

Bond Number: ~~007752~~

002752/1124/006541

Copy 4 of 4

DATED

2nd January

2024/5

CUMBERLAND COUNCIL

and

THOMAS ARMSTRONG (CONSTRUCTION) LIMITED

and

HOME GROUP LIMITED

and

ZURICH INSURANCE COMPANY LIMITED, UK BRANCH

AGREEMENT

Re: Fell View Avenue and Windermere Avenue, Whitehaven

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

THIS AGREEMENT is made as a deed this 2nd day of January 2024^{#5}
BETWEEN

1. **CUMBERLAND COUNCIL** of Cumbria House 107-117 Botchergate Carlisle Cumbria CA1 1RD ("the Council") of the first part;
2. **THOMAS ARMSTRONG (CONSTRUCTION) LIMITED** (Co. Regn. No. 00818913) and whose registered office is at Workington Road Flimby Maryport CA15 8RY ("the Developer") of the second part; and
3. **HOME GROUP LIMITED** registered with the Regulator of Social Housing (Register No L3076) and a Registered Society incorporated under the Co-operative and Community Benefit Societies Act 2014 (Register Number 22981R) whose registered office is One Strawberry Lane Newcastle upon Tyne ("the Owner") of the third part; and
4. **ZURICH INSURANCE COMPANY LTD, UK BRANCH** (registered in England and Wales No. BR000105), whose address for service for the purposes of this Agreement is Zurich Surety of 2nd Floor, Norfolk House, 7 Norfolk Street, Manchester, M2 1ZU, England (or such other address as shall be notified in writing from time to time), a branch of ZURICH INSURANCE COMPANY LTD, a public limited company incorporated in Switzerland (registered in the Canton of Zurich, No. CHE-105.833.114), whose address is Mythenquai 2, 8002 Zurich, Switzerland ("the Surety") of the fourth 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 highways known as Fell View Avenue and Windermere Avenue, Whitehaven ("the Roads").

- (2) The Owner is the registered freehold owner under Title Nos. CU202106, CU201379, CU162832, CU197423, CU201490, CU201378, CU119084, CU61508 and CU201377 of land at Windermere Road, Woodhouse, Whitehaven in the County of Cumbria and is the registered freehold owner under Title Nos. CU201920, CU229664, CU202003, CU17432, CU19416, CU192937, CU202018, CU148525, CU64215 and CU15413 of land at Fell View Avenue, Whitehaven in the County of Cumbria respectively ("the Land") and has entered into a contract with the Developer for the construction of the Highway Works as herein defined.
- (3) The Owner applied to Copeland Borough Council by planning application reference 4/22/2359/0F1 for the erection of 40 dwellings comprising 14 no. two bed bungalows and 4 no. three bed bungalows to be erected upon the part of the Land known as Fell View Avenue, Whitehaven and 12 no. two bed houses and 10 no 2 bed bungalows to be erected upon the part of the Land known as Windermere Road, Woodhouse, Whitehaven together with all associated external works including the demolition of 2 pairs of semi-detached houses on the Land (together "the Developments") and which was approved by Copeland Borough Council on 15 December 2022 ("the Approval")
- (4) Condition 15 of the Approval provides: -
"15. The vehicular crossing over the footway, including the lowered kerbs, shall be carried out to the specification of the Local Planning Authority in consultation with the Highway Authority.
Reason To ensure a suitable standard of crossing for pedestrian safety and in accordance with Policy DM22 of the Copeland Local Plan."

- (5) In order to satisfy the condition specified in Recital (4) 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 drawings ("the Drawings") entitled: -
- i) "S278 Works to Existing Footway/Highway" "Project: Fell View Avenue" and marked "Drawing No. 171 Rev. B"; and
 - ii) "S278 Works to Existing Footway/Highway" "Project: Windermere Road" and marked "Drawing No. 170"
- collectively referred to as ("the Highway Works") for the benefit of the Land and to facilitate the carrying out of the Developments.
- (6) The Council is authorised by virtue of the Highways Act 1980 to carry out the Highway Works in the Roads 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.
- (7) The Developer shall without cost to the Council execute or procure the execution by all necessary parties of such deeds as are in the opinion of the Council necessary to: -
- (i) carry out those parts of the surface water drainage Highway Works shown highlighted in yellow on the attached drawing entitled "S278 Works – Drainage Easement Plan" and marked "Project No. K39225" and "Drawing No. 172" as are situate outside the limits of the Roads on land not owned by the Developer and the Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds.
 - (ii) secure to the Council full drainage rights in respect of such parts of the surface water drainage system of the Roads as are situate outside the limits of the Road as highlighted in yellow on the attached drawing entitled "S278

Works – Drainage Easement Plan” and marked “Project No. K39225” and “Drawing No. 172” and the Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds.

- (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 Drawings subject to any alterations made in pursuance of Clause 8 of this Agreement.
 - 2.2 The Developer has designed a scheme for the execution and completion 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 twelve (12) weeks of the Commencement Date, 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 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 Drawings; 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,

the Council 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 PROVIDING THAT the Developer has, without cost to the Council executed or procured the execution by all necessary parties of such deeds as are in the opinion of the Council necessary to secure to the Council full drainage rights in respect of such parts of the surface water drainage system of the Roads as are situate outside the limits of the Roads as shown as highlighted in yellow on the attached drawing entitled "S278 Works – Drainage Easement Plan" and marked "Project No. K39225" and "Drawing No. 172" and PROVIDING ALSO that the

Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds.

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 Drawings annexed hereto.

2.6.2 90% of the Bond (as herein defined) 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 Roads and will form part of the Roads 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 £192,112.20) 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 which is hereby acknowledged*);

3.3.2 the sum of £17,290.15 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 £1,815 in respect of the Council's legal costs incurred in the making of this Agreement.

3.3.4 the sum of £1,500 in respect of the Stage 3 Safety Audit (to be refunded if carried out by the Developer).

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 properly chargeable thereon by the Council against delivery of a valid VAT invoice and any reasonable additional costs arising from the Safety Audits (if any).

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 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 guarantees to pay the Council 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 **£192,112.20 (One Hundred and Ninety Two Thousand One Hundred and Twelve Pounds and Twenty Pence** ("the Bond") reducing irrevocably to a maximum of **£19,111.22 (Nineteen Thousand One Hundred and Eleven Pounds and Twenty Two Pence)** upon the issue of the Certificate of Completion and the Surety's liability under this Agreement shall be released and discharged absolutely upon the issue of the Final Certificate
 - 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 Owner" 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 the installation of new footways with dropped kerbs along the site frontages of the Developments on the east side of Fell View Avenue, Whitehaven, and on the east side of Windermere Avenue, Whitehaven

all of which are more particularly shown on the following attached drawings entitled:-

- i) "S278 Works to Existing Footway/Highway" "Project: Fell View Avenue" and marked "Drawing No. 171 Rev. B"; and
- ii) "S278 Works to Existing Footway/Highway" "Project: Windermere Road" and marked "Drawing No. 170".

Executed as a DEED by

THOMAS ARMSTRONG
(CONSTRUCTION) LIMITED

In the presence of:

Witness Signature ..

Name: PHILIP HOYLES

Address: 14 THE BECHTES, MARLBOROUGH CASTLE

Occupation: DEPUTY MANAGING DIRECTOR

Executed as a DEED by

affixing the COMMON

SEAL of HOME GROUP LIMITED

In the presence of:

Authorised Signatory



Executed as a DEED by

affixing the Common Seal of

CUMBERLAND COUNCIL

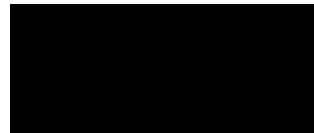
in the presence of:-

Authorised Signatory



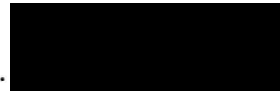
Signed and delivered as a Deed by

KIM KATHERINE ASHWORTH



as Attorney for **Zurich Insurance
Company Limited, UK Branch** in
the presence of:

Signature of witness



Name of witness

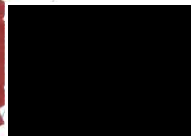
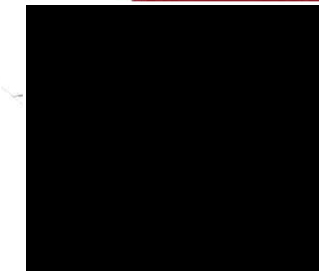
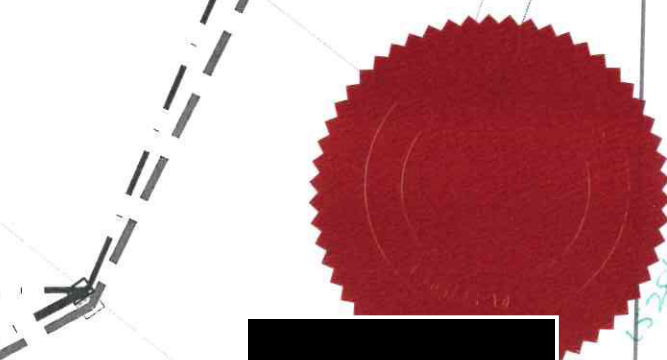
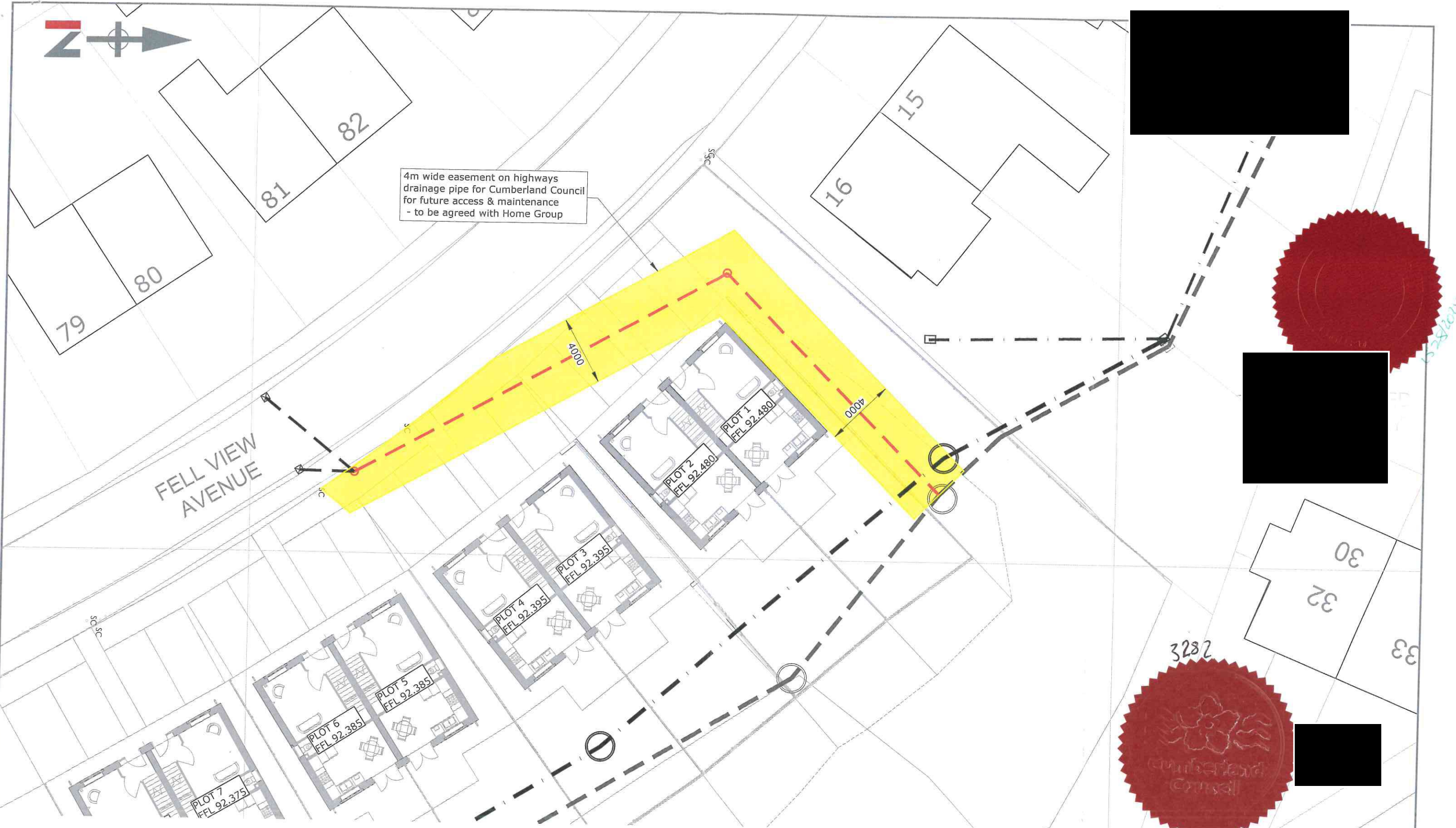
SHREYAS MAKWANA

Address of witness

2nd floor, NORFOLK HOUSE, Manchester

Occupation of witness

Workplace Host.



KEY	
	PUBLIC COMBINED SEWER
	PUBLIC SURFACE WATER SEWER
	EXISTING HIGHWAYS DRAINAGE
	PROPOSED HIGHWAYS DRAINAGE
	4m MIN. WIDE EASEMENT

R G PARKINS
Kendal | 01539 729393 Lancaster | 01524 32548

Client: Thomas Armstrong Ltd
Project: Fell View Avenue, Whitehaven
Drawing Title: S278 Works - Drainage Easement Plan

Scale @ A3: 1:200	First Issue: 04/03/2024	Office of Origin: Kendal
Drawn by: CA	Checked by: TM	Approved: TM
Project No: K39225	Drawing No: 172	Rev:
BIM No:		

Rev	Description	Date	Revised by	Checked by	Approved
	Approval				
Do not scale from this drawing					