



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

Case Reference : CHI/00HH/LAM/2017/0002
CHI/00HH/LLC/2017/0001

Property : Albert Court Market Street Torquay Devon
TQ1 3AH

Applicant : Jill Armstrong and Richard Armstrong;
Fay Coates;
Jonathan Ruth;
Krzystof Nowasad and Monica Nowasad;
Krzystof Nogas and Marta Nogas;
Adrian Suchorski and Gosia Suchorski;
Alan Kendrew;
Mark Shepherd and Makhsuda Shepherd

Respondent : Steven Angus Millar

Type of Application : Section 24 of The Landlord and Tenant Act
1987 (the "1987 Act") (as amended) and
Section 20 C of The Landlord and Tenant Act
1985 (the "1985 Act")

Tribunal Members : Judge C. A. Rai
Timothy N. Shobrook BSc. FRICS Chartered
Surveyor

**Date and venue of
Hearing** : 20 September 2017

St Catherine's House 5 Notte Street
Plymouth PL1 2TS

Date of Decision : 1 November 2017

DECISION

1. The Tribunal has determined that it is just and convenient to appoint a Manager and makes an Order appointing Richard Norton AIRPM of Norton's Professional Services Limited [Co. No 096540741] Coniston College Road Newton Abbot TQ12 1EG as the Manager of the Property for a term of three years from the date of its Order, a copy of which is attached to this decision. The terms of the Order have been agreed with the Manager before this Decision was issued. The Appointment shall be subject to review by the Tribunal on or before 30 April 2019.
2. The Tribunal orders that any costs incurred by the Respondent (Landlord) in connection with these proceedings cannot be regarded as relevant costs or taken into account in determining the amount of any service charges recoverable under the leases of the Property.
3. The reasons for its decision are set out below.

Background

4. The Applicants made an application dated 11 January 2017 (the "Application") to the Tribunal for:-
 - a. the appointment of a manager of the Property which comprises the building known as Albert Court Market Street Torquay Devon TQ1 3AH (the "Property").
 - b. a certificate under section 20C of the 1985 Act to prevent the Landlord taking into account the costs of proceedings as relevant costs in determining service charges.
5. Prior to the Application the Applicants served a preliminary notice under section 22 of the 1987 Act on the Respondent dated 14 November, (the "Section 22 Notice") in which it was stated that the grounds for the appointment of a Manager were that:-
 - a. The Landlord was in breach of his obligations to the tenants under their leases.
 - b. The Landlord had made unreasonable service charge demands
 - c. The Landlord had refused to communicate with the tenants.
6. The matters on which the Applicants relied to evidence the identified breaches are set out in the Section 22 Notice.
7. The Application proposed the appointment of Darren Stocks of Crown Property Management as Manager. Directions were issued by Judge Barber on 20 January 2017. The Respondent did not comply with these Directions but met with Darren Stocks and appointed Crown Property Management as his managing agent in or about early February 2017. Subsequently the Applicant stayed the Tribunal proceedings, albeit that at that time the Respondent alleged that he had not received the Applicant's statement of case.
8. Further Directions issued by Judge Morrison dated 17 May 2017 required that the Respondent disclose a copy of all agreements entered into with the appointed managing agent, Crown Property Management.
9. On 16 June 2017 Judge Barber issued a notice to the parties that the Tribunal was minded to bar the Respondent from taking part in the

proceedings pursuant to Regulation 9 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013.

10. Subsequently the Tribunal confirmed arrangements for the Hearing and the Applicant supplied a hearing bundle (the Bundle).
11. Darren Stocks thereafter sought to correspond with the Tribunal on behalf of the Respondent but was advised by it that the Respondent was barred from participating in the proceedings.
12. The Tribunal inspected the Property just after 10 o'clock on 20 September 2017. Its members were accompanied by Jill and Richard Armstrong and Richard Norton, the proposed Manager.
13. The Property was originally a Victorian Fire Station located on Market Street, which is within the central part of Torquay, and has been converted by the current freeholder into flats. The building fronts on to Market Street but a yard behind the building can be accessed via two sets of electronically controlled gates. On the date of the inspection only one set of gates could be opened. The Tribunal were told that it had been intended to operate a one way system of vehicular access and egress through the gates which also provide security as access to the flats is via entrances at the rear of the building. As only one set of access gates can currently be operated the vehicular access to and from Market Street is hazardous. The Tribunal noticed that the electronic mechanisms on the gates are not modern.
14. Parking spaces are allocated to some flats but not others; those which are included in specific flat leases have lockable bollards. Other tenants simply have the right to use available spaces. Not all of the parking spaces are clearly outlined. The Tribunal was advised that the markings and bollards which it saw had been marked/ installed by the Applicants, not the Respondent.
15. The ground floor of the building adjacent to Market Street is boarded up and remains to be converted into six additional flats. Above the empty units at ground floor level are three upper floors with six flats at each level. There is an external walkway at each level from which the flats are accessed and two sets of external stairs, one original and one housed within a metal enclosure which also contains a lift shaft and which the Tribunal assumed must have been added to the building during the conversion of the upper floors. The upper walkway was fouled by bird droppings and none of the other walkways appeared to have been recently cleaned.
16. The Tribunal were told that the lift was a second hand goods lift. The Tribunal members did not use the lift as they were advised that it regularly malfunctioned which caused difficulty to the residents of the flats on the upper floors. There is no integrated call system, just an alarm which sounded within the vicinity and which was not always audible to the residents. The staircase adjacent to the lift had, according to those Applicants present, been recently "cleaned" by the cleaners contracted by

the current managing agent but it was dirty and dusty at the time of the inspection.

17. The rear yard is bounded by a steep cliff face adjacent to which is an area of overgrown garden land the access to which has been boarded. The higher end of the yard is bounded by a flight of stone steps which lead up to the top of the cliff face and appear to be a public walkway and is not part of the site although it affords a good view of it. The rear yard is uneven and the surface poor. Apparently at least one of the drains is blocked and the Applicants have been informed that concrete or similar debris has caused the blockage. The Applicants assume that this must have happened during the conversion of the building and believe that the Respondent should have remedied this at his own cost.
18. The boarding which encloses the rear undeveloped ground floor units is not secure, which has resulted in these units being accessed and used by rats; although the Tribunal saw no evidence of the vermin, the holes are clearly visible.
19. A derelict coach house is located on the lower side of the yard against the boundary with its roof adjacent to the upper rails of the external walkway serving the third floor flats. The slates on the roof of the coach house were unstable and the structure could easily be accessed from the railings separating it from the end of the upper walkway and would pose a potential hazard to children. The Tribunal was told that loose slates would occasionally separate from the roof causing potential danger to all occupants of Albert Court.

The Hearing

20. At the Hearing the Tribunal were told that eleven of the eighteen converted flats had been sold on long leases. Eight of the current leaseholders are Applicants. Seven other flats are retained by the Respondent and let, by him, to occupational tenants. It was established that whilst at the date of the Application Mr and Mrs Armstrong had owned Flat 14, they had subsequently sold it. They remain owners of Flat 13. The other applicants are lessees and owners of Flats 3, 5, 7, 11, 12, 15 & 18. The lessees of three other flats are not party to the Application; (Flats 1, 6 & 14).
21. Although Steven Millar is the named Respondent no evidence as to ownership of the freehold was provided to the Tribunal. However the copy lease contained in the Bundle was granted by Millsom Developments Limited. Mrs Armstrong told the Tribunal that the Respondent keeps changing the company name for tax purposes. He has not questioned the validity of his being named personally as Respondent.
22. Darren Stocks confirmed that he acted for the freeholder Mr Millar in an email, dated 27 July 2017, sent to the Tribunal in which he also stated "we hereby act for two other leaseholders".

23. The Tribunal advised the Applicant that following its inspection of the Property, in reliance on the information in the Bundle, the content of the Application and the failure of the Respondent to participate in the Proceedings; it was satisfied that the Applicant had established grounds for the appointment of a Manager.
24. It explained that it was also necessary to establish that it is **just and convenient** to appoint the nominated manager and that was the underlying reason for it wishing to question him regarding the proposed appointment and also to enable it to establish if he would be a satisfactory appointee. It would take no account of the emails from Darren Stocks as the Respondent is barred from participating in the proceedings.
25. It explained that neither the Applicant nor the nominated manager had provided a Draft Management Order notwithstanding that it had been directed that this should be provided. It became clear that neither had actually fully understood the Directions or that such an Order was required.
26. The Tribunal established that:-
 - a. Richard Norton has worked in property management for a number of years but has not previously been appointed by a court or tribunal as a manager.
 - b. He currently manages 11 other blocks containing between 4 and 33 units.
 - c. He was the only prospective manager identified by the Applicants (after Mr Stocks) who was willing to take on the management of Albert Court.
 - d. He is familiar with the current edition of the RICS Service Charge Code.
 - e. He is prepared to increase the level of his professional indemnity insurance cover.
 - f. He understands that if appointed he will owe a duty to the Tribunal.
 - g. In response to questions regarding how he would recover service charge contributions due from any leaseholder or the freeholder who did not pay he would initially follow his firm's standard procedures for debt recovery and thereafter employ local solicitors to recover the money; he would expect to recharge any costs incurred to the debtor.
 - h. He told the Tribunal that he had a register of preferred local contractors within the Torbay and Dawlish area able to carry out works.
 - i. He would arrange to put the lift in working order and install an auto dialler to ensure that there was a better procedure to protect users if it malfunctioned.
 - j. He accepted the desirability of a planned maintenance program for the Property and intended to prepare a five year plan.
 - k. He accepted that ensuring the access gates worked properly was important in relation to both security and fire safety.

- l. He would remind himself of the legal framework of the appointment and the RICS Service Charge Code recommendations.
 - m. He thought that he would need to be appointed for at least two years.
 - n. He understood that the provisions of the leases of the flats would directly affect the services that could be provided.
27. In response to questions from the Tribunal Jill Armstrong said that the priority for the Applicants was to establish the ambit of the works required to effectively manage the Building. Security was important and the Applicants wanted working gates a working lift and clean accessways at the rear of the building.

The Law

28. Parts of section 24 of the 1987 Act are set out below including the jurisdiction of the Tribunal to appoint a manager together with section 20C of the 1985 Act.

24 Appointment of manager by [a . . . tribunal] extracted sub-sections

(1) [The appropriate tribunal] may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies--

- (a) such functions in connection with the management of the premises, or
 - (b) such functions of a receiver,
- or both, as [the tribunal] thinks fit.

(2) [The appropriate tribunal] may only make an order under this section in the following circumstances, namely--

(a) where [the tribunal] is satisfied--

(i) that [any relevant person] either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii) . . .

(iii) that it is just and convenient to make the order in all the circumstances of the case;

[(ab) where [the tribunal] is satisfied--

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

[(aba) where the tribunal is satisfied—

(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;]

[(abb) where the tribunal is satisfied—

(i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;]

(ac) where [the tribunal] is satisfied—

(i) that [any relevant person] has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case;]

or

(b) where [the tribunal] is satisfied that other circumstances exist which make it just and convenient for the order to be made.

[(2ZA) In this section “relevant person” means a person—

(a) on whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.]

[(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection “service charge” means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).]

[(2B) In subsection (2)(aba) “variable administration charge” has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.]

(4) An order under this section may make provision with respect to--

- (a) such matters relating to the exercise by the manager of his functions under the order, and
- (b) such incidental or ancillary matters,

as [the tribunal] thinks fit; and, on any subsequent application made for the purpose by the manager, [the tribunal] may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide--

- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
- (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
- (c) for remuneration to be paid to the manager by [any relevant person], or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
- (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(9) [The appropriate tribunal] may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the [Land Registration Act 2002], [the tribunal] may by order direct that the entry shall be cancelled.

[(9A) The [tribunal] shall not vary or discharge an order under subsection (9) on [the application of any relevant person] unless it is satisfied--

- (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
- (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.]

Section 20C of the 1985 Act

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made--

- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
- (c) in the case of proceedings before the Lands Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances."

Reasons for the Decision

29. From the evidence in the Bundle it is apparent that notwithstanding that the example lease refers to the Tenant being obliged to contribute 4.166% (1/24) of the service charges the current manager appointed by the Respondent has attempted to recharge 1/18 of the costs to each tenant. There are no accounts which reconcile costs paid out and service charges collected for any year.
30. A copy of the current year's building insurance certificate is contained in the Bundle at page 4.2 but does not disclose the amount of the annual premium. The Applicant believes that despite previous service charges including buildings insurance contributions the current policy was only purchased on 15 June 2017. The certificate refers to the insured as Millsam Developments Limited.
31. A letter from Higos Insurance Services refers to the insured as Millan Homes LLP but there is no indication whether or not this letter even relates to the insurance of Albert Court [page 4.1] Copies of emails between the Respondent and Higos reveal that the Policy related to insurance by Allianz Policy No 18/BB/15604820 which is a different number from that quoted on the current Policy No which is 18/BB/13144626/01 and which refers to the Property as being 6 Albert Court and quotes a different postcode.
32. The Respondent has apparently relied on nominated tenants to represent him, as he is not local, but has been reluctant to contribute his share of the management costs in respect of either the six un-developed units or the seven units which he retains and lets.
33. The general standard of the conversion works has resulted in additional maintenance costs. The lift does not appear to be entirely suitable for the purpose for which it is now being used. The access gates are not working and the automatic mechanism appears unsatisfactory. The communal areas are not in good condition. At least one of the surface water drains is blocked. The failure of the freeholder to complete the development of the site has left it in an unsatisfactory condition and vulnerable to rodent infestation.
34. The failure of the Respondent to recognise that he is required to comply with the 1985 Act and the 1987 Act and that he cannot require a greater contribution from the Applicants than is provided for in their leases and that he is required to provide service charge accounts is clearly evidenced by the documents contained in the Bundle.

35. The conduct of the Respondent in ignoring the Directions, appointing a managing agent and encouraging him to take no account of the lease provisions has persuaded the Tribunal that the Respondent is unlikely to remedy his omissions and either properly manage or employ an effective manager of the Property.
36. For the reasons explained above the Tribunal finds that the ground contained in section 24(2)(a)(i) of the Act, namely that the Landlord is in breach of an obligation owed to the tenants and relating to the management of the Property, is proved and that it is just and convenient in all of the circumstances of the Application to make an order appointing Richard Norton as Manager of the Property.
37. Although Richard Norton has no previous experience as a court appointed Manager of a property such as the Property the Tribunal is prepared to appoint him for a period of three years subject to a review of his progress after 18 months. It makes the appointment in reliance on his responses to its questions and his evidence as to his prior experience and current management portfolio.
38. The Tribunal determines that the Management Order (a copy of which is attached) be for an initial term of three years.
39. Prior to the issue of this decision it issued both a draft decision and draft management order to the Applicants to enable both Richard Norton and the Applicant to confirm that the terms of the Management Order are sufficiently wide to enable the Manager to provide the necessary works and services required for the appropriate maintenance of the Property.
40. The Tribunal draws the attention of both parties to the provisions of section 24(9) and (9A) of the Act, both of which are set out above.
41. The Tribunal determines that it is appropriate to make an order that any costs incurred by the Respondent, (as Landlord), in connection with these proceedings cannot be regarded as relevant costs or taken into account in determining the amount of any service charges recoverable under the leases of the Property.

Judge C. A. Rai

Chairman

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 which application must:-

- a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
 - b. 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
2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it 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.



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(RESIDENTIAL PROPERTY)**

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Property : Albert Court Market Street Torquay TQ1 3AH

Applicant : Jill Armstrong and Richard Armstrong;
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Mark Shepherd and Makhsuda Shepherd

Respondent : Steven Angus Millar

Application : Section 24 Landlord and Tenant Act 1987 (as
amended) ("the Act")

Application for the appointment of a
Manager

Dated : 1 November 2017

**ORDER FOR THE APPOINTMENT OF RICHARD NORTON AIRPM
AS MANAGER**

UPON hearing the evidence

IT IS ORDERED THAT

1. Richard Norton AIRPM of Norton's Professional Services Coniston College Road Newton Abbot TQ12 1EG ("The Manager") be appointed pursuant to Section 24 of the Landlord and Tenant Act 1987, as amended by the Commonhold and Leasehold Reform Act 2002 as Manager of Albert

Court Market Street Torquay TQ1 3AH for a term of three years commencing on the date of this Order.

2. The Manager shall manage the Property and carry out such functions of a receiver in accordance with:-
 - a. the respective obligations of the Landlord and the Lessees under the Leases by which each of the flats within the Property is demised and
 - b. the terms of the draft Management Contract attached.
3. The following powers are, without limitation to the generality of this Order, expressly conferred on the Manager:
 - a. The power to appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his powers and duties.
 - b. The power, in his own name, acting on behalf of the Landlord to bring, defend, or continue any action or other legal proceedings in connection with the Leases or the Property.
 - c. The power to receive, consider, refuse or grant or otherwise deal with applications for consents or licences and like matters as the Lessees may require under the terms of their Leases
 - d. the power to enforce the Landlord's and the Lessee's covenants under the Leases.
4. The Lessees and their servants and agents shall give reasonable assistance and co-operation to the Manager in pursuance of his duties and powers under this Order and shall not interfere with the exercise of any of his said duties and powers.
5. The Manager shall be entitled to collect the ground rents and receive all sums payable by way of service charges or otherwise arising under the said Leases.
6. The Lessees shall pay into the Manager's client account their proportionate share of any pre-estimate of the costs of the works inclusive of VAT and consultancy fees as may be demanded by the Manager in writing together with any further costs that the Manager may incur in discharging his functions under this Order. All such sums shall be paid within two weeks of the written demand by the Manager.
7. The Manager shall apply the monies receivable by him first in the discharge of such sums as the Landlord properly requires in order to meet the expenditure and shall apply the remaining monies received by him (other than those representing his costs and expenses hereby specified in paragraph 12) towards the costs of the performance of the landlord's covenants contained in the leases for which he is responsible within the terms of this Order and undertaking any other functions of management that it was envisaged that the landlord would undertake.



MANAGEMENT AGENT AGREEMENT

BETWEEN

Millsam Developments Ltd

(The Client)

AND

Norton's Professional Services Ltd

(The Manager)

Whose registered office is at Coniston College Road Newton Abbot TQ12 1EG Company No: 09664071

FOR

Albert Court

(The Property)

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TERMS AND CONDITIONS

1. Definitions

- 1.1 The 'Client' means the resident management company, right to manage company, or other landlord named in the cover sheet to this agreement.
- 1.2 The 'Manager' is the Managing Agent named in the cover sheet to this agreement.
- 1.3 The Property is the estate, scheme or development named in the cover sheet to this agreement and as described at the end of this agreement
- 1.4 The 'Management Fee' is set out in the fee agreement in Appendix I.
- 1.5 The 'Services' as set out and in the frequency specified in Appendix II.
- 1.6 'Additional charges' are the charges listed for additional services in Appendix III
- 1.7 'Review Date' means the review date specified in the fee agreement in Appendix I
- 1.8 'Term' – this agreement is for an initial period of one year fromand will continue with the right to termination by either party on giving a three month written notice period at any time.
- 1.9 The 'Parties' mean the Client and the Manager
- 1.10 'RICS' means the Royal Institute of Charter Surveyors whose website is <http://www.rics.org>

2. Appointment

The Client appoints the Manager to be its Managing Agent for the Property during the Term.

3. Services to be provided by the Manager

- 3.1 The Manager will perform with reasonable care, skill and diligence the Services set out within the frequency as agreed and specified in Appendix II for the Management Fee set out in Appendix I.
- 3.2 The Manager will provide additional services for the Client as set out in Appendix III.

4. Compliance with the Provision of Services Regulations 2009 (as amended)

The Manager has provided to the Client the following information.

- Details of its legal status
- Its office address for communication including email address and telephone numbers
- VAT registration number if applicable
- A copy of its complaints handling procedure
- Details of the ombudsman scheme of which it's a member of
- Details of the Public Indemnity Policy that it holds

5. Conduct of the Manager

- 5.1 The Manager will comply with the terms of the leases of the Property.
- 5.2 The Manager will comply with the requirements of ARMA and the Service Charge Residential Management Code of the RICS as appropriate.
- 5.3 The Manager will comply with the relevant Landlord and Tenant Legislation relating to the management of the property.

- 5.4 The Manager will comply with Health and Safety, Fire Safety, Employment and all other relevant laws and regulations relating to the management of the property.
- 5.5 The Manager will hold professional indemnity insurance including fidelity cover and maintain this during the term. On request, the Manager must give the Client a copy of the certificate of insurance.
- 5.6 The Manager will comply with the rules of the Financial Conduct Authority when carrying out any regulated insurance activities.
- 5.7 The Manager will at all reasonable times allow the Client access to all records and accounts appertaining to the management of the Property.

6. Conduct of the Client

- 6.1 The client will use its best endeavours to ensure that the handover of documents listed in Appendix IV, the takeover list, is produced to the Manager.
- 6.2 The Client will not issue any instructions to the Manager that require it to breach the leases of the property, legislation, the recognised Codes of Practice or any employment of any staff or contractors.
- 6.3 The Client will act in a manner that ensures no unlawful discrimination in the provision of the services, the sales and lettings of the units at the Property and the employment of any staff or contractors.
- 6.4 The Client will not give instructions to the Managers staff working solely at the Property. Any instructions should be given through the Manager's nominated representative as agreed between the parties.
- 6.5 The Client is not required to arrange and hold officers liability insurance for the Term but is advised to do so. On request the Client will give the Manager a copy of any such insurance certificate.
- 6.6 The Client will keep the Manager informed of any notices, sales of leaseholds or freehold, possible formation of resident associations, exercises of Right to Manage, enfranchisement, and any other matter relating to the management of the Property of which the Client becomes aware.
- 6.7 When oral instructions are given by the Client to the Manager, these should be confirmed in writing by post or email within seven days.

7. Disclosures, Commissions and Associated Companies

- 7.1 The Manager has disclosed to the Client all commission arrangements that may apply to its management of the property.
- 7.2 The Manager will disclose any future commission arrangements that it may wish to enter into during the Term of this agreement before so doing and seek the consent or not of the Client to any such arrangement.
- 7.3 The Manager has disclosed to the Client the details of any related companies with whom the Manager has an interest.
- 7.4 The Manager will not award any contracts for services or works of any kind to those associated companies without the prior consent of the Client.

8. Fees and Charges

- 8.1 The fees and charges payable by the Client to the Manager are set out in Appendices I and III and are payable without any right of set-off against any other account with the Client.
- 8.2 The Client authorises the Manager to deduct the Management Fee and Additional Charges from the designated bank account when due.

- 8.3 The Client will pay the Manager a setting up Fee as specified in Appendix I for the work involved in setting up the management arrangements for the property. The fee will be collected on the first payment of the Term.
- 8.4 The Client will pay to the Manager interest on any overdue fees and charges payable by the client to the Manager at the rate of 4% over the base rate of Barclays bank from the date the fee or charge became due until the date of the payment.

9. Changes to the Management Fee and Additional Charges

On the review date the amounts payable under Clause 8 may be varied as follows

- By Agreement between the parties; or
- If no agreement is reached, then the amount by which the retail price index has changed for the 12 month period ending on the date that is 3 months prior to the review date.
- Any Fees or Additional Charges may be subject to specific alteration where legislative obligations or changes of the services required add to the existing workload.

10. Handling of Client's Money

- 10.1 The Manager will comply with statutory and ARMA's rules for banking and hold any funds of the Client in a clearly designated bank account(s). Any such funds will be held in trust.
- 10.2 The Manager will open a designated bank account(s) on behalf of the Client in the name of the property or name of the Client for the receipt of all money due to the Client and the payment of expenses relating to the Property.
- 10.3 The Manager will open a designated bank account(s) on behalf of the Client in the name of the property or name of the Client for the receipt of reserve fund(s) contributions made by the lessees.
- 10.4 The Client authorises the Manager to make payments for the benefit of the property from the designated bank account(s) held for the Property.
- 10.5 The Client authorises the Manager to deduct any outstanding Management Fee and Additional Charges from the designated account after this management agent agreement terminates.
- 10.6 It is hereby agreed that any interest earned on the designated account(s) shall be a credit to those accounts.
- 10.7 The Manager will notify the Client as soon as possible of any lack of funds to pay for the services. The Client shall put the manager in funds to pay for the services required if there is a deficit for any reason and the Manager may cease to provide services if no funds are available.

11. Liability

- 11.1 No Liability shall be attached to the manager either in contract or in tort or otherwise for any loss, injury, damage or legal or other expenses sustained as a result of:
- a) The Manager having reasonably relied upon the Client to provide accurately all relevant information
 - b) Any inaccurate forecast by the Manager of future income or expenditure unless done so negligently;
 - c) Any defect in the Property, or plant and machinery, equipment or materials used for the Property, whether or not such defect be latent or apparent upon examination.

- d) The act, omission or insolvency of any person other than the Manager.
- 11.2 The Client shall indemnify the Manager in respect of any claims made by another person or third party for any loss, damage or legal and other expenses incurred as a result of one or more of those circumstances listed in 11.1 (a) to (d) above.
- 11.3 The Manager shall not be liable to indemnify the Client in respect of any claims made by another or third party for any loss, injury, damage or legal or other expenses incurred as a result of one or more of those circumstances listed in 11.1 (a) to (d) above.
- 11.4 The above shall not be valid insofar as prohibited by statute.
- 11.5 In no circumstance shall the Manager be liable for any consequential loss or damage save where loss, death, or injury results from negligence on part of the Manager.

12. Assignment

This agreement may only be assigned by the Client or the Manager with the written consent of the other party of this agreement.

13. Ending this Agreement

- 13.1 The agreement will end at the expiry of the Term as allowed for in 1.8 above, subject to either party providing 2 months prior written notice.
- 13.2 This agreement may be terminated at any time by the mutual consent of the parties in writing.
- 13.3 The Client may end the agreement at any time in writing if:
- (a) The Manager is in breach of this agreement, and the Client has notified the Manager of that breach in writing, and the breach has continued for 30 days after that notice or;
 - (b) The Manager becomes insolvent or makes other arrangements with its creditors or;
 - (c) The leaseholders of the Property exercise the right to manage, enfranchisement or a manager is appointed by a Tribunal.
 - (d) The Manager merges with or is acquired by another company.
- 13.4 The Manager may end this agreement at any time in writing if:
- (a) The client fails to pay the Management Fee or other Additional Charges owing to the Manager within one calendar month of notice of the fee and charges; or
 - (b) The Client acts in a way that prevents the Manager from performing its Services under this agreement and more specifically is in breach of 5.2 or 5.3 above.
- 13.5 When this agreement is ended the Manager will handover to the Client the documents itemised in Appendix IV, if they are in its possession.
- 13.6 Unless agreed otherwise all documents created by the Manager during the period of this management agreement for the Client, shall belong to the Client.

14. Dispute Resolution

If any dispute arises over the interpretation of or compliance with the specific clauses in the agreement, the Parties will attempt to settle it by negotiation. Each of the Parties is to be represented by a person who is a director, or equivalent executive authority, with authority to settle the dispute.

If the Parties have not settled the dispute by negotiation within 56 days of when the dispute began (or sooner if the Parties) agree the Client can refer to the relevant Ombudsman scheme of which the manager is a member.

15. Data Protection

- 15.1 The Manager confirms its registration under the Data Protection Act and its compliance therewith.
- 15.2 The Manager confirms that it will only hold and retain the information for the purpose of fulfilling this agreement.
- 15.3 The Manager confirms that suitable procedures are in place to safeguard such information from improper use or disclosure.

16. Communication between the Parties

- 16.1 Any communication or instruction from the Client to the Manager shall be made by a director or secretary of the Client or person of equivalent executive authority.
- 16.2 Service of written communications shall be by first class post to the address shown on the cover of this agreement by fax or email. Notice to end this agreement shall be by registered or recorded delivery post only.
- 16.3 Any communication in writing will be deemed to have been served on the third working day

17. Waiver

If either party at any time agrees to waive its rights under this agreement, then that waiver does not prevent the party insisting upon its rights at any other time.

18. Legal Jurisdiction

- 18.1 This agreement shall be governed by the law of England and Wales.
- 18.2 Each party agrees to abide by the jurisdiction of the courts of England and Wales over any claim arising from this agreement.

19. The Property

18 ^{Renovated} ~~unrenovated~~ units, the car park and grounds mentioned in the leasehold documentation.
 6 unrenovated units

Signed on behalf of the Client

Print name and position

In the presence of: Signature

Signed on behalf of the Manager

Print name and position

In the presence of: Signature

Dated

Appendix I

Fee Agreement

- The **Term** of this agreement is as set out in 1.8 above.
- The **Setting up fee** is £...250... .. and is payable as soon as this agreement is signed
- The **Management Fee** of £2700 per annum is payable for the services in Appendix II and is to be paid **Monthly in Advance**.
- The Management Fee and any Additional Charges must be paid to the Manager in accordance with clauses 8 and 9 of the agreement.
- The **Review date** for the Management Fee and Additional Charges is at the Clients Year End.
- The **Ground Rent Collection fee** isN/A.....

Appendix II

The Services

Description	Frequency
• Opening and handling bank accounts	Once upon instruction
• Preparing and sending out service charge estimates	Annually
• Collecting service charges and reserve fund contributions including sending demands and associated summaries and any required statements	As required
• Accounting for Service Charges	Monthly
• Providing information to accountants prior to the preparation of annual service charge accounts	Annually
• Using best endeavours to collect current and ongoing service charge arrears but not action regarding legal work or tribunals	Minimum of monthly but as required

• Providing reasonable management information to the lessees	Daily
• Liaising with the Client	As required
• Liaising with any recognised Resident (s) Association (s)	As required
• Entering into and managing maintenance contracts on behalf of the Client	As required
• Viewing, without the use of inspection equipment, the common parts of to check condition and deal with any necessary repairs other than major repairs	Monthly
• Preparing specifications for minor works contracts such as cleaning and gardening and overseeing such works	As required
• Organising Periodic Health and Safety checks and ensuring appropriate risk assessments are in place	Annually
• Consultation with the Client on management matters	As required
• Consultation with the Client on Long Term agreements except appointing a managing agent.	As required
• Engaging and supervising on behalf of the Client Site staff for the property and dealing with all matters relating to their employment other than pension and Employment tribunals.	To be discussed on an individual needs basis
• Visiting the Property	Monthly
• Dealing with day to day Lessee issues and reporting and taking instruction from the Client	Daily
• Advising the Client on the all relevant legislative and regulatory issues and general interpretation of leases	As required
• Maintaining adequate and suitable files and records on the management of the Property	Daily
• Keeping records of residents and tenancy details were provided	As required
• Advising and liaising with the Client on management policy	As required

Appendix III

Additional Charges

Description	Frequency	Charging basis
• Serving Section 20b notices	As required	£2.50 per notice minimum fee of £25
• Set up fee	Once	£250
• Issuing Section 20 notices	As required	£30 per property minimum fee of £500
• Attendance at any meeting after 8pm or at meetings in excess of 4 per year	As required	£40 per hour of part thereof
• Acting as company secretary and Registered Office	-	FOC

• Issuing of Legal Proceedings or instructions to solicitors for breaches of Covenant	As required	£175 plus disbursements (recharged to tenant)
• Providing evidence to the Courts, First Tier Property Tribunal or similar	As required	£70 per hour (recharged to tenant)
• Close down of records and providing information on cessation of management for any reason	Once	£250
• Dealing with Insurance claims in excess of £1500 including but not limited to meeting insurers, contractors and site visits	As required	£40 per hour or part thereof
• Dealing with solicitors enquiry's on sales and issuing a standard Pre Contract Enquiry Pack	As required	£150 (Recharged to tenant)
• Additional enquires (up to 5)	As requested	£20
• Additional enquires (5+)	As requested	£40
• Copy of accounts, full insurance policy or lease	As requested	FOC if issued electronically £20 if hard copy is required
• Letter of Consent	When required	£30 per letter
• Instructing solicitors in arrears recovery	As required	£175
• Filing of accounts at Companies House	Annually	FOC
• Completing and filing annual return	Annually	Filing Fee
• Notice of transfer or assignment	As required	£40
• Issuing Share or Membership certificates	As required	£20
• Deed of Covenant	As required	£85
• Issuing Notice of Breach of Covenant	As required	£30 (Recharged to tenant)
• Debt Collection Administration Fee	As required	£30 (Recharged to tenant)
• Preparation of Court Application	As required	£75 (Recharged to tenant)
• Application to Mortgage lender following court judgement	As required	£50 (Recharged to tenant)
• Preparation and submission of information pack to the court	As required	£120 (Recharged to tenant)
• Recharge of third party invoices	As required	£10 (Recharged to tenant)
• Photocopying charges	As required	15p per A4 sheet Black and white and 20p per A4 Sheet in colour

All fees are subject to VAT if applicable.

Appendix IV

Takeover and Handover Lists

A. The Takeover list

The Parties hereby agree that the Client shall ensure that the following records, documents and information shall be made available to the Manager in taking over the property.

<i>Description</i>	<i>Timescale</i>

B. The Handover list

The Parties hereby agree that the Manager on ceasing managing the Property shall make available to the Client the following records, documents and information.

<i>Description</i>	<i>Timescale</i>

The Property

- Copy of the land certificate.
- Plans and drawings if any of the site and buildings.
- Details of the utilities and location of the main stop cocks.
- Details of any major works and long term agreements ongoing with copies of the S20 notices and responses given.
- Details of any major works or long term agreements planned and copies of the S20 notices and any responses given.
- Details of any plant, machinery and relevant documentation.
- Copies of statutory inspection reports.

Insurance

- Contact details of the current insurer/broker.
- Original schedule and policy for the property.
- Details of the most recent valuation for the property.
- Summary of claims over the past three years.
- Files on open insurance claims.

- Details of third party and employer's liability (including the current and all previous certificates for employer's liability where the employer is not changing).
- Originals of mechanical engineering insurance and copies of the last three years inspection reports.

Contracts and Contractors

- Details of all current contracts.
- Details of all current contractors including the scope of work and payment terms.
- Details of any current warranties.

The Lessees

- Originals or copies of all leases, deeds of variation and other licences.
- Copies of any current house rules
- Details of any ongoing assignments
- Names and contact details of all the lessees, including those who are not resident.
- Details of any sub-let flats and their occupants.
- Schedule of ground rents payable.
- Schedule of service charge apportionments per unit.

Legal

- Details of current disputes involving lessees, contractors or third parties
- Details of any current or impending litigation whether for or against the Client.
- Details of solicitors employed.

Accounting Information

- Certified Service charge accounts for the last six years.
- Copy of the current service charge budget.
- Bank statements relating to lessee and client monies for the property.
- A reconciled copy of the cash book.
- Service charge balances and statements.
- Paid contractors and suppliers invoices for the current period and previous years.*
- Outstanding contractors and suppliers invoices.
- Reconciled trial balance and supporting statements up until the date of the handover.
- A cheque for the balance of the cleared funds.
- Method of payment used by each lessee.
- Agreed payment plans for arrears if any.
- Copy correspondence about any outstanding arrears.

Staff

- Copies of any contracts of employment along with job descriptions.
- A full record of each person's employment history.
- Details of any disciplinary action.
- PAYE records for the current period and previous years if appropriate.

Miscellaneous

- Details of any guarantees.
- A full set of labelled keys, any spares and access codes and programming procedures.
- Copies of all unanswered correspondence and other relevant enquiries.

Health and Safety

- Copy of any risk assessments carried out.
- Copy of any accident records.
- Copy of any asbestos register.
- CDM file if appropriate.

Company Information

- Copy of the Memorandum and Articles of Association.
- The company books including the minutes, stock transfer forms, certificate of incorporation seal etc.
- Copies of the previous annual returns.
- The last six years filed accounts.
- All financial records and supporting documentation for the last six years.
- Details of accountants/auditors used.
- Details of any directors and officers liability insurance.