



CONSTITUTION

OF THE

MARINERS VILLAGE

HOME OWNERS ASSOCIATION

[CSOS/REG16/WC/003682]

(This Constitution, dated August 2018, replaces any previous Constitution of the Association)

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1. NAME AND ESTABLISHMENT

The Mariners Village Home Owners' Association (the HOA) is an Association, constituted in terms of section 29 of the Land Use Planning Ordinance, No. 15 of 1985 in accordance with the conditions imposed by the local authority when approving the same in terms of section 25 (1) and 42 of the said Ordinance.

2. DEFINITIONS

In this Constitution and unless inconsistent with the context the following words and expressions shall have the meanings hereby assigned to them:

- **"AGM"** means the annual general meeting of the Association;
- **"Alienate"** means alienate any Erf/Sectional Title Unit or part thereof and includes by way of sale, exchange, donation, deed, intestate, will, cession, assignment, court order or insolvency, irrespective whether such alienation is subject to a suspensive or resolutive condition, and alienation shall have a corresponding meaning;
- **"Applicable Laws"** means all laws, bylaws, ordinances and regulations of the Republic of South Africa, whether national, provincial and/or local to which the HOA may be subjected to, including but not limited to: National Building Regulations and Building Standards Act 103 of 1977 (as amended); LUPO; CSOAS; STSMA; WCLUPA;
- **"Architectural Design and Landscaping Manual (abbreviated as ADLM)"** means the separate and dynamic document (including any amendments made by the Exco thereto from time to time), forming part of this Constitution, prepared for and applicable to every Owner, a copy of which available from the HOA or it can be downloaded from the Complex's webpage at www.marinersvillage.co.za;
- **"Architectural Design Review Committee" (ADRC)** means the committee established by the Exco;
- **"Association"** means Mariners Village Home Owners' Association which is bound by this Constitution.
- **"Auditors"** means the external Auditors of the Association, being such Auditors as may be appointed by the HOA from time to time;
- **"Body Corporate"** means a body corporate established for a Sectional Title Scheme in terms of the provisions of the Sectional Title Act;
- **"Building"** means every building constructed or to be constructed that comprises a Sectional Title Scheme or constructed or to be constructed on the Residential Erven;
- **"Chairperson"** means the Chairperson of the Board, as elected/appointed from time to time;

- **“Club Facilities”** (once, if or when established) means the club house, kitchen, pool or whatever building and/or facilities erected or to be erected on Erf 10531 (i.e. the Recreational Erf) in the Complex.
- **“Common Property/Area”** means erven other than residential erven, namely erven numbers 10405, 10420, 10425, 10482, 10531, 10533, 10534, 10536, 10537 and 10538 to be held and maintained by the HOA for the benefit of the Members as roads, walkways, gardens, visitors-parking areas, recreational facilities, security offices, storage areas or for some other communal purposes;
- **“Common Services”** means all bulk services in the Complex including services in respect of the provision of water, sewerage, electricity, drainage, telecommunications, refuse removal, fire-fighting, security and all such other utilities and amenities serving the Common Areas, Units and Residential Erven;
- **“Complex”** encompass all property comprising Mariners Village;
- **"Conduct Rules"** means the HOA's Conduct Rules and any amendments thereto and approved by the committee members at an Exco meeting on behalf of the Members of the Association and ratified at an AGM or with a Special Resolution;
- **“Constitution”** means the Mariners Village Home Owners Association Constitution as set out in this document and its annexures thereto (if any) as well as any separate documents forming part thereof, including but not limited to the Architectural Design and Landscaping Manual, Conduct Rules and Regulations, Fines and Penalties Schedule, Security Rules, Recreational Rules or any such other documents, all as may be amended from time to time and approved by the Members of the Association at its AGM or via a Special Resolution;
- **“CSOSA”** means the Community Schemes Ombud Service Act No. 9 of 2011 (as amended) read together with the Regulations on Community Schemes Ombud Service (as amended);
- **“Days”** means calendar days and shall include the first and last day;
- **“Deed of Sale”** means an agreement of sale and purchase in terms of which any party has purchased a Unit in a Sectional Title Scheme or a Residential Erf;
- **"Developer"** means Sunset Bay Trading 196 (Pty) Ltd registration number 2004/025779/07, or its successor-in-title as the owner of the Sectional Title Properties, namely erven numbers 10308, 10527, 10528, 10529, 10530 and 10532;
- **"Dwelling/House"** means the construction of an approved Building on an Erf for occupation and use by natural persons;
- **“Erf/Erven”** means any of the residential Erven depicted on the existing or any future General Plans of Subdivision of the Land whether registered or not in accordance with the Deeds Registries Act No. 47 of 1937 including further subdivisions or consolidations thereof but excluding the Common Areas and Non-residential Erven as defined herein;

- **“Exco”** means the Executive Committee for the time being of the Association as appointed in terms of this Constitution;
- **“Family”** means the head of a household, being an adult, his/or her spouse as well as any natural descendants of the head of the household and his/her spouse;
- **“Financial Year”** means the Financial Year of the Association to be determined from time to time by the Exco;
- **“HOA”** means the Association;
- **“Improvement”** means any structure of whatever nature constructed or erected or to be constructed or erected on an Erf or on Sectional Title Properties;
- **“Levy/Levies”** means the levy raised by the Home Owners Association and collected by Bodies Corporate from Owners by or on behalf of the Home Owners Association;
- **“Local Authority”** means the Overstrand Municipality or any local authority that may succeed it as the local authority which has jurisdiction over the Complex from time to time;
- **“LUPO”** means the Land Use Planning Ordinance No. 15/1985 (as amended) and includes any superseding legislation;
- **“Managing Agent”** means any person or entity appointed by the HOA as an independent contractor to undertake any of the functions of the HOA;
- **“Mariners Village or Parent Property”** means Erf 9088 Hermanus;
- **“Member”** means any person being the registered owner of a Residential Erf or a Sectional Title Unit within Complex and thereby automatically becoming a member of the Association;
- **“Occupant/Resident”** means any person(s) occupying a Building on the Complex for residential purposes;
- **“Office”** means the administration office of the Association from time to time;
- **“Owner”** means the person who is a registered owner of an Erf/Erven or a Sectional Title Unit;
- **“Person”** shall include a natural person, Company, Close Corporation, Trust, Partnership or other Association of persons entitled by law to hold title to immovable property;
- **“Prime Rate”** means the publicly quoted basic rate of interest per annum from time to time, as certified by any officer of Absa Bank Limited whose appointment and authority it shall not be necessary to prove, at which the said bank lends monies in South African Rand on unsecured overdraft to first class corporate borrowers in general on the basis of such interest being compounded monthly in arrear and calculated on a 365 (Three Hundred and Sixty Five) day year factor, irrespective of whether or not the year is a leap year (and which said rate of interest is sometimes referred to as the prime commercial overdraft rate of interest);

- **“Property”** means a Member’s erf with or without a dwelling on it as the case may be;
- **"Proxy"** means a natural person duly appointed by a Member or Exco member in terms of the provisions of the Constitution to represent him at any meeting or resumption of any meeting that has been postponed;
- **“Republic”** means the Republic of South Africa;
- **“Resident(s)”** means any person, being an Owner or a tenant, occupying a House;
- **“Residential Erf/Erven”** means an erf within the Complex destined for development and use for residential purposes created by the sub-division of the Parent Property and “Residential Erven” shall mean all such erven or any group thereof as the context may indicate;
- **“Review Committee”** means the Exco or other persons appointed by them to review (guided by the Architectural Design and Landscaping Manual) and approve or reject the architectural plans of any proposed new buildings or additions/amendments to existing buildings to be erected in Mariners Village;
- **“Sectional Titles Act”** means the Sectional Titles Act No. 95 of 1986, as amended from time to time;
- **“Sectional Title Levies”** means the levies determined by the HOA Exco applicable to the Body Corporates.
- **“Sectional Title Scheme”** means any Sectional Title Scheme established in terms of the applicable laws on any Sectional Title Property;
- **“Sectional Title Unit(s)”** means the Sectional Title Units erected or to be erected by any developer or person on sectional title erven numbers 10308, 10527, 10528, 10529, 10530 and 10532 (i.e. the Sectional Title Property) incorporated in a sectional title scheme;
- **"Security Company"** means such Security Company as may be appointed by the Exco from time to time with the purpose to undertake some or all security functions of the Association;
- **“Special Resolution”** means a resolution passed at a special General Meeting of which not less than 14 (fourteen) calendar days’ prior written notice has been given specifying the intention to propose the resolution as a Special Resolution, the terms and effect of the resolution and the reasons for it, and passed, on a show of hands, by not less than three-fourths of the total number of Members present at the meeting who, at minimum, form a quorum for a General Meeting;
- **“Spouse”** means the husband, wife or life partner of an Owner under any law or custom that is recognised by South African law;

- **“ST SMA”** means the Sectional Title Schemes Management Act of 2011 (as amended);
- **“Unit”** means a section (as defined in the Sectional Titles Act) in a Sectional Title Scheme with such section's undivided share in the common property of such Sectional Title Scheme;
- **“Unit Owners”** means owners of Units within the Sectional Title Scheme;
- **“Website”** means the place or address on the internet where and through which the Exco and Members can communicate and interact;
- **“Week days”** means all days with the exclusion of Saturdays, Sundays and Public Holidays of the Republic;
- **“WCLUPA”** means the Western Cape Land Use Planning Act, 2014 (as amended);
- **“Year”** means a calendar year.

3. INTERPRETATION

- 3.1 The clause headings are for convenience only and shall be disregarded in construing this Constitution.
- 3.2 Unless the context clearly indicates a contrary intention, the singular shall include the plural and vice versa, and a reference to any one gender shall include the other genders and a reference to natural persons includes legal persons and vice versa.
- 3.3 Words and expressions defined in any sub-Clause shall, for the purpose of the Clause of which that sub-Clause forms part, bear the meaning assigned to such words and expressions in such sub-Clause.
- 3.4 Where figures are referred to in words and in numerals and if there is any conflict between the two, the words shall prevail.
- 3.5 If any provision of this Constitution is in conflict or inconsistent with any Applicable Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.
- 3.6 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, effect shall be given to it as if it were a substantive provision in the body of this Constitution.
- 3.7 The annexures (if any) or separate documents (if any) mentioned in this Constitution are deemed to be incorporated in and form part of this Constitution. Annexures and/or Separate Documents later introduced, as compiled in terms of the Constitution, and recorded in any minutes of an AGM or the minutes of a general meeting of the Association, then those added Annexures and/or Separated Documents shall be incorporated into this Constitution and

form part thereof. Should any provision in such incorporate Annexures and/or Separate Documents be in conflict or be inconsistent with any provision in the body of this Constitution, then the provision of the Constitution shall prevail.

- 3.8 No provision of this Constitution or any related document shall be construed against or interpreted to the disadvantage of any party hereto because of such party having or being deemed to have structured or drafted such provision.
- 3.9 This Constitution shall be governed by and construed and interpreted in accordance with the Applicable Laws and every Member hereby consents to the jurisdiction of any competent court of the Republic of South Africa, for the purposes of any proceedings instituted in connection with this Constitution.

4 INTRODUCTION

- 4.1 The Developer has completed his role in the development (i.e. the Complex) and has transferred all the common property to the HOA and as such shall henceforth be treated as any member of the HOA for as long as he may own property within the Complex. He will be subjected to the HOA's Constitution as an ordinary Member and, as such, shall pay the required levies as raised by the HOA from time to time.
- 4.2 The Developer is also the registered owner of the undeveloped Sectional Title Properties, which it intends to develop with the creation of Sectional Title Schemes consisting of separate Bodies Corporate in respect of each such Sectional Title Property.
- 4.3 It is intended that all the Residential Erven and the Sectional Title Schemes will be integrated to constitute a single security Complex to be served by the same security features such as a surrounding security wall and controlled entrance and all Owners will accordingly be entitled to utilise and enjoy such Common Areas and Services, all in terms of the Conduct Rules and Regulations forming part of the Constitution.
- 4.4 Nothing to the contrary herein contained shall however prevent the Developer from disposing of any one or all of the Sectional Title Properties prior to the development thereof, on condition however that any new owner will, prior to taking transfer and/or commencing with the development of the Sectional Title Scheme relating to the property in question, in writing undertake to the Association, represented by Exco, that it will in all respects abide by the provisions of this Constitution and will incorporate the terms thereof in the rules of the Body Corporate concerned. For the avoidance of doubt, it is recorded that no sale of property, or the erection of any buildings may take place without the Exco's prior written approval, which approval shall not be unreasonably be withheld.

5 STATUS

- 5.1 The HOA has legal personality and can sue or being sued in its own name.
- 5.2 The HOA shall not operate for profit for the benefit of its Members.

- 5.3 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 Exco.
- 5.4 The Constitution and all documents incorporated therewith shall be binding on all Owners.
- 5.5 The Association and all Body Corporates shall be subject to all Applicable Laws as amended from time to time.

6 OBJECTIVES AND CONTROL

The general objectives and powers of the Association are:

- 6.1 to promote, advance and protect the communal interests of the Complex's Owners (and tenants as may be applicable) to ensure acceptable aesthetic, architectural and environmental standards in the Complex and to promote, maintain and manage the Common Property and Recreational Facilities (if any) established or to be established in the Complex;
- 6.2 to act as a home owners' association established in terms of Section 29 of LUPO for the Mariners Village Home Owners Association and to ensure that those matters referred to in sections 29 (2)(b) and (c) of LUPO be adhered to and complied with;
- 6.3 to administer, manage, oversee, control and enforce as appropriate, the provisions of this Constitution and all documents incorporated therewith;
- 6.4 to promote, advance and protect the interests of the Association and all its Members;
- 6.5 to control the registration of transfer of Residential Erven and Units in the Complex;
- 6.6 to administer, manage, oversee, maintain and control the Complex's Common Areas;
- 6.7 to manage, oversee and control all security aspects of the Complex;
- 6.8 to promote environmental awareness and shared responsibility for the upkeep of the Complex amongst Members;
- 6.9 to control the aesthetic appearance of the Complex;
- 6.10 to appoint, remunerate and manage employees necessary to assist the Exco to fulfil its responsibilities in terms of the Constitution;
- 6.11 to enter into agreements with third parties for the provision of services, *inter alia* including for the provision of water, electricity and sewerage services to the Association and where required to supply such services to the Owners and the various Bodies Corporate;
- 6.12 to contract third parties (which may be Members and/or Residents) at market related rates and prices for the provision of once-off or ongoing services relating to any repairs and maintenance to any buildings, security systems, roads, infrastructures, gardens and/or for

the provision of professional services and other services as required by the Exco to comply with the HOA's obligations in terms of the Constitution;

- 6.13 to take action including the imposition of fines, or the institution of proceedings in a court of law, as may be deemed fit by the Exco, in relation to the non-compliance by any Member/Owner of any of the requirements of this Constitution or the Conduct Rules or the provisions contained in the ADLM;
- 6.14 to administer and enforce the Architectural Design and Landscaping Manual rules and specifications; and any other rules and regulations of the Constitution;
- 6.15 to review and approve all new building plans and/or plans for additions/alterations to existing buildings prior to the submission thereof to any other Local Authority for review and approval;
- 6.16 The Association, through its Exco, shall have all the powers that are necessary to accomplish the fulfilment of the foregoing objectives, including but not restricted to, the powers provided for in this Constitution.

All of the above shall be carried out by the HOA in terms of the provisions contained in its Constitution and the supporting rules and regulations as contained in the Constitution's various Annexures and Separate Documents.

7 MEMBERSHIP

- 7.1 The Association shall have as its Members:
 - 7.1.1 he Developer, for as long it remains an owner of any portion of the Complex and, without detracting from the generality of the foregoing, specifically including any Residential Erf or Unit and he shall be bound by the Constitution and all applicable rules and regulations as any other Owner;
 - 7.1.2 every Owner, provided that where an Owner comprises more than one person, such person shall be deemed jointly to be one Member of the Association and shall be jointly and severally liable to comply with their obligations as a Member; and
 - 7.1.3 every Body Corporate.
- 7.2 An Owner of a Residential Erf and/or a Sectional Title Unit shall automatically become a Member of the Association or appropriate Body Corporate upon registration of transfer of the Residential Erf or Sectional Title Unit into his name.
- 7.3 When a Member is no longer the registered owner of any Residential Erf or Unit he shall *ipso facto* cease to be a Member of the Association.
- 7.4 Anything to the contrary hereinbefore 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:

- 7.4.1 any provisions of this Constitution; or
- 7.4.2 any further or ancillary guarantee, commitment or obligation which such Member may have undertaken.
- 7.5 Membership may not be assigned or transferred by a Member to any other natural person or Entity other than through the sale of a Member's property.
- 7.6 The Association shall maintain at the Office a register of Members. Such Register shall be open to inspection by all Members.
- 7.7 Members shall not, by reason of their Membership, be liable for the liabilities and obligations of the Association.

8 MEMBERS' OBLIGATIONS AND RIGHTS

- 8.1 Every Member is obliged and agrees to comply with:
 - 8.1.1 the provisions of this Constitution and any Regulations passed and promulgated by the Association in terms hereof;
 - 8.1.2 the legal and reasonable determinations made by the Exco members;
 - 8.1.3 the provisions as contained in the ADLM, as amended from time to time, in terms of the Constitution;
 - 8.1.4 the provisions as contained in the Conduct Rules and Regulations as well as the Fines and Penalty Schedule (both being a separate documents) as amended from time to time by the Exco and approved at an AGM or general meeting of the Association;
 - 8.1.5 the provisions in the Mariners Village Security Rules and Regulations
 - 8.1.6 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; and
 - 8.1.7 any directive given, or legal decision taken by Exco in enforcing the provisions of this Constitution.
- 8.2 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.
- 8.3 The Members shall be jointly liable for payment of all levies or special levies as determined by the HOA from time to time for the successful operation of the Complex.

- 8.4 A Member shall not sell, alienate or give transfer of a Residential Erf or Sectional Title Unit unless:
- 8.4.1 the proposed transferee has acknowledged in writing that he shall automatically become a Member of the Association or Body Corporate and that he shall be bound to observe the provisions of the Constitution for the duration of his ownership of the Residential Erf and/or Sectional Title Unit;
 - 8.4.2 the Association acting through Exco or the Managing Agent has issued a prior written clearance certificate that all outstanding levies and all other 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; and
 - 8.4.3 the conditions set out in clause 8.4 are incorporated in the relevant deed of sale in terms whereof the transferee takes transfer of the Residential Erf or Unit in question.
- 8.5 A Member shall not part, in the form of a lease, with the occupation of his Dwelling (including a Unit), whether temporarily or otherwise, unless the proposed occupier has agreed to be bound by all the applicable provisions of the Constitution, Conduct Rules and/or any legal and reasonable instructions given, and determinations made by the Exco. The Member shall ensure and warrant compliance therewith by such occupier. Members shall be liable for the acts or omissions of all persons occupying his Property, whether lawfully or unlawfully including without limitation guests, employees, invitees, contractors, sub-contractors or agents.
- 8.6 A Member shall not without the prior written consent of the Association via Exco, who in granting or refusing such consent by acting in its absolute discretion, apply to the Local Authority or any other relevant authority for the subdivision or rezoning of a Residential 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.
- 8.7 A Member is required to ensure that the occupant of his Residential Erf or Unit, whether such occupation arises from an agreement of lease or otherwise, complies with all applicable provisions of this Constitution and the Conduct Rules and Regulations. 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 all his obligations under this Constitution.
- 8.8 A Member cannot resign as a Member of the Association while still being the rightful owner of a property or Sectional Title unit within the Complex.
- 8.9 Each Member shall:
- 8.9.1 refrain from doing and shall prevent others from doing and not suffer to be done on any Residential Erf or in any Sectional Title Unit anything which, in the opinion of Exco, is noisome, unsightly, injurious, objectionable or detrimental or constitutes

a public or private nuisance or a source of disturbance, or cause any damage to any Member, tenant or occupier of any Residential Erf or Unit in the Complex;

- 8.9.2 comply with all security procedures implemented in the Complex from time to time and he shall ensure that his family, tenants, occupiers, invitees and/or employees also comply with the same; ensure ascertain
- 8.9.3 ensure the maintenance of its Property in a neat and tidy condition and in a state of good repair;
- 8.9.4 not do or suffer to be done on any Erf or Unit anything which, in the opinion of the Exco, for the duration of any building or restoration undertakings is excessively noisome, unsightly, injurious, objectionable or detrimental, or a public or private nuisance, or a source of damage or disturbance to any Owner, tenant or resident of any other Erf or Unit or the Common Areas;
- 8.9.5 not use any building or other structure constructed within the Complex, or allow any other person to use such building or other structure, for purposes not permitted by this Constitution or all rules and/or regulations made in terms of this Constitution;
- 8.9.6 ensure that he and his family, tenants, occupiers, invitees and/or employees do not damage plants or landscaping and/or structures on Common Areas. He is also required to ensure that the landscaping on his exclusive use area is developed and maintained to a high standard to form a harmonious whole with the rest of the Complex and that it does not interfere with pedestrian traffic or obscure the vision of motorists. In this regard a Member is obliged to ensure that his private garden does not contain any prohibited, alien invasive and/or poisonous plants, and that it mainly consist of indigenes, fynbos and water-wise plants. Trees may not be planted on the sidewalks without the prior written approval of the Exco;
- 8.9.7 not park, or permit the parking of any vehicle, (including a golf cart, boat, caravan or trailer- but excluding regularly used motor vehicles) on its own property (where it is visible from any road or neighbouring erven), road, pavement, empty erf or common area within the Complex;
- 8.9.8 not, on any Property, erect, construct or allow the erection or construction of anything, including but not limited to: unappealing washing lines; Wendy houses or similar structures; storage containers; carports; boreholes; any wooden, iron/steel or other material structure to be used as screens, walls or shading; water tanks; animal cages; child play/entertainment structures or instruments, without the prior written authorisation of the Exco, but such erections/constructions shall not be allowed where it is visible from any road or neighbouring Properties in the Complex;
- 8.9.9 not, without the prior written approval of the Exco: make any changes or alterations to existing buildings and/or structures on his Erf, including: changes to external colour scheme; install or fix burglar bars to any external windows or doors of the buildings on his Erf or to any external windows and doors of his Sectional Title Unit;

or any other structures which may affect the external appearance of the improvements on his Erf or his Sectional Title Unit.

- 8.9.10 not permit the number of occupants of its Dwelling to exceed the number of people allowed for in the Conduct Rules and Regulations;
 - 8.9.11 afford employees, agents and representatives or contractors of the Association full access to a Property (including a Unit) to do all things reasonably necessary to construct and/or stabilise and/or maintain all Common Services and road edges;
 - 8.9.12 not conduct, or permit to be conducted, any business on a Property, or permit the use thereof for carrying on a business without the prior written approved of the Exco; and
 - 8.9.13 notify and supply Exco with the personal information and copies of the Identity Documents of any Occupants of its Dwelling;
- 8.10 A Member shall not be entitled to exhibit any signboards, notices, advertising Boards, neon signs or nameplates on the exterior of a Residence or empty Erf, or anywhere within the Complex on Common Property.
- 8.11 A Member shall be obliged to stays up to date with the contents of the Complex's website to ensure that he is aware of any news or developments that could affect him or be of interest to Members and to obtain the latest documents (including the Constitution, Conduct Rules and Regulations, Architectural& Landscaping Design Manual and other important communications) of the Association.
- 8.12 Membership of the Association shall confer upon a Member, inter alia, the following rights, subject to the provisions of this Constitution:
- 8.12.1 the right to inspect and/or receive copies of the annual financial statements of the Association;
 - 8.12.2 the right to vote at all General and Special Meetings of Members in accordance with the provisions of this Constitution;
 - 8.12.3 the right to receive notices of, attend and speak at all General and Special Meetings of Members in accordance with the provisions of this Constitution; and
 - 8.12.4 the right to convene a general meeting of Members (other than an Annual General Meeting), provided that the Members holding between them, in aggregate, not less than one third of the voting rights of the Association collectively so decide.

9 ARCHITECTURAL DESIGN and LANDSCAPING MANUAL (ADLM)

- 9.1 The ADLM constitutes an integral part of this Constitution. It is recorded that the ADLM (read together with the management rules of every Body Corporate in relation to Sectional Title Owners) contain the procedures, requirements and guidelines to be adhered to by every

Owner who wishes to effect improvements or alterations to or undertake any renovation of any Building or Sectional Title Unit;

- 9.2 All improvements, whether it be a new Building, improvements or alterations to an existing Building, shall be of sound construction and shall comply with the provisions of the ADLM;
- 9.3 No Improvements on any Erf or alterations to existing buildings on any Residential Erf or portion of the Complex that is undertaken by any party may commence prior to, first, the due and proper written approval of the formal plans for such works by the Architectural Review Committee (the ADRC) of the Association and, there after the Local Authority in accordance with the following provisions:
 - 9.3.1 the Owner shall be liable for the payment of a reasonable inspection fee (as determined by the Exco from time to time) and building deposit to the Association for the scrutinising and examination of all building plans by the ADRC;
 - 9.3.2 the Owner shall submit to the ADRC for review and approval a full set of the proposed building plans or alteration plans (together with proof of payment of the applicable inspection and building fees) which indicate both construction and design details. The building deposit shall be used by the Exco to repair any damage caused by the Owner and/or his contractor(s) to any Common Areas during the building process. If the amount paid to the Association as a building deposit is not sufficient to cover the costs of such repairs, the Exco shall be entitled to recover the shortfall from the Owner. Any shortfall so due by an Owner shall be paid with, and in addition to, the Levies due by that Owner to the Association.
 - 9.3.3 after the approval of such plans by the ADRC the plans shall be submitted to the Local Authority for approval. No plan shall be submitted to the Local Authority unless it bears the endorsement of approval of the ADRC, clearly dated, certifying that the plan complies with both the ADLM' specifications; and
 - 9.3.4 once approved by the Local Authority, a copy of such plans must forthwith be provided to the Exco for its records and control purposes. No construction may commence prior to the Exco being provided with the copies of such approved plans.
- 9.4 Any plans, notwithstanding approval by all relevant authorities, which have not been prepared and/or submitted and/or approved in compliance with the provisions of this Clause 9, shall be invalid.
- 9.5 When effecting the construction or erection of Improvements or alterations to improvements or Buildings the Owner shall always strictly comply with the ADLM specifications/rules as well as all conditions and standards imposed by the Local Authority insofar as these may be additional to the provisions of the ADLM specifications and/or rules. No Owner shall be entitled to deviate in any manner whatsoever from any plan approved by the ADRC and the Local Authority unless the prior written approval of both the ARC and the Local Authority for such proposed deviation has been obtained.

- 9.6 Any member shall be entitled to apply, where appropriate and within the context of enhancing the development as a whole, for the relaxation and/or waiver of any of the provisions of the ADLM rules, with the exclusion of a relaxation of any of its Erf's building lines.
- 9.7 No application for the amendment of the ADLM rules shall be made to the Local Authority, unless the prior written consent of Exco has been obtained therefor.
- 9.8 No amendment of the ADLM by a Body Corporate shall acquire any force of effect unless the prior written consent of HOA Exco has been obtained thereto.

10 SERVICES

10.1 Water:

- 10.1.1 The Association and/or its appointed agent shall supply each Body Corporate and each Residential Erf with water at cost, which shall include all costs of and incidental to such supply including the cost of installation, maintenance and servicing of pipelines, pumps, metres, equipment and materials;
- 10.1.2 The Owner of a Residential Erf and a Body Corporate shall be liable for and shall pay the Association and/or its appointed agent on demand for all charges arising from water supplied to or consumed in or on a Residential Erf or to a Body Corporate;
- 10.1.3 The liability of a Body Corporate or Owner of a Residential Erf for such charges shall be in accordance with separate submeters serving the Sectional Title Development or Residential Erf in question which the Association and/or appointed agent shall be entitled to install at the cost of such Body Corporate or Owner, as the case may be;
- 10.1.4 Where water charges are calculated and payable in terms of this clause 10.1 any value-added tax (if applicable) levied in respect of the supply of such water shall be paid by the Body Corporate or Owner in question; and
- 10.1.5 The Association and/or its appointed agent will be entitled to charge interest at the Prime Rate plus up to three (3%) per centum on any charges payable by a Member or Body Corporate in terms of this clause 10.1 and where payment thereof is in arrears. Interest will be calculated from the due date on the balance of the charges owing from time to time until it has been settled in full (inclusive of such interest charges).

10.2 Electricity:

- 10.2.1 Communal lighting and street lighting on Common Areas 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 HOA Levies;

10.2.2 Electricity consumed by Owners of Sectional Title Units or Residential Erven shall be purchased by them from the supplier thereof; and

10.2.3 Electricity for communal lighting on common property forming part of a Sectional Title Scheme shall be purchased and paid for by the Body Corporate of the Sectional Title Scheme.

10.3 Security:

10.3.1 The Association shall *vis-a-vis* its Members be responsible for the security of the Complex and will take all the steps necessary to provide and maintain adequate security measures for Residents and their property;

10.3.2 It is recorded that the Association via Exco is responsible for providing and maintaining an adequate security system for the entire Complex.

10.3.3 Members and all the Bodies Corporate will co-operate with the Exco to install and maintain security systems that will integrate the security systems of the Association with those of the Bodies Corporate.

10.3.4 Members and all the Bodies Corporates will allow the Association or its employees access to their Property or common property of Bodies Corporate to install, maintain and operate such security systems.

10.4 Maintenance of Common Areas:

10.4.1 The HOA will be responsible for the ongoing maintenance and upkeep of the Common Areas in the Complex.

10.4.2 A Body Corporates shall be responsible for the maintenance and upkeep of the Common Areas of the Section Title Schemes.

10.5 Maintenance of Buildings:

10.5.1 If, in the opinion of Exco, a Body Corporate fails to maintain the exterior of buildings and/or structures forming part of the Sectional Title Scheme for which it is established, or fails to maintain the vacant portions of the common property of such Sectional Title Scheme, or the Owner of a Residential Erf fails to maintain the exterior of buildings/structures (including walls) on his Residential Erf and/or the vacant portions of such Residential Erf in keeping with the general standard of vacant areas in the vicinity of such Sectional Title Scheme or Residential Erf and such Body Corporate or Member fails or refuses to do so despite reasonable notice from Exco to undertake such maintenance or upkeep, the Exco shall be entitled, at the cost of such Body Corporate or Owner, to undertake such necessary maintenance and the Body Corporate or Owner shall, upon demand, be liable for payment of all costs so incurred by the Association.

- 10.5.2 The Association will be entitled to charge interest at the Prime Rate plus three (3%) per centum on any amounts payable and overdue by a Member or Body Corporate. The interest will be calculated from the due date on the balance of such amounts owing from time to time until it has been paid in full.

10.6 General:

- 10.6.1 The Association shall have the right to convey water, electricity, sewerage, telephone information technology, telecommunication, security communication, and any other services over any Residential Erf, Building or Common Areas or any other portion of the Complex, whosoever is the owner thereof, and shall have the right of access to such property for the purposes of installing, replacing and/or repairing such services.
- 10.6.2 The Owners and Bodies Corporates will allow reasonable access to employees or representatives of the Association onto the Erven or into the Buildings for purposes of maintaining any pipes or equipment or in general any of the systems necessary for the conveyance or provision of the common services referred to in clause 10.6.1 above.
- 10.6.3 Furthermore, and without derogating from the aforesaid, all Members will be obliged to provide their co-operation and to allow reasonable access to employees or representatives of the Association to enable them to install, implement and maintain any pipes or other modes of conveyancing the services referred to in clause 10.6.1 above.
- 10.6.4 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 common 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 over any Residential Erf, Sectional Title Unit, Building or common property of any Sectional Title Scheme in favour of the Association or in favour of any adjoining Residential Erf or any other part of the Complex that, in the opinion of the Association, is reasonably necessary for the proper functioning of the Complex. It is in particular recorded that the servitudes of right of way may be registered in favour of the Association for the benefit of its Members over portions of the common property of any Sectional Title Scheme along routes that will be delineated by a developer on any Sectional Plan or on other servitude diagrams, and specifically a servitude of vehicular right of way over portions of the common property.
- 10.6.5 The Association accepts and shall be bound by and consents to registration of such reciprocal servitudes between Bodies Corporate or in favour of individual Members as are provided for herein.

11 SERVICES

11.1 The Association shall:

11.1.1 establish and maintain a levy fund for the purposes of meeting all expenses of the Association in respect of fulfilling its obligations in terms of the Constitution, including but not limited to:

- the control, management, upkeep and administration of the Complex;
- the attainment, in general, of its main objects as described in its Constitution;
- the maintenance of Common Areas and the costs of services such as electricity, water and sewerage consumed or used on the Common Areas;
- the procurement of any services (including labour), professional or otherwise required by the Association;
- the payment of all expenses necessary or reasonably incurred about the management and administration of the Association;
- the costs of providing and maintaining an adequate security system with an appropriate infrastructure for the Complex; and
- making provision for future major capital expenses for the upkeep of the Complex (e.g. road re-servicing, guardhouse and entrance, security upgrades including the electric fence, surveillance equipment as and when required, painting of outer security walls, building recreational facilities, etc.)

11.2 The Exco is authorised to impose a special levy payable by all Members for cost incurred to be incurred because of any emergency requiring urgent rectification without delay.

11.3 To fulfil its obligations in terms of the Constitution the Exco shall, for each new financial year and based on the results of the immediate preceding financial year, prepare a detailed budget for the amounts that will be required by the Association to meet its ongoing expenses and commitments. The budget shall also include a provision to recover any shortfalls incurred in preceding years and an amount to provide for any estimated shortfall for the new financial year (if any). The budget may also include a provision for an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.

11.4 The procedure for raising and collecting HOA Levies shall be as follows:

11.4.1 Exco shall submit the new detailed financial budgeted expenditure referred to above at the AGM of the Association for consideration and approval. It is recorded that the Members at the AGM shall be obliged to approve the following items of expenditure that are necessary for the day to day operations of the Association:

- all costs associated with the general maintenance of the Complex, including items such as maintenance of Common Areas, irrigation, recreational areas and facilities (if any), roads, or any other ordinary ongoing expenditures and all rates and taxes payable by the Association to the Local Authority in respect of the Common Areas;
 - the reasonable fees payable to any security, managing and/or administration agent or any other necessary third-party service providers with whom the Association has entered into a service agreement;
 - the reasonable remuneration, statutory and other benefit costs of the employees of the Association;
- 11.4.2 The Association shall at its AGM, based on and supported by the new detailed financial budget, approve any proposed increases of the HOA Levies required by the Association to fulfil its obligations for the new financial year;
- 11.4.3 All the Members shall contribute (via monthly HOA levies) in equal proportions to the Association's operating as approved at the AGM;
- 11.4.4 The Association shall notify the Bodies Corporate(s), at least thirty (30) days prior to their respective annual general meetings of the HOA Levies it has approved to be charged the following year;
- 11.4.5 The Bodies Corporate(s) must notify their members at least fourteen (14) days before their annual general meetings in compliance with the Sectional Titles Act and give them the detail of the increases in the HOA Levies which have been approved by the Association at its AGM and that must be included in the budgets of the Bodies Corporate(s);
- 11.4.6 At their annual general meeting the Bodies Corporate(s) shall resolve to impose the following levies on their own members: (a) the HOA Levies imposed by the Association on its members in question as communicated to the Bodies Corporates in terms of clause 11.4.5 above; and (b) the Body Corporate(s)' own levies as determined by its members in the meeting pursuant to the provisions of the Sectional Titles Act; (c)
- 11.4.7 Each Body Corporate shall be responsible to collect on behalf of the Association the HOA Levies pertaining to the members of that Body Corporate(s)
- 11.5 Any amount due by a Member by way of a HOA Levy shall be a debt due by him to the Association payable on such time or times as determined by Exco.
- 11.6 In the event that the Association for any reason whatsoever failing to prepare and serve a notice on Members in respect of the HOA Levy payable in respect of a new year, every Member shall until receipt of such notice setting out the HOA Levy payable in respect of that new year on the dates that it paid levies to the Association for the previous year continue to pay the same HOA Levy that it paid for the previous year and shall after receipt of such notice

pay the new HOA Levy (less any levies already paid in respect of the new year) in respect of the new year on the date or dates that Exco has determined.

- 11.7 The obligation of a Member to pay a HOA Levy shall cease upon his ceasing to be a Member, save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Member.
- 11.8 No levies paid by a Member shall be repayable by the Association upon his ceasing to be a Member.
- 11.9 A Member's successor in title to a Residential Erf or Sectional Title Unit shall be liable as from the date upon which he becomes a Member pursuant to the transfer of such Residential Erf or Sectional Title Unit in his name to pay the levies attributable to that Residential Erf or Sectional Title Unit.
- 11.10 A Member shall be obliged to pay interest on any Levy due but unpaid on the due date at the Prime Rate plus up to three (3%) percent per annum calculated on the HOA Levies due from time to time from the due date until the date that the arrear levies and interest have been paid in full to the Association.
- 11.11 If any Member fails to make payment on due date of HOA Levies and/or other amounts payable by such Member including interest and any fines or penalties, the Association may give notice to such Member requiring him to remedy such failure within such period as the Association may determine and should he fail to timeously 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.
- 11.12 No Member shall (unless otherwise determined by Exco) be entitled to any of the privileges of a Member, including: (a) the right of access to and use of any of the Common Areas; (b) the right to serve as an elected Exco member; and (c) the right to vote in terms of the Constitution, until he shall have paid every HOA Levy and interest thereon and any other amount which may be due and payable by him to the Association.
- 11.13 It is hereby recorded that all levies, interest charges, fines and/or penalties, or any other funds or charges due and payable by Members to the Association, will be paid by each Member into the bank account of the Association (or such other bank account nominated by the Association, e.g. that of the Managing Agent). The Association via its Exco is not permitted to receive any cash from a Member or anybody else for any amounts due to the Association in terms of the Constitution.
- 11.14 It is recorded that each Owner will be liable for the payment of the monthly Levies irrespective of the whether the Owner has received a monthly Levy account from the Association or its managing agent.
- 11.15 The Association shall not be entitled to undertake on behalf of its Members any permanent works of major capital nature without the sanction of a resolution of the Members adopted

during an AGM. In this clause "Works of a major capital nature", means works that will cost more than R50 000,00 (Fifty Thousand Rand), excluding Value Added Tax, adjusted annually to allow for inflation with be basis year being the 1st of January 2018.

12 CONDUCT RULES AND REGULATIONS

12.1 Subject to the provisions of this Constitution (inclusive of the applicable Annexures or Separate Documents as may be applicable) and to any directives given by the Association in a General Meeting and to any conditions imposed by the Local Authority or any other statutory body, the Association via its Exco shall make Conduct Rules and Regulations and may vary or modify the same from time to time, about:

- 12.1.1. the installation, operation and maintenance of irrigation in the Common Areas directly adjacent to an Owner's property;
- 12.1.2 the determination or control of security measures;
- 12.1.3 the control of the building operations and the conduct of builders and contractors;
- 12.1.4 the control and conduct of persons for the prevention of nuisance of any nature to any resident;
- 12.1.5 the control and conduct of persons using the Common Property;
- 12.1.6 the use of roads, infrastructure, services amenities and facilities in the Common Areas, including the right to charge a reasonable fee for the use of the recreational amenities and facilities (if any);
- 12.1.7 the furtherance and promotion of any of the objects of the Association and for the better management of the affairs of the Association and for the advancement and protection of the interests of the Members and Owners/Occupants;
- 12.1.8 the enforcement of any rules or any of the provisions of this Constitution generally the Exco shall:
 - give notice to the Member/Occupants concerned to remedy any breach within such period as they may determine;
 - take or cause to be taken such action as they deem fit to remedy the breach of which the Member/Occupant concerned may be guilty and debit the cost thereof, which shall be a debt due to the Association, to his Levy account, and which shall be payable as part of his monthly Levy on the first day of the following month, and
 - impose a fine on the Member/Owner and/or resident concerned, the amount shall be a debt due to the Association, shall be debited to his monthly Levy account and shall be payable as part of his Levy on the first day of the following month.

- 12.3. Should the Exco institute legal proceedings against any Member/Owner or resident for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the Member concerned, calculated as between attorney and own client, including tracing fees and collection commission.
- 12.4 In the event of any breach of the Conduct Rules or of any of the provisions of this Constitution by any person residing in the Complex, or his guests, employees, contractors, and sub-contractors, service providers or agents, such breach shall be deemed to have been committed by the Member himself; but without prejudice to the foregoing, the Exco may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, in addition to any action which might be taken against the Member/Owner concerned.
- 12.5 Subject to any restrictions imposed or directions given at a General Meeting of Members, the Exco shall from time to time, make rules, and amend or modify those rules, in relation to, inter alia, the following:
 - 12.5.1 the management and control of the Complex;
 - 12.5.2 the furtherance and promotion of any of the objects of the Association including the promotion of better management of the affairs of the Association and the advancement of the interests of the Members;
 - 12.5.3 the use, occupation and enjoyment of the Common Property (or any parts thereof);
 - 12.5.4 the preservation of the natural environment and streetscape within the Complex;
 - 12.5.5 the pedestrian and vehicular traffic including parking within the Complex;
 - 12.5.6 the carrying out of any business within the Development;
 - 12.5.7 the conduct of any Owner, tenant, resident or visitor of the Complex;
 - 12.5.8 the nature, content and design of garden and Landscaped areas within the Complex;
 - 12.5.9 the admission of any person into the Complex, including the conditions upon which persons may enter the Complex, and the eviction of any person who is not entitled to be present in the Complex or who ignore or refuse to comply with the Complex rules or the instructions of the Exco;
 - 12.5.10 the storage of flammable and other harmful substances;
 - 12.5.11 the enforcement of any rules made in terms of this Constitution and the adjudication of disputes relating to the application and/or interpretation of any rules;

12.5.12 the introduction of fines and other penalties that may be payable by any Member/Owner, tenant, resident or visitor for contravening or failing to comply with any of the provisions of this Constitution or any rules and regulations made thereunder; and

12.5.13 Any rules made in terms of this Clause 12 shall be binding upon: (a) every Member/Owner; (b) every resident within the Complex.

12.6 Every Member/Owner shall ensure that all its representatives, family members, tenants, visitors, invitees, employees and other persons related to that Member for whatever reason shall comply with any rules made in terms of this Constitution and every Owner acknowledges and agrees that he will be liable for any breach or non-compliance by any of the persons mentioned herein.

13 OWN RISK

ANY person using any of the Complex's Common Areas, Common Services, Gates & Booms or any land or facilities or whatsoever within the Complex does so entirely at his own risk. The Association and/or its Exco shall not in any circumstance be liable to any person, or held liable for any damage and/or injury incurred while in the Complex or making use of the Common Areas or Recreational facilities (if any).

14 AUTONOMY

14.1 Each Residential Erf or Sectional Title Scheme on a Sectional Title Property will be autonomous.

14.2 Each Sectional Title Scheme established or to be established within the Complex will be an autonomous legal entity with its own sectional plan, rules and Body Corporate.

14.3 Every Erf Owner with his immediate family and Sectional Title Unit Owner with his immediate family will be entitled to use the Common Areas.

14.4 Each Body Corporate or registered owner of a Residential Erf will be responsible for the cost of maintaining its own property, fixtures, fittings and equipment and will be responsible for payment of all costs and expenses relating thereto, including rates and taxes and other municipal charges.

14.5 To the extent that rates and taxes and other municipal charges belonging directly to the property comprising a Sectional Title Scheme or an Erf are charged to or paid by the Association, the same shall be refundable by the Body Corporate or the Owner of the Erf to the Association immediately upon written demand.

15 EXCO

15.1 The Exco shall be constituted as follows:

15.1.1 The Home Owners Association shall elect eight (8) members at an AGM meeting;

- 15.1.2 Only fully paid up Members will be entitled to vote or serve on the Exco;
- 15.1.3 Only a Member, or a Member's spouse (provided that the spouse stays on the property, the Member is not disqualified to be elected in terms of the Constitution, and his/her election nomination is accepted by the majority of Members present at the AGM), is eligible to be elected as an Exco member;
- 15.1.4 Every Body Corporate shall, at its annual general meeting, appoint one (1) nominated Exco member for the Association;
- 15.1.5 Each Exco member shall continue to hold office until the AGM of the Association following his appointment, at which meeting each Exco member shall be deemed to have retired from office as such, but will be eligible for re-election at such meeting.
- 15.1.6 An Exco Member shall be deemed to have vacated his office as such upon:
- his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
 - him making any arrangement or composition with his creditors;
 - his conviction for any offence involving dishonestly;
 - him becoming of unsound mind or being found lunatic;
 - him being removed from office by a resolution of Exco;
 - his being disentitled to exercise a vote in terms of this Constitution;
 - him resigning from such office in writing; and
 - his death.
- 15.2 Notwithstanding the fact that an Exco member shall be deemed to have vacated his office as provided for in clause 15.1, anything done in good faith by such Exco member in the capacity of an Exco member shall be valid until the fact that he is no longer an Exco member has been recorded in the minute book of the Exco members.
- 15.3 Should the office of an Exco member fall vacant prior to the next annual general meeting of the Body Corporate to which he belongs, the chairman of that Body Corporate shall, in the interim, *ex officio* take the place of the Exco member of the Association. In the event of a vacancy occurring in the ranks of those Exco members who are representative of the Erf Owners, the remaining Exco members shall appoint a substitute Exco Member from the ranks of the Erf Owners who shall hold his appointment until the next AGM meeting of the Association.

- 15.4 One of the appointed Exco members shall be nominated as Chairman by the Exco and shall hold office until the next AGM.
- 15.5 Save as otherwise provided in this Constitution, the chairman shall preside at all meetings of the Exco members and all general and special meetings of the Association and shall perform all duties incidental to the office of chairman and such other duties as may be prescribed by the Exco members or by Members and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings.
- 15.6 If the chairman vacates the chair during a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Exco members present at such meeting shall choose another chairman for such meeting.
- 15.7 If any chairman vacates his office as chairman or no longer continues in office for any reason, the Exco members shall elect another chairman who shall hold office as such for the remainder of the period of offices of the first mentioned chairman.
- 15.8 An Exco member shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation of any dispute with the Association, by virtue of any interest he may have therein save with the approval of the remaining Exco members after full disclosure of such interest.
- 15.9 No contract concluded on behalf of an Exco member shall be valid and binding unless the chairman and at least one Exco member sign it, the latter specifically appointed as authorised signatory in terms of the resolution of Exco members whereby the Exco members bind the Association.
- 15.10 Exco members shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as Exco members and/or chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of their duties as an Exco member.
- 15.11 Specific and specialised functions may be assigned to Exco members, provided it is not in conflict with their normal obligations as an Exco member and such specific or special function would normally be contracted to outside service providers.
- 15.12 Exco members may not make loans on behalf of the Association to Members or to themselves. This clause excludes perks for permanent staff members to a maximum amount of 1(one) month salary/wage.
- 15.13 Exco members may not disclose any privileged or confidential information of the Association to any person not authorised or entitled to receive the same.
- 15.14 Exco members may not interfere in the management or administration of the Complex, unless mandated by the chairman.

16 FUNCTIONS, POWERS AND DUTIES OF EXCO

- 16.1 Subject to the express provision of this Constitution, the Exco members shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any managing agent, may exercise all such powers of the Association and do all such acts on behalf of the Association which are within the objects of the Association.
- 16.2 Save as specifically provided for in this Constitution, the Exco members shall have the right to engage on behalf of the Association the services of service providers of goods and services, accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, managing agents, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the Exco members on such terms as the Exco members shall decide and for the benefit of the Association.
- 16.3 The Exco members shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 16.4 Should the number of Exco member, for any reason, fall below that required in terms of the Constitution, the remaining Exco members shall at an Exco meeting, by means of a simple majority, elect any suitable Member or a Member's spouse (subject to the provisions of the Constitution) to fill such vacancy or vacancies until the next AGM.
- 16.5 The Exco members may, should they so decide, investigate any suspected or alleged breach by any Member or Exco member of this Constitution in such reasonable manner, as they shall decide from time to time.
- 16.6 The Exco members may make rules and regulations:
- 16.6.1 as to the resolution of disputes generally;
 - 16.6.2 for the furtherance and promotion of any of the objects of the Association;
 - 16.6.3 for the better management and control of the affairs of the Association;
 - 16.6.4 for the advancement of the interest of Members;
 - 16.6.5 for the conduct of Exco members at meetings of Exco members and meetings of the Association;
 - 16.6.6 to levy and collect contributions from Members in accordance with clause 11;
 - 16.6.7 to levy and recover from Members moneys which are necessary to defray the necessary expenses of the Local Authority in the event of the Local Authority imposing any levies and imposts against the Association; and
 - 16.6.8 to assist in administering and governing its activities of the Association generally.

16.7 Without in any way limiting the powers granted, the duties and powers of Exco members shall further specifically include:

16.7.1 the determination of what constitutes appropriate maintenance, repairs, additions to and improvements of all Residential Erven and common property of Sectional Title Schemes in the Complex in strict accordance with the provisions of the Architectural Design and Landscaping Manual. The Exco members shall be entitled to require any Owner or Body Corporate, who shall be obliged, to repair or renovate at his own cost such improvements if in the reasonable opinion of the Exco members such improvements require essential repairs or have become dilapidated or is not in compliance with approved building plans or the specifications of the ADLM;

16.7.2 the entering into of agreements with third parties on behalf of the Association for any purposes of the Association;

16.7.3 the employment on behalf of the Association of agents, servants and any other party and the payment of such persons;

16.7.4 the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as common water, sewage, electricity supply, landscaping, maintenance of private roads, refuse facilities, removal of refuse and suchlike, where applicable; and

16.7.5 the institution or defence of actions in the name of the Association and to appoint legal representatives for such purpose.

16.8 The Exco members shall, at an Exco meeting, have the right to vary, amend, add to or delete rules, regulations and/or any provisions contained in (if applicable):

16.8.1 The ADLM, by means of a 75% majority vote;

16.8.2 The Conduct Rules and Regulations, by means of a 75% majority vote;

16.8.3 Security Rule, by means of a simple majority vote;

16.8.4 Recreational/Club Rules, by means of a simple majority;

16.8.5 Garden Rules and Regulations, by means of a simple majority vote;

16.8.6 Fines and Penalties, by means of a simple majority vote; and

provided always that such changes will not be in contravention of any Applicable Laws or other specifications of the Constitution. The Exco, however, is not allowed to make any changes to existing building lines on any residential erf, or make or allow any change to the ADLM that will materially affect the general architectural design, style or aesthetics of the Complex. All changes made, accepted and implemented in terms hereof, must be presented

to the Members at the very next AGM where such changes must be ratified by the Members by vote as provided for in clause 28 ("Amendment"). Changes made to the content of this document shall only become valid and enforceable once approved by Members at an AGM and as provided for in clause 28.

17 PROCEEDINGS OF EXCO

- 17.1 The Exco members may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this Constitution.
- 17.2 Meetings of the Exco members shall be held at least once every three (3) months.
- 17.3 The chairman always has the right to convene meetings of the Exco members.
- 17.4 A Exco member may, provided he has the support in writing of 3 (three) other Exco members, at any time convene a meeting of Exco members by giving to the other Exco members not less than 14 (fourteen) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting, provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 17.5 A resolution in writing signed by all the Exco members shall be valid and effectual as if it had been passed at a meeting of Exco members duly called and constituted.
- 17.6 The quorum necessary for the holding of any meeting of Exco members shall be 50 % of the elected HOA Exco members and in the instance of the functioning Body Corporate HOA representatives, this number will also be 50 %. If no quorum is present the meeting shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the Exco members then present shall be a quorum.
- 17.7 Subject to sub-clause 16.8 above, any resolution of the Exco members shall be carried by a simple majority of all votes cast.
- 17.8 The chairman shall preside as such at all meetings of Exco members provided that, should at any meeting of Exco members the chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the Exco members shall vote to appoint a chairman for the meeting who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.
- 17.9 An Exco member may be represented at a meeting of Exco members by a proxy provided such proxy is a Exco member.
- 17.10 The instrument appointing a proxy shall be in writing and signed by the Exco member concerned but need not be in any particular form. The proxy shall be deposited with the chairman at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.

- 17.11 The Exco members shall:
- 17.11.1 ensure that minutes are taken of every meeting of Exco members, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the chairman of the meeting at the next Exco meeting after it has been circulated beforehand (i.e. at least 14 days) to all Exco members;
 - 17.11.2 cause such minutes to be kept of all meetings of the Exco members in a minute book of meetings of Exco members kept for that purpose;
 - 17.11.3 keep all books of meetings of Exco members in perpetuity; and
 - 17.11.4 on the written application of any Member, make all minutes of their proceedings available for inspection by such Member.
- 17.12 All resolutions recorded in the minutes of any meeting of Exco members shall be valid and of full force and effect as therein recorded within effect from the passing of such resolutions and until varied or rescinded, but no resolutions or purported resolutions of Exco members shall be of any force or effect or shall be binding upon the Members or any of the Exco members unless such resolution is competent within the powers of the Exco members.
- 17.13 Save as otherwise provided in this Constitution, the proceedings at any meeting of Exco members shall be conducted in such reasonable manner and form as the chairman of the meeting shall decide.

18 MANAGING AGENT

- 18.1 The Exco shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a Managing Agent to control, manage and administer the Complex and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies, provided that a Managing Agent shall be appointed for a year at a time, and unless the Exco members notify the Managing Agent to the contrary, such appointment will be renewed by the Exco.
- 18.2 The Exco members shall ensure that there is included in the contract of appointment of a Managing Agent, a provision to the effect that if the Managing Agent is in breach of any of the provisions of his contract or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Exco members may, without notice, cancel such contract of employment and the Managing Agent shall have no claim whatsoever against the Exco members and/or the Association as a result of such cancellation.

19 GENERAL MEETINGS OF THE ASSOCIATION

- 19.1 An AGM shall be held annually at such time and place as the Exco members shall decide from time to time.

19.2 The Exco or the Members (subject to the provisions in clause 8.11.4) may, whenever they deem fit, convene a general meeting (special general or otherwise), provided that notice thereof be given in terms of this clause.

19.3 Notices:

19.3.1 An AGM shall be called by not less than 30 (thirty) calendar days' notice and a general meeting (special or otherwise) by not less than 14 (fourteen) days' notice. The notice shall specify the place, the day and the hour of the meeting and, in the case of special business in addition to any other requirements contained in this Constitution, the general nature of that business and the reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the Exco members to such notices from the Association, provided that a general meeting or an annual general meeting of the Association shall notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is agreed to by the majority of Members having a right to attend and vote at the meeting.

19.3.2 Notice of the AGM and/or a general meeting (special or otherwise) shall be delivered by hand, sent by registered mail, fax or e-mail to Members.

19.4 Proxies:

19.4.1 A Member may be represented at an AGM and/or a general meeting by a proxy who must be a Member of the Association.

19.4.2 The instruments appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent but need not be in any form, provided that where a Member is more than one person any one of those persons may sign the Instrument appointing a proxy on such Member's behalf. Where a Member is a company, the proxy may be signed by any person authorised by resolution of the board of directors of the company or by its secretary and, where a close corporation, by any member of such close corporation and, where an association of persons, by the secretary thereof and, where a trust, by a person duly authorised by the trustees of such trust.

19.4.3 The instrument appointing a proxy and the power of attorney (if any) under which it is signed, or a certified copy thereof shall be lodged with the Association at least 24 (twenty-four) hours before the scheduled time for the commencement of the meeting or adjourned meeting concerned. The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.

19.4.4 Notwithstanding the foregoing, the chairman of the meeting may agree to accept a proxy tendered at any time before or during the meeting.

19.5 Quorum:

- 19.5.1 No business shall be transacted at any AGM or general meeting unless a quorum is present when the meeting proceeds to business and when any resolution is to be passed. The quorum necessary for the holding of any meeting shall be a minimum of 10 (ten) eligible Members of the total voting rights entitled to attend and vote thereat.
- 19.5.2 If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In all other cases, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the Members present shall constitute a quorum.

19.6 Agenda at meetings:

- 19.6.1 In addition to any other matters by legislation or by this Constitution to be dealt with at any AGM, the following matters shall be dealt with at every AGM of the Association:
- the consideration of the Chairman's report;
 - the election of Exco Members;
 - the consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting;
 - the consideration of the budget as presented by the Exco members and consideration of proposed levies as per the annual budget.
 - the approval of any amendments to the Constitution.

19.7 Procedure at meetings:

- 19.7.1 The chairman shall preside as such at all meetings provided that if he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Exco present at such meetings shall vote to appoint a chairman for the meeting who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.
- 19.7.2 The chairman may, with the consent of any meeting at which a quorum is present (and if so directed by the meeting), adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business that might have been transacted at the meeting from which the adjournment took place. No notice need be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for 30 (thirty) days or more, in which

event notice is to be given in the same manner as for the original meeting. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

- 19.7.3 Save as otherwise provided in this Constitution, the proceedings at any meeting of the Association shall be conducted in such reasonable manner and form as the chairman of the meeting shall decide.

19.8 Voting:

- 19.8.1 At every AGM or general meeting of the Association every Member, in person or by proxy and entitled to vote, shall be allocated one (1) vote per Residential Erf or Sectional Title Unit that such Member owns. Only fully paid up property Owners shall however be entitled to vote.
- 19.8.2 If a Residential Erf or Sectional Title Unit is registered in more than one person's name, then they shall jointly have the attributed (1) vote value.
- 19.8.3 At any meeting of Members, a resolution put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands any Member shall demand a poll. If a poll is duly demanded it shall be taken in such manner as the chairman directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 19.8.4 Save as expressly provided for in this Constitution, no person other than a Member duly registered and who shall have paid every HOA Levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership and who is not under suspension, shall be entitled to be present and to vote on any question either personally or by proxy.
- 19.8.5 At any AGM or a general meeting, a resolution put to the vote at the meeting shall be decided on an ordinary majority of votes represented by Members entitled to attend and entitled to vote thereon present in person or by proxy.
- 19.8.6 Voting on any question of adjournment shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote present in person or by proxy.
- 19.8.7 Subject to clause 28, every resolution for the addition to, amendment, substitution or repeal of any provision hereof, and every amendment of a resolution proposed for adoption by a general meeting, shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 19.8.8 Unless any Member present in person or by proxy at a meeting shall, before closure of the meeting, have objected to any declaration made by the chairman of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the chairman 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 minutes without a record of the number of votes recorded in favour of or against such motion shall be conclusive evidence of the resolution so recorded if such entry confirms with the declaration made by the chairman of the meeting as to the result of an voting at the meeting.

19.9 Minutes of meetings of the Association:

- 19.9.1 The Exco members shall ensure that minutes are taken of every meeting of the Association, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall be certified correct by the chairman of the meeting.
- 19.9.2 The Exco shall keep all minute books of meetings of the Association in perpetuity.
- 19.9.3 On the written application of any Member the Exco shall make all minutes of the proceedings and/or meetings of the Association available for inspection by such Member.
- 19.9.4 All resolutions recorded in the minutes of any meetings of the Association shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Association shall be of any force or effect, or shall be binding upon the Members or any of the Exco members, unless such resolution is legal and competent within the powers of the Association.

20 FINANCIAL YEAR END

The financial year-end of the Association is the last day of February of each year or as determined by the HOA Exco from time to time.

- 20.1 An AGM shall be held annually at such time and place as the Exco members shall decide from time to time, but it shall preferably be within 6 (six) months after the Association's financial year end. Extension will be allowed for by timeous notification to the members and under special circumstances.
- 20.2 The Exco or the Members (subject to the provisions in clause 19.3) may, whenever they deem fit, convene a general meeting (special general or otherwise), provided that notice thereof be given in terms of this clause.

21 RECORDS AND ACCOUNTS

- 21.1 The Exco shall cause proper records and books of account to be kept so as to fairly explain the transactions and financial position of the Association including:
 - 21.1.1 a record of the assets and liabilities of the Association.

- 21.1.2 a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur.
- 21.1.3 a register of Members showing in each case their addresses.
- 21.1.4 individual ledger accounts in respect of each Member.
- 21.2 On the application of any Member the Exco members shall make all or any of the books of accounts and records available for inspection by such Member.
- 21.3 The Exco members shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate.
- 21.4 The Exco members may from time to time make reasonable conditions and regulations as to the time and manner of the inspections by Members of the accounts and books of the Association, or any of them, and subsequent to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 21.5 At each AGM the Exco members shall lay before the Association financial statements for the immediately preceding financial year of the Association. Such financial statements shall be drawn up in accordance with generally accepted accounting practise and shall be accompanied by such additional reports as may be necessary at the discretion of the Exco.

22 DEPOSITS AND INVESTMENT OF FUNDS

- 22.1 The Exco shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.
- 22.2 Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution or any other registered deposit receiving institution approved by the Exco from time to time.
- 22.3 Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.

23 AUDIT

- 23.1 Once at least in every year, the accounts of the Association shall be examined, and the correctness of the income and expenditure account and balance sheets ascertained by the Association's external Auditors appointed by the Exco.
- 23.2 The duties of the Auditors shall be regulated in accordance with general practise and applicable professional standards.

24 INDEMNITY

- 24.1 All the Exco members are indemnified by the Association against any liabilities bona fide incurred by them in their capacities as such and in the case of the chairman in his capacity as chairman, as well as for all costs, losses and expenses (including travelling expenses) which they may incur or become liable for by reason of any authorised contract entered into, or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.
- 24.2 A Exco member shall not be held liable for the acts, or omission of the Auditors, Management Agent or any of the other Exco members whether in their capacities as Exco members or as chairman, for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which moneys are lost because of the wrongful act of any person with whom any moneys, securities or effects are deposited, or for any loss or damage occasioned by any error or judgement or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto unless occurring as a result of *mala fides*, breach of duty or breach of trust.

25 DEFAMATION PRIVILEGE

Every Member of the Association and every Exco member shall be deemed by virtue of his membership or, as the case may be, his holding office as a Exco member, to have waived as against every other Member, the chairman, every other Exco member, and everybody else engaged to perform the function or duty on behalf of or for the benefit of the Association, or the Exco, or any sub-committee, all claims and rights of action which such Member or the Exco, or any sub-committee, all claims and rights of action which such Member or Exco member might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Exco member, or any reference to such Member or Exco member, made at any meeting of Exco, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, being a statement, report, complaint, notice or reference defamatory to such Member or Exco member, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Exco member, whether such statement be true or false.

26 ARBITRATION

Unless provide for differently in any Applicable Law, the following shall apply to the resolution of disputes:

- 26.1 Should any dispute, question or difference arise between Members or between a Member and Exco or between a Member and the Association out of or in respect of the interpretation of their respective rights or obligations under the Constitution (read together with its incorporated Annexures and/or Separate Documents), or the effect of a breach of this Constitution (save for non-payment of levies or any other amount due by a Member in terms of this Constitution), such dispute shall be decided by arbitration in the manner set out in this clause 26.

- 26.2 In respect of any claim arising from non-payment of levies or any other amount due by a Member to the Association in terms of this Constitution, the Association and Exco shall continue to enjoy common law rights and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.
- 26.3 The arbitration referred to in clause 26.1 shall:
- 26.3.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and
 - 26.3.2 commence as soon as reasonably possible after it is demanded and with a view to it being completed within 30 (thirty) days after it is demanded; and
 - 26.3.3 be held under the provisions of the Arbitration act of the Republic (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.
- 26.4 The arbitrator shall be appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing agreement on such appointment within 7 (seven) day period, appointed by the Chairman of the Association of Arbitrators or the successor to that Association.
- 26.5 The arbitrator shall, in giving his award, have regard to the principles contained in this Constitution and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed to be considered by him in arriving at his decision. The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 26.6 Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings shall be final and binding on each of them; and shall be carried into effect immediately and may be made an order of any Court to whose jurisdiction the parties are subject.
- 26.7 Notwithstanding anything to the contrary contained in this clause 26, the Exco shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Constitution, including the Architectural Design and Landscaping Manual and the HOA's Conduct Rules and Regulations.

27 DOMICILIUM

- 27.1 The Exco shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:

- 27.1.1 such address shall be the address of the Association’s duly appointed Management Agent or such other address nominated by the Exco from time to time; and
- 27.1.2 the Exco shall give notice to all Members of any change of such address.
- 27.2 The *domicilium citandi et executandi* of each Member shall be the member’s permanent street address in the Complex.
- 27.3 The Exco shall be competent to give notice by telefax or e-mail where the Member’s telefax number and e-mail detail is recorded with the Exco.
- 27.4 A Member may by notice in writing to the Exco alter his domicilium provided such new address may not be a post office box or post restante and provided such address is within the Republic and shall not be effective until 14 (fourteen) days after receipt of such notification.
- 27.5 Notwithstanding anything to the contrary herein contained, a written notice or communication received by a Member shall be adequate written notice or communication to such Member notwithstanding that it was not sent to or delivered at his *domicilium citandi et executandi*.
- 27.6 Any notice to a Member:
 - 27.6.1 sent to him by prepaid registered post in a correctly addressed envelope at his *domicilium citandi et executandi* shall be deemed to have been received on the 7th (seventh) day after posting (unless the contrary is proved); or
 - 27.6.2 delivered by hand to a responsible person at his *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
 - 27.6.3 successfully transmitted by telefax to his chosen telefax number, or send via e-mail to his e-mail address, shall be deemed to have been received on the 1st (first) day after the date of transmission, unless the contrary is proved.

28 AMENDMENT

Any addition, amendment or substitution of the Constitution (as defined in clause 2) shall require the approval of a two-third majority of the eligible members forming the quorum at said AGM, which majority shall be expressed at an AGM or a general meeting (called specifically for such purpose) in terms of the Constitution.

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