

DATED *20th May* 2005

CAMBRIDGE CITY COUNCIL

and

CAMBRIDGESHIRE COUNTY
COUNCIL

and

FOILDOCK LIMITED

AGREEMENT

under Section 106 of the Town and
Country Planning Act 1990 relating to
Land to the north of Montague Road
in the City of Cambridge

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

File Ref: PL/AG/2/565

THIS DEED is made the 20th day of May 2005
BETWEEN

1. CAMBRIDGE CITY COUNCIL of The Guildhall Cambridge ("the Council")
2. CAMBRIDGESHIRE COUNTY COUNCIL of Shire Hall Castle Hill Cambridge ("the County Council")
3. FOILDOCK LIMITED whose registered office is at 61 Grays Inn Road London WC1X 8TH (company number 04003839) and of 22 Hills Road Cambridge CB2 1JP ("the Owner")

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 this Agreement (save for those in the Sixth Schedule) are enforceable
2. The County Council is the Education 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. The Owner is the registered owner in fee simple in possession of the Land registered under title number Registered Title Numbers CB 191731 and CB 278425 and save for those mentioned in the registers free from encumbrances
4. By a written planning application reference no C/03/1241/FP ("the Application") received on 17 November 2003 the Developer 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")

5. The Council has decided that it would in principle be willing to grant planning permission for the Development in accordance with the Application ("the Planning Permission") but 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 for new development to contribute to the provision of education 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

the Council is unwilling to approve or conditionally approve the Application without first having entered into this Agreement with a view to securing a contribution 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 this Agreement and in the Schedules to this Agreement are planning obligations for the purposes of section 106 of the 1990 Act

1.2 The Owner covenants 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 or activities and to observe the restrictions specified in the Sixth Schedule

1.3 The Owner acknowledges and agrees 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 Owner 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 Owner 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 Third Fourth and Fifth 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 Owner at any time after all of the obligations of the Owner 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 The Owner 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 Council" and **"the County Council"** includes any local authority successor to them;

"Education Contributions" means

- (i) a contribution of £3750 toward the provision of pre-school facilities within the City of Cambridge; and
- (ii) a contribution of £750 toward the provision of lifelong learning facilities within the City of Cambridge

"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 Land" including any building structure erection or thing from time to time erected thereon or any part or parts thereof;

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

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

"The Owner" includes its successor in title;

"the Schedules" means the Third Fourth Fifth Sixth and Seventh Schedules to this agreement.

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 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

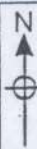


Sandy Lane, Cambridge.
C/03/1241/FP.

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Date: 20/02/04
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Section / Department:
DC Admin

Scale: 1:1,250



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 until the date when such monies are spent for the purposes specified in the respective Schedules

2.15 In the event of any delay in making any payment specified in the Schedules such payment(s) shall:

- (a) thenceforth be a debt due to the Council or the County Council 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 relevant Schedule until the date of payment thereof

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

THE FIRST SCHEDULE

ALL THAT LAND lying to the north of Montague Road Cambridge and shown for the purposes of identification edged red on the plan annexed hereto

THE SECOND SCHEDULE

Reference	Detail
C/03/1241/FP	Erection of five dwelling houses following demolition of existing industrial buildings

THE THIRD SCHEDULE:

IMPLEMENTATION

On Implementation to give written notice to the 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 to pay to the Council:
 - 1.1 a contribution of £7524.00 in lieu of the provision of formal open space on the Land to be used for the provision or improvement of or access to formal open space within the City of Cambridge; and
 - 1.2 a contribution of £6336.00 in lieu of the provision of informal open space to be used for the provision or improvement of or access to informal open space within the City of Cambridge; and
 - 1.3 a contribution of £8316.00 towards the provision or improvement of or access to children's play areas within the City of Cambridge; and

THE FIFTH SCHEDULE:

COMMUNITY CONTRIBUTION

Within 14 days of Implementation to pay to the Council a contribution of £7500.00 in lieu of the on-site provision of community facilities to be used towards the provision of community facilities or for the repair or improvement of existing community facilities in Cambridge in a manner which in the Council's reasonable opinion fulfils Local Plan Policy CS3 and meets the community needs of future residents of Cambridge

THE SIXTH SCHEDULE:

EDUCATION CONTRIBUTION

Within 14 days of Implementation to pay to the County Council the Education Contribution

THE SEVENTH SCHEDULE:

AFFORDABLE HOUSING CONTRIBUTION

Within 14 days of Implementation in respect of the Development to pay to the Council the sum of £159,358.00 towards the provision of affordable housing in the City of Cambridge in lieu of the provision of on-site affordable housing.

THE COMMON SEAL of CAMBRIDGE)

CITY COUNCIL was hereunto)

affixed in the presence of:)

SIR

Head of Legal Services



THE COMMON SEAL of CAMBRIDGESHIRE)

COUNTY COUNCIL was hereunto)

affixed in the presence of:)

JD White
Solicitor

Head of Legal Services



SIGNED AS A DEED BY

THE COMMON SEAL OF)

FOILDOCK PLC was hereunto)

affixed in the presence of:)

Director

Secretary

[Signature]
[Signature]

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



Name

Address

John Wood

Solicitor

61 Gray's Inn Road

London WC1X 8TH

Tel: 020 7242 5058

Fax: 020 7242 5156