

# *In the Royal Court of Jersey*

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**Samedi Division**

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**In the year two thousand and eleven, the fifth day of January.**

Before the Judicial Greffier.

Upon the application of Her Majesty's Attorney General, IT IS ORDERED that the Planning Obligation Agreement between the Minister for Planning and Environment, Mayhew Limited and Jersey Royal (Potato Marketing) Limited in relation to Fields 666 and 667, Trident Nurseries, La Rue de la Retraite, St Saviour be registered in the Public Registry of this Island.

  
Greffier Substitute

LOD

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**Planning Obligation Agreement under Article 25 of the  
Planning and Building (Jersey) Law 2002  
relating to the development of Fields 666 & 667 Trident  
Nurseries La Rue De La Retraite St Saviour**

Dated :

31<sup>st</sup> December

2010

The Minister for Planning and Environment (1)

Mayhew Limited (2)

Jersey Royal (Potato Marketing) Limited (3)

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DATE

31<sup>st</sup> December

2010

**PARTIES**

- (1) The Minister for Planning and Environment of States Offices, South Hill, St Helier, Jersey JE2 4US ("the Minister")
- (2) Mayhew Limited of Thomas Edge House, Tunnell, Street St Helier, JE2 4LU<sup>3</sup> ("the Owner")
- (3) Jersey Royal (Potato Marketing) Limited of Thomas Edge House, Tunnell, Street St Helier, JE2 4LU ("the Parent")

**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 in perpetuity (à fin d'héritage) of the Site - being the property to which it has right - (under its previous name of Woodside Flowers (2007) Limited by hereditary purchase from Woodside Flowers Limited by contract passed before the Royal Court on the 16 March 2007.
- 3 The Parent submitted the Application to the Minister and having regard to the purposes of the Law the Island Plan 2002 and all other material considerations the Minister granted outline planning permission for the Development on the 28 May 2010 subject to the completion of this Agreement within a period of three months from the date of the grant of the outline planning permission-subsequently extended to 31 December 2010.
- 4 The Parent has agreed to enter in to this agreement for the purpose of guaranteeing the performance by the Owner of the planning obligations contained herein
- 5 The parties acknowledge that this Agreement is legally binding
- 6 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:

"Development"	the Development of the Site in accordance with the Planning Permit.

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"Law"		the Planning and Building (Jersey) Law 2002.
"Net Proceeds"		<p>the proceeds of sale after deduction from them of :</p> <ol style="list-style-type: none"> <li>1) the consideration for the purchase by the Owener and/or the Parent of the Site</li> <li>2) the legal costs and disbursements incurred by the Owner and/or the Parent in the purchase of the Site</li> <li>3) the architect and other costs and disbursements incurred by the Owner and/or the Parent in the obtaining of the Planning Permit</li> <li>4) the proper and reasonable costs of the Owner and/or the Parent in the bringing of mains services to the Site</li> <li>5) the legal and estae agents costs and disbursements incurred by the Owner and/or the Parent in the disposal of the Site or the disposal of the share capital of the Owner by the Parent</li> </ol>
"Planning Permit"		the outline planning permission for the Development a copy of which is attached at the Second Schedule.
"Site"		all that immovable property owned by the Owner being Fields 666 & 667 Trident Nursery la Rue de La Retraite St Saviour full details of which are given in the First Schedule

## 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.

### **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 so that this Agreement shall be enforceable without limit of time against the Owner and any person claiming or deriving title through or under it 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 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.

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- 7.2 Any notices on the Owner shall be deemed to have been properly served if sent by ordinary post to and addressed to it at the address referred to above or as otherwise notified for the purpose by notice in writing.
- 7.3 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.
- 7.4 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) it is modified by any statutory procedure or expires prior to the Commencement of Development;
- 7.5 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.
- 7.6 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.
- 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 Owner in favour of the Minister under this Agreement are in addition to any of the Ministers' statutory powers under the Law
- 7.8 0 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
- 7.9 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
- 7.10 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**

The Owner agrees with the Minister to give the Minister immediate written notice of any change in ownership of any of its interest 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 purchased by reference to a plan.



**10 PARENT'S COVENANTS**

The Parent hereby covenants with the Minister in the terms set out in the Fourth Schedule (the Parent hereby agreeing to waive any right pursuant to the droit de discussion which might arise)

**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 JURISDICTION**

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

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## FIRST SCHEDULE

All that property known as "Le Neuf Jardin" and "La Guennetiere" joining together in one piece and bearing the numbers 666 and 667 on the Jersey Digital Map item the buildings water reservoir and greenhouses erected and established on part of the two pieces of land the whole known as Trident Nursery (previously "Maison de Haut Nursery") and having the unique property reference numbers 69217093, 692170940 and 69117283 the whole situate in the Parish of St Saviour Vingtaine de la Grande Longueville and being all the property to which the Owner had right by hereditary purchase by contract dated 16 March 2007 (under its original name of Woodside Flowers (2007) Limited) from Woodside Flowers Limited.

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**SECOND SCHEDULE**  
**The Planning Permissions**

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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

States   
 of Jersey

Planning Application Number PP/2010/0411

# Outline Permission

## PLANNING AND BUILDING (JERSEY) LAW 2002 ARTICLE 19

The Minister for Planning and Environment, having considered your application hereby GRANTS PERMISSION TO DEVELOP LAND under Article 19 of the Planning and Building (Jersey) Law 2002.

Demolish glasshouses, staff accommodation and associated sheds. Construct 1 No. dwelling. Restore part of site for agricultural use.

To be carried out at:

Fields 666 & 667, Trident Nurseries, La Rue de la Retraite, St. Saviour.

### PLEASE NOTE

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.

**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.

In accordance with plan(s) accompanying the said application, subject to compliance with the following conditions and approved plan(s):

### Standard Conditions

- 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 and Environment reserves the right to reconsider this proposal consequent on any future change of circumstances or policy.
- B. Application for the approval of Reserved Matters, as detailed in condition C, shall be made before the expiration of three years from the date of this decision.

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APPROVED

# Outline Permission

Planning Application Number PP/2010/0411

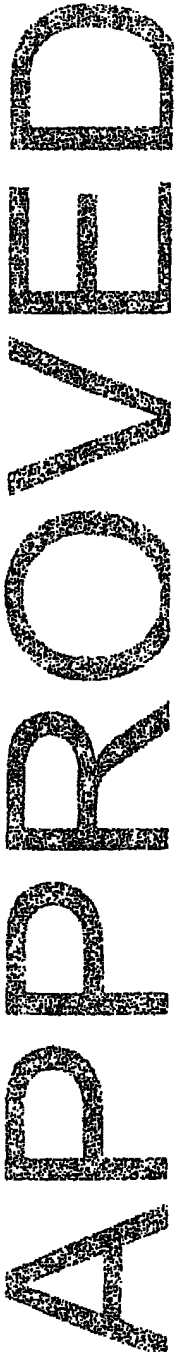
**Reason:** To accord with Article 19(4) of the Planning and Building (Jersey) Law 2002.

- C. Approval of the details of the siting, design and external appearance of the buildings, means of access thereto and landscaping of the site – hereinafter called the Reserved Matters – shall be obtained by application to the Minister for Planning and Environment prior to any development commencing.
- Reason:** To accord with Article 19(4) of the Planning and Building (Jersey) Law 2002.

## Condition/s

1. Before any development first commences on site, a Planning Obligation shall be completed to ensure that the funds generated from the sale of the Trident Nursery development are used entirely for the rationalisation and consolidation of the Jersey Royal Company's farming activities within the island and if the Planning Obligation is not completed by 31<sup>st</sup> December 2010, then the planning permission shall cease to have effect.
2. Notwithstanding the requirements of Standard Condition C above, the Reserved Matters application shall include details of the following information for prior approval of the Minister for Planning and Environment: a) a reduction in the width and height of the proposed gable wings to the new dwelling, b) the amenity and enclosure arrangements, and c) a revised porch arrangement to the main entrance.
3. Before any development first commences on site, samples of all the materials to be used in the construction of the new development shall be submitted to and approved in writing by the Minister for Planning and Environment. The approved scheme shall be implemented in full and shall be retained and maintained as such.
4. No development shall take place until detailed plans and sections of the proposed windows and doors at a scale of 1:20 together with details of proposed finishes have been submitted to and approved in writing by the Minister for Planning and Environment. The approved scheme shall be implemented in full and retained and maintained as such.
5. Before any development first commences on site a landscaping scheme shall be submitted to and approved in writing by the Minister for Planning and

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# Outline Permission

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Environment. The approved scheme shall be undertaken within the first available planting season and any trees or shrubs which die, are removed or become seriously diseased within a period of five years from the date the planting first takes place, shall be replaced in the next planting season with others of a similar size and species.

The Landscape Architect must give written confirmation to the Minister for Planning and Environment that they are satisfied that the works are completed in accordance with the approved plans and the quality of the materials and workmanship is of the highest order.

6. No development shall take place until a scheme of foul drainage and surface water drainage has been submitted to and approved in writing by the Minister for Planning and Environment. The approved scheme shall be implemented in full before the development is first brought into use and shall be retained and maintained as such.

7. Notwithstanding the provisions of the Planning and Building (General Development) (Jersey) Order 2008 (or any order revoking and re-enacting that order with or without modification), the following development shall not be undertaken without express planning permission first being obtained from the Minister for Planning and Environment.

- Extension to the dwelling (to include a conservatory);
- Free standing buildings within the curtilages of the dwelling;
- Addition or alteration to the roof;
- Erection of a porch, and
- Any windows or dormer windows.

8. Unless otherwise agreed in writing with the Minister for Planning and the Environment, the Architect for the development as approved shall be retained for the duration of the construction period and the scheme shall be completed to their satisfaction.

9. The proposed Demolition and Waste Management Plan shall be implemented in full in accordance with the details contained in the submitted report dated March 2010 (States Reference No. P/20100411 Drawing E), with any variation to the programme having been agreed in writing with the Minister for Planning and Environment before the work is undertaken

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# Outline Permission

Planning Application Number PP/2010/0411

10. The Percentage for Art contribution for the development shall be to a minimum value of £15,000 as indicated in the correspondence from the applicants' agents dated 24th May 2010. The installation of the Public Art, details of which shall have been agreed in writing with the Minister for Planning and Environment, shall be undertaken prior to the commencement of construction unless otherwise agreed in writing with the Minister for Planning and Environment.

## Reason(s)

1. To ensure that the new development is used entirely in connection with the Jersey Royal Company's operations in accordance with the requirements of Policy G2 of the Adopted Island Plan 2002.
2. For the avoidance of doubt and in accordance with the requirements of Policies G2 and G3 of the Adopted Island Plan 2002.
3. To safeguard the character and appearance of the area and in accordance with the requirements of Policies G2 and G3 of the Adopted Island Plan 2002.
4. To protect and enhance the appearance of the building and the area in accordance with the requirements of Policies G2 and G3 of the Adopted Island Plan 2002.
5. To safeguard the character and appearance of the area in accordance with the requirements of Policies G2 and G3 of the Adopted Island Plan 2002.
6. To ensure satisfactory drainage arrangements and to avoid flooding in accordance with the requirements of Policy G3 of the Adopted Island Plan 2002.
7. To enable the Minister for Planning and Environment to control the development and so safeguard the character and visual amenities of the area and to ensure that adequate private amenity space is retained within the curtilage of the dwelling in compliance with the requirements of Policy G3 of the Adopted Island Plan 2002.
8. To safeguard the visual amenities of the area and to ensure the use of appropriate detailing in accordance with the requirements of Policy G3 of the Adopted Island Plan 2002.

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# Outline Permission

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9. For the avoidance of doubt and in accordance with the requirements of Policies WM1 and WM2 of the Adopted Island Plan 2002.

10. To ensure the implementation and subsequent maintenance of an agreed scheme of public art in accordance with the requirements of Policy BE12 of the Adopted Island Plan 2002.

**FOR YOUR INFORMATION:**

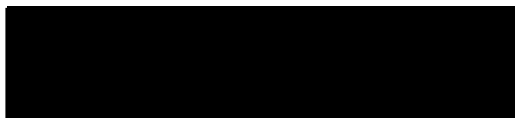
The following plan(s) has/have been approved:

- A: Location Plan
- B: Proposed Site Plan
- C: Proposed Floor Plans
- D: Proposed Elevation & Section Plans
- E: Plannin & Design Statement
- F: Planning Report
- G: Existing Site Photos

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.

28/05/2010 Signed



for Director

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**THIRD SCHEDULE****The Owner's Covenants with the Minister**

The Owner in regard to the Site covenants agrees and undertakes:

**Proceeds of sale**

- 1 Upon any disposal of the Site or any material part of it to pay the Net Proceeds to the Parent on the express condition that such proceeds shall be applied by the Parent solely for the purposes of the reduction by the Parent of its liabilities to HSBC Bank Plc
- 2 To obtain from its Parent and to exhibit to the Minister evidence in a form acceptable to the Minister (acting reasonably) of such payment firstly to the Parent and secondly by the Parent to HSBC Bank Plc in reduction of the liabilities of the Parent to HSBC Bank Plc

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## FOURTH SCHEDULE

### PROVISIONS RELATING TO THE OBLIGATIONS OF THE PARENT

#### 1. Guarantee

1.1 The Parent **HEREBY** irrevocably **COVENANTS AND GUARANTEES** to the Minister the performance observance and compliance by the Owner of each and every of the terms provisions conditions obligations undertakings and agreements on the part of the Owner to be performed observed or carried out by the Owner as contained or referred to in this Agreement (hereinafter called "the Obligations")

#### 2. Obligations

2.1 If at any time any default is made by the Owner in the performance of any of the Obligations the Parent will well and truly perform or cause to be so performed each and every one of the Obligations and/or will pay any sum or sums that may be payable in consequence of any default made by the Owner in the performance of any of the Obligations and will indemnify the Minister on demand against all losses damages costs and expenses arising out of any default by the Owner

#### 3. Liability as if Sole Principal Obligor

3.1 As between the Parent and the Minister (but without affecting the Obligations) the Parent shall remain liable under this Agreement as if it were the sole principal obligor and not merely a guarantor

3.2 The Parent shall not be discharged nor shall its liability be affected by anything which would not discharge it or affect its liability if it were the sole principal obligor including but not limited to:-

3.2.1 any amendment modification waiver consent or variation express or implied to this Agreement or any related documentation

3.2.2 the granting of any extensions of time or forbearance forgiveness or indulgences in relation to time to the Owner

3.2.3 the enforcement absence of enforcement or release of this Agreement or of any security right of action or other guarantee or indemnity

3.2.4 the dissolution amalgamation reconstruction reorganisation of the Owner or any other person or



3.2.5 the illegality invalidity or unenforceability of or any defect in any provision of this Agreement or any of the Obligations

3.2.6 any indulgence or forbearance payment or concession to the Owner

3.2.7 any compromise of any dispute with the Owner

3.2.8 any failure of supervision to detect or prevent any fault of the Owner

**4. Liability of Parent in event of Sale by Parent of the Share Capital of the Owner**

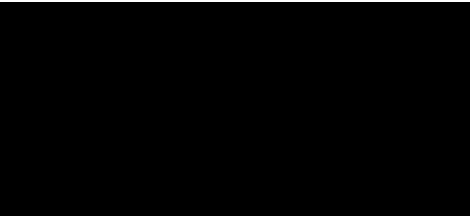
4.1 In the event of the disposal by the Parent of the share capital of the Owner the Parent covenants, agrees and undertakes to apply the Net Proceeds solely for the purposes of the reduction of the liabilities of the Parent to HSBC Bank Plc

4.2 To obtain and to exhibit to the Minister evidence in a form acceptable to the Minister (acting reasonably) of such payment to HSBC Bank Plc in reduction of the liabilities of the Parent to HSBC Bank Plc

Signed on behalf of the

by .....

in the presence of ...



this 31 day of DECEMBER 2010

Signed on behalf of Mayhew Limited

by .....

in the presence



*T. Brink*

this 30 day of DECEMBER 2010

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Signed on

by .....

in the presence

this 30 day of December 2010



*TJ Bueh*

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