

8976



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **LON/00AL/LSC/2013/0124**

**Property** : **248 Tideslea Path, Thamesmead,  
London SE28 0NH**

**Applicant** : **The Gateway (Thamesmead)  
Management Company Limited  
(Manager appointed in the Lease)**

**Representative** : **Mr Mertens of Counsel**

**Also Present** : **Mr A. Bailey; Property Manager,  
Houston Lawrence Management**

**Respondent** : **Mr V. Ekugum (Leaseholder)**

**Representative** : **In person**

**Type of Application** : **Section 27A Landlord and Tenant  
Act 1985**

**Tribunal Members** : **Mr L. W. G. Robson LLB (Hons)  
Mrs A. Flynn MA MRICS  
Mr A. D. Ring**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **15th July 2013**

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**DECISION**

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## **Decision Summary**

- (1) Service Charges from 1<sup>st</sup> July 2009 to 30<sup>th</sup> June 2011 – payable as demanded
- (2) Estimated Service charges for period from 1<sup>st</sup> July 2011 to 30<sup>th</sup> June 2012 – payable as demanded
- (3) Administration charges of £238 – payable as demanded
- (4) The Tribunal makes the other determinations as set out under the various headings in this Decision.
- (5) The Tribunal makes NO order under section 20C of the Landlord and Tenant Act 1985 limiting the landlord's costs chargeable to the Respondent under the service charge or otherwise in connection with this application.
- (6) This case is now referred back to the Dartford County Court to deal with outstanding matters.

## **The application**

1. This case was transferred by order of District Judge Glover in the Dartford County Court dated 15<sup>th</sup> February 2013 under case number 2YN13352. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the Service charge years commencing on 1<sup>st</sup> July 2009 and 2010, and estimated service charges in respect of the year commencing on 1<sup>st</sup> July 2010 and 2011 under the terms of a lease (the Lease) dated 28<sup>th</sup> October 2005. A copy is attached in the Appendix 1 to this decision. Directions by the Tribunal were given on 20<sup>th</sup> March 2013. Appendix 2 to this decision consists of extracts from relevant law.

## **Hearing**

2. At the hearing, the Tribunal considered the Directions which indicated that the Respondent had raised the following issues in his Defence sent to the County Court:
  - i) Liability to pay and reasonableness of service charge in the sum of £2,908.85 (claimed in the County Court) for the period 1<sup>st</sup> July 2009 to 30<sup>th</sup> June 2012 and £238 for administration fees in respect of the service charge years commencing 1<sup>st</sup> January 2011 and 2012

ii) whether the correct proportion of the total service costs is being demanded of the Respondent

iii) whether the sums are in respect of estimated service charge or actual service charge and whether the same are payable by the leaseholder under the Lease

iv) whether the services in respect of which the costs are claimed are within the landlord's obligations under the Lease and whether the cost of works are payable by the leaseholder under the Lease

v) whether the costs of any works are reasonable, in particular in relation to the nature of the work, the contract price, and the supervision and management fee; and

vi) whether the Administration fees claimed are recoverable under the Lease, within the jurisdiction of the Tribunal and reasonable

vii) whether an Order under Section 20C of the 1985 Act should be made.

3. The Respondent applied in his statement of case dated 31<sup>st</sup> May 2013 for an adjournment claiming that the Applicant had failed to provide a sufficient breakdown of costs for him to particularise his case, and this matter was addressed at the start of the hearing.
4. Mr Mertens confirmed that the Applicant had sent its statement of case on 8<sup>th</sup> April 2013, after obtaining a short extension from the Tribunal to submit its statement. A copy of the statement had been acknowledged by the Tribunal on 10<sup>th</sup> April. The Applicant had written to the Tribunal on 7<sup>th</sup> May noting that the Respondent had not sent his Statement of case by 29<sup>th</sup> April, as directed. On 22<sup>nd</sup> May the Respondent wrote to the Tribunal seeking an extension until 31<sup>st</sup> May, and wrote on the same day to the Applicant seeking further information about the service charges, the process for the award of contracts, and indicating that he disputed whether some services are provided, or are provided but not to a reasonable standard. The Applicant did not receive this letter, but a copy of it was sent by the Tribunal on 29<sup>th</sup> May. In ignorance of the letter of 22<sup>nd</sup> May, the Applicant wrote on 28<sup>th</sup> May to advise the Tribunal that the Respondent was still in breach of the Directions. On 30<sup>th</sup> May the Applicant wrote to the Tribunal with a copy to the Respondent indicating where the service charges had been broken down in the attachments to the Applicant's case. No copy of the Respondent's statement of case dated 31<sup>st</sup> May had reached the Applicant until the morning of the hearing. On 5<sup>th</sup> June the Applicant served the hearing bundles. Mr Mertens submitted a) that the Respondent should be restricted to the matters raised in his Defence sent to the County Court (see above), b) that the Respondent's

statement of 31<sup>st</sup> May 2013 was not in the form required by the Directions and it raised no specific items and was too general to reply to, essentially it was the same as the Defence, and c) that as a result the Applicant had not gone into detail with its invoices and documents in the bundle. Nevertheless he believed his client was not hindered in its case.

5. The Respondent stated that his letter of 22<sup>nd</sup> May had been returned by the post office the week prior to the hearing. He initially could not find it in his papers. He was certain it had been sent to the Hertford address of the Applicant's representatives (although when he found the letter later in the hearing this did not seem to be the case). He had not informed the Tribunal of this matter and said it was his first time at such a hearing. When asked by the Tribunal about the letter from the Tribunal dated 17<sup>th</sup> May refusing to grant his request to order further discovery, and why he had not complied with the Directions by completing the Schedule of issues (Scott Schedule) he stated he had not understood how he should do so.
6. The Tribunal decided that the case should not be adjourned. The issues set out in the defence were very general, but the Applicant was prepared to attempt to deal with specific issues raised later based on the existing bundle and wished to proceed.
7. Mr Mertens then set out the Applicant's case, following the written statement dated 8<sup>th</sup> April 2013. He referred to the terms of the Lease. Clause 3 required the lessee to pay 0.463% of the Estate costs and 1.47% of the block costs as defined in the Lease. The Applicant considered that it had complied with its management obligations set out in the Sixth and Tenth schedules to the Lease. The Applicant had raised formal demands for payment (copies of which were attached to the written statement) of the lessee's proportion as detailed in the statements of account, copies of which were also attached to the written statement. The summary of tenant' rights and obligations was stated to be attached to each demand as a matter of course. Copies of the Final Accounts for the periods ending 30<sup>th</sup> June 2010 and 2011 were attached. The accounts for the year ending 30<sup>th</sup> June 2012 had not yet been finalised. Budgets for the years ending 30<sup>th</sup> June 2010, 2011, 2012 and 2013 were attached. As the Respondent had failed to pay the demands as they fell due, the Applicant had instructed its debt collection agency. The fees of this agency were reasonably chargeable by virtue of Clause 4 of Part One of the Eighth Schedule to the Lease. Letters demanding payment had not produced payment, so court proceedings had been issued.
8. The Tribunal noted that at the hearing the Respondent did not seek to challenge the Applicant's interpretation of the Lease relating to the various charges at the hearing. His main complaints related to lack of clarity in the accounts provided, failure to provide detailed information

about certain contracts, engage with complaints he had made, and in relation to a number of specific items.

9. Mr A. Bailey, Senior Property Manager at Houston Lawrence, the Applicant's managing agents attended at the hearing and gave oral evidence relating to the procedures used by the Applicant to manage the block and collect the service charges. He was examined and cross-examined by the parties and the Tribunal. His evidence was that the Applicant was controlled by its directors, who were a group elected from residents on the estate at the Applicant's AGM. The managing agents prepared an annual budget for approval by them. After approval the budget was published to the lessees with a covering letter and a demand for payment of their contribution. This was done once a year, but there was also a website lessees could access which contained much more information. It was not the case that certain services were not being carried out. There were inspectors, being himself, and directors of the Applicant. While he personally had been in post only 10 weeks, he has visited the block on 3 occasions. On site he had met the people he would have expected to meet. On average he expected to visit every 4-6 weeks.
  
10. Requested by the Tribunal to address the specific issue of the adequacy and clarity of the accounts, Mr Bailey and Mr Mertens, with some difficulty, explained how the budgets and final accounts sent to the leaseholders could be used with the service charge percentages in the leases to discover the cost of individual items to each property. It is noteworthy that this explanation took some time, and required a leaseholder to be aware of the percentages in the lease and to work these costs out for him or herself, rather than have a simple summary to hand, which could be checked for accuracy with basic arithmetic. Even Mr Mertens occasionally struggled, and Mr Bailey was unable to produce an accurate reconciliation on several items, although the figures were quite close. The Tribunal noted that the breakdown provided to leaseholders was in small type, and visually difficult to read.
  
11. Relating to specific items mentioned late, Mr Bailey gave the following evidence:

Key Fob payments not accounted for – The directors had for some years made a practice of collecting the charges for replacement key fobs with the annual service charges, but quite recently had decided to require payment before delivery of the replacement. A copy of the Respondent's payment record was in the bundle, which did not show the payments alleged by the Respondent.

Insurance claim for the windows – The Respondent had made a claim for damage to his windows. The Respondent had been passed on to the insurers. The Applicant had no knowledge of further developments

relating to that matter. The windows were demised to the lessees under the Lease.

The status of the account for the key fob headed "not a tax invoice" – there was no question that such a demand was illegal. The demand was not an invoice for tax purposes, and it had not been paid.

The payments record for the block – this information was subject to data protection. Mr Bailey was able to say that arrears on this block were higher than elsewhere, but this he considered was due to the policy of the Directors.

Security gates – it was correct that the security gates were often out of order. This was due to significant vandalism on the estate. For example, the gates had been repaired 2 weeks ago, and were vandalised by the next day. There was a service agreement on the gates, but this did not cover vandalism. There was no charter providing a specific time to deal with defects, this was a matter for the Directors

Two lights being out on the Respondent's landing for seven months – Mr Bailey was unable to comment. He could find no complaints in the file.

Failure to serve Summaries of costs and obligations with accounts – Mr Bailey denied this allegation. He considered that the summary in the bundle was sent out as a matter of course

Service charge generally too high for age of property – Mr Bailey's experience was that the service charges were reasonable, taking into account the location and type of property, and the incidence of vandalism, fly tipping and graffiti on the estate.

Summaries of tenants' costs and obligations not sent with demands as required by law – Mr Bailey refuted this item. The summaries were sent as a matter of course with each demand.

Limited cleaning – There had been issues with cleaning, but the contracts for cleaning and gardening had recently been retendered.

Lack of communication with lessees – Mr Bailey refuted this item. There was a system in operation. All significant calls were logged and action was taken on receipt of information.

Failure to enter dialogue with Respondent over arrears, (thus avoiding administration charges) – Mr Bailey referred to the chronology of events. He considered that the Applicant had attempted to enter

dialogue. The Respondent had not responded promptly, e.g. requesting further time to consider matters in his Defence 6 months previously.

Works contracts – there were no major works contracts or long term contracts requiring Notice under Section 20 during the period in question.

12. The Respondent stated that he had been a senior property manager for several social housing organisations. He submitted that there had been inadequate accounting and breakdowns for individual properties of the specific items involved. He believed he had paid for the key fob when he received it, but had been given no credit on his account. He was generally disappointed at the cost of the service charge for what was received. The windows had been damaged but they had not been repaired by the Applicant. He had been passed on to the block insurers who had denied liability. He considered that to send out a demand marked “not a tax invoice” was illegal, and therefore not payable. He believed many other leaseholders were discontented and not paying and he wanted to know the details, which he considered would assist his case. The security gates were always out of repair. There seemed to be no service agreement on the gates, and no charter for periods of time to deal with defects. Contract for significant works should have been discussed and agreed with leaseholders. Two lights on his landing had been out for 7 months. The property had been bought on an assurance from the developer that development was an exclusive one for professionals, but instead there were many problems of vandalism. The management was remote from leaseholders and it should have engaged with him to avoid the administration charges. The overall cost of the service charge was unreasonable for a new development. There was very limited cleaning and poor communication with leaseholders. He considered that the frequency of Mr Bailey’s site visits was related to the pending hearing.
13. In answer to questions, he was unable to produce any documentary evidence of his specific complaints, particularly the insurance issues, and the alleged failure to supply account summaries. He was unable to say when or if he had received copies of the accounts. He had no record of his bank statements relating to the key fob payments. He had no records of complaints made, either in writing or details of telephone calls. He had attended the AGM of the Applicant 3 years ago, but had not attended since, as he believed his complaints would not be dealt with.

## **Decision**

14. The Tribunal considered the evidence and submissions. A major problem with the Respondent’s case was lack of evidence, and failure to comply with specific detailed Directions of the Tribunal. In all matters in dispute the Tribunal preferred the case put by the Applicant.

Nevertheless, in passing, the Tribunal considered that the formulation and notification of the accounts and demands lacked clarity (although not quite to the point of being in breach of the Lease or legislation). With very minor additions and clarifications the accounting documents would be much more intelligible for non-expert lessees. These improvements would benefit all parties and should be seriously considered.

### **Section 20C Application**

15. For the Applicant, Mr Mertens submitted that it had done all that could be reasonably expected of it. There was specific provision in the Lease to charge the costs to the service charge and/or the individual lessee concerned.
16. The Respondent submitted that the Applicant's procedure for issuing service charge demands was poor. He considered that the Applicant should share responsibility in this case. The Respondent was not an unreasonable man. He had tried to settle this matter but had not brought the relevant letter with him.
17. The Tribunal decided in the circumstances that it would make no order under Section 20C. The Respondent had failed to prove his case on all issues. The Applicant had not been shown to have acted unreasonably in bringing the application.

Signed: Lancelot Robson  
Chairman

Dated: 15th July 2013

### **Appendix 1**

See lease dated 28<sup>th</sup> October 2005 attached

### **Appendix 2**



## **Landlord & Tenant Act 1985**

### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant

shall not be liable to pay so much of the service charge as reflects the costs so incurred.

- (2) Subsection 1 shall not apply if, within the 18 period of 18 months beginning with the date when the relevant costs in question had been incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 21B**

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) and (6)....

### **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 it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

### **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 Upper 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) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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

**Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).
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We hereby certify this to be  
a true copy of the original.

TF6

TGL 265859



A **CENTEX** Company

**Underlease of:  
Plot 539  
The Gateway,  
Thamesmead IV**

**CENTEX**

**UK**

**LEGAL DEPARTMENT**

**Goldvale House**

**Church Street West**

**Woking**

**Surrey**

**GU21 6DH**

**Tel No: 01483 794600**

**HM LAND REGISTRY  
LAND REGISTRATION ACTS 1925 TO 2002  
UNDERLEASE OF PART**

**ADMINISTRATIVE AREA** GREENWICH  
**TITLE NUMBER** TGL223724 and TGL223723(Freehold)  
Leasehold title (TGL242654 )  
**PROPERTY** Plot No. 539 at "The Gateway" Thamesmead

**PARTICULARS**

**Date of Under Lease** 28<sup>th</sup> October 2006

**The Builder** FAIRCLOUGH HOMES LIMITED of  
Meirion House, 18-28 Guildford Road, Woking,  
Surrey GU22 7QF (Company Registration  
Number 1987689)

**The Lessee** VICTOR LAWRENCE EKUGUM of 15  
Grenada Road, London, SE7 7BY

**Management Company** THE GATEWAY (THAMESMEAD)  
MANAGEMENT COMPANY LIMITED  
care of Belcon House, Essex Road, Hoddesdon,  
Hertfordshire EN11 0DR  
(Company Registration Number 4977213)

**The Estate** The land described in the First Schedule known  
for development purposes as "The Gateway"  
Thamesmead

**The Demised Premises** the Dwelling known as Plot Number 539 "The  
Gateway," Thamesmead more particularly  
described in the Third Schedule and to be  
known as 248 Tideslea Path, Thamesmead,  
London, SE28 0NH

**The Allocated Parking Space** The parking space forming one of the Parking  
Spaces and shown edged in blue on Plan 1 and  
numbered with the same Plot Number as the  
Demised Premises (if any)

**The Rent** £200 per annum for the first twenty five years of  
the Term  
£350 per annum for the second twenty-five  
years of the Term  
£500 per annum for the third twenty-five years  
of the Term

	£650 per annum for the fourth twenty-five years of the Term
	£ 800 per annum for the remainder of the Term
The Term	125 years from the Commencement Date
The Commencement Date	1 <sup>st</sup> November 2003
The Premium	£274,950.00 (Two Hundred and Seventy Four Thousand Nine Hundred and Fifty Pounds)
The Declared Value	£500,000.00 (Five Hundred Thousand Pounds)
Lessee's Part A Proportion	0.463% (Estate Costs)
Lessee's Part B Proportion	1.47% (Block Costs)

SAVE THAT any of the said Proportions may be subject to variation from time to time in accordance with the provisions of Clause 7.13

**THIS UNDER LEASE** is made BETWEEN (1) the Builder (2) the Management Company and (3) the Lessee

**WHEREAS:**

- (1) The Builder has a registered leasehold interest in the Estate created by a Lease dated day of 13 February 2004 made between Tilfen Land Limited (1) and the Builder(2) for a term of 999 years from 1 November 2003 at a peppercorn rent.
- (2) The Builder has previously granted underleases and transfers of or intends hereafter to grant underleases and transfers of the Properties forming part of the Estate as hereinafter defined each as separate and distinct properties and the Builder has in every such underlease and transfer imposed and intends in every future underlease and transfer to impose similar obligations to those set out in the Eighth Schedule to the intent that the lessee for the time being of any one of the Properties may enforce the observance by the lessee or transferee of any Other Properties of the covenants in the form set out in Part Two of the Eighth Schedule as are appropriate for each property
- (2) The Builder has agreed to grant to the Lessee an Underlease of the Demised Premises for the Premium at the Rent and on the terms and conditions hereinafter appearing and the Management Company has agreed to join in this UnderLease in the manner hereinafter appearing
- (3) The Management Company has been incorporated for the purpose of managing and maintaining the Managed Land
- (4) The Builder hereby reserves a right to appoint a manager to act on behalf of the Management Company



**NOW THIS DEED WITNESSETH** as follows:

1. In this Deed unless the context otherwise requires:

"the Accessway" means the Accessway forming part of the Estate shown on Plan 1 and any footpaths and accessway substituted therefor

"the Apartments" means the leasehold apartments within the Estate

"Authorities" means any relevant highway drainage and planning authorities and undertakers or companies responsible for the supply of water gas electricity communication media or similar services and "Authority" means any one of them as the context may admit

"the Bin Stores" means the bin stores shown on Plan 1 (if any)

"the Block" means the building in which the Demised Premises are situate and shown on Plan 2

"the Builder" includes the person for the time being entitled to the reversion immediately expectant upon the Term

"the Buildings" means the Blocks C,G, H,.L AND M constructed or to be constructed within the Estate and comprising several flats and all structural parts thereof including the roofs gutters rainwater pipes foundations support structures floors and all external parts of the Buildings and all walls bounding individual Dwellings therein and all Service Installations not used solely for the purpose of an individual Dwelling

"the Dwellings" means all the Properties and the Demised Premises forming the Estate and a Dwelling means any one of them

"the Estate Maintained Areas" means the Accessway and the Soft Landscaping and the Hard Landscaping shown on Plan 1

"Estate Regulations" means any reasonable regulations made by the Management Company from time to time for the proper management and use of the Estate

"Estate Road" means the roadways serving the Estate which are to be adopted and maintained by the local authority and are shown on Plan 1

"Estate Sewer" means the foul and surface water sewers serving the Estate which are to be adopted and maintained by the relevant authority.

"the Forecourt"	means the accessway shown on Plan 2
"the Insured Risks"	means fire lightning aircraft explosion terrorism riot civil commotion earthquake malicious damage storm flood escape of water and oil impact theft attempted theft glass falling trees branches and aerals subsidence heave land slip accidental damage including accidental damage to underground services public liability full terrorism and such other risks as the Builder may reasonably require from time to time but so far only as such risks (including for the avoidance of doubt those expressly referred to above) remain insurable from time to time in the UK insurance market and at reasonable rates
"the Hard Landscaped Areas"	means the Hard Landscaping shown on Plan 1
"the Lessee"	includes the person for the time being entitled to the Term and where the Lessee is more than one person all covenants and agreements on the part of the Lessee herein contained shall be deemed to have been made jointly and severally by all such persons constituting the Lessee
"the Lessee's Proportion"	means the proportion of the Maintenance Expenses as set out in the Particulars payable by the Lessee in accordance with the provisions of the Seventh Schedule
"the Maintenance Expenses"	means the moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company or the Builder at all times during the Term in carrying out the obligations specified in the Sixth Schedule
"the Managed Land"	means those parts of the Estate which are more particularly described in the Second Schedule and the maintenance of which is the responsibility of the Management Company
"the Parking Spaces"	means all the car parking spaces shown on Plan 1 including the Allocated Parking Space in respect of which exclusive rights of use have been granted
"Plan 1" and "Plan 2"	means the plans annexed hereto and numbered accordingly
"the Properties"	means all of the freehold and leasehold properties within the Estate than the Demised Premises
"the Perpetuity Period"	means eighty years from the Commencement Date

"the Forecourt"	means the accessway shown on Plan 2
"the Insured Risks"	means fire lightning aircraft explosion terrorism riot civil commotion earthquake malicious damage storm flood escape of water and oil impact theft attempted theft glass falling trees branches and aerials subsidence heave land slip accidental damage including accidental damage to underground services public liability full terrorism and such other risks as the Builder may reasonably require from time to time but so far only as such risks (including for the avoidance of doubt those expressly referred to above) remain insurable from time to time in the UK insurance market and at reasonable rates
"the Hard Landscaped Areas"	means the Hard Landscaping shown on Plan 1
"the Lessee"	includes the person for the time being entitled to the Term and where the Lessee is more than one person all covenants and agreements on the part of the Lessee herein contained shall be deemed to have been made jointly and severally by all such persons constituting the Lessee
"the Lessee's Proportion"	means the proportion of the Maintenance Expenses as set out in the Particulars payable by the Lessee in accordance with the provisions of the Seventh Schedule
"the Maintenance Expenses"	means the moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company or the Builder at all times during the Term in carrying out the obligations specified in the Sixth Schedule
"the Managed Land"	means those parts of the Estate which are more particularly described in the Second Schedule and the maintenance of which is the responsibility of the Management Company
"the Parking Spaces"	means all the car parking spaces shown on Plan 2 including the Allocated Parking Space in respect of which exclusive rights of use have been granted
"Plan 1" and "Plan 2"	means the plans annexed hereto and numbered accordingly
"the Properties"	means all of the freehold and leasehold properties within the Estate than the Demised Premises
"the Perpetuity Period"	means eighty years from the Commencement Date

"Service Installations"	means sewers drains channels pipes watercourses gutters mains wires cables conduits aerials tanks apparatus for the supply of water electricity gas (if any) or telephone or television signals or for the disposal of foul or surface water
"the Soft Landscaped Areas"	means all soft landscaped areas not included within the boundaries of any individual Dwelling on the Estate as shown on Plan 1 and Plan 2 and any soft landscaped areas substituted therefor

## 2. INTERPRETATIONS

- 2.1 Words importing one gender shall be construed as importing any other gender and words importing the singular shall be construed as importing the plural and vice versa
- 2.2 Persons include companies and all other legal entities
- 2.3 References to clauses schedules and paragraphs are to clauses schedules and paragraphs in this Lease and all headings do not form part of this Underlease and shall not be taken into account in its construction or interpretation
- 2.4 Any reference to any specific statute or statutory provision includes references to any statutory modification extension or re-enactment of such statute or statutory provision and to any byelaws orders regulations or other subordinate legislation made under such statute or statutory provision from time to time
- 2.5 Any covenant by the Lessee not to do any act matter or thing shall be construed as including a covenant by the Lessee that such act matter or thing shall not be done
- 2.6 Where any party to this Underlease comprises more than one person then the obligations and liabilities of that party under this Underlease shall be joint and several obligations and liabilities of those persons

## 3. DEMISE

IN consideration of the Premium now paid by the Lessee to the Builder (the receipt whereof is hereby acknowledged) and of the Rent hereinafter reserved and contained the Builder with Full Title Guarantee HEREBY DEMISES AND CONFIRMS unto the Lessee ALL AND SINGULAR the Demised Premises TOGETHER WITH the rights set out in the Fourth Schedule to the exclusion of any implied rights pursuant to Section 62 of the Law of Property Act 1925 and SUBJECT however to the Lessee's covenants hereinafter contained TO HOLD the same unto the Lessee for the Term SUBJECT TO the burden of the covenants or agreements already entered into by the Builder and the Management Company with the lessee or tenant of any of the Properties for the observance of the Estate Regulations and to all rights and easements appertaining to any other property adjoining the Estate and SUBJECT TO all covenants stipulations and other matters hereinafter contained or referred to and SUBJECT ALSO TO the rights set out in the Fifth Schedule (which so far as not already affecting the Builder's estate in the Demised Premises are hereby excepted and

reserved from this demise) YIELDING AND PAYING THEREFOR during the Term the Rent to be paid by the Lessee to the Builder by yearly payments in advance on the first day of July each year (or such other date(s) as shall be determined by the Management Company) the first of such payments being a proportionate payment to be made on the execution hereof AND ALSO paying on demand by way of further or additional rent the Lessee's Proportion

#### **4. THE LESSEE'S COVENANTS**

THE LESSEE for the mutual protection of the Builder the Management Company and the lessees of the Properties HEREBY COVENANTS:

- 4.1 With the Builder to observe and perform the obligations on the part of the Lessee set out in Parts One and Two of the Eighth Schedule and to observe and perform all covenants and stipulations contained or referred to in the Charges Register (if any) of the Title above referred to so far as the same relate to or affect the Demised Premises and to indemnify the Builder against all actions proceedings costs claims and demands in respect of any breach non-observance or non-performance thereof
- 4.2 With the Management Company to observe and perform the obligations on the part of the Lessee set out in Parts One and Two of the Eighth Schedule
- 4.3 With the lessees of the Properties to observe and perform the obligations on the part of the Lessee set out in Part Two of the Eighth Schedule

#### **5. THE BUILDER'S COVENANTS**

The Builder relying on the covenants on the part of the Lessee herein contained HEREBY COVENANTS with the Lessee to observe and perform the obligations on the part of the Builder set out in the Ninth Schedule

#### **6. THE MANAGEMENT COMPANY'S COVENANTS**

THE MANAGEMENT COMPANY in consideration of the covenants on the part of the Builder and the Lessee herein contained HEREBY COVENANTS with the Builder and as a separate covenant with the Lessee to observe and perform the obligations on the part of the Management Company set out in the Tenth Schedule PROVIDED ALWAYS THAT if at any time the Management Company shall reasonably consider that it would be in the general interests of the lessees of the Dwellings on the Estate so to do the Management Company shall have power to discontinue any of its obligations which in its opinion shall have become impracticable or obsolete PROVIDED THAT in deciding whether or not to discontinue any such matter the Management Company shall agree with the views and wishes of the majority of the lessees of the Dwellings on the Estate

#### **7. AGREEMENTS AND DECLARATIONS**

IT IS HEREBY AGREED AND DECLARED as follows:

- 7.1 That if any Rent hereby reserved or any part thereof shall be unpaid for twenty-one days next after the same shall have become due or if any covenant by the Lessee or condition herein contained shall not be performed or observed by the Lessee then and in any such case it shall be lawful for the Builder or any person or persons authorised

by it in that behalf to re-enter the Demised Premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action of the Builder in respect of any antecedent breach or non-observance by the Lessee of the covenants or conditions herein contained PROVIDED ALWAYS that notice of contemplation of re-entry shall first be served on any mortgagee with an interest in the Demised Premises in respect of which details have previously been provided to the Builder or the Management Company and no re-entry shall be effected until the expiry of 28 days after the service of any such notice

- 7.2 That all rights and obligations of the Builder and the Lessee respectively under this Underlease shall be incidental to and devolve with the legal reversion immediately expectant on the Term and with the Underleasehold interest hereby created and shall accordingly be enjoyed and performed by the persons in whom such reversion and Underleasehold interest respectively shall for the time being be vested
- 7.3 That nothing herein contained shall be construed as entitling the Lessee to require that all or any of the covenants herein contained shall be imposed upon or enforced in respect of any property adjoining or neighbouring the Estate
- 7.4 Acting reasonably at all times the Management Company shall have authority to make and at any time vary such Estate Regulations as it may think fit for the preservation of the amenities of the Estate or for the general convenience of the occupiers of the Dwellings
- 7.5 Section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962) shall apply to any notice demand or instrument authorised to be served hereunder and any notice served by the Builder or the Management Company shall be sufficiently served if served by any agent of the Builder or the Management Company
- 7.6 The rights hereby granted and reserved shall only take effect insofar as they are ascertained within the Perpetuity Period
- 7.7 That the Lessee shall not be entitled to any right of access of light or air to the Demised Premises (except those expressly hereby granted) which would restrict or interfere with the free use of the adjoining or neighbouring land of the Builder for building or any other purpose
- 7.8 If for any reason the repair rebuilding or reinstatement of either the Block or the Demised Premises or the means of access thereto shall be incapable of performance following damage or destruction by any of the Insured Risks and subject to and provided as mentioned in the Sixth and Tenth Schedules the obligations in the Tenth Schedule shall thereupon be deemed to have been discharged and the Management Company shall stand possessed of all monies paid to it under and by virtue of the insurance policy or policies upon trust to pay to the Lessee such proportion of the said monies as shall be equitable such equitable proportion to be agreed in writing between them or in default of agreement then as shall be determined in accordance with the provisions of paragraph 3 of the Seventh Schedule

(Where the Lessee named in the Particulars is more than one person) the Lessees declare that they shall hold the Demised Premises upon trust to sell the same and to hold the net proceeds of sale and the net income thereof in trust for themselves as joint tenants / tenants in common and the Lessee declares that the survivor can / cannot give a valid receipt for capital money arising on a disposition of the Demised Premises

- 7.10. If the Management Company goes into liquidation for any reason (whether compulsory or voluntary) or fails in a material way to observe and perform its covenants under this Underlease then and in any such case the Builder and the Lessee will join with the lessees of the Properties in arranging for the carrying out of the matters mentioned in the Sixth Schedule to be carried out subject to the Lessee contributing an appropriate part of the expense of so doing in accordance with the provisions of this Underlease and in such circumstances the Builder (acting reasonably) may agree the appointment of a successor to be called the Nominee ("Nominee")
- 7.11 If a Nominee is appointed pursuant to Clause 7.10 then the Lessee will join with the lessees of the Properties in arranging for the substitution of the Management Company by the Nominee including (without limitation) entering into appropriate deeds whereby the Nominee shall covenant with each lessee of the Dwellings to observe and perform the covenants and obligations of the Management Company contained in the Underleases of the Dwellings and the Lessee shall covenant with the Nominee to observe and perform the covenants conditions and obligations on the part of the Lessee in favour of the Management Company under this Underlease and if called upon to do so the Lessee shall release the Management Company from all its obligations under this Underlease to the intent that no right of action shall from the date of the appointment of the Nominee subsist as between the Lessee and the Management Company
- 7.12 The provisions of Clauses 7.10 and 7.11 shall apply mutatis mutandis to the appointment of a replacement Nominee at any time during the unexpired portion of the Term
- 7.13 If at any time (including retrospectively) it should become necessary or equitable to do so the Management Company (acting reasonably) shall recalculate on an equitable basis the percentage figure(s) comprised in the Lessee's Proportion appropriate to all the Properties comprising the Estate and shall then notify the lessees accordingly and in such case as from the date specified in the said notice the Lessee's Proportion so recalculated and notified to the Lessee in respect of the Demised Premises shall be substituted for that set out in the Particulars and paragraph 1 of the Seventh Schedule and the Lessee's Proportion so recalculated in respect of the said Properties shall be notified by the Management Company to the lessees thereof and shall be substituted for those set out in their Underleases
- 7.14 Neither the Builder nor the Management Company shall be liable or responsible for any loss or damage suffered by the Lessee or any visitor or employee of the Lessee or any other person including any other person occupying the Demised Premises to themselves their personal effects or to the Demised Premises by reason of any act neglect or default of any agent contractor employee or licensee of the Builder or the Management Company (save and except negligence) or by reason of theft or otherwise from any part



of the Estate except in so far as any such liability may be recovered by the Builder or the Management Company under any insurance effected by the Builder or the Management Company (if applicable)

- 7.15 A person (a "Third Party") who is not a party to this Underlease has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Underlease notwithstanding that any such term may purport to confer or may be construed as conferring a benefit on such Third Party PROVIDED THAT this does not affect any right or remedy of such Third Party which exists or is available apart from that Act
- 7.16 The Lessee HEREBY GRANTS to the Management Company such rights of entry onto the Demised Premises and the Builder hereby grants access and egress on over and through the other parts of the Estate as are necessary to enable the Management Company to carry out its obligations as set out in this Underlease
- 7.17 The parties hereto agree that there will be no objection to the inclusion of additional land within the Estate and for additional members joining the Management Company and for proportions of contributions to be adjusted accordingly
- 7.18 All parties to this Underlease hereby acknowledge and agree that Tilfen Land Limited as the freeholder has not been a party to the development of the Demised Premises the Service Installations or the Estate whether as an employer agent contractor or otherwise and the Freeholder shall not be liable to the Lessee or the Builder or the Management Company for any defect or claim howsoever caused or arising out of: -
- 17.18.1 the Demised Premises, the Service Installations or the Estate or
  - 17.18.2 the ground on which the Demised Premises, the Service Installations or the Estate have been constructed; or
  - 17.18.3 compliance with conditions attached to any planning permission



17.19 It is hereby agreed that the covenants and obligations of the part of the Builder together with the rights granted to the Builder will pass to the freeholder of the Estate following the transfer by Tilfen Land Limited of the freehold reversion of the leasehold properties on the Estate.

#### **8. RESTRICTION**

The Builder and the Lessee hereby apply to the Chief Land Registrar for entry of the following Restriction in the proprietorship register of the registers of title applied for the Demised Premises:

"RESTRICTION – No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by the secretary or other officer of The Gateway (Thamesmead) Management Company Limited whose registered address is care of Belcon House, Essex Road, Hoddesdon, Hertfordshire EN11 0DR provisions of clauses 27.1 and 27.2 of Part One the Eighth Schedule to the registered Underlease dated \_\_\_\_\_ in the Charges Register have been complied with"

#### **9. CERTIFICATE OF VALUE**

IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or aggregate amount or value of the consideration exceeds the Declared Value

#### **THE FIRST SCHEDULE**

##### **The Estate**

ALL THAT piece of land situate at The Gateway, Thamesmead now or formerly comprised in Title Numbers TGL223723 and TGL223724 together with any adjoining land which may be added thereto within the Perpetuity Period and together with any buildings or structures erected or to be erected thereon or on some part thereof

#### **THE SECOND SCHEDULE**

##### **The Managed Land**

1. The Managed Land shall comprise (but not exclusively):
  - 1.1 The Accessways and the Soft Landscaped Areas and the Hard Landscaped Areas and the parking spaces shown on Plan 1
  - 1.2 The Soft Landscaped Areas and the Hard Landscaped Areas and the Forecourt and the Parking Spaces shown on Plan 2
  - 1.3 The structural parts of the Block including the roofs gutters rainwater pipes foundations floors and walls bounding individual Dwellings therein and all external parts of the Block including all decorative parts
  - 1.4 The entrance halls passages landings lifts staircases and other internal parts of the Block which are used in common by the lessees or occupiers of any two or more of

the Dwellings therein and the glass in the windows and doors of all such common parts together with all decorative parts ancillary thereto

- 1.5 All doors and window frames not forming part of the demise of any of the Dwellings.
- 1.6 All Service Installations not used exclusively by any individual Dwelling
2. EXCEPTING AND RESERVING from the Managed Land:
  - 2.1 The glass and window frames and the external doors of the Dwellings SAVE FOR the external decorative parts of the said window frames and doors which (for the avoidance of all doubt) shall form part of the Managed Land
  - 2.2 All interior joinery plaster work tiling and other surfaces of walls the floors down to the upper side of the joists slabs or beams supporting the same and the ceilings up to the underside of the joists slabs or beams to which the same are affixed to the Dwellings
  - 2.3 All Service Installations utilised exclusively by individual Dwellings

### **THE THIRD SCHEDULE**

#### **The Demised Premises**

1. ALL THAT apartment situate on the second floor of the Block and shown edged red on Plan 2 TOGETHER WITH the floor surface only of the balcony or patio co-extensive with the Demised Premises and the air space above such balcony or patio to a height of one storey above the surface thereof (if any) TOGETHER WITH (for the purpose of obligation as well as grant)
  - 1.1 the doors and windows thereof including the glass therein but not the external decorative surfaces thereof
  - 1.2 the interior faces of the ceilings up to the underside of the joists slabs or beams to which the same are affixed
  - 1.3 the floors down to the upper side of the joists slabs or beams supporting the same
  - 1.4 the inner plaster face of all external or structural walls
  - 1.5 all internal walls which are not main structural walls and which do not separate the Demised Premises from adjoining Properties or the internal common parts of the Block
  - 1.6 the Demised Premises half of any non structural wall(s) (severed medially) which may separate the Demised Premises from any adjoining Properties or from the internal common parts of the Block in which the Demised Premises are situate
  - 1.7 all Service Installations utilised exclusively by the Demised Premises

EXCEPTING AND RESERVING from the Demised Premises the main structural parts of the Block in which the Demised Premises are situate including the roof foundations and all the external parts thereof

#### THE FOURTH SCHEDULE

##### Rights included in the demise

1. The right (in common with the Builder the Management Company and all other persons similarly entitled) to the free passage and running of water soil gas (if any) electricity telegraphic and other services from and to the Demised Premises through and from the Service Installations forming part of the Estate
2. The right of support and shelter for the Demised Premises by and from the other parts of the Estate and the Buildings and the Block
3. The right to the benefit of the covenants entered into or to be entered into by the lessees of the Properties with the Builder for the observance and performance of the covenants in the form set out in Part Two of the Eighth Schedule
4. Such rights of access to and entry upon the other parts of the Estate as are necessary for the proper performance of the Lessee's obligations hereunder or for the repair decoration maintenance or inspection of the Demised Premises the Lessee in exercising such rights causing as little damage as possible and making good any damage caused as soon as shall be reasonably practicable
5. The right for the Lessee and the tenant or occupiers of the Demised Premises his or their employees and visitors (in common with all other persons having the like right) to pass over and to use the Accessway and the Forecourt and the passageways corridors lift and staircases forming part of the internal common parts of the Block
6. The right to exclusive use of the Allocated Parking Space for the purpose of parking a private motor vehicle which shall comply with the restrictions set out in paragraph 2 of Part 2 of the Eighth Schedule
7. The right in common with all others entitled to a similar right to use for the reasonable purpose intended the Bin Store(s) (if any) provided for the use of the occupiers of the Block
8. The right to retain in place any parts of the Demised Premises which overhang or protrude into or over any other part of the Estate
9. A right of access over the Estate Roads leading to and from the Estate
10. The benefit of the right rights contained in the Second Schedule to the registered Lease dated 13 day of February 2004 by Tilfen Land Limited (1) to the Builder(2)

**THE FIFTH SCHEDULE**  
Rights to which the demise is subject

The demise is subject to the following rights for the benefit of the Builder and the Management Company and the lessees of the Properties on the Estate and all persons authorised by them

1. The right of support and shelter for the other parts of the Estate and the Block by and from the Demised Premises
2. Such rights of access to and entry upon the Demised Premises by the Builder its lessees and tenants and the Management Company as are necessary for the proper performance of its or their obligations hereunder or under covenants relating to other parts of the Estate for the repair decoration maintenance or inspection of other parts of the Estate upon the giving of reasonable notice (save in the case of an emergency) the said persons in exercising such rights causing as little damage as possible and making good any damage caused as soon as shall be reasonably practicable
3. The right for the Builder at any time or times hereafter without obtaining the consent of or paying compensation to the Lessee:
  - 3.1 To build or rebuild or alter or permit or suffer to be built or rebuilt or altered any building(s) or erections upon the Estate (other than the Block) according to such plans and to such height extent or otherwise and in such manner as the Builder shall think fit notwithstanding that such building(s) as so built rebuilt or altered may obstruct any lights windows or other openings in or on the Demised Premises
  - 3.2 To alter the layout of the Managed Land but not so as to prejudice access to the Demised Premises
4. The right (so far as necessary in common with the Lessee) for the Builder its lessees and tenants and the Management Company to the free passage and running of water soil gas (if any) electricity telegraphic and other services from and to those parts of the Estate not included in the Demised Premises through and from any appropriate Service Installations within the Demised Premises TOGETHER WITH all easements rights and privileges necessary and proper for inspecting cleaning repairing maintaining and reinstating the same
5. To retain in place any parts of the Estate which overhang or protrude into or over the Demised Premises
6. Such rights of access to and entry upon the Demised Premises by the Builder and all others authorised by it including its tenants and the Management Company for the purposes more particularly defined in the Eighth Schedule
7. The rights of the Management Company more particularly referred to in this Underlease
8. The right of the Builder to alter deviate or (subject to adequate alternative provision) stop up or remove any of the Service Installations in which case the rights hereby granted shall be exercisable in respect of such altered diverted or alternative length or position of the Service Installations in substitution for that in respect of which rights were previously

exercisable and "the Service Installations" insofar as thereby varied shall be construed accordingly

9. The right of the Builder to grant to such Authorities during the Perpetuity Period as may be required by any of the Authorities in connection with any Service Installations all easements wayleaves licences rights and privileges needed in connection with the services usually provided or maintained by them

10. Full and free right liberty power and authority to and for the Builder any person(s) authorised by it at any time within 5 years from the date of this Underlease (subject to any restrictions created by statute or international convention) to take photographs films videos painting and sketches or any other type of image record of the exterior of the Demised Premises (whether or not in their original state) and to use the same together with any photographs films videos painting and sketches or any other type of image record of the interior taken before the date of this Underlease for any merchandising exploitation advertising or commercial use and there is further reserved to the Builder or any person(s) authorised by it the non exclusive copyright, neighbouring rights and other rights created by the Copyright Designs and Patents Act 1988 ( as amended from time to time) and all rights subsequently created for common application throughout the European Community as may now or at any time in the future exist in rights to record images of the Demised Premises (whether on not in their original state as aforesaid)

## **THE SIXTH SCHEDULE**

### **The Maintenance Expenses**

#### **PART "A"**

#### **(Estate Costs)**

1. Keeping the Soft Landscaping shown on Plan 1 and Plan 2 generally in a neat and tidy condition and tending and renewing any lawns flower beds shrubs and trees forming part thereof as necessary and maintaining repairing and where necessary reinstating any boundary wall hedge or fence (if any) on or relating thereto including any benches seats garden ornaments sheds structures or the like (if any)
2. Keeping the Accessway and the Hard Landscaping shown on Plan 1 in good repair and clean and tidy where necessary
3. Repairing maintaining inspecting and as necessary reinstating or renewing the Service Installations forming part of the external common parts of the Estate as shown on Plan 1
4. Repairing maintaining inspecting and as necessary reinstating or renewing the electronic gates and the entry phone system (if any) of the Estate
5. To effect the insurance in respect of the Managed Land areas of the Estate  
**PROVIDED ALWAYS:**
  - 5.1 This provision is subject as mentioned in Paragraph 3 of the Seventh Schedule
  - 5.2 The Management Company shall determine a reputable company or office with which the insurance is to be placed and the sum insured

- 5.3 The insured amount shall include provision for the cost of demolition and clearance of buildings reinstatement and architects and surveyors and statutory fees together with public liability cover
- 5.4 If notwithstanding the extent of the risk and value as aforesaid the money-receivable under such insurance shall be insufficient to meet the cost of the necessary works of the rebuilding repair or reinstatement then the deficiency shall be treated as a further item of expense under this Schedule recoverable from the lessees accordingly insofar as any such deficiency may relate to any excess limitation or exclusion under the terms of the Management Company's insurance policy from time to time
- 5.5 The insurance cover shall extend to the lessees for the time being of the Demised Premises and their mortgagees (if any)

**PART "B"**  
(Block Costs)

1. Inspecting rebuilding repointing repairing cleaning renewing redecorating or otherwise treating as necessary and keeping the common parts of the Block within which the Demised Premises are situated and every part thereof in good and substantial repair order and condition and renewing and replacing all worn or damaged parts thereof
2. Repairing maintaining inspecting and as necessary reinstating or renewing the Service Installations forming part or parts of the internal common parts of the Block
3. Inspecting rebuilding repointing repairing cleaning renewing redecorating or otherwise treating as necessary and keeping the internal and external common parts of the Block and every part thereof in good and substantial repair order and condition and renewing and replacing all worn or damaged parts thereof
4. Inspecting maintaining renting renewing reinstating replacing and insuring the fire protection system(s) (if any) the electronic door entry system (if any) the telecommunication reception system (if any) the lifts on the Estate and such other equipment relating to the Estate within the Managed Land by way of contract or otherwise as the Management Company may from time to time consider reasonably necessary or desirable for the carrying out of the acts and things mentioned in this Schedule
4. Repairing maintaining inspecting and as necessary reinstating or renewing the satellite systems in the Block (if any) and the post boxes within the Block (if any)
5. Insuring and keeping insured the Block and other structures at all times against the Insured Risks in the full reinstatement value PROVIDED ALWAYS:
  - 5.1 This provision is subject as mentioned in Paragraph 3 of the Seventh Schedule
  - 5.2 The Management Company shall determine a reputable company or office with which the insurance is to be placed and the sum insured
  - 5.3 The insured amount shall include provision for the cost of demolition and clearance of buildings reinstatement and architects and surveyors and statutory fees

- 5.4 If notwithstanding the extent of the risk and value as aforesaid the money receivable under such insurance shall be insufficient to meet the cost of the necessary works of the rebuilding repair or reinstatement then the deficiency shall be treated as a further item of expense under this Schedule recoverable from the lessees accordingly insofar as any such deficiency may relate to any excess limitation or exclusion under the terms of the Management Company's insurance policy from time to time
- 5.5 The insurance cover shall extend to the lessees for the time being of the Demised Premises and their mortgagees (if any)
6. Inspecting rebuilding repointing repairing cleaning renewing redecorating or otherwise treating as necessary and keeping the Bin Store (if any) and every part thereof provided for use by the occupiers of the Block in good and substantial repair order and condition and renewing and replacing all worn or damaged parts thereof and arranging if necessary for the emptying of refuse containers therein and repairing maintaining inspecting and as necessary reinstating or renewing the lighting system and water tap within the Bin Store (if any)
7. Inspecting rebuilding repointing repairing sweeping renewing or otherwise treating as necessary and keeping the Parking Spaces shown on Plan 2 and every part thereof in good and substantial repair order and condition and renewing and replacing all worn or damaged parts thereof together with the lighting on the Estate and in the car parking areas on the Estate (if any)
8. Repairing maintaining inspecting and as necessary reinstating or renewing the Service Installations serving the Parking Spaces shown on Plan 2 (if any)

#### **PART "C"**

(Costs applicable to any or all of the previous parts of this Schedule)

1. Insuring any risks (including material and third party liability risks) for which the Management Company may be liable as an employer of persons working or engaged in business on the Managed Land or as the occupier of the Managed Land or any part thereof in such amount as the Management Company shall reasonably think fit
2. Providing and paying such persons as may be necessary in connection with the upkeep of the Managed Land
3. Paying all rates taxes duties charges assessments and outgoings whatsoever (whether parliamentary parochial local or of any other description) assessed charged or imposed upon or payable in respect of the Managed Land or any part thereof except insofar as the same are the responsibility of an individual lessee of any of the Dwellings
4. Paying any value added tax chargeable in respect of any of the matters referred to in this Schedule
5. Abating any nuisance and executing such works as may be necessary for complying with any notice served by any of the Authorities in connection with the Estate or any part thereof insofar as the same is not the liability of or attributable to the lessee of any of the Dwellings

6. Preparing and supplying to the lessees of the Dwellings copies of any Estate Regulations
7. Generally managing and administering the Managed Land and protecting the amenities of the Managed Land and for that purpose if necessary employing a firm of managing agents (PROVIDED ALWAYS that the payment of such managing agents shall be met exclusively from the fees more particularly detailed in paragraph 12 hereto) or consultants or similar and the payment of all costs and expenses incurred by the Management Company:
  - 7.1 in the running and management of the Estate and the collection of the Rent and service charges and in the enforcement of the covenants and conditions and regulations contained in the Underleases of the Dwellings and any Estate Regulations
  - 7.2 in making such applications and representations and taking such action as the Management Company shall reasonably think necessary in respect of any notice or order or proposal for a notice or order served under any statute order regulation or bye-law on the Lessee or any under-lessee of the Dwellings or on the Management Company in respect of the Estate or all or any of the Dwellings therein and
  - 7.3 in the valuation of the Block from time to time for insurance purposes
  - 7.4 in the preparation for audit of the service charge accounts
8. Enforcing or attempting to enforce the observance of the covenants on the part of any lessee of any of the Dwellings
9. Employing a qualified accountant for the purpose of auditing the accounts in respect of the Maintenance Expenses and certifying the total amount thereof for the period to which such account relates
10. Complying with the requirements and directions of any of the Authorities and with the provisions of all statutes and all regulations orders and bye-laws made thereunder relating to the Estate insofar as such compliance is not the responsibility of the lessee of any of the Dwellings
11. Providing inspecting maintaining repairing reinstating and renewing any other equipment and providing any other service or facility in connection with the Managed Land which in the opinion of the Management Company it is reasonable to provide
12. The reasonable and proper fees of the Management Company from time to time as to its general management of the Estate
13. Such sum as shall be considered reasonably necessary by the Management Company (whose decision shall be final as to questions of fact) to provide a reserve fund or funds for items of future expenditure to be or expected to be incurred at any time in connection with the Managed Land
14. Operating maintaining and (if necessary) renewing any lighting water and power supply apparatus from time to time in connection with the Managed Land and providing such



additional lighting water or power supply apparatus as the Management Company may reasonably think fit

15. All other reasonable and proper expenses (if any) incurred by the Management Company:

15.1 in and about the maintenance and proper and convenient management and running of the Estate including in particular but without prejudice to the generality of the foregoing any expenses incurred in rectifying or making good any inherent structural defect in the Block or any other part of the Estate (except in so far as the cost thereof is recoverable under any insurance policy for the time being in force or from a third party who is or who may be liable therefor)

15.2 as to any interest paid on any money borrowed by the Management Company to defray any expenses incurred by it and specified in this Schedule

15.3 as to any legal or other costs reasonably and properly incurred by the Management Company and otherwise not recovered in taking or defending proceedings (including any arbitration) arising out of any Underlease of any of the Dwellings or any claim by or against any lessee or any tenant agent or visitor thereof or by any third party against the Management Company as lessee or occupier of any part of the Estate

### **THE SEVENTH SCHEDULE**

#### **The Lessee's Proportion of Maintenance Expenses**

1. The Lessee's Proportion means:

1.1 The Part A Proportion of the amount attributable to the costs in connection with the matters mentioned in Part "A" of the Sixth Schedule and of whatever of the matters referred to in Part "C" of the said Schedule are expenses properly incurred by the Management Company which are relative to the matters mentioned in Part "A" of the said Schedule

1.2.1 the Part B Proportion of the amount attributable to the costs in connection with the matters mentioned in Part "B" of the Sixth Schedule and of whatever of the matters referred to in Part "C" of the said Schedule are expenses properly incurred by the Management Company which are relative to the matters mentioned in Part "B" of the said Schedule

2. The certification of the accountant referred to in paragraph 9 of Part "C" of the Sixth Schedule shall (subject as hereinafter mentioned) be binding on the Management Company and the Lessee unless manifestly incorrect

3. If the Lessee shall at any time during the Term object to any item of the Maintenance Expenses as being unreasonable or to the insurance matters mentioned in the Sixth Schedule being insufficient then the Lessee shall refer the matter in dispute for determination by a person to be appointed for the purpose by the President for the time being of the Royal Institution of Chartered Surveyors whose decision shall bind both parties and whose costs shall be borne by whomsoever the said person shall decide PROVIDED THAT any said objection by the Lessee shall not affect the obligation of the Lessee to pay to the Management Company the Lessee's Proportion in accordance with this Schedule and after

the decision of any person appointed as aforesaid any overpayment by the Lessee shall be credited against future payment due from the Lessee to the Management Company under the terms of this Schedule

4. The amount of Maintenance Expenses shall be adjusted to take into account any sums received by the Management Company as contribution towards the cost of the matters mentioned in the Sixth Schedule from the lessees or occupiers of any adjoining or neighbouring properties to the Estate

5. An account of the Maintenance Expenses (distinguishing between actual expenditure and reserve for future expenditure) for the period ending on the last day of June 2005 and for each subsequent year ending on the last day of June throughout the Term shall be prepared as soon as is practicable and the Management Company shall then serve on the Lessee copies of such account and the accountant's certificate

6. The Lessee shall pay to the Management Company the Lessee's Proportion of the Maintenance Expenses in manner following that is to say:

6.1 In advance on the first day of July in every year throughout the Term one half of the Lessee's Proportion of the amount estimated from time to time by the Management Company or its managing agents as the Maintenance Expenses for the forthcoming year the first payment to be apportioned (if necessary) from the date hereof

6.2 Within twenty one days after the service by the Management Company on the Lessee of a certificate in accordance with paragraph 5 of this Schedule for the period in question the Lessee shall pay to the Management Company the balance by which the Lessee's Proportion received by the Management Company from the Lessee pursuant to sub-paragraph 6.1 of this Schedule falls short of the Lessee's Proportion payable to the Management Company as certified by the said certificate during the said period and any overpayment by the Lessee shall be credited against future payments due from the Lessee to the Management Company

## **THE EIGHTH SCHEDULE**

### **Covenants by the Lessee**

#### **PART ONE**

#### **Covenants Enforceable by the Builder and the Management Company**

1. To pay to the Builder or its authorised agent the Rent hereinbefore reserved on the days and in the manner herein provided
2. To pay to the Management Company or its authorised agent (or to the Builder in the event that the Builder is managing pursuant to paragraph 1 of the Ninth Schedule) the Lessee's Proportion at the times and in the manner herein provided
3. To pay interest at the rate of four per centum (4%) above National Westminster Bank plc's Base Rate from time to time on all sums payable by way of the rents reserved under the terms of this Underlease which may be in arrear from the date 14 days after such payment shall be due until the date of actual payment
4. To pay all costs charges and expenses (including legal costs and fees payable to a surveyor) incurred by the Builder in or in contemplation of any proceedings or service of any

notice under Sections 146 and 147 of the Law of Property Act 1925 including the reasonable costs charges and expenses aforesaid of and incidental to the inspection of the Demised Premises the drawing up of schedules of dilapidations and notices and any inspection to ascertain whether any notice has been complied with and such costs charges and expenses shall be paid whether or not forfeiture for any breach shall be avoided otherwise than by relief granted by the Court

5. To yield up at the termination of the Term the Demised Premises together with any of the Builder's fixtures and appliances and any replacements thereof in such good and substantial repair order and condition as shall be consistent in all respects with the due performance and observance of the covenants on the part of the Lessee and the conditions herein contained

6. At any time within six calendar months prior to the termination of the Term to permit intending lessees and tenants authorised by order in writing of the Builder or its agents to view the Demised Premises at reasonable hours in the daytime by appointment

7. To pay and discharge all rates taxes assessments charges duties and other outgoings whatsoever whether parliamentary parochial or of any other kind which now are or during the Term shall be assessed or charged on or payable in respect of the Demised Premises or any part thereof or by the landlord tenant owner or occupier thereof

8. To keep the Management Company and the Builder indemnified in respect of charges for other services payable in respect of the Demised Premises which the Builder or the Management Company shall from time to time during the Term be called upon to pay such sums to be repaid to the Builder or the Management Company on demand

9. To repair and keep the Demised Premises and all Service Installations exclusively serving the same (but excluding such parts of the Demised Premises as are included in the Managed Land) and every part thereof and all of the Builder's fixtures and fittings therein and all additions thereto in good and substantial repair order and condition at all times during the Term including the renewal and replacement forthwith of all worn or damaged parts but so that the Lessee shall not be liable for any damage which may be caused by any of the Insured Risks (unless such insurance shall be wholly or partially vitiated by any act or default of the Lessee or of any member of the family employee or visitor of the Lessee or other such occupiers) or for any work for which the Management Company may be expressly liable under the covenants on the part of the Management Company hereinafter contained

10. If the Lessee shall (in the exercise of the rights conferred upon him by paragraph 4 of the Fourth Schedule) require access to any other part of the Estate to give at least seventy-two hours notice in writing (except in cases of extreme urgency) to the Management Company or its agents and to the occupiers of that part of the Estate to which the Lessee requires access and the Lessee shall on giving such notice be entitled to have access to such part of the Estate but shall act carefully and reasonably doing as little damage as possible thereby and making good all damage done at the Lessee's own expense as soon as shall be reasonably practicable

11. As often as may be necessary and at least once in every fifth year and in the year preceding the termination of the Term to paint with two coats of good quality material and in a proper and workmanlike manner all the internal wood metal stone and other work of the Demised Premises which usually are or ought to be painted and at the same time to decorate

and colour all such parts of the inside of the Demised Premises as are usually or should be treated using materials of suitable and appropriate quality

12. To clean all the internal and external surfaces of all the windows of the Demised Premises at least once in every four weeks

13. To permit the Builder or the Management Company with or without workmen and others at any convenient hours in the day-time and who have given reasonable prior written notice to enter into and upon the Demised Premises to take inventories of the Builder's fixtures fittings and appliances therein and to view the condition thereof and upon notice being given to the Lessee specifying any repair or works necessary to be done for which the Lessee is liable hereunder forthwith to comply with the same and if the Lessee shall not within thirty days after the service of such notice proceed diligently with the execution of such repairs or works then to permit the Builder or the Management Company or their respective agents with or without workmen and appliances to enter upon the Demised Premises and cause such repairs or works to be executed and the cost thereof shall be payable by the Lessee on demand

14. To make good any damage to any part of the Estate caused by any act or omission or negligence of any occupant of or person using the Demised Premises and (without prejudice to the generality of the foregoing) not to damage or interfere with any aerals and services of the Estate (whether or not attached to or included in the Demised Premises) or any fire-fighting appliances (if any) or any other equipment referred to in the Sixth Schedule

15. Not to bring into the Demised Premises or any part thereof any article which will impose undue stress or strain to any part of the floor surface or structure or any article which is or may become dangerous to any part of the Estate or the occupants thereof

16. Not to do or permit or suffer any act or omission which may render any increased or extra premium payable for the said insurance of the Managed Land or any part thereof or which may make void or voidable any such insurance or the insurance of premises adjoining the Managed Land and so far as the Lessee is liable hereunder to comply in all respects with the reasonable requirements of the insurers with which the Managed Land or any part thereof may for the time being be insured

17. Forthwith to make good to the Management Company or the Builder all loss or damage sustained by the Management Company or the Builder consequent upon any breach of the last mentioned provision

18. Not to do or permit or suffer to be done any act matter or thing on or in respect of the Property which contravenes the provisions of the Town and Country Planning Act 1990 and the requirements of the Building Act 1984 or any enactment amending or replacing these Acts and to keep the Lessor and the Management Company indemnified against all claims demands and liabilities in respect of any such contravention

19. To comply with and make all reasonable endeavours to ensure that all persons living in or visiting the Demised Premises or using the Allocated Parking Space or any part of the Managed Land shall comply with any Estate Regulations which may be in force from time to time

20. To deliver to the Builder forthwith a copy of every notice or other document of whatever description affecting or likely to affect the Demised Premises or any part thereof received by the Lessee from any of the Authorities or person whatsoever whether such notice or other document as aforesaid be served upon the Lessee or upon any sub-tenant of the Lessee and at the request of the Builder to make or join with the Builder on making such objections or representations against or in respect of any notice or other document as aforesaid as the Builder shall deem expedient

21. To comply in all respects at the Lessee's own cost with the provisions of any statute statutory instrument order rule or regulation and of any order direction or requirement made or given by any of the Authorities or the appropriate Minister or Court (whether requiring anything to be done or omitted by Lessor lessee tenant or occupier) so far as the Lessee is liable hereunder and forthwith to give notice in writing to the Builder of the making or giving of such order direction or requirements as aforesaid

22. Not without the previous consent in writing of the Builder or its agents and the Management Company or its agents (which consent may be granted in the absolute discretion of the Builder and the Management Company or their agents) to cut maim or injure nor to make any breach in any part of the structure of the Demised Premises nor to make any alteration or additions whatsoever to the plan design or elevation of the Demised Premises nor to make any openings therein nor to open up any floors walls or ceilings for the purpose of altering or renewing any pipes wires ducts or conduits nor to alter any of the Builder's fixtures fittings or appliances therein and not in any case to commit or allow any waste or spoil on or about the Demised Premises

23. On making application for any such consent as aforesaid to submit to the Builder and to the Management Company or their agents such plans block plans elevations and specifications as they shall require and to pay the reasonable and proper legal and surveyors fees of the Builder and the Management Company in connection with any such application and to carry out any work authorised only in accordance with such plans block plans elevations and specifications as they shall approve in writing making use of good sound and substantial materials all of which may be subject to inspection and approval by them

24. Not to display or hang any window boxes clothes washing television or other aerials satellite dishes or any similar telecommunication transmission or reception apparatus or thing from the Demised Premises (except aerials placed there by the Builder or the Management Company)

25. Not at any time during the Term to:

25.1 dispose of any part or parts of the Demised Premises (as distinct from the whole) howsoever

25.2 underlet the Demised Premises without the prior written consent of the Builder and the Management Company or its agents (such consent not to be unreasonably withheld or delayed) PROVIDED ALWAYS that such under letting shall be by means of an assured shorthold tenancy agreement or any other form of agreement which does not create any rights of tenancy for the tenant after the term of any such agreement shall have expired

25.3 assign transfer or part with possession or occupation of the Demised Premises during the last seven years of the Term without the prior written consent of the Builder and the Management Company or their agents (such consent not to be unreasonably withheld or delayed)

26. On the occasion of every under-Underlease which may be granted to insert a covenant by the assignee or underlessee (as the case may be) directly with the Management Company and the Builder to observe and perform the covenants conditions and obligations on the part of the Lessee appearing in this Underlease other than payment of the reserved rents in the case of an under-lease which for the avoidance of all doubt shall remain to be performed by the Lessee

27.1 To give written notice within 28 days to the Builder and to the Management Company (or their agents) of any assignment transfer mortgage charge grant of probate letters of administration order of court or other matter disposing of or affecting the Demised Premises or devolution of or transfer of title to the same with a certified copy of the instrument effecting any such dealing AND ALSO to pay or cause to be paid at the same time to the Builder and the Management Company such reasonable fee appropriate at the time of registration in respect of any such dealing (being a minimum sum of £40 plus VAT with regard to the notice fee payable to the Builder) PROVIDED ALWAYS that in the case of a contemporaneous transfer and mortgage the fee shall only be payable on one of such matters

27.2 Not to transfer or otherwise dispose of the Demised Premises without contemporaneously with such transfer or otherwise requiring the transferee to enter into a deed of covenant with the Management Company and the Builder in the form set out in the Eleventh Schedule

27.3 Whenever title to the Demised Premises devolves on a successor in title of the Lessee such successor shall apply in writing to the Management Company within 7 days of such devolution to become a member of the Management Company

27.4 To give written notice within 28 days to the Builder and to the Management Company (or their agents) of any remortgage of the Demised Premises AND ALSO to pay or cause to be paid at the same time to the Builder and the Management Company such reasonable fee appropriate at the time of registration in respect of any such dealing

28. Not to interfere with or obstruct in the performance of the duties from time to time imposed upon him by the Management Company any employee or agent of the Management Company or the Builder and not to carry out any decoration repair maintenance or otherwise upon the exterior of the Block or any other part or parts of the Managed Land

29. Not to wilfully damage any part of the Estate and in the event of any breach of this covenant it shall be lawful for the Builder or the Management Company to arrange for the repair of the damage and to recover from the Lessee any costs incurred

30 Forthwith upon taking this Underlease the Lessee will become a member of the Management Company

31. Not to enter the roof space(s) above the Demised Premises (if any) or in any part of the Block for any purpose without the consent of the Builder or to store or permit to be placed or stored any articles of any description in the roof space(s) above the Demised Premises) or in any part of the Block

32. To maintain jointly with the ~~owner~~ of Plot 747/748 the boundary construction dividing the rear garden ground of the plot marked with a double "T" mark on Plan 2.

#### PART TWO

#### Covenants enforceable by the Builder and the Management Company and lessees of the Properties

1. Not to use or suffer to be used the Demised Premises for any purpose whatsoever other than as a private residence for occupation by a single household and in particular not to carry on or permit or suffer to be carried on in or from the Demised Premises any trade business or profession

2. Not to use or permit to be used the Allocated Parking Space for any purpose other than for the purpose of parking a private motor vehicle not exceeding 35 CWT in gross laden weight or a motor cycle thereon such vehicle or cycle to be taxed insured and in a roadworthy condition

3. Not to park or allow to be parked any motor vehicle wheeled vehicle or other form of transport on any other part of the Estate including a trailer caravan or boat or motorised caravan or motorhome or any commercial vehicle

4. Not to carry out nor allow to be carried out any vehicle maintenance on any part of the Estate

5. Not to allow or cause to be allowed the deterioration of any vehicle on the Estate to an unreasonable condition nor to abandon any vehicle whatsoever on any part of the Estate and in the event of any breach of this covenant it shall be lawful for the Management Company without prejudice to its rights hereunder to arrange for the removal of such neglected or abandoned vehicle and to recover from the Lessee any costs incurred by them

6. Not to obstruct or permit to be obstructed at any time any accessways roadways entrances stairways or any openings of whatsoever nature on the Estate or any internal or external common part or parts of the Estate

7. Not to use or permit or suffer the Demised Premises to be used for any illegal immoral or improper purpose and not to do permit or suffer on the Demised Premises any act or thing (including for the avoidance of all doubt the installation of any hard floor finish in any part or parts of the Demised Premises without an effective soundproof under surface) which shall or may be or become a nuisance damage annoyance or inconvenience to the Builder the Management Company or to the lessees or occupiers of the Properties or the other owners lessees or occupiers of any neighbouring property and to pay all costs charges and expenses of abating a nuisance and executing all such work as may be necessary for abating a nuisance or for carrying out works in obedience to a notice served by any of the Authorities insofar as the same is the liability of or wholly or partially attributable to the default of the Lessee and not to exhibit any notice advertisement name plate or placard of any kind upon the Demised Premises except a notice for the sale or underletting of the Demised

Premises which notice may be displayed only in a window of the Demised Premises or in such other place (if any) as the Management Company may approve in writing

8. Not to throw dirt rubbish rags or other refuse or permit the same to be thrown into sinks or basins lavatories cisterns or waste or soil pipes in the Demised Premises but to place refuse in the appropriate receptacles in the area provided (if any) for that purpose for the use of the Demised Premises

9. No piano record player radio loud-speaker or other electric electronic mechanical musical or other instrument of any kind shall be played or used nor shall any singing be practised in the Demised Premises so as to in the opinion of the Management Company cause unreasonable annoyance to any occupiers of the Properties or so as to be audible outside the Demised Premises between the hours of 11 pm and 9 am

10. No dog bird cat or other animal or reptile shall be kept in the Demised Premises except with the prior written consent of the Management Company which consent may be revoked at the discretion of the Management Company

11. Not to use the Managed Land for any purpose which would create a nuisance or annoyance to any of the lessees of the Properties or to use the same for the playing of games

12. Not to use or permit to be used any form of barbecue in or on the Managed Land

13. Not to hang or expose for drying any clothes or other articles outside the Demised Premises

14. To use the garden ground comprised in the demised premises only for the purposes of an ornamental garden and not to erect therein any garden shed or other temporary structures without the approval in writing of the Builder or the Management Company.

## THE NINTH SCHEDULE

### Part A

#### Covenants on the part of the Builder

1. That if the Management Company goes into liquidation for any reason (whether compulsory or voluntary) or fails to observe and perform its covenants under this Underlease then and in any such case the Builder will carry out the matters mentioned in the Sixth Schedule and the Tenth Schedule insofar as they remain reasonably capable of being performed

2. That the Underleases of the Properties contain covenants on the part of the various lessees to observe the like obligations as are contained in the Eighth Schedule as appropriate to each property

3. That the Lessee paying the Rents reserved in this Underlease and observing and performing the several covenants on his part and conditions herein contained shall peaceably hold and enjoy the Demised Premises and the rights hereby granted during the Term without any lawful interruption from or by the Builder or any person lawfully claiming under or in trust for it



4. That if required by the Lessee for the reasonable protection of the Demised Premises to enforce or assist the Lessee in enforcing the said covenants entered into or to be entered into by a lessee of any one or more of the Properties PROVIDED THAT: - . . . .

4.1 the Builder shall not be required to incur or to continue to incur any legal or other costs or expenses under this clause unless and until such security as to such legal or other costs or expenses as the Builder in its absolute discretion may from time to time require shall have been given by the persons requesting action and the Lessee has paid the Rent and all other payments reserved by this Underlease and performed and observed all of the Lessee's covenants contained in this Underlease

4.2 the Builder may in its absolute discretion before taking any action under this clause require the person requesting such action at his own expense to obtain for the Builder from Counsel to be nominated by the Builder advice in writing as to the merits of any contemplated action in respect of the allegations made and the Builder shall not be bound to take action unless Counsel advises that action should be taken and is likely to succeed

4.3. the Lessee shall on demand indemnify the Builder against all costs and expenses incurred by the Builder under this clause

5. That as soon as practicable after the erection of the Dwellings has been completed the Builder will complete the surfacing and landscaping of the external grounds forming part of the Managed Land

6. That until a deed in similar form to this Underlease has been granted in the case of each of the Properties (and in respect of any period during which a deed in similar form to this Underlease shall not for any reason at any time be in force) the Builder will contribute in respect of each such property a due proportion of all debts losses liabilities and expenses due to the Management Company in accordance with paragraph 1 of the Seventh Schedule as if the Builder were the lessee of such property until such time as the Builder shall have disposed of his interest in any such property

7. The Builder covenants with the Lessee and his successors in title to observe and perform its obligations under the Headlease.

#### **THE TENTH SCHEDULE**

##### **Covenants on the part of the Management Company**

1. Conditional on the Management Company having first received payment of the Lessee's Proportion then to carry out the works and do the acts and things set out in the Sixth Schedule as appropriate to each type of Dwelling PROVIDED THAT:

1.1 The Management Company shall not be held personally responsible for any damage caused by any defects or want of repair to the Managed Land or any part thereof unless such matters are reasonably apparent by visual inspection OR until notice in writing of any such defect or want of repair has been served on the Management Company and the Management Company shall have failed to make good or remedy such matter within a reasonable period following receipt of any such notice

1.2 Nothing in this covenant contained shall prejudice the Management Company's right to recover from the Lessee or any other person the amount or value of any loss or

damage suffered by or caused to the Management Company or the Managed Land by the negligence or other wrongful act or default of the Lessee or such other person

- 1.3 The Management Company shall not be liable for any failure to provide employees and workmen necessary in connection with the Managed Land if it shall have used all reasonable endeavours to obtain them
2. To use all reasonable endeavours to recover the contributions towards the cost of the matters referred to in the Sixth Schedule which may be due from the lessees of any of the Properties
3. The Management Company shall ensure that the reserve fund or funds referred to in the Sixth Schedule shall be kept in a separate trust fund account and any interest on or income of the said fund shall be held by the Management Company in trust for the lessees of the Dwellings and shall only be applied in connection with the matters detailed in the Sixth Schedule
4. If the Management Company shall (in exercise of the rights hereinbefore reserved) require access to the Demised Premises to give at least seventy-two hours notice in writing (except in the case of an emergency) to the Lessee the Management Company on giving such notice being entitled to carry out the said repairs or works to the Demised Premises but so that the Management Company shall act carefully and reasonably doing as little damage to the Demised Premises as may be and making good all damage done as soon as shall be reasonably practicable
5. If required by the Lessee for the reasonable protection of the Demised Premises to enforce or assist the Lessee in enforcing the said covenants entered into or to be entered into by the lessee of any one or more of the Properties PROVIDED THAT the Lessee shall (if required) first indemnify the Management Company against all costs and expenses in respect of such enforcement and provide such security for the said costs and expenses as the Management Company may reasonably require
6. Forthwith unless prevented by government or other regulations strikes lockouts and other causes beyond the control of the Management Company to arrange for the rebuilding repairing or reinstating in a good and substantial manner such part or parts of the Estate as may from time to time be destroyed or damaged applying for the purpose the money to be received by virtue of the Insured Risks
7. To provide the Lessee on demand with a certificate for the purposes of the Restriction set out in Clause 8 provided that the provisions set out in the Eighth Schedule have been reasonably complied with
8. THE Management Company HEREBY COVENANTS that it will accept on request by Tilfen Land Limited or the Builder (or by the Builder alone if the ownership of the Managed Land has been transferred to the Builder) a transfer of that part of the Managed Land within the Estate for a nominal consideration after all the Dwellings on the Estate have been sold or earlier if the Builder wishes (the Tilfen Land Limited and the Builder being under no obligation to make such a transfer) such transfer to include a restriction whereby the land transferred cannot be utilised other than as a communal area for the Dwellings on the Estate and cannot be built on at any time and to take over the running of the Management Company when the last Dwelling on the Estate has been sold



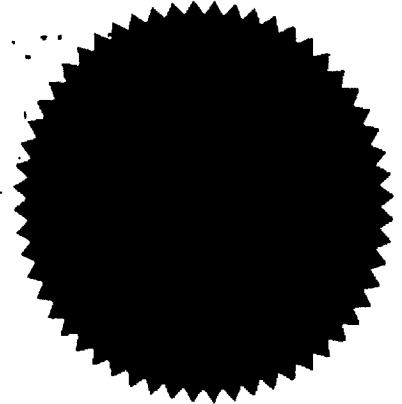
SIGNED as a deed etc

**THE COMMON SEAL of  
FAIRCLOUGH HOMES LIMITED**

was hereunto affixed  
in the presence of:

Authorised Signatories

*Good by  
M. Martin*

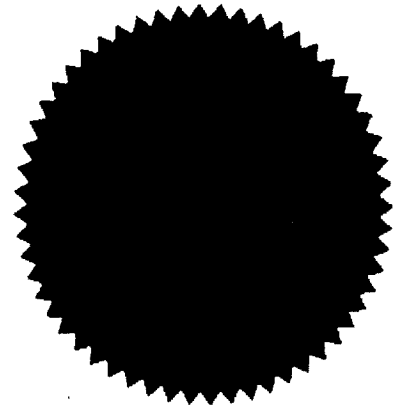


**THE COMMON SEAL of  
THE GATEWAY (THAMESMEAD)  
MANAGEMENT COMPANY LIMITED**

was hereunto affixed  
in the presence of:

Authorised Signatories

*Good by  
M. Martin*



**SIGNED as a DEED**  
by the Lessee in the presence of:

~~*[Signature]*~~

Signature of witness: *M. Martin*

Name: *RAMNA FLORIS*

Address: *66-70 LOOMBE RD, NEW MALDEN  
SURREY KT3 4QL*

Occupation: *SECRETARY*

*Handwritten initials*

*Sub  
Market*

cond Floor Level

