

Dated.....2026

DBH WORTHING LTD

and

ARBUTHNOT LATHAM & CO., LIMITED

to

WORTHING BOROUGH COUNCIL

and

WEST SUSSEX COUNTY COUNCIL

PLANNING OBLIGATION

By way of Unilateral Undertaking

Under section 106 of the Town & Country Planning Act 1990
relating to land on the north side of Barrington Road, Goring By Sea, Worthing

This Planning Obligation is made the day of 2026 and is given in the form of a Unilateral Undertaking

BY

1. **DBH WORTHING LTD** Company Registration Number 13723614 whose registered office is situated at New Burlington House, 1075 Finchley Road, London NW11 0PU (hereinafter called "the Owner")
2. **ARBUTHNOT LATHAM & CO., LIMITED** Company Registration Number 00819519 whose registered office is situated at Arbuthnot House, 20 Finsbury Circus, London, EC2M 7EA, (hereinafter called "the Mortgagee")

TO

1. **WORTHING BOROUGH COUNCIL** of Town Hall, Chapel Road, Worthing, BN11 1HA (hereinafter called "the Council")
2. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex PO19 1RQ (hereinafter called "the County Council")

WHEREAS

1. The Council is the Borough Council for the area in which the Land is situated and have resolved that subject to the completion of this Unilateral Undertaking, Prior Approval be granted subject to the conditions for the Development
2. The County Council is the Highway Authority for the area in which the Land is situated and is the authority by whom the obligations in this Deed are enforceable
3. The Owner is the owner of the freehold of the Land edged red on Plan 1 within title SX14890 subject to a mortgage in favour of the Mortgagee

4. The Owner has made the Application and is proposing to carry out the Development
5. The Owner gives this undertaking to perform the obligations set out in this Deed
6. The Mortgagee is the mortgagee of the Land and has agreed to enter into this Unilateral Undertaking in order to give its consent to the terms of the Unilateral Undertaking and declares that its interest in the Land shall be bound by the terms of this Deed as if it had been executed and registered as a land charge before the creation of the Mortgagee's interest in the Land.

NOW THIS DEED WITNESSETH as follows:

1. Interpretation

- 1.1 In this Unilateral Undertaking unless otherwise stated the following expressions shall where the context so admits have the following meanings:

“the 1990 Act” shall mean the Town and Country Planning Act 1990 (as amended)

“the Application” means an application for Prior Approval of proposed change of use of the building from Class E to 101 flats (65 x 1-bed units, 36 x 2-bed units) made to the Council and under reference number Notice 0019/25

“Commencement of Development” the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this Deed and for no other purpose, the following operations:

demolition works;

site clearance;

ground investigations;
site survey works;
temporary access construction works;
archaeological investigation; and
erection of any fences and hoardings around the Land.

"the Default Interest Rate" means interest at the rate of 4% above the Bank of England base rate applicable at the relevant payment date which shall be calculated on a day to day basis

"the Development" shall mean the development authorised by the Prior Approval

"Index Linked" means that the Travel Plan Monitoring Fee payable by the Owner under this Deed shall be increased by the application of the following formula:

$$A = B \times \frac{C}{D} \text{ (where } C/D \text{ is equal to or greater than 1)}$$

where A is the sum actually payable on the date of payment

B is the original sum mentioned in this Deed

C is the BCIS Index at the date payment falls due

D is the BCIS Index at the date of 24th October 2025

and Indexation shall be construed accordingly

"the Land" shall mean land on the north side of Barrington Road, Goring By Sea, Worthing, registered under Title Number SX14890 and shown edged red on Plan 1 attached hereto

"Occupation" shall mean occupation for any purpose for which the Prior Approval has been granted by the Council other than occupation for the purposes of construction or fitting out or occupation for security, marketing or display and "Occupy" and "Occupied" and "First Occupation" shall be construed accordingly

“ **Plan 1** ” shall mean the plan annexed hereto and marked Plan Number 1

“**the Prior Approval**” shall mean the Prior Approval to be granted by the Council in respect of the Application

“**the Travel Plan**” means the travel plan to be submitted to the County Council for its written approval and subject to any amendments agreed in writing by the County Council from time to time

“**the Travel Plan Co-ordinator**” means the person appointed by the Owner responsible for securing the implementation of the Travel Plan

“**the Travel Plan Monitoring Fee** ” means the sum of £3,950 (three thousand, nine hundred and fifty pounds) payable to County Council for monitoring the delivery of the Travel Plan over the lifetime of the Development

1.2 Words importing the singular includes the plural and vice versa

1.3 References to clauses, sub clauses, recitals, annexes and schedules are unless otherwise stated references to clauses, sub clauses, recitals, annexes and schedules to this agreement

1.4 A reference to the Council or to the County Council shall include the successors to their respective statutory functions

2. Statutory Provisions

2.1 This Deed constitutes a planning obligation for the purposes of Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers

2.2 The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are entered into by the Owner with the intention that they bind the

interests held by those persons in the Land and their respective successors and assigns

2.3 This Unilateral Undertaking shall have full force and effect from the date hereof

2.4 The obligations in this Deed are conditional upon and will not take effect until the grant of Prior Approval, except for clauses 2, 5 and 6.

2.6 The planning obligations contained in this Deed are enforceable by the County Council

3. The Owner's covenants

3.1 The Owner hereby covenants with the County Council that upon Commencement of Development the Owner shall pay to the County Council the Travel Plan Monitoring Fee, Index Linked

3.2 It is hereby acknowledged for the avoidance of doubt and without prejudice to the above that the County Council is authorised to apply the Travel Plan Monitoring Fee

3.3 To submit the Travel Plan for approval prior to Commencement of Development

3.4 Not to Commence Development unless a Travel Plan Co-ordinator has been appointed. The Owner shall notify the County Council in writing of the name, address, email address and telephone number of the person appointed

3.5 Upon First Occupation the Owner shall implement the approved Travel Plan or amendments (as may be agreed with the County Council in writing) until such time as it is agreed between the Owner and the County Council (in writing) that there is no need for a Travel Plan

4 Interest

If any sum or amount has not been paid to the County Council by the date it is due, the Owner shall pay the County Council interest on that amount at the Default Interest Rate. Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

5 Miscellaneous

- 5.1 This Deed is a Local Land Charge and shall be registered as such by the Council
- 5.2 The Owner shall give notice in writing to both the Council and the County Council of the date of the Commencement of the Development ("**the Commencement Notice**") and of the date of First Occupation ("**the First Occupation Notice**"). The Commencement Notice shall be sent to the Council addressed to the Head of Planning and to the County Council addressed to the Planning, Monitoring and Records Team at the addresses herein and shall be delivered as follows:
 - a) By hand; or
 - b) Sent by pre-paid first class post of other next working day delivery service
- 5.3 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a statutory successor to a party hereto
- 5.4 The Owner shall pay to the Council and the County Council on or before the date of this Deed the Council and the County Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed
- 5.5 No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Land, except in respect of any breach subsisting prior to parting with such interest

- 5.6 The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Land
- 5.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 5.8 No waiver whether express or implied by the Council or the County Council of any breach or default by the Owner(s) in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing the relevant obligations or from acting upon any subsequent breach or default
- 5.9 This Deed shall cease to have any effect (insofar only as it has not been complied with) if the Prior Approval shall be quashed, revoked or otherwise withdrawn

6. 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 law of England and Wales.

IN WITNESS whereof this Unilateral Undertaking has been executed as a Deed and Delivered on the day and year written above.

Executed as a Deed by DBH WORTHING LTD

acting by

a director, in the presence of:

.....

Director

.....

Witness

NAME, ADDRESS, AND OCCUPATION OF WITNESS:

Executed as a Deed by ARBUTHNOT LATHAM & CO., LIMITED

acting by

.....

a director, in the presence of:

Director

.....

Witness

NAME, ADDRESS, AND OCCUPATION OF WITNESS:

DRAFT

|

PLAN NUMBER 1

DRAFT