

From: Sophie Emerson-McIntee [REDACTED]
Sent: Thursday, July 16, 2020 12:38
To: [REDACTED]
Subject: Colt Site, Havant - Deed of Variation to s106 Agreement [TH-THL.FID119094558]

Dear Julie

I am instructed by Vivid Housing Limited and Vestal Developments Limited in relation to a Deed of Variation that is required to a s106 Agreement dated 29 January 2019 made between (1) The Council of the Borough of Havant (2) Hampshire County Council and (3) Homes and Communities Agency (attached).

By virtue of an underlease granted by Vistry Partnerships Limited (the Developer) my clients have acquired an interest in the affordable housing comprised in the development site and in order for them to secure the best valuation when they come to charge their units, the Mortgagee Exclusion Clause as set out in paragraph 4 of the First Schedule needs to be amended.

The amends we are seeking are as follows:

- The removal of Clause 19 as this clause will restrict valuation as in effect it means that the affordable housing use obligations bind a lender exercising power of sale
- The definition of "Chargee" in the First schedule includes successors and is circular ; this ties in successors and will mean an issues for valuation. The correct place to refer to successors is Paragraph 4.2 so that successors are released and do not have to follow the hoops. There is also no reference to the provisions of the Agreement determining absolutely as set out in the NHF sector approved clause
- The MEC currently allows for a total of 3months 10 days in which to complete a sale which retains the property as Affordable Housing. In order to obtain an MVSTT valuation only a period of 3 months is generally acceptable to a lender
- the definition of "Disposal " to exclude a charge to avoid ambiguity
- the reference to " diligently and actively" at paragraph 4.2.2 to be removed as this may not be acceptable by some lenders as this is potentially a high threshold in terms of burden of proof.

Please can you let me have the details of the legal officer who will be dealing with this Deed of Variation so I can make contact?

Kind regards

Sophie

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Associate

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