

DATED

2025

THE COUNCIL OF THE CITY OF MANCHESTER

- and –

WQ DEVELOPMENTS LIMITED

AGREEMENT

**pursuant to section 106 of the Town and
Country Planning Act 1990 (as amended)
relating to Land known as Plot D, Great Jackson Street
Manchester, M15 4NP**

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

THIS AGREEMENT is made the

day of

2025

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF MANCHESTER** of Town Hall, Albert Square, Manchester, M60 2LA (the “**Council**”); and
- (2) **WQ DEVELOPMENTS LIMITED** (incorporated in England with company number 09766196) whose registered office is at 1st Floor NQ Building, 47 Bengal Street, Manchester M4 6BB (the “**Owner**”).

BACKGROUND

- A The Council is the local planning authority for the purposes of the Act in relation to the Site and is the authority by whom the obligations hereby created are enforceable.
- B The Owner is the leasehold owner of the Site registered at the Land Registry with title absolute under title number GM514485 together with but subject to all matters contained or referred to in the title register thereunder. The Council is the owner of the freehold of the Site but is not entering into the Planning Obligations (as defined herein).
- C The Owner proposes to carry out the Development on the Site which is situated within the Administrative Boundaries of Manchester and the Application was submitted to the Council for planning permission to carry out the Development in the manner set out in the plans, specifications and particulars forming part of the Application.
- D The Council as local planning authority is satisfied that the Development is such as may be approved by the Council under the Act and is minded to grant planning permission for the Development in accordance with the Application but having considered the Local Plan and the Regulations is desirous of the Owner entering into this Agreement without which the Planning Permission would not be granted.
- E The Owner has agreed to enter into this Agreement in support of the Application so as to create planning obligations in favour of the Council pursuant to section 106 of the Act and to be bound by and observe and perform the covenants hereinafter contained.
- F The Council has determined that the Development in order to comply with the Core Strategy should provide a payment of £33,200,461 (thirty three million two hundred and thousand four hundred and sixty one pounds) Index Linked being the Maximum Contribution towards the provision of Affordable Housing within the Administrative Boundaries of Manchester (the “**Affordable Housing Contribution**”).
- G The Council has determined that there is a requirement to pay a sum towards the cost of environmental improvements within the Administrative Boundaries of Manchester and Owner has agreed to pay to the Council the Biodiversity Net Gain Contribution (as defined herein) in the manner hereinafter detailed. In addition the Council has determined that there is a requirement to

pay a sum to compensate for the loss of trees at the Site and the Owner has agreed to pay to the Council the Off-Site contribution in the manner hereinafter detailed.

- H The Owner has stated that there are viability issues affecting the development of the Site and has submitted to the Council documentation in support of this contention. The Council has accepted that at the date of this Agreement payment of the Affordable Housing Contribution would render the Development unviable. The Owner has agreed to enter into the planning obligations contained herein requiring them to submit the Viability Appraisal and pay any Viability Payment found to be due in accordance with the provisions contained in this Agreement.
- I The planning purpose of this Agreement is to improve the amenity of land in the locality of the Site with benefit for the 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. In particular the Council has recognised the difficulty faced by lower income groups in buying homes within the Administrative Boundaries of Manchester and the planning purpose of this Agreement is to increase the provision of affordable housing within the Administrative Boundaries of Manchester. The Owner intends to make provision for Affordable Housing in the manner hereinafter appearing. 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 provide a planning benefit.

AGREED TERMS

DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation set out in this Clause apply to this Agreement.

“Act” the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008;

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

“Affordable Housing” shall have the same meaning given to it in policy H8 of the Core Strategy and in the NPPF Annex 2 Glossary as may be amended or any replacement of the same;

“Affordable Housing Contribution” the sum of £33,200,461 (thirty three million two hundred and thousand four hundred and sixty one pounds) Index Linked;

“Agreement” shall mean this agreement;

“Application” the application to which the Council gave the reference 137227/FO/2023 for the demolition of existing structures and the erection of one residential building to a height of 71 storeys comprising 642 homes (Use Class C3) with food and drink uses (Use Class E) and/or drinking establishment (Sui Generis); and one office building (Use Class E); with basement car parking, cycle parking, landscaping and public realm, servicing and access arrangements, highways alterations and associated works;

“Architect” SimpsonHaugh and Partners of Riverside, 4 Commercial Street, Manchester, M15 4RQ;

“Benchmark Land Value” means £1,650,000 (one million six hundred and fifty thousand pounds) Index Linked

“Best Endeavours” means that it is agreed by the parties hereto that the party under obligation will not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) but subject thereto and to other terms of this agreement such party will be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may be reasonable to expect; in the case of the Owner, of a competent commercial developer in the context of the Development and of a competent landowner in the context of the Development and in the case of the Council, of a competent local planning authority acting reasonably in the context of its statutory functions;

“Biodiversity Net Gain Contribution” shall be the sum of £8,360 (eight thousand three hundred and sixty pounds) Index Linked towards environmental improvements, green infrastructure and biodiversity improvements in the Administrative Boundaries of Manchester;

“Build to Rent” is purpose-built housing that is typically 100% rented out providing tenants with the option of longer tenancy agreements of six or more months, and will be professionally managed in single ownership and management control;

“Calculation Date” means when Completion of Construction of 75% (to the nearest Dwelling) of the Dwellings has occurred;

“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;

“Clawback” means the difference between the market value of the relevant Dwelling(s) that are the subject of the Disposal as Open Market Sales less the Open Market Value of the same Dwelling(s) as Build to Rent calculated as at the date of Disposal and will be based on the guidelines set out in RICS Guidance or any replacement, update or amendment of the same PROVIDED THAT the Permitted Profit Level on the Build to Rent scheme has been achieved and that the Affordable Housing Contribution has not been paid;

“Clawback Period” means a period of fifteen years from Completion of Construction of all of the Dwellings constructed as part of the Development and if the Council, acting reasonably, considers

that the Completion of Construction of all of the Dwellings that form part of the Development 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 acting reasonably notifies in writing to the Owner that the said Completion of Construction of all of the Dwellings that form part of the Development is to be deemed to have taken place for the purposes of this Agreement;

“Clawback Valuation” means the valuation of the Clawback in accordance with clause 19.1;

“Commencement of Development” the date upon which the Development shall begin by the carrying out of a material operation in accordance with the provisions of section 56(4) of the Act PROVIDED THAT any works of or associated with site clearance, remediation works, environmental or archaeological investigations, site and soil surveys, erections of contractors work compound, erection of site office, erection of fencing to site boundaries, marking of site boundaries and laying out of access roads and services shall for the purposes of the agreement be deemed not to be material operations and **“Commence”**, **“Commencement”** and **“Commenced”** shall be construed accordingly.

“Commercial Unit” means any commercial (Use Class E) unit to be constructed on the Site as part of the Development pursuant to the Planning Permission;

“Completion of Construction” the date upon which a valid certificate of completion shall have been issued in respect of the relevant Phase of Development for the purposes of the Building Act 1984 and the Building Regulations 2010 or any amendment or replacement of the same and **“Completed”** and **“Completion”** shall be construed accordingly;

“Completion of Piling Work” the date on which all piling works required for a Phase of the Development in order to create a strong and stable foundation for the building being constructed on that Phase have been completed and notified to the Council in accordance with the provisions of this Agreement provided that should the Council believe the Completion of Piling Works for that Phase of the Development has occurred but it has not received that notification then the Council, acting reasonably, may give written notice to the Owners notifying them that Completion of Piling Works of that Phase of the Development is deemed to have taken place on the date of the written notice sent by the Council;

“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 014 (reference: 10-012-20240214) of the section of the NPPG headed “Viability” as revised on 12 February 2024 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, ;

“Development” the development undertaken on the Site pursuant to the Planning Permission as specified in the Application and “Developed” shall be construed accordingly;

“Deficit” the amount in pounds sterling by which a Viability Appraisal shows the Gross Margin is less than the relevant Permitted Profit Level.

“Disposal” means:

- (a) a transfer by sale; or
- (b) the grant of a Long Lease;

by the Owner of a Dwelling and **“Disposed”**, **“Disposed Of”**, **“Dispose”** and **“Disposals”** shall be construed accordingly

“Dwelling” a unit of accommodation to be constructed on the Site as part of the Development pursuant to the Planning Permission 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;

“Forward Fund” the committed sale and purchase of the whole of the completed Development or of a completed Phase of the Development (with or without incremental payments) on agreed terms where the parties agree to sign a sale and purchase agreement, either for the shares of the relevant company owning the Development (or Phase of the Development) or for the Development (or Phase of the Development) itself, and with transfer of ownership occurring prior to or following the Completion of Construction.

“Forward Sale” the committed sale and purchase of the whole of the completed Development or of a completed Phase of the Development on agreed terms at a future date as evidenced by binding legal documents which is conditional on the Completion of Construction of the Development or Phase of the Development and with the majority of the purchase price falling due upon or following the Completion of Construction.

“GDV” means gross development value as defined in the RICS Guidance being the aggregate market value of the Development assessed on the special assumption that the Development is complete on the date of valuation in the market conditions prevailing on that date together with the value of any grant funding/public subsidy received in respect of the Development.

“Gross Margin” means the GDV less the Costs including the Benchmark Land Value or in the case of a Build to Rent scheme means the NDV less the Costs including the Benchmark Land Value;

“Index Linked” adjusted on an annual basis or pro rata per diem from the date of this Agreement to the relevant date of payment in accordance with the Retail Price Index and “Index Linking” shall be construed accordingly;

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

“Local Plan” includes the Core Strategy adopted by Manchester City Council on 11 July 2012, the extant Unitary Development Plan policies and all other relevant strategic planning documents adopted by Manchester City Council;

“Long Lease” means a lease of a Unit for not less than ninety-five (95) years granted at a premium without reservation of a rack rental;

“Management Fee” shall mean 15% of the planning application fee which equates to £18,871.05 (eighteen thousand eight hundred and seventy one pounds and five pence) for the purpose of monitoring and reporting on the delivery of this Agreement and the Planning Obligations contained herein;

“Material Operation” means material operation comprised in the Development as defined by Section 56(2) and (4) of the Act and “Material Operations” shall be construed accordingly;

“Maximum Contribution” the sum of £33,200,461 (thirty-three million two hundred and thousand four hundred and sixty-one pounds) Index Linked;

“Method of Disposal” whether the units are being sold on an Open Market Sales basis or subject to a Pre-Sale and/or as Build to Rent;

“NDV” means the GDV deducting operational cost expenditure (‘OPEX’), and purchaser’s costs in the case of a Build to Rent Method of Disposal;

“NPPF” the National Planning Policy Framework issued in December 2024 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 12 February 2024 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 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;

“Off-Site Contribution” the sum of £133,000.00 (one hundred and thirty-three thousand pounds) Index Linked towards off-site tree planting within the Deansgate and/or Piccadilly wards;

“Off-Site Contribution Appraisal” an appraisal by the Council to take place on the Calculation Date to determine whether an additional Off-Site Contribution is required to compensate for the loss of trees on the Site should the compensatory provision of trees being provided within the vicinity of the Site be less than the Owner has indicated will be provided and shall equate to a further Off-Site Contribution in the sum of £7,000 per tree Index Linked in respect of each tree that has not been provided in accordance with the indication of the Owner up to a maximum of an additional Off-Site Contribution of £70,000 (seventy thousand pounds) Index Linked;

“Open Market Sales” means the marketing and sale of individual Dwellings within the Development disposed of at Open Market Value (and “Open Market Sale” shall be construed accordingly)

“Open Market Value” means 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;;

“Permitted Profit Level” means:

- (a) In the case of a Forward Fund agreed before the Completion of Piling Works 12% of total Costs;
- (b) In the case of a Forward Fund agreed after the Completion of Piling Works 15% of total Costs
- (c) In the case of a Forward Sale agreed before the Completion of Piling Works 15% of GDV
- (d) In the case of a Forward Sale agreed after the Completion of Piling Works 18% of GDV
- (e) In the case of Open Market Sales 20% of GDV

“Phase” means any of Phase 1 or Phase 2 and “Phases” shall be construed accordingly;

“Phase 1” means that part of the Site shown coloured blue on the Phasing Plans;

“Phase 2” means that part of the Site shown coloured pink on the Phasing Plans;

“Phasing Plans” the plans numbered 10419-Z1-SHP-G000-PL-B1-B5D801 P01 and 10419-Z1-SHP-G000-PL-B1-B5D804 P01 at Schedule 5;

“Plan” the plan numbered 10419-Z1-SHP-G000-PL-GRD-B5D801 P01 at Schedule 1;

“Planning Obligations” shall mean the obligations of the Owner specified in the Schedules;

“Planning Permission” the planning permission granted pursuant to the Application substantially in the form as appended at Schedule 2 and as may be amended by any non-material amendment;

“Practical Completion” means the issue of a certificate of practical completion by the Owner’s Architect Engineer or other certifying officer as the case may be under the relevant building contract entered into in respect of the Development or part or parts thereof; **“Pre Sale”** means a Forward Sale or Forward Funding Arrangement or Private Rental Sector Forward Funding Arrangement of the whole or of a Phase of the completed Development or Open Market Sales to a Purchaser prior to the Calculation Date;

“Pre-Sale” means a Forward Sale or Forward Fund of the whole or of a Phase or Phases of the completed Development prior to a Calculation Date

“Reasonably and Properly Incurred” shall mean in respect of costs incurred in developing the Site 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;

“Regulations” the Community Infrastructure Levy Regulations 2010;

“Retail Price Index” twelve (12) month percentage change in the All Items Retail Price Index published by the Office for National Statistics Centre and in the Monthly Digest of Statistics (or contained in any official publication substituted therefor) or such other index as may from time to time be published in substitution therefor;

“RICS” the Royal Institution of Chartered Surveyors.

“RICS Guidance” means the RICS guidance note entitled “Assessing viability in planning under the National Planning Policy Framework 2019 for England” 1st Edition, March 2021 or any replacement, update or amendment of the same;

“Sales Incentives” means costs Reasonably and Properly Incurred by the Owner in order to incentivise the Purchase of a Dwelling by a person intending to Occupy the Dwelling;

“Site” the property described in Schedule 1 and shown for the purposes of identification only edged red on the Plan;

“Surplus” the amount in pounds sterling by which a Viability Appraisal shows the Gross Margin is greater than the relevant Permitted Profit Level;

Viability Appraisal” a written appraisal of in the form set out in Schedule 5 to assess the Gross Margin required to be provided on the Calculation Date in accordance with the provisions of paragraph 4 of Schedule 3 of this Agreement. Further guidance on the format to follow can be found in the RICS Guidance;

“Viability Assessment Fee” Up to the sum of £15,000 (fifteen thousand pounds) plus VAT to each cover the cost of the Council’s review of the e Viability Appraisal in order to determine whether and the extent to which the Development can support a requirement to provide an 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 50% of the amount by

which the Gross Margin exceeds the Profit Level PROVIDED THAT the Viability Payment as well as any Clawback shall not exceed the Maximum Contribution. The Viability Payment will be payable in accordance with the timescales set out in paragraph 4 and Paragraph 5 of Schedule 3;

“Viability Payment Deadline” means the twenty eighth (28th) Working Day next following the later of:

In respect of the Viability Appraisal at the Calculation Date:

- (a) the day on which the Council states pursuant to Paragraph 4.2.1 of Schedule 3 that the Viability Appraisal is agreed ;
- (b) the day on which the Council states pursuant the day on which the Council states pursuant to Paragraph 4.3 of Schedule 3 that the Viability Appraisal is agreed;
- (c) the day on which the written determination of the Chartered Surveyor is issued pursuant to Clause 7 of the Agreement and paragraph 4.3 of Schedule 3;

as the case may be;

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

1.2 The Clause headings do not affect this interpretation.

1.3 Unless otherwise indicated, references to Clauses and Schedules are to Clauses of and Schedules to this Agreement and references in a Schedule to a Part or Paragraph are to a Part or Paragraph of that Schedule.

1.4 References to any statute or statutory provision include reference to:

1.4.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and

1.4.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision.

1.5 Except for the provisions of Clause 9 references to the Site include any part of it.

1.6 References to any party in this Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the Act and any successor local highway authority exercising powers under the Highways Act 1980.

1.7 **“Including”** means **“including, without limitation”**.

1.8 Any covenant by the Owner or the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

1.9 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected.

1.10 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

1.11 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 interchangeable in that manner.

2 PLANNING OBLIGATION

This Agreement is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling legislation and is a planning obligation for the purposes of section 106 of the Act, with the intent that covenants hereinafter contained shall be enforceable by the Council acting under the powers contained in section 106 or such other enabling powers against the Owner.

3 CONDITION PRECEDENT

This Agreement is conditional upon the grant of the Planning Permission and Commencement of Development save for the provisions of Clauses 9, 11, 15, 17, 18 and 19 which shall have immediate effect.

4 CONDITION SUBSEQUENT

If the Planning Permission for the Development has not been implemented by the carrying out of a Material Operation in accordance with the provisions of sections 56, 91 and 93 of the Act or is revoked or modified in whole or in part (other than in approval of an application by or on behalf of either of the Owner) or quashed or declared unlawful as a result of legal proceedings then this Agreement shall absolutely determine and become null and void but without prejudice to the rights of either party against the other in respect of any antecedent breach.

5 THE OWNER'S COVENANTS

5.1 The Owner on behalf of themselves and any person deriving title to any part of the Site from the Owner hereafter hereby covenant with the Council so as to bind the Site to fully observe and perform the obligations on his part contained in this Agreement including those obligations set out in Schedule 3 and hereby agrees that the Site shall be permanently subject to the obligations, restrictions and provisions specified herein, such obligations being planning obligations for the purpose of section 106 of the Act.

6 THE COUNCIL'S COVENANTS

The Council hereby covenants with the Owner to observe and perform the obligations on its part in this Agreement including those obligations set out in the Schedule 4.

7 DISPUTE RESOLUTION

7.1 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 reappraisal of viability to a Chartered Surveyor to be appointed by agreement between the Council and the Owner.

7.2 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 Institution of Chartered Surveyors as applicable.

7.3 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.

7.4 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 what manner all the costs of the referral shall be paid.

8 WAIVER

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

9 CHANGE IN OWNERSHIP & LIABILITY

9.1 The Owner agrees with the Council to give the Council written notice within 5 Working Days of any change in ownership of any of its interest in the Site occurring before all the 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 (unless the purchase relates to the entirety of the Site) the area of the Site or unit of occupation purchased by reference to a plan.

9.2 No person shall be liable for any breach, non-performance and non-observance of the covenants, obligations and restrictions contained in this Agreement after it shall have parted with its entire interest in the Site or its entire interest in the part of the Site in which the breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest nor shall this hinder or preclude the Council's rights as the Local Planning Authority to require that the breach, non-performance or non-observance be remedied after that person has parted with its interest in the Site.

9.3 Where a party's interest in the Site is limited only to a Phase it shall be bound to comply with obligations in the Agreement only so far as they are relevant to such Phase and not to any Phase in which it does not have a proprietary interest.

9.4 The obligations on the part of the Owner contained in this Agreement shall not be enforceable against individual purchasers, owner-occupiers, tenants or occupiers of the Dwellings, nor against those deriving title from them (including their mortgagees), or against any tenant, owner, occupier, mortgagee, and/or chargee of a Commercial Unit and their successors in title or against any statutory undertakers in relation to any part of the Development acquired by them for electricity sub-stations or pumping stations.

9.5 The obligations on the part of the Owner contained in this Agreement shall not be enforceable against any mortgagee or chargee unless they themselves caused the breach of the Agreement whilst mortgagee in possession, in which case they will be bound by the obligations in relation to any parts of the Site over which they have a legal charge but not further or otherwise as if they were a person deriving title in the Site from the Owners. This provision does not apply to their successors in title.

10 COUNCIL'S CONSENT OR APPROVAL

Where in this Agreement the consent, agreement or approval of the Council is required to be given by the Council, the Council confirms that such consent, agreement or approval shall not be unreasonably withheld or delayed provided that this shall not fetter the proper discretion of the Council.

11 LOCAL LAND CHARGE AND LAND REGISTRY ENTRY

11.1 This Agreement is a Local Land Charge and shall be registered as such by the Council.

11.2 The Owner will within 10 Working Days of the date of this Agreement apply to the Land Registry to register a copy of this Agreement against title number GM514485 and will provide the Council with a copy of the application. As soon as reasonably practicable following receipt the Owner will supply the Council with copies of the updated register of title.

11.3 The Council will upon receipt of a written request of the Owner or their successors in title, at any time after the obligations set out herein have been fulfilled in their entirety, issue written confirmation thereon and thereafter cancel all related entries in the register of local land charges.

11.4 The costs of registration and cancellation pursuant to clauses 11.2 above shall be met by the Owner if requested by the Council.

12 NON-PROHIBITION ON DEVELOPMENT

Nothing in this Agreement 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 Agreement.

13 THE CONTRACTS ACT

Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit rights or claims whatsoever pursuant thereto.

14 COMMUNICATION

14.1 Any notice or document to be served on or sent pursuant to this Agreement shall either be delivered personally or sent by recorded delivery service

14.1.1 to the Council and addressed to the City Solicitor at the Council's address first above written;

14.1.2 to the Owner at their registered office;

15 FEES

15.1 The Owner shall pay forthwith to the Council its legal fees reasonably and properly incurred in preparation of this Agreement;

15.2 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 Owners from any liability or obligation imposed upon them by the terms of this Agreement or by statute or at common law;

15.3 The Owner shall on the date hereof pay to the Council the Management Fee;

15.4 When submitting a Viability Appraisal the Owner shall pay to the Council the related Viability Assessment Fee within 10 Working Days of his receipt from the Council of an invoice detailing the amount.

16. INTEREST

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.

17. WARRANTY AS TO TITLE

The Owner hereby warrants to the Council that the title details recited in this Agreement are complete and accurate in every respect and no other person has an interest in the Site who has not been disclosed to the Council prior to the date hereof.

18. JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England.

19. CLAWBACK

19.1 Where the Method of Disposal is Build to Rent and at any time during the Clawback Period any one or more Dwellings comprising the Development are not retained in single ownership by the Owners as Built to Rent and are the subject of Open Market Sales the Owners who as defined in Clause 1.6 includes their successors in title will within twenty eight (28) Working Days of any such Disposal provide a valuation of the Clawback (if any) (the "**Clawback Valuation**") to the Council.

19.2 Within forty (40) Working Days of its receipt of the Clawback Valuation the Council shall give written notice to the Owners either:-

19.2.1 Stating that it accepts the Clawback Valuation; or

19.2.2 Correcting or challenging any of the amounts or conclusions included in the Clawback Valuation and giving details of the disputed amounts or conclusions.

19.3 In the event that the Council shall have served a notice on the Owners pursuant to clause 19.2.2 the Owners and the Council shall use reasonable endeavours to reach agreement in respect of the Clawback Valuation but if the Owners and the Council shall have failed to agree the Clawback Valuation within twenty-eight (28) Working Days of the notice served by the Council pursuant to clause 19.2.2, then the matter in dispute shall be referred to the Chartered Surveyor, in accordance with the provisions of Clause 7 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 Clawback Valuation, which both Parties agree will be final and binding upon them (save in respect of manifest error);

19.4 In the event that the Clawback Valuation agreed by the Council pursuant to clause 19.2.1 or 19.3 or determined by the Chartered Surveyor pursuant to clause 19.3 confirms that the Permitted Profit Level for a Build to Rent scheme has been achieved and that Clawback is payable then the Owners will pay the Clawback to the Council to provide Affordable Housing within the Administrative Boundaries of Manchester

19.5 The Owners will pay the Council the Clawback on or prior to the twenty eighth (28th) Working Day next following the later of the date the Clawback Valuation is either agreed by the Council pursuant to clause 19.2.1 or 19.3 or it is determined by the Chartered Surveyor pursuant to clause 19.3.

19.6 Each time the Council is required to assess the Clawback Valuation under this Clause, the Owners covenant to pay the Council's reasonable costs of such calculation and such costs will be notified to the Owners and payment will fall due on the twenty eighth (28th) Working Day of notification of such costs.

19.7 Any payment made under this clause when aggregated together with any Viability Payment will not exceed in total the Affordable Housing Contribution. The Owners and the Council's reasonable costs of assessing the Clawback Valuation under this clause will be treated as Costs in the preparation of a Viability Appraisal

19.8 Upon payment of the Clawback (or determination that no Clawback is payable), the Dwellings that were the subject of the Clawback Valuation will no longer be bound by this clause.

19. COMPLETION

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.

20. COUNCIL POWERS

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 Site 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 Site.

21. RESTRICTION ON TITLE

The Owner covenants with the Council that:

21.1 prior to or upon completion of this Agreement they shall provide the Council with letters of consent signed by the Owner in a form of wording provided by the Council authorising the Council to register a restriction in standard form L at the Land Registry in respect of their interests in the Site in the following terms:

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by Manchester City Council, Town Hall, Albert Square, Manchester, M60 2LA that the provisions of paragraph 6 of Schedule 3 of a Section 106 Agreement dated _____ made between (1) The Council of the City of Manchester and (2) WQ Developments Limited have been complied with or that they do not apply to the disposition.”

21.2 The Council will insert the date of completion of this Agreement into the section of the Form RX1 detailing the wording quoted above following that completion;

21.3 Prior to or upon completion of this Agreement the Owner will provide the Council with a cheque to cover the cost of registering the form RX1 at the Land Registry.

EXECUTED as a deed by the parties on the day and year first hereinbefore appearing.

SCHEDULE 1

The Site

Land known as Plot D, Great Jackson Street, Manchester, M15 4NP and shown for the purposes of identification only edged red on the Plan.

DRAFT



This drawing is copyright.
Do not scale off dimensions.
All dimensions to be checked on site by contractor.
Contractor to report any dimensional discrepancies,
errors or omissions prior to commencing on site.

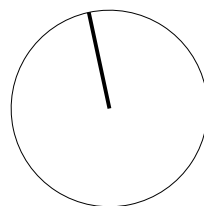
Scale Bar

0 25 75m

NOTE:

- Planning application boundary
- Other sites in Applicant's ownership

NORTH



Rev	Date	Description
P 01	14-04-2023	Planning Issue

Project Title
Great Jackson Street - Plot D
Manchester

Status
Planning

Drawing Title
Context
Site Location Plan

Job No 10419	Scale 1:1000 @ A1	Date APR 2023
Drawing No 10419-Z1-SHP-G000-PL-GRD-B5D801	Revision P 01	

simpsonhaugh

MANCHESTER
Riverside, 4 Commercial St
Manchester M15 4EQ
+44 (0)161 835 2345
www.simpsonhaugh.com
mail@simpsonhaugh.com

LONDON
5-8 Roberts Place
London EC1R 9BB
+44 (0)20 7549 4000
mail@simpsonhaugh.com

SCHEDULE 2

Draft Planning Permission

DRAFT

SCHEDULE 3

THE OWNER'S GENERAL COVENANTS

The Owner hereby covenants with the Council as follows:

1.
 - 1.1 To pay to the Council the Off-Site Contribution Index Linked on or prior to the Commencement of Development or prior to the felling of the first tree located on the Site in connection with the implementation of the Planning Permission, whichever is the sooner.
 - 1.2 Following the Off-Site Contribution Appraisal by the Council to pay to the Council within 10 Working Days of its receipt of a request for payment any further Index Linked Off-Site Contribution adjudged to be payable.
2. To pay to the Council the Biodiversity Net Gain Contribution Index Linked on or prior to the Commencement of Development.
3. To notify the Council in writing;
 - 3.1 within five (5) Working Days of Commencement of Development that development has Commenced;
 - 3.2 within five (5) Working Days of Completion of Construction of 75% of the Dwellings (to the nearest Dwelling) Completed in Phase 1;
 - 3.3 within five (5) Working Days of Commencement of Development of 75% of the Dwellings (to the nearest Dwelling) Completed in Phase 2;
 - 3.4 within five (5) Working Days of the date of Completion of the Piling Works for each Phase.

VIABILITY APPRAISAL AT CALCULATION DATE AND VIABILITY PAYMENT

- 4.1 The Owner will provide the Council with an Viability Appraisal for agreement by the Council within ten (10) Working Days of the Calculation Date and will confirm to the Council in writing the Method of Disposal and the relevant Permitted Profit Level and provide evidence of the date Commencement of Development occurred and evidence of the date any contract relating to a Pre-Sale was signed and dated.
- 4.2 Within forty (40) Working Days of its receipt of the Viability Appraisal the Council shall give written notice to the Owner either:-
 - 4.2.1 stating that it accepts the Viability Appraisal or
 - 4.2.2 correcting or challenging any of the amounts or conclusions included in the Viability Appraisal and giving details of the disputed amounts or conclusions;
- 4.3 In the event that the Council shall have served a notice on the Owner pursuant to paragraph 4.2.2 of this Schedule the Owner and the Council shall use Best Endeavours to reach agreement in respect of the Viability Appraisal but if the Owner and the Council shall have failed to agree the Viability Appraisal within twenty-eight (28) Working Days of the notice served by

the Council pursuant to Paragraph 4.2.2 of this Schedule, then the matter in dispute shall be referred to the Chartered Surveyor, in accordance with the provisions of Clause 7 with the Chartered Surveyor being requested that he/she/they should as soon as practicable issue a written determination as to the matter in dispute and a written determination of the correct Viability Appraisal, which both parties agree will be final and binding upon them (save in respect of manifest error);

4.4 The Viability Appraisal not by way of limitation shall include and confirm the GDV the NDV, the Costs, the Gross Margin, and the Viability Payment, if any ;

4.5 The Viability Payment

45.1 In the event that the Viability Appraisal is agreed by the Council or determined pursuant to Paragraph 4.3 of this Schedule and the information contained therein shows that in accordance with the provisions of this Agreement an Viability Payment is due then on or before the Viability Payment Deadline to pay to the Council the Viability Payment (if any) PROVIDED ALWAYS that the Viability Payment and the aggregate of any Clawback received by the Council shall be capped so that they do not exceed the Maximum Contribution;

4.5.2 In the event that the information contained in the Viability Appraisal (as agreed by the Council or determined pursuant to Paragraph 4.3 of this Schedule) shows that an Viability Payment is not due then it is agreed by the Council that the Viability Payment shall not be payable although the Viability Assessment Fee shall still be due.

4.5.3 If a Viability Payment is due then from the Viability Payment Deadline to cease further Occupation nor permit or allow further Occupation of the Dwellings until payment of the Viability Payment has been received by the Council..

RETENTION OF ARCHITECT

5.1 The Owner shall use Best Endeavours to continue to employ the Architect as the lead architect throughout, the construction period and until Practical Completion of the Development **PROVIDED THAT** the Architect remains willing and able to fulfil such roles in relation to the Development and that such employment is capable of being secured on reasonable commercial terms.

5.2 Should the Architect not be appointed or continue to be appointed in accordance with Paragraph 5.1 above the Owner shall immediately notify the Council of this fact and shall use Best Endeavours to appoint a replacement Architect of a similar calibre and reputation as soon as reasonable practicably and shall thereafter notify the Council of the identity of the replacement architect immediately thereafter.

RETENTION AS BUILD TO RENT

6. Where the Method of Disposal is Build to Rent the Owners covenant that they shall deliver the relevant Build to Rent Dwellings comprising the residential part of the Development for the private rental market as a Build to Rent scheme and the residential part of the Development shall be

retained as Build to Rent Dwellings for the Clawback Period Provided that if any part of the residential part of the Development is then Disposed Of as Open Market Sales during the Clawback Period this will trigger the clawback provisions set out in clause 19 of this Agreement, and the Owners further covenant to comply with all the provisions of that clause 19 and upon payment of the Clawback to the Council (or determination that no Clawback is due) this covenant will no longer apply to the relevant Dwellings Disposed of in breach of this covenant. For the avoidance of doubt, any payment of Clawback agreed by the Council and the Owners or determined to be due in accordance with the provisions of clause 19 will when received by the Council in respect of any Dwelling to which the payment of Clawback relates remedy the breach of the obligation to retain the Dwelling as a Build to Rent Dwelling contained in this paragraph, as well as releasing the Dwelling from that obligation thereafter. For the further avoidance of doubt this provision does not prevent the Owners of the Site as at the date of this Agreement or any successors in title from transferring the Site during the Clawback Period to successors in title all of whom will be bound by the covenants contained in this Paragraph 6.

SCHEDULE 4

The COUNCIL'S COVENANTS

The Council hereby covenants with the Owner as follows:

1. To use the Off-Site Contribution for the purpose for which it was paid and not otherwise.
2. To use the Biodiversity Net Gain Contribution for the purpose for which it was paid and not otherwise.
3. To use any Viability Payment towards the provision of Affordable Housing within the Administrative Boundaries of Manchester and for no other purpose.
4. 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.
5. The Council shall provide written details of any expenditure incurred by the Council using the Viability Payment within twenty (20) Working Days of a written request to do so from the party/person who made the payment to the Council.
6. To repay to the paying party such sum or sums remaining from the Off-Site Contribution, Biodiversity Net Gain Contribution and the Viability Payment as have not been expended in accordance with Paragraph 1, Paragraph 2 and Paragraph 3 of this Schedule (excluding any such sums in respect of which though not yet expended the Council has contractually committed to expend) within ten (10) years of the date of receipt by the Council.
7. To issue the Planning Permission within two (2) Working Days of the date hereof.

SCHEDULE 5

VIABILITY TEMPLATE

Land known as Plot D, Great Jackson Street, Manchester, M15 4NP

Gross Development Value (GDV) £

Net Development Value (NDV) £

Permitted Profit Level for a Forward Fund agreed before the Completion of the Piling Works based upon 12% of Costs;	£
Permitted Profit Level for a Forward Fund agreed after the Completion of the Piling Works 15% of total Costs	£
Permitted Profit Level for a Forward Sale agreed before the Completion of the Piling Works 15% of GDV	£
Permitted Profit Level for a Forward Sale agreed after the Completion of the Piling Works 18% of GDV	£
Permitted Profit Level for Open Market Sales 20% of GDV	£
Costs	£
Schedule of abnormals TBA	£
Contingency on build costs and abnormals TBA	£
Professional fees on build costs and abnormals TBA	£
Sales and marketing costs TBA	£
Section 106 payments TBA	£
Finance cost of TBA	£
Interest cost on deposits - TBA	£
Tax relief - TBA	£

Benchmark Land Value	£1,650,000
Agreed Stamp Duty - TBA	
Commercial letting agent and legal fees	
Investment sales agent & legal fees	
TOTAL COSTS (Costs)	
Gross Margin equals GDV – Costs including Benchmark Land Value or in a Build to Rent Scenario equals NDV – Costs including Benchmark Land Value	
Gross Margin minus Permitted Profit Level	
VIABILITY PAYMENT – equating to 50% of Gross Margin minus Permitted Profit Level	

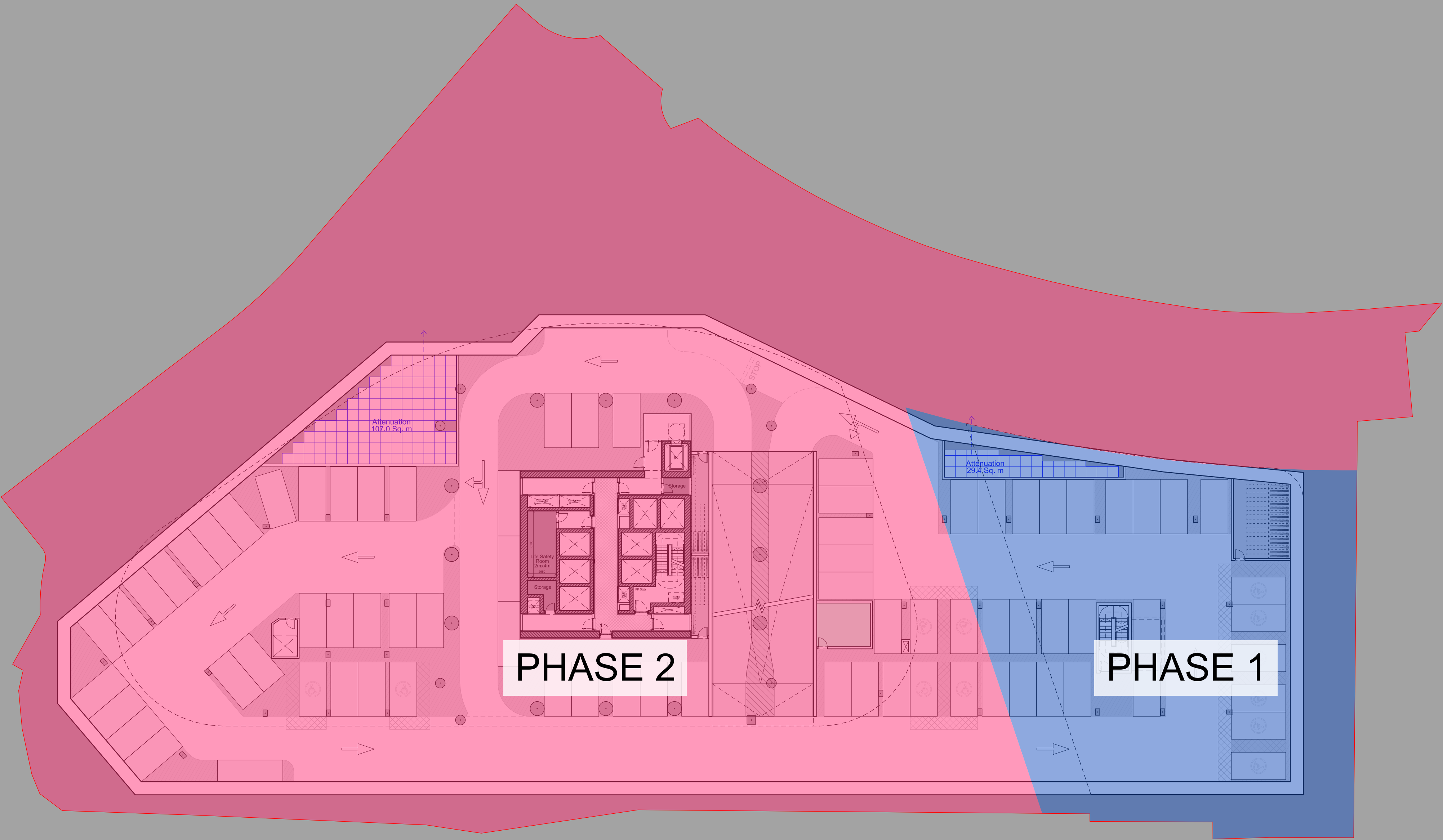
NB –The sum of any Viability Payment shall not exceed the Maximum Contribution

The Headings in the Viability Template are not exhaustive.

SCHEDULE 6

Phasing Plans

DRAFT



This drawing is copyright
Do not scale off dimensions.
All dimensions to be checked on site by contractor.
Contractor to report any dimensional discrepancies,
errors or omissions prior to commencing on site.

Scale Bar

0 40m

NOTE:

Key

PHASE 1

PHASE 2

NORTH

Rev Date Description

P 01 20-04-2023 Planning Issue

Project Title

Great Jackson Street - Plot D
Manchester

Status

Planning

Drawing Title

Phasing Plan
Basement Level

Job No

10419

Scale

1:250 @ A1

Date

APR 2023

Drawing No

10419-Z1-SHP-G000-PL-B1-B5D801

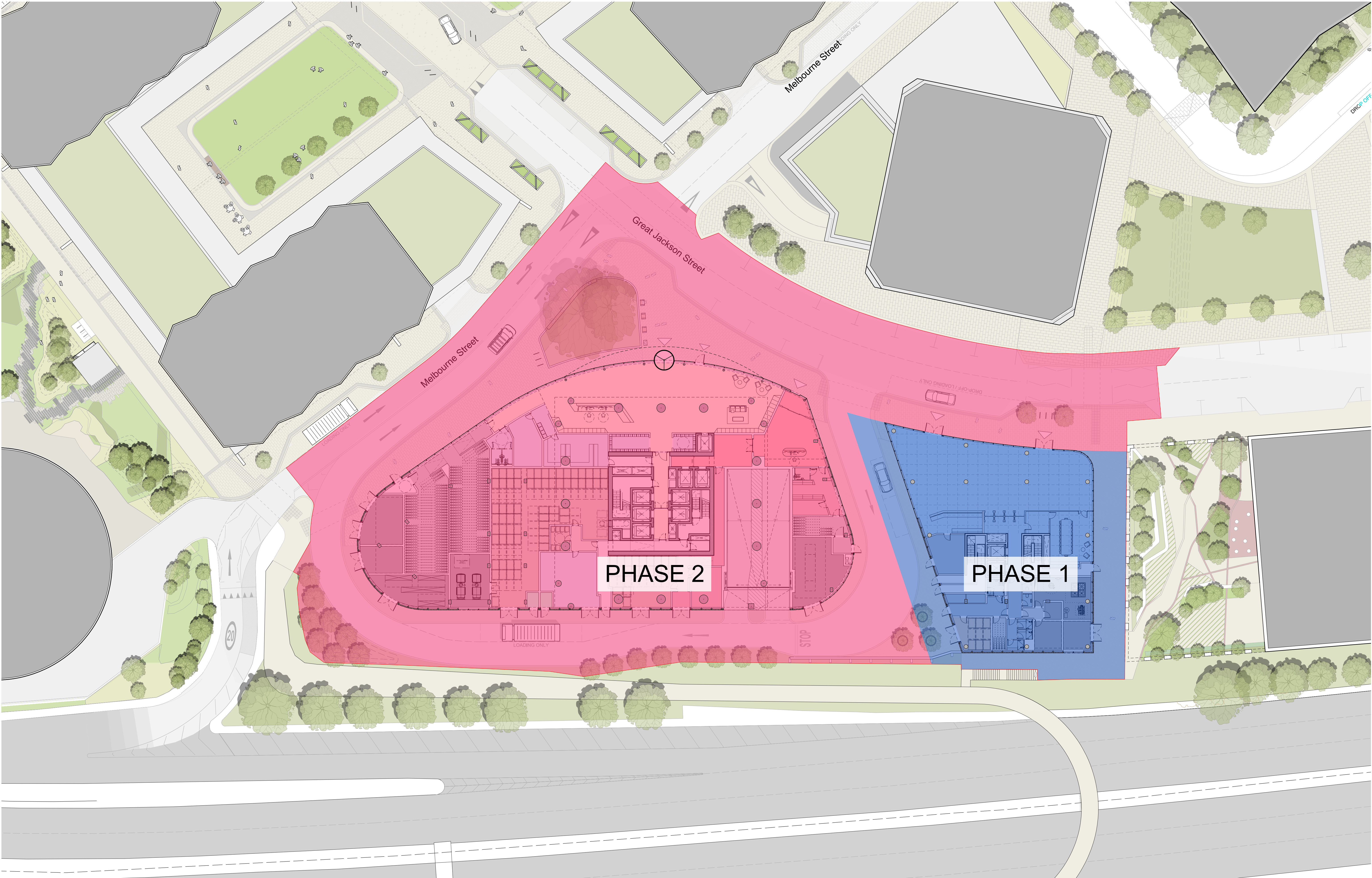
Revision

P 01

simpsonhaugh

MANCHESTER
Riverside, 4 Commercial St
Manchester M15 4RQ
+44 (0)161 835 2345
www.simpsonhaugh.com

LONDON
5-8 Roberts Place
London EC3R 9BB
+44 (0)20 7549 4000
mail@simpsonhaugh.com



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Contractor to report any dimensional discrepancies,
errors or omissions prior to commencing on site.

Scale Bar

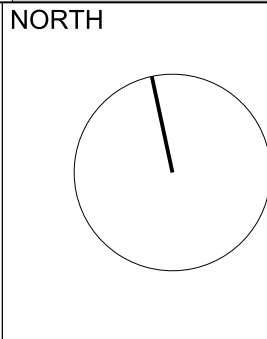
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NOTE:

Key

PHASE 1

PHASE 2



Rev	Date	Description
P 01	20-04-2023	Planning Issue

Project Title

Great Jackson Street - Plot D
Manchester

Status

Planning

Drawing Title

Phasing Plan
Ground Level

Job No	Scale	Date
10419	1:250 @ A1	APR 2023
Drawing No	Revision	
10419-Z1-SHP-G000-PL-GRD-B5D804	P 01	

MANCHESTER
Riverside, 4 Commercial St
Manchester M15 4EQ
+44 (0)161 835 2345
www.simpsonhaugh.com

LONDON
5-8 Roberts Place
London EC1R 9BB
+44 (0)20 7549 4000
mail@simpsonhaugh.com

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:

AUTHORISED SIGNATORY

Executed as a Deed by **WQ DEVELOPMENTS LIMITED**

acting by, a director in the
presence of:

.....
Director

Witness signature

Name (Capitals)

Address

Occupation