DATED 202

THE COUNCIL OF THE CITY OF MANCHESTER

- and –

TOBERMORY S.À.R.L.

-and-

DBS BANK LTD.

AGREEMENT

pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) relating to Land bounded by Deansgate, Great Bridgewater Street, Watson Street and Peter Street, Manchester, M3 4EN

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

L/BH/PLA001/04011

THIS AGREEMENT is made the day of 202

BETWEEN:

(1) **THE COUNCIL OF THE CITY OF MANCHESTER** of Town Hall, Albert Square, Manchester, M60 2LA (the **"Council"**);

(2) **TOBERMORY S.À.R.L.** (a company registered in Luxembourg with RCS number B180422) of 6,rue d'Arlon, L-8399 Windhof (Koerich), Luxembourg (the **"Owner"**);

(3) **DBS BANK LTD.** a limited liability company incorporated under the laws of Singapore (company registration number 19600306E) and registered as a non-Hong Kong Company under Part 16 of the Company Ordinance (Chapter 622 of the Laws of Hong Kong) (registration number F0004920) acting out of its HONG KONG BRANCH whose registered address in Hong Kong is at 18/F, The Center, 99 Queen's Road Central, Hong Kong (the **"Mortgagee"**).

BACKGROUND

A The Council is the local planning authority for the purposes of the Act in relation to the Site and is the authority by whom the obligations hereby created are enforceable. The Council is also the freehold owner of part of the Site registered at the Land Registry with title absolute under title number GM790380 together with but subject to all matters contained or referred to in the title registers thereunder. It is agreed by the parties that the Owner's covenant hereinafter contained shall not bind the Council. The Development will be carried out on the Site. The Site is situated within the Administrative Boundaries of Manchester and this planning obligation is enforceable by the Council.

B The Owner is the freehold owner of the majority of the Site registered at the Land Registry with title absolute under title numbers GM829282 and GM794105 together with but subject to all matters contained or referred to in the title registers thereunder and has the benefit of a leasehold interest in the remainder of the Site registered at the Land Registry with title absolute under title number MAN353253 together with but subject to all matters contained or referred to in the title registers thereunder.

C The Application was submitted to the Council for planning permission to carry out the Development in the manner set out in the plans, specifications and particulars forming part of the Application.

D The Council as local planning authority is satisfied that the Development is such as may be approved by the Council under the Act and is minded to grant planning permission for the Development in accordance with the Application but having considered the Local Plan and the Regulations is desirous of the Owner entering into this Agreement without which planning permission would not be granted. The Council resolved on 16 February 2023 that it was minded to grant the Planning Permission subject to the prior completion of this Agreement.

E The Owner has agreed to enter into this Agreement in support of the Application so as to create planning obligations in favour of the Council pursuant to section 106 of the Act and to be bound by and observe and perform the covenants hereinafter contained.

F The Council has determined that the Development in order to comply with the Core Strategy should provide a payment of fourteen million one hundred and eight thousand seven hundred and thirty pounds (£14,108,730) Indexed Linked in the case of a Pre-Sale and/or Build to Rent Method of Disposal and a payment of twenty eight million two hundred and seventeen thousand four hundred and sixty pounds (£28,217,460) Index Linked in the case of an Open Market Sales Method of Disposal and in all other cases towards the provision of Affordable Housing within the City of Manchester (the "**Maximum Contribution**"). However, the Owner has stated that there are viability issues affecting the development of the Site and has submitted to the Council documentation in support of this contention. The Council has accepted that at the date of this Agreement payment of any financial contribution would render the Development unviable. The Owner has agreed to enter into the planning obligations contained herein requiring them to submit the **Viability Appraisal** and pay any **Viability Payment** found to be due in accordance with the provisions contained in this Agreement.

G The planning purpose of this Agreement is to improve the amenity of land in the locality of the Site with benefit for the occupiers of the Development and to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations. In particular the Council has

recognised the difficulty faced by lower income groups in buying homes within the Administrative Boundaries of Manchester and the planning purpose of this Agreement is to increase the provision of affordable housing within the Administrative Boundaries of Manchester. The Owner intends to make provision for Affordable Housing in the manner hereinafter appearing. The Council is satisfied that the obligations in this Agreement are;

(a) necessary to make the Development acceptable in planning terms (including where appropriate, obligations necessary to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations);

(b) directly related to the Development; and

(c) fairly and reasonably related in scale and kind to the Development.

AGREED TERMS

DEFINITIONS AND INTERPRETATION

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

"Act" the Town and Country Planning Act 1990 (as amended);

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

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

"Agreement" shall mean this agreement;

"Application" the application for development to which the Council gave the reference 135565/FO/2022 comprising:

(i) demolition of the central atrium, car park ramps, and other elements, retention of casino (Sui Generis), bowling alley and existing food and drink unit (Use Class E) alongside to allow refurbishment, restoration and re-use of the Great Northern Car Park to provide office accommodation, retail and/or food and drink uses (Use Class E) and ancillary areas; and

(ii) refurbishment, restoration, partial demolition and erection of a 3-storey extension to Deansgate Terrace (northern section) and Goods Yard Entrance to form office, retail and / or food and drink use (Use Class E) and drinking establishments / hot food takeaway (Sui Generis), with associated public realm works comprising the reconfiguration of Great Northern Square and the introduction of additional public realm with associated hard and soft landscaping, highways works, access and servicing facilities, rooftop plant and other associated works; and

(iii) partial demolition of the existing leisure box to erect three residential buildings (ground plus 16, 27 and 34 storeys) to provide 746 residential apartments (Use Class C3), reconfiguration of existing car parking together with the creation of office, retail and / or food and drink use (Use Class E), or Sui Generis (drinking establishments / hot food takeaway) at ground floor and level 3, hard and soft landscaping, together with highways works, access and servicing facilities, rooftop plant and other associated works; and

(iv) external alterations and restoration of Deansgate Terrace (southern section) to provide office, retail or food and drink use (Use Class E) or Sui Generis (drinking establishments / hot food takeaway / live music venue), along with delivery of associated public realm, highways works, plant, and associated works;

"Architect" Simpson Haugh, Riverside, 4 Commercial Street, Manchester, M15 4RQ;

"Benchmark Land Value" means twelve million eight hundred and forty thousand pounds (£12,840,000) Index Linked;

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

competent landowner in the context of the Development and in the case of the Council, of a competent local planning authority acting reasonably in the context of its statutory functions;

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

"Calculation Date" means on Completion of Construction of 75% of the Dwellings or four (4) years from the date of this Agreement, whichever is earlier;

"**Chartered Surveyor**" a professional expert who is a chartered member of the Royal Institution of Chartered Surveyors with a minimum of ten (10) years post-qualification experience;

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

"**Clawback Period**" means a period of fifteen years from Completion of Construction of all of the Dwellings constructed as part of the Development and if the Council, acting reasonably, considers that the Completion of Construction of all of the Dwellings that form part of the Development has occurred but it has not received the notice confirming completion in accordance with the provisions of this Agreement shall mean the date that the Council acting reasonably notifies in writing to the Owner that the said Completion of Construction of all of the Dwellings that form part of the Development is to be deemed to have taken place for the purposes of this Agreement;

"**Clawback Valuation**" means the valuation of the Clawback in accordance with clause 19.1

"Commencement of Development" the date upon which the Development shall begin by the carrying out of a Material Operation in accordance with the provisions of section 56(4) of the Act PROVIDED THAT any works of or associated with site

clearance, remediation works, environmental or archaeological investigations, site and soil surveys, erections of contractors work compound, erection of site office, erection of fencing to site boundaries, marking of site boundaries and laying out of access roads and services shall for the purposes of the agreement be deemed not to be Material Operations and **"Commence"**, **"Commencement"** and **"Commenced"** shall be construed accordingly.

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

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

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

"Core Strategy" means the Manchester Core Strategy (adopted 11th July 2012) which is the key document in the Council's Local Development Framework and details the Council's vision for the development of Manchester during the period 2012 to 2027

"Costs" means the costs to be taken into account for the purpose of the Viability Appraisal as defined in paragraph 012 (reference: 10-012-20180724) of the section of the 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” (as may be amended or any replacement of the same);

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

“Disposal” means:

(a) a transfer by sale; or

(b) the grant of a Long Lease;

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

“Dwelling” a unit of residential accommodation to be constructed on the Site as part of the Development pursuant to the Planning Permission and **“Dwellings”** shall be construed accordingly.

“Expert” a professional expert in town planning, who is a Chartered Member of the Royal Town Planning Institute with a minimum of ten (10) years post-qualification experience.

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

“Forward Sale” the committed sale and purchase of the whole or part of the completed Development on agreed terms at a future date as evidenced by binding legal documents which are unconditional as to the sale of the whole or part of the completed Development and the requirement to undertake the construction of the

Development and which detail (without limitation) payments made on completion of the sale of the whole or part of the completed Development and during the construction and on completion of the Development;

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

(a) has not been Disposed Of at a value that is equal to or greater than its Open Market Value; or

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

"Gross Margin" means the GDV less the Costs or in the case of a Build to Rent scheme means the NDV less the Costs;

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

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

"Lease Plan" means the plan attached to this Agreement as Appendix C;

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

"Listed Building Applications" shall mean the applications for listed building consent received by the Council under reference numbers 135566/LO/2022 and 135583/LO/2022

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

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

"Management Fee" shall mean 15% of the planning application fee which equates to £24,946.50 for the purpose of monitoring and reporting on the delivery of this Agreement and the Planning Obligations contained herein;

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

"Maximum Contribution" the sum of fourteen million one hundred and eight thousand seven hundred and thirty pounds (£14,108,730) Indexed Linked in the case of a Pre-Sale and/or Build to Rent Method of Disposal and a payment of twenty eight million two hundred and seventeen thousand four hundred and sixty pounds (£28,217,460) Index Linked in the case of an Open Market Sales Method of Disposal and in all other cases,

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

"**NDV**" means the GDV deducting operational cost expenditure ('OPEX'), and purchaser's costs in the case of a Build to Rent Method of Disposal;

"NPPF" the National Planning Policy Framework issued in July 2021 being the framework setting out the Government's planning policies for England and how these are expected to be applied as may be amended or any replacement of the same.

"Occupation" means occupation of any part of the Development for the purposes permitted by the Planning Permission but does not include use by personnel whilst engaged in construction, fitting out or decoration of the Dwellings or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly;

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

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

“Permitted Profit Level” means:

(a) In the case of a Pre-Sale and/or Build to Rent when the Gross Margin is equivalent to 10% of the Costs; and,

(b) in all other cases and in the case of Open Market Sales when the Gross Margin is equivalent to 20% of the GDV.

“Plan” the plan attached to the Agreement;

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

“Planning Permissions” the Planning Permission granted pursuant to the Application in or substantially in the form as detailed in Schedule 2 and as may be amended by any non-material amendment granted by the Council pursuant to s96A of the Act and the listed building consents granted pursuant to the Listed Building Applications in or substantially in the form as appended as Appendix A and Appendix B;

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

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

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

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

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

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

"Regulations" the Community Infrastructure Levy Regulations 2010;

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

"RICS" the Royal Institution of Chartered Surveyors;

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

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

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

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

"Viability Payment" a payment required to be made by the Owner to the Council if the Viability Appraisal shows that the Permitted Profit Level as assessed will be achieved and will be 50% of the amount by which the Gross Margin exceeds the Permitted Profit Level PROVIDED THAT the Viability Payment or the sum of the Viability Payments as well as any Clawback shall not exceed the Maximum Contribution. The Viability Payment will be payable in accordance with the timescales set out in Schedule 3 hereto;

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

(a) the day on which the Council states pursuant to paragraph 3.1 of Schedule 3 that the Viability Appraisal is agreed;

(b) the day on which the Viability Appraisal is agreed in writing between the Owner and the Council pursuant to paragraph 4 of Schedule 3; and

(c) the day on which the written determination of the Chartered Surveyor is issued pursuant to Clause 7 of the Agreement and paragraph 4 of Schedule 3;

as the case may be;

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

1.2 The 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 Save in respect of Clauses 21.1 and 21.3 references to any party in this Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the Act and any successor local highway authority exercising powers under the Highways Act 1980.

1.7 **"Including"** means **"including, without limitation"**.

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

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

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

1.11 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2 **PLANNING OBLIGATION**

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

acting under the powers contained in section 106 or such other enabling powers against the Owner.

3 **CONDITION PRECEDENT**

This Agreement is conditional upon the grant of the Planning Permission and Commencement of Development save for the provisions of Clauses 9, 11, 15, 17, 18 and 20 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 the Owner) or quashed or declared unlawful as a result of legal proceedings then this Agreement shall absolutely determine and become null and void but without prejudice to the rights of either party against the other in respect of any antecedent breach.

5 **THE OWNER'S COVENANTS**

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

6 **THE COUNCIL'S COVENANTS**

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

7 **DISPUTE RESOLUTION**

7.1 In the event of any dispute arising in connection with any of the terms of this Agreement other than a dispute involving the construction or interpretation of the terms of this Agreement or the enforcement of any decision pursuant to this Clause, the same shall unless the Council and the Owner otherwise agree be referred to an Expert or in relation to the Viability Appraisal or Clawback Valuation to a Chartered Surveyor to be appointed by agreement between the Council and the Owner.

7.2 If the Council and the Owner are unable to agree on the appointment of an Expert or Chartered Surveyor within thirty (30) days of one party serving notice on the other calling for the appointment of an Expert or Chartered Surveyor, then an Expert or Chartered Surveyor shall be appointed on the application of either party to the President for the time being of the Royal Town Planning Institute or the Royal Institution of Chartered Surveyors as applicable.

7.3 Any reference of a dispute to an Expert or Chartered Surveyor shall if the parties are agreed in writing be deemed to be a reference to an expert or chartered surveyor (and not to an arbitrator) whose decision shall be final and binding (save for manifest error) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and any statutory amendment variation substitution or re-enactment thereof.

7.4 Any party to this Agreement shall be entitled to submit to the Expert or Chartered Surveyor representations and cross-representations with such supporting evidence as they shall respectively consider necessary and the Expert or Chartered Surveyor shall have regard thereto in making his decision which shall be delivered in writing. The reference of any dispute shall include authority to determine in what manner all the costs of the referral shall be paid.

8 **WAIVER**

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

9 **CHANGE IN OWNERSHIP & LIABILITY**

9.1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interest in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with (unless the purchase relates to the entirety of the Site) the area of the Site or unit of occupation purchased by reference to a plan provided that this clause

shall not apply to the Disposal of a Dwelling or Commercial Unit or a Disposal to a statutory undertaker for the purpose of their statutory undertaking.

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

9.3 The obligations contained in this Agreement shall not be binding on:

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

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

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

10 **COUNCIL'S CONSENT OR APPROVAL**

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

11 **LOCAL LAND CHARGE AND LAND REGISTRY ENTRY**

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

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

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

12 **NON-PROHIBITION ON DEVELOPMENT**

Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission and the listed building consents) granted (whether or not on appeal) after the date of this Agreement.

13 **THE CONTRACTS ACT**

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

14 **COMMUNICATION**

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

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

14.1.2 to the Owner and Mortgagee at their registered office addresses;

15 **FEES**

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

15.2 Receipt by the Council of the payment of such sum shall not create any lawyer-client type contractual relationship between the Council and the Owner nor absolve the Owner from any liability or obligation imposed upon them by the terms of this Agreement or by statute or at common law;

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

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

16. **INTEREST**

If any payment due under this Agreement is paid late Interest will be payable from the date payment is due to the date that payment is received.

17. **WARRANTY AS TO TITLE**

The Owner hereby warrants to the Council that the title details recited in this Deed are complete and accurate in every respect and no other person other than the Mortgagee has an interest in the Site and hereby indemnifies the Council in respect of any loss that arises should there be any breach of this warranty.

18. **JURISDICTION**

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

19. **CLAWBACK**

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

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

19.2.1 Stating that it accepts the Clawback Valuation; or

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

19.3 In the event that the Council shall have served a notice on the Owner pursuant to clause 19.2.2 the Owner and the Council shall use reasonable endeavours to reach agreement in respect of the Clawback Valuation but if the Owner and the Council shall have failed to agree the Clawback Valuation within twenty-eight (28) Working Days of the notice served by the Council pursuant to clause 19.2.2, then the matter in dispute shall be referred to the Chartered Surveyor, in accordance with the provisions of Clause 7 with the Chartered Surveyor being requested that he/she should as soon as practicable issue a written determination as to the matter in dispute and a written

determination of the correct Clawback Valuation, which both Parties agree will be final and binding upon them (save in respect of manifest error);

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

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

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

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

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

20. **COMPLETION**

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

21. **MORTGAGEE**

21.1 Any mortgagee or chargee with an interest in the Site from time to time (including for the avoidance of doubt the Mortgagee) will not incur any liability for any breach of the obligations contained in this Agreement unless and until they

become a mortgagee in possession of the Site or any part of it in which case they will be liable for any breach of the obligations in this Agreement or for costs arising whilst the mortgagee is in possession of all or any part of the Site.

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

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

22. RESTRICTION ON TITLE

The Owner covenants with the Council that:

22.1 prior to or upon completion of this Agreement it shall provide the Council with a completed Land Registry form RX1 (or any subsequent revisions amendments or replacements of the same) signed by it and thereby authorising the Council to register a restriction in standard form L at the Land Registry in respect of their interests in the Site in the following terms:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of paragraph 7 of Schedule 3 of a Section 106 Agreement dated made between (1) The Council of the City of Manchester (2) Tobermory S.À.R.L. and The Royal Bank of Scotland International Limited (3) have been complied with or that they do not apply to the disposition."

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

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

23. SECTION 73 OF THE 1990 ACT

23.1 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in

respect of that application then references to Planning Permission in this Agreement shall unless the Council in determining any application(s) under Section 73 of the 1990 Act requires the completion of a new deed or supplemental deed pursuant to Section 106 and/or section 106A of the 1990 Act include the new planning permission granted pursuant to Section 73 of the 1990 Act and unless as aforesaid this Agreement shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.

23.2 In respect of the completion of any new deed or supplemental deed pursuant to Section 106 and/or section 106A of the 1990 Act (the "New Deed") required by the Council when determining an application under Section 73 of the 1990 Act to amend the Planning Permission ("the Application") to the extent that any obligations imposed under this Agreement in respect of the Planning Permission have been triggered and fully discharged the Council will accept that discharge in lieu of the discharge of any identical obligations imposed in the New Deed in respect of a planning permission granted pursuant to the Application.

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

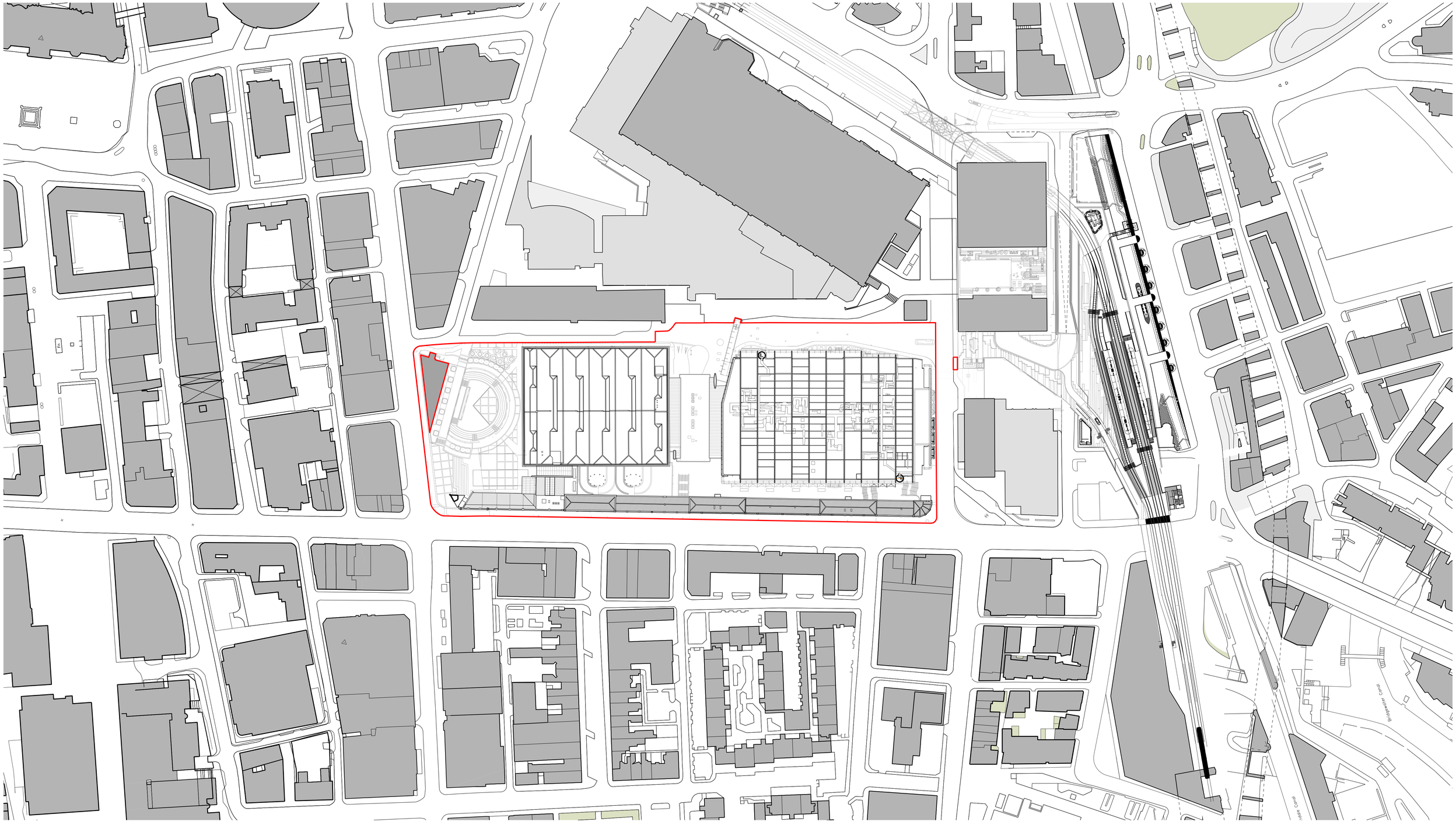
SCHEDULE 1

The Site

Land bounded by Deansgate, Great Bridgewater Street, Watson Street and Peter Street, Manchester and shown for the purposes of identification only edged red on the Plan.

KEY:

Planning application boundary



This drawing is copyright.
Do not scale off dimensions.

All dimensions to be checked on site by contractor.

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

0 10 20 40 60 80 100 m

1:1000

NORTH

Rev	Date	Comment
P01	22-11-2022	Planning Submission

Project Title: Great Northern

Drawing Title: Site Location Plan

Job No: 10422

Scale: 1:1000 @ A1

Status: PLANNING

Drawing No: 10422-SHP-Z0-A-B5D9-G100-PL-XX-001

Revision: P01

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SCHEDULE 2

Draft Planning Permission

SCHEDULE 3

THE OWNER'S GENERAL COVENANTS

The Owner hereby covenants with the Council as follows:

1.

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

1.2.1 To notify the Council within 5 (five) Working Days of the date of Completion of Construction of 75% of the Dwellings, and

1.2.2 To notify the Council within 5 (five) Working Days of Completion of Construction of all of the Dwellings constructed as part of the Development;

1.3 Not to Develop the areas numbered 17,18 and 25 on the Lease Plan until any leasehold interests subsisting at the date of this Agreement that are located within the areas numbered 17, 18 and 25 on the Lease Plan have been closed at the land registry and any lease that is not registered at the land registry has been terminated.

VIABILITY REVIEW AT CALCULATION DATE AND VIABILITY PAYMENT

2. Within ten (10) Working Days of the Calculation Date

2.1 to confirm the Method of Disposal and the relevant Permitted Profit Level to the Council in writing; and

2.2 to provide a copy of the Viability Appraisal in order that the Council may instruct a Chartered Surveyor to review the Viability Appraisal and advise the Council on its contents and conclusion.

3. Within sixty (60) Working Days of its receipt of the Viability Appraisal the Council shall give written notice to the Owner either:-

3.1 Stating that it accepts the Viability Appraisal or

3.2 Correcting or challenging any of the amounts or conclusions included in the Viability Appraisal and giving details of the disputed amounts or conclusions.

4. In the event that the Council shall have served a notice on the Owner pursuant to paragraph 3.2 of this Schedule 3 the Owner and the Council shall use reasonable endeavours to reach agreement in respect of the Viability Appraisal but if the Owner and the Council shall have failed to agree the Viability Appraisal

within twenty-eight (28) Working Days of the notice served by the Council pursuant to Paragraph 3.2 of this Schedule 3, then the matter in dispute shall be referred to the Chartered Surveyor, in accordance with the provisions of Clause 7 with the Chartered Surveyor being requested that he/she should as soon as practicable issue a written determination as to the matter in dispute and a written determination of the correct Viability Appraisal, which both Parties agree will be final and binding upon them (save in respect of manifest error);

5. The Viability Appraisal not by way of limitation shall include and confirm:
   5.1 the GDV and NDV;
   5. 2 the Costs;
   5.3 the Gross Margin; and,
   5.4 the Viability Payment, if any.

6. Viability Payment

   6.1 On or before the Viability Payment Deadline to pay to the Council the Viability Payment (if any) PROVIDED ALWAYS that the Viability Payment and the aggregate of any Clawback shall be capped so that they do not exceed the Maximum Contribution;

   6.2 In the event that the information contained in the Viability Appraisal (as agreed by the Council or determined pursuant to paragraph 4 of this Schedule 3) shows that a Viability Payment is not due then it is agreed by the Council that the Viability Payment shall not be payable although the Viability Assessment Fee shall still be due;

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

RETENTION AS BUILD TO RENT

7. Where the Method of Disposal is Build to Rent the Owner covenants that it shall deliver the relevant Build to Rent Dwellings comprising the residential part of the Development for the private rental market as a Build to Rent scheme and

the residential part of the Development shall be retained as Build to Rent Dwellings for the Clawback Period Provided that if any part of the residential part of the Development is then Disposed Of as Open Market Sales during the Clawback Period this will trigger the clawback provisions set out in clause 19 of this Agreement, and the Owner further covenants to comply with all the provisions of that clause 19 and upon payment of the Clawback to the Council (or determination that no Clawback is due) this covenant will no longer apply to the relevant Dwellings Disposed of in breach of this covenant. For the avoidance of doubt, any payment of Clawback agreed by the Council and the Owner or determined to be due in accordance with the provisions of clause 19 will when received by the Council in respect of any Dwelling to which the payment of Clawback relates remedy the breach of the obligation to retain the Dwelling as a Build to Rent Dwelling contained in this paragraph, as well as releasing the Dwelling from that obligation thereafter. For the further avoidance of doubt this provision does not prevent the Owner of the Site as at the date of this Agreement or any successors in title from transferring the Site during the Clawback Period to successors in title all of whom will be bound by the covenants contained in this Paragraph 7.

RETENTION OF ARCHITECT

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

8.2 Should the Architect not be appointed or continue to be appointed in accordance with paragraph 8.1 above the Owner shall immediately notify the Council of this fact and shall use Best Endeavours to appoint a replacement Architect of a similar calibre and reputation as soon as reasonably practicable and shall thereafter notify the Council of the identity of the replacement architect immediately thereafter.

SCHEDULE 4

The COUNCIL'S COVENANTS

The Council hereby covenants with the Owner as follows:

1 To use any Viability Payment and Clawback towards the provision of Affordable Housing within the Administrative Boundaries of Manchester and for no other purpose.

2. At the written request of the Owner to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed within twenty (20) Working Days of receipt of the request.

3. The Council shall provide written details of any expenditure incurred by the Council using the Viability Payment and the Clawback within 20 Working Days of a written request to do so from the party/person who made the payment to the Council.

4. To repay to the paying party such sum or sums remaining from the Viability Payment and Clawback as have not been expended in accordance with paragraph 1 of this Schedule (excluding any such sums in respect of which though not yet expended the Council has contractually committed to expend) within ten (10) years of the date of receipt by the Council.

5. To issue the Planning Permission within two (2) Working Days of the date hereof.

SCHEDULE 5

VIABILITY TEMPLATE

Land bounded by Deansgate, Great Bridgewater Street, Watson Street and Peter Street, Manchester.

Gross Development Value (GDV) £

Net Development Value (NDV) £

Permitted Profit Level – based upon 20% of GDV of Open Market Value	£
Permitted Profit Level – based upon 10% of Costs of Pre-Sale Element	£
Permitted Profit Level – based upon 10% of Costs on Build to Rent	£
All in build cost – [Includes (but not limited to) - House Build (Superstructure), Plot Costs (Incl. Substructure), Infrastructure, Overheads and Prelims, operating costs, sales incentives]	£
Schedule of abnormals TBA	£
Contingency on build costs and abnormals TBA	£
Professional fees on build costs and abnormals TBA	£
Sales and Marketing Costs TBA	£
Section 106 payments TBA	£
Finance cost of TBA	£
Interest cost on Deposits - TBA	£
Tax Relief - TBA	£
Agreed Land Value (The Lower of 1). Benchmark Land Value set at Planning Consent Stage of £12,840,000 or 2). Actual Land Value – to be evidenced)	£
Agreed Stamp Duty - TBA	
Commercial Letting Agent and Legal Fees 10% and 5% of commercial ERV (estimated rental value)	
Investment Sales Agent & Legal Fees 1% of GDV	

TOTAL COSTS (Costs)	
Gross Margin equals GDV - Costs or in a Build to Rent scenario equals NDV - Costs	
Gross Margin minus Permitted Profit Level	
VIABILITY PAYMENT – equating to 50% of Gross Margin minus Permitted Profit Level	

NB – Viability Payment Cannot Exceed £14,108,730 Indexed Linked in the case of a Pre-Sale and/or Build to Rent Method of Disposal and £28,217,460 Index Linked in the case of an Open Market Sales Method of Disposal and in all other cases

The Headings in the Viability Template are not exhaustive

APPENDIX A

Draft planning conditions relating to application for listed building consent reference 135566/LO/2022

APPENDIX B

Draft planning conditions relating to application for listed building consent reference 135583/LO/2022

APPENDIX C

LEASE PLAN

THE COMMON SEAL of **THE COUNCIL OF THE**

CITY OF MANCHESTER was hereunto affixed in

pursuance of an Order of the Council of the said City:

AUTHORISED SIGNATORY

Executed as a deed by **TOBERMORY** **……**

S.À.R.L. acting by Authorised signatory

and

who are

permitted to execute for **TOBERMORY** **…….**

S.À.R.L. under the laws of Luxembourg Authorised signatory

SIGNED, SEALED and **DELIVERED** **)**
as a **Deed** **)**
by DBS BANK LTD. **)**
acting by its Authorised Signatories **)**

……..

Name:

……..

Name: