

Dated 15th February 2022

THE COUNCIL OF THE CITY OF MANCHESTER

- and -

BRUNSWICK LIVING LTD

AGREEMENT

pursuant to Section 106 Town and Country Planning Act 1990
relating to land on the north west side of Brunswick Street
in the City of Manchester

City Solicitor
Manchester City Council
P O Box 532
Town Hall
Albert Square
Manchester M60 2LA

L/BH/EVD3001/3894

THIS AGREEMENT is made the *15th* day of *February 2022*
BETWEEN THE COUNCIL OF THE CITY OF MANCHESTER of Town Hall, Albert Square, Manchester ("the Council") of the first part and BRUNSWICK LIVING LTD (company registration number 09810366) whose registered office is situated at 452 Chester Road, Old Trafford, Manchester, M16 9HD ("the Owner" which expression shall include the successors in title and assigns of the Owner) of the second part

WHEREAS

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated and is minded to grant the Planning Permission subject to the completion of this Agreement
- 2 The Owner is the registered proprietor with title absolute of the freehold of the Land registered under title number LA383448 at the Land Registry
- 3 The Owner has submitted the Application to the Council and the Owner and the Council have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement
- 4 The planning purpose of this Agreement is to improve the amenity of land in the locality of the Land with benefit for occupiers of the Development and to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations The Council is satisfied that the obligations in this Agreement are;
 - (a) necessary to make the Development acceptable in planning terms (including where appropriate, obligations necessary to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations),
 - (b) directly related to the Development; and
 - (c) fairly and reasonably related in scale and kind to the Development and in any event will secure other planning benefits
- 5 The Council has determined that the Development in order to comply with the Core Strategy will support the payment of £318,234 (three hundred and eighteen thousand two hundred and thirty four pounds) as an Affordable Housing Contribution (as defined herein). However, the Owner has stated that there are

viability issues affecting the development of the Land and has submitted to the Council documentation in support of this contention. The Council accepts that at the date of this Agreement the implementation of the Development is not viable if the Affordable Housing Contribution is required to be paid. The Council will subject to the provisions contained in this Agreement in respect of any possible Viability Payment accept just the Contribution (as defined herein) on the basis of the information contained in the documentation relating to viability submitted by the Owner to the Council. The Owner will pay the Contribution in accordance with the provisions of this Agreement and will submit the Viability Appraisal and pay any Viability Payment found to be due in accordance with the provisions contained in this Agreement.

NOW THIS DEED WITNESSETH as follows:

- 1 In this Agreement unless the context otherwise requires the following words and expressions and phrases shall have the meanings hereby ascribed to them

“Above Ground Works” shall mean the erection of the steel frame comprised in the apartment building the construction of which is being permitted by the Planning Permission

“Act” shall mean the Town and Country Planning Act 1990 (as amended)

“Actual Land Value” means the actual purchase price paid for the Land as evidenced to the reasonable satisfaction of the Council;

“Administrative Boundaries of Manchester” all the wards that together comprise the city of Manchester;

“Affordable Housing” affordable housing as defined in the NPPF that will be available to persons who cannot afford to rent or buy housing generally available on the open market,

“Affordable Housing Contribution” shall mean the sum of £318,234 (three hundred and eighteen thousand two hundred and thirty four pounds) together with any Inflation Increase payable as a contribution towards the provision of Affordable Housing within the Administrative Boundaries of Manchester in accordance with

policy PA1 of the Core Strategy. This represents a sum that is a monetary equivalent to the cost of providing 20% of the Dwellings as Affordable Housing,

“Agreed Land Value” means the lower of i) the Benchmark Land Value or ii) the Actual Land Value,

“Agreed Stamp Duty” means the stamp duty land tax (the "SDLT") that has been paid in respect of the acquisition of the Land or if lower the SDLT that would have been paid if the SDLT had been applied on the basis of the Benchmark Land Value,

“Agreement” shall mean this agreement

“All in Build Costs” means the total costs relating to the building of the Development from the Commencement of Development up until the Calculation Date;

“Application” shall mean the application for planning permission received by the Council under reference number 131240/FO/2021

“Benchmark Land Value” shall mean the agreed fixed land value of the land upon which the Development is to take place as set out in Clause 31.1 of this Agreement,

“Calculation Date” for the Viability Appraisal shall be either i) the date upon which Completion of 75% of the Dwellings has occurred or ii) the date that is exactly 18 months after the date of Commencement, whichever shall occur earlier;

“Chartered Surveyor” a professional expert who is a chartered member of the Royal Institution of Chartered Surveyors with a minimum of ten (10) years post-qualification experience;

“Commencement Date” shall:

(a) in respect of the Development mean the date upon which the Development is commenced by the carrying out of a material operation as defined in section 56 of the Act, and **“Commence Development”**, **“Commencement”** and **“Commencement of Development”** shall have the corresponding meaning

(b) in respect of the Above Ground Works mean the date upon which the carrying out of the Above Ground Works is commenced, and “Commencement” and “Commenced” shall have the corresponding meaning

“Commencement Notice” means written notice given by the Owner to the Council within 14 days of Commencement of Development stating that Commencement of Development has taken place and specifying the date of Commencement

“Completion of Construction” the date upon which a valid certificate of completion shall have been issued in respect of the relevant number of Dwellings referred to in the Schedule for the purposes of the Building Act 1984 and the Building Regulations 2010 or any amendment or replacement of the same or, if the Council, acting reasonably, considers that the completion of construction of the relevant number of Dwellings has occurred but it has not received the notice confirming completion in accordance with the provisions of this Agreement shall mean the date that the Council notifies in writing to the Owner that the said completion of construction is to be deemed to have taken place for the purposes of this Agreement and **“Completed”** and **“Completion”** shall be construed accordingly

“Contribution” shall mean a contribution of £10,000 (ten thousand pounds) for the purpose of all or any of the cost relating to the Residents Parking Scheme of

- (a) implementing a traffic regulation order,
- (b) putting in place associated signs and highway lining;
- (c) administration;

and for the purpose of any costs and expenses in connection with or incidental to the same

“Core Strategy” means the Manchester Core Strategy (adopted 11th July 2012) which is the key document in the Council's Local Development Framework and details the Council's vision for the development of Manchester during the period 2012 to 2027,

“Costs” means the costs to be taken into account for the purpose of the Viability Appraisal as defined in paragraph 012 (reference: 10-012-20180724) of the section of the NPPG headed “Viability” as the same may be amended or any replacement thereof. In addition the Council will accept in the calculation of Costs:

1. the actual costs Reasonably and Properly Incurred in relation to the Development prior to and up until the time of submission of the Viability Appraisal; and
2. the estimated costs that remain to be Reasonably and Properly Incurred in completing the Development and such details shall be included in the Viability Appraisal,
provided always in the case of (i) and (ii) of this definition that any such actual or estimated costs are amongst those detailed or referred to in paragraph 012 of the NPPG section headed “Viability”

“Development” shall mean the development of the Land pursuant to the Planning Permission and substantially comprising the erection of a six storey building comprising 16 (sixteen) Dwellings and associated works, including boundary treatments

“Director” the Council's Director of Planning, Building Control and Licensing;

“Disposal” any of the following in respect of any Dwelling:

- (a) the completion on an arm's length basis of the sale or disposition of the freehold interest in any Dwelling, or
- (b) the grant on an arm's length basis of a lease for a term of 99 years or more whether or not a rent of more than nominal value is reserved;

and **“Disposed Of”** and **“Disposals”** shall be construed accordingly

“Dwelling” a unit of accommodation to be constructed on the Land as part of any of the Developments pursuant to any of the Planning Permissions and **“Dwellings”** shall be construed accordingly

“Expert” a professional expert in town planning, who is a Chartered Member of the Royal Town Planning Institute with a minimum of ten (10) years post-qualification experience,

“FVA” the VA once it includes as part of the VA any documentation in accordance with the provisions of this Agreement that the Council, acting reasonably, may in writing request be provided as part of the VA in order to assist the Council when reviewing the VA,

“Finance Cost” means those costs which the Owner has Reasonably and Properly Incurred as a result of financing the Application and Development providing always that those costs shall not exceed seven (7) per cent above the Bank of England base rate as at the date of the Baseline Viability Assessment.

“Finance Costs” will be construed accordingly,

“First Development” shall mean the development of the Land pursuant to the First Planning Permission and substantially comprising the erection of a five storey apartment building comprising 16 (sixteen) residential dwellings with new front boundary treatment and associated works

“First Planning Agreement” shall mean a Deed of Variation of the Planning Agreement relating to the Land made pursuant to s106 and s106A of the Act and dated 12 January 2018 and made between the Council (1) and the Owner (2)

“First Planning Permission” shall mean full planning permission under the Act for the First Development granted under reference 115475/FO/2017 on 26 July 2017

“GDV” Subject to the Proviso contained in this definition when calculating the cumulative total GDV arising from the Development:

- (a) in respect of Dwellings Disposed Of prior to the Preparation Date the Council will accept as the calculation of GDV in respect of those Dwellings the actual monies received from a Disposal of each Dwelling Disposed Of;
- (b) in respect of Dwellings which have not been Disposed Of prior to the Preparation Date the GDV shall be the highest figure of:

- (i) the gross development value as defined in paragraph 011 (reference: 10-011-20180724) of the Viability Section of the NPPG as the same may be amended or any replacement thereof, or
- (ii) in respect of any Dwellings not Disposed Of but that have been sold subject to contract then the subject to contract price agreed for those Dwellings, or
- (iii) for Dwellings not yet Disposed Of or sold subject to contract their advertised price as detailed in advertisements made as part of any sales and marketing strategy in respect of them and if more than one price for a Dwelling has been advertised shall mean the price as advertised in the advertisements issued closest to the Preparation Date;
- (c) in respect of Dwellings that are Let the Council will accept as part of the calculation of GDV their Market Value, and
- (d) in addition to any of the above calculations of GDV in (a), (b) and (c) above that may apply the GDV of the Development shall include not by way of limitation any income not already included in the calculations of GDV in (a), (b) and (c) above that will be derived from the Development in addition to income from Disposals and Lets for example
 - (i) in the form of ground rents or from the renting of car parking spaces,
 - (ii) the actual revenue from the disposal of the Land or any part of the Land;
 - (iii) the Market Value of the Land, excluding the Dwellings but for the avoidance of doubt shall include the Market Value of any freehold and leasehold reversion of the Dwellings and the Market Value of any part of Development that has a non-residential use and the Market Value of any part of the Land not forming part of the Development,
 - (iv) the value of any Grant Funding or Public Subsidy received in respect of the Development

(v) any receipts (which shall include any rental income but not any service charge or other repayment against costs) or Market Value of any other interest in the Land not already referred to in this sub clause (d) or included in the calculations of GDV in (a), (b) and (c) above

Provided That where in the opinion of the Council a Dwelling has not been Disposed Of at or greater than its Market Value or for a Dwelling not yet Disposed Of or sold subject to contract the advertised price for a Dwelling in respect of a Dwelling not yet Disposed Of as detailed in advertisements made as part of any sales and marketing strategy is in the opinion of the Council not greater than its Market Value then the Council may opt in writing to substitute the Market Value of the said Dwelling concerned in place of the actual monies received or if applicable in place of its advertised price and **“Gross Development Value”** shall be construed accordingly,

“Grant Funding or Public Subsidy” means any funds received towards the funding of the Development from public bodies, for example, not by way of limitation, local authorities, central government and bodies funded by central government, for example, the HCA or the Regulator of Social Housing,

“Gross Margin” the figure after deducting the Costs from the GDV as more particularly detailed in the Viability Appraisal,

“Inflation” shall mean the number of the General Index of Retail Prices (All Items) for the specified month produced by the Office for National Statistics (or contained in any official publication substituted therefor) or such other index as may from time to time be published in substitution therefor

“Inflation Increase” shall mean the amount calculated by way of the formula contained in clause 13 of this Agreement

“Interest” interest at 4% (four per cent) above the base lending rate of the Bank of England from time to time

“Land” shall mean the land against which this Agreement by Deed may be enforced and being all that land on the north west side of Brunswick Street, Manchester as shown edged red on the attached plan

“Let” shall mean any Dwelling let by way of lease for a term of less than 99 years or Assured Shorthold Tenancy, Assured Tenancy or any other form of tenancy for a term of less than 99 years and **“Lets”** shall be construed accordingly;

“Management Fee” shall mean 15% of the planning application fee to be used for the purpose of management and monitoring of this Agreement and the Planning Obligations contained herein

“Market Value” the market value as defined in the RICS Valuation – Global Standards (the “Document”), Incorporating the IVSC International Valuation Standards, published in 2019 by the Royal Institution of Chartered Surveyors (RICS) effective on 31 January 2020 and set out on pages 55 to 56 of the section headed VPS4 in Part 4 of the Document or any replacement, update or amendment of the same from time to time save in respect of any Dwellings that are Let or any part of the Development that has a non-residential use or any other part of the Land not forming part of the Development where the Council will (acting reasonably) accept the Market Value as determined by the application of an investment valuation method using an appropriate capitalisation factor to the market rental income for each let unit and **“MV”** shall be construed accordingly,

“NPPF” the National Planning Policy Framework (NPPF) issued on 1 September 2019 and revised on 20 July 2021 (as may be updated or replaced with an equivalent policy from time to time) being the framework setting out the Government’s planning policies for England and how these are expected to be applied as may be amended or any replacement of the same;

“National Planning Practice Guidance” the web based resource revised in respect of its section on viability on 1 September 2019 as the same may be further revised or amended or any replacement of the same which resource is provided by the government of the United Kingdom and brings together in one place

planning guidance on various planning related topics and “**NPPG**” shall be construed accordingly;

“**Occupation**” means occupation of any part of any of the Development for the purposes permitted by the Planning Permission but does not include use by personnel whilst engaged in construction, fitting out or decoration of the Dwellings or occupation for marketing or display or occupation in relation to security operations and “**Occupy**” and “**Occupied**” shall be construed accordingly,

“**Planning Agreement**” shall mean a planning agreement relating to the Land dated 26 July 2017 made pursuant to Section 106 of the Act and made between the Council (1) and the Owner (2)

“**Planning Obligations**” shall mean the obligations of the Owner specified in Schedule 1 to this Agreement

“**Planning Permission**” shall mean full planning permission under the Act for the Development to be granted pursuant to the Application

“**Preparation Date**” means the date by which in accordance with the provisions of this Agreement the Viability Appraisal is prepared and completed,

“**Profit Level**” means when the Gross Margin is equivalent to 20% of the GDV,

“**Reasonably and Properly Incurred**” shall mean in respect of costs incurred in developing the Land and the adjacent land and in respect of Sales Incentives only those costs that a competent and reputable developer of land would reasonably expect to incur,

“**Residents Parking Scheme**” shall mean a scheme to assist residents of homes within the Development and of homes within the vicinity of the Land to park their vehicles within the vicinity of their homes directed at mitigating the on street parking problems within the Land and in the vicinity of the Land that will result from the proposed Development

“**RICS**” the Royal Institution of Chartered Surveyors,

“**Sales Incentives**” means costs Reasonably and Properly Incurred by the the Owner in order to incentivise the purchase of a Dwelling by a person

Intending to Occupy the Dwelling,

“Sales and Marketing Costs” means the Reasonably and Properly Incurred costs relating to the sale and marketing of part or all of the Development provided always that those costs shall not exceed three (3) per cent of the GDV,

“Second Development” shall mean the variation of the condition numbered 2 (Approved Drawings) of the First Planning Permission in order to allow revisions to the internal layout and elevations of a 5-storey residential block comprising 16 apartments

“Second Planning Agreement” shall mean a Deed of Variation of the First Planning Agreement relating to the Land made pursuant to s106 and s106A of the Act and dated 9 April 2021 and made between the Council (1) and the Owner (2)

“Second Planning Permission” shall mean full planning permission under the Act for the Second Development granted under reference 117726/JO/2017 on 12 January 2018

“Stakeholder” shall mean the Council’s City Treasurer and his authorised officers

“Stakeholder Account” shall mean an account held by the Council’s City Treasurer and his authorised officers at Barclays Bank plc in which the monies paid under the Planning Obligations are held,

“Tax Relief” means any tax concession or relief provided only in relation to the Development and the construction of the same excluding any tax concessions or relief (including but not limited to Contaminated Land Tax Relief or its replacement) granted as a result of any remediation of contamination or anything similar on the Land,

“Third Development” shall mean the development of the Land pursuant to the Planning Permission and substantially comprising the variation of conditions 11 (drainage verification), 12 (waste management), 15 (acoustic insulation) and 16 (external equipment) attached to the Second Planning Permission in order to allow alterations to the timescales for submission of information

“Third Planning Permission” shall mean full planning permission under the Act for the Third Development granted under reference 126651/JO/2020 on 9 April 2021

Viability Appraisal a written appraisal to assess the Gross Margin required to be provided on the Calculation Date in accordance with the provisions of Schedule 1 of this Agreement. The format of the Viability Appraisal shall take the form of the Viability Report detailed in Schedule 3 and “VA” shall be construed accordingly. The VA must include as part of the VA any documentation the Council, acting reasonably, may in writing request be provided as part of it in order to assist the Council when reviewing the VA. The VA must comply with the requirements set out in paragraphs 2.1 to 2.14 of the RICS Professional Statement, first edition, issued in May 2019 and effective from 1/9/2019 titled “Financial viability in planning conduct and reporting” which requirements set out what must be included in the VA and how the VA must be carried out,

“Viability Assessment Fee” a fee of £145 (one hundred and forty five pounds) plus VAT per hour to cover the cost of the Council’s review of the Viability Appraisal by a member of the RICS in order to determine whether and the extent to which the Development can support a requirement to provide a Viability Payment,

“Viability Payment” a payment required to be made by the Owner to the Council if the Viability Appraisal shows that the Profit Level as assessed will be achieved and will be the amount by which the Gross Margin exceeds the Profit Level PROVIDED THAT the Viability Payment shall be required to be no more than the amount that is needed in order to equal the Affordable Housing Contribution (not including any Inflation Increase addition to the Affordable Housing Contribution). The Viability Payment will be payable within the timescale set out in the provisions contained in Schedule 1,

“Viability Report” the form in Schedule 3 setting out the required inputs for the Viability Appraisal and the percentage values that are to be applied to various inputs as detailed in Schedule 3

“Working Day” means any day except Saturday, Sunday or a bank holiday and reference to **“Working Days”** shall be construed accordingly

- 2 A reference in this Agreement to an act of Parliament or to any order, regulation, statutory instrument or the like shall include a reference to any amendment or re-enactment of the same.
- 3 Words importing the masculine gender include the feminine gender and vice versa and words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa
- 4 Any headings or side notes are for ease of reference only and shall not affect the construction of this Agreement.
- 5 Where in this Agreement 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 Agreement
- 6 If any party to this Agreement comprises more than one party then that party shall be jointly and severally liable under this Agreement
- 7 Words denoting an obligation on a party to this Agreement to do any act matter or thing include an obligation to procure that it be done and words placing a party to this Agreement under a restriction include an obligation not to permit or allow infringement of that restriction
- 8 This Agreement is made in pursuance of Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other powers and enactments which may give validity hereto and facilitate the enforcement of the obligations and provisions herein contained.
- 9 The Owner consents to its interest in the Land being bound by this Agreement and covenants with the Council in the terms set out in Schedule 1 to this Agreement, those covenants being planning obligations under section 106 of the Act and enforceable by the Council
- 10 The Owner covenants with the Council to pay to the Council on the date hereof
10 1 such sum as notified in respect of the Council's legal costs in connection with this Agreement. Receipt by the Council of the payment of such sum shall not create any lawyer-client type contractual relationship between the Council and the Owner nor absolve the Owner from any liability or obligation imposed upon it by the terms of this Agreement or by statute or at common law,

10.2 the payment of £84.80 in lieu of the Management Fee,

10.3 The Owner covenants to pay to the Council the Viability Assessment Fee within 10 (ten) Working Days of their receipt from the Council of an invoice detailing the amount

- 11 The Management Fee is £1108.80 (eleven hundred and eight pounds and eighty pence) A management fee of £924 has been paid to the Council pursuant to a covenant contained in the Planning Agreement relating to development of the Land In consideration of the management fee received pursuant to the Planning Agreement and of the agreement of the Owner set out in the following sentence the Council agrees to accept the payment of £84 80 (eighty four pounds and eighty pence) in lieu of the Management Fee being the balance of the Management Fee after taking into account the management fee received pursuant to the Planning Agreement The Owner agrees to pay to the Council on the date hereof the sum of £84 80 (eighty four pounds and eighty pence) in lieu of the Management Fee and that the Council may apply the Management Fee for the purpose of the management and monitoring of the planning obligations contained in this Agreement or the Planning Agreement
- 12 The Council covenants with the Owner to issue the Planning Permission on the date hereof and to observe and perform the obligations on its part in this Agreement including those set out in Schedule 2
- 13 The Inflation Increase payable under the Planning Obligations shall be increased by the application of the formula $A = B \times (C / D)$ provided that (C / D) shall always be greater than or equal to 1 and with the following definitions.
- A is the sum calculated
- (1) on the date as determined by the application of paragraph 4 1 of Schedule 1 and
 - (2) on the date as determined by the application of paragraph 4 2 of Schedule 1
 - (3) on the date as determined by the application of paragraph 6.2 of Schedule 1

- (4) B is in respect of (1) above £5,000 (five thousand pounds) and is in respect of (2) above £5,000 (five thousand pounds) and in respect of (3) above is the Viability Payment
- (5) C is in respect of (1) above 'Inflation as shown in the relevant index published last before the date as determined by the application of paragraph 4 1 of Schedule 1 and is in respect of (2) above Inflation as shown in the relevant index published last before the date as determined by the application of paragraph 4 2 of Schedule 1 and is in respect of (3) above Inflation as shown in the relevant index published last before the date as determined by the application of paragraph 6 2 of Schedule 1
- (6) D is Inflation for the month in which this Deed is dated, and on each of the dates determined by the application of paragraphs 4.1, 4 2 and 6 1 of Schedule 1 the Inflation Increase will be equal to A minus B calculated using the definitions contained in this clause
- 14 Nothing herein contained or implied shall prejudice or affect the rights, powers, duties and obligations of the Council in exercise of its functions as a local authority and the rights, powers, duties and obligations of the Council under all public and private statutes, byelaws, orders and regulations may be fully and effectually exercised in relation to the Land or any part thereof and any works executed thereon as if this Agreement had not been executed by the Council and in particular nothing in this Agreement shall restrict the Council and any other authority from exercising powers of compulsory purchase in respect of any part of the Land.
- 15 No failure or delay by the Council to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
16. In respect of the sums payable by the Owner to the Council under the Planning Obligations, the Council covenants with the Owner
- 16 1 to pay such sums into the Stakeholder Account and hold such sums therein until the withdrawal of such sums as may be required for the purposes specified in the Planning Obligations

16 2 to use such sums withdrawn from the Stakeholder Account solely and exclusively for the purposes specified in the Planning Obligations

16 3 to repay to the Owner (here meaning the party or parties who shall have actually paid such sum) such amount of the sums which have not been expended excluding any such sums in respect of which though not yet expended the Council has contractually committed to expend in accordance with the provisions of this Agreement within 10 (ten) years of the Commencement Date or date of receipt by the Council of such payment (and where payment is made by instalments the date of receipt shall be deemed to be the date upon which the last instalment is received), whichever is the later, together with interest at the Bank of England base rate from time to time from the date of expiration of this ten year period (the "retention period") to the date of refund.

16.4 Upon receipt by the Council of a written request from the Owner received within the final year of the retention period to provide a written statement summarising what the sums received have been spent on and detailing any sums remaining unexpended within 21 days of the Councils receipt of such a request provided that the number of such requests shall not exceed four

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17.1 In the event of any dispute arising in connection with any of the terms of this Agreement other than a dispute involving the construction or interpretation of the terms of this Agreement or the enforcement of any decision pursuant to this Clause, the same shall unless the Council and the Owner otherwise agree be referred to an Expert or in relation to the Viability Appraisal to a Chartered Surveyor to be appointed by agreement between the Council and the Owner.

17 2 If the Council and the Owner are unable to agree on the appointment of an Expert or Chartered Surveyor within thirty (30) days of one party serving notice on the other calling for the appointment of an Expert or Chartered Surveyor then an Expert or Chartered Surveyor shall be appointed on the application of either party

to the President for the time being of the Royal Town Planning Institute or the Royal Institute of Chartered Surveyors as applicable

- 17 3 Any reference of a dispute to an Expert or Chartered Surveyor shall if the parties are agreed in writing be deemed to be a reference to an expert or chartered surveyor (and not to an arbitrator) whose decision shall be final and binding (save for manifest error) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and any statutory amendment variation substitution or re-enactment thereof.
- 17 4 Any party to this Agreement shall be entitled to submit to the Expert or Chartered Surveyor representations and cross-representations with such supporting evidence as they shall respectively consider necessary and the Expert or Chartered Surveyor shall have regard thereto in making his decision which shall be delivered in writing. The reference of any dispute shall include authority to determine in the relevant timescales for the submission of representations and what manner all the costs of the referral shall be paid
- 18 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law
- 19 If any provision of this Agreement shall be prohibited by or adjudged by a court to be unlawful, void or unenforceable such provision shall to the extent required be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances or the validity or enforcement of this Agreement
- 20 Any approval given by the Council under this Agreement or for the purposes of this Agreement shall not be deemed to be approval for any other purpose whatsoever
- 21 Nothing in this Agreement prohibits or limits the right to develop any part of the Land in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal

- 22 For the purpose of noting this Agreement on the title of the Owner registered under title number LA383448 at the Land Registry the Owner will on the date hereof provide the Council with a completed Form AN1 (or any replacement of this form) together with either a cheque made payable to the Land Registry to cover the requisite fee or alternatively with the Owner's solicitor's completed Land Registry account key number details inserted in the form The Council will arrange for the AN1 (or any replacement of this form) to be registered at the Land Registry and the Owner will supply the Council with a copy of the amended registers as soon as reasonably practicable following their receipt by the Owner from the Land Registry.
- 23 If any sum payable to the Council under the terms of this Agreement is not paid at the time specified herein the party responsible for making the payment shall pay to the Council interest on such sum calculated on a daily basis and compounded quarterly from the due date until payment at the rate of 4% per annum over Barclays Bank plc base rate from time to time in force and such amount shall be recoverable by action as a liquidated sum
- 24.1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the Planning Obligations under this Agreement 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 Land or unit of occupation purchased by reference to a plan;
- 24.2 The Owner warrants that no person other than the Owner has a legal or equitable interest in the Land and the Owner hereby indemnifies the Council in respect of any loss that arises should there be any breach of this warranty
- 25 No person shall be liable for any breach of any of the Planning Obligations after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 26.1 The Planning Agreement, First Planning Agreement and Second Planning Agreement each imposed a planning obligation on the Owner to pay to the Council the sum of £10,000 (ten thousand pounds) (the "First Contribution") together with any Inflation Increase for the purpose of meeting all or any of the cost relating to

the creation of a residents parking scheme such as implementing a traffic regulation order, putting in place associated signs and highway lining, administration, and for the purpose of any costs and expenses in connection with or incidental to the same,

26.2 The Council agrees that

26.2.1 if the Land is developed pursuant to the First Planning Permission or the Second Planning Permission or the Third Planning Permission and

26.2.2 the requirement for payment of the First Contribution secured by the Planning Agreement as varied by the First Planning Agreement is triggered, and

26.2.3 it receives the First Contribution together with any Inflation Increase pursuant to the planning obligation contained in the Planning Agreement or the First Planning Agreement or the Second Planning Agreement, then it will accept the First Contribution in lieu of the Contribution,

26.3 The Owner and the Council agree that the Council may apply any such First Contribution and Inflation Increase received for the purposes for which the Contribution may be applied

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

28 If any payment due under this Agreement is paid late Interest will be payable from the date payment is due to the date that payment is received

29 This Agreement shall be governed by and interpreted in accordance with the laws of England.

30 This Agreement is a local land charge and shall be registered as such by the Council.

31. The Owner and the Council agree that in respect of the preparation of any Viability Appraisal required to be submitted by the Owner in accordance with the provisions of this Agreement

31.1 the cost input when assessing the Agreed Land Value of the Land upon its acquisition by the Owner is to be fixed at either the Benchmark Land Value of £210,000

(two hundred and ten thousand pounds) or the Actual Land Value for the Land, whichever is the lower,

31.2 the Viability Appraisal will detail that the whole of the Development is the subject of the Viability Appraisal and will calculate the Gross Margin on that basis;

31.3 When it has received the Viability Appraisal the Council will provide the Owner with a written acknowledgement of service within 10 Working Days of the date that it receives the Viability Appraisal,

31.4 In the event that the Council considers that the Owner has not complied with or not fully complied with the provisions of Paragraph 5.1 and/or 5.2 of Schedule 2 it may refer the matter in dispute to the Chartered Surveyor, in accordance with the provisions of clause 17, with the Chartered Surveyor being requested that he/she should as soon as practicable issue a written determination as to whether the documentation in dispute is reasonably required to enable the Council to carry out its review of the VA and as to the content and form of that documentation that the Council can reasonably expect to receive which the parties agree will be final and binding upon them,

31.5 In the event that the Council shall have served a notice on the Owner pursuant to paragraph 5.3.2 of Schedule 2 the Owner and the Council shall use reasonable endeavours to reach agreement in respect of the VA, but if the Owner and the Council shall have failed to agree within 40 Working Days of the notice served by the Council pursuant to paragraph 5.3.2 of Schedule 2 (or such extended period agreed in writing by the parties), then the matter in dispute shall be referred to the Chartered Surveyor, in accordance with the provisions of clause 17, with the Chartered Surveyor being requested that he/she should as soon as practicable issue a written determination as to the matter in dispute and a written determination of the correct VA, which the parties agree will be final and binding upon them;

31.6 The VA not by way of limitation shall include and confirm the GDV and the Costs and the matters referred to in this Clause 31.1 and 31.2

- 32 All correspondence in connection with this Agreement shall be sent to the Council and addressed to the Director at the following address or such other address as may be notified from time to time Planning and Building Control Department, Ref 131240/FO/2021, Manchester City Council, PO Box 532, Town Hall, Manchester, M60 2LA

IN WITNESS whereof this Agreement has been executed as a deed in the manner hereinafter appearing and delivered the day and year first before written

SCHEDULE 1

THE PLANNING OBLIGATIONS

- The Owner covenants with the Council
- 1 to serve the Commencement Notice,
 - 2 to notify the Council within 5 Working Days of the date of Commencement of the Above Ground Works,
 - 3 to notify the Council within 5 Working Days of the date when Completion of Construction of 12 of the Dwellings has occurred,
 - 4.
 - 4 1 to pay to the Council £5000 (five thousand pounds) together with any Inflation Increase being half of the Contribution on the date of Commencement of the Above Ground Works and once the date of Commencement of the Above Ground Works has occurred not to carry out any further work on the Land until payment of that sum;
 - 4 2 to pay to the Council the further sum of £5,000 (five thousand pounds) together with any Inflation Increase being the balance of the Contribution on the date when Completion of Construction of 12 of the Dwellings has occurred and not to Occupy,

allow or permit Occupation of any of the Dwellings until payment of that further sum

5

5 1 Within 10 (ten) Working Days of the Calculation Date to provide the Council with a copy of the Viability Appraisal for possible agreement by the Council

5 2 If the Council should make a request pursuant to the provisions contained in Paragraph 5 1 and/or 5.2 of Schedule 2 then within 10 (ten) Working Days of the date of that request to provide the Council with written copies of the documentation or amended or supplementary documentation, whichever is applicable, requested

6 Viability Payment

6 1 In the event that the Viability Appraisal is agreed by the Council or determined pursuant to the provisions contained in Clause 31 5 and the information contained therein shows that in accordance with the provisions of this Agreement a Viability Payment is due then the Owner shall pay to the Council the Viability Payment together with any Inflation Increase in accordance with paragraph 6 2 of this Schedule 1

6 2 The Viability Payment together with any Inflation Increase shall be paid by the Owner to the Council within 20 (twenty) Working Days of the agreement by the Council of the Viability Appraisal or if applicable within 20 (twenty) Working Days of the Viability Appraisal being determined pursuant to the provisions contained in Clause 31 5

6 3 In the event that the information contained in the Viability Appraisal (as agreed by the Council or determined pursuant to the provisions of Clause 31.5) shows that a Viability Payment is not due then it is agreed by the Council that the Viability Payment shall not be payable and the obligation in this paragraph 6 of this Schedule 1 shall cease to bind the Land.

SCHEDULE 2

The COUNCIL'S COVENANTS

The Council hereby covenants with the Owner as follows:

- 1 1 To use any Affordable Housing Contribution for the provision of Affordable Housing within the Administrative Boundaries of Manchester and for no other purpose,
- 1 2 To use the Contribution for the purposes set out in the definition of 'Contribution' in this Agreement,
- 2 At the written request of the Owner to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed within twenty (20) Working Days of receipt of the request,
- 3 that the Council shall provide written details of any expenditure incurred by the Council using the Contribution and any Viability Payment received within 20 Working Days of a written request to do so from the party/person who paid the Contribution and any Viability Payment to the Council,
- 4 that at the written request of the Owner the Council shall repay to the person who first paid such monies any balance of the Contribution and of any Viability Payment received (excluding any such sums in respect of which though not yet expended the Council has contractually committed to expend) which remains unexpended 10 (ten) years from the date of payment of the Contribution or of any Viability Payment received or in the case of monies allocated to maintenance 10 (ten) years from such date or dates together with all interest accrued thereon;
- 5 that
- 5 1 Within 10 (ten) Working Days of its receipt of the VA (or such extended period agreed in writing by the parties) the Council shall (acting reasonably) give written notice to the Owner detailing any further documentation that the Owner must provide in writing to the Council before the VA can be accepted by the Council as the FVA
- 5 2 Within 30 (thirty) Working Days of its receipt of the documentation referred to in paragraph 5 1 of this Schedule (or such extended period agreed in writing by the parties) the Council shall give written notice to the Owner either confirming it

accepts that the VA is in FVA form or requesting amended or supplementary documentation to enable it carry out its review of the VA;

Provided that in the event that the Council considers that the Owner has not complied with or not fully complied with the provisions of Paragraph 5.1 and/or 5.2 of this Schedule 2 then it may refer the matter in dispute to the Chartered Surveyor, in accordance with the provisions of clause 17, with the Chartered Surveyor being requested that he/she should as soon as practicable issue a written determination as to whether the documentation in dispute is reasonably required to enable the Council to carry out its review of the VA and as to the content and form of that documentation that the Council can reasonably expect to receive which the parties agree will be final and binding upon them.

5.3 Once the Council has accepted that the VA is in FVA form it will notify the Owner of that fact in writing and shall within 20 (twenty) Working Days of that date (or such extended period agreed in writing by the parties), give written notice to the Owner either:-

5.3.1 stating that it accepts the FVA, or

5.3.2 correcting or challenging any of the amounts or conclusions included in the FVA and giving details of the disputed amounts or conclusions.

SCHEDULE 3

Land on the north west side of Brunswick Street, Manchester

Open Market Gross Development Value (GDV) £

Open Market Net Development Value (NDV) = GDV less Sales Incentives £

Profit Level – based upon 20 % of GDV of Open Market Value
--

£

All in build cost – [Includes - House Build (Superstructure), Plot Costs (Incl Substructure), Infrastructure, Overheads and Prelims]	£
Schedule of abnormals TBA	£
Contingency on build costs and abnormals TBA	£
Professional fees on build costs and abnormals TBA	£
Sales and Marketing Costs TBA	£
Agreed planning stage Section 106 commuted sum	£10,000
Finance cost of TBA	£
Interest cost on Deposits - TBA	£
Tax Relief - TBA	£
Agreed Land Value (The Lower of 1) Benchmark Land Value set at Planning Consent Stage of £210,000 or 2) Actual Land Value – to be evidenced)	£
Agreed Stamp Duty @ 4%	
Agreed Land Legal & Agents Fees @ 1% of Land Value	
TOTAL COSTS	
Surplus = NDV - Costs	
VIABILITY PAYMENT –	

NB – Viability Payment Cannot Exceed the Affordable Housing Contribution

THE COMMON SEAL of THE COUNCIL OF THE
CITY OF MANCHESTER was hereunto affixed in
pursuance of an Order of the Council of the said City:



01113930

Authorised Signatory

EXECUTED AS A DEED by BRUNSWICK LIVING LTD
acting by a director

DIRECTOR

Signature:

Name: (in block capitals)

SHEHZAD ANWAR CHAUDHRY

IN THE PRESENCE OF

Signature:

Name (in block capitals)

MATTHEW BROWN

Address

Versus Law Ltd
Mercantile House
10 Lapwing Lane
West Didsbury
Manchester M20 2WS
Tel: 0845 555 0606

Occupation

SOLICITOR

H. M. LAND REGISTRY

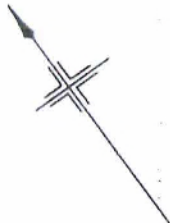
NATIONAL GRID PLAN
(MANCHESTER)

SJ 8597

SECTION P

Scale 1/1250

CITY OF MANCHESTER



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TITLE No **LA 383448**

H. M. LAND REGISTRY

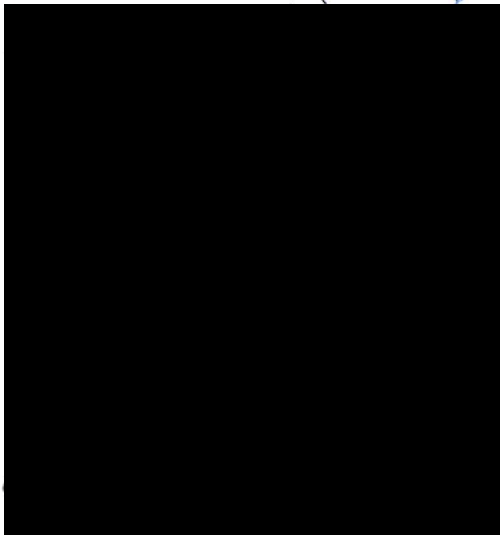
NATIONAL GRID PLAN
(MANCHESTER)

SJ 8597

SECTION P

Scale 1/1250

CITY OF MANCHESTER



SJ8597 SW
SJ8596 NW

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