

**DATED**

**6 December**

**2018**

**2019**

**UNILATERAL UNDERTAKING BY DEED**

given by

**WEST MIDLANDS COMBINED AUTHORITY**

To

**TJX UK**

To deal with objection raised by TJX UK (reference OBJ/22) in connection with the proposed Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order which would confer powers of compulsory acquisition on the West Midlands Combined Authority for the works authorised by the 2005 Order being the extension of the Midland Metro from a junction with existing Metro line 1 in Wednesbury in the Metropolitan Borough of Sandwell to Brierley Hill in the Metropolitan Borough of Dudley.

THE DEED IS AN OBLIGATION BY UNILATERAL UNDERTAKING and is made the day of  
2018~~2019~~

and is given by

(1) WEST MIDLANDS COMBINED AUTHORITY of 16 Summer Lane Birmingham B19  
3SD ("WMCA")

to

(2) TJX UK of 50 Clarendon Road, Watford, Hertfordshire WD17 1TX (Company No.  
03094828) (trading as TK Maxx) (~~the "Objector"~~"TJX UK")

WHEREAS

(A) On 12 December 2017 WMCA made an application to the Department for Transport  
under section 6 of the Transport and Works Act 1992 for the Order in respect of the  
Metro Scheme.

(B) ~~The Objector~~TJX UK has ~~leasehold interests in Plot~~rights over Plots 336 and 337 as stated in  
the Book of Reference

to the New Order relating to their leasehold interest in ~~in~~ Units 100 and 100A Merry  
Hill Shopping Centre Dudley and ~~the Objector~~TJX UK has stated that the lease they hold  
provides access rights over plots 336 and 337 as described in the ~~book~~Book of  
~~reference~~Reference

to the New Order (the "Property")

(C) The New Order would confer powers on WMCA to exercise powers of permanent  
acquisition ~~on~~of Plot 336 and a permanent right to use Plot 337.

(D) On 30 January 2018 ~~the Objector~~TJX UK submitted an Objection to the Secretary of State  
for Transport in respect of the Transport and Works Act Order application for the New  
Order and the provisions of this Deed are to deal with the concerns raised by ~~the~~  
~~Objector~~TJX UK in their Objection.

**NOW THIS DEED WITNESSES** as follows:-

**1. THE DEED**

- 1.1. On the basis that the New Order is made the provisions of this Deed shall be binding on the WMCA.

**2. INTERPRETATION**

- 2.1. In this Deed in addition to the terms hereinbefore referred to the following words and expressions shall where the context so requires or admits have the following meanings:-

"2005 Order" means the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (S.I. 2005 No. 927)

"Metro Scheme" means the Wednesbury to Brierley Hill Extension to the Midland Metro from a junction with the existing Metro Line 1 in Wednesbury in the Metropolitan Borough of Sandwell to Brierley Hill in the Metropolitan Borough of Dudley as authorised by the 2005 Order

"New Order" means the proposed Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order

"Objection" means the objection dated 29 January 2018 and attached to this Deed as Appendix (reference OBJ/22)

"Works" \_\_\_\_\_the authorised works pursuant to the 2005 Order or the New Order

"Property" \_\_\_\_\_ units U100 and U100a at the Merry Hill Shopping Centre as more particularly described in leases both of which are dated 9 January 2018 and made between (1) MH (No.1) Nominee A Limited and MH (No.1) Nominee B Limited and (2) TJX UK and associated customer car parking.

- 2.2. In this Deed where the context so requires:-

- 2.2.1. the singular includes the plural and vice versa
- 2.2.2. references to clauses schedules and paragraphs are references to clauses schedules and paragraphs in this Deed except where otherwise specified
- 2.2.3. title headings to the clauses schedules and paragraphs are for convenience only and shall not affect the interpretation of this Deed
- 2.2.4. references to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force

### **3. COMMENCEMENT**

The provisions of this Deed shall have immediate effect upon the completion of this Deed.

### **4. COVENANTS BY THE WMCA**

WMCA covenants that, on the basis that the New Order is made by the Secretary of State for Transport:

4.1. WMCA will maintain vehicle and pedestrian access/egress from the public highway to the Merry Hill Shopping Centre Property in the vicinity of the Works at all times during the Works for the Metro Scheme as far as is reasonably practicable.

4.2. General access/egress to the Merry Hill Shopping Centre will be maintained at all times via existing routes or by way of reasonable alternative routes; if implemented in accordance with clause 4.3.

4.1.4.3. If in the event access across plot 336 or 337 is temporarily interrupted WMCA will use all reasonable endeavours to ensure that reasonable and appropriate alternative access to the Merry Hill Shopping Centre will be provided to the reasonable satisfaction (to be given as a written approval) of TJX UK and at no cost to the Objector TJX UK. Without prejudice to the generality of the foregoing, WMCA acknowledges that in order to satisfy the requirements of reasonable and appropriate alternative access, the alternative route must be no no less convenient than the current route and as a minimum:

4.3.1. accommodate HGV delivery vehicles; and

4.3.2. accommodate peak staff and customer movements without causing undue delay to pedestrian and vehicular access to and egress from the Property.

4.2.4.4. Should The Embankment road be closed due to the Works WMCA will ensure diversionary routes for vehicular and pedestrian access to the Merry Hill Shopping Centre ~~will be~~ are made operational on or before closure of The Embankment and clearly signposted ~~and traffic will be diverted as is required~~ for all directions of access/egress.

4.5. WMCA will use all reasonable endeavours to ensure that any diversion routes implemented do not materially increase average journey times for access to and egress from the Property and WCMA will provide ~~the Objector~~ modelling evidence of the expected journey times to TJX UK as part of its proposal for TJX UK's written approval under clause 4.3.

4.6. WMCA will use all reasonable endeavours to ensure that the Works are programmed in such a way so as to avoid more than one closure to any point of access / egress to the Merry Hill Shopping Centre.

4.3.4.7. WMCA will provide TJX UK with reasonable advance ~~warning~~ written notice (of at least 28 days) of any Works that are reasonably considered likely to ~~be disruptive~~ cause disruption to the Property or the retail operations conducted at the Property (except any Works carried out in an emergency; in which event as much written notice as is reasonably practicable will be provided)). WMCA will, before commencing such Works, provide a copy of the detailed plans of the Works (and proposed mitigation measures) and allow TJX UK at least 28 days to comment on them. WMCA will have regard to any reasonable comments made by or on behalf of TJX UK in respect of the proposed Works or mitigation measures when implementing the Works or mitigation measures.

4.8. WMCA will provide ~~the Objector~~ TJX UK with ~~regular~~ at least [fortnightly] updates and communication of any Works that are objectively considered likely to ~~reasonably impact the business of the Objector at~~ cause disruption to the Property or the retail operations of TJX UK conducted at the Property, including (but not limited to) details of the proposed works timetable and the traffic management (or other appropriate mitigation) measures to be adopted during the Works. WMCA will provide updates and communication required under this clause in compliance with the notice provisions contained in paragraph 6 of this Deed.

4.9. Any notices served under paragraphs 4.3 and 4.7 of this Deed shall provide details of the Works to be undertaken, including:

4.9.1.1. a plan or description of the location of the Works sufficient to identify the location of the Works;

4.9.1.2. confirm how the Works will likely impact upon the Property;

4.9.1.3. confirm when the Works will begin and the approximate duration of the Works;

4.9.1.4. confirm what alternative arrangements will be put in place to mitigate the disruption caused, including details of any alternative services, arrangements or routes (including plans) sufficient to allow TJX UK to utilise these alternatives; and

4.3.1.1-4.9.1.5. provide a suitable contact name, telephone number and email address for the person with responsibility for the Works.

4.4-4.10. WMCA will minimise the interference to the Property by way of noise, dust, vibration and other similar matters as set out in the Code of Construction Practice Part 1.

4.5-4.11. WMCA will carry out the Works causing minimum disruption ~~as far as is reasonably practicable to access and egress~~ to the ~~access the Objector currently enjoys~~ Property TJX UK for the purposes of customers, staff and deliveries and the provision of services to the Property.

## **5. MISCELLANEOUS**

5.1. Nothing herein contained or implied shall prejudice or affect the rights discretions powers duties and obligations of the WMCA under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a combined authority.

5.2. If the Order is quashed revoked or otherwise withdrawn or if the powers under the Order ~~expires~~expire or ~~the Objector~~TJX UK no longer has a registered interest in the Property this Deed shall cease to have effect.

5.3. WMCA undertakes to act in the utmost good faith towards TJX UK in connection with the covenants and assurances contained in this Deed.

5.4. If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed to be affected or impaired

## **6. NOTICES**

6.1. ~~6.1~~ Any notice under this Deed shall be in writing and signed on behalf of the party giving it and ~~may~~must be served by delivering it in person or sending it by First Class Royal Mail Signed For to the address set out in clause 6.2 of this Deed or such other address as the parties agree to in writing in advance of any service of notice.

6.2. Any notice to TJX UK served under this Deed shall be addressed marked "for the attention of the 'Property Director', TJX UK, 50 Clarendon Road, Watford, Herts, WD17 1TX and copied to Tim Earl at Montagu Evans LLP, 5 Bolton Street, London W1J 8BA. In addition, any notice served on TJX UK may be served by email to: Richard\_Findley@tjxeurope.com and copied to tim.earl@montagu-evans.co.uk.

~~6.2-6.3.~~ The notice as served under clause ~~6.1~~ will be validly received when provided in person or after 24 hours of the notice being sent by First Class Royal Mail Signed For or by email, provided it does not fall on a Saturday or Sunday or a bank holiday in England in which case the valid receipt date will be the next working day.

## **7. RIGHTS OF WAY**

7.1. WMCA covenants not to exercise any powers under the 2005 Order or the New Order to extinguish the rights currently enjoyed by TJX UK in respect of plots 336 and 337, without first obtaining the prior written consent of TJX UK.

7.2. In the event that WMCA exercises powers to extinguish TJX UK's rights of way in respect of Plots 336 and 337, having obtained the prior consent of TJX UK under clause 7.1, WMCA will as soon as reasonably practicable, grant to TJX UK equivalent rights of way (to be determined by TJX UK) over the newly constructed private roads, without cost or premium to TJX UK.

## **8. COSTS AND COMPENSATION**

8.1. WMCA agrees that it will compensate TJX UK for all reasonable business losses, expenses, costs or fees arising as a direct consequence of disruption to its retail business operated

from the Property, as a result of the exercise of powers under the 2005 Order or the New Order.

8.2. WMCA will pay all reasonable and proper fees, costs and expenses incurred by TJX UK in connection with the preparation and negotiation of this Deed or TJX UK's consideration and comment on any Works or mitigation measures submitted under paragraphs [4.4 and 4.5] of this Deed, together with any irrecoverable VAT payable on such costs.

**7.9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

It is hereby agreed and declared that unless specifically agreed the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed.

**8.10. JURISDICTION**

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

EXECUTED AS A DEED the day and year first written

THE COMMON SEAL of )  
WEST MIDLANDS COMBINED AUTHORITY )  
was hereunto affixed in the presence of )

Authorised Signatory