

Dated 17TH NOVEMBER ²⁰²³
~~2022~~

(1) The Council of the City of Manchester

and

(2) Gofran Shannan and Mustafa Al Chelabi

Agreement

pursuant to section 106 Town and Country Planning Act 1990 (as amended) relating to
Land at Big Western, 87 Great Western Street, Manchester, M16 7PA

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

L/JGH/EVD3001/3899

This Agreement is made the 17th day of NOVEMBER 2022²⁰²³

BETWEEN

- (1) **The Council of the City of Manchester** of Town Hall, Albert Square, Manchester M60 2LA (the “**Council**”), and
- (2) **Gofran Shannan and Mustafa Al Chelabi** (the “**Owner**”),

Introduction

- (A) The Council is the local planning authority for the purposes of the Act in relation to the Site and is the authority by whom the obligations hereby created are enforceable. The Development will be carried out on the Site. The Site is situated within the Administrative Boundaries of Manchester and this planning obligation is enforceable by the Council.
- (B) The Owner is the freehold owner of the Site registered at the Land Registry with Title Absolute under Title Numbers GM204680 and GM548834 together with but subject to all matters contained or referred to in the Title Registers thereunder.
- (C) The Council resolved on 26 SEPTEMBER 2023 that it was minded to grant the Planning Permission subject to the completion of this Agreement.
- (D) The Council has recognised the difficulty faced by lower income groups in buying homes within the Administrative Boundary of Manchester and the planning purpose of this Agreement is to increase the provision of affordable housing within the Administrative Boundaries of Manchester. The Owner have agreed to make provision for Affordable Housing in the manner hereinafter appearing. The Council is satisfied that the obligations in this Agreement are
 - (a) necessary to make the Development acceptable in planning terms (including where appropriate, obligations necessary to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations),
 - (b) directly related to the Development, and

(c) fairly and reasonably related in scale and kind to the Development and in any event will secure planning benefits

- (E) The Owner as herein defined 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 Act and to be bound by and observe and perform the covenants hereinafter contained
- (F) The Council has determined that in order to comply with the Core Strategy the Development should provide a financial contribution equivalent to the provision of 20% onsite Affordable Housing towards Affordable Housing within the Administrative Boundaries of Manchester (the **Affordable Housing Policy Requirement**) 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 without a reduction in the Affordable Housing Policy Requirement the implementation of the Development is not viable The Council has agreed to accept the Initial Contribution in lieu of the full policy requirement on the basis of the information contained in the documentation relating to viability submitted by the Owner to the Council The Owner has agreed to enter into the planning obligations contained herein requiring them to pay the Initial Contribution and in accordance with the provisions of this Agreement 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 interpretations

- 1.1 In this Agreement the following terms have the following meanings unless inconsistent with the context

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

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

“Affordable Housing Contribution” shall mean the sum of £382,463 (three-hundred and eighty-two thousand four hundred and sixty-three pounds) being the sum equivalent to the cost to the Owner of providing the number, size and type of Affordable Housing on the Site as would be required under policy H8 of the Core Strategy which policy requires that 20% of the Dwellings should be provided as Affordable Housing

“Agreement” shall mean this agreement,

“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,

“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 planning permission to which the Council gave the reference 128813/FO/2020,

“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 23.1 of this Agreement,

“Best Endeavours” means that it is agreed by the parties hereto that the party under such an 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,

“Calculation Date” means the date when 75% of the Dwellings have been Occupied,

“Chartered Surveyor” means a professional expert who is a chartered member of the Royal Institution of Chartered Surveyors with a minimum of ten years post qualification experience,

“Commencement of Development” means the date upon which the Development shall begin by the carrying out of a material operation in accordance with the provisions of section 56(4) of the Act Provided That any works of or associated with 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,

“Completion of Construction” the date upon which a valid certificate of completion shall have been issued in respect of the completion of construction of the Development as referred to in the Schedule for the purposes of the Building Act 1984 and the Building Regulations 2010 or any amendment or replacement of the same or, if the Council, acting reasonably, considers that the completion of construction of the relevant number of Dwellings has occurred but it has not received the notice confirming completion in accordance with the provisions of this Agreement shall mean the date that the Council notifies in

writing to the Owner that the said completion of construction is to be deemed to have taken place for the purposes of this Agreement and “**Completed**” and “**Completion**” shall be construed accordingly,

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

“**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”,

“**Development**” means the development undertaken on the Site pursuant to the Planning Permission and substantially comprising the change of use and conversion of existing building into 21 No self-contained apartments with associated car parking,

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

“**Disposal**” 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 years or more whether or not a rent of more than nominal value is reserved,

and **"Disposed Of"** and **"Disposals"** 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 years post qualification experience,

"FVA" the Viability Appraisal once it includes as part of the Viability Appraisal 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 Viability Appraisal in order to assist the Council when reviewing the Viability Appraisal,

"Finance Cost" means those costs which the Owner has Reasonably and Properly Incurred as a result of financing the Application and Development providing always that those costs shall not exceed seven (7) per cent 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" a commitment to provide funding to assist the development of the project going forward with the sole aim of facilitating either a single sale of the whole or part of the Development, but not necessarily a commitment to purchase the Development or the retention of the whole or part of the Development by the Developer on Completion of Construction as 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" 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” 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 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 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 **SAVE THAT** where the Dwelling concerned is Disposed Of as an Affordable Housing Unit then this Proviso shall not apply 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” 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

“Initial Contribution” the sum of £20,000 (twenty thousand pounds) together with any Inflation Increase to be paid in accordance with the provisions contained in Schedule 2 and to be used by the Council for the provision of Affordable Housing within the Administrative Boundaries of Manchester,

“Interest” means at 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 99 years or Assured Shorthold Tenancy, Assured Tenancy or any other form of tenancy for a term of less than 99 years and **“Lets”** shall be construed accordingly,

“Management Fee” shall mean 15% of the planning application fee which equates to £1,455 30 (one thousand four hundred and fifty five pounds and thirty pence) to be used for the purpose of management and monitoring of this Agreement and the Planning Obligations contained herein,

“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 Site 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 sum of £382,463 (three-hundred and eighty-two thousand four hundred and sixty-three pounds) which equates to the Affordable Housing Contribution,

“NPPF” means the National Planning Policy Framework (**NPPF**) issued on 1 September 2019 and revised on 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” 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,

“Plan” means the plan attached to this Agreement,

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

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

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

“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” 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 an Owner or any of 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 or any of 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 Owner or other relevant third party to provide services in relation to i) the Application, ii) construction 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 17.5% (seventeen point five percent) of the GDV or in respect of a Pre Sale when the Gross Margin is equivalent to 15% (fifteen percent) of the GDV,

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

“Regulations” means the Community Infrastructure Levy Regulations 2010 (as amended),

“RICS” means the Royal Institution of Chartered Surveyors,

“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 (3) per cent of the GDV,

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

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

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

“Viability Appraisal” a written appraisal to assess the Gross Margin required to be provided on the Calculation Date in accordance with the provisions of Schedule 2 of this Agreement. The format of the Viability Appraisal shall take the form of the Viability Report detailed in Schedule 4 and **“VA”** shall be construed accordingly. The VA shall be accompanied by any documentation 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. 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 the reasonable and proper costs incurred by the Council in obtaining independent advice on the Viability Appraisal provided that the Viability Assessment Fee shall not exceed £12,000 (twelve thousand pounds),

“Viability Payment” means a payment required to be made by the Owner to the Council if the Viability Appraisal shows that the Profit Level as assessed will be achieved and will be 50% of the amount by which the Gross Margin exceeds the Profit Level PROVIDED THAT the Viability Payment shall be required to be no more than the amount that is needed in order to equal the Maximum Contribution after taking into account the payment to the Council of the Initial Contribution (not including any Inflation Increase addition to the Maximum Contribution). The Viability Payment, if any is required, will be payable within the timescale set out in the provisions contained in Schedule 2,

“Viability Report” the form in Schedule 4 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 4

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

1 2 The clause headings do not affect this interpretation

1 3 Unless otherwise indicated, references to Clauses and Schedules are to Clauses of and Schedules to this Agreement and references in a Schedule to a Part or Paragraph are to a Part or Paragraph of that Schedule

1 4 References to any statute or statutory provision include reference to

1 4 1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation, and

1 4 2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision

1 5 Except for the provisions of clause 9 references to the Site include any part of it

1 6 References to any party in this Agreement include the successors in title of that party In addition, references to the Council include any successor local planning authority exercising planning powers under the Act and any successor local highway authority exercising powers under the Highways Act 1980

1 7 "Including" means "**including, without limitation**"

1 8 Any covenant by the Owner or the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing

1 9 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected

1 10 Words importing the singular meaning where the context so admits include the plural meaning and vice versa

1 11 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner

2 **Planning Obligation**

This Agreement is made pursuant to section 106 the Act, section 111 Local Government Act 1972, section 1 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

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 any of them) 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 consents to their interests in the Site being bound by this Agreement and on behalf of themselves 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 their part contained in this Agreement including those obligations set out in Schedule 2 and hereby agrees that the Site shall be permanently subject to the obligations, restrictions and

provisions specified 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 3

7 Dispute resolution

7 1 In the event of any dispute arising in connection with any of the terms of this Agreement other than a dispute involving the construction or interpretation of the terms of this Agreement or the enforcement of any decision pursuant to this clause, the same shall unless the Council and the Owner otherwise agree be referred to an Expert, save that disputes in relation to the Viability Appraisal may be referred 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 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 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 and liability

9 1 The Owner agree with the Council to 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 Owner warrant that no person other than the Owner has a legal or equitable interest in the Site and the Owner hereby indemnify the Council in respect of any loss that arises should there be any breach of this warranty

10 **Council's consent or approval**

Where in this Agreement the consent, agreement or approval of the Council is required to be given by the Council, the Council confirms that such consent, agreement or approval shall not be unreasonably withheld or delayed provided that this shall not fetter the proper discretion of the Council in relation to the exercise of its statutory functions. Any approval given by the Council under this Agreement or for the purposes of this Agreement shall not be deemed to be approval for any other purpose whatsoever.

11 **Local land charge**

11.1 This Agreement is a local land charge and shall be registered as such by the Council.

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 (Rights of Third Parties) Act 1999**

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

14 **Communication**

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

14.1.1 to the Council and addressed to the Director at the Council's address first above written,

14.1.2 to the Owner at their registered office addresses.

15 **Fees**

15 1 The Owner 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 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 accepted by them by the terms of this Agreement or by statute or at common law

15 3 The Owner shall pay to the Council the Viability Assessment Fee within 10 (ten) Working Days of their receipt from the Council of an invoice detailing the amount

16 **Interest**

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

17 **Jurisdiction**

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

18 **Completion**

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

19 **Agreements and declarations**

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

19 1 any owner, occupier, tenant or chargee of any individual Dwelling or the successors in title of any such person or mortgagee or any person deriving title therefrom,

- 19 2 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services,
- 19 3 the relevant highway authority to whom any part of the Site is disposed of for the purposes of adoption of any roads and/or footpaths and/or cycle ways to be constructed on the Site

20 **Inflation Increase**

The Inflation Increase payable under the Planning Obligations shall be calculated on the date upon which the amounts due under the Planning Obligations are paid as follows

A using the formula $A = B \times (C / D)$ provided that (C / D) shall always be greater than or equal to 1, is the sum payable

- (1) on the date as determined by the application of Paragraph 2 of Schedule 2, and
(2) on the date as determined by the application of Paragraph 4 2 of the Schedule 2,

and B, C and D are defined as

B is in respect of (1) above is the Initial Contribution and in respect of (2) above is the Viability Payment

C is in respect of (1) above Inflation as shown in the relevant index published last before the date as determined by the application of Paragraph 2 of Schedule 2 and in respect of (2) above Inflation as shown in the relevant index published last before the date as determined by the application of Paragraph 4 2 of Schedule 2

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

21 **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

22 Payment Receipts

In respect of any sums payable by the Owner to the Council under the Planning Obligations, the Council covenants with the Owner

- 22 1 to pay such sums into the Stakeholder Account and hold such sums therein until the withdrawal of such sums as may be required for the purposes specified in the Planning Obligations
- 22 2 to use such sums withdrawn from the Stakeholder Account solely and exclusively for the purposes specified in the Planning Obligations
- 22 3 to repay to the Owner (here meaning the party or parties who shall have actually paid such sum) such amount of the sums which have not been expended excluding any such sums in respect of which though not yet expended the Council has contractually committed to expend in accordance with the provisions of this Agreement within 10 (ten) years of the Commencement Date or date of receipt by the Council of such payment (and where payment is made by instalments the date of receipt shall be deemed to be the date upon which the last instalment is received), whichever is the later, together with interest at the Bank of England base rate from time to time from the date of expiration of this ten year period (the "retention period") to the date of refund
- 22 4 Upon receipt by the Council of a written request from any of the Owner received within the final year of the retention period to provide a written statement summarising what the sums received have been spent on and detailing any sums remaining unexpended within 21 days of the Councils receipt of such a request provided that the number of such requests shall not exceed four

23 Viability

- 23 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 £441,863 (four hundred and forty-one thousand eight hundred and sixty-three pounds) or the Actual Land Value for the Site, whichever is the lower For the purpose of ascertaining the Profit Level the Viability Appraisal 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 GDV (e.g. 15% (fifteen percent) for a Pre Sale Gross Margin and 17.5% (seventeen point five percent) in all other cases),
- 23.2 the Viability Appraisal will detail that the whole of the Development is the subject of the Viability Appraisal and will calculate the Gross Margin on that basis,
- 23.3 when it has received the Viability Appraisal the Council will provide the Owner with a written acknowledgement of service within 10 Working Days of their receipt,
- 23.4 In the event that the Council considers that the Owner have not complied with or not fully complied with the provisions of Paragraph 5.1 and/or 5.2 of Schedule 3 it may refer the matter in 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 as to whether the documentation in dispute is reasonably required to enable the Council to carry out its review of the Viability Appraisal 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,
- 23.5 In the event that the Council shall have served a notice on the Owner pursuant to paragraph 5.3.2 of 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 within 40 Working Days of the notice served by the Council pursuant to paragraph 5.3.2 of Schedule 3 (or such extended period agreed in writing by the parties), 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 the parties agree will be final and binding upon them,
- 23.6 The Viability Appraisal not by way of limitation shall include and confirm the GDV and the Costs and the matters referred to in this Clause 24.1 and 24.2
- 25 **Restriction**
- 25.5 The Owner covenant with the Council that

25 5 1 prior to or upon completion of this Agreement the Owner shall provide the Council with a completed Land Registry form RX1 (or any subsequent revisions amendments or replacements of the same) signed by 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 Manchester City Council, Town Hall, Albert Square, Manchester, M60 2LA that the provisions of Schedule 2 of a Section 106 Agreement dated

made between (1) The Council of the City of Manchester and (2) Gofran Shannan and Mustafa Al Chelabi have been complied with or that they do not apply to the disposition ”

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

25 5 2 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 or will insert their land registry account details in the form RX1

This Agreement has been executed as a deed by the parties and is delivered and takes effect on the date stated at the beginning of it

Schedule 1

The Site

Land at Big Western, 87 Great Western Street, Manchester, M16 7PA, shown for the purposes of identification only edged red on the Plan

General Notes

The Architect shall have no responsibility for any use made of this document other than for that which it was prepared and issued.
All dimensions should be checked on site. Do not scale from this drawing. To be read in conjunction with all other Consultant's drawings. The Architect to be immediately notified of any discrepancies.

Copyright on this drawing retained by the Architect.

LEGEND

Site Boundary

P2 26/09/22 SA SH Amended red line
P1 11/11/20 HG SH Initial Issue
No. Date Drawn Check App Revision or reason for issue

Client

Mustafa Alchelabi

create **it** studios
Architects & Designers

Create It Studios (NW) Ltd
Universal Square
Devonshire Street North
Manchester M12 6JH
0161 974 6165
www.createitstudios.co.uk
info@createitstudios.co.uk

Project Title

The Big Western Public House
87 Great Western St, Manchester, M16 7PA

Scale / North Point

As indicated

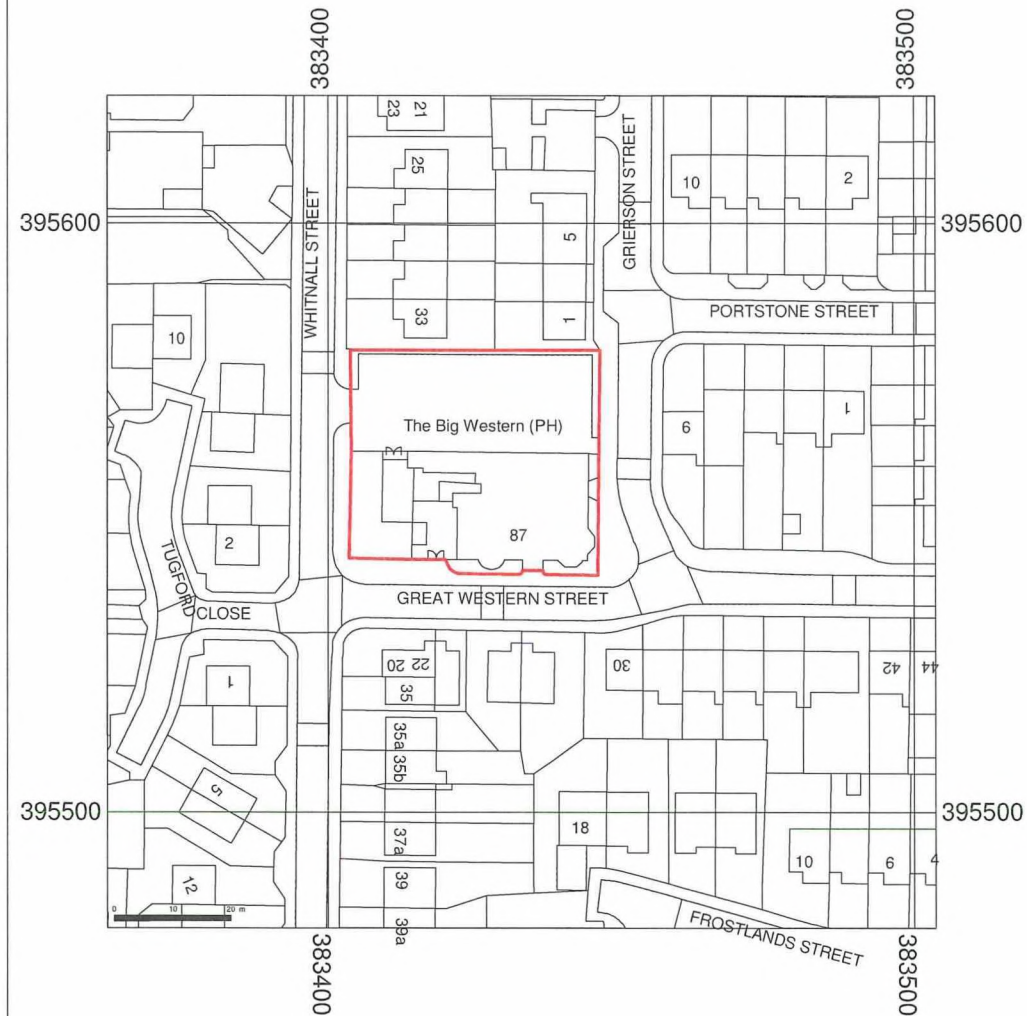
Drawing Title

Existing Site and Location Plan

Drawing Number
A1312(01)001

Drawing Status
Preliminary

Revision
P2



1

Site Location Plan

1 : 1250



0 25 50 75 100m 1:1250



2

Existing Site Plan

1 : 500



0 10 20 30 40m 1:500

Schedule 2

The Owner's general covenants

The Owner hereby covenants with the Council as follows

1 Notices

- 1 1 To notify the Council in writing within five Working Days of,
 - 1 1 1 Commencement of Development that development has commenced,
 - 1 1 2 Completion of Construction,
 - 1 1 3 the date first Occupation has occurred,
 - 1 1 4 the date when 75% of the Dwellings have been Occupied

2 Initial Contribution

- 2 1 To pay the Initial Contribution on or before Commencement of Development

3 Viability Review

- 3 1 Within 10 (ten) Working Days of the Calculation Date the Owner shall provide the Council with a copy of the Viability Appraisal, for possible agreement by the Council
- 3 2 If the Council should make a request pursuant to the provisions contained in Paragraph 5 1 and/or 5 2 of Schedule 3 then within 10 (ten) Working Days of the date of that request to provide the Council with written copies of the documentation or amended or supplementary documentation, whichever is applicable, requested

4 Viability Payment

- 4 1 In the event that the Viability Appraisal is agreed by the Council or determined pursuant to the provisions contained in Clause 23 5 and the information contained therein shows that in accordance with the provisions of this Agreement a Viability Payment is due then the Owner shall pay to the Council the Viability Payment together with any Inflation Increase in accordance with paragraph 4 2 of this Schedule 2
- 4 2 The Viability Payment together with any Inflation Increase shall be paid by the Owner to the Council within 20 (twenty) Working Days of the agreement by the Council of the Viability Appraisal or if applicable shall be paid within 20 (twenty) Working Days of the Viability Appraisal being determined pursuant to the provisions contained in Clause 23 5
- 4 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 23 5) shows that a Viability Payment is not due then it is agreed by the Council that the obligation in this paragraph 4 of this Schedule 2 shall cease to bind the Site

Schedule 3

The Council's covenants

The Council hereby covenants with the Owner as follows

- 1 To use the Initial Contribution and any Viability Payment received towards the provision of Affordable Housing within the Administrative Boundaries of Manchester and for no other purpose and to use any Viability Assessment Fee towards the review of any Viability Appraisal submitted under this Agreement and for no other purpose
- 2 At the written request of the Owner to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed within twenty (20) Working Days of receipt of the request,
- 3 that the Council shall provide written details of any expenditure incurred by the Council using the Initial Contribution and any Viability Payment received within 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 the Owner the Council shall repay to the person who first paid such monies any balance of the Initial Contribution and 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 10 (ten) years from the date of payment of the Initial Contribution and any Viability Payment received or in the case of monies allocated to maintenance 20 (twenty) years from such date or dates together with all interest accrued thereon,
- 5 that
- 5 1 Within 10 (ten) Working Days of its receipt of the Viability Appraisal (or such extended period agreed in writing by the parties) the Council shall (acting reasonably) give written notice to the Owner detailing any further documentation that the Owner must provide in writing to the Council before the Viability Appraisal can be accepted by the Council as the FVA
- 5 2 Within 30 (thirty) Working Days of its receipt of the documentation referred to in paragraph 5 1 of this Schedule (or such extended period agreed in writing by the parties) the Council shall give written notice to the Owner either confirming it

accepts that the Viability Appraisal is in FVA form or requesting amended or supplementary documentation to enable it carry out its review of the Viability Appraisal,

Provided that in the event that the Council considers that the Owner have not complied with or not fully complied with the provisions of Paragraph 5 1 and/or 5 2 of this Schedule 3 then it may refer the matter in 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 as to whether the documentation in dispute is reasonably required to enable the Council to carry out its review of the Viability Appraisal 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

- 5 3 Once the Council has accepted that the Viability Appraisal is in FVA form it will notify the Owner of that fact in writing and shall within 20 (twenty) Working Days of that date (or such extended period agreed in writing by the parties), give written notice to the Owner either -
 - 5 3 1 stating that it accepts the FVA, or
 - 5 3 2 correcting or challenging any of the amounts or conclusions included in the FVA and giving details of the disputed amounts or conclusions

Schedule 4

Viability template

Land at Big Western, 87 Great Western Street, Manchester (M16 7PA)

Open Market Gross Development Value (**GDV**) £

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

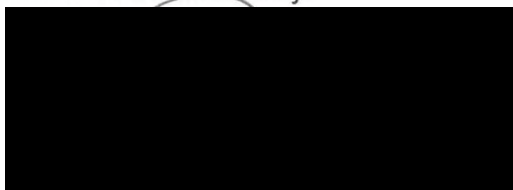
GDV of Pre Sale Element (Contract to be evidenced) £

Profit Level - based upon 17.5% of GDV of the Market Value	£
Profit Level – based upon 15% of GDV of Pre Sale Element	£
All in build cost - [Includes - House Build (Superstructure), Plot Costs (Incl Substructure), Infrastructure, Overheads and Prelims]	£
Schedule of abnormalities TBA	£
Contingency on build costs and abnormalities TBA	£
Professional fees on build costs and abnormalities TBA	£
Sales and Marketing Costs TBA	£
Agreed planning stage Section 106 Initial Contribution	£20,000.00
Finance cost of TBA	£
Agreed Land Value (the Lower of (1) Benchmark Land Value set at Planning Consent Stage of £441,863 (four hundred and forty-one thousand eight hundred and sixty-three pounds) or (2) Actual Land Value - to be evidenced))	£

Agreed Stamp Duty @ 4%	£
Agreed Site Legal & Agents Fees @ 1% of Land Value	£
Total Costs	£
Surplus = NDV – Costs	£
Viability Payment	£

NB – The Viability Payment Cannot Exceed the Maximum Contribution less the Initial Contribution of £20,000

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:



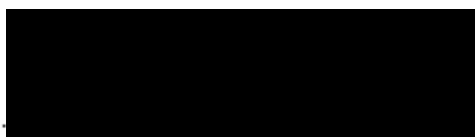
01118272



AUTHORISED SIGNATORY

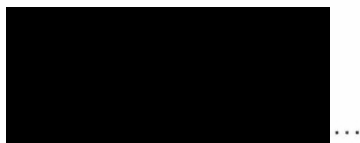
Signed as a Deed by)

Gofran Shannan)



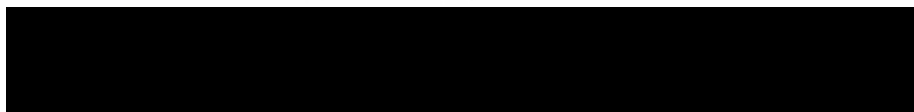
in the presence of a witness)

Witness signature:



Name: SAMANTHA PRESCOTT

Address:

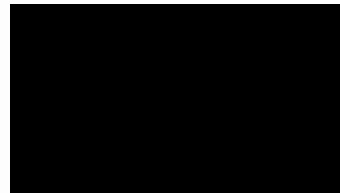


Occupation: Pharmacy dispenser.

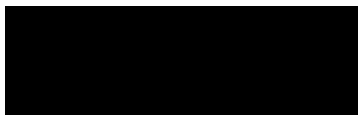
Signed as a Deed by)

Mustafa Al Chelabi)

in the presence of a witness)

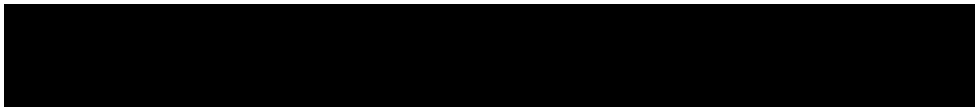


Witness signature



Name SAMANTHA PRESCOTT

Address



Occupation Pharmacy dispense