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Residential  
Property  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**LANDLORD AND TENANT ACT 1987, SECTION 24**

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**REF: LON/00BK/LVM/2010/0002**

**Property:** 4 Ennismore Gardens  
London  
SW7 1NL

**Applicants:** Maria Barros  
Mary Gladstone  
Winston Ku  
Meyer Ziman

**Respondent:** 4 Ennismore Limited (in liquidation)  
C/o Mr Asher Miller of David Rubin &  
Partners

**Appearances:** Mrs Maria Barros (Flat B)  
Mrs Mary Gladstone (Flat A)  
Mr Craig Silver MIRPM, MARLA,  
MNAEA  
Mr Iain Walker  
For the Applicant

**Date of Directions:** 8 April 2010

**Date of Hearing:** 7 May 2010

**Members of Tribunal:** Mr S Shaw LLB (Hons) MCI Arb  
Mr D Banfield FRICS  
Mrs L Walter MA

**Date of Decision:** 12th May 2010

## DECISION

### INTRODUCTION

1. This case involves an application dated 17 March 2010 (“the application”). The application is made by the applicants referred to above (“the applicants”), who are the leasehold owners of flats at 4 Ennismore Gardens, London SW7 1NL (“the property”). The immediate landlord of the applicants is the company known as 4 Ennismore Limited, which company is now in liquidation and whose affairs are dealt with by the liquidators David Rubin & Partners LLP, and in particular the partner in that firm acting as liquidator, namely Mr Asher Miller.
2. The background to the matter is that various applications relating to this property have previously been made to the Tribunal. The property is a six storey house in Knightsbridge and has been converted in such a way as to produce two flats on each floor. Mrs Gladstone and Mrs Barros are the leasehold owners of Flats A & B respectively on the basement floor. The leasehold interest of Flat 1 is owned by Mr Winston Ku and the leasehold interests in Flats 2, 4 and 6 are owned by an offshore company, the name of which company the Applicants were not able to supply during the hearing before the Tribunal. Flats 3, 5 and 9 are subject to long leases, which are owned by Mr Robert Campin who, according to the Applicants does not occupy any of these flats but lets them on assured shorthold tenancies. It should be mentioned that flats 2, 4 and 6 are also not occupied directly by any officer of the offshore company concerned but are let to sub-tenants. A Mr J Kumara (who is an Applicant) owns Flat 7, Mr M Ziman owns Flat 8 and Mrs Berge owns Flat 10 (although in her case we were told she is not well enough to live there alone – she is 87 years old – and the property for some time has been unoccupied).
3. The freehold owner of the house is the Wellcome Trust and there is an intermediate Headlease which is owned by 4 Ennismore Limited (in liquidation) (the Respondent to this application). That company was formed in 2001 but went into liquidation following a previous Tribunal Hearing in 2004.

## THE HEARING

4. The Hearing was attended by Mrs Maria Barros who is the owner and occupier of Flat B, Mrs Mary Gladstone who is the owner and occupier of Flat A, Mr Craig Silver (a proposed manager) and Mr Iain Walker, who does not live in the property but lives nearby at number 40 and who has been or is the Chairman of the Knightsbridge Association, which is an association generally dealing with tenants issues in the area.

Mrs Barros explained to the Tribunal that a previous Management Order had been made in respect of the property in 2004 and then subsequently another Order was made in 2007. The latter Order was in respect of Mr Roderic Welfare and this Order or appointment was for a term which expired at the end of March of this year. It was therefore imperative, asserted the Applicants, that some steps be taken swiftly to ensure some continuity in the management, given that Mr Welfare had written to Mrs Barros by letter dated 11 March 2010 confirming that he no longer wished to act as manager for the property.

5. The Hearing was attended by Mrs Barros, Mrs Gladstone, Mr Silver and Mr Walker as referred to above. Mr Ku was unavailable at the time of the Hearing but the Applicants who did attend, assured the Tribunal that he was fully supportive of the Order being sought, and the Tribunal was able to ascertain that there are indeed e-mails on the Tribunal's file from Mr Ku, the effect of which must be that he is supportive of the Application. Mr Campin was not present before the Tribunal, nor were there any representatives from the offshore company. Mr Ziman is the leasehold owner of Flat 8; he is one of the named Applicants and is obviously supportive of the application.
6. As mentioned, the company 4 Ennismore Limited is the immediate holder of a Headlease and the landlord of the Applicants. That company was formed in 2001 but in 2004 went into liquidation. The Tribunal enquired as to the steps taken to serve Notice of this hearing upon the offshore company and Mr Campin. Mrs Barros informed the Tribunal that she had left papers complying with the Directions, on the table in the common entrance hall at the property,

where post is left. Mr Kumara although owning a flat in this building, also lives at the property next door (number 7). She knows that although having left the papers as indicated they were taken. She believes this was by or on behalf of the parties to whom they were addressed. The papers were in any event taken by someone. Mrs Berge is sadly insufficiently well to take part in the proceedings but Mrs Barros informed the Tribunal that she had spoken to one of Mrs Berge's children and they had intimated to the effect that they had no objection to the application. In addition, the Wellcome Trust, the freeholder, has also been informed of the proceedings through its agents, Messrs. Cluttons.

7. The Tribunal heard evidence from Mrs Barros and Mrs Gladstone, supported by Mr Walker to the effect that the property was generally in disrepair and required attention both externally and internally in order to bring it up to the standard of repair of the buildings in this exclusive street in Knightsbridge. Little or no work had been done since 2000 and the interior common parts were "tired" and generally shabby. The Respondent, which is the company in liquidation and whose affairs are being conducted by its liquidator, was effectively carrying out no management obligations in accordance with the terms of the lease.
  
8. In short, the Tribunal was satisfied that there is no management of this building taking place. It was also satisfied that there are continuing breaches of repairing obligation in the circumstances referred to above and that in any event, because of those circumstances it is just and convenient to make an Order for the appointment of a manager to take over the management duties of the previous manager (namely Mr Roderic Welfare) who has decided not to continue as manager, and whose appointment terminated by effluxion of time on 31 March 2010. The Tribunal was also satisfied that either Notice of this application had effectively been served upon the persons necessary and referred to in Section 22 of the Act, or that, alternatively, it was reasonable to dispense with the requirement to serve a formal Notice because it was not reasonably practicable to do so. This was because three of the flats are registered in an offshore company and three of the other flats are owned by Mr Campin who does not reside at the property and whose details for service the Applicants do not apparently have; however, he does attend regularly at the property to collect

mail and the relevant documents in relation to this application had been left for him and by all accounts collected.

9. As to the person to be appointed as the new manager, the Applicants put forward Mr Craig Andrew Silver. Mr Silver attended before the Tribunal and had prepared a C.V., which appears at page 20 in the bundle of documents prepared by the Applicants. As will be observed from that C.V., Mr Silver has worked in property management effectively all his working life in various well-known firms, culminating in his becoming Head of Estate Management at the firm known as Chesterton Humberts in 1997. His experience is very extensive indeed and he told the Tribunal that the office which he now heads, manages some 66 – 67 blocks of flats, comprising some 1,550 units. These properties are all in or around London. He is based in the office in Islington, which is about 40-50 minutes away from the subject property by public transport. He has visited the property, spoken briefly with the freeholders and the previous manager and with the liquidator. It should be noted that the liquidator, namely Mr Miller, wrote to the Tribunal by letter dated 20 April 2010 and, save for some representations about his fees, told the Tribunal that he did not intend to make any further representation in respect of this matter.
  
10. Mr Silver answered questions from the Tribunal about his understanding of the nature of the job as a manager appointed by the Tribunal; his firm has substantial professional indemnity insurance in place, and a ready structure for the keeping of appropriate separate accounts at the bank for holding clients' monies. His office has good back up in terms of personnel, and a ready compiled database of contractors. He was prepared to take on the management of the property for a fee effectively of £350 plus VAT per unit and otherwise subject to a charge at an hourly rate for services outside the basic management of the property, in accordance with terms and conditions which were put before the Tribunal. Those terms and conditions seemed reasonable to the Tribunal, and in large part can be found reflected in the RICS Code of Management.

11. In short, the proposed manager, although he has not held a Tribunal appointment in the past, is nonetheless of very considerable experience, and the Tribunal was satisfied upon its interview of him, that he is an appropriate person to act as a Tribunal appointed manager in this case.

## **CONCLUSION**

12. For the reasons indicated above the Tribunal is satisfied that circumstances exist making it just and convenient for a Management Order to be made in this case, and that Mr Craig Andrew Silver is an appropriate person to act as manager. Accordingly, an Order for his appointment is made for a term of 3 years from 1 April 2010, in the terms of the Order accompanying this Decision. It is open to any person at any time to revert to the Tribunal for any further Directions or Order in respect of this Decision or Order.

Legal Chairman: Mr S Shaw

Dated: 12th May 2010



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**Applicants:**

Maria Borros  
Mary Gladstone  
Winston Ku  
Meyer Ziman

**Respondent:**

4 Ennismore Limited (in liquidation)  
C/o Mr Asher Miller of David Rubin &  
Partners

**ORDER OF THE TRIBUNAL FOR APPOINTMENT  
OF A MANAGER**

1. Mr Craig Andrew Silver MIRPM, MARLA, MNAEA, of Chesterton Humberts, 325-329 Upper Street, London N1 2XQ, is hereby appointed the Manager and Receiver ("manager") of 4 Ennismore Gardens, London SW7 1NL ("the property") for a period of 3 years from 1 April 2010 until 31 March 2013.
2. During the period of his appointment, the manager shall collect all the various funds reserved and made payable by the lessees ("the lessees") pursuant to their respective leases ("the leases") of the flats ("the flats") in the property, including, but not limited to:
  - (a) ground rent
  - (b) insurance rent
  - (c) service charges
  - (d) the arrears of any of the above
3. The manager shall ensure the proper management of the property and its service charge account, and be entitled to all reports, bank statements, invoices, accounts and other documents relating to the property.
4. During the period of appointment, the manager shall carry out the management obligations of 4 Ennismore Limited (now in liquidation) in accordance with the provisions of the various leases and, without prejudice to the generality of the forgoing:
  - (a) formulate forthwith both a planned maintenance programme and a strategy for completing the repairs referred to in the Enforcement Notice served by the City of Westminster in respect of the property.
  - (b) enforce the covenants of the lessees in respect of the said leases.
  - (c) comply with all statutory requirements including those set out in the Landlord and Tenant Act 1985 and 1987 as amended, and with the requirements of the relevant Residential Code of Management published by the RICS and approved by the Secretary of State from time to time under Section 87 of the Leasehold Reform Housing and Urban Development Act 1993.
  - (d) be under a duty to account to the Respondent landlord for the ground rent and any other monies received and lawfully due to the



Respondent with the exception of insurance, rent and service charges which shall be respectively applied by the manager in respect of the insurance, repairs and other services set out in the provisions of the leases referred to.

- (e) use his best endeavours to effect compliance with the Enforcement Notice served by the Westminster Council referred to above.
5. The manager shall be entitled to charge the sum of £4,200 plus VAT and disbursements per year, by way of basic management fee to cover the day to day duties referred to in the RICS Code of Management, and otherwise shall be entitled to charge in accordance with the Terms and Conditions referred to at page 22 of the bundle of documents put before the Tribunal and, for avoidance of doubt, annexed hereto, so far as is compatible with the other terms of this Order.
  6. The manager will be entitled to appoint, if he thinks fit, any surveyor, architect, engineer or other appropriate person, to assist him in carrying out any duties contained in the Code of Management of the RICS, and will be entitled to recover the cost thereof from the lessees of the property through the service charge provided that always such costs are reasonably incurred and the services of such a person are of a reasonable standard.
  7. The directors of 4 Ennismore Limited (in liquidation) their employees and agents and all the lessees, shall give all reasonable assistance and give co-operation to the manager while acting in accordance with his duties under this Order.
  8. The manager shall have permission to apply to the Tribunal or any other body with authority so to direct, for further Directions or Orders in relation to the above matters.
  9. Any person affected by the terms of this Order may apply in writing to the Tribunal in accordance with Section 24 of the Landlord and Tenant Act 1987.

Chairman: Mr S Shaw



Dated: 12th May 2010

# Agreement setting out the Terms of Appointment for the Management of a Block of Flats

## SECTION A – BASIC TERMS

The Client appoints the Agent to be its Agent to perform the Service and the Agent accepts such appointment.

The Royal Institution of Chartered Surveyors' Terms of Appointment as attached shall apply as varied by this Agreement.

- A. Date of this Agreement:
- B. 'The Client'  
(name and registered office or address)

Registered Number:

Tel no:

Fax no:

Email:

- C. 'The Agent'  
(name and address) MR CRAIG SILVER MIPPM  
% CHESTERTON GLOBAL LIMITED  
T/A CHESTERTON HUMBERTS  
327-329 UPPER STREET  
LONDON N1 2XQ

Registered Number: 5334 580

Tel no: 020 3 040 8481

Fax no: 020 7 704 8411

Email: craig.silver@chesterthumberts.com

D. 'The Property' the subject of this Agreement

(address(es)/description)

4 EMMISMORE GARDENS  
LONDON  
SW7 1NL

'Property' shall include any fixed equipment used within the property from time to time.

E. Term of Agreement 36 months from the [ ]

F. Notice to terminate 3 MONTHS

G. Visits (Clause 1.2.4): once every 8 WEEKS

The Agreed Expenditure Limit (Clause 1.2.5): £ 500 plus VAT

Accounting Period (Clause 1.2.13): one year ending on the [ 31/12 ] in each year

Written statement of account (Clause 1.2.13): within [ 180 ] days of the end of the Accounting Period

Float (Clause 4.2): £ TBA

The Interest Rate (Clause 4.4.2): [ 4 ]% above the base rate of [ ] Bank of ENGLAND

Client's Authorised Person (Clause 4.3.3): ANY OF THE NAMED CLIENTS OFFICERS

H. The Basic Fee (Clause 5.1): (delete whichever bases are not to apply)

Agreed setting up fee £ N/A payable in the event of the appointment being terminated by the Client within \_\_\_\_\_ from commencement of the Agreement.

**And**

A Fixed Fee £ 4200 +VAT per ANNUUM  
will be paid in ~~Arrears~~/Advance (delete as appropriate) QUARTERLY

**And/or**

N/A % of the service charges and other monies received/expended

as calculated as at \_\_\_\_\_ (insert date)

as receivable for \_\_\_\_\_ (insert period)

payable in ~~Arrears~~/Advance (delete as appropriate)

The Agent shall/~~shall not~~ (delete as appropriate)

be entitled to retain any commission received by him or her in respect of the Property, without accounting to the Client.

**Additional Charge Rates** (Clause 5.2): The hourly rates for additional work charged by the hour to be:

for senior staff £ 175.00

for junior staff £ 125.00

for support staff £ 100.00

**Additional Charge Limit** (Clause 2.2): £ 500 (exclusive of VAT) per ANNUUM

**Allowance per mile for car travel** (Clause 5.2): £ \_\_\_\_\_

**Annual Rate Review Date** (Clause 5.4): £ 1 JANUARY

I. **Variations to the attached Terms of Appointment**

J. SIGNED by or on behalf of the Client:

Name in capitals: \_\_\_\_\_

Signing as: director, duly authorised to do so  
partner, duly authorised to do so  
the Client in person  
(delete all except one)

in the presence of:

Signature of witness: \_\_\_\_\_

Name of witness in capitals: \_\_\_\_\_

SIGNED by the Agent: *Craig Silver*

Name in capitals: CRAG SILVER

in the presence of:

Signature of witness: *J. Blake*

Name of witness in capitals: JOAN BLAKE

# SECTION B – STANDARD TERMS

## Terms of Appointment

### 1. 'The Service'

- 1.1. The Agent will perform the Service with reasonable skill and care in accordance with the principles of good estate management for the Term and thereafter until terminated by Notice.
- 1.2. The Agent accepts in consideration of the Basic Fee the following obligations in respect of the Property to be performed as agent of the client:
  - 1.2.1 *Collect service charges*  
To send service charge statements to lessees and to use reasonable endeavours to collect service charges and any arrears and interest payable.
  - 1.2.2 *Notify overdue payments*  
To report to the Client from time to time as to sums overdue from lessees.
  - 1.2.3 *Expenditure*  
To pay (but only to the extent that the Agent is properly able to do so out of sums held) the following liabilities:
    - a) council tax, general, water, sewerage and other rates, charges, assessments and outgoings, and charges for supply of utility services to the Common Parts;
    - b) insurance premiums;
    - c) the cost of maintaining the Property;
    - d) costs incurred in connection with persons employed;
    - e) sums due under any service contract;
    - f) any sums reasonably to be expended in an emergency;
    - g) the fees due to the Agent;
    - h) any bank charges; and
    - i) any other liability arising in the usual course of management;provided that (subject to clause 1.2.18) the Agent shall not apply any funds obtained from lessees under the terms of any lease other than to expenditure permitted by such lease.
  - 1.2.4 *Visits*
    - a) To visit the Property as often as may be agreed in the Written Agreement to identify all obviously necessary works of repair and maintenance.
    - b) To arrange such periodic health and safety, and fire risk assessments as the Agent shall reasonably consider are necessary (but the Agent is not required to advise on health and safety).
  - 1.2.5 *Notification of repairs in excess of the Agreed Expenditure Limit*  
Except in case of emergency to notify the Client of all reasonably necessary works of repair and maintenance estimated to cost more than the Agreed Expenditure Limit of which the Agent is aware and (following agreement of the Agent's responsibilities and Additional Charges) to instruct competent contractors to carry out the works and to administer the work of such contractors.
  - 1.2.6 *Repairs within the Agreed Expenditure Limit*  
To instruct competent contractors to carry out all reasonably necessary works of repair and maintenance within the Agreed Expenditure Limit and to administer the work of such contractors.

- 1.2.7 *Insurance*  
To administer building and other insurance insofar as instructed and permitted by law to do so.
- 1.2.8 *Contracts*  
To arrange on behalf of the Client and administer contracts for the supply of utility services, cleaning, lighting, gardening, security, safety and other services and facilities which the Client is liable under the leases to provide and for the operation, servicing and renewal of any fixed equipment (including without limit lifts and boilers).
- 1.2.9 *Staff*  
To employ and administer all persons necessary in the Agent's opinion to be employed in the management of the Property, to provide such persons with the required written particulars of employment and to dismiss any such persons (in consultation with the Client) insofar as it is reasonable to do so.
- 1.2.10 *Notification of lack of funds*  
To notify the Client immediately of any occasion when the Agent is unable to discharge any expenditure or is unable to instruct contractors in respect of works because of lack of funds.
- 1.2.11 *Client bank accounts*  
To maintain one or more bank accounts designated as Client accounts through which all Client monies are paid and to ensure that any interest accruing is credited to the Client (except where otherwise agreed).
- 1.2.12 *Estimate of expenditure*  
To prepare and submit to the Client an estimate of expenses for each year and such estimate shall form the basis of operations for the management.
- 1.2.13 *Accounts*  
To prepare a statement of account for each Accounting Period (or part period prior to termination) showing all receipts and all expenditure by the Agent.
- 1.2.14 *Evidence of expenditure*  
When requested to do so by the Client and any others entitled to production, to produce any receipts, VAT invoices or other evidence of the expenses paid.
- 1.2.15 *Give information to Client*
- 1.2.15.1 To keep proper records and to supply (subject to an additional charge) copies or print-outs of such records to the Client or other persons authorised by the Client upon reasonable request.
  - 1.2.15.2 To permit the Client's chartered accountants or solicitors by prior appointment to inspect the Agent's records specific to the Property.
  - 1.2.15.3 To ensure that all information (including computer records) are secure and to comply with the Data Protection Act 1998 and to indemnify the Client against all claims and legal costs arising in respect of failure to comply with this obligation.
- 1.2.16 *Dealings with lessees*  
To the extent that the Agent shall consider appropriate:
- 1.2.16.1 To deal with any reasonable enquiries made by lessees, any lessees' association, or prospective lessees, or their respective professional advisers relating to the Property.
  - 1.2.16.2 To consult with any residents' or lessees' association.
- 1.2.17 *Breaches of lessees' obligations*  
Upon the Agent becoming aware of the same, to notify the Client of any apparent breach of any Lease or of any unlawful or suspicious acts relating to use or occupation and in all such cases to seek instructions from the Client before demanding or accepting rent or other sums due under any relevant Lease or otherwise treating such Lease as subsisting.

1.2.18 *Compliance with legislation*

In carrying out the Services to comply with the provisions of all statutes and subordinate legislation and any codes of management practice required or provided for under any such legislation.

1.2.19 *Legal proceedings*

Where legal action is required to enforce or comply with any rights of or obligations owed to the Client, to notify the Client as soon as practical and on receiving the Client's instructions to do so to instruct the Client's solicitors (or if none have been notified to the Agent other solicitors believed by the Agent to have the appropriate expertise) to act as they may advise.

**2. Additional services**

2.1. The following services will be the subject of an additional charge either at a fixed fee, percentage fee or some additional charge rates:

- 2.1.1 Preparing specifications, obtaining tenders and administering works costing more than the Agreed Expenditure Limit.
- 2.1.2 Preparing statutory notices and dealing with statutory consultations.
- 2.1.3 Attending at courts and tribunals.
- 2.1.4 Advising on rating, planning, improvement, other grants and valuations.
- 2.1.5 Preparing replacement-cost assessments and handling insurance claims.
- 2.1.6 Considering leaseholders'/tenants' applications for alterations.
- 2.1.7 Advising on and dealing with assignments of leases, subletting, change of use and Home Information Pack requests.
- 2.1.8 Preparing schedules of dilapidation or condition for individual dwellings.
- 2.1.9 Copying documents, insurance policies and accounts.
- 2.1.10 Dealing with overseas telephone calls and faxes.
- 2.1.11 Providing information to facilitate sales of leasehold interests in individual dwellings including for the purposes of complying with Home Information Pack Regulations.
- 2.1.12 Administering accommodation for meetings and inspections of documents.
- 2.1.13 Working outside normal office hours at the Client's specific request.
- 2.1.14 Advising on termination of service contracts.
- 2.1.15 Carrying out duties of a company secretary.
- 2.1.16 Undertaking additional duties arising from any exercise by the lessees of their 'right to manage' or to form a commonhold.
- 2.1.17 Advising on and dealing with long term maintenance plans.

2.2. Additional charges in excess of the Additional Charge Limit shall only be recoverable if agreed by the Client but the Agent shall not be required to provide any additional services without such agreement being confirmed in writing in advance.

### **3. Authorisations of the Agent by the Client**

The Client authorises the Agent:

- 3.1. *Expenditure within limits*  
To expend any sums that are either within the Agreed Expenditure Limit or considered necessary by the Agent in cases of emergency.
- 3.2. *Expenditure to comply with law*  
To expend any other sums necessary to ensure compliance with the law subject where practicable to prior consultation with the Client.
- 3.3. *Reimbursement*  
Whenever the Agent properly expends any sums under this agreement, to reimburse itself from any funds held by the Agent (including after termination).

### **4. Client's obligations**

The Client agrees with the Agent throughout the subsistence of this agreement:

- 4.1. *To give information to the Agent*
  - 4.1.1 To provide (and as necessary procure that the Client's previous agents provide) to the Agent all information and documents or copies of them which are in the Agent's reasonable opinion necessary to provide the Service and to pay the Agent at the Additional Charge Rates for any work occasioned by any failure to do so.
  - 4.1.2 To keep the Agent fully updated with any information relevant to the Property from time to time.
  - 4.1.3 To give the Agent immediate notice of:
    - any claim for a right to manage;
    - an application to the Leasehold Valuation Tribunal;
    - the recognition of a residents association; and
    - any other notice which may go direct to the Client or any intention to sell all or part of the Property or extend or vary any lease.
- 4.2. *Float for expenditure*  
To pay the Agent the amount of the Float within seven days of this agreement and to pay any further sums requested by the Agent as necessary to maintain the amount of the Float held by the Agent.
- 4.3. *To give instructions to the Agent*
  - 4.3.1 On request by the Agent to do so, promptly to give instructions and decisions in writing, or if given orally to confirm them in writing within seven days.
  - 4.3.2 Not to give any instructions to the Agent which if complied with would involve a breach of clause 1.2.18 (Compliance with legislation).
  - 4.3.3 The Client (if not an individual) shall from time to time in writing nominate an individual Client's Authorised Person to give instructions to the Agent and shall confirm such appointment to the Agent.



- 4.4. *To pay Fees*
- 4.4.1 That the Agent is entitled to deduct sums from funds held but failing that the Client will pay to the Agent within seven days (without set-off or deduction):
- 4.4.1.1 the Fees set out in the Written Agreement;
- 4.4.1.2 all travelling and out-of-pocket expenses properly incurred; and
- 4.4.1.3 any VAT chargeable in addition to the Fees.
- 4.4.2 To pay interest on sums overdue to the Agent at the Interest Rate.
- 4.5. *Reimbursement of expenditure*  
To reimburse the Agent for all expenditure properly incurred in the provision of the Services.
- 4.6. *Indemnity*  
To indemnify the Agent against any liability suffered by the Agent and legal fees and costs properly incurred in the course of providing the Services unless caused by the Agent's negligence.
- 4.7. *Ratification*  
To ratify all acts, deeds and things properly done by the Agent in connection with the provision of the Services.
- 4.8. *Further indemnity*  
That the Client will pay to the Agent within 14 days of a demand from the Agent:
- 4.8.1 any sum paid or incurred in good faith by the Agent in connection with the management of the Property but which is judged by a court or tribunal to be irrecoverable from any or all lessees; and
- 4.8.2 any sum representing service charge monies withheld by any or all lessees of the Property for whatever reason.
- 4.9. *Temporary release of Agent*  
To temporarily release the Agent from any obligation to provide any service during such times as the Agent holds insufficient funds to do so.

## 5. **Bases of remuneration**

- 5.1. The basis or bases of the Agent's remuneration as recorded in the written agreement between the parties ('the Written Agreement') shall apply.
- 5.2. Unless otherwise agreed in writing Additional Services shall be remunerated at the Additional Charge Rates plus travelling expenses.
- 5.3. Any Fixed Fee specified in the Written Agreement shall be adjusted annually on the Annual Rate Review Date in proportion to the change in the [Retail Price Index].
- 5.4. Hourly rates will be reviewed on the Annual Rate Review Date but in the absence of written agreement of any revised rates those applying immediately previously shall continue to apply.

## 6. **Termination**

- 6.1. After the Term of the Agreement (or if the leaseholders enforce a right to manage or form a commonhold) either party may terminate this Agreement by the written notice specified.
- 6.2. If at any time either party is in breach of this Agreement:
- 6.2.1 the other may serve on the party in breach written notice specifying the breach or breaches and requiring them to be remedied within 30 days; and
- 6.2.2 if the party in breach fails within 30 days of the service of such notice to remedy such breach or breaches; then
- 6.2.3 the party who served the notice may terminate the Agreement upon serving written notice to that effect on the other party.

- 6.3. If either party becomes insolvent the other party may end this agreement immediately by serving notice upon the other to that effect.
- 6.4. On termination of this agreement the Agent will return to the Client all originals and copies of deeds relating to the Property and all other material relating to the Property necessary for the continuing management.

## **7. Liability of the Agent**

- 7.1. Unless caused by the Agent's negligence the Agent is not liable for any loss or legal or other expenses sustained as a result of:
- 7.1.1 the Agent having reasonably relied upon the Client to provide accurately all relevant information;
- 7.1.2 any inaccurate forecast by the Agent of future income or expenditure;
- 7.1.3 any defect or failure to identify any defect in the Property or plant, machinery, equipment or materials used for the Property whether or not such defect be latent or apparent on examination;
- 7.1.4 the act, omission or insolvency of any person other than the Agent.
- 7.2. The Client shall indemnify the Agent in respect of any claims made by a third party for any loss, injury, damage or legal or other expenses referred to in Section 7.1 above.
- 7.3. In no circumstances shall the Agent be liable for any consequential loss or damage except where death or injury results from negligence on the part of the Agent.

## **8. Miscellaneous**

- 8.1. *Notices*  
Any notice required to be given under this agreement must be in writing and served by delivery to the party concerned or (effective the following day) by sending it in a prepaid letter by registered post or recorded delivery to the party concerned at the address as given in this agreement or at any other address the party has notified in writing to the other party for the purpose.
- 8.2. *Governing law*  
This agreement shall be governed by and construed in accordance with English law.
- 8.3. *Contracts (Rights of Third Parties) Act 1999*  
For the purposes of the *Contracts (Rights of Third Parties) Act 1999* it is agreed that nothing in this agreement shall confer on any third party any right to enforce or any benefit of any term of this agreement.
- 8.4. *Assignment*  
This Agreement may only be assigned or transferred in whole or in part with the written consent of the other party thereto, and such assignment or transfer shall be varied only after written notice to that effect has been given.
- 8.5. *Disputes*  
The Agent will operate and notify to the Client an appropriate procedure for resolving complaints relating to the Agent's performance of the Service.

*Please note:* References to the masculine include, where appropriate, the feminine.

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