

SAMPLE

Dunphys

CHARTERED SURVEYORS est. 1908

ASSOCIATION OF RESIDENTIAL MANAGING AGENTS

MANAGEMENT AGENCY AGREEMENT

BETWEEN

(The Client)

whose (registered) office is at

and

Dunphys Chartered Surveyors Limited

(The Manager)

whose (registered) office is at

York House, Montague Road, Hounslow, Middlesex TW3 1JZ

Tel: no 020 8577 5172

email: enquiries@dunphys.co.uk

for

***** *(The Property)*

*Dated: ****

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TERMS AND CONDITIONS

1. Definitions

- 1.1. The 'Client' means the resident management company, right to manage company, or other landlord named in the cover sheet to this agreement.
- 1.2. The 'Manager' is the managing agent named in the cover sheet to this agreement.
- 1.3. The 'Property' is the estate, scheme, or development named in the cover sheet to this agreement and as described at the end of this agreement.
- 1.4. The 'Management Fee' is 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' – this agreement is for an initial period of one year from **** and will continue with the right to termination by either party on giving three months written notice at any time.
- 1.9. The 'Parties' means the Client and the Manager.
- 1.10. 'ARMA' means the Association of Residential Managing Agents whose website is www.arma.org.uk
- 1.11. 'RICS' means the Royal Institution of Chartered Surveyors whose website is www.rics.org/uk

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

The Manager has provided to the Client the following information:

- (a) Details of its legal status.
- (b) Its office address for communication including email address and telephone numbers.

- (c) VAT registration number.
- (d) Its ARMA membership and details of where that membership can be checked.
- (e) A copy of its complaints handling procedure.
- (f) Details of the ombudsman scheme that it is required to join as a member of ARMA.
- (g) Details of the public indemnity policy that it holds.

5. Conduct of the Manager

- 5.1. The Manager will where reasonably practicable comply with the terms of the leases of the Property.
- 5.2. The Manager will comply with the requirements of ARMA and the Service Charge Residential Management Code of the RICS as appropriate.
- 5.3. The Manager will comply with relevant landlord and tenant legislation relating to the management of the Property.
- 5.4. The Manager will comply with health and safety, fire safety, employment and all other relevant laws and regulations relating to the management of the Property.
- 5.5. The Manager will hold professional indemnity insurance including fidelity cover and maintain it during the Term. On request, the Manager must give the Client a copy of the certificate of insurance.
- 5.6. The Manager will during working hours and with 24 hours' notice comply with the rules of the Financial Conduct Authority when carrying out any regulated insurance activities.
- 5.7. The Manager will, during working hours and with 24 hours' notice at all reasonable times allow the Client access to all records and accounts appertaining to the management of the Property.

6. Conduct of the Client

- 6.1. The Client will use its best endeavours to ensure the handover of the documents listed in Appendix IV, the Takeover List, to the Manager.
- 6.2. The Client will not issue any instructions to the Manager that require it to breach the leases of the Property, legislation, the recognized Codes of Practice or any regulations relating to the management of the Property.
- 6.3. The Client will 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.
- 6.4. The Client will not give instructions to the Manager's staff working solely at the Property. Any instructions should be given in writing to the Manager's office as agreed between the Parties.

- 6.5. The Client is not required to arrange and hold directors' and officers' liability insurance for the Term but is advised to do so (unless it is stated in the Memorandum and Articles). On request, the Client will give the Manager a copy of any such insurance certificate(s).
- 6.6. The Client will 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.
- 6.7. When oral instructions are given by the Client to the Manager, these should be confirmed in writing by post or email within 7 days, to the registered office of the manager.

7. Disclosures, Commissions and Associated Companies

- 7.1. The Manager will not award any contracts for services or works of any kind without the prior consent of the Client.
- 7.2. The Manager will disclose any future commission arrangements that it may wish to enter into during the Term of this agreement before so doing and seek the consent or not of the Client to any such arrangement.
- 7.3. The Manager will disclose to the Client the details of any related companies with whom the Manager has an interest, that have a bearing on the management of the property.
- 7.4. The Manager has arrangements with insurance companies/brokers that allow the receipt of commissions and confirms it may do so during the Term of this agreement.
- 7.5. The Manager has disclosed to the Client any relationship, other managements or interest of any kind to those companies it has with the freeholder/landlord of the Property if the Client is not the freeholder/landlord.

8. Fees and charges

- 8.1. 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.
- 8.2. The Client authorises the Manager to deduct the Management Fee from the designated bank account on the dates set out in the Fee Agreement.
- 8.3. The Manager reserves the right to charge interest on any overdue fees and charges payable by the Client to the Manager at the rate of 4% over base rate of Barclays Bank from the date the fee or charge became due until the date of payment.

9. Changes to Management Fee and Additional Charges

On the Review Date the amounts payable under Clause 8 may be varied as follows:

- (a) By agreement between the parties; or

- (b) If no agreement is reached, then the amount by which the Retail Price Index has changed for the 12 month period ending on the date that is 3 months before the Review Date.

N.B. Any Fees or Additional Charges may be subject to specific alteration where legislative obligations or changes of the services required add to the existing workload.

10. Handling of Client's Money

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

11. Liability

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

- 11.2. The Client shall indemnify the Manager in respect of any claims made by another or third party for any loss, damage or legal and other expenses incurred as a result of any one or more of those circumstances listed in 11.1 (a) to (d) above.
- 11.3. The Manager shall not be liable to indemnify the Client in respect of any claims made by another or third party for any loss, injury, damage or legal or other expenses incurred as a result of any one or more of those circumstances listed in 11.1 (a) to (d) above unless it be as a result of the Manager's negligence.
- 11.4. The above shall not be valid insofar as prohibited by statute.
- 11.5. 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.

12. Assignment

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

13. Ending this Agreement

- 13.1. This agreement will end at the expiry of the Term as allowed for in 1.8 above, subject to the either Party providing three months prior written notice.
- 13.2. This agreement may be terminated at any time by the mutual consent of the parties in writing.
- 13.3. The Client may end 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 Tribunal.
 - (e) The Manager changes its name, merges with or is acquired by another company.
- 13.4. The Manager may end this agreement at any time in writing if:
 - (a) The Client fails to pay the Management Fee or other Additional Charges owing to the Manager within one calendar month of notice of the fee and charges; or
 - (b) The Client acts in a way that prevents the Manager from performing its Services under this agreement and more specifically is in breach of 5.2 or 5.3 above.
- 13.5. When this agreement is ended the Manager will hand over to the Client any of the available documents itemised in Appendix V, table A.

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

14. Dispute Resolution

If any dispute arises over the interpretation of or compliance with the specific clauses in 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.

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

15. Data Protection

15.1. The Manager confirms its registration under the Data Protection Act and its compliance therewith.

15.2. The Manager confirms it will only hold and retain information for the purpose of fulfilling this Agreement.

15.3. The Manager confirms that suitable procedures are in place to safeguard such information from improper use or disclosure.

16. Communication between the Parties

16.1. Any communication or instruction from the Client to the Manager shall be made by a director or secretary of the Client or person of equivalent executive authority.

16.2. Service of written communications shall be by first class post to the address shown on the front cover of this agreement, by fax or email. Notice to end this agreement shall be by registered or recorded delivery post only.

16.3. Any communication in writing will be deemed to have been served on the third working day after posting, faxing or emailing.

17. Waiver

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

18. Legal Jurisdiction

18.1. This agreement shall be governed by the law of England and Wales.

18.2. Each party agrees to abide by the jurisdiction of the courts of England and Wales over any claim arising from this agreement.

19. The Property

Property address - comprising of:

Number of blocks *
Number of buildings *
Total number of units *

Signatures (*only one required*)

Signed on behalf of the Client:

Print name: position:

Signed on behalf of the Manager:

Print name: Position:

Dated.....

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APPENDIX I

FEE AGREEMENT

- (a) The Term of this Agreement is as set out in 1.8 above.
- (b) The **Management Fee** is payable for the services in Appendix II and is *** + VAT per annum (calculated at £*** per unit for *** units) (£1000 + VAT minimum)
- (c) The **Management Fee** is to be paid ***** in advance.
- (d) The **Management Fee** and any Additional Charges must be paid to the Manager in accordance with clauses 8 and 9 of the agreement.
- (e) The **Review Date** for the Management Fee and Additional Charges is each anniversary of the date of this agreement.

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APPENDIX II

THE SERVICES

Opening and handling bank accounts.	✓
Preparing and sending out service charge estimates.	✓
Collecting service charges and reserve fund contributions including sending demands and associated summaries and any required statements.	✓
Processing payments relating to the Property within expenditure limits and funds available or as reasonable expediency shall dictate.	✓
Providing information to accountants prior to the preparation of annual service charge accounts.	✓
Using best endeavours to collect current and on-going routine service charge arrears but not action requiring legal work or tribunals.	✓
Providing reasonable management information to the lessees.	✓
Liaising with the Client.	✓
Liaising with any recognised resident(s) association(s).	✓
Entering into and managing maintenance contracts on behalf of the Client.	✓
Viewing, without the use of inspection equipment, the common parts of the Property to check condition and deal with any necessary repairs other than major repairs.	✓
Preparing specifications and contracts for minor works and services such as cleaning, gardening, window cleaning and overseeing such works.	✓
Organising periodic health and safety checks (but not specialist checks and tests) and ensuring appropriate risk assessments are in place.	✓
Consultation with the client on management matters.	✓
Consultation with the client on long-term agreements except for consultation on the appointment of a managing agent.	✓
Visiting the Property (minimum of every two months).	✓
Dealing with day-to-day lessee issues and reporting to and taking instruction from the Client on lessees' dissatisfaction.	✓
Advising the Client on all relevant legislative and regulatory issues and general Interpretation of leases.	✓
Maintaining adequate/suitable files and records on the management of the Property.	✓
Keeping records of residents and tenancy details where provided.	✓
Advising and liaising with the Client on management policy.	✓
Obtaining tenders for major works.	✓
Arranging venues for AGMs and EGMs.	✓

APPENDIX III

ADDITIONAL CHARGES

ADDITIONAL SERVICES	AVAILABLE	CHARGING BASIS where not included in the Services
Any additional work entailed, where the information as listed in Appendix IV is not forthcoming on the Takeover list.	✓	£35 + VAT per hour
Initiation and administration of all insurance claims.	✓	£75 + VAT per claim
Preparation of income and expenditure for accountancy purposes.	✓	£25 + VAT per unit
Providing copy documents including insurance policies, copies of invoices and receipts, for which there may be a charge.	✓	£10 + VAT (per document)
Issuing demands for administration charges with associated summaries of rights.	✓	Included in the Services
Arranging fire risk assessments by competent persons.	✓	Included in the Services
The collection of arrears existing at the time of takeover.	✓	£10 + VAT per letter
The provision of lessee welcome packs or handbooks.	✓	Included in the Services
Drawing up and reviewing risk assessment plans.	✓	By arrangement
Holding annual meetings with residents if required.	✓	Included if at Cosgroves
Advertising and recruiting site staff on behalf of the Client.	✗	
Dealing with any pension issues relating to site staff.	✗	
Preparing Notices of subletting, changes of use and handling requests for any necessary approvals, lease extensions and variations.	✓	Quotation available on request
Preparing replacement cost assessment for insurance valuation purposes on buildings and landlord contents.	✓	Quotation available on request
Supplying copies of leases from the Land Registry.	✓	£25 + VAT
Dealing with requests for improvements or alterations by leaseholders and related party wall matters.	✓	£25 + VAT per letter
Dealing with S20 consultations, including serving the required notices, instructing and liaising with specialist consultants.	✓	£15 per unit, min £150
Attending meetings of directors. (Annual meeting included in the Service).	✓	Additional £25ph + VAT
Attending meetings outside of normal office working hours.	✓	£50 per hr + VAT per employee
Cosgroves Sales & Lettings Services		
Offering any vacant property for let.	✓	9% + VAT of full management
Providing information on the transfer of leases.	✓	£75 + VAT
Responding to pre-contract sales enquiries.	✓	£175 + VAT per enquiry
Answering lessees written queries additional to those to be reasonably expected and where excess work arises due to this.	✓	£55 + VAT per written correspondence
Answering lessees' verbal queries additional to those to be reasonably expected and where excess work arises due to this.	✓	£10 + VAT per 15 min phone conversation
Marketing for sale properties in blocks under Cosgroves management	✓	0.8% of sale price

APPENDIX IV

SERVICE ARRANGED EXTERNALLY

Preparing statutory accounts for submission to Companies House excluding audit if required.	✓	By arrangement
Company Secretarial Services: (a) Acting as Company Secretary to the Client. (b) Issuing membership or share certificates. (c) Calling annual general or extraordinary meetings: prepare notices, attend and take minutes.	✓	By arrangement
Filing statutory company returns.	✓	By arrangement
Fees of specialist advisers. Including Fire, Asbestos, Water and H&S.	✓	By arrangement
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 Tribunal.	✓	By arrangement
Dealing with taxation issues relating to trust fund interest.	✓	By arrangement
Any matters relating to ground rent reviews.	✓	By arrangement
Providing detailed legal advice on any of the above.	✓	By arrangement
Providing accommodation for meetings and inspection of documents and the facility to make photocopies.	✓	Included in the Services
Specialist advice on assessment of major repairs and decoration or other issues.	✓	By arrangement
Negotiating with local and statutory authorities regarding operation or amendment or improvements to communal services as necessary.	✓	By arrangement
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/Tribunal.	✓	By arrangement
Advising on health and safety matters and other legislative requirements.	✓	By arrangement
Preparing and monitoring major building works not covered by annual contracts, inspection work in progress and handling retentions.	✓	By arrangement
Organising surveys of Property and reporting to Client.	✓	By arrangement

APPENDIX V

THE TAKEOVER AND HANDOVER LISTS

A. The Takeover List

The Parties hereby agree that the Client shall ensure that the following records, documents and information shall be made available (if applicable and held) to the Manager in order to take 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 licenses 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 and their occupants.
- Schedule of ground rents payable.
- Schedule of service charge apportionments per unit.

APPENDIX V (cont'd)

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.

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.

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. Tribunals can review charges made many years ago 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.

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HEALTH AND SAFETY

- Copy of any risk assessments carried out.
- Copy of any accident records.
- Copy of any asbestos register.
- Construction Design and Management (CDM) file if appropriate.

COMPANY INFORMATION

[Where a Resident Management Company or Right to Manage Company is the client - and subject to arrangements over the Company Secretarial role.]

- Copy of Memorandum & Articles of Association.
- The Books including minutes, stock transfer forms, Certificate of Incorporation, seal etc.
- Copies of previous annual returns.
- The last three years' (audited) accounts.

- All financial records and supporting documentation for the last three years.
- Details of accountants/auditors used.
- Details of any Directors and Officers Liability Insurance.

B. The Handover List

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

Description	Timescale
Up-to-date Accounts	Three months
All applicable items from List A as held by Cosgroves	One month

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