



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

Case References : CHI/21UC/LVT/2014/0007
CHI/21UC/LCV/2015/0001

Property : Hamilton Quay, Sovereign Harbour,
Eastbourne, BN23 5PZ

Applicants : (1) Hamilton Quay Management Co
Ltd (s35 Application)
(2) Mr Peter Framingham (s36
Application)

Represented by : Simon Sinnat (Counsel instructed by
Mayo Wynne Baxter LLP)

Respondent : None

Type of Application : Lease variation – LTA 1987

Tribunal Members : Judge D Dovar
Mr N I Robinson FRICS

Date and Venue of Hearing: 19th October 2015, Bexhill

Date of Decision : 17th November 2015

DECISION

1. These are applications under sections 35 and 36 of the Landlord and Tenant Act 1987 ('the Act') for variations to the 78 leases of flats and townhouses situated within the Property. The First Applicant made a section 35 application in July 2014 and Mr Framingham, a respondent to that application, made a section 36 application in March 2015.
2. A further application under section 37 of the Act has been issued more recently, but that application has not yet been the subject of the Tribunal's consideration and no directions relating to comments or objections to be made by the tenants have been given. The Tribunal has given some consideration to this application as well as will be seen at the end of this decision.
3. The overwhelming majority of the tenants supported the applications by way of written consent and whilst initially there were four objectors, they have all since withdrawn their objections. Despite the lack of objection, the Tribunal has to satisfy itself that the provisions of ss35 and 36 are engaged and that it should go on to make the variations sought by the Applicants.
4. In November 2014, the Tribunal made a preliminary decision in this case determining that the town houses within the estate were flats for the purposes of the 1987 Act. This opened the door for all the leases of the units to be susceptible to this application.

Site View / layout and construction of the development

5. The Tribunal inspected the Hamilton Quay development in November 2014 for the purposes of the preliminary decision.
6. It is a residential development comprising 78 units. Along with a road and walkway, the townhouses and flats all sit on a concrete slab ('the podium'). Underneath the podium and therefore partly underneath the flats and townhouses is car parking and storage space.
7. The residential units are split so that there is a central block of flats either side of the road which are flanked by townhouses with further flat blocks at either end of the terrace.
8. As stated above, the townhouses and flats are all built off the podium slab, although all the properties have staircases piercing the podium slab with the flats having some store rooms and the houses both garages and storage areas below.
9. Whilst the flats over sail the ground level car parking, the townhouses in general terms continue down to the ground level floor slab. However, the front walls of the townhouses at above podium level are not directly above the walls visible in the car park, below the podium, but slightly offset and it could also be seen that the whilst the walls in the car park are straight, at podium level the front walls of the townhouses step in and out, altering the design and footprint at that level. Similar changes could be seen at the rear of the townhouses.
10. The demises of the townhouses included terraces which were constructed above parts of the car park, which did not form part of the

demise. Further, from the lease plans, it was clear that at the front and back of the townhouses, the demise on the lower ground floor was considerably less extensive in area than the demise on the ground floor.

Legislation

11. Part IV of the Landlord and Tenant Act 1987 deals with lease variations.
12. Sections 35, 36 and 38 of the 1987 Act enable the Tribunal to make variations of long leases of flats where it is satisfied that the lease fails to make satisfactory provision for:

the repair or maintenance of the flat or the building containing the flat (s35 (2)(a)); or

the insurance of the building containing the flat or of any such land or building (s35 (2)(b); or

the provision, repair and maintenance of services to ensure the occupiers enjoy a reasonable standard of accommodation (s35(2)(c)and(d)); or

the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party (s35 (2)(e)); or

the computation of a service charge payable under the lease where the aggregate proportions received exceed or fall below 100% (s35 (2)(f), (4)).

13. Under section 36, where an application is made to vary the lease of one flat, a respondent to that application can make their own application to vary other related leases. The Tribunal can therefore order all relevant leases to be varied where it considers that there is a relevant defect and it would be in the interests of either the person making the application and/or in the interests of the other parties to the leases to have all of the leases varied at the same time.
14. Section 38 provides that the Tribunal can, if it is satisfied that a relevant defect is made out, vary the lease either as proposed in the application or as the Tribunal thinks fit.
15. It was asserted through the course of submissions that where the lease was ambiguous, that was of itself a defect that could be addressed under s35. The Tribunal disagrees in that that is not in effect a defect but a matter of construction.

Leases

16. There are three types of lease at the property. The flat leases and two types of townhouse lease. The townhouse leases are the same save for the lease of number 21, which the Tribunal was informed was the last lease to be granted and was altered to address some of the problems identified in this application. One difference between the leases is that the flat leases incorporates flats and townhouses into their definition of the Building whereas the townhouse leases (save for number 21) limit that definition to the townhouses only.

Variations

17. The Applicants seek a number of variations to the leases. The catalyst for these applications was the necessity to ensure that significant works that are needed to be carried out to the podium can be carried out and the costs recovered from all the leaseholders. In the course of investigating the podium problem and the recovery of the costs of repair under the leases, the First Applicant states it identified a number of other deficiencies in those leases and this application seeks to address those as well.

18. The Applicants proposed lease variations are dated 10th August 2015. Whilst these particular variations post-dated the issue of this application and varied slightly from those originally proposed, the Tribunal was informed by the First Applicant that they had all been circulated prior to the consent forms being handed in by the leaseholders and prior to the objectors withdrawing their objections. In those circumstances the Tribunal was content to deal with those proposed variations.

19. Appended to this decision are the variations that the Tribunal considers fall within and are suitable under the 1987 Act. Whilst not dealing with each variation in detail, the Tribunal sets out the broad basis for each category of variation below and where it has departed from the variations sought, the reasons for those departures.

Podium

20. The Applicants contended that the leases provide two methods of recovery (both in full as estate charges and in part as building charges) for these works and that thereby there was an ambiguity and/or the potential for recovery of greater than 100% of the service charges (and so a defect within s35(2)(f)).
21. On the basis that the lease permits recovery of more than 100% of the cost, the Tribunal is satisfied that the section is engaged.
22. The First Applicant has drafted considerable amendments to accommodate the podium works and the recovery of the costs. This includes inserting an entirely new definition of the podium and then slicing it up in layers in terms of ownership. It has also included a right for the costs of repairing the podium to be recovered through the service charge. It has done so in a manner that mirrors the recovery of other items through the service charge.
23. One aspect of the proposed variations that troubled the Tribunal was the provision which changed the ownership of the surface of the podium depending on whether or not access was needed to repair other parts of the podium. It was intended for the surface (and surface materials) to be within the demise, but in the event that repair works were needed to the lower layers of the podium, the surface (and materials) were to temporarily become the property of the Landlord. This was an unsatisfactory method of dealing with the problem and the Tribunal has amended the proposed variation in that regard by deleting the latter part of the proposed definition of the Podium. The Tribunal considers that

this will preserve the obligations to make good and make the question of ownership more certain. The Landlord and the Management Company have sufficient rights of access to the surface of the Podium and the layers under the surface and a correlative obligation to make good under Schedule 3.

Service Installations

24. The service installations are only covered in terms of maintenance where they run under buildings, not when they run under the open spaces on the estate. Further, the service charge cost is only payable by tenant of the particular block that is affected, not the estate as a whole.
25. The Tribunal accepts that this is a defect under s35(2)(a) and (e) in that there is no repairing obligation under the terms of the leases in relation to those parts of the service installations which run under open spaces and no provision for the recovery of costs of repair of the same.

Railings and balconies

26. The lease fails to make provision for the balconies and railings around the estate in that it fails to determine whether they fall within each demise. Further there are no provisions for the repair and maintenance or recovery of service charges in respect of repair and maintenance for these items.
27. The Tribunal considers that these are defects which engage the s35 (2) (a) and (e).

28. In relation to the balconies, in terms of maintenance or repair, the First Applicant proposes splitting that obligation into: tenant's obligation for decking and glazing and landlord's obligation for structure and support.
29. With respect of the railings, there are two types; those that separate flat and townhouse terraces from each other and those that mark out the estate in more general terms. This distinction has been carried into the variations which divide them on the basis that the former falls within building costs and the latter estate. That way the tenants of one building are not charged for railings which only separate units in another building and all leaseholders share the cost of the general demarcations.

Additional areas

30. A lacuna was also identified in relation to those areas that were not either demised or within the definition of communal estate areas. The latter was narrowly defined in the lease so as to seemingly exclude any structures for communal use, such as a computer room or cleaning room.
31. This was a similar problem to that encountered with the service installations in that the leases failed to cover areas outside of the demises that, although communal in use, were not accessible to the leaseholders. This therefore gave rise to defects under s35 (2) (a) (i.e. no provision for maintenance and repair of these areas) and 35 (2) (e) (i.e. no provision for a service charge to be levied in respect of the work done to these areas).

32. The leases also failed to define who had ownership of and responsibility for window frames and who had the responsibility in respect of the maintenance of the garage doors. Again these fall within ss35(2)(a) and (e).
33. Finally the Applicants seek to amend the leases in order to make a leaseholder liable for any damage they cause to a car parking space. The Tribunal does not consider that this is a defect engaging the 1987 Act. The matter is dealt with suitably under paragraph 6 of Part 1 of the 4th Schedule which makes the leaseholder responsible for damage caused to the Estate which includes the car parking area.

Insurance

34. The insurance provisions of the leases fail to provide for insurance of the open areas. It only stipulated the buildings, not the whole estate. This falls within s35 (2) (b).

Mutual enforceability

35. The Applicant also sought to extend the provision of mutually enforcing covenants in the town houses by the flat owners and vice versa. The Tribunal was not satisfied that this omission was a defect or in the event that it was a defect a sufficiently serious one to warrant variation. Whilst such provisions may be desirable, that was not the test under ss 35 and 36.

Service Charge payments

36. The First Applicant sought variations to the service charge collection. Firstly they sought to amend the current provision of one on account payment, to two. Secondly they sought further provision for ad hoc demands to cover unexpected repairs.
37. As with the mutually enforceable covenants, whilst these provisions may be desirable, they do not, in the Tribunal's view amount to a defect within ss 35 and 36.

Conclusion

38. The Tribunal has made amendments to the suggested variations and the Tribunal orders that the leases be varied in accordance with the variations annexed to this decision.
39. Pursuant to section 38 (9) of the Act the Tribunal also orders that a memorandum of the variations shall be endorsed on each lease.
40. In respect of those variations which the Tribunal has not approved under this application and which fall within the s37 application that has been made the Tribunal makes the following directions:
- a. That application be consolidated with these applications;
 - b. The Applicant in the s37 application notify the Tribunal within 28 days of the date of this decision whether they wish to proceed with the s37 or withdraw it under Rule 22 of the Tribunal Procedure Rules 2013;

- c. if they wish to proceed with it, they are to identify the variations that they seek in the said notice to the Tribunal and send copies of this decision and their proposed further variations to each leaseholder and draw their attention to these directions;
- d. Any objection to that application is to be notified to the Tribunal and the Applicant within 28 days of the Applicant sending out their notice in c.) above;
- e. Unless either party gives notice objecting to the same, the Tribunal will deal with the s37 application without a hearing under Rule 31 of the Tribunal Procedure Rules 2013.



Judge D Dovar

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

APPLICATION TO THE LEASEHOLD VALUATION TRIBUNAL FOR VARIATION
OF LEASES AT 78 DWELLING HOUSES AT HAMILTON QUAY SOVEREIGN
HARBOUR NORTH, EASTBOURNE, EAST SUSSEX

PARTIES: -

GROSVENOR QUAY LIMITED
and
HAMILTON QUAY MANAGEMENT COMPANY LIMITED
and
LESSEES OF 78 DWELLING HOUSES AT HAMILTON QUAY

SCHEDULE OF AMENDMENTS TO BE MADE BY ORDER UNDER S35 OF THE
LANDLORD & TENANT ACT 1987

1.

A) The Particulars shall be added to and amended as follows:

1.7	Building Service Charge Proportion: 4.166%
1.8	Insurance Rent Proportion: 4.166%
1.10	Podium Charge Proportion: 1.282%

B) **THE DEFINITIONS AND INTERPRETATIONS** in clause 2 shall be amended by the inclusion of the following definitions and amended definitions:

Building: the blocks of Townhouses erected at the Estate of which the Premises form part

Estate Buildings: All Flats and Townhouses erected at the Estate of which the Premises form part.

Flats: the flats forming part of the Estate

Podium: The structure between the ground floor and the lower ground floor (including the concrete membranes, damp proof courses and drainage facilities thereof) contained within the blue line on Plan 2 (but excluding the surfacing and supporting materials of the surfacing of any external areas included in the demise of any Flat or Townhouse)

Podium Charge: The Podium Charge Proportion specified in Clause 1.10 (subject to Paragraph 6 of Part III of Schedule 6A) of the Podium Costs or estimate thereof payable in accordance with Part III of Schedule 6A

Podium Costs: The costs and expenses incurred by the Management Company described in Part II of Schedule 6A

Podium Services: the services set out in Part I of Schedule 6A

Premises: The Townhouse known as Plot No [] at the Estate intended to be known as Number [] Hamilton Quay Sovereign Harbour North Eastbourne BN23 5PX the Garage the Parking Space (if any) and the Storage Area (if any) in each case shown edged with a red line on Plan 2 and Plan 3, Plan 4 Plan 5 and Plan 6 and more particularly described in Schedule 1 hereto.

Rents: the Rent the Insurance Rent the Estate Charge the Building Service Charge and the Podium Charge.

D) **THE TENANT'S COVENANTS WITH THE MANAGEMENT COMPANY** in clause 6 shall be amended as follows:

6.1 To pay the Estate Charge the Building Service Charge and the Podium Charge in the manner set out in Schedule 5 Schedule 6 and Schedule 6A

E) MANAGEMENT COMPANY COVENANTS in clause 7 shall be amended as follows:

7.1 The Management Company covenants with the Tenant that subject to the payment of the Estate Charge the Building Service Charge and the Podium Charge it will provide and perform the Estate Services the Building Services and the Podium Services and will give any consent required to the Land Registry to allow registration of any proposed dealing in the Premises provided that the Tenant shall have observed and performed the covenants on his behalf contained in this Lease.

7.2 The Management Company shall not be liable for any failure or interruption of any of the Estate Services the Building Services or the Podium Services by reason of any damage or destruction of any installation or apparatus or mechanical breakdown or other cause beyond its control provided that the Management Company uses and continues to use all reasonable endeavours to restore the Estate Service the Building Service or the Podium Service in question.

F) LANDLORD'S COVENANTS contained in Clause 8 shall be amended,

Clause 8.4 shall read as follows:

If the Management Company shall fail to perform its obligations contained in Clause 7 hereof then at the request of the Tenant and subject to the payment of the Estate Charge the Building Service Charge and the Podium Charge the Landlord shall enter the Estate and perform all or any of those obligations of the Management Company that have not been performed and the costs of so doing shall be recoverable by the Landlord in the Estate Charge the Building Service Charge and the Podium Charge

G) Schedule 1 – The Premises

1. All that Townhouse described in Clause 1.2 forming part of the Estate Buildings described in Clause 1.2 including the following:
 - 1.1 The top surface layer of the floor edged red on Plan 2 relating to the Lower Ground Floor of the Premises
 - 1.2 The ceilings, floor screed sound insulation materials and the structure supporting the same excluding the Podium
 - 1.3 The whole of all internal floors above ground floor level
 - 1.4 The doors door frames windows glass and window frames to the Townhouse except the external decorative surfaces of the entrance doors and garage doors and door frames and window frames.
 - 1.5 One half of the non-load bearing walls bounding the Townhouse and separating the Townhouse from any other part of the Estate Buildings served medially.
 - 1.6 The plaster or plasterboard surfaces on the load bearing walls within and bounding the Townhouse and on the external walls of the Townhouse
 - 1.7 All the non-load bearing walls within the Townhouse
 - 1.8 All Service Installations including the lift exclusively serving the Townhouse
 - 1.9 The flooring and the supporting materials laid above the waterproof membrane of the structure of the balconies and the glazing panels but excluding the balcony balustrades.
 - 1.10 The surfacing and supporting materials of the terrace (if any) together with surface drainage gullies and access grids thereof.

- 2 But does not include
 - 2.1 Any structural parts of the Townhouse including the roof and foundations of the Premises and the Podium
 - 2.2 The load bearing and external walls of the Premises except those surfaces described above.
 - 2.3 The painted or other external surface of the entrance door and door frames and the garage doors and door frame and the window frames and the external decorative finishes to the Premises.
 - 2.4 The Service Installations within or serving the Premises but not exclusively for the Premises.
 - 2.5 The structure of the balconies including the waterproof membrane and the balustrades of the balconies but not the glass therein.

- 2.6 The Podium beneath the surfacing and supporting materials of any demised terrace and the drainage serving the terrace from the junction with the Podium and any subsurface drainage serving the Podium
- 2.7 The walls and railings dividing the terraces incorporated into the Flats and Townhouses or forming the front and rear boundaries of any part of the Estate Buildings or dividing any Flat or Townhouse from the Estate Communal Areas.

(H) Schedule 2 – Rights Granted

Schedule 2 shall be amended so as to read:

Clause 5

The right to use the drying areas (if any) and the refuse stores in the Estate Communal Areas coloured orange on Plan 2 at the Estate Buildings and any communal refuse receptacles provided by the Landlord in common with all those entitled to the like right for the disposal of suitably wrapped household refuse

Clause 7

Such rights as are necessary to enter other parts of the Estate Buildings for the purpose of inspecting maintaining reinstating repairing and renewing the Premises as necessary for the proper performance of the Tenant's obligations in this Lease at all reasonable times on giving reasonable prior notice (except in the case of emergency) the Tenant causing as little disturbance as possible and making good any damage occasioned in the exercise of such right.

I) Schedule 3 Rights Excepted

3. Such rights of access to and entry upon the Premises by the Landlord and the Management Company and the tenants of the other Townhouses or Flats as are necessary for the inspection cleansing maintenance repair and decoration renewal and reinstatement of other parts of the Estate Buildings and the Estate including the harbour wall and any Service Installations serving other parts of the Estate Buildings or the Estate as are necessary for the performance of the obligations of the Management Company in this Lease or the tenant under a lease of any other

manner as is required in respect of the insurance of the Building in Clause 12 of this lease

- 6 To repair and maintain all Service Installations in under or upon the Estate or Estate Buildings which do not exclusively serve an individual Flat or Townhouse (excluding those within the Podium Costs)

L) Schedule 5 - Part II – Estate Management Costs

The following clause shall be added

9. The amount of any contribution towards the expense of making repairing maintaining rebuilding or renewing any Service Installations which are used by the Building in common with other Estate Buildings or other parts of the Estate or other adjoining or neighbouring property which the Management Company is called upon to make and the annual rentals or other expenditure involved in supplying and maintaining an entry telephone system and any communal television or radio aerial system CCTV system or any similar systems or services and any lightning conductor gate or shutter as may from time to time be installed in the Estate Buildings.

M) Schedule 6 Part I – The Building Services

Part 1 of the Schedule shall be amended so that clauses 1.1 and 1.2 shall read as set out below and so that clauses 1.3 and 2 below shall be included.

1. To maintain repair and where necessary renew

1.1 The main structure of the Building including the foundations the roof the structure of the balconies to include the waterproof membrane and the balcony balustrades but excluding the Podium

- 1.2 The load bearing and external walls of the Building

1.3 All such Service Installations in under or upon the Building which serve more than one of the Townhouses.

Townhouse or Flat the person exercising such rights giving reasonable prior notice (except in the case of emergency) and making good any damage thereby occasioned

J) Schedule 4 Part I

This Schedule shall be amended as follows:

4. Not to carry out any work or decoration repair maintenance or otherwise to any part of the Estate Buildings or the Estate otherwise than the Premises.
9. To apply on Form RX1 for the Restriction to be entered on the register in accordance with clause 14 hereof

K) Schedule 5 Part I - The Estate Services

The Schedule shall be amended so that it shall read as follows:

- 1 To repair and maintain to a reasonable standard and where necessary renew those parts of the accessways footpaths forecourts boundary walls and fences railings Parking Spaces visitors and other parking spaces and the structures enclosing or associated with the parking spaces and all other areas at the Estate which fall within the Estate Communal Areas or which are excluded from any demise and which are not maintained at public expense but not including the walls and railings which divide the terraces of the Flats and Townhouses
- 2 To repair and maintain to a reasonable standard all the parking spaces at the Estate
- 3 To provide lighting to the Estate Communal Areas so far as the Management Company considers necessary.
- 4 To keep any planted or landscaped area within the Estate Communal Areas in good order and condition
- 5 To insure the Estate Communal Areas and all other areas within the Estate of which do not form part of the Building and to reinstate the same in the same

1.4 The walls and railings dividing the Townhouses and the Flats and Townhouses

2. As often as reasonably required in accordance with good building practice and paint manufacturers recommendations to decorate those parts of the exterior of the Building and all the exterior of the garage door and frames which are usually painted or decorated.

Part II – The Building Costs

Part II shall be amended so that Clause 4 and 5 shall be deleted.

Part III – The Building Service Charge

Part III shall be amended so that clause 2 shall read as follows:

The Tenant shall pay to the Management Company a provisional sum on account of the Building Service Charge based on such estimate by two equal payments on the First day of January and First day of July in each year.

N) The following additional Schedule shall be added to the lease as **Schedule 6A**

Podium Services and Costs

Part I

The Podium Services

To maintain repair and where necessary renew the Podium

Part II

The Podium Costs

- 1 The costs and expenses incurred by the Management Company in the provision of the Podium Services
- 2 The costs of complying with the provision of every statute and every regulation order or requirement of any competent local or other authority in respect of the Podium or any part thereof
- 3 The creation of such reserves or sinking funds against any future liabilities of the Management Company as may be reasonably appropriate for the provision

of the Podium Services and any interest or other charges on any borrowing or securing any sums for the purpose of providing the Podium Services

- 4 All fees charges and expenses payable to any surveyor accountant solicitor architect or other professional or competent adviser or any agent or contractor in connection with the management and/or maintenance of the Podium and in or in connection with the preparation or auditing of the Podium costs accounts and the collection of the Podium Charge.
- 5 Any Value Added Tax or other tax payable in respect of any costs expenses or outgoings referred to in this Schedule or in respect of the Podium Charge paid by the Tenant and the tenants of the other Estate Buildings.
- 6 All other expenses (if any) incurred by the Management Company or its agents in or about the maintenance and proper and convenient management and care of the Podium

Part III

The Podium Charge

- 1 The Management Company shall prepare an estimate of the Podium Costs in respect of each calendar year
- 2 The tenant shall pay to the Management Company a provisional sum on account of the Podium Charge based on such estimate by two equal payments on the First day of January and First day of July in that year.
- 3 After the expiry of each calendar year the Management Company shall prepare and serve on the Tenant by delivery to the Premises an account of the actual Podium Costs for that year.
- 4 In the event of the actual Podium Costs in any calendar year exceeding the Management Company's estimate the Tenant shall pay to the Management Company the deficit in the Podium Charge due from the Tenant on demand and if the estimate exceeds the actual Podium Costs any excess paid by the

Tenant shall be set off against the payments of the Podium Charge to be made by the Tenant for the following year.

- 5 The Management Company shall be entitled to vary the period in respect of which the accounts of the Podium Costs are prepared and the dates of the payment of the provisional sums on account of the Podium Charge.

- 6 If at any time during the Perpetuity Period the total number of Flats and Townhouses enjoying the benefit of the Podium Services shall be more or less than the seventy eight (78) Flats and Townhouses intended to form part of the Estate Buildings and such increase or decrease shall be on a permanent basis the proportion referred to in Clause 1.10 shall be varied with the effect from the commencement of the calendar year (or other period in respect of which the accounts of the Podium Costs are prepared) following the increase or decrease to such proportion as the Management Company shall determine as fair and reasonable having regard to the increase or decrease in question

O) General

References in Clauses 5.2, Schedule 2 paragraphs 3, 4, 6 and 7, Schedule 3 paragraphs 1, 2 & 3, Schedule 4 Part I paragraph 4, Part II paragraph 1 and 5, Schedule 4 Part III paragraphs 12 and 14 to 'the Building' shall be deemed to be references to the Estate Buildings.

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OF LEASES OF 78 DWELLING HOUSES AT HAMILTON QUAY SOVEREIGN
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PARTIES: -

**GROSVENOR QUAY LIMITED
and
HAMILTON QUAY MANAGEMENT COMPANY LIMITED
and
LESSEES OF 78 DWELLING HOUSES AT HAMILTON QUAY**

**SCHEDULE OF AMENDMENTS TO BE MADE BY ORDER UNDER S35 OF THE
LANDLORD AND TENANT ACT 1987**

A) The Particulars shall be added to and amended as follows:

1.

1.10 **Podium Charge Proportion:** 1.282%

B) **THE DEFINITIONS AND INTERPRETATIONS** in clause 2 shall be amended by the inclusion of the following definitions:

Estate Buildings: All Flats and Townhouses erected at the Estate of which the Premises form part.

Podium: The structure between the ground floor and the lower ground floor (including the concrete membranes, damp proof courses and drainage facilities thereof) contained within the blue line on Plan 2 (but excluding the surfacing and supporting materials of the surfacing of any external areas included in the demise of any Flat or Townhouse)

Podium Charge: The Podium Charge Proportion specified in Clause 1.10 (subject to paragraph 6 of Part III of Schedule 6A) of the Podium Costs or estimate thereof payable in accordance with Part III of Schedule 6A

Podium Costs: the costs and expenses incurred by the Management Company described in Part II of Schedule 6A

Podium Services: the services set out in Part 1 of Schedule 6A

Rents: the Rent the Insurance Rent the Estate Charge the Building Service Charge and the Podium Charge.

Townhouses: the Townhouses forming part of the Estate

D) **THE TENANT'S COVENANTS WITH THE MANAGEMENT COMPANY** in clause 6 shall be amended as follows:

6.1 To pay the Estate Charge the Building Service Charge and the Podium Charge in the manner set out in Schedule 5 Schedule 6 and Schedule 6A

E) MANAGEMENT COMPANY COVENANTS in clause 7 shall be amended as follows:

7.1 The Management Company covenants with the Tenant that subject to the payment of the Estate Charge the Building Service Charge and the Podium Charge it will provide and perform the Estate Services the Building Services the Podium Services and will give any consent required to the Land Registry to allow registration of any proposed dealing in the Premises provided that the Tenant shall have observed and performed the covenants on his behalf contained in this Lease.

7.2 The Management Company shall not be liable for any failure or interruption of any of the Estate Services the Building Services or the Podium Services by reason of any damage or destruction of any installation or apparatus or mechanical breakdown or other cause beyond its control provided that the Management Company uses and continues to use all reasonable endeavours to restore the Estate Service the Building Service or the Podium Service in question.

F) LANDLORD'S COVENANTS contained in Clause 8 shall be amended

Clause 8.4 shall read as follows:

If the Management Company shall fail to perform its obligations contained in Clause 7 hereof then at the request of the Tenant and subject to the payment of the Estate Charge the Building Service Charge and the Podium Charge the Landlord shall enter the Estate and perform all or any of those obligations of the Management Company that have not been performed and the costs of so doing shall be recoverable by the Landlord in the Estate Charge the Building Service Charge and the Podium Charge

G) Schedule 1 - The Premises

The Premises demised by the lease shall be amended as follows:

- 2.5 Any air space above the ceiling or below the floor to the Flat
- 2.6 The foundations below the surface of the Garage the Parking Space and the Storage Area
- 2.7 The structure of the balcony including the waterproof membrane and balcony balustrades (including the balustrades of the Juliet balconies) but not the glass therein
- 2.8 The Podium beneath the surfacing and supporting materials of any demised terrace and the drainage facilities serving such terrace from its junction with the Podium and any subsurface drainage serving the Podium.
- 2.9 The walls and railings dividing the terraces incorporated into the Flats and Townhouses or forming the front and rear boundaries of an part of the Estate Buildings or dividing any Flat or Townhouse from Estate Communal Areas.

(H) Schedule 2 – Rights Granted

Clause 7 of Schedule 2 shall be amended so as to read:

Clause 7

The right to use the drying areas (if any) and the refuse stores in the Estate Communal Areas coloured orange on Plan 2 at the Estate Buildings and any communal refuse receptacles provided by the Landlord in common with all those entitled to the like right for the disposal of suitably wrapped household refuse

I) Schedule 3 – Rights Excepted

Clause 3

Such rights of access to and entry upon the Premises by the Landlord and the Management Company and the tenants of the other Flats or Townhouses as are necessary for the inspection cleansing maintenance repair and decoration renewal and reinstatement of other parts of the Estate Buildings and the Estate including the harbour wall and any Service Installations serving other parts of the

1. All that Flat demised in Clause 1.2 forming part of the Estate Buildings shortly described in Clause 1.2 including the following:
 - 1.1. The ceiling and floor surface screed and sound insulation material beneath the screed of the Flat (but not the structure supporting the same)
 - 1.2. The doors door frames windows glass and window frames to the Flat except the external decorative surfaces of the entrance doors and door frames and window frames
 - 1.3. All the non-load bearing walls within the Flat
 - 1.4. One half of the non-load bearing walls bounding the Flat and separating the Flat from any other part of the Estate Buildings severed medially.
 - 1.5. The plaster or plaster board surfaces on the load bearing walls within and bounding the Flat and on the external walls of the Flat
 - 1.6. The top surface layer of the Garage (if any) and the Storage Area (if any)
 - 1.7. The balcony flooring and supporting materials laid above the waterproof membrane of the balcony structure and glazing panels of the balcony (if any)
 - 1.8. The surfacing and supporting materials of the surfacing of the terrace (if any) together with the surface drainage gullies and access grids thereof.
 - 1.9. All service installations exclusively serving the Flat.
2. But does not include:-
 - 2.1 Any structural parts of the Building including where appropriate the roof the foundations and the Podium
 - 2.2 The load bearing and external walls of the Building except those surfaces described above.
 - 2.3 The painted or other external surface of the entrance door and door frames and the garage doors and door frame and the window frames of the Flat and of the railings (if any) on the front side and rear boundaries of the Flat
 - 2.4 The service installations within or serving the Flat but not used exclusively for the Flat

- 5 To insure the Estate Communal Areas and all other areas within the Estate which do not form part of the Building and to reinstate the same in the same manner as is required in respect of the insurance of the Building in Clause 13 of this lease
- 6 To repair and maintain all Service Installations in under or upon the Estate or Estate Buildings which do not exclusively serve an individual Flat or Townhouse (excluding those within the Podium Costs)

L) Schedule 5 - Part II – Estate Management Costs

The following clause shall be added

9. The amount of any contribution towards the expense of making repairing maintaining rebuilding or renewing any Service Installations which are used by the Building in common with other Estate Buildings or other parts of the Estate or other adjoining or neighbouring property which the Management Company is called upon to make and the annual rentals or other expenditure involved in supplying and maintaining an entry telephone system and any communal television or radio aerial system CCTV system any similar systems or services and any lightning conductor gate or shutter as may from time to time be installed in the Estate Buildings.

M) Schedule 6 Part I – The Building Services

Part I of the Schedule shall be amended so that clause 1 shall read:

1. To maintain repair and where necessary renew:
 - 1.1. The main structure of the Building including the foundations the roof and the structure of the balconies including the waterproof membrane and also the balcony balustrades but excluding the Podium
 - 1.2. all such Service Installations (including the lift) in under or upon the Building which serve more than one of the Flats.
 - 1.3. the Common Parts

Estate Buildings or the Estate as are necessary for the performance of the obligations of the Management Company in this Lease or the tenant under a lease of any other Flat or Townhouse the person exercising such rights giving reasonable prior notice (except in the case of emergency) and making good any damage thereby occasioned

J) Schedule 4 Part I

This Schedule shall be amended as follows

Clause 4

Not to carry out any work or decoration repair maintenance or otherwise to any part of the Estate Buildings or the Estate otherwise than the Premises.

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K) Schedule 5 Part I The Estate Services

The Schedule shall be amended so that it shall read as follows:

- 1 To repair and maintain to a reasonable standard and where necessary renew those parts of the accessways footpaths forecourts boundary walls and fences railings Parking Spaces visitors and other parking spaces and the structures enclosing or associated with the parking spaces and all other areas at the Estate which fall within the Estate Communal Areas or which are excluded from any demise and which are not maintained at public expense but not including the walls and railings which divide the terraces of the Flats and Townhouses
- 2 To repair and maintain to a reasonable standard all the parking spaces at the Estate
- 3 To provide lighting to the Estate Communal Areas so far as the Management Company considers necessary.
- 4 To keep any planted or landscaped area within the Estate Communal Areas in good order and condition

1.4. The walls and railings dividing the Flats and the Flats and Townhouses

4. As often as reasonably required in accordance with good building practice and paint manufacturers recommendations to decorate the Common Parts and those parts of the exterior of the Building and the exterior of the garage doors and frames which are usually painted or decorated

N) Schedule 6 - Part II – The Building Costs

Shall be amended as follows:

- 4 The amount of any contribution towards the expense of making repairing maintaining or renewing any Service Installations serving the Building including the lift and all associated plant and machinery.
- 5 This clause shall be deleted

Schedule 6 Part III – The Building Service Charge

Schedule 6 Part III of the Lease shall be amended so that clause 2 shall read as follows:

2. The Tenant shall pay the Management Company a provisional sum on account of the Building Service Charge based on such estimate by two equal payments on the First day of January and First day of July in each year.

O) The following additional Schedule shall be added to the lease as **Schedule 6A**

Part I

The Podium Services

To maintain repair and where necessary renew the Podium

Part II

The Podium Costs

- 1 The costs and expenses incurred by the Management Company in the provision of Podium Services
- 2 The costs of complying with the provision of every statute and every regulation order or requirement of any competent local or other authority in respect of the Podium or any part thereof
- 3 The creation of such reserves or sinking funds against any future liabilities of the Management Company as may be reasonably appropriate for the provision of the Podium Services and any interest or other charges on any borrowing or securing any sums for the purpose of providing the Podium Services
- 4 All fees charges and expenses payable to any surveyor accountant solicitor architect or other professional or competent adviser or any agent or contractor in connection with the management and/or maintenance of the Podium and in or in connection with the preparation or auditing of the Podium costs accounts and the collection of the Podium Charge.
- 5 Any Value Added Tax or other tax payable in respect of any costs expenses or outgoings referred to in this Schedule or in respect of the Podium Charge paid by the Tenant and the tenants of the other Estate Buildings.
- 6 All other expenses (if any) incurred by the Management Company or its agents in or about the maintenance and proper and convenient management and care of the Podium.

Part III

The Podium Charge

- 1 The Management Company shall prepare an estimate of the Podium Costs in respect of each calendar year
- 2 The tenant shall pay to the Management Company a provisional sum on account of the Podium Charge based on such estimate by two equal payments on the First day of January and First day of July in that year.

- 3 After the expiry of each calendar year the Management Company shall prepare and serve on the Tenant by delivery to the Premises an account of the actual Podium Costs for that year.
- 4 In the event of the actual Podium Costs in any calendar year exceeding the Management Company's estimate the Tenant shall pay to the Management Company the deficit in the Podium Charge due from the Tenant on demand and if the estimate exceeds the actual Podium Costs any excess paid by the Tenant shall be set off against the payments of the Podium Charge to be made by the Tenant for the following year.
- 5 The Management Company shall be entitled to vary the period in respect of which the accounts of the Podium Costs are prepared and the dates of the payment of the provisional sums on account of the Podium Charge.
- 6 If at any time during the Perpetuity Period the total number of Flats and Townhouses enjoying the benefit of the Podium Services shall be more or less than the seventy eight (78) Flats and Townhouses intended to form part of the Estate Buildings and such increase or decrease shall be on a permanent basis the proportion referred to in Clause 1.10 shall be varied with the effect from the commencement of the calendar year (or other period in respect of which the accounts of the Podium Costs are prepared) following the increase or decrease to such proportion as the Management Company shall determine as fair and reasonable having regard to the increase or decrease in question

P) General

References in Clauses 5.2, 13.1, Schedule 1, paragraph 1 and 1.4 Schedule 2 paragraphs 5, 6 and 8 and 9, Schedule 3 paragraphs 1, 2 & 3, Schedule 4 Part I paragraph 4, Schedule 4 Part II paragraphs 1 and 5, Part III paragraphs 12 and 14 to 'the Building' shall be deemed to be references to the Estate Buildings.