

9654



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

Case Reference : **CHI/18UE/LV9/2013/0012**

Property : **Flats 1 and 2 130 Boutport Street,
Barnstaple, Devon, EX31 2DM**

Applicant : **Cottingham Investments
Limited**

Representative : **Burkill Govier Solicitors**

Respondent : **Paul Lawrence Scorer & Lesley Jean
Scorer**

Representative :

Type of Application : **Variation of Lease, Section 35 of the
Landlord and Tenant Act 1987**

Tribunal Members : **Judge D Dovar**

**Date and venue of
Hearing** : **Paper Determination**

Date of Decision : **29th November 2013**

DECISION

1. This is an application dated 25th September 2013 pursuant to s35 of the Landlord and Tenant Act 1987 for a variation of the leases to Flats 1 and 2, 130 Boutport Street, Barnstaple, Devon, EX31 2DM.
2. By directions dated 10th October 2013, notice of intention to proceed with a determination without an oral hearing was given to the parties and a timetable was set for provision of representations. No representations were received. The Applicant did provide evidence of service of the application on the Respondent and an amended draft variation.
3. The Applicant is the lessor and the Respondent the lessees of both leases.
4. The basis for the application, as set out in the application itself, is because *'there are no provisions to cater for repair & maintenance of the structure and exterior of the building or shared installations serving the building which do not form part of the demises of the flats for the benefit of the tenants thereof and there are no provisions for the recovery of expenditure incurred by the landlord by provision of such repair, maintenance and services.'*
5. The leases are both for a term of 125 years from 1st September 2005.
6. The proposed variations are as per those annexed to this decision at 'A'. They have been provided in the form of a deed of variation between the parties.
7. Sections 35 and 38 of the 1987 Act enable the Tribunal to make a variation of a long lease of a flat where it is satisfied that the lease fails to make satisfactory provision for: the repair or maintenance of the flat or the building containing the flat (s35 (2)(a)); or 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 (s35 (2)(e)).
8. The Tribunal finds that the leases do fail to deal satisfactorily with the repair or maintenance of the building containing the flats and fail to

provide satisfactorily for the recovery of expenditure for the reasons set out in the application.

9. However, the Tribunal considers that for what appears a relatively modest residential property, extensive service charge provisions have been suggested.
10. To that end, the Tribunal has made amendments to the suggested variations and the Tribunal orders that the leases be varied in accordance with the variations annexed here to at 'B'. The majority of the variations have been made as the Tribunal considered that the proposed variations were more suited to large commercial premises than small residential. Pursuant to section 38 (9) the Tribunal also orders that a memorandum of the variations shall be endorsed on each lease.



JUDGE D DOVAR

CHAIRMAN

29th November 2013

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

DATED

'A'

2013

COTTINGHAM INVESTMENTS LIMITED

and

PAUL LAWRENCE SCORER and LESLEY JEAN SCORER

DEED OF VARIATION

Relating to:

Flat 1, 130 Boutport Street, Barnstable, Devon EX31 1TD



2 Maritime House, The Hart,
Farnham, Surrey GU9 7HW

Telephone: 01252 717171
Facsimile: 01252 717188

LAND REGISTRY
LAND REGISTRATION ACT 2002

COUNTY: DEVON
DISTRICT: NORTH DEVON
TITLE NO. DN529154
PROPERTY: Flat 1, 130 Boutport Street, Barnstable, Devon EX31 1TD

THIS DEED OF VARIATION is made the day of 2003 BETWEEN
COTTINGHAM INVESTMENTS LIMITED incorporated and registered in the British Virgin Isles
(Company No. 243589) whose registered office is at IFG House, 15 Union Street, St Helier, Jersey
JE1 1FG (hereinafter called "the Landlord") of the one part and PAUL LAWRENCE SCORER and
LESLEY JEAN SCORER of Flat 1, 130 Boutport Street, Barnstable, Devon EX31 1TD (hereinafter
called "the Tenant") of the other part

WHEREAS:

1. By a lease (hereinafter together referred to as "the Lease") short particulars whereof are contained in the Second Schedule hereto the premises therein described were demised for the term of years mentioned in the said First Schedule subject to the payment of the rent thereby reserved and subject to the covenants and conditions therein contained
2. The reversion immediately expectant upon the determination of the term created by the Lease is now vested in the Landlord and the residue now unexpired of the term granted by the Lease is now vested in the Tenant
3. It has been agreed between the parties hereto that in consideration of the mutual covenants between the parties the Lease will be varied upon the terms and conditions hereinafter appearing

NOW THIS DEED WITNESSETH as follows:-

1. THE Lease shall henceforth be read and construed and take effect as if:
 1. Recital 1 shall have the additional defined terms set out in the Second Schedule hereto as though the same were incorporated as part of recital 1
 2. Recital 1(b) shall be substituted and replaced by the following:-

"1(b) The building means the building in which the flats are situate but excludes:-

 - (i) all garden ground footpaths drying areas (if any) open spaces parking spaces vehicular access ways adjacent thereto; and

(ii) the extension to the rear of the building"

3. Clause 1(e) of the Lease is substituted and replaced as follows:-

"(e) AND ALSO paying on demand by way of further or additional rent the Service Charge in accordance with paragraphs 2.8(b) and (k) of the Eighth Schedule and interest at the Interest Rate on any rent or sum due under the terms of this Lease that is unpaid longer than 14 days from when such rent or sum became due"

4. Clause 5 of the Lease shall be substituted and replaced as follows:-

"5. The Landlord hereby covenants with the Tenant that it will observe and perform the obligations on its part set out in the Sixth Schedule and (subject to compliance by the Tenant of the tenant's obligations as contained in this Lease) in the Eighth Schedule"

5. Paragraph 6 as set out below shall be deemed added to the Fifth Schedule:-

"6. To comply with the obligations of the Tenant as regards Services and Service Charges as set out in the Eighth Schedule"

6. There shall be added to the Lease the Eighth Schedule in the form of the Third Schedule hereto

7. SAVE as hereby modified this lease is made upon the same terms and subject to the same covenants conditions and stipulations in all respects as those contained in the Lease save as modified hereby and shall be read and construed as if such covenants conditions and provisions were herein set forth verbatim with present demise instead of the demise created by the Lease

8. THE Landlord and the Tenant HEREBY COVENANT with each other to perform and observe the various additional covenants conditions and provisions contained in clauses 3, 4 and 5 hereof

9. IT is hereby agreed and declared that notwithstanding the foregoing all sums due and liabilities outstanding under the Lease as at the date hereof shall remain due and outstanding and the Landlord shall have the same rights in respect thereof as if the same arose under the covenants herein contained

IN WITNESS whereof this deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first before written

THE FIRST SCHEDULE

Flat 1, 130 Boutport Street, Barnstable, Devon EX31 1TD – Title Number DN529154

<u>Date</u>	<u>Document</u>	<u>Parties</u>	<u>Term</u>
31 August 2005	Lease	(1) Paul Lawrence Scorer (2) Paul Lawrence Scorer and Lesley Jean Scorer	125 years from 01.09.2005

THE SECOND SCHEDULE

Additional Recitals

- (f) **Certified Accounts:** service charge accounts prepared in accordance with paragraph 8 of the Eighth Schedule.
- (g) **Management Fee:** the total of the reasonable costs, fees and disbursements of the Manager which are properly incurred in relation to the carrying out and provision of the Management Service.
- (h) **Management Service:** any service provided by, or any function of, the Manager in relation to the provision of the Services, calculation of the Service Costs, and the administration of the Service Charge.
- (i) **Manager:** any managing agent or person employed by the Landlord, or by the managing agents, or otherwise retained by the Landlord to act on the Landlord's behalf, to budget for, forecast, procure, manage, account for, provide and otherwise administer any of the Building, the Services, the Service Costs or the Service Charge.
- (j) **Service Charge:** One Third of the Service Costs or such other proportion of the Service Costs as is allocated to the Property in accordance with paragraphs 8(c) and (k) of the Eighth Schedule.
- (k) **Service Charge Account:** any account set up and maintained by the Landlord into which the Service Charge payments by the occupiers of the Building are paid.
- (l) **Service Charge Code:** the RICS Code of Practice known as "Service Charges in Commercial Property Second Edition (Reference GN 24/2011)", which is effective from 1 October 2011.
- (m) **Service Charge Year:** the annual accounting period relating to the Services and the Service Costs beginning on [1 September] in [2012] and each subsequent year during the term.

- (n) **Service Costs:** the costs listed in paragraph 12 of the Eighth Schedule.
- (o) **Service Provider:** any body, individual, contractor or sub-contractor which is responsible for providing any of the Services, excluding utility suppliers.
- (p) **Services:** the services listed in paragraph 11 of the Eighth Schedule.
- (q) **Site Management Staff:** those persons directly employed by the Landlord or the Manager to deliver or administer delivery of the Services (whether employed full or part time and whether based at the Property or not).
- (r) **Interest Rate:** 4% above the base lending rate from time to time of The Royal Bank of Scotland Plc or such other bank being a member of the Committee of London and Scottish Bankers as the Landlord may from time to time nominate or if that base lending rate cannot be ascertained then four percent above such other rate as the Landlord may reasonably specify and where and whenever interest is payable at or by reference to the Interest Rate it shall be calculate on a daily basis and compounded on the Quarter Days

THE THIRD SCHEDULE

Additional Eighth Schedule to the Lease

Service Charge Code

SERVICES AND SERVICE CHARGE

1. Subject to paragraphs 2 and 6 the Landlord shall provide the Services.
2. In providing the Services the Landlord shall have regard to the aims, core principles and best practice recommended in the Service Charge Code, except where there are sound reasons not to do so, which reasons the Landlord can justify and explain.
3. The Landlord shall:
 - (a) provide the Services on a value for money and cost effective basis. The Tenant acknowledges that this may not necessarily mean doing so at the lowest price;
 - (b) ensure that the range, standard and cost of the Services are relevant to the Building (including its location, size, use and character) and the occupiers of the Lettable Units;
 - (c) review regularly the range, standard and cost of the Services to ensure that they:
 - (i) remain relevant;
 - (ii) still represent value for money (either by benchmarking the cost against the market cost or by requiring submission of competitive quotations or tenders as appropriate);
 - (d) establish policies and procedures which:

- (i) define the intended method of procurement, administration, management and delivery of the Services;
- (ii) ensure that the obligations of the Landlord and the Tenant set out in this clause are complied with;
- (iii) ensure that the Services are provided efficiently, cost effectively and safely;
- (iv) set appropriate performance standards for Site Management Staff and for Service Providers in their respective delivery of the Services; and
- (v) set standards for the selection of Service Providers (including assessment of their financial standing, health and safety compliance, and environmental and sustainability credentials);

and review these policies and procedures regularly;

- (e) require the Manager, the Service Providers and the Site Management Staff to comply with the relevant policies and procedures referred to in paragraph 3(d) when providing the Management Service or the Services as the case may be;
- (f) provide sufficient appropriately qualified or experienced Site Management Staff to deliver those Services which are not delivered by a Service Provider;
- (g) regularly measure and review the performance of the Site Management Staff and Service Providers against the relevant performance standards;
- (h) require the [major] Service Providers to demonstrate that their services, methods and processes are continually reviewed to ensure efficiency and value for money;
- (i) ensure that the Management Fee:
 - (i) is transparent, so that the basis on which it is charged and the way in which it is calculated is clear;
 - (ii) relates only to, and is reasonable for, the Management Service;
 - (iii) reflects the Manager's obligations to observe the principles of the Service Charge Code;
 - (iv) is not linked to a percentage of expenditure on the Services;
 - (v) shall be fixed for a reasonable period of time (subject to indexing); and
 - (vi) is otherwise calculated in accordance with the Service Charge Code;
- (j) credit to the Service Charge Account:
 - (i) all payments of Service Charge (whether in advance or payments made under paragraph 8(k)); and
 - (ii) any interest paid on any instalment of Service Charge which is paid late;
- (k) ensure that the interest earned on the Service Charge Account (or a fair and reasonable proportion of such interest, if the account relates to other properties in addition to the Building) is credited to the Service Charge Account (after deduction of bank charges, tax and any other appropriate amounts);

- (l) apportion the Service Costs between the Lettable Units on a fair and reasonable basis, using a recognised method and consistent basis reflecting the availability to, benefit from and use of the Services by the occupiers of the Building. If any Service Cost relates to a Service which benefits only one occupier, that Service Cost shall be allocated in full to that Lettable Unit;
- (m) ensure regular communication between the Landlord, the Tenant, other occupiers in the Building and the Manager on issues related to the Services and Service Costs, and deal promptly and efficiently with any reasonable enquiry made by the Tenant that relates to those issues;
- (n) invite (and, if appropriate, act upon) feedback from the Tenant on:
 - (i) the performance of the Service Providers and the Site Management Staff;
 - (ii) the standard of the Management Service; and
 - (iii) the range and standard of the Services;
- (o) as soon as practicable but not later than four months after a disposal of the reversion immediately expectant on the determination of this lease, provide the purchaser with full details of the Service Costs, accruals, prepayments, and all other relevant information for the last three Service Charge Years or any other Service Charge Year for which any part of the procedure set out in paragraph 8 remains outstanding, up to the completion date of the disposal.

4. The Landlord shall give the Tenant:

- (a) details of any proposed works or Services or other plans for the Building that may substantially increase the Service Charge due for the relevant Service Charge Year;
- (b) prompt notice (and in any event within the relevant Service Charge Year) of any likely significant variation of the actual Service Costs from the estimated Service Costs of which variation the Landlord becomes aware, together with an explanation of how this variation may be mitigated (if appropriate);
- (c) at the Tenant's request and cost, access to inspect the tender documents for any tender which is undertaken in accordance with clause 1.1(c)(ii);
- (d) information contained in any report or other item where the cost of obtaining this information is included in the Service Costs;
- (e) a schedule showing the apportionment of the Service Costs for each Lettable Unit, together with an explanation of how the apportionments have been calculated;
- (f) contact details for the key contacts at the Manager (and where appropriate other Service Providers) together with details of the respective roles and responsibilities of those key contacts; and
- (g) at the Tenant's request, a copy of any management policies referred to in paragraph 3(d).

5. The Landlord shall not be required to:

- (a) carry out any works as part of the Services if the need for those works has arisen by reason of any damage or destruction by a risk against which the Landlord is not obliged to insure;
 - (b) provide any of the Services outside the Permitted Hours; or
 - (c) replace or renew any part of the Building or any item or system within the Building which has not become beyond economic repair.
- 6. The Landlord shall not be liable for any interruption in, or disruption to, the provision of any of the Services for any reason that is outside the reasonable control of the Landlord.
- 7. The Landlord shall:
 - (a) not charge any of the Excluded Costs as part of the Service Charge;
 - (b) credit the Service Charge Account with any Service Charge apportioned to any unlet Lettable Units; the Landlord shall make such credit within the same periods as are specified in paragraph 8(c) and (d) for the Tenant to make similar payments and shall pay interest on any late payment at the Default Interest Rate in the same way as specified in clause 1(e).
- 8. The procedure and obligations of the parties relating to the operation of the Service Charge are as follows:
 - (a) at least one month before the start of each Service Charge Year, the Landlord shall prepare and send to the Tenant an estimate of the Service Costs for that Service Charge Year (in such form to enable the Tenant to compare it with the last issued Certified Accounts) together with an explanatory commentary where appropriate and a statement of the estimated Service Charge for that Service Charge Year;
 - (b) the Tenant shall pay the estimated Service Charge for each Service Charge Year in four equal instalments in advance on each of the Rent Payment Dates;
 - (c) in relation to the Service Charge Year current at the date of this lease:
 - (i) the Tenant's obligations to pay the estimated Service Charge and the actual Service Charge shall be limited to an apportioned part of those amounts, such apportioned part to be calculated on a daily basis for the period from the date of this lease to the end of the Service Charge Year; and
 - (ii) the estimated Service Charge for which the Tenant is liable shall be paid in equal instalments on the date of the Deed of Variation imposing these terms and on the remaining rent payment days until the end of the Service Charge Year;
 - (d) as soon as reasonably practicable and no later than four months after the end of each Service Charge Year, the Landlord shall prepare and send to the Tenant service charge accounts (Certified Accounts) that:
 - (i) show the Service Costs for that Service Charge Year, classified using the industry standard cost classifications required by the Service Charge Code;

- (ii) state the accounting policies and principles used in their preparation (as set out in detail in the Service Charge Code);
 - (iii) are in a form reasonably consistent from year to year;
 - (iv) are certified as representing a true and accurate record of the Service Costs and that the Service Charge has been calculated in accordance with this lease; and
 - (v) state the name and role of the person giving such certificate;
- (e) the Landlord shall prepare, and send to the Tenant with the Certified Accounts, a statement or report which:
- (i) provides full details of and reasons for any material variations from the estimated Service Charge;
 - (ii) confirms the basis and date of appointment of any managing agent;
 - (iii) confirms the basis of apportionment of the Service Costs;
 - (iv) explains the method of calculating the Management Fee; and
 - (v) includes any other relevant information which is required by the Service Charge Code;
- (f) if any cost is omitted from the calculation of the Service Charge in any Service Charge Year, the Landlord shall be entitled to include it in the estimate of the Service Charge and the Service Costs in any following Service Charge Year;
- (g) the person giving the certificate in the Certified Accounts shall be appropriately qualified, competent and non-partisan, and shall have experience in dealing with service charges;
- (h) subject to clause 1.1(f) and except in the case of manifest error, the certificate given in the Certified Accounts shall be conclusive as to all matters of fact to which it refers, subject to the Tenant's right reasonably to challenge any expenditure by referring the matter for Alternative Dispute Resolution (ADR) in accordance with paragraph 14. If there is a referral to ADR, each party shall bear its own costs;
- (i) the Landlord shall allow the Tenant a reasonable period in which to raise enquiries in respect of the Certified Accounts, shall respond promptly and efficiently to any reasonable enquiries of the Tenant and [on request and on payment by the Tenant of a reasonable fee,] make available for inspection by the Tenant, or provide the Tenant with copies of, all relevant paperwork and any supporting documentation;
- (j) if so requested by the Tenant, the Landlord shall agree to an independent audit of the Service Costs at the Tenant's cost; and
- (k) if in respect of any Service Charge Year, the Landlord's estimate of the Service Charge is less than the Service Charge, the Tenant shall pay the difference immediately upon the expiry of the period specified in paragraph 3(i) (unless the Tenant challenges the Service Charge under paragraph 3(h) in which case the Tenant shall pay the difference immediately upon the final determination of that challenge). If in respect of any Service Charge Year, the Landlord's estimate of the

Service Charge is more than the Service Charge, the Landlord shall promptly repay to the Tenant the difference.

9. In addition to the Tenant's obligations contained in clause 8 the Tenant shall:
- (a) co-operate fully with the Landlord and the Manager to allow the Landlord and the Manager to administer the Service Charge in accordance with the provisions of this clause;
 - (b) nominate someone with appropriate responsibility and authority to deal with the Landlord on any issues relating to the Services or the Service Charge and shall notify the Landlord of the name and contact details of that person;
 - (c) promptly advise the Landlord and the Manager of any changes within the Tenant's organisation that may affect the operation of the Service Charge and of any changes to the person nominated in paragraph 3(b);
 - (d) respond promptly and efficiently to any reasonable enquiry by the Landlord or the Manager on issues related to the Services and Service Costs; and
 - (e) be proactive in assisting the Landlord and the Manager with operating and using the Services to achieve value for money and follow all procedures reasonably required by the Landlord or the Manager to maintain and promote the quality and cost effectiveness of the Services (such procedures may include, but are not limited to, separating waste to facilitate appropriate and cost effective recycling and adopting any energy saving measures).
10. Where the Landlord is required to comply with any obligation contained in this clause such obligation shall, where relevant, include, in the alternative, an obligation on the Landlord to ensure that the Manager complies with that obligation.

SERVICES

11. For the purpose of this Lease and this Schedule the Services are:
- (a) cleaning, maintaining, decorating and repairing the Common Parts, including the structural parts, the outsides of the windows and all Service Media forming part of the Common Parts, and remedying any inherent defect in those parts of the Building;
 - (b) providing heating to the internal areas of the Common Parts [and the Lettable Units] during such periods of the year as the Landlord reasonably considers appropriate, and cleaning, maintaining, repairing and replacing the heating machinery and equipment;
 - (c) lighting the Common Parts and cleaning, maintaining, repairing and replacing lighting machinery and equipment on the Common Parts;
 - (d) supplying hot and cold water, soap, paper, towels and other supplies for any lavatories, washrooms, kitchens and utility areas on the Common Parts, and cleaning, maintaining, repairing and replacing the furniture, fittings and equipment in those areas;

- (e) keeping the lifts on the Common Parts in reasonable working order and cleaning, maintaining, repairing and replacing the lifts and lift machinery and equipment;
- (f) cleaning, maintaining, repairing and replacing refuse bins on the Common Parts;
- (g) cleaning, maintaining, repairing and replacing signage for the Common Parts;
- (h) cleaning, maintaining, repairing, operating and replacing security machinery and equipment (including closed circuit television) on the Common Parts;
- (i) cleaning, maintaining, repairing, operating and replacing fire prevention, detection and fighting machinery and equipment and fire alarms on the Common Parts;
- (j) cleaning, maintaining, repairing and replacing a signboard showing the names and logos of the tenants and other occupiers [in the entrance hall of the Building];
- (k) maintaining the landscaped and grassed areas of the Common Parts;
- (l) cleaning, maintaining, repairing and replacing the floor coverings on the internal areas of the Common Parts;
- (m) cleaning, maintaining, repairing and replacing the furniture and fittings on the Common Parts;
- (n) [providing air conditioning for the internal areas of the [Common Parts] [Building] and cleaning, maintaining, repairing and replacing air conditioning equipment serving the [Common Parts][Building]];
- (o) [providing [security] [reception] [cleaning and maintenances] staff for the Building];
- (p) [ANY OTHER SPECIFIC SERVICES REQUIRED]; and
- (q) any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building.

SERVICE COSTS

12. For the purpose of this Lease and this Schedule the **Service Costs** (excepting the Excluded Costs) are the total of:

- (a) all of the reasonable and properly incurred costs of:
 - (i) providing the Services;
 - (ii) the supply and removal of electricity, gas, water, sewage and other utilities to and from the [Common Parts][Building];
 - (iii) reading any meters;
 - (iv) complying with the recommendations and requirements of the insurers of the Building (insofar as those recommendations and requirements relate to the Common Parts);
 - (v) complying with all laws relating to the Common Parts, their use and any works carried out to them, relating to the use of all Service Media,

machinery and equipment at or serving the Common Parts and relating to any materials kept at or disposed of from the Common Parts;

- (vi) complying with the Third Party Rights insofar as they relate to the Common Parts;
 - (vii) taking any steps (including proceedings) that the Landlord considers necessary to prevent or remove any encroachment over the Common Parts or to prevent the acquisition of any right over the Common Parts (or Building as a whole) or to remove any obstruction to the flow of light or air to the Common Parts (or the Building as a whole); and
 - (viii) borrowing to fund major expenditure on any Service which is infrequent or of an unusual nature;
- (b) the Management Fee and all of the reasonable and properly incurred costs, fees and disbursements of:
- (i) the accountants employed by the Landlord to prepare and certify the service charge accounts; and
 - (ii) a procurement specialist who is employed or retained to achieve greater value for money and cost effectiveness in relation to the Service Costs;
- (c) all costs incurred in relation to the Site Management Staff as follows:
- (i) salaries (and all appropriate benefits);
 - (ii) employers' costs (including NIC and tax; costs of compliance with statutory requirements; and pension, welfare, and insurance contributions);
 - (iii) training;
 - (iv) uniforms; and
 - (v) all equipment, supplies and accommodation needed for the proper performance of their duties,

provided that where the Site Management Staff provide Services to the Building and to other properties, a reasonable proportion only of such costs shall be included in the Service Costs;

- (d) all rates, taxes and impositions payable in respect of the Common Parts, their use and any works carried out on them (other than any taxes payable by the Landlord in connection with any dealing with or disposition of its reversionary interest in the Building);
- (e) the reasonable and proper cost of complying with any of the Landlord's obligations contained in clause 0; and
- (f) any VAT payable in respect of any of the items mentioned above except to the extent that the Landlord obtains credit for such VAT under the Value Added Tax Act 1994.

EXCLUDED COSTS

13. For the purposes of this Lease and this Schedule the **Excluded Costs** are any costs which relate to or arise from:

- (a) matters between the Landlord and an occupier in the Building, including, but not limited to, costs relating to or arising from:
 - (i) enforcement of covenants to pay rent and other monies payable under the occupier's lease;
 - (ii) the letting of any Lettable Unit;
 - (iii) any consents required under the relevant lease, including but not limited to consents to assign, sublet, alterations and extended opening hours; and
 - (iv) rent reviews;
- (b) failure or negligence of the Landlord or Manager;
- (c) any Lettable Unit which is unlet;
- (d) any shortfall in the costs of providing any of the Services to a Lettable Unit for which the Landlord has agreed a special concession (not being a properly constituted weighting formula);
- (e) the maintenance or operation of:
 - (i) any premises within the Building used by the Landlord for its own purposes (except where such use is wholly or partly in connection with the management of the Building itself, in which case the whole or a reasonable part, as the case may be, of such costs shall be a Service Cost);
 - (ii) any cost centre within the Building that generates income for the Landlord (except where such income is (at least in part) credited to the Service Charge Account, in which case the whole or a reasonable proportion of such costs shall be a Service Cost);
- (f) the initial provision of any items that are reasonably to be considered part of the original design and construction of the fabric, plant or equipment of the Building together with the initial setting up that is reasonably to be considered part of the original development of the Building;
- (g) any future development of the Building;
- (h) the replacement of any item of the fabric, plant, equipment or materials necessary for the operation of the Building, except where analysis of the reasonable options and alternatives determines that:
 - (i) replacement is appropriate because the fabric, plant, equipment or materials are beyond economic repair or beyond efficient or economic operation; or
 - (ii) the cost of replacement is relatively low when compared with the greater cost anticipated if replacement is postponed materially; or
 - (iii) replacement is required by statute or the insurers of the Building;

If requested by the Tenant, the Landlord will provide the Tenant with evidence to justify the cost of replacement;

- (i) the improvement of any item (where the cost exceeds the costs of normal maintenance, repair or replacement) except where the expenditure can be justified following the analysis of reasonable options and alternatives and having regard to a cost benefit analysis over the term of the leases in the Building. Where the Landlord believes that the expenditure is justified in this manner, it shall provide the Tenant with evidence to support and explain its decision before the expenditure is incurred;
- (j) any Services provided by reason of damage to or destruction of the Common Parts by a risk against which the Landlord is obliged to insure; and
- (k) [any marketing or promotion activities in relation to the Building].

14. In the event of any dispute arising between the Landlord and the Tenant as regards Services and Service Costs and the operation of this Schedule Eight which the parties cannot resolve themselves the parties will refer the dispute to an agreed member of the Royal Institute of Chartered Surveyors (RICS) or in the event of a failure to agree such appointment then either party may apply to the President for the time being of the RICS to appoint such an expert. The parties will co-operate with complying with such procedures and requests for information as set down by the expert whose decision as an expert and not as an arbitrator shall be final and binding on the parties save and unless in circumstances of a manifest error of substance. The costs of the expert will be shared equally between the parties, and if required by the expert shall be paid in advance.

In witness whereof the parties have executed this deed of variation as a deed

Signed as a Deed by
COTTINGHAM INVESTMENTS
LIMITED by []
(director) and []
(director/company secretary)

Signed.....
Director

Signed.....
Director/Secretary

'B'

DATED

2013

COTTINGHAM INVESTMENTS LIMITED

and

PAUL LAWRENCE SCORER and LESLEY JEAN SCORER

DEED OF VARIATION

Relating to:

Flats 1 & 2, 130 Boutport Street, Barnstable, Devon EX31 1TD



2 Maritime House, The Hart,
Farnham, Surrey GU9 7HW

Telephone: 01252 717171
Facsimile: 01252 717188

LAND REGISTRY
LAND REGISTRATION ACT 2002

COUNTY: DEVON
DISTRICT: NORTH DEVON
TITLE NO. DN529169
PROPERTY: Flats 1 & 2, 130 Boutport Street, Barnstable, Devon EX31 1TD

~~THIS DEED OF VARIATION is made the _____ day of _____ 2003 BETWEEN COTTINGHAM INVESTMENTS LIMITED incorporated and registered in the British Virgin Isles (Company No. 243589) whose registered office is at IFG House, 15 Union Street, St Helier, Jersey JE1 1FG (hereinafter called "the Landlord") of the one part and PAUL LAWRENCE SCORER and LESLEY JEAN SCORER of Flat 1, 130 Boutport Street, Barnstable, Devon EX31 1TD (hereinafter called "the Tenant") of the other part~~

WHEREAS:

1. By a lease (hereinafter together referred to as "the Lease") short particulars whereof are contained in the **First** Schedule hereto the premises therein described were demised for the term of years mentioned in the said First Schedule subject to the payment of the rent thereby reserved and subject to the covenants and conditions therein contained
2. The reversion immediately expectant upon the determination of the term created by the Lease is now vested in the Landlord and the residue now unexpired of the term granted by the Lease is now vested in the Tenant
3. It has been agreed between the parties hereto that in consideration of the mutual covenants between the parties the Lease will be varied upon the terms and conditions hereinafter appearing

NOW THIS DEED WITNESSETH as follows:-

1. THE Lease shall henceforth be read and construed and take effect as if:
 1. Recital 1 shall have the additional defined terms set out in the Second Schedule hereto as though the same were incorporated as part of recital 1
 2. Recital 1(b) shall be substituted and replaced by the following:-

"1(b) The building means the building in which the flats are situate but excludes:-

 - (i) all garden ground footpaths drying areas (if any) open spaces parking spaces vehicular access ways adjacent thereto; and

(ii) the extension to the rear of the building"

3. Clause 1(e) of the Lease is substituted and replaced as follows:-
"5. AND ALSO paying on demand by way of further or additional rent the Service Charge in accordance with paragraphs 2.8(b) and (k) of the Eighth Schedule and interest at the Interest Rate on any rent or sum due under the terms of this Lease that is unpaid longer than 14 days from when such rent or sum became due"
4. Clause 5 of the Lease shall be substituted and replaced as follows:-
"5. The Landlord hereby covenants with the Tenant that it will observe and perform the obligations on its part set out in the Sixth Schedule and (subject to compliance by the Tenant of the tenant's obligations as contained in this Lease) in the Eighth Schedule"
5. Paragraph 6 as set out below shall be deemed added to the Fifth Schedule:-
"6. To comply with the obligations of the Tenant as regards Services and Service Charges as set out in the Eighth Schedule"
6. There shall be added to the Lease the Eighth Schedule in the form of the Third Schedule hereto
7. SAVE as hereby modified this lease is made upon the same terms and subject to the same covenants conditions and stipulations in all respects as those contained in the Lease save as modified hereby and shall be read and construed as if such covenants conditions and provisions were herein set forth verbatim with present demise instead of the demise created by the Lease
8. THE Landlord and the Tenant HEREBY COVENANT with each other to perform and observe the various additional covenants conditions and provisions contained in clauses 3, 4 and 5 hereof
9. IT is hereby agreed and declared that notwithstanding the foregoing all sums due and liabilities outstanding under the Lease as at the date hereof shall remain due and outstanding and the Landlord shall have the same rights in respect thereof as if the same arose under the covenants herein contained

IN WITNESS whereof this deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first before written

THE FIRST SCHEDULE

Flats 1 & 2, 130 Boutport Street, Barnstable, Devon EX31 1TD – Title Number DN529169

<u>Date</u>	<u>Document</u>	<u>Parties</u>	<u>Term</u>
31 August 2005	Lease	(1) Paul Lawrence Scorer (2) Paul Lawrence Scorer and Lesley Jean Scorer	125 years from 01.09.2005

THE SECOND SCHEDULE

Additional Recitals

- (f) **Certified Accounts:** service charge accounts prepared in accordance with paragraph 8 of the Eighth Schedule.
- (g) **Management Fee:** the total of the reasonable costs, fees and disbursements of the Manager which are properly incurred in relation to the carrying out and provision of the Management Service.
- (h) **Management Service:** any service provided by, or any function of, the Manager in relation to the provision of the Services, calculation of the Service Costs, and the administration of the Service Charge.
- (i) **Manager:** any managing agent or person employed by the Landlord, or by the managing agents, or otherwise retained by the Landlord to act on the Landlord's behalf, to budget for, forecast, procure, manage, account for, provide and otherwise administer any of the Building, the Services, the Service Costs or the Service Charge.
- (j) **Service Charge:** One Third of the Service Costs or such other proportion of the Service Costs as is allocated to the Property in accordance with paragraphs 8(c) and (k) of the Eighth Schedule.
- (k) **Service Charge Account:** any account set up and maintained by the Landlord into which the Service Charge payments by the occupiers of the Building are paid.
- (l) **Service Charge Code:** the RICS Code of Practice known as Service Charges Residential Management Code, as published from time to time
- (m) **Service Charge Year:** the annual accounting period relating to the Services and the Service Costs beginning on 1 September In 2012 and each subsequent year during the term.

- (n) **Service Costs:** the costs listed in paragraph 12 of the Eighth Schedule.
- (o) **Service Provider:** any body, individual, contractor or sub-contractor which is responsible for providing any of the Services, excluding utility suppliers.
- (p) **Services:** the services listed in paragraph 11 of the Eighth Schedule.
- (q) **Site Management Staff:** those persons directly employed by the Landlord or the Manager to deliver or administer delivery of the Services (whether employed full or part time and whether based at the Property or not).
- (r) **Interest Rate:** 4% above the base lending rate from time to time of The Royal Bank of Scotland Plc or such other bank being a member of the Committee of London and Scottish Bankers as the Landlord may from time to time nominate or if that base lending rate cannot be ascertained then four percent above such other rate as the Landlord may reasonably specify and where and whenever interest is payable at or by reference to the Interest Rate it shall be calculate on a daily basis and compounded on the Quarter Days

THE THIRD SCHEDULE

Additional Eighth Schedule to the Lease

Service Charge Code

SERVICES AND SERVICE CHARGE

1. Subject to paragraphs 2 and 6 the Landlord shall provide the Services.
2. In providing the Services the Landlord shall have regard to the aims, core principles and best practice recommended in the Service Charge Code, except where there are sound reasons not to do so, which reasons the Landlord can justify and explain.
3. The Landlord shall:
 - (a) provide the Services on a value for money and cost effective basis. The Tenant acknowledges that this may not necessarily mean doing so at the lowest price;
 - (b) ensure that the range, standard and cost of the Services are relevant to the Building (including its location, size, use and character) and the occupiers of the **Building**;
 - (c) review regularly the range, standard and cost of the Services to ensure that they:
 - (i) remain relevant;
 - (ii) still represent value for money (either by benchmarking the cost against the market cost or by requiring submission of competitive quotations or tenders as appropriate);
 - (d) ~~establish policies and procedures which:~~

- ~~(i) define the intended method of procurement, administration, management~~
~~████████████████████~~
 - ~~(ii) ensure that the obligations of the Landlord and the Tenant set out in this~~
~~████████████████████~~
 - ~~(iii) ensure that the Services are provided efficiently, cost effectively and safely;~~
 - ~~(iv) set appropriate performance standards for Site Management Staff and for Service Providers in their respective delivery of the Services; and~~
 - ~~(v) set standards for the selection of Service Providers (including assessment of their financial standing, health and safety compliance, and environmental and sustainability credentials);~~
- ~~and review these policies and procedures regularly;~~
- (e) require the Manager, the Service Providers and the Site Management Staff to comply with the relevant policies and procedures referred to in paragraph 3(d) when providing the Management Service or the Services as the case may be;
 - (f) provide sufficient appropriately qualified or experienced Site Management Staff to deliver those Services which are not delivered by a Service Provider;
 - ~~(g) regularly measure and review the performance of the Site Management Staff and Service Providers against the relevant performance standards;~~
 - (h) require the [major] Service Providers to demonstrate that their services, methods and processes are continually reviewed to ensure efficiency and value for money;
 - (i) ensure that the Management Fee:
 - (i) is transparent, so that the basis on which it is charged and the way in which it is calculated is clear;
 - (ii) relates only to, and is reasonable for, the Management Service;
 - (iii) reflects the Manager's obligations to observe the principles of the Service Charge Code;
 - (iv) is not linked to a percentage of expenditure on the Services;
 - (v) shall be fixed for a reasonable period of time (subject to indexing); and
 - (vi) is otherwise calculated in accordance with the Service Charge Code;
 - (j) credit to the Service Charge Account:
 - ~~(i) all payments of Service Charge (whether in advance or payments made under paragraph 8(k)); and~~
 - (ii) any interest paid on any instalment of Service Charge which is paid late;
 - (k) ensure that the interest earned on the Service Charge Account (or a fair and reasonable proportion of such interest, if the account relates to other properties in addition to the Building) is credited to the Service Charge Account (after deduction of bank charges, tax and any other appropriate amounts);

- (l) apportion the Service Costs ~~between the Lettable Units~~ on a fair and reasonable basis, using a recognised method and consistent basis reflecting the availability to, benefit from and use of the Services by the occupiers of the Building. If any Service Cost relates to a Service which benefits only one occupier, that Service Cost shall be allocated in full to that occupier;
- (m) ensure regular communication between the Landlord, the Tenant, other occupiers in the Building and the Manager on issues related to the Services and Service Costs, and deal promptly and efficiently with any reasonable enquiry made by the Tenant that relates to those issues;
- (n) invite (and, if appropriate, act upon) feedback from the Tenant on:
 - (i) the performance of the Service Providers and the Site Management Staff;
 - (ii) the standard of the Management Service; and
 - (iii) the range and standard of the Services;
- (o) as soon as practicable but not later than four months after a disposal of the reversion immediately expectant on the determination of this lease, provide the purchaser with full details of the Service Costs, accruals, prepayments, and all other relevant information for the last three Service Charge Years or any other Service Charge Year for which any part of the procedure set out in paragraph 8 remains outstanding, up to the completion date of the disposal.

4. The Landlord shall give the Tenant:

- (a) details of any proposed works or Services or other plans for the Building that may substantially increase the Service Charge due for the relevant Service Charge Year;
- (b) prompt notice (and in any event within the relevant Service Charge Year) of any likely significant variation of the actual Service Costs from the estimated Service Costs of which variation the Landlord becomes aware, together with an explanation of how this variation may be mitigated (if appropriate);
- (c) at the Tenant's request and cost, access to inspect the tender documents for any tender which is undertaken in accordance with clause 1.1(c)(ii);
- (d) information contained in any report or other item where the cost of obtaining this information is included in the Service Costs;
- (e) a schedule showing the apportionment of the Service Costs ~~for each Lettable Unit~~, together with an explanation of how the apportionments have been calculated;
- (f) ~~contact details for the key contacts at the Manager (and where appropriate other Service Providers) together with details of the respective roles and responsibilities of those key contacts; and~~
- (g) at the Tenant's request, a copy of any management policies referred to in paragraph 3(d).

5. The Landlord shall not be required to:

- ~~(a) carry out any works as part of the Services if the need for those works has arisen by reason of any damage or destruction by a risk against which the Landlord is not obliged to insure;~~
 - (b) provide any of the Services outside the Permitted Hours; or
 - (c) replace or renew any part of the Building or any item or system within the Building which has not become beyond economic repair.
6. The Landlord shall not be liable for any interruption in, or disruption to, the provision of any of the Services for any reason that is outside the reasonable control of the Landlord.
7. The Landlord shall:
- (a) not charge any of the Excluded Costs as part of the Service Charge;
 - (b) credit the Service Charge Account with any Service Charge apportioned to any unlet part of the Building; the Landlord shall make such credit within the same periods as are specified in paragraph 8(c) and (d) for the Tenant to make similar payments and shall pay interest on any late payment at the Default Interest Rate in the same way as specified in clause 1(e).
8. The procedure and obligations of the parties relating to the operation of the Service Charge are as follows:
- (a) at least one month before the start of each Service Charge Year, the Landlord shall prepare and send to the Tenant an estimate of the Service Costs for that Service Charge Year (in such form to enable the Tenant to compare it with the last issued Certified Accounts) together with an explanatory commentary where appropriate and a statement of the estimated Service Charge for that Service Charge Year;
 - (b) the Tenant shall pay the estimated Service Charge for each Service Charge Year in four equal instalments in advance on each of the Rent Payment Dates;
 - (c) in relation to the Service Charge Year current at the date of this lease:
 - (i) the Tenant's obligations to pay the estimated Service Charge and the actual Service Charge shall be limited to an apportioned part of those amounts, such apportioned part to be calculated on a daily basis for the period from the date of this lease to the end of the Service Charge Year; and
 - (ii) the estimated Service Charge for which the Tenant is liable shall be paid in equal instalments on the date of the Deed of Variation imposing these terms and on the remaining rent payment days until the end of the Service Charge Year;
 - (d) as soon as reasonably practicable and no later than four months after the end of each Service Charge Year, the Landlord shall prepare and send to the Tenant service charge accounts (**Certified Accounts**) that:
 - (i) show the Service Costs for that Service Charge Year, classified using the industry standard cost classifications required by the Service Charge Code;

- (ii) state the accounting policies and principles used in their preparation (as set out in detail in the Service Charge Code);
 - (iii) are in a form reasonably consistent from year to year;
 - (iv) are certified as representing a true and accurate record of the Service Costs and that the Service Charge has been calculated in accordance with this lease; and
 - (v) state the name and role of the person giving such certificate;
- (e) the Landlord shall prepare, and send to the Tenant with the Certified Accounts, a statement or report which:
- (i) provides full details of and reasons for any material variations from the estimated Service Charge;
 - (ii) confirms the basis and date of appointment of any managing agent;
 - (iii) confirms the basis of apportionment of the Service Costs;
 - (iv) explains the method of calculating the Management Fee; and
 - (v) includes any other relevant information which is required by the Service Charge Code;
- (f) if any cost is omitted from the calculation of the Service Charge in any Service Charge Year, the Landlord shall be entitled to include it in the estimate of the Service Charge and the Service Costs in any following Service Charge Year;
- (g) the person giving the certificate in the Certified Accounts shall be appropriately qualified, competent and non-partisan, and shall have experience in dealing with service charges;
- (h) subject to clause 1.1(f) and except in the case of manifest error, the certificate given in the Certified Accounts shall be conclusive as to all matters of fact to which it refers, subject to the Tenant's right reasonably to challenge any expenditure by referring the matter for Alternative Dispute Resolution (ADR) in accordance with paragraph 14. If there is a referral to ADR, each party shall bear its own costs;
- (i) the Landlord shall allow the Tenant a reasonable period in which to raise enquiries in respect of the Certified Accounts, shall respond promptly and efficiently to any reasonable enquiries of the Tenant and ~~[on request and on payment by the Tenant of a reasonable fee,]~~ make available for inspection by the Tenant, or provide the Tenant with copies of, all relevant paperwork and any supporting documentation;
- (j) if so requested by the Tenant, the Landlord shall agree to an independent audit of the Service Costs at the Tenant's cost; and
- (k) if in respect of any Service Charge Year, the Landlord's estimate of the Service Charge is less than the Service Charge, the Tenant shall pay the difference immediately upon the expiry of the period specified in paragraph 3(i) (unless the Tenant challenges the Service Charge under paragraph 3(h) in which case the Tenant shall pay the difference immediately upon the final determination of that challenge). If in respect of any Service Charge Year, the Landlord's estimate of the

Service Charge is more than the Service Charge, the Landlord shall promptly repay to the Tenant the difference.

9. In addition to the Tenant's obligations contained in clause 8 the Tenant shall:
- (a) co-operate fully with the Landlord and the Manager to allow the Landlord and the Manager to administer the Service Charge in accordance with the provisions of this clause;
 - (b) nominate someone with appropriate responsibility and authority to deal with the Landlord on any issues relating to the Services or the Service Charge and shall notify the Landlord of the name and contact details of that person;
 - (c) promptly advise the Landlord and the Manager of any changes within the Tenant's organisation that may affect the operation of the Service Charge and of any changes to the person nominated in paragraph 3(b);
 - (d) respond promptly and efficiently to any reasonable enquiry by the Landlord or the Manager on issues related to the Services and Service Costs; and
 - (e) be proactive in assisting the Landlord and the Manager with operating and using the Services to achieve value for money and follow all procedures reasonably required by the Landlord or the Manager to maintain and promote the quality and cost effectiveness of the Services (such procedures may include, but are not limited to, separating waste to facilitate appropriate and cost effective recycling and adopting any energy saving measures).
10. Where the Landlord is required to comply with any obligation contained in this clause such obligation shall, where relevant, include, in the alternative, an obligation on the Landlord to ensure that the Manager complies with that obligation.

SERVICES

11. For the purpose of this Lease and this Schedule the **Services** are:
- (a) cleaning, maintaining, decorating and repairing the Common Parts, including the structural parts, the outsides of the windows and all Service Media forming part of the Common Parts, and remedying any inherent defect in those parts of the Building;
 - (b) providing heating to the internal areas of the Common Parts ~~and the Lettable Units~~ during such periods of the year as the Landlord reasonably considers appropriate, and cleaning, maintaining, repairing and replacing the heating machinery and equipment;
 - (c) lighting the Common Parts and cleaning, maintaining, repairing and replacing lighting machinery and equipment on the Common Parts;
 - (d) supplying hot and cold water, soap, paper, towels and other supplies for any lavatories, washrooms, kitchens and utility areas on the Common Parts, and cleaning, maintaining, repairing and replacing the furniture, fittings and equipment in those areas;

- (e) keeping the lifts on the Common Parts in reasonable working order and cleaning, maintaining, repairing and replacing the lifts and lift machinery and equipment;
- (f) cleaning, maintaining, repairing and replacing refuse bins on the Common Parts;
- (g) cleaning, maintaining, repairing and replacing signage for the Common Parts;
- (h) cleaning, maintaining, repairing, operating and replacing security machinery and equipment (including closed circuit television) on the Common Parts;
- (i) cleaning, maintaining, repairing, operating and replacing fire prevention, detection and fighting machinery and equipment and fire alarms on the Common Parts;
- (j) cleaning, maintaining, repairing and replacing a signboard showing the names and logos of the tenants and other occupiers in the entrance hall of the Building;
- (k) maintaining the landscaped and grassed areas of the Common Parts;
- (l) cleaning, maintaining, repairing and replacing the floor coverings on the internal areas of the Common Parts;
- (m) cleaning, maintaining, repairing and replacing the furniture and fittings on the Common Parts;
- ~~(n) [providing air conditioning for the internal areas of the [Common Parts] [Building] and cleaning, maintaining, repairing and replacing air conditioning equipment serving the [Common Parts][Building]];~~
- ~~(o) [providing [security] [reception] [cleaning and maintenance] staff for the Building];~~
- ~~(p) [ANY OTHER SPECIFIC SERVICES REQUIRED]; and~~
- (q) any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building.

SERVICE COSTS

12. For the purpose of this Lease and this Schedule the **Service Costs** (excepting the Excluded Costs) are the total of:
- (a) all of the reasonable and properly incurred costs of:
 - (i) providing the Services;
 - (ii) the supply and removal of electricity, gas, water, sewage and other utilities to and from the Building;
 - ~~(iii) reading any meters;~~
 - (iv) complying with the recommendations and requirements of the insurers of the Building (insofar as those recommendations and requirements relate to the Common Parts);
 - (v) complying with all laws relating to the Common Parts, their use and any works carried out to them, relating to the use of all Service Media,

- machinery and equipment at or serving the Common Parts and relating to any materials kept at or disposed of from the Common Parts;
- (vi) complying with the Third Party Rights insofar as they relate to the Common Parts;
 - (vii) taking any steps (including proceedings) that the Landlord considers necessary to prevent or remove any encroachment over the Common Parts or to prevent the acquisition of any right over the Common Parts (or Building as a whole) or to remove any obstruction to the flow of light or air to the Common Parts (or the Building as a whole); and
 - (viii) borrowing to fund major expenditure on any Service which is infrequent or of an unusual nature;
- (b) the Management Fee and all of the reasonable and properly incurred costs, fees and disbursements of:
- (i) the accountants employed by the Landlord to prepare and certify the service charge accounts; and
 - (ii) a procurement specialist who is employed or retained to achieve greater value for money and cost effectiveness in relation to the Service Costs;
- (c) all costs incurred in relation to the Site Management Staff as follows:
- (i) salaries (and all appropriate benefits);
 - (ii) employers' costs (including NIC and tax; costs of compliance with statutory requirements; and pension, welfare, and insurance contributions);
 - (iii) training;
 - (iv) uniforms; and
 - (v) all equipment, supplies and accommodation needed for the proper performance of their duties,

provided that where the Site Management Staff provide Services to the Building and to other properties, a reasonable proportion only of such costs shall be included in the Service Costs;

- (d) all rates, taxes and impositions payable in respect of the Common Parts, their use and any works carried out on them (other than any taxes payable by the Landlord in connection with any dealing with or disposition of its reversionary interest in the Building);
- ~~(e) the reasonable and proper cost of complying with any of the Landlord's obligations contained in clause 0; and~~
- (f) any VAT payable in respect of any of the items mentioned above except to the extent that the Landlord obtains credit for such VAT under the Value Added Tax Act 1994.

EXCLUDED COSTS

13. For the purposes of this Lease and this Schedule the **Excluded Costs** are any costs which relate to or arise from:

- (a) matters between the Landlord and an occupier in the Building, including, but not limited to, costs relating to or arising from:
 - (i) enforcement of covenants to pay rent and other monies payable under the occupier's lease;
 - (ii) ~~the letting of any Lettable Unit;~~
 - (iii) any consents required under the relevant lease, including but not limited to consents to assign, sublet, alterations and extended opening hours; and
 - (iv) rent reviews;
- (b) failure or negligence of the Landlord or Manager;
- ~~(c) any Lettable Unit which is unlet;~~
- ~~(d) any shortfall in the costs of providing any of the Services to a Lettable Unit for which the Landlord has agreed a special concession (not being a properly constituted weighting formula);~~
- (e) the maintenance or operation of:
 - (i) any premises within the Building used by the Landlord for its own purposes (except where such use is wholly or partly in connection with the management of the Building itself, in which case the whole or a reasonable part, as the case may be, of such costs shall be a Service Cost);
 - (ii) any cost centre within the Building that generates income for the Landlord (except where such income is (at least in part) credited to the Service Charge Account, in which case the whole or a reasonable proportion of such costs shall be a Service Cost);
- (f) the initial provision of any items that are reasonably to be considered part of the original design and construction of the fabric, plant or equipment of the Building together with the initial setting up that is reasonably to be considered part of the original development of the Building;
- (g) any future development of the Building;
- (h) the replacement of any item of the fabric, plant, equipment or materials necessary for the operation of the Building, except where analysis of the reasonable options and alternatives determines that:
 - (i) replacement is appropriate because the fabric, plant, equipment or materials are beyond economic repair or beyond efficient or economic operation; or
 - (ii) the cost of replacement is relatively low when compared with the greater cost anticipated if replacement is postponed materially; or
 - (iii) replacement is required by statute or the insurers of the Building;

If requested by the Tenant, the Landlord will provide the Tenant with evidence to justify the cost of replacement;

- (i) the improvement of any item (where the cost exceeds the costs of normal maintenance, repair or replacement) except where the expenditure can be justified following the analysis of reasonable options and alternatives and having regard to a cost benefit analysis over the term of the leases in the Building. Where the Landlord believes that the expenditure is justified in this manner, it shall provide the Tenant with evidence to support and explain its decision before the expenditure is incurred;
- (j) any Services provided by reason of damage to or destruction of the Common Parts by a risk against which the Landlord is obliged to insure; and
- ~~(k) [any marketing or promotion activities in relation to the Building].~~

~~14. In the event of any dispute arising between the Landlord and the Tenant as regards Services and Service Costs and the operation of this Schedule Eight which the parties cannot resolve themselves the parties will refer the dispute to an agreed member of the Royal Institute of Chartered Surveyors (RICS) or in the event of a failure to agree such appointment then either party may apply to the President for the time being of the RICS to appoint such an expert. The parties will co-operate with complying with such procedures and requests for information as set down by the expert whose decision as an expert and not as an arbitrator shall be final and binding on the parties save and unless in circumstances of a manifest error of substance. The costs of the expert will be shared equally between the parties, and if required by the expert shall be paid in advance.~~

In witness whereof the parties have executed this deed of variation as a deed

Signed as a Deed by _____ Signed _____
 COTTINGHAM INVESTMENTS _____ Director
 LIMITED by [_____]
 (director) and [_____]
 (director/company secretary) _____
 _____ Signed _____
 _____ Director/Secretary

Signed as a deed by _____ Signed _____

PAUL LAWRENCE SCORER _____ Signature of witness

in the presence of _____ Name

_____ Address

Signed as a deed by _____ Signed _____

LESLEY JEAN SCORER _____ Signature of witness

in the presence of _____ Name

_____ Address