

**PART 8 OF THE ENTERPRISE ACT 2002: ("THE ACT")**

**THE UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1999  
("UTCCRs")**

**HART RETIREMENT DEVELOPMENTS (SOUTHERN) LIMITED**

**HART RETIREMENT DEVELOPMENTS (THAMESNORTH) LIMITED**

**UNDERTAKINGS TO THE OFFICE OF FAIR TRADING (PURSUANT TO  
SECTION 219 OF THE ACT)**

1. **Hart Retirement Developments (Southern) Limited**, a body corporate with company registration number: 01000183, whose registered office address is Oakleigh House, High Street, Hartley Wintney, Hook, Hampshire RG27 8PE, and **Hart Retirement Developments (Thamesnorth) Limited**, a body corporate with company registration number: 02600192, whose registered office is at Oakleigh House, High Street, Hartley Wintney, Hook, Hampshire RG27 8PE (both companies hereinafter collectively "Hart"), hereby undertake to the Office of Fair Trading ("OFT") that Hart will not whether by its officers, employees, or agents or otherwise or by directing any other entity or individual:
  - a. engage, consent to or otherwise connive in the Prohibited Conduct in the course of its business or another business; or
  - b. consent to, or otherwise be involved in, the carrying out of the Prohibited Conduct by a body corporate with which Hart has a special relationship (within the meaning of section 222(3) of the Act) or by directing any other entity or individual.

where engaging in such conduct harms the collective interests of consumers in the UK.

2. Prohibited Conduct is defined as

- a. recommending, requiring or procuring the inclusion of, or
- b. agreeing to, seeking to enforce, or otherwise relying upon

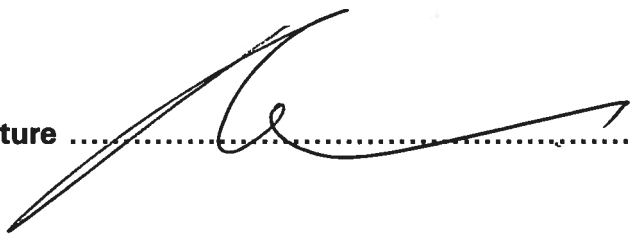
contractual terms in breach of the undertakings in Schedule 1 and to the detriment of the consumer.

3. Terms used in these undertakings are defined in Part 8 of Schedule 1.
4. Between 1987 and 1998 Hart constructed retirement housing in England and Wales at the Developments. Hart included Transfer Fee Terms in (a) its Leases and (b) its Transfer Documents for the Developments. Illustrative examples of the Transfer Fee Terms are set out in Schedule 2. The OFT considers that the Transfer Fee Terms are unfair terms within the meaning of Regulation 5(1) of the UTCCRs.
5. Hart does not accept that the Transfer Fee Terms are unfair terms within the meaning of Regulation 5(1) of the UTCCRs but has agreed to address the concerns of the OFT by hereby providing the undertakings set out in Schedule 1. The OFT considers that any failure to comply with the undertakings would constitute conduct within the meaning of Prohibited Conduct set out in paragraph 2 above.
6. If having secured an undertaking in the manner required by Schedule 1 Part 1 Hart ceases to be entitled to receive Transfer Fees for any Property then Hart shall not be bound by the undertakings set out in Schedule 1 in respect of that Property.

**IF YOU SIGN THIS DOCUMENT ON BEHALF OF HART RETIREMENT DEVELOPMENTS (SOUTHERN) LIMITED AND HART RETIREMENT DEVELOPMENTS (THAMESNORTH) LIMITED (BOTH COMPANIES COLLECTIVELY REFERRED TO AS "HART"), HART THEREBY AGREES TO COMPLY WITH ITS REQUIREMENTS.**

**IF, AFTER YOU HAVE SIGNED THE DOCUMENT ON BEHALF OF HART, HART BREACHES THE ABOVE UNDERTAKING, HART MAY BE THE SUBJECT OF AN APPLICATION TO THE COURT FOR AN ENFORCEMENT ORDER UNDER SECTION 215 OF THE ACT**

**John H K Forster, Director, (for and on behalf of Hart Retirement Developments (Southern) Limited and Hart Retirement Developments (Thamesnorth) Limited).**

Signature ..... 

Date..... 20<sup>th</sup> November 2012

Witness signature..... 

Witness Name..... AMANDA HERON

Date..... 20 NOVEMBER 2012

## **SCHEDULE 1**

### **Part One: Future transfers of the freehold reversions of the Developments**

1. Hart undertakes to the OFT that it will not transfer its interest, or create any subordinate leasehold interest, in the Developments or any property used as retirement housing it owns, or owns at any future time (but excluding the development known as The Empire Grand Parade, Bath, the leases of which do not include Transfer Fee Terms) without securing an undertaking from the prospective lessee or transferee of the freehold interest that it will comply with the terms of these undertakings.

However, this paragraph will not apply to the grant of a leasehold interest in an individual residential unit where:

- a. the unit is currently let to or occupied by an individual employed by Hart or a management company (for example, an on-site administrator) but subsequently ceases to be so let or occupied; or
- b. the unit is currently let to an Owner but the lease is subsequently determined prematurely (for example, by forfeiture).

### **Part Two: Leases and Freeholds**

2. Hart undertakes to the OFT that in relation to Leases it shall:
  - a. only impose a Transfer Fee in the event of a Sale;
  - b. for the avoidance of doubt, and specifically, not require payment of a Transfer Fee on any occasion when the Owner's interest in the Property passes to a beneficiary under any will or intestacy, upon sub-letting, or in circumstances where there is otherwise a change in occupation, an equity release or a surrender. For the further avoidance of doubt this clause does not restrict the imposition of a Transfer Fee on a subsequent Sale of the Property by any Future Owner;

- c. calculate the Transfer Fee at the time of the Sale by an Existing Lessee, as a percentage of the lower of (a) the Sale Price achieved by the Owner and (b) the Adjusted Purchase Price;
  - d. calculate the Transfer Fee at the time of the Sale by a Future Lessee, as a percentage of the Sale Price achieved by the Owner;
  - e. not require an Owner to pay a Transfer Fee calculated as a percentage of the open market value of the Property;
  - f. not require an Owner to pay any sum which is assessed solely at the discretion of Hart.
3. Hart undertakes to the OFT that in relation to Freeholds in respect of which it is entitled to receive a Transfer Fee, it shall:
- a. only impose a Transfer Fee in the event of a Sale;
  - b. for the avoidance of doubt, and specifically, not require payment of a Transfer Fee in the event that the Owner's interest in the Property passes to a beneficiary under any will or intestacy, upon sub-letting, or in circumstances where there is otherwise a change in occupation or an equity release. For the further avoidance of doubt this clause does not restrict the imposition of a Transfer Fee on a subsequent Sale of the Property by a Future Freeholder;
  - c. calculate the Transfer Fee at the time of a Sale by an Existing Freeholder as a percentage of the lower of (a) the Sale Price achieved by the Owner and (b) the Adjusted Purchase Price;
  - d. calculate the Transfer Fee at the time of a Sale by a Future Freeholder as a percentage of the Sale Price achieved by the Owner;
  - e. not require an Owner to pay a Transfer Fee calculated as a percentage of the open market value of the Property;

- f. not require an Owner to pay any sum which is assessed solely at the discretion of Hart.

### **Part Three: Existing Lessees**

- 4. Hart undertakes to the OFT that, in relation to all Existing Lessees, in addition to those undertakings given in Part Two above:

- a. it shall within four (4) months of the date of these undertakings, make an offer to the Existing Lessee under (i) or (ii) below (as appropriate):

- (i) where the Lease remains vested in the Existing Lessee, Hart shall offer the Existing Lessee the option to vary their Lease so as to provide that during the ownership of the Existing Lessee and any successor who acquires the Lease otherwise than on a Purchase, a quarterly ground rent will be payable in place of the Transfer Fee on terms that if the Existing Lessee accepts the offer:

- (a) the Existing Lessee must pay Hart a sum equal to the amount of ground rent that would have accrued for the period between the Purchase of the Property and the time the offer is accepted; and

- (b) thereafter the Existing Lessee and any successor who acquires the Lease otherwise than on a Purchase must pay the quarterly ground rent; and

- (c) on Sale of the Lease the Future Lessee shall have the option to choose to pay a quarterly ground rent in place of the Transfer Fee.

The offer to Existing Lessees will remain open for a period of six (6) months from the date it is made;

- (ii) where the Existing Lessee has sold the Lease without paying the Transfer Fee, Hart shall offer the Existing Lessee the option of paying, in place of the Transfer Fee that became due on the Sale, a sum equal to the amount

of ground rent that would have accrued for the period between the Purchase of the Property and the date when the Existing Lessee completed the Sale of the Lease.

- b. it shall inform all Existing Lessees of the agreed terms of these Undertakings, by way of an explanatory letter;
- c. it shall not require a Lessee who accepts the offer to vary the Lease to pay Hart's legal or other costs.

#### **Part Four: Existing Freeholders**

- 5. Hart undertakes to the OFT that, in relation to any Existing Freeholder, it shall, in addition to those undertakings given in Part Two above:
  - a. inform all Existing Freeholders of the agreed terms of this Undertaking, by way of an explanatory letter.

#### **Part Five: Future Lessees**

- 6. Hart undertakes to the OFT that, in relation to any prospective Future Lessees, it shall, in addition to those undertakings given in Part Two above:
  - a. offer any prospective Future Lessee the option, in the event that the Future Lessee takes an assignment of the Lease, to vary the Lease so as to provide that, during the ownership of the Future Lessee and any successor who acquires the Lease otherwise than on a Purchase, a quarterly ground rent will be payable in place of a Transfer Fee ('the Offer');
  - b. where it becomes aware of a proposed sale of a Lease to provide the prospective Future Lessee with a clear and prominent explanation of the Offer, set out in the form of a key facts information sheet in the pack supplied to prospective Future Lessees. Such an explanation of the Offer should include details of the circumstances under which the Owner will become liable, how the Transfer Fee and ground rent is calculated, and worked examples of the differences between the

Transfer Fee and ground rent for at least two properties of different value for sale;

- c. not require a Future Lessee who accepts the Offer to vary the Lease to pay Hart's legal or other costs;
- d. on the Transfer of a Lease to a Future Lessee, to provide the Future Lessee's conveyancers with a memorandum to be attached to the front of the Lease drawing attention to the Transfer Fee and the Offer;
- e. to produce a memorandum to be attached to the front of the Deed of Covenant to be signed by a prospective Future Lessee drawing the prospective Future Lessee's attention to the Transfer Fee and the Offer;
- f. to invite the conveyancers acting for the Future Lessee to provide a certificate confirming that they have advised their client about the existence of the Transfer Fee and the Offer;
- g. inform any prospective Future Lessees of the restrictions set out in this Undertaking, by way of an explanatory letter.

#### **Part Six: Future Freeholders**

7. Hart undertakes to the OFT that, in relation to any prospective Future Freeholder it shall, in addition to those undertakings given in Part Two above:
  - a. produce a memorandum to be attached to the front of the Deed of Covenant to be signed by a prospective Future Freeholder drawing the prospective Future Freeholder's attention to the Transfer Fee Term;
  - b. invite the conveyancer acting for the prospective Future Freeholder to provide a certificate confirming that they have advised their client about the existence of the Transfer Fee;
  - c. inform any prospective Future Freeholders of the agreed restrictions set out in this Undertaking, by way of an explanatory letter.



## **Part Seven: New Developments**

8. Hart undertakes to the OFT that it will not include provision for the charging of a Transfer Fee in any transfer, lease or associated document relating to any new retirement housing either leasehold or freehold which it constructs unless this is a fee for a service provided by Hart and the fee is no more than the actual costs reasonably and necessarily incurred by Hart in providing that service.

## **Part Eight: Definition Interpretation and Scope**

9. Any reference to "Adjusted Purchase Price" is a reference to the amount calculated by dividing the Purchase Price for that Property by the RPI figure for the month in which the date of the Purchase occurred and multiplying the result by the RPI figure for the month in which the Sale occurs.
10. Any reference to 'Consumer' or 'Consumers' in this undertaking is a reference to consumers generally or individually, as defined in the UTCCRs.
11. Any reference to "Deed of Covenant" is a reference to a deed of covenant which a Future Lessee or a Future Freeholder enters into on a Transfer.
12. Any reference to 'Developments' is a reference to the retirement housing developments constructed by Hart listed in Schedule 3.
13. Any reference to an 'Existing Freeholder' is a reference to an Owner of a Freehold as at the date of this Undertaking.
14. Any reference to an 'Existing Lessee' is a reference to an Owner of a Lease as at the date of this Undertaking or a lessee of a Lease where the Transfer Fee has become due but in respect of which the Transfer Fee has not been paid.
15. Any reference to a 'Freehold' is a reference to a freehold retirement housing property constructed by Hart before the date of this Undertaking and which is subject to a Transfer Fee Term, all such

properties being included within the developments listed in Schedule 3.

16. Any reference to a 'Future Freeholder' is a reference to an Owner who Purchases a Freehold after the date of this Undertaking.
17. Any reference to a 'Future Lessee' is a reference to an Owner who Purchases a Lease after the date of this Undertaking.
18. Any reference to 'Hart' includes a reference to any body corporate with whom Hart has a special relationship (within the meaning of s.222(3) of the Act).
19. Any reference to a 'Lease' is a reference to a lease of a retirement housing property granted by Hart before the date of this Undertaking and which includes a Transfer Fee Term, all such properties being included within the developments listed in Schedule 3.
20. Any reference to "Owner" is a reference to the owner of a Property at the relevant time and if there is more than one owner to all of them.
21. Any reference to "Property" is a reference to a retirement housing property either leasehold or freehold constructed by Hart before the date of this Undertaking and which is subject to a Transfer Fee Term, all such properties being included within the developments listed in Schedule 3.
22. Any reference to 'Purchase' in this Undertaking is a reference to the purchase by an Owner of a Property for valuable consideration.
23. Any reference to "Purchase Price" is a reference to the amount paid by the Owner of a Property on the Purchase of that Property and if the Property was acquired by the Owner by way of an assent to a Personal Representative made as a consequence of the death of a previous Owner then the amount paid by the previous Owner.

24. Any reference to "RPI" is a reference to the Retail Prices Index or any official index replacing it (as published by the Office of National Statistics or any successor body).
25. Any reference to 'Sale' in this Undertaking is a reference to the sale by an Owner of a Property for valuable consideration.
26. Any reference to "Sale Price" is a reference to price at which an Owner sells a Property when a Sale occurs.
27. Any reference to 'Transfer' in this Undertaking is a reference to any legal or equitable means by which an Owner may seek to transfer his or her leasehold or freehold estate in land or by which another person may acquire a legal or equitable proprietary right in respect of such land, including but not limited to any form of conveyance, grant, sale, underlease, surrender, devolution or disposal.
28. Any reference to a 'Transfer Document' is a reference to the document whereby a Freehold was transferred to the original purchaser from Hart.
29. Any reference to 'Transfer Fee' is a reference to a fee payable under a Transfer Fee Term.
30. Any reference to 'Transfer Fee Term' is a reference to a term included in, or which is of like or similar effect to, those terms set out at Schedule 2, or that otherwise allows or purports to allow Hart to require a Consumer to pay a fee that is expressed as a percentage of the Sale Price or open market value on transfer of the Owner's interest on the occurrence of a Transfer.

## **SCHEDULE 2**

### **Illustrative Examples of Transfer Fee Terms referred to under 'The Prohibited Conduct' at paragraph 2 of the Undertaking**

#### **Lease relating to Pegasus Court, Weatherby Gardens, Hartley Wintney**

##### **Paragraph 7 of Schedule 5**

"To pay to the Lessor on the creation or any devolution of any legal or equitable estate or interest in the Property or on a change of occupation a sum equal to 1% of whichever shall be the greater of:

- (a) the gross proceeds of sale of the Property or
- (b) the open market value thereof at the date of such creation devolution or change (such sum to be determined in default of agreement by a surveyor appointed by the Lessor)

plus 1/2% of such value for each complete or partially complete year during which the person effecting such creation devolution or change shall have been entitled to an estate or interest in the Apartment or been in occupation thereof

Provided that:

- (a) such sum shall in no circumstances exceed 5% of such proceeds or such value (as appropriate)
- (b)
  - (i) no sum shall be payable on the death of a person who is beneficially entitled to any such interest as a joint tenant
  - (ii) no sum will be payable where a charge arises on a change of occupation where
    - (aa) one spouse leaves the Property and the other remains in occupation provided that when that remaining spouse ceases to occupy the Property the charge will be payable notwithstanding that the remaining spouse may have remarried or
    - (bb) there is a temporary change of occupation for a period of three calendar months or less
- (c)
  - (i) if a personal representative (which term for the purposes of this paragraph includes the plural where appropriate) of a deceased Lessee shall:
    - (aa) assent to the vesting of the Property or any legal or equitable estate or interest therein in any person or

(bb) not have assented to the vesting of the Property in any person within twelve months of the date of death of the Lessee

then such personal representative shall be deemed for the purposes of this paragraph to have assented to the vesting of the Property in the person or persons entitled to the same under the will or on the intestacy of the deceased Lessee

- (ii) if the person or persons in whom the Property shall be deemed to have been vested in accordance with subparagraph (c)(i) of this paragraph shall fail to pay on demand the sum payable under this paragraph then such personal representative shall on demand pay such sum to the Company

### **Lease relating to The Cloisters, Pegasus Grange, Oxford**

#### **Paragraph 7 of Schedule 5**

"To pay to Pegasus on the creation or any devolution of any legal or equitable estate or interest in the Apartment or on a change of occupation a sum equal to 1% of whichever shall be the greater of:

- (a) the gross proceeds of sale of the Apartment or  
(b) the open market value thereof at the date of such creation devolution or change (such sum to be determined in default of agreement by a surveyor appointed by the Pegasus)

plus 1/2% of such value for each complete or partially complete year during which the person effecting such creation devolution or change shall have been entitled to an estate or interest in the Apartment or been in occupation thereof

Provided that:

- (a) such sum shall in no circumstances exceed 5% of such proceeds or such value (as appropriate)
- (b) (i) no sum shall be payable on the death of a person who is beneficially entitled to any such interest as a joint tenant  
(ii) no sum will be payable where a charge arises on a change of occupation where  
(aa) one spouse leaves the Apartment and the other remains in occupation provided that when that remaining spouse ceases to occupy the Apartment the charge will be payable notwithstanding that the remaining spouse may have remarried or

(bb) there is a temporary change of occupation for a period of three calendar months or less

- (c) (i) if a personal representative (which term for the purposes of this paragraph includes the plural where appropriate) of a deceased Lessee shall:
- (aa) assent to the vesting of the Apartment or any legal or equitable estate or interest therein in any person or
  - (bb) not have assented to the vesting of the Apartment in any person within twelve months of the date of death of the Lessee

then such personal representative shall be deemed for the purposes of this paragraph to have assented to the vesting of the Apartment in the person or persons entitled to the same under the will or on the intestacy of the deceased Lessee

- (ii) if the person or persons in whom the Apartment shall be deemed to have been vested in accordance with subparagraph (c)(i) of this paragraph shall fail to pay on demand the sum payable under this paragraph then such personal representative shall on demand pay such sum to the Company

**Lease relating to Pegasus Court, Torquay Road, Paignton**

**Paragraph 7 of Schedule 5**

"To pay to the Lessor on the creation or any devolution of any legal or equitable estate or interest in the Apartment or on a change of occupation a sum equal to 1% of whichever shall be the greater of:

- (a) the gross proceeds of sale of the Apartment or
- (b) the open market value thereof at the date of such creation devolution or change (such sum to be determined in default of agreement by a surveyor appointed by the Lessor)

plus 0.5% of such value for each complete or partially complete year during which the person effecting such creation devolution or change shall have been entitled to an estate or interest in the Apartment or been in occupation thereof

Provided that:

- (a) such sum shall in no circumstances exceed 5% of such proceeds or such value (as appropriate)

- (b) (i) no sum shall be payable on the death of a person who is beneficially entitled to any such interest as a joint tenant
- (ii) no sum will be payable where a charge arises on a change of occupation where
  - (aa) one spouse leaves the Apartment and the other remains in occupation provided that when that remaining spouse ceases to occupy the Apartment the charge will be payable notwithstanding that the remaining spouse may have remarried or
  - (bb) there is a temporary change of occupation for a period of three calendar months or less
- (c) (i) if a personal representative (which term for the purposes of this paragraph includes the plural where appropriate) of a deceased Lessee shall:
  - (aa) assent to the vesting of the Apartment or any legal or equitable estate or interest therein in any person or
  - (bb) not have assented to the vesting of the Apartment in any person within twelve months of the date of death of the Lesseethen such personal representative shall be deemed for the purposes of this paragraph to have assented to the vesting of the Apartment in the person or persons entitled to the same under the will or on the intestacy of the deceased Lessee
- (ii) if the person or persons in whom the Apartment shall be deemed to have been vested in accordance with sub-paragraph (c)(i) of this paragraph shall fail to pay on demand the sum payable under this paragraph then such personal representative shall on demand pay such sum to the Company

### **SCHEDULE 3 - Developments**

1. Abergavenny - Pegasus Court, Mill Street, Abergavenny, NP7 5EX;
2. Barnwood - Pegasus Court, Barnwood Road, Gloucester, GL4 3HN
3. Broadway - Pegasus Court, Station Road, Broadway, WR12 7DE
4. Bournemouth - Pegasus Court, 58 Lansdowne Road, Bournemouth, BH1 1RH
5. Bourton-on-the-Water - Pegasus Court, Bourton-on-the-Water, Cheltenham, GL54 2BA
6. Brackley - College House, High Street, Brackley, NN13 7NR
7. Cheltenham - Pegasus Court, St Stephens Road, Cheltenham, GL51 3GB
8. Fleet - Pegasus Court, Fleet, GU51 4SX
9. Hartley Wintney - Hartford Court, Hartley Wintney, Hampshire, RG27 8PQ
10. Keynsham - Back Lane, Keynsham, Bristol, BS31 1DG
11. Olney - Silver End, Olney, MK46 4AL, & Pegasus Court & Manor, Freeman Gardens, Olney, MK46 4AU
12. Oxford - Pegasus Grange, White House Road, Oxford, OX1 4QE/ OX1 4QF/ OX1 4QG/ OX1 4QQ
13. Paignton - Pegasus Court, Torquay Road, Paignton, TQ3 2TZ/ TQ3 2UB
14. Tilehurst - Pegasus Court, Park Lane, Tilehurst, Reading, RG31 5DB.