

# *In the Royal Court of Jersey*

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**Samedi Division**

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**In the year two thousand and twenty-one, the seventeenth day of June.**

Before the Judicial Greffier.

Upon the application of Her Majesty's Attorney General, IT IS ORDERED that the Planning Obligation Agreement between The Chief Officer for the Environment, Poppy Lea Limited and Notus Enterprises Limited in relation to 11 Caledonia Place, St Helier, be registered in the Public Registry of this Island.

  
Greffier Substitute

LOD

Reg. Pub.

**Planning Obligation Agreement under Article 25 of the Planning and Building (Jersey)  
Law 2002 (as amended)**

relating to the development of 11 Caledonia Place, St Helier

Dated:

17<sup>th</sup> June

2021

The Chief Officer for the Environment (1)

Poppy Lea Limited (2)

Notus Enterprises Limited (3)

DATE

17<sup>th</sup> June

2021

**PARTIES**

- (1) The Chief Officer for the Environment of PO Box 55, La Motte Street, St Helier, Jersey JE4 SPE ("**the Chief Officer**");
- (2) Poppy Lea Limited (Co Reg 109238), whose registered office is situate at Portman House 32 Hue Street St Helier St Helier Jersey JE23RE ("**the Owner**")
- (3) Notus Enterprises Limited (a company registered in England with Co Reg 08292158), whose registered office is situate at Flat 45 77 Hallam Street, London, W1W 5HB ("**the Lender**")

**RECITALS**

- 1 The Owner warrants that it is the owner in perpetuity (*à fin d'héritage*) as to the Site.
- 2 The Lender has an interest in the Site by virtue of a judicial hypothec (*hypothèque judiciaire*) registered in the Public Registry of Jersey on 23 October 2020.
- 3 An application (accorded the reference P/2020/1423) for planning permission for the Development has been submitted to the Chief Officer.
- 4 Having regard to the purposes of the Law the States of Jersey Island Plan 2011 (as amended from time to time) and all other material considerations, the Chief Officer is minded to approve the grant of planning permission for the Development subject to the prior completion of this Agreement.
- 5 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 6 The parties acknowledge that this Agreement is legally binding.
- 7 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 agreement including the recitals and
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		schedules hereto;
<b>"Application"</b>		the application for planning permission in respect of the Site and described as "Change of use from (Class A) Retail to (Class B) Restaurant on ground floor. Convert first and second floors into 4 No. 2 bed residential units. Convert roof to form residential roof terraces" and given the reference P/2020/1423
<b>"Cycle Shelter and Stands Contribution"</b>		a financial contribution of Eight Thousand and Four Hundred and Eighty Pounds (£8,480) Sterling Index-Linked towards the provision a cycle shelter and 2 no. Sheffield stands in the environ of the Site
<b>"Chief Officer"</b>		the person appointed from time to time as the chief executive officer (or equivalent) of the administration of the States of Jersey responsible for planning and building in accordance with Article 1 of the Law;
<b>"Commencement"</b>		the date on which any operation forming part of the Development permitted by the Planning Permit or any subsequent planning permission for the Development begins to be carried out, and "Commence" and "Commenced" shall be construed accordingly;
<b>"Development"</b>		the development of the Site as set out in the Application;
<b>"GST"</b>		goods and services tax or GST under the Goods and Services Tax (Jersey) Law 2007;
<b>"Index"</b>		the all items Retail Prices Index for Jersey as issued from time to time by the Statistics Unit to the States of Jersey;

"Island Plan 2011"	the States of Jersey Island Plan, 2011 (as amended from time to time);
"Index-Linked"	where any sum or contribution is expressed to be "Index-Linked" then that sum or contribution shall be adjusted in accordance with the provisions of clause 10 prior to payment;
"Interest"	interest at three per cent (3%) above the base lending rate of the HSBC Bank Plc from time to time;
"Law"	the Planning and Building (Jersey) Law 2002;
"Plan"	the plan of the Site annexed to this Agreement as part of the First Schedule;
"Planning Permit"	the planning permission for the Development, a copy of which is attached at the Second Schedule, and references to the Planning Permit include where the context permits any variations and amendments to the said planning permission from time to time;
"Royal Court"	the Royal Court of the Island of Jersey;
"Site"	11, Caledonia Place, St. Helier, JE2 3NG as shown edged by a thick red line on the Plan and described in the First Schedule upon 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 Chief Officer 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**

- 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.

### **4 CONDITIONALITY**

This Agreement is conditional and shall come into effect upon the grant of the Planning Permit.

### **5 OWNER'S COVENANTS**

The Owner covenants and agrees with the Chief Officer 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 PUBLIC REGISTRY OF CONTRACTS**

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

### **7 MISCELLANEOUS**

- 7.1 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Chief Officer 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 Chief Officer by the

Director - Development Control of Planning and notice or communication to the Chief Officer pursuant to the provisions of this Agreement shall be addressed to the Director - Development Control of Planning at Planning and Building Services, PO Box 55, La Motte Street, St Helier, Jersey JE4 8PE or as otherwise notified for the purpose by notice in writing.

- 7.2 Any notices to be served 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.
- 7.3 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.
- 7.4 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 of Article 10 of the Law) by any statutory procedure or expires prior to Commencement.
- 7.5 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.
- 7.6 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.
- 7.7 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 Chief Officer and without prejudice to the generality of the foregoing it is agreed between the parties hereto that any benefit or power conferred on the Chief Officer by any of the obligations or covenants by the Owner in favour of the Chief Officer under this Agreement are in addition to any of the Chief Officers' statutory powers under the Law.
- 7.8 Nothing contained herein shall be construed as obviating the need for the Owner to obtain or acquire from the Public of the Island of Jersey (in its public capacity) or any third party with respect to the Development or its use any consents permits authorisations rights interests in land or servitudes.
- 7.9 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 Chief Officer as a result of the Chief Officer agreeing to accept the covenants agreements and undertakings on the part of the Owner as contained herein.
- 7.10 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.
- 7.11 All communications and notices served or made under this Agreement shall be in writing.

## 8 WAIVER

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

#### **9 CHANGE IN OWNERSHIP**

The Owner agrees with the Chief Officer to give the Chief Officer 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 such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan.

#### **10 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.

#### **11 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.

#### **12 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.

#### **13 GOODS AND SERVICES TAX**

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

13.2 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 had not previously been 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.

#### **14 LENDER'S CONSENT**

The Lender acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the Lender over the Site shall take effect subject to this Agreement PROVIDED THAT the Lender shall otherwise have no liability under this Agreement unless it takes possession of the Site in which case it too will be bound by the obligations as a

person deriving title from the Owner.

## 15 JURISDICTION

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

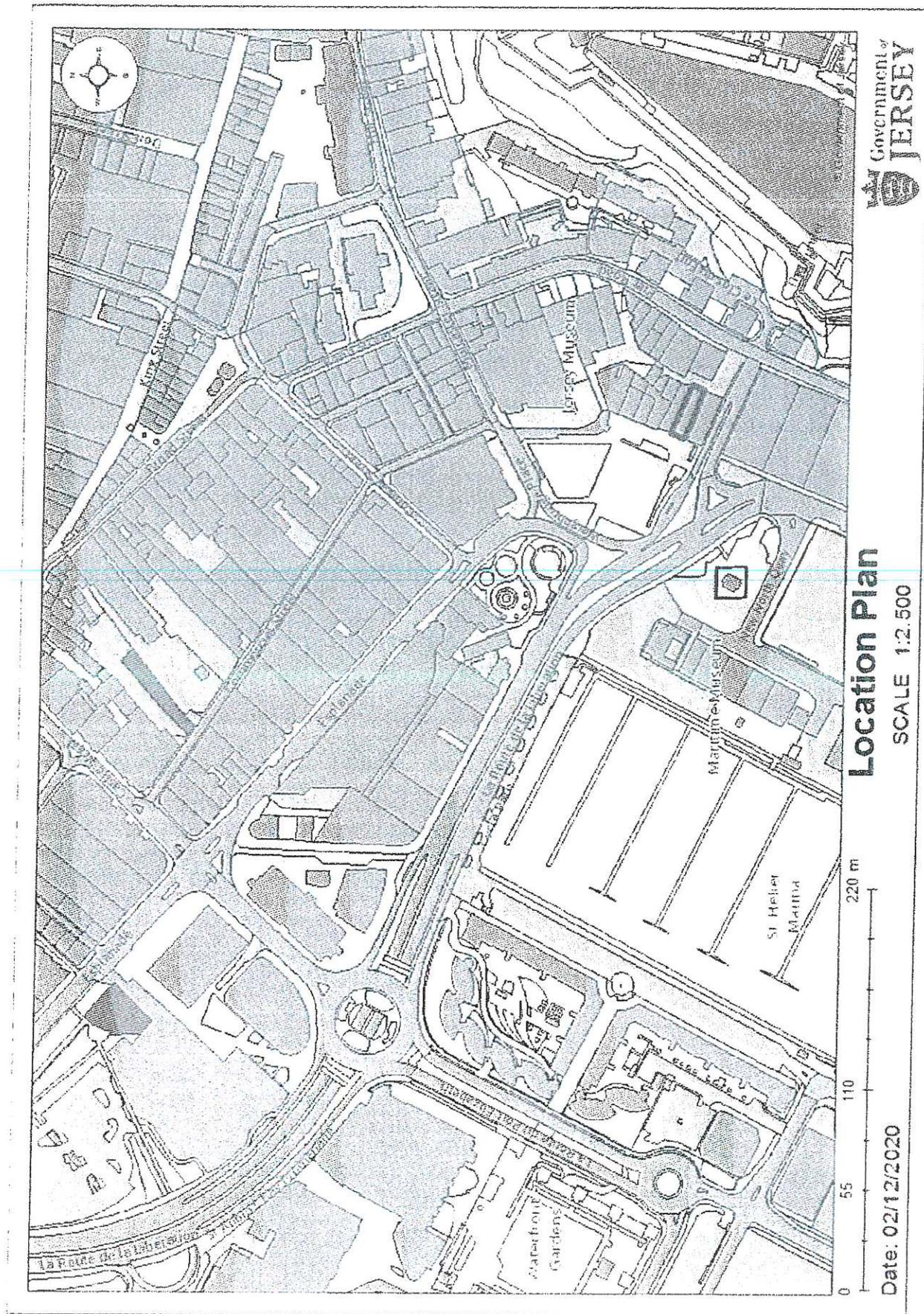
## FIRST SCHEDULE

**Details of the Owner's Title and description of the Site**

A certain property known as 11 Caledonia Place acquired by Poppy Lea Limited from Edgar John Deffains by contract of hereditary purchase dated 23 October 2020.

The whole situate in the Parish of St Helier, Vingtaine de la Ville.

The Site is shown for the purposes of identification on the Plan.



SECOND SCHEDULE  
**The Planning Permit**

# Draft Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2020/1423

In accordance with Article 19(8) of the Planning and Building (Jersey) Law 2002, as representations were made in connection with this application, this decision shall not have effect during the period of 28 days immediately after the decision date.

This permission enures (unless otherwise stated) for the benefit of the land to which it relates and of each person for the time being having an estate or interest in that land.

This decision does not absolve the parties concerned from obtaining, nor does it overrule, any other permission that may be required under any other law. In addition, it does not overrule any private property rights, nor does it absolve the need to obtain the permission of the owner of the land to which this permission relates.

This is notification of the decision to **GRANT** permission to develop land under Article 19 of the Planning and Building (Jersey) Law 2002;

**In respect of the following development:**

Change of use from (Class A) Retail to (Class B) Restaurant on ground floor. Convert first and second floors into 4 No. 2 bed residential units. Convert roof to form residential roof terraces.

**To be carried out at:**

11, Caledonia Place, St. Helier, JE2 3NG.

It is recommended that the Director (Development Control) endorses the **APPROVAL** of the application, with the final determination being subject to the applicants entering into a suitable planning obligation agreement pursuant to Article 25 of the Planning and Building (Jersey) Law 2002 (as amended) to cover the delivery of the covered cycle shelter near the site for residents to utilise (£8,000) and a further 2 no. Sheffield stands near the site for restaurant visitors (£480).

It is recommended that the Director (Development Control) be authorised to **GRANT** planning permission under powers delegated to him subject to the conditions and reasons set out below and also subject to the prior completion of the planning obligation agreement referred to above.

Alternatively, in the event that a suitable planning obligation is not agreed within six months of his being authorised in accordance with this recommendation, the Director (Development Control) be authorised to **REFUSE** the grant of planning permission.

APPROVED

# Draft Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2020/1423

Given comments received during the assessment of the application, the States of Jersey recommends that the applicant should follow the provisions of the Food Hygiene (General Provisions) (Jersey) Order, 1967. Further advice can be obtained from Environmental Health on +44 (0) 1534 443712.

Given comments received during the assessment of the application, the States of Jersey recommends that the applicant should refer to the guidance on The Control of Dust and Emissions from Construction and Demolition, which can be found online at:  
<https://www.gov.je/industry/construction/pages/constructionsite.aspx>

Given comments received during the assessment of the application, the States of Jersey recommends that the applicant should be aware that the site has been identified as having the possible presence of protected wildlife species. It is the responsibility of the applicant to inform all site workers of the possibility of protected species on site and the implications under the Conservation of Wildlife (Jersey) Law (2000) and you are advised that it is your duty under the Law to stop work and notify the Department of Environment on +44 (0) 1534 441600 immediately should any species be found.

Given comments received during the assessment of the application, the States of Jersey recommends that the applicant should be aware that the refuse store, collection, separation, and recycling arrangements should be agreed in detail with the Parish Refuse Manager.

This permission is granted subject to compliance with the following conditions and approved plan(s):

- A. The development shall commence within three years of the decision date.  
**Reason:** The development to which this permission relates will need to be reconsidered in light of any material change in circumstance.
- B. The development hereby approved shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of this permission.  
**Reason:** To ensure that the development is carried out and completed in accordance with the details approved.

FOR YOUR INFORMATION

APPROVED

# Draft Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2020/1423

The approved plans can be viewed on the Planning Register at [www.gov.je/planning](http://www.gov.je/planning)

The following plan(s) has/have been approved:

- 01 - Location Plan
- 02 - Proposed and Existing Elevations and Sections
- 03 - Proposed First Floor - GA Floor Plans
- 04 - Proposed Ground Floor - GA Floor Plans
- 05 - Proposed Roof Plan - GA Roof Plan
- 06 - Proposed Second Floor - Floor Plans
- 07 - Proposed Site Plans

### DECISION DATE:

The development may also require building permission, for which a separate application will need to be made. You can find out if building permission is required on our website [www.gov.je/planningbuilding](http://www.gov.je/planningbuilding)

The approved plans and any conditions attached to the decision are important and should be complied with. If there is any variation from the approved plans or the conditions you need to notify us immediately. Failure to comply with the approved plans or conditions may result in enforcement action.

If you are unhappy with a condition attached to this permission, you may request a review or make an appeal. You can find out how to do this on our website [www.gov.je/planning](http://www.gov.je/planning)

APPROVED

## THIRD SCHEDULE

**The Owner's Covenants with the Chief Officer**

The Owner in regard to the Site covenants, agrees and undertakes:

**COMMENCEMENT**

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

**CONTRIBUTIONS**

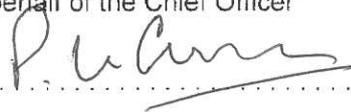
- 2 To pay to the Treasurer of the States the Cycle Shelter and Stands Contribution prior to the Commencement of the Development.
- 3 Not to Commence the Development until the Cycle Shelter and Stands Contribution shall have been paid to the Treasurer of the States.

## FOURTH SCHEDULE

**Chief Officer's Covenants****Repayment of contributions**

- 1 The Chief Officer hereby covenants with the Owner to use or procure the use of all sums received by the Treasurer of the States from under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid or for such other planning purposes arising from the Development as the Chief Officer shall in his discretion consider to be reasonably appropriate in the circumstances.
- 2 The Chief Officer 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 five (5) years of the date of receipt by the Treasurer of the States of such payment.

Signed on behalf of the Chief Officer

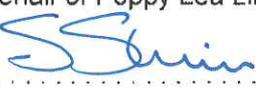
by 

in the presence of

Christopher E. Jones

this 17<sup>th</sup> day of June 2021

Signed on behalf of Poppy Lea Limited

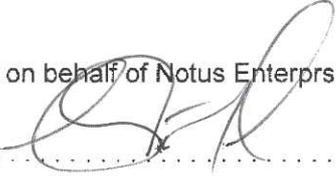
by , authorised signatory

in the presence of

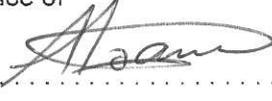
Denise LeBacqz

this \_\_\_\_\_ day of \_\_\_\_\_ 2021

Signed on behalf of Notus Enterprises Limited

by 

in the presence of



this \_\_\_\_\_ day of \_\_\_\_\_ 2021