

DATED 31st July 2024

THE COUNCIL OF THE CITY OF MANCHESTER

– and –

JAMES MAXEY, ROBIN PATEY and DANIEL SLADE

- and -

THE ROYAL BANK OF SCOTLAND PUBLIC LIMITED COMPANY

AGREEMENT

**pursuant to section 106 of the Town and
Country Planning Act 1990 (as amended)
relating to 313 to 319 Palatine Road,
Manchester**

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

L/BH/PLA001/84047

THIS AGREEMENT is made the 31st day of July

2024

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF MANCHESTER** of Town Hall, Albert Square, Manchester, M60 2LA (the “**Council**”)
- (2) **JAMES MAXEY, ROBIN PATEY and DANIEL SLADE** of 313 to 319 Palatine Road, Northenden, Manchester (together the “**Owner**”)
- (3) **THE ROYAL BANK OF SCOTLAND PUBLIC LIMITED COMPANY** (incorporated in Scotland with company number 83026) whose registered office is at 36 St Andrew Square, Edinburgh, EH2 2YB and address for service is Nat West Bank, Credit Documentation Department, ~~PO Box 502, 42 High Street, Sheffield, S1 2YW~~ ^{1 Spinningheids Square, Manchester} (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 part of the Site registered at the Land Registry with Title Absolute under Title Number GM623439 and the leasehold owner of the remainder of the Site registered at the Land Registry with good leasehold title under Title Number GM573787 together with but subject to all matters contained or referred to in the Title Registers thereunder. The freehold owner of the remainder of the Site (the “Remainder”) is not known and is not entering into the planning obligations contained herein.
- C The Mortgagee has an interest in the part of the Site owned by the Owner by virtue of two registered charges dated 10 April 2012 and 23 April 2012 (the “Registered Charges”).
- D The Owner submitted the Application 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. The Council resolved on 14 December 2023 that it was minded to grant the Planning Permission subject to the prior

completion of this Agreement and the parties have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement

E The Council has recognised the difficulty faced by lower income groups in buying homes within the Administrative Boundary 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 has agreed 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

F The Council has determined that in order to comply with the Core Strategy the Development should provide 20% on-site Affordable Housing (the “Affordable Housing Requirement”). 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.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

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

“**Act**” means 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**” means all the wards that together comprise the city of Manchester,

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

“Affordable Housing Requirement” means 20% of all the Dwellings forming the Development are to be Affordable Housing Units,

“Affordable Housing Scheme” means a written scheme to be submitted for approval to the Council for the provision of Affordable Housing Units on the Site in accordance with policy H8 of the Core Strategy in a form approved by the Council and detailing the number, size, location, occupancy criteria and tenure mix of the Affordable Housing Units, together with the composition of any Intermediate Housing Units, on the Site as a whole,

“Affordable Housing Unit” means a Dwelling which shall be designated as Affordable Housing in the Affordable Housing Scheme submitted by the Owner and approved by the Council and in accordance with the Planning Permission which Dwellings are to be constructed according to at least the quality and design standards of the Regulator and which shall be designed, constructed and completed to at least the same standard as the Market Housing Units “Affordable Housing Units” shall be construed accordingly,

Affordable Rent means subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable) and which in any event will not exceed the LHA,

“Agreement” means this agreement,

“Application” means the application to which the Council gave the reference 138127/OO/2023 for outline planning permission (with matters of access, layout and scale for approval) for demolition of existing buildings and redevelopment of Site;

“Broad Rental Market Area” means the area where a person could reasonably be expected to live taking into account access to facilities and services;

“Chargee” means any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or charge or any receiver or manager

(including an administrative receiver) appointed pursuant to the Law of Property Act 1925;

“Chargee’s Duty” means the tasks and duties of the Chargee set out in Schedule 2,

“Commencement of Development” means 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 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 Commencement shall be deemed to have taken place whether it takes place on the Site or on the Adjacent Land and **“Commence”**, **“Commencement”** and **“Commenced”** shall be construed accordingly;

“Commuted Sum” means a financial contribution calculated in accordance with the methodology set out in the definition of “Formula”;

“Completion of Construction” means 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 or, if the Council, acting reasonably, considers that the completion of construction of the relevant number of Dwellings has occurred but it has not received the notice confirming completion in accordance with the provisions of this Agreement shall mean the date that the Council notifies in writing to the Owner that the said completion of construction is to be deemed to have taken place for the purposes of this Agreement and **“Completed”** and **“Completion”** shall be construed accordingly,

“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,

“Development” means the development undertaken on the Site pursuant to the Planning Permission as specified in the Application,

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

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

“Expert” means 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;

“Formula” means the formula for calculating the Commuted Sum for each Affordable Housing Unit is set out as follows.

$$\text{Developer Subsidy} = (A - B) \times C$$

Where

A = Average Market Value per Dwelling

B = Affordable Price per Dwelling

C = Total number of Dwellings

The Affordable Price per Dwelling will be the sum that is equal to 54% of the Market Value of the Dwelling

Worked Example

Average Market Value = £150,000

Affordable Price = £70,000

Total number of Dwellings = 100

In a scheme of 100 dwellings, the Council's normal on-site requirement for affordable housing is up to 20% (20 units) and thus the provision of private market accommodation is at least 80% (80 units).

However, where an in lieu payment is agreed, the calculation will be made on the basis that all 100 dwellings are for private market accommodation. The contribution for affordable housing should take into consideration all new housing units resulting from the facilitating site. Hence, the 100 private market dwellings should still represent 80% of the overall development.

The total resulting from the facilitating site is therefore calculated as

100 divided by 80 x 100 - 100 = 25 units

Commuted sum = (£150,000 - £70,000) x 25 = £2,000,000

Plus 5% management/maintenance/administration charge = £100,000

Total commuted sum in the Worked Example = £2,100,000;

Commuted Sum per Dwelling = £2,100,000 divided by 25 = £84,000

“Homes England “or “HE” means the body that funds and regulates Affordable Housing Providers and such expression shall include successors to the functions and powers of Homes England,

“Initial Sale Percentage” the percentage of the equity in an Affordable Housing Unit purchased by an occupier upon entering into a Shared Equity Arrangement.

“Intermediate Housing Unit” any Affordable Housing Unit to be constructed to the same overall standard in terms of quality and finish as a comparable Market Housing Unit and disposed of at a cost below market levels, under either a Shared Ownership Lease or Shared Equity Arrangement in accordance with the relevant provisions of the Housing and Regeneration Act 2008 and marketed in accordance with guidance issued by HE (or successor body) from time to time and **“Intermediate Housing Units”** shall be construed accordingly

Interest means at 4% above the base lending rate of the Bank of England from time to time,

“Local Housing Allowance” means the rates determined by the Valuation Office Agency used to calculate housing benefit for tenants renting from private landlords, such rates being based on private market rents being paid by tenants in the Broad Rental Market Area and “LHA” shall be construed accordingly;

“Management Fee” means 15% of the planning application fee which equates to one hundred and thirty eight pounds and sixty pence (£138.60) to be used for the purpose of management and monitoring of this Agreement and the Planning Obligations contained herein;

“Market Housing Units” means Dwellings which are general market housing for sale on the open market and which are not Affordable Housing and “Market Housing Unit” shall be construed accordingly;

“Market Value” means the estimated amount for which the Affordable Housing Units would be sold on the open market as though they were Market Housing Units between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion;

“NPPF” means the National Planning Policy Framework (NPPF) issued on 19 December 2023 (as may be updated or replaced with an equivalent policy from time to time) being the framework setting out the Government’s planning policies for England and how these are expected to be applied;

“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;

“Plan” means the plan attached to this Agreement;

“Planning Obligations” means the obligations of the Owner specified in Schedule 2;

“Planning Permission” means the planning permission granted pursuant to the Application as may be amended by any non-material amendment,

“Practical Completion” means the issue of a certificate of practical completion of the Development by the Owner’s architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect,

“Protected Tenant” means any tenant who

(a) has exercised the Right to Acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit,

(b) has exercised any statutory Right to Buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit,

(c) has entered into a Shared Equity Arrangement or Shared Ownership Lease with a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining equity so that the tenant owns the entire Affordable Housing Unit;

“Reasonable Endeavours” means that the Owner will be bound to use reasonable endeavours to fulfil the relevant obligation to a standard to be expected of a competent land owner judged in the context of the Development save that this obligation shall not entail the Owner offering any form of financial incentive inducement or other form of payment other than as may be set out in this Agreement. By way of example but not limitation using Reasonable Endeavours in order to achieve a sale of the Affordable Housing to a Registered Provider shall include all of the following.

(i) throughout the planning application process seeking any advice, assistance or guidance that may be available from the Planning Department of the Council;

(ii) seeking advice, guidance and any assistance that may be available from the Homes and Communities Agency local office for the area in which the Site is situated, the Council's Housing Strategy Team and Plumb Life @ Great Places Housing Group prior to commencement of marketing the Affordable Housing,

(iii) at any time prior to completion of a sale of the Affordable Housing seeking the advice, assistance and guidance of the local Council Regeneration Team for the area in which the Site is situated with the aim of ascertaining which two or three Registered Providers are most likely to be in a position to purchase the Affordable Housing within the time period set out in paragraph 2 4 of Schedule 2 of this Agreement; and

(iv) on receipt of a written request from the Council the Owner will provide evidence of having used Reasonable Endeavours to include, for example, but not by way of limitation copy email or letter correspondence to and from any of the bodies detailed in subparagraphs (i) to (iii) of this definition and also to and from Registered Providers. In respect of Registered Providers such correspondence will be expected to detail the affordable housing mix, describe the Affordable Housing Units, specify the price payable for the Affordable Housing Units and include details if applicable of the decision not to purchase the Affordable Housing;

"Registered Provider" means either a registered social landlord as defined in the Part 1 of the Housing Act 1996 who is registered with the Regulator pursuant to s 3 of the Housing Act 1996 and has not been removed from that register pursuant to s 4 of Housing Act 1996 or a provider of social housing as defined in s 80 of the Housing and Regeneration Act 2008 who is registered with the Regulator pursuant to s111 of the Housing and Regeneration Act 2008 and has not been removed from the register and "Registered Providers" and "RP" shall be construed accordingly;

"Regulations" the Community Infrastructure Levy Regulations 2010 (as amended);

"Regulator" means the body known as the Regulation Committee of Homes England, also known as the Regulator of Social Housing, or any successor organisation or body which regulates Registered Providers,

"Rented Housing Unit" any Affordable Housing Unit to be constructed to the same overall standard in terms of quality and finish as comparable units for sale as Market Housing Units and disposed of to an RP for letting at either an Affordable Rent or a Social Rent on assured tenancies or assured shorthold tenancies in accordance with the relevant provisions of the Housing and Regeneration Act 2008 and marketed in accordance with guidance issued by HE (or successor body) from time to time and **"Rented Housing Units"** shall be construed accordingly.

"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;

"Right to Acquire" the right of a tenant to acquire the Affordable Housing Unit of which they are a tenant provided under section 180 of the Housing and Regeneration Act 2008 and governed by the Housing Act 1985 and modified by the Housing (Right to Acquire) Regulations 1997 as the same may be modified or as contained in any replacement of the same;

"Right to Buy" the right of a tenant to buy the Affordable Housing Unit of which they are a tenant provided

(a) under the Housing Act 2005 and under the Housing and Planning Act 2016 as the same may be modified or as contained in any replacement of the same, or

(b) any equivalent contractual right,

(c) any extension of the Right to Buy to tenants of Registered Providers either through a voluntary scheme brought in by a Registered Provider or by government legislation as the same may be modified or contained in any replacement of the same,

“Shared Equity Arrangement” arrangements which provide for ownership to be shared between the occupier and a landlord under which the occupier owns part of the equity and pays to the landlord an annual fee of no more than 3% (three per cent) of the value of the part of the equity retained by the landlord. Such ownership by the occupier shall:

- (a) initially not be more than 75% (seventy five per cent) of the equity when measured against full Market Value of the relevant Affordable Housing Unit;
- (b) include the entitlement from time to time to Staircase upwards from the Initial Sale Percentage towards a pre-determined maximum percentage (which shall be up to 100% (one hundred per cent) in respect of his or her share of the full Market Value of the Affordable Housing Unit).

“Shared Ownership Lease” a lease the terms of which provide for ownership to be shared between the occupier and a landlord under which the occupier owns part of the equity in the leasehold title and pays a rental on the balance of the equity held in the leasehold interest. Such ownership by the occupier shall not be more than 75% (seventy five per cent) of the equity when measured against full Market Value of the relevant Affordable Housing Unit;

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

“Social Rent” a rent at a level set in accordance with guideline target rents set by the Regulator determined through the national rent regime,

“Staircasing” the exercise of the right of a purchaser under a Shared Ownership Lease/ Shared Equity Arrangement to increase their ownership in an Affordable Housing Unit up to 100% of the equity in the Affordable Housing Unit after which the rent payable on any equity share retained by the Registered Provider shall be reduced proportionally and **“Staircase”** shall be construed accordingly.

“Staircasing Receipts and Other Affordable Housing Receipts” any receipts received by any of the Owners following disposal arising from Right to Buy, Right to Acquire (or equivalent) or arising in respect of a Shared Ownership Lease as a result of Staircasing by the tenant.

“Stakeholder” shall mean the City Treasurer and her authorised officer’s,

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

“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 by the Secretary of State

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 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 2 and hereby agrees that the Site shall be permanently subject to the obligations, restrictions and provisions specified in Schedule 2, 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 Schedule 3.

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 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 within thirty (30) days of one party serving notice on the other calling for the appointment of an Expert then an Expert shall be appointed on the application to the President for the time being of the Royal Town Planning Institute.
- 7.3 Any reference of a dispute to an Expert shall if the parties are agreed in writing be deemed to be a reference to an expert (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 representations and cross-representations with such supporting evidence as they shall respectively consider necessary and the Expert shall have regard thereto in making his decision which shall be delivered in writing. The reference of any dispute shall include authority to determine in the relevant timescales for the submission of representations and what manner all the costs of the referral shall be paid

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.

9.3 The Owner warrants that no person other than the Owner and the Mortgagee and the freehold owner of the Remainder has any legal or equitable interest in the Site and the Owner hereby indemnifies the Council in respect of any loss that arises should there be any breach of this warranty.

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 in relation to the

exercise of its statutory functions Any approval given by the Council under this Agreement or for the purposes of this Agreement shall not be deemed to be approval for any other purpose whatsoever

11 LOCAL LAND CHARGE

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 its successors in title, at any time after the obligations set out herein have been fulfilled in their entirety or if the Planning Permission is not granted or clause 4 applies, issue written confirmation thereof and thereafter cancel all related entries in the register of local land charges.

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 first above written,

14 1 2 to the Owner and the Mortgagee respectively at their registered office address,

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
- 15.4 The Owner shall on the date hereof pay to the Council the Management Fee

16. **JURISDICTION**

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

17 **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

18. **MORTGAGEE**

- 18.1 The Mortgagee consents to this Agreement being entered into with the intention that its interest in the Site in the form of the Registered Charges 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 Charges.
- 18.2 Notwithstanding clause 18.1, 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

19 **AGREEMENTS AND DECLARATIONS**

It is hereby agreed and declared that this Agreement shall not be enforceable against

- 19.1 any owner, occupier, or tenant of any individual Market Housing Unit or the successors in title of any such person or mortgagee or any person deriving title therefrom
- 19.2 any Protected Tenant or their mortgagee or chargee or the successors in title of such Protected Tenant,
- 19.3 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services
- 19.4 the relevant highway authority to whom any part of the Site is disposed of for the purposes of adoption of any roads and/or footpaths and/or cycle ways to be constructed on the Site.

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 Land or any part thereof and any works executed thereon as if this Agreement had not been executed by the Council and in particular nothing in this Agreement shall restrict the Council and any other authority from exercising powers of compulsory purchase in respect of any part of the Land.

21. **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.

22 **AFFORDABLE HOUSING STATEMENT**

The Affordable Housing Statement may be amended by the Owner from time to time provided that such amendments are first approved by the Council in writing, such approval not to be unreasonably withheld or delayed.

23 **RESTRICTION**

23.1 The Owner covenants with the Council that:

23.1.1 prior to or upon completion of this Agreement the Owner shall provide the Council with a completed Land Registry form RX1 (or any subsequent revisions amendments or replacements of the same) signed by the Owner and thereby authorising the Council to register a restriction in standard form L at the Land Registry in respect of its interests in each of the title numbers GM623439 and GM573787 in the following terms

“No surrender 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 Schedule 2 of a Section 106 Agreement dated made between (1) The Council of the City of Manchester (2) James Maxey, Robin Patey and Daniel Slade and (3) The Royal Bank of Scotland PLC have been complied with or that they do not apply to the disposition ”

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,

23.1.2 prior to or upon completion of this Agreement they will each provide the Council with a cheque to cover the cost of registering the form RX1 at the Land Registry or will insert their land registry account details in the form RX1

23.2 the Council covenants with the Owner that:

23.2.1 it will provide the Owner as soon as reasonably practicable following receipt of a written request by the Owner with a completed form RX4 enabling it to withdraw the restriction registered in accordance with clause 23.1 in consideration of the Owner having provided the Council with a completed Form RX1 (or Forms RX1) together with a plan (or plans) detailing edged red thereon the Affordable Housing Units (being not less than 20% of the Dwellings rounded up) as plot numbers enabling the Council to register a replacement restriction in respect of the Site in the following format:

"No disposition of the part of the registered estate comprising house plot(s) numbered (to be inserted) 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 Schedule 2 of a Section 106 Agreement made between (1) The Council of the City of Manchester and (2) James Maxey, Robin Patey and Daniel Slade and (3) The Royal Bank of Scotland PLC dated have been complied with or that they do not apply to the disposition."

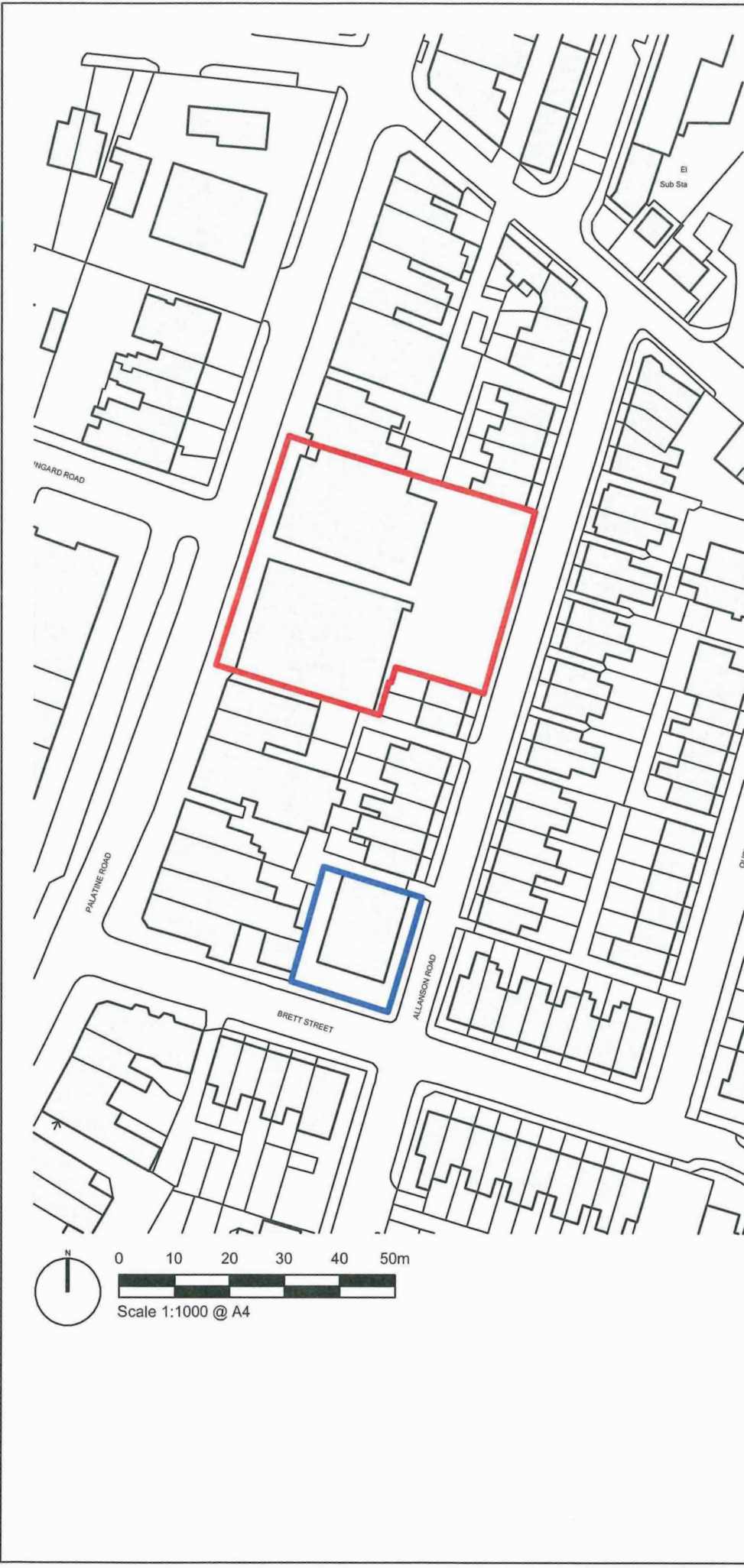
23.2 2 The Owner shall be responsible for the cost of registering the RX1 form referred to in this subclause 23.2.

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

SCHEDULE 1

The Site

Land at 313 to 319 Palatine Road, Northenden, Manchester and shown for the purposes of identification only edged red on the Plan



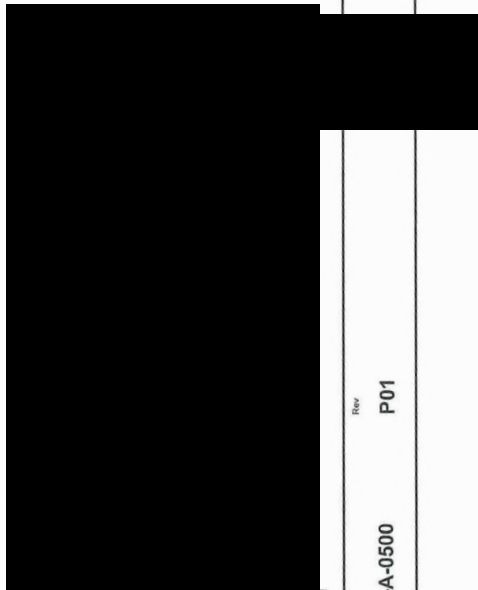
- NOTES
- All dimensions and levels are to be checked on site.
 - Any discrepancies are to be reported to the architect before any work commences
 - This drawing shall not be scaled to ascertain any dimensions. Work to figured dimensions only.
 - This drawing shall not be reproduced without express written permission from AEW.
 - Title overlay drawings and ownership boundaries are produced using all reasonable endeavors. AEW cannot be responsible for the accuracy or scale discrepancy of base plans supplied to them.
 - All works are to be undertaken in accordance with Building Regulations and the latest British Standards.
 - All proprietary materials and products are to be used strictly in accordance with the manufacturers recommendations.

CDM 2015

Client notified of duties: 061021
Principal Designer: TBC

Unless noted below, all known hazards have been highlighted on the drawing:

Application Boundary
Adjacent Ownership



P01	24/07/23	RP	BR
Initial Issue			
REV	Date	Drawn by: -	Checked by: -
Status	Purpose of Issue		
S2	For Approval		
drawing stage	Planning		
client	Express Solicitors		
project	Northenden, Palatine Road		
drawing title	Location Plan		
date	19/07/2023	drawn	RP
scale@A4	1:1000	checked	BR

Rev P01

Job No 12165-AEW-SI-01-DR-A-0500

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SCHEDULE 2

THE OWNER'S COVENANTS

The Owner hereby covenants with the Council as follows.

1.

- 1.1 To notify the Council in writing within five (5) Working Days of Commencement of Development that development has commenced.

2

2.1 To provide the Affordable Housing Requirement

2.2 Prior to Commencement of Development to submit to the Council for its written approval the Affordable Housing Scheme in writing to include full details of any Rented Housing Units at a Social Rent, Rented Housing Units at an Affordable Rent and Intermediate Housing Units to be provided.

2.3 To carry out the Development in accordance with the Affordable Housing Scheme that has been approved in writing by the Council

2.4 As part of the Affordable Housing Scheme submitted to provide detailed plans showing the locations of Affordable Housing Units to be provided such locations to ensure tenure blind design and full integration ("pepper-potted") with the Market Housing Units generally within the Site.

2.5 Not to Occupy, allow or permit to be Occupied more than 60% of the Market Housing Units until all of the Affordable Housing Units have been:

2.5.1 constructed in accordance with the Planning Permission and made ready for residential occupation; and

2.5.2 transferred to a Registered Provider and written notification of the transfer has been sent to and received by the Council PROVIDED THAT if the Owner has made Reasonable Endeavours (as agreed in writing by the Council such agreement not to be unreasonably delayed or withheld) to market an Affordable Housing Unit and has been unable to complete a transfer to a Registered Provider within the period of nine months of beginning to market the Affordable Housing Unit (subject as hereinafter provided in respect of a Chargee) then the Owner may elect to sell the Affordable Housing Unit on the open market at the Market Value (or such other price as may be

agreed in writing by the Council) free of the restrictions contained in this Schedule PROVIDED THAT within 20 (twenty) Working Days of completion of the sale they pay to the Council the Commuted Sum For the purpose of calculating the nine month period it will be assumed that the marketing of the Affordable Housing Units for sale to a Registered Provider will have started not more than three months before Practical Completion If that Owner is selling as a Chargee in possession then the provisions detailed in Paragraph 2.6 apply

2.6 From the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing SAVE THAT this obligation (and the provisions of the Affordable Housing Scheme) shall not be binding on

(a) any Chargee that has first complied with the Chargee's Duty and any person deriving title from such Chargee or any successor in title thereto and their respective mortgagees and chargees, or

(b) any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and any person deriving title from that purchaser or any successor in title thereto and their respective mortgagees and chargees.

2.6.1 Chargee's Duty

The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than one month's prior notice ("Chargee's Notice") to the Council of its intention to dispose and

2.6.1.1 in the event that the Council responds within one month from receipt of the Chargee's Notice ("the Council's Notice") indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing and to satisfy the terms of the mortgage or charge then the Chargee shall co-operate with such arrangements and use its Reasonable Endeavours to complete such transfer, or

2.6 1.2 if the Council does not serve its response to the Chargee's Notice within the one month period referred to above at paragraph 2.6.1 1 then the Chargee shall be entitled to dispose of the Affordable Housing Units or any part thereof free from the restrictions set out in this Schedule (and the provisions of the Affordable Housing Scheme) which provisions shall determine absolutely; or

2 6 1.3 if the Council or any person nominated by the Council cannot within two months of receipt of the Council's Notice complete such transfer (so that for the avoidance of doubt there shall be a total of only 3 months from the Chargee's Notice to completion of such transfer) then provided the Chargee shall have complied with its obligations under paragraph 2 6 1 1 the Chargee shall be entitled to dispose of the Affordable Housing Units or any part thereof free from the restrictions set out in this Schedule (and the provisions of the Affordable Housing Scheme) which provisions shall determine absolutely,

PROVIDED THAT at all times the rights and obligations in this paragraph 2 6 1 shall not require the Chargee to act contrary to its duties under the charge or mortgage and in particular (but without limitation) the Chargee shall not be obliged to transfer, let or otherwise dispose of the Affordable Housing Units or any part thereof for a consideration less than the full amount outstanding under the legal charge or mortgage (plus all interest) thereon) together with the Chargee's costs and expenses

3. Unless required by the HE to do otherwise, not to use any Staircasing Receipts and Other Affordable Housing Receipts other than towards the provision of Affordable Housing within the Administrative Boundaries of Manchester

4. That unless the planning obligations contained in this Schedule 2 have been fully complied with they will not surrender their leasehold interest in the Site that currently exists and are derived from the freehold title of the Remainder recited in Recital B or allow them to merge with any superior title so that they are extinguished without first procuring that any head lessors and the freehold owner of the Remainder have entered into a Deed of Variation of this Agreement whereby the freehold title to the Remainder and the title to any head leases not bound by this Agreement become bound by the planning obligations contained in this Schedule 2

SCHEDULE 3

The COUNCIL'S COVENANTS

The Council hereby covenants with the Owner as follows

- 1 to use any Commuted Sum received 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 that the Council shall provide written details of any expenditure incurred by the Council using any Commuted Sum received within 20 Working Days of a written request to do so from the party/person who paid the Commuted Sum to the Council;
- 4 that at the written request of the Owner the Council shall repay to the person who first paid such monies any balance of any Commuted Sum received (excluding any such sums in respect of which though not yet expended the Council has contractually committed to expend) which remains unexpended 10 (ten) years from the date of payment of any Commuted Sum received or in the case of monies allocated to maintenance 10 (ten) years from such date or dates together with all interest accrued thereon,
- 5 To issue the Planning Permission within two (2) Working Days of the date hereof

01124530

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

SIGNED AS A DEED by **JAMES MOXEY**
in the presence of



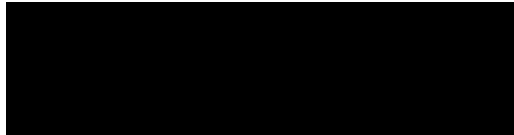
Witness signature



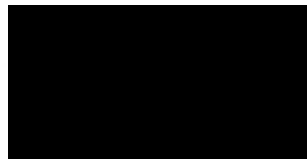
Witness name

LOIS ELLARD

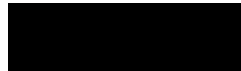
Witness address



SIGNED AS A DEED by **ROBIN PATEY**
in the presence of



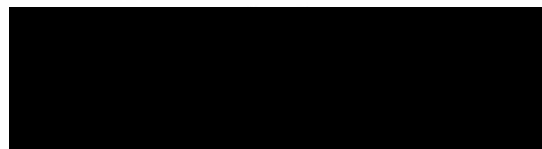
Witness signature



Witness name

LOIS ELLARD

Witness address



SIGNED AS A DEED by **DANIEL SLADE**

in the presence of

Witness signature

Witness name

LOIS ELLARD

Witness address

Signed and delivered as a Deed for and on
behalf of the Bank by a duly authorised
signatory in the presence of

Name

Address:

Executed as a deed as a deed)
for and on behalf of)
THE ROYAL BANK OF SCOTLAND)
by a duly authorised Attorney)

In the presence of -

Laura Morley

Witness' Signature - Bank employee

TINA BAROSKY
DOCUMENTOR
DOCUMENTATION
REF