

	Dated	2019	
	ARUN DISTRICT COUNCIL	(1)	
	and		
	WEST SUSSEX COUNTY COUNCIL	(2)	
	and		
	THE COURTWICK PARTNERSHIP LLP	(3)	
	and		
	GLEESON DEVELOPMENTS LIMITED	(4)	
	DEED OF VARIATION AND AGREEMENT Under section 106 and 106A of the Town & Country Planning Act 1990 relating to Land at Courtwick, Littlehampton, West Sussex		
	Planning Applications LU/355/10, LU/241/18/PO and LU/219/19/PL		
	Arun District Council Arun Civic Centre Maltavers Road LITTLEHAMPTON West Sussex. BN17 5LF Legal Ref: CMS6974		

THIS DEED is dated		2019
(1)	ARUN DISTRICT COUNCIL of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF (“Council”);	
(2)	WEST SUSSEX COUNTY COUNCIL of County Hall, West Street, Chichester, West Sussex PO19 1RQ (“County Council”);	
(3)	THE COURTWICK PARTNERSHIP LLP (Company Registration No. OC336241) of The Ark, 201 Talgarth Road, London W6 8BJ (“Owner”);	
(4)	GLEESON DEVELOPMENTS LIMITED (Company Registration No. 00848808) of Sentinel House, Harvest Crescent, Ancelis Business Park, Fleet, Hampshire GU51 2UZ. (“Developer”).	
BACKGROUND		
(A)	The Council is the local planning authority and the local housing authority and the authority responsible for housing and leisure services including open spaces in the area of the Development.	
(B)	The County Council is the local highway authority, the county planning authority, the education authority and the authority responsible for the provision of library and fire and rescue services for the area in which the Site is situated.	
(B)	The Owner is the freehold owner of the Property registered with absolute title at the Land Registry under title number WSX386080 and subject to a charge at entry number 2 of the Charges Register in favour of the Mortgagee.	
(C)	The Owner is the freehold owner of the Site free from encumbrances and registered at the Land Registry under the Title Numbers WSX258585, WSX234922, WSX240822 and WSXX319621	
(D)	The Developer has a beneficial interest in the Site pursuant to an agreement between the Owner and the Developer dated 22 April 2008 and registered at the Land Registry against Title Numbers WSX258585, WSX234922, WSX240822 and WSX319621	
(E)	The Developer has made the Application and the Further Application and the parties have agreed to vary the terms of the Original Agreement as set out in this Deed.	
(F)	This agreement is made as a deed under section 106 and 106A of the Act and is supplemental to the Original Agreement.	
AGREED TERMS:		

1.	Interpretation	
Unless otherwise stated herein the definitions and rules of interpretation contained in the Original Agreement shall apply to this Agreement The following definitions and rules of interpretation apply to this Agreement		
	1.1	Definitions
	“Act”	means the Town and Country Planning Act 1990 (as amended)
	“Application”	means the application made by the Developer for the amendment of the Original Agreement which has been given the reference number LU/241/18/PO
	“Original Agreement”	means the agreement made under section 106 of the Act dated 22 nd March 2012 between ADC, WSCC, the Original Owner and the Original Developer.
	“Original Planning Permission”	means planning permission numbered LU/355/10 to which the Original Agreement relates.
	“Further Application”	means the application made by the Developer for the amendment of Condition 35 of LU/355/10 which has been given the reference number LU/219/19/PL
	1.2	Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this Deed.
	1.3	Clause headings shall not affect the interpretation of this Deed
	1.4	A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
	1.5	Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
	1.6	Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
	1.7	A reference to any party shall include that party’s personal representatives, successors or permitted assigns and in the case of ADC or WSCC the successors to their respective statutory functions.
	1.8	A reference to “planning permission” shall mean either the Original Planning Permission, the planning permission to be granted pursuant to the Application or both, as the context so requires.
	1.9	Unless the context otherwise requires, a reference to a statute or

		statutory provision is a reference to it as amended, extended or re-enacted from time to time.
	1.10	Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
	1.11	Unless the context otherwise requires, references to clauses are to the clauses of this Deed.
	1.12	Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
	1.13	Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
2	Statutory Provision	
	This Deed is made pursuant to the provisions of sections 106 and 106A of the Act, section 111 and s135 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.	
3	Variation of the Original Agreement	
	3.1	The Original Agreement shall be varied as follows:
	3.1.1	In Paragraph 1 “ Definitions ” “Amenity Space(s)” (vii) replace “LEAP 1” with “LEAP” (viii) replace “LEAP 2” with “Central Square”
	3.1.2	In Paragraph 1 “Definitions” a) Replace “LEAP 1” with “LEAP”; and b) delete “LEAP 2 “ and “means the LEAP in the location identified as LEAP 2 on Plan 2 the detailed boundaries of which are to be approved as part of the LEAP 2 Scheme” and insert “Central Square” and “means area of open space in the location identified as “Central Square” on the Replacement Plan 2, the detailed boundaries of which are to be approved as part of the Central Square Scheme”
	3.1.3	In Paragraph 1 “ Definitions ” delete “LEAP 1 Scheme” and replace with “LEAP Scheme”
	3.1.4	In Paragraph 1 “ Definitions ” amend the “LEAP 1 Scheme” to read: “means a scheme to be submitted by the Owner and approved by the District Council setting out

			(i)	The precise boundaries of the LEAP
			(ii)	The detailed plans and specification for the laying out, servicing and planting of the LEAP
			(iii)	A programme for the laying out and planting of the LEAP to ensure completion of the works by 31st May, 2019.
			(iv)	The Management and Maintenance Arrangements in respect of the LEAP
		3.1.3	In Paragraph 1 “ Definitions ” delete “LEAP 2 Scheme” and replace with “Central Square Scheme”	
		3.1.3	In Paragraph 1 “ Definitions ” amend the definition of “LEAP 2 Scheme” to read: “means a scheme to be submitted by the Owner and approved by the District Council setting out:	
			(i)	The precise boundaries of Central Square;
			(ii)	The detailed plans and specification for the laying out, servicing and planting of Central Square;
			(iii)	A programme for the laying out and planting of Central Square to ensure completion of the works by 31st May, 2019.
			(iv)	The Management and Maintenance Arrangements in respect of Central Square,
		3.1.4	In Paragraph 1 “ Definitions ” insert the following:	
			“Barn Owl Box”	means a box designed and built to in accordance with the recommendations of the Barn Owl Trust (Registered Charity No. 299 835).
			“Barn Own Box Maintenance”	means the provision, monitoring, management, maintenance and replacement when no longer fit for purpose of all the Barn Owl Boxes on the Land as identified in the plan referred in the amended Condition 35 of LU/355/10
		3.1.4	Plan 2 in the Original Agreement shall be replaced with the Plan attached to this agreement and marked “Replacement Plan 2”	

		3.1.5	Schedule 1 paragraphs 1, 2 and 3 shall be deleted and shall be replaced with the following: “1. No provision of this deed shall be enforceable against individual owner occupiers of the dwellings or their mortgagee. 2. Not used 3. Not used.”
		3.1.5	Schedule 2 Paragraph 1 shall be amended by deleting “the LEAP 2 Scheme” and replacing it with “the Central Square Scheme”
		3.1.6	Schedule 2 Paragraph 2 shall be amended by deleting “the LEAP 2 Scheme” and replacing it with “the Central Square Scheme”
		3.1.7	Schedule 2 Paragraph 9 heading shall be amended by deleting “LEAP 2” and replacing it with “Central Square”
		3.1.8	Schedule 2 Paragraph 9 shall be deleted and replaced with: “The Owner covenants to complete the laying out, servicing, planting and ecological enhancement of Central Square in accordance with the Central Square Scheme prior to 31 st May, 2019.”
		3.1.9	Schedule 2 Paragraph 10 shall be deleted
		3.1.10	Schedule 2 Paragraph 11 shall be amended by deleting “first occupation of more than 450 Dwellings” and replacing it with 31 st May 2019.”
		3.1.11	Schedule 2 Paragraph 12 shall be amended by deleted
		3.1.12	Schedule 2 Paragraph 17 shall be amended by deleting “first occupation of more than 500 Dwellings” and replacing it with “31st May 2019.”
		3.1.13	Schedule 2 Paragraph 18 shall be amended by deleted
		3.1.14	Schedule 2 Paragraph 22 shall be amended by deleting sub-paragraph (e) and replacing it with “(e) LEAP 1 and Central Square in accordance with the LEAP 1 Scheme and the Central Square Scheme respectively; and”
		3.1.15	After Schedule 15, insert
			Schedule 16
			Barn Owl Boxes
			1 Within 14No. (fourteen days) of the completion of this agreement the Owner shall erect the Barn Owl Boxes.

			2	The Owner Covenants with the Council that for a period of 80No.(eighty) years commencing 14No. (fourteen)days after the completion of this Agreement to carry out Barn Owl Box Maintenance
	3.2	In all other respects the Original Agreement (as varied by this Deed) shall remain in full force and effect. For the avoidance of doubt this Deed and the Original Agreement shall apply to the Original Planning Permission and all associated permissions issued pursuant to section 73 of the Act unless ADC requires a specific variation of the Original Agreement.		
4	Covenants to the Council			
	The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this Deed.			
5	Mortgagee's Consent			
	The Mortgagee consents to the completion of this Deed and acknowledges that from the date of this Deed the Property shall be bound by the terms of this Deed, as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.			
6	Legal Costs			
	The Owner agrees with the Council and the County Council that on completion of this agreement to pay their respective legal costs incurred in preparing and entering into this agreement as set out below:			
	Payee		Sum of legal costs	
	The Council		£600.00	
	The County Council			
7	Local Land Charge			
	This Deed shall be registered as a Local Land Charge			
8	Value Added tax			
	8.1	All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly paid.		
	8.2	If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT		

		invoice to the party to whom the supply was made and the VAT shall be paid accordingly.
9	Third Party Rights	
	A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.	
10	Governing Law	
	This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.	
This document has been executed and delivered as a deed and is delivered and takes effect on the date stated at the beginning of it.		
EXECUTED as a DEED by affixing) THE COMMON SEAL of ARUN DISTRICT) COUNCIL) Seal Book Number: Authorised Signatory:		
EXECUTED as a DEED by affixing) THE COMMON SEAL of WEST SUSSEX) COUNTY COUNCIL) Seal Book Number: Authorised Signatory:		:
EXECUTED as a DEED by THE COURTWICK PARTNERSHIP LLP		

<p>Acting by an authorised signatory in the presence of:</p> <p>Witness signature:</p> <p>Witness name:</p> <p>Witness address:</p> <p>Witness occupation:</p>	<p>Authorised Signatory</p>
<p>EXECUTED as a DEED by GLEESON) DEVELOPMENTS LIMITED)</p> <p>Acting by an authorised signatory in the presence of:</p> <p>Witness signature:</p> <p>Witness name:</p> <p>Witness address:</p> <p>Witness occupation:</p>	<p>.....</p> <p>Authorised Signatory</p>