



**Registration of a Charge**

Company name: **EQUORIUM PROPERTY COMPANY LIMITED**

Company number: **SC118794**



X910J480

Received for Electronic Filing: **17/03/2020**

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**Details of Charge**

Date of creation: **17/03/2020**

Charge code: **SC11 8794 0004**

Persons entitled: **THE EDINBURGH WOOLLEN MILL (GROUP) LIMITED**

Brief description:

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**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 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:

**STUART FITZSIMMONS**



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

Company number: 118794

Charge code: SC11 8794 0004

The Registrar of Companies for Scotland hereby certifies that a charge dated 17th March 2020 and created by EQUORIUM PROPERTY COMPANY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th March 2020 .

Given at Companies House, Edinburgh on 18th March 2020

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**

JCES/STF/101482.00009/69675879.3

## **Bond and Floating Charge**

**For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this Bond and Floating Charge is delivered on 17 March 2020**

**Equorium Property Company Limited**  
(Chargor)

**The Edinburgh Woollen Mill (Group) Limited**  
(Lender)

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**For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this Bond and Floating Charge is delivered on 17 March 2020**

## **THIS BOND AND FLOATING CHARGE is made by:**

- (1) **Equorium Property Company Limited**, a company incorporated under the laws of Scotland with registered number SC118794 having its registered office at Waverley Mills, Waverley Road, Langholm, Scotland, DG13 0EB (the **Chargor**); and

in favour of

- (2) **The Edinburgh Woollen Mill (Group) Limited**, a company incorporated under the laws of Scotland with registered number SC307281 having its registered office at The Edinburgh Woollen Mill Limited, Waverley Mills, Langholm, Dumfriesshire, DG13 0EB (the **Lender**).

### **Background:**

- A. The Lender has agreed to make certain loan facilities available to the Chargor.
- B. The Chargor has agreed to grant this Floating Charge in order to secure the sums payable by it in consideration of the Lender making loan facilities available.

### **IT IS AGREED as follows:**

## **1 Definitions and Interpretation**

### **1.1 Definitions**

In this Floating Charge:

**Default** means any event, howsoever described, which entitles the Lender to accelerate, demand repayment of or the delivery of cash collateral in respect of, any financial indebtedness of the Chargor to the Lender including, for the avoidance of any doubt, the making of a demand for payment under a Loan Agreement.

**Fixed Security** shall have the meaning given to it in section 486 of the Companies Act 1985.

**Finance Document** means any document, letter or agreement setting out the terms of any indebtedness which forms part of the Secured Liabilities.

**Loan Agreement** means any loan agreement entered into from time to time between the Chargor and the Lender.

**Party** means a party to this Floating Charge.

**Permitted Security** means:

- (a) any Security or Quasi-Security created pursuant to this Floating Charge or otherwise in favour of the Lender;
- (b) any lien arising by operation of law and in the ordinary course of its day-to-day trading activities, and not as a result of any default or omission by the Chargor;

- (c) any netting or set-off arrangement entered into by the Chargor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of the Chargor;
- (d) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to the Chargor in the ordinary course of its day-to-day trading activities and on the supplier's standard or usual terms and not arising as a result of any default or omission by the Chargor.

**Quasi-Security** means:

- (e) the sale, transfer or other disposal of any of its assets on terms whereby they are or may be leased to or re-acquired by the Chargor;
- (f) the sale, transfer or other disposal of any of the Chargor's receivables on recourse terms;
- (g) entry into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (h) entry into any other preferential arrangement having a similar effect,

in each case in circumstances where the arrangement or transaction is entered into primarily as a method of raising financial indebtedness or of financing the acquisition of an asset.

**Receiver** includes any person or persons appointed (and any additional person or persons appointed or substituted) as receiver by the Lender under this Floating Charge and shall include joint Receivers.

**Security** means a mortgage, standard security, charge, pledge, lien, assignment or assignation by way of security, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or other security interest securing any obligation of any person or any other agreement or arrangement in any jurisdiction having a similar effect.

**Security Assets** means all of the assets of the Chargor which are the subject of any Security created or to be created by this Floating Charge.

**Secured Liabilities** means the liabilities of the Chargor to the Lender under or pursuant to the Finance Documents.

**Security Period** means the period starting on the date of this Floating Charge and ending on the date on which the Lender is satisfied that:

- (a) all of the Secured Liabilities have been fully and finally discharged; and
- (b) it is under no commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to the Chargor pursuant to the Finance Documents.

## 1.2 Construction

1.2.1 Clause and paragraph headings shall not affect the interpretation of this Floating Charge.

- 1.2.2 A reference to this floating charge (or any provision of it) or any other document shall be construed as a reference to this Floating Charge, that provision or that document as it is in force for the time being and as amended, varied or supplemented from time to time in accordance with its terms, or with the agreement of the relevant parties.
- 1.2.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.2.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.5 A reference to a business day shall be to any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday in Scotland.
- 1.2.6 Any reference to a document being in the agreed form will mean that document in the form and content agreed by the parties.
- 1.2.7 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.2.8 A reference to any party shall include that party's personal representatives, successors, permitted transferees and permitted assigns.
- 1.2.9 References to clauses and to schedules are to the clauses and schedules of this Floating Charge.
- 1.2.10 Any phrase introduced by the terms including, include or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms
- 1.2.11 Unless a contrary intention appears, any reference in this Floating Charge to:
- (a) this **Floating Charge** is a reference to this Floating Charge as amended, varied, novated, supplemented and replaced from time to time;
  - (b) the **Chargor**, the **Lender** or a **Receiver** includes any one or more of its assigns, transferees and successors in title (in the case of the Chargor, so far as any such is permitted); and
  - (c) the **Lender** or a **Receiver** (except for the references in Clause 12 (*Power of attorney*)), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates.

### 1.3 Third party rights

This Floating Charge does not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of this Floating Charge or otherwise.



## **2 Creation of Security**

### **2.1 General**

2.1.1 The Chargor must pay or discharge the Secured Liabilities in the manner provided for in the Finance Documents.

2.1.2 All the security created under this Floating Charge:

- (a) is created in favour of the Lender;
- (b) is created over present and future assets of the Chargor;
- (c) is security for the payment of all the Secured Liabilities; and
- (d) is made with absolute warrandice.

### **2.2 Floating charge**

The Chargor grants a floating charge over the Security Assets in favour of the Lender.

### **2.3 Priority**

2.3.1 The floating charge created by Clause 2.2 (*Floating charge*) shall, subject to section 464(2) of the Companies Act 1985, rank in priority to any Fixed Security, other than any Fixed Security granted by the Chargor in favour of the Lender, which shall rank in priority to the floating charge created by Clause 2.2 (*Floating charge*) and to another floating charge.

2.3.2 The Chargor shall, not without the prior written consent of the Lender, create or permit to exist any Fixed Security or floating charge over all or part of the Security Assets which ranks in priority to or equally without the floating charge created by Clause 2.2 (*Floating charge*) except for any Fixed Security granted by the Chargor in favour of the Lender.

### **2.4 Qualifying Floating Charge**

The floating charge created by Clause 2.2 (*Floating charge*) is a **qualifying floating charge** for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

## **3 Restrictions on Dealings**

### **3.1 Security**

Except as expressly allowed under the Loan Agreement or this Floating Charge, or in the case of Permitted Security, the Chargor must not create or permit to subsist any Security on any Security Asset.

### **3.2 Disposals**

Except as expressly allowed under the Loan Agreement or this Floating Charge, or in the case of Permitted Security, the Chargor must not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to dispose of all or any part of any Security Asset, except in the ordinary course of business.

## **4 When Security Becomes Enforceable**

### **4.1 Event of Default**

The Security created by this Floating Charge shall become enforceable on the occurrence of a Default.

### **4.2 Discretion**

After this Security has become enforceable, the Lender may enforce all or any part of this Security in any manner it sees fit or as instructed in accordance with the Loan Agreement.

## **5 Enforcement of Security**

### **5.1 No liability as heritable creditor in possession**

Neither the Lender nor any Receiver will be liable, by reason of entering into possession of a Security Asset, to account as heritable creditor in possession or for any loss on realisation or for any default or omission for which a heritable creditor in possession might be liable.

### **5.2 Protection of third parties**

No person (including a purchaser) dealing with the Lender or a Receiver or its or his/her agents will be concerned to enquire:

- (a) whether the Secured Liabilities have become payable;
- (b) whether any power which the Lender or a Receiver is purporting to exercise has become exercisable or is being properly exercised;
- (c) whether any money remains due under the Finance Documents; or
- (d) how any money paid to the Lender or to that Receiver is to be applied.

### **5.3 Redemption of prior charges**

5.3.1 At any time after this Security has become enforceable, the Lender may:

- (a) redeem any prior Security against any Security Asset; and/or
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of the prior ranking creditor, chargee or encumbrancer; any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Chargor.

5.3.2 The Chargor must pay to the Lender, immediately on demand, the costs and expenses incurred by the Lender in connection with any such redemption and/or transfer, including the payment of any principal or interest.

### **5.4 Contingencies**

If this Security is enforced at a time when no amount is due under the Finance Documents but at a time when amounts may or will become due, the Lender (or a Receiver) may pay the

proceeds of any recoveries effected by it into a suspense account or other account selected by it.

## **5.5 Financial collateral**

5.5.1 To the extent that the Security Assets constitute "financial collateral" and this Floating Charge and the obligations of the Chargor under this Floating Charge constitute a "security financial collateral arrangement" (in each case, for the purpose of and as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003), the Lender will have the right after this Security has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Liabilities.

5.5.2 Where any financial collateral is appropriated:

- (a) if it is listed or traded on a recognised exchange, its value will be taken as being the value at which it could have been sold on the exchange on the date of appropriation; or
- (b) in any other case, its value will be such amount as the Lender reasonably determines having taken into account advice obtained by it from an independent commercial property adviser, investment bank or accountancy firm of national standing selected by it,

and the Lender will give credit for the value of the financial collateral appropriated to its use.

## **6 Receivers and Administrators**

### **6.1 Appointment and Removal**

6.1.1 Except as provided below and without prejudice to the provisions of the Insolvency Act 1986, if this Security has become enforceable or the Chargor so requests to the Lender at any time, the Lender may without prior notice to the Chargor:

- (a) (subject to section 72A of the Insolvency Act 1986) appoint one or more persons to be a Receiver of the whole or any part of the Secured Assets;
- (b) remove (so far as it is lawfully able) any Receiver so appointed;
- (c) appoint another person(s) as an additional or replacement Receiver(s); and
- (d) appoint one or more persons to be an Administrator in accordance with paragraph 14 of Schedule B1 of the Insolvency Act 1986.

6.1.2 Any appointment or removal under Clause 6.1.1 above may be by instrument in writing (by deed, under seal or in writing under its hand).

6.1.3 The Lender is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under section 1A of the Insolvency Act 1986.

### **6.2 Remuneration**

The Lender may fix the remuneration of any Receiver appointed by it.

### **6.3 Agent of the Chargor**

- 6.3.1 A Receiver will be deemed to be the agent of the Chargor for all purposes. The Chargor alone is responsible for any contracts, engagements, acts, omissions, defaults and losses of a Receiver and for any liabilities incurred by a Receiver.
- 6.3.2 The Lender will not incur any liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason.

### **6.4 Relationship with Lender**

To the fullest extent allowed by law, any right, power or discretion conferred by this Floating Charge (either expressly or impliedly) or by law on a Receiver may after this Security becomes enforceable be exercised by the Lender in relation to any Security Asset without first appointing a Receiver and notwithstanding the appointment of a Receiver.

## **7 Powers of Receiver**

### **7.1 General**

- 7.1.1 A Receiver has all of the rights, powers and discretions set out below in this Clause 7 in addition to those conferred on it by any law. This includes all the rights, powers and discretions conferred on a receiver under the Insolvency Act 1986 including those set out in Schedule 2 to the Insolvency Act 1986.
- 7.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him/her states otherwise) exercise all of the powers conferred on a Receiver under this Floating Charge individually and to the exclusion of any other Receiver.

### **7.2 Possession**

A Receiver may take immediate possession of, get in and realise any Security Asset.

### **7.3 Carry on business**

A Receiver may carry on any business of the Chargor in any manner he/she thinks fit.

### **7.4 Employees**

- 7.4.1 A Receiver may appoint and discharge managers, officers, agents, accountants, servants, workmen and others for the purposes of this Floating Charge upon such terms as to remuneration or otherwise as he/she thinks fit.
- 7.4.2 A Receiver may discharge any person appointed by the Chargor.

### **7.5 Borrow money**

A Receiver may raise and borrow money either unsecured or on the security of any Security Asset either in priority to this Security or otherwise and generally on any terms and for whatever purpose which he/she thinks fit.

## **7.6 Sale of assets**

- 7.6.1 A Receiver may sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any terms which he/she thinks fit.
- 7.6.2 The consideration for any such transaction may consist of cash or non-cash consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which he/she thinks fit.
- 7.6.3 Fixtures, other than landlord's fixtures, may be severed and sold separately from the property containing them without the consent of the Chargor.

## **7.7 Leases**

A Receiver may let any Security Asset for any term and at any rent (with or without a premium) which he/she thinks fit and may accept a surrender of any lease or tenancy of any Security Asset on any terms which he/she thinks fit (including the payment of money to a lessee or tenant on a surrender).

## **7.8 Compromise**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Security Asset.

## **7.9 Legal actions**

A Receiver may bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he/she thinks fit.

## **7.10 Receipts**

A Receiver may give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset.

## **7.11 Subsidiaries**

A Receiver may form a Subsidiary of the Chargor and transfer to that Subsidiary any Security Asset.

## **7.12 Delegation**

A Receiver may delegate his/her powers in accordance with this Floating Charge.

## **7.13 Lending**

A Receiver may lend money or advance credit to any person.

## **7.14 Protection of assets**

A Receiver may:

- (a) effect any repair or insurance and do any other act which the Chargor might do in the ordinary conduct of its business to protect or improve any Security Asset;
- (b) commence and/or complete any building operation; and
- (c) apply for and maintain any planning permission, building regulation approval or any other Authorisation,

in each case as he/she thinks fit.

## **7.15 Other powers**

A Receiver may:

- (a) do all other acts and things which he/she may consider necessary or desirable for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Floating Charge or law;
- (b) exercise in relation to any Security Asset all the powers, authorities and things which he/she would be capable of exercising if he/she were the absolute beneficial owner of that Security Asset; and
- (c) use the name of the Chargor for any of the above purposes.

## **8 Application of Proceeds**

All amounts from time to time received or recovered by the Lender or any Receiver pursuant to the terms of this Floating Charge or in connection with the realisation or enforcement of all or part of this Security will be held by the Lender and applied in accordance with the Loan Agreement. This Clause 8:

- (a) is subject to the payment of any claims having priority over this Security; and
- (b) does not prejudice the right of Lender to recover any shortfall from the Chargor.

## **9 Expenses and Indemnity**

The Chargor must:

- (a) immediately on demand pay to the Lender the amount of all costs and expenses (including legal fees) incurred by the Lender in connection with this Floating Charge including any arising from any actual or alleged breach by any person of any law or regulation; and
- (b) keep the Lender indemnified against any failure or delay in paying those costs or expenses.

## **10 Delegation**

### **10.1 Power of Attorney**

The Lender or any Receiver may, at any time, delegate by power of attorney or otherwise to any person for any period all or any right, power, authority or discretion exercisable by it under this Floating Charge.

## **10.2 Terms**

Any such delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Lender or that Receiver (as the case may be) may, in its discretion, think fit in the interests of the Lender.

## **10.3 Liability**

Neither the Lender nor any Receiver shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

## **11 Further Assurances**

11.1.1 The Chargor must promptly, at its own expense, take whatever action the Lender or a Receiver may require for:

- (a) creating, perfecting or protecting any security over any Security Asset; or
- (b) facilitating the realisation of any Security Asset, or the exercise of any right, power or discretion exercisable, by the Lender or any Receiver or any of their respective delegates or sub-delegates in respect of any Security Asset.

11.1.2 The action that may be required under Clause 11.1.1 above includes:

- (a) the execution of any standard security, charge, transfer, conveyance, assignation or assurance of any asset, whether to the Lender or to its nominees; or
- (b) the giving of any notice, order or direction and the making of any filing or registration,

which, in any such case, the Lender may consider necessary or desirable.

## **12 Power of Attorney**

The Chargor irrevocably and severally appoints the Lender, each Receiver and any of their respective delegates or sub-delegates to be its attorney with the full power and authority of the Chargor to execute, deliver and perfect all deeds, instruments and other documents in its name and otherwise on its behalf and to do or cause to be done all acts and things, in each case which may be required or which any attorney may in its absolute discretion deem necessary for carrying out any obligation of the Chargor under or pursuant to this Floating Charge or generally for enabling the Lender or any Receiver to exercise the respective powers conferred on them under this Floating Charge or by law. The Chargor ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause 12.

## **13 Miscellaneous**

### **13.1 Continuing Security**

This Security is a continuing security and will extend to the ultimate balance of the Secured Liabilities regardless of any intermediate payment or discharge in whole or in part.

## **13.2 New Accounts**

- 13.2.1 If any subsequent charge or other interest affects any Security Asset, the Lender may open a new account with the Chargor.
- 13.2.2 If the Lender does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other interest.
- 13.2.3 As from that time all payments made to the Lender will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Liability.

## **13.3 Time deposits**

Without prejudice to any right of set-off the Lender may have under any other Finance Document or otherwise, if any time deposit matures on any account the Chargor has with the Lender within the Security Period when:

- (a) this Security has become enforceable; and
- (b) no Secured Liability is due and payable,

that time deposit will automatically be renewed for any further maturity which the Lender considers appropriate.

## **13.4 Notice to Chargor**

This Floating Charge constitutes notice in writing to the Chargor of any charge or assignment/ assignment of a debt owed by the Chargor to the Lender and contained in any other Finance Document.

## **14 Release**

At the end of the Security Period, the Lender must, at the request and cost of the Chargor, take whatever action is necessary to release its Security Assets from this Security.

## **15 Counterparts**

- 15.1.1 This Floating Charge may be executed in any number of counterparts and by each of the parties on separate counterparts.
- 15.1.2 Where executed in counterparts:
- (a) unless otherwise agreed between the parties, this Floating Charge shall not take effect until each of the counterparts has been delivered in accordance with the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (the Counterparts Act);
  - (b) each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered;
  - (c) the counterparts shall be treated as a single document pursuant to the Counterparts Act; and



- (d) the parties may choose to evidence the date of delivery of this Floating Charge by inserting it on the cover page and at the top of page 1 in the blank provided for the delivery date of this Floating Charge.

The parties agree that where a person is nominated under section 2(1) of the Counterparts Act to take delivery of one or more of the counterparts, the obligations and/or duties of that person under section 2(3) of the Counterparts Act shall be excluded and such person shall hold such counterparts in accordance with any other arrangements agreed between the parties. The parties agree that this Clause 15 is for the benefit of any such nominated person and can be relied upon by such person notwithstanding that such person may not be a party to this Floating Charge.

## 16 Governing law and enforcement

### 16.1 Governing law

This Floating Charge and any non-contractual obligations arising out of or in connection with it are governed by Scots law.

### 16.2 Jurisdiction

16.2.1 The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Floating Charge (including a dispute regarding the existence, validity or termination of this Floating Charge) (a **Dispute**).

16.2.2 The parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

IN WITNESS WHEREOF the Floating Charge consisting of this and the preceding 12 pages is executed as follows and, if executed in counterpart delivered on the date set out on the cover page and at the top of page 1 of this Floating Charge in accordance with Clause 15.

### CHARGOR

Executed for and on behalf of

**EQUORIUM PROPERTY COMPANY LIMITED**

at CARDIFF

on 29 day of February 2020

by

\_\_\_\_\_  
Director  
(Signature)

in the presence of this witness:

\_\_\_\_\_

Witness

JOHN JACKSON

Full name

GLOBAL HOUSE

Address

5 CASTLE ST  
CARDIFF CF2 8SY

**LENDER**

Executed for and on behalf of

**THE EDINBURGH WOOLLEN MILL (GROUP) LIMITED**

at CARDIFF

on 29 day of February 2020

by

\_\_\_\_\_  
Director  
(Signature)

in the presence of this witness:

\_\_\_\_\_

JOHN JACKSON

GLOBAL HOUSE

5 CASTLE ST

CARLISLE CA3 8SY

Witness

Full name

Address