

Dated

11 May

2020

(1) The Council of the City of Manchester

and

(2) Miller Homes Limited

Agreement

pursuant to section 106 Town and Country Planning Act 1990 (as amended) relating to
Land at Hinchley Road, Manchester, M9 7FG

City Solicitor
Manchester City Council
P O Box 532
Town Hall
Albert Square
Manchester M60 2LA
L/BH/PLA001/84197

This Agreement is made the 11 day of May 2026

BETWEEN

- (1) The Council of the City of Manchester of Town Hall, Albert Square, Manchester M60 2LA (the "Council");
- (2) Miller Homes Limited (registered in Scotland with company registration number SCC255429) whose registered office is at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh, EH12 9DH (the "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 which is situated within the Administrative Boundaries of Manchester and this planning obligation is enforceable by the Council. The Council is the freehold owner of the Site and other land registered at the Land Registry with Title Absolute under Title Number MAN97981. The Council is not entering into the Planning Obligations (as defined herein) contained in this Agreement.
- (B) The Owner is the tenant under a lease of even date between The Council of the City of Manchester (1) and Miller Homes Limited (2) of the Site for a term of 999 years from the date of the lease.
- (C) The Planning Permission was granted on 6 March 2026 and the Owner and the Council have agreed to enter into this Agreement in order to secure the Planning Obligations contained in this Agreement.
- (D) The Council has recognised the difficulty faced by lower income groups in buying homes within the Administrative Boundary of Manchester and the planning purpose of this Agreement is to increase the provision of affordable housing within the Administrative Boundaries of Manchester. The Owner has agreed to make provision for Affordable Housing in the manner hereinafter appearing. The Council is satisfied that the obligations in this Agreement are:

- (a) necessary to make the Development acceptable in planning terms (including where appropriate, obligations necessary to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations);
 - (b) directly related to the Development; and
 - (c) fairly and reasonably related in scale and kind to the Development and in any event will secure planning benefits.
- (E) The Owner has agreed to enter into this Agreement 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.
- (F) The Council has determined that in order to comply with the Core Strategy the Development should provide a minimum of 20% on site Affordable Housing. The Owner has agreed to enter into the planning obligations contained herein requiring it to provide on site Affordable Housing in the manner herein set out.
- (G) 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

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;

“Administrative Boundaries of Manchester” means all the wards that together comprise the City of Manchester;

“Affordable Housing” means affordable housing as defined in Policy H8 of the Core Strategy and in annex 2 of the NPPF that will be available to persons who cannot afford to rent or buy housing generally available on the open market;

“Affordable Housing Requirement” means 22 of the Dwellings within the Development to be constructed as Affordable Housing in accordance with the Affordable Housing Scheme unless otherwise agreed in writing by the Council;

“Affordable Housing Scheme” a written scheme for the provision of 22 (twenty two) Dwellings to be provided as Affordable Housing that will be submitted to the Council and which will be required to have been approved in writing by the Council in accordance with paragraph 1 in Schedule 3 in accordance with Policy H8 of the Core Strategy and Policy JP-H2 of Places for Everyone);

“Affordable Housing Units” means those 22 Dwellings which in accordance with the provisions contained in Schedule 3 will consist of Social Rented Housing Units or Shared Ownership Housing Units and which shall be designated as Affordable Housing in accordance with the Affordable Housing Requirement and the Affordable Housing Scheme submitted by the Owner and approved 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 and “Affordable Housing Unit” shall be construed accordingly;

“Agreement” shall mean this agreement;

“Allocated” shall mean allocated to a tenant nominated by the Council under the terms of a Nomination Agreement;

“Application” means the application for planning permission to which the Council gave the reference 143085/FO/2025

“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) Index Linked to be paid by the Owner to the Council under paragraph 1.3 of Schedule 2 of this Agreement to be applied by the Council as a financial contribution towards the Council's costs of monitoring compliance with the HMMP;

“Building for a Healthy Life” means the design tool titled 'Building for a Healthy Life' published in June 2020 by Homes England (as the same may from time to time be updated or replaced with an equivalent design tool);

“Capital Funding Guide” means the guide issued by Homes England detailing Homes England's requirements for Shared Ownership Housing published on 4 November 2016 and most recently updated on 10 November 2025 (as the same may from time to time be updated or replaced with an equivalent guide);

“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 4;

“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 and "Commencement" shall be construed accordingly;

“Commutated Sum” means the Commuted Sum per each Affordable Housing Unit of £162,039 Index Linked calculated in accordance with the methodology set out in the definition of "Formula";

“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 Affordable Housing as referred to in Schedule 2 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 Affordable Housing has occurred but it has not received the notice confirming completion in accordance with the provisions of this Agreement shall mean the date that the Council notifies in writing to the Owner that the said completion of construction is to be deemed to have taken place for the purposes of this Agreement and **“Completed”** and **“Completion”** shall be construed accordingly;

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

“Development” means the development undertaken on the Site pursuant to the Planning Permission and substantially comprising the erection of 106 (one hundred and six) Dwellings (C3 Use Class) with associated access, landscaping, parking and other works;

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

“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;

“Formula” means the formula for calculating the Commuted Sum for each Affordable Housing Unit is set out as follows:

Developer Subsidy = (A - B) x C

Where:

A = Average Market Value per Dwelling

B = Affordable Price per Dwelling

C = Total number of Dwellings

The Affordable Price per Dwelling will be the sum that is equal to 55.72% of the Market Value of the Dwelling

Average Market Value = £348,536

Affordable Price = £194,201

Total number of Dwellings = 106

Where an in lieu payment is agreed, the calculation will be made on the basis that all 106 dwellings are for private market accommodation. The contribution for affordable housing should take into consideration all new housing units resulting from the facilitating site. Hence, the 106 private market dwellings should still represent 80% of the overall development.

Therefore in a scheme of 106 dwellings, the Council's normal on-site requirement for affordable housing is 106 divided by 80 x 100 – 100 = 32.5 units

The total resulting from the facilitating site is therefore calculated as:

Commuted sum = (£348,536 - £194,201) x 32.5 = £5,015,888

Plus 5% management/maintenance/administration charge = £250,794

Total commuted sum = £5,266,282;

Commuted Sum per Affordable Housing Unit = £5,266,282 divided by 32.5 = £162,039;

“Freeholder Planning Agreement” an agreement under s106 of the Act as required by Paragraph 2 of Schedule 2 whereby on the transfer of the freehold title of any of the Affordable Housing Land as defined in Paragraph 2 of Schedule 2 that freehold title will become bound by the Planning Obligations contained in Schedule 3 and the Freeholder Planning Agreement or if applicable each Freeholder Planning Agreement shall be substantially in the form appended to this Agreement;

“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 years

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;

"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;

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

"Initial Share Percentage" the amount of the initial percentage of a Shared Ownership Lease that is purchased by a Shared Ownership leaseholder on completion of a Shared Ownership Lease;

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

"Management Fee" shall mean 15% of the planning application fee which equates to £6,295.35 (six thousand two hundred and ninety five pounds and thirty five pence) to be used for the purpose of management and monitoring of this Agreement and the Planning Obligations contained herein;

"Market Housing Units" any Dwelling which is not an Affordable Housing Unit and "Market Housing Unit" shall be construed accordingly;

"Market Value" the estimated amount for which the Affordable Housing Units would be sold on the open market as Market Housing Units between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion;

"Mortgagee" means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority (or any replacement of those bodies) to provide facilities to a person to enable that person to acquire a Dwelling including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a Dwelling;

“Nationally Described Space Standard” means the standard published by the Department for Communities and Local Government in March 2015 and amended on 19 May 2016 (as the same may from time to time be updated or replaced with an equivalent standard). The standard deals with internal space within new dwellings and is suitable for application across all tenures;

“National Design Guide” means the planning practice guide titled the 'National Design Guide' published by the Ministry of Housing, Communities & Local Government on 1 October 2019 and last updated on 30 January 2021 (as the same may from time to time be updated or replaced with an equivalent guide);

“Nomination Agreement” shall mean an agreement entered into by a Registered Provider with the Council detailing the right granted by the Registered Provider to the Council to nominate people as tenants of the Social Rented Housing Units in accordance with the provisions of the Nomination Agreement;

“NPPF” means the National Planning Policy Framework (NPPF) issued on 12 December 2024 (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;

“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;

“Places for Everyone” means the long term joint development plan of nine districts within Greater Manchester adopted by the Council on 21 March 2024;

“Plan” means the plan attached to this Agreement at Schedule 1;

“Planning Obligations” shall mean the obligations of the Owner specified in the Schedules;

"Planning Permission" means the full 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 NHBC or by the Owner's 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 Owner the issue of a certificate of practical completion by that other party's architect;

"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 exercised any voluntary right to buy or right to acquire in respect of a particular Affordable Housing Unit;
- (d) 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;

"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;

"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;

"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;

"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 Housing and Regeneration Act 2008 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;

"Shared Ownership Housing" means any Affordable Housing Units disposed of under a Shared Ownership Lease in accordance with the relevant provisions of the Housing and Regeneration Act 2008 and marketed in accordance with guidance issued by Homes England from time to time;

"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:

- (a) initially not be less than 10% (ten per cent) or more than 75% (seventy five per cent) of the equity when measured against full Market Value of the relevant Affordable Housing Unit; and
- (b) provide that the annual rent on the unsold equity is initially set at no more than 2.75% or such other percentage as may be agreed by the Council (acting reasonably) of the value of the equity retained by the Registered Provider or such other rent as complies with the requirements from time to time of Homes England;
- (c) include the entitlement from time to time to Staircase upwards from the Initial Share Percentage towards a pre-determined maximum percentage (which shall be up to 100% (one hundred per cent) in respect of his or her share of the full Market Value of the Affordable Housing Unit);

"Shared Ownership Housing Unit" means a Dwelling that is also Shared Ownership Housing and **"Shared Ownership Housing 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;

"Social Rent" means a rent that meets all of the following conditions: (a) the rent is set in accordance with the government's rent policy for Social Rent; (b) the landlord is a Registered Provider; and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision;

"Social Rented Housing Units" any Affordable Housing Unit to be designed in accordance with the National Design Guide, Building for a Healthy Life

publication and to be constructed in accordance with the Nationally Described Space Standard guidance issued by the government and disposed of to a Registered Provider for letting at a Social Rent on periodic assured tenancies in accordance with the relevant provisions of the Housing and Regeneration Act 2008 or any replacement of the same and marketed in accordance with guidance issued by the Homes England (or any successor body) from time to time;

“Staircasing” means the exercise by the owner-occupier under a Shared Ownership Lease of the right to purchase additional equity shares up to 100% of the entire interest in the Shared Ownership Housing Unit after which the rent payable on any equity share retained by the Owner shall be reduced proportionally and **Staircase** shall be construed accordingly;

“Staircasing Receipts and Other Affordable Housing Receipts” any receipts received by the Owner 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;

“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 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 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 Owner.

3 Condition precedent

This Agreement is conditional upon the Commencement of Development save for the provisions of this clause and clauses 4, 5, 7, 9, 11, 14, 15, 17, 18, 22 and Paragraphs 1.1 of Schedule 2 which shall have immediate effect.

4 Condition subsequent

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

The Owner consents to this Agreement and to its interest in the Site being bound by this Agreement and 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 Schedules 2 and 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 to observe and perform the obligations on its part in this Agreement including the obligation set out in the 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 and the Owner otherwise agree be referred to an Expert to be appointed by agreement between the Council and the Owner.

7.2 If the Council and the Owner are unable to agree on the appointment of an Expert within 30 days of one party serving notice on the other calling for the appointment of an Expert, then an Expert shall be appointed on the application of either party to the President for the time being of the Royal Town Planning Institute.

7.3 Any reference of a dispute to an Expert shall if the parties are agreed in writing be deemed to be a reference to an expert (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 representations and cross-representations with such supporting evidence as they shall respectively consider necessary and the Expert 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 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 save for this obligation shall not apply to the disposal of an individual Dwelling.

- 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 or the part of the Site in respect of which such breach has occurred 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 Owner warrants that no person other than the Council or Owner has a legal or equitable interest in the leasehold interest in the Site and the Owner hereby indemnifies 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

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 Owner at its registered office address.

15 Fees

15.1 The 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 Owner nor absolve the Owner from any liability or obligation imposed upon it by the terms of this Agreement or by statute or at common law;

15.2 The 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**

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 the Owner SAVE THAT for the avoidance of doubt any mortgagee or chargee that is a Chargee shall if the provisions contained in Paragraph 9 of Schedule Three take effect will 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 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.

22 Restriction

The Owner covenants with the Council:

- 22.1 that prior to or upon completion of this Agreement the Owner shall provide the Council with a letter of consent signed by the Owner in a form of wording provided by the Council and thereby authorising the Council to register a restriction in standard form L at the Land Registry in respect of the title comprising the Owner's interest in the Site in the following terms:

"No disposition by way of transfer or lease of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by Manchester City Council of Town Hall, Albert Square, Manchester, M60 2LA that the provisions of paragraph 2 of Schedule 2 and of Schedule 3 of a Section 106 Agreement dated _____ made between (1) The Council of the City of Manchester and (2) Miller Homes 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;

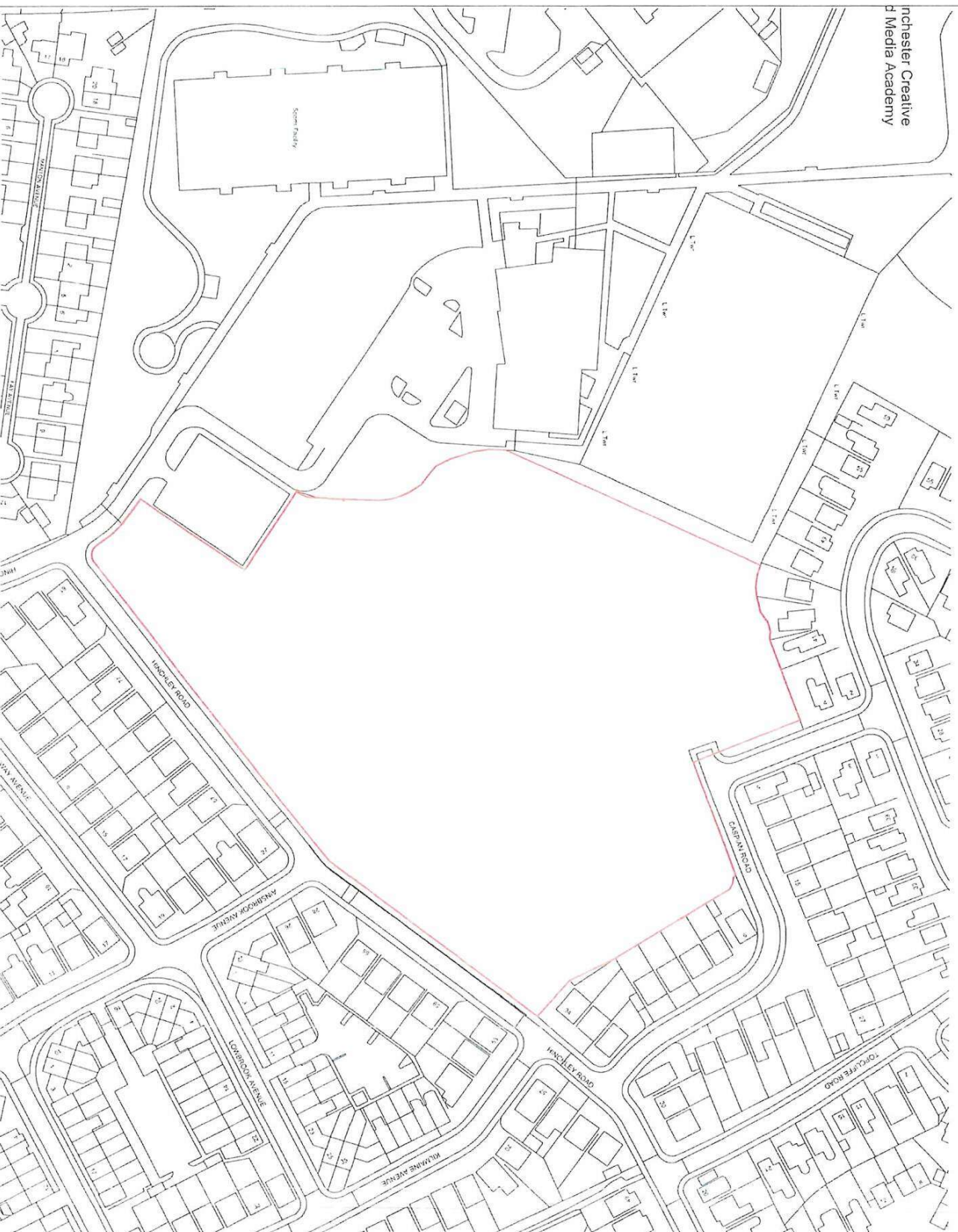
- 22.2 prior to or upon completion of this Agreement the Owner will provide the Council with a cheque to cover the cost of registering at the Land Registry the form RX1.

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 at Hinchley Road, Manchester, M9 7FG shown for the purposes of identification only edged red on the Plan.



Ian Muddel
K. Bouckin

miller homes

Miller Homes Limited, North West Region
Bridgeway Park
Warrington
WA9 6TF
Telephone: 01925 356 000
www.millerhomes.co.uk

HINCHELEY ROAD,
CHARLESWOOD

SITE LAYOUT PLAN

1:1250
Date: 21.01.2011
By: J. Muddel

HRLOC-01

Schedule 2

The Owner's general covenants

The Owner hereby covenants with the Council as follows:

1 Notices

1.1 To notify the Council in writing at least 10 (ten) Working Days in advance of the anticipated date of Commencement of Development;

1.2 To notify the Council in writing within five Working Days of

1.2.1 Commencement of Development;

1.2.2 Completion of Construction;

1.2.3 the date first Occupation has occurred;

1.3 To pay the Biodiversity Gain Land Monitoring Contribution to the Council on the Commencement of Development.

1.4 To comply with Clause 22 of this Agreement.

2 Unless the provisions of Paragraph 6 of Schedule 3 take effect not to transfer the part or parts of the Site upon which the Affordable Housing Units are located in accordance with the Affordable Housing Scheme (the "Affordable Housing Land") other than to a Registered Provider or if applicable Registered Providers and that it will not transfer any part or parts of its leasehold estate in the Site detailed in recital B that comprises the Affordable Housing Land or any part of the Affordable Land or allow it to merge with or be extinguished by the freehold title under which the Affordable Land is held unless and until the Registered Provider or if applicable Registered Providers to whom the Affordable Housing Land or part of the Affordable Land is being transferred prior to the transfer or merger with the freehold title or extinguishment of the Owner's leasehold interest has or if applicable each have executed and delivered to the Council a Freeholder Planning Agreement whereby the freehold title to the Affordable Housing Land being transferred to it or them, whichever is applicable, will become bound by the Planning Obligations contained in Schedule 3 on completion of the Freeholder Planning Agreement and will further procure that the Registered Provider or if applicable each Registered Provider will,

prior to the transfer or merger with the freehold title or extinguishment of the Owner's leasehold interest (or relevant part thereof) provide the Council with an irrevocable authority to complete the Freeholder Planning Agreement or if applicable each Freeholder Planning Agreement immediately following the transfer of the Owner's leasehold title and the Council's freehold interest to such Registered Provider or Registered Providers. For the avoidance of doubt each Freeholder Planning Agreement will not by way of limitation require the Registered Provider to authorise the Council to register a restriction that provides that no disposition by way of transfer or lease of the freehold by the Registered Provider is to be registered without a certificate signed by Manchester City Council confirming that the provisions of Schedule 3 of this Agreement have been complied with or that they do not apply to the disposition.

Schedule 3

Affordable Housing Schedule

The Owner hereby covenants with the Council as follows:

- 1 Prior to Commencement of Development to submit in writing to the Council for its written approval (such approval not to be unreasonably withheld or delayed) the Affordable Housing Scheme which is to detail, not by way of limitation, the following:

- 1.1 The tenure mix of the Affordable Housing provided that;

- 1.1.1(unless otherwise agreed by the Council in writing) twenty two (22) of the total number of Dwellings approved under the Planning Permission for the Development of the Site as a whole are to be Affordable Housing Units comprising eleven (11) Shared Ownership Housing Units four of which shall be two bedroom Dwellings and seven of which shall be three bedroomed Dwellings and eleven (11) Social Rented Housing Units that will all be two bedroomed Dwellings;

- 1.2 The arrangements to be put in place to ensure that the Affordable Housing Units are affordable for both initial and subsequent occupiers;

1.3 the occupancy criteria to be used for determining the identity of prospective and successive occupiers of the Affordable Housing Units and the means by which such occupancy shall be enforced, including details of how the Affordable Housing Scheme will comply with the Capital Funding Guide;

1.4 provide plans showing the locations of the Affordable Housing Units to be provided, such locations to ensure tenure blind design and full integration ("pepper-potted") with the Market Housing Units;

1.5 the arrangements for putting in place a Nomination Agreement.

- 2 To construct the Affordable Housing and to notify the Council in writing at least 10 (ten) Working Days in advance of the anticipated date of the Completion of Construction.
- 3 Not to Commence Development until the Affordable Housing Scheme has been submitted to and approved in writing by the Council (such approval not to be unreasonably withheld or delayed).
- 4 To provide the Affordable Housing in accordance with the approved Affordable Housing Scheme.
- 5 Prior to Commencement of Development to make offers to sell the Affordable Housing Units to a minimum of 2 (two) Registered Providers, providing details of the Affordable Housing Scheme to the Registered Providers, such Registered Providers to be agreed by the Council by means of prior written approval from the Council.
- 6 In the event of the earlier of:
 - 6.1 all Registered Providers to whom offers in accordance with Paragraph 5 are made declining to accept the transfer of all or part of the Affordable Housing Units in accordance with the offer made to them; or
 - 6.2 Six (6) months expiring from the date of receipt of the detailed offer documentation by the Registered Providers without a binding acceptance of the offer having been made by any of them within that period; then in respect of the Affordable Housing Units not transferred to a Registered Provider the Owner shall pay to the Council

the Commuted Sum due in respect of any such Affordable Housing Units in the following instalments:

- 6.2.1 50% (fifty per cent) calculated on the date that 20% (twenty per cent) of the Dwellings are Occupied (the "First Calculation Date") and paid to the Council within 20 (twenty) Working Days of that date;
- 6.2.2 50% (fifty per cent) calculated on the date that 75% (seventy five per cent) of the Dwellings are Occupied (the "Second Calculation Date") and paid to the Council within 20 (twenty) Working Days of that date.
- 6.2.3 For the avoidance of doubt upon receipt of a Commuted Sum by the Council the Owner shall be released from the obligation to provide the Affordable Housing Units in respect of which the Commuted Sum has been paid.

7

- 7.1 Not to Occupy allow or permit to be Occupied more than 50% of the Market Housing Units until the first Affordable Housing Unit has been constructed in accordance with the Planning Permission and the Affordable Housing Scheme and made ready for Occupation and written notification of such has been given to the Council or, if applicable, if the provisions of paragraph 6 of this Schedule take effect in respect of any of the Affordable Housing Units, the Owner has paid to the Council within 20 (twenty) Working Days of the First Calculation Date the Commuted Sum due in respect of those Affordable Housing Units as set out in paragraph 6.2.1 above.
- 7.2 Not to Occupy allow or permit to be Occupied more than 75% of the Market Housing Units until all the Affordable Housing Units have been constructed in accordance with the Planning Permission and the Affordable Housing Scheme and made ready for residential occupation and written notification of such has been given to the Council or, if applicable, if the provisions of paragraph 6 of this Schedule take effect in respect of any of the Affordable Housing Units, the Owner has paid to the Council within 20 (twenty) Working Days of the Second Calculation Date the Commuted Sum due in respect of those Affordable Housing Units as set out in paragraph 6.2.2 above.

7.3 To notify the Council in writing at least 10 (ten) Working Days in advance of the anticipated date:

7.3.1 of Occupation of 50% (fifty per cent) of the Market Housing Units; and

7.3.2 of Occupation of 75% (seventy five per cent) of the Market Housing Units.

8 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 shall not be binding on:

8.1 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

8.2 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 charges; or

8.3 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and charges.

9 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") in writing to the Council of its intention to dispose and:

9.1 in the event that the Council responds in writing 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

- 9.2 if the Council does not serve its response to the Chargee's Notice within the one month period referred to above at Paragraph 9.1 of this Schedule 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 which provisions shall determine absolutely; or
- 9.3 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 9.1 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 which provisions shall determine absolutely.
- 9.4 provided that at all times the rights and obligations in this paragraph 9 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.
- 10 Unless required by the Regulator to do otherwise not to use any Staircasing and other Affordable Housing Receipts other than towards the provision of affordable housing within the Administrative Boundaries of Manchester.
- 11 To comply with the terms of the Nomination Agreement and if any Social Rented Housing Units are not Allocated or have been released or excepted from the Nomination Agreement requiring them to be Allocated to ensure that they are let as Social Rented Housing Units.

Schedule 4

The Council's covenants

The Council hereby covenants with the Owner as follows:

- 1 1.1 to use any Commuted Sum received towards the provision of Affordable Housing within the Administrative Boundaries of Manchester and for no other purpose;

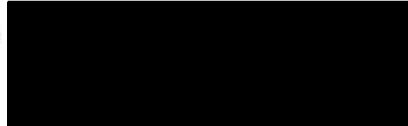
1.2 to use the Biodiversity Gain Land Monitoring Contribution solely towards the cost of monitoring compliance with the HMMP.
- 2 that the Council shall provide written details of any expenditure incurred by the Council using any Commuted Sum received within 20 Working Days of a written request to do so from the party/person who paid the Commuted Sum to the Council;
- 3 that on written request from the person that paid any Commuted Sum the Council shall repay to that person any balance of the Commuted Sum 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 Commuted Sum or in the case of monies allocated to maintenance 10 (ten) years from such date or dates together with all interest accrued thereon;
- 4 at the written request of the Owner to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed within twenty (20) Working Days of receipt of the request.

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:



01132050

AUTHORISED SIGNATORY



EXECUTED AS A DEED by

MILLER HOMES LIMITED

acting by one director in the presence of a witness:

Director:

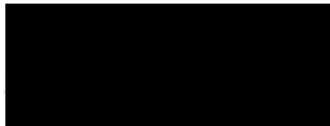
Ian Murdoch

IAN MURDOCH

Witness sign:

Witness name:

Witness address:



1st FLOOR, 2 LOCHSIDE VIEW
EDINBURGH EH12 9DH

Appendix

Freeholder Planning Agreement

DATED _____ 20

THE COUNCIL OF THE CITY OF MANCHESTER

- and -

(to be inserted)

Agreement pursuant to section 106 of the Town and
Country Planning Act 1990 (as amended)
relating to Land at Hinchley Road, Manchester, M9

City Solicitor
P O Box 532
Town Hall
Albert Square
Manchester M60 2LA
L/BH/PLA001/84197

THIS DEED is made the _____ day of _____ 20____

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF MANCHESTER** of Town Hall, Albert Square, Manchester, M60 2LA (the “**Council**”);
- (2) **(to be inserted)** (incorporated in England with company number (to be inserted)) whose registered office is at Unit 5 Royal Mills, Redhill Street, Manchester, M4 5BA (the “**Owner**”).

BACKGROUND

- A The Council is the local planning authority for the purposes of the Act in relation to the Affordable Housing Land (as defined herein) and is the authority by whom the obligations hereby created are enforceable. The Affordable Housing Units (as herein defined) have been constructed on the Affordable Housing Land which is situated within the Administrative Boundaries of Manchester and this planning obligation is enforceable by the Council.
- B On (date to be inserted) the Council transferred to the Owner the freehold title of the Affordable Housing Land to the Owner.
- C The Owner has agreed to enter into this Agreement and hereby acknowledges that its interest in the Affordable Housing Land upon attaining registered legal title to the Affordable Housing Land will be bound by the planning obligations in favour of the Council created pursuant to section 106 of the Act by this Agreement and that it will observe and perform the covenants herein contained.
- D The Council has recognised the difficulty faced by lower income groups in buying homes within the Administrative Boundary of Manchester and the planning purpose of this Agreement is to increase the provision of affordable housing within the Administrative Boundaries of Manchester. The Owner has agreed to make provision for Affordable Housing in the manner hereinafter appearing.
- E In accordance with the Affordable Housing Scheme (number of units to be inserted) Affordable Housing Units have been constructed on the Affordable Housing Land. The Affordable Housing Land is located on part of the Site (as defined herein).

AGREED TERMS

DEFINITIONS AND INTERPRETATION

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;

“**Administrative Boundaries of Manchester**” means all the wards that together comprise the City of Manchester;

“**Affordable Housing**” means affordable housing as defined in Policy H8 of the Core Strategy and in annex 2 of the NPPF that will be available to persons who cannot afford to rent or buy housing generally available on the open market;

“**Affordable Housing Land**” the part or parts of the Site shown edged red on the plan appended hereto marked “Affordable Housing Land” on which the Affordable Housing Units are located;

“**Affordable Housing Requirement**” means 22 of the Dwellings within the Development to be constructed as Affordable Housing in accordance with the Affordable Housing Scheme unless otherwise agreed in writing by the Council;

“**Affordable Housing Scheme**” a written scheme for the provision of 22 (twenty two) Dwellings as Affordable Housing that has been submitted to the Council and approved in writing by the Council and is in accordance with paragraph 1 in Schedule 2 and Policy H8 of the Core Strategy and Policy JP-H2 of Places for Everyone;

“**Affordable Housing Units**” means those (insert relevant number) Dwellings constructed on the Affordable Housing Land which in accordance with the provisions contained in Schedule 2 consist of Social Rented Housing Units or Shared Ownership Housing Units and which are designated as Affordable Housing in accordance with the Affordable Housing Scheme approved by the Council and which have been constructed according to at least the quality and design standards of the Regulator and designed,

constructed and completed to at least the same standard as the Market Housing Units and "Affordable Housing Unit" shall be construed accordingly;

Agreement shall mean this agreement;

"Allocated" shall mean allocated to a tenant nominated by the Council under the terms of a Nomination Agreement;

"Application" means the application for planning permission to which the Council gave the reference 143085/FO/2025

"Building for a Healthy Life" means the design tool titled 'Building for a Healthy Life' published in June 2020 by Homes England (as the same may from time to time be updated or replaced with an equivalent design tool);

"Capital Funding Guide" means the guide issued by Homes England detailing Homes England's requirements for Shared Ownership Housing published on 4 November 2016 and most recently updated on 10 November 2025 (as the same may from time to time be updated or replaced with an equivalent guide);

"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;

"Development" means the development undertaken on the Site pursuant to the Planning Permission and substantially comprising the erection of 106 (one hundred and six) Dwellings (C3 Use Class) with associated access, landscaping, parking and other works;

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

“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;

“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;

“Initial Share Percentage” the amount of the initial percentage of a Shared Ownership Lease that is purchased by a Shared Ownership leaseholder on completion of a Shared Ownership Lease;

“Market Housing Units” any Dwelling which is not an Affordable Housing Unit and “Market Housing Unit” shall be construed accordingly;

“Market Value” the estimated amount for which the Affordable Housing Units would be sold on the open market as Market Housing Units between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion;

“Mortgagee” means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority (or any replacement of those bodies) to provide facilities to a person to enable that person to acquire a Dwelling including all such regulated entities which provide Shari’ah compliant finance for the purpose of acquiring a Dwelling;

“Nationally Described Space Standard” means the standard published by the Department for Communities and Local Government in March 2015 and amended on 19 May 2016 (as the same may from time to time be updated or replaced with an equivalent standard). The standard deals with internal space within new dwellings and is suitable for application across all tenures;

“National Design Guide” means the planning practice guide titled the ‘National Design Guide’ published by the Ministry of Housing, Communities & Local Government on 1 October 2019 and last updated on 30 January 2021 (as the same may from time to time be updated or replaced with an equivalent guide);

“Nomination Agreement” shall mean an agreement entered into by a Registered Provider with the Council detailing the right granted by the Registered Provider to the Council to nominate people as tenants of the Social Rented Housing Units in accordance with the provisions of the Nomination Agreement;

“NPPF” means the National Planning Policy Framework (NPPF) issued on 12 December 2024 (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;

“Places for Everyone” means the long term joint development plan of nine districts within Greater Manchester adopted by the Council on 21 March 2024;

“Plan” means the plan attached to this Agreement at Schedule 1;

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

“Planning Obligations” shall mean the obligations of the Owner specified in the Schedules;

“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 exercised any voluntary right to buy or right to acquire in respect of a particular Affordable Housing Unit;
- (d) 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;

"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;

"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;

"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;

"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 Housing and Regeneration Act 2008 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;

"Shared Ownership Housing" means any Affordable Housing Units disposed of under a Shared Ownership Lease in accordance with the relevant provisions of the Housing and Regeneration Act 2008 and marketed in accordance with guidance issued by Homes England from time to time;

"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:

- (a) initially not be less than 10% (ten per cent) or more than 75% (seventy five per cent) of the equity when measured against full Market Value of the relevant Affordable Housing Unit; and

(b) provide that the annual rent on the unsold equity is initially set at no more than 2.75% or such other percentage as may be agreed by the Council (acting reasonably) of the value of the equity retained by the Registered Provider or such other rent as complies with the requirements from time to time of Homes England;

(c) include the entitlement from time to time to Staircase upwards from the Initial Share Percentage towards a pre-determined maximum percentage (which shall be up to 100% (one hundred per cent) in respect of his or her share of the full Market Value of the Affordable Housing Unit);

"Shared Ownership Housing Unit" means a Dwelling that is also Shared Ownership Housing and **"Shared Ownership Housing 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;

Social Rent: means a rent that meets all of the following conditions: (a) the rent is set in accordance with the government's rent policy for Social Rent; (b) the landlord is a Registered Provider; and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision;

"Social Rented Housing Units" any Affordable Housing Unit to be designed in accordance with the National Design Guide, Building for a Healthy Life publication and to be constructed in accordance with the Nationally Described Space Standard guidance issued by the government and disposed of to a Registered Provider for letting at a Social Rent on periodic assured tenancies in accordance with the relevant provisions of the Housing and Regeneration Act 2008 or any replacement of the same and marketed in accordance with guidance issued by the Homes England (or any successor body) from time to time;

"Staircasing" means the exercise by the owner-occupier under a Shared Ownership Lease of the right to purchase additional equity shares up to

100% of the entire interest in the Shared Ownership Housing Unit after which the rent payable on any equity share retained by the Owner shall be reduced proportionally and **Staircase** shall be construed accordingly;

"Staircasing Receipts and Other Affordable Housing Receipts" any receipts received by the Owner 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;

"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 6 references to the Affordable Housing Land include any part of it.
- 1.6 References to any party in this Agreement save for the reference to a Mortgagee in Clause 15 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 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 Owner.

3 The Owner's covenants

- 3.1 The Owner consents to this Agreement and to its interest in the Affordable Housing Land being bound by this Agreement and on behalf of itself and any person deriving title to any part of the Affordable Housing Land from the Owner hereafter hereby covenants with the Council so as to bind the Affordable Housing Land to fully observe and perform the obligations on its part contained in this Agreement including those obligations set out in Schedule 2 and hereby agrees that the Affordable Housing Land 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.

3.2 The Owner will as soon as reasonably practicable following the transfer of the Affordable Housing Land to the Owner apply to register its title to the Affordable Housing Land and shall use all reasonable endeavours to deal with any Land Registry requisitions in relation to its application for registration in order to enable it to be registered with legal title at the Land Registry.

3.3 The Owner covenants not to withdraw its application for registration of its legal title to the Affordable Housing Land.

3.4 The Owner will supply the Council with a copy of the completion of registration documentation within 5 Working Days of its receipt from the Land Registry.

4 Dispute resolution

4.1 In the event of any dispute arising in connection with any of the terms of this Agreement other than a dispute involving the construction or interpretation of the terms of this Agreement or the enforcement of any decision pursuant to this clause, the same shall unless the Council and the Owner otherwise agree be referred to an Expert to be appointed by agreement between the Council and the Owner.

4.2 If the Council and the Owner are unable to agree on the appointment of an Expert within 30 days of one party serving notice on the other calling for the appointment of an Expert, then an Expert shall be appointed on the application of either party to the President for the time being of the Royal Town Planning Institute.

4.3 Any reference of a dispute to an Expert shall if the parties are agreed in writing be deemed to be a reference to an expert (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.

- 4.4 Any party to this Agreement shall be entitled to submit to the Expert representations and cross-representations with such supporting evidence as they shall respectively consider necessary and the Expert 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.

5 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.

6 Change in ownership and liability

- 6.1 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 Affordable Housing Land 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 Affordable Housing Land) the area of the Affordable Housing Land or unit of occupation purchased by reference to a plan save for this obligation shall not apply to the disposal of an individual Dwelling.
- 6.2 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 Affordable Housing Land or the part of the Affordable Housing Land in respect of which such breach has occurred 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 Affordable Housing Land.

- 6.3 The Owner warrants that no person other than the Owner has a legal or equitable interest in the Affordable Housing Land and the Owner hereby indemnifies the Council in respect of any loss that arises should there be any breach of this warranty.

7 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.

8 Local land charge

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

9 The Contracts (Rights of Third Parties) Act 1999

Save as provided in respect of the successors in title to the Affordable Housing Land 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.

10 Communication

- 10.1 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:

10.1.1 to the Council and addressed to the Director at the Council's address first above written;

10.1.2 to the Owner at its registered office address.

11 Fees

The 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 Owner nor absolve the Owner from any liability or obligation imposed upon it by the terms of this Agreement or by statute or at common law;

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 Jurisdiction

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

14 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.

15 Mortgagees

Any Mortgagee or chargee with an interest in the Affordable Housing Land 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 Affordable Housing Land or any part of it in which case they will be liable as if they were a person deriving title from the

Owner SAVE THAT for the avoidance of doubt any mortgagee or chargee that is a Chargee if the provisions contained in Paragraph 4 of Schedule 2 take effect will need to comply with the Chargee's Duty.

16 Agreements and declarations

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

- 16.1 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;
- 16.2 any Protected Tenant or their mortgagee or chargee or any successor in title to such Protected Tenant;
- 16.3 any statutory undertaker or other person who acquires any part of the Affordable Housing Land or an interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services;
- 16.4 the relevant highway authority to whom any part of the Affordable Housing Land is disposed of for the purposes of adoption of any roads and/or footpaths and/or cycle ways to be constructed on the Affordable Housing Land.

17 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 Affordable Housing 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 Affordable Housing Land.

18 Restriction

The Owner covenants with the Council:

- 18.1 that prior to or upon completion of this Agreement the Owner shall provide the Council with a completed form RX1 (or of any replacement form) signed by the Owner authorising the Council to register a restriction in standard form L at the Land Registry in respect of the title comprising its interest in the Affordable Housing Land in the following terms:

"No disposition by way of transfer or lease of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by Manchester City Council of Town Hall, Albert Square, Manchester, M60 2LA that the provisions of Schedule 2 of a Section 106 Agreement dated _____ made between (1) The Council of the City of Manchester and (2) (details of the Owner to be inserted) 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;

- 18.2 prior to or upon completion of this Agreement the Owner will provide the Council with a cheque to cover the cost of registering at the Land Registry the form RX1.

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.

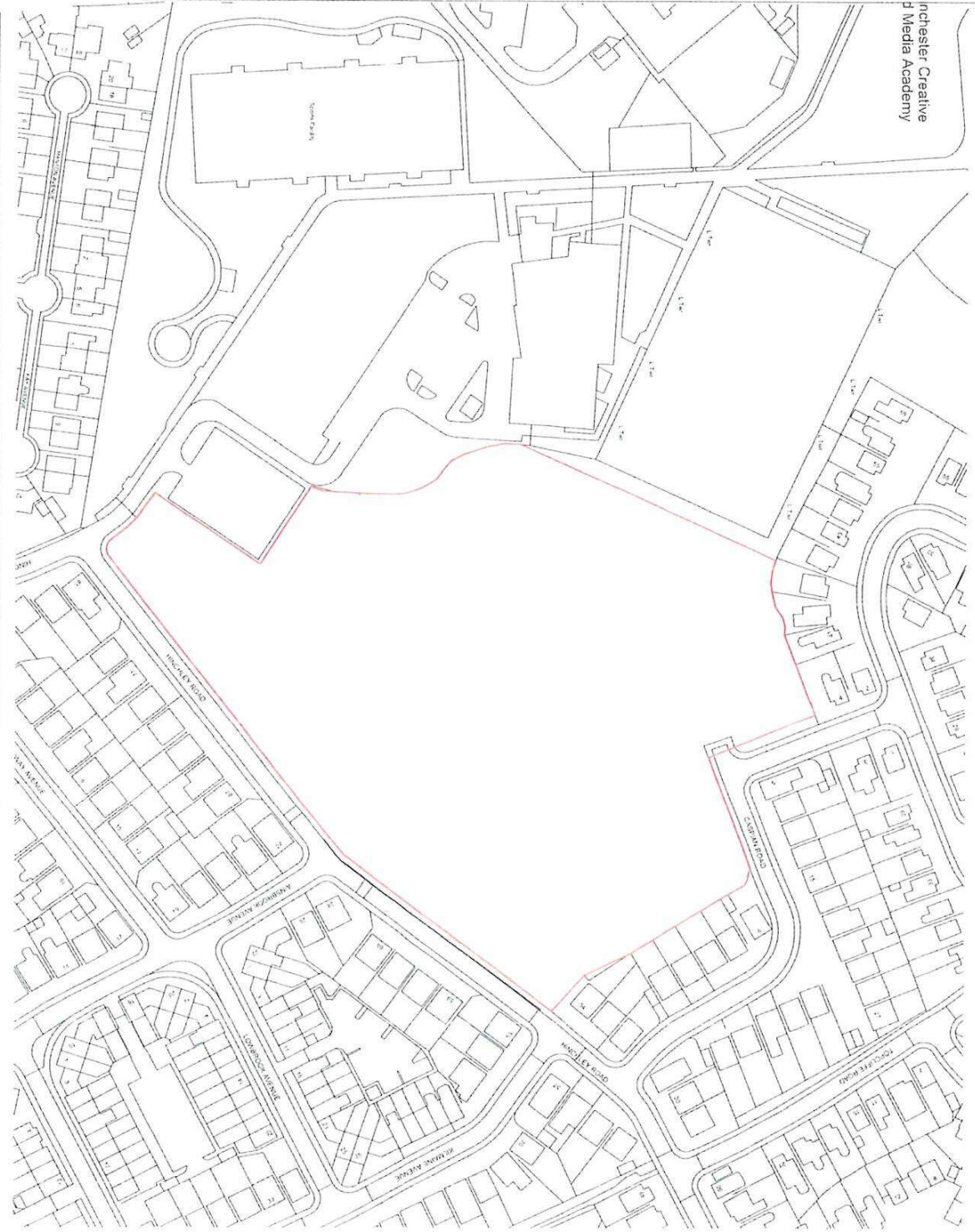
Schedule 1

The Site

Land at Hinchley Road, Manchester, M9 7FG shown for the purposes of identification only edged red on the Plan.

miller homes

Manchester Creative
d Media Academy



1:1000
1" = 100'

lan Hurdal
K. Bonarier

miller homes

1000 South Main Street
1000 South Main Street
WALTON
781-222-0000
www.millerhomes.com

HINDLEY ROAD
CHARLESWOOD

SITE LAYOUT PLAN

1:1250
1" = 125'

Schedule 2

Affordable Housing Schedule

The Owner hereby covenants with the Council as follows:

- 1 To comply with the Affordable Housing Scheme which detailed, not by way of limitation, the following:
 - 1.1 The tenure mix of the Affordable Housing and provided that;
 - 1.1.1(unless otherwise agreed by the Council in writing) twenty two (22) of the total number of Dwellings approved under the Planning Permission for the Development of the Site as a whole are to be Affordable Housing Units comprising eleven (11) Shared Ownership Housing Units four of which shall be two bedroom Dwellings and seven of which shall be three bedroomed Dwellings and eleven (11) Social Rented Housing Units that will all be two bedroomed Dwellings;
 - 1.2 The arrangements to be put in place to ensure that the Affordable Housing Units are affordable for both initial and subsequent occupiers;
 - 1.3 the occupancy criteria to be used for determining the identity of prospective and successive occupiers of the Affordable Housing Units and the means by which such occupancy shall be enforced, including details of how the Affordable Housing Scheme will comply with the Capital Funding Guide;
 - 1.4 provided plans showing the locations of the Affordable Housing Units to be provided, such locations to ensure tenure blind design and full integration ("pepper-potted") with the Market Housing Units;
 - 1.5 the arrangements for putting in place a Nomination Agreement.
- 2 To provide the Affordable Housing in accordance with the approved Affordable Housing Scheme.
- 3 Not to use the Affordable Housing Units other than for Affordable Housing save that this obligation shall not be binding on:

- 3.1 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
- 3.2 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 charges; or
- 3.3 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and charges.

4 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") in writing to the Council of its intention to dispose and:

- 4.1 in the event that the Council responds in writing 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
- 4.2 if the Council does not serve its response to the Chargee's Notice within the one month period referred to above at Paragraph 4.1 of this Schedule 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 which provisions shall determine absolutely; or
- 4.3 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 4.1 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 which provisions shall determine absolutely.

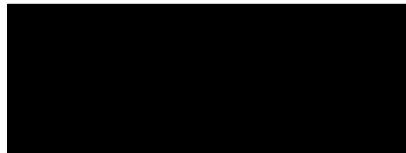
- 4.4 provided that at all times the rights and obligations in this paragraph 4 shall not require the Chargee to act contrary to its duties under the charge or mortgage and in particular (but without limitation) the Chargee shall not be obliged to transfer, let or otherwise dispose of the Affordable 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.
- 4 Unless required by the Regulator to do otherwise not to use any Staircasing and other Affordable Housing Receipts other than towards the provision of affordable housing within the Administrative Boundaries of Manchester.
- 5 To comply with the terms of the Nomination Agreement and if any Social Rented Housing Units are not Allocated or have been released or excepted from the Nomination Agreement requiring them to be Allocated to ensure that they are let as Social Rented Housing Units.

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



EXECUTED AS A DEED by TBC

acting by a director

DIRECTOR

Signature:

Name: (in block capitals)

IN THE PRESENCE OF

Signature:

Name (in block capitals)

Address

.....

Occupation

Appendix

Plan marked "Affordable Housing Plan" showing edged red the Affordable
Housing Land

