

DATED _____ 2025

THE COUNCIL OF THE CITY OF MANCHESTER

- and –

OVAL PROPERTIES 1801 LIMITED

-and-

BARING ASSET MANAGEMENT LIMITED

AGREEMENT

**pursuant to section 106 of the Town and
Country Planning Act 1990 (as amended)
relating to Albert Bridge House, 1
Bridge Street, Manchester M60 9AT**

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**”);
- (2) **OVAL PROPERTIES 1801 LIMITED** (a company registered in Jersey with company number 137240) of PO Box 1075, JTC House, 28 Esplanade, St Helier, Jersey, JE4 2QP (the “**Owner**”);
- (3) **BARING ASSET MANAGEMENT LIMITED** (incorporated in England and Wales with company number 02915887) whose registered office is at 20 Old Bailey, London, United Kingdom, EC4M 7BF (the “**Mortgagee**”).

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. The Council is the local highway authority for the area within which the Site is situated. The Council is also the freehold owner of the part of the Site registered at the Land Registry with Title Absolute under title number MAN175669 together with but subject to all matters contained or referred to in the title register thereunder. It is agreed by the parties that the Owner’s covenants hereinafter contained shall not bind the Council. The Development will be carried out on the Site. The Site is situated within the Administrative Boundaries of Manchester and this planning obligation is enforceable by the Council.
- B The Owner is the freehold owner of the part of the Site registered at the Land Registry with title absolute under title number LA4177 together with but subject to all matters contained or referred to in the title registers thereunder.
- C The Mortgagee is interested in part of the Site by virtue of the Legal Charge.
- D 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.
- E 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 planning permission would not be granted.

- F 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.
- G The Council has determined that the Development in order to comply with the Core Strategy should provide a payment of £14,076,255, being the Maximum Contribution, towards the provision of Affordable Housing within the City of Manchester. However, 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 any financial 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.
- H The Council has further determined that the Development in order to comply with the Core Strategy should provide a payment of up to £500,000, being the Maximum Highway Contribution, towards highway improvement measures in the vicinity of the Development along Bridge Street.
- 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.

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;

“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 the NPPF Annex 2 Glossary as may be amended or any replacement of the same;

“Agreement” shall mean this agreement;

“Application” application reference 135834/FO/2022; for creation of a mixed use development comprising two separate components in the form of an office building of up to 19 storeys with ground floor commercial, leisure, food and drink uses (All Use Class E (g)) and/ or drinking establishment (Sui Generis), and, a residential building up to 45 storeys (Use Class C3a) with additional roof top plant, basement car parking, cycle parking, landscaping and public realm, servicing and access arrangements, highway alterations and other associated works following demolition of the existing building complex

“Architect” Egret West, 3 Brewhouse Yard, London, EC1V 4JQ;

“Benchmark Land Value” means four million four hundred and fifty thousand pounds (£4,450,000) 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 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;

“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:

- (a) where the Development is retained by the Owner as Build to Rent, within twelve (12) months of the Occupation of the first Dwelling which has been Occupied on the Development; or
- (b) where the Development is subject to a Pre-Sale or the subject of Open Market Sales, on Completion of Construction of 75% of the Dwellings;

“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;

“Clawback Period” means a period of fifteen years from Completion of Construction;

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

“Commencement of Development” the date upon which a Material Operation is carried out in relation to the Development to implement the Planning Permission sand **“Commence”**, **“Commencement”** and **“Commenced”** shall be construed accordingly.

“Commercial Unit” means any commercial (Use Class E and/or sui generis drinking establishment) 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 number of Dwellings 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;

“Construction Period” means the period from the carrying out of the first Material Operation to the Practical Completion of the Development;

“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 planning practice guidance 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 points (1) and (2) of this definition that any such actual or estimated costs are amongst those detailed or referred to in paragraph 012 of the planning practice guidance section headed “Viability”;

“Development” the development undertaken on the Site authorised by the Planning Permission and **“Developed”** shall be construed accordingly;

“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 residential accommodation to be constructed on the Site as part of the Development and **“Dwellings”** shall be construed accordingly;

“Expert” an independent 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 Funding Arrangement” a commitment to provide funding to assist the development of the project going forward with the sole aim of facilitating either a single sale of the whole or part of the Development, but not necessarily a commitment to purchase the Development, or the retention of the whole or part of the Development by the Owner on Completion of Construction as a Private Rental Sector (PRS) Investment. For the avoidance of doubt funding not provided for the purposes outlined in the previous sentence of this definition but provided, for example, for the purpose of covering the construction costs of any dwelling that is to be sold to an individual purchaser will not be classed as a Forward Funding Arrangement

“Forward Sale” the committed sale and purchase of the whole or part of the completed Development on agreed terms at a future date as evidenced by binding legal documents which are unconditional as to the sale of the whole or part of the completed Development and the requirement to undertake the construction of the Development and which detail (without limitation) payments made on completion of

the sale of the whole or part of the completed Development and during the construction and on completion of the Development;

“GDV” means gross development value as defined in RICS Guidance or any replacement, update or amendment of the same together with the value of any grant funding/public subsidy received in respect of the Development. In addition the Council will accept in the calculation of GDV the actual sale and rental prices achieved at the Development up to the time of preparation of the Viability Appraisal and detailed therein **Provided That** where in the opinion of the Council a Dwelling:

- (a) has not been Disposed Of at a value that is equal to or greater than its Open Market Value; or
- (b) is not yet Disposed Of or not yet sold subject to contract and the advertised price for the Dwelling is not equal to or greater than its Open Market Value then (in either case) the Council may opt in writing to substitute the Open Market Value of the said Dwelling concerned in place of the actual monies received or (if applicable) in place of its advertised price;

“Gross Margin” means the GDV less the Costs;

“Highway Contribution” the payment required to be made by the Owner to the Council for the provision of the Highway Works PROVIDED THAT the Highway Contribution shall not exceed the Maximum Highway Contribution. The Highway Contribution will be payable in accordance with the timescale set out in Schedule 3 hereto;

“Highway Works” means highway improvement measures in the vicinity of the Development along Bridge Street;

“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;

“Legal Charge” the charge registered against the Owner’s title number LA4177 dated 19 August 2021

“Letting” means a lease or tenancy of a Dwelling which is not a Long Lease and **“Lettings”** shall be construed accordingly;

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

“Long Lease” means a lease of a Dwelling 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 £28,137.30 (twenty eight thousand one hundred and thirty seven pounds and thirty pence) for the purpose of monitoring and reporting on the delivery of this Agreement and the Planning Obligations contained herein;

“Material Operation” means a material operation as defined by 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, temporary display of site notices or advertisements marking of site boundaries and laying out of access roads and services shall for the purposes of this Agreement be deemed not to be Material Operations and **“Material Operations”** shall be construed accordingly;

“Maximum Contribution” the sum of £14,076,255 (fourteen million seventy six thousand two hundred and fifty five pounds) Index Linked;

“Maximum Highway Contribution” the sum of £500,000 (five hundred thousand 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;

“NPPF” the National Planning Policy Framework issued in July 2021 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.

“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;

“**Open Market Sales**” means the marketing and sale of individual Dwellings within the Development disposed of at Open Market Value;

“**Open Market Value**” means the market value as defined in the IVS definition of market value set out in paragraph 30 on pages 18 to 20 of the section headed “IVS 104 Bases of Value” in Part 6 of the RICS publication titled “RICS Valuation – Global Standards 2017 and issued in June 2017 or any replacement, update or amendment of the same from time to time save in respect of any Dwellings Disposed of by way of a Letting where the Council will accept as the calculation of GDV the Open Market Value of those Lettings, as determined by the application of an investment valuation method using an appropriate capitalisation factor to the market rental income for each let unit which shall for the avoidance of doubt be calculated after the deduction of operational costs;

“**Permitted Profit Level**” means:

- (a) In the case of a Pre-Sale and/or Build to Rent when the Gross Margin is equivalent to 10% of the Costs; and,
- (b) in all other cases and in the case of Open Market Sales when the Gross Margin is equivalent to 20% of the GDV.

“**Plan**” the plan attached to the Agreement;

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

“**Planning Permission**” the Planning Permission to be granted pursuant to the Application in or substantially in the form as detailed in Schedule 2 to this Agreement and as may be amended by any non-material amendment granted by the Council pursuant to s96A of the Act

“**Practical Completion**” a certificate of practical completion issued by the Owner’s Architect or other certifying officer as the case may be under the relevant building contract entered into in respect of the Development or parts thereof;

“Pre Sale” means a Forward Sale or Forward Funding Arrangement or Private Rental Sector Forward Funding Arrangement of the whole or part of the completed Development prior to the Calculation Date;

“Pre Sale Element” the part, or if more than one Pre Sale occurs, all of the parts of the Development in respect of which a Pre Sale has taken place;

“Private Rental Sector Forward Funding Arrangement” means a Forward Funding Arrangement in which the Owners will retain the whole or part of the Development on Completion of Construction as a Private Rental Sector Investment. For the avoidance of doubt funding not provided for the purposes outlined in the previous sentence of this definition but provided, for example, for the purpose of covering the construction costs of the Development will not be classed as a Private Rental Sector Forward Funding Arrangement;

“Private Rental Sector Investment” means a development that will deliver new-build homes for the private rental market, to be retained by the Owner on Completion as an investment;

“Reasonably and Properly Incurred” means in respect of costs incurred in developing the Site 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 thereof;

“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;

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

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

“Viability Assessment Fee” the sum of up to £12,000.00 (twelve thousand pounds) plus VAT to cover the cost of the Council’s review of the Viability Appraisal in order to determine whether and the extent to which the Development can support a requirement to provide the Viability Payment.

“Viability Payment” a payment required to be made by the Owner to the Council if the Viability Appraisal shows that the Permitted Profit Level as assessed will be achieved and will be 50% of the amount by which the Gross Margin exceeds the Permitted Profit Level PROVIDED THAT the Viability Payment or the sum of the Viability Payments 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 Schedule 3 hereto;

“Viability Payment Deadline” means the twenty first (21st) Working Day following the later of:

- (a) the day on which pursuant to paragraph 3 of Schedule 3 the Viability Appraisal is agreed;
- (b) the day on which the Viability Appraisal is agreed in writing between the Owner and the Council pursuant to paragraph 4 of Schedule 3; and
- (c) the day on which the written determination of the Chartered Surveyor is issued pursuant to paragraph 4 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 headings in this Agreement are for convenience only and do not form part of nor affect the interpretation of this Agreement.

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 any consolidation, extension, replacement or re-enactment therefore and any order, 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 Save in respect of Clauses 21.1 and 21.3 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 are binding on the Site and shall be enforceable by the Council acting under the powers contained in section 106 of the Act 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 20 which shall have immediate effect upon the completion of this Agreement.

4 CONDITION SUBSEQUENT

If the Development has not been Commenced and the Planning Permission is revoked or modified in whole or in part (other than in approval of an application by or on behalf 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

The Owner on behalf of itself and any person deriving title to any part of the Site from the Owner hereafter hereby covenants with the Council so as to bind the Site to fully observe and perform the obligations on its 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 fully 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 Any dispute arising in connection with this Agreement, subject always to the provision of clause 7.7, shall unless the Council and the Owner otherwise agree be referred to an Expert or in relation to the Viability Appraisal or Clawback Valuation to a Chartered Surveyor to be appointed by agreement between the Council and the Owner subject always to the provision of clause 7.2.

7.2 If the Council and the Owner are unable to agree on the appointment of an Expert or Chartered Surveyor pursuant to clause 7.1 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 RICS as applicable.

7.3 The Expert or Chartered Surveyor shall be required to give notice of his appointment to each of the parties to the dispute.

7.4 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.

7.5 Within ten (10) Working Days from their appointment the Expert or Chartered Surveyor will call both the parties to a meeting at which the Expert or Chartered Surveyor will give directions as to the future conduct of the matter in dispute and will from time to time give such further directions as they shall see fit. Any party to this Agreement shall be entitled to submit to the Expert or Chartered Surveyor written representations and written cross-representations with such supporting evidence as they shall respectively consider necessary and the Expert or Chartered Surveyor shall have regard thereto but will not be in any way fettered by such representation and counter representation and will rely on their own judgement 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.

7.6 Any Expert or Chartered Surveyor howsoever appointed shall be subject to the express requirement that a decision be reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute:

7.6.1 after the conclusion of any hearing that takes place; or

7.6.2 after the Expert or Chartered Surveyor has received the representations and counter representations under clause 7.5.

7.7 This clause 7 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement, which shall be subject to the jurisdiction of the English courts.

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 20 (twenty) 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 provided that this clause shall not apply to the Disposal of a Dwelling or Commercial Unit or a Disposal to a statutory undertaker for the purpose of their statutory undertaking.

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 (save that compliance with the provisions of clause 19 and liability for any Clawback if applicable shall subsist if a person does not retain in single ownership Dwellings which have been delivered as Built to Rent and that person has disposed of such Dwellings by Open Market Sales) 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 The obligations contained in this Agreement shall not be binding on:

9.3.1 Any tenant, owner, occupier, mortgagee, and/or chargee of a Dwelling and their successors in title;

9.3.2 Any tenant, owner, occupier, mortgagee, and/or chargee of a Commercial Unit and their successors in title; and

9.3.3 Any statutory undertaker who acquires any part of the Site for the purpose of its statutory undertaking.

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 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 thereof and thereafter cancel all related entries in the register of local land charges.

11.3 The Council's reasonable and proper costs of registration and cancellation pursuant to clause 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 first class 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 and Mortgagee at their registered office addresses;

14.2 Any notice or document given in accordance with clause 14.1 will be deemed to have been received:

14.2.1 if delivered by hand on signature of a delivery receipt provided that if delivery occurs before 09:00 on a Working Day the notice will be deemed to have been received at 09:00 on that day and if delivery occurs after 17:00 on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 09:00 on the next Working Day; or

14.2.2 if sent by first class recorded delivery service within the United Kingdom at 09:00 on the day two Working Days after the date of posting.

14.3 This clause does not apply to the service of any proceedings or other documents in any legal action or where applicable any arbitration or other method of dispute resolution.

15 FEES

15.1 The Owner shall pay to the Council on completion of this Agreement its legal fees reasonably and properly incurred in preparation, negotiation and completion 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 Owner 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 completion of this Agreement 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 was 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 Deed are complete and accurate in every respect and confirms that apart from the parties hereto (which for the avoidance of doubt includes the Council as the freehold owner of part of the Site) no other person has an interest in the Site and hereby indemnifies the Council in respect of any loss that arises should there be any breach of this warranty.

18. JURISDICTION

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

19. CLAWBACK

19.1 Where at any time during the Clawback Period any one or more Dwellings comprising the Development are not retained in single ownership by the Owner as Build to Rent and are the subject of Open Market Sales the Owner 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 Owner 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 Owner pursuant to clause 19.2.2 the Owner and the Council shall use reasonable endeavours to reach agreement in respect of the Clawback Valuation but if the Owner 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. 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 Owner will pay the Clawback to the Council to provide Affordable Housing within the Administrative Boundaries of Manchester

19.5 The Owner will pay the Council the Clawback on or prior to the twenty eighth (28th) Working Day following the later of the date the Clawback Valuation is either agreed by the Council pursuant to clause 19.2 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 Owner covenants to pay the Council's reasonable costs of such calculation, being £12,000 (twelve thousand pounds) plus VAT, such costs will be notified to the Owner 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 and with any Viability Payment will not exceed in total the Maximum Contribution.

19.8 Upon

19.8.1 payment of the Clawback;

19.8.2 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.

19.9 Where an Owner has Disposed of its interest in any part of the Development comprising Build to Rent to a party as a Build to Rent development then the obligations in this Clause 19 shall no longer be the responsibility of that Owner in respect of that part of the Development and shall be enforced against the party to whom the relevant Build to Rent part of the Development has been Disposed.

20. 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.

21. MORTGAGEE

21.1 Any mortgagee or chargee with an interest in the Site from time to time (including for the avoidance of doubt the Mortgagee) will not incur any liability for any breach of the obligations contained in this Agreement unless and until they become a mortgagee in possession of the Site or any part of it in which case they will be liable for any breach of the obligations in this Agreement or for costs arising whilst the mortgagee is in possession of all or any part of the Site.

21.2 Subject to clause 21.1, the Mortgagee consents to this Agreement being entered into with the intention that its interests in the Site in the form of the Legal Charge will be bound by the terms of this Agreement as if this Agreement had been executed and registered as a local land charge before the execution of the registered charge.

21.3 For the avoidance of doubt the limitation of liability contained in clause 21.1 shall apply to a mortgagee in possession and not to any successor in title to that mortgagee.

22. RESTRICTION ON TITLE

The Owner covenants with the Council that:

22.1 prior to or upon completion of this Agreement it shall provide the Council with a completed Land Registry form RX1 (or any subsequent revisions amendments or replacements of the same) signed by it and thereby 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 a conveyancer that the provisions of paragraph 7 of Schedule 3 of a Section 106 Agreement dated made between (1) The Council of the City of Manchester (2) Oval Properties 1801 Limited and Baring Asset Management Limited (3) have been complied with or that they do not apply to the disposition.”

22.2 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;

22.3 Prior to or upon completion of this Agreement the Owner will provide the Council with a cheque to cover the reasonable and proper 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 Albert Bridge House, 1 Bridge Street, Manchester M60 9AT shown for the purposes of identification only edged red on the Plan and registered at HM Land Registry with absolute title under title numbers LA4177 and MAN175669.

SCHEDULE 2

Draft Planning Permission

SCHEDULE 3

THE OWNER'S GENERAL COVENANTS

The Owner hereby covenants with the Council as follows:

1.
 - 1.1 To notify the Council in writing within ten (10) Working Days of Commencement of Development that development has Commenced.
 - 1.2 To notify the Council within 10 (10) Working Days of the date of Completion of Construction of 75% of the Dwellings;
 - 1.3 To notify the Council within 10 (10) Working Days of the date of Occupation of the first Dwelling to be Occupied.

VIABILITY REVIEW AT CALCULATION DATE AND VIABILITY PAYMENT

2. Within ten (10) Working Days of the Calculation Date:
 - 2.1 to confirm the Method of Disposal and the relevant Permitted Profit Level to the Council in writing; and
 - 2.2 to provide a copy of the Viability Appraisal in order that the Council may instruct a Chartered Surveyor to review the Viability Appraisal and advise the Council on its contents and conclusion.
3. Within sixty (60) Working Days of its receipt of the Viability Appraisal the Council shall give written notice to the Owner either:-
 - 3.1 Stating that it accepts the Viability Appraisal or
 - 3.2 Correcting or challenging any of the amounts or conclusions included in the Viability Appraisal and giving details of the disputed amounts or conclusions.
4. In the event that the Council shall have served a notice on the Owner pursuant to paragraph 3.2 of this Schedule 3 the Owner and the Council shall use reasonable 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 3.2 of this Schedule 3, then the matter in dispute shall be referred to the Chartered Surveyor, in accordance with the provisions of Clause 7 of this Agreement 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 Viability Appraisal, which both Parties agree will be final and binding upon them (save in respect of manifest error);

5. The Viability Appraisal not by way of limitation shall include and confirm:

5.1 the GDV;

5.2 the Costs;

5.3 the Gross Margin; and,

5.4 the Viability Payment, if any.

6. Viability Payment

6.1 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 shall be capped so that they do not exceed the Maximum Contribution;

6.2 In the event that the information contained in the Viability Appraisal (as agreed by the Council or determined pursuant to paragraph 4 of this Schedule 3) shows that a 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.

RETENTION AS BUILD TO RENT

7.1 Where the Method of Disposal is Build to Rent the Owner shall deliver the Dwellings for the private rental market as a Build to Rent scheme and subject to paragraph 7.2 of this Schedule shall retain ownership of the part of the Development which is comprised of Build to Rent Dwellings for a period of fifteen years (15) years from Completion of Construction Provided that, subject to Clause 7.2, if the Owner Disposes of any part of the Development which is comprised of Build to Rent Dwellings in breach of this covenant then the clawback provisions set out in clause 19 of this Agreement will be triggered, and the Owner covenants to comply with all the provisions of that clause and upon payment of the Clawback to the Council (or upon determination that no

Clawback is due) this covenant will no longer apply to the relevant Dwellings Disposed of.

- 7.2 Where the Method of Disposal is Build to Rent the Owner may Dispose of the part of the Development which is comprised of Build to Rent Dwellings to a single proprietor without triggering the clawback provisions set out in clause 19 of this Agreement.

RETENTION OF ARCHITECT

- 8.1 To 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 role in relation to the Development and that such employment is capable of being secured on reasonable commercial terms.
- 8.2 Should the Architect not be appointed or continue to be appointed in accordance with paragraph 8.1 above the Owner shall immediately notify the Council of this fact within ten (10) Working Days and shall use Best Endeavours to appoint a replacement Architect of a similar calibre and reputation as soon as reasonably practicable and shall thereafter notify the Council of the identity of the replacement architect immediately within 10 Working Days thereafter.

HIGHWAY CONTRIBUTION

9. To pay the Highway Contribution within 20 (twenty) Working Days of its receipt of the written confirmation from the Council provided for under Schedule 4 paragraph 5 of this Agreement.

SCHEDULE 4

The COUNCIL'S COVENANTS

The Council hereby covenants with the Owner as follows:

1. To use any Viability Payment and Clawback towards the provision of Affordable Housing within the Administrative Boundaries of Manchester and for no other purpose.
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. The Council shall provide written details of any expenditure incurred by the Council using the Viability Payment and the Clawback within 20 Working Days of a written request to do so from the party/person who made the payment to the Council.
4. To repay to the paying party such sum or sums remaining from the Viability Payment and Clawback as have not been expended in accordance with paragraph 1 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.
5. Prior to first Occupation of the Development and in any event as soon as reasonably practicable to provide written confirmation to the Owner of the amount of the Highway Contribution.
6. To use the Highway Contribution towards the provision of the Highway Works and for no other purpose.
7. To issue the Planning Permission within two (2) Working Days of the date of this Agreement.

SCHEDULE 5

VIABILITY TEMPLATE

Land known as Albert Bridge House, 1 Bridge Street, Manchester M60 9AT

Permitted Profit Level – based upon 20% of GDV of Open Market Value	£
Permitted Profit Level – based upon 10% of Costs of Pre-Sale Element	£
Permitted Profit Level – based upon 10% of Costs on Build to Rent	£
All in build cost – [Includes (but not limited to) - House Build (Superstructure), Plot Costs (Incl. Substructure), Infrastructure, Overheads and Prelims, operating costs, sales incentives]	£
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	£
Agreed Land Value (The Lower of 1). Benchmark Land Value set at Planning Consent Stage of £4,450,000 or 2). Actual Land Value – to be evidenced)	£
Agreed Stamp Duty - TBA	
Agreed Site Legal & Agents Fees @ 1.5% of Land Value	
TOTAL COSTS (Costs)	
Gross Margin = GDV - Costs	
VIABILITY PAYMENT –	

NB – Viability Payment Cannot Exceed £14,076,255 (Index Linked)

The Headings in the Viability Template are not exhaustive

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 **OVAL PROPERTIES 1801 LIMITED**, a company incorporated in Jersey, acting by

who, in accordance with the laws of that territory, is acting under the authority of the company.

Signature in the name of Oval Properties 1801 Limited

Signature of Authorised signatory

**BARING ASSET MANAGEMENT
LIMITED**

acting by its Attorney

Katie Moretti

in the presence of:

BARING ASSET MANAGEMENT LIMITED
by its Attorney Katie Moretti

Signature of witness

Print Name:

Occupation:

Address: