DATED 2026

**THE COUNCIL OF THE CITY OF MANCHESTER**

– and –

**TAMESIDE METROPOLITAN BOROUGH COUNCIL**

– and –

**PJ LIVESEY HOMES (6) LIMITED**

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**AGREEMENT**

**pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) relating to land known Chorlton Square Shopping Centre, Barlow Moor Road, Manchester, M21 9AQ**

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

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**THIS AGREEMENT** is made the day of 2026

**BETWEEN:**

1. **THE COUNCIL OF THE CITY OF MANCHESTER** of Town Hall, Albert Square, Manchester, M60 2LA (the **"Council"**);

2. **TAMESIDE METROPOLITAN BOROUGH COUNCIL** of Guardsman Tony Downes House, 5 Manchester Road, M27 5DA (the **"Owner**"); and

3. **PJ LIVESEY HOMES (6) LIMITED** (a company registered and incorporated in England and Wales with company number 14443642) whose registered office is at Unit 4 Edward Court, Broadheath, Altrincham, WA14 5GL (the **"Developer**").

**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. The Site is situated within the Administrative Boundaries of Manchester and this planning obligation is enforceable by the Council.

B The Owner is the freehold owner of the Site registered at the Land Registry with title absolute under title numbers LA299972 and MAN224870 together with but subject to all matters contained or referred to in the title Registers thereunder.

C The Application was submitted to the Council by the Developer and the Owner for planning permission to carry out the Development in the manner set out in the plans, specifications and particulars forming part of the Application. On 18 December 2025 the planning committee of the Council approved the application subject to the completion of this Agreement.

D 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 granting planning permission for the Development in accordance with the Application but having considered the Local Plan and the Regulations is desirous of the Owner and the Developer entering into this Agreement without which planning permission would not be granted.

E The Owner and the Developer 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 of the Act and to be bound by and observe and perform the covenants hereinafter contained.

F The Council has determined that the Development in order to comply with the Local Plan requires a payment of xxxxxxxxxxxx pounds (£xxxxxxxxxx) Index Linked ("Maximum Contribution") as a contribution towards the provision of Affordable Housing in respect of the part of the Development being Developed by the Owner and the Developer. However, the Owner 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 payment of any financial contribution would render the Development unviable. The

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Owner and the Developer have agreed to enter into the planning obligations contained herein requiring the Owner and the Developer to submit the Viability Appraisal and pay any Viability Payment found to be due in accordance with the provisions contained in this Agreement.

G The planning purpose of this Agreement is to improve the amenity of land in the locality of the Site with benefit for the occupiers of the Development and to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations. The Council is satisfied that the obligations in this Agreement are:

(a) necessary to make the Development acceptable in planning terms (including where appropriate, obligations necessary to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations);

(b) directly related to the Development; and

H fairly and reasonably related in scale and kind to the Development, and in any event will provide a planning benefit.

I Paragraph 13 of Schedule 7A of the Act (as defined herein) sets out that every planning permission granted for the development of land in England shall be deemed to have been granted subject to a biodiversity gain condition requiring the development to achieve a net gain of 10% of biodiversity value. This Agreement includes provides for the payment of a Biodiversity Gain Land Monitoring Contribution in the manner hereinafter appearing.

**AGREED TERMS**

**DEFINITIONS AND INTERPRETATION**

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

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

**"Administrative Boundaries of Manchester"** all the wards that together comprise the city of Manchester;

**"Agreement"** shall mean this agreement;

**"Anticipated Date of Completion of Construction"** means the date upon which the Owner 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 policy H8 of the Core Strategy and in the NPPF that will be available to persons who cannot afford to rent or buy housing generally available on the open market;

**"Application"** the application to which the Council gave the reference 142652/FO/2025 for the erection of 6 no. residential buildings of 10, 8, 6 and 4 storeys in height to provide up to 262 residential dwellings

(Use Class C3) with ground floor commercial uses (Use Class E (a-e)); infrastructure works including electric substation and associated utilities works; basement and ground level parking; service yard; vehicular and pedestrian accesses; together with public realm works and hard/soft landscaping following the demolition of the existing buildings and structures on site;

**"Architect"** Fielden Clegg Bradley Studios, Carver's Warehouse, Lower Ground Floor, 77 Dale Street, Manchester, M1 2HG;

**"Benchmark Land Value"** means £5,321,000 (five million three hundred and twenty one thousand pounds) Index Linked;

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

**"Biodiversity Gain Condition"** means the condition deemed to have been included in the Planning Permission by Paragraph 13 of Schedule 7A of the Act requiring the development to achieve a net gain of 10% of biodiversity value;

**"Biodiversity Gain Land Monitoring Contribution"** means the sum of £3,206 (three thousand two hundred and six pounds pounds) Index Linked to be paid by the Owner to the Council under paragraph 1 of Schedule 3 of this Agreement to be applied by the Council as a financial contribution towards the Council's costs of monitoring compliance with the HMMP;

**"Calculation Date"** means when Completion of Construction of 75% (to the nearest Dwelling) of the Dwellings;

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

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

**"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;

**"Core Strategy"** 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 013 (reference: 10-013-20240214) of the section of the NPPG headed "Viability" as revised on 16 December 2025 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 014 of the NPPG section headed "Viability" (as may be amended or any replacement of the same);

**"Development"** the development undertaken on the Site pursuant to the Planning Permission as specified in the Application and "Developed" shall be construed accordingly;

**"Disposal"** means:

(a) a transfer by sale; or

(b) the grant of a Long Lease;

by the Owner of a Dwelling and **"Disposed", "Disposed Of", "Dispose"** and **"Disposals"** shall be construed accordingly

**"Dwelling(s)"** a unit of accommodation to be constructed on the Site pursuant to the Planning Permission;

**"Expert"** a professional expert in town planning, who is a Chartered Member of the Royal Town Planning Institute with a minimum of ten (10) years post-qualification experience;

**"GDV"** means gross development value as defined in RICS Guidance or any replacement, update or amendment of the same 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 and rental prices achieved at the development up to the time of preparation of the Viability Appraisal and detailed therein **Provided That** where in the opinion of the Council a Dwelling:

(a) has not been Disposed Of at a value that is equal to or greater than its Open 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 Open Market Value then (in either case) the Council may opt in writing to substitute the Open Market Value of the said Dwelling concerned in place of the actual monies received or (if applicable) in place of its advertised price;

**"Gross Margin"** means the GDV less the Costs;

**"Habitat Management and Monitoring Plan"** or "HMMP" means the document which provides a description of the plan the Owner will implement in order to manage and monitor on site biodiversity gain for a continuous period of 30 year as required by the Biodiversity Gain Condition of the Planning Permission and approved by the Council and the Council at its sole absolute discretion may agree in writing to minor amendments to the HMMP;

**"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;

**"Local Plan"** includes the Core Strategy adopted by Manchester City Council on 11 July 2012, the extant Unitary Development Plan policies and all other relevant strategic planning documents adopted by Manchester City Council;

**"Let"** means 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;

**"Long Lease"** means a lease of a Dwelling for not less than ninety-five (95) years granted at a premium without reservation of a rack rental;

**"Management Fee**" shall mean 15% of the planning application fee which equates to the sum of £16,531.35 (16 thousand five hundred and thirty one pounds and thirty five pence) to be used for the purpose of monitoring and reporting on the delivery of this Agreement and the Planning Obligations contained herein:

**"Maximum Contribution"** the sum of £xxxxxxxxx (xxxxxxxxxxxxxxxx pounds) Index Linked;

**"Method of Disposal"** whether the units are being sold on an Open Market Sales basis;

**"NPPF"** the National Planning Policy Framework issued on 7 February 2025 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 16 December 2025 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;

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**"Occupation"** 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;

**"Open Market Sales"** means the marketing and sale of individual Dwellings within the Development disposed of at Open Market Value and "Open Market Sale" and "Open Market Sale Units" shall be construed accordingly;

**"Open Market Value"** means the market value as defined in the IVS definition of market value set out in paragraph 30 on pages 18 to 20 of the section headed "IVS 104 Bases of Value" in Part 6 of the RICS publication titled "RICS Valuation - Global Standards 2017" and issued in June 2017 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;

**"Permitted Profit Level"** mean when the Gross Margin is equivalent to 20% (twenty percent) of the GDV;
**"Plan"** the plan attached to the Agreement at Schedule 1;

**"Planning Obligation"** the obligation of the Owner and the Developer specified in Schedule 3**;**

**"Planning Permission"** the planning permission granted pursuant to the Application substantially in the form as appended at Schedule 2 and as may be amended by any non-material amendment;

**"Practical Completion"** the issue of a certificate of practical completion by the Owner's or the Developer's architect, engineer or other certifying officer as the case may be under the relevant building contract entered into in respect of the Development or part or parts thereof;
"**Regulations**" the Community Infrastructure Levy Regulations 2010."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 first edition March 2021 entitled "Assessing viability in planning under the National Planning Policy Framework 2019 for England" and the 'Viability Section of the NPPF' or any replacement, update or amendment of the same from time to time.
**"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 5 to assess the Gross Margin required to be provided on the Calculation Date in accordance with the provisions of Schedule 3 of this Agreement. Further guidance on the format to follow can be found in the RICS Guidance;
**"Viability Assessment Fee**" a fee of fifteen thousand pounds (£15,000.00) plus VAT to cover the cost of the Council's review of the Viability Appraisal in order to determine whether and the extent to which the Development can support a requirement to provide the Viability Payment;
**"Viability Payment"** a payment required to be made by the Owner and 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 3;

**"Viability Payment Deadline"** means the twenty eighth (28th) Working Day next following the later of:

(a) the day on which the Council states pursuant to paragraph 4 of Schedule 3 that the Viability Appraisal is agreed;

(b) the day on which the Viability Appraisal is agreed in writing between the Owner and the Developer and the Council pursuant to paragraph 4 of Schedule 3; and

(c) the day on which the written determination of the Chartered Surveyor is issued pursuant to Clause 7 of the Agreement and paragraph 4 of Schedule 3;

as the case may be;

**"Working Day"** 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 Save in respect of Clauses 21.1 and 21.2 references to any party in this Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the Act and any successor local highway authority exercising powers under the Highways Act 1980.

1.7 **"Including"** means **"including, without limitation"**.

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

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

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

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

2 **PLANNING OBLIGATION**

This Agreement is made pursuant to section 106 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 and the Developer.

3 **CONDITION PRECEDENT**

This Agreement is conditional upon the grant of the Planning Permission and Commencement of Development save for the provisions of Clauses 9, 11, 15, 17, 18 and 20 which shall have immediate effect.

4 **CONDITION SUBSEQUENT**

If the Planning Permission for the Development has not been implemented by the carrying out of a material operation in accordance with the provisions of sections 56, 91 and 93 of the Act or is revoked or modified in whole or in part (other than in approval of an application by or on behalf of the Owner and 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 OWNER'S AND THE DEVELOPER'S COVENANTS**

The Owner and the Developer on behalf of itself and any person deriving title to any part of the Site from the Owner hereafter hereby covenants with the Council so as to bind the Site to fully observe and perform the obligations on its part contained in this Agreement including those obligations set out in Schedule 3 and hereby agrees that the Site shall be permanently subject to the obligations, restrictions and provisions specified herein, such obligations being planning obligations for the purpose of section 106 of the Act.

6 **THE COUNCIL'S COVENANTS**

The Council hereby covenants with the Owner and the Developer to observe and perform the obligations on its part in this Agreement including those obligations set out in Schedule 4.

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 Owner and the Developer otherwise agree to 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 Owner and the Developer.

7.2 If the Council the Owner 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 Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interest in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with (unless the purchase relates to the entirety of the Site) the area of the Site or unit of occupation purchased by reference to a plan provided that this clause shall not apply to the Disposal of a Dwelling or a Commercial Unit or a Disposal to a statutory undertaker for the purpose of their statutory undertaking.

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 obligations contained in this Agreement shall not be binding on:

9.3.1 Any tenant, owner, occupier, mortgagee, and/or chargee of a Dwelling and their successors in title;

9.3.2 Any tenant, owner, occupier, mortgagee, and/or chargee of a Commercial Unit and their successors in title; and

9.3.3 Any statutory undertaker who acquires any part of the Site for the purpose of its statutory undertaking.

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 ENTRY**

11.1 This Agreement is a Local Land Charge and shall be registered as such by the Council.

11.2 The Owner will within 10 Working Days of the date of this Agreement apply to the Land Registry to register a copy of this Agreement against title numbers LA299972 and MAN224870 and will provide the Council with a copy of the application. As soon as reasonably practicable following receipt the Owner will supply the Council with copies of the updated registers of title.

11.3 The costs of registration and cancellation pursuant to clause 11.2 above shall be met by the Owner 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 and the listed building consents) 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**

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 City Solicitor at the Council's address first above written;

14.1.2 to the Owner and the Developer at their registered office addresses;

15 **FEES**

15.1 The Owner shall pay forthwith to the Council 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 nor absolve the Owner from any liability or obligation imposed upon them by the terms of this Agreement or by statute or at common law;

15.3 The Owner shall on the date hereof pay to the Council the Management Fee;

15.4 When submitting a Viability Appraisal the Owner 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. **WARRANTY AS TO TITLE**

The Owner hereby warrants to the Council that the title details recited in this Agreement are complete and accurate in every respect and no other persons have an interest in the Site and hereby indemnifies the Council in respect of any loss that arises should there be any breach of this warranty.

18. **JURISDICTION**

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

19. **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.

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

**SCHEDULE 1**

**The Site**

The land known as Chorlton Square Shopping Centre, Barlow Moor Road, Manchester, M21 9AQ shown for the purposes of identification only edged red on the Plan.

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**SCHEDULE 2**

**Planning Permission**

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**SCHEDULE 3**

**THE OWNER'S AND THE DEVELOPER'S GENERAL COVENANTS**

The Owner and the Developer hereby covenant with the Council as follows:

1. To pay the Council the Biodiversity Gain Land Monitoring Contribution on or prior to the Commencement of Development.

2. To notify the Council in writing;

   2.1 within five (5) Working Days of Commencement of Development that development has Commenced;

   2.2 within 5 (five) Working Days of the date of Completion of Construction of 75% of the Dwellings, and

   2.3 within 5 (five) Working Days of Completion of Construction of all of the Dwellings constructed as part of the Development

**VIABILITY REVIEW AT CALCULATION DATE AND VIABILITY PAYMENT**

3. Within ten (10) Working Days of the Calculation Date

   3.1 to confirm the Method of Disposal and the relevant Permitted Profit Level to the Council in writing; and

   3.2 to provide a copy of the Viability Appraisal in order that the Council may instruct a Chartered Surveyor to review the Viability Appraisal and advise the Council on its contents and conclusion.

4. Within forty (40) Working Days of its receipt of the Viability Appraisal the Council shall give written notice to the Owner either:-

   4.1 Stating that it accepts the Viability Appraisal or

   4.2 Correcting or challenging any of the amounts or conclusions included in the Viability Appraisal and giving details of the disputed amounts or conclusions.

5. In the event that the Council shall have served a notice on the Owner pursuant to paragraph 4.2 of this Schedule 3 the Owner and the Council shall use reasonable endeavours to reach agreement in respect of the Viability Appraisal but if the Owner and the Council shall have failed to agree the Viability Appraisal within twenty-eight (28) Working Days of the notice served by the Council pursuant to Paragraph 4.2 of this Schedule 3, 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 (save in respect of manifest error);

6. The Viability Appraisal not by way of limitation shall include and confirm:

   6.1 the GDV;

   6.2 the Costs;

   6.3 the Gross Margin; and,

   6.4 the Viability Payment, if any.

7. Viability Payment

   7.1 On or before the Viability Payment Deadline to pay to the Council the Viability Payment (if any) PROVIDED ALWAYS that the Viability Payment shall be capped so that it does not exceed the

Maximum Contribution;

7.2 In the event that the information contained in the Viability Appraisal (as agreed by the Council or determined pursuant to paragraph 5 of this Schedule 3) 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;

7.3 If a Viability Payment is due then from the Viability Payment Deadline to cease further Occupation of the Open Market Sales Units nor permit or allow further Occupation of the Open Market Sales Units until payment of the Viability Payment has been received by the Council.

**RETENTION OF ARCHITECT**

8.1 The Owner and the Developer shall use Best Endeavours to continue to employ the Architect as the lead architect for the relevant Phase throughout the Construction Period and until Practical Completion 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.

8.2 Should the Architects not be appointed or continue to be appointed in accordance with paragraph 8.1 above the Owner and the Developer shall immediately notify the Council of this fact 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.

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**SCHEDULE 4**

**The COUNCIL'S COVENANTS**

The Council hereby covenants with the Owner and the Developer as follows:

1 To use the Biodiversity Gain Land Monitoring Contribution for the purpose which it was paid and for no other purpose.

2 To use the Viability Payment towards the provision of Affordable Housing within the Administrative Boundaries of Manchester and for no other purpose.

3 At the written request of the Owner to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed within twenty (20) Working Days of receipt of the request.

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 made the payment to the Council.

5 To repay to the paying party such sum or sums remaining from the Viability Payment as have not been expended in accordance with paragraph 2 of this Schedule (excluding any such sums in respect of which though not yet expended the Council has contractually committed to expend) within ten (10) years of the date of receipt by the Council.

6 To issue the Planning Permission within two (2) Working Days of the date hereof.

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**SCHEDULE 5**

**VIABILITY TEMPLATE**

Chorlton Square Shopping Centre, Barlow Moor Road, Manchester, M21 9AQ

Gross Development Value (GDV) £

Net Development Value (NDV) £

| | |
|---|---|
| Permitted Profit Level – based upon 20% of GDV | £ |
| Costs | £ |
| Contingency on remaining construction costs | £ |
| Professional fees on build costs and abnormals TBA | £ |
| Sales and marketing costs TBA | £ |
| Section 106 payments TBA | £ |
| Finance cost of TBA | £ |
| Agreed land value (The Lower of 1). Benchmark Land Value set at planning consent stage of £xxxx or 2). Actual land value – to be evidenced) | £ |
| Agreed Stamp Duty - TBA | |
| Commercial letting agent and legal fees | |
| Investment sales agent & legal fees | |
| TOTAL COSTS (Costs) | |
| Gross Margin equals GDV - Costs or in a Build to Rent scenario equals NDV - Costs | |
| Gross Margin minus Permitted Profit Level | |
| VIABILITY PAYMENT – equating Gross Margin minus Permitted Profit Level | |

NB –The sum of the Viability Payment shall not exceed the Maximum Contribution

The Headings in the Viability Template are not exhaustive

DRAFT

**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

**[OWNER EXECUTION BLOCK]**

**[DEVELOPER EXECUTION BLOCK**

DRAFT

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