



**OUBAAI HOMEOWNERS ASSOCIATION**

**CONSTITUTION**

**1 DEFINITIONS**

1.1 In this Constitution and unless the context indicates otherwise the following words and expressions shall have the following meanings:

1.1.1 "Annual General Meeting" means the Annual General Meeting of the association;

1.1.2 "Authorised Representative" means a person authorised in writing to act as the representative of any natural person, body corporate, company or an association of persons as the case may be.

1.1.3 "Architectural and Development Guidelines" means the Architectural and Development Guidelines of the Township as embodied in Annexure "A" hereto in respect of the development approved by the Council, as it may be amended from time to time;

1.1.4 "Association" means the Oubaai Home Owners Association which is bound by the provisions of this Constitution and "HOA" shall have a corresponding meaning;

1.1.5 "Auditors" means any auditor appointed from time to time by the Association;

1.1.6 "Body Corporate" means the body corporate of any Sectional Title Scheme developed or constructed at the Township;

1.1.7 "Chairperson" means the Chairperson for the time being of the board of Trustees appointed in terms of this Constitution

1.1.8 "Common Property" means the whole of the Development Area or Township and associated stormwater and all improvements thereon, including any access road and/or servitude right of access, but excluding the following parts thereof:

- the Golf Course;
- the Golf Academy;
- the Hotel and retail centres;
- the Sectional and Full Title Village units;
- the Residential Erven;

- 1.1.9 "Companies Act" means the Companies Act No 71 of 2008 and any amendment or modification thereof or substitution thereof from time to time;
- 1.1.10 "Constitution" means the Constitution of the Association (with all annexures thereto) approved by the relevant Council in terms of Section 29 of the Land Use Planning Bylaw for George Municipality, 2015 as read with Section 78 of the Western Cape Land Use Planning Act, 2014 and any amendments thereto effected in terms of this Constitution;
- 1.1.11 "Council" means the Municipality of George and its successor/s in title;
- 1.1.12 "CSOS" means the Community Schemes Ombud Service established in accordance with the Community Schemes Ombud Service Act, 2011 (Act No. 9 of 2011);
- 1.1.13 "Debt due and payable" means any amounts due and payable to the Association which remains unpaid after a period of 30 days of due date of payment, and such amounts shall include, but not be limited to, all levies, fines and utility bills; All payments must be made by electronic transfer or debit order only. No cash or cheques allowed.
- 1.1.14 "Design Review Committee" means, a committee of at least three persons appointed by the Trustees which shall consist of an Architect, the Estate Manager and an Independent person appointed by the Trustees;
- 1.1.15 "Developer" means OUBAAI GOLF RESORT (PTY) LTD, a company duly registered and incorporated in terms of the Companies Act under registration number 1995/00010707, or its successors in title;
- 1.1.16 "Development Area" means the entire area depicted on the General Plan of the OUBAAI GOLF RESORT AND ESTATE registered at the Deeds Office as a Township, including all erven and the common property which is owned by the Association and all improvements thereon;
- 1.1.17 "Dwelling" means the Sectional and Full Title Village units or house constructed on an Erf;
- 1.1.18 "End User" means any party other than the Association connecting to the Fibre Network;

- 1.1.19 “Erf” means any erf, portion or subdivision of the Development Area and includes all improvements thereon, and “Erven” shall have a corresponding meaning;
- 1.1.20 “Estate Manager” means the estate manager appointed by the Trustees from time to time in terms of clause 25 below;
- 1.1.21 “Extraordinary General Meeting” means an extraordinary general meeting convened in terms of this Constitution;
- 1.1.22 “Estate” means the township known as OUBAAI GOLF RESORT AND ESTATE comprising the Development Area, and “Township” shall have a corresponding meaning;
- 1.1.23 “Estate Rules” means the estate rules provided for in this Constitution;
- 1.1.24 “Facilities” means all and any facilities or amenities of whatsoever nature which may be provided within the development area and forming part of the common property;
- 1.1.25 “Fibre Network” means the Fibre Network installed throughout the Estate, including the extension from the street into any Erf or Dwelling, and all associated equipment and infrastructure, including the Network Termination Point (but excluding the duct, tube or conduit allowing the access route into the any Erf or Dwelling) all of which is provided and owned by the Association and may be located in, on, over or outside of any Erf or Dwelling. The Fibre Network ends at the Network Terminating Point installed at any Erf or Dwelling;
- 1.1.26 “Financial Year” means the financial year of the Association which shall run from the first day of March in each year until the last day of February in the subsequent year;
- 1.1.27 “General Meeting” means any Annual General Meeting or Extraordinary General Meeting convened in terms of this Constitution;
- 1.1.28 “General Plan” means the final General Plan pertaining to the Estate as approved by the Surveyor General and any amendment thereto.
- 1.1.29 “Golf Club” means the club which owns and operates the Golf Course or its successors in title;

- 1.1.30 “Golf Course” means the golf course that has been constructed within the Township on erf 1255, erf 1256, erf 1334 and includes the club house with associated facilities and all sporting, recreational and other facilities owned and controlled by the Golf Club;
- 1.1.31 “Hotel” means the hotel which has been constructed within the Township on erf 1254 which is known as the “Oubaai Hotel Golf & Spa”;
- 1.1.32 “Life Style Centre” means the life style centre constructed on erf 1334, comprising of the gymnasium, the coffee shop, the driving range and the Pro Shop;
- 1.1.33 “Levy” or “Levies” means the levy or levies referred to in Clause 0 below;
- 1.1.34 “LUPA” means the Land Use Planning Ordinance No 15 of 1985;
- 1.1.35 “LUPB” means Land Use Planning Bylaw for George Municipality, 2015;
- 1.1.36 “Good standing“ means the payment, of all debt due and payable to the Association in terms of this Constitution;
- 1.1.37 “Meeting” means any meeting of, or in connection with the administration of the Association, in terms of this Constitution, and shall include, but not necessarily be limited to, Annual General Meetings, Extraordinary Meetings, Trustees meetings, meetings of committees or sub-committees formed in terms of this Constitution;
- 1.1.38 “Member” means a member of the Association;
- 1.1.39 “Member Trustee” means a trustee appointed by the Members;
- 1.1.40 “Minutes” means the minutes of a General Meeting, Extra-ordinary meeting or a Trustees’ meeting, as the case may be;
- 1.1.41 “Network Terminating Point” means the point in any Erf or Dwelling where the Erf or Dwelling is connected to the Fibre Network and includes an optical network terminator, gateway termination unit or a secure jack or another access point where the Fibre Network ends;
- 1.1.42 “Occupational Health and Safety Act” means the Occupational Health And Safety Act, 1993 (Act No. 85 of 1993);

- 1.1.43 "Optical Fibre Service" means any service of any kind which is provided by the Association and/or any Third Party Service Provider over the Fibre Network, and includes the operation, repair and maintenance of the Fibre Network;
- 1.1.44 "Person" means a natural person, the juristic person (whether incorporated or unincorporated) and includes a close corporation, company, trust or an association of persons, as the case may be.
- 1.1.45 "Prime Rate" means the prime overdraft rate levied by the Association's bankers from time to time.
- 1.1.46 "Registered Owner" means a registered owner of an Erf or sectional title unit as registered in the relevant Deeds Office
- 1.1.47 "Resident" means any person permanently or temporarily living or staying within the Estate, including any Member, tenant, guest, domestic employee, stay in contractor, or visitor.'
- 1.1.48 "Tenant" is any person who is temporarily living or staying at a Member's property within the Estate in terms of either a long term or short-term rental or lease agreement. (Air BnB or similar agreements included).
- 1.1.49 "Residential Erven" means every Erf in the Estate which in terms of the subdivision of the Estate enjoys single residential use rights and shall include any additional residential erven which may be created and approved over and above the existing residential erven depicted on the General Plan.
- 1.1.50 "Rules/Estate Rules" means the rules provided for in clause 11 of this Constitution;
- 1.1.51 "Sectional Titles Act" means the Sectional Titles Act, 1986 (Act No. 95 of 1986) and any amendment or modification thereof or substitution thereof from time to time;
- 1.1.52 "Services" or "Infrastructure Service" means such utilities and amenities as may be provided by or on behalf of the Association for the Registered Owners and residents within the Township and/or the Development Area;
- 1.1.53 "Social Membership" means the right of a member to have access to and enjoyment of any entertainment, recreational facilities and other amenities in

respect of the Township, but excluding playing rights in relation to the Golf Course;

1.1.54 "Third Party Service Provider" means any third-party service provider authorised and/or approved by the Association to provide an End User with telecommunications or data connectivity that uses the Fibre Network;

1.1.55 "Trustees" means the Trustees of the Association consisting of Nominated Trustee/s and Elected Trustee/s;

1.1.56 "Unit" or "Village" or "Village Unit" means all full and sectional title residential properties in the Village;

1.1.57 "VAT" means value-added tax levied in accordance with the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

1.1.58 "Writing" or "Written" means written, printed, typewritten, lithographed, telefaxed, electronically mailed or any other process producing words in a visible form.

1.1.59 "Stay in Contractor" as any person who is temporarily living or staying within the Estate in a member's home who has been employed or contracted by the resident or member for a specific purpose, including but not limited to, maintenance, painting, installation of equipment, etc, but specifically excluding any Domestic or other Employee permanently living on the estate.

1.1.60 "Domestic employee" is any person who is employed by a Resident at a Member's property, including any domestic worker, personal assistant, or gardener.

**2 INTERPRETATION**

In this Constitution:

2.1 the clause headings are for convenience and shall be disregarded in construing or interpreting this Constitution.

2.2 unless the context clearly indicates a contrary intention

2.2.1 the singular shall include the plural and vice versa;

2.2.2 a reference to any one gender shall include the other genders; and

- 2.2.3 a reference to natural persons includes legal persons and vice versa.
- 2.3 words and expressions defined in any clause herein shall, for the purpose of that clause and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in the clause in question.
- 2.4 when any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.5 where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 2.6 if any provision of this Constitution is in conflict or inconsistent with any law of the Republic of South Africa, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.
- 2.7 if any provision in a definition in this Constitution is a substantive provision conferring rights or imposing obligations on any of the members then, notwithstanding that it is only in the definition clause of this Constitution, effect shall be given to it as if it were a substantive provision in the body of this Constitution.
- 2.8 In the case of a Stay in Contractor, all the Contractor rules will be applied. Stay in Contractors will not have any additional rights than a contractor and must comply with all the contractor rules and regulations set out in the governing documents.
- 2.9 the annexures to this Constitution are deemed to be incorporated in and form part of this Constitution.
- 2.10 any words defined in the Companies Act shall bear the same meanings in this Constitution and any words defined in the Sectional Titles Act 95 of 1986, as amended, shall bear the same meaning in this Constitution in relation to Sectional Title matters referred to herein.

### **3 COMMENCEMENT DATE AND STATUS**

- 3.1 The Association was established as a legal persona in accordance with Section 29 of the LUPB as read with Section 78 of LUPA with the registration of the first transfer of an Erf or Unit in the Township to a third party other than the Developer.



- 3.2 According to its Constitution the Association shall:
  - 3.2.1 be a legal entity and exist independently of its Members.
  - 3.2.2 enjoy perpetual succession.
  - 3.2.3 be capable of being sued or to sue with reference to any agreement entered into by the Association, any damage caused to any property of the Association or any matter arising under this Constitution;
  - 3.2.4 not operate for profit but for the benefit of the members;
  - 3.2.5 no Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association, which shall vest in and be controlled by the Trustees.

**4 OBJECTS AND RESPONSIBILITIES OF THE ASSOCIATION**

- 4.1 It is recorded that the development of the whole Township is of a homogenous nature and that eventhough Members hold title to their Erven and/or Units individually the Association, through its Trustees, shall have all the powers that are necessary to accomplish the fulfilment of all objectives of the Association, including, but not limited to the powers specifically contained in this Constitution.
- 4.2 The Association shall have the following objectives:
  - 4.2.1 to act as a Home Owners Association established in terms of Section 29 of the LUPBfor the Township which has been developed in the Development Area, and in particular to perform and enforce all the matters and duties referred to in Sections 29(3) to 29(8)) of the LUPB;
  - 4.2.2 to enter into agreements of servitude for the benefit of its Members or any adjacent property development;
  - 4.2.3 to manage, oversee and control all security aspects of the Township;
  - 4.2.4 to enter into agreements for the provision of any Services with any competent authority or any other third party, inter alia including the provision of access to the Township, water, electricity and sewerage services to the Association and where required to supply such Services to the various Members of the Association;

- 4.2.5 to administer and enforce the Architectural and Development Guidelines, and the estate rules;
- 4.2.6 to control the registration of transfer of Erven and Units in the Township and ensure compliance within the Township with all conditions imposed by the Council when approving the rezoning and/or subdivision of the property/ies comprising the Development Area;
- 4.2.7 in general, to do all such things, and perform all such acts, as may be necessary or expedient to ensure that the Township is developed and maintained in the interests of all Members thereby ensuring that the Township will be and remain one of premier status.
- 4.3 The Association shall be responsible for ensuring compliance, implementation, and enforcement, in respect of the Township, of any condition imposed by any authority in terms of the LUPB, Environment Conservation Act, 1989 (Act No. 73 of 1989), the National Environmental Management Act of 1998 or any other planning - or environmental law, including any Environmental Management Plan approved in respect of the Township.
- 4.4 Without limiting the generality of 4.2.1 to 4.2.7 above, the Association shall have the following powers and functions:-
- 4.4.1 The responsibility to maintain, repair, improve and keep in good order and condition the Common Property and the responsibility for the payment of all rates and taxes, all Services charges and other taxes and/or Levies charged and payable to the Council or any authority in respect of the Common Property and/or for payment of the salaries and/or wages of the employees of the Association and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, and the Association's affairs, including all and any expenses reasonably or necessarily incurred in the attainment of the objects of the Association or the pursuit of its business.
- 4.4.2 The right to impose Levies upon the Members of the Association for the purpose of meeting all the expenses that the Association has incurred or to which the Trustees reasonably anticipate the Association will incur in the attainment of the objects of the Association or the pursuit of its business.

- 4.4.3 To ensure that all provisions of this Constitution are complied with by all Members/parties bound thereby.
- 4.4.4 It is recorded that the owners of the erven upon which the Golf Club, Golf Course, Golf Academy, Hotel and any Residential Erven or Sectional Title Scheme are situated, shall be liable as members of the Association to pay the Levies imposed on them in terms of this Constitution.
- 4.4.5 To promote, advance and protect the Township and the interests of the Association and all Members.
- 4.4.6 To be appointed as the managing agent by any Body Corporate in respect of any Sectional Title Scheme developed or constructed at the Estate.
- 4.5 The sole object of the Association is to manage the collective interests common to all its Members, which includes expenditure applicable to the Common Property of such Members and the collection of Levies for which such Members are liable.
- 4.6 The Association is not permitted to distribute its funds to any person other than to a similar association of persons.
- 4.7 On dissolution, the remaining assets of the Association, must be distributed to a similar association of persons, which is also exempt from Income Tax in terms of Section 10 (1) (e) (iii) of the Income Tax Act, 1962 (Act No. 58 of 1962).
- 4.8 Any amendments to the Constitution shall be submitted to the Commissioner for the South African Revenue Service.
- 4.9 Funds available for investment may only be invested with a financial institution as defined in Section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990) or in any listed financial instrument of a company contemplated in paragraph (a) of the definition of a “listed company”.

## **5 MEMBERSHIP OF THE ASSOCIATION**

- 5.1 Membership of the Association shall be limited to any party who is in terms of the Deeds Registries Act (and if applicable the Sectional Titles Act) reflected in the records of the Deeds Registry concerned as the registered owner of a Unit or an Erf and the Developer whilst the Developer still owns land on the Estate.

- 5.2 A person shall become a Member of the Association upon transfer of a Unit or Erf into his name, and such membership shall *ipso facto* terminate when a Member ceases to be the owner of a Unit or an Erf unless such Member owns any other Unit/s/Erf/Erven.
- 5.3 Membership of the Association shall be limited to the Developer and Registered Owners of Erven or Units in the township. For the sake of clarity:
- 5.3.1 Each of the members of the Body Corporate of any Sectional Title Scheme shall be a member of the Association;
- 5.3.2 Where a Unit or Erf is owned by more than 1 (one) person all the registered owners of that Unit or Erf shall together be deemed to be collectively one Member of the Association and have the rights and obligations of one Member of the Association; provided however that all co-owners of any Unit or Erf shall be jointly and severally liable for the due performance of any obligation to the Association.
- 5.4 The rights and obligations of the Members shall rank in accordance with the provisions of this Constitution.
- 5.5 Anything to the contrary herein before contained or implied notwithstanding, the cessation of his membership shall in no way release a Member from any obligation undertaken by him prior to the cessation of his membership pursuant to:
- 5.5.1 any provision of the Constitution of the Association; or
- 5.5.2 any further or ancillary guarantee, commitment or obligation, which such Member may have undertaken.
- The fact that a person ceases to be a Member of the Association as a result of the transfer of a Unit or Erf to another person, shall not release such Member from any liability to the Association in respect of any debt, the cause of which arose prior to the transfer of such Unit or Erf nor otherwise relieve such erstwhile Member from any other obligations owed to the Association during the period of his membership.
- 5.6 Membership shall be personal to the person in question and may not be assigned or transferred by them to any other natural person or entity.

- 5.7 The Association shall maintain at its registered office, alternatively at the office of Management, a register of Members of the Association as provided in the Companies Act.
- 5.8 The Trustees may by regulation further prescribe appropriate application documentation including *inter alia* the following:
- 5.8.1 an undertaking by a proposed Member to comply with all the obligations imposed on Members in terms of the Constitution, which undertaking must be signed by the proposed Member and deposited with the Association prior to the Association issuing a clearance certificate or consent to transfer a Unit or Erf in favour of such a proposed Member from any existing Member, provided always that this paragraph will not apply in respect of the transfer or alienation by the Developer of an Erf or Unit in favour of a proposed member.
- 5.9 The registered owner of an Erf or a Unit shall not be entitled to resign as a Member of the Association.
- 5.10 Every Member is obliged to comply with:
- 5.10.1 the provisions of this Constitution and any rules or regulations passed by the Association in terms hereof;
- 5.10.2 the provisions of the Architectural and Development Guidelines and the Estate Rules;
- 5.10.3 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member in its capacity as a Member;
- 5.10.4 any directive given by the Trustees in enforcing the provisions of this Constitution.
- 5.10.5 The rights and obligations of a Member are not transferable and every member shall to the best of his ability further the objects and interests of the Association.
- 5.10.6 The Members shall be jointly and severally liable for expenditure incurred in connection with the Association. If a Member consists of more than one person, such persons shall be jointly and severally liable in *solidum* for all obligations of that Member in terms of this Constitution.

- 5.10.7 A Member shall not transfer an Erf or Unit unless:
- 5.10.7.1 the proposed transferee has irrevocably bound himself to become a Member of the Association and to observe the provisions of the Constitution for the duration of his ownership of the Erf and/or Unit, and any rules that may be made pursuant thereto;
- 5.10.7.2 Subject to the provisions of Clause 7, the Association acting through the Trustees or the Estate Manager has issued a prior written clearance that all outstanding Levies and all amounts of whatever nature owing to the Association by such Member have been paid and that the Member is not in breach of any of the provisions of this Constitution including any management or conduct rule and the provisions contained in clause 5.10.7.5; and
- 5.10.7.3 the proposed transferee acknowledges that upon the registration of transfer of the Erf and/or Unit into his name, he shall *ipso facto* become a Member of the Association.
- 5.10.7.4 the conditions set out above are incorporated in the relevant Deed of Sale in terms whereof the transferee acquires the Erf or Unit in question.
- 5.10.7.5 Subject to Clause 7, the Member has complied with all provisions contained in this Constitution and any annexure thereto or any rule or regulation made in terms of this Constitution relating to the Architectural and Development Guidelines and with all rules and regulations in relation to the approval and compliance with approved building plans.
- 5.10.8 A Member shall not without the prior written consent of the Association who in granting or refusing such consent, shall act in its absolute discretion, apply to the Council or any other relevant authority for the subdivision, consolidation or rezoning of an Erf or Unit owned by the Member, or make application for any consent use or waiver or departure or any other dispensation whatsoever in respect thereof, it being recorded that the Township is, primarily, a residential township and that subdivisions and rights pertaining to Erven have to be controlled by the Association to ensure that the primary character of the Township is not negatively affected.
- 5.10.9 A Member is required to ensure that the occupant of his Erf or Unit, whether such occupation arises from an agreement of lease or otherwise, complies with

all applicable provisions of this Constitution and the rules of the Association as amended from time to time. Without detracting from the foregoing the Member shall remain bound by this Constitution notwithstanding such occupation and be jointly and severally liable for the acts and omissions of the occupant and for fulfilling his obligations under this Constitution.

- 5.10.10 To ensure compliance with Clause 5.10.9, each Member shall if it leases out any property:
- 5.10.10.1 enter into a written lease with the tenant in which the tenant is required to accept compliance with the Rules of the Township, and to give an undertaking that the tenant will abide by the Rules of the Township, and in which the tenant is required to report to the Association and register his full details for security reasons prior to the taking of occupation;
- 5.10.10.2 A Member shall notify the Association in writing, in advance of the aforesaid occupation, the details of the person occupying the Member's property and the period of the lease or occupation.”
- 5.10.10.3 A Member shall inform the person occupying the Member's or resident's property of the governing documents and Rules.”
- 5.10.10.4 Members, residents or their agents are required to give the Association prior notice of any person who is to occupy the member's property, with or without a lease agreement in the absence of the member or resident occupying the house.
- 5.10.10.5 be responsible for ensuring that the tenant does thus register himself with the Association prior to taking occupation.
- 5.11 Each Member agrees that his/her chosen *domicilium citandi et executandi* (“*domicilium*”) shall be the Erf or Unit owned by that Member.
- 5.12 Each Member shall be entitled to alter his/her chosen *domicilium* from time to time, by delivering a written notice to the Association at its registered office or principal place of business advising the Association of the Member's new chosen *domicilium*. In this regard, the Members acknowledge that the postal authority(ies) shall act as their agent and not as the agent of the Association. In the aforesaid written notice, the Member shall be entitled to choose, as his/her *domicilium*:
- 5.12.1 a physical address;

5.12.2 a postal address;

5.12.3 a facsimile number; or

5.12.4 an email address;

at which address the Member agrees to accept all notices, pleadings, letters and other correspondence.

5.13 Any notice given by the Association to the Member that: -

5.13.1 is delivered by hand during the normal business hours of the Member at the Member's Erf or unit or physical address for the time being shall be presumed, until the contrary is proved, to have been received by the Member at the time of delivery;

5.13.2 is given by facsimile shall be deemed (in the absence of proof to the contrary) to have been received within 1 (one) hour of transmission where it is transmitted during normal business hours of the receiving instrument and within 2 (two) hours of the commencement of the following business day where it is transmitted outside those business hours.

5.13.3 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope the addressee at its physical address or postal address shall be deemed to have been received on the 10th (tenth) business day after posting (unless the contrary is proved).

5.13.4 sent by electronic mail (e-mail) to its chosen e-mail address stipulated in clause 5.12.4 above, shall be deemed to have been received on the date of dispatch.

5.14 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Member shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium.

5.15 Members who are in Good Standing shall have the right to vote at all meetings of the Association. Members who are not in Good Standing may be excluded from meetings of the Association at the discretion of the Chairman, and shall not exercise any voting rights.

5.16 Members shall diligently and promptly comply with the obligations imposed in terms of this Constitution and observe all rules referred to in this Constitution, and shall



be responsible for and in the case of any Member who conducts any form of business or profession on or from a Unit or Erf, his customers, clients and patients).

5.17 Members shall not interfere with nor give instructions to any officers, employees, agents or contractors of the Association and management, and any complaints shall be addressed in writing to management.

**6 FINANCIAL AND LEVIES**

6.1 The Association shall establish and maintain a Levy fund for the purposes of meeting all expenses of the Association in respect of:

- 6.1.1 the control, management and administration of the Township;
- 6.1.2 in general, the attainment of its primary objects as described in its Constitution;
- 6.1.3 the maintenance of the Common Property and the costs of Services such as electricity, water, optical fibre and sewerage consumed or used on the Common Property;
- 6.1.4 the supply of any Services rendered by the Association;
- 6.1.5 payment of all expenses necessary or reasonably incurred in connection with the management of the Association;
- 6.1.6 the costs of the provision of security to the Township; and
- 6.1.7 in general the cost of fulfilling any of the obligations of the Association;
- 6.1.8 to act as a bulk supplier to the Township in respect of the services referred to in 9 below.

6.2 The Trustees shall not later than 21 (Twenty-one) days prior to each Annual General Meeting have prepared a draft budget in respect of the Levies payable during the affected Financial Year, indicating in detail the estimated amounts which shall be required by the Association to meet its necessary and other reasonably foreseeable expenses during the affected Financial Year (including a provision in respect of reserve funds catering for annual and otherwise non-recurring costs [including capital expenditure]) which draft budget shall further specify, separately, the estimated deficit, if any, carried forward from the preceding Financial Year.

- 6.3 The draft budget shall be available for collection at the offices of management 21 (Twenty-one) days prior to the date of the Annual General Meeting.
- 6.4 Subject to the hereinafter stated provisions, the Levies payable by the Members will be determined by the Trustees and approved by the Association at its Annual General Meeting.
- 6.5 The Trustees shall be entitled to determine, following the criteria hereinafter referred to, a differentiated and/or weighted Levy for any Units or Erven.
- 6.6 The Trustees shall advise each Member, in writing, as soon as practically possible after the Annual General Meeting, the Levies payable by such Member for the affected Financial Year.
- 6.7 The draft budget shall be tabled at the Annual General Meeting for approval by the Members, in the form as presented or with such amendments or modifications as the Members may resolve.
- 6.8 The Trustees shall, in their administration of the Association, not exceed the total budget as approved, nor increase the Levies or impose any additional Levies and/or raise any special Levies (with respect to any unforeseen and/or extraordinary expenditure, special projects or otherwise) unless a due motivation accompanied by a detailed feasibility study has been made available to Members (on the same basis *mutatis mutandis* as referred to above) and such additional Levies and/or special Levies, as the case may be, have been approved by the Members at an Annual General Meeting or Extraordinary General Meeting.
- 6.9 Pending the approval of the draft budget (including any budget with respect to any additional Levies and/or special Levies, as the case may be), the Members shall continue to pay the Levies (on a monthly basis, as is hereinafter indicated) which were due and payable in terms of the previously approved budget/s.
- 6.10 With effect from the commencement of a new Financial Year of the Association, and following the approval of the Levies in terms of the draft budget for the affected year, Members shall be obliged to pay:
- 6.10.1 the newly imposed Levies with effect from the date stipulated in the written notice is delivered to the Member; and
- 6.10.2 within 30 (thirty) days of receipt of such written notice, the deficit (comprising the difference between the Levies paid from the commencement of the (new)

Financial Year and the newly imposed Levies to the date on which such newly imposed Levies become payable), to the Association.

- 6.11 The annual Levies shall be payable in equal monthly instalments, due in advance on the first day of each and every month.
- 6.12 Additional Levies and special Levies imposed upon Members shall, unless otherwise stipulated by the Trustees, similarly be payable in monthly instalments over the period indicated by the Association in its written notice delivered to Members (after approval of such additional Levies and/or special Levies, as the case may be).
- 6.13 Members shall be liable for and shall pay interest on any debt due and payable to the Association (including but not limited to any arrear Levies of whatsoever nature), such interest to be calculated monthly in advance at the Prime Rate plus 3 (three percent) per month from the due date, to the date of actual payment, both days included.
- 6.14 The Levies (and any other debt) shall be payable to the Association free of exchange, deduction or commission at the Association's registered office or principal place of business.
- 6.15 The obligation of a Member to pay Levies shall terminate upon his ceasing to be a Member without prejudice to the Association's rights to recover any debt.
- 6.16 No Levies (or other debt) paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member.
- 6.17 A Member's successor in title (to a Unit or Erf) shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Unit or Erf to him, to pay the Levies attributable to that Unit or Erf with effect from the date of transfer.
- 6.18 In circumstances where a Member has sold or otherwise disposed of a Unit or Erf he shall be obligated to inform the management in writing of the impending transfer and shall furthermore similarly confirm the date on which such transfer is registered in the name of the Member's successor in title in order to enable the Trustees (and management) to determine the date of responsibility for payment of Levies and any other amounts comprising of a debt.
- 6.19 Subject to clause 7, no Member shall be entitled to transfer a Unit or Erf without a Clearance Certificate first having been obtained from management on behalf of the

- Association, confirming that all Levies (including any other amounts comprising of a debt) have been paid up to and including the end of the month during which such contemplated registration of transfer of such Unit or Erf will take place.
- 6.20 Management shall be entitled to levy an administration fee in respect of the issue of each such Clearance Certificate and similarly in respect of any extended Clearance Certificate.
- 6.21 The principles applicable in terms of the Sectional Titles Act with regard to the issue of a Clearance Certificate shall apply *mutatis mutandis* to any Clearance Certificate required to be obtained in respect of the transfer of any Unit in the Township.
- 6.22 In keeping with the principles referred to in clause 6.21, the amount of any debt shall enjoy the preference accorded any similar debt due to the Body Corporate in terms of the Sectional Titles Act in conformity with the provisions of the Insolvency Act, No. 24 of 1936, as amended, and as otherwise apply in law.
- 6.23 The Association shall be entitled to require a Member to sign a debit order authority to allow the Association or its authorised agent to collect Levies directly from an operating bank account.
- 6.24 If any Member fails to make payment on due date of Levies and/or other amounts payable by such Member, including interest, the Association may give notice to such Member requiring him to remedy such failure within such period as the Association may determine and should the Member fail timeously to make such payments, the Association may institute legal proceedings against such Member without further notice and such Member will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association in recovering such amounts.
- 6.25 DIFFERENTIATED AND WEIGHTED LEVIES:
- 6.25.1 Having regard to the nature, extent of occupation, type of Unit or Erf, use of the Unit or Erf (residential and/or business or recreational), the size /composition of the Erf and further taking into account such other relevant criteria as the Trustees shall in their discretion determine, the Trustees are entitled to differentiate with regard to the Levy responsibility attaching to any Unit or Erf and/or to weight the Levies payable in respect of any Unit or Erf (these rights extending to any additional levies and special levies).

6.25.2 In effecting a determination, the Trustees shall take into account and apply, to the extent deemed relevant, the following principles and prescriptions:

6.25.2.1 the allocation of costs directly attributable to a Unit or Erf, to the Member (as owner of such Unit or Erf) and which directly attributable costs shall include, but not be limited to, any municipal and/or other Council service charges and other expenses, and which such directly attributable expenditure shall be payable by the affected Member in addition to the levies;

6.25.2.2 assign a proportion of the costs relating to the Township generally to all Units and Erven (including unsold/undeveloped Erven) equitably; and

6.25.2.3 take into account and effect a weighting and/or differentiation where a Unit or Erf is occupied by more than one household/family and/or where any business is conducted on or from the Unit or Erf (and if necessary, to impose additional Levies with respect thereto).

6.25.3 A Member shall be entitled to deliver an objection in writing to the Trustees within not more than 30 (thirty) days after delivery of the written notification of the Levies payable by such Member (as the owner of the affected Unit or Erf) and the following further provisions shall apply in respect thereof:

6.25.3.1 the Trustees shall not entertain any objection which is not received within the aforementioned prescribed period.

6.25.3.2 the Trustees shall review the determination with respect to the affected Levy and take into account the objection received.

6.25.3.3 the complainant Member shall be entitled to be provided with the calculation and determination as affected by the Trustees.

6.25.3.4 the Trustees shall convene, as soon as reasonably possible, a meeting with the complainant Member (and should there be more than one complainant, those complainants collectively (who attend such meeting)) and hear such further representations as the complainant Member/s may wish to make.

6.25.3.5 the Trustees shall, in consequence of such processes, either reject the complaint (and confirm the determination of the affected Levies) or review the determination and deliver their written decision to the complainants within a reasonable period.

6.25.3.6 in all events the Trustees’ determination (whether confirming the (original) decision or revising same), shall be final and binding on the Association and the affected complainant Member/s, subject to the provision of clause24 below.

**7 ENTRENCHED PROVISIONS**

7.1 The Association, on behalf of all the Members, the Developer and the owners of the Golf Course, the Life Style Centre and the Hotel have a continuing and permanent interest to ensure that certain essential provisions are entrenched to ensure the proper management and control of the Township. Accordingly, and notwithstanding any provisions to the contrary which may exist elsewhere in this Constitution, none of the following provisions of clauses 7.1.1 to 7.1.11 below (inclusive) may be deleted or varied in any way in terms of this Constitution (other than by means of a special resolution passed at a meeting of the Association, either in person or by means of a proxy, and with the consent of the Developer whilst the Developer owns land on the Estate).

7.1.1 All Members of the Association shall enjoy Social Membership of the Golf Club which is integral to the Township;

7.1.2 The Association may register, in their discretion and where necessary, services servitudes, including those referred to in clause 9.3.7 below, in favour of the Council, the Association, and/or any adjacent property development over any separate Erf in the Township, the Common Property, any Unit, building or common property in any sectional title scheme or any other part of the Township;

7.1.3 The Association shall at all times be entitled to draw electricity from Erven adjacent to sprinkler heads in road reserves for the purposes of powering the irrigation system for the verges of such road reserve. The cost thereof shall be borne by the Association but recovered as part of the Levy upon Members;

7.1.4 The Association before construction of any building commences must accredit all building contractors and architects. Such accreditation does not in any manner constitute an endorsement or recommendation of the services of such contractor or builder by the Association and each Member shall solely be responsible for the development or improvement of his or her Erf in accordance with the specifications laid down by the Design Review Committee as set out in Clause 10 hereof, and the selection of any particular building contractor,

architect or service supplier which is accredited to the Estate, shall be at the sole discretion of such Member;

- 7.1.5 It is specially recorded that, provided such building contractor and architect meet the criteria as set out in clause 7.1.6 below, the association shall be obliged to accredit such contractor or architect.
- 7.1.6 Every application for accreditation shall be accompanied by:
- 7.1.6.1 In respect of the building contractor:
- (a) Certificate of registration with the NHBRC in terms of Section 10 (3) of The Housing Consumer's Protection Act 1998 (Act No. 95 of 1998); and
  - (b) Proof of registration with the Master Builders Association or similar body.
- 7.1.6.2 In respect of the Architect:
- (a) proof of membership of the South African Institute of Architects.
- 7.1.7 The Association may not encumber or dispose of any of the Common Property or an interest in land, nor acquire any additional land or an interest in land, unless such acquisition or disposal have been approved by a special resolution passed at a meeting of the Association called for such purpose.
- 7.1.8 Notwithstanding the foregoing, the Association may acquire any additional land, or interest in land, by means of a unanimous resolution of trustees, in circumstances where such land in the Township has come on the market by virtue of a judgment debt and attachment of the land pursuant to such judgment.
- 7.1.9 The provisions of Clause 6.25 above in respect of weighted or differentiated levies shall not apply in respect of the owners (and their successors in title) of the Golf Course or the Hotel.
- 7.1.10 The Developer will continue to pay one-half (1/2) of the levies as may be determined from time to time in respect of units and unsold erven owned by it, until such time that such unit and/or erven have been sold and transferred.

- 7.1.11 The Developer shall have the right to sell and transfer any of its erven without the consent of the Association, provided the new owner has bound itself to become a member of the Association prior to transfer, as required in terms of the Conditions of Title.
- 7.1.12 The provisions of Clause 10.3 below of the Constitution in terms of which the Developer shall not be required to submit plans for approval to the Design Review Committee, are entrenched and can only be amended in the manner set out in Clause 7.1.
- 7.1.13 The time period referred to in Clause 23.3 (the construction period) shall be three years from the date of first registration of transfer from the Developer.

**8 RESPONSIBILITY FOR PAYMENT OF RATES, TAXES AND SERVICES**

8.1 Rates and Taxes:

- 8.1.1 The Association shall be responsible for paying all rates and taxes in respect of the Common Property to the Council;
- 8.1.2 The Body Corporate (or its members, whichever the case may be) shall be responsible for paying all rates and taxes in respect of the property comprising any sectional title scheme to the Council;
- 8.1.3 All other Members as owners of Erven, including the golf club and Golf Course, golf academy and hotel, shall be responsible for paying rates and taxes in respect of their property to the Council.

8.2 Services:

- 8.2.1 The responsibility for payment of Services and the method of Service supplies shall be as regulated in clause 9 below.
- 8.2.2 The supply of Services to the Township shall be subject to all such terms and conditions as imposed by the Association.

**9 SERVICES**

9.1 Potable Water Supply:

- 9.1.1 Water will be supplied and metered in bulk at the boundary of the Township by the Council.



- 9.1.2 The management and maintenance of the complete internal water supply system will be the responsibility of the Association, and all supplies of water will be managed and administered at the entire discretion of the Association.
- 9.1.3 The Association will be responsible for the cost of maintenance and servicing of pipelines, pumps, meters, equipment and materials in respect of the internal potable water supply system up to the boundary of each Erf.
- 9.1.4 The members of the Association, and the members of the Body Corporate of any Sectional Title Scheme, shall be liable for and shall pay to the Association on demand all charges arising from water supplied to or consumed in or on an Erf or Unit and the building thereon and the Common Property of the Sectional Title Scheme.
- 9.1.5 The liability of Members for such charges shall be in accordance with separate sub-meters serving the Erven of Members, including any Sectional Title Scheme, which the Association shall be entitled to install at the cost of such Member, as the case may be.
- 9.1.6 Where water charges are calculated and payable in terms of this Clause 9, any VAT levied in respect of the supply of such water shall be paid by the Member in question on demand. Failure to pay calculated charges to the Association, within 60 days from date of calculation, the Association has the right to restrict such service until all charges are paid in full.
- 9.1.7 The Association will be entitled to charge interest at the Prime Rate plus 3 (three) percentage points on any charges payable by a Member in terms of this clause, which interest will be calculated from the due date on the balance of the charges owing from time to time until it has been paid in full.
- 9.1.8 The Council will be responsible for the maintenance of the potable water supply system up to the bulk supply point at the boundary of the Township.
- 9.2 Electricity:
- 9.2.1 Electricity will be supplied and metered in bulk at the boundary of the Township by the Council. This is known as the Point of Supply (POS). The Association is responsible for paying Council the monthly electrical consumption charges as metered at the POS.

- 9.2.2 The POS contains an intake substation with the necessary switchgear and a bulk supply meter to the development. Ownership of this equipment (together with the responsibility to operate, maintain and repair) vests in the Council.
- 9.2.3 The internal infrastructure from the POS for the electricity supply to a distribution kiosk in the vicinity of each Erf in the Township, including the Body Corporate of any Sectional Title Scheme, has been installed.
- 9.2.4 The Association will be responsible for the operation and maintenance of the internal reticulation of electricity and shall further be responsible for appointing a responsible person, as defined in terms of the Occupational Health and Safety Act, to exercise this function on its behalf.
- 9.2.5 The liability of Members for such charges shall be in accordance with separate sub-meters serving the Erven of Members, including any Sectional Title Scheme, which the Association shall be entitled to install at the cost of such Member, as the case may be and payable on demand.
- 9.2.6 Where electricity charges are calculated and payable in terms of this clause, any VAT levied in respect of the supply of such electricity shall be paid by the Member in question on demand. . Failure to pay calculated charges to the Association, within 60 days from date of calculation, the Association has the right to terminate such service until all charges are paid in full.
- 9.2.7 Lighting on the Common Property shall be supplied through separate electricity supply meters and the cost incurred by the Association in respect thereof shall be recovered from Members as part of the Levies imposed by the Association.
- 9.3 General:
- 9.3.1 The Association will provide the necessary connections to the infrastructure services to the boundary of each Erf or in the dwelling in the Township, including the Body Corporate of any Sectional Title Scheme, by means of sub-meters or otherwise;
- 9.3.2 Each Member shall, from date of transfer, be responsible for any connection charges to the infrastructure of the Township, including the costs of any metering device and the maintenance and replacement of any such device;

- 9.3.3 The Association shall be entitled to call for deposits in respect of any connection to be undertaken by it, the interest on which deposits shall be for the credit of the Association.
- 9.3.4 The Association, shall have the right to convey water, electricity, sewerage, optic fiber, telephone information technology, telecommunication, security communication, and any other services over any Erf or building or any other portion of the Township, whosoever is the owner thereof, and shall have the right of access to such premises for the purposes of installing, replacing and/or repairing such services.
- 9.3.5 The Members and the Body Corporate of any Sectional Title Scheme will allow reasonable access to employees of the Association (as the case may be) into the buildings, Units or Erven for purposes of maintaining any pipes or equipment or in general any of the systems necessary for the conveyance or provision of the services referred to above.
- 9.3.6 Without limiting the generality of the provisions of clause 9.3.4, every Member shall allow gas mains, electricity, optic fibre service, telephone and television cables and/or wires, and main and/or other water pipes and the sewerage and drainage, including storm water, of any other land unit or units to be conveyed to the relevant land unit, and surface installations such as mini-substations, meter kiosks and service pillars to be installed thereon, if considered necessary by the Association and in such a manner and position as may from time to time be reasonably required. This shall include the right of access to the land unit at any reasonable time for the purposes of constructing, altering, removing or inspecting any works connected with the above.
- 9.3.7 Without limiting the generality of the provisions of clause 7.1.2 the Association, shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, water, sewerage, telephone lines, information technology, security systems and any other type of services and/or servitudes of encroachment or servitudes in respect of any common walls or structural support or any other servitudes in respect of any other type of use. The Members accept and shall be bound by and consent to the registration of the servitudes referred to in this clause and clause 7.1.2.
- 9.3.8 The Association will be responsible for the maintenance of the internal sewer reticulation serving the Township as well as for the maintenance of the sewerage treatment plant. The maintenance costs of the internal sewer

reticulation and the sewerage treatment plant, as well as sewerage services costs, shall be recovered from Members as part of the Levies imposed by the Association.

- 9.3.9 The Association will be responsible for the maintenance of the internal storm water system serving the Township as well as for the maintenance of the storm water catchment dams. The maintenance costs shall be recovered from Members as part of the Levies imposed by the Association.
- 9.3.10 The Members and the Body Corporate of any Sectional Title Scheme will allow the Association or any of its agents or subcontractors access to any Erf or Dwelling to install or work on the Fibre Network or anything connected to it on reasonable notice.
- 9.3.11 Members or residents may not interfere with any part of the Fibre Network, even if it is on or within an Erf or Dwelling. The Association will not be liable for any failure or disruption in the Optic Fibre Services.
- 9.3.12 Members or residents may not tamper with or remove any of the assets and/or equipment, including any Fibre Network Termination Points on any Erf or Dwelling.
- 9.3.13 Members or residents may not convey or receive, or permit any person other than an authorised Third Party Service Provider to convey or receive, any signal, communication or other service over or using any part of the Fibre Network unless the Association has given written approval to do so and subject to any reasonable conditions which it shall be entitled to impose.
- 9.4 Members or residents -
- 9.4.1 acknowledge that the Fibre Network Terminating Point will always require a continuous electricity supply to operate, and is his/her responsible for ensuring that electricity is supplied safely to where the Fibre Network Terminating Point will be located in the Erf or Dwelling.
- 9.4.2 acknowledge that if connecting anything to the Fibre Network Terminating Point, including any equipment or device, that is not compliant with any relevant international connection standards, it may adversely affect the connectivity to the Optic Fibre Services and may cause damage to the Fibre Network.

- 9.4.3 acknowledge that if any part of the Fibre Network including the Fibre Network Terminating unit is lost, stolen, or damaged on any Erf or Dwelling, it will be replaced and the cost recovered from the Member.
- 9.4.4 agree to use all reasonable endeavours to ensure that the Fibre Network is not disrupted by anyone else providing a service on his/her behalf and will be liable for any disruption of the Optical Fibre Services including the costs for reinstating such Optical Fibre Services;
- 9.4.5 acknowledge that acknowledge that the Association will be responsible for the maintenance and operation of the Optical Fibre network, including connecting the Optical Fibre network to an external service provider/s for data, DSTV or other proposed service. The operational and maintenance costs of the Optic Fibre Network shall be recovered from Members as part of the Levies imposed by the Association.

## **10 ARCHITECTURAL AND DEVELOPMENT GUIDELINES**

- 10.1 The Architectural and Development Guidelines constitute an integral part of this Constitution. It is recorded that the Architectural and Development Guidelines contain the procedures, requirements and guidelines to be adhered to by every Member who wishes to effect construction, improvements or alterations to or undertake any renovation of any Erf or Unit. The Architectural and Development Guidelines that will be in force and effect are those contained in Annexure "A" hereto and as may be amended from time to time by the Trustees.
- 10.2 All improvements to any Erf or Unit shall be of sound construction and shall comply with the provisions of the Architectural and Development Guidelines;
- 10.3 No construction or erection of any improvements or alterations to and no renovation of any Erf or Unit that is undertaken by any party other than the Developer, or any landscaping on any property, may commence prior to the due and proper approval of plans for such construction, improvements, alterations or renovation by both the Design Review Committee and, where required, the Council, in accordance with the following provisions:
- 10.3.1 the Member shall submit to the Design Review Committee for approval a full set of the proposed building plans or alteration plans which indicate both construction and design details;

- 10.3.2 the Member shall be liable for payment of the reasonable cost of professional scrutinising and examination of such plans by the Design Review Committee;
- 10.3.3 after the approval of such plans by the Design Review Committee, the plans shall be submitted to the Council for approval. No plan shall be submitted to the Council unless it bears the endorsement of approval of the Design Review Committee, clearly dated, certifying that the plan complies with the Architectural and Development Guidelines.
- 10.4 When effecting the construction, improvements or alterations or renovations contemplated in clause 10.3 above, the Member shall at all times comply strictly with the Architectural and Development Guidelines as well as all conditions and standards imposed by the Council insofar as these may be additional to the provisions of the Architectural and Development Guidelines. No Member shall be entitled to deviate in any manner whatsoever from any plan approved by the Design Review Committee and the Council unless the prior written approval of both the Design Review Committee and the Council for such proposed deviation has been obtained.
- 10.5 No Member shall be entitled to challenge or contest any of the provisions of the Architectural and Development Guidelines. No application for the amendment of the Architectural and Development Guidelines shall be made to the Council unless prior written consent of the Trustees has been obtained thereto.
- 10.6 The Body corporate shall not adopt any conduct rules in terms of Section 35(1)(b) of the Sectional Titles Act, which is in conflict with any of the Architectural and Development Guidelines, unless the prior written consent of the Trustees, has been obtained thereto.
- 10.7 The Trustees may amend the Architectural and Development Guidelines from time to time.

## **11 ESTATE RULES**

- 11.1 To promote and implement the main business and main object of the Association, and to ensure the beneficial management and conduct of the business of the Association and to further advance the interests of Members, the Trustees shall formulate and enforce rules (and protocols) (collectively known as and referred to in this Constitution as “Rules/Estate Rules”) as follows:

- 11.1.1 House Rules dealing with such matters pertaining to the Association and as more fully detailed hereunder (for convenience “the House Rules”).
- 11.1.2 Rules applicable to the determination of Levies and matters relating thereto (as dealt with more fully above in this Constitution) (for convenience, “the Levy Rules”).
- 11.1.3 Rules are dealing with disciplinary matters, sanctions and fines (for convenience “the Disciplinary Code and Schedule of Transgression”).
- 11.1.4 To the extent considered necessary and in addition to any provisions contained in the House Rules and Rules relating to safety and security (for convenience “the Security Code”).
- 11.2 All Rules, including any amendment, addition or deletion thereto, shall require the approval of Members at an Annual General Meeting. In the period between two Annual General Meetings, the Trustees shall be entitled to amend, delete or substitute any Rule if it is reasonably necessary to do so. The Trustees must submit all such amendments, deletions or substitutions to the immediately following Annual General Meeting for ratification.
- 11.3 The House Rules shall deal with the following matters, without circumscribing the nature and extent of the Rules, which may comprise thereof (including, if relevant, any matters, which ought to be dealt with in any other Rules:-
  - 11.3.1 The conduct of Members and all persons within the Township, including the control of operations and movements of building contractors, sub-contractors, stay in contractor, project managers, other agents (e.g. architects, engineers, landscapers and the like), project managers and the employees and agents of the foregoing.
  - 11.3.2 The conduct of Members and all persons within the Township for the prevention of nuisance of whatsoever nature and to maintain good neighbourly relations, including the regulation of the use of any noise-making/generating equipment/appliances (e.g. lawnmowers, power tools, tv/radio).
  - 11.3.3 The control of golfers, caddies and all other visitors to the Township including tenants, other occupiers of any Unit or Erf, customers, clients and patients of any business conducted on or from within the Township.

- 11.3.4 The operations and activities of all businesses whatsoever conducted on or from within the Township, including the methods of sale and advertising within the Township.
- 11.3.5 The nature, method and location of any signage, posters or another form of advertising.
- 11.3.6 In particular, and without derogating from the generality of the other provisions herein contained, regulating the conduct of estate agents within the Township, show houses, the control and movement of the estate agents and prospective clients (purchasers).
- 11.3.7 The maintenance and preservation of the natural environment and the protection of fauna and flora and the eradication of undesirable (encroaching/toxic) flora.
- 11.3.8 The construction and material specification of all improvements and in particular, without derogating from the generality of the foregoing, structures of whatsoever nature, paving, pavements/sidewalks, installations of whatsoever nature (including without limiting the generality thereof, air-conditioning units, swimming pool pumps/filters, tv aerials, satellite dishes, lighting, washing lines, refuse bins, carports, awnings, security systems and landscaping features) as well as the maintenance of all of the foregoing.
- 11.3.9 The control of vehicular traffic of whatsoever nature, including parking.
- 11.3.10 Access to and egress from the Township including any particular facilities or amenities within the Township.
- 11.3.11 Safety and other regulations applicable to the playing of any sport or engagement in any other recreational activity including, but not limited to, the use of balls and other sporting equipment, cycles, scooters, skateboards, etc.
- 11.3.12 The control and recycling of refuse, littering and other safety and anti-pollution related measures.
- 11.3.13 The keeping of any animals (including pets, birds, fish, reptiles or insects) and in addition, the control of pets in and about the Township, the prevention of foulment, the rights being further granted to the Association to enforce the removal of any animal which creates a nuisance and/or constitutes a danger.



- 11.3.14 The use of any recreational facility or other amenities.
- 11.4 The Security Code on the common property shall, in addition to the House Rules, deal with the following:
- 11.4.1 All security related matters affecting any persons in or about the Township access and egress to and from the Township.
- 11.4.2 Security installations affecting the Township, its perimeter and access points, and security installations (burglar alarms, CCTV, electrical fencing and other related equipment).
- 11.4.3 Crime prevention and monitoring procedures.
- 11.4.4 Fire prevention and control measures.
- 11.4.5 Vehicle security.
- 11.4.6 The provision by all or any persons entering the Township of a written indemnity.
- 11.5 The Disciplinary Code:
- 11.5.1 The Trustees shall be responsible for the enforcement of all Rules including the Disciplinary Code.
- 11.5.2 The Trustees shall be entitled to impose upon Members fines in respect of non-compliance with or a breach of the Rules and/or with respect to a breach of the obligations imposed upon Members in terms of this Constitution.
- 11.5.3 The Disciplinary Code shall contain:
- 11.5.3.1 a protocol relating to warnings providing for the delivery of a written notice (demand) requiring offenders to remedy any stipulated breach of the Constitution and/or Estate Rules to be remedied within a reasonable period and failing which, a prescribed process of enforcement of sanctions (including the imposition of a fine/s) shall be implemented.
- 11.5.3.2 the Constitution indicating the sanctions and specifying the fines or other penalties which shall be imposed or levied in the event of an unremedied breach, as specified, or otherwise to be imposed in the discretion of the Disciplinary Committee.

- 11.6 The provisions of this clause 11 shall continue to apply in circumstances where the affected Member ceases to be a Member at any time after receipt of the written notice referred to in clause 11.5.3.
- 11.7 Nothing to the contrary herein contained excepted, should a Member fail to remedy a breach of the Constitution and/or Rules despite written notice, it shall be competent for the Association to take such steps as are deemed necessary to remedy such breach (and where relevant, prevent any further recurrence) and to recover all reasonable costs incurred in connection therewith from the affected Member on an attorney and client scale which shall include collection commission and tracing fees (and which amounts shall comprise of a debt).
- 11.8 The Member remains responsible and liable for any breaches committed by a family member, employee, agent, contractor, stay in contractor, sub-contractor, visitor or guest (including any customer, client or patient) whilst in or about the Township.
- 11.9 The Trustees shall ensure that management delivers or otherwise publicises the Rules in a manner, which brings same to the attention of the Members, each Member nevertheless being responsible for ensuring that he is in possession of a current set of all Rules.
- 11.10 Any fines levied against the Members shall be payable together with the Levies due at the commencement of the month following upon the month during which such fine was imposed.
- 11.11 The Body Corporate of any sectional title scheme shall not make any management or conduct rule applicable to the sectional title scheme, which is in conflict with an Estate Rule applicable to the Association in terms of clause 11 of this Constitution.

## **12 TRUSTEES**

- 12.1 There shall be a Board of Trustees of the Association consisting of no more than (eight) Trustees, 5 (five) of whom shall be elected by the members at an Annual General Meeting, and 1 (one) may be nominated and appointed by the owner of the Hotel, 1 (one) by the owner of the Golf Course, and 1 (one) by the Estate Manager. The trustees nominated by the owners of the Hotel and the Golf Course respectively, and the Estate Manager, shall be non-voting.

12.2 The trustees shall at the first meeting of the trustees following the Annual General Meeting, by means of a majority vote at such meeting, be appointed to the following portfolios;

Chairperson

Vice-Chairperson

Finances

Security

Environment/Building Standards

Legal

12.3 A Trustee, by appointment to office, shall be deemed to have agreed to be bound by all the provisions of this Constitution.

### **13 REMOVAL AND ROTATION OF TRUSTEES**

13.1 Each elected Trustee shall continue to hold office as such from the date of his election until the second Annual General Meeting following such election, at which meeting, and subject to the hereinafter set out provisions, each Trustee shall be deemed to have retired from office as such but will be eligible for re-election to the Board of Trustees. No trustee shall hold office for a period in excess of two consecutive terms unless the members at an AGM resolve to do so by means of a special resolution.

13.2 A Trustee shall be deemed to have vacated his office as such upon:

13.2.1 his having become disqualified to act as a director in terms of the provisions of the Companies Act;

13.2.2 his estate being sequestrated, whether provisionally or finally;

13.2.3 the commission by him of any act of insolvency;

13.2.4 his conviction for any offence involving dishonesty or any other serious criminal offence;

13.2.5 his becoming of unsound mind or being found lunatic;

13.2.6 his resigning from such office in writing;

provided that anything done in the capacity of a Trustee in good faith by a person who ceases to be a Trustee shall be valid for the fact that he is no longer a Trustee has been recorded in the minute book of the Association.

- 13.3 The Chairperson shall preside at all meetings of the Board of Trustees and all General Meetings of the Members and in the event of his not being present within 10 (ten) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Vice-Chairperson shall act in his stead, or failing the Vice-Chairperson, a Chairperson shall be appointed by the meeting to act in his stead for such meeting and any adjournment thereof. This clause is subject thereto that the Trustees are entitled to nominate a person who need not be a Trustee or a Member to preside as Chairperson at a particular General Meeting of Members.
- 13.4 Trustees shall be entitled to be reimbursed in respect of all reasonable and vouched expenses necessarily incurred by them respectively in or about the performance of their duties as Trustees.

#### **14 POWERS OF TRUSTEES**

- 14.1 Unless otherwise resolved by way of a Special Resolution at any General Meeting, Trustees are authorised and empowered to:
- 14.1.1 Appoint and dismiss management.
- 14.1.2 Delegate powers to management (including the power to appoint and dismiss employees other than senior employees).
- 14.1.3 Co-opt onto the Board, in an advisory capacity, any persons who need not be a Member/s for such purpose and period (which shall not extend beyond the Annual General Meeting following upon such co-option) as may be determined.
- 14.1.4 To institute and defend legal proceedings for the recovery of any debt and defend any legal proceedings brought against the Association; the institution of any legal proceedings (other than for the recovery of a debt) and engagement in any other legal proceedings, however, requires the approval of the Members at an Annual or Extraordinary General Meeting.
- 14.1.5 To open and conduct a banking account/s for purposes of the Association's business.

- 14.1.6 To disburse, from the bank account/s such operational and capital expenditure as approved in the budget (and/or as raised by way of any additional and/or special Levies) and as otherwise may be authorised by a General Meeting.
- 14.1.7 To enforce compliance with the provisions of this Constitution and the Rules.
- 14.1.8 To enter into contracts necessary for the purposes of the main business and implementation of this Constitution.
- 14.1.9 To appoint standing and ad hoc committees as it may deem necessary from time to time, such as (and not necessarily limited to), Security, Environment/Building Standards, Disciplinary, Finance and Legal, and to delegate to such committees such powers and authorities as may be considered necessary, subject to any restrictions imposed or directives given at any General Meeting. Such committees shall, insofar as possible, be chaired by the Trustee who holds that particular portfolio as envisaged in Clause 12.1.
- 14.1.10 To terminate any committee and/or revoke and/or amend any appointments to such committees and/or the delegations of authority to such Committee from time to time, as deemed necessary.
- 14.1.11 The Trustees may meet to attend to their business, adjourn, and otherwise regulate their meetings, as they think fit, subject to the provisions of this Constitution.
- 14.1.12 Save as specifically provided in this Constitution, the Trustees shall, at all times, have the right to engage on behalf of the Association the services of Accountants, Auditors, Attorneys, Architects, Engineers, Town Planners, Estate Manager or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Trustees on such terms as the Trustees shall decide.
- 14.1.13 The Trustees shall further have the power:
- 14.1.13.1 to require that any construction of any nature within the Township shall be supervised to ensure that the provisions of this Constitution and the Rules are complied with and that all such construction is performed in a proper and workmanlike manner;

- 14.1.13.2 to issue Architectural and Development Guidelines from time to time and to ensure that such guidelines are complied with at all times.
- 14.2 A Trustee may not otherwise delegate any of his obligations, save as approved by a majority of the (other) Trustees.
- 14.3 Any resolution passed by the Board of Trustees shall be carried by a simple majority present. Meetings may also take place by electronic means such as Skype in which event such trustee may not be present in person.
- 14.4 Should there be an equality of votes for or against any resolution; the resolution shall be deemed to have been defeated.
- 14.4.1 The Trustees shall cause the minutes of each meeting to be kept in accordance with the Companies Act, which minutes shall be reduced to writing within 7 (seven) days and certified as correct by the Chairperson at the next meeting.
- 14.4.2 A copy of each minute shall be delivered by the Chairperson to each Trustee within 14 (fourteen) days of the meeting to which such minutes relate.
- 14.4.3 All minutes of Trustees meetings shall, after certification, be placed in the Trustees Minute Book which shall be kept by management in accordance with the provisions of the laws relating to the keeping of minutes of meetings of directors of companies.
- 14.5 The Trustees' Minute Book shall be open for perusal at all reasonable times by any Trustee, the Auditors and Members.
- 14.6 Subject to the provisions of this Constitution, the proceedings of any Trustees meeting shall be conducted in such reasonable manner and form as the Chairperson shall direct.
- 14.7 A resolution signed by all the Trustees shall be valid in all aspects as if it had been duly passed at a meeting of the Board of Trustees.

## **15 PROCEEDINGS OF TRUSTEES**

- 15.1 The Trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.

- 15.2 The quorum necessary for the holding of all meetings of the Trustees shall be 3 (three) elected Trustees present to form a quorum. If no quorum is present within 30 (thirty) minutes after the time for commencement of the meeting then it shall stand adjourned for 7 (seven) days, or if that is not a business day, then to the next business day thereafter, and those Trustees present at the adjourned meeting shall constitute a quorum. The chairperson shall ensure that all Trustees have been notified of any Trustees Meeting of at least 30 (thirty) days prior to the date of the meeting.
- 15.3 A Trustee shall not be entitled to appoint any alternate to function in his stead for any purpose nor by proxy or otherwise appoint any other person to fulfil his functions and duties.
- 15.4 At any meeting of the Trustees, each elected Member Trustee shall have one (1) vote.

## **16 MEMBERS MEETINGS**

### 16.1 Types of meetings:

#### 16.1.1 Annual General Meeting (AGM):

- 16.1.1.1 the Trustees shall use their best endeavours to convene and hold the AGM within 4 (four) calendar months of the end of each financial year of the Association.
- 16.1.1.2 the notice convening the AGM shall be delivered to the Members and shall contain an agenda of the business to be conducted as follows:
- The tabling of the Chairperson's report.
  - Consideration of the annual financial statements (for the previous Financial Year) and the approval thereof.
  - The budget for the affected Financial Year and the determination of Levies and the approval thereof.
  - The appointment of the Association's Auditors and the remuneration payable to the Auditors.
  - The election of the Trustees).

- Any other relevant business.

#### 16.1.2 Extraordinary General Meeting (“EGM”):

The Association may convene an EGM for the passing of a Special Resolution dealing with special business not dealt with at the (preceding) AGM or in respect of matters which the Trustees (or requisitionists, as dealt with in clause 16.2) believe shall fall to be resolved by the passing of a Special Resolution (and which may further include any matters required to be dealt with by the Association which are considered to be *ultra vires* the powers of the Trustees, as referred to in this Constitution).

#### 16.1.3 Informal meetings:

Informal meetings of an informative nature where no resolutions may be passed.

16.2 All such aforementioned meetings shall be held at a date, time and place as the Trustees shall determine, subject to the provisions of this Constitution.

#### 16.3 Requisition by Members for the holding of an EGM.

16.3.1 The Trustees shall within 14 (fourteen) days of receipt of a written requisition signed by Members holding not less than 5% of the voting rights in the Association (and based on 1 (one) vote per Unit or Erf), convene an EGM, within not less than 21 (twenty-one) and not more than 35 (thirty-five) days from the date of such notice.

16.3.2 The written notice of the requisitionists shall set out in detail a draft of the Special Resolution/s required to be tabled at such EGM.

#### 16.4 Notice of Meetings – Further Provisions:

16.4.1 Subject to the other provisions of this Constitution, each AGM and EGM shall be called by written notice at least 21 (twenty-one) clear days before the date set for the meeting.

16.4.2 The notice convening each such meeting shall specify the place, the day and hour of the meeting and shall otherwise contain details of the business, including where relevant, special business, to be conducted at the meeting.



- 16.4.3 In the event that special business is to be conducted at a meeting, the notice convening the meeting shall contain adequate motivation and information to enable the Members to make an informed decision.
- 16.4.4 In the event that less than 21 (twenty-one) clear days' notice was provided in respect of the proposed passing of a Special Resolution, the majority of the Members having the right to attend and vote at such meeting (present in person or represented by proxy) shall be entitled, by way of a majority vote, to condone and consent to such shorter notice.
- 16.5 Quorum:
- 16.5.1 No business shall be transacted at any General Meeting unless a quorum is present within 30 (thirty) minutes of the commencement of the meeting.
- 16.5.2 The quorum necessary for the holding of the following meetings shall comprise the hereinafter set out percentages of the Members entitled to vote (on the basis of 1 (one) vote per unit or erf), present in person and by proxy:
- 16.5.2.1 AGM: 10% (ten per cent).
- 16.5.2.2 EGM: 10% (ten per cent).
- 16.5.3 Subject to the provisions of clause 16.5.1, if within half-an-hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time (or such other date place and time as the Chairperson of the meeting shall direct), and if at the adjourned meeting a quorum is not present within half-an-hour from the time appointed for holding the meeting, the Members present shall constitute a quorum.
- 16.5.4 If the same day in the next week is not a business day (any day other than a Saturday, Sunday or proclaimed public holiday or such date time and place as the Chairperson might direct), the adjourned meeting shall be held on the immediately succeeding business day.
- 16.6 Adjournment of Meetings – Further Provisions:
- 16.6.1 Subject to the provisions of clause 16.4.3, the Chairperson shall, with the approval of a majority of the Members at any General Meeting at which a quorum is present, adjourn the meeting from time to time and place to place.

- 16.6.2 No business shall be transacted at any adjourned meeting other than the business which fell to be transacted at the meeting from which the adjournment took place.
- 16.6.3 Save where a meeting is adjourned for a period of 10 (ten) days or longer, notice of the adjourned meeting shall not be required to be given to the Members.
- 16.6.4 where notice of the adjourned meeting is required to be given as provided in this Constitution, it shall be given in the same manner as for a new meeting.
- 16.6.5 Any General Meeting at which a Special Resolution is required to be passed shall, notwithstanding anything to the contrary contained in this Constitution, be adjourned to a day not earlier than 7 (seven) days and not later than 21 (twenty-one) days after the date of such meeting.
- 16.7 Save as aforesaid, the Members shall not be entitled to any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **17 PROXIES**

- 17.1 A Member may be represented at a General Meeting by a proxy, who need not be a Member.
- 17.2 The instrument appointing a proxy shall be in writing duly signed by the Member concerned (or his appointed agent duly authorised in writing), and be substantially in the form as set out in clause 17.5.
- 17.3 The original instrument appointing a proxy (and the power of attorney or any other authority under which it is signed) any time prior to the commencement of the meeting at which the person named in the proxy instrument proposes to vote, such instrument to be tabled at the meeting and filed with the Minutes thereof, in the Minute Book.
- 17.4 No instrument appointing a proxy shall be valid after the expiration of 6 (six) months from the date when it was signed, unless so specifically stated in the proxy form itself.
- 17.5 In order to determine the authority and rights of the proxy holder, it is preferred that the proxy form is substantially in the following form and indicate the instructions to the proxy holder in an unambiguous manner:

**PROXY FORM**

I/We, ....., the undersigned

the registered owner of ..... (or duly authorised by the registered owner of ....., in which event a copy of the authorising power of attorney and where relevant, authorising resolution shall be attached to this proxy form) being a Member of the Oubaai Homeowners Association, do hereby appoint

.....of .....

or failing him .....of .....

or failing him .....of .....

as my proxy to vote for me and on my behalf at the \_\_\_\_\_ Meeting of the Association to be held on the ..... day of ..... 20....., and at any adjournment thereof as follows:

1. Motion to .....

(See attached draft resolution, if relevant)

In favour  Against  Abstain

2. Motion to .....

(See attached draft resolution, if relevant)

In favour  Against  Abstain

3. Motion to .....

(See attached draft resolution, if relevant)

In favour  Against  Abstain

\* Where it has been indicated that the proxy may vote in favour of any of the resolutions, indicate further whether the proxy may vote in favour of any modification to any proposed resolution or not:

With modification  Without modification

\* If no indication has been made above as to how the proxy may vote, the proxy may vote as he thinks fit.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_

## **SIGNATURE**

- 17.6 A vote given in accordance with the terms of a proxy shall be valid notwithstanding the death or insolvency of the principal prior to the time at which the meeting was due to start, or subsequent revocation of the proxy, provided, however, that no intimation of the death or insolvency or revocation shall have been received by the Trustees and the proxy at any time prior to the vote being taken in respect of which the proxy exercises such vote.

## **18 RESOLUTIONS**

- 18.1 Every motion and every amended motion proposed for adoption as a resolution by a General Meeting shall be seconded at the meeting and if not so seconded, shall be deemed not to have been proposed.
- 18.2 An amendment proposed shall also require being seconded, and if approved by the meeting, will replace the initial proposal, and such amended proposal must then be put to the vote.
- 18.3 An ordinary motion or the amendment of any ordinary motion shall be carried by a simple majority of all votes present in person or by means of a proxy and entitled to vote.
- 18.4 Should there be an equality of votes for or against any ordinary motion, the motion shall be deemed to have been defeated.
- 18.5 A Special Resolution shall be carried by 75% (seventy-five percent) of the votes of Members (in good standing) present in person or by proxy at the General Meeting, and in the event of no quorum being present by 75% (seventy-five percent) of the votes of the Members (in good standing) present in person or by proxy at any adjourned meeting in accordance with the provisions of clause 16.4.
- 18.6 Where less than 21 (twenty-one) days' clear notice was provided in respect of the relevant General Meeting, the consent, if relevant, to the waiver of due notice by a majority of the Members (as referred to in clause 16.4), shall be signed in the prescribed form (as required in terms of the Companies Act) together with a copy of the Special Resolution so passed (if relevant).
- 18.7 A copy of the notice convening the meeting together with the consent/waiver in respect of short notice, as referred to above, shall be kept in the Minute Book.

- 18.8 The Trustees shall deliver a copy of all Special Resolutions to the Members, alternatively ensure that the text thereof is accessible on the Association's website.

## **19 VOTING RIGHTS OF MEMBERS**

At every General Meeting:

- 19.1 Every Member, who is in good standing, shall be entitled to vote in person or by proxy and shall have 1 (one) vote for each erf or unit registered in his name at any General Meeting, subject to the provisions of the Companies Act.
- 19.2 If a Unit or Erf is registered in the name of more than one person, then all such co-owners shall jointly have 1 (one) vote.

Voting-Determination

- 19.3 At any General Meeting a resolution put to the vote of the meeting shall be decided by a show of hands unless a poll is demanded by the Chairperson or Members as provided in terms of the Companies Act.
- 19.4 Unless a poll is demanded before or on the declaration of the result of a show of hands, a declaration by the Chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, an entry to that effect in the Minute Book of the Association, shall be conclusive evidence of the fact, without proof, of the number or proportion of the votes recorded in favour of or against such resolution.
- 19.5 A demand for a poll may be withdrawn.
- 19.6 Should a poll be demanded, it shall be taken in such a manner as the Chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 19.7 Scrutineers shall be elected by the meeting to determine the result of the poll.
- 19.8 Should there be an equality of votes for or against any resolution; the resolution shall be deemed to have been defeated.
- 19.9 A poll demanded with respect to the election of a Trustee or on the issue of any adjournment shall be taken forthwith.

- 19.10 A poll demanded on any other question shall be taken at such time as the Chairperson of the meeting directs.
- 19.11 The demand for a poll shall not prevent the continuation of the meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 19.12 Unless any Member present in person or by proxy at a General Meeting, prior to closure of the meeting, objects to any declaration made by the Chairperson, with regard to the result of any voting at the meeting, whether by show of hands or otherwise, or to the correctness or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted and an entry in the Minute Book to the effect that the motion has been carried or defeated, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.

## **20 ACCOUNTING RECORDS**

- 20.1 The Trustees shall cause such accounting records as are prescribed by the Companies Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary to fairly present the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.
- 20.2 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Trustees think fit, and shall always be open to inspection by the Trustees.
- 20.3 The Trustees shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Association or any of them shall be open to inspection by Members not being Trustees, and no Member (not being a Trustee) shall have any right of inspecting any accounting records or documents of the Association except as conferred by the Companies Act or authorised by the Trustees.
- 20.4 The Trustees shall from time to time cause to be prepared and laid before the Association, in a General Meeting such financial statements as are referred to in the Companies Act.

20.5 A copy of the audited annual financial statements which are to be laid before the Association in Annual General Meeting shall, not less than seven (7) days before the date of the meeting, be available for members at the office of the Estate Manager. It shall not be necessary to circulate the said financial statements with a notice convening an Annual General Meeting.

## **21 SERVICE OF NOTICES**

21.1 The Association may give notices to any Member either personally, or by sending it by post in a prepaid letter addressed to such Member at his registered address or at the address (if any) within the Republic of South Africa supplied by him to the Association for the giving of notices to him.

21.2 Notice of every General Meeting shall be given:

21.2.1 to every Member of the Association;

21.2.2 to the auditors for the time being of the Association;

21.3 No other person shall be entitled to receive a notice of General Meetings.

21.4 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

21.5 The signature to any notice given by the Association may be written or printed, or partly written and partly printed.

21.6 When a given number of days' notice or notice extending over any other period is required to be given, the period shall be calculated by excluding the first day and including the last day.

21.7 Valid notice may also be given to members by means of e-mail to the e-mail addresses of such members, which to which their monthly levy statements are posted from time to time, or such e-mail addresses as specified by such members in writing to the Association.

## **22 INDEMNITY**

22.1 Every Trustee, servant, agent and employee of the Association and management (and their employees), shall be indemnified by the Association against all costs,

- losses and expenses (inclusive of travelling expenses), which such person or persons may reasonably and necessarily incur or become liable for by reason of any contract entered into or by any act or deed done by such person or persons in the discharge of their respective duties and obligations to the Association, and in the case of a Trustee, including his duties as Chairperson or Vice-Chairperson and otherwise as a Member of any Committee.
- 22.2 The provisions as set out in clause 22.1 shall similarly apply insofar as every co-opted Trustee and a member of any committee appointed by the Trustees are concerned, and the Association indemnifies all such persons accordingly.
- 22.3 Without prejudice to the generality of the foregoing, the Association indemnifies every such Trustee or another person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties.
- 22.4 Members conversely indemnify the Association (including management) and their respective officers, employees and agents in respect of any claims, damages or losses (including costs and interest) suffered or sustained as a result of any unlawful act, negligence (including any act or omission) and/or as a result of any breach of the provisions of this Constitution and/or the Rules, by the Member, his family, employees, agents, contractors, stay in contractors, sub-contractors, tenants (and other occupiers of the Erf or Unit), guests and visitors (including any customer, client or patient) and which act, omission and/or breach occurs, if relevant, in and about the Township.
- 22.5 The Trustees shall be entitled in terms of the Rules to require that every person (other than a Member and his family who form part of the household) as a pre-condition to entry to the Township, complete and sign a written indemnity (in a form approved by the Trustees) in which the Association (and management) and their respective officers, employees and agents are indemnified and held harmless in respect of any claims, damages or losses including any personal injury or other harm occurring or arising in or about the Township.
- 22.6 The Trustees shall further be entitled to implement such measures and effect such insurances pertaining to all risks, whether insurable or otherwise and shall procure that the Association is covered by such short-term insurances (including, but not limited to, public liability cover) as is determined necessary from time to time, the right further being reserved to deal with the foregoing in terms of the Rules.



## 23 GENERAL

- 23.1 Whenever the Trustees consider that the appearance of any Erf or Unit or building in the Township vested in a Member is such as to be unsightly or injurious to the amenities of the surrounding area or the Township generally, they may serve notice on such Member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the Member fail within a reasonable time, to be specified in such notice, to comply therewith, the Trustees may enter upon the land or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the Member concerned, which costs shall be deemed to be a debt owing to the Association.
- 23.2 The Trustees shall be obliged in giving such notice to act reasonably. In the event of any dispute, the Member shall bear the onus of establishing that the Trustees acted unreasonably.
- 23.3 Any Member as registered owner of a Residential Erf shall construct and complete the construction of a dwelling house thereon within three (3) years after the first registration (irrespective of whether such transfer was into his name or into the name of any predecessor), unless an extension is allowed by the Association. After a period of 3 (three) years from the date of which the Developer has sold the last of the erven, the Association shall be entitled to close the contractor's gate and to refuse entry to the estate by heavy vehicles.
- 23.4 Should any Member fail to comply with the provisions of clause 23.3, the Association shall be entitled to impose double the amount of levies due by such Member in terms of clause 6.
- 23.5 The Association may enter into agreements with any third party for the provision of facilities and services to or for the Members and may levy charges in respect of the provision thereof or may pass on such costs direct to the Members.
- 23.6 Any person using any of the Services, land or facilities of the Association does so entirely at his own risk.
- 23.7 The Association may at its pleasure permit the Members, subject to the provisions of this Constitution, to use the open space and roads, and shall do so unless, by a special resolution taken at an Extraordinary General Meeting called for the purposes, it is otherwise resolved for a good reason.

- 23.8 The Association may from time to time and whenever it deems it necessary, limit, restrict, or suspend such use in relation to any part of such roads and open space for good reason.
- 23.9 No Member shall operate or conduct a time share scheme as contemplated in the Time Share Control Act No. 71 of 1983 in respect of any Unit or Erf owned by him save where such scheme arises from co-ownership or syndication involving not more than 2 (two) Members per bedroom per Unit or Erf.

## 24 DISPUTES

- 24.1 Any dispute arising out of or in connection with this Constitution must be determined in terms of this clause, except when an interdict is sought for urgent relief or the recovery of non-payment of levies, penalties or any other amount due by the member to the Association in terms of clause 6, which may be obtained from a court of competent jurisdiction.
- 24.2 On a dispute arising, the party who wishes to have the dispute determined must notify the other party thereof in writing. Unless the dispute is resolved amongst the parties to that dispute within fourteen (14) days of such notice, either of the parties may refer the dispute to the determination in terms of this clause.
- 24.3 If a party exercises his right in terms of this clause to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of ten (10) years' experience in their field or in terms of Section 38 of the Community Scheme Ombud Service Act, the party may make an application to the CSOS if materially affected by a dispute for an Alternative Dispute Resolution Service. This entails the resolution of disputes outside of the courts.
- 24.4 **Conciliation** refers to the process where the parties use the services of an independent conciliator to be appointed by the Ombud to assist parties to arrive at a mutually agreeable solution.
- 24.5 **Adjudication** refers to the process where an independent adjudicator appointed by the Ombud, or selected by both parties from the list provided by the Ombud, determines how the dispute is to be resolved and makes a binding decision or order.
- 24.5.1 if the dispute is primarily an accounting matter, a practising chartered accountant;

- 24.5.2 if the dispute is primarily a legal matter, a practising attorney or advocate;
- 24.5.3 if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practising quantity surveyor;
- 24.5.4 if the dispute is primarily a matter relating to any defect in any building construction, a practising professional engineer;
- 24.6 If the dispute relates to any other matter, an independent and suitably qualified person. If the parties are unable to agree either on the person referred to in this clause or on the classification of the dispute within a period of seven (7) days of either party having given notice to the other, proposing an appointee or alternative appointees, then the person in question shall be nominated by the President for the time being of the Cape Law Society or its successor/s.
- 24.7 Any person agreed upon and nominated as aforesaid (“the expert”), shall in all respects act as an expert and not as an arbitrator.
- 24.8 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 24.9 The parties shall use their best endeavours to procure that the decision of the expert shall be given within twenty-one (21) days or so soon thereafter as possible after it has been demanded.
- 24.10 The decision of the expert shall be final and binding upon all parties and capable of being made an order of the court on application by any of them.
- 24.11 The costs of and incidental to any such proceedings, including the fees of the expert, shall be at the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between party and party or as between attorney and client.
- 24.12 The provisions of this clause constitute the irrevocable consent of the parties to any proceedings in terms thereof, and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that it is not bound by such provisions.
- 24.13 The provisions of this clause shall be deemed to be severable from the rest of this Constitution and shall remain binding and effective as between the parties

notwithstanding that this Constitution may otherwise be cancelled or declared of no force and effect for any reason.

- 24.14 This clause shall not preclude the Association from instituting proceedings for the payment of outstanding levies through a court of competent jurisdiction notwithstanding the fact that the payment of such levies may be in dispute.

## **25 ESTATE MANAGER**

- 25.1 The Trustees shall appoint an Estate Manager to control, manage and administer the development and the Common Property and to exercise such powers and duties as may be entrusted to the Estate Manager, including the right to collect Levies.
- 25.2 The terms and conditions of the appointment of the Estate Manager shall be in the discretion of the Trustees.

## **26 AMENDMENT**

- 26.1 No amendment of whatever nature to this Constitution shall be affected without the prior written notice to the Council. It is recorded however that the consent of the Council is not a legal requirement to any amendments taking effect.
- 26.2 Every amendment of this Constitution of whatever nature including any addition thereto, deletion therefrom or substitution thereof shall require the approval of at least 75% (seventy-five per centum) of the total number of votes of Members present, in person or by proxy.