

5284

LEASEHOLD VALUATION TRIBUNAL
FOR THE LONDON RENT ASSESSMENT PANEL

LON/00AY/LSC/2010/0171

Landlord & Tenant Act 1985 (as amended) Section.27A and Section 20C

Property: Commerce House, 258-260 Coldharbour Lane London SW9 8SG

Applicants: Danc-R Property Limited (Freeholder)
D&S Property Management Limited (Managing Agent)

Represented by: Mr S. Newman, Employed Solicitor for D&S Management

Also in attendance: Mr E Mensah; Surveyor for Clane Limited (Contractors)

Respondents: Abbey Road Investments Limited
Mr R. Grandison & Ms M. Joseph (Leaseholders)

First Respondent Represented by: Mr J. Fieldsend of Counsel
Also in attendance: Mr M. Collings BSc (Hons) MRICS; Northwood Collings Limited
Mr J. Carter; Northwood Collings Limited
Mr A. Lempriere; Member of First Respondent
Mr C. Alexis, Assets Manager; Click Properties

Second Respondent Represented by: Ms M. Joseph; Click Properties Limited

Hearing: 20th and 21st July 2010

Members of the Tribunal:
Mr L. W. G. Robson LLB(Hons) (Chairman)
Mrs S. F. Redmond BSc (Econ) MRICS

Preliminary

1. The Applicants seek a determination under Section 27A and 20C of the Landlord & Tenant Act 1985 (as amended) of reasonableness and liability to pay service charges under a specimen lease dated 3rd February 2006 (the Lease) relating to major works proposed to be carried out in 2010 and 2011. For ease of reference, extracts of Sections 27A and 20C are attached hereto as Appendix 1. A copy of the lease dated 3rd February 2006 has been agreed as a specimen lease ("the Lease") and is also attached as Appendix 2
2. Pursuant to Pre Trial Directions given on 14th April 2010 the case was heard on 20th and 21st July 2010.

Inspection

3. The Tribunal inspected the property on the first morning of the hearing in the company of Mr Newman (for Applicants), Mr Collings, Mr Carter, Mr Lempriere (for First Respondent) and Mr Alexis (for Second Respondents). The property is a Victorian block of 8 flats of which 2 were extended to the rear on the ground floor some years ago. It directly fronted a busy road with similar properties nearby. There is access via a rear alleyway, and a railway line immediately beyond the alley. A mansard floor was in the course of construction on the roof, increasing the number of flats to nine. The mansard floor flat appeared larger than the existing flats, being built on either side of the head of the main staircase. The main structure was of brick. The scaffolding for the mansard floor was still in place, although we were informed that it would be struck in the following week. At the rear six redundant flues were pointed out to us. One at least had a metal lining, which was to be removed before the flues were bricked up. Some areas needed repointing. The six wooden windows and frames in the common parts had been replaced at some time in the past with windows of a similar design to the originals. These in turn now needed maintenance. There was broken and missing glazing, and some had signs of rot. Some modern blockwork exposed at the rear needed decoration to keep it watertight. There were two large blank rendered boundary walls to the rear, which had been subject to graffiti. The Applicants intended to paint these. The metal back gate and frame were loose. We saw a small inadequately surfaced rear yard area with a raised gulley from Flat 2 and a broken gulley to the rainwater down pipe.
4. The front elevation was rendered and painted at ground floor level. Some render needed pointing at the joints and there were a number of small cracks. The paint also needed attention. We noted some dilapidated decorative mouldings in the centre of the building, and some decorative ropework render running across the building. This was missing in places, for about 50% of its length. The decorative details reflected those on adjacent buildings. The mastic seals around the all the window frames needed replacing. Some render around the window apertures needed replacement. A few masonry cills needed repair. We noted that some cills to flat windows had been lowered in the past when double glazing had been installed.
5. Internally the common parts stairs were basic with narrow stairs small landings and a small rear lobby giving access to the rear yard, ground floor flats and electric meter understairs cupboard. Signs of water penetration to the common parts were noted. The old carpet had been removed. The front door had an apparently inoperative entryphone system that no longer opened the front door. The front door appeared original, and was badly battered. Some basic piecing in and other repairs had been made to the door and frame in the past. Both were in poor condition. The plain back door was of more recent origin and in fair condition, but the door had been hung at the front of the door aperture, rather than at the rear as it should have been. Some balustrades on the stairs were loose or missing. We were shown the electricity cupboard. The rising mains appeared old. We also noted boxed in piping with water stopcocks protruding near the doorways of the individual flats. The walls and doors to the common parts badly needed redecoration. The electric lighting system in the common parts was not operational and needed repair or replacement in many places. To summarise, the

structure and common parts looked very shabby, dusty and dirty. They clearly needed attention.

Hearing

6. The parties had made written submissions before the hearing, and made further oral submissions at the hearing. The parties agreed that substantial works were needed to put the property back into good order. However both Respondents considered that some proposed works were improvements rather than repairs, and were therefore not chargeable. They also disputed the reasonableness of many of the items of work proposed by the Applicants.
7. The parties negotiated immediately prior to the hearing using a Scott Schedule prepared by the Surveyor to the First Respondent, and during the course of the hearing were able to agree a number of matters in dispute. The Scott Schedule itself was based on a priced schedule of works prepared by the preferred contractor to the Applicants, Clane Limited, dated June 2010. The issues on reasonableness appeared to fall under two general headings; the detailed costings (extending to nine pages), and the administration fee of 10% to be charged by the managing agents for supervising the contract (now described as the Supervision Fee). Agreement was eventually reached between the parties on the fee, once the items it covered had been more clearly particularised. The parties agreed to produce details of the agreed matters to the Tribunal by 28th July 2010, so that the Tribunal could record them in its decision, and then decide on the outstanding issues. The covering letter dated 28th July 2010 from Jaffe Porter Crossick LLP with its enclosures and a supplemental letter dated 29th July 2010 relating to the agreed items is attached as Appendix 3.
8. The Second Respondent raised an additional issue at the hearing; the dates by which any moneys found due should be paid.
9. The parties both called professional witnesses. Mr Collings had been retained by the First Respondents and gave expert evidence following his two reports. We found him a conscientious and credible witness. Mr Mensah gave evidence on behalf of the Applicants. He was a late called witness with no witness statement, who was offered as a witness of fact, but some of his evidence strayed into the area of opinion evidence. He had not made a report, nor signed the usual expert witness declaration.
10. The submissions of the parties on each issue are summarised under the headings set out below, with the Tribunal's decision on each item immediately following the submissions under that heading.

Section 20 Notice and Section 20ZA Application

11. The First Respondents had accepted in their written submissions that the Section 20 notice was valid, but it was apparent from the documents and in evidence from Mr Mensah that the successful tenderer, Clane Limited, had offered a 25% discount conditional upon all the work in the tender being done. Mr Mensah offered his views on the reasonableness of each item of costs in the Scott Schedule by reference to the higher amounts. However the discounted estimate had been used in the Section 20 notice, without reference to the discount. The undiscounted

figure would have made the tender the highest rather than the lowest obtained by the Applicant. At the hearing Mr Newman stated that the “discount” was never intended to be such, so the figures given to us by Mr Mensah must have been artificially inflated by at least 25%. This made both his evidence and the Section 20 Notice unsatisfactory. The parties made little of this issue at the hearing, but as the Second Respondent did not agree to accept that the Section 20 Notice was valid pending further consideration, the Tribunal agreed to allow Mr Newman to make a section 20ZA application, to which the First Respondent was prepared to agree. The Tribunal gave Ms Joseph, representing the Second Respondent, until 28th July to make any representations she wished to make relating to the 20ZA Application. In the event no such representations were received, so the Tribunal deemed that the Second Respondent had not agreed.

12. Whatever any original defects, the Tribunal noted that there has now been very extensive consultation on the works. Mr Fieldsend on behalf of the First Respondent freely offered that it would be very difficult for his client to suggest that there had been inadequate consultation. While the Second Respondent was not bound by that statement, its representative had been present throughout the inspection and hearing. The Second Respondent had associated itself with the First Respondent’s detailed case and been consulted over the negotiations at the hearing. The Tribunal therefore decided to grant dispensation with the strict requirements of Section 20, under Section 20ZA on the basis that no party could reasonably claim it had not been adequately consulted.

Contractual Recoverability (Lease terms)

13. The Applicants made no formal submission as to the recoverability of items through the service charge. They submitted that they would rely upon the Tribunal’s decision on that point.
14. The Respondents submitted that there was power under the Lease to carry out and charge for repairs and maintenance, but some items of proposed work as noted in the Scott Schedule dated 22nd July 2010 (see Appendix 3) fell outside the lease covenants, i.e. items 4.9 with 5.8 (overhaul windows), 5.1 (replacement of front door and frame), 5.2 (replacement of back door and relocating the frame), 5.7 (new accessible service riser in MDF to house water and gas feeds), 5.9 (erection of internal scaffolding and tower in staircase areas for preparation and redecoration works), 74(no Ref) (apply mastic around all internal doors, skirting and architrave and seal all gaps), 6.4 (New Video Entry system) 6.5 (Fit new CCTV system with camera directed to front and rear doors all wired back to ground floor electric cupboard). The Tribunal was requested to rule on these disputed items.
15. The Tribunal decided that in essence paragraphs 1, 2, 3, 4 and 6, in the First Schedule to the Lease allowed for maintenance and repair, but not items properly described as improvements with the exception of items considered necessary for “the proper maintenance, safety, amenity, and administration of the building.” The Tribunal noted that it is well established that when dealing with works otherwise within lease covenants, it is for the covenantor to decide on the method of work, so long as the method proposed is reasonable (see e.g. Ultraworth Ltd v General Accident Fire and Life Assurance Corporation plc [2000] L&TR 495 at p.504).

Thus the Tribunal decided that it was for the landlord to decide how to execute repairs to items 4.9 with 5.8, 5.1, and 5.2. The Tribunal had noted on inspection the nearness to the (narrow) flat doorways of the existing ducting and water stopcocks, and resulting danger of damage to the service risers. The Tribunal decided that item 5.7 was necessary, and the landlord's proposed method of eliminating the danger was within the terms of paragraph 6. Mr Mensah had given evidence that the reasons for specifying item 74 was to prevent excessive noise within the building. The Tribunal had reservations about whether all the proposed work in item 74 was necessary, but in principle some could reasonably be required. The Tribunal decided to allow that item, but with a reduced Provisional Sum. The Tribunal decided that Item 5.9 seemed overdone and therefore unreasonable. Use of a mobile tower for the internal decoration should suffice. Lastly the Tribunal decided that the landlord had not made out a sufficiently good case for item 6.5. The cost of installation and ongoing monitoring would be high, and the risk of interference from short term residents appeared also appeared high. The cost was unreasonable for the likely benefit. The alternative videophone entry system was cheaper, less vulnerable to damage, and therefore reasonable.

Administration Charges and Section 20C

16. During the hearing, Mr Newman stated on behalf of the Applicants that if legal charges were to be made on the lessees under the terms of the Lease then the Applicants would make them as administration charges, rather than as items under the general service charge attracting the jurisdiction of Section 20C. The Tribunal accepted this concession, and therefore decided to make an order under Section 20C limiting the Applicants' costs chargeable to the service charge relating to this application to Nil.

Contribution Proportions

17. For the purposes of the proposed service charge, the Applicants had ascribed a one eighth share of the charge to each existing flat. The Lease (Clause 1.21) ascribes a fixed percentage of 12.5% of the cost to each flat. The Applicants were not proposing to collect a contribution from the new flat being built on the roof, or to make a contribution themselves. The Applicants raised the liability of the leaseholders to pay for the works in their application. The First Respondent queried as one of its closing submissions whether the costs were reasonable, in the light of the use of the common parts made by the builders acting for the developers, and invited the Tribunal to make a finding on this relating to each item still in dispute. However none of the parties had offered any evidence on this point.

18. The Tribunal noted that the Applicants are free, by the Second Schedule paragraph 7, to vary the Service Charge percentages, acting reasonably. Activating that procedure would only affect future service charge payments. While there might be scope for a challenge on the basis of a putative breach of the Applicants' fiduciary duty to the Respondents, this is not a matter before the Tribunal in this application. The Lease itself is specific that the present service charge contribution from each flat is 12.5%. The Tribunal noted that some use of the common parts appeared to have been made by the builders working on the new flat, but it had no specific evidence before it suggesting that the common parts would require more work as a result of such use. The Tribunal decided that

the terms of the Lease were clear, and that it would be unfair to ascribe a cost to the use of the common parts by the developers without hearing any evidence. This application relates to an estimated service charge cost only.

Reasonableness of the cost of the proposed works

19. The parties referred to the Scott Schedule, made detailed costs submissions, (summarised in the Schedule) and requested the Tribunal to decide a reasonable estimated cost for the individual outstanding items.

20. As noted above, the Tribunal considered that Mr Mensah's evidence and costings were unsatisfactory. He frankly agreed that he had not prepared the initial estimate, and had been asked to break down composite figures already in existence and comment on Mr Collings' costings after the event, rather than build up the figures himself. The Tribunal considered that the discount issue made all his costings suspect. By contrast, Mr Collings' report showed that he had worked through the detailed items with impressive thoroughness. The Tribunal decided that his estimates of costs and quantities were well researched and considered, and that in most cases we would adopt them.

21. The following table sets out the outstanding items, with the parties' costings and the Tribunal's decision on each:

<u>Item</u>	<u>Work</u>	<u>Applicant</u>	<u>Respondent</u>	<u>Tribunal</u>
1, 2 and 3	General, General Works Enabling Works	£17,550	£10,569.08	£10,569.08
4.3	Brickwork repairs	£3,000	£480	£480
4.4, 4.5	Redundant Flues	£2,580	£1,038	£1,038
4.6	Pointing	£4,200	£1,033.90	£1,033.90
4.9 and 5.8	Windows overhaul	£2,770	£595.15	£600*
4.16	Rendering window Heads	£900	£240	£240
5.1	Front door and frame	£1,920	£600	£1,553.17**
5.2	Rear door and frame	£1,780	£600	£699.92**
5.7	Service Riser	£1,500	£0.00	£475.91
5.9	Internal scaffolding	£3,900	£0.00	£250***
74(no ref)	Mastic beading	£4,200	£0.00	£1,500*
5.18	Carpeting	£3,000	£1,055.87	£2,000*

6.4	Videocom Entry	£1,550	£500	£1,600**
6.5	CCTV (or bars/bolts)	£1,650	£300.23	£300.23

(* denotes item with insufficient detail given where Applicant's method of work is adopted. The appointed supervising surveyor should consider and report on this item if necessary)

(** denotes item where Applicant's method of work adopted, Respondent's costing adopted)

(*** denotes item where Tribunal considers some cost likely, rather than none)

Retention sum

22. The Applicants submitted that a retention sum of £7,500 was necessary. The Respondents submitted that 5% of the contract price was more normal.

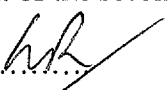
23. The Tribunal agreed with the Respondents that 5% was the usual industry norm. There appeared to be no unusual factors suggesting a different figure. The Tribunal therefore decided that the contract should provide for a 5% retention.

Time for Payment

24. The Second Respondents submitted that they were being asked to find a very large sum. Notwithstanding the terms of the Lease they requested the Tribunal to order a scheme for payment by instalments. They submitted that the poor condition of the common parts (in breach of covenant) had reduced their letting values. They proposed payment of the full amount of the demand by 18 equal monthly instalments

25. The Applicants submitted that they wished to rely upon the terms of the Lease, under which full payment was now overdue. The issue of breach of covenant was not relevant to this application. The Second Respondents had originally asked for a 12 month, and later a 5 year payment plan. The Applicants had refused this, but had made an alternative offer, which was rejected. The First Respondents had already paid towards the demand. It was inequitable to require them to wait until the Second Respondents had paid by instalments.

26. The Tribunal considered that it was obliged to interpret and follow the terms of the Lease. The Lease set out in Schedule 2, paragraph 4 that the lessee should pay provisional service charge demands "by two equal half yearly payments on 1st January and 1st July in each year". The Applicant stated at the hearing that the first demand had been made on 15th January 2010, and the second on 3rd June 2010. There appears to be no restriction in the Lease on the time for the landlord to make such a demand. In the absence of specific submissions on the effect of paragraph 4, the Tribunal decided that to give the Lease business effect, the correct interpretation of the Lease was that since the first demand had been made after 1st January 2010, the date for payment of that demand was 1st July 2010. The date for payment of the second demand was 1st January 2011.

Signed:..... 
Chairman
Date:..... 20-8-09

Appendix 1

Landlord & Tenant Act 1985 Section 27A

(1) *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*

(2) *Subsection (1) applies whether or not any payment has been made.*

(3) *An application may also be made to a leasehold valuation tribunal for a determination whether. If costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-*

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

(4) – (7).....

Section 20C

“(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.”*

Appendix 2

Lease Dated 3rd February 2006, see attached

Appendix 3

Scott Schedule (Revised 22nd July 2010) and letters dated 28th and 29th July 2010 from Jaffe Porter Crossick LLP

DATED 3rd February 2006

(1) ABBEY ROAD INVESTMENTS LONDON LIMITED

-and-

(2) ALAN PETER LEMPRIERE

LEASE

of

Flat 1, 258-260 Coldharbour Lane
London SW9 8SE

Curry Popeck
380 Kenton Road
Kenton, Harrow
Middlesex HA3 8DP
Tel: 020 8907 2000
Fax: 020 8927 0499
Ref: PP MP ABBEY ROAD

H.M. LAND REGISTRY
LAND REGISTRATION ACTS 1925 to 1986
LEASE OF PART

LONDON BOROUGH	Lambeth
TITLE NUMBER	LN 83325
PROPERTY	Flat 1, 258-260 Coldharbour Lane, Brixton, London SW9

THIS LEASE is made the 3rd day of February 2006

BETWEEN:

- (1) **ABBEY ROAD INVESTMENTS LONDON LIMITED** (Company Registration Number 5514321) whose registered office is at 7 Holt Road, Wembley, Middlesex HA0 3PY (the "Landlord") and
- (2) **ALAN PETER LEMPRIERE** of 7 Holt Road, Wembley, Middlesex HA0 3PY (the "Tenant")

NOW THIS DEED WITNESSES as follows:

1. **DEFINITIONS AND INTERPRETATION**

In this Lease:

1.1 "Annual Expenditure" means:

- 1.1.1 all costs, expenses and outgoings whatever reasonably and properly incurred by the Landlord during a Financial Year in or incidental to providing all or any of the services; and

- 1.1.2 all sums reasonably and properly incurred by the Landlord during a Financial Year in relation to the Additional Items; and
- 1.1.3 any VAT payable on such sums, costs, expenses and outgoings but excluding any expenditure in respect of any part of the Building for which the Tenant or any other tenant is wholly responsible and excluding any expenditure that the Landlord recovers or that is met under any policy of insurance maintained by the Landlord pursuant to its obligations in this Lease;
- 1.2 "Building" means: the land and premises owned by the Landlord and known as 258 - 260 Coldharbour Lane Brixton London SW9 8SE as the same is registered at H. M. Land Registry under title number LN83325
- 1.3 "Common Parts" means: the paths, halls and other accessways shown coloured brown on the Plan and areas in the Building or its curtilage that are during the Term provided by the Landlord for common use by the tenants and occupiers of the Building or persons expressly or by implication authorised by them;
- 1.4 the "Financial Year" means: the period from 1st January to 31st December in each year;
- 1.5 the "Initial Provisional Service Charge" means: £300 p.a
- 1.6 the "Insurance Rent" means:

- 1.6.1 the Insurance Rent Percentage of the cost to the Landlord[®] from time to time of insuring the Building; and
- 1.6.2 all of any increased premium payable by reason of any act or omission of the Tenant;
- 1.7 the "Insurance Rent Percentage" means: 12.5%
- 1.8 the "Insured Risks" means: fire, lightning, explosion, aircraft (including articles dropped from aircraft), riot, civil commotion, malicious persons, earthquake, storm, tempest, flood, bursting and overflowing of waterpipes, tanks and other apparatus, subsidence, landslip/heave and impact by road vehicles and such other risks as the Landlord from time to time in the Landlord's absolute discretion shall decide;
- 1.9 the "Interest Rate" means: 4% per year; above the base lending rate of Barclays Bank Plc or such other bank being a member of the Committee of London and Scottish Bankers as the Landlord may from time to time nominate in writing or should such base rate cease to exist such other rate of interest as is most closely comparable with this rate as may be agreed between the parties or in default of agreement be determined by the Surveyor acting as expert and not as an arbitrator;
- 1.10 the "Main Structure" means: the roof and roof coverings and foundations of the Building, all loadbearing walls of the

Building, all columns, joists and beams which are loadbearing or structural and all other structural parts of the Building not otherwise demised by a lease of any flat in the Building;

1.11 the "Permissions" means: all planning permissions or other permits or consents that may be required under the Planning Acts or any other statute to enable the Landlord to rebuild and reinstate the Premises or the Building as the case may be;

1.12 "Pipes" means: all pipes, sewers, drains, mains, ducts, conduits, gutters, watercourses, wires, cables, channels, flues and all other connecting media and includes any fixings and any other ancillary apparatus;

1.13 "Plan Means: the plan or plans annexed to this Lease;

1.14 the "Planning Acts" means: the Town and Country Planning Act 1990 and all statutes, regulations and orders included by virtue of Clause 1 ;

1.15 the "Premises" means: all that ^{ground floor} flat known as Flat 1 in the Building shown edged red on the Plan and includes:

*CP
See drawing
attached*

1.15.1 all additions, alterations and improvements to the Premises;

1.15.2 all the Landlord's fixtures and fittings and fixtures of every kind that shall from time to time be in or on the Premises (whether originally affixed or fastened to or upon the Premises or otherwise) except any such fixtures installed by

the Tenant that can be removed from the Premises without defacing the Premises;

1.15.3

the internal non-loadbearing walls;

1.15.4

the doors, doorframes, windows, window frames and the glass in the doors and windows

1.15.5

the inner half severed medially of all internal non-loadbearing walls shared with any other flat in the Building or with the Common Parts;

1.15.6

the ceiling of the flat up to a depth severed horizontally to the bottom of the floor joists of the floor above but not including any part of the joists or other surfaces of the Building;

1.15.7

any stairway, entrance, terrace, garden and/or patio within the area edged red on the Plan exclusively serving the Premises;

1.15.8

the floor of the flat excluding the foundations of the Building and excluding any structures between the floor of the Premises and the ceiling of any part of the Building immediately below the same floor and structures;

1.15.9

the internal paint and plaster surfaces of all loadbearing walls;

1.15.10

all pipes in or on the Premises that exclusively serve the Premises;

- 1.15.11 any path, steps or stairwell exclusively serving the Premises and shown within the area edged red on the Plan;
- 1.16 the "Premium" means: The sum of One Hundred and Twenty Thousand Pounds.
- 1.17 the "Rent" means: £75.00 per annum for the first 33 years
£150.00 per annum for the second 33 years of the term and £300.00 per annum for the remainder of the term;
- 1.18 the "Rents" means: the Rent, the Insurance Rent and the Service Charge;
- 1.19 the "Services" means: the services, facilities and amenities to be provided by the Landlord and specified in the First Schedule;
- 1.20 the "Service Charge" means: the Service Charge Percentage of the Annual Expenditure;
- 1.21 the "Service Charge Percentage" means: 12.5%
- 1.22 the "Surveyor" means: any suitably qualified person or firm appointed by the Landlord to perform any of the functions of the Surveyor under this Lease (including an employee of the Landlord or a Group Company and including also the person or firm appointed by the Landlord to collect the Rents);
- 1.23 the "Term" means: 99 years from and including 29th September 1999;

1.24

references to consent of the Landlord or words to similar effect are references to consent in writing signed by or on behalf of the Landlord and 'approved' or 'authorised' or words to similar effect means (as the case may be) approved or authorised in writing by or on behalf of the Landlord;

1.25

the expression the "Landlord" and the "Tenant" include the person for the time being entitled to the reversion immediately expectant on the determination of the Term and the Tenant's successors in title respectively and any reference to a superior landlord includes the Landlord's immediate reversioner (and any superior landlords) at any time;

1.26

where any party comprises more than one person the obligations and liabilities of that party under this Lease shall be joint and several obligations;

1.27

words importing one gender shall be construed as importing any other gender;

1.28

wording importing the singular shall be construed as importing the plural and vice versa;

1.29

references to any right of the Landlord to have access to the Premises shall be construed as extending to any superior landlord, any mortgagee of the premises and to all persons authorised by the Landlord and any superior landlord or mortgagee (including agents,

professional advisers, contractors, workmen and others) where such superior lease or mortgage grants such rights of access to the superior landlord or mortgagee;

1.30

any covenant by the Tenant not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where the Tenant is aware that such act or thing is being done;

1.31

any provisions in this Lease referring to the consent or approval of the Landlord shall be construed as also requiring the consent or approval of any superior landlord where such consent shall be required but nothing in this Lease shall be construed as implying that any obligation is imposed upon any superior landlord not unreasonable to refuse any such consent or approval;

1.32

any references to a specific statute include any statutory extension or modification, amendment or re-enactment of such statute and any regulations or orders made under such statute or statutes;

1.33

references to any clause, sub-clause or schedule without further designation shall be construed as a reference to the clause, sub-clause or schedule to this Lease so numbered;

1.34

the clause, paragraph and schedule headings do not form part of this Lease and shall not be taken into account in its construction or interpretation;

2. DEMISE

In consideration of the Premium paid by the Tenant to the Landlord (receipt of which the Landlord acknowledges) the Landlord demises to the Tenant with full title guarantee the Premises TOGETHER with the rights specified in the Third Schedule and EXCEPTING AND RESERVING to the Landlord the rights specified in the Fourth Schedule TO HOLD the Premises to the Tenant for the Term SUBJECT to all rights, easements, privileges, restrictions, covenants and stipulations of whatever nature affecting the Premises SUBJECT ALSO to and with the benefit of any matters set out in the Fifth Schedule YIELDING AND PAYING to the Landlord:

- 2.1 the Rent payable in advance without any deduction on 1st January in each year;
- 2.2 by way of further rent the Insurance Rent payable on written demand in accordance with Clause 5.3 and the Service Charge payable in accordance with the Second Schedule.

3. THE TENANT'S COVENANTS

The Tenant covenants with the Landlord:

- 3.1 to pay the Rents on the days and in the manner set out in this Lease and not to exercise or seek to exercise any right or claim to withhold the Rents;
- 3.2 to pay or procure the payment of :
 - 3.2.1 all community charges, rates, assessments, duties, charges, impositions and outgoings assessed or imposed upon the Premises or the Tenant or other occupiers of the Premises;

- 3.2.2 all VAT (or tax of a similar nature that may be substituted for it or levied in addition to it) chargeable in respect of any payment made by the Landlord where the Tenant agrees in this Lease to reimburse the Landlord for such payment;
- 3.3 at all times during the Term to keep the Premises in good and substantial repair and condition damage caused by an Insured Risk excepted unless the insurance money is irrecoverable in consequence of any default of the Tenant or anyone at the Premises expressly or by implication with the Tenant's authority and under the Tenant's control;
- 3.4 to replace from time to time the Landlord's fixtures and fittings in the Premises that may be or become beyond repair at any time during or at the expiration of the Term;
- 3.5 to clean the Premises and keep them in a clean condition and in particular to clean the windows of the Premises both inside and out as and when necessary;
- 3.6 to keep the garden or patio area comprising part of the Premises (if any) tidy and properly cultivated;
- 3.7 at least once in every seventh year of the Term and in the last year to redecorate the interior of the Premises in a good and workmanlike manner and with appropriate materials of good quality and to redecorate as often as the Landlord shall reasonably require the external parts of the doors windows and window frames of the Premises in a good and workmanlike manner with appropriate materials of quality and colour to be approved in advance in writing by the Landlord
- 3.8 not to make any structural or external alterations or any additions to the Premises without the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed);

- 3.9 not to make any alterations or additions pursuant to Clause 3.8 nor any connection with the pipes otherwise than in accordance with plans and specifications approved by the Landlord (such approval not to be unreasonably withheld or delayed subject to consent to make such connection having previously been obtained from the competent authority or undertaker if required);
- 3.10 at the Tenant's own expense to execute all works and provide and maintain all arrangements upon or in respect of the Premises or the use to which the Premises are being put that are required in order to comply with the requirements of any statute (already passed or in the future to be passed) or any government department, local authority, other public or competent authority or Court of competent jurisdiction regardless of whether such requirements are imposed on the Landlord, the Tenant or the occupier;
- 3.11 not knowingly to do in or near the Premises any act or thing by reason of which the Landlord may under any statute incur have imposed upon him or become liable to pay any penalty, damages, compensation, costs, charges or expenses;
- 3.12 not to use the Premises for any purpose other than as a private residence;
- 3.13 not to use the Premises for a sale by auction or for any trade, business, manufacture or profession or for any illegal or immoral act or purpose;
- 3.14 not to do on the Premises or the Common Parts or bring or allow to remain upon the Premises or the Common Parts anything that may be or become or cause a nuisance, annoyance, disturbance or inconvenience, injury or damage to the Landlord, the Landlord's tenants or the owners or occupiers of adjacent property or any neighbouring property;
- 3.15 not to assign, underlet or part with possession of part only of the Premises;

- 3.16 within 28 days of any assignment, underlease or sub-underlease (save for an Assured Shorthold Tenancy properly granted within the Housing Act 1988 or other similar short term subtenancy which does not provide any security of tenure to the subtenant) or any transmission or other devolution of any interest in or relating to the Premises to produce to the Landlord's solicitor for registration such deed or document or a certified copy of it and to pay the Landlord's solicitor's reasonable charges of not less than £25 exclusive of VAT for the registration of every such document;
- 3.17 not to affix or exhibit on the outside of the Building or display anywhere on the Premises any placard, sign, notice or board or advertisement except a notice advertising the Premises for sale;
- 3.18 to permit the Landlord and all persons authorised by the Landlord with or without workmen, equipment and materials at all reasonable times during the daytime on the service of not less than 24 hours prior written notice (except in case of emergency);
- 3.18.1 to enter upon the Premises to view the state of repair and condition of the Premises for the purpose of ascertaining that the covenants and conditions of this Lease have been observed and performed;
- 3.18.2 to give to the Tenant (or leave upon the Premises) a notice specifying any repairs, cleaning or painting that the Tenant has failed to execute in breach of the terms of this Lease and requesting the Tenant immediately to execute the same.
- 3.19 immediately to repair, cleanse, maintain and paint the Premises as required by any such notice as mentioned in Clause 3.18.2 PROVIDED that if within two months of the service of such notice the Tenant has not commenced and is not proceeding diligently with the execution of the work referred to in the notice the Landlord may enter the Premises to execute such work as may be necessary to comply with the notice and the Tenant shall pay to the Landlord

the cost of so doing and all expenses incurred by the Landlord (including legal costs and surveyors' fees) within 14 days of a written demand being made;

3.20 not to commit any breach of planning control (such term to be construed as it is used in the Planning Acts) and to comply with the provisions and requirements of the Planning Acts that affect the Premises and to indemnify the Landlord and keep the Landlord indemnified against all liability whatsoever including costs and expenses in respect to any contravention of planning control;

3.21 at the Tenant's own expense to obtain all planning permissions and serve all such notices as may be required for the carrying out of any operations on the Premises that may constitute development within the meaning of the Planning Acts;

3.22 not to carry out or make any alteration or addition to the Premises until:

3.22.1 all necessary notices under the Planning Acts have been served; and

3.22.2 all necessary permissions under the Planning Acts have been obtained;

3.23 to pay to the Landlord all costs, fees, charges, disbursements and expenses (including without prejudice to the generality of the above those payable to counsel, solicitors and surveyors) properly and reasonably incurred by the Landlord in relation to or contemplation of or incidental to:

3.23.1 every application made by the Tenant for a consent or licence required by the provisions of this Lease whether such consent or licence is granted or refused or proffered subject to any qualification or condition or whether the application is withdrawn; and

3.23.2 the preparation and service of a notice under the Law of Property Act 1925 Section 146 or the taking of proceedings under the Law of Property Act 1925 Sections 146 or 147 notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;

- 3.24 to be responsible for and to keep the Landlord fully indemnified against all damages, losses, costs, expenses, actions, demands, proceedings, claims and liabilities made against or suffered or incurred by the Landlord arising directly or indirectly out of:
- 3.24.1 any act, omission or negligence of the Tenant or any person at the Premises expressly or impliedly with the Tenant's authority and under the Tenant's control; or
- 3.24.2 any breach or non-observance by the Tenant of the covenants, conditions or other provisions of this Lease or any of the matters to which this demise is subject;
- 3.25 not to stop up, darken or obstruct any windows or light belonging to the Building.
- 3.26 to take all reasonable steps to prevent any new right of light way or passage or any other easement or right whatsoever being acquired over or any encroachment being made on the Premises and to inform the Landlord immediately of any easement acquired or encroachment made or of any attempt to acquire an easement or make an encroachment and at the request of the Landlord but at the cost of the Tenant to adopt such means as shall reasonably be required to prevent the making of such encroachment or the acquisition of any such easement.
- 3.27 at the expiration of the Term to yield up the Premises in repair and in accordance with the terms of this Lease.
- 3.28 to give full particulars to the Landlord of any notice, direction, order or proposal for the Premises made, issued or given to the Tenant by any legal or public authority within 7 days of receipt and if so required by the Landlord to produce it to the Landlord and without delay take all necessary steps to comply with the notice, direction or order and at the request of the Landlord to

make or join the Landlord in making such objection or representation against or in respect of any notice, direction or proposal as the Landlord may reasonably require.

- 3.29 if the Rents or any other sum due under this Lease is unpaid 14 days from the date due whether formally demanded or not to pay to the Landlord interest on the Rents or other sum due from the date on which payment was due to the date of payment both before and after any judgment at the Interest Rate and such interest shall be deemed to be rent due to the Landlord PROVIDED that nothing in this clause shall entitle the Tenant to withhold or delay any payment of the Rents or any other sum due under this Lease after the date upon which it falls due or in any way prejudice affect or derogate from the rights of the Landlord in relation to such non-payment including (but without prejudice to the generality of the above) his rights under the proviso for re-entry contained in this Lease.
- 3.30 to permit the Landlord at all times during the Term to exercise without interruption or interference any of the rights granted to the Landlord by virtue of the provisions of this Lease.
- 3.31 not to throw any dirt, rubbish, rags or other refuse or permit any dirt, rubbish, rags or other refuse to be thrown into the sinks, baths, lavatories, cisterns or waste or soil pipes in the Premises.
- 3.32 not to play or use or permit the playing or use of any musical instrument, television, radio, loudspeaker or mechanical or other noise making instrument of any kind or practice any singing or permit the practising of any singing in the Premises between the hours of 11.00 p.m. and 7.00 a.m. or at any other time or times so as to cause any nuisance or annoyance to any of the occupants of the other parts of the Building or any neighbouring property.
- 3.33 not to:

- 3.33.1 hang or expose in or upon any part of the Premises so as to be visible from the outside any clothes or washing of any description or other articles; or
- 3.33.2 place outside the Premises any flower box, pot or other like object; or
- 3.33.3 shake any mats, brooms or other articles inside any part of the Building (other than the Premises) or out of the windows either of the Premises or of any other part of the Building.
- 3.34 not to keep any dog or other animal, bird or pet whatsoever in the Premises without the previous consent in writing of the Landlord (such consent not to be unreasonably withheld).
- 3.35 at all times to cover the floors of the Premises and keep them covered with carpet and underlay or other suitable sound-deadening covering.
- 3.36 not to obstruct the Common Parts or cause or permit them to be obstructed or leave or deposit any items of rubbish and litter or other articles of any description thereon and to pay the cost of making good any damage at any time done by the Tenant or any person claiming through the Tenant or the Tenants' servants, agents, licensees or visitors to any part of the Building or to the person or property of the tenants or the occupiers of any other flat in the Building by the carrying of furniture or other goods into or removal of furniture or other goods from the Premises or otherwise.
- 3.37 at all times to observe and perform all reasonable regulations that the Landlord may from time to time in the Landlord's absolute discretion think fit to make for the management, care and cleanliness of the Building and the comfort, safety and convenience of all its occupants;
- 3.38 As often as it is necessary to ensure the inspection of any gas installations at the premises in accordance with the provisions of the Gas Safety (Installation and Use) Regulations and any statutory amendment or re-enactment of those

regulations and to indemnify the Landlord against any failure to comply with this covenant

4. THE LANDLORD'S COVENANTS

The Landlord covenants with the Tenant:

4.1. to permit the Tenant peaceably and quietly to hold and enjoy the Premises without any interruption or disturbance from or by the Landlord or any person claiming under or in trust for the Landlord:

4.2 at the written request of the Tenant to enforce by all means available to the Landlord the covenants entered into by any other tenant in the Building in the same terms as Clause 3 of this Lease PROVIDED that:

4.2.1 the Landlord shall not be required to take or proceed with any action or to incur any legal costs or other liability under this subclause unless and until the Tenant requesting action has entered into a deed of indemnity (in a form reasonably acceptable to the Landlord and prepared and completed at the expense of the Tenant) fully and effectually indemnifying the Landlord and the Landlord's successors in title in respect of all legal costs and other liabilities such indemnity to be supported by such security as the Landlord may from time to time reasonably require;

4.2.2 the Landlord may if the Landlord reasonably considers it necessary before taking any action under this clause or during the course of any such proceedings already instituted require the Tenant or the person requesting such action at his or their own expense to obtain for the Landlord from Counsel to be nominated by the Landlord advice in writing as to the merits of any contemplated action or the merits of continuing any such action in respect of the allegations made and in that event the Landlord shall not be bound to take action unless Counsel advises that action should be taken or continued and is likely to succeed.

- 4.3 subject to payment by the Tenant of the Rents to observe and perform the obligations contained in the First Schedule;
- 4.4 to require every person to who the Landlord grants a Lease of any other flat in the Building to covenant in the same terms as the covenants on the part of the Tenant contained in this Lease;
- 4.5 to observe and perform the same covenants and conditions on the part of the Tenant contained in this Lease in respect of any other flat in the Building not for the time being subject to any Lease

5. INSURANCE

5.1 The Landlord covenants with the Tenant to insure the Premises and the Building unless such insurance is vitiated by any act of the Tenant or anyone at the Premises expressly or by implication with the Tenant's authority and under the Tenant's control.

5.2 Insurance will be effected:

5.2.1 against damage or destruction by the Insured Risks to the extent that such insurance may ordinarily be arranged for properties such as the Premises and subject to such excesses, exclusions or limitations as the insurer may require;

5.2.2 in such substantial and reputable insurance office or with such underwriters and through such agency as the Landlord may from time to time decide;

5.2.3 for such sum as the Landlord shall from time to time be advised is the full cost of rebuilding and reinstatement including architects', surveyors' and other professional fees payable upon any applications for the Permissions, the costs of debris, removal, demolition, site clearance, any works that may be required by statute and incidental expenses.

- 5.3 The Tenant shall pay the Insurance Rent on the date of this Lease for the period from the commencement date of the Term to the day before the next policy renewal date and subsequently the Tenant shall pay the Insurance Rent on written demand and (if so demanded) in advance but not more than two months in advance of the policy renewal date.
- 5.4 If and whenever during the Term the Premises or the Building or any part of them are damaged or destroyed by any of the Insured Risks so that the Premises or any part of them are unfit for occupation and use and payment of the insurance money is not refused in whole or in part by reason of any act or default of the Tenant or anyone at the Premises expressly or impliedly with the Tenant's authority and under the Tenant's control then:
- 5.4.1 the Landlord shall use all reasonable endeavours to obtain all the Permissions; and
- 5.4.2 subject to the provisions of Clause 5.5 the Landlord shall as soon as the Permissions have been obtained (or immediately where no Permissions are required) apply all money received in respect of such insurance in rebuilding or reinstating the Premises and the Building so destroyed or damaged; and
- 5.4.3 the Rents or a fair proportion of the Rents according to the nature and the extent of the damage sustained shall cease to be payable until the Premises or the Building or the affected part have been rebuilt or reinstated so that the Premises are made fit for occupation or use (the amount of such proportion and the period during which the Rents shall cease to be payable to be determined by the Surveyor acting as an expert and not as an arbitrator).
- 5.5 If upon the expiry of a period of 3 years commencing on the date of the damage or destruction the Premises have not been made fit for the Tenant's occupation and use either party may by notice served at any time within 6

months of the expiry of such period until such time as they have been made so fit give notice that as from the date of the notice:

5.5.1 the Term shall absolutely cease but without prejudice to any rights or remedies that may have accrued to either party against the other including (without prejudice to the generality of the above) any right the Tenant may have against the Landlord for a breach of the Landlord's covenants set out in Clause 5.4; and

5.5.2 all money received in respect of the insurance effected by the Landlord pursuant to this clause shall belong to the Landlord and the Tenant or any mortgagee of the Landlord or the Tenant in proportion to their respective interests in the Premises and any dispute as to the relevant proportion shall be referred to a single arbitrator to be appointed in default of agreement upon the application of either party by the President for the time being of the Royal Institution of Chartered Surveyors under the Arbitration Acts 1950 and 1979.

5.6 The Tenant covenants with the Landlord:

5.6.1 not to do or omit to do anything that could cause any policy of insurance in relation to the Premises to become void or voidable in whole or in part and not to do anything by which additional insurance premiums may become payable (unless the Tenant has previously notified the Landlord and has agreed to pay the increased premium);

5.6.2 not to store or bring on the Premises any article, substance or liquid of a specially combustible flammable or explosive nature;

5.6.3 to give notice to the Landlord immediately upon the happening of any event that might affect any insurance policy on or relating to the Premises or against which the Landlord may have insured under this Lease;

5.6.4 if at any time the Tenant is entitled to the benefit of any insurance on the Premises (which is not effected or maintained in pursuance of any obligation contained in this Lease) to apply all money received by virtue of such insurance in making good the loss or damage in respect of which such money is received;

5.6.5 if and whenever during the Term the Premises or any part of them are damaged or destroyed by an Insurance Risk and the insurance money under the policy of insurance effected by the Landlord pursuant to his obligations contained in this Lease is by reason of any act or default of the Tenant or anyone at the Premises expressly or by implication with the Tenant's authority and under the Tenant's control wholly or partially irrecoverable immediately in every case (at the option of the Landlord) either:

5.6.5.1 to rebuild and reinstate at his own expense the Premises or the part destroyed or damaged to the reasonable satisfaction and under the supervision of the Surveyor the Tenant being allowed towards the expenses of so doing upon such rebuilding and reinstatement being completed the amount (if any) actually received in respect of such destruction or damage under any such insurance policy; or

5.6.5.2 to pay to the Landlord on demand with interest at the Interest Rate the amount of the insurance money so irrecoverable in which event the provisions of Clause 5.4 shall apply.

5.7 The Landlord covenants with the Tenant in relation to the policy of insurance effected by the Landlord pursuant to his obligations contained in this Lease:

5.7.1 to produce to the Tenant on demand reasonable evidence of the terms of the policy and the fact that the last premium has been paid;

5.7.2 to procure that the interest of the Tenant and his mortgagee is noted or endorsed on the policy; and

5.7.3 to notify the Tenant of any material change in the risks covered by the policy from time to time.

6. **PROVISOS**

6.1 If and whenever during the Term:

6.1.1 the Rents or any part of them are outstanding for 14 days after becoming due; or

6.1.2 there is a material breach by the Tenant of any covenant or other term of this Lease or of any document supplemental to this Lease the Landlord may re-enter the Premises (or any part of them in the name of the whole) at any time (and even if any previous right of re-entry has been waived) and the Term shall absolutely cease but without prejudice to any rights or remedies that may have accrued to the Landlord against the Tenant or the Tenant against the Landlord in respect of any breach of covenant or other term of this Lease (including the breach in respect of which the re-entry is made) PROVIDED ALWAYS that the Landlord shall before proceeding to enforce the right of re-entry reserved by this Lease give notice to any mortgagee of which the Landlord has received notice giving such mortgagee a further period of 21 days in which to take steps to remedy any breach complained of and to pay the arrears of Rents due including interest (if any) and if the Landlord approves of such mortgagee (such approval not to be unreasonably withheld) to consent (at the request of the mortgagee) to the immediate assignment of this Lease by the Tenant to such mortgagee.

6.2 This Lease embodies the entire understanding of the parties relating to the Premises and to all the matters dealt with by any of the provisions of this Lease.

- 6.3 The Tenant acknowledges that this Lease has not been entered into in reliance wholly or in part on any statement or representation made by or on behalf of the Landlord except any such statement or representation expressly set out in this Lease.
- 6.4 Whilst the Landlord is a limited company or other corporation all licences, consents, approvals and notices required to be given by the Landlord shall be sufficiently given if given under the hand of a director or the secretary or other duly authorised officer of the Landlord.
- 6.5 The provisions of the Law of Property Act 1925, Section 195 as amended by the Recorded Delivery Service Act 1962 shall apply to the giving and service of all notices and documents under or in connection with this Lease except that in Section 196 the final words of Section 196(4) 'and that service be delivered' shall be deleted and there shall be substituted 'and that service shall be deemed to be made on the second working day after the registered letter has been posted; and any notice or document shall also be sufficiently served on a party if served on solicitors who are acting for that party in relation to this Lease or the Premises; and any notice or document shall also be sufficiently served if sent by facsimile transmission to the party to be served (or to solicitors who are acting for that party in relation to this Lease or the Premises); and that service shall be deemed to be made on the day of transmission if transmitted before 4 p.m. on a working day but otherwise on the next working day where 'working day' means any day from Monday to Friday (inclusive) other than Christmas Day, Good Friday and any statutory bank or public holiday'.
- 7.1 It is hereby certified that the transaction hereby effected does not form part of a larger transaction or series of transactions in respect of which the amount or value or aggregate amount or value of the considerations exceeds £120,000.00
- 7.2 It is hereby certified that there is no Agreement for Lease which gives effect to this Lease.

IN WITNESS of which the parties hereto have executed this instrument as a deed the day and year first before written.

FIRST SCHEDULE

The Services

1. To maintain and keep in good and substantial repair and condition and renew or replace when required the Main Structure, the Common Parts and any Pipes used in common by the Tenant and other tenants of the Building and which are not expressly made the responsibility of the Tenant or any other tenant in the Building and the boundary walls fences hedges and all other parts of the Building not included in the Lease of any flat in the Building.
2. As and when necessary to decorate in a good and workmanlike manner the external parts of the Building and the Common Parts.
3. To keep the Common Parts clean and where appropriate adequately lit.
4. To pay and discharge any rates (including water rates), taxes, duties, assessments, charges, impositions and outgoings assessed, charged or imposed on the Building as distinct from any assessment made in respect of any flat in the Building.
5. To employ at the Landlord's discretion a firm of managing agents to manage the Building and discharge all proper fees, charges and expenses payable to such agents or such other persons who may be managing the Building including the cost of computing and collecting the Service Charge.
6. To do or cause to be done all works, installations, acts, matters and things as in the reasonable discretion of the Landlord may be considered necessary or desirable for the proper maintenance, safety, amenity and administration of the Building.
7. To keep proper books of account of the sums received from the Tenant and the other tenants in the Building in respect of the Annual Expenditure and of all costs, charges

- and expenses incurred by the Landlord pursuant to the Landlord's covenants in this Lease.
8. To set aside such sums as the Landlord reasonably requires to meet such future costs as the Landlord reasonably expects to incur in replacing, maintaining and renewing those items that the Landlord has covenanted to replace maintains and renew.

SECOND SCHEDULE

The Service Charge Provisions

1. Subject to the Tenant paying to the Landlord the Service Charge and complying with the covenants and other terms of this Lease the Landlord shall perform the Services throughout the Term PROVIDED that the Landlord shall not be liable to the Tenant in respect of:
 - 1.1 any failure or interruption in any of the Services by reason of necessary repair, replacement or maintenance of any installation or apparatus or any damage to or destruction of any installations or apparatus or by reason of mechanical or other defect or breakdown or frost or other inclement conditions or shortage of fuel materials, water or labour or any other cause beyond the Landlord's control; or
 - 1.2 any act, omission or negligence of any person undertaking the Services or any of them on behalf of the Landlord PROVIDED that this clause shall not be construed as relieving the Landlord from liability for breach by the Landlord of any covenants on the part of the Landlord contained in this Lease.
2. The Landlord shall as soon as convenient after the end of each Financial Year prepare an account showing the Annual Expenditure for the Financial Year and containing a fair summary of the expenditure referred to in it and upon such account being certified by the Landlord's accountant, managing agents or the Surveyor it shall be conclusive evidence for the purposes of this Lease of all matters of fact referred to in the account except in the case of manifest error.

3. The Tenant shall pay on the date hereof for the period from the date of this Lease to the end of the present Financial Year the Initial Provisional Service Charge.
4. The Tenant shall pay for the next and each subsequent Financial Year a provisional sum calculated upon a reasonable and proper estimate by the Surveyor of what the Annual Expenditure is likely to be for that Financial Year by two equal half yearly payments on 1st January and 1st July in each year.
5. If the Service Charge for any Financial Year exceeds the provisional sum for that Financial Year the excess shall be due to the Landlord on written demand and if the Service Charge for any Financial Year is less than such provisional sum the overpayment shall be credited to the Tenant against the next quarterly payment of the Service Charge.
6. The Landlord may withhold, add to, extend, vary or make any alteration in the rendering of the Services or any of them from time to time if the Landlord reasonably deems it desirable to do so acting in accordance with the principles of good estate management.
7. If at any time during the Term the total property enjoying or capable of enjoying the benefit of any of the Services or the Additional Items is increased or decreased otherwise than on a temporary basis or if some other event occurs a result of which is that the Service Charge Percentage is no longer appropriate to the Premises the Service Charge Percentages shall be varied with effect from the end of the Financial Year following such event by agreement between the parties or in default of agreement within 3 months of the first proposal for variation made by the Landlord in such a manner as shall be determined to be fair and reasonable in the light of the event in question by the Surveyor.

THIRD SCHEDULE

The Rights Granted

1. The right to the free and uninterrupted passage and running of water, sewage, gas, electricity, telephone and other services or supplies to and from the Premises through

the Pipes to and from other parts of the Building and (where applicable) adjoining or neighbouring property that now are or may during the period of 80 years from the date of this Lease be in, under or over the Building and (where applicable) adjoining or neighbouring property.

The rights of support, protection and shelter now enjoyed by the Premises from other parts of the Building.

The right at reasonable times and upon reasonable notice, except in cases of emergency to enter the other parts of the Building for the purpose of executing repairs, alterations and renewals to the Premises the Tenant immediately making good of all damage caused by the exercise of this right.

The right in common with the Landlord the other tenants of the Building and all other persons entitled to the like right at all times and for all purposes in connection with the permitted use of the Premises to use the Common Parts subject to any reasonable rules and regulations for their common use that the Landlord may from time to time consider necessary.

The right to maintain a dustbin in a dustbin area to be designated by the Landlord in the Building for use of all tenants and all necessary rights of access to the dustbin area.

FOURTH SCHEDULE

The Rights Reserved

The right for the Landlord and all persons authorised by the Landlord with or without workmen equipment and materials at any time during the Term at all reasonable times during the daytime on the service of not less than 24 hours prior written notice (except in cases of emergency) to enter the Premises:

- 1.1 to inspect the condition and state of repair of the Premises; or
- 1.2 to exercise any of the rights granted to or reserved by the Landlord elsewhere in this Lease;

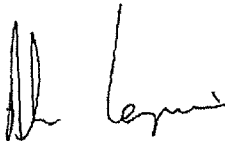
- 1.3 to carry out any of the Landlord's obligations under this Lease.
2. The right to the free and uninterrupted passage and running of water, sewage, gas, electricity, telephone and other services or supplies from and to other parts of the Building in and through the Pipes that now are or may during the period of 80 years from the date of this Lease be in, under or over the Premises.
 3. The right to construct and maintain in or under or over the Premises at any time during the Term any Pipes for the benefit of any other part of the Building.
 4. The rights of light, air, support, protection, shelter and all other easements and rights now or after the date of this Lease belonging to or enjoyed by other parts of the Building.
 5. Full right and liberty at any time after the date of this Lease to erect any new buildings of any height on any neighbouring property and to alter, raise the height of or rebuild any building on any neighbouring property in such manner as the Landlord shall reasonably think fit notwithstanding the fact that the same may obstruct, affect or interfere with the amenity of or access to the Premises or the passage of light and air to the Premises and provided that the same shall not materially affect the Premises or the use and occupation of the Premises.

FIFTH SCHEDULE

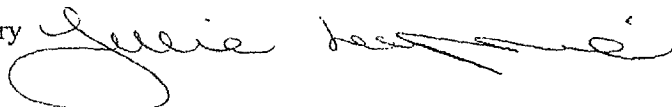
The entries on the Property and Charges Register of the title of the Building so far as they relate to the Premises.

Signed For and On behalf of
ABBEY ROAD INVESTMENTS LONDON LIMITED
Acting by its Director/Secretary

Director



Director/Secretary



JPC
JAFFE PORTER CROSSICK LLP

incorporating Sherman Phillips

SOLICITORS

OMNI HOUSE, 252 BELSIZE ROAD, LONDON NW6 4BT
TEL: 020 7625 4424 FAX: 020 7328 5840 DX 37702 KILBURN
www.jpclaw.co.uk

Leasehold Valuation Tribunal
10 Alfred Place
London
WC1E 7LR

Your Ref: LON/00AY/LSC/2010/0171

Our Ref: JM1/jkm/ABB008/001

Attention of Sylvester Zack-Williams

Date: 28 July 2010

BY HAND, FAX: 020 7637 1250
AND EMAIL: london.rap@communities.gsi.gov.uk

LONDON RENT
28 JUL 2010
15:00

Dear Sirs

**Danc R Limited, D & S Property Management v Abbey Road Investments London Limited, Robert Grandison and Merle Joseph
Landlord and Tenant Act 1985 – Section 27A(1) –
Commerce House, 258–260 Coldharbour Lane, London SW9 8SG
Ref: LON/00AY/LSC/2010/0171**

As you will be aware from our previous correspondence, we act for the First Respondent, Abbey Road Investments London Limited.

We refer to the directions made by the Tribunal at the hearing on 21 July and enclose a revised Scott Schedule together with a Post-Hearing Document which has been prepared by Counsel for the First Respondent, James Fieldsend. Both of these documents have been sent to D & S Property Management, the Applicant's representative. They have approved the revised Scott Schedule and their comments on the Post-Hearing Document, which concerned the retention, have been included in the penultimate paragraph.

We understand that an application was made by the second Respondent to in effect defer payment of their share of the estimated cost of the work. Whilst our client is not making such an application and it is therefore not appropriate for it to make submissions on the point, we feel that, as part of our professional duty owed to the Tribunal, it is right to bring to the Tribunal's attention the case of *Southend-on-Sea Borough Council v Skiggs* [2006]2 E.G.L.R 87.

IAPL - INTERNATIONAL ASSOCIATION OF PRACTISING LAWYERS

Jaffe Porter Crossick Limited Liability Partnership
A list of members is available for inspection at the office
Registered in England and Wales Company Number: OC329562 Registered Office as above
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incorporating Sherman Phillips

SOLICITORS

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Leasehold Valuation Tribunal
10 Alfred Place
London
WC1E 7LR

Your Ref: LON/00AY/LSC/2010/0171

Our Ref: JM1/jkm/ABB008/001

Attention of Sylvester Zack-Williams

Date: 28 July 2010

BY HAND, FAX: 020 7637 1250
AND EMAIL: london.rap@communities.gsi.gov.uk

LONDON RENT
28 JUL 2010
12:53 PM

Dear Sirs

Danc R Limited, D & S Property Management v Abbey Road Investments London Limited, Robert Grandison and Merle Joseph
Landlord and Tenant Act 1985 – Section 27A(1) –
Commerce House, 258–260 Coldharbour Lane, London SW9 8SG
Ref: LON/00AY/LSC/2010/0171

As you will be aware from our previous correspondence, we act for the First Respondent, Abbey Road Investments London Limited.

We refer to the directions made by the Tribunal at the hearing on 21 July and enclose a revised Scott Schedule together with a Post-Hearing Document which has been prepared by Counsel for the First Respondent, James Fieldsend. Both of these documents have been sent to D & S Property Management, the Applicant's representative. They have approved the revised Scott Schedule and their comments on the Post-Hearing Document, which concerned the retention, have been included in the penultimate paragraph.

We understand that an application was made by the second Respondent to in effect defer payment of their share of the estimated cost of the work. Whilst our client is not making such an application and it is therefore not appropriate for it to make submissions on the point, we feel that, as part of our professional duty owed to the Tribunal, it is right to bring to the Tribunal's attention the case of *Southend-on-Sea Borough Council v Skiggs [2006]2 E.G.L.R 87*.

IAPL - INTERNATIONAL ASSOCIATION OF PRACTISING LAWYERS

Jaffe Porter Crossick Limited Liability Partnership
A list of members is available for inspection at the office
Registered in England and Wales Company Number: OC329562 Registered Office as above
Regulated by the Solicitors Regulation Authority

We have sent a copy of this letter and enclosures to D & S Property Management and David Carvalho of MyMetropolis Limited who is representing the Second Respondents.

Yours faithfully



JAFFE PORTER CROSSICK LLP

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JPC



JPC

JAFFE PORTER CROSSICK LLP

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30 JUL 2010

Leasehold Valuation Tribunal
DX :134205
TOTTENHAM COURT ROAD

Your Ref:

Attention of Sylvester Zack-Williams

Our Ref: JM1/JKM/ABB008/001

Date: 29 July 2010

AND BY FAX: 020 7637 1250

Dear Sirs

**Danc R Limited, D & S Property Management v Abbey Road Investments London Limited, Robert Grandison and Merle Joseph
Landlord and Tenant Act 1985 – Section 27A(1) –
Commerce House, 258–260 Coldharbour Lane, London SW9 8SG
Ref: LON/00AY/LSC/2010/0171**

We refer to our letter to you yesterday enclosing the revised Scott Schedule and the Post-Hearing Document.

The second paragraph of our letter contains a mistake insofar as we intended to refer to the contingency and not the retention in that paragraph. The final sentence of the second paragraph of our letter should read:

“They have approved the revised Scott Schedule and their comments on the Post-Hearing Document, which concerned the contingency, have been included in the penultimate paragraph.”

We apologise for any confusion caused.

Yours faithfully


JAFFE PORTER CROSSICK LLP

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Cc D & S Property Management
MyMetropolis Limited

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258-260 Coldharbour Lane, London, SW9 8SE

Row/ column ref	A	B	D	E	F	H	I
1	1.0	GENERAL ITEMS	£17,550.00	No separate cost allowed for these costs in the Clane Breakdown of the 14th April 2009. In the absence of a breakdown assume that these costs were spread over the work costs allowed in the 14th April Breakdown. In the priced schedule the costs have been isolated and work items 4.2 to 4.11 reduced to allow for this. NCL costs based on breakdown of preliminaries expected for a 6 week contract period: Supervision £1920, administration £1920, labourer £1500, Insurances £322.58, plant and equipment £231, Haulage (plant and materials) £2670, Hoardings and screens £124.50, Temporary supplies and usage £565, Welfare provisions £264, rubbish disposal £782, cleaning £270.	£10,569.08	Items 1.0 to 3.7 inclusive - Parties agreed on necessity. Tribunal to determine quantum.	TBC
2	2.0	GENERAL WORKS					
3	2.1	Allow for locating and protecting all services which pass through or near to the area of works. Located services should be recorded upon a health and safety file prepared by the contractor.					
4	2.2	Allow for the removal of all monitoring studs and pins fixed to the property, making good locally to a similar standard.					
5	2.3	Allow for carefully removing and setting aside or easing radiators, wall mounted fires, cupboards, sanitary fittings, light fittings, alarm sensors / boxes, brackets, shelves, curtain poles similar fixtures and fittings in order to carry out any of the works. Re-fix and re-commission upon completion.					
6	2.4	Allow for providing all necessary temporary screens, sheets etc. and temporary removal/ protection of all furniture in areas affected as works proceed and for making good repairing or replacing any areas or items disturbed or damaged.					
7	2.5	Allow for necessary protection around the property and for making good any areas disturbed.					
8	2.6	Allow for cleaning down all surfaces disturbed by the works both internally and externally. Remove stains, touch up paintwork, dry out new works and leave the site in a clean condition to the satisfaction of the landlord.					
9	2.7	Allow for all necessary security of the site and the works including removing all tools and materials every evening.					
10	2.8	All items within the following section must be read fully in conjunction with prelims, materials and workmanship.					
11	2.9	All timbers, both structural and joinery items are to be tanalised as joinery items and are to be primed all round prior to fixings.					
12	2.10	The contractor is to allow for pricing each item individually. The prices indicate for supply, taking delivery, putting in place installation, connection and all other associated items including labour, plant and equipment required for completion of the works.					
13	2.11	All items within this section apply to common parts at 258-260 Coldharbour Lane SW9.					

258-260 Coldharbour Lane, London, SW9 8SE

Row/ column ref	A	B	D	E	F	H	
14	2.12	Items which are market provisional are not carried out until detail is agreed with the Landlord.					
15	2.13	All works are to be carried out in compliance with current building regulations, where discrepancies occur this must be brought to the landlord's attention immediately.					
16	3.0	GENERAL ENABLING WORKS					
17	3.1	The Contractor should satisfy himself that all necessary items are included for to enable the works to be completed in accordance with his chosen method of working such as those listed in this section but not limited to them.					
18	3.2	If required allow to disconnect all services and reconnect at the end of the works including any necessary testing and statutory approvals.					
19	3.3	If required allow to remove all fitted kitchen units and reinstate at the end of the works.					
20	3.4	If required allow to replace any fixtures, fittings, fitted furniture and floor coverings.					
21	3.5	If required allow to protect or break up, cart away and replace with similar approved as necessary, to match existing, all external fixtures and fittings, paths, patios, drives, hedges, fences, trees or other landscaping.					
22	3.6	If required allow to remove internal services and reinstate to replace with similar approved as necessary, to match existing.					
23	3.7	If required allow to temporarily support and remove any internal walls, partitions, staircases doors, windows, frames, floors or any other part of the building fabric and reinstate or replace with similar approved as necessary, to match existing.					
24	4.0	EXTERNAL FRONT, REAR AND FLANK ELEVATIONS:					
25	4.1	Scaffolding, allow for erecting of scaffolding to the front, rear and side elevation above No. 256 fully boarded for the height of building to facilitate completion of works as specified elsewhere including for all necessary licences, hoists, transportations, erecting, dismantling netting, leasing with neighbouring properties, making good finish etc for a period of 6 weeks.	£8,400.00	Priced schedule of works now allows for a 6 week hire period, in line with NCL price document Appendix J of Expert Report.	£13,341.07	Parties agreed.	£8,400.00

258-260 Coldharbour Lane, London, SW9 8SE

Row/ column ref	A	B	D	E	F	H	I
26		Masonry/ Concrete Repairs		Error in both totals page 7, total of these items = £8,507.00 and detailed breakdown = £14,106.00 & these items not included within breakdown. Difference of £5,599.00. Total Cost for this section allowed in priced schedule reduced from £37,080 in April 14th Breakdown to £19,530, difference of £17,550 which is equivalent to total of new section 1.0 to 3.0 in priced schedule. Contractor has moved these costs between issuing the breakdown and the pricing schedule.			
27	4.2	Carefully take down existing brick parapets to front and rear and rebuild, using existing and part new stock.	£800.00	These works already undertaken in order to facilitate works ongoing at roof level and now completed. Applicant states in outline reply that as works not completed as requested that they will deduct this cost and require the company undertaking the works at roof level to bear these costs. Item no longer in dispute.	£0.00	Parties agreed on omission of this item.	£0.00
28	4.3	Rake out all loose mortar and cut out eroded bricks. Insert new matching bricks where necessary to front and rear elevations. (2man gang 3days and materials - 80 bricks at a rate of £50.00 per brick.	£3,000.00	Original quotation and breakdown did not provide quantities and rates which are now provide in priced schedule. Priced schedule includes both indication of labour time and spot rate per brick. Based on labour rates for 2 man gang for 3 days (say £100 per bricklayer) and allowing for material cost of 80 bricks, cost is highly inflated. Item price of £80/ brick also 4 times costs quoted in BCIS MW 2010. Number of bricks to be replaced is also disputed and is to be confirmed. Costs in column F allow for 20 bricks and column G allows for 80 bricks at unit rate of £24/brick.	£480.00	Parties agreed some works necessary. Tribunal to determine rate for brick replacement and determine provisional quantity to be allowed.	TBC
29	4.4	Where redundant flues have been removed carefully take out metal lining where applicable and brick up openings with matching brick.	£2,580.00	Agreed 6 areas in total, some of which require removal of existing metal flue liners. NCL costs based on unit rate of £173.00 calculated from BCIS costs of 94.17 to remove and brick up areas 0.5/1m2 and allowance of £50.00 for flue removal factored for location.	£1,038.00	Parties agreed on necessity of works and that there are 6 areas in total to be filled. Tribunal to determine cost.	TBC
30	4.5	Where redundant flue openings have been bricked up take out unsuitable brick and replace with matching type.					
31		Pointing					
32	4.6	Carry out pointing to front, rear and side elevations as necessary (allow 70m2 @ £80.00 per m2). Note - 'with 25% discount' rate is 70m2 @ £60.00 per m2)	£4,200.00	Dispute necessity of 70m2. Inspection reveals only limited areas of eroded pointing at high level and to flank wall above roof of adjoining building. NCL allowed for 20 sqm. Rate of £80 per sqm in priced schedule also significantly more than £60/ sqm taken from BCIS rates. NCL allowed unit rate of £50.00/m2 based on recently obtained tenders for similar projects for similar works. Column F costings allow for 20/m2 column G costings allow for 70/m2.	£1,033.90	Parties agreed some works necessary. Tribunal to determine rate and provisional quantity.	TBC
33		Joinery repairs					

258-260 Coldharbour Lane, London, SW9 8SE

Row/ column ref	A	B	D	E	F	H	I
34	4.7	Carefully cut out any rotten timber and splice in	£500.00	Applicant states in outline reply para 39 that this allows for rot found whilst overhauling windows and that until work commences this can not be confirmed. If this is the case then the item should not have been priced but a provisional sum allowed in the event rot is discovered. NCL inspection confirms no evidence of rot or decay to 6 common parts windows. Also maintain reference to "timbers" in Clane quote refers to structural members found during removal of roof coverings and not joinery. As discussed when works unknown the item should be provisional so it can be adjusted when content of works becomes evident.	£1,000.00	Parties agreed to allow provisional sum of £750 for this item.	£750.00
35		External decoration.		These costs also now appear to be included within sub-total in summary page for Masonry/ Timber Repairs / Pointing. Unknown in what section they were included in Clane breakdown of 14th April. Also note summary breakdown to priced schedule is out of sequence and almost impossible to relate this to sub-total breakdowns provided in schedule with different sub-totals provided.			
36	4.8	Apply one undercoat and three coats of smooth masonry paint to walls, cills, rendered reveals and decorative detailing previously painted.	£2,700.00	Overall cost of these items a little high based on discounted figures but not unreasonable.	£2,167.94	Parties agreed.	£2,450.00
37 (now merged)	4.9 & 5.8	Make good all external joinery windows (in common parts only) frames, cills and doors filling all cracks and raking out and renewing all loose putty. Overhaul and draught strip all timber sashes in stairwell and allow for fitting new sash lifts and Brighton sash fasteners.	£2,770.00	Windows require overhauling including replacement of broken sash cords not specifically described in original quote or priced schedule. Draught stripping not considered to be necessary. NCL costs in column F allow for new sash lifts and fasteners only as draught stripping considered to be not necessary or recoverable. Costs in column G allow for draught stripping and providing new sash lifts and fasteners to 6 common parts windows,	£595.15	Parties agreed some works necessary. Tribunal to determine necessity of draught stripping and cost of all works required.	TBC
38	4.10	Prepare external woodwork filling as necessary. Prime bare woodwork. Apply one undercoat and two full coats of exterior gloss paint. Clean all windows upon completion.	£1,450.00	Overall cost of these items a little high based on discounted figures but not unreasonable.	£980.66	Parties agreed.	£1,150.00
39		Preparation for Landscaping					
40	4.11, 4.21 & 7.3 (now merged)	Break up existing screed to the rear courtyard area and reduced to a new level to expose through ventilation beneath the ground floor timber floor structure. Introduce new ventilation grills to remedy any internal damp problem to the ground floor flat. Dispose excavated materials. Lay concrete new 450 x 450 x 30mm (buff) textured concrete paving slabs to courtyard on suitable bedding. Allow for reinstating manhole including covers and gullies to suit new levels. Replace metal gate to rear of courtyard with new metal gate. Allow for fitting closer and latch. i.e. steel gate, heavy duty hinges and sliding latches.	£5,700.00	New item introduced in priced schedule and now included in summary page under masonry/timber repairs/pointing. Applicant states in outline statement para 46 that flat 2 has experienced damp problems and external surface considered to be the reason for this and comments in expert report would be passed on to contractor. In supplemental reply para 52 applicant states it was always intended to lower the level despite fact original quote allowed for raising manhole and made not mention of reducing levels. Furthermore this has now been priced in schedule yet tender price remains unaltered. NCL costs are included in item 4.21 as part of landscaping costs. In priced schedule this is additional to item 4.11 which allows for reducing levels, i.e. this price is for laying pavers only and reinstating manhole cover and gully. NCL costs also allow for reducing levels as stated in Expert Report. NCL allow price of £255 to break up and dispose existing surface, £53.85 for hardcore sub base, £184.95 for new paving and £1150.30 for lowering and adapting existing manhole, 2 gullies and 1 surface water gully total price £1642.42 before index.	£4,415.76	Parties agreed.	£5,000.00

258-280 Coldharbour Lane, London, SW9 8SE

Row/ column ref	A	B	D	E	F	H	
				Gate could be repaired with new hinges, sliding latches fitted for security. If gate is to be replaced cost provided in priced schedule is particularly low.			
41		Decorative Details at the ground floor					
42	4.12	Make good to concrete cills that have chipped and deteriorated with concrete mix repair. Carefully remove one number cill and replace with new to match existing.	£1,250.00	Description in priced schedule changed from original quote to include for replacement of one cill as detailed in Expert report. Allowed for 1 cill replacement at £206.22, 1 cracked cill repair at £34.60 and repair of 2 chipped cills at £144.86. Total £385.68 before indexation and factor.	£460.30	Parties agreed.	£835.00
43	4.13	To front elevation reinstate decorative cappings to plasters either side of front entrance door to match No. 262-264 Coldharbour Lane	£320.00	Consider this work to be aesthetic improvement of the building not recoverable through the service charge. Priced schedule now includes itemised costs for these items which are unrealistic for the work required which would involve taking mouldings of existing details and casting replicas before cutting into the wall and bedding in new sections. Suspect applicant is attempting to reduce cost of items of work which may be discounted. Item no longer in dispute.	£0.00	Parties agreed on omission of this item.	00
44	4.14	Hack off render at first floor level and continue rope effect where missing to complete entire length of façade. Repair with concrete mix.	£350.00	Consider this work is outside demise and not recoverable through service charge. Priced schedule includes provisional sum of £0. Individual preparing priced schedule obviously doesn't understand relevance of provisional sum items. Item no longer in dispute.	£0.00	Parties agreed on omission of this item.	£0.00
45	4.15	Allow the provisional sum of £0.00 for making good sunken paving in front of steps to front entrance door.	£0.00	Consider this work is outside demise and not recoverable through service charge. Priced schedule includes provisional sum of £0. Individual preparing priced schedule obviously doesn't understand relevance of provisional sum items. Item no longer in dispute.	£0.00	Parties agreed on omission of this item.	£0.00
46		Rendering					
47	4.16	Hack off loose render to window heads and reveals and repair with concrete mix where required.	£900.00	Minor evidence of damage to the existing rendered soffits and reveals. Would suggest allowing a small provisional sum to allow for any repairs identified after scaffold raised. If contractor has priced for this item should be able to identify what has been priced and how this has been calculated. NCL costings allow Provisional quantity of 3m ² at £80/m ² for render repairs to window reveals approx. 20mm thick in two coats or thickness of existing, wood float finish and s/s beads.	£240.00	Tribunal to determine rate for works and provisional quantity.	TBC
48	4.17	Fill all small cracks as required and fill all large cracks using sand, cement with waterproof additive.	£1,860.00	Minor cracking evident to render at ground level can easily be repaired by simple filling with proprietary filler before redecorating. Costs provided in priced schedule suggest significant render repairs required. NCL allowed provisional sum for this item to be adjusted once scaffold raised and content of work known.	£1,200.00	Parties agreed.	£1,500.00
49	4.18	Form new arch and cill detail in render to doors and windows at ground floor level only.	£920.00	Consider this work to be aesthetic improvement of the building not recoverable through the service charge. Priced schedule now includes itemised costs for this item which is unrealistic for the work required. Suspect applicant is attempting to reduce cost of items of work which may be discounted. Item no longer in dispute.	£0.00	Parties agreed on omission of this item.	£0.00
50	4.19	Remove horizontal render stop bead to render on right hand side of front door. Extend render down to pavement level.	£880.00	Works described inadvisable due to concerns with damp problems where rendering over damp course. Suggest works altered to allow for breaking render at DPC level with drip detail formed to upper render section. NCL allowed for 8/m ² total price inc. hack off and re-rendering £439.37 indexed and factored.	£524.38	Parties agreed.	£650.00
51		Mastic					

258-260 Coldharbour Lane, London, SW9 8SE

Row/ column ref	A	B	D	E	F	H	
52	4.20	Apply mastic around all communal window frames	£1,320.00	Original quote allowed for mastic to all doors and window frames. Priced schedule now refers to communal windows only. Applicant stated during inspection of building on 20th July 2010 that this was a mistake and price infact allows for all windows to building. NCL costs allow for 500 linear meters at a rate of £5.81/linear metre factored and indexed.	£3,467.05	Parties agreed. Specification to be ammended to allow for <u>ALL</u> windows.	£2,400.00
53		Landscaping					
54	4.21	ITEM 4.21 NOW MERGED WITH ITEM 4.11 (COLUMN A, ROW 40)					
55	5.0	INTERNAL HALLWAY					
56		Carpentry and Joinery					
57	5.1	Strip existing front door and frame. Fit new front door and frame with fanlight over including new ironmongery. Fanlight to be sandblasted with door numbers showing through.	£1,920.00	Frame and door sound but require repair and new lock. Costs allowed in priced schedule highly inflated. NCL cost in column F allow for repair of existing door and fitting new locks. NCL costs in column G allow for replacement of door and new locks.	£600.00	Tribunal to decide whether the door is to be repaired or replaced and cost.	TBC
58	5.2	Strip out existing rear door and frame. Fit new door and frame with including all new ironmongery	£1,780.00	Door and frame sound but poorly positioned and locks inadequate. Costs allowed in priced schedule highly inflated. NCL costs in column F allow for resiting existing door back into reveal and fitting new locks. Costs in column G allow for new door of similar quality to existing with new locks.	£600.00	Tribunal to decide whether the door is to be repaired or replaced and cost.	TBC
59	5.3	Remove all metal strapping and newel post at ground floor. Replace with matching item.	£475.00	Work required agreed but costs inflated. NCL costs based on BCIS published figures.	£268.22	Parties agreed.	£0.00
60	5.4	Remove newel post at first floor and replace with turned newel post to match those at all levels	£127.00	This work considered to be aesthetic improvement only and not recoverable through service charge. Costs provided in priced schedule with 25% reduction considered to be reasonable. NCL costs in column F reflect advice in expert report that work not recoverable through service charge. NCL costs in column G allow for replacement of newel post.	£0.00	Parties agreed on omission of this item.	£0.00
61	5.5	Replace 6no. Baluster rails up stairs where they differ to match the rest	£210.00	Only one baluster required to be replaced on account of want of repair however due to fact most of cost would be absorbed in replacing only one item (setting up jig) replacement of remaining 5 could be undertaken at little additional cost. Suggest landlord requests confirmation from lessees that they agree to this item being undertaken. Costs provided in priced schedule considered reasonable when 25% discount applied.	£205.37	Parties agreed 2 balusters to be replaced at cost of £50.00. Parties agreed specification to allow for replacement of additional balusters if required at £25 per item.	£50.00
62	5.6	Fit new budget lock to under stair cupboard with signage reading 'fire door keep locked'	£90.00	Agreed.	£105.59	Parties agreed.	£100.00

Row/ column ref	A	B	D	E	F	H	I
63	5.7	Build new accessible service riser in MDF at each level to house water and gas feeds.	£1,500.00	There are exposed water pipes on each level which are neatly clipped to the wall and painted and stop cocks located in accessible boxing. See no reason why this should be changed. Where new water riser introduced to new top flats this is less discreetly positioned but improvements here not recoverable through the service charge as they relate to the formation of the new top floor flats. NCL costs in column F follow expert view work not necessary or recoverable. NCL costs in column G allow for new timber pipe boxing to encase existing water risers.	£0.00	Tribunal to determine necessity and cost. Applicant states that specification to be amended to change reference to "gas" to "electric rising mains".	TBC
64	5.8	ITEM 5.8 NOW MERGED WITH ITEM 4.9 (COLUMN A, ROW 37)					
65		Decoration					
66	5.9	Allow for erecting of internal scaffolding and tower in the staircase areas for preparation and decoration works.	£3,900.00	This was not specifically described in the original quote. It is not considered that a full scaffold is necessary as high level decorations can be reached with extending pole. Limited access required at high level for plaster repairs. Installation of full internal scaffold will also create health and safety problems with access and egress from flats by tenants/ occupants during works. NCL costs in column F based on expert opinion full scaffold not required and allowance in general preliminaries for access to isolated high level areas. NCL costs column G allow for full scaffold as detailed by applicant. No published data to obtain costs for scaffold over stair therefore have based costs on contractors discounted price.	£0.00	Tribunal to determine necessity and cost.	TBC
67	5.10	Fill all chases to walls and ceiling, prepare and paint all walls and ceilings with one mist coat and two full coats of silk emulsion/ eggshell paint.;	£9,900.00	This item appears to include for decorating all surfaces which is then repeated and priced in section 5.11 and 5.12. It therefore appears this work and costs are being duplicated. Description also allows for "mist coat" only necessary to newly plastered areas.	£3,681.60	Parties agreed cost of decoration works (items 5.10 to 5.16 inclusive) at £6000 or £6500 if contractor opts to replace internal plaster surfaces.	£6,000.00
68	5.11	Walls- fill hole, prepare and decorate		Costs high. NCL costs based on BCIS figures. Original NCL costs did not allow for preparations, now priced at £9.89/m2.			
69	5.12	Ceilings- Fill, make good, prepare, and decorate		Costs high. NCL costs based on BCIS figures. Original NCL costs didn't allow for prep now priced at £10.19 per m2.			
70	5.13	Prepare all woodwork with one undercoat and full coats of eggshell paint.		This item appears to include for decorating all surfaces which is then repeated and priced in section 5.14 to 5.16. It therefore appears this work and costs are being duplicated. Description also allows for "undercoat" only necessary to new timber newel posts and balusters. Cost provided in this section broadly similar to NCL costing for items 5.14 to 5.16.			
71	5.14	Staircase- ditto		Costs high. NCL costs based on BCIS figures. Original NCL costs did not allow for decoration of balusters now priced at £228.16.			
72	5.15	Doors and windows frame		Costs high. NCL costs based on BCIS figures.			
73	5.16	Skirting and Architrave, prepare and decorate		Costs high. NCL costs based on BCIS figures.			

Row/ column ref	A	B	D	E	F	H		I
74	No ref	Apply mastic around all internal doors, skirting, and architrave and seal all gaps.	£4,200.00	New item of work introduced in priced schedule. Not necessary to internal doors and windows. Costs provided in column F based on expert opinion work not necessary. Costs in column G based on mastic to all internal doors, skirtings and architraves. Based on day works rate for professional mastic caulking tradesman of £750/day inclusive of materials.	£0.00	Tribunal to determine necessity and cost.		TBC
75		Floor finishes						
76	5.17	Strip off existing carpet, underlay, gripper rods and laminate throughout and getaway	£600.00	Cost quoted for this work is highly inflated.	£424.75	Parties agreed.		£510.00
77	No ref	To ground floor hallway only lay Victorian tiles on 18mm ply floor. Allow for forming matwell and laying coir matting inside front door.	£1,920.00	Agree that provision of tiling is sensible for durability reasons rather than replacing existing carpet for like. Original quote and priced schedule allows for Victorian tiling and price is excessive. NCL quote allows for quarry tiles or similar.	£1,039.63	Parties agreed on necessity, quantum and cost. Parties further agreed that the specification for this item is to be changed to allow the contractor the option for laying either Victorian or Quarry tiles.		£1,450.00
78		Carpets						
79	5.18	Lay new heavy-duty carpet on new under foam underlay from staircase at ground to top level, including working to treads and risers.	£3,000.00	Price quoted is excessive for heavy duty carpet.	£1,055.87	Parties agreed on necessity. Tribunal to determine Prime Cost sum of carpet and labour cost.		TBC
80	6.0	ELECTRICS						
81	6.1 & 6.3 (now merged)	Undertake full electrical test to all lighting circuits, ring mains etc. in the common areas. Provide written report for the attention of Landlord on condition of system. In addition to the above fit new lighting, switches and smoke detection throughout at each level. Allow for light fitting to both front rear elevations adjacent to doors.	£4,400.00	Original quote included items 6.1, 6.2 and 6.3 within one item & NCL priced accordingly. Now allows for electrical test only at a highly inflated price. Electrical test and report for a property of this type undertaken by an NIC/EIC electrician should be no more than £750. This item now allows for complete replacement of lighting to common parts additional to items 6.1 and 6.2. Total costs for items 6.1 to 6.3 therefore considered to be highly inflated. Suspect contractor is attempting to justify price in breakdown of the 14th April by introducing additional items. Requirement for smoke detection and emergency lighting should be confirmed by undertaking a risk assessment. Applicant states in outline reply paragraphs 54 and 55 that an inspection will be undertaken following the works and that even without an inspection that due to number flights and occupants of building this would be required. The Landlord is required to undertake a risk assessment to comply with the Regulatory Reform (Fire Safety) Order 2005 and it would be advisable to undertake this before the works and implement the recommendations rather than after the works when additional requirements may be required.	£3,369.30	Parties agreed.		£3,800.00

Row/ column ref	A	B	D	E	F	H		I
82	6.2	Allow provisional sum of £2,000 for carrying out repairs highlighted in report in accordance with the latest edition of IEE Regulations, supply certification to the Landlord upon completion.	£2,000.00	New provisional sum allowed not declared in original quote or breakdown. As 6.3 allows for complete replacement of common parts electrics it is considered this is not necessary as all works are now described. Suspect contractor is attempting to justify price in breakdown of the 14th April by introducing additional items. Applicant states provisional allowance for replacement of rising mains due to concerns raised by EDF and awaiting report to validate this. NCL believe costs would be a statutory undertakers cost as before meter.	£0.00	Parties agreed. Specification to be altered to allow a provisional sum of £2,000.00 to replace electrical rising mains to flats if required in writing by EDF and confirmation given in writing that the cost of that replacement is the responsibility of the First Applicant and not EDF.		£2,000.00
83	6.3	ITEM 6.3 NOW MERGED WITH ITEM 6.1 (COLUMN A, ROW 81)						
84	6.4	Strip out existing intercom system including console at ground floor, all wiring and handsets in each flat. Fit new multi-way video entry system with hand sets in each flat.	£1,550.00	Unable to verify that system is not working but as current system appears fairly new and respondent confirms was replaced in around 2006 it seems unnecessary to replace if the existing installation can be economically repaired. Recommend an engineers report obtained from an independent intercom engineer specialist. Video intercom considered to be an improvement that is not recoverable through the service charge provisions of the leases. Costs in column F allow provisional sum for checking and repairing existing intercom. Prices in Column G based on previous costs for full replacement obtained on similar project.	£500.00	Tribunal to determine whether system to be retained or replaced. If replacement necessary parties have agreed to the cost of £1,600.00 for supply and installation of multi-way video entry system with hand sets in each flat.		
85	6.5	Fit new CCTV system with camera directed to front and rear doors all wired back to ground floor electric cupboard.	£1,650.00	NCL consider security improvements to front and rear doors would be more successful in ensuring security of the building and residents. Costs quoted in Column F allow for improving security to doors with London bars and hinge bolts to both front and rear entrance doors. Costs quoted in column G allow for 2 x static cameras + hard disk recorder with installation.	£300.23	Tribunal to determine necessity and cost.		TBC
86	7.0	Refuse removal / gutter						
87	7.1	Remove all builders' debris from roof of single-storey extensions and courtyard and getaway	£600.00	Applicant appears to suggest these costs will be deducted as a gesture of goodwill in paragraph 57 of the outline reply. Costs quoted in priced schedule are in any case excessive.	£0.00	Parties agreed on omission of this item.		£0.00
88	7.2	Clean out gutters to single-storey rear extensions	£360.00		£0.00	Parties agreed on omission of this item.		£0.00
89	7.3	ITEM 7.3 NOW MERGED WITH ITEM 4.11 (COLUMN A, ROW 40)						
90	7.4	Replace broken glass panel to first floor window outside flats 3 & 4, including removing glass and putty and supply and install new single glazed pane.	£120.00	Cost quoted for replacement of one cracked glass pane is excessive.	£65.89	Parties agreed on necessity, quantum and cost.		£90.00
91	TOTALS		£97,752.00	TOTAL ALL ITEMS	£53,729.75	TOTAL OF AGREED COSTS		£37,505.00
92	BALANCE OF APPLICANT COSTS FOR ITEMS TO BE DETERMINED BY TRIBUNAL		£52,500.00	BALANCE OF FIRST RESPONDENT COSTS FOR ITEMS TO BE DETERMINED BY TRIBUNAL	£17,012.23			
93	TOTAL OF AGREED COSTS		£37,505.00	TOTAL OF AGREED COSTS	£37,505.00			

258-260 Coldharbour Lane, London, SW9 8SE

	A	B	D	E	F	H		I
Row/ column ref								
94		TOTAL	£90,005.00		TOTAL	£54,517.23		