

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

466

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**

2

SC039250

Name of company

\* Beaconhurst Grange Limited

\* insert full name  
of Company

Date of creation of the charge (note 1)

16 May 1988

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

## Bond and Floating Charge

**Names of the persons entitled to charge**

The Royal Bank of Scotland Plc

Short particulars of all the property charged

Undertaking and all property and assets present and future of the company including uncalled capital.

**Presenter's name address and  
reference (if any):**  
DLA Piper Scotland LLP  
Rutland Square  
EDINBURGH  
EH1 2AA

DX: ED271 Edinburgh

For official use (06/2005)  
Charges Section

1 Post room

SATURDAY



\*S5CS7P03

SCT

06/08/2016

#119

COMPANIES HOUSE

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

The Royal Bank of Scotland plc (company number SC090312) 36 St Andrew Square  
Edinburgh EH2 2YB (the "Bank");

Beaconhurst Grange Development Limited (company number SC527272) 52 Kenilworth  
Road, Bridge of Allan, Stirling FK9 4RR (the "Subordinated Creditor"); and

Beaconhurst Grange Limited (company number SC039250) 52 Kenilworth Road,  
Bridge of Allan, Stirling FK9 4RR (the "Borrower").

*Please do not  
write in  
this margin*

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

Date(s) of execution of the instrument of alteration

25 and 29 July 2016

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 Rider A

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 Rider B.

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*

N/A

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

Signed OLA P. Smith LLP Date 5/8/16

On behalf of ~~[company]~~ [chargee] †

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

### 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.
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

† delete as appropriate

**BEACONHURST GRANGE LIMITED**

(Registered Number SC039250)

**RIDER A - FORM 466 - (INTERCREDITOR AGREEMENT)**

**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**

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

- (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 Intercreditor Agreement; or
- (b) pay, prepay, redeem, purchase or otherwise discharge or release any of the Subordinated Debt other than in respect of a Permitted Interest Payment; or
- (c) amend any of the terms attaching to the Subordinated Debt or the Subordinated Security if such amendment would increase or accelerate any payment to be made thereon.

Where:-

**"Facilities Agreement"** means the facilities agreement dated on or around the date of the Intercreditor Agreement and made between the (1) Borrower and (2) the Bank;

**"Permitted Interest Payment"** means payment of interest on the Subordinated Debt in terms of clause 5 of the Subordinated Loan Agreement;

**"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 Bank including sums due under the Facilities Agreement;

**"Senior Discharge Date"** means the date on which all Senior Debt has been fully and irrevocably paid or discharged (or otherwise fully cash collateralised to the satisfaction of the Bank (acting reasonably)), whether or not as the result of an enforcement of security, and the Bank is under no obligation (either actual or contingent) under the Senior Documents;

**"Senior Documents"** means the Facilities Agreement and the Senior Security and any other document designated as a "Finance Document" by the Bank and the Borrower;

**"Senior Security"** means all fixed and floating charges and other guarantee or security documents which are from time to time entered into by the Borrower in favour of the Bank as security for, or guaranteeing, the Senior Debt;

"**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 under the Subordinated Loan Agreement;

"**Subordinated Loan Agreement**" means the loan agreement dated 15 and 19 June 2016 between (1) the Borrower and (2) the Subordinated Creditor; and

"**Subordinated Security**" means all fixed and floating charges and other security documents (including, without limitation, the bond and floating charge entered into by the Borrower in favour of the Subordinated Creditor dated on or around the date of the Intercreditor Agreement) which are from time to time entered into by the Borrower in favour of the Subordinated Creditor as security for, or guaranteeing, any or all of the Subordinated Debt.

Terms defined in the Form 466 shall have the same meaning when used in this Rider A.

**BEACONHURST GRANGE LIMITED**

**(Registered Number SC039250)**

**RIDER B - FORM 466 - (INTERCREDITOR AGREEMENT)**

**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 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 or registration or the execution of the Senior Security or Subordinated Security.

Terms defined in the Form 466 and in Rider A to the Form 466 shall have the same meaning when used in this Rider B.



**FILE COPY**

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

COMPANY NO. 39250

CHARGE NO. 2

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 29 JULY 2016 WERE DELIVERED  
PURSUANT TO SECTION 410 OF THE COMPANIES ACT 1985  
ON 6 AUGUST 2016

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 16  
MAY 1988

BY BEACONHURST GRANGE LIMITED

IN FAVOUR OF  
THE ROYAL BANK OF SCOTLAND PLC

FOR SECURING ALL SUMS DUE OR TO BECOME DUE

GIVEN AT COMPANIES HOUSE, EDINBURGH 8 AUGUST 2016



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES





DELIVERED ON 29 July 2016

(1) THE ROYAL BANK OF SCOTLAND PLC  
as Bank

(2) BEACONHURST GRANGE DEVELOPMENT LIMITED  
as Subordinated Creditor

- and -

(3) BEACONHURST GRANGE LIMITED  
as Borrower

## INTERCREDITOR AGREEMENT



I CERTIFY THAT, SAVE FOR MATERIAL REDACTED  
PURSUANT TO §859G OF THE COMPANIES ACT 2006,  
THIS IS A TRUE, COMPLETE AND CORRECT COPY  
OF THE ORIGINAL INSTRUMENT

DATE 2/8/16

SIGNED *DLA Piper Scotland LLP*  
DLA PIPER SCOTLAND LLP

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**BETWEEN**

- (1) **THE ROYAL BANK OF SCOTLAND PLC**, a company incorporated under the Companies Acts with number SC090312 and having its registered office at 36 St Andrew Square Edinburgh EH2 2YB (as "**Bank**");
- (2) **BEACONHURST GRANGE DEVELOPMENT LIMITED**, incorporated in Scotland with company number SC527275 and having their registered office at 52 Kenilworth Road, Bridge Of Allan, Stirling FK9 4RR (as "**Subordinated Creditor**"); and
- (3) **BEACONHURST GRANGE LIMITED**, a company incorporated in Scotland with company number SC039250 and having their registered office at 52 Kenilworth Road, Bridge Of Allan, Stirling FK9 4RR (as "**Borrower**").

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Intercreditor Agreement:

- (a) terms defined in, or construed for the purposes of, the Facilities Agreement have the same meanings when used in this Intercreditor Agreement (unless the same are otherwise defined in this Intercreditor Agreement); and

- (b) 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 Bank 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 the schedule, 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;

**"Facilities Agreement"** means the facilities agreement dated on or around the date of this Agreement and made between (1) the Borrower and (2) the Bank;

**"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 Bank); 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 Bank); 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 Bank); 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;

**"Permitted Interest Payment"** means payment of interest on the Subordinated Debt in terms of clause 5 of the Subordinated Loan Agreement;

**"Property"** means ALL and WHOLE that lot or piece of ground consisting of Six acres and one half acre Imperial Standard Measure or thereby lying in the town of Bridge of Allan, Parish of Logie and County of Stirling being the lot or piece of ground delineated on the plan annexed and signed as relative to and being the subjects particularly described in and disposed by the Feu Charter granted by the Right Honourable George Ralphe Campbell of Lochland, Baron Abercrombie of Aboukir and Tullibody, Heir of Entail in possession of the Entailed Estates of Airthrey, Brucefield and others with consents therein mentioned in favour of John Miller dated Fourteenth and Twentieth August and recorded in the new General Register of Sasines applicable to the County of Stirling on Eighth September all days and months in the year Eighteen hundred and Sixty Eight under exception of (one) that area of ground extending to 1.097 acres more particularly described in and disposed by the Subordinated Creditor in favour of Hugh Kennedy Symington recorded GRS Stirling 19 January 1972 (Two) that area of ground extending to 28.88 square yards more particularly described in and disposed by the Subordinated Creditor in favour of South of Scotland Electricity Board recorded GRS Stirling 5 June 1978 (Three) that area of ground extending to 28.125 square metres acres more particularly described in and disposed by the Subordinated Creditor in favour of Cala Management Limited recorded GRS Stirling 30 November 2001 (Four) that area of ground extending to 25 square metres acres being the subjects registered under the Land Register of Scotland under Title Number STG54061 and (Five) that area of ground at Kenilworth Road, Bridge of Allan being the subjects registered under the Land Register of Scotland under Title Number STG54061;

**"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 Bank including sums due under the Facilities Agreement;

**"Senior Documents"** means the Facilities Agreement and the Senior Security and any other document designated as a "Finance Document" by the Bank and the Borrower;

**"Senior Discharge Date"** means the date on which all Senior Debt has been fully and irrevocably paid or discharged (or otherwise fully cash collateralised to the satisfaction of the Bank (acting reasonably)), whether or not as the result of an enforcement of security, and the Bank is under no obligation (either actual or contingent) under the Senior Documents;

**"Senior Security"** means all fixed and floating charges and other guarantee or security documents which are from time to time entered into by the Borrower in favour of the Bank as security for, or guaranteeing, the Senior Debt;

**"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 under the Subordinated Loan Agreement;

**"Subordinated Document"** means each of the Subordinated Loan Agreement and the Subordinated Security;

**"Subordinated Loan Agreement"** means the loan agreement dated 15 and 19 June 2016 and made between the (1) Borrower and (2) the Subordinated Creditor; and

**"Subordinated Security"** means all fixed and floating charges and other security documents (including, without limitation, the bond and floating charge entered into by the Borrower in favour of the Subordinated Creditor dated on or around the date hereof) which are from time entered into by the Borrower in favour of the Subordinated Creditor as security for, or guaranteeing, 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 16 (*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 the Facilities Agreement or 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;
  - (v) the singular includes the plural and vice versa; and
  - (vi) a reference to **writing** or **written** includes email.
- (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.

### **1.3 Conflict**

In the event of any conflict or inconsistency arising between any of the provisions of this Intercreditor Agreement and all or any of the provisions of the Senior Documents and/or the Subordinated Documents, the provisions of this Intercreditor Agreement shall prevail.

## **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 it including pursuant to the terms of the Security Documents; 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 beneficiaries 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. BORROWER'S UNDERTAKINGS**

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

- (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 other than in respect of a Permitted Interest Payment; or
- (c) amend any of the terms attaching to the Subordinated Debt or the Subordinated Security if such amendment would increase or accelerate any payment to be made thereon.

### **5. UNDERTAKINGS OF THE SUBORDINATED CREDITOR**

#### **5.1 Restrictions on enforcement**

Prior to the Senior Discharge Date, except as permitted by clause 6 (*Restrictions on enforcement*) neither the Subordinated Creditor nor any agent or trustee for it will, without the prior written consent of the Bank:

- (a) take or receive from the Borrower, by cash receipt, set-off or otherwise, the whole or any part of the Subordinated Debt (other than in respect of a Permitted Interest Payment); and/or
- (b) take any Enforcement Action in relation to any Subordinated Debt.

#### **5.2 No Security or amendment**

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

- (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 increase or accelerate any payment to be made thereon.

## **6. RESTRICTIONS ON ENFORCEMENT**

### **No action by the Subordinated Creditor**

The Subordinated Creditor shall not, until the Senior Discharge Date, be entitled to take any action envisaged by clause 5.1 (*Restrictions on enforcement*) unless the Bank has enforced the Security constituted by the Senior Security.

## **7. SECURITY RANKING**

### **7.1 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 or registration or the execution of the Senior Security or Subordinated Security.

### **7.2 Release**

If the Bank agrees to release the assets of the Borrower from the Senior Security, the Subordinated Creditor 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.

### **7.3 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 Bank.

### **7.4 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 it is at such time in compliance with the corresponding or similar provisions of the Senior Security.

### **7.5 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 Bank or the Subordinated Creditor or by the existence at any time of a credit balance on any current or other account of the Bank or the Subordinated Creditor.

## **8. TURNOVER**

### **8.1 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 without the prior written consent of the Bank (other than a Permitted Interest Payment); or

- (b) the Borrower 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 without the prior written consent of the Bank,

the recipient thereof will hold the same in trust for, and pay and distribute upon demand to, the Bank 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.

## **8.2 Discharge by set-off**

If, prior to the Senior Discharge Date, any Subordinated Debt is discharged by set-off or combination of accounts without the prior written consent of the Bank, the Subordinated Creditor will immediately pay to the Bank 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.

## **9. SUBORDINATION ON INSOLVENCY**

### **9.1 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 it in respect of the Senior Debt.

### **9.2 Rights of the Bank**

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

- (a) the Bank is irrevocably authorised by the Subordinated Creditor on their behalf to:
  - (i) demand, claim, enforce and prove for the Subordinated Debt due from the Borrower; and
  - (ii) file claims and proofs, give receipts and take all such proceedings and do all such things as the Bank 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 Bank for application in accordance with clause 10 (*Application of recoveries*). The Subordinated Creditor will give all such notices and do all such things as the Bank may reasonably request to give effect to this provision.

### **9.3 Action by the Bank**

- (a) Following the occurrence of an Insolvency Event in relation to the Borrower, the Bank 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 Bank to effect such rights.

### **9.4 Directions by the Bank**

If the Bank is not, for any reason, entitled to take any such action or exercise any such powers in accordance with clauses 9.2 (*Rights of the Bank*) or 9.3 (*Action by the Bank*), or, at its discretion, elects not to do so, the Subordinated Creditor undertakes to take any action and exercise any powers which the Bank reasonably requires from time to time.

## **10. 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, all recoveries by the Bank pursuant to any guarantee for the Senior Debt and all amounts paid to the Bank 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 Bank 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 Bank in connection with such enforcement;
- (c) thirdly, in payment to the Bank 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.

## **11. CONSENTS**

### **11.1 Waivers**

- (a) If, prior to the Senior Discharge Date, the Bank has given any consent, approval or waiver with or in connection with the Facilities Agreement or the Senior Security, the

Subordinated Creditor shall be deemed to have done the same and to have made an equivalent or equal amendment to the Subordinated Loan Agreement or the Subordinated Security, as the case may be.

- (b) The Subordinated Creditor shall do such things and execute all such documents as the Bank may reasonably require to give effect to clause 11(a).

#### **11.2 Consent**

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

#### **11.3 Further advances**

- (a) The Bank

It is agreed and acknowledged by all the parties to this Intercreditor Agreement that the Bank may make further monies available which shall, if so advanced, constitute Senior Debt; and

- (b) The Subordinated Creditor

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

### **12. PROTECTION OF SUBORDINATION**

#### **12.1 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, or the existence at any time of a credit balance on any current or other account held with or for the benefit of the Bank.

#### **12.2 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.

### **12.3 Immediate recourse**

The Subordinated Creditor waives any right it may have of first requiring the Bank 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 Bank may refrain from applying or enforcing any money, rights or security as it deems appropriate.

## **13. 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.

## **14. EFFECT OF THIS INTERCREDITOR AGREEMENT**

### **14.1 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.

### **14.2 Protection of purchasers**

No purchaser dealing with the Bank 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 Bank or any such Receiver is acting in accordance with the provisions of this Intercreditor Agreement.

### **14.3 Effect of Intercreditor Agreement**

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

**15. 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 Bank and shall be paid to the Bank for application towards the Senior Debt.

**16. CHANGES TO THE PARTIES**

**16.1 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.

**16.2 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.

**16.3 Assignment by Creditors**

Subject to the applicable provisions of the Senior Documents and the Subordinated Documents, 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.

**16.4 Transfer of Subordinated Debt**

If the Subordinated Creditor transfers its rights title and interest in and 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.

**17. COSTS AND EXPENSES**

**17.1 Transaction expenses**

The Borrower shall, promptly on demand, pay the Bank the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Bank, the Subordinated Creditor and any Receiver in connection with the negotiation, preparation, printing, execution and perfection of:

- (a) this Intercreditor Agreement and any other documents referred to in this Intercreditor Agreement, the Senior Security and the Subordinated Security; and
- (b) any other Senior Documents and Subordinated Documents executed after the date of this Agreement.

**17.2 Stamp taxes**

The Borrower shall pay and, within three Business Days of demand, indemnify the Bank against any cost, loss or liability the Bank incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

### **17.3 Enforcement and preservation costs**

The Borrower shall, within three Business Days of demand, pay to the Bank and the Subordinated Creditor 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 under any Finance Document and the Senior Security or any Subordinated Document and the Subordinated Security, and any proceedings instituted by or against the Bank as a consequence of taking or holding the Senior Security or enforcing these rights and any proceedings instituted by or against the Subordinated Creditor as a consequence of taking or holding the Subordinated Security or enforcing these rights.

## **18. INDEMNITIES**

### **18.1 Borrower's indemnity**

The Borrower shall promptly indemnify the Bank, the Subordinated Creditor and every Receiver against any cost, loss or liability (together with any applicable VAT) incurred by any of them:

- (a) in relation to or as a result of:
  - (i) any failure by the Borrower to comply with obligations under clause 17 (*Costs and Expenses*);
  - (ii) the taking, holding, protection or enforcement of the Senior Security or the Subordinated Security;
  - (iii) the exercise of any of the rights, powers, discretions and remedies vested in the Bank and each Receiver by the Senior Documents or by law; or
  - (iv) any default by the Borrower in the performance of any of the obligations expressed to be assumed by it in the Senior Documents; or
- (b) which otherwise relates to any of the Charged Property or the performance of the terms of this Intercreditor Agreement (otherwise than as a result of its gross negligence or wilful misconduct).

### **18.2 Priority of indemnity**

The Bank and every Receiver may indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in clause 18.1 (*Borrower's indemnity*) and shall have a lien on the Security Documents and the proceeds of the enforcement of the Security Documents for all moneys payable to it.

## **19. INFORMATION**

### **19.1 Disclosure**

The Borrower authorises each Creditor to disclose to each other Creditor all information relating to it coming into its possession in connection with any Finance Document or Subordinated Document.

## **19.2 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 under any Finance Document or Subordinated Document.

## **20. POWER OF ATTORNEY**

The Subordinated Creditor irrevocably appoints by way of security the Bank 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 Bank 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.

## **21. NOTICES**

### **21.1 Communications in writing**

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

### **21.2 Delivery**

Any notice to any person hereunder (other than the Bank) 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;
- (c) if sent by facsimile transmission, on the Business Day on which transmitted; and
- (d) if sent by email, at the time of transmission of the email.

### **21.3 Notice to the Bank**

Any notice to the Bank under this Intercreditor Agreement shall be deemed to have been given only on actual receipt by the Bank.

## **22. 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.

## **23. REMEDIES AND WAIVERS**

### **23.1 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.

### **23.2 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.

## **24. COUNTERPARTS AND DELIVERY**

24.1 This Intercreditor Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Intercreditor Agreement.

24.2 Where executed in counterparts:

- (a) this Agreement shall not take effect until all of the counterparts have been delivered in accordance with the terms of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (the "Counterparts Act");
- (b) delivery will take place when the date of delivery is agreed among the parties after execution of this Agreement as evidenced by the date inserted on page 1 of this Agreement; and
- (c) the parties agree that the provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Agreement.



24.3 Where not executed in counterparts, this Agreement shall become effective on the date agreed among the parties as evidenced by the date inserted on page 1 of this Agreement.

**25. GOVERNING LAW AND JURISDICTION**

25.1 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 Scottish courts.

25.2 The Scottish courts 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** these presents consisting of this and the preceding 14 pages together with the schedule annexed hereto are executed as follows:

SUBSCRIBED for and on behalf of THE )  
ROYAL BANK OF SCOTLAND PLC by an )  
authorised signatory in the presence of a )  
witness on the 29 day )  
of 10/11 2016 )  
at EDINBURGH )

Signature

Name (block capitals)

SARAH R S ADE  
Authorised Signatory

Witness signature

Witness name  
(block capitals)

HELEN JOSEPHINE DUCAT

Witness address

24 ST ANDREWS SQUARE

EDINBURGH

EH2 1AF

**SUBORDINATED CREDITOR**

SUBSCRIBED for and on behalf of )  
BEACONHURST GRANGE )  
DEVELOPMENT LIMITED by a director in )  
the presence of a witness on the 25<sup>th</sup> day )  
of July 2016 )  
at STERLING. )

Signature

Name (block capitals)

Director

Witness signature

Witness name  
(block capitals)

Witness address

**THE BORROWER**

SUBSCRIBED for and on behalf of )  
BEACONHURST GRANGE LIMITED by )  
a director in the presence of a witness on the )  
25<sup>th</sup> day of July 2016 )  
at STERLING )

Signature

Name (block capitals)

Director

Witness signature

Witness name  
(block capitals)

Witness address

This is the schedule referred to in the foregoing Intercreditor Agreement between The Royal Bank of Scotland plc, Beaconhurst Grange Development Limited and Beaconhurst Grange Limited dated 29 July 2016

## SCHEDULE

### DEED OF ACCESSION

THIS DEED is made on [♦] 20[♦]

#### BETWEEN

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

#### BACKGROUND:

This Deed is supplemental to the intercreditor agreement dated [♦] 2016 and made between, *inter alia* The Royal Bank of Scotland plc, as Bank (1), the Subordinated Creditor as defined in it and (2) Beaconhurst Grange Limited as Borrower (the "Intercreditor Agreement").

#### IT IS AGREED:

1. Words and expressions defined in the Intercreditor Agreement shall have the same meaning in this 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 Bank for the benefit of the Bank (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 Deed shall be treated as having been executed and delivered as a deed only upon being dated.
5. This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.
6. In accordance with clause 16 (*Changes to the parties*) of the Intercreditor Agreement, each of the parties to this Deed, other than the Acceding Party, acknowledges that the Bank is authorised to execute this Deed as a deed on its behalf.

7. This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by Scots law.

IN WITNESS WHEREOF these presents consisting are executed as follows:

SUBSCRIBED for and on behalf of )  
[◆NAME OF COMPANY] by [a )  
director][the secretary][an authorised )  
signatory] in the presence of a witness on the )  
[◆DATE] day of [◆MONTH][◆YEAR] at )  
[◆PLACE OF SUBSCRIPTION]: )

Signature .....

Name (block capitals) .....

[Director][Secretary]  
[Authorised Signatory]

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....

.....

.....

SUBSCRIBED for and on behalf of THE )  
ROYAL BANK OF SCOTLAND PLC by an )  
authorised signatory in the presence of a )  
witness on the [◆DATE] day of )  
[◆MONTH][◆YEAR] at [◆PLACE OF )  
SUBSCRIPTION]: )

Signature .....

Name (block capitals) .....

Authorised Signatory

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....

.....

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