

DATED 3 August 2020

MITRE YARD PROPERTIES (2020) LIMITED

AND

SANNE GROUP (UK) LIMITED

AND

SINGLELAND LIMITED

AND

UNITED KINGDOM TYRE EXPORTERS LIMITED

AND

CITY & DOCKLANDS MANAGEMENT LIMITED

TO

**THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF HAMMERSMITH AND FULHAM**

UNILATERAL UNDERTAKING

pursuant to section 16 of the Greater London Council
(General Powers) Act 1974 and all other powers enabling
relating to land known as Mitre Yard, 104-108 Scrubs Lane,
London NW10 6SF

**Asserson Law Offices
38 Wigmore Street
London W1U 2RU
T: 0203 691 4798**

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THIS UNDERTAKING is given on

3 August

2020

FROM:

1. **MITRE YARD PROPERTIES (2020) LIMITED** a company registered in England and Wales (company number 12075959) of Regina House, 124 Finchley Road, London NW3 5JS (the "**Owner**"); and
2. **SANNE GROUP (UK) LIMITED** a company registered in England and Wales (company number 05918184) of Asticus Building 2nd Floor, 21 Palmer Street, London SW1H 0AD (the "**First Mortgagee**"); and
3. **SINGLELAND LIMITED** a company registered in England and Wales (company number 01900639) of 2 Lake End Court, Taplow Road, Taplow, Maidenhead, Berkshire SL6 0JQ; and **UNITED KINGDOM TYRE EXPORTERS LIMITED** a company registered in England and Wales (company number 977770) whose registered office is at 2 Lake End Court, Taplow Road, Taplow, Maidenhead, Berks SL6 0JQ (the "**the Second Mortgagee**"); and
4. **CITY AND DOCKLANDS MANAGEMENT LIMITED** a company registered in England and Wales (company number 04270026) whose registered office is at Regina House, 124 Finchley Road, London, NW3 5JS (the "**Developer**")

TO:

5. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH AND FULHAM** of Town Hall, King Street, London, W6 9JU (the "**Council**")

RECITALS

- (A) The Council is the local authority for the area in the vicinity of the Site for the purposes of section 16 of the 1974 Act and is the local authority by whom the obligations contained in this Undertaking are enforceable.
- (B) By virtue of The Old Oak and Park Royal Development Corporation (Planning Functions) Order 2015, the Old Oak and Park Royal Development Corporation ("**OPDC**") is the local planning authority for the area in which the Site is located for the purposes of Part 3 of the 1990 Act.
- (C) The Owner is the registered owner of the freehold interest in the Site with title absolute under title number NGL481480 and title number NGL485524
- (D) The First Mortgagee has a registered charge dated 23 December 2019 over title numbers NGL481480 and NGL485524
- (E) The Second Mortgagee has a registered charge dated 23 December 2019 over title numbers NGL481480 and NGL485524
- (F) The Developer has agreed with the Owner to undertake the Development pursuant to the Second Planning Permission.
- (G) The Developer submitted the Second Planning Application to the OPDC.
- (H) At a meeting of its Planning Committee on 16 January 2020, the OPDC resolved to grant the Second Planning Permission subject to the Owners entering into the S106 Agreement and securing obligations to restrict Occupiers of the Site from holding Parking Permits, without which the Second Planning Permission would not be granted.

- (I) The S106 Agreement has been entered into and the Second Planning Permission has been granted on 30 January 2020
- (J) This Undertaking is being given to satisfy the requirements of paragraph 3 of Schedule 7 of the S106 Agreement.

THE PARTIES AGREE as follows:

1 INTERPRETATION

- 1.1 In this Undertaking the following words and expressions and abbreviations have the following meanings, unless the context otherwise requires:

“1974 Act”

means the Greater London Council (General Powers) Act 1974;

“1990 Act”

means the Town and Country Planning Act 1990;

“Blue Badge”

means a disabled parking badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 and the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 (SI 2000/682);

“Commencement”

means the carrying out of a material operation (as defined in section 56(4) of the 1990 Act but disregarding for the purposes of this Undertaking the following operations: ground investigations for assessing site conditions; archaeological investigations; demolition and site clearance; site survey works; diversion and laying of services; erection of any temporary means of enclosure; temporary display of site notices and advertisements; and any works requires to be undertaken to discharge pre-commencement conditions on the Second Planning Permission) and **“Commenced”** shall be construed accordingly;

“Commencement Date”

means the date upon which the Development is Commenced;

“CPZ”

means any controlled parking zone enforced by the Council as at the date of the S106 Agreement;

“Development”

means demolition of existing buildings and structures and redevelopment of the Site to provide two new buildings comprising ground floor flexible non-residential floorspace (Use Classes A1/A2/A3/A4/B1/D1/D2) ground floor workspace (Use Class B1/Artist Studios) and residential units (Use Class C3) with disabled car parking, plant space, amenity space, landscaping and associated works

“First Planning Permission”

means planning permission allocated reference 17/0055/FUMOPDC granted on 1 February 2018 as amended by a non-material amendment under section 96A of the 1990 Act granted on 12 December 2019 for demolition of existing buildings and structures and redevelopment of the site to provide two new buildings comprising ground floor flexible non-residential floorspace (Use Classes A1/A2/A3/A4/B1/D1/D2), ground floor workspace (Use Class B1/Artist Studios) and residential units (Use Class C3) with disabled car parking, plant space, amenity space, landscaping and associated works

“Occupation”

means the occupation of any part of the Development for its designated planning use but does not include occupation by the Owners or any contractor or other occupier for the purposes of construction, fitting out, decoration, marketing or display and “Occupier” shall be construed accordingly;

“Owners”

means for the Owner and the Developer

“Parking Permit”

means a permit issued or to be issued in the future by the Council to an Occupier of a Residential Unit to permit the parking of a motor vehicle on the highway within a CPZ;

“Residential Unit”

means a unit of residential accommodation comprised within the Development and falling within Use Class C3;

“Second Planning Application”

means the application submitted by the Developer pursuant to section 73 of the 1990 Act for minor material amendments to the First Planning Permission which has been allocated reference number 19/0104/VAROPDC;

“Second Planning Permission”

means the planning permission for the Development to be granted pursuant to the Second Planning Application

“S106 Agreement”

means the agreement dated 30 January 2020 and made pursuant to section 106 of the 1990 Act in respect of the Second Planning Permission between (1) the OPDC (2) the Owner (3) Sanne Group (UK) Limited (4) United Kingdom Tyre Exporters Limited (5) Singleland Limited and (5) the Developer

“Site”

means the land known as Mitre Yard, 104-108 Scrubs Lane, London NW10 6SF as shown edged red on Plan 1, the freehold interest in which is owned by the Owner and registered at HM Land Registry under title numbers NLG481480 and NGL485524;

“Use Classes”

shall be defined by reference to the Town and Country Planning (Use Classes) Order 1987; and

“Working Day”

means any day of the week other than Saturday, Sunday or any bank holiday.

- 1.2 Where in this Undertaking reference is made to a clause, paragraph, schedule, recital, plan, annex or appendix such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule, or recital in this Undertaking or to a plan, annex or appendix attached to this Undertaking.
- 1.3 Where in any schedule or part of a schedule reference is made to a paragraph such reference shall (unless the context otherwise requires) be to a paragraph of that schedule or (if relevant) part of a schedule.
- 1.4 References in this Undertaking to the Owners shall include reference to their successors in title and assigns and to persons claiming through or under them in relation to all or any part of the Site save where the context otherwise requires.

- 1.5 References to the Council shall include reference to any successor body exercising any of the powers currently vested in the Council in relation to this Undertaking.
- 1.6 Words including the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.7 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies and other corporate bodies and also firms and all such words shall be construed interchangeably in that manner.
- 1.8 Words denoting an obligation on a party to do an act matter or thing include an obligation to procure that it be done and words placing a party under a restriction (including for the avoidance of doubt any obligation preventing or restricting Commencement or Occupation) include an obligation not to cause, permit, suffer or allow infringement of the restriction.
- 1.9 Any reference to a statute or a provision thereof or a statutory instrument or a provision thereof shall include any modification, extension or re-enactment thereof for the time being in force (including for the avoidance of doubt any modification, extension or re-enactment made prior to the date of this Undertaking) and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.
- 1.10 The word "**including**" means including without limitation or prejudice to the generality of any description defining term or phrase preceding that word and the word "**include**" and its derivatives shall be construed accordingly.
- 1.11 The clause and paragraph headings in the body of this Undertaking and in the schedules hereto do not form part of this Undertaking and shall not be taken into account in its construction or interpretation.
- 1.12 References to the Site include any part of it.

2 LEGAL EFFECT

- 2.1 This Undertaking is made pursuant to section 16 of the 1974 Act and will come into effect on the date hereof, save for clause 3 which shall come into force upon the Commencement Date.
- 2.2 The covenants undertakings restrictions and requirements imposed upon the Owners under this Undertaking create obligations pursuant to section 16 of the 1974 Act which are enforceable by the Council as local authority against the Owners and the Owners' successors in title and assigns and which bind each and every part of the Site.
- 2.3 Insofar as any provisions in this Undertaking 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 Undertaking.
- 2.4 No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the covenants, undertakings, terms or conditions of this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants, undertakings, terms or conditions or from acting upon any subsequent breach or default.
- 2.5 The covenants, undertakings, restrictions and obligations herein shall be enforceable without any limit of time against the Owners and their successors in title and assigns or any person claiming title through or under the Owners to the Site or any part thereof as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.

3 THE OWNERS' COVENANTS

The Owners hereby covenant with the Council to observe and perform and cause to be observed and performed the obligations, undertakings, covenants and restrictions contained in Schedule 2.

4 OWNERS' CAPACITY TO ENTER INTO THIS UNDERTAKING

The Owners hereby warrant that they have full power to enter into this Undertaking and that they have obtained all necessary consents from any mortgagee, chargee or any other person having a title or right in the Site.

5 MORTGAGEES CONSENT

5.1 The First Mortgagee and the Second Mortgagee acknowledge and declare that this Undertaking has been entered into by the Owner with their consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgages over the Site shall take effect subject to this Undertaking PROVIDED THAT the First Mortgagee and the Second Mortgagee (and any receiver or agent appointed on their behalf) shall otherwise have no liability under this Undertaking unless the First Mortgagee and/or the Second Mortgagee take possession of the Site in which case the First Mortgagee and/or the Second Mortgagee (as the case may be) too will be bound by the obligations as if it were a person deriving title from the Owner.

5.2 City & Docklands Management Limited in its capacity as mortgagee acknowledges and declares that this Undertaking has been entered into by the Owner with its consent as mortgagee and that the Site shall be bound by the obligations contained in this Undertaking and that the security of the mortgage over the Site shall take effect subject to this Undertaking PROVIDED THAT City & Docklands Management Limited (and any receiver or agent appointed on their behalf) shall otherwise have no liability under this Deed as mortgagee unless it takes possession of the Site in which case it will be bound by the obligations as if it were a person deriving title from the Owner

6 FURTHER TERMS

6.1 The covenants and undertakings in this Undertaking shall be registered by the Council as local land charges for the purposes of the Local Land Charges Act 1975.

6.2 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Second Planning Permission) granted after the date of the Second Planning Permission.

7 NOTICE PROVISIONS

7.1 The Owners shall give the Council written notice of Commencement no later than 10 Working Days after the Commencement Date.

7.2 The Owners shall give the Council written notice of any change in ownership of any freehold or leasehold interest in the Site no later than ten Working Days after such change in ownership and such notice shall give details of the transferee's or lessee's full name and registered office (if a company or usual address if not).

7.3 Any notice or other written communication to be served upon a party or given by one party to any other under the terms of this Undertaking shall be given in writing (which for this purpose shall not include email) and shall be deemed to have been validly served or given if delivered by hand or sent by first class post or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given and shall conclusively be deemed to have been received on:

- (a) if delivered by hand, the next Working Day after the day of delivery; and
 - (b) if sent by first class post or recorded delivery post, the day two Working Days after the date of posting.
- 7.4 The address for any notice or other written communication shall be within the United Kingdom only and shall be as specified below or such other address as shall be specified by the party upon whom the notice is to be served to the other parties by not less than five Working Days' notice:
- (a) in the case of the Council, to the Head of Development Management, Hammersmith and Fulham Council, Town Hall, King Street, London, W6 9JU, bearing the reference "North Kensington Gate South – OPDC – 16/0119/FULOPDC";
 - (b) in the case of the Owner and the Developer to Mr Simon Leigh, City & Docklands Management Limited, 5th Floor, FC200 Building, 2 Lakeside Drive, Park Royal, London NW10 7FQ

8 REVOCATION

This Undertaking shall cease to have effect (insofar as it has not already been complied with and save for any obligations which are already outstanding) if the Second Planning Permission shall be quashed, modified (without the consent of the Owners) or revoked or if the Second Planning Permission shall expire prior to Commencement of the Development.

9 LIABILITY UNDER THIS UNDERTAKING

- 9.1 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Undertaking:
- (a) to the extent that such breach relates to any part of the Site in which that person has no interest and/or
 - (b) which occurs after he has parted with his entire interest in the Site (or his interest in that part of the Site on which the breach occurs) save for any prior breach for which he shall continue to be liable.

10 GOVERNING LAW

This Undertaking and any dispute, controversy, proceedings or claims of whatever nature arising out of or in any way relating to this Undertaking or its formation (including any non-contractual disputes or claims) shall be governed and construed in accordance with English law.

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

It is hereby declared that none of the terms of this Undertaking shall be construed as being enforceable by any third party (other than the Council) pursuant to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this undertaking has been executed as a deed on the date first above written.

SCHEDULE 1

Site Plan

Number and arrangement of steps to be confirmed once revised road level (by others) is known.

Hythe Road

Scuba Lane



SCHEDULE 2

Owners' Covenants - Permit Free

The Owners covenant with the Council:

1. Not to apply for a Parking Permit or knowingly suffer or permit any Occupier of a Residential Unit (other than a Blue Badge holder) to apply for a Parking Permit for any CPZ in the Council's area and if such a Parking Permit is issued the Owner covenants on becoming aware of such issue to notify the Council in writing immediately thereafter.
2. That all material utilised for advertising or marketing each and every individual Residential Unit with the Development for letting or sale will make it clear to prospective tenants and Occupiers that no Parking Permit (other than for a Blue Badge holder) will be issued by the Council for any Residential Unit.
3. That in respect of every freehold transfer or lease granted, assigned, transferred or otherwise provided in respect of the Residential Units, the following covenants will be imposed (or a covenant of substantially the same nature) in respect of any transfer, tenancy agreement, licence or other instrument entitling Occupation of the Residential Unit:

*"the [transferee/lessee] for himself and his successors in title being the owner or owners for the time being [of the terms of years hereby granted] hereby covenant with the [transferor/lessor] and separately with the Mayor and Burgesses of the London Borough of Hammersmith and Fulham ("**the Council**") that they shall not apply for nor knowingly permit an application to be made by any person residing in the premises to the Council for any resident's parking permit (save for a disabled person's "**blue badge**" issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970) and/or the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 in respect of such premises (such parking permit entitling the resident to park within any controlled parking zone that was in force on or before [insert date of S106 Agreement] (being the date of an agreement made pursuant to section 106 of the Town and Country Planning Act 1990 between (1) the Old Oak and Park Royal Development Corporation (the "**OPDC**") (2) Mitre Yard Properties (2020) Limited (3) Sanne Group (UK) Limited (4) United Kingdom Tyre Exporters Limited (5) Singleland Limited and (6) City and Docklands Management Limited, in respect of a planning permission granted by the OPDC under reference 19/0104/VAROPDC) and if such a permit is issued then it shall be surrendered within seven days of written request to do so from the Council and this covenant shall also be enforceable by the Council under section 1 of the Contracts (Rights of Third Parties) Act 1999".*

4. Upon receiving written request from the Council, to provide the Council with such evidence as the Council may reasonably require to demonstrate compliance with this schedule.

EXECUTED as a DEED by)
MITRE YARD PROPERTIES (2020) LIMITED)
by a director)

Signature)

X.....X

In the presence of: *Carly Sachs*

Witness signature:

X.....X
Jan

Witness name

Address: **Jeremy Marc Harris**
23 Golf Close, Stanmore
Middlesex HA7 2PP
IN HOUSE SOLICITOR

Occupation:

EXECUTED as a DEED by)
SANNE GROUP (UK) LIMITED)
by a director)

Signature)

X.....X

In the presence of:

Witness signature:

X.....X

Witness name *Kavisha Amarasungra*

Address: *21 Palmer Street*
London SW1H 0AD

Occupation: *Assistant Manager*

EXECUTED as a DEED by
UNITED KINGDOM TYRE EXPORTERS
LIMITED by a director

)
)
)
)
)

Signature

X.....X

In the presence of:

Witness signature:

X.....X

Witness name *Jeffrey Tunafsky*

Address: *MORVERN WADGE
BUTTERFLY LANE
ESTATE HEATH WDB 3AD*

Occupation: *SOLICITOR*



EXECUTED as a DEED by
SINGLELAND LIMITED
by a director

)
)
)
)
)

Signature

X.....X

In the presence of:

Witness signature:

X.....X

Witness name *Jeffrey Tunafsky*

Address: *MORVERN WADGE
BUTTERFLY LANE
ESTATE HEATH WDB 3AD*

Occupation: *SOLICITOR*

EXECUTED as a DEED by)
CITY & DOCKLANDS MANAGEMENT)
LIMITED by a director)

Signature)

X.....X

In the presence of: *GARY DAVIS*

Witness signature:

X.....X

Witness name

Address: **Jeremy Marc Harris**
23 Golf Close, Stanmore
Middlesex HA7 2PP
Occupation: IN HOUSE SOLICITOR