

Draft: - 23.6.2026

THIS AGREEMENT is made as a deed this day of 2026

BETWEEN

1. **CUMBERLAND COUNCIL** of Cumbria House 117 Botchergate Carlisle CA1 1RD ("the Council") of the first part; and
2. **NIGEL KAY HOMES LIMITED** (Co. Regn. 04467959) of Sea Breeze Lodge Nethertown Egremont CA22 2UH ("the Developer") of the second part and final part

WHEREAS

- (1) The Council is the Highway Authority for the purposes of the Highways Act 1980 for the roads referred to in this Agreement and in particular for the highway known as the U4008 Dalzell Street, Moor Row ("the Road").
- (2) The Developer is the registered freehold owner under Title No. CU>< of land at >< ("the Land") and is party to this Agreement for the purpose of carrying out the Highway Works.
- (3) Outline planning permission was granted by Cumberland Council on 19 July 2024 under application reference 4/23/2076/001 ("the Approval"), for residential development for up to 65 dwellings with details of proposed access and all other matters reserved on land off Dalzell Street, Moor Row, Egremont. ("the Development")
- (4) Pre-Commencement Conditions 6, 7, 8 and 19 of the Outline Approval provide: -
 "Highways

6. Prior to the commencement of each phase of development detailed specifications of carriageways, footways, footpaths, cycleways forming part of that phase shall be submitted to and approved in writing by the local planning authority unless detailed specifications of carriageways, footways, footpaths, cycleways have previously been submitted to and approved in writing by the local planning authority for the whole site. The carriageway, footways, footpaths, cycleways etc shall be designed, constructed, drained and lit to a standard suitable for adoption and shall be in accordance with the standards laid down in the current Cumbria Design Guide. Any works so approved shall be constructed before the development is complete.

Reason

To ensure a minimum standard of construction in the interests of highway safety in accordance with the provisions of Policy T1 of the Copeland Local Plan 2013-2028.”

“Visibility Splays

7. The development shall not commence until visibility splays shown on Revised Access Junction Plan, Drawing Number 0001/Revision P08 have been provided at the junction of the access road with the county highway. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and reenacting that Order) relating to permitted development, no structure, vehicle or object of any kind shall be erected, parked or placed and no trees, bushes or other plants shall be planted or be permitted to grown within the visibility splay which obstruct the visibility splays. The visibility splays shall be constructed before general development of the site commences so that construction traffic is safeguarded.

Reason

In the interests of highway safety in accordance with the provisions of Policy T1 of the Copeland Local Plan 2013-2028.”

“Highway Drainage

8. Prior to the commencement of the development a scheme must be submitted to and approved in writing by the Local Planning Authority to ensure the existing highway gully on Dalzell Street is connected into the proposed surface water drainage scheme for the development hereby approved. Prior to the occupation of the proposed development the scheme must be completed in accordance with the approved details and retained thereafter for the lifetimes of the development.

Reason

To promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution in accordance with the provision of Policy ENV1 and Policy DM24 of the Copeland Local Plan 2013 – 2028.”

“Traffic Calming

19. Prior to the first use of the access authorised by this permission full design details of a scheme of traffic calming on Dalzell Street must be submitted to and approved in writing by the Local Planning Authority in consultation with the Highways Authority. Such details must form part of an agreement with the Highways Authority under Section 278 of the Highway Act 1980, unless otherwise agreed in writing with the Local Planning Authority. The approved scheme must be installed prior to the occupation of the first dwelling hereby approved and must be retained at all times thereafter.

Reason

In the interests of highway safety and in accordance Policy DM22 of the Copeland Local Plan and the relevant provisions of the National Planning Policy Framework.”

- (5) Other Condition 27 of the Outline Approval provides: -

“Right of Way.

The existing right of way to the commercial site located outside of the red line boundary for this application must be retained at all times. Any alterations to the existing access arrangements for this site must be agreed in writing by the Local Planning Authority and retained as per the approved details at all times thereafter.

Reason

In the interests of highway safety and in accordance Policy DM22 of the Copeland Local Plan and the relevant provisions of the National Planning Policy Framework.”

- (6) In order to discharge the Pre-Commencement Conditions specified in recital (4) above and the Other Condition specified in recital (5) above, the Developer has requested the Council to permit it to execute the works referred to in the Schedule and shown in outline on the attached drawing (“the Drawing”) entitled “Section 278 Works Agreement Plan” and marked “Drawing No. 24-011-101 Rev C3” (“the Highway Works”) for the benefit of the Land and to facilitate the carrying out of the Development.
- (7) The Council is authorised by virtue of the Highways Act 1980 to carry out the Highway Works within the Road and subject to the terms of this Agreement is prepared to authorise the Developer to carry out those Highway Works on behalf of the Council.
- (8) This Agreement is made pursuant to Section 278 of the Highways Act 1980 as substituted by Section 23 of the New Roads and Street Works Act 1991 and Section 33 Local Government (Miscellaneous Provisions) Act 1982.

- (9) The Council is satisfied that this Agreement and the undertaking of the Highway Works will be of benefit to the public by providing additional traffic calming features, road markings and signs, along with a shared use path at the entrance to the Development.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. In this Agreement a reference to a clause recital or schedule followed by a number is a reference to the clause recital or, as the case may be, the schedule of this Agreement bearing that number.
2. The Council and the Developer in relation to their respective obligations under this clause covenant with each other as follows: -
 - 2.1 The Developer shall carry out the Highway Works specified in the Schedule in accordance with the Schedule and the Drawing annexed hereto and subject to any alterations made in pursuance of Clause 8 of this Agreement.
 - 2.2 The Developer has designed a scheme for the execution of the Highway Works and submitted this to the Council and the Local Planning Authority who have approved it for the construction of the Highway Works
 - 2.3 Upon receipt of a request from the Developer under Clause 3.1 that it wishes to commence the Highway Works the Council shall forthwith notify in writing to the Developer the date for the commencement of the Highway Works ("the Commencement Date"), which shall be fixed to occur upon the expiry of such further time period as the Council may then deem appropriate (after giving due consideration to any representations from the Developer) having regard to its duties for the co-ordination of street works (and other matters) under the New Roads and Street Works Act 1991 and the Traffic Management Act 2004.

- 2.4 The Developer shall use all reasonable endeavours to complete the Highway Works within 2 weeks of the Commencement Date, extensions of time being permitted with respect to those matters beyond the control of the Developer.
- 2.5 The Council shall upon notification in writing by the Developer that the Highway Works have been completed forthwith undertake an inspection of the Highway Works, and: -
- (i) if the said Highway Works have been completed in accordance with the Schedule and the Drawing; and
 - (ii) the Developer has provided the Council with a stage 3 safety audit report ("the Stage 3 Safety Audit") carried out in accordance with DMRB GG119 Road Safety Audit or current amendment thereof published by the Department for Transport, and
 - (iii) The Developer has provided to the Council a copy of the "as built" drawing(s),
- shall issue to the Developer a copy of the certificate of completion (the "Certificate of Completion") which shall not be unreasonably withheld or delayed.
- 2.6 A maintenance period of 12 months ("the Maintenance Period") shall commence upon the issue of the Certificate of Completion during which time: -
- 2.6.1 the Developer shall at his own expense reinstate and make good any defect or damage which may have arisen from any cause whatsoever or be discovered during the Maintenance Period of which he has been notified in writing by the Council so that the Highway Works comply with the Schedule and the Drawing annexed hereto.
 - 2.6.2 90% of the Deposit shall be refunded to the Developer forthwith together with interest accrued at the variable Bank of England

base rate up to the date of refund (subject to the retention of a minimum of £2,500).

- 2.7 Upon the expiry of the Maintenance Period providing all the defects and damage referred to in clause 2.6.1 above have been reinstated and made good, to the Council's reasonable satisfaction (which shall be evidenced by the issue by the Council of a final certificate ("the Final Certificate")), the remaining 10% of the Deposit or £2,500 as referred to in clause 2.6.2 above, shall be refunded forthwith to the Developer together with interest accrued at the variable Bank of England base rate up to the date of refund without prejudice to any future liability which may arise hereunder.
- 2.8 The Council shall inspect the Highway Works to ensure compliance with this Agreement and the agreed technical specification.
- 2.9 The Highway Works will be carried out within the Road and upon the issue of the Final Certificate the Highway Works (already being part of the Road) shall thereafter be maintained by the Council as a highway maintainable at the public expense
3. In consideration of the covenants and agreements contained in clause 2 hereof the Developer and the Council further covenant and agree as follows: -
 - 3.1 The Developer shall within 28 days of the date of this Agreement notify the Council that it wishes to commence the Highway Works in accordance with clause 2.3, such notice to be given via email to sarah.steel@cumberland.gov.uk.
 - 3.2 The Highway Works (estimated at £29,242.40) shall be carried out and completed at no expense to the Council.
 - 3.3 The Developer shall, on the date hereof, pay to the Council the following fees in respect of the Highway Works (receipt of which the Council hereby acknowledges):
 - 3.3.1 the sum of £2,000 in respect of the design checking costs incurred by the Council (*receipt of which the Council hereby acknowledges*);

3.3.2 the sum of £2,631.82 in respect of the establishment charges incurred by the Council which includes, but is not limited to the following: -

- (i) administrative and overhead costs;
- (ii) management of the Agreement;
- (iii) legacy and handover (future planning implications, highway asset management consideration);
- (iv) communications with consultants and internal/external stakeholders; and
- (v) site inspection and any meetings directly linked to the planning application/Agreement

3.3.3 the sum of £1,880 in respect of the Council's legal costs incurred in the making of this Agreement;

3.3.4 the sum of £2,000 in respect of the Stage 3 Safety Audit (to be refunded if carried out by the Developer);

3.3.5 the sum of £1,000 in respect of the Council's advertising and administration fee in connection with the proposed road hump, irrespective of whether the installation proceeds or not.

3.4 The Developer shall, within 14 days of receipt of a written request ("the Due Date"), make the following payments to the Council in respect of the Highway Works: -

3.4.1 a sum equal to the whole of any reasonable and proper expense to which the Council is reasonably and properly put by reason of the carrying out of the Highway Works including (without prejudice to the generality of the foregoing) all reasonable and proper costs or expenses incurred in or in connection with:

3.4.1.1 the granting of any authorisation permission or consent required for the Highway Works including all reasonable costs incurred in connection with undertakers apparatus PROVIDED THAT:

(a) the foregoing shall not extend to any damage caused by or arising out of the neglect or default of the Council or their officers servants agents or contractors

(b) the Council shall notify the Developer forthwith upon receipt of any claim, action, demand, expense, proceeding and compensation of which it intends to make a claim on the Developer under this clause.

(c) the Council shall keep the Developer informed as to the progress of any such action, claim, demand, expense, proceeding and compensation of which it intends to make a claim on the Developer under this clause.

(d) the Council shall not accept any such claim without first having given the Developer details of such claim and having given the Developer the opportunity to make representations to the Council as to the validity and quantum of such claim

(e) the Council shall in settling any such claim give full and due regard to any representations made by the Developer in respect thereof

3.4.1.2 insulating buildings against noise or in satisfying claims made under Part 1 of the Land Compensation Act 1973 together with any claims for injurious affection under Section 10 of the Compulsory Purchase Act 1965 arising from the execution or use of the Highway Works save those arising from any defect in the design of or default in the inspection of the execution of the Highway Works by the Council PROVIDED THAT:

(a) the foregoing shall not extend to any damage caused by or arising out of the neglect or default of

the Council or their officers servants agents or contractors

- (b) the Council shall notify the Developer forthwith upon receipt of any claim
- (c) the Council shall not accept any such claim without first having given the Developer details of such claim and having given the Developer the opportunity to make representations to the Council as to the validity and quantum of such claim
- (d) the Council shall in settling any such claim give full and due regard to any representations made by the Developer in respect thereof.

3.5 The Developer shall at the same time as paying any sum owed under clause 3.3 above pay to the Council a sum equal to any Value Added Tax chargeable thereon by the Council against delivery of a valid VAT invoice and any reasonable and properly incurred additional costs arising from the safety audits.

3.6 In addition to the costs set out elsewhere in this Agreement, the Developer shall, on the date hereof, pay to the Council the sum of £1,000 in respect of 30 years' future maintenance of the road humps.

- 4. Subject always to the provisions of clause 2.3 above the Developer and the Council shall cooperate with each other to enable the Highway Works to be carried out and completed as expeditiously and economically as possible
- 5. The amounts of payments due under the provisions of this Agreement shall be certified on behalf of the Council. Where the amounts payable do not exceed

the estimates given in this Agreement the amounts payable shall be verified by the Council and the Council's decision as to the amounts shall be final and in all cases it shall provide to the Developer any information relating to the amounts as the Developer may reasonably require.

5.1 At any time before the Commencement Date the Developer may terminate this Agreement by giving notice to the Council that the Developer does not wish to carry out the Highway Works.

5.2 On any termination under Clause 5.1 the Council shall give the Developer an account of all reasonable abortive costs incurred by the Council in respect of this Agreement. Within 28 days from the date of receipt by the Developer of that account:

5.2.1 if that account shows a further sum as due to the Council the Developer shall pay that sum to the Council;

5.2.2 if that account shows that the payments previously made by the Developer under the foregoing provisions of this Agreement have exceeded those costs the Council shall refund that excess;

6. The rights and liabilities of the Developer under this Agreement are assignable only with the written consent of the Council such consent not to be unreasonably withheld or delayed.

6.1 The Developer shall on the date hereof, pay to the Council the sum of **£29,242.40** ("the Deposit") as security for the estimated cost of the Highway Works referred to at clause 3.2 of this Agreement.

6.2 It is HEREBY AGREED that the Deposit is not paid hereunder in full and final settlement of the sum due under clause 3.2 but by way of security to the Council save that the Council shall, if necessary, be entitled to utilise the same to reimburse itself from time to time (acting reasonably) with respect to the Developer's liabilities under clause 3.2 hereof, and subject thereto the balance

of the Deposit shall be held by the Council until completion and payment of the Highway Works in accordance with Clause 3.2, following which if there are at that time no further liabilities outstanding to the Council from the Developer under this Agreement the Deposit (or the remaining balance of the Deposit) hereof shall be forthwith refunded to the Developer together with interest accrued at the variable Bank of England Base Rate up to the date of refund without prejudice to any future liability which may arise hereunder.

6.3 If the total liabilities of the Developer at any time exceed the Deposit the Developer shall pay to the Council within 14 days of the date on which the Developer receives a written request from the Council the difference between the Deposit and any sum due under clauses 3.2 and 3.3 hereof PROVIDED THAT:

- a) The Council shall properly evidence in writing any costs or liabilities that in their reasonable opinion exceed the Deposit and notify the Developer forthwith;
- (b) The Council shall give the Developer the opportunity to make representations to the Council as to the validity and the quantum;
- (c) The Council shall take into account any reasonable comments made by the Developer; and
- (d) In the event of any dispute relating to the costs or liabilities the Developer and/or the Council shall comply with the terms of clause 9 to this Agreement.

7. If any payment due from the Developer under any of the provisions of this Agreement is not made on or before the Due Date the Developer shall at the same time as making the payment pay to the Council interest at 8 per cent above the Bank of England base rate as at the Due Date for the period starting with the Due Date and ending with the date on which payment of the sum on which interest is payable is made.

8. The Council may require the Developer to make any alteration in the construction of the Highway Works as (acting reasonably) it shall consider necessary, whether at the request of the Developer or otherwise but there shall be no alteration to the layout and location save as agreed by the Developer.
9. In the event of any dispute arising between the parties hereto in respect of the construction of the Highway Works the same shall at the request of any party be referred to a Chartered Civil Engineer to be agreed between the parties hereto or, failing agreement as to the same within 14 days of such request to be appointed upon the application of either party hereto by the President for the time being of the Institution of Civil Engineers and in this respect such a request shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof.
10. The Developer shall indemnify the Council against any actions, charges, claims, costs, expenses, losses, damages, demands, liabilities and proceedings arising out of any breach or non-observance by the Developer of its obligations in this Agreement or at any time in connection with or incidental to the carrying out of the Highway Works (including without limitation any negligent or defective design or construction of the Highway Works) including (but not limited to):
 - a) third party claims for death, personal injury or damage to property
 - b) statutory or other liability for the safety or security of the working methods, employment practices, protection of the environment and control of pollution; and
 - c) third party claims for unlawful interference with any rights of light, air, support, water, drainage or any other easement or right.

PROVIDED THAT:

- this indemnity shall not apply in respect of any actions, charges, claims, costs, expenses, losses, damages, demands, liabilities and proceedings arising out of any act, neglect, default or liability of the Council;
 - the Council shall notify the Developer forthwith upon receipt of any claim
 - the Council shall not accept any such claim without first having given the Developer details of such claim and having given the Developer the opportunity to make representations to the Council as to the validity and quantum of such claim;
 - the Council shall in settling any such claim give full and due regard to any representations made by the Developer.
11. Any notice or demand required to be served upon the Council shall be in writing and shall be sufficiently given or served upon the Council if emailed to mark.hankin@cumberland.gov.uk ; any notice requiring to be served upon the Developer shall be in writing and shall be sufficiently given or served upon it if delivered or posted to the Developer's before mentioned address.
12. Save where otherwise expressly stated the expressions "the Council" and "the Developer" shall include their respective successors in title and assigns.
13. It is hereby agreed by the parties hereto that the land which is to be benefited by the Highway Works is the Land.
14. This is the entire Agreement between the Parties and shall not be altered other than in writing signed by all Parties.
15. Unless expressly stated herein, nothing in this Deed will create rights pursuant to The Contract (Rights of Third Parties) Act 1999 in favour of anyone other than the parties to this Deed.

IN WITNESS whereof the parties hereto have duly executed this Deed the day and year first before written.

SCHEDULE

The Highway Works on the road comprise: -

- Installation of a thermoplastic road hump;
- Road markings and signage;
- Installation and provision of a shared use path at the northern access of the site entrance, a thermoplastic 'thump' at a point approximately 171m north of No. 1 Dalzell Street and additional 'Slow' road markings to aid road safety,

all of which are more specifically shown on the attached Drawing marked, "Section 278 Works Agreement Plan" and marked "Drawing No. 24-011-101 Rev C3"

Executed as a **DEED** by)
affixing the Common Seal of)
CUMBERLAND COUNCIL)
in the presence of:-)

Authorised Signatory.....

Signed as a Deed by)
NIGEL KAY HOMES LIMITED)
In the presence of:)

Witness Signature
Name (please print):
Address:

DATED

2026

CUMBERLAND COUNCIL

And

NIGEL KAY HOMES LIMITED

A G R E E M E N T

Re: Dalzell Street, Moor Row

Chief Legal and Monitoring Officer,
Cumberland Council,
Cumbria House,
117 Botchergate,
CARLISLE, CA1 1RD