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Dear Sir/Madam,

**100 Avenue Road, NW3 3HF**  
**Application to Amend S106 Agreement for Planning Permission Ref: 2014/1617/P**

On behalf of the applicant Essential Living (Swiss Cottage) Limited ("Essential Living") and pursuant to S.106A of the Town and Country Planning Act 1990, we apply for an amendment to planning obligations within the existing S.106 deed dated 24 August 2015. Details of the requested amendments are set out below.

Planning permission was granted on 18 February 2016 (Ref: 2014/1617/P) by Appeal for the following development at the above-named site:

*Demolition of the existing building and redevelopment with a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (class C3) and up to 1,041sqm of flexible retail/financial or professional or café/restaurant floorspace (classes A1/A2/A3) inclusive of part sui generis floorspace or potential new London Underground station access fronting Avenue Road and up to 1,350sqm for community use (Class D1) with associated works including enlargement of the existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements.*

This permission has subsequently been subject to two non-material amendment (NMA) approvals. Firstly, the wording of Condition 18 was amended (Ref: 2019/1405/P, granted 7<sup>th</sup> May 2019) and secondly some minor changes to internal layouts and external details were approved (Ref: 2018/4239/P, granted 4<sup>th</sup> August 2020).

The legal agreement associated with this planning permission, agreed in accordance with Section 106 of the Town and Country Planning Act 1990 (as amended), was completed on 24 August 2015 during the course of the appeal process that led to the associated planning permission being granted.

This application seeks the amendment of the existing S.106 deed as follows:

- *Removal of the current requirement to provide 36 units of affordable housing (8 Intermediate Housing and 28 Affordable Rent Housing Units (permanent)) and 18 units as Discounted Market Rent for a minimum period of 15 years post practical completion;*
- *Replacement of the above with a new requirement to provide 18 units (10% of the development) as Discounted Market Rent in perpetuity; and*
- *The modification of the Disposal Viability Assessment, Original Viability Assessment and Surplus definitions in each case to refer to the Gross Development Value figure identified in the Financial Viability Assessment report prepared by the Savills viability team – as to which see below and the attached.*

This change will require clause 3.2 of the existing S.106 deed and associated definitions to be adjusted to reflect the changed complexion of the affordable housing package.

This submission is made in accordance with Section 106A, subsections (3) and (4), of the Town and Country Planning Act 1990 (as amended) which state:

*(3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to the appropriate authority for the obligation—*

- (a) to have effect subject to such modifications as may be specified in the application; or*
- (b) to be discharged.*

*(4) In subsection (3) “the relevant period” means—*

- (a) such period as may be prescribed; or*
- (b) if no period is prescribed, the period of five years beginning with the date on which the obligation is entered into.*

More than 5 years have passed since the original S.106 deed was completed and the “relevant period” has accordingly expired. It is now possible to seek an amendment of planning obligations in the original deed in the manner set out below.

The statutory test to be applied when determining the acceptability of an application to amend an S.106 obligation is set out in S.106A(6)(c) of the Town and Country Planning Act 1990, namely where the (original) obligation continues to serve a useful purpose, whether the obligation sought by the application would serve the purpose (of the original obligation) equally well if it had effect subject to the modification specified in the application.

In this case it is possible to view the purpose of the existing S.106 deed either:

- a. as a document which secures a range of planning benefits including affordable housing, a purpose built community space, capacity for an upgraded entrance to the underground stations and contributions for education, employment and training, public art, public realm improvements and cycling infrastructure; or*
- b. more narrowly as a document which for the purpose of the amendment to the affordable housing obligations sought by the application secures the maximum reasonable amount of affordable housing consistent with policy and the delivery of a viable scheme.*

Under either scenario the proposal the subject of this application satisfies the test set out in S.106A(6)(c) as it meets the purpose of the original obligations equally well.

In support of this application, and in addition to this covering letter, please find enclosed:

- *A copy of Appeal Decision Notice ref: 2014/1617/P, dated 18 February 2016;*
- *A copy of each NMA decision notice, ref: 2019/1405/P, granted 7 May 2019 and ref: 2018/4239/P, granted 4 August 2020;*
- *A detailed planning analysis, prepared by Savills; and*
- *A Viability Assessment Report, prepared by Savills.*



This letter provides a summary of the S.106A proposals however the rationale for the proposals is explained in detail in the accompanying Viability Assessment Report and Savills' detailed analysis.

I trust that everything is in order. If any further information is required, please do not hesitate to contact me using the details set out at the head of this letter.

Yours faithfully

A handwritten signature in black ink that reads "Nigel Dexter". The signature is written in a cursive, slightly stylized font.

Nigel Dexter  
Associate