

THIS DEED OF AGREEMENT is made the 21st day of June 2018

B E T W E E N

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND UPON THAMES** of Civic Centre 44 York Street Twickenham Middlesex, TW1 3BZ ("**the Council**")

- (2) **RIVERHILL PROPERTIES LTD** (Company Registration Number **08924790**) whose registered office is situate at 43 Filey Avenue, London N16 6JL ("**the Owner**")

- (3) **WYNBAY LIMITED** (Company Registration Number **01299082**) of whose registered office is situate at New Burlington House, 1075 Finchley Road, London NW11 0PU ("**the Mortgagee**")

INTERPRETATION

IN this Deed the following words and expressions shall have the following meanings:-

"1972 Act"	the Local Government Act 1972
"1974 Act"	the Greater London Council (General Powers) Act 1974
"1990 Act"	the Town & Country Planning Act 1990 (as amended)
"2011 Act"	the Localism Act 2011
"Affordable Housing Contribution"	the contribution payable by the Owner (in the event that the Development proceeds) towards the provision of affordable housing in the Council's administrative area in the event that the Re-Assessment concludes that the Development is viable and can support

an Affordable Housing Contribution towards the Affordable Housing Use. The Affordable Housing Contribution Indexed shall be the equivalent of 40% of the Surplus up to a maximum contribution of £384,700 Indexed in accordance with the Richmond Affordable Housing SPD.

“Affordable Housing Use”

the provision of affordable housing in the Council’s administrative area

“Benchmark Land Value”

the benchmark land value to be applied in the Re-Assessment which shall be £1,400,000 as agreed in the Viability Assessment

“Business Operator”

a person or company operating a business from the Business Unit

“Business Parking Permit”

a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing for a Motor Vehicle to park in a Business Parking Bay

“Business Parking Bay”

a marked highway parking space designated by the Council by order under the Road Traffic Regulation Act 1984 the Road Traffic Regulations (Parking) Act 1986 the Parking Act 1989 or the Road Traffic Act 1991 (or other relevant legislation) for use by residents or any Business Operator of the locality on which the Development is situated

“Business Unit”

the business unit designated for A1 use as defined within the Use Classes Order

to be constructed pursuant to the Development together with any amenity space or any right to use the same (whether in common or not with others therewith)

“CPZ”

a controlled parking zone in operation on the highways on which the Property abuts

“the Development”

the development described in the Planning Application

“Owner’s Profit”

a return to the Owner of 20% of the Gross Development Value

“Disabled Persons Badge”

a disabled person’s badge issued pursuant to Section 21 of the Chronically Sick and Disabled Person’s Act 1970

“Re-Assessment”

a viability assessment to be carried out for the Development in the same format and in general conformity with the approach taken in the Viability Assessment

“Gross Development Costs”

all proper costs incurred by the Owner in carrying out the Development including (but without limitation) site preparation costs, construction and finance costs, legal fees, sales fees, letting and other professional fees and miscellaneous and other costs (including VAT)

“Gross Development Value”

gross development value of the completed Development being the aggregate market value of each of the

proposed Residential Units within the Development with vacant possession and a capitalised value for the proposed Business Unit within the Development

“the HDM”

the Council’s Head of Development Management for the time being or such other person as may be appointed by the Council from time to time to carry out that function

“Indexed”

increased in accordance with the formula whereby the relevant Affordable Housing Contribution is multiplied by the fraction A divided by B where B represents the value of the Retail Prices Index (All Items) as at the date of this Deed and A represents the value of the same index as at the date of payment of the Affordable Housing Contribution by the Owner to the Council

“Implementation”

the carrying out in relation to the Development of a material operation as defined in Section 56(4) of the 1990 Act save that such shall not include works of demolition; works of site clearance; ground investigations; site survey works; laying of services and service media; construction of temporary accesses; archaeological investigation; landscaping works off the public highway; and noise attenuation works and the term “Implement” shall be construed accordingly



"Implementation Date"	the date on which Implementation occurs
"LDF"	the adopted policies of the Richmond Upon Thames Local Development Framework Core Strategy 2009 and Development Management Plan 2011
"Mortgage"	the legal charge dated 6 th May 2016 and made between (1) the Owner and (2) the Mortgagee and which affects the Property recorded at HM Land Registry under title number MX188254
"Motor Vehicle"	any mechanically propelled vehicles intended or adapted for use on a road
"New Unit"	any one of the seven new Residential Units but this does not include the three Residential Units in existence before the date of this agreement or any Business Unit
"Occupation"	the full and beneficial occupation of a Unit for its purpose pursuant to the Use Classes Order (but this expression shall not include occupation for the purposes of construction for fitting out or for marketing or security purposes) and "Occupied" and "Occupy" shall be construed accordingly
"the Planning Application"	a planning application submitted to the Council on 5 th July 2016 bearing reference number 16/2288/FUL for the extension of the existing retail and residential accommodation to provide a mixed use scheme comprising of one

retail unit and 7 new residential dwellings and retention of 3 currently existing residential dwellings, incorporating cycle storage, amenity space and landscaping

"the Planning Permission"

a full planning permission granted by the Council pursuant to the Planning Application subject to the prior completion of this Deed

"the Property"

land known as land and property known as 179 - 181 High Street, Hampton Hill and recorded at HM Land Registry as 179, 179A, 179B, 181, 181A, 181B and 181C High Street, Hampton Hill, TW12 1NL under title number MX188254 and shown edged red on the plan attached hereto

"the Public Realm Contribution"

a contribution payable by the Owner to the Council towards the Public Realm Use in the event that the Development proceeds such contribution not to exceed a total of £7,500

"the Public Realm Use"

the planting of trees and other associated landscaping on the part of High Street, Hampton Hill, Twickenham as shown ^{shown blue} on the attached plan to include for the avoidance of doubt the re-paving and re-laying of the pavement and installation of bike storage as shown on the drawings attached to the Planning Permission

"Public Realm Works Invoice"	an invoice served by the Council on the Owner detailing the proper costs incurred by the Council in carrying out the Public Realm Works should it complete these pursuant to its obligations under clause 3 Schedule 2 of this Deed
"Public Realm Works"	the carrying out of works to facilitate the Public Realm Use
"Residential Occupier"	any tenant or occupier or leasehold owner of the Residential Unit and for the avoidance of doubt the term "Residential Occupier" excludes any business or corporate body or bodies
"Residents' Parking Permit"	a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing for a Motor Vehicle to park in a Residents Parking Bay
"Residents Parking Bay"	a marked highway parking space designated by the Council by order under the Road Traffic Regulation Act 1984 the Road Traffic Regulations (Parking) Act 1986 the Parking Act 1989 or the Road Traffic Act 1991 (or other relevant legislation) for use by residents of the locality on which the Development is situated
"Residential Units"	the residential units designated for C3 use as defined within the Use Classes Order to be constructed pursuant to the Development together with any amenity space or any right to use the same (whether common or not with others

	therewith) and the term "Residential Unit" shall be construed accordingly
"Trigger Date"	the date upon which notice is given by the Owner that the Planning Permission has been fully Implemented and the Occupation of the fifth new Residential Unit has occurred
"Surplus"	<p>the total produced by the sum of the Gross Development Value less:</p> <p>(a) the Gross Development Costs of the Development; and</p> <p>(b) the Owner's Profit; and</p> <p>(c) the Benchmark Land Value as set out in the Viability Assessment</p> <p>provided always that such costs and values are reasonable for development viability appraisal undertaken at this stage in development delivery</p>
"Use Classes Order"	the Town and Country Planning (Use Classes) Order 1987 (as amended)
"Viability Assessment"	the report on the financial viability of the Development prepared by HEDC Ltd, submitted in confidence to the Council in relation to the Planning Application and to which the Council had proper regard in determining the Planning Application
"Units"	the Business Unit and the Residential Units together and the term "Unit" shall be construed accordingly

WHEREAS:

- (A) The Council is the local planning authority for its administrative area within which the Property is situate for the purposes of the 1990 Act and for the purpose of Section 106 of the 1990 Act is the local planning authority by whom the planning obligations contained within this Deed are enforceable against the Property
- (B) The Owner is the freehold owner of the Property registered at the Land Registry with absolute title under title number MX188254 as the proprietor of the freehold interest in the Property
- (C) At its meeting on 8th October 2017 the Council's Planning Committee resolved to approve the Planning Application and grant the Planning Permission subject to the prior completion of a deed of planning obligation under section 106 of the 1990 Act to secure the planning obligations now contained in this Deed
- (D) Policy CP 15 of the LDF Core Strategy and policy DM HO 6 of the LDF Development Management Plan provides that the Council may consider a financial contribution to its affordable housing fund as an alternative to on-site provision
- (E) Policies DM TP2 and DM TP8 of the LDF Development Management Plan 2011 provide that the Council will only approve new development where the transport infrastructure can accommodate it or be adapted to it and new development should be acceptable in terms of traffic generation and traffic impact in the road

NOW THIS DEED WITNESSETH as follows:

1. THIS Deed is made pursuant to Section 106 of the 1990 Act, section 111 of 1972 Act, section 16 of the 1974 Act and section 1 of the 2011 Act and any other enabling powers and the obligations contained in this Deed are planning obligations for the purposes of that section insofar as they fall within the terms of Section 106 of the 1990 Act and receipt of a copy of this Deed pursuant to subsection 106(10) of the 1990 Act is hereby acknowledged by the Council.

2. The obligations of the Owner are conditional on:
 - (a) the grant of Planning Permission; and
 - (b) Implementation
3. THE Owner hereby covenants with the Council as set out in Schedule 1.
4. THE Council covenants with the Owner as set out in Schedule 2.
5. The Mortgagee hereby consents to the Owner completing this Deed with the intention that notwithstanding Section 104 of the Law of Property Act 1925 its interest in the Property shall be bound by the terms of this Deed as if it had been executed and registered as a local land charge prior to the execution of the Mortgage subject to clause 6(z)
6. IT IS HEREBY AGREED and DECLARED:-
Miscellaneous agreements and declarations
 - (a) Nothing contained in this Deed constitutes planning permission
 - (b) Nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as local authority and its rights powers duties and obligations under all public and private statutes bye-laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Deed
 - (c) If any provision in this Deed shall be held to be void invalid illegal or unenforceable or if voidable is avoided this shall not affect the operation validity legality and enforceability of any other provision of this Deed provided severance therefrom is possible
 - (d) Reference to the masculine feminine and neuter genders shall include the other genders and reference to the singular shall include the plural and vice versa

- (e) A reference to a clause is a reference to a clause contained in this Deed
- (f) The expressions “the Council” “the Owner” and “the Mortgagee” shall include their respective successors in title and assignees

Local land charge provisions

- (g) This Deed is a Local Land Charge and shall be registered by the Council in the Council's Register of Local Land Charges immediately on completion thereof
- (h) The Council will, upon written request by the Owner or a Mortgagee if applicable effect a cancellation of any entry made in the Local Land Charges Register in regard to this Deed forthwith after the obligations of the Owner and/or the Mortgagee hereunder have been materially performed or discharged

Reference to statutes and statutory instruments

- (i) References in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force

Variations

- (j) The covenants undertakings and restrictions contained in this Deed shall only be capable of being varied by a memorandum to be endorsed upon or annexed to this Deed by or on behalf of the relevant parties hereto or by a subsequent deed of variation
- (k) This Deed shall continue to be valid and enforceable following an amendment or variation to the Planning Permission achieved through the submission of the Planning Application pursuant to Section 73 of the 1990 Act as if this Deed had been completed pursuant to such an application

Dispute Provisions

- (l) that in the event of any dispute arising in respect of any matter contained in this Deed save as to matters regarding its legal construction then unless the relevant part of the Deed indicates to the contrary the same shall be referred to an expert being an independent person to be agreed upon between the parties hereto or at the request and option of either of them to be nominated at their joint expense by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors and such expert shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the parties hereto and whose costs shall be in his award

- (m) that the expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty eight (28) days from the date of his appointment to act

- (n) that the expert shall be required to give notice to each of the said parties inviting each of them to submit to him within ten (10) working days written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further five (5) working days in respect of any such submission and material and his decision shall be given in writing within twenty eight (28) days of this appointment with reasons and in the absence of manifest error shall be binding on the said parties

- (o) the costs of any reference of any dispute shall be paid jointly in equal shares by the Owner and the Council unless otherwise determined in the independent person's award

English law applicable

- (p) The construction validity and performance of this Deed shall be governed by English law

Effect of revocation of planning permission

- (q) In the event of the Planning Permission being revoked by the Council or any other authority having powers in relation to planning matters or otherwise withdrawn or modified by any statutory procedure without the consent of the Owner or their successors in title the obligations of the Owner under this Deed shall thereupon cease absolutely and in that event the Council will repay to the Owner such monies as have been paid to it pursuant to the obligations contained within this Deed forthwith together with interest at the base rate of Barclays Bank plc from the date such sums were received by the Council until the date of repayment to the extent that they remain unspent

Waivers not to be of a continuing nature

- (r) No waiver (whether express or implied) by any party to this Deed of any breach or default by any party to this Deed in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent any party to this Deed from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereto by the party in question

Liability of subsequent Owner and release of former Owner

- (s) The provisions hereof shall be enforceable by the Council against the Owner and all persons who shall have derived title through or under them in respect of the Property (but so that no person shall be liable to the Council for any breach of the provisions committed after such a person has parted with all of its interest in such land)

Contracts (Rights of Third Parties) Act 1999

- (t) The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person who is not a party to this Deed is to have the benefit of or is capable of enforcing any term in this Deed and no party is to have any rights to enforce this Deed other than those falling within the definitions of the Council and the Owner

Release

- (u) This Deed shall be deemed to have been revoked and be of no effect (without any further act or deed on the part of either the Council or the

Owner) if Implementation has not taken place within 3 years of the date of this Deed or the Planning Permission having been granted shall be varied or revoked other than at the request of the Owner or the Planning Permission having been granted is quashed following a successful legal challenge and in any such case any sums paid by the Owner under this Deed shall be repaid to the Owner by the Council forthwith together with interest at the 4% above the base rate of Barclays Bank plc from the date such sums were received by the Council until the date of repayment

VAT clauses

- (v) all consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof

- (w) 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 had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

Interest on late payment

- (x) if any of the contributions are not paid to the Council within timescales stipulated in the paragraph 1.2(d)(i) Part I of Schedule 1 this Deed and paragraph 4(i) Part IV of this Deed then interest shall be paid on such contribution at the rate of 4% above the Bank of England base rate from time to time in force from the date that the contribution became due to the date of actual payment

Community Infrastructure Levy Regulations 2010

- (y) The terms of this Deed comply in all respects with the requirements of Regulation 122 of the Community Infrastructure Levy ("CIL") Regulations 2010 in that the obligations contained herein are necessary to make the Development acceptable in planning terms, directly relate to the Development and fairly and reasonably related in scale and kind to the Development. For the avoidance of doubt no CIL payments will be payable by the Owner in connection with or in relation to the Development.

Indemnity for Mortgagee

(z) notwithstanding the terms contained herein the Mortgagee shall not be 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 part of the Property

IN WITNESS whereof with the intent that these presents should be executed as a deed the parties hereto have duly executed the same the day and year first before written

SCHEDULE 1

COVENANTS BY THE OWNER

Part I- Affordable Housing Contribution

- 1.1 The Parties acknowledge that the financial viability of the Development has been assessed using the Viability Assessment which indicates that the provision of affordable housing in the Development will not be financially viable at the date of the Planning Permission.
- 1.2 The Parties agree as follows:
- (a) On the Trigger Date, the Owner will appoint a consultant at the Owner's cost to prepare and submit to the Council the Re-Assessment, and the Council shall appoint an assessor to review the Re-Assessment (and the Owner shall meet the Council's reasonable and proper costs incurred in connection with the Re-Assessment in full within 14 Working Days of the Council issuing an invoice of the said costs incurred).
 - (b) The Owner and the Council shall each use their reasonable endeavours to ensure the details for the Re-Assessment shall be agreed between the Council's assessor and the Owner's assessor as soon as practicable and in any event within one month of the Trigger Date and for the avoidance of doubt the Benchmark Land Value will apply provided this will not cause the Owner to be penalised from carrying out site enabling works.
 - (c) That the Owner's assessor will within 14 days of the agreement of the agreement of the details for the Re-Assessment to complete the Re-Assessment and submit the same to the Council for its approval together with such supporting information as is reasonably necessary to enable the Council and its advisors to assess the Re-Assessment.
 - (d)
 - (i) in the event that the Council approves the Re- Assessment and

the Re- Assessment indicates that the scheme will produce a Surplus, the Owner shall pay the Affordable Housing Contribution to the Council within 2 months of the date of receiving the Council's approval of the Re-Assessment that confirms the agreed amount of Affordable Housing Contribution in writing

- (ii) in the event that the Council does not approve the Re-Assessment then, for the avoidance of doubt, any dispute between the Parties as to the Re-Assessment or the amount of the Affordable Housing Contribution shall be resolved in accordance with the provisions of Clauses 6(l)-(o) of this Deed and the Owner shall pay the amount determined by the expert for the Affordable Housing Contribution to the Council within 2 months of the date of receiving the determination in writing of the expert in accordance with clause 6(n) or such period as otherwise agreed between the Parties

Part II – Car Parking Permits

2.1 In the event that a CPZ is established in the future to notify any person who is to be a Residential Occupier of a New Unit prior to their first Occupation that pursuant to the Council's policies to which reference is made in recital (E) hereof or any other policy replacing the same such person shall not be entitled (unless such person is or becomes entitled to be a holder of a Disabled Persons' Badge) to be granted a Residents Parking Permit or to park in other place (without payment to the Council of a fee to be arranged direct between the Council and the Residential Occupier) within the CPZ within the Council's area nor will the Council enter into a contract (other than individual contracts) with such person to park in any car park controlled by the Council nor will they be eligible for a season ticket (other than by way of individual contracts) to park a Motor Vehicle in any car park controlled by the Council

2.2 not to dispose of any New Unit to any person or occupy or allow any person to be a first Residential Occupier of a New Unit unless such notice has been served

2.2.1 In the event that a CPZ is established in the future to notify any person who is to be a Business Operator prior to the first Occupation of the Business Unit that pursuant to the Council's policies to which reference is made in recital (E) hereof or any other policy replacing the same such person shall not be entitled (unless such person is or becomes entitled to be a holder of a Disabled Persons' Badge) to be granted a Business Parking Permit or to park in other place (without payment to the Council of a fee to be arranged direct between the Council and the Business Operator) within the CPZ within the Council's area nor will the Council enter into a contract (other than individual contracts) with such person to park in any car park controlled by the Council nor will they be eligible for a season ticket (other than by way of individual contracts) to park a Motor Vehicle in any car park controlled by the Council

2.2.2 not to dispose of the Business Unit to any person or occupy or allow any person to be the first Business Operator unless such notice has been served

Part III – Payments

3. To pay to the Council the Public Realm Contribution within one calendar month of the Council serving upon the Owner the Public Realm Works Invoice

Part IV – Notifications

4. To provide written notification to the HDM seven days prior to the Implementation Date and a further written notice of the actual Implementation Date within seven days of the occurrence of the same

SCHEDULE 2

COVENANTS BY THE COUNCIL

Part 1 – Miscellaneous

1. To accept the Owner's obligations in Schedule 1 of this Deed
2. To use any Affordable Housing Contribution paid to it pursuant to paragraph 1.2(d)(i) Part I of Schedule 1 This Deed (if applicable) towards the Affordable Housing Use

3.1 To carry out the Public Realm Works upon:

- (i) receipt of the **Public Realm Contribution** pursuant to clause 3 Part III of Schedule 1 of this Deed; and
- (ii) providing notice to the Owner of its intention to carry out the Public Realm Works at least 14 days before carrying out such works and

3.2 To notify the Owner of completion of Public Realm Works within 5 working days of completion of said works

IN WITNESS whereof with the intent that these presents should be executed as a deed the parties hereto have duly executed the same the day and year first before written

EXECUTED as a deed by the said)

RIVERHILL PROPERTIES LTD)

Acting by a director and)

~~a director/company secretary:~~)
in the presence of :

Director

~~Director~~
Witness

J.A.H.
JOEL ROTHBART
98 OSBALDGETE RD
N16 6NL
PROPERTY MANAGER.

EXECUTED as a deed by the said)

WYNBAY LIMITED)

Acting by a director and)

~~a director/company secretary:~~)
in the presence of :

Director

~~Director~~

J.A.H.
JOEL ROTHBART
98 OSBALDGETE RD N16 6NL
PROPERTY MANAGER.

BBS

BBS

BBS

3. 1 To carry out the Public Realm Works upon:

- (i) receipt of the **Public Realm Contribution** pursuant to clause 3 Part III of Schedule 1 of this Deed; and
- (ii) providing notice to the Owner of its intention to carry out the Public Realm Works at least 14 days before carrying out such works and

3.2 To notify the Owner of completion of Public Realm Works within 5 working days of completion of said works

IN WITNESS whereof with the intent that these presents should be executed as a deed the parties hereto have duly executed the same the day and year first before written

**THE COMMON SEAL of
THE MAYOR AND BURGESSES
OF THE LONDON BOROUGH
OF RICHMOND** was hereunto affixed
in the presence of

Q Bishop
Authorised Signatory



Dated 21st June 2018

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH
OF RICHMOND**

-and-

RIVERHILL PROPERTIES LTD

-and-

WYNBAY LIMITED

**DEED OF AGREEMENT
made under Section 106 of the
Town & Country Planning Act 1990 and
Section 16 of the Greater London Council
(General Powers) Act 1974
relating to 179 - 181 High Street, Hampton
Hill**

Paul Evans
Head of South London Legal Partnership
Gifford House
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Morden
SM4 6HY