

- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 1.16 This Deed shall not be enforceable against statutory undertakers to the extent that their interest in the Site and/or the Offsite Skylark Mitigation Land relates solely to discharge of their statutory undertaking.

2 Legal Basis

- 2.1 This Deed is given pursuant to Section 106 of the 1990 Act with the intent that it creates planning obligations binding the Owners', the Developers' and the Mortgagee's interests in the Site and the Offsite Skylark Mitigation Land (as applicable).
- 2.2 No person shall be liable for a breach of any provisions of this Deed after it shall have parted with its entire interest in the Site or the Offsite Skylark Mitigation Land or the part of the Site or Offsite Skylark Mitigation Land (as applicable) in relation to which the breach relates but without prejudice to its liability for any subsisting breach arising prior to parting with such interest.

3 Conditionality

- 3.1 Subject to Clauses 3.2 to 3.8, this Deed is effective on the date hereof.
- 3.2 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is quashed or is modified by any statutory procedure or expires before the Development is Commenced or is at any time revoked.
- 3.3 If the Secretary of State or their Inspector in determining the Appeal expressly states in his/her decision letter that the whole or any part of an obligation set out in this Deed is not a material consideration in the granting of the Planning Permission pursuant to the Appeal and/or does not meet any one or more of the statutory tests for planning obligations set out in Regulation 122 of the CIL Regulations then that obligation shall be deemed to be reduced, varied or vitiated to the extent so expressly stated in his/her decision letter but otherwise all obligations and other matters set out in this Deed shall be deemed to remain in full force and effect.
- 3.4 Clause 4 of this Deed is conditional upon and does not come into effect unless all of the following are satisfied:
- 3.4.1 the Planning Permission has been granted pursuant to the Appeal; and
- 3.4.2 the Skylark Mitigation Works Notice has been given to the Prescribed Recipients.
- 3.5 In addition to the pre-conditions set out in Clause 3.4, Clauses 4.1.1 and 4.1.2 of and paragraph 3 of Schedule 1 of this Deed are conditional upon and do not come into effect unless all of the following are also satisfied:
- 3.5.1 the Skylark Mitigation Strategy approved from time to time pursuant to Part 2 of Schedule 1 of this Deed requires the implementation of Skylark Mitigation Works on the Offsite Skylark Mitigation Land; and
- 3.5.2 Notice of Approval has been given to the Prescribed Recipients not later than seven calendar days following the date upon which any Skylark Mitigation Strategy submitted for approval pursuant to paragraph 3 of Schedule 1 of this Deed is approved by the Council.

- 3.6 In addition to the pre-conditions set out in Clause 3.4, Clauses 4.1.3 and 4.1.4 are conditional upon and do not come into effect unless the Offsite Skylark Mitigation Works Completion Notice has been given to the Prescribed Recipients not later than seven calendar days following the date upon which any Skylark Mitigation Works carried out on the Offsite Skylark Mitigation Land have been completed.
- 3.7 In addition to the pre-conditions set out in Clause 3.4, Clauses 4.1.5 and 4.1.6 of and paragraph 16 of Schedule 1 of this Deed are conditional upon and do not come into effect unless all of the following are also satisfied:
- 3.7.1 the Skylark Monitoring Report approved from time to time pursuant to Part 4 of Schedule 1 of this Deed requires the implementation and/or retention of Skylark Mitigation Works on the Offsite Skylark Mitigation Land; and
- 3.7.2 Notice of Subsequent Approval has been given to the Prescribed Recipients not later than seven calendar days following the date upon which each Skylark Monitoring Report submitted for approval pursuant to paragraph 16 of Schedule 1 of this Deed is approved by the Council.
- 3.8 This Deed terminates and ceases to have effect on the date that the Development is decommissioned in accordance with the terms of the Planning Permission.

4 The Third Owner's Covenants

- 4.1 The Third Owner covenants with the Council:
- 4.1.1 to implement the Skylark Mitigation Strategy approved from time to time pursuant to Part 2 of Schedule 1 of this Deed on the Offsite Skylark Mitigation Land including the provision of any Skylark Mitigation Works thereon insofar as it relates to the Offsite Skylark Mitigation Land;
- 4.1.2 to comply with the Skylark Mitigation Strategy insofar as it relates to the Offsite Skylark Mitigation Land until the date that the Development is decommissioned in accordance with the terms of the Planning Permission.
- 4.1.3 not to permit or allow activities on the Offsite Skylark Mitigation Land during the lifetime of the Development that may prevent the Skylark Mitigation Purpose from being and continuing to be achieved following the implementation of the Skylark Mitigation Strategy without the express prior written consent of the Council;
- 4.1.4 that following the implementation of the Skylark Mitigation Strategy, it shall not do or permit to be done anything that would prevent ongoing compliance with the Skylark Mitigation Strategy in accordance with the terms of this Deed;
- 4.1.5 to implement the requirements of any Skylark Monitoring Report approved from time to time pursuant to Part 4 of Schedule 1 of this Deed on the Offsite Skylark Mitigation Land; and
- 4.1.6 to comply with the Skylark Monitoring Report most recently approved by the Council pursuant to Part 4 of Schedule 1 of this Deed in so far as it relates to the Offsite Skylark Mitigation Land.
- 4.2 The Third Owner hereby acknowledges that the Offsite Skylark Mitigation Land shall be subject to the obligations, restrictions and covenants set out in this Deed, such obligations being planning obligations for the purposes of section 106 of the 1990 Act.

5 The First and Second Owners' Covenants

- 5.1 The First Owner and the Second Owner covenant with the Council:
- 5.1.1 to implement the Skylark Mitigation Strategy approved from time to time pursuant to Part 2 of Schedule 1 of this Deed on the Onsite Skylark Mitigation Land including the provision of any Skylark Mitigation Works thereon insofar as it relates to the Site;
 - 5.1.2 to comply with the Skylark Mitigation Strategy insofar as it relates to the Site until the date that the Development is decommissioned in accordance with the terms of the Planning Permission;
 - 5.1.3 not to permit or allow activities on the Site during the lifetime of the Development that may prevent the Skylark Mitigation Purpose from being and continuing to be achieved following the implementation of the Skylark Mitigation Strategy without the express prior written consent of the Council;
 - 5.1.4 that following the implementation of the Skylark Mitigation Strategy, they shall not do or permit to be done anything that would prevent ongoing compliance with the Skylark Mitigation Strategy in accordance with the terms of this Deed;
 - 5.1.5 to implement the requirements of any Skylark Monitoring Report approved from time to time pursuant to Part 4 of Schedule 1 of this Deed on the Site; and
 - 5.1.6 to comply with the Skylark Monitoring Report most recently approved by the Council pursuant to Part 4 of Schedule 1 of this Deed in so far as it relates to the Onsite Skylark Mitigation Land.
- 5.2 The First Owner and the Second Owner hereby acknowledge that the Site shall be subject to the obligations, restrictions and covenants set out in this Deed, such obligations being planning obligations for the purposes of section 106 of the 1990 Act.

6 The Owners' and Developers' Covenants

The Owners and the Developers covenant with the Council and each other in the terms set out in Schedule 1 of this Deed.

7 Miscellaneous

- 7.1 The Developers shall pay to the Council the Council's reasonable and proper legal costs incurred in the negotiation of this Deed.
- 7.2 This Deed shall not be enforceable by any person not a party to it other than the Council pursuant to the Contract (Rights of Third Parties) Act 1999.
- 7.3 If any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable, such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provision of this Deed.
- 7.4 Where this Deed requires that a Skylark Mitigation Works Notice, Notice of Approval, Notice of Commencement, Notice of Subsequent Approval, Offsite Skylark Mitigation Works Completion Notice or Onsite Skylark Mitigation Works Completion Notice is to be given to the Council and/or the Third Owner (as applicable), such notice:
- 7.4.1 must be:

- (a) sent by means of the special delivery service; and
- (b) in the case of a proprietor for the time being of any legal estate (whether freehold or leasehold) registered at HM Land Registry in respect of the Offsite Skylark Mitigation Land, addressed to "the Owner" at the relevant address for service recorded for that proprietor at HM Land Registry or such other address for service as may be notified in substitution thereof by that proprietor (or by a solicitor or notary public acting on his behalf) to the Owners, the Developers and the Council from time to time;

7.4.2 may be given by the First Developer, the Second Developer, the Council or any other person.

8 Waiver

8.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8.2 No waiver (whether expressed or implied) by the Third Owner of any breach or default by the First Owner, the Second Owner or the Developers in performing or observing any of the covenants made by them with the Third Owner in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Third Owner from enforcing any of the relevant covenants against the First Owner, the Second Owner or the Developers or for acting upon any subsequent breach or default.

9 Value added tax

9.1 Each amount stated to be payable under or pursuant to this Deed is exclusive of VAT (if any).

9.2 If any VAT is at any time chargeable on any supply made by the Council, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

10 Mortgagee's consent

The Mortgagee hereby consents to:

10.1 the Third Owner entering into this Deed; and

10.2 the Mortgagee's interest in the Offsite Skylark Mitigation Land being bound by the terms of this Deed providing it shall have no liability for the obligations set out herein unless and until it becomes a mortgagee in possession of the Offsite Skylark Mitigation Land.

11 Governing law

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

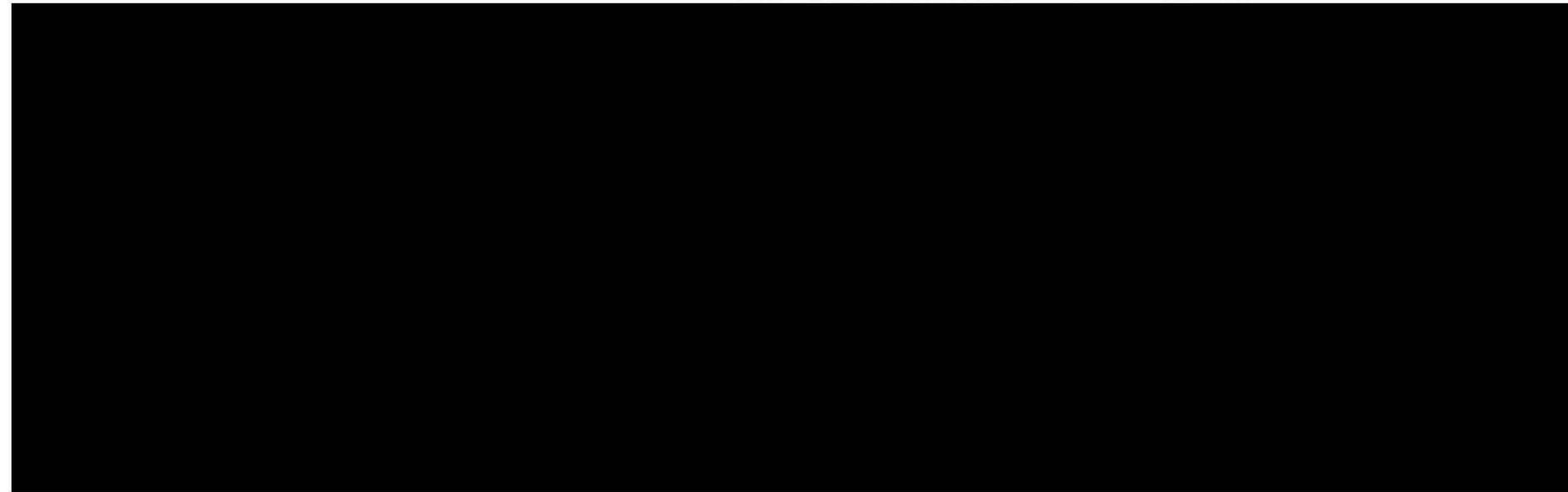
IN WITNESS of which the parties have executed but not delivered this Deed until the date first shown above.

the First Owner:

Executed as a deed by)
Davill Solar Limited acting by a Director)
)
)

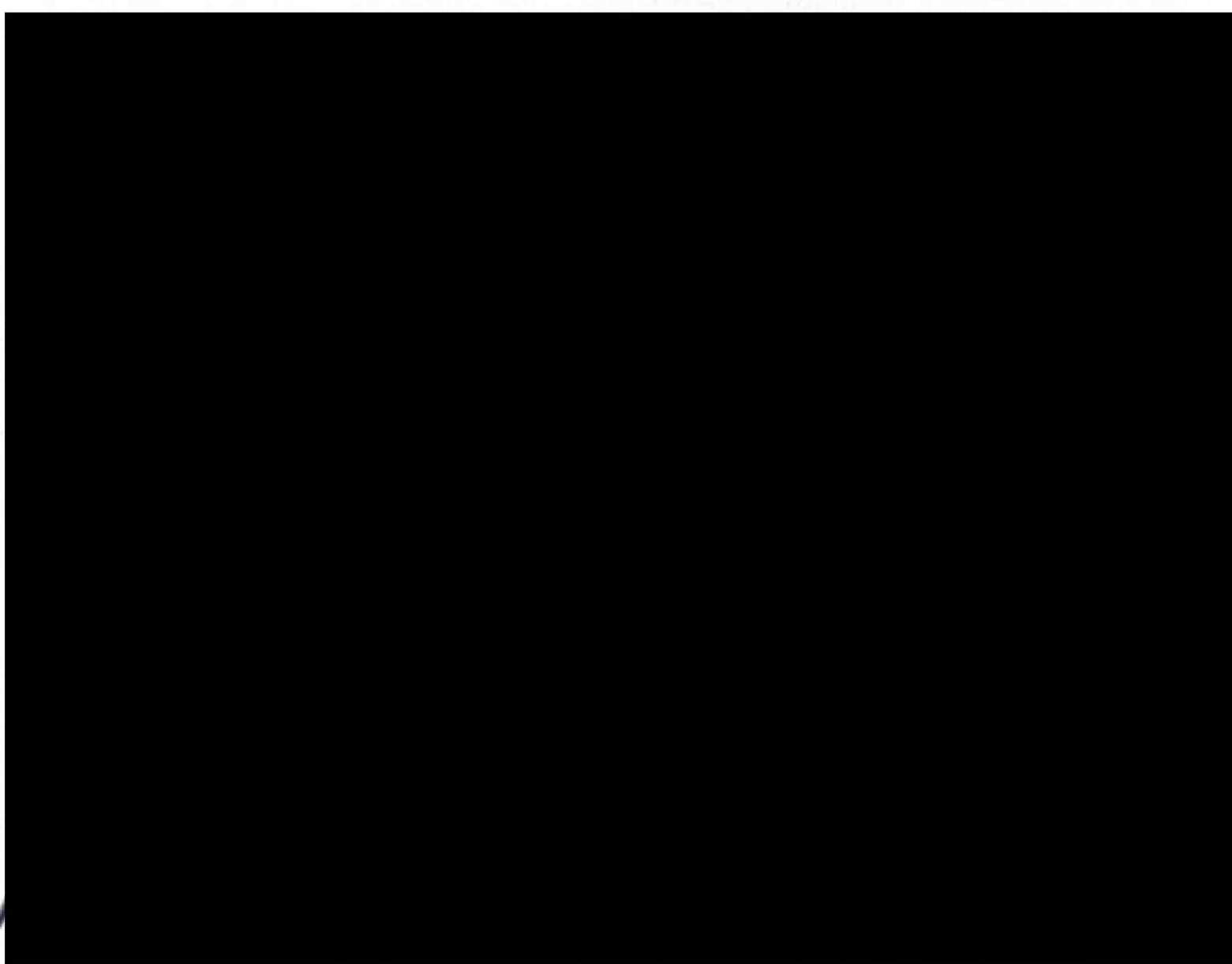
Director Name: (Capitals)

Director Signature:)



In the presence of: [Witness details]:)
)

Witness Name (Capitals):)
Witness Address:)
)
)
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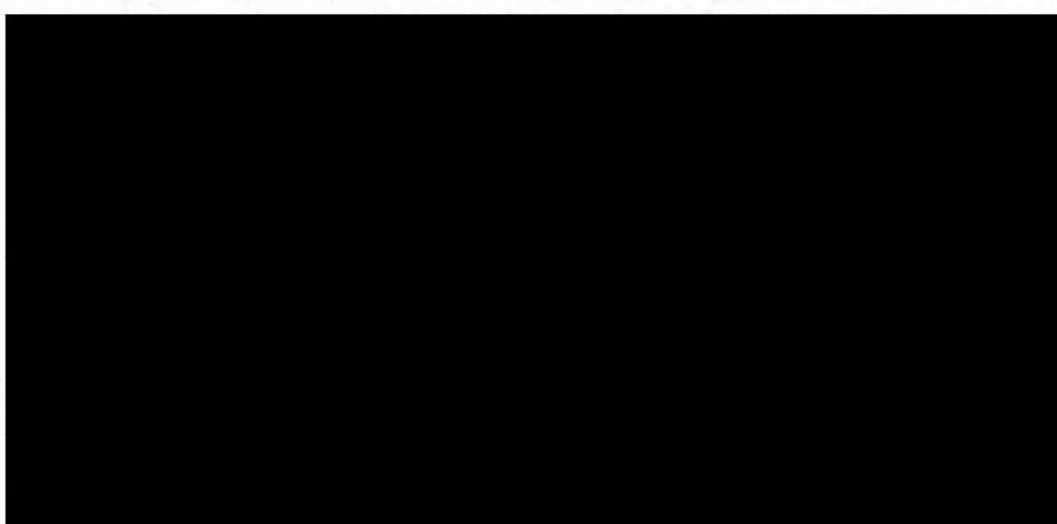


The Second Owner:

Executed as a deed by)
John A Wells Limited acting by a Director)
)
)

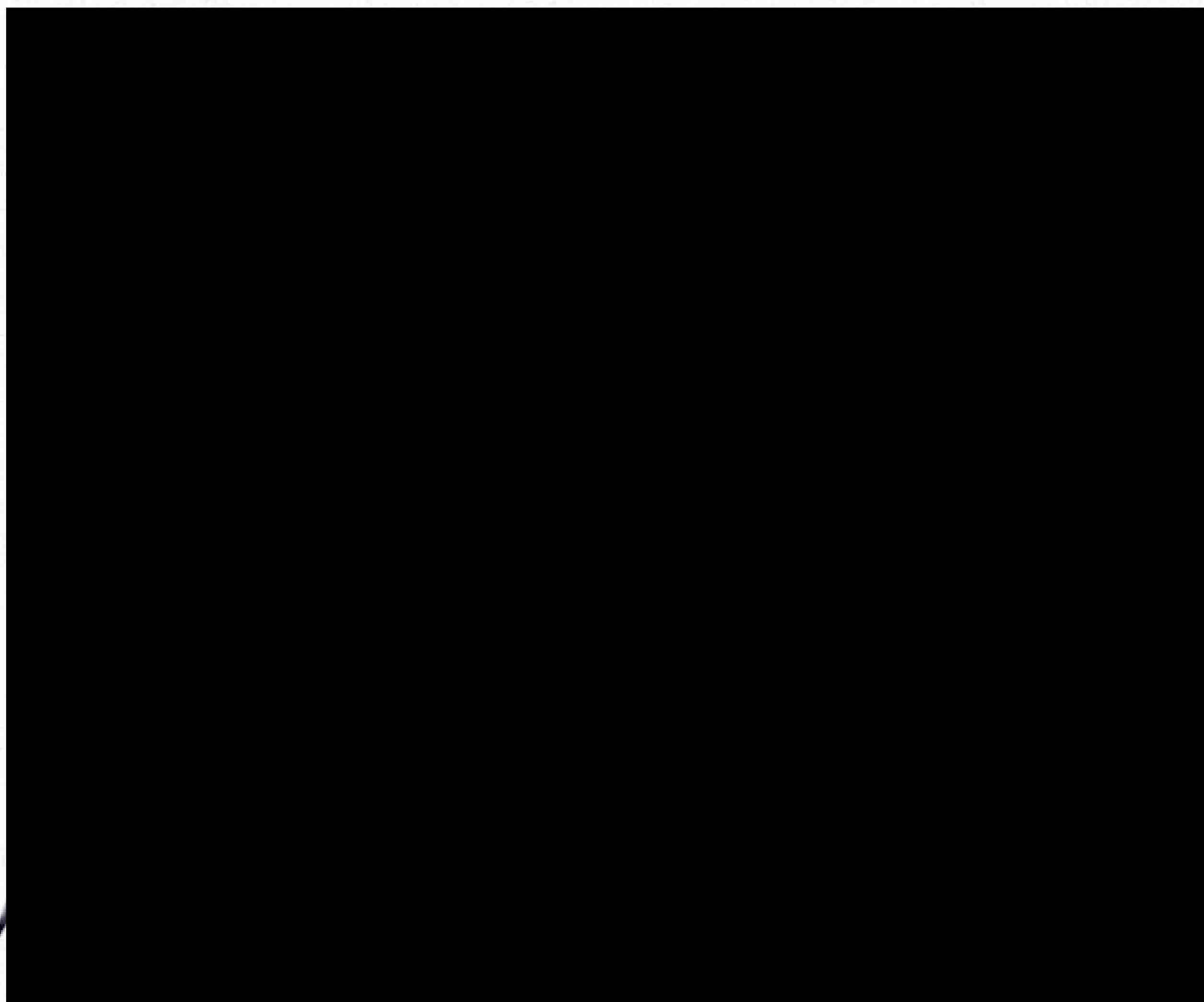
Director Name: (Capitals)

Director Signature:)



In the presence of: [Witness details]:)
)

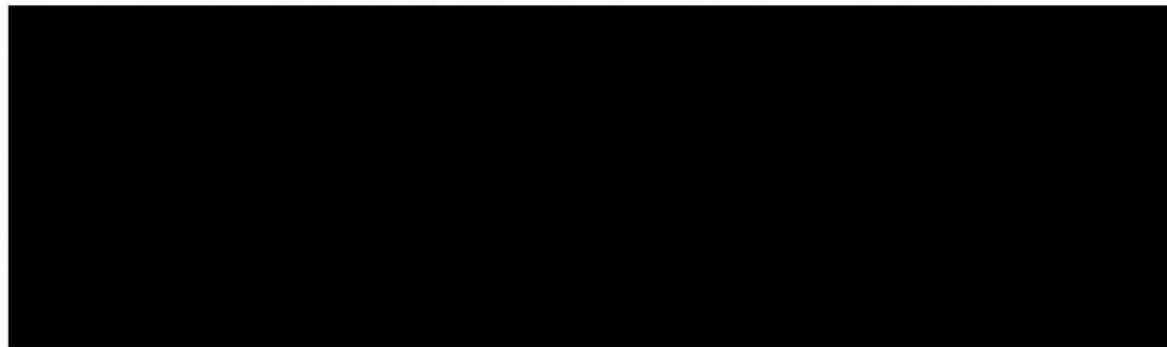
Witness Name (Capitals):)
Witness Address:)
)
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)



The Third Owner:

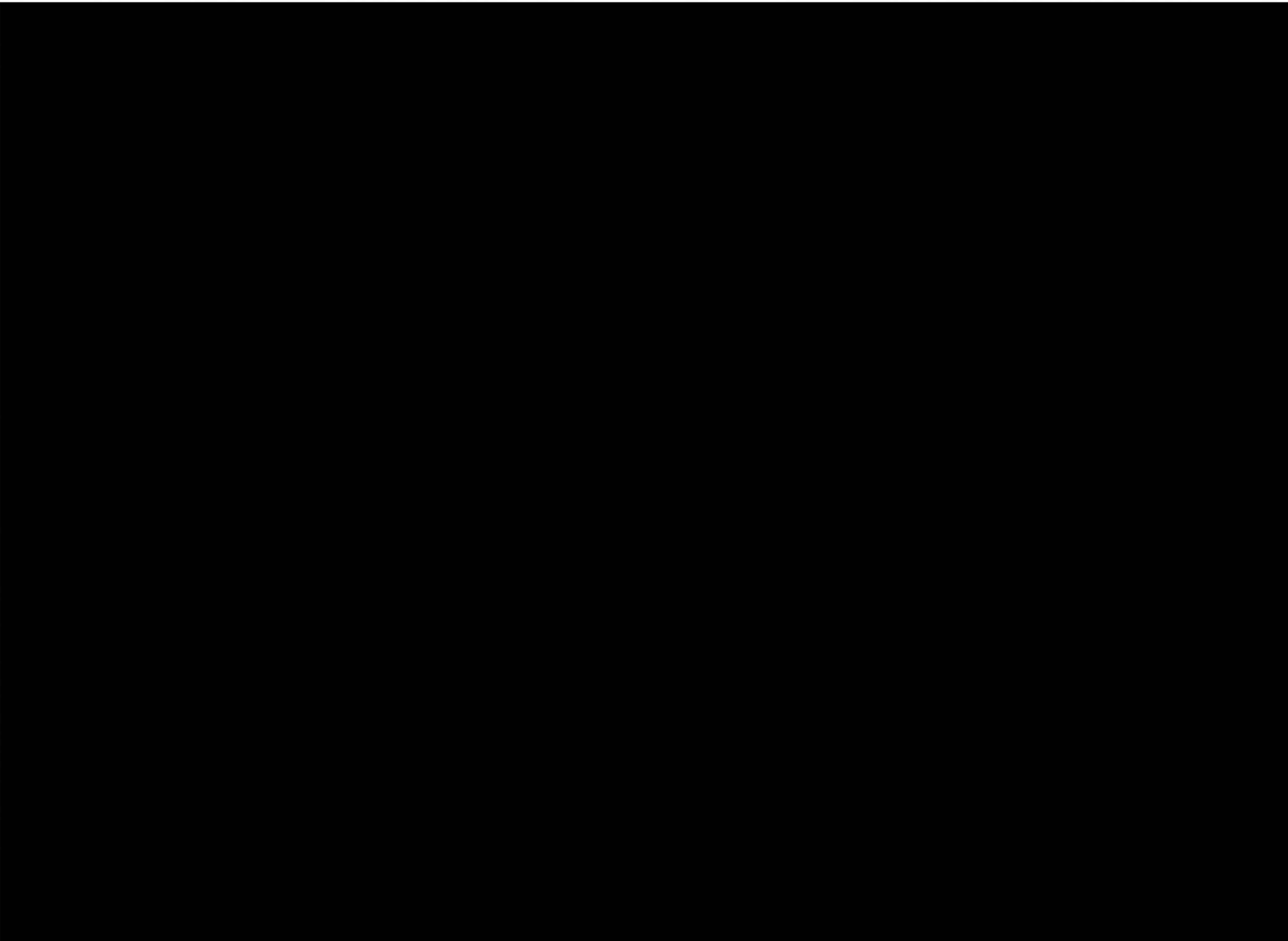
Executed as a deed by)
Timothy Frank Kirk)
)
)

Name:)
Signature:)



In the presence of: [Witness details]:)
)

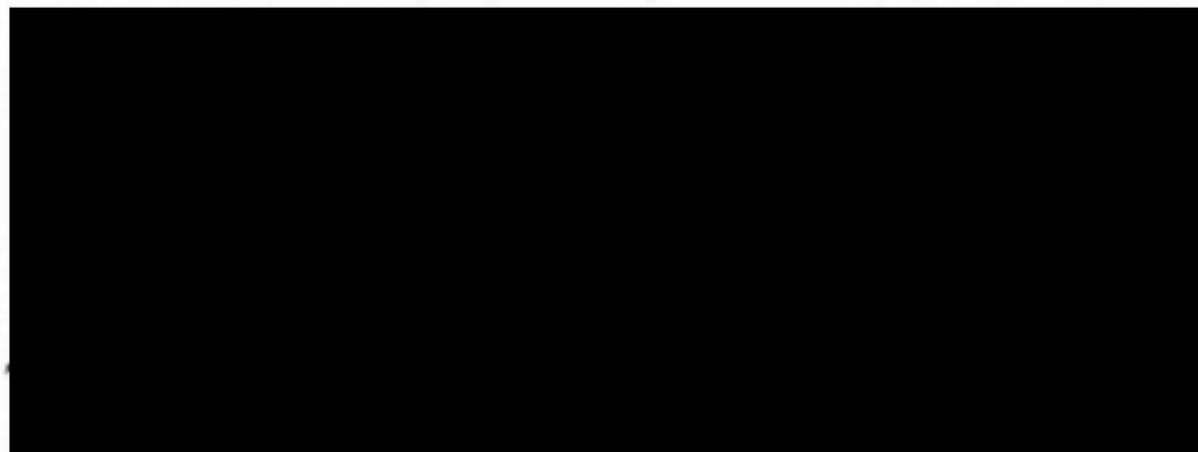
Witness Name (Capitals):)
Witness Address:)
)
)
)



The First Developer:

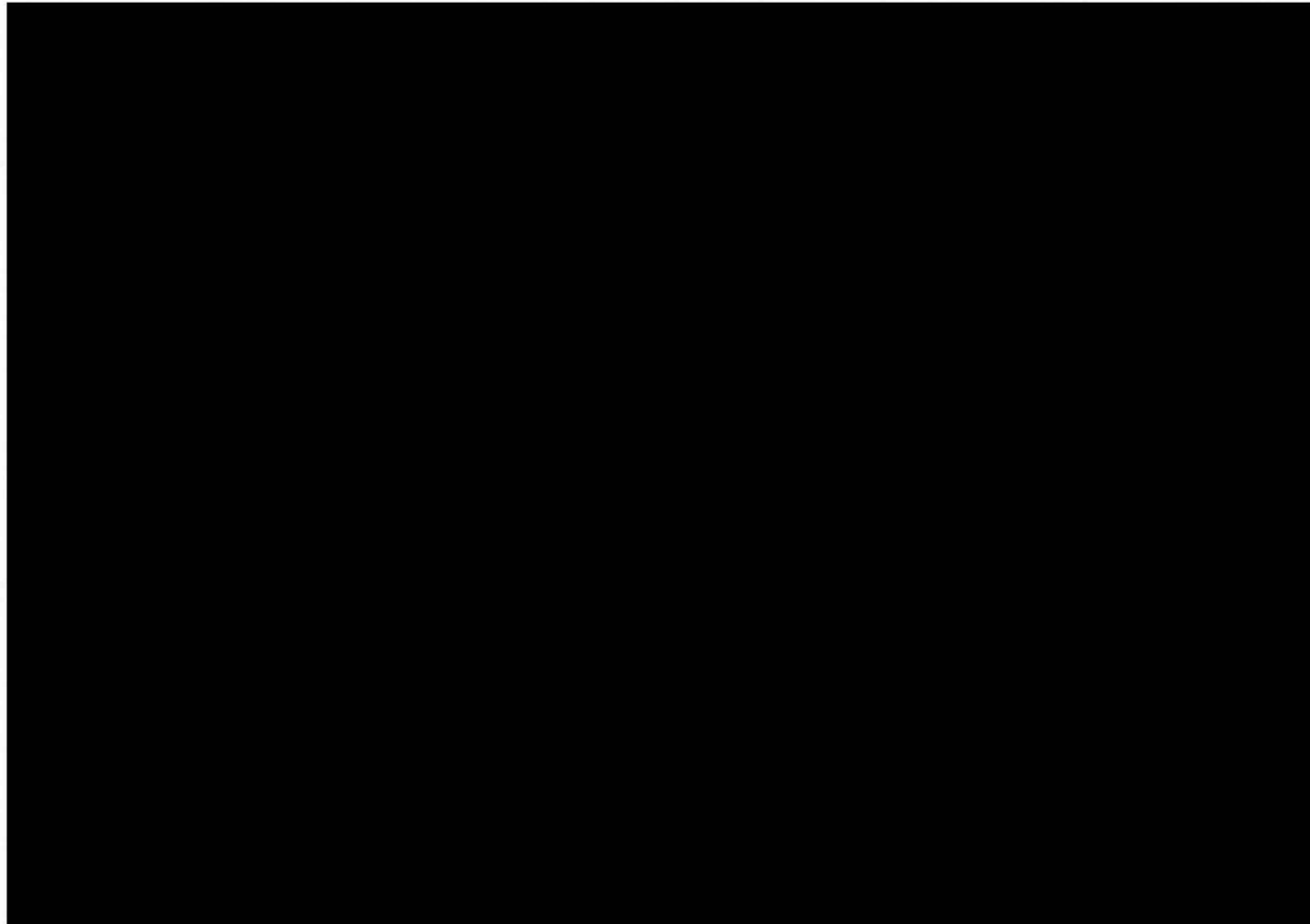
Executed as a deed by)
Exagen Old Wood Limited acting by a)
Director)
)

Director Name: (Capitals))
Director Signature:)



In the presence of: [Witness details]:)
)

Witness Name (Capitals):)
Witness Address:)
)
)
)



The Second Developer:

Executed as a deed by)
Exagen Wymeswold Ltd acting by a)
Director)
)

Director Name: (Capitals))

Director Signature:)



In the presence of: [Witness details]:)
)

Witness Name (Capitals):)

Witness Address:)
)
)
)
)



The Mortgagee:

Executed as a deed by)



.....)
(insert name of Attorney))

As Attorney of)
HSBC UK Bank Plc)
Attorney



In the presence of:)
Signature of Witness:)

Print full name)

Address)
)

Occupation)

