



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

Case Reference	:	CHI/18UB/LAM/2016/0005
Property	:	Gaveney House, 5 Salterton Road, Exmouth EX8 2BW
Applicant	:	1. Debbie Hooper 2. Michael Hooper 3. Anthony Parker 4. Yvonne Parker 5. Michael Roberts 6. Su Roberts 7. James Scullion
Representative	:	For Applicants 1-6 Foot Anstey LLP
		For Applicant 7 Tozers LLP
Respondent	:	Michael Hooper Anthony Parker Michael Roberts James Scullion
Representative	:	As for Applicants
Type of Application	:	Appointment of a manager
Tribunal Member	:	Mr D Banfield FRICS
Date of Decision	:	30 June 2016

DECISION

The Tribunal determines that it is just and convenient to appoint Mr Martin Woodhead as a manager under Section 24 of the Landlord and Tenant Act 1987 in the terms of the attached order.

Background

1. The Applicants are the seven tenants of the property which is comprised of four flats. Four of the Applicant tenants are also the Respondent Landlord.
2. The application is described as unopposed and for this reason and that all parties likely to be affected by the application are party to it, dispensation is sought from the need to serve a notice under section 22.
3. The respondents are said to be in breach of their repairing obligations and have been unable to agree a programme of management for the building. They therefore seek an order from the Tribunal appointing Mr Martin Woodhead as a manager under Section 24 of the Landlord and Tenant Act 1987 ("the Act").
4. The parties asked that as the matter is uncontested that the Tribunal make a decision on the papers.
5. On 6 April 2016 the Tribunal made Directions that it was prepared to determine this application on the papers subject to the provision of further information which has now been received.

Submissions

6. In their application the Applicant tenants requested that the Tribunal dispenses with the requirement to serve a notice under section 22 Landlord and Tenant Act 1987 as the Landlord and Tenants are the same and are all fully aware of the application. The property requires urgent maintenance and attempts to obtain agreement for works to be carried out have failed. The tenants find the maintenance and management of the property burdensome and unmanageable. Service charge demands have not been served in accordance with the leases and the consultation requirements of S.20 Landlord and Tenant Act 1985 not complied with. The tenants now agree that they require advice on the long term maintenance of the building and a schedule of works which is equitable for all the Tenants.
7. In a statement dated 25 April 2016 Mr Woodhead confirms that he is prepared to accept the appointment, that he is aware of the nature of a court appointed manager, will comply with the current RICS management code, and gives details of other properties where he has been or is currently the manager appointed under s.24. Attached to his statement is a draft order and management agreement in which he sets out the terms of his engagement including remuneration. A copy of his firm's current professional indemnity insurance cover was also attached.

The Law

Landlord and Tenant Act 1987

S.24 Appointment of manager by the court.

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

such functions in connection with the management of the premises, or such functions of a receiver,

or both, as the tribunal thinks fit.

(2) the tribunal may only make an order under this section in the following circumstances, namely—

where the tribunal is satisfied—

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

(ii).

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

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22 the tribunal may, if it thinks fit, make such an order notwithstanding-

that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3)”

Decision

8. The Tribunal is satisfied that the service of a notice under S.22 is unnecessary in all the circumstances dispensation is therefore given.
9. The Tribunal is also satisfied that the circumstances that have been described in paragraph 6 above and which have not been challenged by the Respondents give sufficient grounds for the Tribunal to make an appointment under s.24.
10. The Tribunal are satisfied that Mr Woodhead is an experienced manager and although this is a personal appointment he is a member of an established practice and can no doubt call upon their resources if required. He holds a number of other S.24 appointments and the Tribunal therefore determine that it is just and convenient to appoint Mr Martin Woodhead as a manager under Section 24 of the Landlord and Tenant Act 1987 in the terms of the attached order.

D Banfield FRICS
30 June 2016

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking



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

Property : CHI/18UB/LAM/2016/0005

Property : Gaveney House, 5 Salterton Road, Exmouth
EX8 2BW

Applicant : 1. Debbie Hooper
2. Michael Hooper
3. Anthony Parker
4. Yvonne Parker
5. Michael Roberts
6. Su Roberts
7. James Scullion

Respondent : Michael Hooper
Anthony Parker
Michael Roberts
James Scullion

ORDER

IT IS ORDERED THAT:-

1. In accordance with section 24(1)(a) Landlord and Tenant Act 1987 the Tribunal appoints Mr Martin Woodhead (“the Manager”) as the manager of Gaveney House, 5 Salterton Road, Exmouth, Devon EX82BW registered with title number DN218589.
2. The Order shall continue for a period of 4 years from 28 days from the date of this Order.
3. The Manager shall manage the Property in accordance with:
 - a. The Management Agreement attached to this Order.
 - b. The respective obligations of the Landlord and the leases by which the flats at the Property are demised by the Respondents (“the Leases”) and in particular with regard to repair, decoration, provision of services and insurance of the property.
 - c. The duties of a manager set out in the third edition of the Service Charge Residential Management Code (“the Code”) or such

replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993.

4. In addition, in accordance with section 24(1)(b) Landlord and Tenant Act 1987 the Manager is appointed as receiver of the Landlord to the following extent:
 - a. To receive ground rents payable under the lease.
 - b. To receive those service charge funds currently held by the Landlord.
5. The Manager will maintain professional indemnity insurance in the sum of at least £2,000,000 and will provide a copy to any lessee within 28 days if requested.
6. No later than 28 days after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants shall transfer to the Manager all the accounts, books, records and funds (including without limitation, service charge reserve fund).
7. The rights and liabilities of the Company and/or the Lessor arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall become rights and liabilities of the Manager upon 28 days from the date of this Order.
8. The Manager shall apply the ground rent and all other amounts received by him (other than those representing her fees) in the performance of the Respondent's covenants contained in the said leases.
9. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) **in accordance with the Management Agreement attached to this order.**
10. The following powers are without limitation to the generality of the Order, expressly conferred on the Manager;
 - a. The power to appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his powers and duties.
 - b. The power in his own name, acting on behalf of the Landlord to bring, defend or continue any action or other legal proceedings in connection with the Leases or the Property.

- c. The power to receive, consider, refuse or grant or otherwise deal with applications for consents or licences and like matters as the Lessees may require under the terms of their leases.
 - d. The power to enforce the Landlord's and the Lessee's covenants under the leases.
11. The Lessees and their servants and agents shall give reasonable assistance and co-operation to the Manager in pursuance of his duties and powers under this Order and shall not interfere with the exercise of any of his said duties and powers.
12. The Lessees shall pay into the Manager's client account their proportionate share of any estimate of the costs of maintenance or improvement works inclusive of VAT and consultancy fees as may be demanded by the Manager in writing together with any further costs that the Manager may incur in discharging his functions under this Order. All such sums shall be paid within two week's written demand by the Manager.
13. The Manager shall be entitled to apply to the Tribunal for further directions.

Ordered this thirtieth day of June 2016

D Banfield FRICS

Attachments:

Management Agreement

MANAGEMENT AGREEMENT

BETWEEN

Anthony George Parker, Michael Roberts
Michael David Sean Hooper and James Scullion

and

Drew Pearce 1748 Ltd

For

GAVENEY HOUSE
5 SALTERTON ROAD
EXMOUTH
DEVON
EX8 2BW

Dated 10 December 2015

**SECTION A
BASIC TERMS**

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

Date of this agreement:	
The Client: (name and registered office or address)	
Registered number:	
Tel no:	
Email:	
The Agent: (name and address)	Mr Martin Woodhead of Drew Pearce 1748 Limited 14 Cathedral Close Exeter Devon, EX1 1HA
Registered number:	
Tel. no:	01392 201748
Email:	mhw@drewpearce.co.uk
The Building (address(es)/description and land registry title number)	Gaveney House 5 Salterton Road Exmouth Devon EX8 2BW

Flats are parts of the Building demised on Lease agreements. For the purposes of identification only described as follows:

Flats 1 - 5	Gaveney House 5 Salterton Road, Exmouth, Devon, EX8 2BW
-------------	--

and such other demised premises as shall be added to this agreement by way of written agreement between the Client and Agent from time to time.

Common Parts are areas of the Property not demised to the Lessees, but which are provided for the use of some or all Lessees in common.	
Lessees are individuals or other legal entities holding a Lease.	
A Lease is an agreement between the Client or his predecessors in title to demise a part of the Building for a term of years.	
Term of agreement:	[insert number] months from [insert date]
Notice period to terminate:	3 months
Visits (Clause 1.1.5):	once every 3 months
Agreed Expenditure Limit (Clause 1.1.4):	£1,000 plus VAT
Accounting Period:	one year ending on 30 April in each year
Accounting Report (Clause 1.1.15):	to be prepared within 2 months of the end of the Accounting Period
Float (Clause 4.2):	None
Interest Rate (Clause 4.4.2):	3% above the base rate of HSBC Bank plc
Client's Authorised Person (Clause 4.3.3):	
Basic Fee (Clause 5.1): [delete whichever bases are not to apply]	Set up fee of £250 plus VAT. A Fixed Fee £1,500 inclusive of VAT will be paid in advance. Chargeable on 01 January, 01 April, 01 July and 01 October each year. (An initial inspection and report on the condition for the building at a fee of £1,250 plus VAT). The Agent shall not be entitled to retain any commission received by him or her in respect of the Building, without the approval of the Client.
Additional Charge Rates (Clause 5.2):	The hourly rates for additional work charged by the hour to be: for senior staff £150.00 for junior staff £80.00 for support staff £35.00
Additional Charge Limit (Clause 2.2):	N/A

Allowance per mile for car travel (Clause 5.2);	£0.50 per mile
Annual Rate Review Date (Clause 5.4);	N/A

Variations to Section B - Standard Terms

In Section 1 we have priced the service on the basis that our service does not extend into protracted correspondence and/or disputes. Should this become the case then we reserve the right to charge additional fees as set out in Section A.

Signed as a deed	
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]
Date:	
in the presence of:	
Signature of witness:	
Name of witness in CAPITALS:	
by the Agent:	
Name in CAPITALS:	MARTIN WOODHEAD
Signing as:	director, duly authorised to do so partner, duly authorised to do so the Agent in person [delete all except one]
Date:	
in the presence of:	

Signature of witness:	
Name of witness in CAPITALS:	

Provision of Services Regulation 2008

Drew Pearce is a trading name of Drew Pearce 1748 Ltd whose registered office address is at 14 Cathedral Close Exeter EX1 1HA, 8774167. Drew Pearce 1748 Ltd trades as a Limited Company and is registered in England and Wales. Drew Pearce 1748 Ltd is a member of RICS and the registration number is 002165.

**SECTION B
STANDARD TERMS**

1. The Service

1.1. The Agent accepts in consideration of the Basic Fee the following obligations in respect of the Building to be performed as Agent of the Client with reasonable skill and care in accordance with the principles of good estate management for the Term and thereafter until terminated by either party giving the other party written Notice of not less than the period specified in BASIC TERMS above:

1.1.1. *Collect service charges*

To send demands and statements of account (in accordance with the requirements of section 21b of the Landlord and Tenant Act 1985) to the Lessees in respect of the charges incurred, including Agent's fees, in managing the Building (the "Service Charges") to the standard agreed between the Client and the Agent. To use reasonable endeavours to collect the Service Charges and any arrears and interest payable including instructing, with the Client's consent and at the Client's expense, solicitors or debt recovery agents, subject to any statutory procedures that need to be followed. For the avoidance of doubt the Agent is not liable for any failure on the part of the Lessees to pay Service Charges in whole or in part.

1.1.2. *Collect ground rent*

To send demands and statements of account (in accordance with the requirements of section 47 of the Landlord and Tenant Act 1987) to the Lessees in respect of ground rent payable under the terms of the Lease. To use reasonable endeavours to collect ground rent and any arrears and interest payable including instructing, with the Client's consent and at the Client's expense, solicitors or debt recovery agents, subject to any statutory procedures that need to be followed. For the avoidance of doubt the Agent is not liable for any failure on the part of the Lessees to pay ground rent in whole or in part.

1.1.3. *Notify overdue payments*

To report to the Client from time to time as to sums overdue from Lessees.

1.1.4. *Preparation of Budgets*

Prepare budgets for each accounting period in advance of collection of service charges and reserve fund contributions and provide up to three reports per annum to the client detailing income and expenditure against budget.

1.1.5. *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) any taxes, general, water, sewerage and other rates, charges, assessments and outgoings, and charges for supply of utility services to or relating to the Common Parts;
- b) insurance premiums for the Common Parts, the structure and fabric of the Building and any necessary third party liability;
- c) the cost of maintaining the Building;
- 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 always that (subject to clause 1.2.1) the Agent shall only apply funds obtained from Lessees under the terms of any Lease to expenditure permitted by said Lease and shall not be required to expend any funds or settle any account if it has not been provided with the funds to do so either by way of Service Charge payments from the Lessees or by the Client.

1.1.6. *Visits*

- a) To visit the Building at the frequency set out in BASIC TERMS above to identify all obviously necessary works of repair and maintenance. The Agent will only carry out a visual inspection and will not carry out any exposure works or use any specialist equipment and will not be able to identify any work that is not apparent on a cursory inspection.
- 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 and fire risk assessment).

1.1.7. *Repairs within the Agreed Expenditure Limit*

Subject to clause 1.2 below, 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.

1.1.8. *Insurance*

The Agent is authorised under the RICS Designated Professional Scheme to arrange and assist in the administration and performance of contracts of insurance. Subject to clauses 4.10 and 2.1.5 the Agent will arrange, administer and maintain throughout the Term of this agreement (and any extension beyond the original Term) such policies of insurance as are required in accordance with the terms of the Leases, on the instructions of the Client and/ or in the Agent's professional opinion for the effective management of the Building.

1.1.9. *Contracts*

Subject to clause 1.2, 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 that the Client is liable under the Lease to provide and for the operation, servicing, provision and renewal of any fixed equipment (including without limit lifts and boilers) and to obtain on the Client's behalf any necessary licences, certifications or permissions required for the operation of the Building.

1.1.10. *Staff*

Subject to clause 1.2, to arrange for the employment and administration of all persons on behalf of the Client necessary in the Agent's opinion to be employed in the management of the Building, 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.

1.1.11. *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 obligations due under the Agreement because of lack of funds. The Agent will not be responsible for any losses incurred by the Client due to failure to provide the Agent with sufficient funds to comply with the obligations under this agreement or the Client's obligations under any Lease.

1.1.12. *Client bank accounts*

To maintain with a bank recognised by the appropriate British authorities one or more deposit accounts designated as Client accounts for the Building through which all monies received are paid. Funds collected from lessees are to be held by the Agent on trust in accordance with the provisions of section 42 Landlord and Tenant Act 1987 and any interest earned on such funds is to be credited to the trust fund. Interest on any funds held by the Agent and belonging to the Client is to be credited to the Client (except where otherwise agreed).

All our Client Bank accounts are maintained in accordance with rules set out by our professional body, the Royal Institution of Chartered Surveyors (RICS). The account is an interest bearing account. Interest is credited to the account on a quarterly basis. The money is available upon demand. Interest will be paid directly into the account. No bank interest or bank charges will be debited without prior agreement.

Neither we, nor RICS, is responsible for the return of client monies in the event of the bank not being able to honour its obligations to customers. The RICS Clients' Money Protection Scheme does not cover losses owing to bank failure.

Deposits at UK banks may be eligible for protection under the Financial Services Compensation Scheme. For details of current FSCS eligibility requirements and compensation limits please consult www.fscs.gov.uk. In the event of matters giving rise to a claim under FSCS, we will do our best to assist you and FSCS in the processing of any claim. Neither we nor RICS give any assurance or guarantee as to your ability to make a claim or the amount of any such claim and no responsibility is accepted in this regard.

1.1.13. Accounts

If instructed by the Client, to prepare accounts for any Accounting Period (or part period prior to termination) showing all receipts and all expenditure by the Agent, and arranging for these to be examined and approved by a suitably qualified accountant.

1.1.14. 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.

1.1.15. Give Information to Client

- a) such records to the Client or other persons authorised by the Client upon reasonable request.
- b) To permit the Client's chartered accountants or solicitors by prior appointment to inspect the Agent's records specific to the Building.
- c) To keep proper records and to supply (subject to an additional charge) copies or print-outs of 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.

1.1.16. Dealings with Lessees

To the extent that the Agent shall consider appropriate or as required by law:

- a) To deal with any reasonable enquiries made by Lessees, any Lessees' association, or prospective Lessees, or their respective professional advisers relating to the Building.
- b) Subject to the Client complying with clause 4.1, and clause 2.1.11, to respond to any requests for service charge information from Lessees in accordance with section 21 of the Landlord & Tenant Act 1985 and to supply any documents requested pursuant to section 22 of the Act.
- c) To consult with any residents' or Lessees' association.

1.1.17. Breaches of Lessees' obligations

Upon the Agent becoming aware of a breach of the Lessees' obligations, 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.

1.1.18. Compliance with legislation

In carrying out the Service, 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.

1.1.19. 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 at the Client's own expense.

1.2. Use of contractors

1.2.1. Liability for contractors

Any contractor instructed by the Agent, whether to carry out inspections, repairs or for any other reason, will be instructed on behalf of the Client. The Client will have ultimate responsibility for meeting the contractor's invoice notwithstanding any agreement made between the Client and Agent for the Agent to pay such invoices on the Client's behalf. The Agent will not be liable for any failure or negligence of the contractor save to the extent that such failure or negligence was the result of the Agent's own negligence.

1.2.2. *Connected businesses:*

The Agent or its employees may have a personal connection or business relationship with specific contractors instructed on the Client's behalf. Details of any specific connection or relationship are available upon written request.

1.3. *Employment contracts*

The Client will be responsible for providing any necessary training that the Agent considers appropriate for any staff and will allow the Agent to seek such specialist advice as the Agent shall in its sole discretion deem necessary at the Client's expense. Such advice will include but is not limited to health and safety records, pay, taxation, Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and discrimination law.

1.4. *Company secretary*

Carrying out the duties of Company Secretary (Please note that as part of the process of appointing directors we will carry out routine Anti-Money identity checks).

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. Cyclical maintenance (Pre-Planned Maintenance)
To undertake a cyclical maintenance programme if agreed in advance with the Client, for the Common Parts of the Building. For the avoidance of doubt, if the Leases specify a cyclical maintenance programme, it is the Client's responsibility to notify the agent of such a programme and to agree it with the Agent.
 - 2.1.3. Preparing statutory notices and dealing with statutory consultations.
 - 2.1.4. Attending at courts and tribunals and any work done in relation to preparation and conduct of proposed or issued legal proceedings including claims against Lessees' mortgagees.
 - 2.1.5. Advising on rating, planning, improvement, other grants and valuations.
 - 2.1.6. Preparing replacement-cost assessments and handling insurance claims.
 - 2.1.7. Considering Lessees' applications for alterations and variations.
 - 2.1.8. Advising on and dealing with assignments of leases, charges, subletting, and change of use requests.
 - 2.1.9. Preparing schedules of dilapidation or condition for individual Flats.
 - 2.1.10. Providing information to facilitate sales of Leases in Flats, including for the purposes of producing energy performance certificates and answering specific enquiries of tenants, purchasers and their professional advisers. Our current charge is [Insert amount] this may be reviewed annually.
 - 2.1.11. Undertaking additional duties arising from any exercise by the Lessees of their right to manage, enfranchise or to form a Commonhold.
 - 2.1.12. Advising on and undertaking long-term maintenance plans (maybe referred to as Pre-Planned or Cyclical) if agreed in advance with the Client, for the Common Parts of the Building. For the avoidance of doubt, if the Leases specify a cyclical maintenance programme, it is the Client's responsibility to notify the agent of such a programme and to agree it with the Agent.
 - 2.1.13. Advising on and dealing with issues relating to breaches of covenants by Lessees.

- 2.1.14. Administration charges for the collection of rent/ service charge. We reserve the right to charge an administration for the issuing of a third chasing letter at the current rate of [Insert amount]. In the event this amount is not recoverable from the lessee under the lease, we would charge the management company for this service.
- 2.1.15. At the end of our period of management the Agent will produce a management handover pack. Our current charge for this service is [Insert Amount].
- 2.1.16. Providing any other services or undertaking any duties reasonably requested by the Client or in performance of any legal obligations which are not expressly included in the Service defined above.
- 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 where failure to act promptly will carry significant risk of injury to persons or substantial damage to the Building or Flats or any part of them.

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. 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 Building or Flats from time to time.
- 4.1.3. To give the Agent immediate notice of:
 - a) any claim for a right to manage;
 - b) any application to the First-tier Tribunal (Property Chamber);
 - c) the recognition of a residents' association; and
 - d) any other notice that may go direct to the Client or any intention to sell all or part of the Building 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. 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 1.1.18.
- 4.3.3. Where the Client is not an individual, to nominate in writing from time to time an individual Client's Authorised Person to give instructions to the Agent and to confirm such appointment to the Agent.
- 4.4. *Fees*
- 4.4.1. That the Agent is entitled to deduct sums from funds held but failing that the Client agrees to pay the Agent within seven days (without set-off or deduction):
- the Fees set out in this Agreement and any subsequent agreements;
 - all travelling and out-of-pocket expenses properly incurred; and
 - any VAT chargeable in addition to the Fees.
- 4.4.2. To pay simple interest on a daily basis on sums overdue to the Agent at the Interest Rate.
- 4.5. *Reimbursement of expenditure*
To reimburse the Agent within fourteen days of receipt of written request for payment all expenditure properly incurred in the provision of the Service.
- 4.6. *Warranty and Indemnity*
- 4.6.1. The Client acknowledges that the appointment of the Agent under this agreement may be a Qualifying Long Term Agreement pursuant to section 20 of the Landlord and Tenant Act 1985 (as amended by section 151 of the Commonhold and Leasehold Reform Act 2002). The Client warrants that it has complied with the statutory consultation requirements in relation to this agreement. The Agent shall not be liable for any loss suffered by the Client in relation to the Client's failure to comply with its statutory obligations in relation to entering into this agreement. The Client shall provide to the Agent such information as the Agent may reasonably require to satisfy itself that the Client has complied with its statutory obligations.
- 4.6.2. To indemnify the Agent against any liability, penalties, costs, expenses or losses suffered by the Agent and any legal or other professional fees and costs properly incurred during the Term of the agreement in the course of providing the Service unless caused by the Agent's negligence.
- 4.7. *Access*
To provide the Agent, and those instructed by it, with uninterrupted access to the Building and other facilities as required by the Agent to deliver the Service.
- 4.8. *Ratification*
To ratify all acts, deeds and things properly done by the Agent in connection with the provision of the Service.
- 4.9. *Further Indemnity*
To pay the Agent within 14 days of a demand from the Agent:
- any sum paid or incurred in good faith by the Agent in connection with the management of the Building that is judged by a court or tribunal to be irrecoverable from any or all Lessees; and
 - any sum representing service charge monies withheld by any or all Lessees of the Building for whatever reason.
- 4.10. *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 this agreement between the parties shall apply.

- 5.2. Unless otherwise agreed in writing Additional Services shall be remunerated at the Additional Charge Rates plus travelling and any other out of pocket expenses.
- 5.3. Any Fixed Fee specified in this agreement shall be increased annually on the Annual Rate Review Date by a percentage that equates to any percentage increase in the Retail Price Index (all items) between the figure most recently published at the Annual Rate Review Date and the figure most recently published 12 months previously.
- 5.4. Hourly rates will be revised by the Agent and notified to the Client on the Annual Rate Review Date and in the absence of any such notification the rates applying immediately prior to the Annual Rate Review Date shall continue to apply.

6. Termination

- 6.1. After the Term of the Agreement (or if the leaseholders enforce a right to manage, enfranchise or form a Commonhold) either party may terminate this agreement by the written Notice specified in BASIC TERMS above.
- 6.2. Subject to clause 6.3, 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 with immediate effect upon the serving of a further written notice on the other party.
- 6.3. The Agent may end this agreement immediately if the Client fails to pay any amount due under this agreement on the due date for payment and remains in default for 30 days after being notified in writing to make such payment.
- 6.4. If either party becomes insolvent the other party may end this agreement immediately by serving notice upon the other to that effect.
- 6.5. On termination of this agreement the Agent will return to the Client all originals and copies of deeds relating to the Building and all other material relating to the Building necessary for the continuing management save that the Agent may exercise a lien over such items while any sums outstanding to the Agent under the terms of this Agreement remain outstanding.

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 Building or plant, machinery, equipment or materials used for the Building whether or not such defect be latent or apparent on examination;
 - 7.1.4. the act, omission, delay or insolvency of any person other than the Agent;
 - 7.1.5. any failure to perform, or delay in performing, any of its obligations under this agreement that is caused by events outside of its reasonable control ("force majeure events").
- 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 clause 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 will be sufficiently served by personally serving it to the other party; hand delivering it or sending it in a prepaid envelope in the ordinary first class post or an equivalent service that provides for next working day delivery 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 and such notice will be deemed served on the next working day after it would have arrived in accordance with the ordinary course of business.

8.2. **Governing law**

This agreement shall be governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.

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, such consent not to be unreasonably withheld or delayed and such assignment or transfer shall apply 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.

8.6. **Provision of Services: Regulation 2008**

Drew Pearce is a trading name of Drew Pearce 1748 Ltd whose registered office address is at 14 Cathedral Close Exeter EX1 1HA, 8774167. Drew Pearce 1748 Ltd trades as a Limited Company and is registered in England and Wales. Drew Pearce 1748 Ltd is a member of RICS and the registration number is 002165.Commission

8.7. **Commission**

Should any party enter into a binding contract to purchase the Client's interest in the Building as a result of a recommendation, introduction or any marketing material given or produced by the Agent, the Agent shall be entitled to a commission in the sum of [insert number] % of the purchase price.

NOTES

References to the masculine include, where appropriate, the feminine and to the singular instead of the plural and vice versa.

Headings given in italics are for assistance in navigating the agreement only and do not form part of this agreement.

This agreement constitutes the entire agreement between the parties, supersedes any previous agreement or understanding and may not be varied except in writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

If any provision of this agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this agreement and the remainder of the provision in question shall not be affected.

Where the Client includes two or more persons, all such persons shall be jointly and severally liable for the performance of the obligations in this agreement.

Failure or delay by the Agent in enforcing any provision of this agreement shall not be construed as a waiver of any of its rights under the agreement.