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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

**Case Reference:** LON/00AU/LSC/2012/0232

**Premises:** IMPERIAL HALL, 104-122 CITY ROAD,  
LONDON EC1V 2NR

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**Applicant(s):** PATRICK VON SYCHOWSKI and ANNALISA  
JEFFERIES (LESSEES OF FLAT 1) & 57  
OTHERS (AS IDENTIFIED IN SCHEDULE TO  
APPLICATION)

**Representative:** MAXWELL WINWARD LLP SOLICITORS

**Respondent(s):** COLUMBIA HOUSE PROPERTIES (NO 3) LTD

**Representative:** STERLING ESTATES MANAGEMENT LTD

**Date of hearing:** 6 SEPTEMBER 2012

**Appearance for Applicant(s):** (1) Ms K Helmore (Counsel) instructed by Mr  
Nicholson (Maxwell Winward LLP  
solicitors)  
(2) Mr P Von Sychowski (Flat 1)  
(3) Mr P Burditt (Flat 25)  
(4) Mr S McCabe (Flat 42)  
(5) Mr B Asmar (Flat 48)  
(6) Ms K Long (Flat 59)

**Appearance for Respondent(s):** (1) Ms E Gibbons (Counsel)  
(2) Mr P Sherreard (Property and Systems  
Manager, AIRPM)  
(3) Mr S Ahmed (Property Manager)

**Leasehold Valuation Tribunal:** (1) MS L SMITH (LEGAL CHAIR)  
(2) MR D BANFIELD FRICS  
(3) MS S WILBY

**Date of decision:** 17 September 2012

### **Decisions of the Tribunal**

- (1) The Tribunal determines that the Respondent is not precluded in principle from recovering the additional items of service charge for the period 1 October 2010 to 4 April 2011 as contained in the revised service charge account dated 5 March 2012 and served on 12 March 2012. Whether the Respondent is so precluded depends on the nature and extent of the sums claimed.
- (2) The Respondent would not be precluded by the principles of res judicata or issue estoppel from recovering the sum of £69,660 claimed as “compensation for settlement with leaseholder” in the revised service charge account but the Tribunal determines that this sum is not recoverable as part of the service charge for the reasons set out below.
- (3) The Tribunal makes the determinations as set out under the various headings in this Decision
- (4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Lessor’s costs of the Tribunal proceedings may be passed to the Lessees through any service charge

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”), as to the amount of service charges, payable by the Applicants in respect of the period 1 October 2010 – 4 April 2011.
2. The relevant legal provisions are set out in Appendix 1 to this decision.

### **The hearing**

3. The Applicant and Respondent were represented by Counsel at the hearing and the Tribunal was greatly assisted by their very able submissions.
4. At the start of the hearing, Counsel informed the Tribunal that as a result of negotiations prior to the hearing, a commercial settlement had been reached in relation to 2 of the items which were the subject of the original application. These were a sum of £7500 claimed as compensation for loss of car parking spaces and a sum of £3150 claimed as additional management fees. Ms Helmore explained that the agreement was without prejudice to the Applicants’ preliminary issue concerning the application of the principles of res judicata and issue estoppel. The Applicants agreed to pay the sum of £3150 as additional management fees whether or not they succeeded on the preliminary issue and the Respondent agreed to forego the claim for compensation for loss of parking spaces and would bring no further claims in relation to parking.

### The background

5. The property which is the subject of this application is a Grade II listed building converted into 63 residential units let on long leases together with commercial premises and a number of car parking spaces ("the Property"). The Respondent is the freeholder of the Property and the Applicants are long leaseholders of various flats within the Property.
6. By an application dated 29 April 2009 the Respondent sought a determination of various service charges for anticipated major works to the Property. In its decision of 23 September 2009 (LON/00AU/LSC/2009/0249) the Tribunal determined that such sums were reasonable.
7. As of 4 April 2011, the Property has been managed by Imperial Hall RTM Company ("the RTM Company").
8. In July 2011, the Respondent submitted to the Applicants a certified account ("the Original Account") of the expenditure incurred for the period 1 October 2010 to 4 April 2011. A majority of the Lessees of the Property applied to the Tribunal in respect of certain items in the Original Account. By a decision dated 21 December 2011 (LON/00AU/LSC/2011/0520) the Tribunal disallowed 5 of the items challenged and the Respondent was obliged as a result of that decision to refund £15,000 to the Applicants.
9. By a letter dated 13 March 2012 the Respondent served on the Applicants a revised account dated 5 March 2012 ("the Revised Account") for the service charge period 1 October 2010 to 4 April 2011. It added 3 additional sums ("the Additional Items") :-
  - (i) Compensation claims of £7500 for loss of car parking spaces;
  - (ii) A compensation reserve of £75,000 in respect of a claim by an individual leaseholder;
  - (iii) Additional management fees of £3150.
10. By this application dated 30 March 2012, the Applicants challenged the inclusion of the Additional Items in the Revised Account. They did so on the basis that the Respondent was precluded by operation of the principles of res judicata or issue estoppel from recovering any of the Additional Items ("the Preliminary Issue"). They also argued that the Additional Items were not recoverable as service charge (in relation to items (i) and (ii)) and, in relation to item (iii) that the sum claimed was not reasonably incurred and unreasonable in amount. As noted at paragraph 4 above, following negotiations the parties were able to narrow the issue to item (ii) (hereafter referred to as "the Compensation Claim").
11. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

12. The Tribunal had before it a specimen lease relating to Flat 7 dated 9 June 1999 which demised that flat for a period of 125 years from 25 March 1997 ("the Lease"). It was informed that the leases in relation to other flats in the Property were in the same terms. Clause 7 of the Flat Lease requires the Lessor to maintain and keep the Property in good and substantial repair and to provide services. Clauses 2 and 5 of the Flat Lease require the Lessee to pay a contribution of 2% to the costs and expenses incurred by the Lessor in compliance with its obligations under Clause 7.01 by 2 equal half yearly payments on account and in advance on 25<sup>th</sup> March and 29<sup>th</sup> September in each year. The specific provisions of the Lease are referred to below, where appropriate, and are set out so far as relevant in Appendix 2 to this Decision.

### The issues

13. At the start of the hearing and following the agreement referred to at paragraph 4 above, Counsel for the parties identified the remaining relevant issues for determination as follows:
- (i) The Preliminary Issue;
  - (ii) The payability and/or reasonableness of service charges in the sum of £75000 in relation to the Compensation Claim.
14. Having heard submissions from Counsel for the parties and considered all of the legal authorities and documents provided, the Tribunal has made determinations on the various issues as follows.

### Preliminary Issue

#### The Tribunal's decision

15. The Tribunal determines that the Respondent is not precluded in principle from recovering additional service charges subsequent to the revised service charge account dated 5 March 2012 and served on 12 March 2012. Whether the Respondent is so precluded depends on the nature and extent of the amounts claimed.

### Reasons for the Tribunal's decision

16. The principle of res judicata and issue estoppel can perhaps most succinctly be summarised from the seminal case of ***Henderson v Henderson (1843) 3 Hare 100*** as follows:-
- "...where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion*

*and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time”*

17. The Applicants' case can be shortly stated. The Original Account, certified as it was by an accountant in accordance with clause 5.05 of the Lease, was conclusive as to the service charges due under the Lease for the period 1 October 2010 to 4 April 2011 (after which the Respondent was not entitled to claim service charges). As such the Tribunal's decision of 21 December 2011 was a final determination as to the service charge payable for that period and the account could not be reopened. None of the Additional Items could therefore be claimed as a matter of law.
18. The Respondent did not dispute that the Original Account was conclusive as to the sums claimed in that account. However, the Applicants were liable to pay service charges in accordance with the clauses in the Lease. Clause 5.02 of the Lease required payment of service charges by 2 equal half yearly payments on account and in advance on 25<sup>th</sup> March and 29<sup>th</sup> September in each year. Any balancing charge was payable when demanded after the end of the accounting year which the Lease provides is 25<sup>th</sup> March. By convention, the service charge year was varied so as to run from 1<sup>st</sup> October to 30<sup>th</sup> September. The Applicants were liable to pay on account charges on 1<sup>st</sup> October and 1<sup>st</sup> April of each year and any balancing charges when demanded after 30<sup>th</sup> September.
19. The Respondent submitted that the problem here arose from the acquisition by the RTM Company on 4 April 2011. It was this which had triggered the service of the Original Account. The Respondent accepted that the Applicants had in fact had no liability under the Lease to pay the amounts demanded in the Original Account at the time this had been served but had not taken issue with this, resorting instead to an application to the Tribunal to determine whether the amounts were reasonably payable. Whether this was an appropriate way for the Respondent to proceed is not a matter which the Tribunal needs to determine here but the Tribunal notes in any event that by the time of both the hearing and the decision, the 30<sup>th</sup> September deadline would have expired. Further, the certification provisions in clause 5.05 of the Lease apply equally to the conclusiveness of the contributions as well as the balancing charge.
20. The Respondent submitted that the problem in this case arose because the provisions of s94 of the Commonhold and Leasehold Reform Act 2002 did not provide a mechanism or guidance as to how the previous lessor should recover service charges owing to it where a RTM company has acquired its interest after the acquisition date but in relation to costs incurred prior to the acquisition date. Ms Gibbons referred in this regard to the decision of the Upper Tribunal in ***OM Ltd v New River Head RTM Company Ltd [2010] UKUT 394 (LC)***. This was authority for the proposition that a lessor did not lose its ability to recover service charges in relation to the period prior to acquisition from the lessees. Ms Gibbons gave an example of a boiler which

broke down before the acquisition date and where the lessor would be responsible for payment but where the invoice was not received until well after the acquisition date. If there were no RTM company, the lessor could simply recover the cost of the later invoice in the next service charge year. In circumstances where a RTM company had acquired its interest in the interim, it could not be right that the lessor was not able to recover the cost even if this fell into a new service charge period (provided of course that the costs were incurred in the period prior to acquisition). Ms Gibbons therefore submitted that the Preliminary Issue was in any event academic since it would remain open to the Respondent to serve a further account either in relation to the period 4 April 2011 to end of that year or even in relation to the service charge year 1 October 2011 to 30 September 2012.

21. Ms Helmore in response suggested that this rather superficially attractive submission was wrong because issue estoppel would prevent the Respondent from claiming further sums which were due at the time of the Original Account and should have been included in the previous Tribunal application. Further, the submission was in error as it failed to take into account that, unlike the position where there is no RTM acquisition, there were not 2 periods at issue in this case but only the 1 period of 1 October 2010 to 4 April 2011.
22. The Tribunal takes the view that the Preliminary Issue cannot be determined in a vacuum without looking at the individual items disputed. It is necessary to consider whether those items could or should have been included in the Original Account and what the Tribunal's decision in relation to the Original Account actually decided.
23. The Tribunal of course accepts that in relation to those items actually included in the Original Account, there can be no reopening or redetermination. The question is whether the certificate of 4 July 2011 was conclusive as to the Applicants' liability for the service charge year 2010-2011 or whether further items which come to light after the Original Account (or which were known about but for some reason were not included) could or should have been included and whether if they should, the Respondent is precluded from claiming them later.
24. In the Tribunal's view, whether the Original Account was conclusive as to the Applicants' liability for the service charge year 2010-2011 depends on the contractual obligations to pay the service charge. That is provided for by clause 5.02 of the Lease and not by the certification of the Original Account. To this extent, the Tribunal agrees with the Respondent that it was not precluded by service of the Original Account from claiming further sums thereafter (limited of course to those costs incurred before the acquisition date). The Tribunal's decision in this regard appears to be supported by the case of *Universities Superannuation Scheme Ltd v Marks & Spencer plc [1999] L & TR L & TR 237* even though this authority was actually relied upon by the Applicants. It was therefore open to the Respondent to serve the Revised Account for the Additional Items.

25. In relation to the question of whether the claims for the Additional Items are res judicata or the Respondent is precluded by issue estoppel from claiming them later as a result of the earlier Tribunal application and decision, in the view of the Tribunal this depends on whether the costs were incurred prior to the acquisition date but only payable after the date of the Original Account. The Tribunal notes that, in relation to the Compensation Claim which is the only remaining item for the Tribunal's determination, the Respondent in fact included this as a reserve item in the Revised Account. In the Tribunal's view, whilst the Compensation Claim was known about at the time of the Original Account, it was known about only as a potential liability and not one which had crystallised. The Tribunal considers therefore that it would have been open to the Respondent in relation to that item to make no demand until such time as the liability for and quantum of that claim was determined (subject to what the Tribunal finds below in relation to whether the Compensation Claim is recoverable as a service charge). Payment of the sums agreed in the Compensation Claim were not in fact made until June and July 2012.
26. Whether the same can be said of the other Additional Items is not something which the Tribunal needs to determine since those items are the subject of the agreement between the parties.

### **The Compensation Claim**

#### **The Tribunal's decision**

27. The Respondent is not entitled to recover the Compensation Claim as part of the service charge.

#### **Reasons for the Tribunal's decision**

28. The Applicants' case was again a simple one. The Compensation Claim was a claim for damages against the Respondent for breach of the repairing and/or insuring covenant and for derogation from grant. Those were simply not matters which could be claimed as part of the service charge. Such a claim could be relevant to the service charge as a lessee's right to set off but otherwise there was no relationship between the two. No authority was provided for this proposition and Ms Helmore had been unable to find any. She submitted that this was unsurprising since it was such an astonishing proposition that a lessor should be able to claim such sums through the service charges. Service charges were recoverable to enable the lessor to maintain and repair the building and not to compensate a lessor for mismanagement and failure to repair.
29. Ms Gibbons submitted that this was a matter of labelling of the Compensation Claim. The Tribunal had determined in 2009 that the Respondent was entitled to claim for the costs of the works of structural repair which had led to the Compensation Claim. The losses claimed by the lessee of the flat affected by the structural works were simply part of the costs of those works.
30. The Tribunal disagrees. In the end, what the Applicants are obliged to pay by way of service charges is governed by the provisions of the Lease. Clause 5.01 obliges the Applicants to pay the reasonable costs and expenses incurred by the Lessor in compliance with its obligations under Clause 7.01.

Clause 7.01.1 requires the Lessor to maintain the Property and keep it in repair. As such, it is unsurprising that the earlier Tribunal determined that the costs of the structural works were themselves costs which could be recovered by way of the service charge. However, the Lessor's obligations to compensate a Lessee in relation to the inconvenience and losses arising from the works are too remote and are not costs recoverable under the Lease. Indeed the Lease contains 2 clauses (clause 4.03 and 8.01(e)) which expressly exclude a Lessor's obligation to a Lessee in relation to such claims.

#### **Application under s.20C and refund of fees**

31. In the application form and at the hearing, the Applicants applied for an order under section 20C of the 1985. Although the Applicants have not succeeded on the Preliminary Issue, they have succeeded in relation to the Compensation Claim. The Tribunal was informed that the agreement between the parties did not include the costs of the application. However, since the Compensation Claim was the largest of the Additional Items, the Tribunal takes the view that the Applicants have substantially succeeded in their application and that it is therefore just and equitable for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Chairman:

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Ms L Smith

Date:

17 September 2012



## 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 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;
  - (b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  - (c) 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;
  - (d) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (e) 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.

## Appendix 2: Relevant Clauses of the Lease

### Clause 2

TO HOLD the same unto the Lessee for the term of years and from the date as specified in Paragraph 8 of the Particulars YIELDING AND PAYING therefor as provided in Paragraph 7 of the Particulars by two equal half-yearly payments in advance on the 25<sup>th</sup> day of March and 29<sup>th</sup> day of September in each year ....and also paying firstly the moneys covenanted to be paid by the Lessee pursuant to the provision of Clause 5.01 of the Lease....

### Clause 4

In accordance with the said general scheme and for the benefit of the Owners (other than lessees at rack rents) the Lessee hereby covenants with the Lessor and the Owners (other than lessees at rack rents) and with each of them that the Lessee will from time to time and at all times hereafter during the said term

4.03 Permit the Lessor and its Agents and all persons authorized by either of them at all reasonable times and upon three days notice (other than in cases of emergency) to enter and examine the state and condition of the Demised Premises ....to execute and do any repairs or work for which the Lessor is liable under its covenants hereinafter contained and for the purposes aforesaid and also for the purpose of executing any repairs or work to or in connection with any premises above or below or adjoining the Demised Premises or with any adjoining premises to enter upon the Demised Premises or any part thereof ...the person exercising such right thereupon making good any damage thereby occasioned to the Demised Premises carrying out as little damage and inconvenience as possible but making no further or other compensation whatsoever.

### Clause 5

5.01 The Lessee hereby further covenants with the Lessor that he the Lessee will in manner hereinafter provided pay to the Lessor the service charge percentage specified in paragraph 9 of the Particulars (hereinafter called "the Contribution") of the reasonable costs and expenses incurred by the Lessor in compliance with its obligations under Clause 7.01 hereof and of all other costs and expenses reasonably incurred in the proper management of the Building together with the insurance and other premiums payable by the Lessor under the terms hereof together with such monies as the Lessor shall in its reasonable discretion deem appropriate to build up as a reasonable reserve to meet the maintenance expenditure of subsequent years (hereinafter called "the Expenditure")

5.02 The Contribution shall be paid upon demand by two equal half yearly payments on account and in advance on the 25<sup>th</sup> day of March and 29<sup>th</sup> day of September in each year the amount of each such payment to be determined by the Lessor taking account of the likely Expenditure the first of such payments being a proportion of the Contribution calculated from the date hereof until the date next fixed for payment to be paid on the execution hereof

5.03 If for any period of twelve months ending on the 25<sup>th</sup> day of March the Contributions shall have proved to be:-

- (a) insufficient to meet the Lessee's share of the Expenditure the Lessee shall forthwith upon the Lessor making demand at any time after the end of such period of twelve months pay the shortfall in respect of that period or
- (b) too great then the surplus so paid shall be carried forward by the Lessor and credited to the account of the Lessee in computing the Contribution in succeeding accounting periods as aforesaid

5.04 The Lessor shall as soon after 25<sup>th</sup> day of March in each year as reasonably practicable send the Lessee a statement of receipts and expenditure for the year in question

5.05 In the event of any dispute under this Clause as to the amount of the Contribution or shortfall payable at any time the certificate of the Accountants for the time being of the Lessor (acting as auditors and not as arbitrators) shall (except in the case of manifest error) be conclusive evidence of the amount of the Expenditure and of the correctness of the demands for the Contribution and for the shortfall

#### Clause 6

THE Lessor hereby covenants with the Lessee with the intent to bind itself and its successors in title the person for the time being entitled to the reversion of the Demised Premises immediately expectant hereto

6.04 To insure the Building (unless such insurance shall be vitiated by any act or default of the Lessee or any person claiming through the Lessee or his or their servants agents licensees or visitors) against loss or damage by fire lightning riot civil commotion subsidence landslip heave malicious damage sort or tempest bursting or overflowing of water tanks apparatus or pipes flood and impact by road vehicles explosion earthquake aircraft other aerial devices or articles dropped from such devices and such other risks as normally insured and risk of explosion and damage in connection with the lifts and lift apparatus and all plant associated therewith and such other risks (if any) as the Lessor thinks fit in some Insurance Office of repute through the agency of the Lessors in the full reinstatement value thereof including an amount to cover professional fees and other incidental expenses in connection with the rebuilding and reinstating thereof and three years loss of the rent receivable from time to time of the Building and to procure the insurance of the fixtures and fittings plant and machinery of the Lessor against such risks as are usually covered by a Comprehensive Policy and to procure the insurance against third party claims made against the Lessor in respect of the management of the Building...

#### Clause 7

7.01 The Lessor further covenants with the Lessee but subject as provided in Clause 8 hereof that (and insofar as the Lessee is concerned so long as the Contribution payable by the Lessee is received by the Lessor in full) it will in a proper manner and at reasonable cost perform the following services and discharge the following functions namely:-

7.01.1 Maintain and keep in good and substantial repair and condition:-

- (a) the Building including the principal internal timbers and the exterior walls and any other structural walls and the roof and foundations thereof with its main water

tanks main drains gutters and rain water pipes (other than those included in this demise or in the demise of any other flat or parking space in the Building)

(c) the Common Parts

(e) all other parts of the Building not included in the foregoing sub-paragraphs (a) to (e) and not included in this demise or the demise of any other flat or part of the Building

7.01.13 To set aside (which setting aside shall for the purposes hereof be deemed an item of expenditure incurred by the Lessor) such sums of money as the Lessor shall reasonably require to meet such future costs as the Lessor shall reasonably expect during the term of this Lease to incur of replacing maintaining and renewing those items which the Lessor has hereby covenanted to replace maintain and renew

#### Clause 8

PROVIDED FURTHER AND IT IS HEREBY AGREED as follows:-

8.01 Except so far as the same may be insured by any policy maintained under Clause 6.04 hereof (and the Lessor undertakes to use all reasonable endeavours to insure the risks referred to below) the Lessor shall not be liable to the Lessee nor shall the Lessee have any claim against the Lessor in respect of:-

(e) any loss or damage or interference or annoyance suffered by the Lessee during the carrying out by the Lessor of repairs decorations additions alterations or other works whether structural or otherwise which may appear to the Lessor to be necessary or desirable to the Demised Premises or to the Building provided the same are carried out with proper skill and care