

**EASTERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

CAM22UN/OCE/2005/0051

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 24 LEASEHOLD REFORM, HOUSING
AND URBAN DEVELOPMENT ACT 1993.**

Applicant: Sandy Hook Property Management Limited

Respondent: Ronald Major Bridgeman

Property: Sandy Hook, 42 The Esplanade, Frinton-on-Sea, Essex, CO13 9JD

Date of Application: 6 December 2005

Date of Hearing: 6 July 2006

Venue: The River Room, The Tower Hotel, Main Road, Dovercourt, Essex CO12 3PJ

Appearances for Applicant: Mr Stan Gallagher of Counsel

Appearances for Respondent: Mr Adam Rosenthal of Counsel

Also in Attendance: Mr Shadbolt
Mr Ronald Bridgeman
Mr David Gillspie
Mr David Springett
Mr Roland Thomas

Members of the Tribunal: Mr John Hewitt Chairman
Mr John Dinwiddy FRICS
Mr Edward Pennington FRICS

Date of Decision: 27 October 2006

Decision

1. The decision of the Tribunal is that:
 - 1.1 the transfer of the Property by the Respondent to the Applicant shall be in the form of the draft TP1 (marked Appendix 2) annexed to this decision.
 - 1.2 on transfer the Applicant shall pay to the Respondent the sum of £3,500 inclusive of VAT by way of costs payable pursuant to s33 of the Act.

Background

2. This is an application made under section 24 of the Act. It is dated 6 December 2006.
3. By an undated notice the Applicant gave notice to the Respondent pursuant to section 13 of the Act proposing to acquire the freehold of the premises mentioned in paragraphs 1 and 2 of the notice.
The Applicant proposed a price of £19,000 for the premises specified in paragraph 1 of the notice (the Specified Premises) and a price of £2,000 for the property mentioned in paragraph 2 of the notice (the Additional Freehold).
4. By counter-notice dated 10 June 2005 the Respondent admitted that the participating tenants were entitled to exercise the right to collective enfranchisement of the Specified Premises, but did not agree with the proposals put forward. The Respondent exercised his right under s1(4) of the Act to retain part of the land and to grant permanent rights over it.
5. Directions were given on 6 January and 28 April 2006. The application came on for hearing on 6 July 2006. The Applicant was represented by Mr Rosenthal and the Respondent was represented by Mr Gallagher.
6. Shortly prior to and during the course of the hearing the parties were able to agree a number of issues between them including the extent of the freehold land to be acquired, the price to be paid for it and the extent of the land to be retained by the Respondent. However there remained a number of detailed issues between them on the terms of the Transfer, Form TP1 (the substantive issue) and the amount of statutory costs payable by the Applicant to the Respondent pursuant to s33 of the Act.
7. The Tribunal heard submissions from both counsel on the substantive issue. Two versions of a draft form TP1, Version A and Version B were produced. During the course of the hearing both parties were able to make concessions on some of the principles in either, or both versions, subject to fine-tuning the drafting.
8. Further directions were issued on 6 July 2006. In compliance with those directions the parties have provided a final single version of the Form TP1 which reflects those matters which are not now in contention and shows clearly the final drafting contended for by each party. The black type shows the drafting contended for by the Applicant and the red type shows the amendments contended for by the Respondent.
A copy of this draft (marked Appendix 1) is annexed to this decision. The Tribunal was required to settle the final form of the Form TP1 and to decide which, if any, of the amendments contended for by the Respondent should be incorporated. As noted above we have done so and the form of the TP1 settled by is attached marked Appendix 2.
9. Statutory costs are also an issue. The Tribunal has to determine the amount payable. The Tribunal gave notice that it proposed to determine such amount without a hearing in accordance with regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations. The Tribunal indicated that it proposed to determine the amount payable on the basis of written representations submitted pursuant to the directions dated 6 July 2006.

10. The Tribunal has received a schedule of costs submitted on behalf of the Respondent, a schedule of objections submitted on behalf of the Applicant and a reply thereto submitted on behalf of the Respondent.
11. Neither party made a request to be heard on the determination of the costs payable and accordingly we have determined those costs on the basis of the written submissions made to us.

The Property and the Flats

12. The Property, Sandy Hook, was evidently originally constructed, in the 1960s, as comprising two ground floor flats with one much larger flat on the first floor with three front balconies. Since then the first floor flat has been converted into two self-contained flats. The block thus now comprises four self-contained flats. The two upper flats enjoy a rear metal fire escape which provides them with back door access.
13. The site is triangular in shape and reasonably spacious, being approximately 0.33 acres. The flats are at the front of the site overlooking The Esplanade and the greensward and sea beyond. Four lock up garages are located towards the rear of the site. Three of them are in a block, and the fourth detached, probably being constructed when the first floor flat was converted into two flats. The remainder of the site is laid to lawn with some flowerbeds.
14. Each of the four flats (and its allocated garage) has been let on a lease for a term of 99 years from 24th June 1975.
15. The Respondent, who describes himself as a property developer has for some time been of the view that part of the site is capable of useful development and he has submitted a number of planning applications. None have yet been successful. Nevertheless the Respondent has exercised his right to retain part of the site and to grant permanent rights over the retained land in accordance with s1(4) of the Act. Because any development on the site is likely to require demolition of the existing garages, or some of them, and provision of new garages, the nature and extent of permanent rights and the nature and extent of restrictive covenants which the Respondent seeks to impose has become complex.

The Leases

16. Copies of the four leases were included within the trial bundle provided to us. We were told that the leases were granted in common form. A brief summary of relevant extracts is set out below.
17. The 'said land' is defined as that comprised within Title Number EX 64515 and 'the Buildings' is defined as the flats and garages thereon.
18. Clause 3(5) is a covenant on the part of the tenant not to make any objection to the alteration or addition to the Buildings or any land or property adjoining to or near the Buildings by the lessor. Clause 7 reserves full power or liberty to build upon or deal with any neighbouring land as the lessor thinks fit notwithstanding that the access of light or air to the demised premises may thereby be obstructed.

- included if they satisfy s1(4) of the Act. Mr Rosenthal submitted that there is no provision in the lease entitling the lessor to vary the positive obligations to contribute to the costs of providing services.
44. The question we have to decide is what is meant by the expression 'permanent rights' as used in s1(4) of the Act. At present the lessees have the right to use the garages, private roads and paths as set out in the lease, but subject to the obligation to pay a contribution to the costs of insurance and repair and maintenance incurred by the lessor. We find that in the property sector rights often have attached to them obligations. They are concomitant. An obligation is often a key component of a right and in context should be regarded as part and parcel of the right.
45. S1(4) of the Act seeks to ensure that such permanent rights shall be granted as will near as may be replicate the rights enjoyed under the lease. It seems to us that where such permanent rights are to be granted those rights shall include any obligations that may be attached to them under the lease. Not to do so would mean that a lessee achieves more than he has now. He has a benefit of the right, but not the burden of an obligation attached to it. As a matter of construction therefore we find that 'permanent rights' is to be construed in a purposive way and includes all key components attaching to the rights sought to be replicated.
46. In the context of the present case the enjoyment of the rights will only arise if the lessor is obliged to insure and carry out repairs and maintenance. Plainly the lessor will not do so if he cannot recoup the reasonable costs incurred in doing so. If the lessor does not insure and carry out repairs and maintenance the garages will fall into disrepair and may ultimately collapse. They will not then be available for use whether the lessees have the right to use them or not. Such an outcome is clearly unacceptable and inappropriate. In contrast, the construction we have placed on s1(4) will maintain the status quo, that the lessees have the use and benefit of the garages and the Common Parts subject to making a contribution to the costs of insurance, repairs and maintenance. We find that maintaining such status quo is exactly what the statutory provision was designed to effect.
47. Accordingly we find that in that it is appropriate to incorporate reference to 'obligations' in paragraph 1.9, and also that the proposed amendments to Panel E1 paragraph 1 are appropriate.
48. Both parties have rival contentions for the extent of the variation rights. Mr Gallagher contends that the Schedule 3 of the lease contemplates a reorganisation may take place and that the variation of rights should facilitate, not hinder a development. Mr Rosenthal submits that the variation rights should not be wider than those set out in Schedule 3 and that any variation should be subject to the reasonable satisfaction of the lessee. The rival drafting sometimes comes down to a matter of semantics or degree. We find that as a matter of principle the Respondent should be in broadly the same position as he was before enfranchisement and that it is not appropriate that he should be granted wider variation rights than he had previously enjoyed. We have therefore modified the drafting to reflect this.

Panel 13 C – Rights Reserved

Paragraph 2.3 – Erect and Alter buildings

49. The Respondent seeks to include the rights of 'erecting or altering' any building. This is opposed by the Applicant which contends that such reservation of rights is only permitted by s21(3)(d) of the Act to the extent that they are necessary for the proper management or maintenance of the retained land. It is submitted that whilst the rights sought might well be 'reasonable' or 'convenient' to the Respondent, the rights are not 'necessary'. The Respondent submits that the Respondent has the right to build on the retained land and that the amendments should be allowed for the sake of good order.
50. We prefer the submissions of the Respondent and allow the amendments. The inclusion of 'erecting' merely recognises that the Respondent has the right to develop the retained land. Having erected a building it may be necessary to alter it in such a way that does not comprise a repair or maintenance. We bear in mind the safeguards in the proviso and the obligation to do as little damage as possible and to make good.

Paragraph 3 – Right to build on Retained Land

51. The Applicant opposes the proposed amendment for much the same reason as set out in paragraph 49 above. It is submitted that the right is not 'necessary'. Also it impinges on the Applicant's freehold title and may affect adversely rights that have been acquired.
52. The Respondent makes the same submissions as in paragraph 49 and says it should be included for the sake of good order.
53. We prefer the submissions of the Applicant on this point. We find the amendment goes too far and that it is not necessary within the meaning of s21(3)(d) of the Act.

Panel 13 D – Restrictive Covenants by Transferee (Applicant)

54. Mr Rosenthal submitted that the legal test is set out in paragraph 5 of Schedule 7 to the Act. The covenants must either exist in the lease and materially enhance the value of the Retained Land (paragraph 5.(1)(b)(i)) or if not existing must not interfere with the reasonable enjoyment of the Property, as enjoyed during the currency of the leases and must materially enhance the value of the Retained Land (paragraph 5.(1)(c)(i)).

Paragraph 2.1

55. Mr Rosenthal accepts that such a provision is in the lease (clause 3(5)) but submits that the covenant is not restrictive of the user of land, which he says is a key component of paragraph 5(2) of Schedule 7. The amendment sought is a restriction on bringing a claim, nothing at all to do with user of the land or buildings. Mr Rosenthal also submitted that the Tribunal does not have jurisdiction to allow the amendment sought, and that no evidence was brought to show that the covenant would materially enhance the value of the Retained Land.

56. Mr Gallagher conceded that there was a difficulty with terminology to classify the amendment as a restrictive covenant of user of any land or building but he urged a broad interpretation of 'user'. He was content to leave the issue to the discretion of the Tribunal.
57. The Tribunal prefers the submissions made on behalf of the Applicant and finds that the amendment sought is not a covenant restrictive of the user of any land or building. It is therefore disallowed.

Paragraphs 2.2 and 2.4 – Restrictions on parking

58. Mr Rosenthal submitted that the test was s1(4) of the Act and that the Applicant was entitled to the same rights as granted under the lease. He accepted that the lease does not grant an express right to park, but it does grant a right to use the roadways. He further argued that the right to use a roadway includes a right to park on it. He relied upon *McClymont v Primecourt Property Management Limited* [2000] EGCS 139 in support of this proposition. He also contended that parking on the Forecourt in front of the garages had been permitted by the Respondent for many years and that rights had been acquired which cannot be excluded from the transfer (s62(1) Law of Property Act 1925).
59. Mr Gallagher accepted that a right to use included a right to park but only so long as no offence was caused. He submitted that no evidence was adduced as to the historic parking and what may or may not have been permitted by the Respondent. He submitted that Schedule 1 paragraphs 10 and 14 and Schedule 2 paragraph 3 of the lease should be read together to show the extent of the qualified right to park. He submitted that such qualified right should be replicated.
60. The Tribunal prefers the submissions of the Applicant. The Tribunal finds that the proposed amendments go further than the provisions in the lease. The proposed amendments are rejected.

Paragraph 2.6

61. Mr Rosenthal submitted that the proposed amendment is not in the lease and that the Respondent has to rely upon paragraph 5.(1)(c) of Schedule 7 to the Act. This was conceded by Mr Gallagher. Mr Rosenthal contended that the amendment would prevent any development of the building to be transferred and that there was no evidence that such restriction will materially enhance the value of the Retained Land.
62. Mr Gallagher submitted that amendment satisfies both tests in paragraph 5.(1)(c) of Schedule 7 and that the proposed restriction does not interfere with the Applicant's use of the land as enjoyed during the currency of the leases and that it will materially enhance the value of the Retained Land.
63. The Tribunal prefers the submissions of the Applicant. In particular, in the absence of any evidence, let alone valuation evidence, the Tribunal, using its expertise and experience in these matters is far from satisfied that the proposed restriction will materially enhance the value of the Retained Land.

Panel 13 E – Positive Covenants by the Transferee (Applicant)

Paragraph 1 – Contribution to costs incurred

64. We have already found that amendments to this paragraph should be allowed. See paragraph 47 above.

Paragraph 2 – Fencing on boundary

65. At the hearing Mr Rosenthal argued that there should be no restriction and that the Applicant was entitled to fence its boundary as it saw fit subject only to any statutory requirements or planning control.
66. Mr Gallagher argued that proposed covenant was not positive in nature but restrictive and met the two stage test in paragraph 5(1)(c) of Schedule 7.
67. It appears from the draft TP1 submitted to us that the Applicant has now conceded the obligation to fence on part of the boundary marked A-B on the plan submitted to us and is willing to restrict the height of such fence to 24 inches. The Respondent contends for 6 inches. Evidently the Respondent is anxious to ensure that there should be no impediment to the view of the Esplanade and sea beyond from any ground floor building that may be constructed on the Retained Land at some future time.
68. The Tribunal prefers the submissions of the Applicant and finds that the proposed covenant is in reality a positive covenant to fence with a fence of a limited height. We find that the Respondent is not in a position to insist on such a positive covenant at all. In these circumstances the Respondent has little alternative but to accept the concession in its entirety or reject it completely and have no covenant at all. For our part, for what it may be worth, we are of the view that the Applicant's concession of a 24 inch height restriction is appropriate on a fair and reasonable basis. The Tribunal did not share the Respondent's fear that any fence at a height greater than 6 inches would have any adverse impact on future development, let alone any material adverse impact.

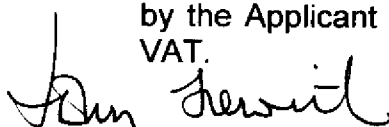
Costs

69. The Respondent is entitled to certain statutory costs by virtue of s33 of the Act. The costs payable by a nominee purchaser to a reversioner are set out in s33(1)(a)-(e) of the Act. Such costs are limited by the matters set out in s33(2).
70. The Tribunal proposes to assess the amount of those costs on the basis of the written submissions submitted pursuant to the directions given on 6th July 2006
70. The Respondent has claimed :

Solicitors costs	£2,717.50
Surveyors fees	<u>901.20</u>
	£3,618.70
VAT	<u>633.27</u>
Total	£4,251.97

71. The solicitors costs have not been broken down into the component parts of s33(1)(a)-(e) of the Act, but the hourly rate claimed is £160 for a senior assistant solicitor and there a basic break down of functions

- undertaken and the time involved. Included is a claim for £157.50 being the cost of a costs draftsman preparing the schedule of costs.
72. The Applicant has three objections:
1. The amount of the hourly rate; it is submitted that the matter should have been given to a team of fee earners with a range of hourly rates.
 2. The cost of the costs draftsman is not recoverable under s33(1) of the Act.
 3. As no breakdown is given it is not possible to establish what costs, if any, come within s33(1) of the Act.
73. In response the Respondent submitted:
1. The case was appropriate for a senior assistant and that if a team had been deployed costs would have been duplicated and greater.
 2. The Respondent was put to expense in producing the schedule of costs and that the cost of it should be allowed.
 3. The format of the schedule in summary assessment form was directed by the Tribunal and the file is available for inspection by the Tribunal if necessary.
 4. The costs claimed are fair and reasonable.
74. The Tribunal finds that an hourly rate of £160 for a senior assistant solicitor practising in Chelmsford is reasonable for this case and that it would not have been reasonable or cost effective to deploy a team. The accumulated knowledge of one fee earner would enable the matter to be progressed more efficiently. It is the responsibility of the Respondent to provide details of the claim and the Respondent's solicitor is entitled to make an appropriate and reasonable charge for doing so. £157.50 does appear to be at the upper end of reasonableness.
- The absence of a breakdown into the components set out in s33(1) does lead to some difficulty in assessment. The absence of challenge to the valuer's invoice is noted as is the fact that the valuer's invoice refers not only to the provision of valuation advice but also attendance at meetings.
75. Taking all matters into account and drawing on the experience of the members of the Tribunal on these matters, bearing in mind the provisions of s33 of the Act and the scope of work necessarily involved in a transaction such as this, we find that the amount of costs payable by the Applicant to the Respondent is the sum of £3,500 inclusive of VAT.



John Hewitt
Chairman
27 October 2006

Appendices

1. **Travelling draft Form of TP1 submitted by the parties**
2. **Form of TP1 as settled by the Tribunal**

If you need more room than is provided for in a panel, use continuation sheet CS and attach to this form.

1. Stamp Duty

Place "X" in the appropriate box or boxes and complete the appropriate certificate.

- ☐ It is certified that this instrument falls within category ☐ in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987
- ☐ It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of £
- ☐ It is certified that this is an instrument on which stamp duty is not chargeable by virtue of the provisions of section 92 of the Finance Act 2001

2. Title number(s) out of which the Property is transferred *Leave blank if not yet registered.*
EX64515

3. Other title number(s) against which matters contained in this transfer are to be registered, if any

4. Property transferred *Insert address, including postcode, or other description of the property transferred. Any physical exclusions, e.g. mines and minerals, should be defined. Any attached plan must be signed by the transferor.*

The Property is defined: Place "X" in the appropriate box.

- ☐ on the attached plan and shown *State reference e.g. "edged red".*
Edged red
- ☐ on the Transferor's title plan and shown *State reference e.g. "edged and numbered 1 in blue".*

5. Date

6. Transferor *Give full name(s) and company's registered number, if any.*
Ronald Major Bridgeman

7. Transferee for entry on the register *Give full name(s) and company's registered number, if any. For Scottish companies use an SC prefix and for limited liability partnerships use an OC prefix before the registered number, if any. For foreign companies give territory in which incorporated.*
Sandy Hook Management Limited (company registration number: 5319685)

Unless otherwise arranged with Land Registry headquarters, a certified copy of the Transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.

8. Transferee's intended address(es) for service (including postcode) for entry on the register *You may give up to three addresses for service one of which must be a postal address but does not have to be within the UK. The other addresses can be any combination of a postal address, a box number at a UK document exchange or an electronic address.*
6 Tilehouse Street, Hitchin, Hertfordshire, SG5 2OW

9. The Transferor transfers the Property to the Transferee

10. Consideration Place "X" in the appropriate box. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.

☐ The Transferor has received from the Transferee for the Property the sum of *In words and figures*
£23,000.00 (Twenty Three Thousand Pounds)

☐ Insert other receipt as appropriate.

☐ The transfer is not for money or anything which has a monetary value

11. The Transferor transfers with Place "X" in the appropriate box and add any modifications.

☐ full title guarantee ☐ limited title guarantee

12. Declaration of trust Where there is more than one Transferee, place "X" in the appropriate box.

☐ The Transferees are to hold the Property on trust for themselves as joint tenants

☐ The Transferees are to hold the Property on trust for themselves as tenants in common in equal shares

☐ The Transferees are to hold the Property *Complete as necessary.*

13. Additional provisions

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

Definitions and interpretation

In this transfer:

1. 'the Common Parts' means the Forecourt Paths and Gardens together with any Service Apparatus used in common by the Property and the Retained Land as the same may be varied from time to time and shall not include such part or parts of the Retained Land as may be built on from time to time after the date hereof.
2. 'the Forecourt' means the garage forecourt shown hatched yellow on the Plan as the same may be varied from time to time after the date hereof
3. 'the Garages' mean the garages situate on the Retained Land shown edged blue on the Plan as the same may be varied or relocated from time to time after the date hereof
4. 'the Gardens' means the gardens shown hatched green on the Plan as the same may be varied from time to time and shall not include such part or parts of the Retained Land as may be built on from time to time after the date hereof
5. 'the Path' means the path hatched orange on the Plan as the same may be varied or relocated from time to time after the date hereof.
6. 'the Perpetuity Period' means the period of 80 years commencing on the date of this transfer
7. 'the Plan' means the plan annexed to this transfer
8. 'the Retained Land' means the Common Parts Gardens and the Garages retained by the Transferor being the land comprised in title number EX64515 following the date of this transfer
9. 'the Services' means water soil effluent gas fuel oil electricity telephone telephonic signals television visual audio fax electronic mail data information communications and other services
10. 'the Service Apparatus' means sewers drains channels pipes watercourses gutters wires cables ducts flues conduits laser optic fibres electronic data or impulse communication transmission or reception

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systems and other conducting media

11. words importing one gender shall be construed as importing any other gender

12. words importing the singular shall be construed as importing the plural and vice versa

13. words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa

14. the panel and clause headings do not form part of this transfer and shall not be taken into account in its construction or interpretation

15. references to 'Transferor' and 'Transferee' shall include their respective successors in title

16. references to a specific statute includes any statutory extension or modification or re-enactment of such statute and any regulations or orders made thereunder

B - Rights granted for the benefit of the Property

1. Subject to the Transferee observing and performing the covenants at clause 13.E.1 there are granted for the benefit of the Property and every part thereof the following rights to be exercised in common with all others with like rights:

1.1 to pass and repass with or without vehicles at all times and for all purposes over and along the Forecourt

1.2 to pass and repass on foot only at all times and for all purposes over and along the Path

1.3 to receive the Services through the Service Apparatus now or within the Perpetuity Period laid in over or under the Retained Land

1.4 to enter upon the Retained Land other than such part or parts of the Retained Land as may for the time being be built on after date hereof at all reasonable times and upon reasonable notice (except in the case of emergency when no notice shall be required) with workmen tools implements and materials for the purpose of:

1.4.1 inspecting repairing and maintaining the Service Apparatus now or within the Perpetuity Period laid in over or under the Retained Land and

1.4.2 repairing and maintaining any building or any part thereof now or hereafter to be erected on the Property

the person exercising such right causing as little damage and inconvenience as possible and making good any damage so caused to the Retained Land as soon as possible

1.5 to use and enjoy the Gardens for domestic and recreational purposes only but not for any other purpose likely to cause offence or to constitute a nuisance to the owners or occupiers of the Retained Land

1.6 to use the Garages as private garages ancillary to the Property

1.7 To use the refuse disposal area on the Retained Land for the disposal of rubbish but not for any purposes which are not ancillary to the ordinary domestic use of the flats

1.8 To park vehicles upon the Forecourt but not so as to create a nuisance or obstruction to the fair use thereof by others or impede or hinder that use

1.9 Variation of Rights Granted:

The Transferor shall be permitted to serve notice (Variation Notice) upon the Transferee notifying the Transferee of his intention to vary the rights and obligations (the Existing Rights and Obligations) granted pursuant to clauses 1.1, 1.2, 1.5, 1.6 and 1.7 of panel 13B and clause 1 of panel 13E of the transfer. The Variation Notice shall have annexed to it a draft Deed of Variation detailing the new rights and obligations (the New Rights and Obligations) which the Transferor proposes to grant to the Transferee in substitution for or variation of the Existing Rights and Obligations.

The New Rights and Obligations shall be such variations to the Existing Rights and Obligations as shall be reasonable having regard to the requirements of any proposed development of the Retained Land for residential purposes for which the Transferor may at anytime obtain planning permission ("the Proposed Development") and any variation of the right at clause 1.6 of panel 13B shall be subject to the Transferor providing at its own expense and in a good and workmanlike manner to the reasonable satisfaction of the Transferor four new garages and a new refuse area in a position upon the Retained Land conveniently situated near to the Property and upon the Retained Land. For the avoidance of any doubt, the new garages shall be of substantially equivalent size and standard as the existing garages and shall be completed before any Variation Notice served in respect of the rights granted by clause 1.6 of panel 13B of this transfer take effect save for such variations of rights and obligations as are necessary to enable the construction phase of the Proposed Development to proceed.

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Upon the service of a Variation Notice The Transferor and the Transferee shall use reasonable endeavours to agree the Deed of Variation as quickly as practicable ("the Deed of Variation"). The Deed of Variation shall provide for the Existing Rights and Obligations to be varied or extinguished so as to facilitate the Proposed Development but granting new rights over the Retained Land for the benefit of the Property compatible with the Proposed Development in relation to access services entry and the right to use four private garages together with a right to use and enjoy such gardens as shall remain following the construction of the Proposed Development provided always that any disagreement between the Transferor and the Transferee as to the terms of the Deed of Variation to be determined by an independent barrister of no less than 10 years experience (the Expert) whose decision shall be binding on both parties (save in the case of manifest error) appointed either by agreement between the Transferor and the Transferee or in the absence of agreement nominated at the request of either party by the Chairman for the time being of the Bar Council of England and Wales. The following provisions shall apply in relation to the conduct of that determination:-

- (a) The fees and expense of the Expert and any VAT payable on them including the costs of his appointment are (save where the Expert directs otherwise) to be borne equally between the parties.
- (b) The Expert must afford each of the parties an opportunity to make written representations to him and also an opportunity to make written counter-representations on any representations made to him by the other party but is not to be in any way limited or fettered by such representations and counter-representations and is to be entitled to rely on his own judgment and opinion
- (c) If the Expert dies or refuses to act or becomes incapable of acting or if he fails to publish his determination within six months of the date on which he accepted the appointment either party must apply to the President Chairman to discharge him and appoint another in his place.

OR IN THE ALTERNATIVE:

Variation of Rights Granted:

The Transferor shall be permitted to serve notice (Variation Notice) upon the Transferee notifying the Transferee of his intention to vary the rights and obligations (the Existing Rights and Obligations) granted pursuant to clauses 1.1, 1.2, 1.5, 1.6 and 1.7 of panel 13B and clause 1 of panel 13E of this transfer. The Variation Notice shall have annexed to it a draft Deed of Variation detailing the new rights and obligations (the New Rights and Obligations) which the Transferor proposes to grant to the Transferee in substitution for or variation of the Existing Rights and Obligations.

The New Rights and Obligations shall be limited to those as are reasonable and convenient to the Transferee having regard to any proposed development of the Retained Land for residential purposes and any variation of the right at clause 1.6 of panel 13B shall be subject to the Transferor providing at its own expense and in a good and workmanlike manner to the reasonable satisfaction of the Transferor four new garages and a new refuse area in a position upon the Retained Land conveniently situated near to the Property and upon the Retained Land. For the avoidance of any doubt, the new garages shall be of equivalent size and standard as the Garages and shall be completed before any Variation Notice is served in respect of the rights granted by clause 1.6 of panel 13B of this transfer

The Transferor and the Transferee shall use reasonable endeavours to agree the Deed of Variation as quickly as practicable. Any disagreement between the Transferor and the Transferee as to the terms of the Deed of Variation shall be determined by an independent surveyor barrister who shall be a Fellow of the Royal Institution of Chartered Surveyors of no less than 10 years experience (the Expert) whose decision shall be binding on both parties (save in the case of manifest error) appointed either by agreement between the Transferor and the Transferee or in the absence of agreement nominated at the request of either party by the President Chairman for the time being of the Royal Institution of Chartered Surveyors Bar Council of England and Wales. The Expert shall be entitled to consult with a Fellow of the Royal Institution of Chartered Surveyors of no less than 10 years experience ("the Surveyor") in reaching his decision. The following provisions shall apply in relation to the conduct of that determination:-

- (a) The fees and expense of the Expert and Surveyor and any VAT payable on them including the costs of their appointments are (save where the Expert directs otherwise) to be borne equally between the parties.
- (b) The Expert must afford each of the parties an opportunity to make written representations to him and also an opportunity to make written counter-representations on any representations made to him by the

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other party but is not to be in any way limited or fettered by such representations and counter-representations and is to be entitled to rely on his own judgment and opinion

(c) If the Expert dies or refuses to act or becomes incapable of acting or if he fails to publish his determination within six months of the date on which he accepted the appointment either party must apply to the President Chairman to discharge him and appoint another in his place

(d) The Surveyor shall be independent from both parties and chosen by the Expert at his sole discretion

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4. The Deed of Variation shall be completed within twenty eight working days of the date of agreement or determination of the form of the Deed of Variation. Both parties shall then register the Deed of Variation at HM Land Registry against their respective title numbers and provide the other with official copies of the amended title within five working days of receiving the same

5. The Transferor shall be responsible for the Transferee's reasonable and proper costs and expenses (together with any VAT) incurred in connection with the negotiation completion and registration of the Deed of Variation

C- Rights reserved for the benefit of the Retained Land

There are reserved out of the Property for the benefit of each and every part of the Retained Land and any building for the time being erected thereon the following rights to be exercised in common with all others with like rights:

1. Subject to contributing a fair proportion of the cost of replacing, maintaining, repairing, renewing the sewers drains and channels, the right to drain water soil and effluent through the sewers drains and channels now or within the Perpetuity Period laid in over or under the Property

2. to enter upon such part of the Property that has not been built upon at all reasonable times and upon reasonable notice (except in the case of emergency) with workmen tools implements and materials for the purpose of

2.1 connecting into the sewers drains and channels now or within the Perpetuity Period laid in over or under the Property

2.2 inspecting repairing and maintaining the sewers drains and channels now or within the Perpetuity Period laid in over or under the Property and

2.3 erecting altering repairing and maintaining any building or any part thereof now or hereafter to be erected on the Retained Land

Such right to only be exercised when such work cannot reasonably be undertaken without such access and the person exercising such right causing as little damage and inconvenience as possible and making good any damage so caused as soon as possible

3. To build upon the Retained Land and to rebuild or alter any building now or hereafter erected or built thereon to such height or in such manner or otherwise deal with the Retained Land in all respects as the Transferor may think fit notwithstanding any interference thereby occasioned to the access of light or air to the Property

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D - Restrictive covenants by the Transferee

1. The Transferee covenants with the Transferor to observe and perform the restrictions contained in clause 13.D.2 ('the Transferee's Restrictions') and it is agreed and declared that:

1.1 the benefit of this covenant is to be attached to and enure for each and every part of the Retained Land

1.2 the burden of this covenant is intended to bind and binds each and every part of the Property into whosoever hands it may come

1.3 an obligation in the Transferee's Restrictions not to do any act or thing includes an obligation not to permit or suffer that act or thing to be done by another person

2. The Transferee's Restrictions are as follows:

2.1 Not to make any objection to or claim in respect of any works of construction building alteration addition cleansing or repair carried out on any part of the Retained Land provided that such work shall be carried out with as little inconvenience to the Transferee and the occupants of the Property as possible

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2.2 Not to obstruct any of the Common Parts in any way whatsoever nor erect any building or other

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structure on any of the Common Parts nor hinder or interfere with the use of the Common Parts by any person or persons lawfully entitled to use them save that the Transferee is entitled to park cars on the forecourt at any time provided that doing so does not obstruct the fair use thereof by others or impede or hinder that use in any manner whatsoever

2.3 Not to deposit refuse or waste or any other item that is unsightly on the Common Parts other than in the refuse disposal area

2.4 Not to park or stand any vehicle on the Common Parts other than the Forecourt provided that any parking in the forecourt is done in such manner as not to obstruct the fair use thereof by others or impede or hinder that use in any manner whatsoever

2.5 Not to alter or otherwise change in any way whatsoever the surface appearance material or colour of any external surface of the Garages

2.6 Not to make any structural alterations or extensions to the building now erected on the Property so as to increase its height above 8 metres or erect any structures whatsoever whether of a temporary or permanent nature on the area shown hatched purple on the Plan or to plant or suffer to grow any trees hedges or shrubs on the said area hatched purple on the Plan

2.7 Not to erect any external mast or aerial on the Property save for domestic television aerials or satellite dishes

E - Positive covenants by the Transferee

The Transferee covenants with the Transferor as follows:

1. To contribute a fair proportion according to user of the reasonable cost properly incurred by the Transferor in maintaining the Common Parts provided that the Transferee shall not be required to make any contributions in relation to any buildings erected on the Common Parts after the date hereof save that the transferee shall contribute the whole of the cost properly incurred by the Transferor in keeping the Garages in reasonable repair and decorative condition and insured to their full reinstatement value

2. Within 6 months of the date hereof to erect and forever hereafter maintain a post and single chain link fence no greater than 6 inches in height between the points marked 'A' and 'B' on the Plan

F - Positive covenant by the Transferor

Subject to the observance and performance by the Transferee of its covenant contained at clause 13.E.1 the Transferor covenants with the Transferee for the benefit of the land transferred the so that the covenant will bind the Transferor's successors in title:

1. subject to the observance and performance by the Transferee of its covenant contained at clause 13.E.1 the Transferor covenants with the Transferee to keep to keep the Common Parts and the Garages in good repair and condition and to insure the Garages to their full reinstatement value.
2. that he will not use the Gardens for any purpose other than for ordinary domestic and recreational purposes, and not in such a way as is likely to cause offence or to constitute a nuisance to the owners or occupiers of the Property

G - Agreements and declarations

It is agreed and declared as follows:

1. The transfer of the Property is subject to the leases described in the schedule of leases comprised in the charges register of the freehold register of title for the Property
2. It is not intended that any terms of this transfer should be enforceable by any third party as provided by the Contracts (Rights of Third Parties) Act 1999 but any third party right which exists or is available independently of that Act is preserved

14. Execution The Transferor must execute this transfer as a deed using the space below. If there is more than one Transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains Transferee's covenants or declarations or contains an application by the Transferee (e.g. for a restriction), it must also be executed by the Transferee (all of them, if there is more than one).

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Signed as a deed by
RONALD MAJOR
BRIDGEMAN in the
presence of:

Signed as a deed by
SANDY HOOK
MANAGEMENT
LIMITED acting by a
director and its secretary
(or two directors)

Director.....

Secretary (or director).....

If you need more room than is provided for in a panel, use continuation sheet CS and attach to this form.

1. Stamp Duty

Place "X" in the appropriate box or boxes and complete the appropriate certificate.

- ☐ It is certified that this instrument falls within category ☐ in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987
- ☐ It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of
- ☐ It is certified that this is an instrument on which stamp duty is not chargeable by virtue of the provisions of section 92 of the Finance Act 2001

2. Title number(s) out of which the Property is transferred *Leave blank if not yet registered.*
EX64515

3. Other title number(s) against which matters contained in this transfer are to be registered, if any

4. Property transferred *Insert address, including postcode, or other description of the property transferred. Any physical exclusions, e.g. mines and minerals, should be defined. Any attached plan must be signed by the transferor.*

The Property is defined: Place "X" in the appropriate box.

- ☐ on the attached plan and shown *State reference e.g. "edged red".*
Edged red
- ☐ on the Transferor's title plan and shown *State reference e.g. "edged and numbered 1 in blue".*

5. Date

6. Transferor *Give full name(s) and company's registered number, if any.*
Ronald Major Bridgeman

7. Transferee for entry on the register *Give full name(s) and company's registered number, if any. For Scottish companies use an SC prefix and for limited liability partnerships use an OC prefix before the registered number, if any. For foreign companies give territory in which incorporated.*
Sandy Hook Management Limited (company registration number: 5319685)

Unless otherwise arranged with Land Registry headquarters, a certified copy of the Transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.

8. Transferee's intended address(es) for service (including postcode) for entry on the register *You may give up to three addresses for service one of which must be a postal address but does not have to be within the UK. The other addresses can be any combination of a postal address, a box number at a UK document exchange or an electronic address.*
6 Tilehouse Street, Hitchin, Hertfordshire, SG5 2OW

9. The Transferor transfers the Property to the Transferee

10. Consideration Place "X" in the appropriate box. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.

- ☐ The Transferor has received from the Transferee for the Property the sum of *In words and figures*
£23,000.00 (Twenty Three Thousand Pounds)
- ☐ Insert other receipt as appropriate.
- ☐ The transfer is not for money or anything which has a monetary value

11. The Transferor transfers with Place "X" in the appropriate box and add any modifications.

- ☐ full title guarantee ☐ limited title guarantee

12. Declaration of trust Where there is more than one Transferee, place "X" in the appropriate box.

- ☐ The Transferees are to hold the Property on trust for themselves as joint tenants
- ☐ The Transferees are to hold the Property on trust for themselves as tenants in common in equal shares
- ☐ The Transferees are to hold the Property *Complete as necessary.*

13. Additional provisions

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

Definitions and interpretation

In this transfer:

1. 'the Common Parts' means the Forecourt Paths and Gardens together with any Service Apparatus used in common by the Property and the Retained Land as the same may be varied from time to time and shall not include such part or parts of the Retained Land as may be built on from time to time after the date hereof.
2. 'the Forecourt' means the garage forecourt shown hatched yellow on the Plan as the same may be varied from time to time after the date hereof
3. 'the Garages' mean the garages situate on the Retained Land shown edged blue on the Plan as the same may be varied or relocated from time to time after the date hereof
4. 'the Gardens' means the gardens shown hatched green on the Plan as the same may be varied from time to time and shall not include such part or parts of the Retained Land as may be built on from time to time after the date hereof
5. 'the Path' means the path hatched orange on the Plan as the same may be varied or relocated from time to time after the date hereof.
6. 'the Perpetuity Period' means the period of 80 years commencing on the date of this transfer
7. 'the Plan' means the plan annexed to this transfer
8. 'the Retained Land' means the Common Parts Gardens and the Garages retained by the Transferor being the land comprised in title number EX64515 following the date of this transfer
9. 'the Services' means water soil effluent gas fuel oil electricity telephone telephonic signals television visual audio fax electronic mail data information communications and other services

10. 'the Service Apparatus' means sewers drains channels pipes watercourses gutters wires cables ducts flues conduits laser optic fibres electronic data or impulse communication transmission or reception systems and other conducting media
11. words importing one gender shall be construed as importing any other gender
12. words importing the singular shall be construed as importing the plural and vice versa
13. words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa
14. the panel and clause headings do not form part of this transfer and shall not be taken into account in its construction or interpretation
15. references to 'Transferor' and 'Transferee' shall include their respective successors in title
16. references to a specific statute includes any statutory extension or modification or re-enactment of such statute and any regulations or orders made thereunder

B - Rights granted for the benefit of the Property

1. There are granted for the benefit of the Property and every part thereof the following rights to be exercised in common with all others with like rights:
 - 1.1 to pass and repass with or without vehicles at all times and for all purposes over and along the Forecourt
 - 1.2 to pass and repass on foot only at all times and for all purposes over and along the Path
 - 1.3 to receive the Services through the Service Apparatus now or within the Perpetuity Period laid in over or under the Retained Land
 - 1.4 to enter upon the Retained Land at all reasonable times and upon reasonable notice (except in the case of emergency when no notice shall be required) with workmen tools implements and materials for the purpose of:
 - 1.4.1 inspecting repairing and maintaining the Service Apparatus now or within the Perpetuity Period laid in over or under the Retained Land and
 - 1.4.2 repairing and maintaining any building or any part thereof now or hereafter to be erected on the Propertythe person exercising such right causing as little damage and inconvenience as possible and making good any damage so caused to the Retained Land as soon as possible
- 1.5 to use and enjoy the Gardens for domestic and recreational purposes only but not for any other purpose likely to cause offence or to constitute a nuisance to the owners or occupiers of the Retained Land
- 1.6 to use the Garages as private garages ancillary to the Property
- 1.7 To use the refuse disposal area on the Retained Land for the disposal of rubbish but not for any purposes which are not ancillary to the ordinary domestic use of the flats
- 1.8 To park vehicles upon the Forecourt

1.9 Variation of Rights Granted:

The Transferor shall be permitted to serve notice (Variation Notice) upon the Transferee notifying the Transferee of his intention to vary the rights and obligations (the Existing Rights and Obligations) granted pursuant to clauses 1.1, 1.2, 1.5, 1.6 and 1.7 of panel 13B and clause 1 of panel 13E of the transfer. The Variation Notice shall have annexed to it a draft Deed of Variation detailing the new rights and obligations (the New Rights and Obligations) which the Transferor proposes to grant to the Transferee in substitution for or variation of the Existing Rights and Obligations.

The New Rights and Obligations and any variation of the right at clause 1.6 of panel 13B shall be subject to the Transferor providing at its own expense and in a good and workmanlike manner to the reasonable satisfaction of the Transferor four new garages and a new refuse area in a position upon the Retained Land conveniently situated near to the Property and upon the Retained Land. For the avoidance of any doubt, the new garages shall be of equivalent size and standard as the existing garages and shall be completed before any Variation Notice served in respect of the rights granted by clause 1.6 of panel 13B of this transfer

The Transferor and the Transferee shall use reasonable endeavors to agree the Deed of Variation as quickly as practicable. Any disagreement between the Transferor and the Transferee as to the terms of the Deed of Variation to be determined by an independent barrister of no less than 10 years experience (the Expert) whose decision shall be binding on both parties (save in the case of manifest error) appointed either by agreement between the Transferor and the Transferee or in the absence of agreement nominated at the request of either party by the Chairman for the time being of the Bar Council of England and Wales. The following provisions shall apply in relation to the conduct of that determination:-

- (a) The fees and expense of the Expert and any VAT payable on them including the costs of his appointment are (save where the Expert directs otherwise) to be borne equally between the parties.
- (b) The Expert must afford each of the parties an opportunity to make written representations to him and also an opportunity to make written counter-representations on any representations made to him by the other party but is not to be in any way limited or fettered by such representations and counter-representations and is to be entitled to rely on his own judgment and opinion
- (c) If the Expert dies or refuses to act or becomes incapable of acting or if he fails to publish his determination within six months of the date on which he accepted the appointment either party must apply to the President Chairman to discharge him and appoint another in his place.

4. The Deed of Variation shall be completed within twenty eight working days of the date of agreement or determination of the form of the Deed of Variation. Both parties shall then register the Deed of Variation at HM Land Registry against their respective title numbers and provide the other with official copies of the amended title within five working days of receiving the same

5. The Transferor shall be responsible for the Transferee's reasonable and proper costs and expenses (together with any VAT) incurred in connection with the negotiation completion and registration of the Deed of Variation

C- Rights reserved for the benefit of the Retained Land

There are reserved out of the Property for the benefit of each and every part of the Retained Land and any building for the time being erected thereon the following rights to be exercised in common with all others with like rights:

- 1. Subject to contributing a fair proportion of the cost of replacing, maintaining, repairing, renewing the sewers drains and channels, the right to drain water soil and effluent through the sewers drains and channels now or within the Perpetuity Period laid in over or under the Property
- 2. to enter upon such part of the Property that has not been built upon at all reasonable times and upon reasonable notice (except in the case of emergency) with workmen tools implements and materials for the purpose of
 - 2.1 connecting into the sewers drains and channels now or within the Perpetuity Period laid in over or under the Property
 - 2.2 inspecting repairing and maintaining the sewers drains and channels now or within the Perpetuity Period laid in over or under the Property and
 - 2.3 erecting altering repairing and maintaining any building or any part thereof now or hereafter to be erected on the Retained Land

Such right to only be exercised when such work cannot reasonably be undertaken without such access and the person exercising such right causing as little damage and inconvenience as possible and making good any damage so caused as soon as possible

D - Restrictive covenants by the Transferee

1. The Transferee covenants with the Transferor to observe and perform the restrictions contained in clause 13.D.2 ('the Transferee's Restrictions') and it is agreed and declared that:

1.1 the benefit of this covenant is to be attached to and enure for each and every part of the Retained Land
1.2 the burden of this covenant is intended to bind and binds each and every part of the Property into whosoever hands it may come

1.3 an obligation in the Transferee's Restrictions not to do any act or thing includes an obligation not to permit or suffer that act or thing to be done by another person

2. The Transferee's Restrictions are as follows:

2.1 Not to obstruct any of the Common Parts in any way whatsoever nor erect any building or other structure on any of the Common Parts nor hinder or interfere with the use of the Common Parts by any person or persons lawfully entitled to use them save that the Transferee is entitled to park cars on the forecourt at any time

2.2 Not to deposit refuse or waste or any other item that is unsightly on the Common Parts other than in the refuse disposal area

2.3 Not to park or stand any vehicle on the Common Parts other than the Forecourt

2.4 Not to alter or otherwise change in any way whatsoever the surface appearance material or colour of any external surface of the Garages

2.5 Not to erect any structures whether of a temporary or permanent nature on the area shown hatched purple on the Plan

2.6 Not to erect any external mast or aerial on the Property save for domestic television aerials or satellite dishes

E - Positive covenants by the Transferee

The Transferee covenants with the Transferor as follows:

1. To contribute a fair proportion according to user of the reasonable cost properly incurred by the Transferor in maintaining the Common Parts provided that the Transferee shall not be required to make any contributions in relation to any buildings erected on the Common Parts after the date hereof save that the Transferee shall contribute the whole of the cost properly incurred by the Transferor in keeping the Garages in reasonable repair and decorative condition and insured to their full reinstatement value

2. Within 6 months of the date hereof to erect and forever hereafter maintain a post and single chain link fence no greater than 24 inches in height between the points marked 'A' and 'B' on the Plan

F - Positive covenant by the Transferor

Subject to the observance and performance by the Transferee of its covenant contained at clause 13.E.1 the Transferor covenants with the Transferee for the benefit of the land transferred the so that the covenant will bind the Transferor's successors in title:

1. to keep the Common Parts and the Garages in good repair and condition and to insure the Garages to their full reinstatement value.
2. that he will not use the Gardens for any purpose other than for ordinary domestic and recreational purposes, and not in such a way as is likely to cause offence or to constitute a nuisance to the owners or occupiers of the Property

G - Agreements and declarations

It is agreed and declared as follows:

1. The transfer of the Property is subject to the leases described in the schedule of leases comprised in the charges register of the freehold register of title for the Property
2. It is not intended that any terms of this transfer should be enforceable by any third party as provided by the Contracts (Rights of Third Parties) Act 1999 but any third party right which exists or is available independently of that Act is preserved

14. Execution *The Transferor must execute this transfer as a deed using the space below. If there is more than one Transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains Transferee's covenants or declarations or contains an application by the Transferee (e.g. for a restriction), it must also be executed by the Transferee (all of them, if there is more than one).*

Signed as a deed by
RONALD MAJOR
BRIDGEMAN in the
presence of:

Signed as a deed by
SANDY HOOK
MANAGEMENT
LIMITED acting by a
director and its secretary
(or two directors)

Director.....

Secretary (or director).....