DATED 11 DECEMBER **2017**

(1) HAVANT BOROUGH COUNCIL

and

(2) DRUM HOUSING ASSOCIATION LIMITED

DEED OF VARIATION
of the S106 Agreement dated 25th February 2015

Pursuant to Section 106A
of the Town and Country Planning Act 1990 (as amended) and all other powers enabling.

Devonshires Solicitors LLP
30 Finsbury Circus
London
EC2M 7DT

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PEFC/16-33-375

THIS DEED OF VARIATION OF SECTION 106 AGREEMENT is made the 11TH day of DECEMBER 2017

BETWEEN:

(1) **HAVANT BOROUGH COUNCIL of** Public Service Plaza, Civic Centre Road, Havant PO9 2AX **("the Council")**; and

(2) **DRUM HOUSING ASSOCIATION LIMITED** a Registered Society under the Co-Operative and Community Benefit Societies Act 2014 under number 28156R of Collins House, Bishopstoke Road, Eastleigh, Hampshire, SO50 6AD **("the Owner")**.

WHEREAS:

(A) This Deed of Variation pertains to the Affordable Housing Land, namely Plots 1-6, 13, 14, 17, 18, 28, 29, 54 and 55, as detailed under the Section 106 Agreement dated 25th February 2015 made between (1) Denise Ann Tiller, (2) Ronald Alan King and Jayne King, (3) Shirley Ann King, (4) Michael John Bramble and Julie Carol Bramble, (5) Linden Limited, (6) Havant Borough Council, (7) East Hampshire District Council, (8) Lloyds Bank PLC, and (9) The Bank of Scotland.

(B) The Owner purchased the Affordable Housing Land referred to in the Section 106 Agreement on the 29th June 2016 and the Owner is registered at HM Land Registry as proprietor with an Absolute Title under title number SH44864 of the properties described above.

(C) The Owner has requested and the Council has agreed that the Section 106 Agreement shall be varied in the manner hereinafter appearing and pursuant to Section 106 and Section 106A of the Town and Country Planning Act 1990 (as amended)

NOW IT IS AGREED as follows:

1. **Definitions and Interpretation**

In this Deed the following expression shall have the following meaning:-

"**Section 106 Agreement**" means the Planning Agreement dated 25th February 2015 relating to Land north of Bartons Road, Havant, Hampshire made pursuant to

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Section 106 of the Town and Country Planning Act 1990 (as amended) and other enabling powers made between (1) Denise Ann Tiller, (2) Ronald Alan King and Jayne King, (3) Shirley Ann King, (4) Michael John Bramble and Julie Carol Bramble, (5) Linden Limited, (6) Havant Borough Council, (7) East Hampshire District Council, (8) The Bank of Scotland, and (9) Lloyds Bank PLC.

2. Variations to the Section 106 Agreement

The following variations will be made to the Section 106 Agreement, detailed as follows:

2.1 With reference to Paragraph 1 of the Fifth Schedule, the tenure of Plot 18 is stated as being as an Affordable Rent unit. However, this tenure will now be amended to be used as a Shared Ownership unit.

2.2 With reference to Paragraph 8 of the Fifth Schedule a, b and c shall be deleted and replaced with the following:

'a) a covenant not to use the Affordable Housing Units otherwise than for Affordable Housing except when the Chargee has exercised their power of sale as stipulated within Paragraph 12 of the Fifth Schedule then the provisions of Paragraph 12 will apply and'

'b) a covenant not to transfer any of the Affordable Housing Units other than by sale by way of Shared Ownership or Affordable Rent to the intent that all the Affordable Rented Units shall be used for the purpose of providing Affordable Housing to Eligible Persons, and'

'c) a covenant requiring the Registered Provider to enter into an agreement with HBC granting HBC the right to nominate 100 per cent of the occupiers of the Affordable Rented Units when initially let and all subsequent true voids except when the Chargee has exercised their power of sale as stipulated within Paragraph 12 of the Fifth Schedule then the provisions of Paragraph 12 will apply.'

2.3 With reference to Paragraph 12 of the Fifth Schedule the following amendments shall be made:

(i) housing administrator shall be included within the first paragraph which will read as follows:

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'In the event only that there is a default under any legal charge or mortgage of an Affordable Housing Unit or any default under any legal charge or mortgage held by a Registered Provider in relation to the Affordable Housing Units then a mortgagee chargee receiver or manager (including an administrative receiver) or housing administrator appointed pursuant to the Law of Property Act 1925 ("the Chargee") shall be entitled to exercise its power of sale in respect of an Affordable Housing Unit or Affordable Housing Units free from the obligations contained within this Schedule PROVIDED THAT the Chargee shall first follow the procedures set forth below'

(ii) 12(c) shall be deleted and replaced with the following:

"if pursuant to paragraph 12(b) above the Relevant Council shall accept the Offer or shall nominate a Nominee so to do then the Chargee and the Relevant Council (or the Nominee as the case may be) shall use reasonable endeavours to agree the Purchase Price which shall represent the open market value of the Affordable Housing Unit or Affordable Housing Units subject to tenancies subsisting at the date of the Notice and in default of agreement on the Purchase Price within one (1) month of the Relevant Council's notification under paragraph 12(b) above the Purchase Price shall be determined by an Expert 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 pursuant to the provisions of Clause 7 hereto"

(iii) 12(d) shall be deleted and replaced with the following:

"any transfer to the Council or to the Nominee shall be completed within three (3) months of the Notice given under paragraph 12(a) above"

(iv) 12(f) shall be deleted and replaced with the following:

"Then in any of the above circumstances and if the transfer has not completed within three (3) months of the Notice the Chargee shall be entitled (subject to compliance with Sections 39 to 50 of the Housing Act 1996 so far as is applicable) to exercise its power of sale and dispose of the Affordable Housing Unit or Affordable Housing Units free from the affordable housing restrictions in this Deed, which provisions shall determine absolutely and at the written request of the Chargee the Relevant Council shall expeditiously issue written confirmation that the affordable housing provisions in this Deed

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are no longer applicable and the Relevant Council shall take steps to cancel any entry in the Local Land Charges Register insofar as it may be recorded against the Affordable Housing Unit or Affordable Housing Units.

3. Miscellaneous provisions

3.1 Except as varied by clause 2 of this Deed the Section 106 Agreement is otherwise confirmed by the parties hereto and remains in full force and effect.

3.2 This Agreement is a Local Land Charge and the Council shall register it in its Register of Local Land Charges in accordance with the provisions of the Local Land Charges Act 1975 and Section 106(11) of the Town and Country Planning Act 1990 as amended.

4. Costs

4.1 The Owner hereby covenants to pay to the Council the capped sum of £731 in respect of its legal and other costs in connection with the preparation and approval of this deed such costs to be paid prior to completion of this deed.

IN WITNESS whereof this deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

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EXECUTED as a Deed by affixing the Common Seal of HAVANT BOROUGH COUNCIL in the presence of:-

[redacted]
Authorised Signatory

[redacted]
Authorised Signatory

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EXECUTED as a Deed by AFFIXING THE COMMON SEAL OF DRUM HOUSING ASSOCIATION LIMITED In the presence of:-

Peter Evans
Director of Technical Se[redacted]
Authorised Signatory

[redacted]
Malcolm Rule
Company Secretary
.....
Authorised Signatory

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