DATED 15th June 2004

HUNTINGDONSHIRE DISTRICT COUNCIL

AND

MCA HOLDINGS LIMITED

AND

GEORGE WIMPEY EAST ANGLIA LIMITED

AND

PROWTING HOMES SOUTH EAST LIMITED

AND

SEVERNBROOK HOMES LIMITED

AND

GRANTA HOUSING SOCIETY LIMITED

AND

HANOVER HOUSING ASSOCIATION

AND

PERSIMMON HOMES LIMITED

SECOND SUPPLEMENTAL AGREEMENT

Relating to:
An agreement pursuant to s106 Town and Country Planning Act 1990
dated 8 December 1999 as varied by a supplemental agreement dated 21 March 2001

LAYTONS

GUILDFORD

Tel: 01483 407000
Fax: 01483 407070
Email [redacted]

1/1159364 v5/21 May 2004

THIS AGREEMENT is made the 15th day of June 2005

BETWEEN:-

(1) **HUNTINGDONSHIRE DISTRICT COUNCIL** of Pathfinder House St Mary's Street Huntingdon in the County of Cambridgeshire ("**the Council**") and

(2) **MCA HOLDINGS LIMITED** whose registered office is Saint Davids Court, Union Street, Wolverhampton, West Midlands WV1 3JE and **PROWTING HOMES SOUTH EAST LIMITED** whose registered office is Westbury House, Lansdown Road, Cheltenham, Gloucestershire GL50 2WH and **GEORGE WIMPEY EAST ANGLIA LIMITED** whose registered office is Saint Davids Court, Union Street, Wolverhampton, West Midlands WV1 3JE and **SEVERNBROOK HOMES LIMITED** whose registered office is Westbury House, Lansdown Road, Cheltenham, Gloucestershire GL50 2WH ("together **the Developer**"); and

(3) **GRANTA HOUSING SOCIETY LIMITED ("Granta")** whose registered office is at 1 Horizon Park, Barton Road, Comberton, Cambridgeshire CB3 7AF and **HANOVER HOUSING ASSOCIATION** (Industrial and Provident Society Number 16324) whose registered office is at Hanover House, 1 Bridge Close, Staines, Middlesex TW8 4TB ("**Hanover**") and **PERSIMMON HOMES LIMITED** whose registered office is Persimmon House, Fulford, York, North Yorkshire YO19 4FE ("**Persimmon**"), ("together with the Developer hereinafter referred to as **the Owner**")

WHEREAS : -

A The Council, Cambridgeshire County Council and the Owner's predecessors in title have entered into an agreement pursuant (inter alia) to Section 106 of the Town and Country Planning Act 1990 dated 8th December 1999 relating to the Development of the Land as amended by a supplemental agreement dated 21 March 2001 ("**the Main Agreement**")

B The Owner is the freehold Owner of the Land (free from incumbrances affecting their ability to observe and perform their covenants and agreements in this Agreement).

C Granta has taken transfers of parts of the Land by transfers dated 12 February 2002 and now registered or to be registered at HM Land Registry with title absolute under Title Numbers CB257371 and CB281688 and the parties intend that the s106 obligations shall

bind Granta only in so far as such obligations relate to the land comprised in Title Numbers CB257371 and CB281668.

D Hanover has taken a transfer of part of the Land by a transfer dated 17 March 2003 now registered at HM Land Registry with title absolute under Title Number CB270963 and the parties intend that the s106 obligations shall bind Hanover only in so far as such obligations relate to the land comprised in Title Number CB270963.

E Persimmon has taken a transfer of part of the Land by a transfer dated 29 August 2003 now registered at HM Land Registry with title absolute under Title Number CB277682 and the parties intend that the s106 obligations shall bind Persimmon only in so far as such obligations relate to the land comprised in Title Number CB277682.

NOW IT IS AGREED as follows:

1.

1.1. This Supplemental Agreement is and shall at all times be construed as a deed and is supplemental to the Main Agreement.

1.2. Except as herein specified to the contrary words and expressions used in this deed which are defined in the Main Agreement shall bear the meanings so defined.

1.3. From the date of this Second Supplemental Agreement the term "the Agreement" shall mean the Main Agreement as supplemented and varied by this Second Supplemental Agreement and a copy of the Agreement in its amended form appears at Annexure 1 to this Second Supplemental Agreement.

1.4. In this Agreement "the Schedule" shall mean the schedule to the Main Agreement.

1.5. This Supplemental Agreement is made pursuant to Section 106 and 106A of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972 and all other enabling powers to the intent that it shall bind the Owner and any person deriving title from the Owner.

2. The following shall be added at the end of the definition of "Planning Permission":-
"(which for the avoidance of doubt and without prejudice to the generality of the foregoing includes the planning permission dated 23 May 2002 issued by the Council under reference 02/00224/S73)"

3 In clause 4.9 of the Main Agreement the words "prejudice to" shall be added after the word "without" and before the word "liability"

4 A new Clause 4.11 shall be added to the Agreement to read : -

"4.11 Any person body or utility company within the classes defined in clauses 4.11.1 - 4.11.3 below shall not be liable to observe and perform any of the Planning Obligations or other provisions covenants and other stipulations contained in this Agreement not being Planning Obligations :-

4.11.1 bone fide private residential purchasers or lessees of dwelling houses or flats;

4.11.2 any public body to whom any land under this agreement is to be transferred pursuant to the terms hereof;

4.11.3 any utility company having statutory power and obligations in the respect of electricity, gas, water (foul or surface) telecommunications cable and ducting to whom the Owner shall have transferred any land in connection with the provision of utility services or infrastructure."

5 A new Clause 4.12 shall be added to the Agreement to read : -

"4.12 Any mortgagee or chargee ("**the Mortgagee**") of the Affordable Housing Site or Sheltered Site or any part thereof ("**the Mortgaged Property**") acting pursuant to the terms of the mortgage or legal charge affecting the Mortgaged Property of which it is the registered proprietor or any receiver appointed by the Mortgagee ("the Receiver") may dispose of the Mortgaged Property or any part thereof in exercise of its power of sale free of the restrictions set out in paragraphs 4.1.3 and 4.2.4 of the Schedule

Subject to the Mortgagee or Receiver having first :-

(a) notified the Council in writing of its intention to exercise its power of sale; and

(b) used its reasonable endeavours to secure the continued availability of the Mortgaged Property as Affordable Housing or Sheltered Affordable Housing as the case may be by transferring the Mortgaged Property to a Social Landlord nominated by the Council

Provided That

1. if three months after notifying the Council under sub-clause 4.12(a) above the Council has not notified the mortgagee or receiver, by written notice, of the nominated Social Landlord as referred to in sub-clause 4.12(b) above, OR

2. if the written notice referred to in the immediately preceding clause 1 has been served, but 6 months after notifying the Council under sub-clause 4.12(a) above contracts for the transfer of the Mortgaged Property have not been exchanged with the nominated Social Landlord and an unconditional completion date agreed between the contracting parties

then the Mortgagee or Receiver (as the case may be) shall be deemed to have complied with sub-clauses 4.12(a) and 4.12(b) above."

6. Paragraph 7.2 of the Schedule shall be deleted and replaced with :-

"7.2.1 Not more than 50% of the Open Market Dwellings permitted in any Development Phase shall be occupied until such part of the Open Space (excluding Local Areas of Play) to be provided in accordance with the plan approved under clause 7.1 and lying within that Development Phase has been laid out in accordance with the relevant parts of the Open Space Specification;

7.2.2 The last 5 Open Market Dwellings in any Development Phase shall not be occupied until the Council has certified in writing that the Local Area of Play has been provided to its satisfaction and such certification shall not be unreasonably withheld or delayed;

7.2.3 In the event of any of the last 5 Open Market Dwellings in the last Development Phase being occupied prior to the Local Area of Play being provided for that Development Phase ("the Last LAP") the Developer (which in this context shall mean the Developer at the date of completion of this agreement) shall forthwith pay to the Council the sum of £10,000 or if the Developer has commenced but not completed providing the Last LAP a sum which shall be certified by the Developer's engineering consultants (acting reasonably) as being a sum

equivalent to the cost of completing the construction of the Last LAP such sum not to exceed £10,000 and which sum shall be indexed in line with any movements in the Retail Prices Index between 8 December 1999 and the date of payment and shall also be subject to an increase of 15% (in aggregate "**the Liquidated Sum**") to cover the Council's reasonable costs of arranging and supervising the outstanding works on the Last LAP;

7.2.4 Should the Liquidated Sum or any part thereof not be expended or Committed by the Council within a period of 5 years from its receipt by the Council the Liquidated Sum or such part thereof which is not so expended or Committed shall on receipt of a written demand from the Developer (which in this context shall mean the Developer at the date of completion of this agreement) be repaid by the Council to those persons together with simple interest thereon (compounded at yearly rests) calculated at the National Westminster Bank Plc base lending rate prevailing from time to time for the period from the date the Liquidated Sum is received to the date of repayment."

7. A new paragraph 10 shall be added to the Schedule as follows :-

"10 AT the date hereof it has not been possible for the Developer to comply with the obligations in the section 106 Agreement to provide a LEAP and the Developer and the Council have agreed that in lieu of complying with the said obligations the Developer shall

10.1 pay the sum of £45,500 ("**the LEAP Contribution**") to the Council on the date of this agreement and in the manner and on the terms set out below; and

10.2 not occupy or permit to be occupied the last 5 Open Market Dwellings permitted under reserved matters approval 01/01669/REM dated 18 February 2002 until the Developer has

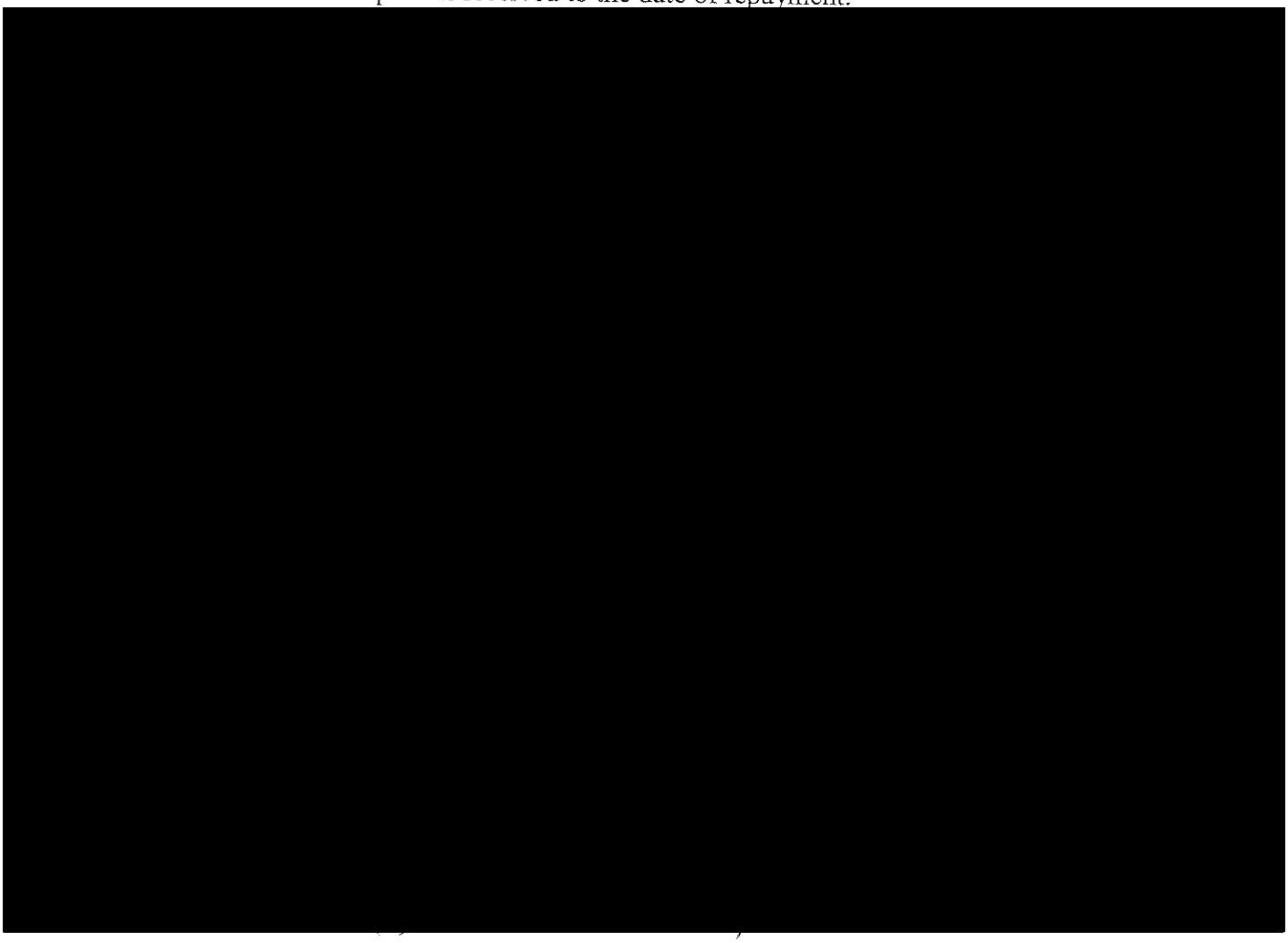
(a) made available on the Amenity Land in the approximate location edged red on the attached plan an area of land suitable for the provision of the LEAP which land shall have been drained and levelled by the Developer to the satisfaction of the Council and

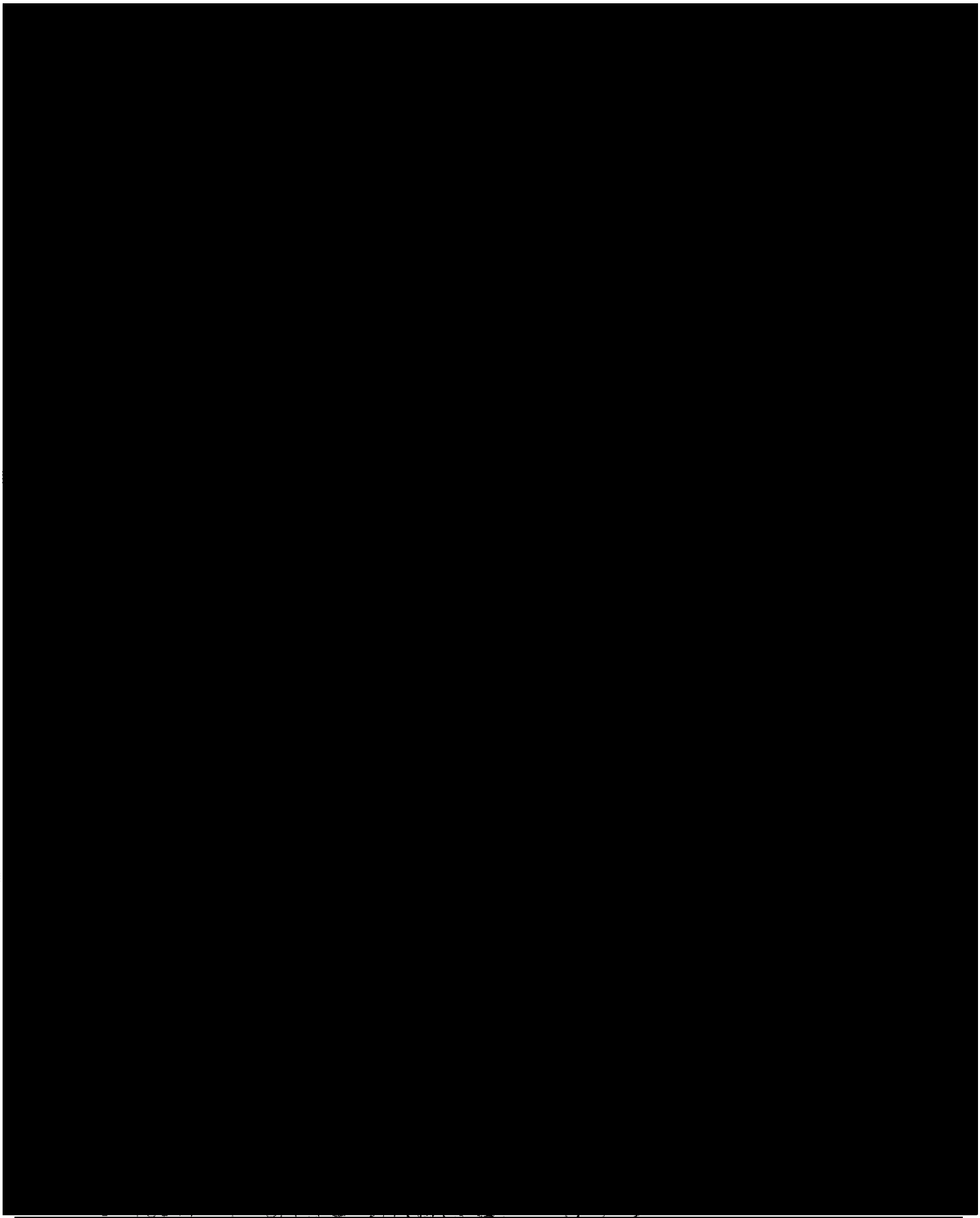
(b) constructed a footpath to the satisfaction of the Council between Bellamy Close and the area of land made available pursuant to the immediately preceding sub paragraph;

10.3 In consideration of the payment of the LEAP Contribution and the other obligations imposed on the Developer in paragraph 10.2 above the Council releases the Developer from the obligation to equip, landscape, fence and lay out the LEAP;

10.4 the LEAP Contribution shall be held by the Council for use solely as a contribution towards the cost of equipping, landscaping, fencing and laying out the LEAP;

10.5 If the LEAP Contribution is not expended or Committed within a period of 5 years from its receipt by the Council the LEAP Contribution or such part thereof which is not so expended or Committed shall on receipt of a written demand from the Developer (which in this context means the Developer at the date of this Agreement) be repaid by the Council to those persons together with simple interest thereon (compounded at yearly rests) calculated at the National Westminster Bank Plc base lending rate prevailing from time to time for the period from the date the Deposit is received to the date of repayment."





ANNEXURE 1

Amendments incorporated pursuant to the 1st supplemental agreement dated 21.03.01

[redacted]

THIS AGREEMENT is made the day of One thousand nine hundred and ninety nine

B E T W E E N the HUNTINGDONSHIRE DISTRICT COUNCIL of Pathfinder House St Mary's Street Huntingdon in the County of Cambridgeshire (hereinafter called "the Council") of the first part and CAMBRIDGESHIRE COUNTY COUNCIL of Shire Hall Castle Hill Cambridge (hereinafter called "the County Council") of the second part and [redacted] of [redacted] of [redacted] aforesaid, [redacted] and [redacted] of [redacted] (hereinafter called "the Owner") of the third part

DEFINITIONS:

In this Agreement the following expressions shall have the following meanings:-

"the Act"	means the Town & Country Planning Act 1990 (as amended)
"Affordable Housing"	means housing affordable to those people who cannot afford to rent buy houses generally available on the open market including the following types of scheme or any one or combination thereof (it being expressly agreed and declared that this definition is not intended to be exhaustive) (i) a dwelling let as an assured tenancy as defined by Section 1 of the Housing Act 1988 (or any statutory extension re-enactment or modification thereof) through the involvement of a Social Landlord at a level of rent not above the National Housing Federation Eastern Regional Indicator Rents or such other guidelines as may be approved by the Council (ii) a dwelling for sale on a shared ownership basis; or (iii) any other scheme approved by the Council which secures the provision of housing to be available in perpetuity (where legally permissible) for occupation by persons who by reason of their limited income and/or resources or of some other circumstances have need of such housing and cannot afford to rent or buy housing generally available on the open market
"Affordable Housing	means the terms for the transfer of the Affordable

Land Terms"	Housing Site and the Sheltered Site as set out in clause 4.3 to the Schedule
"Affordable Housing Scheme"	means a scheme or schemes for securing the provision of not less than 80 units of Affordable Housing (comprising 30 x 1 bedroom flats or dwellinghouses; 20 x 2 bedroom dwellinghouses; 18 x 3 bedroom; 8 x 4 bedroom dwellinghouses; and 4 special needs dwellinghouses) on the Affordable Housing Site in 2 phases comprising 40 units of Affordable Housing in each or such other numbers as the Head of Planning may in his discretion determine (hereinafter referred to as the "First Phase Affordable Housing Scheme" and the "Second Phase Affordable Housing Scheme" respectively) such scheme(s) to identify and/or specify (inter alia); (i) the location or locations of the Affordable Housing Site (ii) the type of accommodation and form of tenure (iii) the Social Landlord(s) to be involved in or responsible for operating the scheme; and (iv) the persons or categories of persons for which the affordable housing will be provided particular regard being had to the categories of person referred to in paragraph 7 to Annex A of Planning Policy Guidance No.3 March 1992) (v) the manner in which the Affordable Housing is to be secured in perpetuity (where legally permissible) (vi) such other information as the Director may reasonably request
"Affordable Housing Site"	means the part or parts of the Housing Land comprising 1.82 hectares (4.5 acres) gross
"Amenity Land"	means the part or parts of the Land comprising approximately 20 hectares (of which approximately 2 hectares including the Playing Field Extension shall be laid out as formal adult and youth playspace) the approximate location of which is shown coloured green on the Plan together with such part of the Water Area as may be agreed
"Amenity Land Contribution"	means a commuted sum calculated as follows:- (a) for the 2 hectares of formal adult and youth playspace a sum assessed on the basis of the Open Space Contribution; and (b) in respect of the remainder of the Amenity Land a commuted sum sufficient to ensure the proper future maintenance of the Amenity Land (including the reasonable costs of management

	and administration of the maintenance work and the reasonable cost of third party and public liability insurance to the Council's normal standard)
"the Application"	means the outline planning application registered on the 21st day of April 1995 under application number 0469/95
"Archaeological Scheme"	means a phased scheme of archaeological investigation on the Land an archaeologist approved by the Head of Planning including a required mitigation strategy relating to any Development Phase
"the Car Park Contribution"	means the sum of £25,000.00
"Childrens' Play Areas"	means one Local Equipped Area for Play and three Local Areas of P1 as defined in the National Playing Fields Association Publication "The Six Acre Standard" up to a total value of £72,000 (including equipment) as adjusted by any increase or decrease in the Index from the date of this Agreement to the date the Childrens' Play Areas or any part thereof are provided
"Committed"	means that a contract has been let to a contractor or awarded to the Council's or County Council's direct service organisation to undertake the relevant works
"Commence Development/ Commencement of Development	means the implementation of the Planning Permission by the carrying out of a material operation as defined by Section 56(4) of the Act but excluding any operation in connection with archaeological or site investigations soil surveys demolition the display of advertisements the diverting and laying of services outside the Land the erection of enclosure for the purpose of site security and any investigation for the purpose of assessing contamination or remedial action in respect of at contamination PROVIDED THAT any development of the part of the Employment Land cross hatched black on the Plan shall not be regarded as Commencement of Development for the purposes of this Agreement if it is not development authorised by the Planning Permission and it is accessed from the adjacent Tesco Superstore site shown on the Plan
"Community Facility Land"	means the part of the Land comprising approximately 0.77 hectares the approximate location of which is shown coloured grey on the Plan
"the Development"	means the development of the Land in accordance with the Planning Permission with housing and for

	employment and incorporating the provision of open space and amenity land
"Development Phase"	means any part or parts of the Development in such location(s) and of such extent as shall be identified in any approval of reserved matters pursuant to the Planning Permission
"the Education Contribution"	means the sum of £297,000.00 as adjusted by any increase or decrease in the Index from the date of this Agreement to the date of payment of the Education Contribution
"the Employment Land"	means the part or parts of the Land comprising approximately 7.0 hectares gross (17.3 acres) the approximate location of which is shown coloured purple on the Plan
"the Footpath"	means the footpath and footpath/cycleway which shall be not less than 2.5 metres in width to be constructed or upgraded over the Amenity Land in accordance with the Agreement along the lines A-B-C -D and P-C-B-E and A-0-E-F-M-N and F/M-L-K-G/J-H/I respectively on the Plan
"the Head of Planning"	means the Head of Planning Services for the time being of the Council or such other officer as the Council may specify
"the Housing Land"	means the part or parts of the Land comprising approximately 13.76 hectares net (34 acres) the approximate location of which is shown coloured pink on the Plan
"the Index"	means:- (a) for the purposes of the Amenity Land Contribution the Open Space Contribution and the Play Equipment Contribution the Index of Retail Prices published by the Department of Employment or any successor Ministry or Department; and (b) for the purposes of the Education Contribution and the Playing Field Contribution the Royal Institution of Chartered Surveyors Building Cost Information Service All In Tender Price Index
"the Land"	means the Housing Land the Employment Land the Community Facility Land and the Amenity Land situate west of Barford Eynesbury comprising approximately 40.9 hectares (101 acres) and shown edged red on the Plan

"Maintenance Period "

means a period of 12 months after the Open Space or the Amenity Land (as the case may be) has been laid out in accordance with the approved Open Space Scheme or Management Scheme respectively

"Management Scheme"

means a scheme for the laying out management and maintenance of the Amenity Land such scheme to include

a) the location of all existing natural features which are agreed to be retained

b) a full topographical survey of the Amenity Land showing both existing and proposed levels (including indicative cross sections)

c) the routes and construction of existing and proposed footpath/cycle way links (including any necessary bridges) through the Amenity Land such links to be to the standard recommended in the publication "The National Cycle Network Guidelines and Practical Details 1997" (ISBN 0-9527106-9-2 Sustrans Ltd)

d) details of the construction and treatment of any Water Areas including proposed levels

e) the proposed treatment of the Amenity Land and management/maintenance regime in respect thereof which detail shall fully accord with the "Cambridgeshire Landscape Guideline - A Manual for Management and Change in the Rural Landscape (published 1991 ISBN 0-906782.74.0)

f) details of the species and sizes of plants to be used in each area together with seed mixture where appropriate

g) provision for the proper maintenance of trees to be retained on the Amenity Land

h) a full ecological survey including an assessment of the potential impact of any works or measures proposed to be carried out on the Amenity Land under the Management Scheme

"Open Market Dwelling(s)"

means the dwelling houses and/or flats erected on the Housing Land in accordance with the Planning Permission excluding any Affordable Housing and Sheltered Affordable Housing

"Open Space"

means the part or parts of the Housing Land to be laid out as incidential Open Space (and as equipped Childrens' Play Areas) in accordance with the clause 7 to the Schedule

"the Open Space Contribution"

means a commuted sum calculated on the basis of £34,000 per hectare of Open Space provided for the maintenance thereof as adjusted by any increase or

	decrease in the Index from the date of this Agreement to the date of payment of the Open Space Contribution
"the Open Space Specification"	means the specification annexed hereto and marked "Huntingdonshire" District Council Standard Specification for the Construction and Maintenance of Landscaped Areas for Adoption by the District Council" dated February 1997
"the Plan"	means the plan annexed hereto and marked "Illustrative Layout Plan"
"the Planning Obligations"	means the planning obligations specified in the Schedule hereto
"the Planning Permission"	means permission for the Development granted by the Council pursuant to the Application and includes any approval of reserved matters pursuant to the outline permission or any agreed amendment thereto (which for the avoidance of doubt and without prejudice to the generality of the foregoing includes the planning permission dated 23 May 2002 issued by the Council under reference 02/00224/S73)
"Play Equipment Contribution"	means the sum of £24,000 for the maintenance of the equipment in the Childrens' Play Areas as adjusted by any increase or decrease in the Index from the date of this Agreement to the date of payment of the Play Equipment Contribution
"the Playing Field"	means the Sidney Banks Memorial Playing Field as shown yellow on the Plan
"the Playing Field Contribution"	means a sum of £150,000.00 by way of contribution towards works to be carried out by the Town Council at the Playing Field as adjusted by any increase or decrease in the Index from the date of this Agreement to the date of payment of the Playing Field Contribution
"Playing Field Extension"	means a parcel of land adjacent to the Playing Field and identified in the Management Scheme as intended for transfer to the Town Council pursuant to Clause 8.2.2.2 of the Schedule and for the purpose of enabling additional pitch facilities to be provided on the Playing Field
"Scheme Development Standards"	means the published requirements and recommendations of the Housing Corporation for quality of housing probity of procurement and procedural compliance

"Sheltered Scheme"	means a scheme for securing the provision of not less than 30 units of Sheltered Affordable Housing on the Sheltered Site such scheme to identify:- (i) the location of the Sheltered Site; (ii) the type of Sheltered Accommodation and form of tenure; (iii) the Social Landlord(s) to be involved or responsible for operating the Sheltered Scheme; (iv) the manner in which the Sheltered Affordable Housing is to be secured in perpetuity (where legally permissible) (v) such other information as the Head of Planning may reasonably request
"Sheltered"	means Affordable Housing suitable for occupation by older persons and meeting Category 1 or Category 2 or Frail Older People Standards as described in the Housing Corporation Total Cost Indicators in force at the time the Sheltered Scheme is provided.
"Sheltered Site"	means part of the Community Facility Land comprising approximately 0.4 hectares (1.0 acre) or such lesser area as the Head of Planning shall in his discretion approve suitable for the development of the Sheltered Scheme
"the Social Landlord"	means a registered social landlord within the meaning of Part 1 of the Housing Act 1996
"Substantially Complete(d)"	means complete save in minor respects so that it can be used for the purpose and operate in the manor for which it was designed
"the Surgery Site"	means part of the Community Facility Land comprising a fully serviced site of not less than 0. 1 hectares (0.247 acres) to be made available for development as a doctor's surgery
"Total Cost Indicators"	means the Total Cost Indicators of the Housing Corporation for the year in which the Affordable Housing Site is transferred to a Social Landlord
"Total Scheme Costs"	means the cost of land acquisition building and construction works and all associated fees in connection with the Affordable Housing Scheme
"the Town Council"	means the St Neots Town Council
"Water Area"'	means the part or parts of the Land the approximate location(s) of which are shown coloured dark blue on the Plan

WHEREAS

(1) The Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Land is situated

(2) The County Council is the local education authority for the area within which the Land is situated and also a local planning authority for the purposes of the Act.

(3) The Owner has submitted the Application to the Council for Planning Permission for the Development

(4) The Council is satisfied that the Development is such as may be permitted by the Council under the Act subject to conditions and subject also to the prior execution of this Deed into which the parties hereto have agreed to enter

NOW THIS DEED which is a Planning Obligation made in pursuance of Section 106 of the Act and all other powers the parties hereto enabling

WITNESSETH as follows:

1. THE Planning Obligations are planning obligations for the purposes of Section 106 of the Act

2. The Planning Obligations contained in clauses 1-8 inclusive to the Schedule hereto are enforceable by the Council and those contained in clause 9 to the Schedule are enforceable by the County Council

3. THE Owner hereby covenants with the Council and the County Council

3.1 to observe and perform the Planning Obligations

3.2 to comply with all other provisions covenants and other stipulations contained in this Agreement not being Planning Obligations

3.3 within 21 days of the date of any disposition of any legal interest in the Land or any part thereof to give the Council written notice thereof including details of the name and address of the person or persons to whom such interest was transferred PROVIDED ALWAYS that this shall not apply to the disposal of any interest by way of mortgage or legal charge, to dispositions of dwelling houses and/or flats to bone fide private residential purchasers, to dispositions made pursuant to the Main Agreement and dispositions to any utility company in connection with the provision of utility services or infrastructure.

4. IT is agreed and declared

4.1 The expressions "the Council" "the County Council" and "the Owner" shall include their successors in title and assigns

4.2 Wherever the expression "the Owner" includes more than one person then the covenants on the part of the Owner herein contained shall be deemed to be joint and several

4.3 If the Planning Permission shall expire before Commencement of Development or is revoke otherwise withdrawn without the consent of the Owner this Agreement shall thereupon cease to have effect

4.4 The Owner shall pay to the Council the reasonable legal costs incurred by the Council and County Council in drafting negotiating and completing this Agreement

4.5 Nothing herein contained shall prejudice fetter or affect any of the statutory rights powers duties and obligations for the time being vested in the Council or County Council as local authority and/or local planning authority

4.6 The Owner shall permit any person duly authorised by the Council to enter the Land at any reasonable hour to ascertain whether there is or has been any breach of the Planning Obligations on the part of the Owner hereunder

4.7 That in the event of any delay in making any payment required under this Agreement interest shall be payable on the amount payable at the rate of four per cent per annum above National Westminster Bank Plc base lending rate from time to time in force from the date that the relevant payment falls due to the date of actual payment

4.8

4.8.1 Any approval or consent required under the terms of this Agreement shall not be unreasonably withheld or delayed

4.8.2 matters approved by the development control committee of the Council under the terms of this Agreement shall not require the further approval of the Head of Planning

4.9 No person shall be liable for a breach of a Planning Obligation contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach prior to parting with such interest

4.10 In the event of a dispute between the parties arising in connection with this Agreement (other than a dispute relating to a matter of law or in relation to the interpretation of this Deed) the parties agree that the matter in dispute will on the application of either of them be referred to a Surveyor acting as an expert (hereinafter referred to as the "Expert") (being a member of the Planning Division of the RICS with not less than ten years' recent experience in the field of town and country planning and development) whose identity will be agreed between the parties or in default of agreement appointed by or on behalf of the President for the time being of the RICS on the application of either party and it is further agreed that:-

(a) the determination of the Expert will be final and binding on the parties save in the case of manifest error

(b) the parties will be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct and

(c) the Expert's costs will be borne in such proportions as he may direct failing which each party will bear its own costs of the reference and determination and one-half each of the Experts' costs.

4.11 Any person body or utility company within the classes defined in clauses 4.11.1 - 4.11.3 below shall not be liable to observe and perform any of the Planning Obligations or other provisions covenants and other stipulations contained in this Agreement not being Planning Obligations :-

4.11.1 bone fide private residential purchasers or lessees of dwelling houses or flats;

4.11.2 any public body to whom any land under this agreement is to be transferred pursuant to the terms hereof;

4.11.3 any utility company having statutory power and obligations in the respect of electricity, gas, water (foul or surface) telecommunications cable and ducting to whom the Owner shall have transferred any land in connection with the provision of utility services or infrastructure.

4.12 Any mortgagee or chargee (**"the Mortgagee"**) of the Affordable Housing Site or Sheltered Site or any part thereof (**"the Mortgaged Property"**) acting pursuant to the terms of the mortgage or legal charge affecting the Mortgaged Property of which it is the registered proprietor or any receiver appointed by the Mortgagee

("the Receiver") may dispose of the Mortgaged Property or any part thereof in exercise of its power of sale free of the restrictions set out in paragraphs 4.1.3 and 4.2.4 of the Schedule

Subject to the Mortgagee or Receiver having first :-

(a) notified the Council in writing of its intention to exercise its power of sale; and

(b) used its reasonable endeavours to secure the continued availability of the Mortgaged Property as Affordable Housing or Sheltered Affordable Housing as the case may be by transferring the Mortgaged Property to a Social Landlord nominated by the Council

Provided That

1. if three months after notifying the Council under sub-clause 4.12(a) above the Council has not notified the mortgagee or receiver, by written notice, of the nominated Social Landlord as referred to in sub-clause 4.12(b) above, OR

2. if the written notice referred to in the immediately preceding clause 1 has been served, but 6 months after notifying the Council under sub-clause 4.12(a) above contracts for the transfer of the Mortgaged Property have not been exchanged with the nominated Social Landlord and an unconditional completion date agreed between the contracting parties

then the Mortgagee or Receiver (as the case may be) shall be deemed to have complied with sub-clauses 4.12(a) and 4.12(b) above.

I N W I T N E S S whereof the parties hereto have caused this Deed to be executed the day and year first before mentioned

THE SCHEDULE

(Section 106 Planning Obligations)

1. Comprehensive Development

1.1 Not to Commence Development until a Plan showing the location of the Housing Land the Employment Land and the Amenity Land has been submitted to and approved by the Head of Planning and such plan shall be in accordance with the planning brief or planning briefs submitted to and approved pursuant to Condition 3 of the Planning Permission

2. Car Park Contribution

2.1 The Car Park Contribution shall be paid to the Council on the date of this Agreement

2.2 Commencement of Development shall not take place until the Car Park Contribution has been paid to the Council

2.3 It is hereby agreed and declared that

2.3.1 The Car Park Contribution shall be used solely as a contribution towards the cost of creating additional car parking at Ewulf School

2.3.2 If the Car Park Contribution is not expended or Committed within a period of 5 years from its receipt by the Council the Car Park Contribution or such part thereof which is not so expended or Committed shall on receipt of a written demand from the Owner (which in this context means the Owners at the date of this Agreement) be repaid by the Council to those persons together with simple interest thereon (compounded at yearly. rests) calculated at the National Westminster Bank Plc base lending rate prevailing from time to time for the period from the date the Car Park Contribution is received to the date of repayment

2.3.3 The Council may at its sole discretion on or at any time after completion of this Planning Obligation commence the provision or provide (in whole or in part) the car park in accordance with clause 2.2.1 to this Schedule notwithstanding that the trigger point for payment of the sum specified in clause 2.1 to this Schedule shall not have arisen and (for the avoidance of doubt) Owners shall pay the Car Park Contribution in accordance with the provisions of this Agreement so as to reimburse the Council the costs incurred both prior (if any) and subsequent to such trigger point **PROVIDED THAT** the Council hereby agrees that it shall if requested by Owner supply a statement of account to the Owner as to how the Car Park Contribution has been spent within 2 months of receipt of such request

3. Memorial Playing Field

3.1 Commencement of Development shall not take place until The Playing Field Contribution has been paid to the Council (or if the Council shall so direct to the Town Council); and

3.2 If the Playing Field Contribution is not expended or Committed on the Playing Field within a period of 5 years from its receipt by the Council the Playing Field Contribution or such part thereof which is not so expended or Committed shall on receipt of a written demand from the Owner (which in this context means the Owners at the date of this Agreement) be repaid by the Council to those persons together with simple interest thereon (compounded at yearly rests) calculated at the National Westminster Bank Plc

base lending rate prevailing from time to time for the period from the date the Playing Field Contribution is received to the date of repayment

4 **Affordable Housing**

4.1 Sheltered Scheme

4.1.1 Not more than 50 Open Market Dwellings shall be occupied until the Sheltered Scheme has been submitted to and approved by the Head of Planning

4.1.2 Not more than 115 Open Market Dwellings shall be occupied until the Sheltered Site has been transferred to a Social Landlord in accordance with the approved Sheltered Scheme on the Affordable Housing Land Terms

4.1.3 The Sheltered Affordable Housing shall not be occupied other than in accordance with the approved Sheltered Scheme or such other scheme as may subsequently be approved in writing by the Head of Planning

4.1.4 The Sheltered Affordable Housing shall comply with the Scheme Development Standards

4.2 Affordable Housing Scheme

4.2.1 Not to occupy any part of the Development (except for the Surgery Site) until the First Phase Affordable Housing Scheme has been submitted to and approved in writing by the Head of Planning

4.2.2

4.2.2.1 Not more than 50 Open Market Dwellings shall be occupied until the Affordable Housing Site (or the relevant part thereof) has been transferred to one or more Social Landlords in accordance with the approved First Phase Affordable Housing Scheme on the Affordable Housing Land Terms; and

4.2.2.2 Not more than 115 Open Market Dwellings shall be occupied until the Second Phase Affordable Housing Scheme has been submitted to and approved in writing by the Head of Planning

4.2.3 Not more than 210 Open Market Dwellings shall be occupied until the Affordable Housing Site (or relevant part thereof) has been transferred to one or more Social Landlords in accordance with the approved Second Phase Affordable Housing Scheme on the Affordable Housing Land Terms

4.2.4 The Affordable Housing shall not be occupied other than in accordance with the approved Affordable Housing Scheme or such other scheme as may subsequently be approved by the Head of Planning

4.2.5 The Affordable Housing shall comply with the Scheme Development Standards

4.3 The Affordable Housing Land Terms

4.3.1 The Affordable Housing Site and Sheltered Site (hereinafter collectively referred to as "the Site") shall

4.3.1.1 be sufficient in extent for the erection of the Affordable Housing in the approved Affordable Housing Scheme and the Sheltered Affordable Housing in the approved Sheltered Scheme including (without prejudice to the generality of the foregoing) adequate curtilage parking spaces walkways gardens and other normal domestic facilities

4.3.1.2 be provided up to the boundary of the Site with an adoptable road access subject to an Agreement under Section 38 of the Highways Act 1980 and adoptable public sewers and drains subject to an Agreement under Section 104 of the Water Industry Act 1991

4.3.2 The Sheltered Site shall be transferred to a Social Landlord who has been approved in writing by the Council at a cost to the Social Landlord of £2,500per unit of Sheltered Affordable Housing

4.3.3 The Affordable Housing Site (or the relevant part thereof) shall be transferred to a Social Landlord who has been approved in writing by the Council at a consideration of £5000 times the number of units of Affordable Housing to be built in the relevant Affordable Housing Scheme provided that if the Owners have elected to charge VAT on all land disposals at the Land and a Social Landlord serves counter notice on the Owners precluding them from charging VAT then the price per unit will be £5,000 plus VAT at the rate prevailing at the date of transfer of the relevant part of the Affordable Housing Site

4.4 In the event a Social Landlord cannot be found in sufficient time to take a transfer of either the Affordable Housing Site or the Sheltered Site prior to the occupancy restrictions in subclauses 4.1.2 and 4.2.2 of this Clause taking effect, the Council shall take an immediate transfer of the relevant part in lieu of a Social Landlord in which event the occupation restrictions shall be deemed to have been satisfied upon the following terms:-

4.4.1 The price payable for the Sheltered Site or the Affordable Housing Site or the relevant part or parts thereof ("**the Purchase Price**") shall be calculated in accordance with the provisions of Clauses 4.3.2 and Clause 4.3.3 above and the Council will accept a transfer of the relevant part from the Owner

4.4.2 The Owner shall make an interest free loan available to the Council equivalent to the Purchase Price which loan will be secured by a legal charge in such form as the Owner may reasonably require over the whole of the relevant part and the Owner shall procure that the relevant part is registered in the name of the Council at H M Land Registry.

4.4.3 The Council shall use all reasonable endeavours to find a Social Landlord to purchase the relevant part, and upon completion of the transfer of the relevant part to the Social Landlord the Council will repay or procure repayment of the said loan.

4.4.4 If a transfer of a relevant part to a Social Landlord cannot be effected within three years of the date of the transfer to the Council, the Council will transfer the relevant part back to the Owner in satisfaction of the said loan.

4.4.5 In the event the Sheltered Site is transferred back to the Owner in accordance with the provisions of clause 4.4.4 above then the obligation to provide Sheltered Housing on the Site shall be deemed to have been satisfied and the land comprising the Sheltered Site shall be deemed pursuant to Outline Planning Permission Reference 95/0469 dated 15 December 1999 to be available for Open Market Dwellings

4.4.6 In the event the relevant part of the Affordable Housing Site is transferred back to the Owner in accordance with the provisions of clause 4.4.4 above then the obligation to provide Affordable Housing on the relevant part shall be deemed to have been satisfied and the land comprising the relevant part of the Affordable Housing Site shall be deemed pursuant to Outline Planning Permission Reference 95/0469 dated 15 December 1999 to be available for Open Market Dwellings

5 Doctors Surgery

5.1 Commencement of Development shall not take place until a plan has been submitted to and approved by the Head of Planning identifying the Surgery Site in a suitable location for a doctor's surgery

5.2 The Surgery Site shall be made available for the construction of a doctor's surgery (and for no other purpose) within 6 months of Commencement of Development for a period extending to 1 year following completion of the last Open Market Dwelling on the Housing Land

5.3 All reasonable endeavours shall be used to market the Surgery Site for the construction of a doctor's surgery on terms and at a value to be assessed in accordance with Guidance Notes published by the Royal Institution of Chartered Surveyors from time to time save that regard shall be had to the intended use of the Surgery Site under the terms of this Agreement

6 Archaeology

6,1 Commencement of Development shall not take place until the Archaeological Scheme has been submitted to and approved by the Head of Planning; and

6.2 Commencement of Development for each Development Phase shall not take place until the approved Archaeological Scheme for that Development Phase has been implemented to the reasonable satisfaction of the Head of Planning.

7 Open Space

7.1 Commencement of Development shall not take place on any Development Phase on the Land until a plan showing the Open Space (including Childrens' Play Areas) to be provided for that Development Phase in accordance with the Local Plan requirements has been submitted to and approved by the Head of Planning in writing

7.2

7.2.1 Not more than 50% of the Open Market Dwellings permitted in any Development Phase shall be occupied until such part of the Open Space (excluding Local Areas of Play) to be provided in accordance with the plan approved under clause 7.1 and lying within that Development Phase has been laid out in accordance with the relevant parts of the Open Space Specification;

7.2.2 The last 5 Open Market Dwellings in any Development Phase shall not be occupied until the Council has certified in writing that the Local Area of Play has been provided to its satisfaction and such certification shall not be unreasonably withheld or delayed;

7.2.3 In the event of any of the last 5 Open Market Dwellings in the last Development Phase being occupied prior to the Local Area of Play being provided for that Development Phase ("**the Last LAP**") the Developer (which in this context shall mean the Developer at the date of completion of this agreement) shall forthwith pay to the Council the sum of £10,000 or if the Developer has commenced but not completed providing the Last LAP a sum which shall be certified by the Developer's engineering consultants (acting reasonably) as being a sum equivalent to the cost of completing the construction of the Last LAP such sum not to exceed £10,000 and which sum shall be indexed in line with any

movements in the Retail Prices Index between 8 December 1999 and the date of payment and shall also be subject to an increase of 15% (in aggregate "**the Liquidated Sum**") to cover the Council's reasonable costs of arranging and supervising the outstanding works on the Last LAP;

7.2.4 Should the Liquidated Sum or any part thereof not be expended or Committed by the Council within a period of 5 years from its receipt by the Council the Liquidated Sum or such part thereof which is not so expended or Committed shall on receipt of a written demand from the Developer (which in this context shall mean the Developer at the date of completion of this agreement) be repaid by the Council to those persons together with simple interest thereon (compounded at yearly rests) calculated at the National Westminster Bank Plc base lending rate prevailing from time to time for the period from the date the Liquidated Sum is received to the date of repayment.

7.3 After the Open Space and Childrens' Play Areas for a Development Phase have been laid in accordance with clause 7.2 to this Schedule they shall thereafter be maintained for the Maintenance Period to the reasonable satisfaction of the Council

7.4 No earlier than two months prior to the expiry of the Maintenance Period the Owner shall request the Council in writing to inspect the Open Space and Childrens' Play Areas for a Development Phase and shall following such inspection carry out such remedial works to the Open Space and Childrens' Play Areas as are reasonably required by the Council (including the replacement of any dead or dying trees or shrubs) by the expiration of the Maintenance Period

7.5 At the expiration of the Maintenance Period the Owner shall offer to transfer the Open Space to the Council (or if the Council shall so direct to the Town Council) for a consideration of One Pound together with all rights and easements necessary for the maintenance and public use thereof and shall without delay use all reasonable endeavours to effect such transfer

7.6 No later than the transfer of the Open Space in accordance with the preceding clause the Owner shall pay to the Council the Open Space Contribution and Play Equipment Contribution to cover the future cost incurred by the Council in maintaining the Open Space as public open space and the Childrens' Play Areas

7.7 In the event of all the Open Space or Childrens' Play Areas not being transferred at the same time on the transfer of Open Space or Childrens' Play Areas for one or more Development Phases the Open Space Contribution and/or Play Equipment Contribution shall be apportioned in such manner as may be agreed between the Owner and the Council or in default of agreement calculated on the area of Open Space being transferred pro rata to the overall area of Open Space required to be provided on the Housing Land to satisfy the Council's Local Plan requirements or any modification thereof or in respect of the Childrens' Play Areas to the amount of play equipment being transferred as a proportion of the total play equipment to be provided

7.8 Subject to the clauses 7.1 to 7,7 to this Schedule having been fully complied with the Council agrees to accept the transfer of the Open Space and the Childrens' Play Areas (or secure acceptance by the Town Council) on the terms and conditions herein contained **PROVIDED** always that the Open Space so transferred shall not be used for a purpose

other than public open space/amenity land and the Transfer shall contain a covenant to by the Transferee to this effect

8 Amenity Land

8.1 Not to Commence the Development until a Management Scheme has been submitted to and approved by the Head of Planning

8.2

8.2.1 Not more than 2.5 hectares of the Employment Land (which shall include any development on the part of the Employment Land hatched black on the Plan) and not more than 115 Open Market Dwellings (unless the Head of Planning shall in his absolute discretion agree otherwise) shall be occupied until :-

8.2.1.1 the Amenity Land has been laid out in accordance with the approved Management Scheme; and

8.2.1.2 the Footpath has been constructed to the reasonable satisfaction of the Head of Planning.

8.2.2 Not more than 210 Open Market Dwellings may be occupied until:-

8.2.2.1 the Amenity Land has been maintained in accordance with the approved Management Scheme for the Maintenance Period (or such lesser period as the Head of Planning may approve) to the reasonable satisfaction of the Head of Planning; and

8.2.2.2 the Amenity Land has been transferred to the Council , or if the Council shall so direct, to the Town Council for a consideration of £1 together with all rights necessary for access to and the maintenance and public use thereof; and

8.2.2.3 the Amenity Land Contribution has been paid or tendered to the Council or if the Council shall so direct to the Town Council.

8.3 Subject to Clauses 8,1 and 8.2 to this Schedule having been fully complied with the Council agrees to accept the transfer of the Amenity Land (or secure its acceptance by the Town Council) on the terms and conditions herein contained and subject to such easements as may have been granted pursuant to clause 8.4 below PROVIDED THAT the Amenity Land so transferred shall not be used other than as public space/amenity land and the Transfer shall contain a covenant by the transferee to this effect

8.4

8.4.1 In the event that the Environment Agency or any other public or statutory body or agency shall require the Owner to grant easements in respect of drainage through the Amenity Land or any part thereof the Owner shall submit to the Head of Planning for prior written approval (such approval not to be unreasonably withheld or delayed and in any event to be granted or refused within 28 days) details of the proposed line of such drainage and of such schemes of work as may be required to facilitate such drainage and the Owner shall carry out such works and reinstate the Amenity Land at no cost to the Council and to the Council's reasonable satisfaction and shall be entitled to grant such drainage easements.

8.4.2 In circumstances other than as set out in paragraph 8.4.1 above, if the Owner shall deem it necessary to grant easements in respect of drainage through the Amenity Land or any part thereof the Owner shall submit to the Head of Planning for prior written approval (in the Head of Planning's absolute discretion and in any event to be granted or refused within 28 days) details of the proposed line of such drainage and of such schemes of work as may be required to facilitate such drainage and if such prior written approval is

given the Owner shall carry out such works and reinstate the Amenity Land at no cost to the Council and to the Council's reasonable satisfaction and shall be entitled to grant such drainage easements or lay such drainage.

9 **Education Contribution**

9.1 Not more than 115 Open Market Dwellings shall be occupied until the Education Contribution has been paid to the County Council

9.2 The County Council covenants that the Education Contribution shall be used solely for the provision of primary school accommodation serving the Eynesbury area

9.3 If the Education Contribution or any part thereof is not expended or Committed within a period of 5 years from its receipt by the County Council the Education Contribution or such part thereof which is not so expended or Committed shall be repaid on receipt of a written demand by the County Council to the Owner (which in this context means the Owners at the date of this Agreement) together with simple interest thereon calculated at the National Westminster Bank Plc base lending rate prevailing from time to time for the period the date the Education Contribution is received to the date of repayment

9.4 It is hereby acknowledged and agreed that the County Council may at its sole discretion on or at any time after completion of this Planning Obligation commence the provision or provide (in whole or in part) the education facilities in accordance with clause 9.2 to this Schedule notwithstanding that the trigger point for payment of the sum specified in clause 9.1 to this Schedule shall not have arisen and (for the avoidance of doubt) the Owners shall pay the Education Contribution in accordance with the provisions of this Agreement so as to reimburse the County Council the costs incurred both prior (if any) and subsequent to such trigger point PROVIDED THAT the County Council hereby covenants that it shall if requested by the Owners supply a statement of account to the Owners as to how the Education Contribution has been spent within 2 months of receipt of such request

10. **LEAP Contribution**

AT the date hereof it has not been possible for the Developer to comply with the obligations in the section 106 Agreement to provide a LEAP and the Developer and the Council have agreed that in lieu of complying with the said obligations the Developer shall

10.1 pay the sum of £45,500 ("**the LEAP Contribution**") to the Council on the date of this agreement and in the manner and on the terms set out below; and

10.2 not occupy or permit to be occupied the last 5 Open Market Dwellings permitted under reserved matters approval 01/01669/REM dated 18 February 2002 until the Developer has:-

(a) made available on the Amenity Land in the approximate location edged red on the attached plan an area of land suitable for the provision of the LEAP which land shall have been drained and levelled by the Developer to the satisfaction of the Council and

(b) constructed a footpath to the satisfaction of the Council between the end of Bellamy Close and the area of land made available pursuant to the immediately preceding sub paragraph

10.3 In consideration of the payment of the LEAP Contribution and the other obligations imposed on the Developer in paragraph 10.2 above the Council releases the Developer from the obligation to equip, landscape, fence and lay out the LEAP;

10.4 the LEAP Contribution shall be held by the Council for use solely as a contribution towards the cost of equipping, landscaping, fencing and laying out the LEAP;

10.5 If the LEAP Contribution is not expended or Committed within a period of 5 years from its receipt by the Council the LEAP Contribution or such part thereof which is not so expended or Committed shall on receipt of a written demand from the Developer (which in this context means the Developer at the date of this Agreement) be repaid by the Council to those persons together with simple interest thereon (compounded at yearly rests) calculated at the National Westminster Bank Plc base lending rate prevailing from time to time for the period from the date the Deposit is received to the date of repayment.

THE COMMON SEAL of the **HUNTINGDONSHIRE DISTRICT COUNCIL** was annexed to this Deed in the presence of:-)
)

Executive Director of Central Services

THE COMMON SEAL of the **CAMBRIDGESHIRE COUNTY COUNCIL** was annexed to this Deed in the presence of:-)
)

Senior Solicitor

SIGNED as a Deed and DELIVERED by the said [redacted])
)
in the presence of:-)

SIGNED as a Deed and DELIVERED by the said [redacted])
)
in the presence of:-)

SIGNED as a Deed and DELIVERED by the said [redacted])
)
in the presence of:-)

Huntingdonshire District Council

CAMBRIDGESHIRE

Application Number: 95/0469

TOWN & COUNTRY PLANNING ACT, 1990

OUTLINE PLANNING PERMISSION

29. To produce a satisfactory relationship between the various elements of the scheme and adjacent development/land uses.

30. For the avoidance of doubt.

NOTES:

1. This permission is related to an Agreement entered into by the applicant and the Huntingdonshire District Council under Section 106 of the Town and Country Planning Act 1990.

2. In connection with Condition 3 the applicants/developers' attention is drawn to the attached guidelines for the Landscape Master Plan for the whole site and specific treatment for the large area of Amenity Land to the west of the site.

3. In connection with Condition No.5 above, a substantial planting belt shall be defined as: a planting belt of an average width of 30 metres.

4. In accordance with condition No.12, the developer must complete the appropriate legal agreement with the appropriate Local Highway Authority before any works outside the site within the public highway are commenced.. In addition, attention is drawn to the attached letter plus enclosures from the Highways Agency dated 13 January 1998, and the attached letter from Stirling Maynard & Partners dated 20th October 1997.

5. In accordance with Condition 20 above, a circumstance where the Local Planning Authority might consider allowing the use or occupation of part of the development without the approved flood compensatory scheme being in place is in connection with the provision of a Doctor's surgery which may come on stream in advance of the other phases of development.

6. The applicant's attention is drawn to the enclosed letter from the Environment Agency (previously the NRA).

7. Any public right of way crossing the site shall be retained on its existing alignment and maintained free from obstruction until an alternative way has been provided under the appropriate statutory procedure.

DATED: 15th December 1999

Operational Services Directorate, Pathfinder House,
St. Mary's Street, Huntingdon, Cambs., PE18 6TN.

Direct

[redacted]

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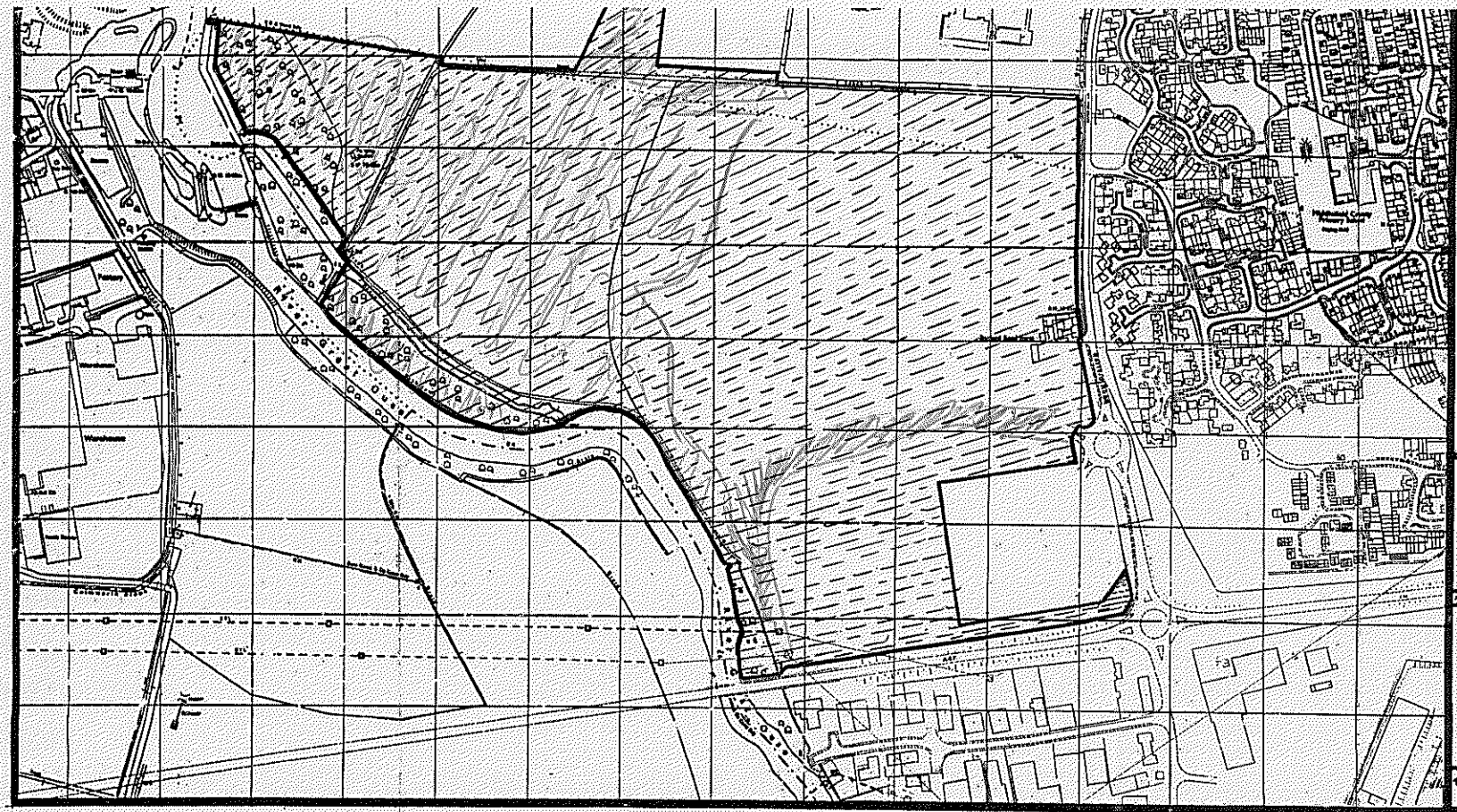

p.p.s.

Phillips Planning Services
1 Hassett Street
Bedford, MK40 1HA
Telephone (0234) 272829

Assistant: | Drawn by:

Land Off Barford Road,
Eynesbury.

N

D.: April 1995
Scale: 1:2,500.
Drawing No: 86107/10

p.p.s.

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