

# No 3 SILO

## MANAGEMENT & CONDUCT RULES

# MANAGEMENT RULES

*Management rules prescribed in terms of section 10(2)(a) of the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011).*

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## INTRODUCTION

The Management Rules contained herein must be read in conjunction with the Conditions imposed by the Developer in terms of Section 11(3)(b) of the Act.

## PART 1 INTRODUCTORY

### INTERPRETATION

2. (1) In the interpretation of these rules, unless the context indicates otherwise —
- (a) **"adjudicator"** means an adjudicator acting in terms of the Community Schemes Ombud Service Act, 2011 (Act No. 9 of 2011);
  - (b) **"administrator"** means an administrator appointed in terms of section 16 of the Act;
  - (c) **"auditor"** means a person accredited to perform an audit in terms of the Auditing Professions Act, 2005 (Act No. 26 of 2005);
  - (d) **"Community Schemes Ombud Service"** means the service established in terms of the Community Scheme Ombud Service Act, 2011 (Act No. 9 of 2011);
  - (e) **"estimated cost"**, for the purposes of rule 22, means the estimated cost to maintain, repair or replace a major capital item;
  - (f) **"expected life"**, for the purposes of rule 22, means the estimated number of years before it is expected that the cost of maintenance, repair or replacement of a major capital item will be incurred;

- (g) **"executive managing agent"** means a managing agent appointed to carry out all the functions and powers of the trustees in terms of rule 28;
- (h) **"future development right"** means a right to extend the scheme in terms of section 25 of the Sectional Titles Act;
- (i) **"House Rules"** The rules imposed by the trustees from time to time regulating the conduct of members (or their tenants, guests and invitees) in respect of the common property and communal amenities of the scheme and other matters of communal interest.
- (j) **"major capital item"**, for the purposes of rule 22, means wiring, lighting and electrical systems, plumbing, drainage and storm-water systems, heating and cooling systems, any lifts, any carpeting and furnishings, roofing, interior and exterior painting and waterproofing, communication and service supply systems, parking facilities, roadways and paved areas, security systems and facilities and any other community and recreational facilities;
- (k) **"managing agent"** means any person who provides management services to a body corporate for reward;
- (l) **"member"** means a member of the body corporate;
- (m) **"past contribution"**, for the purposes of rule 22, means the funds in the reserve fund of the body corporate in respect of the estimated cost;
- (n) **"primary section"** means a section designed to be used for human occupation as a residence, office, shop, factory or for any other type of use allowed in terms of local municipal by-laws, not being a utility section;
- (o) **"registered auditor"** means a person as defined in terms of the Auditing Professions Act, 20015((Act No. 26 of 2005);

- (p) **"registered bondholder"** means the holder of a mortgage bond of whom the body corporate has been notified in terms of section 13(1)(f) of the Act;
  - (q) **"reserve funds"** means an amount set aside by the body corporate to meet the unexpected costs that may arise in future, including future cost of maintenance;
  - (r) **"Sectional Titles Act"** means the Sectional Titles Act, 1986, (Act No. 95 of 1986), as amended;
  - (s) **"service address"** means the service address of a member or the body corporate in terms of rule 4; and
  - (t) **"the Act"** means the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011);
  - (u) **"utility section"** means a section which, in terms of local municipality by-laws, is designed to be used as an accessory to a primary section, such as a bathroom, toilet, storeroom, workshop, shed, servant's quarters, parking garage, parking bay or other utility area, not being a primary section.
- (2) In the interpretation of these rules —
- (a) words and expressions to which a meaning has been assigned in the Act or its regulations, bear those meanings;
  - (b) words importing—
    - (i) the singular must be interpreted to include the plural, and the plural to include the singular; and
    - (ii) any one gender must be interpreted to include all other genders; and
  - (c) the headings of rules must not be taken into account.

### **AMENDMENT AND BINDING NATURE**

3. (1) The body corporate may substitute, amend, repeal, or add to the management rules subject to and in accordance with the provisions of section 10 of the Act.
- (2) A member must take all reasonable steps to ensure compliance with the conduct rules in force in terms of section 10(2)(b) of the Act by any tenant or other occupant of any section or exclusive use area, including the member's employees, tenants, guests, visitors and family members.

### **SERVICE ADDRESSES**

4. (1) The body corporate must, from time to time, determine the address that is its *domicilium citandi et executandi* in terms of section 3(1)(o) of the Act; provided that such service address must be—
  - (a) the physical address of a section in the scheme;
  - (b) the physical address of a duly appointed managing agent or administrator; or
  - (c) another physical address within the magisterial district in which the scheme is located.
- (2) The trustees may designate a fax, email or other address as an alternate body corporate service address.
- (3) A change of a body corporate service address is effective when written notice of that address is lodged with the Community Schemes Ombud Service in the prescribed form.
- (4) The trustees must, when they give the Community Schemes Ombud Service notice of a change of the body corporate service address in terms of section 3(1)(o) of the Act, simultaneously give such written notice to all members and other occupiers of sections and to all registered bondholders.
- (5) The service address for any legal process or delivery of any other document to a member is the address of the primary section registered in that member's name; provided that a member is entitled by written notice to the

body corporate to change that address for purposes as contemplated in subsections 6(3)(c) and 6(4) of the Act to another physical, postal or fax address in the Republic of South Africa or to an email address, and that the change in the service address of the member is effective when the body corporate receives notice of such a change.

- (6) The service address for any legal process or delivery of any other document to an occupier of a section, who is not a member, is the physical address of that section.

## **PART 2 TRUSTEES**

- 5.** (1) All the members are trustees from the establishment of the body corporate until the end of the first general meeting.
- (2) The chairman of the trustees referred to in rule 5(1) shall be the Developer concerned or his nominee, who shall hold office until the general meeting referred to in the said rule, where after he will continue in office until the first annual general meeting whereat he shall retire as a trustee and as chairman.
- (3) The number of trustees shall be determined as follows:
  - (a) 2 (two) trustees from the commercial component.
  - (b) A minimum of 3 (three), but a maximum of 5 (five), trustees from the residential component, the determination of such number to take place at each annual general meeting in terms of management rule 17 (6) (j) (viii).

## **REQUIREMENTS FOR OFFICE AND DISQUALIFICATION**

- 6.** (1) A trustee need not be a member or the legally recognised representative of a member who is a juristic person.
- (2) A person who is the managing agent or an employee of the managing agent or the body corporate may not be a trustee unless that person is a member.

- (3) A trustee who has any direct or indirect personal interest in any matter to be considered by the trustees must not be present at or play any part in the consideration or decision of the matter concerned.
- (4) A trustee ceases to hold office if that trustee—
  - (a) by written notice to the body corporate, resigns from office;
  - (b) is declared by a court to be of unsound mind;
  - (c) is or becomes insolvent and the insolvency results in the sequestration of that trustee's estate;
  - (d) is convicted, or has been convicted in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty;
  - (e) is sentenced to imprisonment without the option of a fine;
  - (f) is removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money;
  - (g) is removed from office by ordinary resolution of a general meeting; provided the intention to vote on the proposed removal was specified in the notice convening the meeting;
  - (h) is or becomes disqualified to hold office as a director of a company in terms of the Companies Act, 2008 (Act No. 71 of 2008); or
  - (i) fails or refuses to pay the body corporate any amount due by that trustee after a court or adjudicator has given a judgment or order for payment of that amount.

## **NOMINATION, ELECTION AND REPLACEMENT**

- 7.** (1) A member may nominate any person for the office of trustee.
- (2) The nomination of a trustee must be in writing, accompanied by the written consent of the person nominated and delivered to the body corporate service address at least 48 hours before the annual general meeting is due to start.
- (3) If an insufficient number of nominations are received in terms of sub-rule (2), further nominations may be called for at the annual general meeting with the consent of the persons nominated.

- (4) Save for the provisions of rules 5(1) and (2), trustees must be elected at the first general meeting of the body corporate and then at each subsequent annual general meeting.
- (5) If a trustee ceases to hold office —
  - (a) the remaining trustees; or
  - (b) the members in general meeting,may appoint a replacement trustee.
- (6) An elected or replacement trustee holds office until the end of the next annual general meeting and is eligible for re-election, if properly nominated.
- (7) The trustees may appoint, for a specified period, a person qualified to serve as a trustee as a replacement for any trustee who is absent or otherwise unable to perform the duties of that office.

#### **PAYMENT AND INDEMNITY**

- 8.** (1) The body corporate must reimburse trustees for all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers.
- (2) Unless so determined by special resolution, trustees who are members are not entitled to any reward, whether monetary or otherwise, for their services as such.
- (3) Trustees who are not members may be rewarded for their services as such; provided that any reward, whether monetary or otherwise, must be approved by a resolution of the body corporate as part of the budget for the scheme's administrative fund.
- (4) The body corporate must indemnify a trustee who is not a managing agent against all costs, losses and expenses arising as a result of any official act that is not in breach of the trustee's fiduciary obligations to the body corporate.



**PART 3**  
**TRUSTEE MEETINGS AND DECISIONS**

**GENERAL POWERS AND DUTIES**

**9.** The trustees must—

- (a) meet to carry out the body corporate's business, adjourn and otherwise regulate their meetings as they think fit, subject to the provisions of the Act, these rules and the common law of meetings;
- (b) exercise the body corporate's powers and functions assigned and delegated to them in terms of section 7(1) of the Act in accordance with resolutions taken at general meetings and at meetings of trustees;
- (c) apply the body corporate's funds in accordance with budgets approved by members in general meeting;
- (d) appoint any agent or employee in terms of section 4(a) of the Act in terms of a duly signed written contract; and
- (e) compile minutes of each trustee and general meeting in accordance with rule 27(2)(a) and distribute these to the persons entitled to notice of the meeting concerned as soon as reasonably possible, but not later than 7 days after the date of the meeting.

**VALIDITY OF ACTIONS**

- 10.** (1) No document signed on behalf of the body corporate is valid and binding unless it is signed on the authority of a trustee resolution by —
- (a) 2 (two) trustees or the managing agent, in the case of a clearance certificate issued by the body corporate in terms of section 15B(3)(i)(aa) of the Sectional Titles Act; and
  - (b) 2 (two) trustees or one trustee and the managing agent, in the case of any other document.

- (2) A resolution adopted or other act performed by the trustees remains valid and effective notwithstanding the later discovery of some defect in the appointment of a trustee or the disqualification of a trustee.

## **CALLING AND ATTENDANCE AT MEETINGS**

- 11.** (1) A trustee may at any time call a meeting of trustees by giving all other trustees not less than seven days written notice of the time and place of the meeting and by setting out an agenda for the meeting: Provided that —
  - (a) in cases of urgency a trustee may give such shorter notice as is reasonable in the circumstances; and
  - (b) notice need not be given to any trustee who is absent from the Republic unless the meeting is one referred to in sub-rule (5), but notice must be given to any replacement trustee appointed for that trustee.
- (2) The trustees may by written resolution set the dates of and a standard agenda for their future meetings and delivery of a copy of this resolution is considered adequate notice of all such future meetings.
- (3) Members, registered bondholders, holders of future development rights and the managing agent may attend trustee meetings and may speak on any matter on the agenda, but they are not entitled to propose any motion or to vote; provided that such persons are not entitled to attend those parts of trustee meetings that deal with —
  - (a) discussions of contraventions of the Act or rules; or
  - (b) any other matters in respect of which the trustees resolve that the presence of any such persons would unreasonably interfere with the interests of the body corporate or any person's privacy.
- (4) If a member, a registered mortgagee or the holder of a future development right in writing requests notice of trustee meetings, the trustees must deliver to that person a copy of a notice of a meeting referred to in sub-rule (1), a resolution referred to in sub-rule (2) and a notice of any adjournment of such a meeting; provided that the body corporate may recover from the person concerned the costs of delivery of such documents.

- (5) The trustees may make arrangements for attendance at a trustee meeting by telephone or any other method, if the method —
  - (a) is accessible to all trustees and other persons entitled to attend the meeting;
  - (b) permits all persons participating in the meeting to communicate with each other during the meeting; and
  - (c) permits the chairperson to confirm, with reasonable certainty, the identity of the participants.
- (6) A person who attends a meeting as provided under sub-rule (5) is considered present in person at the meeting.

## **CHAIRPERSON**

- 12.** (1) From the establishment of the body corporate until the end of the first general meeting, the developer or the developer's nominee is the chairperson of the trustees.
- (2) At the commencement of the first meeting of trustees after an annual general meeting at which trustees have been elected and whenever else necessary, the trustees must by majority vote elect a chairperson from among their number.
- (3) The chairperson of the trustees holds office as such until the end of the next annual general meeting.
- (4) The trustees at a trustees' meeting or the members at a general meeting may remove the chairperson from office if notice of the meeting contains a clear statement of the proposed removal; provided that such removal does not automatically remove the chairperson from the office of trustee.
- (5) If a chairperson is removed from office as such or ceases to hold office as a trustee, the remaining trustees must elect a replacement chairperson from among their number who holds office as chairperson for the remainder of the period of office of his or her predecessor and has the same voting rights.

- (6) If the elected chairperson vacates the chair during the course of a trustee meeting, is not present or is for any other reason unable or unwilling to preside, the trustees present must choose another chairperson from among their number and that replacement chairperson has all the powers and functions of the chairperson while acting as such.

## **QUORUM**

- 13.** (1) At a trustee meeting, 50 (fifty) per cent of the trustees by number, but not less than two, form a quorum.
  - (2) If the number of trustees falls below the number necessary to form a quorum, the remaining trustee or trustees may continue to act, but only to—
    - (a) appoint replacement trustees to make up a quorum; or
    - (b) call a general meeting.
  - (3) If at any trustee meeting a quorum is not present within 30 minutes of the appointed time for the meeting, the trustees present, but not less than two, must adopt interim resolutions in respect of each item on the agenda.
  - (4) An interim resolution adopted by trustees in terms of sub-rule (3) does not take effect unless it is confirmed—
    - (a) at the next trustee meeting at which a quorum is present; or
    - (b) by written resolution signed by all the trustees.

## **VOTING**

- 14.** (1) A motion at a trustee meeting —
  - (a) does not have to be seconded; and
  - (b) must be determined by resolution adopted by the majority of the trustees present and voting.
- (2) Each trustee is entitled to one vote; provided that if the deliberative votes of the trustees, including that of the chairperson, are tied, the chairperson has a casting vote, unless there are only two trustees.

- (3) A trustee is disqualified from voting in respect of —
  - (a) any proposed or current contract or dispute with the body corporate to which the trustee is a party; and
  - (b) any other matter in which the trustee has any direct or indirect personal interest.
  
- (4) Trustees must adopt decisions by resolutions adopted by majority vote: Provided that resolutions may be put to the vote —
  - (a) at trustee meetings; or
  - (b) by a notice sent to each trustee which contains the text of any proposed resolutions and instructs the trustees to indicate their agreement to the resolution by their signature, which signatures must be received by the body corporate before expiry of the closing date specified in the notice.

**PART 4**  
**OWNER MEETINGS**

**NOTICE**

- 15.** (1) Subject to sub-rule (7), at least 14 days' written notice of a general meeting specifying the place, date and hour of the meeting must be given to—
- (a) all members;
  - (b) all registered bondholders;
  - (c) all holders of future development rights; and
  - (d) the managing agent.
- (2) A person who has a right to be notified under this rule may waive that right by notice in writing delivered to the body corporate and may, at any time and in the same way, revoke that waiver; provided that if two or more persons are jointly entitled to exercise a vote, all of them must waive the right to notice and any of them may revoke that waiver.
- (3) The notice of a general meeting must be accompanied by at least—
- (a) an agenda, as required in terms of these rules;
  - (b) a copy or comprehensive summary of any document that is to be considered or approved by members at the meeting; and

- (c) a proxy appointment form in the prescribed format.
- (4) A general meeting must be held in the local municipal area where the scheme is situated unless the members have by special resolution decided otherwise.
- (5) Registered bondholders, holders of future development rights and the managing agent may attend general meetings and may speak on any matter on the agenda, but they are not, in those capacities, entitled to propose any motion or to vote; provided that such persons are not entitled to attend any part of a general meeting if the members resolve that their presence would unreasonably interfere with the interests of the body corporate or any person's privacy.
- (6) Notice of a general meeting must be delivered to—
  - (a) members at their service addresses in terms of rule 4(5), and
  - (b) other persons at the most recent physical, postal, fax or email address of which they have notified the body corporate in writing.
- (7) A general meeting may be called—
  - (a) on 7 days' notice if the trustees have resolved that short notice is necessary due to the urgency of the matter and set out their reasons for this resolution; provided that the trustees must not take such a resolution in regard to a meeting referred to in rule 29(2) or (4);
  - (b) on less than 14 days' notice, if this is agreed to in writing by all persons entitled to attend.
- (8) Failure to give proper notice of a general meeting to a person entitled to receive notice does not invalidate a vote taken at the meeting, as long as the body corporate made a reasonable attempt to give the notice.
- (9) Voting at a general meeting may proceed despite the lack of notice as required by this rule, if all persons entitled to receive notice in writing waive their right to notice.

## **FIRST GENERAL MEETING**

- 16.** (1) The developer must include with the notice of the first general meeting held in terms of section 2(8) of the Act —
- (a) an agenda in accordance with sub-rule (2);
  - (b) the documents referred to in sub-rule (2); and
  - (c) a comprehensive summary of the rights and obligations of the body corporate under the policies and contracts referred to in sub-rule (2)(d).
- (2) The agenda for the first general meeting of members must include at least the following —
- (a) a motion to confirm or vary the terms of the policies of insurance effected by the developer or the body corporate;
  - (b) a motion to confirm or vary an itemised estimate of the body corporate's anticipated income and expenses for its first financial year;
  - (c) a motion to approve, with or without amendment, the developer's —
    - (i) evidence of revenue and expenditure concerning the management of the scheme from the date of the first occupation of any unit until the date of the establishment of the body corporate, as required in terms of section 2(8)(c)(iii) of the Act; and
    - (ii) financial statements relating to the management and administration of the scheme from the date of establishment of the body corporate to the date of notice of the first general meeting referred to in sub-rule (1);
  - (d) subject to section 15(2) of the Act, a motion to ratify or not to ratify the terms of any contract entered into by the developer on behalf of the body corporate;
  - (e) a motion confirming that the developer has —
    - (i) furnished the meeting with copies of the documents referred to in section 2(8) of the Act and in this rule; and
    - (ii) paid over any residue referred to in section 2(9) of the Act;
  - (f) a motion appointing an auditor to audit the evidence and financial statements referred to in (c);
  - (g) motions determining the number of trustees and electing trustees;

- (h) a motion detailing any restrictions to be imposed or directions to be given in terms of section 7(1) of the Act or confirming that there are no such restrictions or directions.
- (3) For the purposes of voting on the items of business referred to in sub-rule (2)(c), (d) and (e), any vote held or controlled by the developer is suspended.
- (4) In addition to the documents referred to in section 2(8) of the Act, the developer must at or before the first general meeting furnish the body corporate with copies of —
- (a) all building plans approved by the local municipality;
  - (b) any encroachment permit or other document issued by the local municipality in regard to the improvements in the scheme;
  - (c) plans showing the location of all pipes, wires, cables and ducts referred to in section (3)(1)(r) of the Act;
  - (d) names and addresses of all contractors, subcontractors and any other persons whom the developer has employed to render services or supply materials relating to the development of the scheme;
  - (e) all warranties, manuals, schematic drawings, operating instructions, service guides, documentation from manufacturers and other similar information in respect of the construction, installation, operation, maintenance, repair and servicing of any common property or body corporate assets, including any guarantee or warranty provided to the developer by a person referred to in (d); and
  - (f) all records the body corporate is required to prepare or retain in terms of rule 27.
- (5) If the developer fails to provide the body corporate with any document referred to in section 2(8) of the Act or in this rule, the body corporate must do all things reasonably necessary to obtain or have the specific document prepared and may recover the reasonable costs incurred in doing so from the developer.
- (6) If the developer fails to call the first general meeting in compliance with the requirements of section 2(8) of the Act, any member or the body corporate



may do so and the body corporate must recover from the developer all costs reasonably incurred in ensuring compliance with the developer's obligations.

## **ANNUAL AND SPECIAL GENERAL MEETINGS**

- 17.** (1) Subject to sub-rule (2), the body corporate must hold an annual general meeting within four months of the end of each financial year.
- (2) The body corporate is not obliged to hold an annual general meeting if, before or within one month of the end of a financial year, all members in writing waive the right to the meeting and consent in writing to motions that deal with all the items of business that must be transacted at the annual general meeting; provided that if two or more persons are jointly entitled to exercise a vote, all of them must waive the right to the meeting and consent to the resolutions in writing.
- (3) All general meetings other than the annual general meeting are special general meetings.
- (4) The trustees may by resolution call a general meeting whenever they think fit and must do so if either-
- (a) members entitled to 25 (twenty five) per cent of the total quotas of all sections; or
  - (b) the holder of mortgage bonds over not less than 25 (twenty five) per cent in number of all the primary sections,
- deliver to the body corporate a written and signed request for a special general meeting; provided that if the trustees fail to call a meeting thus requested within 14 (fourteen) days of delivery of the request, the members or bondholder concerned are entitled to call the meeting.
- (5) Members or a bondholder who request a meeting in terms of sub-rule (4) must include one or more motions or matters for discussion with their request and these motions or matters must be included, without amendment, in the agenda for the meeting.
- (6) The order of business at general meetings is as follows:

- (a) confirm proxies, nominees and other persons representing members and issue voting cards;
- (b) determine that there is a quorum;
- (c) elect a person to chair the meeting, if necessary;
- (d) present to the meeting proof of notice of the meeting or waivers of notice;
- (e) approve the agenda;
- (f) approve minutes from the previous general meeting, if any;
- (g) deal with unfinished business, if any;
- (h) deal with any business referred to in sub-rule (5);
- (i) if the meeting is the first general meeting referred to in section 2(8) of the Act, deal with the business set out in rule 16(2);
- (j) if the meeting is an annual general meeting —
  - (i) receive reports of the activities and decisions of trustees since the previous general meeting, including reports of committees;
  - (ii) approve the schedules of insurance replacement values referred to in rule 23(3), with or without amendment;
  - (iii) determine the extent of the insurance cover by the body corporate in terms of rules 23(6), (7) and (8);
  - (iv) approve the budgets for the administrative and reserve funds for the next financial year;
  - (v) consider the annual financial statements;
  - (vi) appoint an auditor to audit the annual financial statements, unless all the sections in the scheme are registered in the name of one person;
  - (vii) if the body corporate has more than four members who are owners of primary sections and is not managed by an executive managing agent in terms of rule 28, determine the number of trustees to be elected to serve during the next financial year; and
  - (viii) determine the number of and elect the trustees;
- (k) report on the lodgment of any amendments to the scheme's rules adopted by the body corporate under section 10 of the Act and, if applicable, table a consolidated set of scheme rules;
- (l) deal with any new or further business;
- (m) give directions or impose restrictions referred to in section 7(1) of the Act; and
- (n) dissolve the meeting.

- (7) Subject to sub-rules (5) and (6), the trustees determine the agenda for an annual or special general meeting; provided that the agenda must contain—
  - (a) a description of the general nature of all business, and
  - (b) a description of the matters that will be voted on at the meeting, including the proposed wording of any special or unanimous resolution.
  
- (8) If any of the items of business that require member approval are not approved at an annual general meeting or any adjournment of the meeting; the resolution not to approve the relevant document must include the reasons for non-approval and the body corporate must have the document revised and submitted to another general meeting for approval as soon as reasonably possible, until it is approved.
  
- (9) The body corporate does not have to hold a special general meeting to consider a resolution if all members waive the right to the meeting and consent to the resolution in writing; provided that if two or more persons are jointly entitled to exercise a vote, all of them must waive the right to the meeting and consent to the resolution in writing.
  
- (10) A body corporate may make arrangements for attendance at an annual or special general meeting by telephone or any other method, if the method—
  - (a) is accessible to all members and other persons entitled to attend the meeting;
  - (b) permits all persons participating in the meeting to communicate with each other during the meeting; and
  - (c) permits the chairperson to confirm, with reasonable certainty, the identity of the participants.
  
- (11) A person who attends a meeting as provided under sub-rule (10) is considered present in person at the meeting.

## **CHAIRPERSON**

- 18.** (1) The chairperson of the trustees must preside as chairperson at every general meeting of the body corporate, unless otherwise resolved by members at the meeting.

- (2) If there is no chairperson or the chairperson of the trustees is not present within 15 minutes after the time appointed for the meeting, or is unwilling or unable to act as chairperson, the members present must elect a chairperson for such meeting.
  
- (3) A chairperson must—
  - (a) maintain order, regulate the orderly expression of views and guide the members and other participants through the business of the meeting in accordance with the common law of meetings;
  - (b) ensure that all motions and amendments proposed are within the scope of the notice and powers of the meeting;
  - (c) ensure that the scheme's rules, the minute books and any other documents relevant to the items of business on the agenda are available at the meeting;
  - (d) act fairly, impartially and courteously to all members and others entitled to attend the meeting;
  - (e) ensure that all members and other persons entitled to speak are able to express their views without unnecessary disturbance or interruption;
  - (f) adjourn the meeting, when it is not able to complete or continue with its business;
  - (g) make decisions on points of procedure;
  - (h) settle disputes by giving rulings on points of order; and
  - (i) surrender the chair to a temporary chairperson elected by the members for any period during which the chairperson wishes to engage in the debate of any item of business.
  
- (4) A chairperson at a general meeting must not—
  - (a) from the chair, attempt to influence members' views on any item of business; or
  - (b) disclose in advance of a vote how the chairperson intends to vote on any item of business .

## **QUORUM**

- 19.** (1) Business must not be transacted at any general meeting unless a quorum is present or represented.

- (2) A quorum for a general meeting is constituted—
- (a) for a scheme with less than 4 primary sections or a body corporate with less than four members, by members entitled to vote and holding two thirds of the total votes of members in value;
  - (b) for any other scheme, by members entitled to vote and holding one third of the total votes of members in value,
- provided that at least two persons must be present unless all the sections in the scheme are registered in the name of one person, and provided further that in calculating the value of votes required to constitute a quorum, the value of votes of the developer must not be taken into account.
- (3) For the purpose of establishing a quorum and for the purposes of section 6 of the Act, the value of votes of any sections registered in the name of the body corporate must not be taken into account and the body corporate must not be considered to be a member.
- (4) If within 30 minutes from the time appointed for a general meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same place and time; provided that if on the day to which the meeting is adjourned a quorum as described in sub-rule (2) is not present within 30 (thirty) minutes from the time appointed for the meeting, the members entitled to vote and present in person or by proxy constitute a quorum.

## **VOTING AND REPRESENTATIVES**

- 20.** (1) A motion at a general meeting —
- (a) does not need to be seconded; and
  - (b) except for a special or unanimous resolution, must be adopted by resolution of the majority of the votes, calculated in value, of the members present and voting.
- (2) Except for special and unanimous resolutions, a member is not entitled to vote if—
- (a) a member fails or refuses to pay the body corporate any amount due by that member after a court or adjudicator has given a judgment or order for payment of that amount; or

- (b) that member persists in the breach of any of the conduct rules of the scheme referred to in section 10(2)(b) of the Act after a court or an adjudicator has ordered that member to refrain from breaching such rule.
- (3) For the purposes of any vote, the values of votes of any sections registered in the name of the body corporate are considered abstentions.
- (4) Where a member is as such a trustee for a beneficiary, that member exercises voting rights to the exclusion of persons beneficially interested in the trust and such persons are not entitled to vote.
- (5) A member's appointment of a proxy in terms of section 6(5) of the Act and the proxy's acceptance of the mandate must, except in the case of an appointment in a mortgage bond, be substantially in the prescribed form and must be—
  - (a) delivered to the body corporate 48 hours before the time of the meeting; or
  - (b) handed to the chairperson before or at the start of the meeting.
- (6) A proxy need not be a member, but must not be the managing agent or an employee of the managing agent or the body corporate.
- (7) When two or more persons are entitled to exercise one vote jointly, that vote may be exercised only by one person, who may or may not be one of them, jointly appointed by them as their proxy.
- (8) The outcome of each vote, including the number of votes for and against the resolution, must be announced by the chairperson and recorded in the minutes of the meeting.
- (9) If a special resolution is passed at a general meeting by members holding less than 50 (fifty) per cent of the total value of all members' votes—
  - (a) the body corporate must not take any action to implement that resolution for one week after the meeting, unless the trustees resolve that there are reasonable grounds to believe that immediate action is

necessary to ensure safety or prevent significant loss or damage to the scheme; and

- (b) within seven days from a resolution referred to in paragraph (a), members holding at least 25 (twenty) per cent of the total votes of all members in value may, by written and signed request delivered to the body corporate, require that the body corporate hold a special general meeting to reconsider the resolution.

- (10) If a demand referred to in sub-rule (9)(b) is delivered to the body corporate, the trustees must not implement the resolution unless—
  - (a) it is again passed by special resolution; or
  - (b) a quorum is not present within 30 minutes of the time set for the meeting.

## **PART 5**

### **FINANCIAL MANAGEMENT**

#### **FINANCIAL YEAR, FUNCTIONS AND POWERS**

- 21.** (1) The financial year of a body corporate established after the Act comes into operation must run from the 1<sup>st</sup> (first) day of October of each year to the last day of September of the following year unless otherwise resolved by the body corporate in general meeting.
- (2) The body corporate must not—
- (a) make loans from body corporate funds without the authority of a unanimous resolution;
  - (b) refund to any member a contribution lawfully levied and paid;
  - (c) distribute to a member or any other person any portion of the body corporate's profits or gains except—
    - (i) upon destruction or deemed destruction of the buildings, or
    - (ii) where such profit or gain is of a capital nature.

- (3) The body corporate may, on the authority of a written trustee resolution—
- (a) levy members with a special contribution if additional income is required to meet a necessary expense that cannot reasonably be delayed until provided for in the budget for the next financial year;
  - (b) increase the contributions due by the members by a maximum of 10 (ten) per cent at the end of a financial year to take account of the anticipated increased liabilities of the body corporate, which increase will remain effective until members receive notice of the contributions due by them for the next financial year; provided that the trustees must give members notice of such increased contributions by notice in terms of rule 25, with such changes as are required by the context;
  - (c) charge interest on any overdue amount payable by an member to the body corporate; provided that the interest rate must not exceed the maximum rate of interest payable per annum under the National Credit Act (2005) Act No 34 of 2005) , compounded monthly in arrear;
  - (d) invest any moneys in the reserve fund referred to in sections 3(1)(b) of the Act in a secure investment with any institution referred to in the definition of "financial institution" in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);
  - (e) enter into written and signed contracts in respect of its powers and duties under the Act and these rules;
  - (f) join organisations and subscribe to services to further its purposes under the Act and these rules;
  - (g) delegate to one or more of the trustees, to a member, agent or an employee such of their powers and duties as they deem fit, and at any time to revoke such delegation; provided that when they delegate any power or duty they must specify in writing—
    - (i) the power or duty concerned;
    - (ii) a maximum amount of the body corporate's funds that may be spent for a particular purpose; and
    - (iii) any conditions that may be applicable; and
  - (h) approach the Community Scheme Ombud Service for relief.
- (4) The body corporate must ensure that all money received by the body corporate is deposited to the credit of an interest-bearing bank account—
- (a) in the name of the body corporate; or



- (b) that is a trust account opened in terms of either the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), or the Attorneys Act, 1979 (Act No. 53 of 1979).

## **MAINTENANCE, REPAIR AND REPLACEMENT PLAN**

- 22.** (1) A body corporate or trustees must prepare a written maintenance, repair and replacement plan for the common property, setting out—
- (a) the major capital items expected to require maintenance, repair and replacement within the next (ten) 10 years;
  - (b) the present condition or state of repair of those items;
  - (c) the time when those items or components of those items will need to be maintained, repaired or replaced;
  - (d) the estimated cost of the maintenance, repair and replacement of those items or components;
  - (e) the expected life of those items or components once maintained, repaired or replaced; and
  - (f) any other information the body corporate considers relevant.
- (2) The annual contribution to the reserve fund for the maintenance, repair or replacement of each of the major capital items must be determined according to the following formula: [(estimated cost minus past contribution) divided by expected life].
- (3) A maintenance, repair and replacement plan takes effect on its approval by the members in general meeting; provided that on approval of such a plan, members may lay down conditions for the payment of money from the reserve fund.
- (4) The trustees must report the extent to which the approved maintenance, repair and replacement plan has been implemented to each annual general meeting.

## **INSURANCE**

- 23.** (1) The insurance policies of the body corporate in terms of sections 3(1)(h) and (i) of the Act —
- (a) must provide cover against —
    - (i) risks referred to in regulation 3;
    - (ii) risks that members resolve must be covered by insurance; and
    - (iii) risks that holders of registered first mortgage bonds over not less than 25 per cent in number of the primary sections by written notice to the body corporate may require to be covered by insurance;
  - (b) must specify a replacement value for each unit and exclusive use area, excluding the member's interest in the land included in the scheme; provided that any member may at any time by written notice to the body corporate require that the replacement value specified for that member's unit or exclusive use area be increased;
  - (c) must restrict the application of any "average" clause to individual units and exclusive use areas, so that no such clause applies to the buildings as a whole;
  - (d) must include a clause in terms of which the policy is valid and enforceable by any holder of a registered mortgage bond over a section or exclusive use area against the insurer notwithstanding any circumstances whatsoever which would otherwise entitle the insurer to refuse to make payment of the amount insured, unless and until the insurer terminates the insurance on at least 30 days' notice to the bondholder; and
  - (e) may include provision for "excess" amounts.
- (2) A member is responsible —
- (a) for payment of any additional premium payable on account of an increase in the replacement value referred to in sub-rule (1)(b);
  - (b) for any excess amount that relates to damage to any part of the buildings that member is obliged to repair and maintain in terms of the Act or these rules,
- and must furnish the body corporate with written proof from the insurer of payment of that amount within seven days of written request.

- (3) A body corporate must obtain a replacement valuation of all buildings and improvements that it must insure at least every three years and present such replacement valuation to the annual general meeting.
- (4) A body corporate must prepare for each annual general meeting schedules showing estimates of —
  - (a) the replacement value of the buildings and all improvements to the common property; and
  - (b) the replacement value of each unit, excluding the member's interest in the land included in the scheme, the total of such values of all units being equal to the value referred to in paragraph (a).
- (5) On written request by any registered bondholder and the furnishing of satisfactory proof, the body corporate must record the cession to that bondholder of that member's interest in any of the proceeds of the insurance policies of the body corporate.
- (6) A body corporate must take out public liability insurance to cover the risk of any liability it may incur to pay compensation in respect of—
  - (a) any bodily injury to or death or illness of a person on or in connection with the common property; and
  - (b) any damage to or loss of property that is sustained as a result of an occurrence or happening in connection with the common property,for an amount determined by members in general meeting, but not less than 10 million rand or any such higher amount as may be prescribed by the Minister in any one claim and in total for any one period of insurance.
- (7) A body corporate must take out insurance for an amount determined by members in general meeting to cover the risk of loss of funds belonging to the body corporate or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by a trustee, managing agent, employee or other agent of the body corporate.

- (8) A body corporate, authorised by a special resolution of members, may insure any additional insurable interest the body corporate has —
- (a) in the land and buildings included in the scheme; and
  - (b) relating to the performance of its functions,
- for an amount determined in that resolution.

## **ADMINISTRATIVE AND RESERVE FUNDS**

### **24. Contribution by owners to the administrative fund and reserve fund in terms of Section 3 of the Act as amended by the Developer in terms of Section 11 of the Act :**

- (1) The administrative fund referred to in section 3(1)(a) of the Act must be used to fund the operating expenses of the body corporate for a particular financial year.
- (2) The reserve fund maintained in terms of section 3(1)(b) of the Act must be used for the implementation of the maintenance, repair and replacement plan of the body corporate referred to in rule 22.
- (3) The following amounts must be paid into the reserve fund —
- (a) any part of the annual levies designated as being for the purpose of reserves or the maintenance, repair and replacement plan;
  - (b) any amounts received under an insurance policy in respect of damage or destruction of property for which the body corporate is responsible;
  - (c) any interest earned on the investment of the money in the reserve fund;
  - (d) any other amounts determined by the body corporate,
- and all other body corporate income must be paid into the administrative fund.
- (4) Money may be paid out of the administrative fund in accordance with trustee resolutions and the approved budget for the administrative fund.
- (5) Money may be paid out of the reserve fund —
- (a) at any time in accordance with trustee resolutions and the approved maintenance, repair and replacement plan; or

- (b) if the trustees resolve that such a payment is necessary for the purpose of an urgent maintenance, repair or replacement expense, which purpose includes, without limitation —
  - (i) to comply with an order of a court or an adjudicator;
  - (ii) to repair, maintain or replace any property for which the body corporate is responsible where there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage to persons or property;
  - (iii) to repair any property for which the body corporate is responsible where the need for the repairs could not have been reasonably foreseen in preparing the maintenance, repair and replacement plan; or
  - (iv) to enable the body corporate to obtain adequate insurance for property that the body corporate is required to insure;provided that the trustees must report to the members on any such expenditure as soon as possible after it is made.

(6) Expenditure under sub-rule (5)(b) —

- (a) must not exceed—
  - (i) the amount necessary for the purpose for which it is expended; or
  - (ii) any limitation imposed by the body corporate on expenditure; and
- (b) must comply with any restrictions imposed or directions given by members.

(7) **Division of scheme into components with various segments:**

The liability of owners to make contributions and the proportions in which the owners shall make contributions for the purposes of section 3 (1) (a) of the Act with effect from the date upon which the body corporate comes into being, be borne by the owners in accordance with the determination made in terms of section 11 (2) (a) of the Act and set out in this rule. The purpose of this management rule is to provide that the owners and holders of rights in each of the two components in the building and their various segments will, as far as reasonably possible bear the expenses attributable to those components and segments so as to eliminate cross-subsidisation between the components and segments;

**(8) Identification of the components and segments:**

The scheme consists of a commercial component and a residential component, which are indicated on the sectional plans of the Building.

**(9) Classification of and liability for scheme expenses:**

The trustees (subject to review from time to time by the owners at a general meeting as set out hereunder) shall classify all administrative expenses payable by or anticipated by the body corporate to be collected from owners of units and holders of exclusive use rights and credited to its administrative fund established in terms of section 3 (1) (a) of the Act as being:

- (a) Specific expenses, being those which are applicable to the interior of particular units or the surface of exclusive use areas and which shall be due by and recovered directly from the owners of such units and the holders of such exclusive use rights.
- (b) Component expenses, being those which are applicable only to the units and/or exclusive use areas within a particular component and which shall be due by and recovered directly from the owners of such units or the holders of such exclusive use rights in proportion to the measured floor area of their units or exclusive use areas as shown on the sectional plan registered for the scheme. In addition the owner of Section 100 shall be responsible for expenses relating to the common areas (indicated as CP on the sectional plans) servicing or benefiting the said Section 100.
- (c) General expenses, being those which are applicable to the scheme generally which shall be due by and recovered from all owners of units in the scheme in proportion to the measured floor area of their units as shown on the sectional plan registered for the scheme.
- (d) For the purposes of any determination in terms of this clause the following administrative expenses shall be deemed to be classified as set out below, such classification not being exhaustive, and can be added to or amended, where the Trustees deem appropriate:

Specific	(a) Pest control for interiors of units if carried out by body corporate contractor.
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	(b) DSTV cabling inside a section. (c) Internet and or fibre optic cabling inside a section. (d) Utilities supplied on a metered basis (e) Insurance. (f) Waterfront common area levy (g) Precinct levy
Component	Residential and Commercial
General	(a) Lift expenses to be weighted and allocated on this basis to each component. (b) Amenities expenses to be weighted and allocated to the components on this basis.
Services	As per a metered supply .

- (10) Notwithstanding rule 9 above, any expenses which are charged to the body corporate based on the number of sections, will be recovered by way of the levy charge per section, and not based on the participation quota.
- (11) At every annual general meeting the body corporate shall approve, with or without amendment, the estimate of income and expenditure for both the commercial component and the residential component, and shall ratify or amend the amounts determined to be required to be levied upon the owners by the trustees within each component during the ensuing financial year.

## **CONTRIBUTIONS AND CHARGES**

- 25.** (1) The body corporate must, as soon as possible but not later than 14 days after the approval of the budgets referred to in rule 17(6)(j)(iv) by a general meeting, give each member written notice of the contributions and charges due and payable by that member to the body corporate, which notice must—
- (a) state that the member has an obligation to pay the specified contributions and charges; and
  - (b) specify the due date for each payment; and
  - (c) if applicable, state that interest at a rate specified in the notice will be payable on any overdue contributions and charges; and
  - (d) include details of the dispute resolution process that applies in respect of disputed contributions and charges.

- (2) If money owing is not paid on the dates specified in the notice referred to in sub-rule (1), the body corporate must send a final notice to the member, which notice must state—
  - (a) that the member has an obligation to pay the overdue contributions and charges and any applicable interest immediately; and
  - (b) if applicable—
    - (i) the interest that is payable in respect of the overdue contributions and charges at the date of the final notice; and
    - (ii) the amount of interest that will accrue daily until the payment of the overdue contributions and charges; and
  - (c) that the body corporate intends to take action to recover the amount due if the overdue contributions and charges and interest owing are not paid within 14 days after the date the final notice is given.
- (3) Subject to rules 21(3) (a) and (b), after the expiry of a financial year and until they become liable for contributions in respect of the next financial year, members are liable for contributions in the same amounts and payable in the same instalments as were due and payable by them during the past financial year.
- (4) A member is liable for and must pay to the body corporate all reasonable legal costs and disbursements, as taxed or agreed by the member, incurred by the body corporate in the collection of arrear contributions or any other arrear amounts due and owing by such member to the body corporate, or in enforcing compliance with these rules, the conduct rules or the Act.
- (5) The body corporate must not debit a member's account with any amount that is not a contribution or a charge levied in terms of the Act or these rules without the member's consent or the authority of a judgment or order by a judge, adjudicator or arbitrator.
- (6) The body corporate must in its annual financial statements account for all contributions and any other charges debited to members' accounts.
- (7) On request in writing by a member the body corporate must make available a full and detailed account of all amounts debited and credited to the member's account with the body corporate.



## **FINANCIAL RECORDS, BUDGETS, REPORTS AND AUDIT**

- 26.** (1) A body corporate must—
- (a) keep proper books of accounts that—
    - (i) record all its income, expenditure, assets and liabilities;
    - (ii) disclose all amounts recovered from members by the body corporate or any managing agent or other service provider acting on its behalf;
    - (iii) include individual accounts for each member; and
    - (iv) contain all other information necessary to allow members to assess the body corporate's financial situation and their financial situation in regard to the body corporate.
  - (b) keep separate books of account and bank accounts for its administrative and reserve funds referred to in sections 3(1)(a) and (b) of the Act;
  - (c) prepare annual financial statements for presentation at the annual general meeting, which statements must include analyses of the —
    - (i) amounts due to the body corporate in respect of contributions, special contributions and other charges, classified by member and the periods for which such amounts were owed;
    - (ii) amounts due by the body corporate to its creditors generally and prominently disclosing amounts due to any public authority, local municipality or other entity for services including, without limitation, water, electricity, gas, sewerage and refuse removal, classified by creditor and the periods for which such amounts were owed;
    - (iii) amounts advanced to the body corporate by way of levy finance, a loan, in terms of a guarantee insurance policy or otherwise, setting out the actual or contingent liability of the body corporate and the amounts paid by the body corporate and by any member in terms of such arrangement;
    - (iv) amounts in the reserve fund showing the amount available for maintenance, repair and replacement of each major capital item as a percentage of the accrued estimated cost and the rand value of any shortfall;
    - (v) premiums and other amounts paid and payments received by the body corporate and any member in terms of the insurance policies of the body corporate and the expiry date of each policy; and

- (vi) amounts due and payable to the Community Schemes Ombud Service.
  - (d) prepare a maintenance, repair and replacement plan in accordance with rule 22 for presentation at the annual general meeting;
  - (e) prepare budgets for the administrative and reserve funds comprising itemised estimates of the anticipated income and expenses during the next financial year for presentation at the annual general meeting; provided that such budgets may include discounts not exceeding 10 per cent of a members' annual contributions applicable if all those contributions are paid on or before the due dates;
  - (f) prepare a report adopted by the trustees reviewing the affairs of the body corporate during the financial year for presentation at the annual general meeting.
- (2) On the application of any member, registered bondholder or of the managing agent, the body corporate must make all or any of the books of account and records available for inspection and copying.
- (3) The body corporate must ensure that all the body corporate's books of account and financial records are retained for a period of six years after completion of the transactions, acts or operations to which they relate.
- (4) Unless all the sections in the scheme are registered in the name of one person, the body corporate must present audited financial statements to a general meeting for consideration within four months after the end of the financial year.
- (5) The audit of a body corporate's annual financial statements—
  - (a) must be carried out by an independent auditor who has not participated in the preparation of the annual financial statements or advised on any aspect of the accounts of the body corporate during the period being reported on;
  - (b) need not be carried out in accordance with any recognized financial reporting framework of guidelines for financial accounting;
  - (c) must include opinions as to whether or not—
    - (i) the annual financial statements accurately reflect the financial position of the body corporate for the financial year under review,

- with such qualifications and reservations as the auditor considers necessary;
- (ii) the body corporate has complied with the accounting requirements set out in rules 21, 24 and this section, with a specific description of any failure to comply with such requirements;
  - (iii) the books of account of the body corporate have been kept and its funds have been managed so as to provide a reasonable level of protection against theft or fraud; and
  - (iv) the financial affairs of the body corporate appear to be effectively managed;
- (d) must be completed within four months of the end of the body corporate's financial year.

## **PART 6**

### **ADMINISTRATIVE MANAGEMENT**

#### **GOVERNANCE DOCUMENTS AND RECORDS**

- 27.** (1) The body corporate must—
- (a) lodge a notification of an amendment to the scheme's rules referred to in section 10(5) of the Act as soon as reasonably possible, but not later than 10 days after the date of the relevant resolution of the body corporate; and
  - (b) compile and keep a complete set of all management and conduct rules including —
    - (i) an index; and
    - (ii) a prominent reference to any rules that confer exclusive use rights, vary the effects of the participation quotas in regard to the value of votes or the liability for contributions, or impose either a financial or a maintenance obligation on members;
  - (c) prepare a consolidated set of rules whenever they are amended.
- (2) The body corporate must prepare and update the following records —
- (a) minutes of general and trustee meetings, including the following information—

- (i) the date, time and place of the meeting;
  - (ii) the names and role of the persons present, including details of the authorisation of proxies or other representative;
  - (iii) the text of all resolutions; and
  - (iv) the results of the voting on all motions;
  - (b) lists of trustees, members and tenants with their—
    - (i) full names;
    - (ii) identity numbers or, in the case of non-South African citizens, their passport numbers; and
    - (iii) section addresses and mailing addresses, if different;
    - (iv) telephone numbers; and
    - (v) email or other electronic addresses, if any;
  - (c) lists of—
    - (i) sections shown on the sectional plan, indicating in each case whether it is a primary or a utility section, its participation quota and the name of the member in whose name it is registered;
    - (ii) exclusive use areas with descriptions of purposes and numbers, if any, indicating whether the rights to each area are conferred in terms of section 27 of the Sectional Titles Act or in terms of a rule, and a reference to the relevant rule where applicable; and
    - (iii) registered bondholders with their names and addresses;
  - (d) details of all future development rights including —
    - (i) names and addresses of all registered holders of such rights; and
    - (ii) copies of all documentation prepared in terms of section 25(2) of the Sectional Titles Act for any such right; and
  - (e) any other records required by the regulations.
- (3) The body corporate may obtain and keep copies of all of the following:
- (a) The registered sectional plan and any registered amending sectional plan;
  - (b) the Act and the regulations;
  - (c) resolutions that deal with changes to the common property, including the conferring of exclusive use rights on members;
  - (d) consents and approvals given by the body corporate to members;
  - (e) waivers and consents given by members;
  - (f) written contracts to which the body corporate is a party;

- (g) any decision of an adjudicator, arbitrator, magistrate or judge in a proceeding in which the body corporate is a party, and any legal opinions obtained by the body corporate;
  - (h) the budget and financial statement for the current year and previous years;
  - (i) income tax returns;
  - (j) insurance policies, endorsement and claim forms;
  - (k) correspondence sent or received by the body corporate and trustees; and
  - (l) any other records required by the regulations.
- (4) On receiving a written request, the body corporate must make the records and documents referred to in this rule available for inspection by, and provide copies of them to —
- (a) a member;
  - (b) a registered bondholder; or
  - (c) a person authorised in writing by a member or registered bondholder.
- (5) The body corporate must comply with a request for inspection or copying under this rule within 10 days unless the request is in respect of the rules, in which case the body corporate must comply with the request within five days.
- (6) The body corporate may charge a fee for a copy of a record or document other than the rules, provided that the fee is not more than the reasonable cost associated with the process of making the copy, and the body corporate may refuse to supply the copy until the fee is paid.
- (7) If the body corporate terminates its contract with an employee or a managing agent, that person must within 10 days deliver to the body corporate all records referred to in this rule that are in the person's possession or under the person's control.
- (8) The records referred to in this rule must be in writing or in a form that can be easily converted to writing.

## **EXECUTIVE MANAGING AGENT AND MANAGING AGENTS**

- 28.** (1) The body corporate may, by special resolution, appoint an executive managing agent to perform the functions and exercise the powers that would otherwise be performed and exercised by the trustees.
- (2) Members entitled to 25 per cent of the total quotas of all sections may apply to the Community Scheme Ombud Service for the appointment of an executive managing agent.
- (3) An executive managing agent —
- (a) is subject to all the duties and obligations of a trustee under the Act and the rules of the scheme;
  - (b) is obliged to manage the scheme with the required professional level of skill and care;
  - (c) is liable for any loss suffered by the body corporate as a result of not applying such skill and care;
  - (d) has a fiduciary obligation to every member of the body corporate;
  - (e) must arrange for the inspection of the common property at least every six months; and
  - (f) must report at least every four months to every member of the body corporate on the administration of the scheme.
- (4) The reports of an executive managing agent referred to in (3)(f) must include at least the following details —
- (a) proposed repairs to and maintenance of the common property and assets of the body corporate within the next four months;
  - (b) matters the executive managing agent considers relevant to the condition of the common property and the assets of the body corporate;
  - (c) the balance of each of the administrative and reserve funds of the body corporate on the date of the report and a reconciliation statement for each fund; and
  - (d) for the period since the appointment of the executive managing agent or from the date of the last report —
    - (i) the expenses of the body corporate, including repair, maintenance and replacement costs; and

- (ii) a brief description of the date and nature of all decisions made by the executive managing agent.
  
- (5) The body corporate may, if trustees so resolve, and must if required by —
  - (a) a registered mortgagee of 25 per cent in number of the primary sections; or
  - (b) a resolution of members,appoint a managing agent to perform specified financial, secretarial, administrative or other management services under the supervision of the trustees.
  
- (6) A management agreement for any managing agent must comply with the requirements as may be set out in the regulations.
  
- (7) A management agreement may not endure for a period longer than three years and may be cancelled, without liability or penalty, despite any provision of the management agreement or other agreement to the contrary —
  - (a) by the body corporate on two months' notice, if the cancellation is first approved by a special resolution passed at a general meeting, or
  - (b) by the managing agent on two months' notice.
  
- (8) The body corporate or trustees may by ordinary resolution cancel the management agreement in accordance with its terms or refuse to renew the management agreement when it expires.

**PART 7**  
**PHYSICAL MANAGEMENT**

**IMPROVEMENTS TO COMMON PROPERTY**

- 29.** (1) The body corporate may on the authority of a unanimous resolution make alterations or improvements to the common property that is not reasonably necessary.
- (2) The body corporate may propose to make alterations or improvements to the common property that are reasonably necessary; provided that no such

proposal may be implemented until all members are given at least 30 days written notice with details of —

- (a) the estimated costs associated with the proposed alterations or improvements;
- (b) details of how the body corporate intends to meet the costs, including details of any special contributions or loans by the body corporate that will be required for this purpose; and
- (c) a motivation for the proposal including drawings of the proposed alterations or improvements showing their effect and a motivation of the need for them;

and if during this notice period any member in writing to the body corporate requests a general meeting to discuss the proposal, the proposal must not be implemented unless it is approved, with or without amendment, by a special resolution adopted at a general meeting.

- (3) A body corporate must, if so directed by a resolution of members —
  - (a) install and maintain separate meters to measure the supply of electricity, water, gas or the supply of any other service to each member's sections and exclusive use areas and to the common property; and
  - (b) recover from members the cost of such supplies to sections and exclusive use areas based on the metered supply.
- (4) A body corporate may on the authority of a special resolution install separate pre-payment meters on the common property to control the supply of water or electricity to a section or exclusive use area; provided that all members and occupiers of sections must be given at least 60 days notice of the proposed resolution with details of all costs associated with the installation of the pre-payment system and its estimated effect on the cost of the services over the next three years.
- (5) If a pre-payment system referred to in sub-rule (4) is installed —
  - (a) the body corporate is responsible to ensure that the system does not infringe on the constitutional rights of section occupiers to access basic services; and



- (b) any member who leases a unit to a tenant is responsible to ensure that the system does not infringe the rights of the tenant in terms of the Rental Housing Act, 1999 (Act No. 50 of 1999), or any other law.

## **USE OF SECTIONS AND COMMON PROPERTY**

- 30.** (1) (a) The body corporate must take all reasonable steps to ensure that a member or any other occupier of a section or exclusive use area does not—
- (b) use the common property so as to unreasonably interfere with other persons lawfully on the premises, in breach of section 13(1)(d) of the Act;
  - (c) use a section or exclusive use area so as to cause a nuisance, in breach of section 13(1)(e) of the Act;
  - (d) contravene the provisions of any —
    - (i) law or by-law relating to the use of a section or an exclusive use area; or
    - (ii) conditions of a license relating to use of the building or the common property, or the carrying on of a business in the building; or
    - (iii) conditions of title applicable to sections or exclusive use areas;
  - (e) make alterations to a section or an exclusive use area that are likely to impair the stability of the building or interfere with the use and enjoyment of other sections, the common property or any exclusive use area;
  - (f) do anything to a section or exclusive use area that has a material negative affect on the value or utility of any other section or exclusive use area;
  - (g) subject to the provisions of section 13(1)(g) of the Act, use a section or exclusive use area for a purpose other than for its intended use as —
    - (i) shown expressly or by implication on a registered sectional plan or an approved building plan ;
    - (ii) can reasonably be inferred from the provisions of the applicable town planning by-laws or the rules of the body corporate; or
    - (iii) is obvious from its construction, layout and available amenities;

- (h) construct or place any structure or building improvement on an exclusive use area which in practice constitutes a section or an extension of the boundaries or floor area of a section without complying with the requirements of the Act and the Sectional Titles Act; provided that the body corporate may by ordinary resolution —
  - (i) give consent for such a structure or building improvement, if they are satisfied that it does not require compliance with such requirements;
  - (ii) prescribe any reasonable condition in regard to the use or appearance of the structure or building improvement; and
  - (iii) withdraw any consent if the member or other occupier of a section breaches any such condition.
- (i) No open fires shall be allowed on balconies, only smokeless gas braais are allowed. . Owners are encouraged to use the communal braai on level 10 of the building.

### **OBLIGATION TO MAINTAIN**

- 31.** (1) Notwithstanding that a water-heating installation forms part of the common property and is insured by the body corporate, a member must maintain, repair and, when necessary, replace such an installation which serves that member's section or exclusive use area; provided that where such an installation serves sections owned or exclusive use areas held by more than one member, the members concerned must share the maintenance, repair and replacement costs on a pro-rata basis.
- (2) If despite written demand by the body corporate, a member refuses or fails to —
- (a) carry out work in respect of that member's section ordered by a competent authority as required by section 13(1)(b) of the Act; or
  - (b) repair or maintain a section owned by that member in a state of good repair as required by section 13(1)(c) of the Act;
- and that failure threatens the stability of the common property, the safety of the building or otherwise materially prejudices the interests of the body corporate, its members or the occupiers of sections generally, the body corporate must remedy the member's failure and recover the reasonable cost

of doing so from that member; provided that in the case of an emergency, no demand or notice need be given to the member concerned.

### **SECTION 10(7) OF THE ACT: EXCLUSIVE USE RIGHTS (NEW RULE)**

**32.** The Developer has in terms of Section 10(7) of the Act reserved for owners of Sections, the right of exclusive use and enjoyment of the balconies adjacent to their respective Sections; and of parking bays and store rooms, as indicated on the Layout Plan and Schedule annexed hereto as Annexure "A" indicating the Sections and their linked Exclusive Use Areas. An owner who enjoys the exclusive use of a parking bay and/or store room in terms of this Rules, may alienate the right to the exclusive use of his/her parking bay and/or store room to another owner of a Section in the Scheme, In such event the Body Corporate will cause the necessary amendment of the Layout Plan and Schedule and register same with the Ombud as provided for in the Act.

### **USE OF ROOF SWIMMING POOL AND ENTERTAINMENT AREA**

**33.** (1) The use of the roof swimming pool and entertainment area will regulated by House Rules imposed by the Trustees from time to time.

### **SERVICES TO APARTMENTS**

**34.** (1) The scheme has communal heat exchangers and bulk hot water storage units, which provide hot water to individual units. Usage of hot water will be individually metered by meters situated in each apartment. The cost of maintenance, replacement and/or repair of the hot and cold water supply system shall be the responsibility of the body corporate up to and including the water meter and the individual owners shall be responsible from the water meter, including all connectors.

(2) Gas shall be supplied to individual apartments from a central supply and the cost of maintenance, replacement and/or repair of the system shall be the responsibility of the body corporate up to and including the gas meter and the individual owners shall be responsible from the gas meter, including all connectors.

- (3) An air heating and cooling service shall be supplied to the scheme from the adjoining building. The body corporate shall be responsible for maintenance, replacement and/or repair of the system from the point at which it enters the building up to and including the air handling meters. Individual owners shall be responsible for the maintenance, replacement and/or repair of the system from the air handling meters, including all connectors and individual Flow Coil Units (FCU's) or Air Handling Units (AHU's), whichever are applicable.
- (4) Standby generator back-up power shall be supplied to all life safety services i.e. fire detection, and electrical lighting and electronic circuits inside individual apartments. The standby generator supply shall be from the Silo 5 precinct generator plant. The body corporate shall be responsible for maintenance, replacement and/or repair of the low voltage (LV) electrical reticulation system from the standby power supply circuit breaker (excluding the circuit breaker), located at Silo 5 generator plant, up to and including the LV reticulation inside the building (excluding apartment electrical distribution boards which will be the responsibility of the apartment owner).
  - (a) The standby generator back-up supply to apartments are limited to predetermined circuits which supply lights (all excluding Owner supplied plug-in type light fixtures), socket outlets at predetermined television positions and home automation and data network infrastructure controllers installed inside the apartment electrical distribution board enclosure.
  - (b) The body corporate will be alerted via the monitored metering management system should the apartment exceed a predetermined standby generator back supply load threshold. Exceeding this predetermined threshold will constitute a contravention of the management rules.
- (5) The scheme has been designed for efficient energy and water management that can be measured. Energy and water consumption are measured for common property as well as within each dwelling. All this metered information will be sent to a central location, where it can be accessed for generating monthly utilities invoices, dissemination and reporting purposes by the Body Corporate and individual owners.
  - (a) The sub metering within each dwelling will be broken down into different uses and the following meters will be installed:

- (i) Common property:
  - (aa) Energy:
    - (i) Bulk gas storage
    - (ii) Lifts
    - (iii) Common property lighting and small power
    - (iv) Air handling plant equipment (electrical and DC thermal plant water flow)
    - (v) Swimming pool equipment
    - (vi) Potable hot water plant equipment (electrical and DC thermal plant water flow)
  - (bb) Water:
    - (i) Swimming pool water
    - (ii) Irrigation water for the roof garden
    - (iii) Ablution and kitchenette water
    - (iv) Total incoming water to the building
    - (v) Chilled Sea Water for the air handling system
- (ii) For each dwelling - meters are installed on common property locations outside apartments:
  - (aa) Energy:
    - (i) 1 meter for the lighting, fan coil unit fan and small power energy use (via the prepaid meter)
    - (ii) 1 meter for the lighting and small power energy use (via the monitored metering management system for billing of standby generator back-up power at a tariff determined by the Body Corporate)
    - (iii) 1 meter for gas usage
    - (iv) 1 meter for hot water energy consumption
    - (v) 1 meter for the fan coil unit run time
    - (vi) 2 meters for the air conditioning energy consumption via flow water meter readings fed into monitoring metering system. The apartment internal FCU's not measured separately and forms part of small power energy consumption
  - (bb) Water:
    - (i) 1 meter for the cold water supplied to the dwelling
    - (ii) 1 meter for the hot water supplied to the building

- (b) As each of these services are metered, the costs for these services will be charged to each owner based on the metered supply and at the tariff the Trustees deem appropriate to recover the costs that the body corporate incurs in providing such services and these recoveries form part of the amounts due by an owner to the body corporate in terms of management rules 30 and 31.

## **PERFORMANCE AUDIT AND REPORTING**

- 35.** (1) The Trustees shall perform an energy and water management audit in respect of the common property and units and furnish owners with an environmental performance report every 6 (six) months.
- (2) Each owner and occupier of a unit shall acquaint himself with the requirements or criteria for the Green Star Rating of the building and shall comply with the requirements applicable to his unit.
- (3) The Environmental Performance Reporting Strategy of the Buildings is annexed (Annexure "A").

## **REPORTING STRATEGY**

- 36.** (1) An environmental performance report will be generated from the metering system every month. This report will be filed by the Body Corporate in order to allow the performance of the building to be monitored over time. To ensure that this happens, the following must be considered:
  - (a) the automated metering strategy meters the following services in each individual apartment:
    - (i) Electrical consumption
    - (ii) Cold water consumption
    - (iii) Hot water consumption
    - (iii) Gas consumption
    - (iv) Chilled water consumption (FCUs)
    - (v) Heating hot water consumption (FCUs)
  - (b) All sub metering data will be uploaded to a server in the BMS Room on the ground floor. The data will be issued automatically to the Body Corporate.

- (2) This report will be available from the managing agent
- (3) An appointed member of the Body Corporate will be responsible for compilation and distribution of this report.

## **PENALTIES**

- 37.** (1) If the conduct of an owner or occupier of a section or their visitors constitutes a nuisance or danger in the opinion of the Trustees, or if an owner, occupier or visitor contravenes, breaches, disobeys, disregards a Management or Conduct Rule, the Trustees may give the owner and occupier written notice, which may in the discretion of the Trustees be delivered by hand or by registered post, specifying the conduct which constitutes a nuisance or danger and the Rule allegedly contravened, and notifying the offender that if he/she persists in such conduct or contravention, a penalty or penalties will be imposed on the owner of the section in terms of this rule;
- (2) If the owner or occupier nevertheless persists with the conduct complained of or in the contravention of the relevant Rule, the Trustees may convene a meeting of Trustees to discuss and deal with the matter as set out below:
  - (3) A written notice, in which the relevant owner or occupier is informed of the purpose of the meeting and invited to attend, must be sent to the owner and occupier at least seven (7) days before the meeting is held. At the meeting the owner or occupier must be given the opportunity to present their case, but except as may be permitted by the chairperson, they may not participate in the decision making or voting at the meeting.
  - (4) After the owner or occupier has been given the opportunity to present their case, the Trustees may, impose an "initial penalty" for the first offence and a "subsequent penalty" for every identical offence thereafter, without derogating the rights in law of the Trustees and Body Corporate to take further action.

- (5) Any penalty imposed in terms of Sub-Rule (4), may if it is not paid within 14 days after the owner has been notified of the imposition thereof, be added to the contribution levy account which the owner is obliged to pay.
- (6) The Body Corporate may, at a general meeting, from time to time, determine the amount of the "initial" and "subsequent" penalties, or in the absence of such a determination within the previous 2 years, the Trustees shall determine such penalties.

#### **LETTING OF RESIDENTIAL COMPONENT UNITS**

- 38.** (1) Units may not be let to any tenant or occupier for periods of less than three (3) consecutive months and owners who let the unit must ensure that the tenants have a copy of the Management, Conduct and House Rules in force and ensure that the tenants and occupiers adhere to these rules.  
  
(2) Short term letting of any nature is strictly prohibited.

#### **DEVELOPER, V & A WATERFRONT AND GREEN STAR MUR V1 RATING**

- 39.** The scheme has been designed in accordance with criteria set for a Green Star MUR v1 rating to demonstrate compliance with environmental sustainable design principles. To ensure the continuity of the green ethos throughout the operational phase of the building, any retrofits and maintenance done to the building must comply with the Architectural Guidelines issued by the Developer.

#### **DAMAGE, ALTERATIONS, DEVICES, ADDITIONS AND ATTACHMENTS TO THE COMMON PROPERTY OR TO THE EXTERIOR OF A BUILDING, STRUCTURAL ALTERATIONS AND RENOVATIONS**

- 40.** (1) Alterations to units by owners. The approval of the trustees is only required where alterations by an owner to a Unit involves structural alterations or additions to a unit including the removal, creation or modification of a wall (solid or hollow) or any structural part of the building and shall include any alteration, modification or decorative work which affects the exterior appearance of a unit. Furthermore any incidental or construction requirement related to the common services, air conditioning, sprinkler or ceiling installations shall also be defined as an alteration. The trustees shall be the



sole and final judge as to whether the work proposed constitutes "alterations" as referred to herein.

- (2) An owner shall not make any alterations to his unit or the common property which are likely to impair the stability of the building or the amenity of other units or the common property.
- (3) The trustees will be entitled to impose applicable measures and conditions when approving any particular application for improvements, alterations and or renovations
- (4) An owner or person authorised by him shall not mark, paint, drive nails or screws or the like into, or otherwise damage, or alter, any part of the common property or the exterior of a building, including the exterior of doors and windows, without first obtaining the written consent of the trustees.
- (5) Notwithstanding sub-rule 40(1), an owner or person authorised by him, may not install:
  - (a) any locking device, safety gate, burglar bars, or other safety device for the protection of his section; or
  - (b) any screen or other device to prevent the entry of animals or insects: until the trustees have first approved the nature and design of the device and the manner of its installation, and which must be in terms of the Architectural and Electrical Guidelines applicable to the scheme.
- (6) An owner shall not without the prior written consent of the trustees, who may attach reasonable conditions to their consent, construct to/on, or attach to/on the common property or to the exterior of a building, any alteration, device, addition or attachment, inclusive of but not limited to an aerial, air conditioning unit, extractor, flume or awning.
- (7) To obtain the written consent of the trustees in terms of sub-rules 40(1), 40(4), 40(5) or 40(6), the owner shall apply to the trustees in writing and the application shall be accompanied by sufficient plans and specifications that explain the nature, design, shape, size, material, colours and location of installation of the proposed alteration, device, addition or attachment.

- (8) The Trustees may grant their written consent in terms of sub-rules 40(1), 40(4), 40(5) or 40(6), or refuse such consent, in which case the trustees must give reasons for their refusal. The trustees may impose conditions when granting their consent. The owner shall comply with the guidelines and the requirements of the Trustees regarding the nature, appearance, colour and design of the alteration, device, addition or attachment and the manner and place of its installation.
- (9) As the scheme has an air-conditioning system, no further air-conditioning unit or other type of extractor or installation, including overflow pipes, may be installed or fitted.
- (10) The trustees' consent for such alterations, devices, additions or attachments may be withdrawn at any time in the event of non-compliance with any imposed conditions. In the event of such withdrawal, the owner shall be responsible for the immediate removal of the object, at his own cost, failing which the Trustees may have it removed and hold the owner liable for any costs incurred.
- (11) As a communal satellite dish is provided in respect of the scheme, owners, tenants or occupiers shall not erect their own satellite dishes but shall connect to the communal service. Owners, tenants and occupiers shall be liable for the connection fee and their own monthly subscription costs in respect of the communal service, if provided.

## **RENOVATIONS**

- 41.** An owner shall inform the trustees of intended renovations in respect of his section at least 7 (seven) days in advance. The owner shall comply with any conditions that may be imposed by the trustees in respect of the renovations.

## **STRUCTURAL ALTERATIONS**

- 42.** (1) An owner shall comply with the following provisions to obtain the written consent of the trustees to proceed with structural alterations:
  - (a) The owner shall submit an application to the trustees, together with plans and any additional documents that may be required by the trustees.

- (b) The owner shall pay a deposit as determined by the trustees, which deposit shall be refundable upon completion of the works to the satisfaction of the trustees as set out below.
  - (c) the owner shall pay the submission fee required by the trustees or managing agent (if applicable) and the scrutiny payable to the body corporate's architect (if applicable).
- (2) Upon receipt of the application, the trustees will consider the application and will advise the owner should any further documentation or information be required by them. If considered necessary by the trustees, they may request that the owner submit a report from a structural engineer confirming compliancy. If considered necessary by the trustees, they may advise the owner that they require a consultation with or a report from, an architect, engineer, legal advisor or other professional consultant regarding the proposed alterations and of the estimate costs thereof which shall be for the account of the owner.
- (3) If the trustees are satisfied that the proposed structural alterations are aesthetically acceptable, does not prejudice the harmonious appearance of the buildings and complies with the Architectural and Electrical Guidelines of the scheme, they shall convey their written consent to the owner.
- (4) The owner shall submit the building plans to the Local Authority for approval.
- (5) Once the Local Authority has approved the building plans, copies of the approved building plans must be submitted to the trustees, for their confirmation that the work may proceed. If applicable, electrical and plumbing plans must be submitted to the trustees, for approval prior to commencement of the work and compliance certificates must be submitted to the trustees upon completion of the work.
- (6) Any work which requires the authorisation of the members shall be submitted to the members of the body corporate for approval. The members of the body corporate may impose conditions when granting their approval.
- (7) Confirmation that the work may proceed will be conveyed by the trustees or the managing agent to the owner with whom a date for the commencement of the work will be arranged. The trustees will supply information as to

access by contractors and workmen and the maintenance of security within the building.

- (8) The deposit paid by the owner, shall cover any claim/s that the body corporate may have arising from, or in regard to any damage sustained to the building and/or the common property during construction of the structural alterations. The deposit shall also cover any charges levied by the trustees, and any costs incurred by the trustees in respect of the structural alterations and any penalties imposed on the owner in respect of contraventions of these rules. The deposit shall be retained by the trustees until completion of the work, to the satisfaction of the trustees. The trustees shall refund the deposit to the owner within 30 (thirty) days of completion of the work to the satisfaction of the trustees, subject to the deductions that may be made by the trustees in terms of this rule.

#### **FURTHER CONDITIONS ATTACHED TO RULES 40, 41 AND 42**

- 43.** (1) The owner shall, where applicable, comply with the following provisions with regard to the construction of alterations and renovations in terms of rules 40, 41 and 42:
- (a) The owner shall comply with the conditions imposed by the trustees or by the body corporate and the provisions of the Architectural and Electrical Guidelines of the scheme.
  - (b) The owner shall ensure that a suitably qualified and experienced contractor is appointed, especially for plumbing, electrical and waterproofing work. The owner shall provide the trustees with the details of his contractors. The owner shall ensure that a suitably qualified architect, builder and/or structural engineer is appointed in respect of the structural alterations.
  - (c) Appropriate insurance must be taken out by the owner or his contractor for the duration of the construction of structural alterations, if required by the trustees. The owner or his contractor shall make provision for fire prevention and shall ensure that the safety of owners, tenants and occupiers are not compromised.
  - (d) The owner shall comply with the requirements of the Local Authority and the regulations to the National Building Regulations and Building Standards Act, No. 103 of 1977, as amended and any other relevant

legislation and regulations.

- (e) The owner and his contractor shall adhere to the provisions of the Occupational Health and Safety Act, No. 85 of 1993.
  - (f) The owner shall ensure that the harmonious appearance of the buildings is not compromised. All doors and windows being installed must conform in outward appearance with the other doors and windows installed in similar positions elsewhere in the buildings.
  - (g) The owner shall ensure that the structural integrity of the building is not compromised.
  - (h) Any work done in pursuance of this rule, must be carried out during the times specified in the House Rules.
- (2) Should any work commence before the Trustees have granted their consent, or should the scope of work be materially changed, the Trustees may instruct an owner to have his contractor stop the work, until permission to continue has been granted by the Trustees.
- (3) Upon completion of construction of the work, the owner must notify the Trustees who shall arrange for an inspection, before refunding the deposit to the owner, subject to any deductions that may be made for damages, costs, charges and penalties in terms of these rules.
- (4) If required in terms of the Act, the owner shall ensure that the structural alterations are registered in the Deeds Registry.

## **MAINTENANCE**

- 44.** (1) An owner shall:
- (a) repair and maintain his section in a state of good repair as required by section 13 of the Act;
  - (b) repair and maintain (including renewal where reasonably necessary) the pipes, wires, cables and ducts situated inside his section and used in connection with the enjoyment of that section only, in a state of good repair as required by section 13 of the Act.
  - (c) ensure that his commercial section and the front windows or display windows in respect of his commercial section are kept in a clean and neat condition;

- (d) where applicable maintain and repair the planter box on the balcony of the Unit;
- (2) If an owner fails to:
- (a) repair or maintain his section in a state of good repair as required by section 13 of the Act; or
  - (b) repair and maintain (including renewal where reasonably necessary) the pipes, wires, cables and ducts situated inside the section and used in connection with the enjoyment of that section only, in a state good repair as required by section 13 of the Act,
  - (c) keep his commercial section and the front windows or display windows of his commercial section in a clean and neat condition;

and any such failure persists for a period of 30 (thirty) days after written notice given by the trustees or the managing agent on their behalf, the body corporate shall be entitled to remedy the owner's failure and to recover the reasonable cost of doing so from such owner; provided that the trustees make provision where necessary for any extension of timeframes where these are required as relates to the commercial component.

- (3) An owner shall replace the window panes of his section at his own costs within 7 (seven) days of it being broken, from whatsoever cause. If an owner fails to replace the window panes of his section and any such failure persists for a period of 7 (seven) days after written notice to repair or maintain given by the trustees or the managing agent on their behalf, the body corporate shall be entitled to remedy the owner's failure and to recover the reasonable cost of doing so from such owner.
- (4) An owner shall keep his exclusive use area and balcony (including but not limited to maintaining the planter box) in a clean and neat condition (and as far as the units on the 4<sup>th</sup> and 11<sup>th</sup> floor of the building are concerned, the landscaping and maintenance of the garden areas by the applicable owners). If the owner fails to keep his exclusive use area and balcony in a clean and neat condition (including maintaining the planter box and where applicable the garden areas) and any such failure persists for a period of 30 (thirty) days after written notice to do so, given by the trustees or the managing agent on their behalf, the body corporate shall be entitled to remedy the owner's failure (which includes maintaining and repairing the planter box on

the balcony) and to recover the reasonable cost of doing so from such owner. It is recorded that the maintenance of the communal area on the 10<sup>th</sup> floor is the responsibility of the Body Corporate.

- (5) Any alteration, device, addition or attachment made or installed by or on behalf of an owner in terms of sub-rules 40(1), 40(4), 40(5) or 40(6) shall be repaired and maintained by the owner of the section in a state of good repair and in a clean, neat, hygienic and attractive condition, at his own expense. If an owner fails to repair and maintain the alteration, device, addition or attachment and any such failure persists for a period of thirty (30) days after the giving of written notice to repair or maintain given by the trustees, the trustees shall be entitled to remedy the owner's failure and to recover the reasonable cost of doing so from such owner.
- (6) The costs incurred by the trustees in terms of this rule shall be due and payable by the owner upon demand, and failing which, the costs may be added to the owner's levy account and may be recovered from the owner in the same manner as applies to arrear levies, together with interest at the rate applicable to levies.
- (7) An owner, tenant or occupier shall permit any person authorized in writing by the body corporate, at all reasonable hours on notice (except in case of emergency, when no notice shall be required), to enter his section or exclusive use area for the purposes of inspecting it and maintaining, repairing or renewing pipes, wires, cables and ducts existing in the section and capable of being used in connection with the enjoyment of any other section or common property, or for the purposes of ensuring that the provisions of the Act and the rules are being observed.

#### **APPEARANCE FROM OUTSIDE**

- 45.** (1) No changes shall be made to the façade of the building by any owner. This include the green walls and planter boxes on the western and northern balconies of the building. Furthermore, an owner, tenant or occupier shall not place, store or do anything on any part of the common property, including balconies, and gardens, which in the discretion of the Trustees is aesthetically displeasing or undesirable when viewed from the outside of the section.
- (2) All balcony walls and railings must be kept obstacle free. Pot plants may be

placed on balconies, provided that the maximum loading shall not be exceeded.

- (3) Owners, tenants and occupiers of residential sections shall ensure that their sections are provided with adequate curtaining or blinds. All curtains must have white or off-white linings and all linings to curtains, and blinds must be acceptable to the Trustees in their discretion when viewed from the outside of the section. Only white-backed and lined curtains or blinds may be used as window coverings and no tinted film coatings, tinting foil sheets, towels or the like will be permitted.
- (4) No storage of any kind shall be allowed on balconies, including bicycles.
- (5) Further to sub-rule (3) above, blinds shall be restricted to roller, sliding type and colour visible to the outside shall be white, light grey or neutral in colour.
- (6) No coloured internal or external lighting shall be visible to the exterior.
- (7) All outside furniture on balconies to be aesthetically pleasing in the discretion of the Trustees.
- (8) Umbrellas to be white, light grey or neutral in colour.
- (9) Signage to the shop front of the retail unit to be subject to approval by the Trustees and must be in conformance with the V & A Waterfront Signage Committee and lease conditions.

## **EMPLOYEES**

- 46.** (1) The trustees may, in their sole discretion, require all employees employed by owners and by the body corporate to be registered with the body corporate and may require such employees to carry or display a security identification document.
- (2) All employees are to only use access and egress areas as designated as for employees and may not use areas relative to the general common property, the amenities and any other area the trustees deem so, provided that the



Trustees may also specifically authorise body corporate employees to access certain of these areas in order to carry out their specific functions and duties.

## **SECURITY CAMERAS**

- 47.** (1) The trustees are specifically authorised to install security cameras in all areas and on parts of the common property as are reasonably required, having due regard for privacy and privacy laws.
- (2) These cameras may also be used for the enforcement of the management and conduct rules and the relevant video footage may be used as evidence of where rules have been transgressed.

## **ADVERTISING SPACE, SIGNAGE AND NOTICES**

- 48.** (1) No owner or occupier of a section shall place any sign, notice, billboard or advertisement of any kind whatsoever on any part of the common property or of a section, so as to be visible from outside the section, without the prior written consent of the trustees in their sole discretion and direction.
- (2) No owner or occupier of a section shall hold, or permit to be held, any auction sale in any portion of the premises or display any advertisement on or outside the building or any portion thereof, or on the common property or exclusive use area.
- (3) No owner or occupier of a section shall allow estate agent advertising to be erected, except with the prior written permission and direction of the Trustees.
- (4) Owners shall ensure that their estate agents receive a copy of the Management, Conduct and House Rules and undertake to hand a copy of these Rules, to any purchaser prior to the signing of any sale agreement to ensure that all new owners are fully aware of their responsibilities in terms of these Rules. The trustees shall make copies of the Conduct Rules available to owners and estate agents for this purpose.

## **WATERFRONT DEVELOPMENT**

### **Specific rules and provisions relating to the operation and the ongoing development of the V & A Waterfront Development and binding on the owners of units in the scheme and the body corporate**

- 49.** (1) Each owner of a Unit in the Scheme by taking transfer of a Unit declares that he is fully aware that the Scheme is located in a working harbour environment in which a variety of activities are conducted including, inter alia, in close proximity, the operation of a synchrolift and dry dock and fishing industry activities. In terms of the phased development of the V & A Waterfront construction work is undertaken in the V & A Waterfront on an ongoing basis and that the Scheme is situated in close proximity to current and future development works. Each owner has appraised himself with the scope and ambit of the current and intended future development plans for the V & A Waterfront and approves and supports such development;
- (2) An owner of a Unit in the Scheme shall not have any claim against the Developer for damages or any other claim of whatsoever nature by reason of any nuisance or inconvenience occasioned to or damages alleged to be suffered by the Owner or any other person on account of the aforesaid working harbour activities or any construction or development activity undertaken in the V & A Waterfront , including, without being limited to, any noise, dust, smell or any other nuisance of whatever kind accompanying any such activity, whether caused by the Developer or its contractors or any other party.
- (3) Each owner of a Unit in the Scheme acknowledges that he is aware that there are entertainment venues in the V & A Waterfront and that events are being hosted by the V & A Waterfront and that he/she shall have no claim against the Developer as a result of noise, traffic or other inconveniences caused by

such events or other entertainment activities held from time to time in the V & A Waterfront.

- (4) Each owner of a Unit in the Scheme declares that as a result of the future and phased development or redevelopment of the surrounding buildings in the vicinity of the Scheme, is aware and acknowledges that the current views of his/her Unit may be interrupted or be lost as a result of such future development and accordingly that he/she shall have no claim of whatsoever nature in respect of any loss of view.

# CONDUCT RULES

*Amendments and additions to conduct rules in terms of section 10(2)(b) of the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011).*

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## **1. Animals, Reptiles And Birds**

- (1) An owner or occupier of a section shall not, without the consent in writing of the Trustees, which approval may not unreasonably be withheld, keep any animal, reptile or bird in a section or on the common property and the Trustees will use a code of good practice document marked annexure C and which annexure can be amended by the Trustees from time to time, on what constitutes reasonable conditions in sub-rule (2) below
- (2) When granting such approval, the Trustees may prescribe any reasonable conditions.
- (3) The Trustees may withdraw such approval in the event of any breach of any condition prescribed in terms of sub-rule (2).

## **2. Appearance from Outside**

Further to management rule 45, the owner or occupier of a section used for residential purposes shall not place or do anything on any part of the common property, including balconies, and gardens which, in the discretion of the Trustees, is aesthetically displeasing or undesirable when viewed from the outside of the section.

## **3. Littering and Refuse and Waste management**

- (1) An owner or occupier of a section shall not deposit, throw, or permit or allow to be deposited or thrown, on the common property any rubbish, including dirt, cigarette butts, food scraps or any other litter whatsoever.
- (2) All refuse is to be deposited into the refuse areas clearly marked on each floor of the scheme and must be stored in the appropriate refuse bags and must be placed into the refuse bins provided in the reuse area. If the bins so provided are

full, refuse may not be left in the refuse area, it is to be returned to a section and must be disposed of when the refuse bins allow.

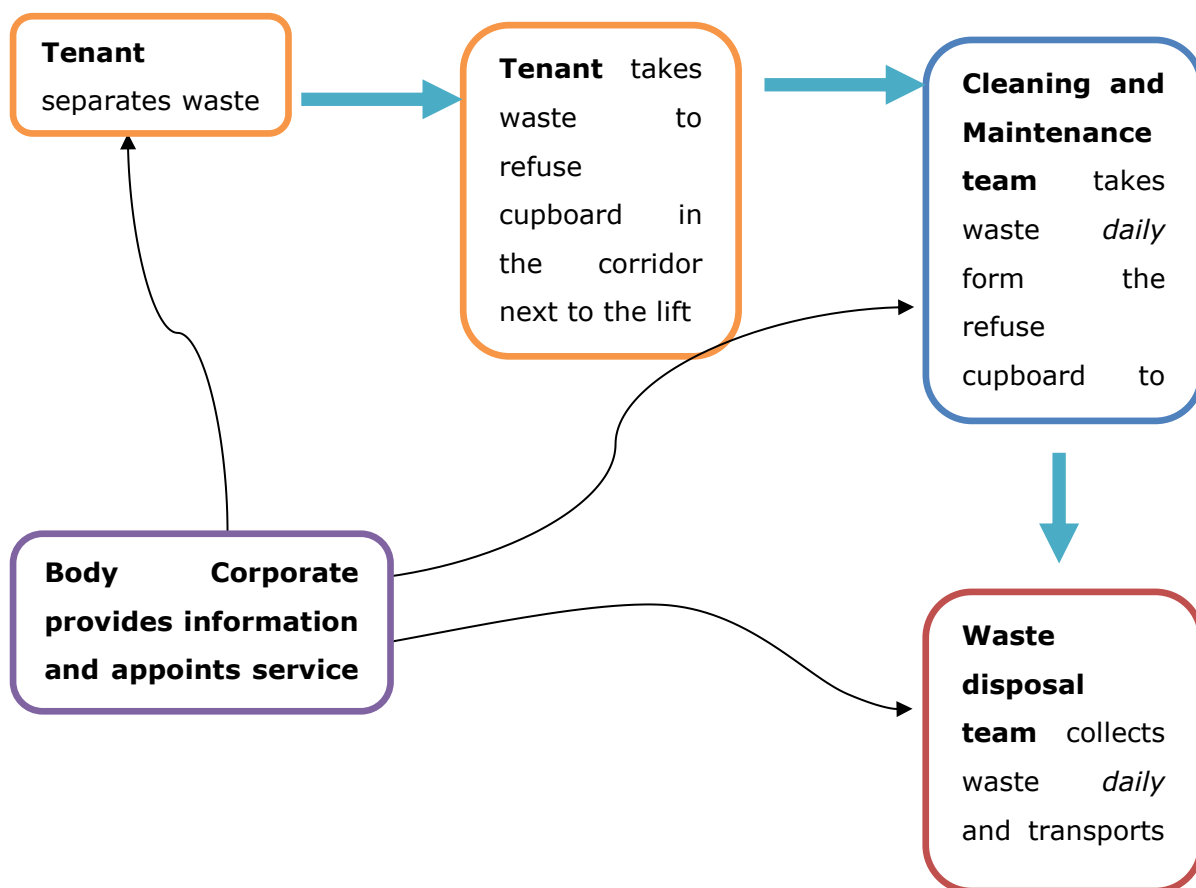
(3) Waste management

- (a) The scheme has been designed for effective waste management that encourages recycling and The V & A Waterfront Waste removal service provider, as appointed by the Body Corporate, will be responsible for collecting and removing the recyclable and non-recyclable waste for disposal.
- (b) A general cleaning service provider, as appointed by the Body corporate, will remove the waste from the refuse cupboard on each floor, daily, and transport it to the recycling room. Bins in the recycling room will be clearly marked to denote recyclable or non-recyclable goods. This service provider will also be responsible for cleaning and maintaining the refuse and recycling room.
- (c) The V & A Waterfront Wasteremoval service provider, will remove the waste stored in the recycling room regularly, and dispose of it appropriately at the cost of the Body Corporate.
- (d) The owner and occupier(s) of the retail unit will separate and remove their waste to the retail refuse room in the delivery yard. The V & A Waterfront Waste removal service provider will remove the waste from the refuse room regularly, and dispose of it appropriately for the cost of the owner and/or occupier(s). The retail owner and occupier(s) may not dispose of waste in the residential refuse room.

## Roles and Responsibilities

<b>Role</b>	<b>Responsibility</b>
Waste segregation at source in apartments	Owner/occupier
Transportation of waste from apartments to refuse room on each level	Owner/occupier
Transportation of waste from refuse room on each level to residential refuse/recycling room on ground floor	Cleaning service employed by body corporate
Transfer of waste from residential refuse/recycling storage room to waste collection	V&A Waterfront Waste Service Provider at the cost of the Body corporate
Transportation of waste from retail unit to retail refuse room in delivery yard	Owner/occupier
Transportation of waste from retail refuse room in delivery yard to waste collection	V & A Waterfront Waste Service Provider at the cost of the owner/occupier of the retail unit
Cleaning and Maintenance of residential refuse/recycling storage room	Cleaning service employed by body corporate
Signage	Body corporate
Cleaning and Maintenance of retail refuse/recycling storage room	Owner/occupier
Education of residents about WMP	Body corporate

In summary:



- (4) An Owner or Occupier of a section shall:
- (a) maintain in a hygienic and dry condition, a receptacle for refuse within his section, his exclusive use area or on such part of the common property as may be authorised by the trustees in writing.
  - (b) ensure that before refuse is placed in such receptacle it is securely wrapped, or in the case of tins or other containers, completely drained and furthermore ensure that a refuse bag is not over-filled and/or torn and that no refuse is left on top of a receptacle.
  - (c) comply with any signage in the refuse room.

- (d) not allow any refuse for the disposal of which he is responsible, to remain on any landing, staircase, walkway or in any entrance or passage, or on any part of the common property.
- (e) all domestic personnel in the Building shall be informed of these particular rules and be obliged to comply thereto.
- (f) the Trustees may from time to time make changes to the refuse room and/or the rules regulating refuse.

#### **4. Laundry**

An owner or occupier of a section shall not erect his own washing lines, nor hang any washing or laundry or any other items on any part of the building or the common property so as to be visible from outside the buildings or from any other sections.

#### **5. Storage of Inflammatory Material and Other Dangerous Acts**

An owner or occupier shall not store any material, or do or permit or allow to be done, any other dangerous act in the building or on the common property which will or may increase the rate of the premium payable by the body corporate on any insurance policy.

#### **6. Eradication of Pests**

An owner shall keep his section free of white ants, borer and other wood destroying insects and to this end shall permit the Trustees, the managing agent, and their duly authorized agents or employees, to enter upon his section from time to time for the purpose of inspecting the section and taking such action as may be reasonably necessary to eradicate any such pests. The costs of the inspection, eradicating any such pests as may be found within the section, replacement of any woodwork or other material forming part of such section which may be damaged by any such be borne by the owner of the section concerned.



## **7. Employees**

Further to management rule 46

- (1) The common property and all facilities, if any, shall be used by employees of owners or occupiers in such a manner and at such times as may be directed by the Trustees from time to time.
- (2) An owner or occupier shall be responsible for the conduct of their employees, and for any person visiting them.
- (3) An owner or occupier shall ensure that their employee(s) complies fully with the Management and Conduct Rules, does not do anything which may constitute a nuisance or danger to any other person and that any facilities are only used for the purposes for which they are intended.

## **8. Lifts**

- (1) No smoking is allowed in any lift or common use area.
- (2) Owners and occupiers must ensure that children are supervised and do not play in or with the lift.
- (3) Protective blankets or other suitable material must be used when heavy goods, furniture or appliances are transported in the lift. The lift doors are not to be wedged open.
- (4) Service lifts are to be used for goods transportation only. Guest lifts may not be used for transporting goods under any circumstances.

## **9. Security**

- (1) Access to and egress from the parking areas shall be controlled and monitored through access control systems which employ the use of remotes, discs, keypads or cards.

- (2) All access and egress shall be monitored by CCTV cameras positioned at entry points.
- (3) All visitors to the building shall be required to sign in at the Security desk and access will only be given with the consent of the owner/occupier.
- (4) All permanent domestic and other workers must be registered with the Body Corporate.
- (5) All casual labourers, workmen, domestic or other workers must report to Security and sign in.
- (6) Access will only be given with the consent of the owner/occupier.
- (7) The trustees may from time to time make changes to the security systems and rules applicable to the building.
- (8) Owners and occupiers must ensure that the security and safety of all owners and occupiers and their property are preserved at all times, and in particular must:
  - (a) ensure that upon entering or leaving, all security doors and gates are properly closed; and
  - (b) ensure that security doors and gates are never opened for persons other than their known visitors or those known by them to occupy a section or be employed by the Body Corporate.
- (9) Access security disks will be issued to owners and occupiers only. Domestic employees and visitors will not be issued with these discs. All access discs issued will be registered and controlled by the building supervisor. Should any access disc be lost, new access discs will have to be obtained from the building supervisor at the owner's or occupier's expense.
- (10) The trustees may from time to time issue directives for the proper compliance with this Rule.

## **10. Noise**

- (1) All television, radio, and other appliances emitting sound, including musical instruments, must be kept at audio levels which are reasonable in the discretion of the trustees and hotel management.
- (2) All noise which is undue in the discretion of the trustees or other owners must cease at 23h00 on Fridays and Saturdays and at 22h 00 on all other evenings.
- (3) The use of power tools, hammers and other electrical equipment is restricted to : between 08h00 and 14h00 weekdays, 08h00 to 13h00 on Saturdays, and use thereof is not allowed on Sundays or Religious and Public Holidays. No noise is permitted after 21h00 on the common property.
- (4) Hooters of vehicles may not be sounded at any time on the common property, except as a warning of imminent danger in the case of an emergency.
- (5) No explosives, crackers, fireworks or items of similar nature may be activated, lit or operated at any time, in any sections or on any part of the common property except for trustees and hotel management approved celebrations.
- (6) No firearms may be discharged in a section or on any part of the common property, except under such circumstances which would legally justify the use of a firearm for self-defence purposes.
- (7) No games may be played on the common property other than in any area/s which is designated for this purpose.

## **11. Relaxation of Rules**

- (1) No indulgence or relaxation in respect of these Rules shall constitute a waiver or consent, or prevent their enforcement by the trustees at any time, unless given in pursuance of Sub-Rule (2).
- (2) The body corporate or trustees may in special circumstances grant an indulgence, waiver or relaxation of any Conduct Rule, which shall be given in writing, signed by two (2) Trustees and which may be made subject to conditions stated therein

and which may be rescinded by the Trustees or Body Corporate at any time in their sole discretion.

## **12. Television and other installations**

- (1) Prior written approval by the Trustees is required for the installation or erection of any awnings and coverings, including the appearance, quality and colour, which may only be yellow, dark brown, the latter to be substituted by the colour yellow upon replacement. In absence of such approval, the owner may be required to remove such awning or covering within 30 days, at the owners cost, failing which the Trustees may attend to such removal and hold the owner liable for any costs so incurred.
- (2) No owner or occupier may, without the prior written approval and direction of the Trustees, erect a solar heating system or a device for the reception or transmission of radio, television or other signals which is visible from outside their section.
- (3) The Trustees' consent for such structures may be withdrawn at any time in the event of non-compliance with any imposed conditions. In the event of such withdrawal, the owner shall be responsible for the immediate removal of such object, at his/her own cost, failing which the Trustees may have it removed and hold the owner liable for any costs so incurred.
- (4) No television antenna or dish may be erected or installed.

## **13. Visitors**

An owner or occupier of a section is liable for the conduct of their visitors, guests and employees and must ensure their strict compliance with all the requirements of the Sectional Title Act and the Management and Conduct Rules.

## **14. Children and Games**

- (1) Children, including visitors' children, may only play in any designated games area and are to be supervised at all times.

- (2) Children under the age of 8 must be supervised at all times if using the lift.
- (3) No games or other recreational activities are allowed on the common property other than in any designated games area and the Trustees are authorised to impose further regulations should they consider it necessary.

#### **15. Fire-fighting Equipment**

The owner or occupier of any section shall not tamper with or damage, or cause or permit to be tampered with or damaged, any firehouse, reel or extinguisher in any manner or for any purpose other than as permitted or prescribed by the fire regulations of the relevant local authority.

#### **16. Loss or Damage**

The body corporate shall not be responsible for any loss or damage whatsoever suffered by an owner or occupier or visitor which is caused by the body corporate or by any employee or agent of the body corporate from any clause whatsoever, and it shall be the owners responsibility to effect his/her own insurance in respect of household, movable contents and vehicles in his/her section, or on any part of the common property.

#### **17. Parking**

- (1) Only owners and residents may park in the designated and secure parking area. All visitors or contractors will park in the V & A Waterfront public parking areas. Owners and residents will have the option of purchasing parking vouchers from the V & A Waterfront, to pay for their visitor's parking. The cost, purchase and usage terms and conditions governing parking vouchers will be as determined by the V & A Waterfront from time to time in its own unfettered discretion and notified to the body corporate and the owners.
- (2) No washing or maintenance of motor or other vehicles shall be permitted in parking bays. An owner or occupier shall keep his parking bays in a clean, hygienic and neat condition at all times.

## **18. Access Control and Deliveries**

- (1) Any owner or occupier of a section shall comply with the Rules imposed by the trustees for the delivery or removal of goods or material from a section.
- (2) Before any furniture or heavy goods or materials are delivered or removed from any section, the trustees or the building supervisor must be notified to ensure that adequate precautions are in place.
- (3) After any goods are delivered or removed from any section, the trustees or the building supervisor will be entitled to inspect the passageways, stairwells, lifts and any other part of the common property accessed by the movers, in order to assess any damage. Any damage noticed will be repaired at the expense of the owners or occupiers of the section concerned.
- (4) Owners, occupiers and visitors are prohibited from tampering with any lifts, automatic gates, automatic front sliding doors or any other part of the common property.

## **19. Balconies**

- (1) No climbing is permitted on or onto any of the balconies, onto any of the roofs, or over any gate, fence or wall.
- (2) No object or liquid is to be dropped, thrown or projected from the balcony or window of any section. The balcony should be vacuumed instead of swept. No hanging of washing or storing of any movables (including bicycles) on the balconies is allowed.
- (3) All planter boxes on balconies will be properly maintained and repaired by the owner, failing which the body corporate will be entitled to carry out any repairs or maintenance work to the planter boxes which may become necessary and recover such costs from the owner or occupier as provided for in management rule 44.4.
- (4) No bicycle storage is permitted on balconies.

- (5) No owner or occupier shall without the prior written consent of the Trustees, erect any blind or awning on the outside of or on the balcony of a unit, and when giving consent to the erection of blinds or awnings, the Trustees shall be empowered to impose such conditions as they deem necessary, including the colour thereof.

## **20. Common Property and Exclusive Use Areas**

- (1) No owner or occupier shall erect any tent or other structure on the common property or exclusive use area.
- (2) No owner or occupier may alter or remove any tree or plant on the common property, except with the prior written permission of the Trustees in their sole discretion.
- (3) No owner or occupier shall remove or replace the lawn on an exclusive use area, except to provide for flowerbeds bordering such exclusive use area. No owner or occupier shall plant shrubs or trees which may obstruct the view from other sections, or whose root system may cause structural damage to any part of the property.

## **21. Mail**

Mail boxes are to be kept clean and neat at all times and to be further controlled in terms of conduct rule 24.

## **22. Delivery and Moving**

- (1) The Trustees must be notified of the delivery of furniture or appliances so that the necessary arrangements and preparations can be made insofar as the use of the lift.
- (2) Moves shall take place subject to and in accordance with the provisions of the House Rules.

### **23. Consent unreasonably withheld**

If there is a dispute between an owner or occupier as to whether the trustees or the body corporate have unreasonably withheld their/its consent or approval in any case where these Conduct Rules preclude the trustees or body corporate from withholding their/its consent unreasonably, the onus shall be on the owner or occupier to prove that the trustees or body corporate have/has withheld their/its consent or approval unreasonably.

### **24. General**

- (1) No Owner or Occupier of a section may, without the prior written consent of the Trustees:
  - (a) allow more than 2 (two) persons per bedroom t.
  - (b) hold or permit to be held any auction (excluding a sale of a unit by public auction) or a fete in the section or on the common property;
  - (c) that no advertisement, name or lettering of any unsightly size, colour or character shall be painted on or affixed to any wall, Building or structure on the property and no advertisement, name or lettering of any kind shall be painted on or affixed to the roof of any Building on the property, save for signage for the Retail and Gym Components and governed by the Management Rules;
  - (d) erect, store or leave or allow to be erected, kept, stored or left any article or thing on any part of the common property;
  - (e) remove any shrub, tree or plant on or in the common property;
  - (f) erect his own washing lines nor hang any washing or other items on any part of the Building or the common property so as to be visible from outside the Building or from any other section nor be exposed to view on the premises in any unsightly manner whatsoever.



- (g) that no noisy, injurious or objectionable trade or business of any kind shall be carried on in any units or Building and such Building shall, at all times, be kept in such a state as not to be a nuisance or annoyance to any Owner and/or Occupier and surrounding neighbours.
  - (h) drill into any concrete slab of any section or any other part of the Building and/or common property due to the pre-determined reinforcement of such concrete slabs. Any Owner and/or Occupier desiring such drilling operation shall be liable for the cost of a Structural Engineer's report, confirming that such drilling operation does not interfere with the structural reinforcement.
  - (i) The Body Corporate shall not be responsible for redecoration of the internal and external of any balcony and/or terrace.
  - (j) Enclose any part of a balcony or terrace.
- (2) An Owner or Occupier shall not place or do anything on any part of the common property or on the balcony or terrace of his section which, in the Trustees' opinion, is aesthetically displeasing or undesirable when viewed from outside the Building.
  - (3) The Owner or Occupier shall be responsible for ensuring that the windows of his unit, both internally and externally are regularly cleaned and maintained and shall further ensure that any leaking windows be repaired within 72 hours of the leak becoming known to the owner.
  - (4) An Owner or Occupier shall not deposit, throw or permit or allow to be deposited or thrown on the common property any rubbish, including dust, food, scraps, cigarette butts or any other litter.
  - (5) Such storerooms may not be utilised for residential purposes nor may they be converted into any servants' quarters.
  - (6) An Owner and/or Occupier shall at all times ensure that the storm water outlets contained within the balconies or terraces are kept clear of any blockages and such balconies or terraces shall be kept clean at all times

## **25. CONFLICT WITH MANAGEMENT RULES**

In the event that there is a conflict between the Conduct Rules and the Management Rules the Management Rules shall prevail.