



## **MANAGEMENT AGREEMENT**

DATED

**CLIENT (1)**

ALEXANDER FAULKNER PARTNERSHIP LTD (2)

**THE PROPERTY  
ADDRESS**

**THIS AGREEMENT** is made on XXXX 2020

**BETWEEN:**

(1) **CLIENT (Company Registration Number XXXXXX)** of 11 Little Park Farm Road, Fareham, PO15 5SN (“the Client”) and

(2) **Alexander Faulkner Partnership Limited (Company Registration Number 05574453)** Registered Office address 11 Little Park Farm Road, Fareham, PO15 5SN. (“the Manager”)

Each a party and together the parties.

**WHEREAS**

(a) The Client (1) is responsible for the Property and for providing any services required.

(b) The Manager (2) has agreed to be appointed as the managing agent in relation to the Property.

**IT IS HEREBY AGREED**

**1. Definitions**

In this agreement (including the preamble and recitals) the following definitions shall apply:

“**Additional Services**” means services undertaken by the Manager in return for additional fees including those in Schedule 2.

“**ARHM**” means the Association of Retirement Housing Managers whose website is <https://www.arhm.org/>.

“**ARMA**” means the Association of Residential Managing Agents whose website is [www.arma.org.uk](http://www.arma.org.uk).

“**Associated Company**” means a person, corporation or organisation with an association to the Client and/or Manager. This can include business associates; the directors or controllers of a limited company; partners in a partnership and the officers or managers of an unincorporated association; as well as in-house service providers.

“**Authorisation Limits**” means the authorisations given by the Client to the Manager to enter into contracts and commit expenditure as detailed in Schedule 6.

“**Client Bank Account**” means bank accounts which are opened and operated by the Manager for the Client.

“**Code of Practice**” means the professional standards where applicable to this contract that the Manager is a member of RICS

“**Commencement Date**” means the XXX 2020.

“**Data Breach**” means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data

“**Data Controller**” has the meaning given to it in Data Protection Law.

“**Data Processor**” has the meaning given to it in Data Protection Law.

“**Data Protection Law**” means:

- (i) the EU Data Protection Directive; and
- (ii) the EU Privacy & Electronic Communications Directive 2002/58/EC; and
- (iii) any amendments and replacement legislation relating to the above, including the EU General Data Protection Regulation (EU) 2016/679, European Commission decisions, binding EU and national guidance and all national implementing legislation; and
- (iv) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party’s assets, resources or business; and
- (v) Any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by a relevant Supervisory Authority.

“**Data Subject**” means the identified or identifiable person to whom Personal Data relates.

“**The Handover List**” means the standard list of items recommended by ARMA.

“**Leases**” means the registered Leases or Transfer (TP1) documents for freehold properties.

“**the Management Fee**” means the fee set out in the fee agreement in Schedule 6.

“**Personal Data**” has the meaning given to it in Data Protection Law.

**“Potential Returning Employees”** means those personnel who are employees of the Manager or any sub-contractor and who are assigned to the provision of the Services or a relevant part of the Services for the purposes of the Transfer Regulations;

**“Process”** has the meaning given to it in Data Protection Law.

**“Protected Data”** means Personal Data received from or on behalf a Party from another Party to this Agreement, or otherwise obtained in connection with the performance of this Agreement.

**“Replacement Agent”** means any alternative third party appointed by the Client to perform the Services or any part of the Services after the Subsequent Transfer Date.

**“Returning Employees”** means any alternative third party appointed by the Client to perform the Services or any part of the Services after the Subsequent Transfer Date.

**“Review Date”** means the service charge financial year end date.

**“RICS”** means the Royal Institution of Chartered Surveyors whose website is [www.rics.org.uk](http://www.rics.org.uk).

**“RMC” “RTM”** means Residents Management Company; Right to Manage Company.

**“Services”** means the services in Schedule 1 provided by the Manager and included in the Management Fee.

**“Schedule of Rates”** means the list of additional charges for Additional Services the Manager can perform which is reviewed annually on 1<sup>st</sup> April and available to the Client.

**“Subsequent Transfer Date”** means the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services between the Agent (or a sub-contractor) and the Client and/or a Replacement Agent (as the case may be).

**“Supervisory Authority”** means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Law

**“Term”** means twelve months less one day from the Commencement Date.

**“Transfer Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended, re-enacted or consolidated from time to time.

## 2. Appointment

- a. The Client appoints the Manager to be its managing agent for the Property for the Term.

## 3. Services to be provided by the Manager

- a. The Manager shall perform with reasonable care, skill and diligence the Services in Schedule 1 in return for the Management Fee in Schedule 6.
- b. The Manager may provide Additional Services for the Client for additional charges based on the Manager’s Schedule of Rates.

## 4. Compliance with the Provision of Services Regulations 2009 (as amended)

- a. Alexander Faulkner Partnership Limited is registered for VAT, registration number 115 3879 08.
- b. Alexander Faulkner Partnership Limited are members of the *Ombudsman Services: Property* scheme [www.ombudsman-services.org](http://www.ombudsman-services.org). A copy of our complaints procedure is on our website, [www.afpartnership.co.uk](http://www.afpartnership.co.uk)

## 5. Conduct of the Manager

- a. The Manager shall comply with the terms of the Leases of the Property unless otherwise agreed in writing with the Client.
- b. The Manager shall comply with the requirements of ARMA and the Service Charge Residential Management Code of the RICS as appropriate.
- c. The Manager shall comply with relevant landlord and tenant legislation relating to the management of the Property.
- d. The Manager shall comply with health and safety, fire safety, employment and all other relevant laws and regulations relating to the management of the Property.
- e. The Manager shall hold professional indemnity insurance including fidelity cover and maintain it during the Term. On request, the Manager

shall give the Client a copy of the certificate of insurance.

- f. The Manager shall comply with the rules of the Financial Conduct Authority when carrying out any regulated insurance activities.
- g. The Manager shall at all reasonable times allow the Client access by appointment at their offices to all records and accounts appertaining to the management of the Property.

## **6. Conduct of the Client**

- a. The Client shall use its reasonable endeavours to ensure the documents in the Handover List are provided to the Manager and shall not hold the Manager responsible or liable for any loss the Client incurs as a result of the Manager's actions where the Client has not provided adequate documents to the Manager.
- b. The Client shall 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.
- c. The Client shall 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.
- d. The Client shall 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 in a timely manner.
- e. The Client authorises the Manager to deal on its behalf with any notices and deal with any enquiries including, but not limited to, notice of assignment and mortgage, sub-letting and any other consents required under the Lease.
- f. When oral instructions are given by the Client to the Manager, these shall be confirmed in writing by post or email within 7 days.
- g. Where the Manager is acting as Company Secretary the Client is required to arrange and hold directors' and officers' liability insurance for the Term. On request, the Client shall give the Manager a copy of any such insurance certificate.

h. The Services shall be provided on the terms of this Agreement unless both parties agree additional terms in writing.

i. The Services shall be provided following receipt by the Manager of this Agreement signed by the Client.

## **7. Commissions**

a. The Manager is authorised to retain the commission arrangements disclosed in Schedule 4 and shall notify the Client in writing of any additional commission arrangements it may wish to enter into during the Term in advance.

## **8. Management Fees & Additional Charges**

a. The Management Fee payable by the Client to the Manager is payable without any right of set-off against any other account.

b. Additional charges shall be paid by the Client for Additional Services under this agreement or by separate agreement and these additional charges shall be payable in advance and payable without any right of set-off against any other account.

c. The Client authorises the Manager to deduct all agreed fees from the Client Bank Account on the due dates.

d. The Client shall pay to the Manager interest on any overdue fees at a rate of 8% over the base rate of Natwest Bank from the date the fee or charge became due until the date of payment inclusive.

e. The Manager reserves the right to keep and retain any fees payable to the Client arising from the Leases and other legal transfers, including, but not limited to Notice of Assignments and Deed of Covenants.

f. The Client agrees that the Manager may undertake the Additional Services outlined in Schedule 2 which are payable by the Leaseholder or other parties and is entitled to keep and retain any fees arising.

g. The Client agrees that the Manager may provide consent under the Lease on behalf of the Client and retain any fees arising.

## **9. Changes to Management Fee and Additional Charges**

a. On the Review Date the amounts payable under clause 8 above may be varied as follows:

- By agreement between the parties; or
- If no agreement is reached, then by the amount by which the Retail Price Index has changed for the last 12 month period ending on the date that is 3 months before the Review Date.

b. Any Management Fees or additional charges may be subject to specific alteration where legislative obligations or changes of the services required add to existing workload.

## 10. Handling of Client's Money

a. The Manager shall comply with statutory and RICS rules for banking and holding any funds of the Client in the Client Bank Account. Any Client funds will be held in trust.

b. The Client authorises the Manager to make payments for the benefit of the Property from the Client Bank Account.

c. The Client authorises the Manager to receive insurance claim payments.

d. The Client authorises the Manager to deduct outstanding Management Fee and/or any additional charges for Additional Services from the Client Bank Account after this Agreement terminates.

e. The Manager shall notify the Client as soon as possible of any lack of funds to pay for the Services or Additional Services or suppliers. The Client shall put the Manager in funds to pay if there is a deficit for any reason and the Manager may cease to provide services until funds are available.

## 11. Liability

a. 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 accurate information;

(b) any inaccurate forecast by the Manager of future income or expenditure;

(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.

b. 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 listed in 11(a) above.

c. 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 listed in clause 11(a) unless it is a result of the Manager's negligence.

d. In no circumstances shall the Manager be liable for any consequential loss or damage and the Manager's total liability for breach of contract, tortious act, or otherwise shall be limited to the Management Fees received by the Manager during the 12 month period preceding any claim except where death or injury results from negligence on the part of the Manager.

## 12. Assignment

a. Either party is entitled to assign this Agreement to a subsidiary or holding company or Associated Company within the same group without consent of the other party.

## 13. Ending this Agreement

a. This Agreement may be ended at any time by mutual consent of the parties in writing giving 90 days notice.

b. The Client may end this Agreement at any time in writing if the Manager is in breach of this Agreement and the Client has notified the Manager of that breach in writing and the breach has not been rectified within 60 days of that notice.

c. The Manager may end this Agreement at any time in writing if:

(i) the Client fails to pay the Management Fee or other fees owing to the Manager within 30 days of notice of the fee and charges; or

(ii) the Client acts in a way that prevents the Manager from performing the Services under this Agreement.

- d. When this Agreement is ended the Manager, if in its possession, shall provide to the Client the information within the Handover List within three months of the date this Agreement is ended.

#### 14. Dispute Resolution

- a. If any dispute arises over the interpretation of or compliance with the specific clauses in this agreement, the parties shall 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 may refer the dispute to the Ombudsman.

#### 15. Data Protection

- a. The Parties agree and acknowledge that, for the Protected Data, both the Manager and the Client are Independent Data Controllers under Data Protection Law.
- b. Both the Manager and the Client are responsible for complying with Data Protection Law and complying with their respective obligations under Data Protection Law.
- c. Both the Manager and the Client agree to ensure that they only Process Protected Data where there is a legal basis to do so under Data Protection Law.
- d. Both the Manager and the Client agree to ensure that, for the Protected Data, they have appropriate data retention policies and schedules in place and that these policies and schedules shall comply with Data Protection Law.
- e. Neither the Manager nor the Client shall give instructions to the other party which require or encourage the other party to breach Data Protection Law.
- f. Both the Manager and the Client shall take appropriate technical and organisational measures to prevent unauthorised or unlawful Processing of Protected Data.
  - (i) On the request of the other party either party shall produce details of any such technical or organisational measures.
- g. The Client warrants that the Protected Data transferred to or shared with the Manager is

within the ownership and control of the Client and that the Client is legally entitled to transfer such Protected Data to the Manager for the purposes of the Manager providing the Services and Additional Services detailed in this Agreement.

- h. The Client shall notify the Manager promptly upon receiving any notice or communication from a Supervisory Authority which relates to Protected Data.
- i. The Client shall notify the Manager as soon as is reasonably practicable of any Personal Data Breach in relation to Protected Data which warrants a report to a Supervisory Authority or to the Data Subjects under Data Protection Law.
- j. The Manager shall notify the Client as soon as is reasonably practicable of any Personal Data Breach in relation to Protected Data which warrants a report to a Supervisory Authority or to the Data Subjects under Data Protection Law.
- k. If the Client is approached by a Data Subject who is seeking to exercise rights under Data Protection Law which may cover Protected Data held by the Manager, the Client shall forward the correspondence from the Data Subject to the Manager without unreasonable delay so that the Manager can provide a response if the Manager is so required under Data Protection Law.
- l. If the Manager is approached by a Data Subject who is seeking to exercise rights under Data Protection Law which may cover Protected Data held by the Client, the Manager shall forward the correspondence from the Data Subject to the Client without unreasonable delay so that the Client can provide a response if the Client is so required under Data Protection Law.
- m. The Manager and the Client shall cooperate with any Supervisory Authority in the performance of its tasks under Data Protection Law.
- n. The Manager and the Client shall regularly review their storage and use of Protected Data to ensure that they comply with Data Protection Law.
- o. If the Manager or the Client is required by Data Protection Law to report a Personal Data Breach relating to Protected Data to a Supervisory Authority, the other party shall

assist the reporting party by reasonable measures.

- p. If the Manager or the Client is required by Data Protection Law to report a Personal Data Breach relating to Protected Data to the Data Subjects the other party shall assist the reporting party by reasonable measures.
- q. The Manager shall only hold Protected Data for the purpose of fulfilling this Agreement and shall ensure suitable procedures are in place to safeguard Protected Data.
- r. If the Client or the Manager appoint a Data Processor to Process Protected Data on their behalf they shall comply with Art28(1) General Data Protection Regulation 2016/679, meaning that they shall use only Data Processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of the General Data Protection Regulation.
- s. The Manager and the Client shall ensure that all personnel who have access to Protected Data or Process Protected Data are obliged to keep the Protected Data confidential.
- t. Neither Party shall transfer Protected Data to any country outside the European Economic Area or to any International Organisation unless such a transfer is in accordance with Data Protection Law.
- u. If any variation to this clause (being Clause 15) is required by Data Protection Law, then either Party may give notice to the other Party of this change in the law. The Parties shall discuss the change in good faith and negotiate necessary variations to this Agreement.

## **16. Communication**

- a. Any communication from the Client to the Manager shall be made by the Client in writing.
- b. Service of written communications under this Agreement shall be by post or email to the other party.
- c. Any communication in writing will be deemed to be served on the third working day after sent.
- d. Any communication by email will be deemed to be served on the working day following the day on which the email was sent.

## **17. Waiver.**

- a. 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**

- a. This Agreement shall be governed by the law of England and Wales.
- b. Each party agrees to abide by the exclusive jurisdiction of the courts of England and Wales over any dispute arising from or in connection this agreement.

# SCHEDULE 1 (THE SERVICES)

## 1. Administration

- a. To maintain records of the individual owners at the Property and to take reasonable steps to ensure this is kept up to date.
- b. To maintain adequate records and procedures throughout the year.
- c. To maintain the health and safety file where provided to the Manager by the Client subject to an agreement of reasonable storage costs other than electronic storage of files.

## 2. Accounting

- a. To authorise and arrange payment of invoices payable by the Client for the Property.
- b. To collect service charge and other monies on behalf of the Client.
- c. Make all reasonable endeavours to collect current and ongoing service charge or other payments collected by the Manager and to recover its reasonable costs from the individuals concerned.
- d. To open a Client Bank Account to comply with statutory and RICS rules for banking.
- e. Where requested by the Client, the Manager will provide financial information to the Client on an annual, half yearly or Quarterly basis.
- f. To process the financial records for the year and prepare such reports and information as necessary for the Client or the accountant to enable the preparation of the annual report of the year end accounts.
- g. Using all reasonable endeavours to collect current and ongoing service charge or other payments collected by the Manager on behalf of the Client in accordance with Schedule 3. The Manager is to recover its costs from the individual lessee(s) concerned.
- h. To prepare an annual budget and if required approve this with the Client before circulating to all those entitled to receive under the Leases.

## 3. Inspection

- a. To undertake min of **X inspections** per annum of the common parts of the Property without the use of access or other equipment and will only

include those areas that can be inspected safely and for the general day-to-day management.

## 4. Management

- a. To have a named property manager responsible for the Property.
- b. To manage the Property under the terms of this agreement adopting best practice and principles of good estate management.
- c. To provide general advice on matters relating to health and safety and other legislation in relation to the management of the Property. Advice given by the Manager to the Client shall in no circumstances constitute legal or financial advice and the Client must seek advice from an appropriately qualified third party for all legal or financial matters.
- d. To arrange and sign contracts for services for the Client including grounds maintenance, cleaning, window cleaning, lifts, other equipment, utility services and associated services.
- e. To arrange and sign contracts for repairs or maintenance or other works to the Property within the Authorisation Limits and always subject to the requirements of the section 20 consultation on major and long term works.
- f. To deal with the day-to-day lessee issues and reporting and taking instruction from the client on any lessee issues.
- g. Dealing with any approvals or consent required under the Lease.
- h. To deal with enquiries on behalf of the Client such as notices of assignments, deeds of covenants in accordance with the Leases.
- i. The supply of transmitters or fobs for security systems and administering any car park enforcement measures including parking permits.

## 5. Client Matters

- a. To undertake **X hours of** out-of-office meetings per annum.
- b. To undertake **X hours** of in-office client meetings per annum.

- c. To provide regular reports, not exceeding a half yearly frequency, to the client on the general management matters.
- d. Deal with claims for the Client on insurances arranged by the Manager.
- e. To consult with the Client on management matters.

- a. An annual audit to include a review of the General and or Fire Risk Assessment, which ever is applicable.
- b. An annual visual inspection of any asbestos contained within the communal parts of the building where the asbestos report for the building has identified asbestos-containing materials which need to be managed.
- c. An annual review of the reserve fund will be undertaken to include a review of the long term plan to enable us to recommend a figure to include in the budget.
- d. An inspection will be undertaken as required for the reinstatement cost assessment which is the valuation for the building for insurance rebuilding purposes. This is recommended to be undertaken once every 3 years.
- e. Any other inspection undertaken to comment on health and safety or the structure or maintenance of the building.

## **SCHEDULE 2 (ADDITIONAL SERVICES)**

These Additional Services are not included within the Management Fee and shall be subject to an additional charge. The availability of these Additional Services is not guaranteed and the Manager reserves the right to refuse to provide any of these Additional Services at any time and for any reason. The authority to undertake Additional Services comes from the Authorisation Limit and the additional charge can vary. A schedule of rates is prepared by the Manager annually on or around 1<sup>st</sup> April and is available.

### **1. Administration**

- a. The appointment of the Manager as Company Secretary where the Client is an RMC or RTM.
- b. Preparation and issue of share/membership certificates where the Manager is appointed Company Secretary.
- c. Dealing with onsite staff, recruiting, pension, payroll, administration and associated tasks.
- d. The provision of welcome packs or handbooks or other documentation.
- e. To deal with administration of insurance claims.

### **2. Accounting**

- a. To manage the Client Bank Account including regular bank reconciliations.
- b. To collect arrears and refer collection matters to solicitors. These fees will be billed to the individual concerned and if recovered will offset our fees.
- c. Dealing with any statutory request for accounting information from a lessee.
- d. Issuing any statutory notices such as Section 20B notices.

### **3. Inspection**

### **4. Management**

- a. To provide a facility to report repairs outside the normal working hours for the Manager.
- b. To prepare specifications and undertake competitive tendering for general service contracts such as gardening, cleaning and window cleaning.
- c. To prepare specifications to undertake competitive tendering for one off works.
- d. To issue statutory notices such as section 20 consultation notices.
- e. To provide any professional services including building surveying and health and safety reviews which may be required from time to time such as property reports, or schedules of condition or dilapidation.
- f. To deal with matters arising from a statutory duty, included but not limited to, duties under the Landlord and Tenant Act 1985 or other legislation or regulations including preparation of documentation and or attendance at a court or tribunal.
- g. Providing assistance in dealing with disputes with a developer or other Landlord such as building guarantee scheme or other warranties.

- h. Any extraordinary postage or photocopying which may include the service of the annual accounts, budgets or circular letters.
- i. The storage of property specific documents such as health and safety files, counterpart leases the client has requested the Manager to hold.

## 5. Client Matters

- a. To deal with matters relating to rent reviews required by the Lease if the Manager is instructed to collect ground rents.
- b. Providing accommodation for meetings and inspection of documents.

- a. The Manager will issue a final letter but not before the debt has been owing for more than 14 days.
- b. The letter will be sent to the individual requesting payment.
- c. The Manager will charge an administration fee to be paid from the Client Bank Account.
- d. The Manager's fee will be added to the tenant account and recovered as part of the claim.

## 5. Instructing Debt Recovery Solicitors

- a. The Manager will instruct debt recovery solicitors from a panel of solicitors used by the Manager and supply them with sufficient information to enable them to collect the debt. The Manager will make a further administration charge to be paid from the Client Bank Account and added to the debt to be recovered from the individual. The solicitor costs will also be added to the debt to be recovered.
- b. The solicitors will be instructed to take any action up to and including an application for a county court judgement. Solicitors will not be instructed on debts of less than £350 unless it has been owing for more than 3 years or unless the Client specifically requests.
- c. If the matter is referred to the First Tier Tribunal (FTT) then the Manager will require specific instruction to act for the Client and will be subject to agreeing fees.

## SCHEDULE 3 (ARREARS & RECOVERY)

The arrears and recovery procedure to be followed by the Manager on behalf of the Client is set out below.

Legal action will not be taken against a Director of an RMC or RTM unless there are specific instructions to do so from another serving Director.

The Client can request that a different approach to the arrears is taken but in the absence of any instructions from the Client in writing the Manager will follow the procedure as set out below.

### 1. Issuing Invoice

- a. The invoice will usually be issued 21 days before the payment is due for payment.

### 2. Interest on late payment

- a. The Manager will apply interest to late payment if specifically requested by the Client.
- b. The Manager may charge an administration fee to the Client where the Client makes a request for the Manager to write off interest charges that have been applied correctly by the Manager.

### 3. Reminder

- a. The Manager will issue a reminder but not until at least 7 days after the due date.

### 4. Final Reminder – Letter Before Action

The Client as part of this Agreement indemnifies the Manager in full against any and all costs or claims arising from or in connection with this procedure or any other agreement requested in writing by the Client.

## SCHEDULE 4 (DISCLOSURES)

### 1. Commission

- a. Any Commission arrangements will require the written consent of the Client in advance.

### 2. Client disclosures

- a. The Client indemnifies the Manager against any and all claims and liability where the Client did not disclose information to the Manager which resulted in the claim or liability.

# SCHEDULE 5 (ADDENDUM)

Any Addendum to this Agreement shall be in the form as set out below.

**THIS ADDENDUM** is dated

**BETWEEN:**

(1) **CLIENT** (“the Client”)

and

(2) **ALEXANDER FAULKNER PARTNERSHIP LIMITED** (Company Registration Number **05574453** Registered Office address, 11 Little Park Farm Road, Fareham, Hants, PO15 5SN, (“the Manager”)

**BACKGROUND**

(A) This is an addendum to the agreement dated and replaces any previous Addendum.

(B) The purpose of this Addendum is to renew the Agreement for a further initial fixed Term.

(C) The terms of the Agreement will remain in force with the exception of the addendums detailed below.

(D) This Addendum when issued by the Manager to the Client will be agreed when signed by the Client or after 21 days have elapsed and the Client has not taken steps to end the agreement in accordance with the original Agreement.

**AGREED TERMS**

**The Property** .....

**Management Fee**

The Management Fee is **currently £ XXX** . To be reviewed and agreed annually with the client on the Review Date.

**Ground Rent Fee**

**£ XX plus VAT**

**Additional Terms** .....

# SCHEDULE 6 (FEE SCHEDULE)

## 1. The Management Fee

- a. £ XXX plus VAT. To be reviewed and agreed on the Review Date.
- b. Out of hours service to be provided. Yes/No. Where provided will be charged at £10 per unit per annum plus VAT, with an estimated total of £ xx £ {Units X £10} plus VAT
- c. The Management Fee is payable in advance on the service charge due dates or quarterly in advance at the discretion of the Manager.
- d. The Management Fee is payable by the Client to the Manager in return for providing the Services as set out in Schedule 1.
- e. Each party agrees to abide by the jurisdiction of the courts of England and Wales over any claim arising from this agreement.

## 2. Ground Rent Collection Fee

- a. Not applicable
- b. Where ground rent is collected the Manager will be entitled to charge a fee to the Client which will be deducted from the monies collected prior to paying monies to the Client.

## 3. Company Secretariat Services

- a. The Manager will/ will not act as Company Secretary for the Client.
- b. Acting as Company Secretariat for the client is chargeable at £ XX plus VAT per year.
- c. Company accounts: in the event the accounts are non-trading, the manager will automatically file these on the company's behalf. There will be an additional charge for this service, as detailed in the Schedule of Fees.

## 4. The Additional Services

- a. Where an individual lessee has benefitted directly from Additional Services, the Manager shall invoice additional charges for Additional Services to the lessee or other party who have benefitted from the additional service provided by the Manager in relation to this Agreement.

- b. The Manager shall invoice all other additional charges for Additional Services to the client to be paid from the Client Bank Account in advance for the Additional Services required for the Term.

## 5. The Authorisation Limit

- a. The Manager is authorised to undertake expenditure to manage the Property under the terms of this Agreement and to comply with statutory requirements and best practice for estate management including the Additional Services in Schedule 3.
- b. The expenditure limit is agreed at £ XXX for any single item of expenditure (this is a standard default sum, should you wish to revise this please liaise with your Property Manager). Any item of expenditure exceeding this limit will require authorisation from the Client in writing prior to instructions being issued.
- c. Additional Services planned and required for the period of this Agreement will be invoiced in advance and be due in full at the commencement of this agreement.

## 6. Entry Provisions

- a. The parties acknowledge that the Transfer Regulations will not apply as a result of the Manager providing the Services to the Client with effect from the Commencement Date.

## b. Transfer of Returning Employees

If there is a transfer for the purposes of the Transfer Regulations, the employment of the Returning Employees shall transfer to the Client or a Replacement Agent in accordance with the Transfer Regulations with effect from the Subsequent Transfer Date.

Save where the parties reasonably believe that there will be no relevant transfer for the purpose of the Transfer Regulations, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the Client and/or the Replacement Agent.

## c. Provision of Information and Warranties

The Manager shall, no later than three months prior to the expiry of this Agreement, (or, if earlier, within twenty-eight days of notice being given of termination of this Agreement), or at any other time reasonably directed by the Client

to the extent lawfully permitted provide the Client with:

- i) A list of the Potential Returning Employees, including details of their job titles, age, length of continuous service, current remuneration, benefits and notice;
- ii) A list of agency workers, agents and independent contractors engaged by the Agent and any sub-contractor;
- i) The total payroll bill of the Potential Returning Employees;
- ii) The terms and conditions of employment of the Potential Returning Employees;
- iii) Details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings in respect of the Potential Returning Employees;
- iv) Details of any claims, current or threatened, brought by the Potential Returning Employees or their representatives;
- v) Details of all death, disability benefit or permanent health insurance schemes and other similar arrangements with or in respect of the Potential Returning Employees including the identities of any such employees in receipt of benefits under any such scheme; and
- vi) Details of all collective agreements relating to or affecting the Potential Returning Employees, with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes or claims for recognition by any trade union.

The Client shall keep such information secure and confidential and shall use it for the sole purpose of a tender exercise for a continuation of the Services, in which case the information may be disclosed to a prospective tenderer.

At intervals to be stipulated by the Client (which shall not be more frequent than every 30 days) and immediately prior to the Subsequent Transfer Date, the Manager shall deliver to the Client a complete update of all such information as shall have been deliverable pursuant to section (g) and the Manager shall meet with the Client to discuss the information disclosed.

At the time of providing the information to the Client pursuant to sections (g) and (h) the Agent shall warrant the completeness and accuracy of all such information.

#### d. **Financial Information**

Within twenty-eight (28) days after the Subsequent Transfer Date, the Manager shall, on request by the Client, provide to the Client and/or any Replacement Agent updated

financial details for the relevant Returning Employees. Such financial details shall include sums payable in respect of each Returning Employee relating to the following:

- i) Salary and benefits;
- ii) PAYE and National Insurance contributions; and
- iii) Miscellaneous costs (for example, training grants and staff loans)

#### e. **Restrictions**

The Manager undertakes to the Client that, during the three months prior to the expiry of this Agreement or, if earlier, at any time after notice has been served to terminate this Agreement and in respect of that part of the Services which will cease to be provided by the Manager (or any sub-contractor) at the Subsequent Transfer Date (the "**Affected Services**" for the purposes of this clause), the Manager shall not (and shall procure that any sub-contractor shall not) without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed):-

- i) Amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement) (including, for the avoidance of doubt, pay) of any Potential Returning Employees;
- ii) Terminate or give notice to terminate the employment or engagement of any Potential Returning Employees (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
- iii) Transfer away, remove, reduce or vary the involvement of any of the Potential Returning Employees from or in the provision of the Affected Services;
- iv) Recruit or bring in any new or additional individuals to provide the Affected Services who were not already involved in providing the Affected Services prior to the relevant period.

#### f. **Apportionments and Payments**

The Manager shall be responsible for all emoluments and outgoings in respect of the Returning Employees (including without limitation all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to, but excluding, the Subsequent Transfer Date (including any bonuses or commission which are payable after the Subsequent Transfer Date but attributable in whole or in part to the period on or before the Subsequent Transfer Date) and the Manager shall indemnify the Client (both for itself and any Replacement Agent) against any costs, claims,

liabilities and expenses (including reasonable legal expenses) incurred or suffered by the Client or any Replacement Agent in respect of the same

The Client shall be responsible for all emoluments and outgoings in respect of the Returning Employees (including without limitation all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period on and after the Subsequent Transfer Date (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable on or before the Subsequent Transfer Date but which are attributable in whole or in part to the period after the Subsequent Transfer Date), and the Client shall indemnify the Manager (both for itself and any sub-contractor) against any costs, claims, liabilities and expenses (including reasonable legal expenses) incurred or suffered by the Manager or any sub-contractor in respect of the same.

#### g. **Indemnities**

The Manager shall indemnify the Client (both for itself and a Replacement Agent) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Client and a Replacement Agent in connection with or as a result of:-

- i) Any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, personal injury, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Manager or any sub-contractor in respect of any Returning Employee before the Subsequent Transfer Date;
- ii) Any failure by the Manager or any sub-contractor to comply with its or their obligations under the Transfer Regulations, or any award of compensation under Regulation 11 of the Transfer Regulations, save where such failure arises from the failure of the Client or a Replacement Agent to comply with its or their duties under Regulation 13 of the Transfer Regulations;

- iii) Any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing the Potential Returning Employees arising from or connected with any failure by the Manager or any sub-contractor to comply with any legal obligation to such trade union, body or person; and
- iv) The provision of inaccurate or incomplete information pursuant to sections (g) and (h)

The Client shall indemnify the Agent (both for itself and any sub-contractor) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred in connection with or as a result of:-

- i) Any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, any claim for unfair/ wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Client or a Replacement Agent in respect of any Returning Employee on or after the Subsequent Transfer Date;
- ii) Any persons other than any Returning Employee whose employment or claims or liabilities arising out of their employment or its termination transfer to the Client or any Replacement Agent pursuant to or by virtue of the Transfer Regulations or who claims that their employment or such claims or liabilities so transfer;
- iii) Any failure by the Client or a Replacement Agent to comply with its obligations under the Transfer Regulations; and
- iv) Any claim (including any individual entitlement of a Returning Employee under or consequent on such claim) by any trade union or other body or person representing the Returning Employees arising from or connected with any failure by the Client or a Replacement Agent to comply with any legal obligation to such trade union, body or person.

#### h. **Other Transferring Employees**

If it is found or alleged that the employment of any person other than the Returning Employees transfers to the Client or a Replacement Agent

on or after the Subsequent Transfer Date pursuant to the Transfer Regulations:

- i) The Client shall notify the Manager, or shall procure that the Replacement Agent notifies the Manager of that finding or allegation as soon as reasonably practicable after becoming aware of it;
- ii) in consultation with the Client, the Manager shall within 14 days of becoming aware of that allegation or finding make that person a written offer of employment to commence immediately on the same terms and conditions as that person was employed prior to the transfer (actual or alleged), and under which the Manager agrees to recognise that employee's prior service with the Manager (or, where applicable, the sub-contractor) and the Client shall give all reasonable assistance requested by the Agent to persuade that person to accept the offer;
- iii) The Client or Replacement Agent may, within 28 days after becoming aware of that finding or allegation, if that person is still an employee of the Client or the Replacement Agent and has not accepted an offer of employment with the Manager, dismiss that person; and

Each party undertakes, if a claim, demand or action is made or threatened that may give rise to a claim for indemnity under this Section then that party shall as the case may be:

- i) Notify the indemnifying party of such a claim, demand or action in writing within 1 business day of it first being made or threatened or if not reasonably practicable to do so then as soon as reasonably practicable thereafter;
- ii) Give the indemnifying party promptly all reasonable co-operation, assistance and information which may be relevant to the claim, demand or action; and
- iii) Not admit, defend, compromise, negotiate or settle the claim or action without the consent of the indemnifying party (such consent not to be unreasonably withheld) in writing.
- iv) Any sub-contractor and/or Replacement Agent shall be entitled to enforce the provisions of this Schedule pursuant to Section 1 of the Contracts (Rights of Third Parties) Act 1999 provided that the parties to this Agreement may vary or terminate this Agreement by agreement between them without requiring the consent of any sub-contractor or the Agent and need not comply with Section 2(1) of the Contracts (Rights of Third Parties) Act 1999.

## SCHEDULE 7 (AGREEMENT)

This Agreement is signed on behalf of both parties and comes into effect on the Commencement date.

### Signed on behalf of the Client

Name

.....

Position or Authority to Sign

.....

Signature

.....

Date

2020

.....

### Signed on behalf of the Manager

Name

Nicholas Faulkner

.....

Position or Authority to Sign

Managing Director

.....

Signature

.....

*N.A. Faulkner.*

Date

2020

.....

# Schedule of Rates April '20

Fee Heading	Fee Description	Fee Type	Fee	Fee inc VAT
Admin	<b>Sellers Information Pack – Standard</b> Normally required as part of the sale of a property the solicitors acting for the purchaser will normally require a TP1 form to be completed and we have a standard pack of information we can provide.	Recharge to Tenant	£300.00 (£500 for London properties)	£360.00 (£600.00 for London properties)
	<b>Sellers Info. Pack - Additional Enquiries fee</b> Sometimes the pack we provide does not cover all the enquiries raised by the solicitors and we will be asked additional questions and sometimes this will attract an additional fee.	Recharge to Tenant	By arrangement	
	<b>Notice of Assignment/Charge</b> Normally required as part of sale process, will be served after sale and will receipt it and then update our records.	Recharge to Tenant	£120.00	£144.00
	<b>Consent under the Lease</b> To deal with requests for consent for building works, sub-letting as examples. This is an admin fee and additional charges may apply if we are asked to check structural works proposed as an example.	Recharge to Tenant	£205.00	£246.00
	<b>Land Registry Certificate of Compliance</b> Normally required as part of the sale of a property if there is a restriction on the title.	Recharge to Tenant	£150.00	£144.00
	<b>Deed of Covenant prepared by sols. Incl. Exec.</b> Normally required as part of the sale of a property where the deeds require, this document is a legal document which the new owner will sign to say they abide by the lease/transfer.	Recharge to Tenant	£120.00	£144.00
	<b>Section 20 Notices</b> Issuing of Section 20 Notices to comply with Landlord & Tenant Act 1985. If the work does not proceed an abortive fee of £10+VAT per unit is charged.	As required	2.5% of the contract sum plus VAT (min fee of £500+VAT) Postage and distribution of the at £5.00 per unit chargeable at Notice 1 stage	
	<b>Postage of circular letters – (Fee is per letter)</b> This will relate to letters over and above what is considered to be commensurate with the management fee and the issuing of the invoices, budget, the accounts and notices for annual meetings.	As required	£1.00	£1.20
	<b>Providing accommodation for meetings</b>	As required	£50.00	£60.00
<b>Insurance</b>	<b>Reinstatement Cost Assessment (Valuation for insurance purposes 3 yearly)</b> Best practice to review every 3 years, to involve a site survey and then a desktop assessment.	Recommended	By arrangement	
<b>Offboarding</b>	<b>Account closing:</b> Upon Section 12a being invoked by either party AFP will prepare handover documentation to include all statutory records and full account reconciliations, liaise with new management partners to assist with the smooth transition of management obligations. (per unit cost)	Client Cost	£5.00	£6.00
<b>Out of Hours Service</b>	<b>Out of Hours Repairs Service (Fee is per unit)</b> This is to provide an external service which will take and deal with calls when we are closed.	Recommended	£10.00	£12.00
Contracts	<b>Dealing with on site staff</b> This will relate to concierge or caretakers who are directly employed on a site. The fee will be to deal with payroll issues, HR administration, advising on training requirements etc.	As required	12.5% of Gross Salary	
	<b>Annual fee in relation to the processing of a client bank account (cost per account)</b> Fee to administer a bank account, reconciliations and charges we incur in opening and maintaining the account.	Other	£5.00 per unit with a min fee of £ 120.00	
	<b>Administration fee in relation to making a same day or next day payment</b> to a contractor or supplier on behalf of the client from the service charge account plus a 10% administration charge based on the invoice value.	Other	£30+VAT plus a 10% of the cost of the invoice	
	<b>To issue a reminder for non payment of monies due under the Lease or TP1</b> Credit control fees in chasing non payment which we will seek to recover as part of the arrears claim.	Other	£50.00	£60.00
	<b>To issue referral to solicitors to recover non payment of monies due under the Lease or TP1</b> As above, for instructing solicitors, providing them with the information they require to take legal steps to recover.	Other	£100.00	£120.00
Hourly Rates	<b>Hourly Rate – Manager</b> For providing advice or attending meetings in addition to that included in the management fee.	As required	£100.00	£120.00
	<b>Hourly Rate – Senior Manager</b> For providing advice or attending meetings in addition to that included in the management fee.	As required	£150.00	£180.00
	<b>Hourly Rate – Director</b> For providing advice or attending meetings in addition to that included in the management fee.	AS required	£200.00	£240.00
Building Surveying	<b>Project management</b> The fee based on value of the work subject to a minimum fee to plan work, the number of visits will depend on the fees and nature of the work.	As required	By arrangement	
	<b>Specification &amp; competitive tendering</b> The fee for AFP based on value of the work subject to a minimum fee to prepare specification and competitive tendering.	As required	10% min fee £500 plus VAT	
	<b>Long Term Maintenance Plan – Annual Review</b> Updating the long term plan to update works completed and the plan of works and to report on the reserve fund.	Recommended	By arrangement	
	<b>Long Term Maintenance Plan - Survey</b> To undertake a condition report normally 5 yearly to identify short, medium and long term expenditure.	Recommended	By arrangement	
	<b>Property Specific Maintenance Inspection &amp; Report</b> To undertake an inspection to look at structural defects such as damp problems and provide recommendations.	Recommended	By arrangement	
	<b>Building Consultancy, survey's, dilapidations, condition reports</b>	Recommended	By arrangement	
Company Admin	<b>Share/Membership Certificate issue</b>	Recharge to Tenant	£105.00	
	<b>Confirmation statement if not providing company administration</b>	As required	£120.00	£144.00
	<b>Being appointed as Company Director</b>	As required	£195.00	£234.00
	<b>Preparation and filing of Non Trading accounts</b>	As required	£100.00	£120.00
	<b>Lease Extension/Enfranchisement services</b>	As required	By arrangement	
	<b>Company Administration including appointment as company secretary (Fee per unit subject to a minimum fee)</b> Fee to be appointed as company secretary/registered office to oversee the company accounts and returns.	As required	Minimum of £300 £10 per unit plus VAT	
Professional	<b>Rent Reviews</b>	As required	By arrangement	
	<b>Health &amp; Safety Risk Assessments, Asbestos Survey, Electrical Safety tests, Independent Lift survey's</b>	As required	By arrangement	

## SUPPLEMENTAL INFORMATION

**This information does not form part of the Management Agreement but seeks to explain the main terms and why they are included.**

**A Management Agreement is a document which sets out what you can expect from us as your managing agent but also what we expect from you as a Client.**

### How long will the Agreement last?

All long-term agreements are subject to the consultation procedures meaning that any agreement for more than 12 months and that will cost leaseholders more than £100 each per annum must go through the statutory consultation process.

- Our agreement is for 9 months less one day and requires 3 months' notice to be served after this initial term.
- This means that the agreement will run for a minimum of 12 months less 1 day.
- The agreement will normally run for the period of the financial year for the service charge.
- The management agreement cannot be ended during the initial term or the notice period unless there is fault on either side or by mutual agreement.
- The agreement will continue after the term unless and until the 3 month's notice has been served and expired.
- We have the extension clause in the agreement to ensure that we can continue to provide services if a new agreement has not been signed.

### What will be paid to the Manager?

The agreement specifies the Management Fee and any ground rent collection fee in Schedule 6.

These are fixed fees and are payable in advance for the period and frequency that the service charges are collected, so may be annually, half yearly, quarterly or monthly in advance.

We will also charge fees for additional services which are detailed in Schedule 2.

The default management agreement will provide us with the authority to undertake all additional

services which are statutory requirements or recommended or best practice as defined by the Royal Institution of Chartered Surveyors (RICS), the Association of Residential Managing Agents (ARMA), or the Association of Retirement Housing Managers (ARHM).

You may decide to remove this clause; if you do so will need to instruct us or another party to undertake such services. You will therefore take responsibility for ensuring these services are carried out.

The additional services are listed in Schedule 2 and include items such as:

- Arranging fire risk assessments and undertaking fire risk reviews;
- Arranging other health & safety reports and testing such as Asbestos, water tanks, lifts, 5 yearly electrical testing etc;
- Long term plans to enable us to put a figure into the budget for the reserve fund.

We may earn commission where we arrange insurance on your behalf.

### Why are there additional fees?

Some of the additional services may not be required or we may not know if they will be required in advance so they cannot be included in the management fee.

Also, separating the costs allows transparency in pricing. The management fee is for the day to day management and the additional fees are for performing specific duties.

Some of the additional services are professional services and the costs will be dependent upon the amount of work involved.

Some services we provide will be for individual leaseholders to pay such as dealing with pre- sales enquiries; in these instances, the agreement gives us your authority to charge the individual for providing these services.