

THIS DEED OF AGREEMENT is made the 31st day of October two thousand and eight BETWEEN THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND UPON THAMES of Civic Centre 44 York Street Twickenham Middlesex TW1 3BZ ("the Council") of the first part and WYNNSTAY PROPERTIES PUBLIC LIMITED COMPANY (Co. Regn No.00022473) whose registered office is at 18 Southampton Place, London, WC1A 2AJ ("the Owner") of the second part and NM ROTHSCHILD & SONS LIMITED (Co Regn No 925279) of New Court, St Swithins Lane, London EC4P 4DU ("the Mortgagee") of the third part

INTERPRETATION

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

"the 1990 Act"	the Town & Country Planning Act 1990
"the Contributions"	the Education Contribution, the Health Contribution, the Public Realm Contribution and the Transport Contribution together
"the DCM"	the Council's Development Control Manager for the time being or such other person as may be appointed from time to time to carry out that function
"the Development"	the development at the Property described in the Planning Application
"the Education Contribution"	the combined sum of the Primary and Secondary Education Contributions
"the Health Contribution"	the sum of two thousand seven hundred and sixty six pounds and fifty four pence (£2766.54) Indexed
"Indexed"	increased in accordance with the formula whereby the relevant contribution is multiplied by the fraction A divided by B where B represents the value of the Retail Prices Index (All Items) as at 29 July 2008 and A represents the value of the same index as at the date of payment of the relevant contribution to the Council
"Material Start"	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
"the Monitoring Fee"	5% of the combined sum of the Education, Health, Public Realm and Transport Contributions being a total of five thousand eight hundred and ninety seven pounds and forty six pence (£5897.46)

"the Planning Application"	a planning application submitted by the Owner to the Council on 29 July 2008 under Council reference number 08/2651/FUL for the demolition of the existing warehouse and change of use to mixed use for construction of 8 dwellings at the front of the Property and 2 storey commercial offices to the rear with new access and landscaping and parking at the Property
"the Planning Permission"	a planning permission to be granted by the Council pursuant to the Planning Application
"the Primary Education Contribution"	the sum of thirty thousand two hundred and six pounds (£30,206) Indexed
"the Property"	land known as land and property at 9-23 Third Cross Road, Twickenham TW2 5DY delineated in red on the plan attached hereto
"the Public Realm Contribution"	the sum of twelve thousand seven hundred and ninety seven pounds and sixty pence (£12,797.60) Indexed
"the Secondary Education Contribution"	the sum of twenty four thousand nine hundred and twenty three pounds (£24,923) Indexed
"the Transport Contribution"	the sum of forty seven thousand two hundred and fifty six pounds (£ 47,256) Indexed
"UDP"	the Richmond upon Thames Unitary Development Plan: First Review 2005

WHEREAS:

- (1) 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(a) of the 1990 Act is the local planning authority by whom the planning obligations contained within this Deed are enforceable
- (2) The Owner is registered at the Land Registry with absolute title under title number SGL346523 as the proprietor of the freehold interest in the Property and the Mortgagee is similarly registered as the proprietor of a charge over the Property
- (3) On 16 October 2008 the Council's Planning Committee resolved to grant the Planning Permission pursuant to the Planning Application subject to the prior completion of this Deed to secure that a financial contribution of £117,949.14 towards local educational, transport, health and the public realm facilities is made available to the local planning authority and that in the event that a Controlled Parking Zone is introduced in the local area, the units to be constructed pursuant to the Planning Permission will not be entitled to parking permits within any Controlled Parking Zone

- (4) Saved policies IMP3, CCE8 and HSG19 of the UDP provide that the Council will seek the provision of planning advantages where it is necessary to make a proposal acceptable in land-use planning terms including ensuring that the provision of schools, pre-schools and other educational facilities meet the need for the additional educational resources any new development may generate
- (5) Saved policies IMP3 and TRN2 of the UDP provide that the Council will only permit new development where it can be demonstrated that the transport infrastructure can accommodate it and will seek in appropriate cases planning advantages appropriate to the site and commensurate to the scale of development
- (6) Saved policy CCE4 of the UDP provides that the Council will cooperate with the NHS commissioners and providers to improve health services for local residents and the planning Obligations Strategy adopted 6 June 2005 provides that planning can ensure the provision of primary care facilities as part of new residential and commercial developments (including through Section 106 agreements) (Policy 3.85 of the London Plan)
- (7) Saved policy TRN4 of the UDP provides that the Council will encourage car free or limited car owning developments in locations which are within controlled parking zones and easily accessible by public transport and where there is a range of amenities including shops and services
- (8) Saved policy IMP3 provides that where it is necessary to make a proposal acceptable in planning terms the Council will seek the provision of planning advantages appropriate to the site and commensurate to the scale and nature of the development including the provision of facilities for public use such as recreation and community uses which help meet site or other Plan objectives
- (9) The Council's Planning Obligations Strategy adopted as Supplementary Planning Guidance in June 2005 outlines and clarifies the Council's current approach, policies and procedures in respect of planning obligations

NOW THIS DEED WITNESSETH as follows:-

1. THIS Deed is made pursuant to Section 106 of the 1990 Act 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 Council hereby COVENANTS with the Owner:-
 - (a) to accept the Owner's covenant contained in Clause 3 hereunder
 - (b) to use the Education Contribution paid to it pursuant to Clause 3 of this Deed for education facilities within its administrative area
 - (c) to use the Health Contribution paid to it pursuant to Clause 3 of this Deed for the provision of and improvements to health facilities within its administrative area

- (d) to use the Public Realm Contribution paid to pursuant to Clause 3 of this Deed for the provision of and improvements to the public realm within its administrative area
- (e) to use the Transport Contribution paid to it pursuant to Clause 3 of this Deed for the provision of transport improvements within its administrative area
- (f) to use all Contributions received from the Owner under the terms of this Deed for the purposes specified in this Deed and if any part of such Contributions remains unexpended at the end of a period of 20 years from the date of their receipt by the Council then the Council shall at that time repay to the person who paid such sum that part which remains unexpended together with any actual interest accrued thereon from the date of payment to the date of repayment

3. THE Owner hereby COVENANTS with the Council:-

- (a) to pay to the Council the Monitoring Fee on the date on which a Material Start is made for the Development and not to commence such Development until such Monitoring Fee has been paid
- (b) to pay to the Council the Education Contribution, the Health Contribution, the Public Realm Contribution and the Transport Contribution within one (1) year of a Material Start
- (c) if the highways on which the Property abuts are within or will be within a Controlled Parking Zone when the residential or business units to be constructed pursuant to the Planning Permission or some of them are first occupied or are within such a zone by a date five years from the date hereof then not to allow any person to occupy any of the residential or business units to be formed on the Property as a result of the implementation of the Development unless a notice has been served on such person that pursuant to the Council's policies to which reference is made in recital (7) 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 issued pursuant to Section 21 of the Chronically Sick and Disabled Persons' Act 1970) to be granted an on street parking permit to park a vehicle in any marked highway bay or other place within a Controlled Parking Zone within the Council's area nor will the Council enter into a contract (other than individual contracts for one occasion) with such person to park in any car park controlled by the Council
- (d) to give notice in writing to the DCM of its intention to commence the Development at least seven (7) days before making a Material Start
- (e) on the date hereof to pay the Council's reasonable and proper legal costs in the preparation and completion of this Deed in the sum of three hundred and seventy- five pounds (£375)

4. 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

5. 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" and "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 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 wholly 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 a planning application pursuant to Section 73 of the 1990 Act as if this Deed had been completed pursuant to such an application

English law applicable

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

Effect of revocation of planning permission

- (m) 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 to the extent that they remain unspent

Waivers not to be of a continuing nature

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

Liability of subsequent owners and release of former owners

- (o) The provisions hereof shall be enforceable by the Council against the Owner and all persons who shall have derived title through or under it 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 but without prejudice to liability for any subsisting breach arising prior to parting with such interest)

Contracts (Rights of Third Parties) Act 1999

- (p) 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 the Owner and the Mortgagee

Release

- (q) 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 a Material Start 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 Base Rate of Barclays Bank plc from the date such sums were received by the Council until the date of repayment

VAT clauses

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

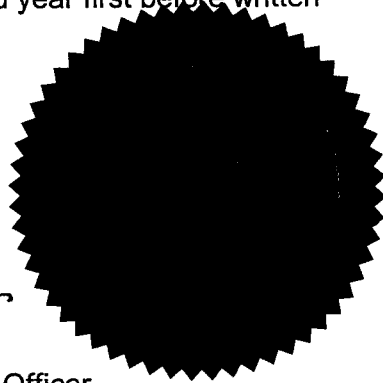
- (t) if any of the contributions is not paid to the Council within one year from a Material Start, then interest shall be paid on such contribution at the rate of 4% above the base rate of Barclays Bank plc from time to time in force from the date that the contribution became due to the date of actual payment

Indemnity for Mortgagee

- (u) notwithstanding the terms contained herein the Mortgagee shall only be liable for any breach of any provision of this Deed during such period (if any) as it is mortgagee in possession of the Property and then only if it shall have caused such breach or breaches to have been occasioned and PROVIDED THAT for the avoidance of doubt it shall not in any event be liable for any breach of this Deed arising prior to its becoming mortgagee in possession of the Property regardless of whether or not such pre existing breach shall continue for any period during which it is mortgagee in possession 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

THE COMMON SEAL of the MAYOR
AND BURGESSES
OF THE LONDON BOROUGH OF
RICHMOND UPON THAMES was
hereunto affixed in the presence of:-

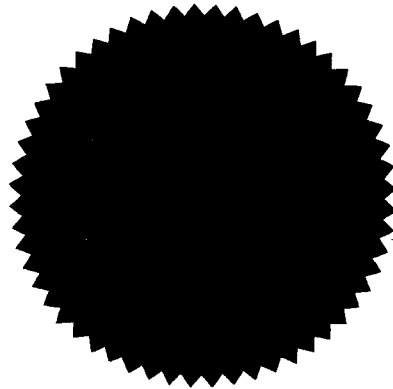


[Handwritten signature]

Authorised Officer

Seal Reg. No. 117813

THE COMMON SEAL of WYNNSTAY
PROPERTIES PUBLIC LIMITED
COMPANY was hereunto affixed
in the presence of:



[Handwritten signature]

Director

Secretary

[Handwritten signature]

EXECUTED AS A DEED BY
NM ROTHSCHILD & SONS LIMITED
in the presence of

[Handwritten signature]
[Handwritten signature]

Authorised signatory

Authorised signatory

08/2651/FUL

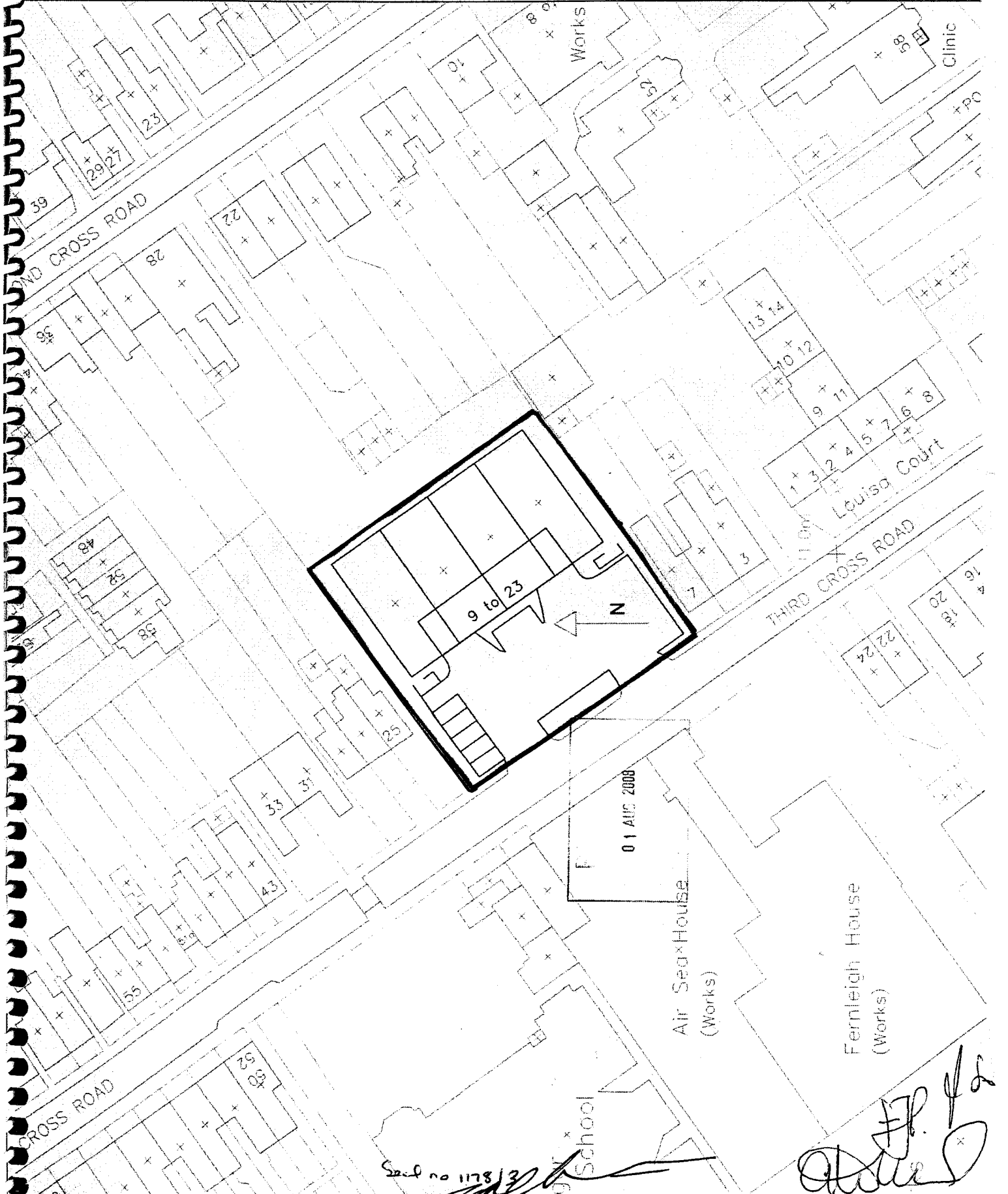
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PLANNING

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Barrett Lloyd Davis Associates LLP
535, Kings Road, London, SW10 0SE
Tel: 020 7539 6565
Fax: 020 7539 5566
e-mail: enquiries@bldh.co.uk
www.bldh.co.uk

Job:	923 THIRD CROSS ROAD
Client:	THICKENHAM, TVE
Design:	EXISTING SITE PLAN
Design Type:	PLANNING
Design Status:	PRELIMINARY
Drawn by:	AS
Checked by:	AS
Date:	10/07/08
Scale:	1:1000
Sheet No.:	2523
Sheet Total:	P000



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[Handwritten signatures and initials]

Dated 31st October 2008

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

-and-

**WYNNSTAY PROPERTIES PUBLIC LIMITED
COMPANY**

-and-

NM ROTHSCHILD & SONS LIMITED

**DEED OF AGREEMENT
made under Section 106 of the
Town & Country Planning Act 1990
relating to 9-23 Third Cross Road, Twickenham**

R J M Mellor
Head of Legal & Electoral Services
London Borough of Richmond upon Thames
Civic Centre
44 York Street
Twickenham
TW1 3BZ

Ref. L /KAB
File Ref: 7283