

LEASE

between

**THIRDPART 2003 LIMITED AND ALFRED PLACE LIMITED
AS TRUSTEES FOR THE ALEXANDER TRUST**

and

The Tenant

Subject: Bowhouse Café, St. Monans, Anstruther, Fife KY10 2DB

LEASE

Between

Thirdpart 2003 Limited a Company incorporated under the Companies Acts (registered number 04852050) and having their Registered Office at 50 Broadway, Westminster, London and **Alfred Place Limited** a Company incorporated under the Companies Acts (registered number 02782385) and having their Registered Office at 50 Broadway, Westminster, London as Trustees of the Alexander Trust presently acting in terms of the Trust created by the Trust Instrument dated 4 March 1949 made between Joan Campbell, (1), Ian Fife Campbell Anstruther, (2) and Martin James Pollock, Francis Maurice Grosvenor Glyn and John Alfred Fergusson-Cunninghame, (3) and by a Trust Instrument dated 26 September 1950 made between the same Parties as varied by an Order of the High Court of Justice, Chancery Division dated 8 March 1974, the short title and reference to the Record whereof is Ian Fife Campbell Anstruther –v- Tobias Alexander Campbell Anstruther and Others 1973 A 5277 (who and whose successors in the ownership of the subjects aftermentioned are hereinafter referred to as "**the Landlord**")

and

The Tenant (who and whose successors in the right of occupancy under this Lease are hereinafter referred to as "**the Tenant**", which expression shall when the context so requires or admits include permitted assignees or sub-tenants)

IT IS CONTRACTED AND AGREED between the Landlord and the Tenant in the manner following, videlicet:-

1. **SUBJECTS OF LET**

The Landlord in consideration of the rent and other prestations hereinafter specified hereby lets to the Tenant ALL and WHOLE of the Bowhouse Café as the same are shown delineated in red on the plan annexed and signed as relative hereto (which plan is demonstrative only) together with the whole parts, privileges and pertinents thereof, the rights effering thereto and the whole fixtures and fittings therein so far as belonging to the Landlord (which subjects hereby let are hereinafter referred to as "the Property") which Property the Tenant hereby accepts as in good and tenantable repair.

2. **PERIOD OF LEASE**

The duration of this Lease shall be for 10 years from the date of entry, subject to a three-year Break Clause exercisable by the Landlord and the Tenant

3. RENT

3.1. The Tenant binds and obliges itself and its successors all jointly and severally without the necessity of discussing them in their order and hereby undertakes subject to the right of review aftermentioned to pay to the Landlord from the date of entry throughout the duration of this Lease without deduction by Bankers Direct Debit or by such other method required by the Landlord without any written demand therefor rent at the rate of £.... per annum (exclusive of Value Added Tax) payable quarterly in advance by equal portions on the pre-agreed payment dates in each year beginning the first payment of the said rent on the date of entry and so forth quarterly, termly and continually thereafter during the currency of this Lease with a fifth part more of each quarter's payment of liquidate penalty in case of failure in the punctual payment thereof and with interest on the said rent on the amount outstanding during the non payment thereof as specified in Clause 4.1.4 hereof; Declaring that the said rent shall be subject to review as follows.

3.2. At and with effect from the first anniversary of the date of entry and every subsequent anniversary thereafter (with each date being hereinafter referred to as the "review date") the annual rent for the time being payable under this Lease in respect of the Property shall be reviewed and shall thereafter be an amount (hereinafter called the "Revised Rent") which shall be the greater of (a) the annual rent payable in the period immediately before the review date or (b) the Index Rent and the following expressions have the following meanings:-

"Index" means the General Index of Retail Prices for all items (excluding items of food whose prices show significant seasonal variations) published by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefor) or such other index as may from time to time be published in substitution therefor.

"Index Rent" means the rent calculated according to the following formula:-

$$A \times \frac{C}{B}$$

where:-

'A' is the passing rent before review

'B' is the figure published in respect of the Index for the month immediately before the date of entry

'C' is the figure published in respect of the Index for the month immediately before the relevant review date.

If after the date of entry there shall be any change in the base figure by reference to which changes in the Index are calculated the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said base figure had been retained and the appropriate reconciliation shall be made but if for any reason the Index shall be otherwise altered or shall be abolished or replaced there shall be substituted for the purposes of this Clause such index of food price costs (including the altered All Items Retail Prices Index) as may from time to time be published by or under the authority of any Ministry or department of Her Majesty's Government and if no such index is published the parties hereto shall endeavour to agree such other index as shall most closely reflect changes in the cost of living.

- 3.3. If the Landlord and the Tenant have not agreed the amount of the Revised Rent payable by the review date then and in any such event the determination of the rental at the review date may at any time thereafter be referred at the joint cost of the Landlord and the Tenant to the decision of some competent person to be agreed upon to act as an expert and not as an arbitrator in such determination and in default of agreement as to the person to be appointed either the Landlord or the Tenant may request the Chairman (or senior office holder) for the time being of the Scottish Branch of the Royal Institution of Chartered Surveyors (as constituted, reconstituted, formed or reformed from time to time) to appoint a competent person to act as an expert and not as an arbitrator in such determination and the decision of such person (except as to the costs of such determination which shall be borne as aforesaid) shall be final and binding on the parties to this Lease.

- 3.4. In the event of the Revised Rent not being agreed or determined as herein provided on or before the review date in question then in respect of the period of time (hereinafter called "the said interval") beginning with the relevant review date and ending on the quarter term day immediately following the date upon which the Revised Rent is agreed or determined as aforesaid the Tenant shall pay to the Landlord in the manner hereinbefore provided rent at the yearly rate payable immediately before the review date in question and at the expiration of the said interval there shall be due by the Tenant to the Landlord on demand as arrears of rent an amount equal to the difference between the Revised Rent and the rent actually paid during said interval and apportioned on a daily basis in respect of the said interval together with interest at the rate of Two per centum per annum below the Prescribed Rate (as defined in Clause 4.1.4 hereof) at the review date in question from the review date in question to the expiry of the said interval. For the avoidance of doubt, interest will run on the said single payment from the expiry of the said interval until the same is paid at the Prescribed Rate.

4. **TENANT'S OBLIGATIONS**

- 4.1. The Tenant binds and obliges itself and its successors all jointly and severally and hereby undertakes:-

- 4.1.1. To pay all rates, taxes, (including Value Added Tax), assessments and other impositions whether parliamentary, municipal, parochial or otherwise which now are or shall at any time hereafter during the currency of this Lease, be charged, rated, assessed or imposed upon or in respect of the Property or any part thereof.
- 4.1.2. To pay to the Landlord on demand the whole premiums incurred by the Landlord in effecting the insurances required under this Lease.
- 4.1.3. To pay to the Landlord on demand the amount of any insurance policy excess from time to time in respect of each and every successful claim under the insurance arranged by the Landlord
- 4.1.4. To pay on demand to the Landlord without prejudice to any other right, remedy or power available to the Landlord interest at [Five per centum per annum above the base or minimum lending rate or its equivalent of The Royal Bank of Scotland plc - (herein referred to as "the Prescribed Rate")] on the rent (whether demanded or not) or on any other sum of money payable to the Landlord under this Lease which shall have become due, running said interest from the date when the same shall have become due during the non-payment thereof.

- 4.1.5. To pay to the Landlord on demand all Value Added Tax at the rate for the time being in force as shall be payable whether on any rent or other sum of money payable to the Landlord under this Lease or in respect of any supplies of goods or services made by the Landlord to the Tenant or made to the Landlord in circumstances where the cost of such supplies or a proportion thereof is to be borne by the Tenant or otherwise properly payable and at all times to keep the Landlord indemnified against the Value Added Tax on any such sums or on any charges or otherwise properly payable and any liability in respect thereof and in every case where in this Lease the Tenant undertakes to pay an amount of money as consideration for supplies of goods or services or as rent or other sum of money or otherwise such amount shall be regarded as being exclusive of all Value Added Tax which may from time to time be legally payable thereon.
- 4.1.6. At all times during the currency of this Lease to put and keep the Property in a clean, tidy, safe and stable condition and clear of all rubbish and in no worse condition than its condition as vouched by the Photographic Schedule of Condition annexed and executed as relative hereto the foregoing generality to clean the windows of the Property at least once every month.
- 4.1.7. To pay on demand to the relief of the Landlord, the due proportion attributable to the Property as determined by the Landlord's Surveyor or otherwise, of the expense of the upholding, repairing, maintaining, rebuilding, reinstating and renewing] all roads, pavements, roofs, foundations, fences, main gable and party walls, entrances and stairways, sewers, drains, pipes mutual structures and all other subjects for which the Landlord may be liable exclusively or in common under their titles or otherwise in any other manner whatsoever:
- 4.1.8. In every third year of this Lease to paint all the inside wood and iron work of the Property usually painted with two coats at least of good quality paint and to enamel, repaper, distemper, stain, grain, varnish and polish all such portions of the inside as are or shall be enamelled, papered, distempered, stained, grained, varnished or polished in a proper and workmanlike manner.
- 4.1.9. At all times during the currency of this Lease to keep the Property in a clean and tidy condition and clear of all rubbish and without prejudice to the foregoing generality to clean the windows of the Property at least once every month.

- 4.1.10. During the currency of this Lease to execute all works which may be directed or required by statute or by any Local or Public Authority to be executed to the Property or any part thereof and the carriageways and pavements *ex adverso* the Property whether by the Landlord or the Tenant and to comply with any other requirements in respect of the Property or in respect of the use of the Property which may under or by virtue of any Act of Parliament, Rule, Bye-Law or Regulation be established or imposed by any Local or Public Authority and to keep the Landlord indemnified against all claims, demands, fines, penalties and expenses incurred in relation to the same or payable for obtaining any approval of works or matters to be done in respect of the Property. In the event of the Tenant receiving any compensation with respect to its interests hereunder because of any restriction placed upon the Property by virtue of any Act of Parliament or regulation thereunder or any powers of the Local Authority then it shall forthwith make such provision as is just and equitable for the Landlord to receive its due benefit from such compensation.
- 4.1.11. To permit the Landlord and its Surveyors, Agents or Factors at any time during the currency of this Lease by prior appointment during reasonable hours with or without workmen or others to enter the Property to view the state of repair and condition of the same and to take and check inventories of the fixtures and fittings therein to be given up on the expiry or earlier termination of this Lease and to give or leave in the Property notice in writing to the Tenant of any defects and wants of reparation there found and the Tenant shall be bound within a period of two months after such notice or sooner if requisite to repair and make good the same according to such notice. In the event that the Tenant shall not, within the period of two months from the date of any such notice, proceed diligently with the execution of the repairs required by the notice, the Landlord shall be entitled, but not obliged, to enter upon the Property and execute such repairs, and the cost thereof shall be a debt due by the Tenant to the Landlord from the date of disbursement by the Landlord and be forthwith recoverable by action.
- 4.1.12. To remove from possession and use of the Property and the Landlord's fittings and fixtures therein at the expiry or earlier termination of this Lease without any warning or process of removal, leaving the Property and others in good and substantial order and repair and making good any damage caused by the removal of any additions, erections, fixtures, fittings, plant and machinery in the nature of tenant's or trade fixtures or fittings which the Tenant shall be entitled to remove. No compensation shall be payable to the Tenant for any improvements made by it to the Property.

- 4.1.13. To use the Property for the purpose a café and bakery and for no other purpose whatever unless with the consent in writing of the Landlord, which consent shall not be unreasonably withheld. The Tenant shall not use or permit to be used the Property for any offensive, noisy, noxious or dangerous trade, business or manufacture or for any purpose which may be or grow to be a nuisance or annoyance or disturbance to the owners or occupiers of any adjoining or neighbouring properties, and shall not use or permit to be used the Property for any sale by auction or any exhibition or public meeting or entertainment. If the use of the Property by the Tenant at any time during the currency of this Lease shall cause the insurance premiums payable in respect of the Property or other subjects owned by the Landlord or any adjoining or neighbouring subjects to exceed the usual rates then the Tenant shall be responsible for such excess premiums, payable on demand.
- 4.1.14. Not to do or omit or suffer to be done or omitted any act, matter or thing whatsoever the doing or omission of which would make void or voidable the insurance effected hereunder and in the event that any insurance monies are irrecoverable in whole or in part whether by reason of any act, default or omission of the Tenant or others for whom it is responsible or otherwise including any excess retained or required by the insurers, the Tenant shall make up any shortfall in the insurance monies towards rebuilding, reinstating and replacing the Property or any part thereof.
- 4.1.15. Not to keep or store any goods of a hazardous nature or carry on any hazardous process or trade on the Property without having first obtained the written consent of the Landlord, the Insurers and any Statutory Authority whose consent is required and subject always to the Tenant observing all conditions contained in such consents;
- 4.1.16. Not to make any structural or other alterations or improvements to the Property without the prior consent in writing of the Landlord. Such alterations and improvements shall become and remain the property of the Landlord without any claim for compensation by the Tenant on its removal or otherwise. The Tenant shall be bound to pay the reasonable fees of the Landlord in relation to such application for consent.
- 4.1.17. Not without the previous consent in writing of the Landlord to affix, paint or otherwise exhibit on the exterior of the Property any sign, notice, placard, poster or advertisement.
- 4.1.18. Not without previously obtaining the written consent of the Landlord to carry out or execute or permit to be carried out or executed anything which comes

within the definition of "development" in the Town and Country Planning (Scotland) Act 1997 or any statutory modification or re-enactment thereof for the time being in force or any regulations or orders made thereunder and will at all times (as well after the expiry of this Lease as during its continuance) indemnify and keep indemnified the Landlord against all liability in respect of or incidental to such things.

- 4.1.19. To perform and observe all the conditions, obligations, burdens, restrictions, provisions and others contained in the titles of the Property so far as the same are applicable and still subsisting and to indemnify the Landlord against all claims and demands which may arise therefrom.
- 4.1.20. To prevent the interruption, obstruction or loss of any servitude or right of a similar nature belonging to or used with the Property, and not permit any encroachment to be made or servitude or right of a similar nature to be acquired on, over or against the Property which may be or come to be to the damage, annoyance or inconvenience of the Landlord and in case any such encroachment shall be made or attempted, or such servitude or right acquired or the acquisition thereof attempted, with the knowledge of the Tenant, to give immediate notice thereof to the Landlord.
- 4.1.21. To permit the Landlord during reasonable hours, and upon reasonable notice, to inspect the Property, or to have the Property inspected by, or on behalf of, prospective purchasers, prospective lenders or insurance surveyors and to permit the Landlord and its Agents at any time within six months before the expiry or earlier termination of this Lease to enter upon the Property and to fix upon any suitable part thereof a Notice Board for reletting or selling the same and to permit all persons by order in writing of the Landlord or its Agents to view the Property at all reasonable hours in the day-time without interruption or interference.
- 4.1.22. Not to assign, charge, sub-let or in any way or for any purpose deal with the tenant's interest in the whole of the Property without the prior written consent of the Landlord which consent shall not be unreasonably withheld in the case of reputable sub-tenants and of a reputable assignee of sound financial standing demonstrably capable of performing the tenant's obligations under this Lease.
- 4.1.23. To indemnify and keep indemnified the Landlord from liability in respect of any injury to or the death of any person, damage to any property heritable or moveable, the infringement, disturbance or destruction of any right, servitude or privilege or otherwise by reason of or arising directly or indirectly out of the repair, state of repair, condition or any alteration to or to

the use herein permitted of the Property and from all proceedings, costs, claims and demands of whatsoever nature in respect of any such liability or alleged liability.

4.1.24. Forthwith on demand to pay and accordingly free and relieve the Landlord of all solicitors' fees, (including Value Added Tax thereon) expenses and outlays incurred by the Landlord in connection with the grant of this Lease (including the costs of registering this Lease in the Books of Council and Session and obtaining two Extracts for the Landlord) and the preparation and completion of any Memorandum recording the rent payable under this Lease from time to time and all surveyors' and solicitors' fees and all other professional charges, expenses and outlays incurred by the Landlord in connection with or incidental to:-

4.1.24.1. any application to the Landlord for consent or approval in terms of this Lease or in consequence thereof, whether or not such consent or approval is granted

4.1.24.2. securing the performance of or compliance with any of the Tenant's obligations under this Lease (including without prejudice to the generality, the costs and expenses incurred in connection with the preparation and service of all notices and all Court proceedings instituted)

4.1.24.3. the supervision of or the carrying out of any works to items common to the Property and property near or adjoining thereto and

4.1.24.4. the preparation and service of any Schedules of Dilapidations during or after the currency of this Lease.

4.1.24.5. To timeously submit all forms in connection with and pay all sums due by way of Stamp Duty Land Tax.

5. **LANDLORD'S OBLIGATIONS**

5.1. Provided the Tenant continuously and punctually pays the rent payable in terms hereof and performs and observes its whole obligations herein contained or referred to the Landlord shall insure the Property for the full reinstatement cost thereof including the cost of Architects' and Surveyors' fees against fire and such other risks as the Landlord may deem appropriate and to insure against Property Owners' Liability.

5.2. If the Property is destroyed or damaged by any of the risks insured against by the Landlord, provided the insurance monies have not been refused or the insurance policy or policies vitiated as a consequence of some act, default or omission of the Tenant or others for whom it is responsible, the Landlord shall expend the monies received by virtue of such insurance towards rebuilding so far as practicable the Property;

5.3. Declaring that this Lease will not be terminated on account of the destruction of or damage to the Property caused by any of the risks insured against by the Landlord but will continue in full force and effect in every respect;

6. **REI INTERITUS**

Save as provided in Clause 5.3 of this Lease this Lease shall continue in full force and effect notwithstanding damage or destruction of the Property whether caused by any of the risks insured against by the Landlord or through any other cause whatever.

7. **IRRITANCY**

If the rent herein provided for or any part thereof shall be unpaid for fourteen days after any of the days appointed for payment thereof (whether demanded or not) or if there shall be any other breach, non-observance or non-performance by the Tenant of any of its other obligations under this Lease or if the Tenant shall become apparently insolvent or be sequestered or sign a composition for creditors or, being a company, shall go into liquidation or a Receiver or Administrator of the Tenant shall be appointed or if the Tenant shall sign a trust deed for its creditors then and in any such case the Tenant shall at the sole option of the Landlord forfeit all right and title under these presents and if such option of forfeiture be exercised this Lease hereby granted shall become ipso facto null and void and that without the necessity of any declarator, process of removal or other process at law and the Property shall thereupon revert to the Landlord who shall be entitled to enter upon the possession thereof, uplift rents, eject tenants and occupiers and thereafter use, possess and enjoy the same free of all claims by the Tenant as if these presents had never been granted but without prejudice and reserving to the Landlord its rights of action in respect of any antecedent breach of the Tenant's obligations herein contained; which irritancy is hereby declared to be pactional and not penal and shall not be purgeable at the bar. Provided that in the case of a breach, non observance or non performance by the Tenant which is capable of being remedied, the Landlord shall not exercise such option of forfeiture unless and until it shall first have given written notice to the Tenant requiring the same to be remedied and that the Tenant shall have failed to remedy the same within such reasonable time as the Landlord shall prescribe which in the case of non payment of rent shall be a period of fourteen days only.

8. **NO WARRANTY ON PLANNING**

Nothing contained in this Lease shall be deemed to constitute any warranty by the Landlord that the Property or any part thereof are authorised for use under the Planning Acts for any specific purpose.

9. **DISCLAIMER OF LIABILITY**

The Landlord shall not be responsible for any damage to the Property or for the temporary deprivation of the occupancy of the Property or for any other loss or damage which the Tenant or others may sustain by or through the bursting, leakage or failure of gas, water or soil pipes or the choking, stoppage or overflow thereof or of the public sewers, drains, gutters, rhones or conductors or through latent or inherent defects or insufficiency therein or any part of the Property or the connection and appurtenances thereof or through the natural incidental or accidental decay in the fabric or structure of the Property or through any fault or defect in or failure, fusing or breakdown of electric wires or appliances or from any cause or source whatsoever.

10. **NOTICES**

Any notice under this Lease shall be in writing. Any notice to the Tenant shall be sufficiently served if sent by Recorded Delivery Post (if the Tenant shall be an incorporated body) to its Head or Registered Office and (if the Tenant shall be an individual or partnership) to its last known address in Great Britain or Northern Ireland or to the Property. Any notice to the Landlord (if an incorporated body) shall be sufficiently served if sent by Recorded Delivery Post to its Head or Registered Office and (if the Landlord shall be an individual or partnership) to its last known address in Great Britain or Northern Ireland. Any notice sent by Recorded Delivery Post shall be deemed to have been duly served at the expiry of forty eight hours after the time of posting. In proving service it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Tenant or the Landlord (as the case may be) in accordance with this clause and posted to the place to which it was so addressed.

11. **INTERPRETATION**

In this Lease words importing the masculine gender only include the feminine gender and vice versa; words importing the singular number only shall include the plural number and vice versa; and where there are two or more persons included in the expression "the Tenant" obligations contained in this Lease which are expressed to be made by the Tenant shall be binding jointly and severally on such persons and on their respective executors and representatives whomsoever without the necessity of discussing them in their order.

12. **CONSENT TO REGISTRATION**

The Landlord and the Tenant hereby consent to the registration hereof for preservation and execution: IN WITNESS WHEREOF these presents printed on this and the 12 preceding pages together with the Schedule/ Plan annexed hereto are executed as follows:

For the Landlord

| | |
|---|---|
| | |
| Director/Secretary/Authorised Signatory | Director/Secretary/Authorised Signatory/Witness |
| | |
| Full name of party signing | Full name of party signing |
| | |
| Date of signing | |
| | |
| Place of signing (Town) | Address of Witness |

