

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

relating to the development of 28-34 Hill Street, St Helier

Dated:

8th December

2022

The Chief Officer for the Environment (1)

Malorey Investments Limited (2)

The Royal Bank of Scotland International Limited Trading as NatWest International (3)

DATE

8th December

2022

PARTIES

- (1) The Chief Officer for the Environment of PO Box 55, La Motte Street, St Helier, Jersey JE4 SPE ("**the Chief Officer**");
- (2) Malorey Investments Limited (Co Reg 129375), whose registered office is situate at Malorey Manor Les Charrieres Malorey St Lawrence Jersey JE3 1FU ("**the Owner**")
- (3) The Royal Bank of Scotland International Limited trading as NatWest International (Co Reg 2304), whose registered office is at Royal Bank House 71 Bath Street St Helier Jersey JE2 4SU ("**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 14 August 2020.
- 3 An application (accorded the reference P/2021/0131) for planning permission for the Development has been submitted to the Chief Officer.
- 4 Having regard to the purposes of the Law, the Island Plan 2011 and all other material considerations the Chief Officer on 30 July 2021 instructed that planning permission is to be granted for the Development subject first to the prior completion of this Agreement.
- 5 On 25 March 2022 the elected members of the States of Jersey approved, in accordance with Article 3(1) of the Planning and Building (Jersey) Law 2002, as amended by the Covid-19 (Island Plan) (Jersey) Regulations 2021, the Island Plan 2022-25, the draft for which had been lodged au greffe on 19 April 2021.
- 6 The Chief Officer is satisfied that in all of the circumstances, and subject to the prior completion of this Agreement, that a decision notice can be issued.
- 7 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 8 The parties acknowledge that this Agreement is legally binding.
- 9 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 schedules hereto;
"Application"		the application for planning permission in respect of the Site and described as " Change of use from Class C - Office to create 8 no. one bed and 13 no. two bed residential units with associated parking" and given the reference P/2021/0131;
'Car Club'		means a car club operated and managed by a Car Club Provider which enables its members to have access to or share facilities of a private car at a reasonable cost on a short-term basis as and when required subject to availability and which is made available to all occupiers who wish to become members of the scheme;
'Car Club Provider'		means an organisation which provides cars for use by members of a car club;
"Cycle and Walking Contribution"		a financial contribution of Twenty Eight Thousand Three Hundred and Fifty Pounds (£28,350) Sterling Index-Linked towards the provision and enhancement of public walking and cycling infrastructure within the vicinity of the Site;
"Cycle Stands"		two bicycle stands within Hill Street, in close proximity to the Site, to be delivered at the Owner's expense to a technical standard agreed by the highway authority responsible or Hill Street;

"Chief Officer"		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;
"Commencement"		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;
"Development"		the development of the Site as set out in the Application;
'Dwelling Unit'		a residential unit forming part of the Development to be constructed pursuant to the Planning Permit;
"GST"		goods and services tax or GST under the Goods and Services Tax (Jersey) Law 2007;
"Index"		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);
"Island Plan 2022"		the States of Jersey Island Plan, 2022 (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;
'Occupation', 'Occupy' and 'Occupied'		means occupation for the purposes permitted by the Planning Permit but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;
"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"		28-34 Hill Street, St Helier, JE2 4UA as shown hatched in black 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.

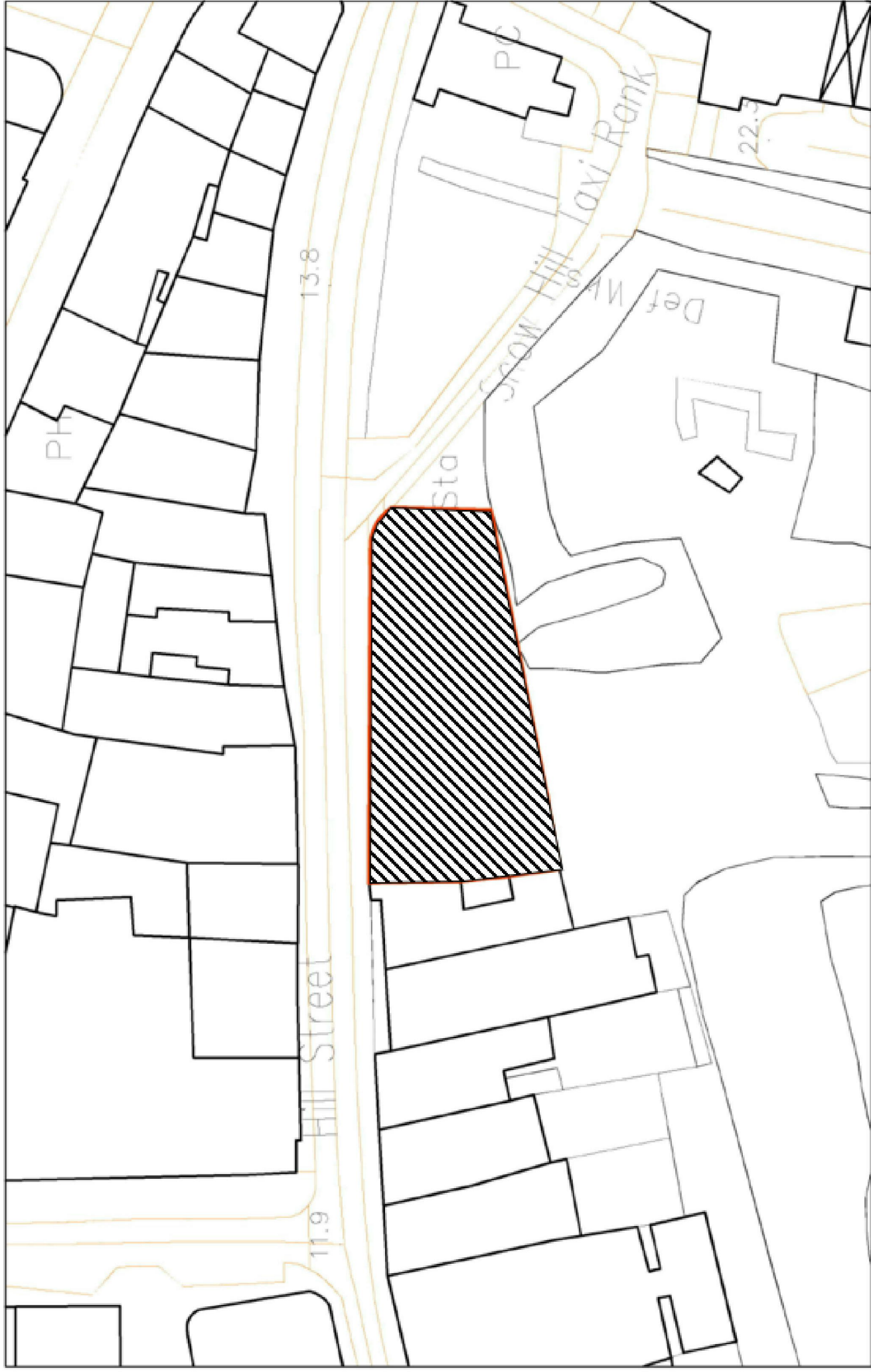
FIRST SCHEDULE

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

A certain property known as 28-34 Hill Street acquired by the Owner from 28-34 Hill Street Limited by contract of hereditary purchase dated 14 August 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.



28/34 Hill St



Scale 1:500

licence no: J63

SECOND SCHEDULE

The Planning Permit

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2021/0131

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 C - Office to create 8 no. one bed and 13 no. two bed residential units with associated parking.

To be carried out at:

28-34 Hill Street, St Helier, JE2 4UA

REASON FOR APPROVAL: Permission has been granted having taken into account the relevant policies of the approved Island Plan, together with other relevant policies and all other material considerations, including the consultations and representations received.

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.

APPROVED

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2021/0131

Condition(s):

1. Prior to the first occupation of the new development, all of the new bicycle parking / storage for residents and visitors (as indicated within approved plan SK01 B), including charging points for electric bicycles, must be fully installed and made available for use.
2. The car parking spaces shall be retained solely for the use of occupants of the development. They shall not be used or sub-let for any other purpose.
3. No part of the development hereby approved shall be occupied until all hard and soft landscape works, as indicated on the approved plans, have been carried out in full. Following completion, the landscaping areas shall, thereafter, be maintained as such.
4. As confirmed within the submitted Design Statement, a Percentage for Art contribution shall be delivered on site as part of the development. Details of the exact form which the artistic installation will take must be submitted to, and approved in writing by, the Development Control section of Regulation, prior to the commencement of the relevant phase of works on site. Thereafter, the approved work of art must be installed prior to the first use / occupation of any part of the development.

Reason(s):

1. To ensure that these facilities are made available at the outset, in the interests of general residential amenity, under the provisions of Policies GD 1 and TT 4 of the adopted Island Plan 2011 (revised 2014).
2. To restrict the use of the parking spaces, to ensure that they are not used by non-residents which would be contrary to Policy TT 11 of the adopted Island Plan 2011 (revised 2014).
3. To ensure that the benefits of the approved landscaping scheme are carried out and completed, making a positive contribution to the amenities of the site and its residents, in accordance with Policies GD 1, GD 7, NE 1, NE 2 and NE 4 of the adopted Island Plan 2011 (revised 2014).
4. To accord with the provisions of Policy GD 8 of the adopted Island Plan 2011 (revised 2014).

APPROVED

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2021/0131

FOR YOUR INFORMATION

The applicant's attention is drawn to the comments made by IHE Drainage (consultation response dated 29/03/2021), with regard to the need to provide full drainage details to that department.

The approved plans can be viewed on the Planning Register at www.gov.je/planning

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

Location Plan

- 1587/20/S02 – Survey as Existing – Basement, Ground & First Floor Plans
- 1587/20/S03 – Survey as Existing – Second, Third, Fourth & Fifth Floor Plans
- 1587/20/S04 – Survey as Existing – Elevations
- 1587/20/S05 – Survey as Existing – Sections & Site Plan
- 1587/20/SK01 B – Proposed Basement, Ground & First Floor Plans
- 1587/20/SK02 A – Proposed Second, Third, Fourth & Fifth Floor Plans
- 1587/20/SK03 B – Proposed Elevations
- 1587/20/SK04 B – Proposed Sections & Site Plan

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

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

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 and Walking Contribution prior to the Commencement of the Development.
- 3 Not to Commence the Development until the Cycle and Walking Contribution has been paid to the Treasurer of the States.

CYCLE STANDS

- 4 Not to Occupy the Development until such time as the Cycle Stands have been provided.

CAR CLUB AND FREE MEMBERSHIP

- 5 On or prior to the first Occupation of each Dwelling Unit to notify in writing the first household of each Dwelling Unit of its entitlement to a £500 voucher or credit towards use and membership of a Car Club from the date of its Occupation.
- 6 Within fourteen (14) days of the first Occupation of each dwelling Unit to notify the Chief Officer that every residential occupier of each Dwelling Unit to be Occupied has been notified in writing in accordance with the preceding paragraph.
- 7 Subject to any household as referred to in paragraph 5 above having confirmed that it wishes to accept the proposal and an occupant being legally entitled to drive a Motor Vehicle, to provide that household with a £500 voucher or credit towards use and membership of a Car Club.
- 8 In the event that the Car Club Provider is no longer able to provide the Car Club for the Dwelling Units the Owner shall then use all reasonable endeavours to secure another Car Club Provider for the Development.

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

PETER LE GREY

in the presence of

...

LAWRENCE DAVIES

this

8th

day of

December 2022

Signed on behalf of Malorey Investments Limited

by

in the presence of

...

Emily Paris-Hunter
Scottish Solicitor
Viberts, Viberts House
PO Box 737, Don Street
St. Helier, Jersey, JE4 8ZQ

this

21st

day of

November

2022

Signed on behalf of The Royal Bank of Scotland International Limited Trading as

NatWest International

by

Timothy Brian Slatter
Head of Portfolio Management
Offshore Real Estate Finance

in the presence of

...

Helen Victoria Lagadu
PO Box 64 11 Bath Street
St. Helier, Jersey
JE4 8PJ

this

16th

day of

November

2022