

**RULES FOR THE CONTROL AND MANAGEMENT OF THE
BUILDING AND BODY CORPORATE KNOWN AS AVALON
SPRINGS**

I hereby certify that these are the special Rules (Management and Conduct Rules) which were duly submitted to an Extraordinary General Meeting of the Body Corporate known as "Controlling Body of AVALON SPRINGS No SS.28/1988" held on _____ and adopted by a unanimous and a Special Resolution of the Members thereof in substitution for the Rules contained in Annexures 8 and 9 and submitted to the Registrar of Deeds in terms of Section 35(2)(a) of the Sectional Titles Act No 95 of 1986.

DATED AT _____ ON
2006

CHAIRMAN

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RULESFOR THE CONTROL AND MANAGEMENT OF THE BUILDING

KNOWN AS

AVALON SPRINGS**PARTICULARS OF SECTIONAL TITLE SCHEME:**

NAME OF BUILDING : "AVALON SPRINGS"

PROPERTY DESCRIPTION: ERF 2796 (portion of Erf 2093)
Montagu in the Municipality and
Division of Breede River Winelands;

IN EXTENT: 1 059 m² (One Thousand and Fifty
Nine) square metres

NO. OF SCHEME: SS 28/1988

BUILDINGS: One Building, namely:

One 6 storey Building comprising 30
flats with balconies, 5 meter rooms,
2 store rooms, an entrance hall,
double lift shaft and lift motor
room, lift foyers, stairs, corridors
and passages, various toilets and
wash rooms, restaurant with store, 6
hotel rooms (garden suites), 2
offices.

1. DEFINITIONS AND INTERPRETATION

1.1 Unless the context otherwise indicates, the following words and expressions shall bear the meanings assigned to them in the Rules:

1.1.1 **ALIENATE** - Alienate in any manner whatsoever and without derogating from the generality of the foregoing, includes a transfer of any rights in respect of the Undivided Share and Time Sharing Interest, either voluntarily or involuntarily, and includes by way of sale, exchange, donation, deed, intestacy, will, cession assignment, court order or insolvency, irrespective of whether such alienation is subject to a suspensive or resolutive condition and alienation has a corresponding meaning, but excludes a cession in terms of Rule 4.1.1 of the

Management Rules.

- 1.1.2 **BODY CORPORATE** - The Body Corporate in terms of Section 36(1) of the Sectional Titles Act, in respect of the Sectional Title Scheme known as Avalon Springs, of which all Owners are members.
- 1.1.3 **BUILDING** - The Building known as **AVALON SPRINGS** situated at Uitvlugt Street, Montagu.
- 1.1.4 **CHAIRMAN** - The Chairman of the Board of Trustees of the Body Corporate from time to time in terms of both the Sectional Titles Act and the Rules, or any person duly authorized to act on his behalf.
- 1.1.5 **DEVELOPER** - Avalon Springs Time Share (Proprietary) Limited and includes its successors-in-title or assignee.
- 1.1.6 **EXCLUSIVE USE AREAS** - those portions of the Common Property which are or will be allocated for the exclusive use of the Owners of specific Sections, in terms hereof.
- 1.1.7 **LAND** - Erf 2796 (a portion of Erf 2093) Montagu in the Municipality and Division of Breede River Winelands- IN EXTENT 1 059 Square Metres.
- 1.1.8 **LEVY** - the liability of an Owner to contribute to the fund established by the Body Corporate in terms of Section 37 of the Sectional Titles Act, and in terms of rule 7 of the Management Rules.
- 1.1.9 **MANAGING AGENT** - The Managing Agent appointed by the Body Corporate from time to time pursuant to Section 38(a) of the Sectional Titles Act, and shall include any appointment referred to in paragraphs 8 and 21 of the Conduct Rules.
- 1.1.10 **MORTGAGEE** - The holder of a duly registered Mortgage Bond over either the Land or any Unit or Undivided Share.
- 1.1.11 **MOVABLES** - the furniture, equipment and other contents of a Section as referred to in Section 4(1)(m) of the Time Sharing Act.
- 1.1.12 **OWNER** - The Owner of an Undivided Share or of a Unit.
- 1.1.13 **PARTICIPATION QUOTAS:**
- 1.1.13.1 **PARTICIPATION QUOTA OF THE UNIT:** the participation quota attributed to each Unit is as follows:
- | | | |
|------------|------------------------------------|-------------|
| 1.1.13.1.1 | Type A Units (39 m ²): | 0.030516432 |
| 1.1.13.1.2 | Type B Units (56 m ²): | 0.043818466 |
| 1.1.13.1.3 | Type C Units (75 m ²): | 0.058685446 |

- 1.1.13.1.4 Type D Units (43 m²): 0.033646322
- 1.1.13.2 **PARTICIPATION QUOTA OF THE UNDIVIDED SHARE:** the participation quota attributed to each 1/52nd Undivided Share in each Unit as follows:
- 1.1.13.2.1 Type A Units (39 m²): 0.000586854
- 1.1.13.2.2 Type B Units (56 m²): 0.000842663
- 1.1.13.2.3 Type C Units (75 m²): 0.001128566
- 1.1.13.2.4 Type D Units (43 m²): 0.000647045
- 1.1.14 **REPUBLIC** - The Republic of South Africa.
- 1.1.15 **RULES** - These Management Rules and Conduct Rules, and shall include any house rules, administrative rules or regulations made in terms hereof.
- 1.1.16 **SCHOOL HOLIDAYS** - the vacation periods of Public (State) Schools in the Province of the Western Cape as determined each year by the relevant education authority.
- 1.1.17 **SEASON:** Subject to the rights and obligations of the Chairman referred to in Rule 3 of the Management Rules, the expressions Peak Season, High Season, Middle Season and Flexi Season shall bear the following meanings:-
- 1.1.17.1 **PEAK SEASON** - in each successive year means Time Modules P1 to P12 inclusive so that:-
- 1.1.17.1.1 P1 coincides with the week which commences on the Friday of the Easter Weekend;
- 1.1.17.1.2 P3 to P5 coincides with 3 successive weeks of the Winter School Holidays;
- 1.1.17.1.3 P2 coincides with the week preceding P3;
- 1.1.17.1.4 P6 coincides with one week in the Spring School Holidays;
- 1.1.17.1.5 P7 to P12 coincides with six (6) successive weeks in the Summer School Holidays; and
- 1.1.17.1.6 P12(A) follows, and is linked to the week which succeeds, P12;
- 1.1.17.2 **HIGH SEASON** in each successive year means Time Modules H1 - H13 inclusive so that:-
- 1.1.17.2.1 H7 coincides with that week in which Ascension Day falls in each and every year;
- 1.1.17.2.2 H8 coincides with the week which immediately precedes P2 and H9 coincides

with the week which immediately succeeds P5;

1.1.17.2.3 H10 coincides with the week which immediately precedes P6, H11 coincides with the week which immediately succeeds P6 and H12 coincides with the week which immediately succeeds H11;

1.1.17.2.4 H13 coincides with the week which immediately precedes P7 and H1 coincides with the week which immediately succeeds P12 or P12(A) as the case may be;

1.1.17.2.5 H2 to H5 inclusive coincide with four (4) successive weeks which immediately precede P1;

1.1.17.2.6 H6 coincides with the week which immediately succeeds P1;

1.1.17.3 **MIDDLE SEASON** in each successive year means Time Modules M1 - M15 inclusive so that :

1.1.17.3.1 M1 and M2 coincide with the two (2) successive weeks which immediately precede H8 (subject to adjustment for H7 in any year where Ascension Day falls within these two weeks);

1.1.17.3.2 M3 - M8 coincide with the six (6) successive weeks which immediately succeed H9;

1.1.17.3.3 M9 - M13 coincide with the five (5) successive weeks which immediately precede H13;

1.1.17.3.4 M14 - M15 coincide with the two (2) successive weeks which immediately succeed H1;

1.1.17.4 **FLEXI SEASON** being Time Modules F1 - F12 inclusive, being all the Time Modules in a year other than Peak, High or Middle Season Time Modules, F1 being the first occurring of such Time Modules in any Calendar Year and the rest following consecutively.

1.1.18 **SECTION** - a Section as defined in the Sectional Titles Act and shown on the Sectional Plans in respect of the land.

1.1.19 **SECTIONAL PLAN** - The Sectional Plan registered by the Registrar of Deeds, Cape Town, in respect of the Sectional Title Scheme "Avalon Springs" SS 28/1988.

1.1.20 **SECTIONAL TITLES ACT** - The Sectional Titles Act No. 95 of 1986 as amended together with all regulations promulgated in terms thereof from time to time.

- 1.1.21 **TIME MODULE** - A period of seven (7) consecutive days commencing on a Friday at 12h00 and ending on the following Friday at 12h00, during which period the Owner may utilize his Time Sharing Interest annually, provided that the Owner shall only be entitled to utilize his Time Sharing Interest during a Time Module from 17h00 on the commencement date thereof until 10h00 on the termination date thereof.
- 1.1.22 **TIME MODULE TABLE** - the Time Module Table for a year, to be compiled annually by the Managing Agent and failing it, the Chairman on or before the 15th day of November in each successive year for the following year, which shall indicate the commencement and termination dates of all Time Modules for purposes of utilization of the Time Sharing Interests.
- 1.1.23 **TIME SHARING ACT** - The Property Time Sharing Control Act No. 75 of 1983 as amended together with all regulations promulgated in terms thereof from time to time.
- 1.1.24 **TIME SHARING INTEREST** - The right, arising out of Ownership of an Undivided Share, to the recurrent annual exclusive use or occupation of:-
- 1.1.24.1 in the case of a Time Module falling within Peak, High or Middle Seasons, the Section in respect of which the Undivided Share is owned, for residential purposes, and the use of the Common Property in terms of and subject to the Sectional Titles Act and the Rules;
- 1.1.24.2 in the case of a Time Module falling within Flexi Season, the Section in respect of which the Undivided Share is owned or any other Section in the Building of the same type, for residential purposes and the use of the Common Property in terms of and subject to the Sectional Title Act and the Rules;
- 1.1.24.3 the movables contained in the relevant Section;
- 1.1.24.4 a parking bay, subject to the provisions of Rule 14 of the Conduct Rules; and
- All for the duration of the relevant Time Module annually, until the Building is deemed to be destroyed in terms of Section 48 of the Sectional Titles Act.
- 1.1.25 **TIME SHARING PURPOSES** - the utilisation of Units in the Building for purposes of a property time sharing scheme as defined in the Time sharing Act.
- 1.1.26 **TIME SHARING SECTION** - A Unit which is utilized for time sharing purposes as provided for in the Time Sharing Act.
- 1.1.27 **TRANSFeree** - An Owner's successors-in-title and,

without in any way derogating from the generality of the foregoing, includes an Owner's executors, administrators assigns, heirs, successors-in-title and any person to whom an Owner's rights in regard to the Undivided Share and Time Sharing Interest are alienated.

- 1.1.28 **UNDIVIDED SHARE** - An undivided 1/52 (one fifty second) share in the Ownership of a Unit and the Movables, which gives rise to a Time Sharing Interest in terms of these Rules.
- 1.1.29 **UNIT** - a Section together with its undivided share in the Common Property in terms of the Sectional Titles Act, which may be owned in Undivided Shares as referred to in 1.1.28 of these definitions.
- 1.1.30 **YEAR** - A year which commences at 12h00 on the last day of Time Module P12 or P12(A) as the case may be and ends at 12h00 on the same day of the next calendar year.
- 1.2 Any notices for all purposes of these Rules shall :
- 1.2.1 be in writing;
- 1.2.2 be sent by post or delivered; and in the case of notice to the Body Corporate by registered post;
- 1.2.3 be addressed to the respective party at his domicilium citandi et executandi referred to in Rule 2.1 and 2.2 of the Conduct Rules, and subject to a party's rights in regard thereto referred to in the said Rule; and
- 1.2.4 be deemed to be received by the party to whom it is addressed at the time of delivery thereof, or on the 4th (fourth) day following the posting thereof in the Republic, as the case may be.
- 1.2.5 Notwithstanding the above, any notice which has been sent or delivered in any other manner (such as fax or email) and which has actually been received by the addressee, shall be deemed to have been validly given on the date of such receipt, provided that it shall be incumbent on the sender of such notice to prove that it was received by the addressee and not simply that it was sent.
- 1.3 The words and expressions in these Rules, other than defined in terms of this Rule, shall bear the meanings assigned to them in the Sectional Titles Act and the Time sharing Act.
- 1.4 The headings of the respective Rules are for reference purposes only, and shall not be taken into account in the interpretation of these Rules.
- 1.5 In these Rules the singular shall include the plural and

vice versa. The male gender shall include the female and neuter genders and vice versa.

1.6 The Annexures to these Rules shall be deemed to be part of the Rules as if specifically embodied therein.

1.7 The preamble to these Rules shall be taken into account in the interpretation of these Rules.

1.8 The definitions form part of Rules.

2. PREAMBLE

WHEREAS

2.1 An Owner is the registered Owner of either an Undivided Share which gives rise to a Time Sharing Interest, or of a Unit;

2.2 A Time Sharing Interest entitles an Owner to the utilization of a Unit for the Time Module annually, or periodically in the case of Time Module P12(A), until the Building is deemed to be destroyed in terms of Section 48 of the Sectional Titles Act;

2.3 The Rules, in terms of Section 35 of the Sectional Titles Act, provide for the control, management, administration, use and enjoyment of both Sections and the Common Property;

2.4 The Developer has bound purchasers of both Undivided Shares and their accompanying Time Sharing Interests and Units to these rules which provide for -

2.4.1 the control, management, administration, use and enjoyment of both Sections and the Common Property; and

2.4.2 the alienation of an Undivided Share, Time Sharing Interest and the share of the movables;

2.4.3 the annual compilation of the Time Module Table and the consequential determination of Time Modules; and

2.4.4 the appointment of the Managing Agent to perform certain duties and exercise certain powers of the Body Corporate;

and matters incidental thereto;

NOW THEREFORE THE OWNERS AGREE THAT THE FOLLOWING RULES SHALL BE THE RULES IN SUBSTITUTION FOR THE PREVIOUSLY REGISTERED RULES OF THE BODY CORPORATE AND THE RULES IN TERMS OF ANNEXURES 8 AND 9 TO THE SECTIONAL TITLES ACT.

MANAGEMENT RULES

SECTION 35(2)(a) OF THE SECTIONAL TITLES ACT)

1. ALTERATION OF RULES

It is recorded that these Management Rules are made in terms of Section 35(2)(a) of the Sectional Titles Act and may therefore not be added to, amended or repealed except by unanimous resolution of the members of the Body Corporate. Any addition, amendment or repeal shall be subject to the provisions of Section 35(5)(a) of the Sectional Titles Act .

2. PARTITION, CESSION, ALIENATION AND JOINT OWNERSHIP

2.1 An Owner of an Undivided Share:-

2.1.1 Acknowledges being aware that other Owners will own Undivided Shares in the same Unit, thereby becoming joint Owners of the Unit with him and entitled to exercise Time sharing Interests in respect thereof in terms of these Rules;

2.1.2 Agrees that he is deemed to have renounced his rights to, and shall not be entitled to:-

2.1.2.1 accumulate the rights of use arising out of his Time Sharing Interest or carry them forward from one year to another; or

2.1.2.2 alienate any portion of or share in his Undivided Share; or

2.1.2.3 alienate his Undivided Share independently from his Time Sharing Interest (or vice versa); or

2.1.2.4 alienate his Undivided Share unless he has obtained the prior written consent of the Chairman, which consent shall be given should the transferee irrevocably and in writing bind himself in terms hereof in regard to:

2.1.2.4.1 the renunciation of the rights referred to in this Rule;

2.1.2.4.2 the rights in regard to the utilization of other Owners' Time Sharing Interest, as referred to in this Rule;

2.1.2.4.3 the obligations in regard to the Section and Time sharing Interest referred to or set out herein.

2.2 The Purchaser accepts :-

- 2.2.1 that the Developer has imposed a condition as envisaged in terms of Section 11(2) of the Sectional Titles Act which burdens the land and the Units and which reads as follows: *"that a Unit or an Undivided Share therein and in the property may not be alienated or transferred without the prior written consent of the Chairman of the Board of Trustees of the Body Corporate, which consent shall be granted should the transferee bind himself irrevocably and in writing and in such manner as the Chairman may require to the provisions of the rules relating to the right of use of specific Sections for specific times and more particularly in respect of the rights and duties of the person from whom the transferee takes transfer."*
- 2.2.2 The rights and obligations of an Owner in regard to the utilization of his Time Sharing Interest as is more fully set out in Rule 4 of the Management Rules; and
- 2.2.3 That the Chairman will be entitled to exercise his powers and rights in terms of Rules 2 to 6 of the Management Rules.
- 2.3 That the Section shall be used in terms of the provisions of the Time Sharing Control Act and the regulations promulgated in terms thereof, to which all members of the Body Corporate shall be deemed to have agreed.

3. TIME MODULE TABLE

Subject to the provisions of Rule 3.2, the Managing Agent and failing it, the Chairman shall annually compile the Time Module Table for the following year before the 15th of November in every year, or such other date as the Chairman may deem appropriate, in terms of which the Time Module during which the Owners shall be entitled to utilise their Time Sharing Interest, shall be determined as follows:-

- 3.1 The Time Module Table must indicate the Time Modules in respect of the Time Sharing Interests for the respective season as described in Rule 1.1.17 of the definitions, for the ensuing Year.
- 3.2 Should the School Holidays be changed or adapted, so that the Chairman is either in whole or in part, unable to give effect to the provisions of Rule 1.1.17 of the definitions in regard to the compilation of the Time Module Table, then the Chairman shall, for the purpose of compiling the Time Module Table, adapt the allocation of Time Modules in respect of the relevant seasons referred to in Rule 1.1.17 of the definitions, and in this regard the Chairman shall have the absolute discretion to make the necessary adaptations within the framework of the following guidelines, which shall be binding on all Owners, namely -

- 3.2.1 The Chairman shall ensure that each Owner obtains utilization of his Time Sharing Interest for the Time Module concerned as near as possible in accordance with the provisions of par 1.1.17 of the definitions.
- 3.2.2 The Chairman shall always:
- 3.2.2.1 prefer Owners of Time Sharing Interests in Peak Season to Owners of Time Sharing Interests in High Season;
 - 3.2.2.2 prefer Owners of Time Sharing Interests in High Season to Owners of Time Sharing Interests in Middle Season and
 - 3.2.2.3 prefer Owners of Time Sharing Interests in Middle Season to Owners of Time Sharing Interests in Flexi Season.
- 3.2.3 Any decision made by the Chairman in terms of this clause shall be final and binding on all persons, irrespective of whether such person is a party to the decision.
- 3.3 An Owner irrevocably consents to and grants the Chairman the rights accorded him in terms of this rule and agrees to be bound thereby.

4. RIGHTS AND OBLIGATIONS REGARDING UTILIZATION OF TIME-SHARING INTERESTS

- 4.1 An Owner of a Time Sharing Interest shall have the following rights and obligations:-
- 4.1.1 He shall have the right to utilize his Time Sharing Interest himself, or to cede/lease it to a third party.
 - 4.1.2 If he exercises the right to either utilize his Time Sharing Interest himself or cede/lease it to a third party as provided for in rule 4.1.1, he shall be obliged to notify the Managing Agent of the reservation of the Time Module for such use not less than 60 (sixty) days prior to the commencement of his Time Module. Subject to the Owner not being in arrears with any amount due to the Body Corporate in terms hereof, the Managing Agent shall, subject to the rules, allocate the said Time Module to him or the third party.
 - 4.1.3 In the event of a Time Module remaining unreserved in terms of rule 4.1.2 60 (sixty) days prior to the date upon which the said Time Module commences, the time sharing interest shall be placed at the disposal of the Managing Agent who shall be entitled to let the Time Module.

- 4.1.4 The amount of rental(if any) received by the Managing Agent in respect of the Time Module referred to in rule 4.1.3 above shall be paid to the relevant Owner, subject to deduction of a commission in favour of the Managing Agent as determined in terms of rule 4.7. Any amount to be remitted to an Owner in terms hereof, shall be paid to the Owner within 60 (sixty) days of expiry of the relevant Time Module.
- 4.2 The Owner agrees that his mandate to the Managing Agent to lease his Time Sharing Interest pursuant to rule 4.1.3 above, may not be withdrawn without the Managing Agent's prior written consent.
- 4.3. The Owner
- 4.3.1 irrevocably appoints the Managing Agent or, failing such, the Body Corporate in rem suam as his attorney and agent, on his behalf to sign any documents and to do any act which may be required in regard to the letting of a Time Sharing Interest, including the ejectment of any occupier of the Section.
- 4.3.2 indemnifies the Managing Agent and the Body Corporate against any claims of whatsoever nature and howsoever arising, made by a cessionary/lessee in respect of or relating to the Time Sharing Interest.
- 4.3.3 waives any claim against the Managing Agent and/or the Body Corporate of whatsoever nature and howsoever arising, out of the cession/leasing of the Time Sharing Interest or the failure to cede/lease such Time Sharing Interest.
- 4.4 The right of the Managing Agent to lease a Time sharing Interest as provided for in rules 4.1.3 and 4.1.4, shall arise on an annual basis when and if the provisions of such rules become applicable.
- 4.5 The Managing Agent, in exercising its rights and obligations in terms of this Rule shall always act on behalf of the Owner of the relevant Time Sharing Interest and not on its own behalf.
- 4.6 The Managing Agent shall be entitled to deduct from monies payable to the Owner in respect of rental income in terms of this rule, any amount due by the Owner to the Body Corporate whatsoever, including but not limited to amounts owing in respect of the levy relating to tthat or any other Time Sharing Interest or Unit.
- 4.7 The Body Corporate shall, in consultation with the Managing Agent, be entitled in its discretion to determine the amount of commission to be charged from time to time as referred to in rule 4.1.4.

5. **LEASE OF TIME SHARING INTEREST FOR, INTER ALIA, MAINTENANCE PURPOSES**

It is recorded that the Developer and the Body Corporate have entered into a lease in terms of which the Developer has leased to the Body Corporate 1 (one) time sharing interest comprising Time Module F.1 in every Unit in the Building, the material provisions of which lease are the following:-

- 5.1 The lease is for a period commencing on the date that the first Unit in the Building is beneficially occupied, and terminates when the Building is deemed to be destroyed in terms of Section 48 of the Sectional Titles Act.
- 5.2 The rental is an amount equivalent to the levy in respect of the Time Module, and is payable when such levy is payable in terms of the rules.
- 5.3 The Body Corporate shall be obliged, inter alia, to:-
- 5.3.1 effect maintenance and repairs to the relevant Section during the Time Module for the benefit of Owners of the Time Sharing Interests in the Section; and
- 5.3.2 utilize the said Time Sharing Interest as follows:-
- 5.3.2.1 firstly for the maintenance (including replacement in the case of movables) of both the Section and the movables; and
- 5.3.2.3 secondly for the benefit of the Body Corporate in such manner as the Body Corporate may deem fit.
- 5.4 The Developer shall have the sole right at any time during the duration of the lease, in respect of a Unit in which no Undivided Share and Time Sharing Interest have been alienated, to cancel the lease in respect of such Time Sharing Interest, without being obliged to substitute any other Time Sharing Interest in replacement therefore.

6. **ADMINISTRATIVE POWERS**

The Trustees are entitled to make such regulations from time to time as they deem fit and may supplement, amend and/or repeal such regulations -

- 6.1 to enable the Chairman to consider giving his consent in terms of Rule 2.1.2.4 of these Management Rules;
- 6.2 in regard to the provisions of Rules 2 to 4 of these Management Rules; and
- 6.3 specifically, and without derogating from the generality of the foregoing, with reference to the application by an Owner to the Chairman for his consent in terms of these Rules, as regards the manner in which application is to be made, including the form of such application and

the form in which notice of a change of Ownership of an Undivided Share and Time Sharing Interest shall be given including furthermore, the right to require that the transfer of the Undivided Share be effected by Conveyancers nominated by the Chairman or the Managing Agent at the cost of the transferee, and any matters ancillary or related thereto.

7. LEVY

- 7.1 The Body Corporate shall establish a fund in terms of Section 37 of the Sectional Titles Act, for all expenditure incurred by it pursuant to the rules, which shall include:
- 7.1.1 expenses incurred in carrying out the powers and performing the duties imposed upon it in terms of these rules, including the powers referred to in Rule 3.17 of the Conduct Rules; and
- 7.1.2 All expenses and disbursements including the Managing Agent's remuneration, but excluding any remuneration which the Managing Agent may receive from the cessions of Time Sharing Interests arising from Rule 4 of The Management Rules.
- 7.2 All Owners shall be obliged to contribute to the fund referred to in rule 7.1 (i.e. the levy), in the proportions set forth in rule 7.6, except the Owner/Owners from time to time of the Units consisting of Sections 1, 2 and 3 in the Building, who shall never be obliged to contribute to the said fund.
- 7.3 The levy shall include such amounts which the Body Corporate, in its discretion from time to time decides, is sufficient to cover, inter alia, the costs of managing, administering, repairing, maintaining (and replacing in the case of movables) the land and the Building, including without limitation, rates, taxes, sewerage and sanitation, insurance of every description, electricity, water services, salaries, wages, care and maintenance of the land, the Building, the Section and the movables, and the costs, expenses and the remuneration of the Managing Agent arising out of any Management Agreement with him.
- 7.4 The Body Corporate shall at its discretion be entitled to allocate the levy into two basic categories, namely:-
- 7.4.1 costs to be borne exclusively by Owners of Undivided Shares in Units or Owners of Units otherwise being used for time sharing purposes ("the time sharing levy"); and
- 7.4.2 common costs to be borne by all Owners irrespective of whether there Unit is being used for time sharing purposes or not (subject to Rule 7.2 above) ("the main levy").
- 7.5 The Body Corporate shall, in its sole discretion, be entitled to apportion the costs incurred by it into the two

categories set out in rule 7.4. The Body Corporate shall, furthermore, in its sole discretion, be entitled to decide whether a Unit is being used for time sharing purposes.

7.6 Subject to Rule 7.8 hereof the liability of an Owner of an Undivided Share to pay the levy shall be determined with reference to the Participation Quota of the Undivided Share, and the liability of an Owner of a Unit to pay the levy shall be determined with reference to the Participation Quota of the Unit, provided that

7.6.1 insofar as a different value (i.e. other than participation quota as shown on the sectional plans) is attached to the liability of the Owner to pay the levy, it is recorded that such different value is effected in terms of Section 32(2)) of the Sectional Titles Act; and

7.6.2 any increase in insurance premiums of the Units effected in terms of rule 5.5.1.9 or 5.5.1.10 of the Conduct Rules, as the case may be, shall be for the account of the Owners or Owner as the case may be, of the particular Unit insofar as such increase is in excess of the Body Corporate's estimate. Such increase, if any, shall be deemed to be part of the levy; and

7.6.3 the Owner from time to time of the Units consisting of Sections 1, 2 and 3 in the Building, shall never be obliged to pay any levy.

7.7 The levy is payable irrespective of whether the Owner utilizes his Time Sharing Interest or occupies his Unit.

8. UNITS USED FOR OTHER THAN TIME SHARING PURPOSES

8.1 The Owner/Owners of the Units consisting of Sections 1, 2 and 3 in the scheme shall at all times be entitled to utilise same for purposes related either directly or indirectly to the running of an hotel or any purpose/purposes incidental thereto or relating to the provisions of such Hotel related facilities as such Owner/Owners may deem necessary.

8.2 Should the Developer at any time acquire or re-acquire Ownership of any or all of the Units described in 8.1 above, it shall be entitled to convert the said Units to time sharing Sections as defined in these rules, to be used for time sharing purposes, at the discretion of the Developer and to make such structural alterations and renovations to the said Units as may be necessary in order to give effect to such conversion.

8.3 In the event of the Developer carrying out the conversion contemplated in 8.2 above, all the relevant provisions of these rules shall apply to the said Units and to the utilisation thereof, including the payment of levies.

8.4 All expenses incurred in giving effect to the provisions of

8.1 and 8.2 and 8.3, including any necessary amendments to the Sectional plans and the relevant participation quota schedule shall be borne by the Developer.

CONDUCT RULES

(SECTION 35(2)(b) OF THE SECTIONAL TITLES ACT)

1. ALTERATION OF RULES

It is recorded that these rules are made in terms of Section 35(2)(b) of the Sectional Titles Act and may therefore not be added to, amended or repealed except by special resolution of the members of the Body Corporate. Any addition, amendment or repeal shall be subject to the provisions of Section 35(5)(a) of the Sectional Titles Act.

2. DOMICILIA CITANDI ET EXECUTANDI OF THE BODY CORPORATE AND OWNERS

2.1. The Trustees shall from time to time determine the address constituting the domicilium citandi et exectandi of the Body Corporate as required by Section 37(1)(m) of the Sectional Titles Act, subject to the following:

2.1.1. such address shall be situated within any Magisterial district in the Republic;

2.1.2. until otherwise determined by the Trustees the domicilium citandi et executandi shall be at the Building; and

2.1.3. no change of such address shall be effective until the registrar has been notified thereof.

2.2 The domicilium citandi et executandi of each Owner shall be such address as he notifies the Body Corporate of in writing, and failing such notification, the address of the Owner, for the purpose of this rule shall be the address of the Section which relates to the Unit or timesharing interest as the case may be.

3. TRUSTEES OF THE BODY CORPORATE

3.1. NUMBER

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 (2) Trustees.

3.2 QUALIFICATIONS

A Trustee or alternate Trustee shall not be required to be an Owner or the nominee of an Owner who is a juristic person, to qualify for office as a Trustee.

3.3 ELECTION OF TRUSTEES

Subject to the provisions of Rule 3.3 hereof, the Trustees shall be elected at each Annual General Meeting and shall hold office until the next succeeding Annual General Meeting, but shall be eligible for re-election.

3.4 NOMINATIONS

Nominations by Owners for the election of Trustees at any Annual General Meeting shall be by notification, accompanied by the written consent of the person nominated, so as to be received at the domicilium of the Body Corporate not later than five (5) days before the meeting: provided that should there be no nominees present at such meeting, or nominees for less than the requisite number of Trustees provided for, Trustees may be elected from the persons then present: provided further that in the event of the re-election of any retiring Trustee, such nomination together with the written consent of the Trustee so nominated, shall not be required.

3.5 VACANCY AND CO-OPTION

The Trustees may fill any vacancy in their number or co-opt an additional Trustee. Any Trustee so appointed or co-opted shall hold office until the next Annual General Meeting when he shall retire and be eligible for re-election.

3.6 ALTERNATE TRUSTEES

3.6.1 A Trustee may appoint another person to act as his alternate during his absence or inability to act as a Trustee.

3.6.2 An alternate Trustee shall have the powers and be subject to the duties of a Trustee by whom he was appointed.

3.6.3 An alternate Trustee shall cease to hold office if the Trustee appointing him ceases to be a Trustee or if his appointment is revoked by the Trustee who appointed him.

3.7 REMUNERATION

3.7.1 Subject to the provisions of Rule 3.7.2 hereof, neither Trustees who are Owners nor the nominee of an Owner who is a juristic person, shall be entitled to any remuneration in respect of their services as such. Furthermore the Body Corporate shall reimburse all Trustees for any disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers as Trustees, provided such Trustee submits a written, detailed account of such disbursements and expenses to the Body Corporate.

3.7.2 The Body Corporate may remunerate any Trustee at such rate as may be agreed upon in writing between the Body Corporate and such Trustee. Such Trustee shall also be entitled to be reimbursed for any disbursements and expenses incurred by him in the circumstances envisaged in Rule 3.7.1 hereof.

3.8 VALIDITY OF ACTS OF TRUSTEES

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 valid as if such Trustee had been duly appointed or had continued in office.

3.9 INDEMNITY

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 for 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 gross negligence, willful default or fraudulent act of such person. It shall be the duty of Trustees to pay such indemnity out of the funds of the Body Corporate.

3.10 DISQUALIFICATION OF TRUSTEES

A Trustee shall cease to hold office as such -

3.10.1 If by notice to the Body Corporate he resigns his office;

3.10.2 If he is or becomes of unsound mind;

3.10.3 If he voluntarily surrenders his estate or his estate is sequestrated;

3.10.4 If he is convicted of an offence of which dishonesty is an element;

3.10.5 If by resolution of an extraordinary general meeting of the Body Corporate, he is removed from his office provided, however, that the intention to vote upon the removal from office is specified in the notice convening the meeting; and

3.10.6 If he is or becomes in terms of Sections 218 or 219 of the Companies Act 1973 or any re-enactment thereof disqualified from being appointed or acting as a Director of a company; provided that if such Trustee is the nominee of the Developer as referred to in Rule 3.3 hereof, the Developer shall have the right to immediately appoint another person in his place.

3.11 REMOVAL FROM OFFICE

Subject to the provisions of Rule 3.3 hereof, the Body Corporate may at an extraordinary general meeting remove any Trustee before the expiry of his term of office and appoint another Trustee in his place to hold office for the unexpired part of the term of office of the Trustee so removed.

3.12 MEETINGS OF TRUSTEES

- 3.12.1 Subject to the provisions of Rules 3.12.2 and 3.12.5 hereof, the Trustees may give notice convening meetings, meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit. It shall not be necessary to give notice of a meeting of Trustees to any Trustee who is absent from the Republic, but notice of any such meeting shall be given to his alternate, if he has appointed one, provided that such alternate is in the Republic.
- 3.12.2 A majority in number of trustee may at any time acting jointly convene a meeting of the Trustees by giving to the other Trustees not less than seven (7) days 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 the Chairman considers reasonable, may be given.
- 3.12.3 The Trustees shall be obliged to hold at least two meetings annually.
- 3.12.4 The Managing Agent shall be entitled and obliged to attend all meetings of the Body Corporate, but shall not, in his capacity as such, be entitled to vote thereat.

3.13 QUORUM

- 3.13.1 At a meeting of Trustees, two Trustees shall form a quorum where there are FOUR (4) or less than FOUR (4) Trustees, and THREE (3) Trustees shall form a quorum where there are FIVE (5) or more Trustees.
- 3.13.2 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.

3.14 CHAIRMAN

- 3.14.1 At the commencement of the first meeting of Trustees after each Annual General Meeting, the Trustees shall elect a Chairman from among their number who shall hold office as such until the end of the next ensuing Annual General Meeting. The Chairman shall have a casting as well as a deliberative vote.
- 3.14.2 The Body Corporate may, at an extra-ordinary general meeting, in respect of which the requisite notice of special business has been given, remove the Chairman from his office as such.
- 3.14.3 If any Chairman elected in terms of Rule 3.14.1 hereof vacates his office as Chairman or is removed from office by virtue of any rule hereof, 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 shall have the same powers and duties.

3.14.4 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.

3.15 VOTING

3.15.1 All matters at any meeting of the Trustees shall be determined by a majority of the votes of the Trustees present.

3.15.2 No Trustee shall be disqualified from voting in respect of any matter under discussion by virtue of any interest he may have therein, provided he declares the nature and extent of his interest which must thereupon be recorded.

3.15.3 A resolution in writing and 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.

3.16 THE FUNCTION, POWERS AND DUTIES OF TRUSTEES

The duties and powers of the Body Corporate shall, subject to the provisions of the Sectional Titles Act, these Rules, and to any restriction imposed or direction given at a General Meeting of the Body Corporate, be respectively performed and exercised by the Trustees of the Body Corporate holding office in terms of these Rules.

3.17 POWERS

Subject to any restriction imposed or direction given at a general meeting of the Body Corporate, the Trustees shall have such powers as they reasonably require to give proper effect to their duties and without in any way derogating from the generality of the foregoing, such powers shall include the following:

3.17.1 In their discretion -

3.17.1.1 All such powers as are referred to in Section 38 of the Sectional Titles Act in regard to the Common Property;

3.17.1.2 All such powers as are referred to in Section 38 of the Sectional Titles Act insofar as they could, in the opinion of the Trustees, be applied to the control, management, administration, use, enjoyment and maintenance of any time sharing Section; provided that where such powers can be jointly exercised for the benefit of both the wholly-owned Units and the time sharing Sections, such powers shall be so exercised.

- 3.17.2 Subject to any restrictions contained in any other rule or law, in their discretion to delegate to one or more Trustees any of their powers.
- 3.17.3 In their discretion to make house rules from time to time in regard to the management, control, administration, use, enjoyment, maintenance and safety of:-
- 3.17.3.1 the Common Property,
 - 3.17.3.2 any time sharing Section, and
 - 3.17.3.3 any Unit ;
- which house rules shall -.
- 3.17.3.4 not conflict with these rules
 - 3.17.3.5 be reasonable; and
 - 3.17.3.6 apply equally to all Owners in the class to which they belong (that is, a Unit Owner or Owner of a time sharing Section, as the case may be).
- 3.17.4 In their discretion in regard to a time sharing Section, to -
- 3.17.4.1 enter a Section in order to exercise any of their powers or perform any of their duties in terms of the Sectional Titles Act or the rules; and
 - 3.17.4.2 from time to time to replace, repair and maintain the movables.
- 3.17.5 In their discretion in general to make administrative rules from time to time, and to add to, amend or repeal the same, in regard to:-
- 3.17.5.1 the making of a reservation by an Owner, tenant or other occupant;
 - 3.17.5.2 the reception of occupants as aforesaid;
 - 3.17.5.3 the rights and duties of occupants whilst in occupation of the Section;
 - 3.17.5.4 occupants' departure from the relevant Section,
 - 3.17.5.5 generally in regard to the occupation of a Section; and
 - 3.17.5.6 the use or allocation of areas for exclusive or particular use.
- 3.17.6 The powers granted to the Management Association (as defined in the Time sharing Act) by the Time sharing

Act as if the regulations promulgated in terms of the Time sharing Act relating to the management of a property time sharing scheme were applicable, insofar as they do not conflict with the intent and purpose or any provision of these Rules. In the event of such conflict these Rules shall prevail.

4. PARTICIPATION QUOTA

- 4.1 The Participation Quota of the Undivided Share or the Participation Quota of a Unit, as the case may be, as set out in the definitions, shall determine the matters referred to in Section 32(3)(b) and 32(3)(c) of the Sectional Titles Act.
- 4.2 The matters referred to in Section 32(3)(a) of the Sectional Titles Act, i.e the value of the vote of the owner of any section, shall be determined in terms of rule 7.20 of the Conduct Rules.

5. TRUSTEES DUTIES AND RESTRICTIONS GENERALLY

5.1. GENERALLY

Without derogating from the Trustees' duties in terms of these Rules, the Trustees shall perform the duties imposed upon them by Section 39 of the Sectional Titles Act, and in addition, and without in any way derogating from the generality of the foregoing, in the case of time sharing Sections the Trustee shall have the following additional duties:

- 5.1.1 properly to maintain such Sections and keep them in a state of good and serviceable repair;
- 5.1.2 control, manage and administer such Sections for the benefit of all the Owners thereof;
- 5.1.3 keep in a state of good and serviceable repair and properly maintain the movables; and
- 5.1.4 generally for the aforesaid purposes do all and anything that may be necessary for the use and enjoyment by the Owners of such Sections.

5.2 DELEGATION

Subject to any restrictions imposed or directions given at a general meeting by members of the Body Corporate, and the provisions of Rule 6 of the Management Rules, the Trustees shall, in their discretion, be entitled to delegate to any one or more of the Trustees, any one or more of their duties.

5.3 LOANS

The Trustees may not lend any money belonging to the Body Corporate to anybody, (except for investment purposes and then only in terms of Rule 6.5.8.2 hereof) unless the Owners, by special resolution grant the Trustees such authority.

5.4 SIGNATURE OF INSTRUMENTS

Except for the consent to be given by the Chairman in terms of Rule 2.1.2.4 of the Management Rules, all documents, including cheques or instruments signed on behalf of the Body Corporate shall be valid if signed on behalf of the Body Corporate by such person or persons appointed by the Trustees from time to time, provided further that in regard to a certificate issued in terms of Section 15B(3)(a)(i)(aa) of the Sectional Titles Act, any Trustee or the Managing Agent may sign the same on behalf of the Body Corporate.

5.5 GENERALLY TO INCLUDE SPECIFIC DUTIES

The Trustees shall perform all acts reasonably necessary for the control, management, administration, use and enjoyment of time sharing Sections, Units and the Common Property, and without in any way derogating from the generality of the foregoing, the Trustees shall :

5.5.1 INSURANCE

The Trustees shall at their first meeting and whenever thereafter appropriate but at least annually, insure and keep insured the Building and movables as follows:-

5.5.1.1 The insurance shall be effected with an insurance company duly registered in terms of the relevant legislation of the Republic.

5.5.1.2 Such insurance company appointed in terms of Rule 5.5.1.1 shall be nominated by the Trustees in their discretion, but always subject to any requirement of any mortgagee.

5.5.1.3 The insurance shall be effected for such type of cover that can be obtained from time to time, bearing in mind, inter alia, the nature and structure of the Building and the purpose for which it is used.

5.5.1.4 The Trustees shall be obliged to extend the type of cover as directed by the Owners in general meeting.

5.5.1.5 The Trustees shall at all times ensure that in the said policy or policies of insurance -

5.5.1.5.1 there is specified the replacement value of each Unit (excluding the Owner's interest in the land) and the movables;

- 5.5.1.5.2 any "average clause" as regards Units, is restricted in its effect to individual Units and does not affect the Building as a whole.
- 5.5.1.6 Prior to every Annual General Meeting, the Trustees shall cause to be prepared schedules reflecting their estimate of:
 - 5.5.1.6.1 the replacement value of the Building, and all improvements to the Common Property and the movables; and
 - 5.5.1.6.2 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 6.5.1.6.1 above as regards the Building; and such schedules shall be laid before the Annual General Meeting for consideration and approval in terms of Rule 9.11.3.2 hereof.
- 5.5.1.7 The Trustees shall, at 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 6.5.1 hereof.
- 5.5.1.8 At the first meeting of the Trustees or as soon there-after as is possible, the Trustees shall take steps:
 - 5.5.1.8.1 to procure a fidelity guarantee or like policy in terms of which the Trustees, their agents or employees including the Managing Agent, are insured for such amount as the Trustees may in their discretion decide upon from time to time, in their aforesaid capacities, against such perils as the Trustees may deem fit, which amount may be increased by the Owners at a general meeting;
 - 5.5.1.8.2 to insure the Owners and Trustees against death, bodily injuries or damage or loss to property or person arising out of the use of the Building and Sections for such amount as the Trustees may in their discretion decide upon from time to time, which amount may be increased by the Owners at a general meeting.
- 5.5.1.9 No individual Owner of an Undivided Share in a time share Section may request the Body Corporate to increase the insurance of the time sharing Section, provided that the majority of Owners the Undivided Shares in any time sharing Section may at any time do so by giving the Body Corporate notice thereof, in which event the

remaining Owners of Undivided Shares in such Units shall be bound by such majority decision.

5.5.1.10 An Owner of a wholly owned Unit (excluding an Owner of a time sharing Section) may at all times request the Body Corporate to insure his Unit for a specified amount, provided such amount is in excess of the Body Corporate's estimate thereof.

5.5.2 LEVY FUND

The Trustees shall levy contributions from Owners for the purposes of, and in accordance with, and in the proportions set forth in Rule 7 of the Management Rules.

5.5.3 ESTIMATE OF LEVY

The Trustees shall, not later than such date as they may from time to time determine in each and every year determine the levy payable by each Owner in accordance with the Rules and shall as soon as possible advise each Owner in writing of the amount payable. Such levy shall thereupon become payable in such manner as the Trustees may determine. It is recorded that the Owners are aware that the levy is purely an estimate of what the Trustees consider to be the expenses for the ensuing year, and that accordingly an Owner may become liable for payment of an additional levy if it subsequently transpires that the levy has been incorrectly estimated.

5.5.4 RULES - CLEARANCE, ETC.

The Trustees shall upon notification by:

5.5.4.1 an Owner;

5.5.4.2 the prospective purchaser of a Unit or an Undivided Share and Time Sharing Interest or his agent;

5.5.4.3 a mortgagee;

5.5.4.4 the Managing Agent, and

5.5.4.5 the auditor of the Body Corporate;

furnish such person with a copy of the Rules, house rules, administrative rules and regulations and a certificate in terms of Section 15B(3)(a)(i)(aa) of the Sectional Titles Act at a reasonable charge therefore.

5.5.5 MINUTES

The Trustees shall

- 5.5.5.1 keep minutes of their proceedings;
- 5.5.5.2 cause minutes to be kept of all meetings of the Body Corporate in a Minute Book of the Body Corporate kept for that purpose;
- 5.5.5.3 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;
- 5.5.5.4 retain all minutes for at least ten (10) years; and
- 5.5.5.5 upon the notification by any Owner, mortgagee or the Managing Agent, make all minutes of their proceedings and of minutes of the Body Corporate available for inspection by such person at the place of business of the Body Corporate, provided such person pays the reasonable expense of the Body Corporate in connection therewith.

5.5.6 BOOKS OF ACCOUNT

The Trustees shall

- 5.5.6.1 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
 - 5.5.6.1.1 a record of assets and liabilities;
 - 5.5.6.1.2 a record of all sums of money received and expended by the Body Corporate, particulars of such receipts and the purpose for which such expenditure was incurred;
 - 5.5.6.1.3 in English, a register of Owners, showing in the case of Owners their domicilium referred to in Rule 2 hereof. In regard to the register of Owners, the Trustees shall, without derogating from the generality of the foregoing, in regard to time sharing Sections, keep a record of current registered Owners of Undivided Shares in their discretion and by using any recording manner or method they may think fit;
 - 5.5.6.1.4 an individual ledger account for each

Owner; and

5.5.6.1.5 the Time Module Table from year to year.

5.5.6.2 Upon notification by any Owner, mortgagee or of the Managing Agent, make the books of account and records of the Body Corporate available for inspection by such Owner, mortgagee or Managing Agent at a place convenient to the Body Corporate; provided such person pays the reasonable expenses of the Body Corporate in connection therewith.

5.5.6.3 Cause all books of account and records to be retained for a period of at least ten (10) years, except for the current part of the records referred to in Rule 5.5.6.1.3, which record shall be kept up to date until the Building is deemed to be destroyed in terms of Section 48 of the Sectional Titles Act.

5.5.7 ANNUAL FINANCIAL ESTIMATE, FINANCIAL STATEMENT AND REPORT

5.5.7.1 The Trustees shall, prior to every Annual General Meeting, prepare an itemised 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.

5.5.7.2 The estimate of expenses referred to in Rule 5.5.7.1 may include a reasonable provision for unforeseen expenditure, inflation and any other expenditure which the Trustees in their discretion deem advisable.

5.5.7.3 The Trustees shall cause to be prepared, and lay before every Annual General Meeting, for consideration in terms of Rule 9.11.2 an audited financial statement in regard to the affairs of the Body Corporate for the previous financial year, in conformity with general standards adopted by the Accounting Practices Board of the Republic or any body in replacement thereof.

5.5.7.4 The Trustees shall further cause to be prepared and 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 8.11.2 hereof.

- 5.5.7.5 The Trustees shall not be obliged to cause copies of schedules, estimates, audited statement and report, referred to in Rules 5.5.1.6.1 and 5.5.1.6.2, 5.5.7.1, 5.5.7.3 and 5.5.7.4 to be sent to any Owner or any mortgagee.

5.5.8 DEPOSIT AND INVESTMENT OF MONIES

The Trustees shall:-

- 5.5.8.1 Cause all moneys received by the Body Corporate to be deposited with a registered commercial bank in an account in the name of the Body Corporate and, subject to these rules or to any direction given or restriction imposed at a general meeting of the Body Corporate, such moneys shall only be withdrawn for any lawful purpose of the Body Corporate or investment in terms of Rule 5.5.8.2 hereof, and the Trustees may authorise the Managing Agent to administer and operate the accounts referred to in Rules 5.5.8.1 and 5.5.8.2.
- 5.5.8.2 Any funds not immediately required may be invested with a financial institution, as defined in the Financial Institutions (Investment of Funds) Act No. 39 of 1984, or any statutory re-enactment thereof, on any type of account.
- 5.5.8.3 Interest on moneys so invested shall be utilized for any legitimate purpose of the Body Corporate.

5.5.9 FINANCIAL YEAR

The Trustees shall, in their discretion, but subject to any statutory requirement, decide from time to time from which date to which date the financial year of the Body Corporate shall run.

6 NO REFUNDS OR DISTRIBUTIONS OF PROFITS OR ASSETS

- 6.1 No Owner shall, for any reason whatsoever, be entitled to a refund of any contribution made by him pursuant to Rule 7 of the Management Rules.
- 6.2 Subject to the provisions of Rule 11 hereof, no portion or whole of the gains, income or profits accruing to or received by the Body Corporate from whatever source or its assets, shall be distributed in any manner to any Owner or

any other person.

7 **MEETINGS OF OWNERS**

- 7.1 The first Annual General Meeting of Owners shall be held within three (3) months of the date on which the Body Corporate is deemed to be established as contemplated by Section 36(1) of the Sectional Titles Act.
- 7.2 An Annual General Meeting shall be held within 4 months of the end of each financial year of the Body Corporate.
- 7.3 All general meetings other than the Annual General Meeting shall be called extraordinary general meetings.
- 7.4 The Trustees may, whenever they think fit, and shall, upon notification by Owners, entitled to 30 (THIRTY) per cent of the votes referred to in Rule 7.20 hereof, convene an extra-ordinary general meeting at the sole cost of the Body Corporate.
- 7.5 If the Trustees fail to call a meeting so requested within fourteen (14) days of the notification, the Owners concerned shall be entitled themselves to call the meeting.
- 7.6 At least fourteen (14) days notice of every general meeting specifying the place (which shall be held at such place as the Trustees may decide), the date and the hour of the meeting and, in the case of special business, the general nature of such business shall be given to :-
- 7.6.1 such Owners who will be registered as such in terms of rule 17 hereof, at the end of the calendar month(or such later date as the Body Corporate may decide) which immediately precedes the date such notice is given;
- 7.6.2 any mortgagee of the Developer; and
- 7.6.3 the Managing Agent.
- 7.7 The Mortgagee and the Managing Agent shall have the right to attend the meetings herein referred to and to speak at such meetings but shall not, in their respective capacities as such, be entitled to vote thereat.
- 7.8 The documents referred to in Rule 5.5.7.5 hereof shall be available for inspection by an Owner at such meetings.
- 7.9 Inadvertent omission to give the notice referred to in Rule 7.6 hereof to any person entitled to such notice, or the actual non-receipt of such notice by such person shall not invalidate any proceedings at any such meeting.
- 7.10 All business at any general meeting other than business referred to in Rules 7.11.1 to 7.11.5 hereof shall be special business.

- 7.11 The following business shall be transacted at an Annual General Meeting:
- 7.11.1 The election of Trustees;
 - 7.11.2 The consideration of the financial statement and report referred to in Rules 5.5.7.3 and 5.5.7.4 hereof;
 - 7.11.3 The approval with or without amendment of :
 - 7.11.3.1 the estimate of income and expenditure referred to in Rule 5.5.7.1 hereof; and
 - 7.11.3.2 subject to the provisions of Rules 5.5.1.9 and 5.5.1.10 hereof, the schedules of replacement values referred to in Rule 5.5.1.6.1 and 5.5.1.6.2 hereof;
 - 7.11.4 the appointment of an auditor;
 - 7.11.5 the approval of the remuneration of the auditor;
 - 7.11.6 any restrictions or directions to the Trustees pursuant to Section 39(1) of the Sectional Titles Act;
 - 7.11.7 the determination or alteration of the domicilium citandi et executandi of the Body Corporate; and
 - 7.11.8 any special business of which due notice has been given in terms of Rule 7.6. hereof.
- 7.12 No business shall be transacted at any general meeting unless a quorum is present in person or by proxy at the time when the meeting proceeds to business.
- 7.13 A quorum at a general meeting shall be two (2) Owners present in person or by proxy and entitled to vote, holding at least 10% of the votes.
- 7.14 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 constitute a quorum.
- 7.15 The Chairman of the Trustees shall preside as Chairman at every general meeting of the Body Corporate.
- 7.16 If there is no such Chairman, or if at any meeting the Chairman of the Trustees is not present within fifteen (15) minutes after the time appointed for the holding of the meeting, or if he is unwilling to act as Chairman, the members present shall elect one of their number to be Chairman. Such Chairman shall only preside at such meeting and shall not have the powers accorded the Chairman in terms of Rules 2 to 7 of the Management Rules.

- 7.17 At any general meeting, a motion put to the vote of the meeting shall be decided by a show of hands and an Owner who is entitled to notice of a general meeting, as determined by rule 7.6.1 hereof, shall, subject to rule 7.21 hereof, have the right to vote.
- 7.18 If a dispute arises as to whether an Owner has a vote or a dispute arises as to how many votes an Owner has, the onus shall be on such Owner to prove to the satisfaction of the Chairman both his right to vote and the number of votes he possesses. The Chairman's decision shall be final.
- 7.19 A poll, by ballot, shall be taken in such a manner as the Chairman deems fit, and the result of the poll shall be deemed to be the resolution of the meeting at which such poll was demanded.
- 7.20 Notwithstanding the provisions of Section 32(3)(a) of the Sectional Titles Act, it is recorded that the value of a vote of Owners, in terms of Section 32(4) of the Sectional Titles Act, is as follows:
- 7.20.1 An Owner of a Unit = 52 (fifty two) votes;
- 7.20.2 An Owner of a Time Sharing Interest for each Time Module = 1 (one) vote.
- 7.21 For all purposes including the purpose of a special resolution, the value of the vote of an Owner shall be reckoned in accordance with the provisions of rule 7.20 hereof whether or not an Owner is personally present or represented by his proxy.
- 7.22 Except in cases where a special resolution or a unanimous resolution is required under the Sectional Titles Act, an Owner shall not be allowed to vote at any general meeting if -
- 7.22.1 he is in arrear with his levy; or
- 7.22.2 he is in breach of any of the rules;
- and a certificate by the Trustees or their duly appointed agent or the Managing Agent shall be prima facie proof thereof.
- 7.23 In the case of a representative or trustee of a trust, he shall exercise the voting rights in respect of the Unit or Undivided Share and Time Sharing Interest to the exclusion of persons beneficially interested in the trust and such persons shall not be entitled to vote.
- 7.24 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.
- 7.25 Votes at a general meeting may be cast either personally or by proxy.
- 7.26 An instrument appointing a proxy shall be in writing under the hand of the appointer or his agent duly appointed in writing, and shall be deposited at the domicilium of the

Body Corporate not less than 24 hours before the time for the holding of the meeting at which the person named in the instrument proposes to vote, and in default of compliance therewith the instrument of proxy shall be invalid.

7.27 A proxy need not be an Owner.

8 DUTIES OF AN OWNER

8.1 An Owner shall have the duties imposed on him in terms of Section 44 of the Sectional Titles Act and the Rules.

8.2 An Owner of an Undivided Share and Time Sharing Interest shall have the following duties:-

8.2.1 the duties imposed upon him as a joint Owner and the other duties referred to in Rules 2 to 6 of the Management Rules;

8.2.2 the duty to use the Section during his Time Module in terms of and subject to the powers of the Trustees;

8.2.3 the duties, referred to in Section 44(a), (d), (e) and(f) of the Sectional Titles Act;

8.2.4 The duty to care for both the Section and the movables, and to leave the same in the same state and condition as when he took control thereof;

8.2.5 the prohibition of alienation of his Undivided Share referred to in Rule 2 of the Management Rules;

8.2.6 the prohibition of alienation of his share of movables; and

8.2.7 the prohibition of alienation of the Undivided Share, the Time Sharing Interest and his share of the movables separately, other than in terms of Rule 4 of the Management Rules;

8.2.8 generally all duties which are necessary for the continuous occupation of the Section by its various Owners, tenants or occupiers.

8.3 An Owner shall in addition have the following duties:

8.3.1 Not use his Section or permit it to be used in such manner or for such purpose as shall be injurious to the reputation of the Building and/or time sharing scheme conducted in respect thereof;

- 8.3.2 not contravene nor permit the contravention of any law, bye-law, ordinance, proclamation, statutory regulation or the conditions of any licence relating to or affecting the occupation of the Building or the carrying on of business in the Building or the conditions of title applicable to the land, Building or his Section or any other Section;
- 8.3.3 not make structural alterations or additions to his Section, save that this prohibition shall not apply to the Owners of Sections 1, 2, and 3.
- 8.3.4 keep his Section free of white ants, borer and other wood-destroying insects and to this end shall permit the Trustees, the Managing Agent and their duly authorised agents or employees to enter upon his Section as often as is necessary for the purpose of inspecting the Section and take such actions as may be reasonably necessary to eradicate any such pests. The costs of the inspection and of eradicating any such pests shall be paid for by all Owners (both of wholly owned Units and time sharing Sections) upon notification and shall be deemed to be an additional levy lawfully imposed in terms of Rule 5 hereof and Rule 7 of the Management Rules. In the event of it being found necessary to replace any woodwork or other material forming part of such Section, the cost of such replacement shall be borne by the relevant Owners as aforesaid.
- 8.3.5 may not subdivide his Unit in terms of Section 21 of the Sectional Titles Act.
- 8.3.6 unless the Body Corporate otherwise determines, use his Section only for residential purposes, provided that where the use of a Section is by necessary implication other than that of residential, the provisions of this Rule shall not apply.
- 8.4 An Owner or his agent is entitled to the information contained in the register of Owners against prior payment of such fee as the Body Corporate may from time to time decide.
- 8.5 An Owner shall not be entitled to occupy the Section or utilize his Time Sharing Interest, in the event that he is in arrear with any amount due to the Body Corporate whatsoever or in material breach of any of these Rules. A certificate issued by the Body Corporate or anybody acting on its behalf shall be prima facie proof that such Owner is in arrear or breach.

BINDING NATURE

The provisions of the rules and the duties of an Owner in regard to the utilization of his Unit or Time Sharing Interest, the Common Property and the movables shall be

binding on the Owner and any other occupier of any Section. It shall be the duty of the Owner to ensure compliance of the rules by any tenant, occupier invitee or guest.

10 UNIT OWNER'S FAILURE TO MAINTAIN

If an Owner of a Unit

10.1 fails to repair or maintain his Section in a state of good repair as required by Section 44(c) of the Sectional Titles Act; or

10.2 fails to maintain adequately any Exclusive Use Area allocated to him, and such failure persists for a period of seven (7) days after notice to effect such repair or maintenance by the Trustees or the Managing Agent, the Body Corporate shall be entitled to remedy the Owner's failure and to recover the actual cost of doing so from such Owner.

11 EXPROPRIATION

11.1 If at any time the whole or any part of or any rights in the Common Property or in a time sharing Section are expropriated, each of the Owners concerned shall be deemed to have appointed the Trustees as his duly authorised agents and representatives (unless in the case of a time sharing Section all the joint Owners of such Section have notified the Body Corporate otherwise):

11.1.1 to negotiate and settle the compensation payable to him and to that end, to employ Attorneys, Advocates and experts; and

11.1.2 on his behalf to receive and give valid acquittance for any compensation moneys paid.

11.2 Any valid compensation moneys received by the Trustees on behalf of the Owners in terms of Rule 11.1 hereof shall be paid to the Owners in accordance with their participation quotas of their Units or Undivided Share, as the case may be, unless any Owner notifies the Trustees before such moneys are so distributed that he considers such a distribution would be inequitable, in which event they shall be distributed either -

11.2.1 In accordance with

11.2.1.1 as regards the Common Property, a special resolution of Owners, and

11.2.1.2 as regards a time sharing Section, a special resolution (as defined in the Sectional Titles Act) of the joint Owners of such Section; or

11.2.2 in accordance with a decision of an arbitrator.

11.3 For the purpose of this rule arbitrator means a practising

Senior Advocate at the Cape Town Bar appointed by the Trustees. The Trustees shall be obliged to nominate the arbitrator within three (3) weeks of being called upon to do so by any Owner.

11.4 An Owner shall have the choice referred to in Rules 11.2.1 and 11.2.2 hereof, provided he so notifies the Trustees in terms of Rule 11.2 hereof.

11.5 In his deliberation in terms of Rule 11.2.2 hereof the arbitrator shall have due regard to the quantum of damages suffered by each Owner as a result of the expropriation, and if any particular Owner's Exclusive Use Area has been affected by the expropriation, the arbitrator should, if reasonably practicable, provide for the allocation to such Owner of another Exclusive Use Area for the same purpose.

11.6 Save as otherwise herein provided, the arbitration shall be conducted in terms of the Arbitration Act No. 42 of 1965 or any re-enactment thereof.

12 USE OF PARKING BAYS

An Owner shall be entitled to the use of a parking bay in a designated parking area on the adjoining property as and when he utilises his Time Sharing Interest. The exact allocation or siting of the parking bay is to be at the sole discretion of the Body Corporate and such parking bay shall be used only for the purpose of parking thereon one passenger motorcar used for private purposes and for no other purpose whatsoever without the consent of the Body Corporate.

13 LEGAL COSTS

An Owner shall be liable for and pay all legal costs, including costs on an Attorney-and-own-client scale and collection commission, disbursements, expenses and charges incurred by the Body Corporate in obtaining the recovery of any amounts due by an Owner to the Body Corporate.

14 DETERMINATION OF DISPUTES

14.1 Any dispute, arising out of or in connection with these Rules, except where an interdict is sought or urgent relief may be obtained from a Court of competent jurisdiction, must be determined in terms of this rule.

14.2 If a dispute arises, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within 14 (fourteen) days of such notice, either of the parties may refer the dispute for determination in terms of 14.3 hereof.

14.3 If a party exercises his right in terms of 14.2 hereof to refer the dispute for determination, such dispute shall be referred to a Senior Advocate practising as such or any practising Attorney of not less than 10 (ten) years standing or such person as the Trustees may decide and

nominated by the Trustees.

- 14.4 Any person agreed upon or nominated as aforesaid (the "expert") shall in all respects act as an expert and not as an arbitrator.
- 14.5 Subject to 14.6 the expert shall be bound to follow the general substantive principles of South African Law.
- 14.6 The expert shall be vested with the entire discretion as to the procedure and manner to be followed in arriving at his decision, and in this regard shall not be bound to follow the general principles of procedure and evidence.
- 14.7 The parties shall use their best endeavours to procure that the decision of the expert shall be given within 21 (twenty-one) days or so soon thereafter as possible, after it has been demanded.
- 14.8 The expert's decision shall be final and binding on all the parties affected in any way thereby and shall be carried into effect and may be made an order of any competent Court at the instance and cost of any of the parties.
- 14.9 The provisions of this rule :-
- 14.9.1 constitutes the irrevocable consent by the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim that any such proceedings that it is not bound by such provisions; and
- 14.9.2 are severable from the rest of these Rules and shall remain in effect even if the Body Corporate ceases to exist for any reason whatsoever.
- 14.10 Any person appointed in terms of 14.3 hereof, shall be entitled to nominate any other person as the expert, if he is of the opinion that such person, is better qualified to determine the issue. In such event such nominee shall be the expert for the purposes of this rule.
- 14.11 The party who exercises his right in terms of 14.2 hereof shall establish from the expert what his estimated fees will be, and such party shall deposit such sum with the expert prior to the commencement of the proceedings, who shall hold such amount in trust for himself. If any party fails to comply with this obligation, he shall be precluded from exercising his rights in terms of 14.2 hereof. The payment by such party of the expert's fees shall not imply that the expert is obliged to grant a costs award against such person, or fetter the experts' discretion in this regard.

15 IMPROVEMENTS

No duty shall be placed upon any Owner in regard to the

provision of any improvement to the Common Property unless a proposal to make such improvement has been approved by a special resolution at a general meeting of Owners.

16 **ARREARS**

All arrear payments or amounts in terms of these rules shall bear finance charges at the rate prescribed from time to time in terms of section 2(1) of the Usury Act, 1968 for money lending transactions, the capital being the amount outstanding in terms of these rules.

17 **REGISTRATION OF TRANSFER OF OWNERSHIP**

The register of Owners referred to in Rule 5.5.6.1.3 hereof shall, as between the Body Corporate and Owners, be the sole and exclusive memorial and record of Owners, unless the contrary be proved and the onus of proof shall be on such person who alleges that the said register is defective. The Body Corporate shall not recognise an Owner as such until his name has, in terms of Rule 5.5.6.1.3 hereof and Rule 6.3 of the Management Rules been properly recorded in the register of Owners.

18 **MANAGING AGENT - GENERALLY**

Should the agreement appointing the Managing Agent be at any time terminated, the Trustees shall have the power to appoint another or further Managing Agent subject to such terms and conditions as they in their discretion may decide.

19 **PROHIBITION OF ACTS BY OWNER**

An Owner shall not -

19.1 keep or do anything on the Common Property after notice to the contrary on that behalf from the Trustees;

19.2 keep any animal including pets and birds in his Section or on the Common Property; and

19.3 do or permit to be done in his Section or on the Common Property anything which will or may increase the rate of premium payable by the Body Corporate on any insurance policy.

20 **EXCLUSIVE USE AREA**

20.1 Notwithstanding the fact that portion of the 5th floor of the Building comprising a restaurant, bar/bar counter, toilets, washrooms and lift foyer as more fully depicted on the annexed plan marked "B" forms part of the Common Property, the Owner of Sections 1, 2 and 3 (hereinafter referred to as the "user") shall be entitled to the exclusive use, enjoyment, benefit and occupation of the said area until the aforesaid Buildings are deemed to be

destroyed in terms of Section 48 of the Sectional Titles Act.

- 20.2 The user shall be obliged to maintain and treat the said exclusive use area as if it were part of a Section of which he were the Owner, and to utilise same in such a manner as not to prejudice or impair the safety or appearance of any other Section or any other part of the Building.
- 20.3 The user shall use the said exclusive use area for the purposes set out in 20.1 above and as indicated on the Sectional plans and annexure "B" and for all such related and/or incidental purposes as may reasonably be necessary in connection therewith.
- 20.4 The user, his agents, employees, workmen, sub-contractors or any other person engaged or appointed by him or acting on his behalf shall, at all times, have unrestricted access to the said exclusive use area for the purpose of maintaining, repairing or renewing same or any part thereof.
- 20.5 The user shall be liable for payment of the levy applicable to the said exclusive use area calculated and payable in accordance with the provisions of these rules and in calculating the said levy, the following costs shall be taken into account, viz : all costs incurred in respect of management, administration, repair, maintenance (including replacement of movables where necessary) of the said exclusive use area including, without limitation, rates, taxes, sewerage and sanitation, insurance on a pro-rata basis, electricity, water, services, salaries, wages, care and maintenance. The user shall operate and conduct its business in and upon the said exclusive use area for its sole and exclusive benefit and profit.