

In the Royal Court of Jersey

Samedi Division

In the year two thousand and twenty-two, the thirteenth day of May.

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, DHRE Holdings Limited and CrossFit Valiant Limited in relation to Units 2 & 3 CTV House, La Pouquelaye, 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 Units 2 & 3, CTV House, La Pouquelaye, St. Helier, JE1 3ZD

JE2 3TP

Dated:

12th May

2022

The Chief Officer for the Environment (1)

DHRE Holdings Limited (2)

CrossFit Valiant Limited (3)

DATE

12th May

2022

PARTIES

- (1) **The Chief Officer for the Environment** of PO Box 228, St Helier, Jersey JE4 9SS ("the Chief Officer");
- (2) **DHRE Holdings Limited** a Jersey registered private company with registration number 78149 and registered address at German Underground Hospital, Les Charrieres Malorey, St Lawrence, JE3 1FU ("the Owner"); and
- (3) **CrossFit Valiant Limited** a Jersey registered private company with registration number 136961 and registered address at La Ville Corporate Services Limited, ~~Beachside Business Centre, Rue du Hocq, St Clement JE2 6LF~~ ("the Developer").

9 BOND STREET, ST HELIER, JE2 3NP

RECITALS

- 1 The Owner warrants that it is the owner in perpetuity (*à fin d'héritage*) of the Site as described in the First Schedule.
- 2 The Developer has an interest in the Site by virtue of a lease with the Owner dated 3 February 2022.
- 3 The Application (accorded reference P/2021/0230) for planning permission for the Development has been submitted for and on behalf of the Developer.
- 4 Pursuant to Article 9(5)(b) of the Law, the Chief Officer referred the Application to the Planning Committee for determination by that Committee.
- 5 Having regard to the purposes of the Law, the Island Plan 2011 (as amended) and all other material considerations the Planning Committee at its meeting on 3 February 2022 made a determination to approve the grant of planning permission for the Development, subject to the prior completion of this Agreement.
- 6 The Committee is composed of elected members of the States of Jersey.
- 7 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.
- 8 The Chief Officer is satisfied that in all of the circumstances the elected members of the Committee would have been cognisant of the impending approval of a new Island Plan as a factor such that, and subject to the prior completion of this Agreement, that a decision notice can be issued without reference back to the Committee.
- 9 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.

- 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 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 Class H - Fitness gym." and given the reference P/2021/0230
"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"		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
"Environment Minister"		the Minister for Environment of the States of Jersey which expression includes any person or body to whom the functions of Environment Minister and his successors may be transferred hereafter and any person to whom such functions are from time to time lawfully delegated;
"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 per cent above the base lending rate of the HSBC Bank Plc from time to time;
"Island Plan 2011"	the States of Jersey Island Plan, 2011 (as amended from time to time);
"Island Plan 2022-2025"	the States of Jersey Island Plan, 2022 (as amended from time to time);
"Law"	the Planning and Building (Jersey) Law 2002;
"Occupation, Occupy and Occupied"	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 produced by Axis Mason architects reference 4075 Revision P1 annexed to this Agreement as part of the First Schedule;
"Planning Permit"	the planning permission for the Development with reference: P/2021/0230, a copy of which is attached at the Second Schedule;
"Royal Court"	the Royal Court of the Island of Jersey;
"Site"	the property of the Owner currently known as Units 2 & 3, CTV House, La Pouquelaye, St Helier, JET 320 as shown for the purpose of identification only edged black on the Plan upon which the Development is to be carried out;
"Transport Contribution"	means the sum of seven thousand four hundred and fifty-two pounds (£7,452) to be paid by the Developer to the Treasurer of the States to be applied by the Minister for Infrastructure towards achieving safer routes for those walking or cycling in the vicinity of the Site;



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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 one gender include all 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 or the Environment Minister the successors to their respective 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:

- (i) the grant of the Planning Permit; and
- (ii) Commencement of the Development,

save for any relevant provision which 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 AND DEVELOPER COVENANTS

The Owner and Developer covenant and agree 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 Developer and any person claiming or deriving title through or under the Owner and or the Developer to the Site or any part or parts thereof.

6 CHIEF OFFICER'S COVENANTS

The Chief Officer covenants with the Owner and Developer 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 and or the Developer 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 at Planning and Building Services, La Motte Street, St Helier, Jersey or as otherwise notified for the purpose by notice in writing.
- 8.2 Any notices to the Owner and or the Developer 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 and or the Developer) 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 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 and or the

Developer 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 and or the Developer 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 and or the Developer as contained herein.
- 8.10 The Owner and the Developer 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 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.

10 CHANGE IN OWNERSHIP

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

11 INDEXATION

Any sum referred to in the Fourth 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 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**

The Owner (under its former name of Walter Property (Jersey) Limited) is the owner of all that immovable property known as Units 2 & 3, CTV House, La Pouquelaye, St Helier, ~~JE1 SZD~~, to which the Owner has right by hereditary purchase pursuant to a contract passed before the Royal Court of Jersey on 29 September 2000 from Comprop Limited.

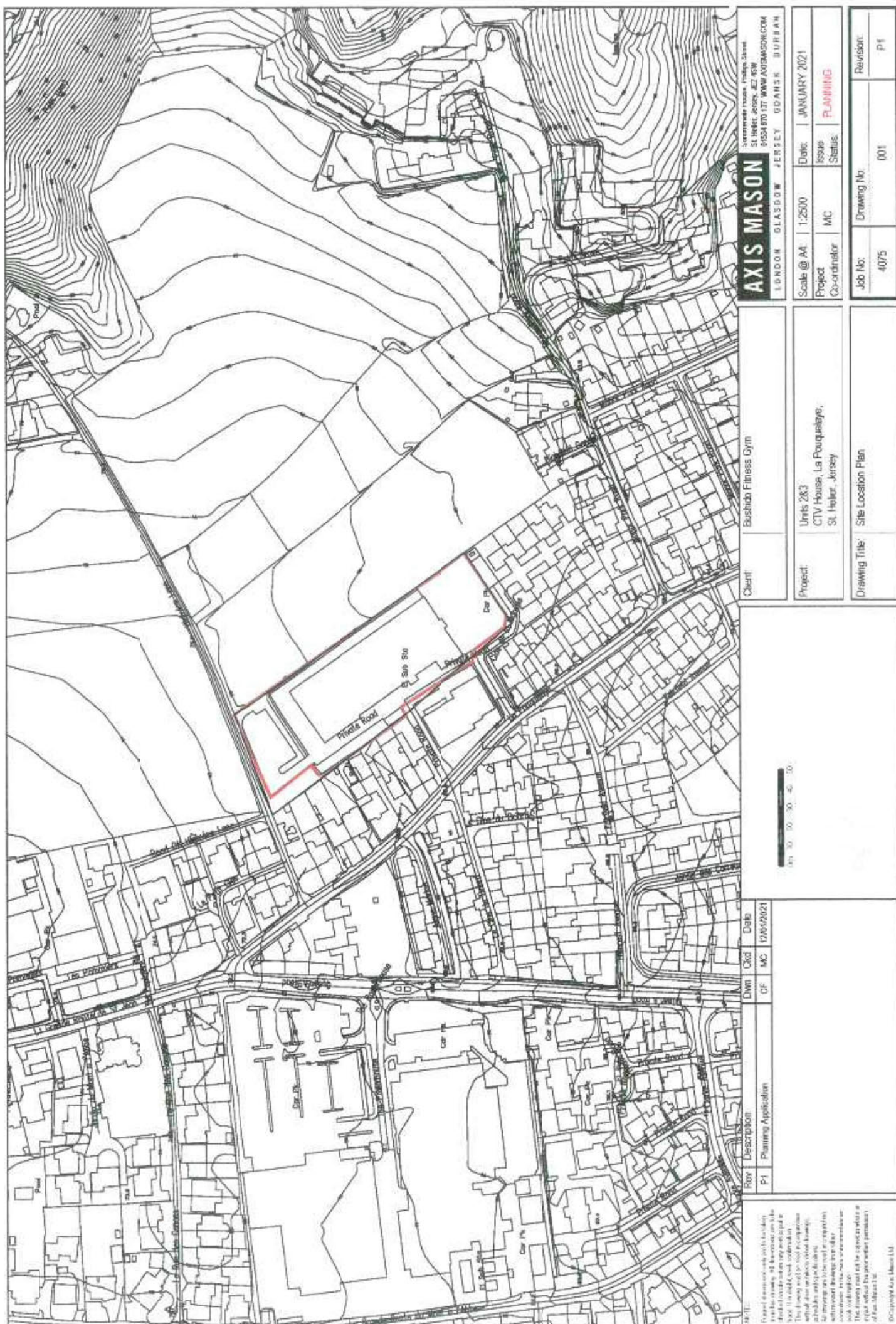
The Site is shown for the purpose of identification on the Plan.

JE2 3TP



SECOND SCHEDULE

The Plan



THIRD SCHEDULE

The Planning Permit

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2021/0230

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, subject to a

Planning Obligation Agreement

In respect of the following development:

Change of use from Class C - Office to Class H - Fitness gym.

To be carried out at:

CTV House, La Pouquelaye, St. Helier, JE1 3ZD.

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. The Committee were satisfied that the proposal will be a good use of an existing building located within the Built-up Area, and that any potential impacts on residents can be managed by appropriate restrictions, subject to conditions limiting the operation to this user only, noise and vibration attenuation measures being in place before commencement and a management agreement to cover behavioural matters and activities.

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

- 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.

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2021/0230

4. In the interests of promoting sustainable patterns of development, in accordance with Policies TT9 and SP6 of the Adopted Island Plan 2011 (Revised 2014).

FOR YOUR INFORMATION

The approved plans can be viewed on the Planning Register at

www.gov.je/planning

The following plans have been approved:

Operational Statement

1. 001 P1 Site Location Plan
2. 010 P1 Block Plan
3. 120 Rev P4 – Proposed Car/Cycle Park Plan
4. 100 P2 Existing and Proposed Ground Floor Plan
5. Management Plan – January 2022

DECISION DATE: **Currently undated**

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

FOURTH SCHEDULE

The Owner and Developer's Covenants with the Chief Officer

The Owner and Developer covenant, agree and undertake:

COMMENCEMENT

1 Not to Commence the Development until the Owner or the Developer has given to the Chief Officer seven (7) days' notice in writing of its intention so to do.

TRANSPORT CONTRIBUTION

2 To pay the Transport Contribution to the Treasurer of the States prior to the Commencement of any part of the Development.

3 Not to Commence the Development until such time as the Transport Contribution has been paid to the Treasurer of the States.

FIFTH SCHEDULE
Chief Officer's Covenants

- 1 The Chief Officer hereby covenants with the Owner and the Developer to use all sums received by the Treasurer of the States from the Developer 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 and the Developer that he will procure or arrange that the Treasurer of the States will pay to the Developer such amount of any payment made by the Developer to the Treasurer of the States under this Agreement which has not been expended in accordance with the provisions of this Agreement within 5 years of the date of receipt by the Treasurer of the States of such payment.
- 3 The Chief Officer covenants with the Owner and the Developer to use reasonable endeavours to issue the Planning Permit as soon as practically possible after this Agreement is recorded as registered in the Royal Court as evidence by an Act of the said Court.

Signed on behalf of

by

(Peter Le Grosley)

in the presence of

E STABLES

this 12th day of May 2022

Signed

by

in the presence of

NICK TROWER

this 26 day of APRIL 2022

Signed on behalf of the Developer

by ANDREW WHELAN

in the presence of

STEPHEN O'BRIEN

this 25 day of APRIL 2022