

Sample Property PSL Precedent

WARNING: This document is a sample Property PSL precedent. It contains clauses for inclusion in a transfer of part (e.g. easements, covenants etc.). This document is not the final version of the document that appears on the Property PSL website. The final version includes further updating and drafting modifications. It is provide as a sample only, and should not therefore be used in a transaction.

1. DEFINITIONS

In this Transfer, unless the context otherwise requires, the following expressions have the following meanings:

| | |
|-------------------------------|--|
| Access Area | the land shown edged [blue] on the Plan; |
| Access Road | the road shown coloured [brown] on the Plan; |
| Perpetuity Period | the period specified in clause 3 of this Transfer; |
| Plan | the plan attached to this Transfer; |
| Projection | any eaves, gutters, spouts, drainpipes, chimney capping, foundations, footings, cellars, vaults, fire escapes or similar structures which are either now in existence or are constructed within the Perpetuity Period; |
| Property | the land shown edged red on the Plan and each and every part of it; |
| Property Conduits | any sewers, drains, ducts, gutters, pipes, wires, cables, watercourses and other conducting media and also manholes, inspection chambers, tanks, soakaways and all apparatus used in connection with them which are either now in, on or under the Property or are constructed or laid in, on or under it within the Perpetuity Period; |
| Retained Land | the land shown edged [green] on the Plan and each and every part of it; |
| Retained Land Conduits | any sewers, drains, ducts, gutters, pipes, wires, cables, watercourses and other conducting media and also manholes, inspection chambers, tanks, soakaways and all apparatus used in connection with them which are either now in, on or under the Retained Land or are constructed or laid in, on or under it within the Perpetuity Period; |

| | |
|----------------------|---|
| Services | water, foul and surface water drainage, gas, electricity, telecommunications and other services and supplies; |
| Title Matters | the matters contained, mentioned or referred to in the [property and charges] registers of title number [] [and the deeds and documents set out in Schedule 3] so far as they are subsisting or capable of being enforced and affect the Property; |
| VAT | value added tax and any other tax or duty of a similar nature substituted for it or in addition to it. |

2. INTERPRETATION

2.1 In this Transfer:

- 2.1.1 the expression "the Transferor" includes the owner or owners for the time being of the Retained Land, and the Transferor's successors in title;
- 2.1.2 the expression "the Transferee" includes the owner or owners for the time being of the Property, and the Transferee's successors in title;
- 2.1.3 obligations expressed to be made or assumed by a party comprising more than one person are made and are to be construed as made by all such persons jointly and severally;
- 2.1.4 words denoting one gender include the other genders and words denoting persons include firms and corporations and vice versa;
- 2.1.5 words importing the singular number include the plural and vice versa;
- 2.1.6 clause headings are not to affect interpretation;
- 2.1.7 any obligation on any party not to do, or omit to do anything includes an obligation not to allow that thing to be done or omitted to be done by any employee, servant, agent, consultant or other person acting on that party's behalf;
- 2.1.8 unless the context otherwise requires, a reference to a clause or to a Schedule is a reference to the relevant clause in, or Schedule to this Transfer, and a reference to a paragraph of a Schedule is a reference to the relevant paragraph of that Schedule.
- 2.1.9 rights of entry granted or reserved by this Transfer include the right to enter with workmen, machinery, equipment, tools and materials.

2.2 Any references in this Transfer to "liability" include, where the context allows, claims, demands, proceedings, damages, loss, costs and expenses.

2.3 Any references in this Transfer 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. [except that references to the Town and Country Planning (Use Classes) Order 1987 are to that Order as it is force at the date of this Transfer].

3. **PERPETUITY PERIOD**

The perpetuity period applicable to this Transfer is 80 years from the date of this Transfer.

4. **TITLE MATTERS**

The Property is transferred subject to, and, where appropriate, together with the benefit of the Title Matters.

5. **RIGHTS GRANTED FOR THE BENEFIT OF THE PROPERTY**

The Transferor grants to the Transferee for the benefit of the Property the rights set out in Schedule 1.

6. **RIGHTS RESERVED FOR THE BENEFIT OF THE RETAINED LAND**

The Transferor excepts and reserves out of the Property for the benefit of the Retained Land the rights set out in Schedule 2.

7. **TRANSFEEE'S COVENANTS**

7.1 The Transferee [on behalf of itself and its successors in title to the Property] covenants with the Transferor for the benefit of the Retained Land to observe and perform the covenants in Part 1 of Schedule 4.

7.2 The Transferee [on behalf of itself and its successors in title to the Property] covenants with the Transferor for the benefit of the Retained Land and with the intention that that the covenants will bind the Property [but not so as to impose any personal liability on the Transferee or any successor in title of the Transferee after it has parted with all of its interest in the Property] to observe and perform the covenants in Part 2 of Schedule 4.

7.3 The Transferee covenants with the Transferor [with the object of affording to the Transferor a full and sufficient indemnity but not further or otherwise] that the Transferee will observe and perform the covenants, conditions and other obligations in the Title Matters, but only in so far as they relate to the Property and are subsisting and capable of being enforced against the Property].

8. **TRANSFEROR'S COVENANTS**

8.1 The Transferor [on behalf of itself and its successors in title to the Retained Land] covenants with the Transferee for the benefit of the Property to observe and perform the covenants in Part 1 of Schedule 5.

8.2 The Transferor [on behalf of itself and its successors in title to the Retained Land] covenants with the Transferee for the benefit of the Property and with

the intention that that the covenants will bind the Retained Land [but not so as to impose any personal liability on the Transferor or any successor in title of the Transferor after it has parted with all of its interest in the Retained Land] to observe and perform the covenants in Part 2 of Schedule 5.

9. **LAND REGISTRY RESTRICTION**

[The Transferor and the Transferee request the Land Registry to enter in the proprietorship register of the Property [and also of the Retained Land] a restriction referring to this Transfer in the following form:

["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,] is to be registered without a certificate signed by the registered proprietor of the land comprised in title number [*title number for the Retained Land*] (or his solicitor) [or the registered proprietor of the Property] (or his solicitor)] that the provisions of paragraph [] of schedule 4 [or paragraph [] of schedule 5] to the transfer dated [] and made between [] and [] have been complied with."]

10. **DECLARATIONS**

10.1 The parties declare that this Transfer does not operate to create or convey any easements rights or privileges over the Retained Land other than those expressly granted by this Transfer.

10.2 [Except as expressly granted in this Transfer, the Transferee is not to become entitled to any right to light or air, or to any other easement, right or privilege over the Retained Land [which would or might restrict or prejudicially affect the future rebuilding, alteration or development of the Retained Land.]

10.3 [The Transferor and the Transferee agree and declare that all boundary structures separating the Property from the Retained Land are party walls or structures and will be maintained accordingly.]

11. **VAT**

11.1 All sums made payable by this Transfer are exclusive of any VAT.

11.2 Any obligation to pay money includes an obligation to pay VAT chargeable in respect of that payment.

12. **THIRD PARTY RIGHTS**

Save as expressly provided none of the provisions of this Agreement are intended to or will operate to confer any benefit (pursuant to the Contracts (Rights of Third Parties) Act 1999) on a person who is not named as a party to this Transfer.

SCHEDULE 1

Rights granted for the Property

1. The right (in common with the Transferor and all others authorised by the Transferor):
 - 1.1 to pass and repass for all purposes and at all times with or without vehicles (but on foot only in respect of any footpaths) over the Access Road serving the Property (but only in so far as such road and footpath is not adopted by the relevant highway authority);
 - 1.2 to use the Access Area to pass and repass [at all times] [between the hours of [] and [] only] with or without vehicles to and from the Property [and to load or unload goods and merchandise in connection with the Transferee's use of the Property] such right to be exercised in a reasonable manner and so as not to obstruct the free flow of traffic and other persons lawfully in the Access Area;
 - 1.3 to use [on a first come first served basis] that part (if any) of the Access Area as the Transferor in its absolute discretion allocates for the parking of private motor vehicles in connection with the use of the Property.
2. The right (in common with the Transferor and all others authorised by the Transferor) for the benefit and enjoyment of the Property to the passage and running of Services through the Retained Land Conduits serving the Property.
3. The right to make connections into and to use any Retained Land Conduits for the passage and running of Services to and from the Property.
4. The right to enter on to any part of the Retained Land in so far as is necessary to:
 - 4.1 inspect, repair, clean, maintain, modify, connect into, disconnect, replace, renew or carry out any other works in respect of any Retained Land Conduits [exclusively] serving the Property; or
 - 4.2 repair, maintain, clean, alter, renew, demolish or reconstruct the whole or any part of any building [(including any Projection or any boundary walls or fences)] from time to time erected on the Property.
5. The right to retain and where appropriate to use any Projection which protrudes from the Property over or beneath the Retained Land.
6. The right of support and protection from the Retained Land for the benefit of the Property.
7. [The right after giving reasonable notice to the Transferor, and at the expense of the Transferee:
 - 7.1 [to vary the location of that part of the Access Road that is within the Property (but without materially affecting the nature or quality of access to and from the Retained Land and the public highway) so that the area so modified becomes the Access Road for the purposes of this Transfer); and]
 - 7.2 [temporarily to close that part of the Access Road that is within the Property in connection with the carrying out of any works to the Property or to any

building from time to time erected on the Property [if the carrying out of such works may not reasonably be achieved by other means] [and provided a suitable alternative access to and from the Retained Land and the public highway is provided]; and]

- 7.3 [to divert any of the Property Conduits serving the Retained Land to a location no less convenient than exists (such location to be determined by the Transferee [acting reasonably]) [provided that there is no interruption or diminution in the supply of Services through the Property Conduits to the Retained Land.]]

SCHEDULE 2

Rights excepted and reserved for the Retained Land

1. The right (in common with the Transferee and all others authorised by the Transferee) to pass and repass for all purposes and at all times with or without vehicles (but on foot only in respect of any footpaths) over that part of the Access Road that is within the Property and serving the Retained Land (but only in so far as such road and footpath is not adopted by the relevant highway authority).
2. The right (in common with the Transferee and all others authorised by the Transferee) for the benefit and enjoyment of the Retained Land to the passage and running of Services through the Property Conduits serving the Retained Land.
3. The right to make connections into and to use any Property Conduits for the passage and running of Services to and from the Retained Land.
4. The right to enter on to any part of the Property in so far as is necessary to:
 - 4.1 inspect, repair, clean, maintain, modify, connect into, disconnect, replace, renew or carry out any other works in respect of any Retained Land Conduits [exclusively] serving the Retained Land; or
 - 4.2 repair, maintain, clean, alter, renew, demolish or reconstruct the whole or any part of any building [(including any Projection or any boundary walls or fences)] from time to time erected on the Retained Land.
5. The right to retain and where appropriate to use any Projection which protrudes from the Retained Land over or beneath the Property.
6. The right of support and protection from the Property for the benefit of the Retained Land.
7. [The right after giving reasonable notice to the Transferee, and at the expense of the Transferor:
 - 7.1 [to vary the location of the Access Road (but without materially affecting the nature or quality of access to and from the Property and the public highway) so that the area so modified becomes the Access Road for the purposes of this Transfer); and]

- 7.2 [temporarily to close the Access Road in connection with the carrying out of any works to the Retained Land or to any building from time to time erected on the Retained Land [if the carrying out of such works may not reasonably be achieved by other means] [and provided a suitable alternative access to and from the Property and the public highway is provided]; and]
- 7.3 [to divert any of the Retained Land Conduits serving the Property to a location no less convenient than exists (such location to be determined by the Transferor [acting reasonably]) [provided that there is no interruption or diminution in the supply of Services through the Retained Land Conduits to the Property.]]

SCHEDULE 3

Documents affecting title

| Date: | Document: | Parties: |
|--------------|------------------|-----------------|
|--------------|------------------|-----------------|

SCHEDULE 4

Part 1

Transferee's Positive Covenants

1. [Subject to payment of the contribution referred to in Paragraph [2] of Schedule 5] to maintain in good repair and condition [and where necessary replace or renew] the Property Conduits serving or capable of serving the Retained Land [and that part of the Access Road that falls within the Property].
2. To pay to the Transferor on demand [[] per cent] [a fair proportion as determined from time to time by the Transferor [acting reasonably]] of the costs and expenses properly incurred by the Transferor in complying with the Transferor's covenant to maintain in good repair and condition and to keep clean, tidy and (where necessary) lit the Access Area, the Access Road and the Retained Land Conduits.
3. To pay on demand to the Transferor any cost or expense properly incurred by the Transferor arising out of any entry on to the Property in order to remedy any failure by the Transferee to comply with its covenants set out in this Transfer.
4. As soon as reasonably practicable after the date of this Transfer (and in any event within [three] months of it) to erect [PVC covered chain-link fencing] [close boarded wooden fencing] not less than [] metres high along the boundary of the Property between the points marked [A and B] on the Plan and thereafter to maintain the fence in good repair and condition.

5. To keep in good repair and condition any boundary railings, gates, fences or walls which may now [or at any time within the Perpetuity Period] be erected along the boundary separating the Retained Land from the Property.
6. To maintain those parts of the Property which are not built upon in a clean and tidy condition.
7. To make good as soon as practicable all damage caused to the Retained Land by or during the exercise of any right of entry on to the Retained Land.
8. [Not to dispose of the whole or any part of the Property without first procuring that the disponee covenants (and if more than one, jointly and severally) with the Transferor and for the benefit of the owner or owners from time to time of the Retained Land to observe and perform the covenants set out in Schedule 4 (including this covenant).]

Part 2

Transferee's Restrictive Covenants

1. Not to use the Property for any purpose other than for [] [purposes within the meaning of Class [] of the Town and Country Planning (Use Classes) Order 1987].
2. Not to use the Property for any purpose which may be or become a nuisance to the Transferor or any tenants or occupiers of the Retained Land.
3. Not to emit smoke or noxious fumes from the Property, cause excessive noise on the Property, or deposit rubbish or refuse on the Property other than in a suitable receptacle.
4. [Not to discharge into the Retained Land Conduits or the Property Conduits any substance which may be harmful [to the environment or to human health] or corrosive or which may cause any damage to or obstruction of or deposit in them.]
5. Not to store any inflammable materials [within [] metres of any boundary of] [on] the Property unless covered or stored inside a building or in a receptacle suitable for storage of such materials.
6. Not to carry out any works or erect any building or structure within [] metres of [] [the boundary separating the Retained Land from the Property] or within [] metres of any Property Conduits serving or capable of serving the Retained Land, and not to obstruct access to the Property Conduits for any of the purposes provided for in this Transfer.
7. Not to obstruct the use by the Transferor and those authorised by it of the Access Area and the Access Road.
8. Not to exercise any right of entry on to the Retained Land except:
 - 8.1 in a reasonable manner, and causing as little damage or disturbance as reasonably possible to the Retained Land; and

- 8.2 after first giving reasonable written notice of the proposed entry to the Transferor (except in the case of an emergency).]
9. [Not to obstruct or otherwise to interfere with the access, use, quality or quantity of the light and air as may now or hereafter be available to the Retained Land and any buildings on it.]

SCHEDULE 5

Part 1

Transferor's Positive Covenants

[If acting for a transferee, consider adapting Schedule 4 covenants.]

Part 2

Transferor's Restrictive Covenants

[If acting for a transferee, consider adapting Schedule 4 covenants.]