23rd April 2018

Open letter to CREM from the Residents' Association of Canary Riverside

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Dear Canary Riverside Estate Management

We are writing in response to your letter dated 12th April 2018 to lessees which, in our view, seeks to misrepresent the situation following the First Tier Tribunal's decision in August 2016 to remove management responsibility for Canary Riverside from CREM. We remind you that:

The Manager was appointed by the FTT because of the serious failings in your management of the estate over many years.

The Tribunal's **findings against CREM** – which you have never shared with lessees - included:

- If it had not been for the lessees' legal action **you would not have begun** addressing long-standing issues maintenance issues such as repairing the garden path and leaking windows. Despite commissioning a planned maintenance report, you **failed to implement it or to set a proper reserves budget** to fund the required maintenance programme.
- Similarly, lessees only received accounts - outstanding since Marathon Estates' appointment in 2011- because of their legal action. Under CREM, annual accounts took **on average more than 3 years** to prepare: HML produced the 2017 accounts within **6 months**.
- The continual **cost** (c.£500,000) of the **chiller repairs** between 2010-2013 was **unreasonable**. The Tribunal noted the chiller plant was **already at the end of its useful life** in 2010, **when you spent over £400,000** on major repairs.
- **You utilised £245,000 from the service charge** account when **you were not entitled to do so** - indicating to the Tribunal that **you placed no real importance on the service charge monies.**
- You **failed to comply** with s.22 of the Landlord & Tenant Act 1985, **refusing to provide** lessees with full information supporting the accounts or providing documents so **heavily redacted** they were **useless**.
- You **did not tell your bank** that lessees' reserves must, by law, be held on trust. Prior to the legal action, **lessees' monies were co-mingled with CREM's** and even included within CREM's own 'cash at bank' in its statutory accounts.

When you appealed the Tribunal's decision the High Court judge said *"the First Tier Tribunal's findings amply justified the making of an immediate management order"*

In October 2016 **you applied to the Tribunal** to reduce the term of the Management Order by one year so that it would end in September 2018, and to regain certain management responsibilities. The hearing took place over various days between February and June 2017, and the Tribunal issued a **new Management Order in September 2017**.

- The FTT **decided insurance should remain with the manager**: **you have appealed** to the Upper Tribunal and convinced them that bank loan covenants require that you place the insurance. **You didn't mention** the substantial **commission** you would earn.
- The Tribunal decided the term of the Order should be **increased**, to end in **September 2020**: **you have appealed** their decision.
- The Tribunal decided the manager be responsible for sales packs, consents and other lease matters: **you have appealed** their decision.
- The Tribunal confirmed that **'the manager steps into the shoes of the landlord**' – yet you continue to challenge the Tribunal's decisions in order to reduce significantly the manager's powers and responsibilities while increasing your own.

The Tribunal's decision regarding your appeal matters is currently awaited.

Throughout 2017 the Tribunal was dealing with your application to vary the Order and your appeals against its decisions.

On legal costs:

- **You appealed** the Tribunal's decision to prevent you charging your 2016 legal costs of £320,000 to lessees. The Tribunal **rejected** your appeal: however, a legal technicality has allowed you to charge a proportion of those costs to the 'non-applicant' lessees.
- The manager's estimated legal fees re. the Order (per the 2017 accounts, 2017/18 and 2018/19 budgets) total £637,000.

Lessees expressed their fear to the Tribunal that, **despite the successful s.24 application**, unless it brought the disputes and appeals regarding the Order to a satisfactory end, lessees could end up paying over £1 million in legal fees: **this would be unjust**.

On other matters:

- Between 2014-2016, **companies related to CREM** were, we understand, paid over **£1.5 million** of service charge monies: you were legally obliged to declare these transactions in the accounts and did not. **£106,000 of this was paid to Artcloud Management** for the **garden path**: they were not the company notified to lessees in the s.20 consultation (and the path is already disintegrating).
- We understand that the buildings insurance premium of £540,000 may include **commissions of c.£250,000 paid to you** and Octagon Overseas (the freeholder). By law, such commissions must be disclosed in the accounts.

If CREM wants to demonstrate to lessees that it is acting in good faith and in the interests of good estate management, it should apologise for its past management failures and allow the Management Order to be the effective scheme of management that the Tribunal intended.