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

Case Reference : **LON/00AS/LVL/2013/0019**

Property : **12 Dell Farm Road, Ruislip,
Middlesex HA4 7TX**

Applicant : **Dell Farm Management Company
Limited**

Representative : **Mr Allison, Counsel, instructed by
Thomas Eggar LLP Solicitors**

Respondent : **Mr J Brennan**

Representative : **Mr J Brennan, in person**

Type of Application : **Variation of a lease by a party to the
lease**

Tribunal Members : **Miss A Seifert FCI Arb
Mr D Banfield FRICS**

Date and venue : **Hearing 11th July 2014 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **1st September 2014**

DECISION

The Application

1. The property, which is the subject of this application, is a Flat 12 ("Flat 12") together with garage No. 12, Dell Farm Road, Ruislip, Middlesex HA4 7TX ("the estate"). The applicant seeks to vary the lease ("the existing lease") of Flat 12 under section 35 of the Landlord and Tenant Act 1987 ("the 1987 Act"). The relevant statutory provisions are attached to this decision in **Appendix 1**.
2. The Tribunal's Decision dated 29th May 2014 should be read in conjunction with this decision.
3. The existing lease is for a term of 125 years from 25th March 1965. The lessor's interest is vested in the applicant and the lessee's interest is vested in Mr Brennan. The existing lease was subject to a Deed of Variation dated 18th May 2009, made between the applicant and Mr Brennan. This added clause 4(3) to the existing lease as follows:

"THAT if so required by the Lessee the Lessor will at all times during the continuance of the term created by the Lease at the request (but in all respects at the cost of the Lessee) take all reasonable steps to enforce against the lessees for the time being of the other premises in the block any covenants rights or other provisions contained in the Lease of the premises by virtue of which that lessee holds the premises the enforcement of which would be for the benefit of the demised premises (including but without prejudice to the generality of the foregoing words all covenants relating to repair maintenance cleansing and insurance and all rights of support and protection access and passage) PROVIDED THAT the Lessee shall fully indemnify the Lessor against all costs charges and expenses incurred or to be incurred in respect of such enforcement security against such costs charges and expenses prior to such enforcement.

There is no proposal to vary this clause.

4. The premises demised by the existing lease comprise Flat 12, which is on the top floor of Block A, together with garage 12. There are 24 flats on the estate in total. The Tribunal was told that the other 23 lessees have already entered into new modern leases which are granted a longer term. Mr Brennan has not entered into a new lease. The parties have been before the tribunal previously in relation to service charges and it has been suggested by the Tribunal in previous decisions, that an application for variation of the existing lease might be appropriate.
5. The applicant contended that the existing lease fails to make satisfactory provision in relation to several matters including:

- Recovery of accountancy fees
 - Recovery of legal fees
 - Payment of a variable estimated amount of service charge
 - The establishment of a sinking fund
 - Recovery of management costs
 - Provision for interest on outstanding service charges
6. Two Case Management Conferences were held by the Tribunal in respect of this application. The first resulted in an Order for Directions dated 21st November 2014. Further Directions were issued by the Tribunal on 22nd January 2014.
 7. In a Decision dated 29th May 2014 the Tribunal found that it had been shown that there were grounds for variation under section 35(2) of the 1987 Act.
 8. The Tribunal issued further Directions dated 29th May 2014, which were complied with by the parties. Pursuant to these Directions the applicant provided a bundle of documents (“the hearing bundle”) including a draft Deed of Variation (“the draft Deed of Variation”). The parties also provided a schedule (“the hearing schedule”) setting out amongst other things the existing lease terms sought to be varied, additional terms sought to be included and Mr Brennan’s responses to the various terms proposed. Mr Brennan also provided responses in annotations on a copy of the draft Deed of Variation.
 9. A copy of draft Deed of Variation was at section 4 of the hearing bundle and a copy is attached to this Decision at **Appendix 2**.

The Issues

10. The outstanding issues are:
 - 1] Should the Tribunal order the proposed variations to be made to the existing lease? and
 - 2] If the Tribunal makes an order directing such a variation / an order varying the lease, should the Tribunal order any person to pay compensation to any other person?

The Hearing

11. A hearing was held on 11th July 2014. Mr Allison attended on behalf of the applicant and made submissions. Mr Brennan also attended. Mr Brennan gave evidence and made submissions in respect of the draft Deed of Variation.
12. A further witness statement was provided on behalf of the applicant by Charlotte Elisabeth Chapman dated 8th July 2014. Mr Brennan provided a further statement of case dated 1st July 2014.

13. During the hearing Mr Allison produced a copy of a plan from the London Borough of Hillingdon showing the split between adopted and privately maintained roads on the estate.

The Tribunal's Decision and reasons

A. General

14. The applicant has established to the satisfaction of the Tribunal the grounds on which the application under section 35 of the 1987 Act was made.
15. Having considered the evidence and the parties' submissions, the Tribunal has reached the conclusions in **Section B** below.
16. The Tribunal requires the applicant to provide the additional definitions referred to in **Section B**.
17. The Tribunal requires the applicant to provide a further draft Deed of Variation ("the further draft Deed of Variation") in accordance with the Tribunal's decision (**Section B**).
18. Reasons for the Tribunal's Decision in respect of the main areas of dispute are at **Section C** of this Decision.
19. The Tribunal anticipates that subject to consideration and approval of the further Draft Deed of Variation, and subject to the provisions of sub-paragraphs 6 and 7 of paragraph 38 of the 1987 Act being met, the Tribunal will then make a further Decision in respect of the outstanding issues set out in paragraph 10 above. Directions are at **Section D** of this Decision.

B. The Tribunal's decision respect of the draft Deed of Variation

20. Save where otherwise stated, the clauses and provisions referred to in this section are those in the draft Deed of Variation (**Appendix 2**).
21. Approved clauses and provisions: The various clauses and provisions the terms of which are approved by the Tribunal are referred to in this section.
22. Amendments and deletions: The Tribunal determines that amendments should be made to the draft Deed of Variation so that the clauses and provisions read as set out in italics below. Additional words are shown underlined. Deleted words are shown in square brackets

Clauses 2 and 3

23. The Tribunal accepts the proposal in the Draft Deed of Variation that Clauses 2(3), 2(22), 2(23), 2(24), and 3 of the existing lease be deleted.
24. **[Subject to the deletion of '5']** the proposed Clause 2(3) is approved.
25. The proposed Clause 2(22) should be **amended** to read as follows:

"2(22) To pay to the Lessor the full amount of all costs, fees, charges, disbursements and expenses, including those payable to counsel, solicitors, surveyors and bailiffs, properly and reasonably incurred by the Lessor in relation to or incidental to:

(a) every application made by the Lessee for a consent or licence required by the provisions of this Lease, whether it is granted, refused or offered subject to any lawful qualification or condition, or the application is withdrawn.

(b) every reasonable request for information from the Lessor in relation to a proposed sale of the demised premises by the Lessee.

(c) the reasonable contemplation, preparation and service of a notice under the Law of Property Act 1925 Section 146, or the contemplation or taking of proceedings under Section 146 or 147 of that Act, even if forfeiture is avoided by relief granted by the court;

(d) the recovery or attempted recovery of arrears of rent or other sums due under this Lease; and

(s) any other reasonable steps taken in contemplation of or in direct connection with the enforcement of the obligations on the part of the Lessee under this Lease whether during or after the end of the said term including the preparation service and negotiation of schedules of dilapidations.

26. The Tribunal approves the proposed Clauses 2(23), 2(24) and 3(1).

27. The proposed Clause 3(2) should be **amended** to read as follows:
"3(2) The Lessor acting reasonably may add to, withhold or vary the Services if he considers the addition withholding or variation to be necessary or desirable even if it increases the Service charge (as defined in the Fifth Schedule) or if it is required to do so by a competent authority."

28. The Tribunal approves the proposed Clause 3(3).

The Fifth Schedule Part 1

29. The proposed paragraph 1 of Part 1 of the Fifth Schedule should be **amended** to read as follows:

“1 Definitions

In this Schedule and in the Sixth Schedule only the terms defined below”

30. The definitions in Part 1 of the proposed Fifth Schedule, of ‘A financial year’, ‘Other lettable premises’, “The Accountant”, ‘The Block’, ‘The Block Service Charge’, ‘The Block Service Charge percentage’, ‘The Block Services’, are approved.
31. The definition in Part 1 of the proposed Fifth Schedule of ‘The Block Common Parts’ should be **amended** to read as follows:

“The Block Common Parts’ means”

“(1) the entrances, lobbies, landings, staircases, lifts, lift equipment and machinery (if any), door entry systems, passages, footpaths, walkways, courtyards, landscaped areas, reception areas, fire escapes, communal security equipment, television and other aerials, means of refuse disposal, service installations and other areas, structures and facilities the use or equipment of which is common to occupiers of the demised premises and some or all of the tenants, occupiers or other users of the Block (excluding any parts of the Block from time to time let to a tenant or tenants or occupied or intended for separate or exclusive occupation by a tenant or tenants);”

“(2) the roofs and roof space of the Block;”

“(3) the foundations, and all external structural or load-bearing walls, columns, beams, joists, floor slabs and supports of the Block;”

“(4) the external decorative surfaces of the windows, window sills and frames of any windows in any external, structural or load bearing walls of the Block;”

[The words ‘and window furniture’ are **deleted**]

“(5) the doors, door frames and door furniture in any doors in any external, structural or load bearing walls of the Block but excluding

any in relation to any door leading from the demised premises to the balcony at the demised premises (if any)."

"(6) any Conduits exclusively serving the Block and not the demised premises or any of the other Flats.

[The words 'such other parts of the block as are not included in the demised premises and are not be included in premises demised by the leases of the Other Flats if let on the same terms as this lease; and', are **deleted.**]

32. The definition of 'The Common Parts' is approved, **subject to a satisfactory definition of 'Garage Common Parts' being submitted by the applicant to and approved by the Tribunal.** There is currently no definition of the 'Garage Common Parts' in the Fifth Schedule of the draft Deed of Variation.
33. The definitions of 'Conduits', 'The Estate', 'The Estate Service Charge', 'The Estate Services', 'The Garage', 'The Garage Block', 'The Initial Provisional Service Charge', 'The Insured Risks', 'Flats', 'The Planning Acts', 'The Plant', 'The Service Charge', 'Reserve Fund', are approved.
34. The definition of 'The Service Charge' is approved **subject to a satisfactory definition of 'the Garage Service Charge Percentage' being submitted by the applicant to and approved by the Tribunal.** There is currently no definition of 'the Garage Service Charge Percentage' in the Fifth Schedule of the draft Deed of Variation.
35. The definition of 'The Services' is approved **subject to a satisfactory definition of 'the Garage Services' being submitted by the applicant and approved by the Tribunal.** There is currently no definition of 'the Garage Services' in the Fifth Schedule the draft Deed of Variation.
36. The definitions of 'The Certificate of the Service Charge' (paragraph 2.1) and 'Omissions from the certificate' (paragraph 2.2) are approved.
37. Deemed Service Charge paragraph 2.3
 - (i) Paragraph 2.3.1 is approved.
 - (ii) Paragraph 2.3.1.1 is approved **subject to a satisfactory definition of 'the Term' being submitted by the applicant and approved by the Tribunal.** There is currently no definition of 'the Term' in the Fifth Schedule of the draft Deed of Variation.

(iii) Paragraph 2.3.1.2 is approved [**subject to the third bracket in the proposed paragraph being deleted**].

(iv) Paragraph 2.3.1.3 is **not approved and should be deleted**.

(v) Paragraph 2.3.1.4 is **not approved and should be deleted**.

(vi) Paragraphs 2.3.2, 2.3.2.1, 2.3.2.2, and 2.3.2.3 are approved.

(vii) Paragraph 2.3.2.4 is approved **subject to** a new line being started in the text after 'Block' to make it clear that the words 'then and expense is to be incurred....' qualify **all** of the preceding provisions of paragraph 2.3.2.

38. Paragraph 2.4 should be **amended** to read as follows:

Paragraph 2.4

"Any certificate of the Service Charge and any certificate of the Accountant in connection with the Service Charge is to be conclusive as to the matters it purports to certify save for manifest error."

39. Paragraphs 2.5 and 2.6 are approved.

40. Paragraph 2.7 is approved **subject to the submission by the applicant to the Tribunal of a definition of 'the Lease'**". The Fifth Schedule of the draft Deed of Variation as currently drafted does not include a definition of 'the Lease'.

41. Paragraph 2.8 of the draft Deed of Variation is approved.

The Fifth Schedule Part 2

42. Paragraphs 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10 and 3.11 are approved.

43. Paragraph 3.12 should be **amended** to read as follows:

Paragraph 3.12

"employing such persons as the Lessor, acting reasonably, considers necessary or desirable from time to time in connection with providing any of the Estate Services, performing the Lessor's other obligations in this lease and collecting rents accruing to the Lessor from the Estate, with all incidental expenditure including, but without limiting the generality of the above, remuneration, payment of statutory contributions and such other health, pension, welfare, redundancy and similar or ancillary payments and any other payment the Lessor, acting reasonable thinks desirable or necessary, and providing work

clothing PROVIDED THAT the cost does not exceed that which independent agents or contractors might properly have charged for the same work;”

44. Paragraphs 3.13, 3.14, 3.15, 3.16, 3.17, 3.18, 3.19, 3.20, 3.20.1, 3.20.2, 3.20.3, 3.21 are approved.

The Fifth Schedule Part 3

45. Paragraphs 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, and 4.10 are approved.

46. Paragraph 4.11 should be **amended** to read as follows:

Paragraph 4.11

“employing such persons as the Lessor, acting reasonably, considers necessary or desirable from time to time in connection with providing any of the Block Services, performing the Lessor’s other obligations in this lease and collecting rents accruing to the Lessor from the Block, with all incidental expenditure including, but without limiting the generality of the above, remuneration payment of statutory contributions and such other health, pension, welfare, redundancy and similar or ancillary payments and other payments the Lessor, acting reasonably, thinks desirable or necessary, and providing work clothing PROVIDED THAT the cost does not exceed that which independent agents or contractors might properly have charged for the same work;”

47. Paragraph 4.12, 4.113, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.19.1, 4.19.2, 4.19.3, and 4.20 are approved.

The Sixth Schedule

48. The Tribunal approves the proposed provisions of the Sixth Schedule, **subject to the applicant submitting a corrected version of the wording /grammar in paragraph 2 ‘covenant to insure’ to the Tribunal and approval by the Tribunal.**

C. The Tribunal’s reasons

49. In reaching our conclusions the Tribunal has had careful regard to the comments by parties in the Schedule, the evidence and statements of case and the further submissions at the hearing. The Tribunal’s reasons in respect of the main areas of dispute are as follows.

Clauses 2 and 3 - reasons

50. The Tribunal has held in the Decision dated 29th May 2014 that the existing lease does not make satisfactory provision for amongst other things, the calculation and payment of the Service Charge and management costs.
51. In respect of the proposed Clause 2(3) Mr Brennan was concerned that Service Charge was reserved as 'further rent'. The Tribunal considers that this wording is appropriate. The existing lease reserves a payment of ground rent of £20 per annum payable by two instalments in each year. It was common ground that this ground rent has ceased to payable by Mr Brennan, and Mr Allison stated at the previous hearing that there was no proposal to reintroduce such payment by Mr Brennan. However, the obligation to pay ground remains in the existing lease (although this is not recovered), and accordingly the terminology 'further rent' in the draft Deed of Variation is appropriate.
52. Mr Brennan objected to the use of 'reasonable' and 'reasonably' in the proposed clause 2(22) and elsewhere in the proposed variation. The Tribunal considers such wording is appropriate and reflects the statutory provisions in respect of recoverability of service charges.
53. Mr Allison explained that the existing lease was very basic and there was no cost recovery by the Lessor until forfeiture. Clause 2(22) introduces a wider basis for recovery of Lessor's costs than previously in the existing lease. There are five circumstances in which the Lessor will be liable to pay the Lessor's costs ((a) to (e)). Circumstance (c) mirrors the provisions of the existing lease save that it includes 'contemplation'. This reflects the need for the Lessor to comply with the modern statutory process prior to forfeiture, for instance of coming to the Tribunal to get a determination as to breaches of covenant; (e) covers the position where the Lessor instructs its lawyers to write a letter. Mr Allison further submitted that in the case of this self-managing Lessor, the only funds they have available are the funds they raise themselves. He submitted that the proposed clause is necessary as costs are not always awarded on an indemnity basis. Although the provisions in (a) to (e) are more in favour of the Lessor than previously, these are included in the leases of the other 23 flats on the estate. In response, Mr Brennan was concerned that the Lessor would use and abuse the powers. Having considered the evidence and submissions the Tribunal considered that it was appropriate to include the proposed Clause 2(22) subject to the inclusion of the words 'reasonable' in (c) and (e) as noted in section B of this Decision above.
54. Clause 2(24) introduces a requirement on the Lessee to pay interest. Mr Brennan submitted that interest charges should apply to end of year balancing payments due from the Lessee to the Lessor only, and not to advance payments. Mr Allison submitted that it was necessary to charge interest on failure to pay advance payments of service charge for the proper administration of the service charge. The existing lease does

not make satisfactory provision for the calculation and payment of interest on service charge sums outstanding from time to time. It is not usual for there to be an obligation on the Lessor to pay interest on balancing payments to the Lessee. He pointed out that when a balancing payment is made by the Lessor this includes interest accrued. Mr Allison submitted that in practice the introduction of the requirement to pay interest was necessary as when leaseholders delay payment of service charges this causes significant difficulties, particularly where there is no outside funding of the service charge, which is the position in this case. He submitted that the proposed rate of interest of 4% over base rate is common in modern leases. The Tribunal considered the submissions of both parties and concluded that the provisions in clause 2(24) of the draft Deed of Variation should be included for the reasons explained by Mr Allison. The Tribunal considered that the period of 10 working days of the due date before interest is payable to be a reasonable period.

55. In respect of Clause 3(1), Mr Brennan submitted that the words 'reasonable endeavours' was insufficient and that the Lessor should be subject to strict liability in respect of the provision of the Services set out in the Fifth Schedule. Mr Allison explained that this was not practicable. He gave as an example the situation in which the Lessee did not pay the advance payments of service charge with the possible result that the Lessor would not be in funds to meet its obligations at that time. Having considered the parties' submissions, the Tribunal considered that the proposed wording of Clause 3(1) satisfactory.
56. In respect of Clause 3(2), Mr Brennan submitted that this clause is unnecessary and would allow the Lessor to introduce unspecified variations at any time. Mr Allison explained that this Clause facilitated appropriate adjustments to be made in the Services provided by the Lessor, to meet changes over time, for instance changes in available technology. He gave as an example modern entry phone systems. Having considered the parties' submissions, the Tribunal considered that Clause 3(2) was appropriate, save that the words 'acting reasonably' be included before the word 'Lessor'.

The Fifth Schedule, Part 1 - reasons

57. Mr Brennan submitted that there was no need for the proposed Fifth Schedule. The Tribunal has found for the reasons set out in its Decision dated 29th May 2014 that the Lessor has shown that there are grounds for the variation and considers that the introduction of a Fifth Schedule (and Sixth Schedule) are an appropriate manner of addressing this.
58. In respect of the first sentence of paragraph 1, the Tribunal includes word 'only' after 'Sixth Schedule'. This is for clarification purposes.
59. Mr Brennan was concerned about several of the definitions as seen from his comments in the hearing schedule and his further submissions at the hearing. The following are examples of some of the main areas of

dispute. For instance, in respect of 'a financial year', Mr Brennan considered that the Lessor should not have discretion to vary the period. Mr Allison explained that this was for practical reasons as the company's financial year can change. The Tribunal considers that the inclusion of such discretion is practical and appropriate.

60. In respect of the definition of 'Accountant' Mr Brennan submitted that he is opposed to the use of accountants and outside management, and considered that the Lessor's financial affairs could be managed by the applicant's directors on a non-paid / voluntary basis. Mr Allison submitted that the Accountant would prepare the service charge accounts. There are many items of expenditure and items may need to be brought forward, for instance as a consequence of an insurance renewal date falling due during the service charge year. He submitted that it was in the interests of the leaseholders generally for the accounts to be prepared by an Accountant, and pointed out that Mr Brennan had previously complained that the accounts were inaccurate. Having considered the parties' submissions, the Tribunal found that it was appropriate for the accounts to be professionally prepared and agreed with the proposed definition of the Accountant.
61. Other definitions in dispute were 'The Block Common Parts'. The Tribunal's decision in respect of this is in section B above. As a general explanation, Mr Allison said that the definition of 'The Block Common Parts' covered what are essentially parts which can be used in common by the lessees, whereas 'The Common Parts' are the parts which can be used by the lessees and the freeholders. The Tribunal finds that the definition of 'The Block Common Parts' should be amended as set out in section B above. Mr Brennan's demise includes the windows and window frames (the First Schedule of the existing lease). Under the existing lease Mr Brennan is obliged to repair and maintain the windows window frames (Clause 2(4) of the existing lease). There was no proposal to delete or alter that clause. Mr Brennan was concerned that as a result of the proposed definition of 'The Block Common Parts', he would lose control in respect of repair and maintenance of the windows in his demise. The Tribunal considers that the Tribunal's amendments to the definition 'The Block Common Parts' (see paragraph 31 of this Decision) meets these concerns. The Tribunal has deleted wording commencing 'such other parts... if let on the same terms as this lease' as unnecessary and inappropriate as the Tribunal were informed that no other flats on the estate are let on precisely the same terms as Mr Brennan's lease.
62. In respect of the definition of 'The Initial Provisional Service Charge', the Tribunal finds that there should be no change to the definition set out in the proposed draft Deed of Variation namely 'the Service Charge payable under the Lease at the date of this Deed'. Mr Brennan submitted that this should be defined in terms of the service charge payable as at the 1st April 2015 and, Mr Allison at the hearing suggested backdating to the 1st April 2014. The Tribunal prefers the definition in the draft Deed of Variation as included in the hearing bundle. Although

in practice this may involve some additional calculations by the Lessor, it appears to be the fairest outcome for both parties.

63. In respect of the definition of 'The Plant', Mr Brennan submitted that a number of the items referred to in the proposed definition do not exist at the Block or Estate, such as escalators. Mr Allison said that this is an all-encompassing clause and that although some items do not exist there now they might do so in future, for example, fire-sprinklers. The Tribunal considered that although this is a wide definition, the inclusion of items not currently in existence would not prejudice the lessee as no expenditure could be reasonably incurred in respect of these.
64. In respect of the definition of 'Reserve Fund', Mr Brennan submitted generally that there was no need for a reserve or sinking fund. The Tribunal has found in its Decision dated 29th May 2014, that there were grounds for variation, and in particular considers for the various reasons set out that it is appropriate to introduce a reserve fund. The Tribunal finds the proposed definition acceptable.
65. Mr Brennan objected to paragraph 2.1 (Certificate of Service Charge) and 2.2 (Omissions from the Certificate). However, the Tribunal considered that these provisions were required to meet the possible position explained by Mr Allison where for instance if contractors carried out work in one service charge year and invoiced the Lessor in the next year.
66. In respect of paragraph 2.3, the Tribunal has deleted paragraph 2.3.1.2 (discretionary gifts). The Tribunal was provided by Mr Brennan with a list of payments made by the Lessor to various individuals in previous years. The Tribunal agreed with Mr Brennan's submission that such gifts were not necessary for the proper administration of the service charge.
67. In respect of paragraph 2.3.1.4 (an amount equal to the fair annual rental of the Management Premises). It was agreed by the parties that there were no such premises at the Estate, and it was agreed by the parties that this provision be deleted.
68. In respect of paragraph 2.4 (Certificates conclusive), the parties agreed that the words 'save for manifest error' be added to this provision.

The Fifth Schedule, Part 2 – reasons

69. Part 2 of the Fifth Schedule concerns the Estate Services.
70. The Tribunal carefully considered the provisions in paragraph 3 setting out the various Estate Services, and that parties' submissions in respect of these provisions.

71. The Tribunal considered that the provisions approved in section B above were reasonable and in line with the provisions of the other leases of properties on the Estate. In particular, in the Tribunal considered the periods of every 2-4 years for external Common Parts and every 3-7 years for internal Common Parts (paragraph 3.2) to be reasonable.
72. In respect of paragraph 3.12, the Tribunal considered that this is too widely drafted. The Tribunal considered that the wording 'PROVIDED THAT the cost does not exceed that which independent agents or contractors might properly have charged for the same work' should be added to the end of paragraph 3.12. This is consistent with the provisions of paragraph 2.3.2.

Fifth Schedule, Part 3 - reasons

73. Part 3 of the Fifth Schedule concerns the Block Services.
74. The Tribunal considered that the provisions referred to as acceptable in section B above were reasonable and in line with the provisions of the other leases of properties on the Estate.
75. In particular, in respect of paragraph 4.7 (cleaning windows etc.), Mr Brennan objected to the inclusion of cleaning the outside of the windows of the demised premises. Although the windows in flat 12 are within the demise of Mr Brennan as defined in Schedule 1 of the existing lease, and Mr Brennan has in practice cleaned these windows, the Tribunal considered that it was impracticable to differentiate between the costs of cleaning the outside of the windows in flat 12 and the windows of the remaining 11 flats in the Block. The Tribunal considered it reasonable in all the circumstances to include window cleaning charges as set out in the proposed paragraph 4.7 in the items subject to the service charge.
76. In respect of paragraph 4.11, the Tribunal considered that the wording 'PROVIDED THAT the cost does not exceed that which independent agents or contractors might properly have charged for the same work' should be added to the end of paragraph 4.11. This is consistent with the provisions of paragraphs 3.12 and 2.3.2.
77. In respect of paragraph 4.15, Mr Brennan stated that there are no water or gas services to the common parts. Mr Allison accepted that there are no communal water or gas services currently and that there would be no charges for these items at present, but pointed out that it is not unusual to have such services. In the circumstances the Tribunal considered that it was reasonable to include this proposed paragraph.

The Sixth Schedule - reasons

78. There is currently no Sixth Schedule to the existing lease. The Tribunal considers that the existing lease does not make satisfactory provision

for the provision of insurance. The proposed Sixth Schedule is included as part of the provisions seeking to ensure that the service charge provisions of the lease are fit for purpose overall. The proposed variation will provide some conformity with the other leases of flats on the estate.

79. Generally in respect of the obligation to comply with the insurance provisions contained in the Sixth Schedule (see Clause 2(23)), Mr Brennan said that generally he had no objection to the proposed insurance provisions as such. He said that his chief concern was regarding proof that insurance cover had been renewed and having sight of the insurance documents
80. In respect of the 'Warranty as to convictions' (paragraph 1) and 'Notice of convictions' (paragraph 5(2)) in the proposed Sixth Schedule, Mr Brennan submitted that this did not affect him personally but he was 'not sure' about the proposed provision. Having considered the parties submissions, the Tribunal found that the proposed provisions were appropriate and consistent with the other leases of flats on the estate.
81. In respect of paragraph 2, the 'Covenant to insure', Mr Allison explained that Lessor pays insurance for the whole of the Garage Block, and not just the leasehold garages.
82. Mr Brennan suggested that at least two alternative renewal quotes be obtained by the Lessor in each year. However, the Tribunal considered that the proposed provisions in the Sixth Schedule were sufficient and appropriate.
83. Mr Brennan expressed concern in respect of paragraph 6.1 'Copy policy'. The Tribunal considers that the requirement to produce to the Lessee on demand 'reasonable evidence of the terms of the policy and the fact that the last premium has been paid' is appropriate and sufficient.

D. Outstanding issues and further Directions

84. The Tribunal makes the following Directions:

Within 21 days of the date of this Decision, the applicant provide a further draft Deed of Variation incorporating the amendments and deletions and additional definitions referred to in Section B of this Decision. This document should be filed at the Tribunal with a copy to the respondent.

85. The additional definitions required are:
'Garage Common Parts'
'the Garage Service Charge Percentage'
'the Garage Services'
'the Term'
'the Lease'

86. Subject to receipt of the above, the Tribunal will then determine whether:

1] Whether to direct the parties to enter into the variations to the existing lease, and

2] If so, whether it is appropriate to order the payment of compensation.

A Seifert

1st September 2014

Judge of the First tier Tribunal (Property Chamber)

Appendix 1

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) Which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) The whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "Costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Landlord and Tenant Act 1987

Section 35

- (1) Any party to a long lease of a flat may make an application to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application.
- (2) The grounds on which any such application may be made re that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely –
 - (a) the repair or maintenance of –
 - (i) the flat in question, or
 - (ii) the building containing the flat, or
 - (iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;
 - (b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a) (iii);
 - (c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to

ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of occupiers of a number of flats including that flat);

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

(f) the computation of a service charge payable under the lease;

(g) such other matters as may be prescribed by regulations made by the Secretary of State.

(3) For the purposes of subsection (2) (c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include-

(a) factors relating to the safety and security of the flat and its occupiers and any common parts of the building containing the flat; and

(b) other factors relating to the condition of any such common parts.

(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

(4) For the purposes of subsection (2) (f) a lease fails to make satisfactory provision with respect to the computation of a service charge under it if -

(a) it provides for such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.

(5) Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002 shall make provision -

(a) for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application on any person who the applicant or (as the case may be) the respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

(6) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if –

(a) the demised premises consist of or include three or more flats in the same building; or

(b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

(8) In this section “service charge” has the same meaning given by section 18(1) of the 1985 Act.

Section 38

Orders... Varying leases

(1) If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may (subject to subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order:

(2) ...

(3) ...

(4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35... or such other variation as the tribunal thinks fit.

(5) ...

(6) A tribunal shall not make an order under this section effecting any variation of a lease if it appears to the tribunal –

(a) that the variation would be likely substantially to prejudice-

(i) any respondent to the application, or

(ii) any person who is not a party to the application,

And that an award under subsection (10) would not afford him adequate compensation, or

(b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.

(7) ...

(8) A tribunal may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a lease or to any variation effected by an order shall include a reference to an order which directs the parties to a lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.

(9) A tribunal may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are specified in the order.

(10) Where a tribunal makes an order under this section varying a lease the tribunal may, if it thinks fit, make an order providing for any part to the lease to pay, to any other party to the lease or any other person, compensation in respect of any loss or disadvantage that the tribunal considers he is likely to suffer as a result of the variation.



Draft (1) 12 June 2014
Created/Amended by Thomas Eggar LLP
Date:

Dell Farm Management Company Limited

and

John Joseph Brennan

DEED OF VARIATION

Relating to 12 Dell Farm Road Ruislip
Middlesex HA4 7TX

Ref: PPG/0413/45114155

Thomas Eggar LLP
14 New Street London EC2M 4HE

Telephone +44 (0)207 9729720
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DX no. 88 London

www.thomaseggar.com

HM Land Registry

Administrative area: Hillingdon

Lessor's title number: NGL33995

Lessee's title number: NGL15878

THIS DEED is made the day of 2014

PARTIES:

- (1) **DELL FARM MANAGEMENT COMPANY LIMITED** (Company Registration Number 01711342) whose registered office is at Hartfield Place, 40-44 High Street, Northwood, Middlesex, HA6 1BN (the **Lessor**)

- (2) **JOHN JOSEPH BRENNAN** of 12 Dell Farm Road Ruislip Middlesex HA4 7TX (the **Lessee**)

BACKGROUND

- A This deed is supplemental and collateral to the Lease.

- B The Lessor and the Lessee have agreed to vary the Lease on the terms set out in this deed.

- C The Lessor is entitled to the immediate reversion to the Lease.

- D The residue of the term granted by the Lease is vested in the Lessee.

AGREED TERMS

1 Interpretation

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

1.1 Definitions:

Lease: a lease of the Property dated 5 November 1965 and made between Avante Properties Limited (1) and John Addley Marsh (2)

Property: 12 Dell Farm Road and garage 12 Ruislip Middlesex as more particularly described in and demised by the Lease and registered at the Land Registry under Title Number NGL15878.

Variations: the variations set out in the Schedule.

- 1.2 References to the **Lessor** include a reference to the person entitled for the time being to the immediate reversion to the Lease. References to the **Lessee** include a reference to its respective successors in title and assigns.
- 1.3 A reference to the Lease includes any deed, licence, consent, approval or other instrument supplemental to it.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 Unless the context otherwise requires, a reference to the **Property** is to the whole and any part of it.
- 1.8 Except where a contrary intention appears, references to clauses and Schedules are to the clauses and Schedules of this deed and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.9 Clause, Schedule and paragraph headings shall not affect the interpretation of this deed.

1.10 Except to the extent that they are inconsistent with the definitions and interpretations in this deed, the definitions and interpretations in the Lease shall apply to this deed.

2 Variations of the Lease

2.1 Variations made

From and including the date of this deed, the Lease shall be read and construed as varied by the provisions set out in the Schedule.

2.2 Lease remains in force

The Lease shall remain fully effective as varied by this deed and the terms of the Lease shall have effect as though the provisions contained in this deed had been contained in the Lease with effect from the date of this Deed.

3 Registration of this deed

3.1 Application for registration

Promptly following the completion of this deed, the Lessee and the Lessor shall apply to register this deed at the Land Registry against the Lessee's registered title number NGL15878 and the Lessor's registered title number NGL33995.

3.2 Requisitions

The Lessee and the Lessor shall ensure that any requisitions raised by HM Land Registry in connection with an application for registration are dealt with promptly and properly.

3.3 Official copies

Within one month after completion of the registration, the Lessee shall send to the Lessor official copies of his registered title.

4 Governing law

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

5 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

6 Third party rights

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed. This does not affect any right or remedy of a third party which exists or is available apart from that Act.

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

SCHEDULE

Variations to the Lease

1. Deletion of existing clauses

Clauses numbered 2(23) and 2(24) of the Lease shall be deleted.

2. Replacement of existing clauses

Clauses numbered 2(3), 2(22), and 3 of the Lease shall be deleted and replaced by the following clauses:

2(3) To pay to the Lessor by way of further rent the Service Charge payable in accordance with the Fifth Schedule together with any VAT incurred by the Lessor in relation to that charge save to the extent that such VAT is recoverable or available for set off by the Lessor as input tax AND to observe and perform all obligations contained in the Fifth Schedule 5

2(22) The Lessee must pay to the Lessor the full amount of all costs, fees, charges, disbursements and expenses, including those payable to counsel, solicitors, surveyors and bailiffs, properly and reasonably incurred by the Lessor in relation to or incidental to:

(a) every application made by the Lessee for a consent or licence required by the provisions of this Lease, whether it is granted, refused or offered subject to any lawful qualification or condition, or the application is withdrawn

(b) Every request for information from the Lessor in relation to a proposed sale of the demised premises by the Lessee

(c) the contemplation, preparation and service of a notice under the Law of Property Act 1925 Section 146, or the contemplation or taking of proceedings under Sections 146 or 147 of that Act, even if forfeiture is avoided otherwise than by relief granted by the court;

(d) the recovery or attempted recovery of arrears of rent or other sums due under this Lease; and

(e) any other steps taken in contemplation of or in direct connection with the enforcement of the obligations on the part of the Lessee under this lease whether

during or after the end of the said term including the preparation, service and negotiation of schedules of dilapidations.

2(23) To comply with the insurance provisions contained in the Sixth Schedule.

2(24) The Lessee must pay interest at the rate of 4% per year above the base lending rate of Barclays Bank Plc (or such other bank being a member of the Committee of London and Scottish Bankers as the Lessor from time to time nominates in writing or if it shall cease to be practicable to ascertain the rate in this way such rate as the Lessor and the Lessee may from time to time agree or as may in default of agreement be determined by the Surveyor) on any of the rent, service charge or other sums due under this lease that are not paid within 10 working days of the date due, whether formally demanded or not so long as the Lessor has complied with any obligations imposed on it by law in relation to any such payment. Nothing in this clause is to entitle the Lessee to withhold or delay any payment of the rent, service charge or any other sum due under this lease or affect the rights of the Lessor in relation to any non-payment.

3. THE Lessor HEREBY COVENANTS with the Lessee as follows:

(1) If the Lessee pays the Service Charge in accordance with the Fifth Schedule and observes his obligations under this lease, the Lessor must use all reasonable endeavours to provide the Services as defined in the Fifth Schedule subject to the provisions of the Fifth Schedule.

(2) The Lessor may add to, withhold or vary the Services if he considers the addition withholding or variation to be necessary or desirable even if it increases the Service Charge (as defined in the Fifth Schedule) or if it is required to do so by a competent authority.

(3) To comply with the insurance provisions contained in the Sixth Schedule.

3. Addition of new clauses

The following shall be added to the Lease as new clauses:

Fifth Schedule
THE SERVICE CHARGE AND SERVICES
PART 1: INTRODUCTION

1 Definitions

In this Schedule and in the Sixth Schedule the terms defined below have the meanings given in this paragraph.

'A financial year'

References to 'a financial year' are references to the period commencing on 1 April in any year and ending on 31 March in the following year or such other annual period as the Lessor in its discretion determines as being that for which its accounts, either generally or in respect of the Estate, are to be made up.

'Other lettable premises'

References to 'other lettable premises' are references to premises in the Block and the Garage Block that are let, or are from time to time allocated for letting, by the Lessor, other than the demised premises and the Garage, and respectively include and exclude, where applicable, the equivalent parts of the Block included in and excluded from the demised premises and the garage.

'The Accountant' means a qualified accountant or firm of accountants appointed by the Landlord from time to time.

'The Block' means all that land and buildings known as Block A The Dell, Reservoir Road, Ruislip, Middlesex.

'The Block Service Charge' means the costs and expenses incurred by or on behalf of the Landlord in providing the Block Services.

'The Block Service Charge Percentage' means 1/24 of the Block Service Charge.

'The Block Services' means the services provided by the Landlord for the Block and other blocks on the Estate

'The Block Common Parts' means the entrances, lobbies, landings, staircases, lifts, lift equipment and machinery (if any), door entry systems, passages, footpaths, walkways, courtyards, landscaped areas, reception areas, fire escapes, communal security equipment, television and other aerials, means of refuse disposal, service installations

and other areas, structures and facilities the use or equipment of which is common to occupiers of the demised premises and some or all of the tenants, occupiers or other users of the Block (excluding any parts of the Block from time to time let to a tenant or tenants or occupied or intended for separate or exclusive occupation by a tenant or tenants);

the roofs and roof space of the Block;

the foundations, and all external, structural or load-bearing walls, columns, beams, joists, floor slabs and supports of the Block;

the windows, window sills and frames and window furniture of any windows in any external, structural or load-bearing walls of the Block;

the doors, door frames and door furniture in any doors in any external, structural or load-bearing walls of the Block but excluding any in relation to any door leading from the demised premises to the balcony at the demised premises (if any);

such other parts of the Block as are not included in the demised premises and are not and would not be included in premises demised by leases of the Other Flats if let on the same terms as this lease; and

any Conduits exclusively serving the Block and not the demised premises or any of the Other Flats.

'The Common Parts' means the areas and amenities on the Estate (which for the avoidance of doubt shall exclude the Garage Common Parts) available for use in common by the tenants, occupiers and owners of the Block, the demised premises and the Houses and all persons expressly or by implication authorised by them, including the pedestrian ways, forecourts, car parks, loading bays, service roads, landscaped areas and gardens, entrance halls, landings, staircases, passages and areas designated for the keeping and collecting of refuse.

'Conduits' means pipes, sewers, drains, mains, ducts, conduits, gutters, downpipes, watercourses, wires, cables, laser optical fibres, data or impulse transmission systems, or reception systems (including systems for the reception of television and radio transmissions), channels, flues and all other conducting media (and including any fixings, louvres, cowls, covers and other ancillary apparatus) and any of them.

'The Estate' means the land registered at the Land Registry under Title Number NGL33995.

'The Estate Service Charge' means the costs and expenses incurred by or on behalf of the Landlord in providing the Estate Services.

'The Estate Service Charge Percentage' means 1/36 of the Estate Service Charge.

'The Estate Services' means the services provided by the Lessor for the Estate

'The Garage' means the garage numbered 12 located within the Garage Block and forming part of the Estate

'The Garage Block' means the block of garages forming part of the Estate

'The Initial Provisional Service Charge' means the Service Charge payable under the Lease at the date of this Deed.

'The Insured Risks' means the risks of loss or damage by fire, storm, tempest, earthquake, lightning, explosion, riot, civil commotion, malicious damage, terrorism, impact by vehicles and by aircraft and aerial devices and articles dropped from aircraft or aerial devices (other than war risks), flood damage and bursting and overflowing of water pipes, apparatus and tanks and such other risks, whether or not in the nature of the foregoing, as the Lessor acting reasonably from time to time decides to insure against.

'Other Flats' means the flats in the Block other than the demised premises.

'The Planning Acts' means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and all statutes, regulations and orders made pursuant thereto

'The Plant' means all the electrical, mechanical and other plant, machinery, equipment, furnishings, furniture, fixtures and fittings of ornament or utility in use for common benefit from time to time on, in or at the Block and the Garage Block, including goods and passenger lifts, lift shafts, escalators, heating, cooling, lighting and ventilation equipment, cleaning equipment, fire precaution equipment, fire and burglar alarm systems, door entry systems, closed circuit television, refuse compactors and all other such equipment, including stand-by and emergency systems.

'The Service Charge' means collectively the Estate Service Charge, and the Block Service Charge .

'The Service Charge Percentage' means collectively the Estate Service Charge Percentage, the Block Service Charge Percentage and the Garage Service Charge Percentage.

'The Services' means collectively the Estate Services, the Block Services and the Garage Services.

'Reserve Fund' means such sum (to be fixed annually) as shall be estimated by the Lessor (whose decision shall be final) to provide a reserve fund for items of expenditure in respect of Services to be or expected to be incurred at any time during the period of 3 years beginning with the date on which the estimate is made. The said reserve fund shall be kept in a separate account together with any interest earned on it and shall be applied only in accordance with the terms of the Fifth Schedule.

2 Service charge provisions

2.1 Certificate of the Service Charge

As soon as reasonably practicable after each financial year the Lessor must ensure that the Accountant issues a certificate containing a summary of the Service Charge for that financial year, and a summary of any expenditure that formed part of the Services in respect of a previous financial year but has not been taken into account in the certificate for any previous financial year. A copy of the certificate must be supplied by the Lessor to the Lessee.

2.2 Omissions from the certificate

Omission by the Accountant from a certificate of the Services Charge of any expenditure incurred in the financial year to which the certificate relates is not to preclude the inclusion of that expenditure in any subsequent certificate.

2.3 Deemed Service Charge

2.3.1 In any financial year the Service Charge is to be deemed to include:

2.3.1.1 such fair and reasonable part of all costs and expenditure in respect of or incidental to all or any of the recurring services and other matters referred to in Parts 2 - 3 of this Schedule, whenever paid or incurred whether before or during the Term, including reasonable provision for anticipated expenditure by way of contribution to sinking and reserve funds, as the Lessor in its reasonable discretion allocates to that financial year;

2.3.1.2 the costs and expenditure (including all charges, salaries, commission, premiums, fees (legal, surveyors or otherwise) and interest) paid or incurred by the Lessor in respect of or incidental all or any of the Services or otherwise required to be taken into account for the purpose of calculating the Service Charge, managing the Estate, the Block and the Garage Block and operating the Services;

2.3.1.3 any discretionary gifts and gratuities that the Lessor (acting reasonably) shall deem appropriate to be paid; and

2.3.1.4 an amount equal to the fair annual rental value of the Management Premises.

2.3.2 If the Lessor or a person connected with the Lessor or employed by the Lessor attends (where permitted by law) to:

2.3.2.1 the supervision and management of the provision of services for the Estate, the Block and/or the Garage Block;

2.3.2.2 the preparation of statements or certificates of the Service Charge;

2.3.2.3 the auditing of the Service Charge;

2.3.2.4 the collection of rents from the Block and the Garage Block

then an expense is to be deemed to be paid or a cost incurred by the Lessor, being a reasonable fee not exceeding that which independent agents might properly have charged for the same work.

2.4 Certificates conclusive

Any certificate of the Service Charge and any certificate of the Accountant in connection with the Service Charge is to be conclusive as to the matters it purports to certify.

2.5 Payment

For each financial year the Lessee must pay the Service Charge Percentage of the Service Charge.

2.6 Payment on account

For each financial year the Lessee must pay to the Lessor on account of the Service Charge such a sum as is reasonable having regard to the likely amount of the Service Charge. That sum must be paid in advance by equal instalments on the first day of every month, the first instalment to be paid on the first day of the month immediately before the commencement of the financial year in question. During any financial year the Lessor may revise the contribution on account of the Service Charge for that financial year so as to take into account any actual or expected increase in expenditure.

2.7 Service charge for the first financial year

The sum payable for the financial year current at the date of this document is to be the Initial Provisional Service Charge, payable in accordance with the provisions of the Lease.

2.8 Final account and adjustments

As soon as reasonably practicable after the end of each financial year, the Lessor must furnish the Lessee with an account of the Service Charge payable by him for that financial year, credit being given for payments made by the Lessee on account. Within 10 Working Days of the furnishing of such an account, the Lessee must pay the Service Charge, or any balance of it payable, to the Lessor. The Lessor must allow any amount overpaid by the Lessee to him against future payments of the Service Charge, or (at the Lessor's discretion) pay such overpayments into the Sinking Fund to the credit of the Lessee. At the end of the financial year current at the end of the said term the Lessor must (unless otherwise agreed with the Lessee) repay to the Lessee any outstanding overpayment of the Service Charge.

PART 2: ESTATE SERVICES

3 The Services

The Estate Services are:

- 3.1 repairing and, whenever the Lessor, acting reasonably, regards it as necessary in order to repair, resurface or renew the car parking spaces on the Estate whether or not included in the lease of any Other Flat;
- 3.2 decorating any element of the Common Parts where appropriate or necessary (but in any event every 2-4 years for external Common Parts and every 3-7 years for internal Common Parts);
- 3.3 operating, maintaining, repairing and, whenever the Lessor, acting reasonably, considers it appropriate, renewing, replacing or modifying the Plant servicing the Common Parts;
- 3.4 placing and running maintenance contracts for the Common Parts;
- 3.5 providing suitable facilities for disposing of refuse, compacting it or removing it from the Estate;
- 3.6 providing reasonable lighting in the Common Parts;
- 3.7 cleaning the Common Parts;
- 3.8 supplying, maintaining, servicing and keeping in good condition and, wherever the Lessor considers it appropriate, renewing and replacing all fixtures, fittings, furnishings, equipment and any other things the Lessor may consider desirable for performing the Services or for the appearance or upkeep of the Common Parts;
- 3.9 carrying out inspections and tests of the Common Parts, including any Plant servicing the Common Parts, that the Lessor from time to time considers necessary or desirable;
- 3.10 planting, tidying, tending and landscaping any appropriate part of the Common Parts in such manner as the Lessor from time to time considers appropriate;
- 3.11 providing, replacing and renewing trees, shrubs, flowers, grass and other plants, in the grounds of the Estate;

3.12 employing such persons as the Lessor, acting reasonably, considers necessary or desirable from time to time in connection with providing any of the Estate Services, performing the Lessor's other obligations in this lease and collecting rents accruing to the Lessor from the Estate, with all incidental expenditure including, but without limiting the generality of the above, remuneration, payment of statutory contributions and such other health, pension, welfare, redundancy and similar or ancillary payments and any other payments the Lessor, acting reasonably, thinks desirable or necessary, and providing work clothing;

3.13 discharging any amounts the Lessor may be liable to pay towards the expense of making, repairing, maintaining, rebuilding and cleaning anything (for example ways, roads, pavements, sewers, drains, pipes, watercourses, party walls, party structures, party fences and other conveniences) that are appurtenant to the Estate or are used for the Estate in common with any adjoining property of the Lessor;

3.14 erecting, providing, maintaining, renewing and replacing notice boards, notices and other signs on the Common Parts as the Lessor, acting reasonably, from time to time considers appropriate;

3.15 administering and managing the Estate and the Common Parts, performing the Estate Services, performing the Lessor's other obligations in this lease and preparing statements or certificates of and auditing the Estate Services;

3.16 discharging all existing or future taxes, rates, charges, duties, assessments, impositions and outgoings whatsoever in respect of the Common Parts, including those for water, electricity, gas and telecommunications;

3.17 paying any interest on any loan or overdraft raised for the purpose of defraying the Estate Service Charge;

3.18 taking any steps the Lessor, acting reasonably, from time to time considers appropriate for complying with, making representations against, or otherwise contesting or dealing with any statutory or other obligation affecting or alleged to affect the Estate, including any requirement of the European Union, notice, regulation or order of any government department, local, public, regulatory or other authority or court, compliance with which is not the direct liability of the Lessee or any Lessee of any part of the Estate;

3.19 discharging the reasonable and proper cost of any service or matter the Lessor, acting reasonably, thinks proper for the better and more efficient management and use of the Estate and the comfort and convenience of its occupants;

3.20 the gross sums including any commission that the Lessor is from time to time liable to pay:

3.20.1 in insuring the Common Parts against the Insured Risks in accordance with its obligations under the lease (including for loss of rent) or, where the insurance includes the Common Parts and other property, the proportion of those sums attributable to the Common Parts;

3.20.2 in insuring against all liability to the Lessor to third parties arising out of or in connection with any matter involving or relating to the Common Parts and/or the Estate; and

3.20.3 in connection with obtaining insurance valuations.

3.21 making payments into the Reserve Fund

PART 3: BLOCK SERVICES

4 The Services

The Block Services are:

4.1 repairing and, whenever the Lessor, acting reasonably, regards it as necessary in order to repair, replace or renew the Block Common Parts whether or not included in this lease or in the lease of any Other Flat;

4.2 decorating the Block Common Parts where appropriate or necessary;

4.3 operating, maintaining, repairing and, whenever the Lessor, acting reasonably, considers it appropriate, renewing, replacing or modifying the Plant servicing the Block;

4.4 placing and running maintenance contracts for the Block;

4.5 providing suitable facilities for disposing of refuse, compacting it or removing it from the Block;

- 4.6 providing reasonable lighting in the Block Common Parts whether or not such lighting is inside or outside the Block;
- 4.7 cleaning the windows and other glass of the Block Common Parts, and the outside of the windows and other glass of the Block (including the demised premises);
- 4.8 supplying, maintaining, servicing and keeping in good condition and, wherever the Lessor considers it appropriate, renewing and replacing all fixtures, fittings, furnishings, equipment and any other things the Lessor may consider desirable for performing the Block Services or for the appearance or upkeep of the Block;
- 4.9 carrying out inspections and tests of the Block Common Parts, including the Plant servicing the Block, that the Lessor from time to time considers necessary or desirable;
- 4.10 planting, tidying, tending and landscaping any appropriate part of the Block Common Parts in such manner as the Lessor from time to time considers appropriate;
- 4.11 employing such persons as the Lessor, acting reasonably, considers necessary or desirable from time to time in connection with providing any of the Block Services, performing the Lessor's other obligations in this lease and collecting rents accruing to the Lessor from the Block, with all incidental expenditure including, but without limiting the generality of the above, remuneration, payment of statutory contributions and such other health, pension, welfare, redundancy and similar or ancillary payments and any other payments the Lessor, acting reasonably, thinks desirable or necessary, and providing work clothing;
- 4.12 discharging any amounts the Lessor may be liable to pay towards the expense of making, repairing, maintaining, rebuilding and cleaning anything (for example ways, Conduits, party walls, party structures and other conveniences) that are appurtenant to the Block or are used for the Block in common with any adjoining property of the Lessor;
- 4.13 erecting, providing, maintaining, renewing and replacing notice boards, notices and other signs in the Block as the Lessor, acting reasonably, from time to time considers appropriate;

4.14 administering and managing the Block, performing the Block Services, performing the Lessor's other obligations in this lease and preparing statements or certificates of and auditing the Block Service Charge;

4.15 discharging all existing or future taxes, rates, charges, duties, assessments, impositions and outgoings whatsoever in respect of the Block Common Parts, including those for water, electricity, gas and telecommunications;

4.16 paying any interest on any loan or overdraft raised for the purpose of defraying the Block Service Charge;,,

4.17 taking any steps the Lessor, acting reasonably, from time to time considers appropriate for complying with, making representations against, or otherwise contesting or dealing with any statutory or other obligation affecting or alleged to affect the Block, including any requirement of the European Union, notice, regulation or order of any government department, local, public, regulatory or other authority or court, compliance with which is not the direct liability of the Lessee or any Lessee of any part of the Block;

4.18 discharging the reasonable and proper cost of any service or matter (including improvements) which the Lessor, acting reasonably, thinks proper for the better and more efficient management and use of the Block and the comfort and convenience of its occupants;

4.19 the gross sums including any commission that the Lessor is from time to time liable to pay:

4.19.1 in insuring the Block against the Insured Risks in accordance with its obligations under the lease (including for loss of rent);

4.19.2 in insuring against all liability to the Lessor to third parties arising out of or in connection with any matter involving or relating to the Block; and

4.19.3 in connection with obtaining insurance valuations.

4.20 making payments into the Reserve Fund

Sixth SCHEDULE INSURANCE

1 Warranty as to convictions

The Lessee warrants that before the execution of this document he has disclosed to the Lessor in writing any conviction, judgment or finding of any court or tribunal relating to the Lessee of such a nature as to be likely to affect the decision of any insurer or underwriter to grant or to continue insurance of any of the Insured Risks.

2 Covenant to insure

The Lessor covenants with the Lessee to insure the Estate, the Block and the Garage Block as appropriate (with in the interest of the Lessee and of his chargee or mortgagee being noted on the policy unless if the Lessor is so required) the insurance is vitiated by any act of the Lessee or by anyone at the Estate, Block or the Garage Block expressly or by implication with his authority and under his control.

3 Details of the insurance

3.1 Office, underwriters and agency

Insurance is to be effected in such insurance office, or with such underwriters, and through such agency as the Lessor from time to time decides.

3.2 Insurance cover

Insurance must be effected for the following amounts:

3.2.1 the sum that the Lessor is from time to time advised by an independent surveyor is the full cost of rebuilding and reinstating the Estate, the Block and the Garage Block (as appropriate) including VAT, architects', surveyors', engineers', solicitors' and all other professional persons' fees, the fees payable on any applications for planning permission or other permits or consents that may be required in relation to rebuilding or reinstating the Estate, the Block or the Garage Block, the cost of preparation of the site including shoring-up, debris removal, demolition, site clearance and any works that may be required by statute, and incidental expenses;

3.2.2 loss of rental and service charge income from the Estate, the Block and the Garage Block for 3 years or such longer period as the Lessor from time to time requires for planning and carrying out the rebuilding or reinstatement;

3.2.3 the cost of providing the Lessee with reasonable suitable alternative accommodation for so long as the demised premises and the Garage remains uninhabitable or access cannot be obtained to the demised premises and/or the Garage or until the end of 3 years from the destruction or damage whichever period is the shorter.

3.3 Risks insured

Insurance must be effected against damage or destruction by any of the Insured Risks to the extent that such insurance may ordinarily be arranged for properties such as the Estate, the Block and the Garage Block subject to such excesses, exclusions or limitations as the insurer requires.

3.4 Suspension of the Rent

3.4.1 Events giving rise to suspension

If and whenever the Estate, the Block and/or the Garage Block or any part of it is damaged or destroyed by one or more of the Insured Risks (except one against which insurance may not ordinarily be arranged for properties such as the Estate, the Block and the Garage Block unless the Lessor has in fact insured against that risk) so that the Flat and the Garage are unfit for habitation and use or so that access cannot be obtained to the Flat and the Garage, and payment of the insurance money is not wholly or partly refused because of any act or default of the Lessee or anyone at the Estate, the Block or the Garage Block expressly or by implication with his authority and under his control, then the provisions of paragraph 3.4.2 are to have effect.

3.4.2 Suspending the Rent

In the circumstances mentioned in paragraph 3.4.1, the rent and the Service Charge, or a fair proportion of the rent and the Service Charge according to the nature and the extent of the damage sustained, are to cease to be payable until the end of 3 years from the destruction or damage. The suspension will end earlier if before the end of that period the Estate, the Block or the Garage Block has been rebuilt or reinstated so as to render the demised premises and/or the Garage fit for habitation and use or so as to enable access to be obtained to the demised premises and/or the Garage. The proportion of the Rent and the Service Charge suspended and the period of the suspension are to be determined by the Surveyor acting as an expert and not as an arbitrator.

4 Reinstatement and termination

4.1 Obligation to obtain permissions

If and whenever the Estate, the Block or the Garage Block or any part of it is damaged or destroyed by one or more of the Insured Risks or any other risk against which the Lessor has in fact insured, and payment of the insurance money is not wholly or partly refused because of any act or default of the Lessee or anyone at the Estate, the Block or the Garage Block expressly or by implication with his authority and under his control, then the Lessor must use its reasonable endeavours to obtain any planning permissions or other permits and consents ('permissions') that are required under the Planning Acts or otherwise to enable it to rebuild and reinstate the Estate, the Block or the Garage Block.

4.2 Obligation to reinstate

Subject to the provisions of paragraph 4.3, and, if any permissions are required, after they have been obtained, the Lessor must as soon as reasonably practicable apply all money received in respect of such insurance, except sums in respect of loss of the rent and Service Charge and sums in respect of alternative accommodation, in rebuilding or reinstating the parts of the Estate, the Block or the Garage Block destroyed or damaged and must make up out of its own money any difference between the cost of rebuilding and reinstating and the money received.

4.3 Relief from the obligation to reinstate

The Lessor need not rebuild or reinstate the Estate, the Block or the Garage Block if and for so long as the rebuilding or reinstating is prevented because:

- 4.3.1 the Lessor, despite using its reasonable endeavours, cannot obtain a necessary permission;
- 4.3.2 any permission is granted subject to a lawful condition with which it is impossible for or in all the circumstances it is unreasonable to expect the Lessor to comply;
- 4.3.3 there is some defect or deficiency in the site on which the rebuilding or reinstatement is to take place that renders it impossible or that means it can only be undertaken at a cost that is unreasonable in all the circumstances;
- 4.3.4 the Lessor is unable to obtain access to the site to rebuild or reinstate;
- 4.3.5 the rebuilding or reinstating is prevented by war, act of God, government action, strike or lock-out; or

4.3.6 because of the occurrence of any other circumstances beyond the Lessor's control.

4.4 Notice following failure to reinstate

If the demised premises is still not fit for the Lessee's habitation and use or if access still cannot be obtained to the demised premises at the end of a period of 3 years starting on the date of the damage or destruction, either the Lessor or the Lessee may by notice served at any time within 6 months of the end of that period ('a notice following failure to reinstate') implement the provisions of paragraph 4.5.

4.5 Application of insurance money following failure to reinstate

On service of a notice following failure to reinstate, all money received in respect of the Flat under the insurance effected by the Lessor pursuant to this lease (so far as not properly expended in or about reinstatement) shall be divided between the Lessor and the Lessee in proportion to the values of their respective interests in the demised premises at the time of the damage or destruction giving rise to the payment. In the event of any dispute the proportions may be determined under the provisions of the Arbitration Act 1996 by a single arbitrator to be appointed by agreement between the Lessor and the Lessee or in default of agreement by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors at the request of either party.

4.6 Notice to terminate

4.6.1 This paragraph 4.6 shall only apply if the demised premises is still not fit for the Lessee's habitation and use or if access still cannot be obtained to the demised premises at the end of a period of 3 years starting on the date of the damage or destruction.

4.6.2 In the circumstances mentioned in paragraph 4.6.1, after service of a notice following failure to reinstate and after all money received in respect of the demised premises under the insurance effected by the Lessor pursuant to this lease (so far as not properly expended in or about reinstatement) has been divided between the Lessor and the Lessee in accordance with paragraph 4.5, either the Lessor or the Lessee may by notice at any time during the Term or within 6 months of service of the notice following failure to reinstate ('a notice to terminate') implement the provisions of paragraph 4.3.

5 Lessee's further insurance covenants

The Lessee covenants with the Lessor to observe and perform the requirements contained in this paragraph 5.

5.1 Requirements of insurers

The Lessee must comply with all the requirements and recommendations of the insurers.

5.2 Notice of events affecting the policy

The Lessee must give immediate notice to the Lessor of any event that might affect any insurance policy on or relating to the demised premises or the Garage, and of any event against which the Lessor may have insured under this Lease.

5.3 Notice of convictions

The Lessee must give immediate notice to the Lessor of any conviction, judgment or finding of any court or tribunal relating to the Lessee of such a nature as to be likely to affect the decision of any insurer or underwriter to grant or to continue any insurance.

5.4 Other insurance

If at any time the Lessee is entitled to the benefit of any insurance of the Flat or the Garage that is not effected or maintained in pursuance of any obligation contained in this lease, the Lessee must apply all money received by virtue of such insurance in making good the loss or damage in respect of which the money is received.

6 Lessor's further insurance covenants

The Lessor covenants with the Lessee to observe and perform the requirements set out in this paragraph 6 in relation to the insurance policy it has effected pursuant to its obligations contained in this lease.

6.1 Copy policy

The Lessor must produce to the Lessee on demand reasonable evidence of the terms of the policy and the fact that the last premium has been paid.

6.2 Liability to third parties

The Lessor will effect insurance in respect of any risks for which the Lessor may be liable in respect of injury or loss or damage to persons on the Estate, the Block or the Garage in such amount as may be reasonable from time to time, with such insurance office, or with such underwriters, and through such agency as the Lessor from time to time

decides, to the extent that such insurance may ordinarily be arranged for such risks, subject to such excesses, exclusions or limitations as the insurer requires.

EXECUTED as a DEED by)
DELL FARM MANAGEMENT COMPANY)
LIMITED acting by:)

Director

Director/Secretary

EXECUTED as a DEED by)
JOHN JOSEPH BRENNAN in the presence)
of:)

Name of Witness:

Signature of Witness:

Address of Witness: