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SCHEDULES

SCHEDULE 2

Section 17.

CONVEYANCE OF FREEHOLD AND GRANT OF LEASE

PART I

COMMON PROVISIONS

Rights to be conveyed or granted—general

- 1 The conveyance or grant shall not exclude or restrict the general words implied under section 62 of the Law of Property Act 1925, unless the tenant consents or the exclusion or restriction is made for the purpose of preserving or recognising any existing interest of the landlord in tenant's incumbrances or any existing right or interest of any other person.

Rights of support, passage of water, etc.

- 2 (1) The conveyance or grant shall, by virtue of this Schedule, have the effect stated in sub-paragraph (2) below as regards—
- (a) rights of support for any building or part of a building;
 - (b) rights to the access of light and air to any building or part of a building;
 - (c) rights to the passage of water or of gas or other piped fuel, or to the drainage or disposal of water, sewage, smoke or fumes, or to the use or maintenance of pipes or other installations for such passage, drainage or disposal;
 - (d) rights to the use or maintenance of cables or other installations for the supply of electricity, for the telephone or for the receipt directly or by landline of visual or other wireless transmissions.
- (2) The effect is—
- (a) to grant with the dwelling-house all such easements and rights over other property, so far as the landlord is capable of granting them, as are necessary to secure to the tenant as nearly as may be the same rights as at the relevant time were available to him under or by virtue of the secure tenancy or any agreement collateral to it, or under or by virtue of any grant, reservation or agreement made on the severance of the dwelling-house from other property then comprised in the same tenancy ; and
 - (b) to make the dwelling-house subject to all such easements and rights for the benefit of other property as are capable of existing in law and are necessary to secure to the person interested in the other property as nearly as may be the same rights as at the relevant time were available against the tenant under or by virtue of the secure tenancy or any agreement collateral to it, or under or by virtue of any grant, reservation or agreement made as mentioned in paragraph (a) above.

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(3) This paragraph—

- (a) does not restrict any wider operation which the conveyance or grant may have apart from this paragraph; but
- (b) is subject to any provision to the contrary that may be included in the conveyance or grant with the consent of the tenant.

Rights of way

3 The conveyance or grant shall include—

- (a) such provisions (if any) as the tenant may require for the purpose of securing to him rights of way over land not comprised in the dwelling-house, so far as the landlord is capable of granting them, being rights of way that are necessary for the reasonable enjoyment of the dwelling-house ; and
- (b) such provisions (if any) as the landlord may require for the purpose of making the dwelling-house subject to rights of way necessary for the reasonable enjoyment of other property, being property in which at the relevant time the landlord has an interest, or to rights of way granted or agreed to be granted before the relevant time by the landlord or by the person then entitled to the reversion on the tenancy.

Covenants and conditions

4 The conveyance or grant shall include such provisions (if any) as the landlord may require to secure that the tenant is bound by, or to indemnify the landlord against breaches of, restrictive covenants (that is to say covenants or agreements restrictive of the use of any land or premises) which affect the dwelling-house otherwise than by virtue of the secure tenancy or any agreement collateral to it and are enforceable for the benefit of other property.

5 Subject to Parts II and III below, the conveyance or grant may include such covenants and conditions as are reasonable in the circumstances.

Meaning of "incumbrances", "tenant's incumbrances" and "relevant time"

6 In this Schedule—

- (a) "incumbrances" includes personal liabilities attaching in respect of the ownership of land or of an interest in land though not charged on the land or interest;
- (b) "tenant's incumbrance" means any incumbrance on the secure tenancy which is also an incumbrance on the reversion, and any interest derived directly or indirectly out of the secure tenancy ; and
- (c) "the relevant time" means, in all cases, the date on which the tenant's notice claiming to exercise the right to buy is served.

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PART II

CONVEYANCE OF FREEHOLD

General

- 7 The conveyance shall not exclude or restrict the all estate clause implied under section 63 of the Law of Property Act 1925, unless the tenant consents or the exclusion or restriction is made for the purpose of preserving or recognising any existing interest of the landlord in tenant's incumbrances or any existing right or interest of any other person.
- 8 The conveyance shall be of an estate in fee simple absolute subject to—
(a) tenant's incumbrances; and
(b) the burdens specified in paragraph 9 below ;
but otherwise free of incumbrances.
- 9 The burdens referred to in paragraph 8 above are burdens in respect of the upkeep or regulation for the benefit of any locality of any land, building, structure, works, ways or watercourse.

Covenants

- 10 The conveyance shall be expressed to be made by the landlord as beneficial owner (thereby implying the covenant set out in Part I of Schedule 2 to the Law of Property Act 1925).

PART III

LEASES

General

- 11 (1) The lease shall be for a term of not less than 125 years at a rent not exceeding £10 per annum, and the following provisions shall have effect with respect to the other terms of the lease but subject to sub-paragraph (2) below.
- (2) If a building contains two or more dwelling-houses and the landlord has, since the passing of this Act, granted a lease of one of them for a term of not less than 125 years, any lease granted in pursuance of this Chapter of the other or one of the others may be for a term expiring at the end of that term and, if it is for such a term, the assumption stated in section 6(4)(a) shall be modified accordingly.

Common use of premises and facilities

- 12 Where the tenant enjoyed, during the secure tenancy, the use, in common with others, of any premises, facilities or services, the lease shall include rights to the like enjoyment, so far as the landlord is capable of granting them, unless otherwise agreed between the landlord and the tenant.

Covenants by landlord

- 13 (1) There shall be implied, by virtue of this Schedule, covenants by the landlord—

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- (a) to keep in repair the structure and exterior of the dwelling-house and of the building in which it is situated (including drains, gutters and external pipes) and to make good any defect affecting that structure ;
 - (b) to keep in repair any other property over or in respect of which the tenant has any rights by virtue of this Schedule;
 - (c) to ensure, so far as practicable, that any services which are to be provided by the landlord and to which the tenant is entitled (whether by himself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services.
- (2) The covenant to keep in repair implied by virtue of subparagraph (1)(a) above includes a requirement that the landlord shall rebuild or re-instate the dwelling-house and the building in which it is situated in the case of destruction or damage by fire, tempest, flood or any other cause against the risk of which it is normal practice to insure.
- (3) The county court may, by order made with the consent of the parties, authorise the inclusion in the lease or in any agreement collateral to it, of provisions excluding or modifying the obligations of the landlord under the covenants implied by this paragraph, if it appears to the court that it is reasonable to do so.

Covenant by tenant

- 14 Unless otherwise agreed between the landlord and the tenant there shall be implied, by virtue of this Schedule, a covenant by the tenant to keep the interior of the dwelling-house in good repair (including decorative repair).

Avoidance of certain agreements

- 15 Any provision of the lease or of any agreement collateral to it shall be void in so far as it purports—
- (a) to prohibit or restrict the assignment of the lease or the subletting, wholly or in part, of the dwelling-house; or
 - (b) to enable the landlord to recover from the tenant any part of the costs incurred by the landlord in discharging or insuring against his obligations under paragraph 13(1)(a) or 13(1)(b) above, or
 - (c) to authorise any forfeiture or impose on the tenant any penalty or disability in the event of his enforcing or relying on the preceding provisions of this Schedule ;

but subject to section 19 of this Act and paragraph 16 below.

- 16 A provision is not void by virtue of paragraph 15 above in so far as it requires the tenant to bear a reasonable part of the costs of carrying out repairs not amounting to the making good of structural defects or of the costs of making good any structural defects falling within paragraph 17 below or of insuring against risks involving such repairs or the making good of such defects.

- 17 A structural defect falls within this paragraph if—
- (a) the landlord has notified the tenant of its existence before the lease was granted ; or
 - (b) the landlord does not become aware of it earlier than 10 years after the lease is granted.

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PART IV

CHARGES ON FREEHOLD

- 18 Where there is a charge (however created or arising) on the freehold which is not a tenant's incumbrance, then—
- (a) if it is not a rentcharge, the conveyance of the freehold in pursuance of the right to buy shall be effective to release the freehold from the charge, but the release shall not affect the personal liability of the landlord or any other person in respect of any obligation which the charge was created to secure ; and
 - (b) whether or not it is a rentcharge, the charge shall not affect a lease granted in pursuance of the right to buy.
- 19 (1) Where the freehold is subject to a rentcharge which does not affect other land the conveyance shall be made subject to the rent-charge.
- (2) Where the freehold is subject to a rentcharge which also affects other land the conveyance shall be made subject to the rentcharge but shall contain a covenant by the landlord to indemnify the tenant and his successors in title in respect of any liability arising under the rentcharge.
- (3) In a case falling within sub-paragraph (2) above the landlord shall, immediately after the conveyance and if the rentcharge is of a kind which may be redeemed under the Rentcharges Act 1977, take such steps as are necessary to redeem the rentcharge, so far as it affects land owned by the landlord (including land treated by subparagraph (4) below as so owned).
- (4) For the purposes of the Rentcharges Act 1977 and of subparagraph (3) above any land which has been conveyed by the landlord in pursuance of the right to buy, but subject to the rentcharge, shall be treated as if it had not been so conveyed but had continued to be owned by the landlord.
- 20 In this Part of this Schedule " rentcharge " has the same meaning as in the Rentcharges Act 1977 ; and for the purposes of paragraph 19 above land is owned by a person if he is the owner of the land within the meaning of section 13(1) of that Act.