

DATED

2016

(1) ROBERT HITCHINS LIMITED

(2) LLOYDS BANK PLC

(3) THE COUNCIL FOR THE BOROUGH OF TEWKESBURY

A G R E E M E N T

in respect of land to the south of the A46 and north of the Tirlle Brook,
Tewkesbury, in the County of Gloucestershire
pursuant to Section 106 of the Town and Country Planning Act 1990 (as
amended) Section 111 of the Local Government Act 1972 and Section 2 of
the Local Government Act 2000
(Town Centre Initiatives)

THIS DEED is made the

day of

2016

BETWEEN

1. THE COUNCIL FOR THE BOROUGH OF TEWKESBURY of Council Offices Gloucester Road Tewkesbury GL20 5TT ("the Council")
2. ROBERT HITCHINS LIMITED (Co. Regn. No. 686734) whose registered office is at The Manor Boddington Cheltenham Gloucestershire GL51 0TJ ("the Owner") and
3. LLOYDS BANK PLC (Co. Regn. No. 2065) of Registrations, Secured Assets, Barnett Way, Gloucester GL4 3RL ("the Chargee")

WHEREAS:

- (1) The Owner is the registered proprietor of the freehold interest in the Land which is registered with title absolute under title numbers GR118545 and GR92289 subject to the matters set out in the registers
- (2) The Owner intends to develop the Land and has made the Application to the Council
- (3) The Council is the Local Planning Authority within the meaning of the Act for the administrative area within which the Land is situate
- (4) By the Charges the Owner charged the Land (together with other land) to the Chargee to secure repayment to the Chargee of the monies therein mentioned

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS AND INTERPRETATION:

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

'Act'	means the Town and Country Planning Act 1990 and any amendment thereof
'Application'	means an application for planning permission submitted to the Council for the Development and allocated reference number 13/01003/OUT
'Charges'	mean firstly a charge dated 9 September 2011 and

	secondly a charge dated 20 December 2013 made between (1) the Owner and (2) the Chargee relating to the Land and other land
'CIL Regulations'	means, for the purposes of this Deed, Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 as amended by the Community Infrastructure Levy (Amendment) Regulations of 2012 and 2013
'Commencement of Development'	means the date which any material operation as defined in Section 56 of the Act, comprised in the Development shall commence to be carried out (but excluding for the avoidance of doubt operations consisting of site clearance demolition work archaeological 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 and the temporary display of site notices and advertisements) and 'Commence Development' shall be construed accordingly
"Development"	means the construction on the Land of a new garden centre and retail outlet centre with associated highway works in accordance with (or largely in accordance with) the Permission
'Index'	Means the All Items Index of Retail Prices issued by the Office for National Statistics
'Interest'	means interest calculated on a daily basis and compounded quarterly from the due date until payment at 4% above the base lending rate from time to time of Lloyds Bank Plc
"Land"	means the land to the south of the A46 and north of the Tirlle Brook Tewkesbury shown edged red on the Plan
"Occupation" and "Occupied"	occupation for the purposes permitted by the Permission but not including occupation by personnel engaged in construction and 'first Occupation' shall be construed accordingly
'Permission'	means planning permission granted pursuant to the Application
'Plan'	means the plan annexed hereto

'Town Centre Initiatives'	<p>means any one or more of the following, but not limited to:</p> <ul style="list-style-type: none"> • Built environment/public realm enhancements; • Accessibility improvements • Security improvements • Promotional events (including provision of a tourist information point) • Town centre management
'Town Centre Initiatives Contribution'	<p>mean the sum of Six Hundred and Seventy Five Thousand Pounds (£675,000.00) to be used by the Council towards the implementation of the Town Centre Initiatives</p>
'VAT'	<p>means the tax referred to in the Value Added Tax Act 1994 or any tax of a similar nature which is introduced in substitution for or as an addition to such tax from time to time</p>

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed 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 Deed.
- 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 an Act of Parliament shall include any modification, extension or re-enactment of that Act 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 Act or deriving validity from it.
- 2.6 References to any party to this Deed 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 Council or the successors to their statutory functions.
- 2.7 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing

3. LEGAL BASIS:

- 3.1 This Deed is made pursuant to Section 106 of the Act. To the extent that the obligations fall within the terms of Section 106 of the Act the obligations contained in this Deed are planning obligations for the purpose of Section 106 of the Act and are enforceable by the Council
- 3.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to powers contained in Section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and all other enabling powers
- 3.3 The obligations created by this Deed create planning obligations for the purpose of Section 106 of the Act and are enforceable by the Council as local planning authority for the area in which the Land is situated

4. CONDITIONALITY

- 4.1 Save for the provisions of Clause 14 (Costs) jurisdiction and delivery clauses and any other relevant provisions which shall come into effect immediately upon completion of this Deed, this Deed is conditional upon:
- (i) the grant of the Planning Permission; and
 - (ii) the Commencement of Development
- 4.2 In the event that the Application falls to be determined by Secretary of State or by an Inspector appointed by the Secretary of State (as to the whole or any part of this Deed, as appropriate), the obligations hereunder are conditional upon the Secretary of State or the Inspector appointed not stating in his report that the provisions are irrelevant or not required in order to grant Planning Permission or are not compliant with the CIL Regulations (and any provision in this Deed that the Inspector determines does not meet the policy tests set out in the CIL Regulations shall from the date of such determination not be enforced) UNLESS such decision is quashed following a successful planning challenge

5. THE COVENANTS:

The parties hereby agree and covenant with the other that:

- 5.1 The Owner will pay the Town Centre Initiatives Contribution to the Council prior to the date of first Occupation;

- 5.2 The Council will return the Town Centre Initiatives Contribution to the payee within 21 days of the relevant event, if the Town Centre Initiatives Contribution is not used five years from the date of first Occupation;
- 5.3 There shall be added to the payment of the Town Centre Initiatives Contribution a sum calculated by reference to any percentage increase in the Index between the publication immediately before the date hereof and the date upon which the payment of the Town Centre Initiatives Contribution is actually paid to the Council
- 5.4 The Owner hereby agrees and covenants with the Council that:
- (i) it will write to the Council no less than twenty eight (28) days before the Owner expects first Occupation to occur notifying the Council of the expected date of first Occupation; and
 - (ii) within 7 (seven) days of the date of first Occupation it will serve on the Council written notice confirming the date of first Occupation

6. MISCELLANEOUS

- 6.1 The covenants in this Deed shall come into effect on the date of it.
- 6.2 This Deed shall be registrable as a local land charge by the Council.
- 6.3 Nothing in this Deed shall be construed as imposing a contractual obligation upon the Council as to the issue of the Permission or as restricting the exercise by the Council of any power or function exercisable under the Act or under any other Act or authority.
- 6.4 This Deed shall cease to have effect if;
- (i) the Permission expires before Commencement of Development;
 - (ii) the Permission is varied or revoked or otherwise withdrawn;
 - (iii) the Permission is quashed following a successful legal challenge
 - (iv) the Permission (without the consent of the Owner) is modified by any statutory procedure; or
 - (v) development of the Land is undertaken pursuant to another planning permission granted after the date of this Deed insofar as it has not already been complied with or should have been complied with save for clause 5.2 which shall remain in force until complied with.
- 6.5 This Deed shall not be enforceable against tenants of the retail units constructed pursuant to the Permission nor against those deriving title from them.
- 6.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after parting with their entire interest in the Land

but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 6.7 Insofar as any clause or clauses of this Deed 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 Deed.
- 6.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.9 If the Permission shall expire (or shall be revoked or be quashed in any legal proceedings) before the Commencement of the Development then this Deed shall forthwith determine and cease to have effect and the Planning Obligations shall be removed from the register of local land charges by the Council or otherwise record the fact that it has come to an end and no longer affects the Land

7. WAIVER

No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8. THIRD PARTY RIGHTS

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act

9. CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed 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 Land or unit of occupation purchased by reference to a plan.

10. INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

11. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

12. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England.

13. NOTICE

13.1 Any notice or other communication required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its address as set out below:

Council: at the address set out above

Owner: at the address set out above;

or as otherwise specified by the relevant person by notice in writing to each other person.

13.2 Any notice or other communication shall be deemed to have been duly received:

13.2.1 if delivered personally, when left at the address and for the contact referred to in this clause;

13.2.2 if sent by recorded delivery, at the time the delivery was signed for; or

13.2.3 if by post on the second working day after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom

13.2.4 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

13.2.5 if sent by facsimile transmission at the time of successful transmission provided it was sent before 4pm and if sent after 4pm the next working day,

AND in proving such service it shall be sufficient to prove that personal delivery was made and a receipt obtained or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class recorded delivery envelope and a receipt obtained or that facsimile was successfully transmitted

14. COSTS:

The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed which shall be limited to the sum of [] Pounds (£[])

15. CHARGEES CONSENT

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

IN WITNESS whereof the parties hereto have caused this Deed to be executed the day and year first before written

THE COMMON SEAL of
ROBERT HITCHINS LIMITED
was hereunto affixed
in the presence of:-

Director:
Director/Secretary:

Executed as a Deed (but not delivered until
dated) by

(name and designation)
as attorney for LLOYDS BANK PLC
in the presence of:-

Signature of Witness
Name of Witness
Address
Occupation

THE COMMON SEAL of
TEWKESBURY BOROUGH COUNCIL
was hereunto affixed
in the presence of:-

