

## **Deed of Variation**

**Pursuant to Section 106A of the Town and Country Planning Act 1990 (as amended)**

In respect of: Land at Lotmead Farm, Stratton Road, Wanborough, Swindon

Swindon Borough Council (1)

Countryside Sovereign Swindon LLP (2)

Angela Helen Gillibrand and Julian Mark Culmer Cooper (3)

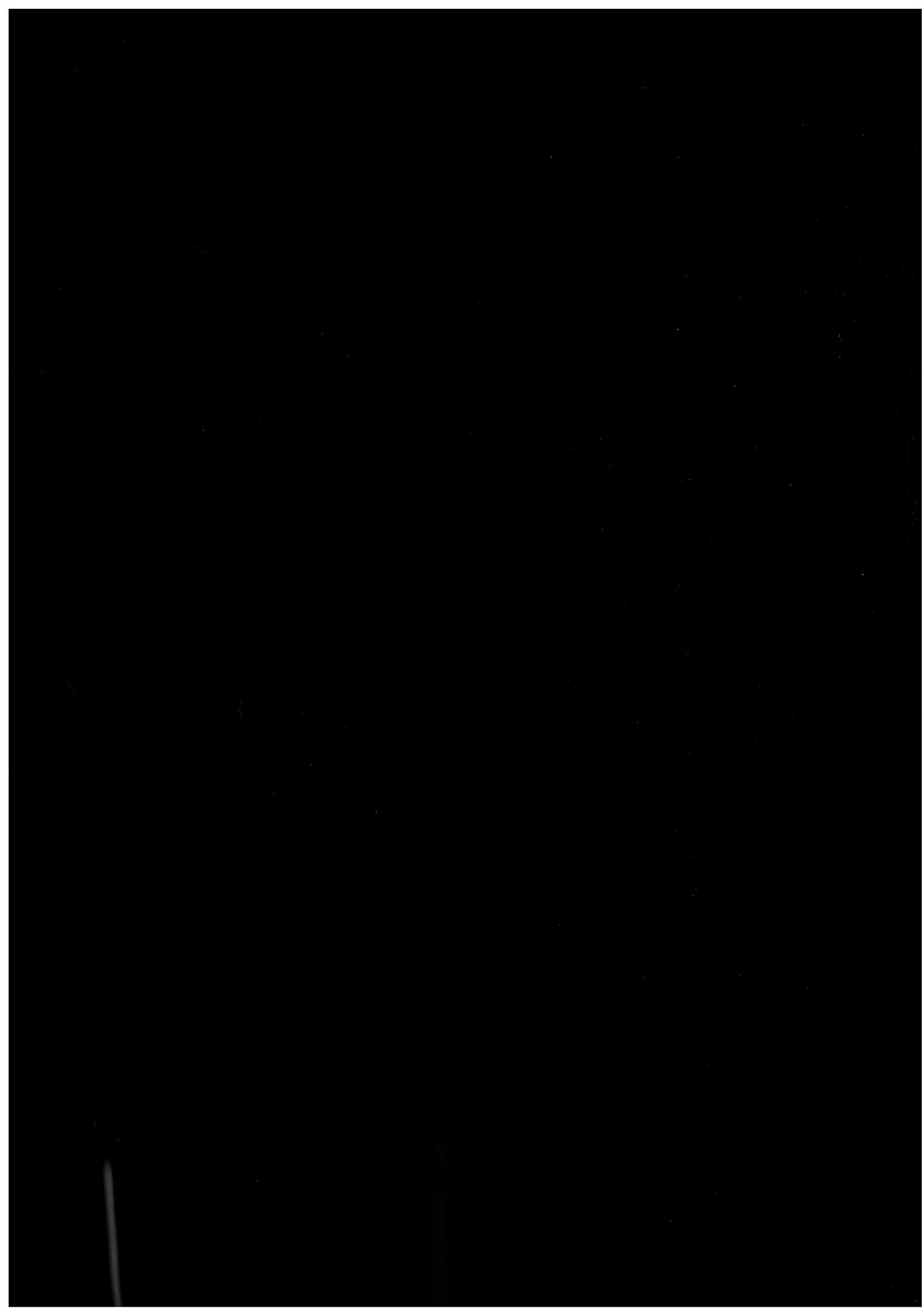
Countryside Properties (UK) Limited (4)

Sovereign Housing Association Limited (5)

Dated 21 JULY 2023

### **Osborne Clarke**

Halo  
Counterslip  
Bristol  
BS1 6AJ  
Telephone +44 (0) 117 917 3000  
Fax +44 (0) 117 917 3005



THIS DEED OF VARIATION is made the

21 day of July

2023

**BETWEEN**

- (1) **SWINDON BOROUGH COUNCIL** of Civic Offices, Euclid Street, Swindon (the "**Council**");
- (2) **COUNTRYSIDE SOVEREIGN SWINDON LLP** (registration number OC439649) whose registered office is at Countryside House, The Drive, Brentwood, Essex CM13 3AT (the "**First Owner**");
- (3) **ANGELA HELEN GILLIBRAND** of Lower Fresden House, Highworth, Swindon SN6 7PX and **JULIAN MARK CULMER COOPER** of Adbury Holt House, Burghclere, Newbury (the "**Second Owners**");
- (4) **COUNTRYSIDE PROPERTIES (UK) LIMITED** (Co. Regn. No. 614864) of Countryside House, The Drive, Brentwood, Essex CM13 3AT (the "**First Chargee**"); and
- (5) **SOVEREIGN HOUSING ASSOCIATION LIMITED** (the "**Second Chargee**") (a charitable registered society under the Co-operative and Community Benefits Societies Act 2014 with FCA registration number 7448 and registered with the Regulator of Social Housing registration number 4837) whose registered office is at Sovereign House, Basing View, Basingstoke, RG21 4FA (the "**Second Chargee**")

together the "**Parties**"

**WHEREAS**

- A. The Council is the local planning authority and local highways authority for the purposes of the Act and also the local highways authority for the area within which the Application Site is situated.
- B. The First Owner is the freehold owner of the part of the Development Land registered at the Land Registry under title number WT465176 which is subject to the following registered charges:
  - (i) a registered charge dated 22 November 2021 in favour of the Second Owners;
  - (ii) a registered charge dated 22 November 2021 in favour of the First Chargee; and
  - (iii) a registered charge contained in a debenture dated 22 November 2021 and a second registered charge also dated 22 November 2021 both in favour of the Second Chargee.

- C. The Second Owners are the freehold owner of the part of the Development Land registered at the Land Registry under title number WT222415.
- D. The Council granted the Planning Permission on 30 March 2021 and the Principal Agreement (as defined herein) was entered into in connection therewith.
- E. Without prejudice to the terms of the other covenants contained in the Principal Agreement the Parties to this Deed have agreed that the Principal Agreement shall be varied as set out in Schedule 1 to this Deed and pursuant to Section 106 and Section 106A of the Act.
- F. This Deed is supplemental to and varies the Principal Agreement and is to be read together with it.
- G. Each obligation undertaken in the Original Deed as varied and supplemented by this deed is a planning obligation for the purposes of Section 106 of the Act.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1 DEFINITIONS**

- 1.1 Words and expressions in the Principal Agreement shall unless the context otherwise requires have the same meaning in this Deed (save to the extent that they are expressly varied in this Deed).
- 1.2 In this Deed the following words and expressions shall unless the context otherwise requires have the following meanings:

<b>“Principal Agreement”</b>	means the agreement made under Section 106 of the Act dated 29 March 2021 and made between: (1) Swindon Borough Council; and (2) Angela Helen Gillibrand and Arthur Guy Parry and Julian Mark Culmer Cooper; and (3) Ainscough Strategic Land Limited
------------------------------	---

**2 INTERPRETATION**

The provisions in the Principal Agreement relating to its interpretation apply equally to this Deed (save to the extent that they are expressly varied in this Deed).

**3 LEGAL EFFECT**

- 3.1 The Owner agrees with the Council that the agreements, covenants and obligations in the Principal Agreement as varied by this Deed are covenants which:

- (a) are entered into pursuant to the provisions of section 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers;
- (b) are planning obligations for the purposes of section 106 of the Act;
- (c) are entered into with the intention that they bind the interests held by those persons in the Development Land and their respective successors and assigns; and
- (d) are (subject to the terms in the Principal Agreement) enforceable by the Council in accordance with section 106 of the Act.

#### **4 CONDITIONALITY**

The terms and provisions in this Deed shall come into force on the date of this Deed.

#### **5 COVENANTS**

- 5.1 It is hereby agreed and declared that the Principal Agreement shall with effect from the date of this Deed be varied as set out in the Schedule to this Deed and the Principal Agreement shall take effect and be read and construed accordingly.
- 5.2 The Parties confirm that save as varied by this Deed, the Principal Agreement shall continue in full force and effect and any obligations in the Principal Agreement not yet fully discharged at the date of completion of this Deed shall remain in full force and effect.
- 5.3 The Parties agree that the obligations in this Deed shall not take effect so as to duplicate the obligations in the Principal Agreement and any obligations in the Principal Agreement already discharged shall be considered as discharged for the purposes of the Principal Agreement as varied by this Deed.

#### **6 LOCAL LAND CHARGE**

This Deed is a local land charge and shall be registerable as such by the Council.

#### **7 LEGAL COSTS**

The First Owner covenants to pay the Council's reasonable legal costs in the sum of £3,000 incurred in connection with the negotiation, preparation, and execution of this Deed.

8 **THIRD PARTY RIGHTS**

No person other than a party to this Deed shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

9 **CHARGEES' CONSENT**

The Second Owners (in their capacity as chargee of part of the Development Land), the First Chargee and the Second Chargee hereby consent to the First Owner entering into this Deed amending the obligations contained in the Principal Agreement but FOR THE AVOIDANCE OF DOUBT each of the Second Owners (in their capacity as chargee of part of the Development Land), the First Chargee and the Second Chargee shall have no liability pursuant to such obligations unless they become a chargee in possession.

10 **DELIVERY**

This Deed is delivered on the date of this Deed.

11 **JURISDICTION**

This Deed 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.

12 **OWNERSHIP**

The First Owner, Second Owners, First Chargee and Second Chargee warrant:

- (a) that no person other than the First Owner, Second Owners, First Chargee and Second Chargee and the owners of the three leases listed in the Schedule of Notices of Leases under Registered Title Number WT465176 has any legal or equitable interest in the Development Land; and
- (b) the owners of the three leases listed in the Schedule of Notices of Leases under Registered Title Number WT465176 do not have any contractual or other legal right to Commence the Development.

**IN WITNESS** whereof this Deed has been executed by the Parties hereto and is intended to be and is hereby delivered on the date first above written.

**THE SCHEDULE**  
**VARIATIONS TO THE PRINCIPAL AGREEMENT**

**Variations in respect of future planning permissions**

1. The definition of 'Planning Application' contained in Clause 1.1 of the Principal Agreement shall be deleted and replaced with the following:

***Planning Application***

*means any of the applications below individually or any combination thereof:*

- (a) *the application for outline planning permission registered with the Council on 9 April 2019 with application reference number S/OUT/19/0582 for demolition and/or conversion of existing buildings and redevelopment to provide up to 2,500 homes (Use Class C3); up to 1,780 sqm of community/retail uses (Use Class D1/D2/A1/A3/A4); up to 2,500 sqm of employment use (Use Class B1); sports hub; playing pitches; 2no. 2 Form Entry primary schools; green infrastructure; indicative primary access road corridors to A420; improvements to Wanborough Road and associated works; and/or*
- (b) *the subsequent application validated by the Council on 11 May 2023 with application reference number S/23/0438 for variation of conditions 9, 10, 41, 42, 43, 46 and 47 from previous permission S/OUT/19/0582; and/or,*
- (c) *any further planning application submitted pursuant to section 73 of the Act in accordance with Clause 23 of this Deed.*

2. A new clause 23 shall be added to the Principal Agreement as follows:

**"23 FUTURE PLANNING PERMISSIONS**

23.1 *If after the date of this Agreement any planning permission is granted pursuant to section 73 of the Act in respect of any condition(s) attached to the Planning Permission references in this Agreement to the 'Planning Application' and 'Planning Permission' shall be deemed to include respectively any such subsequent section 73 planning applications and any planning permissions granted pursuant to the section 73 planning applications and this Agreement shall apply and take effect and be read and construed accordingly PROVIDED ALWAYS THAT nothing in this clause shall fetter the discretion of the Council in determining any such section 73 planning application from requiring that any consequential planning obligations be secured by way of a new deed or supplemental deed under section 106 and section 106A of the Act"*

**Variations in respect of affordable housing matters**

3. The following definitions shall be inserted after the definition 'Working Day' at Clause 1.1 of the Principal Agreement:

***"Indicative Affordable Housing Delivery Table***

means:

Phase	% S106 Affordable Housing Units within Phase	% Additional affordable housing via subsidy	% Overall (S106 + Additional) affordable housing within Phase
1	20%	8%	28%
2	8%	22%	30%
3	8%	19%	27%
4	13%	17%	30%
5	16%	12%	28%
6	27%	0%	27%
7	27%	0%	27%
8	27%	0%	27%
9	27%	0%	27%
<b>Total</b>	<b>20%</b>		<b>c.28%</b>

***Approval***

means approval in writing by the Council under hand of the Planning Services Manager (or equivalent at the time) and "**Approved**" shall be construed accordingly."

4. Paragraph 1.2 of Part 1 of Schedule 3 of the Principal Agreement shall be deleted and replaced with the following:

*"1.2 That a minimum of twenty percent (20%) (rounded up to the nearest whole Dwelling) of the Dwellings which are constructed on the Application Site shall be Affordable Housing of which fifty percent (50%) shall be Affordable Rented Units (or Intermediate Rented Units in the event that Affordable Rent is no longer available to the Registered Provider) and fifty percent (50%) shall be Intermediate Units and based on a total of 2,500 Dwellings proposed on the Application Site, a minimum of 500 shall be Affordable Housing (or 20% of the total number of the Dwellings constructed on the Application Site for which Reserved Matters Approvals are granted, whichever is lesser).*

*1.2A Unless otherwise Approved by the Council the Affordable Housing Scheme for each Phase shall:*

- a) *Be in accordance with the Indicative Affordable Housing Delivery Table PROVIDED THAT the Owner may submit an amended Indicative Affordable Housing delivery table for the Council's Approval as part of the submission(s) made under paragraph 1.1 of this Part 1 of Schedule 3 above PROVIDED FURTHER*



THAT in any event not less than five percent (5%) (rounded up to the nearest whole Dwelling) of the Dwellings which are constructed in any Phase shall be Affordable Housing

- b) Of the Affordable Housing in each Phase fifty percent (50%) shall be Affordable Rented Units (or Intermediate Rented Units in the event that Affordable Rent is no longer available to the Registered Provider) and fifty percent (50%) shall be Intermediate Units.
- c) The Affordable Housing shall be provided with a mix as follows:

**Affordable Rent Units:**

- i. twenty point nine percent (20.90%) x one bedroom flats (2 persons);
- ii. four point five five percent (4.55%) x two bedroom flats (3 persons);
- iii. forty eight point six four percent (48.64%) x two bedroom houses (4 persons);
- iv. twenty one point three six percent (21.36%) x three bedroom houses (5 persons); and
- v. four point five five percent (4.55%) x four bedroom houses (7 persons).

**Intermediate Units (Low Cost Home Ownership/Shared Ownership):**

- i. four point zero nine percent (4.09%) x two bedroom flats (3 persons);
- ii. forty nine point zero nine percent (49.09%) x two bedroom houses (3 persons);
- iii. thirty eight point one eight percent (38.18%) x three bedroom houses (5 persons);
- iv. four point zero nine percent (4.09%) x three bedroom houses (6 persons);  
and
- v. four point five five percent (4.55%) x four bedroom houses (7 persons).

Insofar as this paragraph 1.2A of this Part 1 of Schedule 3 fails to comply with paragraph 1.2 of this Part 1 of Schedule 3, paragraph 1.2 of this Part 1 of Schedule 3 shall take precedence.

1.2B For the avoidance of doubt nothing in this Deed shall operate so as:

- (a) to oblige the Owner to deliver more than twenty percent (20%) (rounded up to the

*nearest whole Dwelling) of the Dwellings as Affordable Housing; nor*

*(b) to prevent the Owner (as its sole discretion) from delivering more than twenty percent (20%) (rounded up to the nearest whole Dwelling) of the Dwellings as Affordable Housing.*

*1.2C Where the Owner elects to deliver additional Affordable Housing (i.e. above the quantum required pursuant to paragraph 1.2 of this Part 1 of Schedule 3 above) the provisions of paragraph 1.2A(b) and 1.2A(c) of this Part 1 of Schedule 3 shall not apply to such additional Affordable Housing and the mix of the additional Affordable Housing shall be submitted to and Approved by the Council."*

5. Sub-Paragraph 1.14(b)(i) of Part 1 of Schedule 3 of the Principal Agreement shall be amended by the deletion of the word "all" between the words 'used' and 'reasonable' in line 4 thereof to read as follows:

*"(i) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the whole of any part of the Affordable Housing Land or any or all of the Affordable Housing Units (as the case may be) and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the whole of any part of the Affordable Housing Land or any or all of the Affordable Housing Units (as the case may be) to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expense or the Market Value, whichever is less; and"*

The **COMMON SEAL** of )  
**SWINDON BOROUGH COUNCIL** )  
was hereunto affixed in the presence of: )



868217

**BHAVANA PATEL**  
Authorised Signatory -  
Swindon Borough Council

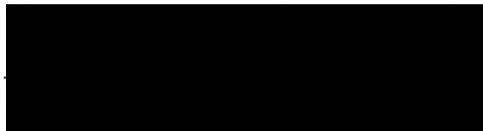
**EXECUTED** as a **DEED** by )  
**COUNTRYSIDE SOVEREIGN SWINDON LLP** )  
acting by two members: )



yy/066

Authorised Signatory  
for and on behalf of Sovereign  
Housing Partnerships Limited.

**SIGNED** as a **DEED** by )  
**ANGELA HELEN GILLIBRAND** )  
in the presence of: )

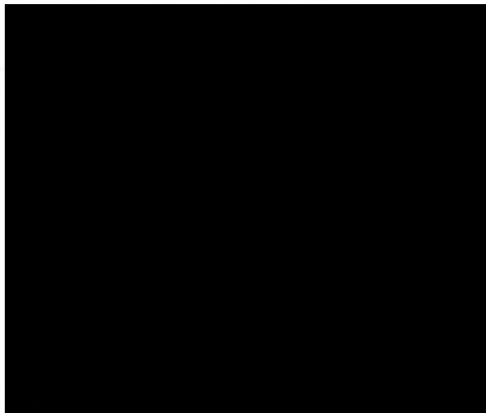


Signature of Witness:

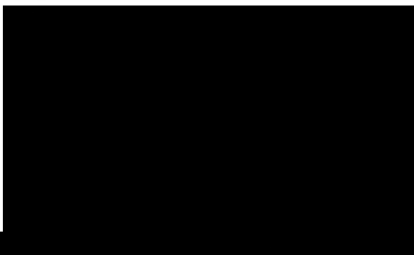
Name of Witness:

Address of Witness:

Occupation of Witness:



**SIGNED** as a **DEED** by )  
**JULIAN MARK CULMER COOPER** )  
in the presence of: )



Signature of Witness:

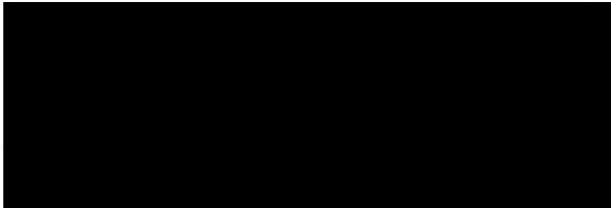
Name of Witness:

Address of Witness:

Occupation of Witness:



EXECUTED as a DEED by )  
COUNTRYSIDE PROPERTIES (UK) LIMITED )  
acting by DARREN DANCEY )  
and ZOE WHITE )  
as attorneys for )  
Countryside Properties (UK) Limited )  
under a power of attorney dated )  
27 March 2023 )



Attorney

In the presence of:

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:



Attorney

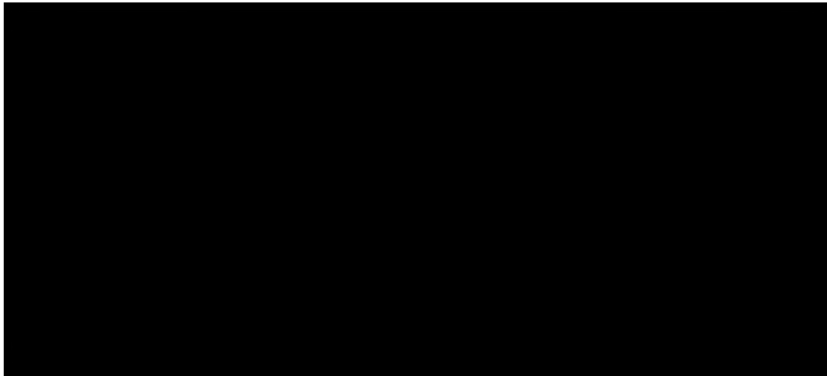
In the presence of:

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:



**EXECUTED as a DEED by  
AFFIXING THE COMMON SEAL of  
SOVEREIGN HOUSING ASSOCIATION LIMITED**

in the presence of:



Authorised Signatory

AA/733

