

DATED

2016

ROBERT HITCHINS LIMITED

and

LLOYDS BANK PLC

To

THE COUNCIL FOR THE BOROUGH OF TEWKESBURY

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**Unilateral Undertaking**

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)

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A DEED made the ..... day of ..... 2016

BY

1. **ROBERT HITCHINS LIMITED** (Co. Regn. No. 686734) whose registered office is at The Manor Boddington Cheltenham Gloucestershire GL51 0TJ ("the Owner") and
2. **LLOYDS BANK PLC** (Co. Regn. No. 2065) of Registrations, Secured Assets, Barnett Way, Gloucester GL4 3RL ("the Chargee")

creating planning obligations enforceable by THE COUNCIL FOR THE BOROUGH OF TEWKESBURY of Council Offices Gloucester Road Tewkesbury GL20 5TT ("the Council")

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 proposes to carry out the Development on the Land
- (3) The Council is a Local Planning Authority as defined in the Act and the Local Planning Authority for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act
- (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:**

- a) The definitions and rules of interpretation in this clause apply in this Undertaking:

'the Act'	means the Town and Country Planning Act 1990 and any amendment thereof
'the Application'	means an application for planning permission pursuant to

	the Act and made to Tewkesbury Borough Council under reference number 13/01003/OUT (with all matters reserved except access) for a proposed garden centre, retail outlet centre and ancillary facilities together with associated infrastructure works including access, car parking and landscaping
'the Charges'	mean firstly a charge dated 9 September 2011 (charge reference GR92289) and secondly a charge dated 20 December 2013 (charge reference: CYM126641) both 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 Date'	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 'Commencement of Development' shall be construed accordingly
'the Development'	means the construction on the Land of a new garden centre and retail outlet centre with associated highway works pursuant to the Permission
'the Highway Reserve Land'	means the land shown edged and hatched blue on Plan 2
'the Highway Reserve Period'	means the period of 10 years following the Commencement Date
"the Land"	means the land to the south of the A46 and north of the Tirl Brook, Tewkesbury and shown edged red on Plan 1
'Notice of Commencement'	means written notification from the Owner to the Council of the Commencement Date in accordance with the

	provisions of the Undertaking
'the Permission'	means planning permission granted pursuant to the Application
'Plan 1' and 'Plan 2'	means the plans annexed hereto and respectively numbered Plan 1 and Plan 2
'VAT'	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

- (b) Where the context so admits
- (i) words of the masculine gender shall incorporate the feminine gender and words of the singular shall include the plural and vice versa and where there is more than one party all obligations of such parties shall be joint and several unless there is an express provision otherwise
- (ii) where reference is made to a statutory provision this includes all prior and subsequent enactments amendments and modifications relating to that provision and any sub-ordinate legislation made under it
- (c) The expressions "the Council" "the Owner" and "the Chargee" shall include their respective successors in title and assigns and any deriving title through or under that party and successors to any statutory functions of the Council
- (d) All headings in this Undertaking are for ease of reference only and are not part of the Undertaking nor are they intended to be used as a guide to its interpretation
- (e) All payments in accordance with the terms of this Undertaking shall be exclusive of any VAT payable in respect thereof
- (f) Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words following those terms

**2. Legal Basis:**

- (a) Obligations hereunder on the part of the Owner are planning obligations for the purposes of Section 106 of the Act and enforceable by the Council
- (b) The covenants restrictions and requirements created by this Deed are planning obligations for the purposes of Section 106 of the Act to the intent that it shall bind the Owner and its successors in title to each and every part of the Land and are enforceable by the Council as local planning authority
- (c) Obligations hereunder shall not be enforceable against:

- (i) owner-occupiers or tenants of retail units constructed pursuant to the Permission nor against those deriving title from them
- (ii) any local authority or statutory undertaker who takes a transfer of any part of the Land in the normal course of the Development
- (iii) a chargee of any part of the Land personally unless and until it takes possession or otherwise exercises its right of sale under a charge
- (iv) any person who has disposed of his interest in the Land or relevant part of it at the time a breach hereunder occurs always provided that they have given notice to the Council of the date of disposal and details of to whom the disposal has been made

**3. Conditionality:**

The obligations hereunder are conditional upon:

- (a) the grant of Planning Permission and
- (b) the Commencement of Development

**4. Owner's Covenants:**

- (a) The Owner will observe and perform the obligations set out in this Undertaking
- (b) The Owner undertakes that, during the Highway Reserve Period, it will not erect any structures on the Highway Reserve Land nor use the Highway Reserve Land in such way as would preclude use of the Highway Reserve Land as highway or footpath maintainable at public expense
- (c) The Owner shall pay to the Council its proper and reasonable legal costs incurred in negotiating this Deed upon completion of this Deed

**5. Notices:**

Any notice to the Owner or the Chargee under this Undertaking shall be in writing signed by the Head of Legal Services for the time being of the Council unless otherwise herein provided and shall be deemed to be sufficiently served if sent to it by registered or recorded delivery post in the case of the Owner or the Chargee at their respective addresses stated at the beginning of this Undertaking and any notice to the Council under this Undertaking shall be in writing and shall be deemed to be sufficiently served if sent by registered or recorded delivery post to the Council addressed to the Head of Legal Services at The Council For The Borough Of Tewkesbury Council Offices Gloucester Road Tewkesbury GL20 5TT

**6. Non-Waiver:**

The Owner acknowledges that failure by the Council at any time to enforce the provisions of this Undertaking or to require performance strictly or otherwise by the Owner of any of the conditions covenants or obligations of this Undertaking or any failure or delay by the Council to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant or obligation and shall not affect the validity of this Undertaking or any part thereof or the right of the Council to enforce any provision

**7. General:**

- (a) This Undertaking supersedes and replaces all previous negotiations whether oral or written and
- (b) Nothing herein contained excludes the liability of any of the parties in relation to fraud
- (c) This Undertaking shall be determined and have no further effect if;
  - (i) the Permission expires before the Commencement Date;
  - (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 Undertaking insofar as it has not already been complied with or should have been complied with
- (d) The Owner acknowledges that this undertaking will be registered as a local land charge in the Register of Local Land Charges
- (e) Nothing in this Undertaking 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 Undertaking

**8. Warranty**

The Owner warrants that it has not mortgaged charged or otherwise created any interest (legal or equitable) in the Land or any part thereof which would adversely affect the enforceability of this Undertaking at the date of this Undertaking other than as shown on the register of title numbers GR118545 and GR92289 as at the date hereof

**9. Contract (Rights of Third Parties) Act 1999:**

It is not intended that any third party shall have a right to enforce the terms of this Undertaking pursuant to the Contracts (Rights of Third Parties) Act 1999 even if the terms are expressed to be for their benefit and nor shall any such third party have a right of veto over any future variations of this Undertaking

**10. Effect of invalidity illegality or enforceability:**

- (a) If any provision in this Undertaking shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired
- (b) 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 Undertaking, 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 the Permission or are not compliant with the CIL Regulations (and any provision in this Undertaking 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)

**11 Notice of Commencement:**

The Owner:

- (a) undertakes that it will write to the Council no less than twenty eight (28) days before the Owner expects commencement of the Development to occur notifying the Council of the expected Commencement Date;
- (b) within 7 (seven) days of the actual Commencement Date will serve Notice of Commencement on the Council
- (c) acknowledges that the Council is at liberty to elect a date which it considers to be the Commencement Date in default of the Owner's compliance with sub-clauses 12(a) and (b) above for the purposes of Clause 4(a) and will notify the Owner of such date

**12. Chargee's consent:**

The Chargee acknowledges and declares that this Undertaking has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Undertaking and that the security of the Chargee over the Land shall take effect subject to this Undertaking PROVIDED THAT the Chargee shall otherwise have no liability under the Undertaking 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

**13. Jurisdiction:**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

**14. Consent to Registration:**

The Owner hereby consents to the registration of this Deed as a Local Land Charge and as a notice against title numbers GR118545 and GR92289

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:-

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Director:

Director/Secretary:

THE COMMON SEAL of  
LLOYDS BANK PLC  
was hereunto affixed  
in the presence of:-

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Director:

Director/Secretary: