

IN TRIPLICATE

DATED

25 February

2025

CUMBERLAND COUNCIL

and

JOHN SWIFT HOMES LIMITED

and

HCC INTERNATIONAL INSURANCE COMPANY PLC

DEED OF VARIATION

Re: Section 278 Agreement - Harras Road, Whitehaven in the County of Cumbria

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

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THIS DEED OF VARIATION is made the 25 day of February 2025
Between

1. **CUMBERLAND COUNCIL** of Cumbria House 107-117 Botchergate Carlisle Cumbria CA1 1RD ("the Council") of the first part;
2. **JOHN SWIFT HOMES LIMITED** (Co. Regn. No. 04067663) of 2 Hobson Court, Penrith 40 Business Park, Penrith, Cumbria, CA11 9GQ ("the Developer") of the second part; and
3. **HCC INTERNATIONAL INSURANCE COMPANY PLC** (Co. Regn. No. 01575839) whose registered office is at 1 Aldgate, London, England, EC3N 1RE ("the Surety") of the final part

WHEREAS:

- (1) In this document the following expressions shall have the following meanings respectively unless the context otherwise requires:
 - a) "the Developer" and "the Council" and "the Surety" shall have the meanings hereinbefore mentioned;
 - b) "the Section 278 Agreement" shall have the meaning hereinafter appearing.
- (2) On 17 September 2024, the Developer and the Surety entered into an agreement with the Council under Section 278 of the Highways Act 1980 in relation to Highway Works on Harras Road, Whitehaven ("the Section 278 Agreement")
- (3) The Developer and the Council and the Surety have agreed that, following the removal of the requirement for the Developer to provide two new road lighting columns, one at each of the traffic calming features, that the Section 278 Agreement be amended.

This Deed is made pursuant to section 278 of the Highways Act 1980 as substituted by Section 23 of the New Road and Street Works Act 1991.

NOW THIS DEED WITNESSETH that: -

1. the Section 278 Agreement shall at all times be read and construed as if: -

(a) Recital (6) was amended to read: -

- (6) In order to discharge the conditions set out in Recital (4) and the requirements of the Informative Note referenced 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 Agreement Plan" and marked "Drawing No. 23-026-102 Rev P8" ("the Highway Works") for the benefit of the Land and to facilitate the carrying out of the Development."

(b) The following Drawing, entitled: -

"Section 278 Agreement Plan" and marked "Drawing No. 23-026-102 Rev P7"
was replaced with the attached Drawing, entitled: -

"Section 278 Agreement Plan" and marked "Drawing No. 23-026-102 Rev P8"

(c) Clause 3.2 was replaced with the following: -

"3.2 The Highway Works (estimated at £105,205.02) shall be carried out and completed at no expense to the Council."

(d) Clause 3.3.2 was replaced with the following: -

"3.3.2 the sum of £9,468.45 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.”

(e) Clause 3.6 was deleted in its entirety.

(f) Clause 9 was replaced with the following: -

- “9. The Surety hereby indemnifies the Council against all losses, damages, costs and expenses arising from any breach of any one or more of the obligations of the Developer under this Agreement PROVIDED ALWAYS that the sum payable by the Surety shall not exceed a maximum of **£105,205.02** (“the Bond”)
- 9.1 The Surety shall not be discharged or released from this guarantee by any arrangement between the Developer and the Council or by any alteration in the Developer's obligations or by any forbearance whether as to payment performance time or otherwise whether made with or without the assent of the Surety
- 9.2 For the avoidance of doubt it is declared that this clause is without prejudice to the Council's rights under the Highways Act 1980 or any other claim or remedy against the Developer.”

(g) The Schedule was replaced with the following: -

SCHEDULE

The Highway Works comprise: -

PART 1

- the construction of a new 2.0m wide footway for a distance of approximately 200m along the front of the proposed (private) Development, and
- the construction of two new bitmac surface access points, allowing pedestrians to safely travel from the proposed new footway on the north eastern side of the road to the existing footway on the south western side of the road,

all of which are more particularly shown on the following attached drawing

entitled "Section 278 Agreement Plan" and marked "Drawing No. 23-026-102 Rev P8"

PART 2

Two sets of chicanes on Harras Moor Road with attendant 'priority give way' signs to act as traffic calming features;

which are also shown on the following attached drawing entitled "Section 278 Agreement Plan" and marked "Drawing No. 23-026-102 Rev P8"

But in all other respects the parties hereto confirm the Agreement.

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

Executed as a **DEED** by)

THE DEVELOPER)

acting by a director)

in the presence of:-)

Witness Signature

Witness Name (BLOCK CAPITALS)

Witness Address

NICK QUINCEY

Nº1 MANCROFT COTTAGES

BRIGHAM, CA13 0XH

Executed as a **DEED** by)

affixing the Common Seal of)

CUMBERLAND COUNCIL)

in the presence of:-)

Authorised Signatory



Signed as a Deed by

RYAN GRANT O'NEILL

As Attorney for and on Behalf of
HCC INTERNATIONAL INSURANCE COMPANY PLC
In the presence of:

Witness : ALICE GUNN
Occupation : Bond Administrator

Bond No. : 501-3/527880-6.

