Decision of the Home Owner Housing Committee issued under the Home Owner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

HOHP Reference: HOHP/PF/13/0077

THE PARTIES:

Mrs Laura Craig, formerly residing at 21 Bellamy Close, Plymouth P16 5LG & now residing at
("The applicant")

Thenue Housing Association Ltd, a company incorporated under the Industrial & Provident Societies Act 1965 (registered Number 1933 R(S)) & having their registered office at 423 London Road, Glasgow G40 1AG ("The respondent")

DECISION BY THE COMMITTEE OF THE HOME OWNERS HOUSING PANEL IN AN APPLICATION UNDER S17 OF THE PROPERTY FACTORS (SCOTLAND) ACT 2011

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Respondent has

(a) Complied with the property factor's duties created by s, 17 of the Property Factors (Scotland) Act 2011 ("The 2011 Act") &

(b) Complied with the Code of Conduct, as required by s. 14 of the 2011 Act

Determined that the Respondent has neither failed to carry out the property factor's duties, nor has the Respondent breached the Code of Conduct for Property Factors

COMMITTEE MEMBERS

Paul Doyle (Chairperson)
Mr Thomas Keenan (Housing Member)

BACKGROUND

1. By application dated 15th May 2013, the applicant applied to the Home Owners Housing Panel for a determination as to whether the respondent had failed to comply with the property factor's duties in terms of the 2011 Act, and failed to comply with the duties to adhere to the Code of Conduct imposed by section 14 of the 2011 Act.

2. The application by the applicant stated that the applicant considered that the respondent had failed to comply with section 2.2 of the Code of Conduct and had failed to comply with the Property Factor's Duties. In the course of the application the applicant extended her complaint, to a complaint that the respondent had failed to comply with sections 2.2, 2.4, 2.5 and 6.9 of the Code of Conduct. The subject matter of the applicant's complaint is the circumstances in which a minute of agreement between the applicant and the respondent relating to repair works on the larger building, of which the applicant's property forms part, was entered into, and whether or not the terms of the minute of agreement are fair and reasonable.

3. By letter dated 15 July 2013 the applicant re-intimated her complaint to the respondent, stating her belief that the respondent had failed to comply with sections 2.2, 2.4, 2.5 and 6.9 of the Code of Conduct. By letter dated 19 July 2013 the respondent wrote to the applicant asking for specification of the alleged failures to comply with sections 2.2, 2.4, 2.5 and 6.9 of the Code of Conduct. By email dated 9 August 2013 the respondent wrote to the applicant acknowledging that their own internal complaints procedure was at an end.

4. By letter dated 3 September 2013 the President of the Home Owner's Housing Panel intimated a decision to refer the application to a Home Owner's Housing Committee. The Home Owner's Housing Panel served notice of referral on both parties, directing each party to make written representations no later than 17 September 2013.

5. Following service of the notice of referral, both parties made further written representations to the Committee.

6. A hearing was held at Europa House, Argyle Street, Glasgow on 8 November 2013. All parties were timeously notified of the time date and place of the hearing. The applicant was present. The respondent's head of property services, Elizabeth Riley, was present. The respondents were represented by Alistair McKendrick, Solicitor.

7. The Homeowners Housing Committee comprised:

Paul Doyle, Chairman, and
Thomas Keenan, Housing Member.

8. After the procedure was explained to parties & the Committee members had been introduced to the parties, the applicant answered questions from Committee members and from the respondent's solicitor. Ms Riley then answered questions from Committee members. A written submission was adopted by the solicitor for the

respondent. The Committee members helped the applicant to make her own submissions. The Committee then reserved their determination.

FINDINGS IN FACT

9. The Committee finds the following facts to be established:

(a) The applicant is the heritable proprietor of the second floor flatted dwellinghouse known as and forming 2/2 97 Greenhead Street, Glasgow G40 1HR. The applicant's heritable property forms part of a larger tenement building, consisting of a number of stairs, with eight flats on each stair. The respondent owns four of the flats on the stair entered by 97 Greenhead Street aforesaid.

(b) Towards the end of 2012 the proprietors of the various flatted dwelling houses contained within the tenement from 97 to 113 Greenhead Street, aforesaid, agreed that refurbishment was required to the larger building of which each of their flatted dwelling houses formed part. The works required *inter alia*, repairs to the façade, repairs to the stonework and the parapet of the building and repairs to the roof of the building. The proprietors of the flatted dwelling houses in the building were aware that if they could not agree a scheme of repairs then there was likelihood that Glasgow City Council would issue a Repairs notice in terms of s50 of the Housing (Scotland) Act 2006. Both parties to this application, as well as the other neighbouring proprietors, were aware that if all proprietors in the building 97-113 Greenhead Street aforesaid, agreed to a scheme of works then each individual proprietor (including the applicant) would be entitled to a grant to assist with the costs of the common repairs works from Glasgow City Council.

(c) The respondents made efforts to coordinate the necessary refurbishment and repair of 97-113 Greenhead Street aforesaid. As part of the efforts they asked each proprietor to sign a minute of agreement, after they had obtained a mandate to instruct the works. The majority of the heritable proprietors signed the minute of agreement presented to them by the respondent. The applicant initially refused to do so, viewing the minute of agreement to be both unnecessary and unfair.

(d) There was an exchange of emails between the applicant and the respondent throughout December 2012 & January 2013, which is now reproduced in the case file before us. The respondent's position was that the minute of agreement was necessary to ensure that the necessary refurbishment and repair works could be instructed and that each proprietor was obliged to pay their share. One of the benefits of the minute of agreement was that it would provide access to a grant from Glasgow City Council to assist with 50% of the costs of the programme of refurbishment and repair for each heritable proprietor.

(e) In or about October 2012 the applicant made a grant application to Glasgow City Council to assist with the funding of the proposed refurbishment and repairs to the property at 97-113 Greenhead Street, aforesaid. Prior to 20 December 2012, the respondent emailed the applicant a draft minute of agreement. In an email from the respondent to the applicant on 21st December 2012, the applicant was advised that the respondent was seeking return of a signed minute of agreement by 18 January 2013.

(f) The applicant is a solicitor. Although not on practice at the present, her name remains on the roll of solicitors maintained by the Law Society of Scotland. The applicant first had sight of the respondent's preferred wording of the minute of agreement before 20 December 2012.

(g) On 9 January 2013 the applicant emailed the draft minute of agreement with her proposed revisals marked on the draft as tracked changes both to the respondent and to the respondent's solicitors. On 11 January 2013 the respondent emailed the applicant the draft minute of agreement, further revised, with tracked changes rejecting the majority of the applicant's proposed revisals to the minute of agreement.

(h) By email dated 13 January 2013 the applicant wrote to the respondent with further adjustments to the draft minute of amendment and stated, "*I have accepted all the changes made and red lined my new ones.*" The applicant then set out in detail her arguments in favour of her revisals to the draft minute of agreement.

(i) On 14 January 2013 the respondent wrote to the applicant by email, rejecting the applicant's further adjustments (contained in the email of 13 January 2013) and stating "... *the minute of agreement issued with my email of 11 January 2013 is the one that we would wish to have signed.*" The respondent went on to state "*if you do not wish to sign the agreement, the Association would be willing to accept payment in full of the £17,970 as your agreement to the works proceeding. This would mean that grant payment would be made direct to yourself rather than the Association.*"

(j) The applicant emailed the respondent on 14 January 2013 stating "*I do not have £17,970 to give you (I only have my share, minus the grant award as GCC have confirmed that they will pay the other half with the grant) nor would I pay any monies to you at this stage as the works are not completed.*" and later "*Hopefully they can confirm their position ASAP so I fully understand the implications if I will be forced to choose between signing a document that is unfair and one sided, or letting my property fall into more disrepair. This is not a position I want to be in but this is unfortunately one I find myself in due to your stance.*"

(k) On 15 January 2013 the applicant emailed the respondent stating inter alia "*As you will know, the Association have me over a barrel. Your bargaining power is much stronger than mine and you hold all the cards as I will suffer severe economic loss if I don't sign your biased agreement. Therefore I have no option but to sign it, but I do so under great duress.*" The applicant went on to ask for an engrossed agreement for signature.

(l) The applicant signed a minute of agreement with the respondent on 17 January 2013. The respondent signed the minute of agreement on 11 February 2013. A copy of the minute of agreement is attached hereto and referred to for its terms *brevitatis causa.*

(m) On 16 January 2013 the applicant wrote to the senior executive of the respondent's Association registering a complaint. She copied her complaint to her own MP. In her letter of complaint she stated "*my main complaint lies with the way*

the minute of agreement that Thenue proposed has been handled. I do not have an issue in principal with the minute of agreement; however I have major issues with the terms therein. There are a number of clauses that don't work or are totally inequitable. I am aware of the terms of legal documents as I am a commercial property solicitor and trained at one of biggest construction law firms in the world so I also have a solid background in construction law and documentation…

"… I would also like to formerly register my complaint at the inappropriate handling of the matter and the fact that the Association have used their greater bargaining power to force me to sign an inequitable, one sided agreement where I have been forced to sign away my rights and take on overly onerous conditions."

(n) The repair and refurbishment works for 97-113 Greenhead Street, aforesaid, have now finished. The applicant has not suffered as a result of the terms of the minute of agreement entered into between the applicant and the respondent dated 17 January and 11 February 2013. The applicant has in fact derived a financial benefit as a result of the said minute of agreement. Because the minute of agreement was entered into, the scheme of works was coordinated by the respondent. As a result the applicant had access to a 50% grant to assist with the cost of repairs from Glasgow City Council. In addition the prospect of a statutory notice ordering works for which no grant would be available, and increasing the cost of works by a minimum of 15% , would have been served on the applicant.

(o) The applicant's estimated cost of the works involving the scheme of repair and refurbishment were £17,970. Glasgow City Council made payment of a grant of £8,985 to assist the applicant to meet the costs of the repair and refurbishment programme. The applicant was required to pay a balance of £9,115.

CONCLUSIONS

10 (a) The applicant submitted her application to the Home Owner Housing Panel on 15 May 2013. At question 7 of the application form, the applicant is asked for details of her complaint. The applicant states that the property factor failed to resolve her complaint because the property factor disagrees that they have acted improperly. The applicant summaries her complaint when asked *"How has this affected you?"* by stating, *"I have had to sign an agreement which I believe is prejudicial to my position. I will have no collateral warranties to protect my position with the contractors."* The applicant is then asked *"What would help to resolve the problems?"* and the applicant explains that in order to resolve her complaints, *"I want the contract voided and I want collateral warranties."*

(b) The Home Owners Housing Panel cannot give the remedy sought by the applicant even if the applicant's case is made out. The remedy sought by the applicant is a remedy which can only be competently sought by an action of reduction, which can only competently be raised in the Court of Session. The Home Owners Housing Panel is restricted to considering whether or not the Code of Conduct has been adhered to, and whether or not the Property Factor's Duties have been honoured. If a property factor fails to uphold the Property Factor's Duties, or breaches the Code of Conduct, then the remedy in this jurisdiction is a Property Factor Enforcement Order.

(c) The hearing in this case took place on 8 November 2013 in Europa House, Argyle Street, Glasgow. The applicant was present, the respondent was represented by Ms McKendrick, solicitor. Elizabeth Riley, the head of property services for the respondent (and author of the respondent's letter dated 16 September 2013) gave evidence on behalf of the respondent. After Committee members were introduced to parties and the procedure was explained, the applicant answered questions from Committee members in order to set out her position. The applicant identified her application as her own and was taken to the exchange of emails between parties. The applicant read through her own email dated 16 January 2013 (reproduced at documents 111-113 of the papers before us) and confirmed that the combination of her application form and that email formed a summary of her claim. The applicant identified a letter dated 23 January 2013 from the respondent (now reproduced at documents 120-123 of the papers before us) as the response that she received to her email in January 2013, (documents 111-113). The applicant then answered a number of questions from the Committee. Ms Riley adopted the terms of the letter of 16 September 2013 as her evidence.

(d) In the course of her evidence the applicant took us to her own proposed revisals to the draft minute of agreement which passed between the parties in this case, and bemoaned the fact that her revisals were rejected. The applicant confirmed that at section 17 of the papers before us there is reproduced a final version of the minute of agreement which was signed by the applicant on 17 January 2013. It is beyond the dispute that the minute of agreement is a minute of agreement designed to organise and regulate a scheme of common repairs to a tenement block of which the applicant's property forms a part. It is equally beyond dispute that the applicant received a grant from Glasgow City Council to assist with the cost of the repairs. The applicant's position is that the respondent has breached the Code of Conduct (particularly sections 2.2, 2.4, 2.5 and 6.9) because the respondent

(i) Rejected the applicant's revisals to the contract.
(ii) The respondent did not provide collateral warranties, having promised to do so
(iii) The applicant felt that she was forced to sign an agreement against her will
(iv) The applicant believes that the respondent manipulated the time frame for repairs and grant applications to force the applicant to sign the contract.

(e) The applicant concedes that the work has been completed and that there have been no problems *"...so far..."* The unchallenged evidence is that the works have been completed and have now entered the "*snagging period*".

(f) Committee members took the applicant to the terms of the minute of agreement signed on 17 January 2013, and asked the applicant to specify which clause was prejudicial. The applicant read through the minute of agreement and stated that each clause, including the interpretation clause, was prejudicial but would not specify in which ways her interests were prejudiced, nor could the applicant specify any prejudice that had been suffered. In reality the reliable evidence placed before us is that the applicant has not suffered prejudice; that the minute of agreement had been implemented; that the works have been carried out, and that the applicant has in fact

derived a financial benefit from signing the minute of agreement - because it smoothed the way for a grant from Glasgow City Council to assist the applicant with almost 50% of the costs of the works which are the subject matter of the minute of agreement, which the applicant now complains about.

(g) A minute of agreement to regulate common repairs entered into between co-proprietors is not unusual. Committee members considered the terms of the minute of agreement signed by the applicant on 17 January 2013 and cannot find an unusual clause in that minute of agreement, nor *ex facia* is there an obviously unfair clause.

(h) At the date of hearing, the minute of agreement was ten months old - yet no action of reduction has been raised and no complaint in terms of the Unfair Contract Terms Act has been raised. The applicant has made no attempt to interdict the respondent from implementing the terms of the agreement.

(i) Taking a holistic view of the evidence in this case, Committee members come to the conclusion that there is nothing unfair or prejudicial contained within the terms of the minute of agreement. The applicant may well be aggrieved that her revisals were not incorporated within the final engrossment of the minute of agreement, but the applicant decided independently to sign the final engrossment of the minute of agreement, even though it did not incorporate her revisals. The applicant's revisals are, in fact, antecedent negotiations. There is nothing within the terms of the contract which we find to be either obviously or intrinsically unfair or prejudicial. There is therefore nothing in the contract which merits an examination of the antecedent negotiations.

(j) The applicant was asked by a Committee member if, when she practiced as a solicitor negotiating contracts for construction deals, she would have advised her own client to sign the Minute of Agreement (on the assumption that she acted for a Housing Association) and she said that she would advise a housing association to sign such a contract.

(k) The applicant complains that the respondent acted unfairly and placed pressure on her to sign the minute of agreement. The pressure identified by the applicant was the frustration that her attempts to negotiate adjustments were not meeting with success, and the passage of time may have counted against her application for a grant from Glasgow City Council. The documents before the Committee indicate that negotiations on the minute of agreement began in October 2012. The Minute of Agreement was not signed until January 2013. The Minute of Agreement was first presented for signature in December. The delays in signing the Minute of Agreement are not solely attributable to the respondent. The delays were at least contributed to by the applicant's decision to attempt to negotiate a significant amount of revisals to the minute of agreement. The reliable evidence before the Committee indicates that the majority of proprietors in the tenement simply signed the minute of agreement presented to them and did not seek to make revisals. The reliable evidence before the Committee indicates that the applicant was the only proprietor in the tenement who tried to enter into protracted negotiations and who tried to make adjustments to the minute of agreement.

(l) The applicant attempted to negotiate significant adjustments to the minute of agreement and presenting tracked changes to the respondent, but the respondent did not simply reject the applicant's proposed revisals. The respondent entered into correspondence with the applicant explaining why the revisals were not acceptable. The respondent provided the applicant with direct access to their own solicitors so that the applicant could negotiate with the respondents' solicitors directly.

(m) The reliable evidence before the Committee indicates that it is wrong for the applicant to attempt to apportion blame on the respondent when the delay was caused by a period of dialogue, instigated and kept alive by the applicant.

(n) The respondent's principal complaint relates to section 2 of the Code of Conduct "*Open communication and consultation.*" The reliable evidence before us is that the respondent engaged, openly and actively, in communication with the applicant.

(o) The respondent's position has always been reasonable & state-able. The respondent did not treat the applicant's representations in a frivolous manner, but presented an argument firmly rooted in business efficacy. The respondent's position has never been one which a Housing Association acting reasonably & balancing its various obligations would not take. It is clear from the reliable evidence placed before the Committee that the respondent's position was influenced by legal advice provided by their solicitors. As the respondents were "*fronting all owners contributions*", they required a robust agreement to protect their position and to ensure that each owner understood their obligations in relation to the refurbishments. The minute of agreement that was entered into quite clearly does that, and it has achieved its aim.

(p) The applicant complains that Articles 2.2 ("*You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action)*") and 2.4 ("*You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies)*") of the Code of Conduct is breached, but the reliable evidence before the Committee indicates that the respondent had a procedure of consultation with the group of home owners and the respondent sought written approval before engaging in significant works which incurred fees. As the Committee has already noted, a significant period of negotiation was allowed before the applicant signed the minute of agreement. The negotiation may not have been fruitful in the applicant's eyes, but the communication and negotiation undeniably took place prior to the commencement of works which incur fees. The reliable evidence indicates that the respondent has consistently communicated in a courteous & business-like manner with the applicant.

(q) The respondent complains that Article 2.5 of the Code of Conduct is breached, ("*You must respond to enquiries or complaints received by letter or email, within prompt timescales*"). The documentary evidence placed before us indicates that there were no delays in responding to any of the applicant's written communications. In her own evidence the applicant is unable to point to any written enquiry or complaint where a response has either been delayed or not received.

(r) The applicant complains that Article 6.9 of the Code of Conduct is breached; ("*You must pursue the contractual supplier to remedy the defects in any inadequate work or service provided, if appropriate you should obtain a collateral warranty from the contractor.*") Parties are agreed that there is not yet any evidence of defects in the work, but it is here that we come to the real focus in the applicant's complaint - collateral warranties.

(s) From the outset the applicant has complained that she has not been able to obtain collateral warranties from the contractors and she believes that her position is prejudiced as collateral warranties are not available. In emails of both 3 and 4 December 2013 the respondent wrote to the applicant setting out the details of the warranties required and the costs involved. It has always been the respondents' position that there are no obligations on the contractor to provide collateral warranties.

(t) The minute of agreement that is entered into is not entered into between the applicant and the contractor; it is entered into between the applicant and the Housing Association. Collateral warranties are used as a supporting document to a primary contract, where an agreement is required with a third party outside the primary contact. There are occasions where an architect, contractor or a sub-contractor needs to warrant to a funder, tenant or a purchaser that it has fulfilled its duties under a building contract. The applicant's concern is that, as a third party to a construction work, she might not be able to bring a contractual complaint against a contractor who is at fault. It is not normal for a contractor to grant greater liability than he has under the primary contract. However there is no difference between collateral warranties and third party rights in a construction or engineering project. Third party warranties are unlikely to increase the applicant's right.

(u) When the applicant asked for collateral warranties, she was advised by the respondent that a collateral warranty would cost around £30 per warranty, and that there is no obligation on the contractor to sign the warranty. However, the respondent told the applicant that the collateral warranty was available at the applicant's request.

(v) The respondent's email of 3 December 2012 is poorly worded. It opens with the sentence, "*I can confirm that we will get CCG to issue you with collateral warranties for the works.*" But when full account is taken of the entirety of the email it is clear that what the respondent is telling the applicant is that investigation have been carried out, that warranties are available, and that it is up to her to get the warranties. The first paragraph of the applicant's response to that email appears to be written in a hostile tone, and demands to know what style of warranty will be used. The respondent replied on 4 December, stating in unambiguous terms, *"I have confirmed with our QS that it will be SBCC warranty that will be used between yourself and*

CCG. As stated any costs for this will have to be borne by any owner who wishes this guarantee". The discussion of collateral warranties is not taken further. The respondent made their position clear on 4 December 2012. The applicant did not sign a minute of agreement (which contains no mention of contractual warranties) until 17 January 2013.

(w) There is no reliable evidence before the Committee of efforts that the applicant made to contact the contractors, the quantity surveyors, or the architects in order to obtain collateral warranties. There is no evidence of payment made for any of the collateral warranties which may have been on offer. Although we have a repetitive abundance of emails between the applicant and the respondent, and several copies of revisals the applicant sought to make to the minute of agreement, the evidence of trying to obtain collateral warranties peters out with the respondent's simple and unambiguous email on 4 December 2012.

(x) Article 6.9 of the Code of Conduct for property factors concludes with this sentence, "*if appropriate you should obtain a collateral warranty from the contractor*" There is no reliable evidence before the Committee to indicate that is was appropriate for the respondent to obtain a collateral warranty from the contractor.

(y) The applicant provides details of the manner in which she believes the Code of Conduct has been breached. We consider each strand of evidence in this case. The Committee carefully pore over the documentary evidence in this case and having done so come to the conclusion that the property factor has not breached the Code of Conduct.

(z) On the one hand the applicant provides specific allegations of breaches of the Code of Conduct, on the other the applicant simply asserts that the property factor duties (in terms of section 17.5 of the 2011 Act) have been breached. The applicant does not provide specification of the manner or nature of the alleged breach of the property factor duties. We take a holistic view of the evidence in this case and come to the conclusion that the respondent has not breached duties in relation to the management of the common parts of the land owned by the home owner, nor has the respondent breached duties in relation to land adjoining that owned by the home owner and available for use to the home owner. There is therefore no breach to the property factor's duties.

DECISION

11. The Committee therefore finds that the Respondent has neither failed to carry out the property factor's duties, nor has the Respondent breached the Code of Conduct for Property Factors. The committee refuses the application. No Property Factor Enforcement Order will be made in response to this application.

Appeals

12. The parties' attention is drawn to the terms of section 22 of the 2011 Act regarding their right to appeal and the time limit doing so. It provides:

"...(1) An appeal on a point of law only may be made by summary application to the Sheriff against a decision of the president of the Homeowner Housing Panel or a Homeowner Housing Committee.

(2) An appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made..."

Paul Doyle

Signed
Chairperson

Date 19/11/2013

MINUTE OF AGREEMENT

Between

THENUE HOUSING ASSOCIATION, incorporated under the Industrial & Provident Societies Act 1965 (Registered Number 1933 R(S)) and the Housing (Scotland) Act 1988, registered as a Registered Social Landlord with The Scottish Housing Regulator under the provisions of the Housing (Scotland) Act 2001 (Registered Number 193), being a recognised Scottish Charity (Charity No SC032782) having their Registered Office at Four hundred and twenty three London Road, Glasgow (hereinafter referred to as "the Association")

and

LAURA JOHANN CRAIG, residing at 97 GREENHEAD STREET, FLAT 2/2, BRIDGETON, GLASGOW G40 1HR, (hereinafter referred to as "the Proprietor")

WHEREAS the Proprietor owns the dwellinghouse known as and forming FLAT 2/2, 97 GREENHEAD STREET, GLASGOW being the northmost house on the second floor above the ground floor at 97 GREENHEAD STREET, GLASGOW G40 1HR ("the Flat") within the block known as and forming the Tenement 97 GREENHEAD STREET and 2 JAMES STREET, GLASGOW "the Building"

AND WHEREAS the Association, has agreed with the Proprietor and other proprietors of the Building that they will to carry out required repairs to the Building as detailed in the plans and specifications contained in Schedule One annexed and docquetted as relative hereto ("Specification") ("the Repair Works"), it is hereby AGREED as follows:-

1. **The Repair Works**

1.1 The Association will carry out the Repair Works or procure that they are carried out. The Association will act as Employers under any Building Contract. The said building contract shall in the form of the SBCC Standard Building Contract with Approximate Quantities for use in Scotland 2011 Edition ("Building Contract"). In so doing the Association will be acting as Agents for and on behalf of the Proprietor and other proprietors in the Building insofar as the Repair Works relate to the Building and the common parts of the Building.

1.2 The Association will procure that the Repair Works are carried out in a proper and workmanlike manner using good quality materials, and shall in all respects comply with the Specification and all general or local Acts of Parliament and all instruments, orders, plans, regulations, permissions and directions for the time being made issued or given thereunder or deriving validity therefrom and the requirements of any public, local or other competent authority. The Association shall also use their best

endeavours to ensure that the Contactor shall adhere to the terms of the Building Contract in all respects until the Repair Works are practically completed.

1.3 The Association shall not be liable to the Proprietor for any inherent design or technical faults in the works carried out in terms of the Repair Works which may arise in the future. The relationship between the parties constituted by this Agreement is hereby declared to be contractual only and shall not constitute a partnership or a joint venture agreement between the parties.

1.4 The Proprietor by his execution hereof agrees to any/all plans, specifications and approved costs of the said Repair Works so far as they relate to the common parts of the Building of which the said Flat forms part. The Proprietor by his execution hereof agrees that the said works may be subject to amendment by the Association or any Contract Administrator employed by the Association ("the CA") to supervise the implementation of the said works, it being understood that in event of the net effect of such amendment or amendments increasing the cost of the said scheme over the sum allowed for contingencies in the tender documentation relative to the Building Contract, then the Proprietor will be advised in writing of the reason for any increase in the overall costs of the Repair Works

1.5 The Proprietor requests and hereby formally authorises the Association on her behalf to enter into all requisite contracts relating to the Repair Works and any necessary work in addition thereto and to act within their absolute discretion as his Agent during the course of said contracts. The Proprietor expressly authorises the Association to make on her behalf any payments falling due under such contracts which are certified by the CA as directly attributable to her In particular, and without prejudice to the foregoing generality, the Proprietor acknowledges that she has had the opportunity to see the extent of and examine the cost of the Repair Works are estimated to be and by her execution hereof authorises the Association to appoint on his behalf a Contractor to execute said works; the Proprietor further acknowledges that she is not entitled to require any changes in or additions to the said works except with prior written agreement between the Proprietor and the Association or the CA

1.6 The Association undertakes that provided the Proprietor has fulfilled his obligations hereunder they shall as soon as reasonably practicable and at the latest within one year of the date of practical completion of the Repair Works supply to the Proprietor a detailed breakdown of the cost of the Repair Works, related fees and VAT attributable to the Building as measured by the Association's consultants and the loan interest (if any) incurred by the Association

1.7 The Association shall ensure that there is in place all risk insurance for the duration of the Repair Works and until they are practically completed.

2. **Costs and Payment**

2.1 The Proprietor will pay to the Association the sum of **£17,970** ("the Sum Due") in respect of their share of the cost of the Repair Works calculated and detailed in Schedule Two annexed and executed as relative hereto. Payment will be made within **Twenty Eight** days of the Association's confirmation of practical completion of the Repair Works provided that the Proprietor is furnished with a copy of the certificate of practical completion issued under the Building Contract by the CA to the effect that Repair Works are practically completed ("Due Date").

2.2 If the Sum Due is not received by the Association by the Due Date interest will be charged thereon at 4% over the Bank of Scotland base lending rate from time to time. Furthermore in the event that payment of the Sum Due is not paid within **twenty eight** days from the Due Date, the Association will be entitled to treat the Proprietor as in material breach of this agreement and will be entitled to raise an action for recovery of the sums due in the local Sheriff Court.

2.3 The Proprietor authorises the Association to draw down any grant to be provided by Glasgow City Council in respect of the Repair Works on their behalf to settle payments due under the Building Contract. The sum payable by the Proprietor in terms of clause 2.1 will be reduced by any sum received by the Association in terms of any grant funding due to the Proprietor received by them.

The Proprietor hereby irrevocably authorises and instructs any local authority or other body or person providing finance by way of grant to the Proprietor to finance the cost of the Repair Works to pay such grant to the Association on demand in accordance with the provisions this clause. This authority and instruction may not be withdrawn without the consent of the Association in writing

The Proprietor undertakes to use his best endeavours to ensure that his application for an improvement grant or loan finance is successful

3. **Variations**

3.1 The Association may increase the sum payable by the Proprietor in terms of clause 1.3 to the fair and reasonable extent attributable to variations contained in this clause in which case the sum due in terms of clause 2.1

shall be deemed to be increased accordingly and where applicable pro rated.

In the event that the cost of the Repair Works is less than anticipated the total sum payable by the Proprietor will be reduced accordingly such sum to be paid to the Proprietor within 28 days of agreement of the signed final account between the Association and the Contractor. If such sum is not received by the Proprietor within Twenty Eight days of the said agreement of the signed final account interest will be charged thereon at the rate 4% above the Bank of Scotland base lending rate from time to time. Furthermore in the event that such sum is not paid to the Proprietor within twenty eight days, the Proprietor will be entitled to treat the Association as in material breach of this agreement and will be entitled to raise an action for recovery of the Overpayment in the local Sheriff Court.

4 Your Title

4.1 The Proprietor warrants to the Association that they are the proprietor of the Flat and undertakes to provide title evidence of that ownership to the Association as quickly as possible after any request for that evidence made to them by the Association.

5. Access to the Flat and Building

5.1 The Proprietor undertakes to allow the Association or persons acting on the Association's instructions, access to the Flat if required provided that 48 hours written notice is given to the Proprietor (and/or their tenant where the Flat is tenanted), for all necessary purposes at all reasonable times during the course of the said Repair Works. The Proprietor also undertakes to allow the Association or their representative access at all reasonable times to any part of the Building in which the Proprietor has an interest to effect any repairs, renewals or alterations which are necessary in terms of the Repair Works. Any breach of this undertaking by the Proprietor shall be construed as a material breach of this contract.

5.2 The parties agree that until the date of Practical Completion of the Repair Works the structure of the Building shall be insured under a policy of insurance maintained by the Association but provided that interior fitments and finishes shall not be covered by such insurance and it shall be the responsibility of the Proprietor to remove any such items from the Building.

6. Change of Ownership/Assignation

Neither the Association nor the Proprietor shall assign or otherwise deal with this Agreement or the benefit thereof without the prior written consent

of the other not to be unreasonably withheld or delayed. In the event of the Proprietor entering into a contract to sell his Property, the Proprietor shall (i) advise the Association of same forthwith and at least 21 days prior to the completion of any such sale; (ii) shall (subject to the consent of the Association) procure that the purchaser of the Property enters into an Agreement with the Association on the same terms as this Agreement and that such Agreement is delivered to the Association within 7 days of completion of such sale; and (iii) shall supply to the Association on demand all such information as is required by the Association in connection with such sale including details of the Proprietor's new residential address. In the event of the Proprietor selling the Property and having the consent of the Association to the assignation of this Agreement then the Proprietor shall be relieved of all liability under this Agreement upon a purchaser of the Property entering into an agreement with the Association on the same or similar terms to this Agreement

7 Disputes

7.1 Any dispute between the Association and the Proprietor in respect of this agreement shall be determined (including in respect of costs apportionment) by arbitration. Arbitration shall be by a single arbiter agreed between the Association and the Proprietor or (in the absence of agreement) nominated by the Chairman for the time being of the Royal Institution of Chartered Surveyors in Scotland or the person for the time being authorised to act on his behalf on the application of either the Association or the Proprietor and whose decision shall be final and binding and not subject to appeal under Section 3 of the Administration of Justice (Scotland) Act 1972

7.2 If the arbiter appointed or nominated under clause 7.1 shall die or decline to act the Chairman for the time being of the Royal Institution of Chartered Surveyors in Scotland or the person for the time being authorised to act on his behalf may on the application of either the Association or the Proprietor discharge the arbiter and appoint another in his place

7.3 In the case of arbitration the Association and Proprietor may make written representations and written comments on each other's representations and the arbiter may call for written evidence from the Association and/or Proprietor and seek legal or other expert assistance, all of which, along with the whole provisions of this agreement, the specialist shall take into account in making a determination.

8. Interpretation

In this agreement unless the context requires otherwise:-

8.1 words importing gender includes all genders

8.2 words importing singular include plural and vice versa and where there are 2 or more persons included in the term 'Proprietor', obligations on the Proprietor are binding jointly and severally on them and their respective executors and representatives without discussing them in order.

8.3 rights or powers conferred on the Association (including inspections, works to be carried out by the Association and notices, requests or demands to be served or issued by the Association) may be exercised by the Association or its duly authorised employee, contractor or agent

8.4 Any obligation on the Proprietor which has the effect of restricting any act of the Proprietor shall be deemed to incorporate an obligation on the Proprietor not to allow or permit any other person to infringe such prohibition or restriction and to use reasonable endeavours to prevent any person within the Proprietors reasonable control from infringing such prohibition or restriction.

8.5 Any expression of liability on the part of the Proprietor in respect of their act, omission, neglect or default shall include liability for the act, omission, neglect or default of their resident family and their employees, contractors or agents and all others within the Proprietors reasonable control

8.6 Each of the parties hereto shall so far as it lies within its powers to do so and acting in good faith do such acts and things and execute such deeds and documents as may be necessary to give full effects to the provisions of this agreement.

8.7 If at any time any provisions in this agreement shall become or be held to be of no effect or unenforceable whether by operation of law or by reason of uncertainty or otherwise it shall not affect the validity of the remainder of this agreement which will remain in full force and effect.

8.8 All notices which require to be given in terms of this agreement shall be in writing and shall be deemed to be sufficiently given if sent by post to the address of the party concerned or to the solicitors of the party concerned (and in the case of the Proprietor also by email to the email address laurajohanncraig@hotmail.com). Any such notice shall be deemed to have been served on the second working day after the date on which the same was posted. In proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the recipient and posted to the place to which it was so addressed in accordance with this clause or in the case of email that it was sent to the above email address.

8.9 This Agreement shall be governed and construed in accordance with the Law of Scotland and the parties hereto agree to submit to the exclusive jurisdiction of the Scottish Courts.

The parties hereto consent to registration for preservation and execution:

SIGNED ON BEHALF OF THENUE HOUSING ASSOCIATION LIMITED and subscribed for and on their behalf at 423 LONDON RD. Glasgow on the 11th day of February Two Thousand and thirteen by;-

..... FULL NAME.....
Authorised Signatory

in the presence of;-

Witness .....

Address .....

.....

.....

(Signatures)

Signed by the said Laura Johann Craig

At PLYMOUTH

on the 17th of January
Two Thousand and thirteen
in the presence of;-

Occupation .....

Witness .....

Address .....

.....

.....

(Signatures)