

DATED

23 FEBRUARY

2023

DHOLAK LIMITED

and

THE LONDON BOROUGH OF HILLINGDON

and

ARBUTHNOT LATHAM & CO. LIMITED

**PLANNING OBLIGATION BY DEED PURSUANT TO SECTION 106
OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND ASSOCIATED
POWERS**

RELATING TO THE DEVELOPMENT OF LAND AT

53-55 THE BROADWAY

JOEL STREET

NORTHWOOD

HA6 1NZ

PLANNING APPLICATION NUMBER

5564/APP/2022/2355

Planning & Corporate Team
London Borough of Hillingdon
Civic Centre, High Street
Uxbridge, Middlesex
Ref: 3E/04/021368

THIS PLANNING OBLIGATION BY DEED is dated 23 FEBRUARY 2023
and is made **BETWEEN**:

1. **DHOLAK LIMITED** (Co. Regn. No. 1306260) of Acre House, 11-15 William Road, London NW1 3ER. ("the Owner");
2. **THE LONDON BOROUGH OF HILLINGDON** of the Civic Centre, High Street, Uxbridge, Middlesex UB8 1UW ("the Council").
3. **ARBUTHNOT LATHAM & CO., LIMITED** (Co. Regn. No. 819519) of Arbuthnot House, 7 Wilson Street, London EC2M 2SN ("the Mortgagee")

BACKGROUND

- A The Council is the local planning authority for the purposes of the Act in respect of the Land and by whom the obligations in this Agreement are enforceable.
- B The Owner has a freehold interest in the Land registered under Title No AGL65056 at the Land Registry subject to a charge entered into between the Owner and the Mortgagee dated 11th October 2022.
- C On the 21st July 2022 and the Owner submitted the Planning Application to the Council for permission to develop the Site for the purposes and in the manner described in the Planning Application.
- D The Owner intends to develop the Site pursuant to the Planning Permission.
- E The Council has delegated authority to determine the Planning Application to the Head of Planning, Transportation & Regeneration subject to the prior completion of this Agreement.
- F The Council has considered the provisions of the development plan and taken into account planning considerations affecting the Site and considers that in the interests of the proper planning of its area the Development of the Site ought to only be permitted subject to the terms

of this Agreement and for that purpose the parties are willing to enter into this Agreement.

THIS DEED WITNESSES AS FOLLOWS:-

OPERATIVE PROVISIONS

1 INTERPRETATION

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

"1980 Act"	means the Highways Act 1980 (as amended);
"1990 Act"	means the Town and Country Planning Act 1990 (as amended);
"Agreement"	Means this Deed relating to the development of land at 53-55 The Broadway, Joel Street, Northwood, HA6 1NZ to secure the infrastructure required pursuant to the Planning Permission
"Commencement of Development"	means the carrying out in relation to the Development of any material operation (as defined within section 56(4) of the 1990 Act) on the Site pursuant to the Planning Permission but (for the purposes of this Agreement) excluding operations consisting of: <ul style="list-style-type: none">- site clearance;- demolition (provided always that such works do not relate to any listed building within the Site);- archaeological investigations and works;- ground investigations;- site survey works;- temporary access construction works;- preparatory or remediation works;- works for the laying termination or diversion of services;

	<ul style="list-style-type: none"> - the erection of any temporary means of enclosure or site notices; - decontamination works; - erection of any fences and hoardings around the Site; and - environmental site investigations, <p>and Commence and Commenced shall be construed accordingly;</p>
“Deputy Director of Planning and Regeneration”	means the Council's Deputy Director of Planning and Regeneration or such person as the Council designates as undertaking this role;
“Development”	means the development of the Site pursuant to the Planning Permission;
“Dwelling”	means to be provided as part of the Development
“Form PO1”	means the form in the substantial format attached at Appendix 1 ;
“Land”	Means the land subject to the Planning Application and shown on the attached Plan
“Occupier”	means an individual occupier of a unit of accommodation approved pursuant to the Planning Application and occupier shall be construed accordingly;
“Owner”	means a person with a registerable interest in the land
“Parking Permit”	means a resident's parking permit issued by the Council (which for the avoidance of doubt does not include a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 as amended);
“Plan ”	means the plan attached to this Agreement at Appendix 2 ;

“Planning Application”	means the application for change of use of undercroft to provide a wheelchair accessible self-contained residential unit with associated external alterations/works including disabled parking bay under the Council's reference number 5564/APP/2022/2355
“Planning Permission”	Means the planning permission approved pursuant to the Planning Application
“Planning Obligations Officer”	means the Council's Planning Obligations Officer or such person as the Council designates as undertaking this role;
“Planning Reference”	means planning reference 5564/APP/2022/2355
“Site”	means the property known as 53-55 the Broadway, Joel Street, Northwood, HA6 1NZ and shown for identification purposes only edged red on the Plan;
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax; and
“Working Day”	means any day except Saturday, Sunday and any bank or public holiday and Working Days shall be construed accordingly.

1.2 In this Agreement:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 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;
- 1.2.3 a reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions;

- 1.2.4 unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.5 the headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;
- 1.2.6 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part of paragraph of that Schedule;
- 1.2.7 where the agreement, approval, consent or an expression of satisfaction is required by the Owner under the terms of this Agreement from the Council that agreement, approval, consent or satisfaction shall be given in writing and shall not be unreasonably withheld or delayed;
- 1.2.8 references to any statute or statutory provision include references to:
 - 1.2.8.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by subsequent legislation; and
 - 1.2.8.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.9 references to the Site include any part of it;
- 1.2.10 references to any party in this Agreement include the successors in title of that party and any person deriving title through or under that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act or any successor local highway authority exercising powers under the 1980 Act;
- 1.2.11 "including" means "including, without limitation";
- 1.2.12 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.13 without prejudice to the terms of any other provision contained in this Agreement the Owner shall pay all costs, charges and expenses (including without prejudice to legal costs and Surveyor's fees) reasonably incurred by the Council for the purpose of or incidental to the enforcement of any right or power of the Council or any obligation of the Owner arising under this Agreement;

1.2.14 where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them jointly or against each of them individually; and

1.2.15 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

2 LEGAL BASIS

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Owner without limit of time.
- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 16 of the Greater London Council (General Powers) Act 1974, section 2 of the Local Government Act 2000, section 1 of the Localism Act 2011 and all other enabling powers with the intent that it will bind the Owner and their successors in title to the Site.

3 CONDITIONALITY

The obligations contained in the schedules to this Agreement are subject to and conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) Commencement of the Development.

All other parts of this Agreement shall be of immediate force and effect unless otherwise stated.

4 MISCELLANEOUS

- 4.1 Nothing contained or implied in this Agreement shall prejudice or affect the rights, powers, duties and obligations of the Council in exercise of their functions as local planning authority and their rights, powers, duties and obligations under all public and private statutes, bylaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.
- 4.2 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Agreement, whether or not pursuant to an appeal.

- 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 Agreement 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 of the Owner.
- 4.4 Nothing in this Agreement shall be construed as a grant of planning permission.
- 4.5 Unless expressly agreed otherwise in this Agreement, the covenants in this Agreement shall be enforceable without any limit of time against the Owner and any successors in title to the Site and assigns of the Owner in an interest or estate to the Site or any part or parts of the Site 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 Agreement nor 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 Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 4.7 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is quashed or revoked or otherwise withdrawn or (without the consent of the Owner or their successors in title) is modified by any statutory procedure or expires prior to Commencement of Development.
- 4.8 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 4.9 In the event that the planning obligations contained in this Agreement being modified a note or memorandum thereof shall be endorsed upon this Agreement.
- 4.10 The Agreement cannot be amended or discharged without the prior consent in writing of the Owner and the Council or their respective successors in title

5 THE OWNER'S PLANNING OBLIGATIONS

The Owner covenants with the Council so as to bind the Site to observe and perform the obligations contained in this Agreement and the Schedules hereto.

6 COSTS

6.1 The Owner hereby covenants with the Council that on completion of this Agreement it will pay the Council's reasonable and proper legal costs, together with all disbursements, incurred in connection with the negotiation, preparation, completion and registration of this Agreement.

7. REGISTRATION OF AGREEMENT

7.1 The Owner recognises and agrees that the covenants in this Agreement shall be treated and registered as local land charges for the purposes of the Local Land Charges Act 1975.

7.2 The Owner covenants to register this Deed at the Land Registry against title Number AGL 65056 and upon any subsequent registerable disposition of the Land prior to the Commencement of Development.

8. ARBITRATION

8.1 Any dispute, controversy or claim arising out of or relating to this Agreement, including any question regarding its breach, existence, validity or termination or legal relationship established by this Agreement shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

8.1.1 the tribunal shall consist of one other arbitrator appointed jointly by the parties;

8.1.2 in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;

8.1.3 the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and

8.1.4 the seat of the arbitration shall be London

9. THIRD PARTIES

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

10. NOTICES

10.1 All notices served under or in connection with this Agreement 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 Agreement shall be sent to the:

- a) Deputy Director of Planning and Regeneration, London Borough of Hillingdon, Civic Centre, High Street, Uxbridge, Middlesex, UB8 1UW and shall cite the Planning Reference for this Agreement; and
- b) The Owner at the HM Land Registry address provided in this agreement.

11. FORM PO1

Prior to Commencement of the Development the Owner shall notify the Council that it intends to Commence the Development by completing and sending Form PO1 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 Planning Reference.

12. CHANGE IN OWNERSHIP

The Owner agrees to provide the Council with immediate written notification of any change in Ownership of any of its interest in the Land occurring before all of the obligations under this Agreement have been discharged (such notice to give details of the transferee's full name and registered office) together with the area of the Land or unit of occupation purchased by reference to a plan and the Section 106 Reference.

13. VAT

13.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable.

13.2 The Owner hereby acknowledges and agrees that if at any time VAT is required to be paid in respect of the Land and the Contributions then to the extent that VAT had not been previously charged in respect of that payment the Council shall have the right to issue a VAT invoice to the Owner and the VAT shall be paid accordingly.

14. JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England and Wales.

15. MORTGAGEE'S CONSENT

The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Agreement and that the security of its charge over the Land shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall otherwise have no liability under this Agreement unless they take possession of the Land in which case they too will be bound by the obligations as if they were a person deriving title from the Owner.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1

RESIDENTIAL PARKING PERMITS

The Owner hereby covenants and agrees with the Council as follows:

- 1 Upon completion of this Agreement not to apply to the Council for a Parking Permit in respect of any Dwelling nor to knowingly permit any owner or occupier of the Dwelling to apply to the Council for a Parking Permit and if such a permit is issued in respect of the Dwelling it shall be surrendered to the Council within seven (7) days of written demand.
- 2 That all material used for advertising or marketing the Dwelling for letting or sale will notify prospective owners and occupiers that they will not be entitled to apply for a Parking Permit.
- 3 That in respect of every freehold transfer or lease granted, assigned, transferred or otherwise provided in respect of the Dwelling the following covenant shall be imposed (or a covenant of substantially the same nature in respect of any tenancy agreement licence or other instrument entitling Occupation of the Dwelling):

"the transferee/lessee for himself and his successors in title being the owner or owners for the time being [of [plot No. []]/the terms of years hereby granted] hereby covenant with the transferor/lessor and separately with the Mayor and Burgesses of the London Borough of Hillingdon ("the Council") not to apply for nor knowingly permit an application to be made by any person residing in the premises to the London Borough of Hillingdon for a parking permit (save for the display of badges on motor vehicles used by disabled persons issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 as amended) and if such a permit is issued then it shall be surrendered within seven (7) days of written request to do so from the Council and this covenant shall also be enforceable by the Council under the Contracts (Rights of Third Parties) Act 1999, section 1"

APPENDIX 1
FORM PO1

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 on 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: _____

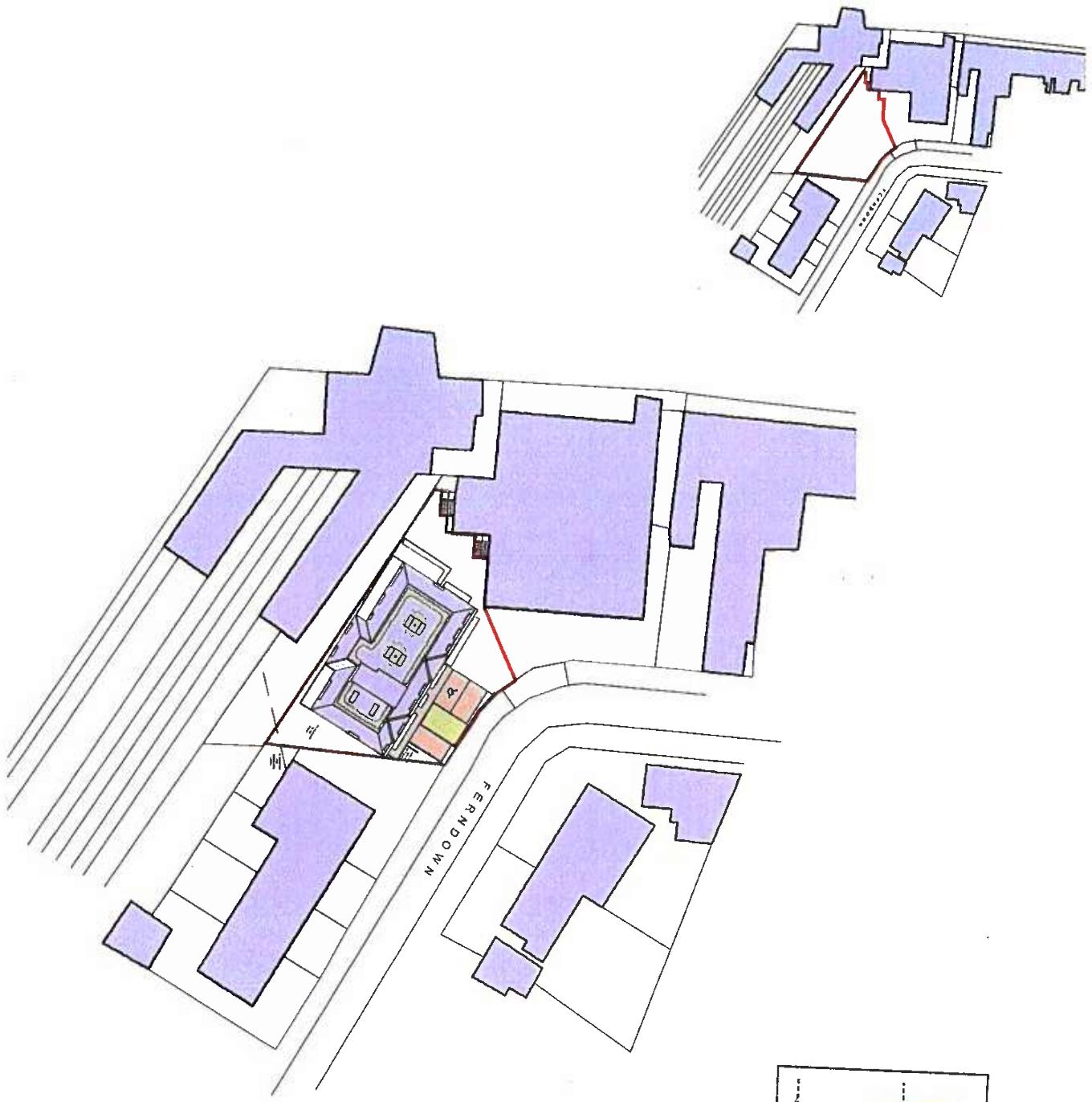
OTHER COSTS (IDENTIFY): _____

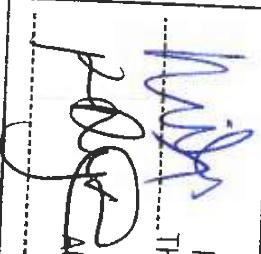
MAINTENANCE COSTS (COMMUTED SUM) _____

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

APPENDIX 2

PLAN



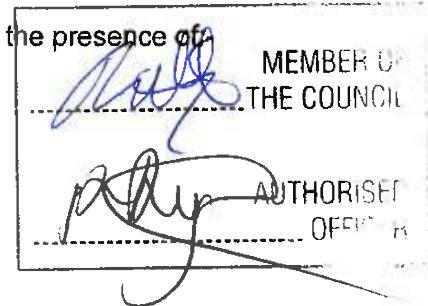

 MEMBER OF
 THE COUNCIL
 N. Milin
 AUTHORIZED
 OFFICER



Scale 1:500 @ A3	Drawn No. FLU.653.2.02
Date 10.05.22	Rev C
Site Layout & Location Plan	
 FLUENT ARCHITECTURAL DESIGN SERVICES 221 CLOTHES LINE ROAD, ST. JAMES, WINDHOEK, TEL: 061 240 0011, E-MAIL: info@fluent.com.na FAX: 061 240 0011	
 10	

THE COMMON SEAL of the
MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF HILLINGDON
was duly affixed to this Agreement

in the presence of:



Executed as a deed by DHOLAK LIMITED

acting by KAMAL PANKHANIA Director

in the presence of:

Signature:

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

[Signature]
Gareth Williams
Solicitor SRA No. 127592
7 Churchill Court, 58 Station Road
Harrow HA2 7SA
+44 (0)7471 351460

Executed as a deed ARBUTHNOT LATHAM & CO. LIMITED

acting by in the presence of :-

Signature: *[Signature]*

WENDY STREET UNDER PANEL
ATTORNEY

Signature of witness: *[Signature]*

Name (in BLOCK CAPITALS): *MARION LYNCH*

Address: 7 WILSON STREET

LONDON

EC2M 2SN.

