

2 Agreement to forward fund the cost of future works

(See section 4.8.4.5 and B5.6 of RICS' *Service charges in commercial property*, 2nd edition.)

The text in italics is produced for guidance only and sets out examples of the key elements of a communication. Practitioners should give consideration as to how the agreement of parties will be formalised before implementing as this is likely to be a voluntary agreement outside lease provisions and legal advice should be sought on implementation.

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| <i>Property address</i> | |
| <i>Service charge period ending dd/mm/yyyy [current service charge period]</i> | |
| <i>Description of the works proposed</i> | |
| <i>Projected works cost</i> | <i>£</i> |
| <i>When the proposed works will be commenced</i> | |
| <i>Over which service charge years will the works cost be collected</i> | |
| <i>Explanation of reasons for proposing incurring costs ahead of project completion</i> | |

In accordance with the detail above, it is proposed to spread the anticipated cost of works to be carried out in future over several service charge periods. In accordance with the current edition of RICS' Service charges in commercial property, the intention of this communication is to formalise agreement and treatment of these works in the accounts.

The intention is to collect costs towards future works in the current and future service charge year accounts to collect funds to satisfy the project works as detailed above. This is to assist tenant cash flow to spread the costs of the proposed works, which negates a significant one-off increase in tenant service charge liabilities in the service charge year that the works are delivered. It is understood, however, that tenants will require certain assurances.

This communication is to seek agreement for the landlord to include an amount within the service charge accounts, by way of a reserve fund arrangement, over future periods to satisfy the funds to carry out the works in accordance with the following:

- 1. The landlord shall keep (or procure that landlord's managing agents shall keep) the relevant monies in a separate trust account until and to the extent that they may be required for disbursement in payment of the costs and expenses of the works.*
- 2. Interest earned on such account (less any tax payable) shall be credited to the account.*
- 3. Until and subject to actual disbursement in payment of the cost and expenses of the works, the relevant monies shall be held by the landlord on trust for the benefit of the tenants and occupiers.*
- 4. In the event of the expiry or sooner determination of the lease prior to any service charge period in which actual disbursement or payment of the costs and expenses of the works has occurred, the tenant shall be entitled to full reimbursement of its contributions into the reserve fund up to the date of such expiry or sooner determination of the lease.*
- 5. The landlord shall contribute payments to the fund in respect of vacant lettable areas, and where there are shortfalls in the recovery of contributions from a tenant of its due proportion whether by reason of default or agreed concession in respect of the tenant's liability for contributions.*
- 6. The landlord shall only apply the proceeds of the reserve fund to the cost of the works for which it has been established, as described above and for no other purpose. If the cost and expenses of the works is less than the sums accumulated in the reserve fund, the landlord will credit any balance in full in the service charge period in which the works are completed.*
- 7. All funds collected will be disclosed separately within the year end accounts as 'agreed contributions towards future works' and will be subject to reconciliation on completion of the project. Further details of the forward funding should also be disclosed in the notes to the expenditure report.*