

Counterpart Lease

THIS LEASE AGREEMENT (the "Agreement") dated this

05-10, 2020

BETWEEN:

Bruno d'Avanzo, Sebastiano d'Avanzo and Victoria d'Avanzo

Address: Shrewton House, Elston Lane, Shrewton, Wiltshire SP3 4HJ

[REDACTED]
(the "Landlord")

- AND -

Barry Musselwhite T/A Downton Diggers

[REDACTED]
(individually the "Party" and collectively the "Parties")

1 In this Lease the following expressions shall have the following meanings:

"Property" ALL THAT yard forming part Ordnance Survey Number 3500 at Shrewton House, Shrewton, Wiltshire SP3 4HJ, together with the cabin container sheds and stores, external security fencing including gate and barrier and two security and CCTV systems and all buildings and structures. Fixtures, fittings, appurtenances, additions and improvements on the Property from time to time which is for the purposes of identification edged red on the plan annexed ("The Plan") TOGETHER WITH the rights set out in the First Schedule hereto.

"Term" A term commencing on the date of this Lease until, and including, 4 February 2022.

"Commencement Date" 29 September 2020

"The Planning Acts" "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 and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and any statutory extension or modification, amendment or re-enactment of these statutes and any regulations or orders made under them.

"Permitted Use" for the storage of plant and machinery and other related items in connection with the Tenant's groundworks business

“Rent”

The Landlord LETS the Property to the Tenant for the period of the Term

2 The Tenant covenants with the Landlord as follows:

2.1 To pay the Landlord:

- 2.1.1 The Rent by equal payments monthly in advance on the first day of each month, the first payment to be paid on the Commencement Date
- 2.1.2 The cost of any works to the Property which the Landlord does after the tenant defaults
- 2.1.3 Interest at the rate of 4% per annum above the base rate of Barclays Bank plc or such other bank as the Landlord nominates from time to time in writing on any Rent or other sums due under this lease that are not paid within 7 days of the date due whether formally demanded or not. The interest is to be recoverable as rent. Nothing in this clause entitles the Tenant to withhold or delay any payment of the Rent or any other sum due under this lease or affects the rights of the Landlord in relation to any non-payment.

2.2 To make the following further payments, with Value Added Tax where payable:

- 2.2.1 All charges in respect of electricity used on the Property, and for the hire of any meter
- 2.2.2 all charges in respect of water supplied to and the maintenance of any sub-meter measuring the quantity of water supplied to the Property including the proportion of the standing charge attributable to the Property (calculated according to the quantity of water used at the Property) and payment for water used by the Property at the rate charged by the local authority supplied as measured by any sub-meter installed to measure the supply of water to the Property.
- 2.2.3 all charges in respect of telecommunications equipment used at the property
- 2.2.4 all present and future rates, taxes and other impositions and outgoings payable in respect of the Property, its use and any works carried out there

2.3 To comply with the following requirements as to the use of the Property and any part of it, and not to authorize or allow anyone else to contravene them:

2.3.1 to use the Property only for the Permitted Use

2.3.2 not to use any part of the Property for any activities which are noisy, dangerous, offensive, noxious, illegal, or immoral nor to store or bring onto the Property any articles of an especially combustible, inflammable, or dangerous nature or of an illegal nature

2.3.3 not do anything on the Property or allow anything to remain on them, that may be or become a nuisance, or cause annoyance, disturbance, inconvenience, injury or damage to the Landlord or its tenants or the owners or occupiers of any adjacent or neighbouring properties

2.3.4 not to permit any oil or grease or any deleterious objectionable, dangerous, hazardous, poisonous or explosive matter or substance to be discharged from the Property or into any of the service conduits, and to take all reasonable measures to ensure that any effluent discharged into the service conduits does not harm the environment, or corrode or otherwise harm the service conduits or cause any obstruction or deposit in them

2.3.5 to manage and dispose of any waste in accordance with the environmental permitting regime and all other laws relating to waste

2.3.6 not to use the Property as sleeping accommodation or for residential purposes, or keep any animal on it

2.3.7 not without the Landlord's prior written approval to erect any building upon the site

2.4 To give the Landlord or anyone authorized by them in writing access to the Property:

2.4.1 for these purposes

(a) inspecting the condition of the Property, or how it is being used

(b) complying with any statutory obligation

(c) reading meters on the Property measuring the supply of services to the Property

(d) viewing the Property as a prospective buyer or tenant

(e) valuing the Property

(f) inspecting, cleaning or repairing neighbouring property, or any sewers, drains, pipes, wires, cables serving any neighbouring property

And only on reasonable notice except in an emergency

And the Landlord is promptly to make good all damage caused to the Property and any goods therein in exercising these rights providing such was not necessitated by any default of the Tenant.

2.5 To keep the Property clean, tidy and clear of all rubbish and to keep the Property including the hard standing, its fencing (to include the entrance gate and the barrier) and any structure on site in good repair.

2.6 To comply in all respects with the requirements of any statutes and any other obligations imposed by law or by any bylaws applicable to the Property or the trade or business for the time being carried on there and to obtain, renew and continue any license or registration which is required

2.7 Without prejudice to the generality of clause 3.6 the Tenant must comply with the provisions of the Construction (Design and Management) Regulations 2007 ("the CDM Regulations), be the only client, as defined in the provisions of the CDM Regulations, fulfil, in relation to all and any works, all the obligations of the client as set out in or reasonably to be inferred from the CDM Regulations, and make a declaration to that effect to the Health and Safety Executive in accordance with the Approved Code of Practice published from time to time Health and Safety Executive in relation to the CDM Regulations.

2.8 At the end of the Term, the Tenant must forthwith deliver to the Landlord any and all health and safety files relating to the Property in accordance with the CDM Regulations

2.9 To maintain the security fencing surrounding the Property in good working repair and condition.

2.10 To insure with a reputable office against accidental damage caused by the Tenants, their employees and licensees and the Landlords against third party risks as owners or the Property and to produce to the Landlord on request such policy or policies of insurance

2.11 Not to transfer, assign, sublet, charge, share or otherwise deal with the Property or any part thereof

2.12 To keep the Landlord indemnified against all liabilities, proceedings, actions, expenses, costs, claims, damage and loss (including any diminution in the value of the Landlord's interest in the Property and loss of amenity of the Property) arising through the use or occupation of the Property or from any breach of any tenant covenants in this lease, or any act or omission of the Tenant, or his respective workers or agents or any other person on the Property with the actual or implied authority of any of them.

2.13 To give the Landlord a copy of any notice concerning the Property or any neighbouring property as soon as he receives it

3. The following right is reserved to the Landlord:

3.1 the right to enter onto the Property to install (if necessary) and maintain a sub meter to measure the quantity of water supplied to the Property

4. While the Tenant complies with the Terms of this Lease, the Landlord is to allow the Tenant to possess and use the Property without lawful interference from the Landlord, anyone who derives title from the Landlord or any trustee for the Landlord

5. Nothing in this Lease or in any consent granted by the Landlord under this Lease is to imply or warrant that the Property may lawfully be used under the Planning Acts for the Permitted Use

6. This Lease comes to an end if the Landlord forfeits it by entering any part of the Property, which the Landlord is entitled to do whenever:

6.1 the Tenant has not complied with any of the terms in this Lease

6.2 the tenant goes into liquidation, unless that is solely for the purpose of amalgamation or reconstruction when solvent, an administrative receiver of it is appointed or an administration order is made in respect of it

The forfeiture of this lease does not cancel any outstanding obligation of the Tenant

7. When this lease ends the Tenant is to:

7.1 return the Property to the Landlord leaving it in the state and condition in which this Lease requires the Tenant to keep it

7.2 (if the Landlord so requires) remove anything the Tenant fixed to the Property and make good any damage which that causes

8. The rules about serving notices in Section 196 of the Law of Property Act 1925 (as since amended) apply to any notice given under this Lease

9. The Landlord acknowledges that the Landlord holds a deposit paid by the Tenant in the sum of [REDACTED] as a fund out of which the Landlord may recover any outstanding rent or other sums reasonably due hereunder and any other sums due to the Landlord in respect of any dilapidations arising at the end or sooner determination of the Term and in the event that the said fund is not required for such purposes the Landlord shall direct that the said deposit or the balance in the case where part of the fund has been so used to be paid to the Tenant with no interest PROVIDED THAT if such deposit is insufficient to cover all funds due to the Landlord that balance shall be immediately payable by the Tenant to the Landlord PROVIDED FURTHER THAT if recourse shall be had to the said deposit during the term the Tenant shall forthwith on demand by way of additional Rent pay to the Landlord such amount as shall be required to restore the deposit to [REDACTED]

10. The Landlord will issue a full set of keys to all the locks at the Property and the Tenant is responsible for ensuring that a full set of keys is returned to the Landlord at the determination of the Term and that no additional keys are cut.

11 In this clause

11.1 Break Notice means written notice to terminate this lease

11.1.1 Break Date means the third anniversary of the commencement of the Term

11.1.2 The Tenant may terminate this lease by serving on the Landlord at least six months before the Break Date a Break Notice

11.1.3 A Break Notice served by the Tenant shall be of no effect if:

- (a) at the Break Date the Tenant has not paid any part of the rent or any VAT in respect of it which was due to have been paid on or prior to the Break Date
- (b) vacant possession of the whole of the property is not given
- (c) there is a subsisting material breach of any of the Tenant covenants in this Lease relating to the state of repair or condition of the Property

11.2 Subject to Clause 12.3, following service of a Break Notice by the Tenant, this Lease shall terminate on the Break Date

11.3 Termination of this Lease on the Break Date shall not affect any right or remedy that either party may have in relation to any earlier breach of this Lease

THE FIRST SCHEDULE

The right for the Tenant (in common with the Landlord and all persons now or hereafter entitled to a like right):

1. To go pass and repass at all times with or without vehicles over along and across the trackway coloured brown on the Plan ("the Track")
2. To receive supplies of water and electricity to the Property through the pipe wires and cables serving the same

THE SECOND SCHEDULE

1. Definitions

1.1 The terms defined in this paragraph shall for all purposes of this schedule have the meaning specified

1.2 "Review Date" means the third anniversary of the commencement of the Term

1.3 "the Assumptions" means the following assumptions at the Review Date:

1.3.1 that no work has been carried out on the Property by the Tenant during the Term which has diminished the rental value of the Property

1.3.2 that if the Property has been destroyed or damaged it has been fully restored

1.3.3 that the covenants contained in this Lease on the part of the Tenant have been fully performed and observed

1.3.4 that the Property is available to let by a willing landlord to a willing tenant by one lease without a premium being paid by either party and with vacant possession

1.3.5 that the Property is ready for and fitted out and equipped for immediate occupation and use for the Permitted Use by the willing tenant referred to in paragraph 1.3.4 and that all the services required for such occupation and use are connected to the Property

1.3.6 that the lease referred to in paragraph 1.3.4 contains the same terms as this Lease except that amount of the Initial Rent including the provisions for rent review on the Review Date

1.3.7 that the term of the lease referred to in paragraph 1.3.4 is equal in length to the Term and that such term begins on the relevant Review Date and that the rent shall commence to be payable from that date

1.4 "the Disregarded Matters" means:

1.4.1 Any effect on rent of the fact that the Tenant has been in occupation of the Property

1.4.2 Any goodwill attached to the Property by reason of the Permitted Use

1.4.3 Any increase in rental value of the Property attributable to the existence at the relevant Review Date of any improvement to the Property carried out with consent where required otherwise than in pursuance of an obligation to the Landlord by the Tenant

1.5 "the President" means the President for the time being of the Royal Institution of Chartered Surveyors the duly appointed deputy of the President or any given person authorized by the President to make appointments on his behalf

1.6 "the Arbitrator" means a person appointed by agreement between the parties or in the absence of agreement within 14 days of one party giving notice to the other of their nomination or nominations nominated by the President on the application of either party made not earlier than six months before the Review Date or at any time afterwards

2. Ascertaining the Rent

2.1 On each Review Date, the Rent shall be increased to the higher of:

2.1.1 The rent payable immediately before the relevant Review Date; or

2.1.2 The rent at which the Property might reasonably be expected to be let on the open market at the Review Date making the Assumptions but disregarding the Disregarded Matters;

2.2 Such revised Rent may be agreed in writing at any time between the parties or (in the absence of agreement) will be determined by the Arbitrator

2.3 The arbitration shall be conducted in accordance with the Arbitration Act 1996 except that if the Arbitrator nominated pursuant to paragraph 1.6, shall die or decline to act the President may on the application of either party discharge the Arbitrator and appoint another in his place

2.4 Whenever the Rent shall have been ascertained in accordance with this schedule memoranda to this effect shall be signed by or on behalf of the parties and annexed to this Lease and its counterpart and the parties shall bear their own costs in this respect

3. Arrangements pending ascertainment of revised Rent

If the revised Rent payable during the Review Period has not been ascertained by the relevant Review Date Rent shall continue to be payable at the rate previously payable such payments being on account of the Rent for the Review Period

4. Payment of revised Rent

If the revised Rent payable during the relevant Review Period has not been ascertained by the relevant Review Date then immediately after the date when the same has been agreed between the parties or the date upon which the Arbitrator's award shall be received by one party the Tenant shall pay to the Landlord:

4.1 any shortfall between the Rent which would have been paid on the relevant Review Date and on any subsequent rent payment had the revised rent been ascertained on or before the relevant Review Date and the payments made by the Tenant on account and

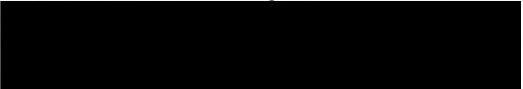


4.2 interest at the base lending rate of Barclays Bank Plc on the day upon which the shortfall is paid in respect of each instalment of Rent due on or after the relevant Review Date on the amount by which the instalment of revised Rent which would have been paid on the Review Date or such rent payment day exceeds the amount paid on account and such interest shall be payable for the period from the date upon which the instalment was due up to the date of payment of the shortfall.

The parties confirm that the previous lease to the Tenant of the Property, dated 15th December 2008, is superseded by this Lease dated 29 September 2020.

Signed as a deed by **BRUNO D'AVANZO,**)
SEBASTIANO D'AVANZO, AND)
VICTORIA D'AVANZO)


Bruno d'Avanzo


Sebastiano d'Avanzo


Victoria d'Avanzo

On Counterpart

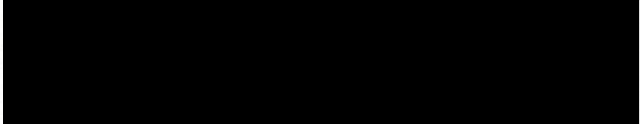
Signed as a deed by **BARRY PETER**)
MUSSELEWHITE in the presence of:-)

Witness Signature

Name

Address

Occupation



(Witness) page
 (original with
 Sandra Sutton - witness)

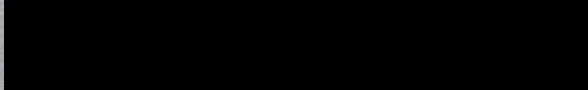
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SEBASTIANO D'AVANZO, AND
VICTORIA D'AVANZO


 Bruno d'Avanzo


 Sebastiano d'Avanzo


 Victoria d'Avanzo

On Counterpart

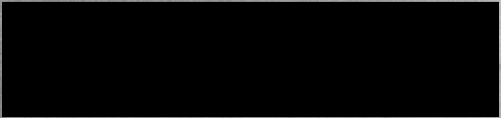
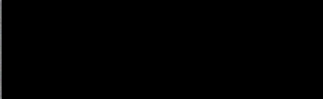
Signed as a deed by **BARRY PETER**
MUSSLEWHITE in the presence of:-

Witness Signature

Name

Address

Occupation



 SANDRA SUTTON

7, HIGHFIELD RISE, SHREWTON, E

LIVERY YARD MANAGER.