

FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	LON/OOAG/OLR/2020/0509 CVP REMOTE
Property	:	44a Sarre Road London NW2 3SL
Applicant	:	Philip Richard Morgan and Milly Amelia Glynis Morgan
Representative	:	Ms Brooke Lyne of Counsel
Respondent	:	John Scurry
Representative	:	Non-attendance
Type of application	:	Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Judge Professor Robert M. Abbey Kevin Ridgeway MRICS
Date of determination and venue	:	9 February 2021 by Video hearing at 10 Alfred Place, London WC1E 7LR
Date of decision	:	10 February 2021

DECISION

Summary of the tribunal's decision

- (1) The form of lease to be granted in this case is set out in the attached lease approved by the Tribunal including the lease plan.
- (2) With regard to a costs application made by the applicant against the respondent, the parties are to comply with the Directions set out in clause 15 of this Decision.

Background

- 1. This is an application made by the applicant leaseholder pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid for the grant of a new lease of **44a Sarre Road London NW2 3SL** (the "subject property") and for the determination of lease terms to be included in the new lease of the subject property.
- 2. By a notice of a claim served pursuant to section 42 of the Act, the applicant exercised the right for the grant of a new lease in respect of the subject property. At the time, the applicant held the existing lease of the subject property. The applicant subsequently proposed to pay a premium of £30,500 for the new lease.
- 3. The respondent freeholder served a counter-notice admitting the validity of the claim and subsequently counter-proposed a premium of $\pounds 58,700$ for the grant of a new lease.
- 4. In February 2020 the parties agreed that the premium for the new lease should be \pounds 37,000 but the lease terms were not agreed. The applicant applied to the tribunal for a determination of lease terms to be included in the new lease of the subject property. They did so in the absence of anything from the respondent relating to the possible lease terms.

<u>The issues</u>

Matter not agreed

- 5. The following matter was not agreed:
 - (a) New lease terms

<u>The hearing</u>

- 6. The hearing in this matter took place on 9th February 2021. The applicant was represented by Ms Lyne and the respondent failed to attend.
- 7. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE use for a hearing that is held entirely on the Ministry of Justice Cloud Video Hearing platform with all participants joining from outside the court. A face to face hearing was not held because it was not possible due to the Covid -19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore,

the tribunal had before it an electronic/digital trial bundle of documents prepared by the applicant, in accordance with previous directions.

- 8. The hearing of the application took place on Tuesday 9 February 2021. the applicant attended with representation as more particularly described above. The respondent did not appear nor were there any representatives present on his behalf. The Tribunal decided to proceed in their absence in accordance with Rule 34 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8) as the Tribunal was satisfied that the parties had been notified of the hearing or that reasonable steps had been taken to notify the parties of the hearing; and the Tribunal considered that it was in the interests of justice to proceed with the hearing. The Applicant attended by their representative and were ready to proceed with their application.
- 9. Neither party asked the tribunal to inspect the subject property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.
- 10. The applicant confirmed that they had issued the form of draft lease and in the absence of any submissions from the respondent requested that the Tribunal approve this form of lease as the new lease for enfranchisement purposes.

The tribunal's determination

11. The tribunal determines that the form of lease to be used on the lease extension shall be that produced to the tribunal by the applicant in the form attached including the lease plan.

Reasons for the tribunal's determination

12. The law relating to lease terms on enfranchisement renewal is governed by section 57 of the Leasehold Reform Housing and Urban Development Act 1993 and which can be seen in full in the annex to this decision. Relevant elements are set out below insofar as they relate to this dispute:-

• 57 Terms on which new lease is to be granted.

(1)Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, (6)Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—

(a)it is necessary to do so in order to remedy a defect in the existing lease; or

(b)it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease

- 13. Accordingly, in the main lease amendments need to either remedy a defect in the old lease or it would be unreasonable to not make an amendment in view of changes that have occurred since the old lease was granted and which affects the suitability of the provisions of the old lease. The lease proposed by the applicant and in the absence of any submissions by the respondent would appear to address these issues and has been drafted in the light of the statutory guidance and should therefore be the form of lease on renewal.
- 14. Rights of appeal are set out below.

Costs Directions

- 15. The applicant seeks an Order for costs against the respondent pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 No 1169 (L.8) the details of which are set out below. The applicant produced at the hearing a schedule of costs but also confirmed that this had not been sent to the respondent. In these circumstances the Tribunal decided to issue agreed Directions as follows: -
 - 1. On or before 5pm on 23 February 2021 the applicant is to file with the Tribunal and serve on the respondent the costs schedule with supporting submissions on the costs application
 - 2. On of before 5pm on 9 March 2021 the respondent is to file with the Tribunal and serve on the applicant his comments/submissions on the costs application

3. Thereafter the Tribunal will make a decision on the costs application in the light of the submissions made by the parties.

Name:	Judge Professor Robert. M Abbey	Date:	10 February 2021
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Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Leasehold Reform, Housing and Urban Development Act 1993

57 Terms on which new lease is to be granted.

(1)Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account—

(a)of the omission from the new lease of property included in the existing lease but not comprised in the flat;

(b)of alterations made to the property demised since the grant of the existing lease; or

(c)in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.

(2)Where during the continuance of the new lease the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance—

(a)the new lease may require payments to be made by the tenant (whether as rent or otherwise) in consideration of those matters or in respect of the cost thereof to the landlord; and

(b)(if the terms of the existing lease do not include any provision for the making of any such payments by the tenant or include provision only for the payment of a fixed amount) the terms of the new lease shall make, as from the term date of the existing lease, such provision as may be just—

(i)for the making by the tenant of payments related to the cost from time to time to the landlord, and

(ii)for the tenant's liability to make those payments to be enforceable by distress, re-entry or otherwise in like manner as if it were a liability for payment of rent.

(3)Subject to subsection (4), provision shall be made by the terms of the new lease or by an agreement collateral thereto for the continuance, with any suitable adaptations, of any agreement collateral to the existing lease.

(4)For the purposes of subsections (1) and (3) there shall be excluded from the new lease any term of the existing lease or of any agreement collateral thereto in so far as that term—

(a)provides for or relates to the renewal of the lease,

(b)confers any option to purchase or right of pre-emption in relation to the flat demised by the existing lease, or

(c)provides for the termination of the existing lease before its term date otherwise than in the event of a breach of its terms;

and there shall be made in the terms of the new lease or any agreement collateral thereto such modifications as may be required or appropriate to take account of the exclusion of any such term.

(5)Where the new lease is granted after the term date of the existing lease, then on the grant of the new lease there shall be payable by the tenant to the landlord, as an addition to the rent payable under the existing lease, any amount by which, for the period since the term date or the relevant date (whichever is the later), the sums payable to the landlord in respect of the flat (after making any necessary apportionment) for the matters referred to in subsection (2) fall short in total of the sums that would have been payable for such matters under the new lease if it had been granted on that date; and section 56(3)(a) shall apply accordingly.

(6)Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—

(a)it is necessary to do so in order to remedy a defect in the existing lease; or

(b)it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 No 1169 (L.8)

Orders for costs, reimbursement of fees and interest on costs

13.-(1) The Tribunal may make an order in respect of costs only-

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in— (i) an agricultural land and drainage case,

(ii) a residential property case, or (iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative. (4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings. (6) The Tribunal may not make an order for costs against a person (the "paying person") without

first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the

costs (the "receiving person");

(c) detailed assessment of the whole or a specified part of the costs (including the costs of the

assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(**a**)

, section 74 (interest on judgment debts, etc) of the County Courts Act 1984(**b**) and the County Court (Interest on Judgment Debts) Order 1991(**c**) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

Form of approved lease

Dated

2021

JOHN SCURRY

and

PHILIP RICHARD MORGAN and MILLY AMELIA GLYNIS MORGAN

LEASE

of

First and Second Floor Flat, 44a Sarre Road, London NW2 3SL

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LR1. Date of lease

LR2. Title number(s)

LR2.1 Landlord's title number(s)

NGL130298

LR2.2 Other title numbers

NGL768390

LR3. Parties to this lease

Landlord

John Scurry

44 Sarre Road, London NW2 3SL

Tenant

PHILIP RICHARD MORGAN and MILLY AMELIA GLYNIS MORGAN

44A Sarre Road, West Hampstead, London NW2 3SL

LR4. Property

In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.

See the definition of "Property" in clause 1.1 of and Schedule 1 to this lease.

LR5. Prescribed statements etc.

None.

LR6. Term for which the Property is leased

The term as specified in this lease at clause 1.1 in the definition of "Term".

LR7. Premium

£37,000 (thirty seven thousand pounds).

LR8. Prohibitions or restrictions on disposing of this lease

This lease contains a provision that prohibits or restricts dispositions.

LR9. Rights of acquisition etc.

LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land

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None.

LR9.2 Tenant's covenant to (or offer to) surrender this lease

None.

LR9.3 Landlord's contractual rights to acquire this lease

None.

LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property

None.

LR11. Easements

LR11.1 Easements granted by this lease for the benefit of the Property

The easements granted in clause 3.1 and set out in Schedule 2 to this lease.

The Property is let without the benefit of any existing easements or other rights which are appurtenant to the whole or any part of the Building.

LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property

The easements reserved in clause 4 and set out in Schedule 3 to this lease.

LR12. Estate rentcharge burdening the Property

None.

LR13. Application for standard form of restriction

None.

LR14. Declaration of trust where there is more than one person comprising the Tenant

The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants.

THIS LEASE is made on the 2021

day of

PARTIES

- (1) JOHN SCURRY of 44 Sarre Road, London NW2 3SL (the "Landlord"); and
- (2) **PHILIP RICHARD MORGAN** and **MILLY AMELIA GLYNIS MORGAN** of 44A Sarre Road, West Hampstead, London NW2 3SL (the **"Tenant"**).

IT IS HEREBY AGREED

1. INTERPRETATION

The following definitions and rules of interpretation apply in this lease.

1.1 Definitions:

"Building"	the land and building known as 44 Sarre Road, West Hampstead NW2 3SL registered at HM Land Registry with title number NGL130298 shown coloured red on the Plan.		
"Common Parts"	these are:		
	(a)	the front door, entrance hall, passages, staircases and landings of the Building; and	
	(b)	the external paths, driveways, yard, staircases and Refuse Area at the Building;	
		are not part of the Property or the Flats and which are gnated for use by the tenants and occupiers of the Building.	
"Conditions for Entry"	the conditions to which any right to enter granted in Schedule 2 or excepted and reserved by Schedule 3 is subject, namely that the right shall be subject to the person exercising the right:		
	(a)	effecting entry at a reasonable time (or at any time in an emergency);	
	(b)	giving reasonable notice to the person whose premises are being entered (except in the case of emergency when no notice is required);	
	(c)	causing as little damage as possible to the premises being entered and promptly making good any damage caused to the reasonable satisfaction of the person whose premises are being entered; and	
	(d)	complying with any reasonable requirements of the person whose premises are being entered in relation to the exercise of the right of entry.	

"Flats"	any premises forming part of the Building that are capable of being let and occupied as a single private dwelling (except the Property, and the Retained Parts).		
"Flat Tenants"	the tenants for the time being of the Flats which are let on leases granted for an original term of over 21 years.		
"Insurance Rent"	 (a) a fair and reasonable proportion determined by the Landlord of the cost of any premiums (including any IPT) that the Landlord expends (after any discount or commission is allowed or paid to the Landlord), and any fees and other expenses that the Landlord reasonably incurs, in effecting and maintaining insurance of the Building in accordance with its obligations in paragraph 2 of Schedule 6 including any professional fees for carrying out any insurance valuation of the Reinstatement Cost; 		
	(b) the cost of any additional premiums (including any IPT) and loadings that may be demanded by the Landlord's insurer as a result of any act or default of the Tenant, any undertenant, their workers, contractors or agents or any person at the Property with the express or implied authority of any of them.		
"Insured Risks"	fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, escape of water or oil, impact by aircraft and articles dropped from them, impact by vehicles, riot, civil commotion, malicious damage, theft or attempted theft, falling trees and branches and aerials, subsidence, heave, landslip, collision, accidental damage to underground services, public liability to anyone else and any other risks which the Landlord reasonably decides to insure against from time to time and Insured Risk means any one of the Insured Risks.		
"IPT"	Insurance Premium Tax chargeable under the Finance Act 1994 or any similar replacement or additional tax.		
"Landlord Covenants"	the covenants on the part of the Landlord set out in Schedule 6.		
"Permitted Use"	as a single private dwelling.		
"Plan"	the plan attached to this lease.		
"Premium"	£37,000 (thirty seven thousand pounds).		
"Property"	the first and second floors of the Building known as 44a Sarre Road, London NW2 3SL, the floor plan of which is shown edged		

"Refuse Area" the refuse area in such area as the Landlord shall from time to

red on the Plan and as described in Schedule 1.

time designate.

"Regulations" the covenants on the part of the Tenant set out in Schedule 5.

- "Reinstatement the full cost of reinstatement of the Building as reasonably determined by the Landlord from time to time, taking into account inflation of building costs and including any costs of demolition, site clearance, site protection, shoring up, professional fees and expenses and the costs of any other work to the Building that may be required by law and any VAT on any such costs, fees and expenses.
- "**Rent**" a peppercorn (if demanded).
- "Rent Payment Date" 1 January.
- "Reservations" the rights excepted and reserved to the Landlord in clause 4 and listed in Schedule 3.
- "Retained Parts" all parts of the Building other than the Property and the Flats including:
 - (a) the main structure of the Building including the roof and roof structures, the foundations, the external walls and internal load bearing walls, the structural timbers, the joists and the guttering;
 - (b) all parts of the Building lying below the floor surfaces or above the ceilings;
 - (c) all external decorative surfaces of (i) the Building, (ii) external doors, (iii) external door frames and (iv) external window frames;
 - (d) the Common Parts;
 - (e) the Service Media at the Building; and
 - (f) all boundary walls fences and railings of the Building.
- "Rights" the rights granted by the Landlord to the Tenant in clause 3 and listed in Schedule 2.
- "Service Charge" a fair and reasonable proportion determined by the Landlord of the Service Costs.
- "Service Costs" the total of:
 - (a) all of the costs reasonably and properly incurred of providing the Services and complying with all laws relating to the Retained Parts;
 - (b) the reasonably and properly incurred costs fees and disbursements of any managing agent or other person

retained by the Landlord to act on the Landlord's behalf in connection with the Building or the provision of the Services; and

- (c) all rates, taxes, impositions and outgoings payable in respect of the Common Parts, their use and any works carried out on them (other than any taxes payable by the Landlord in connection with any dealing with or disposition of its reversionary interest in the Building).
- "Service Media" all media for the supply or removal of heat, smoke, electricity, gas, water, sewage, energy, telecommunications, television, data and all other services and utilities and all structures, machinery and equipment ancillary to those media.

"Services" means:

- (a) cleaning, maintaining, decorating, repairing and replacing the Retained Parts;
- (b) providing heating to the internal areas of the Common Parts during such periods of the year as the Landlord reasonably considers appropriate, and cleaning, maintaining, repairing and replacing the heating machinery and equipment;
- (c) lighting the Common Parts and cleaning, maintaining, repairing and replacing lighting, machinery and equipment on the Common Parts;
- (d) cleaning, maintaining, repairing and replacing the furniture, fittings and equipment in the Common Parts;
- (e) cleaning, maintaining, repairing, operating and replacing security machinery and equipment on the Common Parts;
- (f) cleaning the outside of the windows of the Building;
- (g) maintaining any landscaped and grassed areas of the Common Parts;
- (h) cleaning, maintaining, repairing and replacing the floor coverings on the internal areas of the Common Parts; and
- (i) any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building.
- "Tenant Covenants" the covenants on the part of the Tenant set out in Schedule 4 and the Regulations.

"Term" a term of 189 years from and including 25 December 1995.

- "Third Party Rights" all rights, covenants and restrictions affecting the Building including the matters referred to at the date of this lease in entries 1 & 2 of the charges register of title number NGL130298.
- "VAT" value added tax chargeable in the UK.
- 1.2 A reference to this lease, except a reference to the date of this lease or to the grant of this lease, is a reference to this deed and any deed, licence, consent, or other instrument supplemental to it.
- 1.3 A reference to the Landlord includes a reference to the person entitled to the immediate reversion to this lease. A reference to the Tenant includes a reference to the Tenant's personal representatives, successors in title and assigns.
- 1.4 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.
- 1.5 Any obligation in this lease on the Tenant not to do something includes an obligation not to permit or allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
- 1.6 Unless the context otherwise requires, references to the Building, the Common Parts, the Flats, the Property and the Retained Parts are to the whole and any part of it.
- 1.7 Unless the context otherwise requires, any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.8 A person includes a corporate or unincorporated body (whether or not having separate legal personality).
- 1.9 A reference to writing or written excludes fax and email.
- 1.10 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.11 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.12 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.
- 1.13 A reference to the **end of the term** is to the end of the term however it ends.
- 1.14 The Schedules form part of this lease and shall have effect as if set out in full in the body of this lease. Any reference to this lease includes the Schedules.

- 1.15 Clause, Schedule and paragraph headings shall not affect the interpretation of this lease.
- 1.16 References to clauses and Schedules are to the clauses and Schedules of this lease and references to paragraphs are to paragraphs of the relevant Schedule.

2. GRANT

- 2.1 The Landlord lets with full title guarantee the Property to the Tenant for the Permitted Use for the Term.
- 2.2 The grant is made together with the Rights, excepting and reserving the Reservations, and subject to the Third Party Rights.
- 2.3 The grant is made in consideration of the Tenant paying to the Landlord the Premium (receipt of which the Landlord acknowledges) and covenanting to the pay the Landlord the following sums as rent:
 - (a) the Rent;
 - (b) the Insurance Rent;
 - (c) the Service Charge; and
 - (d) all other sums due under this lease.

3. THE RIGHTS

- 3.1 The Landlord grants the Tenant the Rights for all purposes connected with the Permitted Use of the Property, but in each case subject to complying with any Regulations relating to that Right.
- 3.2 The Rights are granted subject to the Third Party Rights and in so far as the Landlord is able to grant them and in common with:
 - (a) the Landlord and all persons authorised by the Landlord; and
 - (b) the Flat Tenants.

4. THE RESERVATIONS

- 4.1 The Reservations are excepted and reserved from this lease for the benefit of the Building.
- 4.2 The Reservations may be exercised by the Landlord notwithstanding that the exercise of any of the Reservations or the works carried out pursuant to them may result in a reduction in the flow of light or air to the Property or the Common Parts or loss of amenity for the Property or the Common Parts provided that they do not materially adversely affect the use and enjoyment of the Property for the Permitted Use.
- 4.3 The Reservations shall be construed as extending to the Landlord and all persons authorised by the Landlord or otherwise entitled to exercise the Reservations.

5. TENANT COVENANTS

- 5.1 The Tenant covenants:
 - (a) with the Landlord to observe and perform the Tenant Covenants; and
 - (b) with the Flat Tenants to observe and perform the Regulations.

6. LANDLORD COVENANTS

- 6.1 Subject to clause 6.2, the Landlord covenants with the Tenant to observe and perform the Landlord Covenants.
- 6.2 The Landlord shall not be liable to the Tenant for any failure or interruption in the Services, unless and until the Tenant has given the Landlord notice of the failure or interruption and the Landlord has not remedied the failure or interruption within a reasonable time of service of that notice.

7. RE-ENTRY

- 7.1 The Landlord may re-enter the Property (or any part of the Property in the name of the whole) at any time after any of the following occurs:
 - (a) any Rent, Insurance Rent, Service Charge or any other rent due under this lease is wholly or partly unpaid one month after becoming payable;
 - (b) any breach of any of the Tenant Covenants.
- 7.2 If the Landlord re-enters the Property (or any part of the Property in the name of the whole) pursuant to this clause, this lease shall immediately end, but without prejudice to any right or remedy of the Landlord in respect of any breach of covenant by the Tenant.

8. SECTION 62 OF THE LAW OF PROPERTY ACT 1925, IMPLIED RIGHTS AND EXISTING APPURTENANT RIGHTS

- 8.1 The grant of this lease does not create by implication any easements or other rights for the benefit of the Property or the Tenant and the operation of section 62 of the Law of Property Act 1925 is excluded.
- 8.2 The Property is let without the benefit of any existing easements or other rights which are appurtenant to the whole or any part of the Building.
- 8.3 For the avoidance of doubt, it is agreed that the Property does not have the benefit of any rights to use the rear garden, save as is permitted under Paragraph 5 of Schedule 2.

9. DESTRUCTION OF BUILDING

- 9.1 If:
 - (a) the Building is damaged or destroyed by an Insured Risk;

- (b) the Property is wholly or partly unfit for occupation and use and/or the Common Parts are damaged or destroyed so as to make the Property inaccessible or unusable; and
- (c) the payment of the insurance monies is not wholly or partly refused because of any act or omission of the Tenant or any undertenant or their respective workers, contractors or agents or any other person at the Property or the Building with the express or implied authority of any of them,

then payment of the Rent, Insurance Rent and Service Charge, or a fair proportion of them according to the nature and extent of the damage, shall be suspended until the Building has been reinstated so as to make the Property fit for occupation and use and the Common Parts accessible and usable.

- 9.2 If for any reason the repair, rebuilding or reinstatement of the Building shall be impossible following damage or destruction by any of the Insured Risks:
 - (a) the Landlord's obligation to reinstate the Building contained in paragraph 3 of Schedule 6 shall be deemed to have been discharged;
 - (b) the Landlord shall hold all proceeds of the insurance policy of the Building on trust for the Landlord, the Tenant and the Flat Tenants in proportion to their respective interests in the Building at the time of the damage or destruction, as agreed in writing between the Landlord, the Tenant and the Flat Tenants or failing agreement as determined pursuant to clause 9.3; and
 - (c) the Landlord shall pay such sums due to the Tenant and the Flat Tenants forthwith on agreement or on determination pursuant to clause 9.3.
- 9.3 Any dispute arising regarding this clause 9 shall be finally determined by arbitration in accordance with the provisions of the Arbitration Act 1996. The tribunal shall consist of one arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors.

10. SET-OFF

The Rent, Insurance Rent, Service Charge and all other amounts due under this lease shall be paid by the Tenant in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11. LANDLORD'S CONSENT

- 11.1 Any consent given by the Landlord under this lease may be granted subject to reasonable conditions.
- 11.2 No consent given by the Landlord under this lease shall imply that any consent required from a third party has been given and shall not obviate the need to obtain any consent required from a third party.

12. DISPUTES BETWEEN TENANTS

Save for any dispute arising under clause 9, any dispute between the Tenant and the Flat Tenants in relation to this lease, including any payment of costs, shall be

resolved by the Landlord (or such other person as the Landlord shall appoint) whose decision shall be final and binding on the Tenant except on questions of law.

13. JOINT AND SEVERAL LIABILITY

- 13.1 Where the Landlord or the Tenant comprises more than one person, those persons shall in each case be jointly and severally liable for their respective obligations and liabilities arising under this lease.
- 13.2 The Landlord may take action against, or release or compromise the liability of, or grant any time or other indulgence to, any one of the persons comprising the Tenant, without affecting the liability of any other of them.

14. ENTIRE AGREEMENT

- 14.1 This lease constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.
- 14.2 Each party acknowledges that in entering into this lease it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently.
- 14.3 Nothing in this clause shall limit or exclude any liability for fraud.

15. NOTICES

- 15.1 A notice given under or in connection with this lease shall be:
 - (a) in writing and for the purposes of this clause a fax or an e-mail is not in writing;
 - (b) given to the Landlord by:
 - (i) leaving it at the Landlord's address given in clause 15.5; or
 - (ii) sending it by pre-paid first-class post or other next working day delivery service to the Landlord's address given in clause 15.5;
 - (c) given to the Tenant by:
 - (i) leaving it at the Property; or
 - (ii) sending it by pre-paid first-class post or other next working day delivery service to the Property.
- 15.2 If a notice is given in accordance with clause 15.1, it shall be deemed to have been received:
 - (a) if delivered by hand, at the time the notice is left at the proper address; or
 - (b) if sent by pre-paid first-class post or other next working day delivery service, on the second working day after posting.

- 15.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 15.4 Section 196 of the Law of Property Act 1925 shall otherwise apply to notices given under this lease.
- 15.5 The Landlord's address for service is such address as the Landlord may notify to the Tenant from time to time.

16. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This lease does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999.

17. VAT

Any obligation to pay money refers to a sum exclusive of VAT and the amount of any VAT payable in addition (whether by the Landlord or by the Tenant) shall be paid by the Tenant to the Landlord.

18. GOVERNING LAW

This lease and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

19. JURISDICTION

Save for any dispute arising under clause 9, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this lease or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1 The Property

1. DEFINING THE PROPERTY

The first and second floors of the Building known as 44a Sarre Road, London NW2 3SL, the floor plan of which is shown edged red on the Plan including:

- 1.1 the internal plaster, plasterboard and surface finishes of all walls;
- 1.2 the whole of any internal, non-load bearing walls that are entirely within the Property;
- 1.3 the inner half (severed medially) of the non-load bearing walls dividing the Property from any other parts of the Building;
- 1.4 the floorboards or other floor surfaces above the joists or other structural floor supports supporting them;
- 1.5 the ceiling plaster, plasterboard or other ceiling surface below the joists or other structural ceiling supports supporting them;
- 1.6 the doors and windows and their frames, fittings and glass;
- 1.7 all Service Media within and exclusively serving the Property; and
- 1.8 all additions and improvements to the Property.

2. RETAINED PARTS

The Property shall not include any of the Retained Parts.

SCHEDULE 2 The Rights

1. SHELTER AND PROTECTION

The right of support, shelter and protection from other parts of the Building, to the extent existing at the date of this lease.

2. ACCESS TO AND FROM THE PROPERTY

2.1 A right of way for the Tenant and all persons authorised by the Tenant at all times on foot only, or with vehicles where appropriate, over and along those parts of the Common Parts which afford access to and egress from the Property Provided that the Landlord may, at its discretion, change the route of any means of access to or egress from the Property by giving notice to the Tenant.

3. USE OF RETAINED PARTS

The right for the Tenant and all persons authorised by the Tenant to keep and use a dustbin in the Refuse Area for the purpose of depositing normal domestic rubbish.

4. SERVICE MEDIA

The right to use and to connect into any Service Media in the Building that serve the Property and which are in existence at the date of this lease or are installed or constructed during the Term (provided that the Landlord may, at its discretion, reroute or replace any such Service Media at any time and the right shall then apply in relation to the Service Media as re-routed or replaced).

5. ACCESS TO OTHER PARTS OF THE BUILDING

The right to enter other parts of the Building with or without agents, professional advisers, workmen and equipment so far as is reasonably necessary to inspect or carry out any works to the Property required or permitted by this lease or in the case of emergency but at all times subject to compliance with the Conditions for Entry.

SCHEDULE 3 The Reservations

1. SHELTER AND PROTECTION

All rights of support, shelter and protection from the Property to the extent those rights are capable of being enjoyed at any time during the Term.

2. LIGHT AND AIR

All rights of light and air to the extent those rights are capable of being enjoyed at any time during the Term.

3. SERVICE MEDIA

The right to use and to connect into any Service Media at the Property which serve other parts of the Building and which are in existence at the date of this lease or are installed or constructed during the Term.

4. ACCESS TO THE PROPERTY

- 4.1 Subject to compliance with the Conditions for Entry, the right to enter the Property with or without agents, professional advisers, workmen and equipment so far as is reasonably necessary:
- 4.2 to inspect or carry out works to the Retained Parts or the Flats;
- 4.3 to inspect, repair, maintain, install, re-route or replace any Service Media serving any other part of the Building;
- 4.4 to inspect the state of repair and condition of the Property (following which the Landlord may give the Tenant notice of any breach of the Tenant Covenants relating to the repair or condition of the Property);
- 4.5 to carry out any works needed to remedy the breach set out in any notice served under paragraph 4.4 if the works have not been carried out by the Tenant to the reasonable satisfaction of the Landlord within the time period specified in the notice;
- 4.6 for any other purpose mentioned in or connected with this lease, the Reservations or the Landlord's interest in the Building.

5. ALTERATION AND SUSPENSION OF RIGHTS

The right to re-route and replace any Service Media at the Building over which Rights are granted.

SCHEDULE 4 Tenant Covenants

1. RENT

To pay the Rent to the Landlord if demanded, in advance on or before the Rent Payment Date.

2. SERVICE CHARGE

To pay to the Landlord the Service Charge demanded by the Landlord under paragraph 4 of Schedule 6 by the date specified in the Landlord's notice.

3. INSURANCE

- 3.1 To pay to the Landlord:
 - (a) the Insurance Rent demanded by the Landlord under paragraph 2 of Schedule 6 by the date specified in the Landlord's notice;
 - (b) on demand a fair and reasonable proportion, determined by the Landlord of any excess payable under the insurance policy of the Building following the occurrence of an Insured Risk; and
 - (c) on demand an amount equal to any insurance money that the insurers of the Building refuse to pay by reason of any act or omission of the Tenant or any undertenant, their workers, contractors or agents or any person at the Building with the express or implied authority of any of them.
- 3.2 To inform Landlord immediately that:
 - (a) any matter occurs in relation to the Tenant or the Building that any insurer or underwriter may treat as material in deciding whether or on what terms, to insure or continue insuring the Building;
 - (b) any damage or loss occurs that relates to the Building and arises from an Insured Risk; and
 - (c) any other event occurs which might affect any insurance policy relating to the Building.

and if the Landlord reasonably so requests, to give the Landlord notice of that matter or such other confirmation as the Landlord reasonably requires.

3.3 Not to insure the Building or the Property against any of the Insured Risks in such a manner as would permit the Landlord's insurer to cancel the Landlord's insurance or to reduce the amount of any money payable to the Landlord in respect of any insurance claim.

4. RATES AND TAXES

To pay all present and future rates, taxes and other impositions and outgoings payable in respect of the Property, its use and any works carried out there, other than:

- (a) any taxes payable by the Landlord in connection with any dealing with or disposition of the reversion to this lease; and
- (b) any taxes, other than VAT and IPT, payable by the Landlord by reason of the receipt of any of the rents due under this lease.

5. UTILITIES

- 5.1 To pay all costs in connection with the supply and removal of electricity, gas, water, sewage, telecommunications, data and other services and utilities to or from the Property.
- 5.2 To comply with all laws and with any recommendations of the relevant suppliers relating to the use of those services and utilities and the Service Media at or serving the Property.

6. COSTS

To pay to the Landlord on demand the costs and expenses (including any solicitors', surveyors' or other professionals' fees, costs and expenses and any VAT on them) reasonably and properly incurred by the Landlord (both during and after the end of the Term) in connection with or in contemplation of any of preparing and serving any notice in connection with this lease under section 146 or 147 of the Law of Property Act 1925 or taking any proceedings under either of those sections, notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;

7. ALTERATIONS

Not to make any external or structural alteration or addition to the Property or make any opening in any boundary of the Property or cut or maim any structural parts of the Building without the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed.

8. ASSIGNMENT AND UNDERLETTING

Within one month of any assignment, underletting for more than one year, charge, parting with possession of or any other devolution of title to this lease or the Property to serve notice on the Landlord or (if required by the Landlord) the Landlord's solicitors giving details and to:

- (a) provide a certified copy of the transfer or other instrument of devolution of title; and
- (b) pay the Landlord's or the Landlord's solicitor's, reasonable registration fee which shall be no less than Thirty Pounds plus VAT in respect of each document produced.

9. REPAIR AND DECORATION

To keep the Property in good repair and condition throughout the Term (provided that the Tenant shall not be liable to repair the Property to the extent that any disrepair has been caused by an Insured Risk, unless and to the extent that the policy of insurance of the Property has been vitiated or any insurance proceeds withheld in consequence of any act or omission of the Tenant, any undertenant or

their respective workers, contractors or agents or any person at the Property with the express or implied authority of any of them).

10. COMPLIANCE WITH LAWS AND NOTICES

- 10.1 To comply with all laws relating to the Property, its use by the Tenant and any works carried out at it.
- 10.2 To comply with all laws relating to the use of the Retained Parts by the Tenant.
- 10.3 To carry out all works that are required under any law to be carried out at the Property (without prejudice to any obligation on the Tenant to obtain any consent under this lease).
- 10.4 Within one week after receipt of any notice or other communication affecting the Property or the Building (and whether or not served pursuant to any law) to:
 - (a) send a copy of the relevant document to the Landlord; and
 - (b) in so far as it relates to the Property or the Tenant's use of the Retained Parts, take all steps necessary to comply with the notice or other communication and take any other action in connection with it as the Landlord may reasonably require.

11. NOTIFY DEFECTS

To give notice to the Landlord of any defect in or want of repair or damage to the Property or Building for which the Landlord may be responsible under this lease or any law, as soon as the Tenant becomes aware of it.

12. THIRD PARTY RIGHTS

- 12.1 To comply with all obligations on the Landlord relating to the Third Party Rights insofar as they relate to the Property (and the exercise by the Tenant of the Rights) and not do anything (even if otherwise permitted by this lease), that may interfere with any Third Party Right.
- 12.2 To allow the Landlord and any other person authorised by the terms of any Third Party Right to enter the Property in accordance with its terms.

13. **REMEDY BREACHES**

- 13.1 If the Landlord has given the Tenant notice of any breach of any of the Tenant Covenants relating to the repair or condition of the Property under paragraph 4.4 of Schedule 3, to carry out all works needed to remedy that breach as quickly as possible, and in any event within the time period specified in the notice (or immediately if works are required as a matter of emergency) to the reasonable satisfaction of the Landlord.
- 13.2 If the Tenant has not begun any such works within the time specified in the notice or is not carrying out the works with due speed, to permit the Landlord (without prejudice to the Landlord's other rights in this lease) and all persons authorised by him, to enter the Property and carry out the works needed.

13.3 To pay to the Landlord on demand the costs properly incurred by the Landlord in carrying out any works pursuant to this clause (including any solicitors', surveyors' or other professionals' costs and expenses, and any VAT on them, assessed on a full indemnity basis).

14. PERMIT ENTRY

To permit all those entitled to exercise any right to enter the Property to do so subject to their compliance with the Conditions for Entry.

15. RETURNING THE PROPERTY TO THE LANDLORD

At the end of the Term to return the Property to the Landlord in good and substantial repair, condition and decoration and in accordance with the Tenant Covenants.

SCHEDULE 5 The Regulations

- 1. Not to use the Property for any purpose other than for the Permitted Use or carry on any trade or business at the Property.
- 2. Not to use the Property for any noisy, offensive, illegal or immoral purpose.
- 3. Not to do anything at the Property which may be or become a nuisance, or cause loss, damage or injury, to the Landlord or the Flat Tenants.
- 4. Not to do anything which may cause any insurance of the Building to become void or voidable or which may cause an increased premium to be payable in respect of it (unless the Tenant has previously notified the Landlord and has paid any increased premium).
- 5. To comply with the requirements and recommendations of the insurers relating to the Property and the exercise by the Tenant of the Rights.
- 6. Not to overload any structural part of the Building nor any Service Media at or serving the Property or the Building.
- 7. Not to do anything which may lessen the support or protection given by the Property to other parts of the Building.
- 8. Not to decorate the exterior of the Property in any way other than the entrance door to the Property.

SCHEDULE 6 Landlord Covenants

1. QUIET ENJOYMENT

So long as the Tenant pays the rents reserved by and complies with its obligations in this lease, the Tenant shall have quiet enjoyment of the Property without any interruption by the Landlord or any person claiming under the Landlord except as otherwise permitted by this lease.

2. INSURANCE

- 2.1 To effect and maintain insurance of the Building against loss or damage caused by any of the Insured Risks with reputable insurers, on fair and reasonable terms that represent value for money, for an amount not less than the Reinstatement Cost subject to:
 - (a) any exclusions, limitations, conditions or excesses that may be imposed by the Landlord's insurer; and
 - (b) insurance being available on reasonable terms in the London insurance market.
- 2.2 To serve on the Tenant a notice giving full particulars of the gross cost of the insurance premium payable in respect of the Building (after any discount or commission but including IPT). Such notice shall state:
 - (a) the date by which the gross premium is payable to the Landlord's insurers; and
 - (b) the Insurance Rent payable by the Tenant, how it has been calculated and the date on which it is payable.
- 2.3 In relation to any insurance effected by the Landlord under this clause, the Landlord shall:
 - (a) at the request of the Tenant supply the Tenant with:
 - (i) a copy of the insurance policy and schedule;
 - (ii) a copy of the receipt for the current year's premium; and
 - (iii) details of any commission paid to the Landlord by the Landlord's insurer.
 - (b) notify the Tenant of any change in the scope, level or terms of cover within five working days after the Landlord has become aware of the change;
 - (c) use reasonable endeavours to procure that the insurance policy contains a non-invalidation provision in favour of the Landlord in respect of any act or default of the Tenant or any other occupier of the Building; and
 - (d) procure that the interest of the Tenant and its mortgagees are noted on the insurance policy, either by way of a general noting of tenants' and

mortgagees' interests under the conditions of the insurance policy or (provided that the Landlord has been notified of any assignment to the Tenant pursuant to paragraph 8 of Schedule 4) specifically.

3. REBUILD FOLLOWING DAMAGE OR DESTRUCTION

- 3.1 If the Building or any part of it is damaged or destroyed by an Insured Risk, the Landlord shall:
 - (a) promptly make a claim under the insurance policy for the Building;
 - (b) notify the Tenant immediately if the Landlord's insurer indicates that the Reinstatement Cost will not be recoverable in full under the insurance policy, and, where appropriate, pursue any of the Flat Tenants in respect of any monies that the insurers of the Building refuse to pay by reason of any act or omission of the Flat Tenants or any undertenant, their workers, contractors or agents or any person at the Building with the express or implied authority of any of them;
 - (c) promptly take such steps as may be necessary and proper to obtain all planning and other consents to repair (or as the case may be) rebuild the Building;
 - (d) subject to obtaining such consents, use any insurance money received any money received from the Tenant under paragraph Schedule 43.1(c) of Schedule 4 promptly to repair the damage in respect of which the money was received or (as the case may be) to rebuild the Building; and
 - (e) subject to obtaining such consents, provide premises or facilities equivalent in size, quality and layout to those previously at the Building but if the relevant consents cannot be obtained for premises or facilities equivalent in size, quality and layout to those previously at the Building to provide premises and facilities that are reasonably equivalent to those previously at the Building.

4. SERVICES AND SERVICE COSTS

- 4.1 To provide the Services.
- 4.2 To serve on the Tenant a notice giving full particulars of the Service Costs and stating the Service Charge payable by the Tenant and the date on which it is payable as soon as reasonably practical after incurring, making a decision to incur, or accepting an estimate relating to, any of the Service Costs.
- 4.3 To keep accounts, records and receipts relating to the Service Costs incurred by the Landlord and to permit the Tenant, on giving reasonable notice, to inspect the accounts, records and receipts.

5. LEASES OF FLATS

5.1 To ensure that every lease of the Flats granted by the Landlord for an original term of over 21 years is in substantially the same form as this lease and contains covenants substantially the same as the Regulations.

5.2 Until such time as the Landlord grants leases of the Flats to maintain and repair the Flats to the extent that no physical damage is caused to the Property. For the avoidance of doubt, this covenant will automatically lapse once leases of the Flats have been granted.

6. ENFORCEMENT OF COVENANTS AGAINST THE FLAT TENANTS

- 6.1 At the written request of the Tenant to enforce or assist the Tenant in enforcing the Regulations against the Flat Tenants provided that:
 - the Tenant shall indemnify the Landlord in writing against all costs and expenses of such enforcement (including any solicitors', surveyors' or other professionals' costs and expenses, and any VAT on them, assessed on a full indemnity basis);
 - (b) the Landlord shall not be required to take any action or incur any costs under this clause until the Tenant has given to the Landlord such security as the Landlord shall in its reasonable discretion require;
 - (c) the Tenant shall join in any action or proceedings if so requested by the Landlord.

Signed as a deed by **JOHN SCURRY** in the presence of:

Signature of witness Name of witness: Address of witness:

Signed as a deed by **PHILIP RICHARD MORGAN** the presence of:

Signature of witness

Name of witness: Address of witness:

Signature of witness Name of witness: Address of witness:

