

DATED

2018

- (1) RICHARD JOHN TRELAWNY MARKER
- (2) HONITON TOWN COUNCIL

LEASE

relating to

Allotments at Roundball Hill, Honiton

Michelmores 

**Woodwater House
Pynes Hill
Exeter EX2 5WR
DX 135608 EXETER 16
Tel: 01392 688688
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CONTENTS

1 DEMISE.....5

2 RIGHTS GRANTED5

3 EXCEPTIONS AND RESERVATIONS5

4 COVENANTS BY TENANT6

5 QUIET ENJOYMENT.....7

6 GENERAL CONDITIONS.....7

SCHEDULE 1 THE PROPERTY 10

SCHEDULE 2 RENT REVIEW 11

LR1. **Date of lease**
[] 2018

LR2. **Title number(s)**
LR2.1 **Landlord's title number(s)**
DN527271

LR2.2 **Other title numbers**
None

LR3. **Parties to this lease**
Landlord

Richard John Trelawny Marker

Combe Estate, Beech Walk, Gittisham, Devon, EX14 3AB

Tenant

Honiton Town Council

LR4. **Property**
In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.

The Property as specified in the Schedule 1

LR5. **Prescribed statements etc**
None

LR6. **Term for which the Property is leased**
The term as specified in this lease at clause 1.

LR7. **Premium**
None

LR8. **Prohibitions or restrictions on disposing of this lease**
This lease contains a provision that prohibits or restricts dispositions.

LR9. **Rights of acquisition etc.**

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

None

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

None

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

None

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

None

LR11. **Easements**

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

None

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

Clause 2.

LR12. **Estate rentcharge burdening the Property**

None

LR13 **Application for standard form of restriction**

None

THIS LEASE is made

2018

PARTIES

- (1) **RICHARD JOHN TRELAWNY MARKER** of Combe Estate, Beech Walk, Gittisham, Devon, EX14 3AB ('the Landlord') and
- (2) **HONITON TOWN COUNCIL** ('the Tenant')

THIS DEED WITNESSES:

1 DEMISE

The Landlord with limited title guarantee lets the property described in Schedule 1 ('the Property') to the Tenant, together with the rights and excepting and reserving as mentioned below, to hold to the Tenant from and including 1 April 2018 for the term of 20 years, paying:-

- 1.1 the yearly rent of £750 or such higher rent as maybe determined pursuant to Schedule 2. payable by equal quarterly payments on the usual quarter days ('the Rent Payment Dates') the first payment to be made on 1 April 2018; and
- 1.2 the sum of £200 plus VAT on 24 June in each year for the supply of water to the Property under this lease such sum to be increased by the same proportion as the rent is increased pursuant to Schedule 2.

2 RIGHTS GRANTED

The Landlord grants the Tenant:-

- 2.1 a right of way on foot and with such horticultural machinery as the Landlord shall approve over and along the track shown coloured green on the plan attached;
- 2.2 the right to surface the track to a specification agreed by the Landlord (such agreement not to be unreasonably withheld or delayed); and
- 2.3 the right to connect to the Landlord's private water supply to a specification agreed by the Landlord and to take water therefrom for the use permitted by this lease subject to payment by the Tenant of the sum required under clause 1.2

3 EXCEPTIONS AND RESERVATIONS

There are reserved to the Landlord:

- 3.1 all mines, minerals, stone, gravel and sand and underground substances of every kind, with right of entry to get and work them, making reasonable compensation for all damage done;
- 3.2 all timber and other trees, pollards, saplings and underwood, but not the fruit of trees, with right of entry with workmen, animals and vehicles to mark them, cut them and carry them away, making reasonable compensation for all damage done; and
- 3.3 subject to the provisions of the Ground Game Act 1880 and the Ground Game (Amendment) Act 1906, all game, ground or otherwise, with exclusive right for the Landlord and all persons authorised by him to enter for the purpose of preserving the

game and for hunting and shooting.

4 COVENANTS BY TENANT

The Tenant covenants with the Landlord:

- 4.1 to pay the rent reserved by this lease and all rates, taxes and outgoings imposed or charged on the Property, or on the owner or occupier in respect of it, except any payable by the Landlord occasioned by receipt of the rent under this lease or by any disposition or dealing with this lease;
- 4.2 to maintain in good repair all buildings, gates, stiles, hedges and fences, and in particular to cut out, lay and protect a proper proportion of the hedges in each year of the tenancy, to plant young quicks and thorns in the hedges where required, and to cleanse and scour all ditches, drains and culverts;
- 4.3 to cultivate, keep and manage the Property, or cause it to be cultivated, kept and managed, in a good and husbandlike manner;
- 4.4 to use the Property, and permit it to be used, for allotments (not exceeding 40) only and in particular not for a market garden;
- 4.5 at its own expense to obtain all necessary planning and any other consents required for the use of the Property permitted by this lease;
- 4.6 to insure the Property against such risks and in such sum (include three years loss of rent) as the Landlord shall require and to layout any insurance money received in rebuilding or reinstating the Property, and paying the Landlord an amount equal to any insurance money that the insurers of the Property refuse to pay by reason of any act or omission of the Tenant or any undertenant, their workers, contractors or agents or any person at the Property with the actual or implied authority of any of them;
- 4.7 to carry out any necessary infrastructure work to include the surfacing and maintenance of the track, fencing, water supplies and any necessary landscaping works at the Tenant's own expense;
- 4.8 not to injure or deteriorate the Property or permit it to be injured or deteriorated;
- 4.9 to leave the Property on the termination of the tenancy in good heart and condition;
- 4.10 to preserve all timber and timberlike trees and not to cut, lop, top, drive nails into or otherwise injure any timber or timberlike trees or permit them to be cut, lopped or injured in any way;
- 4.11 not to use or erect, or permit to be used or erected, any barbed or other wire fence on the Property without the consent in writing of the Landlord or the Landlord's agent; and
- 4.12 not to sublet, assign or part with possession of or share or hold upon trust the Property or any part of it, except for the purpose of allotments.
- 4.13 to pay the costs and expenses of the Landlord including any solicitors' or other professionals' costs and expenses (incurred both during and after the end of the term) in connection with or in contemplation of any of the following:
 - 4.13.1 the enforcement of the tenant covenants of this lease;

- 4.13.2 serving any notice in connection with this lease under section 146 or 147 of the Law of Property Act 1925 or taking any proceedings under either of those sections, notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;
 - 4.13.3 serving any notice in connection with this lease under section 17 of the Landlord and Tenant (Covenants) Act 1995;
 - 4.13.4 the preparation and service of a schedule of dilapidations in connection with this lease; or
 - 4.13.5 any consent or approval applied for under this lease, whether or not it is granted (unless the consent or approval is unreasonably withheld by the Landlord in circumstances where the Landlord is not unreasonably to withhold it).
- 4.14 promptly following the grant of this lease, to apply to register this lease at HM Land Registry. The Tenant shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly. Within one month after completion of the registration, the Tenant shall send the Landlord official copies of its title.
- 4.15 to keep the Landlord indemnified against all liabilities, expenses, costs (including but not limited to any solicitors' or other professionals' costs and expenses), claims, damages and suffered or incurred by the Landlord arising out of or in connection with any breach of any tenant covenants in this lease, or any act or omission of the Tenant or the allotment holders or their respective workers, contractors or agents or any other person on the Property with the actual or implied authority of any of them.

5 QUIET ENJOYMENT

The Landlord covenants with the Tenant that the Tenant, paying the rent reserved by this lease and observing and performing the covenants and stipulations on the Tenant's part contained in it, shall peaceably hold and enjoy the Property during the term without any interruption by the Landlord or any person rightfully claiming under or in trust for the Landlord.

6 GENERAL CONDITIONS

6.1 Rent Review

The Landlord and Tenant agree that the provisions of Schedule 2 shall apply.

6.2 Re-entry

The Landlord may re-enter the Property (or any part of the Property in the name of the whole) at any time after any of the following occurs:

- 6.2.1 any rent is unpaid 21 days after becoming payable whether it has been formally demanded or not;
 - 6.2.2 any breach of any condition of, or tenant covenant in, this lease;
- 6.3 If the Landlord re-enters the Property (or any part of the Property in the name of the whole) pursuant to this clause, this lease shall immediately end, but without prejudice to any right or remedy of the Landlord in respect of any breach of covenant by the Tenant or any guarantor.

6.4 Power to resume possession for building etc

The Landlord shall have power, upon giving to the Tenant 3 months' previous notice in writing to expire at any time of the year, to resume possession of the Property or any part of it if it is required for use for building, mining or other industrial purposes or for roads or sewers necessary for such purposes, making compensation for crops then growing on the Property. If possession of part only of the Property is so resumed, the rent payable shall, as from the day of resumption of possession, be reduced by such sum as in default of agreement may be determined by arbitration in the manner provided below.

6.5 Power of re-entry

The Landlord shall have power to re-enter and determine this lease on non-payment of rent for 21 days after it has become due, whether formally demanded or not, or on breach or non-observance of any of the conditions or covenants contained in this lease and on the Tenant's part to be observed and performed.

6.6 Compensation for improvements

The Tenant shall not be entitled to compensation for any of the improvements mentioned in Part I of Schedule 2 to the Small Holdings and Allotments Act 1908 or for any of the improvements mentioned in Part II of that Schedule as amended by the Small Holdings and Allotments Act 1926 Section 21 and Schedule 1 unless the Landlord has, before the making or execution of such improvements, consented in writing.

6.7 Reference of disputes to arbitration

All disputes and differences that may arise between the parties under or in connection with this lease shall be referred, in accordance with the Arbitration Act 1996, to a single arbitrator to be appointed in default of agreement by the President for the time being of Devon and Somerset Law Society.

EXECUTED as a **Deed** by
RICHARD JOHN TRELAWNY MARKER
in the presence of:-

.....

.....
Witness signature

.....
Witness name

.....
.....
.....
.....
Witness address

.....
Witness occupation

**EXECUTED as a Deed by
HONITON TOWN COUNCIL**

.....

**SCHEDULE 1
THE PROPERTY**

The Property shown edged red on the plan attached being part of title number DN527271.

SCHEDULE 2 RENT REVIEW

- 1 In this Schedule:
 - 1.1 the **President** is the President for the time being of the Royal Institution of Chartered Surveyors or a person acting on his behalf, and the **Surveyor** is the independent valuer appointed pursuant to paragraph 7 of this Schedule
 - 1.2 The **Review Date** is 1 April 2023 and every fifth anniversary of that date
- 2 The rent shall be reviewed on each Review Date to equal:
 - 2.1 the rent payable immediately before the relevant Review Date (or which would then be payable but for any abatement or suspension of the rent or restriction on the right to collect it) or, if greater;
 - 2.2 the open market rent agreed or determined pursuant to this Schedule.
- 3 The open market rent may be agreed between the Landlord and the Tenant at any time before it is determined by the Surveyor.
- 4 If the open market rent is determined by the Surveyor, it shall be the amount that the Surveyor determines is the best annual rent (exclusive of any VAT) at which the Property could reasonably be expected to be let:
 - 4.1 in the open market;
 - 4.2 at the relevant Review Date;
 - 4.3 on the assumptions listed in paragraph 5 of this Schedule; and
 - 4.4 disregarding the matters listed in paragraph 6 of this Schedule.
- 5 The assumptions are:
 - 5.1 the Property is available to let in the open market:
 - 5.1.1 by a willing lessor to a willing lessee;
 - 5.1.2 as a whole;
 - 5.1.3 with vacant possession;
 - 5.1.4 without a fine or a premium;
 - 5.1.5 for a term equal to the unexpired residue of the Contractual Term at the relevant Review Date or a term of ten years commencing on the relevant Review Date, if longer; and
 - 5.1.6 otherwise on the terms of this lease other than as to the amount of the rent but including the provisions for review of the rent;
 - 5.2 the willing lessee has had the benefit of any rent-free or other concession or contribution which would be offered in the open market at the relevant Review Date in relation to fitting

- out works at the Property;
- 5.3 the Property may lawfully be used, and is in a physical state to enable it to be lawfully used, by the willing lessee (or any potential undertenant or assignee of the willing lessee) for any purpose permitted by this lease;
 - 5.4 the Landlord and the Tenant have fully complied with their obligations in this lease;
 - 5.5 if the Property, or any means of access to it or any Service Media serving the Property, has been destroyed or damaged, it has been fully restored;
 - 5.6 no work has been carried out on the Property or on any other part of the Estate that has diminished the rental value of the Property;
 - 5.7 any fixtures, fittings, machinery or equipment supplied to the Property by the Landlord that have been removed by or at the request of the Tenant, or any undertenant or their respective predecessors in title (otherwise than to comply with any law) remain at the Property; and
 - 5.8 the willing lessee and its potential assignees and undertenants shall not be disadvantaged by any actual or potential exercise of an option to tax under Part 1 of Schedule 10 to the VATA 1994 in relation to the Property.
- 6 The matters to be disregarded are:
- 6.1 any effect on rent of the fact that the Tenant or any authorised undertenant has been in occupation of the Property;
 - 6.2 any goodwill attached to the Property by reason of any business carried out there by the Tenant or by any authorised undertenant or by any of their predecessors in business;
 - 6.3 any effect on rent attributable to any physical improvement to the Property carried out after the date of this lease, by or at the expense of the Tenant or any authorised undertenant with all necessary consents, approvals and authorisations and not pursuant to an obligation to the Landlord (other than an obligation to comply with any law);
 - 6.4 any effect on rent of any obligation on the Tenant to reinstate the Property to the condition or design it was in before any alterations or improvements were carried out; and
 - 6.5 any statutory restriction on rents or the right to recover them.
- 7 The Surveyor shall be an independent valuer who is a Member or Fellow of the Royal Institution of Chartered Surveyors. The Landlord and the Tenant may, by agreement, appoint the Surveyor at any time before either of them applies to the President for the Surveyor to be appointed. Any application to the President may not be made earlier than three months before the relevant Review Date.
- 8 The Surveyor shall act as an expert and not as an arbitrator. The Surveyor shall determine the open market rent. The Surveyor's decision shall be given in writing and the Surveyor shall provide reasons for any determination. The Surveyor's written decision on the matters referred to him shall be final and binding in the absence of manifest error or fraud.
- 9 The Surveyor shall give the Landlord and the Tenant an opportunity to make written representations to the Surveyor and to make written counter-representations commenting on the representations of the other party to the Surveyor. The parties will provide (or

procure that others provide) the Surveyor with such assistance and documents as the Surveyor reasonably requires for the purpose of reaching a decision.

- 10 If the Surveyor dies, or becomes unwilling or incapable of acting, or unreasonably delays in making any determination, then either the Landlord or the Tenant may apply to the President to discharge the Surveyor and paragraph 7 of this Schedule shall then apply in relation to the appointment of a replacement.
- 11 The fees and expenses of the Surveyor and the cost of the Surveyor's appointment and any counsel's fees, or other fees, incurred by the Surveyor shall be payable by the Landlord and the Tenant in the proportions that the Surveyor directs (or if the Surveyor makes no direction, then equally). If the Tenant does not pay its part of the Surveyor's fees and expenses within ten working days after demand by the Surveyor, the Landlord may pay that part and the amount it pays shall be a debt of the Tenant due and payable on demand to the Landlord. The Landlord and the Tenant shall otherwise each bear their own costs in connection with the rent review.
- 12 If the revised rent has not been agreed by the Landlord and the Tenant or determined by the Surveyor on or before the relevant Review Date, the rent payable from (and including) that Review Date shall continue at the rate payable immediately before that Review Date. No later than five working days after the revised rent is agreed or the Surveyor's determination is notified to the Landlord and the Tenant, the Tenant shall pay:
 - 12.1 the shortfall (if any) between the amount that it has paid for the period from and including the Review Date until the Rent Payment Date following the date of agreement or notification of the revised rent and the amount that would have been payable had the revised rent been agreed or determined on or before that Review Date; and
 - 12.2 interest at Barcalys Bank PLC base rate on that shortfall calculated on a daily basis by reference to the Rent Payment Dates on which parts of the shortfall would have been payable if the revised rent had been agreed or determined on or before that Review Date and the date payment is received by the Landlord.
- 13 Time shall not be of the essence for the purposes of this Schedule.
- 14 If at any time there is a guarantor, the guarantor shall not have any right to participate in the review of the rent.
- 15 As soon as practicable after the amount of the revised rent has been agreed or determined, a memorandum recording the amount shall be signed by or on behalf of the Landlord and the Tenant and endorsed on or attached to this lease and its counterpart. The Landlord and the Tenant shall each bear their own costs in connection with the memorandum.