

## MANAGEMENT AGREEMENT

### MEMORANDUM OF AGREEMENT BETWEEN

#### MidCity Property Services (Pty) Ltd

Reg. No. 2001/012534/07

(Hereinafter referred to as “the Managing Agent”)

AND

#### THE BODY CORPORATE OF GLENWOOD HEART

Sectional Title Scheme No. SS. \_\_\_\_\_

(Hereinafter referred to as “the Community Scheme”)

#### PREAMBLE:

**WHEREAS** the Community Scheme requires the services of a Managing Agent to provide Scheme Management Services to the Community Scheme;

**AND WHEREAS** the Managing Agent is prepared to render such Scheme Management Services to the Community Scheme;

**NOW, THEREFORE, IT IS AGREED:**

#### 1. DEFINITIONS

Unless the context otherwise indicates in this Agreement, the following words and expressions shall bear the meanings assigned to them hereunder:

- 1.1 “Basic fee” means the basic administration charge levied by the Managing Agent for its services and as referred to in clause 5.1.

MidCity Property Services (Pty) Ltd. Registration No. 2001/012534/07

MidCity Holdings Board of Directors: DJ de Villiers Sr. (Non-Executive Chairman), M Alberts (CEO), JJ Croukamp (COO), JA Basson (CFO), DJ de Villiers Jr.

#### CONTACT DETAILS

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#### MIDCITY SQUARE

501 Jorissen Street,  
Sunnyside East,  
Pretoria

#### MIDCITY CORNER

500 Jorissen Street,  
Sunnyside East,  
Pretoria

- 1.2 “Body Corporate” means the Body Corporate of Glenwood Heart, Scheme No. SS. \_\_\_\_\_, a Body Corporate established in terms of Section 36 of the STA.
- 1.3 “Community Scheme” means a Scheme as defined in the CSOS Act and inter alia includes a Sectional Title Development Scheme, a Share Block Company, a Home- or Property Owners Association, a Housing Co-operative and/or a Housing Scheme for Retired Persons and “Scheme” has the same meaning.
- 1.4 “Companies Act” refers to the Companies Act, Act No. 71 of 2008.
- 1.5 “CSOS Act” means the Community Schemes Ombud Service Act, Act No. 9 of 2011.
- 1.6 “Data Subject” means in the context of this Agreement, any Persons and Owners to whom any Personal Information relates;
- 1.7 “Debt Collectors Act” refers to the Debt Collectors Act 114 of 1998 as amended from time to time.
- 1.8 “Effective Date” means the date referred to in clause 3, which is the commencement date of this Agreement.
- 1.9 “Managing Agent” means MidCity Property Services (Pty) Ltd, Registration Number: 2001/012534/07, a Managing Agent 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.
- 1.10 “Managing Agent Prevailing Rates” means the rate which Midcity charges for carrying out various functions and duties. The most current fees at the Effective date of this Agreement are attached hereto and marked Annexure “A”. These rates may be amended from time to time without notice.
- 1.11 “National Association of Managing Agents (NPC) / NAMA” (hereinafter referred to as NAMA) means the National Association of Managing Agents (NPC), a non-profit company with Registration Number: 2005/013686/08.
- 1.12 “Ombud Service” means the services provided by the Chief Ombud's Office in terms of the CSOS Act.
- 1.13 “Operator Agreement” means any operator agreement in terms of which the Managing Agent is mandated to process Personal Information for and on behalf of the Community Scheme;
- 1.14 “Owner” means a person who has legally secured a right to possession and occupation of a private area, including but not limited, to the registered owner of a Sectional Title Unit, the registered owner of an Erf under the jurisdiction of a Homeowners Association, the holder of shares in a Share Block Company and/or the holder of an occupation right in a Housing Development Scheme for Retired Persons.
- 1.15 “Person” includes an Association, Partnership, Trust, Corporation, Private- or Public entity and such person's representatives, successors and assignees.

- 1.16 “Personal Information” shall mean information relating to a Person, including, but not limited to—
- (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
  - (b) information relating to the education or the medical, financial, criminal or employment history of the Person;
  - (c) any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier, or other particular assignment to the Person;
  - (d) the biometric information of the Person;
  - (e) the personal opinions, views, or preferences of the Person;
  - (f) correspondence sent by the Person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
  - (g) the views or opinions of another individual about the Person;
  - (h) the name of the Person if it appears with other Personal Information relating to the Person or if the disclosure of the name itself would reveal information about the Person.
- 1.17 “POPIA” means the Protection of Personal Information Act, 4 of 2013, as amended from time to time.
- 1.18 “Processing” means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including—
- (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation, or use;
  - (b) dissemination by means of transmission, distribution or making available in any other form; or
  - (c) merging, linking, as well as restriction, degradation, erasure, or destruction of information.
- 1.19 “Rules” mean the Rules applicable to the Community Scheme, which Rules:
- 1.19.1 in the case of a Body Corporate, refers to the Prescribed Management Rules (Annexure 1) and Conduct Rules (Annexure 2) of the Regulations in terms of the STSM Act, as amended from time to time, and/or Rules amended or supplementary as certified by the Chief Ombud, whichever applies; and
  - 1.19.2 in the case of a Homeowners Association, refers to Company Rules published in terms of the Companies Act, 71 of 2008; and

- 1.19.3 in case of a Housing Scheme for Retired Persons, means the Constitution or Rules made in terms of the Regulations under the Housing Development Scheme for Retired Persons Act, 65 of 1988.
- 1.20 “Scheme Executive” means a person who is a Trustee, Director or another person who exercises executive control of a Community Scheme.
- 1.21 “Scheme Management Services” means any financial-, secretarial-, administrative- or other service relating to the administration of a Community Scheme;
- 1.22 “Service Providers” means any service provider appointed by the Managing Agent through the authority of this Agreement to fulfil any function required by the Community Scheme from time to time. These service providers shall include appointed attorneys, contractors, maintenance and/or inspection providers and any other appointed person duly instructed to perform any duties on behalf of the Community Scheme.
- 1.23 “STA” means the Sectional Titles Act, Act 95 of 1986, as amended, and as may be amended from time to time;
- 1.24 “STSM Act” refers to the Sectional Titles Schemes Management Act, Act No. 8 of 2011, as may be amended from time to time.
- 1.25 The headings of the respective clauses in this Agreement are for reference purposes only and shall not be considered in the interpretation of this Agreement.
- 1.26 The singular shall include the plural and vice versa. The male gender shall include the female and neuter genders and vice versa.

## **2. APPOINTMENT, CONSUMER PROTECTION ACT (CPA) & DISCLOSURE**

- 2.1 The Managing Agent is hereby appointed to act as Managing Agent of the Community Scheme on the terms and conditions set forth herein from the Effective Date of this Agreement.
- 2.2 The Managing Agent shall act on the instructions of the Scheme Executives of the Community Scheme in the performance of the duties and functions set out in this Agreement.
- 2.3 The Community Scheme shall always be represented by its duly elected Scheme Executives in office from time to time. Appointment of the Managing Agent does not relieve the Scheme Executives of any of their fiduciary duties.
- 2.4 The relationship between the Managing Agent and the Community Scheme shall be governed in terms of the provisions of this Agreement and, where applicable, the Consumer Protection Act, No. 68 of 2008 (CPA).
- 2.5 The Scheme Executives acknowledge that they have been furnished with a copy of this Agreement and all annexures thereto prior to signature and conclusion of this Agreement, that they have been made aware of the important terms and conditions contained in this Agreement and as disclosed in the disclosure document, Annexure “C”, that they had the opportunity to question and clarify any of the provisions of this Agreement before entering into this Agreement on

behalf of the Community Scheme. They fully understand the contents and binding nature of this Agreement.

- 2.6 The Consumer Protection Act, No. 68 of 2008 (CPA) will govern the relationship between the Community Scheme and the Managing Agent if, after this Agreement (Effective Date), the annual turnover and/or the asset value of the Community Scheme does not exceed the threshold value as determined from time to time and which threshold at conclusion of this Agreement is R2 000 000-00 (Two Million Rand). The receipt of levies by the Community Scheme from its members does not constitute “annual turnover”.

### **3. EFFECTIVE DATE**

This Agreement shall commence and take effect on the date of the 1<sup>st</sup> transfer from which date this Agreement shall be of force and effect for an initial period of 12 (twelve) months and may only 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 Community Scheme 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 instructed by the Scheme Executives, and to call for quotations when so instructed but not exceeding two quotations per repair. The Community Scheme will pay an additional fee for third and more quotations obtained.

4.1.1.2 Negotiate with professional firms/consultants/contractors and others for the compiling of specifications of work to be done, including assistance with preparation of a maintenance plan for submission and approval at the Annual General Meeting, when so instructed by the Scheme Executives.

- 4.1.2 Employees' Payment: The Managing Agent undertakes to pay on behalf of the Community Scheme, the salaries, wages, PAYE, UIF and Workmen's Compensation in respect of any employees. It is expressly agreed that the employees are employed by the Community Scheme and not by the Managing Agent. Any disputes, which may arise between the Community Scheme 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. The Managing Agent is not responsible for the control or keeping of Community Scheme employees' leave/leave of absence/sick leave records which must be kept and controlled by the Scheme Executives on behalf of the Community Scheme.

- 4.1.3 Labour Legislation: The Managing Agent, when so instructed by the Scheme Executives, will negotiate with professionals/consultants or obtain written reference from the relevant controlling bodies (such as the

CCMA) relative to labour legislation advice, at the Managing Agent's 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 disciplinary procedures as well as the conduct of disciplinary hearings and the like; at the Managing Agent's prevailing rates.
- 4.1.5 Valuations: The Managing Agent will, when requested by the Scheme Executives, assist the Scheme Executives in determining the replacement values of buildings/improvements for insurance purposes, and to arrange for valuations by suitable professionals and at the Managing Agent's prevailing rates.
- 4.1.6 Insurance: The Managing Agent will arrange for the insurance of the buildings and improvements and any other insurance the Community Scheme may require.
  - 4.1.6.1 In the event of the Community Scheme having funds available, the Managing Agent shall pay the annual/monthly insurance premiums on the due date from Community Scheme funds;
  - 4.1.6.2 In the event of the Community Scheme having insufficient funds available in the Trust account or Trust Savings account, the Managing Agent's obligation to effect 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. Furthermore, the Community Scheme acknowledges that any such conduct by the Managing Agent shall not be construed as negligence. The Managing Agent shall timeously advise the Schemes Executives in the event of insufficient funds being available.
  - 4.1.6.3 The Managing Agent will process/submit all insurance claims on behalf of the Community Scheme to their in-house 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 a fee at its prevailing rates on all claims for coordinating the administration on behalf of the Community Scheme.
- 4.1.7 Rules: The Managing Agent undertakes to assist in the enforcement of the Rules of the Community Scheme when so required by the Scheme Executives:
  - 4.1.7.1 The Managing Agent acknowledges that it has acquainted itself with the provisions of the Rules adopted by the Community Schemes, and will similarly do so in respect of future amendments or supplementary Rules which the Community Scheme may adopt from time to time, and in the case of a Body Corporate, shall abide by the reasonable requests or instructions of the holders of registered Sectional Mortgage Bonds over at least 25% (twenty-five per cent) 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 Scheme Executives / Community Scheme for the enforcement of the Rules, the cost of which may, at the instruction of the Scheme Executives, be debited to the errant owner's levy account.

4.1.7.3 The Managing Agent will assist the Community Scheme and/or Scheme Executives with the preparation of, the conducting of, or the defence of any applications to the Ombud Service, for which additional charges shall apply at the Managing Agent's prevailing rates.

4.1.8 Payments / Recoveries: The Managing Agent shall be entitled, for and on behalf of and for the account of the Community Scheme, to pay all bona fide expenses incurred by or on behalf of the Community Scheme and likewise recover amounts due to the Community Scheme.

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

4.1.9 Records: The Managing Agent shall keep full records of their administration as statutorily required from time to time and shall report to the Community Scheme and to all holders of registered sectional mortgage bonds, bonds over units who have notified the Community Scheme of their interest in terms of Section 13(1)(f) of the STSM Act, all matters which, in their opinion, will detrimentally affect the value or amenity of the common property and any of the sections.

#### 4.2 Collection of levies and other monies:

The Managing Agent undertakes on behalf of the Community Scheme to:

4.2.1 Arrange for the collection of the monthly levies, special levies and all amounts due by Members of the Community Scheme and also all other income or monies due to the Community Scheme, 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 owner statements on a monthly, quarterly, annual basis, or no statements at all, as decided and agreed by the Scheme Executives. Statements can be e-mailed or posted, and costs thereof will be recoverable by the Managing Agent from the Community Scheme at prevailing rates. Where provision is made for statements and records to be downloaded from the Managing Agent's web portal, statements and information will only be e-mailed or posted to members not having access to the Managing Agent's portal and/or where statutorily required.

4.2.3 The parties agree that the Managing Agent shall, on behalf of the Community Scheme, be entitled and authorised to instruct and conclude a Fee Mandate Agreement with any firm of attorneys on their panel, or as per the Community Schemes specific instruction:

4.2.3.1 for the collection of outstanding levies;

- 4.2.3.2 for other legal matters (litigation, advice, lodging, defending and conducting applications to the Ombud Service, interdicts, etc.) if the Scheme Executives have authorised such actions.
- 4.2.4 The Trustees will be required to complete a FICA form for the appointed attorneys from time to time if so required.
- 4.2.5 Attorneys' fees shall be payable by the Community Scheme in accordance with the Attorneys' Fee Agreement, alternatively as per the attorneys' tariffs charged on the scale as between attorney and client, which fees shall be payable on demand unless special arrangements have been made with the Attorneys concerned.
- 4.2.6 The Managing Agent shall be entitled at any stage to settle any amount due and outstanding by the Community Scheme for legal fees from any monies held in trust on behalf of the Community Scheme.
- 4.2.7 The Managing Agent will endeavour to recover all legal fees and administrative charges from a defaulting owner, however, any amount not recovered or recoverable from the owner will be payable by the Community Scheme.
- 4.2.8 Upon termination of this Management Agreement, attorneys appointed by the Managing Agent as authorised in terms hereof shall immediately be entitled to payment of any outstanding accounts. The Managing Agent shall be entitled to withhold any trust funds of the Community Scheme to settle the outstanding accounts unless a written agreement is reached between the attorneys and the Community Scheme.
- 4.2.9 The Managing Agent will be responsible to exercise credit control and debt collection monthly to recover all amounts owing by owners to the Community Scheme.
- 4.2.10 Credit control and debt collection shall be exercised by implementing the procedures outlined in the Debt Collectors Act and as prescribed.
- 4.2.11 The Managing Agent shall comply with the provisions of the Debt Collectors Act in respect of collections undertaken by the Managing Agent.
- 4.2.12 All administrative charges (including Debt Collection Charges) incurred by the Managing Agent shall be payable by the Community Scheme on demand.
- 4.2.13 The Managing Agent will collect compounded interest on arrear levies at such rates as determined by the Scheme Executives from time to time.
- 4.3 Accounting: The Managing Agent undertakes on behalf of the Community Scheme to:
- 4.3.1 Pay all expenses incurred in the administration of the Community Scheme, as instructed by the Scheme Executives.
- 4.3.2 Process all payments and receipts;



- 4.3.3 Prepare and submit to the Scheme Executives a monthly statement of income and expenditure, supported by copies of vouchers where these have been specifically requested by the Scheme Executives and which statement shall include an analysis of debtors' balances and a comparison to a monthly budget.
- 4.3.4 Arrange the annual audit with the auditor appointed by the Community Scheme. Upon completing the audit, submit the draft audited statements on completion to the Scheme Executives for approval and presentation to the Members of the Community Scheme for consideration at the Annual General Meeting.
- 4.3.5 Prepare an annual estimate of income and expenditure for submission to the Scheme Executives and presentation to the Members at the AGM for their approval of amendment. Thereafter to be finalised by a resolution of the Scheme Executives which resolution shall include instalment details as to when levies need to be paid; for example, monthly, quarterly, annually, and deadlines for receipt of payments into Community Scheme account.
- 4.3.6 Invest funds into the schemes reserve fund and surplus funds into an interest-bearing investment account (Agent Fees Applicable).
- 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 to the following matters 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 bondholders, sectional plans, rules, insurance policies and all other statutory documents, records and files pertaining to the Community Scheme;
  - 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 Scheme Executives;
  - 4.4.4 Attending at Trustee meetings, which meetings may be conducted online where possible, as and when requested but not exceeding four meetings per annum and subject to the provisions of clause 5.5. Meetings will be charged at prevailing rates and subject to its duration in terms of clause 5.3;
  - 4.4.5 Attendance at Special General Meetings of the Community Scheme when so requested by the Scheme Executives. A fee, at prevailing rates, will be charged for attendance at such meetings;
  - 4.4.6 Keeping proper minutes of the meetings attended by the Managing Agent, if so requested by the Scheme Executives, and dispatching copies to all persons entitled to receive such minutes;

- 4.4.7 The Scheme Executives shall give reasonable prior notice to the Managing Agent of all meetings of the Scheme Executives and the Community Scheme. The Managing Agent shall be entitled to attend such meetings but shall not make an additional charge if this would generally be applicable unless specifically requested by the Scheme Executives / Community Scheme to attend same. The Scheme Executives shall, in any event, furnish the Managing Agent with copies of the minutes of all meetings of the Scheme Executives / Community Scheme;
- 4.4.8 Arrange venues for meetings, alternatively send out online meeting invitations to attendees, if requested by the Scheme Executives;
- 4.4.9 Assist and advise the Scheme Executives on procedural matters, such as general meetings, special general meetings, quorums, proxies, resolutions, voting rights, amendments to Rules and the statutory requirements of the Act and Rules;
- 4.4.10 Furnish the Chairperson of the Scheme Executives with copies of correspondence done on their behalf;
- 4.4.11 Assist with the enforcement of the Rules adopted by the Community Scheme, as the Managing Agent may be instructed by the Scheme Executives from time to time.

## 5. REMUNERATION

- 5.1 R\_\_\_\_\_ (“the basic fee”) per month (exclusive of VAT, presently at 15%) payable monthly as from the effective date of this 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 and the associated prevailing rates 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” (e.g. postage). The amended Annexure A schedule shall be forwarded to the Scheme Executives at least one month prior to the 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 that should a meeting specified in paragraphs 4.4.4 and 4.4.5 above extend either beyond 90 minutes in 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 (online or in-person) 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 regular 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 Community Scheme, 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 Scheme Executives from time to time.

- 5.5 The Managing Agent is not available to attend meetings held on Fridays after 14h00, on Saturdays, Sundays, or public holidays.
- 5.6 In addition to the basic fee, 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 basic fee, the Managing Agent shall be entitled and is hereby authorised to receive or recover from the Community Scheme's funds all bona fide expenses/costs incurred for the benefit of or on behalf of the Community Scheme, including all costs related to services where the requirements are variable (such as, but not limited to, collection of arrear amounts owing to the Community Scheme / 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 Community Scheme'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 Scheme Executives 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 Community Scheme's employees and the duties on the property and requires the Scheme Executives to arrange such supervision and control.

## **7. DURATION / TERMINATION OF THE AGREEMENT**

- 7.1 This Agreement shall commence on the effective date stipulated in clause 3 hereof and shall continue for an initial period of 12 (twelve) months.
- 7.2 Upon the expiry of the initial period, this Agreement shall then automatically renew for a further period of 12 (twelve) months and thereafter automatically renew for a further 12 (twelve) months from any subsequent renewal period unless either party notifies the other of its intention not to renew the Agreement by written notice at least 2 (two) calendar months prior to the expiry of any subsequent renewal period.
- 7.3 Upon any renewal, the Managing Agent shall continue to render the service as stipulated in this Agreement until termination thereof alternatively, on such terms and conditions as the Managing Agent and Community Scheme's Executives may agree.
- 7.4 The Management Agreement may be cancelled without liability or penalty, despite any provision of the Management Agreement or other agreement to the contrary-

- 7.4.1 by the Body Corporate on 2 (two) months' written notice; provided that the cancellation is first approved by a Special Resolution of members of the Community Scheme, passed at a General Meeting; or
  - 7.4.2 by the Managing Agent on 2 (two) months' written notice; or
  - 7.4.3 by the Body Corporate by Ordinary Resolution or the Scheme Executives and/or the Managing Agent in terms of the provisions of the Management Agreement.
  - 7.4.4 by opting not to renew the management agreement by written notice 2 (two) months before the expiry of the initial period or any subsequent renewal period.
- 7.5 The appointment of the Managing Agent shall be revoked, and the Managing Agent shall cease to hold office if:
- i) where the managing agent is a juristic person, an order is made for its provisional or final liquidation or, where the managing agent is a natural person, he applies for the surrender of his estate as insolvent or his estate is sequestrated either provisionally or finally or, where the managing agent is a company, it is placed under judicial management; or
  - ii) the managing agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the managing agent is a company or a close corporation, and any of its directors or members is convicted of an offence involving an element of fraud or an element of dishonesty; or
  - iii) a special resolution of the members of the body corporate is passed to that effect in accordance with Prescribed Management Rule 28(7) without liability or penalty with 2 (two) months' written notice of cancellation.
- 7.6 The Scheme Executives may cancel this Agreement, without notice, if the Managing Agent is in breach of any of the provisions of this Agreement or if the Managing Agent is guilty of conduct, which at common law would justify the termination of the contract between master and servant, or where losses or damages to the Community Scheme are due to the Managing Agents employees negligence. In such event, the Managing Agent shall have no claim against the Body Corporate or any of the owners as a result of such cancellation.
- 7.7 Upon termination of this Agreement, any service providers appointed by the Managing Agent as authorised in terms thereof shall immediately be entitled to payment of any outstanding accounts. The Managing Agent shall be entitled to settle these accounts on demand from any trust funds of the Community Scheme, unless a written agreement is reached between the service providers and the Community Scheme.
- 7.8 The Managing Agent shall prepare the handover documentation required for the new appointed Managing Agent in the Managing Agents' systems format and arrange for delivery thereof as soon as reasonably possible thereafter. The Community Scheme is aware that any trust funds held on a call account will require notice to the relevant financial institution. These funds will only become available upon the expiry of such notice period.

## 8. AUTHORISATION TO ACT

- 8.1 The Community Scheme hereby acknowledges, and it is agreed that the Managing Agent acts as Agent on behalf of, and in the name of, the Community Scheme, 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 Community Scheme or of the Scheme Executives or of both, as may be necessary for the performance of its duties, subject to the provisions of the STSM Act as amended, and the Rules and any directives issued by the Scheme Executives. The parties acknowledge that this Agreement shall not be construed as an assignment by the Scheme Executives of their powers (or those of the Community Scheme) 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 Glenwood Heart
- MidCity Property Services (Pty) Ltd (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 it 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 by the Community Scheme as recorded and set out in Annexure A attached hereto.

## **12. DISPUTES**

- 12.1 Save as otherwise specifically provided for 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 (fourteen) 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 concluded as quickly as possible with a view to it 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 he/she considers 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 he/she considers just and equitable and such decision will be final and binding, and made an order of the High Court to which the parties to the dispute are subject.
- 12.4 Either of the parties may, before appointment of an Arbitrator, refer any dispute concerning this Agreement to the Ombud Service for adjudication in terms of the provisions of Section 39(5)(a) and (b) of the CSOS Act.
- 12.5 Notwithstanding the provisions of the foregoing clauses 12.1 – 12.4, either party shall be entitled to apply for interdictory and/or other urgent relief to any Division of the High Court having jurisdiction.

### **13. PROTECTION OF PERSONAL INFORMATION**

- 13.1 The Community Scheme warrants that, where it is required to do so, it has obtained the required consent, alternatively has established a lawful justification for the processing of any Personal Information, as contemplated in terms of POPIA, from the Data Subjects to which the Personal Information relates and belongs, alternatively, the required consent of the competent person and/or authorised representatives of such Data Subject(s) to give such consent on behalf of such Data Subject for the Managing Agent (i) to be in possession of and Process the Personal Information in relation to the provisions of and in the manner contemplated in this Agreement (ii) disclose the Personal Information to the Managing Agent and for the Managing Agent to Process the Personal Information in the manner as set out in this Agreement and in accordance with its Privacy Policy which can be sourced at <https://www.midcity.co.za/> or any specific privacy notice to which this Agreement relates. The Community Scheme indemnifies and holds harmless the Managing Agent against any damage, harm or loss suffered in consequence of a failure of this warranty.
- 13.2 In line with POPIA, the Community Scheme acknowledges that it has been adequately informed of its rights and the purposes for which its Personal Information will be processed by the Managing Agent and that it accepts the terms of the Managing Agent's Privacy Policy which can be sourced at <https://www.midcity.co.za/> ("the Privacy Policy"), as well as any privacy notice to which this Agreement relates ("Privacy Notice").
- 13.3 Accordingly, the Community Scheme consents to the Managing Agent and approved third parties to lawfully collect, process, retain and distribute relevant Personal Information where it is required by the Managing Agent for the purposes set forth in their Privacy Policy and more specifically in order for the Managing Agent to comply with its obligations towards the Community Scheme and Data Subjects, and for the purposes of statutory compliance, statistical analysis, as well as to direct market additional products and services to the Community Scheme by means of electronic communications, in its capacity as a client of the Managing Agent.
- 13.4 The Community Scheme acknowledges that it understands its right to privacy and the right to, upon request, have the Personal Information which it shares with the Managing Agent reviewed and to object to the Managing Agent's processing of any such Personal Information.
- 13.5 The Managing Agent shall only process Personal Information for the purposes set forth in this Agreement and its Privacy Policy, as well as in accordance with the provisions of a validly concluded Operator Agreement.

### **14. GENERAL**

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

**15. NEW LEGISLATION:**

- 15.1 It is recorded that various pieces of legislation are applicable to the management of the Scheme and the relationship between the Managing Agent and Community Scheme, which legislation is amended from time to time.
- 15.2 The Managing Agent shall endeavour to advise the Scheme Executives on such aspects of the administration of the Community Scheme which may be influenced by any amendments to legislation or new legislation, but it shall be the duty of the Trustees to seek independent professional and/or legal advice concerning any such amendments and/or legislation and the Managing Agent will assume no responsibility and/or liability with regard to any non-compliance by the Community Scheme with its obligations in terms of such amendments or new legislation.
- 15.3 It shall be the duty of the Scheme Executives to implement appropriate procedures and guidelines concerning the application, implementation, and enforcement of amendments to legislation and new legislation to the extent necessary and to advise the Managing Agent of any actions and guidelines implemented from time to time.
- 15.4 The Managing Agent undertakes to implement appropriate measures in its administration of the affairs of the Community Scheme to ensure that there is compliance with the provisions of the Protection of Personal Information Act No. 4 of 2013 (also referred to as POPI) and the Managing Agent shall only allow access to personal information of members of the Community Scheme to the extent permissible in law and to the extent authorised by the Scheme Executives from time to time.



THUS, DONE AND SIGNED AT \_\_\_\_\_

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ IN THE YEAR 2023.

**ON BEHALF OF MIDCITY PROPERTY SERVICES (PTY) LTD**

(1)	(2)
_____	_____
(for MANAGING AGENT)	(for MANAGING AGENT)
FFC 1141554	FFC 0073836
C FOURIE	B VAN DYK

AS WITNESSES:

(1)	(2)
_____	_____

THUS, DONE AND SIGNED AT \_\_\_\_\_

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ IN THE YEAR 2023.

**ON BEHALF OF THE BODY CORPORATE OF GLENWOOD HEART**

(1)	(2)
_____	_____
(TRUSTEE)	(TRUSTEE)

AS WITNESSES:

(1)	(2)
_____	_____

**ANNEXURE A - Forming part of the MidCity Management Agreement  
Glenwood Heart Body Corporate**

Management Fee (full management) X4 Trustee Meetings & X1 Annual General Meeting per annum (or as agreed at last Annual General Meeting)

Bank Admin Charge (BC Percentage)

0.746% of monies collected  
per month

***Salary Administration***

Wages / Salaries - Processing (monthly charge) per employee

Wages / Salaries - Processing (monthly charge) per scheme

Wages / Salaries - Payslip (monthly charge)

Wages / Salaries - Workmen's Compensation Return (annual charge)

Extra Ordinary Wage Payments - Per Occasion

Staff Contracts - Per Staff Member

Labour related research / provision of information - calculated on time per hour

R48.60

R120.00

R7.15

R54.00

R54.00

R380.00

R350.00

***POPI and PAIA Admin:***

Registration

Annual Admin fee

R2 500,00 Once Off

R 1 500.00

***CIPC Administration:***

Annual Returns

Lodgement of Directors

Disclosures

R 1 100.00

R 1 100.00

R 54.00

***CSOS Admin:***

CSOS - Registration

CSOS - Annual Return

CSOS Dispute (Hourly rate)

CSOS - Change of managing agent

R2 200.00

R1 100.00

R400.00

R450.00

***As and when incurred:***

Attendance of Trustees Meetings (Exceeding three per financial year)

Reconvened (Postponed) Annual General Meetings

Special General Meeting

Should the Portfolio Manager be required to attend meetings of the Trustees or the Body Corporate or any other meetings on a Saturday or a Sunday or public holiday, attendance at such a meeting shall be charged accordingly.

R 850.00 per meeting

R 1100.00 per meeting

R 1100.00 per meeting

R 1100.00 per meeting

Should the Portfolio Manager be required to attend meetings of the Trustees or the Body Corporate or any other meetings on weekdays on instruction from the Trustees and the meeting exceed two hours.	R 850.00 per hour or part there of
Photocopies	R1.50 per copy
Photostat copies - Coloured	R8.65 per copy
Additional Charges of Variables	R 7.15 per unit
Special Levies - admin charge for raising, processing & follow-up.	R 7.15 per unit
Deeds Search (per annum/per unit)	R 35.00 per unit
Deeds Search with Appointment as Managing Agent	R 35.00 per unit
Stationery - Filing system with appointment as Managing Agent	R 54 per unit
Archiving - Small	R 35.00
Archiving - Large	R 90.00
Use of Boardroom at MidCity	R 900.00
Use of Executive Boardroom at MidCity	R 1 700.00
* Exclusive Use Site Plan & Rules	R 1 300.00 on request
SMS Notification to owners	R 1.60
Ballot - General Meeting (per form)	R 7.15
Unpaid debit orders	R 205.00
Maintenance Plan: Compilation	R 5 000.00
Maintenanace Plan: Update	R 2 500.00

**Payable by the Agent by Body Corporate and recoverable from the registered owner:**

**Prescribed Fees - Debt Collecting**

Arrears admin charges - SMS reminder (debited to relevant owner) *	R 21.00
Processing & delivery of "Letters of demand" (Registered Post) *	R 58.40
Handover Fee	R 770.00
Necessary phone calls, which is not a consultation (per call)	No Charge
Correspondence received and attended to	No Charge
On receipt of an instalment in redemption of the debt *	A fee of 10% of the instalment received subject to a maximum amount of R480.00
Admin Fee - Incorrect Reference	R 175.00
* Or as per the prescribed fees (Annexure B)	

***Payable to the Agent by bona fide parties requesting documents.***

**Reimbursement on demand for all bona fide expenses not covered and, incurred for the benefit of the Body Corporate for its members or for both. These expenses shall include the costs of minute books, stamps, envelopes and photostat copies for circulars and notifications of meetings to owners:**

* Copies of Rules	On Request
Rules, filing with Deeds Registrar	R 2 700.00
Rules, scrutiny - calculated on time @ R 350.00 per hour	On Request
* Copies of Sectional Plans	On Request

* Copies of Audited Financial Statements	On Request
Minute Book	R 650.00
Tax Certificate	On Request
Deeds Search	On Request
* Monthly financial Statement and/or Minutes (Non-Trustee)	On Request
* Insurance Policy	No Charge
* Insurance policy (schedule only)	No Charge
Budget revision (in addition to normal annual budget preparation / implementation)	On Request
Take-on fee for new Schemes - calculated on time / dependent on condition of records	No Charge
Travel charges (i.r.o. meetings not held at MidCity Property Services (Pty) Ltd offices) - @ AA rate	At AA rate
Circular - preparation (excl copies / reg. post) R54.00 for 1st page; R38.00 per additional page	R 54.00 1st page + R 38.00 add pages
Letter of Conduct (Payable by Owner)	R 110.00
* Monthly Management Reports (1 copy free) - additional sets charged	R 1 200.00
Monthly Processing fee per unit - statements for variables; eg water etc. (posted or emailed)	R 7.15
Postage	At cost
Resolution preparation (excl disbursement charges)	R 350.00
<b>Owners (property transfers):</b>	
Clearance certificate and Consent	R 1 180.00
Clearance certificate - re-issue	R 540.00
Homeowners Association Consent form	R 540.00

***The charges will not be added additionally if obtained from the web.***

All figures reflected are exclusive of VAT

While most disbursements / charges have been included, these are not limited to items listed.

Charges / fees reflected are as at date prepared; "at cost" items are subject to change without notice

**"ANNEXURE B" - forming part of the MidCity Management Agreement  
Glenwood Heart Body Corporate**

***Credit control procedure as approved by the Trustees***

- (a) Levy statements are sent out to all owners on a monthly basis.
- (b) Notification of any change to the budget / levy is, however, sent to the owners after this has been implemented by the relevant Resolution of the Trustees.
- (c) Statements and all other communications are sent to the address (either postal or email) selected in writing by the registered owner.
- (d) **It is the responsibility of the owner to ensure that their communication details are correct and updated.**
- (e) If payment is not received by the 7<sup>th</sup> working day of the month a SMS reminder will be sent to the defaulting owner, for which an administrative charge will be made as prescribed by the Council of Debt Collection; this will be debited to the defaulting owner's levy account.
- (f) If payment is not received by the end of the month interest (as set by the Trustees from time to time) will be added and is for the credit of the Body Corporate.
- (g) If payment is not received by the 15<sup>th</sup> working day of the month a final demand will sent out for which a further administrative ("final demand") charge is made as prescribed by the Council of Debt Collection; this will be debited to the defaulting owner's levy account. The final demand notification will include a final date for full payment.
- (h) If payment is not received by the deadline stated in the final demand the account will be handed over for legal collection. A further administrative charge will at this point be debited to the defaulting owner's levy account to cover the administrative costs of preparing the account for handover to a collections attorney. This fee will be set by the Managing Agent from time to time and will be based on cost of postage, stationery and staff time.

**"ANNEXURE C" - forming part of the MidCity Management Agreement  
Glenwood Heart Body Corporate**

**Disclosures Schedule listing any rebates, discounts and commissions paid to the Managing Agent by the providers of goods and services to the Body Corporate:**

**MidCity Property Services (Pty) Ltd do not receive any rebates/incentives on work that is done at Bodies Corporate.**

**Where the Managing Agent and/or trustees negotiate any form of discount on any quoted price or service, such discount is in the favour of the Body Corporate.**