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Our Ref: mki/ag4/233551/329

Your Ref:

Date: 29 June 2023

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Dear Sirs

Application to vary Section 106 Agreement dated 22 December 2021 made between (1) The Merchant Seamen's War Memorial Society (Incorporated) (2) Thakeham Homes Limited (3) Waverley Borough Council and (4) Surrey County Council ("the Section 106 Agreement")

**Previous application number WA/2020/1684 - Granted on appeal with reference W/21/3278196
Land west of Loxwood Road, Alfold, GU6 8EX**

We are instructed on behalf of Oriel Housing Limited (Abri) to submit this letter as a formal application to modify the provisions described below in the Section 106 Agreement pursuant to Section 106A of the Town and Country Planning Act 1990. A copy of the Section 106 Agreement and site location plan is enclosed by email. We will arrange payment of the relevant fee for the application under a separate cover. Our client is the Owner of the above application site.

There are four proposed changes to the Section 106 Agreement required for the reasons detailed below:

1. Removal of reference to Shared Ownership Units in definition of "Nominations Agreement"

Our client proposes that the Nomination Agreement with the Council governs only the rented Affordable Housing Units only and not the Shared Ownership Units. This is to enable the Shared Ownership Units to be brought forward as part of our client's Strategic Partnership with Homes England. We understand that the current eligibility criteria does not align with the Homes England Capital Funding Guide. Please see enclosed correspondence between our client and Esther Lyons (Housing Strategy and Enabling Manager) on this point.

The definition of Nominations Agreement will therefore need to reflect this by removing the references to Shared Ownership Units and changing the references to Affordable Housing Units to Affordable Rented Units. Accordingly, we propose the new definition of "Nomination Agreement" should be:

"Nomination Agreement" means an agreement between the Brough Council and the Affordable Housing Provider under which the Borough Council exercises its right to nominate prospective tenants or lessees for the Affordable Rented

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Units in accordance with Part VI of the Housing Act 1996 section 159 and Homelessness Act 2002, the final form of which:

- Reflects the mix of the Affordable Rented Units; and
- Provides the Borough Council with a right of nomination of 100% of first lets of the Affordable Rented Units and 75% of all subsequent lets of the Affordable Rented Units

2. Amendments to the Mortgagee Exclusion Clause

The Section 106 Agreement contains a Mortgagee Exclusion Clause at paragraph 4.4 of Part 1 of Schedule 1. It is proposed that the current Mortgagee exclusion clause wording is amended in order to ensure that the wording is suitable to achieve charging.

The proposed wording is the National Housing Federation's standard wording as follows:

"The provisions in part 1 of Schedule 1 of this Agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- *such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and*
- *if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing Units in this Agreement which provisions shall determine absolutely."*

3. Removal of definition of Bus Service Contribution

The Section 106 Agreement contains a redundant definition of "Bus Service Contribution". This definition is not used in the main body of the Section 106 Agreement and we understand that this was left in the final document in error. As such we propose the definition is removed and we trust this is not controversial.

4. Management Company amendments

We understand that the Section 106 Agreement envisages a new Management Company being set up for the purposes of securing the future management and finance for such management of the estate roads, footpaths, LAP, LEAP, open space and SUDS. The proposed amendment would enable either a new management company or an **existing management company** to be responsible for these functions. The existing definition of Management Company requires amending to reflect this along with minor changes to paragraphs 5.1, 5.2 and 5.3 of Part 2 of Schedule 1.

We would be grateful if you could confirm that the Council are supportive of this application and provide us with contact details of the relevant person in your legal department who will progress the deed of variation.

Please let me know if there is any further information that you require.

I look forward to hearing from you.

Yours faithfully

Marianne Ironside

Marianne Ironside
Senior Associate