



DATED 19 August 2021

AGREEMENT

between

SOUTH HOLLAND DISTRICT COUNCIL

and

CROSS KEYS HOMES LIMITED

in relation to the provision of a waste collection service along a private road off Willow Walk,
Spalding

THIS AGREEMENT is made on the 19 day of August 2021

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices Priory Road Spalding Lincolnshire PE11 2XE ("the Council") (which shall include any successor authority acting as waste collection authority) and
- (2) **CROSS KEYS HOMES LIMITED** (Community Benefit Society No. 7643) whose registered office is at Shrewsbury Avenue, Peterborough PE2 7BZ ("the Owner")

RECITALS

- A. The Council is the waste collection authority for the area which the Private Road is situated
- B. The Owner is the freehold owner of the Private Road
- C. The Owner has secured planning permission for the development of residential dwellings which will be served by the Private Road
- D. The Private Road is not to be adopted as a road maintainable at public expense which would normally preclude the Council providing a household waste collection service along the Private Road but in the exceptional circumstances that apply in this instance the Council has agreed to provide the Service subject to the Owner entering into this Agreement

DEFINITIONS

1. In this Agreement the following words shall have the following meanings:

"Permitted Disposal"	means any of the following: • any disposal of an interest in the Private Road or any part thereof to a competent authority with a view to that competent authority providing water, gas, electricity, communication services or foul or surface water disposal facilities or other services/utilities to or from the development that is served by the Private Road or to or from other land and whether or not pursuant to a statutory agreement • the grant of a charge over the Private Road • any disposal or dedication or adoption of the Private Road or any part thereof to or by the highways authority for the area in which the Private Road is situated • the granting of any rights or wayleaves or easements over under or across the Private Road
----------------------	---

"Plan"	means the plan attached to this Agreement
"Private Road"	means the private road shown for identification purposes edged red on the Plan including all kerbs and footpaths and intervening soft landscaping
"Service"	means the collection by the Council either directly or through its contractors or sub-contractors of household waste from the residential dwellings to be served by the Private Road using such employees of the Council or its contractors or sub-contractors and such Vehicles as the Council or its contractors or sub-contractors (as appropriate) consider appropriate
"Title"	means the title registered at HM Land Registry which includes the Private Road and which at the date of the Agreement is registered under title number LL262075
"Vehicles"	means any vehicle owned or leased or otherwise secured by the Council or any vehicle owned or leased or otherwise secured by any contractor or sub-contractor of the Council and used by the Council acting as waste collection authority or used by any such contractor or sub-contractor of the Council in the provision of the Council's waste collection service
"Working Day"	means any day from Monday to Friday (inclusive) other than Christmas Day, Good Friday and any statutory Bank or public holidays

2. Words importing persons will include the Council and firms and companies and, where expressed in the singular, will include the plural and vice versa
3. Words importing one gender will include the other genders
4. Headings are for ease of reference only and will not affect its construction

OBLIGATIONS OF THE COUNCIL

5. In consideration of the Agreement by the Owner as referred to in clause 6 the Council hereby:
 - (a) agrees to provide the Service; and
 - (b) acknowledges the provisions of clause 8 (negligence and wrongful act); and
 - (c) subject to clause 14(c) (Private Road affected by 3 or more titles) agrees to enter into and sign an agreement with any successor purchaser or disponent of the Private Road (or any part thereof) in the same terms as this Agreement as soon as reasonably practicable (but with such reasonable amendments as are appropriate in the circumstances) in the event that the Owner wishes to transfer or transfers the freehold or leasehold ownership of the Private Road or any part thereof and the disponent wishes the Service to continue

Highway Boundary

Key

 Boundary

Disclaimer: This document and its design content is copyright protected. It shall be read in conjunction with all other associated project information including specific specifications, schedules and related forms, parts documents. Do not scale from documents. All scales noted correct at original paper size. All dimensions to be checked on site. Immediately report any discrepancies, errors or omissions on this document to the originator. If in doubt, ask.

Source File:
12011 Site Model.dwg

Rev	Date	Drawn	Note
P02	29/07/2021	JKG	Red line updated.




burmor construction

JAMES GARNER
ARCHITECTURE
01432 202 0000 11/07/2020 10:27:57

Client:
Burmor Construction Ltd.

Project Site:
Residential development at land off Willow Walk, Spalding

Drawing Title:
Highway Boundary

Drawing Status:
Legal

Scale:
1:500, 1:200

Drawn:
JKG

Project Number:
18011

Drawn By:
8031

Original Plot Size:
A4

Date:
27.07.21

Revision:
P02

OBLIGATIONS OF THE OWNER

6. In consideration of the Council agreeing to provide the Service the Owner agrees (subject to the provisions of clause 8) that:

(a) the Council and its contractors and sub-contractors employees and agents shall not be liable to contribute towards the repair and maintenance of the Private Road or any part of the Private Road nor for any damage caused to the surface of the Private Road or any part of the Private Road through the normal use of the Vehicles on the Private Road whilst providing the Service; and

(b) the Owner shall not make any claims or institute any legal proceedings against the Council or its contractors or sub-contractors employees or agents in relation to any damage caused to the Private Road during the provision of the Service

7. Within twenty (20) Working Days from the date of this Agreement the Owner shall apply to the Land Registry to enter a restriction in the following terms in the Proprietorship Register of the Title and immediately upon registration of the restriction shall deliver to the Council a copy of the Title with the restriction duly registered:

"No transfer or lease of that part of the registered estate shown [description to be provided by HMLR for Private Road] on the title plan (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of the restriction, is to be registered without a certificate signed on behalf of South Holland District Council of Council Offices Priory Road Spalding Lincolnshire PE11 2XE or its conveyancer that the provisions of clause 9 of a waste collection indemnity agreement made between the South Holland District Council (1) and Cross Key Homes Limited (2) dated [] 2021 have been complied with or that they do not apply to the disposition"

GENERAL

8. The provisions of clause 6 (a) and 6 (b) do not apply where damage is caused or maintenance or repair works are required to the Private Road as a result of the negligence or wrongful act or acts of the Council or its employees or its contractors or sub-contractors or agents
9. Subject to clauses 11 and 14(c) (Private Road affected by 3 or more titles) upon any transfer by the Owner of the freehold ownership of any part of the Private Road or upon the grant by the Owner of a leasehold interest of any part of the Private Road the Owner shall in the event that the Owner or disponee of the Private Road wishes the Council to continue to provide the Service (but not otherwise) procure that its disponee acquiring such interest in the relevant part of the Private Road enters into an agreement with the Council in the same form as this Agreement with such amendments as are appropriate in the circumstances at the reasonable cost of the Owner
10. Upon completion of any agreement referred to in clause 9 the Owner shall (where the interest disposed is the Owner's freehold interest) be released from the terms of this Agreement in relation to that part of the Private Road to which the said agreement

refers BUT FOR THE AVOIDANCE OF DOUBT where the interest disposed of is the leasehold interest in the Private Road (or part thereof) the Owner shall not be released from the terms of this Agreement

11. For the avoidance of doubt:

- (a) the use of the Private Road by the Council or its contractors or sub-contractors is in common with the Owner and all others authorised by the Owner to use the Private Road; and
- (b) the Owner may enter into any Permitted Disposal with the effect that the provisions of clause 9 and the terms of the restriction referred to in clause 7 do not apply to such Permitted Disposal

TEMPORARY SUSPENSION OF SERVICE

12. The Council may suspend the provision of the Service upon 2 (two) weeks' written notice to the Owner where an administration order is made or an administrator appointed in relation to the Owner unless the administrator acknowledges (but without personal liability on the part of such administrator) that the provisions of this Agreement with the Council continue to apply

13. The Council reserves the right entirely at its discretion (but acting reasonably) to suspend the service temporarily:

(a) on a given particular collection day(s) without prior written notice being given to the Owner due to exceptional circumstances including (but not limited to) adverse weather conditions or obstruction of the Private Road on that day(s) which would affect the safety of the Council's equipment and or its contractors or sub-contractors or their employees or agents supplying the Service or prevent Vehicles from using the Private Road; or

(b) and for the shortest period possible where the Council or its contractors or sub-contractors or their employees or agents supplying the Service is of the opinion that the condition of the Private Road or any part of the Private Road is such that due to lack of maintenance to the Private Road the provision of the Service could result in damage to the Council's property or injury to its contractors or sub-contractors or their employees or agents supplying the Service. Where this applies (i) the Council shall notify the Owner in writing (in accordance with clause 21) within 10 Working Days of the first day on which the Service is suspended of both the adverse condition of the Private Road (or any part of thereof) together with full details of the remedial works that the Council (acting reasonably) considers are necessary to be undertaken to the Private Road in order that the Service can be resumed; and (ii) the Council shall not be required to recommence the Service unless and until the Council is reasonably satisfied based upon the condition of the Private Road that the Service can be provided again safely

(c) and for the shortest period possible where the Council or its contractors or sub-contractors or their employees or agents supplying the Service is of the opinion that the Service cannot be provided safely for any other reasons. Where this applies (i) the Council shall notify the Owner in writing (in accordance with clause 21) within 10 Working Days of the first day on which the Service is suspended of the issues that have resulted in the suspension of the Service and (ii) the Council shall not be required to recommence the

Service unless and until the Council is reasonably satisfied that the Service can be provided again safely

(d) where the Council or its contractors or sub-contractors or their employees or agents supplying the Service is of the opinion (acting reasonably) that clause 14(b) applies (disposition of Private Road without disponent entering into a new agreement)

TERMINATION OF AGREEMENT

14. This Council may terminate this Agreement upon two (2) weeks' written notice to the Owner in the event that:

(a) the Owner fails to comply with clause 7 (registration of restriction); or

(b) the Owner disposes of its freehold interest in the Private Road or any part of the Private Road or disposes of a leasehold interest in the Private Road or any part of the Private Road without the purchaser or disponent entering into an agreement with the Council under clause 9; or

(c) the Private Road is at any time subject to three (3) or more separate registered titles whether such titles are freehold and/or leasehold interests (but excluding any registered titles that relate to Permitted Disposals).

15. The Owner may terminate this Agreement at any time upon one (1) months' written notice to the Council in the event that:

(a) the Private Road becomes adopted and maintained at public expense by the relevant highways authority for the area in which the Private Road is situated; or

(b) an alternative provider provides the Service

16. Any termination of this Agreement shall be without prejudice to any right or remedy of either party against the other in respect of any antecedent breach of this Agreement

17. It is acknowledged that the provisions of clause 15(b) (alternative provider) does not oblige the Owner to source an alternative provider for the Service

18. Where this Agreement is terminated the Council shall at the Owner's reasonable expense sign such application as the Owner may require to remove from the Title the restriction referred to in clause 7 provided the Council is (acting reasonably) satisfied that such restriction is no longer required

DISPUTES

19. In the event of there being a dispute arising out of this Agreement or the subject matter thereof the following provisions shall apply:

(a) The parties shall use their reasonable endeavours to resolve the dispute by agreement

(b) If agreement cannot be reached the matter in dispute shall be referred to and settled by a single expert to be appointed by agreement between the

parties to the dispute or, in default of agreement, to be nominated by the President of the Law Society of England and Wales or the President of the Royal Institution of Chartered Surveyors as appropriate on the application of either party to the dispute after giving notice in writing (in accordance with clause 21) to the other party or parties to this Deed

(c) The person to be appointed shall be a person having five years or more post qualification experience

(d) Reference to the expert shall be on terms that determination shall take place within 30 (thirty) Working Days of the expert accepting his instructions

(e) The expert shall have the power to award costs of the determination in favour of either party to the dispute at the expense of the other party or parties and failing such determination such costs shall be borne by the parties to the dispute in equal shares

(f) The expert shall be limited in his findings to the matter in dispute referred to him and shall provide written reasons for his decision

(g) The findings of the expert shall (other than in the case of a manifest material error) be final and binding on the parties to the dispute.

THIRD PARTY RIGHTS

20. Except for any successor authority acting as waste collection authority for the area within which the Private Road is situated nothing herein contained or implied shall give or be construed as giving rights privileges powers or enforceability other than to the parties executing this Agreement and the provisions of the Contract (Rights of Third Parties) Act 1999 and any benefits or rights which could arise therefrom are expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of any matter herein contained

NOTICES

- 21.1 Any notice or written communication given or required under this Agreement shall be validly given by e-mail where it is:

(a) marked in the subject line "URGENT – important notice re Willow Walk, Spalding refuse collection agreement"; and

(b) sent to the relevant e-mail address as follows

The Council – wasteservices@sholland.gov.uk

The Owner – Developmentteam@crosskeyshomes.co.uk

or such other e-mail address as either party may by notice notify the other party or parties.

- 21.2 The notice shall be deemed to be validly served and received one hour after the time that the e-mail is sent provided that the e-mail is sent is before 5pm on a Working Day or otherwise at 9am the immediately next following Working Day and that the e-mail address does not respond with an automated mailer daemon message stating that the message is undelivered

21.3 In the event that a notice sent by either party to the other is repeatedly subject to an automated mailer daemon stating that the message is undelivered then any notice or written communication given or required under this Agreement shall be validly given if addressed for the attention of the Waste Collection Officer (in relation to the Council) or for the attention of Gemma Reeves (in relation to the Owner) and either

- (a) hand delivered or
- (b) sent by first class post or
- (c) recorded delivery post or
- (d) next Working Day guaranteed post

to the address set out at the beginning of this Agreement or to such alternative address as may from time to time constitute the principal address or registered office (as appropriate) of the recipient

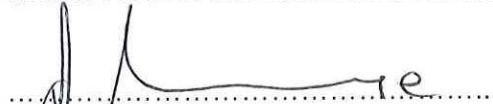
21.3 Where clause 21.3 applies notice shall be deemed to be received on the day of service where hand delivered provided that this is a Working Day or otherwise on the immediately next following Working Day and on the first Working Day following the day of service where sent by first class post or recorded delivery post or next working day guaranteed post

JURISDICTION

22. This Deed is governed by and interpreted in accordance with the law of England

This Agreement has been entered into on the date stated at the beginning of this Agreement and is signed by the persons named below as duly authorised signatories

Signed on behalf of
SOUTH HOLLAND DISTRICT COUNCIL


.....
(Authorised Officer)

(Authorised by M Stinson - Assistant Director Governance
by e-mail 17-8-21)

Executed and delivered as a deed by

Cross Keys Homes Limited acting by
an officer appointed for that purpose by its
attorney Trowers & Hamlin LLP under section
74^{(2)(a)} Law of Property Act 1925 in the
presence of

Suzanne Benson

Cross Keys Homes Limited

Signature of officer

Suzanne Benson

RACHEL VAUGHAN
Name of witness

Signature of witness

Rachel Vaughan

*55 PRINCESS STREET
MANCHESTER
M2 4EW*

Address of witness

SOLICITOR
Occupation of witness