

In the Royal Court of Jersey

Samedi Division

In the year two thousand and five, the fourth day of October.

Before the Judicial Greffier.

Upon the application of Her Majesty's Solicitor General, IT IS ORDERED that the attached Planning Obligation Agreement between West View Developments Limited and The Environment and Public Services Committee of the States of Jersey in relation to Westview Farm, La Rue des Cosnets, St Ouen, be registered in the Public Registry of this Island.


Greffier Substitute

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PLANNING OBLIGATION AGREEMENT

ARTICLE 10 of the ISLAND PLANNING (JERSEY) LAW 1964

BETWEEN

WEST VIEW DEVELOPMENTS LIMITED

AND

THE ENVIRONMENT AND PUBLIC SERVICES COMMITTEE

of the

STATES OF JERSEY

REGARDING

Westview Farm, La Rue des Cosnets, St Ouen

Law Officers' Department

Morier House

St Helier

Jersey

JE1 1DD

L1190-872--



1. Parties

- 1.1 West View Developments Limited, whose registered office is The Old Chapel, Sacre Coeur, Rouge Bouillon, St Helier, (hereinafter called “the Developer” which expression where the context so admits shall include its assigns and successors in title); and
- 1.2 The Environment and Public Services Committee of the States of Jersey (hereinafter called “the Committee” which expression shall be construed in accordance with clause 2.2 hereof).

2. Interpretation

- 2.1 In this agreement the terms in the left hand column have the meaning ascribed to them in the corresponding entry in the right hand column.

Approved Funder	any bona fide financial institution regulated by the Jersey Financial Services Commission and carrying on the business of lending money in the Island of Jersey which shall, with the consent of Housing (with regard to both the identity of the funder and the size of the fund provided) (which consent shall not be unreasonably withheld), provide funds to the Social Rental Landlord to enable it to proceed with the Social Rental Development
The Committee	the Environment and Public Services Committee
Communal Areas	the roads, footpaths, paved areas and any

L1190-873--



	associated lighting serving the Development, together with the play area, landscaped areas and other open areas
development	as defined in the Law
the Development	The construction of dwelling accommodation on the Land as permitted by the permission issued by the Committee under the Law in respect of Planning Application No. P/2003/1857
First Time Buyer	<p>any person who :</p> <p>Either:</p> <p>(1)</p> <p>(i) Does not own, and has not previously owned, whether as sole owner or jointly or in common with any other person or persons:</p> <p>(a) Any immovable property</p> <p>(b) Either in his own name or as beneficial owner, shares in any company, ownership of which confers the right to occupy residential accommodation;</p>

L1190-874-



	<p>and</p> <p>(ii) Is neither married to, nor buying as co-owner with, any person who does not fall within (i) above;</p> <p>or</p> <p>(2)</p> <p>Has been approved by the Housing Committee as being a person to whom consent should be granted to acquire or to occupy the residential accommodation as the case may be, notwithstanding the fact that he does not fall within (1) above</p>
Funding Agreement	An agreement between an Approved Funder and the Social Rental Landlord and the Public of Jersey for the funding of the Social Rental Development generally in the form of that annexed as Schedule 2 to this Agreement or any similar form agreed between the Approved Funder, the Social Rental Landlord and Housing for and on behalf of the Public of Jersey
Housing	the Housing Committee
The Land	Westview Farm, La Rue des Cosnets, St. Ouen (as shown on the map titled Schedule 1 to this

L1190-875--



	Agreement)
The Law	the Island Planning (Jersey) Law, 1964
Obligation	All obligations created under this agreement
Public Services	the Public Services Department of the Committee
The Road Junction Land	the land which lies on either side of the southern end of road B56 at its junction with road B34, - (a) in the south eastern corner of Field 790, and (b) in the south western corner of the property known as Le Coin du Jardin
Social Rental Accommodation	accommodation which is for rental by a Social Rental Landlord approved for that purpose by Housing to a person or persons who satisfy Housing's criteria and qualifications
Social Rental Development	<u>Either or both of:</u> (a) The acquisition by the Social Rental Landlord of any part of the Land for the purpose of providing Social Rental Accommodation thereon; or (b) The construction of Social Rental Accommodation on any part of the Land

L1190-876--



Social Rental Landlord	<p>(a) The Public;</p> <p>(b) A Parish;</p> <p>(c) A Housing Trust;</p> <p>(d) Any other person or body who has:</p> <p style="padding-left: 40px;">(i) Been approved as such by Housing, and</p> <p style="padding-left: 40px;">(ii) Entered into a Social Rental Landlord Agreement with Housing</p> <p>when discharging their function of providing housing for –</p> <p style="padding-left: 40px;">(1) those persons whom the Social Rental Landlord considers, having regard to the criteria set out from time to time by the States or by Housing as the case may be, to be in need of financial and/or social assistance for obtaining accommodation suitable for their needs, or</p> <p style="padding-left: 40px;">(2) those persons whom Housing have nominated in accordance with any relevant Social Rental Landlord Agreement,</p> <p>as the case may be.</p>
The Social Rental Landlord Agreement	<p>the written agreement between the Developer and Housing in relation to the approval by Housing of L1190-877–</p>



	the Developer as a Social Rental Landlord.
The Works of Highway Improvement	a reduction in the height of any wall, bank or hedge which lies on the Road Junction Land. The whole in accordance with drawing number 1095/01 prepared by Public Services.

2.2 Any reference to a Committee of the States shall include any person or body to whom the functions of that Committee are lawfully delegated from time to time and any person or body to whom the functions of that Committee are transferred hereafter.

3. Whereas:

3.1 The Committee is the Committee of the States charged with the administration of the Law, by whom the obligations in this Agreement are enforceable in accordance with the provisions of the Law.

3.2 Subject to Clause 3.3. of this Agreement, the Developer is the owner of the Land to which property it has right in perpetuity (à fin d'héritage) by contract passed before the Royal Court on 17th October 2003.

3.3 The Developer has sold certain parts of the Land as plots (together with part completed houses constructed thereon) to First Time Buyers but has retained certain rights over each of the said plots and is obliged to procure the construction thereon of a house and to carry out external works, the whole in accordance with a private agreement entered into between the Developer and each First Time Buyer to whom a plot of land has been sold.

L1190-878--



- 3.4 Wherefore the Developer has an interest in the Land within the meaning of paragraph (1) of Article 10 of the Law.
- 3.5 The Developer has applied to the Committee for permission under Article 6 of the Law to develop the Land (application reference no. P/2003/1857).
- 3.6 The Committee considers it expedient in the interests of proper planning that provision should be made for regulating or facilitating the development or use of the Land in the manner hereinafter appearing and it is satisfied that development permission could properly be granted in respect of the said application conditional on the Developer entering into this agreement.
- 3.7 The Committee has granted development permission by notice of approval dated 22nd July 2005. Condition 2 of the permission provides that the developer will enter into a formal contract with the Environment and Public Services Committee under Article 8A (which Article has become Article 10 in the revised edition of the Law) of the Island Planning (Jersey) Law 1964, as amended.

4. It is agreed as follows:

- 4.1 This **AGREEMENT** is made pursuant to all powers enabling the parties and in particular to Article 10 of the Law and with the intent that it shall bind the Developer and its assigns and successors in title and any persons claiming under or through it **SAVE AND EXCLUDING** the purchasers of completed or part completed dwelling units constructed in accordance with the development permission, who will only be bound by Clause 5.6 of this Agreement.

L1190-879-



- 4.2 The Obligation assumed by the Developer by this Agreement is a planning obligation for the purposes of Article 10 of the Law.
- 4.3 This is the Agreement referred to in the development permission issued by the Committee in respect of application P/2003/1857.
- 4.4 The parties acknowledge that the Development has been commenced. The Developer undertakes that the Development has been and will be carried out in accordance with the conditions of the development permission.
- 4.5 Should the Developer cease to have an interest in the Land, the Developer shall no longer be bound by the Obligation in this Agreement save for any Obligation which the Developer should have carried out during the period when it had an interest in the Land.
- 4.6 If, while the Approved Funder has a hypothec over that part of the Land acquired from the Developer for, or set aside by the Developer as, a Social Rental Development, the Social Rental Landlord (whether this be the Developer or a body in right of the Developer) is declared bankrupt as defined in Article 8 of the Interpretation (Jersey) Law 1954 or any similar statutory provision that may be enacted hereafter and should the Public of the Island of Jersey, having been offered the option granted to it by virtue of the appropriate provision of the Funding Agreement, fail to exercise it, then the provisions of Clauses 5.1, 5.2, 5.6.1 and 5.6.2 of this Agreement as they relate to Social Rental Accommodation shall be of no further effect and the obligations to which the Developer is subject by this Agreement shall not be enforceable against any successor in title to the Social Rental Landlord.

L1190-880-



5. The Obligation

5. The Developer agrees that –

5.1 55% of the dwelling units permitted by the Committee to be constructed on the Land shall be sold to First-Time Buyers and 45% of the dwelling units shall be either:

(a) sold, gifted or otherwise transferred to a Social Rental Landlord approved as such by Housing, for rental to persons meeting Housing's criteria and qualifications, or

(b) (provided that the Developer falls within the definition of Social Rental Landlord), retained by the Developer and used by it for the provision of Social Rental Accommodation in accordance with the provisions of any Social Rental Landlord Agreement entered into between it and Housing.

5.2 The Developer will give effect to the said tenure division by constructing 24 First Time Buyer units and 19 social rental units on the Land.

5.3 At or prior to the completion of the Development, which the Developer shall carry out as expeditiously as possible, the Developer will place the First Time Buyer dwelling units on the open market and shall take all reasonable steps to facilitate their sale to First Time Buyers.

5.4 At or prior to completion of the Development, which the Developer shall carry out as expeditiously as possible, the Developer will deal with the Social Rental Accommodation in one or other of the ways set out below.

L1190-881–



- 5.4.1 the Developer will obtain the approval of Housing as a Social Rental Landlord and will enter into a Social Rental Landlord Agreement with Housing, and will thereafter use the Social Rental Accommodation for the provision of social rental housing in accordance with the Social Rental Landlord Agreement, or
- 5.4.2 the Developer will sell, gift or otherwise transfer the Social Rental Accommodation to a Social Rental Landlord approved as such by Housing as set out in Clause 5.1 of this Agreement, under a conveyance, the terms of which will require the transferee to use the accommodation as Social Rental Accommodation.
- 5.5 In the event that the Developer retains the Social Rental Accommodation in accordance with Clauses 5.1(b) and 5.4.1 of this Agreement, the Developer will, within six months or such longer period as may be agreed by the Committee in its absolute discretion of the coming into force of any enactment as defined by the Interpretation (Jersey) Law 1954 which requires the registration of providers of social rental housing, register in accordance with the provisions thereof.
- 5.6.1 All subsequent transfers of First Time Buyer units will be to First Time Buyers reasonably approved as such by Housing and all subsequent transfers of social rental units will be to Social Rental Landlords reasonably approved as such by Housing.
- 5.6.2 All First Time Buyer units will be occupied only by First Time Buyers and all Social Rental Landlord units will be utilised only for the provision of Social Rental Housing.

L1190-882--



- 5.6.3 The owners of dwelling accommodation will comply with all contractual obligations created by the Developer in pursuance of Clause 5.13 hereof.
- 5.7 The Developer will pay the Committee's costs of whatsoever kind as may be incurred in carrying out or in requiring the carrying out or in procuring or enabling the Developer or any third party to carry out the Works of Highway Improvement on the Road Junction Land.
- 5.8 The said costs will include:
- (i) All fees, expenses, disbursements, compensation and any other outlay which the Committee incurs or which the Committee is bound or ordered or agrees to pay to any third party including the owner or owners of the Road Junction Land;
 - (ii) The costs of any assistance provided to the Committee by any other Department of the States of Jersey;
- 5.9 Without prejudice to the generality of the foregoing, the Developer will be liable to pay to the Committee the costs incurred in connection with:
- (i) The service, enforcement or defending of any Notice or Notices served pursuant to Article 4(1) of the Roads Administration (Jersey) Law 1960 the purpose of which is to facilitate the Works of Highway Improvement;
 - (ii) The bringing or defending of any proceedings to enforce or defend any action taken by the Committee in connection with the Works of Highway Improvement;

L1190-883-



5.10 In the alternative, the Developer may, at its option and at its own expense, procure the consent of the owner or owners of the Road Junction Land to the Works of Highway Improvement and will, if necessary, attend the Royal Court (whether in its own name or through an attorney) in order to pass contract in relation to the consent of the said owner or owners or to any transfer of any part of the Road Junction Land which may be necessary to carry out the Works of Highway Improvement; provided that if the Developer exercises the option conferred on it by this clause, the Developer will nevertheless be liable to reimburse the Committee for any costs of whatsoever kind which the Committee has already incurred in relation to any of the matters referred to in Clauses 5.7, 5.8 and 5.9 above prior to the receipt by the Committee of notification from the Developer that the Developer has procured the consent of the owner or owners of the Road Junction Land.

5.11 In the event that the Developer does procure the consent of the owner or owners as set out in Clause 5.10 of this Agreement, the Developer will, at its own expense, undertake the Works of Highway Improvement; provided that if the Developer, having procured the consent of the owner or owners, does not undertake the Works of Highway Improvement –

(a) with due diligence,

(b) to a standard acceptable to the Committee,

the Committee will be entitled to complete the Works of Highway Improvement itself and to recover from the Developer all costs as set out in Clauses 5.7, 5.8 and 5.9 above.

5.12 The Developer will, at its own expense –

L1190-884–



5.12.1 provide satisfactory access to and from the Land;

5.12.2 consult with the Public Services Department when creating the said access;

5.12.3 carry out any works undertaken in connection with the said access in accordance with the requirements and specification of Public Services.

5.13 The Developer will ensure –

5.13.1 prior to the alienation of any of the properties forming part of the Development, that the future maintenance of the Communal Areas is assured to the satisfaction of the Committee;

5.13.2 without prejudice to the generality of Clause 5.13.1, -

- (i) That the cost of the long-term management of the Communal Areas is apportioned between the owners of the dwelling units constructed on the Land pursuant to their respective deeds of purchase, and
- (ii) That the owners of the dwelling units constructed on the Land shall be bound to contribute the percentage payment set out in their respective deeds of purchase towards the cost of maintaining the Communal Areas and the fees of the agent appointed pursuant to sub-clause (iii) of this Clause, and
- (iii) That the owners of the dwelling units constructed on the Land shall be obliged to appoint an agent who shall be responsible for

L1190-885--




ensuring that the Communal Areas are properly maintained and upkept and all contributions required of the owners duly made.

5.13.3 within 6 months of the completion of the Development that the Communal Areas are completed.

6. Enforcement of the Obligation

6.1 The Committee is the planning authority with responsibility for achieving the purposes of the Law and the Committee has the power to enforce this agreement against the parties to the Agreement and any person who derives title to the Land from any such party (subject to the provisions of Clause 4.1 of this Agreement) pursuant to paragraph (7) of Article 10 of the Law.

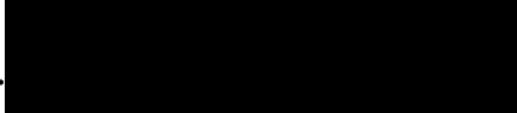
Signed on behalf of West View Developments Limited

by  DIRECTOR

in the presence of  SOLICITOR

Signed on behalf of the Environment and Public Services Committee

by  GREFFIER OF THE STATES

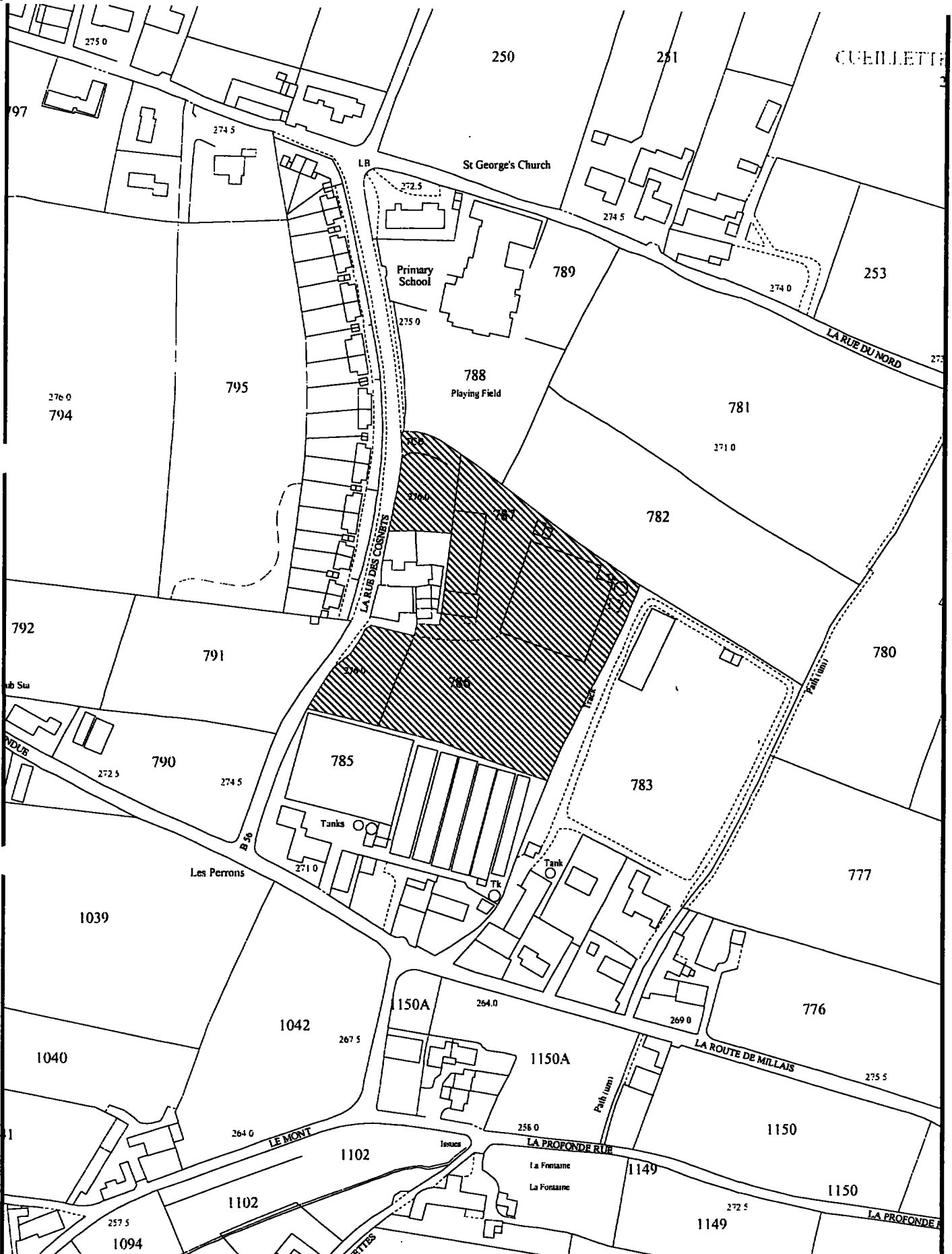
in the presence of ... 

this 29th day of September, 2005

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Schedule 1



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Schedule 2

Dated _____ 2005

THE PUBLIC OF THE ISLAND OF JERSEY

and

[] BANK PLC

and

[THE HOUSING TRUST]

AGREEMENT

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THIS AGREEMENT is made the _____ day of _____ 2005 **BY AND BETWEEN THE PUBLIC OF THE ISLAND OF JERSEY** (hereinafter called "the Public") of the first part **AND [] BANK PLC** (hereinafter called "the Bank" which expression shall include its successors and assigns) of the second part **AND [THE HOUSING TRUST]** (hereinafter called "THT") of the third part.

WHEREAS:-

- (A) The Bank proposes to advance monies to THT in connection with the purchase and development by THT of certain land forming part of the property known as Westview Farm situate at La Rue des Cosnets in the Parish of St. Ouen, as shown, for the purpose of identification only by hatching on the plan attached hereto as the Schedule (hereinafter called "the Land") the repayment of such monies to be secured against the Land by way of judicial hypothec (hereinafter called "the Hypothec" which expression shall include any re-registration of such judicial hypothec).
- (B) In consideration of the Bank advancing the monies to THT as aforesaid the Public has agreed to enter into this Agreement with the Bank.

NOW THIS AGREEMENT WITNESSES as follows:-

1. This Agreement shall take effect upon the registration of the Hypothec and shall remain in force until the cancellation of the Hypothec.
2. If the Bank should obtain an "Acte Vicomte chargé d'écrire" against THT in accordance with the provisions of the "Loi (1880) sur la Propriété Foncière" (as amended) by virtue of the debt and obligations secured by the Hypothec the Bank will offer to the Public by notice in writing given to the Greffier of the States within fourteen days of the grant of such "Acte Vicomte chargé d'écrire" the option of taking a hereditary transfer of the Land in the event that the Bank takes tenure of the Land in any ensuing "dégrèvement".
3. If the Public exercises the option referred to in clause 2 above and takes such transfer of the Land, the Public will be substituted for THT in respect of the debt and obligations secured by the Hypothec and will discharge (i) all amounts due thereunder at the date of transfer forthwith and (ii) all continuing obligations of THT to the Bank under the debt and obligations secured by the Hypothec as they fall due.



4. If THT becomes bankrupt as defined by Article 8 of the "Interpretation (Jersey) Law 1954" or any similar statutory provision that may be enacted hereafter the Bank may offer to the Public by notice in writing given to the Greffier of the States the option (exercisable within the six months following the service of such notice) of taking an assignment from the Bank of the debt due to the Bank by THT secured by the Hypothec PROVIDED THAT:
 - (i) Unless and until the insolvency procedure of Dégrevement is abolished and is not replaced by any insolvency procedure entitling the holder of a secured charge to realise that security by bringing proceedings for the vesting in him of the property upon which the hypothec is secured this clause 4 will only apply in respect of bankruptcy proceedings which have been initiated by THT or any third party including the Public, but will not apply to bankruptcy proceedings which have been initiated by or at the instance of the Bank: and
 - (ii) During the six months following the service of the option notice referred to in this clause 4 the Bank will take all such steps in the bankruptcy proceedings as are necessary or appropriate to protect its rights and interests in those proceedings.
5. If the Public exercises the option referred to in clause 4 above the Bank will assign to the Public all its rights in the debt due to the Bank secured by the Hypothec and in the Hypothec itself and the Public will discharge to the Bank all sums due in respect of the said debt and Hypothec as at the date of assignment.
6. THT agrees to the terms of this Agreement.
7. This Agreement shall be governed by and construed in accordance with the laws of the Island of Jersey.

IN WITNESS WHEREOF the parties hereto have executed this Agreement (in duplicate) the day and year first above written in the presence of the undersigned witnesses.

SIGNED for and on behalf of the said
PUBLIC OF THE ISLAND in the
 presence of:

.....
 Greffier of the States

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.....
Witness

SIGNED for and on behalf of the said
[] **BANK PLC** in the
presence of:

.....
Authorised Signatory

.....
Witness

SIGNED for and on behalf of the said
[THE HOUSING TRUST] in the
presence of:

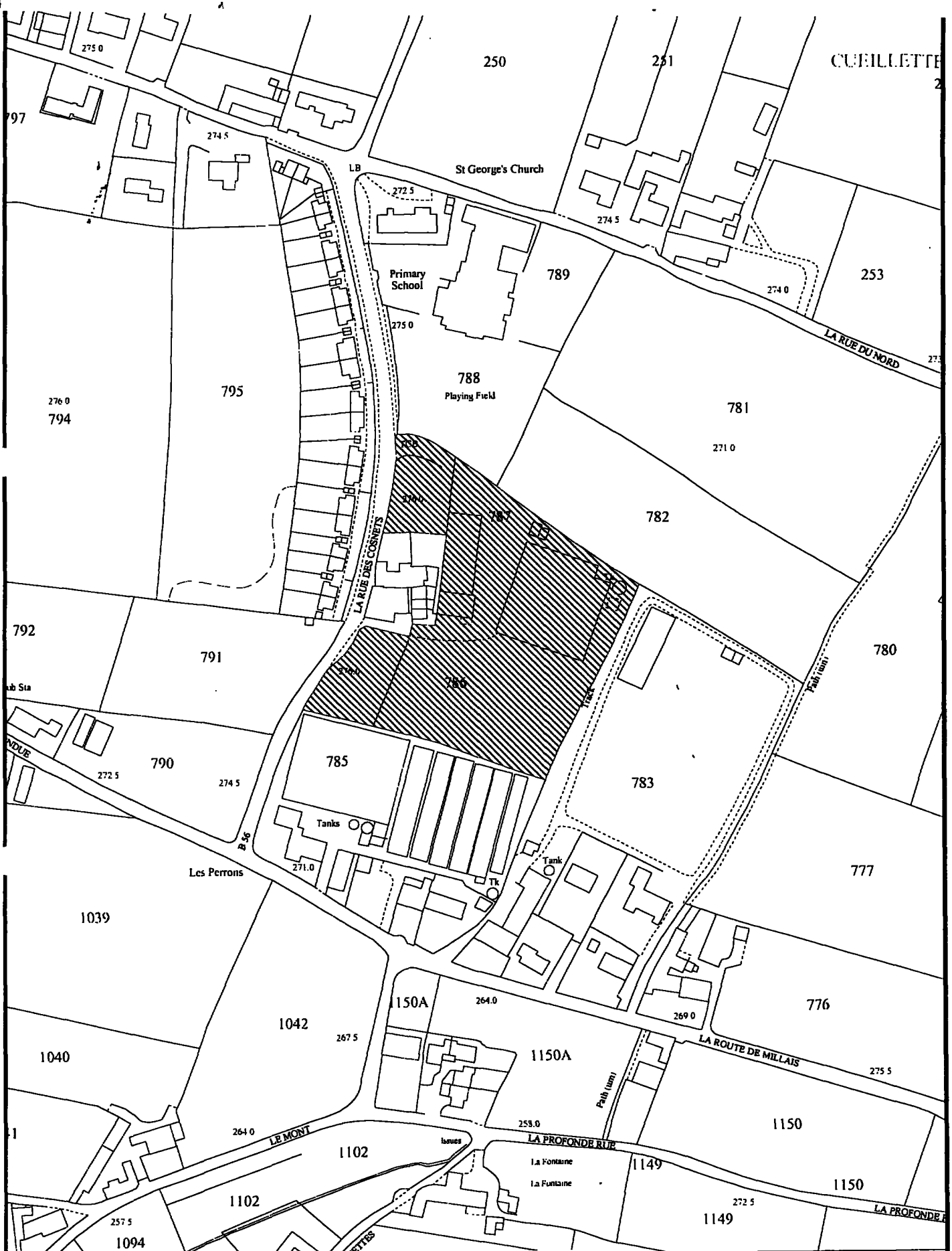
.....
Authorised Signatory

.....
Witness

L1190-891-



Schedule to the Funding Agreement



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