

DATED _____ 2025

THE COUNCIL OF THE CITY OF MANCHESTER

– and –

TRIPLE JERSEY LIMITED

- and -

[Mortgagee]

AGREEMENT

**pursuant to section 106 of the Town and
Country Planning Act 1990 (as amended)
relating to the redevelopment of a retail unit and associated garden centre by 115 dwellings
access and car parking landscaping and associated drainage at former B and M Home Store
Kingsway Manchester M19 1BB**

MCC Draft 26 /03/25

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

2025

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF MANCHESTER** of Town Hall Albert Square Manchester M60 2LA ("the Council");
- (2) **TRIPLE JERSEY LIMITED [Owner]** (incorporated in England and Wales with company number [XXXXXX]) whose registered office is at XXXXXXXXXXXXXXX ("the Owner"); and
- (3) **[Mortgagee]** of xxxxxxxxxxxx ("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 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 Site registered at the Land Registry with Title Absolute under Title Number [GMXXXXXX] together with but subject to all matters contained or referred to in the Title Registers thereunder.
- C. The Mortgagee is interested in 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 Core Strategy and SPD and the Regulations is desirous of the Owner entering into this Agreement without which planning permission would not be granted.
- F. The application of the SPD to the Development means that there is a requirement to provide affordable housing [on the Site] in the manner appearing in this Agreement. The Council has determined that the Development in order to comply with the SPD will support the provision of the Affordable Housing in lieu of making a payment of the **Maximum Contribution**.
- G. 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.

- 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 without a reduction in the Maximum Contribution the implementation of the Development is not viable. The Council has agreed to accept the offer of Affordable Housing in lieu of the Maximum Contribution on the basis of the information contained in the documentation relating to viability submitted by the Owner to the Council. 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 mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations. The Council is satisfied that the obligations in this Agreement are;
- a) necessary to make the Development acceptable in planning terms;
 - b) directly related to the Development; and
 - c) fairly and reasonably related in scale and kind to the Development.

AGREED TERMS

1. 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 Dwelling a dwelling identified as a Housing Unit in the Affordable Housing Scheme

Affordable Housing has the meaning given in Annex 2 of the National Planning Policy Framework (2024) or any amendment or supplemental government guidance issued in respect thereof

Affordable Housing Provider means either:

- a Registered Provider; or
- any other housing provider; or
- the Owner or any other company or body;

who has appropriate management and maintenance arrangements and who will either acquire the freehold or leasehold (of at least 125 years) of (part of) the Affordable Housing, as approved by the

Council (such approval not to be unreasonably withheld or delayed) or if the Owner manages the units themselves to do so subject to the provisions in Schedule xx

Affordable Housing scheme a scheme to be submitted to the Council in writing in accordance with Part 2 of the Second Schedule and approved in writing by the Council which:

- i) provides for 8 Affordable Dwellings forming part of the Development ;
- ii) Identifies the dwelling and tenure mix to be provided in accordance with the Affordable Housing Dwelling/Tenure Mix;
- iii) Details the location of the Affordable Dwellings within the Development; and
- iv) Details the Affordable Housing Provider

"Agreement" this agreement;

"Anticipated Date of Completion of Construction" means the date upon which the Developer anticipates that the Completion of Construction of the relevant percentage of Dwellings referred to in this Agreement shall take place;

"Application" the application to which the Council gave the reference 141306/FO/2024 for planning permission for the redevelopment of the existing retail store and adjacent garden centre with up to 115 dwellings car parking access and landscaping;

"Calculation Date" shall be upon the 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;

"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. Commencement will be deemed to have taken place whether it takes place on the Site or on the land adjacent to the Site;

"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;

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

"Director" the Council's Director of Planning, Building Control and Licensing or such other officer of the Council as may from time to time be nominated in writing to act in place of the Council's Director of Planning, Building Control and Licensing;

"Dwelling" a unit of accommodation to be constructed on the Site as part of the Development pursuant to the Planning Permission and any Reserved Matters Approvals 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 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 Developer on Completion of Construction as Build to Rent. 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 on the Open Market 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;

"GDC" means Gross development cost as defined in Appendix F of the RICS Guidance. In addition the Council will accept in the calculation of GDC the actual costs incurred in the Development up to the time of preparation of the Viability Appraisal and such details shall be included in the Viability Appraisal provided always that any such actual costs are allowed for in Appendix F of the RICS Guidance;

"GDV" means gross development value as defined in Appendix F of the RICS Guidance together with the value of any grant funding/public subsidy received in respect of the Development

"Gross Margin" the GDV after deducting the GDC as more particularly detailed in the Viability Appraisal;

"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;

Landscape Management Scheme shall mean a structurally robust, fully costed and adequately funded written scheme that has been Approved for the management and maintenance of the common parts of the Land shown shaded xxxxxx on the Landscape Management Plan for the life of the Development prepared by or on behalf of the Owners and submitted to the Council for Approval and which shall be substantially based upon the proposals, strategy and recommendations for management and maintenance that were produced by xxxxxxxxxxxx Consultants for the Developer in support of the discharge of planning condition 28 a copy of which is appended to this Agreement in Schedule 6

Landscape Management Plan shall mean the plan appended to this Agreement in Schedule 6 marked "Landscaped Management Plan" showing thereon shaded xxxxxxxx the land to which the Landscape Management Scheme shall apply

"Legal Charge" a registered charge registered against the [Mortgagee] title dated [LD];

"Management Company" shall mean a limited company registered at Companies House which may already be in existence or which may be formed by the Owners set up in accordance with Part 3 of Schedule 3 for the purposes of carrying out the Landscape Management Scheme and:-

1. which is incorporated in England and Wales;
2. which has its registered office in England; and
3. whose primary objects permit it to manage and maintain the landscaping of the common areas of the Land in accordance with the Landscape Management Scheme

"Maximum Contribution" the sum of £[XXX,XXX] [TY Enter Maximum contribution amount in words] Index Linked;

"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"** shall be construed accordingly;

"Owners" the Owner and the Developer;

"Plan " the plan attached to the agreement;

"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;

"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;

"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;

"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;

"Profit Level" means in the case of a Pre Sale when the Gross Margin is equivalent to 10% of the GDC and in all other cases is when the Gross Margin is equivalent to 18% of the GDC;

Registered Provider a registered provider of social housing within the terms of the Housing and Regeneration Act 2008 (as may be amended or superseded from time to time) registered with the Regulator of Social Housing or any such body that shall replace it

"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" the RICS guidance note 1st edition entitled "Financial viability in planning" and assigned reference GN 94/2012 or any replacement, update or amendment of the same;

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

"Viability Appraisal" a written appraisal 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 Schedule 3 of this Agreement. Further guidance on the format to follow can be found in the first edition of the Guidance Note published in August 2012 by the Royal Institution of Chartered Surveyors titled "Financial Viability in Planning" or any amendment, update or replacement of the same;

"Viability Assessment Fee" a fee of £125 (one hundred and twentyfive pounds) plus VAT per hour 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 Profit Level as assessed will be achieved and will be the amount by which the Gross Margin exceeds the Profit Level PROVIDED THAT the Viability Payment shall be required to be no more than the amount that is needed in order to equal the Maximum Contribution. The Viability Payment will be payable within the timescale set out in the provisions contained in Schedule 3;

"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 Owners.

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 and 18 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 Owners) 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 himself 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 his part contained in this Agreement including those obligations set out in Schedule 3 Parts 1, 2 and 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 Viability Appraisal 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 immediate written notice 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 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.

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 For the purpose of noting this Agreement on the titles of the Owner registered under title numbers **GM xxxxxxxx at the** Land Registry the Owner will on the date hereof provide the Council with completed Form AN1 (or any replacement of this form) together with either a cheque made payable to the Land Registry to cover the requisite fee or alternatively with the Owner's solicitor's completed Land Registry account key number details inserted in the form. The Council will arrange for the AN1 (or any replacement of this form) to be registered at the Land Registry and the Owner will supply the Council with a copy of the amended registers as soon as reasonably practicable following their receipt by the Owner from the Land Registry.

11.3 The Council will upon receipt of a written request of the Owner's 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 11.3 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 Director at the Council's address above;

14.1.2 to the Owner and the Mortgagee respectively at their addresses above;

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

15.3 When submitting the 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. JURISDICTION

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

18. 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.

19. MORTGAGEE

19.1 The Mortgagee consents to this Agreement being entered into with the intention that its interest in the Site in the form of the Legal Charge detailed in the Title Registers 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 Legal Charge.

19.2 Notwithstanding clause 19.1, 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.

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

SCHEDULE 1

The Site

and shown for the purposes of identification only edged red on the Plan.

SCHEDULE 2

Draft Planning Permission

SCHEDULE 3

Part 1

THE OWNERS' GENERAL COVENANTS

The Owners hereby covenant with the Council as follows:

1. To notify the Council in writing within 7 (seven) Working Days of Commencement of Development;
2. To provide prior notification to the Council in writing at least 14 (fourteen) Working Days in advance of the Anticipated Date of Completion of Construction of the first Dwelling and thereafter as calculated by reference to the total number of Dwellings in each case the Anticipated Date of Completion of Construction of 50% of the Dwellings and the Anticipated Date of Completion of Construction of 75% of the Dwellings and to provide on-site within 7 (seven) Working Days as follows:
 - 2.1. Four Affordable Units upon Completion of Construction of 50% of the Dwellings; and
 - 2.2. Eight Affordable Units upon Completion of Construction of 75% of the Dwellings
3. Within 14 (fourteen) Working Days of the Calculation Date:
 - 3.1. to confirm to the Council in writing whether the Development was subject to a Pre Sale; and
 - 3.2. to provide the Council with a copy of the Viability Appraisal for possible agreement by the Council;
4. Within 28 (twenty eight) Working Days of its receipt of the Viability Appraisal the Council shall give written notice to the Owners either:-
 - 4.1. Stating that it accepts the Viability Appraisal or
 - 4.2. Correcting or challenging any of the amounts or conclusions included in the Viability Appraisal and giving details of the disputed amounts or conclusions;
5. In the event that the Council shall have served a notice on the Owners pursuant to paragraph 4.2 of this Schedule 3 the Owners and the Council shall use reasonable endeavours to reach agreement in respect of the Viability Appraisal but if the Owners and the Council shall have failed to agree the Viability Appraisal within 28 Working Days of the notice served by the Council pursuant to Paragraph 4.2 of this Schedule 3, then the matter in dispute shall be referred to the Chartered Surveyor, in accordance with the provisions of Clause 7 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;
6. The Viability Appraisal not by way of limitation shall include and confirm:
 - 6.1. the GDV;

6.2. the GDC;

7. Viability Payment

7.1. In the event that the Viability Appraisal is agreed by the Council or determined pursuant to paragraph 5 of this Schedule 3 and the information contained therein shows that in accordance with the provisions of this Agreement a Viability Payment is due then the Owners shall pay to the Council {XX% of} the Viability Payment PROVIDED ALWAYS that this does not exceed the Maximum Contribution and all the Viability Assessment Fee in accordance with paragraph 7.2 below;

7.2. The Owner shall pay to the Council {XX% of} the Viability Payment within 28 days of the agreement by the Council of the Viability Appraisal or if applicable within 28 Working Days of the Viability Appraisal being determined pursuant to Paragraph 5 of this Schedule 3 [for the avoidance of doubt the Owners shall retain the remaining XX% of the Viability Payment (if any)]

7.3. In the event that the information contained in the Viability Appraisal (as agreed by the Council or determined pursuant to paragraph 5 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.

7.4. The Developer covenants with the Council that it will indemnify the Council to the full extent of any Viability Payment and related Viability Assessment Fee due that remains unpaid on the expiry of the time limit for payment set out in paragraph 7.2 of this Schedule (the "Outstanding Amount") and will pay the Outstanding Amount to the Council within 28 days of its receipt of a written request from the Council for the Outstanding Amount.

Part 2

AFFORDABLE HOUSING

The Owners hereby covenant with the Council as follows:

1. To submit to the Council for approval an Affordable Housing Scheme for 8 Affordable Dwellings in accordance with the provisions of this Deed and the Planning Permission with the Reserved Matters Application
2. Not to Commence the Development prior to approval of the Affordable Housing Scheme
3. The 8 Affordable Dwellings shall be provided in accordance with the Affordable Housing Dwelling Mix as units for Affordable Rent.
4. In carrying out the Development the Owner shall ensure that the Affordable Dwellings required within the Development shall be provided and constructed in accordance with the approved Affordable Housing Scheme for the Development
5. The Owner may carry out the Development to provide 8 dwellings as Affordable Dwellings PROVIDED THAT
 - 5.1 The Owner shall use its reasonable endeavours to transfer or to enter into an agreement to transfer the Affordable Rent Units to an Affordable Housing Provider but in the event that it is unable to do so within 6 months of the Commencement of Development:
 - 5.1.1 the Owner shall provide the Council with written evidence of the use of such endeavours to transfer the Affordable Dwellings to an Affordable Housing Provider and what options have been explored;
 - 5.1.2 the Owner and the Council may both use their reasonable endeavours to agree an alternative tenure mix;
 - 5.2 Where an alternative tenure mix has been agreed pursuant to Part 2 paragraph 5.1 above, the Owner shall for a further period of 56 days use reasonable endeavours to

transfer those Affordable Dwellings to an Affordable Housing Provider approved by the Council;

- 5.3 In the event that the Owner has been unable to enter into a transfer of those Affordable Dwellings to an Affordable Housing Provider pursuant to Part 2 paragraph 5.2, the Owner shall provide written evidence of the use of such reasonable endeavours to transfer those Affordable Dwellings to an Affordable Housing Provider;
- 5.4 Further to Part 2 paragraph 5.2, if the Council are reasonably satisfied that the Owner used reasonable endeavours to transfer the Affordable Dwellings to an Affordable Housing Provider but was unable to, the Owner will (pay the Affordable Housing Commuted Sum (within 20 Working Days of such sum being agreed between the Council and the Owner)) and the Owner shall then be permitted to let those Affordable Dwellings as market rental dwellings;
- 5.5 Once the Owner and Council has agreed that the provisions of Part 5.4 above have been met the provisions of Part 2 of this Schedule will no longer apply to those Affordable Dwellings
6. Not to Occupy or allow to be Occupied more than 75% of Market rental Dwellings until:
 - 6.1. The Affordable Dwellings for that phase of Development have been completed and are available for Occupation; and
 - 6.2. The Affordable Rent Units transferred to an Affordable Housing Provider
7. Not to Occupy permit suffer cause or allow to be Occupied any Affordable Dwelling otherwise than in accordance with the provisions of this Deed
8. To use reasonable endeavours to ensure that any transfer of the Affordable Housing to the Affordable Housing Provider contains the following provisions:
 - 8.1 the grant of all rights (so far as they are within the control of and can be granted by the Owner) of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Dwellings;
 - 8.2 a reservation of all rights (so far as they are within the control of and can be granted by the Owner) of access and passage of services and rights of entry reasonably necessary for the benefit of the remainder of the Dwellings on the Land;

- 8.3 the imposition of such covenants as the Owner shall reasonably require as are consistent with the sale of any other Dwellings on the Development

10. To ensure the Affordable Rent Units are at all times managed by an Affordable Housing Provider
11. To notify the Council within fourteen days of the transfer of any of the Affordable Housing Units to an Affordable Housing Provider of the date of such transfer
12. To ensure that no Affordable Rent Unit shall be used for any purpose other than for the provision of Affordable Housing for rent via the MCC Lettings System (or any subsequent system adopted by the Council) to Persons In A Housing Need
13. To ensure that all Affordable Rent Units will be advertised through the MCC Lettings System and that the Council will have the right to nominate 100% of the first lets of the Affordable Rent Units and 95% of lets to subsequent occupiers of the Affordable Rent Units

PART 3

MANAGEMENT COMPANY AND LANDCAPE MAINTENANCE

- 1 the Owners covenants as follows. :
- 1.1 to implement the Landscape Scheme and thereafter maintain the landscape and the area provided
- 1.2 Not to let or Dispose of any Dwelling until the Management Company has been established in accordance with the following provisions:-
- 1.1.1 the first directors and shareholders of the Management Company shall be representatives of the Owners;
- 1.1.2 the Owners shall ensure that the principal objects of the Management Company will include provisions that the Management Company shall implement the Landscape Management Scheme in Schedule 5
- 1.1.3 Not to Occupy permit or to allow Occupation of any Dwelling until the Landscape Management Scheme is in existence
- 1.1.4 to notify the Council within 7 days of any Transfer of land subject to the landscape scheme into the Management Company and to supply a copy of the completed transfer with the notification.

- 2 Not to dispose of any dwelling by way of open market sale unless –
 - 2.1 the Disposal contains provisions that bind the purchaser/s and their successors in title to ensure that the purchaser/s covenant with the Owners of the part of the Land upon which the Dwelling is constructed and the Management Company:-
 - 2.1.1 to pay annually in advance on or before a date set out in the Transfer to the Management Company an estate rentcharge or service charge whichever is applicable of the estimated amount set out in the form of the annual payment request sent to each Dwelling by the Management Company required to be paid as that Dwelling's share of the costs that it is estimated will be incurred by the Management Company in carrying out the ongoing implementation of the Landscape Management Agreement for the year ahead;
 - 2.1.2 once the costs actually incurred in each year have been calculated ("the Actual Costs") to pay annually any supplementary estate rentcharge or service charge whichever is applicable that is set out in any supplementary estate rentcharge or service charge payment request within the timescale set out in the Transfer which shall be that Dwelling's share of the amount that is required in order to meet the difference if any between the Actual Costs and the amount that has already been received by way of estate rentcharge or service charge and allocated for the year concerned towards the cost of implementing the Landscape Management Plan ;
- 3 To ensure that control of the Management Company shall be transferred to the owners of the Dwellings upon completion of the sale of the last Dwelling in the Development.

SCHEDULE 4

The COUNCIL'S COVENANTS

The Council hereby covenants with the Owners as follows:

1. To use any Viability Payment to contribute towards: Affordable Housing provision within the City.
2. At the written request of the Owners to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed.
3. To issue the Planning Permission within 5 Working Days of the date hereof.

SCHEDULE

Landscape Scheme and Plan

SCHEDULE 5/6

VIABILITY TEMPLATE

Site location, MANCHESTER

Open Market Gross Development Value (GDV) £

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

GDV of Pre Sale (PS) Element (Contract to be evidenced) £

Profit Level – based upon X% of GDV of Open Market Value	£
Profit Level – based upon X % of GDV of PS Element	£
All in build cost – [Includes - House Build (Superstructure), Plot Costs (Incl. Substructure), Infrastructure, Overheads and Prelims]	£
Schedule of abnormals TBA	£
Contingency on build costs and abnormals TBA	£
Professional fees on build costs and abnormals TBA	£
Sales and Marketing Costs TBA	£
Agreed planning stage Section 106 commuted sum payment	£xxx
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 £xxxx or 2). Actual Land Value – to be evidenced)	£
Agreed Stamp Duty @ 4%	
Agreed Site Legal & Agents Fees @ 1% of Land Value	
TOTAL GROSS DEVELOPMENT COSTS (GDC)	
Surplus = NDV - GDC	
VIABILITY PAYMENT – xxxxx	

NB – Viability Payment Cannot Exceed [£ XXX,XXX]

THE COMMON SEAL of THE COUNCIL

OF THE CITY OF MANCHESTER was affixed in the presence of:

AUTHORISED SIGNATORY

Signature:

Name (in block capitals)

[Parties to provide execution block]

SIGNED AS A DEED by xxxxxxxxxx

in the presence of:

Witness signature:

Witness name:

Witness

address:

Occupation:/'.