

**LEASEHOLD VALUATION TRIBUNAL**  
**FOR THE LONDON RENT ASSESSMENT PANEL**

LON/00AN/LSC/2010/0437

**Landlord & Tenaat Act 1985 (as amended) Section 27A and Section 20C**

**Property:** 159a Sulgrave Road, London W6 7PX

**Applicants:** Mr James Cook and Mrs Melanie Cook (Flats A and B)  
Ms L. Summers (Flat C) (Leaseholders)

**Represented by:** Mr James Cook in person

**Respondent:** Mr J. Arthur-Hay (Landlord)  
**Represented by:** Mr G. Willis; Assurance Solicitors

**Also Present:** Ms L. Summers

**Hearing:** 9<sup>th</sup> September 2010

**Members of the Tribunal:**

Mr L. W. G. Robson LLB(Hons) (Chairman)  
Mr C. Kane FRICS  
Mr P. Clabburn

**Preliminary**

1. The Applicant leaseholders seek a determination under Section 27A of the Landlord & Tenant Act 1985 (as amended) of reasonableness and liability to pay service charges under a (specimen) lease dated 20<sup>th</sup> November 1978 (the Lease) for annual service charges in the years ending on 23<sup>rd</sup> June 2008, 23<sup>rd</sup> June 2009, and 23<sup>rd</sup> June 2010.
2. Pursuant to Pre Trial Directions given on 21<sup>st</sup> July 2010 the case was heard on 9<sup>th</sup> September 2010. No inspection was deemed necessary, although the Tribunal had access to a number of photographs of the property in the hearing bundle. The property was agreed at the hearing to be a Victorian house converted into 3 flats, for the period in question.

**Hearing**

3. The Applicants tendered no formal witness statements. The Respondent tendered witness statements from Mr J.L. Gray, a Director of Galebaron, the managing agents, and Mr K. Horton an insurance broker with St Giles Insurance and Finance Limited. Neither was available to be orally examined, which was unfortunate, since the Tribunal had to infer a number

of factual matters without their first hand knowledge. The Respondents offered a further emailed statement from Mr Horton dated 8<sup>th</sup> September 2010 at the start of the hearing. Mr Cook was given time to consider it. Mr Cook and Mr Willis made oral submissions following their written submissions at the hearing. After the hearing, Mr Cook sent the Tribunal copies of two emails without any request from the Tribunal. These items were not taken into consideration by the Tribunal when making its decision. Evidence sent after a hearing without permission should not normally be considered.

4. From the papers, the Tribunal ascertained that the following matters were in dispute:
  - a) The risks covered and cost of the insurance for all years in issue.
  - b) The reasonableness of a charge by the managing agents of 10% based on the total cost of the service charges for all years in issue being made in addition to a unit management charge.
  - c) An advance service charge of £100 per annum being made instead of £50 as specified in the Lease
  - d) An administration fee charged to Mr Cook in excess of the sum specified in the Lease.
5. The Parties managed to agree items c) and d) prior to the hearing. Thus the Tribunal was only required to decide items a) and b) above.

#### **Insurance**

6. Mr Cook submitted that he had obtained a “like for like” quote from Direct Line for £1,022.28 for the current year. The freeholder’s premium was £1,508.84. It was not competitive. As to risks covered, both policies included £20,000 for contents of the common parts. The common parts of this property were a short hallway and stairs to a half landing, with a small space under the front entrance steps. The contents were limited to a carpet and a lampshade. This cover added 30% to the premium for the building alone. Also the sum of £5 million had been insured for public liability. Mr Cook submitted that the more usual sum was £2 million. He had left out some quotations he had obtained because they would only cover £2 million for residential flats.
7. Mr Cook further submitted that Mr Horton had confirmed in an email that the brokers paid a commission of 25% to the freeholder (later modified to the managing agents). He agreed that he did not have a copy of this email to hand, but it existed. Commenting on Mr Horton’s email criticising his methodology and lack of precision, he submitted that he had done his best with the information supplied to him by the landlord’s agents. His main concern was the commission paid to the landlord’s agents.
8. Mr Willis submitted that Mr Cook’s quote was obtained in an amateur fashion. It was not “like for like”. Some items were unclear, e.g. the amount of terrorism cover had been written in by hand. Mr Cook had not contacted St Giles for the information he needed. Direct Line had not seen the documents the landlord had sent relating to the insurance when giving its quote. It was not clear that his quote included “Trace and Access” cover relating to services,

which was standard in St Giles' own blocks of flats policy. Following Mr Horton's comments, he considered that a brokered policy was safer as everything was done in writing rather than on the phone. It would not inadvertently omit cover. Direct Line did not offer broking services, and were new to the market for flats. It might well have offered an inducement for the first year. The cover of £20,000 for the common parts was reasonable, although in answer to questions he conceded that the cover was only for contents, not the common parts which were part of the building. He referred us to Berrycroft Management Limited v Sinclair Gardens Investment Limited [1997] 22 EG 141 as to the cost of the premium. The Applicant had no supporting evidence for his contention that £2 million was standard. He referred to the decision in the LVT case of 7/7a Conington Road London SE13 7LH (LON/00AL/LSC/2005/0116) for support for his view that £5million was the industry norm. He also referred to other cases relating to insurance premiums allowed, but the Tribunal advised him that it considered that such evidence had only slight evidential value, and that quotes and cover actually obtained on this property already in evidence were far more persuasive. He also referred to the LVT decision on 19<sup>th</sup> September 2005 in 111 Hubert Grove, London SW9, particularly at paragraph 15 that decided that it was reasonable for an insurance broker to obtain a 12.5% commission. He conceded in answer to questions from the Tribunal that paragraph 15 also noted that it was "commonly accepted and supported by case law that the landlord should not make a profit for himself in respect of service charges and insurance premiums". Mr Willis submitted that the Tribunal should decide whether the broker approach or the direct approach was appropriate.

9. The Tribunal considered all the evidence and submissions. It was not disputed that Clause 3(2) of the Lease and the 4<sup>th</sup> Schedule gave the landlord power to effect the insurance and recover the cost from the tenants. The clause itself is widely drawn and gives much discretion to the Respondent. Also the case of Berrycroft (above) decides that the landlord is not obliged to take the cheapest quote, minimum risks, or the lowest amounts covered. Thus the landlord's discretion in this case is only limited by the question of reasonableness. Hubert Grove (above) accepts that broker's commission is allowable, but landlord's commission is not allowable. The Tribunal had some doubts about the level of the common parts contents cover, but on balance decided to allow it.
10. Mr Cook's quote was subjected to detailed criticism by the broker, and scrutiny at the hearing. Mr Cook had conceded that his quote might not be totally on a like for like basis. Nevertheless, the Tribunal decided that the quote was substantially on a like for like basis. While it had not been obtained through a broker and thus might suffer from minor errors or omissions, it was evidence of likely costs for the current insurance market, albeit at the lower end of the band of reasonableness.
11. Mr Willis doubted whether there was good evidence of the commission paid to the agents, and invited us to consider the putatively large size of the sum alleged, which he suggested was 37.5% but the Tribunal noted that Mr Horton had not contradicted Mr Cook's written submission on this point which was

the subject of his email of 8<sup>th</sup> September 2010. In his last paragraph he had sought to suggest that the premium should include commission for the broker “and the managing agent” as long as it was competitive. This comment appeared significant, and in the absence of any first hand evidence from Mr Horton or Mr Gray the Tribunal decided on the balance of the evidence that an indeterminate commission was included in the premium, but including at least 25% for the managing agent. The Tribunal agreed with the decision in Hubert Grove that the landlord’s agent was not entitled to this commission, as the landlord was effectively a trustee, and further the existence of the commission had not been disclosed until discovery in this application. For completeness, the Tribunal decided that any broker’s commission included in the premium in this case was allowable.

12. The Tribunal therefore decided that taking into consideration all factors, reduction of the premiums for all 3 years in question by 25% would produce figures which were not unreasonable. The result is thus:

2008 – charged £1,397.31 less 25% reduction = £1,047.98  
2009 – charged £1,508.84 less 25% reduction = £1,131.63  
2010 – As 2009.

The Tribunal notes in passing that these figures are only slightly higher than the quote obtained by Mr Cook for 2010, which fortified it in its view that its decision correct

#### **Management Fees**

13. The parties made a number of written submissions but in answer to an initial question at the hearing, Mr Willis conceded that there was no written management agreement, although he understood the agreement incorporated the terms of the RICS Code of Management for Residential Flats (First Edition). Mr Willis then asked for permission to make an offer to the Applicants to dispose of the matter quickly. With the Tribunal’s permission he then made an offer. After adjourning for the Applicants to consider the offer, the Applicants returned to state that they would accept the offer.
14. The Tribunal records that the parties agreed to the following:

Management Fee 2008 - £132 per flat only, with no further additions  
Ditto 2009 - £145 per flat  
Ditto 2010 – 149.50 per flat  
AND for future years a written management agreement would be signed, incorporating the terms of the RICS Code (2<sup>nd</sup> Edition).


The Tribunal notes for completeness that no figures for future years were agreed. This remains a matter for future negotiation.

#### **Section 20C Application**

15. Mr Willis considered that the Lease gave the landlord the power to charge the costs of this application to the lessees, particularly paragraphs 6 and 9 of the

4<sup>th</sup> Schedule. He submitted that the Respondent had acted reasonably. The letter dated 5<sup>th</sup> October 2009 from Galebaron to Mr Cook had attempted to answer his queries. It was not a threat, as suggested by the Applicants. The Applicants had been asked to go to mediation, and a reasonable offer had been made to avoid the hearing itself. Concessions had been made over the two items settled before the hearing. The Applicants had refused to consider the offer made prior to the hearing.

16. Mr Cook submitted that he had interpreted Galebaron's letter of 5<sup>th</sup> October 2009 as a threat, rather than an attempt to negotiate. The Applicants found Galebaron difficult to deal with. It was difficult to contact them by phone. There had been no other way to settle this matter, other than make the application. Several issues had been agreed by the Respondent after the application had been made. The Applicants had completed the mediation forms, and so had the Respondent's representative, but then their client refused to continue. The offer before the hearing had come in an email two days before the hearing. When the letter containing it arrived the day before the hearing, the offer was very different and had been headed "Without Prejudice Save as to Costs". The Applicants did not know what that meant, and could not get advice on this point before the hearing.
17. The Tribunal considered the submissions. Failure to mediate alone was not a factor which the Tribunal could take into consideration. Mediation is not a step in the proceedings, and the facts surrounding mediation should generally be ignored. The letter of 5<sup>th</sup> October 2009 appeared to be in quite strong terms, and not very conciliatory. The Tribunal decided that the Lease did empower the landlord to charge the costs of this application to the service charge, thus attracting its discretionary power to limit these costs under Section 20C. The Applicants had achieved a significant reduction over the insurance matter, and the Respondents had conceded a great deal on the remaining matters in dispute. While that was not conclusive, it seemed indicative of the conduct of the dispute as a whole. The Tribunal decided to make an order limiting the costs of the Respondent in this Application chargeable to the service charge to Nil.

Signed:   
Chairman

Date: *17th September 2010*

#### **Appendix 1**

Lease dated 20<sup>th</sup> October 1978 – see attached

#### **Appendix 2**

**Section 20C Landlord & Tenant Act 1985**

*"(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal, or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application."*

*(2).....*

*(3) The court or tribunal to which application is made may make such order on the application as it considers just and equitable in the circumstances."*

**Section 27A(1) Landlord & Tenant Act 1985**

*"An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to*

- a) the person by whom it is payable*
- b) the person to whom it is payable*
- c) the amount which is payable*
- d) the date at or by which it is payable, and*
- e) the manner in which it is payable"*

Z X 11/10/1978

DATED

20 October

1978

CLAIRMONT INVESTMENTS LIMITED

- to -

P.J. BOAG, ESQ.

L E A S E

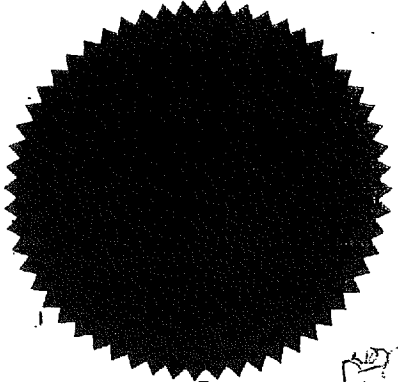
- of -

Basement Floor Flat at  
159, Sulgrave Road, London, W6.

Term commences:	24th June	1978
For years:		<u>99</u>
Term expires:	23rd June	<u>2077</u>

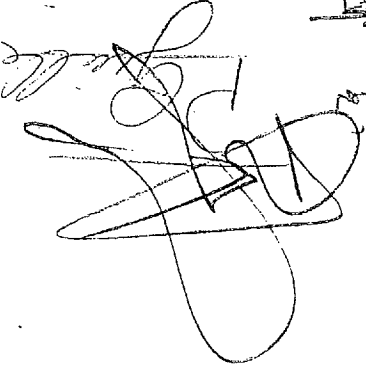
Rent: £50.00. per annum, for the first 33 years, thereafter increasing.

Consideration: £13,250.00.

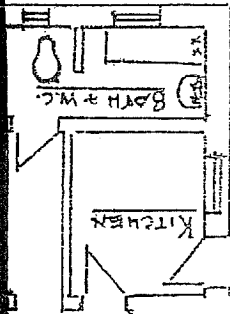


*Overlaid*

*Directly*

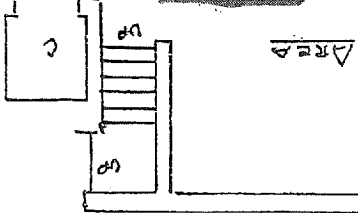


(GARDEN  
(NOT TO SCALE IN DEPTH)



THE DEMISED PREMISES  
IS OUTLINED IN RED.

SCALE 1/100



BASEMENT FLAT

(INVERTED)



H.M. LAND REGISTRY

LAND REGISTRATION ACTS 1925 to 1971

LONDON BOROUGH : Hammersmith  
TITLE NUMBER : LN 130028  
PROPERTY : 159 Sulgrave Road.

T H I S L E A S E is made the 20 day of October  
One thousand nine hundred and seventy-eight B E T W E E N  
CLAIRMONT INVESTMENTS LIMITED care of 959 Fulham Road London SW6  
(hereinafter called "the Lessor") of the one part and PETER JOHN  
BOAG of 31 Bridge Down Bridge Canterbury Kent (hereinafter  
called "the Lessee") of the other part.

W H E R E A S :

(a) THE Lessor is registered at H.M. Land Registry as Proprietor  
with Title Absolute under Title Number LN 130028 of the freehold  
property known as 159 Sulgrave Road London SW6 comprising three  
flats and hereinafter called "the Building".

(b) THROUGHOUT these presents the following definitions and  
expressions shall (unless the context does not so permit) have the  
following meanings and interpretations namely :-

- (i) "the Lessor" and "the Lessee" shall be deemed to include the parties hereto and the person or persons or corporate body claiming title under them respectively:
- (ii) "the Reserved Property" shall mean First All Those grounds paths roads and boundary fences for the time being adjoining the Building and the entrances staircases landings passages refuse and dustbin stores and other parts of the Building used in common by or for the benefit of the owners or occupiers of any other part or parts of the Building Secondly All Those the main structural parts of the Building including the roof and foundations thereof:
- (iii) "the Flat" shall mean All and Singular the flat on the basement floor of the Building All which said flat is more particularly shown on the plan annexed hereto and thereon delineated in red Together with the easements rights and privileges mentioned in the Second Schedule hereto Subject as therein mentioned Except and Reserving as mentioned in the Third Schedule hereto (hereinafter together called "the premises"):
- (iv) words importing the masculine gender shall be deemed to include the feminine gender and words in the singular shall include the plural and vice versa and where two or

more persons are included from time to time in the expressions "the Lessor" and "the Lessee" covenants entered into or made or accepted by such persons shall be deemed to be contracted jointly and severally and to be performed accordingly:

- (v) every internal wall separating the Flat from an adjoining flat shall be a party wall severed medially.

N O W THIS LEASE made in consideration of the sum of THIRTEEN THOUSAND TWO HUNDRED AND FIFTY POUNDS (£13,250.00) now paid by the Lessee to the Lessor (the receipt whereof is hereby acknowledged) and of the rents hereinafter reserved and the covenants on the part of the Lessee hereinafter contained W I T N E S S E T H as follows :-

1. THE Lessor HEREBY DEMISES unto the Lessee ALL THAT the Flat and the premises TO HOLD the same unto the Lessee from the Twenty-fourth day of June One thousand nine hundred and seventy-eight for a term of NINETY-NINE YEARS YIELDING AND PAYING therefor yearly the rent of FIFTY POUNDS (£50.00) during the first thirty-three years of the said term and thereafter increasing by a further Fifty pounds (£50.00) for each successive period of thirty-three years in advance free from any deduction whatsoever the first payment thereof being a proportionate part of the said rent calculated from the date hereof to the Twenty-fourth day of June One thousand nine hundred and seventy-nine to be made on the execution hereof and all subsequent payments to be made on the Twenty-fourth day of June in each year.

2. THE Lessee HEREBY COVENANTS with the Lessor as follows :-

(i) To pay the rents hereby reserved on the days and in the manner aforesaid without any deduction.

(ii) To pay all existing and future rates including water rates taxes assessments and outgoings of whatsoever nature which are now or may hereafter be charged upon the premises or any part thereof and in the event of any rates taxes assessments charges impositions and outgoings being assessed charged or imposed in respect of the Building to pay a proper proportion of the same attributable to the premises such proportion to be determined by the Lessor's Surveyor.

(iii) (a) To contribute and pay to the Lessor or his agents or as he may direct during the said term a sum (hereinafter called "the Maintenance Charge") being one-third of the costs and expenses and outgoings incurred by the Lessor in respect of the matters referred to in the Fourth Schedule hereto.

(b) The Maintenance Charge shall be paid as follows :-

\* As to FIFTY POUNDS (£50.00) per annum payable in advance on the day of payment of rent As to the balance (if any) within

twenty-one days of the delivery to the Lessee by the Lessor of an account (hereinafter called "the Maintenance Account") showing particulars of such costs expenses and outgoings for the year up to the previous Twenty-fourth day of June PROVIDED THAT if the Maintenance Account shall show that the proportion payable by the Lessee of the said costs expenses and outgoings for the year to the previous Twenty-fourth day of June amounted to less than the sum of Fifty pounds (£50.00) the difference shall be refunded to the Lessee within twenty-one days of delivery of the Maintenance Account Provided that the Lessor shall be entitled to retain out of such difference such a sum as it may reasonably estimate to be necessary to provide (without any sums retained from previous years) a fund to meet future costs expenses and outgoings the cost of which should be spread over several years If any dispute shall arise as to the accuracy of the Maintenance Account or the reasonableness of any sum retained for further expenses the same shall be submitted to a Member of the Institute of Chartered Accountants in England and Wales to be agreed between the parties hereto or in default of agreement to be nominated by the President for the time being of the said Institute The fees of the said Accountant shall be paid by both parties in equal shares.

(c) The Maintenance Charge shall be a charge on the premises and be recoverable as if the same were rent in arrear.

(iv) In the year One thousand nine hundred and eighty and thereafter once in every seventh year of the said term and also during the last year thereof (howsoever determined) to paint all the interior of the Flat and all additions thereto with two coats at least of good quality paint and in a proper and workmanlike manner and also at such times as last aforesaid to clean varnish whitewash colour and paper such parts of the interior of the Flat as are usually so treated.

(v) To keep the Flat and every part thereof in good and substantial repair and condition throughout the said term hereby created and it is hereby declared and agreed that there is included in this covenant as repairable by the Lessee (including replacement whenever such shall be necessary) the window glass of the Flat and the ceilings.

(vi) To keep in repair and replace when necessary all cisterns tanks drains pipes wires ducts conducting media and any other things installed in the Flat for the purpose of supplying gas and electricity and water (cold or hot) and of draining away water and soil or for allowing the escape of steam or other deleterious matter which are in the Flat.

(vii) To yield up unto the Lessor the premises so painted repaired upheld cleansed maintained and kept as aforesaid at the expiration or sooner determination of the said term quietly together with additions and improvements made thereto in the meantime and all fixtures of every kind in or upon the Flat and which during the said term may be affixed or fastened to or upon the same except Lessee's fixtures legally removable by the Lessee.

(viii) To permit the Lessor and his agents with or without workmen and others once or oftener in every year at all reasonable times but upon giving forty-eight hours' notice except in cases of emergency to enter upon and examine the condition of the Flat and to serve upon the Lessee notice in writing specifying any works or repairs necessary to be done and require the Lessee forthwith to execute the same and if the Lessee shall not within one month after the service of such notice proceed diligently with the execution of such works or repairs then to permit the Lessor to enter upon the Flat with all necessary workmen tools and materials and execute such works or repairs whereupon the cost thereof shall be a debt due to the Lessor from the Lessee payable on demand and if not paid forthwith to be recoverable by action as if the same were rent issuing out of the Flat and in arrear.

(ix) (a) To pay unto the Lessor all proper and reasonable costs and charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred by the Lessor incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 by the Lessor or incurred in or in contemplation of proceedings under Section 146 or 147 of that Act notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court.

(b) To pay all proper and reasonable expenses including Solicitors' costs and Surveyors' fees incurred by the Lessor of and incidental to the service of all notices and schedules relating to wants of repair to the Flat whether the same be served during or after the expiration or sooner determination of the term hereby granted (but relating in all cases to such wants of repair that accrued not later than the expiration or sooner determination of the said term as aforesaid).

(x) Not to make any alteration in the Flat without the approval in writing of the Lessor to the plans and specifications thereof and upon such approval being obtained to make all such alterations strictly in accordance with the approved plans and specifications the Lessor's consent not to be unreasonably withheld. The Lessee shall at his own expense in all respects obtain all licences approvals of plans permissions and other things necessary for the carrying out of such alterations and comply with the Bye-Laws regulations and conditions prescribed by any competent Authority either generally or in respect of the specific works involved in such alterations and at all times keep the Lessor fully indemnified from and against all claims and liability arising thereout, whether to such Authority or to any other body or person.

(xi) Not to do or permit or suffer to be done in or upon the Flat anything which may be or become a nuisance annoyance or cause damage or inconvenience to the Lessor or the occupiers of the other flats or whereby any insurance for the time being effected on any building erected thereon may be rendered void or voidable or whereby the rate of premiums may be increased in respect of such insurance.

(xii) (a) Not to assign transfer let or part with possession of part only of the Flat.

(b) Not to assign transfer let or part with possession of the whole of the Flat without the written consent of the Lessor such consent not to be unreasonably withheld.

(xiii) Within one month after every Assignment Assent Transfer Mortgage or Underlease or other dealing of or with the Flat to give notice thereof in writing with full particulars thereof to the Lessor and in the event of a devolution of the interest of the Lessee not perfected by an Assent within six months after the happening thereof to produce to the Lessor the Probate of the Will or Letters of Administration or other evidence under which such devolution arose and to pay to the Lessor a registration fee of Five pounds (£5.00) in respect of each such Assignment Assent Transfer Mortgage Underlease or other devolution.

(xiv) To permit the Lessor and the lessees of the remainder of the flats and their respective agents or workmen at any time or times during the said term at all reasonable hours in the daytime upon seven days' notice in writing except in the case of emergency to enter upon the Flat for the purpose of executing repairs to or alteration of or upon the Reserved Property or the other flats or for the purpose of constructing laying down altering repairing cleansing emptying or maintaining any sewers watercourses cables drains water pipes electric wires or gas pipes in connection with or for the accommodation of the Reserved Property or other flats on the person or persons so entering making good any damage as may be occasioned to the Flat without any unreasonable delay but without making any compensation for any temporary inconvenience.

(xv) That every lease or tenancy agreement of the Flat granted by the Lessee shall contain stipulations restrictions covenants conditions and provisions so far as appropriate thereto mutatis mutandis similar to those contained in this Lease.

(xvi) To comply with the requirements of any local or planning or other authority relating to the premises and to do all such work as may be necessary for that purpose and to indemnify the Lessor from and against all loss costs charges and expenses which he may be compelled to incur bear pay or discharge in consequence of any such requirement or the non-compliance of the Lessee therewith and that in default of such compliance the Lessor may enter upon the premises or any part thereof and comply with the same and that the Lessee will pay to the Lessor on demand all expenses thereby incurred.

(xvii) Within six months before the expiration or sooner determination of the said term (howsoever determined) to permit the Lessor or his agents to exhibit upon any suitable parts or part of the Flat a notice board for reletting or disposing of the same and to permit all persons authorised by them to view the Flat at all reasonable times without interruption.

(xviii) Upon receiving any notice or order or proposal for a notice or order given or made under any statutory authority relating

to the user or conditions or development or alteration of the Flat forthwith to give full particulars thereof and (if required) to produce the same to the Lessor's agents for the time being.

(xix) Not at any time during the said term to carry on or permit to be carried on any trade or business upon the premises or any part thereof or used for any illegal or immoral purpose nor to have or permit to be had any sale by auction but to use the premises for the purpose of a private residence in one family occupation only.

(xx) At all times to comply with the rules and restrictions set out in the First Schedule hereto and any reasonable rules and restrictions imposed by the Lessor in substitution therefor.

3. THE Lessor HEREBY COVENANTS with the Lessee as follows :-

(1) To pay all existing and future rates taxes assessments and outgoings now or hereafter imposed or payable on or in respect of the Reserved Property.

(2) To insure and keep insured in the full reinstatement value in a householders' comprehensive policy unless such insurance shall be vitiated by any act or default of the Lessee the Building against loss or damage by fire and such other risks as contained in a householders' comprehensive policy (including loss of rent) as the Lessor may determine in its absolute discretion in some insurance office of repute as the Lessor may nominate in writing and make all payments necessary but not more often than once a year for the above purposes and will in the event of the Building being damaged or destroyed by fire as soon as reasonably practicable lay out the insurance monies in the repair rebuilding or reinstatement of the Building the Lessor producing a copy of the policy and the last premium receipt therefor on demand to the Lessee.

(3) Provided that and so long as the Lessee shall perform and observe his obligations under this Lease and shall make all payments hereunder required to be made by him the Lessor shall :-

(i) maintain redecorate renew amend clean repaint repair grain varnish whiten and colour :

(a) the structure of the Reserved Property and the structure of the Building as a whole and in particular but without prejudice to the generality thereof the roofs exterior walls foundations chimney stacks gutters and rainwater and soil pipes thereof;

(b) the sewers drains channels watercourses gas and water pipes electric cables and wires and supply lines laid in under and upon the Reserved Property by a Statutory Authority or by the lessee of a demised flat;

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- (c) the passages landings and staircases and other parts of the Reserved Property enjoyed or used by the Lessee in common with others; and
  - (d) the boundary walls and fences of and in the curtilage of the Reserved Property insofar as these are not the responsibility of adjoining owners;
  - (e) the exterior wood and iron work and interior common parts usually painted varnished or coloured:

PROVIDED that the Lessor shall not be liable to the Lessee for any defects or want of repair hereinbefore mentioned unless the Lessor has had notice thereof:

(ii) so far as practicable :

- (a) to keep clean and reasonably lighted the passages landings and staircases and other parts of the Reserved Property enjoyed or used by the Lessee in common with others; and
- (b) to tend keep clean and tidy and generally to maintain the gardens forecourts roadways and pathways used in connection with the Reserved Property.

(4) Before carrying out any repairs or works to the Reserved Property for the carrying out of which access is required to the Flat to give to the Lessee in writing not less than seven days' (except in the cases of emergency) notice and the Lessor shall on giving such notice in writing be entitled to carry out the said repairs or works and in doing so to have access to the Flat but shall act carefully and reasonably doing as little damage as possible to the Flat and making good all damage occasioned thereto.

(5) Notwithstanding anything herein contained the Lessor shall be under no liability either to parties hereto or to strangers to this contract who may be permitted to enter or use the Reserved Property for accident happening injuries sustained or for loss of or damage to goods or chattels in the Reserved Property or in any part thereof whether arising from the negligence of the Lessor or that of any servant or agent of the Lessor or otherwise.

(6) That the Lessee paying the rents and Maintenance Charge hereby reserved and performing and observing the covenants restrictions and conditions herein contained shall peaceably hold and enjoy the Flat for the term hereby granted without any interruption by the Lessor or any person lawfully claiming for under or in trust for the Lessor.

4. IT IS HEREBY MUTUALLY DECLARED AND AGREED by and between the Lessor and the Lessee as follows :-

(i) In case at any time during this demise any dispute shall arise between the Lessor and the Lessee or lessees of other flats

relating to the premises to them respectively demised or the party or other walls sewers drains pipes conduits and other easements rights and appurtenances whatsoever relating or appertaining thereto or any repairs thereto or the contributions in respect of the expenses of such repairs as hereinbefore provided or any nuisance or annoyance arising therefrom then and in every such case the dispute shall be referred to the determination and award of the Surveyor for the time being of the Lessor which determination and award shall be final and binding on the Lessee and such other person or persons in the dispute and the Lessor's Surveyor's costs shall be borne by the parties to the dispute in such manner as may be ordered by the said Surveyor.

(ii) If the rents hereby reserved or any part thereof shall be unpaid for twenty-one days after the same shall have become due and payable (whether legally demanded or not) or if any of the covenants on the part of the Lessee herein contained shall not be observed and performed then and in every such case it shall be lawful for the Lessor or any person or persons authorised by the Lessor in that behalf at any time thereafter to re-enter the premises or any part thereof in the name of the whole and thereupon the term hereby created shall absolutely determine but without prejudice to any right of action or remedy of the Lessor in respect of any breach of the covenants by the Lessee herein contained.

\* \* \* →  
(iii) If the rent hereby reserved (whether by way of ground rent or Maintenance Charge) shall be in arrear for fourteen days whether demanded or not the Lessor shall be entitled to charge interest thereon at the rate of Four per centum (4%) above the base rate of National Westminster Bank Limited for the time being from the due date until payment shall have been made.

(iv) That any notice hereby required or authorised to be given to the Lessor or the Lessee respectively shall be in writing and may be given in any of the modes provided by Section 196 of the Law of Property Act 1925 with respect to notices to be given to landlords or tenants (as the case may be) under that Act.

5. IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration other than rent exceeds the sum of Fifteen thousand pounds (£15,000.00).

I N W I T N E S S whereof the parties hereto have caused these presents to be duly executed the day and year first before written.

THE FIRST SCHEDULE

Rules and Restrictions imposed on the Lessee  
in respect of the Flat

1. To ensure that so far as the Lessee is concerned the



front door of the Building shall be kept closed except for the purposes of immediate ingress and egress AND that the exterior appearance of the Building shall be strictly maintained as that of a private dwellinghouse.

2. Not to allow any musical or mechanical instrument to be played or any singing to take place in the Flat in such a manner as to be an annoyance to the Lessor or any other lessee of the Building.

3. Not to throw dirt rubbish rags or any other refuse or permit the same to be thrown into the sinks baths lavatories cisterns or waste or soil pipes in the Flat.

4. Not to shake any mat or carpet out of the windows.

5. Not to remove from the premises any refuse cinders dust or rubbish except in covered containers and between the hours of Eight a.m. and Twelve noon each day and to cause all such garbage to be emptied into the bin or bins to be provided by the Lessee in the enclosure provided by the Lessor.

6. Not without the consent in writing of the Lessor to put out or permit to be put out any clothing or other articles to dry or bleach on any part of the Building.

7. To ensure that the windows of the Flat whether open or closed shall be suitably curtained in uniform style and colour so as to prevent at all times a view of the interior thereof from neighbouring premises and also at least once in every four weeks to clean all windows in the Flat.

8. To cover all the floors and internal staircase (if any) in the Flat (except the kitchen bathroom and lavatory) by laying down and maintaining fitted carpets with underfelts.

9. Not to affix or fasten any aerials or other apparatus on the outside walls or roof of the Flat without the written consent of the Lessor.

10. Not to keep any dog cat bird or other live animal in the Flat without the previous written consent of the Lessor.

11. Not to obstruct or permit any act or thing which would interfere with the free passage and use by all others entitled thereto of the staircase landings and the pathways and in particular not to park any vehicle on the paths or roadways of the Reserved Property.

12. Not to use any part of the Reserved Property for any sport or game or for any purpose which may cause a nuisance or annoyance to any of the lessees or occupers of the other flats.

#### THE SECOND SCHEDULE

##### Easements rights and privileges included in the demise

1. Full right of way and passage for the Lessee and all persons authorised by him with or without workmen and their tools and materials over the entrance hall staircases and landings leading to the Flat for all purposes connected with the use and enjoyment of the Flat and the maintenance and repair thereof.
2. Full right and liberty for the Lessee and all persons authorised by him (in common with all other persons entitled to the like right) at all times by day or by night to go pass and re-pass over and along the pathways of the Reserved Property to the Building.
3. All easements and quasi-easements and rights of light and air appurtenant to the Flat and in particular :-
  - (a) the right to subjacent and lateral support and to shelter and protection from the Reserved Property;
  - (b) the free and uninterrupted passage and running of water and soil gas and electricity from and to the Flat through the sewers drains and watercourses cables pipes and wires which now are or may at any time hereafter be in under or passing through the Reserved Property.
4. Full right and liberty for the Lessee (in common with all other persons entitled to the like right) to keep a dustbin in the enclosure provided.

PROVIDED THAT all the above easements rights and privileges are subject and conditional upon the Lessee contributing and paying the rents and Maintenance Charge hereby reserved.

#### THE THIRD SCHEDULE

##### Exceptions and Reservations

There is excepted and reserved to the Lessor and the owners and lessees of the remaining flats in the Building :-

1. Full right and liberty for the Lessor and all persons authorised by him with or without workmen and others at all reasonable times and from time to time upon notice (except in the case of emergency) to enter in and upon any part of the Flat to

carry out and effect repairs decorations and maintenance to the remaining flats and the Reserved Property and to erect ladders scaffolding or other plant as may be necessary for such purposes making good any damage to the Flat which may be occasioned thereby.

2. The free and uninterrupted passage and running of water and soil gas and electricity from and to the remaining flats through the sewers drains gutters watercourses cables pipes and conduits which now are or may at any time hereafter be in under or passing through over or along the Flat or any part thereof and the right of reasonable access for maintaining such services in good order and condition causing as little disturbance as possible and on making good any damage caused thereby.

3. All easements or quasi-easements and rights of support protection way access exit light and air equivalent to such rights as the remaining flats would have acquired by prescription had the Flat and the remaining flats been at all times in separate ownership.

4. The right and liberty for the Lessor at any time hereafter and from time to time to execute works and erections upon or alter or rebuild any of the buildings erected on his adjoining or neighbouring lands and buildings in such manner as he may think fit notwithstanding that the access of light and air to the Flat may thereby be interfered with Together with the right to subjacent and lateral support and to shelter and protection from the Flat and from the site thereof.

#### THE FOURTH SCHEDULE

Lessor's expenses and outgoings and other heads of expenditure in respect of which the Lessee is to pay a proportionate part by way of Maintenance Charge

1. The expense of maintaining repairing redecorating and renewing amending cleaning repointing painting graining varnishing whitening or colouring the Reserved Property and all parts thereof and all the appurtenances apparatus and other things belonging thereto.

2. The cost of insuring and keeping insured in the full reinstatement value throughout the term hereby created the Building and landlord's fixtures and fittings therein and all the appurtenances apparatus and other things thereto belonging against the insurable risks hereinbefore mentioned or required by the Lessor.

3. The cost of cleaning decorating and lighting painting and repairing the passages landings staircases and other parts of the Reserved Property.

4. The cost of providing and maintaining an automatic entry telephone at the front door of the Building.

5. All charges assessments and other outgoings (if any) payable by the Lessor in respect of all parts of the Reserved Property.

6. The reasonable fees of the Lessor's Managing Agents for the collection of the rents of the flats in the Building and for the general management thereof and any reasonable legal costs incurred by the Lessor in connection therewith PROVIDED THAT so long as the Lessor does not employ Managing Agents he shall be entitled to add the sum of Ten per centum (10%) to anything contained in this Schedule for administration.

7. All reasonable fees and costs incurred in respect of the Maintenance Account and of accounts kept and audits made for the purposes thereof.

8. The cost of taking all steps deemed desirable or expedient by the Lessor for complying with making representations against or otherwise contesting the incidence of the provisions of any legislation or orders or statutory requirements thereunder concerning Town and Country Planning Public Health Highways Streets Drainage or other matters relating or alleged to relate to the Building for which the Lessee is not directly liable hereunder.

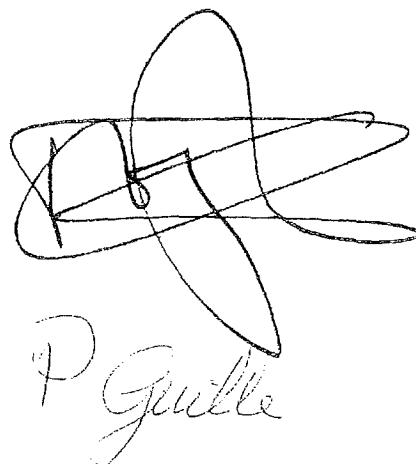
9. All other reasonable expenses (if any) incurred by the Lessor in complying with his covenants contained in this Lease and incurred in and about the maintenance and proper and convenient management and running of the Building.

10. The cost of the supply of water to the Building.

( THE COMMON SEAL of CLAIRMONT INVESTMENTS  
( LIMITED was hereunto affixed in the  
( presence of :-

Director.

~~Director~~  
Secretary.



P Gulle