

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

Relating to the development of Les Aunaies Farm La Rue des Chataigniers, JE3 4DL

Dated

17th October

2022

The Chief Officer for the Environment (1)

Clarence Alan Coutanche and Merilyn Aileen Coutanche, née Pirouet (2)

DATE

17th October

2022

PARTIES

1. The Chief Officer for the Environment of Government Offices, Planning and Building Control, PO Box 228, Jersey, JE4 9SS (**'the Chief Officer'**); and
2. Clarence Alan Coutanche and Marilyn Aileen Coutanche, née Pirouet of Les Aunaies Farm La Rue des Chataigniers, St John, Jersey JE3 4DL (**'the Owner'**).

RECITALS

- 1 The Owner warrants that it is the owner in perpetuity (*à fin d'héritage*) of the Site as described the First Schedule.
- 2 The Owner consented to the submission of the Application (accorded the reference RC/2021/0569) for planning permission for the Development.
- 3 The Application was submitted to the Chief Officer who pursuant to Article 9(5)(a) of the Law for determination by the Chief Officer
- 4 Having regard to the purposes of the Law, the Island Plan 2011 (Revised 2014) and all other material considerations, the Chief Officer on 7 February 2022 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 to secure the planning obligations contained herein.
- 8 The parties acknowledge that this Agreement is legally binding.
- 9 This Agreement shall be construed 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, 'Removal of Condition 1 of permission RC/2018/0274 and condition 1 of permission P/2014/2258 (permission shall cease to be valid after 3 years) to permit a permanent change of use of agricultural sheds to storage', and given the reference RC/2021/0569;
'Highways Contribution'		the sum of six thousand two hundred and twenty eight pounds (£6,228) to be paid by the Owner to the Treasurer of the States to be applied towards investment in walking and cycling improvements in the Parish of St John;
'Chief Officer'		the person appointed from time to time as the Chief Executive Officer (or equivalent) of the administration of the States responsible for planning and building in accordance with Article 1 of the Law;
'Commencement'		As the application is for the removal of planning conditions to permit the permanent use of the site development is treated as commenced on the day of the permission: there is an immediate liability to pay. 'Commence' and 'Commenced' shall be construed accordingly;
'Development'		the development of the Site as set out in the Planning Permit;

'GST'		Goods and Services Tax under the Goods and Services Tax (Jersey) Law 2007;
'Index'		the 'All Items Retail Prices Index of Jersey' as issued from time to time by the Statistics Unit to the Government of Jersey.
'Interest'		interest at three per centum (3%) above the base lending rate of Barclays Bank Plc.
'Island Plan 2011'		the States of Jersey Island Plan, 2011 (Revised 2014);
'Island Plan 2022'		The States of Jersey Island Plan, 2022 (as amended from time to time);
'Law'		the Planning and Building (Jersey) Law 2002;
'Planning Permit'		the planning permission for the Development granted by the Chief Officer pursuant to the Application, a copy of which is attached at the Third Schedule and references to the Planning Permit include where the context permits any variations to the said planning permission from time to time;
'Public'		the Public of the Island of Jersey;
'Royal Court'		the Royal Court of the Island of Jersey;
'Site'		the site comprising the property known as Les Aunaies Farm La Rue des Chataigniers, St John, Jersey JE3 4DL, the whole as shown for the purposes of

		identification edged red on the plan forming the Second Schedule.

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

5 OWNER'S COVENANTS

The Owner covenants and agrees with the Chief Officer as set out in the Fourth 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 CHIEF OFFICER'S COVENANTS

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

7. 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.

8 MISCELLANEOUS

- 8.1 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, Philip Le Feuvre House, La Motte Street, St. Helier, Jersey, JE4 8PE or as otherwise notified for the purpose by notice in writing.
- 8.2 Any notices served on the Owner shall be deemed to have been properly served if sent by ordinary post to and addressed to the address of the Owner referred to above or sent by e-mail to the Owner's e-mail address as stated on the signature page 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 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 Officer'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 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.
- 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 Chief Officer of any breach or default in performing or observing any of the covenant's 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.

10 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 its interest in the Site occurring before all the obligations under this Agreement have been discharged but this obligation shall not extend to the disposal of any individual Dwelling Units to a purchaser for his own, his family or his tenant's Occupation.

11 INDEXATION

Any sum referred to in the Fourth Schedule shall be increased by an amount equivalent to the increase in the Index from (a) the date on which the Planning Permit becomes capable of implementation following the elapse of the statutory period for the making of a third-party appeal without any such appeal having been made or, if applicable, the final determination of any third-party appeal until (b) 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 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 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.

15 JURISDICTION

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

FIRST SCHEDULE

Owner's Title

Contract of Purchase dated the 29th September 2000 from Mr David Robert Benn

SECOND SCHEDULE

The Site

THIRD SCHEDULE
The Planning Permit

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number RC2021/0569

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 21 of the Planning and Building (Jersey) Law 2002;

In respect of the following development:

Removal of Condition 1 of permission RC/2018/0274 and condition 1 of permission P/2014/2258 (permission shall cease to be valid after 3 years) to permit a permanent change of use of agricultural sheds to storage.

To be carried out at:

Les Aunaies Farm, La Rue des Chataigniers, St. John, JE3 4DL.

Reason for approval:

The proposed development is considered by the Department to be acceptable having been assessed against all the material considerations raised. In particular, the development has been assessed against policies SP1, SP3, SP5, GD1, GD4, NE7, and ERE4 of the adopted Island Plan 2011 (Revised 2014)

This permission is granted subject to compliance with the following conditions and approved plans:

Conditions:

- 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 RC2021/0569

1. The use hereby permitted shall be for the storage of goods only and no manufacturing or other processes shall take place on these premises.
2. No deliveries shall be taken at or despatched from the premises other than from 08:30 to 17:30 Monday to Friday and 09:00 to 17:00 on Saturdays, and for the avoidance of doubt not at any time on Sundays or Public Holidays.
3. No external storage of materials, equipment, waste, goods and/or other products shall take place on site, other than in the area as shown on the approved drawing 2014/085/02 – Existing site plan.
4. Vehicular access and egress to and from the site is to be from La Rue de la Mare Des Pres only.

Reasons:

1. Reason: The proposal has been assessed for storage use only and to protect the amenities of occupiers of neighbouring properties, in accordance with Policies NE7 and GD1 of the adopted Island Plan 2011 (Revised 2014).
2. Reason: To protect the amenities of occupiers of neighbouring properties, in accordance with Policy GD1 of the adopted Island Plan 2011 (Revised 2014).
3. Reason: To protect the amenities of the occupiers of neighbouring properties and the visual amenities of the surrounding area, in accordance with Policy GD1 of the adopted Island Plan 2011 (Revised 2014).
4. Reason: In the interests of highway safety and the protection of the amenities of the occupiers of neighbouring properties and the visual amenities of the surrounding area, in accordance with Policies GD1 and TT5 of the adopted Island Plan 2011 (Revised 2014).

APPROVED

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number RC2021/0569

FOR YOUR INFORMATION

This permission is subject to a Planning Obligation Agreement, dated xx/xx/xxxx.

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

The following plans have been approved:

- Location Plan
- Drawing 2014/085/02 – Existing site plan

DECISION DATE: xx/xx/xxxx

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

FOURTH SCHEDULE

The Owner's Covenants with the Chief Officer

The Owner covenants, agrees and undertakes:

CONTRIBUTIONS

- 1 To pay the Highways Contribution to the Treasurer of the States on execution of this agreement.

FIFTH SCHEDULE

Chief Officer's covenants

1. The Chief Officer 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.
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 four years of the date of receipt by the Treasurer of the States of such payment.

IN WITNESS whereof the parties hereto have executed this agreement the day and year first before written.

Signed on behalf of the Chief Officer

Print Name: PETER LE GRESLEY

Signature: _____

in the presence of

Print Name: LAWRENCE DAVIES

Signature: _____

this 17th day of OCTOBER 2022

Signed Clarence Alan Coutanche

Signature: CA Coutanche

in the presence of

Print Name: ANTHONY PAUL DEL AMO

Signature: _____

this 29th day of SEPTEMBER 2022

Signed Marilyn Aileen Coutanche, née Pirouet

Signature: _____

in the presence of

Print Name: ANTHONY PAUL DEL AMO

Signature: _____

this 29th day of SEPTEMBER 2022