
- (b) secondly, in payment of all costs, charges and expenses incurred by or on behalf of the Lender in connection with such enforcement;
- (c) thirdly, in payment to the Lender or any other person entitled for application towards discharge of the Senior Debt in full;
- (d) fourthly, in payment to the Subordinated Creditor for application towards discharge of the Subordinated Debt; and
- (e) lastly, in payment of the surplus (if any) to the Borrower concerned or other person entitled thereto.

10. CONSENTS

10.1 Waivers

- (a) If, prior to the Senior Discharge Date, the Lender has given any consent, approval or waiver with or in connection with the Senior Debt or the Senior Security, the Subordinated Creditor shall be deemed to have done the same and to have made an equivalent or equal amendment in connection with the Subordinated Debt or the Subordinated Security, as the case may be.
- (b) The Subordinated Creditor shall do such things and execute all such documents as the Lender may reasonably require to give effect to clause 10(a).

10.2 Consent

Each of the Creditors hereby consent to the creation of the Senior Security and the Subordinated Security.

10.3 Further advances

It is agreed and acknowledged by all the parties to this Intercreditor Agreement that (1) the Lender may make further monies available which shall, if so advanced, constitute Senior Debt and (2) the Subordinated Creditor may make further monies available which shall, if so advanced, constitute Subordinated Debt.

11. PROTECTION OF SUBORDINATION

11.1 Continuing subordination

The subordination provisions in this Intercreditor Agreement constitute a continuing subordination and benefit the ultimate balance of the Senior Debt regardless of any intermediate payment or discharge of the Senior Debt in whole or in part.

11.2 Waiver of defences

The subordination provisions in this Intercreditor Agreement and the obligations of the Creditors and the Borrower under this Intercreditor Agreement will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the subordination or any of those obligations in whole or in part, including, without limitation:

- (a) any time or waiver granted to, or composition with, the Borrower or other person; or
- (b) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Borrower or any other person under the Security Documents or otherwise or any non-presentment or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security; or
- (c) any unenforceability, illegality or invalidity of any obligation of the Borrower or any security under the Security Documents or any other document or security.

11.3 Immediate recourse

The Subordinated Creditor waives any right it may have of first requiring the Lender to proceed against or enforce any other rights or security or claim payment from any person before claiming the benefit of this subordination, of the security conferred by the Senior Security, or of the obligations of the Subordinated Creditor under this Intercreditor Agreement. The Lender may refrain from applying or enforcing any money, rights or security as it deems appropriate.

12. REPRESENTATIONS AND WARRANTIES

Each party to this Intercreditor Agreement represents and warrants to and for the benefit of each of the other parties to this Intercreditor Agreement that:

- (a) it is duly incorporated and validly existing under the laws of its place of incorporation and has the power to own its property and assets and carry on its business;
- (b) it has the power to enter into and comply with its obligations under this Intercreditor Agreement; and
- (c) it has taken all necessary action to authorise the entry into and compliance with its obligations under this Intercreditor Agreement and to ensure that its obligations under this Intercreditor Agreement are valid, binding and enforceable on it.

13. EFFECT OF THIS INTERCREDITOR AGREEMENT

13.1 Limitation

Nothing contained in this Intercreditor Agreement shall:

- (a) require any of the Creditors to make any advance or to provide any facility to the Borrower; or
- (b) as between the Borrower and any of the Creditors, affect or prejudice any rights or remedies of the Creditors under the Security Documents which shall remain in full force and effect according to their tenor as effective security for all monies, obligations and liabilities therein mentioned.

13.2 Protection of purchasers

No purchaser dealing with the Lender or dealing with any Receiver appointed by it shall be concerned in any way with the provisions of this Intercreditor Agreement, but shall assume that the Lender or any such Receiver is acting in accordance with the provisions of this Intercreditor Agreement.

13.3 Effect of Intercreditor Agreement

The provisions of this Intercreditor Agreement shall regulate the rights and obligations of the parties in respect of the Senior Debt and the Subordinated Debt which shall in all respects take effect and be subject to the provisions of this Intercreditor Agreement.

14. TRUST

Any payments made to and/or received and/or retained by the Subordinated Creditor in contravention of the terms of this Intercreditor Agreement shall be held on trust for the Lender and shall be paid to the Lender for application towards the Senior Debt.

15. CHANGES TO THE PARTIES

15.1 Successors and assignors

This Intercreditor Agreement shall be binding upon and enure to the benefit of each party hereto and each of their permitted successors and assigns.

15.2 No transfer by the Borrower

The Borrower shall not be entitled to assign or transfer all or any of its rights, benefits and obligations hereunder.

15.3 Assignment by Creditors

Subject to clause 15.4 (*Transfer of Subordinated Debt*), the Creditors may at any time assign all or any of their respective rights and benefits hereunder to any permitted assignee of the Debt to whom all or any part of the Debt is assigned.

15.4 Transfer of Subordinated Debt

If the Subordinated Creditor shall transfer its rights, title and interest to any of the Subordinated Debt, it shall do so only on the terms that such transfer is conditional upon the transferee entering into a Deed of Accession so as to make such person a party to this Intercreditor Agreement as a Subordinated Creditor.

16. COSTS AND EXPENSES

16.1 Transaction expenses

Each party shall bear their own costs and expenses (including legal fees) (together with any applicable VAT) incurred in connection with the negotiation, preparation, printing, execution and perfection of this Intercreditor Agreement and any other documents referred to in this Intercreditor Agreement and the Security.

16.2 Interest on demand

If the Borrower fails to pay any amount payable by it under this Intercreditor Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is eight per cent per annum.

16.3 Enforcement and preservation costs

The Borrower shall, within three Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees and together with any applicable VAT) incurred by it in connection with the enforcement of or the preservation of any rights in relation to the

Senior Debt and the Senior Security and any proceedings instituted by or against the Lender as a consequence of taking or holding the Senior Security or enforcing these rights.

17. INFORMATION

17.1 Disclosure

The Borrower authorises each Creditor to disclose to each other Creditor all information relating to it coming into its possession.

17.2 Notification

Each Creditor agrees to notify each other Creditor promptly upon becoming aware of the same of the occurrence, waiver or remedy of any default in relation to the Senior Debt or the Subordinated Debt.

18. POWER OF ATTORNEY

The Subordinated Creditor irrevocably appoints by way of security the Lender as its attorney (with full power of substitution and delegation) in its name and on its behalf to do anything which it has authorised the Lender to do under the terms of this Intercreditor Agreement and/or is required and legally able to do under this Intercreditor Agreement but has failed to do.

19. ADMINISTRATORS' LIABILITY

The Administrators have entered into and signed this Intercreditor Agreement as agents for or on behalf of the Borrower and neither they, their firm, partners, employees, advisers, representatives or agents shall incur any personal liability in respect of any of the obligations undertaken by the Borrower or in respect of any failure on the part of the Borrower to observe, perform or comply with any such obligations or under or in relation to any associated arrangements or negotiations or under any document or assurance made pursuant to this Intercreditor Agreement. The Administrators are party to this Intercreditor Agreement in their personal capacities only for the purpose of receiving the benefit of the exclusions, limitations, undertakings, covenants and indemnities in their favour contained in this Intercreditor Agreement.

20. NOTICES

20.1 Communications in writing

All communications to be made hereunder shall be made by facsimile or otherwise in writing and shall be made or delivered to the relevant person at its address and/or facsimile number set out under its name at the end of this Intercreditor Agreement, or at such other address and/or facsimile as that person may hereafter advise the other parties of in writing.

20.2 Delivery

Any notice to any person hereunder shall be deemed to have been given:

- (a) if delivered personally, at the time of such delivery;
- (b) if posted, on the second Business Day following the day on which it was despatched by first class mail (airmail, if appropriate) postage prepaid; and

- (c) if sent by facsimile transmission, on the Business Day on which transmitted.

21. PARTIAL INVALIDITY

If, at any time, any provision of this Intercreditor Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

22. REMEDIES AND WAIVERS

22.1 Waiver, rights and remedies

No failure to exercise, nor any delay in exercising, on the part of any Creditor, any right or remedy under this Intercreditor Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any 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 Intercreditor Agreement are cumulative and not exclusive of any rights or remedies provided by law.

22.2 Waivers

A waiver or other consent given by any Creditor under this Intercreditor Agreement will be effective if given in writing and then only in the instance and for the purpose for which it is given.

23. GOVERNING LAW AND JURISDICTION

- (a) This Intercreditor Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by Scots law. Each party to this Intercreditor Agreement irrevocably submits to the jurisdiction of the courts of Scotland.
- (b) The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

IN WITNESS WHEREOF this Intercreditor Agreement has been executed as follows:

SUBSCRIBED for and on behalf of **BIDCO**)
(1874) LIMITED by a director in the presence)
of a witness on the 9 day of May 2014)
at Edinburgh:)
)
)
)

Signature

Name (block capitals)



ANN BUDGE
Director

Witness signature

Lucy Gannon

Witness name
(block capitals)

LUCY RAE GANNON

Witness address

53 BOTHWELL ST.

GLASGOW

SUBSCRIBED for and on behalf of)
FOUNDATION OF HEARTS LIMITED by)
a director in the presence of a witness on the)
9 day of May 2014 at Edinburgh:)
)
)
)

Signature

Name (block capitals)



IAN MURRAY
Director

Witness signature



Witness name
(block capitals)

CHRISTOPHER WALTON

Witness address

70 CASTLE TERRACE

EDINBURGH

SUBSCRIBED by HEART OF)
MIDLOTHIAN PLC (IN)
ADMINISTRATION) acting by one of the)
Administrators in the presence of a witness on)
the 9 day of May 2014 at Edinburgh:])

Signature

[Redacted Signature]

Administrator

Witness signature Lucy Gannon

Witness name LUCY RAE GANNON
(block capitals)

Witness address 53 BOTHWELL ST.
GLASGOW

SUBSCRIBED by one of the Administrators)
for and on behalf of all of them in the presence)
of a witness on the 9 day of May 2014)
at Edinburgh:

Signature

[Redacted Signature]

Administrator

Witness signature Lucy Gannon

Witness name LUCY RAE GANNON
(block capitals)

Witness address 53 BOTHWELL ST
GLASGOW

This is the schedule in two parts referred to in the foregoing Intercreditor Agreement among Bidco (1874) Limited, Foundation of Hearts Limited and Heart of Midlothian plc (in administration) dated May 2014

SCHEDULE

Part 1: Deed of Accession

DEED OF ACCESSION

BETWEEN

- (1) [◆] (the "Acceding Party"); and
- (2) [other parties].

BACKGROUND:

This Accession Deed is supplemental to the intercreditor agreement dated [◆] 2014 and made between, *inter alia*, Bidco (1874) Limited as Lender (1), [FoH] as Subordinated Creditor (2) and Heart of Midlothian plc (in administration) as Borrower (3) (the "Intercreditor Agreement").

IT IS AGREED:

1. Words and expressions defined in the Intercreditor Agreement shall have the same meaning in this Accession Deed.
2. The Acceding Party confirms it has been supplied with a copy of the Intercreditor Agreement and that [◆] (the "Transferor") has agreed to transfer to it the Subordinated Debt detailed in the schedule to this Deed.
3. The Acceding Party covenants with the Lender for the benefit of the Lender (including its respective assigns, transferees and successors in title) to be bound by all of the terms of the Intercreditor Agreement capable of applying to it to the intent and effect that the Acceding Party shall be a party to the Intercreditor Agreement as with effect from the date the Acceding Party is registered as a holder of any part of the Subordinated Debt.
4. This Accession Deed and any non-contractual obligations arising out of or in connection with it shall be governed by Scots law.

IN WITNESS WHEREOF this Accession Deed has been executed as follows:

Part 2: Security

Senior Security

1. Standard Security over the Property by the Borrower in favour of the Lender dated the date of the Borrowers execution of this Intercreditor Agreement.
2. Floating Charge by the Borrower in favour of the Lender dated the date of the Borrowers execution of this Intercreditor Agreement.

Subordinated Security

1. Standard Security over the Property by the Borrower in favour of the Subordinated Creditor dated the date of the Borrowers execution of this Intercreditor Agreement.
2. Floating Charge by the Borrower in favour of the Subordinated Creditor dated the date of the Borrowers execution of this Intercreditor Agreement.