

MANAGEMENT RULES

OF

BLUE MOUNTAIN HAVEN BODY CORPORATE  
(In terms of Section 35(2) of the Sectional Titles Act)

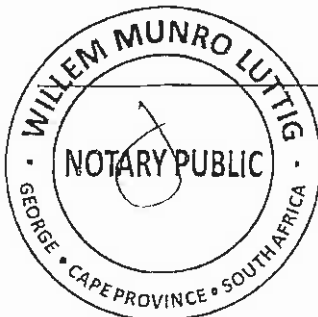


PRELIMINARY

- 1) The rules contained in this Annexure shall not be added to, amended or repealed except in accordance with section 35 (2) (a) of the Act, and subject to the provisions of section 35 (3) and (5) of the Act.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 No. 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 80 of 1991);
  - d) **“home owners association”** means Blue Mountain Village Home Owners Association trading as Blue Mountain Master Property Owners Association, registration number 2006/027010/08;
  - e) **“facility provider”** means the developer of the scheme, namely Blue Mountain Carenet Haven (Pty) Limited, registration number 2006/024546/07;
  - f) **“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;
  - g) **“trustee”** includes an alternate trustee;
  - h) words and expressions to which a meaning has been assigned in the Act, shall bear the meanings so assigned to them;
  - i) 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;
  - j) 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.



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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-
- i) 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;
  - ii) no change of such address shall be effective until written notification thereof has been received by the registrar; and
  - iii) 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 situated 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 (RULES 4 – 12)

GENERAL

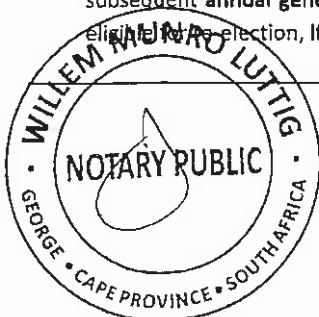
- 4) (1) The number of trustees shall be determined from time to time by the members of the body corporate in general meeting, provided that there shall be not less than two trustees.
- (2) With effect from the date of the establishment of the body corporate, all owners shall be trustees who shall hold 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 unless he or she is an owner.

ELECTIONS OF TRUSTEES

- 6) Save for the provisions of rule 4 (2), the trustees shall be elected at the first annual general meeting 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.



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NOMINATIONS

- 7) 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): Provided further that no nomination or appointment as trustee, of a person in breach of rule 64(a) or 64(b), may be made or accepted.

VACANCY IN NUMBER OF TRUSTEES

- 8) The trustees may fill any vacancy in their number. Any trustee so appointed shall hold office until the next annual general meeting when 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 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

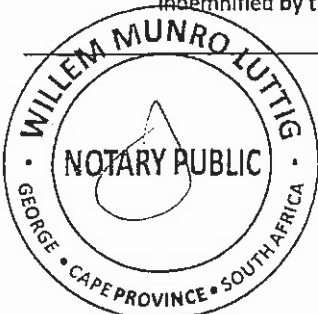
- 10) (1) Unless otherwise determined by a special resolution of the owners, trustees who are owners shall not be entitled to any remuneration in respect of their services as such: Provided that the body corporate shall reimburse to the trustees all disbursements and expenses actually and reasonably 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 alternate trustee appointed by a 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



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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 (RULES 13 – 14)

REMOVAL FROM OFFICE

13) A trustee 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 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; or
- g) if he is in arrears for more than 60 days with any levies and contributions payable by him in respect of his unit or exclusive use area (if any) and if he fails to bring such arrears up to date within 7 days of being notified in writing to do so.

REPLACEMENT

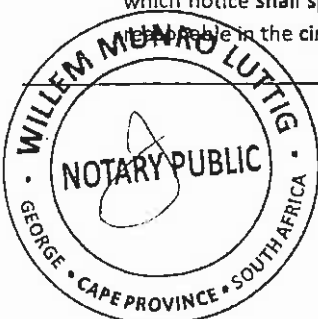
14) The body corporate may at a general meeting appoint another trustee in the place of any trustee who has ceased to hold office in terms of rule 13, for the unexpired part of the term of office of the trustee so replaced.

MEETINGS OF TRUSTEES (RULES 15 – 24)

WHEN TO BE HELD AND 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 dispatch 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.



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- (3) Any mortgagee holding first mortgage bonds over units shall, if he so requires 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 the trustees, more than 50 percent of the number of trustees must be present to 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 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.

ADJOURNMENT DUE TO LACK OF QUORUM

- 17) If at any meeting of trustees a quorum is not present within thirty minutes of the appointed time of the meeting, such 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.

ELECTION OF 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.

REMOVAL FROM OFFICE

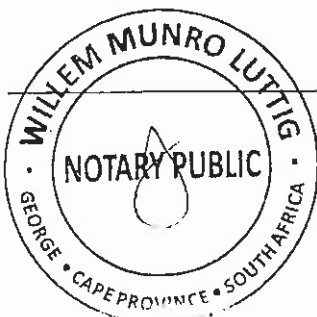
- 19) The trustees at a trustees' meeting or the body corporate at a special meeting, in respect of either of which notice of the intended removal from office of the chairperson has been given, may remove the chairperson from his or her office.

REPLACEMENT OF CHAIRMAN

- 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 of voting.

TEMPORARY CHAIRMAN

- 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.



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VOTING RIGHTS

22) All matters at any meeting of the trustees shall be determined by a majority of the votes of the trustees present and voting.

DISQUALIFICATION FROM VOTING

23) A trustee shall be disqualified from voting in respect of any contract or proposed contract, or any litigation or proposed litigation, with the body corporate, by virtue of any interest he may have therein.

ROUND ROBIN RESOLUTION

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 (RULES 25 -27)

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-

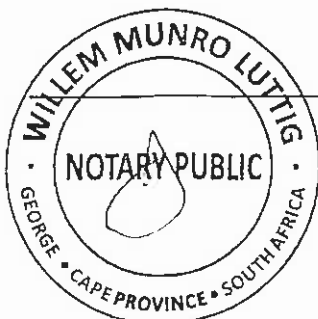
- (i) the control, management and administration of the common property; and
- (ii) the exercise and performance of any or all of the powers and duties of the body corporate;

(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 this 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)(i) (aa) of the Act, by two trustees or the managing agent.



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DUTIES OF TRUSTEES (RULES 28 – 45)

STATUTORY AND GENERAL DUTIES

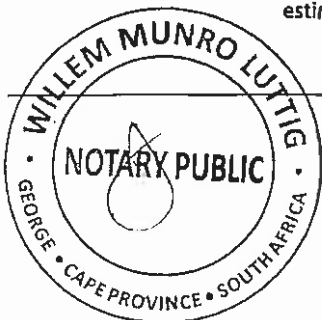
- 28) (1) Without detracting from the scope of the additional duties specified in rules 29 to 45, inclusive, and subject to the provisions of such rules, the trustees shall perform the functions entrusted to them by sections 37 and 39 of the Act.
- (2) The trustees shall do all things reasonably necessary 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 soon thereafter as is possible, and annually thereafter, the trustees shall take steps to insure the buildings, and all improvements to the common property, to the full replacement value thereof, subject to negotiation of such excess, premiums and insurance rates as in the opinion of the trustees are most beneficial to the owners, 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 organization;
  - (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;



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- (4) The owner of a section is responsible for any excess payment in respect of his or her section payable in terms of a contract of insurance entered into by the body corporate: provided that owners may by special resolution determine that the body corporate is responsible for excess payments in respect of specified damage.

#### COLLECTION OF CONTRIBUTIONS

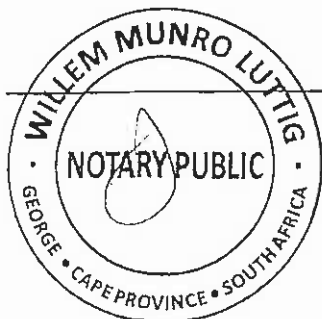
- 30) It shall be the duty of the trustees to levy and collect contributions from the owners in accordance with the provisions and in the proportions set forth in rule 31.

#### LIABILITY IN TERMS OF SECTIONS 37(1) AND 47 OF THE ACT

- 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, be 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.
- (2A) Where the financial year-end and the annual general meeting of a body corporate do not coincide, the budget shall coincide with the financial year of the scheme.
- (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 sub rule (2), whereupon such amount shall become payable in installments, 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 as are mentioned in rule 31(2) above), and such levies and contributions may be made payable in one sum or by such installments 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 and shall ensure that any amendment, substitution, addition or repeal of such rules (as contemplated in section 35(5) of the Act) is submitted forthwith to the Registrar of Deeds for filing as contemplated in section 35(5)(c) of the Act.



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(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 such person a copy of all rules in force, and may require them to pay a reasonable charge therefor.

#### IMPROVEMENTS ON THE COMMON PROPERTY

##### **Luxurious**

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

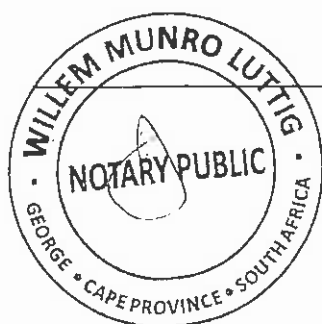
##### **Non-luxurious**

(2) (a) Should the trustees wish to effect or remove 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 or removal thereof 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 improvement or removal thereof 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 approve, with or without amendments, such proposals by way of special resolution.

(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.



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- (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.

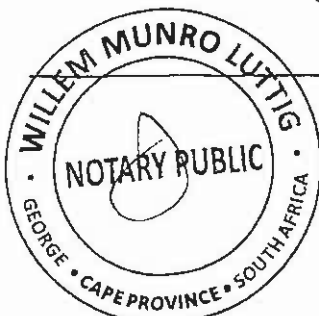
#### MINUTES

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, mortgagees or other persons) showing in each case their addresses; and
- (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 a 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.



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ANNUAL FINANCIAL ESTIMATE

- 36) (1) Prior to the commencement of every financial year of the body corporate, the trustees shall cause to be prepared an itemized estimate of the anticipated income and expenses of the body corporate for 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 and the maintenance of the common property.

ANNUAL FINANCIAL STATEMENT

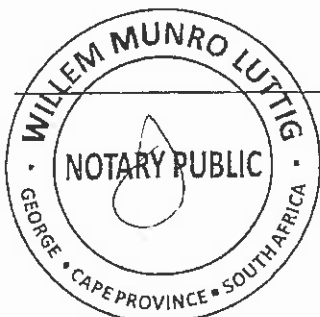
- 37) (1) The trustees shall cause to be prepared, and shall lay before every annual general meeting, for consideration in terms of rule 56(a), a financial statement in conformity with generally accepted accounting practice, which statement shall fairly present the state of affairs of the body corporate and its finances and transaction as at the end of the financial year concerned.
- (2) The financial statement shall include information and notes pertaining to the proper financial management by the body corporate, including:
  - (a) the age analysis of debts in respect of levies, special levies and other contributions;
  - (b) the age analysis of amounts owing by the body corporate to the creditors and in particular to any public or local authority in respect of rates and taxes and charges for consumption or services, including but not limited to, water, electricity, gas, sewerage and refuse removal; and
  - (c) the expiry dates of all insurance policies.

ANNUAL TRUSTEES' REPORT

- 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(a).

DELIVERY OF ESTIMATE, STATEMENT AND REPORT

- 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 for purposes of sub rule (1) shall be deemed to have been effected if the documents referred to are sent to the owner at the address 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: Provided that delivery for purposes of sub rule (1) shall also be deemed to have been effected on the owner if the said documents are transmitted by facsimile or electronic mail to a facsimile number or electronic mail address specified by such owner in writing for the purposes of receiving such documentation which specification shall only be effective on receipt thereof by the body corporate at its domicilium.



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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 10 units, an accounting officer may be appointed for that purpose and the auditor or accounting officer, as the case may be, must sign the financial statements.

DEPOSIT OF 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.

MANAGING AGENT'S CONTROL OF FUNDS

- 42) The trustees may authorize the managing agent to administer and operate the account referred to in rule 41 and 43: Provided that where the managing agent is an estate agent as defined in the Estate Agents' Act, 1976 (Act 112 of 1976), the trustees may authorize 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.

INVESTMENT OF FUNDS

- 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.

USE OF INTEREST

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

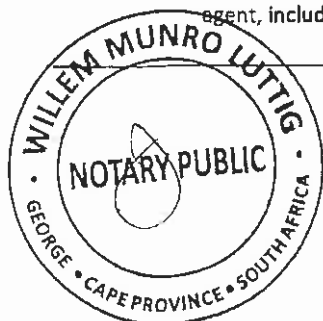
NO REFUNDS OR DISTRIBUTION OF PROFITS OR ASSETS

- 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 of a capital nature.

MANAGING AGENT (RULES 46 -49)

APPOINTMENT, POWERS AND DUTIES

- 46) (1) (a) 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 of 25 per cent 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 the obligations to any public or local authority by the body corporate on behalf of the unit owners, 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.



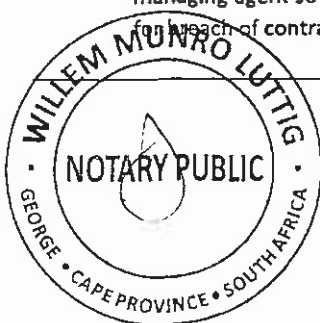
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- (b) A managing agent is appointed for an initial period of one year and thereafter such appointment shall automatically be renewed from year to year unless the body corporate notifies the managing agent to the contrary: provided that notice of termination of the contract may be given by the trustees in accordance with a resolution taken at a trustee meeting or an ordinary resolution taken at a general meeting.
- (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 trustees 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).

**MANDATORY PROVISIONS IN MANAGING AGENCY CONTRACT**

- 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:
- a) 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 sequestered either provisionally or finally or, where the managing agent is a company, it is placed under judicial management; or
- b) 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
- c) 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.



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RECORDS OF ADMINISTRATION

48) The managing agent shall keep full records of his or her administration and shall report to the body corporate and to 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.

NOTICE AND MINUTES TO MANAGING AGENT

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 trustees shall from time to time furnish to the managing agent copies of the minutes of all meetings of the trustees and of the body corporate.

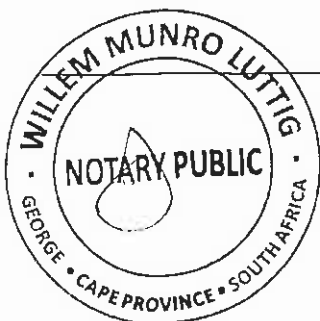
MEETINGS OF OWNERS (RULES 50 – 55)

FIRST MEETING

50) (1) The first meeting of owners shall be held within sixty days of the establishment of the body corporate, at least seven days' 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 itemized 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 notice 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.



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ANNUAL GENERAL MEETINGS

- 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 in each year to the last day of February in the following year.

SPECIAL GENERAL MEETINGS

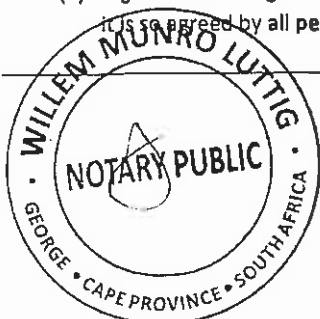
- 52) All general meetings other than the annual general meeting shall be called special general meetings.

CONVENING 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 the 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

- 54) (1) Unless otherwise provided for in the Act, at least fourteen days' 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-
- i) to all owners;
  - ii) to all holders of registered mortgage bonds over units who have advised the body corporate of their interests; and
  - iii) 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), or failure to deliver the documentation referred to in rule 39(1), to any person entitled to such notice or documentation, or the non-receipt of such notice or documentation 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.



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- (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.

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 (RULES 56 – 67)

COMPULSORY ITEMS OF AGM AGENDA

56) The following business shall be transacted at an annual general meeting:

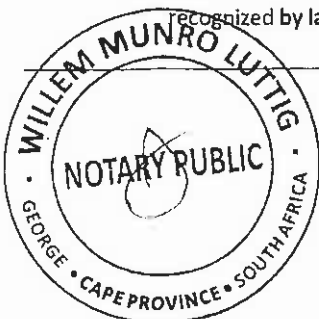
- a) The consideration of the financial statement and report referred to in rules 37 and 38;
- b) the approval with or without amendment of-
  - (i) the schedules of replacement values referred to in rule 29(1)(c); and
  - (ii) the estimate of income and expenditure referred to in rule 36;
- c) the appointment 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;
- h) the determination of the domicilium citandi et executandi of the body corporate; and
- i) the confirmation by the auditor or accounting officer that any amendment, substitution, addition or repeal of the rules (as contemplated in section 35(5) of the Act) have been submitted to the Registrar of Deeds for filing as contemplated in section 35(5)(c) of the Act.

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 recognized by law and entitled to vote, in schemes where there are ten units or less;



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- (b) the number of owners holding at least 35 per cent of the votes, present in person or by proxy or by representative recognized 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 recognized by law and entitled to vote, in the case of schemes with 50 or more units.

ADJOURNMENT DUE TO LACK OF QUORUM

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 a chairman for such meeting.

VOTING PROCEDURE

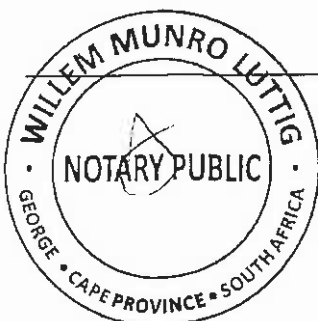
- 60) (1) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- (2) Unless a poll be 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.

POLL PROCEDURE

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.

VALUE OF VOTES BY SHOW OF HANDS

62) On a show of hands the owner or owners of a section, or if the owner is a juristic person, its proxy, shall have one vote for each section owned: 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.



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VALUE OF VOTES FOR SPECIAL OR UNANIMOUS RESOLUTIONS OR ON A POLL

- 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 exclusion 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 vote 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.



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DUTIES OF OWNERS AND OCCUPIERS OF SECTIONS (RULES 68 – 70)

STATUTORY AND GENERAL

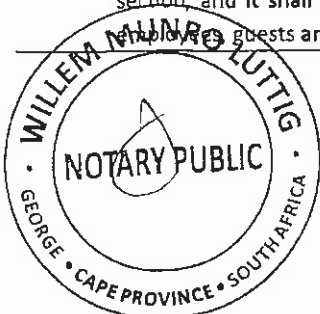
68) (1) In addition to his obligations in terms of section 44 of the Act, an owner-

- i) shall not use his section, exclusive use area 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 license, 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 area or any other exclusive use area;
- iii) shall not make alterations which are likely to impair the stability of the building or the use and enjoyment of other sections, the common property or any exclusive use area;
- iv) shall not do anything to his section or exclusive use area which is likely to prejudice the harmonious appearance of the building;
- v) shall, when the purpose for which a section and exclusive use area is intended to be used, -
  - (a) is shown expressly or by implication on a registered sectional plan;
  - (b) is shown expressly or by implication on the original approved building plan thereof;
  - (c) can be inferred from the provisions of the rules; or
  - (d) is obvious from its construction, layout and available amenities,not use, nor permit such section or exclusive use area to be used, for any other purpose: Provided that with the written consent of all owners such section or exclusive use area may be used for another purpose;
- (vi) shall not construct or place any structure or building improvement on his or her exclusive use area, without the prior written consent of the trustees, which shall not be unreasonably withheld and that the provisions of section 24 and section 25 or other relevant provisions of the Act or the rules, will not be contravened;
- (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.



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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,
  - (c) 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 the reasonable cost of doing so from such owner.

DETERMINATION OF DISPUTES BY ARBITRATION

- 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 a dispute or complaint arises, the aggrieved party shall notify the other affected party or parties in writing and copies of such notification shall be served on the trustees and the managing agents, if any, and 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: Provided that, if an owner declares a dispute with the body corporate, it shall be sufficient notice if notification is served on the trustees and managing agents, if any, and such owner will not be required to serve notice on each of the other owners.
- (3) Subject to the provisions of rule 77(5)(f), 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 subrule (3) within three days after the arbitration has been demanded, the Director of the Cape Law Society established in terms of the Attorneys Act 53 of 1979 or his or her nominee shall upon written application in writing appoint an arbitrator 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 the 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 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.



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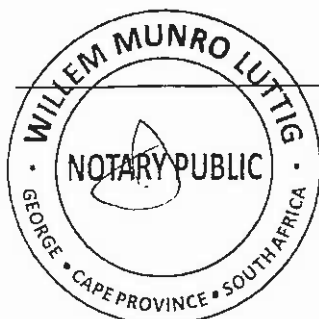
- (7) The decision of the arbitrator shall be final and binding and may be made an order of the High Court upon application of any party to or affected by the arbitration.
- (8) Notwithstanding that the Arbitration Act, No. 42 of 1965, makes no provision for Joinder of parties to an arbitration without their consent thereto, should a dispute arise between the body corporate and more than one owner or between a number of owners arising out of the same or substantially the same cause of action, or where substantially the same order would be sought against all the parties against whom the dispute has been declared, such parties shall be automatically joined in the arbitration by notice thereof in the original notice of dispute given in terms of sub-rule (2).

#### AGE RESTRICTION

- 72) (1) A unit in the scheme may only be occupied by persons older than 48 (forty eight) years or of whom 1 (one) of the spouses is 48 (forty eight) years or older, unless 80% (eighty percent) of the members of the body corporate consent to the reduction of this age restriction.
- (2) Rule 72(1) shall not be applicable on the surviving spouse of an occupant of a unit after the death of the qualified occupant, provided that it shall be the responsibility of such surviving spouse to notify the trustees of the body corporate in writing and to provide the particulars of the person younger than 48 (forty eight) years who shall occupy the unit.
- (3) Rule 72(1) is only applicable on the occupation of a unit and does not prohibit a person younger than 48 (forty eight) years from acquiring ownership of or other proprietary rights in the unit.
- (4) Notwithstanding differently worded provisions, Rule 72 can only be amended or revoked by a unanimous resolution of the body corporate.

#### UNIT RE-SALE PROCEDURES

- 73) All owners of units are obliged to comply with these management rules and must adhere to the following selling procedures when they sell their units:
- (1) They must obtain a standard re-sale agreement from the trustees to be completed and signed by the purchaser and seller. They must pay an administrative fee to the body corporate to cover the preparation cost thereof.
- (2) Any prospective purchaser must fill out the necessary application form in terms of which:
- (a) he consents to a medical assessment by his primary health care practitioner and the completion by such practitioner of the assessment form designed to provide data on the medical, psychosocial and functional capabilities and limitations of the prospective purchaser. The completed assessment form must be submitted to the General Manager of the scheme within 7 (seven) days from signing the application form;
- (b) he agrees to a consultation with the General Manager of the scheme in order to establish whether the accommodation, facilities and services will be adequate for his needs and requirements;
- (c) the General Manager will submit a statement to the trustees regarding the prospective purchaser to enable them to determine whether the prospective purchaser can be accommodated in the section.



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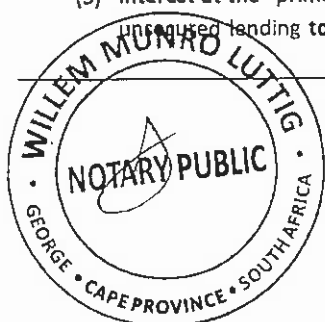
- (3) The owner must on re-sale of the unit ensure that the agreement of sale requires payment by the seller/owner for a levy of 10% (ten percent) on the selling price, 50% of which will be payable to the body corporate and 50% to the facility provider against transfer of the unit.
- (4) The 5% (i.e. 50% of the 10%) receivable by the body corporate must be applied and used as follows :
  - (a) 2,5% (i.e. 50% of the 5%) to provide for care and support services for the needy in the scheme; and
  - (b) 2,5% (i.e. the other 50% of the 5%) must be utilized towards the asset maintenance of the scheme.
- (5) The current owner or his conveyancer must then for transfer purposes apply for a clearance certificate from the trustees to effect transfer of the unit to the purchaser. For purposes hereof the trustees must be furnished with a certified copy of the agreement of sale, proof that all payments due in terms of the rules have been sufficiently secured, an undertaking for payment of the 10% re-sale levy, proof that the provisions of rule 73(2) have been complied with and any other documents that may be required.
- (6) The trustees will then issue a certificate of compliance and only then the conveyancer may proceed with the transfer of the unit to the proposed purchaser.
- (7) Estate agents of the seller's choice may facilitate the transaction, provided they are accredited and trained in respect of the standard re-sale agreement. Agents will be trained and accredited by the trustees and will be required to pay an admission fee to cover the administrative costs in this regard.

#### LEASE PROCEDURES

- 74) (1) All owners and tenants of units must comply with rule 13 of the conduct rules when a unit is let.
- (2) The lessee shall pay to the body corporate the entry fee applicable to tenants from time to time to qualify for admission to the facility. No lessee may take up any occupation in the facility unless such fee has been duly paid to the body corporate.

#### CARE SERVICES MANAGEMENT

- 75) (1) Fixed Monthly Service Fees, over and above the entry fee referred to in rule 74(2), based on the services required by the resident, shall be payable monthly to the body corporate.
- (2) Owners and occupiers requiring extra care and support services will be responsible for additional pre-agreed ad hoc fees for such services.
- (3) Frail care services fees on a monthly basis will be payable by residents who are placed in the terminal frail care facility.
- (4) Placement in a terminal frail care facility (which could be temporary or permanent) will always be subject to external professional advice in that regard. The decision whether or not placement of the resident within a frail care facility is required to care for such person effectively will be solely dependent on the discretion of the trustees.
- (5) Interest at the "prime" rate charged by the facility provider's bankers from time to time (being the rate charge charged on <sup>promised</sup> lending to their best customers) plus 2 percent per annum will be payable on all service fee arrears. For the



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purposes of the Prescribed Rate of Interest Act, 1975, the setting of the interest rate in terms of this rule shall be considered to be an agreement between owners, binding on all owners and occupiers of units.

**PRE-EMPTIVE RIGHTS AND SALES CONDITIONS**

76) Every purchaser of a unit (as described in the Act) or any interest therein (hereinafter referred to as 'the unit') in the scheme is further subject to the following conditions namely.

(1) The owner of a unit shall only be entitled to sell or transfer in any manner (which includes the sale of shares in the case of a company, members interest in the case of a close corporation or the change of beneficiaries in the case of a trust, donation or testamentary or intestate dispositions, but excluding the registration of a mortgage bond), the unit to a third party after such owner, his heirs, executors, administrators, trustees or assigns and/or its successors-in-title or assigns has:

(a) First obtained the written consent of the body corporate and the written consent of the home owners association, which consents shall be granted in terms of their rules and constitutions and will not be unreasonably withheld, provided that :

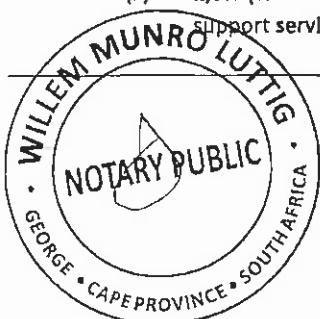
- (i) the purchaser of such unit agrees in writing to be bound by the articles of association of the home owners association and the rules of the body corporate;
- (ii) the purchaser consents in writing to the registration of the hereinafter mentioned pre-emptive right against the title deed of the unit;
- (iii) the owner shall pay all levies and other amounts owing by such member as at the date of transfer to the body corporate, the home owners association and to the facility provider; and
- (iv) the registered owner of a unit shall not be entitled to resign as a member of the home owners association.

(2) The owner of a unit shall first refer the written offer to purchase the unit to the facility provider, who has a pre-emptive right to purchase the unit at the same price and subject to the same terms and conditions as those stated in the offer to purchase.

(3) The facility provider must within 14 (fourteen) days of receipt of the offer referred to in rule 76(b), notify the owner in writing whether or not he exercises his pre-emptive right. If the facility provider does not exercise its pre-emptive right timeously as contemplated in this clause, or fail to notify the owner accordingly in writing, as the case may be, the owner will then be entitled to dispose of the unit to the purchaser referred to in the offer to purchase at the same purchase price and subject to the same terms and conditions as those therein set out and subject to payment of the levies and contributions due and payable.

(4) The disposal of the unit by the owner or his successors-in-title shall further be subject to payment of the following levies and contributions, namely :

- (a) an amount equal to 10% of the re-sale price or the market value whichever shall be the higher, namely :
- (i) 5% (five percent) to the facility provider;
  - (ii) 2,5% (two and a half percent) to the body corporate to be administered and applied as an "asset maintenance and support services fund";



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*[Handwritten signatures and initials]*

- (iii) 2,5% (two and a half percent) to the body corporate, to be administered and applied as a "support fund for the needy" in respect of needy inhabitants of the scheme;
- (5) Payment of the abovementioned amounts shall be secured by a bank guarantee for the amounts concerned in favour of the attorneys nominated by the facility provider, which guarantee(s) must be to the satisfaction of the said attorneys and payable against registration of transfer of the unit in the name of the purchaser.
- (6) In the event of a testamentary or Intestate disposition the value of the unit will be in accordance with the value as accepted by the Master of the High Court in the liquidation and distribution account.
- (7) The above pre-emptive right shall be applicable ad Infinitum on every unit and may only be varied or cancelled with the written consent of the facility provider.
- (8) This rule can only be amended or revoked by a unanimous resolution of the body corporate after it has obtained the written consent by the facility provider.

**SEPARATE ADMINISTRATION AND FINANCIAL MANAGEMENT OF PHASES**

77) (1) It is recorded that the scheme will, on completion, comprise three distinct phases, namely:

- (a) Phase 1, consisting of one residential building incorporating numerous sections ("Phase 1");
- (b) Phase 2, consisting of will consist of a center for frail care and Alzheimer patients ("Phase 2"); and
- (c) Phase 3, consisting of a number of detached sectional title dwellings ("Phase 3")

which phases are shown on the attached sketch plan marked "A".

- (2) The purpose of this management rule is to provide that the owners and holders of rights in each of the three phases will, as far as reasonably possible:
  - (a) bear the expenses attributable to those phases, so as to eliminate cross-subsidization between the owners in each phase; and
  - (b) manage issues which are only of concern to their phase.
- (3) 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 first day of the 2014/2015 financial year, be borne by the owners in accordance with the determination made in terms of section 32 (4) of the Act and set out in this rule.
- (4) The body corporate shall classify all expenses payable by or anticipated by the body corporate for which contributions are collected from owners of units and any liabilities for any judgment debt of the body corporate as being:
  - (a) Unit-specific expenses or liabilities, being those which are applicable only to particular sections or units and which shall be due by and recovered directly from the owners of such units;



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- (b) Phase-specific expense or liabilities, being those which are applicable only to the units within a particular phase and which shall be due by and recovered directly from the owners of such units in proportion to the participation quotas of the units in that phase; or
  - (c) General expenses or liabilities, being those that are applicable to the scheme generally and which shall be due by and recovered from all owners of units in all phases in proportion to their participation quotas.
- (5) (a) The owners of units in each of the three phases shall each elect the same number of trustees to represent them, which number shall be determined at the annual general meeting.
- (b) The trustees elected for a phase shall make any trustee decision that relates only to that phase and shall do so by meeting separately from the other trustees for this purpose.
- (c) The trustees elected for all the phases shall make any trustee decision that relates to two or more phases.
- (d) The body corporate's annual financial estimates and accounts shall show income and expenditure for each phase separately.
- (e) The insurance schedules prepared for each annual general meeting shall show replacement values for units in each phase separately.
- (f) The trustees shall, with the prior written agreement of the facility provider, have the right to appoint a service provider in respect of the care services referred to in management rule 75 to be delivered in all the phases, provided that the facility provider will during the construction of phases and thereafter, where he holds the majority interest in any phase, have the sole right to appoint the service provider for that phase. The trustees and facility provider will endeavor to appoint the same service provider for all phases where practical possible. In the event that the trustees in a phase and the facility provider are unable to reach an agreement in regard to the identity of a mutually acceptable service provider, the dispute shall be resolved by arbitration under management rule 71, provided that for the purposes of rule 71(3) the arbitrator shall be an independent and suitably qualified person who has a suitable medical background.



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