



**Registration of a Charge**

Company Name: **ANDREW KAY & COMPANY (CURLING STONES) LIMITED**

Company Number: **SC033266**



Received for filing in Electronic Format on the: **27/04/2023**

XC2CF40H

**Details of Charge**

Date of creation: **21/04/2023**

Charge code: **SC03 3266 0007**

Persons entitled: **WORLD CURLING FEDERATION (AS CHARGEES)**

Brief description:

**Contains floating charge(s) .**

**Contains negative pledge.**

**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **ALAN CASSELS**



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

Company number: 33266

Charge code: SC03 3266 0007

The Registrar of Companies for Scotland hereby certifies that a charge dated 21st April 2023 and created by ANDREW KAY & COMPANY (CURLING STONES) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 27th April 2023 .

Given at Companies House, Edinburgh on 2nd May 2023

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

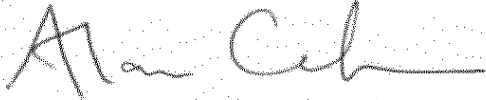


**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

For and on behalf of Burness Paull LLP, I certify this is a true copy of the original document, save for the information redacted pursuant to section 859G of the Companies Act 2006



**ANDREW KAY & COMPANY (CURLING STONES) LIMITED**

as Chargor

in favour of

**WORLD CURLING FEDERATION**

as Chargee

**BOND AND FLOATING CHARGE**

## TABLE OF CONTENTS

Clause		Page No.
1	DEFINITIONS AND INTERPRETATION	1
2	BOND	3
3	FLOATING CHARGE	3
4	NEGATIVE PLEDGE AND RANKING OF FLOATING CHARGE	3
5	UNDERTAKINGS	3
6	ENFORCEMENT	4
7	OFFICE OF RECEIVER	6
8	APPLICATION OF ENFORCEMENT PROCEEDS	6
9	PROTECTION OF SECURITY	7
10	FURTHER ASSURANCE	8
11	MANDATE AND ATTORNEY	9
12	NOTICES	9
13	GOVERNING LAW AND JURISDICTION	9
14	CONSENT TO REGISTRATION	10

## BOND AND FLOATING CHARGE

by

- (1) **ANDREW KAY & COMPANY (CURLING STONES) LIMITED**, a company incorporated under the Companies Acts with registered number SC033266 and having its registered office at 2 Glenfoot Gardens, Dundonald, Kilmarnock, KA2 9JQ (the “**Chargor**”)

in favour of

- (2) **WORLD CURLING FEDERATION**, an organisation incorporated under the laws of Switzerland, with its registered address at Altdorf/Uri, Switzerland, and having its head office at 3 Atholl Crescent, Perth, PH1 5NG (the “**Chargee**”)

### CONSIDERING THAT:

- (A) the Chargee and the Chargor have entered into the Services Agreement (as defined below); and
- (B) one of the conditions to the entry by the Chargee into the Services Agreement is the grant by the Chargor of this bond and floating charge in security of the Chargor's payment obligations under the Services Agreement.

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

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 In this Instrument:

“**Administrator**” means any administrator appointed pursuant to this Instrument;

“**Enforcement Event**” means:

- (a) any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Chargor;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of the Chargor;
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Chargor or any of its assets; or

- (iv) enforcement of any security over the Secured Assets, or any analogous procedure or step is taken in any jurisdiction;
- (b) a moratorium is declared in respect of any indebtedness of the Chargor;
- (c) the Chargor rescinds or purports to rescind or repudiates or purports to repudiate the Services Agreement or this Instrument;
- (d) default by the Chargor on any payment obligations under the Services Agreement, unless that payment default is either:
  - (i) remedied within 90 days following the due date for payment; or
  - (ii) waived in writing by the Chargee;

**“Receiver”** means any receiver or administrative receiver appointed in respect of the Secured Assets (whether pursuant to this Instrument, pursuant to any statute, by a court or otherwise) and includes joint receivers;

**“Secured Assets”** means all blue hone granite obtained by or on behalf of the Chargor, from Ailsa Craig in the 2021 harvest; and

**“Secured Liabilities”** means the payment obligations of the Chargor under the Services Agreement.

## 1.2 Construction

- 1.2.1 Capitalised terms defined in the Services Agreement have, unless expressly defined in this Instrument, the same meaning in this Instrument.
- 1.2.2 A reference in this Instrument to any document includes (without prejudice to any prohibition on amendments) all amendments however fundamental to that document.
- 1.2.3 A reference to any asset, unless the context otherwise requires, includes any present and future asset.
- 1.2.4 If the Chargee considers that an amount paid to it or a Receiver is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Instrument.
- 1.2.5 Unless the context otherwise requires, a reference to a Secured Asset includes the proceeds of sale of that Secured Asset.

- 1.2.6 For cross-references in this Instrument, where a clause number is referred to, along with the clause heading and there is an inconsistency between the clause number and the heading, the clause heading shall prevail.

**1.3 Third party rights**

This Instrument does not confer on any person who is not a Party (other than any Administrator, Receiver or any attorney appointed in terms of this Instrument) any right to enforce or otherwise invoke this Instrument or any part of it under the Contract (Third Party Rights) (Scotland) Act 2017.

**2 BOND**

- 2.1 The Chargor undertakes to the Chargee that it will pay or discharge to the Chargee all the Secured Liabilities when the Secured Liabilities become due for payment or discharge under the terms of the Services Agreement (whether by acceleration or otherwise).

- 2.2 Paragraph 14 of Schedule B1 to the Insolvency Act (incorporated by Schedule 16 to the Enterprise Act 2002) shall apply to this Instrument which is accordingly a qualifying floating charge.

**3 FLOATING CHARGE**

The Chargor as security for the payment and discharge of all the Secured Liabilities hereby grants in favour of the Chargee a floating charge over the Secured Assets.

**4 NEGATIVE PLEDGE AND RANKING OF FLOATING CHARGE**

- 4.1 The Chargor agrees that it shall be prohibited from granting or creating subsequent to the date of execution of this Instrument any fixed security or any other floating charge over the Secured Assets or any part or parts of them, other than in favour of the Chargee or in favour of another person and with the prior written consent of the Chargee.

- 4.2 Any fixed security granted by the Chargor in favour of the Chargee (whether before or after the date of execution of this Instrument) shall rank in priority to this Security.

- 4.3 In the event that the Chargor grants or creates any fixed security or floating charge in breach of the prohibition in Clause 4.1 or with the consent of the Chargee under Clause 4.1 but with no written agreement of the Chargee as to the ranking of them, this Instrument shall rank in priority to that fixed security or floating charge.

**5 UNDERTAKINGS**

The Chargor will notify the Chargee promptly in the event of any creditor exercising diligence against it or any of the Secured Assets wherever situated or taking any steps which might be expected to lead thereto.

## 6 ENFORCEMENT

6.1 In addition to any statutory provisions concerning enforceability or attachment, this Security shall become enforceable upon and the Chargee's powers of appointment and other rights and powers shall become exercisable at any time after:

- 6.1.1 the occurrence of an Enforcement Event; or
- 6.1.2 the receipt of any request from the board of directors of the Chargor; or
- 6.1.3 the taking (or purported taking) by any person of any step towards the winding up or dissolution of the Chargor or towards the appointment of any administrator, trustee, administrative receiver, receiver, liquidator or the like to the Chargor or the whole or any part of its property,

and the Chargee may then (or as soon thereafter as permitted by law) by instrument in writing appoint any person or persons (if more than one with power to act both jointly and separately) to be an administrator of the Chargor or (subject, if applicable, to Section 72A of the Insolvency Act 1986) a receiver of the Secured Assets. In addition, and without prejudice to the foregoing provisions of this Clause 6.1, in the event that any person appointed to be a Receiver shall be removed by a court or shall otherwise cease to act as such, then the Chargee shall be entitled so to appoint another person as Receiver in his place.

6.2 An Administrator shall have and be entitled to exercise, in addition to and without limiting all the powers of an administrator under the Insolvency Act 1986, all the powers of a receiver under Schedule 2 of the Insolvency Act 1986 and a Receiver shall have and be entitled to exercise, in addition to and without limiting all the powers of a receiver under Schedule 2 of the Insolvency Act 1986, all the powers of an administrative receiver set out in Schedule 1 of the Insolvency Act 1986 together with (in either case) the power to exercise any powers or rights incidental to ownership of the Secured Assets, including (as regards shares and other securities) any voting rights or rights of enforcing the same together with power to:

- 6.2.1 implement and exercise all or any of the Chargor's powers and/or rights and/or obligations under any contract or other agreement forming a part of the Secured Assets;
- 6.2.2 make any arrangement or compromise which he shall think expedient of or in respect of any claim by or against the Chargor;
- 6.2.3 promote or procure the formation of any new company or corporation;
- 6.2.4 subscribe for or acquire for cash or otherwise any share capital of such new company or corporation in the name of the Chargor and on its behalf and/or in the name(s) of a nominee(s) or trustee(s) for it;



- 6.2.5 sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise the Secured Assets or any part thereof to any such new company or corporation and accept as consideration or part of the consideration therefor in the name of the Chargor and on its behalf and/or in the name(s) of any nominee(s) or trustee(s) for it, any shares or further shares in any such company or corporation or allow the payment of the whole or any part of such consideration to remain deferred or outstanding by way of loan or debt or credit;
- 6.2.6 sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise on behalf of the Chargor any such shares or deferred consideration or part thereof or any rights or benefits attaching thereto;
- 6.2.7 convene an extraordinary general meeting of the Chargor;
- 6.2.8 acquire any property on behalf of the Chargor;
- 6.2.9 do all such other acts and things as he may consider necessary or desirable for protecting or realising the Secured Assets, or any part thereof, or incidental or conducive to any of the matters, powers or authorities conferred on a Receiver under or by virtue of or pursuant to this Instrument and exercise in relation to the Secured Assets, or any part thereof, all such powers and authorities and do all such things as he would be capable of exercising or doing if he were the absolute beneficial owner of the same and use the name of the Chargor for all and any of the purposes aforesaid,

subject always to the rights of the Chargee as holder of this Security.

- 6.3 To the extent that any of the Secured Assets constitutes "financial collateral" and this Instrument and the obligations of the Chargor hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the "**Regulations**") the Chargee shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Liabilities and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of such financial collateral so appropriated shall be (a) in the case of cash, the amount standing to the credit of each of the relevant accounts, together with any accrued but unposted interest, at the time the right of appropriation is exercised; and (b) in the case of any shares, stocks, debentures, bonds or other securities or investments, the market price of such shares, stocks, debentures, bonds or other securities or investments determined by the Chargee by reference to a public index or by such other process as the Chargee may select, including independent valuation. In each case, the parties agree that the method of valuation provided for in this Instrument shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.
- 6.4 The Security Agent may not appoint a Receiver solely as a result of the obtaining of a moratorium (or as a result of anything done with a view to obtaining a moratorium) under Part

A1 of the Insolvency Act 1986 other than in respect of a floating charge referred to in section A52(4) of Part A1 of the Insolvency Act 1986.

## **7 OFFICE OF RECEIVER**

7.1 Any Receiver appointed under Clause 6 (Enforcement) shall be the agent of the Chargor for all purposes and (subject to the provisions of the Insolvency Act 1986) the Chargor alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him and for his remuneration and his costs, charges and expenses and the Chargee shall not incur any liability for those (either to the Chargor or any other person) by reason of the Chargee making his appointment as such Receiver or for any other reason whatsoever.

7.2 Any Receiver appointed under Clause 6 (Enforcement) shall be entitled to remuneration for his services and the services of his firm appropriate to the responsibilities involved. Subject to Section 58 of the Insolvency Act 1986, the remuneration of the Receiver may be fixed by the Chargee (and may be or include a commission calculated by reference to the gross amount of all money received or otherwise and may include remuneration in connection with claims, actions or proceedings made or brought against the Receiver by the Chargor or any other person or the performance or discharge of any obligation imposed upon him by statute or otherwise) but such remuneration shall be payable by the Chargor alone and the amount of such remuneration shall form part of the Secured Liabilities and accordingly be secured on the Secured Assets under the floating charge constituted by this Instrument.

## **8 APPLICATION OF ENFORCEMENT PROCEEDS**

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

8.1.1 first, in or towards payment of all costs, charges and expenses of or incidental to the appointment of the Receiver and the exercise of all or any of his powers, including his remuneration and all outgoings paid by and liabilities incurred by him as a result of such exercise;

8.1.2 secondly, in or towards satisfaction of the Secured Liabilities in such order as the Chargee shall in its absolute discretion decide; and

8.1.3 thirdly, any surplus shall be paid to the Chargor or any other person entitled thereto.

8.2 Nothing contained in this Instrument shall limit the right of the Receiver or the Chargee (and the Chargor acknowledges that the Receiver and the Chargee are so entitled) if and for so long as the Receiver or the Chargee, in their discretion, shall consider it appropriate, to place all or any monies arising from the enforcement of the security interest hereby granted or any security created pursuant to this Instrument into a suspense account, without any obligation

to apply the same or any part thereof in or towards the discharge of any of the Secured Liabilities.

## **9 PROTECTION OF SECURITY**

9.1 The security created by and any security interest constituted pursuant to this Instrument shall be a continuing security notwithstanding any settlement of account or other matter or thing whatsoever and in particular (but without prejudice to the generality of the foregoing) shall not be considered satisfied by an intermediate repayment or satisfaction of part only of the Secured Liabilities and shall continue in full force and effect until total and irrevocable satisfaction of all the Secured Liabilities.

9.2 The security created by, and any security interest constituted pursuant to, this Instrument shall be in addition to and shall not in any way prejudice or be prejudiced by any collateral or other security, right or remedy which the Chargee may now or at any time hereafter hold for all or any part of the Secured Liabilities.

9.3 No failure on the part of the Chargee to exercise and no delay on its part in exercising any right, remedy, power or privilege under or pursuant to this Instrument or any other document relating to or securing all or any part of the Secured Liabilities will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Instrument and any such other document are cumulative and not exclusive of any right or remedies provided by law.

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

9.5 If the Chargee receives or is deemed to be affected by notice, whether actual or constructive, of any subsequent security or other interest affecting any part of the Secured Assets and/or the proceeds of sale(s) thereof, the Chargee may open a new account or accounts in the name of the Chargor. If the Chargee does not open a new account or accounts, it shall nevertheless be treated as if it had done so at the time when it receives or was deemed to have received notice and as from that time, all payments made to the Chargee shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount for which this Instrument is security.

9.6 Neither the security created by, nor any security interest constituted pursuant to, this Instrument nor the rights, powers, discretions and remedies conferred upon the Chargee by this Instrument or by law shall be discharged, impaired or otherwise affected by reason of:

9.6.1 any present or future security, guarantee, indemnity or other right or remedy held by or available to the Chargee being or becoming wholly or in part void, voidable

or unenforceable on any ground whatsoever or by the Chargee from time to time exchanging, varying, realising, releasing or failing to perfect or enforce any of the same; or

9.6.2 the Chargee compounding with, discharging or releasing or varying the liability of, or granting any time, indulgence or concession to, the Chargor or any other person or renewing, determining, varying or increasing any accommodation or transaction in any manner whatsoever or concurring in accepting or varying any compromise, arrangement or settlement or omitting to claim or enforce payment from the Chargor or any other person; or

9.6.3 any act or omission which would not have discharged or affected the liability of the Chargor had it been a principal debtor instead of cautioner or by anything done or omitted which but for this provision might operate to exonerate the Chargor from the Secured Liabilities; or

9.6.4 any legal limitation, disability, incapacity or other similar circumstance relating to the Chargor.

9.7 The Chargee shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by or pursuant to this Instrument or by law, to:

9.7.1 take any action or obtain judgement or decree in any court against the Chargor; or

9.7.2 make or file any claim to rank in a winding-up or liquidation of the Chargor; or

9.7.3 enforce or seek to enforce any other security taken, or exercise any right or plea available to the Chargee, in respect of any of the Chargor's obligations under the Facility Agreement.

9.8 For the avoidance of doubt, any Secured Assets which are sold by the Chargor in line with the normal activities of its business shall be sold free and clear of any security constituted by this Instrument, without any further reference to, or any further consent required from, the Chargee.

## 10 FURTHER ASSURANCE

The Chargor shall execute and do all such assurances, acts and things as the Chargee may require for perfecting or protecting the security created by or pursuant to this Instrument over the Secured Assets or for facilitating the realisation of such assets and the exercise of all powers, authorities and discretions conferred on the Chargee or on any Receiver by this Instrument.

## 11 MANDATE AND ATTORNEY

- 11.1 The Chargor hereby irrevocably appoints the Chargee and any Receiver to be its mandatary and attorney for it and on its behalf and in its name or otherwise and as such to create or constitute any deed, or to make any alteration or addition or deletion in or to, any documents which the Chargee or the Receiver may require for perfecting or protecting the title of the Chargee or the Receiver to the Secured Assets or for vesting any of the Secured Assets in the Chargee or the Receiver or its nominees or any purchaser and to re-deliver the same thereafter and otherwise generally to sign, seal and deliver and perfect any fixed security, floating charge, transfer, disposition, assignation, security and/or assurance or any writing, assurance, document or act which may be required or may be deemed proper by the Chargee or the Receiver on or in connection with any sale, lease, disposition, realisation, getting in or other enforcement by the Chargee or the Receiver of all or any of the Secured Assets.
- 11.2 The Chargor hereby ratifies and confirms and agrees to ratify and confirm whatever any such mandatary or attorney shall do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this Clause 11 (Mandate and Attorney).

## 12 NOTICES

All notices, requests, demands and other communications to be given under this Instrument shall be in writing and shall be to the following addresses:

### Chargor

Address:

[REDACTED]

Attention: Jim English

### Chargee

Address:

[REDACTED]

Attention: Colin Grahamslaw

## 13 GOVERNING LAW AND JURISDICTION

This Instrument shall be governed by, and construed in all respects in accordance with, the law of Scotland and, for the benefit of the Chargee, the Chargor irrevocably submits to the non-exclusive jurisdiction of the Scottish courts but without prejudice to the ability of the Chargee to proceed against the Chargor in any other appropriate jurisdiction.

**CONSENT TO REGISTRATION**

A certificate signed by any official, manager or equivalent account officer of the Chargee shall, in the absence of manifest error, conclusively determine the Secured Liabilities at any relevant time and shall constitute a balance and charge against the Chargor, and no suspension of a charge or of a threatened charge for payment of the balance so constituted shall pass nor any sist of execution thereon be granted except on consignment. The Chargor hereby consents to the registration of this Instrument and of any such certificate for preservation and execution:

IN WITNESS WHEREOF these presents consisting of this and the preceding 9 pages are executed as follows:

**THE CHARGOR**

SUBSCRIBED for and on behalf of the said **ANDREW KAY & COMPANY (CURLING STONES) LIMITED**

at GLASGOW

on 21st APRIL 2023

by

PAUL RICHMOND DAVIDSON

Print Full name

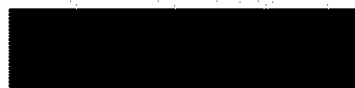


Director

before this witness:

ALAN CASSELS

Print Full Name



Witness

Address:

