

DATED

28th January 2022

SHALL DO HAYES DEVELOPMENTS LIMITED

TO

THE LONDON BOROUGH OF HILLINGDON

PLANNING OBLIGATION BY UNILATERAL UNDERTAKING

PURSUANT TO SECTION 106

OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND ASSOCIATED POWERS RELATING TO THE
DEVELOPMENT OF LAND AT

Hayes Park North, Hayes Park, UB4 8EE

Hillingdon Planning Ref: 12853/APP/2021/2202

Planning Inspectorate Ref: APP/R5510/W/21/3280015

And is **GIVEN BY:**

- (1) **SHALL DO HAYES DEVELOPMENTS LIMITED** (Company number 13701731) a company incorporated in England and Wales whose registered office is situated at 22 Braydon Road, London, England, N16 6QB ("the Owner").

TO:

- (2) **THE LONDON BOROUGH OF HILLINGDON** of the Civic Centre, High Street, Uxbridge, Middlesex, UB8 1UW ("the Council").

BACKGROUND

- A The Council is the local planning authority for the purposes of the Act in respect of the Land and is the body by whom the obligations in this Undertaking are enforceable.
- B The Owner has purchased the freehold interest in the land registered under title number AGL153495 and is in the process of being registered at the Land Registry
- C On 02/06/21 the previous owner (UNIVERSITIES SUPERANNUATION SCHEME LIMITED) submitted the Prior Approval Application to the Council.
- D The Owner intends to develop the Land pursuant to the Permitted Development Right and as described in the Prior Approval Application.
- E The Prior Approval Application was refused under delegated powers on 26/07/21 and the previous owner (UNIVERSITIES SUPERANNUATION SCHEME LIMITED) submitted the Appeal.

F During the Appeal programme, the previous owner (UNIVERSITIES SUPERANNUATION SCHEME LIMITED) sold the Land to the Owner (**SHALL DO HAYES DEVELOPMENTS LIMITED**).

G The Owner enters into this Undertaking in order to secure the planning obligations contained herein should the Appeal be successful and Prior Approval be granted.

THIS UNDERTAKING WITNESSES AS FOLLOWS: -

1. DEFINITIONS AND INTERPRETATION

1.1 For the purposes of the recitals and this Undertaking, the following expressions shall have the following meaning:

“Act” means the Town and Country Planning Act 1990;

Appeal means the appeal submitted on 30/07/21 which was registered by the Planning Inspectorate on 06/08/21 and given appeal reference number APP/R5510/W/21/3280015;

“Commencement of Development” means the date on which any material operation as defined in Section 56(4) of the Act forming part of the Development begins to be carried out other than (for the purposes of this Undertaking and for no other purpose)

- (i) site clearance;
- (ii) archaeological investigation;
- (iii) the assessment of contamination;
- (iv) remedial action in respect of any contamination;
- (v) diversion and laying of services;
- (vi) the erection of fencing or other means of enclosure for site

	security;
	(vii) the display of advertisements; and
	(viii) any off-site highways works, and “Commence” and “Commencement” shall be construed accordingly;
"Development"	means the development constituting the subject of the Prior Approval;
"Deputy Director of Planning and Regeneration"	means the Council's Deputy Director of Planning and Regeneration and Community Services or such person as the Council designates as undertaking this role;
"Dwelling"	means a dwelling (including a house flat or maisonette) forming part of the Development;
"Form PO1"	means the form in the substantial form set out at Appendix 1;
"Highway Agreement"	means one or more highway agreements to be entered into by the Owner under Section 38 and/or Section 278 of the Highways Act 1980;
"Highway Works"	means the highway improvement works to be carried out by the Owner: • Provision of a shared footway linking the development site with Hayes End Road and Park Lane • Provision of enhancements to the

highway network for pedestrians and cyclists between the internal access road and the Uxbridge Road, including the provision of an advisory on-street cycle lane and localised footway resurfacing;

“Index”

means the Index of Retail Prices (All Items) published by the Office for National Statistics or such other index as the Inspector shall specify in their decision letter and “Indexation” shall be construed accordingly;

“Inspector”

the planning inspector appointed to hear the Appeal;

“Interest”

means interest at 4% above the base lending rate of HSBC Bank PLC from time to time;

"Land"

means the building at Hayes Park North, Hayes Park, UB4 8EE which is in the freehold ownership of the Owner and is registered at the Land Registry under Title No AGL153495 and is shown for identification purposes only edged in red on the Plan.

“Occupation”

means occupation for the purposes permitted by the Permitted Development Right and the subject of the Prior Approval Application but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in

relation to security operations and the term "Occupied" and "Occupy" shall be construed accordingly;

“Permitted Development Right”

means the development permitted under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015;

"Plan"

means the plan attached at Appendix 2 of this Undertaking;

“Planning Obligations Officer”

means the Council’s Planning Obligations Officer or such person as the Council designates as undertaking this role;

"Prior Approval Application"

means the application for prior approval under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015) in respect of a change of use of offices (Use Class E(g)) to residential use (Use Class C3) to include 64 residential units comprising 6 x studios, 33 x one-bedroom units, 19 x two-bedroom units and 6 x three-bedroom units under the Council's reference number 12853/APP/2021/2202.

"Prior Approval"

means the prior approval that may be granted pursuant to the Appeal;

“Public Transport Infrastructure Contribution”

means the public transport infrastructure contribution referred to in Schedule 1.

"Section 106 Reference"

means reference 12853/APP/2021/2202.

“Specified Date”	means the date upon which an obligation arising under this Undertaking is due to be performed;
“Undertaking”	means this Deed;
“VAT”	means Value Added Tax;
“Working Day”	means any day other than a Saturday or a Sunday or a Public Holiday

- 1.2 Unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting any one gender shall include all genders and words denoting persons shall include bodies corporate, unincorporated associations and partnerships.
- 1.3 References in this Undertaking to any statute or statutory provision shall be construed as a reference to the same as it may from time to time be amended, extended, modified, consolidated or re-enacted whether before or at the date of this Undertaking.
- 1.4 Unless the context otherwise requires, reference to any clause, paragraph, sub-clause or schedule or appendix is a reference to a clause, paragraph, sub-clause, schedule or appendix of or to this Undertaking.
- 1.5 The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of this Undertaking.
- 1.6 Where a party includes more than one person named as a party any obligations of that party shall be joint and several unless there is an express provision otherwise.

1.7 References to any party to this Undertaking shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to the Council's respective functions.

1.8 Where the agreement, approval, consent or an expression of satisfaction is required by the Owner under the terms of this Undertaking from the Council that agreement, approval, consent or satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

2. STATUTORY PROVISIONS

2.1 This Undertaking is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and section 16 of the Greater London Council (General Powers) Act 1974 to the intent that it will bind the Owner and its successors in title to the Land.

2.2 The covenants, restrictions and requirements imposed upon the Owner under this Undertaking create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

3. CONDITIONALITY

3.1 The obligations in this Undertaking are subject to and conditional upon:

- (i) the grant of Prior Approval; and
- (ii) Commencement of Development.

4. MISCELLANEOUS

- 4.1 Nothing contained or implied in this Undertaking shall prejudice or affect the rights, powers, duties and obligations of the Council in exercise of their functions as local planning authority.
- 4.2 If any provision in this Undertaking shall be held to be invalid, illegal or unenforceable then the invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Undertaking.
- 4.3 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants undertakings obligations or restrictions contained in this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants undertaking or obligation from acting upon any subsequent breach or default in respect thereof by the Owner.
- 4.4 Nothing in this Undertaking shall be construed as a grant of planning permission.
- 4.5 Unless expressly agreed otherwise in this Undertaking, the covenants in this Undertaking shall be enforceable without any limit of time against the Owner and any successors in title to the Land and assigns of the Owner or any person corporate or otherwise claiming title through or under the Owner an interest or estate to the Land or any part or parts of the Land as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.
- 4.6 No party to this Undertaking nor any of its successors in title nor any person deriving title from or under them shall be liable for any breach of any of the planning obligations or other obligations contained in this Undertaking after it shall

have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 4.7 This Undertaking shall not be enforceable against either statutory undertakers or owners and occupiers of Dwellings (or their mortgagees) and those deriving title from them.
- 4.8 This Undertaking shall cease to have effect (insofar only as it has not already been complied with) if the Permitted Development Right or any associated certificate of lawfulness issued under section 191 or section 192 of the Act is quashed or revoked or otherwise withdrawn or (without the consent of the Owner or its successors in title) is modified by any statutory procedure or expires prior to Commencement of Development.
- 4.9 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission granted (whether or not on appeal) after the date of this Undertaking.
- 4.10 This Undertaking cannot be amended or discharged without the prior consent in writing of the Owner and the Council.
- 4.11 In the event of the planning obligations contained in this Undertaking being so modified a note or memorandum thereof shall be endorsed upon this Undertaking.
- 4.12 If the Inspector in their decision letter concludes that any of the obligations set out in this Undertaking are incompatible with any one of the tests for planning obligations set out at regulation 122 of the Community Infrastructure Levy Regulations 2010 and states in the decision letter that they attach no weight to that obligation in determining the Appeal then the relevant obligation(s) shall immediately cease to

have effect and the Owner shall be under no obligation to comply with such obligation(s).

5. THE OWNER'S PLANNING OBLIGATIONS

- 5.1 The Owner covenants with the Council so as to bind the Land to observe and perform the obligations contained in Schedules 1 and 2.

6. REGISTRATION OF UNDERTAKING

- 6.1 The Owner recognises and agrees that covenants in this Undertaking shall be treated and registered:
- (a) As local land charges for the purposes of the Local Land Charges Act 1975; and
 - (b) In the Charges Register of Title No AGL153495 at the Land Registry.
- 6.2 The Owner shall as soon as reasonably practicable after the completion of this Undertaking apply for an entry of this Undertaking to be made in the Charges Register of the above title number of the Land and following the making of such entry shall furnish the Council's Borough Solicitor with a certified copy of the title information document relating to the said title.
- 6.3 If the Owner fails to make the application referred to in clause 6.2 above within twenty (20) Working Days of the completion of this Undertaking the Council shall (without prejudice to any other right) be entitled to register the Undertaking and recover the reasonable expenses incurred in doing so from the Owner and the Owner hereby covenants with the Council to do or concur in doing all things reasonably necessary to enable such entries to be made.

7. MORTGAGEES

- 7.1 No party (including any mortgagee) shall be bound by the obligations in the Undertaking, or be subject to enforcement action in respect of a breach of such obligations, unless and until it shall have a freehold or leasehold interest in the Land.

8. ARBITRATION

- 8.1 All disputes, differences or questions arising out of this Undertaking or as to the rights or obligations of the parties under it or in connection with its construction shall be referred to arbitration by a single arbitrator to be agreed between the parties or, failing agreement, within 15 Working Days by an arbitrator to be appointed at the request of any party by the President of The Royal Institute of Chartered Surveyors as the case may be having due regard to any representations made to him as to the appropriate qualifications of such arbitrator.

- 8.2 The arbitration shall take place in London and shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of such Act for the time being in force, unless otherwise agreed in writing between the parties.

9. THIRD PARTIES

A person who is not named in this Undertaking does not have any right to enforce any term of this Undertaking under the Contracts (Rights of Third Parties) Act 1999.

10. NOTICES

- 10.1 All notices served under or in connection with this Undertaking shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

- 10.2 Any notice to be served under or in connection with this Undertaking shall be sent:

- a) to the Council, for the attention of the Deputy Director of Planning and Regeneration, London Borough of Hillingdon, Civic Centre, High Street, Uxbridge, Middlesex, UB8 1UW and shall cite the Section 106 Reference for this Undertaking; or
- b) to the Owner, at 2nd Floor, Royal Liver Building, Liverpool L3 1PY.

11. FORM PO1

- 11.1 Upon Commencement of Development the Owner shall notify the Council by completing and sending Form PO1 (Appendix 1) to the Council addressed to the Planning Obligations Officer, 3 North, London Borough of Hillingdon, High Street Uxbridge UB8 1UW or by email to cil@hillingdon.gov.uk and shall cite the Section 106 Reference.

12. CHANGE IN OWNERSHIP

- 12.1 The Owner agrees to give the Council written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Undertaking have been discharged such notice to be given within twenty (20) Working Days and to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan and the Section 106 Reference SAVE THAT this clause 12 shall not require the Owner to notify the Council of any of the following:
 - (a) the sale or letting of any individual Dwelling; or
 - (b) the grant of any rights or the transfer of any interest in the Land to statutory undertakers within the meaning of Section 262 of the Act.

13. CONTRIBUTIONS

13.1 Payment of the Public Transport Infrastructure Contribution shall be made on the following basis:

- (a) The Public Transport Infrastructure Contribution shall be delivered to the person and address specified in clause 10 above;
- (b) Pursuant to the Local Government Act 2003, the Council shall be at liberty to charge the Public Transport Infrastructure Contribution to a Council revenue account and for the avoidance of doubt it is agreed and declared that this shall be without prejudice to the Council's right to apply the Public Transport Infrastructure Contribution or any part or parts thereof to revenue purposes or to capital purposes or partly to the one and partly to the other.

14. INDEX LINKING

Any sums payable by the Owner under this Undertaking shall be increased by the application of the formula $A=B \times C/D$ where:

- (a) A is the sum actually payable on the Specified Date;
- (b) B is the original sum mentioned in this Unilateral Planning Obligation;
- (c) C is the Index for the month 2 months before the Specified Date;
- (d) D is the Index for the month 2 months before the date of this Undertaking; and
- (e) C/D is equal to or greater than 1.

15. INTEREST

15.1 All costs, payments and expenses payable to the Council under this Undertaking shall bear Interest being charged from the date such payment is due until the payment is received by the Council.

16. VAT

- 16.1 All consideration given in accordance with the terms of this Undertaking shall be exclusive of any VAT properly payable in respect thereof.

17. JURISDICTION

- 17.1 This Undertaking is governed by and interpreted in accordance with the law of England and Wales.

18. DELIVERY

- 18.1 The provisions of this Undertaking (other than this clause which shall be of immediate effect) shall be of no effect until this Undertaking has been dated.

IN WITNESS of which this Undertaking has been duly executed as a Deed and has been delivered once dated.

SCHEDULE 1

PUBLIC TRANSPORT INFRASTRUCTURE CONTRIBUTION

The Owner hereby covenants with the Council as follows:

1. Prior to Commencement of Development to pay to the Council the Public Transport Infrastructure Contribution of £30,000 (THIRTY THOUSAND POUNDS) towards the provision of Santander docking station, bicycles, and the management of the Santander Cycle Hire scheme.
2. Not to Commence Development before the Public Transport Infrastructure Contribution is paid.

SCHEDULE 2

HIGHWAY WORKS

The Owner hereby covenants with the Council as follows:

1. Not to Occupy or permit or cause to be Occupied any part of the Development until the Highway Works have been completed.
2. To enter into any necessary Highway Agreements for the Highways Works before the Highways Works are commenced.

APPENDIX 1

PO1 FORM

TO: PLANNING OBLIGATIONS OFFICER

PLANNING AND REGENERATION
LONDON BOROUGH OF HILLINGDON
3N CIVIC CENTRE
HIGH STREET UXBRIDGE
MIDDLESEX UB8 1UW
EMAIL: cil@hillingdon.gov.uk

FORM PO1

SECTION 106/278 LEGAL AGREEMENT

SITE ADDRESS:

PLANNING REFERENCE:

DESCRIPTION OF DEVELOPMENT:

DATE OF COMMITTEE AUTHORISATION:

SECTION 106 OBLIGATIONS

DATE OF IMPLEMENTATION OF DEVELOPMENT:

(i) NOTIFIED TO THE COUNCIL:

(ii) SUBMITTED TO THE COUNCIL WITH THIS FORM:

NB: Please continue of separate sheet(s) if necessary.

**TICK BOX IF THIS FORM IS TO CONSTITUTE THE “FIRST NOTICE”
UNDER THE SECTION 278 HIGHWAY AGREEMENT IF THIS IS THE
“FIRST NOTICE” PLEASE ATTACH THE “FIRST PAYMENT” AS
SPECIFIED IN THE AGREEMENT**

☐

FOR COUNCIL USE

NB: IF THIS IS THE FIRST NOTICE PASS IMMEDIATELY TO HIGHWAYS ENGINEERS

COST CODE: _____

PLANNING COSTS: _____

LEGAL COSTS: _____

OTHER COSTS (IDENTIFY):

MAINTENANCE COSTS (COMMUTED SUM) _____

INTEREST BEARING ACCOUNT FOR BENEFIT OF OBLIGATIONS **YES/NO**

APPENDIX 2

Plan

NOTES:

1. THIS DRAWING IS INDICATIVE AND SUBJECT TO DISCUSSIONS WITH LOCAL & NATIONAL HIGHWAY AUTHORITIES. THIS DESIGN IS ALSO SUBJECT TO CONFIRMATION OF LAND OWNERSHIP, TOPOGRAPHY, LOCATION OF STATUTORY SERVICES, DETAILED DESIGN AND TRAFFIC MODELLING.

2. THIS DRAWING IS BASED UPON THE ORDNANCE SURVEY'S (1:1250) MAP WITH PERMISSION OF THE CONTROLLER OF HER MAJESTY'S STATIONERY OFFICE. CROWN COPYRIGHT RESERVED.

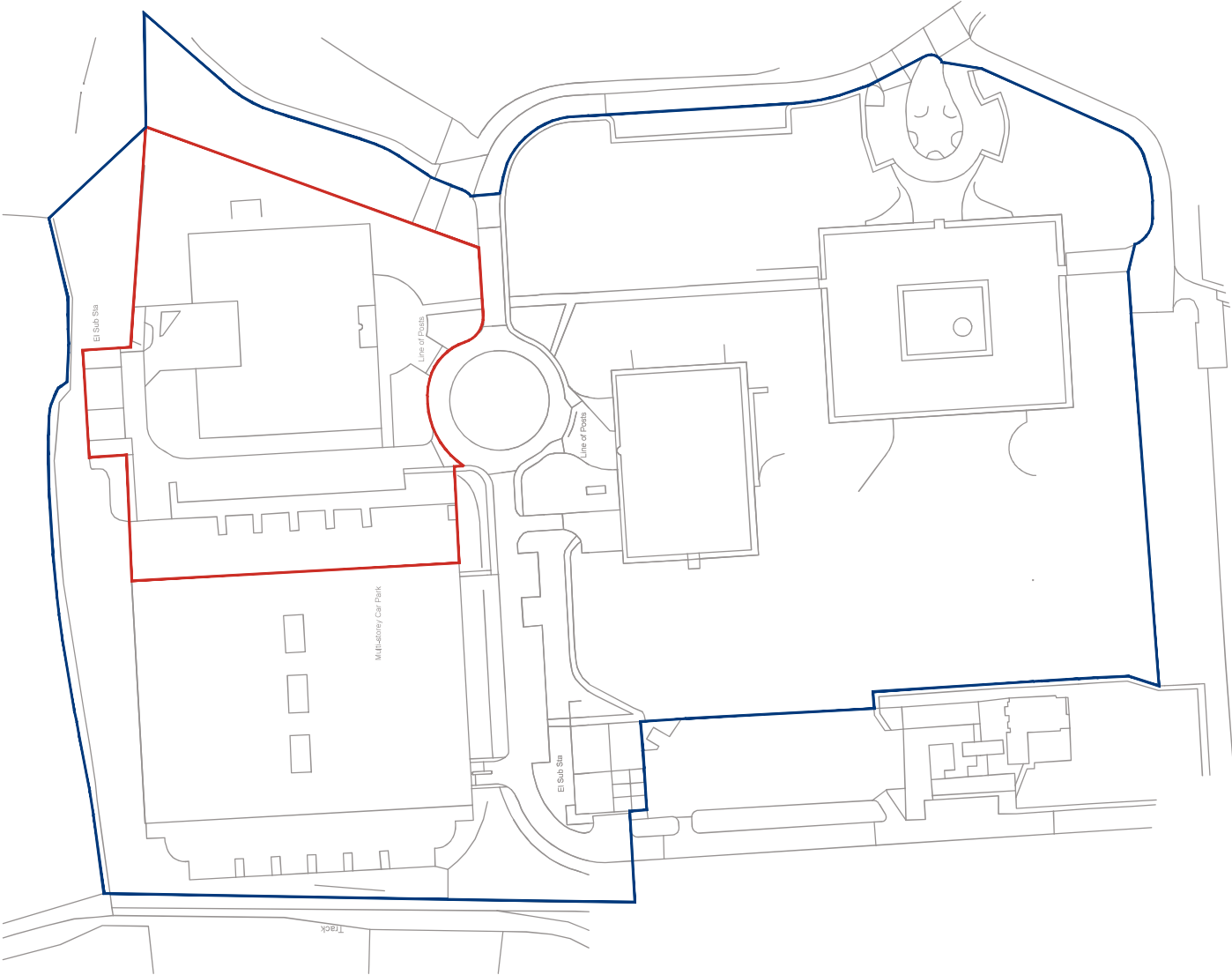
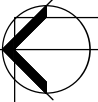
KEY:



RED LINE BOUNDARY



LAND OWNERSHIP BOUNDARY



ICENI PROJECTS LIMITED
DA VINCI HOUSE
44 SAFFRON HILL
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mail@iceniprojects.com



CLIENT

UNIVERSITIES SUPERANNUATION SCHEME LIMITED

PROJECT

HAYES BUSINESS PARK

TITLE

SITE LOCATION PLAN

DRAWN BY	NM	CHECKED BY	SP	APPROVED BY	SP
			28/05/2021		28/05/2021
SCALE @ A3	1:1250	DATE			
PROJECT NO.	21-T066	DRAWING NO.	02	REV.	-

This Project is not to be used for any purpose other than that for which it was prepared. All figures are to be verified.

Executed as a Undertaking by

Joel Sofer (Director), for and on
behalf of **SHALL DO HAYES**
DEVELOPMENTS LIMITED.



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Authorised signatory



Signature of Witness:

Name of Witness: **James Gordon**

Address of Witness: **Flat 26 Brockwell Court**

Effra road, Brixton, SW2 1NA

Occupation: **Secretary**