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Residential
Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1987, SECTION 24

REF: LON/00BA/LAM/2010/0027

PROPERTY: FLAT 5, KENT HOUSE,
112 HARDY ROAD,
LONDON SW19 1HZ

Applicant: MR VINCENT ELIAS

Respondent MR AMIRTHASINGHAM KUGATHASAN

Date of Application: 21st July 2010-11-16

Date of Oral Pre-Trial

Review and Directions: 17th August 2010

Appearances MR ADAM GADD (of Counsel)
THE APPLICANT IN PERSON
MR DUNCAN HOWITT & MR JOHN ABBEY
(of Woollens, Managing Agents)
MR GARETH SMITH (Flat 1)
MS KATE JENKINS (Flat 2)

For the Appellant

MR MUID KHAN (West Harrow & Co Solicitors)
THE RESPONDENT IN PERSON
MR DAVID RAGESH (Building Contractor)

For the Respondent

Date of hearing 8th November 2010

Date of Decision 22nd November 2010

Members of Tribunal Mr S Shaw LLB (Hons) MCI Arb
Mr M Taylor FRICS
Mrs G Barrett JP

DECISION

Introduction

1. This case involves an application made by Mr Vincent Elias (“the Applicant”) against Mr Amirthasingham Kugathasan (“the Respondent”) in respect of Flat 5, Kent House, 112 Hardy Road, London SW19 1HZ (“the Property”). The Application is made pursuant to Section 24 of the Landlord and Tenant Act 1987 (“the Act”) and the Applicant seeks an order for the appointment of a manager by the Tribunal, to carry out management duties in respect of the property. The Applicant is the leasehold owner of one of the six flats now forming part of Kent House. There is also a commercial unit on the ground floor where the Respondent runs a business called “Better Choice Food & Wine”. There were until recently only five flats in the building, but a further flat has been added by the Respondent, which has been the source of some controversy between himself and the Applicant and other leaseholders.
2. The essence of the Application, which will be expanded somewhat below, is that the Applicant contends that it is “just and convenient” within the meaning of Section 24, for the appointment of a manager to take place, largely because there have been multiple breaches of covenant on the part of the Respondent, and because management of the property and the building in which it is situate generally, has been neglected until very recently. Insofar as there has been recent activity the Applicant contends that, on past experience, no reasonable expectation can exist that such activity will continue into the future.

3. The Tribunal inspected the property during the morning of 8th November 2010, and there was a hearing of the evidence from both sides thereafter for the duration of that day. The Applicant prepared a very full bundle of documents running to some 177 pages. His application for appointment of a manager was supported by two other leaseholders who attended the hearing, namely Mr Gareth Smith of Flat 1 and Miss Kate Jenkins of Flat 2. Mr Jacob Ghanty, who is the leasehold owner of Flat 3 was unable to attend the hearing but signed an entirely supportive statement which appears at pages 165 and 166 in the bundle.

4. Summarising the position significantly, the Applicant's case was that he had purchased his flat in October 2006 and that since that date the Respondent has carried out no significant management or maintenance duties in relation to the property at all. As a result there had been issues at the property including infestation of vermin, blocked gutters, non repair following flooding, faulty lights and door opening mechanism, an unsafe fire escape, a neglected refuse area and general cleanliness and maintenance in all the communal areas. In his statement appearing at page 46-49 in the bundle, he sets out a very detailed chronology of his efforts to make contact with the Respondent and to request him to deal with the numerous matters referred to above and in more detail in that statement. In the main, on his case, the Respondent had persistently ignored his requests to deal with these management matters, and the position had caused him significant emotional distress and concern given he had invested much money into the purchasing of the leasehold interest of his flat. He had never received a single written request for service charge payments and the details of the multiple breaches of covenant as set out in the Section 22 Notice which appears at pages 80 to 85 of the bundle. He had never been

supplied with a single invoice explaining any calculation of proposed service charges, although he would have been only too happy to pay, subject to the services being supplied. He told the Tribunal, and pointed to evidence in this regard at the inspection, that there had been frenetic activity shortly before the Tribunal's inspection, to complete works of conversion relating to the additional ground floor flat, and generally, in the period leading up to the Tribunal hearing. However he was concerned as to the quality of these works. He showed the Tribunal photographs of what the position had been like, on his case, prior to the Tribunal's inspection, and in approximately July and August of this year. These photographs, appearing at pages 95 to 129 of the bundle, illustrate obstructions in the communal staircase and fire exit. They also show smashed windows, a defective light fitting, damaged stairs, water damage, internal cracking in the common parts, and other significant disrepair (see page 115). He was particularly concerned about security and obstruction of the fire escape, and told the Tribunal that when he had made a complaint to those working in the shop below about this obstruction (see page 69) the response had been to block up the entrance entirely with cardboard boxes of materials as seen in photograph 70 and 71 in the bundle.

5. He also pointed the Tribunal to concern expressed by the local Fire Service which had written to the Respondent by letter dated 2nd April 2009 giving notice of the requirement to carry out various works which had been necessitated by the neglect at the property.
6. The general thrust of the Applicant's evidence was that he had found it almost impossible to make contact with the Respondent or to get him to take any interest in

the property at all. Indeed his evidence was that an entirely different person had identified himself as the Respondent to the Applicant, and that the first time that he had come across the actual Respondent appearing at the Tribunal, was at the Tribunal hearing itself. As indicated, his evidence generally was supported by the other leaseholders referred to above.

7. The Respondent told the Tribunal that he had bought this property in April 2004. It was the first property he had purchased and he had no experience of managing property generally. He was reliant on a Mr Raj Puspanandem, a man who did not appear before the Tribunal, but who had apparently given the Respondent some advice. He told the Tribunal that he relied upon this man to do all the necessary invoicing. He told the Tribunal that he had himself been out of the country for significant periods as a result of the ill health of his parents in Sri Lanka. He regarded the property as being in very good condition when he purchased it in 2004 and it was only after 2008 that maintenance was needed. He was unable to show the Tribunal any documentary evidence of invoices sent by him or on his behalf for contributions towards maintenance or services. He was asked what he knew about the Landlord and Tenant Act 1985, and he told the Tribunal that he knew nothing about the Act at all. He told the Tribunal that he was proposing to recover the cost of substantial works that had been carried out at the property relatively recently from the leaseholders, but he had no idea as to how the Section 20 consultation procedure operated, and had served no such notices. He further informed the Tribunal that he did not know what a landlord's gas certificate was, and that he had no knowledge of any Health & Safety Regulations which govern the ownership of such property. When asked to produce the current insurance certificate for the property he produced

documents which showed that the shop premises were insured and that the building had cover for approximately half a million pounds. He told the Tribunal that he considered that the market value of the whole building was about £1.4 million, but neither he nor his Counsel were able to point specifically to provisions in the insurance documentation presented to confirm that the leasehold flats were specifically covered by the policy obtained. The Tribunal makes no specific finding in this respect save to say that the documentary material produced, at the hearing only, was unclear.

8. In cross-examination he agreed with the proposition put to him that he might find it helpful if a manager were to carry out the management duties in relation to the property and would be content if that person was someone other than himself. However he qualified this by saying that he would prefer to select the agent himself. He would further prefer to collect the ground rent himself. He did not however put anyone forward as a suitable agent or manager and said that he now felt that he could be more available to carry out management duties himself.

9. Mr Khan, in summarising the Respondent's case contended that the Tribunal should not appoint a manager because the Respondent had received no payments from the Applicant or the other leaseholders. When asked to take the Tribunal to the requests for payment or other itemised service charge accounts he was unable to do so. He nonetheless contended that it would be both unjust and inconvenient to appoint a manager. Mr Gadd on behalf of the Applicant said that there had been clear breaches of covenant as required by the Act for the appointment to take place (especially

worryingly in relation to insurance position) and urged the Tribunal to make the appointment.

10. The Tribunal was satisfied that the breaches set out in the Section 22 Notice had indeed occurred. It was clear on the Tribunal's inspection, and the Tribunal finds as a fact, that there had been recent activity to bring the property up to a tolerable cosmetic appearance. However the photographic evidence demonstrates this has not historically been the position, and in all cases of conflict between the Applicant and the Respondent, the Tribunal preferred the Applicant's evidence. It did so because it was supported by the photographic evidence referred to and the correspondence which documents in a very detailed way the Applicant's account. There was no significant documentary evidence to rebut this from the Respondent and indeed the Respondent frankly conceded that he had no service charge accounts of any kind to put before the Tribunal, no properly calculated invoices had been served, and he was, to put it shortly, completely unfamiliar with proper property management. Indeed the Respondent appeared to the Tribunal to be bemused by the proceedings generally, and entirely unclear as to what steps he could or should be taking in order properly to manage this property. On the evidence before it, the Tribunal was satisfied that each of the breaches tabulated in the Section 22 Notice was made out, and that it is just and convenient for a manager to be appointed in this case, largely because on his track record there can be no immediate confidence that the Respondent, left to his own devices, will be able properly to manage this property and the building generally.

11. The Applicant put before the Tribunal as proposed manager Mr Duncan Howitt from whom a statement was obtained which appears at page 133 in the bundle. Mr Howitt is the Managing Director of Woollens of Wimbledon, who are property consultants and managers who have been in the business of managing blocks of flats in this area for over ten years. The firm also manages in the region of 200 individual flats for private landlords. The firm is a member of ARLA (The Association of Residential Letting Agents) and of ARMA (The Association of Residential Managing Agents). Mr Howitt himself has some twenty years experience in property management. The firm has seven full time members of staff. It is situate half a mile away from the property, and he knows the area very well. The firm has an established system for dealing with reports of disrepair and other matters from property occupiers and has a database of well-tried local contractors. The firm has insurance cover for public liability in the sum of one million pounds and also for professional indemnity cover in the same sum (the Tribunal was shown the current insurance certificates in both cases). Mr Howitt has set out a plan of action if he is appointed as manager of the building as set out in his letter of 6th September 2010, which appears a sensible approach. On balance, although this will be his first appointment as a Tribunal manager, the Tribunal was satisfied that he has sufficient experience and appears to be a fit and proper person to carry out the functions of a Tribunal appointed manager. His proposed Management Agreement appearing at pages 134 to 141 in the bundle is unremarkable as is the fee structure of an initial set up fee of £200 plus VAT and thereafter a management fee of £225 plus VAT per unit. There are additional

charges if there are works to be carried out which are outside the “core services” as described in the terms and conditions. These too are generally as to be expected.

Conclusion

12. For the reasons indicated above, the Tribunal determines that this is a case in which the Respondent has been in breach of numerous obligations owed by him under the terms of the lease pertaining, as referred to above, and that it is just and convenient to make the order in all the circumstances, again for the reasons set out above. The Tribunal is satisfied that Mr Duncan Howitt, of Woollens of Wimbledon Limited, is an appropriate person to act as the Tribunal’s appointed manager and that he should be appointed for a period of one year from 1st December 2010. The appointment should be on the terms of the Management Agency Agreement appearing at page 134 in the hearing bundle and to be attached to the management order which will supplement this Decision.

13. The Applicant sought a Direction under Section 20C of the Act to the effect that no part of any costs incurred in this Application should be added to his service charge account. The Tribunal was satisfied that he had been compelled to make this Application and that it is right that such a Direction should be given. A Section 20C Direction is accordingly so given. There was a further application for recovery of costs by the Applicant. The Tribunal’s powers in relation to the ordering of costs are limited. However, once again, the Tribunal is satisfied that the Applicant had no option but to make this Application, given the years of neglect which the Tribunal has found as a fact had occurred in this case. The Tribunal is satisfied that his costs paid to the Tribunal by way of hearing fee and application fee should be refunded to

him by the Respondent in the total sum of £400, and the Tribunal so orders accordingly.

Legal Chairman: S Shaw

Dated: 22nd November 2010



Residential
Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL
MANAGEMENT ORDER

**PROPERTY: KENT HOUSE,
112 HARDY ROAD,
LONDON SW19 1HZ**

REF: LON/00BA/LAN/2010/0027

VINCENT JACQUES LUC ELIAS

Applicant

-and-

AMIRTHASINGHAM KUGATHASAN

Respondent

**ORDER FOR THE APPOINTMENT OF MR DUNCAN HOWITT
OF WOOLLENS OF WIMBLEDON, AS MANAGER AND RECEIVER**

1. Duncan Howitt of Woollens of Wimbledon Limited (“the Manager”) is appointed Manager and Receiver of the property for a period of one year with effect from 1st December 2010.

2. The Manager shall manage the property in accordance with:
 - (i) the respective obligations of the landlord and the lessees under the various leases by which the flats at the property are demised, and in particular, but without prejudice to the generality of the foregoing, with regard to the repair, decoration, provision of services to, and insurance of the property, and
 - (ii) in accordance with the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State from time to time).
3. He shall receive all sums whether by way of ground rent, insurance premiums, payment of service charges or otherwise arising under the said leases.
4. He shall account forthwith to the freeholder for the time being of the property for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees which will be specified below) in the performance of the landlord’s covenants contained in the said leases.
5. He shall make arrangements with the present insurers of the building to make any payments under the insurance policy presently effected by the Respondent to him.
6. He shall be entitled to the following remuneration (which for the avoidance of doubt shall be recoverable as part of the said service charges in accordance with the leases) namely:

- (i) A basic annual fee of £225 plus VAT per flat for performing the duties set out in the Code referred to above, and as described in the Management Agency Agreement attached to this Order. He shall also be entitled to a one-off fee of £200 (plus VAT) by way of setting up fee at the inception of his term of management.
 - (ii) In the case of works falling within the category appearing at Appendix 3 of the Management Agency Agreement, further additional charges shall be recoverable as set out in that Agreement.
7. Value added tax will be payable, for the avoidance of doubt, in addition to the remuneration mentioned above.
8. The Manager shall have liberty to apply to the Tribunal for further Directions, and any interested party is entitled to apply for further Directions during the course of the appointment if so required.

Dated: 22nd November 2010

Chairman: S. Shaw



**ASSOCIATION OF RESIDENTIAL
MANAGING AGENTS**

MANAGEMENT AGENCY AGREEMENT

BETWEEN

(The Client)

*whose (registered) office is at tel.
no.....fax.....email.....*

and

WOOLLENS OF WIMBLEDON LTD

(The Manager)

*whose office is at
182 The Broadway, Wimbledon, London, SW19 1RY
tel. no 020 8542 9551
fax: 020 8543 0295
email: john@woollens.co.uk*

for

(The Property)

Dated

Sent to Mr. Bugallison 31/09/2010

13 pages

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Sent to Dr. K.
13/09/2010 135

TERMS AND CONDITIONS

1 Definitions

- 1.1 The 'Client' means the resident management company, right to manage company, or 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 the fee set out in the fee agreement in Appendix I.
- 1.5 The 'Services' mean the services set out and 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' means the term or period specified in the fee agreement in Appendix I.
- 1.9 The 'Parties' means the Client and the Manager.

2 Appointment

The Client appoints the Manager to be its managing agent for the Property for 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 with the frequency specified in Appendix II for the Management Fee as set out in Appendix I.
- 3.2 The Manager will provide additional services for the Client for Additional Charges as set out in Appendix III.

4 Conduct of the Manager

- 4.1 The Manager must comply with the terms of the leases of the Property.
- 4.2 The Manager must comply with the Service Charge Residential Management Code of the RICS as appropriate.
- 4.3 The Manager must comply with relevant landlord and tenant legislation relating to the management of the Property.
- 4.4 The Manager must comply with health and safety, employment and all other relevant laws and regulations relating to the management of the Property.
- 4.5 The Manager must hold professional indemnity insurance and maintain it during the Term. On request, the Manager must give the Client a copy of the certificate of insurance.
- 4.6 The Manager must comply with the rules of the Financial Services Authority when carrying out any regulated insurance activities.
- 4.7 The Manager must at all reasonable times and with reasonable notice allow the Client access to all records and accounts appertaining to the management of the Property. Should the Client require copies of documents these copies will be charged at 20p per page.

Sent to M.K
13/09/2010
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5 Conduct of the Client

- 5.1 *The Client will use its best endeavours to ensure the handover of the documents listed in Appendix IV, the Takeover List, to the Manager.*
- 5.2 The Client must 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 regulations relating to the management of the Property.
- 5.3 The Client must act in a manner that ensures there is no unlawful discrimination in the provision of services, the sales and lettings of units at the Property and the employment of any staff or contractors.
- 5.4 *The Client should not give instructions to the Manager's staff working solely at the Property. Any instructions should be given through the Manager's nominated representative as agreed between the Parties.*
- 5.5 The Client is not required to arrange and hold directors' and 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.
- 5.6 The Client must keep the Manager informed of any notices, sales of leaseholds or freehold, possible formation of resident associations, exercise of the right to manage, enfranchisement and any other matter relating to the management of the Property of which the Client becomes aware.
- 5.7 When oral instructions are given by the Client to the Manager, these must be confirmed in writing by post or email within 7 days.

6 Commissions

- 6.1 The Manager may have arrangements with insurance companies/brokers and other contractors that allow the receipt of commissions.

7 Fees and charges

- 7.1 The fees and charges payable by the Client to the Manager are as set out in Appendices I and III and are payable without any right of set-off against any other account with the Client.
- 7.2 The Client authorises the Manager to deduct the Management Fee and Additional Charges from the designated bank account on the dates set out in the Fee Agreement.
- 7.3 The Client must 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 must be paid as soon as this agreement is signed.
- 7.4 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 base rate of Nat West Bank from the date the fee or charge became due until the date of payment.

8 Changes to Management Fee and Additional Charges

On the Review Date the amounts payable under Clause 7 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 before the Review Date.

N.B. 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.

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9 Handling of Client's Money

- 9.1 The Manager must comply with statutory and ARMA and RICS Code rules for banking and holding any funds of the Client in a clearly designated client bank account. Any such client funds must be held in trust.
- 9.2 *The Manager will open a designated bank account(s) on behalf of the Client in the name of the Property for the receipt of all money due to the Client and the payment of expenses relating to the Property.*
- 9.3 The Client authorises the Manager to make payments for the benefit of the Property (*or within the limits set out in 9.6 below*) from the designated bank account(s) held for the Property.
- 9.4 The Client authorises the Manager to deduct any outstanding Management Fee and Additional Charges from the designated account after this management agency agreement terminates.
- 9.5 It is hereby agreed that any interest earned on the designated account(s) shall be a credit to that account *or to the credit of the Manager (where no bank charges are incurred).*
- 9.6 The expenditure authorisation limit of the Manager without referral to the Client shall be £200 exclusive of VAT (per item), however this shall be ~~within the overall~~ context of any annual service charge budget. Such an item will never need to involve the Section 20 consultation process.
- 9.7 The Manager shall 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 services required if there is a deficit for any reason.

10 Liability

- 10.1 The Client indemnifies the Manager against all costs, expenses and liabilities including legal costs incurred in **properly** performing the Services under this agreement.
- 10.2 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.
- 10.3 The Client shall indemnify the Manager in respect of any claims made by another or third party for any loss, damage or legal and other expenses incurred as a result of any one or more of those circumstances listed in 10.2 (a) to (d) above.
- 10.4 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 any one or more of those circumstances listed in 10.2 (a) to (d) above unless it be as a result of the Manager's negligence.
- 10.5 The above shall not be valid insofar as prohibited by statute.

Sent to Mail.
13/09/2010

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10.6 In no circumstances shall the Manager be liable for any consequential loss or damage save where loss, death or injury results from negligence on the part of the Manager.

11 Assignment

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

12 Ending this Agreement

12.1 This agreement will end at the expiry of the Term specified in Appendix I.

12.2 This agreement may be terminated at any time by the mutual consent of the parties in writing.

12.3 The Client may end this 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 Manager's membership of the Association of Residential Managing Agents has been suspended or ended; or
- (d) the leaseholders of the Property exercise the right to manage or enfranchise or a manager is appointed by a Leasehold Valuation Tribunal.

12.4 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.

12.5 Either party may end this agreement on any ground other than those set out above upon giving not less than 3/xx months' notice in writing.

12.6 *When this agreement is ended the Manager will handover to the Client the documents itemised in Appendix IV, the Handover List, if they are in his possession.*

12.7 Unless agreed otherwise all documents created by the Manager during the period of this management agreement for the Client shall belong to the Client.

13 Dispute Resolution

13.1 If any dispute arises over the interpretation of or compliance with the specific clauses in this 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 of equivalent executive authority, with authority to settle the dispute.

13.2 If the Parties are unable to settle any such dispute by negotiation within 21 days, they will attempt to settle it by mediation. To initiate mediation, a director of a party must give notice in writing (an "ADR notice") to the other party to the dispute, addressed to a director, requesting a mediation. If the other party does not agree to the request within 14 days or refuses the request, the dispute shall be settled by the courts, *or the dispute goes to independent resolution under clause 13.3.*

13.3 *If the Parties have not settled the dispute by mediation within 56 days from when mediation began/or the date of the ADR notice, the Client can refer the dispute to the Property Ombudsman scheme of which the Manager is a member.*

*Sent to Du. R.
13/09/2010 139*

14. Data Protection

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

15. Communication between the Parties

- 15.1 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.
- 15.2 Service of written communications shall be by first class post to the address shown on the front cover of this agreement, by fax or email. Notice to end this agreement shall be by registered or recorded delivery post only.
- 15.3 Any communication in writing will be deemed to have been served on the third working day after posting except for notices to end this agreement which shall be deemed to have been served the second working day after posting.

16. 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.

17. Legal Jurisdiction

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

18. The Property

[Provide detailed description here or refer to an attached document – as Appendix V]

Signed on behalf of the Client.....

[Print name and position.....]

Signed on behalf of the Manager.....

[Print name and position.....]

In the presence of: Signature.....

Name in capitals.....

Dated.....

Sent to Mr. K:
13/09/2010
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- END -

Sent to Du K.
13/09/2010
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APPENDIX I

FEE AGREEMENT

- The **Term** of this Agreement is *ONE YEAR*, starting on
- The **Setting-up fee** is £.....+ VAT based on the following table and is a one-off fee payable as soon as this Agreement is signed.

1-10 units (inclusive)	£200.00 (plus VAT)
11-20 units (inclusive)	£300.00 (plus VAT)
21 + units	£400.00 (plus VAT)

- The **Management Fee** is payable for the services in Appendix II and is based on the following:

1-4 units (inclusive)	£250.00 plus VAT per unit per annum
5-10 units (inclusive)	£225.00 plus VAT per unit per annum
11 + units	£200.00 plus VAT per unit per annum

- The Management Fee is to be paid **half-yearly in advance**.
- The Management Fee and any Additional Charges must be paid to the Manager in accordance with clauses 7 and 8 of the agreement.
- The **Review Date** for the Management Fee and Additional Charges is each anniversary of the date of this agreement.

- The **Ground Rent Collection Fee** is based on the following:

1-10 units (inclusive)	£100.00 plus VAT per block
10 + units	£200.00 plus VAT per block

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APPENDIX II

THE CORE SERVICES

DESCRIPTION	FREQUENCY
• Preparing and sending out service charge estimates.	
• Collecting service charges and reserve fund contributions including sending any required statements.	
• Processing payments relating to the Property within expenditure limits and funds available or as reasonable expediency shall dictate.	
• Accounting for services charges.	
• Providing information to accountants for preparing annual accounts.	
• Using best endeavours to collect current and ongoing routine service charge arrears but not action requiring legal work or LVTs.	
• Providing reasonable management information to the lessees – <i>describe</i> .	
• Liaising with the Client.	
• Liaising with any recognised resident(s) association(s).	
• Paying Insurance Premiums on behalf of the Client and providing policy details to the Client/lessees on request.	
• Entering into and managing maintenance contracts on behalf of the Client.	
• Viewing, without the use of inspection equipment, the common parts of the Property to check condition and deal with any necessary repairs other than major repairs.	
• Preparing specifications and contracts for minor works and services such as cleaning, gardening, window cleaning and overseeing such works.	
• Organising periodic health and safety checks (but not specialist checks and tests) and ensuring appropriate risk assessments are in place.	
• Consultation with the <i>client</i> on management matters	
• Consultation with the client on long-term agreements except for consultation on the appointment of a managing agent.	
• 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 Industrial Tribunal matters.	
• Visiting the Property.	
• Dealing with day-to-day lessee issues and reporting to and taking instruction from the Client on lessees' dissatisfaction.	
• Advising the Client, as far we are able & bearing in mind that we are not lawyers, on all relevant legislative and regulatory issues and general interpretation of leases.	
• Maintaining adequate/suitable files and records on the management of the Property.	
• Providing copy documents including insurance policies, copies of invoices and receipts, for which there will be a charge.	
• Keeping records of residents and tenancy details where provided.	
• Advising and liaising with the Client on management policy.	
• Issuing demands for administration charges and required summaries of rights.	

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APPENDIX III

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ADDITIONAL CHARGES
(NB: All fees may be subject to annual review)

ADDITIONAL SERVICES	FREQUENCY	CHARGING BASIS where not included in the Services
<ul style="list-style-type: none"> Any additional work entailed, where the information as listed in Appendix 4 is not forthcoming on the Takeover list. 		
<ul style="list-style-type: none"> Fees for organising specialist advice on assessment of major repairs and decoration or other issues. 		£25 + VAT per hour or part thereof
<ul style="list-style-type: none"> Negotiating with local and statutory authorities regarding operation or amendment or improvements to communal services as necessary. 		£25 + VAT per hour or part thereof
<ul style="list-style-type: none"> Holding annual meetings with residents if required. 		£25 + VAT per hour or part thereof per staff member attending
<ul style="list-style-type: none"> Responding to requests for information for Home Information Packs and responding to pre-contract enquiries 		£150 + VAT
<ul style="list-style-type: none"> Supplying additional copies of the accounts and other documents to individual lessees 		20p per sheet payable by the individual lessee
<ul style="list-style-type: none"> Dealing with requests for improvements or alterations by leaseholders and related party wall matters 		£25 + VAT per hour or part thereof
<ul style="list-style-type: none"> Legal recovery of unpaid service charges or ground rents or action for non-compliance with leases including instructing solicitors and preparing for and attending Court/LVT. 		£25 + VAT per hour or part thereof
<ul style="list-style-type: none"> Preparing and monitoring major building works not covered by annual contracts, dealing with S20 consultations, including serving the required notices, instructing and liaising with specialist consultants, inspecting work in progress, and handling retentions. 		10% + VAT of the total cost of the works
<ul style="list-style-type: none"> Company Secretarial Services:- <ul style="list-style-type: none"> Acting as Company Secretary to the Client Issuing membership or share certificates Calling annual general or extraordinary meetings: prepare notices, attend and take minutes. Filing Annual Returns if requested in writing by the Client Filing Annual Accounts if necessary and if requested in writing by the Client 		£200 + VAT per annum

APPENDIX III cont....

		ng
<ul style="list-style-type: none"> Providing any form of services to the Client over and above this Management Agency agreement in relation to the exercise by the lessees of Enfranchisement, the Right to Manage or as the result of the Appointment of a Manager by a LVT. 		
<ul style="list-style-type: none"> Any matters relating to Ground Rent reviews. 		£25 + VAT per hour or part thereof
<ul style="list-style-type: none"> Service of Ground Rent Demands and collection of Ground Rent 		£100 + VAT per annum <u>Payable by the Freeholder</u>
<ul style="list-style-type: none"> Answering of queries from the lessees where excess work arises from the unreasonable expectations of those lessees. 		£25 + VAT per hour or part thereof
<ul style="list-style-type: none"> Providing accommodation for meetings and inspection of documents and the facility to make photocopies. 		£50 + VAT

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APPENDIX IV

THE TAKEOVER AND HANDOVER LISTS

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THE PROPERTY

	RECEIVED
Copy of the Land Certificate.	
Plans and drawings if any of the site and buildings.	
Details of utilities and location of main stop-cocks etc.	
Details of any major works and long term agreements planned and copies of any related S.20 notices and responses given.	
Details of plant, machinery and relevant documentation.	
Copies of statutory inspection reports.	
Arrangement for out of hours emergencies.	

INSURANCE

	RECEIVED
Contact details of current broker/insurers.	
Original of schedule and policy for the property.	
Details of most recent valuation of the property.	
Summary of claims history over past three years.	
Files on open insurance claims and agreement on who will handle such.	
Details of third party and employers liability (including current and all previous certificates for employers liability where employer is not changing).	
Originals of mechanical engineering insurance and the last three years' inspection reports.	

CONTRACTS AND CONTRACTORS

	RECEIVED
Details of all current contracts.	
Details of regular contractors used and the scope of their duties and payment terms.	
Details of any current warranties.	

THE LESSEES

	RECEIVED
Originals or copies of all leases and deeds of variation and other licenses etc.	
Copy of any current house rules (if any)	
Details of any ongoing assignments or lease extensions	
Names and contact details of all 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.	

APPENDIX IV cont....

LEGAL

	RECEIVED
Details of any current disputes whether involving lessees, contractors or other parties.	
Details of any current or impending litigation whether for or against the client.	
Details of solicitors employed.	

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ACCOUNTING INFORMATION

	RECEIVED
Certified service charge accounts for at least the last three years and preferably six years or longer.	
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. (Note:- The receipts and invoices to support service charges belong to landlord so, if the agent changes, all years held should be handed over. LVT's can now go back many years if a challenge is made by lessees.)	
Outstanding contractors and suppliers invoices.	
Reconciled trial balance and supporting schedules made up to the date of the handover.	
A cheque for the balance of funds in hand.	
Method of payment used by each lessee.	
Agreed payment plans for arrears if any.	
Copy correspondence about any outstanding arrears.	

MISCELLANEOUS

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

HEALTH AND SAFETY

	RECEIVED
Copies of any Risk Assessments carried out.	
Copy of any accident records.	
Copy of any asbestos register.	

COMPANY INFORMATION [Where a Resident Management Company is the client - and subject to arrangements over the Company Secretarial role.]

	RECEIVED
Copy of Memorandum & Articles of Association.	
The Legal Books including minutes, stock transfer forms, Certificate of Incorporation, seal etc.	
Copies of previous annual returns.	
The last six years' (audited) accounts.	
All financial records and supporting documentation for the last six years.	
Details of accountants/auditors used.	
Details any Directors and Officers Liability Insurance.	

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