



MEMORANDUM OF SERVICE AGREEMENT

between

CAREWELL MANAGEMENT ROBERTSON PROPRIETARY LIMITED
(registration number 2019/368208/07)

and

ROBERTSON UITBREIDING 9 (PTY) LTD
(registration number 2006/010610/07)
AS DEVELOPER IN THE STEAD AND BEHALF OF
ROBERTSON LIFESTYLE ESTATE PROPERTY OWNERS ASSOCIATION

**In relation to the operation of a Medical Centre and the offering of medical support
and services from such centre**



1. PREAMBLE AND DEFINITIONS

Preamble

- 1.1 The service provider is contracted by the Association to provide a primary health and caring service to the members whom automatically become subscription members of the service provider upon transfer of the Erf purchased within the development into the name of the purchaser. The service provider will manage and operate a medical care center to the benefit of its subscription members which will be located on Erf 6729 Robertson Lifestyle Estate.
- 1.2 The Association and the service provider herewith enter into a service agreement to record the terms and conditions upon which basic services will be made available to the subscription members.
- 1.3 the owner(s) and/or their nominees and/or occupants of property purchased within the designated categories of “assisted living” and “independent living”, but limited to 2 persons per property, shall be obliged to comply with the terms and conditions of this agreement with the service provider as if he, she, it or they was or were a party to this agreement (the terms of which may be amended from time to time) in terms whereof, with reference to all services provided by the service provider, a standard levy is to be paid without prior negotiation first taking place.
- 1.4 All the relevant parties hereby agree as set out in this agreement, on the following terms and conditions.

Definitions

In this agreement, unless inconsistent with the context, the following words and expressions shall bear the meanings assigned thereto and cognate words and expressions shall bear corresponding meanings:

- 1.5 "the Property Owners Association" means the property owners Association established for Robertson Lifestyle Estate in terms of section 29 of the Land Use Ordinance of 1985 or any amendment thereof and the word "Association" will have the same meaning as "the property owners Association", the duties and responsibilities of which is assumed by the developer for the time being;
- 1.6 "the facility" means the Carewell Robertson Medical centre, a private care establishment of a non-acute care nature to be established in the Robertson Lifestyle Estate and which will provide the services as contemplated in this agreement and all subsequent agreements and amendments thereto;
- 1.7 "home care" shall be the services as described in **clause 4** rendered to those properties within the designated "assisted living" and "independent living" areas;
- 1.8 "the members" means all the Members of the Association who purchase units within the categories designated "Assisted Living" or "Independent Living" and will constitute one member per unit, but including his/her dependent (additional subscription), with a maximum of two persons per unit;
- 1.9 "the service provider" means Carewell Management Robertson Proprietary Limited, registration number 2019/368208/07, which will carry on the business of a Private Care Centre at the Robertson Lifestyle Estate, which expression includes the company's existing and future subsidiaries and/or successors in title;
- 1.10 "the services" means the care, support, response, temporary care and monitoring services as more fully described in **clauses 3 and 4** hereunder, to be provided at the facility to members but which shall exclude hospital services not provided at the Robertson Carewell premises, should a subscription member have to be hospitalized;
- 1.11 "subscription members" means those members of the Association obliged to subscribe as members (the property owners and/or their nominees and/or the occupants of dwellings situated within the designated categories of "assisted living" or "independent living") or any other owner, resident or occupant who have contracted, in the sole discretion of the service provider, with the service provider to subscribe to and pay the monthly subscription or other amount levied in respect of services to be provided.

2. GUARANTEE

This agreement confers obligations upon third parties as members of the Robertson Lifestyle Estate Homeowners Association and the Association, by signing this agreement, guarantee compliance by those members of the Association of all the obligations, terms and conditions contained in this agreement.

3. THE SERVICES

3.1 The service provider will, subject to possible amendments and rules, make available to the subscription members at the facility and at pre-determined times, once a week, a medical monitoring service consisting of the following:

3.1.1 a general check-up to monitor the medical state of the subscription members, including general observations, the measuring of blood pressure, blood glucose levels and cholesterol levels; (consumables will be payable by the subscription members)

3.1.2 the provision of general advisory services in connection with the use of medication and health related queries with referral to a General Practitioner if necessary.

3.1.3 all Subscription members will be allowed to choose their own General Practitioner as a family practitioner to whom they wish their medical history to be referred to. This information is to be provided to the "service provider" in a timeous manner.

3.2 The service provider will provide an emergency primary assistance response service as follows:-

3.2.1 all subscription member's properties will be electronically linked to the facility with an electronic system to be selected by the service provider which will be monitored on a 24-hour basis, seven days a week;

- 3.2.2 medical staff on duty shall respond to any calls or signals from subscription members in the following manner:-
- 3.2.2.1 The medical staff on duty will immediately attempt to make telephonic contact with the resident. If contact can be established and it appears that a medical emergency exists, a local Doctor and/or ambulance will be called and the medical staff member on duty will immediately attend to the member at the member's unit or wherever the subject is within the boundaries of Robertson Lifestyle Estate.
- 3.2.2.2 If telephonic contact cannot be made, the medical staff member on duty will attend to the members unit. Once the condition of the resident/member has been established as a medical emergency, a local doctor and/or ambulance and/or any other relevant emergency medical response service provider will be contacted. Staff members of the service provider will not personally transport any subscription member to any clinic or medical facility other than the Robertson Carewell Hospital Facility, where possible and if necessary.
- 3.2.2.3 The patient/member will be stabilized and made as comfortable as possible until the contacted assistance has arrived. The Doctor and/or paramedic and/or ambulance personnel will diagnose the condition of the patient and will make all further decisions and recommendations.
- 3.3 The service provider shall ensure that there is at all times at least one bed and one emergency bed available in the facility to receive and treat subscription member emergency cases or incidents.
- 3.4 The subscription members and the Association acknowledge herewith that the electronic emergency response system ("panic button") is for use in a **MEDICAL EMERGENCY** only unless alternative arrangements and/or reasons for using the panic button has been arranged between the "Service Provider" and any specific subscription member. Abuse of this facility could be construed as a breach of this agreement and may result in penalties to be applied against the Association.

4. MEALS, CATERING AND EVENTS

- 4.1 The service provider shall allow the Association and its members access to the lounge and dining areas within the facility for the taking/collecting of meals. Such meals shall be made available for subscription members at a negotiated fee at the designated dining room at the facility and only on prior arrangement with the service provider.
- 4.2 The service provider will also permit the Association and its member's access to the lounge area that forms part of the facility for meetings and social events subject thereto that this shall take place after prior arrangements are made with the service provider.
- 4.3 The service provider will provide catering for social events which may be hosted within the facility subject to prior arrangements and also on the basis that catering fees will be payable to the service provider.

5. HOME CARE AND ASSISTED LIVING

- 5.1 The service provider shall offer a home care service to subscription members and/or shall consider subscription of any other member of the Association not already contractually required to subscribe to the basic services (ie "assisted" and "independent" living categories) as contemplated in **clause 5.2** hereunder which shall:
- 5.1.1 consist of a service, based on need, for the benefit of the subscription members;
- 5.1.2 function by mutual agreement between the relevant member and the service provider based on the extent of the home care service required and provided to the relevant member;
- 5.1.3 The aforementioned services will be provided at a fee to be negotiated between the service provider, the Association and the subscription members and shall be in writing and signed by all relevant parties.

5.2 The service provider shall offer the services as contemplated in **clauses 3 and 4** above to all other members or their nominated residents not already contractually obligated to subscribe to the services upon compliance with the following conditions, which service shall be known as “**contracted service**”:

5.2.1 Entrance fee

An entrance fee shall be payable by members that were not subscribed to the services herein offered prior to application for subscription for rendering of contracted services.

The entrance fee shall be calculated as the total of the normal service fee that such member or resident would have had to pay should he, she, they or it have subscribed to the services from the onset of becoming a member or nominated resident but shall such entrance fee be capped with a maximum being the total monthly contributions that would have been paid for the preceding period of 5 years.

5.2.2 Monthly basic contribution

Contribution for this contracted service shall be reckoned at the normal current monthly rate applicable to “assisted” and “independent” living categories **plus 20%**.

5.2.3 Capital contribution levy

Members subscribed to this contracted service in person or who have nominated a resident to be subscribed for this service shall be obliged to pay a capital contribution of 5% plus such amount the Homeowners Association levies (currently 1%) of the gross sales price to the Homeowners Association.

- 5.2.4 a member subscribed to this contracted service in person or who have nominated a resident to be subscribed for the service may not cancel his, her or its subscription save in instances where the member ceases to be a member of the Home Owners Association or the nominated resident ceases to be a resident.

6. DUTIES AND OBLIGATIONS OF THE SERVICE PROVIDER

The service provider shall:-

- 6.1 be responsible to man the emergency response service at all times and shall be available to the subscription members as described in **clause 3.2** above;
- 6.2 respond with due diligence to all calls;
- 6.3 provide a weekly clinic as provided for in **clause 3.1**;
- 6.4 undertake to provide home care and assisted living services on demand as provided for in **clause 5** above;
- 6.5 undertake to provide meals, catering and event services as provided for in **clause 4** above;
- 6.5 keep all the facilities and services described herein in good repair and full working order for the full duration of this Agreement.

7. DUTIES AND OBLIGATIONS OF THE ASSOCIATION

The Association shall:

- 7.1 ensure that its constitution makes provision for the Association to enter into this Agreement on behalf of its members and that all members of the Association who are obliged to make use of the services offered by the service provider and those that subscribe at a later stage are bound by the terms and conditions of this Agreement;
- 7.2 ensure that the constitution makes specific provision for the issuing of a clearance certificate from the Association ensuring that:-

- 7.2.1 where Erven is designated as “assisted” and “independent” living, four percent (4%) and in the case of “contracted services” as contemplated in **clause 5.2** and five percent (5%) **plus** such amount levied by the Homeowners Association (currently 1%) of the gross selling price of the erf or sectional title unit and any improvements thereon is paid to the Association by the registered owner.
- 7.2.2 all amounts owing by the registered owner to the Association and the service provider have been paid or satisfactorily secured, in the discretion of the Association;
- 7.2.3 all obligations of the registered owner in terms of the constitution has been complied with in full;
- 7.2.4 he or it pays the Association the fees pertaining to such certificate as determined by the Association from time to time.
- 7.2.5 alienation of an erf is considered to be:
 - 7.2.5.1 a sale, donation, bequest or any other form of alienation (except for the registration of a bond) of an erf or unit;
 - 7.2.5.2 the sale, donation, bequest or any other form of alienation of shares in a company or members interest in a close corporation;
 - 7.2.5.3 a sale, donation, bequest or any other form of alienation of the rights of existing beneficiaries in a trust.
- 7.3 In the event of an erf being alienated at a value less than market value the amount referred shall be calculated on the fair market value. If the trustees and the member or his representative cannot agree on the fair market value within 10 days the trustees and the member will appoint a registered valuator to determine the fair market value, the cost of which will be payable by the Association and the member in equal shares. In the event of the parties being unable to agree within 10 days on the valuator, a valuator must be appointed by the auditor of the Association.

8. INDEMNITY

- 8.1 The staff employed by the Service Provider as medical response personnel are not trained to make any diagnosis and will act under the strict instructions of the subscription member’s Doctor.

- 8.2 The service provider's medical staff will respond to an emergency within the limits of their medical scope and training.
- 8.3 Carewell Robertson accepts no responsibility for any decision or action taken by its staff, or any Doctor, ambulance service or other medical response entity that may become involved with the care and treatment of a subscription member or patient.
- 8.4 The service Provider's staff will not dispense, alter or substitute any prescribed medication at the request of a subscription member or his/her family without a signed script from a Doctor authorizing same.
- 8.5 Carewell Robertson accepts no responsibility for loss of or damage to property belonging to a subscription member, the Association or any other person involved as a result of the actions of staff, a Doctor, ambulance personnel or any other person who may be present at the premises of the Association, subscription member or any other member of the Association.
- 8.6 the Association and all its members hereby indemnify Carewell Robertson and all of its staff against any loss or injury of any kind whatsoever.

9. COMMENCEMENT DATE

This agreement shall commence on the date upon which the facility commences operations and the service provider is in a position to provide the services herein contemplated to the Association.

10. MONTHLY CONTRIBUTIONS BY MEMBERS

- 10.1 The monthly contribution payable by the primary subscription member shall be R 840.00 (Eight hundred and forty Rand), inclusive of Value Added Tax for the 2019 period. The second member's monthly contribution (if applicable will be R380.00 (Three hundred and eighty Rand), inclusive of VAT.

Contracted services subscribers' monthly contribution shall have an increased premium of 20% added to the monthly contribution of that of the applicable premium of properties situated within the "independent" and "assisted living" categories.

- 10.2 It is compulsory for every owner of a property within the designated “independent” and “assisted” living categories or alternatively its nominee or occupant of the premises to become a subscription member, up to a maximum of two members per unit. For purposes of clarity, if there is no resident occupying the unit the owner will automatically become the subscription member.
- 10.3 in the sole discretion of the service provider, if a unit will be unoccupied for a period of more than 60 days or for any other reason which might be considered by the service provider, the subscription member can apply for a discount of 50% on the monthly contribution.
- 10.4 The monthly subscription levy to be paid by subscription members as provided for in **clause 10.1** shall escalate annually, on 1 March, by not more than a percentage equal to the published CPMIX (Consumer Price Index for Medical Services and Products) published by the Department of Central Statistics for the period terminating most recently before each such escalation date. The subscription levies to be paid by the subscription members shall become payable with effect from the date of commencement of the delivery of the services from the facility by the service provider after the date of occupation in terms of the sales agreement of the subject erf.

11. PLACE FOR PAYMENT OF MONIES

All amounts payable by the subscription member to the service provider in terms of this agreement shall be paid to the service provider at such place within the Republic of South Africa as may be directed by the service provider.

12. SALE OF PREMISES

- 12.1 The validity of this agreement shall not in any way be affected by the transfer of the land upon which the facility is to be established by the service provider to a third party.
- 12.2 Accordingly, upon the registration of transfer of the premises by the service provider into the name of the third party, this agreement shall remain of full force and effect, save that the new owner of the premises shall be substituted as the service provider and shall acquire such rights and be liable to fulfill all the obligations which the service provider has in terms of this agreement.
- 12.3 The service provider shall not be entitled to alienate and transfer the land on which the facility is to be established unless 'the proposed alienation and transfer is approved by the Association, which approval shall not be unreasonably withheld.

13. DISPUTES

13.1 Save as otherwise provided in this Agreement, should any dispute of whatever nature arise between the parties in the widest sense in connection with:

13.1.1 the formation or existence of;

13.1.2 the carrying into effect of;

13.1.3 the interpretation or effect of;

13.1.4 the validity, enforceability, rectification, termination or cancellation (whether in whole or in part) of;

13.1.5 any documents furnished by the parties pursuant to the provision of;

13.1.6 the respective rights or obligations of the parties (or any of them) under, or a breach or termination of this agreement; or

13.1.7 any matter related to this agreement which affects the interests of the parties in terms of this agreement;

13.1.8 the reasonableness of the member's subscription (monthly contribution) and to determine the amount of the contribution:-

then the parties shall endeavor in good faith to make every effort to resolve the dispute on its merits by negotiation forthwith after such dispute arises and shall, for that purpose, attempt to attend at least one meeting with each other, but if not so resolved amongst the parties to the dispute, the dispute shall be referred to and be determined by arbitration in terms of this clause, provided that a party to the dispute has demanded the arbitration by written notice to the other parties.

13.2 The arbitrator shall be, if the matter in dispute is principally —

13.2.1 an accounting matter, be an independent practicing Chartered Accountant of not less than 10 (ten) years' standing;

13.2.2 a legal matter, a practicing advocate or attorney of not less than 10 (ten) years' standing as such and resident/practicing in the Langeberg Municipal Area;

- 13.2.3 any other matter, then be an independent accountant, advocate or attorney as envisaged in 13.2.1 or 13.2.2 or be an independent person, selected in each case by agreement by the parties or, failing such agreement within 7 (seven) days after failure to resolve the dispute, appointed by the President for the time being of the Cape Law Society or its successor in-title.
- 13.3 Should the parties fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter shall be deemed to be a legal matter.
- 13.4 The arbitration shall be held at Robertson it being the intention that the arbitration shall be held and completed within 21 (twenty-one) days after it was demanded.
- 13.5 The arbitrator's decision shall be final and binding on all parties affected thereby, shall be carried into effect and may be made an order of any competent court at the instance of any of the parties.
- 13.6 This clause constitutes an irrevocable consent by the parties to any proceedings in terms thereof and no party shall be entitled to withdraw therefrom or to claim in any such proceedings that it is not bound by this clause.
- 13.7 This clause is severable from the rest of this agreement and shall remain in effect even if this agreement is invalid or terminated for any reason.
- 13.8 This clause shall not preclude any party from obtaining relief by way of motion proceeding on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 13.9 The parties hereby consent to the jurisdiction of the Magistrates Court or, if a party so desires, of the High Court of South Africa in respect of any proceedings arising out of this agreement not subject to arbitration in terms of this clause.

14. BREACH

14.1 Should the Association:

- 14.1.1 Fail to carry out any of its obligations under this agreement and fail to remedy such breach within a period of 14 (fourteen) days of the giving of written notice to that effect to the Association by the service provider;

or

14.1.2 Consistently breach any one or more of the terms of this Agreement in such manner as to justify the service provider in holding that the Association is unable or unwilling to carry out the terms of this Agreement;

14.1.3 Permit or allow or have a default or consent Judgement entered against it and fail to satisfy or note an appeal against same within 7 (seven) days of same coming to its attention:-

then and in any of such events the service provider shall be entitled, without prejudice and in addition, to all other rights available to the service provider in law and as a result of such events, to forthwith cancel the Agreement.

14.2 Should the service provider dispute this Agreement and the Association dispute the service provider's right so to do whilst still making use of the service and facility, then the Association, pending the determination of the dispute, shall to the best of its ability continue to enforce payment of amounts due by the subscription members in terms of this agreement on the due dates thereof and the service provider shall be entitled to recover, sue for and accept those payments without prejudice to and without affecting in any manner whatsoever the service provider's claim to cancellation of this lease or of any other right whatsoever.

14.3 Interest at the prime rate charged by Nedbank *per annum* shall accrue to any payments due in terms of this agreement which are not paid on the due date stipulated for payment.

14.4 Should the service provider breach the agreement and fail to rectify the breach within 14 (fourteen) days after written notice from the Association the latter shall be entitled to claim specific performance and/or the cancellation of this agreement with a claim for damages and/or costs. The provisions of this clause are subject thereto that should the nature of the breach of the service provider be such that it will reasonably require more than 14 (fourteen) days to remedy same, the Association shall allow to the service provider such period as may be reasonably required to remedy the relevant breach.

15. GENERAL

15.1 The service provider chooses its *domicilium citandi et executandi* for all purposes of this agreement at its address at Robertson Lifestyle Estate Robertson and the Association chooses its *domicilium citandi and executandi* at 56 Church Street, Robertson.

- 15.2 All notices required to be addressed to the service provider or Association in terms of this agreement shall be sent by prepaid registered post, email or delivered by hand and the parties are entitled to change their *domicilium* by written notice to the other, which changes shall only take effect on receipt of such notice by the other party.
- 15.3 This Agreement constitutes the entire agreement between the parties and no representations, warranties or undertakings not contained or recorded herein shall be of any force or effect.
- 15.4 No alteration or variation of the terms of this Agreement or any alleged cancellation by mutual consent shall be of any force or effect unless in writing and signed by the service provider and the Association or any person duly authorized thereto in writing by them.
- 15.5 No relaxation which the service provider may show at any time whatsoever in regard to the carrying out of any of the Association's obligations in terms of this Agreement shall prejudice any of the service provider's rights under this Agreement in any manner whatsoever or be regarded as a waiver of any of the service provider's rights in terms of this Agreement.
- 15.6 So far as any time, date or period is mentioned in this agreement, time shall be of the essence.
- 15.7 If any term or provision of this agreement is proved to be illegal for whatsoever reason, it shall be treated as removed, changed or reduced, only to the extent minimally necessary to bring it within the law and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.
- 15.8 The Service Provider reserves the right to refuse Home Care to a subscription member who suffers from violent forms of dementia.

THUS DONE AND SIGNED AT ROBERTSON ON 31 JULY 2019

WITNESSES:

1. _____

**CAREWELL MANAGEMENT
ROBERTSON
PROPRIETARY LIMITED**

2. _____

THUS DONE AND SIGNED AT ROBERTSON ON 31 JULY 2019

WITNESSES:

1. _____

**THE DEVELOPER obo THE
HOME OWNERS
ASSOCIATION AND obo all
members**

2. _____