



**SECTIONAL TITLES SCHEMES MANAGEMENT ACT, 2011 (ACT NO 8 OF 2011)**

**CERTIFICATE IN TERMS OF SECTION 10(5)(c)**

**For office use:**

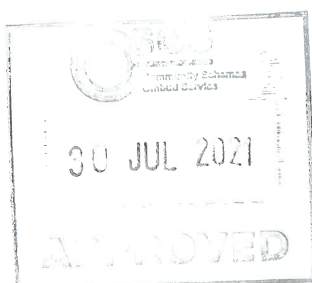
**Scheme Registration Number: CSOS/GovDocs/21/GP/003608**

1. I, the undersigned, Thembelihle Mbatha, in my capacity as the Acting Chief Ombud, acting in terms of section 10(5) (c), of the Sectional Titles Schemes Management Act, 2011 (Act No 8 of 2011), hereby certify that: -
2. At a meeting held on 8<sup>th</sup> June 2021, the scheme ratified a special resolution approving the amendments of the Constitution of One On Whiteley.
3. The Management Rules prescribed in Annexure 1 of the Sectional Titles Schemes Management Regulations have been substituted with the Constitution of One On Whiteley.
4. The Constitution is for the regulation and management of the following Community Scheme:

**ONE ON WHITELEY**

- .....
5. The amendments will become effective on the date of signature hereof.

Signed and dated at.....**CENTURION**.....on the.....**30<sup>TH</sup>**.....day of.....**JULY**.....2021



  
\_\_\_\_\_  
**Thembelihle Mbatha: Acting Chief Ombud**

Seal / Stamp

# **ONE ON WHITELEY CONSTITUTION**

**Substituted, amended and added to in terms of section 10 of the  
Sectional Titles Schemes Management Act 8 of 2011 (as amended from time to time)**



a Body Corporate established in terms of section 36 of the Sectional Titles Act 95 of 1986,  
read with section 2(1) of the Sectional Titles Schemes Management Act 8 of 2011

**APPROVED BY THE COMMUNITY SCHEMES OMBUD SERVICE ON 31 MAY 2019  
REFERENCE: CSOS/GovDoc/19/GP/001962**

**AMENDED BY SPECIAL RESOLUTION OF THE MEMBERS OF THE *ONE ON WHITELEY*  
BODY CORPORATE IN GENERAL MEETING ON 08 JUNE 2021  
AMENDMENT APPROVED BY THE COMMUNITY SCHEMES OMBUD SERVICE ON 30 JULY 2021  
REFERENCE: CSOS/GovDocs/21/GP/003608**

## 1. PRELIMINARY

In terms of section 10 of the STSMA the Developer may impose registrable conditions and substitute the prescribed management rules contained in Annexure 1 to the STSMA Regulations to the extent prescribed, when submitting an application for the opening of a sectional title register.

The Rules set out in this Constitution substitute, amend and add to the prescribed management rules provided for in Annexure 1 of the STSMA Regulations.

The Development shall be established as a mixed-use development as contemplated in section 32(2)(a) of the STA.

The Development shall comprise 5 (five) completely autonomous and wholly independent Building Components:

- (i) a Retail (Motor Showroom) Component (being Section 1);
- (ii) a Hotel Component (being Section 2);
- (iii) a Parking Component (being Section 3);
- (iv) a Commercial Component (begin Section 4); and
- (v) a Residential Component (comprising various Sections);

as more fully detailed in Annexure A and Annexure B hereto.

Each such Building Component shall be liable for its own expenses and charges and shall operate independently of the others, save as otherwise expressly provided for herein.

The *One on Whiteley Body Corporate* is hereby constituted in terms of section 36(2) of the STA read with section 2(1) of the STSMA and shall come into existence simultaneously upon registration of the Sectional Plan in the deeds office.

All Members of the *One on Whiteley Body Corporate* shall at all material times be bound by the provisions of this Constitution and the Constitution of the Melrose Arch Property Owners' Association.

This Constitution shall at all material times be subject to the Constitution of the Melrose Arch Property Owners' Association, its design guidelines and code of conduct issued in terms thereof, as amended from time to time. Should there at any time be a conflict between the provisions of this Constitution and those contained in the Constitution of the Melrose Arch Property Owners' Association, the design guidelines and code of conduct issued in terms thereof, then the provisions of the Constitution of the Melrose Arch Property Owners' Association, the design guidelines and the code of conduct issued in terms thereof shall prevail.

This Constitution shall at all times be subject to the STA and the STSMA and, save to the extent that the Developer and/or the *One on Whiteley Body Corporate* is entitled to and/or do, from time to time, substitute, amend and/or add to the Rules. Should there at any time be a conflict between the provisions of this Constitution and the provisions of the STA and/or the STSMA, the provisions of the STA and/or the STSMA (as the case may be) shall prevail.

## 2. INTERPRETATION

In the interpretation of this Constitution, unless the context otherwise indicates:

- 2.1. clause headings are for convenience only and shall not be used in its interpretation;
- 2.2. an expression which denotes:
  - 2.2.1. any gender includes the other genders;
  - 2.2.2. a natural person includes a juristic person and *vice versa*;
  - 2.2.3. the singular includes the plural and *vice versa*;
- 2.3. the following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:
  - 2.3.1. **“Auditors”** means the auditors of the Body Corporate and/or the Building Components, as the context may indicate, from time to time;
  - 2.3.2. **“Administration Fund”** means, as the context may indicate, a fund to be established and maintained by the Body Corporate to cover annual shared operating costs of the Body Corporate, OR a fund to be established and maintained by each of the Building Components (with the exception of the Parking Component) to cover annual operating costs of that Building Component, as envisaged in section 3(1)(a) of the STSMA;
  - 2.3.3. **“Body Corporate”** means the *One on Whiteley Body Corporate* to be established in terms of the STA and the STSMA upon registration of the Sectional Plan in the deeds office;
  - 2.3.4. **“Building(s)”** means the building or buildings to be erected on the Property and forming part of the Development;
  - 2.3.5. **“Building Component(s)”** means each autonomous part of the Building(s) comprising those respective Sections and Exclusive Use Areas which constitute the Retail (motor Showroom) Component, the Hotel Component, the Parking Component, the Commercial Component and the Residential Component, as more fully detailed in Annexure A and Annexure B hereto;
  - 2.3.6. **“Building Component Budget(s)”** means the estimated income expected to be derived from contributions levied upon Members of a specific Building Component and the estimated expenditure expected to be incurred by that Building Component in respect of the particular Building Component, including those Private Common Areas forming part of such Building Component, during the course of any particular Financial Year, except that the Parking Component’s budget shall not reflect any estimated income and shall only reflect the estimated expenditure expected to be incurred by the Parking Component, which expenditure is to be defrayed as envisaged in Rule 21.5 below;

- 2.3.7. **“Building Component Trustees”** means the trustees elected by Members of a particular Building Component to represent that Building Component in accordance with the provisions of this Constitution;
- 2.3.8. **“Business Day”** means any day other than a Saturday, Sunday or official public holiday in the Republic;
- 2.3.9. **“Chairperson”** means the chairperson of the Trustees of the Body Corporate and/or the Building Components Trustees, as the context may indicate or require;
- 2.3.10. **“Commercial Component”** means that part of the Building(s) used exclusively for commercial purposes (being Section 4) as well as the Exclusive Use Areas allocated to and/or used by the commercial Sections. For the avoidance of doubt, it is herewith recorded that the Commercial Component also includes the Private Common Areas (if any) of the Commercial Component;
- 2.3.11. **“Common Property”** means the Shared Common Areas and the Private Common Areas, collectively;
- 2.3.12. **“Conduct Rules”** means the conduct rules of the Body Corporate as may be issued, substituted, amended, repealed and/or added to from time to time, subject to the provisions of section 10 of the STSMA;
- 2.3.13. **“the/this Constitution”** means this document containing the terms of establishment of the *One on Whiteley Body Corporate* and the Rules and includes any and all annexures hereto;
- 2.3.14. **“CSOS”** means the Community Schemes Ombud Service established in terms of the Community Schemes Ombud Service Act No. 9 of 2011;
- 2.3.15. **“Developer”** means Melrose Arch Investment Holdings Proprietary Limited (registration number 2004/017820/07), a private company with limited liability duly incorporated in terms of the laws of the Republic, or its nominee(s) or agent(s) undertaking the Development in respect of the Property, including its successors-in-title or assigns;
- 2.3.16. **“Development”** means the sectional title scheme, known as *One on Whiteley*, to be established on the Property;
- 2.3.17. **“Exclusive Use Areas”** means the exclusive use storeroom(s) and/or balcony(ies) and/or terrace(s), and/or garden(s) and/or parking bay(s) and/or other parts of the Common Property (as the case may be) so conferred upon the registered owner for the time being of a Section in terms of section 27 of the STA;
- 2.3.18. **“Financial Year”** means the financial year of the Body Corporate and each of the Building Components which shall run from the first day of March of each year to the last day of February of the following year, unless otherwise decided by the Members at a general meeting;

- 2.3.19. **“General Budget”** means the estimated total income expected to be derived from all Member contributions and the estimated total expenditure expected to be incurred in respect of all shared costs and expenses in relation to the Building(s) and the Shared Common Areas during the course of any particular Financial Year, but specifically excluding the income and expenditure of the Parking Component, which will be managed separately by the Developer (or its successors-in-title) as owner of the Sections comprising the Parking Component;
- 2.3.20. **“Hotel Component”** means that part of the Building(s) used exclusively for purposes of operating a hotel (being Section 2), as well as the Exclusive Use Areas allocated to and/or used by the commercial Sections. For the avoidance of doubt, it is herewith recorded that the Hotel Component also includes the Private Common Areas (if any) of the Hotel Component;
- 2.3.21. **“in writing”** means written or printed or partly one and partly another, and other modes of representing or producing words in a visible and legible form;
- 2.3.22. **“juristic person”** includes a company or close corporation (as defined in the Companies Act 71/2008), a foreign company (as defined in the Companies Act 71/2008), a body corporate, a partnership or an association, a trust (as defined in the Trust Property Act 57/1988), and a trust established outside of the Republic;
- 2.3.23. **“Levy/Levies”** means the contribution(s) payable by a Member (with the exception of the Parking Component) to the Body Corporate and/or the Building Components, as the context may indicate, in terms of section 3 of the STSMA;
- 2.3.24. **“Member”** means a member of the Body Corporate, being every registered owner of a Section;
- 2.3.25. **“Office”** means the registered office of the Body Corporate from time to time;
- 2.3.26. **“Ordinary Resolution”** means a resolution:
- (i) in relation to matters concerning or affecting all Building Components, a resolution:
    - a. passed by at least 50% (fifty percent) of the Members of the Body Corporate, entitled to cast a vote in respect of the specific matter to be voted on, who are present or represented by proxy or by a representative recognized by law at a special or general meeting of the Body Corporate of which at least 14 (fourteen) days' written notice, specifying the proposed ordinary resolution, has been given, or at any adjournment thereof as envisaged in Rule 16.5.3; alternatively
    - b. agreed to in writing by at least 50% (fifty percent) of the Members of the Body Corporate, entitled to cast a vote in respect of the specific matter to be voted on, calculated in both value and number of all votes;

(ii) in relation to matters concerning only one of the Building Components a resolution:

- a. passed by at least 50% (fifty percent) of all the Members of the relevant Building Component, entitled to cast a vote in respect of the specific matter to be voted on, are present or represented by proxy or by a representative recognized by law at a special or general meeting of the Body Corporate or at a special or general meeting of the Members of the relevant Building Component (as the case may be), of which at least 14 (fourteen) days' written notice, specifying the proposed ordinary resolution, has been given, or at any adjournment thereof as envisaged in Rule 17.3; alternatively
- b. agreed to in writing by at least 50% (fifty percent) of the Members of the relevant Building Component, entitled to cast a vote in respect of the specific matter to be voted on, reckoned in value and in number;

2.3.27. **“Parking Component”** means that part of the Building(s) comprising Section 3, as well as Exclusive Use Areas allocated to and/or used by the Parking Sections, storerooms, refuse rooms, plant rooms and parking bays situated in the basement parking levels, Basement B-1, Basement B-2, and Basement B-3, Basement B-4 and Basement B-5 portions of which Parking Component are allocated for use by Members of the Residential Component in accordance with Rule 21. For the avoidance of doubt, it is herewith recorded that the Parking Component also includes the Private Common Areas (if any) of the Parking Component;

2.3.28. **“Parking Component Costs”** means the operational and maintenance (running) costs of the Parking Component, which includes but shall not necessarily be limited to municipal rates, electricity, cleaning, maintenance of mechanical equipment and parking equipment, security, access control and a market related management fee;

2.3.29. **“Participation Quotas”** means the quota applied to all Members and/or to Members of a specific Building Component in order to determine:

2.3.29.1. the liability of such Member(s) to contribute to the costs of the Body Corporate and/or the Building Component in question; and

2.3.29.2. the value of any vote cast by such Member(s) at any meeting by the Body Corporate and/or the Building Component in question, in accordance with the formulas set out below:

2.3.29.2.1. Building Component: the floor area of a Building Component in relation to the total floor area of all the Building Components in the Building(s) and expressed as a percentage; or

2.3.29.2.2. Residential Component: the floor area of a particular Section, inclusive of any Exclusive Use Area(s) (where applicable), in the Residential Component in relation to the total floor area of all Sections, inclusive of all Exclusive Use Areas (where applicable), in the Residential Component and expressed as a percentage; or

- 2.3.29.2.3. Commercial Component: the floor area of a particular Section, inclusive of any Exclusive Use Area(s) (where applicable), in the Commercial Component in relation to the total floor area of all Sections, inclusive of all Exclusive Use Areas (where applicable), in the Commercial Component; or
- 2.3.29.2.4. Retail (Motor Showroom) Component: the floor area of a particular Section, inclusive of any Exclusive Use Area(s) (where applicable), in the Retail (Motor Showroom) Component in relation to the total floor area of all Sections, inclusive of all Exclusive Use Areas (where applicable), in the Retail (Motor Showroom) Component; or
- 2.3.29.2.5. Hotel Component: the floor area of a particular Section, inclusive of any Exclusive Use Area(s) (where applicable), in the Hotel Component in relation to the total floor area of all Sections, inclusive of all Exclusive Use Areas (where applicable), in the Hotel Component;
- 2.3.29.2.6. Parking Component: the floor area of a particular Section, inclusive of any Exclusive Use Area(s) (where applicable), in the Parking Component in relation to the total floor area of all Sections, inclusive of all Exclusive Use Areas (where applicable), in the Parking Component
- 2.3.29.2.7. Building: the floor area of a particular Section, inclusive of any Exclusive Use Area(s) (where applicable), in the Building(s) forming part of the Development in relation to the total floor area of all Sections, inclusive of all Exclusive Use Areas (where applicable), in the Building(s) and expressed as a percentage,  
  
as the context may indicate or require;
- 2.3.30. **“PMR”** means prescribed management rules contained in Annexure 1 to the STSMA Regulations;
- 2.3.31. **“Private Common Areas”** means those parts of the Property which do not form part of a Section and in respect of which the use of such common areas is allocated exclusively to either the Residential Component, the Commercial Component, Retail (Motor Showroom) Component, the Hotel Component and/or the Parking Component (as the case may be);
- 2.3.32. **“Property”** means the property on which the Development is situate, being Portions 3 and 4 of Erf 113 Birnam and Portions 51 and 52 of Erf 181 Melrose North, , Johannesburg;
- 2.3.33. **“MAPOA”** means The Melrose Arch Property Owners’ Association, a non-profit company with registration number: 2001/000057/08, incorporated in terms of the laws of the Republic;



- 2.3.34. **“MAPOA MOI”** means the memorandum of incorporation of the MAPOA, including but not limited to its design guidelines and the code of conduct, as may be substituted, amended, repealed and/or added to from time to time;
- 2.3.35. **“Registered Bondholder”** means any holder of a mortgage bond over a Section of whom the Body Corporate and/or the Building Components, as the context may indicate, have been notified in writing as contemplated in section 13(1)(f) of the STA;
- 2.3.36. **“Registrar”** means a registrar of deeds as defined in the Deeds Registries Act No 47 of 1937 and whose offices are situated in the registration district of the Development;
- 2.3.37. **“Republic”** means the Republic of South Africa;
- 2.3.38. **“Residential Component”** means that part of the Building(s) comprising 8 (eight) floors of residential Sections, as well as the Exclusive Use Areas allocated to and/or used by these residential Sections. For the avoidance of doubt, it is herewith recorded that the Residential Component also includes the Private Common Areas of the Residential Component.
- 2.3.39. **“Reserve Fund”** means, as the context may indicate, a fund to be established and maintained by the Body Corporate to cover the cost of future maintenance and repair of the Shared Commons Areas OR a fund to be established and maintained by each of the Building Components (with the exception of the Parking Component) to cover the cost of future maintenance and repair of the Private Common Areas of that Building Component, as envisaged in section 3(1)(b) of the STSMA;
- 2.3.40. **“Retail (Motor Showroom) Component”** means that part of the Building(s) used exclusively for retail/motor showroom purposes (being Section 1) as well as the Exclusive Use Areas allocated to and/or used by the retail/motor showroom Sections. For the avoidance of doubt, it is herewith recorded that the Retail (Motor Showroom) Component also includes the Private Common Areas (if any) of the Retail (Motor Showroom) Component;
- 2.3.41. **“Rules”** means the management rules of the Body Corporate as set out in this Constitution, and as may be issued, substituted, amended, repealed and/or added to from time to time, subject to the provisions of section 10 of the STSMA;
- 2.3.42. **“Section”** means a Section in the Building(s), excluding the Common Property and Exclusive Use Areas, being a “primary section” as envisaged in section 2(m) of the STSMA Regulations;
- 2.3.43. **“Sectional Plan”** means the sectional plan(s) applicable to the Development as approved by the Surveyor General and includes the plans filed with the sectional title scheme in terms of section 25(2)(a) of the STA;
- 2.3.44. **“Shared Common Areas”** means those parts of the Development which do not form part of a Section and in respect of which the use thereof is shared by all Members of the Body Corporate, i.e. by all Members of all the Building Components;

- 2.3.45. **“Special Contribution(s)”** means any contribution levied, on authority of a Trustee resolution, by the Body Corporate on the Members or, on authority of a Building Component Trustee resolution by a Building Component on the Members of the relevant Building Component under section 3(10) of the STSMA other than contributions which arise from the approval of the estimate of income and expenditure of the Body Corporate or the Building Components (as the case may be) at an annual general meeting of the Body Corporate, determined to be a contribution to be levied on the Members during the current Financial Year, and includes a special contributions in respect of Parking Component Costs;
- 2.3.46. **“Special Resolution”** means a resolution:
- (i) in relation to matters concerning or affecting all Building Components, a resolution:
    - a. passed by at least 80% (eighty percent), reckoned in value and in number, of the Members of the Body Corporate who are present or represented by proxy or by a representative recognized by law at a general meeting of the Body Corporate of which at least 21 (twenty-one) days' written notice, specifying the proposed special resolution, has been given, or at any adjournment thereof as envisaged in Rule 16.5; alternatively
    - b. agreed to in writing by at least 80% (eighty percent) of Members, reckoned in value and in number;
  - (ii) in relation to matters concerning only one of the Building Components a resolution:
    - a. passed by at least 80% (eighty percent), reckoned in value and in number, of the Members of the relevant Building Component who are present or represented by proxy or by a representative recognized by law are present or represented by proxy or by a representative recognized by law at a general meeting of the Body Corporate or at a general meeting of the Members of the relevant Building Component, of which at least 21 (twenty-one) days' written notice, specifying the proposed ordinary resolution, has been given, or at any adjournment thereof as envisaged in Rule 16.5; alternatively
    - b. agreed to in writing by at least 80% (eighty percent) of the Members of the relevant Building Component, reckoned in value and in number;
- 2.3.47. **“STA”** means the Sectional Titles Act No 95 of 1986 (or any statutory modification or re-enactment thereof) and includes the regulations promulgated thereunder from time to time;
- 2.3.48. **“STSMA”** means the Sectional Titles Schemes Management Act No 8 of 2011 (or any statutory modification or re-enactment thereof) and includes the regulations promulgated thereunder from time to time;
- 2.3.49. **“STSMA Regulations”** means the regulations promulgated under the STSMA;

2.3.50. **“Trustee”** means, subject to sections 6(1) and 6(2) of Annexure 1 to the STSMA Regulations, any one of the Members of the Body Corporate or other persons elected as such by the Members of the respective Building Components at an annual general meeting to represent the respective Building Components on the board of trustees of the Body Corporate;

2.3.51. **“Unanimous Resolution”** means:

- (i) in relation to matters concerning or affecting all the Building Components, a resolution passed unanimously by the Members of the Body Corporate:
  - a. passed by all the Members of the Body Corporate, reckoned in value and in number, who are present or represented by proxy or by a representative recognized by law at a general meeting of the Body Corporate of which at least 21 (twenty-one) days' written notice, specifying the proposed unanimous resolution, has been given, or at any adjournment thereof as envisaged in Rule 16.5; alternatively
  - b. agreed to in writing by all the Members of the Body Corporate;
- (ii) in relation to matters concerning only one of the Building Components a resolution passed unanimously by all the Members of the relevant Building Component:
  - a. passed by all the Members of the relevant Building Component, reckoned in value and in number, who are present or represented by proxy or by a representative recognized by law at a general meeting of the Body Corporate or a general meeting of the Members of the relevant Building Component (as the case may be), of which at least 21 (twenty-one) days' written notice, specifying the proposed unanimous resolution, has been given, or at any adjournment thereof as envisaged in Rule 16.5; alternatively
  - b. agreed to in writing by all the Members of the relevant Building Component;

2.4. where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day that is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day;

2.5. should any provision or definition in this Rule 2 be a substantive provision conferring a right or imposing an obligation on any person then, notwithstanding that it is only a definition, effect shall be given to that provision as if it were a substantive provision in this Constitution;

2.6. any schedules or annexures to this Constitution shall be deemed to be incorporated in and form part of this Constitution, unless expressly stated otherwise;

2.7. where any term is defined in a particular Rule and not in this Rule 2, that term shall bear the meaning ascribed to it in that Rule wherever it is used in this Constitution;

- 2.8. any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the date of registration of this Constitution, and as amended, re-enacted or substituted from time to time;
- 2.9. where figures are referred to in numerals and words, if there is a conflict between the two, the words shall prevail unless the context indicates otherwise or the party supporting the accuracy of the numeracy over the words is able to prove, on a balance of probabilities, that the numerals are correct;
- 2.10. any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, calendar months or calendar years (as the case may be);
- 2.11. the use of the word “including” followed by a specific example(s) shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example(s);
- 2.12. the rule of construction that this Constitution shall be interpreted against the person responsible for the drafting or preparation thereof, shall not apply;
- 2.13. this Constitution shall in all respects be governed by the laws of the Republic.

### 3. **DOMICILIUM CITANDI ET EXECUTANDI**

- 3.1. The Trustees and the Building Component Trustees shall from time to time determine the physical address and/or email address constituting the *domicilium citandi et executandi* of the Body Corporate and the Building Component (as the case may be) and notify CSOS, the local municipality and the registrar of deeds thereof, as required by section 3(1)(o) of the STSMA, subject to the following:
  - 3.1.1. such physical address shall be the address of the Chairperson or other resident Trustee or the address of the offices of any duly appointed managing agent;
  - 3.1.2. the respective email addresses of the Body Corporate and each of the Building Components shall be the email address of the Chairperson or other resident Trustee or the email address of any duly appointed managing agent;
  - 3.1.3. no change of the aforesaid physical address or email address shall be effective until written notification thereof has been lodged with CSOS;
  - 3.1.4. the Trustees or Building Component Trustees (as the case may be) shall give notice to all Members or all Members of the relevant Building Component (as the case may be) of any change in such physical address and/or email address.

- 3.2. The *domicilium citandi et executandi* of each Member shall be the address of the Section registered in his name and/or the email address chosen by such Member and notified to the Body Corporate and the relevant Building Component in writing. A Member shall be entitled from time to time to change his physical address and/or email address provided that any new physical address shall be situated in the Republic and shall not be a post office box or *poste restante*, and provided further that the change shall only be effective on receipt of written notice thereof by the Body Corporate and the relevant Building Component at its *domicilium* referred to in Rule 3.1. Written notice of any such change in such physical address or email address may be given to the Body Corporate either by hand delivery and/or per email.

#### 4. **MAIN OBJECT**

- 4.1. The main object of the Body Corporate is:
- 4.1.1. the promotion, advancement and protection of its Members and their respective rights and interests;
  - 4.1.2. the improvement to, maintenance of and control over the Building(s) and the Shared Common Areas forming part of the Development;
  - 4.1.3. the compilation, approval and regulation of the General Budget, as referenced in Rules 14.2.1.2 and 14.12.1, including the management of the Administration Fund and Reserve Fund;
  - 4.1.4. the control over the implied servitudes created in favour of and against each Section in terms of section 28 of the STA;
  - 4.1.5. the promotion, advancement and protection of the communal interests of the Members;
  - 4.1.6. the regulation of the scope, usage and extent of the Common Property, and in particular the Shared Common Areas;
  - 4.1.7. enforcing compliance by all Members with the provisions of this Constitution and all other rules issued pursuant thereto from time to time;
  - 4.1.8. enforcing compliance by all Members with the MAPOA MOI and all other rules issued pursuant thereto from time to time.
- 4.2. Subject to the provisions of this Constitution and in line with the autonomous nature of the Building Components, the main object of each of the Building Components is:
- 4.2.1. the improvement to, maintenance of and control over each Building Component and the Private Common Areas allocated for the exclusive use of that Building Component;
  - 4.2.2. the compilation, approval and regulation of the Building Component Budget, as referenced in Rules 15.2.1.1 and 15.10.1, including the management of an Administration Fund and Reserve Fund in respect of such Building Components;

- 4.2.3. the promotion, advancement and protection of the interests of the Members of the Building Components;
- 4.2.4. the regulation of the scope, usage and extent of the Private Common Areas;
- 4.2.5. insofar as it may be necessary, and at all times subject to the powers of the Trustees of the Body Corporate, enforcing compliance by Members of the Building Component with the provisions of this Constitution and all other rules issued pursuant thereto.

## 5. **FUNCTIONS AND POWERS OF THE BODY CORPORATE**

Whilst having due regard to the autonomous nature of each of the Building Components referred to in Rule 6, the Body Corporate shall have the functions and powers normally associated with a body corporate in a sectional title scheme and which functions and powers are more fully detailed in Sections 3, 4 and 5 of the STSMA and this Constitution.

## 6. **AUTONOMY OF THE BUILDING COMPONENTS**

- 6.1. In accordance with the provisions of this Constitution, each Building Component shall be completely autonomous of the other Building Components and shall exist, operate and be wholly independent of the others.
- 6.2. With a view to ensure the autonomous operation and separation of expenses relating to the Body Corporate and each particular Building Component to the fullest extent possible, and as more fully set out hereinafter, this Constitution provides for the operation of the Body Corporate on 2 (two) levels:
  - 6.2.1. the Body Corporate represented by its Trustees; and
  - 6.2.2. each Building Component represented by the Building Component Trustees.
- 6.3. In line with the provisions of Rule 6.1 and Rule 6.2, and as detailed below, a distinction is also *inter alia* made with regard to:
  - 6.3.1. a separation in respect of income and expenditure (including matters concerning the Administration Fund and the Reserve Fund) by virtue of the provision for both a General Budget and Building Component Budgets;
  - 6.3.2. a separation in respect of books of accounts, records and financial statements to be kept by the Body Corporate and each Building Component independently of the other in relation to expenses to be shared by all Members and expenses limited to the Building Component in question;
  - 6.3.3. separate meetings to be held by the Body Corporate and each Building Component, subject to Rule 17.3.1; and
  - 6.3.4. general provisions relating to the powers and duties of the Trustees and the Building Component Trustees.

## **7. SEPARATION OF EXPENDITURE: THE BODY CORPORATE vs THE BUILDING COMPONENTS**

- 7.1. Each Building Component shall, independent of the Body Corporate and independent of the other Building Components, be liable for all its own expenses and charges arising from or in connection with that Building Component (save to the extent provided for in Rule 21), including but not necessarily limited to:
  - 7.1.1. all rates, taxes, levies, local authority charges (including any such increases) and any other proprietary charges due and payable by that Building Component;
  - 7.1.2. all water, gas and electricity consumed in, on, by or in connection with the Building Component;
  - 7.1.3. all amounts payable to third parties and incurred by the Members of the relevant Building Component in respect of maintenance contracts or other services rendered to that Building Component;
  - 7.1.4. all building insurance and/or licence fees and any renewal(s) thereof that are applicable to that Building Component (notwithstanding that such insurance cover is arranged by the Body Corporate as provided for in Rule 14.6);
  - 7.1.5. interior and exterior maintenance, insofar as this may be practical and possible given the construction of the Building(s) and the Common Property, of the relevant Building Component so that the Building(s), Common Property and particularly the Private Common Areas are maintained in good order and condition and in accordance with any decisions taken by the Members of the relevant Building Components, including but not limited to repairing all machinery and equipment exclusively serving that particular Building Component, including but not necessarily limited to lifts and electrical installations as well as service contracts related thereto;
  - 7.1.6. all costs of maintaining and repairing the mechanical ventilation and air-conditioning exclusively serving that Building Component;
  - 7.1.7. all costs of maintaining and repairing internal and external plumbing, sanitary works, electrical and lighting installations exclusively serving that particular Building Component;
  - 7.1.8. all cleaning costs, including external window cleaning and all pest control service costs in respect of that Building Component;
  - 7.1.9. all costs associated with maintaining and servicing fire control and protection equipment of the relevant Building Component and any increase in such amounts howsoever arising; and
  - 7.1.10. any other amount not specified but attributable to a specific Building Component.
- 7.2. For purposes of the provisions of this Rule 7, a Building Component includes those parts of the Private Common Areas allocated for the exclusive use by Members of the Building Component in question.



- 7.3. To the extent that it is impossible for whatever reason to apportion any costs to a particular Building Component under this Rule 7, all Members of the Body Corporate shall be liable for such costs and such costs will be recovered from all Members in accordance with the Participation Quota set out in Rule 2.3.29.2.4.
- 7.4. In the context of this Rule 7 and for the avoidance of doubt, all costs of whatsoever nature arising from or in connection with the Shared Common Areas shall be borne by the Body Corporate which may recover such costs from all Members in accordance with the Participation Quota as set out in Rule 2.3.29.2.4.

## 8. **USE AND MAINTENANCE OF PRIVATE COMMON AREAS AND SHARED COMMON AREAS**

- 8.1. Certain common areas will be available for use exclusively by certain Building Components ("**Private Common Areas**") in which event the maintenance of those areas will be for the account of the Building Component in question only, in accordance with the Participation Quota as referred to in Rules 2.3.29.2.2, 2.3.29.2.3, 2.3.29.2.4, 2.3.29.2.5 or 2.3.29.2.6 (as the case may be).
- 8.2. Other common areas ("**Shared Common Areas**") will be available for use by all Members of the Body Corporate in which event the maintenance of those areas will be for the account of the Body Corporate, to be paid for by all Members in accordance with the Participation Quota as referred to in Rule 2.3.29.2.7.
- 8.3. In respect of any other Common Areas where it is not practically or reasonably possible to determine whether same is used exclusively by one or more of the Building Components ("**Deemed Shared Common Areas**"), the maintenance of those Deemed Shared Common Areas will be for the account of the Body Corporate, to be paid for by all Members in accordance with the Participation Quotas as referred to in Rule 2.3.29.2.7.
- 8.4. The general public shall have access to those parts of the Common Property used as lifts, stairs, vehicular access and pedestrian access and which are required and allocated as access areas in order to gain access to the Parking Component and the Building(s), where applicable and as provided for.
- 8.5. The Members of any Building Component and their maintenance teams will have free access over the Common Property and/or the Parking Component in order to access any area which they are responsible to maintain.

## 9. **BUILDING COMPONENTS, PRIVATE COMMON AREAS AND SHARED COMMON AREAS**

- 9.1. The Residential Component, Commercial Component and Parking Component are reflected in Annexure A hereto.
- 9.2. The Private Common Areas and Shared Common Areas (collectively "**the Common Property**") are similarly reflected in Annexure A and Annexure B hereto.



## 10. **TRUSTEES OF THE BODY CORPORATE**

### 10.1. **Composition of Trustees**

- 10.1.1. The number of Trustees of the Body Corporate shall be 5 (five), the composition of which shall be as follows:
- 10.1.1.1. 1 (one) Trustee elected by the Members, being owners of residential Sections, to represent the Residential Component;
  - 10.1.1.2. 1 (one) Trustee elected by the Members, being owner(s) of commercial Section(s), to represent the Commercial Component;
  - 10.1.1.3. 1 (one) Trustee elected by the Members, being owner(s) of retail Section(s), to represent the Retail (Motor Showroom) Component;
  - 10.1.1.4. 1 (one) Trustee elected by the Members, being owner(s) of hotel Section(s), to represent the Hotel Component;
  - 10.1.1.5. 1 (one) Trustee elected by the Members, being owner(s) of the Sections situate in the Parking Component, to represent the Parking Component;
- 10.1.2. With effect from the date of the establishment of the Body Corporate, all Members shall be Trustees who shall hold office until the first general meeting of the Members of the Body Corporate as contemplated in Rule 16 whereupon they shall retire but shall be eligible for re-election in terms of Rules 11.3 and 11.4.
- 10.1.3. The Chairperson of the Trustees referred to in Rule 10.1.2 shall be the Developer concerned or his nominee, who shall hold office until the end of the first general meeting, when he shall retire as Chairperson, but shall be eligible for re-election in terms of Rule 12.3.2.

### 10.2. **Qualifications**

The provisions of Rule 11.2 shall apply *mutatis mutandis* herein, save that reference therein to Building Component Trustee shall be read as a reference to Trustee.

### 10.3. **Election/appointment of Trustees**

The persons elected to act as Chairperson for each of the Building Components in terms of Rule 11.4 shall, without further election, be appointed to act as Trustees of the Body Corporate, subject to the provisions of Rule 10.1.1.

### 10.4. **Replacement of & vacancy in number of Trustees**

Save to the extent that Rule 11.1.1 is not applicable to this Rule 10.4, the provisions of Rule 11.5.3 shall apply *mutatis mutandis* herein, subject to the provisions of Rule 10.1.1.

#### 10.5. **Alternate trustees**

The provisions of Rule 11.6 shall apply *mutatis mutandis* herein, save that reference therein to Building Component Trustee shall be read as a reference to Trustee.

#### 10.6. **Remuneration**

10.6.1. Unless otherwise determined by a Special Resolution of all Members of the Body Corporate, Trustees who are Members shall not be entitled to any remuneration in respect of their services as such, provided however 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 on behalf of the Body Corporate and in accordance with this Constitution.

10.6.2. The Body Corporate may remunerate Trustees who are not Members at such rate as may be approved by an Ordinary Resolution of the Members of the Body Corporate as part of the General Budget and such Trustees shall further be entitled to have refunded to them any disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers on behalf of the Body Corporate and in accordance with these Rules, provided always that an alternate trustee appointed by the Trustees, who is not a Member, 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.

#### 10.7. **Indemnity**

10.7.1. Subject to Rule 10.7.3, 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 in accordance with this Constitution, unless such costs, losses, expenses and/or claims are caused by the *mala fide* (bad faith) or grossly negligent conduct of such person.

10.7.2. The Trustees shall pay such indemnity, as and when necessary, out of the funds of the Body Corporate.

10.7.3. The indemnity referred to in Rule 10.7.1 shall not apply in favour of any managing agent appointed in terms of Rule 18.

#### 10.8. **Powers and Duties**

The Trustees shall have the powers and duties as detailed in Section 7 of the STSMA, PMR 9, this Constitution and any direction given to or restriction imposed upon them by the Members in general meeting.

## **10.9. Disqualification & Removal from Office**

10.9.1. The provisions of Rule 11.9 shall apply *mutatis mutandis* herein, save to the extent that:

10.9.1.1. all references to the Building Component shall be read as a reference to the Body Corporate;

10.9.1.2. the Ordinary Resolution of all Members of the Building Component referred to in Rule 11.9.1.6 shall be read as an Ordinary Resolution of all Members of the Body Corporate in accordance with such Members' Participation Quota as referred to in Rule 2.3.29.2.7.

## **10.10. Representation at MAPOA meetings**

10.10.1. The Chairperson or alternatively, in the event of the Chairperson being unavailable for any reason, any Trustee nominated by the other Trustees for such purpose, shall represent the Body Corporate at any meeting of the MAPOA.

10.10.2. The Body Corporate's vote and the casting of such vote at any meeting of the MAPOA shall be determined by the provisions of the MAPOA MOI and shall be exercised by the representative of the Body Corporate referred to in Rule 10.10.1.

## **11. BUILDING COMPONENT TRUSTEES**

### **11.1. Composition of Building Component trustees**

11.1.1. The number of Building Component Trustees of each Building Component shall be determined by the Members of that Building Component, provided that the number of Building Component Trustees shall not be less than 2 (two) and not more than 5 (five).

11.1.2. The Building Component Trustee elected by the Members of that Building Component in accordance with Rule 11.4.2, shall represent that Building Component as a Trustee of the Body Corporate, shall act as Chairperson of the Building Component until the end of his tenure as provided for herein, subject to the provisions of Rule 13.3. For purposes of Rule 10.1.1.1 both the Chairperson and vice-chairperson of the Residential Component shall act as Trustees of the Body Corporate.

### **11.2. Qualifications**

11.2.1. A Building Component Trustee or alternate Building Component Trustee shall not be required to be a Member or the nominee of a Member who is a juristic person, in order to qualify for office as a Trustee, provided however that:

11.2.1.1. the majority of the Building Component Trustees are Members of the relevant Building, or spouses of such Members; and

11.2.1.2. 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 also a Member.

### **11.3. Nominations**

11.3.1. Nominations by Members of each Building Component for the election of Building Component Trustees at any annual general meeting shall be given:

11.3.2. in accordance with the categories of Trustees, as per Rule 10.1.1, in respect of which such Member is allowed to vote for the election of such a Building Component Trustee(s);

11.3.3. in writing, accompanied by the written consent of the person nominated, so as to be received at the *domicilium* of the Body Corporate by no later than 48 (forty eight) hours prior to the meeting,

provided that Building Component 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 the number of Building Component Trustees required in terms of Rule 11.1.

### **11.4. Election of Building Component Trustees**

11.4.1. The Building Component Trustees in respect of each of the autonomous Building Components shall be elected by the Members of each relevant Building Component at the first annual general meeting of the Body Corporate and thereafter at each subsequent annual general meeting, and shall hold office until the end of the next succeeding annual general meeting, at which meeting they shall be eligible for re-election, if so nominated.

11.4.2. Following election of the Building Component Trustees as aforesaid, the Members of each Building Component shall elect, from amongst the relevant Building Component's duly elected Building Component Trustees, to act as Chairperson of the Building Component Trustees.

### **11.5. Replacement of & vacancy in number of Building Component Trustees**

11.5.1. In the event of any Building Component Trustee ceasing to hold office in terms of Rule 11.9, the Building Component Trustees may fill any vacancy in the number of Building Component Trustees subject to the composition of Building Component Trustees required in terms of Rule 11.1.

11.5.2. Any Building Component Trustee so appointed shall hold office until the next annual general meeting when he shall retire and be eligible for re-election in terms of Rules 11.3 and 11.4.

11.5.3. In the event that the Building Component Trustee ceasing to hold office as aforesaid, is the Chairperson representing the relevant Building Component on the board of Trustees of the Body Corporate, the remaining Building Component Trustees of the relevant Building Component shall appoint a person from amongst their number to act as Chairperson of the Building Component Trustees and to represent the relevant Building Component on the board of Trustees of the Body Corporate.

#### **11.6. Alternate trustees**

- 11.6.1. Each duly elected Building Component Trustee may appoint another person, whether or not he be a Member of the relevant Building Component, to act as an alternate trustee during his temporary absence or temporary inability to act as Trustee.
- 11.6.2. An alternate trustee shall have the powers and be subject to the duties of a Building Component Trustee.
- 11.6.3. An alternate trustee shall cease to hold office if the Building Component Trustee whom he replaces, ceases to be a Building Component Trustee, or if the alternate's appointment is revoked by the relevant Building Component Trustee.

#### **11.7. Remuneration**

11.7.1. The provisions of Rule 10.6 shall apply *mutatis mutandis* herein, save to the extent that:

- 11.7.1.1. the reference to a Special Resolution by all Members of the Body Corporate in Rule 10.6 shall be read as a reference to a Special Resolution by Members of the relevant Building Component in question, in accordance with such Members' Participation Quota as referred to in Rules 2.3.29.2.2, 2.3.29.2.3 (as the case may be);
- 11.7.1.2. all references to Body Corporate, Trustees and Members shall be read as a reference to the Building Component, the Building Component Trustees and the Members of the Building Component; and
- 11.7.1.3. reference to General Budget shall be read as a reference to the relevant Building Component Budget.

#### **11.8. Indemnity**

11.8.1. The provisions of Rule 10.7 shall apply *mutatis mutandis* herein, save to the extent that:

- 11.8.1.1. all references to the Body Corporate and Trustees shall respectively be read as a reference to Building Component and Building Component Trustees;
- 11.8.1.2. the indemnification shall only be provided to a Building Component Trustee, agent or other officer or servant of the Building Component, acting on behalf of the relevant Building Component; and
- 11.8.1.3. any indemnity to be paid in terms hereof, shall be paid out of the funds of the relevant Building Component.

## **11.9. Disqualification & Removal from office**

11.9.1. A Trustee shall cease to hold office as such:

- 11.9.1.1. if by notice in writing to the the Body Corporate and the relevant Building Component he represents, that he resigns his office;
- 11.9.1.2. if he is or becomes of unsound mind;
- 11.9.1.3. if he surrenders his estate as insolvent, or if his estate is sequestrated;
- 11.9.1.4. if he is convicted of an offence which involves dishonesty;
- 11.9.1.5. in the event of his death;
- 11.9.1.6. if by Ordinary Resolution of all Members of the Building Component, at a general meeting of the Building Component, 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; or
- 11.9.1.7. if he is or becomes disqualified in terms of Section 69 of the Companies Act, 71/2008, from being appointed or acting as a director of a company.

## **11.10. Powers and duties of Building Component Trustees**

The Trustees shall have the powers and duties as detailed in Section 7 of the STSMA, PMR 9, this Constitution and any direction given to or restriction imposed upon them by the Members of the relevant Building Component in general meeting, except that the exercise of such power and duties shall be limited in relation to a specific Building Component.

## **12. MEETINGS OF TRUSTEES**

### **12.1. Calling of and attendance at Trustee meetings**

- 12.1.1. Subject to Rules 12.1.2, 12.1.3 and 12.1.4, the Trustees may give notice convening meetings, meet 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 for the time being absent from the Republic unless the meeting is one referred to in Rule 12.1.6, but notice of any such meeting shall be given to his alternate trustee, if he has appointed one, where such an alternate trustee is in the Republic.
- 12.1.2. The Trustees may by written Ordinary Resolution set the dates of and a standard agenda for their future meetings and delivery of such resolution to the Trustees is considered adequate notice of all such meetings.

- 12.1.3. A Trustee may at any time convene a meeting of the Trustees on not less than 7 (seven) days' written notice of the proposed meeting, which notice shall set out the time, place and agenda of such meeting, provided that in cases of urgency such shorter notice as is reasonable in the circumstances may be given if the reasons for such urgency is detailed in the notice.
- 12.1.4. Any Member, Registered Bondholder holding first mortgage bonds over Sections shall, and holders of future development rights, may in writing request to be notified of Trustee meetings (including the resolution referred to in Rule 12.1.2 and adjournment of such meetings), provided that such person bears the reasonable cost of such notification.
- 12.1.5. Any such Member, Registered Bondholder and holders of future development rights or their respective nominees shall be entitled to attend and speak on matters on the agenda but shall not be entitled to propose any motion or vote thereat and shall not be entitled to attend parts of the meeting referred to in PMR 11(3)(a) and PMR 11(3)(b).
- 12.1.6. The Trustees may make arrangement for attendance at a Trustee meeting by way of telephone, video conferencing or other method, if such method:
  - 12.1.6.1. is accessible to all Trustees or their alternate trustees (as the case may be);
  - 12.1.6.2. permits all persons participating in the meeting to communicate with each other during the meeting; and
  - 12.1.6.3. permits the Chairperson to confirm, with reasonable certainty, the identity of the participants.
- 12.1.7. A person who attends the Trustee meeting as described in Rule 12.1.6 is considered to be present in person at the meeting.
- 12.1.8. The Trustees are not obliged to hold a meeting if:
  - 12.1.8.1. at least 24 (twenty four) hours before the meeting is set to take place:
    - 12.1.8.1.1. all Trustees consent in writing to motions that deal with the items of business on the agenda; and
    - 12.1.8.1.2. the Trustee(s) calling the meeting, alternatively the Chairperson, has sent an email to all Trustees and other persons entitled to notice of such meeting advising that the meeting will not proceed, provided that if the said person made a reasonable attempt to give such notice, an inadvertent omission or failure to do so to any person entitled to such notice or the non-receipt or late receipt of such notice shall not invalidate the notice or the resolutions agreed to in writing as aforesaid.

## **12.2. Quorum of trustees**

- 12.2.1. At a meeting of the Trustees no less than 3 (three) Trustees shall form a quorum.
- 12.2.2. If at any meeting of Trustees a quorum is not present within 30 (thirty) minutes of the appointed time of the meeting, such meeting shall stand adjourned to the next Business Day at the same time and same place, and the Trustees then present, who shall not be less than 2 (two), must adopt interim resolutions in respect of each item on the agenda, but implementation of such resolutions are suspended and will only take effect once adopted at a Trustee meeting at which a quorum is present, alternatively by written resolution signed by all the Trustees.

## **12.3. Chairperson**

- 12.3.1. From the establishment of the Body Corporate until the end of the first general meeting, the Developer or the Developer's nominee is the Chairperson of the Trustees.
- 12.3.2. At the commencement of the first meeting of Trustees after an annual general meeting at which Trustees have been elected as provided for in Rules 11.3 and 11.4, the Trustees shall elect a Chairperson from among their number, who shall, subject to Rule 12.3.3, hold office as such until the end of the next annual general meeting of the Members of the Body Corporate.
- 12.3.3. The Trustees at a Trustees' meeting or the Body Corporate at a general meeting, in respect of which notice of the intended removal from office of the Chairperson has been given, may remove the Chairperson from office, provided that such removal shall not remove the Chairperson from the office of Trustee.
- 12.3.4. If any Chairperson elected in terms of Rule 12.3.2 vacates office as Chairperson or ceases to hold office by virtue of the provisions of Rule 12.3.3, the Trustees shall elect another Chairperson from among their number who shall hold office as such for the remainder of the period of office of the first-mentioned Chairperson and who shall have the same voting rights as the first-mentioned Chairperson.
- 12.3.5. If any Chairperson 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 Chairperson from among their number, who shall for such meeting have the same powers and duties as the Chairperson would ordinarily have.

## **12.4. Voting by Trustees**

- 12.4.1. Subject to Rule 12.4.5, each Trustee shall have 1 (one) vote.
- 12.4.2. A motion at a Trustee meeting does not have to be seconded and must be determined by a resolution adopted by the majority of Trustees present and entitled to vote.



- 12.4.3. Trustees must adopt decisions by way of majority vote, provided that resolutions may be put to the vote:
  - 12.4.3.1. at Trustee meetings; or
  - 12.4.3.2. by a notice sent to each Trustee which contains the text of any proposed resolutions and instructs the Trustees to indicate their agreement to the resolution by affixing their signature thereto and return same to the Body Corporate by no later than the closing date specified in the said notice.
- 12.4.4. A resolution in writing signed by all the Trustees for the time being present in the Republic and constituting a quorum, shall be as valid and effective as if it had been passed at a meeting of the Trustees duly convened and held.
- 12.4.5. A Trustee is disqualified from voting in respect of any contract or dispute with the Body Corporate to which the Trustee is a party (whether directly or indirectly) and any other matter in respect of which the Trustee has any direct or indirect interest.
- 12.4.6. In the event of a deadlock, no resolution shall be passed and the meeting shall stand adjourned to the next duly convened Trustee meeting at which the item in respect of which such deadlock was reached, will automatically be placed on the agenda again.
- 12.4.7. Should the deadlock continue at the next Trustee meeting, the Chairperson shall have a casting vote.

### **13. MEETINGS OF BUILDING COMPONENT TRUSTEES**

#### **13.1. Calling of and attendance at Building Component Trustee meetings**

- 13.1.1. The provisions of Rule 12.1 shall apply *mutatis mutandis*, save to the extent that:
  - 13.1.1.1. all references to Trustee(s) therein shall be read as a reference to Building Component Trustees;
  - 13.1.1.2. all references to a Member shall be read as a reference to a Member of the Building Component.

#### **13.2. Quorum of Building Component Trustees**

Save insofar as the presence of 2 (two) Building Component Trustees are required to constitute a quorum at a meeting of the Building Component Trustees (including an adjournment of such meeting), the remainder of the provisions of Rule 12.2 shall apply *mutatis mutandis*, save to the extent that all references to Trustee(s) therein shall be read as a reference to Building Component Trustees.

#### **13.3. Chairperson**

- 13.3.1. The Chairperson of the Building Component Trustees shall be the person elected in terms of Rule 11.4.

- 13.3.2. The Building Component Trustees at a Building Component Trustees' meeting or the Members of the relevant Building Component at a general meeting, in respect of which notice of the intended removal from office of the Chairperson has been given, may remove the Chairperson from office, provided that such removal does not automatically remove the Chairperson from the office of Building Component Trustee.
- 13.3.3. If any Chairperson elected in terms of Rule 11.4 vacates office as Chairperson or ceases to hold office by virtue of the provisions of Rule 12.3.3, then:
  - 13.3.3.1. if the Chairperson is removed at a Building Component Trustees' meeting, the Building Component Trustees shall elect another Chairperson from among their number who shall hold office as such for the remainder of the period of office of the first-mentioned Chairperson and who shall have the same voting rights as the first-mentioned Chairperson;
  - 13.3.3.2. if the Chairperson is removed at a general meeting of Members of the Relevant Building Component, the Members of the relevant Building Component shall, at the general meeting elect another Chairperson from among the existing Building Component Trustees elected in terms of Rule 11.4, who shall hold office as such for the remainder of the period of office of the first-mentioned Chairperson and who shall have the same voting rights as the first-mentioned Chairperson; or
  - 13.3.3.3. if any Chairperson 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 Chairperson from among their number, who shall for such meeting have the same powers and duties as the Chairperson would ordinarily have.

#### 13.4. **Voting by Building Component Trustees**

The provisions of Rule 12.4 shall apply *mutatis mutandis* herein, save to the extent that all references to Trustee(s) therein shall be read as a reference to Building Component Trustees.

#### 13.5. **General**

Notwithstanding the provisions of this Rule 13, it is recorded that if, at any point in time, a specific Building Component has only 1 (one) Member it shall not be required of such Building Component to hold Trustee meetings. However, the said Member of that Building Component shall keep record of all decisions taken by it in relation to the operations of the Building Component in question.

### 14. **THE FUNCTIONS, POWERS AND DUTIES OF TRUSTEES OF THE BODY CORPORATE**

#### 14.1. **General**

- 14.1.1. Subject to Rule 6, the functions, powers and duties of the Body Corporate shall, subject to the provisions of the STA, the STSMA, this Constitution and to any restrictions imposed and/or directions given at a general meeting of the Members, be performed or exercised by the Trustees of the Body Corporate holding office in terms hereof.

14.1.2. The Trustees shall:

- 14.1.2.1. perform the functions entrusted to them in terms of the STA, the STSMA and this Constitution;
- 14.1.2.2. do all things reasonably necessary for the control, management and administration of the Building(s); and
- 14.1.2.3. do all things reasonably necessary for the enforcement of the provisions of this Constitution.

14.2. **Powers**

14.2.1. Subject to any restrictions imposed and/or directions given by Members at a general meeting of the Body Corporate, the powers of the Trustees shall include, but shall not necessarily be limited to, the following:

- 14.2.1.1. to meet and carry out the Body Corporate's business, adjourn and otherwise regulate meetings as they deem fit;
- 14.2.1.2. to compile and thereafter submit the general Budget for approval at an annual general meeting of the Body Corporate;
- 14.2.1.3. to appoint for and on behalf of the Body Corporate such agents and employees as they deem fit in connection with:
  - 14.2.1.3.1. the control, management and administration of the Building(s) and the Common Property;
  - 14.2.1.3.2. the exercise and performance of any or all of the powers and duties of the Body Corporate in accordance with Rule 14.1 and resolutions taken at general meetings and at Trustee meetings;
- 14.2.1.4. to apply the Body Corporate funds in accordance with the General Budget approved by the Members in general meeting;
- 14.2.1.5. 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;
- 14.2.1.6. to compile minutes of each Trustee meeting and general meeting and within 7 (seven) days of such meeting distribute the minutes to persons entitled to have received notice of such meeting; and
- 14.2.1.7. appoint an agent (in terms of Rule 18).

14.2.2. The Trustees may not make loans on behalf of the Body Corporate to Members and/or any third parties and/or to themselves.

#### **14.3. Signing of instruments**

14.3.1. No document signed on behalf of the Body Corporate shall be valid and binding unless it is signed on authority of a resolution:

14.3.1.1. in the case of a certificate issued in terms of section 15B(3)(i)(aa) of the STA, by 2 (two) Trustees or the managing agent, provided that where such document is signed by 2 (two) Trustees, 1 (one) such Trustee shall be the Trustee representing the Building Component in which the relevant Section to be transferred is situate; or

14.3.1.2. in the case of any other document, by 2 (two) Trustees alternatively 1 (one) Trustee and the managing agent referred to in Rule 18, provided that where such document relates to a specific Building Component 1 (one) of the signatories shall be:

14.3.1.2.1. where signed by 2 (two) Trustees, the Trustee representing the relevant Building Component; and

14.3.1.2.2. where signed by 1 (one) Trustee and the managing agent, the Trustee representing the relevant Building Component.

#### **14.4. Maintenance, repair and replacement plan**

The Trustees shall prepare a written maintenance, repair and replacement plan for the Shared Common Areas as envisaged in PMR 22.

#### **14.5. Administration Fund & Reserve Fund**

The Trustees shall establish and maintain an Administration Fund and a Reserve Fund as envisaged in section 3 of the STSMA and PMR 24, insofar as it relates to the Shared Commons Areas and matters where the costs cannot be apportioned to a specific Building Component(s).

#### **14.6. Insurance**

14.6.1. At the first meeting of the Trustees or as soon thereafter as is possible, and annually thereafter, the Trustees shall take steps to insure the Building(s), 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 Members, against:

14.6.1.1. fire, lightning, explosion and smoke;

14.6.1.2. riot, civil commotion, strikes, lock-outs, labour disturbances and/or malicious persons acting on behalf of or in connection with any political organisation;

14.6.1.3. storm, tempest, windstorm, hail and flood;

14.6.1.4. earthquakes and subsidence;

- 14.6.1.5. bursting or overflowing of any water tanks, pipes and any other apparatus forming part of and/or required for the proper functioning of any water tanks, water pipe network or water/pipe infrastructure in respect of the Building(s), and the Common Property;
- 14.6.1.6. impact by aircraft with the Building(s) and/or improvements to the Common Property;
- 14.6.1.7. impact by any vehicle(s) or other objects (including animals) with the Building(s) and/or improvements to the Common Property;
- 14.6.1.8. housebreaking, theft, robbery, armed robbery and/or any attempt thereat;
- 14.6.1.9. loss of occupation and/or loss of rent and/or any other form of income in respect of any of the above risks;
- 14.6.1.10. such other perils or dangers as the Members may determine by way of Special Resolution.
- 14.6.2. The Trustees shall at all times ensure that in the insurance policy(ies) referred to in Rule 14.6:
  - 14.6.2.1. there is specified the replacement value of each Section (excluding the Members' undivided share in the Common Property):
    - 14.6.2.1.1. initially, but subject to the provisions of Rule 14.6.2.1.3, in accordance with the Trustees' estimate of such value;
    - 14.6.2.1.2. after the first annual general meeting, but subject to the provisions of Rule 14.6.2.1.3, in accordance with the schedule of values as approved in terms of Rule 14.6.3; or
    - 14.6.2.1.3. as required at any time by any Member in terms of Rule 14.6.2.2;
  - 14.6.2.2. any "average" clause is restricted in its effect to individual Sections and does not apply to the Building(s) as a whole;
  - 14.6.2.3. there is included a clause in terms of which the policy(ies) is valid and enforceable by any Registered Bondholder against the insurer notwithstanding any circumstances whatsoever which would otherwise entitle the insurer to refuse to make payment of the amount insured unless and until the insurer on not less than 30 (thirty) days' notice to the Registered Bondholder shall have terminated such insurance.

- 14.6.3. Before every annual general meeting, the Trustees shall, in consultation with the Building Component Trustees, cause to be prepared and lay before the annual general meeting of the Body Corporate for consideration and approval, schedules reflecting the estimate of:
  - 14.6.3.1. the replacement value of Building(s) and all improvements to the Common Property; and
  - 14.6.3.2. the replacement value of each Section (excluding the Members' undivided share in the Common Property), the aggregate of such values of all Sections being equal to the value referred to in Rule 14.6.3.1.
- 14.6.4. Any Member may at any time increase the replacement value as specified in the insurance policy(ies) in respect of his Section, provided that such Member shall be liable for payment of the additional insurance premium and shall forthwith furnish the Body Corporate with proof thereof from the insurer.
- 14.6.5. The Trustees shall, on the written request of a Registered Bondholder and satisfactory proof thereof, record the cession by any Member to such Registered Bondholder of the Members' interest in the application of the proceeds of the insurance policy(ies) effected in terms of Rule 14.6.1.
- 14.6.6. At the first meeting of the Trustees or as soon thereafter as is possible, the Trustees shall take all reasonable steps:
  - 14.6.6.1. to insure the Members and the Trustees and to keep them insured against liability in respect of:
    - 14.6.6.1.1. death, bodily injury or illness; and
    - 14.6.6.1.2. loss of, or damage to, property,  
  
occurring in connection with the Building(s), and the Common Property, for a sum of liability of not less than R20,000,000.00 (twenty million rand), which sum may be increased from time to time as directed by the Members in general meeting; and
  - 14.6.6.2. to procure to the extent, if any, as determined by the Members of the Body Corporate in general meeting, a fidelity guarantee in terms of which shall be refunded any loss of monies belonging to the Body Corporate or for which it is responsible, sustained as a result of any act of fraud and/or dishonesty committed by any insured person being any person in the service of the Body Corporate and all Trustees and persons acting in the capacity of managing agents of the Body Corporate.
- 14.6.7. The Members may by Special Resolution direct the Trustees to insure against such other risks as the Members may deem appropriate.

#### 14.7. **Collection of Levies**

- 14.7.1. It shall be the duty of the Trustees to levy and collect contributions from the Members in accordance with the provisions and in the proportions set out herein.
- 14.7.2. Subject to the provisions of Rule 14.7.3, the liability of Members to make contributions to the shared costs, and the proportions in which the Members shall make such contributions for the purposes of Section 3 of the STSMA, shall with effect from the date upon which the Body Corporate comes into being, be borne by the Members in accordance with the Participation Quotas attaching to their respective Sections, in terms of Rule 2.3.29.2.7 and in accordance with Rule 21.
- 14.7.3. By virtue of the autonomous nature of the Building Components, and in particular the general provisions that the various Building Components shall be responsible for the maintenance, upkeep of and all expenses related to the particular Building Component, including those parts of the Private Common Areas allocated for the exclusive use of a particular Building Component, the following principles shall apply:
  - 14.7.3.1. the liability of Members to make contributions as provided for in section 3 of the STSMA, shall, in respect of the Building Component in which a Member's Section is situated, be determined in accordance with Rules 2.3.29.2.1 or 2.3.29.2.2 or 2.3.29.2.3 or 2.3.29.2.4 or 2.3.29.2.5 or 2.3.29.2.6 (as the case may be); and
  - 14.7.3.2. the liability of Members of the Residential Component to make contributions towards the Parking Component Costs shall be determined in accordance with Rule 21; and
  - 14.7.3.3. the liability of Members to make contributions as provided for in section 3 of the STSMA, shall, in respect of all expenses arising from or in connection with the Building(s) (including the Shared Common Areas) and insofar as such expenses cannot be allocated to a specific Building Component, be determined in accordance with Rule 2.3.29.2.7.
- 14.7.4. The liability of Members to make contributions, and the proportions in which the Members may, in terms of section 15 of the STSMA 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 Members in terms of the Participation Quota defined in Rule 2.3.29.2.7, save where such debt relates to a specific Building Component in which event payment of such judgment debt shall be borne by the Members of the relevant Building Component in terms of the Participation Quota defined in Rules 2.3.29.2.1 or 2.3.29.2.2 or 2.3.29.2.3 or 2.3.29.2.4 or 2.3.29.2.5 or 2.3.29.2.6 (as the case may be), provided however that any Member who is required to make a payment to a judgment creditor after he has paid to the Body Corporate or Building Component (as the case may be) any contribution which he was required to pay to the Body Corporate or Building Component (as the case may be) in respect of such debt, shall be entitled to obtain a refund from the Body Corporate or Building Component (as the case may be) of the amount of the payment so made to the judgment creditor.

- 14.7.5. At every annual general meeting the Members shall approve, with or without amendment, the General Budget and shall determine the amount estimated to be required to be levied upon the Members during the ensuing Financial Year.
- 14.7.6. Within 14 (fourteen) days after each annual general meeting the Trustees shall advise each Member in writing of:
- 14.7.6.1. the amount payable by him in respect of the approved General Budget;
  - 14.7.6.2. the Member's obligation to pay the specified contribution;
  - 14.7.6.3. the date(s) on which the contribution is due and payable;
  - 14.7.6.4. the interest (if any) that will be levied on overdue payments; and
  - 14.7.6.5. the dispute resolution process insofar as disputed contributions are concerned.
- 14.7.7. The Trustees and Building Component Trustees may from time to time, when necessary, provide for Special Contributions or call upon Members to make Special Contributions in respect of all such expenses as are not included in any approved General Budget or approved Building Component Budget (as the case may be) and such Special Contributions shall be determined as follows:
- 14.7.7.1. in respect of a Building Component in which a Member's Section is situated (including those parts of the Private Common Areas allocated for the exclusive use by the particular Building Component), the liability of such Members to pay Special Contributions shall be determined in accordance with such Member's Participation Quota as referred to in Rules 2.3.29.2.1 or 2.3.29.2.2 or 2.3.29.2.3 or 2.3.29.2.4 or 2.3.29.2.5 or 2.3.29.2.6 (as the case may be); and
  - 14.7.7.2. in respect of expenses arising from or in connection with the Parking Component Costs, the liability of Members of the Body Corporate to pay Special Contributions shall be determined in accordance with Rule 21; and
  - 14.7.7.3. in respect of all expenses arising from or in connection with the Building(s) (including the Shared Common Areas) and insofar as such expenses cannot be allocated to a specific Building Component, the liability of Members to pay Special Contributions shall be determined in accordance with such Member's Participation Quota as referred to in Rule 2.3.29.2.7.
- 14.7.8. Special Contributions as provided for in Rule 14.7.7 may be made payable by Members liable for such Special Contribution, either in one lumpsum or in such number of instalments and at such time(s) as the Trustees deem to be appropriate in the circumstances.



#### **14.8. Record of Rules and Availability**

14.8.1. The Trustees shall keep a complete record of:

14.8.1.1. the Constitution as well as all Rules in force from time to time and shall ensure that any amendment, substitution, addition to and/or repeal of such Rules is submitted forthwith to CSOS for approval as contemplated in section 10 of the STSMA; and

14.8.1.2. the information and documents listed in PMR 27.

14.8.2. The Trustees shall:

14.8.2.1. have this Constitution available for inspection at Trustee meetings and Member meetings;

14.8.2.2. deliver a copy of this Constitution to each person who becomes a Member;

14.8.2.3. deliver to all Members a copy of any Rules substituted, amended or repealed in terms of section 10(5) of the STSMA; and

14.8.2.4. deliver to a Member upon written request and upon payment by such Member of the reasonable costs incurred in the supply thereof to such Member, a copy of this Constitution and/or Rules substituted, amended or repealed in terms of section 10(5) of the STSMA.

#### **14.9. Luxurious and Non-Luxurious Improvements to Common Property**

14.9.1. The Trustees may:

14.9.1.1. if the Members by Unanimous Resolution so decide, effect improvements of a luxurious nature to the Shared Common Areas;

14.9.1.2. if the Members by Special Resolution so decide, effect improvements of a non-luxurious nature to the Shared Common Areas.

14.9.2. Should the Trustees wish to effect any improvements of a luxurious or non-luxurious nature to the Shared Common Areas, they shall first give written notice of such intention to all Members effected thereby. Such notice shall:

14.9.2.1. indicate the intention of the Trustees to proceed with the improvements; and

14.9.2.2. provide details of the improvements as to:

14.9.2.2.1. the costs thereof; and

14.9.2.2.2. the manner in which it is to be financed and the effect upon Levies payable by Members; and

14.9.2.2.3. the need, desirability and effect thereof.

14.9.3. The Trustees shall convene a special general meeting in order to discuss and to deliberate upon the proposals contained in the notice referred to in Rule 14.9.2, at which meeting the Members may reject or approve such proposals, with or without amendment.

14.9.4. The Trustees shall not proceed with their proposals until the holding of a special general meeting, whereupon they shall be bound by any Unanimous Resolution or Special Resolution (as the case may be) ensuing therefrom.

#### **14.10. Minutes of Meetings of all Members**

14.10.1. The Trustees shall:

14.10.1.1. keep minutes of their meetings;

14.10.1.2. cause minutes to be kept of all meetings of the Body Corporate in a minute book of the Body Corporate kept for that purpose;

14.10.1.3. include in the minute book of the Body Corporate a record of every Unanimous Resolution, Special Resolution, Ordinary Resolution and any other resolution of the Body Corporate.

14.10.2. The Trustees shall keep all minute books in perpetuity.

14.10.3. On the written application of any Member or Registered Bondholder of a Section, the Trustees shall make all minutes of their proceedings and the minutes of the Body Corporate available for inspection by such Member or Registered Bondholder.

#### **14.11. Records and books of account**

14.11.1. The Trustees shall cause proper books of account and records to be kept in respect of all dealings relating to the Building(s) and the Common Property so as to accurately record and fairly explain the transactions and financial position of the Body Corporate, including, but not necessarily limited to:

14.11.1.1. a record of assets and liabilities;

14.11.1.2. a record of all sums of money received and expended and the matters in respect of which such receipt and expenditure occurred;

14.11.1.3. a register of Members and of Registered Bondholders and of all other persons having real rights in such Sections (insofar as written notice shall have been given to the Trustees by such Members, Registered Bondholders or other persons) showing in each case their physical addresses and email addresses;

14.11.1.4. individual ledger accounts in respect of each Member.

14.11.2. On written application by any Member, Registered Bondholder or of the managing agent the Trustees shall make all or any of the books of account and records available for inspection by such Member, Registered Bondholder or managing agent at a time convenient for all parties involved.

14.11.3. The Trustees shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate, provided that minute books shall be retained in perpetuity, for as long as the scheme remains registered.

#### **14.12. General Budget, financial statements and report**

14.12.1. Before every annual general meeting, the Trustees shall prepare or cause to be prepared a General Budget, which General Budget shall:

14.12.1.1. be laid before the annual general meeting for consideration and approval in terms of Rule 16.4.1.3.2; and

14.12.1.2. include a reasonable provision for contingencies and the maintenance of the Building(s) (save to the extent that the Building Components are liable for same) and the Shared Common Areas.

14.12.2. Without derogating from the generality of Rule 14.12, the General Budget shall include the Levies payable from time to time by the Members of the Body Corporate for and in respect of the MAPOA. These expenses as set out in the General Budget shall be allocated to the respective Members in accordance with Rule 2.3.29.2.7.

14.12.3. For the sake of clarity, it is herewith recorded that all Members shall be entitled to partake and vote in relation to the consideration, confirmation and/or variation of the General Budget, while only Members who are registered owners of a Section(s) in a particular Building Component shall be entitled to partake and vote in relation to the consideration, confirmation and/or variation of the Building Component Budget pertaining to that particular Building Component.

14.12.4. The Trustees shall prepare or cause to be prepared, and shall lay before every annual general meeting for consideration in terms of Rule 16 audited financial statements relating to the management, control and administration of the Body Corporate prepared in conformity with generally accepted accounting practice, which statements shall fairly present the state of affairs of the Body Corporate and its finances and transactions as at the end of the Financial Year concerned.

- 14.12.5. The statements shall include information and notes pertaining to the proper financial management by the Body Corporate, including but not limited to:
- 14.12.5.1. an analysis of the periods of debts and the amounts due by Members to the Body Corporate in respect of Levies, Special Contributions and other charges;
  - 14.12.5.2. an analysis of the periods and the amounts due by the Body Corporate to creditors and in particular to any public or local authority in respect of rates, taxes and charges for consumption or services, including but not limited to, water, electricity, gas, sewerage and refuse removal;
  - 14.12.5.3. amounts advanced to the Body Corporate by way of levy finance, a loan or otherwise;
  - 14.12.5.4. amounts in the Reserve Fund showing the amount available for maintenance, repair and replacement of each major capital item insofar as the Shared Common Areas are concerned, as a percentage of the accrued estimated cost and the rand value of any shortfall;
  - 14.12.5.5. amounts payable to CSOS; and
  - 14.12.5.6. the expiry dates of all insurance policies.
- 14.12.6. The Trustees shall further cause to be prepared and shall lay before every annual general meeting budgets for the Administration Fund and the Reserve Fund comprising itemised estimates of the anticipated income and expenses in respect of the Shared Common Areas and costs that cannot be attributed to any particular Building Component, during the next Financial Year, provided that such budgets may include discounts not exceeding 10% (ten percent) of the Members' annual contributions paid before the due dates.
- 14.12.7. The Trustees shall further cause to be prepared and shall lay before every annual general meeting a report signed by the Chairperson reviewing the affairs of the Body Corporate during the past Financial Year, for consideration in terms of Rule 16.
- 14.12.8. The Trustees shall:
- 14.12.8.1. cause copies of the insurance schedules, General Budget, audited statements, Administration Fund and Reserve Fund budgets and report referred to in Rules 14.6.3, 14.12.1, 14.12.4, 14.12.6 and 14.12.7 as well as the Building Component Budget in respect of the Parking Component to be delivered to each Member, to any Registered Bondholder which has advised the Body Corporate of its interest, and to all holders of future development rights, at least 14 (fourteen) days before the date of the annual general meeting at which they are to be considered;

14.12.8.2. cause copies of the Building Component Budgets, audited statements, Administration Fund and Reserve Fund budgets and report referred to in Rules 15.10.1, 15.10.4, 15.10.5 and 15.10.6 to be delivered to each Member of the relevant Building Component, to any Registered Bondholder of a mortgage bond over a Section forming part of that Building Component which has advised the Body Corporate of its interest, and to all holders of future development rights, at least 14 (fourteen) days before the date of the annual general meeting at which they are to be considered.

14.12.9. Delivery under Rule 14.12.8 shall be deemed to have been effected if the documents referred to are sent/delivered by email, by hand or by prepaid registered post addressed to the Member at his *domicilium* referred to in Rule 3.2, and to any Registered Bondholder as aforesaid at the address of such Registered Bondholder as reflected in the records of the Body Corporate.

#### 14.13. **Audit**

At the first general meeting and thereafter at every ensuing annual general meeting, the Members shall appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.

#### 14.14. **Deposit and investment of funds**

14.14.1. The Trustees shall cause all monies 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 monies shall only be withdrawn for the purpose of payment of the expenses of the Body Corporate or investment in terms of Rule 14.14.3.

14.14.2. The Trustees may authorise the managing agent to administer and operate the accounts referred to in Rules 14.14.1 and 14.14.3, provided that where the managing agent is an estate agent as defined in the Estate Agency Affairs Act 112 of 1976, the Trustees may authorise such managing agent to deposit monies contemplated in Rule 14.14.1 in a trust account as contemplated in section 32(3) of that Act, which monies shall only be withdrawn for the purposes contemplated in Rule 14.14.1.

14.14.3. Any funds not immediately required for disbursement, may be invested in a savings or similar account with any registered bank or building society approved by the Trustees from time to time.

14.14.4. Interest on monies invested shall be used by the Body Corporate for any lawful purpose.

## **15. THE FUNCTIONS AND POWERS OF THE BUILDING COMPONENT TRUSTEES**

### **15.1. General**

- 15.1.1. The duties and powers of each Building Component shall, subject to the provisions of the STA, the STSMA, this Constitution and to any restrictions imposed and/or directions given by Members of the Building Component in general meeting, be performed or exercised by the Building Component Trustees holding office in terms hereof.
- 15.1.2. The Building Component Trustees shall do all things reasonably necessary to assist the Trustees of the Body Corporate in the enforcement of the provisions of this Constitution and any rules issued pursuant hereto from time to time.

### **15.2. Powers**

- 15.2.1. Subject to any restrictions imposed and/or directions given by Members of the relevant Building Component at a general meeting, the powers of the Building Component Trustees of each Building Component shall include, but shall not necessarily be limited to, the following:
  - 15.2.1.1. to compile and thereafter submit the Building Component Budget for approval at an annual general meeting;
  - 15.2.1.2. to appoint for and on behalf of the Building Component such agents and employees as they deem fit in connection with:
    - 15.2.1.2.1. the control, management and administration of the Building Component and those parts of the Private Common Areas allocated for the exclusive use of the particular Building Component; and
    - 15.2.1.2.2. the exercise and performance of any or all of the powers and duties of the Building Component;
  - 15.2.1.3. to delegate to one or more of the Building Component Trustees such of their powers and duties as they deem fit, and at any time to revoke such delegation.
- 15.2.2. The Building Component Trustees may not make loans on behalf of the Building Component to any Members and/or any third parties and/or to themselves.

### **15.3. Signing of instruments**

No document signed on behalf of the Building Component shall be valid and binding unless it is signed on authority of a resolution by 2 (two) Building Component Trustees, alternatively 1 (one) Building Component Trustee and the managing agent referred to in Rule 18.3, provided however that if, at any point in time, a specific Building Component has only 1 (one) Member signature by that Member's or its authorised representative shall be sufficient.

#### 15.4. **Maintenance, repair and replacement plan**

The Building Component Trustees of each Building Component shall prepare a written maintenance, repair and replacement plan for the Private Common Areas as envisaged in PMR 22.

#### 15.5. **Administration Fund & Reserve Fund**

The Building Component Trustees shall establish and maintain an Administration Fund and a Reserve Fund as envisaged in section 3 of the STSMA and PMR 24, insofar as it relates to the Private Common Areas of that Building Component.

#### 15.6. **Collection of Levies**

15.6.1. Save as expressly provided otherwise, the following provisions of Rule 14.7 shall apply *mutatis mutandis*:

15.6.1.1. Rule 14.7.1, save to the extent that it shall be the duty of the Building Component Trustees to collect Levies and Special Contributions from the Members of the relevant Building Component, in accordance with the provisions of this Constitution and in the proportions set out below;

15.6.1.2. Rule 14.7.2, save to the extent that the liability of Members of Building Components to contribute to the costs of the relevant Building Component in question in terms of section 3(1) of the STSMA, shall arise with effect from the date upon which the Body Corporate comes into being and shall be borne by the Members in accordance with their Participation Quotas as referred to in Rule 2.3.29.2.1 or 2.3.29.2.2 or 2.3.29.2.3 or 2.3.29.2.4 or 2.3.29.2.5 or 2.3.29.2.6 (as the case may be);

15.6.1.3. Rule 14.7.3;

15.6.1.4. Rule 14.7.5, save to the extent that the Members of a Building Component shall at every annual general meeting of those Members, approve, with or without amendment, the Building Component Budget and shall determine the amount estimated to be levied upon such Members during the ensuing Financial Year;

15.6.1.5. Rule 14.7.6, save to the extent that the reference to Trustees, Member(s) and General Budget, shall be read as a reference to the Building Component Trustees, Members of the Building Component and the Building Component Budget;

15.6.1.6. Rule 14.7.7, save to the extent that all references to Trustees, Members and the General Budget shall be read as a reference to the Building Component Trustees, Members of the Building Component and the Building Component Budget; and

15.6.1.7. Rule 14.7.8.

## **15.7. Luxurious and Non-Luxurious Improvements to Private Common Areas**

15.7.1. The Building Component Trustees may:

- 15.7.1.1. if the Members, in respect of a specific Building Component in which those Members' Sections are situated, by Unanimous Resolution so decide, effect improvements of a luxurious nature to those parts of the Private Common Areas allocated for the exclusive use by the Building Component in question;
- 15.7.1.2. if the Members, in respect of a Specific Building Component in which those Members' Sections are situated, by Special Resolution so decide, effect improvements of a non-luxurious nature to those parts of the Private Common Areas allocated for exclusive use by the particular Building Component in question.

15.7.2. The provisions of Rule 14.9.2 shall apply *mutatis mutandis* to the procedure to be followed by the Building Component Trustees in order to obtain the required approval by Members of the relevant Building Component.

## **15.8. Minutes of Meetings of Members of Building Components**

The provisions of Rule 14.10 shall apply *mutatis mutandis*.

## **15.9. Records and books of account**

15.9.1. The provisions of Rule 14.11 shall apply *mutatis mutandis*, save to the extent that:

- 15.9.1.1. all references to the Body Corporate, Trustees and Members shall be read as a reference to the Building Component, Building Component Trustees and Members of the Building Component in question;
- 15.9.1.2. the reference to books of account and records to be kept shall be read as a reference to books of account and records to be kept by the Building Component Trustees in respect of all dealings in respect of the Building Component and those parts of the Private Common Area allocated for the exclusive use of the particular Building Component.

## **15.10. Building Component Budgets, financial statements and report**

15.10.1. Before every annual general meeting, the Building Component Trustees shall prepare or cause to be prepared a Building Component Budget, which shall be laid before the annual general meeting for consideration and approval in terms hereof, which Building Component Budget shall:

- 15.10.1.1. timeously be provided to the Trustees of the Body Corporate to accompany the notice referred to in Rule 16.2.1; and



- 15.10.1.2. include a reasonable provision for contingencies and the maintenance of the Building Component and those parts of the Private Common Area allocated for the exclusive use of the Building Component in question.
- 15.10.2. Without derogating from the generality of Rule 15.10.1.2, the Building Component Budget shall include the Levies or Special Contributions payable from time to time by the Members of the relevant Building Component for and in respect of the Body Corporate. These expenses as set out in the Building Component Budget shall be allocated to the respective Members in accordance with Rule 2.3.29.2.1 or 2.3.29.2.2 or 2.3.29.2.3 or 2.3.29.2.4 or 2.3.29.2.5 or 2.3.29.2.6 (as the case may be) and in accordance with Rule 21.
- 15.10.3. For the sake of clarity, it is herewith recorded that all Members shall be entitled to partake and vote in relation to the consideration, confirmation and/or variation of the General Budget, while only Members who are registered owners of a Section(s) in a particular Building Component shall be entitled to partake and vote in relation to the consideration, confirmation and/or variation of the Building Component Budget pertaining to that Building Component.
- 15.10.4. The Building Component Trustees shall prepare or cause to be prepared, and shall lay before every annual general meeting for consideration, audited financial statements relating to the management, control and administration of the relevant Building Component, prepared in conformity with generally accepted accounting practice, which statements shall fairly present the state of affairs of the Building Component and its finances and transactions as at the end of the Financial Year concerned.
- 15.10.5. The statements shall include information and notes pertaining to the proper financial management of the Building Component by the Building Component Trustees, including but not limited to:
- 15.10.5.1. an analysis of the periods of debts and the amounts due by Members to the Building Component in respect of Levies, Special Contributions and other charges;
  - 15.10.5.2. an analysis of the periods and the amounts due by the Building Component to creditors and in particular to any public or local authority in respect of rates, taxes and charges for consumption or services, including but not limited to, water, electricity, gas, sewerage and refuse removal;
  - 15.10.5.3. amounts advanced to the relevant Building Component by way of levy finance, a loan or otherwise;
  - 15.10.5.4. amounts in the relevant Building Component's Reserve Fund showing the amount available for maintenance, repair and replacement of each major capital item in the relevant Building Component as a percentage of the accrued estimated cost and the rand value of any shortfall; and
  - 15.10.5.5. the expiry dates of all insurance policies.

15.10.6. The Building Component Trustees (with the exception of the Parking Component) shall further cause to be prepared and shall lay before every annual general meeting budgets for the Administration Fund and the Reserve Fund comprising itemised estimates of the anticipated income and expenses in respect of each of the Building Components during the next Financial Year, provided that such budgets may include discounts not exceeding 10% (ten percent) of the Members' annual contributions paid before the due dates.

15.10.7. The Building Component Trustees (with the exception of the Parking Component) shall further cause to be prepared a report signed by the Chairperson of that Building Component for inclusion in the report referred to in Rule 14.12.7.

15.10.8. The Building Component Trustees shall, where applicable, cause copies of the Building Component Budget, audited statements, Building Component Administration Fund and Building Component Reserve Fund budgets and report referred to in Rules 15.10.1, 15.10.4, 15.10.6 and 15.10.7 to be delivered to the Body Corporate for distribution by the Body Corporate as envisaged in Rules 14.12.8 and 14.12.9.

#### 15.11. **Audit**

The auditor appointed in terms of Rule 14.13 shall automatically be appointed as the auditor of each Building Component.

#### 15.12. **Deposit and investment of funds**

The provisions of Rule 14.14 shall apply *mutatis mutandis* to all monies received by the Building Component Trustees and to be deposited and/or invested and/or used on behalf of and for the benefit of the Members of the particular Building Component.

### 16. **MEETINGS OF MEMBERS**

#### 16.1. **General meetings**

16.1.1. The first meeting of Members shall be held within 60 (sixty) days of the establishment of the Body Corporate, on at least 7 (seven) days' written notice to all Members, and which notice shall be accompanied by a copy of the agenda of such meeting and details of the items referred to in Rule 16.1.2.

16.1.2. The Developer must include with the notice of the first general meeting:

16.1.2.1. an agenda, the content of which is detailed in Rule 16.1.3;

16.1.2.2. the documents referred to in PMR 16(2);

16.1.2.3. a comprehensive summary of the rights and obligations of the Body Corporate under the contracts referred to in Rule 16.1.3.5;

- 16.1.3. The agenda for the meeting convened under Rule 16.1.1, shall comprise at least the following:
- 16.1.3.1. the consideration, confirmation and/or variation of the insurances effected by the Developer or the Trustees;
  - 16.1.3.2. the consideration, confirmation and/or variation of the General Budget and each of the Building Component Budgets for the ensuing Financial Year;
  - 16.1.3.3. the consideration and approval, with or without amendment, of:
    - 16.1.3.3.1. evidence of revenue and expenditure concerning the management of the Development from the date of occupation of the first Section until the date of establishment of the Body Corporate;
    - 16.1.3.3.2. the financial statements relating to the management, control and administration of the Body Corporate and each of the Building Components from date of establishment of the Body Corporate to the date of notice of the meeting referred to in Rule 16.1.1;
  - 16.1.3.4. a motion confirming that the Developer has:
    - 16.1.3.4.1. furnished the meeting with the documents referred to in section 2(8) of the STSMA and PMR 16; and
    - 16.1.3.4.2. paid over to the Body Corporate any residue referred to in Rule 16.1.3.3.1;
  - 16.1.3.5. subject to section 15(2) of the STSMA, ratification and the taking of cession of any contracts relating to the management, control and administration of the Body Corporate and each of the Building Components as may have been entered into by the Developer for the continual management, control and administration of:
    - 16.1.3.5.1. the Body Corporate and the Shared Common Areas; and
    - 16.1.3.5.2. each of the Building Components and the Private Common Areas,

in respect of which the Developer shall be obliged to submit such contracts to the meeting;
  - 16.1.3.6. the appointment of an auditor or, where applicable, an accounting officer;
  - 16.1.3.7. the election of Building Component Trustees and appointment of the Trustees in accordance with Rules 11.4 and 10.3 respectively;

- 16.1.3.8. any restrictions imposed on or directions given to Trustees and/or Building Component Trustees in terms of section 7(1) of the STSMA; and
- 16.1.3.9. determination of the *domicilium citandi et executandi* of the Body Corporate and each of the Building Components.
- 16.1.4. For purposes of voting on Rules 16.1.3.1, 16.1.3.3, 16.1.3.4 and 16.1.3.5 any vote held or controlled by the Developer (in its capacity as such) shall be suspended, save to the extent that the Developer is also a Member.
- 16.1.5. The Developer shall at or before the first general meeting provide to the Body Corporate the documents listed in PMR 16(4).
- 16.1.6. An annual general meeting shall be held within 4 (four) months of the end of each Financial Year.
- 16.1.7. All general meetings other than the annual general meeting shall be called special general meetings.
- 16.1.8. The Trustees may whenever they think fit, by Ordinary Resolution call a general meeting and must do so if:
  - 16.1.8.1. Members of at least 25% (twenty five percent) of the Participation Quota calculated in terms of Rule 2.3.29.2.7; or
  - 16.1.8.2. the Registered Bondholder of mortgage bonds over at least 25% (twenty five percent) in number of all Sectionsdeliver to the Body Corporate a written and signed request for a special general meeting, which notice must include one or more motions or matters for discussion, which motions or matters for discussion must be included, without amendment, in the agenda for such meeting, provided that if the Trustees fail to call a meeting so requested within 14 (fourteen) days of the request, the Members or the Registered Bondholder concerned shall be entitled themselves to call the meeting.
- 16.1.9. The Body Corporate may make arrangements for attendance at any annual general meeting or special general meeting by telephone, video conferencing or other method, if such method:
  - 16.1.9.1. is accessible to all Members;
  - 16.1.9.2. permits all persons participating in the meeting to communicate with each other during the meeting; and
  - 16.1.9.3. permits the Chairperson to confirm, with reasonable certainty, the identity of the participants.

16.1.10. A person who attends the meeting as described in Rule 16.1.9 is considered to be present in person at the meeting.

16.1.11. The Body Corporate is not obliged to hold a general meeting if:

16.1.11.1. at least 48 (forty eight) hours before the meeting is set to take place:

16.1.11.1.1. all Members consent in writing to motions that deal with the items of business requiring a Unanimous Resolution that must be transacted at the general meeting; and/or

16.1.11.1.2. at least 80% (eighty percent) of the Members consent in writing to any motions that deal with the items of business requiring a Special Resolution that must be transacted at the general meeting; and/or

16.1.11.1.3. at least 50% (fifty percent) of the Members consent in writing to any motions that deal with the items of business requiring an Ordinary Resolution that must be transacted at the general meeting; and

16.1.11.2. at least 24 (twenty four) hours before the meeting is set to take place, the Body Corporate has sent an email to all Members and other persons entitled to receive notice of general meetings, advising that the meeting will not proceed, provided that if the Trustees made a reasonable attempt to give such notice an inadvertent omission or failure to do so to any person entitled to such notice or the non-receipt or late receipt of such notice shall not invalidate the notice or the resolutions agreed to in writing as aforesaid.

## 16.2. **Notice of general meetings**

16.2.1. Subject to Rule 16.2.2, at least 14 (fourteen) days' written notice of every general meeting specifying the place within the magisterial district where the scheme is situated (or such other place as determined by Special Resolution of the Members), the date and the hour of the meeting and, in the case of special business, the general nature of such business, shall be given:

16.2.1.1. to all Members;

16.2.1.2. to all Registered Bondholders who have advised the Body Corporate of their interests;

16.2.1.3. to all holders of future development rights; and

16.2.1.4. to the managing agent.

16.2.2. Notwithstanding the provisions of Rule 16.2.1, a general meeting may be called:

16.2.2.1. on 7 (seven) days' notice if the Trustees have resolved that such short notice is necessary due to the urgency of the matter and the reasons for such urgency is detailed in the notice; or

16.2.2.2. otherwise on less than 14 (fourteen) days' notice if so agreed by all persons entitled to attend and vote at the meeting;

16.2.3. Any person entitled to receive notice of general meetings may waive such right by written notice delivered to the Body Corporate and may at any time, in the same way, revoke such waiver, provided that where 2 (two) or more persons are jointly entitled to exercise a vote, all of them must waive such right and any of them may revoke the waiver.

16.2.4. The Registered Bondholders, holders of future development rights and the managing agent referred to in Rule 16.2.1, 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.

16.2.5. The notice referred to in Rule 16.2.1 shall be deemed to have been sufficiently given and delivered if delivered in accordance with Rule 14.12.9.

16.2.6. The notice referred to in Rule 16.2.1 shall be accompanied by:

16.2.6.1. an agenda;

16.2.6.2. a copy of or comprehensive summary of any documents that is to be considered or approved by Members at the meeting;

16.2.6.3. the documents referred to in Rule 14.12.8, except in the case of a meeting contemplated in Rule 16.1.8 or a special general meeting; and

16.2.6.4. a proxy appointment form in the prescribed format referred to in Rule 16.7.9.4.

16.2.7. Inadvertent omission or failure to give the notice referred to in Rule 16.2.1 to any person entitled to such notice or the non-receipt of such notice by such person shall, not invalidate any proceedings or vote at any such meeting, provided that the Trustees made a reasonable attempt to give notice to all persons entitled to have received such notice.

16.2.8. A special general meeting for the purposes of passing a Unanimous Resolution or Special Resolution must be convened on at least 30 (thirty) days' written notice to all Members of the Body Corporate, but may be convened on shorter notice 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 and the reasons for such urgency or specific nature of the matter is detailed in the notice.

16.2.9. Notice of all general meetings must be delivered to each person referred to in Rules 16.2.1.1, 16.2.1.2, 16.2.1.3 and 16.2.1.4:

16.2.9.1. by hand; and/or

16.2.9.2. by prepaid registered post sent to the address of the Member's Section in the Development; and/or

16.2.9.3. by prepaid registered post sent to the relevant person's physical or postal address in the Republic that such person has chosen in writing for such purpose; and/or

16.2.9.4. by email transmitted to the email address that the relevant person has chosen in writing for such purpose.

16.2.10. Notwithstanding anything to the contrary contained in this Constitution a written notice or communication actually received by a person entitled to receive such notice, shall be an adequate written notice or communication to such person notwithstanding that it was sent via email and/or not sent to or delivered at its chosen *domicilium citandi et executandi*.

### 16.3. **Proceedings at general meetings**

16.3.1. The order of business at general meetings shall be as set out in PMR 17(6).

16.3.2. Subject to the provisions of Rules 16.1.8 and 16.3.1 the Trustees may determine the agenda for general meetings, provided that the agenda must contain:

16.3.2.1. a description of the general nature of all business; and

16.3.2.2. a description of the matters that will be voted on at the meeting, including the proposed wording of any Unanimous Resolution or Special Resolution.

16.3.3. The Body Corporate does not have to hold a special general meeting to consider a resolution if all Members waive the right to the meeting (subject to Rule 16.2.3) and consent in writing to the resolution.

16.3.4. All business at any general meeting other than business referred to in Rules 16.4.1, shall be special business.

### 16.4. **Annual general meeting**

16.4.1. The following business shall be transacted at an annual general meeting:

16.4.1.1. the receipt of reports of the activities and decisions of the Trustees since the last general meeting, including reports of the Building Component Trustees and committees (if any);

- 16.4.1.2. the consideration of the financial statements, Body Corporate Chairperson's report and each Building Component's Chairperson's report;
- 16.4.1.3. the approval with or without amendment of:
  - 16.4.1.3.1. the insurance schedules of replacement values referred to in Rule 14.6.3; and
  - 16.4.1.3.2. the General Budget referred to in Rule 14.12.1 and the Building Component Budgets referred to in Rule 15.10.1;
- 16.4.1.4. the appointment of an auditor or an accounting officer;
- 16.4.1.5. the election of the Building Component Trustees in terms of Rule 11.3 and 11.4 and the appointment of the Trustees of the Body Corporate in terms of Rule 10.3;
- 16.4.1.6. any special business of which due notice has been given in terms of Rule 16.2.1;
- 16.4.1.7. the giving of directions to or the imposing of restrictions on the Trustees or Building Component Trustees referred to in section 7(1) of the STSMA;
- 16.4.1.8. the determination of the *domicilium citandi et executandi* of the Body Corporate and the Building Components; and
- 16.4.1.9. confirmation by the auditor or accounting officer that any amendment, substitution, addition to or repeal of the Rules (as contemplated in section 35(5) of the STA) have been submitted to and has been approved by CSOS in terms of section 10(5) of the STSMA.
- 16.4.2. The Body Corporate is not obliged to hold an annual general meeting if, within 1 (one) month of the end of a Financial Year, all Members in writing waive the right to the meeting, as provided for in Rule 16.2.3, and consent in writing to motions that deal with all the items of business that must be transacted at the annual general meeting in accordance with Rule 16.1.11.

#### 16.5. **Quorum at general meetings**

- 16.5.1. 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.
- 16.5.2. A quorum at any general meeting shall be achieved when:
  - 16.5.2.1. at least  $\frac{1}{3}$  (one third) of the voting rights that are entitled to be exercised in respect of at least 1 (one) matter to be decided at such meeting are present in person or by proxy or by a representative recognized by law and entitled to vote, calculated in accordance with the Participation Quota as referred to in Rule 2.3.29.2.7; and



- 16.5.2.2. at least  $\frac{1}{3}$  (one third) of the voting rights that are entitled to be exercised in respect of at least 1 (one) matter to be decided at such meeting in respect of each Building Component are present in person or by proxy or by a representative recognized by law and entitled to vote, calculated in accordance with the Participation Quota as referred to in Rules 2.3.29.2.2, 2.3.29.2.3, 2.3.29.2.4, 2.3.29.2.5 and 2.3.29.2.6.
- 16.5.3. If within 30 (thirty) minutes 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 time and at a venue to be confirmed, and:
  - 16.5.3.1. the Body Corporate or managing agent, shall within 24 (twenty four) hours of the meeting at which no quorum was present, send a notice per email to all persons entitled to receive notice of general meetings to inform them of the adjournment; and
  - 16.5.3.2. at the adjourned meeting a quorum is not present within 30 (thirty) minutes of the time appointed for the meeting, the Members present in person or by proxy and entitled to vote shall form a quorum.

#### 16.6. **Chairperson**

- 16.6.1. The Chairperson of the Trustees shall preside as chairperson at every meeting of the Body Corporate, unless otherwise resolved by Members of the Body Corporate at such meeting.
- 16.6.2. If there is no such Chairperson or if, at any meeting, the Chairperson is not present within 15 (fifteen) minutes after the time appointed for the holding of the meeting, or if he is unwilling or unable to act as Chairperson, the Trustees present shall elect from among their number a Chairperson for such meeting.

#### 16.7. **Voting at general meetings**

- 16.7.1. A motion at a general meeting:
  - 16.7.1.1. does not need to be seconded; and
  - 16.7.1.2. except for Unanimous Resolutions and Special Resolutions, must be adopted by a resolution of the majority of the votes, calculated per the Participation Quota referred to in Rule 2.3.29.2.7, of the Members present and entitled to vote.
- 16.7.2. Only the Members of a particular Building Component shall be entitled to vote on matters or motions or resolutions affecting that Building Component exclusively.
- 16.7.3. The outcome of each vote, including the number of votes for and against a resolution, must be announced at the meeting and recorded in the minutes of the meeting.

#### 16.7.4. Poll

- 16.7.4.1. At any meeting a resolution put to the vote shall be decided on a show of hands in accordance with Rule 16.7.5.1, unless either prior to the declaration by the Chairperson of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting and in respect of the motion/resolution in question.
- 16.7.4.2. Unless a poll be demanded as aforesaid, a declaration by the Chairperson that a resolution has on the show of hands been carried, shall be conclusive evidence of that fact.
- 16.7.4.3. A demand for a poll may be withdrawn.
- 16.7.4.4. A poll, if demanded, shall be taken in such a manner as the Chairperson thinks fit, and the result of the poll shall be deemed to be the resolution of the meeting at which such poll was demanded.

#### 16.7.5. Votes

- 16.7.5.1. On a show of hands, the value of a Member's vote, or if the Member is a juristic person its proxy's vote, shall be reckoned in accordance with that Member's Participation Quota as per Rule 2.3.29.2.7 or, in respect of matters affecting a specific Building Component only, in terms of Rules 2.3.29.2.2, 2.3.29.2.3, 2.3.29.2.4, 2.3.29.2.5 or 2.3.29.2.6(as the case may be).
- 16.7.5.2. 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 Member shall be reckoned in accordance with the Member's Participating Quota as per Rule 2.3.29.2.7 or, in respect of matters affecting a specific Building Component only, in terms of Rules 2.3.29.2.2, 2.3.29.2.3, 2.3.29.2.4, 2.3.29.2.5 or 2.3.29.2.6 (as the case may be).

#### 16.7.6. No vote in certain circumstances

- 16.7.6.1. Except in cases where a Unanimous Resolution is required under the STA and/or the STSMA, a Member (including his proxy) shall not be entitled to vote at any meeting if:
  - 16.7.6.1.1. any Levy, Special Contributions or other charges payable by him in respect of his Section and/or any Exclusive Use Areas allocated to him or his Section and/or his undivided share in the Common Property have not been duly paid; or
  - 16.7.6.1.2. he remains in breach of this Constitution, notwithstanding written notice by the Trustees or managing agent to refrain from committing or permitting the commission of such a breach,
 

provided that any Registered Bondholder shall be entitled to vote as such Member's proxy at any meeting, even though Rule 16.7.6.1.1 or the provisions of this Rule 16.7.6.1.2 may apply to such Member.

16.7.7. Voting by representatives of juristic persons

Where a Member is a juristic person, a duly authorised representative of such juristic person shall exercise the voting rights in respect of the Section to the exclusion of the shareholders of the company, members of the close corporation or beneficiaries of the trust (as the case may be) and such shareholders, members and beneficiaries shall not be entitled to vote.

16.7.8. Joint voters

16.7.8.1. When 2 (two) or more persons are entitled to exercise one vote jointly, that vote shall be exercised only by 1 (one) person (who may or may not be one of them) jointly appointed by them as their proxy.

16.7.8.2. Subject to Rule 16.7.8.1, where 2 (two) or more persons are entitled to exercise one vote jointly, their proxy (who may or may not be one of them) may demand a poll.

16.7.9. Proxies at general meetings

16.7.9.1. A Member may be represented in person or by proxy at a general meeting, provided that a person must not act as proxy for more than 2 (two) Members.

16.7.9.2. Votes at a general meeting may be cast either personally or by proxy, whether on a poll or on a show of hands.

16.7.9.3. 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 Chairperson or the managing agent at least 24 (twenty four) hours prior to the commencement of the meeting or to the Chairperson before or at the start 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.

16.7.9.4. The notification by a Member to the Body Corporate of the appointment of a proxy must be substantially in accordance with the form prescribed in terms of section 5(3) of the STSMA, provided however that a resolution by a Member who is a juristic person authorising a representative(s) shall be acceptable notwithstanding that such resolution does not conform to the prescribed format.

16.7.9.5. A proxy need not be a Member, but shall not be the managing agent or any of its employees, or an employee of the Body Corporate.

## **17. GENERAL MEETINGS OF MEMBERS OF EACH OF THE BUILDING COMPONENTS**

- 17.1. The Members of a specific Building Component shall be entitled to hold special general meetings to discuss and vote on matters which affect them exclusively.
- 17.2. Members of other Buildings Components shall:
- 17.2.1. not be entitled to attend such meetings, unless the Members of the Building Component in question has consented thereto by way of a Special Resolution envisaged in Rule 2.3.46(ii)(b);
  - 17.2.2. not be entitled to vote at meetings referred to in Rule 17.1.
- 17.3. The provisions of Rule 16 shall apply *mutatis mutandis* to meetings of the Building Components, save to the extent that:
- 17.3.1. the autonomous Building Components shall not hold a separate first general meeting or separate annual general meetings; and
  - 17.3.2. all references to the Body Corporate, Trustees and Members shall respectively be read as a reference to the Building Component, Building Component Trustees and Members of the Building Component in question; and
  - 17.3.3. the Building Component Trustees shall as soon as reasonably possible after such minutes become available, for record purposes, provide to the Body Corporate a copy of the minutes of general meetings of the Members of the Building Component in question.

## **18. THE APPOINTMENT, POWERS AND DUTIES OF THE MANAGING AGENT**

- 18.1. Subject to section 7(1) of the STSMA, the Developer may initially appoint a managing agent on behalf of the Members to *inter alia*:
- 18.1.1. control, manage and administer the Body Corporate;
  - 18.1.2. control, manage and administer the Shared Common Areas;
  - 18.1.3. control, manage and administer the Residential Component;
  - 18.1.4. control, manage and administer the Private Common Areas of the Residential Component;
  - 18.1.5. ensure compliance by the Body Corporate and all Building Components with any obligations to any public or local authority;
  - 18.1.6. ensure compliance by the Body Corporate and all Building Components with the provisions of the MAPOA MOI;

- 18.1.7. collect Levies, Special Contributions and other charges due to the Body Corporate by each Member in terms of the General Budget and as determined in accordance with the Participation Quotas provided for in Rule 2.3.29.2.7.
  - 18.1.8. collect Levies, Special Contributions and other charges due by each Member of the Residential Component in terms of the Building Component Budget for the Residential Component and as determined in accordance with the Participation Quotas as provided for in Rule 2.3.29.2.2; and
  - 18.1.9. collect additional contributions from Members as envisaged in PMR 3(1)(c); and
  - 18.1.10. collect from the Residential Building Component the contribution towards the Parking Component Costs as detailed in Rule 21, and pay same over to the Developer (or its successors-in-title) as owner of the Parking Component.
- 18.2. The managing agent referred to in Rule 18.1 shall be appointed for an initial period of 1 (one) year and such appointment shall automatically be renewed from year to year unless the Trustees notify the managing agent to the contrary, provided that either the Body Corporate (subject to a Special Resolution) or the managing agent may, without penalty, terminate the appointment on 2 (two) calendar months' written notice to the other of them.
- 18.3. Although this Constitution provides for a managing agent to be appointed and to act on behalf of each of the autonomous Building Components, the Building Component Trustees, in appointing a managing agent for the Building Component in question, at any time and in accordance with the provisions of this Constitution, shall not be entitled to appoint a managing agent different from the managing agent acting on behalf of the Body Corporate at the time.

## 19. **DEALING WITH THE COMMON PROPERTY**

- 19.1. Neither the whole nor any portion of the Shared Common Areas shall be:
- 19.1.1. sold, let, alienated, otherwise disposed of, subdivided and/or transferred; or
  - 19.1.2. subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude (except those already registered, if any), save for those enjoyed by the Members in terms hereof; or
  - 19.1.3. built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities,
- without the specific prior written consent of all the Members and the sanction of the Trustees, provided that no Member or Trustee shall be entitled to unreasonably vote against any such proposal.
- 19.2. Neither the whole nor any portion of any Private Common Area in respect of a specific Building Component shall be:
- 19.2.1. sold, let, alienated, otherwise disposed of, subdivided and/or transferred; or

19.2.2. subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude (except those already registered, if any), save those enjoyed by the Members of the Building Component in question in terms hereof; or

19.2.3. built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities,

without the specific prior written consent of the Members of the Building Component in question and the sanction of the relevant Building Component Trustees, provided that no Member of the relevant Building Component or a Building Component Trustee shall be entitled to unreasonably vote against any such proposal.

19.3. The Developer reserves the right, whether or not it is a Member of the Body Corporate, to erect, install and maintain, at its own expense, but not subject to any rental or other charges to the Body Corporate, aerials, satellite dishes, antennae or any other electromagnetic, radio frequency or signal receiving or sending apparatus on the roof of the Building(s) and to receive income and make use of such installation/s for the purpose for which it was designed. Cabling to and from the aforementioned aerials and apparatus shall be over any Common Property (if required).

## **20. RESPONSIBILITY FOR THE COMMON PROPERTY**

20.1. The Body Corporate acknowledges that:

20.1.1. the relevant local authority shall not be responsible for the care, repair, maintenance, cleaning, upkeep, improvement and control of the Common Property, all services therein and any structure or thing erected on or contained therein;

20.1.2. the Body Corporate shall be solely responsible for the care, repair, maintenance, cleaning, upkeep, improvement and control of the Shared Common Areas;

20.1.3. each of the Building Components shall be solely responsible for the care, maintenance, cleaning, upkeep, improvement and control of the Private Common Areas pertaining to the Building Component in question.

20.2. The Body Corporate and the the Building Components (as the case may be) shall at all relevant times be guided by and remain subject to the MAPOA MOI, as amended from time to time, and any applicable rules and/or regulations issued pursuant thereto.

## **21. PARKING**

21.1. The Developer will retain ownership of the entire Section or Sections and Exclusive Use Areas comprising the Parking Component and will operate the Parking Component on a commercial basis, which will include both short and long term parking leases as well as casual parking on an hourly/daily basis. The Developer (or its successors-in-title) shall accordingly be entitled to all revenue generated by paid public parking at the Development.

- 21.2. A Member, being an owner of a Section in the Residential Component and its successors-in-title will have the right, in perpetuity, of access to and use of 1 (one) parking bay in the case of the Section being a 1-bedroom apartment and 2 (two) parking bays in the case of the Section being a 2-bedroom or 3-bedroom apartment, within the Parking Component.
- 21.3. The aforesaid right of access to and use of a parking bay(s) shall not be on the basis of exclusive use as defined and/or envisaged in the STA.
- 21.4. Access to and use of the parking bay(s) will at all times be subject to payment by the relevant Member, being an owner of a Section in the Residential Component (or its successors-in-title) to the Developer (or its successors-in-title) of a monthly fee per parking bay, to be calculated on a cost recovery basis, to recover all Parking Component Costs.
- 21.5. It is specifically recorded that the Developer (or its successors-in-title), as owner of the Parking Component, shall invoice the Parking Component Costs as a lump sum on a monthly basis to the Body Corporate, who shall in turn recover such costs from the relevant Members or their successors-in-title (as the case may be), based upon the number of parking bays in respect of which use has been granted to each such Member, divided by the total number of parking bays utilised by all Members of the Residential Component (or their respective successors-in-title).

## **22. SIGNAGE**

- 22.1. Subject to the provisions of Rule 22.2 below, no Member shall affix, or allow to be affixed, any signage, object, apparatus or other material to the exterior of any part of the Building(s) without the prior written consent of the Body Corporate by way of a Special Resolution, and specifically with the prior written consent of the Hotel Component, the Commercial Component and the Retail (Motor Showroom) Component. The Body Corporate's consent and the consent by the aforesaid Building Components shall not be unreasonably withheld, provided that the proposed signage, object, apparatus or other material complies with any signage and/or design guideline issued by the Developer and/or the Trustees, as well as with any provision in the MAPOA MOI regulating same, and does not detract from the corporate image of the Hotel Component, Commercial Component and/or the Retail (Motor Showroom) Component and/or competes with either of the said Building Components or their tenants/operators/occupiers.
- 22.2. Notwithstanding the provisions of Rule 22.1, the Members of the Commercial Component, Retail (Motor Showroom) Component and the Hotel Component are hereby granted the rights to affix, or allow to be affixed, signage, objects, apparatus or other materials in compliance with the then applicable signage and/or design guidelines in terms of this Constitution and/or the MAPOA MOI as contemplated in Rule 22.1 in the positions on the Building Components identified in the signage and/or design guidelines, which signage areas shall be regarded, for all intents and purposes, as exclusive use areas allocated in terms of these Rules, for the exclusive use by the Commercial Component, the Retail (Motor Showroom) Component and/or the Hotel Component (as the case may be).
- 22.3. Any dispute between the Body Corporate and a Member as to whether or not the said signage and/or design guideline applicable in terms of this Constitution will be or have been infringed, will be referred for resolution in terms of Rule 29.

- 22.4. Subject to the specified Members' signage rights in terms of Rule 22.1, no Member may permit for consideration or otherwise any third party to advertise or promote anything on the Building(s) and/or Building Components in question, without the prior written consent of the Body Corporate and in particular the Commercial Component, the Retail (Motor Showroom) Component and the Hotel Component.

## 23. **RIGHT TO EXTEND**

- 23.1. The Developer will upon opening of the Sectional Title Scheme impose the undermentioned conditions in terms of section 25 of the STA:

- 23.1.1. in terms of section 11(2) of the STA, the Developer hereby reserves the right to erect and complete from time to time, but by no later than 50 (fifty) years from the date of registration hereof, for its personal account:

23.1.1.1. further buildings and horizontal extensions; and

23.1.1.2. vertical extensions of the existing Building(s),

on specified parts of the Common Property and to divide such building(s) into a Section or Sections and Common Property and to confer the right of exclusive use over parts of such Common Property upon the Member or Members of one or more of such Sections; and

- 23.2. Subject further to the following condition imposed by the Developer in terms of section 11(2) of the STA:

- 23.2.1. the Developer shall also be entitled to create new exclusive use areas in terms of section 27 of the STA and to cancel existing exclusive use areas in the areas referred to as exclusive use visitors parking bays, if applicable; and

- 23.2.2. no Member nor any holder of a registered real right in a Section or over any part of the Common Property shall be entitled to oppose or withhold their consent to the passing of either a Special Resolution or Unanimous Resolution for the cancellation or creation of exclusive use areas in the areas referred to in Rule 23.2.1. All such Members and holders of real rights shall be deemed to have consented in writing to any such amendments and the duly authorised representatives of the Developer shall be deemed to be authorised by the Trustees of the Body Corporate to sign all documentation to give effect to such cancellation and creation and the acts of registration arising therefrom.

## 24. **CONTRACTS, REGULATIONS AND ACCESS**

- 24.1. The Trustees may from time to time:

24.1.1. make rules governing *inter alia*:

24.1.1.1. the Members' rights of use, occupation and enjoyment of the Shared Common Areas;



- 24.1.1.2. the external appearance of and the maintenance of the Building(s) (save to the extent that such responsibility falls within the responsibilities of a particular Building Component) and the Shared Common Areas and/or other improvements erected thereon;
  - 24.1.2. enter into agreement(s) with the local authorities governing the matters set out in Rule 24.1.1 and any other incidental matters, subject however to the written approval of the MAPOA (where applicable).
- 24.2. The Building Component Trustees may from time to time:
  - 24.2.1. make rules governing *inter alia*:
    - 24.2.1.1. the rights of use, occupation and enjoyment of the Private Common Areas by Members of the Building Component in question; and
    - 24.2.1.2. the external appearance of and the maintenance of those parts of the Building(s) exclusively used by a particular Building Component as well as the Shared Common Areas and/or other improvements erected thereon;
  - 24.2.2. enter into agreement(s) with the local authorities governing the matters set out in Rule 24.1.1 and any other incidental matters, subject however to the written approval of the MAPOA (where applicable).
- 24.3. Each Member undertakes to the Body Corporate that he shall comply with:
  - 24.3.1. the provisions of this Constitution;
  - 24.3.2. any rules made in terms of Rule 24.1.1; and
  - 24.3.3. any agreements referred to in Rule 24.1.2 insofar as those agreements may directly or indirectly impose obligations on him.
- 24.4. In addition to the provisions of Rule 24.3, each Member of a particular Building Component undertakes to the Building Component that he shall comply with:
  - 24.4.1. any rules made in terms of Rule 24.2.1; and
  - 24.4.2. any agreements referred to in Rule 24.2.2 insofar as those agreements may directly or indirectly impose obligations on him.
- 24.5. All officials, employees and contractors employed by the Body Corporate or the Building Components (as the case may be), the MAPOA, the local authority and/or any public service company shall, at all times, for purposes of inspecting and/or maintaining all services supplied and/or traversing any part thereof, have reasonable access to the Building(s), the Common Property and, to the extent necessary, the Sections.

## 25. DUTIES OF MEMBERS AND OCCUPIERS OF SECTIONS

### 25.1. General

25.1.1. In addition to his obligations in terms of section 13 of the STSMA, a Member:

- 25.1.1.1. of the Residential Component, shall under no circumstances be entitled to enter into a lease agreement (whether oral or in writing) in respect of his Section and/or Exclusive Use Area in terms whereof such Section and/or Exclusive Use Area is leased to any third party for a period of less than 6 (six) months. To this end and for the sake of clarity, it is recorded that Members of the Residential Component shall not allow their Sections to form part of a rental pool and/or to be utilised (whether directly or indirectly) for short term rental accommodation such as *Airbnb* or similar and/or for a period of less than 6 (six) months;
- 25.1.1.2. 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 Development, the Building Components and/or the Body Corporate;
- 25.1.1.3. shall not use his Section, Exclusive Use Area or any part of the Common Property, or permit it to be used, for:
  - 25.1.1.3.1. activities which emit a loud or obnoxious noise or bright lights (such as strobe lights) that unreasonably interfere with the enjoyment of the Building(s) or Common Property by other Members, occupants, guests and/or visitors of the Development; and/or
  - 25.1.1.3.2. a store which primarily sells discounted merchandise, such as a liquidation outlet, thrift store, pawn shop and/or flea market; and/or
  - 25.1.1.3.3. an automobile repair and/or paint shop; and/or
  - 25.1.1.3.4. selling, leasing, exchanging, displaying, advertising and/or otherwise offering sexually explicit materials and/or services; and/or
  - 25.1.1.3.5. selling paraphernalia associated with illegal or dangerous drugs; and/or
  - 25.1.1.3.6. a laundry or dry-cleaning business; and/or
  - 25.1.1.3.7. a lodging establishment; and/or
  - 25.1.1.3.8. a bar, restaurant, tavern, pub or discotheque; and/or

- 25.1.1.3.9. a business that primarily sells prepared meals; and/or
  - 25.1.1.3.10. a casino or other gaming establishment; and/or
  - 25.1.1.3.11. a mortuary or cemetery; and/or
  - 25.1.1.3.12. an assisted-suicide facility; and/or
  - 25.1.1.3.13. storing or selling explosives and/or any dangerous or hazardous materials (including fireworks); and/or
  - 25.1.1.3.14. a veterinarian facility; and/or
  - 25.1.1.3.15. any other purpose inconsistent with the quality of the Development or that may adversely affect the character, standard and/or reputation of the Body Corporate and/or the Development.
- 25.1.1.4. 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(s) or the Common Property, or 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;
  - 25.1.1.5. shall not make any alterations which are likely to impair the stability of the Building(s) or the use and enjoyment of other Sections, the Common Property or any Exclusive Use Area;
  - 25.1.1.6. shall not do anything to his Section or Exclusive Use Area which is likely to prejudice the harmonious appearance of the Development, the Building(s) and/or the Common Property;
  - 25.1.1.7. shall, when the purpose for which an Exclusive Use Area is intended to be used, is shown expressly or by implication on or by a registered sectional plan, not use, nor permit such Exclusive Use Area to be used, for any other purpose, provided that with the written consent of all Members such Exclusive Use Area may be used for another purpose;
  - 25.1.1.8. shall not construct and/or place any structure or building improvement on his Section and/or Exclusive Use Area, without the prior written consent of the Trustees and Building Component Trustees of the Building Component in question, which shall not be unreasonably withheld and shall ensure that the provisions of sections 24 and 25 of the STA and other relevant provisions of the STA and the STSMA and/or this Constitution, will not be contravened;

- 25.1.1.9. shall maintain the hot water installation which serves his Section, or, where such installation serves more than one Section, the Members concerned shall maintain such installation pro-rata, notwithstanding that such appliance is situated on the Common Property and is insured in terms of the policy procured by the Body Corporate;
- 25.1.1.10. of a Section through which provision has been made for common services by means of any pipes, wires, cables or ducts shall, at all reasonable times, allow the Body Corporate, the relevant Building Component Trustees, the MAPOA or any person authorised by either of the them, to enter his Section for the purpose of effecting any maintenance or repair required to any such pipes, wires, cables or ducts;
- 25.1.1.11. shall not, without the prior written consent of the Body Corporate be entitled to:
  - 25.1.1.11.1. connect into or otherwise draw power from any back-up generators in the basement of the Building(s); or
  - 25.1.1.11.2. install an air-conditioning unit or system in his Section(s).
- 25.1.2. A Member who exercises his rights in terms of section 60(3) of the STA shall bear all costs to give effect thereto.
- 25.1.3. All improvements and/or additions to and/or maintenance and repair of the Common Property shall be effected in accordance and conformity with the standards and aesthetics prescribed from time to time by the Body Corporate or the Building Component Trustees (as the case may be) and the MAPOA (as the case may be).

## 26. **BINDING NATURE OF THIS CONSTITUTION**

The provisions of this Constitution and the duties of a Member in relation to the use and occupation of a Section(s), Exclusive Use Areas and the Common Property shall be binding on the Member and any tenant or other occupant of any Section, and it shall be the duty of the Member to ensure compliance with this Constitution, and any Rules issued pursuant thereto, by his tenant or other occupant, including employees, guests, invitees, service providers, contractors and any member of his family.

## 27. **MEMBER'S FAILURE TO MAINTAIN**

27.1. If a Member:

- 27.1.1. fails to repair or maintain his Section and/or Exclusive Use Area or to keep it clean and in a state of good repair as required by section 13(1)(c) of the STSMA; and/or
- 27.1.2. fails to maintain adequately any area of the Common Property allocated for his exclusive use and enjoyment,

and any such failure persists for a period of 14 (fourteen) days after the giving of written notice to repair or maintain given by the Trustees or the managing agent on their behalf, the Trustees and/or the managing agent on their behalf, shall be entitled to remedy the Member's failure and to recover the reasonable cost of doing so from such Member, which cost shall be added to the Member's monthly Levy contribution.

## 28. **BREACH**

### 28.1. Should any Member:

- 28.1.1. fail to pay by the due date any amount due by that Member in terms of this Constitution or any Rules made thereunder and fail to rectify the breach within 7 (seven) days after being notified in writing to do so by the Body Corporate; or
- 28.1.2. commit any other breach of any of the provisions of this Constitution or any Rule made hereunder and fail to commence remedying that breach within a period of 7 (seven) days after the receipt or deemed receipt of written notice to that effect by the Body Corporate and complete the remedying of such breach within a reasonable time (as determined by the Body Corporate in its sole and absolute discretion having due regard to the nature of the breach);

then and in either such event, the Body Corporate shall be entitled, without prejudice to any other rights or remedies which the Body Corporate may have in law, including the right to claim damages:

- (a) to institute legal proceedings against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any Rule made hereunder, as the case may be; and/ or
- (b) insofar as may be permitted by law, to suspend all or any services to the Section owned by that Member until such time as the breach is in fact remedied; and/or
- (c) in the case of Rule 28.1.2, to remedy such breach on behalf of the Member and immediately recover the total cost incurred by the Body Corporate in so doing from such Member, which cost shall be added to the Member's monthly Levy contribution.

28.2. Should the Body Corporate institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any rule made hereunder, then without prejudice to any other rights which the Body Corporate may have in law, the Body Corporate shall be entitled to recover from such Member all legal costs incurred by the Body Corporate on an attorney and own client scale together with VAT thereon (where applicable), including but not limited to tracing fees and collection commission(s).

28.3. Without prejudice to all or any of the rights of the Body Corporate granted in terms of this Constitution, should any Member fail to pay any amount due by that Member on due date, then such Member shall pay interest thereon at the publicly quoted prime rate of interest charged by the Body Corporate's bankers from time to time calculated from the due date for payment until the date of actual receipt of such amount by the Body Corporate.

28.4. This Rule 28 shall apply *mutatis mutandis* to the Building Components and the enforcement of this Constitution by the relevant Building Component against its Members.

## 29. DISPUTE RESOLUTION: MEDIATION & ARBITRATION

29.1. With regard to any dispute, question or difference arising at any time between Members and/or between a Member(s) and the Trustees and/or between a Member(s) of a specific Building Component and the relevant Building Component Trustees out of or in regard to:

29.1.1. any matters arising out of this Constitution; and/or

29.1.2. the rights and duties of any of the parties mentioned in this Constitution; and/or

29.1.3. the interpretation of this Constitution,

the Parties shall first exhaust all mediation remedies available.

29.2. In the event of mediation not being successful, either party to the dispute may elect to either proceed with arbitration (as detailed below) or to refer the dispute to the Community Schemes Ombud Service ("CSOS"), provided however that:

29.2.1. the dispute falls within the ambit of section 39 of the Community CSOS Act 9/2011; and

29.2.2. all matters falling outside the ambit of section 39 of the CSOS Act 9/2011 shall be submitted to and decided by arbitration (as detailed below) on written notice given by any party to the dispute to the other party(ies) to be dealt with in accordance with the Expedited Rules of the Arbitration Foundation of Southern Africa ("AFSA") read with the Uniform Rules of Court made in terms of the Supreme Court Act, 59 of 1959 ("**the Supreme Court Act**").

29.3. Subject to all mediation remedies first being exhausted, either party may declare a dispute to be referred to arbitration as envisaged in Rule 29.2.2 by giving written notice to the other party to that effect. Thereafter the declaring party shall within 7 (seven) days:

29.3.1. submit a written request to AFSA to appoint the arbitrator, subject to Rule 29.5; and

29.3.2. send a copy of the request to the other party.

29.4. The arbitration shall be held:

29.4.1. in English;

29.4.2. at Johannesburg;

29.4.3. with only the legal and other representatives of the parties to the dispute present thereat;

29.4.4. *mutatis mutandis* in accordance with the provisions of the Supreme Court Act, the Uniform Rules and the practice directives of the High Court of South Africa, Gauteng Local Division, Johannesburg; and

- 29.4.5. in terms of the Arbitration Act, No 42 of 1965 ("**Arbitration Act**"), unless otherwise provided for herein or agreed between the parties in writing.
- 29.5. Save as otherwise specifically provided herein, the arbitrator shall be, if the question in dispute is:
- 29.5.1. primarily a financial matter, an independent accountant or auditor of at least 10 (ten) years' standing and registered with the South African Institute of Chartered Accountants, agreed upon between the parties or, failing agreement within 5 (five) days of the notice referred to in Rule 29.3, appointed by AFSA; or
  - 29.5.2. primarily a legal matter, a practising advocate of the Johannesburg Bar of at least 10 (ten) years' standing, agreed upon between the parties or, failing agreement within 5 (five) days of the notice referred to in Rule 29.3, appointed by AFSA; or
  - 29.5.3. primarily an architectural matter, a construction matter and/or a development matter, an independent architect of at least 10 (ten) years' standing, agreed upon between the parties or, failing agreement within 5 (five) days of the notice referred to in Rule 29.3, appointed by AFSA.
- 29.6. If agreement cannot be reached on whether the question in dispute falls under Rules 29.5.1, 29.5.2 or 29.5.3 within 5 (five) days of the notice referred to in Rule 29.1, then:
- 29.6.1. AFSA or its successors-in-title shall determine whether the question in dispute falls under Rules 29.5.1, 29.5.2 or 29.5.3; and/or
  - 29.6.2. AFSA shall nominate the arbitrator in terms of Rule 29.5 within 7 (seven) days after the parties have failed to agree, so that the arbitration can be held and concluded as soon as possible.
- 29.7. The parties hereby consent to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to herein.
- 29.8. The arbitrator shall make his award within 14 (fourteen) days after completion of the arbitration or as soon as is reasonably and practically possible thereafter having due regard to the nature of the dispute, and shall in giving his award have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Body Corporate or Building Component in question (as the case maybe) as he in his sole discretion may deem fit.
- 29.9. The decision of the arbitrator shall, save for a manifest error, be final and binding on the parties to the dispute and may be made an order of the court referred to in Rule 29.7 at the instance of any of the parties to the dispute.
- 29.10. In the event that a party to the dispute wishes to appeal the decision of the arbitrator, such party shall apply to the arbitrator for leave to appeal in accordance with the provisions of the Arbitration Act, Supreme Court Act, the Uniform Rules and the practice directives of the High Court of South Africa, Gauteng Local Division, Johannesburg.

29.11. In the event that a party to the dispute is granted leave to appeal the decision of the arbitrator, such appeal shall be held:

29.11.1. before 3 (three) arbitrators appointed, subject to Rules 29.5 and 29.6; and

29.11.2. *mutatis mutandis* in accordance with the provisions of the Arbitration Act, Supreme Court Act, the Uniform Rules and the practice directives of the High Court of South Africa, Gauteng Local Division, Johannesburg.

29.12. The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated in Rule 29.9.

29.13. Nothing contained in this Rule 29 shall prohibit either party from approaching any court of competent jurisdiction for urgent interim relief.

### **30. NO REFUNDS OR DISTRIBUTION OF PROFITS OR ASSETS**

30.1. The Members shall not be entitled to a refund of Levies, Special Contributions and/or other charges lawfully levied upon them and duly paid by them.

30.2. No portion of the profits or gains of the Body Corporate and/or the Building Components (as the case may be) shall be distributed to any Member, Trustee, Building Component Trustee, managing agent and/or any other person.

### **31. AMENDMENT TO CONSTITUTION**

31.1. None of the Rules contained in this Constitution shall be substituted, repealed or amended, and no new Rules shall be added unless:

31.1.1. approved by Special Resolution of all the Members, calculated in value and in number; and

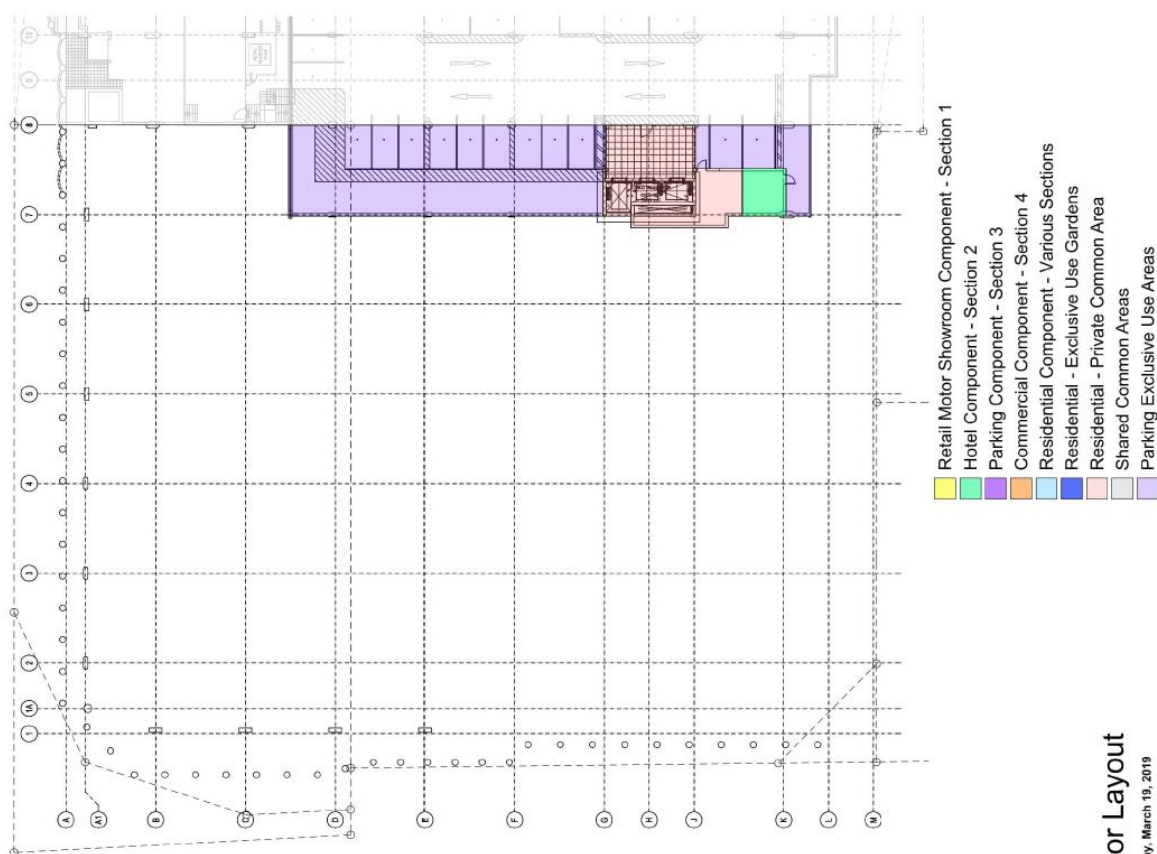
31.1.2. CSOS has approved the relevant substitution, repeal and/or amendment (as the case may be) by issuing a certificate as required in terms of section 10(5) of the STSMA.

31.2. The relevant substitution(s), repeal(s) and/or amendment(s) shall come into effect on the date of the opening of a sectional title register in respect of the Development or on the date CSOS issues a certificate as required in terms of section 10(5) of the STSMA, whichever is the later.

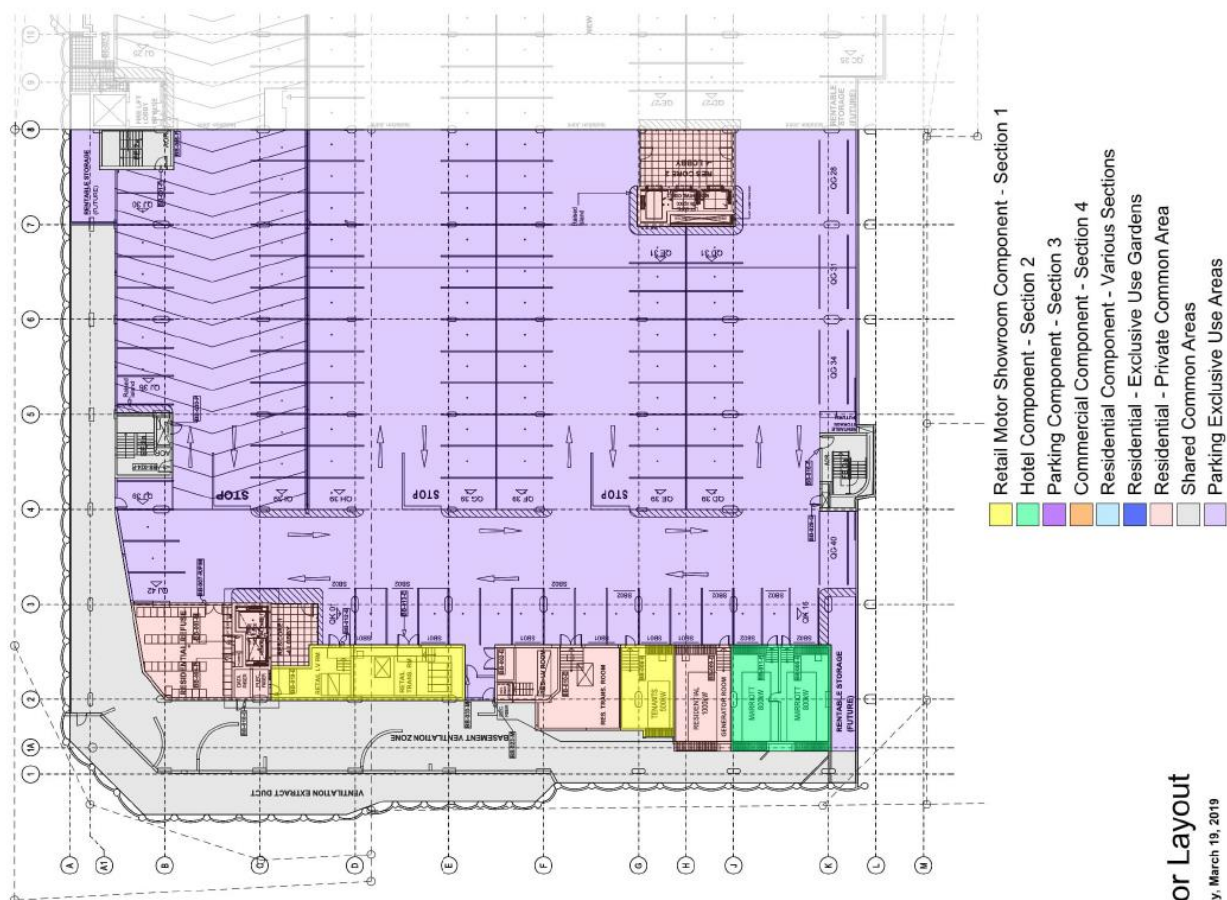


## ANNEXURE A

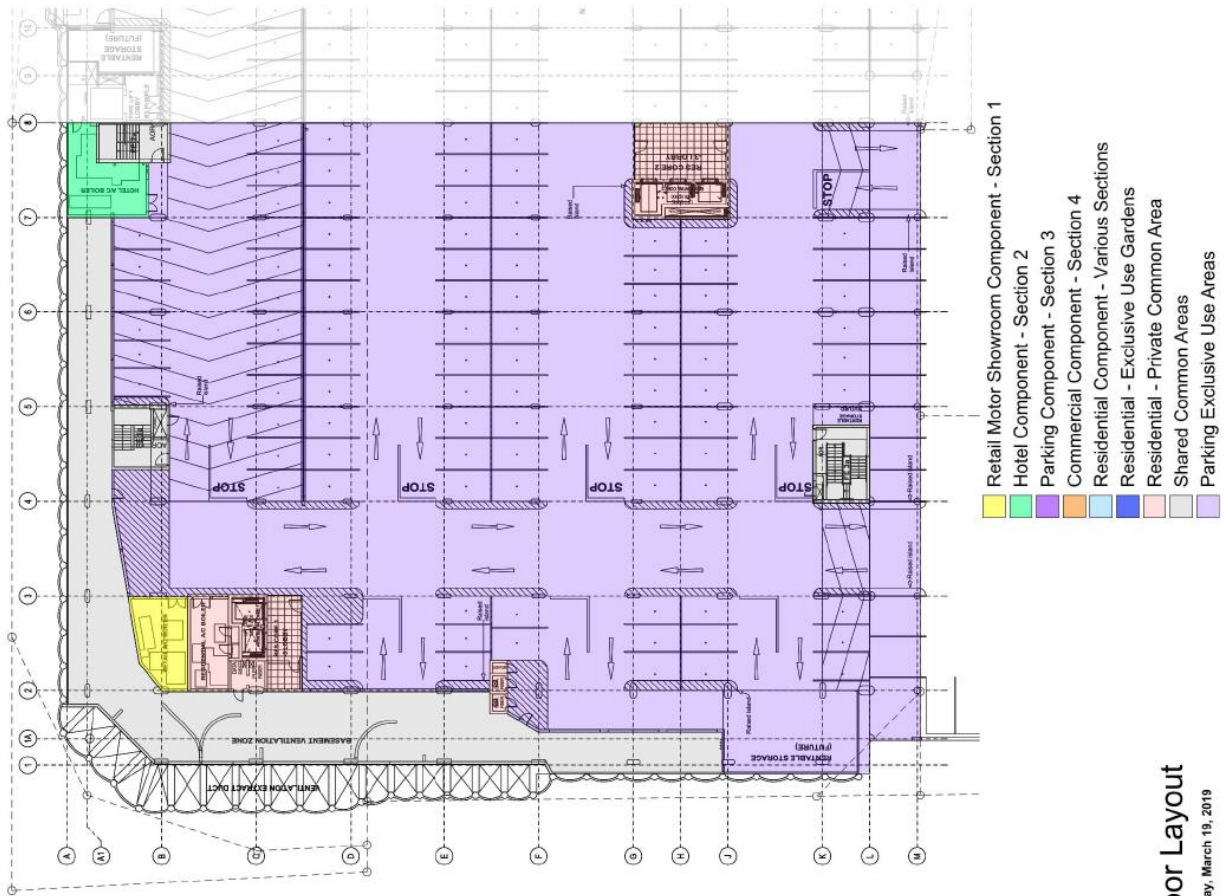
### FLOOR LAYOUTS (BUILDING COMPONENTS, PRIVATE COMMON AREAS AND SHARED COMMON AREAS)



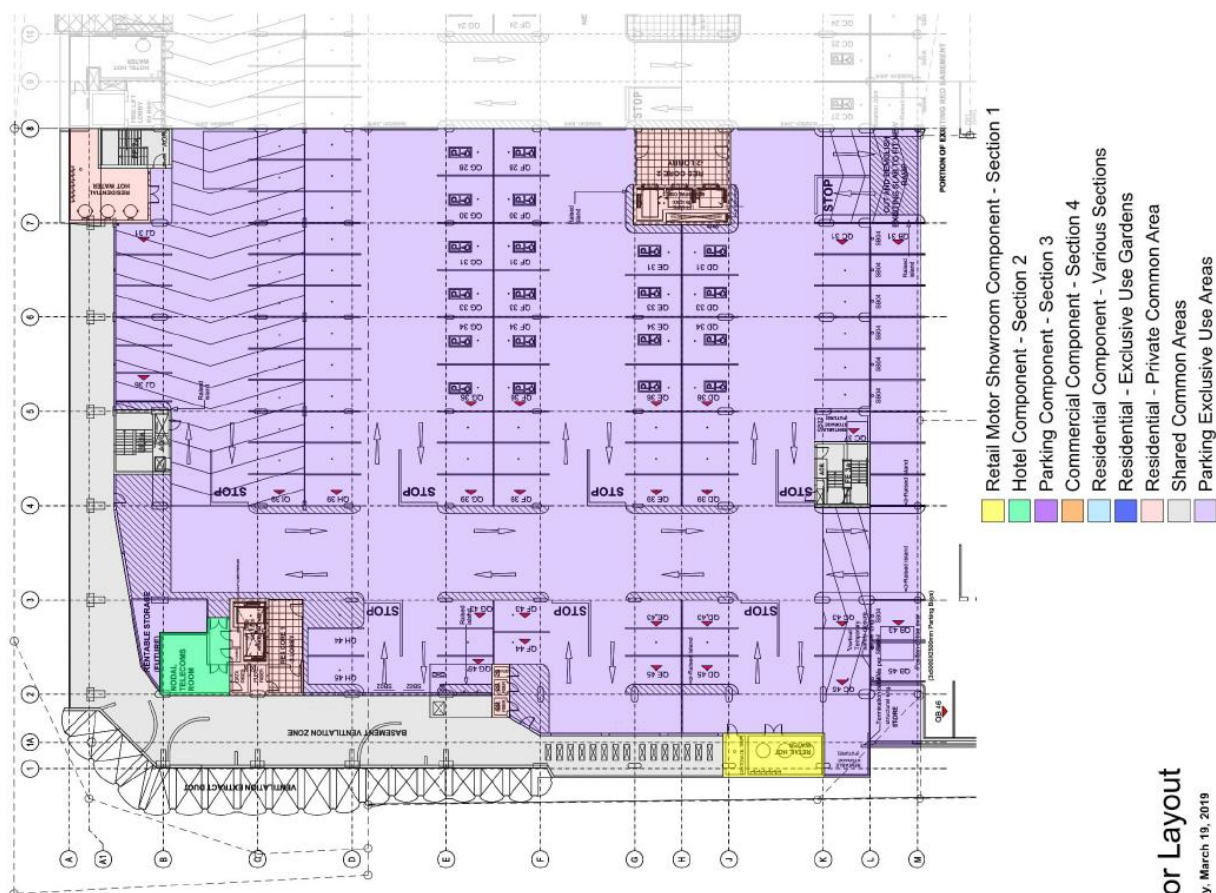
**ANNEXURE A - Scheme Floor Layout**  
Basement B5  
Date Tuesday, March 19, 2019



**ANNEXURE A - Scheme Floor Layout**  
Basement B4

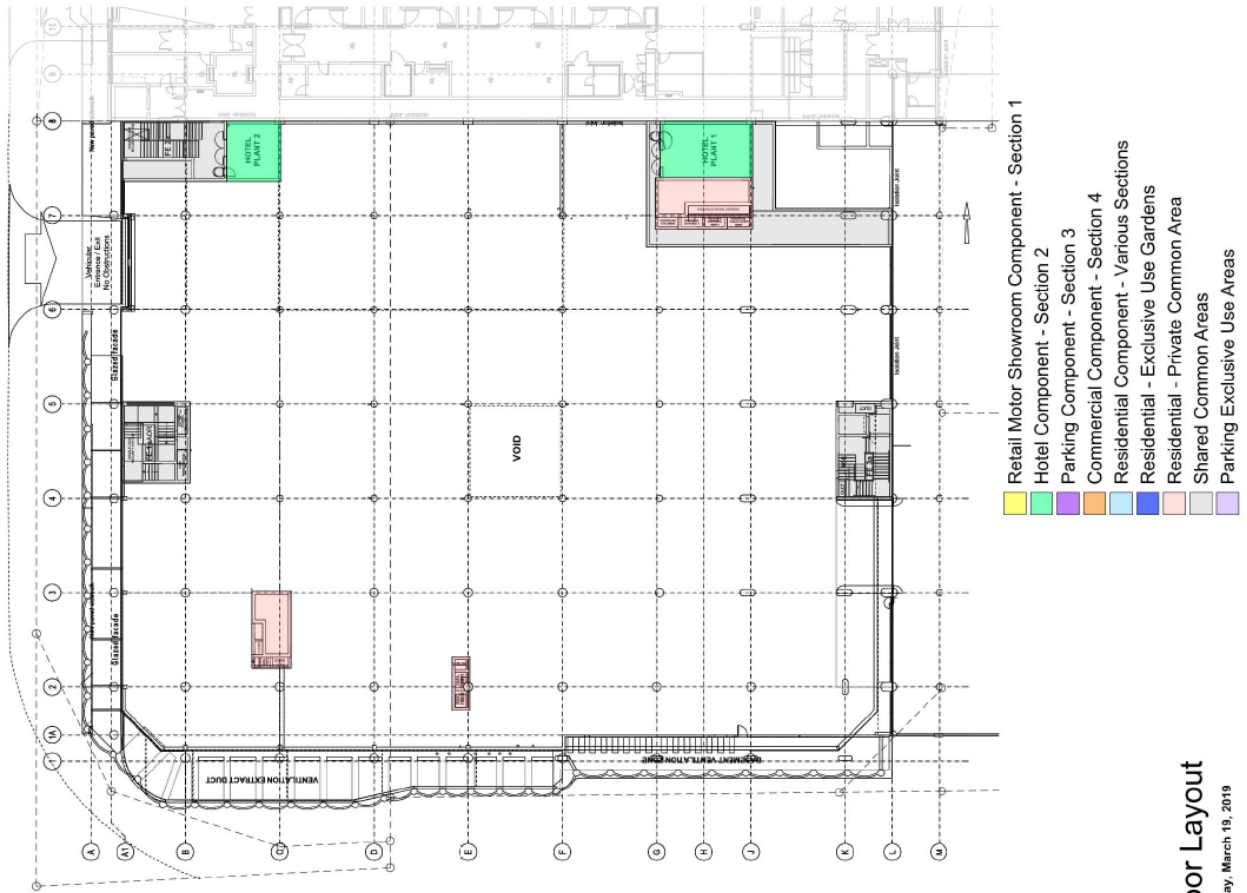


**ANNEXURE A - Scheme Floor Layout**  
Basement B3  
Date Tuesday, March 19, 2019









ANNEXURE A - Scheme Floor Layout  
Basement B1 Mezzanine  
Date Tuesday, March 19, 2019



- Retail Motor Showroom Component - Section 1
- Hotel Component - Section 2
- Parking Component - Section 3
- Commercial Component - Section 4
- Residential Component - Various Sections
- Residential - Exclusive Use Gardens
- Residential - Private Common Area
- Shared Common Areas
- Parking Exclusive Use Areas

## ANNEXURE A - Scheme Floor Layout

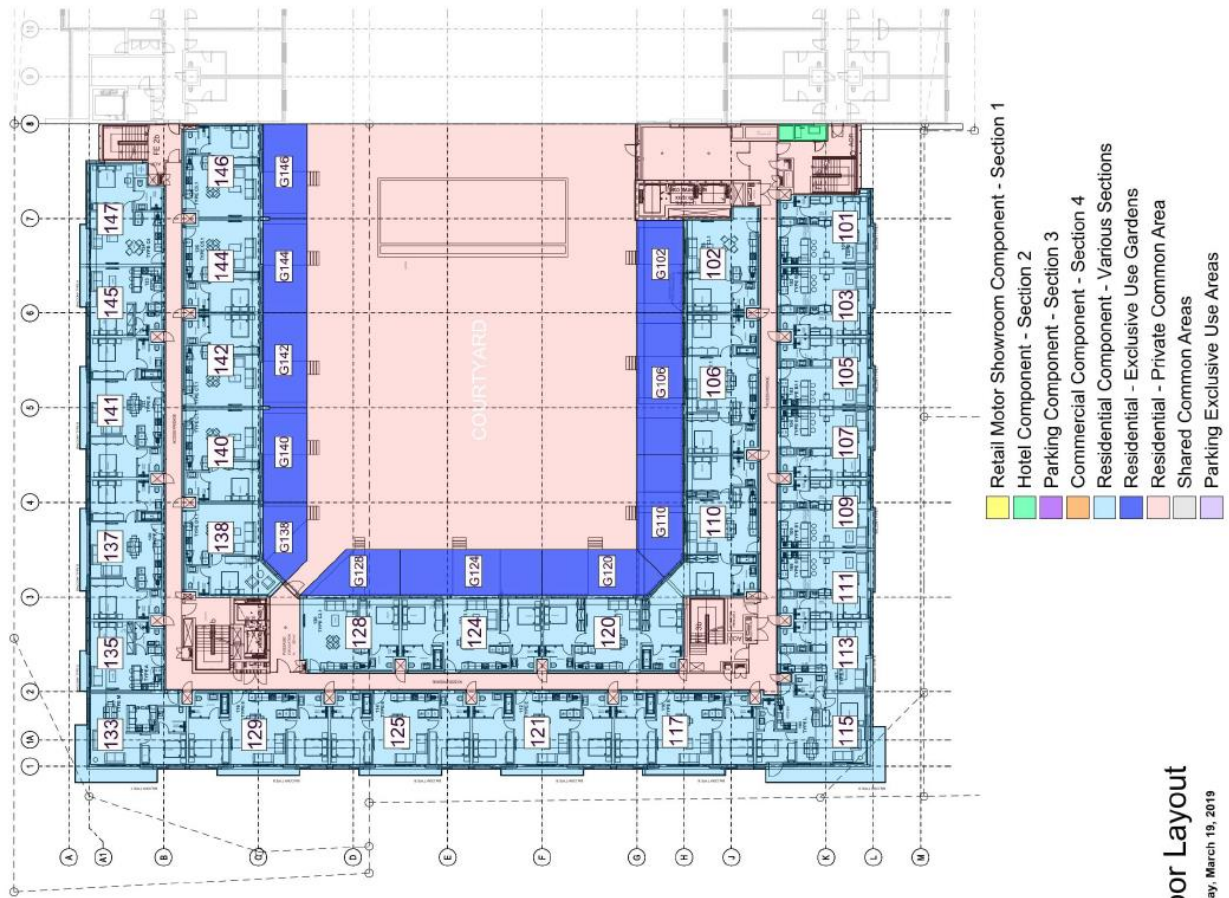
Ground Floor

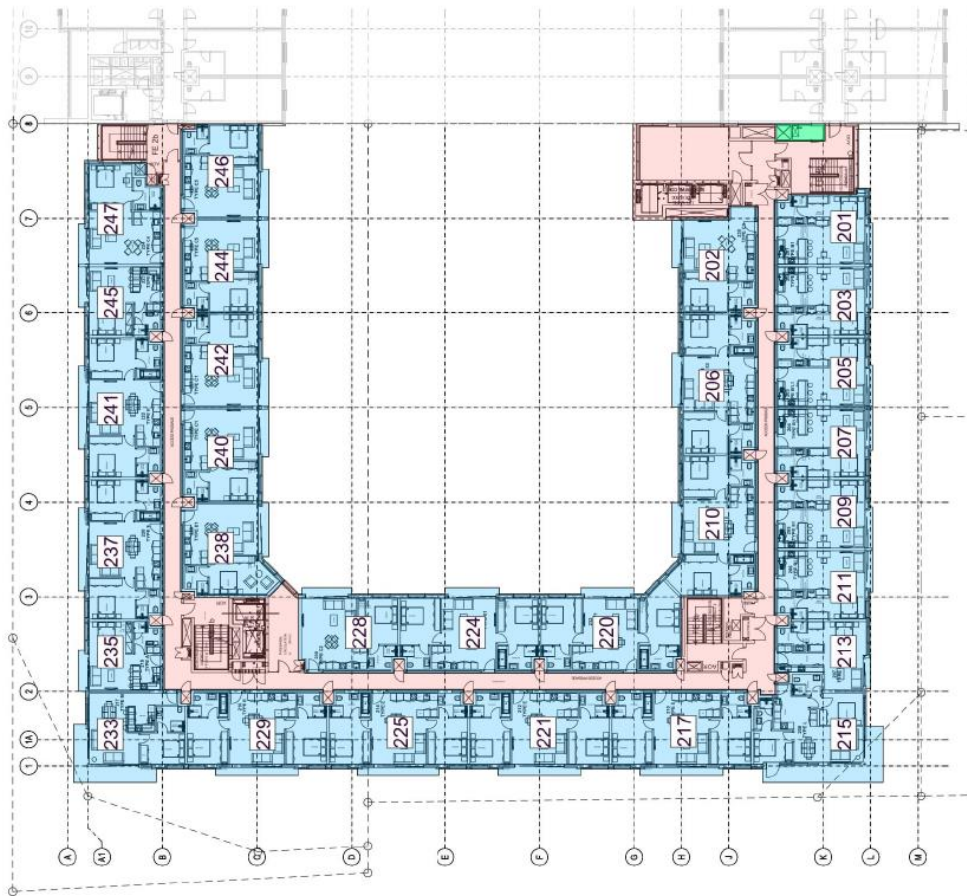
Date Tuesday, March 19, 2019



**ANNEXURE A - Scheme Floor Layout**  
Service Void Level  
Date Tuesday, March 19, 2019







- Retail Motor Showroom Component - Section 1
- Hotel Component - Section 2
- Parking Component - Section 3
- Commercial Component - Section 4
- Residential Component - Various Sections
- Residential - Exclusive Use Gardens
- Residential - Private Common Area
- Shared Common Areas
- Parking Exclusive Use Areas

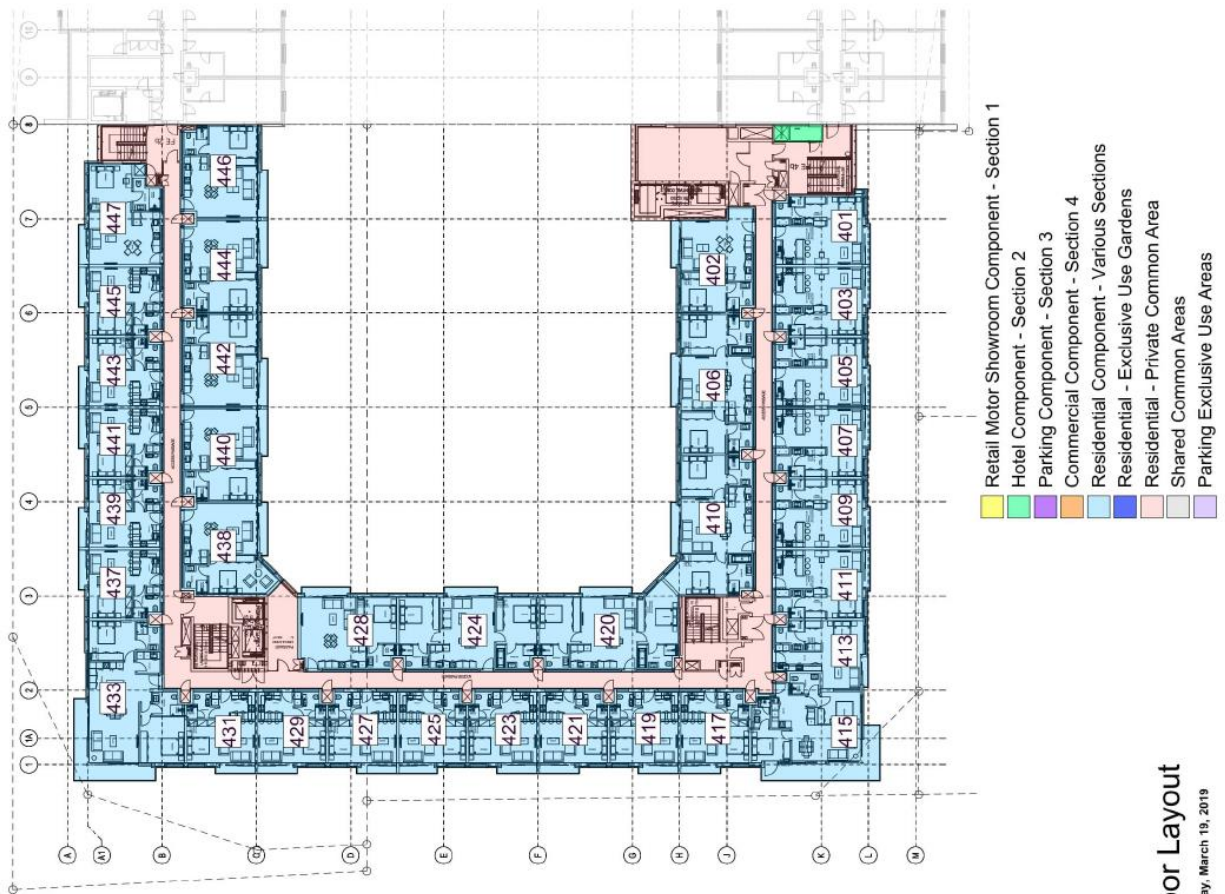
## ANNEXURE A - Scheme Floor Layout

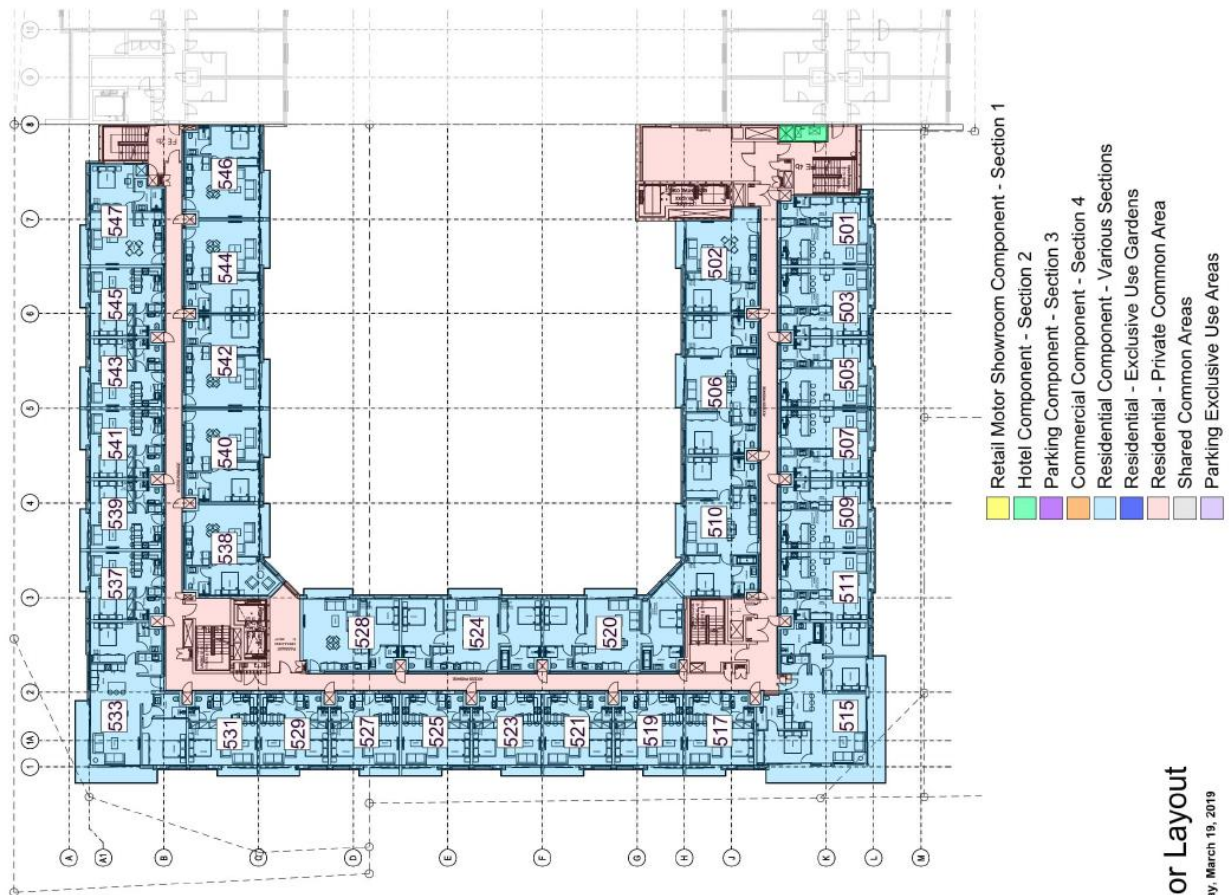
2nd Floor

Date Tuesday, March 19, 2019









**ANNEXURE A - Scheme Floor Layout**  
5th Floor  
Date Tuesday, March 19, 2019

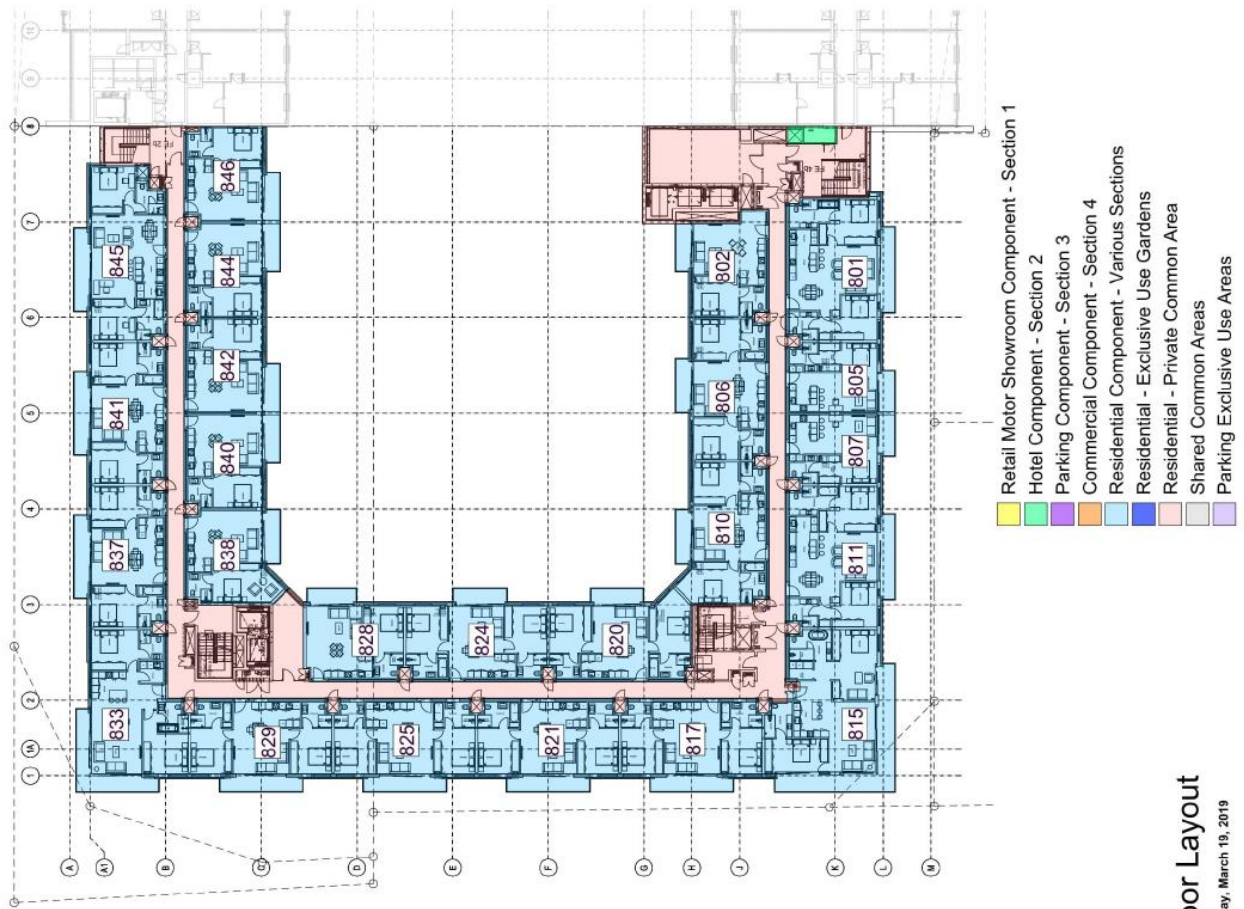


**ANNEXURE A - Scheme Floor Layout**  
6th Floor  
Date Tuesday, March 19, 2019





**ANNEXURE A - Scheme Floor Layout**  
7th Floor  
Date Tuesday, March 19, 2019



## ANNEXURE A - Scheme Floor Layout

8th Floor  
Date Tuesday, March 19, 2019



# **ONE ON WHITELEY**

## **CONDUCT RULES**

**[Section 10(2)(b) of the Sectional Titles  
Schemes Management Act, 8 of 2011]**



**APPROVED BY THE COMMUNITY SCHEMES OMBUD SERVICE ON 31 MAY 2019  
REFERENCE: CSOS/GovDoc/19/GP/001962**

## Conduct Rules

### 1. Introduction

- 1.1. These Conduct Rules are determined and established in terms of Section 10(2)(b) of the Sectional Titles Schemes Management Act No. 95 of 1986 (“the STSMA”) and furthermore in accordance with the One on Whiteley Constitution, being an association constituted as a body corporate (“the Body Corporate”) in terms of Section 11, read with Section 36 of the Sectional Titles Act 95/196, as amended (“the STA”) in respect of the sectional title development scheme known as *One on Whiteley* (“the Development”). These Conduct Rules are in addition to Annexure 2 of the STSMA. Should there at any time be a conflict between the provisions of these Conduct Rules and those contained in Annexure 2 of the STSMA, then the provisions of these Conduct Rules shall prevail.
- 1.2. The Development shall be established as a mixed-use development as contemplated in Section 32(2)(a) of the STA and shall comprise of 4 (four) completely autonomous and wholly independent building components, comprising of a Residential Component, a Commercial Component and a Parking Component.
- 1.3. These Conduct Rules shall at all material times be subject to the Constitution of the Development and the constitution of the Melrose Arch Property Owners’ Association (“the MAPOA Constitution”) as amended from time to time and any applicable guidelines and rules issued in terms thereof, as amended from time to time. Should there at any time be a conflict between the provisions of these Rules and those contained in the MAPOA Constitution or any guidelines and/or rules issued in terms thereof, then the provisions of the MAPOA Constitution and the guidelines and rules issued in terms thereof shall prevail.
- 1.4. These Conduct Rules are legally binding on and shall apply to all occupants of the Development, where appropriate and as the context may indicate.
- 1.5. The purpose and intention of these Conduct Rules is to:
  - 1.5.1. create a harmonious community between all occupants of the Development by regulating the use and enjoyment of the Common Property;
  - 1.5.2. maintain the aesthetically appealing appearance of the Common Property and all Sections;
  - 1.5.3. ensure a secure, healthy and harmonious living environment for the benefit of all occupants of the Development; and
  - 1.5.4. ensure a good neighbourliness between, and to maintain common courtesy and regard for, the rights of all occupants of the Development.
- 1.6. Each occupant of the Development is under an obligation to strictly abide by and to ensure that his family, visitors, invitees, guests, servants, contractors, sub-contractors, friends, tenants, employees or any other person(s) are made aware of and strictly abide by these Conduct Rules at all times.
- 1.7. Ignorance shall not be a reason for non-compliance with these Conduct Rules by any person whomsoever.

- 1.8. All definitions, words and expressions to which a meaning has been assigned in the Constitution shall bear the same meaning in these Conduct Rules and apply in the interpretation thereof, unless inconsistent with the context or specifically stated otherwise.
- 1.9. Subject to section 10 if the STSMA these Conduct Rules may be substituted, added to, amended or repealed from time to time by special resolution of all Members of the Body Corporate provided that any Rule so substituted, added to or amended may not be irreconcilable with the Constitution.

## **2. Definitions and Interpretation**

- 2.1. Notwithstanding the manner in which the clauses in these Conduct Rules have been grouped together or linked, each of them constitutes a separate and independent clause, severable from each of the other clauses in regard to all aspects thereof. Accordingly, should one or more of the clauses be declared unenforceable, the remaining clauses shall continue to be and remain in full force and effect.
- 2.2. For the purpose of these Conduct Rules, the term “clause” shall include all sub-clauses.
- 2.3. Where the word “he/his” is used in any rule, it includes “her/hers” and “its” and any juristic person which is the registered owner of a Section in One on Whiteley and *vice versa*.
- 2.4. The term “occupant” shall mean:
  - 2.4.1. the owner of any Section who shall be a member of *One on Whiteley Body Corporate*; and
  - 2.4.2. the tenant and/or any other person(s) residing in a Section and/or visiting any tenant or owner of any Section for any reason and/or for any period of time.
- 2.5. In these Conducts Rules all references to “Trustees” shall be a reference to the Trustees of the Body Corporate and/or the Building Component Trustees of the Building Component in question (as the context may require).

## **3. Application of Conduct Rules**

- 3.1. Unless inconsistent with the context of the Conduct Rules and/or specifically stated otherwise, the Conduct Rules will apply to each of the Building Components, i.e. the Residential Component, the Commercial Component, the Hotel Component, the Retail (Motor Showroom) Component and the Parking Component.
- 3.2. The enforcement of and/or any consents to be granted in terms of the Conduct Rules and/or any decision and/or steps to be taken in the event of a transgression of the Conduct Rules, will fall upon the Trustees of the Body Corporate or the Building Component Trustees of the Building Component in respect which the specific Conduct Rule(s) apply and in respect of which the enforcement and/or consent and/or remedial steps are required (as the case may be).

## **4. Animals, Reptiles and Birds**

- 4.1. For purposes of clarity, this clause 4 applies to the Residential Component and all references to “Trustees” within the context of this clause 4, is a reference to the Building Component Trustees of the Residential Component.

- 4.2. No animals, reptiles and/or birds will be kept by an occupant without the prior written consent of the Trustees. No dogs will be kept under any circumstances.
- 4.3. When granting such approval, the Trustees may prescribe any reasonable condition(s), which may include but shall not necessarily be limited to control of excessive noise, prevention of hindrance and/or nuisance to occupants, control of aggressive behaviour, damage to any property and/or injury to any person.
- 4.4. Only pets that are housed in a portable cage or aquarium may be kept, except in the case of a cat to which the following applies:
  - 4.4.1. All cats must be:
    - 4.4.1.1. neutered/spayed and vaccinated on an annual with all relevant documentation to prove same;
    - 4.4.1.2. identifiable by collar and identity tag with the Section number and a contact telephone number, or the pet must be micro-chipped.
- 4.5. All animals, e.g. cats must, where applicable, be leashed or carried and properly controlled at all times when on the Common Property.
- 4.6. Only 1 (one) cat per Section is allowed. Additional prior written consent must be obtained from the Trustees should the occupant wish to keep an additional cat.
- 4.7. Occupants shall ensure that their pets do not foul the Common Property. Should any pet foul the Common Property, the occupant to which the pet belongs shall remove all excrement or other mess left by such pet forthwith and ensure that the said area is duly cleaned.
- 4.8. The Trustees may withdraw approval for the keeping of an animal, reptile and/or bird in the event of any breach of any condition prescribed above or if any written complaint is received from another occupant and such complaint is verified by the Trustees.
- 4.9. Approvals or consents shall not automatically be assigned to any Section in perpetuity. Any change/replacement of animals, reptiles and/or birds requires new applications for approval to be submitted to the Trustees, subject to the terms and conditions as set out in this clause 4.

## **5. Sanitary Service / Refuse Removal**

- 5.1. For the purpose of having the refuse collected, the occupant shall ensure that, on the morning of the day allocated for collection, refuse is placed in garbage receptacles in the area provided for such purpose by the Trustees. When the refuse has been collected the occupant shall promptly return such receptacle to his or her Section or other area designated for this purpose by the Trustees, but in any event by no later than the day of collection.
- 5.2. The occupant of a Section shall maintain his garbage receptacle in a hygienic and dry condition a receptacle for refuse within his/her Section, or his/her Exclusive Use Areas or on such part of the Common Property as may be authorised by the Trustees in writing.

- 5.3. No garbage receptacles may be placed where visible to any other part of the Common Property or any other Section.
- 5.4. Occupants shall ensure that before refuse is placed in a garbage receptacle it is securely wrapped, sealed or, in the case of tins or other containers, completely drained.

## **6. Vehicles**

- 6.1. Motor vehicles of occupants and their visitors shall only be parked in such areas as are specifically provided for this purpose and is so demarcated. No occupant shall park or stand any vehicle upon the Common Property, or permit or allow any vehicle to be parked or stood upon the Common Property, without the prior written consent of the Trustees.
- 6.2. It is specifically prohibited to park in front of any parking bay/garage and the driveways and access ramps are to remain clear at all times.
- 6.3. Repairs to and reconditioning of vehicles on the Common Property is prohibited.
- 6.4. Vehicles may not travel at speeds in excess of 15km/h on any portion of the Common Property, parking basement and/or access driveway(s) and/or access ramps. This speed limit is, as far as may be required by law, subject to approval by the relevant authority(ies).
- 6.5. No vehicle exceeding a gross vehicle mass of 3500kg shall be allowed to enter the parking basement.
- 6.6. No caravans, recreational vehicles, boats, trailers or the like are permitted.
- 6.7. Occupants shall ensure that their vehicles and the vehicles of their visitors and guests do not drip oil or brake fluid on the Common Property or in any other way deface the Common Property. The onus is on the occupant to restore any area where a spillage has occurred to its original condition within 14 (fourteen) days of written notice from the Trustees, failing which the Trustees will attend to or procure such repairs/restoration and a mark-up of 20% (twenty percent) will be added to the bill which shall be for the occupant's account and shall be payable by the occupant immediately on demand.
- 6.8. Any vehicle parked in contravention of the foregoing may be towed away at the vehicle owners' expense or alternatively be wheel clamped which clamp will only be removed after payment of a fine as the Trustees may determine from time to time, without the Trustees thereby incurring any liability for any damages of any nature whatsoever.
- 6.9. The normal statutory road rules will apply within the Development.
- 6.10. No reckless driving will be tolerated within the Development.
- 6.11. No car washing is allowed in the parking basement, parking bays or any part of the Common Property. Car washing, if required by the occupant, must be carried out off site by the occupant.

## **7. Damage to Common Property**

- 7.1. Should any damage of whatsoever nature be caused to the Common Property by an occupant, and/or any member of his family, and/or any of his visitors/guests, and/or any of his employees, or the children, visitors and/or pets of such occupant, or should such persons/pets cause the Body Corporate/Building Component in question to suffer any loss or incur any expense, such occupant shall be liable to properly repair such damage forthwith and to immediately reimburse the Body Corporate/Building Component in question in full in respect of such loss or expense.
- 7.2. Electrical Supply: Occupants may not under any circumstances tamper with or work on electrical points/appliances serving the Common Property. Should any work need to be undertaken then the Trustees of the Body Corporate/Building Component in question shall authorise such work to be done by a competent and qualified electrician.
- 7.3. If the Trustees instruct a firm of attorneys in connection with or arising out of an infringement of the Constitution and/or these Conduct Rules by an occupant, the occupant shall be liable to reimburse the Body Corporate/Building Component in question on demand for all legal costs on an attorney and own client scale incurred in respect thereof.

## **8. Alterations, Additions & Appearance**

- 8.1. Any alteration and/or addition to the permanent or semi-permanent fixtures of the Common Property must be applied for in writing to the Trustees and has to be approved by the Trustees in writing.
- 8.2. No extensions or alterations and/or improvements of a structural nature to any Section, balcony, patio, stoep, garden or carport, including awnings and security gates (where applicable) shall be affixed or made unless the Trustees have been given full particulars thereof (including where necessary, plans approved by the local authority) and the Trustees have consented in writing thereto. If such written permission is granted, it shall apply only to the plans submitted and any variations will also require the permission of the Trustees in writing.
- 8.3. Extensions, alterations and improvements fitted by occupants shall be maintained by the occupant. If these are allowed to deteriorate, they will be maintained or removed by the Trustees at the sole cost of the occupant and the Trustees shall be entitled to recover such cost from the occupant immediately upon demand.
- 8.4. Tampering with television aerials, satellite dishes or masts is prohibited.
- 8.5. No additional outside television aerials, satellite dishes or air-conditioning units which are visible from the outside of the Section may be erected without the Trustees' prior written consent.
- 8.6. All refuse, debris etc. resulting from extensions, alterations and/or improvements shall be stored in a container approved by the Trustees and placed in an location on the Common Property (approved by the Trustees) and shall be removed by the occupant concerned within 5 (five) days of completion of such work. If such refuse, debris etc. is not removed either timeously or at all, the Trustees may cause it to be removed and all costs and charges in connection therewith shall be for the account of the occupant concerned and which costs and charges shall be payable immediately on demand.

- 8.7. The occupant of a Section shall not place or do anything on any part of the Common Property, including balconies, patios, stoeps and gardens (where applicable) which, in the sole and absolute discretion of the Trustees, is aesthetically displeasing or undesirable when viewed from the outside of the Section i.e. hanging washing/awnings/décor.
- 8.8. An occupant shall not mark, paint, drive nails or screws or the like, or otherwise damage and/or alter and/or make any additions to any part of the Common Property without obtaining the prior written consent of the Trustees.
- 8.9. Notwithstanding clause 8.8 an occupant or person authorised by him may install:
- 8.9.1. any locking device, safety gate, burglar bars or other safety device for the protection of his/her Section; and/or
- 8.9.2. any screen or other device to prevent the entry of animals or insects,
- provided that the Trustees shall have prior approved in writing the nature, design and colour of the device and the manner of installation.
- 8.10. The dragging of furniture and other items in passageways or on tiled/bricked and/or other surfaces on the Common Property is prohibited. Items must be carried and/or moved in such a manner that they do not cause damage of whatsoever nature.

## **9. Business Activities, Signs and Notices**

- 9.1. Subject to the provisions of the Constitution in respect of the operation of the Commercial Component, the Hotel Component, the Retail (Motor Showroom) Component and the Parking Component, no business, profession and/or trade may be conducted in any Section and/or on those parts of the Private Common Areas allocated for the exclusive use of the Residential Component and/or on the Common Property except those which are specifically allowed for by the local authority to be conducted in a sectional title scheme and which are agreed to in writing by the Trustees.
- 9.2. No auction or jumble sale may be held anywhere in the Development unless the prior written consent of the Trustees is obtained.
- 9.3. Subject to the provisions of the Constitution, no occupant of a Section shall exhibit, distribute and/or place any sign, notice, billboard, advertisement and/or publicity of any nature whatsoever on any part of the Common Property or a Section.
- 9.4. Estate agent signs are allowed but shall be limited to a maximum of 3 (three) only in/on the Development. These may only be erected on show days and must be removed at the end of the specific show day. Failure to do so will result in the said boards being confiscated. The type, size, wording and location of estate agent signs shall be approved by the Trustees before being erected on Common Property.

**10. Littering**

- 10.1. No occupant shall deposit, throw and/or permit or allow to be deposited or thrown on the Common Property any rubbish, including dirt, cigarette butts, food scraps and/or any other litter whatsoever.
- 10.2. Bins for the collection of refuse on the Common Property are provided for placing of all litter.

**11. Laundry**

- 11.1. Washing and other articles may not be hung out on or in any part of the Building(s) and/or the Common Property or in any position where it is visible from any part of the Building(s), the Common Property and/or from any other Section(s).
- 11.2. An occupant of a Section shall not erect his own washing line on any part of the Building(s) or Common Property.
- 11.3. Mobile clotheshorses may not be placed on or in any part of the Building(s) and/or the Common Property, except in the Sections, provided it is not visible from any part of the Building(s), the Common Property and/or from any other Section(s).

**12. Storage of Inflammable Material & other Dangerous Acts**

- 12.1. An occupant shall not store any material nor do or permit or allow to be done anything in his Section, the Building(s) or on Common Property which will or may increase the rate of the premium payable by the Body Corporate on any insurance policy.
- 12.2. No firearms, pellet guns, catapults or bow and arrows may be discharged from within the boundaries of the Development.
- 12.3. Inflammable or other dangerous material or articles may not be brought onto the Common Property or elsewhere except in such limited quantities as are allowed under any insurance policy held by the Body Corporate from time to time.
- 12.4. No fireworks of any kind are allowed to be kept and/or set off or discharged within the boundaries of the Development.

**13. Letting of Sections**

- 13.1. In accordance with the provisions of the Constitution, an owner of a Section in the Residential Component, shall under no circumstances be entitled to enter into a lease agreement (whether oral or in writing) in respect of his Section and/or Exclusive Use Area in terms whereof such Section and/or Exclusive Use Area is leased to any third party for a period of less than 6 (six) months.
- 13.2. Owners who let their Sections to tenants or otherwise allow occupation of their Sections to third parties must advise the Managing Agent for the Body Corporate of the name and full contact details of the tenant or other occupier.



- 13.3. Owners who let their Sections to tenants or otherwise allow occupation of their Sections to third parties must ensure that their tenants are introduced to an appointed Trustee and that they sign a copy of these Conduct Rules prior to taking occupation. Failure to do so shall not be reason for non-compliance with these Conduct Rules by any such tenant or other occupier.
- 13.4. All tenants of Sections and other persons granted rights of occupancy by any owner of the relevant Section are obliged to comply with these Conduct Rules, notwithstanding any provision to the contrary contained in any lease or any grant of right of occupancy.

#### **14. Eradication of Pests**

An owner shall keep his Section free of white ants, borers 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 the Sections from time to time for the purpose of inspecting and taking such action as may be deemed necessary for the purposes of eradicating any such pests as may be found within the Section, replacement of any woodwork or other material forming part of such Section which may be damaged by any such pests, the costs of which shall be borne by the owner of the Section concerned.

#### **15. Cycles**

- 15.1. Bicycles, tricycles, roller skates, skateboards, etc. may not be left in or on any part of the Building(s) or the Common Property, save in a Section or such part of the Common Property designated for this purpose by the Body Corporate (if any).
- 15.2. The use of soapbox carts, skateboards, roller skates etc, on the Common Property is strictly forbidden.

#### **16. Gardening and Plants**

- 16.1. Gardens and plants on the Common Property are for the enjoyment of all occupants and no wilful/negligent damage thereto will be tolerated. Removal of plants from the Common Property is forbidden unless authorised by the Trustees in writing.
- 16.2. Occupants are forbidden to improve the gardens outside their Sections (where applicable) without the prior written consent of the Trustees.
- 16.3. Garden tools must not be visible from outside the Building(s) or from any Sections.
- 16.4. No "Zozo" huts or similar structures may be erected in any garden area (where applicable) or on the Common Property at any time.
- 16.5. Occupants will not request any employee of the Body Corporate or a Building Component to perform work on their behalf during normal working hours.
- 16.6. The appointed garden service company as employed by the Body Corporate shall be responsible for the mowing, trimming and watering of any lawn and garden forming part of the Common Property only.
- 16.7. No gardens (where applicable) may be modified so as to restrict the thoroughfare of any part of the Common Property.

**17. Supervision of Children**

Occupants shall properly supervise their children, their children's friends and children of their visitors/guests so that no provision of these Conduct Rules is infringed, that no nuisance and/or damage is caused to any occupant and/or to the Common Property and/or to any Section.

**18. Employees**

- 18.1. All employees must be registered, in writing, with the Managing Agent and the Trustees. The occupant is to provide the name of their employee together with the days/times that the said employee will require access to the Development. The employee will then be issued with an identity card, the cost of which will be borne by the occupant.
- 18.2. Only registered employees will be allowed access to the Development, this includes family, friends, and visitors of employees.
- 18.3. Occupants shall ensure that their employees do not loiter on the Common Property.

**19. Payment of Levies**

- 19.1. The Body Corporate or the Managing Agent (as the case may be) must receive payment of the Levies in advance and in full, without deduction or set off, by the 1<sup>st</sup> day of each and every month.
- 19.2. Occupants failing to pay their account with the Body Corporate either timeously or at all may at the discretion of the Trustees be handed over to the Body Corporate's attorney, the cost of which will be borne by the occupant concerned on a scale as between attorney and own client.
- 19.3. Should any occupant fail to pay any amount due by that occupant on due date, then such occupant shall pay interest thereon at the publicly quoted prime rate of interest from time to time plus 2% (two percent), calculated daily and compounded monthly in arrears from the due date for payment until the date of actual receipt of such payment by the Body Corporate or the Managing Agent (as the case may be).
- 19.4. The provisions of clauses 19.1, 19.2 and 19.3 apply *mutatis mutandis* to the payment of all levies due by Members of a specific Building Component, save that payment of these levies are to be made to the relevant Building Component Trustees.

**20. Noise**

- 20.1. An occupant shall ensure that he and his visitors, guests, employees and/or contractors do not make or cause to be made any undue noise and/or disturbance at any time.
- 20.2. All noisy work, mechanical maintenance work, including the use of power-tools and similar tools and especially construction, is to be limited to weekdays between 07h30 and 17h00 with noisy work not to be undertaken on Saturdays, Sundays, or public holidays. Any knocking of nails and hanging of pictures should be done at a reasonable hour so as not to disturb occupants of neighbouring Sections.

- 20.3. No occupant shall do or permit to be done or persist in doing any act, matter and/or thing which may cause or tend to cause a nuisance to any other owner or occupant of the Building(s), including the loud playing of any musical instrument, radios, record players, compact disc players, television sets and videos and the like.
- 20.4. Social functions are to be limited to a size and noise level having due regard for neighbouring Sections and the size of the Section where the function is to be held. The Trustees have a right to review arrangements for functions, including but not limited to numbering guests, parking arrangements, timings etc.
- 20.5. Staff, private employees and their visitors must make every effort to perform their duties quietly and avoid vocal disturbance on the Common Property, including the passages and stairways of the Building(s).
- 20.6. Any noise and, in particular, loud music is to end strictly by no later than 22h00 in the evening from a Sunday to a Thursday and strictly by no later than 24h00 on a Friday and a Saturday.
- 20.7. Radios, tape decks, televisions, dvd-players, musical instruments and other sound producing devices shall not be played and/or used in such a manner as to interfere with any occupant's enjoyment of his/her Section or the Common Property at any time.
- 20.8. Automobile hooters and alarms shall not be sounded on the Common Property (i.e. within the boundaries of the Development) at any time by an occupant and/or any member of his family, and/or his visitors, and/or of his employees, their children or visitors.
- 20.9. All motor vehicles must be maintained in such a manner as not to exceed the Automobile Association's permissible noise levels, including all working parts.
- 20.10. In the event of disputes between occupants arising from annoyance, disturbance and/or nuisance, the involved parties should attempt to settle the matter amicably between themselves, exercising tolerance and consideration. Where the dispute cannot be resolved, the matter should be brought to the attention of the Trustees for settlement.

## **21. Braais or Barbeques**

- 21.1. Braaiing/barbeque equipment shall be limited to LP gas braais.
- 21.2. Braaiing/barbeque equipment which uses any form of wood, charcoal or briquettes are strictly prohibited.
- 21.3. All braaiing on terraces/patios shall be conducted in such a manner so as to limit disturbance or smoke contamination to other occupants and Sections in the Development. The extent of the disturbance shall be assessed by the Trustees who shall have sole discretion as to the control measures required to ensure compliance with these provisions.
- 21.4. Examples of freestanding LP Gas braais/barbeques approved by the Body Corporate are available from the Trustees.

## **22. Security**

- 22.1. Occupants and other persons entering the Development shall not interfere with the performance by security guards of their duties. Security guards may under no circumstances be abused and occupants and such other persons shall treat the security guards courteously and co-operate to ensure the proper performance of their duties.
- 22.2. Security protocol at any entrance to the Development shall be adhered to at all times and as may be notified to occupants and may be amended from time to time by the Trustees.
- 22.3. Any criminal activity or suspected criminal activity must be reported to the Trustees as soon as possible after the occurrence of any incident.

## **23. General**

- 23.1. The Trustees are not responsible for, and has no jurisdiction over any dispute between an individual owner and the Developer.
- 23.2. The Trustees shall have the right to take any action deemed necessary to prevent any infringement of these Conduct Rules.
- 23.3. No stones and/or solid objects may be thrown on the Common Property.
- 23.4. An occupant of a Section shall not:
  - 23.4.1. use his Section or permit his Section to be used for any purpose, which is injurious to the reputation of the Development;
  - 23.4.2. keep and/or do anything on the Common Property after written notice has been received from the Trustees to refrain therefrom;
  - 23.4.3. conduct any criminal and/or otherwise unlawful activities in his Section, the Buildings or on the Common Property.
- 23.5. All complaints must be lodged in writing and sent to the Trustees as soon as possible after a problem has arisen. A sincere endeavour will be made to resolve such complaints as long as such complaints are not wilfully frivolous and/or malicious and the rights of other occupants are not affected. Any action taken against an occupant shall be in the sole and absolute discretion of the Trustees.
- 23.6. An occupant shall not place or do anything on any part of the Common Property (including balconies, patios, stoeps and gardens, where applicable) which, when viewed from the outside of the Section, is aesthetically displeasing or undesirable (in the sole and absolute discretion of the Trustees).
- 23.7. The Trustees reserve the right to impose fines on any occupant who continues to be in breach of these Conduct Rules, after having received written notice thereof from the Trustees or the Managing Agent.
- 23.8. No equipment on the Common Property may be tampered with and/or removed.

- 23.9. Any fire hydrants and extinguishers in the Building(s) and on the Common Property are to be exclusively used for firefighting purposes.
- 23.10. The maximum number of occupants in each Section will be limited to 2 (two) per bedroom.
- 23.11. Balconies, patios, stoeps and/or terraces (where applicable) must be kept clean and tidy at all times. No mops, boxes, clotheshorses or clothes lines, and/or dead plants are to be left in/on these areas.
- 23.12. Occupants will at all times be held responsible for the conduct of their guests, visitors, invitees and employees.
- 23.13. The Owners of Sections will at all times be held responsible for the conduct of their tenants any other person(s) residing in a Section and their respective guests, visitors, invitees and employees.

**24. Commercial Component, Hotel Component & Retail (Motor Showroom) Component**

- 24.1. The Commercial Component the Hotel Component and the Retail (Motor Showroom) Component, as provided for in the Constitution, are further subject to the following Conduct Rules.
- 24.2. Ordinary retail activities and commercial office, retail and hotel practises and activities are the only permissible business uses. Should there be any doubt as to what constitutes permissible business use, the Building Component Trustees of the Commercial Component, the Hotel Component and/or the Retail (Motor Showroom) Component (as the case may be) will provide final adjudication.
- 24.3. Owner/tenant/occupant installation amendments and works are common practice in the office environment. When such installation amendments and works are required, the following further Conduct Rules apply:
  - 24.3.1. the owners/tenants/occupants are obliged to appoint a professional designer and/or architect to prepare the necessary layouts and documentation;
  - 24.3.2. the owners/tenants/occupants shall obtain the necessary prior written approvals for their documentation from the Building Component Trustees of the Commercial Component, the Hotel Component and/or the Retail (Motor Showroom) Component (as the case may be);
  - 24.3.3. all intended installation amendments and works shall further be subject to the prior written approval of all legislative authorities which may be required, as well as any structural and/or operational limitations or requirements which limitations or requirements will fall within the sole and absolute discretion of the Building Component Trustees of the Commercial Component, the Hotel Component and/or the Retail (Motor Showroom) Component (as the case may be);
  - 24.3.4. no physical work in the office Section(s) may commence unless all statutory approvals have been obtained and agreements have been reached between all relevant parties;
  - 24.3.5. the owners/tenants/occupants shall have sole responsibility for compliance with all applicable statutes, codes, ordinances and other regulations in carrying out any installation amendments and works;

- 24.3.6. owners/tenants/occupants are to note that applied loads must not exceed the limits as determined by a structural engineer to be appointed by the Building Component Trustees of the Commercial Component, the Hotel Component and/or the Retail (Motor Showroom) Component (as the case may be);
- 24.3.7. **the floor slabs are all post-tensioned, and therefore it is essential that no chasing and/or coring whatsoever takes place;**
- 24.3.8. owners/tenants/occupants that install an area that requires wash down e.g. kitchen, bathroom, toilet, shower, or any other wet area, shall provide waterproofing to the top of the slab below the final floor finish and maintain such waterproofing in good order and condition;
- 24.3.9. owners/tenants/occupants must ensure that a smoke detection system is installed as required by building regulations or other statutes, codes, ordinances, etc.;
- 24.3.10. owners/tenants/occupants are responsible for providing hand-held extinguishers and fire signage within the office space to the satisfaction of the local authority;
- 24.3.11. under-sink waste disposal units are a requirement of all Sections within the Commercial Component in which kitchens are installed. In the instance that a kitchen is to be installed, owners/tenants/occupants are required to install an under-sink waste disposal unit accordingly. All putrescible waste is to be disposed of via the under-sink waste disposal unit.
- 24.4. Any intended business signage will be subject to the prior written approval of the Building Component Trustees of the Commercial Component, the Hotel Component and the Retail (Motor Showroom) Component and the provisions of the MAPOA Constitution.
- 24.5. In so far as the Commercial Component forms part of the Building(s), it is critical that their outward appearance matches the quality of the overall appearance of the Building(s) and the Development. Therefore:
  - 24.5.1. the use of venetian and/or vertical blinds will not be permitted. Pull-down semi-transparent blinds will be considered, however they should be used only at the time of day when needed to provide shading from direct sun;
  - 24.5.2. no internal posters, notes, papers etc. may be affixed or stuck to windows and/or shop-fronts that form part of the façade of the Building(s); and
  - 24.5.3. no internal furniture, fixtures or fittings may abut directly up against the windows and/or shop-fronts that form part of the façade of the Building(s).
- 24.6. Further to clause 5 above, the following further waste management rules apply:
  - 24.6.1. owners/occupants/tenants are responsible for depositing their dry waste in the bins provided in the waste and refuse rooms, the location of which will be identified at date of occupation;

- 24.6.2. waste is to be placed in bin liners before placement in the bins provided in the waste and refuse rooms;
- 24.6.3. owners/tenants/occupants are to make provision for limited refuse storage within their premises;
- 24.6.4. cardboard boxes are to be flattened and neatly folded before placing them in the waste and refuse rooms;
- 24.6.5. all hazardous waste is to be disposed of as per local legislation. Owners/tenants/occupants are to note that fluorescent tubes are considered hazardous waste and are to be disposed of accordingly; and
- 24.6.6. all refuse removal should be conducted discreetly and should not interfere with the well-being of other owners/tenants/occupants in the Development.

*Copies of this document will be made available on written request by an occupier at a reasonable cost as determined by the Trustees.*