

DATED 202

**THE COUNCIL OF THE CITY OF MANCHESTER**

– and –

**FARZANA PARVEEN**

-and-

**ICON (MCR) LIMITED**

- and –

**S AND A (GB) LIMITED**

-and others-

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**Agreement**

**pursuant to section 106 of the Town and Country Planning Act 1990 (as  
amended) relating to Land at 764 to 786 Stockport Road  
Manchester**

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

L/BH/EVD3001/4024

**THIS AGREEMENT** is entered into the                      day of                      202

**BY:**

- (1) **THE COUNCIL OF THE CITY OF MANCHESTER** of Town Hall, Albert Square, Manchester, M60 2LA (the “**Council**”)
- (2) **FARZANA PARVEEN** of 16 Highbank Drive, Manchester, M20 5QR (the “**First Owner**”)
- (3) **ICON (MCR) LIMITED** (incorporated in England with company number 06758078) whose registered office is at Adullam, London Road, Macclesfield, SK10 4DU (the “**Second Owner**”)
- (4) **S AND A (GB) LIMITED** (incorporated in England with company number 08989953) whose registered office is at 985 Stockport Road, Manchester, M19 2SY (the “**Third Owner**”)
- (5) **IDREES AHMED** of Flat 1, 985 Stockport Road, Manchester, M19 2SY (the “**Fourth Owner**”)
- (6) **TULIP NORTH WEST LIMITED** (incorporated in England with company number 01473487) whose registered office is at 16 Robert Street, Manchester, M3 1EY (the “**Fifth Owner**”)
- (7) **TOGETHER COMMERCIAL FINANCE LIMITED** (incorporated in England with company number 02058813) whose registered office is at Lake View, Lakeside, Cheadle, Cheshire, SK8 3GW (the “**First Mortgagee**”)
- (8) **CHROMOLYTE LTD** (incorporated in England with company number 01600031) whose registered office is at Argyle House, Leicester Street, Southport, PR9 0HA (the “**Second Mortgagee**”)
- (9) **ZULFIQAR AHMED** of 5b Alderglen Road, Manchester, M8 0AL (the “**Third Mortgagee**”) and
- (10) **LLOYDS BANK PLC** (incorporated in England with company number 00002065) whose registered office is at 25 Gresham Street, London, EC2V 7HN (the “**Fourth 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 any 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 any planning obligation created by this Agreement is enforceable by the Council. The Council owns the freehold of the Site and other land registered at the Land Registry with Title Absolute under Title Number GM715935 but is not entering into the Planning Obligations contained in this Agreement.

- B The First Owner has a leasehold title to the part of the Site comprising 764 to 770 Stockport Road, Manchester registered at the Land Registry with Title Absolute under Title Number GM533806 together with but subject to all matters contained or referred to in the Title Registers thereunder.
- C The Second Owner has a leasehold title to the part of the Site comprising 784 and 786 Stockport Road, Manchester registered at the Land Registry with Title Absolute under Title Number MAN 393518 together with but subject to all matters contained or referred to in the Title Registers thereunder.
- D The Third Owner has a leasehold title to the part of the Site comprising 774 to 786 Stockport Road, Manchester registered at the Land Registry with Title Absolute under Title Number GM971415 together with but subject to all matters contained or referred to in the Title Registers thereunder.
- E The Fourth Owner has leasehold titles to the parts of the Site comprising 776 and 778 Stockport Road, Manchester registered at the Land Registry with Title Absolute under Title Numbers MAN 364308 and MAN378660 respectively together with but subject to all matters contained or referred to in the Title Registers thereunder.
- F The Fifth Owner has a leasehold title to the part of the Site comprising 782 Stockport Road, Manchester registered at the Land Registry with Title Absolute under Title Number MAN 366185 together with but subject to all matters contained or referred to in the Title Registers thereunder.
- G The First Mortgagee has an interest in the part of the Site owned by the First Owner by virtue of a registered charge dated 21 December 2021 and in the part of the Site owned by the Second Owner by virtue of three Debentures dated 15 December 2023, 21 September 2021 and 21 December 2021 (the “Together Charges”).

- H The Second Mortgagee has an interest in the part of the Site owned by the Second Owner by virtue of a Debenture dated 26 January 2023 (the “Chromolyte Charge”).
- I The Third Mortgagee has an interest in the part of the Site owned by the Second Owner by virtue of a legal charge dated 12 January 2022 (the “Third Mortgage Charge”).
- J The Fourth Mortgagee has an interest in the part of the Site owned by the Second Owner by virtue of a Debenture dated 27 January 2009 and in the part of the site owned by the Third Owner by virtue of a Debenture dated 26 January 2021 (the “Lloyds Charges”).
- K The Application has been 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. The parties hereto have entered into this Agreement in order to consent to and be bound by the provisions of this Agreement.
- L 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 (as herein defined) intends to make provision for Affordable Housing in the manner hereinafter appearing. The Council is satisfied that the provision of Affordable Housing is:
- (a) necessary to make the Development acceptable in planning terms (including where appropriate, obligations necessary to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations);
  - (b) directly related to the Development; and
  - (c) fairly and reasonably related in scale and kind to the Development and in any event will secure planning benefits.
- M 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.

N The Council has determined that the Development in order to comply with the Core Strategy will where no Affordable Housing (as defined herein) is being provided on site support the payment of £415,627 (four hundred and fifteen thousand six hundred and twenty seven pounds) as an Affordable Housing Contribution (as defined herein) in lieu of the provision of 20% of the Dwellings as Affordable Housing. However, the Owners (as herein defined) have stated that there are viability issues affecting the development of the Site and have submitted to the Council documentation in support of this contention. The Council has accepted that at the date of this Agreement the implementation of the Development is not viable if payment is required to be made to the Council of the Affordable Housing Contribution. The Council will subject to the provisions contained in this Agreement in respect of any possible Viability Payment accept the postponement of the payment of the Maximum Contribution (as herein defined) on the basis of the information contained in the documentation relating to viability submitted by the Owners to the Council. The Owners have agreed to enter into the planning obligations contained herein requiring them to submit a Viability Appraisal and pay any Viability Payment found to be due in accordance with the provisions contained in this Agreement.

## **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;

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

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

**“Affordable Housing”** 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 Contribution”** shall mean the sum of £415,627 (four hundred and fifteen thousand six hundred and twenty seven pounds), together with any Inflation Increase, payable in lieu of Affordable Housing where no Affordable Housing is being provided on site as a contribution towards the provision of Affordable Housing within the Administrative Boundaries of Manchester in accordance with policy PA1 of the Core Strategy. This represents a sum that is a monetary equivalent to the cost of providing twenty per cent (20%) of the Dwellings as Affordable Housing;

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

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

**“Agreement”** means this agreement;

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

**“Application”** means the application for development to which the Council gave the reference 133747/FO/2022 comprising the demolition of existing buildings on site and construction of a four storey building comprising 30 (thirty) new residential units (Use Class C3), together with 9 (nine) ancillary flexible commercial uses at ground floor (Use Class E) and other associated infrastructure;

**Baseline Viability Assessment** means the financial viability appraisal submitted with the Application;

**“Benchmark Land Value”** shall mean the agreed fixed land value of the land upon which the Development is to take place as set out in clause 22.1 of this Agreement;

**“Calculation Date”** for the Viability Appraisal shall be the date when seventy five per cent (75%) of the Dwellings have been Occupied or the date that is 18 months following the Commencement of Development, whichever is the earliest to occur;

**“Chartered Surveyor”** means 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”** shall mean 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 this 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;

**“Completion of Construction”** shall mean 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 Owners that the said completion of construction is to be deemed to have taken place for the purposes of this Agreement and **“Completed”** shall be construed accordingly;

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

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

1. the actual costs Reasonably and Properly Incurred in relation to the Development prior to and up until the time of submission of the Viability Appraisal; and
2. the estimated costs that remain to be Reasonably and Properly Incurred in completing the Development and such details shall be included in the Viability Appraisal, provided always in the case of 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 NPPG section headed “Viability” (or any amendment or replacement thereof), and
3.      provided the grant funding forms part of the GDV and is repaid prior to the Calculation Date, the amount or amounts of any grant funding irrevocably repaid to the payer;

**“Development”** means the development undertaken on the Site and adjacent land pursuant to the Planning Permission as specified in the Application;

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

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

- (a) the completion on an arm's length basis of the sale or disposition of the freehold interest in any Dwelling; or

(b) the grant on an arm's length basis of a lease for a term of 99 (ninety nine) years or more whether or not a rent of more than nominal value is reserved;

and **"Disposed Of"** shall be construed accordingly

**"Dwelling"** means a unit of accommodation to be constructed on the Site as part of the Development pursuant to the Planning Permission and **"Dwellings"** shall be construed accordingly;

**"Expert"** 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;

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

**"Finance Cost"** means those costs which the Owners have Reasonably and Properly Incurred as a result of financing the Application and Development providing always that those costs shall not exceed seven per cent (7%) above the Bank of England base rate as at the date of the Baseline Viability Assessment. **"Finance Costs"** will be construed accordingly;

**"Forward Funding Arrangement"** means 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 any of the Owners 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 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"** means 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”** shall mean, subject to the proviso contained in this definition, when calculating the cumulative total GDV arising from the Development:

(a) in respect of Dwellings Disposed Of prior to the Preparation Date the Council will accept as the calculation of GDV in respect of those Dwellings the actual monies received from a Disposal of each Dwelling Disposed Of;

(b) in respect of Dwellings which have not been Disposed Of prior to the Preparation Date the GDV shall be the highest figure of:

(i) the gross development value as defined in paragraph 011 (reference: 10-011-20180724) of the Viability Section of the NPPG as the same may be amended or any replacement thereof; or

(ii) in respect of any Dwellings not Disposed Of but that have been sold subject to contract then the subject to contract price agreed for those Dwellings; or

(iii) for Dwellings not yet Disposed Of or sold subject to contract their advertised price as detailed in advertisements made as part of any sales and marketing strategy in respect of them and if more than one price for a Dwelling has been advertised shall mean the price as advertised in the advertisements issued closest to the Preparation Date;

(c) in respect of Dwellings that are Let the Council will accept as part of the calculation of GDV their Market Value; and

(d) in addition to any of the above calculations of GDV in (a), (b) and (c) above that may apply the GDV of the Development shall include not by way of limitation any income not already included in the calculations of GDV in (a), (b) and (c) above that will be derived from the Development in addition to income from Disposals and Lets for example:

(i) in the form of ground rents or from the renting of car parking spaces;

- (ii) the actual revenue from the disposal of the Site or any part of the Site;
- (iii) the Market Value of the Site, excluding the Dwellings but for the avoidance of doubt shall include the Market Value of any freehold and leasehold reversion of the Dwellings and the Market Value of any part of Development that has a non-residential use and the Market Value of any part of the Site not forming part of the Development;
- (iv) the value of any Grant Funding or Public Subsidy received in respect of the Development;
- (v) any receipts (which shall include any rental income but not any service charge or other repayment against costs) or Market Value of any other interest in the Site not already referred to in this sub clause (d) or included in the calculations of GDV in (a), (b) and (c) above,

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

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

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

**“Inflation”** shall mean the number of the General Index of Retail Prices (All Items) for the specified month produced by the Office for National Statistics (or

contained in any official publication substituted therefor) or such other index as may from time to time be published in substitution therefor;

**“Inflation Increase”** shall mean the amount calculated by way of the formula contained in clause 21 of this Agreement;

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

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

**“Management Fee”** shall mean fifteen per cent (15%) of the planning application fee which equates to £3,118.50 (three thousand one hundred and eighteen pounds and fifty pence) to be used for the purpose of management and monitoring any Planning Obligations that may be created by this Agreement as detailed herein;

**“Market Housing Units”** means any part of the Development which is general market housing for sale on the open market and which is not Affordable Housing and **“Market Housing Unit”** shall be construed accordingly;

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

**“Maximum Contribution”** shall mean the maximum sum of £415,627 (four hundred and fifteen thousand six hundred and twenty seven pounds) together with any Inflation Increase;

**“Mortgagees”** shall mean together the First Mortgagee, the Second Mortgagee, the Third Mortgagee and the Fourth Mortgagee;

**“NPPF”** means the National Planning Policy Framework (NPPF) first published on 27 March 2012 and updated on 24 July 2018, 19 February 2019 and 20 July 2021 (as may be updated or replaced with an equivalent policy from time to time) being the framework setting out the Government’s planning policies for England and how these are expected to be applied as may be amended or any replacement of the same;

**“National Planning Practice Guidance”** means the web based resource revised in respect of its section on viability on 1 September 2019 as the same may be further revised or amended or any replacement of the same which resource is provided by the government of the United Kingdom and brings together in one place planning guidance on various planning related topics and **“NPPG”** shall be construed accordingly;

**“Occupation”** means occupation of any part of 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;

**“Owners”** means together the First Owner, the Second Owner, the Third Owner, the Fourth Owner and the Fifth Owner;

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

**“Planning Obligations”** shall mean the obligations of the Owners specified in clause 22 and Schedule 3;

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

**“Practical Completion”** shall mean issue of a certificate of practical completion by the Owners’ architect or in the event that the Development is constructed by a party other than the Owners the issue of a certificate of practical completion by that other party’s architect;

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

**“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”** means 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 Owner will retain the whole or part of the Development;

**“Private Rental Sector Investment”** means a Development that will deliver new-build homes for the private rental market, with all or some of the Dwellings to be retained by the Owner as an investment;

**“Professional Fees”** means all of the costs of those third parties (including but not limited to their agents, contractors, professional advisors and technical consultants) that have agreed with the Owners or other relevant third party to provide services in relation to i) the Application, ii) construction of the Development and iii) sale of the Development PROVIDED THAT they have been Reasonably and Properly Incurred;

**“Profit Level”** means when the Gross Margin is equivalent to twenty per cent (20%) of the GDV or in the case of a Pre Sale Element when the Gross Margin is fifteen per cent (15%) of the GDV;

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

**“Retail Price Index”** means a 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”** means the Royal Institution of Chartered Surveyors;

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

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

**“Site”** means the property described in Schedule 1 and shown for the purposes of identification only edged red on the Plan and which shall be the land against which the planning obligations contained in clause 22 and Schedule 3 may be enforced against;

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

**Viability Appraisal** means a written appraisal to assess the Gross Margin required to be provided within ten (10) days of the Calculation Date in accordance with clause 22.4 of this Agreement. The format of the Viability Appraisal shall take the form of the Viability Report and **“VA”** shall be construed

accordingly. The VA must include as part of the VA any documentation the Council, acting reasonably, may in writing request be provided as part of it in order to assist the Council when reviewing the VA. The VA must comply with the requirements set out in paragraphs 2.1 to 2.14 of the RICS Professional Statement, first edition, issued in May 2019 and effective from 1/9/2019 titled “Financial viability in planning: conduct and reporting” which requirements set out what must be included in the VA and how the VA must be carried out;

**“Viability Assessment Fee”** means a reasonable and properly incurred fee of up to £12,000 (twelve thousand pounds) 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”** means fifty per cent (50%) of the amount by which the Gross Margin exceeds the Profit Level (referred to in the Viability Report as the **“MCC Surplus”**) PROVIDED THAT the Viability Payment shall be capped so that it shall not exceed the Maximum Contribution and PROVIDED FURTHER THAT the Viability Payment will be payable within the timescale set out in the provisions contained in Schedule 3;

**“Viability Report”** shall mean the form setting out the required inputs for the Viability Appraisal and the percentage values that are to be applied to various inputs, as detailed in Schedule 5;

**“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 their 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 shall include the successors in title of that party. In addition, references to the Council shall 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 Owners 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. This Agreement is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling legislation and is a planning obligation for the purposes of section 106 of the Act, with the intent that covenants hereinafter contained shall be enforceable by the Council acting under the powers contained in section 106 or such other enabling powers against the Owner.
3. **CONDITION PRECEDENT**
- This Agreement is conditional upon the grant of the Planning Permission save for the provisions of clauses 7, 9, 11, 13, 14, 15, 16, and 17 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 any 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 OWNERS COVENANTS**

The Owners on behalf of themselves and any person deriving title to any part of the Site from the Owners hereafter hereby covenant with the Council so as to bind the Site to fully observe and perform the obligations on their part contained in this Agreement including those obligations set out in clause 22 and Schedule 3 and hereby agrees that the Site shall be permanently subject to the obligations, restrictions and provisions specified in clause 22 and Schedule 3, 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 Owners to observe and perform the obligations on its part in this Agreement including those obligations set out in clause 22 and 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 Owners 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 Owners.

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

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

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 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 Owners will give the Council immediate written notice of any change in ownership of any of their interests 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 Owners warrant that no person other than the Owners and the Mortgagees have any legal or equitable 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 in relation to the exercise of its statutory functions.

**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 any of the Owners 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 will cancel all related entries in the register of local land charges.
- 11.4 The costs of registration and cancellation pursuant to clauses 11.2 above shall be met by the Owners 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 first above written; and

14.1.2 to the Owners and the Mortgagees respectively at their addresses or registered office addresses detailed herein, as applicable.

**15. FEES**

15.1 The Owners shall pay to the Council on the date of this Agreement:

15.1.1 its legal fees reasonably and properly incurred in preparation of this Agreement; and

15.1.2 the Management Fee.

15.2 Receipt by the Council of the payment of such sums shall not create any lawyer-client type contractual relationship between the Council and the Owners nor absolve the Owners from any liability or obligation accepted by them by the terms of this Agreement or by statute or at common law.

15.3 Following submission of the Viability Appraisal (if required), the Owners shall pay to the Council the Viability Assessment Fee within ten (10) Working Days of their receipt from the Council of an invoice detailing the amount.

**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 Mortgagees consent to this Agreement being entered into with the intention that their interests in the Site in the form of the Together Charges, Chromolyte Charge, Third Mortgagee Charge and the Lloyds 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 Together Charges, Chromolyte Charge, Third Mortgagee Charge and the Lloyds Charges.

18.2 Notwithstanding clause 18.1, the Mortgagees will not incur any personal 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. DECLARATIONS**

It is hereby declared that this Agreement shall not be enforceable against any owner, occupier, or tenant of any individual Dwelling or the successors in title of any such person or mortgagee or any person deriving title therefrom.

## **20. 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.

## **21. INFLATION INCREASE**

The Maximum Contribution shall be increased using the formula  $A = B \times (C / D)$  PROVIDED THAT  $(C / D)$  shall always be greater than or equal to 1, where:

- (1) A is the Maximum Contribution including the Inflation Increase;
- (2) B is the figure set out in the definition of Maximum Contribution in this Agreement

(3) C is in respect of (1) above: Inflation as shown in the relevant index published last before the Calculation Date

(4) D is Inflation for the month in which this Agreement is dated; and the Inflation Increase will be equal to A minus B

## **22. VIABILITY**

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

22.1 the cost input when assessing the Agreed Land Value of the Site upon its acquisition by the Owner is to be fixed at either the Benchmark Land Value of £450,000 (four hundred and fifty thousand pounds) or the Actual Land Value for the Site, whichever is the lower.

22.2 for the purpose of ascertaining the Profit Level the VA will detail whether the whole or part of the Development is the subject of a Pre Sale and if part will detail the specific Dwellings that are the subject of each and every Pre Sale that has been entered into on or before the Calculation Date so that they may be assessed at the relevant level of Gross Margin which shall be equivalent to fifteen per cent (15%) of the GDV for a Pre Sale and twenty per cent (20%) of the GDV in all other cases;

22.3 The VA not by way of limitation shall include and confirm the GDV and the Costs and the matters referred to in clause 22.1 and 22.2. The VA will detail that the whole of the Development is the subject of the VA and will calculate the Gross Margin on that basis.

22.4 Within 10 (ten) Working Days of the Calculation Date the Owners shall confirm in writing to the Council whether the Development was subject to a Pre Sale and shall provide the Council with a copy of the VA for agreement by the Council;

22.5 When it has received the VA the Council will provide the Owners with a written acknowledgement of service within five (5) Working Days of the date that it receives the VA;

22.6 Within ten (10) Working Days of its receipt of the VA and of the Viability Assessment Fee the Council shall give written notice to the Owners detailing any further or amended documentation that the Owners must provide in writing to the

Council (acting reasonably) before the VA can be accepted by the Council as the FVA;

22.7 If the Council make a request pursuant to clause 22.6 then within ten (10) Working Days of the date of that request the Owners shall provide the Council with written copies of the documentation or amended or supplementary documentation, whichever is applicable, requested;

22.8 Within fifteen (15) Working Days of its receipt of the documentation referred to in clause 22.7, or in the event that no further documentation is requested by the Council pursuant to clause 22.6 within 25 (twenty five) Working Days of the receipt of the VA and the Viability Assessment Fee, the Council shall give written notice to the Owners confirming whether or not it accepts that the VA is in FVA form.

22.9 If the Council notifies the Owners pursuant to clause 22.8 that it accepts that the VA is in FVA form it shall within 30 (thirty) Working Days of such notice being given give further written notice to the Owners either:-

22.9.1 Stating that it approves the FVA, or

22.9.2 Correcting or challenging any of the amounts or conclusions included in the FVA and giving details of the disputed amounts or conclusions.

22.10 In the event that the Council notifies the Owners pursuant to clause 22.8 that it does not accept the VA is in FVA form or pursuant to clause 22.9 that it does not approve the FVA then in either case the service of such notice shall be treated as a viability dispute (“**Viability Dispute**”).

22.11 If a Viability Dispute arises then the Owners and the Council shall use reasonable endeavours to resolve the Viability Dispute so that the Council may approve the FVA PROVIDED ALWAYS THAT at any time after a Viability Dispute arises either the Council or the Owners may refer the Viability Dispute 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:-

- in the case of a Viability Dispute pursuant to clause 22.8 as to whether the documentation in dispute is reasonably required to enable the Council to carry out its review of the VA and as to the content and form of that documentation that the

Council can reasonably expect to receive which the parties agree will be final and binding upon them (save for manifest error); or

- in the case of a Viability Dispute pursuant to clause 22.9 a written determination of the correct VA, which the parties agree will be final and binding upon them (save for manifest error);

22.12 If the Council does not serve notice on the Owners pursuant to clauses 22.6, 22.8 or 22.9 within the timescales set out in the respective clauses then the Council shall be deemed to have agreed the VA.

## **23 COUNCIL POWERS**

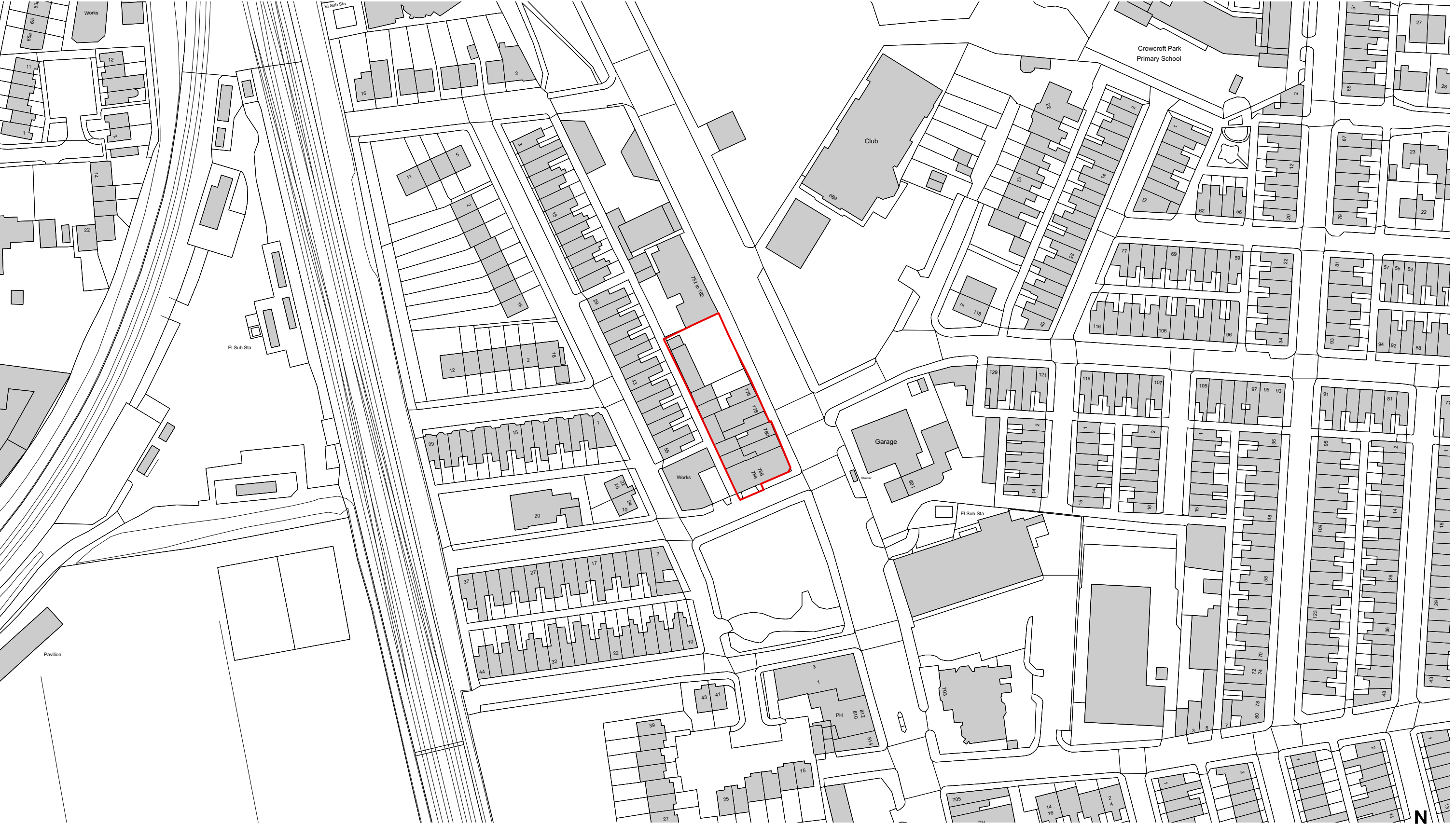
Nothing herein contained or implied shall prejudice or affect the rights, powers, duties and obligations of the Council in exercise of its functions as a local authority and the rights, powers, duties and obligations of the Council under all public and private statutes, byelaws, orders and regulations may be fully and effectually exercised in relation to the Site or any part thereof and any works executed thereon as if this Agreement had not been executed by the Council and in particular nothing in this Agreement shall restrict the Council and any other authority from exercising powers of compulsory purchase in respect of any part of the Site.

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

## **SCHEDULE 1**

### **The Site**

764 to 786 Stockport Road, Manchester and shown for the purposes of identification only edged red on the Plan.



LOCATION PLAN  
1:1250 @ A3



|          |          |                       |                                           |                  |
|----------|----------|-----------------------|-------------------------------------------|------------------|
| A        | 27.05.22 | AMENDED SITE BOUNDARY | CLIENT: VIEWS                             |                  |
|          |          |                       | PROJECT: PROPOSED RESIDENTIAL DEVELOPMENT |                  |
|          |          |                       | ADDRESS: 764 STOCKPORT ROAD               |                  |
| REVISION | DATE     | DESCRIPTION           | DRAWING TITLE: LOCATION PLAN              |                  |
|          |          |                       | SCALE: 1:1250@A3                          | DATE: MARCH 2022 |
|          |          |                       | DRAWING NO: A666_P_001A                   |                  |

**OLLIER SMURTHWAITE ARCHITECTS**  
40 King Street, Manchester, M2 6BA  
T 0161 883 0838  
F 0161 883 0839  
E mail@olliersmurthwaite.com

## **SCHEDULE 2**

### **Draft Planning Permission**

## **SCHEDULE 3**

### **THE OWNERS GENERAL COVENANTS**

The Owners hereby covenant with the Council as follows:

#### **1. NOTICES**

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

1.2 To notify the Council in writing within five (5) Working Days of the date when the first of the Dwellings has been Occupied;

1.3 To notify the Council within five (5) Working Days of the date when seventy five per cent (75%) of the Dwellings have been Occupied.

1.4 To comply with the provisions of clause 22.

#### **2. Viability Payment**

2.1 In the event that the Viability Appraisal is agreed by the Council or determined pursuant to the provisions contained in clause 22 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 the Viability Payment, together with any Inflation Increase in accordance with paragraph 2.2 of this Schedule 3.

2.2 The Viability Payment together with any Inflation Increase shall be paid by the Owners to the Council within 15 (fifteen) Working Days of the agreement by the Council of the Viability Appraisal or if applicable within 15 (fifteen) Working Days of the Viability Appraisal being determined pursuant to the provisions contained in clause 22.

2.3 In the event that the information contained in the Viability Appraisal (as agreed by the Council or determined pursuant to the provisions of clause 22) shows that a Viability Payment is not due, then it is agreed by the Council that the Viability Payment shall not be payable and the obligation in this paragraph 2 of this Schedule 3 shall cease to bind the Site.

## **SCHEDULE 4**

### **The COUNCIL'S COVENANTS**

The Council hereby covenants with the Owners as follows:

1. To use any Viability Payment for the provision of Affordable Housing within the Administrative Boundaries of Manchester and for no other purpose;
2. At the written request of any 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 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 Viability Payment received within twenty (20) Working Days of a written request to do so from the party/person who paid the Viability Payment to the Council;
4. That at the written request of any of the Owners the Council shall repay to the person who first paid such monies any balance of any Viability Payment received (excluding any such sums in respect of which though not yet expended the Council has contractually committed to expend) which remains unexpended ten (10) years from the date of payment of any Viability Payment received, together with all interest accrued thereon.

## SCHEDULE 5

Land at 764 to 786 Stockport Road, Manchester

Open Market Gross Development Value (GDV): £

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

|                                                                                                                                                |   |
|------------------------------------------------------------------------------------------------------------------------------------------------|---|
| Profit Level – based upon 20% of GDV where no Pre Sale Element                                                                                 | £ |
| Profit Level – based upon 15% of GDV in respect of any Pre Sale 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                                                                                                                  | £ |
| 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 £450,000 or 2). Actual Land Value – to be evidenced) | £ |
| Agreed Stamp Duty @ 4%                                                                                                                         | £ |
| Agreed Site Legal & Agents Fees @ 1% of Land Value                                                                                             | £ |
| Repaid grant funding (if any)                                                                                                                  | £ |
| TOTAL COSTS                                                                                                                                    | £ |
| Surplus = NDV – Total Costs                                                                                                                    | £ |
| MCC Surplus = Surplus x 50%                                                                                                                    |   |
| VIABILITY PAYMENT = MCC Surplus*                                                                                                               | £ |

\* Viability Payment cannot exceed the Maximum Contribution

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

AUTHORISED SIGNATORY

**SIGNED AS A DEED** by **FARZANA PARVEEN**

in the presence of

Witness signature

Witness name

Witness address

Executed as a Deed by **ICON (MCR) LIMITED**

acting by a director in the presence of

a witness

Signature of director .....

Witness signature .....

Name .....

Occupation .....

Address .....

.....

.....

.

Executed as a Deed by **S AND A (GB) LIMITED**

acting by a director in the presence of

a witness

Signature of director .....

Witness signature .....

Name .....

Occupation .....

Address .....

.....

.....

**SIGNED AS A DEED by IDREES AHMED**

in the presence of

Witness signature

Witness name

Witness address

Executed as a Deed by **TULIP NORTHWEST LIMITED**

acting by a director in the presence of

a witness

Signature of director .....

Witness signature .....

Name .....

Occupation .....

Address .....

.....

.....

Executed as a Deed by **TOGETHER COMMERCIAL FINANCE LIMITED**

acting by a director in the presence of

a witness

Signature of director .....

Witness signature .....

Name .....

Occupation .....

Address .....

.....

.....

Executed as a Deed by **CHROMOLYTE LIMITED**

acting by a director in the presence of

a witness

Signature of director .....

Witness signature .....

Name .....

Occupation .....

Address .....

.....

.....

**SIGNED AS A DEED by ZULFIQAR AHMED**

in the presence of

Witness signature

Witness name

Witness address

Executed as a Deed by

as Attorney for and on behalf of Lloyds

Bank plc in the presence of: