

# DEED OF CONDITIONS



by

[ ]

Property: [ ]

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WE, [ ] incorporated under the Companies Acts (Registered Number [ ]) and having our Registered Office at [ ] proprietors of the Development as hereinafter defined [and CONSIDERING THAT we are about to develop the Development including areas of amenity ground and other common areas **[if required describe briefly the circumstances of the development (NB strictly no narrative is necessary)]** PROVIDE as follows:

## 1 Definitions, Interpretation and Construction

### 1.1 Definitions

In this Deed:

**[Insert definitions of terms to be used in the Deed according to circumstances, for example:]**

|  |   |
|--|---|
| <b>["Common Parts"]</b>                  | means [describe all parts of the Development intended to be common among the Owners];]  |
| <b>"Consent"</b>                         | means, in relation to any Unit, the written consent of the Owner of any other Unit which is at some point within four metres of the Unit in question, (disregarding the width of any intervening road if of less than twenty metres and any pertinent of either Unit) except that where the Developer owns any Unit in the Development it means the written consent of the Developer;               |
| <b>"Developer"</b>                       | means [ ] incorporated under the Companies Acts (Registered number [ ]) and having their Registered Office at [ ]   |
| <b>"Development"</b>                     | means ALL and WHOLE [ ] (insert full conveyancing description or by reference to Title Number) being the area of ground shown delineated in [ ] on the Plan;  |
| <b>["Development Management Scheme"]</b> | means the scheme of rules for the management of land set out in Schedule 1 to the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009, which are set out in full in the Schedule, as applied to the Development, with such variations as may be specified in this Deed of Conditions, and any other variations as may subsequently be made to that scheme;]             |
| <b>"Manager"</b>                         | means [ ] or such other organisation or person who may be appointed in accordance with the provisions of [Condition [7]] [the Development Management Scheme];   |
| <b>"Owner"</b>                           | means at any time the owner at that time of any Unit, and where two or more persons own the Unit includes both or all of them;  |
| <b>"Plan"</b>                            | means the plan annexed and executed as relative to this Deed of Conditions;   |
| <b>["Schedule"]</b>                      | means the schedule annexed and signed as relative to this Deed of Conditions;]  |
| <b>["Scheme Property"]</b>               | for the purposes of the Development Management Scheme means [the Common Parts] [or describe the property which is to be subject to maintenance under the Development Management Scheme] [and where the Development is or includes a tenement includes those parts of the tenement specified in Article 20 of the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009];] |
| <b>"Service Media"</b>                   | means [ ]   |

**"Unit"** means [      ](describe units in an appropriate way according to the nature of the development OR as any [land][property] which is designed to be held in separate ownership);

## 1.2 Interpretation and Construction

Except to the extent that the context or the express provisions otherwise requires, in this Deed of Conditions:

- 1.2.1 words importing any gender include all other genders;
- 1.2.2 words importing the singular number only include the plural number and *vice versa*;
- 1.2.3 words which import the whole are to be treated as including reference to any part of the whole;
- 1.2.4 where at any one time there are two or more persons included in the expression "Owner" obligations contained in this Deed of Conditions are binding jointly and severally on them;
- 1.2.5 words importing individuals include legal persons and *vice versa*;
- 1.2.6 references to this Deed of Conditions or to any other document are to be construed as reference to this Deed of Conditions or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;
- 1.2.7 any reference to a Condition is to the relevant Condition of this Deed of Conditions;
- 1.2.8 reference to any statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and includes any orders, legislation, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.2.9 any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and shall not be construed as limiting the generality of any preceding words.

## 1.3 Headings

The headings in this Deed of Conditions are included for convenience only and are to be ignored in its construction.

## 1.4 Exercise of rights conferred by this Deed

Any rights conferred on an Owner or the Manager by this Deed of Conditions may be validly exercised by any person duly authorised by such Owner or the Manager including its tenants, agents and tradesmen, but subject to any limitations or restrictions imposed upon such Owner or the Manager by this Deed.

## 2 Community Burdens

### 2.1 Creation

- 2.1.1 The conditions set out in Conditions [2] to [6] are imposed on [the Units in] the Development as community burdens.
- 2.1.2 To the extent that the Developer is the Owner of any Unit, the conditions set out in Conditions [2] to [6] are real burdens in favour of such Unit.
- 2.1.3 Condition [7] is a manager burden

## **[2.2 Date of creation and application**

The conditions imposed by this Deed of Conditions will take effect, in respect of a Unit, on the date of registration in the Land Register of Scotland of a disposition of that Unit in which the conditions in this Deed of Conditions are expressly stated to apply.]

## **2.3 Variation and Discharge of community burdens**

A community burden may be varied or discharged by a deed of variation or discharge under Section 33 of the Title Conditions (Scotland) Act 2003 granted:

- 2.3.1 by or on behalf of the Owners of at least [ ] per cent of the Units, or
- 2.3.2 by the Manager, but only where the Manager is authorised to do so under Condition [ ].

## **2.4 Lands Tribunal applications**

No application may be made to the Lands Tribunal for Scotland under sections 90(1)(a)(i) and 91(1) of the Title Conditions (Scotland) Act 2003 in respect of the community burdens and servitudes created in this Deed for a period of [five] years after the date of registration of this Deed of Conditions in the Land Register of Scotland.

## **3 [Application of the Development Management Scheme**

- 3.1 The Development Management Scheme will apply to the Development [except so far as varied by Condition[s] [ ] and [ ]].
- 3.2 The owners' association to which the Development Management Scheme applies will be known as "[The] [ ] [Owners' Association] [ ]"
- 3.3 [The first manager of the owners' association will be [ ].] [The first manager of the owners' association will be the person appointed in terms of Condition 7 of this Deed of Conditions, and Rules 4.1 and 4.2 of the Development Management Scheme will be suspended until the expiry of the period referred to in Condition 7.2 of this Deed of Conditions.]
- 3.4 [Details of any variations to the provisions of the Development Management Scheme]

**[Real burdens which are to apply to the Development as community burdens to be narrated here. These can relate to matters such as use, maintenance and insurance [and the arrangements if any to be made for an Owners' Association].]**

4 [ ]

5 [ ]

6 [ ]

## **[7 Manager Burden**

- 7.1 The Development is subject to the manager burden in Condition 7.2 in favour of the Developer.
- 7.2 The Developer or anyone appointed by the Developer for the purpose may:
  - 7.2.1 act as the manager of the Development;
  - 7.2.2 appoint some other person to be such manager;
  - 7.2.3 dismiss any person appointed by virtue of Condition 7.2.2.

for [5] years from the date of registration of this Deed or until the Developer no longer owns any Unit in the Development whichever is the shorter period.

7.3 The Developer may assign the manager burden created in this Condition.]

## 8 Servitudes

**[Servitudes which are to apply to the Development or parts of the Development to be narrated here. These can relate to matters such as access, services, access for maintenance and repair. The following provisions provide examples of the types of servitudes that might be required.]**

The rights in this Condition are servitudes imposed on the relevant burdened properties in favour of the relevant benefited properties

### 8.1 Community Servitudes

8.1.1 For the purposes of this Condition 8.1:

- (i) the burdened property is the Development, and
- (ii) each Unit is a benefited property.

8.1.2 The following servitudes are imposed on the Development in favour of each Unit:

- (i) a right of access for pedestrian and vehicular traffic over all roads, footpaths, parking spaces and lanes within the Development, other than those situated within any Unit;
- (ii) a right of access over, and use of, (including a right to erect scaffolding) any other Unit for the purpose of inspecting, cleaning, repairing and renewing any building, wall, fence or other structure erected on a Unit;
- (iii) a right of access over, and use of, (including a right to erect scaffolding) any other Unit for the purpose of inspecting, cleaning, repairing and renewing the [drains, sewers, electric cables, gas and water mains, and other pipes, cables and enclosed units][Service Media] serving a Unit.

### 8.2 Development Servitudes

8.2.1 For the purposes of this Condition 8.2:

- (i) the burdened property is the Development,
- (ii) each Unit is a benefited property, and
- (iii) ALL and WHOLE [insert conveyancing description of adjoining land to be entitled to the benefit of the servitudes] ["ABC Land"] is a benefited property.

8.2.2 The following servitudes are imposed on the Development in favour of each Unit and in favour of [ABC Land]:

- (i) a right to lead pipes, cables, wires or other enclosed units over or under the Development for sewage, electricity, gas, water and all other necessary purposes;
- (ii) a right to install, construct and lay drains, sewers, electric cables, gas and water mains, and other pipes, cables and enclosed units and to connect into such drains, sewers, electric cables, gas and water mains, and other pipes, cables and enclosed units as already exist or are installed by virtue of Condition 8.2.2(i), and
- (iii) a right to carry out all necessary acts of inspection, maintenance and renewal in respect of such drains, sewers, electric cables, gas and water mains, and other pipes, cables and enclosed units;

- (iv) a right of access for pedestrian and vehicular traffic (including construction traffic) over all roads, footpaths, parking spaces and lanes within the Development, including a right to form, construct, re-design, and re-align the roads, footpaths, parking spaces and lanes.

8.2.3 The rights conferred by this Condition 8.2 may be exercised in respect of any current or future development of the benefited property under this Condition 8.2.

8.2.4 Except for the right granted by Condition 8.2.2(i), the rights conferred by Condition 8.2 are extinguished in respect of any part of the benefited property when that part ceases to be owned by [the Developer][owner of [ABC Land] at the time Deed of Conditions is granted].

### **8.3 Building Servitudes**

8.3.1 For the purposes of this Condition 8.3:

- (i) each Unit is a burdened property, and
- (ii) the benefited property is the Development

8.3.2 The following servitudes are imposed as servitudes on each Unit in favour of the Development:

- (i) a right of access (including a right to erect scaffolding) for the purpose of the erection of a [building] or other structure on any other Unit.
- (ii) a right to move or remove any part or parts of any boundary wall or fence, and to re-position any boundary wall or fence to coincide with the title plans.

8.3.3 The rights conferred by this clause are extinguished in respect of any part of the benefited property when that part ceases to be owned by the Developer.

### **8.4 Exercise of servitude rights**

8.4.1 The parties exercising the rights and obligations contained in Conditions 8.1, 8.2 and 8.3 will:

- (i) except when exercising the rights contained in 8.1.2 (i) give reasonable prior written notice to the relevant Owners or the Developer (except in the case of an emergency, when no notice will be required);
- (ii) exercise the rights at reasonable times and in a reasonable manner;
- (iii) keep any disturbance and interference to a minimum; and
- (iv) make good all physical damage caused to the Development or the Units to the reasonable satisfaction of the affected Owners or the Developer as soon as reasonably practicable.

8.4.2 The rights contained in Conditions 8.1, 8.2 and 8.3 may be exercised only where it is reasonably necessary for the purpose in question.

### **9 Disputes**

Any questions disputes or differences which may arise among any of the Owners shall, failing agreement, be referred to an arbiter jointly appointed by the parties or failing agreement by an arbiter to be appointed at the request of any party by the Chairman for the time being of the Scottish Branch of the Royal Institution of Chartered Surveyors in respect of practical matters relating to the Development, or by the President of the Law Society of Scotland in respect of legal matters relating to the Development or this Deed of Conditions, and the decision of such arbiter shall be binding upon the parties who shall each bear their own costs in respect of any such determination. The application of Section 3 of the Administration of Justice (Scotland) Act 1972 is expressly excluded.

**10 Statutory Undertakers**

There are reserved in favour of the local or public authorities and statutory undertakers and the like all necessary rights of access for the installation, repair, maintenance, cleaning and renewal of all electric and telegraphic cables, water, gas and drainage pipes, sewers, soil, waste and water supply pipes and all other cables, pipes and transmitters and other services serving the Units in the Development in, through and under any part of the Development provided that such rights may be exercised by any local or public authority or statutory undertaker without any liability on the part of us or our successors, and none of the Owners will have any claim against [us or our successors][the Developer]: IN WITNESS WHEREOF

[This is the Schedule referred to in the foregoing Deed of Conditions relative to [ ]]

## SCHEDULE

### Development Management Scheme

#### PART 1 - INTERPRETATION

##### RULE 1 - INTERPRETATION

###### Definitions

1. In this scheme, unless the context otherwise requires:
  - “the Act” means the Title Conditions (Scotland) Act 2003;
  - “advisory committee” means any such committee formed in pursuance of rule 15.1;
  - “association” means the owners’ association of the development established under article 4 of the Development Management Scheme Order;
  - “deed of disapplication” means a deed granted pursuant to section 73 of the Act;
  - “deed of variation” means a deed of variation or discharge granted pursuant to article 7 or 8 of the Development Management Scheme Order;
  - “the development” means the Development;
  - “the Development Management Scheme Order” means the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009;
  - “general meeting” means an annual or other general meeting of the association;
  - “maintenance” includes repairs or replacement, cleaning, painting and other routine works, gardening and the day to day running of property; but does not include demolition, alteration or improvement unless reasonably incidental to the maintenance;
  - “manager” means the Manager;
  - “member” means a member of the association in accordance with rule 2.3;
  - “owner” means an Owner;
  - “regulations” means regulations made under rule 3.6;
  - “reserve fund” means money held on behalf of the association to meet the cost of long term maintenance, improvement or alteration of scheme property or to meet such other expenses of the association as the association may determine;
  - “scheme property” means the Scheme Property;
  - “service charge” means the contribution to association funds payable in accordance with Part 4 of this scheme and includes additional service charge; and
  - “unit” means a Unit.

#### PART 2 - THE OWNERS' ASSOCIATION

##### RULE 2 – ESTABLISHMENT, STATUS ETC.

###### Establishment

- 2.1 The association is established on the day on which this scheme takes effect.

###### Status

- 2.2 The association is a body corporate to be known as [specify the name of the owners’ association].

###### Members of the association

- 2.3 The members are the persons who, for the time being, are the owners of the units to which this scheme applies and has taken effect; and where two or more persons own a unit both (or all) of them are members.

###### Address of association

- 2.4 The address of the association is that of:
  - (a) the development; and
  - (b) the manager,
  - or either of them.

##### RULE 3 – FUNCTION, POWERS AND ENFORCEMENT

###### Function of association

- 3.1 The function of the association is to manage the development for the benefit of the members.

###### Powers of the association

- 3.2 The association has, subject to rule 3.3, power to do anything necessary for or in connection with the carrying out of the function mentioned in rule 3.1 and in particular may:
  - (a) own, or acquire ownership of, any part of the development;
  - (b) carry out maintenance, improvements or alterations to, or demolition of, the scheme property;
  - (c) enter into a contract of insurance in respect of the development or any part of it (and for that purpose the association is deemed to have an insurable interest);
  - (d) purchase, or otherwise acquire or obtain the use of, moveable property;
  - (e) require owners of units to contribute by way of service charge to association funds;
  - (f) open and maintain an account with any bank or building society;
  - (g) invest any money held by the association;
  - (h) borrow money; or
  - (i) engage employees or appoint agents.

###### Prohibited activities

3.3 The association shall not have power to:

- (a) acquire land outwith the development;
- (b) carry on any trade whether or not for profit; or
- (c) make regulations other than in accordance with rule 3.6.

Scheme to be binding

3.4 This scheme is binding on the association, the manager and the members as are any regulations which have taken effect; and a rule, or any such regulation, in the form of an obligation to refrain from doing something is binding on:

- (a) a tenant of property affected by the rule or regulation; or
- (b) any other person having the use of such property.

Enforcement of scheme

3.5 The association may enforce:

- (a) the provisions of this scheme and any regulations which have taken effect; and
- (b) any obligation owed by any person to the association.

Regulations

3.6 The association may, at a general meeting:

- (a) make regulations as to the use of recreational facilities which are part of the scheme property; and
- (b) revoke or amend regulations made under paragraph (a), but any such regulation, revocation or amendment takes effect only after a copy of it has been delivered or sent to each member.

#### RULE 4 – THE MANAGER

Association to have manager

4.1 The association is to have a manager who, subject to any other provision of this scheme, is a person (whether or not a member) appointed by the association at a general meeting.

Power to remove manager

4.2 The association may at a general meeting remove the manager from office before the expiry of that person's term of office.

Validity of actings of manager

4.3 Any actings of the manager are valid notwithstanding any defect in that person's appointment.

Manager to be agent

4.4 The manager is an agent of the association.

Exercise of powers

4.5 Subject to this scheme, any power conferred on the association under or by virtue of this scheme is exercisable by:

- (a) the manager; or
- (b) the association at a general meeting.

Duties owed to association and members

4.6 Any duty imposed on the manager under or by virtue of this scheme is owed to the association and to the members.

Manager to comply with directions

4.7 The manager must, in so far as it is reasonably practicable to do so, comply with any direction given by the association at a general meeting as respects the exercise by the manager of:

- (a) powers conferred; or
- (b) duties imposed, on the association or on the manager.

Information about management

4.8 Any member may require the manager to allow that member to inspect a copy of any document, other than any correspondence with another member, which relates to the management of the development; and if the document is in the manager's possession or it is reasonably practicable for the manager to obtain a copy of it the manager must comply with the requirement.

Notice to manager on sale etc. of unit

4.9 Any member who sells or otherwise disposes of a unit must, before the date on which the person to whom the unit is to be sold (or otherwise transferred) will be entitled to take entry, send a notice to the manager stating, to the extent to which the information is known by that member:

- (a) the entry date and the name and address of that person;
- (b) the name and address of the solicitor or other agent acting for that person in the acquisition of the unit; and
- (c) an address at which the member may be contacted after that date.

#### RULE 5 – EXECUTION OF DOCUMENTS

Execution of documents by association

5. A document is signed by the association if signed on behalf of the association by:

- (a) the manager; or
- (b) a person nominated for the purpose by the association at a general meeting, provided that the manager or person acts within actual or ostensible authority to bind the association.

#### RULE 6 – WINDING UP

Commencement of winding up

6.1 The manager must commence the winding up of the association on the day on which this scheme ceases to apply as respects the development.

**Distribution of funds**

6.2 The manager must, as soon as practicable after the commencement of the winding up, use any association funds to pay any debts of the association; and thereafter must distribute in accordance with this scheme any remaining funds among those who were, on the date when the winding up commenced, owners of units.

**Final accounts**

6.3 The manager must:

- (a) prepare the final accounts of the association showing how the winding up was conducted and the funds were disposed of; and
- (b) not later than six months after the commencement of the winding up, send a copy of those accounts to the owner of every unit.

**Automatic dissolution of association**

6.4 Subject to rule 6.5, the association is dissolved at the end of the period of six months beginning with the commencement of the winding up.

**Delayed dissolution**

6.5 At any time before the end of the period of six months mentioned in rule 6.4, the members may determine that the association is to continue for such period as they may specify; and if they so determine it is dissolved at the end of the period so specified.

### PART 3 - MANAGEMENT

#### RULE 7 – APPOINTMENT OF MANAGER

**First manager**

7.1 The first manager is [complete name and address of manager] and:

- (a) acts as manager until the first annual general meeting is held;
- (b) is entitled to reasonable remuneration; and
- (c) is eligible for reappointment.

**Appointment of manager**

7.2 The association:

- (a) at the first annual general meeting; and
- (b) where the manager's period of office expires or a vacancy occurs, at any subsequent general meeting, is to appoint a person to be manager on such terms and conditions as the association may decide.

**Certificate of appointment**

7.3 Not later than one month after the date of a general meeting at which a person is appointed to be manager:

- (a) that person; and
- (b) on behalf of the association, a member, must sign a certificate recording the making, and the period, of the appointment.

#### RULE 8 – DUTIES OF MANAGER

**Duties of manager**

8. The manager must manage the development for the benefit of the members and in particular must:

- (a) from time to time carry out inspections of the scheme property;
- (b) arrange for the carrying out of maintenance to scheme property;
- (c) fix the financial year of the association;
- (d) keep, as respects the association, proper financial records and prepare the accounts of the association for each financial year;
- (e) implement any decision made by the association at a general meeting;
- (f) in so far as it is reasonable to do so, enforce—
- (i) any obligation owed by any person to the association; and
- (ii) the provisions of the scheme and of any regulations which have taken effect;
- (g) if there are regulations, keep a copy of them (taking account of revocations and amendments); and
- (h) keep a record of the name and address of each member.

#### RULE 9 – CALLING OF GENERAL MEETINGS

**First annual general meeting**

9.1 The first annual general meeting must be called by the manager and held not later than twelve months after the day on which, in accordance with rule 2.1, the association is established.

**Annual general meetings**

9.2 The manager must call an annual general meeting each year; and a meeting so called must be held no more than fifteen months after the date on which the previous annual general meeting was held.

**Other general meetings**

9.3 The manager may call a general meeting at any time and must call a general meeting if:

- (a) a revised draft budget requires to be considered;
- (b) required to call that meeting by members holding not less than twenty five per cent. of the total number of votes allocated; or
- (c) so required by a majority of the members of the advisory committee.

**Calling of meeting**

9.4 Not later than fourteen days before the date fixed for a general meeting the manager must call the meeting by sending to each member:

- (a) a notice stating:
  - (i) the date and time fixed for the meeting and the place where it is to be held; and
  - (ii) the business to be transacted at the meeting; and
- (b) if the meeting is an annual general meeting, copies of the draft budget and (except in the case of the first annual general meeting) the accounts of the association for the last financial year.

#### Validity of proceedings

9.5 Any inadvertent failure to comply with rule 9.4 as respects any member does not affect the validity of proceedings at a general meeting.

#### Member's right to call meeting in certain circumstances

9.6 Any member may call a general meeting if:

- (a) the manager fails to call a general meeting:
  - (i) in a case where paragraph (b) or (c) of rule 9.3 applies, not later than fourteen days after being required to do so as mentioned in those paragraphs; or
  - (ii) in any other case, in accordance with this scheme; or
- (b) the association does not have a manager.

#### Procedure where member calls meeting

9.7 Where under rule 9.6 a general meeting is called by a member:

- (a) any rule imposing a procedural or other duty on the manager in relation to general meetings (other than the duty imposed by rule 9.4(b)) applies as if it imposed the duty on the member; and
- (b) if there is a manager, the member must send that person a notice stating the date and time fixed for the meeting, the business to be transacted at it and the place where it is to be held.

### RULE 10 – GENERAL MEETINGS: QUORUM

#### Number required for quorum

10.1 A quorum is:

- (a) where there are no more than thirty units in the development, members present or represented holding fifty per cent. of the total number of votes allocated;
- (b) where there are more than thirty such units, members present or represented holding thirty five per cent. of the total number of votes allocated.

#### Quorum necessary for meeting to begin

10.2 A general meeting is not to begin unless there is a quorum; and if there is still no quorum twenty minutes after the time fixed for a general meeting then:

- (a) the meeting is to be postponed until such date, being not less than fourteen nor more than twenty eight days later, as may be specified by the manager (or, if the manager is not present or if there is no manager, by a majority of the members present or represented); and
- (b) the manager (or any member) must send to each member a notice stating the date and time fixed for the postponed meeting and the place where it is to be held.

#### No quorum at postponed meeting

10.3 A meeting may be postponed only once; and if at a postponed meeting the provisions in rule 10.2 as respects a quorum are not satisfied, then the members who are present or represented are to be deemed a quorum.

#### Quorum need not be maintained

10.4 If a general meeting has begun, it may continue even if the number of members present or represented ceases to be a quorum.

### RULE 11 – GENERAL MEETINGS: VOTING

#### Allocation and exercise of votes

11.1 For the purpose of voting on any proposal at a general meeting one vote is allocated to each unit; and any right to vote is exercisable by the owner of that unit or by someone (not being the manager) nominated in writing by the owner to vote.

#### Exercise of vote where two or more persons own unit

11.2 If a unit is owned by two or more persons the vote allocated to that unit may be exercised by either (or any) of them; but if those persons disagree as to how the vote should be cast then no vote is counted for that unit.

#### Decision by majority

11.3 Except where this scheme otherwise provides, a decision is made by the association at a general meeting by majority vote of all the votes cast.

#### Method of voting

11.4 Voting on any proposal is by show of hands; but the convener may determine that voting on a particular proposal is to be by ballot.

### RULE 12 – GENERAL MEETINGS: FURTHER PROVISIONS

#### Election of convener

12.1 The members present or represented at a general meeting are to elect one of their number or the manager to be convener of the meeting; and on being so elected the convener is to take charge of the organisation of the business of the meeting.

#### Additional business

12.2 Any member present or represented at a general meeting may nominate additional business to be transacted at that meeting.

Manager to attend and keep record of business transacted

12.3 Except where unable to do so because of illness or for some other good reason, the manager must attend each general meeting and:

(a) keep a record of the business transacted; and

(b) not later than twenty one days after the date of the meeting, send a copy of the record of business to each member, and where the manager does not attend the convener is to nominate a person present to carry out the manager's duties under paragraphs (a) and (b) of this rule in respect of the meeting.

#### RULE 13 – SPECIAL MAJORITY DECISIONS

Special majority required

13.1 The association may:

(a) make a payment out of any reserve fund which it has formed; or

(b) use any money held on behalf of the association to carry out improvements or alterations to, or demolition of, scheme property (not being improvements, alterations or demolition reasonably incidental to maintenance), but only after the association have, at a general meeting, by majority vote of all the votes allocated, determined to do so.

Consent of owner to be given where not common property

13.2 Where scheme property is not the common property of the members (or not the common property of members who between them own two or more units) a determination under rule 13.1 for the purposes of paragraph (b) of that rule may be implemented only if the owner of the property consents in writing to the improvements, alterations or demolition in question.

#### RULE 14 – EMERGENCY WORK

Power to instruct etc.

14.1 Any member may instruct or carry out emergency work.

Reimbursement of member

14.2 The association must reimburse any member who pays for emergency work.

Meaning of "emergency work"

14.3 "Emergency work" means work which requires to be carried out to scheme property:

(a) to prevent damage to any part of that or any other property; or

(b) in the interests of health or safety,

in circumstances in which it is not practicable to consult the manager before carrying out the work.

#### RULE 15 – ADVISORY COMMITTEE

Power to elect advisory committee

15.1 The association may at a general meeting elect such number of the members as it may specify to form an advisory committee whose function is to provide the manager with advice relating to the manager's:

(a) exercise of powers; and

(b) fulfilment of duties,

under or by virtue of this scheme.

Manager to consult advisory committee

15.2 Where an advisory committee is formed, the manager is from time to time to seek advice from the committee.

#### RULE 16 – VARIATION

Deeds of variation under article 7

16.1 The manager may, on behalf of the association and after consulting the advisory committee (if any), grant a deed of variation under article 7 of the Development Management Scheme Order, and at the first general meeting after the granting of the deed the manager must then report that it has been so granted.

Deeds of variation under article 8 and deeds of disapplication

16.2 The manager may, on behalf of the association, grant a deed of variation under article 8 of the Development Management Scheme Order or a deed of disapplication but only after the association has, at a general meeting, by majority of all the votes allocated, determined to do so.

#### RULE 17 – WINDING UP

Distribution of funds on winding up

1. Where funds are distributed under rule 6.2 the basis of distribution is that each unit receives one share.

### PART 4 - FINANCIAL MATTERS

#### RULE 18 – ANNUAL BUDGET

Duty of manager to prepare annual budget

18.1 Before each annual general meeting the manager must prepare, and submit for consideration at that meeting, a draft budget for the new financial year.

Content of draft budget

18.2 A draft budget is to set out:

(a) the total service charge and the date (or dates) on which the service charge will be due for payment;

- (b) an estimate of any other funds which the association is likely to receive and the source of those funds;
- (c) an estimate of the expenditure of the association; and
- (d) the amount (if any) to be deposited in a reserve fund.

Consideration of draft budget by association

18.3 The association may at a general meeting:

- (a) approve the draft budget subject to such variations as it may specify; or
- (b) reject the budget and direct the manager to prepare a revised draft budget for consideration by the association at a general meeting to be called by the manager and to take place not later than two months after the date of the meeting at which the budget is rejected.

Rejected budget – payment of service charge

18.4 Where the budget is rejected the service charge eligible under the budget last approved is, until a new budget is approved, to continue to be eligible and is to be due for payment on the anniversary (or anniversaries) of the date (or dates) on which it was originally due for payment.

Revised draft budget

18.5 At a general meeting at which a revised draft budget is considered, the association may approve or reject the budget as mentioned in rule 18.3(a) and (b).

#### RULE 19 – SERVICE CHARGE

Amount of service charge

19.1 Except where rule 19.2 applies, the amount of any service charge imposed under this scheme is the same as respects each unit.

Service charge exemption

19.2 The association may at a general meeting decide as respects a particular owner and in relation to a particular payment that no service charge (or a service charge of a reduced amount) is payable.

Manager to collect service charge

19.3 When the draft budget has been approved in accordance with this scheme, the manager:

- (a) must send to each owner a notice requiring payment, on the date (or dates) specified in the budget, of the amount of the service charge so specified; and
- (b) may send to each owner at any time a notice:
  - (i) requiring payment, on the date (or dates) stated in the notice, of an additional amount of service charge determined under rule 20.1; and
  - (ii) explaining why the additional amount is payable,

and each owner is liable for that amount accordingly.

Redistribution of share of costs

19.4 Where an owner is liable for a service charge but the service charge cannot be recovered (for example because the estate of that owner has been sequestered, or that owner cannot, by reasonable inquiry, be identified or found) then that service charge is to be shared equally among the other owners or, if they so decide, is to be met out of any reserve fund; but that owner remains liable for the service charge.

Interest payable on overdue service charge

19.5 Where any service charge (or part of it) remains outstanding not less than twenty eight days after it became due for payment, the manager may send a notice to the owner concerned requiring that person to pay interest on the sum outstanding at such reasonable rate and from such date as the manager may specify in the notice.

Interpretation of rule 19

19.6 In rule 19 references to "owner" are references to an owner of a unit.

#### RULE 20 – ADDITIONAL SERVICE CHARGE

Additional service charge

20.1 The manager may from time to time determine that an additional service charge, limited as is mentioned in rule 20.2, is payable by the members to enable the association to meet any expenses that are due (or soon to become due) and which could not be met otherwise than out of the reserve fund.

Limit on amount of additional service charge

20.2 In any financial year the total amount of any additional service charge determined under rule 20.1 is not to exceed twenty five per cent. of the total service charge for that year as set out in the budget approved by the association; but in calculating that percentage no account is to be taken of any additional service charge payable in respect of the cost of emergency work (as defined in rule 14.3).

Supplementary budget

20.3 If in any financial year the manager considers that any additional service charge exceeding the percentage mentioned in rule 20.2 should be payable, the manager must prepare and submit to the association at a general meeting a draft supplementary budget setting out the amount of the additional service charge and the date (or dates) on which the charge will be due for payment; and rules 18.3, 18.4 and 19.3(a) apply as respects that draft supplementary budget as they apply as respects a draft budget and revised draft budget.

#### RULE 21 – FUNDS

Association funds

21.1 Any association funds must be:

- (a) held in the name of the association; and

(b) subject to rule 21.2, deposited by the manager in a bank or building society account.

**Special treatment of certain funds**

21.2 The manager must ensure that any association funds which are likely to be held for some time are:

- (a) deposited in an account which is interest bearing; or
- (b) invested in such other way as the association may at a general meeting decide.

**Reserve fund**

21.3 The manager must ensure that any association funds forming a reserve fund are kept separately from other association funds.

**RULE 22 – SENDING**

**Sending**

22.1 Where a rule requires that a thing be sent:

- (a) to a person it shall suffice, for the purposes of that rule, that the thing be sent to an agent of the person;
- (b) to a member and that member cannot by reasonable inquiry be identified or found, it shall suffice, for the purposes of that rule, that the thing be sent to the member's unit addressed to "The Owner" (or using some other such expression, as for example "The Proprietor").

**Method of sending**

22.2 Any reference to a thing being sent shall be construed as a reference to its being:

- (a) posted;
- (b) delivered; or
- (c) transmitted by electronic means.

**Date of sending**

22.3 A thing posted shall be taken to be sent on the day of posting; and a thing transmitted by electronic means, to be sent on the day of transmission. ]