


In the Royal Court of Jersey

Samedi Division

In the year two thousand and nine, the twenty-sixth day of March.

Before the Judicial Greffier.

Upon the application of Her Majesty's Solicitor General, IT IS ORDERED that the Planning Obligation Agreement between the Minister for Planning and Environment, Fallford Warehouse & Packing Company Limited, Jersey Canning Company Limited and Bank of Scotland Plc in relation to land at Checkers Supermarket, Plat Douet Road, St Saviour, be registered in the Public Registry of this Island.


Greffier Substitute

LOD ✓
Reg. Pub.

Dated - 25th March, 2009

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

between

(1) Fallford Warehouse & Packing Company Limited

(2) Jersey Canning Company Limited

(3) ~~The Governor and Company of the Bank of Scotland PLC~~ (K.S.)

and

(4) Minister for Planning and Environment

re

Checkers Supermarket, Plat Douet Road, St. Saviour

Law Officers' Department

Morier House

St Helier

Jersey

JE1 1DD

1. Parties

1.1 Fallford Warehouse & Packing Company whose registered office is situate at at 1-3 L'avenue Le Bas, Longueville, St. Saviour, JED 7QN and Jersey Canning Company Limited whose registered office is situate at 1-3 L'avenue Le Bas, Longueville, St. Saviour, JED 7QN (hereinafter together called "the Owner", which expression shall include them both, jointly and severally and their respective assigns and successors in title in relation to the Land or any part thereof as further defined in clause 3.1)

1.2 ~~The Governor and Company of the~~ Bank of Scotland^{plc (K.S.)} ("the Hypothecator");
and

1.3 The Minister for Planning and Environment (hereinafter called "the Minister" which expression is further defined in clause 2.1).

2. Recitals

2.1 The Minister is the Minister of the States charged with the administration of the Planning and Building (Jersey) Law 2002, by whom the obligations in this Agreement are enforceable in accordance with the provisions of that Law.

2.2 Fallford Warehouse & Packing Company is the owner in perpetuity (*à fin d'héritage*) by i) a contract of purchase from Jersey Cannery Limited passed before the Royal Court on 18 September 1948 as to part, ii) a contract of purchase from H.G. Tuck and others passed before the Royal Court on 20 November 1970 as to part and iii) a contract of purchase from the Public of the Island passed before the Royal Court on 20 August 1993 as to and Jersey Canning Company Limited is the owner in perpetuity (*à fin d'héritage*) by i) a contract of purchase from Bashfords Limited passed before the Royal Court on 20 August 1975 as to part and ii) a contract of purchase from Bashfords Limited passed before the Royal Court on 27 May 1977 as to the remainder of the property shown for the purposes of identification only hatched in diagonal hatching on Drawing 1 which all together are now known as Checkers

Supermarket and the Plat Douet Road Complex. Plat Douet Road, in the Parish of St. Saviour (hereinafter called "the Land") and therefore have respectively an interest in the Land within the meaning of paragraph (1) of Article 25 of the Planning and Building (Jersey) Law 2002.

2.3 An application reference no. P/2005/1564 was made to the Environment and Public Services Committee for permission to develop the Land. The functions of the Committee have now devolved upon the Minister.

2.4 The Minister considers it expedient in the interests of proper planning that provision should be made for securing highway improvements in the vicinity which will be necessitated by the additional traffic which will be generated by the Development in the manner hereinafter appearing and is satisfied that development permission could properly be granted conditional on the Owner having first entered into this agreement without which the Minister would not be so minded to grant.

2.5 The Hypothecator has an interest in the Land by virtue of a judicial hypothec (hypothèque judiciaire) dated 24th August 2007

3. Interpretation

3.1 In this agreement the words or expressions in the left hand column have the meaning attributed to them respectively in the right hand column.

3.2

Additional Traffic Calming Survey	means a survey by Transport and Technical Services in order to assess whether additional traffic calming system(s) to the southern end of the B24 (La Rue des Pres) from the entrance to the Land to the B23 (Plat Douet Road) are reasonably necessary because of the Development
Additional Traffic Calming Survey Costs"	the sum of £5,000 to be used by the Minister to fund a survey by Transport and Technical Services in order to assess whether additional traffic calming system(s) to the

	southern end of the B24 (La Rue des Pres) from the entrance to the Land to the B23 (Plat Douet Road) are reasonably necessary because of the Development
Application	The application specified in clause 2.3 above.
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.
development	Has the meaning assigned to it by the Law.
Development	The development which is the subject of the Application.
Drawing 1	Drawing no. 4332/21 which is at Schedule 1 to this Agreement.
Highway improvements	The works specified in clause 5.1.1.
Index	All Items Index of Retail Prices for Jersey as issued by the Statistics Unit to the States of Jersey
Land	The Land specified in clause 2.2 above and shown hatched black on Drawing 1.
Law, the	The Planning and Building (Jersey) Law 2002

“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.
Owner	The companies specified in clause 1.1 above, their assigns and successors in title in relation to that part of the Land in which there is an interest.
“Planning Permit”	the planning permission subject to conditions to be granted by the Minister pursuant to the Application.

3.2 Any reference to a Minister of the States includes –

3.2.1 Any person or body to whom the relevant functions of that Minister are lawfully delegated from time to time.

3.2.2 Any person or body to whom the relevant functions of that Minister are transferred hereafter.

3.3 Any reference to an enactment includes –

3.3.1 Any modification, extension, or replacement thereof for the time being in force.

3.3.2 Any subordinate legislation made thereunder.

3.3.3 Any orders, directions, permissions, notices or codes of conduct issued or given thereunder or deriving validity therefrom.

3.4 Any reference to a clause unless otherwise specified is a reference to the clause so numbered in this Agreement.

3.5 The provisions of the Interpretation (Jersey) Law 1954 shall, unless the contrary intention appears, apply to this Agreement as they apply to enactments.

4. The Agreement

4.1 This Agreement is made pursuant to all powers enabling the parties to enter in to it and in particular to Article 25 of the Law and with the intent that it shall bind the Owner and any persons claiming under or through them.

4.2 The Obligation assumed by the Owner by this Agreement is joint and several and is a planning obligation for the purposes of Article 25 of the Law.

4.3 This Agreement is conditional upon the grant of planning permission by the Minister in respect of the Land and (save for where the context requires otherwise) the Commencement of Development.

4.4 If the planning permission lapses, this Agreement shall automatically lapse and be of no further force or effect.

4.5 Should the Owner cease to have an interest in the Land, the Owner shall no longer be bound by the obligations in this Agreement save to the extent that any liability may have accrued thereunder at that date upon which the Owner's interest ceased.

5. The Obligation

5.1.1 The Owner will carry out or cause to be carried out to the reasonable satisfaction of officers of the Transport and Technical Services Department the Highway improvements shown on Drawing 1 and set out below.

- (a) The erection of traffic signals and pedestrian crossings at the junction of the B23 and La Route de Longueville (referred to on Drawing 1 as the Plat Douet Road and Longueville Road junction).
- (b) The introduction of an additional traffic calming system (referred to on Drawing 1 as an additional traffic calming system along Plat Douet Road) along the B23 (referred to on Drawing 1 as La Rue ès Nouettes)
- (c) The construction of a mini-roundabout at the junction of the B23 and Victoria Road.
- (d)(i) The Owner will pay the Additional Traffic Calming Survey Costs to the Minister prior to Commencement of Development
- (ii) If the findings of the Additional Traffic Calming Survey conclude that additional traffic calming system(s) to the southern end of the B24 (La Rue des Pres) from the entrance to the Land to the B23 (Plat Douet Road) are required then the Owner within two years of the date upon which the redeveloped supermarket opens to the public shall carry out such additional traffic calming measures as are specified by the Transport and Technical Services Department

5.1.2 The Owner will carry out or cause to be carried out the Highway improvement specified in sub-paragraph (c) of clause 5.1.1 before the redeveloped supermarket is completed.

5.1.3 The Owner will carry out or cause to be carried out the introduction of such additional traffic calming system(s) (if any) as may be specified by the Transport and Technical Services Department in pursuance of sub-paragraph (d)(ii) of clause 5.1.1 within six months of receipt of the written specification from the Transport and Technical Services Department.

5.1.4 If the Owner has not carried or caused to be carried out –

- (a) the highway improvements specified in sub-paragraphs (a) (b) and (c) of clause 5.1.1 before the redeveloped supermarket opens to the public, or
- (b) the introduction of such additional traffic calming system(s) (if any) as may be specified by the Transport and Technical Services Department within six months of receipt of the written specification from that Department pursuant to the provisions of sub-paragraph (d)(ii) of clause 5.1.1,

the Minister will be entitled to carry out or cause to be carried out the works of improvement and/or the introduction of additional traffic calming system(s) as the case may be and to recover the proper and reasonable cost thereof from the Owner.

5.1.5 Prior to Commencement of Development the Owner will provide bonds in respect of its potential liability under clause 5.1.1 (a) –(c) in or substantially in the form attached as Schedule 2

- (a) one insofar as that liability relates to the carrying out by the Minister of the works specified in sub-paragraphs (a) and (c) of clause 5.1.1, in the sum of £116,000,
- (b) and the other insofar as that liability relates to the carrying out by the Minister of the works specified in sub-paragraph (b) of clause 5.1.1, in the sum of £36,000.

5.1.6 If the Owner carries out or causes to be carried out the highway improvements specified in sub-paragraphs (a) and (c) of clause 5.1.1, the Minister will cause the said bond referred to in sub-paragraph (a) of clause 5.1.5 to be cancelled within a period of two months following the completion of the works or in default of the Owner carrying out the works within two months of the Minister having carried out or caused

to have carried out the works and receiving payment due under the bond and if the Owner carries out or causes to be carried out the highway improvements specified in sub-paragraph (b) of clause 5.1.1, the Minister will cause the said bond referred to in sub-paragraph (b) of clause 5.1.5 to be cancelled within a period of two months following the completion of the works or in default of the Owner carrying out the works within two months of the Minister having carried out or caused to have carried out the works and receiving payment due under the bond.

5.2.1 Pursuant to clause 5.2.2, the Owner will fund the cost of the resurfacing of the B23 between La Rue des Pres and La Route de Longueville and of La Rue des Pres from the entrance to the land to the B23.

5.2.2 The Owner will pay to the Minister the sum of £119,000 for the cost of the works set out in clause 5.2.1 above one month prior to Commencement of Development.

5.3 Any sum referred to in this Agreement shall be increased by an amount equivalent to the increase in the Index from the date on which this Agreement is registered in the Public Registry of Contracts until the date on which such sum is payable

5.4 There shall be no Commencement of Development until the obligations at 5.1.1(d)(i), 5.1.5(a) & (b) and 5.2.2 have all been discharged

6. Repayment of contributions

6.1 The Minister hereby covenants with the Owner to use all sums received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid.

6.2 The Minister covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Minister under this Agreement which has not been expended in accordance with the provisions of this Agreement within three years of the date the redeveloped supermarket opens to the Public together with interest at the HSBC base rate from time to time for the period from the date of payment to the date of refund.

7. Enforcement of the Obligation

7.1 The Minister is the planning authority with responsibility for achieving the purposes of the Law and the Minister has the power pursuant to Article 25 of the Law to enforce this Agreement against the Owner and any person who derives title to the Land from the Owner.

8. Hypothecator's Consent

The Hypothecator acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Agreement and that the security of the Hypothecator in the Land shall take effect subject to this Agreement PROVIDED THAT the Hypothecator shall otherwise have no liability under this Agreement unless it takes possession of the Land (or any part thereof) in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

DRAWING NUMBER
4332/21

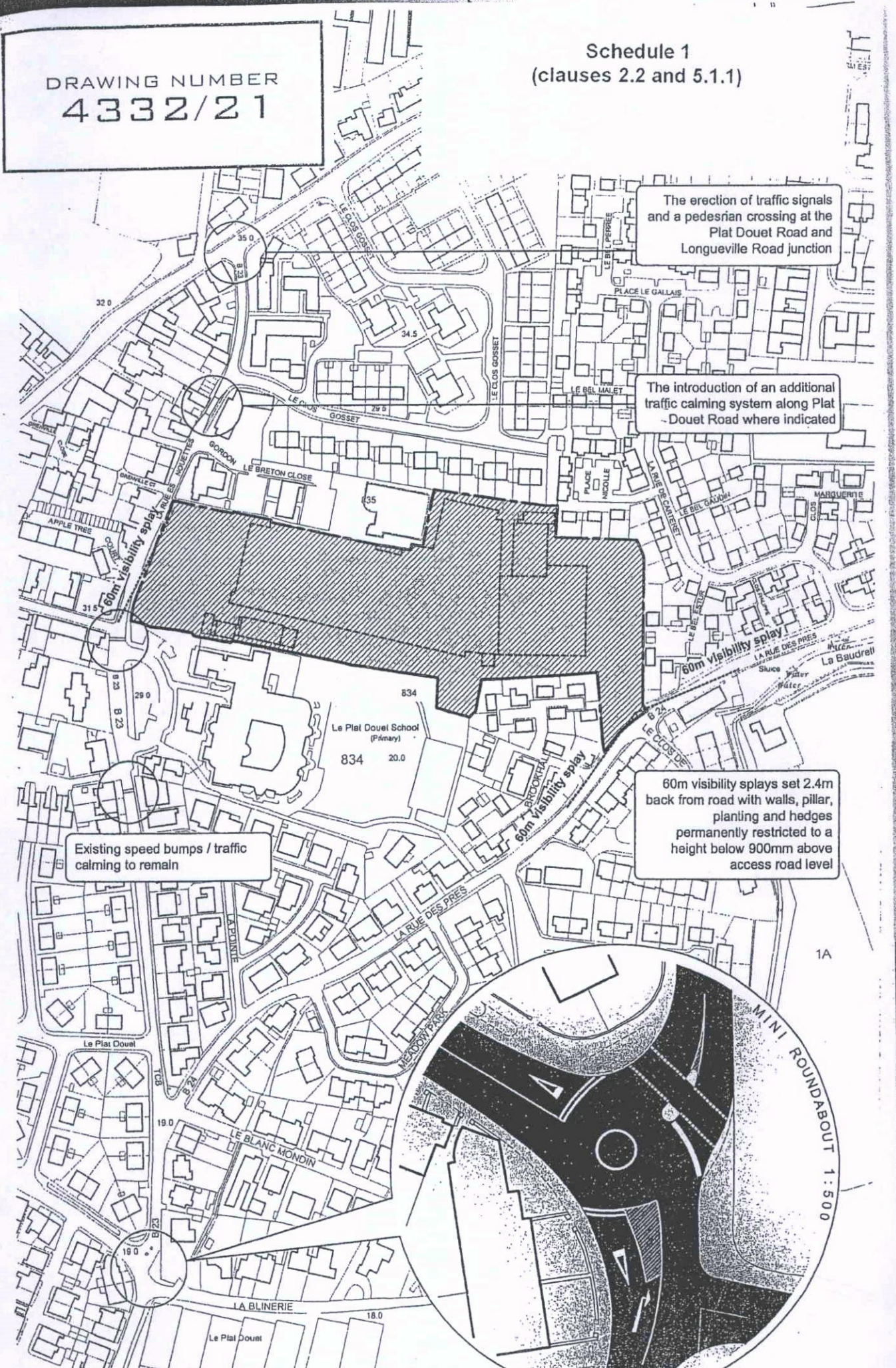
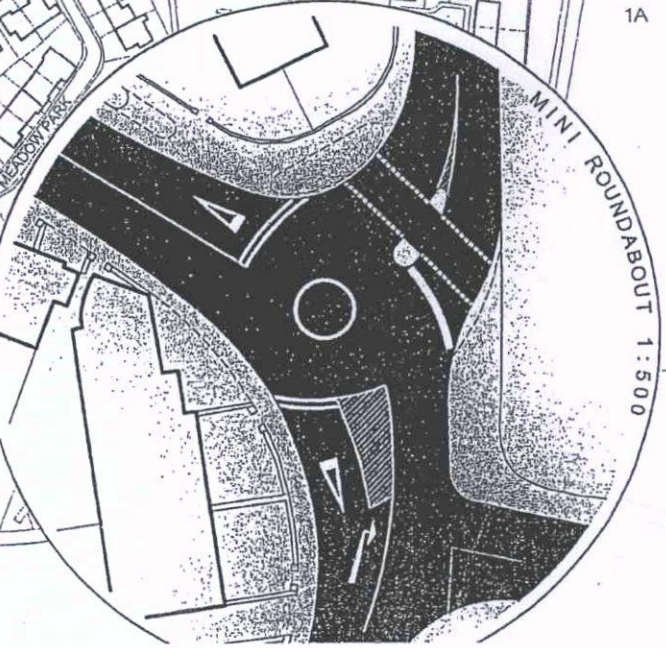
Schedule 1
(clauses 2.2 and 5.1.1)

The erection of traffic signals and a pedestrian crossing at the Plat Douet Road and Longueville Road junction

The introduction of an additional traffic calming system along Plat Douet Road where indicated

60m visibility splays set 2.4m back from road with walls, pillar, planting and hedges permanently restricted to a height below 900mm above access road level

Existing speed bumps / traffic calming to remain



1A

Schedule 2

THIS BOND is made

2009

BETWEEN

- (1) The Minister for Planning and Environment (hereinafter called "the Minister").
- (2) [Fallford Warehouse & Packing Company Limited whose registered office is situate at 1-3 L'avenue Le Bas, Longueville, St. Saviour, JED 7QN and Jersey Canning Company Limited whose registered office is situate at 1-3 L'avenue Le Bas, Longueville, St. Saviour, JED 7QN] (hereinafter jointly referred to as "the Owners")

1. DEFINITIONS AND INTERPRETATION

In this Bond the expressions "the Minister" and "the Owners" mean the parties respectively so defined above, "the Minister" includes (where the context admits) his successors in function and the expressions listed in column 1 below shall unless the context otherwise requires have the respective meanings set opposite to them in column 2 below:

1.	2.
"the Deposit"	the sum of one hundred and fifty two thousand pounds [(£152,000)] and in which the Minister will place in an interest bearing account opened or to be opened by the Minister at HSBC Bank plc
"Deposit Balance"	the amount from time to time standing to the credit of the Deposit;
"Default"	any costs or expenses incurred by the Minister or due to the Minister in consequence of any failure by the Owners to observe or perform any of the Obligations
"the Obligations"	Each and every of the terms provisions conditions obligations undertakings and agreements on the part of the Owners to be performed observed or carried out by the Owners as contained or referred to in clauses 5.1.1 (a) (b) and (c) of a Planning Obligation Agreement of even date between the parties hereto and the Governor and Company of the Bank of Scotland

2. COVENANT AND GUARANTEE

- 2.1. The Owners HEREBY irrevocably COVENANT AND GUARANTEE to the

Minister the performance observance and compliance of each and every of the Obligations

- 2.2. As security for their performance of the Obligations the Owners have paid the Deposit to the Minister.

3. **DURATION**

- 3.1. This Bond will continue until the Obligations have been performed to the reasonable satisfaction of the Minister.
- 3.2. On the expiration of this Bond the Deposit Balance shall be released to the Owners after first being applied to payment to the Minister in satisfaction of all claims made by the Minister against the Owners arising out of Default.

4. **OWNERSHIP OF THE DEPOSIT BALANCE**

- 4.1. The Minister and the Owners declare that during the currency of this Bond the Deposit Balance shall be the property of the Minister.
- 4.2. The Owners warrants that the Deposit is or will be free from any charge, lien or any other encumbrance.

5. **REMEDIES OF THE MINISTER**

The Minister shall be entitled at any time and without prior reference to the Owners withdraw from the Deposit such money as may be required from time to time in order to make good or compensate the Minister in respect of any Default

Signed on behalf of ~~Fallford Warehouse & Packing Company Limited~~ by.....

[Redacted signature]
in the presence of ... [Redacted name]

this 18th day of February, 2009

Signed on behalf of ~~Jersey Canning Company Limited~~ by.....

[Redacted signature]
in the presence of [Redacted name]

this 18th day of February, 2009

Signed on behalf of ~~the Governor and Company of the Bank of Scotland~~ Plc. (K.S.)

By .. [Redacted signature]
In the [Redacted name]

This 5th day of March 2009

Signed by/on behalf of [Redacted signature]

By [Redacted signature]

in the presence of . [Redacted name]

this 25th day of March, 2009