Draft Management Agreement

Between

Michael Laurie Magar Limited
(Managing Agent)

and

XYZ Limited
(the Client / the Owner)

for the

Management of

ABC DEVELOPMENT

DATE: ........................................
AN AGREEMENT BETWEEN Michael Laurie Magar Limited (MLM) 

AND 

XYZ Limited 
Company Number 12345678 

(the Client / the Owner) 

IN RESPECT OF THE MANAGEMENT OF 

ABC Development 

(the Property) 

WHEREBY THE OWNERS OR DULY AUTHERISED AGENT REQUEST AND AUTHORISE MLM LIMITED TO MANAGE THE PROPERTY ON THE TERMS AND CONDITIONS SET OUT HEREIN AND THE COVERING LETTER WHICH ACCOMPANIES THIS AGREEMENT. 

Signed:...................................................................... 
for and on behalf of 
XYZ Limited 

Accepted for and on behalf of 

Signed:...................................................................... 
for and on behalf of 
Michael Laurie Magar Limited
Introduction

The Owner appoints MLM to be its agent for the management of the Property during the Management Period and MLM accepts such appointment on the terms and conditions of this agreement.

The Management Period shall begin on the date at the front of this agreement and thereafter from year to year until terminated by not less than 3 months notice in writing given by the Owner to MLM or vice versa.

The Owner authorises MLM to:

1. expend any sums received for the relevant purpose for the benefit of the Property in accordance with the lease documents and this agreement
2. act reasonably and properly to expend any other reasonable sums necessarily incurred by MLM to ensure compliance with any statutory provision affecting the Property or affecting the Owner or MLM with regard to the Property

The Managing Agent shall:

1. Ensure that the Management obligations are observed and performed; and
2. Manage the Property as a high class [mixed use] residential development in a proper and businesslike manner on behalf of the Owner; and
3. To protect and promote the Owner’s interests as regards the Property; and
4. Carry out its duties under this agreement with all due care and attention and to the reasonable satisfaction of the Owner; and
5. At all times comply with all relevant Laws and professional standards.
1.0 SERVICE CHARGE & ACCOUNTING ADMINISTRATION

Service Charges

MLM shall ensure compliance with:

2. Part 2 of the Commonhold and Leasehold Reform Act 2002; and
4. The Service Charges (Summary of Rights and Obligations, and Transitional Provision)(England) Regulations 2007 (each as amended and/or superseded from time to time);
5. All relevant Laws generally and without prejudice thereto in connection with consultation with the Unit Owners in respect of the service charges payable under the lease Documents.
6. Provide to the Unit Owners forthwith such information as they shall be entitled to in accordance with their respective lease Document or under the relevant legislation.
7. Calculate for each financial year the service charge applicable to the whole of the property and the apportionment attributable to each of the Private Units and the Commercial Units and the Affordable Units in accordance with the various lease Documents.
8. Prepare budgets for future service charges in advance of each financial year and establish and administer any long-term fund to meet major future liabilities in accordance with the Management Strategy.
9. Administer and collect the service charge and deal with all service charge funds in accordance with the lease Documents and all relevant statutory provisions and codes of practice and without prejudice thereto shall take all necessary and reasonable steps to collect all arrears of service charge from each of the Lessees in accordance with the Leases.
10. In the first month of the last quarter of each financial year to prepare the estimates of service change expenditure applicable to the whole of the Property and its apportionment to each of the Private Units and Affordable Units and Commercial Units in readiness for the next financial year and issue the same to the Owner in the said first month for the Owner's approval.
11. Prepare service charge books of accounts ready for the accountants / auditors and assist so that the accounts in accordance with the terms of the Leases and the regulations of the Royal Institution of Chartered Surveyors are met.
12. Provide the Owner with quarterly income and expenditure statements as agreed with them.

12. Present service charge accounts to the Owner within a reasonable time of the relevant service charge year end or in accordance with the lease documents.

13. Invoice at least 30 days prior to the relevant due date and thereafter use best endeavours to collect on behalf of the Owner all Monies.

14. Comply with the provisions set out in section 166 of the Commonhold and Leasehold Reform Act 2002 relating to the requirement to serve notices in respect of the recovery of Rents.

15. Account and pay to the Owner and (where relevant) all Monies received as follows:
   1. all Rents received shall be paid to the Owner quarterly together with all interest earned thereon;
   2. all service charge, rent and reserve fund monies shall be held in separate bank accounts (see credit control point 2).

16. To pay and discharge out of the service charges collected (subject to the availability of adequate funds) all rates taxes the cost of employing site staff in accordance with the Unit leases utility bills and the cost of all other outgoings for which the Owner is responsible under the relevant provisions in the Unit leases.

17. Issue reasonable administration fees and any other fees in connection with the running of and administration of the building such as recharging of items to tenants not covered in the service charge.

18. Expend such other sums considered necessary to ensure compliance with any statutory provision affecting the property or the client or the agent with regard to the property.

Credit Control

1. MLM is to engage in tight credit control and collection procedures which might include the following:
   1. applying interest to tenants accounts where the lease documents so provide,
   2. sending letters requesting payment, with an administrative fee of £75 for 3 letters to non paying leaseholders in any one charging cycle,
   3. make applications to the Land Registry to identify the defaulting tenants borrower and write to same advising of non payment through solicitors,
   4. instructing solicitors to make applications to County Court for a money judgement order, the courts fees initially borne by the client but will be charged to the defaulting tenants account,
   5. making an application to the tenants borrower to have a County Court money judgement order discharged,
   6. applying to County Court for an attachment to earnings order and for permission for the Court to enter judgement on the charges register against the property. Furthermore, to lodge a charge against the property title to prevent it being sold without discharging the debt,
   7. writing to the defaulting tenant’s place of employment to seek enforcement of an attachment to earnings order,
   8. an application to Leasehold Valuation Tribunal to deem that a service charge is reasonable or to instruct a solicitor to serve a section 146 notice for breach of covenant after receiving a judgement notice if appropriate.
2. Ensure that all monies received are deposited into a separate Clients Account maintained within the strict rules of the Royal Institution of Chartered Surveyors Accounts Regulations as follows

1. Ground rent account (if applicable).
2. Service charge trust account.
3. Reserve fund trust account (if applicable).

3. Subscribe to the Royal Institution of Chartered Surveyors client money protection scheme.

4. Ensure that payments are made to the applicable bank accounts within 24 hours of receipt of a payment.

5. Make all bank statements, receipts and other such documentation as necessary available to the clients appointed Auditor and accountant as might be reasonably necessary.

6. Place all Monies received immediately on an interest bearing Client Account attracting the highest possible rate of interest commensurate with the intended application of Monies

2.0 REPAIR AND DEVELOPMENT ADMINISTRATION

Repairs

MLM shall use all reasonable care and skill to:

1. Advise the Owner on request any day to day items of repair and maintenance including repairs, decorations, maintenance, alterations together with routine maintenance of the Property and more generally comply with the Management Obligations of the Owner and to provide the services set under the lease documents.

2. To enter into contracts on behalf of the owner for the maintenance and the supply of goods and services which shall either (i) not exceed a value or length above the consultation limit as stated in The Landlord and Tenant Act 1985 (as amended) or (ii) where such contracts do exceed a value or length above the relevant consultation limit as stated in the Landlord and Tenant Act 1985 (as amended) to consult in accordance with the provisions of the Landlord and Tenant Act 1985 (as amended) and following such consultation and having obtained consent as aforesaid to enter into the said contracts.

3. Be responsible for and make the payments properly required relating to the Property from the service charge contributions collected under the lease Documents in accordance with this agreement to the extent that funds are available for that purpose and to report immediately to the Owner if further funds are required in respect of which MLM will seek to recover the same from the Unit Owners either immediately or in the following financial year(s) depending on the terms of the lease Documents.
Collateral Warranties etc.

1. Where any plant and equipment or other facilities or infrastructure at the Property has or may have the benefit of or be subject to:

any collateral warranties manufacturers/suppliers guarantees or other rights against third parties in respect of their design installation operation maintenance or replacement (“Third Party Recourse”) then MLM shall ensure that it is fully aware of the terms and conditions of the Third Party Recourse and that it takes all reasonable steps to comply with the express or implied requirement of each relevant Third Party Recourse not prejudice the rights of the Owner under each Third Party Recourse without prejudice to the foregoing where the Third Party Recourse requires that a particular maintenance contractor is employed then to ensure that the person is so employed, where this employment will not contravene the legislation covering collection and expenditure of service charges and contractual arrangements.

Staff

1. MLM will employ for and on behalf of the Owner an adequate number of competent and suitably qualified, experienced, trustworthy and reliable staff to meet the obligations of this agreement and who shall be courteous and polite at all times, where the development so requires.

Site Visits

1. MLM shall visit the Property on a frequent and regular basis (being not less than once every month) to inspect the Property to ascertain for the purposes of day to day management the general condition of the Property to supervise any routine repair works on the Property and make reports to the Owner where necessary.

Information Exchange and Disaster Recovery

MLM shall:

1. Keep the Unit Owners informed of matters relevant to the management of the Property and to keep the Owner promptly informed of matters relating to the Lease Documents and Flat Owners and promptly assist in preparation of replies to enquiries at the cost of the relevant Unit Owners

2. Hold a meeting with the Owner as required to inform the Owner of matters relating to the Property

3. Provide appropriate secure storage facilities for all files and documents relating to the management of the Property and to allow persons authorised by the Owner access to the same on reasonable notice and to keep proper written and computer records of relevant management information for at least 12 years or pass all relevant files to new managing agents if required.

Dealing with Enquiries

1. The Managing Agent shall deal promptly and satisfactorily with all reasonable enquiries in connection with matters arising from the day to day management of the Property.
Consent Applications

MLM shall:

1. Process all applications for consent to alter, assign or sublet any Unit in the Property subject to payment of relevant fees.

2. Diligently ensure that each application is handled in compliance with all relevant Laws and lease documents and that any information required from the applicant is requested in order to ensure that the application is complete and has enough information for the Owner to decide upon and for MLM to advise upon the application.

3. to act diligently and in accordance with the Owner's instructions in connection with the grant of any consents to be provided under any of the lease Documents.

Health and Safety

MLM shall ensure that:-

1. the Property is safe for use by the general public, residents, contractors, agents and employees alike by using all best endeavours and through implementation of periodic Health and Safety Inspections and subsequent reporting and actioning of issues arising there from and ensuring compliance at all times with the relevant health, safety and environmental legislation including in particular preparing fire risk assessment reports, asbestos reports, and maintaining an up to date and compliant health & safety file and including maintaining copies of all maintenance and statutory inspections of lifts and other plant and equipment.

2. When procuring construction works to the Property, all current health, safety and environmental legislation in existence at the time of carrying out such work shall be complied with.

Confidentiality

1. Neither party shall disclose any information relating to this agreement or the management of the Property to any third party unless required to do so by a court or by a governmental or regulatory authority or where subject to a valid and existing legal right duty or requirement to do so.

Data Protection Act 1998

1. MLM undertakes to comply with the provisions of the Data Protection Act 1998 in so far as the same relates to the provisions and obligations of this agreement.

2. In particular MLM warrants and undertakes that it has and will during the Management Period appropriate technical and organisational measures and procedures in place to protect any personal data accessed or processed by MLM against unauthorised or unlawful processing of personal data and against accidental loss or destruction of or damage to personal data held or processed by MLM and that MLM has taken all reasonable steps to ensure the reliability of its staff which will have access to personal data processed under the terms of this agreement.
3.0 CLIENT REPORTING

MLM shall:

1. As soon as reasonably practicable following the completion of this agreement undertake a comprehensive review of the scheme documents such as they may exist to include relevant plans of the Property and relevant supporting documentation to enable MLM thereafter to produce a report (to be made available to the Owner) detailing material issues in connection with the management of the Property by MLM under this agreement to include draft service charge budgets and recovery schedules and formation of a management strategy.

2. Present the report in draft to the Owner and it shall be amended by MLM to reflect any comments made by the Owner.

3. The Report shall without prejudice to the generality of the provisions in this agreement:
   1. set out the Rents, service charge contributions, and insurance rent payable under each of the Leases together with methods of calculation; and
   2. in particular highlight any areas of irrecoverability in respect of the service charge contributions (whether due to caps weighting or numerical errors in the documentation or any other reason),
   3. include a strategy for minimising payments of service charge for Units which have not yet been sold by the Owner (voids),
   4. identify any changes necessary in the form of the Lease employed on the Property in order to improve service charge recovery or which are otherwise desirable in the interests of the Owner,
   5. set out a planned long term (between 5 and 30 years) costed maintenance programme for the Property,
   6. take into account and plan for the performance of all outstanding obligations on the part of the Owner under any planning agreements.

4. Ensure that all necessary changes identified pursuant to the draft lease are communicated without delay to the Owner’s solicitor.

5. MLM shall provide regular advice to the Owner on management policy in respect of the Property and shall as often as is necessary update the Management Strategy.

6. MLM will prepare and submit to the Owner after the end of each quarter a property management report showing:-
   1. up to date records and books of account,
   2. all Rents, service charge and insurance payments due and,
   3. accounts to the Owner for rents received, such books to be open to inspection at all reasonable times by the Owner at the offices of the Managing Agent and to comply with all laws.
The services to be provided by MLM under this agreement shall include any of the following at the request of the Owner, subject to a suitable fee being agreed as these services will be in addition to the standard fees set out herein.

1. The supervision of major building works and the preparation of any specification.
2. The service of notices in accordance with the Landlord & Tenant Act 1954 or 1985.
3. Any work arising as a result of the proposed sale of Property (provided that MLM shall make available at reasonable cost all copy documents records and other information in respect of the Property in its possession to the Owner upon reasonable request).
4. Instructing solicitors or attending at court for the recovery of arrears of rent or service charge or for any other purpose.
5. The preparation of insurance valuations.
6. The preparation of schedules of dilapidation.
7. Undertaking negotiations in respect of rent reviews or lease renewals for Commercial Units and preparation of submissions and proofs of evidence for third party determinations thereof if applicable.
8. Offering vacant parts of the Property to let and negotiating the terms of any new or varied Lease where applicable.
9. Formal RICS red book Valuations [except as noted above].
10. Initiating, conducting, preparing evidence for and attending hearings or Leasehold Valuation Tribunal and otherwise dealing with any rent review, party wall proceedings, application for a grant or for consent, arbitration or litigation.
11. Dealing with local government matters including council tax valuations, planning permission, building regulations consent and grant applications, save as to any conditions attached to the section 106 agreement.
12. Supervising and verifying the performance of contractors or other professional consultants whose specialist expertise would require verification by a similar specialist expert.
13. Building surveying works, structural works productions of any plans and works required under any CDM regulations.
14. Re-registration of regulated tenancy rents. The client will advise MLM in writing of any changes to its demanding cycles if any rents are re-registered.

4.0 EXCLUDED DUTIES FROM MANAGEMENT RESPONSIBILITIES
5.0 MANAGEMENT FEES

Base Fees

1. Service charge base fees are calculated on the basis of XXXX residential, units at £XXX per unit plus VAT for the first year of management. Fees are paid quarterly in advance on calendar quarters.

2. Base fees are increased yearly with the new budget by the rate of inflation subject to a minimum of 3% per annum.

Additional fees

Services for which additional fees may be charged:-

Major works

1. Preparation of Specifications for major works

   Fees are based upon the following table

<table>
<thead>
<tr>
<th>Value</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to £20,000</td>
<td>£1,000</td>
</tr>
<tr>
<td>£20,001 - £50,000</td>
<td>£2,000</td>
</tr>
<tr>
<td>£50,001 - £150,000</td>
<td>£3,000</td>
</tr>
<tr>
<td>£150,001 - £500,000</td>
<td>£4,000</td>
</tr>
<tr>
<td>£500,001 plus</td>
<td>£5,500</td>
</tr>
</tbody>
</table>

2. Obtaining competitive tenders, tender reports, and supervising all major works

   Contract value of up to £20,000. 12.5% plus VAT of the value of the works
   Contract Value in excess of £20,001. 10% plus VAT the value of the works
   Contract Value in excess of £750,000. 8.5% plus VAT the value of the works

   Fees are calculated on the basis of the price chosen as part of the section 20 notification procedure or the contract price issued to the contractor where section 20 does not apply. Additional works over and above the contracted price are charged at the same rate.

   50% of the fees become due at the time of expiry of the notice of estimates.
   25% of the value of the works become due at the outset of the works.
   25% of the fees become due from ½ way into the contracted period.

   NOTE: Where a project does not proceed, after tenders are received, 25% of the fees chargeable based on the lowest tender price will be due.

Miscellaneous fees charged for those leaseholders that use them and not to form part of the service charge.

1. Credit Control

   A cost will be chargeable where MLM are required to send 3 chasing letters in any one charging cycle.

   Fee - £75 including VAT. Please note that only non paying leaseholders are charged. If the non paying leaseholder continues not to pay and it
becomes necessary to send the matter to solicitors, additional fees of the solicitors will be made to the non paying leaseholder. Additional costs will be charged to the tenant where court action is required to recover ground rents, service charges, major works charges and other administrative charges. Where the lease so provides, costs will be charged to the offending tenant.

2. DVLA Enquires

Enquires chasing and removal of abandoned cars.

Fee - £50 plus VAT per enquiry. The client will also be able to pay for charges of removal unless it can be identified that the car belonged to a resident in the block.

3. Solicitors pre-contract sale enquires or re-mortgage enquires.

Fee – £250 plus VAT chargeable to the recipient of the information packs. Should additional queries be raised by solicitors MLM reserve the right to make an additional charge at the rate of £15 plus VAT per question. These fees are paid by the seller and recovered by the buyer and does not form part of the service charge.

4. Licences

Where it is requested that MLM provide Licenses to assign or licenses to sub-let (where the lease so provides) fees of £250 plus VAT will be charged.

Where it is requested that MLM provides a License for alteration (where the lease so provides) fees of £450 plus VAT will be charged to inspect the premises and provide the license.

Where structural alterations are required, an additional surveyors report will be necessary based on an hourly rate of £150 plus VAT per hour.

These fees are only chargeable for those lessees that require these services.

5. Standing orders/Returned cheques

A charge of £30 including VAT is charged for setting up monthly standing orders. No charge is made for quarterly standing orders.

Where cheque payments are returned unpaid, an administrative charge of £30 including VAT and any bank charges will be made to the offending leaseholder only.

6.0 DISCLAIMER

1. Unless caused by MLM’s negligence in the provision of the Management Service, MLM cannot be held liable either in contract or in tort for any loss, injury, damage or legal or other expenses sustained as a result of:-

1. MLM having reasonably relied upon the client to provide accurately all relevant information;
2. any inaccurate forecast by MLM of future income or expenditure;
3. any defect or failure to identify any defect in the Property or plant, machinery, equipment, or materials used for the Property whether or not such defect be latent or apparent on
examination;

4. the act, omission or insolvency of any person/third party other than the Agent.

2. Neither MLM nor any of its employees can be held liable for any loss occasioned to any occupier of or visitor to the property under MLM’s management, unless the loss, damage or injury is due to the default of MLM in pursuing its obligations under this agreement.

3. This Schedule shall not be valid in so far as prohibited by statute.

4. MLM shall at all times maintain Professional Indemnity Insurance as approved by the Royal Institution of Chartered Surveyors both for the period of this Agreement and the relevant “run off” period.

5. The Owner is strongly advised to hold Property Owners Liability Insurance to cover the contingency of detecting any defect in the property which may give rise to a liability.

6. The Owner agrees that in relation to all matters relating to the property, MLM Ltd are merely the agents of the client.

7. MLM must be able to rely on information provided by the client and shall not be obliged to make any independent enquiries to verify any information provided orally or in writing. The client agrees to fully indemnify MLM in respect of incorrect or inaccurate information it supplies to MLM in respect of the property.

7.0 TERMINATION OF MANAGEMENT AGREEMENT

1. In respect of a breach of this agreement by MLM the Owner may serve on the other written notice specifying the breach or breaches and requiring them to be remedied within 28 working days.

2. If MLM fails within 28 working days of the service of any such notice to remedy such breach or breaches then the party who served the notice may terminate the Agreement upon serving 3 months written notice to that effect on the other party.

3. The Owner may terminate this agreement on not less than 28 working days' prior written notice if at any time a right to manage company is appointed in accordance with Part 2 of the Commonhold and Leasehold Reform Act 2002 (as amended from time to time).

4. If this agreement is terminated for any reason then MLM shall provide to the Owner (or as it may direct) within 5 working days all materials, supplies, keys, leases contracts, insurance policies, plans, specifications, reports, permits, licences, promotional materials, other papers (including general correspondence) and uncommitted service charge, reserve funds and other funds as my be necessary.

5. A final bank reconciliation of all funds is to be provided to the Owner (or as directed) within 28 days of termination of this contract.
8.0 BUILDING INSURANCE

MLM will (if required):-

1. Ensure that the Property is insured on comprehensive terms having regard to the lease documents, the nature of the Property and the availability of insurance (and the terms of the insurance so available) unless so instructed by the Owner.

2. Prepare, administer and submit insurance claims where necessary as a result of incidents covered by the Owner’s insurance policy and to proceed with all claims diligently and expeditiously (keeping the Owner informed at all times).

3. Process the renewal of the insurance policy and monitor insurance requirements in respect of the property.

4. Prepare, and where required process and submit simple claims relating to the common parts and assist unit owners in making their own claims where necessary. However, MLM reserves the right to charge an administration fee for large complicated claims in excess of £10,000 based upon 5% of the value of the claim.

5. Where the owner arranges insurance elsewhere, it will be for the owner to advise MLM on the renewal terms and to let MLM have copies of the renewal notices and policy documents for reimbursement as appropriate. Claims will need to be handled via the owners own insurance company direct.

6. Rely upon the previous years’ cost of rebuilding figures as stated on the insurance certificate unless instructed by the Owner to carry out an Insurance Valuation for which an additional fee is charged. MLM recommend that a valuation is prepared once in every 3 year period.

7. Not warrant that the new cover is a reflection of the true cost of rebuilding unless MLM or a suitably qualified valuation specialist has been instructed to undertake a formal Insurance Valuation.

8. Provide to the Unit Owners upon written request, written details of the policy or policies of insurance and a copy of the receipt for the last premium payment made.

9. MLM confirm that the exercise of brokering the insurance renewal will provide MLM with a standard brokerage commission on all new insurance policies renewed via MLM. This amount will change year on year, but will be in the region of 15% of the premium price.

9.0 GROUND RENTS

1. If so instructed, MLM will collect and account to the Owner every quarter of all ground rents due and collected.

2. MLM will charge a fee of 5% of the rents collected for this service.

END