

THIS DEED is made the 21<sup>st</sup> day of *October* 2004

BETWEEN

1. CAMBRIDGE CITY COUNCIL of The Guildhall Cambridge ("the Council")
2. CAMBRIDGESHIRE COUNTY COUNCIL of Shire Hall, Castle Hill, Cambridge CB3 0AP (the "County Council");
3. FOILDock LTD whose registered office is at 61 Grays Inn Road London WC1X 8TH (company number 04003839) ("Foildock")
4. PATRICIA MARGARET ONYETT of Old Hall Wenhaston Suffolk IP19 9DG and THOMAS READ GRAHAM and JANICE WENDY GRAHAM of Farley Farm Braishfield Romsey Hants ("the Owners")

RECITALS

1. The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the land described in the First Schedule ("the Land") is situated and by whom the obligations contained in the Schedules to this Agreement are enforceable
2. The County Council is the Local Education Authority and a Local Planning Authority for the purposes of this Agreement for the area within which the Land is situated and by whom the obligations contained in the Sixth Schedule to this Agreement are enforceable.
3. Foildock are the owners in fee simple in possession of the land hatched red free from encumbrances.
4. "the Owners" are the owners of the land shaded blue on the plan to which Foildock and the Owners have agreed an option to purchase
5. By a written planning application reference no C/03/0406/FP ("the Application") received on 14<sup>th</sup> April 2003 the Owner applied to the Council for permission to develop the Land in the manner and for the

uses set out in the Application and set out in the Second Schedule ("the Development")

6. The Council refused the Application on 3<sup>rd</sup> September 2003
7. Foildock submitted an Appeal pursuant to section 78 of the Town and Country Planning Act 1990 against the refusal of the consent
8. The Council has decided that planning permission should not be granted for the Development in accordance with the Application ("the Planning Permission") having regard to:

Local Plan policy RL3 and the need for new development to provide for open space to meet the Council's requirements;

Local Plan policy RL4 and the need for new development to provide for space for play to meet the needs of the City's children in accordance with the Council's requirements;

Local Plan Policy CS3 and the need for new development to contribute to the provision of community facilities;

Local Plan Policy CS9 and the need to make accommodation for the additional demand on educational facilities;

Local Plan Policy HO7 and the Council's policy document entitled "The Payment of Commuted Sums In Lieu of On-Site Affordable Housing Provision" approved by the Council's Planning sub-committee 14 July 1999

Unless the parties have first entered into this agreement with a view to securing contributions to meet the aims of the Council's Local Plan policies.

NOW THIS DEED made in pursuance of section 106 of the Town and Country Planning Act 1990 (the 1990 Act) WITNESSES as follows:

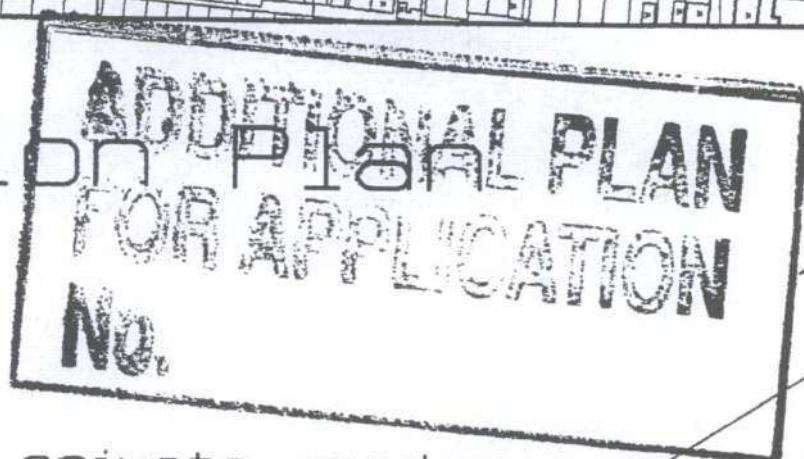
- 1.1 The obligations contained in the Third Fourth Fifth Sixth and Seventh Schedules to this Agreement are planning obligations for the purposes of section 106 of the 1990 Act



Patch



Location



it landscaping private gardens

it landscaping communal areas

*Handwritten signatures:*  
J. W. C. Asher  
[Signature]

*Handwritten initials:* JHA



1.2 Each of the Owners and Foildock

- a) jointly and severally covenant with the Council to perform the obligations or activities and to observe the restrictions specified in the Third Fourth Fifth and Seventh Schedules and with the County Council to perform the obligations and to observe the restrictions in the Third and Sixth Schedule
- b) acknowledge and agree that on or at any time after the date of this Agreement improvements referred to in this Agreement for which contributions are required to be made may at the Council's or the County Council's (as the case may be) absolute discretion be commenced or provided (in whole or in part) notwithstanding that the trigger point for payment of the relevant contribution should not have arisen and (for the avoidance of doubt) the Owners and Foildock shall pay the contributions at such trigger points in accordance with the provisions of this Agreement so as to reimburse the costs incurred in providing the said improvement Provided however for the avoidance of doubt that nothing herein shall obligate the Owners and Foildock to pay any such contribution prior to the date upon which they are due hereunder nor at all if such relevant trigger dates are not reached nor to pay any greater contribution than provided for herein

2. It is agreed and declared as follows

- 2.1 No person shall be liable for breach of a covenant contained in this Agreement after he has parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any breach of covenant prior to parting with such interest
- 2.2 Save as may be expressly provided therein the obligations contained in the Schedules to this agreement shall take effect on Implementation and for the avoidance of doubt the remaining

provisions of this Agreement shall take effect immediately on completion of this Agreement

- 2.3 If the Planning Permission shall expire before Implementation or shall at any time be revoked this Agreement shall forthwith cease to have effect except for clause 2.9
- 2.4 For the purpose of such parts of this Agreement as may be subject to the law against perpetuities the perpetuity period applicable thereto shall be a period of 80 years from the date of this Agreement
- 2.5 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted whether or not on appeal after the date of this Agreement
- 2.6 This Agreement is a local land charge and shall be registered as such
- 2.7 The Council will upon the written request of the Owners or Foildock at any time after all of the obligations of the Owners and Foildock under this Agreement have been fulfilled issue written confirmation thereof and thereafter cancel the relevant entries in the Register of Local Land Charges
- 2.8 The provisions of Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply as to the service of any notices required under the provisions of this agreement

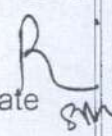


2.9 Foildock shall bear the Council's and the County Council's solicitor's reasonable costs in connection with the preparation and completion of this Agreement

2.10 The following expressions shall have the following meanings:

**"the Application"** means reference no c/03/0406<sup>0406</sup>~~0406~~FP; <sup>SN</sup> 

**"Appeal"** means the appeal with reference number

APP/Q0505/A/1143494<sup>A04</sup> submitted to the First Secretary of State <sup>SN</sup>   
acting through the Planning Inspectorate against refusal by the Council to grant planning consent pursuant to the Application;

**"Cost Indicator"** means the Housing Corporation Total Costs Indicator;

**"the Council"** and **"the County Council"** includes any local authority successor to them;

**"Dwelling"** means a residential unit in the Development;

**"the Development"** as described in the Second Schedule;

**"Implementation"** means the commencement of the Development by the carrying out of a material operation comprised in the Development pursuant to the Planning Permission within the meaning of Section 56(4) of the 1990 Act and "Implement" and "Implemented" shall also be construed accordingly;

**"the Index"** means the Royal Institution of Chartered Surveyors Building Cost Information Service All in Tender Price Index;

**"the Land"** includes any building structure erection or thing from time to time erected thereon or on any part or parts thereof;

**"the Local Plan"** means the Cambridge Local Plan adopted November 1996;

**"The Owners"** and **"Foildock"** includes their respective successors in title;

**"The Planning Permission"** means the planning permission to be granted pursuant to the Application

**"the Schedules"** the Third and Fourth and Fifth and Sixth and Seventh Schedules

**"the 1990 Act"** includes any regulations made thereunder and any Act amending re-enacting or replacing the same;

- 2.11 The parties to this Agreement agree that a person who is not a party to this Agreement shall have no right to enforce any terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999
- 2.12 The payments specified or referred to in the Fourth Fifth and Sixth Schedules shall be linked to the Index so as to reflect movements in the Index from the date of this Agreement to the date of actual payment thereof
- 2.13 The payment specified or referred to in the Seventh Schedule shall be linked to the Cost Indicator so as to reflect movements in the Cost Indicator from the date of this Agreement to the date of actual payment thereof
- 2.14 The Council and the County Council shall be entitled to use all interest accrued on the payments specified in the Schedules from the date of actual payment thereof to the Council or the County Council as the case maybe until the date when such monies are spent for the purposes specified in the relevant Schedule
- 2.15 In the event of any delay in making the payment specified in the Schedules those payments shall:
- a) thenceforth be a debt due to the Council and/or the County Council (as the case may be) recoverable by action; and
  - b) thereafter be liable to interest thereon calculated on a daily basis at a daily rate of  $1/365^{\text{th}}$  of the annual rate of interest



of two per centum per annum greater than the HSBC Bank plc base rate in force from time to time from the due date as specified in the Schedules until the date of payment thereof

THIS AGREEMENT has been entered into by the parties as a deed

#### **THE FIRST SCHEDULE**

ALL THAT LAND to the rear of 5-33 Montague Road Sandy Lane Cambridge and shown for the purposes of identification only edged black on the plan annexed hereto

#### **THE SECOND SCHEDULE**

<b>Reference</b>	<b>Detail</b>
C/03/0406/FP	Erection of eighteen 4 to 5 bedroom dwellings following demolition of existing workshops

#### **THE THIRD SCHEDULE: IMPLEMENTATION**

1. On Implementation to give written notice to the Council and the County Council of the fact that this event has occurred including details of the date on which the said event occurred.

#### **THE FOURTH SCHEDULE: CONTRIBUTIONS FOR OPEN SPACE**

- 1 Within 14 days of Implementation in respect of the Development to pay to the Council:-



- a) the sum of £29,754.00 for the improvement of and/or provision of and/or access to formal open space in lieu of the provision of on-site formal open space
- b) the sum of £25,056.00 for the improvement of and/or provision of and/or access to informal open space in lieu of the provision of on-site informal open space
- c) the sum of £32,886.00 for the improvement of and/or provision of and/or access to children's play areas in lieu of the provision of on-site children's play areas

#### **THE FIFTH SCHEDULE: COMMUNITY CONTRIBUTIONS**

1. Within 14 days of Implementation in respect of the Development to pay to the Council the sum of £27,000.00 for the improvement of and/or provision of and/or access to community facilities in lieu of the provision of on-site community facilities;

#### **THE SIXTH SCHEDULE: EDUCATION CONTRIBUTIONS**

##### **Life Long Learning Facilities and Pre-School Facilities**

1. Within 14 days of Implementation in respect of the Development to pay to the County Council the sum of £150 per Dwelling towards the provision of life long learning facilities in lieu of the provision of on-site life long learning facilities;
2. Within 14 days of Implementation in respect of the Development to pay to the County Council the sum of £750 per Dwelling towards the provision of pre-school education facilities in lieu of the provision of on-site pre-school education facilities.

## THE SEVENTH SCHEDULE: AFFORDABLE HOUSING CONTRIBUTION

1. Within 14 days of Implementation in respect of the Development to pay to the Council the sum of £544,656.00 towards the provision of affordable housing in the City of Cambridge in lieu of the provision of on-site affordable housing.

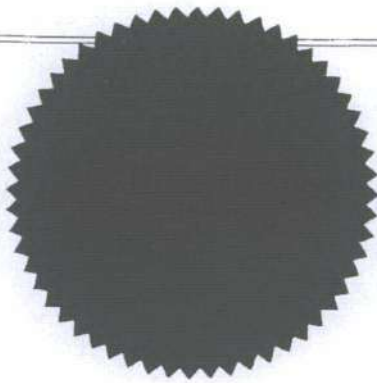
*Sup. Devel. agreed to  
shed. Cost indicated by  
15/12/06*



THE COMMON SEAL of CAMBRIDGE)

CITY COUNCIL was hereunto )

affixed in the presence of: )



*STAR*

Head of Legal Services

THE COMMON SEAL OF )

CAMBRIDGESHIRE COUNTY )

COUNCIL was hereunto )

affixed in the presence of: )



*[Signature]*

Head of Legal Services

**SEAL**

THE COMMON SEAL OF )

FOILDOK LTD )

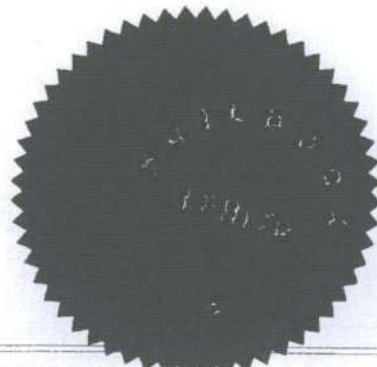
was hereunto affixed in the )

presence of: )

Director )

Secretary )

*[Signature]*



SIGNED AS A DEED  
BY THE SAID  
Patricia Margaret Oyett  
In the presence of


) P.M. Oyett  
)  
)  
)

Witness



NIGHTINGALE HOUSE, BRICKHILL,  
OWRE, ROMSRY, HANTS. SO51 6AR.  
FARM SECRETARY.

SIGNED AS A DEED  
BY THE SAID  
Thomas Read Graham  
In the presence of

)   
)  
) R. S. Crowe  
)

15 Shorehaven  
Portsmouth  
PO6 4RU.  
Agronomist.

Witness

SIGNED AS A DEED  
BY THE SAID  
Janice Wendy Graham  
In the presence of

) J.W. Graham  
)  
)  
) R. S. Crowe  
)

15 SHOREHAVEN  
PORTSMOUTH  
PO6 4RU  
AGRONOMIST

Witness



## CERTIFICATE OF TITLE

As solicitors for the Owner we confirm that we have investigated the title of the Owner to the Land prior to entry into this Agreement and hereby certify that on the date of this Agreement what is set out in the Third Recital to this Agreement is true

Signed JP. [Signature]

Name JOHN WOOD

Address 61 GRAYS INN ROAD

LONDON

WC1A 8TH

DATED 21 October 2004

CAMBRIDGE CITY COUNCIL  
AND  
CAMBRIDGESHIRE COUNTY  
COUNCIL  
AND  
FOILDOCK LTD  
AND  
PATRICIA MARGARET ONYETT  
THOMAS READ GRAHAM  
JANICE WENDY GRAHAM

## AGREEMENT

under Section 106 of the Town and  
Country Planning Act 1990 relating to  
Land at 5-33 Montague Road Sandy  
Lane Cambridge

Simon Pugh LL.B.  
Solicitor  
Head of Legal Services  
The Guildhall  
Cambridge  
CB2 3QJ

**FileRef: PL/AG/02/**