

MANAGEMENT AGREEMENT

Entered into by and between:

_____ **HOME OWNERS ASSOCIATION,**

REG. NO. ____/____/____

("the Association")

AND

_____ (REG/CK NO: ____/____/____) T/A _____

("the Managing Agent")

1. RECORDAL

- 1.1 The Association needs abide by the terms of the Companies Act No. 71 of 2008, the Community Schemes Ombud Service Act, No. 9 of 2011, the Memorandum of Incorporation of the Company and the Rules or Constitution of the Company, if applicable (jointly referred to as "the Act") and the Directors have been elected in terms of the Act.
- 1.2 The Directors are obliged to perform certain functions and may exercise certain powers in terms of the Act and the Rules.
- 1.3 The Directors 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 Association 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 Directors of their fiduciary duties.

3. POWERS AND DUTIES OF THE MANAGING AGENT

- 3.1 The Managing Agent shall be entitled to act in all respects on behalf of and in the name of the Home Owners Association and/or the Directors, 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 Directors of their functions or powers (or those of the Association) to the Managing Agent.

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

4. REMUNERATION

4.1 The Managing Agent's fees are set out in **Annexure "C"**. These fees will increase by 10% (ten percent) on the 1st 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 "C".

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 Association 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 it 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 Association 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 Association from time to time. The Managing Agent shall not in any way whatsoever, be liable to the Association if the Managing Agent fails or omits to do any act, matter or thing it is obliged to do hereunder or in law, if such failure or omission arises from the Association'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 DIRECTORS TO ENTER INTO THIS AGREEMENT IS ATTACHED MARKED "A"

| | | |
|----------------|----------------------------|-----------------------|
| _____ | _____ | _____ |
| WITNESS | DIRECTORS SIGNATURE | DIRECTORS NAME |

| | | |
|----------------|----------------------------|-----------------------|
| _____ | _____ | _____ |
| WITNESS | DIRECTORS SIGNATURE | DIRECTORS NAME |

THUS DONE AND SIGNED AT _____ ON THIS THE ___ DAY OF _____ 20__.

WITNESS

| | |
|----------------|-----------------------|
| _____ | _____ |
| WITNESS | MANAGING AGENT |



ANNEXURE "A" – DIRECTORS RESOLUTION

HOME OWNERS ASSOCIATION OF _____

REG. NO. _____ / _____ / _____

PASSED AT A MEETING OF DIRECTORS AT _____ ON THIS DAY OF _____ 2020.

Wherefore it is hereby resolved by the undersigned Directors, who agree to the resolutions by their signature hereunder, that:

1. The Home Owners Association enter into a Management Agreement and Clearance Certificate Mandate (Annexure "D") with the Managing Agent.
2. Any 2 (Two) Directors may sign the Management Agreement and Clearance Certificate Mandate on behalf of the Home Owners Association.

DIRECTORS
Print name:

DIRECTORS
Print name:

DIRECTORS
Print name:

DIRECTORS
Print name:

DIRECTORS
Print name:

DIRECTORS
Print name:

DIRECTORS
Print name:

DIRECTORS
Print name:

*MAJORITY OF THE DIRECTORS TO SIGN THIS RESOLUTION



ANNEXURE “B” – DUTIES OF THE MANAGING AGENT

A. ADMINISTRATION

- To open and operate a bank account in the name of the Home Owners Association to meet the commitments of the Home Owners Association. Should such bank account already exist, the Directors grant the Managing Agent full access to such bank account. This includes managing any investments of the Home Owners Association.
- 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 Home Owners Association.
- 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 Home Owners Association as per the Expenditure Budget Estimation. All other payments will first be referred to the Directors of the Home Owners Association, 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 Directors of the Home Owners Association and prescribed by Law. The Managing Agent is not responsible for keeping records of employees leave.
- To keep a list of Directors, owners and tenants as well as units, participation quotas and registered bondholders in terms of the Act.
- To compile and distribute, to all Directors of the Home Owners Association 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 Directors 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 Home Owners Association.
- 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 Association.
- To dispatch to the owners any notices in terms of the Act.
- To demand and recover from all past and present owners of units, 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 Directors have signed the mandate attached as **Annexure “D”** giving the Managing Agent permission to sign the necessary tri-partite clearance certificate agreement on behalf of the Home Owners Association and be remunerated for such certificate.
- To carry out specific instructions from the Directors in connection with enforcing the Rules of the Home Owners Association.
- If required by the Act and/or directed by the Directors, to assist the Home Owners Association 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 Home Owners Association when necessary to make payments out of the reserve fund.
- To make all the books of account, records and documents of the Home Owners Association available for inspection and copying by an owner.
- To ensure that the Home Owners Association’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 Home Owners Association and more specifically:**
 - o To arrange and annually renew, with the assistance of a broker, if necessary, all the insurance requirements of the Act;
 - o To arrange and annually renew with the assistance of a broker, if necessary, insurance against such other risks as the owners may, in terms of the governance documentation of the Association, determine;
 - o To arrange and report, with the assistance of a broker, on valuations and replacement values, for insurance purposes, of the common property as and when required;
 - o To obtain fidelity insurance as required by the Act;
 - o To submit and follow through to completion any insurance claims on behalf of the Home Owners Association.

C. MAINTENANCE

- To assist and advise the Directors on the maintenance of the common property and the major capital items. If the Directors require periodic inspections of the buildings, the Managing Agent will recommend a suitable professional firm to do so, at the cost of the Home Owners Association.
- If required by the Act and/or directed by the Directors, 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 Directors, 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 Home Owners Association.
 - 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 Home Owners Association and that the Directors need arrange such supervision.
 - The Directors will allow the Managing Agent to erect their sign at the entrance to the Scheme.

D. MEETINGS

- To assist and advise the Directors and the owners on any applicable procedural matters pertaining to the running of the Association. This would include procedures relating to annual general meetings, special general meetings, Directors meetings, resolutions, quorums, proxies, and voting rights.
- To arrange proxies, nominations and agendas for meetings of the owners and of the Directors.
- To arrange, attend, minute, and distribute minutes of General Meetings of owners in the Association.
- To arrange, attend, minute, and distribute minutes of the Directors Meetings of the Association (with a maximum of 4 free meetings per annum, thereafter to be charged for).
- To arrange, draft and distribute resolutions of Directors and owners for signature.

- To where necessary, provide notice of meetings of owners and Directors 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 Directors of the Association.
- To comply with the Act in respect of the update and retention of minute books, attendance registers, plans, rules, insurance policies and all other permanent records of the Association.
- The Directors are required to provide the Managing Agent with copies of minutes of all Directors 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 Association.
- 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 if relevant the reserve fund 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 Association and to arrange the annual audit.
- To prepare an annual report reviewing the affairs of the Association for the financial year for presentation at the Annual General Meeting.

F. **LEGISLATIVE DUTIES**

- **Community Scheme Ombud Service (“CSOS”)**
 - To assist the Association 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 Ombud’s fee.
 - To assist the Association where necessary in approaching the Ombud for relief or to assist the Association in opposing such proceedings brought against the Association.

- **Protection of Personal Information Act (“POPIA”)**
To assist the Association to comply with the POPIA to the extent that it may be necessary.
- **Promotion of Access to Information Act (“PAIA”)**
To assist the Association to comply with the PAIA to the extent that it may be necessary.

ANNEXURE “C” – FEES

FEES:

- **Management** – fee per unit per month RXXX (plus VAT) – minimum monthly fee of R XXX (plus VAT) for the Association.
- **Directors 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 Association.
- **Certificate** - fee for the issue of the Certificate RXXX (plus VAT). Fee for the reissue of the 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 Directors or the Association, or be required to attend any other meeting on instructions of the Directors, 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 if legislatively permitted.
- **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 Association, 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 Home Owners Association 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 Association.

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

ANNEXURE "D" – CLEARANCE CERTIFICATE MANDATE

WHEREAS liability for contributions levied accrues from the passing of a resolution to that effect by the Directors of the Home Owners Association, and may be recovered by the Home Owners Association by legal action against the persons who were the owners of units at the time when such resolution was passed and **WHEREAS** there is an obligation on the seller to pay all levies in advance before the transfer can be effected and **WHEREAS** 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 Home Owners Association for any levies for the balance of the financial year and **WHEREAS** the Directors 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 Directors of the Association known as the

Home Owners Association of _____

REG. 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 Home Owners Association, so as to clarify whose obligation it is to make good any and all levies on the sold unit to the credit of the Home Owners Association;

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

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

THUS DONE AND SIGNED AT _____ ON THIS THE ___ DAY OF _____ 20____.

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

WITNESS

DIRECTORS SIGNATURE

DIRECTORS NAME

WITNESS

DIRECTORS SIGNATURE

DIRECTORS NAME

