

DATED

10th March

2023

THE COUNCIL OF THE CITY OF MANCHESTER

– and –

BIA DEVELOPMENTS LIMITED

– and –

FAZ CONSTRUCTION LIMITED

– and –

VIEWS (HOLDINGS) LIMITED

– and –

MS LENDING GROUP LIMITED

AGREEMENT

**pursuant to section 106 of the Town and
Country Planning Act 1990 (as amended)
relating to land bounded by Stockport Road,
Swallow Street, Siddall Street and Pennington Street
in the City of Manchester**

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

EVD3001/3962

THIS AGREEMENT is made the 10th day of March 2023
BETWEEN.

- (1) **THE COUNCIL OF THE CITY OF MANCHESTER** of PO Box 532, Town Hall, Albert Square, Manchester M60 2LA (the “**Council**”),
- (2) **BIA DEVELOPMENTS LIMITED** (incorporated in England with company number 09773520) whose registered office is at 985 Stockport Road, Manchester, M19 2SY (the “**First Owner**”),
- (3) **FAZ CONSTRUCTION LIMITED** (incorporated in England with company number 09778109) whose registered office is at 985 Stockport Road, Manchester, M19 2SY (the “**Second Owner**”),
- (4) **VIEWS (HOLDINGS) LIMITED** (incorporated in England with company number 11742662) whose registered office is at Suite 3, First Floor, Blenheim Court, Carrs Road, Cheadle, SK8 2JY (the “**Developer**”),
- (5) **MS LENDING GROUP LIMITED** (incorporated in England with company number 12723324) whose registered office is at 1st Floor Cloister House, Riverside, New Bailey Street, M3 5FS (the “**Mortgagee**”)

BACKGROUND

- A The Council is the local planning authority for the purposes of the Act in relation to the Site and is the authority by whom the obligations hereby created are enforceable. The Development will be carried out on the Site.
- B The Council is the freehold owner of part of the Site registered at the Land Registry with title absolute under title number GM715932 together with but subject to all matters contained or referred to in the title register thereunder but is not entering this Agreement as a landowner. For the avoidance of doubt the Council is not entering into the planning obligations contained in Schedule 2.
- C The First Owner is the freehold owner of part of the Site registered at the Land Registry with title absolute under title numbers GM736487 and GM745503 together with but subject to all matters contained or referred to in the title registers thereunder and the leasehold owner of part of the Site registered at the Land Registry with title absolute under title number GM684888 together with but subject to all matters contained or referred to in the title register thereunder.
- D The Second Owner is the leasehold owner of part of the Site registered at the Land Registry with title absolute under title number MAN33315 together with but subject to all matters contained or referred to in the title register thereunder.
- E The Mortgagee is interested in part of the Site by virtue of the Legal Charge (pending registration against Title Numbers GM736487 and GM745503) and has agreed to enter into this Deed to give its consent to the terms of this Agreement.
- F On 4 February 2022 the Council granted planning permission for erection of a detached building with a ground floor and four floors above (maximum height of 5 storeys) comprising 39 residential units (Class C3), 8 retail /commercial units (Class E) to the ground floor, formation of a 22 space car park and servicing area accessed via Siddall Street, boundary treatments, waste storage enclosures and landscaping on vacant land bounded by Stockport Road, Swallow Street, Siddall Street and

Pennington Street, Manchester under planning permission reference 128698/FO/2020 (the **"February 2022 Permission"**) subject to the conditions and the section 106 agreement completed on 4 February 2022 (the **"February 2022 Section 106 Agreement"**)

- G On 13 May 2022 the Developer applied to vary conditions 2 (approved plan), 6 (permitted development rights), 10 (EV charging points), 13 (waste management strategy), 14 (bin storage materials), 24 (car parking details) and 25 (cycle storage) of planning permission 128698/FO/2020 in order to amend the February 2022 Permission (the **"Section 73 Application"**)
- H 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 Section 73 Application but having considered the Local Plan and the Regulations is desirous of the Owners and the Developer entering into this Agreement without which planning permission would not be granted
- I The Council has determined that the Development in order to comply with the Local Plan requires a payment of £779,245 00 (seven hundred and seventy nine thousand two hundred and forty five pounds) (**"Maximum Contribution"**) as a contribution towards on-site Affordable Housing
- 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 Owners and the Developer have stated that there are viability issues affecting the development of the Site and have submitted to the Council documentation in support of this contention The Council has accepted that at the date of this Agreement without a reduction in the Affordable Housing Policy Requirement the implementation of the Development is not viable The Owners and the Developer have agreed to enter into the planning obligations contained herein requiring them to submit a Viability Appraisal and pay any Viability Payment found to be due in accordance with the provisions contained in this Agreement
- K The Owners and the Developer have agreed to enter into this Agreement in support of the Section 73 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
- L The Council is satisfied that the obligations in this Agreement are;
- 1 necessary to make the Development acceptable in planning terms,
 - 2 directly related to the Development, and
 - 3 fairly and reasonably related in scale and kind to the Development

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

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

"Act" the Town and Country Planning Act 1990 as amended,

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

“Agreement” this agreement,

“Anticipated Date of Completion of Construction” means the date upon which the Owners and the Developer anticipate that the Completion of Construction of the relevant percentage of Dwellings referred to in this Agreement shall take place,

“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,

“Affordable Housing Unit” a Dwelling which shall be designated as Affordable Housing,

“Calculation Date” shall be prior to first occupation 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,

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

“Development” the development undertaken on the Site pursuant to the Planning Permission as specified in the Section 73 Application and **“Developed”** shall be construed accordingly,

“Dwelling” a unit of residential accommodation (C3) 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 years post-qualification experience

“February 2022 Section 106 Agreement” the section 106 agreement binding the Site dated 4 February 2022,

“Forward Funding Arrangement” a commitment to provide funding to assist the development of the project going forward with the sole aim of facilitating either a single sale of the whole or part of the

Development, but not necessarily a commitment to purchase the Development, or the retention of the whole or part of the Development by the Owners on Completion of Construction as a Private Rental Sector Investment. For the avoidance of doubt funding not provided for the purposes outlined in the previous sentence of this definition but provided, for example, for the purpose of covering the construction costs of any dwelling that is to be sold on the open market to an individual purchaser will not be classed as a Forward Funding Arrangement.

“Forward Sale” 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,

“GDC” means gross development cost as defined in Appendix F of the RICS Guidance. 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 together with the value of any grant funding/public subsidy received in respect of the Development. In addition the Council will accept in the calculation of GDV the actual sale 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,

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

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

“Legal Charge” a legal charge over part of the Site granted by the First Owner to the Mortgagee dated 11 March 2022 and any further charge or charges over the Site (or any part of it) granted from time to time to the Mortgagee,

“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 the Council,

“Market Housing Units” Dwellings which are general market housing for sale on the open market and which are not Affordable Housing,

“Maximum Contribution” the sum of £779,245 00 (seven hundred and seventy nine thousand two hundred and forty five pounds) Index Linked,

“NPPF” the National Planning Policy Framework issued in in February 2019 (and subsequently updated in June 2019) 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,

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

“Planning Permission” the planning permission granted pursuant to the Section 73 Application and as may be amended by any non material amendment,

“Pre Sale” a Forward Sale or Forward Funding Arrangement or Private Rental Sector Forward Funding Arrangement of at least 25% of the completed Development prior to the Calculation Date,

“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

“Private Rented Sector Forward Funding Arrangement” a Forward Funding Arrangement in which the Owner will retain the whole or part of the Development on Completion of Construction as a Private Rental Sector Investment,

“Profit Level” shall mean in the case that the Development is subject to a Pre Sale, when the Gross Margin is equivalent to 15% of the GDV, and in all other cases, when the Gross Margin is equivalent to 20% 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,

“Section 73 Application” the pursuant to section 73 of the Act to which the Council gave reference 133792/JO/2022 for variation to conditions 2 (approved plan), 6 (permitted development rights), 10 (EV charging points), 13 (waste management strategy), 14 (bin storage materials), 24 (car parking details) and 25 (cycle storage) attached to planning permission ref 128698/FO/2020 to facilitate

changes to the height, elevational design and internal and external layout of the authorised development,

“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 ten thousand pounds (£10,000.00) 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 Owners or the Developer 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 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

1.7 “Including” means “including, without limitation”

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

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

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

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

2 PLANNING OBLIGATION

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

3 CONDITION PRECEDENT

This Agreement is conditional upon the grant of the Planning Permission and Commencement of Development save for the provisions of Clauses 9, 11, 14, 15, 17, and 18 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 Owners or the Developer) or quashed or declared unlawful as a result of legal proceedings then this Agreement shall absolutely determine and become null and void but without prejudice to the rights of either party against the other in respect of any antecedent breach

5 THE OWNERS' AND THE DEVELOPER'S COVENANTS

The Owners and the Developer on behalf of themselves and any person deriving title to any part of the Site from the Owners 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 Owners and the Developer 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 the Owners and the Developer otherwise agree be referred to an Expert or in relation to the Viability Appraisal

to a Chartered Surveyor to be appointed by agreement between the Council the Owners and the Developer

- 7 2 If the Council the Owners and the Developer 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 Owners agrees with the Council to give the Council immediate written notice of any change in ownership of any of their interests in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with (unless the purchase relates to the entirety of the Site) the area of the Site or unit of occupation purchased by reference to a plan
- 9 2 No person shall be liable for any breach, non performance and non observance of the covenants, obligations and restrictions contained in this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest nor shall this hinder or preclude the Council's rights as the Local Planning Authority to require that the breach, non performance or non observance be remedied after that person has parted with its interest in the Site

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 For the purpose of noting this Agreement on the titles of the Owners at the Land Registry the Owners will on the date hereof provide the Council with 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 Owners' 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 Owners will supply the Council with a copy of the amended registers as soon as reasonably practicable following their receipt by the Owners from the Land Registry

11 3 The Council will upon receipt of a written request of the Owners or their successors in title, at any time after the obligations set out herein have been fulfilled in their entirety, issue written confirmation thereon and thereafter cancel all related entries in the register of local land charges

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

12 NON-PROHIBITION ON DEVELOPMENT

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

13 THE CONTRACTS ACT

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

14 COMMUNICATION

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

14 1 To the Council and addressed to the City Solicitor at the Council's address first above written,

14 2 To the Owners the Developer and the Mortgagee at their registered office address,

15 FEES

15 1 The Owners or the Developer shall pay to the Council on the date hereof its legal fees reasonably and properly incurred in preparation of this agreement,

15 2 Receipt by the Council of the payment of such sum shall not create any lawyer-client type contractual relationship between the Council and the Owner or the Developer nor absolve the Owner or the Developer from any liability or obligation imposed upon them by the terms of this Agreement or by statute or at common law,

15 3 The Owners or the Developer shall pay to the Council on the date hereof the Management Fee,

15.4 When submitting the Viability Appraisal the Owners or the Developer shall pay to the Council the related Viability Assessment Fee within ten (10) Working Days of his receipt from the Council of an invoice detailing the amount

16 INTEREST

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

17 JURISDICTION

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

18 COMPLETION

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

19 MORTGAGEE

19.1 The Mortgagee consents to this Agreement being entered into with the intention that its interest in the Site in the form of the Legal Charge will be bound by the terms of this Agreement as if this Agreement had been executed and registered as a local land charge before the execution of the Legal Charge

19.2 Notwithstanding clause 19.1 the Mortgagee will not incur any liability for any breach of the obligations contained in this Agreement unless and until they become a mortgagee in possession of the Site or any part of it

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

SCHEDULE 1

The Site

Land bounded by Stockport Road, Swallow Street, Siddall Street and Pennington Street, Manchester and shown for the purposes of identification only edged red on the Plan



rev	description	drawn	auth	date
DO NOT SCALE OFF THIS DRAWING © LEACH RHODES WALKER 2001				

LeachRhodesWalker
Architects

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client VIEWS LTD			
project LAND SOUTH OF 786 STOCKPORT ROAD			
project no 8048	drawing no L(00)25	rev B	
description SITE EDGED RED LOCATION PLAN			
scale 1:1250@ A4	date drawn 30.11.20	drawn by KM	authorised by CJG
purpose of issue planning ☐ building regs ☐ tender ☐ comment ☐ approval ☐ construction ☐			

SCHEDULE 2

THE OWNERS' AND THE DEVELOPER'S COVENANTS

The Owners and the Developer hereby covenant 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. Viability Appraisal

- 2 1 Within ten (10) Working Days of the Calculation Date to provide the Council with a copy of the Viability Appraisal,
- 2 2 Within twenty (20) Working Days of receipt of the Viability Appraisal the Council shall give written notice to the Owners and the Developer either -
 - 2 2 1 Stating that it accepts the Viability Appraisal, or
 - 2 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,
- 2 3 In the event that the Council shall have served a notice on the Owners and the Developer pursuant to paragraph 2 2 of this Schedule 2 the Owners the Developer and the Council shall use reasonable endeavours to reach agreement in respect of the Viability Appraisal but if the Owners the Developer 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 2 2 of this Schedule 2, then the matter in dispute shall be referred to the Chartered Surveyor, in accordance with the provisions of Clause 7 with the Chartered Surveyor being requested that he/she should as soon as practicable issue a written determination as to the matter in dispute and a written determination of the correct Viability Appraisal, which both Parties agree will be final and binding upon them,
- 2 4 The Viability Appraisal not by way of limitation shall include and confirm
 - 2 4 1 the GDV,
 - 2 4 2 the GDC,

3. Viability Payment

- 3 1 Once the Viability Appraisal is agreed by the Council or determined pursuant to paragraph 2 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 Owners or the Developer shall pay to the Council the Viability Payment and all the Viability Assessment Fee in accordance with paragraph 3 2 below,
- 3 2 The Owners or the Developer shall pay to the Council the Viability Payment within twenty eight (28) days of agreement by the Council of the Viability Appraisal or if applicable within twenty eight (28) Working Days of the Viability Appraisal being determined pursuant to Paragraph 3 3 of this Schedule 2
- 3 3 In the event that the information contained in the Viability Appraisal (as agreed by the Council or determined pursuant to paragraph 2 3 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
- 3 4 The Owners and the Developer covenant 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 3 2 of this Schedule (the **"Outstanding Amount"**) and will pay the Outstanding Amount to the Council within 28 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 any Viability Payment (if due) towards the provision of Affordable Housing within the Administrative Boundaries of Manchester and for no other purpose
- 2 At the written request of the Owners or the Developer to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed
- 3 In the event that any part of the Viability Payment has not been spent by the Council within 10 years of the date on which the Viability Payment was paid the Council shall on the written request of the Owners or the Developer repay to the party/person which paid the Viability Payment 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
- 4 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
- 5 To issue the Planning Permission within 2 Working Days of the date hereof

SCHEDULE 4

VIABILITY TEMPLATE

Stockport Road, Swallow Street, Siddall Street and Pennington Street, Manchester

Open Market Gross Development Value (GDV) £

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

Profit Level – based upon 15% of GDV where Pre Sale and 20% of GDV of in all other scenarios	£
All in build cost – [Includes - House Build (Superstructure), Plot Costs (Incl Substructure), Infrastructure, Overheads and Prelims]	£
Schedule of abnormals TBA	£
Contingency on build costs and abnormals TBA	£
Professional fees on build costs and abnormals TBA	£
Sales and Marketing Costs TBA	£
Agreed planning stage Section 106 commuted sum payment	£
Finance cost of TBA	£
Interest cost on Deposits – TBA	£
Tax Relief – TBA	-£
Agreed Land Value	£193,500
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



01119401

EXECUTED AS A DEED by BIA DEVELOPEMENTS LIMITED

acting by a director

DIRECTOR

Signature:

Name: (in block capitals)

IN THE PRESENCE OF

Signature:

Name (in block capitals)

Address

Occupation

[Redacted signature and name of director]

[Redacted signature and name of witness]

[Redacted address and occupation of witness]

Shoaib Taj
Solicitor

EXECUTED AS A DEED by FAZ CONSTRUCTION LIMITED

acting by a director

DIRECTOR

Signature:

Name: (in block capitals)

IN THE PRESENCE OF

Signature:

Name (in block capitals)

Address

Occupation

[Redacted signature and name of director]

[Redacted signature and name of witness]

[Redacted address and occupation of witness]

Shoaib Taj
Solicitor

EXECUTED AS A DEED by VIEWS (HOLDINGS) LIMITED

acting by a director

DIRECTOR

Signature

Name (in block capitals)

IN THE PRESENCE OF

Signature

Name (in block capitals)

Address

Occupation

[Redacted Signature]

[Redacted Signature]
Shoaib Taj
Solicitor

EXECUTED AS A DEED by MS LENDING GROUP LIMITED

acting by a director

DIRECTOR

Signature

Name (in block capitals)

IN THE PRESENCE OF

Signature

Name (in block capitals)

Address

Occupation

[Redacted Signature]

MICHAEL STRATTON

[Redacted Signature]

SAM BRUCE

[Redacted Address]

Junior Underwriter