

DATED

2016

(1) ROBERT HITCHINS LIMITED

(2) LLOYDS BANK PLC

(3) GLOUCESTERSHIRE COUNTY COUNCIL

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 278 of the
Highways Act 1980 (as amended) and Section 1 of the Localism Act 2011
(Transportation)

THIS AGREEMENT is made the

day of

2016

BETWEEN

1. ROBERT HITCHINS LIMITED (Co. Regn. No. 686734) whose registered office is at The Manor Boddington Cheltenham Gloucestershire GL51 0TJ ("the Owner")
2. LLOYDS BANK PLC (Co. Regn. No. 2065) whose registered office is at 25 Gresham Street, London, EC2V 7HN ("the Chargee") and
3. GLOUCESTERSHIRE COUNTY COUNCIL of Shire Hall in the City of Gloucester GL1 2TG ("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) 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; and
 - (b) the Highway Authority for Gloucestershire and is of the opinion that the Contributions are necessary to address the consequences of the Development; and is
 - (c) satisfied that entry into this Agreement is of benefit to the public
- (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) It is hereby agreed by the parties that in this Agreement the following expressions shall have the following meanings:

'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 Agreement, 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 'Commence' and 'Commencement of Development' shall be construed accordingly
'the Contributions'	means the Footway and Cycleway Contribution, the Highway Works Contribution and the Travel Plan Contribution
"the 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
'the Footway and Cycleway Contribution'	means the sum of Seventy Thousand Pounds (£70,000.00) to be used toward the cost of the new footway/cycleway which is to be constructed on the east side of Northway Lane to provide improved facilities for employees and customers travelling between Northway and the proposed Development
'the Highway Works Contribution'	means the sum of up to Two Hundred and Eighty Nine Thousand Four Hundred and Twenty Five Pounds (£289,425.00) to be used towards the costs of the A438/ Shannon Way junction improvement scheme identified in Gloucestershire County Council's 'Pinch Point' scheme for the A438 at Ashchurch
'the Index'	means the Road Construction Tender Price Index (1995 = 100) Road Type Factors - New Construction Location Factors - South West (issued by Department for Business Innovation and Skills or by any other Department Ministry or other body upon which the duties in connection with that index devolves
"the Land"	means the land to the south of the A46 and north of the Tirl Brook, Tewkesbury and shown edged red on the Plan
'Late Payment Interest'	means a rate calculated on a daily basis and compounded quarterly from the due date until payment at five per cent (4%) per annum over HSBC Bank place base rate from time to time in force
'Notice of Commencement'	means written notification from the Owner to the Proper Officer of the Commencement Date in accordance with the provisions of the agreement
'the Permission'	means planning permission granted pursuant to the Application
'the Plan'	means the plan annexed hereto
'the Proper Officer'	means the Commissioning Director: Communities & Infrastructure or such other Chief Officer as shall from time to time be responsible for the highway and transportation function of the Council
'Repayment Interest'	means interest repaid at the London Interbank seven day rate (as compiled by the British Bankers Association) then

	subsisting calculated annually at the end of each financial year to ascertain the simple average interest rate for that year and then compounded annually calculated from the date of payment until repayment (net of tax if such deduction is required by the guidance in respect thereof issued by Her Majesty's Government at the date of such refund)
'the S106 Monitoring Officer'	means that officer of the Council appointed from time to time with the role of monitoring the compliance of the Owner or other persons with the provisions of this Agreement
"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
'the Travel Plan'	means a plan to promote sustainable travel patterns and behaviour
'the Travel Plan Contribution'	mean the sum of Five Thousand Pounds (£5,000.00) to be used towards the monitoring of the Travel Plan
'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) The Development shall be deemed to be commenced on the Commencement Date
- (c) 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 covenantor all obligations of such covenantors shall be joint and several
 - (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
- (d) The expressions "the Council" "the Owner" and "the Chargee" shall include their respective successors in title and assigns

- (e) All headings in this Agreement are for ease of reference only and are not part of the Agreement nor are they intended to be used as a guide to its interpretation
- (f) All payments in accordance with the terms of this Agreement shall be exclusive of any VAT payable in respect thereof
- (g) 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. Statutory Provisions:

The parties hereby agree that:

- (a) the obligations on the part of the Owner hereinafter contained are planning obligations imposed pursuant to the provisions of Section 106 of the Act which are enforceable by the Council and
- (b) inter alia this is an Agreement pursuant to Section 278 of the Highways Act 1980 Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011
- (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

- 3.1 Save for the provisions of Clause 5 (Payments due on Completion) jurisdiction and delivery clauses and any other relevant provisions which shall come into effect immediately upon completion of this Agreement, this Agreement is conditional upon:
 - (i) the grant of the Planning Permission; and
 - (ii) the Commencement of Development
- 3.2 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 Agreement, 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 Agreement 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

4. The Contributions:

The parties hereby agree and covenant with the other that:

Travel Plan Contribution

- (a) the Owner will pay the Travel Plan Contribution to the Council prior to the Commencement Date
- (b) the Council will return the Travel Plan Contribution to the Owner within twenty one (21) days of;
 - (i) the Permission lapsing before the Commencement Date; or
 - (ii) the occurrence of any of the events set out at clause 8(e) hereoftogether with Repayment Interest on the amount repaid from the date of payment until the date of repayment

Footway and Cycleway Contribution and Highway Works Contribution

- (c) The Owner will pay the Footway and Cycleway Contribution to the Council prior to the Commencement Date (provided that the Footway and Cycleway Contribution shall not be payable in the event that the Owner shall have already paid such sum to the Council pursuant to a planning obligation entered into in relation to the Owner's proposed development of land to the south of Aston Fields Lane, Ashchurch, Tewkesbury);
- (d) The Owner will pay the Highway Works Contribution to the Council prior to the Commencement Date (provided that the Highway Works Contribution shall not be payable in the event that the Owner shall have already paid such sum to the Council pursuant to a planning obligation entered into in relation to the Owner's proposed development of land to the south of Aston Fields Lane, Ashchurch, Tewkesbury);
- (e) The Council will return the Footway and Cycleway Contribution to the payee within twenty one (21) days of the relevant event, if the Footway and Cycleway Contribution has been paid but the Permission lapses before the Commencement Date together with Repayment Interest on the amount repaid from the date of payment until the date of repayment.

- (f) The Council will return the Highway Works Contribution to the payee within twenty one (21) days of the relevant event if the Highway Works Contribution has been paid but the Permission lapses before the Commencement Date together with Repayment Interest on the amount repaid from the date of payment until the date of repayment
- (g) The Council will
 - (i) expend all sums and contributions paid by the Owner to the Council under this Agreement in the manner and solely for the purpose for which the monies are paid and as soon as practicable following receipt of each payment;
 - (ii) ensure that all costs and expenses which it incurs or expends in relation to any of its obligations pursuant to this Agreement are reasonable, accurate, verifiable and evidenced by appropriate documentation;
 - (iii) if requested by the Owner, provide a written statement accounting for the planned, proposed or actual collection and expenditure of contributions received and
 - (iv) in the event that all or part of the Footway and Cycleway Contribution and/or the Highway Works Contribution is unspent or uncommitted by the date five (5) years from the date of receipt of the respective payment of the same, return to the payee any such unexpended or uncommitted sum together with Repayment Interest on the amount repaid from the date of payment until the date of repayment
- (h) There shall be added to the payment of the Footway and Cycleway Contribution and the Highway Works 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 respective Contributions are actually paid to the Council

5. Payments due on Completion:

The Owner hereby agrees with the Council that it will upon the execution hereof pay to the Council:

- (a) the Council's legal charges in the sum of [] Pounds (£[]) and
- (b) the Council's (highways) technical charges in the sum of [] Pounds (£ [])

6. Notices:

Any notice to the Owner or the Chargee under this Agreement 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 Agreement and any notice to the Council under this Agreement 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 Gloucestershire County Council Shire Hall Gloucester GL1 2TG

7. Non-Waiver:

It is hereby agreed by the parties hereto that failure by the Council or the Proper Officer at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Owner of any of the conditions covenants agreements or obligations of this Agreement or any failure or delay by the Council or the Proper Officer 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 agreement or obligation and shall not affect the validity of this Agreement or any part thereof or the right of the Council to enforce any provision

8. General:

The parties hereby agree that:

- (a) this Agreement constitutes the entire agreement between the parties in respect of the Permission and
- (b) this Agreement supersedes and replaces all previous negotiations whether oral or written and
- (c) none of the parties has relied on any express or implied statement warranty representation or undertaking given by or on behalf of another and no collateral agreement exists between the parties and
- (d) nothing herein contained excludes the liability of any of the parties in relation to fraud
- (e) this Agreement 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 Agreement insofar as it has not already been complied with or should have been complied with save for clauses 4 (b) 4(e) 4(f) and 4(g) which shall remain in force until complied with

9. Indemnity:

Nothing in this Agreement 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 Agreement

10. 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 Agreement at the date of this Agreement other than as shown on the register of title numbers GR118545 and GR92289 as at the date hereof

11. 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 Agreement 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 Agreement

12. Effect of invalidity illegality or enforceability:

(a) If any provision in this Agreement 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 Agreement, as appropriate), and either the Secretary of State or the Inspector appointed by the Secretary of State determines that any provision hereunder does not meet the statutory tests set out in either the CIL Regulations or paragraphs 203-206 of the National Planning Policy Framework such provision shall from the date of such determination not be enforced UNLESS such decision is quashed following a successful planning challenge

13. Late Payment Interest

If any sum payable under the terms of this agreement is not paid at the time specified herein the Owner shall pay to the Council Late Payment Interest on such sum

14 Notice of Commencement and Notice of Substitution:

The Owner hereby agrees and covenants with the Council that:

- (a) it will write to the S106 Monitoring Officer 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 the Owner will serve on the S106 Monitoring Officer the Notice of Commencement
- (c) the Proper Officer 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 14(a) and (b) above for the purposes of Clause 4(a) and 4 (c) as applicable and will notify the Owner of such date;
- (d) the Owner will give the S106 Monitoring Officer written notice as soon as possible following any change in ownership of any part or parts of the land occurring before all of the obligation of the Owner 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 Land sold by reference to a plan

14. Chargee's consent:

The Chargee 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 Chargee over the Land shall take effect subject to this Agreement PROVIDED THAT the Chargee shall otherwise have no liability under this Agreement unless it takes possession of the Land as mortgagee in possession, (and then only if it shall have caused such breach to have been occasioned and provided further for the avoidance of doubt it shall not in any event be liable for any breach of this Agreement arising prior to it becoming a mortgagee in possession of the Land regardless of whether or not such pre-existing breach shall continue for any period during which it is a mortgagee in possession of the Land) in which case it too will be bound by the obligations as if it were a person deriving title from the Owner PROVIDED ALWAYS that the successors in title to the Chargee shall become fully liable for any breach of this Agreement.

THE COMMON SEAL of
GLOUCESTERSHIRE COUNTY COUNCIL
was hereunto affixed
in the presence of:-



Head of Legal Services