

DATED

2026

- (1) **CUMBERLAND COUNCIL**
- (2) **BRYAN GEOFFREY HASLOP AND JOYCE BAILEY**
- (3) **JOHN SWIFT HOMES LIMITED**

PLANNING OBLIGATION

by deed of agreement under Section 106 of the Town and Country Planning Act 1990
relating to Land Lying to the South West of Summergrove Park, Hensingham,
Whitehaven.

Clare Liddle
Chief Legal Officer Cumberland Council
Cumbria House
117 Botchergate
Carlisle
CA1 1RD

THIS AGREEMENT is made the day of

2026

B E T W E E N

- (1) **CUMBERLAND COUNCIL** of Cumbria House, 117 Botchergate, Carlisle CA1 1RD ("**Council**").
- (2) **BRYAN GEOFFREY HASLOP** of 2 Cross Barn, Hensingham, Whitehaven, Cumbria and **JOYCE BAILEY** of The Cross, Hensingham, Whitehaven, Cumbria ("**Owners**");
- (3) **JOHN SWIFT HOMES LIMITED (Company Reg No 4067663)** whose registered address is The Old Bank, 41 King Street, Penrith, England, CA11 7AY ("**Developer**")

WHEREAS

1. The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 for the area within which the Development Land situated.
2. The Owners are the proprietors of the freehold title to the Development Land which is registered at the Land Registry and which forms part of Title Number CU135400 and part of Title Number CU115034.
3. On 2 September 2021 the Developer entered into an option with the Owner to purchase the Development Land and by application of 14 October 2021 applied to enter a unilateral notice to the Land Registry on Title Number CU135400 and Title Number CU115034.
4. The Developer has submitted the Application to the Council for planning permission for the Development and the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
5. The Council is minded to grant the Planning Permission subject to the prior completion of this Deed.

NOW IT IS HEREBY AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this Clause:-

"1990 Act"	means the Town and Country Planning Act 1990 (as amended).
"Affordable Dwellings"	means not less than 7 (seven) Dwellings comprising seven Discount Market Sale Dwellings included in the Development Land as part of the Development in the locations identified on Plan 2, coloured orange for the purpose of Affordable Housing and reference to "Affordable Dwelling" shall be construed accordingly;
"Application"	the application for planning permission for the Development which was submitted to the Council on 6 th August 2025 by the

	Developer and which was validated by the Council on 1 st September 2025 under reference number 4/25/2307/0F1.
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) in respect of the Planning Permission (as appropriate) is begun save that irrespective of the provisions of Section 56(4) of the 1990 Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development for the purposes of this Deed only i. trial holes or other operations to establish the ground conditions; ii. archaeological investigations; iii. any works of demolition or site clearance; iv. any structural planting or landscaping works; v. ecological or natural conservation works; vi. construction of boundary fencing or hoardings vii. construction of access or highway works and the term "Commence Development", "Development Commences" and "Commences Development" shall be construed accordingly.
"Development"	means residential development for 70 Dwellings including infrastructure, landscaping and BNG uplift to take place on the Development Land.
"Development Land"	means the land edged in red on Plan 1 attached to this Deed at the Fourth Schedule with the drawing number 15/10/863 – 01 b)
"Dwellings"	means the Residential Units that may be built on the Development Land pursuant to the Planning Permission and reference to "Dwelling" shall mean any of the Dwellings;
"Interest"	means interest at 4% (four per cent) above the base lending rate of National Westminster Bank plc from time to time;
"Occupation"	means occupation for the purposes permitted by the Planning Permission 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 "Occupy", "Occupier" and "Occupied" shall be construed accordingly
"Open Market Dwellings"	means the Dwellings to be constructed on the Development Land pursuant to the Planning Permission excluding the

	Affordable Dwellings and reference to "Open Market Dwelling" shall be construed accordingly;
"Planning Permission"	a planning permission permitting the Development granted by Council pursuant to the Application substantively in the form attached at the Fifth Schedule.
"Plan 1"	means the attached location plan at the Fourth Schedule to identify the Development Land;
"Plan 2"	means the attached plan at the Fourth Schedule showing the location of the Affordable Dwellings, coloured orange (and as may be amended from time to time with the prior written agreement of the Council)
"Price Index"	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation as at the date the Contributions become payable respectively;
"Qualifying Person"	shall mean (unless otherwise agreed in writing with the Council): someone who meets the criteria specified in the Discounted Market Sale Housing Guidance (under Low-cost Housing Ownership Scheme) 2023, or any successor document.
"Residential Unit"	means both the Affordable Dwellings and the Open Market Dwellings to be constructed on the Development Land pursuant to the Planning Permission and reference to "Residential Unit" shall be construed accordingly.
"Specialist"	means an independent chartered surveyor qualified to act as an expert having not less than ten years' professional experience in relation to developments in the nature of the Development and where possible in the same locality as the Development Land.
"Working Day"	means any day from Monday to Friday inclusive which is not Christmas Day, a statutory holiday or a day between Christmas Day and New Year's Day.

2. **CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2 The singular includes the plural and vice versa and words importing the masculine gender only include the feminine and neuter genders and words denoting persons extend to include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

- 2.3 References to any party in this Deed shall include the successors in title and assigns of that party and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act.
- 2.4 Where a party includes more than one person any obligations of that party shall be joint and several and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension, re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 An obligation on a party not to do something includes an obligation not to allow that thing to be done.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 1 of the Localism Act 2011, Section 111 of the Local Government Act 1972 and all other powers so enabling.
- 3.2 The covenants, obligations and restrictions in this Deed (in so far as they are capable) are planning obligations for the purposes of s.106 of the 1990 Act and the interest of:
- 3.2.1 the Owner in respect to their interest in the Development Land shall be bound by the terms of the First and Second Schedule to this Deed.
- 3.3 No person shall be bound by the terms of this Deed or be liable for the breach of any covenants restrictions or obligations contained in this Deed:-
- 3.3.1 occurring after he or it has parted with his or its interest in the Development Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);
- 3.3.2 if he or it shall be an owner, occupier, tenant or chargee of any of the Open Market Dwellings or a purchaser of an individual Open Market Dwelling;
- 3.3.3 if he or it shall be a statutory undertaker or other person who acquires any part of the Development Land or an interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services; or
- 3.3.4 if he or it shall be an owner, occupier, tenant or chargee of the Affordable Dwellings constructed pursuant to the Planning Permission or anyone deriving title from them
SAVE FOR the relevant provisions in Part 1 of the Second Schedule;

4. CONDITIONALITY

- 4.1 Save for clauses 1-4 (inclusive) and clauses 6 – 13 (inclusive) which shall take from effect from the date of this Deed the remainder of the covenants contained in this Deed are conditional on and shall take effect from the implementation of the Planning Permission.

5. THE OWNERS' COVENANTS

- 5.1 The Owner covenants with the Council so as to bind its interest in the Development Land to comply with the planning obligations in the First and Second Schedules to this Deed.

6. **THE COUNCIL'S COVENANTS**

- 6.1 The Council covenants with the Owners as set out in the Third Schedule of this Deed.

7. **LEGAL COSTS**

- 7.1 The Developer shall pay to the Council upon the date of this Deed its reasonable and proper costs of £2,500.00 for the negotiation of this Deed.

8. **NOTICE**

- 8.1 Any notice or other communication given or made under this Deed shall be in writing (which for this purpose shall not include email) and shall be delivered personally or sent by first class post to the address of the addressee specified in clause 8.2 this Deed.

- 8.2 Subject to clause 8.3, the contact details for each party are:

- 8.2.1 For the Owner:

Address: The Cross, Hensingham, Whitehaven, Cumbria, CA28 6XZ

Name: Joyce Bailey

- 8.2.2 For the Council:

Address: Planning Services, Thriving Places, Cumberland Council, Civic Centre,
Rickergate, Carlisle CA3 8QG

Reference: 4/25/2307/0F1.

- 8.3 A party may give notice of a change to its name, address or relevant address for the purposes of this clause provided that such notification shall only be effective on:

8.3.1 The date specified in the notification as the date on which the change is to take place; or

8.3.2 If no date is specified or the date specified is less than five (5) Working Days after the date on which the notice is received or deemed to be received, the fifth Working Day after the notice of any such change is given.

- 8.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

8.4.1 if delivered by hand, at the time of delivery;

8.4.2 if sent by post, on the second Working Day after posting; or

8.4.3 if sent by recorded delivery, at the time delivery was signed for.

- 8.5 If notice, demand or any other communication is served after 4.00pm on a Working Day or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

- 8.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

9 MISCELLANEOUS

- 9.1 The Deed is a local land charge and shall be registered as such.
- 9.2 The provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded from the terms of this Deed.
- 9.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Development Land in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed.
- 9.4 If any provision of this Deed is held to be invalid illegal or unenforceable under any enactment or rule of law that term or provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remainder of this Deed shall remain unaffected.
- 9.5 The provisions of this Deed shall be of no effect until this Deed has been dated.
- 9.6 The Owner agrees with the Council to give the Council written notice of any Disposal of the Development Land (or part of it) occurring before all the obligations under this Deed have been discharged such notice to give details of the transferees full name and registered office (if a company or usual address if not) together with the area of the Development Land or unit of occupation acquired by reference to a plan PROVIDED THAT the requirement in this clause 9.6 to provide written notice shall not apply on the Disposal of an individual Dwelling;
- 9.7 If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of payment.
- 9.8 Any sum referred to in this Deed shall be increased by an amount equivalent to the increase in the Price Index from the date hereof until the date on which such sum is actually paid.

10. FETTER OF DISCRETION

- 10.1 Nothing in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

11. DETERMINATION OF DISPUTE

- 11.1 Any dispute arising between the parties as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Deed or as to any other matter or thing arising out of or connected with the subject matter of this Deed or any failure to agree upon any matter may be referred in accordance with clause 11.2 to the determination of a Specialist.
- 11.2 Any reference to a Specialist in accordance with clause 11.1 shall be to a reputable chartered surveyor unconnected to any of the parties hereto and experienced in commercial development matters who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such Specialist shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error) and if the parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Specialist shall act as an expert pursuant to the terms of this clause 11.2 then each of the parties to the dispute shall be entitled to submit

to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Specialist himself) shall be paid.

12. GOVERNING LAW

- 12.1 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 and Wales.

13. SECTION 73 OF THE 1990 ACT

- 13.1 If an application is made under section 73 of the 1990 Act in respect of the Planning Permission to carry out the Development without complying with a condition or conditions to which the Planning Permission is subject (a **S73 Application**) then in the event that the Council is minded to approve such S73 Application:
- (a) if the Council reasonably considers that the planning obligations contained in this Agreement are both sufficient and necessary to make the development proposed by such S73 Application acceptable in planning terms then references to **Planning Permission** in this Agreement shall be deemed to also be references to that new planning permission and the Parties agree that this Agreement shall apply to and remain in full force in respect of both that new planning permission and the Planning Permission without the need for a further deed to be made pursuant to section 106 of the 1990 Act; or
 - (b) if the Council reasonably considers that additional or modified planning obligations are necessary to make the development proposed by such S73 Application acceptable in planning terms then for the avoidance of doubt nothing in this Clause 14.1 shall fetter the Council's ability in the exercise of its proper planning judgment to require the completion of such further deed made pursuant to section 106 of the 1990 Act as it considers necessary and in such case Clause 14.1 (a) shall be disregarded.

THE FIRST SCHEDULE

1. NOTICE AND MONITORING

- 1.1 The Owner shall give notice in writing to the Council not later than 28 days before the Commencement of Development.
- 1.2 The Owner shall give notice in writing to the Council not later than 28 days before first Occupation of any part of the Development.
- 1.3 The Owner shall give notice in writing to the Council upon Occupation of the final Dwelling.
- 1.4 The Owner shall provide in writing to the Council (as soon as reasonably practicable following a written request made by the Council) such information as the Council reasonably requires to monitor compliance with this Deed.

THE SECOND SCHEDULE

Affordable Housing

- 1.1 In addition to those definitions contained in clause 1.1 of this Deed, the following definitions apply to this Second Schedule:-

"Adjoining Locality"	means the parishes of Moresby, Whitehaven, Cleator Moor, and Arlecdon & Frizington
Affordable Housing	housing which is provided to eligible households whose needs are not met by the market and which (a) meets the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices and (b) includes provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision;
"Discount Market Sale Dwellings"	means the Affordable Dwellings in the locations shown on the Plan 2, coloured orange as plot 2, 3, 4, 59, 60, 61 and 62 that will be provided in accordance with the provisions of this Second Schedule for discounted sale and which will be offered by the Owner to Qualifying Persons at the Discount Market Sale Dwelling Price and the term "Discount Market Sale Dwelling" shall be construed accordingly;
Discount Market Sale Dwelling Price	means not more than 80% (eighty per cent) of the Open Market Value of the Discount Market Sale Dwelling;
"Disposal"	means the sale or transfer of the freehold or the grant of a lease underlease or tenancy or the assignment of a lease underlease or tenancy and reference to "Dispose" shall be construed accordingly and for the sake of clarity the term "Disposal" and "Dispose" shall not include the creation of mortgages or charges;
"District"	means the administrative district of the Council;
"Locality"	Means the parishes of Egremont and Weddicar
Open Market Value"	means the price as agreed between the parties (or in the absence of agreement as determined by a Specialist agreed between the parties) at which a disposal of the interest in a Dwelling might reasonably be expected to have been completed unconditionally for cash consideration on the date of valuation assuming:

	(i) a willing seller and buyer; (ii) that prior to the date of the valuation there has been a reasonable period (having regard to the nature of the Dwelling and the state of the market) for the proper marketing of the interest for the agreement of price and terms and for the completion of the disposal; (iii) that the state of the market level of values and other circumstances were on any earlier assumed date of exchange of contracts the same as on the date of valuation; (iv) that no account is taken of an additional bid by a purchaser with a special interest; (v) that any obligations or restrictions imposed upon the Dwellings in or by reason of this Deed are disregarded; and (vi) that an independent valuation is carried out not more than six (6) months prior to the sale of the Dwelling;
“Wider Locality”	Means the parishes of Bootle, Beckermest, Distington, Drigg and Carleton, Eskdale, Ennerdale and Kinniside, Gosforth, Haile and Wilton, Irton with Santon, Lowside Quarter, Lamplugh, Lowca, Millom, Muncaster, Millom Without, Wasdale, Ponsonby, Parton, Seascale, Ulpha, Waberthwaite and Corney, Whicham

Part 1 – Discount Market Sale Dwellings

1. The Owner covenants with the Council as follows:-
 - 1.1. To ensure that provision is made for the Discount Market Sale Dwellings in the construction of the Development.
 - 1.2. That the Discount Market Sale Dwellings will be developed and built in accordance with the Planning Permission.
 - 1.3. To limit the Occupation of the Open Market Dwellings on the following basis:
 - 1.3.1. to limit Occupation to no more than fifty percent (50%) of the Open Market Dwellings until all the Discount Market Sale Dwellings have been constructed and made ready for residential occupation and written notification of such has been received by the Council and:
 - 1.4. To supply to the Council within two weeks of the Council's written request to do so such information as the Council may reasonably require in order to determine whether the restrictions and obligations referred to in this Schedule are being observed.

- 1.5. Only to Dispose of the Discount Market Sale Dwellings by selling the freehold or leasehold of it for the Discount Market Sale Dwelling Price to a Qualifying Person.
- 1.6. Before marketing a Discount Market Sale Dwelling to obtain written agreement from the Council of the Open Market Value of the Discount Market Sale Dwelling (such agreement not to be unreasonably withheld or delayed).
- 1.7. FOR THE AVOIDANCE OF DOUBT in the case of any subsequent sales of the freehold or leasehold of a Discount Market Sale Dwelling the consideration shall be no more than the Discount Market Sale Dwelling Price.
- 1.8. The Discount Market Sale Dwelling shall first be offered at the Discount Market Sale Dwelling Price to persons at least one of whom has been certified by the Council as a Qualifying Person in respect of either the Locality or the Adjoining Locality (or other defined geographic area as the case may be).
- 1.9. If on an initial or subsequent marketing of any Discount Market Sale Dwelling for a period of six weeks no person within the Locality or the Adjoining Locality has satisfied the Council that they are a Qualifying Person then provided that the vendor has supplied the Council with copies of at least two advertisements placed in newspapers commonly circulated within the Locality and Adjoining Locality during the six week period or satisfactory evidence of marketing the said unit on a national property marketing website relating to the sale of the Discount Market Sale Dwelling then the relevant Discount Market Sale Dwelling shall be marketed for a further period of six weeks as available to a Qualifying Person within the Locality, the Adjoining Locality or the Wider Locality.
- 1.10. If at the end of the initial twelve week period no person has satisfied the Council that they are a Qualifying Person within the Locality the Adjoining Locality or the Wider Locality then provided that the vendor has supplied the Council with copies of at least two advertisements relating to the sale of the relevant Discount Market Sale Dwelling placed in newspapers commonly circulated within the Locality the Adjoining Locality and the Wider Locality during the twelve week period or satisfactory evidence of marketing the said unit through a national property marketing website the Discount Market Sale Dwelling shall be marketed as available for occupation by a Qualifying Person within the District for a further period of four weeks.
- 1.11. If at the end of such further period of four weeks no person has satisfied the Council that they are a Qualifying Person within the District then provided that the vendor has supplied the Council with copies of at least two advertisements relating to the sale of the Discount Market Sale Dwelling placed in newspapers within the District during the further one month period or satisfactory evidence of marketing the said unit through a national property marketing website the Discount Sale Dwelling shall be marketed as available for occupation by any person currently residing in Cumberland including those who are not a Qualifying Person provided that on any subsequent Disposal the property remains subject to the provisions of this Deed.
- 1.12. Any owner of a Discount Market Sale Dwelling shall reside in the Discount Market Sale Dwelling as his sole residence and shall not permit any other person to live in the Discount Market Sale Dwelling (other than a person who forms part of their own household). Household does not include people who rent a room in the property.
- 1.13. Each Disposal of the Discount Market Sale Dwelling shall include a restriction in the following terms:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by the Assistant Director Adult Social Care and Housing (or other officer authorised for the time being by the Council) or their conveyancer, of Cumberland Council, of Cumbria House, 117 Botchergate, Carlisle CA1 1RD that the Discount Market Sale Dwelling provisions of Part 1 of the Second Schedule of the Section 106 Agreement between (1) Cumberland Council (2) Bryan Geoffrey Haslop and Joyce Bailey and (3) John Swift Homes Limited dated []2026 have been complied with".

- 1.14. No Disposal of a Discount Market Sale Dwelling after the date hereof shall be completed and no such Disposal shall be registered at the Land Registry unless the Council has first provided the certificate referred to in paragraph 1.13 above provided that such certificate shall be given forthwith upon:
 - 1.14.1. evidence being furnished that the donee (or in the case of joint donees one of the donees) is a Qualifying Person (where applicable); and
 - 1.14.2. the Solicitor or Licensed or other authorised Conveyancer acting for the donee(s) certifying to the Council that any consideration expressed to be given for the Discount Market Sale Dwelling by the donee(s) did not exceed the Discount Market Sale Dwelling Price as evidenced by the certificate given by a Specialist not more than six (6) months before the date of such Disposal
- 1.15. For the avoidance of doubt in the case of a first Disposal of a Discount Market Sale Dwelling the Owner shall be free to market the said Discount Market Sale Dwelling in full accordance with the terms of paragraphs 1.6 to 1.8 hereof at any point prior to the construction of such Discount Market Sale Dwelling being completed (although such period of marketing may not begin prior to the Commencement of the Development).
- 1.16 Where any chargee or receiver takes possession of any of the Discount Market Sale Dwellings such chargee or receiver shall give the Council immediate written notice of its intention to Dispose of the same and the obligations contained in this Deed shall be binding and enforceable against such chargee or receiver except where no Qualifying Person can be found within four (4) weeks of notice being duly given to and received by the Council of the intention to Dispose of a particular Discount Market Sale Dwelling to any person provided that all other obligations contained in this Deed shall continue to apply and provided always that any subsequent successor in title to such a chargee or receiver shall be bound by all the obligations contained in this Deed.

THE THIRD SCHEDULE

The Council's Covenants

1. The Council hereby covenants with the Owner that as soon as reasonably possible following completion of this Deed it shall issue the Planning Permission.

THE FOURTH SCHEDULE
Plans

THE FIFTH SCHEDULE
The draft Planning Permission

IN WITNESS whereof the parties hereto have executed this document as a deed and it is delivered and takes effect on that date stated at the beginning of it.

**EXECUTED as a DEED by
CUMBERLAND COUNCIL**

**Whose COMMON SEAL was hereunto affixed
in the presence of:**

EXECUTED AS A DEED By
LORRAINE HASLOP as duly appointed attorney for BRYAN GEOFFREY HASLOP

In the presence of:

Witness signature

Witness name

Witness address

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EXECUTED AS A DEED By
JOYCE BAILEY

In the presence of:

Witness signature

Witness name

Witness address

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EXECUTED AS A DEED By
JOHN SWIFT HOMES LIMITED
acting by a Director

In the presence of:

Witness signature

Witness name

Witness address

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