



**Registration of a Charge**

Company name: **BORTHWICK MARBLE & GRANITE LTD**

Company number: **05445084**



X6IG322W

Received for Electronic Filing: **03/11/2017**

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**Details of Charge**

Date of creation: **27/10/2017**

Charge code: **0544 5084 0005**

Persons entitled: **ASHLEY BUSINESS FINANCE LIMITED**

Brief description: **BY WAY OF A LEGAL CHARGE, THE LEASEHOLD PROPERTY KNOWN AS UNIT 15 PROSPECT WAY, PARK VIEW INDUSTRIAL ESTATE, HARTLEPOOL, TS25 1UD REGISTERED WITH HM LAND REGISTRY UNDER TITLE UMBER CE127045**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

**JAYNE MORGAN OF ARCHERS LAW LLP**



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

Company number: 5445084

Charge code: 0544 5084 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 27th October 2017 and created by BORTHWICK MARBLE & GRANITE LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd November 2017 .

Given at Companies House, Cardiff on 7th November 2017

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**

**DATED**

27<sup>th</sup> October 2017

**LEGAL MORTGAGE**

Between

**ASHLEY BUSINESS FINANCE LIMITED**

and

**BORTHWICK MARBLE & GRANITE LTD**

## CONTENTS

1.COVENANT TO PAY .....	
2.PROPERTY CHARGED .....	
3.MORTGAGOR'S CHATIELS .....	
4.OBLIGATIONS TO REPAIR AND INSURE ETC .....	
5.MORTGAGEE'S RIGHTS .....	
6.THE LAND REGISTRY .....	
7.REDEMPTION OF PRIOR CHARGES ETC .....	
8.APPOINTMENT AND REMOVAL OF A RECEIVER .....	
9.POWER AND CAPACITY OF A RECEIVER .....	
10.JURISDICTION .....	
11.JOINT AND SEVERALLIABILITY .....	
12.INSOLVENCY ACT 1986 ETC .....	
13.PURCHASER NOT BOUND TO ENQUIRE .....	
14.INTERPRETATION .....	
15.NOTICES .....	
16.DELIVERY .....	
17.DEFINITIONS .....	
18. CONSUMER CREDIT ACT .....	
THE FIRST SCHEDULE .....	
(Details of the Property legally mortgaged) .....	

THIS LEGAL MORTGAGE is made on the 27<sup>th</sup> day of October 2017

**BETWEEN:**

**PARTIES**

(1) **BORTHWICH MARBLE & GRANITE LTD** incorporated and registered in England and Wales with company number 05445084 whose registered office is at Unit 15 Prospect Way, Park View Industrial Estate, Hartlepool, England, TS25 1UD (“the Mortgagor”).

(2) **ASHLEY BUSINESS FINANCE LIMITED** incorporated and registered in England and Wales with company number 08093131 whose registered office is at First Floor, Equinox North Great Park Road, Bradley Stoke, Bristol, England, BS32 4QL and trades at 8<sup>th</sup> Floor, 80 Mosley Street, St Peter’s Square, Manchester M2 3FX (“the Mortgagee”).

#### **BACKGROUND**

The Mortgagee has agreed under the Agreement to provide the Mortgagor, a limited company, with a business Loan.

- (A) Details of the Loan are contained in the Ashley Business Finance Loan Agreement dated (‘The Agreement’).
- (B) The Mortgagor is the owner of the Property.
- (C) This mortgage provides security which the Mortgagor has agreed to give the Mortgagee for their obligations under the Agreement.

- (D) The parties wish to take advantage of one of the exceptions set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (RAO).

## INTERPRETATION

The following definitions and rules of interpretation apply in this mortgage.

### Definitions:

- (E) **Agreement:** the Ashley Business Finance Loan Agreement dated between the Mortgagee and the Mortgagor.
- (F) **Business Day:** a day other than a Saturday, Sunday or a public holiday in England when banks in London are open for business.
- (G) **Encumbrance:** any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.
- (H) **Event of Default:** has the meaning given to that expression in the Agreement.
- (I) **Loan:** the sum specified in the Business Loan Term Sheet of the Agreement
- (J) **LPA 1925:** the Law of Property Act 1925.
- (K) **Property:** the property owned by the Mortgagor described in *Schedule 1*.
- (A) **Secured Liabilities:** all present and future monies, obligations and liabilities of either the Mortgagor to the Mortgagee, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Agreement with all interest including, without limitation, default interest accruing in respect of those monies, obligations or liabilities.

- (B) **Security Period:** the period starting on the date of this mortgage and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**WITNESSETH:**

*1. Covenant to pay*

The Mortgagor shall, on demand, pay to the Mortgagee and discharge the Secured Liabilities when they become due.

**2. PROPERTY CHARGED**

The Mortgagor with full title guarantee hereby:

- 2.1 charge by way of legal mortgage the Property (being the property described in the Schedule 1 hereto) and the proceeds of sale thereof and all compensation or grants payable or paid to or recoverable by the Mortgagor in respect of the Property and all other estates and interests which the Mortgagor may have in the Property (including but not limited to estates or interests under any lease or tenancy of the Property or period of holding over after or statutory or other continuation of such lease or tenancy and any right to renew the same) and to the extent that any such interests are not capable of being legally charged the Mortgagor with full title guarantee hereby assign the same (subject to reassignment on redemption)
- 2.3 assign by way of security (but subject to reassignment on redemption) all the benefit of every insurance policy (whether or not pursuant to an obligation in this Legal Mortgage) in respect of the Property (other than the third party and public liability policies) and all moneys or proceeds paid or payable thereunder but subject to all rights powers and other matters having actual priority in law to the rights conferred and the obligations imposed by this Legal Mortgage (whether by virtue of the terms of such policies the Fire Prevention (Metropolis) Act 1774 any prior mortgage or charge or any subsisting lease or otherwise howsoever)



2.4 assign the benefit of all guarantees warranties and representations given or made by and any rights or remedies against all or any of the Architects Quantity Surveyors and Consulting Engineers now or at any time engaged by the Mortgagor in relation to the Property and the manufacturers suppliers or installers of all plant and machinery fixtures fittings and other items now or from time to time in the buildings erected or to be erected on the Property and any other persons firm or company now or from time to time under contract with or under a duty to the Mortgagor including (without limitation) the right to prosecute in the name of the Mortgagor any proceedings against any such person in respect of any act omission neglect default breach of contract or breach of duty whether relating to the design construction inspection or supervision of the construction of any said buildings or to the quality or fitness for use of such plant machinery fixtures fittings and other items or otherwise howsoever and the benefit of all sums recovered in any proceedings against all or any such persons (subject to reassignment on redemption) to the Mortgagee as a continuing security for the payment or discharge on demand of all moneys obligations and liabilities covenanted to be paid or discharged by the Mortgagor to the Mortgagee under Clause 1 above.

### 3. MORTGAGOR'S CHATTELS

If the Mortgagee takes possession of the Property the Mortgagee is hereby authorised as agent for the Mortgagor to remove store sell or otherwise deal with any furniture plant machinery equipment goods and effects which do not in law form part of the Property which the Mortgagor shall fail or refuse to remove from the Property within seven days of being requested so to do by written notice from the Mortgagee and the Mortgagee shall not be liable for any loss or damage occasioned to the Mortgagor or the Property. The Mortgagor shall indemnify the Mortgagee against all expenses incurred by the Mortgagee in relation to such furniture plant machinery equipment-goods and effects and the Mortgagee shall account to the Mortgagor for the proceeds of any such sale after deducting any such expenses. Nothing herein contained shall give to or confer on the Mortgagee any charge or right in respect of such furniture plant machinery equipment goods and effects or the proceeds of sale thereof which would constitute this Legal Mortgage as a Bill of Sale.

4. **OBLIGATIONS TO REPAIR AND INSURE ETC.**

The Mortgagor hereby covenant in respect of the Property:

- 4.1 that the Mortgagor will keep the Property in a good and substantial state of repair and in good working order and condition and will not pull down or remove either any building or erection for the time being forming part of the Property or any fixtures annexed to the same or any of them without the previous consent in writing of the Mortgagee except in the ordinary course of repair or maintenance of the Property Provided that for the purposes of ascertaining whether the Property has been kept in compliance with this covenant the Mortgagee may from time to time cause it to be surveyed by a surveyor appointed by the Mortgagee and may pay reasonable and proper remuneration to such surveyor who may without rendering the Mortgagee liable as mortgagee in possession enter upon the Property for the purpose of making his survey and whose certificate shall be conclusive as to compliance with this covenant and such remuneration and the Value Added Tax payable thereon if unpaid by the Mortgagor on demand will be debited to the Mortgagor's account with the Mortgagee and deemed to be an expense properly incurred in relation to this security and shall carry interest accordingly and be secured hereby;
- 4.2 that the Mortgagor will insure and keep the Property insured with an insurance company approved by the Mortgagee against loss or damage by fire explosion earthquake riot and civil commotion malicious damage heave subsidence fire storm and tempest including lightning impact by aircraft and articles dropped therefrom bursting and overflowing of water tanks apparatus and pipes and plate glass and impact by motor vehicles and such other risks as shall be required by the Mortgagee to the full amount of their insurable value and in addition Architects' and Surveyors' fees at the scales current from time to time and any consequential loss directly or indirectly resulting or arising from such loss or damage. And will duly pay or cause to be paid on the due date the premiums and other sums of money payable in respect of any policy or policies effected under this clause and immediately after such payment will produce to the Mortgagee the receipt for the same and will apply all monies which may be received by virtue of such policy or policies (and will stand possessed of all monies which may be received by the

Mortgagor by virtue of any policy of insurance upon the Property upon trust to apply the same) either in making good the loss or damage in respect of which the same may have been received or (at the option of the Mortgagee but not so as to prejudice any obligations in the policy of insurance or any obligations having priority to the obligations imposed by this Legal Mortgage) in or towards the discharge or reduction of the monies which shall for the time being be secured hereby;

4.3 that no development within the meaning of the Town and Country Planning Act 1990 or any Act or Acts amending or replacing the same (the "Planning Acts") will be undertaken or carried out on the Property without the relevant or necessary planning permission prescribed in the Planning Acts having first been obtained without the relevant or necessary planning permission prescribed in the Planning Acts

4.4 that the Mortgagor will pay all rent sums and other payments payable out of or in respect of the Property and will duly and effectually perform and observe any covenants obligations stipulations and conditions expressly or impliedly imposed on the Mortgagor by all conveyances transfers and leases now or in the future affecting the Property and (subject to the provisions of Clause 4.5 below) will also perform and observe all obligations under any statute and any regulation order or notice made or given by a competent authority and will on demand produce to the Mortgagee satisfactory evidence of such payment and of the performance and observance of any such covenants obligations stipulations and conditions and will indemnify the Mortgagee in respect thereof;

4.5 to give full particulars of any notice direction order or proposal in respect of the Property made given or issued by any local public or other competent authority which is served on or given to the Mortgagor or of which the Mortgagor becomes otherwise aware forthwith on receipt or on so becoming aware and if so required by the Mortgagee to produce it to the Mortgagee and without delay to take all necessary steps either to comply with such notice direction order or proposal or to make such

objections or representations in respect thereof as the Mortgagee reasonably requires or if the Mortgagee reasonably so requires to contest or appeal the same

- 4.6 that the Mortgagor will not without the prior written consent of the Mortgagee dispose of create or permit to subsist any mortgage charge floating security or other encumbrance in favour of any third party over all or any of the property charged in any way or assigned by the Mortgagor to the Mortgagee create any mortgage or charge ranking in priority to or pari passu with the security hereinbefore created.

## **5. MORTGAGEE'S RIGHTS**

It is hereby agreed and declared as follows:

- 5.1 that if default shall be made by the Mortgagor in complying with Clauses 4.1 and 4.2 hereof it shall be lawful for but not obligatory upon the Mortgagee to repair or insure and keep repaired or insured all or any part of the same in accordance with the said clauses and for such purposes to enter upon the Property without thereby becoming liable as mortgagee in possession and any monies expended for that purposes (including Value Added Tax) may (if unpaid on demand) be debited to the Mortgagor's account with the Mortgagee and shall be deemed to be an expense properly incurred in relation to this security and shall carry interest and be secured hereby accordingly;
- 5.2 during the continuance of this security no person other than the Mortgagor shall be registered under the Land Registration Act 1925 or any Act amending or re-enacting the same as the proprietor of the Property without the consent in writing of the Mortgagee and the costs incurred by the Mortgagee in lodging from time to time a caution or notice of the Charge may (if unpaid on demand) be debited to the Mortgagor's account with the Mortgagee and shall be deemed to be an expense properly incurred in relation to this security and shall carry interest accordingly and be secured hereby,

- 5.3 until the obligations of the Mortgagor hereunder are discharged in full the Mortgagee shall be entitled to a lien upon any documents or assets of whatever nature which the Mortgagor keep with the Mortgagee at any time whether for safe custody or otherwise;
- 5.4 this security is in addition to and not in substitution for or to merge with any other security or lien to which the Mortgagee may now or at any time hold for all or any of the monies liabilities or obligations hereby secured;
- 5.5 Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Legal Mortgage

**6. THE LAND REGISTRY**

The Mortgagor hereby consents to the registration of a restriction against the title to the Property at the Land Registry in the following form:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the Charge dated this       day of       in favour of Ashley Business Finance Limited referred to in the Charges Register or, if appropriate, signed on such proprietors behalf by its conveyancer"

**7. REDEMPTION OF PRIOR CHARGES ETC**

If any proceedings or steps are taken to exercise any powers or remedies conferred by any mortgage or charge over the Property which secures indebtedness which has priority to or over any indebtedness secured by this Legal Mortgage then the Mortgagee may redeem all or any part of such mortgage or charge or procure the transfer of such mortgage or charge to the Mortgagee and all of the principal money interest cost charges and expenses (including Value Added Tax) of and incidental to such transfer may if not repaid by the Mortgagor on demand be debited to the Mortgagor's account with the Mortgagee and shall be deemed to be an expense properly incurred in relation to this security carry interest accordingly and be secured hereby.

## **8. APPOINTMENT AND REMOVAL OF A RECEIVER**

8.1 At any time after the security constituted by this legal mortgage has become enforceable or at the request of the Mortgagor, the Mortgagee may, without further notice:

8.1.1 appoint under seal or in writing, by a duly authorised officer of the Mortgagee, anyone or more person or persons to be a receiver or a receiver and manager, of all or any part of the Property; and

8.1.2 (subject to section 45 of the Insolvency Act 1986) from time to time, under seal or in writing, by a duly authorised officer of the Mortgagee, remove any person appointed to be Receiver and may, in a similar manner, appoint another in his place

Where more than one person is appointed Receiver, they shall have power to act separately (unless the appointment by the Mortgagee specifies to the contrary)

8.2 The power to appoint a Receiver conferred by this legal mortgage shall be in addition to all statutory and other powers of the Mortgagee under the Insolvency Act 1986, the LPA or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA

8.3 The power to appoint a Receiver (whether conferred by this legal mortgage or by statute) shall be, and remain, exercisable by 'the Mortgagee despite any prior appointment in respect of all or any part of the Property

8.4 The Mortgagee may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA and the remuneration of the Receiver shall be a debt secured by this legal mortgage which shall be due and payable immediately upon its being paid by the Mortgagee

**9. POWERS AND CAPACITY OF A RECEIVER**

- 9.1 Any Receiver appointed by the Mortgagee under this legal mortgage shall, in addition to the powers conferred on him by the LPA and the Insolvency Act 1986, have the following powers set out in this clause
- 9.1.1 A Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence to carry out any of the same
- 9.1.2 A Receiver may grant, or accept surrenders of, any leases or tenancies affecting the Property and may grant any other interest or right over the Property on such terms and subject to such conditions as he thinks fit
- 9.1.3 A Receiver may provide services and employ, or engage, such managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on such salaries, for such periods and on such other terms as he thinks fit. A Receiver may discharge any such person or any such person appointed by the Mortgagor
- 9.1.4 A Receiver may exercise or revoke any VAT option to tax as he thinks fit
- 9.1.5 A Receiver may charge and receive such sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) as the Mortgagee may prescribe or agree with him
- 9.1.6 A Receiver may collect and get in the Property or any part of it in respect of which he is appointed and make such demands and take such proceedings as may seem expedient for that purpose, and take possession of the Property with like rights

- 9.1.7 A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Mortgagor carried out at the Property
- 9.1.8 A Receiver may grant options and licences over all or any part of the Property, sell or concur in selling, assign or concur in assigning, lease or concur in leasing and accept or concur in accepting surrenders of leases of, all or any of the Property in respect of which he is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on such terms and conditions as he thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Property to be disposed of by him
- 9.1.9 A Receiver may sever and sell separately any fixtures or fittings from the Property without the consent of the Mortgagor
- 9.1.10 A Receiver may give valid receipts for all monies and execute all assurances and things which may be proper or desirable for realising any of the Property
- 9.1.11 A Receiver may make any arrangement, settlement or compromise between the Mortgagor and any other person as he thinks fit
- 9.1.12 A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Property as he thinks fit
- 9.1.13 A Receiver may, if he thinks fit, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Mortgagor under this legal mortgage
- 9.1.14 A Receiver may exercise all powers provided for in the LPA in the same



way as if he had been duly appointed under that act and exercise all powers provided for an administrative receiver

9.1.15 A Receiver may do all such acts and things as an absolute owner could do in the ownership and management of the Property or any part of it

9.1.16 A Receiver may do all such other acts and things as he may consider incidental or conducive to any of the matters or powers in this clause 9, or which he lawfully may or can do as agent for the Mortgagor

## **10. JURISDICTION**

This Legal Mortgage shall be governed by and construed in accordance with English law and it is irrevocably agreed for the exclusive benefit of the Mortgagee that the Courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with this Legal Mortgage and that accordingly any suit action or proceeding arising out of or in connection with this Legal Mortgage (in this clause referred to as "Proceedings") may be brought in such courts. Nothing in this clause shall limit the right of the Mortgagee to take Proceedings against the Mortgagor in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction whether concurrently or not.

## **11. INSOLVENCY ACT 1986 ETC**

The Mortgagor hereby covenant with the Mortgagee to notify the Mortgagee by the most expeditious means reasonably and practicably available to the Mortgagor including but not limited to telephone, E-mail and/or facsimile letter as soon as the Mortgagor become aware of the fact that anyone (including the Mortgagor) intends or proposes or is considering taking and/or does in fact take anyone or more of the following courses of action:

- 11.1 making a proposal for a company voluntary arrangement, placing the Mortgagor into administration or liquidating/winding up the Mortgagor; or
- 11.2 petitioning or applying to the Court in respect of the Mortgagor for a winding up order or
- 11.3 appointing a receiver or manager of any of the Mortgagor's property or any part thereof (including the Property); or

## **12. PURCHASER NOT BOUND TO ENQUIRE**

No purchaser (as defined in Section 205 of the Law of Property Act 1925) of the Property or other person or company shall be bound or concerned to see or enquire whether the right of the Mortgagee or any receiver appointed hereunder to exercise any of its or his powers has arisen or become exercisable.

## **13. INTERPRETATION**

13.1 Any references in this Legal Mortgage to statutes or Acts of Parliament (whether specifically or generally) include any statutory extension modification amendment or re-enactment of such statutes or Acts and any regulations or orders made thereunder. Words used in this Legal Mortgage importing one gender include any other gender and words importing the singular include the plural and vice versa. Clause headings are for ease of reference only and shall not affect the construction or interpretation of this Legal Mortgage. Where the expression Mortgagor includes more than one person or body the expression shall include each and all such persons or bodies as the context may permit.

13.2 In this Legal Mortgage "the Mortgagor" includes the Mortgagor and his/her/its successors in title those deriving title under them and their personal representatives

#### 14. **NOTICES**


Any notice or demand by the Mortgagee hereunder shall without prejudice to any other effective mode of making the same be deemed to have been sufficiently made hereunder if served on the Mortgagor personally or left or sent by post to the Mortgagor at either the Property or the last address known to the Mortgagee or any notice or demand sent by post or email will be assumed to have reached its addressee in the course of posting and in proving such service it shall be sufficient to prove that the notice or demand was properly addressed and posted. Any such demand or any certificate as to the amount at any time secured hereby shall be conclusive and binding on the Mortgagor if signed by an officer of the Mortgagee save in the case of manifest error.

#### 15. **CONSUMER CREDIT ACT**

This security shall not extend or apply to any obligations under a regulated agreement under the Consumer Credit Act 1974 (the "Consumer Act") except a regulated agreement to which the provisions of Part V of the Consumer Act do not apply at the date hereof including (but not by way of limitation) an agreement to overdraw on a current account within the meaning of the Consumer Act.

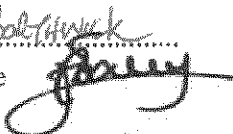
IN WITNESS WHEREOF this Legal Mortgage has been duly executed by the Mortgagor  
as a Deed and delivered on the date above

Signed as a deed by Borthwick Marble  
& Granite Ltd acting by

  
.....

a director in the presence of

Director

  
.....  
Signature

Name **EMMA FOLEY**

Address **LAKE SIDE HOUSE, KINGFISHER WAY,  
STOCKTON, TS18 3NR**

Occupation **SAUCITOR**

Signed as a Deed by Liam Cavanagh  
as Attorney for Ashley Business  
Finance Limited under a power of  
attorney dated the 24 October 2016 in  
the presence of

.....

Liam Cavanagh

.....  
Signature

Name

Address

Occupation

IN WITNESS WHEREOF this Legal Mortgage has been duly executed by the Mortgagor  
as a Deed and delivered on the date above

Signed as a deed by Borthwick Marble  
& Granite Ltd acting by

a director in the presence of

.....  
Director

.....  
Signature

Name

Address

Occupation

Signed as a Deed by Liam Cavanagh  
as Attorney for Ashley Business  
Finance Limited under a power of  
attorney dated the 24 October 2016 in  
the presence of



Liam Cavanagh

K. Stelfox .....

Signature

Kayley Stelfox

Name

8<sup>th</sup> Floor, 80 Mosley St, Manchester, M2 3FX

Address

Funding Advisor

Occupation

**Schedule Property**

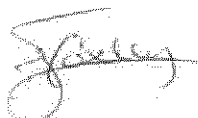
Premises at	Land Registry Office	Registered at HM Land Registry under Title No
Unit 15 Prospect Way, Park View Industrial Estate, Hartlepool, TS25 1UD	Durham Office	CE127045

To be completed and signed by the Solicitor giving legal advice

I certify that I attended JAMIE BORTHWICK acting as a director of Borthwick Marble & Granite Ltd named above and fully explained to him/her the terms and effects of this Deed and that I witnessed his/her signature. My advice complied with the guidelines set out in the Royal Bank of Scotland Plc v Etridge.

JAMIE BORTHWICK is personally known to me or produced satisfactory identifying evidence.

Name ..Emma Foxley



Address ..Archers Law LLP, Lakeside House, Kingsfisher Way, Stockton on Tees  
TS18 3NB

Occupation: Solicitor