

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

relating to the development of Woodside Farm,
La Rue du Petit Alevall, St Peter

Dated : 28 May 2009

for + ON BEHALF OF
The Minister for Planning and Environment (1)

WITNESSED:

Woodside Farms Limited (2)

Charles Philip Gallichan (3)

L1250-617--



DATE 28th May 2009

PARTIES

- (1) The Minister for Planning and Environment of States Offices, South Hill, St. Helier, Jersey, JE2 4US ("the Minister"); and
- (2) Woodside Farms Limited of La Rue Coutanche, Trinity, Jersey, JE3 5DU ("the St Peter Owner")
- (3) Charles Philip Gallichan of La Hocquarderie, La Rue Coutanche, Trinity, Jersey, JE3 5DU (the "Trinity Owner").

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 St Peter Owner and the Trinity Owner (together referred to in this agreement as "the Owners") respectively warrant that they are respectively the owner in perpetuity (*à fin d'héritage*) of the Site thereto by virtue of those matters referred to in the First Schedule.
- 3 The Owners submitted the applications P/2008/0231 P/2008/0234 and PP/2008/0219 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 Owners 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 decided to grant outline planning permission subject to the completion 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:

"Alienation"

includes the transfer to a person of any share ("share" includes stock and all other subdivisions of equity

L1250-618--



	capital of a company), ownership of which confers a right of occupation of land in Jersey; an amendment to the declaration of the trusts on which shares in a company owning land in Jersey are held, where the amendment alters the person on whom the declaration confers the right of occupation of the land; the creation of a security interest, pursuant to a security agreement, in any share
"Escrow Bank Account"	a bank account that conforms to the requirements of Schedule 3
"Implement"	the date on which any use or operation forming part of the development begins to be carried 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
"The Trinity Farm Development"	the redevelopment of Woodside Farm, La Hocquarderie, Trinity in accordance with planning permits P/2008/0231 (with the description of development as <i>Construct new glasshouse and reservoir</i>) and P/2008/0234 (with the description of development as <i>Construct new processing and storage building including 30 No. staff units</i>)
"The St Peter's Farm Development"	the redevelopment of Woodside farm, La Rue du Petit Aeval, St Peter for as set out in the planning application PP/2008/0219 with the description of development as 'Demolish two dwellings, staff accommodation units and agricultural sheds and construct 2 No. dwellings'
"The St Peter's Farm Permit"	the outline planning permission dated 10 th October, 2008 for the St Peter's Farm Development and allocated reference number PP/2008/0219 including the subsequent approval of any reserved matters specified therein
"Dwellings Permit Unit"	each dwelling forming part of the St Peter's Farm Development to be constructed pursuant to the St Peter's Farm Permit
"GST"	means the goods and services tax under the Goods and Services Tax (Jersey) Law 2007
"Law"	the Planning and Building (Jersey) Law 2002

L1250-619--



"Occupation" and "Occupied"	occupation for the purposes permitted by the Dwellings Permit but not including occupation by personnel engaged in construction, fitting out or decoration.
"Plans"	the plans numbered 1 and 2 attached to this Agreement
"Site"	the land against which this Agreement may be enforced as shown hatched black (being the St Peter Site and the Trinity Site) on the Plans
"Shed"	that part of the Trinity Farm Development under the application for planning permission given reference P/2008/0234 consisting of a new processing and storage building
"St Peter Site"	the land shown hatched black on Plan 1
"Treasurer of the States"	the person appointed as such for the time being in accordance with Part 5 of the Public Finances (Jersey) Law 2005
"Trinity Site"	the land show hatched black on Plan 2
"Trinity Staff Accommodation"	means that part of the Trinity Farm Development consisting of the provision of 30 units of staff accommodation

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 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 Owners.

4 CONDITIONALITY

This Agreement is conditional upon:

4.1 being registered in the Royal Court as evidenced by an Act of the said Court; and

4.2 in the event that the sale of the St Peter Site is not completed on or before 12th June 2009 the St Peter Owner will procure that The Royal Bank of Scotland International Limited (which has an interest in the St Peter Site by virtue of a judicial hypothec) will enter into an agreement with the Minister to confirm that this Agreement has been entered into with its consent and that the St Peter Site shall be bound by the obligations contained in this Agreement and that its security in the St Peter Site shall take effect subject to this Agreement.

save for the provisions of Clauses 7.1 and 13 (legal costs clause and jurisdiction clause) which shall come into effect immediately upon completion of this Agreement.

5 THE OWNERS COVENANTS

The Owners covenant and agree with the Minister as set out in the Third Schedule to the intent that this Agreement shall be enforceable without limit of time against the Owners and any person claiming or deriving title through or under the Owners 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 Owners 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 of £1,000.

7.2 Where the agreement, approval, consent or expression of satisfaction is required by the Owners 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 Owners shall be deemed to have been properly served if sent by ordinary post to and addressed to it at the address of the Trinity Owner set out above or as otherwise notified for the purpose by notice in writing and that service on one party at that address shall also be deemed to be service on the other.
- 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 St Peter's Farm Permit shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) by any statutory procedure or expires prior to implementation.
- 7.6 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.
- 7.7 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 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 Owners in favour of the Minister under this Agreement are in addition to any of the Ministers' statutory powers under the Law.
- 7.8 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 Owners as contained herein.
- 7.9 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 for acting upon any subsequent breach or default.

9 **CHANGE IN OWNERSHIP**

The Owners agree with the Minister to give the Minister immediate written notice of any change in ownership of any of their 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.

L1250-622--



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 GST

All sums given in accordance with the terms of this Agreement shall be exclusive of any GST properly payable

12. 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

13 JURISDICTION

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

L1250-623--



FIRST SCHEDULE

(Description of the Owners Sites)

PART 1

Details of the St Peter's Owner title and description of the St Peter Site

The St Peter Owner has an interest in the St Peter Site as follows:-

That part of the property known as Woodside Farm, La Rue de l'Alva, St Peter comprising the two bungalows, agricultural sheds and staff accommodation.

Provenance:-

The St Peter Owner has a right by virtue of the subrogation by New Guarantee Trust of Jersey Limited of all the lands and property owned by Jersey Cattle Exporters Limited in the degrevement of the Goods and Lands of Jersey Cattle Exporters Limited as confirmed by Act of the Royal Court dated 16th December 1977.

PART 2

Details of the Trinity Owner's title and description of the Trinity site

The Trinity Owner has an interest in the Trinity Site as follows:-

The western part of Field 456 situate at La Rue Coutanche, Trinity.

Provenance:-

The Trinity Owner has a right as devisee to the Will of Real Estate dated 27th January 2000 of his late father Charles Thomas Gallichan.

L1250-624--



Second Schedule

The Owners Covenants with the Minister

The Owners covenant and agree and undertake:

- 1 Not to Implement the St Peter's Farm Permit until such time as a contract has been let for the Trinity Farm Development
- 2 Not to Implement the St Peter's Farm Permit until such time as the Owner has proved to the reasonable satisfaction of the Minister that the Trinity Farm Development has commenced and that the Owner has spent or has entered into irrevocable commitment or commitments to spend not less than £1,655,000 (being the difference between the value of the St Peter Site with the benefit of the St Peter's Farm Permit and the value of the St Peter Site without the benefit of the St Peter's Farm Permit) on the Trinity Farm Development. Prior to Implementation the Owner shall provide to the Minister such evidence, as the Minister shall reasonably require in order to confirm the expenditure or commitment of the sums paid by or committed to be paid by the Owner for the Trinity Farm Development and that the expenditure or commitment that the Owner will be making is on a competitive basis
- 3 No Dwellings Permit Unit is to be Occupied until such time as (a) the sum of five hundred thousand pounds (£500,000) (being the sum referred to in paragraph 2 above less the expenditure of £1,155,000 that the Owner has committed towards the Trinity Farm Development prior to the signing of this agreement) has been deposited as to £250,000 on or about 1st July 2009 and as to £250,000 on or about 1st October 2009 in an Escrow Bank Account such account to be operated in accordance with the Third Schedule and (b) the £500,000 has been committed to and spent on the Trinity Farm Development by the Owner to the reasonable satisfaction of the Minister
- 4 The Owner shall maintain accurate and up to date records and books of account of all expenditure incurred in respect of the Trinity Farm Development and the commitments to spend not less than the £1,655,000 referred to in paragraph 2 above in accordance with good accounting practice and ensure that such accounts are prepared by the Owner on the basis of a separate independently audited cost centre and permit the Minister the opportunity to inspect such records and accounts from time to time on reasonable notice or if requested to provide photocopies thereof to the Minister
- 5 To commence the works for the provision and laying out (including construction of buildings to at least a shell state) of the Shed within one month of this agreement being registered in the Public Registry
- 6 To complete the works for the provision of the Shed within six months of this agreement being registered in the Public Registry
- 7 To commence the works for the provision and laying out (including construction of buildings to at least a shell state) of the Trinity Staff

L1250-625--



Accommodation within one month of this agreement being registered in the Public Registry

**THIRD SCHEDULE
Bank Account**

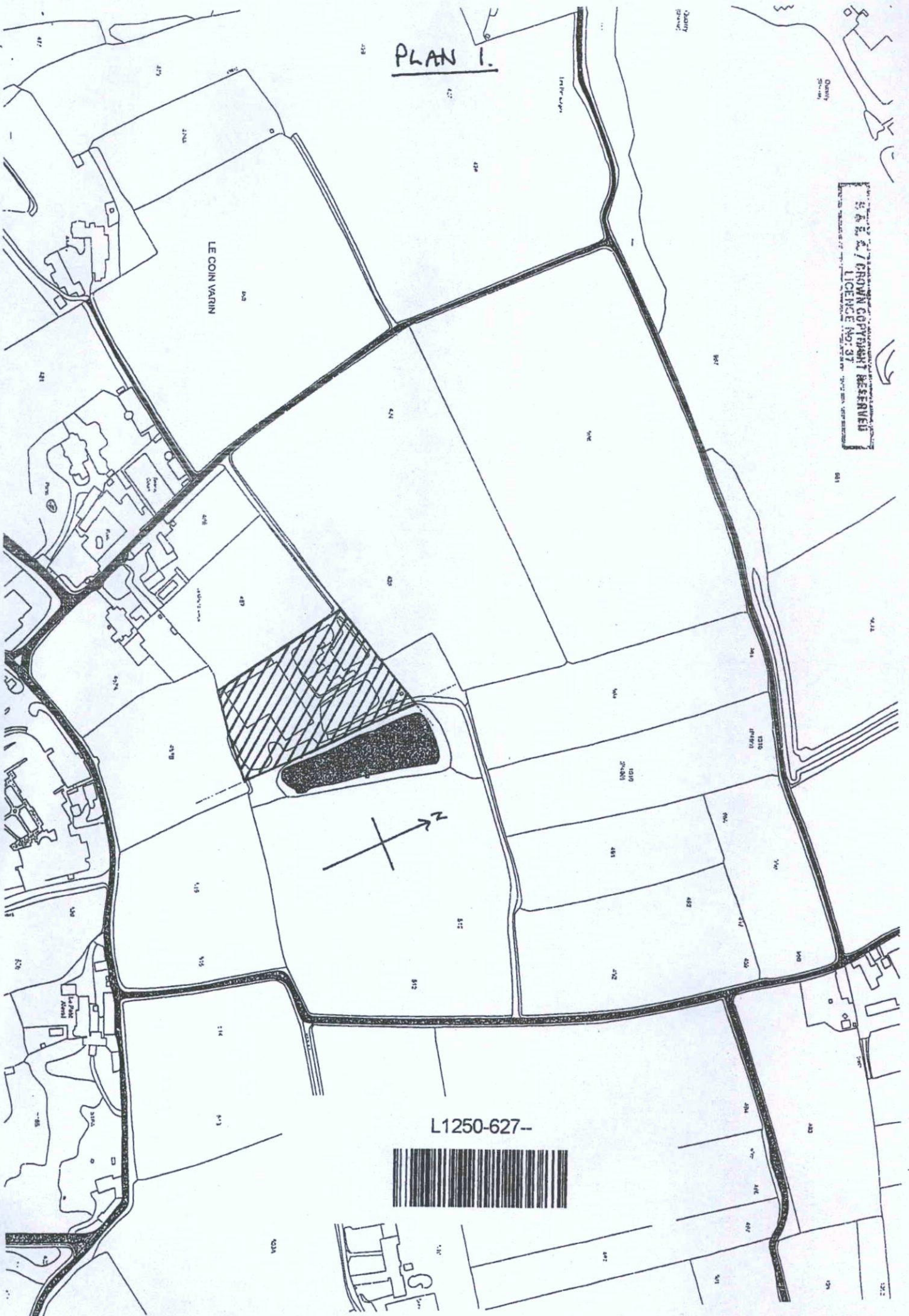
1. The Escrow Bank Account shall be held at a reputable clearing bank.
2. The Escrow Bank Account shall be in the name of and operated by Treasurer of the States
3. The Escrow Bank Account shall be an interest-bearing account and interest earned therefrom shall be added to the Escrow Bank Account.
4. The Treasurer of the States shall release sums from the Escrow Bank Account to the Owner once he has been notified by the Minister as to the Minister's satisfaction that the Owner has entered into the irrevocable and binding commitments referred to in the obligations referred to in the Second Schedule above.

L1250-626--



PLAN I.

S. A. S. / CROWN COPYRIGHT RESERVE
LICENCE NO: 37



L1250-627--



PLAN 2.

1305
(1997)

1200
(1449)

977

416

448

445

450

450A

457

459

457

450A

450

444

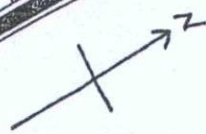
452

443

E. & E. C. / CROWN COPYRIGHT RESERVE
LICENCE No: 37

456A

455



442A

442B

442C

441

451

L1250-628--



463

465

Pool

ISSUES

466