

DATED

27 February

2012

EAST CAMBRIDGESHIRE DISTRICT COUNCIL

and

M M PEARSON, S A GOTT AND PM GILBERT

PLANNING OBLIGATION by Deed of Agreement
under Section 106 of the Town and Country Planning Act 1990
relating to the development of land at
89 Cambridge Road
Ely

LEGAL & DEMOCRATIC SERVICES
EAST CAMBRIDGESHIRE DISTRICT COUNCIL
THE GRANGE, NUTHOLT LANE, ELY, CAMBRIDGESHIRE, CB7 4EE

Date

27 February

2012

BETWEEN

- 1 **EAST CAMBRIDGESHIRE DISTRICT COUNCIL** of The Grange Nutholt Lane Ely Cambridgeshire CB7 4EE ("the Council"); and
- 2 **MARGARET MABEL PEARSON** of 3 Leicester Close Ely Cambridgeshire CB6 3QR and **SHIRLEY ANN GOTT** of 6 Hale Fen Littleport Ely Cambridgeshire CB6 1eN and **PATRICIA MAY GILBERT** of Red Barn Farm Wisbech Road Littleport Ely Cambridgeshire CB6 1RD (the Applicant);

INTRODUCTION

- I. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated.
- II. The Owners are the freehold Owner of the Land situated at 89 Cambridge Road Ely Cambridgeshire registered at H M Land Registry under Title Number CB358720 as is shown edged red on the attached plan.
- III. The Owners have submitted the Application, for outline/full planning permission for residential development and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- IV. Having regard to the provisions and policies of the Council's Core Strategy and all other material considerations the Council as local planning authority is prepared to grant conditional Planning Permission pursuant to the Application subject to the parties entering into this Deed and the planning obligations herein contained to make provision for regulating the Development.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. **DEFINITIONS**

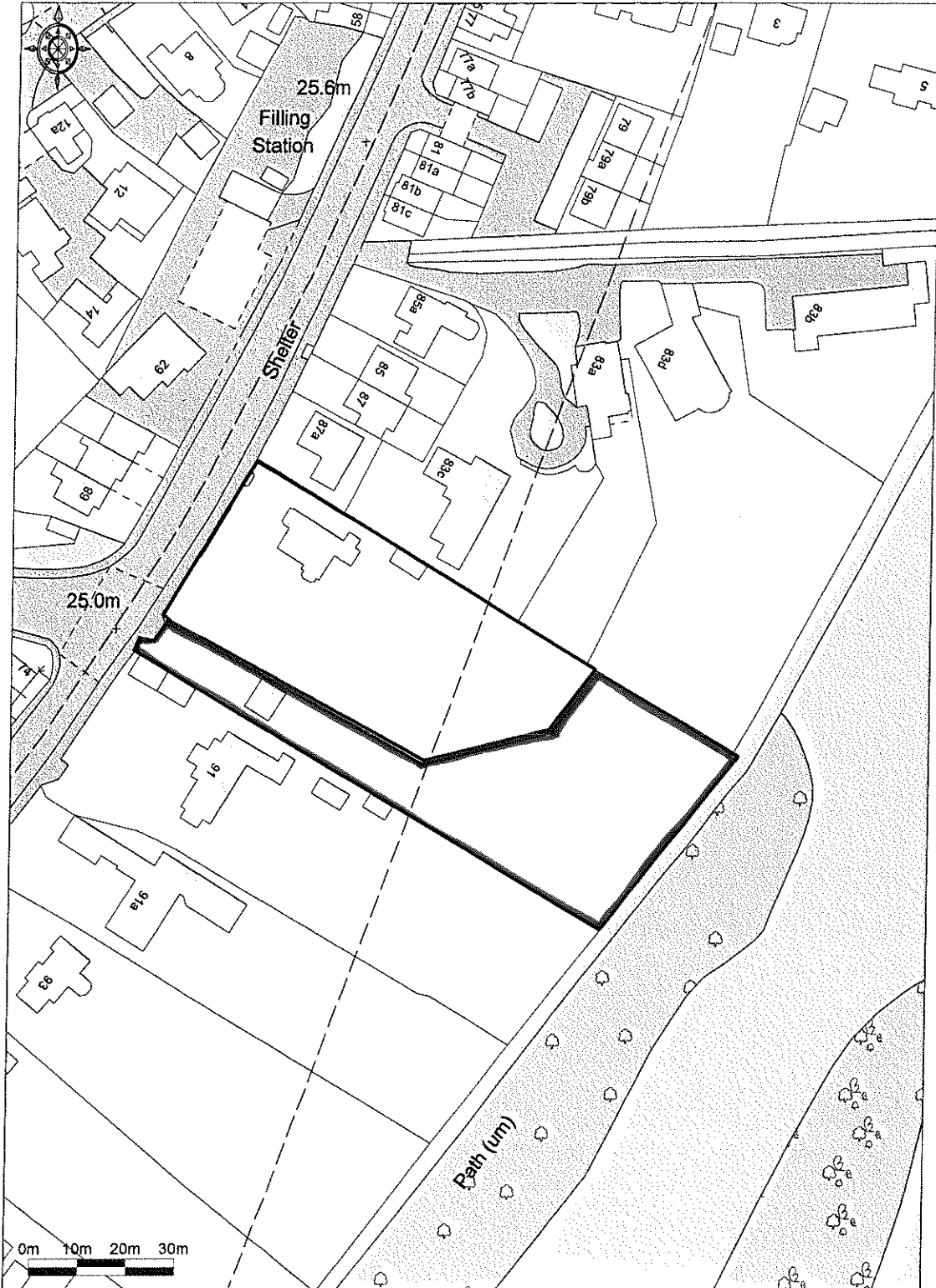
For the purposes of this Deed the following expressions shall have the following meanings:

"Act" the Town and Country Planning Act 1990 as amended

"Application"	the application for permission dated 10 October 2011 to the Council for the Development and allocated reference number 11/00897/OUT.
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.
"Development"	the development of the Land with two residential Dwellings pursuant to the Planning Permission.
"District"	the District of East Cambridgeshire
"Dwelling"	Any unit of residential accommodation constructed pursuant to the Planning Permission.
"Education Contribution"	means the sum of Five Hundred and Sixty Seven pounds (£560) for Pre-school education and One Thousand Eight Hundred Pounds (£1,800) for Primary education per dwelling payable in accordance with paragraph 5 of the Third Schedule.

“Educational Contribution Purposes”	the provision of additional and/ or improved education facilities serving or capable of serving the Development in the East Cambridgeshire area required as a consequence of the Development.
“Emergency Services Contribution”	means the sum of Sixty Nine pounds (£69) per dwelling payable in accordance with paragraph 2 of the Third Schedule.
“Emergency Services Contribution Purposes”	the contribution towards police facilities serving the East Cambridgeshire area.
“Index”	All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation
“Interest”	interest to be calculated on a daily basis at a daily rate of 1/365th of the annual rate of interest at Four per cent above the base lending rate of Barclays Bank Plc from time to time.
“Land	the land against which this Deed may be enforced as shown edged red on the plan.
“Plan”	the plan attached to this Deed.
“Planning Permission”	the planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Second Schedule.
“Practical Completion”	Issue of a certificate of practical completion by the Owner’s architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect;

Location Plan - Barton Lodge, 89 Cambridge Road, Ely, Cambridgeshire



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Licence number 100020449. Plotted Scale - 1:1250

Drwg. Ref. OPP/PEAR/01
Scale: 1:1250

M H P
Margaret N Pearson
A A G
Shirley A. Gott. A P H G

"Public Open Space Contribution"	means the sum of One thousand nine hundred and eleven pounds (£1,911) per dwelling towards the provision and/or improvement of Public Open Space in the District payable in accordance with paragraph 1 of the Third Schedule.
"Public Open Space Contribution Purposes"	the provision or improvement of Public Open Space facilities or access to Public Open Space within the District.
"Social and Community Contribution"	the sum of One thousand Three hundred and four pounds (£1,304) towards the provision of the necessary social and community infrastructure for the District payable in accordance with paragraph 3 of the Third Schedule.
"Social and Community Contribution Purposes"	a contribution towards community and young people infrastructure projects serving the East Cambridgeshire area
"Sports and Leisure Facilities"	the sum of Two thousand one hundred and seventy nine pounds (£2,179) per dwelling towards the provision of the necessary sports and leisure facilities for the District payable in accordance with paragraph of the Third Schedule.
"Sports and Leisure Purposes"	the provision or improvement of indoor and outdoor sports and leisure facilities within the District required as a consequence of the Development
"Transport Contribution"	means the contribution of one thousand pounds (£1,000) per dwelling payable in accordance with paragraph 6 of the third schedule.

“Transport Contribution Purposes” to be used for minor highways improvement projects identified in the District of Ely Cambridgeshire.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party to the Land or any part thereof and in the case of the Council, the successors to its respective statutory functions.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all enabling powers with the intent that the covenants and obligations shall hereafter run with the Land pursuant to Section 106 of the 1990 Act. The Owners are satisfied that the obligations meets the tests set out under Regulation 122 of the Community Infrastructure Regulations 2010.

- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority either collectively or individually against the Owners.

4 CONDITIONALITY

The obligations in this Deed are conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development save for the provisions of Clauses 7.1, 12 and 13 (legal costs, jurisdiction and delivery clauses) and any other relevant provisions which shall come into effect immediately upon completion of this Deed.

5 THE OWNERS' COVENANTS

- 5.1 The Owners covenant with the Council as set out in the Third Schedule.

6 THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the Fourth Schedule.

7 MISCELLANEOUS

- 7.1 On completion of this Deed, the Owner shall pay to the Council the sum of £676.50 (No VAT) in respect of legal costs that have been incurred in the negotiation and execution of this Deed.
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This Deed shall be registrable as a local land charge by the Council.
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office or individual's last known address (as appropriate) of the relevant party.

- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon written request from the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after they shall have parted with his/their/its entire interest in the Land or part of the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.9 Representatives of the Council may enter upon the Land at any reasonable time upon reasonable prior notice to ascertain whether the terms of this Deed are being or have been complied with.
- 7.10 Any moneys from time to time held by the Council under the provisions of this Deed shall in any event become the absolute property of the Council (as the case may be) and shall not be subject to return by the Council to the Owner in the event that the Owner[s][or either of them] becomes bankrupt or has a winding-up petition or a petition for an administration order presented against him or the Owners or any them passes a winding-up resolution or an Administrative Receiver or a Receiver or a Receiver and Manager is appointed in respect of the property or any part thereof of the Owners or any of them or the Owners or any of them enters into any arrangement scheme compromise moratorium or composition with his creditors or any of them, but shall continue to be held by the Council under the terms of this Deed.
- 7.11 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

- 7.12 The Land shall not be used nor Occupied except in accordance with the Development to be carried out pursuant to the Planning Permission or any related reserved matters approved or any modification thereto which may be approved in writing by the Council.
- 7.13 The Owners shall carry out the Development under the Planning Permission in strict conformity with the plans and particulars lodged with the Application and the conditions set out in the decision notice including any amendments thereto approved in writing by the Council.
- 7.14 The Owners hereby further agrees that any rights to claim compensation arising from any limitation or restriction on the planning use of the Land under the terms of this Deed are hereby waived.
- 7.15 The Owner and the Developer hereby acknowledge and agree that the Council may at their sole discretion on or at any time after completion of this Deed commence the provision of or provide (in whole or in part) the improvements in respect of which contributions are to be paid pursuant to this Deed notwithstanding that the trigger point for payment of the relevant contributions specified in the Third Schedule shall not have arisen, and (for the avoidance of doubt) the Owner or the Developer shall pay those contributions in accordance with the provisions of this Deed so as to reimburse the Council the costs incurred both prior to (if any) and after the trigger points for payment.

8 WAIVER

- 8.1 No waiver (whether expressed or implied) by the Council or Owners of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 INDEXATION

- 9.1 The sums referred to in the Third Schedule shall be linked to the Index to the intent that the actual amounts to be paid shall be the amounts of the relevant payments as set out in the Third Schedule divided by the Index figure last published prior to the date of this Deed multiplied by the Index figure last published before the due date for payment or (or at the option of the Council) the figure for the Index as last forecast by the Royal Institution of Chartered Surveyors to be in force at the due date for payment.

10 INTEREST

- 10.1 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the actual date of payment.

11 VAT

- 11.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

12 JURISDICTION

- 12.1 This Deed is governed by and interpreted in accordance with the law of England and Wales.

13 DELIVERY

- 13.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

14. CHANGE OF OWNERSHIP

- 14.1 The Owners agrees with the Council to give the Council immediate written notice of any change in the ownership of any if their interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferees full name and registered office (if a company or usual address if not) together with the area of the Land.

15. DISPUTE RESOLUTION

- 15.1 If any dispute difference or question shall at any time arise between the parties hereto or any of them in respect of the construction of this deed or respecting anything herein contained or arising out of or in connection with this deed (except where such matter is one in respect of which a right of appeal to the Secretary of State is expressly provided) the same shall be referred to and decided by an arbitrator (who has the relevant experience and qualifications for the matter in dispute) to be appointed by agreement between the parties to the dispute or (failing agreement) by the President for the time being of the Royal Institution of Chartered Surveyors. The arbitration shall be conducted in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force and the arbitrator's costs shall be borne as he shall direct

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

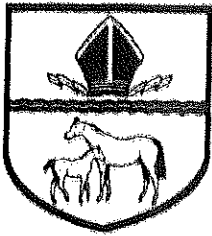
FIRST SCHEDULE

Details of the Owners' Title, and description of the Land

The [Land is known as land at 89 Cambridge Road Cambridgeshire and, along with other land, is registered at HM Land Registry under Title Number CB358720 with freehold title absolute.

SECOND SCHEDULE

Form of notice of Planning Permission – please see attached



EAST CAMBRIDGESHIRE DISTRICT COUNCIL

THE GRANGE, NUTHOLT LANE,
ELY, CAMBRIDGESHIRE CB7 4EE

Telephone: Ely (01353) 665555
DX41001 ELY Fax: (01353) 665240
www.eastcambs.gov.uk

Mrs M Pearson
C/O Cheffins
Fao: Paul Sutton
1 & 2 Clifton Road
Cambridge
CB1 7EA

This matter is being dealt with by:

Rebecca Saunt

Telephone: 01353 665555
E-mail: rebecca.saunt@eastcambs.gov.uk
My Ref: 11/00897/OUT
Your ref

6th February 2012

Dear Sir/Madam

DRAFT

TOWN AND COUNTRY PLANNING ACT 1990

OUTLINE PLANNING PERMISSION

Subject to conditions

The Council hereby **approves** the following development:

Proposal: Erection of two detached dwellings
Location: Land Rear Of 89 Cambridge Road Ely Cambridgeshire CB7 4HX
Applicant: Mrs M Pearson

This consent for outline planning permission is granted in accordance with the application reference **11/00897/OUT** registered 10th October 2011 and the plans, drawings and documents, as listed below;

Plan Reference	Version No	Date Received
OPP/PEAR/03	D	24th November 2011
2755-D	B	1st December 2011
OPP/PEAR/01		10th October 2011
OPP/PEAR/06		10th October 2011
OPP/PEAR/04	A	10th October 2011
OPP/PEAR/02		10th October 2011

Subject to the additional conditions set out below:

ADDITIONAL CONDITIONS

- 5 Prior to the occupation of the dwellings any gate or gates to the vehicular access shall be set back a minimum of 6.m from the near edge of the highway carriageway. Any access gate or gates shall be hung to open inwards.
- 5 REASON: In the interests of highway safety, in accordance with policies S6 and S7 of the East Cambridgeshire Core Strategy 2009.
- 6 The access shall be a minimum width of 5m, for a minimum distance of 10m measured from the near edge of the highway carriageway.
- 6 REASON: In the interests of highway safety, in accordance with policies S6 and S7 of the East Cambridgeshire Core Strategy 2009.
- 7 Prior to the first occupation of the development sufficient space shall be provided within the site to enable vehicles to enter, turn and leave the site in forward gear and to park clear of the public highway The area shall be levelled, surfaced and drained and thereafter retained for that specific use.
- 7 REASON: In the interests of highway safety, in accordance with policies S6 and S7 of the East Cambridgeshire Core Strategy 2009.
- 8 Prior to the occupation of the dwellings visibility splays shall be provided each side of the vehicular access in full accordance with the details indicated on the submitted plan PAS/PEAR/03 Rev D. The splays shall thereafter be maintained free from any obstruction exceeding 0.6m above the level of the adjacent highway carriageway.
- 8 REASON: In the interests of highway safety, in accordance with policies S6 and S7 of the East Cambridgeshire Core Strategy 2009.
- 9 Prior to the occupation of the dwellings the vehicular access where it crosses the public highway shall be laid out and constructed in accordance with the Cambridgeshire County Council construction specification
- 9 REASON: In the interests of highway safety, in accordance with policies S6 and S7 of the East Cambridgeshire Core Strategy 2009.
- 10 No development shall begin until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority. The archaeological work shall be carried out in accordance with the approved details.
- 10 REASON: To ensure that any archaeological remains are suitably recorded in accordance with policy EN5 of the East Cambridgeshire Core Strategy 2009.
- 11 Except as detailed on the approved plans, no trees shall be /pruned or removed/felled and no shrubs or hedges shall be removed without the prior written approval of the Local Planning Authority.
- 11 REASON: To ensure that the trees on site are adequately protected, to safeguard the character and appearance of the area, in accordance with policies EN1 and EN2 of the East Cambridgeshire Core Strategy 2009.

PLEASE ALSO NOTE THAT THIS PERMISSION IS GRANTED SUBJECT TO DUE COMPLIANCE WITH THE BYE-LAWS AND GENERAL STATUTORY PROVISION IN FORCE IN THE DISTRICT AND DOES **NOT** CONSTITUTE APPROVAL UNDER BUILDING REGULATIONS. YOU ARE ADVISED TO CONTACT THE BUILDING REGULATIONS SECTION IF YOU WISH TO DISCUSS THIS FURTHER

A handwritten signature in black ink, appearing to read 'A. V. Johnson', with a stylized flourish at the end.

Dated: 6th February 2012

Head of Planning & Sustainable Development Services

THIRD SCHEDULE

The Owner's Covenants with the Council

1 PUBLIC OPEN SPACE CONTRIBUTION

- 1.1 The Owners covenant to pay the Public Open Space Contribution to the Council (together with any indexation) prior to Occupation of the first Dwelling (in lieu of or in addition to the Public Open Space provision on the Development).

2. EMERGENCY SERVICES CONTRIBUTION

- 3.1 The Owners covenant to pay the Emergency Services Contribution to the Council (together with any indexation) prior to Occupation of the [first] Dwelling.

3 SOCIAL AND COMMUNITY CONTRIBUTION

- 3.1 The Owners covenant to pay the Social and Community Contribution to the Council (together with indexation) prior to Occupation of the first Dwelling.

4. SPORTS AND LEISURE FACILITIES CONTRIBUTION

- 5.1 The Owners covenant to pay the Sports and Leisure Facilities Contribution to the Council (together with any indexation) prior to Occupation of the first Dwelling.

5. EDUCATION CONTRIBUTION

- 5.1 The Owners covenants to pay the Education Contribution to the Council (together with indexation) prior to Occupation of the first Dwelling.

6. TRANSPORT CONTRIBUTION

- 6.1 The Owner covenants to pay the Transport Contribution to the Council (together with indexation) upon Commencement of Development to be used in connection with the Transport Contribution Purposes.

FOURTH SCHEDULE

Council's Covenants

1. USE OF CONTRIBUTIONS

- 1.1 The Council shall not use the Public Open Space Contribution other than for Public Open Space Contribution Purposes or for such other purposes as specified above
- 1.2 The Council shall on receipt of payment of the Emergency Services Contribution pay this contribution (and any applicable indexation) to Cambridgeshire Police Services for Emergency Service Contribution Purposes
- 1.3 The Council shall not use the Social and Community Contribution other than for Social and Community Contribution Purposes
- 1.4 The Council shall not use the Sports and Leisure Facilities Contribution other than for Sports and Leisure Purposes
- 1.5 The Council shall not use the Transport Contribution other than for Transport Contribution Purposes.
- 1.6 The Council shall, having consulted Cambridgeshire County Council, pay (and any applicable indexation) the Education Contribution to Cambridgeshire County Council for Education Contribution Purposes.

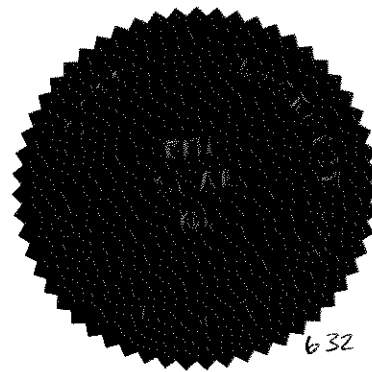
The Council covenants that all contributions paid hereunder shall be paid into an interest bearing account and that in the event that any such contributions or any part thereof have not been used for their stated purpose within a period ("the Relevant Period") of 5 years from the date of payment then the Council will repay to the party who paid such contribution the amount of such contribution or the part thereof that remains unspent together with accrued interest except in respect of the following contributions:

Provided Always that if on the expiry of any relevant period mentioned above the Council shall have entered into any contract relating to the provision of facilities works or improvements or any other thing for which the relevant contribution was paid pursuant to this Deed which contract shall be completed after the expiry of the said relevant period then any sum to be repaid to the Owner or the Developer shall be repaid following payment of the final account in respect of any and all such contracts and the sum repaid to the Owner or the Developer shall be less all costs incurred by the Council and/or paid by the Council pursuant to such contracts.

2 DISCHARGE OF OBLIGATIONS

2.1 At the written request of the Owner[s] the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

The COMMON SEAL of EAST CAMBRIDGESHIRE)
DISTRICT COUNCIL was hereunto affixed)
in the presence of:-)



J. H. Gray

Head of Legal Services/ Chief Executive/ Principal Solicitor

Signed by the Owner

MARGARET MABEL PEARSON

Margaret M^{rs} Pearson

In the presence of

Signature of witness *PM S*

Name of witness PAULINE MARY SIVIER

Address of witness 1, WEICESTER CLOSE
ELY, CAMBS. CB6 3QR.

Occupation *Retired.*

Signed by the Owner

SHIRLEY ANN GOTT

Shirley A. Gott

In the presence of

Signature of witness *KMG*

Name of witness KAREN MARY GOLDING

Address of witness TRINITY CLOSE
ELY
CAMBS. CB6 1AX

Occupation *Office Manager - NFU Mutual*

Signed by the Owner
PATRICIA MAY GILBERT

P.M. Gilbert

In the presence of

Signature of witness

R.M. Maskell

Name of witness

Revd Rosemary Maskell

Address of witness

*St. Georges Vicarage
30 Church Lane*

Occupation

*Whiteport
Cambs CB6 1PS*

Parish Priest