

DATED

14th October

2016

(1) SAGER HOUSE (HAMPSTEAD) LIMITED

-and-

(2) JULIAN HODGE BANK LIMITED

-and-

**(3) THE MAYOR AND THE BURGESSES OF
THE LONDON BOROUGH OF CAMDEN**

THIRD DEED OF VARIATION

Relating to the s106 Unilateral Undertaking dated 10 December 2004
Made to the Mayor and the Burgesses of the London Borough of Camden by
Sager House (Hampstead) Limited, Jason Investments Limited
Fortune Green Limited and Irish Nationwide Building Society PLC
under section 106 of the Town and
Country Planning Act 1990 (as amended)
Relating to development at premises known as
**37-63 FORTUNE GREEN ROAD
WEST HAMPSTEAD, LONDON NW6**

Andrew Maughan
Head of Legal Services
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

Tel: 020 7974 1918
Fax: 020 7974 2962

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CLS/COM/PM/
3rd DoV 18.03.16 (FINAL)



THIS AGREEMENT is made on the 14th day of October 2016

BETWEEN

1. **SAGER HOUSE (HAMPSTEAD) LIMITED** (Co. Regn. No. 4207091) whose registered office is at Sager House 50 Seymour Street London W1H 7JG (hereinafter called "the Freeholder") of the first part
 2. **JULIAN HODGE BANK LIMITED** (Co. Regn No. 743437) whose registered office is 31 Windsor Place Cardiff CF10 3UR (hereinafter called "the Mortgagee") of the second part
 3. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the third part
1. **WHEREAS:**
- 1.1 The Freeholder, Fortune Green Limited, Irish Nationwide Building Society PLC and Jason Investments Limited made a Unilateral Undertaking to the Council dated 10 December 2004 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended).
 - 1.2 The Freeholder is registered at the Land Registry as the freehold proprietor of the Property with Title Absolute under title number NGL785640 subject to a charge to the Mortgagee.
 - 1.3 The Freeholder is the freehold owner of and is interested in the Property for the purposes of Section 106(9) of the Act.
 - 1.4 Fortune Green Limited and National Asset Loan Management Limited no longer hold an interest in the Property.
 - 1.5 For the purposes of information the leasehold interest registered under title number NGL827373 closed on the 22nd June 2015.

- 1.6 The Freeholder shall hereinafter be referred to as “the Owner”.
- 1.7 The Mortgagee as mortgagee under a legal charge registered under Title Number NGL785640 and dated 14th July 2015 is willing to enter into this Agreement to give its consent to the same.
- 1.8 The Council is the local planning authority for the purposes of the Act and considers it expedient in the interests of the proper planning of its area that the Development of the Property should be restricted or regulated in accordance with this Agreement.
- 1.9 An Application was made under s73 of the Act in respect of the Property to vary a condition contained in the Original Planning Permission was submitted to the Council by the Owner and validated on 11 February 2015 for which the Council resolved to grant permission conditionally under reference 2015/0253/P subject to the conclusion of this Agreement.
- 1.10 This Agreement is made by virtue of the Town and Country Planning Act 1990 Section 106 (as amended) and is a planning obligation for the purposes of that section.
- 1.11 Without prejudice to the terms of the other covenants contained in the Existing Agreement as amended by the First Deed of Variation and the Second Deed of Variation the parties hereto have agreed to further vary the terms of the Existing Agreement as amended by the First Deed of Variation and the Second Deed of Variation as hereinafter provided.

2. INTERPRETATION

- 2.1 All words and phrases defined in the Existing Agreement shall have the same meaning in this Agreement save where the context otherwise dictates and for the avoidance of any doubt the Existing Agreement shall remain in full force and effect save as varied by this Agreement.
- 2.2 All reference in this Agreement to clauses in the Existing Agreement are to clauses within the Existing Agreement as amended by the First Deed of Variation and the Second Deed of Variation.

2.3 In this Agreement the following expression shall unless the context otherwise states have the following meaning now allocated to it.

2.3.1 "Agreement" this Deed of Variation

2.3.2 "Existing Agreement" the Section 106 Unilateral Undertaking under the Town and Country Planning Act 1990 (as amended) dated 10 December 2004 made by Freeholder the Fortune Green Limited the Irish Nationwide Building Society PLC and Jason Investments Limited to the Council as amended by the First Deed of Variation and the Second Deed of Variation

2.3.3 "the First Deed of Variation" the Section 106 agreement Deed of Variation under the Town and Country Planning Act 1990 (as amended) in respect of the Property dated 2 February 2010 made between (1) the Council (2) the Freeholder (3) Fortune Green Limited and (4) the Irish Nationwide Building Society PLC

2.3.4 "the Original Planning Permission"

means the planning permission granted by the Planning Inspectorate on 17 February 2005 referenced APP/X5210/A/03/1135364 relating to Planning Application 1 allowing the redevelopment of the Property to provide 72 apartments (including 22 affordable units) five retail units and gym over five storeys

2.3.5 "the Second Deed of Variation" the Section 106 agreement Deed of Variation under the Town and Country Planning Act 1990 (as amended) in respect of the Property dated 18 January 2011 made between (1) the Council (2) the Freeholder (3) the Fortune Green Limited and (4) the Irish Nationwide Building Society PLC

2.4 Where in this Agreement reference is made to a clause schedule or recital such reference (unless the context otherwise requires) is a reference to a clause schedule or recital of this Agreement.

2.5 Headings are for ease of reference only and are not intended to be construed as part of this Agreement and shall not be construed as part of this Agreement and shall not effect the construction of this Agreement.

2.6 Unless the context otherwise requires references to the singular shall include the plural and vice versa.

2.7 References in this Agreement to the Owner and Mortgagee shall include their successors in title.

3. VARIATION TO THE EXISTING AGREEMENT

3.1 The following definitions contained in the Existing Agreement as varied by the First Deed of Variation and the Second Deed of Variation shall be further varied as follows:

3.1.2 "Planning Permission" the planning permission relating to Planning Application 1 to be issued by the Council under reference number 2015/0253/P substantially in the draft form annexed hereto

3.1.3 "Application"

the application made under s73 of the Act to vary a condition contained in the Original Planning Permission relating to Planning Application 1 referenced APP/X5210/A/03/1135364 (Council reference 2003/1858/P) in respect of the Property submitted by the Owner and validated on 11 February 2015 and given reference number 2015/0253/P

- 3.2 For the avoidance of any doubt any persons deriving title from the Freeholder or granted a lease in the Property by the Freeholder will be an Owner of the Property, and shall be bound by the terms and obligations in the Existing Agreement as subsequently varied.

4 JOINT AND SEVERAL LIABILITY

- 4.1 All Covenants made by the Owner and the Mortgagee in this Agreement are made jointly and severally and shall be enforceable as such.
- 4.2 In all other respects the Existing Agreement (as varied by the First Deed of Variation, the Second Deed of Variation and this Agreement) shall continue in full force and effect.

5 PAYMENT OF THE COUNCIL'S LEGAL COSTS

- 5.1 The Owner agrees to pay the Council (prior to completion of this Agreement) its reasonable legal costs incurred in preparing this Agreement

6. REGISTRATION AS LOCAL LAND CHARGE

- 6.1 This Agreement shall be registered as a Local Land Charge

7 MORTGAGEE EXEMPTION

7.1 The Mortgagee shall not be personally liable for any breach of the obligations in the Existing Agreement unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.

IN WITNESS WHEREOF the Council has caused its Common Seal to be affixed and the Owner and the Mortgagee have caused this Agreement to be executed as a Deed the day and year first above written.

**EXECUTED AS A DEED BY
SAGER HOUSE (HAMPSTEAD) LIMITED
Acting by a Director in the
in the presence of:-**)
)
)
)

.....
Director

.....
Director/Secretary

**EXECUTED AS A DEED by the
JULIAN HODGE BANK LIMITED**)
)
)

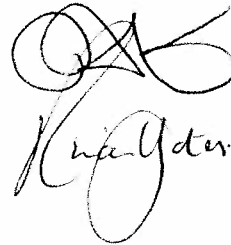
By

In the presence of:

.....
Duly Authorised Signatory

**THE COMMON SEAL OF THE MAYOR
AND BURGESSES OF THE LONDON
BOROUGH OF CAMDEN
was hereunto affixed by Order:-**)
)
)
)

.....
Duly Authorised Signatory



Metropolis Planning & Design
4 Underwood Row
London
N1 7LQ

Tel 020 7974 4444
Fax 020 7974 1930
Textlink 020 7974 6866

planning@camden.gov.uk
www.camden.gov.uk/planning

Application Ref: **2015/0253/P**

Dear Sir/Madam

DRAFT
FOR INFORMATION ONLY - THIS IS NOT A FORMAL DECISION
Town and Country Planning Act 1990 (as amended)

DECISION SUBJECT TO A SECTION 106 LEGAL AGREEMENT

Address:

37 Fortune Green Road London NW6 1DR

Proposal:

Variation of condition 22 (use as gymnasium/ swimming pool) of planning permission 2003/1858/P, granted 17/02/2005 (for redevelopment of existing public house) namely to allow the use to be either a gym and/or a swimming pool at ground floor level.

Drawing Nos: Metropolis covering letter dated 19/01/2015, P_100C, P_103CB,

The Council has considered your application and decided to grant permission subject to the conditions and informatives (if applicable) listed below **AND** subject to the successful conclusion of a Section 106 Legal Agreement.

The matter has been referred to the Council's Legal Department and you will be contacted shortly. If you wish to discuss the matter please contact **Aidan Brookes** in the Legal Department on **020 7 974 1947**.

Once the Legal Agreement has been concluded, the formal decision letter will be sent to you.

Condition(s) and Reason(s):

- 1 For the purposes of this decision notice condition 22 of the planning permission granted on 17/02/2005 (Camden ref: 2003/1858/P) shall be replaced by the following condition:

Notwithstanding the provisions of Class D2 of the Schedule of the Town and Country Planning (use Classes) Order, 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, the areas identified as a gymnasium shall be used only for a gymnasium and/or swimming pool (in either single or separate units of occupation) and for no other purposes within Class D2."

Informative(s):

- 1 This approval under Section 73 of the 1990 Act effectively varying the relevant condition of the previous planning permission is subject otherwise to the same terms, drawings, conditions (and obligations where applicable) as attached to the previous planning permission.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

Yours faithfully

Culture and Environment Directorate

DECISION

DATED

14th October

2016

(1) SAGER HOUSE (HAMPSTEAD) LIMITED

-and-

(2) JULIAN HODGE BANK LIMITED

-and-

(3) THE MAYOR AND THE BURGESSES OF
THE LONDON BOROUGH OF CAMDEN

THIRD DEED OF VARIATION

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