

SCHEDULE 1

Article 3

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(1);

“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” is [*specify the extent of the development*];

“the Development Management Scheme Order” means the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009(2);

“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 person appointed to be manager of the association;

“member” means a member of the association in accordance with rule 2.3;

“owner” has the meaning given in article 18 of the Development Management Scheme Order;

“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 [*describe the property which is subject to maintenance under the scheme*];

“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 [*specify the individual properties forming the development*].

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(1) 2003 asp 9.

(2) S.I. 2009/ 729 (S.2).

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**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.

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### **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.

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### **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.

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## 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.

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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 exigible under the budget last approved is, until a new budget is approved, to continue to be exigible 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).

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## 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 sequestrated, 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”).

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### **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.