
PLANNING OBLIGATION AGREEMENT

(ENVIRONMENTAL IMPROVEMENTS)

UNDER ARTICLE 25 OF THE PLANNING AND BUILDING (JERSEY) LAW 2002

RELATING TO LAND AT TAMBA PARK,

LA RUE DE LA FRONTIERE, ST MARY, JERSEY.

LAW

This is a planning obligation agreement executed under, and pursuant to, Article 25 of the Planning and Building (Jersey) Law 2002 in relation to land known as Tamba Park, La Rue de la Frontiere, St Mary, Jersey.

DATE

This planning obligation is dated: 2017

PARTIES

The Parties to this Planning Obligation Agreement are:

- 1) The Minister for the Environment of States Offices , South Hill, St Helier, Jersey, JE2 4US (“the Minister”); and
- 2) JAJ Properties Limited, Ruff Properties Limited, Retreat Leisure Holdings Limited, and Retreat Dwelling Limited of Tamba Park, Rue des Varvots, St Lawrence, Jersey JE3 1GX, Channel Islands, (“the Owner”).

RECITALS

- (1) The Site is all that land known as Tamba Park, La Rue de la Frontiere, St Lawrence, Jersey.
- (2) The Owner warrants that it is the owner in perpetuity (*a fin d'heritage*) as to the Site.
- (3) JAJ Properties Limited on behalf of the Owner submitted three applications for planning permission (accorded the references P/2017/0519, P/2017/0805, and P/2017/1023) for planning permission for the development of the Site.
- (4) On 30th January 2018, the Department of the Environment reported that P/2017/0519 be approved and that conditional planning permission be granted for that development.
- (5) The Minister of the Environment directed, by Ministerial Decision (dated 15th August 2017), that the applications for planning permission, references P/2017/0805 and P/2017/1023, be subject to a public inquiry because they were closely related and a comprehensive planning and environmental solution could be considered.
- (6) The Public Inquiry was heard by an Inspector ("the Inspector") between on the 19th and 23rd February 2018.
- (7) Having regard to the purposes of the Law the Revised Island Plan 2011 and all other material considerations the Inspector in his report dated 2018 ("the Inspector's Report") recommended to the Minister that planning permission for the Development should be granted subject to the prior completion of this Agreement to secure the obligations contained herein.
- (8) Having considered the Inspector's Report the Minister has under Article 116 of the Law given effect to the Inspector's recommendation to allow the appeal and grant planning permission subject to the prior completion of this Agreement to secure the obligation contained herein.
- (9) The parties hereto have agreed to enter into this Agreement in order to secure the planning obligation contained herein and that it satisfies the terms of paragraph 5.1(i)-(v), and Topic Paper 3, paragraph 3.1 (Off Site 1), of the Supplementary Planning Guidance, Practice Note 13: The Use of Planning Obligations.
- (10) The parties acknowledge that this Agreement is legally binding.
- (11) This Agreement shall be construed so as to give effect to the purpose and intention of the Law.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

For the purposes of this Agreement the following expressions shall have the following meanings:

“Agreement”	This planning obligation agreement including the recitals and schedules hereto.
“Environmental Improvements”	The removal of the structures and hardstandings on Fields L78 and M770, the remediation of Fields M770 and L78 and the Tamba car park to good agricultural land quality and including the provision of permeable ground surfaces thereon, the removal of existing and the provision of new surface and foul drainage infrastructure, the widening of the Primary Route Network in the vicinity of the access of Tamba Park to La Rue De La Frontiere, the provision of bus stops and shelter in that location, the cessation of permitted use of the Tamba Park car park on La Rue Des Varvots and the creation of a new car park accessed from La Rue de la Frontiere serving Tamba Park, the improvement of the setting of the Grade 3 listed Retreat Farmhouse by the erection of a single storey single dwelling on the said car park, and landscaping.
“Commencement”	The date on which any operation (but not including any exploratory or investigative works) forming part of the Development permitted by the Field L78 Planning Permit and the Field M770 Planning Permit for the Development begins to be carried out, and “Commence” and “Commenced” shall be construed accordingly.

“The Development”	The development of the Site as set out in the Field L78 Planning Application and in the Field M770 Planning Application.
“GST”	Goods and services tax under the Goods and Services Tax (Jersey) Law 2007.
“Primary Route Network Improvement”	The realignment of part of the Primary Route Network known as La Rue de la Frontiere in the location identified and as shown on Plans B and C in the First Schedule.
“Index”	The all Items Index of Retail Prices for Jersey as issued from time to time by the Statistics Unit to the States of Jersey.
“Interest”	Interest at three percent above base lending rate of the HSBC Bank plc from time to time.
“Revised Island Plan 2011”	The States of Jersey Island Plan, 2011 (as revised 2014).
“Law”	The Planning and Building (Jersey) Law 2002.
“Minister”	The Minister for the Environment of States Offices, South Hill, St Helier, Jersey JE2 4US.
“Plan A”	The plan entitled “Plan A” contained in the First Schedule to this Agreement.
“Plan B”	The plan entitled “Plan B” contained in the First Schedule to this Agreement, identifying the Orange Land, and showing the Primary

	Route Network Improvement and the Bus Stop Improvements.
“Plan C”	The plan entitled “Plan C” contained in the First Schedule to this Agreement, identifying the Orange Land and Percentage for Art, and showing the Primary Route Network Improvement and the Bus Stop Improvements.
“Field L78 Planning Application”	The application for planning permission for Field L78, and given the reference P/2017/0805.
“Field M770 Planning Application”	The application for planning permission for Field M770 and given the reference P/2017/1023.
“Field L78 Planning Permit”	the planning permission for the Development granted by the Minister pursuant to the Field L78 Planning Application as recorded in his decision reference a copy of which is attached at the Second Schedule and references to the Planning Permit include where the context permits any variations to the said planning permission from time to time.
“Field M770 Planning Permit”	the planning permission for the Development granted by the Minister pursuant to the Field M770 Planning Application as recorded in his decision reference a copy of which is attached at the Second Schedule and references to the Planning Permit include where the context permits any variations to the said planning permission from time to time.
“Orange Land”	A total area of 115 square metres of land identified coloured hatched orange on Plans B and C (within Field M770 and Field M772) transferred to the Department of Infrastructure for use in

	perpetuity as part of the Primary Route Network public highway forming part of La Rue de La Frontiere.
“Owner”	<p>Together:</p> <ul style="list-style-type: none"> a) JAJ Properties Limited; b) Ruff Properties Limited, company reference number 100241; c) Retreat Leisure Holdings Limited, company number 116919, being owner of Fields M770 and M772; d) Retreat Dwelling Limited, company number 123274, being the owner of that part of Field L78 permitted by planning permission reference 3199/IA (dated 1st October 1992) to be used for car parking facilities for visitors; and <p>the registered office of each being: Tamba Park, Rue Des Varvots, St Lawrence, Jersey JE3 1GX.</p>
“Percentage for Art”	The provision of an art work in the location identified by a circle coloured orange on Plan C.
“Royal Court”	The Royal Court of the Island of Jersey.
“Site”	All that immoveable property generally known as Tamba Park, Retreat Farm, La Rue de la Frontiere, St Lawrence, Jersey, and including Field(s) M770, M772, L78, and Tamba Park car park, the whole as shown for the purposes of identification edged by a thick red line on Plan A in the First Schedule and in which the Development is to be carried out.

2. CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 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 interchangeably in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each Individually unless there is an express provision otherwise.
- 2.5 Any reference to a law of the States of Jersey shall include any modification, extension or re-enactment of that law for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Law or deriving validity from it.
- 2.6 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Minister the successors to his statutory functions.
- 2.7 This Agreement shall be construed so as to give effect to the purpose of the Law.

3. LEGAL BASIS AND CONDITIONALITY

3.1 This Agreement is made pursuant to Article 25 of the Law.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Article 25 of the Law and are enforceable by the Chief Officer against the Owner.

3.3 This Agreement is conditional upon:

- (i) the grant of the Field L78 Planning Permit and the Field 770 Planning Permit; and
- (ii) the date on which this Agreement has been recorded as registered in the Royal Court as evidenced by an Act of the said Court.

4. EFFECTIVE DATE

This Agreement shall come into effect immediately upon the date which this Agreement has been recorded as registered in the Royal Court as evidenced by an Act of the said Court,

5. OWNER COVENANTS

The Owner covenants and agrees with the Minister as set out in the Third Schedule so that this Agreement shall be enforceable without limit of time against the Owner and any person claiming or deriving title through or under the Owner to the Site or any part or parts thereof.

6. MINISTER COVENANTS

The Minister covenants with the Owner as set out in the Fifth Schedule.

7. PUBLIC REGISTRY OF CONTRACT

The Minister shall as soon as practicable apply to the Royal Court for an order that this Agreement be registered in the Public Registry of Contracts.

8. MISCELLANEOUS

- 8.1 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Minister under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction may be given on behalf of the Minister by the Director - Development Control of Planning and notice or communication to the Minister pursuant to the provisions of this Agreement shall be addressed to the Director - Development Control of Planning at Planning and Building Services South Hill St Helier Jersey JE2 4US or as otherwise notified for the purpose by notice in writing.
- 8.2 Any notices on the Owner shall be deemed to have been properly served if sent by ordinary post to and addressed to such party at the address referred to above or as otherwise notified for the purpose by notice in writing.
- 8.3 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 8.4 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permit shall be quashed, cancelled, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified (other than by process under Article 10 of the Law) by any statutory procedure or expires prior to the Commencement of Development.
- 8.5 No person shall be liable for any breach of any of the planning obligations or other provisions of 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.
- 8.6 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 Permit) granted (whether or not on appeal) after the date of this Agreement.

- 8.7 Except in so far as legally or equitably permitted this Agreement shall not prejudice or fetter or affect any statutory power discretion or duty of the Minister and without prejudice to the generality of the foregoing it is agreed between the parties hereto that any benefit or power conferred on the Minister by any of the obligations or covenants by the Owner in favour of the Minister under this Agreement are in addition to any of the Minister's statutory powers under the Law.
- 8.8 Nothing contained herein shall be construed as obviating the need for the Owner to obtain or acquire from any third party with respect to the Development or its use any consents permits authorisations rights interests in land or servitudes.
- 8.9 Nothing in this Agreement shall be construed or interpreted in such a way or inference to be drawn so as to place or create a duty of care upon the Minister as a result of the Minister agreeing to accept the covenants agreements and undertakings on the part of the Owner as contained herein.
- 8.10 The Owner shall not be entitled to any costs or compensation as a result of the making of this Agreement and the obligations contained herein.
- 8.11 All communications and notices served or made under this Agreement shall be in writing.

9. WAIVER

No waiver (whether expressed or implied) by the Minister 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 Minister from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

10. CHANGE IN OWNERSHIP

The Owner agrees with the Minister to give the Minister written notice (as soon as reasonably practical following such change) of any change in ownership of any of their interest in the Site occurring before all the obligations under this Agreement have been discharged.

11. INDEXATION

Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date on which this Agreement is registered in the Public Registry of Contracts until the date on which such sum is payable.

12. INTEREST

If any payment due under this Agreement is paid late, Interest will be payable from the date payment is due to the date of payment.

13. DISPUTE RESOLUTION

In the event that any dispute shall arise in respect of any provision of this Agreement, it shall be referred if not resolved within seven (7) working days to the arbitration of an independent arbitrator under the provisions of the Arbitration (Jersey) Law 1998 such arbitrator to be named by the agreement of the parties to the dispute or in default of agreement by the President for the time being of the Royal Institution of Arbitrators upon the application of any party to the dispute.

14. GOODS AND SERVICES TAX

14.1 All *cause* given in accordance with the terms of this Agreement shall be exclusive of any GST properly payable in respect thereof.

14.2 If at any time GST is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement, then to the extent that GST has not been previously charged in respect of that supply, the person making the supply shall have the right to issue a GST invoice to the person to whom the supply was made and the GST shall be paid accordingly.

15. JURISDICTION

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

FIRST SCHEDULE

PLAN A

DRAFT

PLAN B

DRAFT

PLAN C

DRAFT

SECOND SCHEDULE

THE FIELD L78 PLANNING PERMIT

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THE FIELD M770 PLANNING PERMIT

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THIRD SCHEDULE

THE OWNER'S COVENANTS WITH THE MINISTER

The Owner covenants, agrees and undertakes:

COMMENCEMENT:

1. Not to Commence the Development until the Owner has given to the Minister twenty-eight (28) days' notice in writing of its intention to so to do.

THE ENVIRONMENTAL IMPROVEMENTS

2. To execute the Environmental Improvements.
3. Not to Commence the erection of the single dwelling permitted by the Field L78 Planning Permit before the conclusion of the following and in the sequence set out hereto:
 - a) Execution of a planning obligation agreement by which the Owner transfers the Orange Land to the Department for Infrastructure for the purpose of use as a public highway forming part of the Primary Route Network;
 - b) Demolition and removal of the glasshouse, and associated heating infrastructure, currently standing on Field M770, on the area permitted by planning permissions, reference 3199/I (dated 22nd May 1975), and 3199/K (18th August 1978), identified as A and B on Plan A
 - c) Demolition and removal of the glasshouse, and associated heating infrastructure, currently standing on Field L78 on the area permitted by planning permission, reference 3199/PA (dated 9th August 1995), identified as B and C on Plan A;
 - d) Removal of hardstandings on Fields L78 and M770 from the areas identified by hatching on Plan A;
 - e) Removal of existing drainage infrastructure from Field M770 and provision of new foul and surface water drainage infrastructure;
 - f) Remediation of Fields L78 and M770 to good quality agricultural land of the areas identified by hatching on Plan A and pursuant to the "schedule of operations" within the report "Field M770 and L78 Restoration Works" attached in the Fourth Schedule hereto;

- g) Re-alignment of part of La Rue de la Frontiere and improvements to the access onto that highway from Tamba Park in accordance with Plans B and C;
 - h) Provision of two bus stops and a bus shelter, associated passenger refuge areas, and pedestrian facilities, identified in Plans B and C;
 - i) Provision of a single public access to Tamba Park from La Rue de la Frontiere identified in Plans B and C;
 - j) Provision of a landscaping scheme, including for ground permeability, for Fields M770, M772, and L78 pursuant to the Field M770 Planning Permit and the Field L78 Planning Permit;
 - k) Provision of car park facilities on Field M770 serving Tamba Park pursuant to the Field M770 Planning Permit;
 - l) Cessation of use of the car park permitted by planning permission, reference 3199/IA (dated 1st October 1992) for 75 car park spaces and cessation of public use thereto and from of Rue des Varvots for access and egress to Tamba Park;
 - m) Provision of up to 27 self-catering lodges on Field M770 pursuant to the M770 Planning Permit;
 - n) Commission of the Percentage for Art artwork in the location identified on Plan C; and thereafter
 - o) Erection of a single dwelling pursuant to the Field L78 Planning Permit.
4. In the event that the Owner serves written notice on the Minister of anticipated conclusion of use of Field M770 for 27 self-catering lodges, then within 6 months of the date of that notice, the Owner to remove the 27 self-catering lodges from Field M770 and the area of that touristic use be turned to agricultural land, including by removal of then existing ground surfaces.

FOURTH SCHEDULE

THE AGRICULTURAL LAND SPECIFICATION FOR FIELDS M770 AND L78

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FIFTH SCHEDULE

THE MINISTER'S COVENANTS

1. The Minister covenants with the Owner to, at the written request of the Owner from time to time, to provide written confirmation of the discharge of the obligations contained in this Agreement (or any of them) when and to the extent that the Minister is satisfied that such obligations have been performed.
2. The Minister hereby covenants with the Owner to use all sums received by the Treasurer of the States from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid.
3. The Minister covenants with the Owner that he will procure or arrange that the Treasurer of the States will pay to the Owner such amount of any payment made by the Owner to the Treasurer of the States under this Agreement which has not been expended in accordance with the provisions of this Agreement within seven years of the date of receipt by the Treasurer of the States of such payment.

Signed on behalf of the Minister:

By:

Name and Position:

In the presence of

Name and Position:

This day of2018

DRAFT

Signed on behalf of the Owner:

By:

Name and Position:

In the presence of

Name and Position:

This day of February 2018.

By:

Name and Position:

In the presence of

Name and Position:

This day of February 2018.

By:

Name and Position:

In the presence of

Name and Position:

This day of February 2018.

By:

Name and Position:

In the presence of

Name and Position:

This day of February 2018.

DRAFT