

DATED

7th July

2017

ROBERT HITCHINS LIMITED
and
BODDINGTON ESTATES LIMITED
and
GLOUCESTERSHIRE COUNTY COUNCIL

A G R E E M E N T

in respect of land at Twigworth in the county of Gloucestershire
pursuant to Section 106 and Section 106A 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 2 of the Local Government Act 2000
(Highways and Transportation)



THIS AGREEMENT is made the

7th

day of

July

2017

BETWEEN

1. **ROBERT HITCHINS LIMITED** (Co. Regn. No. 00686734) whose registered office is at The Manor Boddington Near Cheltenham Gloucestershire GL51 0TJ ("the First Owner")
2. **BODDINGTON ESTATES LIMITED** (Co. Regn. No. 00874206) whose registered office is at The Manor Boddington Near Cheltenham Gloucestershire GL51 0TJ ("the Second Owner")
3. **GLOUCESTERSHIRE COUNTY COUNCIL** of Shire Hall Westgate Street in the City of Gloucester ("the Council")

WHEREAS:

- (1) The First Owner is the Registered Proprietor with the freehold interest in the Blue Land (subject only as shown on the Registers thereto but otherwise free from incumbrances) as set out in the First Schedule hereto
- (2) The Second Owner is the Registered Proprietor with the freehold interest in the Green Land (subject only as shown on the Registers thereto but otherwise free from incumbrances) as set out in the First Schedule hereto
- (3) The Owners propose to carry out the Development on the Land
- (4) 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
 - (c) satisfied that entry into this Agreement is of benefit to the public

NOW THIS DEED WITNESSETH as follows:

Definitions and Interpretation

1.(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
'the Application'	means application made to the Tewkesbury Borough Council and registered under number 15/01149/OUT
'the Basic Bond Sum'	means the sum of Six Hundred and Eighty Seven Thousand Six Hundred and Seventy Five Pounds (£687,675.00)
'the Blue Land'	means that part of the Land shown edged blue on the Land Ownership Plan
'the Bond'	means the First Bond and/or the Further Bond(s) as set out in clause 8 and the Third Schedule hereof
'the Bondsman'	means a company or person that achieves a Financial Strength Indicator of 5A together with a Risk Indicator of 1 and a minimum risk of failure when a check is carried out with Dun and Bradstreet
'the Bus Service Enhancements Contribution'	means the sum of Four Hundred and Fifty Thousand Pounds (£450,000.00)
'the Bus Service Enhancements'	means such enhancements as may be required to ensure there is an appropriate bus service to serve the Development
'the Bus Service Enhancements Agreement'	means an agreement for the provisions of the Bus Service Enhancements which are intended to be provided in three phases in accordance with the Second Schedule (subject to such changes as may be required from time to time by the Council) and which provides for the bus operator to operate the services with a fully accessible

	low-floor bus seating not less than 25 seats
'the Bus Service Provider'	means a company authorised to operate a public service vehicle as defined by Section 1 of the Public Passenger Vehicles Act 1981 pursuant to the Bus Service Enhancements Agreement
'the Bus Stop Contribution'	means the sum of Fourteen Thousand Pounds (£14,000.00)
'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 other than 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 'Commenced' and 'Commencement' shall be construed accordingly
'the Contributions'	means the: <ul style="list-style-type: none"> • Bus Stop Contribution; • Travel Plan Contribution; and • Footway Enhancements Contribution.
'the CIL Regulations'	means Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended by the Community Infrastructure Levy (Amendment) Regulations of 2012 and 2013
'the Development'	means a mixed use development at the Land comprising demolition of existing buildings; up to 725 dwellings and a local centre of 0.33ha (A1,A2,A3,A4,A5,D1,D2 uses); primary school, open space, landscaping, parking and supporting infrastructure and utilities; and the creation of

	a new vehicular access from the A38 Tewkesbury Road largely in accordance with the Permission
'Dwelling'	means a dwelling built as part of the Development (reference to a numbered dwelling such as 50 th 150 th 300 th or 400 th shall have the ordinary meaning thereof and shall be construed accordingly)
'Director'	means the Commissioning Director: Communities & Infrastructure for the time being of the Council or such other Chief Officer as shall from time to time be responsible for the communities and infrastructure function of the Council
'First Bond'	means a bond in the form set out in the Third Schedule
'First Occupied'	means the date when a Residential Unit becomes liable for Council Tax or any replacement thereof and 'First Occupation' shall be construed accordingly
'Footway Enhancements Contribution'	means the sum of Ninety Thousand Six Hundred and Twenty Five Pounds (£96,625.00)
'Further Bond / Further Bonds'	means a bond in the form set out in the Third Schedule and marked 'Form of Bond' save for the expiration clause in clause 2(b) therefore which shall be 5 years from the date of the First Bond or subsequent Further Bond in place at that time
'the Green Land'	means that part of the Land shown edged green on the Land Ownership Plan
'the Index (Highways)'	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 other body upon which the duties in connection with that index devolves) or such other official publication substituted for it
'the Index (Transport)'	means the Retail Prices (Motoring Expenditure) Index

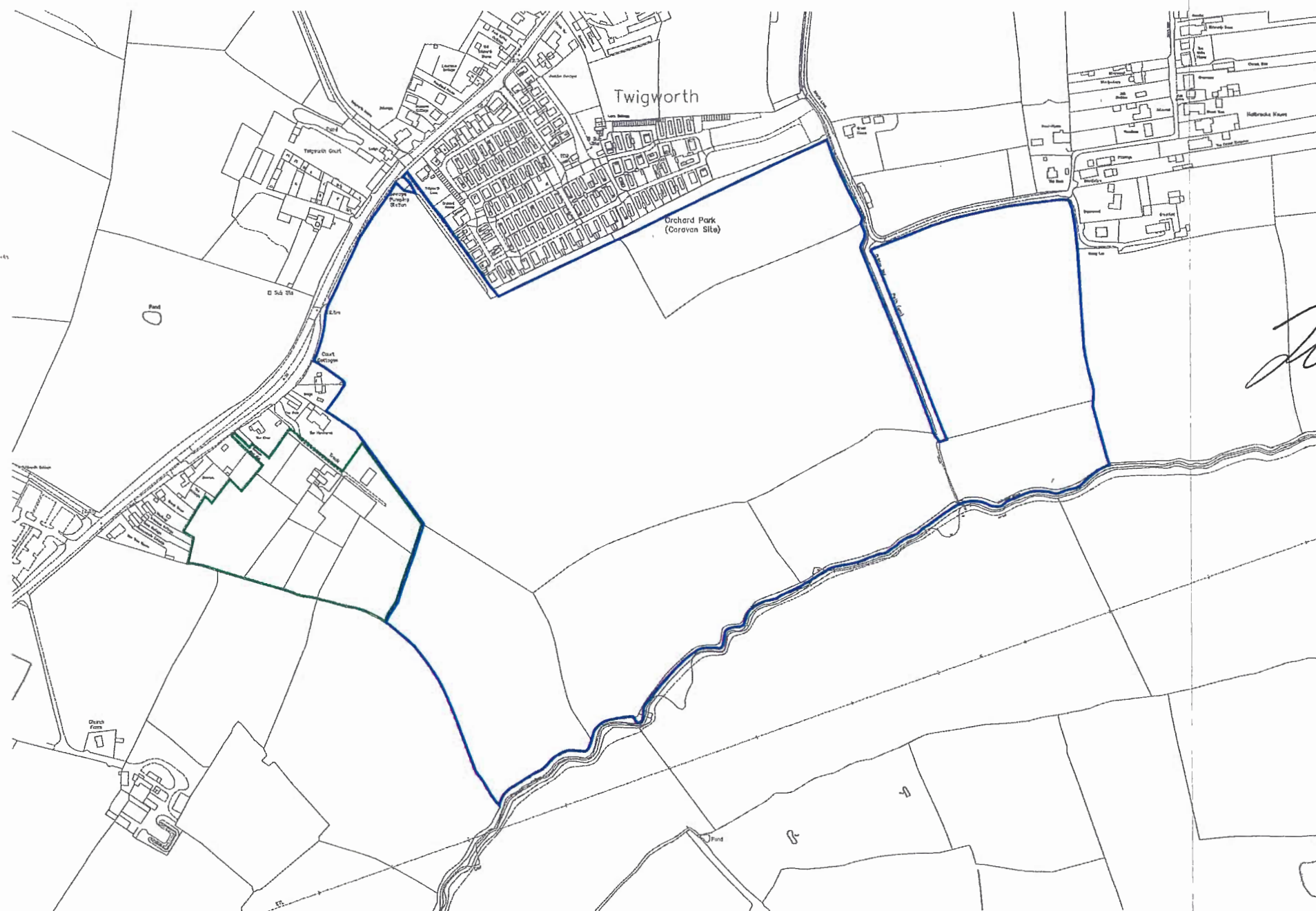
	(issued by the Office of National Statistics or such other official publication substituted for it)
'the Land'	means the Blue Land and the Green Land all situate at Twigworth Gloucestershire and shown for the purposes of identification only edged red on the Plan
'the Land Ownership Plan'	means the plan annexed to this Agreement and marked Land Ownership 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 (5%) per annum over HSBC Bank place base rate from time to time in force
'Notice of Commencement'	means written notification from the Owners to the Director of the Commencement Date in accordance with the provisions of the agreement
'the Owners'	means together the First Owner and the Second Owner
'the Permission'	means planning consent granted pursuant to the Application
'the Plan'	means the plan annexed to this Agreement and marked 'the Plan'
'Repayment Interest'	means interest repaid at the Public Works Loan Board 2 to 3 year rate from time to time in force such rate being calculated on a daily basis from the date of payment until the date of 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)
'Residential Unit'	means a dwelling for residential use built as part of the Development
'the Travel Plan'	means a plan to deliver a modal shift away from the private car in favour of public transport and other means of travel including walking and cycling

'the Travel Plan Contribution'	means the sum of One Hundred and Twenty Seven Thousand and Fifty Pounds (£127,050.00)
'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 Owners" "the First Owner" "the Second Owner" and "the Bondsman" 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) The obligations hereunder shall not be enforceable against:
 - (i) the owners and/or occupiers of an individual Dwelling;
 - (ii) any local authority or statutory undertaker who takes a transfer of any part of the Land in the normal course of development;




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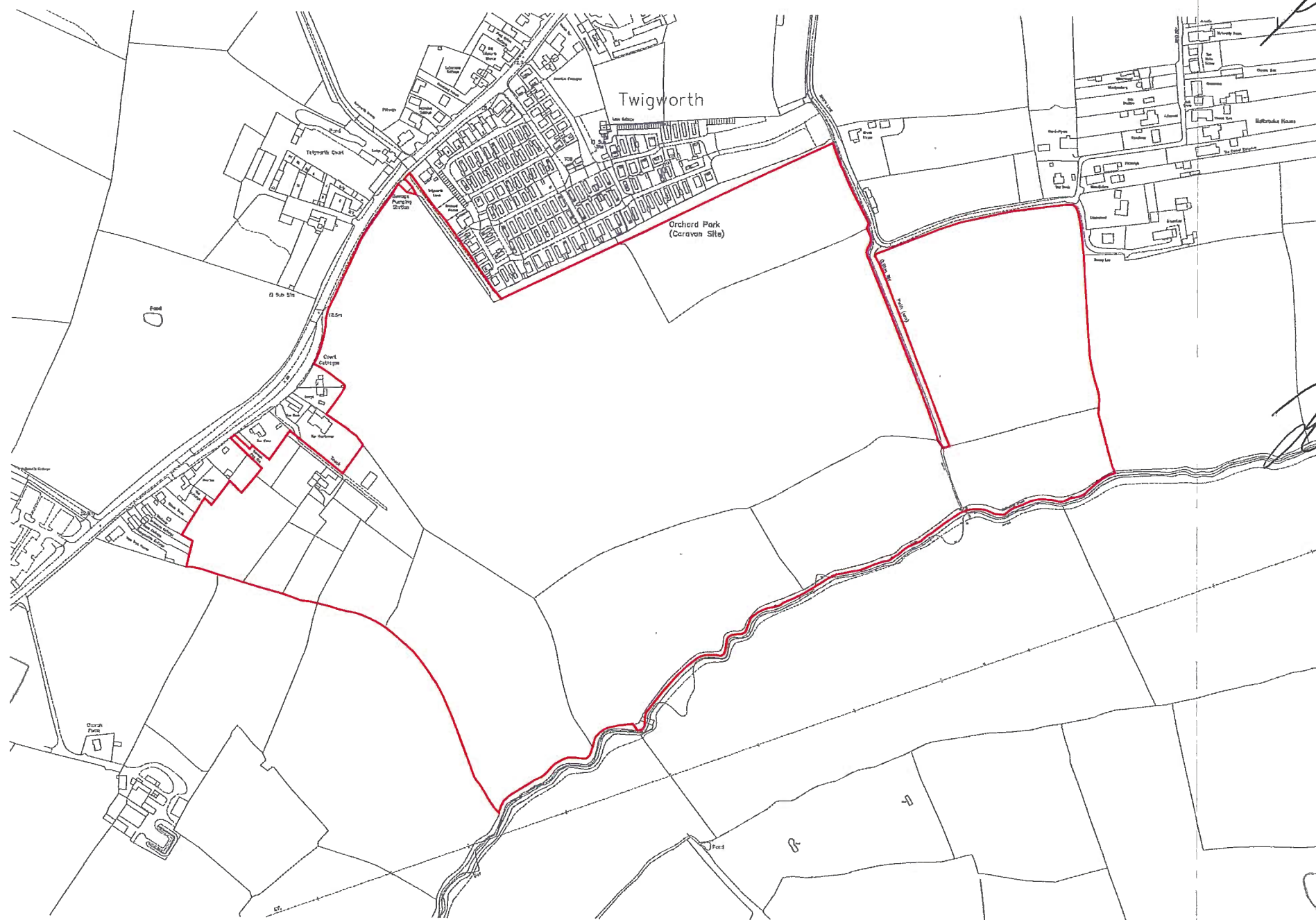
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9331

Site Name: Twigworth		Drawing Number: TWIG.L.6		Revision:
Drawing Title: Land Ownership Plan		Drawn By: MBA	Date: 17.05.2017	Scale: 1:5000@A3
<div> Robert Hitchins The Complete Development Solution <small>The Manor, Boddington, Cheltenham, Gloucestershire, GL51 0TJ Tel: 01242 680694 www.robert-hitchins.co.uk</small></div>				






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Site Name: Twigworth		Drawing Number: TWIG.L.5		Revision:
Drawing Title: S106 Plan		Drawn By: MBA	Date: 24.01.2017	Scale: 1:5000@A3
 Robert Hitchins The Complete Development Solution The Manor, Boddington, Cheltenham, Gloucestershire, GL51 0TJ Tel: 01242 680694 www.robert-hitchins.co.uk				

- (iii) a charge (and its successors) of any Registered Provider (which expression shall mean a housing association or other body which is registered with the Homes and Communities Agency as a social landlord or residential occupier of an Affordable Housing Unit (which expression shall mean dwellings constituting affordable housing within the meaning of Annex 2 to the national Planning Policy Framework (March 2012) taking possession or effecting a power of sale under a charge in default; and
 - (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 notice has been given to the Council of the sale or disposal and details of to whom the disposal has been made
- (h) Clauses 3 to (and including) clause 9 are conditional upon:
 - (i) the grant of the Permission; and
 - (ii) the Commencement of the Development
 and the Owners shall not cause or permit the Commencement of the Development until such time as a Bondsman shall have entered into the First Bond for the Basic Bond Sum as first defined herein.
- (i) In the event that the Application falls to be determined by the Secretary of State or by an Inspector appointed by the Secretary of State (as to the whole or any party 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 legal challenge
- (j) 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 Owners) is modified by any statutory procedure; or
- (v) development of the Land (or any part of it) 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.

Statutory Provisions

2. The parties hereto hereby agree that
 - (a) the obligations 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 106A of the Act Section 111 of the Local Government Act 1972 Section 278 of the Highways Act 1980 and Section 2 of the Local Government Act 2000

The Contributions

3. The Owners hereby agree and covenant with the Council that they will pay to the Council the following Contributions in the following manner (together with any Indexation payment in accordance with Clause 6 hereof and any Late Payment Interest payable in accordance with Clause 9 hereof):-

Type of Contribution	Base line Instalment Figures	Trigger
(a) Bus Stop Contribution	<ul style="list-style-type: none"> • £14,000.00 	On or before the Commencement Date
(b) Travel Plan Contribution	<ul style="list-style-type: none"> • £70,200.00 • £56,850.00 	On or before the Commencement Date On or before the First Occupation of the 300 th Dwelling
(c) Footway Enhancement Contribution	<ul style="list-style-type: none"> • £96,625.00 	On or before the First Occupation of the 1 st Dwelling

Application Review and Repayment

4. The Council hereby agrees with the Owners that:-

- (a) the **Bus Stop Contribution** (together with any Indexation payment in accordance with Clause 6 hereof and any Late Payment Interest payable in accordance with Clause 9 hereof) shall be used towards:-

Application	Repayment Trigger
Two new bus shelters, SMS Code reference glodawop, referred to as stop Twigworth Lodge Hotel & Opposite Twigworth Lodge Hotel, located on the A38 Tewkesbury Road, outside properties Green Trees and Westway located between the Twigworth Premier Inn Hotel and the proposed access for the Development, to be provided in accordance with Gloucestershire County Council Bus Stop Specifications Document dated February 2006 (updated 2010)	5 years from the date of payment

- (b) the **Travel Plan Contribution** (together with any Indexation payment in accordance with Clause 6 hereof and any Late Payment Interest payable in accordance with Clause 9 hereof) shall be used towards:-

Application	Repayment Trigger
(a) the implementation the Travel Plan; and (b) the employment of a person or organisation (at the discretion of the Proper Officer) to co-ordinate the Travel Plan	5 years from the date of the payment of the final instalment under clause 3 (b) above

- (c) the **Footway Enhancement Contribution** (together with any Indexation payment in accordance with Clause 6 hereof and any Late Payment Interest payable in accordance with Clause 9 hereof) shall be used towards:-

Application	Repayment Trigger
<p>enhancing the footways and bus stops in the immediate vicinity of the Land; specifically:</p> <ol style="list-style-type: none"> 1. Fircroft Road junction- Reduce bellmouth radius and install inline crossing and tactile paving. 2. Victoria Road junction - Install inline crossing and tactile paving. 3. Longford Mews junction - Install inline crossing and tactile paving. 4. Longford Lane junction - Investigate provision of dropped kerbs to provide crossing. 5. Bus stops at Longford Lane junction - Install bus boarder and new flag at southbound bus stop and investigate repositioning northbound bus stop 50m to the south to improve interchange between services 71 and 97/98. 6. Works at Chesterton Court - Install tactile paving at existing dropped kerbs and widen footway over 60m to north of junction. 7. Works at former fuel filling station - Potential to improve footway across entrances to former fuel filling station by marking footway. 8. North of Longford Bridge - Improve 	10 years from the date of payment

	width of existing footway by cutting back vegetation over 315 metres	
9.	South of The Old Rectory - Widen existing footway by removing grass verge over a distance of 145m.	
10.	North of fuel filling station - Widen existing footway over 45m and install dropped kerbs to provide crossing.	
11.	North of St Matthew's Church - Improve width of existing footway by cutting back vegetation over 60 metres.	
12.	South west of Yew Tree House - Improve width of existing footway by cutting back vegetation over 100 metres.	
13.	Between Tiverton & Westway - Widen existing footway; install bus boarder kerbing and hardstanding at southbound bus stop and provide dropped kerb crossing to link to northbound stop.	
14.	Works to layby - Create footway along length of layby to connect to proposed foot/cycle path into the Development and new access off A38.	

- (d) in the event that all or part of the Contributions are unspent or uncommitted by the date of its respective repayment trigger set out above the Council shall return to the party who made the payment to the Council any such unexpended or uncommitted sum together with Repayment Interest on the amount repaid

The Bus Service Enhancements

5.

- (a) The Owners undertake to use reasonable endeavours to enter into a Bus Service Enhancements Agreement with the Bus Service Provider prior to the First Occupation of the 50th Dwelling or one year after the First Occupation of the 1st Dwelling, (whichever is the earlier) and subject to entering into a Bus Service Enhancement Agreement, undertakes to pay the Bus Service Enhancements Contributions pursuant to and in accordance with the terms of the Bus Service Enhancements Agreement entered into, in the following instalments (unless otherwise agreed in accordance with that Bus Service Enhancements Agreement):
- (i) the first instalment of £125,000 on or before the earlier of First Occupation of the 100th Dwelling or the first anniversary of the First Occupation of the 1st Dwelling ("the Agreement First Instalment Date");
 - (ii) the second instalment of £105,000 on or before the date of the first anniversary of the Agreement First Instalment Date;
 - (iii) the third instalment of £85,000 on or before the date of the second anniversary of the Agreement First Instalment Date;
 - (iv) the fourth instalment of £65,000 on or before the date of the third anniversary of the Agreement First Instalment Date;
 - (v) the fifth instalment of £45,000 on or before the date of the fourth anniversary of the Agreement First Instalment Date; and
 - (vi) the sixth instalment of £25,000 on or before the date of the fifth anniversary of the Agreement First Instalment Date
- together with any contractual inflationary increases and contractual late payment penalties referred to therein.
- (b) The Owners undertake, prior to the First Occupation of the 100th Dwelling, or two years after the First Occupation of the 1st Dwelling (whichever is the earlier), to provide a turning facility sufficient to accommodate a 12.8m MAN 18.240 single deck bus together with a bus stop incorporating bus boarder kerbing and a shelter at the access into the Land from Twigworth Road and

being no further than 250 metres from the Land's access point at Twigworth Road.

- (c) The Owners undertake to notify the Council if the Bus Service Enhancements Agreement has not been entered into prior to the First Occupation of the 50th Dwelling, or one year after the First Occupation of the 1st Dwelling (whichever is the earlier), for reasons outside of the reasonable control of the Owners
- (d) As soon as reasonably practical following the service of any notification to the Council under clause 5 (c), the Owners shall propose an alternative public transport provision to the Council which is within the reasonable control of the Owner ("the Alternative Public Transport Provision") and the Council shall, within 6 months of the date of service of such notification, confirm to the Owners whether the Alternative Public Transport Provision is acceptable (acting reasonably)
- (e) In the event the Council confirms the Alternative Public Transport Provision is acceptable under clause 5 (d), the Owners shall as soon as reasonably practical thereafter, implement the Alternative Public Transport Provision, provided that
 - (i) the Owners shall not be prohibited from Commencing Development pending notification from the Council pursuant to this paragraph; and
 - (ii) the Owners' maximum financial liability in respect of the Bus Service Enhancements shall not exceed the amount of the Bus Service Enhancements Contribution
- (f) If an Alternative Public Transport Provision is not agreed by the Council pursuant to clause 5 (d), the Owners shall pay the Bus Service Enhancements Contribution to the Council in the instalments set out below and clause 5 (g) and clause 5 (h) shall apply:

In six instalments of: <ul style="list-style-type: none">• £125,000.00;	On or before the second anniversary of the First Occupation of the 1 st Dwelling (whichever is the earlier (hereinafter "the First Instalment Date"))
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<ul style="list-style-type: none"> • £105,000.00; 	On or before the date of the 1 st anniversary of the First Instalment Date
<ul style="list-style-type: none"> • £85,000.00; 	On or before the date of the 2 nd anniversary of the First Instalment Date
<ul style="list-style-type: none"> • £65,000.00 	On or before the date of the 3 rd anniversary of the First Instalment Date
<ul style="list-style-type: none"> • £45,000.00 	On or before the date of the 4 th anniversary of the First Instalment Date
<ul style="list-style-type: none"> • £25,000.00 	On or before the date of the 5 th anniversary of the First Instalment Date

- (g) The Council hereby agrees with the Owners that the **Bus Service Enhancements Contribution** (together with any Indexation payment in accordance with Clause 6 hereof and any Late Payment Interest payable in accordance with Clause 9 hereof) shall be used towards:-

Application	Repayment Trigger
the cost of the Bus Service Enhancements which are intended to be provided in three phases in accordance with the Second Schedule (subject to such changes as may be agreed from time to time with the Council) and which provides for the operation of services with a fully accessible low-floor bus seating not less than 25 seats	5 years from the date of the final instalment paid under clause 5 (f) above

- (h) The Council hereby agrees with the Owners that in the event that all or part of the Bus Service Enhancement Contributions are unspent or uncommitted by the date of its respective repayment trigger set out above the Council shall return to the party who made the payment to the Council any such unexpended or uncommitted sum together with Repayment Interest on the amount repaid

Indexation

6. There shall be added to the payments pursuant to:-
- (a) Clauses 3(a) and 3 (c) a sum based on those payments and calculated by reference to any percentage increase in the Index (highways) between the last published Index (highways) prior to the date hereof and the date upon which the payments are actually paid to the Council; and
- (b) Clause 3 (b) and 5 (f) a sum based on that payment and calculated by reference to any percentage increase in the Index (Transport) between publication immediately between the last published Index (Transport) prior to the date hereof and the date upon which the payments are actually paid to the Council

Notice of Commencement and Dwelling numbers

- 7.(a) The Owners hereby agree and covenant with the Council that:
- (i) they 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;
- (ii) within 7 day of the actual Commencement Date they will serve on the Council the Notice of Commencement
- (iii) in default of the Owners compliance with sub-clause 7(i) and 7(ii) above, the Director shall be at liberty to take steps to ascertain the Commencement Date and thereafter to elect a date which it considers (acting reasonably) to be the Commencement Date

- (iv) they will give written notice to the Council of the date of First Occupation of the 1st, 50th, 100th and 300th Dwellings respectively
- (b) The Council hereby agrees and covenants with the Owners that that Director shall immediately notify the Owners of the date(s) referred to in sub-clause (a)(iii) above

Bonding Provisions

- 8.(a) The Owners shall not cause or permit Commencement of Development until such time as a Bondsman shall have entered into the First Bond for the value of the Basic Bond Sum or such sum as may be equal to the Basic Bond Sum multiplied by the Index herein defined
- (b) The Council hereby agrees with the Owners that upon receipt of a written request so to do the Director shall review the sum payable under the terms of the First Bond and may thereafter notify the Owners and the Bondsman of any reduction in such sum as he may in his absolute discretion determine
- (c) in the event of the sum payable under the terms of this Clause being reduced in accordance with sub-clause (b) of this Clause then for the purposes of this Clause from the date of such notification the reduced sum specified shall be substituted for the Basic Bond Sum
- (d) Six months before the expiry of either the First Bond or subsequent Further Bond currently in place (if the same has not already been released) the Owners shall procure that the Bondsman (which for the avoidance of doubt need not be the same as the Bondsman as in the First Bond or subsequent Further Bond currently in place but shall fulfil the criteria specified in Clause 8(a) above) shall have entered into a Further Bond or subsequent Further Bond as the case may be with the Council
- (e) When a Further Bond has been put in place to the satisfaction of the Director he will notify the Bondsman (the bondsman being defined in this instance as being the bondsman who is a party to either the First Bond or the subsequent Further Bond as the case may be) that the First Bond or subsequent Further Bond currently in place is released absolutely

- (f) Save for any claim made by the Council prior to the expiry date of the First Bond or subsequent Further Bond then currently in place it shall be released and the Bondsman discharged absolutely on the earlier of:
- (i) the date on which all payments pursuant to this Agreement have been paid; or
 - (ii) completion of a Further Bond in the form set out in the Third Schedule

Late Payment Interest

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

Costs

10. The Owners hereby agree with the Council that they will upon the execution hereof pay the Council's legal fees in the sum of Seven Hundred and Twenty Pounds (£720.00) and technical fees in the sum of Three Hundred and Sixteen Pounds (£316.00)

Further covenants by the Council

11. The Council covenant with the Owners that;
- (a) it shall provide to the Owners such evidence as the Owners shall reasonably require to confirm the expenditure of the sums paid under this Agreement
 - (b) at the written request of the Owners, provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed and take such steps as shall be required to procure the reduction or release as appropriate of the Bond to be provided pursuant to clause 8
 - (c) where the agreement approval consent expression of satisfaction or similar is required by any person from the Council under the terms of this Agreement (including the Schedules hereto) such agreement approval consent or

expression of satisfaction shall not be unreasonably withheld or delayed (and for the avoidance of doubt this provision applies regardless of whether or not any specific provision hereof specifically deals with the issue)

- (d) in addition to its obligation at clause 15 (b), following the performance and satisfaction of all the obligations contained in this Agreement, forthwith on written request by the Owners confirm to the Registrar of Local Land Charges that the Council had no objection to the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement and shall provide to the Owners a copy of the confirmation
- (e) enter into the Bond forthwith on receipt

Notices

- 12. Any notice to the Owners 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 Owners at its respective registered offices 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 Head of Legal Services Gloucestershire County Council Shire Hall Westgate Street Gloucester

Non-Waiver

- 13. It is hereby agreed by the parties hereto that failure by the Council or the Director 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 Director 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 and any variation of this Agreement agreed between

the parties hereto which does not affect the liability of the Bondsman shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendments or amendments agreed

General

14. 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

Consent to and release of Registration and SDLT

- 15.
- (a) The Owners hereby consent to the registration of this Deed as a Notice on the Owners respective Title Numbers identified in the First Schedule
 - (b) The Council agrees with the Owners that following the performance and satisfaction of all the obligations contained in this Agreement (to the Director satisfaction) the Council will as soon as practicable on written request by the Owners arrange for the cancellation of all entries made against the titles referred to herein
16. Entry into this Deed does not constitute a transaction for a chargeable consideration for which Stamp Duty Land Tax is required and thus the Council hereby certifies that a Land Transaction Return is not applicable in accordance with Section 79(3) of the Finance Act 2003

Contract (Rights of Third Parties) Act 1999

17. 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

Effect of invalidity illegality or enforceability

18. 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

Warranty

19. The Owners hereby jointly and severally warrant to the Council that they have not leased mortgaged charged or otherwise created any interest in their respective interest of those parts of the Land in their ownership as set out in the First Schedule hereto at the date of this Agreement other than as shown on the registers of the title numbers as referred to in this Agreement

**First Schedule
Land Ownership**

TITLE NUMBER	TYPE OF INTEREST	REGISTERED PROPRIETOR	IDENTIFYING AREA
GR298992	Freehold	the First Owner	the Blue Land
GR367399	Freehold	the Second Owner	the Green Land

Second Schedule

(Bus Service Enhancements phasing)

Phase 1

- Phase 1 relies on the existing Service 71 (Gloucester - Tewkesbury) which runs with a regular 60 minute core frequency between 07:00 and 19:00 Mondays-Fridays; and between 08:00 and 19:00 on Saturdays.
- Access to the service will be via existing bus stops and/or new stops to be provided as part of the access arrangements.
- There is potential for this existing service to be diverted into the Land via the access off Tewkesbury Road, subject to turning facilities being provided.

Phase 2

- Phase 2 relies on a new service operating between Gloucester and the Land run on a half-hourly frequency between 07:00 and 19:00 Mondays-Saturdays.
- The new service will be introduced in conjunction with the 100th residential occupation or no later than 2 years after the first occupation, whichever is the sooner.
- The new service will 'turn-around' within the site initially at the local centre where turning facilities will be provided.
- The new service, operated with a fully-accessible low-floor bus seating not less than 38 seats will be integrated with the existing service 71 to provide up to 3 journeys an hour.

Phase 3

- Subject to timetabling and the provision of suitable on-site roads, the service will be extended into the Land.

**Third Schedule
(Form of Bond)**

THIS AGREEMENT is made the day of 201

BETWEEN

1. (Co Registration Number) whose
registered office is at ("the Bondsman")

2. **GLOUCESTERSHIRE COUNTY COUNCIL** of Shire Hall in the City of Gloucester
("the Council")

WHEREAS

1. By an Agreement dated 2017 made between Robert Hitchins Limited (1)("the First Owner") Boddington Estates Limited (2) ("the Second Owners") and The Council (5) ("the Main Agreement") the First Owner and the Second Owner (together "the Owners") entered into certain obligations to the Council in respect of development of land in Twigworth, Gloucester
2. By the Main Agreement the Owners undertook to procure delivery to the Council of a Bond as therein provided
3. The Bondsman having been approved by the Council in accordance with Clause 8 of the Main Agreement is prepared to undertake with the Council as hereinafter mentioned

NOW THIS DEED WITNESSETH as follows:-

1. The Bondsman hereby covenants with the Council that in the event that any of the terms conditions and obligations contained in the Main Agreement are not carried out (such failure being sufficiently proved for the purposes of this Clause upon the issue of a Certificate of Default by the Director of Law and Administration for the time being of the Council to that effect) it will on demand pay to the Council any sum of money as may be unpaid in accordance with the provisions of the Main Agreement or any part thereof and discharge any other liability on the part of the Owners thereunder
2. The Council hereby agrees with the Bondsman that:

- (a) the total sum payable by the Bondsman shall not exceed the sum of Six Hundred and Eighty Seven Thousand Six Hundred and Seventy Five Pounds (£ 687,675.00) ("the Basic Bond Sum") or such sum as may be equal to the Basic Bond Sum multiplied by the variable factor as herein defined
 - (b) this Agreement shall cease and be discharged (except in relation to any demand already made by the Council) on the earlier of:
 - (a) the [20]; or
 - (b) the issue by the Director of written confirmation that all obligations pursuant to the Main Agreement have been satisfactorily discharged
 - (c) the variable factor referred to in clause 2(a) hereof shall be the percentage increase of the Index (Highways) and the Index (Transport) from the date of the last published Index (Highways)/Index (Transport) (as appropriate) prior to the date hereof up to the date of the last publication before the certificate referred to in Clause 1 hereof
 - (d) if during the currency of this Deed the Index (Highways) shall be related to some commencing date other than 1995 then an appropriate adjustment will be made to the calculation to allow the new Index (Highways) to be used
 - (e) the Council hereby agrees with the Bondsman that upon payment of each Bonded Item (together with any indexation and interest payable) identified in the Main Agreement and confirmation from the Director so to do the Council will (as soon as practicable thereafter) notify the Bondsman of such reduction in accordance with Clause 8 of the Main Agreement
 - (f) in the event of the sum payable under the terms of this clause 3 of this Deed being reduced in accordance with sub-clause (e) of this clause then for the purposes of this sub-clause from the date of such notification the reduced sum specified shall be substituted for the Basic Sum and the date of notification shall be substituted for the date specified in sub clause (a) of this clause
3. Any demand shall be accepted by the Bondsman as conclusive evidence (and admissible as such) that any sums stated therein are properly due and payable to the Council for the purpose of this Agreement

4. If any event shall happen whereby it becomes impossible or impracticable to implement the provisions for calculating the amount payable hereinbefore contained then and in any such case such dispute difference or question as the case may be as to the amount payable shall be referred for determination by a single arbitrator in accordance with the provisions of the Arbitration Act 1996 or any statutory enactment in that behalf for the time being in force
5. Any notice to the Bondsman under this Agreement shall be in writing and shall be deemed to be sufficiently served if sent to it by registered or recorded delivery post to its registered office 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 Commissioning Director: Communities & Infrastructure Gloucestershire County Council Shire Hall Gloucester
6. It is hereby agreed by the parties hereto that failure by the Council or the Director at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Owners of any of the conditions covenants agreements or obligations of the Main Agreement or any failure or delay by the Council or the Director 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 and any variation of the Main Agreement agreed between the Owners and the Council which does not affect the liability of the Bondsman shall not vitiate the remainder of this Agreement which shall remain in full force and effect subject to such amendments or amendments agreed
7. This agreement shall be governed by and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English Courts

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

THE COMMON SEAL of

was hereunto affixed
in the presence of:-

Director

Secretary

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

Head of Legal Services

DATED 201

and

GLOUCESTERSHIRE COUNTY COUNCIL

B O N D

in respect of Land at Twigworth Gloucester in
the county of Gloucestershire

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



Secretary



THE COMMON SEAL of
BODDINGTON ESTATES LIMITED
was hereunto affixed
in the presence of:-

Director



Secretary



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



Head of Legal Services



7331