

Dated 28th February 2023

THE COUNCIL OF THE CITY OF MANCHESTER

- and -

DEANS_GATE SOF ALLIANCE RESIDENTIALCO LIMITED

AGREEMENT

pursuant to Section 106 Town and Country Planning Act 1990
relating to land on the north side of Blackfriars Street
in the City of Manchester

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

L/BH/EVD3001/3911

THIS AGREEMENT is made the 28th day of February 2023

BETWEEN THE COUNCIL OF THE CITY OF MANCHESTER of Town Hall, Albert Square, Manchester (the “**Council**”) of the first part, and DEANSGATE SOF ALLIANCE RESIDENTIALCO LIMITED (company registration number 13118672) whose registered office is situated at 2nd Floor, One Eagle Place, St James's, London SW1 6AF (the “**Owner**” which expression shall include the successors in title and assigns of the Owner) of the second part

WHEREAS

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated and is minded to grant the Planning Permission subject to the completion of this Agreement
- 2 The Owner is the registered proprietor with title absolute of an underleasehold estate of the Land registered under title number MAN399689 at the Land Registry. The Council owns the freehold of the Land but is not entering into the planning obligations contained in this Agreement.
- 3 The Application has been submitted to the Council and the Owner and the Council have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement
- 4 The Council has recognised the difficulty faced by lower income groups in buying homes within the Administrative Boundary of Manchester and the planning purpose of this Agreement is to increase the provision of Affordable Housing within the Administrative Boundaries of Manchester The Owner has agreed to make provision for Affordable Housing in the manner hereinafter appearing The Council is satisfied that the obligations in this Agreement are:
 - (a) necessary to make the Development acceptable in planning terms (including where appropriate, obligations necessary to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations),
 - (b) directly related to the Development, and
 - (c) fairly and reasonably related in scale and kind to the Development, and in any event will secure other planning benefits

- 5 The Council has determined that the Development in order to comply with the Core Strategy will support the payment of £10,800,799 (ten million eight hundred thousand seven hundred and ninety nine pounds) as an Affordable Housing Contribution (as defined herein) However, the Owner has stated that there are viability issues affecting the development of the Land and has submitted to the Council documentation in support of this contention The Council accepts that at the date of this Agreement the implementation of the Development is not viable if the Affordable Housing Contribution is required to be paid on this date The Council and Owner agree that payment by the Owner to the Council towards the Affordable Housing Contribution (as defined herein) will be required if the First Viability Appraisal (if applicable) or the Second Viability Appraisal determine that a First Viability Payment or a Second Viability Payment is due The Owner agrees that if required by the provisions of this Agreement it will submit to the Council the First Viability Appraisal and/or the Second Viability Appraisal and pay any First Viability Payment and/or Second Viability Payment found to be due in accordance with the provisions of this Agreement

NOW THIS DEED WITNESSETH as follows

1. In this Agreement unless the context otherwise requires the following words and expressions and phrases shall have the meanings hereby ascribed to them
“**Act**” shall mean the Town and Country Planning Act 1990 (as amended),
“**Abnormals**” shall mean conditions affecting the Land which a competent purchaser, having undertaken the necessary investigations, could not have reasonably foreseen prior to the acquisition of the Land;
“**Actual Land Value**” means the actual purchase price paid for the Land 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 £10,800,799 (ten million eight hundred thousand seven hundred and ninety nine pounds) together with any Inflation Increase payable as a contribution towards the provision of Affordable Housing within the Administrative Boundaries of Manchester in accordance with policy PA1 of the Core Strategy This represents a sum that is a monetary equivalent to the cost of providing 20% (twenty per cent) of the Dwellings as Affordable Housing,

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

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

“Agreement” shall mean this agreement,

“All in Build Costs” means the total costs relating to the building of the Development such costs to be the actual costs Reasonably and Properly Incurred that relate to the building of the Development up until the Calculation Date and the estimated costs that remain to be Reasonably and Properly Incurred in completing the Development;

“Application” shall mean the application for planning permission received by the Council under reference number 132088/FO/2021,

“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 28 1 of this Agreement,

“Calculation Date” for the First Viability Appraisal (if applicable) shall mean the date that is exactly 2 (two) years after the date of this Agreement, and for the

Second Viability Appraisal shall mean the later of (i) the date upon which Completion of 75% (seventy five per cent) of the Dwellings has occurred, or (ii) the date when contracts have been exchanged in respect of 255 (two hundred and fifty five) of the Dwellings,

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

“Commencement Date” shall mean the date upon which the Development is commenced by the carrying out of a material operation as defined in section 56(4) of the Act and **“Commence Development”**, **“Commencement”** and **“Commencement of Development”** shall have the corresponding meaning,

“Commencement Notice” means written notice given by the Owner to the Council within 5 (five) Working Days of Commencement of Development stating that Commencement of Development has taken place and specifying the date of Commencement,

“Completion of Construction” means the date upon which a valid certificate of completion shall have been issued in respect of the relevant number of Dwellings referred to in Schedule 1 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 **“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 First Viability Appraisal (if applicable) or the Second 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 the cost inputs included in the first and second tables as detailed in the Viability Report at Schedule 3, as well as

- a) the actual costs Reasonably and Properly Incurred in relation to the Development prior to and up until the time of submission of the First Viability Appraisal (if applicable) or the Second Viability Appraisal, and
- b) the estimated costs that remain to be Reasonably and Properly Incurred in completing the Development and such details shall be included in the First Viability Appraisal (if applicable) or the Second Viability Appraisal,

PROVIDED ALWAYS THAT in the case of points a) and b) of this definition that any such actual or estimated costs are amongst those detailed or referred to in paragraph 012 (reference 10-012-20180724) of the section of the NPPG headed “Viability”,

“Development” shall mean the development of the Land pursuant to the Planning Permission and substantially comprising the erection of a part ground and 26 storey, part ground and 13 storey building to form 300 Dwellings (Class C3) and ground floor retail/ leisure floorspace (Class E/ Sui Generis (drinking establishments), together with private amenity space for residents (gym, cinema room and external terraces), new public realm to include riverside walkway and leisure/ food and beverage space (Class E/ Sui Generis (drinking establishments/ drinking establishments with food provision/ hot food takeaways), new landscaping, parking (36 spaces level -1), 300 cycle parking spaces, servicing, supporting infrastructure and associated works;

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

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

- a) the completion on an arm’s length basis of the sale or disposition of the freehold interest in any Dwelling, or
- b) the grant on an arm’s length basis of a lease for a term of 99 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 Land 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 10 (ten) years post-qualification experience,

“FVA” means the First Viability Appraisal (if applicable) or the Second Viability Appraisal once it includes as part of the First Viability Appraisal (if applicable) or the Second 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 First Viability Appraisal (if applicable) or the Second Viability Appraisal in order to assist the Council when reviewing the First Viability Appraisal (if applicable) or the Second Viability Appraisal,

“Finance Costs” means those costs which the Owner has Reasonably and Properly Incurred as a result of financing the Application and the Development,

“First Viability Appraisal” means a written appraisal to assess the Gross Margin which is required to be provided on the Calculation Date in accordance with the provisions of Schedule 1 to this Agreement The format of the First Viability

Appraisal shall take the form of the first table detailed in the Viability Report in Schedule 3. The First Viability Appraisal must include as part of it any documentation the Council, acting reasonably, may in writing request be provided in order to assist the Council when reviewing it. The First Viability Appraisal 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 First Viability Appraisal and how the First Viability Appraisal must be carried out,

"First Viability Assessment Fee" means a reasonable and properly incurred fee of £10,000 (ten thousand pounds) to cover the cost of the Council's review of the First Viability Appraisal in order to determine whether and the extent to which the Development can support a requirement to provide the First Viability Payment,

"First Viability Payment" means a payment required to be made by the Owner to the Council if the First Viability Appraisal (if applicable) shows that the Profit Level as assessed will be achieved and will be the sum of the MCC Surplus (as defined in the first table detailed in the Viability Report in Schedule 3) PROVIDED THAT the First Viability Payment shall be required to be no more than the amount that is needed in order to equal the Affordable Housing Contribution. For the avoidance of doubt any Inflation Increase calculated to be due is not counted towards the amount needed in order to equal the Affordable Housing Contribution. The First Viability Payment together with any Inflation Increase will be payable within the timescale set out in the provisions contained in Schedule 1;

"Forward Funding Arrangement" means a commitment to provide funding to assist the development of the project going forward with the sole aim of facilitating either a single sale of the whole or part of the Development, but not necessarily a commitment to purchase the Development or the retention of the whole or part of the Development by the Owner on Completion of Construction as a Private Rental Sector Investment. For the avoidance of doubt funding not provided for the

purposes outlined in the previous sentence of this definition but provided for example for the purpose of covering the construction costs of any Dwelling that is to be sold on the Open Market to an individual purchaser will not be classed as a Forward Funding Arrangement,

“Forward Sale” means the committed sale and purchase of the whole or part of the completed Development on agreed terms at a future date as evidenced by binding legal documents which are unconditional as to the sale of the whole or part of the completed Development and the requirement to undertake the construction of the Development and which detail (without limitation) payments made on completion of the sale of the whole or part of the completed Development and during the construction and on completion of the Development,

“GDV” subject to the proviso contained in this definition when calculating the cumulative total GDV arising from the Development, means

- 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 section of the NPPG headed “Viability” 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 Land or any part of the Land,
 - iii the Market Value of the Land, 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 Land not forming part of the Development,
 - iv the value of any Grant Funding or Public Subsidy received in respect of the Development, and
 - 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 Land 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 (acting reasonably) a Dwelling has not been Disposed Of at its Market Value or at 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 (acting reasonably) not greater than its Market Value then the Council may opt in writing to substitute the Market Value of the said Dwelling concerned in place of the actual monies received or if applicable in place of its advertised price and **“Gross Development Value”** shall be construed accordingly,

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

“Gross Margin” means the figure after deducting the Costs from the GDV as more particularly detailed in the First Viability Appraisal (if applicable) or the Second 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 12 of this Agreement,

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

“Land” shall mean the land against which this Agreement may be enforced and being all that land on the north side of Blackfriars Street, Manchester as shown edged red on the attached plan,

“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% (fifteen per cent) of the planning application fee which equates to £9,019 65 (nine thousand and nineteen pounds and sixty five

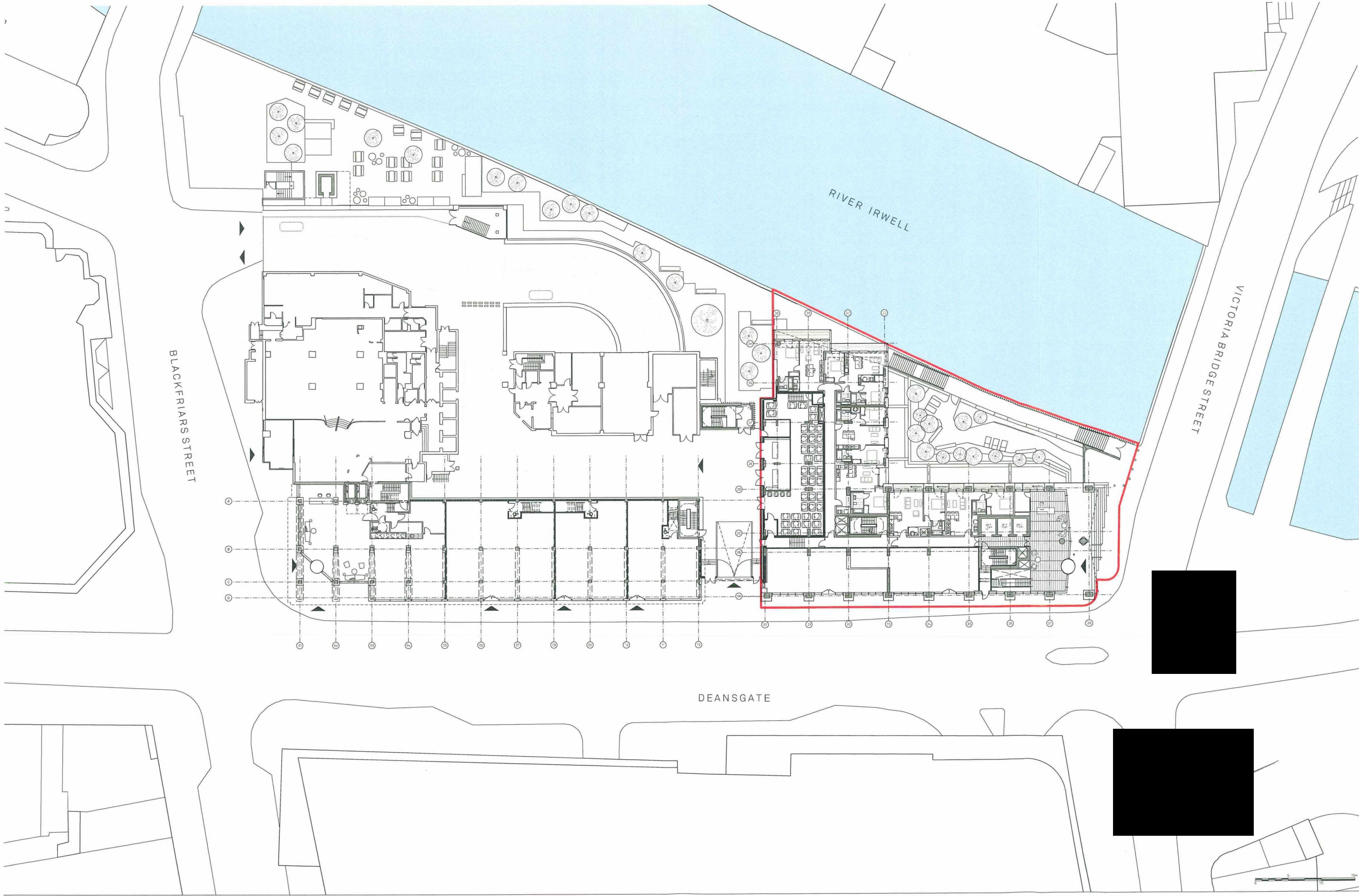
pence) to be used for the purpose of management and monitoring of the Planning Obligations,

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

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

“Occupation” means occupation of any part of any 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”** shall be construed accordingly,



- Residential Application Boundary
- Office Application Boundary
- Car Park Application Boundary
- Hotel Application Boundary
- Premier House Supporting Columns
- Hotel Supporting Columns
- Hotel Ownership Shared Access with Car Park



Project Name:	Renaissance	Type:	Residential - Lease Plan	Scale:	1:250@A1
Drawn:	FM	Checked:	JC	Status:	Information
Project:	150	Drawing No:	MP_02_2800	Rev:	-
Date:	16.09.21	Issued for:	Information		

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“Owner’s Development Management Fee” means any Reasonably and Properly Incurred costs of Property Alliance Group Limited in providing services of the kind detailed in (i), (ii) and (iii) of the definition of **“Professional Fees”** in relation to the Development, such costs to not exceed 3% (three per cent) of the construction costs of the Development capped at £3,000,000 (three million pounds),

“Planning Obligations” shall mean the obligations of the Owner specified in Schedule 1 to this Agreement,

“Planning Permission” shall mean full planning permission under the Act for the Development to be granted pursuant to the Application;

“Preparation Date” means the date by which in accordance with the provisions of this Agreement the First Viability Appraisal (if applicable) or the Second Viability Appraisal is prepared and completed,

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

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

“Private Rental Sector Forward Funding Arrangement” means a Forward Funding Arrangement in which the Owner will retain the whole or part of the Development,

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

“Professional Fees” means, not including the Owner’s Development Management Fee, 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 20% (twenty per cent) of the GDV or in respect of a Pre Sale when the Gross Margin is equivalent to 15% (fifteen per cent) of the GDV;

“Property Alliance Group Limited” shall mean the company registered in England with company registration number 04454378 and a registered office address of Alliance House, Westpoint Ent Park, Clarence Avenue, Trafford Park, Manchester M7 QS,

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

“Regear Costs” means all of the following Owner’s costs taken together:

- (a) Regear of the headlease in respect of the Land (including the Council’s professional fees) £3,582,600,
- (b) Lease surrender in respect of existing car park at the Land: £288,600,
- (c) Lease surrender in respect of 38 and 40-42 Deansgate, Manchester (basement, ground and first floors) £37,500 PROVIDED THAT evidence is produced showing that this cost was incurred solely for the purpose of obtaining vacant possession of the land detailed in this clause (c),
- (d) Premium in respect of rights to light insurance policy amounting to £249,669 74, together with a potential policy excess payment of up to £95,000, PROVIDED THAT only any actual excess payment incurred by the Owner (if any) is to be included as a Regear Cost, and
- (e) BuildZone New Home Warranties £550,000,

all of which costs to be accepted as Regear Costs must be supported by written evidence, provided to and accepted by the Council in writing (acting reasonably),

which demonstrates that the Regear Costs have been incurred by the Owner, and
“**Regear Cost**” shall be construed accordingly,

“**RICS**” means the Royal Institution of Chartered Surveyors,

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

“**Sales and Marketing Costs**” means the Reasonably and Properly Incurred costs relating to the sale and marketing of part of or all of the Development,

“**Second Viability Appraisal**” means a written appraisal to assess the Gross Margin which is required to be provided on the Calculation Date in accordance with the provisions of Schedule 1 to this Agreement. The format of the Second Viability Appraisal shall take the form of the second table detailed in the Viability Report in Schedule 3. The Second Viability Appraisal must include as part of it any documentation the Council, acting reasonably, may in writing request be provided in order to assist the Council when reviewing it. The Second Viability Appraisal 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 Second Viability Appraisal and how the Second Viability Appraisal must be carried out,

“**Second Viability Assessment Fee**” means a reasonable and properly incurred fee of £10,000 (ten thousand pounds) to cover the cost of the Council’s review of the Second Viability Appraisal in order to determine whether and the extent to which the Development can support a requirement to provide the Second Viability Payment,

“**Second Viability Payment**” means a payment required to be made by the Owner to the Council if the Second Viability Appraisal shows that the Profit Level as assessed will be achieved and will be the sum of the MCC Surplus (as defined in the second table detailed in the Viability Report in Schedule 3) PROVIDED THAT the Second Viability Payment shall be required to be no more than the amount that is needed in order to equal the Affordable Housing Contribution after taking into

account any First Viability Payment (if any) that has been received by the Council in accordance with this Agreement. For the avoidance of doubt any Inflation Increase calculated to be due is not counted towards the amount needed in order to equal the Affordable Housing Contribution. The Second Viability Payment together with any Inflation Increase will be payable within the timescale set out in the provisions contained in Schedule 1,

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

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

“Viability Report” means the forms in Schedule 3 setting out the required inputs for each of the First Viability Appraisal (if applicable) and the Second Viability Appraisal and the percentage values that are to be applied to various inputs as detailed in Schedule 3, and

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

2. A reference in this Agreement to an act of Parliament or to any order, regulation, statutory instrument or the like shall include a reference to any amendment or re-enactment of the same
3. Words importing the masculine gender include the feminine gender and vice versa and words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa
4. Any headings or side notes are for ease of reference only and shall not affect the construction of this Agreement

- 5 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement
- 6 If any party to this Agreement comprises more than one party then that party shall be jointly and severally liable under this Agreement
- 7 Words denoting an obligation on a party to this Agreement to do any act, matter or thing include an obligation to procure that it be done and words placing a party to this Agreement under a restriction include an obligation not to permit or allow infringement of that restriction
- 8 This Agreement is made in pursuance of Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other powers and enactments which may give validity hereto and facilitate the enforcement of the obligations and provisions herein contained
- 9 The Owner consents to its interest in the Land being bound by this Agreement and covenants with the Council in the terms set out in Schedule 1 to this Agreement, those covenants being planning obligations under Section 106 of the Act and enforceable by the Council
- 10 1 The Owner covenants with the Council to pay to the Council on the date hereof 10 1 1 such sum as notified in respect of the Council's legal costs in connection with this Agreement 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 it by the terms of this Agreement or by statute or at common law, 10 1 2 the Management Fee,
- 10 2 The Owner covenants to pay to the Council the First Viability Assessment Fee and the Second Viability Assessment Fee within 10 (ten) Working Days of their receipt from the Council of an invoice detailing the amount
- 11 The Council covenants with the Owner to issue the Planning Permission on the date hereof and to observe and perform the obligations on its part in this Agreement including those set out in Schedule 2

- 12 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 calculated
- (1) on the date as determined by the application of paragraph 5 2 of Schedule 1, and
 - (2) on the date as determined by the application of paragraph 5 2 of Schedule 1,
 - (3) B in respect of (1) above is the First Viability Payment and B in respect of (2) above is the Second Viability Payment,
 - (4) C in respect of (1) above is Inflation as shown in the relevant index published last before the date as determined by the application of paragraph 5 2 of Schedule 1 and C in respect of (2) above is Inflation as shown in the relevant index published last before the date as determined by the application of paragraph 5 2 of Schedule 1,
 - (5) D is Inflation for the month in which this Agreement is dated, and on each of the dates determined by the application of paragraph 5 2 of Schedule 1 the Inflation Increase will be equal to A minus B calculated using the definitions contained in this clause
- 13 Nothing herein contained or implied shall prejudice or affect the rights, powers, duties and obligations of the Council in exercise of its functions as a local authority and the rights, powers, duties and obligations of the Council under all public and private statutes, byelaws, orders and regulations may be fully and effectually exercised in relation to the Land or any part thereof and any works executed thereon as if this Agreement had not been executed by the Council and in particular nothing in this Agreement shall restrict the Council and any other authority from exercising powers of compulsory purchase in respect of any part of the Land
- 14 No failure or delay by the Council to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy

- 15 In respect of the sums payable by the Owner to the Council under the Planning Obligations, the Council covenants with the Owner
- 15 1 to pay such sums into the Stakeholder Account and to hold such sums therein until the withdrawal of such sums as may be required for the purposes specified in the Planning Obligations,
- 15 2 to use such sums withdrawn from the Stakeholder Account solely and exclusively for the purposes specified in the Planning Obligations, and
- 15 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 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 10 (ten) year period (the “**retention period**”) to the date of refund
- 15 4 Upon receipt by the Council of a written request from 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 (twenty one) days of the Council’s receipt of such a request PROVIDED THAT the number of such requests shall not exceed four
- 16
- 16 1 In the event of any dispute arising in connection with any of the terms of this Agreement other than a dispute involving the construction or interpretation of the terms of this Agreement or the enforcement of any decision pursuant to this clause, the same shall unless the Council and the Owner otherwise agree be referred to an Expert or in relation to the First Viability Appraisal (if applicable) or the Second

Viability Appraisal to a Chartered Surveyor to be appointed by agreement between the Council and the Owner.

- 16.2 If the Council and the Owner are unable to agree on the appointment of an Expert or Chartered Surveyor within 30 (thirty) days of one party serving notice on the other calling for the appointment of an Expert or Chartered Surveyor then an Expert or Chartered Surveyor shall be appointed on the application of either party to the President for the time being of the Royal Town Planning Institute or the Royal Institute of Chartered Surveyors as applicable.
- 16 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
- 16 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 the relevant timescales for the submission of representations and in what manner all the costs of the referral shall be paid
- 17 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 PROVIDED THAT this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law
- 18 If any provision of this Agreement shall be prohibited by or adjudged by a court to be unlawful, void or unenforceable such provision shall to the extent required be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances or the validity or enforcement of this Agreement

- 19 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
- 20 Nothing in this Agreement prohibits or limits the right to develop any part of the Land in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal
- 21 For the purpose of noting this Agreement on the title of the Owner registered under title number MAN399689 at the Land Registry the Owner will on the date hereof provide the Council with a completed Form AN1 (or any replacement of this form) together with either a cheque made payable to the Land Registry to cover the requisite fee or alternatively with the Owner's solicitor's completed Land Registry account key number details inserted in the form The Council will arrange for the AN1 (or any replacement of this form) to be registered at the Land Registry and the Owner will supply the Council with a copy of the amended registers as soon as reasonably practicable following their receipt by the Owner from the Land Registry
- 22 If any sum payable to the Council under the terms of this Agreement is not paid at the time specified herein the party responsible for making the payment shall pay to the Council interest on such sum calculated on a daily basis and compounded quarterly from the due date until payment at the rate of 4% (four per cent) per annum over Barclays Bank plc base rate from time to time in force and such amount shall be recoverable by action as a liquidated sum
- 23 1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the Planning 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 the area of the Land or unit of occupation purchased by reference to a plan
- 23 2 The Owner warrants that no person other than the Owner has a legal or equitable interest in the Land and the Owner hereby indemnifies the Council in respect of any loss that arises should there be any breach of this warranty

- 24 No person shall be liable for any breach of any of the Planning Obligations after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest
25. 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
- 26 This Agreement shall be governed by and interpreted in accordance with the laws of England
27. This Agreement is a local land charge and shall be registered as such by the Council
- 28 The Owner and the Council agree that in respect of the preparation of any First Viability Appraisal or any Second Viability Appraisal required to be submitted by the Owner in accordance with the provisions of this Agreement:
- 28 1 the cost input when assessing the Agreed Land Value is to be fixed at either the Benchmark Land Value of £2,736,000 (two million seven hundred and thirty six thousand pounds) or the Actual Land Value, whichever is the lower. For the purpose of ascertaining the Profit Level, the First Viability Appraisal (if applicable) or the Second 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 the part of the Development that is subject to a Pre Sale may be assessed at the relevant level of GDV (15% (fifteen per cent) for a Pre Sale Gross Margin),
- 28 2 the First Viability Appraisal (if applicable) and the Second Viability Appraisal will detail that the whole of the Development is the subject of the First Viability Appraisal (if applicable) or the Second Viability Appraisal and will calculate the Gross Margin on that basis,
- 28 3 when it has received the First Viability Appraisal (if applicable) or the Second Viability Appraisal, the Council will provide the Owner with a written acknowledgement of service within 10 (ten) Working Days of their receipt,
- 28 4 in the event that the Council considers that the Owner has not complied with or not fully complied with the provisions of paragraph 5 1 and/or paragraph 5 2 of

Schedule 2 it may refer the matter in dispute to the Chartered Surveyor, in accordance with the provisions of clause 16, 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 First Viability Appraisal (if applicable) or the Second 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,

28 5 in the event that the Council shall have served a notice on the Owner pursuant to paragraph 5 3 2 of Schedule 2, the Owner and the Council shall use reasonable endeavours to reach agreement in respect of the First Viability Appraisal (if applicable) or the Second Viability Appraisal, but if the Owner and the Council shall have failed to agree within 40 (forty) Working Days of the notice served by the Council pursuant to paragraph 5 3 2 of Schedule 2 (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 16, 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 First Viability Appraisal (if applicable) or the Second Viability Appraisal, which the parties agree will be final and binding upon them,

28 6 the First Viability Appraisal (if applicable) or the Second Viability Appraisal not by way of limitation shall include and confirm the GDV and the Costs and the matters referred to in clause 28 1 and clause 28 2

29. If the Owner surrenders its underlease registered at the Land Registry under title number MAN399689 or for any reason that underlease ceases to exist then provided no legal or equitable interest or estate in the Land deriving from that underlease has been created then the Council agrees that from the date of closure at the Land Registry of the title to the underlease the Land will be deemed to have been released from the planning obligations contained in this Agreement

30 All correspondence in connection with this Agreement shall be sent to the Council and addressed to the Director at the following address or such other address as

may be notified from time to time Planning and Building Control Department,
Ref 132088/FO/2021, Manchester City Council, PO Box 532, Town Hall,
Manchester M60 2LA

IN WITNESS whereof this Agreement has been executed as a deed in the manner
hereinafter appearing and delivered the day and year first before written

SCHEDULE 1

THE PLANNING OBLIGATIONS

The Owner covenants with the Council

- 1 to serve the Commencement Notice,
- 2 to notify the Council within 5 (five) Working Days of the date of Commencement of Development,
- 3 to notify the Council within 5 (five) Working Days of the date when Completion of Construction of 225 (two hundred and twenty five) of the Dwellings has occurred and of the date when contracts have been exchanged for the purchase of 255 (two hundred and fifty five) of the Dwellings,
- 4
- 4 1 Within 10 (ten) Working Days of each Calculation Date to provide the Council with a copy of the First Viability Appraisal or the Second Viability Appraisal, whichever is applicable, for possible agreement by the Council PROVIDED THAT the First Viability Appraisal will only be required to be submitted to the Council if Commencement of Development has not taken place within 2 (two) years of the date of this Agreement
- 4 2 If the Council should make a request pursuant to the provisions contained in paragraph 5 1 and/or paragraph 5 2 of Schedule 2 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
- 5 First Viability Payment and Second Viability Payment
- 5 1 In the event that the First Viability Appraisal (if applicable) or the Second Viability Appraisal is agreed by the Council or determined pursuant to the provisions contained in clause 28 5 and the information contained therein shows that in accordance with the provisions of this Agreement a First Viability Payment or a Second Viability Payment is due then the Owner shall pay to the Council the First

Viability Payment or the Second Viability Payment together with any Inflation Increase in accordance with paragraph 5 2 of this Schedule 1

- 5 2 The First Viability Payment (if applicable) together with any Inflation Increase or the Second Viability Payment together with any Inflation Increase shall be paid by the Owner to the Council (i) within 20 (twenty) Working Days of the agreement by the Council of the First Viability Appraisal (if applicable) or the Second Viability Appraisal; or shall be paid by the Owner to the Council (ii) within 20 (twenty) Working Days of the First Viability Appraisal (if applicable) or the Second Viability Appraisal being determined pursuant to the provisions contained in clause 28 5 (as the case may be)
- 5 3 In the event that the information contained in the First Viability Appraisal (if applicable) or the Second Viability Appraisal (as agreed by the Council or determined pursuant to the provisions of clause 28 5) shows that neither a First Viability Payment nor a Second Viability Payment is due then it is agreed by the Council that the obligation in this paragraph 5 of this Schedule 1 shall cease to bind the Land

SCHEDULE 2

The COUNCIL'S COVENANTS

The Council hereby covenants with the Owner as follows

- 1 To use any Affordable Housing Contribution for the provision of Affordable Housing within the Administrative Boundaries of Manchester and for no other purpose,
- 2 At the written request of the Owner to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed within 20 (twenty) Working Days of receipt of the request,
- 3 That the Council shall provide written details of any expenditure incurred by the Council using any First Viability Payment or any Second Viability Payment received within 20 (twenty) Working Days of a written request to do so from the party/person who paid the First Viability Payment or the Second 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 any First Viability Payment or any Second 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 any First Viability Payment or any Second Viability Payment received together with all interest accrued thereon,
- 5 That
- 5 1 Within 10 (ten) Working Days of its receipt of the First Viability Appraisal (if applicable) or the Second 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 First Viability Appraisal (if applicable) or the Second 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 2 (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 First Viability Appraisal (if applicable) or the Second Viability Appraisal is in FVA form or requesting amended or supplementary documentation to enable it carry out its review of the First Viability Appraisal (if applicable) or the Second Viability Appraisal,

PROVIDED THAT in the event that the Council considers that the Owner has not complied with or not fully complied with the provisions of paragraph 5 1 and/or paragraph 5 2 of this Schedule 2 then it may refer the matter in dispute to the Chartered Surveyor, in accordance with the provisions of clause 16, 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 First Viability Appraisal (if applicable) or the Second 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 First Viability Appraisal (if applicable) or the Second 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 3

Re Land on the north side of Blackfriars Street, Manchester

Table for use when determining the First Viability Payment

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 20% of GDV of Open Market Value	£
Profit Level – based upon 15% of GDV of Pre Sale Element	£
All in Build Costs TBA including – house build (superstructure), plot costs (incl substructure), infrastructure, overheads and prelims	£
Schedule of Abnormals TBA	£
Contingency on All in Build Costs and Abnormals TBA	£
Professional Fees (not including the Owner's Development Management Fee) TBA	£
Regear Costs TBA	£
Sales and Marketing Costs TBA	£
Finance Costs TBA	£
Owner's Development Management Fee TBA	£
Interest cost on deposits TBA	£
Tax Relief TBA	£
Agreed Land Value (the lower of 1) Benchmark Land Value set at Planning Consent Stage of £2,736,000 or 2) Actual Land Value – to be evidenced)	£
Agreed Stamp Duty TBA	£
Agreed Land Legal & Agents Fees Reasonably and Properly Incurred TBA	£
TOTAL COSTS	£
Surplus = NDV - Costs	£
MCC Surplus = Surplus x 50%	£
FIRST VIABILITY PAYMENT = MCC Surplus	£

NB – The First Viability Payment cannot exceed the Affordable Housing Contribution

Table for use when determining the Second Viability Payment

Open Market Gross Development Value (GDV) £

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

Profit Level – based upon 20% of GDV of Open Market Value	£
All in Build Costs TBA including - house build (superstructure), plot costs (incl substructure), infrastructure, overheads and prelims	£
Schedule of Abnormals TBA	£
Contingency on All in Build Costs and Abnormals TBA	£
Professional Fees (not including the Owner's Development Management Fee) TBA	£
Regear Costs TBA	£
Sales and Marketing Costs TBA	£
Finance Costs of TBA	£
Owner's Development Management Fee TBA	£
First Viability Payment TBA	£
Interest cost on deposits TBA	£
Tax Relief TBA	£
Agreed Land Value (the lower of 1) Benchmark Land Value set at Planning Consent Stage of £2,736,000 or 2) Actual Land Value – to be evidenced)	£
Agreed Stamp Duty TBA	£
Agreed Land Legal & Agents Fees Reasonably and Properly Incurred TBA	£
TOTAL COSTS	£
Surplus = NDV - Costs	£
MCC Surplus = Surplus x 50%	£
SECOND VIABILITY PAYMENT = MCC Surplus	£

NB - The Second Viability Payment, together with any First Viability Payment received, cannot exceed the Affordable Housing 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



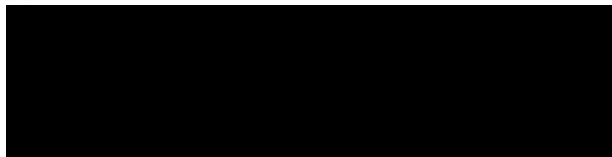
01119092

EXECUTED AS A DEED by DEANS GATE SOF ALLIANCE RESIDENTIAL CO LIMITED
acting by a director

DIRECTOR

Signature:

Name: (in block capitals)



Alex Russell

IN THE PRESENCE OF

Signature:

Name (in block capitals)

Address

Occupation



SOPHIA RUSSELL



PA