



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

**Case Reference** : LON/00AN/LVM/2014/0005

**Property** : 5 Peterborough Villas, London  
SW6 2AT

**Applicants** : Mrs Jackie Payne &  
Ms Frances Britto (for Mr E. Britto)

**Representative** : None

**Respondents** : Mr Andrew Strong (Manager)  
Ms Renuka Wickramaratne  
Mr Marcus Shields

**Representative** : None

**Type of Application** : Application for a variation of an  
order appointing a manager  
(section 24 Landlord & Tenant Act  
1987)

**Tribunal Members** : Mr M Martynski (Tribunal Judge)  
Mr P Tobin FRICS MCI Arb

**Date and venue of  
Hearing** : 16 June 2014  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 30 June 2014

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**DECISION**

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## **Decision summary**

1. The Management Order dated 24 February 2011 is:
  - (a) extended and will now expire at midnight on 23 February 2017
  - (b) varied as per the order attached to this decision.
2. There is no order for costs save that the Respondents must pay to the Applicants the total sum of £380.00 paid by them by way of tribunal fees. Those costs are to be paid by no later than 28 days from the date of this decision.

## **Background**

### *The building*

3. The building in question is Victorian four-storey house converted into four flats.

### *The legal interests*

4. The freehold of the building is jointly owned by Mr Britto, Ms Payne and Ms Wickramaratne.
5. The four leaseholders of the four flats are Mr Britto, Ms Payne, Ms Wickramaratne and Mr Shields.

### *The previous litigation*

6. There is unfortunately a history of litigation between the parties.
7. The litigation stems partly from the problem that the building had been neglected for many years and badly needed works of decoration and repair.
8. A Mr Price had managed the building at one point and there was a dispute as to by whom he had been instructed and whether or not he had the support (at first or at any time) of any leaseholder.
9. In September 2010, Ms Wickramaratne and Mr Shields applied to the tribunal<sup>1</sup> for an order formally appointing Mr Price as the Manager of the building.
10. That application was opposed by Mr Britto and Ms Payne. They agreed that there was a need for a Manager to be appointed, but did not want Mr Price. They put forward Mr Strong of Atlantis Estates as the proposed Manager.

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<sup>1</sup>Reference number LON/00AY/LAM/2010/0032

11. In a decision dated 24 February 2011, the tribunal appointed Mr Strong as Manager and Receiver of the building for a period of three years from that date.
12. There was then a dispute as to money and property held by Mr Price when he was managing the property. Mr Strong took proceedings against Mr Price seeking the handing over to him of uncommitted Service Charges held by Mr Price from his time as manager. That claim was dismissed after a hearing in the County Court.
13. In early 2012 Ms Wickramaratne and Mr Shields applied to the tribunal<sup>2</sup> for a variation of the Manager order. The variation they sought was to replace Mr Strong as Manager with Mr Price. That application was dismissed by the Tribunal.
14. Mr Strong then made an application to the tribunal dated 22 October 2012<sup>3</sup>. In that application Mr Strong sought various orders and guidance from the tribunal as to his continued management and regarding the costs that he had incurred in pursuing Mr Price. That tribunal made various orders of assistance to Mr Strong.

#### *The current application*

15. The current application made by Ms Britto on behalf of Mr Britto<sup>4</sup> and Ms Payne, dated 4 February 2014, is to extend Mr Strong's appointment.
16. Under the terms of the 2011 management order, Mr Strong's period of management expired on 23 February 2014.
17. An interim order was made by this tribunal on 21 February 2014 extending Mr Strong's appointment until further order of the tribunal.

#### *The building*

18. As at the date of the hearing before us, works of decoration and repair had been undertaken and mostly completed to the exterior and interior common parts of the building. There was no dispute as to the quality of those works or as to their eventual cost.
19. Accordingly, it appeared that the main historical problem in this matter had been effectively dealt with. There was no plan for future major works in the short or medium term.
20. The application to extend Mr Strong's term was opposed by Ms Wickramaratne and Mr Shields.

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<sup>2</sup> Reference number LON/00AN/LVM/2012/0001

<sup>3</sup> Reference number LON/00AN/LVM/2012/0009

<sup>4</sup> We were shown a power of attorney during the hearing from Mr Britto giving Ms Francis Britto authority to make and conduct this application on his behalf

## **The issues**

21. All the parties were at the hearing. Mr Strong attended for a large part of the hearing and the Respondents' concerns regarding his management of the building were put to him so that he could respond to them.
22. We spent a large amount of time attempting to ascertain from Ms Wickramaratne the reasons why she opposed the application. Her main points of contention (which we assume were shared by Mr Shields) were as follows.

### *Delay in getting major works done*

23. Ms Wickramaratne was concerned that funds were obtained from leaseholders in May 2013 and that the major works had not been started until early 2014.
24. Mr Strong said that he had to go through the statutory consultation process. He had chosen a small contractor to do the work because that contractor's tender for the work was in the order of £20,000 cheaper than other contractors. The result of this was that the contractor was going to take longer to do the job than a larger contractor. Mr Strong added that, given the history of dispute in this building, he wanted to make sure that he consulted fully and tried to take account of everyone's views in how the work should be carried out – that took time.

### *Communications regarding the starting of the works*

25. Ms Wickramaratne was concerned that she had not got answers to questions about the progress of the plans to start the works and that she was only given five days notice of the start of the works.
26. Mr Strong was in a difficult position regarding this and other allegations of this nature because Ms Wickramaratne had made general allegations of this nature in her Statement of Case but had not provided specific examples of communications that had been ignored by Mr Strong. It was therefore difficult for Mr Strong to answer the allegations. On this particular point, during the hearing, Ms Wickramaratne produced a copy of an email regarding the works, which she said had not been answered by Mr Strong. As Mr Strong had not been given advance notice of this email and, as he did not have his complete file with him, he was unable to comment.
27. Mr Strong was candid in admitting that he found dealing with Ms Wickramaratne quite difficult.

### *Works – previous specifications and history*

28. Ms Wickramaratne made the point that Mr Strong was given a specification of works that were needed in 2011. That specification was more or less the same as the specification that formed the basis of the works that had just been completed. Ms Wickramaratne said that rather than take this specification forward in 2011, Mr Strong instructed a building surveyor to produce, what turned out to be, a much longer and complicated specification. Mr Strong put that specification out to tender. The tenders that came in were for over £100,000. The work in the specification produced by the surveyor was significantly over and above that which was actually needed for the building.
29. When the leaseholders complained that the costs of the proposed works were far too high Mr Strong then took the matter in-house and came up with a much shorter specification of works that was very similar to the 2011 specification. The works in that specification were the works that had just been carried out. Those works were all that were required and there were no further major works planned.
30. Mr Strong admitted that, with the benefit of hindsight, he could have managed matters in a different way. He pointed to the difficult circumstances in existence when he first took over as manager. There was a history of serious dispute at the building; he felt obliged to chase the previous manager, Mr Price, for uncommitted service charges. As well as the litigation with Mr Price, Mr Strong felt it necessary to make an application back to the tribunal to obtain some direction and authority. The building was desperately in need of decoration and repair. Mr Strong was concerned that he fully identified the works necessary to the bring building up to standard. He agreed with the tenants that the works that were specified by the Surveyor that he had used were too extensive and that the resulting cost would have been too high.

### *Roof repairs*

31. Ms Wickramaratne and Mr Shields complained that there was a long running leak to the roof at the building which had caused significant damage to the interior of Mr Shields' flat. The leak has not been attended to by Mr Strong despite their complaints and eventually they had to employ a contractor to have the roof repaired themselves. They had sent the contractor's bill (for £400) to Mr Strong's company but that bill had not been authorised.
32. After looking at documents produced by Ms Wickramaratne, Mr Strong accepted that the invoice for the work had been sent to his company and that it should have been paid.

*Mrs Payne/communications generally with Mr Strong*

33. A further complaint from the Respondents was that, they were told by Mr Strong's employees that the only person authorised to give instructions regarding the building was Mrs Payne. An internal screen print from Mr Strong's records show that Mrs Payne was on their system as 'director'.
34. At this point there was a discussion regarding communication generally between Mr Strong, his company, and the leaseholders. Mr Strong said that the problem was that leaseholders were talking to various members of his staff rather than coming to him direct. Some of those members of staff would not be aware that he was the Manager of the property appointed by this tribunal and were not aware of the particular issues regarding the property.
35. For their part, Ms Wickramaratne and Mr Shields said that they get communications from various different people in Mr Strong's office regarding different matters. Also they had to deal with a variety of property managers and there seemed to be no consistency as to who was dealing with the property. They said that if they were written to by a member of staff regarding something relatively trivial, they would have thought it more appropriate to respond directly to this member of staff rather than involve Mr Strong.
36. Mr Strong conceded that there might be some confusion. He recognised this as a problem and stated that he would be committed to resolving this issue.

*Unreasonable service charges*

37. Although this was raised as a matter of concern, there was no real evidence presented on this by the Respondents. There were no complaints as to the quality and cost of the recent major works, and no real evidence regarding any other item of service charge that could be said to be unreasonable.
38. Mr Strong said that everyone's Service Charge account was in credit and there would be no need for any immediate service charge demand.

*Data protection*

39. Ms Wickramaratne complained that when she was helping Mr Shields access his account by going to Mr Strong's computer system, she was able to access his account by using her password.
40. Mr Strong explained that when the system was set up, all leaseholders were given the same password to access the system and were told to immediately change and individualise this password. The Respondents had failed to comply with this instruction and this is why one was able to access the other's account.

### *Impartiality/disputes between leaseholders*

41. Ms Wickramaratne was concerned that Mr Strong was not impartial when dealing with complaints between leaseholders. An issue regarding Mrs Payne's tenants' bicycles blocking the fire exit that she brought to Mr Strong's attention had not been dealt with. Mr Strong replied that he had in fact discussed this issue with Mrs Payne and had asked her to attend to it.
42. Ms Wickramaratne complained that nothing had been done regarding the noise issues from the Applicants flats'. She had compiled diary sheets and sent these to Mr Strong's company but the matter was not taken forward.
43. For his part, Mr Strong wondered whether or not the dispute between the parties, given that three of them were both freeholder and leaseholder, were something that the Manager should get involved with.
44. Ms Wickramaratne complained that the Applicants had used the same solicitors as Mr Strong's company.
45. She further complained that Mr Strong had decided that the cost of repairs of the front garden fence was a common expense despite the fact that it was the sole responsibility of one of the individual leaseholders. Mr Strong stated that he had made investigations into this and there was no evidence to support the assertion that the front fence belongs to any individual leaseholder.

### *Insurance*

46. The Respondents were concerned that Mr Strong has not disclosed the commission that his company were receiving in respect of the buildings insurance which they had organised. Mr Strong said his commission was 20%. In response to concerns as to whether or not the insurance obtained by Mr Strong was competitive, he said that his broker looks at the market every year.
47. Ms Wickramaratne stated that she had got a quote for buildings insurance on a like-for-like basis and that this was significantly cheaper than the premium obtained by Mr Strong's company. There was however no evidence produced in respect of this allegation from Ms Wickramaratne.

### *Location*

48. Ms Wickramaratne complained that Mr Strong's offices were in Reading and that when she and Mr Shields had wanted to see documents, they had been asked to travel to Reading.

49. Mr Strong responded that his company had a London office that was not too far from the subject property and that if given prior notice, arrangements could be made so that leaseholders could inspect documents in the London office rather than travel to Reading.

*Ms Wickramaratne as resident*

50. The Applicants sublet their flats in the building and do not live there. Ms Wickramaratne made the point that she does live in the building and that she could not cover the costs of a manager through a rental income. Given that she was actually living in building it was not just and convenient for there to be a manager.

*End of year 2014 accounts*

51. Ms Wickramaratne stated that Mr Strong had failed to provide accounts as ordered following the end of his initial three years as manager. Mr Strong replied that he felt that the figures that he had given to the tribunal and that were in the papers before the tribunal were sufficient.

*Other matters*

52. Various other matters were referred to in the Statements of Case of Mr Shields and Ms Wickramaratne which were not referred to directly during the hearing and in respect of which there was no other written evidence. We have read both Statements of Case carefully and have not found anything in them that we have found it necessary to specifically deal with in this decision or anything that would change our view of the matter and our decision.

**The tribunal's views**

*The need for a manager*

53. We are satisfied in this case that the variation (by way of extension of this order) will not result in a recurrence of the circumstances which led to the order being made in the first place. We find that it is just and convenient in all the circumstances of the case to vary the order by extending it.

*Mr Strong as Manager*

54. We were impressed with Mr Strong. He had no hesitation in admitting to problems that had arisen during his management and he appears to be entirely genuine in his desire, if his period of management was extended, to deal with those problems.
55. Mr Strong, when originally appointed in 2011, took on the most challenging of situations. It may well have been the case that he could have got the works at the property done sooner, we say that however



with the benefit of hindsight. In our view, the fact that he has got the works done at all and without complaint from any leaseholder as to the quality and cost of those works, is commendable.

56. We have no doubt that, because the divisions between the parties are as deep as ever, there is a continuing need for this building to be managed by an independent manager. In our view Mr Strong has demonstrated, both in the way that he has managed the property, and in his evidence to us, that he is capable of doing the job.
57. We are not convinced that there was any real evidence that Mr Strong was impartial as between the leaseholders. As stated above Mr Strong freely admitted that he found dealing with Ms Wickramaratne difficult.
58. As to the specific issues discussed above, we comment as follows: –

(a) *Communications*: Clearly there has been a problem with communications. This will be resolved in the following way; if the leaseholders receive communication from a member of staff at Mr Strong's company and that communication is routine, they should respond to that individual. If any leaseholder wishes to raise a matter that is not routine or which is of concern to them, that leaseholder should raise the issue directly with Mr Strong via e-mail. Mr Strong should commit to responding to any such e-mail within three working days, or if he is absent from the office on holiday, within three working days of his return from holiday. Mr Strong should, if possible, find a way of marking the file and/or the records on this building clearly so that members of staff realise that this is a building directly managed by Mr Strong and that any matter of concern or complaint should be referred to him directly.

(b) *Disputes between leaseholders*: Given the history of the dispute between the parties in this building, and taking into account the fact that three of the four leaseholders are also freeholders, it would not be appropriate for Mr Strong, as manager, to involve himself in a dispute between the individual freeholders except possibly where the actions of any party compromised physical health and safety at the building.

#### *The period of management*

59. There appears to be no prospect of the dispute between the parties in this building being resolved and as far as we can see there will be a continuing need for a manager in the foreseeable future. We consider that the minimum period of any management order should be a further three years.

#### *The management order*

60. The management order that was made in 2011 will remain in force with some minor modifications as per the attached amended order.

61. The original order provided for Mr Strong to be appointed as Manager and Receiver of the building. We now know that such an order is not possible and that an order of this kind should be for a Manager to be appointed<sup>5</sup> and for that Manager, if necessary, to be given certain functions of a Receiver.
62. Mr Strong proposed that his fees of management be increased to £250 plus VAT per flat per year. We consider this to be an entirely reasonable fee for an appointment of this nature and we will allow this fee with provision for an increase in respect of inflation over the period of the order.
63. The management order to apply from 24 February 2014 is attached.

### **Costs**

#### *Section 20C Landlord and Tenant Act 1985*

64. Ms Wickramaratne asked the tribunal to make an order that none of the costs incurred in this application be added to any future service charge. She argued that this application was essentially Mr Strong's pitch for further business.
65. We will not make the order sought by Ms Wickramaratne. We consider that this application was reasonably and properly brought and that, if necessary and allowable under the terms of the leases, costs associated with it should be paid by all leaseholders through the Service Charge.

#### *Tribunal fees*

66. Mrs Payne asked that the tribunal fees for the application of £380 be paid to her and Ms Britto by the Respondents.
67. We consider that it is appropriate that we make an order for the Respondents to pay the tribunal fees incurred by the Applicants. As stated above this application was necessary and reasonably made and was vigorously opposed by the Respondents. We have found completely in the Applicants' favour.

#### *Penalty costs*

68. Mrs Payne asked us to make an order that the Respondents pay to her the other expenses that she had incurred in making this application such as the costs of postage, printing and stationary.
69. We could only make such an order if we were of the view that the Respondents had behaved unreasonably during the course of this application. Whilst the Respondents have not been successful in

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<sup>5</sup>P C Residents (Finchley Road) Limited and Sekinat Abiola [2013] UKUT 0165 (LC)

opposing the application, they had the right to oppose and their behaviour during the proceedings was not unreasonable. We therefore decline to make this costs order.

**Mark Martynski, Tribunal Judge**  
**1 July 2014**

**LEASEHOLD VALUATION TRIBUNAL**

IN THE MATTER OF SECTION 24 LANDLORD AND TENANT ACT 1987 AND  
THE PROPERTY AT 5 PETERBOROUGH VILLAS, LONDON SW6 2AT

APPLICANTS: MS R WICKRAMARATNE AND MR M SHIELDS

RESPONDENTS: MR E BRITTO, MR D ROBERTS, MRS J PAYNE AND MS R  
WICKRAMARATNE

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ORDER FOR THE APPOINTMENT OF A MANAGER UNDER SECTION 24 OF  
THE LANDLORD AND TENANT ACT 1987

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1. In this Order:
  - A. "The Property" includes all those parts of the property known as 5 Peterborough Villas, London SW6 2AT;
  - B. "The Landlord" means the freeholder of the Property from time to time, currently understood to be Mr E Britto, Mr D Roberts, Mrs J Payne and Ms R Wickramaratne jointly;
  - C. "The Manager" means Mr A Strong of Atlantis Estates Ltd, 23/24 Market Place, Reading RG1 2DE; and
  - D. "The Tenants" means the tenants from time to time of the various parts of the Property.
2. In accordance with Section 24(1) of the Landlord and Tenant Act 1987 the Manager shall be appointed as ~~receiver and~~ manager of the Property.
3. The Order shall continue for a period of 3 years from ~~the date hereof.~~ **24 February 2014.**
4. The Manager shall manage the Property in accordance with:
  - (a) the respective obligations of the Landlord and the Tenants, in particular with regard to repair, decoration and insurance of, and provision of services to, and the Property;
  - (b) The duties of a manager set out in the Service Charge Residential Management Code ("the Code") or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of

State pursuant to section 87 of the Leasehold Reform Housing and Urban Development Act 1993; and

- (c) the Schedule attached to this Order as if it were expressed not as an agreement with a freeholder as client but instead as a series of obligations owed to the Tribunal (albeit that the day to day relationship will be with the Tenants), with the following additions/amendments:-
- the Term shall be 3 years from the date of this Order;
  - the management fee shall be ~~£868.09~~<sup>£1000.00</sup> per annum plus VAT and shall ~~not~~ be increased in the second and third years; and *in line with inflation*
  - the amount of all additional charges set out in Appendix III to the Schedule attached to this Order shall apply for all 3 years and these charges ~~shall not therefore be~~ *may be* increased in the second and third years.
5. The Manager shall be remunerated by all the Tenants for the functions and services he provides in accordance with the Schedule attached to this Order.
6. The Applicants, the Respondents and the Manager shall each be at liberty to apply to the Leasehold Valuation Tribunal for further directions where it is necessary to do so and they are unable to resolve matters amongst themselves.

CHAIRMAN.....  
Mr P Korn

Date: 24<sup>th</sup> February 2011

MARK MARZYNSKI  
JUNE 2014.



**atlantis**  
estates

## AGENCY AGREEMENT

### BETWEEN

**(THE CLIENT)**

**[Freeholder / Management Company / RMC]**

whose registered office is at

**[Address]**

**AND**

**(THE MANAGER)**

**Atlantis Estates Ltd**

Whose registered office is at

**23/24 Market Place, Reading RG1 2DE**

**FOR**

**(THE PROPERTY)**

**[Property Address]**



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### ***APPENDIX I THE FEE AGREEMENT***

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### ***APPENDIX IV THE TAKEOVER AND HANDOVER LISTS***

# 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 Royal Institute of Chartered Surveyors (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 including fidelity cover 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 allow the Client access to all records and accounts appertaining to the management of the Property.



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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 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.
- 5.5 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.

## **6 Commissions**

- 6.1 The Manager may have arrangements with insurance companies/brokers and other contractors that allow the receipt of commissions.
- 6.2 The Manager may deduct commission owed in respect of the property when making payments to those contractors in respect of the property.

## **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 Lloyds TSB Bank PLC 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 an inflationary amount equal to 5% of the existing management fee may be applied.

## **9 Handling of Client's Money**

- 9.1 The Manager must comply with statutory and Association of Residential Managing Agents (ARMA) and Royal Institute of Chartered Surveyors (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.

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- 9.2 The Manager will open two designated bank accounts 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 accounts 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 accounts shall be a credit to that account.
- 9.6 The expenditure authorisation limit of the Manager without referral to the Client shall be £1000 exclusive of VAT (per item), however this shall be within the overall context of any annual service charge budget.
- 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 properly incurred in 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 properties, or plant and machinery, equipment or materials used for the properties, whether or not such defect be latent or apparent upon examination;
  - d) the act, omission or insolvency or 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 referred to in the 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 referred to in the 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.
- 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.

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- 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 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 and the Client will cover the Managers reasonable administrative costs in doing so.

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

### **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 "Alternative Dispute Resolution (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 adjudication under clause 13.3.

13.3 If the Parties have not settled the dispute by mediation within 42 days from when mediation began/or the date of the Alternative Dispute Resolution notice, the Client can refer the dispute to the Association of Residential Managing Agents with a view to using the Association's Residential Management Adjudication Scheme run by IDRS Ltd, a wholly owned subsidiary of the Chartered Institute of Arbitrators.

### **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 e mail. 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. Invalidity**

If any term or provision in this agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law, that term or provision or part shall to that extent be deemed not to form part of this agreement and the enforceability of the remainder of this agreement shall not be affected.

**19. The Property**

[DESCRIPTION OF DEVELOPMENT]

Signed on behalf of the Client.....

[Print name and position.....]

In the presence of: Signature.....

Name in capitals.....

Dated.....

Signed on behalf of the Manager.....

[Print name and position.....]

In the presence of: Signature.....

Name in capitals.....

Dated.....

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## APPENDIX I FEE AGREEMENT

The **Term** of this Agreement is [PERIOD], starting on [DATE]

The Setting-up fee is [AMOUNT] and is payable as soon as this Agreement is signed.

The Management Fee is payable for the services in Appendix II and is [AMOUNT] per annum.

The Management Fee is to be paid monthly 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 10% of the total amount invoiced and payable upon receipt of rent.

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**APPENDIX II  
THE SERVICE**

Description	Frequency (if applicable)
<b>Handover of Development</b>	
Creation of leaseholder website within our Pathway system ( <a href="http://pathway.atlantisestates.co.uk">http://pathway.atlantisestates.co.uk</a> ).	
The provision of lessee 'welcome packs'.	
Maintaining adequate/suitable files and records of lessee contact details, management information and accounting records.	
The collection of lessee arrears existing at the time of takeover.	
Obtaining and communicating with previous agent regarding handover of documentation and funds.	
<b>Accounting related matters</b>	
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 service charges.	
Supplying quarterly financial reports to the Client which will contain details of current service charge arrears, actual versus budget report, nominal expenditure breakdown and details of current bank statements.	
Providing information to accountants for preparing annual accounts for audit or completion.	
Using best endeavours to collect current and ongoing routine service charge arrears.	
<b>Property related matters</b>	
Arranging any necessary insurance and dealing with general claims.	
Entering into and managing maintenance contracts on behalf of the Client.	
Viewing on a quarterly basis, 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. A written report will be provided to the Client after each inspection.	
Preparing specifications and contracts for minor works and services.	
Providing general advice on the assessment of major repairs.	
<b>Communication and advice to leaseholders and the Client</b>	

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Providing reasonable management information to the lessees.	
Dealing with day-to-day lessee issues and reporting to and taking instructions from the Client.	
Providing copy documents including insurance policies, copies of invoices and receipts.	
Regular consultation with the client on management matters.	
Consultation with the client on long-term agreements except for consultation on the appointment of a managing agent.	
Carrying out appraisals of reserve funds including surveys of Property and reporting to Client.	
Advising the Client on all relevant legislative and regulatory issues and general interpretation of leases.	
<b>Company services</b>	
Holding annual meetings / annual general meetings with residents.	
Attending meetings of directors.	
Acting as Company Secretary to the Client.	
Filing statutory company returns.	

**APPENDIX III  
ADDITIONAL CHARGES**

Description	Charge
Responding to requests for information for Home Information Packs.	£88.13 payable by individual leaseholder
Responding to pre-contract enquiries.	£146.88 payable by individual leaseholder
Changes of use and handling requests for any necessary approvals, lease extensions and variations.	£88.13 payable by individual leaseholder
Dealing with any major insurance claims over and above a claim value of £25,000.	£41.13 per hour up to a maximum of 10% of the insurance claimed value
Dealing with requests for improvements or alterations by leaseholders and related party wall matters.	£58.75 per hour up to a maximum of £230
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 .	Costs to be paid by individual leaseholder if lease permits
Issuing membership or share certificates and registration of new lessees upon transfer of lease.	£205.63 payable by individual leaseholder
Calling extraordinary meetings: prepare notices, attend and take minutes.	£185.25
Fees of specialist advisers.	To be confirmed at time of instruction
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.	£58.75 per hour with a cap at 10% of the overall cost of the project
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.	To be negotiated and confirmed if instructed



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## **APPENDIX IV THE TAKEOVER AND HANDOVER LISTS**

### **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 management of the Property.

### **THE PROPERTY**

- 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 ongoing and copies of S.20 notices and responses given.
- 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**

- 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**

- 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**

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

### **LEGAL**

- 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.

### **ACCOUNTING INFORMATION**

- 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.

**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 taken or other special circumstances.
- Pas As You Earn (PAYE) records for the current period and the 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 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.
- Construction, Design & Management (CDM) file if appropriate.

**COMPANY INFORMATION**

(Where a Resident Management Company is the client)

- 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 of any Directors and Officers Liability Insurance.

