

DATED

25th July

2023

THE COUNCIL OF THE CITY OF MANCHESTER

– and –

PEELERS YARD LTD

– and –

PEELERS ESTATES LIMITED

AGREEMENT

**pursuant to section 106 of the Town and
Country Planning Act 1990 (as amended)
relating to land on the northeast side of Goulden
Street, Manchester**

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

THIS AGREEMENT is made the 25th day of July

2023

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF MANCHESTER** of PO Box 532, Town Hall, Albert Square, Manchester M60 2LA (the "**Council**"),
- (2) **PEELERS YARD LTD** (incorporated in England with company number 13552246) whose registered office is at Hilton House, 26-28 Hilton Street, Manchester, M1 2EH (the "**First Owner**"), and
- (3) **PEELERS ESTATES LIMITED** (company number OE016550) whose registered office is at 2nd Floor St George's Court, Upper Church Street, Douglas, Isle of Man, IM1 1EE (the "**Second Owner**")

BACKGROUND

- A The Council is the local planning authority for the purposes of the Act in relation to the Site and is the authority by whom the obligations hereby created are enforceable. The Development will be carried out on the Site.
- B By virtue of a transfer dated 24 February 2023 the First Owner has now transferred the site registered at the Land Registry with Title Absolute under title number GM62217 together with but subject to all matters contained or referred to in the Title Register thereunder to the Second Owner.
- C The First Owner has been included as a party to this Deed on the basis that it technically remains the legal owner of the Site whilst the associated Land Registry application relating to the transfer is pending.
- D On 18 December 2020 the Council granted planning permission for the erection of an 8-storey residential building (Use Class C3) comprising 73 residential units, with ground floor commercial use (Classes A1, A2, A3, B1 and D1 (excluding Places of Worship)) (205 sqm), alterations to the retained perimeter wall and chimney including the introduction of a light box, disabled car parking, highways, landscaping and other associated works on land bound by Bendix Street to the North East, Chadderton Street to the South East, Goulden Street to the South West and Cross Keys Street to the North West, Manchester under planning permission reference 125678/FO/2019 (the "**December 2020 Permission**") subject to the conditions and the section 106 agreement completed on 18 December 2020 (the "**December 2020 Section 106 Agreement**").
- E On 19 December 2022 the Owner applied to vary condition 2 (Specified Plans) attached to planning permission 125678/FO/2019 (as amended by 135824/NMC/2022) in order to amend the December 2020 Permission (the "**Application**").
- F 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.

- G The Council has determined that the Development in order to comply with the Local Plan requires a payment of £1,946,157 (one million nine hundred and forty six thousand one hundred and fifty seven pounds) ("**Maximum Contribution**") as a contribution towards off-site Affordable Housing
- H The Council has determined that the Development in order to comply with the Local Plan will support the payment of £12,000 (twelve thousand pounds) as a contribution towards off site highway improvement works including the creation of a loading bay in the immediate vicinity of the site and creation of disabled bay(s)
- I 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
- J The Council has determined that in order to comply with the Core Strategy the Development should provide 20% on-site Affordable Housing or an equivalent financial contribution towards Affordable Housing within the Administrative Boundaries of Manchester or a combination of both ("**the Affordable Housing Policy Requirement**") However, the Owner has stated that there are viability issues affecting the development of the Site and have submitted to the Council documentation in support of this contention The Council has accepted that at the date of this Agreement 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 Affordable Housing Contribution in lieu of the Maximum Contribution on the basis of the information contained in the documentation relating to viability submitted by the Owner to the Council The Owner has agreed to pay the Initial Affordable Housing Contribution and 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
- K 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 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 by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008,

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

“Affordable Housing” 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,

“Agreement” this agreement,

“Application” the application made pursuant to Section 73 of the Act to vary condition 2 (specified plans) of the December 2020 Permission and to make internal reconfigurations associated with the increase in the number of apartments together with associated elevational alterations which was submitted to the Council on 19 December 2022 and allocated planning reference 135818/JO/2022,

“Architect” means Tim Groom Architects, Knott Mill, 7 Constance Street, Manchester, M15 4JQ,

“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 Owner 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” shall be upon the Completion of Construction of 75% of the Dwellings,

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

“Commencement of Development” the date upon which the Development shall begin by the carrying out of a material operation in accordance with the provisions of section 56(4) of the Act PROVIDED THAT any works of or associated with site clearance, remediation works, environmental or archaeological investigations, site and soil surveys, erections of contractors work compound, erection of site office, erection of fencing to site boundaries, marking of site boundaries and laying out of access roads and services shall for the purposes of the agreement be deemed not to be material operations and **“Commence”**, **“Commencement”** and **“Commenced”** shall be construed accordingly Commencement will be deemed to have taken place whether it takes place on the Site,

“Completion of Construction” the date upon which the relevant number of Dwellings are substantially complete and **“Completed”** and **“Completion”** shall be construed accordingly,

“Conservation Deficit” This where the existing value of a heritage asset plus the cost of bringing it back into use is greater than the value of the asset after development has been completed The heritage asset in this instance is the Former Police and Fire Station at Goulden Street Establishing a conservation deficit therefore facilitates the implementation of planning permission 125678/FO/2019

therefore allowing the repair and restoration of the heritage asset in order that it can be returned to a beneficial use and make a positive contribution to the regeneration of New Cross

“December 2020 Permission” planning permission for the erection of 8-storey residential building (Use Class C3) comprising 73 residential units, with ground floor commercial use (Classes A1, A2, A3, B1 and D1 (excluding Places of Worship)) (205 sqm), alterations to the retained perimeter wall and chimney including the introduction of a light box, disabled car parking, highways, landscaping and other associated works on land bounded by Bendix Street to the North East, Chadderton Street to the South East, Goulden Street to the South West and Cross Keys Street to the North West, Manchester under planning permission reference 125678/FO/2019 dated 18 December 2020,

“December 2020 Section 106 Agreement” associated with planning permission reference 125678/FO/2019 dated 18 December 2020,

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

“Dwelling” 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” 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,

“GDC” means gross development cost as defined in Appendix F of the RICS Guidance (including for the avoidance of doubt costs incurred by a forward funder) In addition the Council will accept in the calculation of GDC the actual costs incurred in the Development up to the time of preparation of the Viability Appraisal and such details shall be included in the Viability Appraisal provided always that any such actual costs are allowed for in Appendix F of the RICS Guidance,

“GDV” means gross development value as defined in Appendix F of the RICS Guidance In addition the Council will accept in the calculation of GDV the actual sale prices achieved at the development up to the time of preparation of the Viability Appraisal and detailed therein,

“Gross Margin” the GDV after deducting the GDC as more particularly detailed in the Viability Appraisal,

“Highways Contribution” the sum of £12,000 (twelve thousand pounds) Index Linked to be paid in accordance with paragraph 1 of Schedule 2,

“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,

“Initial Affordable Housing Contribution” the sum of £156,428 (one hundred and fifty six thousand four hundred and twenty eight pounds) Index Linked,

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

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

“Management Fee” shall mean the sum of three thousand two hundred and twelve pounds and eighty-five pence (£3,212 85) to be used for the purpose of management and monitoring of this Agreement and the Planning Obligations contained herein,

“Maximum Contribution” the sum of £1,946,157 (one million nine hundred and forty six thousand one hundred and fifty seven pounds) Index Linked,

“NPPF” the National Planning Policy Framework 2019 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 the 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,

“Owner” together the First Owner and the Second Owner,

“Planning Permission” the planning permission to be granted pursuant to the Application,

“Practical Completion” means 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 and “Practically Complete” and “Practically Completed” shall be construed accordingly”,

“Private Rental Sector Investment” a development that will deliver new-build homes for the private rental market, to be retained by the funder on Completion of Construction as an investment

“Profit Level” shall mean when the Gross Margin is equivalent to 20% (twenty per cent) of the GDV,

“Regulations” the Community Infrastructure Levy Regulations 2010 as amended,

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

“RICS” the Royal Institution of Chartered Surveyors,

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

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

“**Viability Appraisal**” a written appraisal in the form set out in Schedule 4 to assess the Gross Margin required to be provided on the Calculation Date in accordance with the provisions of Schedule 2 of this Agreement Further guidance on the format to follow can be found in the RICS Guidance,

“**Viability Assessment Fee**” a fee of 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 Profit Level as assessed will be achieved and will be the amount by which the Gross Margin exceeds the Profit Level PROVIDED THAT it shall not exceed the Maximum Contribution less the Initial Affordable Housing Contribution The Viability Payment will be payable within the timescale set out in the provisions contained in Schedule 2,

“**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

2 1 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

2 2 it is hereby acknowledged between the Owner and the Council that in contemplation of the issue of the permission associated with the Application the Site will be bound by the obligations contained in this Agreement to the extent set out in this Agreement and the Owner and the Council agree that this agreement will supersede the December 2020 Section 106 Agreement from the grant of the Planning Permission and from said grant of the Planning Permission the December 2020 S106 Agreement shall determine absolutely and the Council further agrees that it will not enforce the obligations contained in the December 2020 Section 106 Agreement

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, 16, 18 and 19 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 themselves and any person deriving title to any part of the Site from the Owner hereafter hereby covenant with the Council so as to bind the Site to fully observe and perform the obligations on his part contained in this Agreement including those obligations set out in Schedule 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 to be appointed by agreement between the Council and the Owner

7 2 If the Council or the Owner are unable to agree on the appointment of an Expert or Chartered Surveyor within thirty (30) days of one party serving notice on the other calling for the appointment of an Expert or Chartered Surveyor, then an Expert or Chartered Surveyor shall be appointed on the application of either party to the President for the time being of the Royal Town Planning Institute or the Royal Institution of Chartered Surveyors as applicable

7 3 Any reference of a dispute to an Expert or Chartered Surveyor shall if the parties are agreed in writing be deemed to be a reference to an expert or chartered surveyor (and not to an arbitrator) whose decision shall be final and binding (save for manifest error) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and any statutory amendment variation substitution or re-enactment thereof

7 4 Any party to this Agreement shall be entitled to submit to the Expert or Chartered Surveyor representations and cross-representations with such supporting evidence as they shall respectively consider necessary and the Expert or Chartered Surveyor shall have regard thereto in making his decision which shall be delivered in writing The reference of any dispute shall include authority to determine in what manner all the costs of the referral shall be paid

8 WAIVER

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

9 CHANGE IN OWNERSHIP & LIABILITY

9 1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interest in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with (unless the purchase relates to the entirety of the Site) the area of the Site or unit of occupation purchased by reference to a plan

9 2 No person shall be liable for any breach, non performance and non observance of the covenants, obligations and restrictions contained in this Agreement after it shall have parted with its entire interest

in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest nor shall this hinder or preclude the Council's rights as the Local Planning Authority to require that the breach, non performance or non observance be remedied after that person has parted with its interest in the Site

9 3 No tenant or owner of any individual dwelling constructed on the Site pursuant to the Planning Permission or any mortgagee thereof or a statutory undertaker after the transfer of statutory apparatus by the Owner to the statutory undertaker shall be liable for any of the covenants contained in this Deed

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 Owner will within 10 Working Days of the date of this Agreement use reasonable endeavours to apply to the Land Registry to register a copy of this Agreement against title number GM622117 and will provide the Council with a copy of the application As soon as reasonably practicable following receipt the Owners will supply the Council with copies of the updated registers of title

11 3 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 thereon and thereafter cancel all related entries in the register of local land charges

11 4 The costs of registration and cancellation pursuant to clause 11 3 above shall be met by the Owner if requested by the Council

12 NON-PROHIBITION OF DEVELOPMENT

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

13 THE CONTRACTS ACT

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

14 ARCHITECT

14 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 a role in relation to the Development and such employment is capable of being secured on reasonable commercial terms

- 14 2 Should the Architect not be appointed or continue to be appointed in accordance with paragraph 14 1 the Owner shall immediately notify the Council of this 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

15 COMMUNICATION

15 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

15 1 1 to the Council and addressed to the City Solicitor at the Council's address first above written,

15 1 2 to the Owner at their registered office address,

16 FEES

16 1 The Owner shall prior to completion of the Agreement pay to the Council its legal fees reasonably and properly incurred in preparation of this agreement,

16 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,

16 3 When submitting the Viability Appraisal the Owner shall pay to the Council the related Viability Assessment Fee within ten (10) Working Days of the receipt from the Council of an invoice detailing the amount

17 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

18 JURISDICTION

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

19 WARRANTY AS TO TITLE

The Owner hereby warrants to the Council that the title details recited in this Agreement are complete and accurate in every respect and no other person has an interest in the Site who has not been disclosed to the Council prior to the date hereof

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

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

SCHEDULE 1

The Site

Land on the North East side of Goulden Street, Manchester and shown for the purposes of identification only edged red on the Plan

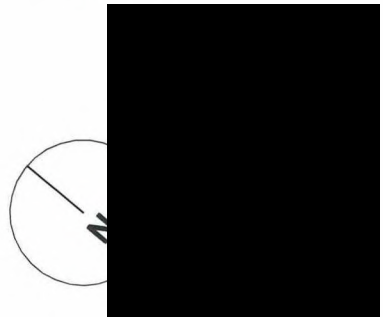


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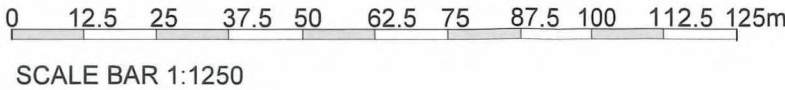
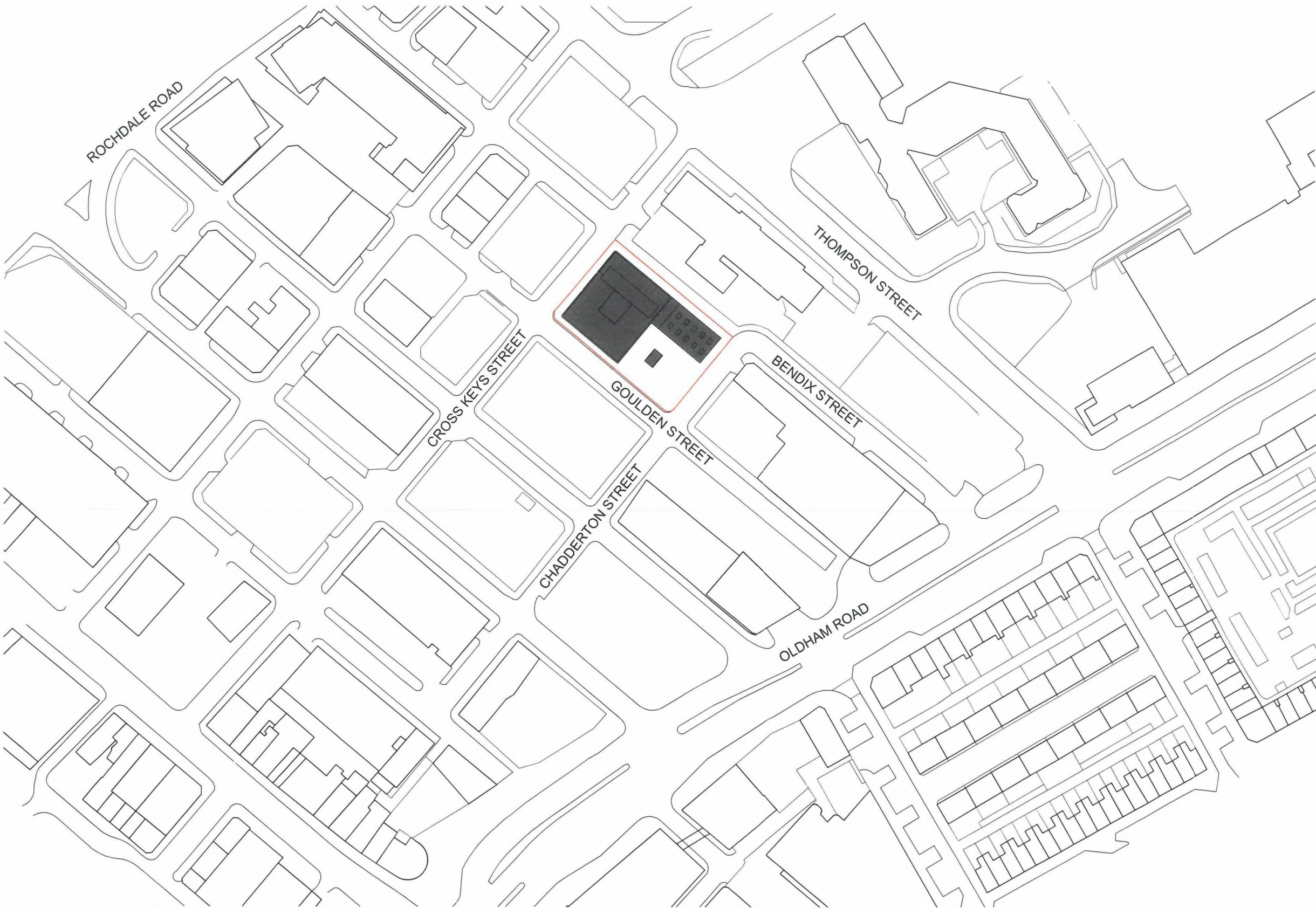
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Dimensioning
Figured dimensions only to be taken from these designs and drawings. Work to annotated dimensions only. All dimensions to be checked on site. Architects to be informed immediately of any discrepancies before work proceeds. Drawings are to be read in conjunction with relevant specifications, structural engineers and service engineers' drawings. All data, dimensions and designs contained in this document are confidential to the copyright owner and may not be communicated to any third party save in accordance with a licence for the copyright owner or with the copyright owner's written permission and authority.

Rev.	Description	Date
PA	PLANNING	11.12.19
T1	Full Planning Drawing Update	07.09.20
T2	Amended Planning Issue	02.10.20
PA1	Section 73, 96a and 19 SUBMISSION	16.12.22



Client	CERT Property
Project	Goulden Street
Title	Location Plan
Status	FOR COORDINATION
Project number	0321
Date	Dec 2019
Drawn by	AT
Checked by	AB
Scale	As indicated@A3
Drawing No.	0321-TGA-XX-00-DR-A-0200
Revision	P2



SCHEDULE 2

THE OWNER'S GENERAL COVENANTS

The Owner hereby covenants with the Council as follows

1. Notices

To notify the Council in writing

- 1 1 At least ten (10) Working Days in advance of Commencement of Development,
- 1 2 Within five (5) Working Days following Commencement of Development,
- 1 3 At least ten (10) Working Days in advance of the first Occupation of the Development, and
- 1 4 Within five (5) Working Days of first Occupation of the Development

2. Previous Payments

The Council and the Owner acknowledge that the sum of three thousand two hundred and twelve pounds and eighty-five pence (£3,212 85) defined as the Management Fee under the December 2020 Section 106 Agreement was paid by the Owner to the Council and it is agreed that such sum already paid by the Owner will be applied as the Management Fee payable under this Agreement such that no further Management Fee is payable

- 3 To pay to the Council the Highways Contribution on the date that is six (6) months after the date of the Deed
- 4 To pay the Initial Affordable Housing Contribution on the date that is six (6) months after the date of this Deed

5 Viability Appraisal

- 5 1 Within ten (10) Working Days of the Calculation Date to provide the Council with a copy of the Viability Appraisal,
- 5 2 Within twenty (20) Working Days of receipt of the Viability Appraisal the Council shall give written notice to the Owner either -
 - 5 2 1 Stating that it accepts the Viability Appraisal, or
 - 5 2 2 Correcting or challenging any of the amounts or conclusions included in the Viability Appraisal and giving details of the disputed amounts or conclusions,

- 5 3 In the event that the Council shall have served a notice on the Owner pursuant to paragraph 5 2 2 of this Schedule 2 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 (20) Working Days of the notice served by the Council pursuant to Paragraph 5 2 2 of this Schedule 2, or if no notice is served by the Council within the timescales required by clause 5 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 (and in any event within 10 Working Days) 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,
- 5 4 The Viability Appraisal not by way of limitation shall include and confirm
5 4 1 the GDV,
5 4 2 the GDC,
- 5 5 The Conservation Deficit will be off set against the Maximum Contribution Following the deduction of the Conservation Deficit, the Viability Appraisal will then determine if there is any contribution to be made towards the Maximum Contribution Any profit made above the Profit Level will be split 50/50 between the Council and the Owner and paid towards any Viability Payment As a result and for the avoidance of doubt the Owner will only be liable to pay 50% of any profit made above the Profit level in discharge of any Viability Payment

6 Viability Payment

- 6 1 Once the Viability Appraisal is agreed by the Council or determined pursuant to paragraph 5 3 of this Schedule 2 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 and all the Viability Assessment Fee in accordance with paragraph 6 3 below
- 6 2 The Owner shall pay to the Council the Viability Payment within twenty one (21) days of agreement by the Council of the Viability Appraisal or if applicable within twenty one (21) Working Days of the Viability Appraisal being determined pursuant to Paragraph 5 3 of this Schedule 2
- 6 3 In the event that the information contained in the Viability Appraisal (as agreed by the Council or determined pursuant to paragraph 5 2 of this Schedule 2) 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

- 6.4 The Owner covenants with the Council that it will indemnify the Council to the full extent of any Viability Payment and related Viability Assessment Fee due that remains unpaid on the expiry of the time limit for payment set out in paragraph 5.3 of this Schedule (the “**Outstanding Amount**”) and will pay the Outstanding Amount to the Council within 21 days of its receipt of a written request from the Council for the Outstanding Amount

SCHEDULE 3

THE COUNCIL'S COVENANTS

The Council hereby covenants with the Owner as follows

- 1 To use the Highways Contribution towards off site highway improvement works including the creation of a loading bay and disabled bay(s) in the immediate vicinity of the Site
- 2 To Use the Initial Affordable Housing Contribution towards the provision of Affordable Housing with the Administrative Boundaries of Manchester
- 3 To use the Viability Payment (if due) towards the provision of Affordable Housing within the Administrative Boundaries of Manchester
- 4 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
- 5 In the event that any part of the Viability Payment, Highways Contribution has not been spent by the Council within 10 years of the date on which the relevant contribution was paid the Council shall on the written request of the Owner repay to the party/person which paid the relevant contribution such unspent balance (excluding any such sums in respect of which though not yet expended by the Council has contractually committed to expend) together with interest on that balance calculated from the date of payment to the Council to the date of repayment
- 6 The Council shall provide written details of any expenditure incurred by the Council using the Viability Payment within twenty (20) Working Days of a written request to do so from the party/person who paid the Viability Payment to the Council
- 7 To issue the Planning Permission within 2 Working Days of the date hereof

SCHEDULE 4

VIABILITY TEMPLATE

Goulden Street, New Cross, Manchester

Open Market Gross Development Value (GDV) £

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

Profit Level – based upon 20% of GDV	£
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	£
Highways Contribution	£12,000
Initial Affordable Housing Contribution	£156,428
Conservation Deficit	£352,444
Finance cost of TBA	£
Interest cost on Deposits – TBA	£
Tax Relief – TBA	-£
Agreed Land Value	£470,000
Agreed Stamp Duty @	
Agreed Site Legal & Agents Fees @ 1% of Land Value	
TOTAL GROSS DEVELOPMENT COSTS (GDC)	
Surplus = NDV - GDC	
VIABILITY PAYMENT –	

NB – Viability Payment Cannot Exceed the Maximum Contribution

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



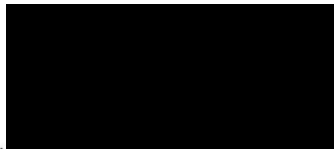
Authorised Signatory



01120965

EXECUTED as a DEED by

PEELERS YARD LTD
acting by a director



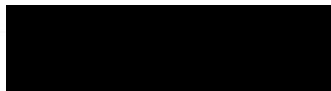
DIRECTOR

Signature:

Name: (in block capitals)

..... HOWARD LORD

IN THE PRESENCE OF



Signature:

Name: (in block capitals)

..... GRANT KAYE

Address



Occupation

..... DEVELOPMENT MANAGER

EXECUTED as a DEED by

PEELERS ESTATES LIMITED

acting by a director

DIRECTOR

Signature

Name (in block capitals)



DAVID ILLGIAHILL (Sons)

IN THE PRESENCE OF

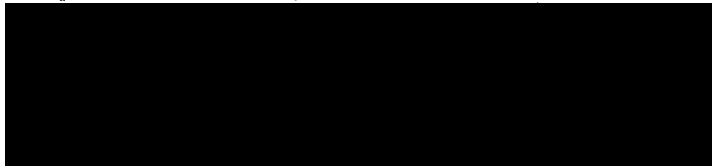
Signature

Name (in block capitals)



STEPHEN OSTER

Address



Occupation