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Dear Sir

Application for modification of a section 106 agreement relating to land at Whitelands Farm, South West Bicester adjoining Oxford Road and Middleton Stoney Road, Bicester

We act for the registered provider Bromford Housing Association. Bromford own residential 250 units (houses, flats and garages) at Kingsmere. These are described on the attached schedule of addresses.

The Kingsmere development was originally consented under planning permission 06/00967/OUT granted on 30 June 2008.

The application for permission 06/00967/OUT was supported with a section 106 planning obligation dated 27 June 2008 (the Principal Agreement) (appended). The Principal Agreement has been amended on 8 April 2010, 30 August 2011 (deed of release) and 30 August 2011 (deed of modification), 6 August 2015, 15 August 2016 (pursuant to application reference 13/00433/OUT), 13 September 2016, 22 June 2018, and 3 May 2019 (Settlement agreement and deed of variation). None of the amendment deeds address the clause 13, which is the subject of this letter.

Requested modification to the section 106

As is common for registered providers Bromford want to borrow against their interest in these properties. Borrowing allows Bromford to advance its aim of providing affordable housing. Consequently, Bromford would like to maximise the borrowing potential of these properties.

Currently, the section 106 planning obligation (as amended) makes provision for to exclude a mortgagee in certain circumstances. Those circumstances are not the NHF agreed form of market standard so they impact on the properties' borrowing potential. Bromford would

For what comes next

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therefore like to amend the section 106 to align the mortgagee exclusion clause with the market standard and thereby achieve best borrowing potential.

This will be achieved by the following amendments:

1. Amending clause 13.5 as follows:

13.5 Not to use or cause or permit the use of the Affordable Housing Land or any part of it for any purpose other than for the provision of Affordable Housing in accordance with the relevant Affordable Housing Phase Scheme as approved by the District Council after consultation with the RSL or as subsequently varied by agreement with the District Council after consultation with the RSL and for the avoidance of doubt this clause is (subject to clause 15) only binding on a mortgagee or chargee of the whole or any part of the Affordable Housing Land if the mortgagee or chargee is in possession or has appointed a receiver in respect of that land and in those instances the Mortgagee Sale Provisions shall apply

2. Amending clause 15.3

15.3 a bona fide purchaser for value and its mortgagee or chargee from the mortgagee or chargee of any part of the Affordable Housing Land exercising its power of sale or from a receiver appointed by such mortgagee or chargee (other than a purchaser which is a registered social landlord) or the successors in title of such purchaser provided the mortgagee or chargee shall first have [complied with] satisfied the Mortgagee Sale Provisions

3. Inserting new clause 15.4

15.4 a mortgagee or chargee (or any persons or bodies deriving title through such mortgagee or chargee or Receiver (as defined in Schedule 4) of any part of the Affordable Housing Land including any Affordable Housing Unit or part of any Affordable Housing Unit that has complied with the Mortgagee Sale Provisions

4. Deleting the text in Schedule 4 (the Mortgagee Sale Provisions) and replacing it with the following:

Schedule 4

Mortgagee Sale Provisions

1. *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 Land and/or any Affordable Housing Unit (or part thereof) shall:*
 - (a) give written notice to the District Council of its intention to dispose of the Affordable Housing Land and/or any Affordable Housing Unit*
 - (b) use reasonable endeavours over a period of three months from the date of the written notice in (a) to complete a disposal of the Affordable Housing Land and/or any Affordable Housing Unit to another registered provider or to the District 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 Land and/or any Affordable Housing Unit free from the provisions of Clause 13.5 in this Agreement which provisions shall determine absolutely for the properties described in the written notice in (a)

Parties to the deed of variation

This application is made pursuant to section 106A(3) of the Town and Country Planning Act 1990.

The Kingsmere development has progressed significantly since 2008. There are not many parties with an interest in the land bound. Securing a deed of variation with all those parties is an impossibility. Implicit in section 106A(5) is the principle that not all parties with an interest need to be a party to a deed of variation that does not impose an obligation against them. In this case the requested modification is at best beneficial and at worst benign. Consequently, we consider that the only parties that need be party to this deed of variation is the Council and our client.

In the alternative we would propose to insert a acceptable plan into the section 106 which will define the Bromford properties and include wording in the deed of variation that makes it clear the variation only applies to those properties. This alternative is again designed to avoid parties other than Bromford and the Council.

Please let us have you earliest thoughts on the parties you will require to the proposed deed of variation.

Costs undertaking

We will be pleased to provide a costs undertaking to cover your Council's legal costs, together with details of our client's title.

Yours faithfully



TLT LLP

Enc Section 106A application form
Schedule of addresses
Section 106 planning obligation dated 27 June 2008