

Dated _____ **2024**

THE COUNCIL OF THE BOROUGH OF NORTH TYNESIDE

and

WYNYARD HOMES 2023 LIMITED

and

**THE MOST NOBLE RALPH GEORGE ALGERNON TWELFTH DUKE OF
NORTHUMBERLAND, THE HONOURABLE GEORGE DOMINIC PERCY AND THE
HONOURABLE JAMES WILLIAM EUSTACE PERCY**

Highway Contribution Agreement

pursuant to Section 1 Localism Act 2011, section 216
Planning Act 2008 and the Community Infrastructure
Levy Regulations 2010 relating to highway
improvement works at the A19/A1056 Killingworth Way
Junction

Contents

Clause	Page
1. Definitions.....	2
2. Construction of this Agreement.....	5
3. Legal Basis.....	6
4. Conditionality.....	6
5. The Developer's Covenants.....	6
6. The Authority's Covenants.....	7
7. Communication.....	8
8. Miscellaneous.....	9
9. Assignment.....	10
10. Waiver.....	10
11. Dispute Provisions.....	10
12. Jurisdiction.....	10
13. Delivery.....	10
14. Counterparts.....	10
15. Future / Amended Planning Permission(s).....	10

This Agreement is made the day of

2024

By

1. **THE COUNCIL OF THE BOROUGH OF NORTH TYNESIDE** of The Quadrant, Silverlink North, Cobalt Business Park, North Tyneside, NE27 0BY ("**the Authority**"); and
2. **WYNYARD HOMES 2023 LIMITED** (Company Registration Number: 11307664) whose registered office is at Wynyard Park House Wynyard Avenue, Wynyard, Billingham, England, TS22 5TB ("**the First Owner**")
3. **THE MOST NOBLE RALPH GEORGE ALGERNON TWELFTH DUKE OF NORTHUMBERLAND, THE HONOURABLE JAMES WILLIAM EUSTACE PERCY and THE HONOURABLE GEORGE DOMINIC PERCY** of the Estates office, Alnwick Castle, Alnwick, NE66 1NQ ("**the Second Owner**")

Whereas

- (A) The Authority is the local highway authority for the purposes of the Highways Act 1980 for the Highway Works Land.
- (B) The Authority is also the Charging Authority for the purposes of section 206 of the Planning Act 2008 and the CIL Regulations in respect of the Site.
- (C) The First Owner and the Second Owner are together "**the Developer**" for the Purposes of this Agreement.
- (D) The First Owner is the owner of the Site and on which the Developer proposes to undertake the Development in accordance with the Planning Permission.
- (E) The Developer is the owner of the Highway Works Land on which the Developer proposes to undertake the A19 Junction Works.
- (F) The Planning Permission requires the completion of the A19 Junction Works prior to Occupation of 120 Dwellings.
- (G) The Authority resolved on 11 January 2024 to grant the Planning Permission subject to conditions and the completion of the Section 106 Agreement.
- (H) The Authority is satisfied that the A19 Junction Works are of benefit to the public and has determined by way of a delegated decision dated [] to apply CIL Monies to make the Highway Contribution towards the cost of the A19 Junction Works subject to the terms of this Agreement.
- (I) It is agreed between the Parties that the purpose of this Agreement is to document the mechanism by which the Authority shall make payment of the Highway Contribution to the Developer.
- (J) It is further agreed between the parties that a Highways Agreement will be required to be entered into prior to commencement of the A19 Junction Works to address their construction and maintenance.

Now this Agreement witnesses as follows:

1. **Definitions**

For the purposes of this Agreement the following expressions shall have the following meanings:

- | | | |
|-------------------------------|------------------|---|
| "1980 Act" | | means the Highways Act 1980; |
| "1990 Act" | | the Town and Country Planning Act 1990; |
| "A19 Junction Works" | | means those works to improve the junction of the A19 and A1056 Killingworth Way to be approved by the Authority pursuant to the Application; |
| "Actual Costs" | | means all of those costs actually incurred and/or contractually committed for expenditure in the delivery of the A19 Junction Works at any given time; |
| "Additional Records" | Financial | evidence certified by the Developer of the Financial Records of the Actual Costs incurred submitted to the Authority pursuant to clause 6.3.2 to evidence that the Actual Costs are equal to or greater than the First Tranche Highway Contribution, such evidence to be to the satisfaction of the Authority, acting reasonably; |
| "Adjacent Development" | | means development to be undertaken on land adjacent to the Site pursuant to planning permission granted by the Authority under reference 20/01435/FULES or any subsequent variations thereof pursuant to section 73 of the 1990 Act; |
| "Application" | | the hybrid planning application submitted to the Authority on 13 August 2019 for the Development and allocated reference number 19/01095/FULES comprising: <ul style="list-style-type: none">(i) full planning permission for the change of use of agricultural land and development of 432no. residential dwellings (including affordable housing), highway improvements, and associated infrastructure and engineering works, creation of a new access from the A19 Interchange, SUDS, landscaping and open space, and other ancillary works; and(ii) outline planning permission (all matters reserved except access) for |

the change of use of agricultural land and development of 118no. residential dwellings (including affordable housing), residential development of High Farm with 6 no. new dwellings, associated infrastructure and engineering works, landscaping and open space, and other ancillary works;

- "Balance Figure"** means the sum to be calculated in accordance with the below:
- A - B
- where:
- A = the First Tranche Highway Contribution; and
- B = the Actual Costs incurred at the date of the First Council's Notice
- "CIL Monies"** means those funds received by the Authority as charging authority within its administrative area pursuant to the section 205 of the Planning Act 2008 and the CIL Regulations;
- "CIL Regulations"** the Community Infrastructure Levy Regulations 2010 (as amended);
- "Commencement Development"** of the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out on the Site (and where for the avoidance of doubt, "Planning Permission" as defined for the purposes herein comprises more than one such planning permission, the earliest date on which any such planning permission is commenced on the Site) other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly;
- "Development"** means the development of the Site pursuant to the Planning Permission;
- "Dwelling"** a unit of residential accommodation to be constructed pursuant to the Planning Permission;

"Financial Records"		evidence prepared and certified by the Developer of the Actual Costs incurred by the relevant date, such evidence to be to the satisfaction of the Authority, acting reasonably;
"First Council's Notice"		the notice served by the Authority on the Developer stating that the Authority intends to pay the First Tranche Highway Contribution;
"First Financial Records"		the Financial Records of the Actual Costs incurred by the time of the First Council's Notice;
"First Tranche Highway Contribution"		means £5,000,000 (five million pounds) of the Highway Contribution;
"Highways Agreement"		means the agreement to be entered into by the Developer pursuant to section 278 and/or section 38 and/or section 6 of the 1980 Act in respect of the A19 Junction Works;
"Highway Contribution"		means the total sum of £9,500,000 (nine million, five hundred pounds) to be paid by the Authority to the Developer towards the costs of the A19 Junction Works;
"Highway Commencement"	Works	the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the A19 Junction Works begins to be carried out on the Highway Works Land;
"Highway Works Land"		the land upon which the A19 Junction Works are to be delivered;
"In Receipt Of"		means where the Authority has received the actual CIL Monies due under a demand notice issued by the Authority pursuant to regulation 69 of the CIL Regulations;
"Killingworth Development"	Moor	means the development of the wider site as detailed in the Killingworth Moor Masterplan and including the Development and the Adjacent Development;
"Killingworth Masterplan"	Moor	the framework for development of Killingworth Moor dated December 2017 prepared by Capita North Tyneside in collaboration with the Authority, Persimmon Homes and the Development Consortia for Killingworth Moor, comprising Bellway Homes, Banks Group and The Northumberland Estates;
"Occupation" "Occupied"	and	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or

display or occupation in relation to security operations and "Occupy and Occupied" shall be construed accordingly;

- "Planning Permission"** the hybrid planning permission subject to conditions to be granted by the Authority pursuant to the Application;
- "Second Council's Notice"** the notice served by the Authority on the Developer stating that the Authority intends to pay the Second Tranche Highway Contribution PROVIDED ALWAYS that the Second Council's Notice is not predicated on the Authority having previously served on the Developer the First Council's Notice;
- "Second Financial Records"** the Financial Records of the Actual Costs incurred by the time of the Second Council's Notice;
- "Second Tranche Highway Contribution"** means £2,000,000 (two million pounds) of the Highway Contribution;
- "Section 106 Agreement"** means the agreement to be entered into by the Authority (1), Wynyard Homes 2023 Limited (2) and The Most Noble Ralph George Algernon Twelfth Duke of Northumberland, the Honourable James William Eustace Percy, and the Honourable George Dominic Percy (3) pursuant to section 106 of the 1990 Act in respect of the Application;
- "Site"** as defined in the Section 106 Agreement;
- "Third Council's Notice"** the notice served by the Authority on the Developer stating that the Authority intends to pay the Third Tranche Highway Contribution PROVIDED ALWAYS that the Third Council's Notice is not predicated on the Authority having previously served on the Developer the Second Council's Notice;
- "Third Financial Records"** the Financial Records of the Actual Costs incurred by the time of the Third Council's Notice;
- "Third Tranche Highway Contribution"** means £2,500,000 (two million, five hundred thousand pounds) of the Highway Contribution;
- "Working Day"** means Monday to Friday (excluding bank holidays).

2. Construction of this Agreement

- 2.1. Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a

clause, paragraph or schedule or recital in this Agreement (unless the context otherwise requires).

- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4. Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly, or against each of them individually unless there is express provision otherwise.
- 2.5. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6. The headings and contents list are for reference only and shall not affect construction.
- 2.7. Any covenant by the Developer or the Authority not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.8. Insofar as any clause or clauses of Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.

3. **Legal Basis**

- 3.1. This Agreement is made pursuant to section 1 of the Localism Act 2011, section 216 of the Planning Act 2008 and regulations 59 and 60 of the CIL Regulations and all powers so enabling.
- 3.2. This Agreement shall come into effect on the date hereof.

4. **Conditionality**

- 4.1. The covenants given at clauses 5 and 6 are conditional upon:
 - 4.1.1. the grant of the Planning Permission; and
 - 4.1.2. the Commencement of Development.

5. **The Developer's Covenants**

- 5.1. Within 30 Working Days of receipt of:
 - 5.1.1. the First Council's Notice, the Developer shall submit to the Authority the First Financial Records;
 - 5.1.2. the Second Council's Notice, the Developer shall submit to the Authority the Second Financial Records; and

- 5.1.3. the Third Council's Notice, the Developer shall submit to the Authority the Third Financial Records.
 - 5.2. If the Authority has not served:
 - 5.2.1. the Second Council's Notice by the timescale provided at clause 6.5 below; and/or
 - 5.2.2. the Third Council's Notice by the timescale provided at clause 6.8 below
- then the obligations at clause 5.1.2 and 5.1.3 above (as relevant) shall be of no further force or effect and shall determine absolutely.

6. **The Authority's Covenants**

- 6.1. When the Authority is first In Receipt of CIL Monies from the Killingworth Moor Development equivalent to the First Tranche Highway Contribution and is therefore in a position to pay the First Tranche Highway Contribution, the Authority shall serve the First Council's Notice on the Developer.
- 6.2. Subject to clause 6.3 below, within 30 Working Days (or as soon as practicable thereafter) of receipt of the First Financial Records by the Authority the Authority shall pay to the Developer the First Tranche Highways Contribution.
- 6.3. In the event that the First Financial Records evidence that the Actual Costs incurred are less than the First Tranche Highway Contribution:
 - 6.3.1. the First Tranche Highway Contribution paid by the Authority pursuant to clause 6.2 above shall be substituted for the Actual Costs incurred at the date of the First Council's Notice; and
 - 6.3.2. the Developer may submit Additional Financial Records to the Authority at such time as the Actual Costs incurred since the Highway Works Commencement are equal to or greater than the First Tranche Highway Contribution; and
 - 6.3.3. Within 30 Working Days (or as soon as practicable thereafter) of receipt of the Additional Financial Records the Authority shall pay to the Developer the Balance Figure.
- 6.4. There is no obligation on the Authority to pay the First Tranche Highway Contribution and/or the Balance Figure in the event that the Developer has not submitted the First Financial Records and/or the Additional Financial Records, as relevant.
- 6.5. When the Authority is in the position to pay CIL Monies equivalent to the Second Tranche Highway Contribution, the Authority shall serve the Second Council's Notice on the Developer PROVIDED ALWAYS that the obligation to serve the Second Council's Notice shall fall away and be of no further force or effect following the later of:
 - 6.5.1. Occupation of 300 Open Market Dwellings;
 - 6.5.2. The expiry of six years following Commencement of Development

- 6.6. Within 30 Working Days (or as soon as practicable thereafter) of receipt of the Second Financial Records by the Authority, the Authority shall pay to the Developer the Second Tranche Highways Contribution SUBJECT TO the Second Financial Records evidencing that the Actual Costs incurred since the Highway Works Commencement are equal to or are greater than the total of the First Tranche Highway Contribution and the Second Tranche Highway Contribution.
- 6.7. There is no obligation on the Authority to pay the Second Tranche Highway Contribution in the event that the Developer has not submitted the Second Financial Records.
- 6.8. When the Authority is in the position to pay CIL Monies equivalent to the Third Tranche Highway Contribution, the Authority shall serve the Third Council's Notice on the Developer PROVIDED ALWAYS that the obligation to serve the Third Council's Notice shall fall away and be of no further force or effect following the later of:
- 6.8.1. Occupation of 450 Open Market Dwellings;
- 6.8.2. The expiry of nine years following Commencement of Development
- 6.9. Within 30 Working Days (or as soon as practicable thereafter) of receipt of the Third Financial Records by the Authority, the Authority shall pay to the Developer the Third Tranche Highways Contribution SUBJECT TO the Third Financial Records evidencing that the Actual Costs incurred since the Highway Works Commencement are equal to or are greater than the total of the First Tranche Highway Contribution, the Second Tranche Highway Contribution (if in fact paid) and the Third Tranche Highway Contribution.
- 6.10. In the event that at the time of the Third Council's Notice the Actual Costs incurred are less than the Highway Contribution then the Third Tranche Highway Contribution shall be substituted as follows:
- (A – B) = C; where:
- A = Actual Costs incurred since the Highway Works Commencement
- B = the total of the First Highway Contribution and the Second Highway Contribution; and
- C = the quantum of the Third Tranche Highway Contribution to be paid in these circumstances.
- 6.11. There is no obligation on the Authority to pay the Third Tranche Highway Contribution in the event that the Developer has not submitted the Third Financial Records.

7. **Communication**

- 7.1. Any notice, request, demand or other written communication to be given or served under this Agreement must be in writing and must be:
- 7.1.1. delivered by hand;

- 7.1.2. sent by pre-paid first class post or other next working day delivery service; or
- 7.1.3. sent by email in accordance with the requirements of this clause 7.
- 7.2. Any notice, request, demand or other written communication to be given or served under this Agreement must be sent to the relevant party as follows:
 - 7.2.1. to the Authority at Quadrant, The Silverlink North, Cobalt Business Park, North Tyneside NE27 0BY marked for the attention of the Head of Planning;
 - 7.2.2. to the First Owner at Wynyard Park House Wynyard Avenue, Wynyard, Billingham, England, TS22 5TB marked for the attention of the Chief Executive Officer / Managing Director ;
 - 7.2.3. to the Second Owner at the Estates Office, Alnwick Castle, Alnwick, NE66 1NQ, marked for the attention of the Chief Executive Officer / Managing Director,
 - 7.2.4. or in respect of all parties by email to such email address as has previously been provided as being valid for the service of any such notice, request, demand or other written communication,

or as otherwise specified by the relevant party by notice in writing to each other party.

- 7.3. Any notice, request, demand or other written communication given or served in accordance with clauses 7.1 and 7.2 shall be deemed to have been received:
 - 7.3.1. if delivered by hand, on signature of a delivery receipt provided that if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice shall be deemed to have been received at 9.00 am on the next Working Day; or
 - 7.3.2. if sent by pre-paid first class post or other next working day delivery service, on the Working Day after posting; or
 - 7.3.3. if sent by email, at the time of transmission provided that if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice shall be deemed to have been received at 9.00 am on the next Working Day.

7.4. This Clause 7 does not apply to the service of any proceedings or other documents in any legal action.

8. **Miscellaneous**

8.1. This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or it is modified (without the consent of the Developer) by any statutory procedure or expires prior to the Commencement of Development.

8.2. Subject always to clause 9 this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

9. **Assignment**

9.1. The Developer may, with prior written consent of the Authority (not to be unreasonably withheld or delayed):

9.1.1. assign, mortgage, charge, or deal in any other manner with any or all of its rights under this Agreement; and/or

9.1.2. subcontract or delegate any or all of its obligations under this Agreement to any third party,

subject to the provision by the incoming party of a deed of covenant (in a form to be approved by the Authority, acting reasonably) to comply with the obligations of the Developer under this Agreement as if it were the original covenanting party.

10. **Waiver**

10.1. No waiver (whether expressed or implied) by the Authority of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Authority from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

11. **Dispute Provisions**

11.1. If any dispute arises out of this Agreement, the dispute shall be referred to an arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on any party's request by the President for the time being of the Royal Institution of Chartered Surveyors. The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally).

12. **Jurisdiction**

12.1. This Agreement is governed by and interpreted in accordance with the law of England and Wales.

13. **Delivery**

13.1. The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

14. **Counterparts**

14.1. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate of the original, but all the counterparts together shall constitute one agreement.

15. **Future / Amended Planning Permission(s)**

15.1. In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the 1990 Act this Agreement shall continue in full force in respect of the Planning Permission with the relevant condition or conditions so varied.

- 15.2. In the event that an application is made pursuant to Section 73 and/or Section 73B of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of that application references to Planning Permission in this Agreement shall include the new planning permission granted pursuant to Section 73 and/or Section 73B (as relevant) of the 1990 Act and this Agreement shall apply to and remain in full force in respect of that new planning permission without the need to vary this Agreement.
- 15.3. In the event that an application for planning permission for the Site is granted pursuant to planning obligations substantively in the form of paragraph 2 of the Third Schedule of the Section 106 Agreement then references to Planning Permission in this Agreement shall include such new planning permission and this Agreement shall apply to and remain in full force in respect of that new planning permission without the need to vary this Agreement.

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

Executed as a Deed by affixing

The Common Seal of **THE COUNCIL OF
THE BOROUGH OF NORTH TYNESIDE**

in the presence of:

Authorised Signatory

.....

Signed as a deed by a director of

**WYNYARD HOMES 2023
LIMITED** in the presence of: -

.....

Witness Signature:

Name:

Address:

Occupation:

Signed as a Deed by)

The Most Noble Ralph George Algernon)

Twelfth Duke of Northumberland)

In the presence of:)

Signature of Witness:

Name:

Address:

.....

Occupation:

Signed as a Deed by)

The Honourable George Dominic Percy)

In the presence of:)

Signature of Witness:

Name:

Address:

.....

Occupation:

Signed as a Deed by)

The Honourable James William Eustace Percy)

In the presence of:)

Signature of Witness:

Name:

Address:

.....

Occupation: