



CONSTITUTION

OF THE

MARINERS VILLAGE HOMEOWNERS' ASSOCIATION (the HOA)

[Registration number: CSOS/REG16/WC/003682]

(This amended Constitution was approved at the Annual General Meeting of Members held on 13 May 2023 and replaces any previous versions of the Constitution of this Association)

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1. NAME AND ESTABLISHMENT

The Mariners Village Home Owners' Association (the HOA) is an Association constituted under the Common Law and in terms of section 29 of the Land Use Planning Ordinance, No. 15 of 1985 in accordance with the conditions imposed by the Overstrand local authority when approving the same in terms of section 25 (1) and 42 of the said Ordinance, currently governed by the Western Cape Land Use Planning Act, 2014. The HOA is also registered in terms of the Community Schemes Ombud Services (CSOS) Act No. 9 of 2011, with its registration number being:

CSOS/REG16/WC/003682CSOS.

Mariners Village Homeowner's Association is a voluntary association, which is bound by the provisions of its Constitution.

2. DEFINITIONS

In this Constitution and all other regulatory/supplementary documentation mentioned herein, unless inconsistent within the context, the following words and expressions shall have the meanings hereby assigned to them:

- **"AGM"** means the annual general meeting of the HOA;
- **"Alienation"** means the alienation of any Erf and/or a Sectional Title Scheme Erf or part thereof by way of (amongst other) sale, exchange, donation, deed, intestate, will, cession, assignment, court order or insolvency, irrespective whether such alienation is subject to suspensive or resolutive conditions, and alienate 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: the National Building Regulations and Building Standards Act 103 of 1977 (as amended); CSOSA (i.e. the Community Schemes Ombud Service Act No. 9 of 2011 - as amended and read together with the Regulations on Community Schemes Ombud Service - as amended); STSMA (i.e. the Sectional Title Schemes Management Act of 2011 - as amended); WCLUPA (i.e. Western Cape Land Use Planning Act, 2014 - as amended) and the Overstrand Municipality Amendment By-law on Municipal Land Use Planning, 2020, including any amendments thereafter;
- **"Architectural Design and Landscaping Manual (abbreviated as ADLM)"** means the separate and dynamic document (including any amendments made thereto by the Exco from time-to-time in terms of the Constitution) applicable to every Owner of an erf in the Estate. The ADML shall also apply to every Sectional Title Scheme Erf and/or Body Corporate as may be applicable. A copy of the ADLM can be downloaded from the Complex's webpage at <https://marinersvillage.co.za>
- **"Architectural Design Review Committee" (ADRC)** means the committee established by the Exco to review all types of approved and/or to be approved building projects in the Estate;

- **“Association”** means Mariners Village Homeowners’ Association (the HOA) which is bound by this Constitution and its other regulatory documentation;
- **“Auditors”** means the external Auditors of the Association as may be appointed by the Exco 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. Each Body Corporate shall have its own Rules and Regulations in accordance with the Sectional Title Act but such Rules and Regulations may not be in conflict with this Constitution;
- **“Budget”** means the document prepared annually by the Exco showing all budgeted income and expenses for each financial year of the HOA and that will be effective from the beginning of each such year;
- **“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 and/or the Estate’s common property, including its recreational erf (i.e. erf number 10531);
- **“Chairperson”** means the Chairperson of the HOA, as elected/appointed by the Exco from time to time in terms of the Constitution;
- **“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 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 the entrances to the Complex, roads, walkways, gardens, visitors-parking areas recreational facilities, security offices, storage areas or for some other communal purposes. Common property excludes all common property forming part of or belonging to a Body Corporate;
- **“Common Services”** means all bulk services in the Complex including services in respect of the provision of water, sewerage, electricity, drainage, telecommunications, refuse removal, security and all such other utilities and amenities serving the Common Areas, Sectional Title Schemes and Residential Erven;
- **“Complex or Estate”** encompasses all common property, freehold erven property and Sectional Title Scheme properties registered within the scheme known as the greater Mariners Village;
- **“Conduct Rules”** means the HOA’s Conduct Rules and Regulations and any amendments thereto which have been approved by the trustees at an Exco meeting on behalf of the Members of the Association and later ratified at an AGM or with a Special Resolution. Body Corporates may have their own Conduct Rules, but such rules may not conflict with the HOA’s Conduct Rules and Regulations;

- **“Constitution”** means the Mariners Village Homeowner’s Association’s Constitution as set out in this document and its annexures thereto (if any) as well as any separate documents auxiliary thereto, including but not limited to the Architectural Design and Landscaping Manual, Conduct Rules and Regulations, Fines and Penalties Schedules, Security Rules, Recreational Rules or any such other documents, all as may be amended from time-to-time in terms of the Constitution;
- **“Days”** means calendar days and shall include the first and last day of the period mentioned;
- **“Deed of Sale”** means an agreement of purchase and sale in terms of which any party has purchased or sold a Residential Erf or a Sectional Title Scheme Erf in the Mariners Village Estate;
- **“Developer”** means the original developer being Sunset Bay Trading 196 (Pty) Ltd registration number 2004/025779/07, or its successor-in-title as the owner of the Sectional Title Scheme Erven, namely erven numbers 10308, 10527, 10528, 10529, 10530 and 10532;
- **“Dwelling/House”** means a constructed or to be constructed approved Building on a freehold property for occupation and use by natural persons;
- **“Erf/Erven”** means any of the residential erven (i.e., freehold property) and erven whereupon Sectional Title Schemes are established, 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;
- **“Estate Manager/Administrator”**; means the person(s) appointed by the Exco to take responsibility for all functions and activities of the Estate as assigned to him by the Exco, all within the framework of the Constitution and its other governing documents as applicable;
- **“Exco”** means the Executive Committee comprising of the HOA’s trustees as appointed (or co-opted) in terms of this Constitution;
- **“Family”** means the head of a household, being an adult, a 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 HOA, currently from the first of March of each year to the end of February the following year;
- **“HOA”** means the Mariners Village Homeowner’s Association consisting of its Members;
- **“Improvement”** means any structure of whatever nature constructed or erected or to be constructed or erected on a Residential Erf or a Sectional Title Scheme erf;
- **“Levy/Levies”** means all levies raised by the HOA to be collected monthly or otherwise from all its Members, whether proportionally determined or not;

- **"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;
- **"Managing Agent"** means any person or entity appointed by the Exco as an independent service provider to undertake any of the functions of the HOA as determined by the Exco;
- **"Mariners Village or Parent Property"** means Erf 9088 Hermanus;
- **"Member"** means the Developer, in its capacity as such, during the Development Period; all Registered Owners of any Erf; and if applicable, in respect of any Erf on which is established a Sectional Title Scheme and a Body Corporate, it being recorded that if a Member consists of more than one person such persons shall be jointly and severally be liable *in solidum* for all obligations in terms of this Constitution;
- **"Occupant/Resident"** means any person(s) occupying a Building on the Complex for residential purposes;
- **"Office"** means the registered office of the HOA from time-to-time determined by the Exco;
- **"Owner"** means the person who is a registered owner of a Residential Erf, or a Sectional Title Scheme Erf or a Body Corporate, but could apply to a unit owner within a Body Corporate if it is so intended by the applicable text;
- **"Person"** shall include a natural person, Company, Close Corporation, Trust, Partnership, registered Body Corporate, or other Associations of persons entitled by law to hold title to immovable property in the Estate;
- **"Prime Rate"** means the publicly quoted basic rate of interest per annum from time-to-time, as certified by any officer of Nedbank 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 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 or a Sectional Title Scheme Erf (governed by a Body Corporate or not) with or without a building on it as the case may be;
- **"Proxy"** means a natural person duly appointed by a Member in terms of the provisions of the Constitution to represent him at any meeting or resumption of any such 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 or a Sectional Title unit;

- **“Residential Erf/Erven”** means a freehold property 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 person(s) appointed by them to review (guided by the Architectural Design and Landscaping Manual) and approve or reject the architectural plans for 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 Levy”** means the levies determined by the HOA’s Exco applicable to the Body Corporate(s) and due to the HOA, irrespective of any other levies the Body Corporate may impose internally on its members due to that Body Corporate;
- **“Sectional Title Scheme”** means any Sectional Title Scheme property in the Complex as established in terms of the applicable laws on Sectional Title Property/Schemes;
- **“Sectional Title Unit(s)”** means the Sectional Title Units, erected or to be erected by any developer or person on sectional title scheme erven numbers 10308, 10527, 10528, 10529, 10530 and 10532 (i.e., the Sectional Title Scheme Property), incorporated in a sectional title scheme and that form part of the established or to be established Body Corporate;
- **“Security Company”** means such Security Company/Service Provider as may be appointed by the Exco from time-to-time to undertake some or all security functions of the HOA;
- **“Special Resolution”** means a resolution passed at a special General Meeting for which not less than 14 (fourteen) calendar days’ prior written notice has been given to all Members via email, specifying the intention to propose that a resolution be taken on the matter(s) specified in the notice. A special resolution shall be passed on a show of hands, by not less than 75% (seventy five percent) of the total number of Members present at that meeting who, as a minimum, form a quorum for a General Meeting as specified in this Constitution;
- **“Spouse”** means the husband, wife, or life partner of an Owner under any law or custom that is recognised by South African law;
- **“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, currently being <https://marinersvillage.co.za>;
- **“Week days”** means all days with the exclusion of Saturdays, Sundays, and Public Holidays of the Republic;

- “Year” means a calendar year

3. INTERPRETATION

In this Constitution and all other regulatory/supplementary documentation mentioned herein, unless inconsistent with the context, the documents shall be interpreted as follows:

- 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 gender 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, the words shall prevail should there be any conflict between the two.
- 3.5 If any provision of this Constitution (or any other regulatory/supplementary documentation) 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 (or that of any other regulatory/supplementary documentation).
- 3.6 If any provision in a definition in this Constitution (or any other regulatory/supplementary documentation) 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 (or that of any other regulatory/supplementary documentation).
- 3.7 Annexures and/or Separate Documents later introduced thereto, or amendments to any existing documents, as done in compliance and in terms of the Constitution, shall be valid, provided that any changes to such documents may not be inconsistent with any provision in the body of this Constitution. If so, then the provision of the Constitution shall prevail. However, if the annexures and/or separate regulatory documents address anything not specifically mentioned in the Constitution, the contents thereof shall be valid and applicable to all Members (where appropriate), unless it is not aligned with the general spirit, intention and/or objectives of the Constitution.
- 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 (or any other regulatory/supplementary documentation) 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 (or any other regulatory/supplementary documentation).

4 INTRODUCTION

- 4.1 The original 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 and its other regulatory documents as an ordinary Member and, as such, shall pay the required levies as raised by the HOA from time-to-time. His successor in title in respect of the sectional title scheme erven, shall also be regarded as an ordinary Member and, as such, shall be bound by this Constitution and any relevant documents mentioned in it, and shall pay the required levies as raised by the HOA from time to time.
- 4.2 It is recorded that each Sectional Title Scheme erf will be developed and registered as separate Bodies Corporate in respect of each such Sectional Title Scheme erf.
- 4.3 It is intended that all the Residential Erven and the Sectional Title Schemes/Body Corporates will be integrated to constitute a single security Complex to be served by the same security infrastructure, rules and services established by the Exco from time-to-time and shall encompass an electrified surrounding security wall, security cameras with monitoring equipment, patrolling guards and controlled entrance(s) to the Complex. All residents shall be entitled to utilise and enjoy all common property areas and services, all in terms of the Constitution and/or any other regulatory/supplementary documentation.
- 4.4 Nothing to the contrary herein contained shall however prevent the original Developer from disposing of any one or all of the Sectional Title Scheme erven 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 withheld.

5 STATUS

- 5.1 The HOA has legal identity and can sue or be 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 to, title or interest in the funds or assets of the Association, which shall be vested in and be controlled by the Exco.
- 5.4 The Constitution and all the HOA's supplementary regulatory documents shall be binding on all Members and Residents as may be applicable.

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 HOA's Members (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 infrastructure of the Complex;
- 6.2 to act as a homeowners' association established in terms of relevant legislation and to ensure that those matters referred to in those sections are applied;
- 6.3 to administer, manage, oversee, control, and enforce as appropriate, the provisions of this Constitution and all of the HOA's other regulatory/supplementary documentation;
- 6.4 to promote, advance and protect the interests of the HOA and all its members;
- 6.5 to control the registration of transfer of Residential and Sectional Title Scheme Erven in the Complex;
- 6.6 to administer, manage, oversee, develop, maintain, and control the HOA's Common Areas and its infrastructure;
- 6.7 to manage, oversee and control all security aspects of the Complex, whether outsourced or not. It is, however, recorded that each Member/Resident is primarily responsible for his own safety and security;
- 6.8 to promote environmental awareness and shared responsibility for the general upkeep, neatness, and security of the Complex among Members in so far as it concerns the common and private property;
- 6.9 to control the aesthetic appearance of the Complex (refer to the Architectural Design and Landscaping Manual);
- 6.10 to appoint, remunerate and manage employees and third parties 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, including, *inter alia* for the provision of water, electricity, sewerage, and waste removal services to the Association and where required to supply such services to the Owners and the various Bodies Corporates (unless a Body Corporate has arranged its own independent supply of such services via the local Municipality and at no cost to the HOA);

- 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/or maintenance to any common property and/or infrastructure of the Complex, and/or for the provision of specialised and other services as required by the Exco to comply with the 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 in respect of the requirements of this Constitution and/or that contained in the HOA's other Regulatory documents;
- 6.14 to administer and enforce the Architectural Design and Landscaping Manual rules and specifications and any other rules and regulations of the Constitution (as may be amended from time-to-time by the Exco in terms 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.

The above shall be carried out by the HOA via its Exco in terms of the provisions contained in its Constitution and/or any of the HOA's supplementary regulatory documents.

7 MEMBERSHIP

- 7.1 The Association shall have as its Members:
 - 7.1.1 the Developer, or his successor in title, for as long as he remains an owner of any portion of the Complex and, without detracting from the generality of the foregoing, specifically including any Residential or Sectional Title Scheme erf and he shall be bound by this Constitution and all applicable rules and regulations as any other Member;
 - 7.1.2 every Owner (provided that where an Owner comprises more than one person, such persons shall be deemed jointly to be one Member of the Association and shall jointly and severally be liable) shall comply with their obligations as a Member; and
 - 7.1.3 in respect of any Erf on which is established a Sectional Title Scheme, the Body Corporate of that Sectional Title Scheme, as represented by their respective chairperson or duly authorised representative.
- 7.2 An Owner of a Residential Erf, Sectional Title Scheme Erf and/or a registered Body Corporate shall automatically become a Member of the HOA.

- 7.3 No Registered Owner or joint Registered Owner of any Erf may resign as a Member while he is a Registered Owner or joint Registered Owner.
- 7.4 No Body Corporate may resign as a Member.
- 7.5 When a Member is no longer the registered owner of any Residential erf or a Sectional Title Scheme Erf, he shall *ipso facto* cease to be a Member of the Association.
- 7.6 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:
- 7.6.1 any provisions of this Constitution; or
- 7.6.2 any further or ancillary guarantee, commitment, or obligation which such Member may have undertaken.
- 7.7 Membership may not be assigned or transferred by a Member to any other natural person or Entity other than through the sale and transfer of a Member's property.
- 7.8 The Association shall maintain at the Office or with its appointed agent a register of Members.
- 7.9 Members shall not, by reason of their Membership, be liable for the liabilities and obligations of the Association other than their proportionate share in such liabilities.
- 7.10 No Member ceasing to be a Member for any reason (nor any such Member's executor, curators, trustees or liquidators) shall have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Member or its successors-in-title any arrears in Levies or subscriptions or other sums due from him to the Association at the time of him so ceasing to be a Member.
- 7.11 Any Member who is in breach of any provision of this Constitution, or who is in arrears with respect to any amount payable to the Association, shall not be entitled to the rights and powers provided to him in terms of this Constitution, for so long as he remains in breach or arrears.

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 of the Constitution;
- 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 Schedules (or any of the HOA's other supplementary regulatory documents – all being separate documents) as amended from time-to-time by the Exco in terms of the Constitution;
 - 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 fair directive given, or legal decision taken by Exco in enforcing the provisions of this Constitution and any of its other regulatory/supplementary documentation.
- 8.2 Every Member shall, to the best of his ability, further the objectives and interests of the Association.
- 8.3 The Members shall be jointly liable for payment of their share of all applicable levies as determined by the HOA via its Exco from time-to-time, all for the successful operation of the HOA and settlement of the HOA's obligations (e.g., all Municipal charges for services delivered, etc.).
- 8.4 A Member shall not sell, alienate, or give transfer of its registered property 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 and it's regulatory/supplementary documentation for the duration of his ownership of the property;
 - 8.4.2 the Association acting through its 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 any further or ancillary guarantee, commitment, or obligation which such Member may have undertaken has been complied with, 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 property in question.
- 8.5 A Member shall not part, in the form of a lease, with the occupation of his property, whether temporarily or otherwise (including BnB's or Airbnb's), 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 its 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 owned by the Member, or make application for any consent use or waiver or departure or any other dispensation whatsoever in respect thereof. When granting a request for consolidation of Erven, the Association reserves the right to impose conditions regarding the building parameters of the property and levies payable to ensure that the levy base of the Association is not unduly compromised.
- 8.7 A Member cannot resign as a Member of the Association while still being the rightful owner of a property within the Complex.
- 8.8 Each Member shall:
- 8.8.1 refrain from doing and shall prevent others from doing and not suffer to be done on any Erf or Sectional Title Scheme 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 Erf or Sectional Title Scheme in the Complex (for the avoidance of doubt, this sub-clause is meant to also refer to noise, disturbance, damage, etc. cause by house pets);
 - 8.8.2 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;
 - 8.8.3 ensure the maintenance of his Property in a neat and tidy condition and in a state of good repair;
 - 8.8.4 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;
 - 8.8.5 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;
 - 8.8.6 ensure that he and his family, tenants, occupiers, invitees and/or employees do not damage plants or landscaping and/or structures on Common property. 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's streetscape 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 indigenous, fynbos and water-wise plants. Trees may not be planted on the sidewalks without the prior written approval of the Exco;

- 8.8.7 not park, or permit the parking of any vehicle, (including a golf cart, boat, caravan, or trailer- but excluding regularly used motor vehicles) on his own property (where it is visible from any road or neighbouring erven), road, pavement, empty erf, or common area within the Complex. Vehicles may also not be parked on the roads in such a way that they could obstruct any other vehicle from using the roads freely and safely;
- 8.8.8 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 may not be allowed where they are visible from any road or neighbouring Properties in the Complex;
- 8.8.9 not, without the prior written approval of the Exco: make any changes or alterations to existing buildings and/or structures on his property, including, e.g., changes to external colour scheme; install or fix burglar bars to any external windows of his property; or any other structures which may affect the external appearance of his property;
- 8.8.10 not permit the number of occupants in his house to exceed the number of people allowed for in the Conduct Rules and Regulations. The same applies to pets (animals);
- 8.8.11 afford employees, agents and representatives or contractors of the Association full access to a Property to do all things reasonably necessary to construct and/or stabilise and/or maintain all Common Services and road edges;
- 8.8.12 not conduct, or permit to be conducted, any business on a Property, or permit the use thereof for running a business without the prior written approved of the Exco;
- 8.8.13 notify and supply Exco with the personal information and copies of the Identity Documents of any Occupants of his Dwelling; and
- 8.8.14 ensure that his house has a street number on it, has a water meter installed (in such a way that water consumption can easily and quickly be read on a monthly basis by the Association) and is equipped with a pre-paid electricity meter, registered with the HOA, and obtained from the HOA's Electricity Administrator – currently Edison Power SA (this also applies to every erf where buildings are in progress and to each sectional title unit/compartments in a Body Corporate).

- 8.9 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.
- 8.10 A Member shall be obliged to stay 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.
- 8.11 Membership of the Association shall confer upon a Member, inter alia, the following rights, subject to the provisions of this Constitution:
- 8.11.1 the right to inspect and/or receive copies of the annual financial statements of the Association;
 - 8.11.2 the right to vote at all General and Special Meetings of Members in accordance with the provisions of this Constitution;
 - 8.11.3 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
 - 8.11.4 the right to convene a special general meeting of Members, provided that the attending Members shall between them hold, in aggregate, not less than one third of the voting rights of the Association collectively.
- 8.12 Owners of empty erven are encouraged to start building on their properties as soon as possible after registration thereof in their name. Once a building project has commenced, the owner has 1 (one) year within which the building project (included the establishment of a garden in compliance with the Rules) must be completed. Failing which the owners will be charged an initial monthly penalty of 50% of the then current Administration Levy for the first 6 (six) months and thereafter 100% of the then current Administration Levy per month until the building project is completed and signed off as such by the Estate Manager and applicable Trustee member.

9 ARCHITECTURAL DESIGN and LANDSCAPING MANUAL (ADLM)

- 9.1 The ADLM contains the procedures, requirements, and guidelines to be adhered to by every Owner who wishes to build on a property, effect improvements or alterations to or undertake any renovation of any existing house;
- 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 obtaining, the due and proper written approval of the formal plans for such works by the

Architectural Review Committee (the ADRC) of the Association and, thereafter the Local Authority in accordance with the following provisions:

- 9.3.1 the Owner shall be liable for the payment of the plan review/inspection and general administration fees and the applicable building deposit (as determined by the Exco from time-to-time) to the Association. All fees will automatically be charged to the owner's levy account, payable in full together with his next due levy payment.
 - 9.3.2 the Owner shall submit to the ADRC for review and approval a full set of the proposed building or alteration plans that 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 by debiting his levy account.
 - 9.3.3 after the approval of building 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 the HOA's approval;
 - 9.3.4 once approved by the Local Authority, a copy of such approved plans must forthwith be provided to the HOA for its records and control purposes. No construction may commence prior to the HOA being provided with the copies of such approved plans;
 - 9.3.5 no building work may commence prior to a water meter, as well as a temporary electricity distribution box with a registered pre-paid Edison issued electricity meter, have been installed (whether connected to the erf's electrical supply or not at the time – heavy penalties will apply to any other illegal electricity source); and
 - 9.3.6 all building contractors to be employed by an owner must be registered with the HOA and its annual registration fees must be paid in full to the HOA.
- 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, 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 without the prior written consent of Exco.
- 9.8 No amendment or deviation from the ADLM by a Body Corporate/developer (where applicable) shall be allowed without the prior written consent of HOA's Exco.

10 SERVICES

10.1 Water:

- 10.1.1 The Association and/or its appointed agent shall supply each Residential Erf and Body Corporate (unless the Body Corporate obtains its water directly from the Municipality without making use of any of the HOA's infrastructure to do so) with potable water. However, connecting to the Complex's water supply line via the necessary connections and installation of a water meter shall be for the owner's own account. The owner must ensure that the water meter is properly installed at ground level and close to the erf's main connection where it will be easily readable monthly by the HOA's personnel or an appointed contractor. The owner must also ensure that the water meter is kept clean from any dirt, water, sand, overgrowth, etc.;
- 10.1.2 The Owner of a Residential Erf and a Body Corporate (subject to sub-clause 10.1.1) shall be liable for and shall pay the Association and/or its appointed agent (via the owner's or applicable Body Corporate's levy account) for all fixed and infrastructure costs charged by the Municipality to the Association arising from potable water provided to a Residential Erf or Body Corporate or a Sectional Title scheme development. Currently empty residential erven are not charged by the Municipality with fixed and infrastructure costs. However, it is placed on record that each Unit within a Body Corporate (whether sold, occupied or not) will, apart from the actual water consumption, be charged by the Municipality with fixed and infrastructure costs and invoice it to the Association for payment. The Association shall recover such costs from the applicable Body Corporate who, in turn may recover the same from their Unit owners;
- 10.1.3 All Municipal monthly costs associated with the usage of potable water (i.e., actual water used plus an associated sewerage quantity/cost) and charged to the Association, shall be recovered by the Association from erf owners and applicable Body Corporates (subject to sub-clause 10.1.1.) via their levy accounts. Amounts due and payable to the Association shall be calculated using current applicable Municipal water/sewerage tariffs and formulas with input data being actual water consumption obtained from monthly readings of water meters. A Body Corporate may recover the Association's single monthly charge in respect of water/sewerage costs from their Unit owners as they deem applicable, but the Body Corporate shall be liable to pay the Association's account when due, together with any other levies and charges raised by the Association against its levy account.

10.2 Electricity:

- 10.2.1 Electricity usage for communal purposes in the Complex shall be for the HOA's account to be paid for via general/specified levies collected from all Owners;
- 10.2.2 Pre-paid electricity bought for consumption by any Owner/Resident may be procured from any source that sells pre-paid electricity, provided the supplier is linked to the HOA's Electricity Administrator (currently Edison Power SA). Such pre-paid electricity units may only be loaded for usage on a pre-paid electricity meter obtained (and paid for by the Owner) from the HOA's Electricity Administrator or linked to them. Every existing or future electricity user in the Complex (i.e., every built-up and/or empty erf, whether a residential or Sectional Title Scheme erf and every Unit in a Body Corporate, whether sold and occupied or not) is liable and will be charged monthly (via an Owners' and/or a Body Corporate's levy account) an equal share of the Municipality's total fixed and infrastructure monthly charges to the Complex for the supply of electricity via their four mini-sub stations on erven 10527, 10528, 10529, and 10530 ; and
- 10.2.3 Electricity for communal use (e.g., such as lighting, lifts, laundry facilities, etc) on common property forming part of a Sectional Title Scheme shall be purchased and paid for (via a pre-paid electricity meter as mentioned above) 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 within the Complex. Residents are, however, primarily responsible for their own and their property's safety and security;
- 10.3.2 It is recorded that the Association via Exco is responsible for providing and maintaining an adequate security system/infrastructure with procedures that must be adhered to by all Members/Residents;
- 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 as may be necessary/feasible; and
- 10.3.4 Members and all the Bodies Corporate will allow the Association or its employees access to their Property or common property of Bodies Corporate to install, maintain and operate such common security infrastructure and 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/Property in the Complex. However, if an owner extends a section of his private garden (with prior approval from Exco) to include the side walk

(common property), he will be responsible for the upkeep and maintenance of such extended garden.

- 10.4.2 Body Corporates shall be responsible for the development, maintenance and upkeep of their own common property, infrastructure, gardens, etc.

10.5 Maintenance of Property:

10.5.1 If, in the opinion of Exco, a Body Corporate fails to maintain the exterior of their buildings and/or structures forming part thereof , 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 his buildings/structures (including erf walls) in compliance with the HOA's general standard pertaining thereto, and the Owner refuses to do so despite reasonable notice from the Exco to undertake such maintenance or upkeep, the Exco shall be entitled to fine the Owner, and may, at the cost of the Owner, undertake such necessary maintenance and charge the Owner (via his levy account) with all costs so incurred or to be incurred without further notice to the Owner;

10.5.2 All empty erven must be kept clean, free of alien plants, rubble, etc. in compliance with the HOA's rules and regulations, or the Municipality's bylaws as applicable. It is placed on record that should an Owner refuse or neglect to undertake such maintenance or upkeep, the Exco shall be entitled (after giving the Owner fair notice), at the cost of the Owner, to undertake such necessary maintenance and charge the Owner (via his levy account) with the costs so incurred or to be incurred by the HOA.

Notwithstanding the above, the Exco will automatically, while the HOA has the equipment and other necessary resources, see to it that the above requirement is complied with in respect of empty residential erven (i.e., excluding Sectional Title Scheme erven). The Exco will endeavour to service the mentioned empty erven at least quarterly at a fee of R200-00 (two hundred rand, which may be increased annually as from 1 March each year) per service, and the fee will be charged to the Owner's levy account to be settled in terms of the Constitution. However, an owner may, via written notice to the Exco, request not to have their property serviced as contemplated herein if he wishes to clean his property according to standard himself on a regular basis.

10.6 General:

10.6.1 The Association shall have the right to convey water, electricity, sewerage, and all other necessary common services over any Member's property and shall have the right of access to such property for the purposes of installing, replacing and/or repairing such services.

10.6.2 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 conveying the services referred to in sub-clause 10.6.1 above.

- 10.6.3 The Association shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, water, sewerage, and any other necessary 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 Member's property or common property in favour of the Association or in favour of any adjoining Property that is, in the opinion of the Association, 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 erven 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.

11 LEVIES

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's common property and infrastructure;
- the attainment, in general, of its main objects as described in its Constitution;
- the procurement of any services (including labour), professional or otherwise required by the Association as decided by the Exco at the time;
- the payment of all expenses necessary or reasonably incurred for the management and administration of the Association;
- implementing and maintaining an adequate general security service for the Complex consisting of own and/or contracted personnel/external security services; and
- making provision for ongoing/future capital expenses for the upkeep of the Complex (e.g., painting of the outer side of the Complex's perimeter walls; road re-servicing/repairing; guardhouse and entrance; security equipment, infrastructure maintenance and upgrades as and when necessary, including the electric fence and surveillance equipment; etc.)

11.2 The Exco is authorised to make use of the HOA's reserve funds for costs incurred or to be incurred because of any emergency or unforeseen circumstance requiring urgent and

immediate rectification and afterwards to impose a special levy payable by all Members to recover such costs should it be deemed necessary.

- 11.3 To fulfil its obligations in terms of the Constitution the Exco shall, for each new financial year, based on the available actual (and/or forecasted as appropriate) financial figures for the immediately 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 may also include a provision to recover any shortfalls (if applicable) incurred in preceding years. The budget may, in addition, include a provision for an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 11.4 If applicable, assign a proportion of those budgeted costs (contemplated above) attributable directly and/or indirectly to a particular Sectional Title Scheme (“the Sectional Title Levy”), it being agreed that the Body Corporate of such Sectional Title Scheme shall determine the pro-rata portion due by each Registered Owner of a Unit in the said Sectional Title Scheme in respect of such Sectional Title Levy and shall be responsible for collecting such pro-rata amounts from each Registered Owner of a Unit, which Registered Owners agree to be jointly and severally liable with the Body Corporate to the Association for payment of each such pro-rata portion of the Sectional Title Levy.
- 11.5 If applicable, the Bodies Corporate acknowledge and agree that any increase in levies payable by the Registered Owners of Units in each Body Corporate as members of such Body Corporate will be market related and will be communicated to the Association prior to such increase taking effect.
- 11.6 The Association shall be allowed to introduce fines for Members who fail to comply to the Local Authority’s bylaws and water restriction conditions.
- 11.7 Levy income currently is exempt from tax in terms of the provisions of section10(1)(e) of the Income Tax Act No 58 of 1962, as amended, provided that the sole object of the Association is to manage the collective interest common to all its Members, which includes expenditure applicable to the Common Property and the collection of levies for which Members are liable.
- 11.8 The procedure for raising and collecting HOA Levies shall be as follows:
 - 11.8.1 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 fair costs associated with the general running and maintenance of the Complex, including items such as maintenance of the Common Areas, including irrigation, common gardens and pathways, pools, borehole(s), roads, kerbs and any other ordinary ongoing expenditures and all services provided to the HOA by the local authority;

- the reasonable fees payable to any security contractor/service provider, managing and/or administration agent or any other necessary third-party service providers with whom the Association has entered into a service agreement or not;
 - the reasonable remuneration, statutory and other benefit costs of any employees of the Association, including the Estate Manager;
- 11.8.2 The new financial year's revised (proposed/initial) levies to cover all costs and to make provision for any previous years' shortfalls or reserves shall be completed by the Exco by not later than the middle February of each year for implementation as from the 1st of March that year. The revised (proposed/initial) levies must be circulated to all Members (via email) at least 10 (ten) days prior to the end of February, allowing Members to formally raise questions concerning the proposed/initial levies. The Association shall at its annual AGM, present a final financial budget with revised levies (if necessary) for review and approval. Should the HOA at its AGM decide and approve changes to be made to the budget and levies, such changes/amendments shall be affected by the Exco within 14 (fourteen) days after the AGM and the adjusted/amended budget, and levies, circulated to all Members. Any adjustments to the expenditure budget and/or the levies payable will be corrected and brought into effect over the remaining months of the particular financial year as from the month in which the AGM was held (i.e., they will not be back dated to the beginning of the financial year);
- 11.8.3 All the Members shall contribute (via monthly HOA levies) in a fair manner to all aspects concerning the management, upkeep, and activities of the Association. It is recorded that registered Body Corporates may be levied less than the rest of the HOA's Members, if possible/appropriate/fair. It is further placed on record that Body Corporates shall pay levies calculated on its number of sectional title units in the Body Corporate, regardless of whether such units are sold, rented, occupied or not. Body Corporates (not the individual Unit owners) will be levied from the date of registration as a Body Corporate and registration may not be delayed. However, it is placed on record that should any Units be occupied by residents prior to the registration of the Body Corporate, the Developer shall be the liable party i.r.o. all levies and other charges/costs payable to the Association in terms of the Constitution;
- 11.8.4 Subject to sub-clause 11.8.3, 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).
- 11.9 Any amount due by a Member by way of a HOA Levy Account shall be a debt due by him to the Association payable monthly in advance, but not later than the 15th (fifteenth) of each month. Levy accounts not settled in full by the end of each month shall be subject to interest charges in terms of the Constitution.
- 11.10 In the event of the Association, for any reason whatsoever, failing to prepare and serve a notice on Members in respect of the HOA Levy Account payable in respect of a new financial

year, every Member shall until receipt of such notice setting out the HOA Levy payable in respect of that new financial year continue to pay the same HOA Levy that it paid for the previous year and only after receipt of such notice, shall all Members pay the new HOA Levies (less any levies already paid in respect of the new year) in respect of the new year on, or as from the date or dates determined by the Exco.

- 11.11 The obligation of a Member to pay his HOA Levy Account shall cease upon him 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.
- 11.12 A Member's successor in title shall be liable as from the date upon which he becomes a Member pursuant to the transfer of such property in his name to pay the levies attributable to that property.
- 11.13 A Member shall be obliged to pay interest on any Levy (including any other charges against his levy account in terms of the Constitution) unpaid on the due date (i.e., at the beginning of each month but not later than the 15th of the month) at the Prime Rate plus up to three (3%) percent per annum calculated on the HOA Levy Account balance from the due date until the date the arrear amounts with interest have been paid in full to the Association.
- 11.14 If any Member fails to make payment on the due date of HOA Levies and/or other amounts payable by such Member including interest and any fines or penalties or any other charges in terms of the Constitution, the Association may give notice to such Member requiring him to remedy such failure within such period as the Exco 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.
- 11.15 No Member shall (unless otherwise determined by Exco) be entitled to any of the privileges of a Member, including: the right to serve as an elected Exco member; and the right to vote on any meeting of the Association, until he shall have paid all arrears due to the HOA (including interest) in terms of this Constitution.
- 11.16 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 into the bank account of the Association as nominated from time-to-time by the Exco. The Association via its Exco and/or its Managing Agent are not permitted to receive any cash from a Member or anybody else for any amounts due to the Association in terms of the Constitution.
- 11.17 It is recorded that each Member will be liable for the payment of the monthly Levies irrespective of the whether the Owner has received a monthly Levy account (via his email address) from the Association or its Managing Agent.
- 11.18 The Association shall not be entitled to undertake on behalf of its Members any permanent works of major capital nature before such projects have been presented to and approved at the Association's AGM. This sub-clause, however, does not apply to unforeseen and urgent repair work to the infrastructure and security systems/equipment that require

urgent/immediate attention. However, such unbudgeted expenditure must be reported at the AGM.

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 (amongst other):

- 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, and in this regard the Exco shall:
 - give notice to the Member/Occupants concerned to remedy any breach within such period as Exco 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 due date of the following month, and
 - impose a fine on the Member concerned, which shall be a debt due to the Association and shall be debited to his monthly Levy account and shall be payable as part of his next month's Levy.

- 12.2. Should the Exco institute legal proceedings against any Member/Owner 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.
- 12.3 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.
- 12.4 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:
- 12.4.1 the management and control of the Complex, including any matter pertaining to wildlife and/or pets allowed/disallowed in the Complex;
 - 12.4.2 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;
 - 12.4.3 the use, occupation, and enjoyment of the Common Property (or any part thereof);
 - 12.4.4 the preservation of the natural environment and streetscape within the Complex;
 - 12.4.5 the pedestrian and vehicular traffic including parking within the Complex;
 - 12.4.6 the carrying out of any business within the Complex (including Airbnb's and/or Guest Houses);
 - 12.4.7 the conduct of any Owner, tenant, resident, or visitor of the Complex;
 - 12.4.8 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 ignores or refuses to comply with the Complex rules or the fair instructions of the Exco and/or Security Guards at the entrance;
 - 12.4.10 the storage of flammable and other harmful substances;
 - 12.4.11 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;

- 12.4.12 the introduction of fines and other penalties that may be payable by any Member/Owner for contravening or failing to comply with any of the provisions of this Constitution or any rules and regulations made thereunder;
 - 12.4.13 any rules made in terms of this Clause 12 shall be binding upon: (a) every Member/Owner; (b) every resident within the Complex; and
 - 12.4.14 the Exco shall be responsible for appointing the HOA's Managing Agents, its external auditor(s), any other employees, service providers and contractors necessary to ensure compliance with the Constitution and the smooth operation of the day-to-day activities of the Association.
- 12.5 Every Member/Owner shall ensure that all his representatives, family members, tenants, visitors, invitees, employees, and other persons related to that Member for whatever reason shall comply with any applicable rules made in terms of this Constitution and every Member/Owner acknowledges and agrees that he will be liable for any breach or non-compliance by any of the persons mentioned herein.

13 CO-OWNERS AND BODIES CORPORATE

- 13.1 Where any Erf or Unit is owned by more than 1 (one) person or in the event of a Body Corporate being a Member (if applicable), the co-owners or Body Corporate concerned shall elect one of their number as a liaison officer and shall notify the Association of the name, address, and contact number of such liaison officer. Any notices which may be required to be given in respect of such Erf or Sectional Title Scheme, regarding the appearance or maintenance or repair thereof or the appearance or maintenance or repair of any Unit shall be given to the liaison officer and served upon such liaison officer and shall be deemed for purposes of this Constitution to have been served upon the Member concerned.
- 13.2 In the event of the co-owners failing to elect a liaison officer as aforesaid, service of notice upon any one of the co-owners shall be deemed to be service upon all the co-owners.
- 13.3 Notwithstanding the provisions of clause 13.1 above, any notice required to be served upon any Body Corporate (if applicable) shall be deemed to have been properly served if served in terms of clause 29 below at the address given as the *domicilium citandi et executandi* of that Body Corporate.

14 OWN RISK

Any person using any of the Complex's Common Areas (including the ponds), 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 be held liable for any damage and/or injury incurred while in the Complex or while making use of the Common Areas or Recreational facilities (if any).

15 AUTONOMY

- 15.1 Each Residential Erf or Sectional Title Scheme/Body Corporate will be autonomous.
- 15.2 Each Sectional Title Scheme/Body Corporate established or to be established within the Complex will be an autonomous legal entity with its own sectional plan, rules, and regulations, but such documents, where applicable, may not conflict with the Association's Constitution and/or other regulatory documents referred to herein. Where in conflict, the Association's regulatory documents shall prevail.
- 15.3 Every Member/Owner and a sectional title unit owner (with his immediate family, guests, and tenants) will be entitled to use the Common Areas and shall contribute, via the HOA's levies, to the development, maintenance, and upkeep thereof.
- 15.4 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.
- 15.5 To the extent that rates and taxes and other municipal charges applicable directly to a Member's property (whether it comprises of a Sectional Title Scheme erf/Body Corporate or a freehold erf) are charged to or paid by the Association, the same shall be refundable by the Member to the Association via levies raised by the Association or immediately upon written demand. Should the applicable budgeted and charged levies, for whatever reason, be out of line with actual costs incurred by the Association, the Exco shall be entitled to increase or decrease (as the case may be) such levies at any time and give notice thereof to all Members.

16 EXCO/TRUSTEES

- 16.1 The Exco/Trustees shall be constituted as follows:
 - 16.1.1 The Homeowners' Association shall be represented by no more than eight (8) freehold property Members (i.e., Trustees) to be elected at an AGM meeting, and one nominated Trustee member from each registered Body Corporate in the Complex (i.e., a maximum of 6 people). Thus, the Exco will consist of a maximum of fourteen (14) Trustees in total;
 - 16.1.2 Only fully paid-up Members will be entitled to vote or serve on the Exco;
 - 16.1.3 Only a Member, or a Member's spouse (provided that the spouse stays on the property, and 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/Trustee member;
 - 16.1.4 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.

16.1.5 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 majority resolution of Exco;
- him being disentitled to exercise a vote in terms of this Constitution;
- him resigning from such office in writing; and
- his death.

16.2 Notwithstanding the fact that an Exco member shall be deemed to have vacated his office as provided for in clause 16.1, 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.

16.3 In the event of a vacancy occurring in the ranks of the Exco members more than four (4) months prior to the next AGM, the remaining Exco members shall endeavour to appoint a substitute Exco Member from the ranks of the Association's Members who shall hold his appointment until the next AGM meeting of the Association.

16.4 One of the appointed Exco members shall be elected by a simple majority vote as Chairperson by the Exco and shall hold office until the next AGM. Exco members may, however, remove and replace a chairperson via a special Exco meeting and via a simple majority vote.

16.5 Save as otherwise provided in this Constitution, the Chairperson 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 Chairperson and such other duties as may be prescribed by the Exco 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.

16.6 If the Chairperson 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 Chairperson for such meeting.

- 16.7 If any Chairperson vacates his office as Chairperson or no longer continues in office for any reason, the Exco members shall elect another Chairperson who shall hold office as such for the remainder of the period of offices of the first mentioned Chairperson.
- 16.8 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.
- 16.9 No contract concluded on behalf of the Association shall be valid unless it was approved by Exco via a simple majority vote and signed by at least the Chairperson. If urgent, approval of such a contract(s) may be obtained via a written round robin simple majority vote by the Exco members and recorded as such in the next Exco meeting's minutes.
- 16.10 Exco members shall be entitled to be repaid all proven reasonable and bona fide expenses incurred by them in or about the performance of their duties as Exco members and/or Chairperson 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.
- 16.11 The Exco may decide that specific and/or specialised functions may be assigned to Exco members, and they may be remunerated for such services, provided it shall not conflict with their normal obligations as an Exco member, and such specific or special function/service would normally be contracted to outside service providers.
- 16.12 Exco members may not make loans on behalf of the Association to Members or to themselves or to the Association's employees.
- 16.13 Exco members may not disclose any privileged or confidential information of the Association to any person not authorised or entitled to receive the same.
- 16.14 No Exco member, nor any Member of the HOA, may interfere in the day-to-day management or administration of the Complex, unless mandated thereto by the Chairperson.

17 FUNCTIONS, POWERS, AND DUTIES OF EXCO

- 17.1 Subject to the express provision of this Constitution, the Exco members shall oversee the business and affairs of the Association and shall have full power in the execution of the Association's rights and obligations in terms of its Constitution and all other regulatory documents mentioned therein.
- 17.2 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.

- 17.3 The Exco members shall have the right to vary, cancel or modify any of their decisions and resolutions as or when circumstance change that necessitate such action by them.
- 17.4 The Exco members may, should they so decide, investigate any suspected or alleged breach by any Member of this Constitution in such reasonable manner as they may decide from time- to-time.
- 17.5 The Exco members may make rules and regulations:
- 17.5.1 as to the resolution of disputes generally;
 - 17.5.2 for the furtherance and promotion of any of the objects of the Association;
 - 17.5.3 for the better management and control of the affairs of the Association;
 - 17.5.4 for the advancement of the interest of Members;
 - 17.5.5 for the conduct of Exco members at meetings of Exco members and meetings of the Association;
 - 17.5.6 to levy and collect contributions from Members in term of the Constitution;
 - 17.5.7 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/penalties on the Association; and
 - 17.5.8 to assist in administering and governing the activities of the Association generally.
- 17.6 Without in any way limiting the powers granted to the Exco, the duties and powers of Exco members shall further specifically include:
- 17.6.1 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, all in strict compliance (as applicable) 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 are not in compliance with approved building plans or the specifications of the ADLM;
 - 17.6.2 the entering into of agreements with third parties on behalf of the Association for any purposes of the Association;
 - 17.6.3 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 common roads, refuse facilities, removal of refuse and suchlike, where applicable; and

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

17.7 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):

17.7.1 The ADLM, by means of a 75% majority vote of Exco members;

17.7.2 The Conduct Rules and Regulations, by means of a 75% majority vote of Exco members;

17.7.3 Security Rules, by means of a simple majority vote of Exco members;

17.7.4 Recreational/Club Rules (if any), by means of a simple majority of Exco members;

17.7.5 Garden Rules and Regulations, by means of a simple majority vote of Exco members;

17.7.6 Fines and Penalties, by means of a simple majority vote of Exco members; and

17.7.7 Provided, always, that such changes (mentioned above) will not be in contravention of any Applicable Laws or other specifications of this Constitution. The Exco, however, is not allowed to make any changes to existing building lines on any Property 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 or at a special Members meeting where such changes must be ratified by the Members by a simple majority vote. Changes made to the content of the Constitution itself shall only become valid and enforceable once approved by Members at an AGM or a special Members meeting as procedurally specified in Clause 30 below.

18 PROCEEDINGS OF EXCO

18.1 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.

18.2 Meetings of the Exco members shall be held at least once every three (3) months.

18.3 The Chairperson always has the right to convene meetings of the Exco members as necessary.

18.4 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 7 (seven) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting, provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.

- 18.5 A minute in writing, signed by the Chairperson as approved by the Exco members via a round robin process, shall be valid and effectual as if it had been passed at a meeting of Exco members duly called and constituted.
- 18.6 The quorum necessary for the holding of any meeting of Exco members shall be 50 % of the elected HOA Exco members. 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.
- 18.7 Unless specifically stated otherwise herein, any resolution of the Exco members shall be carried by a simple majority of all votes cast.
- 18.8 The Chairperson shall preside as such at all meetings of Exco members provided that, should at any meeting of Exco members the Chairperson is not present within 15 (fifteen) minutes after the time appointed for the holding thereof, those Exco members present shall vote to appoint a Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 18.9 An Exco member may be represented at a meeting of Exco members by a proxy provided such proxy is a Exco member.
- 18.10 The instrument appointing a proxy shall be in writing and signed by the Exco member concerned but need not be in any specific form. The proxy shall be deposited with the Chairperson 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.
- 18.11 The Exco members shall:
 - 18.11.1 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 Chairperson of the meeting at the next Exco meeting after it has been circulated beforehand (i.e., at least 14 days) to all Exco members;
 - 18.11.2 cause such minutes to be kept of all meetings of the Exco members in a minute book of meetings of Exco members kept by the Association's Managing Agent for that purpose;
 - 18.11.3 keep all books of meetings of Exco members in perpetuity; and

- 18.11.4 on the written application of any Member to the Association's Managing Agent, make all Exco meeting minutes available for inspection by such Member during normal office hours.
- 18.12 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.
- 18.13 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 Chairperson of the meeting shall decide.

19 MANAGING AGENT

- 19.1 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/service level agreement, 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 by the Exco, including the power to collect levies, penalties and/or any other debts owing to the Association. A Managing Agent shall not be appointed for more than two years at a time, but his appointment may be renewed by the Exco from time-to-time.
- 19.2 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/service level agreement 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.

20 GENERAL MEETINGS OF THE ASSOCIATION

- 20.1 An AGM shall be held annually at such time and place as the Exco members shall decide from time-to-time. However, the AGM must be held no more than 4 (four) months after the Association's financial year end.
- 20.2 The Exco or the Members may, whenever they deem fit, convene a special general meeting of Members.
- 20.3 Notices:**
- 20.3.1 An AGM shall be called by giving Members preferably 30 (thirty) but not less than 14 (fourteen) calendar days' notice and a special general meeting by not less than 14 (fourteen) calendar days. The notice shall specify the place, the day,

and the hour of the meeting. In the case of a special general meeting, the notice shall state the purpose of business and the reasons for it.

20.3.2 Notice of the AGM and/or a special general meeting shall be delivered by hand, sent by registered mail, or via e-mail to Members.

20.4 Proxies:

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

20.4.2 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 specific 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 closed corporation, by any member of such closed 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.

20.4.3 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.

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

20.5 Quorum:

20.5.1 No business shall be transacted at any AGM or special 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 of Members shall be a minimum of 20 (twenty) eligible Members entitled to attend and vote thereat.

20.5.2 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.

20.6 Agenda at meetings:

20.6.1 In addition to any other matters required 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 (in no prescribed sequence):

- the approval of the meeting's agenda;
- the consideration of the Chairperson's report;
- the consideration and approval of the previous AGM's minutes;
- 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 and approval of the new financial year's budget and levies.
- the approval of any amendments to the Constitution (if not earlier approved at a special general meeting of Members) and ratification of changes to any of the Association's other regulatory documents mentioned herein.

The above documents (where applicable) must be circulated at least 14 days prior to the meeting of all Members. However, should the audited annual financial statement of the Association not be ready/available at the time when such notice of the meeting is given, it may be circulated separately later to Members, but it must be circulated not less than 7 (seven) calendar days before the date of the meeting. Documents may be circulated via email to a Member's email address, the same email address regularly used to provide a Member with his monthly levy invoice.

20.7 Procedure at meetings:

20.7.1 The Chairperson shall preside as such at all meetings provided that if he is not 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 Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.

20.7.2 The Chairperson 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

20.7.3 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 Chairperson of the meeting shall decide.

20.8 Voting:

20.8.1 At any meeting of the Association every Member that is the registered owner of an Erf, in person or by proxy and entitled to vote, shall be allocated one (1) vote for each Erf registered in his/her name, on every matter to be voted on.

20.8.2 If a Residential Erf or Sectional Title Scheme Erf is registered in more than one person's name, then they shall jointly have the attributed (1) vote value.

20.8.3 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 Chairperson directs, and the result of the poll shall be accepted to be the resolution of the meeting concerning the polled matter.

20.8.4 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 may 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.

20.8.5 Subject to clause 30 below, at any AGM or a special 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.

20.8.6 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.

20.8.7 Every resolution for the addition to, amendment, substitution, or repeal of any provision contained in the Constitution, and every amendment of a resolution proposed for adoption by Members at a meeting of the Association, shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.

20.8.8 Unless any Member present in person or by proxy at a meeting of the Association's Members shall, before closure of the meeting, have objected to any declaration made by the Chairperson 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, then the meeting shall in all respects deemed to have been properly conducted and any such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting and shall be recorded as such in the minutes without a record of the number of votes cast in favour or against the motion.

20.9 Minutes of meetings of the Association:

20.9.1 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 Chairperson of the meeting.

20.9.2 The Exco shall ensure that minutes of all the Association's Member meetings are kept in minute books in perpetuity.

20.9.3 On the written application of any Member the Exco shall make all minutes of the meetings of the Association available for inspection by such Member during normal business hours.

20.9.4 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.

21 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.

21.1 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.

21.2 The Exco or the Members may, subject to the terms of the Constitution, whenever they deem fit, convene a special general meeting, provided that notice thereof be given in terms of the Constitution.

22 RECORDS AND ACCOUNTS

- 22.1 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:
- 22.1.1 a record of the assets and liabilities of the Association.
 - 22.1.2 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.
 - 22.1.3 a register of Members showing in each case their physical and email addresses.
 - 22.1.4 individual ledger accounts in respect of each Member.
- 22.2 On the written 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.
- 22.3 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.
- 22.4 The Exco members may from time-to-time make reasonable conditions and regulations as to the time and manner in which Members may inspect the accounts and/or books of the Association and after setting such conditions and regulations, the accounts and books of the Association shall be open for inspection at reasonable times during normal business hours at the offices of the Managing Agent where such books and accounts are normally kept.
- 22.5 At each AGM the Exco members shall lay before the Association audited 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.

23 DEPOSITS, INVESTMENT OF FUNDS, AND BANK DEBIT CARDS

- 23.1 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.
- 23.2 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.
- 23.3 Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.
- 23.4 The Exco may request and authorise the Association's commercial bank to issue (or cancel as the case may be) a bank debit card to be issued to a dedicated trustee or the Estate Manager to be used for small urgently required purchases (e.g., for petrol for the generator, etc.). All

such purchases must be approved by the Chairperson prior to the vouchers being sent to the Managing Agent for recording purposes.

24 AUDIT

- 24.1 The books and accounts of the Association shall be examined annually, and the fairness of the prepared annual financial statements ascertained by the Association's external Auditors appointed by the Exco.
- 24.2 The duties of the Auditors shall be regulated in accordance with general practise and applicable professional standards.

25 INDEMNITY

- 25.1 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 Chairperson in his capacity as Chairperson, 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.
- 25.2 An 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 Chairperson, 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.

26 DEFAMATION PRIVILEGE

- 26.1 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 against every other Member, the Chairperson, 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:
- 26.1.1 all claims and rights of action which such Member or Exco member might otherwise have had in law arising because 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;
- 26.1.2 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.

27 MEDIATION

- 27.1 Unless provided for differently in any Applicable Law, all Members shall be obliged to partake in Mediation before referring any dispute to CSOS or Arbitration in terms of Clause 27.
- 27.2 Members shall reduce any grievances to writing and direct said grievance personally to the Exco for attempts to resolve any dispute that has arisen.
- 27.3 The Mediation process may not assume a time period longer than 7 days after the grievance or dispute has been reported to Exco in writing.

28 ARBITRATION

Unless provided for differently in any Applicable Law, the following shall apply to the resolution of disputes, after Mediation has been attempted in terms of Clause 27:

- 28.1 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 other regulatory 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 28.
- 28.2 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.
- 28.3 The arbitration referred to in clause 28.1 shall:
 - 28.3.1 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
 - 28.3.2 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
 - 28.3.3 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.
- 28.4 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 Chairperson of the Association of Arbitrators or the successor to that Association.

- 28.5 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/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.
- 28.6 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.
- 28.7 Notwithstanding anything to the contrary contained in this clause 28 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 or any other of the Association's regulatory documents.

29 DOMICILIUM

- 29.1 The Exco shall from time to time determines the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:
- 29.1.1 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
- 29.1.2 the Exco shall give notice to all Members of any change of such address.
- 29.2 The *domicilium citandi et executandi* of each Member shall be the member's permanent street address in the Complex.
- 29.3 The Exco shall be authorised to give notice by e-mail where the Member's e-mail detail is recorded with the Exco/Managing Agent.
- 29.4 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.
- 29.5 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*.

29.6 Any notice to a Member:

29.6.1 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

29.6.2 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

29.6.3 successfully transmitted 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.

30 AMENDMENT

30.1 Any addition, amendment or substitution of the Constitution shall require the approval of a two-third majority of the eligible and present Members at the meeting, which majority shall be expressed at a duly constituted AGM or a special general meeting (called specifically for such purpose) in terms of the Constitution.

30.2 Particularly in a developing residential complex, such as Mariners Village, rules and regulations will need to be added to, amended, supplemented, or repealed in accordance with evolving needs and requirements. These evolving Rules and Regulations are meant to clarify, add practicality, give effect to, and provide the necessary tools to ensure compliance with the HOA's Constitution by all Residents.

30.3 Being dynamic in nature, it is expected that the Rules and Regulations will need to be reviewed from time-to-time by the Exco to keep them relevant and in touch with the ever changing external and internal environments and conditions.

30.4 Taking the above into account, Exco is obliged to review and consider the relevance and adequacy of all the HOA's regulatory documents at least every third year. Where considered necessary/appropriate/justified, the Exco may add to, amend, supplement or repeal anything contained in the separate regulatory documents (excluding the Constitution) and notify Members accordingly by way of email. Subject to sub-clause 30.7, such changes to the regulatory documents shall come into effect ten (10) days after the notification email was sent out.

30.5 Proposed/implemented amendments will be included annually in the Chairperson's Report (as an Annexure) to be circulated via email together with all other AGM documents for ratification or final discussion and approval (refer to sub-clause 30.4) at the following Annual General Meeting.

30.6 Rules, Regulations and Supplementary documentation will follow the same procedure as described in this clause 30.

30.7 Should 10 Members or more object to any proposed amendments circulated to them, then the proposed amendments will be held over until the following Annual General Meeting for discussion and final decision by the AGM.

31 DISSOLUTION OF ASSOCIATION

Upon dissolution of the Association for any reason whatsoever and if it ceases to function or carry out its obligations:-

- 31.1 the Overstrand Municipality may take steps to instruct the Association to reconstitute itself in accordance with the provisions of the Community Schemes Ombud Services Act 2011;
- 31.2 the Association's remaining assets shall be distributed to a similar association of persons which is exempt from income tax under section 10(1)(e) of the Income Tax Act No. 58 of 1962, or to any such exempt person.

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