

In the Royal Court of Jersey

Samedi Division

In the year two thousand and thirteen, the eighteenth day of December.

Before the Judicial Greffier.

Upon the application of Her Majesty's Attorney General, IT IS ORDERED that the Planning Obligation Agreement between The Minister for Planning and Environment and the Jersey Society for Prevention of Cruelty to Animals in relation to 89 St Saviour's Road, St Helier, be registered in the Public Registry of this Island.

[REDACTED]
Greffier Substitute

LOD

Reg. Pub.

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

relating to the development of 89, St Saviour's
Road, St Helier, JE2 4GJ

Dated: 18th DECEMBER

2013

The Minister for Planning and Environment (1)

Jersey Society for Prevention of Cruelty to Animals (2)

DATE 18th DECEMBER

2013

PARTIES

- (1) The Minister for Planning and Environment of South Hill St Helier Jersey JE2 4US ("the Minister")
- (2) Jersey Society for Prevention of Cruelty to Animals, 89 St. Saviours Road St. Helier, JE2 4GJ ("the Owner")

RECITALS

- 1 The Minister is the Minister of the States charged with the administration of the Law by whom the obligations in this Agreement are enforceable in accordance with the provisions of the Law
- 2 The Owner warrants that it is the owner of the Site to which it has right in perpetuity (à fin d'héritage) by virtue of a contract from the Jersey Animals Shelter passed before the Royal Court on 21st April 1937
- 3 The Owner submitted the Application to the Minister
- 4 Having regard to the purposes of the Law the Island Plan 2011 and all other material considerations the Minister considers it expedient in the interests of proper planning that provision should be made for the effective delivery of an alternative site for the relocation of the existing accommodation for the canine species in the manner hereinafter appearing without which the Minister would not be so minded to grant
- 5 The parties have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement
- 6 The Owner acknowledges that this Agreement is legally binding

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

OPERATIVE PART**1 DEFINITIONS**

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

"Application"	the application for planning permission dated 31 st May 2013 submitted to the Minister for the Development and allocated reference number P/2013/0762.
"Commencement of Development"	the date on which any use or operation forming part of the Development begins to be carried out including for the avoidance of any doubt operations

consisting of site clearance, demolition work, tree removal, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the words "Commence" and "Commenced" shall be construed accordingly.

"Development"	the Development of the Site to demolish existing kennels, exercise area, stores and ancillary parking. Construct 12 No. 3 bed dwellings with private gardens, parking and landscaping.
"Law"	the Planning and Building (Jersey) Law 2002.
"Plan"	the plan attached to this Agreement as the First Schedule.
"Planning Permit"	the planning permission subject to conditions to be granted by the Minister pursuant to the Application as set out in the Second Schedule.
"Site"	the land against which this Agreement may be enforced as shown on the Site Plan in the First 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 interchangeable 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

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 Minister against the Owner.

4 CONDITIONALITY

This Agreement shall come into effect immediately upon the date upon which it has been recorded as registered in the Royal Court as evidenced by an Act of the said Court and the Planning Permit has been issued to the Owner.

5 THE OWNER'S COVENANTS

The Owner covenants and agrees with the Minister as set out in the Third Schedule to the intent 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 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.

7 MISCELLANEOUS

7.1 All communications and notices served or made under this Agreement shall be in writing.

7.2 Any notices on the Owner shall be deemed to have been properly served if sent by ordinary post to and addressed to either party at the address given in this Agreement or such other address in the Island of Jersey as otherwise notified to the Minister by the Owner 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, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

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 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 Ministers' 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 (whether in its public or private capacity) or the Parish of St Helier (whether in its public or private 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 Minister as a result of the Minister agreeing to accept the covenants agreements and undertakings on the part of the Owner as contained herein.
- 7.10 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 or oblige the Public to accept or take a transfer of land.
- 7.11 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 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 for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The Owner agrees with the Minister to give the Minister immediate written notice of any change in ownership of any of its interests 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 or unit of occupation purchased by reference to a plan.

10 JURISDICTION

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

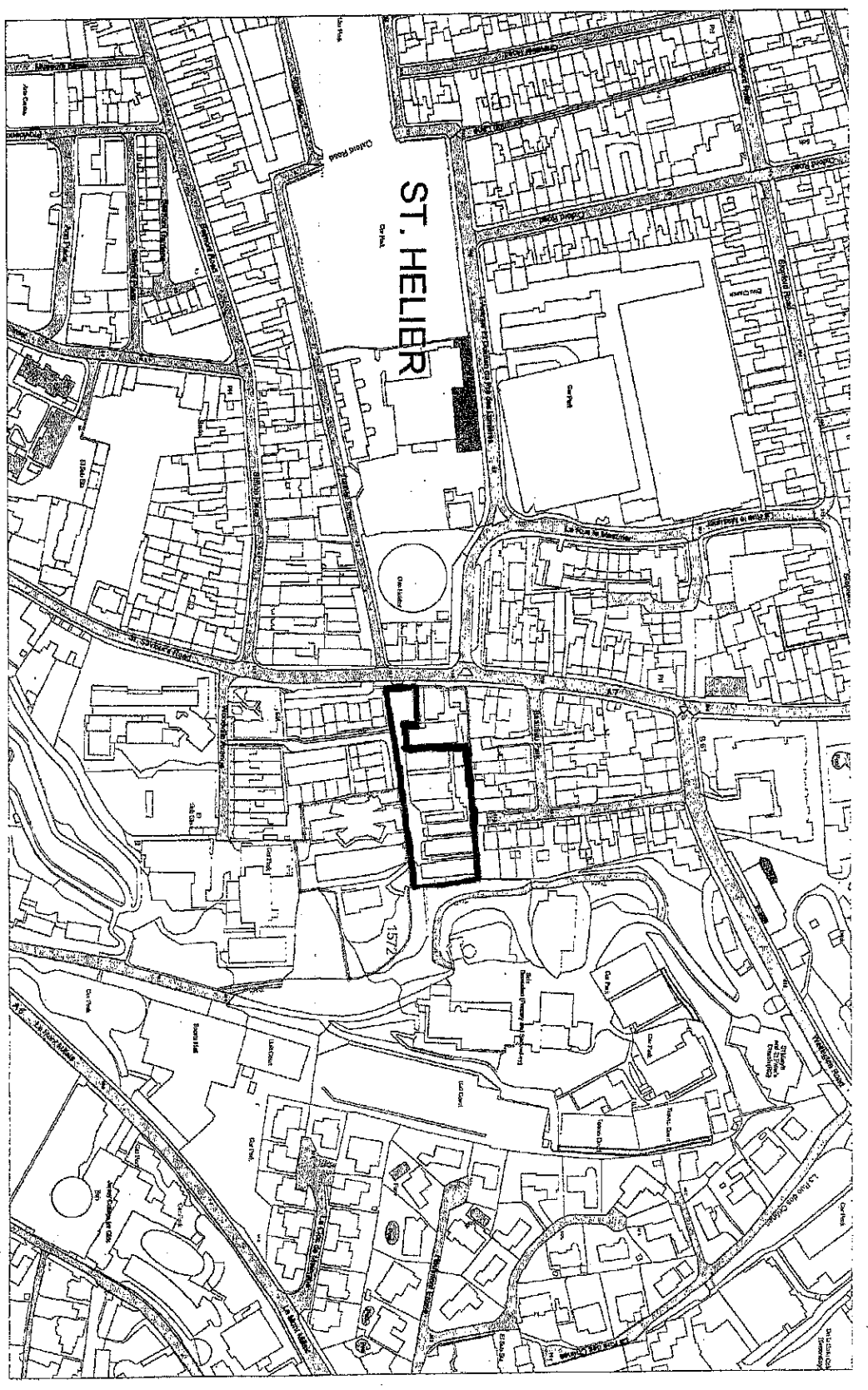
FIRST SCHEDULE

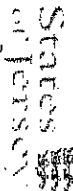
Site Plan

04 March 2013

LOCATION PLAN

SCALE 1: 2500





 STATES OF JERSEY

 Copyright Planning & Environment Department

SECOND SCHEDULE
The Planning Permit

**Department of the Environment
Planning & Building Services**
South Hill
St Helier, Jersey, JE2 4US
Tel: +44 (0) 1534 445508
Fax: +44 (0) 1534 445528

James Naish Architect
The Studio
Route de Plemont
Clos Du Mur
St. Ouen
JE3 2BD

Planning Application Number P/2013/0762

Dear Sir/Madam

Application Address:	89, St. Saviours Road, St. Helier, JE2 4GJ.
Description of Work:	Demolish existing kennels, exercise area stores and ancillary parking. Construct 12 No. 3 bed dwellings with private gardens, parking and landscaping. (3D Model Available).

Please find enclosed notice of The Minister for Planning & Environment's decision regarding the above application.

Please note that the Conditions imposed on the Notice are important and should be strictly adhered to and any subsequent changes to the development which may affect the requirements of the Conditions should be notified to the Minister for Planning and Environment as soon as possible.

Failure to comply with the attached Conditions may result in the Minister for Planning and Environment instigating Enforcement Action.

Yours faithfully

Derek Smyth MSc BA(Hons) MRTPI
Senior Planner
Planning & Building Services
Department of the Environment
direct dial: +44 (0) 1534 448475
fax: +44 (0) 1534 445528
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Encl.

PI_2010

**Department of the Environment
Planning and Building Services**

South Hill
St Helier, Jersey, JE2 4US
Tel: +44 (0)1534 445508
Fax: +44 (0)1534 445528

Planning Application Number P/2013/0762

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

IMPORTANT NOTICE

This notice gives permission under Article 19 of the Planning and Building (Jersey) Law 2002, as amended. In accordance with Article 24(i) of the Law the grant of this permission enures (except insofar as the permission otherwise provides) 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.

The development stated below may also require Building consent under Article 34, for which a separate application will need to be made. If you are in any doubt as to whether building permission is required please telephone the Building Applications Team on 448407 who will be pleased to help.

The Minister for Planning & Environment, having considered your application hereby GRANTS PERMISSION TO DEVELOP LAND¹ under Article 19 of the Planning and Building (Jersey) Law 2002.

Demolish existing kennels, exercise area stores and ancillary parking.
Construct 12 No. 3 bed dwellings with private gardens, parking and landscaping. (3D Model Available).

To be carried out at:

89, St. Saviours Road, St. Helier, JE2 4GJ.

PLEASE NOTE

This decision is purely permissive and in no way absolves 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 an applicant from the need to obtain the permission of the owner of the land to which a permission relates.

REASON FOR APPROVAL: The proposed development is considered to be acceptable having due regard all of the material considerations raised.

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In particular, the development has been assessed against Policy H6 of the 2011 Island Plan, in which residential development in the built-up area are assessed. In this case, the proposed 12 new dwellings are regarded as acceptable because it would provide good quality residential accommodation within the town centre of St. Helier.

The representations raised to the scheme on the grounds of loss of privacy, overlooking, increase in traffic, concern for relocation of dogs have been assessed. The proposed new dwellings are located a sufficient distance in planning terms (approximately 20 metres) from the adjoining properties on Beaulieu Park to the north together with the properties on Woodville Avenue to the south to avoid any unreasonable overlooking/overshadowing.

In addition, the proposed parking for the new units has been reduced from 25 to 18 and an acceptable car parking management plan has been submitted as part of the application to demonstrate that parking would operate effectively.

Therefore, it is considered that the proposal accords with the terms of Policy GD1 of the 2011 Island Plan, in that it does not have an unreasonable impact on neighbouring uses.

Informative Note: This decision is subject to a Planning Obligation Agreement as registered with the Royal Court on ?

Subject to compliance with the following conditions and approved plan(s):

Standard Condition

- A. If the development hereby permitted has not commenced within five years of the decision date, this permission shall cease to be valid.

Reason: The Minister for Planning & Environment reserves the right to reconsider this proposal consequent on any future change of circumstances or policy.

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Condition(s):

1. The development hereby approved shall be carried out entirely in accordance with the plans and documents permitted under this permit. No variations shall be made without the prior written approval of the Minister for Planning and Environment.
2. Notwithstanding the indications on the approved plans, prior to the commencement of the development hereby permitted, full details of all external materials to be used to construct the development shall be submitted to and approved by the Minister for Planning and Environment.
3. Before any development first commences on site a landscaping scheme shall be submitted to and approved in writing by the Minister for Planning and Environment. The approved scheme shall be undertaken within the first available planting season and any trees or shrubs which die, are removed or become seriously diseased within a period of five years from the date the planting first takes place, shall be replaced in the next planting season with others of a similar size and species. The Landscape Architect must give written confirmation to the Minister for Planning and Environment that they are satisfied that the works are completed in accordance with the approved plans and the quality of the materials and workmanship is of the highest order.
4. In conjunction with Condition 3 above, a Landscape Management Plan including long term objectives, management responsibilities and maintenance schedules for all the landscaped areas shall be submitted to and approved in writing by the Minister for Planning and Environment prior to the first occupation of any part of the development.
5. No development shall take place until a scheme of foul drainage and surface water drainage has been submitted to and approved in writing by the Minister for Planning and Environment. The approved scheme shall be implemented in full before the development is first brought into use and shall be retained and maintained as such.
6. Prior to the commencement of development, a Demolition and Construction Environmental Management Plan shall be submitted to and approved in writing by the Minister for Planning and Environment. The

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Demolition and Construction Environmental Management Plan shall thereafter be implemented in full until completion of the development and any variations agreed in writing by the Minister for Planning and Environment prior to such work commencing. The Plan shall secure an implementation programme of mitigation measures to minimise the adverse effects of the proposal and shall include:

- (i) A demonstration of compliance with best practice in relation to noise and vibration control and control of dust and emissions;
- (ii) Details of a publicised complaints procedure, including office hours and out of hours contact numbers;
- (iii) Specified hours of working to be restricted to 0800-1800 Monday to Friday and 0800-1300 hours Saturdays with no working on Sundays or Public Holidays;
- (iv) Details of any proposed crushing/sorting of waste material on site ;
- (v) Parking of vehicles of site personnel, operatives and visitors;
- (vi) Loading and unloading of plant and materials, and
- (vii) Storage of plant and materials used in demolishing and then constructing the development.

7. The parking spaces and garage shown on the approved plans shall be permanently kept available for the parking of vehicles by the occupiers of the dwellings and all manoeuvring space and accesses to parking, unloading and garage space must be kept available for that use and for no other purpose.

8. Prior to the commencement of the development, full details of the permeable paving materials shall be submitted to and approved in writing by the Minister for Planning and Environment. The agreed permeable paving shall apply to all hard-surfaced areas on site and shall be fully implemented prior to the first use of the development and retained and maintained as such.

9. Before any development first commences on site, details of the precise location on site of a Separated Recycling Point together with the the facilities to be provided therein and maintenance arrangements, shall be submitted to and approved in writing by the Minister for Planning and Environment. The approved scheme shall be undertaken before the first occupation of any dwelling on site and shall thereafter be retained and maintained as such.

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10. Before any development first commences on site, precise details of the proposed refuse bin store shall be submitted to and approved in writing by the Minister for Planning and Environment. The scheme, which shall previously have been agreed with the Parish of St. Helier shall be implemented prior to the first use of the development and shall thereafter be retained and maintained as such.

11. Prior to the commencement of the development, a noise survey to assess the level of noise from the proposed air pumps shall be submitted to the Minister for Planning and Environment. The air pumps shall be installed in accordance with the agreed details prior to commencement of development.

Reason(s):

1. To ensure that the development is carried out and completed in accordance with the details approved by the Minister for Planning and Environment and to comply with Policy GD1 of the Adopted Island Plan 2011.
2. To safeguard the visual amenities of the area , in accordance with Policy GD 7 of the Island Plan, 2011.
3. To safeguard the character and appearance of the area in accordance with the requirements of Policy GD 1, NE 1, NE 2 and NE 4 of the Adopted Island Plan 2011.
4. To ensure a satisfactory form of development and continuing standard of amenities are provided and maintained in accordance with the requirements of Policies GD 1 and NE 4 of the Adopted Island Plan 2011.
5. To ensure satisfactory drainage arrangements and to avoid flooding in accordance with the requirements of Policies GD 1, LWM 2 and LWM 3 of the Adopted Island Plan 2011.
6. To ensure that th edevelopment does not have an unreasonable impact on public health or the wider environmental and to accord with Policies GD1 and H6 of the Adopted Island Plan 2011.

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7. To ensure the provision of adequate off-street parking accommodation to avoid congestion of adjoining streets by parked vehicles in accordance with the requirements of Policy GD 1 of the Adopted Island Plan 2011.
8. To ensure satisfactory drainage arrangements and to avoid flooding in accordance with the requirements of Policy LWM 3 of the Adopted Island Plan 2011.
9. So as to accord with the requirements of Policy WM1 of the Adopted Island Plan 2011.
10. To ensure satisfactory bin store arrangements in accordance with the requirements of Policy GD1 of the Adopted Island Plan 2011.
11. To protect the amenities of the area and to comply with Policy GD1 of the Adopted Island Plan 2011.

FOR YOUR INFORMATION:

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
Proposed Design Statement
Proposed Site Layout 003 E
Proposed Plans, Sections and Elevations 004 D
Proposed Elevations 005 D
Proposed Perspective Views 006 D
Proposed Site Cross-Sections 007 C
Proposed Site Plan 008 B
Proposed Town Model Views 009 A

If written representations were made on this application this permission shall not have effect for a period of 28 days from the date of this notice, in order to allow for the lodging of any 'third party' appeal against the decision under Article 114 of the Law of the Planning and Building (Jersey) Law 2002.

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If during this period a person appeals in accordance with Article 114 of the Law, the decision shall not have effect until either the appeal is withdrawn or is determined. When any such appeal is determined the decision shall have effect, if at all, in accordance with that determination.

Signed for Director




THIRD SCHEDULE

The Owner's Covenants with the Minister

1. The Owner covenants and agrees and undertakes not to Commence the Development until:
 - a. an alternative site for the relocation of accommodation for canine species has been identified;
 - b. the alternative site described in 1 a. immediately above, has necessary planning permission, if so required, and has been licensed pursuant to Article 18 of the Animal Welfare (Jersey) Law 2004 to accommodate a minimum of 57 canines;
 - c. the alternative site is fit for purpose as accommodation for the canine species and the Owner has given notice in writing to the Minister of the same; and
 - d. the Owner has given to the Minister twenty-eight (28) days' notice in writing of its intention so to Commence the Development.

SIGNED on behalf of the **JERSEY SOCIETY FOR THE PROTECTION OF CRUELTY TO ANIMALS**

By  *Chief Executive*

Signature 

In the presence of **HIREN B MISTRY**
Barrister Senior Associate
BoisBois
P O Box 429
4 Bond Street
St Helier
Jersey
JE4 5QR
Channel Islands

Signature 
this Eleventh day of December 2013

SIGNED on behalf of the **MINISTER FOR PLANNING AND ENVIRONMENT**

By *PETER LE GRESLEY*

Signature 

In the presence of *JOHN NICHOLSON*

Signature 
this 16th day of December 2013