SECTION 106 UNILATERAL UNDERTAKING

THIS UNILATERAL UNDERTAKING is given this 20 day of September two thousand and twenty four

By:

(1) Polands Development Limited (company number 15430135) whose registered office is 168 Church Road, Hove, England, BN3 2DL ("Developer")

(2) CPF One Limited (company number 10910882) whose registered office is Midland House, 2 Poole Road, Bournemouth, Dorset, England, BH2 5QY ("Mortgagee")

To:

(1) Worthing Borough Council of Town Hall, Chapel Road, Worthing, West Sussex, BN11 1HA ("**the Council**")

RECITALS

A The Developer is the freehold owner of the Site by virtue of the transfer of the land dated 8th April 2024. An Application for registration of the transfer was made to the Land registry on the 18th April 2024;

B The Council is the Local Planning Authority for the purposes of the Act and for the administrative area in which the Land is situated;

C The Owner has by the Application applied to the Council for Planning Permission to develop the Land by the Development;

D The Owner is willing to give an undertaking to perform the obligations set out in this Unilateral Undertaking to facilitate the grant of Planning Permission by securing the contribution contained in this undertaking towards measures which avoid or mitigate against any adverse effect of the Development;

E The Council are satisfied that the provisions of this Unilateral Undertaking comply with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended.

1. DEFINITIONS & INTERPRETATION

In this Unilateral Undertaking:

1.1 "Act" means the Town and Country Planning Act 1990 as amended;

1.2 "Affordable Housing" shall have the same meaning as in Annex 2 of the NPPF 2023 or such other replacement document;

1.3 "Affordable Housing Contribution" means the sum of thirty two thousand and eighty two pounds (£32,082) Index Linked to be paid to Worthing Borough Council and applied towards the delivery or improvement of Affordable Housing;

1.4 "Application" means the planning application numbered AWDM/1483/23 made by the Owner for full Planning Permission to develop the Land and shall include any amendment or renewal thereof or any reserved matters application thereunder;

1.5 "Commencement of the Development" means the carrying out as part of the Development of the first material operation (within the meaning ascribed in Section 56 of the Act);

1.6 "Council Monitoring Contribution" means the total sum of £300 (three hundred) payable to the Council for monitoring the delivery and performance of a Qualifying trigger over the lifetime of the Development calculated on the basis of £300 (three hundred pounds) per Qualifying Trigger;

1.7 "Deed" means this document, including schedules;

1.8 "Development" means the development of the Land by ground floor extension to provide residential access staircase, first floor extension to provide 1 Dwelling and access staircase and terraces, second floor extension to provide 2 dwellings and access staircase;

1.9 "Dwelling" means a house, flat, or other place of residence;

1.10 "Index Linked" means increased in accordance with the following formula: Amount payable = the Contribution x (A/B) where: A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date of actual payment. B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this deed;

1.11 "Occupation" means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out, decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" "Occupies" and "Occupied" shall be construed accordingly;

1.12 "Planning Permission" means planning permission for the Development that may be granted in pursuance of the Application;

1.13 "Qualifying Trigger" means any trigger contained within this Deed that attracts the Council Monitoring Contributions applicable because its implementation and/or adherence requires monitoring by the Council;

1.14 "Retail Prices Index" means the United Kingdom fiscal annualised retail prices index as published by the Office for National Statistics (or by any government department or other body upon which duties to prepare such an index devolve) provided that in the event of the Council considering the method used to

compile such index has changed substantially or such index being abolished to apply such alternative as shall be set by the Council;

1.15 "Working Days" means Monday to Friday excluding bank holidays and other public holidays;

1.16 Words importing the masculine include the feminine and vice versa;

1.17 Words importing the singular include the plural and vice versa;

1.18 Words importing persons include companies and corporations and vice versa;

1.19 Any reference to a clause or plan is to one in or attached to this Unilateral Undertaking;

1.20 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument direction specification made or issued under the statute or deriving validity from it;

1.21 References to any Party to this Unilateral Undertaking shall include the successors in title to that Party and to any deriving title through or under that Party and in the case of the Council the successors to their respective functions as local planning authority;

2. ENABLING PROVISIONS

This deed constitutes a planning obligation pursuant to Section 106 of the Act, section 111 of the Local Government Act 1972 and all other enabling powers.

3 COMMENCEMENT AND DETERMINATION

3.1 In the event that Planning Permission is granted and the Development is Commenced this Unilateral Undertaking shall have full force and effect but not otherwise, save that clauses 1, 2, 3, 6, 8 and shall have full force and effect from the date of this Undertaking.

3.2 If the Planning Permission granted pursuant to the Application shall expire before the Commencement of the Development or shall at any time be varied or revoked other than at the request of the Owner then this Unilateral Undertaking shall be determined and shall have no further effect.

4. OWNER'S COVENANTS WITH THE COUNCIL

4.1 The Owner hereby covenants with the Council that it will comply with the obligations set out in Schedule 1 of the Deed.

4.2 No person shall be liable for any breach of the covenants, restrictions or obligations contained in this Unilateral Undertaking after that person has

parted with its interest in the Land but they will remain liable for any breaches of this Unilateral Undertaking occurring before that date.

5. INDEXATION OF CONTRIBUTION

All financial contributions payable to the Council shall be Index Linked.
Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

6. MORTGAGEE'S CONSENT

The Mortgagee consents to the Owner entering into this Unilateral Undertaking and acknowledges that this Unilateral Undertaking binds the Land and that the Mortgagee's charge takes effect subject to the terms of this deed provided that the Mortgagee shall otherwise have no liability under this deed unless it takes possession of the Land in which case it to will be bound by this Unilateral Undertaking as if it were a person deriving title from the Owner.

7. GENERAL

The Owner acknowledges and declares that:

7.1 the obligations contained in this Unilateral Undertaking are planning obligations for the purpose of Section 106 of the Act;

7.2 this Unilateral Undertaking constitutes a deed;

7.3 the obligations contained in this Unilateral Undertaking are enforceable by the Council;

7.4 this Unilateral Undertaking does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999;

7.5 this deed is a Local Land Charge and shall be registered as such by the Council;

7.6 this deed shall be governed by and construed in accordance with the laws of England and each of the parties hereby submits to the exclusive jurisdiction of the Courts of England and Wales;

7.7 that the Owner [and the Mortgagee together have] has the sole proprietary interest in the Land and that there are no third party interests which would require any other party to give this Unilateral Undertaking.

8. NOTICES

8.1 Any notice, demand or any other communication served under this Unilateral Undertaking will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

8.2 Any notice, demand or any other communication served shall be sent to the address of the relevant Party set out at the beginning of this Unilateral Undertaking or to such other address as one Party may notify in writing to the others at any time as its address for service.

8.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:

(a) if delivered by hand, at the time of delivery;
(b) if sent by post, on the second Working Day after posting; or
(c) if sent by recorded delivery, at the time delivery was signed for.

8.4 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.

8.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

9. COSTS

The Owner agrees to pay to the Council prior to completion of this Unilateral Undertaking their reasonable legal costs incurred in the negotiation and preparation of this Unilateral Undertaking.

IN WITNESS of which the Owner [and the Mortgagee] have executed this deed on the above date
Polands Development Limited
Signature:.....
in the presence of

Signature:.....
Name of Witness:
Address of Witness:

Joseph Harry Entwistle – Solicitor
ODT Solicitors
Pavilion View 19 New Road
Brighton BN1 1UF

CPF One Limited

Signature:..... MATT GILLAM
in the presence of

Signature:.....

Name of Witness: MARTYN BALSOM

Address of Witness: 9 KHYBER ROAD
POOLE
BH12 2DG

Schedule 1

PLANNING OBLIGATIONS

The Owner hereby covenants with the Council that it will comply with the following obligations:

To pay the Affordable Housing Contribution to the Council prior to first Occupation of any Dwelling as part of the Planning Permission.

Not to cause, allow or permit the Occupation of any dwelling until the Affordable Housing Contribution has been paid

Schedule 2

Plan

