JERSEY PROPERTY DEVELOPMENT AGREEMENTS

In this article we review the types of development agreement that may be used in Commercial Property developments in Jersey.

Despite the current financial climate, Voisin Property Department has found that there are still a number of developments being carried out on the Island. The starting point for any development is of course the documentation, regulating the relationship between property developers, funding institutions and tenants. There are various types of development agreement and the choice of which type is used depends in each case on the nature and complexity of the particular transaction.

Pre-Let Agreement

Also known as an Agreement for Lease, this is used as a method of committing a tenant to taking a lease of a property when it has been built by the developer. The Agreement will specify the terms upon which a lease will be granted by the developer (or purchaser of the development) upon Practical Completion of the development.

Forward Purchase Agreement

The long term aim of many property developers is to sell the finished product and to move onto the next project as quickly as possible. A Forward Purchase Agreement sets out the terms on which the property will be sold by the developer to the purchaser. It is usually entered into at an early stage in the development process. Often at this stage, a Pre-Let Agreement will also be entered into with a prospective tenant. Usually, the developer retains Freehold title to the development and will fund the development itself, often through a bank finance agreement or facility agreement. The developer will enter into building contracts with contractors and following completion of the development, will grant a lease to the tenant pursuant to a Pre-Let Agreement.

Following Practical Completion and the grant of a lease, Freehold title will be conveyed to the purchaser pursuant to the Forward Purchase Agreement. The price payable at the end of the project may be agreed in advance or calculated upon completion by capitalising the total rent roll achieved.

Forward Funding Agreement

In contrast to a Forward Purchase Agreement, in a Forward Funding Agreement the purchaser provides finance to cover the costs of the development as it progresses. In a Forward Funding Agreement, Freehold title is transferred immediately with the purchaser paying the site value. A Pre-Let Agreement is often entered into at this stage. The developer will then carry out the development drawing down the costs from the purchaser pursuant to the Forward Funding Agreement. Usually there will be a maximum commitment and any costs beyond the maximum commitment shall be borne by the developer.

When the development has been built and, if a Pre-Let Agreement was entered into prior to the development, the developer shall receive a profit payment from the purchaser. Specifically this will be the total rent roll capitalised at an agreed yield, minus the total development costs.

Under this arrangement, the developer vastly reduces the risk exposure however profit is likely to be reduced accordingly. The purchaser takes on some risk, but hopes for a lower purchase price and higher yield than if it had waited until the development had been built and let before committing to buy.

Speculative Funding Agreement

This Agreement is the same as the Forward Funding Agreement but without the development being pre-let. The developer will enter into the Speculative Funding Agreement with the purchaser and into a building contract with the contractor. The purchase price will be drawn down from the purchaser pursuant to the Speculative Funding

Agreement. It is likely that at this stage a Pre-Let Agreement will be entered into with a prospective tenant.

Once the building has been built and the lease granted to the tenant pursuant to the Pre-Let Agreement, the developer will receive a profit payment from the purchaser pursuant to the Speculative Funding Agreement.

Bank Finance Agreement

This financing agreement is used when the developer borrows money in order to carry out the development. As security, the lender will take a charge over the property.

Stand-Alone Development Agreement

This is generally used where a landowner uses developer to carry out a project on his land. The Stand-Alone Development Agreement may provide for the project to be carried out by the developer, at the owner's expense or alternatively at the developer's expense if the developer is to be granted a long lease or the freehold of the development following completion.

The type of development agreement used will differ with each development based upon the development itself and the parties involved. It is essential that prior to entering into any such agreement all parties are aware of their options and the risk involved with each of the options available. It is at this time in the market that parties must be cautious when entering into such agreements however if parties have the capital and land upon which to develop and are properly able to balance the risks and rewards, there is potential to create highly advantageous development agreements for all parties.

For further information on how Voisin can assist with Commercial Property developments in Jersey, please contact any of the Voisin Property team.