

Appendix B

Dated:

Between:

**(1) The Mayor and Burgesses of the
London Borough of Hammersmith and
Fulham**

**(2) Orion Shepherds Bush Limited,
Orion Shepherds Bush (no.2) Limited,
and Orion Shepherds Bush (no.3)
Limited**

**CPO Indemnity Agreement *etc* relating to land in and around
Shepherds Bush Market, Shepherds Bush, Hammersmith, London**

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This Agreement is made this • day of • 2012

Between:

- (1) **The Mayor and Burgesses of the London Borough of Hammersmith and Fulham** of Town Hall, King Street (“**the Council**”); and
- (2) **Orion Shepherds Bush Limited** (registration number 07206167; registered in England) (“**OSB**”), **Orion Shepherds Bush (no.2) Limited** (registration number 07664775; registered in England) (“**OSB (no.2)**”); and **Orion Shepherds Bush (no.3) Limited** (registration number 07670833; registered in England) (“**OSB (no.3)**”); each of whose registered office is at Palladium House, 1-4 Argyll Street, London, W1F 7LD (**together “the Developer”**)

Whereas:

- (a) The Council wishes to facilitate the Developer’s proposals for a comprehensive development, redevelopment and improvement of the Development Site.
- (b) On [14th][27th] October 2010 the Council passed the CPO Principal Resolution.
- (c) The relevant Developer has entered into the respective Land Agreements and desires and is seeking to acquire by private treaty the remainder of the CPO Lands.
- (d) On 13th September 2011 OSB submitted the Planning Application to the Council.
- (e) On 17th January 2012 the TSA issued to Peabody a Section 172 Consent.
- (f) On 8th February 2012 the Planning Applications Committee resolved to grant planning permission for the Development subject *inter alia* to the completion of an agreement pursuant to section 106 of the 1990 Act was completed.
- (g) On 30th March 2012 the section 106 Agreement was completed and on even date the Planning Permission was granted.
- (h) By reason of the grant of the Planning Permission the call option within the H&F Option Agreement is exercisable subject to its provisions.
- (i) On the [●] October 2012 the Council received a report recommending it to make and promote a CPO for the CPO Lands on the basis that under this Agreement the Developer and the Surety will indemnify the Council against all reasonable and proper costs arising from a resolution to make and seek confirmation of the CPO from the Secretary of State and its implementation.
- (j) On the [●] October 2012 the Council formally resolved to make the CPO on, *inter alia*, the basis that the compulsory acquisition of CPO Lands [and the New Rights] that cannot be acquired by the Developer by private treaty will facilitate the carrying out of development, re-development or improvement of the relevant land and deliver the regeneration aims of the Council by, *inter alia*, being highly likely to promote

and/or improve the economic and/or social and/or environmental well-being of the Borough.

- (k) Pursuant to the Land Agreements the Developer holds an interest in land which is the subject of those agreements and which is situated within the Development Site.
- (l) The Developer has agreed to indemnify the Council against all and any CPO Costs reasonably and properly incurred and to provide the Surety to guarantee that indemnity.

The Parties agree as follows:

1 Definitions and interpretation

The Parties agree that the provisions of Schedule 1 shall apply to this Agreement.

2 Commencement and making the CPO

2.1 This Agreement shall come into immediate effect upon both the making of the CPO and the provision of the Surety.

2.2 If the Parties have not agreed the form, content and extent of the CPO and all supporting material prior to this Agreement coming into effect then the Council shall consult the Developer about the form, content and extent of it and all supporting material which shall be subject to the prior written approval of the Developer.

2.3 Subject to clause 4.2:

2.3.1 as soon as reasonably practicable, the Council shall proceed diligently and expeditiously with the making of the CPO and the submission of it to the Secretary of State for confirmation and shall take all appropriate steps to secure confirmation of the CPO in such form as soon as reasonably practicable; and

2.3.2 the Council may and shall if so requested in writing by the Developer secure the implementation of the CPO by either way of:

2.3.1 the service of one or more Notices to Treat, whether subsequently with or without Notices of Entry; and/or

2.3.2 the making of one or more General Vesting Declarations.

3 Developer's Obligations

The Parties agree that the provisions of Schedule 4 shall apply to this Agreement.

4 The Council's Obligations

4.1 The Parties agree that the provisions of Schedule 5 shall apply to this Agreement.

4.2 Nothing in this Agreement or implied into it shall prejudice or fetter the Council's duties, obligations, powers or rights in the discharge of its functions as a statutory authority and in particular the Council may:

4.2.1 discontinue the CPO at any time if:

4.2.1.1 Leading Counsel advises that there is less than forty (40) *per cent* prospect of its confirmation or of successfully defending a CPO Challenge (in which case Schedule 6 (Part A) shall apply); and

4.2.1.2 there has been a material change in the circumstances giving rise to the making of the CPO and its intended purposes so that the underlying purpose of the CPO will remain unfulfilled and the Council then formally resolves that continuing with the CPO or acquiring any CPO Interest will not be in the interests of securing the promotion and/or improvement of the economic and/or social and/or environmental well-being of the Borough (in which case Schedule 6 (Part B) shall apply).

4.2.2 enter into a written undertaking with any person who has a CPO Interest restricting and controlling the timing, manner and circumstances in which the CPO would be implemented in respect of their CPO Interest after first having obtained the Developer's approval, provided that such approval shall not be withheld unless the Developer reasonably considers that the entering into of a such an undertaking shall not be in the best interests of delivering the Development and/or acquiring any CPO Interest not yet acquired by, without limitation, delaying the delivery of the Development or any part or increasing the cost of it.

5 Termination

5.1 A non-defaulting Party may terminate this Agreement by notice to the defaulting Party without prejudice to either Party's accrued rights or remedies if any one of more of the following shall occur:

5.1.1 if the defaulting Party is in substantial breach of any of its obligations in this Agreement which cannot be rectified by the service of a notice giving a reasonable time to rectify the same; or

5.1.2 if the defaulting Party is in substantial breach of any of its obligations in this Agreement and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the non-defaulting Party; or

5.1.3 on the date four weeks after the decision of the Secretary of State not to confirm the CPO provided that in the event of any legal proceedings following a decision not to confirm the CPO the period of four weeks shall not start to run until after the final outcome of such proceedings including any appeal or appeals therefrom;

whichever is the first to occur provided that termination under either clause 5.1.1 or 5.1.2 shall not be effective unless and until the defaulting Party has admitted that the

breach was a substantial breach which cannot or has not been rectified or it has been so Determined.

- 5.2 The Council may also terminate this Agreement by notice to the Developer without prejudice to either Party's accrued rights or remedies if an Event of Default occurs.
- 5.3 The Developer may also terminate this Agreement by giving notice to the Council in which case Schedule 6 (Part C) shall apply.
- 5.4 If the Developer terminates this Agreement pursuant to clause 5.1 (and its proviso) then Schedule 6 (Part D) shall apply.
- 5.5 Notwithstanding the termination of this Agreement the Developer shall remain liable to pay for any CPO Costs which have been incurred or which have been legally committed to prior to such termination and the Council shall take all reasonable steps to mitigate and minimise the same.

6 Dispute Resolution

Each Party agrees that the provisions of Schedule 7 shall apply to this Agreement.

7 Administrative Provisions

Each Party agrees that the provisions of Schedule 8 shall apply to this Agreement.

8 Execution

In witness whereof this Agreement has been executed as a deed on the date first above written.

Schedule 1

Definitions and Interpretation

A reference to paragraph in this Schedule is, unless otherwise stated, a reference to a paragraph in this Schedule

1 Definitions

In this Agreement and in the Recitals and Schedules the following words and expressions unless the context otherwise requires shall have the meanings hereinafter specified that is to say:

“1961 Act”	means the Land Compensation Act 1961
“1965 Act”	means the Compulsory Purchase Act 1965
“1973 Act”	means the Land Compensation Act 1973
“1981 Act”	means the Acquisition of Land Act 1981
“1990 Act”	means the Town and Country Planning Act 1990
“the 2000 Act”	means the Freedom of Information Act 2000
“the 2004 Regulations”	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued in relation to them
“the Access Road”	means the unregistered land, believed freehold, providing access to and egress from the rear of numbers 30-52 (inclusive) Goldhawk Road, Shepherds Bush, London W12 and coloured blue on Plan 1 for the purposes of identification only being land forming part of the CPO Lands
“Blight Notice”	means a notice validly served under the provisions of section 150 of the 1990 Act
“the Borough”	means the area comprising the London Borough of Hammersmith and Fulham
“the Broadway Option Agreement”	means the call option agreement dated 9 th September 2011 and made between (1) Broadway Homelessness and Support and (2) Orion Shepherds Bush (no.2) Limited under which Orion Shepherds Bush (no.2) Limited is entitled to opt to buy the Broadway Property from Broadway subject to its provisions

“the Property”	Broadway	means all that freehold property situate at and known as The Broadway Hostel, 14 Market Lane London W12 8EZ and registered at the Land Registry with title absolute under title number BGL71221
“Compensation Assessment”		means an assessment carried out from time-to-time by the Referencing Agent using the best available evidence of the level of risk and quantum of compensation claims in respect of each and every CPO Interest
“the Code”	Compensation	means the body of legislation, common law and case law which is applied by the Upper Tribunal (Lands Chamber) in determining compensation for the acquisition of land or the displacement of persons from land under a compulsory purchase order, or Blight Notice
“the Council”		means The Mayor and Burgesses of the London Borough of Hammersmith and Fulham and its lawful successors in functions, but excluding the Developer
“the Council’s Address”		means: London Borough of Hammersmith & Fulham Town Hall King Street Hammersmith London W6 or such other address that is notified by the Council to the other Parties from time-to-time
“CPO”		means any compulsory purchase order which may be made by the Council pursuant to its powers as a local planning authority under section 226(1)(a) and/or (b) of the 1990 Act to acquire CPO Lands and/or Third Party Interests and/or New Rights
“CPO Challenge”		means any court challenge to the Council's decision to make the CPO, proceed with or implement the CPO or to the Secretary of State decision to confirm the CPO (in whole or in part)
“CPO Costs”		means any compensation and/or administrative/acquisition costs reasonably and properly incurred and that are payable by the Council as a direct consequence of a directly related to the making and implementation of the CPO as are set out in Schedule 2
“CPO Interest”		means any interest or right in, on or over the CPO Lands

or land adjoining the CPO Lands, or any part thereof, of whatsoever nature or any occupation or use of that land which gives the owner, occupier, or beneficiary an entitlement to compensation for the acquisition of the land, or acquisition of a New Right in, on or under it or the acquisition or extinguishment of a Third Party Interest, or the displacement of occupiers from that land under the Compensation Code and a reference to “*CPO Interests*” shall be construed accordingly

“CPO Lands”

means the land shown [edged][coloured] red on Plan 2 being land within or adjoining the Development Site and which includes the following freehold and leasehold land (as the case may be) known as:

- (a) the Access Road;
- (b) the Broadway Property;
- (c) the Goldhawk Road Properties;
- (d) the H&F Property;
- (e) the LUL Property (including each and every arch, shop and stall);
- (f) the Peabody Property;
- (g) the Shepherds Bush Market Freehold Properties;
- (h) the Lime Grove Hostel
- (i) any other land within the Development Site;
- (j) any Third Party Interests in, on, under or over the above land; and
- (k) any New Rights,

and a reference to “*CPO Land*” shall be construed accordingly

“the CPO Principal Resolution”

means the resolution passed by the Cabinet of the Council on [14th][27th] October 2010 that it is willing to consider using CPO powers to acquire land to facilitate the regeneration of the Shepherds Bush Market area

“Determined”

means a determination by the Expert

“the Developer”

means OSB, OSB (no.2) and OSB (no.3) and includes

their lawful successors in title and assigns

“Developer’s Address” means:

c/o Orion Land & Leisure Limited
Second Floor
Egyptian House
170 Piccadilly
London
W1J 9EJ,

or such other address that is notified by Orion Land & Leisure Limited to the other Parties from time-to-time

“Developer’s Costs” means the costs paid or contracted to be paid by the Developer in pursuing the Development including (without limitation) the purchase price of property, stamp duty land tax, and professional and consultant team fees

“Development” means the development of the Development Site as described in the Planning Permission

“the Development Site” means land in and around Shepherds Bush Market, Shepherds Bush, Hammersmith W12 shown edged red on Plan 3 for the purposes of identification only being the land the subject of the Planning Permission

“Dispute” means dispute or disagreement relating to or arising out of this Agreement between the Parties, including, but not limited to, a dispute or disagreement relating to any CPO Costs or Outgoings

“Disputing Party” means the Party who raises a Dispute

“Event of Default” means and one or more of the following:

(a) any step is taken in connection with any voluntary arrangement or any compromise or arrangement for the benefit of any creditors of the Developer; or

(b) an application is made for an administration order in relation to the Developer; or

(c) in relation to the Developer, there is the appointment of an administrator, the filing of documents with the court for the appointment of an administrator or the giving of notice of intention to appoint an administrator by the Developer or its directors, or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

(d) a receiver or manager is appointed in relation to any property or income of the Developer; or

(e) a liquidator is appointed in respect of the Developer; or

(f) a voluntary winding up of the Developer is commenced, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies; or

(g) a petition is granted for a winding-up of the Developer; or

(h) the Developer is struck off from the Registrar of Companies; or

(i) the Developer otherwise ceases to exist,

and “*Events of Default*” shall be construed accordingly and for the purpose of this definition a reference to *the Developer* is a reference to each person constituting the same

“Expert” means a suitably qualified person of not less than 10 years post-qualification experience at the date of appointment relevant to the Dispute

“FOIA Legislation” means the 2000 Act and the 2004 Regulations together

“General Vesting Declaration” as defined in Section 2 of the Compulsory Purchase Vesting Declarations Act 1981 and references to “*General Vesting Declarations*” shall be construed accordingly

“the Goldhawk Road Properties” means those even numbered properties numbered 30-52 (inclusive) Goldhawk Road, Shepherds Bush, London, edged red on Plan 4 for the purposes of identification only and a reference to “*Goldhawk Road Property*” shall be construed accordingly

“the H&F Option Agreement” means the call option agreement dated 22nd December 2010 and made between (1) the Council and (2) Orion Shepherds Bush Limited under which Orion Shepherds Bush Limited is entitled to opt to buy the H&F Property from the Council subject to first obtaining the grant of planning permission but otherwise subject to its provisions

“the H&F Property” the freehold property known as 15 Pennard Road,

Shepherds Bush, London being the former Spring Grove Laundry site comprised in title number BGL1352 and any other interests the Council has in, on or over the Application Site

- “the Land Agreements” means together:
- (a) the Broadway Option Agreement;
 - (b) the H&F Option Agreement; and
 - (c) the Peabody Sale Agreement,
- and a reference to a “*Land Agreement*” shall be construed accordingly
- “Leading Counsel” means a Queens Counsel experienced in compulsory purchase law and practice chosen by the Council and approved by the Developer
- "Lime Grove Hostel" means all that freehold property situate and known as The Lime Grove Hostel and registered at the Land Registry with title absolute under title number BGL19570 being the property proposed for the relocation of facilities currently being provided in the Peabody Property
- “LUL” means London Underground Limited (registration number 1900907; registered in England) whose registered office is at Victoria Station House, 191 Victoria Street, London SW1E 5NE
- “the LUL Property” means all that freehold property situate and known as Shepherds Bush Market, Shepherds Bush, London W12 and registered at the Land Registry with title absolute under title number BGL75815
- “New Rights” means any and all interests and rights in, on or over the CPO Lands or land adjoining the CPO Lands, or any part thereof, of whatsoever nature that the Developer reasonably considers are necessary to create or acquire to facilitate the Development and a reference to a “*New Right*” shall be construed accordingly
- “Notice of Entry” means a notice served by the Council, under section 11 of the Compulsory Purchase Act 1965, and a reference to “*Notices of Entry*” shall be construed accordingly
- “Notice to Treat” means a notice served by the Council, under section 5 of Compulsory Purchase Act 1965, and a reference to “*Notices to Treat*” shall be construed accordingly

“Outgoings”	means any outgoings of annual or periodic nature recurring nature reasonably and properly paid by the Council for which the Council has become liable in respect of any Third Party Interests or New Rights acquired by the Council after the date of acquisition pursuant to the CPO until the date the same is transferred to the Developer or the termination of this Agreement, including, but not limited to, but not limited to insurance, rates, rent, repairs and works to secure any premises provided that the Council shall not undertake and repairs or works of improvement without the approval of the Developer or in the case of emergency when it is legally obliged to do so
“the Parties”	means the parties to this Agreement and their successors in title and permitted assigns and references to “Party” shall be construed accordingly
“the Peabody Property”	means all that freehold property situate at and known as 52a Goldhawk Road, London W12 8DH and registered at the Land Registry with title absolute under title number NGL671333
“the Peabody Sale Agreement”	means the conditional sale agreement dated 9 th September 2011 and made between (1) The Governors of the Peabody Trust and (2) Orion Shepherds Bush (no.3) Limited, under which Orion Shepherds Bush (no.3) Limited agrees to buy the Peabody Property from Peabody subject first to The Governors of the Peabody Trust obtaining the Section 172 Consent and The Governors of the Peabody Trust Peabody being able to provide vacant possession but otherwise subject to its provisions
“Planning Application”	means the planning application made by or on behalf of OSB under the 1990 Act to carry out the Development in relation to the Site and numbered 2011/02930/OUT
“the Plans”	means the plans numbered 1, 2, 3, 4, and 5 respectively annexed in Schedule 4 and a reference to a numbered plan shall be construed accordingly
“the Planning Permission”	means the planning permission granted on 30 th March 2012 or any other planning permission granted pursuant to any planning application or applications submitted by or on behalf of the Developer in accordance with the Option Agreement to carry out all or any part of the Development and as may be subsequently amended or varied once submitted and references to “ <i>Planning Application</i> ” shall be construed accordingly

“Prescribed Rate”	means the simple rate of interest two (2) <i>per cent per annum</i> above the base rate from time-to-time of Barclays Bank plc
“President”	means the president or such other proper officer for the being of The Law Society or the Royal Institution of Chartered Surveyors or other relevant body, as is relevant to the Dispute
“Purchase Notice”	means a valid notice served under the provisions of section 137 of the 1990 Act
“the Referencing Agent”	means the person appointed by the Developer, pursuant to paragraph 1 of Schedule 7, to carry out the Referencing Exercise and the Compensation Assessment
“Referencing Exercise”	<p>means the body of work to be carried out by the Referencing Agent to enable the schedules for the CPO to be prepared, including its confirmation, including (without limitation):</p> <ul style="list-style-type: none"> (a) identifying and listing (without limitation) all owners, lessees, tenants, occupiers, mortgagees and any other third party having any interest or rights in, on, over, and under any Third Party Land; (b) preparing any plans that may be necessary; (c) checking whether any land falls within the one of the categories contained in Part III of the 1981 Act; (d) checking and (if relevant) identifying any buildings which are listed, of list quality, subject to a building preservation notice or within a conservation area; and (e) reviewing the body of work and making suggestions
“Request”	means a properly made request for information made to the Council as described in section 8 of the 2000 Act and/or Regulation 5 of the 2004 Regulations (as applicable) and a reference to “ <i>Requested</i> ” shall be construed accordingly
“Section 106 Agreement”	means the agreement dated 30 th March 2012 and made between (1) The Mayor and Burgesses of the London Borough of Hammersmith and Fulham (2) Broadway Homelessness and Support (3) The Governors of the Peabody Trust (4) Orion Shepherds Bush Limited (5) Orion Shepherds Bush (no.2) Limited (6) Orion

Shepherds Bush (no.3) Limited and (7) Development Securities plc relating to land in and around Shepherds Bush Market, Shepherds Bush, London W12 or such agreement that may replace it or as it may be modified under Section 106A of the 1990 Act

“Section 172 Consent” means consent for The Governors of the Peabody Trust to transfer the Peabody Property pursuant to the terms of the Peabody Sale Agreement under the provisions of section 172 of the Housing and Regeneration Act 2008

“Secretary of State” means the minister or authority (or any successor office) or any person appointed him and/or having authority to act on his behalf or any person entitled to exercise powers conferred upon him to confirm the CPO

“the Shepherds Bush Market Freehold Properties” means those freehold pieces or parcels of land shown edged red on Plan 5 for the purposes of identification only each being registered at the Land Registry with title absolute and comprised in following title numbers:

- (a) LN250454;
- (b) NGL17355;
- (c) NGL527863;
- (d) NGL401801;
- (e) LN249849;
- (f) NGL16056;
- (g) NGL506742;
- (h) NGL80596;
- (i) NGL593295; and
- (j) 460397,

and/or such other or further title numbers as may be in existence as at the date of this Agreement or subsequently come into existence or other unregistered land within the area edged red

“Shepherds Bush Market Tenancy Agreements” means a reference to the leases between LUL and a Shepherds Bush Market Tenant and a reference to “*Shepherds Bush Market Tenancy Agreement*” shall be construed accordingly

“the Shepherds Bush Market Tenants” means the lawful lessees of (currently) LUL of the arches, shops and stalls in Shepherds Bush Market, but excluding for the avoidance of any of their successors-in-title and the Shepherds Bush Market Freehold Traders, and a reference to “*Shepherds Bush Market Tenant*” shall be construed accordingly

“Surety” means one or more of the following:

- (a) a bond issued by a reputable financial institution or recognised bondsman;
- (b) a guarantee whether given by a incorporated or unincorporated person; and
- (c) other forms of security, whether being in money or in kind,

in respect of the Developer’s obligations under this Agreement in such sum as the Council shall from time to time reasonably determine after considering any report from the Referencing Agent and from such Surety and in such form as the Council may approve

“Terms of Appointment” means the terms and conditions of for the appointment of the Referencing Agent which shall include (without limitation):

- (a) the timing and carrying out of the Referencing Exercise;
- (b) the level and timing of payment of remuneration;
- (c) the level of professional indemnity insurance;
- (d) the providing of either a Collateral Warranty or rights under the 1999 Act in favour of the Buyer;
- (e) reviewing and advising on the draft CPO and any supporting documentation;
- (f) providing advice and its opinion from time-to-time when requested on the method and approach to be taken by the Seller in the preparation, application for and making of a CPO, including its confirmation;
- (g) preparing Tables 1 and 2 to be inserted in the prescribed form of compulsory purchase order;

- (h) preparing the map or maps to accompany the CPO;
- (i) Compiling and maintaining the Compensation Assessment
- (j) providing and sharing information with the Council and Developer on an equal basis; and
- (k) such other terms and conditions as the Parties may reasonably agree

- “Third Party Interests” means any and all interests or rights of third parties of whatsoever nature in, on or over CPO Lands or any part thereof that the Developer reasonably considers are necessary to acquire or extinguish to facilitate the Development and references to “*Third Party Interest*” shall be construed accordingly
- “TSA” means the Tenant Services Authority being the body at the material time to consider applications for a Section 172 Consent
- “VAT” means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax
- “Working Day” means any day (other than a Saturday or Sunday) on which the Barclays Bank plc is open in the City of London for normal banking business and a reference to “*Working Days*” shall be construed accordingly

2 Interpretation

In the interpretation of this Agreement:

- 2.1 words importing the singular number only shall include the plural number and *vice versa*;
- 2.2 words importing one gender shall include all other genders;
- 2.3 the word “*including*” shall be deemed to be followed by the words “*without limitation*”;
- 2.4 the headings appearing in this agreement are for reference only and shall not affect its construction;
- 2.5 *person* includes a corporate or unincorporated body
- 2.6 *writing* or *written* includes faxes but not electronic mail

- 2.7 references to any statute include a reference to any statutory amendment, modification replacement or re-enactment thereof for the time being in force and to every instrument or direction, regulation, bye-law, permission, licence, consent, condition, scheme and matter made in pursuance of any statute and any Regulation or other legislation of the European Union that is directly applicable in England and Wales and include existing statutes and those that come into effect while this Agreement subsists;
- 2.8 any reference to a clause or a Schedule or a paragraph without further designation is a reference to a clause or Schedule or a paragraph of a Schedule of this Agreement;
- 2.9 the provisions in the Schedules are to apply as if incorporated *in extenso* in the main body of this Agreement;
- 2.10 any obligation on a Party not to do any act, matter or thing shall be deemed to include an obligation not to permit or suffer such thing to be done and any obligation on a Party to do any act, matter or thing includes an obligation to procure that it be done;
- 2.11 references to any Party shall unless otherwise stated be deemed to include successors in title and assigns of that Party unless the context otherwise requires;
- 2.12 where two or more persons are obliged to carry out an obligation it may be enforced against them all jointly or against each of them individually;
- 2.13 for the avoidance of doubt:
- 2.13.1 the Schedules to this Agreement shall be deemed to form part of this Agreement; and
- 2.13.2 the definitions shall apply to the Recitals and the Recitals are operative;
- 2.14 where any provision in this Agreement stipulates that any matter is subject to (without limitation) the agreement, approval or consent of a Party then:
- 2.14.1 unless the otherwise is stated then that agreement, approval or consent shall not be unreasonably withheld or delayed and shall be given in writing; and
- 2.14.2 unless the Party from whom (without limitation) the agreement, approval or consent is being sought substantively responds within ten (10) Working Days of being asked for (without limitation) their agreement, approval or consent either (without limitation) to either agree, approve or consent, or refuse the same with detailed reasons why then such (without limitation) agreement, approval or consent shall be deemed to be given;
- 2.15 references to a paragraph number in a Schedule, unless otherwise stated, is a reference to that numbered paragraph in that Schedule;
- 2.16 references to “*consult*” or “*consultation*” require the Party seeking to consult to:

2.16.1 provide to the Party being consulted sufficient information to enable it to properly to understand the proposal and respond to it, as well as sufficient time to respond to the proposal;

2.16.2 pay proper and due regard to any response provided by the Party being consulted; and

2.16.3 where the Party seeking to consult chooses not to follow any suggestion contained within a response then that Party shall provide to the Party being consulted detailed reasons why before taking any action or omitting to take any action on the matter being consulted upon.

Schedule 2

CPO Costs

The following costs to the extent that they are reasonable and properly incurred as a result of a resolution to make the CPO, the making, processing and implementation of the CPO and any arising from a Blight Notice or Purchase Notice relating to the CPO Lands other than the Lime Grove Hostel:

- 1 the purchase price for any Third Party Interest or New Right which the Council acquires pursuant to the CPO or is required to purchase as a result of any Blight Notice or Purchase Notice;
- 2 any payment under the 1961 Act, or 1965 Act, or 1973 Act made as a result of the acquisition of or interference with any Third Party Interest or New Right or otherwise arising from the making or implementation of the CPO;
- 3 any statutory interest or interest awarded in any proceedings payable in connection with any sum payable hereunder including (without prejudice to the generality of the foregoing) interest which may be payable by virtue of the Council taking possession of any Third Party Interest or New Right before the amount to be paid has been agreed;
- 4 the costs of any warrant procedure or other procedures necessary to obtain possession of any Third Party Interest or New Right;
- 5 the Council's legal and valuation costs in connection with the making, processing and implementation of the CPO including the costs of the Council's reasonably and properly appointed consultants;
- 6 any legal, valuation or other expenses which the Council is required to pay to an owner or owners of any Third Party Interest or New Right in respect of the same and/or in connection with the negotiation of compensation or the transfer of title or the grant of any Third Party Interest or New Right;
- 7 the Council's costs (including any costs awarded against it) of any public inquiry or Lands Tribunal reference in connection with the CPO and any subsequent litigation in relation thereto;
- 8 the Council's costs (including any costs awarded against it) in relation to any CPO Challenge.
- 9 all disturbance and home loss, basic loss or occupiers loss payment to which any owner or owners or occupier or occupiers is entitled to as a result of the service of a Blight Notice, Purchase Notice or the vesting or taking possession of any Third Party Interest or New Right;
- 10 the purchase price or any compensation (including any payment for severance or injurious affection) and any additional compensation the Council is required to pay in

respect of all or any part of the CPO Lands as the result of the severance of land in common ownership and the cost of accommodation works the Council is required to carry out as a direct result of the CPO in respect of land not included in the CPO and not otherwise acquired by the Council for the Development;

- 11 any advance payment the Council is required to make in respect of all or any part of the CPO Lands under the provisions of section 52 and 52A of the 1973 Act;
- 12 any compensation payable pursuant to the provisions of sections 236, 237 or 250 of the 1990 Act;
- 13 any payments require to be made by the Council under Parts I and/or II of the 1973 Act arising directly from and in connection with the Development;
- 14 stamp duty land tax and any Land Registry fees arising out of the acquisition of any Third Party Interest or New Right;
- 15 any monies awarded to an owner or owners of any Third Party Interest or New Right in respect of any reference to the Lands Tribunal and costs awarded to such person by the Lands Tribunal in respect thereof;
- 16 to the extent the same is not covered elsewhere in this Schedule, any other payment to which a claimant is entitled under the Compensation Code;
- 17 a sum equal to any VAT which is paid by the Council in respect of any of the CPO Costs save to the extent that the Council obtains repayment or credit in respect of such sums; and
- 18 any additional costs the Council incurs as a result of the Developer refusing to approve any payment or delaying approval of that payment or failing to provide the Council with the necessary funds to make a payment on the day it is due,

provided always that:

- (a) CPO Costs shall not include costs incurred by the Council in breach of this Agreement or as a result of any negligent act or omission on the part of the Council and the Council shall not be entitled to double recovery of any item of cost; and
- (b) CPO Costs shall include costs incurred in connection with the promotion of the CPO even if they directly or indirectly Lime Grove Hostel but shall not (for the avoidance of doubt include) any and all costs incurred by or on behalf of the Council or any third party relating to or arising out of the disposal and acquisition of Lime Grove Hostel

Schedule 3

The Plans

Attached to this Schedule are the following Plans:

Plan 1 – the Access Road

Plan 2 – the CPO Lands

Plan 3 – the Development Site

Plan 4 – the Goldhawk Road Properties

Plan 5 – the Shepherds Bush Market Freehold Properties

Schedule 4

The Developer's Obligations

Each Party shall comply with their respective obligations in this Schedule

1 Referencing Agent

- 1.1 Unless already appointed prior to the date of this Agreement, as soon as practicable after this Agreement is entered into, the Parties shall, using their reasonable endeavours, seek to identify prospective appointees as the Referencing Agent and its Terms of Appointment, including the timetable within which to carry out the Referencing Exercise.
- 1.2 Upon agreement between the Parties as to the identity of the Referencing Agent, the Developer shall as soon as practicable appoint the Referencing Agent at the Developers cost.

2 Referencing Exercise

- 2.1 The Referencing Agent shall be required to complete the Referencing Exercise as soon as is practicable and to furnish the information gathered as a result of that in such form as may be reasonably required by the Council and the Developer, but so that such information gathered and supplied complies with all statutory requirements to prepare, apply for and make a CPO, including its confirmation
- 2.2 Without prejudice to any other provision in this Agreement:
 - 2.2.1 each of the Parties shall provide the Referencing Agent such assistance as it may reasonably request or require from time to time and do all acts and things necessary; and
 - 2.2.2 the Council shall, if reasonably necessary to carry out the Referencing Exercise, use such powers, statutory or otherwise, to obtain or require (without limitation) third parties to supply information as to ownership or occupation of land or interests in land

3 Compensation Assessment

- 3.1 As soon as reasonably practicable after its appointment the Referencing Agent shall produce to the Developer and the Council based upon the best evidence then available a schedule listing:
 - 3.1.1 all known or anticipated CPO Interests;
 - 3.1.2 the heads of claim that the owner of those interests could be entitled to make;
 - 3.1.3 an estimated an amount (or range of amounts) for compensation for that interest;

3.1.4 the assumptions used in making that estimate, including assumptions as to the future accommodation available for any business; and

3.1.5 whether that claimant could be entitled to serve a blight notice

3.2 The Referencing Agent shall periodically review the schedule prepared pursuant to paragraph 3.1, and where any material change occurs provide an updated schedule to the Developer and the Council in the light of further information as to:

3.2.1 CPO Interests;

3.2.2 heads of claim;

3.2.3 relocation prospects;

3.2.4 performance of claimants business;

3.2.5 the property market;

3.2.6 the completion of acquisitions by the Developer; and

3.2.7 the claimant's entitlement to serve a blight notice.

4 Indemnity

The Developer covenants with the Council:

4.1 to indemnify and keep the Council at all times during the currency of this Agreement indemnified from and against all the CPO Costs provided that:

4.1.1 in respect of any sum payable under this indemnity at or prior to the date of demand the Council shall provide the Developer with details of the nature of the sums incurred and dates when due to be paid and (once paid) with a certified and dated copy of each receipt or acknowledgement of payment certifying that it has been paid; and

4.1.2 prior to the making of any General Vesting Declaration the Council shall not settle individual CPO Costs exceeding the sum of £5,000 (five thousand pounds sterling) without the prior written approval of the Developer

4.2 to pay to the Council all and any Outgoings (if any) within thirty (30) Working Days of receipt of an invoice submitted by the Council and properly addressed to the Developer fully particularising the same (but not more frequently than once every thirty (30) Working Days);

4.3 to pay to the Council all and any CPO Costs following receipt of a statement submitted by the Council to the Developer fully particularising the same so that the monies are in the Council's bank account not less than twenty (20) Working Days before the date on which the Council is required to make the payment;

- 4.4 to consult with the Council in relation to such part of the Development as may relate to the CPO and provide to the Council all information it may reasonably require to discharge its obligations under this Agreement; and
- 4.5 at its own cost to provide support and all reasonable assistance that the Council may request to support the CPO including giving or procuring the giving of evidence at any public inquiry or judicial review of the CPO.

5 Third Party Interests *etc*

The Developer covenants with the Council:

- 5.1 to use its reasonable endeavours to negotiate terms by private treaty to acquire all Third Party Interests and New Rights in accordance with the provisions of the Acquisitions Schedule and the Council shall use its reasonable endeavours to assist the Developer;
- 5.2 to assist the Council to secure payment of CPO Costs due to claimants at the earliest practicable time by:
 - 5.2.1 negotiations and settlements on Compensation Code terms in good faith;
 - [5.2.2 seeking early resolution of disputes through mediation or arbitration; and
 - 5.2.3 referring relevant disputes to the Upper Tribunal (Lands Chamber) as soon as it becomes apparent negotiations or mediation are unlikely to secure a settlement; and
 - 5.2.4 seeking to mitigate loss and hardship to persons likely to be displaced by reason of the compulsory acquisition of their property by assisting with planned relocation to alternative premises either within the Development Site or in the vicinity of the CPO Lands where such relocation can be facilitated by early settlement of claims (or future claims) under the Compensation Code.

6 Surety

- 6.1 In addition to the indemnity contained within paragraph 4, the Developer shall provide the Council (if so requested) with a Surety as provided for in this paragraph 6
- 6.2 The Council may require a Surety to cover the extent of its prospective liability during the following stages of the CPO process:
 - 6.2.1 from the date of [this Agreement][the resolution to make the CPO] in relation to the estimated costs of preparing, publishing and submitting the CPO for confirmation and preparing for and appearing at a public inquiry (including the risk of costs at a public inquiry) in the initial sum of [£500,000] [or such higher reasonable sum as the Council may reasonably specify from time to time];
 - 6.2.2 from the date the Council makes the CPO an additional sum representing [one hundred and twenty (120) *per cent*] of the Referencing Agent's estimate of the

liability for CPO Costs in relation to the risk that all of the owners and occupiers of the CPO Lands who are entitled to serve a Blight Notice were to serve a Blight Notice in respect of their respective interests and on the assumption that none of such Blight Notices could be rejected or such higher reasonable sum as the Council may reasonably specify from time to time having regard to the Compensation Assessment; and

6.2.3 on the date on which the Developer requests the Council to make a General Vesting Declaration in respect of any outstanding interests in the CPO Lands an additional sum (if any) which represents the amount by which the Council's reasonable and proper estimate of the CPO Costs in relation to all such outstanding interests in the CPO Lands exceeds the Surety then in place under paragraph 2 above.

6.3 On each payment of CPO Costs the Council shall reduce the amount of Surety required in the following manner:

6.3.1 during the period in which a Surety is in place under paragraph 6.2.2 to the Council's reasonable estimate of the outstanding risk for CPO Costs in relation to the occupiers of the CPO Lands who are entitled to serve a Blight Notice except that interest in respect of which the payment of CPO Costs was made;

6.3.2 during the period in respect of which a Surety is in place under paragraph 6.2.3 to the Council's reasonable estimate of the outstanding risk for CPO costs in relation to all CPO Interests except that in respect of which the payment of CPO Costs was made; and

6.3.3 where any payment of CPO Costs is not a full and final settlement of the claim in respect of the interest in the CPO Lands to which it relates, the risk of any further payment in respect of that interest shall be taken into account in the Council's estimates under paragraphs 6.2.2 and 6.2.3.

6.4 The Council shall immediately release the Surety when the Council is reasonably satisfied that full and final settlement of all CPO Costs has been made and give notice to the Developer and the Surety upon settlement occurring

6.5 Upon the Developer's written request the Council shall release the person providing the Surety from the same if the Developer is able to procure a replacement person that in the Council's reasonable opinion provides an equivalent or better Surety for the Developer's then liabilities under this Agreement

6.6 [For the avoidance of doubt the Developer's liability at all times shall extend to the full CPO Costs whether or not that liability exceeds the amount of any Surety required by the Council at that time and the Surety shall not be released by the termination of this Agreement following an Event of Default other than by a notice of release given by the Council]

7 Disputes not to delay payment or surety

7.1 The Developer shall pay to the Council all and any CPO Costs or Outgoings on the date it is due whether or not there is any Dispute over the amount due and the

Developer shall procure a Surety in the sum reasonably required by the Council whether or not there is any Dispute over the amount specified by the Council

- 7.2 If after the resolution of a Dispute over any Surety the Expert settles a sum less than the amount specified by the Council, the Council shall give notice to reduce any excess of Surety within ten (10) Working Days of the Determination.

Schedule 5

The Council's Obligations

Subject to clause 4.2, each Party shall comply with their respective obligations in this Schedule

1 The Council's Covenants

The Council covenants:

- 1.1 to review any Compensation Assessment provided by the Referencing Agent from time-to-time and to issue its reasonable opinion on those estimates and any notice of proposed increase or reduction of the Surety as expeditiously as is reasonably practicable;
- 1.2 unless lawfully obliged to do so not to acquire any Third Party Interest or New Right under the CPO or by private treaty save with the prior written approval of the Developer;
- 1.3 without prejudice to paragraph 1.4, to consult fully at all times with the Developer as to the conduct and progress of the CPO and any related public inquiry and the evidence to be adduced thereat and the implementation of the CPO and the amount of CPO Costs;
- 1.4 to supply to the Developer as soon as practicable copies of all documents relevant to the CPO including any notices and correspondence received by the Council;
- 1.5 to consult with the Developer in all stages of the CPO process not to finalise drafts of (without limitation) the form of the statement of reasons nor the form of the CPO, nor complete the same without the prior approval of the Developer;
- 1.6 following any confirmation of the CPO to procure as soon as practicable the publication of the requisite notice pursuant to section 15 of the 1981 Act and if so requested by the developer to include in it a notice of intention to make a general vesting declaration;
- 1.7 to use reasonable endeavours to progress the CPO and acquisitions of Third Party Interests required under the CPO subject to:
 - 1.7.1 taking all available steps to minimise and/or mitigate the CPO Costs and any interest and/or VAT forming part of the CPO Costs;
 - 1.7.2 employing such valuers, negotiators and solicitors as shall be the shall be the subject of consultation with the Developer; and
 - 1.7.3 issuing a warrant for possession to obtain possession of any land in relation to which the Council is entitled to lawful possession;

- 1.8 to give the Developer not less than thirty (30) Working Days written notice of the date on which the Council is legally required to make any CPO Cost payment.
- 1.9 to promptly pay any sums received from the Developer pursuant to paragraph 1 of Schedule 4 to the person or persons to whom such sums are due and provide the Developer with written confirmation such payment has both been made and received;
- 1.10 to consult with the Developer before giving any undertaking to or entering any agreement with any objector or other party in relation to the CPO;
- 1.11 to consult with the Developer about any threatened or actual judicial review or statutory challenge to the CPO or public enquiry and to keep the Developer informed about the progress of any such proceedings including (if so requested to do so by the Developer) to assist the Developer to be joined as a party;
- 1.12 to consult with the Developer at all relevant stage of all and any stages of any proceedings referred to in paragraph 1.11 threatened and/or commenced and to consult the Developer in (without limitation) the preparation and approval of proofs of evidence, witness statements, statements of case (and the like), as well as instructing and briefing counsel;
- 1.13 not to exercise the CPO (in whole or part) without the Developer's approval provided that such approval shall not be withheld unless the Developer reasonably considers that the exercise at that time shall not be in the best interests of delivering the Development and/or acquiring any CPO Interest not yet acquired by, without limitation, delaying the delivery of the Development or any part or increasing the cost of it;
- 1.14 on the request of the Developer to exercise the CPO in whole or any number of parts (as the case maybe) as soon as practicable and on each such occasion the Developer requests provided that nothing in this Agreement shall require the Council to exercise the CPO by the service of one or more Notices to Treat or General Vesting Declarations so as to acquire' any CPO Interest in the LUL Property which would interfere with the safe, efficient and economic running of LUL's railway undertaking; and
- 1.15 to take such steps that are reasonable to minimise and mitigate CPO Costs.

2 Blight Notices

2.1 The Council covenants:

2.1.1 to copy to the Developer within five (5) Working Days any Blight Notice which is served upon it, together with a statement certifying the rateable value of the relevant property within the rating list as at the date of the Blight Notice;

2.1.2 to propose a course of action in relation to the relevant Blight Notice to the Developer, including whether it considers that there are grounds for the service of a counter-notice and that if it is in the interests of expediting the Development to do so; and

- 2.1.3 not to accept or admit any Blight Notice unless the Developer agrees
- 2.2 In relation to Blight Notices the policy agreed between the Parties is:
- 2.2.1 to acquire the CPO Lands on reasonable terms without having to have recourse to the implementation of the CPO at an appropriate time to enable the regeneration objectives to be achieved;
- 2.2.2 to the extent that a Blight Notice can be properly be objected to it will be objected to unless the Parties agree otherwise or in the event of a disagreement Leading Counsel advises prior to five (5) Working Days before the expiry of the timescale to serve a counter-notice required by the relevant Act that to do so would materially prejudice the obtaining of confirmation of the CPO;
- 2.2.3 the Council shall refer the claimant to the Developer who shall seek to negotiate the purchase of the CPO Interest under the Compensation Code;
- 2.2.4 if a Blight Notice is accepted but the Developer is not able to negotiate the purchase of the relevant CPO Interest the Council shall include that interest in any subsequent General Vesting Declaration; and
- 2.2.5 if a Blight Notice is to be objected to then the Council shall serve a counter-notice and take all steps as are necessary from time-to-time to maintain a valid objection
- 2.3 The Parties shall seek to agree the course of action to be adopted in relation to each Blight Notice and once agreed the Developer and Council shall pursue it and any disagreement (except in relation to the level of compensation payable (if any)) shall be referred to Leading Counsel for their recommendation, which shall be followed unless it conflicts or is inconsistent with the Parties obligations under the Agreement or imposes additional liabilities on a Party which they are not obliged to accept or they decline to accept
- 2.4 The Council shall:
- 2.4.1 if it is not reasonably satisfied that the Developer is actively pursuing negotiations for the purchase of a CPO Interest at a reasonable cost serve notice on the Developer of its concerns before the Council itself enters into negotiations with the owner of the CPO Interest
- 2.4.2 in addition to any other obligation under this Agreement, consult with the Developer whenever required to do so by the Developer and to take into account all representations made by the Developer as to how to progress and conduct the course of action and in relation to all submission and any evidence to be submitted to the Upper Tribunal (Lands Chamber);
- 2.4.3 supply to the Developer all relevant advice, opinions, documentation, correspondence and reports received or issued by the Council in respect any actual or proposed course of action;

2.4.4 appoint Leading Counsel and junior Counsel (or other such other Counsel if the Developer agrees) to advise on the conduct of the Upper Tribunal (Lands Chamber) proceedings and to present the Council's case at the same and to notify the Developer of and invite the attendance of the Developer at all consultations with Leading and/or junior Counsel (as the case may be)

2.5 In relation to Blight Notices, the Developer shall:

2.5.1 keep the Council fully informed at all times of the progress made in pursuing or resisting any course of action in relation to each Blight Notice and any negotiations undertaken in respect thereof and any substantive communications with the person serving a Blight Notice; and

2.5.2 in addition to any other obligation under this Agreement, consult with the Council whenever required to do so by the Council and to take into account all representations made by the Council as to how to progress and conduct the course of action and in relation to all submission and any evidence to be submitted to the Upper Tribunal (Lands Chamber)

2.6 The Council shall not create any new interest or interests in land held pursuant this paragraph 2 without the consent of the Developer.

3 Transfer of CPO Lands *etc* to the Developer

3.1 The Council covenants that it will make a General Vesting Declaration or serve a Notice to Treat upon all relevant owners or in relation to any part of the CPO Lands upon being called upon to do so by the Developer provided always that unless the Council agrees otherwise a Notice to Treat shall only be served in respect of minor interest which could not be vested under a General Vesting Declaration.

3.2 As soon as practicable after the Council has obtained legal title to any CPO Land the Council shall transfer that title to the Developer or as it directs provided that the Developer has paid, at the time of legal completion, to the Council all CPO Costs in relation to that land.

3.3 As soon as the Council shall become entitled to an interest in land for which the Developer has paid the acquisition cost the Developer may have use of that land provided that the Council is entitled thereto with vacant possession.

3.3 The Council shall not create any new interest or interests in land held pursuant this paragraph 3 without the consent of the Developer.

4 The Broadway and Peabody Properties and any other land which the Developer proposes to purchase by agreement – section 237 of the 1990 Act

Notwithstanding the existence of the Broadway Agreement and the Peabody Agreement, the Council covenants that it will if called upon to do so:

4.1 make one or more General Vesting Declarations in relation to any part of either parcel of the Broadway or Peabody Properties; or

4.2 agree to complete the purchase of the Broadway Property and/or Peabody Property or any other land the Developer proposes to purchase by agreement as an acquisition for the purposes of Section 227 of the 1990 Act but on condition that the Developer provides the monies to complete the purchase in each case and that the property is in any case immediately transferred to the Developer or as it directs,

for the purposes of ensuring that section 237 of the 1990 Act applies to such property.

5 Appeal

5.1 If the Secretary of State is not minded to confirm the CPO whether as to the whole or any part thereof (other than an exclusion from the CPO to which the Developer in its discretion agrees will not adversely affect the Development) the Council will if the Developer so requires in writing (and subject to paragraph 5.2) appeal to the High Court against the non-confirmation or partial confirmation or apply for judicial review whichever Leading Counsel shall advise as being more appropriate in the circumstances

5.2 The Council shall not be obliged to appeal to the High Court against the non-confirmation or partial confirmation or apply for judicial review if:

5.2.1 having reviewed the Secretary of State decision is does not consider it would not be likely to promote and/or improve the economic and/or social and/or environmental well-being of the area to pursue such an appeal; and/or

5.2.2 written advice from Leading Counsel asserts that there is less than forty (40) *per cent* chance of such appeal or application succeeding leaving in place a CPO which meets the respective reasonable requirements of the Council and Developer and provided further than the Developer shall first have been given the opportunity to consider the terms of instruction to be submitted to Leading Counsel and to attend any conference or consultation with Leading Counsel in relation thereto.

6 Upper Tribunal (Lands Chamber)

Without prejudice to the Council's right to refer any matter to the Upper Tribunal (Lands Chamber) at such time as the Council may reasonably determine, if after the date upon which the CPO shall have become operative the Developer shall by written notice to the Council request the determination of the statutory compensation payable in respect of any Third Party Interest or New Right to be made by the Upper Tribunal (Lands Chamber) then the Council shall provide all reasonable cooperation to the Developer in the prosecution of such reference or proceedings in such manner as the Developer may reasonably require and produce with all due expedition any information or documentation, including witness statements, as the Developer may reasonably require in relation to such matters.

7 Repayment of CPO Costs

If any CPO Costs which the Developer has reimbursed are overpaid then the Developer shall be entitled to the benefit of any refund lawfully due either as a lump sum or as a credit against any further payments due in respect of any CPO Costs and without prejudice to the generality of the foregoing the Developer shall be entitled to receive any surplus advance compensation paid under section 52 of the 1973 Act which is repaid to the Council and the Council shall pursue repayment of the same.

8 Shepherds Bush Market Tenancies

The Council covenants that notwithstanding any provision in the Section 106 Agreement, and in particular paragraph 6.3 of Schedule 15 of the Section 106 Agreement, that it will if it has not been possible to reach an accord with a Shepherds Bush Market Tenant to allow any part of the Development to take place and that it is not possible to determine or terminate that tenancy or that the Developer considers that it will take too long to obtain possession that way then the Council will, if called upon to do so by the Developer, serve a Notice to Treat on that tenant or make a General Vesting Declaration in relation to that property provided always that the Council may not be required to do so unless it is reasonably satisfied that, at the date the said tenant will be displaced from their property, alternative accommodation which the Council reasonably considers is reasonably suitable (either temporary or permanent) has been offered to them (and if temporary that reasonably suitable permanent accommodation will be offered to them in due course, albeit on terms yet to be agreed) or alternatively that in the circumstances of the case it is appropriate to displace that person having regard to the regeneration objective and accordingly that they will be displaced without being offered alternative accommodation.

Schedule 6

Exit Consequences

Part A: Where the Council formally resolves not to proceed with the CPO after Leading Counsel advises prospects of success are no better than forty (40) *per cent*

- 1 The Council shall not be required to take any further action in relation to the CPO but shall take all reasonable steps available to mitigate and minimise the Developer's liability under this Agreement.
- 2 The Developer's obligations under this Agreement shall continue in effect in relation to liabilities that the Council has incurred prior to the date of that resolution or steps that the Council has taken that will create liabilities that the Council cannot reasonably avoid.
- 3 Provided that if Leading Counsel advises that if the CPO was modified to increase the chances of success above forty (40) *per cent* but so that the Council's regeneration objectives were still being met in the Developer's reasonable opinion then the Council shall proceed with the CPO.

Part B: Where the Council resolves not to proceed on the grounds that as a result of a material change of circumstances it no longer considers pursuing the CPO to be likely to promote and/or improve the economic and/or social and/or environmental well-being of the area (other than such a decision made following a decision by the Secretary of State not to confirm the CPO in whole or in part)

- 1 The Council shall not be required to take any further action in relation to the implementation of the CPO and shall take all reasonable steps available to minimise and mitigate the Developer's liability under this Agreement.
- 2 The Developer's obligations under this Agreement shall cease.
- 3 The Council shall (where called upon to do so) pay to the Developer the amount which represents:
 - 3.1.1 The CPO Costs paid by the Developer to the Council under this Agreement; and
 - 3.1.2 Any and all costs which the Developer incurred in pursuing the Development and/or paid under the Land Agreements and/or incurred in acquiring CPO Land and/or CPO Interests, including the costs of acquisition, as well as SDLT, or which are directly related to supporting the Council in relation to the CPO either prior to or after the date of this Agreement. The sum that the Council is to pay for the transfer of land shall be the higher of market value and the price the Developer paid.
 - 3.1.3 In addition to the above sums the Council will pay to the Developer the sum which will secure the Developer a return on costs of ten (10) *per cent*. after taking account of any amount by which the Market Value of any land acquired by the Developer exceeds the price paid for it.

- 4 If the Developer has title to any CPO Land and/or Interests in respect of which the Developer has paid the acquisition costs the Developer shall transfer that interest to the Council for the sum of £1, after the payment of all sums due to the Developer.

Part C: Where the Developer is in material breach of its obligations under this Agreement or gives notice that it does not wish the Council to proceed with the CPO for its benefit

- 1 The Council shall elect and serve notice on the Developer stating whether:
 - 1.1 It will abandon the CPO in which case the provisions of Part A of this Schedule shall apply; or
 - 1.2 It will continue with the CPO in which case the provisions of this Part C shall apply.
- 2 If the Council elects to proceed with the CPO without the support of the Developer:
 - 2.1 The Developer shall not object to the CPO nor cause or permit any other person to object on its behalf and shall withdraw any objection it may have made prior to the date of the Council's election.
 - 2.2 If the CPO is confirmed (either before or after the Developer gave notice that it did not wish to continue) the Council may implement the CPO in respect of any CPO Interest which the Developer has acquired and the Developer shall be entitled to compensation for any such CPO Interests it owns under the Compensation Code, including, for the avoidance of doubt any monies paid under either the Broadway Agreement or the Peabody Agreement.
 - 2.3 The Developer shall not be entitled to recover any CPO Costs it had paid (or had been liable to pay) to the Council prior to the date of its notice but shall not be liable under this Agreement in respect of any liability incurred by the Council in respect of CPO Costs after the date of that notice.
 - 2.4 If at the date of the Developer's notice the Council has acquired and holds any CPO Interest for which the Developer has paid the CPO Costs prior to the making of a General Vesting Declaration the Council shall transfer ownership of that interest to the Developer for the sum of £1.
 - 2.5 If at the date of the Developer's notice the Council has made a General Vesting Declaration in respect of CPO Lands [Interests] not owned by the Developer the Council shall have no obligation to transfer them to the Developer and the Developer shall have no obligation to pay any CPO Costs in respect of such interests.
 - 2.6 Where any CPO Interest has been vested in the Council under a General Vesting Declaration and transferred to the Developer, the Developer shall forthwith transfer that interest back to the Council and the Council shall refund to the Developer the CPO Costs related to the acquisition of that interest.

Part D: Where the Developer asserts that Council is in material breach of its obligations under this Agreement and the Council either gives notice accepting that assertion or the Developer has referred the question to the Expert and the Expert has determined that question in favour of the Developer

- 1 The Council shall not be required to, nor shall, take any further action in relation to the pursuance or implementation of the CPO and shall take all reasonable steps available to minimise and mitigate the Developer's liability under this Agreement.
- 2 The Developer's obligations under this Agreement shall cease.
- 3 The Council shall (where called upon to do so) pay to the Developer the amount which represents:
 - 3.1.1 The CPO Costs (subject to Part D paragraph 4) paid by the Developer to the Council under this Agreement; and
 - 3.1.2 Any and all costs which the Developer incurred in pursuing the Development and/or paid under the Land Agreements and/or incurred in acquiring CPO Land and/or Interests, including the costs of acquisition, as well as SDLT, or which are directly related to supporting the Council in relation to the CPO either prior to or after the date of this Agreement. The sum that the Council is to pay for the transfer of land shall be the higher of market value and the price the Developer paid.
 - 3.1.3 In addition to the above sums the Council will pay to the Developer the sum which will secure the Developer a return on costs of ten (10) *per cent.* after taking account of any amount by which the Market Value of any land acquired by the Developer exceeds the price paid for it.
- 4 If the Council has title to any CPO Land and/or CPO Interests in respect of which the Developer has paid the acquisition costs the Council shall (if called upon to do so) the transfer that interest to the Developer or as it directs for the sum of £1.
- 5 Alternative to Part D paragraph 4, if it so chooses, the Developer may (on behalf of itself and any other third party to whom CPO Interests have been transferred to or held by (if such third party agrees for the Developer to make such request) call upon the Council to acquire such CPO Interests from the Developer and/or such third party for the higher of the then market value and the purchase price of such interests.
- 6 Completion by the Council of any acquisitions to be made by it under Part D paragraph 5 shall take place the later of twenty (20) Working Days after the service any notice served under Part D paragraph 5 and ten (10) Working Days after (where there is a Dispute over the price to be paid) the purchase price to be paid is Determined.

Schedule 7

Dispute Resolution

Each relevant Party shall comply with their respective obligations in this Schedule

1 Consultation

If any Dispute arises then those Parties involved in the Dispute will consult in good faith in an attempt to resolve the same.

2 Disputes

Any Dispute shall be referred to the Expert.

3 Appointment of Expert

3.1 If a Dispute arises then the Expert shall, unless the Dispute is settled, be appointed by agreement between the Disputing Parties. If agreement on the identity or the expertise required of the Expert cannot be reached within ten (10) Working Days of agreement being sought, then either Disputing Party may apply to the President for him to nominate an Expert.

3.2 If an Expert at any time shall die or become incapable of acting or decline to act then any Disputing Party may apply to the President to discharge the Expert and appoint another Expert.

4 Costs

The fees and expenses of the Expert including the cost of his appointment shall unless awarded otherwise be borne equally by the Disputing Parties who shall bear their own costs provided that if one Party shall pay more than its due share it may recoup the balance from the other Disputing Party as a liquidated debt.

5 Procedure

5.1 After his appointment the Expert shall afford the Disputing Parties an opportunity within a reasonable period to make written representations to him and also an opportunity to make counter-representations on any representations made to him by him by the other Disputing Party but will not be fettered or in any way limited by such representations and will be entitled to rely on his own judgment and opinion.

5.2 If the Expert or any Disputing Party considers it appropriate to do so they may request a formal hearing take place and if that occurs then the Expert may issue directions as to how such a hearing may take place.

5.3 It is agreed that:

5.3.1 the Expert shall sit as an expert and not an arbitrator;

5.3.2 the tribunal shall consist of one person;

5.3.3 the place of the hearing shall be London;

5.3.4 the language of the procedure and hearing shall be English; and

5.3.5 save as varied in this Schedule or by paragraph 15 of Schedule 8 the provisions of the Arbitration Act 1996 shall apply to the provisions of this Schedule.

Schedule 8

Administrative Provisions

Each relevant Party shall comply with their respective obligations in this Schedule

1 Inconsistency and Conflict

1.1 In the event of any inconsistency and conflict between:

1.1.1 any Schedule and main body of this Agreement then the Schedule shall prevail;

1.1.2 any provision of this Agreement and the H&F Option Agreement then this Agreement shall prevail; and

1.1.3 if any provision of this Agreement is more onerous than a similar provision in the section 106 Agreement then this Agreement shall prevail but otherwise the section 106 Agreement shall prevail.

1.2 Save as expressly provided herein, nothing in this Agreement is intended to lessen, relax, release or waive any of the obligations on any of the Parties contained in either:

1.2.1 the H&F Option Agreement; and

1.2.2 the section 106 Agreement.

2 Further Assurance

Without prejudice to any other provision in this Agreement each Party agrees to do all acts and things reasonably necessary to give meaning and effect to this Agreement and the things contemplated hereunder.

3 To keep informed

Without prejudice to any other provision in this Agreement each Party agrees to keep the other informed at all times of all relevant or material matters.

4 Waiver *etc*

4.1 The failure of a Party to insist upon strict performance of any provision of this Agreement on the part of the other or a failure to exercise any right or remedy to which it is entitled shall not constitute a waiver thereof and shall not cause a diminution of the obligations either Party under this Agreement or otherwise.

4.2 A waiver by either Party of a default by the other shall not constitute a waiver of any subsequent default by that Party.

- 4.3 No waiver of any provision of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated by the non-defaulting Party to the other
- 4.4 The Parties may vary this Agreement in writing and if such variation takes place then it shall be treated as if it were a provision of this Agreement as at the time of execution, unless otherwise agreed.

5 Severability

- 5.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision omitted.
- 5.2 If the provision referred to in paragraph 5.1 as being omitted is fundamental to either the discharge of the obligations of the Parties' under this Agreement or the accomplishment of its objective the Parties shall immediately commence negotiations in good faith to remedy such invalidity, illegality or unenforceability.

6 Joint and several liability

Where the Developer is more than one person, the Council may release or compromise the liability of any of those persons under this Agreement or grant time or indulgence without affecting liability of any of them.

7 Notices

- 7.1 All notices under this Agreement shall be in writing and shall be served by sending the same by first-class post, facsimile or by hand, or leaving the same at:
 - 7.1.1 for the Council at the Council's Address for the attention of Martin Miah; and
 - 7.1.2 for the Developer at the Developer's Address for the attention of: Richard Olsen.
- 7.2 Any Party may change its details from time to time by prior notice to the other Parties in accordance with paragraph 7.3.
- 7.3 Notices given by post shall be effective upon the earlier of actual receipt and five (5) Working Days after posting. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
 - 7.3.1 within two (2) hours after sending, if sent on a Working Day between the hours of 9 *a.m.* and 4 *p.m.*; or

7.3.2 by 11 a.m. on the next following Working Day, if sent after 4 *p.m.* on a Working Day but before 9 *a.m.* on that next following Working Day.

8 Value added tax

The sums stated to be payable by any Party under this Agreement and all other supplies made under or in connection with this Agreement are exclusive of VAT and:

- 8.1 if any such sum or supply gives rise automatically to a charge to VAT; or
- 8.2 if any such sum or supply gives rise to a charge to VAT due to any election made or to be made by a supplier,

then and in any such case the recipient of the supply shall pay VAT in addition thereto on production of a valid VAT invoice.

9 Non-merger

The provisions of this Agreement shall not merge on the actual completion of any act or step contemplated hereunder to the extent they remain to be performed and capable of being performed the provisions shall continue in full force and effect.

10 Information and Confidentiality

10.1 Subject to paragraphs 10.2, 11 and 12, each of the Parties acknowledges that this Agreement will be a public document.

10.2 Each of the parties agrees and undertakes not to make public or reveal to any person:

10.2.1 the amount secured under the Surety nor any of the contents of the Compensation Assessment, other than the global aggregate; and

10.2.2 not to use any such information otherwise than in good faith in the performance of its obligations under this Agreement; and

10.2.3 to use all reasonable endeavours to procure that any person to whom it does disclose such information shall comply with the provision of this paragraph 10 as if it were a Party and bound by it

10.3 Paragraph 10.2 shall not prevent any Party from disclosing such information:

10.3.1 to its legal and other professional advisers (having first informed them that such information is to be kept in strict confidence and not disclosed further);

10.3.2 to its officers, servants, employees or agents who are involved in the performance of the Party's obligations under this Agreement;

10.3.3 where (and to the extent that) which a Party can demonstrate is already lawfully in the possession of that Party or becomes generally available and in the public domain otherwise than as a result of a breach of this paragraph 10;

10.3.4 where (and to the extent that) disclosure is necessary to enable a determination to be made under the Dispute Resolution Procedure contained in Schedule 7;

10.3.5 where (and to the extent that) disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law; or

10.3.6 where the Parties agree to such information being disclosed and the manner in which disclosure occurs

10.4 This paragraph 10 shall survive the termination of this Agreement and shall continue in full force and effect and be enforceable by each of the Parties

11 Freedom of Information Act

11.1 The Developer acknowledges that the Council may be subject to the requirements of the FOIA Legislation in relation to this Agreement and if the Council is, then the Developer will assist and co-operate with the Council to enable the Council to comply with any Request relating to this Agreement only but not any matter, thing or arrangement between the Parties arising out or relating to this Agreement, the Property or otherwise

11.2 The Council shall be responsible for determining whether a Request is properly made or whether any information is exempt from disclosure under the FOIA Legislation and for determining in its absolute discretion the information to be disclosed provided always that the Council shall:

11.2.1 promptly upon receipt of any Request give notice to the Developer of such Request and in such notice shall:

11.2.1.1 confirm whether it considers it a proper Request and whether or not any information is exempt from disclosure under the FOIA Legislation; and

11.2.1.2 (to the extent applicable) provide the Developer with sufficient information to allow the Developer to collate and provide any information which it holds and which is required to be disclosed in respect of such Request; and

11.2.2 consult with and obtain the views of the Developer in respect of any Request (giving due regard to such views) before it:

11.2.2.1 makes any determination pursuant to this paragraph 13; and/or

11.2.2.2 discloses any information;

in respect of such Request provided that the Council shall be entitled to respond within the statutory timescale if no response is received in time from the Developer.

12 Contracts (Rights of Third Parties) Act 1999

- 12.1 Save for lawful successors in title and assigns, unless the right of enforcement is expressly provided, it is not intended that a third party should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 12.2 The Parties may, subject to its express provisions, by agreement, rescind or vary this Agreement without the consent of any third party to whom the right of enforcement of any of its terms has been expressly provided.

13 Costs

The Developer shall pay the Council's professional costs relating to the discussions and negotiations leading up to and the entering into of this Agreement.

14 Counterparts

This Agreement may be executed in any number of separate counterparts each of which when executed and delivered shall be an original but all the counterparts shall together form one and the same instrument.

15 Proper Law

This Agreement shall in all respects be governed by and construed according to the laws of England and Wales and subject to the provisions of clause 6 and Schedule 7 each Party hereby submits to the exclusive jurisdiction of the courts of England and Wales for all purposes relating to or arising out of this Agreement.

**Executed as a deed by affixing the
common seal of the London
Borough of Hammersmith and
Fulham, in the presence of:**

**The Officer duly authorised on
behalf of the Council:**

**Signed as a deed by
Orion Shepherds Bush Limited,**

acting by:

Director

Director/Secretary

**Signed as a deed by
Orion Shepherds Bush (no.2) Limited,
acting by:**

Director:

Director/Secretary:

**Signed as a deed by
Orion Shepherds Bush (no.3) Limited,
acting by:**

Director:

Director/Secretary: