

21 June 2019

**THE LIFE RIGHT HOLDERS  
EVERGREEN BERGVLIET  
HOMESTEAD AVENUE  
BERGVLIET  
7945**

Dear Life Right Holders,

**RE: RESPONSE TO DAVID WALKER'S "SUBMISSION TO RESIDENTS' MEETING ON 24 JUNE 2019  
CONCERNING PROPOSED CHANGES TO MANAGEMENT STRUCTURE"**

1. We were advised that a letter was circulated to Life Right Holders at Evergreen Bergvliet ("**the Village**") with regard to a management structure proposed by Mr David Walker.
2. We take this opportunity to allay the fear/concerns that have been or may be created by Mr Walker's address.
3. Section 4(1)(bb) of the Retired Persons Act envisages that the management structure of housing development schemes may take forms which differ from that which is proposed and set out in Regulations 7 to 14. It allows flexibility to the Owner and the Life Right Holder regarding agreement in respect of such management structure. The the management structure in place at Evergreen Bergvliet (i.e. direct involvement by the developer) ("**Evergreen Bergvliet Model**") encompasses one such alternative management structure, which has worked well to date.
4. For reasons that will be more fully detailed below we believe that Evergreen Bergvliet Model:
  - 4.1. creates added value to the Life Right Holders, in that Evergreen Property Investments (Pty) Ltd ("**EPI**"), as property owner, long-term investor and active manager of the Village, assume all financial exposure above the fixed levies; and
  - 4.2. in EPI assuming the liabilities, responsibilities and risks arising from the control, administration and management of the Village, is one which is far more beneficial for Life Right Holders than the management association model provided for in Regulations 7 to 14 (proposed by Mr Walker).
5. In essence, the Evergreen Bergvliet Model operates as follows:
  - 5.1. the EPI (as owner) and the Developer (to the extent that either or both of them own the land and improvements thereon, comprising the Village) shall through Evergreen Lifestyle Villages (Pty) Ltd ("**the Operator**") manage, control, and administer the Village, insure the buildings and improvements comprising the Village, etc.;
  - 5.2. the Management Committee ("**Mancom**") – comprising 2 (two) Owner representatives, 1 (one) Developer representative, 2 (two) Rescom members (being the chairperson and vice-chairperson of the Rescom) and the Village Manager (by invitation) – acts as the liaison and consultative forum of the Owner, the Developer and the Life Right Holders (represented by the chairperson and vice-chairperson of Rescom); and
  - 5.3. the Residents' Committee ("**Resom**") – comprising a maximum of 6 (six) Life Right Holders – acts as a liaison between the Life Right Holders and the Village Manager and aims to achieve and maintain a happy, healthy and convivial environment within the Village.

6. The effect of the Evergreen Bergvliet Model is that:

- 6.1. EPI remains the registered owner of the land on which the Village has been developed and of the improvements on such land, whereas the Life Right Holders have become the owners of Housing Interests (also known as life rights or rights of occupation) in respect of the “Units” comprising the Village;
  - 6.2. all risks and benefits of ownership in respect of the land and improvements of the Village remain with EPI;
  - 6.3. the Village is managed in a professional manner by or on behalf of EPI and at its expense. Staff (including a Village Manager) are employed exclusively for the Village to attend to the day to day control, administration and management of the Village. On-site staff are supported by EPI head-office staff based in Tokai, Cape Town; and
  - 6.4. Life Right Holders are not exposed to any liabilities, responsibilities or risks arising from the control, administration and management of the Village, which liabilities, responsibilities and risks which are borne by EPI.
7. It is our (and our attorneys’) opinion that Regulations 7 to 14 of the Retired Persons Act (i.e. the management association model proposed by Mr Walker) were intended to provide for a management structure for housing development schemes where developers, upon selling the last Housing Interest, relinquishes all of its interests in the scheme and therefore plays no further part in the management of the scheme.
- 7.1. This scenario is not applicable to the Village, as EPI is the sole owner of the land on which the Village has been developed and has a vested interest in the long-term success of the Village.
  - 7.2. Further, as owner of all properties comprising the Village, EPI alone is exposed to the liabilities, responsibilities and risks arising from the control, administration and management of the Village. In order to i) achieve the long-term success of the Village; and ii) offset this exposure, EPI retains the management, control and administration of the Village.
  - 7.3. This retention of liability, responsibility and risk on the part of EPI is not what was envisaged in the scenario described in Mr Walker’s address.

8. **In terms of the Evergreen Bergvliet Model, Life Right Holders enjoy, amongst others, the following benefits:**

- 8.1.1. the Life Right Holders benefit from having **certainty in respect of their overall financial exposure**, knowing that any shortfall of expenditure over income derived from levies is supplemented by EPI out of own funds, whereas in terms of the management association model provided for in Regulations 7 to 14, no such limitation would exist and Life Right Holders would, in addition to levies recorded in the Life Right Agreements (“LRAs”), be exposed to further financial obligations, for example, special levies required:
  - 8.1.1.1. for operating or capital expenditure not budgeted for in a particular financial year;
  - 8.1.1.2. to cover shortfalls in cash-flow;
  - 8.1.1.3. to cover any shortfalls in budgeted income arising from one or more Life Right Holders being unable to pay their levies;

- 8.1.2. as EPI undertakes to provide the services and facilities which are described in the LRAs, the Life Right Holders benefit from **i) having certainty in respect of what these services and facilities will be; and ii) EPI providing such services and facilities on a fixed cost basis.** In terms of the management association model provided for in Regulations 7 to 14, Life Right Holders (as members of the management association) would jointly and severally bear the obligation of providing these services and facilities and the accompanying liabilities arising therefrom;
- 8.1.3. **the Life Right Holders benefit from having no liability in respect of the control, administration and management of the Village.** In terms of the management association model provided for in Regulations 7 to 14, Life Right Holders (as members of the management association) would jointly and severally be liable for all obligations arising from, for example:
- 8.1.3.1. managing the day to day affairs of the Village;
  - 8.1.3.2. maintaining plant, machinery and buildings;
  - 8.1.3.3. managing and appointing staff;
  - 8.1.3.4. billing and collecting levies;
  - 8.1.3.5. drafting budgets;
  - 8.1.3.6. maintaining the financial records of the Village;
  - 8.1.3.7. controlling, managing and administering the common property for the benefit of all Life Right Holders;
  - 8.1.3.8. ensuring that adequate insurance cover is in place;
  - 8.1.3.9. ensuring that there is compliance with applicable laws; and
  - 8.1.3.10. any actions of the management association (including their agents and employees) which result in third party claims; and
- 8.1.4. the Life Right Holders benefit from cost and responsibility free management of the Village. As EPI accepts the responsibility for managing the Village, **EPI assumes all of the costs in contracting the services of a managing agent.** This cost is not on-charged to the Life Right Holders and therefore results in a direct saving to Life Right Holders. In terms of the management association model provided for in Regulations 7 to 14, Life Right Holders (as members of the management association) would jointly and severally be liable for the fees and costs accruing from contracting the services of a managing agent.

9. In conclusion:

- 9.1. the benefits of the Evergreen Bergvliet Model far outweigh the benefits (if any) of the management association model proposed by Mr Walker; and
- 9.2. the Evergreen Bergvliet Model, is a tried and tested management structure as the village has been operating on this basis since inception and, you may agree, has been working very well to date.

Yours faithfully,

**GARRY REED**