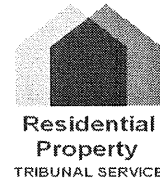


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HM Courts
& Tribunals
Service



LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
under Sections 27A and 20C of the Landlord & Tenant Act 1985 and Schedule
11 of the Commonhold & Leasehold Reform Act 2002**

Case Reference: LON/00BE/LSC/2012/0615

Premises: 87A Wyndham Road, London SE5 0UB

Applicant: Mr V. Feiner (Landlord)

Represented by: TV Edwards LLP, Solicitors

Respondent: Ms M. Khan (Leaseholder)

Represented by: Anthony Gold & Co, Solicitors

Court Referral: 11th September 2012

Tribunal: Mr L. W. G. Robson LLB (Hons)
Mr T. W. Sennett FCIEH

Determination Date: 9th January 2013

Decision Date: 13th February 2013

Decisions of the Tribunal

- (1) In the service charge year 2009/10 the insurance contribution of £340.61 demanded is not reasonable, and the demand itself did not comply with Section 153 of the Commonhold and Leasehold Reform Act 2002, as it contained no summary of the lessee's rights and obligations.
- (2) In the service charge year 2009/10 the contribution to roof works of £2,736.27 is reasonable and reasonable in amount, however, although consultation took place the notice procedure pursuant to Section 20 was not followed.
- (3) The Tribunal decided to grant the Landlord's application for dispensation under Section 20ZA, as the Respondent Tenant had not in fact been prejudiced.
- (4) The demand for payment of contribution to the roof works did not comply with Section 153 of the Commonhold and Leasehold Reform Act 2002, for the same reasons noted in (1) above. Until a valid notice is served, nothing is payable.
- (5) The Tribunal decided NOT to grant an order under Section 20C to limit the landlord's costs of this application being added to the service charge as the Applicant will in fact pay half of the cost under the terms of his own lease of the other flat in the building.
- (6) The Tribunal further makes the decisions as set out under the various headings in this Decision
- (7) The Tribunal orders that this case be referred back to the County Court to deal with outstanding items in the original claim.

Application

1. The Applicant seeks a determination pursuant to s.27A and 20C 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 1st April 2009, under the terms of a lease ("the Lease") dated 15th January 1985, a copy of which is attached hereto as Appendix 2.
2. The relevant legal provisions are set out in Appendix 1 to this decision.

Background

3. The property consists of 2 flats. The ground floor flat is no. 87A and is leased to the Respondent. The first and second floor flat is no. 87B, and is leased to the Applicant. The Applicant purchased the freehold in or about June 2006. The Respondent has not disputed the terms of the service charge in the Lease, nor her liability to pay 50% of the service charge. The Applicant seeks

payment of the sum of £340.61 being 50% of the insurance premium for the service charge year commencing 1st April 2009, and £2,367.27 being 50% of the cost of major works carried out to the roof of the Ground Floor Flat. The original demand, sent by email dated 22nd June 2009, referred to two other items relating to the roof works, being the Building Inspector's fee, and plants for the front garden, but the Applicant in his statement has not pursued those items.

4. The Parties agreed to a paper determination of this case, each providing one written submission and one evidence bundle. Mr Feiner and Ms Khan also provided witness statements.

Determination

5. The Tribunal identified that the following matters remained in dispute:
 - i) The cost and quality of the specific items of service charge noted above.
 - ii) Whether any costs and fees relating to this application were payable.
6. The Tribunal's detailed decisions appear immediately after the summary of the parties' submissions on each item in dispute.

Insurance premium

7. The Applicant submitted that the relevant insurance policy was with AXA Insurance UK plc through brokers Key Connect and that the property was insured in the joint names of the Applicant and Respondent. The Applicant agreed that the policy schedule showed an endorsement stating "Holiday homes used for family use" but denied that the validity of the insurance was affected. The household statement dated 18th August 2009 described the Applicant's property as "weekday home" and that the property was not let. The Applicant was rarely at the property at weekends as he had a house elsewhere. He allowed friends to use the property, and currently his daughter was using it. He did not let the property. The insurance statement also noted two claims made on the policy, one on 21st December 2008 settled for £280, and the other notified on 16th June 2009 in respect of which no claim was made. Both claims had been made by the Respondent, and neither rejected on the basis of any defects in the policy. The Respondent had made repeated approaches to the insurer making untrue allegations which gave the Applicant concern that the insurance cover might be withdrawn.
8. Relating to the Summary of Rights, the Applicant (misguidedly, see para [] onwards below) applied for dispensation under Section 20ZA.
9. The Respondent submitted that she would not pay the premium as she had concerns that the policy contained a material misdescription in the policy which might lead to the insurers declining liability. Her main concern was that the

property was insured as a holiday home. She had requested copies of the insurance policy from the Applicant on various occasions without success. Eventually a copy had been sent. She had contacted the insurers who had advised her that they had not appreciated it was not a holiday home, and that her name should be noted on the policy as it would affect cover. After some delay, the Respondent had rectified the policy on 16th February 2009 to show her name on the schedule, but had not rectified the misdescription relating to use as a holiday home. The Respondent had notified the Applicant that she would not pay the sum due when the policy was renewed on 18th August 2010 until that aspect was rectified. Further, the Applicant was to her knowledge letting the property to tenants. The insurance statement in 2011 repeated the misdescriptions that the property was used as “a weekday home” by the Applicant’s family, and that it was “not let”.

10. The Respondent also submitted that the demands made by the Applicant were not lawful as they were not accompanied by a summary of right and obligations, and therefore under Section 153 of the Act she was entitled to withhold payment.
11. The Tribunal considered the evidence and submissions. It was clear from the submissions and evidence that there was a considerable history of disagreement over various matters between the parties. Such matters are only referred to, to the extent that they are relevant to the matters in dispute.
12. The Tribunal considered that neither party appeared to fully understand insurance matters. The Insurance schedule dated 18th August 2009 showed the premium payable was £681.22, the parties were shown jointly as the insured, and the endorsement described the properties as “Holiday Homes used for family use”. The proposal in 2011 described the properties as a “Weekday Home”, occupied by the proposer’s family only. The 2009 schedule contained no reference to previous claims, contrary to Mr Feiner’s submission. The Tribunal found all this slightly surprising, as the insurance documents for 2009 appeared to relate to two family homes jointly owned and insured by the parties. It would have expected to see the Applicant landlord insuring as freeholder, with the interests of the Applicant and the Respondent noted as leaseholders for their individual flats together with specific notes of their respective mortgagees, i.e. a landlord’s policy. The application form (included in the bundle) completed for the 2011 insurance (not the subject of this application) muddied the waters further by showing the insured as Mr Feiner, and showing himself and Ms Khan as adult residents. All this appeared very unsatisfactory, and the Tribunal is surprised that the brokers who have been consulted by both parties on a number of occasions, and should be aware of the factual situation, have not queried the matter, particularly in the light of an (undated) letter written by Ms Khan to the insurers (item 18V of the bundle). For completeness, although the Tribunal considered that evidence of claims by the Respondent existed, there was insufficient evidence in the bundle that a claim had been paid relating to the period of insurance in question.
13. The Tribunal considered much conflicting evidence from the parties on the question of letting. The Tribunal considered that the Respondent had not

proved more than suspicions and had inferred into documents and events rather more than was reasonable. For example a reference to “lodger” does not prove that a tenancy exists, (as alleged), nor does a statement from “a temporary resident”. The Respondent also attempted to rely upon documents not in the bundle. On balance, the Tribunal accepted that no tenancy existed. The Tribunal notes in passing that failure to disclose a tenancy could significantly affect the insurance of the building, which would damage both parties’ interests.

14. In all the circumstances the Tribunal decided that the cost of the insurance policy (relating to the period 18th August 2009 to 17th August 2010) was not reasonably incurred. The type of policy appeared inappropriate, and some of the insurance declarations (although mostly NOT those complained of by the Respondent) on the application form were also inappropriate to a property of this type, as they inferred that both flats were used for the same purposes.
15. Relating to service of the demands for the service charge contribution, the Tribunal noted that none of the demands apparently had the statutory summary of rights attached to them pursuant to Section 153 of the Commonhold and Leasehold Reform Act 2002. They appeared deficient in other respects also, particularly in relation to sections 47 and 48 of the Landlord & Tenant Act 1987. The Tribunal also noted that it was unclear that the demands in the bundle had been sent on the dates of the emails to which they were attached. Only the covering emails were included. Landlords seeking to rely upon demands must provide good evidence of the demands as sent. The Tribunal will not infer the contents of attachments.

Major Works

16. The Applicant submitted that the Respondent had requested the repairs to her flat roof in an email on 28th July 2008. In response the Applicant had obtained 5 estimates for rectifying the defects. These were broadly consistent in their view of the work to be done, and the costs. Copies were delivered to the Respondent by hand and by email, but the Respondent failed to reply. The Applicant selected Bridgwater Ltd to do the work as its quote was in the mid-range of the estimates, and it was on the London Borough of Southwark’s list of approved suppliers. The Respondent’s own expert report of 8th December 2010 disclosed that the work had been properly done, that there was evidence of past water leakage from the flat roof, and that the cause of the rain water penetration to the flat appeared to be through the external party wall.
17. Relating to the demand for payment, if the consultation and notice given was inadequate, the Applicant applied for dispensation under Section 20ZA, on the basis that there had been a process of consultation, the Respondent was aware of the defects, and had requested the work which was done. Also there were only two lessees in the building, the Applicant bore half the cost. The cost of the work was not excessive, the Applicant caused no damage to the roof, the Respondent was not prejudiced, and that the Applicant had received no

commission or other benefit from the work (or the insurance premium; see above).

18. The Applicant agreed that he had applied for planning permission in November 2011 for a roof terrace but this had been refused on appeal. He denied the Respondent's allegations that the works on the roof in 2009 were related to the construction of the roof terrace. The Planners had visited the site on a number of occasions and had not served any enforcement notices. He also denied that he or any other occupant had used the roof, apart from legitimate inspections.
19. The Respondent submitted that the sum demanded had varied from time to time. The sum finally demanded in the Court application was £2,741.96. The Respondent should not be liable for any of the costs of the work as they had been done without proper consultation with her. The costs were in relation to works for which the Applicant was not entitled to charge and/or she should not have to pay as the property was not being properly maintained in accordance with the lease. The Respondent had complained about water ingress at the property on various occasions. The kitchen had flooded in 2007, believed due to blocked drains or guttering. On 21st December 2008 water leaked into the linen cupboard between the kitchen and the living room. In April 2009 there was water ingress through the living room ceiling. In January 2011 there was water ingress into the hall which spread into the bathroom and living room. The leak to the bathroom and hall had ceased by 18th March 2011, but water was still dripping into the living room. The Respondent on that occasion had obtained a quotation for repointing the brickwork and replace the gutters to stop the dampness. He had refused to do the work until the Respondent paid the outstanding charges from 2009.
20. The Respondent submitted that the works done in 2009 were unnecessary, as the roof covering had been replaced already some years before. The Applicant was intending to develop the flat roof above the Respondent's property into a garden roof terrace. The flat roof had been replaced and decking applied while the Applicant tried to obtain planning permission. Permission was refused but the Applicant refused to accept that the roof is not structurally designed for use as a terrace. Use of the flat roof by occupants of the Applicant's flat was causing pressure lines to develop on her living room ceiling and had caused the ceiling light to collapse. The works done in 2009 were predominantly to rectify defects caused by the Applicant.
21. Further, the Applicant's demands had failed to comply with the requirements of Section 153 of the Commonhold and Leasehold Reform Act 2002 as there had been no summary of the rights and obligations of tenants. The Respondent was therefore entitled to withhold payment.
22. Also the Applicant had failed to comply with the Notice provisions of Section 20 of the (1985) Act and for that reason was not entitled to payment. There was no good reason to dispense with the requirements of Section 20. The Respondent had suffered prejudice;
 - a) as the time between proposal of the roof works and receiving quotations from the contractors had been foreshortened

- b) by not being invited to make proper observations and being informed properly of the purpose of the works
- c) she had not been able to properly ascertain the need for roof works, the extent or purpose of the works, nor to be able to commission her own report on whether those repairs were required to stop the kind of water ingress she was complaining about. The dampness penetrating the Respondent's flat was found to be a course of bricks which needed repointing. The Respondent believed that at least one of the ingresses of water in 2008 was from a boiler on the Applicant's premises. The Respondent relied on Daejan Investments Ltd v Benson 2011 EWCA Civ 38, but without any elaboration.

23. The Tribunal considered the submissions and evidence, dealing firstly with the need for the works, then notices under Section 20, section 20ZA, and finally with Section 153.

Need for the works

24. The Tribunal noted that the Respondent did not exhibit or refer to her expert's report dated 8th December 2010 at all. Although the Applicant did not exhibit a copy of the report either, he quoted extensively from it in his submissions, as noted above. The Respondent did not deny that such a report had been obtained. The Tribunal decided that the report existed, and considered that if any part had been favourable to the Respondent she would have put it in evidence. It was clear from the correspondence that the Respondent had requested the work in her letter dated 31st July 2008 (which was done in June 2009), and also revealed that she had already employed a builder to carry out work, which apparently had not been successful. The Tribunal was satisfied from the evidence, particularly the independent evidence, that the work done in 2009 was reasonably necessary, done competently, and apparently cured water ingress from the roof. The fact that it was discovered subsequently that there was water ingress from another cause also does not diminish the need for the work. The evidence as to the cause of the problems on the roof was contradictory. The Respondent claimed that people from Flat 87B walking on the roof were a prime cause, while the Applicant denied this completely. The Respondent also complained at length that the Applicant had primarily done the work to further his desire to create a roof terrace. However the Applicant denied this. The Tribunal noted the invoice from the builder (p.144 of the bundle) contained no element which could be construed as strengthening work. In the end the Tribunal decided to prefer the evidence of the Applicant on both matters.

Notices under Section 20.

25. The Tribunal decided that it was very clear from the evidence that the notices served by the Applicant did not comply with the strict requirements of Section 20, and the Applicant seemed to accept this implicitly. There was no reference to Section 20 in the letters concerned, and no request for nominating a contractor, or a time limit set for making observations.

Section 20ZA application

26. It should be noted that the work was commissioned in response to the Respondent's specific request. The Applicant had made some attempt to

consult with the Respondent, particularly over the quotations sent (at the latest) in his solicitor's letter of 28th April 2009. The Respondent had made no reply whatever to this letter. She claimed that only a period of 5 days had been allowed before the Applicant accepted one of the quotations. In fact the Bridgwater estimate was not accepted before 3rd June 2009 (see p.151 of the bundle), a period of nearly 5 weeks, which is rather more time than is allowed under Section 20.

27. When considering a Section 20ZA application the Tribunal should not treat Section 20 as a means of penalising the Applicant, but following Daejan v Benson (supra), (at least until the current appeal to the House of Lords in that case is determined) the Tribunal should particularly consider the prejudice to the Respondent as pleaded in para 22 a) b) and c) above. The Tribunal was significantly influenced by the fact that the Respondent had attempted repairs herself, then specifically requested work be done to cure water ingress from the roof, but had then not replied to the Applicant's letter consulting her over the quotations obtained, despite having been given a generous period to do so. This work was urgent. The Respondent's suggestion that she should have been given time to consider the purpose, need, nature and extent of the works, and to obtain her own report seemed slightly disingenuous, since she was pressing the landlord to do the work. The Tribunal considered that in all the circumstances of this case, granting dispensation was appropriate and thus exercised its discretion to make an order under Section 20ZA.
28. The Tribunal decided that the Applicant's request for dispensation under Section 20ZA relating to service of service charge demands under Section 153 was misconceived. Section 20ZA relates only to consultation over qualifying works or qualifying long term agreements, not to the service of notices.

Section 153.

29. The Tribunal decided that the demands served by the Applicant clearly did not comply with Section 153, (see the discussion at paragraph 15 above). Thus until a compliant notice has been served nothing is payable at this time.

Costs

Section 20C

30. The Respondent applied for an Order to limit the landlord's costs chargeable to the service charge under Section 20C. The Respondent submitted that she was in receipt of benefits and had been unable to obtain Legal Aid for the application before the Tribunal. The Applicant made no specific submission, although he had complained to the Legal Services Commission about the Respondent's Legal Aid.
31. The Tribunal considered the evidence and submissions. It decided that in all the circumstances it would make no order because if the cost fell on the service charge, then the Applicant was obliged to pay 50% of the cost.

Schedule 12, Paragraph 10

32. The Applicant made an application under Schedule 12, Paragraph 10 of the Commonhold and Leasehold Reform Act 2002. This paragraph relates to un-

reasonable conduct by another party. Since the Respondent has been partially successful in defending the application, the Tribunal decided that it would not exercise its discretion and made NO order.

Other Matters

33. The Tribunal now orders that this case be referred back to the County Court for disposal of outstanding matters.

L. W. G. Robson
Signed: Lancelot Robson
Chairman

Date: 13th February 2013

Appendix 1 - relevant legislation

Landlord and 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 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 20ZA (extract)

- (1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

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.

Commonhold and Leasehold Reform Act 2002

Section 153

Notice to accompany demands for service charges

After section 21A of the 1985 Act (inserted by section 152) insert—

“21B Notice to accompany demands for service charges

- (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) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where-

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) He has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed-

(a) £500, or

(b)

APPENDIX 2

- See Copy Lease dated 15th January 1985 attached

(25)

(6)

A/7372096-2

DATED 15th January 1985

PAMELA JEAN SPENCER

- to -

WAP KUMUTHINI RAJASUNDARAM

LEASE

- of -

87A Wyndham Road, London SE5

Term Commences : 25th March 1983

For years : 99 years

Term expires : 24th March 2082

Rent : £50 pa rising

Consideration : £27,000

Winckworth & Pemberton
22 Greencoat Place
London SW1

Ref: DKJ/0597L

HM LAND REGISTRY

LAND REGISTRATION ACTS 1925 TO 1971

LONDON BOROUGH

: SOUTHWARK

TITLE NUMBER

: SGL 344091

PROPERTY

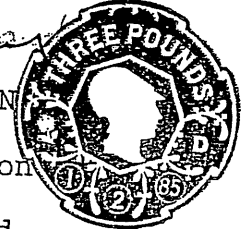
: Ground Floor Flat 87A
Wyndham Road, London SE5

PRODUCED

FEB. 1985

MANAGE ACT 1931

3



THIS LEASE is made the 15 day of November

One thousand nine hundred and eighty five BETWEEN

PAMELA JEAN SPENCER of 66 Ling Road, Canning Town, London

E16 (hereinafter called "the Lessor") of the one part and

KUMUTHINI RAJASUNDARAM of 6 Wayland House Robsort Street

London SW9 (hereinafter called "the Lessee") of the other

part

WHEREAS :

(a) The Lessor is registered at HM Land Registry as Proprietor with Title Absolute under Title Number SGL 344091 of the freehold property known as 87 Wyndham Road London SE5 comprising a maisonette and a flat and hereinafter called "the Building"

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

- (i) "the Lessor" and "the Lessee" shall be deemed to include the parties hereto and the person or persons or corporate body claiming title under them respectively;
- (ii) "the Reserved Property" shall mean all those the main structural parts of the Building including the roof main walls and the beams and roof timbers and foundations thereof and all other parts of the Building not hereby or by any other Lease demised;
- (iii) "the Flat" shall mean all and singular the Flat on the ground floor of the Building all which said premises is more particularly shown on the plan annexed hereto and thereon edged red together with the easements rights and privileges mentioned in the Second Schedule hereto subject as therein mentioned except and reserving as mentioned in the Third Schedule hereto (hereinafter together called "the premises");
- (iv) words importing the masculine gender shall be deemed to include the feminine

gender and words in the singular shall include the plural and vice versa and where two or more persons are included from time to time in the expressions "the Lessor" and "the Lessee" covenants entered into or made or accepted by such persons shall be deemed to be contracted jointly and severally and to be performed accordingly;

- (v) every internal wall floor or ceiling separating the Premises from the adjoining maisonette or the reserved property shall be a party structure severed medially

NOW THIS LEASE made in consideration of the sum of TWENTY SEVEN THOUSAND POUNDS (£27,000.00) now paid by the Lessee to the Lessor (the receipt whereof is hereby acknowledged) and of the rents hereinafter reserved and the covenants on the part of the Lessee hereinafter contained

W I T N E S S E T H as follows:-

1. THE Lessor HEREBY DEMISES unto the Lessee ALL THAT the premises TO HOLD the same unto the Lessee from the Twenty-fifth day of March One thousand nine hundred

and eighty-three for a term of NINETY NINE YEARS (99) YIELDING AND PAYING therefor for the first period of thirty three years of the term the yearly the rent of FIFTY POUNDS (£50.00) for the second period of thirty three years the yearly rent of ONE HUNDRED POUNDS (£100.00) and for the remainder of the term the yearly rent of TWO HUNDRED POUNDS (£200.00) free from any deduction whatsoever the first payment thereof being a proportionate part of the said rent calculated from the date hereof to the Twenty-fifth day of March One thousand nine hundred and eighty-five to be made on the execution hereof and all subsequent payments to be made on the Twenty-fifth day of March in each year

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

- (i) To pay the rents hereby reserved on the days and in the manner aforesaid without any deduction
- (ii) To pay all existing and future rates including rates taxes assessments and outgoings of whatsoever nature which are now or may hereafter be charged upon the premises or any part thereof and in the event of any rates taxes assessments charges impositions and outgoings being assessed charged or imposed in respect of the Building to

pay a proper proportion to be determined by the Lessor's Surveyor

- (iii) (a) To contribute and pay to the Lessor or her agents or as she may direct during the said term a sum (hereinafter called "the Maintenance Charge") being the proportion which the rateable value of the premises bears to the rateable value of the whole building of the costs and expenses and outgoings incurred by the Lessor in respect of the matters referred to in the Fourth Schedule hereto

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

As to ONE HUNDRED POUNDS (£100.00) per annum or Seventy-five per centum (75%) of the Maintenance Charge for the preceding year whichever is the higher (hereinafter called "the Interim Charge") payable in advance on the day of payment of rent As to the balance (if any) within twenty-one days of the delivery to the Lessee by the Lessor of any account (hereinafter called "the Maintenance Account") showing particulars of such costs expenses and outgoings for the year up to the previous Twenty-fifth day of March in respect of which the Lessee or his

representative shall be entitled to inspect the receipts vouchers and accounts at his own expense within one month of receiving the maintenance account PROVIDED THAT if the Maintenance Account shall show that the proportion payable by the Lessee of the said costs expenses and outgoings for the year to the previous Twenty-fifth day of March amounted to less than the Interim Charge the difference shall be refunded to the Lessee within twenty-one days of delivery of the Maintenance Account Provided that the Lessor shall be entitled to retain out of such difference such a sum as she or the Managing Agents may reasonably estimate to be necessary to provide (without any sums retained from previous years) a fund to meet future costs expenses and outgoings the cost of which should be spread over several years If any dispute shall arise as to the accuracy of the Maintenance Account or the reasonableness of any sum retained for further expenses the same shall be submitted to a Member of the Institute of Chartered Accountants in England and Wales to be agreed between the parties hereto or in default of agreement to be nominated by the President for the time being of the said Institute The fees of the said Accountant shall be awarded at the discretion of the said accountant

- (c) The Maintenance Charge shall be a charge on the premises and be recoverable as if the same were rent in arrear
- (iv) In the year One thousand nine hundred and eighty-nine and thereafter once in every seventh year of the said term and also during the last year thereof (howsoever determined) to paint all the interior of the premises and all additions thereto with two coats at least of good quality paint and in a proper and workmanlike manner and also at such times as last aforesaid to clean varnish whitewash colour and paper such parts of the interior of the premises as are usually so treated
- (v) To keep the premises and every part thereof in good and substantial repair and condition throughout the said term hereby created and it is hereby declared and agreed that there is included in this covenant as repairable by the Lessee (including replacement whenever such shall be necessary) the windows (including window frames and glazing) of the premises
- (vi) Damage by any of the insured risks excepted to keep in repair and replace when necessary all

cisterns tanks drains pipes wires ducts
conducting media and any other things exclusively
serving the premises installed for the purpose of
supplying gas and electricity and water (cold or
hot) and of draining away water and soil or for
allowing the escape of steam or other deleterious
matter which are in the Maisonette

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

(viii) To permit the Lessor and her agents with or
without workmen at all reasonable times but upon
giving forty-eight hours' notice except in cases
of emergency to enter upon and examine the
condition of the premises and to serve upon the
Lessee notice in writing specifying any works or
repairs necessary to be done and require the

Lessee forthwith to execute the same and if the Lessee shall not within two months after the service of such notice proceed diligently with the execution of such works or repairs then to permit the Lessor to enter upon the premises with all necessary workmen tools and materials and execute such works or repairs whereupon the cost thereof shall be a debt due to the Lessor from the Lessee payable on demand and if not paid forthwith to be recoverable by action as if the same were rent issuing out of the premises and in arrear

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

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

(x) Not to make any alteration in the premises without the approval in writing of the Lessor to the plans and specifications thereof (such approval not to be unreasonably withheld or delayed) and upon such approval being obtained to make all such alterations strictly in accordance with the approved plans and specifications and the terms of the Lessor's consent. The Lessee shall at his own expense in all respects obtain all licences approvals of plans permissions and other things necessary for the carrying out of such alterations and comply with the Bye-Laws regulations and conditions prescribed by an

competent Authority either generally or in respect of the specific works involved in such alterations and at all times keep the Lessor fully indemnified from and against all claims and liability arising thereout whether to such Authority or to any other body or person (including professional fees)

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

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

(b) Not to assign the whole of the premises without first obtaining a Deed in a form approved by the Lessor's Solicitors containing a covenant by the intended assignee with the Lessor to pay the rent and Maintenance Charge reserved by this

Lease and to comply with all of the covenants and conditions of this Lease

- (c) Not to underlet the whole of the premises without the prior written consent of the Lessor which shall not be unreasonably withheld in the case of an intended underlessee who enters into a covenant with the Lessor in the form set out in (b) above limited to the term of such underlease (except the covenant for the payment of rent only but including the covenant for the payment of Maintenance Charge)
- (xiii) Within one month after every Assignment Assent Transfer Mortgage or Underlease or other dealing of or with the premises to give notice thereof in writing with full particulars thereof to the Lessor and in the event of a devolution of the interest of the Lessee not perfected by an Assent within six months after the happening thereof to produce to the Lessor the Probate of the Will or Letters of Administration or other evidence under which such devolution arose and to pay to the Lessor a registration fee of Seven Pounds (£7.00) plus VAT in respect of each such Assignment

Assent Transfer Mortgage Underlease or other
devolution

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

- (xv) To comply with the requirements of any local or planning or other authority relating to the premises and to do all such work as may be

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necessary for that purpose and to indemnify the Lessor from and against all loss costs charges and expenses which he may be compelled to incur bear pay or discharge in consequence of any such requirement or the non-compliance of the Lessee therewith and that in default of such compliance the Lessor may enter upon the premises or any part thereof and comply with the same and that the Lessee will pay to the Lessor on demand all expenses thereby incurred

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

(xvii) Upon receiving any notice or order or proposal for a notice or order given or made under any statutory authority relating to the user or conditions or development or alteration of the premises forthwith to give full particulars thereof and (if required) to produce the same to the Lessor's agents for the time being

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

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

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

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

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

(i) in good and substantial repair and condition maintain redecorate renew amend clean repoint repair grain varnish whiten and colour:-

(a) the structure of the Reserved Property and in particular but without prejudice to the generality thereof the roof foundations chimney stacks gutters and rainwater and soil pipes thereof (including the roof timbers and beams) and if necessary to rebuild any part or parts thereof which required to be rebuilt:

(b) the exterior paintwork of the Building including the window frames of the premises;

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

(d) the paths passages refuse bin area landings doorways screen fencing and staircases and other parts of the Reserved Property enjoyed or used by the Lessee in common with others

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

(a) keep clean and reasonably lighted the passages landings and staircases and other parts of the Reserved Property enjoyed or used by the Lessee in common with others; and

(b) tend keep clean and tidy and generally to maintain the gardens footpaths forecourts roadways and pathways used in connection with the Reserved Property

(3) Before carrying out any repairs or works to the Reserved Property for the carrying out of which access is required to the premises to give to the

Lessee in writing not less than forty-eight hours' (except in the cases of emergency) notice and the Lessor shall on giving such notice in writing be entitled to carry out the said repairs or works and in doing so to have access to the premises but shall act carefully and reasonably doing as little damage as possible to the premises and making good all damage occasioned thereto

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

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

- (6) In any future lease or conveyance of the reserved property or conveyance of the building to impose covenants stipulations and restrictions (mutatis mutandis) in like terms to those contained in this Lease so phrased to ensure and to intent that the Lessee shall at all times in the future be able to enforce the observance and performance thereof by the owners or occupiers for the time being of the reserved property or the owners of the freehold interest in the building as the case may be
- (7) That if so required by the Lessee the Lessor will enforce the covenants and conditions entered into by the lessee of the maisonette in the Building so far as they affect the premises hereby demised or the Lessee subject to the Lessee indemnifying the Lessor against all costs and expenses reasonably and properly incurred by the Lessor in respect of such enforcement as are not recoverable from the defaulting Lessee
- (8) That the Lessor will bear the Maintenance Charge applicable to one flat or maisonette in the Building for any period during which that flat or maisonette is unlet or let on terms that do not require the Lessee to pay a Maintenance Charge

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and will ensure that the occupier of any such flat or maisonette for the time being complies with the rules and restrictions set out in the First Schedule hereto or any rules and restrictions imposed by the Lessor in substitution therefor

- (9) (a) To keep insured at all times throughout the term against loss or damage by fire, flood and other risks and special perils normally insured under a householder's Comprehensive Policy the Building and landlord's fixtures and fittings therein and all the appurtenances apparatus and other things thereto belonging in some reputable Insurance Office in a sum equal to the full re-instatement value thereof together with Architects' and Surveyors' and other professional fees and to make all payments necessary for the above purpose immediately and same have become due and to provide to the Lessee or his agent on demand the Policy or policies of such insurance and the receipt for each payment payable thereunder Provided that if the Lessor shall fail to keep the Building and landlord's fixtures and fittings therein and all the appurtenances apparatus and other things thereto belonging insured as aforesaid the Lessee may do all things necessary to effect or maintain such insurance and any monies expended by him for the

purpose shall be repayable by the Lessor on demand and be recoverable forthwith by action.

(b) To use all insurance money received to make good the damage or destruction for which the money has been received and if that money shall not be sufficient to make up the deficiency from his own money Provided always as if the re-building or re-instatement of the Building and the landlord's fixtures and fittings therein and all the appurtenances apparatus and other things thereto belonging shall be frustrated all such insurance monies relating to the Building fixtures and fittings aforesaid or parts thereof in respect of which the frustration occurs shall after deduction of all monies due to any Mortgagee of the Building be apportioned between the Lessor and Lessee in accordance with their respective interests

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

(i) If the rents hereby reserved or any part thereof shall be unpaid for twenty-one days after the same shall have become due and payable (whether legally demanded or not) or if any of the

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covenants on the part of the Lessee herein contained shall not be observed and performed then and in every such case it shall be lawful for the Lessor or any person or persons authorised by the Lessor in that behalf at any time thereafter to re-enter the premises or any part thereof in the name of the whole and thereupon the term hereby created shall absolutely determine but without prejudice to any right of action or remedy of the Lessor in respect of any breach of the covenants by the Lessee herein contained

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

(iii) That any notice hereby required or authorised to be given to the Lessor or the Lessee respectively shall be in writing and may be given in any of the modes provided by Section 196 of the Law of Property Act 1925 with respect to notices to be

given to landlords or tenants (as the case may be) under the Act

IN WITNESS whereof the parties hereto have caused these presents to be duly executed the day and year first before written

THE FIRST SCHEDULE

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

1. To ensure that so far as the Lessee is concerned the entrance door of the Building shall be kept closed except for the purposes of immediate ingress and egress AND that the exterior appearance of the Building shall be strictly maintained as that of a private dwellinghouse
2. Not to allow any musical or mechanical instrument to be played or any singing to take place in the premises in such a manner as to be an annoyance to the Lessor or any other lessee of the Building
3. Not to throw dirt rubbish rags or any other refuse or permit the same to be thrown into the sinks baths lavatories cisterns or waste or soil pipes in the Maisonette
4. Not to shake any mat or carpet out of the windows
5. Not to remove from the premises any refuse cinders dust or rubbish except in covered containers and between the hours of eight a.m. and twelve noon each day and to cause all such garbage to be emptied into the bin or bins to be provided by the Lessee in the area provided by the Lessor
6. Not to put out or permit to be put out any clothing or other articles to dry or bleach on any part of the Building
7. To ensure that the windows of the premises whether open or closed shall be suitably curtained and also at least once in every four weeks clean all windows in the premises and not to display any notice advertisement or sign whatsoever from any window or door of the premises or of the Building without prior written

consent of the Lessor such consent not to be unreasonably withheld.

8. Not to affix or fasten any aeriels or other apparatus on the outside walls or roof of the premises without the written consent of the Lessor
9. Not to keep any dog cat bird or other live animal in the premises without the previous written consent of the Lessor
10. Not to obstruct or permit any act or thing which would interfere with the free passage and use by all others entitled thereto of the staircase landings and the pathways and in particular not to park any vehicle perambulator or bicycle on the paths of the Reserved Property
11. Not to use any part of the Reserved Property for any sport or game or for any purpose which may cause a nuisance or annoyance to any of the lessees or occupiers of the maisonette

THE SECOND SCHEDULE

Easements rights and privileges included in the demise

1. Full right of way and passage for the Lessee and all persons authorised by him with or without workmen and therein tools and materials over the entrance hall staircases and landings leading to the premises for all purposes connected with the use and enjoyment of the premises and the maintenance and repair thereof
2. Full right and liberty for the Lessee and all persons authorised by him (in common with all other persons entitled to the like right) at all times by day or by night to go pass and repass over and along the pathways of the Reserved Property to the Building
3. All easements and quasi-easements and rights of light and air appurtenant to the premises and in particular:
 - (a) the right to subjacent and lateral support and to shelter and protection from the maisonette in the Building and the Reserved Property;
 - (b) the right to take leads through and over any other part of the Building;
 - (c) the right for the Lessee with servants workmen and others at all reasonable times upon giving

three days' previous notice in writing (or in the case of emergency without notice) to enter into and upon the adjoining flat or any part thereof whether comprised in another lease or other leases or remaining in the possession of the Lessor for the purpose of repairing and maintaining the premises or repairing and maintaining the adjoining flats or any pipes wires cables or other installation serving the same causing as little disturbance as possible and making good any damage caused;

(d) the free and uninterrupted passage and running of water and soil gas and electricity from and to the premises through the sewers drains and watercourses cables pipes and wires which now are or may at any time hereafter be in under or passing through the Reserved Property

4. Full right and liberty for the Lessee (in common with all other persons entitled to the like right) to keep a dustbin in the enclosure provided

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

THE THIRD SCHEDULE

Exceptions and Reservations

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

1. Full right and liberty for the Lessor and all persons authorised by her with or without workmen and others at all reasonable times and from time to time upon notice (except in the case of emergency) to enter in and upon any part of the premises carry out and effect repairs decorations and maintenance to the maisonette and the Reserved Property and to erect ladders scaffolding or other plant as may be necessary for such purposes making good any damage to the premises which may be occasioned thereby

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

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

4. The right and liberty for the Lessor at any time hereafter and from time to time to execute works and erections upon or alter or rebuild any of the buildings erected on her adjoining or neighbouring lands and buildings in such manner as she may think fit but so that there is no interference with the access of light and air to the flat Together with the right to subjacent and lateral support and to shelter and protection from the premises and from the site thereof

THE FOURTH SCHEDULE

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

1. The expense of maintaining repairing redecorating and renewing amending cleaning reporting painting graining varnishing whitening or colouring the Reserved Property and the exterior paintwork of the Building and all parts thereof and all the appurtenances apparatus and other things belonging thereto PROVIDED THAT the exterior of the Building shall not be redecorated more often than once in every three years

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

3. The cost of cleaning decorating and lighting painting repairing and re-carpeting where necessary the passages landings staircases and other parts of the Reserved Property

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

5. The fees of the Lessor's Managing Agents (if employed) for the collection of the rents of the premises or the flat in the Building and for the general management thereof and any legal costs incurred by the Lessor in connection therewith

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

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

8. All other expenses (if any) incurred by the Lessor in complying with her covenants contained in Clauses 3(1) (2) (3) (4) (5) of this Lease and incurred in and about the maintenance and proper and convenient management and running of the Building (which shall not however include any costs or expenses of the Lessor in repairing maintaining or decorating any flat in the Building nor for the time being let upon terms which require the Lessee to repair maintain or decorate the same or any other costs or expenses incurred by the Lessor in connection with any such flat)

9. When any repairs decorations or renewals are carried out by the Lessor she or her agents shall be entitled to charge as expenses or costs thereof their normal charges (including profits) in respect of such work including the fees of any surveyor

10. The cost to the Lessor (if any) of the supply of water to the Building via a common service pipe

SIGNED SEALED and DELIVERED by)
the said PAMELA JEAN SPENCER in)
the presence of:

X Pamela Jean Spencer X

Witness
Name Keith Murray
Address
Occupation 57 Dewick Rd
E.S.

also known as
Pamela Jean Spencer

Hoffman Presser

IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration (other than rent) exceeds the sum of THIRTY THOUSAND POUNDS

[Handwritten signature]
[Handwritten signature]

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H.M. LAND REGISTRY

LEASEHOLD TITLE REGISTERED

TITLE NUMBER SGL 428660

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