

DATED 5 December 2024

(1) SUFFOLK COUNTY COUNCIL

-and-

(2) BENNETT PLC

AGREEMENT UNDER SECTION 106 OF THE
TOWN AND COUNTRY PLANNING ACT 1990

relating to the development of land off Keightley Way, Tuddenham St Martin, Suffolk

DC/22/3748/FUL



Howes Percival LLP
Flint Buildings
1 Bedding Lane
Norwich, NR3 1RG

JZC/213413.0045

I HEREBY CERTIFY THIS DOCUMENT TO BE A TRUE COPY
OF THE ORIGINAL

[REDACTED]

FOR: JONATHAN LOCKINGTON,
LAWYER

SUFFOLK COUNTY COUNCIL
ENDEAVOUR HOUSE, 8 RUSSELL ROAD
IPSWICH IP1 2BX

DATED 5 DECEMBER 2024

THIS AGREEMENT is made this 5th day of December 2024

BETWEEN

- (1) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the **County Council**"); and
- (2) **BENNETT PLC** (Company registration number: 01031743) whose registered office is situated at Low Green Barn, Nowton Bury St Edmunds, Suffolk IP29 5ND ("the **Owner**")

jointly to be referred to as "the Parties"

RECITALS

1. The County Council is the local highway authority (except for trunk roads), the local education authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
2. The Owner is the registered proprietor of the freehold of the Site which is registered at the Land Registry with title number SK433361.
3. The Application was made to the Council by the Owner and the Former Owners.
4. The Owner and the Former Owners have appealed against the failure of the Council to determine the Application within the requisite time.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PROVISIONS

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)
“Appeal”	means the appeal made to the Secretary of State against the non-determination of the Application and allocated appeal reference APP/X3540/W/24/3352886 by the Planning Inspectorate
“Application”	the planning application for the Development validated by the Council on 22 November 2022 and allocated reference number DC/22/3748/FUL
“CIL Regulations”	Community Infrastructure Levy Regulations 2010 (as amended)
“CIL Tests”	the tests set out in regulation 122(2) of the CIL Regulations
“Commencement”	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” shall be construed accordingly
“Council”	means East Suffolk Council of East Suffolk House, Station Road, Melton, Woodbridge IP12 1RT
“Decision Letter”	means the decision letter issued by the Inspector in determining the Appeal or where the Secretary of

	State recovers the Appeal for determination the decision letter of the Secretary of State;
"Default Interest Rate"	4% per annum above the base lending rate of the Bank of England from time to time unless otherwise provided by this Deed
"Development"	the development of the Site for residential development for 25no. new dwellings pursuant to the Planning Permission
"Dwelling"	any dwelling to be constructed in accordance with the Planning Permission
"Former Owners"	means Mr William Lawrence Pipe and Monica Daphne Pipe of Popular Farm, Westerfield Lane, Tuddenham, Ipswich IP6 9BH who were formerly the freehold owners of the Site before the Site was acquired by the Owners pursuant to a transfer dated 22 October 2024 which has been registered at the Land Registry
"Inspector"	an inspector appointed by the Secretary of State to determine the Appeal
"Location Plan"	means the plan attached to this Deed at the first schedule titled "Site Location Plan" with reference 0445-1000
"NPPF"	means the National Planning Policy Framework (December 2023) as amended or any successor document
"Occupation" "Occupy" and "Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

"Planning Permission"	the planning permission that may be granted by the Secretary of State or the Inspector pursuant to the Appeal
"Practical Completion"	means the completion of a Dwelling to a standard which is wind and watertight and fit for habitation in terms of heating, plumbing, electrics and sanitation and "Practically Complete" shall be construed accordingly.
"Primary School Transport Contribution"	means the sum of £59,010 RPI Index Linked payable to the County Council to be used towards the provision of school transport for primary aged children from the Development
"RPI Index Linked"	the increase in any sum referred to in this Deed by an amount equivalent to the increase in the RPI Index calculated in accordance with Clause 11 of this Deed
"RPI Index"	means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics from time to time or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Owner and the County Council
"Secondary School Transport Contribution"	means the sum of £28,100 RPI Index Linked payable to the County Council to be used towards the provision of school transport for secondary aged children from the Development
"Secretary of State"	the Secretary of State for Housing, Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the 1990 Act
"Site"	means the land off Keightley Way Tuddenham St Martin Suffolk against which this Deed may be

enforced and shown for identification purposes only edged red on the Location Plan to the extent such land is registered at the Land Registry under title number SK433361

"Working Day(s)"

Mondays to Fridays (excluding days that in England and Wales are public holidays or on which the Council offices are closed and the period between Boxing Day and New Year's Day) inclusive

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or 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 any gender include any other genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable 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 severally unless there is an express provision otherwise.
- 2.5 Unless stated otherwise in this Deed 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 person deriving title through or under that party and in the case of the County Council the successor to their respective statutory functions.

2.7 The headings are for reference only and shall not affect construction.

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 1 of the Localism Act 2011 and all other enabling powers.

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 County Council as appropriate in the case of covenants made with it as local planning authority against the Owner and their successors in title.

4 CONDITIONALITY

The obligations set out in the Second Schedule are conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

and the rest of the provisions set out in this Deed shall take effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

The Owner covenants with the County Council as set out in the Second Schedule.

6 THE COUNTY COUNCIL'S COVENANTS

The County Council covenants with the Owner as set out in the Third Schedule.

7 LEGAL AND MONITORING FEES

7.1 Immediately prior to the completion of this Deed the Owner shall pay the County Council's reasonable legal costs properly incurred in connection with the negotiation preparation and execution of this Deed.

- 7.2 Within 10 Working Days of the grant of Planning Permission the Owner shall pay the County Council the total sum of £952 (nine hundred and fifty two pounds) (being £476 (four hundred and seventy-six pounds per obligation) towards the monitoring of the performance of the planning obligations that the Owner is required to observe and perform to the County Council.

8 INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the County Council by the date it is due, the Owner shall pay interest on that amount at the Default Interest Rate. Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

9 MISCELLANEOUS

- 9.1 The Owner covenants and warrants to the County Council that they are the freehold owner of the legal and beneficial title to the Site respectively and have full power and capacity to enter into this Deed and that there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.
- 9.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 9.3 This Deed may be registerable as a local land charge by the Council or County Council.
- 9.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 9.5 Any notice or written communication to be served or given by one party to any other party under the terms of this Deed shall be deemed to have been properly served or given if delivered by hand or sent by first class post or registered or recorded delivery to the following addresses:
- 9.5.1 Owner: at the address at the beginning of this Deed;

- 9.5.2 County Council: shall be addressed to the Executive Director of Growth Highways and Infrastructure at the address at the beginning of this Deed; or
- 9.5.3 such other address as may be notified in writing from time to time.
- 9.6 Following the performance and satisfaction of all the obligations contained in this Deed the County Council shall forthwith effect the cancellation of all entries that the County Council may have made in the Register of Local Land Charges in respect of this Deed.
- 9.7 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.
- 9.8 Subject to clause 9.7 and clause 17 of this Deed, 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.
- 9.9 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or part of the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT neither the reservation of rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or part of the Site) shall constitute an interest for the purposes of this Clause.
- 9.10 Any obligation contained in this Deed shall not apply and not have any force nor effect if the Inspector appointed to determine the Appeal finds in his/her Decision Letter in respect of the Appeal that a particular obligation or part thereof is not a material consideration in the granting of the Planning Permission pursuant to the Appeal or in accordance with the CIL Tests or should the Inspector find in his/her Decision Letter that a particular obligation as defined or provided for in this Deed should be deleted or amended so as to ensure compliance with the CIL Tests or to otherwise enable the grant of Planning Permission such contribution and/or obligation in this Deed shall be treated as so amended in accordance with the Inspector's decision.

9.11 The covenants, restrictions and requirements contained in this Deed shall not be enforceable against:

9.11.1 owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them;

9.11.2 a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owner to that statutory undertaker;

9.11.3 any mortgagee or chargee of the whole or any part of the Owner's interest in the Site unless such mortgagee or chargee takes possession of the Site or part thereof in which case it will be bound by the obligations as a person deriving title from the Owner.

9.12 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

9.13 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

9.14 The Owner covenants from the date that this Deed takes effect to allow the County Council, and their duly authorised officers or agents at all reasonable times on reasonable notice to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed and in doing so the County Council shall have regard to all health and safety requirements when visiting the Site.

9.15 The Owner hereby agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived.

10 WAIVER

No waiver (whether expressed or implied) by the County Council or the Owner 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 County Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

11 INDEXATION

Any sum referred to in the Second Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the RPI Index from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times (C/D)$ where:

A is the sum payable under this Deed;

B is the original sum calculated as the sum payable;

C is the RPI Index for the month two (2) months before the date on which the sum is payable;

D is the RPI Index as of the date of this Deed;

C/D is equal to or greater than 1.

12 VAT

12.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable.

12.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

13 DISPUTE PROVISIONS

13.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional

qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties to the dispute in equal shares.

13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor (or suitable person holding appropriate professional qualifications) to determine the dispute such solicitor or other person acting as an expert and his decision shall be final and binding on all parties to the dispute in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute in equal shares.

13.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) working days after the conclusion of any hearing that takes place or twenty-eight (28) working days after he has received any file or written representation.

13.4 The expert shall be required to give notice to each of the said parties to the dispute requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten (10) working days.

14 CHANGES IN OWNERSHIP OF THE SITE

The Owner shall give the County Council within ten (10) Working Days written notice quoting reference DC/22/3748/FUL of any change in ownership of their freehold interest in the Site or of any other disposal of any part of the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not)

together with the area of the Site purchased by reference to a plan save that this requirement shall not apply to any such disposals to individual Dwelling purchasers or disposals of any part of the Site to a statutory undertaker.

15 NOTICES

The Owner covenants to inform the County Council by way of written notice within fourteen (14) Working Days following:

- (i) Commencement of Development
- (ii) First Occupation of the first (1st) Dwelling;
- (iii) First Occupation of the eighth (8th) Dwelling;
- (iv) First Occupation of the final Dwelling.

16 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England.

17 FUTURE PERMISSIONS

17.1 Nothing in this agreement shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

17.2 In the event that any new planning applications are made in respect of the Development pursuant to section 73 of the Act then with effect from the date that such new planning permission is granted pursuant to section 73 of the Act:

17.2.1 the obligations in this Deed shall in addition to binding the Site in respect of the Planning Permission relate to and bind the Site in respect of any planning permission granted pursuant to Section 73 of the Act; and

17.2.2 the definitions of Application and Planning Permission shall be assumed to include references to any applications under section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any applications under section 73 of the Act and the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the Act whether by way of a new deed or supplemental deed pursuant to section 106 of the Act or a modification pursuant to section 106A of the Act.

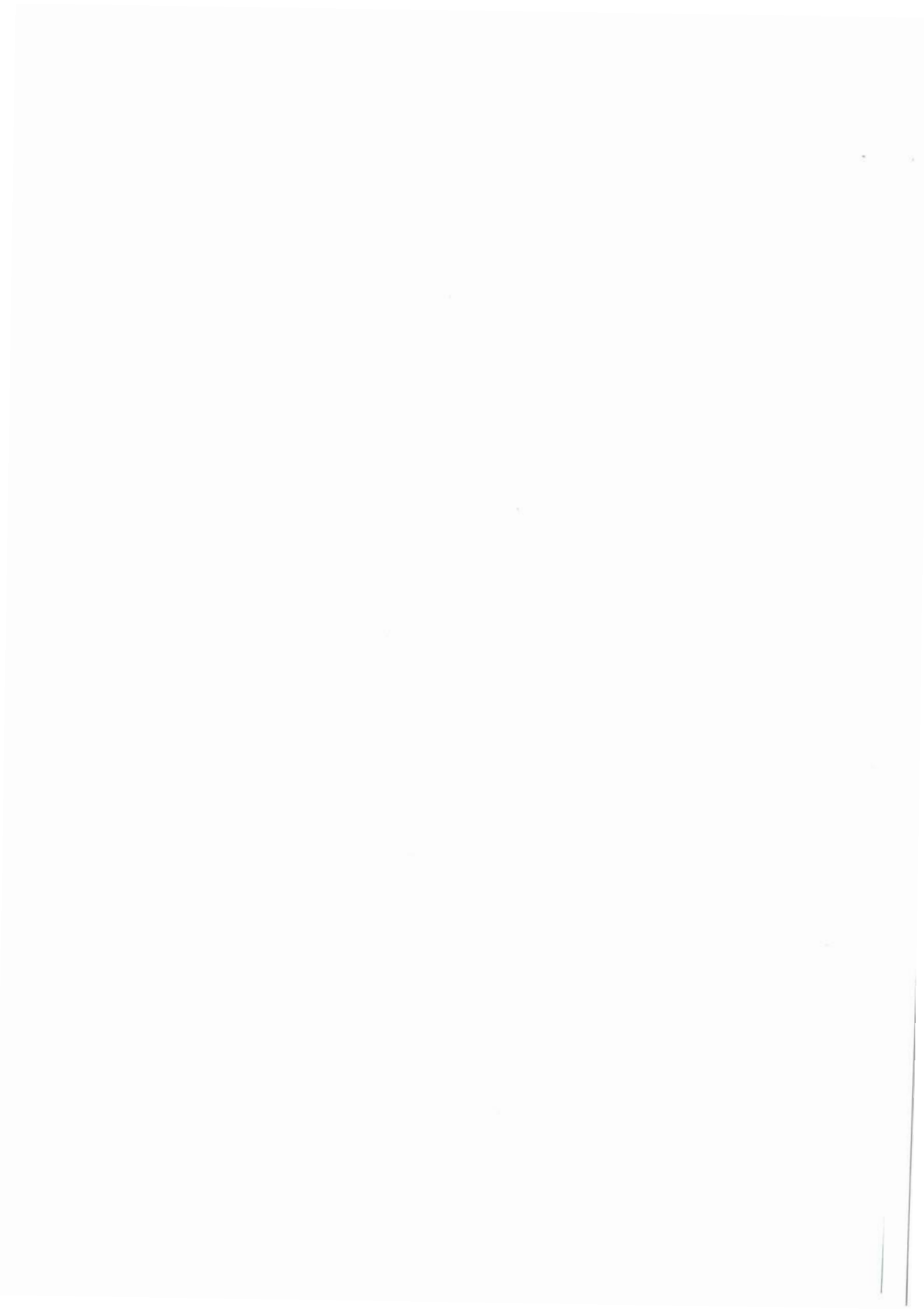
18 DELIVERY

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.

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

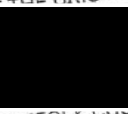
FIRST SCHEDULE

Location Plan





I HEREBY CERTIFY THIS DOCUMENT TO BE A TRUE COPY OF THE ORIGINAL


 JONATHAN LOCKINGTON
 LAWYER

SUFFOLK COUNTY COUNCIL
 ENDEAVOUR HOUSE, 8 RUSSELL ROAD
 IPSWICH IP1 2BX
 DATED 5 DECEMBER 2024

Issued for:

PLANNING


Project/Client: Proposed Residential Development
 Land off Keightley Way
 Tuddenham
 (Bennett Homes)

Project No: 0445

Dwg No: 1000 Rev: -

Scale: 1:1250@A3

Drawing: Site Location Plan

North: 

Drawn By: PJA Date: 06/2022

Checked By: PJA Date: 06/2022



SECOND SCHEDULE

The Owner's Covenants with the County Council

The Owner hereby covenants with the County Council as follows (unless otherwise agreed in writing by the Owner and the County Council):

1 Primary School Transport Contribution

- 1.1 To pay the Primary School Transport Contribution to the County Council in a single lump sum payment prior to the Occupation of more than 8 (eight) Dwellings.
- 1.2 Not to Occupy more than 8 (eight) Dwellings on the Development or allow the Occupation of the 9th (ninth) Dwelling on the Development until the Primary School Transport Contribution has been paid to the County Council.

2 Secondary School Transport Contribution

- 2.1 To pay the Secondary School Transport Contribution to the County Council in a single lump sum payment prior to the Occupation of more than 8 (eight) Dwellings.
- 2.2 Not to Occupy more than 8 (eight) Dwellings on the Development or allow the Occupation of the 9th (ninth) Dwelling on the Development until the Secondary School Transport Contribution has been paid to the County Council.

THIRD SCHEDULE

The County Council's Covenants

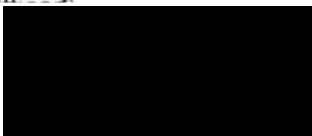
The County Council hereby covenants with the Owner as follows:

1. The County Council shall provide written confirmation of the discharge of the obligations contained in this Deed on written request to the Owner when satisfied that such obligations have been performed.
2. The County Council covenants with the Owner that it shall apply the Primary School Transport Contribution and the Secondary School Transport Contribution paid to the County Council solely towards the purposes specified in this Deed.
3. If requested to do so in writing after the expiry of ten (10) years from the date the final Dwelling is first Occupied within a further period of one (1) year to pay within one month of such request to the Owner such amount of the Primary School Transport Contribution and the Secondary School Transport Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate, compounding annually at financial year end.

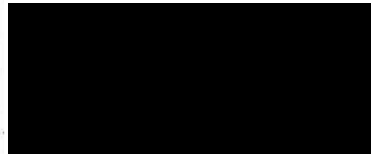
THE COMMON SEAL of)
SUFFOLK COUNTY COUNCIL)
was hereunto affixed to this)
Deed in the presence of:)



Authorised Officer



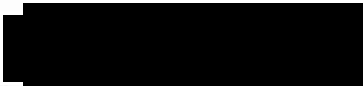
Executed as a deed by)
BENNETT PLC)
acting by a director)



.....
Director

in the presence of:

Signature of Witness, _____



Name (in BLOCK CAPITALS): *BETHANY BOUCHER*

Address **HOWES PERCIVAL LLP**
FLINT BUILDINGS
1 BEDDING LANE
NORWICH NR3 1RG

I HEREBY CERTIFY THIS DOCUMENT TO BE A TRUE COPY
OF THE ORIGINAL
[Redacted]
BY *BERNARD JONATHAN LOCKINGTON*
SUFFOLK COUNTY COUNCIL
ENDEAVOUR HOUSE, 8 RUSSELL ROAD
IPSWICH IP1 2BX
DATED *5 DECEMBER* 20*24*
LAWYER