

Dated

9th September

2021

(1) South Holland District Council

and

(2) Cross Keys Homes Limited

DEED OF VARIATION

Sections 106 and 106A of the Town and Country Planning Act 1990

Relating to land at
Law's Yard, Willow Row, Spalding
(known as Willow Walk, Spalding)

South Holland District Council
Council Offices
Priory Road
Spalding
PE11 2XE

SHDC Reference: LD/H16-1091-20

Date

9th September

2021

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and
- (2) **CROSS KEYS HOMES LIMITED** (Community Benefit Society Number 7643) of Shrewsbury Avenue, Peterborough, PE2 7BZ ("the Owner")

BACKGROUND

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated.
- (B) On 25 July 2018 the Council and Jonquille Properties Limited entered into the Original Agreement.
- (C) The Owner has since the grant of the Planning Permission purchased the whole of the Site from the previous owner and is now the registered proprietor at the Land Registry under title number LL262075 and is the Owner for the purposes of the Original Agreement.
- (D) On 6 March 2019 the Council and the Owner entered into the First Deed of Variation to secure amendments to the affordable housing provision and amended the Chargee provisions.
- (E) The Owner has now submitted to the Council a section 73A application to vary condition 12 relating to highways and condition 17 relating to levels
- (F) Without prejudice to the terms of the other covenants contained in the Original Agreement as varied by the First Deed of Variation the parties have agreed to vary the terms of the Original Agreement as varied by the First Deed of Variation as set out in this Deed.
- (G) The parties have agreed to enter into this Deed to give its consent to the terms of this Deed.
- (H) This agreement is made under Sections 106 and 106A of the Act and is supplemental to the Original Agreement as varied by the First Deed of Variation.

NOW THIS DEED WITNESSES AS FOLLOWS:**1. DEFINITIONS**

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

"First Deed of Variation"	means the agreement made under Sections 106 and 106A of the Act relating to land at Law's Yard, Willow Row, Spalding dated 6 March 2019 between (1) the Council and (2) the Owner
"Original Agreement"	means the agreement made under section 106 of the Act relating to land off Willow Walk, Spalding (formerly Laws Yard) dated 25 July 2018 and made between (1) the Council and (2) Jonquille Properties Limited
"S.73 Modification Application"	means the application for the removal or variation of a condition submitted by the Owner to the Council on 6 December 2018 and allocated the Council's reference number H16-1218-18 following the grant of the Planning Application
"S.73 Modification Permission"	means the planning permission for the Site issued pursuant to the S.73 Modification Application
"S.73A Application"	means the application for the removal or variation of a condition following grant of planning permission submitted by the Owner to the Council on 4 December 2020 and allocated the Council's

reference number H16-1091-20

2. CONSTRUCTION OF THIS DEED

- 2.1 Unless the context otherwise requires and save as herein varied all words and phrases defined in the Original Agreement shall have the same meaning in this deed.
- 2.2 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 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 interchangeably.
- 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 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party to the Land or any part thereof and in the case of the Council, the successors to its functions.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Sections 106 and 106A of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers with the intent that the covenants and obligations shall run with the Land.

4. VARIATIONS TO THE ORIGINAL AGREEMENT

- 4.1 Recital (C) in the Introduction section in the Original Agreement shall be deleted and replaced with the following:

"The Owner applied to the Council for planning permission for the Land for residential development for 20 Dwellings under reference H16-0283-17 as varied by reference H16-1218-18 and H16-1091-20"

4.2 The Following definitions shall be added to the Original Agreement

"First Deed of Variation"	means the agreement made under Sections 106 and 106A of the Act dated 6 March 2019 between the Council and the Owner
"Original Agreement"	means the agreement made under section 106 of the Act relating to land off Willow Walk, Spalding (formerly Laws Yard) dated 25 July 2018 and made between (1) the Council, (2) Jonquille Properties Limited
"S.73 Modification Application"	means the application for the removal or variation of a condition submitted by the Owner to the Council on 6 December 2018 and allocated the Council's reference number H16-1218-18 following the grant of the Planning Application
"S.73 Modification Permission"	means the planning permission for the Site issued pursuant to the S.73 Modification Application
"S.73A Application"	means the application for the removal or variation of a condition following grant of planning permission submitted by the Owner to the Council on 4 December 2020 and allocated the Council's reference number H16-1091-20
"S.73A Permission"	means the planning permission for the

	Site to be issued pursuant to the S.73A Application substantially in the form as the attached draft at Schedule 1
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- 4.3 The definition of "Planning Application" in Clause 1.1 to the Original Agreement shall be deleted and replaced with the following:

"Planning Application"	means the Planning Application or the S.73 Modification Application or the S.73A Application
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- 4.4 The definition of "Planning Permission" in Clause 1.1 of the Original Agreement shall be deleted and replaced with the following:

"Planning Permission"	means either the Planning Permission or the S.73 Modification Permission or the S.73A Permission or such other planning permissions for the Development granted pursuant to sections 73 or 96A of the 1990 Act
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- 4.5 The following clause shall be inserted after Clause 4.1.11 of the Original Agreement:

*"It is agreed between the parties that where planning permission is issued in relation to the Development pursuant to an application under section 73 of the 1990 Act this Deed shall continue to bind the Development and shall be in full force and effect subject to and in accordance with the provisions contained herein and shall in addition bind the Development in respect of any subsequent planning permission granted pursuant to section 73 of the Act **AND PROVIDED THAT** in the event that upon receipt of an application under section 73 of the 1990 Act the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and*

acknowledged that the Council should retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations."

4.6 The document annexed to this deed at Schedule 1 shall be added to Schedule 2 of the Original Agreement.

4.7 In all other respects the Original Agreement (as varied by this deed and the First Deed of Variation) shall remain in full force and effect.

5. THE OWNER'S COVENANTS

5.1 The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

6. LOCAL LAND CHARGE

6.1 This Deed shall be registerable as a local land charge by the Council.

7. COUNCIL'S COSTS

7.1 On completion of this Deed, the Owner shall pay to the Council their reasonable legal costs together with all disbursements that have been incurred in the negotiation and completion of this Deed.

8. VAT

8.1 Any consideration given under this Deed shall be done in such a way that the VAT liability is borne by the Owner and not the Council.

9. THIRD PARTY RIGHTS

9.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

10. JURISDICTION

10.1 This Deed is governed by and interpreted in accordance with the laws of England and Wales.

11. EXECUTION AND DELIVERY

This Deed is executed as a deed by the parties and is delivered on the date first hereinbefore written

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

James Garner Architecture Ltd.
 5 Bush Road
 Kibworth Beauchamp
 LE8 0SP

Council Offices
 Priory Road
 Spalding
 Lincolnshire
 PE11 2XE

Admin 01775 764723
 DC Officers 01775 761161
 Facsimile 01775 762937

planningadvice@sholland.gov.uk

www.sholland.gov.uk

TOWN AND COUNTRY PLANNING ACT 1990

DRAFT APPROVAL

Reference: H16-1091-20 **Date of Decision:**

Applicant: Burmor Construction Ltd.
 Burmor House
 Sunderland Road
 Northfields Industrial Estate
 Market Deeping
 PE8 8FD

Location: Land Off Willow Walk Spalding

Description: Residential Development of 20 Dwellings - approved under H16-0283-17.
 Modification of Conditions 2, 12 & 17 relating to highways and levels.

South Holland District Council hereby give notice that permission has been GRANTED (or equivalent) subject to the following condition(s):

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

H16-1091-20 Residential Development of 20 Dwellings - approved under H16-0283-17.
 Modification of Conditions 2, 12 & 17 relating to highways and levels.

Application Form received 4.12.20
 Indemnity dated 19 August 2021
 07-0123-005 P8 received 26.8.21
 8011 1004 P07 received 19.8.21
 07-0123-020 P4 received 19.8.21
 07-0123-011 P4 received 19.8.21
 07-0123-010 P4 received 19.8.21
 07-0123-008 P4 received 19.8.21
 07-0123-007 P9 received 19.8.21
 07-0123-006 P8 received 19.8.21

18011 1010 P01 received 23.7.21
 18011 4000-P04 Elevations - Plots 01-05 received 21.6.21
 18011 4002-P04 Elevations - Plots 10-14 received 21.6.21
 18011 4003-P03 Elevations - Plots 17-20 received 21.6.21
 07-0123-001 P2 received 14.6.21
 07-0123-009 P4 received 14.6.21
 07-0123-019 P2 received 14.6.21
 Soakaway 1 received 14.6.21
 Soakaway 2 received 14.6.21
 Soakaway 3 received 14.6.21
 Soakaway 4 received 14.6.21
 Soakaway 5 received 14.6.21
 Soakaway 6 received 14.6.21
 Soakaway 7 received 14.6.21
 Soakaway 8 received 14.6.21
 Highways Surface Water Drainage System - 1 in 100 year + 40% Climate Change
 Prepared by G30 Consulting Dated 18th February 2021 received 23.2.21
 07-0123-012 P4 received 23.2.21
 07-0123-018 P3 received 23.2.21
H16-0180-20 CONDITION COMPLIANCE Details of full closure report and landscaping
 (Conditions 3 (iv) and 6 of H16-0283-17)
 Application Form received 25.2.20
 Topsoil Report BS3882 Total Aggregates Ltd received 25.2.20
 Topsoil Analysis Report Landscape 20/Nov 2019 received 25.2.20

H16-1234-19 CONDITION COMPLIANCE Details of boundary treatment (Condition 7 of
 H16-0283-17)
 NONE

H16-0923-19 NON MAT AMENDMENT Residential development of 20 dwellings -
 approved under H16-0283-17 - Amendment to window details on Plots 6, 7, 8, 9, 15 and
 16

 18011 4001 P04 received 13.9.19

H16-0686-19 CONDITION COMPLIANCE Details of landscaping (Condition 6 of H16-
 0283-17) - Residential development of 20 dwellings

 Application Form received 12.7.19
 19.1446.001A received 25.10.19
 Geomatters Letter 10 September 2019 JR/AT/GML18246/TL1Rev1 received 13.9.19
 Geomatters Letter 17 September 2019 AT/GML18246/RS/1 received 13.9.19

H16-0468-19 CONDITION COMPLIANCE Details of external materials (Condition 4 of
 H16-0283-17)

Materials Schedule Job No: 18011

H16-0197-19 CONDITION COMPLIANCE Details of Conditions 3 (contamination of land or pollution of controlled waters), 4 (external materials of construction), 5 (external boxes for gas and electricity supplies and of any gas flues and soil vent pipes), 8 (landscape management and maintenance schedule), 9 (means of storage and disposal of refuse and recycling), 10 (construction management to minimise disturbance during the construction process), 11 (prevent the deposit of mud on public highways), 15 (surface water drainage scheme), 16 (design and location of all lighting) & 17 (existing and proposed site levels and proposed floor levels) of H16-0283-17

Application Form received 22.2.19

Email of agent Burmor Projects dated 15 April 2019 13:37 confirming hours of working received 22.2.19

Traffic Route Map (large scale) received 22.2.19

Traffic Route Map (small scale) received 22.2.19

SITE SET UP PLAN received 22.2.19

1001 P04 (layout) received 22.2.19

Remedial Method Statement GML18246/4/1 Revision 1 received 22.2.19

Construction Management Plan received 22.2.19

1830 LTG 5000 Street Lighting Layout received 22.2.19

Lighting Design Report 1830 12 February 2019 received 22.2.19

Drainage Strategy Report by G30 Consulting Document Reference DSR/001 Dated 22nd November 2018 received 22.2.19

Environmental Factual & Interpretive Report Project No.: 4926 received 22.2.19

Exploratory Hole Layout Plan GML18246 005 received 22.2.19

H16-1218-18 SEC 73 MODIFICATION. Residential Development of 20 Dwellings - approved under H16-0283-17. Modification of Condition 2 to allow amendments to previously approved plans and Conditions 13 and 14 relating to commencement/occupation of dwellings in conjunction with roads and footpaths

None. Overtaken by current application.

H16-0283-17 FULL Residential development of 20 dwellings

Application form received 28.3.17

358.SL.01A received 8.8.17

358.P1.01A received 8.8.17

358.P1.02A received 8.8.17

358.P6.01A received 8.8.17

358-P8-01A received 8.8.17

358.P10.01A received 8.8.17

358-P10-02A received 8.8.17

358.P15.01A received 8.8.17

358.P17.01A received 8.8.17

358.P17.02A received 8.8.17

358.DSP.01A received 8.8.17

358.LP.01. received 26.2.18

Drainage Strategy Rev A (Hemmings, 17th July 2017).
Flood Risk Assessment Rev C (Hemmings, 27th March 2017)

Reason: For the avoidance of doubt and in the interests of proper planning.

- 2 The approved cycle sheds, boundary treatments and ground floor privacy screens as approved by plans refs 07-0123-005 P8 and 8011 1004 P07 shall be installed prior to the first occupation of each individual dwelling and retained for the duration of the development. Any replacement or repairs to cycle sheds, boundary treatments and ground floor privacy screens as a result of damage or wear and tear shall be undertaken within one month of identification of the need for replacement or repair, and shall be installed to replicate the details approved by plan ref 18011 1004 P07, and retained for the duration of the development.

Reason: In order to ensure that the site is adequately screened, in the interests of the character and appearance of the development and the amenity of the area in which it is set including the amenity of nearby occupiers.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 3 Notwithstanding the details included within the Construction Management Plan received 22.2.19 (H16-0197-19 refers) the hours of construction working shall be confined to:

Monday to Friday: 8am to 6pm

Saturdays: 8am to 1pm

Sundays and bank holidays: No work permitted.

as agreed by the Email of agent Burmor Projects dated 15 April 2019 13:37

Reason: In the interests of the residential amenity of adjoining occupiers. This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan 2019

- 4 The scheme of landscaping and tree planting shown on drawing 19.1446.001A received 25.10.19 shall be carried out and completed in its entirety during the first planting season following practical completion of the development. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for the period of five years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

Reason: To ensure that the development is adequately landscaped, in the interests of its visual amenity and that of the area in which it is set.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 5 The means of storage and disposal of refuse and recycling shall be undertaken in accordance with the indemnity agreement dated 19 August 2021.

Reason: To ensure that adequate facilities are made available for refuse storage and disposal to avoid pollution, to protect residential amenity, and in the interests of the appearance of the site and the area within which it is set. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019.

- 6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order or Statutory Instrument revoking and re-enacting that Order), none of the following developments or alterations shall be carried out.

- i) the erection of freestanding curtilage buildings or structures including car ports, garages, sheds, greenhouses, pergolas or raised decks;
- ii) the erection of house extensions including dormer windows, conservatories, garages, car ports, porches or pergolas;
- iii) alterations including the installation of replacement or additional windows or doors and the installation of roof windows.

Reason: To ensure that the Local Planning Authority retains control over the future extension and alteration of the development, in the interests of its architectural and visual integrity, levels of residential amenity and the visual amenity and character of the area within which it is set.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order or Statutory Instrument revoking and re-enacting that Order), no further walls, fences or other means of enclosure other than those illustrated on the plans forming part of the application hereby approved shall be erected on the site.

Reason: To ensure that the Local Planning Authority retains control over means of enclosure, in the interests of the appearance of the development and the visual amenity and character of the area within which it is set.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

Notes:

For the avoidance of doubt the bricks to be used to the external walls of the development hereby permitted are as follows:

External Walls:

Above DPC - Wienerberger 'Berkshire Red'

Below DPC - Wienerberger 'Bournville Buff Blend'

Roof:

Material 01 - Slim profile interlocking concrete roof tile - colour 'Grey'

Material 02 - Slim profile interlocking concrete roof tile - colour 'Terracotta'

First Floor Bay Windows:

Composite Lead Effect Cladding - colour 'Grey'

Windows:

UPVC Double Glazed - colour 'White'

Front Entrance Doors:

Composite door set - colour 'Black'

Rear Entrance Doors:

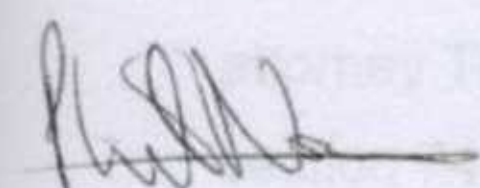
UPVC Double Glazed - colour 'White'

Rainwater Goods:

Gutters - UPVC - colour 'Black'

Downpipes - UPVC - colour 'Black'

This planning permission is subject to an Agreement under Section 106 of the Town & Country Planning Act 1990 dated 25 July 2018, and Deed of Variation dated xxx and can only be implemented as a consequence of meeting the provisions of that Agreement



Phil Norman
Planning Manager
South Holland District Council

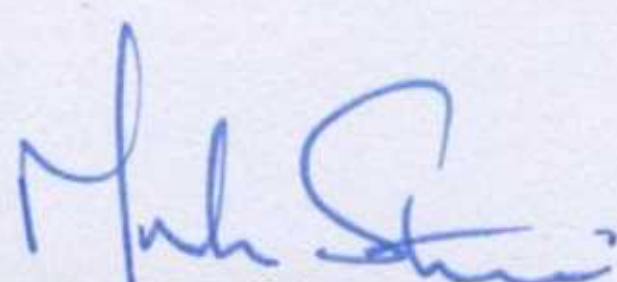
1st September 2021

BUILDING REGULATIONS:

This decision refers only to planning permission as granted under the Town and Country Planning Act 1990. The works that you are proposing may also require Building Regulations and this planning permission does not give authority under Building Regulations to commence work. Please contact the Building Control section for further information on 01775 764557 or bcadmin@sholland.gov.uk

The **COMMON SEAL** of **SOUTH HOLLAND DISTRICT COUNCIL**

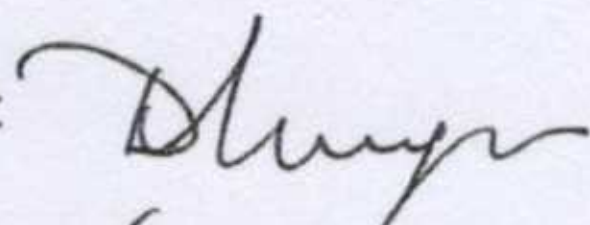
was hereunto affixed
in the presence of:-


Authorised Signatory



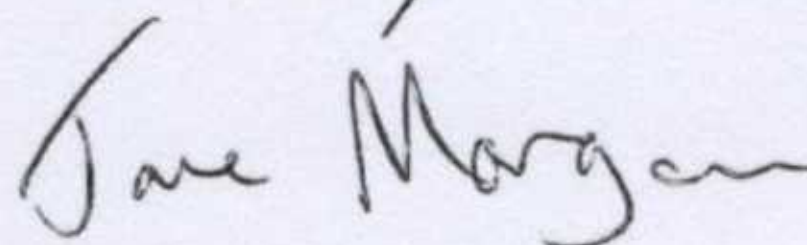
Executed as a deed by)
CROSS KEYS HOMES LIMITED)
acting by **DIGBY MORGAN** as)
an officer appointed for that purpose by its)
attorney Trowers & Hamlins LLP under)
section 74(4) of the Law of Property Act)
1925

~~in the presence of:~~



as attorney for Cross Keys Homes

witness signature:



name: **JANE MORGAN**

address: **CHERRYDENE, LONGLEY GREEN, WR6 5DU**

occupation: **TUTOR**