

**SOUTHERN RENT ASSESSMENT PANEL AND  
LEASEHOLD VALUATION TRIBUNAL**

**In the matter of section 9 and section 27 of the  
Leasehold Reform Act 1967 (as amended) (“the Act”)**

**and in the matter of 15 Kelston Gardens Worle Weston super Mare**

**Case Number:** CHI/00HC/OAF/2006/0022

**Upon the application of Mr & Mrs J E Cumner (“the Applicants”)**

**Inspection:** 16<sup>th</sup> January 2007

**Determination:** 22<sup>nd</sup> January 2007

The matter was considered in the light of written representations without a hearing

**Decision of the Tribunal**

Issued: 25<sup>th</sup> January 2007

**Tribunal**

Mr R P Long LLB (Chairman)  
Mr M J Ayres FRICS

## **Decision**

1. The tribunal has determined for the reasons set out below that the price payable by the Applicant for the freehold reversion in this matter is the sum of £2240-00, being £2155-00 in respect of the head leasehold interest and £85-00 in respect of the under leasehold interest.

## **Reasons**

2. 15 Kelston Gardens (“the property”) is a two bedroom semi detached bungalow on a development at Worle that was built in or about 1988. It is of brick cavity construction under a pitched tiled roof, and has a small garden. There is no garage but parking space is available. It has the benefit of gas-fired central heating. There appeared from our inspection to be no material improvement or modernisation that we should disregard for the purposes of valuation. The Applicant did not seek a hearing before the tribunal. The members of the tribunal inspected the property in the presence of Mr Cumner on 16<sup>th</sup> January 2007.
3. The property is built upon land that was part of that demised by a sixteenth century lease, of which the tribunal understands understand no copy now is known to exist. The demise was in favour of John and Isabel Thomas for a term expiring in 2057 at an annual rent of £1-6-9d (£1-34). We are informed that the lessees under this lease pay no rent. The whereabouts of the lessees or beneficiaries under this lease are now unknown. No copy of the Underlease was provided to the Tribunal, but it is informed by Messrs Stephen and Co in their valuation that the property was demised under the terms of an underlease dated 30<sup>th</sup> September 1988 made between Second City Homes South West Limited, Lansdowne Homes Limited and Margaret Joan Lamdin for a term of seventy years from 1<sup>st</sup> January 1987 at an annual rent of a peppercorn. The rateable value is £127.
4. The Weston Super Mare County Court made an Order under section 27(5) of the Act on 16<sup>th</sup> March 2006 that the freehold of the property be vested in the Applicants. The Order contains a paragraph in the following terms:

“AND THIS COURT determines and declares pursuant to the provisions of section 27(5) of the Leasehold Reform Act 1967 that the estimated amount of pecuniary rent payable for the said property by the Applicants as tenants thereof under the lease out of which the Applicants current interest arises as provided by section 3 of the Landlord & Tenant Act 1954 as amended and which remains unpaid and which will remain unpaid up to the date of this order is the sum to be determined by the Leasehold Valuation Tribunal (under section 9(i) of the Leasehold reform Act 1967 under the “original valuation” basis).”
5. The amount that the tribunal is to determine is the ‘appropriate sum’ defined in section 27(5) of the Act as follows:

'The appropriate sum which in accordance with sub section (3) above, is to be paid into Court is the aggregate of:

- (a) such amount as may be determined by (or on appeal from) a leasehold valuation tribunal to be the price payable in accordance with section 9 above, and
- (b) the amount or estimated amount as so determined of any pecuniary rent payable for the house and premises up to the date of the conveyance which remains unpaid.'

6. Section 9 of the Act sets out in detail the assumptions to be made and the procedure to be followed in carrying out the valuation. The effect of section 27(1) is that the valuation date is the date on which the application for an Order was made to the Court. The Applicant's solicitors certify that this was done on 21 November 2006.

7. The tribunal is aware that the expression "original valuation basis" is one that is referred to in a paper on the website of the Leasehold Advisory Service (LEASE) intended to explain valuations in matters of this nature to the general public, although the term does not appear in the leading textbook upon the matter, Hague on Leasehold Enfranchisement. However, the paper in question adopts the "standing house" method of valuation as does the valuation from Messrs Stephen & Co the applicants' valuers, which is the method commonly adopted for valuations under section 9(1) of the Act. The question whether or not a Court in these circumstances is entitled to instruct an expert tribunal upon the valuation method it is to adopt is not settled, but since the tribunal would be minded in any event to adopt the standing house approach in the present case, and it appears that that is the approach that the Court may have had in mind, no issue arises upon the point.

8. There is unlikely to be evidence of sales of vacant sites because the locality in which the property stands has been fully developed for some years. Finally, the tribunal bore in mind the cases to which the Applicant's valuers stated that they had considered.

9. For the purpose of establishing what amounted to the standing house value of the property on the valuation date Messrs Stephen & Co had supplied details of sales of two comparable properties as follows:

10 Kelston Gardens, an end of terrace bungalow otherwise similar to the property, which was sold in July 2006 for a price of £134000, and

21 Kelston Gardens, an end terrace bungalow similar to 10 Kelston Gardens, which was sold in April 2006 for £131000.

The tribunal looked at the exterior of these comparable properties, and was satisfied that they do indeed afford appropriate comparables for the property, bearing in mind, however that both are end of terrace properties whilst the property is mid terrace.

10. Messrs Stephen and Co placed the entirety value of 15 Kelston Gardens at £130,000 in reliance on those comparables. They took that view upon the basis that the two comparables might be expected to command slightly higher prices than the property by reason of the fact that they are at the ends of their respective terrace. The Tribunal accepted their reasoning in that respect and accepted that figure.
11. Messrs Stephen & Co argued that the site value should be taken as 27.5% of the entirety value after taking into account the overall nature of the development on which the property is situate, and the proximity of adjacent premises. The tribunal was content to adopt that view. This is a plot that has planning permission for development for properties that may be occupied only by those over 60 years of age, and the management and retirement care provisions attaching to the property as part of those arrangements, together with some restrictions of access, impose restrictions that justify a reduction from the figure of 30% of the entirety value that might otherwise have been adopted.
12. The tribunal then carefully considered the representations made by Messrs Stephen & Co in their report to the effect that the existence of numerous limited rights of access around the subject property, indicated on the plan attached to it, would have the effect of substantially limiting the price to be paid for the reversion. They referred in this connection to the principles enunciated in *Stokes v Cambridge City Council* [1961] 13 P & CR 77, and suggested that the price should be reduced by a further fifty per cent because of the difficulty of access for redevelopment purposes when the Underlease comes to an end in 2057. This argument was in addition to their argument that the site value of the property should on this occasion be reduced to 27.5% of the entirety value rather than the more usual 30% to reflect essentially the same matters.
13. The tribunal felt unable to accept this further argument. The effect of section 10 of the Act is that the rights in question are to be granted in the Conveyance, whether by the underlessor or by the head lessor as may be appropriate. Parts 2 and 3 of paragraph 13 of the draft transfer appear to recognise that fact without specifically referring to the section in question. Accordingly there is no justification for making a reduction in price to reflect the problems that Messrs Stephen & Co. mention.
14. Messrs Stephen & Co had taken a deferment rate of 6% rather than the 4.75% that might be indicated by the decision of the Lands Tribunal in *Earl Cadogan and others v Sportelli* [LRA 50 2005] (“Sportelli”). They argued that the nature of these premises, being suburban social housing in respect of which no ground rent is payable militated against the use of a deferment rate as low as that used in Sportelli.

15. The Tribunal recognised that there is some force in the argument that the absence of a ground rent in these cases can be regarded in this context as a particular feature that may indicate some departure from the rates mentioned by the Lands Tribunal as does the absence of a freeholder who can enforce the freehold covenants. It bore in mind that the property in Sportelli was a high value, low risk central London property, the market for which bears very little practical relationship for a property of this type in its location, and in an area where the rise of property prices generally has not been nearly as rapid as it has in central London. Those factors in its judgement produce a risk factor that may be regarded as higher than that for a reversionary investment of the sort considered in Sportelli. It therefore adopted the deferment rate used by Messrs Stephen & Co of 6% which it considers to be a more accurate estimate of the sort of deferment rate that might be applied in the open market in the Weston super Mare area for a property like this.

16. The tribunal accepted Messrs Stephen & Co's representation that a modern ground rent in this locality might be established using a 7% rate of return on the site value.

17. The tribunal's valuation therefore was:

Ground rent reserved:	Nil
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Estimated site value (27.5% of £130,000)	35750 - 00
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Under lease

Modern Ground rent @ 7%	2502-50
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But say £2500-00

YP in perpetuity 6% deferred 50.16 years	<u>0.8963</u>
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Total	£2240-50
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But say £2240-00

Head lease

Modern Ground rent as above	2500-00
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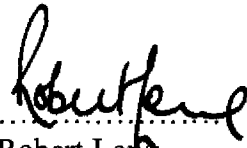
YP in perpetuity 7% deferred 51.84 years	<u>0.8621</u>
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Total	£2155-25
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But say £2155-00

18. That calculation produces a value of £2155-00 for the head lease and of £85 (the balance of the sum of £2240-00) for the under leasehold interest. No ground rent is in practice payable so that no addition is required in that

respect. The tribunal approves the form of transfer that was sent with the application, a copy of which is annexed and is signed by me for identification subject to the insertion in it of these prices.

  
.....  
Robert Long  
Chairman

23rd January 2007

<b>1. Stamp Duty</b>  It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value of the aggregate amount or value the consideration exceeds the sum of £125,000.00
<b>2. Title Number(s) of the Property</b> <i>(leave blank if not registered)</i>  AV166526 and Part AV206660
<b>3. Property</b>  15 Kelston Gardens, Worle, Weston-super-Mare, North Somerset, BS22 7FP  <i>If this transfer is made under section 37 of the Land Registration Act 1925 following a not-yet-registered dealing with part only of the land in a title, or is made under rule 72 of the Land Registration Rules 1925, include a reference to the last preceding document of title containing a description of the property.</i>
<b>4. Date</b>
<b>5. The First Transferor</b>  The Successors in Title of Catherine Wallop and Henry Wallop
<b>6. The Second Transferor</b>  Retirement Care Limited
<b>7. The Third Transferor</b>  Kelston Gardens Residents Company Limited
<b>8. Transferee for entry on the register</b>  Jeffrey Edward Cumner and Alice Lilian Cumner
<b>9. Transferee's intended address(es) for service in the U.K.</b> <i>(including postcode) for entry on the register</i>  15 Kelston Gardens, Worle, Weston-super-Mare, North Somerset, BS22 7FP
<b>10. The First Transferor and the Third Transferor transfer their interest in the Property to the Transferee.</b>
<b>11. Consideration</b> The First Transferor has received from the Transferee for the property the sum of Pounds ( ) and the Third Transferor has received from the Transferee for its interest in the property the sum of Pounds ( ).
<b>12. The Transferees are to hold the property as joint tenants.</b>
<b>13. The parties apply to the Chief Land Registrar for the extinguishment and merger of the Title Number of the property with that part of Title No AV213281 registered in favour of the Residents Company.</b>

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Approved draft (12 pages)

Robert Long  
Chairman 23.1.07

**14. Additional Provision(s)**

**PART 1**

**(a) "Residents Company"**

Kelston Gardens Residents Company Limited whose registered office is situate at 115-121 High Street, Worle, Weston-super-Mare, North Somerset, BS22 6HB and shall (subject to the provisions of this deed) include the company person or persons for the time being in whom the common parts of the estate and reversionary interests are vested including immediate reversionary interest of the Transferee

**"The Perpetuity Period"**

means 80 years from the 1st day of January 2001 which period shall apply to rights created by this Transfer.

**"The Plan"**

The plan attached to this Transfer.

**"Deed of Covenant"**

The model Deed of Covenant which the successors to the Transferee shall enter into with the Estate Manager and the Residents Company the form of which is set out in Part 9.

**"The Estate"**

Includes all the land now or formerly comprised in or subsequently added to Title Nos.AV206660 and AV213281 which is vested in the Residents Company.

**"The Management Lease"**

Means a Lease dated 2<sup>nd</sup> November 1990 made between Beazer Homes (Wales) Limited (1) Lansdown Homes Limited (2) and Retirement Care Limited (3) by which the Estate (as therein defined) was demised to the Estate Manager.

**"The Estate Manager"**

Means Retirement Care Limited or its successors for the time being entitled to the term granted by the Management Lease or if such Lease shall have been forfeited surrendered or otherwise determined the Residents Company until such time as a substitute manager shall have entered into covenants with the Transferee equivalent to those contained in Part 5 hereof whereupon "Estate Manager" shall refer to such substitute manager and similar provisions (mutatis mutandis) shall apply in relation to the removal of such substitute manager and any subsequent such manager

**"The Specified Age"**

Means 60 years or over.

**"Approved Occupier"**

Means the person or persons of specified age approved by the Estate Manager (such approval not to be unreasonably withheld in the case of a person or persons of the specified age who complies with the usual criteria at that time in force for the selection of persons for accommodation on estates managed or controlled by it) provided that where such persons are husband and wife or other related persons or unrelated companion or nurse only one need be of the Specified Age and may be the surviving spouse or other related person below the said age.

**"Estate Office"**

The part of the development provided for the use of the Estate Manager in carrying out his duties.



**“The Common Parts”**

The road accessway drives footpaths car parking areas refuse areas garden grounds and all other parts of the estate which for the purpose of identification only are shown on the attached plan annexed hereto shaded grey and hatched grey and which are intended to be for the use and enjoyment of the Transferee and all other occupiers (and their invitees) of the bungalows comprised within the estate provided that the Resident Company or the Estate Manager should be entitled to vary the amenities from time to time but not so that the amenities thereby provided are substantially diminished.

**“The Service Charge”**

As defined and construed in accordance with Part 7

**“The Appropriate Fraction”** (subject to the provisions of Part 7 ) one thirty-seventh.

**“The Main Structure”**

Means all exterior and internal load bearing walls but excluding in each case the plaster upon or other internal finish thereto) all foundations floor slabs (but excluding the covering thereof) ceiling joists (excluding the battens and/or plasterboard or other covering or decoration affixed thereto) and all roofs of the other properties situate on the estate.

**“Reserve Fund”**

Means the total of sums received by the Residents Company or the Estate Manager appointed by it received from the Residents of the properties on the estate for the allocation to a sinking reserve or replacement fund created as a provision for future exceptional or major expenditure in relation to the provision of the services described in Part 3.

**“Transferee”**

Includes (where the context so admits) any successors in title of the Transferee and where the Transferee consists of two or more persons covenants and obligations on the Transferee’s part shall be treated as given jointly and severally

1. This Transfer is made with the benefits of the rights set out in Part 2 but subject to the rights set out in Part 3
2. The Transferee covenants with the First Transferor the Estate Manager and the Residents Company and separately with present or future owners of any part of the Estate to the effect set out in Parts 4 and 7 to bind (so far as the Law may allow) the property (but not the Transferee personally after ceasing to own the property and having procured a Deed of Covenant from the new owner thereof) and to benefit (so far as the Law may allow) each and every part of the Estate.
3. The Estate Manager hereby covenants with the Transferee in consideration of and subject to of the payment of the Service Charge and the covenants on the part of the Transferee to perform the covenants obligations and provisions as set out in Part 5 and the Residents Company covenants with the Transferee at the request and the cost of the Transferee to enter into the Deed of Covenant for the purposes of giving the covenant on its part therein contained.

**PART 2**

- (a) Full right and liberty in common with the Estate Manager and the Residents Company and the owners and occupiers of the other units comprised in the Estate and all others having the like right to pass and repass for all purposes with or without vehicles over the roads on the Estate

- b) The right in common as aforesaid to pass and repass for all purposes on foot only over the footpaths and access paths and common parts on the Estate
- (c) The right in common as aforesaid to walk and sit in the common parts and grounds of the Estate and to use them for the purposes of rest and recreation
- (d) The right in common as aforesaid to the free passage and running of water and soil gas and electricity passage of telephone cables and other services from the Property through the drains sewers gas and water pipes and electric cables wires and other conduits now laid or during the term hereby granted to be laid in under or through the Estate
- (e) Insofar as the First Transferor and the Residents Company is able to grant the same a right of way (in common with all others now or hereafter entitled to the like right) at all times and for purposes with or without motor vehicles over and along the private access road leading from the Estate to the public highway known as Kelston Road and Locksbrook Road.
- (f) The right of support and protection for the Property as is now enjoyed from the other parts of the Estate

### **PART 3**

1. The right to the free passage and running of water and soil gas electricity and other services through the drains and sewers gas and water pipes and electric cables wires and other conduits now laid or during the term hereby granted to be laid in under or through the Property
2. All rights of light and air and other rights and easements and benefits now enjoyed or intended to be enjoyed by any other part of the Estate over the Property
3. Such rights of access to and entry upon the Property by the Estate Manager as are necessary for the proper performance of its obligations hereunder or under covenants relating to other units on the Estate and similar to those herein contained
4. To the gas electricity and water boards or other relevant statutory authority the right to enter upon the Property for the purpose of carrying out all or any of their respective functions subject to making good any damage thereby caused
5. The right to rebuild alter or use any other part of the Estate or any adjoining land or buildings in any manner whatsoever and to let the same for any purpose or otherwise deal therewith notwithstanding the access of light or air to the Property is in any such case thereby diminished or any other liberty easement right or advantage belonging to the First Transferor is thereby diminished or prejudicially affected provided that reasonable means of access to the Property are maintained
6. The right of support and protection for the benefit of all other parts of the Estate as is now enjoyed from the Property.

### **PART 4**

1. To pay rates and other assessments of an annual or periodically recurring nature in respect of the Property either direct to the appropriate Authorities (where the Property is separately assessed) or by way of reimbursement to the Estate Manager of an appropriate proportion attributable to the Property

1. To pay for all gas and electricity which shall be supplied to the Property and the amount of all charges for the installation and use of the telephone (if any) at the Property
3. Subject to the obligations of the Estate Manager referred to in Part 5 to keep the Property in good repair and decorative order
4. (a) Not to make any alterations or additions to the exterior of the Property
- (b) Not without the Estate Manager's consent make any structural alterations or additions to the interior of the Property nor to cause any damage to the same.
5. Not to allow any person other than an Approved Occupier to occupy the Property
6. (a) Not to transfer let or part with or share the possession or occupation of the whole or any part of the Property save by way of a Transfer pursuant to paragraph (b) of this sub-clause
- (b) Not to transfer the Property except to an Approved Occupier or to a person or persons taking a transfer on behalf of or for the benefit of an Approved Occupier (hereinafter referred to as a "Beneficial Owner") and Provided that the Transferee shall first give to the Estate Manager not less than one week's written notice of his intention to instruct estate agents to sell the Property or to advertise the Property for sale and of the proposed price at which the Property is to be transferred so as to give the Estate Manager an opportunity of nominating prospective approved occupiers from its waiting list and if within one week the Estate Manager nominates a person to take a Transfer for a consideration not less than the said price then the Transferee shall subject to the proviso hereafter complete and execute a Transfer to an Approved Occupier or Beneficial Owner as the case may be but if the Estate Manager shall not have notified to the Transferee that it has a nominee within the period of one week or the nominated Transferee is unable to complete the assignment within a period of ten weeks or exchange contracts within a period of six weeks from such nomination or such other period as is agreed between the Transferee and the person so nominated by the Estate Manager then it shall be lawful for the Transferee to transfer the Property in accordance with the foregoing requirements of this Clause subject always to the provisions of Clause 8 of this Part and PROVIDED THAT on the occasion of any transfer of the Property the Transferee shall execute a Deed of Covenant at the cost and expense of the Transferee (a duplicate of which shall be provided to the Residents Company)
- (c) To procure upon any Transfer of the Property that any Transferee shall in the Transfer Document make application to enter a restriction by the Transferee in substantially the same format as that contained in Part 10
7. On completion of any transfer pursuant to paragraph (b) of Clause 6 of this Part to pay to the Estate Manager a sum equal to 1 % of the consideration for that transfer if that transfer was to a person nominated by the Estate Manager and if the said sum shall not be paid within seven days of the completion of the said Transfer when it shall be due and payable by the Transferee
8. To give written notice within Twenty-eight days to the Estate Manager of any assignment mortgage charge death Probate or other devolution of the Property
9. To allow the Estate Manager (on reasonable notice except in the case of emergency) with workmen and others to enter the Property for the purpose of carrying out repairs and works to the Estate and service

pipes and wires therein but causing as little inconvenience to the Transferee as practicable and making good any damage cause

10. Not to do or permit to be done in the Property or the remainder of the Estate any act matter or thing whereby any insurance effected by the Estate Manager may be rendered void or voidable or whereby the rate of premium thereunder may be increased
11. To observe the regulations contained in Part 7 and such other regulations as may be made by the Estate Manager and notified in writing to the Transferee from time to time for the better management of the Estate or for the general benefit of the owners occupiers or lessees of the units in the Estate

## **PART 5**

- (a) Maintain repair decorate and renew:-
  - (i) the Main Structure of the Buildings on the Estate and the exterior thereof
  - (ii) the Common parts and
  - (iii) the gas and water pipes drains and electric cables and wires in or under the Property or the remainder of the Estate and the garden and grounds thereof and which serve in common the Property and other premises forming part of the Estate
- (b) So far as practicable keep clean and reasonably lighted the roads paths and car parking spaces used by the Transferee and clean all outside surfaces of the windows of the Estate including those of the Property and so far as practicable keep the forecourts drainways gardens and grounds in good condition and the garden cultivated
- (c) Maintain an alarm system connection to the Property for the purpose of dealing with emergency calls and employ a Manager for general supervision of the Estate and at all times whilst on duty for answering emergency calls of the Transferee
- (d) Insure the Estate against loss or damage by fire and other perils within the usual comprehensive policy or the insurers to the full costs of rebuilding or reinstatement plus professional fees and site clearance fees in some reputable insurance office and to include insurance for the cost or reasonable alternative accommodation necessarily incurred by the Transferee in the event of the Property being made uninhabitable by an insured risk for an amount not exceeding ten per cent (10%) of the purchase price paid by the Transferee for the Property and a policy of insurance covering the Estate Manager's liability for injury to persons on the Estate and will if so requested provide copies of such insurance policies and evidence of payment of premiums thereof
- (e) If the Estate should be destroyed or damaged by a risk which is covered by insurance effected by the Estate Manager and provided that the insurance has not been vitiated or the insurance monies refused in whole or in part the Estate Manager will lay out the insurance monies received by it in rebuilding or reinstating the Estate subject to all planning Building Regulations and other necessary consents first having been obtained
- (f) At the request and cost of the Transferee and so far as the Estate Manager is lawfully able to do enforce covenants in terms similar to those contained in Part 4 on the part of the owners or lessees of the other units comprised in the Estate PROVIDED THAT if the Estate Manager shall in its absolute discretion so require the Transferee shall first deposit with the Estate Manager such reasonable sum as the Estate

Manager shall specify as security for full costs and expenses arising in or in connection with such enforcement

- (g) At the request and cost of the Transferee to enter into any Deed of Covenant required in accordance with the proviso to clause 6(b) of Part 4 of the Transfer for the purpose of giving the obligations on the part of the Estate Manager referred to in the form of deed set out in Part 9 hereof.

PROVIDED THAT the Estate Manager may for the better management of the Estate add to or vary any of the above services and PROVIDE ALSO that the Estate Manager shall not be liable for any temporary breakdown or withdrawal of the above services for causes beyond the Estate Manager's reasonable control

## **PART 6**

### **Agreements and declarations**

1. The perpetuity period applicable to this Deed shall be Eighty years from the 1st January 2001.
2. The rights specified in Part 2 and Part 3 are exercisable subject to payment by the Transferee of the Service Charge and to performance and observance of the Transferee's obligations hereunder and are subject to the persons exercising the same:
  - (a) As to the rights of entry:-
    - (i) Causing as little damage as possible; and
    - (ii) Making good to the reasonable satisfaction of any person thereby affected any damage so caused.
  - (b) As to the rights to use the service installations paying a fair proportion of any expense necessarily incurred inspecting maintaining repairing and renewing the relevant service installations.
3. The Transferees shall not by virtue of this transfer (except as expressly created herein) acquire or be entitled to any easement or right of light or air which would prejudice the free use or enjoyment of any adjoining or neighbouring land now or within the perpetuity period belonging to the Residents Company and that any enjoyment or right of light or air enjoyed by the Transferee from or over any adjoining or neighbouring land shall be deemed to be had by licence or consent and not as of right.
4. Whilst the Estate Manager agrees in accordance with Clause (c) of Part 5 to employ a Manager for general supervision of the Estate and for answering emergency calls of the Transferee neither the Estate Manager nor the Residents Company can accept responsibility for medical or other care of the Transferee and the Transferee agrees that he will at his own expense make his own arrangements for all such attention and care as may be necessary
5. Wherever Value Added Tax is attracted to any payment made pursuant to the provisions of this Transfer the amount thereof at the then current rate shall be added to such payment or payments

## **PART 7**

1. To pay to the Estate Manager quarterly and proportionately for any less period than a quarter a Service Charge (herein called "the Service Charge") being the Appropriate Fraction of the reasonable cost (including Value Added Tax thereon to the extent that the Estate Manager or its agent is unable to deduct

or recover the same in its Value Added Tax accounting) to the Estate Manager of providing supplying maintaining and making provision for the supply of the services and other matters specified in paragraph 2 of this Part together with a fee in respect of the cost of management which shall not exceed that from time to time permitted by the Department of the Environment to Housing Associations managing sheltered housing schemes such payment to be calculated and made as follows:-

- (i) A Provisional Service Charge (hereinafter called "the Provisional Service Charge") shall be payable quarterly in advance on the First day of January April July and October in each year each such payment being one quarter of the Appropriate Fraction (proper proportion) (as certified by the Estate Manager) shown in the most recent accounts prepared as hereinafter provided apportioned where necessary so as to relate to a part of a year and reasonable adjustments made thereto to take account of an increase in the cost of providing the said services or any proposed exceptional or major expenditure in relation to any of the said services
- (ii) As soon as is convenient after the expiry of each accounting period commencing with the one current at the date hereof the Estate Manager shall submit to the Transferee an account certified by the Estate Manager showing the expenses and outgoings incurred by the Estate Manager in providing supplying maintaining and making provision for the services and other matters specified in the said paragraph 2 during that accounting period which shall include not only those expenses outgoings and other expenditures which have been actually disbursed incurred or made by the Estate Manager during that year (or part of a year) but also such reasonable provision on account of part of all expenses outgoings and other expenditures which are not of an annually recurring nature (whether non recurring or recurring by regular or irregular periods of more than one year) whenever to be disbursed incurred or made as the Estate Manager may in its discretion allocate to the year (or part of a year) in question as being fair and reasonable in the circumstances so as to ensure as far as is reasonably foreseeable that the Service Charge shall not fluctuate unduly from year to year and the Service Charge payable by the Transferee in respect thereof shall be the Appropriate Percentage (proper proportion) of those expenses and outgoings and other expenditures and the said provisions and fees
- (iii) If in relation to any accounting period the Service Charge payable by the Transferee shall be greater than the Provisional Service Charge payment made by the Transferee for that period (apportioned when necessary) then the difference shall be paid by the Transferee to the Estate Manager on demand and if in relation to any accounting period the Service Charge payable by the Transferee shall be less than the Provisional Service Charge payments made by the Transferee for that period (apportioned where necessary) then the difference shall at the option of the Estate Manager be refunded by the Estate Manager to the Transferee or credited against a payment due for the next period.
- (iv) The Estate Manager may from time to time vary its accounting period.

2. The services referred to in paragraph 1 of this Part are as follows :-

- (1) The carrying out by the Estate Manager of its obligations in Clauses (a) (b) and (c) of Part 5.
- (2) The provision of any insurance by the Estate Manager pursuant to Clause (d) of Part 5

3. The maintenance and repair of the private access road affording access to the Estate from the public highway known as Kelston Road, Worle and Locksbrook Road aforesaid and of the cost of maintaining

and repairing the sewers serving the Estate and being in or under the said private access road until such time as the same is adopted by the Local Authority

4. The provision maintenance and repair of the Manager's Office (including any rates or taxes payable in respect thereof)
5. The discharge of all rates (including water rates) taxes and outgoings (if any) payable in respect of any part of the Estate and its grounds and gardens other than those payable solely in respect of the Property or the other properties in the Estate
6. The preparation auditing and/or certification by an accountant or other professional person of any accounts of the costs expenses outgoings and matters referred to in this Part
7. The provision of all other services (if any) provided by the Estate Manager in and about the maintenance and proper and convenient management and running of the Estate and the common parts thereof

## **PART 8**

1. Not to use the Property otherwise than for private residential use in the occupation of an Approved Occupier only or an Approved Occupier and some other person of the Specified Age in respect of whom the Estate Manager has given its prior approval in writing.
2. No trade or business or profession whatsoever shall be exercised or carried on from or upon the Property
3. Not to affix advertisements nameplates or signs on any part or parts of the Estate except a nameplate giving the name of the Transferee in the place or places provided by the Estate Manager
4. Not to do anything in the Property or within the Estate or make a noise which may be of annoyance or nuisance to owners or occupiers of other units in the Estate or in the neighbourhood and in particular not to play a wireless or television or other noise making equipment or instruments so as to be audible outside the Property between the hours of 11 p.m. and 7 a.m.
5. Not to keep pets in the Property except with the prior written consent of the Estate Manager (which will not be unreasonably withheld) which consent may be withdrawn at any time if such pet causes a nuisance or annoyance to the Estate Manager or other owners or occupiers of other properties in the Estate
6. Not to use the Property for improper purposes or purposes injurious to the reputation of the Estate Manager or the Estate or allow persons of character objectionable to the Estate Manager or resort thereto
7. Not to encumber with boxes or otherwise or leave any rubbish in the Common Parts save in the refuse Areas provided
8. Not to cause any obstruction whatsoever to the pedestrian and vehicular accessways in the Estate
9. Not to use the car parking spaces nor permit the same to be used other than for the purpose of the parking of one private motor vehicle belonging to the Transferee or to the Transferee's visitors
10. No boat caravan coach van lorry or anything other than a private motor vehicle shall be parked or permitted to remain on any part of the Estate

11. Not to block or permit to be blocked any waste pipe in the Property and not to overload the electrical circuits and installations therein
12. To comply with such reasonable rules and regulations as the Estate Manager may from time to time prescribe relating to the use of the gardens and grounds and the Common Parts of the Estate
13. To comply in all respects with the provisions of the Town and Country Planning Acts 1971 to 1977 and all planning permissions and other matters deriving authority therefrom for the time being in force insofar as they relate to the Property

## **PART 9**

**THIS DEED OF COVENANT** is made the  
**BETWEEN:**

200

1. (hereinafter called "the Transferee") of the first part
2. (hereinafter called "the Estate Manager") of the second part  
whose registered office is at
3. KELSTON GARDENS RESIDENTS COMPANY LIMITED (thereinafter called "the Residents Company") of the first part whose registered office is at 115-121 High Street, Worle, Weston-super-Mare, North Somerset, BS22 6HB

WHEREAS this Deed is supplemental to a Transfer (hereinafter called "the Transfer") dated the day of 200 and made between Kelston Gardens Residents Company Limited of the first part and Retirement Care Limited of the second part and of the third part whereby the premises known as 15 Kelston Gardens, Worle, Weston-super-Mare, North Somerset were transferred to the Transferee subject to the covenants and conditions therein contained

NOW THIS DEED WITNESSETH

- (a) that the Transferee hereby covenants with the Estate Manager and the Residents Company to observe and perform the covenants on the part of the Transferee therein contained in the Transfer and set out in Parts 4 and 7
- (b) that the Estate Manager hereby covenants with the Transferee to observe and perform the covenants on the part of the Estate Manager therein contained in Part 5
- (c) That the Residents Company hereby covenants with the Transferee to observe and perform (but for such period or periods only as the Residents Company shall be or become the Estate Manager pursuant to the provisions of the Transfer) the covenants on the part of the Estate Manager contained in Part 5

IN WITNESS whereof the Estate Manager has caused its Common Seal to be hereunto affixed and the Transferee as set his hand as a deed the day and year first before written

## **PART 10**

The parties hereto jointly apply to the Chief Land Registrar for the entry of the following Restriction to be entered on the Proprietorship Register of the Title to the Property:-



No disposition or transfer of the registered estate (other than a charge) by the Proprietor of the registered estate is to be registered without a certificate signed by the Solicitor or Conveyancer on behalf of the Transferee that the provisions of Clauses 6 and 7 of Part 4 have been complied with

**SIGNED AS A DEED pursuant to the Order for Enfranchisement**

**by District Judge** .....  
as Successor in Title to Catherine and Henry Wallop  
in the presence of :-

Signature of  
witness .....

Name (*in BLOCK CAPITALS*).....

Address .....

.....

**SIGNED AS A DEED by**  
**Jeffrey Edward Cumner and**  
**Alice Lilian Cumner**

.....

in the presence of:

.....

Signature of  
witness .....

Name (*in BLOCK CAPITALS*).....

Address .....

.....

**THE COMMON SEAL OF KELSTON GARDENS**  
**RESIDENTS COMPANY LIMITED**

was affixed in the presence of :-

**THE COMMON SEAL OF RETIREMENT CARE  
LIMITED**

was affixed in the presence of :-