

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country

Planning Act 1990

Relating to application for the erection of 1No. Retail Unit (USE CLASS E(A) with external display area and car parking and servicing arrangements. Partial demolition, reconfiguration and refurbishment of existing employment building to create 2No. industrial /warehouse buildings with ancillary offices (Use Classes E(G)(III), B2 and B8) with servicing and car parking; retention and amendment of existing site accesses along with internal estate roads; 2No.substations; landscaping; and associated works.

on land at Sovereign Industrial Park, Wilson Road, Huyton, Knowsley

Planning Application 23/02782/FUL

Dated

2025

- (1) Knowsley Metropolitan Borough Council
- (2) Davos Property Developments Limited
- (3) Davos Industrial Limited
- (4) T.J. Morris Limited

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EXECUTION OF DEED

DATE

2025

PARTIES

- (1) **Knowsley Metropolitan Borough Council** of Municipal Buildings Archway Road Huyton Knowsley Merseyside L36 9YU ("**Council**")
- (2) **Davos Property Developments Limited** (co. reg. no. 13202516) whose registered office is at C/O T.J. Morris Limited Axis Business Park, Portal Way, Gillmoss, Liverpool, United Kingdom, L11 0JA ("**First Owner**")
- (3) **Davos Industrial Limited** (co. reg. no. 13184742) whose registered office is at C/O T.J. Morris Limited Axis Business Park, Portal Way, Gillmoss, Liverpool, United Kingdom, L11 0JA ("**Second Owner**")
- (4) **T.J. Morris Limited** (co. reg. no. 01505036) whose registered office is at T.J. Morris Limited Axis Business Park, Portal Way, Gillmoss, Liverpool, United Kingdom, L11 0JA ("**Chargee**")

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The First Owner is the freehold owner of that part of the Site registered under title number MS703521 subject to a charge dated 12 December 2022 in favour of the Chargee and the entries disclosed on the Charges Register to the title detailed in the first Schedule but otherwise free from encumbrances.
- 3 The Second Owner is the freehold owner of that part of the Site registered under title number MS237537 subject to the entries disclosed on the Charges Register to the title detailed in the first Schedule but otherwise free from encumbrances.
- 4 The First Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- 5 The Chargee owns and operates variety stores under various trading names includingof "Home Bargains".
- 6 The Council is minded to grant planning permission subject to the prior completion of this Deed.
- 7 The parties to this Agreement agree that the planning obligations contained in this Deed are necessary to comply with the requirements of regulation 122 of the Community Infrastructure Regulations 2010 (as amended).

NOW THIS DEED WITNESSES as follows:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed unless the context otherwise requires the following expressions shall have the following meanings:

- 1.1 "**Act**" means the Town and Country Planning Act 1990

- 1.2 **“Application”** means the application for outline planning permission submitted to the Council for the Development and allocated reference number 23/02782/FUL
- 1.3 **“Commencement of Development”** means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, 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, the temporary display of site notices or advertisements and **“Commence Development”** shall be construed accordingly
- 1.4 **“Committed”** means any amount which the Council has allocated for expenditure relevant to the purpose for which the sum was paid and such amount has been authorised by the relevant committee, or Council member or Council officer or has contracted to expend where such contract provides for payment contingent on the provision of works and/or services and/or supplies
- 1.5 **“Development”** means the erection of 1No. Retail Unit (USE CLASS E(A)) with external display area and car parking and servicing arrangements. Partial demolition, reconfiguration and refurbishment of existing employment building to create 2No. industrial /warehouse buildings with ancillary offices (Use Classes E(G)(III), B2 and B8) with servicing and car parking; retention and amendment of existing site accesses along with internal estate roads; 2No.substations; landscaping; and associated works.
- 1.6 **“Index”** means All Items Index of Retail Prices issued by the Office for National Statistics
- 1.7 **“Indexation Date”** means the date immediately preceding the date hereof when the last firm figure was published for the Index unless expressly stated otherwise in this Deed
- 1.8 **“Index Linked”** means the contribution is to be adjusted by reference to the amount of any increase in the Index over the period from the Indexation Date to the last, firm figure published for the Index for the month immediately prior to payment of the relevant contribution to the Council (or where the Owner is required by this Deed to apply a specified sum or make a specified sum available for a specified purpose the date of application of such sum for the specified purpose) and **“Indexation”** shall be construed accordingly
- 1.9 **“Interest”** means interest at 4% (four per cent) above the base lending rate of Barclays Bank PLC from time to time
- 1.10 **“Location and Layout Plan”** means the plan at Annex 2
- 1.11 **“Owner”** means the First Owner and the Second Owner
- 1.12 **“Planning Permission”** means the planning permission for the Development subject to conditions to be granted by the Council pursuant to the Application
- 1.13 **“Site”** means the property (including land and any buildings) against which this Deed may be enforced as shown edged red on the Location and Layout Plan and more particularly described in the First Schedule
- 1.14 **“Working Days”** means any day from Monday to Friday (inclusive) which is not a bank or public holiday in England

2 INTERPRETATION

- 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 their successors in title to that party and to any person deriving through or under that party any title interest or estate in any part of the Site and in the case of the Council it shall include the successors to its relevant statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4 CONDITIONALITY

This Deed is conditional upon the grant of the Planning Permission save for the provisions of Clauses 7, 9, 13, 14 and 15 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS AND WARRANTY

- 5.1 The Owner covenants with the Council as set out in the Second Schedule.
- 5.2 The Owner hereby warrants and confirms that apart from the parties hereto there are no other persons with a legal estate equitable or beneficial interest in the rents and profits or proceeds of sale of the Site or any part thereof.

6 THE COUNCIL'S COVENANTS

The Council covenants with the Owner to observe the restrictions and perform the obligations as set out in the Third Schedule.

7 MISCELLANEOUS

- 7.1 The Owner shall pay to the Council on completion of this Deed
- 7.1.1. the sum of £1,050 being the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed; and
- 7.1.2 the sum of £315 in respect of the Council's administrative costs for registering the obligations contained in this Deed
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This Deed shall be registrable as a local land charge by the Council.
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning Services, or in the event of any restructuring of posts by the Council such successor as the Council may from time to time determine, and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith secure the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.6 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.
- 7.7 If the Planning Permission is quashed or revoked or otherwise withdrawn or ceases to have effect by operation of law or expires before the Development has commenced then:
- a) this Deed shall (except for paragraph b) below) cease to have effect; and
- b) the Council shall forthwith cancel all entries made in the Register of Local Land Charges in respect of this Deed and return to the Owner any payments made under the terms of this Agreement.
- 7.8 No person shall be liable for any breach of any planning obligations or other provisions of this deed after parting with its entire interest in the Site or its interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest
- 7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.10 Nothing contained or implied in this Deed grants planning permission or other consent or shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as a Local Authority and its rights powers duties and obligations under any statute

byelaw or regulation may be as fully and effectually exercised as if the Council were not a party to this Deed.

7.11 The planning obligations in this Deed shall not be enforceable against:

7.11.1 any statutory undertaker holding an estate easement or interest in the Site or part of the Site insofar as the relevant statutory undertaker is occupying the relevant part of the Site face purposes as a statutory undertaker; nor

7.11.2 anyone whose only interest in the Site or any part of it is the nature of the benefit of an easement or covenant, or as the owner of the subsoil of any highway within the Site.

7.12 Nothing contained or implied in this Deed shall prejudice affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

7.13 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party as detailed in this Deed or such other address notified in writing to the other party from time to time. Provided however that

7.13.1 any notices to be served upon the Owner shall be sent to the Owner's registered address and;

7.13.2 any notices to be served upon the Council shall be marked for the attention of the Council's Head of Planning

7.13 If the Council agrees pursuant to application under section 73 of the Act to any variation or release of any condition contained in the Planning Permission or if any condition is varied or released following an appeal under section 78 of the Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission save where the Council in their determination of such an application for the new planning permission all the Secretary of State or inspector in their determination of such appeal indicate that consequential amendments are required to this deed to reflect the impact of the section 73 application and in such circumstances a separate deed pursuant to section 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission.

7.14 In respect of the Chargees interest in the Site the Chargee consents to the completion of this Deed and declares that its interest in the Site shall be bound by the terms of this Deed as if it had been executed and registered as a land charge before the creation of the Chargee's interest in the Site SAVE THAT the Chargee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Chargee is in possession of all or any part of the Site.

8. 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.

9 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give 10 Working Days' written notice of any change in ownership of any of its interests in the Site 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 Site or unit of occupation purchased by reference to a plan.

10 INDEXATION

Any sum referred to in the Schedules shall be Index Linked and where the Owner is required by this Deed to apply a specified sum or make a specified sum available for a specified purpose such sum shall also be Index Linked

11 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.

12 VAT

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

13 DISPUTES

If any dispute arises out of this deed the dispute shall be referred to an arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors. The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction then equally)

14 JURISDICTION

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

15 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

Details of the Owner's Title, and description of the Site

Details of the Owner's Title

The land registered at HM Land Registry within title numbers MS703521 and MS237537.

Description of the Site

All that land known as land at Sovereign Industrial Park, Wilson Road, Huyton, Knowsley shown edged red on the Location and Layout Plan at Annex 2.

SECOND SCHEDULE

Owner's Covenants to the Council

PART 1

RETAIL STORE TRADING LIMITATIONS

Interpretation

In this Part 1 the following words and phrases shall have the meanings:

'Force Majeure Event' means any circumstance not within the Owner's reasonable control including:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict;
- (c) nuclear, chemical or biological contamination;
- (d) collapse of buildings, fire, explosion or accident; and
- (e) interruption or failure of utility service.

'Huyton Home Bargains' means either

- (i) the existing retail premises currently operated by T.J. Morris Limited (trading as 'Home Bargains') at 26-30 Derby Road, Huyton Village, L36 9UJ and shown edged red on the plan at Annex 5; or
- (ii) such replacement for the existing Home Bargains referred to in paragraph (i) above comprising not less than 767 square metres and situated with Huyton Village and trading as Home Bargains and/or used as a discount variety store.

'Huyton Village' means the primary retail area of Huyton shown edged red on the Huyton Village Map at Annex 4

'Occupation' means occupation of the Retail Store for its intended purpose pursuant to the Planning Permission save for the purpose of construction, fitting out, security or marketing and the expressions **Occupy** and **Occupied** shall be construed accordingly.

'Retail Store' means the 2,396m² retail unit at the junction of Wilson Road and Cronton Road shown for the purpose of identification on the Location and Layout Plan at Annex 2 and approved pursuant to the Planning Permission.

1. it shall not be used for any purpose within Use Class E of the Use Classes Order 1987 (as amended) unless Huyton Home Bargains is open for trading; and
2. it will keep Huyton Home Bargains open for trading

3. Subject to paragraph 4 below the Owner shall not be liable for any failure to perform its obligations in paragraph 1 of this Part for so long as, and to the extent that, its performance is directly prevented by a Force Majeure Event.

4. The Owner covenants with the Council as follows:
- 4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 10 Working Days from its start, notifies the Council in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on the Owner's ability to perform any of its obligations under the Part; and
 - 4.2 took reasonable precautions to prevent or minimise the Force Majeure Event, including implementing and complying with an effective business continuity plan, except where compliance with the business continuity plan is itself affected by the Force Majeure Event; and
 - 4.3 uses all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations
 - 4.4 keeps the Council informed of its endeavours under paragraph 4.3 of this Schedule and their outcome promptly on request.
5. If the Owner has not resumed full performance of its obligations in paragraphs 1 and 2 of this Part which have been suspended under paragraphs 3 and 4 within 60 Working Days after the start of the Force Majeure Event (or such longer period as shall be agreed by the Council (acting reasonably) in writing) then its obligations under paragraphs 1 and 2 of this Part will recommence.

PART 2

SOCIAL VALUE CONTRIBUTIONS

Interpretation

In this Part 2 the following words and phrases shall have the meanings:

“Social Value Strategy” means a strategy for providing training programmes and delivering social value during construction and end use phases of the Development as required and described in the SPD and which has been

- a) submitted by the Owner in support of the Application;
- b) approved by the Council as part of the Planning Permission; and
- c) annexed to this Deed

“Social Value Contribution” means the sum of £2,995 (two thousand nine hundred and ninety-five pounds) to be used by the by the Council's approved partner organisation to support and monitor the provision of social value activity relevant to the Development in accordance with the approved Social Value Strategy. Social Value activity may include but shall not be limited to the provision of apprenticeships, local employment and trainee placements.

“SPD” means the Council's adopted SPD “Adding Social Value to Development: Employment and Skills” September 2018

The Owner covenants with the Council as follows:

1. Prior to the Commencement of Development the Owner shall pay the Social Value Contribution to the Council and shall not Commence Development until the Social Value Contribution has been paid.

PART 3

TREE MITIGATION CONTRIBUTION

Interpretation

In this Part 3 the following words and phrases shall have the following meanings:

“Tree Mitigation Contribution” means the sum of £819.73 (eight hundred and nineteen pounds and seventy-three pence) to be used by the Council for offsite tree planting in highway verge on Wilson Road (to replace tree to be removed).

The Owner covenants with the Council as follows:

1. Prior to the Commencement of Development the Owner shall pay the Tree Mitigation Contribution to the Council and shall not Commence Development until the Tree Mitigation Contribution has been paid.

PART 4

MONITORING FEE

Interpretation

In this Part 4 the following words and phrases shall have the meanings:

“Monitoring Fee” means the sum of £3,000 (three thousand pounds) towards the additional resource costs arising from the monitoring of the Development and the obligations arising under this Deed.

The Owner covenants with the Council as follows:

1. Prior to the Commencement of Development the Owners shall pay the Monitoring Fee to the Council and shall not Commence Development until the Monitoring Fee has been paid

THIRD SCHEDULE

Council's Covenants to the Owner

The Council hereby covenants with the Owner:

- 1 to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such per other purposes for the benefit of the Development as the Owner and Council shall agree
- 2 that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if such sum has been Committed to be spent by the Council) within 5 (five) years of the date of receipt by the Council of the payment such payments to be paid together with interest at Barclay's Bank PLC base rate from time to time for the period from the date of payment to the date of refund
- 3 that it will provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed

ANNEX 1

not used

ANNEX 2

Location and Layout Plan

ANNEX 3

Approved Social Value Strategy

Annex 4
Huyton Town Centre Map

Annex 5

Huyton Town Centre Home Bargains

THE COMMON SEAL of
**KNOWSLEY METROPOLITAN
BOROUGH COUNCIL** was hereunto
affixed in the presence of:

Authorised Signatory

Print Name:

Seal No.

Position:

Authority:

EXECUTED as a Deed by) Signature

DAVOS PROPERTY)

DEVELOPMENTS LIMITED) Name (block capitals)

by a director in the presence of a witness:)

Witness signature

Witness name

(block capitals)

Witness address

.....

.....

EXECUTED as a Deed by) Signature

DAVOS INDUSTRIAL)

LIMITED) Name (block capitals)

by a director in the presence of a witness:)

Witness signature

Witness name

(block capitals)

Witness address

.....

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EXECUTED as a Deed by) Signature

T.J. MORRIS LIMITED)

by a director in the presence of a witness:) Name (block capitals)

Witness signature

Witness name

(block capitals)

Witness address

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