

RESIDENT'S AGREEMENT

entered into by and between

MOTHTWA HAVEN PRETORIA

Registration number: 001-091-NPO

of

335 Booysen street

Eloffsdal

Pretoria

0084

(hereinafter referred to a "MOTHTWA Haven")

(herein represented by the Manager duly authorized thereto)

and

(Full name and surname of accountable person)

Identity number

of

1. DEFENITIONS AND INTERPRETATION

1.1. The following expressions shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and cognate expressions shall bear corresponding meanings:

1.1.1. **“the Accountable Person”** means the person who will be accountable for all cost payable for the residency of the Resident at the MOTHWA Haven and is identified as:

(full names and surname)

(Identity Number)

with his/her chosen domicilium citandi et executandi at:

1.1.2. **“the Act”** means the Older Persons Act 13 of 2006;

1.1.3. **“the Admission Policy”** means the policy governing the admission of Residents and which is included herewith marked **Annexure 2**;

1.1.4. **“the Agreement”** means this agreement, the Application, the House Rules, Admission Policy, Suretyship, and any other annexures hereto whatever it may be from time to time;

1.1.5. **“the Application”** means the Application forms and all its annexures included herewith marked **Annexure 1**;

1.1.6. **“the House-rules”** means the House rules which are attached hereto as **Annexure 3**;

1.1.7. **“the Manager”** means Yolandi McMaster, an adult female duly appointed by the MOTHWA Haven and authorized to act as Manager of MOTHWA Haven;

- 1.1.8. “**MOTHTWA Haven**” means MOTHTWA Haven Pretoria, a non-profit organization duly constituted in terms and laws of the RSA with registration number 001-091-NPO with its chosen *domicilium citandi et executandi* at 335 Booysen street Eloffsdal 0084, herein represented by the Manager, whoever it may be from time to time, duly authorized thereto;
- 1.1.9. “**Next of kin**” means the next of kin of the Resident as identified on the Application;
- 1.1.10. “**Parties**” mean the MOTHTWA Haven and the Accountable Person;
- 1.1.11. “**the Resident**” means the frail older person or older person as defined in the Act, who will be admitted to the MOTHTWA Haven and cared for and for the purposes of this agreement has been identified as follows:

(full names and surname)

(*Identity Number*)

- 1.1.12. “**RSA**” means the Republic of South Africa;
- 1.1.13. “**signature date**” means the date of signature by the party signing last in time and the term “**date of signature**” shall have similar meaning as the context dictates.
- 1.2. Any words denoting the singular include the plural and vice versa.
- 1.3. Any words denoting one gender include the other two genders as well as companies, close corporations and trusts and vice versa.
- 1.4. If any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement.

- 1.5. Where any term is defined within a particular clause other than clause one that term shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement.
- 1.6. Where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a Assets Day, the last day shall be deemed to be the immediately preceding day which is a Assets day.
- 1.7. Any reference to days (other than a reference to Assets Days), months or years shall be a reference to calendar days, months or years, as the case may be.
- 1.8. The use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.

2. **RECITAL**

- WHEREAS** the MOTHWA Haven is a frail care facility duly registered in terms of the Act, and;
- WHEREAS** the Accountable Person is seeking residency for the Resident, and;
- WHEREAS** the Accountable Person has the necessary authority in terms of the Act to enter into this agreement;

NOW THEREFORE THE PARTIES AGREES AS FOLLOWS:

3. RESIDENCY ADMISSION

- 3.1. The Accountable Person has applied for residency for the Resident at the MOTHWA Haven and the MOTHWA Haven has accepted the application, and therefore the Accountable Person has accepted and consented to enter into this agreement and specifically agrees to abide by the terms and conditions of this Agreement.
- 3.2. It is specifically recorded that the Resident has consented and agreed to be admitted to the MOTHWA Haven, and in the event that the Resident does not have the mental capacity to grant such consent, has been advised of such admission to the satisfaction of the Accountable Person and the Manager.
- 3.3. The Accountable Person acknowledge that he/she has read and familiarized him/herself with the Admission Policy and abided and complied with said document.

4. TARIFFS AND CHARGES

- 4.1. The tariffs are set out in the Application and are subject to change at the discretion of the MOTHWA Haven.
- 4.2. Any changes in the tariffs or charges will be communicated by written notice to the Accountable Person and shall become payable within 30(Thirty) days from the date of such notice.
- 4.3. Tariffs are charged for board and lodging and include meals and laundry services only but excludes medical charges and aids (doctors, hospitals and ambulance services).
- 4.4. In the event that the Resident requires specific medical aids such as a wheelchair, walker, oxygen bottles or any other aids, such aids must be provided by the Next of Kin/Accountable Person and MOTHWA HAVEN does not accept any responsibility for such equipment.

- 4.5. Any cost for transportation to and from hospitals and doctors shall be borne by the Accountable Person and shall be charged as an additional cost which will become payable at the next payment date within the month that such cost has been incurred.
- 4.6. A non-refundable administration fee as set out in the House Rules shall be payable on the signature date hereof by the Accountable Person and no admission will be granted to the Resident until such amount has been paid.
- 4.7. Tariffs and charges are payable monthly in advance and payment for the first month shall be paid prior to admission. Thereafter all tariffs and charges shall be paid on or before the 1st day of each month, except if specific arrangement has been made with the Manager.
- 4.8. All tariffs and charges shall be made free of exchange into the following account:

MOTHTWA Haven Pretoria

First National Bank

Account number: 51461696590

Branch code: 251545

Deposit reference: Resident initial and surname

- 4.9. Medical care including but not limited to doctor consultations, dental care, physio therapy, hospital admission and charges, operations of any kind whatsoever, medicines, wound dressings and pads are not covered by the tariffs and charges and will be payable directly by the Accountable Person towards the service provider. In the event that the Resident and/or Accountable Person does not have a medical aid which cover such eventualities, the Resident will be sent to a Government Health Institution for treatment with prior telephonic notice to the Accountable Person.

5. COMMENCEMENT AND TERM

- 5.1. This agreement shall commence on the signature date and upon compliance with clauses 4.6 and 4.7 above.
- 5.2. This agreement shall remain in force until terminated by either Party as set out herein, or on the passing away of the Resident.

6. NURSING CARE

- 6.1. MOTHWA Haven provides nursing services and general care as defined in the Act generally expected and associated with frail care facilities.
- 6.2. In the event that the Accountable Person requires extra care, or individual care for a Resident, such requirements may be discussed with management and should it be approved the Accountable Person will be liable for the cost of appointment of extra care workers or nursing staff to fit the requirement.
- 6.3. From time to time the Resident may be moved to a specific ward without the permission of the Accountable Person, next of kin or Resident. MOTHWA Haven reserves the right to exercise such move in order to ensure best practises and medical care.
- 6.4. MOTHWA Haven shall be entitled to make regulations and or change House Rules regarding the running of the facility, the nature and degree of nursing care, the degree of board and lodging and matters generally concerning the running of the facility. The Resident shall be obliged to comply with such changes and regulations insofar as the Resident may be affected thereby. The changes contemplated herein shall be communicated to the accountable person in writing.

7. MEDICAL CARE AND MEDICINENS

- 7.1. The Resident shall be entitled to consult the doctor of his/her choice, and the Resident/Next of Kin/ Accountable person shall be entitled to nominate such Doctors of Specialist, failing which the Resident shall, in a case of emergency be transported to by ambulance to a Hospital as set out in clause 4.9 hereof.
- 7.2. This shall apply to the consent of the Resident/Next of Kin/Accountable person, which consent may not be unreasonably withheld.
- 7.3. Any medicines brought into the facility must be duly handed in and reported as set out in the House Rules.
- 7.4. Any medicines not reported or found in the possession of the Resident shall be considered a serious transgression and is considered a material breach which goes to the core of this agreement and will entitle MOTHWA Haven to cancel this agreement with 7 (seven) days written notice.
- 7.5. It is specifically recorded that Resident will strictly adhere to the House Rules insofar as medication is concerned and a breach thereof shall *mutadis mutandis* be treated as set out in 7.4 hereof.

8. HOUSE RULES

- 8.1. The House Rules which are included to this agreement in order to ensure proper governance and exercising good and acceptable practises as are expected in terms of the Act.
- 8.2. Transgressions of the House Rules shall be dealt with in accordance with the seriousness thereof and continuous transgressions can lead to the termination of this agreement in accordance with clause 9 hereof.

9. TERMINATION AND BREACH

- 9.1. The Accountable Person shall be entitled to terminate this agreement by 30(Thirty) days written notice.
- 9.2. Upon such notice being given by the Accountable Person all tariffs and charges must be paid up to date and settled before the MOTHWA Haven will accept the termination.
- 9.3. In the unfortunate event that the Resident passes away, this agreement shall automatically terminate and the Accountable Person and/or the Surety shall remain liable for all outstanding tariffs and charges which shall be calculated pro-rata to the date of death of the Resident.
- 9.4. In the event that the MOTHWA Haven Employees, Nursing Staff, or Professional Assistants consider that the MOTHWA Haven is not able to provide the necessary specialized nursing care or that another facility such as a Hospice are better equipped with the specific needs of the Resident, then the Accountable Person or Next of Kin, whichever may be applicable, shall be notified and the agreement may be terminated with 30 (Thirty) days' notice.
- 9.5. Should the Resident transgress the House Rules, except for material breaches as set out herein, on more than two occasions in a calendar year for which due warning was given, the MOTHWA Haven may terminate this agreement with 2 (Two) weeks' notice, and the MOTHWA Haven shall retain all payments made and no refunds will be paid towards the Accountable Person.
- 9.6. Non-payment of tariffs and charges is considered a material breach of this agreement and should the Accountable Person not rectify the breach with 14 (Fourteen) days of receiving written notice the MOTHWA Haven shall be entitled to forthwith cancel this agreement

without further notice and hold the Accountable Person and Surety liable for all outstanding tariffs and charges which will immediately become due owing and payable as well as any legal cost on an attorney client scale plus VAT.

- 9.7. Upon cancellation of the agreement as stipulated in clause 9.6 the Resident shall forthwith vacate and leave the facility.

10. DISCLAIMER

- 10.1. The Resident/Accountable Person and Next of Kin hereby waives any claims against MOTHWA Haven for any loss, damage or injury suffered by the Resident, whether such loss, damage or injury is caused directly or indirectly by any negligence or any act of omission of or by any of the employees, voluntary assistants, professional consultants or any other person who is the responsibility of MOTHWA Haven, or other resident or as a result of MOTHWA Havens ownership, management or control of the facility and/or equipment, fixtures and fittings installed therein.
- 10.2. These provisions shall not apply to gross negligence or deliberate malfeasance on the part of anyone for whose conduct MOTHWA Haven is responsible in law.

11. NOTICES AND DOMICILIA

- 11.1. Each Party chooses as its *domicilium citandi et executandi* its address as set out in clause 1 above, at which address all notices and legal processes in relation to this Agreement or any action arising there from may be effectually delivered and served.
- 11.2. Any notice given by one of the parties to the other ("*the addressee*") which:
- 11.2.1. is delivered by hand to the addressee's *domicilium citandi et executandi* shall be presumed until the contrary is proved to have been received by the addressee on the third day

- after delivery; or
- 11.2.2. is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's *domicilium citandi et executandi* shall be presumed until the contrary is proved to have been received by the addressee on the fourteenth after the date of posting;
- 11.2.3. is delivered by facsimile or e-mail shall be presumed until the contrary is proved to have been received by the addressee on the same day as such notice has been dispatched.
- 11.3. Either party shall be entitled, on written notice to the other, to change the address of his *domicilium citandi et executandi*.

12. SEVERABILITY

- 12.1. All provisions of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other.
- 12.2. Any provision of this Agreement which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this Agreement shall remain of full force and effect.
- 12.3. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

13. MISCELLANEOUS

13.1. Governing law and jurisdiction

- 13.1.1. This agreement shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the law of the RSA.
- 13.1.2. The Parties hereby consent and submit to the non-exclusive jurisdiction of the Magistrates Court Pretoria in terms of Section 45 of Magistrates Court Act 32 of 1944, in respect of any dispute or claim arising out of or in connection with this agreement.

13.2. Payment, interest and exchange rate

- 13.2.1. All payments in terms of arising out of this Agreement shall be made free of commission and all other deductions to the Party entitled thereto.
- 13.2.2. No Party shall have the right to defer, adjust or withhold any payment due to the other/s in terms of or arising out of this Agreement or to obtain deferment or judgment for such amount or any execution of such judgment by reason of any set-off or counterclaim of whatsoever nature or howsoever arising.
- 13.2.3. Save to the extent otherwise provided, all amounts due by Accountable Person to the MOTHWA Haven (including damages) in terms of or arising out of this Agreement shall, unless paid on the due date, bear interest at the prime rate of First National Bank, (whatever it may be from time to time) plus 5(Five) percent per annum, from the due date to date of payment.
- 13.2.4. A certificate signed by any financial officer or legal representative of an Aggrieved Party, who's position needs not be proofed or verified, shall constitute *prima facie* proof of any or all amounts owing arising from this Agreement, for

the purposes of judgment, or for any other reason whatsoever.

13.3. **Implementation and Good Faith**

13.3.1. The Parties undertake to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give or conducive to the giving of effect to the terms, conditions and import of this Agreement.

13.3.2. The Parties shall at all times during the continuance of this Agreement observe the principles of good faith towards one another in the performance of their obligations in terms of this Agreement. This implies, without limiting the generality of the afore going, that they:

13.3.2.1. will at all times during the term of this Agreement act reasonably, honestly and in good faith;

13.3.2.2. will perform their obligations arising from this Agreement diligently and with reasonable care; and,

13.3.2.3. make full disclosure to each other or any matter that may affect the execution of this Agreement.

13.4. **Independent Advice**

Each Party acknowledges that it has been free to secure independent legal advice as to the nature and effect of all the provisions of this Agreement and that it has either been taken such independent legal advice or dispensed with the necessary of doing so. Further, each Party acknowledges that all the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all

circumstances and are part of the overall intention of the Parties in connection with the Agreement.

13.5. **Further Assurances**

The Parties agree to perform any further acts and to execute and deliver any further documents which may be necessary or appropriate to carry out the purpose and the implementation of this Agreement.

13.6. **Confidentiality**

13.6.1. No Party shall without the consent of the other Parties, issue or make any public announcement or statement or release or make available any information regarding this Agreement or its implementation. Once the other Parties have approved, any such announcement or statement or release of information, the approving Party/ies shall automatically be entitled to or make the same announcement or statement or release the information in question in the same approved format.

13.7. **Whole Agreement**

Save where otherwise recorded herein, this Agreement constitutes the sole record between the Parties as to the subject matter hereof. No Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes and replaces all prior agreements, commitments, undertakings, or representations, where applicable, whether oral or written between the Parties in respect of the subject matter hereof.

13.8. **Variation**

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver or any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced

to writing and signed by all the Parties or their duly authorised representatives.

13.9. Relaxation

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation herein or enforcement of any right arising from this Agreement and no single or partial exercise of any right by any Party shall under any circumstance be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision in terms hereof.

THUS DONE AND SIGNED AT PRETORIA ON THE ____ DAY _____ 20__

Witness (1)

Accountable Person

Witness (2)

THUS DONE AND SIGNED AT PRETORIA ON THE ____ DAY _____ 20__

Witness (1)

Manager: MOTHWA Haven

Witness (2)