

IN TRIPLICATE.

DATED

17 SEPTEMBER

2024

CUMBERLAND COUNCIL

and

JOHN SWIFT HOMES LIMITED

and

HCC INTERNATIONAL INSURANCE COMPANY PLC

A G R E E M E N T

Re:Harras Road, Whitehaven in the County of Cumbria

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

Kb/agreements/3.4.418,harrasroad,Whitehaven

THIS AGREEMENT is made as a deed this 17 day of September 2024

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) 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 Harras Road, Whitehaven ("the Road").
- (2) The Developer is the registered freeholder of land on the north side of Harras Road, Harras Moor, Whitehaven, registered at HM Land Registry under Title No CU326184 ("the Land")
- (3) The Developer applied to the Council under application reference 4/23/2088/0F1, for planning permission for the erection of 23 dwellings including associated infrastructure and landscaping (re-submission of application 4/22/2135/0F1) on land at Harras Road, Harras Park, Whitehaven ("the Development"), which was granted approval on 8 May 2024 ("the Approval"), subject to a Section 106 Agreement.

- (4) Conditions 9 and 10 of the Approval, provide that :

"9. Prior to the first use of the construction access authorised by this permission full design details of a scheme of traffic calming, site frontage footway and pedestrian crossing facilities on Harras Road 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.

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.

10. Prior to the occupation of the first dwelling the traffic calming scheme, frontage footway and pedestrian crossings as agreed with the Highways Authority under section 278 of the Highways Act 1980, must be constructed and completed to the satisfaction of the local planning authority in consultation with the Highways Authority (unless otherwise agreed).

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) Further the Informative Note 2) to the Approval provides: -

"2) For the avoidance of doubt, the Traffic calming measures will require suitable lighting and signing and should be detailed in a suitably worded legal agreement with the Local Highway Authority. This agreement will include technical details and a commuted sum."

- (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 P7" ("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 in 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.
- (9) The Council is satisfied that this Agreement and the undertaking of the Highway Works will be of benefit to the public.

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 in accordance with the Schedule and the Drawing 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.
 - 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.

2.4.1 The Developer shall use all reasonable endeavours to complete the Highway Works specified in Part 1 of the Schedule within five (5) weeks of the Commencement Date, save that extensions of time will be permitted with respect to those matters beyond the control of the Developer, and such extensions shall not be unreasonably withheld or delayed. The Council is agreeable, contrary to Condition 10 of the Approval, that upon completion of the footway works, the footway may be closed off to the public until such time as the houses are fully completed and the Final Certificate is issued.

2.4.2 The Developer shall use all reasonable endeavours to complete the Highway Works specified in Part 2 of the Schedule ~~on completion of the final dwelling (to prevent damage to the chicanes from construction traffic)~~ ^{prior to the occupation of the first dwelling, s.c.}, save extensions of time being permitted with respect to those matters beyond the control of the Developer, extensions shall not be unreasonably withheld or delayed.

2.5 The Council shall upon notification in writing by the Developer that the Highways 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" drawings,

shall issue to the Developer a copy of the certificate of completion in respect of the Highway Works (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 reasonable and properly incurred 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 Drawing annexed hereto.

2.6.2 90% of the Bond (as defined in Clause 9) shall be released (subject to the retention of a minimum of £2,500).

2.6.3 The remaining 10% of the Bond or £2,500 (as above) as referred to in clause 2.6.2 above, shall be released 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, whereupon the Council shall issue a final certificate ("the Final Certificate") and the Surety shall be released from its liability under this Agreement.

2.7 The Council shall inspect the Highway Works.

2.8 The Highway Works will be carried out within the Road and will form part of the Road upon the issue of the Final Certificate.

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 mark.hankin@cumberland.gov.uk.

3.2 The Highway Works (estimated at £110,667.70) 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:

3.3.1 the sum of £2,000 in respect of the design checking costs incurred by the Council (*receipt of £2,000 of which the Council hereby acknowledges*);

3.3.2 the sum of £9,960.10 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 £1,815 in respect of the Council's legal costs incurred in the making of this Agreement.

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

3.4.1.2 all reasonable costs or expenses incurred in 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 PROVIDING THAT: - the Council shall:

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

(b) 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.

3.5 The Developer shall at the same time as paying any sum owed under clauses 3.3 and 3.4 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 additional costs arising from the safety audits (if any).

3.6 The Developer shall, on the date hereof deposit with the Council the sum of £6,060.00 in respect of:-

- i) 30 years maintenance of £71 per lighting column (x2) per year;
and
- ii) 30 years energy of £30 per lighting column (x2) per year

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 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.
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 reasonable 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. 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 **£110,667.70** ("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.

10. 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.
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 delivered or posted to Cumberland Council, Commercial and Adoptions Team, Highways & Transport, Joseph Noble Road, Lillyhall Industrial Estate, Workington, CA14 4JH, and 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" and "the Surety" 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 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, including two new road lighting columns, one at each traffic calming features (specified in Part 2 of this Schedule),

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 P7"

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 P7"

Executed as a **DEED** by)

THE DEVELOPER)

acting by a director)

in the presence of:-)

Witness Signature

Witness Name (BLOCK CAPITALS)

Witness Address

..... PETER RICHARD MARRS

..... Peter Richard Marrs
..... Milburns Solicitors Limited
..... 21-23 Oxford Street, Workington
..... CA14 2AL

Executed as a **DEED** by)

affixing the Common Seal of)

CUMBERLAND COUNCIL)

in the presence of:-)

Authorised Signatory

Signed as a Deed by

TRACEY DEBORAH SMITH

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



