

Planning Obligation Agreement

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

relating to the development of A C Gallie Ltd, Longueville Road, St. Saviour, JE2 7WF

Dated

7th January

2018

The Chief Officer for the Environment (1)

Physique Transformations Limited (2)

Brian Keith Barette (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) Physique Transformations Limited (Jersey company number 121718) whose registered office is at 3 Le Bel Horizon, Rue De Cotils, Grouville, Jersey, JE3 9AP ("**the Developer**")
- (3) Brian Keith Barette of La Maison du Mont, La Rue de la Blanche Pierre, St Lawrence, Jersey, JE3 1EX ("**the Owner**")

RECITALS

- 1 The Owner warrants that he is the owner in perpetuity (à fin d'héritage) of the Site being (a) the remainder of the site of the former property known as "Swiss Villa" (long since demolished) and dependent lands which he purchased from Marjorie Mary Shepherd, Mary Bernadette O'Malley, Mary Martha Farrell and Barbara Hughes by contract dated 6 April, 1979; and (b) the remainder of a certain piece of land (with the buildings originally erected thereon and long since demolished) which he purchased from Royston Philip Jeandron by contract dated 17 August, 1979.
- 2 The Developer submitted an application (accorded the reference P/2018/1125) for planning permission for the Development.
- 3 The Developer intends to enter into a 9 year lease with the Owner to be signed once planning permission is granted.
- 4 Having regard to the purposes of the Law the Island Plan 2011 and all other material considerations the Chief Officer is minded to approve the grant of planning permission for the Development subject to the prior completion of this Agreement.
- 5 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 6 The parties acknowledge that this Agreement is legally binding.
- 7 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 "Convert existing store and office into wellness centre." and given the reference P/2018/1125;
"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;
"Cycleway Contribution"	the sum of nine thousand seven hundred and seventy-four pounds (£9,774.00) to be paid by the Owners to the Treasurer of the States to be applied by the Minister for Infrastructure for the purposes of the Eastern Cycle Network as required by Policy TT3 of the Island Plan;
"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;
"Interest"	interest at three per cent above the base lending rate of HSBC Bank Plc from time to time.
"Island Plan 2011"	the States of Jersey Island Plan, 2011 (as amended from time to time);
"Law"	the Planning and Building (Jersey) Law 2002;

<p>"Occupation", "Occupy" and "Occupied"</p>	<p>means occupation for the purposes permitted by the Planning Permit but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;</p>
<p>"Planning Permit"</p>	<p>the planning permission for the Development granted by the Chief Officer pursuant to the Application, 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;</p>
<p>"Royal Court"</p>	<p>the Royal Court of the Island of Jersey;</p>
<p>"Site"</p>	<p>the A C Gallie Ltd warehouse, Longueville Road, St. Saviour, JE2 7WF, as shown for the purpose of identification edged in red on the plan forming the First Schedule;</p>

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 and the Developer 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 AND DEVELOPER COVENANTS

The Owner and Developer covenant and agree with the Chief Officer as set out in the Third Schedule so that this Agreement shall be enforceable without limit of time against the Owner and 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 COVENANTS

The Chief Officer covenants with the Owner and the Developer as set out in the Fourth 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 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.
- 8.2 Any notices on 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 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 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 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 as contained herein.
- 8.10 Neither the Owner nor the Developer shall 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 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.

11 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.

12 GOODS AND SERVICES TAX

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

12.2 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.

13 JURISDICTION

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

FIRST SCHEDULE

The Site

SECOND SCHEDULE
The Planning Permit

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1125

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 / outline permission under Article 19 of the Planning and Building (Jersey) Law 2002;

In respect of the following development:

Convert existing store and office into wellness centre.

To be carried out at:

A C Gallie Ltd, Longueville Road, St. Saviour, JE2 7WF.

Reason For Approval: The proposed development is considered to be acceptable having due regard to all of the material considerations raised. In particular, the development has been assessed against Policy GD1 and TT4 of the Adopted Island Plan 2011 (Revised 2014), which seeks to allow development within the Built-Up Area, and provision for cyclists. In this case, the proposed gym is regarded as acceptable because the basement of this building is vacant, will require minimal alterations and for the majority of the time will be a low intensity use.

The representation raised to the scheme on the grounds of disturbance to the occupants of the adjacent residential property has been assessed. However, given the existing use of the site, the fact that the parking spaces and ramp are already in existence, and the close proximity of a major road it is considered that the proposal accords with the terms of Policy GD1 of the Adopted Island Plan 2011 (Revised 2014), in that it will not have an unreasonable impact on neighbouring uses over and above the existing use of the site, given the conditions imposed on the Decision Notice.

APPROVED

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1125

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.

Conditions:

1. All details contained in the Design Statement relating to sound insulation of walls and floor must be completed prior to the first use of this site as a gym, and maintained thereafter.
2. The times of operation and parking arrangements detailed in the Design Statement must be adhered to, unless otherwise agreed in writing with the Department of the Environment.
3. The gym shall not be open to the public on Sundays or Bank Holidays unless otherwise agreed in writing with the Department of the Environment.

Reasons:

1. To safeguard the amenities of the occupants of the adjoining properties in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
2. To safeguard the amenities of the occupants of the adjoining properties in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
3. To safeguard the amenities of the occupants of the adjoining properties in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).

FOR YOUR INFORMATION

Informative 1: The attention of the applicant is drawn to the consultation response from GH&E - Transport dated 20/09/18 regarding the need to safeguard road safety issues.

APPROVED

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1125

Informative2: Given comments received during the assessment of the application, the States of Jersey recommends that the applicant should be aware that if noise complaints are received in the future, the matter may be investigated and considered under the Statutory Nuisances (Jersey) Law 1999, and noise mitigation measures may then be required. These measures may themselves require planning permission.

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

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

1. Location Plan
2. Amended Proposed Floor Plan, Site Plan and Site Photos 641.005 Rev A
3. Amended Design Statement Rev A - Sept 2018

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

APPROVED

THIRD SCHEDULE

The Owner and the Developer's Covenants with the Chief Officer

The Owner and Developer covenant, agree and undertake:

COMMENCEMENT

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

CYCLEWAY CONTRIBUTION

- 2 To pay the Cycleway Contribution to the Treasurer of the States prior to the Commencement of the Development.
- 3 Not to Commence any part of the Development until such time as the Cycleway Contribution has been paid to the Treasurer of the States.

FOURTH SCHEDULE

Chief Officer's covenants

1. The Chief Officer hereby covenants with the Owner and Developer to use the Cycleway Contribution received by the Treasurer of the States from the Developer under the terms of this Agreement for the purpose specified in this Agreement for which it is to be paid.
2. The Chief Officer covenants with the Owner and Developer that he will procure or arrange that the Treasurer of the States will pay to the Developer such amount of the 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 five years of the date of receipt by the Treasurer of the States of such payment.

Signed on behalf of the Chief Officer

by [redacted] (PETER LE GREISLEY)

in the presence of [redacted]

this 7th day of January 2018

[redacted] [redacted]

Signed on behalf of Physique Transformations Limited

by Cameron Elliott & Thomas Frame (Director/Secretary)

in the presence of [redacted] (Drew Locke)

this day of 2018

Signed by Brian Keith Barette

[redacted] [redacted] (acting as Attorneys)

in the presence of [redacted] (Witness signature)

Witness full name LORNA ANN CAVEY

Witness address HEATHER FARM, LA RUE DE VILLE AU BAS, ST QUEN

Witness occupation SALES ADMINISTRATOR

this 27th day of December 2018