

# **RULES**

**SUBSTITUTED BY THE DEVELOPER**

**FOR**

**THOSE RULES AS CONTEMPLATED IN  
SECTION 35(2)(a) OF ACT NUMBER 95 OF 1986**

**AND**

**BEING FOR THE CONTROL AND MANAGEMENT  
OF THE BUILDING OR BUILDINGS KNOWN AS**

**MUTUAL HEIGHTS**

No. SS \_\_\_\_\_

**AND**

**REMAINDER ERF 4773 CAPE TOWN  
ON WHICH THE BUILDING OR BUILDINGS ARE SITUATED.**

---

## **MANAGEMENT RULES**

[Section 35(2) of the Sectional Titles Act, 1986]

---

### **PRELIMINARY**

- 1 The rules contained in this Annexure shall not be added to, amended or repealed except in accordance with section 35 (2) (a) of the Act, and subject to the provisions of section 35 (3) and (5) of the Act.

### **INTERPRETATION**

- 2 In the interpretation of these rules, unless the context otherwise indicates –
  - (a) “Act” means the Sectional Titles Act, 1986 (Act No. 95 of 1986), as amended from time to time, and any regulations made and in force thereunder;

- (b) “accounting officer” means a person who in terms of section 60 (2) of the Close Corporation Act, 1984 (Act 69 of 1984), is qualified to perform the duties of an accounting officer;
- (c) “auditor” means an auditor qualified to act as such under the Public Accountant’s and Auditors’ Act 1951 (Act No. 51 of 1951);
- (d) “registered mortgagee” means any mortgagee of whom the body corporate has been notified in writing as contemplated in section 44 (1) (f) of the Act;
- (e) “trustee” includes an alternate trustee;
- (f) words and expressions to which a meaning has been assigned in the Act, shall bear the meaning so assigned to them;
- (g) 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;
- (h) the headings to the respective rules are provided for convenience of reference only and are not to be taken into account in the interpretation of the rules.

### **DOMICILIUM CITANDI ET EXECUTANDI**

3

- (1) The trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the body corporate as required by section 37 (1) (m) of the Act, subject to the following:
  - (a) Such address shall be situated in the magisterial district in which the scheme is situated and shall be the address of the chairman or other resident trustee duly appointed in general meeting or in the magisterial district in which the offices of any duly appointed managing agent are situated being the address of such managing agent;
  - (b) No change of such address shall be effective until written notification thereof has been received by the registrar;

- (c) The trustees shall give notice to all owners of any change of such address.
- (2) The *domicilium citandi et executandi* of each owner shall be the address of the section registered in his name; Provided that such owner shall be entitled from time to time to change the said *domicilium* but that any new *domicilium* selected shall be situate in the Republic, and that the change shall only be effective on receipt of written notice thereof by the body corporate at its *domicilium*..

### **TRUSTEES OF THE BODY CORPORATE**

#### ***Qualifications; appointment and election; tenure or office; remuneration; indemnity.***

4

- (1) The number of trustees shall be determined from time to time by the members of the body corporate in general meeting, provided that there shall be not less than two trustees.
- (2) With effect from the date of the establishment of the body corporate, all owners shall be trustees who shall hold office until the first general meeting of the members of the body corporate as contemplated in rule 50 (1) whereupon they shall retire but shall be eligible for re-election.
- (3) The chairman of the trustees referred to in rule 4(2) shall be the developer concerned or his nominee, who shall hold office until the general meeting referred to in the said rule, when he shall retire as a trustee and as chairman, but shall be eligible for re-election in terms of rule 18.

#### ***Qualifications***

5 Save for the provisions of rule 4(2), a trustee or alternate trustee shall not be required to be an owner or the nominee of an owner who is a juristic person, in order to qualify for office as a trustee; Provided that –

- (a) the majority of the trustees are owners, or spouses of owners; and
- (b) the managing agent or any of his or her employees or an employee of the body corporate may not be a trustee.

6

#### ***Election of trustees***

Save for the provisions of rule 4(2), the trustees shall be elected at the first annual general and thereafter at each subsequent annual general meeting and

shall hold office until the next succeeding annual general meeting, but they shall be eligible for re-election if so nominated.

7

### *Nominations*

- 7.1 Nominations by owners for the election of trustees at any annual general meeting shall be given in writing, accompanied by the written consent of the person nominated, so as to be received at the *domicilium* of the body corporate not later than 48 hours before the meeting; Provided that trustees are also capable of being elected by way of nominations with the consent of the nominee given at the meeting itself should insufficient written nominations be received to comply with rule 4(1).
- 7.2 The owner/s for the time being of the retail sections (or sub-divisions thereof in the future), namely sections 1 to 7 shall be entitled to appoint/nominate one Trustee to the Board of Trustees from time to time and, likewise the owner of section 8 shall be entitled to appoint/nominate one Trustee to the Board of Trustees from time to time. In the case where such owners fail to appoint/nominate a Trustee, as aforesaid, the Trustees may themselves co-opt a Trustee/s in terms of the Act.

### *Vacancy in number of trustees*

- 7 The trustees may fill any vacancy in their number. Any trustee so appointed shall hold office until the next annual general meeting which he shall retire and be eligible for re-election as though he had been elected at the previous annual general meeting.

### *Alternate trustees*

9

- (1) The trustees may appoint another person, whether or not he be the owner of a unit, to act as an alternate trustee during the absence or inability to act of a trustee.
- (2) An alternate trustee shall have the powers and be subject to the duties of a trustee.
- (3) An alternate trustee shall cease to hold office if the trustee whom he replaces, ceases to be a trustee, or if the alternate's appointment is revoked by the trustees.

### *Remuneration*

10

- (1) Unless otherwise determined by a special resolution of the owners, trustees who are owners shall not be entitled to any remuneration in respect of their services as such; provided that the body corporate shall

reimburse to the trustees all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers.

- (2) The body corporate may remunerate trustees who are not owners at such rate as may be agreed upon between the body corporate and such trustees, and such trustees shall further be entitled to have refunded to them any disbursements and expenses incurred by them in the circumstances envisaged in the proviso to sub-rule (1) of this rule, provided always that an alternative trustee appointed by the trustees, who is not an owner, shall claim his remuneration, if any, from the trustee whom he replaced and not from the body corporate, unless the body corporate has been instructed in writing by such trustee to pay any portion of his remuneration to such alternate trustee.

### ***Validity of acts of trustees***

- 11 Any act performed by the trustees shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any trustee, be as valid as if such trustee had been duly appointed or had duly continued in office.

### ***Indemnity***

- 12
- (1)
- (a) Subject to the provisions of sub-rule (2), every trustee, agent or other officer or servant of the body corporate shall be indemnified by the body corporate against all costs, losses, expenses and claims which he may incur or become liable to by reason of any act done by him in the discharge of his duties, unless such costs, losses, expenses or claims are caused by the *mala fide* or grossly negligent act or omission of such person.
- (b) It shall be the duty of the trustees to pay such indemnity out of the funds of the body corporate.
- (2) The indemnity referred to in sub-rule (1) shall not apply in favour of any managing agent appointed in terms of rule 46.

## **DISQUALIFICATION OF TRUSTEES**

### ***Removal from office***

- 13 A trustees shall cease to hold office as such –

- (a) if by notice in writing to the body corporate, he resigns his office;
- (b) if he is or becomes of unsound mind;
- (c) if he surrenders his estate as insolvent, or if his estate is sequestrated;
- (d) if he is convicted of an offence which involves dishonesty;
- (e) if by resolution of a general meeting of the body corporate, he is removed from his office, provided that the intention to vote upon the removal from office has been specified in the notice convening the meeting;
- (f) if he is or becomes disqualified in terms of section 218 or 219 of the Companies Act, 1973, from being appointed or acting as a director of a company.

### ***Replacement***

- 14 The body corporate may at a general meeting appoint another trustee in the place of any trustee who has ceased to hold office in terms of rule 13, for the unexpired part of the term of office of the trustee so replaced.

### **Meeting of Trustees**

#### **QUORUM; CHAIRMAN; VOTING**

##### ***When to be held in notice***

- 15
- (1) Subject to the provisions of sub-rule (2) and (3) hereof, the trustees may give notice convening meetings, meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. It shall not be necessary to give notice of a meeting of trustees to any trustee for the time being absent from the Republic, but notice of any such meeting shall be given to his alternate, if he has appointed one, where such an alternate is in the Republic.
  - (2) A trustee may at any time convene a meeting of the trustees by giving to the other trustees and all first mortgagees in the circumstances referred to in sub-rule (3) hereof, not less than seven days' written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; Provided that in cases of urgency such shorter notice as is reasonable in the circumstances may be given.

- (3) Any mortgagee holding first mortgage bonds over units shall, if he so requires of the trustees in writing, be entitled to receive reasonable notice of all meetings of the trustees.
- (4) The nominee of any such first mortgagee shall be entitled to attend and speak at all meetings of the trustees but shall not, in his capacity as such, be entitled to vote thereat.
- (5) An owner shall be entitled to attend and speak at any meeting of the trustees, but shall not in his or her capacity as such, be entitled to vote thereat.

### *Quorum*

16

- (1) At a meeting of trustees 50 percent of the number of trustees but not less than two, shall form a quorum.
- (2) If the number of trustees falls below the number necessary to form a quorum, the remaining trustees may continue to act, but only for the purpose of appointing or co-opting additional trustees to make up a quorum or for the purpose of convening a general meeting of owners.

17 If at any meeting of trustees a quorum is not present within thirty minutes of the appointed time of the meeting, shall stand adjourned to the next business day at the same time, and the trustees then present, who shall not be less than two, shall form a quorum.

### *Chairman*

18 At the commencement of the first meeting of trustees after an annual general meeting, at which trustees have been elected, the trustees shall elect a chairman from among their number, who shall hold office as such until the end of the next annual general meeting of the members of the body corporate and who shall have a casting as well as a deliberative vote, save where there are only two trustees.

19 The trustees at a trustees meeting or the body corporate at a special meeting, in respect of either of which notice of the intended removal from office of the chairperson has been given, may remove the chairperson from his or her office.

20 If any chairman elected in terms of rule 18 vacates his office as chairman or no longer continues in office by virtue of the provisions of rule 19, the trustees shall elect another chairman who shall hold office as such for the remainder of the period of office of the first-mentioned chairman, and who shall have the same rights to voting.

- 21 If any chairman vacates the chair during the course of a meeting or is not present or is for any other reason unable to preside at any meeting, the trustees present at such meeting shall choose another chairman for such meeting who shall have the same rights of voting as the chairman.

### *Voting*

- 22 All matters at any meeting of the trustees shall be determined by a majority of the votes of the trustees present and voting.
- 23 A trustee shall be disqualified from voting in respect of any contract, or any litigation or proposed litigation, with the body corporate, by virtue of any interest he may have therein.
- 24 A resolution in writing signed by all the trustees for the time being present in the Republic and being not less than are sufficient to form a quorum, shall be as valid and effective as if it had been passed at a meeting of the trustees duly convened and held.

## **THE FUNCTIONS, POWERS AND DUTIES OF TRUSTEES**

### *General*

- 25 The duties and powers of the body corporate shall, subject to the provisions of the Act and these rules and to any restriction imposed or direction given at a general meeting of the owners of sections, be performed or exercised by the trustees of the body corporate holding office in terms of these rules.

### *Powers*

- 26
- (1) Subject to any restriction imposed or direction given at a general meeting of the body corporate, the powers of the trustees shall include the following:
- (a) To appoint for and on behalf of the body corporate such agents and employees as they deem fit in connection with;
- (i) the control, management and administration of the common property; and
- (ii) the exercise and performance of any or all of the powers and duties of the body corporate.

- (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.
- (2) The trustees may not make loans on behalf of the body corporate to owners of units or to themselves.

### *Signing of instruments*

- 27 No document signed on behalf of the body corporate shall be valid and binding unless it is signed by a trustee and the managing agent, referred to in rule 46, or by two trustees or, in the case of a certificate issued in terms of section 15B (3) (a) (i) (aa) of the Act, by two trustees or the managing agent.

## **DUTIES OF TRUSTEES**

### *Statutory and general duties*

- 28
- (1) Without detracting from the scope of the additional duties specified in rules 29 to 45, inclusive, and subject to the provisions of such rules, the trustees shall perform the functions entrusted to them by sections 37 and 39 of the Act.
  - (2) The trustees shall do all things reasonably necessary for the control, management and administration of the common property in terms of the powers conferred upon the body corporate by section 38 of the Act.
  - (3) The trustees shall do all things reasonably necessary for the enforcement of the rules in force.

### *Insurance*

- 29
- (1)
    - (a) At the first meeting of the trustees or so soon thereafter as is possible, and annually thereafter, the trustees shall take steps to insure that the buildings, and all improvements to the common property, to the full replacement value thereof against –
      - (i) fire, lightning and explosion;
      - (ii) riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organisation;

- (iii) storm, tempest and flood;
  - (iv) earthquake;
  - (v) aircraft and other aerial devices or articles dropped therefrom;
  - (vi) bursting or overflowing of water tanks, apparatus or pipes;
  - (vii) impact with any of the said buildings or improvements by any road vehicle, horses or cattle;
  - (viii) housebreaking or any attempt thereat;
  - (ix) loss of occupation or loss of rent in respect of any of the above risks;
  - (x) such other perils or dangers as the trustees or any holder, of first mortgage bonds over not less than 25% in number of the units in the scheme, may deem appropriate.
- (b) The trustees shall at all times ensure that in the policy of insurance referred to in paragraph (a) above –
- (i) there is specified the replacement value of each unit (excluding the owner's interest in the land) –
    - (aa) initially [but subject to the provisions of subparagraph (cc)] in accordance with the trustees' estimate of such value;
    - (bb) after the first annual general meeting [but subject to the provisions of subparagraph (cc)] in accordance with the schedule of values as approved in terms of paragraph (c); or
    - (cc) as required at any time by any owner in terms of paragraph (d);
  - (ii) any "average" clause is restricted in its effect to in to individual units and does not apply to the building as a whole;

- (iii) there is included a clause in terms of which the policy is valid and enforceable by any mortgagee 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 on not less than thirty days' notice to the mortgagee shall have terminated such insurance.
- (c) Before every annual general meeting, the trustees shall cause to be prepared schedules of their estimate of
    - (i) the replacement value of the buildings and all improvements to the common property; and
    - (ii) the replacement value of each unit (excluding the owner's interest in the land), the aggregate of such values of all units being equal to the value referred to in subparagraph (i) above,

and such schedules shall be laid before the annual general meeting for consideration and approval in terms of rule 56.

- (d) Any owner may at any time increase the replacement value as specified in the insurance policy in respect of his unit; provided that such owner shall be liable for payment of the additional insurance premium and shall forthwith furnish the body corporate with proof thereof from the insurer.
- (e) The trustees shall, on the written request of a mortgagee and satisfactory proof thereof, record the cession by any owner to such mortgagee of the owner's interest in the application of the proceeds of the policies of insurance effected in terms of rule 29 (1) (a).

(2)

At the first meeting of the trustees or as soon thereafter as is possible, the trustees shall take reasonable steps –

- (a) to insure the owners and the trustees and to keep them insured against liability in respect of –
  - (i) death, bodily injury or illness; and
  - (ii) loss of, or damage to, property,

occurring in connection with the common property, for a sum of liability of not less than one hundred thousand rand, which

sum may be increased from time to time as directed by the owners in general meeting; and

- (b) to procure to the extent, if any, as determined by the members of the body corporate in a general meeting, a fidelity guarantee in terms of which shall be refunded any loss of moneys belonging to the body corporate or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by any insured person being any person in the service of the body corporate and all trustees and persons acting in the capacity of managing agents of the body corporate; and
- (3) The owners may by special resolution direct the trustees to insure against such other risks as the owners may determine.

***Contributions and liability in terms of section 37 (1) and 47 of the Act***

30 It shall be the duty of the trustees to levy and collect contributions from the owners in accordance with the provisions and in the proportions set forth in rule 31.

31

- (1) The liability of owners to make contributions, and the proportions in which the owners shall make contributions for the purposes of section 37 (1) of the Act, or may in terms of section 47 of the Act be held liable for the payment of a judgment debt of the body corporate, shall with effect from the date upon which the body corporate comes into being, borne by the owners in accordance with a determination made in terms of section 32 (4) of the Act, or in the absence of such determination, in accordance with the participation quotas attaching to their respective sections.
- (2) At every annual general meeting the body corporate shall approve, with or without amendment, the estimate of income and expenditure referred to in rule 36, and shall determine the amount estimated to be required to be levied upon the owners during the ensuing financial year.
- (3) Within fourteen days after each annual general meeting the trustees shall advise each owner in writing of the amount payable by him or her in respect of the estimate referred to in subrule (2) whereupon such amount shall become payable in instalments, as determined by the trustees.
- (4) The trustees may from time to time, when necessary, make special levies upon the owners or call upon them to make special contributions in respect of all such expenses as are mentioned in rule 31 (1) above [which are not included in any estimates made in terms of rule 31 (2) above], and such levies and contributions may be made payable in one sum or by such instalments and at such time or times as the trustees shall think fit.

- (5) An owner shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the body corporate in obtaining the recovery of arrear levies, or any other arrear amounts due and owing by such owner to the body corporate, or in enforcing compliance with these rules, the conduct rules or the Act.
- (6) The trustees shall be entitled to charge interest on arrear amounts at such rate as they may from time to time determine.

***Record of rules and their availability***

32

- (1) The trustees shall keep a complete record of all rules in force from time to time.
- (2) The trustees shall on the application of –
  - (a) an owner of a unit;
  - (b) an occupant of a unit;
  - (c) the prospective purchaser of a unit;
  - (d) the holder of any registered sectional mortgage bond;
  - (e) the managing agent; and
  - (f) the auditor or the accounting officer,
 supply to any such person a copy of all rules in force, and may require them to pay a reasonable charge therefor.

***Improvements***

**Luxurious improvements**

33

- (1) The trustees may, if the owners by unanimous resolution so decide, effect improvements of a luxurious nature on the common property.

**Non-luxurious improvements**

- (2)
  - (a) Should the trustees wish to effect any improvements to the common property, other than luxurious improvements referred

to in sub-rule (1), they shall first give written notice of such intention to all owners such notice shall –

- (i) indicate the intention of the trustees to proceed with the improvement upon the expiry of a period of not less than thirty days reckoned from the date of posting such notice; and
- (ii) provide details of the improvements as to –
  - (aa) the costs thereof; and
  - (bb) the manner in which it is to be financed and the effect upon levies paid by owners; and
  - (cc) the need, desirability and effect thereof.
- (b) The trustees shall at the written request of any owner convene a special general meeting in order to discuss and to deliberate upon the proposals contained in the notice referred to in paragraph (a), at which meeting the owners may veto, amend or approve such proposal by way of special resolution.  
  
[Par. (b) substituted by GN R2435 of 1990 and corrected by GN R2542 of 1990]
- (c) In the event of such a special general meeting being called, the trustees shall not proceed with their proposals until the holding of such meeting, whereupon they shall be bound by any special resolution ensuing therefrom.
- (3) Notwithstanding the provisions of sub-rules (1) and (2), the trustees shall, if so required in writing by a majority of owners, procure the installation and maintenance in good working order, at the body corporate's cost, of separate meters to record the consumption of electricity, water and gas in respect of each individual section and the common property.
- (4) If and for so long as no separate meters have been installed in terms of sub-rule (3) the contribution payable by each owner in respect of electricity, water and gas shall be calculated in accordance with the provisions of rule 31.

34

- (1) The trustees shall –
  - (a) keep minutes of their proceedings;
  - (b) cause minutes to be kept of all meetings of the body corporate in a minute book of the body corporate kept for the purpose;
  - (c) include in the minute book of the body corporate a record of every unanimous resolution, special resolution and any other resolution of the body corporate.
- (2) The trustees shall keep all minute books in perpetuity.
- (3) On the written application of any owner or registered mortgagee of a unit, the trustees shall make all minutes of their proceedings and the minutes of the body corporate available for inspection by such owner or mortgagee.

***Books of account and records***

35

- (1) The trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the body corporate, including –
  - (a) a record of the assets and liabilities of the body corporate;
  - (b) a record of all sums of money received and expended by the body corporate and the matters in respect of which such receipt and expenditure occur;
  - (c) a register of owners and of registered mortgagees of units and of all other persons having real rights in such units (insofar as written notice shall have been given to the trustee by such owners,
  - (d) individual ledger accounts in respect of each owner.
- (2) On the application of any owner, registered mortgagee or of the managing agent the trustees shall make all or any of the books of account and records available for inspection by such owner, mortgagee or managing agent.
- (3) The trustees shall cause all books of account and records to be retained for period of six years after completion of the transactions, acts or operations to which they relate; Provided that minute books shall be retained for so long as the scheme remains registered.

[Sub-r (3) substituted by GN R2345 of 1990]

*Annual financial estimate, financial statements and report*

36

- (1) Before every annual general meeting, the trustees shall cause to be prepared an itemised estimate of the anticipated income and expenses of the body corporate during the ensuing financial year, which estimate shall be laid before the annual general meeting for consideration in terms of rule 56 hereof.
- (2) The estimate of expenses referred to in sub-rule (1) shall include a reasonable provision for contingencies.

37

The trustees shall cause to be prepared, and shall lay before every annual general meeting, for consideration in terms of rule 56 (b), a financial statement in conformity with generally accepted accounting practice, which statement shall fairly present the state of affairs of the body corporate and its finances and transaction as at the end of the financial year concerned.

[Rule 37 substituted by GN R2345 of 1990]

38

The trustees shall further cause to be prepared and shall lay before every annual general meeting a report signed by the chairman reviewing the affairs of the body corporate during the past year, for consideration in terms of rule 56 (b).

39

- (1) The trustees shall cause copies of the schedules, estimate, audited statement and report referred to in rules 29 (1) (c), 36, 37 and 38 to be delivered to each owner, and to any mortgagee which has advised the body corporate of its interest, at least fourteen days before the date of the annual general meeting at which they are to be considered.
- (2) Delivery under the last preceding sub-rule shall be deemed to have been affected if the documents referred to are sent by prepaid post addressed to the owner at his *domicilium* referred to in rule 3 (2), and to any mortgagee as aforesaid at the address of such mortgagee as reflected in the records of the body corporate.

*Audit*

40

At the first general meeting and thereafter at every ensuing annual general meeting, the body corporate shall appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting; Provided that where a scheme comprises less than ten units, an accounting officer may be appointed for that purpose.

[Rule 40 substituted by GN R2345 or 1990]

***Deposit and investment funds***

- 41 The trustees shall cause all moneys received by the body corporate to be deposited to the credit of an account or accounts with a registered commercial bank or building society in the name of the body corporate and, subject to any direction given or restriction imposed at a general meeting of the body corporate, such moneys shall only be withdrawn for the purpose of payment of the expenses of the body corporate or investment in terms of rule 43.
- 42 The trustees may authorise the managing agent to administer and operate the accounts referred to in rule 41 and 43; Provided that where the managing agent is an estate agent as defined in the Estate Agents' Act (Act 112 of 1976), the trustees may authorise such managing agent to deposit moneys contemplated in rule 41 in a trust account as contemplated in section 32 (3) of the Estate Agents' Act 1976, which moneys shall only be withdrawn for the purposes contemplated in rule 41.
- 43 Any funds not immediately required for disbursement, may be invested in a savings or similar account with any registered building society or bank approved by the trustees from time to time.

[Rule 43 substituted by GN R1422 of 1997]

- 44 Interest on moneys invested shall be used by the body corporate for any lawful purpose.

***No refunds or distribution of profits or assets***

- 45
- (1) The owners shall not be entitled to a refund of contributions lawfully levied upon them and duly paid by them.
  - (2) No portion of the profits or gains of the body corporate shall be distributed to any owner or any other person except upon destruction or deemed destruction of the building, or where such profit or gain is on a capital nature.

***The appointment, powers and duties of a managing agent***

- 46
- (1) Notwithstanding anything to the contrary contained in rule 28, and subject to the provisions of section 39 (1) of the Act, the trustees may from time to time , and shall if required by a registered mortgagee or

50% of the units or by the members of the body corporate in general meeting, appoint in terms of a written contract a managing agent to control, manage and administer the common property and to exercise such powers and duties as may be entrusted to the managing agent, including the power to collect levies and to appoint a supervisor or caretaker; Provided that a managing agent shall be appointed for a year at a time and unless the body corporate notifies the managing agent to the contrary, such appointment will be automatically renewed from year to year; Further provided that if the agreement has not been reduced to writing within thirty days of conclusion, it shall be voidable at the instance of either party.

{Sub-r. 46 (1) substituted by GN R1422 of 1997}

(2)

- (a) The trustees shall ensure that there is included in the contract of appointment of all managing agents a provision to the effect that if he is in breach of any of the provisions of his contract, or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the trustee may, without notice, cancel such contract of appointment, and that the managing agent shall have no claim whatsoever against the body corporate or any of the owners as a result of such cancellation.
- (b) Any one or more of the owners or mortgagees of sections in the buildings may, if the managing agent is in breach of the provisions of his contract or if he is guilty of any conduct which at common law would justify the termination of a contract between master and servant, require the trustees to cancel the managing agent's contract in terms of paragraph (a). The foregoing provisions shall in no way detract from the trustees' rights to cancel the managing agent's contract.
- (c) Any owner or mortgagee who required the trustees to cancel the managing agent's contract in terms of paragraph (b) shall furnish the trustees with such security as they in their discretion may determine for the payment of and shall indemnify the trustees and the body corporate against –
  - (i) all litigation costs reasonably incurred by the trustees in enforcing such cancellation against the managing agent; and
  - (ii) all other costs and damages arising out of such cancellation, purported cancellation or litigation for which the trustees or the body corporate might be liable

up to the time such owner or mortgagee formally notifies the trustees that he no longer requires them to pursue the action.

- (d) The trustees shall not be required to cancel the contract of appointment of the managing agent unless and until the owner or mortgagee requiring cancellation in terms of paragraph (b) has furnished them with the security and indemnity as specified in rule 46, paragraph (2) (c).

47 The contract with the managing agent shall further provide for the appointment to be revoked and such managing agent shall cease to hold office, if –

- (i) where the managing agent is a juristic person, an order is made for its provisional or final liquidation or, where the managing agent is a natural person, he applies for the surrender of his estate as insolvent or his estate is sequestrated either provisionally or finally or, where the managing agent is a company, it is placed under judicial management, or

- (ii) the managing agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the managing agent is a company or a close corporation any of its directors or members is convicted of an offence involving an element of fraud or an element of dishonesty, or:

[Sub-r. 47 (ii) substituted by GN R1422 or 1997]

- (iii) a special resolution of the members of the body corporate is passed to that effect; provided that in such event the managing agent so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.

48 The managing agent shall keep full records of his or her administration and shall report to the body corporate and all holders of registered sectional mortgage bonds who have notified the body corporate of their interest in terms of rule 54 (1) (b) of all matters which in his or her opinion detrimentally affect the value or amenity of the common property and any of the sections.

[Rule 48 substituted by GN R14212 or 1997]

49

- (1) The trustees shall give reasonable prior notice to the managing agent of all meetings of the trustees and he may with the consent of the trustees be present thereat.
- (2) The trustee shall from time to time furnish to the managing agent copies of the minutes of all trustees and of the body corporate.

## MEETING OF OWNERS

### GENERAL MEETINGS

#### *When to be held*

50

- (1) The first meeting of owners shall be held within sixty days of the establishment of the body corporate, at least seven day's notice of which shall be given in writing, and which notice shall be accompanied by a copy of the agenda of such meeting and details of the items referred to in sub-rule 2.
- (2) The agenda for the meeting convened under sub-rule (1), shall comprise at least the following:
  - (i) The consideration, confirmation or variation of the insurances effected by the developer or the body corporate;
  - (ii) the consideration, confirmation or variation of an itemised estimate of the anticipated income and expenses of the body corporate for the ensuing financial year;
  - (iii) the consideration and approval, with or without amendment, of the financial statements relating to the management, control and administration of the building from date of establishment of the body corporate to the date of the meeting referred to in sub-rule (1);
  - (iv) subject to section 47 (2) of the Act, the taking of cession of such contracts relating to the management, control and administration of the building as may have been entered into by the developer for the continual management, control and administration of the building and the common property and in respect of which the developer shall be obliged to submit such contracts to the meeting;
  - (v) the appointment of an auditor, or, where applicable, an accounting officer;
  - (vi) the election of trustees;
  - (vii) any restrictions or directions to be given in terms of section 39(1) of the Act; and
  - (viii) determination of the *domicilium citandi et executandi* of the body corporate.

[Sub-r. 50 (2) substituted by GN R1422 of 1997]

51

- (1) An annual general meeting shall be held within four months of the end of each financial year.
- (2) Unless otherwise decided at a general meeting or by the trustees, the financial year of the body corporate shall run from the first day of March of each year to the last day of February of the following year.

[Rule 51 substituted by GN R1422 of 1997]

52 All general meetings other than the annual general meeting shall be called special general meetings.

53 The trustees may whenever they think fit and shall upon a request in writing made either by owners entitled to 25 per cent of the total of quotas of all sections or by any mortgagee holding mortgage bonds over not less than 25 per cent in number of the units, convene a special general meeting. If the trustees fail to call a meeting so requested within fourteen days of the request, the owners or mortgagee concerned shall be entitled themselves to call the meeting.

### *Notice of general meetings*

54

- (1) Unless otherwise provided for in the Act, at least fourteen day's notice of every general meeting specifying the place, within the magisterial district where the scheme is situated, or such other place determined by special resolution of members of the body corporate, the date and the hour of the meeting and, in the case of special business, the general nature of such business, shall be given –
  - (a) to all owners;
  - (b) to all holders of registered mortgage bonds over units who have advised the body corporate of their interests; and
  - (c) to the managing agent.
- (2) The holders of registered mortgage bonds and the managing agent referred to in sub-rule (1) shall have the right to attend the meeting herein referred to and to speak at such meetings, but shall not, in their respective capacities as such, be entitled to vote thereat.

- (3) The notice referred to in sub-rule (1) (a) shall be deemed to have been sufficiently given and delivered if delivered in accordance with rule 39 (2).
- (4) The notice referred to in sub-rule (1) shall be accompanied by the documents referred to in rule 39 (1), except in the case of a meeting contemplated in rule 50 (1) or a special general meeting.
- (5) Inadvertent omission to give the notice referred to in sub-rule (1) to any person entitled to such notice or the non-receipt of such notice by such person shall, save in the case of the persons contemplated in sub-rule (1) (b), not invalidate any proceedings at any such meeting.
- (6) A general meeting of the body corporate may be called on shorter notice than that specified in sub-rule (1) hereof, provided it is so agreed by all persons entitled to attend.
- (7) A special general meeting for the purposes of passing a unanimous or special resolution may be convened for a date 30 days or less after notice has been given to all the members of the body corporate if, in the opinion of the trustees, it is necessary due to the urgency of a matter or due to the specific nature of a matter to convene the meeting with such shorter period of notice.

## **PROCEEDINGS AT GENERAL MEETINGS**

### *Ordinary and special business*

- 55 All business at any general meeting other than business referred to in rule 56 (a), (b), (c) and (d), shall be special business.

### *Annual General meeting*

- 56 The following business shall be transacted at an annual general meeting:
- (a) the consideration of the financial statement and report referred to in rules 37 and 38;
  - (b) the approval with or without amendment of
    - (i) the schedules of replacement values referred to in rule 29 (1) (c); and
    - (ii) the estimate of income and expenditure referred to in rule 36;
  - (c) the appointment of an auditor or an accounting officer;

- (d) the election of trustees;
- (e) the determination of the number of trustees for the ensuing year;
- (f) any special business of which due notice has been given in terms of rule 54;
- (g) the giving of directions or the imposing of restrictions referred to in section 39 (1) of the Act; and

[Sub-r. 56 (g) substituted by GN R1422 of 1997]

- (h) determination of the *domicilium citandi et executandi* of the body corporate.

### *Quorum*

57

- (1) No business shall be transacted at any general meeting unless a quorum of persons is present in person or by proxy at the time when the meeting proceeds to business.
- (2) A quorum at a general meeting shall be –
  - (a) the number of owners holding at least 50 per cent of the votes, present in person or by proxy or by representative recognised by law and entitled to vote, in schemes where there are ten units or less;
  - (b) the number of owners holding at least 35 per cent of the votes, present in person or by proxy or by representative recognised by law and entitled to vote in the case of schemes with less than 50 but more than 10 units; and
  - (c) the number of owners holding at least 20 per cent of the votes present in person or by proxy or by representative recognised by law and entitled to vote, in the case of schemes with 50 or more units.

58

If within half-an-hour from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time, and if at the adjourned meeting a quorum is not present within half-an-hour of the time appointed for the meeting, the owners present in person or by proxy and entitled to vote shall form a quorum.

*Chairman*

59

- (1) The chairman, if any, of the trustees shall preside as chairman at every general meeting of the body corporate, unless otherwise resolved by members of the body corporate at such meeting.
- (2) If there is no such chairman or if, at any meeting, the chairman of the trustees is not present within fifteen minutes after the time appointed for the holding of the meeting, or if he is unwilling or unable to act as chairman, the members present shall elect one of their number to be chairman.

**VOTING AT GENERAL MEETING**

*Poll*

60

- (1) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- (2) Unless a poll be so demanded, a declaration by the chairman that a resolution has on the show of hands been carried, shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour of or against such resolution.
- (3) A demand for a poll may be withdrawn.

61

A poll, if demanded, shall be taken in such a manner as the chairman thinks fit, and the result of the poll shall be deemed to be the resolution of the meeting at which such poll was demanded.

*Votes*

62

On a show of hands the owner or owners or a section, or if the owner is a juristic person, its proxy, shall have one vote; Provided that the chairman shall be entitled in his discretion, to change the manner of voting to one by poll and not by show of hands.

63

For the purpose of a unanimous or special resolution (with or without a ballot), or on a poll the value of the vote of the owner or owners of a section shall be

reckoned in accordance with a determination made in terms of section 32 (4) of the Act or, in the absence of this determination in accordance with participation quotas.

***No vote in certain circumstances***

- 64 Except in cases where a special resolution or unanimous resolution is required under the Act, an owner shall not be entitled to vote at any general meeting if–
- (a) any contributions payable by him in respect of his section and his undivided share in the common property have not been duly paid; or
  - (b) he persisted in breach of any of the conduct rules referred to in section 35 (2) (b) of the Act, notwithstanding written warning by the trustees or managing agent to refrain from breaching such rule; Provided that any mortgagee shall be entitled to vote as such owner’s proxy at any general meeting, even though paragraph (a) or the foregoing provisions of this paragraph may apply to such owner.

***Voting by trustee for beneficiary***

- 65 Where an owner of a section is as such a trustee for a beneficiary, he shall exercise the voting rights in respect of the section to the exclusions of persons beneficially interested in the trust and such persons shall not be entitled to vote.

***Joint voters***

- 66
- (1) When two or more persons are entitled to exercise one vote jointly, that votes shall be exercised only by a person (who may or may not be one of them) jointly appointed by them as their proxy.
  - (2) Notwithstanding sub-rule (1), where two or more persons are entitled to exercise one vote jointly, any one of them may demand a poll.

***Proxies***

- 67
- (1) Votes at a general meeting may be cast either personally or by proxy, whether on a poll or on a show of hands.
  - (2) A proxy shall be appointed in writing under the hand of the appointer, or his agent duly appointed in writing, and shall be handed to the Chairman prior to the commencement of the meeting; Provided that the foregoing provisions shall not apply in the case of any proxy created

and contained in any registered mortgage bond, if such mortgage bond is produced at the meeting.

- (3) A proxy need not be an owner but shall not be the managing agent or any of his or her employees, or an employee of the body corporate.

## **DUTIES OF OWNERS AND OCCUPIERS OF SECTIONS**

### *Statutory and General*

68

- (1) In addition to his obligations in terms of section 44 of the Act, an owner –
- (i) shall not use his section, exclusive use are or any part of the common property, or permit it to be used, in such a manner or for such purpose as shall be injurious to the reputation of the building;
  - (ii) shall not contravene, or permit the contravention, of any law, by-law, ordinance, proclamation or statutory regulation, or the conditions of any licence, relating to or affecting the occupation of the building, or the common property, or the carrying on of business in the building, or so contravene or permit the contravention of the conditions of title applicable to his section or any other section or to his exclusive use are or any other exclusive use area;
  - (iii) shall not make alterations which are likely to impair the stability of the building or use and employment of other sections, the common property or any exclusive use area;
  - (iv) shall not do anything to his section or exclusive use are which is likely to prejudice the harmonious appearance of the building;
  - (v) shall, when the purpose for which an exclusive use area is intended to be used, is shown expressly or by implication on or by a registered sectional plan, not use, nor permit such exclusive use are to be used, for any other purpose; Provided that with the written consent of all owners such exclusive use are may be used for another purpose;
  - (vi) shall not construct or place any structure or building improvement on his exclusive use area, without the prior written consent of the trustees, which shall not be unreasonably withheld;

- (vii) shall maintain the hot water installation which serves his section, or, where such installation serves more than one section, the owners concerned shall maintain such installation pro-rata, notwithstanding that such appliance is situated in part of the common property and is insured in terms of the policy taken out by the body corporate.
- (2) An owner who exercises his rights in terms of section 60 (3) of the Act shall bear all costs to give effect thereto.

***Binding nature***

- 69 The provisions of these rules and of the conduct rules, and the duties of the owner in relation to the use and occupation of sections and common property shall be binding on the owner of any section and any lessee or other occupant of any section, and it shall be the duty of the owner to ensure compliance with the rules by his lessee or occupant, including employees, guests and any member of his family, his lessee or his occupant.

***Owner's failure to maintain***

- 70 If an owner-
- (a) fails to repair or maintain his section in a state of good repair as required by section 44 (1) (c) of the Act; or
  - (b) fails to maintain adequately any area of the common property allocated for his exclusive use and enjoyment,

and any such failure persists for a period of thirty days after the giving of 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 reasonable cost of doing so from such owner.

- 71
- (1) Any dispute between the body corporate and an owner or between owners arising out of or in connection with or related to the Act, these rules or the conduct rules, save where an interdict or any form of urgent or other relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of these rules.
  - (2) If such dispute arises, the aggrieved party shall notify the other interested party or parties in writing and copies of such notification shall be served on the trustees and managing agents, if any. Should the dispute or complaint not be resolved within 14 days of such notice,

either of the parties may demand that the dispute or complaint be referred to arbitration.

- (3) Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties appoint an arbitrator who shall be an independent and suitably experienced and qualified person as may be agreed upon between the parties to the dispute.
- (4) If the parties cannot agree as to the arbitrator to be appointed in terms of sub-rule (3) within three days after the arbitrator has been demanded, the registrar of deeds for the deeds registry in which the scheme is registered or his or her nominee shall upon written application and subject to payment of the prescribed fee, in writing appoint an arbitrator within 7 days after he or she has been required to make the appointment so that the arbitration can be held and concluded without delay.
- (5) Arbitration shall be held informally or otherwise as the arbitrator may determine. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with. Where possible the arbitration shall be concluded within 21 days after the matter has been referred to for arbitration in terms of sub-rule (2) or security for costs has been furnished.
- (6) The arbitrator shall make his or her award within 7 days from the date of the completion of the arbitration and shall in making his or her award, have regard to the principles laid down in terms of these rules. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as he or she may determine and as he or she in his or her discretion, may deem appropriate having regard to the outcome of the arbitration.
- (7) The decision of the arbitrator shall be final and binding and may be made an order of the High Court upon application of any party to be affected by the arbitration.

## **HERITAGE SIGNIFICANCE OF THE LAND AND BUILDINGS**

72

- (1) It is in the interests of all owners that the Heritage Significance of the land and buildings, which are situate within an urban conservation area, be preserved, as set out in the condition imposed by the Developer under Section 11(3)(b) of Act 95/1986.

- (2) To this end, the provisions of the Heritage Impact Assessment, dated August 2003, annexed hereto marked "A" form part of these Management Rules and shall be binding on the Trustees and the Body Corporate at all times.
- (3) The Trustees and all members of the Body Corporate shall be obliged to adhere to the provisions of the Heritage Impact Assessment in their dealings with the land and buildings comprising the Sectional Title Scheme Mutual Heights, in particular, regarding the Principal Areas, Secondary Areas, and the Significant Elements referred to in Paragraphs 7.1, 7.2 and 7.3 of such Heritage Impact Assessment.

### 73 **USEAGE**

- (1) No owner or occupier of a section shall be entitled to use a section or any part of the common property in contravention of the provisions of any Town Planning or Zoning requirements, municipal or other laws applicable to the land and buildings comprising Mutual Heights from time to time.
- (2) It is in the interests of all owners that a certain standard of decorum is maintained in the Scheme and it is accordingly necessary to ensure that certain occupancy levels are not exceeded, the occupancy levels shall be limited as follows:

Two persons per bedroom