

ANNEXURE E



HARBOUR BAY

VILLAGE

EXCLUSIVE RETIREMENT LIVING

# HARBOUR BAY VILLAGE

MANAGEMENT RULES

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## PART 1

### INTRODUCTORY

#### 1. Preliminary

The Management Rules contained herein are the rules prescribed in terms of Section 10(2)(a) of the Sectional Title Schemes Management Act, No 8 of 2011 (the Act) as added to by the Developer in terms of Section 10(3) of the Act, read with Regulation 6 to the Act.

#### 2. Interpretation

(1) In the interpretation of these Management Rules, unless the context indicates otherwise, the words and expressions as defined in the prescribed Management Rules shall have the meaning as therein defined, and in addition to the following words and expressions shall, unless the context indicates otherwise, have the following meanings:

<b>Act</b>	the Sectional Title Schemes Management Act, No.8 of 2011, and any regulations made and in force in terms thereof;
<b>Agreement of Sale</b>	an agreement or contract under which a Unit is sold;
<b>Alienation, Alienate</b>	to divest of ownership of any Unit or part thereof, by way of sale, exchange, donation, deed, intestate or testate succession, cession assignment, court order, sequestration, liquidation, prescription or expropriation, and irrespective of whether the Alienation is subject to a suspensive or resolutive condition, and 'Alienation' or 'Alienating' shall have a corresponding meaning;
<b>Amenities and Facilities</b>	amenities and facilities situated within the Scheme, for communal use by Owners and Tenants, such as Therapeutic Garden, Herb Garden, Concierge Desk, Library Lounge, Business Centre, Captain's Quarters, Restaurant, Care Centre and laundry drop off and collection point (first phase), Health and beauty Centre with indoor pool including gym, yoga, beauty salon and hairdresser (second phase);
<b>Body Corporate</b>	The Body Corporate of the Scheme; established on date of registration of the first unit transfer;
<b>Budget</b>	an itemised estimate of the anticipated income and expenses of the Body Corporate during the ensuing Financial Year; provided that a separate budget is to be prepared in respect of maintenance items as provided for herein;
<b>Business Day</b>	every weekday other than a Saturday, Sunday, or proclaimed public holiday;
<b>Care Centre</b>	the area labelled as such on the Site Development Plan within the Admiral Building where the Care Provider will manage the Care Services inclusive of a frail care ward and a Memory Care facility;

<b>Care Provider</b>	Medwell SA
<b>Care Services</b>	the care services as fully described in “Annexure J”
<b>Chairperson</b>	the Chairperson for the time being of the Board Trustees of the Body Corporate;
<b>Clubhouse</b>	the common areas situated within the Admiral Building on the layout plan of the Scheme, comprising of functions, entertainment, lounge, bistro and bar facilities;
<b>Conduct Rules</b>	the Conduct Rules from time to time applicable to Owners and Residents in the Scheme, as contemplated in Section 10(2)(b) of the Act;
<b>Development Period</b>	a period of 10 (TEN) years from the date of establishment of the Body Corporate, alternatively such earlier date as may be notified in writing by the Developer to the Trustees;
<b>Developer</b>	Harbour Bay Village (Pty) Ltd;
<b>Exclusive Use Area</b>	an exclusive use area as defined in the Act, being either an exclusive use area depicted on the sectional plan of the Scheme in terms of Section 27 of the Sectional Titles Act, or created in these Management Rules in terms of Section 10(7) of the Act, both of which methods provide for parts of the Common Property to be allocated for an Owner’s exclusive use and enjoyment by virtue of his ownership of a particular Section;
<b>Exit Levy</b>	the levy payable by a Transferor to the Body Corporate as determined in Rule 22(12c) of these Management Rules;
<b>Financial Year</b>	the period from the 1st March of each year to the last day of February of the following year;
<b>In writing</b>	Written or printed, or partly one or partly another and other modes of representing or producing words and/or figures in visible form or as provided for in the Electronic Communications and Transaction Act, No 24 of 2002;
<b>Levies</b>	the contributions payable by Owners in terms of Section 3(1) of the Act read with Rules 22 of these Management Rules;
<b>Levy Clearance Certificate</b>	a certificate issued on behalf of the Body Corporate, in Rule in 31 of these Management Rules as contemplated in Section 15(B)(3)(a)(i)(aa) of the Sectional Titles Act;
<b>Manager</b>	a person as may be appointed by the Managing Agent as an employee of the Managing Agent in terms of Rule 9(2)(a) of these Management Rules to act as Estate Manager of the Scheme;
<b>Managing Agent</b>	a Managing Agent as defined in the prescribed management rules, fulfilling the functions as determined in

	these Management Rules, to be appointed by the Developer initially, or by his successors in title, for the duration of the Development Period;
<b>Member</b>	a Member of the Body Corporate as defined in the Act;
<b>Month</b>	a calendar month;
<b>Office</b>	the office of the Managing Agent, situated in The Admiral Building;
<b>Ombud</b>	the office of the Chief Ombud, established in terms of the Community Schemes Ombud Services Act, No 9 of 2011, or, as may be applicable, his provincial representative;
<b>Ordinary Resolution</b>	a resolution by the Members made at any general meeting, as decided by an ordinary majority of Members present or represented;
<b>Owner</b>	a registered Owner of any Unit in the Scheme;
<b>Registrar</b>	the Registrar of Deeds in Cape Town;
<b>Retired Persons Act</b>	the Housing Development Schemes for Retired Person Act, No 68 of 1988, as amended from time to time any regulations made and in force thereunder;
<b>Sales Price</b>	the gross Purchase Price of a Unit, as disclosed in the relevant Agreement of Sale;
<b>Scheme</b>	the Harbour Bay Village Sectional Title Scheme as defined in the Act and delineated on the Sectional Plan thereof;
<b>Section</b>	a section in the Scheme, as defined in the Act;
<b>Sectional Titles Act</b>	the Sectional Titles Act, No 95 of 1986, as amended;
<b>Services</b>	the care, catering and other services available within the Scheme to Owners and Residents, including but not limited to medical and care support, nursing services, meals and catering, security, IT support, laundry, shuttle service, cleaning and refuse removal and whether such services are compulsory or optional;
<b>Special Resolution</b>	a resolution passed at a general meeting of the Body Corporate, which complies with the provisions for a special resolution in terms of the Act;
<b>Transferee</b>	a natural person or juristic person to whom a Unit is Alienated and such Alienation is to be registered in the Deeds Registry;
<b>Transferor</b>	the Owner, the executor of his or her estate or any other person having legal competence in respect of his estate Alienating his Unit in a manner requiring registration in the Deeds Registry;
<b>Trustee</b>	a Trustee for the time being, and a Member of the Board of Trustees of the Body Corporate;

<b>Trustees</b>	the Board of Trustees of the Body Corporate as contemplated in Section 7 of the Act;
<b>Unanimous Resolution</b>	a resolution passed at a general meeting of the Body Corporate, which complies with the provisions of the Act in respect of Unanimous Resolution;
<b>Unit</b>	a Unit, as defined in the Act, in the Scheme;
<b>Year</b>	a calendar year.

- (2) The following rules shall apply in respect of the interpretation of these Management Rules:
- (a) The rule headings are for convenience and shall be disregarded in construing these Management Rules and, unless the context clearly indicates a contrary intention, words importing;
    - (i) the singular number only shall include the plural, and the converse shall also apply;
    - (ii) the masculine gender shall include the feminine, and neuter genders, and the neuter gender shall include the masculine and feminine genders; and
    - (iii) a reference to natural persons shall include legal persons, and the converse shall also apply.
  - (b) Words and expressions defined in any sub-rule shall, for the purpose of the rule to which that sub-rule forms part in subsequent rules, unless inconsistent with the context, bear the meaning assigned to such words and expressions in sub-rule.
  - (c) If there is a conflict between the words and numerals in the interpretation of a rule, the words shall prevail.
  - (d) If any provision in a definition in these Management Rules is a substantive provision conferring rights or imposing obligations on any of the Members, Trustees or the Body Corporate, then notwithstanding that it is only in the definition Rule, effect shall be given to it as if it were substantive provision of these Management Rules.
  - (e) If any provisions of these Management Rules is in conflict or inconsistent with any law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of these Management Rules, and such provisions shall be construed and interpreted to the minimum extent necessary so as to comply with the relevant legislation or law.
  - (f) When any number of days is prescribed in these Management Rules, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or proclaimed public holiday.
  - (g) Any reference to a provision in the Act shall include any amendments thereof.

- (h) In applying the provisions of these Management Rules and the Conduct Rules, the Trustees and Members shall at all times conduct their affairs subject to the applicable provisions of the Act and the Retired Persons Act.

### **3. Amendment and Binding Nature**

- (1) These Management Rules may be further added to, amended or repealed in accordance with Section 10 of the Act, provided that during the Development Period, they may not be amended by the Body Corporate without the written approval of the Developer.
- (2) Any amendment to these Management Rules shall be effective as from the date approval thereof by the office of the Chief Ombud.
- (3) 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 occupier of any Section or Exclusive Use Area, including the Member's and the occupier's employees, workmen, contractors, guests, visitors and family members.

### **4. Services Addresses**

- (1) The Trustees must from time to time determine the address constituting the domicilium citandi et executandi of the Body Corporate as required by Section 3(1)(o) of the Act, subject to the further provisions of prescribed Management Rule 4 which provide that the service address must be:-
  - (a) the physical address of a Section in the Scheme;
  - (b) the physical address of a duly appointed Estate Manager / 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, e-mail or other address as an alternate Body Corporate service address.
- (3) A change of the Body Corporate service address is effective when notice of such 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 the Body Corporate service address in terms of Section 3(1)(o) of the Act, simultaneously give such written notice to all Members and 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 such address for purpose contemplated in subsections 6(3)(c) and 6(4) of the Act, to another physical address, postal address or fax in the Republic of South Africa or to an e-mail address, and that the change in the service address of the Member is effective when the Body Corporate receives notice of such 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 such Section.



## PART 2

### TRUSTEES

#### 5. Trustees of the Body Corporate

- (1) As from the date of establishment of the Body Corporate until the end of the first general meeting, all Members are Trustees.
- (2) At the first general meeting and at every annual general meeting thereafter, the number of Trustees to be elected in terms of these rules must be determined by the Members; provided that:-
  - (a) there shall not be less than 5 (five) Trustees;
  - (b) until expiry of the Development Period there shall be no less and no more than 5 (five) Trustees, of whom the Developer shall be entitled to appoint 3 (three); and
  - (c) until expiry of the Development Period, the Chairperson of the Trustees shall be a nominee of the Developer, who shall hold office until the next general meeting, when he must retire as a Trustee and as Chairperson, but shall be eligible for re-election; provided that for the duration of the Development Period he shall be eligible for re-appointment by the Developer.

#### 6. Requirements for Office and Disqualification

- (1) A Trustee need not be a Member or the legally recognised representative of a Member which is a juristic person; provided that the majority of Trustees are Members (or legally recognized representatives of Members, or spouses or life partners of Members).
- (2) A person who is the Estate Manager, Managing Agent or an employee of the Managing Agent or of the Body Corporate may not be a Trustee, unless such person is a Member. However, during the Development Period, the Developer will be allowed to appoint Trustees who are under his employ.
- (3) A Trustee who has any direct or indirect personal interest in any matter to be considered by the Trustee must not be present at or play any part in the consideration or decision of the matter concerned.
- (4) A Trustee shall cease 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 of mind;
  - (c) is or becomes insolvent and the insolvency results in the sequestration of such 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 misappropriation of money;
- (g) is removed from office by an ordinary resolution at a general meeting; provided that the intention to vote on the proposed removal as 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, 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 had given a judgment or order for payment of such amount.

#### **7. Nomination, Election and Replacement of Trustees**

- (1) A member may nominate any person for the office of Trustee.
- (2) The nomination for trusteeship must be in writing, accompanied by the written consent of the person nominated and delivered to the Body Corporate service address at least 48 (forty-eight) 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 as 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; provided that, during the Development Period, if the Trustee ceasing to hold is a Trustee appointed by the Developer, then the Developer shall be entitled to appoint the 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 Trustee, as a replacement for any Trustee who is absent or otherwise unable to perform the duties of office.

#### **8. General Powers and Duties**

- (1) Subject to any restriction imposed or directive given at a general meeting of the Body Corporate, the power of the Trustees shall include the following:-

- (a) To enforce the terms and standards as stipulated in the service level agreement entered into with the Managing Agent appointed, as mentioned in rule 25, and to hold them accountable to the duties in terms of the said service level agreement, which duties include, but are not limited to the following:
  - (i) the control, management and administration of the Common Property and the Amenities and Facilities;
  - (ii) the control, management and administration of the Care Centre and provision of the Services;
  - (ii) the exercise and performance of any or all of the powers and duties of the Body Corporate;

The duties of the Managing Agent, in fulfilling the terms of the service level agreement, may require them to appoint additional agents, supervisors, caretakers, service providers, independent contractors, managers and employees from time to time, which they are entitled to do, provided the Body Corporate or Trustees authorises any appointments in writing.

- (b) To delegate to one or more of the Trustees such of their powers and duties as they deem fit, and at any time to revoke such delegation;
- (c) To prepare or adopt gardening, flora and landscaping guidelines and rules which shall be binding upon all Owners and residents and compliance to which may be enforced by the Trustees;
- (d) To prepare regulations for the use of the Amenities and Facilities, which shall be binding upon all Owners and residents and compliance to which may be enforced by the Trustees;
- (e) To issue written approvals to Tenants to reside in the Scheme, and for such purpose to require such medical interviews, examinations, information and documentation as may be necessary in the opinion of the Trustees to establish such person's suitability as a resident of the Scheme bearing in mind that the Scheme has been established to provide accommodation for retired persons. This power may be delegated to the Estate Manager / Managing Agent or the Care Provider, and no person may reside in the Scheme without such written approval; and

- (2) The Trustees may not make loans on behalf of the Body Corporate to Owners or to themselves.

## 9. Validity of Actions

- (1) No document signed on behalf of the Body Corporate is valid and binding unless it is signed on the authority of a Trustees resolution by:-
  - (a) 2 (two) Trustees or the Estate Manager / Managing Agent in the case of a clearance certificate issued by the Body Corporate in terms of Section 15(B)(3)(i)(aa) of the Sectional Titles Act; and by
  - (b) 2 (two) Trustees or 1 (one) Trustee and the Estate Manager / 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.

#### **10. Calling of and Attendance at Trustees' Meetings**

- (1) A Trustee may at any time call a meeting of Trustees by giving all other Trustees not less than 7 (seven) days' written notice of the time and place of the meeting and by setting out the agenda for the meeting; provided that:-
  - (a) in cases of urgency a Trustee may give such shorter notice as it 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 such Trustee.
- (2) The Trustees may by written resolution set dates of and a standard agenda for their future meeting and delivery of a copy of such a resolution is considered adequate notice of all such future meetings.
- (3) Members, registered bondholders, holder of future development rights and the Estate Manager / 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 which deal with:-
  - (a) discussions of contraventions of the Act or the 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 interest of the Body Corporate or any person's privacy.
- (4) If a Member, registered mortgagee or the holders of future development right in writing request 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 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 attend a meeting as provided under sub-rule (5) is considered present in person at the meeting.

## 11. Chairperson of Trustees

- (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; provided that during the Development Period, the Chairperson shall be nominee of the Developer.
- (3) The Chairperson of the Trustees hold 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; and provided further that during the Development Period, the Chairperson shall be replaced by a nominee of the Developer.
- (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 to the remainder of the period of office of his or her predecessor and has the same voting rights; provided that during the Development Period, the replacement Chairperson shall be a nominee of the Developer.
- (6) If the elected Chairperson vacated 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.

## 12. Quorum at Trustees' Meetings

- (1) At a Trustee meeting, 50 (fifty) percent of the Trustees by number, but not less than 3 (three), 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 (thirty) minutes of the appointed time for the meeting, the Trustees present, but not less than 2 (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.

### **13. Voting at Trustees' Meeting**

- (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 1 (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 2 (two) Trustees.
- (3) A Trustee is disqualified from voting in respect of –
  - (a) any proposal 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 rule; 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**

### **OWNERS' MEETING**

#### **14. Owners' Meeting**

- (1) Subject to sub-rule (7), at least 14 (fourteen) 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 Estate Manager / Manager 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 2 (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 Management Rules;
  - (b) a copy of 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 local municipality area where the Scheme is situated unless the Members have by special resolution decided otherwise.
- (5) Registered bondholders, holders of future development right and The Estate Manager / 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 their presence would reasonably interfere with the interest 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 (seven) 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 26(2) & (4);
  - (b) on less than 14 (fourteen) 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.

#### **15. First general meeting**

- (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 documentation referred to in sub-rule (2); and

- (c) a comprehensive summary of the rights and obligations of the Body Corporate under to policies and contracts referred to in sub-rule (2)(d).
  - (d) a motion to confirm or vary the terms of the policies of insurance effected by the Developer of the Body Corporate;
  - (e) a motion to confirm or vary an itemised estimate of the Body Corporate's anticipated income and expenses for its Financial Year, bearing in mind the provisions of Section 4(1)(x) and (y) of the Retired Persons' Act;
- (2) A Chairperson at a general meeting must:
- (a) ensure that the Scheme's rules, the minute books and any other documents relevant to the items of the business on the agenda are available at the meeting;
  - (b) act fairly, impartially and courteously to all Members and other entitled to attend the meeting;
  - (c) ensure that all Members and other persons entitled to speak and are able to express their views without unnecessary disturbance or interruption;
  - (d) adjourn the meeting, when it is not able to complete or continue with its business;
  - (e) make decisions on points of procedure;
  - (f) settle disputes by giving rulings on points of order; and
  - (g) 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.
- (3) 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.

## 16. Quorum

- (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 by Members entitled to vote and holding one third of the total vote of Members in value; provided that at least 2 (two) persons must be present.
- (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 (thirty) 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.

## 17. Voting and Representatives

- (1) A motion at general meeting;
  - (a) does not need to be seconded; and
  - (b) except for special or unanimous resolutions, motions must be adopted by resolution of the majority of the votes, calculated as a 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 judgement 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 a trustee for a beneficiary, that Member exercises voting rights to the exclusion of persons beneficially interest 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 mortgage bond, be substantially in the prescribed form and must be:
  - (a) delivered to the Body Corporate 48 (forty-eight) hours before the time of the meeting; and
  - (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 Management Agent or the Body Corporate.
- (7) When 2 (two) or more persons are entitled to exercise one vote jointly, that vote may be exercised only by 1 (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, 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) percent of the total value of all Member's votes:
  - (a) the Body Corporate must not take any action to implement that resolution for 1 (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 7 (seven) days from a resolution referred to in sub-rule 9(a), Members holding at least 25 (twenty-five) percent 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 (thirty minutes of the time set for the meeting;

## **PART 5**

### **FINANCIAL MANAGEMENT**

#### **18. Financial Management**

- (1) The financial year of the Body Corporate established after the Act comes into operation must run from the 1st day of March of each year to the last day of February 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) percent at the end of each 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 to 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 a 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, No 34 of 2005, compounded monthly in arrear;

- (d) invest any monies 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, 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 of these rules;
  - (g) delegate to 1 (one) or more of the Trustees, to a Member, agent or an employee such of their powers and duties as the 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 of 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, No 112 of 1976, or the Attorney Act, No 53 of 1979.

#### **19. Maintenance, Repair and Replacement Plan**

- (1) The Body Corporate or Trustees must prepare 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 10 (ten) 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.

## 20. Insurance

- (1) The Insurance policies of the Body Corporate 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
    - (ii) risks that holders of registered first mortgage bond over not less than 25 (twenty-five) percent 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 individuals Units and Exclusive Use Areas, so that no such clause applies to the building 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 (thirty) days' notice to the bondholder; and
  - (e) may include provisions 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); and
  - (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 of these rules, and must furnish the Body Corporate with written proof from the insurer of payment of that amount within 7 (seven) days of written request.

- (3) The Body Corporate must obtain a replacement valuation of all buildings and improvements that it must insure at least every 3 (three) years and present such replacement value to the annual general meeting.
- (4) The 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 Unit being to the value referred to in sub-rule 4(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) The 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 R10 000 000.00 (ten 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) The 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) The Body Corporate, authorised by special resolution of Members, may insure any additional insurable interest the Body Corporate has:
  - (a) the land and buildings included in the Scheme; and
  - (b) relating to the performance of its functions, for an amount determined in that resolution.

## 21. Administrative and Reserve Funds

- (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 19.
- (3) The following amounts must be paid into the reserve fund:-
  - (a) any part of the annual Levies designated as being for the reserves or the maintenance, repair and replacement plan;
  - (b) any amount 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; and
  - (d) any other amounts determined by the Body Corporate.
- (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 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;
    - (ii) 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 of directions given by Members.

## 22. Contributions and Charges

- (1) Expense items in the administrative Budget must include, but shall not be limited to:-
  - (a) remuneration of the Managing Agent;
  - (b) administrative costs other than in respect of the Managing Agent;
  - (c) costs of the compulsory minimum services rendered to Owners and Nominated Occupation(s) / Tenant(s) by the Care Provider;
  - (d) electricity and water supply for the common property and the Amenities and Facilities;
  - (e) municipal rates and taxes on the common property;
  - (f) maintenance not provided for in the reserve fund budget;
  - (g) salaries and wages;
  - (h) cleaning and maintenance of Exclusive Use Areas;
  - (i) security;
  - (j) insurance for all buildings, fidelity and public liability cover;
  - (k) refuse removal common area and individual sections;
  - (l) catering and laundry;
  - (m) concierge;
  - (n) information technology and telecommunication costs; and
  - (o) adequate provision for contingencies.
- (2) The Body Corporate must, as soon as possible but not later than 14 (fourteen) days after the approval of the budgets referred to in rule 23(1)(E) 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 specified contributions and charges; and
  - (b) specify the due date of 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 in respect of disputed contributions and charges.
- (3) If money owing is paid on the dates specified in the notice referred to in sub-rule (2), the Body Corporate must send a final notice to the Member, which notice must state:-
- (a) that the Member has an obligation to pay 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 (fourteen) days after the date the final notice is given.
- (4) Subject to rules 18(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.
- (5) A Member is liable for and must pay to the Body Corporate all reasonable legal costs and disbursements 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.
- (6) The Body Corporate may 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, or a penalty levied in terms of the Conduct Rules, without the Member's consent or the authority of a judgment or order by a judge, adjudicator or arbitrator.
- (7) The Body Corporate must in its annual financial statements account for all contributions and any other charges debited to Members' accounts.
- (8) 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.
- (9) The liability of Owners to pay Levies, and the proportions in which the Owners shall make such contributions, shall with effect from the date upon which the Body Corporate comes into being, be borne by the Owners in accordance with a determination made by the Developer in terms of Section 11(2) of Act. In terms of this determination, certain components of the Levies will be based on the participation quota of the Section, and other components will be charged per Section, irrespective of the size of the Section. A breakdown of the components of the Levies and the basis of their allocation is set out in Annexure "K" to the main agreement hereto, named 'DEVELOPER'S DETERMINATION'.
- (10) During the Development Period, the abovementioned determination made by the Developer may not be altered without the Developer's written consent.



- (11) Unless determined otherwise by an ordinary resolution taken at a general meeting, Levies shall be payable monthly in advance by the Owners. For purposes of clarity, the fees for certain optional Services may be payable in arrears.
- (12) (a) The transfer of Units, except when transferred by the Developer, shall be subject to payment of an Exit Levy by or on behalf of the transferor to the Body Corporate. No clearance certificate for transfer of the Unit may be issued unless payment of the Exit Levy is made or undertaken by the transferring conveyancer as required in respect of normal Levies. The Exit Levies so received shall be utilised as contribution to the reserve fund referred to in Section 3(1)(b) of the Act;
- (b) When a unit is transferred from the estate of an Owner (or from the joint estate of Transferor and his/her spouse, common law husband, common law wife or life companion) to his or her surviving spouse, common husband, common law wife or life companion as the case may be, such Alienation shall be exempt from payment of an Exit Levy, provided that such exemption shall not again apply in respect of a transfer from the estate of such surviving spouse, common law husband, common law wife or life companion.
- (c) The amount of the Exit Levy shall be either 10%, 20% or 25% whichever the case may be, of the difference between the initial purchase price and selling price after deduction of reasonable costs of improvements and enhancement and deduction of agent's commission.
- (d) Should the Trustees believe that the sale is not arms-length, or that the Sales Price is below the market value of the Unit for whatever reason, then the Exit Levy shall be based on a higher market-related valuation of the Unit as agreed to by the Trustees and the Transferor, and in the absence of such agreement, the Trustees shall appoint a sworn valuer to determine the market value. The sworn valuer shall make such determination as an expert, and his or her determination shall be binding upon the Body Corporate, The Trustees and the Transferor. The costs of the valuer shall be borne by the Body Corporate.

### **23. Financial Records, Budgets, Reports and Audit.**

- (1) The Body Corporate must:-
- (a) keep proper books of account that:-
- (i) record all its income, expenditure, assets and liabilities;
  - (ii) disclose all amount 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(2)(a) and (b) of the Act;
- (c) prepare annual financial statement 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 a 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 for each major capital item as a percentage of the accrued estimated cost and the rand value of any shortfall; and
  - (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;
- (d) prepare a maintenance, repair and replacement plan in accordance with rule 19 for presentation at the annual general meeting;
  - (e) prepare budgets for the administrative and reserve funds comprising itemized 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 (ten) percent of a Member's 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 the presentation as 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 10 (ten) 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 1 (one) person, the Body Corporate must be present audited financial statements to a general meeting for consideration as soon as possible after the end of the Financial Year.
  - (5) The audit of the 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 recognised framework or guidelines for financial accounting;
    - (c) must include opinion as to whether or not:-

- (i) the annual financial statement 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 account requirements set out in rule 21, 22 and this rule 23, with a specific description of any failure to comply with such requirements;
  - (ii) 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;
- (c) must be completed with 4 (four) months of the end of the Body Corporate's Financial year.

## **PART 6**

### **ADMINISTRATIVE MANAGEMENT**

#### **24. Governance Documents and Records**

- (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 no later than 10 (ten) days after the date of the relevant resolution of the Body Corporate; and
  - (b) compile and keep a complete set of all Management Rules 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 to all resolutions; and
    - (iv) the results of the voting on all motions;
  - (b) lists of Trustees, Members and Nominated Occupants / Tenants with their:-

- (i) full names;
  - (ii) identity numbers or, in the case of non-South African citizens; their passport numbers, and
  - (ii) Section addresses and mailing addresses, if different;
  - (iv) telephone numbers; and
  - (v) email or other electronic addresses, if any;
  - (c) list of:-
    - (i) Sections shown on the sectional plan, indication in each case whether it is 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 purpose 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 rule, and a reference to the relevant rule where applicable; and
    - (iii) registered bondholders with their names and addresses;
  - (d) details of all future developments rights including:-
    - (i) names and addresses of all registered holders of such right; and
    - (ii) copies of all documentation prepared in terms of Section 25(2) of the Sectional Title Act for any such right; and
  - (e) any other records required by the regulations.
- (3) The Body Corporate must obtain and keep copies of all 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) consent 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 Financial Year and previous Financial 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 copies of the rules and other 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;
  - (c) a Tenant;
  - (d) a person authorised in writing by a Member or registered bondholder; or
  - (e) any other person or entity authorised by a Trustees' resolution.
- (5) The Body Corporate must comply with a request for inspection or copying under this rule within 10 (ten) days unless the request is in respect of the rules, in which case the Body Corporate must comply with the request within 5 (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 (ten) 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.
- (9) Insofar as personal information is collected, processed and stored by or on behalf of the Trustees for the purposes of administering the Scheme, the Trustees must ensure that such processing complies with the requirements of law, including the Protection of Personal Information Act, No 4 of 2013, and must inter alia ensure that all such personal information is protected by adequate physical, technological and organisational safeguards.

## **25. Executive Managing Agent and Managing Agent**

- (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% (twenty-five) percent 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 rule 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 6 (six) months; and
- (f) must report at least every 4 (four) months to every Member of the Body Corporate on the administration of the Scheme.

The reports of an executive Managing Agent referred to in (3)(f) must include at least the following details:

proposed repairs to and maintenance of the common property and assets of the Body Corporate within the next 4 (four) months;

matters at the executive Managing Agent considers relevant to the condition of the common property and the assets of the Body Corporate;

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 funds; and

for the period since the appointment of the executive Managing Agent or from the date of the last report:-

the expense of the Body Corporate, including repair, maintenance and replacement costs; and

a brief description of the date and nature of all decisions made by the executive Managing Agent.

The Body Corporate may, if Trustees resolve, and must if required by a resolution of Members, appoint a Managing Agent to perform specified financial, secretarial or other management services under the supervision of the Trustees, provided that Noble Resorts (Pty) Ltd, or its nominee, shall be the managing agent for the duration of the Development Period.

A management agreement for any Management Agent must comply with the requirements for such an agreement in the Management Agent Code of Conduct in the regulations.

Subject to sub-rule 5, a management agreement may not endure for a period longer than 10 (Ten) years and may be cancelled, without liability or penalty, despite any provisions of the management agreement or other agreement to the contrary:-

by the Body Corporate on 2 (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 2 (two) months' notice.
- (8) The Body Corporate may by ordinary resolutions, cancel the management agreement in accordance with its or refuse to renew the management when it expires.

## **PART 7**

### **PHYSICAL MANAGEMENT**

#### **26. Improvements to Common Property**

- (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 (thirty) days' written notice with details:-
  - (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) The Body Corporate must, if such has not already been installed by the Developer, and 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) The Body Corporate may on the authority of a unanimous 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 a Members and occupiers of Sections must be given at least 60 (sixty) 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 3 (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 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, No 50 of 1999, or any other law.

## 27. Use of Sections and Common Property

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:-

- (a) use the common property so as to unreasonably interfere with other persons lawfully on the premises, in breach of Section 13(1)(e) of the Act;
- (b) use a Section or Exclusive Use Area so as to cause a nuisance, in breach of Section 13(1)(d) of the Act;
- (c) contravene the provisions of any:-
  - (i) law or by-law relating to use of a Section or an Exclusive Use Area; or
  - (ii) conditions of a license relating to use of a building(s) or the common property, or the carrying on of a business in a building(s); or
  - (iii) conditions of title applicable to Sections or Exclusive Use Areas;
- (d) make alterations to a Section or an Exclusive Use Area that are likely to impair the stability of a building or interfere with the use enjoyment of other Sections, the common property or any Exclusive Use Area;
- (e) 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;
- (f) 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;
- (g) construct or place any structure or building improvement on an Exclusive Use Area which in practice constitute a Section or an extension of the boundaries or floor area of a Section without complying with the requirements of the Act or the Conduct Rules; 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 conditions in regard to the use of appearance of the structure or building improvement; and
- (iii) withdraw any consent if the Master or other occupier of a Section breaches any such condition.

## 28. Obligation to Maintain

- (1) Notwithstanding that 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 1 (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 a building or otherwise materially prejudice the interest 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 to be given to the Member concerned.

## 29. Assignment of Exclusive Use Areas

- (1) In terms of Section 10(7) and (8) of the Act, rights of Exclusive Use and enjoyment of parts of the common property are hereby created and assigned to the Owners as reflected in the site development plan annexed to the main agreement marked Annexure "A".
- (2) The parts of the common property (ie. the Exclusive Use Area) referred to in sub-rule (2) above, are garden/patio areas to be maintained by the Body Corporate, garden/patio to be maintained by the respective Owners, parking bays to be maintained by the Body Corporate, covered parking bays to be maintained by the Body Corporate, some basement parking bays to be maintained by the Body Corporate, and garages / storerooms to be maintained by the Body Corporate (but only in respect of the exteriors, the interiors being the responsibility of the Owners to whom such Exclusive Use Areas are allocated).
- (6) Where maintenance duties of Exclusive Use Areas are assigned to the Body Corporate, the Body Corporate shall determine appropriate levies payable by the Owners concerned. In this regards, the Trustees may impose additional levies as contemplated in Section 3(1)(c) of the Act on the

Owners, to recover the expenses incurred by the Body Corporate in respect of their respective Exclusive Use Area.

- (7) Where maintenance duties of Exclusive use Areas are assigned to the Owners, such maintenance shall be performed to the satisfaction of the Trustees, who shall be entitled, in the event of maintenance not being performed to their satisfaction, to gain entry to such Exclusive Use Areas and have the required maintenance done at the cost of the relevant Owner.
- (8) Owners shall allow access to all Exclusive Use Areas at all reasonable times, to the Trustees, Estate Manager / Managing Agent, and employees or contractors appointment by the Trustees or Managing Agent, for the purpose of inspection, maintenance and repairs or for any other reasonable purpose.
- (9) The Trustees may consider and allow or refuse the placement or construction of a structure or building improvement on an Exclusive Use Area as contemplated in rule 30(g).
- (10) An Owner of a Linked Section may not let his Exclusive Use Area without the written consent of the Trustees, which consent shall not be unreasonably withheld and may only be granted if the Exclusive Use Area is to be let to another Nominated Occupant / Tenant in the Scheme; provided however, that where the Linked Section itself is let, the related Exclusive Use Area may without the consent of the Trustees, be let to the lessee of the Linked Section.
- (11) Upon registration of transfer of a Linked Section, the new registered Owner of the Linked Section will automatically acquire the Exclusive Use Area(s) linked to the Section as indicated in the Site Development Plan.
- (12) An exclusive Use Area held in terms of this Rule may only be cancelled or transferred to another Owner of a Section in the Scheme by means of a suitable amendment of this Rule approved by the Members of the Body Corporate by unanimous resolution; provided that during the Development Period, such a cancellation or transfer shall not be valid without the Developer's written consent.

### **30. Age Restriction, Maximum Number of Occupants and Nominated Occupants / Tenants**

- (1) Subject to the provisions of these Management Rules and the Conduct Rules, a Section may only be occupied by Nominated Occupant / Tenant approved by the Trustees as set out in sub-rules (4) and (5).
- (2) The maximum number of occupants residing in the units shall be restricted as follows:
  - a. Studio apartment: 2 people
  - b. 1 Bed apartment: 2 people
  - c. 1 Bed Sleeper Study: 3 people
  - d. 2 Bed apartment: 4 people
  - e. 3 Bed apartment: 6 people
  - f. Penthouse: 6 people
- (3) Either both Nominated Occupant(s) / Tenant(s) must be 50 (fifty) years of age or older, or 1 (one) Nominated Occupant / Tenant must be of 50 (fifty) years of age or older, and the other

Nominated Occupant / Tenant must be his or her spouse, common law wife, common law husband or life companion, who may be younger than 50 (fifty) years.

- (4) In order to obtain written approval of the Trustees for a Nominated Occupant(s) / Tenant(s) to reside in or occupy a section, an Owner must furnish the Trustees with a written nomination of his or her proposed Nominated Occupant(s) / Tenant(s), and such nomination shall be accompanied by the documents as may be prescribed from time to time by the Trustees.
- (5) Before granting their written approval for a Nominated Occupant(s) / Tenant(s) to reside in a Section, the Trustees are entitled to:-
  - (a) be satisfied as to the suitability of the Nominated Occupant(s) / Tenant(s), bearing in mind that the Scheme has been established to provide accommodation to retired persons;
  - (b) establish the care requirements of the proposed Nominated Occupant(s) / Tenant(s), and ensure that such persons have subscribed for the Services which, in the opinion of the Trustees, adequately meet such requirements;
  - (c) require such reasonable proof as the Trustees deem fit that the Nominated Occupant(s) / Tenant(s) has attained the age of 50 years;
  - (d) require a medical certificate from a qualified medical doctor or specialist relating to any mental or physical aspect of the health of the Nominated Occupant(s) / Tenant(s); and
  - (e) require payment of all outstanding Levies or contributions payable by the relevant Owner in respect of his Section, Exclusive Use Area(s) and/or his undivided share in the common property and/or monies owing for any penalties and fines and/or Services rendered to the Owner of his previous Nominated Occupant(s) / Tenant(s).
- (6) No person may reside in the Scheme without written approval from the Trustees in terms of this rule. The Trustees may delegate the development, refinement and implementation of the practical process of establishing the suitability and care requirements of potential Nominated Occupants / Tenants to the Care Provider or Estate Manager / Managing Agent.
- (7) A Section may not, without prior written consent of the Trustees, to be let or otherwise occupied by any person other than a Nominated Occupant, and such other persons mentioned in sub-rule (7), and such consent may be subject to such terms and conditions as the Trustees may impose in their discretion.

### **31. Restrictions on Transfer of a Unit**

- (1) No transfer of a Unit may be effected unless the Trustees have granted their consent to such transfer, as evidence by a Levy Clearance Certificate issued by the Trustees on behalf of the Body Corporate.
- (2) The Body Corporate may withhold the issue of a Levy Clearance Certificate if:-
  - (a) any Levies, Exit Levies, charges or contributions payable by the relevant Owner in respect of his Section, Exclusive Use Area(s) and/or his undivided share in the common property and/or monies owing for any penalties and fines and/or monies owing for

any Services rendered to the Owner and/or his Nominated Occupant(s) / Tenant(s) remain unpaid;

- (b) any building additions exist in respect of such Unit, or Exclusive Use Area(s) which have not been properly authorised and registered, as the case may be, in terms of the Act, the Sectional Titles Act, these Management Rules or the Conduct Rules;
- (c) if the format and content of the Agreement of Sale does not substantially comply with the format and content prescribed by the Trustees; and/or if
- (d) the Trustees have not been notified of the identity/ies of the proposed Nominated Occupant(s) / Tenant(s) have not been approved by the Trustees in terms of rule 30.

### 32. Sales of Units

- (1) An Agent affiliated to the Managing Agent or an Agent who is registered with the Managing Agent will function as facilitator and broker for all re-sales within the Scheme, so as to ensure that Owners and Purchasers receive accurate advice and assistance regarding the Scheme and the Services from competent and informed persons.
- (2) In amplification of sub clause 32.1 above, it is recorded that the Owner of the Unit being sold has a choice of appointment of property broker subject to the chosen property broker being approved by the Body Corporate which approval shall not be unreasonably withheld.
- (3) All agreements of Sale shall be concluded in terms of the standard written agreement as prescribed by the Trustees from time to time, which document shall disclose the full names and identity numbers of the Nominated Occupier(s) of the Purchaser.
- (4) All Agreements of Sale shall be subject to a suspensive condition that it must be approved in writing by the Trustees, failing which the agreement shall lapse. The Trustees shall provide the approval or refusal (as the case may be) as expeditiously as reasonably possible.
- (5) All transfers of Units shall be conducted by a conveyancer approved by the Trustees in order to protect the interest of the Body Corporate in such transaction, Criteria of such approval shall be:
  - (a) awareness and understanding of the provisions of these Management Rules; and
  - (b) written acknowledgement to abide by the relevant provisions of these Management Rules and the Reasonable requirements of the Trustees.

**This sub clause 32(5) shall be waived by the Body Corporate in the event that the property is sold by the Mortgagee by way of distressed sale or foreclosure.**

- (6) In amplification of sub clause 32.5 above, it is recorded that the Owner of the Unit being sold has a choice of appointment of conveyancer subject to the chosen conveyancer being approved by the Body Corporate which approval shall not be unreasonably withheld.