

**Planning Obligation Agreement under Article 25 of the
Planning and Building (Jersey) Law 2002
relating to the development of part of Field 1218 Mont à
L'Abbé, St Helier**

Dated :

13th

November 2009

The Minister for Planning and Environment (1)

Uplands Hotel Limited (2)

S.A.M. Homes Limited (3)

The Minister for Housing (4)

DATE

13th

November 2009

PARTIES

- (1) The Minister for Planning and Environment of States Offices, South Hill, St Helier, Jersey JE2 4US ("the Minister")
- (2) Uplands Hotel Limited of Uplands Hotel, St John's Road, St Helier, Jersey JE2 3LE ("the Owner")
- (3) S.A.M. Homes Limited of Les Chenes, La Longue Rue, St Martin, Jersey JE3 6ED ("the Developer")
- (4) The Minister for Housing of PO Box 843, Jubilee Wharf, 24 Esplanade, St Helier, Jersey JE4 0UT ("the Housing Minister")

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 the manner referred to in the First Schedule.
- 3 The Developer submitted the Application to the Minister and the parties have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement.
- 4 The Owner and the Developer both acknowledge that this Agreement is legally binding
- 5 Having regard to the purposes of the Law the Island Plan 2002 and all other material considerations the Minister is minded to grant planning permission for the Development subject to the completion of this Agreement.
- 6 The Owner and the Developer have agreed that the Site will be conveyed by the Owner to the Developer at the first sitting of the Royal Court for the passing of hereditary contracts of sale and conveyance of immoveable property subsequent to the registration of this Agreement pursuant to Clause 6 of this Agreement.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

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

"Affordable Housing"		residential accommodation for purchase, for persons who would otherwise have financial difficulties acquiring residential accommodation in the general market for residential accommodation prevailing in Jersey.
"Category A Housing"		shall have the meaning attributed to such phrase in the Island Plan 2002 and Supplementary Planning Guidance issued by the Planning and Environment Department of the States of Jersey.
"Development"		the development of the Site for Category A Housing to provide fourteen (14) dwelling houses of which eight (8) shall be First Time Buyer Units and six (6) shall be Intermediate Housing Units; the whole as detailed on the Planning Permit.
"Dwelling Unit"		a dwelling house to be constructed on the Site as part of the Development pursuant to the Planning Permit.
"Family Member"		means a member of the family of a First Time Buyer who is entitled by virtue of the terms of this Agreement to occupy a Dwelling Unit and for the purposes of this Agreement shall mean the spouse, partner, brother, sister, daughter, son, step-children, grandparent or grandchild of a First Time Buyer
"First Time Buyer"		any person who is approved from time to time by the Housing Minister as being eligible to acquire a unit of Category A Housing.

"First Time Buyer Unit"		any Dwelling Unit other than an Intermediate Housing Unit.
"Housing Minister"		the Minister for Housing charged with the administration of the Housing (Jersey) Law 1949.
"Intermediate Housing"		Affordable Housing for people with incomes too great to be eligible for social rented housing but who are unable to afford to acquire (even with a loan) the cheapest equivalent First Time Buyer Unit.
"Intermediate Housing Provider"		shall mean the Public, a Parish or a Housing Trust (and in the case of a Housing Trust one created under the <i>Loi (1862) sur les teneures en fidéicommis et l'incorporation d'associations</i> , as amended and whose constitution specifically provides for the acquisition and provision of Intermediate Housing and provides for the application of Redemption Monies specifically to the purpose of the provision creation and furtherance of Intermediate Housing and such Housing Trust to also have been previously approved in writing by the Housing Minister) when discharging their function of providing housing for those persons whom the Intermediate Housing Provider considers, having regard to the criteria set out from time to time by the States or by the Housing Minister as the case may be, to be in need of financial and/or social assistance for obtaining Intermediate Housing suitable for their needs.
"Intermediate Housing Units"		that part of the Development comprising six Dwelling Units together with six car parking spaces all shown hatched with diagonal lines on the second copy of the Plan annexed to this agreement in the First Schedule; or any one or more of them.

"Law"		the Planning and Building (Jersey) Law 2002.
"Long Stop Date"		midnight on the ninetieth (90 th) day immediately subsequent to the practical completion of the Works.
"Occupation 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 numbered Job No. 4703, Drawing No. 11F and dated August 2007 prepared by Messrs. Naish Waddington annexed to this agreement in the First Schedule and signed by the parties.
"Planning Permit"		the planning permission, a copy of which is attached as the Second Schedule.
"Public"		the public of the Island of Jersey.
"Qualifying Person"		<p>any person (being a First Time Buyer)</p> <ol style="list-style-type: none"> 1. whose household income and capital are insufficient to allow that person to afford to acquire a dwelling sufficient for their needs on the open market (general housing or First Time Buyer housing); and 2. whose household income and capital are sufficient to allow them to afford to acquire an Intermediate Housing Unit on the basis of an Intermediate Housing Purchase; and 3. whose household by its size and nature is or will be appropriate to the size and nature of Intermediate Housing Unit they will acquire and occupy; and,

		4. who is approved from time to time by the Housing Minister as being eligible to acquire an Intermediate Housing Unit.
"Royal Court"		the Royal Court of the Island of Jersey.
"Site"		the land against which this Agreement may be enforced as shown by means of diagonal lines on the Plan.
"Social Rental Accommodation"		shall mean accommodation which is let for rental by a Social Rental Landlord approved for that purpose by the Housing Minister to a person or persons who satisfy the Housing Minister's criteria and qualifications.
"Social Rental Landlord"		shall mean: <ol style="list-style-type: none"> 1. the Public 2. a Parish 3. a Housing Trust when discharging their function of providing housing for those persons whom the Social Rental Landlord considers, having regard to the criteria set out from time to time by the States or by the Housing Minister as the case may be, to be in need of financial and/or social assistance for obtaining accommodation suitable for their needs.
"Unit Price"		shall be calculated in the manner provided for in the Fourth Schedule.
"Works"		all those construction and other works, operations and processes and the provision of all fixtures and fittings and equipment necessary to complete each Intermediate Housing Unit in accordance with plans

		approved and building permits issued by the Minister.

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 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 and the Developer.

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.

5 THE OWNER'S COVENANTS

The Owner covenants and agrees with the Minister as set out in the Third Schedule to the intent that subject to clause 7.6.2 hereof 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 The Developer shall pay to the Minister on completion of this Agreement the reasonable legal costs of the Minister incurred in the negotiation, preparation and completion of this Agreement.
- 7.2 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Minister 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 Minister by the Director of Planning and notice or communication to the Minister pursuant to the provisions of this Agreement shall be addressed to the Director at Planning and Building Services South Hill St Helier Jersey JE2 4US or as otherwise notified for the purpose by notice in writing.
- 7.3 Any notices on the Owner or the Developer shall be deemed to have been properly served if sent by ordinary post to and addressed to either party at the address referred to above or as otherwise notified for the purpose by notice in writing.
- 7.4 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.
- 7.5 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 by any statutory procedure or expires prior to the Commencement of Development;
- 7.6.1 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.
- 7.6.2 Without prejudice to the generality of sub-clause 7.6.1 Uplands Hotel Limited will cease to be under any obligation under this Agreement subsequent to the passing of the

conveyance of the Site to the Developer as envisaged by Recital 6 of this Agreement, howsoever and whensoever occurring .

- 7.7 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.
- 7.8 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
- 7.9 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
- 7.10 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 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
- 7.11 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
- 7.12 All communications and notices served or made under this Agreement shall be in writing.

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 from acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

Prior to the transfer envisaged by Recital 6 hereof 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 Dwelling Unit purchased by reference to a plan.

10 JURISDICTION

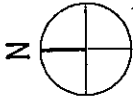
This Agreement is governed by and interpreted in accordance with the law of the Island of Jersey.

FIRST SCHEDULE

[Details of the Owner's Title, and description of the Site and the Plan]

The Owner has an interest in the Site being a certain piece of land forming part of Field 1218, St Helier and as hatched in diagonal lines on the Plan by virtue of gift from William John Morvan by contract dated 18th March 2005

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"INTERMEDIATE HOUSING UNITS"

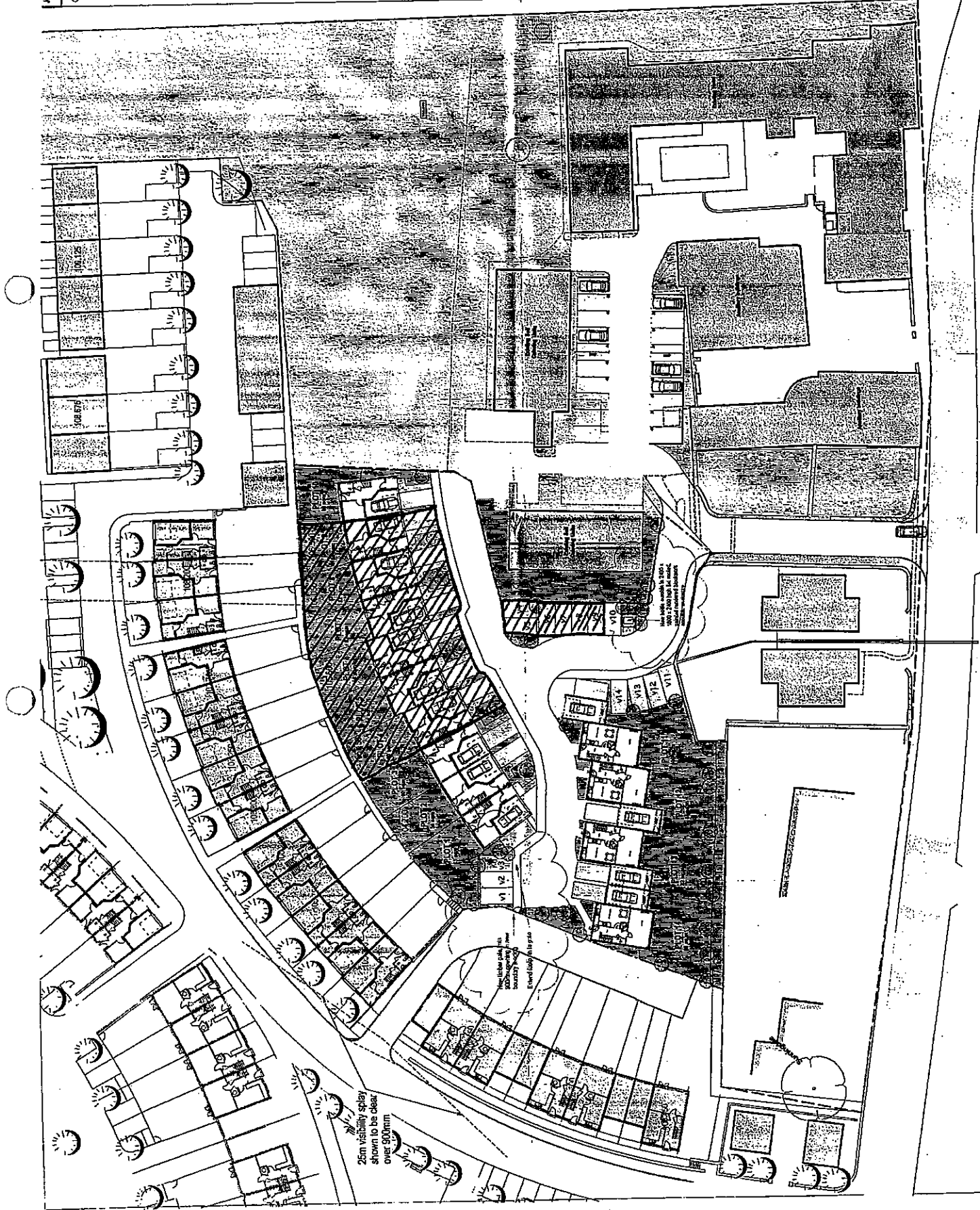
Scale: 1/8" = 1'-0"
Date: 12/14/04
Project: Intermediate Housing Units
Drawing: Site Plan

Revision No. Drawing
PAGE 1 1 1 1

P & E Rechecked

Status - FEASIBILITY	
Client -	Wash State
Project -	Intermediate Housing Units
Drawing -	Site Plan
Date -	AUG 03
Scale -	1/8"=1'-0"

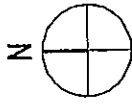
Walsh Waddington architects
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 202 Andrew Plaza
 Cheyenne, WY 82002
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SITE PLAN 1:250

Walsh Waddington Architects

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"THE SITE"

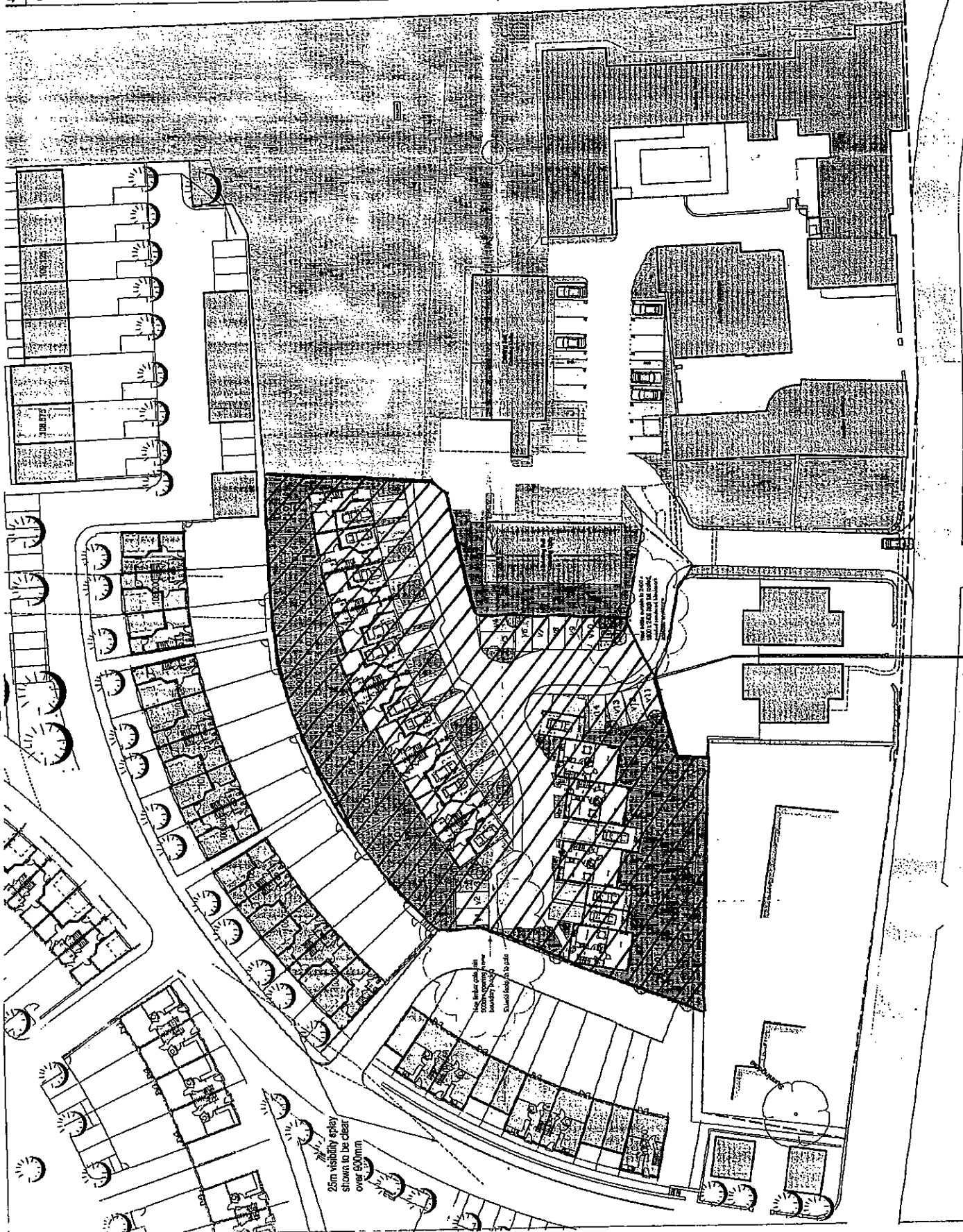
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Sheet: 11 of 11

Application No. 10/00000
P. 2008 1 1 1 1 1

P. & E. Reseyher

STATUS - FEASIBILITY
Client -
Project - Upgrade of
Drawing - Site Plan
Date - 10/10/13
Scale - 1:1000

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 www.nalshwaddington.com



SITE PLAN 1:250

Best design and building cost
by Nalsh Waddington Architects

SECOND SCHEDULE
The Planning Permission

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



Mr S Marett
La Frenaie
La Longue Rue
St Martin
Jersey
JE3 6ED

Planning Application Number P/2006/2648

Planning Permit

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. 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.

Construct 14 no. First Time Buyer Houses. AMENDED PLANS: Revised access arrangement - introduction of one-way loop. ADDITIONAL AMENDED PLANS: Single access from New St John's Road.

To be carried out at:

Field No 1218, Mont a L'Abbe, St. Helier, JE2 3LE.

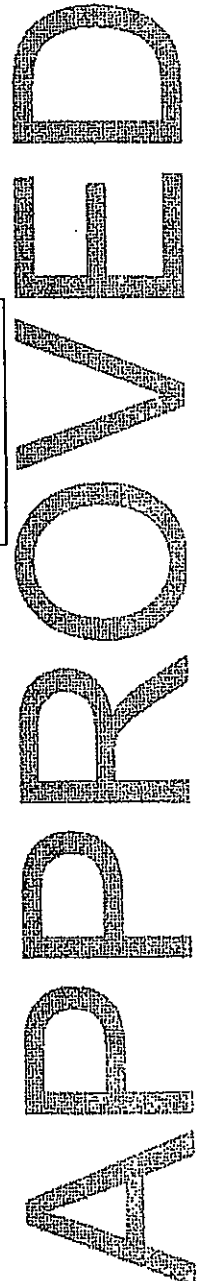
REASON FOR APPROVAL: Permission has been granted having taken into account the relevant policies of the approved Island Plan, together with other relevant policies and all other material considerations, including the consultations and representations received.

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

¹ 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.

(P1; P/2006/2648; Page 1)



Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2648

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.

Condition(s):

1. Before any development first commences on site, a Planning Obligation Agreement shall be entered into to ensure that in accordance with the Island Plan 2002, Policy H1, "Provision of Homes", of the dwelling units permitted 8 no. shall be sold to first-time buyers and 6 no. shall be sold to first time buyers under the 'Jersey Homebuy Scheme' approved for that purpose by the Minister for Housing for sale to persons meeting his qualifications, through the 'Jersey Homebuy' gateway. If the Planning Obligation Agreement is not completed on or before the 30th day of November 2009, then the planning permission shall cease to have effect.

2. Prior to the commencement of the development, hereby approved, details of a scheme for the provision of public art or a contribution to a wider public art objective, shall be submitted to and approved in writing by the Minister for Planning and Environment.

3. The 14 no. Category A dwelling units hereby permitted shall be developed and retained in the proportion 8 no. for sale to first-time buyers, as defined in the obligation and 6 no. for homes purchased under the 'Jersey Homebuy Scheme', in accordance with the Island Plan 2002, Policy H1 'Provision of Homes'. (As amended: States reference P/74/2008 10th July 2008).

DEVELOPMENT
PROPOSED
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 relates.

(P1; P/2006/2648; Page 2)

Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2648

4. The development hereby permitted shall not be commenced until there has been submitted to and approved in writing by the Minister for Planning and Environment, a scheme of landscaping which shall provide details of the following;

- i) all existing trees, hedgerows and other plants, walls, fences and other features which it is proposed to retain on the site and on adjoining land within the same ownership;
- ii) the position of all new trees and/or shrubs, this must include the species of plant(s)/tree(s) to be planted, their size, number and spacing and the means to be used to support and protect them;
- iii) other landscape treatments to be carried out or features to be created, for example, any excavation works, surfacing treatments, or means of enclosure;
- iv) the measures to be taken to protect existing trees and shrubs; and,
- v) the arrangements to be made for the maintenance of the landscaped areas.
- vi) the 2 m high soft landscaping screening which is to be planted along the entire east boundary of Plots 11, 12, 13 and 14.

5. All planting and other operations comprised in the landscaping scheme approved under this permission, shall be carried out and completed in the first planting season following the commencement of the development.

6. No development shall take place on the site in pursuance of this permission until all of the information required has been submitted to and approved in writing by the Minister for Planning and Environment through the submission of a detailed planning application. This information shall include:

- a) A description of the external materials to be used, inclusive of render bands;
- b) Information to show the treatment of all the external windows and doors, this should include a typical example, including colour, design details and materials;
- c) Information to show the means by which any curtilage is to be enclosed;
- d) Information to show all hard landscaping proposed for the site, including internal walls and surfacing materials;
- e) Plans to show any works required in connection with the provision of foul and surface water drainage.

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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.

(P1; P/2006/2648; Page 3)

Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2648

7. A. The accommodation/dwellings to which this permission relates shall not without the consent of the Minister for Planning and Environment be transferred by sale, cession, gift, exchange or other form of transfer to any person who does not satisfy the criteria specified in the schedule hereto.

B. The accommodation/dwellings to which this permission relates shall not without the consent of the Minister for Planning and Environment be occupied by any person who does not satisfy the criteria specified in the schedule hereto and who does not occupy the accommodation as his sole or principal place of residence.

Schedule

persons to whom (the residential accommodation) may be transferred in accordance with condition A above, or who may occupy (the residential accommodation) in accordance with condition B above.

1) any person who –

i) does not own, and has not previously owned, whether as a sole owner or jointly or in common with any other person or persons,

a) any immovable property;

b) either in his own name or as beneficial owner shares in any company, ownership of which confers the right to occupy residential accommodation;

and -

ii) is neither married to, nor buying as co-owner with, any person who does not fall within (i) above

2) any person who has been approved by the Minister For Housing as being a person to whom consent should be granted to acquire or to occupy the residential accommodation as the case may be notwithstanding the fact that he does not fall within (1) above.

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.

(P1; P/2006/2648; Page 4)

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2648

8. Prior to commencement of any development on the site, full details of permitted visibility splays in accordance with Transport and Technical Services (Highways) comments of 30th July 2008 must be provided in accordance with the approved drawings.

9. Prior to commencement of the development hereby permitted, full details of the provisions and arrangements to be made for the storage and disposal of refuse must be submitted to and approved in writing by the Minister for Planning and Environment.

10. Prior to commencement of the development, hereby approved, details of the new pedestrian gate, adjacent to parking space V1 as shown on Planning Approved DWG P/2006/2648 'Z', to connect the site to the existing dwellings on the 'Clos Vaze' development to the south/west of the site, shall be submitted to and approved in writing by the Minister for Planning and Environment. Prior to first use of the development the access gate connecting 'Clos Vaze' with the site shall be constructed for use by the residents.

Reason(s):

1. To ensure that the, "Provision of Homes", is honoured to accord with Policy H1 of the Island Plan 2002 as amended and Article 23 (4) of the Planning and Building (Jersey) Law 2002.

2. To accord with the provisions of Policy BE12 of the Adopted Island Plan, 2002.

3. This development has been permitted on the basis of Policies H1 and H2 of the Island Plan and it is vital that the Minister ensures that it is implemented in accordance with these policies.

4. To ensure that before development proceeds provision is made for a landscaping regime that will enhance the appearance of the development and help to assimilate it into the landscape.

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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.

(P1; P/2006/2648; Page 5)

Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2648

5. To ensure that the benefits of the approved landscaping scheme are not delayed and consequently make an early contribution to the amenity of the site in the interest of sustaining and enhancing landscape quality.

6. These items have been omitted from the application and require approval prior to commencement of this development.

7. To ensure that the land and property the subject of this application remains in the use for which it was designated by the states, in the best interests of the community.

8. In the interests of highway safety.

9. To ensure that waste and refuse is stored and disposed of without harming the amenities of the occupiers of neighbouring properties or the surrounding area.

10. To ensure that the development is carried out and completed in accordance with the details approved by the Minister for Planning and Environment.

FOR YOUR INFORMATION:

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

- C: Location Plan
- T: Ground and First Floor Plan (Type A)
- U: Second Floor Plan & Section A-A
- V: North and South Elevation (Type A)
- W: Ground and First Floor Plan (Type B)
- X: North, South, West & East Elevations
- Z: Site Plan

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CAUTION

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(P1; P/2006/2648; Page 6)


Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2648

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.

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.

15/01/2009 Signed  for Director

DOWN FOR AREA

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.

THIRD SCHEDULE

The Owner's Covenants with the Minister

The Owner covenants, agrees and undertakes:

- 1.1 that eight (8) of the Dwelling Units to be constructed on the Site shall be sold to First Time Buyers;
- 1.2 that six (6) of the Dwelling Units to be constructed on the Site (being the Intermediate Housing Units) shall be utilised at the election of the Owner to provide either Intermediate Housing or Social Rental Accommodation;
- 2.1 to carry out the Works expeditiously and ensure that the Works are completed no later than the eight (8) First Time Buyer Units;
- 2.2 to complete the Works to a good standard of workmanship with good quality materials and in accordance with accepted good building practice and in any event to a standard at least commensurate with the eight (8) First Time Buyer Units
- 3.1 subsequent to practical completion of the Works to transfer the six (6) Intermediate Housing Units (whether individually or en bloc and by means of a contract of hereditary sale passed before the Royal Court) at the Unit Price for each unit so transferred (at the election of the Owner) either to an Intermediate Housing Provider on terms that are approved by the Planning Minister and accord with the Housing Minister's requirements for the provision of Intermediate Housing at the date of construction of the Affordable Housing or to a Social Rental Landlord and in either case with the benefit of the following:
 - 3.1.1 full and free rights of access both pedestrian and vehicular from the public highway to the Intermediate Housing Units;
 - 3.1.2 full and free rights to the passage of water soil electricity gas and other services through the pipes drains channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the Intermediate Housing Units all such services to be connected to the mains;
- 3.2 At least twenty-one days prior to Occupation of a Dwelling Unit the Owner shall notify in writing the Minister of the intention to Occupy the Dwelling Unit and will provide the Minister with such information that the Minister reasonably requires to identify the relevant Dwelling Unit and identify the occupier
- 3.3 If an Intermediate Housing Provider has not acquired all of the Intermediate Housing Units by means of a contract of hereditary purchase passed before the Royal Court before the Long Stop Date then the Minister will thereafter co-operate with the Owner in arranging for such Intermediate Housing Units as have not been so acquired to be disposed of as Social Rental Accommodation;
- 4.1 all subsequent transfers of First Time Buyer Units shall be to First Time Buyers approved as such by the Housing Minister and all subsequent transfers of Social Rental Accommodation Dwelling Units shall be to Social Rental Landlords reasonably approved as such by the Housing Minister;

- 4.2 no Intermediate Housing Unit shall be used or Occupied other than by a Qualifying Person (or for the avoidance of doubt a Family Member of the Qualifying Person living together with the Qualifying Person as a family) under the provisions of an Intermediate Housing Purchase;
- 4.3 all subsequent transfers of Intermediate Housing Units by the Intermediate Housing Provider shall be to Qualifying Persons approved as such by the Housing Minister and all subsequent transfers of a Intermediate Housing Unit by a Qualifying Person shall be to First Time Buyers approved as such by the Housing Minister;
- 4.4 no First Time Buyer Unit shall be used or Occupied other than by a First Time Buyer (or for the avoidance of doubt a Family Member of the First Time Buyer living together with the First Time Buyer as a family);
- 4.5 each Dwelling Unit shall be used and Occupied at all times as the only and principal home of a First Time Buyer and shall not be used as a second home or a holiday home.

FOURTH SCHEDULE

Calculation of "Unit Price"

- A. If an Intermediate Housing Unit is to be transferred to an Intermediate Housing Provider the Unit Price shall be determined in accordance with either Option 1 or Option 2 as set out below in this Fourth Schedule and the Owner shall elect which of Option 1 or Option 2 shall be used to calculate the Unit Price.

Option 1

In each phase of the Development a schedule of the Intermediate Housing Unit offer prices shall be prepared by the Owner and provided to the Housing Minister.

On receipt of the schedule and within one month, it shall be open for the Housing Minister to either:

- approve the prices as suggested; or
- commission an independent valuation as to the proper Intermediate Housing Unit market price for the relevant Dwelling Unit.

In the event that the Housing Minister elects to commission an independent valuation, the Owner will be notified of this intention and an alternative pricing schedule will be produced by a firm of suitably experienced Chartered Surveyors.

That pricing schedule will be prepared by a Chartered Surveyor M.R.I.C.S. or F.R.I.C.S. appointed by the Housing Minister within 1 month of being commissioned by the Department.

The valuation shall be carried out in accordance with the Royal Institution of Chartered Surveyors' (RICS) Valuation Standards 6th Edition ("Red Book").

In arriving at a Intermediate Housing Unit price for each Dwelling Unit the valuer shall determine the amount reasonably expected to be realised on a sale in Intermediate Housing Unit housing market for a Dwelling Unit on the Development assuming:

- 1 a willing seller and a willing Qualifying Person transacting at arm's length'
- 2 that vacant possession is to be given;
- 3 that the Dwelling Unit is in good and substantial repair and condition and subject to a condition created in perpetuity that the Dwelling Unit should not be sold to or occupied by any person who was not a Qualifying Person.

In determining the Intermediate Housing Unit price payable there shall be taken into account all factors that influence the calculation of the price (including, without limitation, the actual costs or estimated reasonable costs of acquiring any land, servitudes required for sight lines, access, drainage or other services to or from the said property, the

actual costs or estimated reasonable costs of any construction work or payments in respect of access, drainage or other services to or from the said property which are to be outside the boundaries of the said property and the actual costs or estimated reasonable costs of complying with any agreement required or likely to be required by any Insular Parochial or other authority or by any service undertaking in respect of the said property or in respect of other property but relating directly or indirectly to the Development) PROVIDED ALWAYS that in calculating the Intermediate Housing Unit price payable the effect on the Intermediate Housing Unit market of the fact that the Development has been wholly or partly carried out shall also be disregarded. If the average difference between the two sets of prices is less than or equal to 5% of the Owner's proposal then the lower of the two prices will be taken. If the difference in prices is, on average, greater than 5% of the Owner's proposal, a third set of prices will be from another firm (jointly instructed) of suitably experienced Chartered Surveyors (based on the same valuation basis as set out in this Option 1 and the sale prices for each of the units is then taken as being the mid-point between those which appear in the third set and the mid-point of those which appeared in the first two sets. The Parties then seek to agree on this set of figures (both acting reasonably) after which if they are still in dispute, the pricing is referred to arbitration.

The Non Profit Organisation (NPO) will have no seed or operating capital and will not be in a position to recover valuation costs from the Qualifying Person, therefore in respect of each and every Intermediate Housing Unit, the Owner will bear all valuation costs.

Example:

Owner's Intermediate Housing Unit Price schedule:

Unit 1 £442,800

Unit 2 £463,300

Housing Minister Response:

Unit 1 £400,000

Unit 2 £410,000.

Difference:

Unit 1 = 8%

Unit 2 = 13%

Average difference = 10.5% which is > 5% therefore third set required

Independent Third Set:

Unit 1 £410,000

Unit 2 £430,000

Mid-Points of first pair of valuations:

Unit 1 £421,400

Unit 2 £436,650

Mid Points between first set mid-point and Third Set:

Unit 1 £415,700

Unit 2 £436,652

The agreed Intermediate Housing Unit Price would therefore be:

Unit 1 £415,700

Unit 2 £436,652

Option 2

Driving cost out of the process whether that be for the Owner, the NPO or the homebuyer must be a key objective of the scheme and an alternative valuation mechanism would potentially achieve this aim and would, in particular, have the attraction of significantly reducing the valuation costs for the Owner.

In this case the Owner can, within 3 months before the Homebuy Homes being ready for completion, notify the Housing Minister of the plot numbers on the site proposed for Intermediate Housing Units. The Housing Minister will within 1 month commission an independent valuation as to the proper Intermediate Housing Unit price for those Dwelling Units resulting in the production of a pricing schedule by a firm of suitably experienced Chartered Surveyors.

- B. If an Intermediate Housing Unit is to be transferred to a Social Rental Landlord the Unit Price of such unit shall be calculated by producing a debt redemption model adopting (as nearly as circumstances will permit) the same principles, methodology, criteria and assumptions as applied by the Housing Minister (at the time of practical completion of the Works) for calculating the capital value of Social Rental Accommodation and shall (inter alia) take into account:
- (1) the maximum fair rental that the Housing Minister would approve for each of the Intermediate Housing Units at the time of practical completion of the Works (currently £13,086.84 p.a. per unit);
 - (2) the reasonable and usual running costs of holding, managing and maintaining such units (currently 18% of rent receivable);
 - (3) the prevailing interest rates for borrowing the acquisition costs of the Intermediate Housing Units on the basis that the relevant loan would be fully redeemed over a term of 25 years (currently the interest rate is 5%); and
 - (4) an assumed average rate of inflation over the term of 25 years (currently assumed to be 3% per annum).

Signed on behalf of the Plaintiff

by

in the presence of

this 12 day of NOVEMBER 2009

Signed on behalf of Uplands Hotel Limited

by

in the presence

this 13th day of NOVEMBER 2009

Signed on behalf of S.A.M. Homes Limited

by

in the presence of

this 13th day of November 2009

Signed on behalf of H

by

in the presence of ...

this 13th day of November 2009