

THE COUNCIL OF THE CITY OF MANCHESTER

- and -

KMM LIVING LTD

- and -

SOUTHWAY HOUSING TRUST (MANCHESTER) LIMITED

- and -

PMJ CAPITAL LIMITED

AGREEMENT

**pursuant to section 106 of the Town and
Country Planning Act 1990 (as amended)
relating to Land at The Former Openshaw AEU Club (No.2),
Manchester, M11 1NF**

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

L/PLA001/84247

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) **KMM LIVING LTD** (a company registered and incorporated in England and Wales with company number 14728907) whose registered office is at 239 Mossley Road, Ashton-Under-Lyne, Manchester, OL6 6LN (the “**Owner**”);
- (3) **SOUTHWAY HOUSING TRUST (MANCHESTER) LIMITED** (Industrial and Provident Society No. 30348R being a registered society under the Co-operative and Community Benefits Societies Act 2014) whose registered office is at Southern Gate, 729 Princess Road, Manchester, M20 2LT (the “**Developer**”); and
- (4) **PMJ CAPITAL LIMITED** (a company registered and incorporated in England and Wales with company number 09485153) whose registered office is at Atria, Spa Road, Bolton, BL1 4AG (the “**Mortgagee**”).

BACKGROUND

- A The Council is the local planning authority for the purposes of the Act in relation to the Site and is the authority by whom the obligations hereby created are enforceable. The Development will be carried out on the Site. The Site is situated within the Administrative Boundaries of Manchester and this planning obligation is enforceable by the Council.
- B The Council is the freehold owner of the Site registered at the Land Registry under title numbers GM47609, GM693712, LA10665, LA15632, LA243619 and LA36365 but is not entering into this Agreement as an owner of a freehold interest.
- C The Owner is the freehold owner of the Site registered at the Land Registry with title absolute under title number GM5407 together with but subject to all matters contained or referred to in the title register thereunder.
- D The Mortgagee is interested in the Site by virtue of the Legal Charge.
- E 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.
- F The Council as local planning authority and the Developer entered into an agreement pursuant to section 111 Local Government Act 1972 and section 1 Localism Act 2011 on 2026 following which the Council granted planning permission for the Development in accordance with the Application. Under the agreement dated _____ 2026, the Developer covenanted to enter into this Agreement upon its taking a lease of the Site.

- G The Council as local planning authority is satisfied that the Development is such as may be approved by the Council under the Act and is minded to grant planning permission for the Development in accordance with the Application but having considered the Local Plan and the Core Strategy is desirous of the Owner and the Developer entering into this Agreement without which planning permission would not be granted.
- H 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.
- I The Council has determined that the Development in order to comply with the Core Strategy and the Local Plan should provide a payment of £286,124 (two hundred and eighty six thousand one hundred and twenty four pounds) Index Linked towards the provision of open space within the City of Manchester.
- J 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 Owner and the developer intend to make provision for open space 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.

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);

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

“Agreement” shall mean this agreement;

“Application” the application to which the Council gave the reference 143444/FO/2025 comprising of the proposed redevelopment of the former AEU Club/land incorporating demolition of the southern boundary wall and construction of 23 new residential dwellinghouses, 10 cottage flats and 18 apartments (Use Class C3) with vehicle access from Club Street, car parking, associated landscaping and infrastructure;

“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.

“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;

“Dwelling” a unit of residential accommodation to be constructed on the Site as part of the Development pursuant to the Planning Permission and **“Dwellings”** shall be construed accordingly;

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

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

“Legal Charge” a registered charge registered against the title GM5407 comprising part of the Site dated 31 October 2024;

“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;

“Management Fee” shall mean 15% of the planning application fee which equates to £4,736.10 (four thousand seven hundred and thirty six pounds and ten pence) for the purpose of monitoring and reporting on the delivery of this Agreement and the Planning Obligations contained herein;

“Material Operation” means material operation comprised in the Development as defined by Section 56(2) and (4) of the Act and “Material Operations” shall be construed accordingly;

“Open Space Contribution” the sum of £286,124 (two hundred and eighty six thousand one hundred and twenty four pounds) and Index Linked towards the improvement of two bowling Greens and associated pavilion within High Bank Park, Gorton;

“Plan” the plan attached to the Agreement;

“Planning Permission” the planning permission granted pursuant to the Application in or substantially in the form as detailed in Schedule 2 and as may be amended by any non-material amendment granted by the Council pursuant to s96A of the Act

“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;

“Site” the property described in Schedule 1 and shown for the purposes of identification only edged red on the Plan;

“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 Save in respect of Clauses 21.1 and 21.3 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 the Developer or the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

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

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

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

2 PLANNING OBLIGATION

This Agreement is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling legislation and is a planning obligation for the purposes of section 106 of the Act, with the intent that covenants hereinafter contained shall be enforceable by the Council acting under the powers contained in section 106 or such other enabling powers against the Owner 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 and the Developer hereafter hereby covenant 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 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 the Owner and the Developer otherwise agree be referred to an Expert 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 within thirty (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 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 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 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 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.

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 ten (10) Working Days of the date of this Agreement apply to the Land Registry to register a copy of this Agreement against title number GM5407 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 register of title.

11.3 The Developer will within ten (10) Working Days of the date of this Agreement apply to the Land Registry to register a copy of this Agreement against title numbers GM47609, GM693712, LA10665, LA15632, LA243619 and LA36365 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.

11.4 The costs of registration and cancellation pursuant to clauses 11.2 and 11.3 above shall be met by the Owner and Developer.

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 the Developer and the Mortgagee at their registered office addresses;

15 FEES

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

15.3 The Owner and/or the Developer shall on the date hereof pay 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. WARRANTY AS TO TITLE

The Owner and the Developer hereby warrant to the Council that the title details recited in this Agreement are complete and accurate in every respect and no other person other than the Mortgagee has 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.

20. MORTGAGEE

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

20.2 Notwithstanding clause 20.2, the Mortgagees will not incur any liability for any breach of the obligations contained in this Agreement unless and until they become a mortgagee in possession of the Site or any part of it.

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

SCHEDULE 1

The Site

The Land at The Former Openshaw AEU Club (No.2), Manchester, M11 1NF and shown for the purposes of identification only edged red on the Plan.

DRAFT

SCHEDULE 2

Draft Planning Permission

DRAFT

SCHEDULE 3

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

1. To pay to the Council the Open Space Contribution on or prior to the Commencement of Development.
2. Not to Commence Development until the Open Space Contribution has been paid to the Council.

DRAFT

SCHEDULE 4

The COUNCIL'S COVENANTS

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

- 1 To use the Open Space Contribution for the purpose for which it was paid and not otherwise.
2. At the written request of the Owner or the Developer to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed within twenty (20) Working Days of receipt of the request.
3. To repay to the paying party such sum or sums remaining from the Open Space Contribution as have not been expended in accordance with Paragraph 1 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.
4. To issue the Planning Permission within two (2) Working Days of the date hereof.

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 affixing THE COMMON SEAL of SOUTHWAY HOUSING TRUST (MANCHESTER) LIMITED

in the

presence of:-

Signature:

Name (in Capitals):

Authorised Signatory

Signature:

Name (in Capitals):

Authorised Signatory

EXECUTED AS A DEED by

KMM LIVING LTD

acting by a director

DIRECTOR

Signature:

Name (in block capitals)

IN THE PRESENCE OF:

Signature:

Name: (in block capitals)

Address:

SIGNED AS A DEED by

PMJ CAPITAL LIMITED

in the presence of:

Witness signature:

Witness name:

address:

Occupation: