



## **Board of Directors**

Thursday 15 March 2012 at 12.30pm  
To be held at Keelman House, Fifth Avenue Business Park,  
Team Valley, Gateshead, Tyne and Wear  
*Agenda*

Item	Business
1.	<b>Apologies for Absence</b>
2.	<b>Declarations of Interest</b>
3.	<b>Intermediate Rent Properties</b> Report of TGHC Director of Corporate Services
4.	<b>Kibblesworth Art – Progress Update</b> Presentation by New Build and Regeneration Manager
5.	<b>Date and Time of Next Meeting</b> Thursday 17 May 2012 at 12.30pm at Keelman House, Fifth Avenue Business Park, Team Valley, Gateshead



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**Title: Intermediate Rent Properties**

**Report of: TGHC Director of Corporate Services**

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### **Purpose of Report**

1. To provide the Board with an update on the properties which were allocated as Intermediate Rent when the HCA grant funding was awarded.

### **Background**

2. There are 13 homes being built on the Kibblesworth development during 2012 which were awarded grant based on being for 'Intermediate Rent'.
3. Intermediate Rent was a scheme which the HCA developed to try and encourage potential homeowners off the social housing waiting list whilst they were saving to enable themselves to purchase a property.
4. Intermediate rent was aimed at key workers unable to pay the full market rent in an area but able to pay more than social rent, and whose circumstances prevented homeownership at the time. Rent would be capped at 80% of market rent and tenancies had to be periodic not permanent. Intermediate rent did not have a timescale attached to it. If a tenant in an intermediate rent property wished to buy the property then the property would convert to a rent to buy unit.
5. The Rent to Buy scheme enables purchasers to rent before they buy. Prospective purchasers will be assessed on their eligibility for the scheme and must not only demonstrate that they can afford and sustain rent payments but are also able to save towards a deposit for the future purchase.
6. Prospective purchasers wanting a Rent to Buy property will initially rent their home as an assured shorthold tenant; this can be up to a maximum of 5 years. During this period they will be expected to save a deposit towards the partial purchase of a share in the property.
7. When a share of the property is purchased the tenant becomes a shared owner and signs a lease for their property. They then pay rent on the unpurchased percentage of the property. The tenant can buy a share from as little as 25% of the purchase price of the new home (maximum 75% initial share) and then pay rent on the part not purchased. The tenant would need to have funds (including a mortgage plus any deposit where available) for a minimum 25% share of the sale price of the home. They can then staircase (add to their shares) in tranches of a

minimum of 10%. Rents are calculated to be affordable and rent will be paid at approximately 2.75% pa on the share not owned.

8. The Kibblesworth development site is classed by the Homes and Communities Agency as a Protected Area. This means that the area is exempt from the Right to Acquire. The HCA want the Protected Area policy to still deliver Shared Ownership (in Kibblesworth this would be Rent to Buy) within these areas but it aims to ensure that low cost home ownership in difficult to replace areas is retained for the benefit of local people.

### **Meeting with the Homes and Communities Agency**

9. Keelman Homes were aware that whilst the grant funding was provided for Intermediate Rent properties, this did not necessarily facilitate the Low Cost Home Ownership that was preferred by the HCA. Therefore, a meeting took place with the HCA to discuss options.
10. Intermediate rent would lead to renting the property at 80% market rent on an assured shorthold tenancy, initially for 6 months. However, this would be regularly reviewed but could in effect lead to someone being in this property at Intermediate Rent in perpetuity. Keelman Homes do not expect there to be a large amount of interest in this type of tenancy.
11. Discussions with the HCA centred around marketing the properties on a 'Shared Ownership' basis initially and if shared ownership was not an option for individuals who were interested then we would also market them as Rent to Buy properties, for a maximum of 5 years.
12. Discussions also focused around the potential for a change in use for the properties. This would look to retain the properties as a social rented product. The HCA were not averse to this proposal, however, they requested that we attempted to market the properties as Shared Ownership or Rent to Buy first. If we were unsuccessful in gaining interest in these schemes, then they would be willing to reopen discussions around the change of use. It has been agreed that this will be reviewed in December 2012.

### **ISOS HomeBuy Agents**

13. Isos are the HomeBuy agents that we must use to market and assess the prospective purchasers/tenants for our properties. They are the HomeBuy agents for Tyne and Wear and Northumberland and were appointed by the HCA. It costs £180 (plus VAT) for an assessment of eligibility.
14. Initial discussions have taken place with Isos regarding the marketing of these properties and initial marketing is likely to take place from April/May 2012.
15. Decisions need to be taken over whether we would offer any incentives for prospective purchasers. These could include carpets, white goods or vouchers for purchasers who obtain at least a 25% share of the property.
16. If tenants were on a Rent to Buy tenancy then we could look to offer incentives such as 'part of your rent back for a deposit'. However, we would need to take a more detailed look into this type of initiative.

17. At the Kibblesworth site, we will be looking to provide a show home to allow prospective tenants and purchasers the chance to look around the property. We will be providing no specific choices for the properties and will just be providing a standard specification on the properties.

### **Meetings with lenders**

18. Meetings with lenders will take place to discuss whether they will be willing to lend if the prospective purchaser could only acquire a maximum of 80% of their property.
19. If there are lenders willing to lend to this level then it is proposed that we provide a lease to enable the shared owner to acquire a maximum of 80% of a share in the property.
20. However, if lenders are unwilling to lend with these stipulations then we will be providing a lease that enables the shared owner to acquire more than 80 per cent of the shares in the property. Keelman Homes (or a nominated provider) would then be required to repurchase the property if the shared owner wished to sell.
21. There are grants available from the HCA to assist providers if they are unable to raise the funding to repurchase the home. Otherwise Keelman Homes could maintain a percentage of the funding that it receives from the sale of shared ownership leases to facilitate any future repurchase.
22. Meetings with lenders are due to take place during this week and a verbal update will be provided to the Board.

### **Lease**

23. A prospective lease has been drawn up by our legal representatives at Gateshead Council. This lease would cover all those shared owners when they have purchased a share in the property as they become leaseholders for the unpurchased share.
24. The lease contains provisions for both whether it is agreed to allow shared owners to purchase an 80% share or up to a 100% share. The lease is attached in the Appendix and this Lease contains alternative clauses depending on whether:
  - staircasing is restricted to 80% (clauses in red); or
  - staircasing to more than 80% is permitted (clauses in blue).

### **Next Steps**

25. Work needs to be undertaken to ensure that the properties can be marketed on a shared ownership basis and on a rent to buy basis if shared ownership proves unsuccessful.
26. Full details of the attempts to market the properties will be retained should we need to go back to the HCA to review the nature of the properties.
27. A service level agreement needs to be signed with the HomeBuy Agents Isos to enable the marketing of the properties to begin. Further discussions will be held

with Isos around their process and the documents that need to be provided by Keelman Homes.

28. The properties will be progressed on site with a standard specification for the kitchen and door choices. Further discussions will be held around incentives.
29. Following the meeting with lenders a decision will be taken as to whether Keelman Homes should offer the properties to a maximum equity share of 80% or up to 100% dependent on the lenders preference to lend.
30. Once the decision has been made as to the maximum equity share, the lease will be amended accordingly.

### **Impact on Tenants**

31. The decision on whether to allow prospective shared owners to purchase either 80% or 100% equity share will have a significant impact on shared owners as they may be restricted on the mortgage product they can obtain.
32. Any incentives offered to prospective purchasers or tenants will have a direct benefit to those individuals.
33. If the property types were to revert back to social housing then there would be a direct positive impact on the social housing waiting list held by Gateshead Council.

### **Financial Implications**

34. Keelman Homes would be required to repurchase properties if shared owners could purchase 100% of the shares of the property. Therefore, funding would need to be found at such a time in the future should shared owners wish to sell the property. There could be financial implications associated with the repurchase of the property, although at the present time these are unknown.
35. There are financial implications associated with the incentives that could be offered to prospective shared owners or tenants. These need to be considered in comparison to the cost of administering the scheme.
36. Each eligibility assessment will cost Keelman Homes £180 (plus VAT).

### **Risk Management Implications**

37. The risk of allowing shared owners to only purchase a maximum of 80% equity shares may restrict the availability of funding options for shared owners and therefore, may reduce the desirability of the properties. This would mean that there is a greater risk of the properties being void for longer periods of time.
38. The risk of allowing shared owners to purchase up to 100% of the equity shares will fall on Keelman Homes as they will have a mandatory obligation to repurchase the property if the shared owner wishes to sell. Therefore, funding would need to be available to fund this repurchase.

### **Value for Money Implications**

39. There are no value for money implications arising from this report; however, the decision taken on which lease to offer will have implications on the use of the future capital receipts from the sale of these properties.

### **Equality and Diversity Implications**

40. There are no equality and diversity implications directly arising from this report.

### **Health implications**

41. There are no direct health implications arising from this report.

### **Consultation Carried Out**

42. Consultation has been carried out with Gateshead Council's legal section, the Homes and Communities Agency and the HomeBuy agents Isos to obtain further advice and information relating to this report.
43. Further consultation has also been carried out with mortgage lenders to discuss the suitability of offering either product.

### **Recommendation**

44. The Board is asked to approve the following:
  - a. That the properties be marketed as Shared Ownership
  - b. That the properties revert to Rent to Buy properties with a maximum tenancy period of 5 years prior to a purchase of the property if shared ownership is unsuccessful
  - c. That discussions are held with the HCA around reverting the properties back to social housing should the properties be unsuccessful as Shared Ownership or Rent to Buy.
45. To approve officers to agree the properties being offered an equity share of either 80% or up to 100% following the meeting and intimation from lenders.
46. To approve the lease as developed by Gateshead Council's legal section.
47. To approve the properties to be built to a standard specification.
48. To receive a future report on the marketing strategy and incentive schemes offered for the properties.
49. To receive a future report on the proposed rents and valuations for the properties.

DATED

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**Keelman Homes Limited**  
as Landlord

[•]  
as Leaseholder

**NewBuild HomeBuy Lease of a House - PROTECTED AREAS  
(Granted on Shared Ownership terms)**

of [•]

**Important Notice for Leaseholders**

**A guide to the key terms of this Lease is set out in Appendix 3**

*[Note, this Lease contains alternative clauses depending on whether:*

- *staircasing is restricted to 80% (clauses in red); or*
- *staircasing to more than 80% is permitted (clauses in blue).*

*Please delete whichever colour clauses are not applicable and return remaining clauses to black, adjust clause numbers and cross references as necessary, and delete footnotes.]*

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## Contents

<b>Clause</b>	<b>Name</b>	<b>Page</b>
Section 1	Particulars.....	1
1	Definitions and interpretation.....	2
2	The Letting Terms .....	3
3	Leaseholder’s covenants.....	3
4	Landlord’s covenants .....	10
5	Leaseholder’s further covenants.....	11
6	Provisos.....	11
7	Service charge provisions .....	<b>Error! Bookmark not defined.</b>
8	Mortgage protection .....	16
9	Stamp duty certificate as shared ownership .....	17
10	Notices .....	17
11	Landlord and Tenant (Covenants) Act 1995 declaration.....	17
12	Value Added tax .....	18
13	Leasehold reform Act 1967 Declaration.....	18
14	Charity clause .....	<b>Error! Bookmark not defined.</b>
<b>Schedule</b>	<b>Name</b>	<b>Page</b>
1	The Premises .....	20
2	Easements, Rights and Privileges .....	21
3	Exceptions and Reservations.....	22
4	Rent Review.....	24
5	Staircasing .....	26
6	<a href="#">Mandatory Buyback</a> .....	28
7	Defined Terms.....	29
8	<a href="#">Grounds for Possession</a> .....	33
<b>Execution Page</b> .....		36
<b>Appendix</b>	<b>Name</b>	<b>Page</b>
1	Memorandum of Staircasing .....	37
2	Example of Notice of Rent Increase.....	388
3	Key Information for Shared Owners .....	399

## LAND REGISTRY PRESCRIBED CLAUSES

<b>LR1. Date of Lease</b>	[•]
<b>LR2. Title number(s)</b>	<b>LR2.1 Landlord's title number(s)</b>
	[•]
	<b>LR2.2 Other title numbers</b>
	[•]
<b>LR3. Parties to this Lease</b>	<b>Landlord</b>
	Keelman Homes Limited of (company no. 06972673) whose registered office is at Keelman House Fifth Avenue Team Valley Trading Estate Gateshead Tyne and Wear NE11 0XA
	<b>Tenant</b>
	[•] of [•]
	<i>[Other parties [•]]</i>
	[•] [of] [•] [Guarantor]
<b>LR4. Property</b>	<b>In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail</b>
	As specified in Schedule 1 ( <i>The Premises</i> ) and Schedule 7 ( <i>Defined Terms</i> ) of this Lease and defined in this Lease as "the <b>Premises</b> "
<b>LR5. Prescribed statements etc</b>	<b>LR5.1</b> <i>Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003</i>
	None

	<b>LR5.2 This Lease is made under, or by reference to, provisions of:</b>
	Not applicable
<b>LR6. Term for which the Property is leased</b>	The term as specified in this Lease at Clause 2 ( <i>The Letting Terms</i> ) and as defined in Schedule 7 ( <i>Defined Terms</i> )
<b>LR7. Premium</b>	£[•]
<b>LR8. Prohibitions or restrictions on disposing of this Lease</b>	This Lease contains a provision that prohibits or restricts dispositions
<b>LR9. Rights of acquisition etc</b>	<b>LR9.1 Tenant's contractual rights to renew this Lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land</b>
	As specified in Schedule 5 ( <i>Staircasing</i> )
	<b>LR9.2 Tenant's covenant to (or offer to) surrender this Lease</b>
	As specified in <b>Clause 3.21</b> ( <i>Disposals of the Premises when the Acquired Percentage is less than or equal to 80%</i> ), <b>clause 3.21</b> ( <i>Disposals of the Premises when the Acquired Percentage is more than 80%</i> ) and Schedule 6, and clause 5(7) ( <i>Frustration clause</i> )
	<b>LR9.3 Landlord's contractual rights to acquire this lease</b>
	Not applicable
<b>LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property</b>	None
<b>LR11. Easements</b>	<b>LR11.1 Easements granted by this lease for the benefit of the Property</b>
	As specified in Schedule 2 ( <i>Easements, Rights and Privileges</i> )
	<b>LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property</b>

	As specified in Schedule 3 ( <i>Exceptions and Reservations</i> ).
<b>LR12. Estate rent charge burdening the Property</b>	Not applicable
<b>LR13. Application for standard form of restriction</b>	<p><b>None</b></p> <p>The Parties to this Lease apply to enter the following standard form of restriction against the title of the Property:-</p> <p>"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number [<i>specify title number</i>] or their conveyancer that the provisions of Clause 3.21 (<i>Disposals of the Premises when the Acquired Percentage is more than 80%</i>) of the registered lease have been complied with or that they do not apply to the disposition."</p>
<b>LR14. Declaration of trust where there is more than one person comprising the Tenant</b>	<p>[The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants.]</p> <p style="text-align: center;">OR</p> <p>[The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares.]</p> <p style="text-align: center;">OR</p> <p>[The Tenant is more than one person. They are to hold the Property on trust [<i>complete as necessary</i>].]</p>

**PARTICULARS**

<b>Commencement Date</b>	[●]
<b>Gross Rent</b>	£[●] per annum, subject to review in accordance with Schedule 4 ( <i>Rent Review Review</i> ).
<b>Initial Market Value</b>	The sum of £[●].
<b>Initial Percentage</b>	[●]%. <sup>1</sup>
<b>Maximum Percentage</b>	[●]%. <sup>1</sup>
<b>Premium</b>	The sum of £[●]
<b>Review Date</b>	[●] and each successive [●] during the Term and the term the " <b>Relevant Review Date</b> " shall be construed accordingly.
<b>Specified Rent</b>	A sum equal to the Unacquired Percentage of the Gross Rent (the Specified Rent on the date of this Lease being £[●] per annum) [or (if greater) the Minimum Rent].

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<sup>1</sup> Insert the figure for the maximum percentage up to which the Leaseholder is allowed to staircase. It must be either 80% or 100%. Percentages between those two figures are not permitted.

**DATED**

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**PARTIES**

- (1) **Keelman Homes Limited** (company no 06972673) whose registered office is at Keelman House Fifth Avenue Team Valley Trading Estate Gateshead Tyne and Wear NE11 0XA (the "**Landlord**")
- (2) [●] of [●] (the "**Leaseholder**")

**OPERATIVE PROVISIONS****1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Lease the terms defined in the Particulars and in Schedule 7 (*Defined Terms*) shall have the meanings specified.
- 1.2 Any obligation on a party to this Lease to do any act includes an obligation to procure that it is done.
- 1.3 Where the Leaseholder is placed under a restriction in this Lease, the restriction includes the obligation on the Leaseholder not to permit or allow the infringement of the restriction by any person.
- 1.4 References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses.
- 1.5 The Clause and paragraph headings in this Lease are for ease of reference only and are not to be taken into account in the interpretation of any provision to which they refer.
- 1.6 The Key Information for Shared Owners set out in Appendix 3 is for information purposes only and is not to be taken into account in the interpretation of any provision of this Lease.
- 1.7 Unless the contrary intention appears, references:
- (a) to defined terms are references to the relevant defined term in the Particulars and Schedule 7 (*Defined Terms*);
  - (b) to numbered Clauses and Schedules are references to the relevant Clause in, or Schedule to, this Lease; and
  - (c) to a numbered paragraph in any Schedule are references to the relevant paragraph in that Schedule.
- 1.8 Words in this Lease denoting the singular include the plural meaning and vice versa.
- 1.9 References in this Lease to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it.

- 1.10 Words in this Lease importing one gender include both genders, and may be used interchangeably, and words denoting natural persons, where the context allows, include corporations and vice versa.
- 1.11 Words and expressions which appear in the first column of the Particulars, shall in this Lease have the meaning shown opposite them in the second column of the Particulars.

## 2 THE LETTING TERMS

In consideration of the Premium (receipt of which the Landlord acknowledges), the Specified Rent and the Leaseholder's covenants in this Lease the Landlord lets the Premises to the Leaseholder:

- (a) together with the rights set out in Schedule 2 (*Easements, Rights and Privileges*) and together with the rights; but
- (b) subject to the provisions set out in Schedule 5 (*Staircasing*); and
- (c) except and reserved to the Landlord the rights set out in Schedule 3 (*Exceptions and Reservations*);
- (d) for the Term,

the Leaseholder paying during the Term the Specified Rent (subject to revision under Schedule 4 (*Rent Review*)) by equal monthly payments in advance on the first day of each month, the first payment to be made on the date of this Lease.

## 3 LEASEHOLDER'S COVENANTS

The Leaseholder covenants with the Landlord as follows.

### 3.1 Pay rent

To pay the Specified Rent at the times and in the manner mentioned in Clause 2 (*The Letting Terms*) and all other monies due under this Lease without deduction.

### 3.2 Interest

To pay interest calculated on a day to day basis at an annual rate of 3% above the Base Rate of Barclays Bank PLC for the time being in force on so much of the Specified Rent or any other monies due to the Landlord under this Lease that remain unpaid for a period of 14 days after becoming due for payment.

### 3.3 Insurance premiums

To refund to the Landlord on demand [a fair and proper proportion attributable to the Premises, such proportion to be conclusively determined by the Landlord (who shall act reasonably) of] the insurance premiums incurred by the Landlord in connection with the Premises.

### 3.4 Outgoings

- 3.4.1 To pay Outgoings.

- 3.4.2 To refund to the Landlord on demand (where Outgoings relate to the whole or part of property which includes the Premises) a fair and proper proportion attributable to the Premises, such proportion to be conclusively determined by the Landlord (who shall act reasonably).
- 3.4.3 To pay for all gas electricity and other sources of power supplied to the Premises and to observe the regulations and requirements of the relevant authorities responsible for such sources of power
- 3.4.4 To pay to the Landlord on demand a fair and proper proportion (to be conclusively determined by the Landlord (who shall act reasonably)) of:
- (a) the expense of cleaning, lighting, repairing, renewing, decorating, maintaining and rebuilding any Communal Facilities; and
  - (b) the reasonable costs, charges and expenses incurred by the Landlord in connection with the provision, maintenance and management of the Communal Facilities.
- 3.4.5 For the purposes of Clause 3.4.3, the provisions of sections 18 to 30B (inclusive) of the Landlord and Tenant Act 1985 and of Part V of the Landlord and Tenant Act 1987 shall apply.

### 3.5 **Gas Installations**

Where at the date of this Lease or at any time thereafter the Premises has or is fitted with gas installations then:-

- 3.5.1 The Leaseholder must no fewer than once in every Account Year have all the gas installations within the Premises tested in accordance with the Statutory Instrument and to obtain and produce to the Landlord a gas service certificate
- 3.5.2 If the Leaseholder fails to produce a gas service certificate in accordance with clause 3.5.1 above then it shall be lawful for the Landlord its officers agents or contractors to enter onto the Premises at all times upon giving reasonable notice to the Leaseholder for the purpose of carrying such a test and all costs incurred by the Landlord incidental thereto shall be repaid by the Leaseholder to the Landlord on demand and in the event of non-payment the Landlord will be permitted to recover the cost by action for rent arrear.

### 3.6 **Repair**

To repair and keep the Premises and all fixtures and fittings in them and all additions to them in good and substantial repair and condition (except in respect of damage by risks insured under Clause 4.2 (*Insure*) unless the insurance money is irrecoverable by reason of any act or default of the Leaseholder) including all interior doors and doorframes the interior faces and plaster of the external and internal walls of the Premises and all floors and ceilings and any installation serving the Premises exclusively..

### 3.7 **Decoration**

[As often as is reasonably necessary and in the last month of the Term in a proper and workmanlike manner (and in the last month of the Term in colours approved by the Landlord) to paint, paper, treat and generally decorate in a style appropriate to property of a like character all [the inside and outside] of the Premises previously or usually so painted, papered, treated and decorated.]

**3.8 Provide floor coverings**

To provide carpets or such other suitable floor coverings to the floors of the Premises.

**3.9 Repair damage to Communal Facilities**

In respect of any damage or disrepair to the Communal Facilities caused or contributed to by any act, neglect or default of the Leaseholder or the Leaseholder's family, servants or licensees or by any other person under the control of the Leaseholder, at the option of the Landlord, the Leaseholder will on demand indemnify the Landlord in respect of all costs, charges and expenses incurred the Landlord in repairing, making good, renewing and/or reinstating such damage or disrepair.

**3.10 Not to alter**

**3.10.1 Not to:**

- (a) make any alterations or additions to the exterior of the Premises;
- (b) make any structural alterations or structural additions to the Premises;
- (c) erect any new buildings on the Premises; or
- (d) remove any of the Landlord's fixtures from the Premises.

**3.10.2** Not to make any alteration or addition of a non-structural nature to the interior of the Premises without the previous written consent of the Landlord (such consent not to be unreasonably withheld).

**3.11 Comply with requirements of public authorities**

To execute and do at the expense of the Leaseholder all works and things as may at any time during the Term be directed or required by any national or local or other public authority to be executed or done upon or in respect of the Premises or any part of the Premises.

**3.12 Provide copies of notices**

Promptly to serve on the Landlord a copy of any notice, order or proposal relating to the Premises and served on the Leaseholder by any national, local or other public authority or where such notice may be capable of adversely affecting the Landlord's interest.

**3.13 Expenses of the Landlord**

To pay all costs, charges and expenses (including solicitors' costs and surveyors' fees other professional costs and bailiff fees) reasonably incurred by the Landlord:

- (a) for the purpose of or incidental to the preparation and service of a notice under section 146 or section 147 of the Law of Property Act 1925 even if forfeiture is avoided otherwise than by relief by the court; or
- (b) otherwise incurred by the Landlord in respect of any breach of covenant by the Leaseholder under this Lease; or

- (c) any schedule relating to wants of repair or decoration or dilapidations whether served during or after the Termination Date; or
- (d) any application made by the Leaseholder for the consent of the Landlord whether the same be granted refused or proffered subject to any lawful qualifications or conditions or whether the application be withdrawn.

### 3.14 **Obtain consents**

To obtain all licences, permissions and consents and do all works and things and pay all expenses required or imposed by any existing or future legislation in respect of any works carried out by the Leaseholder on the Premises or any part of the Premises or in respect of any use of the Premises during the Term.

### 3.15 **Landlord's right of inspection and right of repair**

3.15.1 To permit the Landlord and its employees or agents at reasonable times to enter the Premises and examine their condition and also to take a schedule of fixtures and fittings in the Premises.

3.15.2 If any breach of covenant, defects, disrepair, removal of fixtures and fittings or unauthorised alterations or additions are found on inspection for which the Leaseholder is liable, then, on notice from the Landlord, to execute to the reasonable satisfaction of the Landlord or the Landlord's surveyor all repairs, works, replacements or removals required within three months (or sooner if necessary) after receipt of notice.

3.15.3 If the Leaseholder fails to comply with a notice under Clause 3.15.2, the Landlord may itself or by its workpeople or agents enter the Premises and execute the repairs, works, replacements or removals.

3.15.4 To pay to the Landlord on demand all expenses incurred under Clause 3.15.3.

### 3.16 **Permit entry**

At all reasonable times during the Term on notice to permit the Landlord and the lessees of other adjoining or neighbouring premises with workmen and others to enter the Premises for the purpose of repairing any adjoining or neighbouring premises and for the purpose of repairing, maintaining and replacing all Service Media or other conveniences belonging to or serving the same, the party so entering making good any damage caused to the Premises.

### 3.17 **Yield up**

At the Termination Date of this Lease to quietly yield up the Premises repaired, maintained, cleaned, decorated and kept in accordance with the covenants in this Lease (except in respect of damage by risks insured under Clause 4.2 (*Insure*) unless the insurance money is irrecoverable by reason of any act or default of the Leaseholder).

### 3.18 **Use**

Not to use the Premises for anything other than as a private residence in single occupation.

### 3.19 **Restrictions on use**

#### 3.19.1 Not to do any act or thing which may:

- (a) render void or voidable any policy of insurance on the Premises or may cause an increased premium to be payable in respect of the Premises;
- (b) cause or permit to be caused nuisance, annoyance or disturbance to the owners lessees or occupiers of premises in the neighbourhood or visitors to such premises;
- (c) result in any form of harassment or intimidation of any other person, including the Landlord's staff, contractors and agents; or
- (d) result in the use of the Premises for any unlawful or immoral purpose.

#### 3.19.2 Not to:

3.19.2.1 carry on or permit to be carried on upon in over or under the Premises any development within the meaning of the Town and Country Planning Act 1990

3.19.2.2 do or suffer to be done any act matter or thing on or in respect of the Premises or any part thereof which may contravene any provisions of the Town and Country Planning Act 1990 and to keep the Landlord indemnified against all costs claims demands and liabilities in respect of it

3.19.2.3 use the Premises for any trade profession or business whatsoever but to use them only as a private dwelling for residential purposes in accordance with clause 3.18

3.19.2.4 do or permit or suffer to be done in or upon the Premises or the Estate anything which may be or become a nuisance annoyance or cause damage or inconvenience to the Landlord or the tenants or leaseholders or occupiers of other Premises on the Estate or to the owner or occupier of any adjoining or neighbouring property including the repair of vehicles and the inconsiderate parking of vehicles nor to behave in any way or use any words or to permit behaviour or the use of any words which are threatening abusive or insulting or to cause or permit harassment because of colour race creed or ethnic or national origin nor to do anything whereby any policies of insurance for the time being effected on the Building may be rendered void or voidable or whereby the premium may be increased

3.19.2.5 cause or permit the Premises to be overcrowded within the meaning of section 324 of Part X of the Housing Act 1985

3.19.2.6 make or permit to be made any alteration or addition to the structure of the Premises or to the external appearance of the Premises or to the wires or cables which are installed in the Premises and where the Premises have the Housing Care Warden Call System installed not to make or permit to be made any alteration or addition to the wires and cables which are used in connection with such system

3.19.2.7 permit any water or liquid to soak through the floors of the Premises or any corrosive or harmful substance to be placed or thrown into any of the installations serving the Premises and in the event of this happening (without prejudice to the Landlord's other rights under this Lease) immediately at the expense of the Leaseholder to rectify and make good all damage and injury caused by it

3.19.2.8 store or bring onto the Premises any articles of a specially combustible inflammable or dangerous nature

### 3.20 **Alienation**

- 3.20.1 Not to assign, underlet, charge, mortgage or part with possession of part only of the Premises.
- 3.20.2 Not to underlet or part with possession of the whole of the Premises.
- 3.20.3 Not without the prior written consent of the Landlord (such consent not to be unreasonably withheld) to assign the whole of the Premises.

### 3.21 **Disposals of the Premises when the Acquired Percentage is less than or equal to 80%**

3.21.1 Subject to Clause 3.21.3 and Clause 3.21.4, the Leaseholder shall pay to the Landlord on demand a sum equal to 80% less the Acquired Percentage of the Market Value if:

- (a) this Lease is assigned when the Acquired Percentage is less than or equal to 80%; and
- (b) within two months after receipt of notice of the assignment pursuant to Clause 3.23 (*Register disposals*) the Landlord serves notice on the Leaseholder requiring such payment.

3.21.2 Within 14 days of the date of the Landlord's notice pursuant to Clause 3.21.1(b) the Landlord shall apply to the Valuer to determine the Market Value as at the date of service of the Leaseholder's notice of assignment served pursuant to Clause 3.23 (*Register disposals*) and shall notify the Leaseholder of the amount of the Valuer's determination in writing within 7 days of receipt of such determination.

3.21.3 The provisions of Clause 3.21.1 shall not apply when the Lease is assigned by way of either:

- (a) a disposal under a will or intestacy;
- (b) a disposal under section 24 of the Matrimonial Causes Act 1973 or section 2 of the Inheritance (Provision for Family and Dependants) Act 1975;
- (c) a grant of a sub-tenancy in respect of which a notice has been given under section 52(1)(b) of the Housing Act 1980 (notice that a tenancy is to be a protected shorthold tenancy) or of a kind mentioned in any of Cases 11 to 18 or 20 in Schedule 15 to the Rent Act 1977;
- (d) a grant of a sub-tenancy of part of the house, if any other part of the house remains in the possession of the tenant; or
- (e) a grant of a mortgage.

3.21.4 The circumstances in which the Landlord may not require payment under the provisions of Clause 3.21.1 are either:

- (a) when the Lease is assigned both:
  - (i) to a person nominated by the Landlord within a period of eight weeks from the receipt by the Landlord of notice from the Leaseholder to the effect that the Leaseholder wishes to assign his interest in the Premises ("the **Nomination Period**"); and

(ii) at a price no greater than the Acquired Percentage of the Market Value of the Premises (calculated excluding paragraph (c) and paragraph (d) of the definition of Market Value) as at a date no more than eight weeks prior to the date of exchange of contracts for the assignment which shall be confirmed by a Valuer's Certificate which the Leaseholder shall serve on the Landlord together with the notice of assignment served pursuant to Clause 3.23 (*Register disposals*); or

(b) if the Landlord fails within the Nomination Period to make any nomination or the Landlord's nominee (without any fault or obstruction on the part of the Leaseholder) fails to enter into a binding contract for purchase from the Leaseholder within twelve weeks from the receipt of a draft contract by the solicitors or other persons acting for the Landlord's nominee (which draft contract shall be supplied by the solicitor or other persons acting for the Leaseholder and shall contain reasonable terms based on the Standard Conditions of Sale).

### 3.22 **Disposals of the Premises when the Acquired Percentage is more than 80%**

3.22.1 If at any time when the Acquired Percentage is more than 80% the Leaseholder wishes to assign the whole of the Premises he must first serve written notice ("Initial Notice") on the Landlord offering a surrender of the Term.

3.22.2 Within six weeks of service of the Initial Notice, the Landlord shall serve written notice on the Leaseholder:

- (a) stating that the Landlord will accept a surrender of the Term, in which case the provisions of Part 1 of Schedule 6 will apply; or
- (b) declining the offer of a surrender but confirming that a Nominated Association will take an assignment of the whole of the Premises and stating the name, address and contact details of the Nominated Association, in which case the provisions of Part 2 of Schedule 6 will apply.

3.22.3 If the Landlord (or the Nominated Association, if appropriate) does not comply with the timescale for completion specified in paragraph 4 of Schedule 6 (as to which time shall be of the essence) the Leaseholder may:

- (a) assign the whole of the Premises as the Leaseholder sees fit subject to exchange of contracts (or completion where there is no prior exchange of contracts) for the assignment taking place within twelve months of service of the Initial Notice **provided that** if no exchange of contracts is effected within such twelve month period and the Leaseholder wishes to assign the whole of the Premises the procedure set out in this Clause 3.21 shall be repeated; and
- (b) recover from the Landlord compensation for any loss occasioned by the Leaseholder as a result of delay or failure on the part of the Landlord (or the Nominated Association) to complete the surrender (or assignment) in accordance with this Clause 3.21 and Schedule 6.

3.22.4 The Landlord and the Leaseholder hereby apply to the Chief Land Registrar to enter a restriction in the form set out in LR13 of the Land Registry Prescribed Clauses in the proprietorship register of the Leaseholder's title to the Premises.

### 3.23 **Register disposals**

Within one month of any assignment, underletting, mortgage, charge or other dealing with the Leaseholder's interest in the Premises to give notice of it together with a certified copy of the document effecting the assignment, mortgage, charge, or devolution to the Landlord and to pay a reasonable fee to the Landlord for the registration of the notice.

### 3.24 **Prevent loss of easements**

To do such acts and things as may reasonably be required by the Landlord to prevent any easement or right belonging to or used with the Premises from being obstructed or lost and not knowingly to allow any encroachment to be made on or easement acquired over the Premises and in particular not to allow the right of access of light from or over the Premises to any neighbouring property to be acquired.

### 3.25 **Covenants and Provisions**

To observe and perform the Covenants and Provisions so far as the same are still subsisting and capable of being enforced and to indemnify the Landlord against all proceedings actions costs claims and demands in respect of any breach of them.

## 4 **LANDLORD'S COVENANTS**

The Landlord covenants with the Leaseholder as follows.

### 4.1 **Quiet enjoyment**

That the Leaseholder paying the rents reserved by this Lease and performing and observing the covenants contained in this Lease may peaceably enjoy the Premises during the Term without any lawful interruption by the Landlord or any person rightfully claiming under or in trust for it.

### 4.2 **Insure**

At all times during the Term (unless such insurance shall be cancelled, invalidated or revoked by any act or default of the Leaseholder) to keep the Premises insured against loss or damage by fire and such other risks as the Landlord may from time to time reasonably determine or the Leaseholder or the Leaseholder's mortgagee may reasonably require in some insurance office of repute to its full reinstatement value (including all professional fees in connection with any reinstatement and two years' loss of rent) and whenever required will produce to the Leaseholder the insurance policy and the receipt for the last premium and will in the event of the Premises being damaged or destroyed by fire or other risks covered by such insurance as soon as reasonably practicable make a claim against the insurers and lay out the insurance monies in the repair, rebuilding or reinstatement of the Premises.

### 4.3 **Land Registry certificate of compliance**

That the Landlord will promptly in response to a request from the Leaseholder provide a certificate confirming where applicable that the provisions of Clause 3.22 (*Disposals of the Premises when the Acquired Percentage is more than 80%*) has been complied with or that they do not apply to the disposition.

#### 4.4 **Nominated Associations**

That the Landlord will not nominate any Nominated Association to take an assignment of the Premises under Clause 3.22 (*Disposals of the Premises when the Acquired Percentage is more than 80%*) unless the Nominated Association has previously confirmed in writing to the Landlord that it wishes to be so nominated.<sup>2</sup>

### 5 **LEASEHOLDER'S FURTHER COVENANTS**

The Leaseholder covenants with the Landlord and with and for the benefit of the leaseholders tenants and occupiers from time to time of the other premises on the Estate as follows.

#### 5.1 **Comply with Regulations**

To comply with such reasonable regulations as the Landlord may make from time to time relating to the orderly and proper use of the Communal Areas

#### 5.2 **Leaseholders Additional Covenants**

##### 5.2.1 The Leaseholder shall not:

5.2.1.1 erect any placard or notice of any description upon the external parts of the Premises or in any window

5.2.1.2 hold or permit any sale by auction in the Premises

5.2.1.3 keep any dog cat or other animal (including birds or reptiles) without the Landlord's prior written consent save that such permission shall be deemed to have been given in the case of a budgerigar or small aquarium

5.2.1.4 allow window boxes or plants to be placed on any window sills or balconies stairs or roof of the Premises

5.2.1.5 erect or permit to be erected any external wireless or television aerial without the Landlord's prior written consent

5.2.1.6 interfere with or cause or permit interference with the television aerial systems (if any) serving the other neighbouring or adjoining premises

5.2.1.7 play or permit the use of any radio television record player tape recorder musical instrument or other noise making implement so as to cause nuisance or annoyance at any time to the occupiers of any neighbouring or adjoining premises or so as to be audible at all outside the Premises between the hours of 11 p.m. and 7 a.m.

5.2.1.8 park or permit to be parked upon any shared access way (if any) any vehicle PROVIDED that where parking spaces are designated by the Landlord the Leaseholder may (in common with all other tenants and leaseholders of the Estate) park one private motor vehicle in one such space subject to conditions specified from time to time by the Landlord IT BEING SPECIFICALLY agreed that no exclusive right to park in any such parking space is granted to the Leaseholder by this Lease

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<sup>2</sup> Wording in blue only required if leaseholder can staircase to more than 80%

- 5.2.1.9 use the garden (if any) included in the Premises for any purpose other than for a private garden and will not park any vehicles whatsoever on it and will not fence the garden without the Landlord's prior written consent
- 5.2.1.10 decorate any exterior part of the Premises without the Landlord's prior written consent
- 5.2.1.11 keep the Premises and the sewers drains gutters watercourses pipes cables wires channels or conductors belonging to it in good and tenantable repair and condition
- 5.2.1.12 maintain in a neat and satisfactory condition the garden of and any hedge at any time planted on the Premise
- 5.2.1.13 pay a fair proportion of the expense of repairing cleansing maintaining and amending any footpaths sewers drains gutters watercourses pipes cables wires channels or conductors the use of which is common to the Premises and any adjoining or neighbouring property
- 5.2.1.14 pay equally with the owner for the time being of the land shown coloured brown (if any) on the Plan the cost of maintaining the land shown coloured brown and blue (if any) on the Plan
- 5.2.2 The Leaseholder shall:
  - 5.2.2.1 keep the boundary fences and walls as shown by the letter "T" (if any) on the Plan in good repair and condition (the remaining fences and walls (if any) to be the responsibility of the Landlord or its successors in title)
  - 5.2.2.2 be responsible for all damages caused by him or his family or visitors to the Premises and for any breach of these regulations by his family or visitors
  - 5.2.2.3 inform the Landlord as soon as is reasonably possible of any defect or damage which the Landlord is obliged to remedy or repair
  - 5.2.2.4 do or suffer to be done or kept on the Premises any act or thing which may be or become a nuisance or annoyance or cause inconvenience to the Landlord or to the occupiers of any neighbouring or adjoining premises on the Estate or which may tend to lessen or depreciate the value of the Premises or the Estate
  - 5.2.2.5 at any time to alter or permit to be altered the external plan elevation or appearance of the Premises or any wall fence erection or building on it or take down or make any external addition or alteration to it or any part or parts of it except for the purpose of being immediately rebuilt and reinstated in accordance with plans and specifications previously submitted to and approved of by the Landlord before such taking down or other work is commenced or unless the landlord prior written consent is obtained provided that if work is carried out in at or on the Premises without the Landlord's consent and consent is subsequently requested retrospectively the owner for the time being of the Premises shall pay to the Landlord the costs incurred in granting retrospective consent in the event that retrospective consent is granted
  - 5.2.2.6 at any time to interfere with or make or permit to be made any alteration or addition to the Landlord's wires or cables (if any) which are installed in the Premises and are used in connection with the Housing Care Warden Call System unless the Landlord's prior written consent is obtained

- 5.2.2.7 at any time to erect construct or permit to be erected or constructed on the Premises any building wall fence or other erection of any kind except in accordance with plans and specifications previously approved of by the Landlord or unless the Landlord's prior written consent is obtained provided that if work is carried out in at or on the Premise without the Landlord's consent and consent is subsequently requested retrospectively the owner for the time being of the Premises shall pay to the Landlord the costs incurred in granting retrospective consent in the event that retrospective consent is granted
- 5.2.2.8 carry on any trade manufacture or business upon the Premises or any part of it nor to use any building at any time erected on it for any purpose other than for a single private dwellinghouse and appurtenances to it for the occupation of one family only nor to subdivide the Premises into tenements or flats
- 5.2.2.9 fix or set up in or on the Premises any bill poster placard or advertisement (except for advertising the sale of the Premises) and not to erect any board hoarding prop support or place for the exhibition or display of any bill poster placard or advertisement or any swinging hanging or fixed sign for any purpose unless the Landlord's prior written consent is obtained
- 5.2.2.10 place or permit to be placed any soil refuse or other material on or against any of the boundary walls or fences of the Premises
- 5.2.2.11 erect any fence or plant any hedge tree or shrub on the Premises which exceeds two metres in height
- 5.2.2.12 park any cars caravans or trailers upon the garden of the Premises
- 5.2.2.13 keep any livestock (including pigeons) other than domestic pets upon the Premises
- 5.2.2.14 fell lop trim cut or damage any existing tree or trees on the Premises unless the Landlord's prior written consent is obtained
- 5.2.3 Any disputes between the tenants and leaseholders or occupiers of other premises in respect of the Estate shall be settled by reference to the Landlord
- 5.2.4 Any application for any permission required under these regulations shall be made in writing to the Landlord

## 6 **PROVISOS**

The parties agree the following provisos.

### 6.1 **Proviso for re-entry**

6.1.1 This Clause 6.1 (*Proviso for re-entry*) shall apply where:

- (a) the Specified Rent shall be unpaid for 21 days after becoming payable (whether formally demanded or not); or
- (b) if any covenant on the part of the Leaseholder shall not be performed or observed.

6.1.2 Subject to the Landlord obtaining any court order required the Landlord may at any time re-enter the Premises or any part of them and terminate this Lease.

6.1.3 Clause 6.1.2 does not affect any right of action or remedy of the Landlord in respect of any earlier breach of any of the Leaseholder's covenants or the conditions contained in this Lease provided that (without prejudice to the Landlord's rights under this Lease):

- (a) the Landlord shall give notice to the Mortgagee or any mortgagee of the Leaseholder of whom the Landlord has received notice pursuant to Clause 3.23 (*Register disposals*) (as the case may be) before commencing any proceedings for forfeiture of this Lease or proceedings for possession of the Premises; and
- (b) if within a period of 28 days (or within such other period specified in the Landlord's notice as the notice period, if longer) the Mortgagee or such mortgagee of the leaseholder of whom the Landlord has received notice (as the case may be) indicates in writing to the Landlord that it wishes to remedy such breach, and/or is going to take such action as may be necessary to resolve the problem complained of by the Landlord, the Landlord shall allow 28 days (or such longer time as may be reasonable in view of the nature and extent of the breach) to remedy such breach and take the action necessary to resolve such problem.

6.1.4 If at any time during the tenancy the Leaseholder shall fail to pay the Specified Rent (whether formally demanded or not) or if any covenant on the part of the Leaseholder shall not be performed or observed then this tenancy may be brought to an end on any of those grounds for possession mentioned in Schedule 8 below (whether that provision takes the form of a provision for re-entry, for forfeiture, for determination by notice or otherwise).

## 6.2 **Limitation of Landlord's Liability**

The Landlord shall not be liable for any damage suffered by the Leaseholder or any member of the Leaseholder's family or any employee, servant or licensee of the Leaseholder through any defect in any fixture, tank, Service Media, staircase, machinery, apparatus or thing in the Premises or through the neglect, default or misconduct of any servant employed by the Landlord acting outside the Landlord's instruction in connection with the Premises or for any damage to the Premises due to the bursting or overflowing of any tank, boiler or Service Media in the Premises except insofar as any such liability may be covered by insurance effected by the Landlord.

## 6.3 **Landlord's power to deal with other Property**

Notwithstanding anything contained in this Lease the Landlord shall have power without obtaining any consent from or making any compensation to the Leaseholder to deal as the Landlord may think fit with any other land, buildings or premises adjoining or near to the Premises and to erect, rebuild or heighten on such other land or premises any buildings whether such buildings shall or shall not affect or diminish the light or air which may now or at any time during the Term be enjoyed by the Leaseholder or other tenants or occupiers of the Premises.

## 6.4 **Power to alter Communal Facilities**

The Landlord shall have power at its discretion to alter the arrangement of the Communal Facilities provided that after such alteration the access to and amenities of the Premises are not substantially less convenient than before.

## 6.5 **Party walls**

Every internal wall separating the Premises from any other building shall be a party wall severed medially.

## 6.6 **Suspension of rent in case of insured damage**

If the whole or any part of the Premises are destroyed or damaged by fire or any other risks covered by the Landlord's insurance so as to be rendered unfit for use then (unless the insurance money is irrecoverable by reason of any act or default of the Leaseholder) the Specified Rent or a fair proportion of it shall be suspended until the Premises are again fit for use.

## 6.7 **Frustration clause**

6.7.1 Subject to Clause 6.7.2, in the event of the repair, rebuilding or reinstatement of the Premises being frustrated by any reason beyond the control of the Landlord the Leaseholder will surrender to the Landlord this Lease in consideration of the Landlord paying to the Leaseholder a sum equal to the Acquired Percentage of any insurance monies received by the Landlord in respect of the Premises.

6.7.2 If at the time of such frustration there is any Loan outstanding to a Mortgagee of the Premises then the consideration for such surrender shall be the amount referred to in Clause 6.7.1 plus the Mortgage Protection Claim (calculated on the basis that paragraph (h) in the definition of "Loss" in Schedule 7 (*Defined Terms*) is the amount referred to in Clause 6.7.1).

6.7.3 Any overpayment of insurance monies shall be a debt due from the Leaseholder to the Landlord and shall be payable on demand.

## 6.8 **Expert determination**

6.8.1 In this Lease, where any issue is required to be dealt with by, or submitted for the determination of, an independent expert, the following provisions of this Clause 6.8 (*Expert determination*) are to apply but, in case of conflict with other provisions specifically relating to expert determination elsewhere in this Lease, those other provisions are to prevail to the extent of the conflict.

6.8.2 The expert is to be appointed by the parties jointly, or if they cannot or do not agree on the appointment, appointed by whichever of the following is appropriate:

- (a) the president from time to time of the Royal Institution of Chartered Surveyors; or
- (b) the president from time to time of the Institute of Chartered Accountants in England and Wales,

or in either case the duly appointed deputy of the president, or other person authorised by him to make appointments on his behalf.

6.8.3 The person so appointed is to:

- (a) act as an expert, and not as an arbitrator; and
- (b) must afford the parties the opportunity within such a reasonable time limit as he may stipulate to make representations to him (accompanied by professional valuations, reports or other appropriate evidence in the

relevant circumstances) and permit each party to make submissions on the representations of the other.

- 6.8.4 Neither the Landlord nor the Leaseholder may without the consent of the other disclose to the expert correspondence or other evidence to which the privilege of non-production ("without prejudice") properly attaches.
- 6.8.5 The fees and expenses of the expert, including the cost of his nomination, are to be borne as the expert may direct (but in the absence of such a direction, by the parties in equal shares), but (unless they otherwise agree) the parties shall bear their own costs with respect to the determination of the issue by the expert.
- 6.8.6 One party may pay the costs required to be borne by another party if they remain unpaid for more than 21 days after they become due and then recover these and any incidental expenses incurred from the other party on demand.
- 6.8.7 If the expert refuses to act, becomes incapable of acting or dies, the Landlord or the Leaseholder may request the appointment of another expert in his stead under Clause 6.8.2.
- 6.8.8 The determination of the independent expert, except in case of manifest error, is to be binding on the Landlord and the Leaseholder.

#### 6.9 **Cesser of Liability in respect of covenants**

A party who was formerly the Landlord is to cease to be liable to perform and observe the covenants and conditions on the part of the Landlord contained in this Lease at and from the date of an assignment of the immediate reversion to this Lease.

### 7 **MORTGAGE PROTECTION**

- 7.1 If a Mortgagee enforces its security in respect of the Loan then (subject to the other provisions of this Clause 7 (*Mortgage protection*)) the Mortgagee is entitled to deduct the amount of the Mortgagee Protection Claim from monies that would otherwise be paid to the Landlord as the price for the Final Staircasing. There is no obligation on a Mortgagee to accomplish Final Staircasing.
- 7.2 The deduction under Clause 7.1 is conditional upon the Mortgagee agreeing simultaneously with the deduction under Clause 7.1 that upon such deduction or, if later, promptly upon the Mortgagee recovering the whole of its Loss, the Mortgagee shall assign to the Landlord any guarantees, insurance policies and any other collateral security given to the Mortgagee or secured by the Mortgagee in respect of the Loan together with all other rights to enforce the same and all sums payable under them.
- 7.3 A claim may only be made to the extent:
- (a) the Mortgagee has made a Loss; and
  - (b) the Mortgagee has obtained the Landlord's consent to the terms of each and every Loan; and
  - (c) the disposal of the Leaseholder's interest in the Premises was made on an arm's length basis at the best price reasonably obtainable in the market at the time of sale. For the purpose of this Clause 7.3(c) the onus of proof is on the Landlord to show the sale was at an undervalue; and

- (d) the Leaseholder has not, prior to any default occurring under the Loan, accomplished Final Staircasing.

7.4 When applying for the Landlord's consent under Clause 7.3(b) the Mortgagee must provide full details of the terms of the proposed Loan. The Landlord must respond promptly to any request for consent and give its decision within 28 days. If such consent is given it must be given in writing, and must be retained by the Mortgagee. In addition such consent shall be deemed to be given in the event that the Landlord receives any amounts advanced by the Mortgagee which are applied in protecting, preserving or enforcing its security over this Lease (including any amounts advanced by the Mortgagee and applied in discharging any arrears of rent and/or other sums payable under this Lease).

7.5 If the Landlord makes a payment to the Mortgagee or a deduction is made by the Mortgagee the Landlord shall be entitled to claim against the Leaseholder for any such amount together with interest on such sum calculated in accordance with the provisions of Clause 3.2 (*Interest*).

7.6 The Leaseholder hereby authorises:

- (a) the Landlord to disclose to any Mortgagee of the Leaseholder from time to time personal information relating to the Leaseholder or to the provisions of this Lease (including details of any arrears of rent or other sums payable under this Lease); and
- (b) any Mortgagee from time to time of the Leaseholder to disclose to the Landlord such information as the Landlord may request regarding the Leaseholder and the Loan (including details of any arrears).

## 8 **STAMP DUTY CERTIFICATE AS SHARED OWNERSHIP**

For the purposes of paragraph 4 of schedule 9 of the Finance Act 2003 the Landlord and the Leaseholder confirm that the premium obtainable on the open market for the Premises (by reference to which the Premium is calculated) is the Initial Market Value and the minimum rent payable is the Minimum Rent and that the Leaseholder intends stamp duty land tax to be charged in accordance with the said paragraph 4 of schedule 9 by reference to the Initial Market Value and the Minimum Rent.

## 9 **NOTICES**

For the purposes of Section 48 of the Landlord and Tenant Act 1987 the address at which any notices (including notices in any proceedings) may be served on the Landlord by the Leaseholder is (until the Leaseholder is notified to the contrary) as follows. A notice to be served under this Lease shall be served in writing and shall be properly served if served upon the Landlord at its registered office and/or upon the Leaseholder at the Premises and shall be deemed to have been made or delivered if left at such address or two days after being posted postage prepaid and by first class recorded delivery in an envelope addressed to them at such address.

## 10 **LANDLORD AND TENANT (COVENANTS) ACT 1995 DECLARATION**

For the purposes of the Landlord and Tenant (Covenants) Act 1995 the covenants on the part of the Landlord and on the part of the Leaseholder under this Lease are not personal covenants.

11      **VALUE ADDED TAX**

Sums payable under this Lease for the supply of goods and services are exclusive of value added tax which is to be payable, if applicable, in respect of and at the same time as each sum falls due for payment.

12      **LEASEHOLD REFORM ACT 1967 DECLARATION**

Pursuant to paragraph 3(2)(g) of Schedule 4A to the Leasehold Reform Act 1967 the Landlord declares that in its opinion this Lease is excluded from the operation of Part 1 such Act.

13      **CHARITY CLAUSE – KEELMAN HOMES LIMITED ONLY**

13.1      In accordance with section 37(1) of the Charities Act 1993 the Landlord certifies that the Charitable Land is held by the Landlord in trust for a charity (for Keelman Homes Limited) which is not an exempt charity and this Lease is not one falling within paragraph (a) (b) or (c) of subsection 9 of section 36 of the Charities Act 1993 and therefore the restrictions on disposition imposed by that section apply to this Lease.

13.2      In accordance with section 37(2)(b) of the Charities Act 1993 the Landlord certifies that it has the power under the trusts of the charity to effect this Lease and that it has complied with the provisions of section 36 of the Charities Act 1993 so far applicable to it

14      **AGREEMENTS AND DECLARATIONS**

- (i)      If any dispute of difference arises between the Landlord and the Leaseholder relating to any of the provisions of this Lease then such dispute or difference shall be referred to the appropriate Court which has jurisdiction for the Premises
- (ii)      Any light or air now or at any time enjoyed by the Premises over any of the Estate is deemed to be enjoyed with the consent of the Landlord
- (iii)      If at any time after the date of this Lease there is a need or requirement for a Deed of Rectification or similar Deed to be executed by the Landlord and the Leaseholder each party to that Deed shall be responsible for its own costs in relation to the preparation and completion of such Deed
- (iv)      The Leaseholder will at all times observe and perform the restrictive covenants referred to in this Lease which are for the benefit of the Estate but shall not be liable for any breach of them after he has parted with all interest in the Premises and as it is intended to create a building scheme in respect of the Estate the Landlord agrees that:-
  - (a)      the Estate is laid out in separate housing plots and
  - (b)      the restrictive covenants referred to in this lease will so far as circumstances allow be imposed in each transfer of any plot within the Estate with the intention that the owner for the time being of each plot is to have the benefit of and the right to enforce the restrictive covenants imposed on every other plot within the Estate regardless of whether the other plot was transferred by the Landlord

before or after the date of the lease of the plot to the owner for the time being who wishes to enforce the restrictive covenants

provided that nothing shall prevent the Leaseholder from:-

- (c) transferring or holding any part or parts (as distinct from plots) of the Estate free from restrictive covenants similar to those referred to in this Lease
- (d) varying releasing modifying or waiving any breach of any of the restrictive covenants in any transfer of any plot within the Estate irrespective of whether such variation release modification or waiver takes place before or after any transfer of any other plot or plots within the Estate

**Delivered as a deed on the date of this document.**

## **Schedule 1 The Premises**

- 1 The Premises known as \_\_\_\_\_ and is defined on the attached Plan and shown coloured pink [and blue]
- 2 The Premises include:
  - (a) all buildings, erections and structures on the Premises from time to time;
  - (b) the Service Media within and exclusively serving the Premises; and
  - (c) appurtenances, fixtures, fittings and rights granted by this Lease, and improvements and additions made to, and fixtures, fittings and appurtenances in, the Premises.
3. The Premises does not include:
  - (i) any mines or minerals of every description (which have not previously been severed or reserved by deed or statute) in or under the Premises
  - (ii) the cables and wires (if any) which are installed in the Premises and used in connection with the Housing Care Warden Call System  
  
which remain the Landlord's property
4. The Premises is leased subject to:
  - (a) the subsisting occupation of the Premises by the Leaseholder with the intent that the Leaseholder's existing tenancy of the Premises granted by the Landlord merges and is extinguished in the fee simple of the Premises
  - (b) the covenants contained in the Charges Register of Title Number TY \_\_\_\_\_ so far as such covenants affect the Premises and are subsisting and capable of being enforced

**Schedule 2**  
**Easements, Rights and Privileges**

- (i) A right in common with the owner for the time being of the adjoining premises at all times on foot only to pass and repass over the land shown coloured brown (if any) on the Plan
- (ii) A right in common with the owner for the time being of the adjoining premises to use maintain and repair the soil waste and vent stack (if any) which services the Premises and the adjoining premises
- (iii) A right to the passage and running of gas water electricity soil waste radio television signals or telephone services in through or along the sewers drains gutters watercourses pipes cables wires channels or conductors in on or under any adjoining premises
- (iv) A right to enter into or on any adjoining premises in cases of emergency only for the purpose of repairing the sewers drains gutters watercourses pipes cables wires channels or conductors referred to in sub-clause (iii) above

**Schedule 3**  
**Exceptions and Reservations**

- (i) The right to win work and carry away any mines or minerals of every description which belong to the Leaseholder in or under the Premises
- (ii) All rights of way water light drainage air or other easements or quasi-easements of any kind in under or over the Premises as are now used or enjoyed by the Landlord in respect of the Estate
- (iii) A right of support by and from the Premises for the buildings now or at any time erected on any of the Estate
- (iv) A right to unlimited light and air over the Premises and to build rebuild alter or permit or suffer to be built rebuilt or altered any buildings or erections upon any of the Estate to whatever height and extent and in any manner as the Landlord requires without obtaining consent from or making any compensation to the Leaseholder notwithstanding that such buildings as so built rebuilt or altered may obstruct any light to windows or other openings in the Premises or any buildings now or at any time erected on it
- (v) The right at any time or times:-
  - (a) to make connections with examine the state and condition of maintain clean repair or renew the existing sewers drains gutters watercourses pipes cables wires channels or conductors now erected constructed placed or laid in on through or under the Premises at such point or points as the Landlord may require
  - (b) to erect construct place or lay in on through or under the Premises additional sewers drains gutters watercourses pipes cables wires channels or conductors as the Landlord may require
  - (c) to attach to retain or place on the Premises any wire pole column or other equipment necessary for the provision of any television wireless electricity lighting or telephone services
  - (d) to examine the state and condition of maintain clean repair or renew any additional works referred to in sub-clauses (b) and (c) of this clause
- (vi) A right to the passage and running of gas water electricity soil waste radio television signals or telephone services in through or along the existing works referred to in sub-clause (v)(a) above and any additional works referred to in sub-clauses (v)(b) and (c) above
- (vii) A right to enter as often as occasion shall require with or without appliances and vehicles at all reasonable times upon the Premises for the purpose of exercising the rights mentioned in sub-clause (v) subject to the person exercising any of the rights making good or paying compensation for all damage occasioned to the Premises or the existing works referred to in sub-clause (v)(a)
- (viii) A right in common with the Leaseholder at all times on foot only to pass and repass over the land shown coloured blue (if any) on the Plan
- (ix) A right in common with the Leaseholder to use maintain and repair the soil waste and vent stack (if any) which services the Premises and the adjoining premises
- (x) A right in common with the Leaseholder and all others lawfully entitled to pass and repass under that part of the Premises shown pink hatched black (if any) on the Plan
- (xi) A right to enter the Premises at all reasonable times for the purpose of inspecting repairing maintaining removing replacing altering or improving any of the Landlord's cables or wires (if any) which are used in connection with the Housing Care Warden Call System

- (xii) A right to enter the Premises to examine the state and condition of and maintain repair cleanse and renew any building or structure belonging to the Landlord which adjoins or abuts any boundary of the Premises subject to the Landlord making good all damage caused to the Premises in exercising this right to the reasonable satisfaction of the Leaseholder or its successors in title

## Schedule 4 Rent Review

### 1 Definitions

In this Schedule 4 (*Rent Review*):

"**A**" means the monthly figure shown in the Index published for the Relevant Month in the year of the immediately preceding Relevant Review Date or (if none) in the year of the date of the Commencement Date.

"**B**" means the monthly figure shown in the edition of the Index for the Relevant Month in the year of the Relevant Review Date.

"**Index**" means the all items retail prices index published by the Office for National Statistics.

"**Relevant Month**" means [the calendar month which is two calendar months before<sup>3</sup>] the Relevant Review Date.

### 2 Gross Rent review

With effect from each Review Date the Gross Rent for the purposes of this Lease shall be the reviewed Gross Rent (as agreed or determined in accordance with this Schedule 4 (*Rent Review*)).

### 3 Upwards only rent review

- (a) The reviewed Gross Rent is to be the greater of:
- (i) the Gross Rent under this Lease immediately preceding the Relevant Review Date x 1.005; and
  - (ii) (the Gross Rent under this Lease immediately preceding the Relevant Review Date x  $\frac{B}{A}$ ) x 1.005.
- (b) If the Index is re-based after A is published, but before B is published, then an appropriate adjustment shall be made in the calculation to ensure that both B and A are calculated on the same basis.
- (c) If the Index ceases to be published then there shall be substituted in the calculation in paragraph 3(a)(ii) such other index as the Landlord shall (acting reasonably) determine as being a generally respected measure of the general increase in retail prices.
- (d) If, because of any change after the date of this Lease in the method used to compile the Index or for any other reason it becomes impossible or impracticable to calculate fairly the fraction referred to in paragraph 3(a)(ii) by reference to the

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<sup>3</sup> The RPI is normally published two months after the month to which it relates, so practical difficulties could arise if "Relevant Month" was the same as (or only one month before) the month in which the Review Date occurs. If the RPI for a specific month (say September) is used in all of the Landlord's leases, then the words in square brackets should read "[the September which is at least two clear calendar months and no more than 14 clear calendar months]"

Index, or if any dispute or question arises between the parties to this Lease with respect to any such calculation pursuant to paragraph 3(a)(ii) or with respect to the construction or effect of this provision, then such dispute or question shall (if it is not resolved within 3 months of the Relevant Review Date) be referred to an independent expert pursuant to Clause 6.8 (*Expert determination*).

4 **Specified Rent Review**

With effect from each Review Date the Specified Rent reserved under this Lease shall be reviewed to an amount equal to the Unacquired Percentage of the Gross Rent as at that Review Date as agreed or determined in accordance with the terms of this Schedule.

5 **Time**

Whilst the parties are encouraged to act promptly and reasonably in order to resolve disputes as soon as possible, in agreeing or determining the reviewed Gross Rent, the reviewed Specified Rent or in appointing an expert, no rights or obligations are extinguished by the passage of time.

6 **Rental Adjustments**

(a) If the reviewed Specified Rent payable from a Review Date is not agreed or determined in accordance with the provisions of this Schedule 4 (*Rent Review*) before the Relevant Review Date, then until the reviewed Specified Rent has been so agreed or determined, the Leaseholder will continue to pay on account Specified Rent at the rate payable immediately before the Relevant Review Date.

(b) Within 14 days after the time that the reviewed Specified Rent has been agreed or determined the Leaseholder will pay to the Landlord all arrears of the reviewed Specified Rent which have accrued in the meantime[, with interest equal to the base rate of Barclays Bank PLC on each of the instalments of the arrears from the time that it would have become due if the reviewed rent had then been agreed or determined until payment becomes due from the Leaseholder to the Landlord under this paragraph 6(b)].

7 **Notice of Review**

Immediately following each Review Date the Landlord shall serve written notice on the Leaseholder, substantially in the form set out in Appendix 2 specifying the amount of the reviewed Gross Rent and the amount of the Specified Rent then payable.

## **Schedule 5 Staircasing**

1

- (a) At any time or times during the Term the Leaseholder may serve notice in writing on the Landlord stating the Portioned Percentage he proposes to acquire. The provisions of this Schedule 5 (*Staircasing*) shall also be exercisable by any mortgagee of the Leaseholder of whom the Landlord has received proper notice pursuant to Clause 3.23 (*Register disposals*).
- (b) The Landlord shall apply to the Valuer to determine the Market Value as at the date of service of the Leaseholder's notice served pursuant to paragraph 1(a) (upon which the price of acquisition will be based) within 14 days of receipt of the Leaseholder's notice (or, if later, within 14 days of the Valuer's appointment) and shall notify the Leaseholder of the amount of the Valuer's determination in writing within 7 days of receipt of the said determination.
- (c) At any time within 3 months of the Valuer's determination the Leaseholder may pay for a Portioned Percentage in accordance with the provisions of paragraph 1(d).
- (d) The Leaseholder may pay for a Portioned Percentage by paying to the Landlord a sum equal to that Portioned Percentage of Market Value (as agreed or determined under this Schedule 5 (*Staircasing*)) plus any unpaid sums under paragraph 1(e) and as from the date of such payment (a) the Portioned Percentage so acquired shall form part of the Acquired Percentage and (b) the Specified Rent payable under this Lease shall be a sum equal to the Unacquired Percentage of the Gross Rent.
- (e) On completion of the payment for a Portioned Percentage in addition to the sum or the price payable for the Portioned Percentage the Leaseholder shall pay any arrears of rent and any other sums due to the Landlord under this Lease including any unpaid costs under paragraph 2. The Landlord and the Leaseholder shall, save as provided in paragraph 2 pay their own costs and expenses in connection with such payment or purchase.
- (f) Whenever the Leaseholder completes the payment for a Portioned Percentage the Landlord and the Leaseholder shall forthwith execute and deliver to the other (to be attached to the original and counterpart of this Lease) a memorandum substantially in the form set out in Appendix 1 specifying the Portioned Percentage paid for and the Specified Rent then payable.
- (g) If the provisions of this Schedule 5 (*Staircasing*) are exercised by any mortgagee under paragraph 1(a) then provided that the Premises are being sold by the mortgagee on an arm's length basis at the best price reasonably obtainable at the time of sale:
  - (i) the Market Value shall be deemed to be the price at which the Premises are being sold by the mortgagee on the assumption that the Acquired Percentage is the Maximum Percentage;
  - (ii) the relevant Portioned Percentage shall be calculated on the basis of that deemed Market Value; and
  - (iii) if so requested by the mortgagee, the Landlord shall co-operate with the mortgagee to ensure that there occurs simultaneously (A) the payment to the Landlord of the relevant Portioned Percentage under paragraph 1(d),

(B) delivery by the Landlord to the mortgagee of the memorandum under paragraph 1(f), and (C) completion of the sale of the Premises by the mortgagee.

- (h) Where the Leaseholder serves a notice under paragraph 1(a) the Landlord must not act in a way that would unreasonably delay the acquisition by the Leaseholder of the Portioned Percentage he proposes to acquire.
- 2 The costs of any determination by the Valuer pursuant to the provisions of this Schedule 5 (*Staircasing*) shall be paid by the Leaseholder to the Landlord on demand.
- 3 The parties agree that the decision of the Valuer shall be final and binding on the parties to this Lease.

## **Schedule 6** **Mandatory Buyback<sup>4</sup>**

### **Part 1**

- 1 If the Landlord has served written notice on the Leaseholder in accordance with Clause 3.21.2(a) the Landlord and the Leaseholder will agree the Market Value (as defined in Schedule 7) of the Leaseholder's interest in the Premises. Where the Landlord and Leaseholder are unable to agree the manner in which the Market Value should be determined, they may appoint an independent expert to determine the Market Value. If the Landlord and Leaseholder are unable to agree on the person to be appointed, either party may apply to the President of the Royal Institution of Chartered Surveyors for the Market Value to be determined by the President or such person as he may nominate.
- 2 The Leaseholder will serve written notice on the Landlord confirming (when this is the case) that the Leaseholder is ready to surrender the Term ("Ready to Sell Notice"), provided that the Leaseholder will not serve a Ready to Sell Notice unless and until the Market Value has been agreed or determined in accordance with paragraph 1 above.
- 3 The price that must be paid by the Landlord to the Leaseholder on completion of the surrender of the Term must be no greater than the Acquired Percentage as at the date of the Ready to Sell Notice, of the Market Value (as defined in Schedule 7).
- 4 The Landlord must complete the surrender of the Term no later than three months after the Landlord has received the Leaseholder's Ready to Sell Notice.

### **Part 2**

- 5 If the Landlord serves written notice on the Leaseholder pursuant to Clause 3.21.2(b):
  - 5.1 the provisions set out in paragraphs 1-4 above will apply save that all references to the Landlord will be replaced with references to the Nominated Association and all references to a surrender of the Term will be replaced with assignment of the Lease; and
  - 5.2 the Landlord will procure that the Nominated Association complies with its obligations set out in paragraphs 1-4 above.

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<sup>4</sup> Delete whole schedule if leaseholder cannot staircase beyond 80%

## **Schedule 7 Defined Terms**

In this Lease:

**"Acquired Percentage"** means the percentage figure equal to the aggregate of the Initial Percentage and any Portioned Percentage or Portioned Percentages paid for pursuant to Schedule 5 (*Staircasing*).

**"Communal Facilities"** means party walls, fences, gutters, drains, roadways, pavements, entrance ways, staircases, lavatories, accessways, passages, lifts, escalators, turntables, courtyards, external pavements, car parks and service or loading areas, service roads and other such amenities which are or may be used or enjoyed by an occupier of the Premises in common with any other person or persons.

**"Covenants and Provisions"** means those covenants and provisions contained within the Charges Register to title number TY (if any).

**"Default"** means:

- (a) the existence of arrears of at least 3 months' payments in respect of the Loan; or
- (b) any other breach by the Leaseholder of the terms applicable to the Loan.

**"Enforcement Date"** means the date on which the Mortgagee commences its enforcement of any of the security for the Loan by reason of a Default.

**"Estate"** means the land within the solid blue line on the Plan except that where the Estate extends beyond the land included on the plan the blue line is broken to denote that the Estate continues beyond such broken line

**"Final Staircasing"** means the purchase by the Leaseholder from the Landlord of such Portioned Percentage that increases the Acquired Percentage to the Maximum Percentage.

**"Landlord"** includes all persons from time to time entitled to the immediate reversion to this Lease.

**"Lease"** includes any documents supplemental to this lease.

**"Leaseholder"** includes the Leaseholder's successors in title and assigns in whom this Lease may for the time being be vested.

**"Loan"** means the loans made by the Mortgagee to the Leaseholder (after first obtaining the Landlord's written consent to each and all such loans) and which loans are secured by a valid and binding first ranking mortgage over the Premises. For the purposes of this definition repayments of capital shall not reduce the Loan.

**"Loss"** means the amount by which the aggregate of:

- (a) a sum representing the Loan advanced for the purchase of the Initial Percentage share in the Premises;

- (b) the Loan made (if any) to accomplish Final Staircasing in the Premises as part of the enforcement process or as a result of further Loan being made;
- (c) Loans for other sums in relation to the Premises or any other purpose;
- (d) interest accruing at the rate applicable to the Loan;
- (e) costs incurred in relation to the enforcement of the Loan or any security for it (including advances to cover arrears of rent and/or other sums payable under this Lease) provided that costs of actual disposal shall not exceed 3% of Market Value at the time;
- (f) costs incurred in relation to the protection or preservation of the Loan or any security for it; and
- (g) any other sums due to the Mortgagee in respect of the Loan made to the Leaseholder,

(less any repayments which have been made), exceeds the aggregate of:

- (h) the gross sale proceeds to be received from a disposal (including a surrender) of the Leaseholders interest in the Premises; and
- (i) all amounts (if any) received by the Mortgagee as a result of the enforcement by the Mortgagee of all (if any) security which the Mortgagee may have including, without limitation, all security, guarantees and insurance policies given to the Mortgagee.

**"Market Value"** shall at the date of this Lease mean the Initial Market Value and shall at any subsequent date mean the price which the interest of the Leaseholder would then fetch if sold on the open market by a willing seller and on the assumption that the Unacquired Percentage is nil and disregarding the following matters:

- (a) any mortgage of the Leaseholder's interest;
- (b) any interest in or right over the Premises created by the Leaseholder;
- (c) any improvement made by the Leaseholder or any predecessor in title of his; and

1.2 **any failure by the Leaseholder or any predecessor in title to carry out the obligations contained in Clause 3.5 (Gas Installations**

Where at the date of this Lease or at any time thereafter the Premises has or is fitted with gas installations then:-

1.2.1 The Leaseholder must no fewer than once in every Account Year have all the gas installations within the Premises tested in accordance with the Statutory Instrument and to obtain and produce to the Landlord a gas service certificate

3.5.2 If the Leaseholder fails to produce a gas service certificate in accordance with clause 3.5.1 above then it shall be lawful for the Landlord its officers agents or contractors to enter onto the Premises at all times upon giving reasonable notice to the Leaseholder for the purpose of carrying such a test and all costs incurred by the Landlord incidental thereto shall be repaid by the Leaseholder to the Landlord

on demand and in the event of non-payment the Landlord will be permitted to recover the cost by action for rent arrear.

(d) Repair *Repair*) and Clause 3.7 (*Decoration*).

**"Minimum Rent"** means One peppercorn per month (if demanded).

**"Mortgagee"** means a lender who shall have made available to the Leaseholder a Loan (which expression includes its successors and assigns and also any persons for whom the Mortgagee is acting as agent or trustee).

**"Mortgagee Protection Claim"** means the Loss capped at a maximum of the aggregate of:

- (a) an amount equivalent to interest on the Loan for a period of 18 months from the Enforcement Date at the interest rate applicable to the Loan immediately before the Enforcement Date;
- (b) the Loan;
- (c) any amounts advanced by the Mortgagee and applied in discharging any arrears of rent and/or other sums payable under this Lease; and
- (d) any costs and fees incurred in enforcing the Mortgagee's security for the Loan (capped at 3% of Market Value at the time of such enforcement).

**"Nominated Association"** means either a housing association or a landlord registered as a social landlord in England under Part 1 of the Housing Act 1996, nominated by the Landlord to take an assignment of the Premises in accordance with Clause 3.21.2(b) and Clause 4(4)<sup>5</sup>

**"Outgoings"** means (in relation to the Premises) all existing and future rates, taxes, charges, duties, assessments, impositions and outgoings whatsoever (whether parliamentary or local) which are now or may at any time be payable, charged or assessed on property or any part of them, or the owner or occupier of property and all Service connection and disconnection charges.

**"Particulars"** means the Particulars set out in this Lease.

**"Plan"** means the plan attached to and forming part of this Lease.

**"Portioned Percentage"** means at any relevant time (including for the avoidance of doubt on the Final Staircasing) the percentage interest in the Premises which the Leaseholder proposes to acquire (or has already acquired) under the provisions of Schedule 5 (*Staircasing*), being a portion of the then Market Value of the Premises up to the Maximum Percentage, each Portioned Percentage being at least 10% and no more than 25%, and so that the Portioned Percentage which accomplishes Final Staircasing shall be at least 10%.

**"Premises"** means the premises described in Schedule 1 (*The Premises*).

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<sup>5</sup> Wording in blue only required if leaseholder can staircase to more than 80%

**"Service Media"** means drains, sewers, conduits, flues, gutters, gullies, channels, ducts, shafts, watercourses, pipes, cables, wires, mains, electrical risers, aerials and any other conducting media.

**"Standard Conditions of Sale"** means the Standard Conditions of Sale (Fourth Edition).

**"Term"** means the term of [99] years from and including the Commencement Date.

**"Termination Date"** means the date of termination of the Term whether by effluxion of time or by re-entry under the provisions of this Lease or by or from any other means or cause whatsoever

**"Unacquired Percentage"** shall mean the percentage figure equal to 100% less the Acquired Percentage.

**"Valuer"** means an independent expert who is an associate or fellow of the Royal Institution of Chartered Surveyors agreed between the Landlord and the Leaseholder or in default of agreement appointed on the application of either Landlord or Leaseholder by or on behalf of the president of the Royal Institution of Chartered Surveyors.

**"Valuer's Certificate"** means a written certificate from an associate or fellow of the Royal Institution of Chartered Surveyors confirming the amount of the Market Value for the purposes of clause 3.20.4.

## **Schedule 8**

### **Grounds for Possession**

#### **Ground 2**

The dwelling-house is subject to a mortgage granted before the beginning of the tenancy and—

- (a) the mortgagee is entitled to exercise a power of sale conferred on him by the mortgage or by section 101 of the Law of Property Act 1925; and
- (b) the mortgagee requires possession of the dwelling-house for the purpose of disposing of it with vacant possession in exercise of that power; and
- (c) either notice was given as mentioned in Ground 1 above or the court is satisfied that it is just and equitable to dispense with the requirement of notice;

and for the purposes of this ground "mortgage" includes a charge and "mortgagee" shall be construed accordingly.

#### **Ground 8**

Both at the date of the service of the notice under section 8 of this Act relating to the proceedings for possession and at the date of the hearing—

- (a) if rent is payable weekly or fortnightly, at least eight weeks' rent is unpaid;
- (b) if rent is payable monthly, at least two months' rent is unpaid;
- (c) if rent is payable quarterly, at least one quarter's rent is more than three months in arrears; and
- (d) if rent is payable yearly, at least three months' rent is more than three months in arrears;

and for the purpose of this ground "rent" means rent lawfully due from the tenant.

#### **Ground 10**

Some rent lawfully due from the tenant—

- (a) is unpaid on the date on which the proceedings for possession are begun; and
- (b) except where subsection (1)(b) of section 8 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

#### **Ground 11**

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

### **Ground 12**

Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

### **Ground 13**

The condition of the dwelling-house or any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any other person residing in the dwelling-house and, in the case of an act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

For the purposes of this ground, "common parts" means any part of a building comprising the dwelling-house and any other premises which the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other dwelling-houses in which the landlord has an estate or interest.

### **Ground 14**

The tenant or a person residing in or visiting the dwelling-house—

- (a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or
- (b) has been convicted of—
  - (i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or
  - (ii) an indictable offence committed in, or in the locality of, the dwelling-house.

### **Ground 14A**

The dwelling-house was occupied (whether alone or with others) by a married couple, a couple who are civil partners of each other, a couple living together as husband and wife or a couple living together as if they were civil partners and—

- (a) one or both of the partners is a tenant of the dwelling-house,
- (b) the landlord who is seeking possession is a non-profit registered provider of social housing, a registered social landlord or a charitable housing trust, or, where the dwelling-house is social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008, a profit-making registered provider of social housing,
- (c) one partner has left the dwelling-house because of violence or threats of violence by the other towards—
  - (i) that partner, or
  - (ii) a member of the family of that partner who was residing with that partner immediately before the partner left, and
- (d) the court is satisfied that the partner who has left is unlikely to return.

For the purposes of this ground "registered social landlord" and "member of the family" have the same meaning as in Part I of the Housing Act 1996 and "charitable housing trust" means a housing trust, within the meaning of the Housing Associations Act 1985, which is a charity within the meaning of the Charities Act 1993.

### **Ground 15**

The condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any other person residing in the dwelling-house and, in the case of ill-treatment by a person lodging with the tenant or by a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

### **Ground 17**

The tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by—

- (a) the tenant, or
- (b) a person acting at the tenant's instigation

**EXECUTION PAGE**

Executed as a deed by **Keelman Homes** )  
**Limited** acting by: )  
)

Director

Director/Secretary

Executed as a deed by [•] in the presence )  
of: )  
)

Executed as a deed by [•] in the presence )  
of: )  
)

**Appendix 1**  
**Memorandum of Staircasing**  
**(Number [•] )**

Premises :  
Date of Lease :  
Leaseholder :  
Landlord :

**THIS IS TO RECORD THE FOLLOWING:**

On the        day of        20    on the payment of £[•] (the "**Premium**") being [•] % of the Market Value of the Premises as assessed by the Valuer on the        20    the Leaseholder purchased a Portioned Percentage of [•]%.

The total share in the Premises now owned by the Leaseholder is [•]%

The Specified Rent (the rent payable) as from the        day of 20    (date of payment of the Premium) is £[•] per annum (subject to review).

Signed by the Leaseholder/for and on behalf of the Landlord.

## Appendix 2 Example of Notice of Rent Increase

To: Leaseholder

[insert details of the Premises] ("the Premises")

The next Rent Review Date under your shared ownership lease of the Premises is [●] [20 ].  
The rent which you currently pay is [●] per month.

The rent which you must pay on and after [●] [20 ] is [●] per month.

The new figure of [●] per month is calculated as follows:

- RPI Index for [●] [20 ] was [●] (this was the Index on which the rent review in [●] [20 ] was based);
- The Gross Rent fixed at the rent review in [●] [20 ] was [●] per month;
- RPI Index for [●] [20 ] is [●] (this is the Index on which the rent review in [●] [20 ] is being based);
- The reviewed Gross Rent as at [●] [20 ] is therefore [●] per month (being (£[●] x  $\frac{[●]}{[●]}$ ) x 1.005)

But because your share of the Premises is currently [●%] and our share is [●%], the rent which you must actually pay is only [●%] of [£●], which is the sum of [£●] per month.

### WORKED EXAMPLE:

The notice set out below would have been given in relation to a rent review in November 2008 in the following circumstances:

- The Lease had Rent Review Dates on 30 November in 2007 and 2008;
- As at November 2008, the Leaseholder's share in the Premises was 45%;
- The Gross Rent in November 2007 had been £100 per month (based on the RPI in September 2007), and so the actual rent payable would have been £55 per month (being 55% of £100).
- The RPI was 208.0 in September 2007, and 218.4 in September 2008.

*The next Rent Review Date under your shared ownership lease of the Premises is [30 November 2008]. The rent which you currently pay is [£55.00] per month.*

*The rent which you must pay on and after [30 November 2008] is [£58.04] per month.*

*The figure of [£58.04] per month is calculated as follows:*

- *RPI Index for [September 2007] was [208.0] (this was the Index on which the rent review in [November 2007] was based);*
- *The Gross Rent fixed at the rent review in November 2007 was [£100.00] per month;*
- *RPI Index for [September 2008] is [218.4] (this is the Index on which the rent review in [November 2008] is being based);*
- *The reviewed Gross Rent as at [30 November 2008] is therefore [£105.52] per month (being (£100 x  $\frac{218.4}{208.0}$ ) x 1.005)*

*But because your share of the Premises is currently [45%] and our share is [55%], the rent which you must actually pay is only [55%] of [£105.52], which is the sum of [£58.04] per month.*

## **Appendix 3**

### **Key Information for Shared Owners**

This note is intended as a brief guide for Leaseholders (i.e., shared owners) of the key provisions of the Shared Ownership Lease.

**All Leaseholders should carefully consider the terms of this note and the attached lease and discuss any issues that arise with his or her solicitor before entering into the lease.**

#### **1 HOW DOES SHARED OWNERSHIP WORK?**

Under a shared ownership lease, the Leaseholder buys a 'share' of the property and pays rent on the remaining share of the property (which remains in the ownership of the Landlord).

The Leaseholder can buy further shares in the property (up to the Maximum Percentage in Protected Areas) at the market value of those shares at the time of purchase. Buying further shares is referred to as 'staircasing'. Normally, when the Leaseholder owns 100%, he or she can acquire the freehold in the property for no charge, but that does not apply to properties in Protected Areas.

As the Leaseholder buys further shares, the rent will be reduced proportionately to reflect the fact that the Landlord's interest in the property has reduced.

#### **2 STANDARD LEASE OBLIGATIONS**

Although initially the property is not owned outright, the Leaseholder does have the normal responsibilities of a full owner. This means, for example, that the Leaseholder will be obliged to pay 100% of the outgoings relating to the property and to keep the property in good and substantial repair and condition.

The lease also contains other 'standard' obligations on the Leaseholder. For example, the Leaseholder will:

- if applicable, need to contribute towards the costs incurred by the Landlord in providing services;
- need to seek the Landlord's consent before making certain alterations; and
- if applicable, comply with regulations relating to the management of the estate of which the property forms part.

#### **3 RENT REVIEW**

The rent will be reviewed periodically at the times set out in the lease. Typically, the rent will be reviewed every year. The reviewed rent will be increased in line with any proportionate increases in the retail prices index (RPI).

The rent will be reviewed on an 'upwards only' basis. This means that the level of rent will not go down when it is reviewed. However, any increase in the rent will be capped at a figure representing the RPI increase plus 0.5%. This means that where the RPI is zero or negative the most the rent can increase by is 0.5%.

A worked example demonstrating how the rent is recalculated at review is set out in Appendix 2 of the lease.

## 4 **DISPOSALS OF OR DEALINGS WITH THE LEASE**

### **Assignment or Transfer**

If the Leaseholder assigns or transfers the lease before he or she staircases to 100% ownership of the property (80% in Protected Areas), the Landlord can require the Leaseholder's purchaser to pay for (at market value) all remaining shares in the property. This is often referred to as 'back to back' staircasing.

However, back to back staircasing will not be required by the Landlord:

- if the lease is transferred or assigned as a result of the divorce or death of the Leaseholder;
- if the Leaseholder gives the Landlord notice that he or she wishes to sell its interest in the lease and either the lease is assigned to a person nominated by the Landlord, or, the Leaseholder surrenders (or returns) the Lease to the Landlord (in both cases for a price that is no more than the market value of the Leaseholder's share of the property);
- if the Landlord fails to nominate a purchaser, the nominated purchaser fails to purchase the Leaseholder's share or completion of the surrender of the Lease does not take place.

### **Subletting**

The Leaseholder is not permitted to sub-let or part with possession of the property in any other way until the Leaseholder staircases to 100% ownership of the property (80% in Protected Areas).

## 5 **LANDLORD'S RIGHT OF FIRST REFUSAL**

With a view to ensuring that the property remains in the ownership of people in need of shared ownership units, there are restrictions on the transfer, assignment and subletting of the property after the Leaseholder staircases to more than 80% ownership.

If, at any time after the Leaseholder staircases to more than 80% ownership of the property, the Leaseholder gives the Landlord notice that he or she wishes to sell the Lease, the Landlord can require the Leaseholder either to transfer the Lease back to the Landlord or to a person nominated by the Landlord. In both cases the price will be no more than the market value of the Lease with vacant possession.

The Landlord's right of first refusal does not apply if the Lease is transferred or assigned as a result of the divorce or death of the Leaseholder.

## 6 **MORTGAGEE PROTECTION PROVISIONS**

Loans from banks and building societies to Leaseholders would often require Leaseholders to take out mortgage indemnity insurance or other forms of additional security which would increase the expense to the Leaseholder of acquiring a shared ownership interest in the property. So with the aim of cutting down or avoiding such expense arising (so that mortgage indemnity insurance is not required and encouraging banks and building societies to lend to shared owners), the Landlord agrees that if the Leaseholder defaults the Landlord will compensate the Lender for some part of any loss incurred if the proceeds from the sale of the Leaseholder's share of the property are insufficient. For this reason the Leaseholder's lender will

need to obtain the consent of the Landlord to the terms of the Leaseholder's mortgage.

If the Landlord has to cover some of the mortgage debt in this way the Leaseholder will become liable to pay the Landlord back. In such cases the Landlord will be able to pursue the Leaseholder to recover its loss and may also enforce any other security guarantees or insurance that were originally granted to the Lender.

To assist the Landlord and the Lender in operating these compensation provisions, by signing the lease the Leaseholder authorises the Landlord and the Lender to exchange personal information relating to the Leaseholder in relation to various matters, including the terms of the lease, details of any arrears and any loan secured against the property.

## 7 **IMPORTANT NOTICE REGARDING PAYMENT OF THE RENT AND LEASE OBLIGATIONS**

You need to be aware that if the Leaseholder fails to pay the rent reserved by the Lease and/or fails to observe and perform his or her obligations in the Lease the Landlord may be entitled to terminate the lease (subject to the Landlord obtaining any necessary court order. If the lease is terminated the Leaseholder will lose (and will not be entitled to any compensation for), any shares in the property which he or she had acquired.

## 8 **VARIATIONS TO THE STANDARD FORM LEASE**

Paragraphs 1 to 7 above summarise the key terms of the standard form Shared Ownership Lease issued by the Homes and Communities Agency.

The Landlord summarises below the terms of the lease that materially depart from the standard form:

[•]

**This guidance note does not form part of the Lease and is not to be taken into account in the interpretation of any provision in the Lease. It is important that the Leaseholder gets legal advice before entering into the Lease.**