

Dated

30 June

2022

(1) The Council of the City of Manchester

and

(2) Latimer Developments Limited

and

(3) Clarion Housing Association Limited

and

(4) Affinity Sutton Professional Services Limited

and

Agreement

pursuant to section 106 Town and Country Planning Act 1990 (as amended) relating to Land Bounded By The Travelodge And Surface Level Carparking To The North, Further Surface Level Carparking To The East, Manchester College To The South And Bury New Road To The West, in the City of Manchester

City Solicitor
Manchester City Council
P O Box 532
Town Hall
Albert Square
Manchester M60 2LA
L/BH/EVD3001/3912

This Agreement is made the 30th day of June 2022

BETWEEN

- (1) **The Council of the City of Manchester** of Town Hall, Albert Square, Manchester M60 2LA (the "**Council**"),
- (2) **Latimer Developments Limited** (company number 05452017) whose registered office is at Level 6, 6 More London Place, London, England SE1 2DA (the "**First Owner**"),
- (3) **Clarion Housing Association Limited trading as Clarion Housing** a society registered under the Co-Operative and Community Benefit Societies Act 2014 with registration number 7686 whose registered office is at Level 6, 6 More London Place, Tooley Street London, SE1 2DA (the "**Second Owner**")
- (4) **Affinity Sutton Professional Services Limited** (company number 07068999) whose registered office is at 6 More London Place, Tooley Street, London, SE1 2DA (the "**Third Owner**")

Introduction

- (A) The Council is the local planning authority for the purposes of the Act in relation to the Site and is the authority by whom the obligations hereby created are enforceable. The Development will be carried out on the Site. The Site is situated within the Administrative Boundaries of Manchester and this planning obligation is enforceable by the Council.
- (B) The First Owner is the leasehold owner of parts of the Site registered at the Land Registry with Title Absolute under Title Numbers MAN383818 and MAN383820 together with but subject to all matters contained or referred to in the Title Registers thereunder. The First Owner is the equitable owner of the freehold title to the parts of the Site registered with Title Numbers MAN332524 and MAN314656 (the "**First Owner's Equitable Estates**") pending acquiring the legal estate in those titles on completion of the registration of their transfer to the First Owner at the Land Registry.

- (C) LTE Group (a further education corporation established on 1 August 2008 with the name of The Manchester College under section 16(1)(a) of the Further and Higher Education Act 1992 by virtue of The Manchester College (Incorporation) Order 2008 SI 2008 No.49 and which changed its name on 1 June 2017 to LTE Group with the consent of the Secretary of State for Education (the "LTE Group") Principal office is at Openshaw Campus & Administration Centre, Ashton Old Road, Manchester M11 2WH) is the freehold owner of parts of the Site registered at the Land Registry with Title Absolute under title numbers MAN332524, and MAN314656 (noting that title numbers MAN332524 and MAN314656 have been transferred to the First Owner so that following completion of the registration at the Land Registry the LTE Group will not have any interest in these titles) together with but subject to all matters contained or referred to in the Title Registers thereunder It has been agreed that LTE Group's interest in the Site need not be bound by the terms of this Agreement
- (D) SMH Investments Limited (company registration number 08189577) of Unit B, First Floor, Lostock Park, Lynstock Way, Lostock, Bolton, BL6 4SG is the freehold owner of part of the Site registered at the Land Registry with Title Absolute under Title Number GM517879 (the "SMH Land") together with but subject to all matters contained or referred to in the Title Registers thereunder SMH Investments Limited is not entering into the planning obligations in this Agreement SMH Investments Limited has transferred its interest in the SMH Land and other land to Deansgate Securities LLP (company registration number OC322448) whose registered office is situated at 1 Ambassador Place, Stockport Road, Altrincham, WA15 8DB. Their new title to the SMH Land and other land is pending registration under title number MAN397533 The SMH Land is subject to the underlease held by the First Owner under title number MAN383818 and the lease held by the Council under title number LA145277 It has been agreed that SMH Investments Limited's interest in the Site shall not be bound by this Agreement
- (E) The Second Owner is the leasehold owner of an equitable estate in parts of the Site through leases dated 11 March 2022 and 25 August 2021 that are pending registration at the Land Registry and which have been allocated the following pending title numbers. MAN398956 and MAN388112 (the "**Second Owner's**")

Equitable Estates”) The lease allocated title number MAN398956 affects land contained in the Title Numbers MAN383818, MAN314656 and MAN383820 recited above. The lease allocated the Title Number MAN388112 affects the land held under Title Number MAN332524 recited above. A break notice has been served in respect of the lease dated 25 August 2021 and pending title number MAN388112 and the lease will come to an end on the 12 July 2022 and the Second Owner's interest in this part of the Site will cease

- (F) The Third Owner is the owner of an equitable estate in an underlease of part of the Site through an underlease dated 11 March 2022 that is pending registration at the Land Registry and which has been allocated the pending title number MAN399861 (the **“Third Owner’s Equitable Estate”**) The underlease affects land held under the Title Number MAN398956 recited above.
- (H) The Council owns a freehold interest in the Site under Title Number LA73324 and a leasehold interest in the Site under Title Number LA145277
- (I) The Council resolved on 17 March 2022 that it was minded to grant the Planning Permission subject to the completion of this Agreement
- (K) 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 Owners have agreed to make provision for Affordable Housing in the manner hereinafter appearing. The Council is satisfied that the obligations in this Agreement are:
 - (a) necessary to make the Development acceptable in planning terms (including where appropriate, obligations necessary to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations),
 - (b) directly related to the Development, and
 - (c) fairly and reasonably related in scale and kind to the Development and in any event will secure planning benefits.

(L) The Owners as herein defined have agreed to enter into this Agreement in support of the Application so as to create planning obligations in favour of the Council pursuant to section 106 Act and to be bound by and observe and perform the covenants hereinafter contained

(M) The Council has determined that in order to comply with the Core Strategy the Development should provide 20% onsite 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 First Owner has stated that there are viability issues affecting the development of the Site and has submitted to the Council documentation in support of this contention The Council has accepted that at the date of this Agreement without a reduction in the Affordable Housing Policy Requirement the implementation of the Development is not viable The Council has agreed to accept the provision of 5% onsite Affordable Housing in lieu of the full policy requirement on the basis of the information contained in the documentation relating to viability submitted by the First Owner to the Council The Owners have agreed to enter into the planning obligations contained herein requiring them to provide 5% onsite Affordable Housing and if required in accordance with the provisions of this Agreement to submit a Viability Appraisal and pay any Viability Payment found to be due in accordance with the provisions contained in this Agreement

Agreed terms

1 Definitions and interpretations

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

Act means the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008;

“Actual Land Value” means the actual purchase price paid for the 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” a sum equivalent to the cost of providing the number, size and type of Affordable Housing on the Site as would be required under policy H8 of the Core Strategy which policy requires that 20% of the Dwellings should be provided as Affordable Housing

Affordable Housing Plans means the four plans at the Appendix 1 which identify the tenure and location of the Affordable Housing Units with drawing numbers A3564-ASA-XX-XX-DR-A-0200 Rev P06, A3564-ASA-ZZ-01-DR-A-041401 Rev P01, A3564-ASA-ZZ-03-DR-A-041403 Rev P01, and A3564-ASA-ZZ-02-DR-A-041402 Rev P01;

Affordable Housing Statement means a written statement detailing the provision of Affordable Housing Units in the form attached at Appendix 2 which has been approved by the Council or such amended Affordable Housing Statement as may be submitted to and approved by the Council in writing from time to time,

Affordable Housing Unit means a Dwelling which shall be designated as Affordable Housing in the Affordable Housing Statement A total of 23 (twenty three) Affordable Housing Units shall be designated as Affordable Housing in the Affordable Housing Statement submitted by the First Owner for approval by the Council and which are to be constructed according to at least the quality and design standards of the Regulator. The Affordable Housing Units shall be designed, constructed and completed to at least the same standard as the Market Housing Units “Affordable Housing Units” shall be construed as referring to the 23 (twenty three) Dwellings designated as Affordable Housing in the Affordable Housing Statement;

Affordable Rent means subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable)

and which in any event will not exceed the LHA and “Affordable Rented”, “Affordable Rented Unit” and “Affordable Rented Units” shall be construed accordingly,

Agreement shall mean this agreement,

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

“Agreed Stamp Duty” means the stamp duty land tax (the “SDLT”) that has been or will be 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,

“All in Build Costs” means the total costs relating to the building of the Development from the Commencement of Development up until the Calculation Date,

Application means the application for planning permission to which the Council gave the reference 132416/FO/2021

“Architect” means Assael Architecture Ltd of 123 Upper Richmond Road, London, SW152TL;

“Baseline Viability Assessment” means the financial viability appraisal submitted with the Application,

“Benchmark Land Value” shall mean £1,365,000 (one million three hundred and sixty five thousand pounds);

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

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

“Broad Rental Market Area” means the area where a person could reasonably be expected to live taking into account access to facilities and services;

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

“Chargee” any mortgagee or chargee of the Registered Provider or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator,

“Chargee’s Duty” the tasks and duties of the Chargee set out in the Schedule 2;

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

Commencement of Development means the date upon which the Development shall begin by the carrying out of a material operation in accordance with the provisions of section 56(4) of the Act Provided That any works of or associated with site clearance, remediation works, environmental or archaeological investigations, site and soil surveys, erections of contractors work compound, erection of site office, erection of fencing to site boundaries, marking of site boundaries and laying out of access roads and services shall for the purposes of the agreement be deemed not to be material operations,

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

provisions of this Agreement shall mean the date that the Council notifies in writing to the Owners that the said completion of construction is to be deemed to have taken place for the purposes of this Agreement and “**Completed**” and “**Completion**” shall be construed accordingly,

“**Construction Period**” means the period from the carrying out of the first Material Operation to the date of Practical Completion of the Development,

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

“**Costs**” means the costs to be taken into account for the purpose of the Viability Appraisal as defined in paragraph 012 (reference: 10-012-20180724) of the section of the NPPG headed “Viability” as the same may be amended or any replacement thereof. In addition the Council will accept in the calculation of Costs

1. the actual costs Reasonably and Properly Incurred in relation to the Development prior to and up until the time of submission of the Viability Appraisal; and
 2. the estimated costs that remain to be Reasonably and Properly Incurred in completing the Development and such details shall be included in the Viability Appraisal,
- provided always in the case of points 1 and 2 of this definition that any such actual or estimated costs are amongst those detailed or referred to in paragraph 012 of the NPPG section headed “Viability”,

Development means the development undertaken on the Site and adjacent land pursuant to the Planning Permission and substantially comprising the erection of two buildings part 27, 20, 17 storeys and part 11 and 10 storeys to form a mixed use development comprising of 461 residential apartments (Use Class C3a) and ground floor commercial uses (Use Class E) (718 sqm) together with public realm including courtyard pocket park, landscaping, car parking and other associated works,

Director means the Council's Director of Planning, Building Control and Licensing;

"Disposal" any of the following in respect of any Dwelling.

(a) the completion on an arm's length basis of the sale or disposition of the freehold interest in any Dwelling, or

(b) the grant on an arm's length basis of a lease for a term of 99 years or more whether or not a rent of more than nominal value is reserved,

and **"Disposed Of"** and **"Disposals"** shall be construed accordingly

Dwelling means a unit of accommodation to be constructed on the Site as part of the Development pursuant to the Planning Permission and **'Dwellings'** shall be construed accordingly,

Expert means a professional expert in town planning, who is a Chartered Member of the Royal Town Planning Institute with a minimum of ten years post qualification experience;

"FVA" the Viability Appraisal once it includes as part of the Viability Appraisal any documentation in accordance with the provisions of this Agreement that the Council, acting reasonably, may in writing request be provided as part of the Viability Appraisal in order to assist the Council when reviewing the Viability Appraisal;

"Finance Cost" means those costs which the Owners have Reasonably and Properly Incurred as a result of financing the Application and carrying out and completion of the Development including, if the Actual Land Value is adopted as the Agreed Land Value, the costs relating to the acquisition of the Site. If the Benchmark Land Value is adopted as the Agreed Land Value, the costs relating to the acquisition of the Site may be included providing they are adjusted down if necessary to reflect the Benchmark Land Value and providing always whichever value is adopted that those costs shall not exceed seven (7) per cent above the Bank of England base rate as at the date of the Baseline Viability Assessment. **"Finance Costs"** will be construed accordingly,

"Forward Funding Arrangement" a commitment to provide funding to assist the development of the project going forward with the sole aim of facilitating

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

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

“GDV” Subject to the Proviso contained in this definition when calculating the cumulative total GDV arising from the Development

(a) in respect of Dwellings Disposed Of prior to the Preparation Date the Council will accept as the calculation of GDV in respect of those Dwellings the actual monies received from a Disposal of each Dwelling Disposed Of,

(b) in respect of Dwellings which have not been Disposed Of prior to the Preparation Date the GDV shall be the highest figure of.

(i) the gross development value as defined in paragraph 011 (reference 10-011-20180724) of the Viability Section of the NPPG as the same may be amended or any replacement thereof, or

(ii) in respect of any Dwellings not Disposed Of but that have been sold subject to contract then the subject to contract price agreed for those Dwellings; or

(iii) for Dwellings not yet Disposed Of or sold subject to contract their advertised price as detailed in advertisements made as part of any sales and marketing strategy in respect of them and if more than one price for a Dwelling has been advertised shall mean the price as advertised in the advertisements issued closest to the Preparation Date;

(c) in respect of Dwellings that are Let the Council will accept as part of the calculation of GDV their Market Value; and

(d) in addition to any of the above calculations of GDV in (a), (b) and (c) above that may apply the GDV of the Development shall include not by way of limitation any income not already included in the calculations of GDV in (a), (b) and (c) above that will be derived from the Development in addition to income from Disposals and Lets for example

(i) in the form of ground rents or from the renting of car parking spaces,

(ii) the actual revenue from the disposal of the 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

(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 a Dwelling

(a) has been Disposed Of other than at a value that is equal to or greater than its Market Value, or

(b) is not yet Disposed Of or not yet sold subject to contract and the advertised price for the Dwelling is not equal to or greater than its Market Value then (in either case) the Council may opt in writing to substitute the Market Value of the said Dwelling concerned in place of the actual monies received or (if applicable) in place of its advertised price SAVE THAT where the Dwelling concerned is Disposed Of as an Affordable Housing Unit then this Proviso shall not apply and **“Gross Development Value”** shall be construed accordingly;

“Grant Funding or Public Subsidy” means any funds received towards the funding of the Development from public bodies, for example, not by way of

limitation, local authorities, central government and bodies funded by central government, for example, the HCA or the Regulator of Social Housing,

Gross Margin the figure after deducting the Costs from the GDV as more particularly detailed in the Viability Appraisal,

“Homes England “or “HE” means the body that funds and regulates Affordable Housing Providers and such expression shall include successors to the functions and powers of Homes England;

“Inflation” shall mean the number of the Consumer Prices and Housing Index (CPIH) for the specified month produced by the Office for National Statistics (or contained in any official publication substituted therefor) or such other index as may from time to time be published in substitution therefor

“Inflation Increase” shall mean the amount calculated by way of the formula contained in clause 21 of this Agreement

Interest means at 4% above the base lending rate of the Bank of England from time to time;

“Let” shall mean any Dwelling let by way of lease for a term of less than 99 years or Assured Shorthold Tenancy, Assured Tenancy or any other form of tenancy for a term of less than 99 years and **“Lets”** shall be construed accordingly;

“Local Housing Allowance” the rates determined by the Valuation Office Agency used to calculate housing benefit for tenants renting from private landlords, such rates being based on private market rents being paid by tenants in the Broad Rental Market Area and **“LHA”** shall be construed accordingly,

Management Fee shall mean 15% of the planning application fee which equates to £12,768 15 (twelve thousand seven hundred and sixty eight pounds and fifteen pence)) to be used for the purpose of management and monitoring of this Agreement and the Planning Obligations contained herein,

Market Housing Units that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing and **“Market Housing Unit”** shall be construed accordingly,

“Market Value” the market value as defined in the RICS Valuation – Global Standards (the “Document”), Incorporating the IVSC International Valuation Standards, published in 2019 by the Royal Institution of Chartered Surveyors

(RICS) effective on 31 January 2020 and set out on pages 55 to 56 of the section headed VPS4 in Part 4 of the Document or any replacement, update or amendment of the same from time to time save in respect of any Dwellings that are Let or any part of the Development that has a non-residential use or any other part of the 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 and “MV” shall be construed accordingly,

“**Maximum Contribution**” shall mean the sum of £15,393,934.50 (fifteen million three hundred and ninety three thousand nine hundred and thirty four pounds and fifty pence) together with any Inflation Increase;

“**NPPF**” means the National Planning Policy Framework (**NPPF**) issued on 1 September 2019 and revised on 20 July 2021 (as may be updated or replaced with an equivalent policy from time to time) being the framework setting out the Government's planning policies for England and how these are expected to be applied as may be amended or any replacement of the same;

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

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

“**Owners**” shall mean together the First Owner, the Second Owner and the Third Owner and a reference to “Owner” shall mean any of the Owners,

“**Plan**” means the plan attached to this Agreement,

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

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

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

“Preparation Date” means the date by which in accordance with the provisions of this Agreement the Viability Appraisal is prepared and completed;

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

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

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

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

“Professional Fees” means all of the costs of those third parties (including but not limited to their agents, contractors, professional advisors and technical consultants) that have agreed with the Owners 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% of the GDV or in the case of a Pre Sale Element when the Gross Margin is equivalent to 15% of the GDV;

Protected Tenant means any tenant who

- (a) has exercised the Right to Acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit,
- (b) has exercised any statutory Right to Buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit,
- (c) has entered into a Shared Ownership Lease with a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining equity so that the tenant owns the entire Affordable Housing Unit,

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

Registered Provider or RP means either a registered social landlord as defined in the Part 1 Housing Act 1996 who is registered with the Regulator pursuant to section 3 Housing Act 1996 and has not been removed from that register pursuant to section 4 Housing Act 1996 or a provider of social housing as defined in section 80 Housing and Regeneration Act 2008 who is registered with the Affordable Housing Regulator pursuant to section 111 Housing and Regeneration Act 2008 and has not been removed from the register and which shall for the avoidance of doubt include Clarion Housing Association Limited,

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

Regulator means the body known as the Regulation Committee of Homes England, also known as the Regulator of Social Housing, or any successor organisation or body which regulates Registered Providers,

"Rented Housing Unit" any Affordable Housing Unit to be constructed to the same overall standard in terms of quality and finish as comparable units for sale as Market Housing Units and disposed to an RP under the terms of this Agreement for letting at an Affordable Rent on assured tenancies or assured shorthold tenancies in accordance with the relevant provisions of the Housing and Regeneration Act 2008 and marketed in accordance with guidance issued by HE (or successor body) from time to time and **"Rented Housing Units"** shall be construed accordingly,

RICS means the Royal Institution of Chartered Surveyors,

"Right to Acquire" the right of a tenant to acquire the Affordable Housing Unit of which they are a tenant provided under section 180 of the and governed by the Housing Act 1985 and modified by the Housing (Right to Acquire) Regulations 1997 as the same may be modified or as contained in any replacement of the same,

"Right to Buy" the right of a tenant to buy the Affordable Housing Unit of which they are a tenant provided

(a) under the Housing Act 2005 and under the Housing and Planning Act 2016 as the same may be modified or as contained in any replacement of the same, or

(b) any equivalent contractual right,

(c) any extension of the Right to Buy to tenants of Registered Providers either through a voluntary scheme brought in by a Registered Provider or by government legislation as the same may be modified or contained in any replacement of the same,

"Sales and Marketing Costs" means the Reasonably and Properly Incurred costs relating to the sale and marketing of part or all of the Development provided always that those costs shall not exceed three (3) per cent of the GDV,

Shared Ownership Housing means Affordable Housing sold and leased by a Registered Provider on Shared Ownership Terms,

Shared Ownership Lease means a lease the terms of which provide for ownership to be shared between the occupier and a landlord under which the occupier owns part of the equity in the leasehold title and pays a rental on the balance of the equity held in the leasehold interest Permitting Staircasing up to 100% Such initial ownership by the occupier (and subject to the right to Staircase up to 100%) shall not be more than 75% of the equity when measured against full Market Value of the relevant Affordable Housing Unit,

Shared Ownership Terms means the terms of a disposal contained in model shared ownership leases published by the Regulator from time to time whereby

- (a) a Registered Provider sells shares in the equity of a dwelling to an Eligible Purchaser (the initial share being between 25% and 75%) who pays rent upon the remainder, and
- (b) staircasing to 100% of the equity of the dwelling is permitted,

Shared Ownership Unit means a Dwelling that is also Shared Ownership Housing and "Shared Ownership Units" shall be construed accordingly,

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

"Staircasing" means the exercise by the owner-occupier of a Shared Ownership Unit of the right to purchase additional equity shares up to 100% of the entire interest in the Shared Ownership Unit after which the rent payable on any equity share retained by the Registered Provider shall be reduced proportionally and **Staircase** shall be construed accordingly,

"Staircasing Receipts and Other Affordable Housing Receipts" any receipts received by any of the Owners following disposal arising from Right to Buy, Right to Acquire (or equivalent) or arising in respect of a Shared Ownership Lease as a result of Staircasing by the tenant

"Stakeholder" shall mean the City Treasurer and her authorised officer's;

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

Viability Appraisal a written appraisal to assess the Gross Margin as at the Calculation Date in accordance with the provisions of Schedule 3 of this Agreement. The format of the Viability Appraisal shall take the form of the Viability Report detailed in Schedule 4 and “VA” shall be construed accordingly. The VA must include as part of the VA any documentation the Council, acting reasonably, may in writing request be provided as part of it in order to assist the Council when reviewing the VA. The VA must comply with the requirements set out in paragraphs 2.1 to 2.14 of the RICS Professional Statement, first edition, issued in May 2019 and effective from 1/9/2019 titled “Financial viability in planning: conduct and reporting” which requirements and paragraph 012 of the NPPG set out what must be included in the VA and how the VA must be carried out.

Viability Assessment Fee means the reasonable and proper costs incurred by the Council in obtaining independent advice on the Viability Appraisal provided that the Viability Assessment Fee shall not exceed £12,000 (twelve thousand pounds),

Viability Payment means 50% of the amount by which the Gross Margin exceeds the Profit Level PROVIDED THAT the Viability Payment shall be capped so that it shall not exceed the Maximum Contribution,

“Viability Report” the form in Schedule 4 setting out the required inputs for the Viability Appraisal;

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 save for the reference to a Mortgagee in Clause 19 3 include the successors in title of that party In addition, references to the Council include any successor local planning authority exercising planning powers under the Act and any successor local highway authority exercising powers under the Highways Act 1980

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

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

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

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

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

2 **Planning Obligation**

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

3 **Condition precedent**

This Agreement is conditional upon the grant of the Planning Permission and Commencement of Development save for the provisions of clauses 7, 9, 11, 14, 15, 17, 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 any of them) or quashed or declared unlawful as a result of legal proceedings then this Agreement shall absolutely determine and become null and void but without prejudice to the rights of either party against the other in respect of any antecedent breach

5 **The Owners covenants**

The Owners consent to their interests in the Site being bound by this Agreement and on behalf of themselves and any person deriving title to any part of the Site from any of the Owners hereafter hereby covenants with the Council so as to bind the Site to fully observe and perform the obligations on their part contained in this Agreement including those obligations set out in Schedule 2 and hereby agrees that the Site shall be permanently subject to the obligations, restrictions and provisions specified herein, such obligations being planning obligations for the purpose of section 106 of the Act

6 **The Council's covenants**

The Council hereby covenants with the Owners to issue the Planning Permission on the date hereof and to observe and perform the obligations on its part in this Agreement including those obligations set out in the Schedule 3

7 **Dispute resolution**

7 1 In the event of any dispute arising in connection with any of the terms of this Agreement other than a dispute involving the construction or interpretation of the

terms of this Agreement or the enforcement of any decision pursuant to this clause, the same shall unless the Council and the Owners otherwise agree be referred to an Expert, save that disputes in relation to the Viability Appraisal may be referred to a Chartered Surveyor, to be appointed by agreement between the Council and the Owners.

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

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

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

8 **Waiver**

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

9 **Change in ownership and liability**

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

9 2 No person shall be liable for any breach, non-performance and non-observance of the covenants, obligations and restrictions contained in this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest nor shall this hinder or preclude the Council's rights as the Local Planning Authority to require that the breach, non-performance or non-observance be remedied after that person has parted with its interest in the Site

9 3 The Owners warrant that no person other than the Owners has a legal or equitable interest in the Site and the Owners hereby indemnify the Council in respect of any loss that arises should there be any breach of this warranty

10 **Council's consent or approval**

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

11 **Local land charge**

11 1 This Agreement is a local land charge and shall be registered as such by the Council

12 **Non-prohibition on Development**

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

13 **The Contracts (Rights of Third Parties) Act 1999**

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

14 **Communication**

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

14 1 1 to the Council and addressed to the Director at the Council's address first above written,

14 1 2 to, the Owners and Mortgagees at their registered office addresses.

15 **Fees**

15 1 The First Owner has paid to the Council its legal fees reasonably and properly incurred in preparation of this Agreement on or prior to the date hereof Receipt by the Council of the payment of such sum shall not create any lawyer-client type contractual relationship between the Council and the First Owner nor absolve the First Owner from any liability or obligation imposed upon it by the terms of this Agreement or by statute or at common law;

15 2 Following submission of the Viability Appraisal, if required, the Owners shall pay to the Council the related Viability Assessment Fee within ten Working Days of receipt from the Council of an invoice detailing the amount

15 3 The First Owner has on or prior to the date hereof paid to the Council the Management Fee.

16 **Interest**

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

17 **Jurisdiction**

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

18 **Completion**

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

19 **Mortgagees**

19.1 Any mortgagee or chargee with an interest in the Site from time to time will not incur any personal liability for any breach of the obligations contained in this Agreement unless and until they become a mortgagee in possession of the Site or any part of it in which case they will be liable as if they were a person deriving title from any of the Owners SAVE THAT for the avoidance of doubt any mortgagee or chargee that is a Chargee shall if the provisions contained in Paragraph 6 of Schedule Two take effect need to comply with the Chargee's Duty

20 **Agreements and declarations**

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

20 1 any owner, occupier, tenant or chargee of any individual Market Housing Unit or the successors in title of any such person or mortgagee or any person deriving title therefrom,

20 2 any Protected Tenant or their mortgagee or chargee or any successor in title to such Protected Tenant,

20.3 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services,

20.4 the relevant highway authority to whom any part of the Site is disposed of for the purposes of adoption of any roads and/or footpaths and/or cycle ways to be constructed on the Site

21 **Inflation Increase**

The Maximum Contribution shall be increased using the formula $A = B \times (C / D)$ provided that (C / D) shall always be greater than or equal to 1, where

(1) A is the Maximum Contribution including the Inflation Increase,

(2) B is the figure set out in the definition of Maximum Contribution in this Agreement

(3) C is in respect of (1) above Inflation as shown in the relevant index published last before the Calculation Date

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

22 **Council Powers**

Nothing herein contained or implied shall prejudice or affect the rights, powers, duties and obligations of the Council in exercise of its functions as a local authority and the rights, powers, duties and obligations of the Council under all public and private statutes, byelaws, orders and regulations may be fully and effectually exercised in relation to the 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

23 **Payment Receipts**

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

23 1 to pay such sums into the Stakeholder Account and hold such sums therein until the withdrawal of such sums as may be required for the purposes specified in the Planning Obligations

23 2 to use such sums withdrawn from the Stakeholder Account solely and exclusively for the purposes specified in the Planning Obligations

23 3 to repay to the Owners (here meaning the party or parties who shall have actually paid such sum) such amount of the sums which have not been expended excluding any such sums in respect of which though not yet expended the Council has contractually committed to expend in accordance with the provisions of this Agreement within 10 (ten) years of the Commencement Date or date of receipt by the Council of such payment (and where payment is made by instalments the date of receipt shall be deemed to be the date upon which the last instalment is received), whichever is the later, together with interest at the Bank of England base rate from time to time from the date of expiration of this ten year period (the "retention period") to the date of refund

23 4 Upon receipt by the Council of a written request from any of the Owners received within the final year of the retention period to provide a written statement summarising what the sums received have been spent on and detailing any sums remaining unexpended within 21 days of the Council's receipt of such a request provided that the number of such requests shall not exceed four

24 Viability Review

The Owners and the Council agree that in respect of the preparation of any VA required to be submitted by the Owners in accordance with the provisions of this Agreement

24 1 the cost input when assessing the Agreed Land Value of the Site upon its acquisition by the Owners is to be fixed at either the Benchmark Land Value of £1,365,00 (one million three hundred and sixty five thousand pounds) or the Actual Land Value, whichever is the lower,

24 2 for the purpose of ascertaining the Profit Level the VA will detail whether the whole or part of the Development is the subject of a Pre-Sale and if part will detail the specific Dwellings that are the subject of each and every Pre-Sale that has been entered into on

or before the Calculation Date so that they may be assessed at the relevant level of Gross Margin which shall be equivalent to 15% of the GDV for a Pre-Sale and 20% of the GDV in all other cases,

24.3 The VA not by way of limitation shall include and confirm the GDV and the Costs and the matters referred to in Clause 24.1 and 24.2

24.4 Within 10 (ten) Working Days of the Calculation Date the Owners shall confirm in writing to the Council whether the Development was subject to a Pre-Sale and shall provide the Council with a copy of the VA for agreement by the Council,

24.5 When it has received the VA the Council will provide the Owners with a written acknowledgement of service within 5 Working Days of the date that it receives the VA,

24.6 Within 10 (ten) Working Days of its receipt of the VA and of the Viability Assessment Fee the Council shall give written notice to the Owners detailing any further or amended documentation that the Owner must provide in writing to the Council before the VA can be accepted by the Council as the FVA,

24.7 If the Council make a request pursuant to clause 24.6 then within 10 (ten) Working Days of the date of that request the Owners shall provide the Council with written copies of the documentation or amended or supplementary documentation, whichever is applicable, requested,

24.8 Within 15 (fifteen) Working Days of its receipt of the documentation referred to in clause 24.7 or in the event that no further documentation is requested by the Council pursuant to clause 24.6 within 25 (twenty five) Working Days of the receipt of the VA and the Viability Assessment Fee the Council shall give written notice to the Owners confirming whether or not it accepts that the VA is in FVA form

24.9 If the Council notifies the Owners pursuant to clause 24.8 that it accepts that the VA is in FVA form it shall within 20 (twenty) Working Days of such notice being given give further written notice to the Owners either:-

24.9.1 Stating that it approves the FVA, or

24.9.2 Correcting or challenging any of the amounts or conclusions included in the FVA and giving details of the disputed amounts or conclusions

24.10 In the event that the Council notifies the Owners pursuant to clause 24.8 that it does not accept the VA is in FVA form or pursuant to clause 24.9 that it does not approve

the FVA then in either case the service of such notice shall be treated as a viability dispute ("Viability Dispute")

24.11 If a Viability Dispute arises then the Owners and the Council shall use reasonable endeavours to resolve the Viability Dispute so that the Council may approve the FVA provided always that at any time after a Viability Dispute arises either the Council or the Owner may refer the Viability Dispute to the Chartered Surveyor, in accordance with the provisions of clause 7, with the Chartered Surveyor being requested that he/she should as soon as practicable issue a written determination -

- in the case of a Viability Dispute pursuant to clause 24 8 as to whether the documentation in dispute is reasonably required to enable the Council to carry out its review of the VA 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 (save for manifest error), or

- in the case of a Viability Dispute pursuant to clause 24 9 a written determination of the correct VA, which the parties agree will be final and binding upon them (save for manifest error),

24 12 If the Council does not serve notice on the Owners pursuant to clauses 24 6, 24 8 or 24 9 within the timescales set out in the respective clauses then the Council shall be deemed to have agreed the Viability Appraisal

24 13 The Owners may request in writing that the Council waives the requirements of this clause 24 and Paragraphs 1 3 and 3 of Schedule 2 and the whole of Schedule 4 so as to dispense with the requirement to carry out Viability Appraisal and make a Viability Payment, and the Council shall act in its sole and absolute discretion when considering such request In the event that the Council agrees to waive the requirements of this clause 24 and Paragraphs 1 3 and 3 of Schedule 2 and the whole of Schedule 4 the Council shall confirm the same in writing to the Owners whereupon the provisions this clause 24 and Paragraphs 1 3 and 3 of Schedule 2 and the whole of Schedule 4 shall determine absolutely Such waiver shall enure for the benefit of the Owners any mortgagees or chargees and any other persons with an interest in the Site from time to time

25 Restriction

25 5 The First Owner covenants with the Council that

25 5 1 prior to or upon completion of this Agreement the First Owner shall provide the Council with a completed Land Registry form RX1 (or any subsequent revisions amendments or replacements of the same) signed by it and thereby authorising the Council to register a restriction in standard form L at the Land Registry in respect of its interest in the title number MAN383818 in the following terms

"No surrender of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by Manchester City Council, Town Hall, Albert Square, Manchester, M60 2LA that the provisions of paragraph 6 of Schedule 2 of a Section 106 Agreement dated _____ made between (1) The Council of the City of Manchester (2) Latimer Developments Limited (3) Clarion Housing Association Limited (4) Affinity Sutton Professional Services Limited have been complied with or that they do not apply to the disposition "

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

25 5 2 prior to or upon completion of this Agreement they will each provide the Council with a cheque to cover the cost of registering the form RX1 at the Land Registry or will insert their land registry account details in the form RX1

26 First Owner's Equitable Estates Second Owner's Equitable Estates and Third Owner's Equitable Estate

The First Owner Second Owner and Third Owner consent to this Agreement and hereby acknowledge that their interests in the Site referred to in the heading of this Clause 26 upon their deriving registered legal title to those interests will be bound by the planning obligations in this Agreement.

27 Registrations

27 1 The First Owner will use reasonable endeavours to deal with all Land Registry requisitions in relation to the First Owner's Equitable Estate to enable them to be registered with the legal title at the Land Registry

27 2 The First Owner covenants not to withdraw their application for registration of their interest in the Site

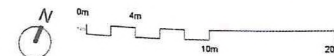
- 27 3 The First Owner will supply the Council with a copy of the completion of registration documentation within 5 working days of receipt from the Land Registry;
- 27 4 The Second Owner will use reasonable endeavours to deal with all Land Registry requisitions in relation to the Second Owner's Equitable Estate to enable them to be registered with the legal title at the Land Registry save in respect of the lease dated 25 August 2021 and pending title number MAN388112 as the lease will come to an end on the 12 July 2022 and the Second Owner's interest in this part of the Site will cease
- 27 5 The Second Owner covenants not to withdraw their application for registration of their interest in the Site other than as referred to in clause 27 4 where the application may be withdrawn
- 27 6 The Second Owner will supply the Council with a copy of the completion of registration documentation within 5 working days of receipt from the Land Registry,
- 27 7 The Third Owner will use reasonable endeavours to deal with all Land Registry requisitions in relation to the Third Owner's Equitable Estate to enable them to be registered with the legal title at the Land Registry
- 27 8 The Third Owner covenants not to withdraw their application for registration of their interest in the Site
- 27 9 The Third Owner will supply the Council with a copy of the completion of registration documentation within 5 working days of receipt from the Land Registry,

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

Schedule 1

The Site

Land Bounded By The Travelodge And Surface Level Carparking To The North, Further Surface Level Carparking To The East, Manchester College To The South And Bury New Road To The West, Manchester shown for the purposes of identification only edged red on the Plan



General Notes

This drawing must not be scaled. This drawing must not be used for any other purpose. This drawing must be read in conjunction with all other relevant documents. Information contained in this drawing is for reference only and does not constitute a contract. The information contained in this drawing is for reference only and does not constitute a contract. The information contained in this drawing is for reference only and does not constitute a contract.

Drawings must be printed on A3 paper and must be submitted to the client for approval.

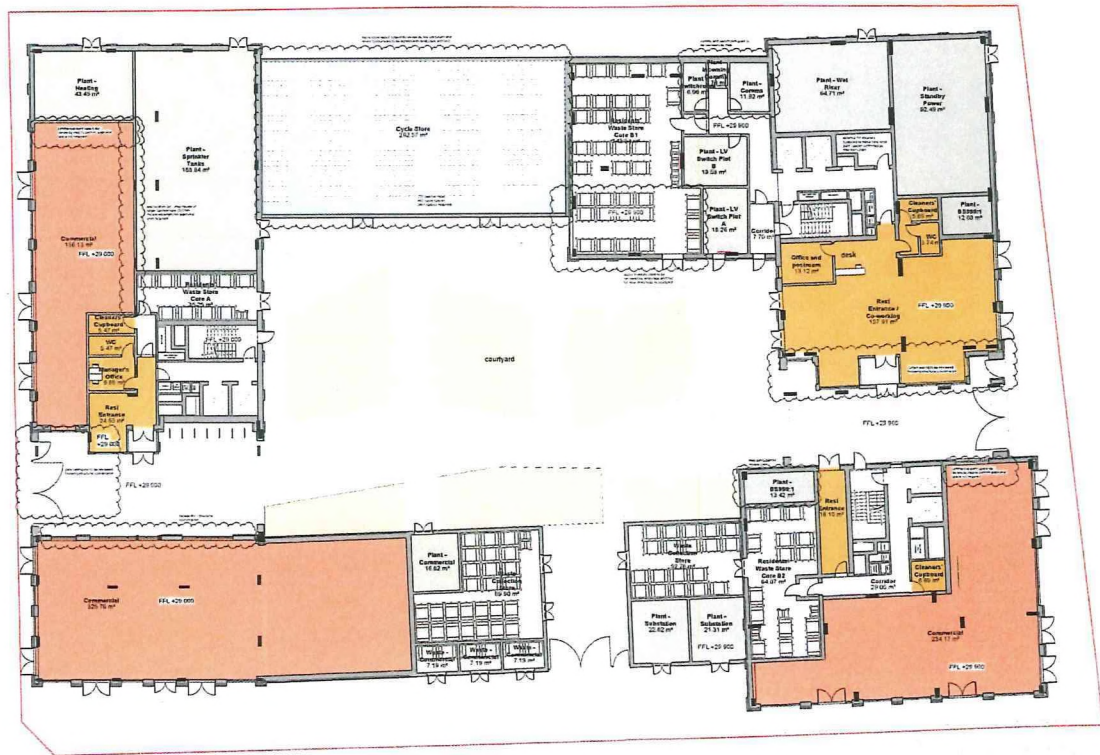
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Electronic file references

A356-A356-22-02-10-0-001

Rev	Revision	Date	Drawn	Check
001	For information	19/02/21	008	TS
002	For information	19/02/21	008	TS
003	For information	02/03/21	011	TS
004	For information	27/03/21	008	TS
005	For information	27/03/21	008	TS



B18-4



B18-5

Client
Clarion Housing Group

Project title
A3564 Former Boddingtons Brewery Site

Drawing title
00 Ground Floor



Assael

B18-6

Architecture

Assael Architecture
100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 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Schedule 2

The Owners general covenants

The Owners hereby covenant with the Council as follows

1 Notices

1 1 To notify the Council in writing within five Working Days of,

1 1 1 Commencement of Development that development has commenced,

1 1 2 Completion of Construction,

1 1 3 the date first Occupation has occurred,

1 1 4 the date when 50% of the Dwellings have been Occupied,

1 1 5 the date when 75% of the Dwellings have been Occupied

1 2

1 2 1 The Owners shall use Best Endeavours to continue to employ the Architect throughout the Construction Period and until Completion of Construction of the Development **PROVIDED THAT** the Architect remains willing and able to fulfil such role in relation to the Development and that such employment is capable of being secured on reasonable commercial terms

1 2 2 Should the Architect not be appointed or continue to be appointed in accordance with paragraph 1 2 1 above the Owners shall immediately notify the Council of this fact in writing and shall use Best Endeavours to appoint a replacement Architect of a similar calibre and reputation as soon as reasonably practicable and shall thereafter notify the Council of the identity of the replacement architect immediately thereafter

1 3 to comply with the provisions of Clause 24

2 Affordable Housing Statement

2 1 The Owners shall not carry out the Development other than in accordance with the Affordable Housing Statement

2 2 The Affordable Housing Statement may be amended by the Owners from time to time provided that such amendments are first approved by the Council in writing

2 3 Not to Occupy allow or permit to be Occupied more than 50% of the Dwellings until a legal estate in all of the Affordable Housing Units has been granted by the First Owner to the Second Owner noting that the Second Owner has already been granted the Second Owner's Equitable Estate in partial satisfaction of this clause

2 4 Not to Occupy allow or permit to be Occupied more than 75% of the Market Housing Units until all of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for residential occupation and have been Occupied and written notification of that Occupation has been received to the Local Planning Authority

2 5 Nothing in this Agreement nor in the Affordable Housing Statement shall be construed as restricting or regulating the terms upon which the Market Housing Units may be let or disposed of (nor the persons who may own or occupy them) and for the avoidance of doubt the Owners may provide the Market Housing Units on affordable housing terms and to any person outwith the terms of this Agreement at its absolute discretion

3 Viability Payment

3 1 In the event that the Viability Appraisal is agreed by the Council or determined pursuant to the provisions contained in Clause 24 and the information contained therein shows that in accordance with the provisions of this Agreement a Viability Payment is due then the Owners shall pay to the Council the Viability Payment

3 2 The Viability Payment shall be paid by the Owners to the Council within 20 (twenty) Working Days of the agreement by the Council of the Viability Appraisal or if applicable shall be paid within 20 (twenty) Working Days of the Viability Appraisal being determined pursuant to the provisions contained in Clause 24

3 3 In the event that the information contained in the Viability Appraisal (as agreed by the Council or determined pursuant to the provisions of Clause 24) shows that a Viability Payment is not due then it is agreed by the Council that the obligation in this paragraph 3 of this Schedule 2 shall cease to bind the Site

4 Mortgagee Exclusion

From the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing save that this obligation (and the provisions of the Affordable Housing Statement) shall not be binding on

4 1 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty and any person deriving title from the Chargee or any successor in title thereto and their respective mortgagees and chargees, or

4 2 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and any person deriving title from that purchaser or any successor in title thereto and their respective mortgagees and chargees

5 Chargee's Duty

The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than one month's prior notice ("Chargee's Notice") to the Council of its intention to dispose and.

5 1 in the event that the Council responds within one month from receipt of the Chargee's Notice ("the Council's Notice") indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing and to satisfy the terms of the mortgage or charge then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to complete such transfer; or

- 5 2 if the Council does not serve its response to the Chargee's Notice within the one month period referred to above at paragraph 5 1 then the Chargee shall be entitled to dispose of the Affordable Housing Units or any part thereof free from the restrictions set out in this Schedule (and the provisions of the Affordable Housing Statement) which provisions shall determine absolutely; or
- 5 3 if the Council or any person nominated by the Council cannot within two months of receipt of the Council's Notice complete such transfer (so that for the avoidance of doubt there shall be a total of only 3 months from the Chargee's Notice to completion of such transfer) then provided the Chargee shall have complied with its obligations under paragraph 5 1 the Chargee shall be entitled to dispose of the Affordable Housing Units or any part thereof free from the restrictions set out in this Schedule (and the provisions of the Affordable Housing Statement) which provisions shall determine absolutely
- 5 4 provided that at all times the rights and obligations in this paragraph 5 shall not require the Chargee to act contrary to its duties under the charge or mortgage and in particular (but without limitation) the Chargee shall not be obliged to transfer, let or otherwise dispose of the Affordable Housing Units or any part thereof for a consideration less than the full amount outstanding under the legal charge or mortgage, plus all interest, costs and expenses
- 6 That unless the planning obligations contained in this Schedule 2 have been fully complied with they will not surrender any of their leasehold interests in the Site derived from the freehold title of SMH recited in Recital (D) or allow them to merge with any superior title so that they are extinguished without first procuring that any head lessors and the freehold owner of the SMH Land have entered into a Deed of Variation of this Agreement whereby the freehold title to the SMH Land and the title to any head leases not bound by this Agreement become bound by the planning obligations contained in this Schedule 2

Schedule 3

The Council's covenants

The Council hereby covenants with the Owners as follows

- 1 To use any Viability Payment received towards the provision of Affordable Housing within the Administrative Boundaries of Manchester and for no other purpose and to use any Viability Assessment Fee towards the review of any Viability Appraisal submitted under this Agreement and for no other purpose
- 2 At the written request of the Owners to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed within twenty (20) Working Days of receipt of the request,
- 3 that the Council shall provide written details of any expenditure incurred by the Council using any Viability Payment received within 20 Working Days of a written request to do so from the party/person who paid the Viability Payment to the Council,
- 4 that at the written request of the Owners the Council shall repay to the person who first paid such monies any balance of any Viability Payment received (excluding any such sums in respect of which though not yet expended the Council has contractually committed to expend) which remains unexpended 10 (ten) years from the date of payment of any Viability Payment received or in the case of monies allocated to maintenance 20 (twenty) years from such date or dates together with all interest accrued thereon

Schedule 4

Viability template

Land Bounded By The Travelodge And Surface Level Carparking To The North, Further Surface Level Carparking To The East, Manchester College To The South And Bury New Road To The West, Manchester

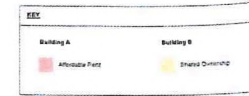
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Profit Level - based upon 20% of GDV of the Market Value	£
Profit Level – based upon 15% of GDV of Pre Sale Element	£
All in Build Cost	£
Schedule of abnormalities TBA	£
Contingency on All in Build Costs	£
Professional Fees	£
Sales and Marketing Costs TBA	£
Agreed planning stage Section 106 sum equivalent to the value of the 5% of the Dwellings provided as Affordable Housing to be included on provision of the 5% Affordable Housing on site in accordance with the Affordable Housing Statement	£3,078,786.90
Finance Cost	£
Agreed Land Value (the Lower of (1) Benchmark Land Value or (2) Actual Land Value)	£
Agreed Stamp Duty	£

Agreed Site Legal & Agents Fees @ 1% of Agreed Land Value	£
Total Costs	£
Gross Margin	£
Viability Payment (not to exceed the Maximum Contribution)	£

Appendix 1
Affordable Housing Plans

A diagram showing a path starting from a point and moving in a series of steps. A compass rose indicates North (N) is towards the top-left. The path is marked with distances: 0m, 4m, 10m, and 20m. The path starts at 0m, goes up and right to 4m, then down and right to 10m, then up and right to 20m.

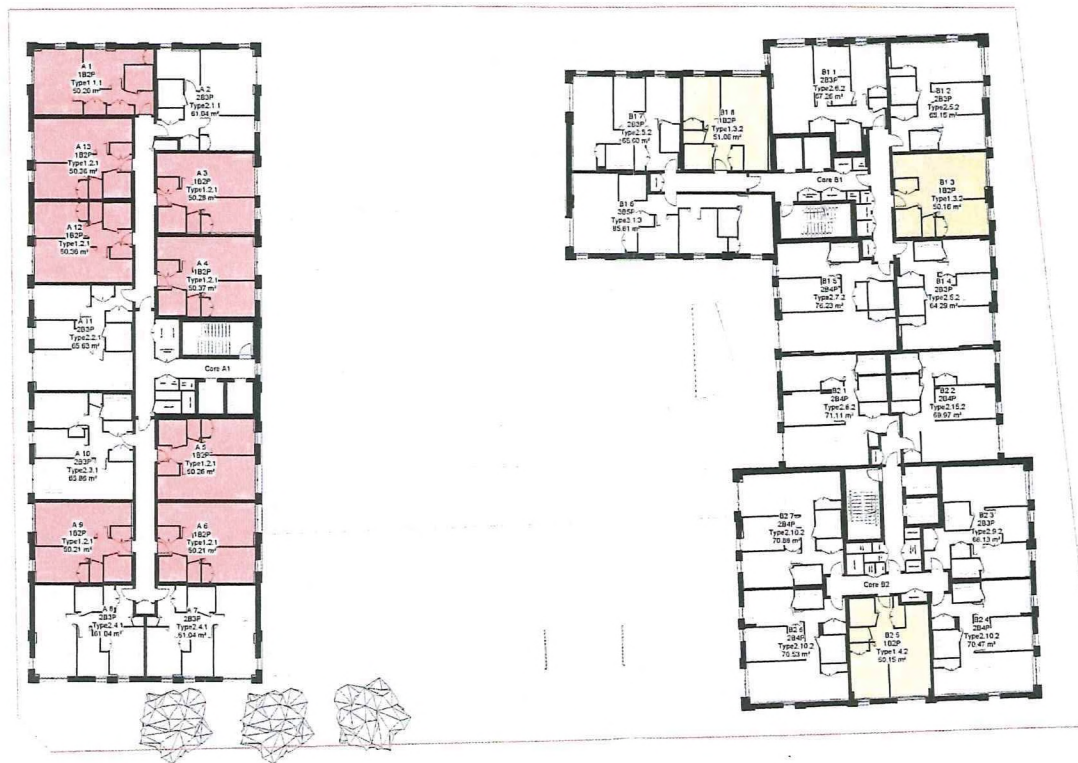


Drawing revision prefix (not applied to sketches):
 p = Pre-Contract
 C = Contract

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DATE 03-22-2011 BY 60322 UCBAW

Rev	Revision note	Date	Drawn	Check
PG1	For Information	10/06/22	AT	KC

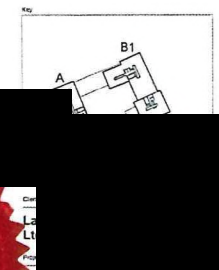


Great Ducle Street

Manchester City College
(under construction)



Old Brewery Gardens
(consented scheme)



**A3564 Former Boddingtons
Brewery Site**

Floor 01, Section 106 Plan

18-8
Guide # A1
1:200
10/06/22

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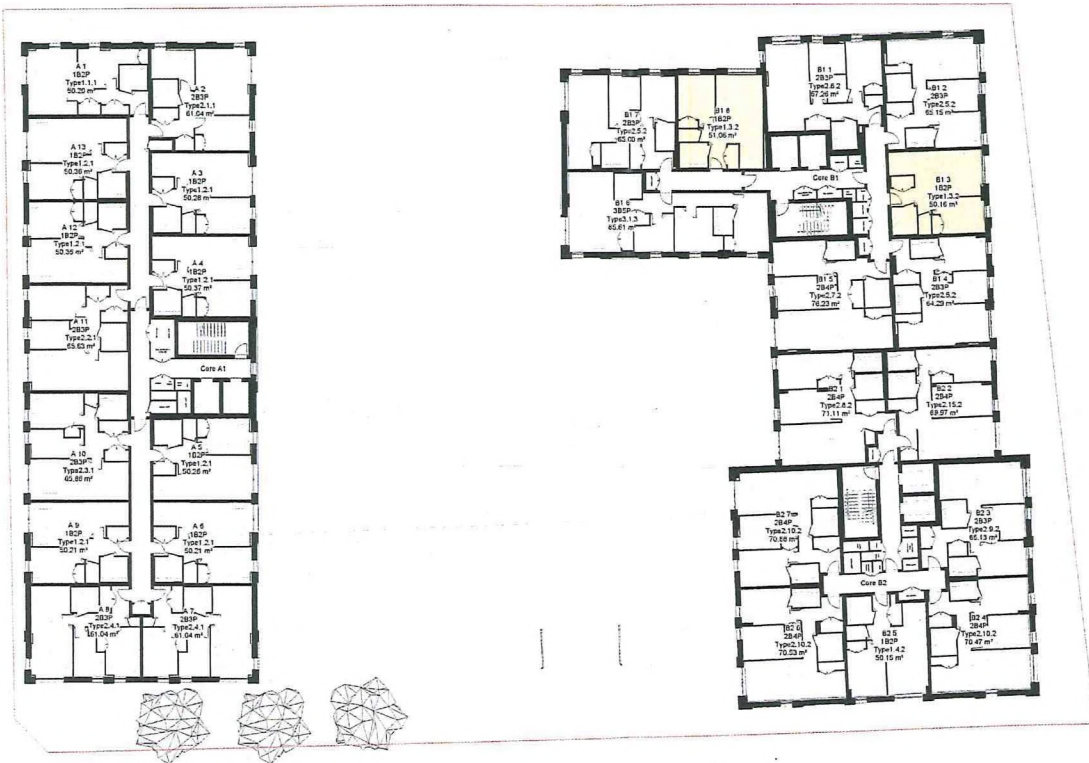
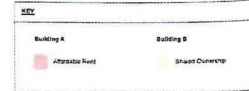
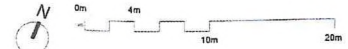
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Architecture
 Andrew Architecture Ltd
 125 Walsby Rd, Richmond Hill
 Ontario L4B 1C7, CAN
 +44 (0)203 725 7244
 info@andrewarch.co.uk
 www.andrewarch.co.uk

Travelodge

Great Duke Street

Manchester City College
(under construction)



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Drawing revision table (not applied to sheets)

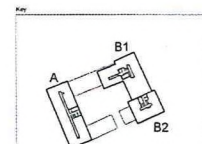
Rev	Revision note	Date	Drawn	Check
P01	For Information	10/06/22	AT	HC

AS06A-A10-02-02-03-A-001



B18-13

Old Brewery Gardens
(consented scheme)



Brewery Site

Drawing title

Floor 03, Section 106 Plan

Scale date

1:200 10/06/22

Drawing number



B18-15

Architecture

Author: [Name]
Date: [Date]
Version: [Version]

Appendix 2

The Affordable Housing Statement

This Affordable Housing Statement has been prepared in support of the development of Land Bounded By The Travelodge And Surface Level Carparking To The North, Further Surface Level Carparking To The East, Manchester College To The South And Bury New Road To The West, Manchester shown for the purposes of identification only edged red on the Plan.

This Affordable Housing Statement addresses the provision of relevant affordable housing consideration in light of national and local policy The affordable housing shall meet the definition of affordable housing in Annex 2 of the NPPF

- 1 The Development comprises of the following tenure and unit mix of Affordable Housing Units

	Number of Homes (1B2P)
Affordable Rented Units	15
Shared Ownership Units	8
Total	23

Provided that the tenure mix may be varied from time to time throughout the lifetime of the Development subject to submission of a revised Affordable Housing Statement for provision of the Affordable Housing Units to be submitted for the written approval of the Council

The location of the Affordable Housing Units is shown on the Affordable Housing Plan The Affordable Housing Units shall not be used other than as Affordable Housing

- 2 Latimer Developments Limited are to construct the Affordable Housing Units on behalf of Clarion Housing Association Limited which is a Registered Provider Following handover of the completed units the Registered Provider will own and

manage the Affordable Rented Units and be responsible for their future lettings and maintenance. The Shared Ownership Units will be marketed for sale and will be part owned by the Registered Provider until the point at which any future occupier decides to 'Staircase' out of the Dwelling and own it outright

3 In terms of affordability the following applies

3 1 Rent levels for the Affordable Rented Units will be at an Affordable Rent,

3 2 the disposal of the Affordable Rented Units to a Registered Provider will ensure that those units remain Affordable Housing in perpetuity, unless disposed of under statutory right to buy or acquire and subject to mortgagee exemptions;

3 3 Shared Ownership Units will be disposed of to purchasers who meet the Regulator eligibility criteria as set out in the Capital Funding Guide on Shared Ownership Terms. The Shared Ownership Units will be sold at market value. A relevant Independent financial adviser will then use the approved Regulator Shared Ownership Affordability calculator to ascertain that any applicant is maximising their contribution and that any mortgage and rental costs are affordable and sustainable,

4 Nomination Rights

4 1 The Council will have 100% nominations on first lettings, and 100% nominations for all subsequent lets

4.2 Nominations to the Affordable Rented Units will be through the Manchester Move system and allocated as per the allocations policy, as amended by a Local Letting Policy agreed between the Council and the Registered Provider. This is likely to focus on achieving a mix of residents in the scheme to create a balanced and sustainable community. Tenancy sustainment actions will be undertaken by the Registered Provider

5 Allocation of Shared Ownership Units

5 1 The Shared Ownership Units will be disposed of to purchasers who meet the Regulator's Capital Funding Guide. In line with the Shared Ownership Affordable

Homes Programme (SOAHP) prospectus, nationally or locally defined prioritisation criteria will not apply to the Shared Ownership Units.

- 5.2 Eligible purchasers will have a household income less than £80,000 (eighty thousand pounds) per annum and will not own another property.
- 5.3 This Affordable Housing Statement shall only apply to the first grant of a Shared Ownership Lease and shall not apply to subsequent sales or assignments
- 6 Unless required by the HE to do otherwise not to use any Staircasing Receipts and Other Affordable Housing Receipts other than towards the provision of Affordable Housing within the Administrative Boundaries of Manchester.

**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



01116043

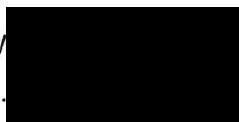
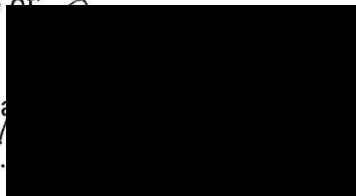
Executed as a deed by **LATIMER
DEVELOPMENTS LIMITED** by affixing
the common seal
in the presence of:

Authorised Signatory

.....

Authorised Signatory

.....



B18/1

Executed as a deed by **CLARION
HOUSING ASSOCIATION LIMITED** by
affixing the common seal
in the presence of:

Authorised Signatory

.....

Authorised Signatory

.....



Executed as a deed by **AFFINITY
SUTTON PROFESSIONAL
SERVICES LIMITED** by affixing
the common seal in the presence of:

Authorised Signatory

.....

Authorised Signatory

.....

