

## MANAGEMENT AGREEMENT

Entered into by and between:

\_\_\_\_\_ **BODY CORPORATE**

SS \_\_\_\_\_ / \_\_\_\_\_

("the Body Corporate")

AND

\_\_\_\_\_ (REG/CK NO: \_\_\_\_/\_\_\_\_/\_\_\_\_) T/A \_\_\_\_\_

("the Managing Agent")

### 1. **RECORDAL**

1.1 The Body Corporate needs abide by the terms of the Sectional Titles Schemes Management Act, No 8 of 2011, the Sectional Titles Act, No 95 of 1986 and the Community Schemes Ombud Service Act, No 9 of 2011 (jointly referred to as "the Act") and the Trustees have been elected in terms of the Act and the Rules adopted in terms of the Act.

1.2 The Trustees are obliged to perform certain functions and may exercise certain powers in terms of the Act and the Rules.

1.3 The Trustees require the Managing Agent to perform certain specified financial, secretarial, administrative and other management services on their behalf and under their supervision.

### 2. **APPOINTMENT**

2.1 The Managing Agent is hereby appointed to act as managing agent of the Body Corporate on the terms and conditions set out in this agreement, which appointment is accepted.

- 2.2 The appointment of the Managing Agent does not relieve the Trustees of their fiduciary duties.

### 3. **POWERS AND DUTIES OF MANAGING AGENT**

- 3.1 The Managing Agent shall be entitled to act in all respects on behalf of and in the name of the Body Corporate and/or the Trustees, as may be necessary for the performance of its services, subject to the provisions of the Act and the Rules. The parties acknowledge that this agreement shall not be construed as a delegation by the Trustees of their functions or powers (or those of the Body Corporate) to the Managing Agent.

- 3.2 The duties of the Managing Agent are set out in **Annexure "A"**.

### 4. **REMUNERATION**

- 4.1 The Managing Agent's fees are set out in **Annexure "B"**. These fees will increase by 10% (10 percent) on the 1<sup>st</sup> of January of each year following signature of this agreement.

- 4.2 The Managing Agent will be remunerated monthly in advance for all the fees set out in Annexure "B".

### 5. **COMMENCEMENT AND TERMINATION OF THIS AGREEMENT**

- 5.1 This agreement begins from \_\_\_\_\_ and shall endure for a 3 (three) year period, whereafter it will automatically renew for further periods of 3 (three) years at a time, unless written notice of termination is given by either party 3 (three) months before the date the agreement is set to be renewed automatically.

- 5.2 This agreement may be cancelled without liability or penalty by:

5.2.1 The Body Corporate on 2 (two) calendar months' notice if the cancellation is first approved by a special resolution passed at a general meeting of owners;

5.2.2 The Managing Agent on 2 (two) calendar months' notice.

## 6. **BREACH**

6.1 If any party breaches any provision or term of this agreement and fails to remedy such breach within 14 (fourteen) days of the date of dispatch of written notice requiring it to do so, then, the other party ("the aggrieved party") shall be entitled, in addition to any other remedy available to him at law, to cancel this agreement or to claim specific performance, in either event, without prejudice to the aggrieved party's rights to claim damages.

## 7. **INDEMNITY**

7.1 Save in the event of default by the Managing Agent, the Body Corporate will indemnify and hold harmless the Management Agent from and against all claims, losses, costs, damages and expenses properly incurred by the Managing Agent in carrying out its duties and obligations as instructed by the Body Corporate from time to time. The Managing Agent shall not in any way whatsoever, be liable to the Body Corporate if the Managing Agent fails or omits to do any act, matter or thing it is obliged to do hereunder, if such failure or omission arises from the Body Corporate's failure to make the appropriate decision in relation to such act, matter or thing or to have sufficient monies available to the Managing Agent to enable the Managing Agent to carry out its obligations.

## 8. **ARBITRATION**

8.1 Should any dispute or claim arise between the parties ("the dispute"), concerning the Agreement, the parties shall try to resolve the dispute by negotiation. This entails that the one party will invite the other in writing, to a meeting and to attempt to resolve the dispute within 7 (seven) days from date of the written invitation. If the dispute has not been resolved by such negotiation, the parties shall resolve the dispute by arbitration.

The National Association of Managing Agents appointment of a suitably qualified Arbitrator shall be accepted by the parties. The Arbitration shall be conducted in a summary manner and the Arbitrator shall be required to give a decision within 14 days of referral of the matter to the Arbitrator, as well as ruling on costs.

## 9. GENERAL

9.1 This agreement shall be the whole agreement between the parties and no variations shall be of any force or effect unless reduced to writing and signed by both parties. No variation or consensual cancellation shall arise via an exchange of "data" by means of "electronic signature" and/or "advanced electronic signature" as set out in the Electronic Communications and Transactions Act 25 of 2002 as amended, or otherwise through electronic and/or written signed correspondence.

THUS DONE AND SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_.

*RESOLUTION OF THE TRUSTEES TO ENTER INTO THIS AGREEMENT IS ATTACHED MARKED "X"*

\_\_\_\_\_  
**WITNESS**

\_\_\_\_\_  
**TRUSTEE SIGNATURE**

\_\_\_\_\_  
**TRUSTEE NAME**

\_\_\_\_\_  
**WITNESS**

\_\_\_\_\_  
**TRUSTEE SIGNATURE**

\_\_\_\_\_  
**TRUSTEE NAME**

THUS DONE AND SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_.

**AS WITNESSES**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ **MANAGING AGENT**

**ANNEXURE "A" – DUTIES OF THE MANAGING AGENT**

**A. ADMINISTRATION**

- To open and operate a bank account in the name of the Body Corporate to meet the commitments of the Body Corporate. Should such bank account already exist, the Trustees grant the Managing Agent full access to such bank account. This includes managing any investments of the Body Corporate.
- To compile and dispatch statements to each owner, on a monthly basis, displaying all current transactions.
- To collect and receipt all levies and other amounts and income due to the Body Corporate.
- To verify and pay rates, taxes, charges and any other expenditure whatsoever which may from time to time be payable by or chargeable to the Body Corporate as per the Expenditure Budget Estimation. All other payments will first be referred to the Trustees of the Body Corporate, for approval.
- To pay all salaries and wages and all statutory deductions thereon, including PAYE, UIF and Workmen's Compensation on the dates and in the manner instructed by the Trustees of the Body Corporate and prescribed by Law. The Managing Agent is not responsible for keeping records of employees leave.

- To keep a list of Trustees, owners and tenants as well as primary and utility sections, participation quotas and registered bondholders in terms of the Act.
- To compile and distribute, to all Trustees of the Body Corporate on a monthly basis, a management report which will include an income and expenditure statement (detailing actual versus budgeted figures), a balance sheet, a cash flow statement and any supplementary schedules which the Trustees may require, ie. a monthly arrears report.
- To keep full and proper books of account and records in accordance with standard accounting principles showing clearly all revenue, expenditure, transactions and proceedings relating to the Body Corporate.
- To make and sign applications to the appropriate government department/s and/or local authority/ies for all and any licenses, permissions and consents required by any Act, Regulation or By-Law in connection with the management of the Scheme.
- To dispatch to the owners the Management rule 25 (1) notice and 25 (2) final notice.
- To demand and recover from all past and present owners of sections, all levies and other sums payable by them, and to take all necessary steps, whether by legal action or otherwise, in which case they may instruct attorneys of their choice to institute legal proceedings, agree fees with such attorneys and furnish all instructions to the attorneys, to recover any levies or sums in arrears as well as to make payment to such attorneys.
- The Trustees have signed the mandate attached as **Annexure "C"** giving the Managing Agent permission to sign the necessary tri-partite clearance certificate agreement on behalf of the Body Corporate and be remunerated for such certificate.
- To carry out specific instructions from the Trustees in connection with enforcing the Rules of the Body Corporate.
- To assist the Body Corporate in establishing and maintaining a reserve fund for the cost of future maintenance and repair to the common property as well as to open a separate bank account for such fund and if instructed to invest such monies. In addition to prepare a budget and financial statements for the reserve fund. Lastly to assist the Body Corporate when necessary to make payments out of the reserve fund.
- To make all the books of account, records and documents of the Body Corporate available for inspection and copying by an owner.
- To ensure that the Body Corporate's books of account and financial records are retained for a period of 6 years.

**B. INSURANCE**

- To provide for the insurance needs of the Body Corporate and more specifically:
  - To arrange and annually renew, with the assistance of a broker, if necessary, all the insurance requirements of the Act, including insurance under Regulation 3 to the Sectional Titles Schemes Management Act and specifically of the buildings and to keep them insured to the replacement value thereof against fire and such other risks as may be prescribed;
  - To arrange and annually renew with the assistance of a broker, if necessary, insurance against such other risks as the owners may by special resolution determine;
  - To arrange and report, with the assistance of a broker, on valuations and replacement values, for insurance purposes, of the common property and each unit as and when required;
  - To obtain a fidelity guarantee if decided by the members of the Body Corporate;
  - To submit and follow through to completion any insurance claims on behalf of the Body Corporate.

**C. MAINTENANCE**

- To assist and advise the Trustees on the maintenance of the common property and the major capital items. If the Trustees require periodic inspections of the building, the Managing Agents will recommend a suitable professional firm to do so, at the cost of the Body Corporate.
- To prepare annually, a written maintenance, repair and replacement plan for the common property for approval by the owners in a general meeting.
- To negotiate, on behalf of the Trustees, with:
  - professional persons, firms, or other organisations, for the drawing up of specifications for maintenance and repair contracts pertaining to the common property; and
  - outside contractors to do work or perform services on behalf of the Body Corporate.
- To, at an additional fee, arrange for all meter readings and the processing thereof on a monthly basis, including the preparation of meter reading schedules for each unit.
- It is specifically recorded that it shall not be the duty of the Managing Agent to supervise work done on the common property and work done by employees of the Body Corporate and that the Trustees need arrange such supervision.

- The Trustees will allow the Managing Agent to erect their sign at the entrance to the Scheme

#### D. **MEETINGS**

- To assist and advise the Trustees and the owners on any applicable procedural matters pertaining to the running of the Scheme. This would include procedures relating to annual general meetings, special general meetings, Trustees meetings, resolutions, quorums, proxies, and voting rights.
- To arrange proxies, nominations and agenda's for meetings of the owners and of the Trustees
- To arrange, attend, minute, and distribute minutes of General Meetings of owners in the Scheme.
- To arrange, attend, minute, and distribute minutes of the Trustee Meetings of the Scheme (with a maximum of 4 free meetings per annum, thereafter to be charged for).
- To arrange, draft and distribute resolutions of Trustees and owners for signature.
- To where necessary, provide notice of meetings of owners and Trustees to registered bondholders and holders of future development rights.
- To print and forward to owners and where applicable tenants, notices and circulars on behalf of the Trustees of the Scheme.
- To comply with the Act in respect of the update and retention of minute books, attendance registers, sectional plans, rules, insurance policies and all other permanent records of the Complex.
- The Trustees are required to provide the Managing Agent with copies of minutes of all Trustee's meetings not attended by the Managing Agent.
- To within 14 days of approval of the budgets, give written notice to each owner of the contributions and charges due and payable by that owner to the Body Corporate.
- If money owing is not paid by an owner on time to arrange to send to the owner the necessary statutory notices.

#### E. **FINANCIAL YEAR END**

- To prepare an annual budget for the administrative and reserve funds that will include an estimate of income and expenditure for consideration and approval at the annual general meeting.



- To prepare the annual financial statements for submission to the appointed auditor of the Scheme and to arrange the annual audit.
- To prepare an annual report reviewing the affairs of the Body Corporate for the financial year for presentation at the Annual General Meeting.

F. **LEGISLATIVE DUTIES**

- Community Scheme Ombud Service (“CSOS”)
  - To assist the Body Corporate to register with the Ombud, lodge its governance documentation with the Ombud, files its annual returns and financial statements with the Ombud and to collect and pay quarterly to the Ombud, the Ombuds fee.
  - To assist the Body Corporate where necessary in approaching the Ombud for relief or to assist the Body Corporate in opposing such proceedings brought against the Body Corporate.
- Protection of Personal Information Act (“POPI”)

To assist the Body Corporate to comply with POPI to the extent that it may be necessary.
- Promotion of Access to Information Act (“PAIA”)

To assist the Body Corporate to comply with PAIA to the extent that it may be necessary.

## **ANNEXURE “B” – FEES**

### FEES:

- **Management** – fee per unit per month RXXX (plus VAT) – minimum monthly fee of R XXX (plus VAT) for the Scheme.
- **Trustees’ meeting** – fee per meeting held in excess of the 4 meetings provided free of charge per annum RXXX (plus VAT).
- **Meter reading** – fee per meter per month to arrange meter readings and meter reading schedules for the unit RXXX (plus VAT) – a minimum monthly fee of RXXX (plus VAT) for the Scheme.
- **Certificate** - fee for the issue of 15 (4) (b) Certificate RXXX (plus VAT). Fee for the re-issue of 15 (4) (b) Certificate RXXX (plus VAT). These rates may fluctuate from time to time. Fee for extended clearance figures requested RXXX (plus Vat).
- **Building Management** – fee per month per hour for weekly site visit RXXX (plus Vat) – If required.
- **After hour meetings** - Should the Managing Agent be required to attend to any meetings of the Trustees or the Scheme, or be required to attend any other meeting on instructions of the Trustees, that extends past 20h00, attendance at such meetings for any period after 20h00 shall be charged for at the rate of RXXX (plus VAT) per hour or part thereof.
- **Reconvening Annual General Meeting and/or Special General Meetings** – fee in the event of a quorum not being present at the date stated and having to reconvene the meeting of RXXX (plus VAT).
- **Inspection and copying of Books of Account, Records and documents** – Fee in the event of arranging for an entitled party to inspect and make copies of RXXX (plus VAT) per hour and RXXX (plus VAT) per copy. The copy charges to be paid by the entitled party.
- **Community Schemes Ombud Service** – Fee in the event of having to attend at the ombud’s office of RXXX (plus VAT) per hour. Travelling time also charged for and RXXX (plus VAT) per kilometre.
- **Stationery** - all bona fide expenses incurred for the benefit of or on behalf of the Body Corporate, including the costs of books of account, minute books, stationery, stamps, microfilming of records to be retained, photocopying, bank charges, cellphone and telephone calls and faxes. List available on request.

- **Other attendances-** In any event of the Managing Agent being required to attend to any matter not specified herein, or to attend to site meetings with contractors or attend to physical deliveries of whatsoever nature or to attend to the registration or dismissal of employees, then and in such event the Body Corporate shall reimburse the Managing Agent at the rate of RXXX (plus VAT) per hour or part thereof as well as travelling costs.
- **Final Notice/Letter of demand** – fee per letter sent by the Managing Agent RXXX (plus VAT).
- **Legal handover** – fee per unit handed over by the Managing Agent to attorney to collect contributions RXXX (plus VAT).
- **Legal monitoring** – fee per unit per month, whom the attorney has an open file for, to cover monthly meeting with attorney and reporting, giving of instructions to attorney, the providing of statements, reconciliation of payments and other matters RXXX (plus VAT).
- **Consumables** – all fees, which slips will be provided for, for consumables acquired on behalf of the complex.

**Notwithstanding anything to the contrary herein contained, no Meeting shall be held on Friday evenings, Saturdays, Sundays or Public Holidays.**

**ANNEXURE C - CLEARANCE CERTIFICATE MANDATE**

**WHEREAS** section 3 (2) of the Sectional Titles Schemes Management Act reads:

“Liability for contributions levied under any provision of subsection (1), save for special contributions contemplated by subsection (4), accrues from the passing of a resolution to that effect by the Trustees of the Body Corporate, and may be recovered by the Body Corporate by an application to an ombud from the persons who were the owners of units at the **time when such resolution was passed**”. This section creates the obligation on the seller of a sectional title unit to pay all levies in advance before the transfer can be effected. In practice this means that the entire financial year's levy needs to be collected from the seller, and the purchaser will not be liable to the Body Corporate for any levies for the balance of the financial year. The Trustees are willing to assist both the seller and the purchaser in apportioning the liability for any and all levies between the seller and the purchaser on a pro-rata basis, computed on the date of transfer.

To give effect to that willingness the Trustees of the scheme known as the

Body Corporate of \_\_\_\_\_ Sectional Title Scheme, Scheme No: \_\_\_\_\_ / \_\_\_\_\_ have on this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_:

**RESOLVED THAT** the Managing Agent may:

utilize a standard format "tri-partite agreement" which agreement would be entered into between the seller, the purchaser and the Body Corporate, so as to clarify whose obligation it is to make good any and all levies on the sold unit to the credit of the Body Corporate;

sign such a standard format tri-partite agreement on behalf of the Body Corporate and thereby binding the Body Corporate to the agreement. This resolution duly authorizes the managing agent to sign on behalf of the Body Corporate.

sign any and all clearance certificates (and or extended clearance certificates) on behalf of the Body Corporate, to give effect to any such agreement.

THUS DONE AND SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_.

*RESOLUTION OF THE TRUSTEES TO ENTER INTO THIS AGREEMENT IS ATTACHED MARKED "X"*

\_\_\_\_\_  
**WITNESS**

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**TRUSTEE SIGNATURE**

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**TRUSTEE SIGNATURE**

\_\_\_\_\_  
**TRUSTEE NAME**

