

# *In the Royal Court of Jersey*

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**Samedi Division**

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**In the year two thousand and eighteen, the twenty-third day of April.**

Before the Judicial Greffier.

Upon the application of Her Majesty's Attorney General, IT IS ORDERED that the Planning Obligation Agreement between (i) The Chief Officer for the Environment, (ii) LV Charrieres Limited and (iii) RS Fund II, LP (3) in relation to Les Charrieres Hotel, Les Charrieres, St Peter, 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  
relating to the development of Les Charrieres  
Hotel, Les Charrieres, St Peter, Jersey JE3  
7ZQ**

Dated *20 April* 2018

The Chief Officer for the Environment (1)

LV Charrieres Limited (2)

RS Fund II, LP (3)

**DATE**

2018

**PARTIES**

- (1) The Chief Officer for the Environment of States Offices, South Hill, St Helier, Jersey JE2 4US ("**the Chief Officer**");
- (2) LV Charrieres Limited of 24 Beresford Street, St Helier, Jersey JE2 4WN ("**the Owner**"); and
- (3) RS Fund II, LP ("**the Hypothecator**") a limited partnership without separate legal personality registered in Jersey acting by its general partner RS Fund II GP Limited, a company incorporated in Jersey of 11-15 Seaton Place, St Helier, Jersey JE4 0QH

**RECITALS:**

- A. 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 of purchase from Les Charrieres Hotel Limited passed before the Royal Court on 24 February 2017.
- B. The Hypothecator has an interest in the Site by virtue a judicial hypothec (hypothèque judiciaire) registered in the Public Registry of Jersey on 24 February 2017.
- C. The Owner submitted the Application to the Chief Officer who pursuant to Article 9(5)(b) of the Law referred the Application to the Planning Committee for determination by that Committee.
- D. Having regard to the purposes of the Law, the Island Plan 2011 and all other material considerations the Planning Committee at its meeting on 21 December 2017 resolved to approve the grant of planning permission with respect to the Application subject to the prior completion of this Agreement as it considers it expedient in the interests of proper planning that provision should be made for securing improvements to road resurfacing and road re-widening of La Rue des Charrieres and to comply with the provision of the Travel Plan which will be necessitated as a result of the Development in the manner hereinafter appearing.
- E. The parties have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement.
- F. The Owner acknowledges that this Agreement is legally binding.

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**NOW 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 submitted to the Chief Officer for planning permission in respect of the Site and described as "Demolish all site structures. Construct 1 No. 50 unit residential care home with associated parking and landscaping. Alter various vehicular accesses and widen roads surrounding the site" and allocated reference number P/2017/0993;
"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 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 as set out in the Application;
"Force Majeure"	means fire, flood or other exceptionally adverse weather conditions, malicious damage, terrorist action, a state of emergency declared by the Lieutenant-Governor, or other unforeseen exceptional event, cause or circumstance outside the reasonable control of the Owner, its contractors or agents, and which adversely affects its ability to perform any obligation relating to any works provided for in this Agreement <b>PROVIDED THAT</b> the same could not reasonably have been avoided or provided against by the Owner its contractors or agents, is not due to the

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	negligence or default of the relevant party and is mitigated against to reduce any delay so far as reasonably practicable;
"Island Plan 2011"	The States of Jersey Island Plan, 2011 (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 demolition, site clearance, construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;
"Plan"	the plan attached to this Agreement as the First Schedule;
"Planning Committee"	the body exercising functions conferred under Article 9A of the Law;
"Planning Permit"	the planning permission subject to conditions to be granted pursuant to the Application, a copy of which is set out in the Second Schedule a copy of which is attached at the Second Schedule and references to the Planning Permit include where the context permits any variations to the said planning permission from time to time;
"Road Resurfacing and Widening Works"	means the formation creation and works to a specification to be agreed with the Parish of St Peter, which are necessary for the provision of the road resurfacing and widening of La Rue des Charrieres to the junction with La Route des Hetres being the area marked in yellow on the Plan being part of the First Schedule and the widening of the roads around the site boundary to a minimum width of 5 metres being along the boundary and marked in blue on the Plan being part of the First Schedule;
"Royal Court"	the Royal Court of the Island of Jersey;
"Site"	means Les Charrieres Hotel, Les Charrieres, St Peter, Jersey JE3 7ZQ marked in red on the Plan being part of the First Schedule;
"Travel Plan"	the Plan prepared by Peter Brett Associates LLP on behalf of the Owner and dated 30 October 2017;
"Travel Plan Measures"	those measures set out under sections 5, 6, 7 and 8 of the Travel Plan;

## **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 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. CONDITIONALLY**

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.

#### **5. THE OWNER'S COVENANTS**

The Owner covenants and agrees with the Chief Officer 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 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 South Hill St Helier Jersey JE2 4US or as otherwise notified for the purpose by notice 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 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 under Article 10 of the Law) 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 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.
- 7.8 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.
- 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 for acting upon any subsequent breach or default.

**9. CHANGE IN OWNERSHIP**

The Owner agrees with the Chief Officer to give the Chief Officer 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. 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.

**11. GOODS AND SERVICES TAX**

- 11.1 All *cause* given in accordance with the terms of this Agreement shall be exclusive of any GST properly payable in respect thereof.
- 11.2 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.

**12. HYPOTHECATORS CONSENT**

The Hypothecator 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 Hypothecator over the Site shall take effect subject to this Agreement PROVIDED THAT the Hypothecator shall otherwise have no liability under this Agreement unless it takes title to the Site in which case it too will be bound by the obligations as a person deriving title from the Owner.

**13. FORCE MAJEURE**

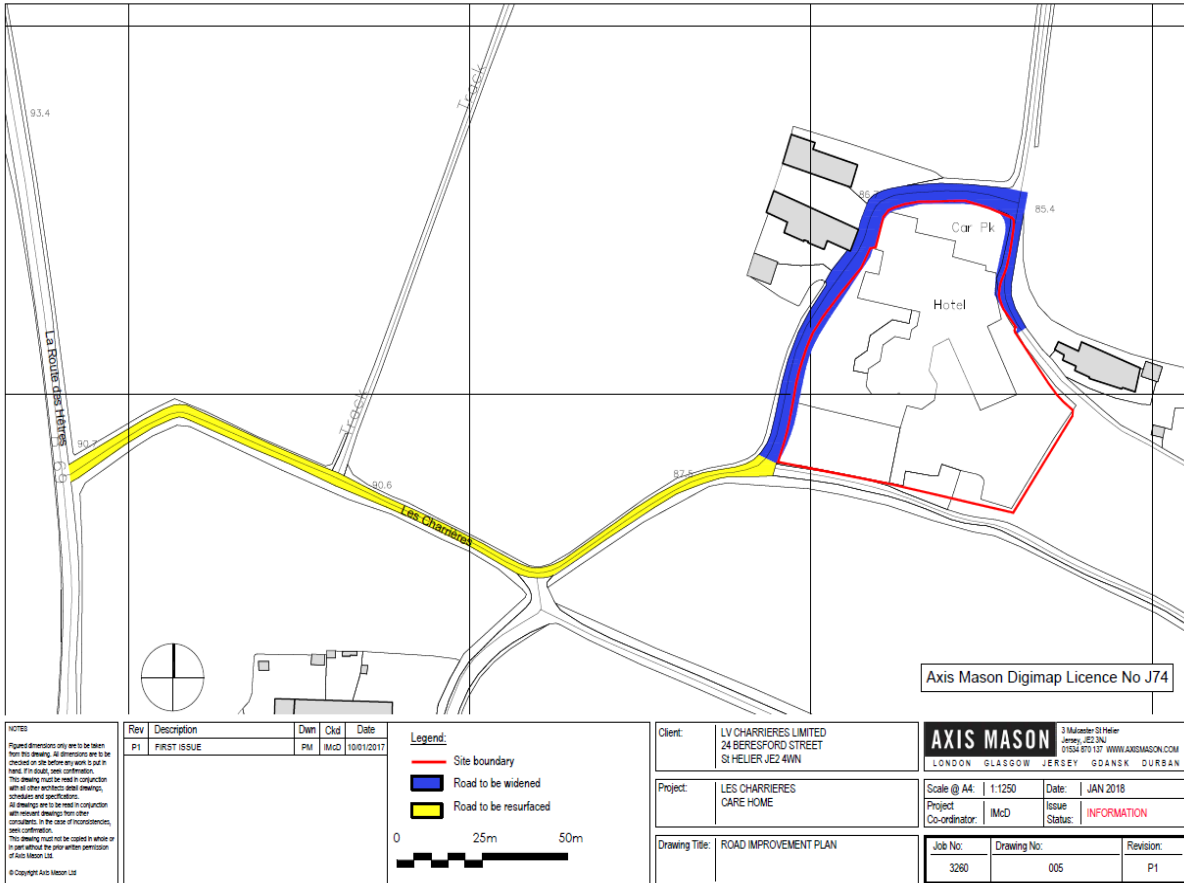
Notwithstanding any other provision of this Agreement, a party shall not be liable for any failure or delay in performing any of its obligations under or pursuant to this Agreement, and any such failure or delay in performing its obligations will not constitute a breach of this Agreement, if such failure or delay is due to Force Majeure.

**14. JURISDICTION**

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

**FIRST SCHEDULE**

**Site Plan**



Axis Mason Digimap Licence No J74

**NOTES**  
 Figures/dimensions only are to be taken from this drawing. All dimensions are to be checked on site before any work is put in hand. If in doubt, seek confirmation.  
 This drawing must be read in conjunction with all other technical related drawings, schedules and specifications.  
 All drawings are to be read in conjunction with relevant drawings from other consultants. In the case of inconsistencies, seek confirmation.  
 This drawing must not be copied in whole or in part without the prior written permission of Axis Mason Ltd.  
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Rev	Description	Dwn	Ckd	Date
P1	FIRST ISSUE	PM	IMcD	10/01/2017

**Legend:**

- Site boundary
- Road to be widened
- Road to be resurfaced

0      25m      50m

<b>Client:</b>	LV CHARRIERES LIMITED 24 BERESFORD STREET ST HELIER JE2 4WN
<b>Project:</b>	LES CHARRIERES CARE HOME
<b>Drawing Title:</b>	ROAD IMPROVEMENT PLAN

		3 Milewater St Helier Jersey, JE2 3JN 01534 870137 WWW.AXISMASON.COM		
		LONDON	GLASGOW	JERSEY
<b>Scale @ A4:</b>	1:1250	<b>Date:</b>	JAN 2018	
<b>Project Co-ordinator:</b>	IMcD	<b>Issue Status:</b>	INFORMATION	
<b>Job No:</b>	3260	<b>Drawing No:</b>	005	
		<b>Revision:</b>	P1	

**SECOND SCHEDULE**

**The Planning Permit**

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



**DRAFT**  
**Decision Notice**  
**Subject to POA**

**PLANNING AND BUILDING (JERSEY) LAW 2002**

**In accordance with Article 19(8) of the Planning and Building 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:**

Demolish all site structures. Construct 1 No. 50 unit residential care home with associated parking and landscaping. Alter various vehicular accesses and widen roads surrounding the site. 3D MODEL AVAILABLE.

**To be carried out at:**

Les Charrieres Hotel, Les Charrieres, St. Peter, JE3 7ZQ.

**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.

Redevelopment of this existing employment site is in principle acceptable as an exception to the presumption against development in the Green Zone, as set out in paragraph 10 of policy NE7. It is considered that the development will provide an attractive improvement to both the buildings and the landscape, without any unreasonable impact on adjoining properties, whilst also providing for the widening of the roads around the site. It is not considered that the level of traffic generated by the development is unreasonable, and indeed is likely to be less than that generated by the existing hotel use. The application is therefore considered to be well designed and in compliance with Green Zone policy NE7.

# Decision Notice

## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2017/0993

**INFORMATIVE:** The applicants attention is drawn to the recommendations of the Environmental Health Department dated 7 August and viewable on the Planning Register with regard to Asbestos, Dust Control, Kitchen Fittings, Extraction systems, Noise Control for Construction Sites, Statutory Nuisance and Construction Environmental Management.

**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.
- 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.

**Additional Conditions:**

1. No part of the development hereby approved shall be occupied until the widening of the existing roads around the site, shown on the approved plans, has been undertaken and completed.
2. No part of the development hereby approved shall be occupied until all hard and soft landscape works as indicated on the approved plan have been carried out in full. Following completion, the landscaping areas shall be thereafter retained as such.
3. Prior to commencement of the development hereby approved, an Ecological Assessment of the site must be submitted to and approved in writing by the Department of the Environment. The Ecological Assessment shall be undertaken by a suitably qualified person and to a methodology to be first agreed in writing by the Department of the Environment. All mitigation measures shall be carried out in full and in accordance with the recommendations of the Ecological Assessment.
4. Prior to commencement of the development hereby approved, a scheme of external lighting shall be submitted to and approved in writing by the Department of the Environment.
5. No part of the development hereby approved shall be occupied until suitable foul and surface water drainage has been provided in accordance with details to be agreed in advance by the Department of the Environment.

**CAUTION**

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.

APPROVED

# Decision Notice

## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2017/0993

### Reasons:

1. In the interests of highway safety, in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
2. 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 in accordance with Policies GD1, GD7 and NE7 of the Adopted Island Plan 2011 (Revised 2014).
3. To ensure the protection of all protected species in accordance with Policies NE1, NE2 and NE4 of the Adopted Island Plan 2011 (Revised 2014).
4. To safeguard the character and appearance of the area in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
5. To ensure the provision of satisfactory drainage in accordance with policies GD1 and LWM3 of the Adopted Island Plan 2011 (Revised 2014).

### FOR YOUR INFORMATION

#### <sup>1</sup> CAUTION

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 is made.

APPROVED

# Decision Notice

## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2017/0993

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

The following plans have been approved:

Location Plan  
Waste Management Plan  
Ecological Bat Survey  
Public Art Statement  
Proposed Site Plan 050-P5  
Proposed Lower Ground Floor Plan 100-P5  
Proposed Upper Ground Floor Plan 101-P5  
Proposed First Floor Plan 102-P5  
Proposed Roof Plan 103-P5  
Proposed North and South Elevations 300-P6  
Proposed East and West Elevations 301-P5  
Proposed Context North Site Elevations 200-P5  
Proposed Context South Site Elevations 201-P4  
Proposed Context West Site Elevations 202-P3  
Proposed Context East Site Elevations 203-P4  
Proposed Sectional Elevations 302-P6  
Proposed Facade Details 400-P4  
Proposed Landscape Plan 900-P5

DECISION DATE:

**The development may also require building permission, 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.**

APPROVED

### CAUTION

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 is granted.



### THIRD SCHEDULE

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

The Owner covenants and agrees and undertakes:

1. not to Commence the Development until the Owner has given to the Chief Officer seven (7) days' notice in writing of its intention so to do;
2. to commission the Road Resurfacing and Widening Works prior to the Commencement of the Development at the Owner's sole cost and for the avoidance of doubt there shall be no cost for such works to the Parish of St Peter Roads Committee;
3. not to Occupy or cause or permit to be Occupied the Development until such time as the Road Resurfacing and Widening Works have been completed to the reasonable satisfaction of Parish of St Peter Roads Committee;
4. to undertake to ensure compliance and use the Site in accordance with the provisions of the Travel Plan;
5. that on completion of the Road Resurfacing and Widening Works to notify the Parish of St Peter Roads Committee that the Owner considers that the Road Resurfacing and Widening Works are ready and complete for transfer to the Parish of St Peter;
6. to arrange to cede that part of the site to the Parish of St Peter adjacent to Les Charrieres necessary to permit the widening of the Parish road to 5 metres along the site boundary adjacent to Les Charrieres free of all charges and encumbrances by contract to be passed before the Royal Court the Owner paying the proper and reasonable costs of and incidental to the said transfer (including all and any reasonable legal and professional costs). The road to be widened is coloured blue for identification on the Plan set out in the First Schedule; and
7. the Site shall be used as a home for providing care and/or treatment to persons residing at the premises. The Site shall not be used for treating non-residents, (other than the treatment of residents of another care home operated by the owner on a very infrequent basis of an average of no more than 1 person per month), nor shall it be occupied by persons who are not receiving treatment and/or care on the premises. Those persons residing at the Site shall therefore be in need of personal care by reason of old age, disablement or illness.

Signed on behalf of the Chief Officer

by .....

[Redacted Signature]

(PETER LE GRESLEY)

in the presence of

[Redacted Signature]

(ANDREW TOWNSEND)

this 20<sup>th</sup> day of April 2018

Signed on behalf of LY Charrieres Limited

by .....

[Redacted Signature]

[Redacted Signature]

in the presence of . THOMAS LEADER .

this day of 2018

Signed on behalf of RS Fund II, LP  
acting by its general partner,  
RS Fund II GP

.....

[Redacted Signature]

in the presence of . THOMAS LEADER .

[Redacted Signature]

this day of 2018