



**NATIONAL ASSOCIATION
OF MANAGING AGENTS**
(Incorporated under Section 21)

P.O.BOX 35253
ANNLIN
0066

TEL: (012) 567 7597
FAX: 0866 844 796

E-MAIL: namasa@mweb.co.za
WEBSITE: www.namasa.co.za
(Registration No 2005/013686/08)

MANAGEMENT AGREEMENT

MEMORANDUM OF AGREEMENT BETWEEN:

Reg. No. _____
(hereinafter referred to as "the Managing Agent")
and

THE BODY CORPORATE OF _____

Sectional Title Scheme No. SS. _____
(hereinafter referred to as "the Body Corporate")

WHEREAS the Body Corporate has decided to make use of the services of the Managing Agent to manage the Sectional Title Scheme, and

WHEREAS the Managing Agent has accepted such appointment;

THEREFORE it is agreed as follows:

1. DEFINITIONS:

In this agreement, unless otherwise indicated:

- 1.1 "Body Corporate" means that the Body Corporate conforms to the terms of the Sectional Titles Act No. 95/1986 ("the Act") and the Trustees have been elected in terms of the Act and the Rules adopted in terms of Section 35(2) of the Act ("the Rules").
- 1.2 "Managing Agent" means a Managing Agency which holds current membership of the National Association of Managing Agents (hereinafter referred to as NAMA) who has accepted and signed the NAMA Code of Conduct, and it is specifically noted that this Management Agreement shall only remain in force for so long as the Managing Agent remains a member of NAMA, and will become null and void in its entirety should the Managing Agent's membership of NAMA cease for whatsoever reason.
- 1.3 "National Association of Managing Agents (hereinafter referred to as NAMA) means the Association incorporated under Section 21 – Registration No. 2005/013686/08.
- 1.4 "Effective Date" means date stated which signifies the commencement date of this Agreement.
- 1.5 "Owner" means the person in whose name a unit in the Scheme, controlled by the Body Corporate, is registered in the Deeds Registry.
- 1.6 "Rules" shall mean the Rules of the Body Corporate – Management Rules Annexure 8, and Conduct Rules Annexure 9 – in terms of the Sectional Titles Act 95 of 1986, as amended, and/or rules as registered / filed with the Registrar of Deeds, whichever applies.
- 1.7 "Trustees" shall mean the Trustees duly elected who are obliged to perform certain functions and duties in terms of the Act and the Rules.

2. APPOINTMENT

The Managing Agent is hereby appointed to act as Managing Agent of the Body Corporate on the terms and conditions set forth herein. The Managing Agent shall act on the instructions of the Body Corporate or the Trustees in the performance of the duties and functions set out in this Agreement.

3. EFFECTIVE DATE

The 1st day of _____ in the year _____. This agreement shall commence and take effect from this date and shall be of force and effect for an initial period of 12 months from the commencement date and may thereafter be terminated in terms of Paragraph 7 hereof.

4. DUTIES OF THE MANAGING AGENT

The duties of the Managing Agent shall be defined as follows:

4.1 Administrative:

4.1.1 **Repairs and Maintenance:** The Managing Agent undertakes on behalf of the Body Corporate to:

4.1.1.1 Arrange for such repairs to, and maintenance of, the common property that does not require the advice and supervision of suitably qualified professionals, when so instructed by the Members of the Body Corporate or by the Trustees, and to call for quotations when so instructed but not exceeding two quotations per repair. The Body Corporate will pay an additional fee for third and more quotations obtained.

4.1.1.2 Negotiate with professional firms / outside contractors and others for the compiling of specifications of work to be done, when so instructed by the Members of the Body Corporate or by the Trustees.

4.1.2 **Employees' Payment:** The Managing Agent undertakes to pay salaries, wages, PAYE, UIF and Workmen's Compensation. It is expressly agreed that the employees are employed by the Body Corporate and not by the Managing Agent. Any disputes, which may arise between the Body Corporate and any of its employees in terms of any legislation, shall not involve the Managing Agent, who cannot be cited as the employer of any of the said employees, and is therefore not to be held liable or responsible. Any payments as mentioned above, due by the Body Corporate, will be made on their behalf. The Managing Agent is not responsible for the control or keeping of Body Corporate employees' leave / leave of absence records which must be kept and controlled by the Trustees on behalf of the Body Corporate.

4.1.3 **Labour Legislation:** The Managing Agent, when so instructed by the Trustees, will negotiate with professionals / outside firms or provide written reference from relevant controlling bodies (such as the CCMA) relative to labour legislation advice, at prevailing rates.

4.1.4 **Employees' Service Contracts:** The Managing Agent will assist, if required, in providing service contracts in accordance with the current Labour Relations Act, advice on the disciplinary codes and agreement procedures as well as the conduct of disciplinary hearings and the like; at prevailing rates.

4.1.5 **Valuations:** The Managing Agent will assist the Trustees on replacement values of buildings / improvements for insurance purposes and arrange for valuations by suitable professionals, when so requested by the Trustees and at prevailing rates.

4.1.6 **Insurance:** The Managing Agent will arrange for the insurance of the buildings and improvements, and for any other insurance the Body Corporate may require, when so requested by the Trustees.

4.1.6.1 In the event of the Body Corporate having funds available the Managing Agent shall pay the annual / monthly insurance premiums;

4.1.6.2 In the event of the Body Corporate having insufficient funds available in the Trust account or Trust Savings account, the Managing Agent's obligation for payment of annual / monthly insurance premiums will immediately end and the parties agree that the Managing Agent will not be liable for any damages of whatever nature. The Body Corporate furthermore acknowledges that any such conduct by the Managing Agent shall not be construed as negligence.

4.1.6.3 The Managing Agent will process / submit all insurance claims on behalf of the Body Corporate to their inhouse or duly appointed broker, at no additional charge; which broker will be expected to handle all aspects of the insurance claim;

4.1.6.4 The Managing Agent may charge an additional fee on all claims and payments in respect thereof should the trustees choose to make use of an outside broker.

4.1.7 **Rules:** Assist in the enforcement of the Rules of the Body Corporate, when so required by the Trustees:

4.1.7.1 The Managing Agent acknowledges that it has acquainted itself with the provisions of the Management and Conduct Rules adopted by the Body Corporate, and will similarly do so in respect of further amended or other Rules as the Body Corporate may adopt from time to time, and shall abide by the reasonable requests or instructions of the holders of registered Sectional Mortgage Bonds over at least 25% (twenty-five percent) of the sections of the scheme insofar as its obligations and duties imposed herein are concerned.

4.1.7.2 The Managing Agent will charge a fee for all letters written on behalf of the Trustees / Body Corporate for the enforcement of the Rules, the cost of which may, at the instruction of the Trustees, be debited to the errant owner's levy account.

4.1.8 **Payments / Recoveries:** The Managing Agent shall be entitled on behalf of and for the account of the Body Corporate to pay or recover all *bona fide* expenses incurred by or on behalf of the Body Corporate.

4.1.8.1 The Body Corporate indemnifies the Managing Agent of all and any accountability of whatever kind following inability to settle any expense incurred by the Body Corporate due to insufficient funds in the Body Corporate's bank account/s.

4.1.9 **Records:** The Managing Agent shall keep full records of their administration and shall report to the Body Corporate and to all holders of registered sectional mortgage bonds, all matters which, in their opinion, will detrimentally affect the value or amenity of the common property and of any of the sections, as per the Sectional Titles Act 95 of 1986 as amended.

4.2 Collection of levies and other monies:

The Managing Agent undertakes on behalf of the Body Corporate to :

4.2.1 Arrange for the collection of the monthly levies and other income from all present and future owners and also any other income or monies due to the Body Corporate, and to deposit all such receipts into a trust account administered by the Managing Agent.

4.2.2 Arrange for the preparation and delivery of statements on a monthly, quarterly, annual basis, or no statements at all, as decided and agreed by the Trustees. Statements can be e-mailed or posted and costs thereof will be recoverable by the Managing Agent from the Body Corporate at prevailing rates.

4.2.3 The parties agree that the Managing Agent shall, on behalf of the Body Corporate, be entitled to instruct an attorney :

4.2.3.1 for any litigious matter pertaining to the collection of outstanding levies;

4.2.3.2 following an instruction from the Trustees on any relevant issue;

which attorneys fees shall be payable by the Body Corporate on demand; all administrative charges incurred by the Managing Agent shall also be payable by the Body Corporate on demand. All fees / charges may be recovered from the defaulting owner where relevant.

- 4.2.4 The Managing Agent shall be entitled at any stage to deduct any amount due and outstanding by the Body Corporate with respect to legal fees from any monies held in trust on behalf of the Body Corporate.
- 4.2.5 The Managing Agent will be responsible to exercise credit control timeously in order to recover all amounts owing by owners to the Body Corporate.
- 4.2.6 Credit control shall be exercised by implementing the procedures outlined in Annexure B attached hereto. It is noted that this Annexure might differ from scheme to scheme and the procedures set out in Annexure B are therefore subject to amendment by agreement between the Managing Agent and the Trustees.
- 4.2.7 The Managing Agent shall act in terms of current legislation as pertaining to the Debt Collectors Act.
- 4.2.8 The Managing Agent will raise compounded interest on arrear levies at such rate as determined by the Trustees from time to time, to be credited to the account of the Body Corporate.
- 4.3 **Accounting:** The Managing Agent undertakes on behalf of the Body Corporate to:
- 4.3.1 Pay all expenses incurred in the administration of the Body Corporate, as instructed by the Trustees.
- 4.3.2 Process all payments and receipts;
- 4.3.3 Prepare and submit to the Trustees monthly statement of receipts and expenditure, supported by copies of vouchers where these have been specifically requested by the Trustees, and including an analysis of debtors' balances and a comparison to monthly budget.
- 4.3.4 Arrange the annual audit with the auditor / accounting officer appointed by the Body Corporate. On completion of the audit submit the audited statements to the Trustees for approval / signature and thereafter to the Members of the Body Corporate for consideration at the Annual General Meeting.
- 4.3.5 Prepare an annual estimate of income and expenditure for submission to the Trustees and the Body Corporate, for their amendment / approval and the determination of monthly levies.
- 4.3.6 Manage surplus funds after payment of creditors in terms of current legislation.
- 4.3.7 Attend to the requirements of the South African Revenue Service and all statutory requirements, at the prevailing rates.
- 4.4 **Secretarial:** The Managing Agent will arrange, prepare for and attend the following and will be entitled to charge an additional fee at prevailing rates, where preparation of communications, copying and dispatch thereof, or research is required:
- 4.4.1 Maintain the statutory records, minute books, attendance registers, register of sectional bond holders, sectional plans, rules, insurance policies and all other records and files pertaining to the Body Corporate;
- 4.4.2 Draft and dispatch of circulars, notices, agendas, proxies and nomination forms for General Meetings of owners;
- 4.4.3 Draft and dispatch notices for meetings of the Trustees;
- 4.4.4 Attendance at the Annual General Meeting of the Body Corporate;
- 4.4.5 Attendance at the meetings of the Trustees, as and when requested, but not exceeding four times per year – refer Clause 5.3 relative to timing / duration of meetings; additional meetings will be charged for at prevailing rates;
- 4.4.6 Attendance at Special General Meetings of the Body Corporate when so requested by the Trustees. A fee, at prevailing rates, will be charged for attendance at such meetings;

- 4.4.7 Keeping proper minutes of the meetings attended by the Managing Agent, if so requested by the Trustees, and dispatching copies to all persons entitled to receive such minutes;
- 4.4.8 The Trustees shall give reasonable prior notice to the Managing Agent of all meetings of the Trustees and the Body Corporate, and the Managing Agent shall be entitled to attend such meetings but shall not make an additional charge, if this would normally be applicable, unless specifically requested by the Trustees / Body Corporate to attend same. The Trustees shall in any event furnish the Managing Agent with copies of the minutes of all meetings of the Trustees / Body Corporate as per the Sectional Titles Act 95 of 1986 as amended, in particular, Annexure 8, Management Rule 49(2);
- 4.4.9 Arrange venues for meetings if so requested by the Trustees;
- 4.4.10 Assist and advise the Trustees on procedural matters, such as general meetings, special general meetings, quorums, proxies, resolutions, voting rights, amendments to Rules and the statutory requirements of the Sectional Titles Act 95 of 1986 as amended and the Rules;
- 4.4.11 Furnish the Chairperson of the Trustees with copies of correspondence done on their behalf;
- 4.4.12 Assist in the enforcement of the Rules adopted by the Body Corporate, as the Managing Agent may be instructed by the Trustees from time to time.

5. REMUNERATION:

- 5.1 R _____ (_____) per month (inclusive of VAT, presently at 14%) payable monthly as from the date of commencement of the agreement. (*Refer Annexure A, which forms part of this Agreement, for current charges / calculations*).
- 5.2 Annexure A forms a part of this Agreement and lists additional services for which the Managing Agent will be entitled to charge. Annexure A is subject to amendment, normally annually, but also to include increases in items charged "at cost" (eg postage). The amended Annexure A schedule shall be forwarded to the Trustees at least one month prior to implementation thereof (with the exception of "at cost" items), and shall thereafter replace the schedule attached to this original Agreement and become of force and effect from such date.
- 5.3 Specific note should be taken of the fact that should a meeting specified in paragraphs 4.4.4 and 4.4.5 above extend either beyond 90 minutes duration or 19h00 the Managing Agent shall charge an additional hourly fee (refer Annexure A) for the additional time spent at such meetings. Should the Managing Agent be required to attend any meetings additional to those specified in paragraphs 4.4.4 and 4.4.5 these will be charged at an hourly fee (refer Annexure A), or part thereof, and it should be noted that the "out of normal office hours" fee is higher than that for normal office hours.
- 5.4 The Managing Agent may retain rebates, discounts and commissions paid to it by the providers of goods and services to the Body Corporate, provided these are detailed in a disclosure schedule which shall be attached to this Agreement as Annexure C or as otherwise notified in writing to the Trustees from time to time.
- 5.5 The Managing Agent is not available to attend meetings held on Friday after 14h00, on Saturday, Sunday or a public holiday.
- 5.6 Specific note should also be taken of the fact that the Managing Agent will be entitled to recoup travelling charges to and from any meeting, inspection, etc. held outside the offices of the Managing Agent which charges will be calculated at rates equivalent to current AA rates.
- 5.7 In addition to the above the Managing Agent shall be entitled and is hereby authorised to receive or recover from the Body Corporate's funds all *bona fide* expenses / costs incurred for the benefit of or on behalf of the Body Corporate, including all costs related to services where the requirements are variable (such as, but not limited to, collection of arrear amounts owing to the Body Corporate / additional funds to be collected, etc.).
- 5.8 All fees / charges due as outlined herein are due on demand and may be deducted by the Managing Agent from the Body Corporate's account.

6. LIMITATION OF DUTIES OF THE MANAGING AGENT:

- 6.1 The Managing Agent does not undertake to supervise work done on the common property and relies on the Trustees to do such supervision (or to appoint a competent person to do so) and to authorise payments to be made to contractors.
- 6.2 The Managing Agent does not undertake to supervise and/or control the Body Corporate's employees and the duties on the property and requires the Trustees to arrange such supervision and control.

7. DURATION / TERMINATION OF THE AGREEMENT:

- 7.1 This Agreement shall commence on the effective date stipulated in Paragraph 3 hereof and the duration / termination shall be in terms of Prescribed Management Rule 46, as amended from time to time.
- 7.2 Each and every renewal of this Agreement will be subject to the same terms and conditions set out herein, except where specifically altered in terms of a separate written Agreement signed by both parties.

8. AUTHORISATION TO ACT:

- 8.1 The Body Corporate hereby acknowledges and it is agreed that the Managing Agent acts as Agent on behalf of, and in the name of, the Body Corporate, and not as Principal.
- 8.2 The Managing Agent shall be entitled to act in all respects on behalf of and in the name of the Body Corporate or of the Trustees or of both, as may be necessary for the performance of its duties, subject to the provisions of the Sectional Titles Act 95 of 1986 as amended, and the Rules and the directive of the Trustees. The parties acknowledge that this agreement shall not be construed as a delegation by the Trustees of their powers (or those of the Body Corporate) to the Managing Agent.

9. DOMICILIUM:

- 9.1 The parties to this Agreement hereby choose *domicilium citandi et executandi* for all purposes under this Agreement at the addresses set out below their respective names hereunder :

9.1.1 Body Corporate of _____

9.1.2 _____ (Managing Agent)

- 9.2 Any notice to any party shall be addressed to such party at its domicilium aforesaid and either sent by prepaid registered post (deemed to have been received unless the contrary is proved on the fourth business day after posting), or by confirmed delivery e-mail or facsimile (deemed to have been received unless proved to the contrary on the date of the successful transmission thereof if it is a business day,

otherwise the next following business day), or by hand (deemed to have been received unless proved to the contrary on the date of delivery, provided such date is a business day or otherwise on the next following business day);

- 9.3 Any party shall be entitled, by notice to the other, to change its *domicilium* to another address in the Republic of South Africa, provided that the change shall be given in writing to the other parties *domicilium* and shall only become effective 14 (fourteen) days after service of the notice in question;
- 9.4 For the purposes of this Agreement “business day” means any day other than a Saturday, Sunday or public holiday.

10. WHOLE AGREEMENT / NON-WAIVER:

- 10.1 This Agreement constitutes the entire contract between the parties hereto and no amendment or consensual cancellation of this agreement or any provision or term thereof, and no extension of time, waiver, relaxation or suspension of any of the provisions or terms of this Agreement, shall be of legal efficacy save insofar as the same is reduced to writing and signed by the parties hereto.
- 10.2 Any relaxation of any of the terms of this agreement or any indulgence shown by either of the parties to the other shall in no way prejudice the rights of such party and shall not be construed as a waiver or notation thereof.
- 10.3 Any amendment / relaxation must be formalised through a separate written Agreement between the parties since no amendment of the text of this copyright agreement is allowed; the only exceptions being that a section which is not relevant may be crossed through provided this is initialled by all parties and Annexures A, B and C may differ for individual Schemes - firstly to cater for the Managing Agent’s individual charges / fees, from time to time, (Annexure A), secondly the individual Scheme’s credit control requirements, as negotiated with the Trustees (Annexure B) and lastly the Disclosures Schedule (Annexure C) if relevant.

11. ADDITIONAL SERVICES & FEES – ANNEXURE A:

In addition to the duties set out herein, the Managing Agent will be prepared to perform various additional services, some of which are payable by owners rather than the Body Corporate – refer listing set out in Annexure A attached hereto.

12. DISPUTES:

- 12.1 Save as otherwise specifically provided in this Agreement, should any dispute arise out of or in connection with this Agreement or the termination thereof, either party shall be entitled to require, by written notice to the other, that the dispute be submitted to arbitration in terms of this clause and held under the provisions of the arbitration laws for the time being in force in the Republic of South Africa, provided that:
- 12.1.1 the arbitrator who shall be agreed upon by both parties shall be a suitably qualified professional, in whatsoever field the dispute relates to, of not less than ten years’ standing;
- 12.1.2 14 days written notice of such dispute shall be given, with the option of mediation before proceeding to arbitration.
- 12.2 The arbitration may be carried out informally, if so suggested by the arbitrator, but will be subject to normal arbitration procedures; the arbitration should be resolved as quickly as possible with a view to its being resolved within 30 (thirty) days of being demanded.
- 12.3 The arbitrator will be entitled to investigate, or cause to be investigated, any matter, fact of thing which they consider to be relevant, and to question under oath representatives of either of the parties. The arbitrator shall decide the dispute, including the award of costs, according to what they consider just and equitable, and such decision will be final and binding, and may be made an order of any Court to which the parties to the dispute are subject.
- 12.4 Notwithstanding the foregoing, either party shall be entitled to apply for, and, if successful, be granted an interdict from any competent Court having jurisdiction.

13. GENERAL:

13.1 In the event of new legislation which may impact on the Managing Agents’s cost structures, the Managing Agent will have the unilateral right to terminate this agreement in the absence of successful negotiation with the Trustees.

13.2 The paragraph headings to this Agreement are for reference purposes only and do not bear upon the interpretation of the Agreement.

THUS DONE AND SIGNED AT _____

ON THIS _____ DAY OF _____ IN THE YEAR _____

ON BEHALF OF _____

(1) _____ (2) _____

(for MANAGING AGENT) (for MANAGING AGENT)

AS WITNESSES:

(1) _____ (2) _____

THUS DONE AND SIGNED AT _____

ON THIS _____ DAY OF _____ IN THE YEAR _____

ON BEHALF OF THE BODY CORPORATE OF _____

(1) _____ (2) _____

(TRUSTEE) (TRUSTEE)

AS WITNESSES:

(1) _____ (2) _____
