



OPTENHORST

CONSTITUTION

De Paarde Estate Home Owners' Association

A statutory Body Corporate established in terms of Section 29 of the
Drakenstein By-law on Municipal Land Use Planning, 2018

DRAKENSTEIN MUNICIPALITY

Approved in terms of Section 60(1) of the Drakenstein By-law on Municipal Land Use Planning, 2018. The approval may be subject to certain conditions as set out in the letter of approval.

Ref: 15/4/1 15/4/1 (41444) P

Date: 24/10/2023


MANAGER: LAND DEVELOPMENT MANAGEMENT



NOTES

1. The subject of this planning application is the subject of a property of 100 m².
2. The subject of this planning application is the subject of a property of 100 m².
3. The subject of this planning application is the subject of a property of 100 m².
4. The subject of this planning application is the subject of a property of 100 m².

Rev	Date	Revised By	Description
1	2023-11-11	Revised By: [Name]	Revised By: [Name]
2	2023-10-16	Revised By: [Name]	Revised By: [Name]
3	2023-09-08	Revised By: [Name]	Revised By: [Name]
4	2023-08-15	Revised By: [Name]	Revised By: [Name]

De Paarde Residential Estate Established on subdivided Erf 41444 Paarl General Plan no 2502/2021 Total Area: 4,8117 ha			
Zoning: Conventional Housing Zone			
Erf number	Number of erven	Extent	Land Use
42345 - 42352	8	1879m ²	Dwelling Houses
42353 - 42354	2	856m ²	Public open spaces
Total		2735m ²	
Land Use Parameter			
Coverage	70%		
Height	Evens 42345- 42352: Single Storey		
Refer to approved architectural Guidelines and Site Development Plan:			
Building Line			
1. Internal Street boundary for buildings: 1.5m			
2. Internal common building line: 1m			
3. No swimming pools within building lines.			
Erf 42353 - 42354 is subject to Open Space and borehole.			
All erven shall be a member of the Homeowners Association			
Erf 42353 - 42354 shall be transferred to the Homeowner Association			
All buildings shall adhere to the Architectural Control Guidelines			
Setbacks			
All erven shall be a member of the Homeowners Association			
Erf 42353 - 42354 shall be transferred to the Homeowner Association			
All buildings shall adhere to the Architectural Control Guidelines			



ANNEXURE A

Site Development Plan



De Paarde Estate ERF 41444
Paarl

Title No.	1: 150	Scale	A1	Date	2023-09-18	Author	
Project No.	C15232.00	Drawing No.	REG.00_210.32	Project No.			4



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ANNEXURES

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ANNEXURE D:	Residential Code of Conduct

1. ESTABLISHMENT

- 1.1. The Association is constituted as an owners' association in terms of Section 29 of the MPBL in accordance with the conditions imposed by the Local Authority, when approving the development rights pertaining to the Parent Property in terms of Section 60 of the MPBL.
- 1.2. The Association shall be established upon the registration of transfer of ownership of the first erf arising from the subdivision to a person other than the Developer. The Constitution of the Association as approved by the Local Authority shall take effect upon the registration of transfer of the first erf arising from the subdivision to a person other than the Developer.
- 1.3. The Association shall have as its members all the owners of erven arising from the subdivision and their successors in title, who shall be jointly liable for expenditure incurred in connection with the Association.

2. DEFINITIONS AND INTERPRETATION

- 2.1. In this Constitution the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them:
 - 2.1.1. **Access Procedure** mean the procedure to be followed, upon the circumstances as provided for in terms of this Constitution and/or the Residential Code of Conduct, which procedure will be determined as part of the Residential Code of Conduct;
 - 2.1.2. **A & D Guidelines** mean the architectural and design guidelines relating to the design and construction requirements in respect of buildings and improvements and landscaping guidelines prepared for and applicable to the Estate, to be contained in **Annexure B** of this Constitution as may be amended from time to time;
 - 2.1.3. **AGM** means the Annual General Meeting of the Association held in terms of the provisions of this Constitution;
 - 2.1.4. **Annexure** means the annexures to the Constitution, being the Site Development Plan to be contained in **Annexure A**, the A & D Guidelines to be contained in **Annexure B**, the Builders Code of Conduct to be contained in **Annexure C** and the Residential Code of Conduct to be contained in **Annexure D** and as may be amended from time to time.
 - 2.1.5. **Association** means the **De Paarde Estate Home Owners' Association**, constituted in terms hereof;
 - 2.1.6. **Auditors** means the Auditors or Independent Reviewer or Accountant of the Association appointed by the Developer during the Development Period and thereafter by the Board, from time to time;

- 2.1.7. **Board** means the Trustees of the Association assembled as a board as more fully provided for in this Constitution and **Trustees** shall have a corresponding meaning and **Trustee** shall mean one of them;
- 2.1.8. **Borehole Servitude** means the borehole, pump/s, equipment, water pipes and related equipment located within the Borehole Servitude Area, measuring 117 square metres in extent as referred to in note 4, and indicated by the figure L4 L3 M2 M1, on General Plan S.G. No. 2502/2021, to be registered in favour of OMPOA;
- 2.1.9. **Budget** means the estimate of income and expenditure of the Association in respect of a Financial Year;
- 2.1.10. **Builders Code of Conduct** means the manual prepared by the Developer incorporating rules to control and regulate construction and building operations within the Estate, to be contained in **Annexure C** to this Constitution and as may be amended from time to time;
- 2.1.11. **Business Day** means a weekday other than a Saturday, Sunday or a Public Holiday officially recognised in the Republic of South Africa;
- 2.1.12. **Chairperson** means the Chairperson of the Board and the Association, from time to time;
- 2.1.13. **Clear Days** means in a computation of days, the exclusion of the first and last day of the period to be calculated;
- 2.1.14. **Common Property** means collectively, all Private Roads, Private Open Spaces, and specifically includes any servitude areas, roads, buildings, infrastructure, and facilities which are or will be located in the Estate (being Erf 42353 Paarl) and owned, controlled and managed by the Association, from time to time, for the benefit of, inter alia, the Association and its Members but shall exclude the Communal Property;
- 2.1.15. **Communal Property** means the Borehole Servitude which shall be controlled, maintained, repaired and managed by the OMPOA.
- 2.1.16. **Constitution** means the constitution of the Association as set out in this document, including the Annexures thereto, as may be amended from time to time;
- 2.1.17. **CSOS** means the Community Schemes Ombud Service established in terms of the CSOS Act;
- 2.1.18. **CSOS Act** means the Community Scheme Ombud Act, No. 9 of 2011 and any regulations made in terms thereof, and as may be amended;
- 2.1.19. **Developer** means Ashprop Investments Number 10 (Pty) Ltd, Registration Number: 2021/936603/07, and its respective successors-in-title or assigns;
- 2.1.20. **Developer Trustee** means a Trustee appointed by the Developer during the Development Period.

- 2.1.21. **Development** means the development to be established on a portion of the Parent Property as indicated in the Site Development Plan, to be known as the **De Paarde Estate** and **Estate** shall have a corresponding meaning;
- 2.1.22. **Development Period** means the period from the date of establishment of the OMPOA until all the erven forming subdivisions of Erf 41443 Paarl have been transferred from the Developer and/or improved by the Developer, or until the Developer notifies the Association in writing that the Development Period has ceased, whichever event occurs first;
- 2.1.23. **Development Rights** means all the development rights granted to the Developer by all relevant authorities to enable the Developer to develop the Estate;
- 2.1.24. **Dwelling** means the construction of a Building on an Erf suitable for occupation and use for residential purposes by natural persons;
- 2.1.25. **Erf/Erven** means any Erf created by the subdivision of the Parent Property and forming part of the Estate, as indicated on the General Plan, or any amendments thereto, but excluding the Municipal Erven and Common Property, i.e Erven 42264 to 42344 Paarl.;
- 2.1.26. **Estate** means De Paarde Estate;
- 2.1.27. **Estate Manager** means the Estate Manager appointed by the Developer, during the Development Period and thereafter by the Board of the OMPOA, with the functions and duties as may be ascribed to the Estate Manager by the Developer, during the Development Period, and thereafter, by the Board of the OMPOA;
- 2.1.28. **Financial Year** means the financial year of the Association which shall run from the first day of the month following the first registration of transfer of an Erf to an Owner until the last day of the month of February and thereafter from the first day in March in each year until the last day of February in the subsequent year;
- 2.1.29. **General Plan** means General Plan SG No. 2502/2021 in respect of the Parent Property, providing for the subdivisions thereof, approved by the Surveyor General;
- 2.1.30. **GM** means a General Meeting of the Association, which include an AGM or SGM and **GMs** means a collective reference to the AGMs and all SGMs;
- 2.1.31. **Governing Rules** means the Governing Rules of the OMPOA;
- 2.1.32. **Invitee** means a visitor, guest, employee, worker, contractor, service provider or other invitee of an Owner or Occupant;
- 2.1.33. **Levy/ies** means Ordinary Levy/ies and Special Levy/ies imposed by the Association on the Members in terms of clause 16 of the Constitution;

- 2.1.34. **Local Authority** means the municipality having jurisdiction over the Estate, being the Drakenstein Municipality or its successors in title and **Municipality** shall have a corresponding meaning;
- 2.1.35. **Management Company** means any person or entity appointed by the Developer, during the Development Period, and thereafter by the Board of the Association, as an independent contractor to undertake any or all of the management functions of the Association, subject to the terms and provisions of this Constitution, provided that the Association shall appoint the Management Company as appointed by the OMPOA;
- 2.1.36. **Member** means a member of the Association as provided for in clause 7 of this Constitution;
- 2.1.37. **MPBL** means the Drakenstein By-law on Municipal Land Use Planning, 2018, as may be amended;
- 2.1.38. **Municipal Erven** means any subdivision of the Parent Property and indicated as such on the General Plan for the use of the Local Authority (who will be the registered owner of such an Erf);
- 2.1.39. **Occupant** means any person/s occupying an Erf, Dwelling or any improvements or structures thereon;
- 2.1.40. **Office** means the registered office of the Association, being the physical address of the Management Company, from time to time;
- 2.1.41. **OMPOA** means the Optenhorst Master Property Owners' Association which shall be constituted for the entire Optenhorst Development;
- 2.1.42. **OMPOA Constitution** means the Constitution and Governing Rules of Optenhorst Master Property Owners' Association and any other rules or regulations made or in force in terms thereof;
- 2.1.43. **Ordinary Levy/ies** means the Ordinary Levy/ies imposed by the Association on the Members in terms of clause 16 of the Constitution.
- 2.1.44. **Ordinary Resolution** means a resolution passed at an AGM or SGM, where a quorum is present, by an ordinary majority of the votes cast (more than 50% (fifty percent)) of the votes of the Members of the Association present in that meeting, personally or by means of a proxy, and entitled to vote at such a meeting in terms of the provisions of this Constitution. An Ordinary Resolution may also be agreed to in writing by or on behalf of the Members holding an ordinary majority of the votes of all the Members of the Association;
- 2.1.45. **Owner** means the registered owner of an Erf and as such a Member of the Association;

- 2.1.46. **Parent Property** means the land approved for development by the Local Authority, being Erf 41444 Paarl, in the Drakenstein Municipality, Division Paarl, Western Cape Province, a portion whereupon the Estate will be developed by the Developer in terms of and subject to the Development Rights;
- 2.1.47. **Person** means a natural person or a juristic person;
- 2.1.48. **Prime Rate** means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (three Hundred and Sixty-Five) day year irrespective of whether or not the year is a leap year, from time to time published by ABSA Bank Limited as being its prime overdraft rate, as certified by any representative of that bank whose appointment and designation it will not be necessary to prove;
- 2.1.49. **Private Open Spaces** means all the Private Open Spaces, indicated as such on the General Plan, which Private Open Spaces will be registered in the name of the Association in the Cape Town Deeds Registry and which Private Open Spaces will, as such, become the responsibility of the Association, unless otherwise stipulated herein and/or in the OMPOA Constitution;
- 2.1.50. **Private Roads** means the Private Roads, indicated as such on the General Plan, which will be registered in the name of the Association in the Cape Town Deeds Registry, and will, as such, become the responsibility of the Association;
- 2.1.51. **Public Roads** means the Public Roads, if any, indicated as such on the relevant General Plan;
- 2.1.52. **Purchaser** means any person or entity that enters into an agreement of sale with the Developer in respect of an Erf during the Development Period and/or during the Restriction Period, whichever date is the latest;
- 2.1.53. **Residential Code of Conduct** means the rules governing the conduct of the Owners, Occupants, and Invitees in the Estate to be contained in Annexure to this Constitution and as may be amended from time to time;
- 2.1.54. **Restriction Period** means a period of 2 (Two) years after the date that an Erf was first transferred and registered in favour of a Purchaser;
- 2.1.55. **Services** means the private combined systems of services, including but not limited to the water network, sewer network, storm water network, road network components, irrigation and such other engineering services, infrastructure and utilities to be provided in respect of the Estate, including but not limited to waste disposal, the security perimeter and where applicable telecommunications and technological services;
- 2.1.56. **Service Address** means the domicilium citandi et executandi for the service of legal notices which address must be a physical address situated in the Republic of South Africa;

- 2.1.57. **SGM** means a Special General Meeting of the Association as provided for and in terms of the provisions of this Constitution;
- 2.1.58. **Site Development Plan** means the plan contained in **Annexure A** to this Constitution.
- 2.1.59. **Special Levy/ies** means any Special Levy/ies imposed by the Association on Members in terms of clause 16 of the Constitution;
- 2.1.60. **Special Resolution** means a resolution passed at an AGM or SGM of which not less than 21 (twenty one) Clear Days' notice has been given specifying the intention to propose the resolution as a Special Resolution, the terms and effect of the resolution and the reasons for it, and passed, by at least 75% (seventy five percent) of the votes cast on the matter, with a quorum of at least 25% (twenty five percent) of the votes of the Members present at the meeting in person or by proxy. A Special Resolution may also be agreed to in writing by or on behalf of Members holding at least 75% (seventy five percent) of the total number of Members of the Association.
- 2.1.61. **Sub-Associations** means the Home Owners' Associations to be established in respect of portions of Optenhorst Development:
 - 2.1.61.1. Optenhorst Estate Home Owners' Association to be established in respect of Erven 42264 to 42344 (residential erven) and Erf 42354 (Common Property) Paarl on the General Plan.
 - 2.1.61.2. De Paarde Estate Home Owners' Association to be established in respect of Erven 42345 to 42352 (residential erven) and Erf 42353 (Common Property) Paarl as indicated on the General Plan.
- 2.2. Unless the context clearly indicates a contrary intention, words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and reference to natural persons includes juristic persons and vice versa.
- 2.3. The clause headings in this Constitution have been included for convenience only and shall not be considered in its interpretation.
- 2.4. Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 2.5. If any provision in a definition in this Constitution is a substantive provision conferring rights or imposing obligations on any of the Members, then, notwithstanding that it is only in the definition clause of this Constitution, effect shall be given to it as if it were a substantive provision in the body of this Constitution.
- 2.6. Words and expressions defined in the OMPOA Constitution and not defined in this Constitution shall in this Constitution bear the meanings so assigned, unless the context clearly indicates a contrary intention.

- 2.7. Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part of, bear the meaning assigned to such words and expressions in such sub-clause.
- 2.8. If any term is defined within the context of any clause in the Constitution, the term so defined shall bear the meaning ascribed to it for all purposes in terms of this Constitution, notwithstanding that that term has not been defined in this interpretation provision, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause.
- 2.9. No provision of this Constitution or any related document shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party having or being deemed to have structured or drafted such provision.
- 2.10. If there is any discrepancy or conflict between this Constitution and the OMPOA Constitution or with any other document or approval referred to in the OMPOA Constitution, including any directive issued by the Board of the OMPOA, then the provisions of the OMPOA Constitution, or any other document or approval referred to in the OMPOA Constitution, and any directive issued by the Board of OMPOA, will prevail. If required by the Board of the OMPOA the Association must amend the Constitution to correlate to the OMPOA Constitution.
- 2.11. When any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.12. References to any act/statute or any regulation issued thereunder shall be references to that act/statute or regulation as modified, amended, or substituted from time to time, or to any legislation or regulation which replaces it. Reference to an act/statute shall include the regulations made in terms of the act/statute.
- 2.13. This Constitution shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa and the Association and every Member consent 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.
- 2.14. If any provision of this Constitution is in conflict or inconsistent with any legislation, the invalidity of such provision shall not affect the validity of the remainder of the provisions of this Constitution. If any provision of this Constitution is unenforceable for any reason whatsoever, then such provision shall be deemed to be separate and severable, without in any way affecting the validity of the remaining provisions.
- 2.15. The annexures to this Constitution are deemed to be incorporated in and form part of this Constitution. The terms defined in this Constitution shall bear the same meanings in any annexures, if applicable.
- 2.16. The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this Constitution.

- 2.17. References to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney.
- 2.18. References to Members entitled to vote, present at a meeting or acting in person shall include juristic persons represented by duly authorised representative/s, including juristic persons represented by proxy.
- 2.19. The words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s.
- 2.20. Any reference to "writing" includes electronic communication as defined in the Electronic Communications and Transactions Act, 2002 and "written" shall have a corresponding meaning.
- 2.21. Where any consent or approval is required to be furnished by the Association to a Member, such consent or approval shall be in writing and signed by the Association or its authorised agent; not be unreasonably withheld; and be given prior to the Member taking the relevant action requiring the consent.
- 2.22. The onus of proof with regard to the receipt of any notice given or payment made by a Member, shall be on the giver of the notice or the maker of the payment.
- 2.23. In the instance of any discrepancy between the Constitution, the OMPOA Constitution, the Governing Rules, or any other document or approval as referred to in the OMPOA Constitution, including any directive issued by the Developer, during the Development Period, or thereafter, by the Board of OMPOA, the provisions of the Governing Rules or any other document or approval as referred to in the OMPOA Constitution, including any directive issued by the Developer, will prevail and the Constitution will be deemed to be amended to accommodate the relevant discrepancy, unless approved in writing by the Board of OMPOA.
- 2.24. Any decision or act by the Association prior to the implementation of the Constitution will be subject to the OMPOA Constitution, the Governing Rules or any other document or approval as referred to in the OMPOA Constitution, including any directive issued by the Developer, during the Development Period, or thereafter, by the Board.

3. THE STATUS OF THE ASSOCIATION

- 3.1. The Association shall, subject to the provisions of this Constitution, be responsible for the control, administration, and management of the Development for the benefit of all the Members.
- 3.2. The Association is a legal persona and as such –
 - 3.2.1. its assets, liabilities, rights and obligations shall vest in the Association independently of its Members;
 - 3.2.2. the Association shall have perpetual succession;

- 3.2.3. all legal proceedings shall be brought by or against the Association, in the name of the Association, and the Board may authorise any person/s to act on behalf of the Association and to sign all such documents and take all such steps as may be necessary in connection with any such legal proceedings; and
 - 3.2.4. its Members shall not, by reason of their membership, be liable for the liabilities and obligation of the Association.
- 3.3. The Association is established as a non-profit making institution for the objectives set out in the Constitution. The Association shall not be for profit, but for the collective benefit and interest of its Members. The Association has the right to acquire, hold, lease, and alienate property, both movable and immovable.
- 3.4. No part of the income of the Association may be paid or refunded to any Member, except to settle any debt to such Member that the Association may have. No Member in his personal capacity shall have any right, title, or interest to or in the funds or assets of the Association which shall vest in the Association and be controlled by the Board on behalf of the Members according to the objectives of the Association.
- 3.5. The sole object of the Association is to manage the collective interests common to all its Members, which includes expenditure applicable to the Common Property and the collection of Levies for which such Members are liable.
- 3.6. The Association is not permitted to distribute its funds to any person other than to a similar association of persons.
- 3.7. On dissolution the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act, No. 58 of 1962.
- 3.8. Funds available for investment may only be invested or re-invested with registered financial institutions as defined in section 1 of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001.
- 3.9. The Association is not or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act, No. 58 of 1962 or any other Act administered by the Commissioner for the South African Revenue Services.
- 3.10. The Association shall submit annual returns of income together with financial statements to the South African Revenue Services or similar relevant government departments as required.
- 3.11. Any amendments of the Constitution must be submitted to the Commissioner for the South African Revenue Services.

4. OBJECTIVES OF THE ASSOCIATION

The objectives of the Association are as follows:

- 4.1. to formally represent the collective mutual interests of the Association and Members as set out in the Constitution in accordance with the conditions of approval;
- 4.2. the control over and maintenance of buildings, services or amenities arising from the subdivision;
- 4.3. to own, control, improve and maintain and to insure where necessary the buildings, structures, installations, and equipment relating to the Common Property;
- 4.4. to control, administer and manage the Common Property, Services, and facilities and amenities in respect of the Development and the buildings on land under the Association's control for the benefit of all the Members;
- 4.5. to take ownership of the Common Property and other Services arising out of the subdivision of the Parent Erf, including Private Open Space and Private Roads and land required for services provided by the Association;
- 4.6. to acquire and grant servitudes and to register servitudes;
- 4.7. to maintain the Common Property, the Private Open Spaces, Private Roads and gardens and the Services, at the costs of the Association;
- 4.8. to enforce the conditions of approval or management plans in respect of the Development;
- 4.9. the control over the A & D Guidelines of the buildings and Erven;
- 4.10. to control the design and appearance, including aesthetic appearance of buildings and improvements constructed or to be constructed in the Development and to control landscaping within the Development;
- 4.11. to oversee, regulate and control the harmonious development of the Estate and to ensure and promote the general high standard of the Estate;
- 4.12. to control the nature and position of buildings, structures, installations, and equipment relating to the Erven and to ensure compliance with the A & D Guidelines, the Builders Code of Conduct, and the Residential Code of Conduct and any other control measures in respect of the Estate required by law or document;
- 4.13. the implementation and enforcement by the Association of the provisions of the Constitution, the A & D Guidelines, the Builders Code of Conduct, and the Residential Code of Conduct;
- 4.14. to control the alienation, transfer, letting and use of Erven within the Development;
- 4.15. to provide for any further development which must form part of the Estate;
- 4.16. to regulate the annual general meetings of the Members;
- 4.17. to represent the Association and the Members at general meetings of OMPOA as provided for in the OMPOA Constitution;

- 4.18. to institute, control and pay for measures relating to the security of the Members and the Estate;
- 4.19. to conclude service agreements with the Local Authority and other service providers for the benefit of the Members as may be necessary or required;
- 4.20. to enter into any agreement and other appropriate arrangement with any supplier, contractor or other third party, in relation to the administration, management and/or control of the Estate;
- 4.21. to establish a fund for expenses of the Association, including provision for future expenses and contingencies, and to determine and collect Levies for the purpose of the said fund from the Members and to recover charges for Services from Members;
- 4.22. to ensure compliance with the MPBL, the CSOS Act, and any other applicable legislation, by-laws and regulations (see clause 12.5 below);
- 4.23. to take action as deemed necessary by the Board (including but not limited to the imposition of fines or instituting proceedings in a court of law) in relation to the non-compliance by any Owner or Occupant with any provisions of the Constitution, the A & D Guidelines, the Builders Code of Conduct, or the Residential Code of Conduct;
- 4.24. to provide for procedures to obtain the consent of the Members of the Association to transfer the Common Property or an Erf in the event that the Association ceases to function;
- 4.25. to promote, advance and protect the interest of Members generally in regard to the Development and to represent the interest of Members;
- 4.26. and to generally do all such things as may be necessary or requisite to give effect to and implement and enforce the objectives of the Association and to do all such things ancillary or incidental to the objectives, and the Association, through the Board, shall have all the powers that are necessary to accomplish the fulfilment of the foregoing objectives.
- 4.27. to ensure that the charge of water be the same or less than the approved tariffs of the Municipality from time to time.

5. FUNCTIONS AND POWERS OF THE ASSOCIATION

- 5.1. The Association shall exercise the powers and perform the functions as set out in the Constitution and such ancillary functions as may be necessary in pursuit of its objectives.
- 5.2. The functions of the Association shall include:
 - 5.2.1. to control, manage and administer the Development for the benefit of all Members.
 - 5.2.2. to establish a levy fund of the Association sufficient in the opinion of the Association to meet the expenditure of the Association and to perform the duties of the Association;

- 5.2.3. to raise and determine Levies payable by the Members as contributions to the levy fund;
 - 5.2.4. to manage the finances of the Association and the payments of the expenditure of the Association;
 - 5.2.5. to manage, repair, maintain, improve and/or to replace the Common Property, the Services, facilities, installations, and other assets of the Association;
 - 5.2.6. to take up insurance for the Association as may be required and to pay the premiums on any policy of insurance effected by it;
 - 5.2.7. to ensure compliance with the legal requirements of the Local Authority, including the conditions of establishment and rezoning imposed by any competent authority;
 - 5.2.8. to implement and enforce the provisions of the Constitution, the A & D Guidelines, the Builders Code of Conduct or the Residential Code of Conduct and any law, ordinance or by-law as may be applicable;
 - 5.2.9. to add to, amend, repeal, or substitute the provisions of the Constitution, the A & D Guidelines, the Builders Code of Conduct and the Residential Code of Conduct, from time to time;
 - 5.2.10. to the extent applicable, manage payment of the bulk water account for the Association and manage and maintain individual water accounts of the Members.
- 5.3. The powers of the Association shall include the power:
- 5.3.1. to purchase or otherwise acquire, take transfer of, mortgage, sell, alienate, give transfer of, or hire or let immovable property;
 - 5.3.2. to make improvements to the Common Property or to remove improvements;
 - 5.3.3. to purchase, hire, or otherwise acquire movable property and to insure, sell, let, or otherwise dispose of movable property;
 - 5.3.4. to control, manage, administer, maintain, and improve the Common Property and Services and to establish amenities as may be necessary and to provide security in respect of the Development;
 - 5.3.5. to appoint the Trustees for the Association;
 - 5.3.6. to prevent the transfer or alienation of any Erf unless the levies and other amounts due to the Association in respect of the Erf have been paid or provision has been made to the satisfaction of the Association;

- 5.3.7. to open, operate and close bank accounts in the name of the Association with registered South African commercial banks and financial institutions;
- 5.3.8. to invest surplus moneys of the levy fund;
- 5.3.9. to apply for licenses and other rights enabling the Association to deal with its property in any lawful manner;
- 5.3.10. to borrow moneys required by it in the performance of its functions or the exercise of its powers if authorised thereto by a Special Resolution of the Members;
- 5.3.11. to secure the repayment of moneys borrowed by it and the payment of interest thereon in any manner and to agree to the terms of such transactions;
- 5.3.12. to employ, dismiss and remunerate employees for the Association and to establish and contribute to pension-, provident-, medical aid and other similar funds for the benefit of its employees;
- 5.3.13. to appoint a Management Company and other agents and contractors on behalf of the Association as may be necessary;
- 5.3.14. to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, town planners or any other professional firm or person as may be necessary;
- 5.3.15. to appoint a Health and Safety Officer to ensure compliance with the relevant health and safety legislation by the Association;
- 5.3.16. to enter into agreements for the supply of services, equipment, or property to the Association;
- 5.3.17. to enter into any agreement necessary to achieve the objectives of the Association or to further the interests of the Association;
- 5.3.18. to recover by legal process in court or by application to CSOS any levies or moneys due by Members or former Members to the Association;
- 5.3.19. to institute, conduct, defend, compound, or abandon any legal proceedings on behalf of the Association;
- 5.3.20. to impose penalties on Members, Occupants, and Invitees in respect of contraventions of any provision of the Constitution, the A & D Guidelines, the Builders Code of Conduct and/or the Residential Code of Conduct;

and generally, to do all things necessary or required to attain the objectives of the Association, and for the implementation and enforcement of the provisions of the Constitution.

6. SERVICE ADDRESS OF THE ASSOCIATION

- 6.1. The Board shall from time to time determine the Service Address of the Association, subject to the following;
- 6.1.1. such address shall be the address of the Office or the address of the Chairperson or of a resident Trustee nominated by the Board;
- 6.1.2. the Board shall give notice to all Members of any change of such Service Address.
- 6.2. The Board or Management Company may give notice to all Members of the e-mail address of the Association for the receipt of notices, applications, and documentation from Members in terms of the Constitution.

7. MEMBERSHIP OF THE ASSOCIATION

- 7.1. Membership of the Association shall be compulsory for the following:
- 7.1.1. the Developer, during the Development Period;
- 7.1.2. the Purchaser of an Erf, from the date of registration of transfer of the Erf in the Cape Town Deeds Registry;
- 7.2. For the duration of the Development Period or for so long as the Developer owns an Erf or land or immovable property in the Development, the Developer shall be a Member of the Association. Membership in respect of the Developer shall commence on the date of establishment of the Association.
- 7.3. Any person reflected in the records of the Deeds Registry concerned as the registered owner of any Erf shall be deemed to be the registered owner of such Erf and shall further be deemed, ipso facto, to be a Member of the Association. Membership of the Association shall be automatic and compulsory for registered owners of Erven. Such membership shall commence simultaneously with registration of transfer of an Erf into the name of the purchaser or transferee in the Deeds Registry. When a Member ceases to be the registered owner of an Erf, he shall automatically cease to be a Member of the Association.
- 7.4. Where any Erf is owned by more than one person, all the registered owners of that Erf shall jointly and severally be liable in solidum for all their obligations to the Association in terms of the Constitution.
- 7.5. Where any person is the registered owner of more than one Erf, such person shall be regarded as a Member, and shall have the rights and obligations of a Member, in respect of each Erf registered in such person's name.
- 7.6. An Owner may never and at any time whilst he is the registered owner of an Erf in the Development, resign as a Member of the Association.
- 7.7. No Member ceasing to be a Member of the Association for any reason shall have any claim upon or interest in the funds or other property of the Association.
- 7.8. The provisions of this Constitution shall be binding upon all Members and, insofar as they may be applicable on all Occupants, whatsoever the nature of such occupation.

- 7.9. All Erven shall be subject to the following condition imposed by the Developer for the benefit of the Association, namely:

"The transferee and his successors in title may not alienate or transfer this property without first having obtained consent of the De Paarde Estate Home Owners' Association of which the owner and his successors in title automatically becomes a member as soon as the transfer is registered in his name".

Accordingly, no Owner may apply to the Registrar of Deeds, Cape Town, for the registration of and the Registrar of Deeds, Cape Town, may not register an Erf without the consent of the Association, which consent, subject to the provisions contained in clause 10 of this Constitution, may not be unreasonably withheld.

8. MEMBERSHIP OF THE OMPOA

- 8.1. The Development shall be part of the greater Optenhorst Development which shall be controlled and administered by the OMPOA.
- 8.2. The Association shall ipso facto be and become a member of OMPOA upon establishment of the Association concerned and shall be represented at meetings of OMPOA by a Trustee of the Association, or such other person as provided for in the OMPOA Constitution.
- 8.3. The Association, being a Sub-Association, may not at any time resign as a member of the OMPOA.
- 8.4. Each Owner of an Erf (being owners of Land Units as defined in the OMPOA Constitution) will as such become a Sub-Member of the OMPOA and will be subject to the provisions of the OMPOA Constitution.
- 8.5. An Owner may never and at any time whilst he is the owner of an Erf in the Development, resign as a Sub-Member of the OMPOA.
- 8.6. The Association will always be bound by the provisions of the OMPOA Constitution and must ensure that the Members comply with all the provisions, obligations, terms, and conditions of the OMPOA Constitution.
- 8.7. Any resolution of the Association and of the Board will be subject to the OMPOA Constitution, and to the resolutions of the OMPOA and to the resolutions of the Board of the OMPOA.

9. GENERAL RIGHTS AND OBLIGATIONS OF MEMBERS

- 9.1. Every Member and Occupant shall comply with:

9.1.1. the provisions of the Constitution, the A & D Guidelines, the Builders Code of Conduct, the Residential Code of Conduct, the OMPOA Constitution, and all other rules or regulations made or promulgated by the Association, the Board, the Developer, during the Development Period, and the OMPOA;

- 9.1.2. any agreement concluded by the Association, the Board, the OMPOA or the Developer during the Development Period, insofar as such agreement may directly or indirectly impose rights or obligations on a Member;
 - 9.1.3. any directive given by the Association, the Board, the OMPOA, the Management Company or by the Developer, during the Development Period.
- 9.2. Save as may be provided for herein, the rights and obligations of a Member are not transferable, and every Member shall:
 - 9.2.1. to the best of his ability further the objectives and interests of the Association and the OMPOA;
 - 9.2.2. be jointly liable with the other Members for expenditure incurred in connection with the business and objectives of the Association and its obligations to the OMPOA.
- 9.3. Except for the Developer, no Member shall consolidate any Erven or subdivide any Erf, without the authorisation of the Members by Ordinary Resolution.
- 9.4. Except for the Developer, no Member shall apply for any rezoning, subdivision, departure, consent use, or the amendment of any other condition of approval relating to any Erf to the Local Authority without the prior written approval of the Board.
- 9.5. A Member shall not use any Erf or Dwelling or allow any other person to use an Erf or Dwelling, for purposes not permitted in terms of the MPBL and applicable laws and regulations or in terms of this Constitution.
- 9.6. No business may be conducted on any Erf without the written approval of the Board and provided that the Local Authority has, to the extent that it may be necessary, granted approval authorising such use in terms of applicable laws and regulations. The foregoing restriction does not apply to the Developer and/or its agents in respect of activities relating to the sale and development of Erven.
- 9.7. A Member must appoint an estate agent approved by the Board to secure a prospective purchaser for his Erf.
- 9.8. A Member must maintain his Erf and the buildings and improvements on his Erf in a state of good repair and in a neat and tidy condition. A Member must maintain the external boundary walls in respect of his Erf, inclusive of the regular painting thereof.
- 9.9. A Member must establish and maintain the landscaping in respect of his Erf according to a standard acceptable to the Board and in compliance with the A & D Guidelines, as may be applicable.
- 9.10. If in the reasonable opinion of the Board, any buildings, or improvements in respect of an Erf require repairs or the appearance thereof have become unsightly, the Board may require that the Member take steps to repair, repaint, repair, maintain or renovate the buildings and improvements. If in the reasonable opinion of the Board, any Erf or garden requires maintenance, the Board may require that the Member take steps to maintain the Erf or garden to a standard that is acceptable to the Board.

- 9.11. A Member must procure adequate insurance in respect of the Dwelling on his Erf and must furnish proof of such insurance to the Board if requested to do so. In the event of the total or partial destruction of a Dwelling, the Member must reinstate the Dwelling in accordance with building plans to be approved by the Board within a reasonable time period.
- 9.12. A Member shall not do or suffer to be done on any Erf or Dwelling or on the Common Property anything which, in the opinion of the Board, is noisome, unsightly, injurious, objectionable, or detrimental or a public or private nuisance or a source of damage or disturbance to any other Member or Occupant.
- 9.13. The provisions of the Constitution, the A & D Guidelines, the Builders Code of Conduct and the Residential Code of Conduct and the duties of an Owner in relation to the use and enjoyment of his Erf and the Common Property, facilities and the Services of the Association shall be binding on all Owners and Occupants of Erven.
- 9.14. A Member must take all reasonable steps to ensure compliance with the Constitution, the A & D Guidelines, the Builders Code of Conduct, and the Residential Code of Conduct by the Occupants of his Erf and by the Invitees to his Erf. A Member shall be liable and accountable for the acts or omissions of all persons occupying or having access to his Erf and to the Estate, whether lawfully or unlawfully.
- 9.15. A Member shall permit access by a person authorised in writing by the Board to his Erf if required for any reasonable purpose required by the Association. The Board, the Board of the OMPOA, the Management Company and their employees, agents or contractors shall be entitled and shall have the right to enter any Erf for any reasonable purpose, provided that they have complied with the Access Procedure.

10. RESTRICTION AGAINST TRANSFER

- 10.1. No Member shall alienate or transfer any Erf unless the Association has granted its written consent to such alienation or transfer. The written consent of the Association shall be issued by the Management Company, or the Chairperson or by a Trustee, duly authorised thereto on behalf of the Association.
- 10.2. The Association may withhold the written consent if:
- 10.2.1. Any Levies or other amounts due in respect of such an Erf have not been paid or remains unpaid or inadequate provision has been made in respect of the payment thereof; or
- 10.2.2. Any building additions exist in respect of an Erf, which have not been properly authorised and registered in terms of the Constitution, the A & D Guidelines, or the Residential Code of Conduct; or
- 10.2.3. If the Member is substantially in breach of the provisions of the Constitution, the A & D Guidelines, the Builders Code of Conduct, or the Residential Code of Conduct to an extent reasonable to justify withholding such consent.

- 10.3. The provisions of this clause shall apply *mutatis mutandis* to any transfer of an undivided share in any Erf.
- 10.4. Restrictions will be registered against the title deeds of all Erven to give effect to the terms of this clause. The Members shall however be bound by this clause irrespective of whether or not such restrictions are registered in the Cape Town Deeds Registry, or not.
- 10.5. The Board shall ensure that none of the Members shall in any manner transfer an Erf unless:
 - 10.5.1. the proposed transferee, has irrevocably bound itself in writing to become a Member of the Association, ipso facto against becoming the Owner of an Erf, and to observe the OMPOA Constitution, this Constitution, the A & D Guidelines, the Builders Code of Conduct, and the Residential Code of Conduct for the duration of this ownership of any Erf;
 - 10.5.2. the Association has given its prior written consent to the transfer.

11. COMMON PROPERTY

- 11.1. The Association will take title to the Common Property, which Common Property will be transferred to the Association, free of counter value. Registration of the transfer of the Common Property will be effected by the Attorneys appointed by the Developer.
- 11.2. The Association shall be responsible for the control, repair, maintenance and administration of the Common Property and any buildings, improvements, structures, installations, and devices constructed on or contained in the Common Property (including but not limited to perimeter fences, security systems, entrance, parking and streetlights) and for all the movable and immovable assets of the Association.
- 11.3. The Board shall control all services, landscaping, irrigation, and amenities in respect of the Common Property and shall also control access to and use of the Common Property.
- 11.4. The Association shall comply with all the conditions imposed by the Local Authority relating to the conditions of establishment of the township comprising the Estate and shall be solely responsible for any non-compliance with such conditions.
- 11.5. The Developer will construct detention and retention ponds on the Parent Property as required by the Local Authority, which ponds will not be fenced or secured by the Developer. No Owner or Occupant or other person will have any claim against the Developer, the Association, the OMPOA or any member of the OMPOA for any damages or loss suffered as a result of the ponds being constructed by the Developer.
- 11.6. The Board may, subject to the directions given or restrictions imposed by an Ordinary Resolution of the Members:
 - 11.6.1. let parts of the Common Property on terms shorter than ten (10) years;
 - 11.6.2. construct improvements or structures on the Common Property or remove improvements or structures;

- 11.6.3. repair, maintain, upgrade, and provide services in respect of the Common Property;
- 11.6.4. enter into agreements with service providers and/or other persons in respect of the Common Property.
- 11.7. No portion of the Common Property shall be alienated, sold, or let on a long-term lease for a period of 10 (ten) years or longer, or be otherwise disposed of, subdivided, mortgaged, or subjected to any servitudes or other rights to be registered in the Deeds Registry, save as specified in the conditions of approval without the authorisation of the Members by Special Resolution.
- 11.8. The Board must procure at the costs of the Association general public liability insurance in respect of Common Property. The amount of the general public liability insurance must be determined by the Board or by the Members at the AGM by Ordinary Resolution. The premiums in respect of the insurance must be included in the Budget.
- 11.9. The Board shall procure at the cost of the Association such fidelity insurance as may be required from time to time in terms of the CSOS Act and as may be deemed necessary by the Board and/or as may be directed by the Members by Ordinary Resolution.
- 11.10. The Board may procure, at the cost of the Association such other insurance against such risks as may be determined by the Board or as may be directed by the Members by Ordinary Resolution.

12. RESPONSIBILITY FOR THE PROVISION OF SERVICES

- 12.1. The responsibility for the Services shall pass from the Developer to the Association on the date of the registration of transfer of the Common Property from the Developer to the Association.
- 12.2. Subject to clause 12.3, the Association shall be responsible for the provision of, the repair, maintenance, upkeep, and proper control, operation, and administration of the Services and the bulk services accounts in respect of the Estate and shall comply with the approvals and conditions of the Local Authority and applicable by-laws and regulations.
- 12.3. The Members shall be responsible for the repair and maintenance of the service infrastructure in respect of their Erven and for the charges due for the provision of such services to them. Members shall be responsible for charges for water according to the water meter readings in respect of their properties.
- 12.4. The following provisions shall apply in respect of the use of the transmission and reception of telecommunication (voice, broadband and data), multimedia signals and services to Members and Occupants:
 - 12.4.1. The Developer Trustees may appoint a suitable service provider to deploy and operate a fibre based, open access network for the purposes of carrying the telecommunications and internet signals and services.

- 12.4.2. The Developer Trustees may grant the suitable service provider an exclusive right to indefinitely use the ducts connecting each Erf to the network, and the owners hereby irrevocably consent thereto, as far as needs be. The suitable service provider will deploy the network to each Erf connection point. All equipment up to an Erf connection point is the sole property of the suitable service provider which equipment remains immovable property and will not accede to the land and / or the Common Property.
- 12.4.3. Members will be responsible for the cost of connection to the network and complying with all the requirements of their selected internet service providers (ISP's) for the Development in respect of telecommunications and internet signals and services.
- 12.5. Members must install water-saving devices in toilets, bathrooms, and basins of their dwellings. Members must comply with water restrictions or water saving measures introduced by the Local Authority or by the Board, including the Water and Sanitation by-law which include water restrictions as and when declared by the Municipality.
- 12.6. The Board shall be responsible for waste management in respect of the Estate. Members must comply with waste minimization measures implemented by the Board from time to time.
- 12.7. To the extent applicable, the Board will be responsible for the management, administration and maintenance of all individual water connections linked to a bulk water meter supply allocated to it by the Municipality, if any.
- 12.8. To the extent applicable, if the water meter is found to be over-registering with more than 2%, the account must be adjusted to suit and the testing fee and cost for the replacement meter must be paid back to the member by the Association.
- 12.9. To the extent applicable, the water consumption for an individual water user may not be charged at a higher rate than the approved municipal water tariffs, including water restriction tariffs.
- 12.10. To the extent applicable, the Association will comply with the Water Services By-law and associated rules, restrictions, conditions and approved fines.
- 13. A & D GUIDELINES AND THE BUILDERS CODE OF CONDUCT**
- 13.1. The Developer shall formulate and issue A & D Guidelines in respect of the Development and may for the duration of the Development Period amend the A & D Guidelines from time to time. After the Development Period, the A & D Guidelines may be added to, amended, substituted, or repealed from time to time by a Board resolution, subject to the directions given or restrictions imposed by the Members at GMs.
- 13.2. The A & D Guidelines may include provisions governing:
 - 13.2.1. the architectural design, standard and guidelines and aesthetic requirements for buildings and improvements on Erven;

- 13.2.2. requirements for buildings, improvements and structures to be constructed on Erven and alterations thereto, including the colours to be used on the exterior;
 - 13.2.3. specifications as to siting and coverage in respect of the buildings;
 - 13.2.4. provisions relating to the maintenance of buildings and Erven;
 - 13.2.5. generally, the approval process for building activities and landscaping within the Development.
- 13.3. The Developer shall formulate the Builders Code of Conduct in respect of the Development and may for the duration of the Development Period amend the Builders Code of Conduct from time to time. After the Development Period, the Builders Code of Conduct may be added to, amended, substituted, or repealed from time to time by a resolution of the Board, subject to the directions given or restrictions imposed by the Members at GMs. Members must ensure that their building contractors comply with the Builders Code of Conduct in respect of all construction activities in the Estate.
- 13.4. The Board shall have the power to:
 - 13.4.1. administer and enforce the A & D Guidelines and the Builders Code of Conduct;
 - 13.4.2. perform such acts as are necessary to accomplish the purposes expressed or implied in the Constitution, including but not limited:
 - 13.4.3. appoint a design review committee with such powers and duties as may be delegated by the Board;
 - 13.4.4. appoint an Architect/s with such powers and duties as may be delegated by the Board;
 - 13.4.5. examine and approval building plans for the construction of buildings and improvements;
 - 13.4.6. evaluate landscaping proposals; and
 - 13.4.7. recover fees, including professional fees and charges and costs from Members to consider applications and buildings plans and to consult with professionals.

14. CONSTRUCTION OF BUILDINGS AND IMPROVEMENTS

- 14.1. No Member may construct any building, improvement or structure on an Erf or remove any building, improvement, or structure from an Erf without the prior written consent of the Board and subject to the approval of the building plans by the Board and the Local Authority, if applicable.

- 14.2. All buildings and improvements constructed on an Erf shall be of approved design and of sound construction and shall comply with the provisions of the A & D Guidelines.
- 14.3. To obtain the written approval of the Board in terms of clause 14.1 above a Member shall apply to the Board in writing. The Member must where applicable submit a full set of the proposed buildings plans and such further documentation and information as may be required to the Board or to the Architect.
- 14.4. After approval of the building plans by the Board, the Member must submit the building plans to the Local Authority for approval. No Member shall submit any building plans to the Local Authority without prior approval of the building plans by the Board.
- 14.5. Having obtained the approval of the Local Authority, the Member shall comply with all conditions and standards imposed by the Local Authority, the conditions imposed by the Board and the provisions of the A & D Guidelines, the Builders Code of Conduct and the Residential Code of Conduct when constructing the buildings, improvements or structures on Erven or when making alterations to existing buildings, improvements or structures.
- 14.6. No Member may undertake any planting, landscaping, or gardening activities on any Erf, save to the extent permitted in the A & D Guidelines and the Residential Code of Conduct.
- 14.7. The centre line of any common boundary wall between any of the Erven, will be the common boundary between the relevant Erven and must be split 50/50 between the adjacent Erven. The common boundary wall must be constructed by the Owner who first commences with construction of a Dwelling on his Erf, and he must be reimbursed 50% (fifty percent) of the construction costs, excluding plastering and painting if not done by him on both sides of the common boundary wall, by the Owner who commences afterwards with construction of his Dwelling on his Erf.
- 14.8. Notwithstanding the foregoing, the provisions of this clause shall not be binding on the Developer during the Development Period.

15. RESIDENTIAL CODE OF CONDUCT

- 15.1. The Developer may formulate and issue the Residential Code of Conduct for the Association and may for the duration of the Development Period in its sole discretion amend the Residential Code of Conduct from time to time. After the Development Period, the Board may formulate and issue and amend the Residential Code of Conduct from time to time, subject to the directions given or restrictions imposed by the Members at GMs of the Association and to the OMPOA Constitution.
- 15.2. The Residential Code of Conduct may include provisions in respect of:
 - 15.2.1. the installation, operation and maintenance of irrigation in respect of the Common Property;
 - 15.2.2. the determination or control of security measures in respect of the Estate and to control access by persons to the Estate;

- 15.2.3. the control and conduct of persons using the Common Property or present in the Estate;
- 15.2.4. the use of roads, infrastructure, Services, amenities and facilities in the Common Property and restrictions on the use and enjoyment thereof, including the right to charge a reasonable fee for the use of the amenities and facilities;
- 15.2.5. the management and control of the Estate;
- 15.2.6. the use and enjoyment of the Common Property (or any parts thereof);
- 15.2.7. the preservation of the natural environment within the Estate;
- 15.2.8. the pedestrian and vehicular traffic, including parking, within the Estate;
- 15.2.9. the conduct of any Owner, Occupant, or Invitee in the Estate;
- 15.2.10. the control and conduct of persons for the prevention of nuisance of any nature to any Owner/Occupant;
- 15.2.11. the use and enjoyment of Erven and dwellings, and restrictions on the use and enjoyment thereof;
- 15.2.12. the storage of flammable and other harmful substances as provided for in the H&S Legislation;
- 15.2.13. the sale, letting and occupation of Erven and restrictions in respect thereof;
- 15.2.14. the conduct of any business within the Estate;
- 15.2.15. the conduct of estate agents, service providers and employees, workers, and contractors;
- 15.2.16. the keeping of pets and to control, restrict and prohibit the keeping of pets and to restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
- 15.2.17. the appearance of Buildings and improvements and landscaping;
- 15.2.18. the nature, content, and design of gardens and landscaped areas within the Estate;
- 15.2.19. refuse disposal and prohibition of littering;
- 15.2.20. the enforcement of the provisions of the Residential Code of Conduct;
- 15.2.21. the amounts of fines payable by an Owner, Occupant or Invitee for contravening or failing to comply with any of the provisions of the Residential Code of Conduct or this Constitution;

- 15.2.22. and generally, any other provisions in the furtherance and promotion of any of the objectives of the Association and the advancement of the interests of the Members.
- 15.3. The provisions of the Residential Code of Conduct and the duties of an Owner or Occupant in relation to the use and enjoyment of his Erf and the Common Property and the Services of the Association shall be binding on all Owners and Occupants of Erven.
- 15.4. The provisions of the Residential Code of Conduct shall be mutatis mutandis (with the necessary changes having been made) applicable to Occupants. Occupants shall be obliged to comply with the provisions of the Residential Code of Conduct notwithstanding any provision to the contrary contained in, or the absence of provisions, in any lease or any grant of rights of occupancy.
- 15.5. A Member must take all reasonable steps to ensure compliance with the Residential Code of Conduct by the Occupants of his Erf and by the Invitees to his Erf. A Member shall be liable and accountable for the acts or omissions of all persons occupying or having access to his Erf and to the Estate, whether lawfully or unlawfully.
- 16. BUDGET AND LEVIES**
- 16.1. The Board shall establish and maintain a fund for the purpose of meeting all the expected expenses of the Association for the control, management and administration of the Estate, the Association and its affairs as provided for in the Constitution and to pay the contributions due by the Association and its Members to the OMPOA.
- 16.2. The Board shall in consultation with the Management Company formulate a Budget and a strategic plan and any amendments thereto for each Financial Year of the Association. The Budget shall be submitted to the Members of the Association for consideration at the AGM. The Board must perform a mid-term budget review and may make amendments to the yearly budget if necessitated by relevant circumstances. These amendments need no approval by the AGM.
- 16.3. The Board shall, by making a resolution to such effect, determine the Ordinary Levies due by the Members to the Association by apportioning the income required in terms of the Budget to the Members as Ordinary Levies equally per Erf in the Estate.
- 16.4. The Ordinary Levies determined by a resolution of the Board in terms of clause 16.3 shall become effective or due by the Members from the date of passing of the resolution by the Board. The Ordinary Levies shall be paid by the Members to the Association in equal monthly instalments over a period of 12 (twelve) months, monthly in advance, on or before the 1st (first) day of every succeeding month of the Financial Year. Before the end of each Financial Year the Board may determine the Ordinary Levies due by Members for the interim period until the approval of the Budget for the ensuing Financial Year.

- 16.5. The Board may, from time to time, make Special Levies upon Members in respect of any expenditure not included in the Budget. Special Levies shall become due from the date of passing of the resolution by the Board and shall be apportioned to Members in accordance with clause 16.3 above. Special Levies shall be payable in one payment or in such instalments and at such time or times as the Board may think fit. The Board must notify Members in writing of the Special Levies payable by them and the reasons for imposing such Special Levies.
- 16.6. The Board may recover charges for Services rendered to Members or their Erven or to the Occupants of their Erven, which amounts will become due and payable on the date on which the levy statement is issued.
- 16.7. Upon taking transfer of an Erf on date of registration in the Deeds Registry, the new Member shall become liable to the Association for the payment of the Levies and service charges due in respect of the Erf.
- 16.8. If a Member fails to pay the Levies and other amounts due to the Association on the due date, the Association may institute an action for the recovery thereof in any competent court or apply to CSOS for an appropriate order. The Association may hand-over any debt due to the Association to the Association's Attorneys for collection if the debt is outstanding for more than 10 (ten) days after written notice by the Board or the Management Company.
- 16.9. A Member shall be liable for payment of interest on arrear Levies and other amounts due, calculated at the Prime Rate plus 5% per annum. Interest calculated at the determined rate shall be recoverable from the date on which the amount is due and payable to the date of payment, both days inclusive.
- 16.10. A Member shall be liable for and shall pay all costs, including all legal costs on the scale as between attorney and own client together with collection commission, tracing agent fee, advocate's fees, administrative costs and all other expenses and charges incurred by the Association in obtaining recovery of arrear Levies or other amounts due to the Association, or in enforcing compliance with the provisions of the Constitution, the A & D Guidelines, the Builders Code of Conduct and the Residential Code of Conduct. Such costs and expenses may be added to the Member's levy account and recovered in the same manner as applies to arrear Levies together with interest calculated at the Prime Rate plus 5% per annum.
- 16.11. Monthly Levy statements will be circulated to the Members of the Association via e-mail. A Member will still be liable to effect monthly payments of the Levies irrespective whether the statement was actually received and/or circulated by the Association to such Member.
- 16.12. All Levies shall be paid monthly in advance by bank debit order on the first day of each and every month to the bank account of the Association or by any other method as determined by the Board or the Management Company, from time to time.
- 16.13. Where payment of debt due by a Member to the Association is made by way of cheque or debit order, and such cheque is referred to drawer for any reason whatsoever, and/or if such debit order is unpaid for any reason whatsoever, the Board shall be entitled, in their sole discretion, to charge an administration charge in respect of each such occurrence in an amount to be determined by the Board from time to time.

- 16.14. Where payment of any debt due by a Member is made by way of cash deposited to the Association's bank account, the Board shall be entitled to recover any bank charges made by the bank relating to the deposit from the Member.
- 16.15. All moneys received from a Member towards his levy account shall be apportioned firstly towards interest, then towards legal fees and administration charges and then towards Levies and other service fees or charges.
- 16.16. Every Member must, during his membership of the Association, ensure and is obligated to ensure that the balance on his Levy account in the financial records of the Association, is at all times equal to the amount determined in terms of this Constitution.
- 16.17. No Member may off-set any amount due to him by the Association, or to the Developer against the amount of Levies due to or held by the Association in terms of the Constitution.

17. THE BOARD

- 17.1. The Board of the Association shall comprise of a minimum of 3 (three) Trustees and a maximum of 5 (five) Trustees elected or appointed by the Members. For the duration of the Development Period the Developer may appoint 2 (two) of the Trustees (the Developer Trustees). The Developer Trustees shall continue to hold office for the duration of the Development Period, provided that the Developer shall at any time be entitled to remove any Developer Trustee and to appoint a new Developer Trustee.
- 17.2. During the Development Period and at the first AGM, the Trustees referred to in clause 17.1 above, shall be elected by the Members and the Developer shall announce the Developer Trustees. A Developer Trustee shall be the Chairperson during the Development Period and thereafter the Board shall appoint such a Chairperson.
- 17.3. After the Development Period the Trustees shall be elected by the Members at the AGM.
- 17.4. A Trustee shall be an Owner of an Erf or a member representative of a close corporation, director or shareholder representative of a company or trustee of a trust who owns an Erf.
- 17.5. A Trustee, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this Constitution.

18. FIDUCIARY RELATIONSHIP

- 18.1. Each Trustee shall stand in a fiduciary relationship to the Association. A Trustee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute with the Association by virtue of any interest he may have therein.
- 18.2. A Trustee is required to:

- 18.2.1. Perform the functions of office in good faith, honesty and in a transparent manner, and
 - 18.2.2. At all times act in the best interest of the Association, and in such a way that the credibility and integrity of the Association and/or the Estate is not compromised in any way.
- 18.3. When nominated, a Trustee shall simultaneously with his nomination, declare in writing to the Board any financial interest he or his immediate family or business associates may have in respect of any contract, deliberations, or other transactions with the Association or the OMPOA.
- 18.4. No Member may be nominated to become a Trustee, or if already elected, vote during Board meetings, if his Erf or any improvements thereon do not comply with the provisions of the Constitution, or if his Levy payments are in arrear for one month or more.
- 18.5. Each Trustee must declare to the Board any gifts, which he or his immediate family might be offered, or receive, from any business and or person involved or endeavouring to become involved, in any contract with financial gain with the Association or the OMPOA.
- 18.6. A Trustee may not, without the permission of the Board, disclose any privileged or confidential information to any person not authorised or entitled to receive same.
- 18.7. A Trustee may not, except through the Chairperson of the Trustees and/or the Board:
 - 18.7.1. Interfere in the management or administration of the Estate, unless mandated by the Board;
 - 18.7.2. Give or purport to give any instruction to any employee other than the Management Company;
 - 18.7.3. Obstruct or attempt to obstruct the Management Company or any of the employees of the Association in the implementation of any decision or resolution of the Board, or
 - 18.7.4. Encourage or participate in any conduct which would cause or contribute to maladministration by the Board.
- 18.8. The Board may at any time and from time to time investigate and make a finding in respect of any alleged breach by a Trustee(s) of any provision of this Constitution, the A & D Guidelines, the Builders Code of Conduct or the Residential Code of Conduct, or establish a special committee to investigate and make appropriate recommendations to the Board in this respect.
- 18.9. Should the Board find that a Trustee is in breach of a provision of this Constitution (or an Annexure thereto) or has been found to be negligent in any of the duties assigned to him in his capacity as a Trustee or has reasonable grounds to suspect that a Trustee was or is involved in any form of theft or fraud regarding any funds of the Association, the Board may:

- 18.9.1. issue a formal warning to the Trustee concerned;
 - 18.9.2. reprimand the Trustee;
 - 18.9.3. suspend the Trustee;
 - 18.9.4. suspend the Trustee pending the outcome of a forensic audit in the instance of any suspected theft or fraud, or
 - 18.9.5. request the Trustee to resign, or
 - 18.9.6. request the Association to remove the Trustee from the Board.
- 18.10. The aforesaid provisions shall not apply to the Developer or the Developer Trustees for the duration of the Development Period.

19. CHAIRPERSON

- 19.1. For the duration of the Development Period, the Chairperson shall be a Developer Trustee. After the Development Period, the Board shall within 14 (fourteen) days of each AGM, appoint a Chairperson, who shall hold office until the next AGM. The office of Chairperson shall automatically be vacated by a Trustee holding such office upon his ceasing to be a Trustee for any reason, in which event the Board shall immediately appoint a new Chairperson.
- 19.2. Except as otherwise provided in this Constitution, the Chairperson shall preside at all meetings of the Board and at all GMs and, in the event of the Chairperson not being present within 15 (fifteen) minutes of the scheduled meeting time or in the event of his inability or unwillingness to act, any one of the remaining Trustees shall preside in his stead or the Members shall appoint another Chairperson for the purpose of the GM.
- 19.3. Except as otherwise provided in this Constitution, the proceedings at any Board meeting and GM shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
- 19.4. If any Chairperson vacates his office as Chairperson or no longer continues in office for any reason, the Board shall meet as soon as reasonably possible to appoint one of their number as Chairperson who shall hold office as such for the remainder of the period of office of the first mentioned Chairperson.
- 19.5. If the Chairperson vacates the chair during the course of a Board meeting or is not present or is, for any other reason, unable to preside at any meeting, the Board present at such meeting shall choose another Chairperson for such meeting.
- 19.6. If the Chairperson vacates the chair during the course of a GM or is not present or is, for any other reason, unable to preside at any meeting, and no other Trustee is willing to act as Chairperson, the Members present at such GM in person or by proxy shall choose another Chairperson for such meeting.

20. REMOVAL AND ROTATION OF TRUSTEES

- 20.1. Subject to clause 20.2 each Trustee shall hold office as such from the date of his appointment until the next AGM following his appointment, at which AGM each Trustee shall be deemed to have retired from office but shall be eligible for re-election as a Trustee by the Members at the AGM.
- 20.2. A Trustee shall be deemed to have vacated his office as such:
- 20.2.1. should he become disqualified to act as a director of a company in terms of the Companies Act, 2008;
 - 20.2.2. should he be removed from office by a resolution of the Board or by an Ordinary Resolution of the Members;
 - 20.2.3. should his estate be sequestrated whether provisionally or finally or upon his surrendering his estate or making any arrangement or compromise with his creditors;
 - 20.2.4. on is conviction of any offence involving dishonesty;
 - 20.2.5. on the commission by him of any act of insolvency;
 - 20.2.6. should he become of unsound mind or being found to be a lunatic or mentally handicapped;
 - 20.2.7. on his resignation from such office in writing;
 - 20.2.8. on his death; or
 - 20.2.9. if he is in arrears with his Levies or any other amounts due to the Association for 2 (two) months or more; or
 - 20.2.10. upon his failure to comply with his fiduciary duties as Trustee or acting in conflict with the interest of the Association.
- 20.3. Upon any vacancy occurring in the Board prior to the next AGM, the Board shall appoint a person to hold office until the conclusion of the next AGM following his appointment. The Developer may at any time appoint a new Developer Trustee for the duration of the Development Period.
- 20.4. The Board may appoint, for a specified period, a person qualified to serve as a Trustee as a replacement for any Trustee who is absent or otherwise unable to perform the duties of that office.
- 20.5. Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 20.2 , anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the minutes of the Trustees or of the Association or in terms of a resolution.
- 21. PROCEEDINGS OF THE TRUSTEES**
- 21.1. The Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.

- 21.2. The Chairperson may at any time convene a Board meeting by giving to the other Trustees and to the Management Company 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.
- 21.3. After the Development Period, a Trustee may, provided he has the support in writing of 1 (one) other Trustee, at any time convene a Board meeting by giving to the other Trustees and the Management Company 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.
- 21.4. It is sufficient if the notice of the meeting is transmitted electronically directly to the Trustees and Management Company in a manner and form that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.
- 21.5. The quorum necessary for the holding of all Board meetings shall be 2 (two) if there are 3 (three) Trustees in office or 3 (three) if there are 4 (four) or 5 (five) Trustees in office, present personally. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following Business Day and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the Trustees then present shall be a quorum, provided that at least 2 (two) Trustees shall be present personally.
- 21.6. Any resolution of the Board shall be carried by a simple majority of all votes cast and each Trustee shall have 1 (one) vote. In the case of an equality of votes for or against a resolution, the Chairperson shall have a second casting vote.
- 21.7. A resolution signed by an ordinary majority of the Trustees shall be valid in all respects as if it had been duly passed at a Board meeting duly convened.
- 21.8. The Board shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
- 21.9. The Board must ensure that minutes are taken of every Board meeting, although not necessarily word for word. The minutes must be reduced to writing within 15 (fifteen) days after the Board meeting and the draft minutes must be delivered to the Trustees. The minutes must be approved by the Board and must then be certified as correct by the Chairperson of the meeting. The Board must keep all minutes of Board meetings in perpetuity. On the written application of a Member, the Board must make minutes of their proceedings available for inspection by or on behalf of the Member during reasonable hours on Business Days and/or furnish them with the copies as may be required, against payment of the required charges.

- 21.10. All resolutions recorded in the minutes of any Board meeting 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 Board resolution shall be of any force or effect or shall be binding upon the Members or any of the Trustees, unless such resolution is competent within the powers of the Trustees.
- 21.11. No agreement concluded on behalf of the Association shall be valid and binding unless it is signed by the Chairperson or by a Trustee or representative of the Management Company specifically appointed as authorised signatory in terms of a Board resolution.

22. EXPENSES AND REMUNERATION OF THE TRUSTEES

- 22.1. Trustees shall be entitled to be repaid all reasonable expenses incurred by them in or about the performance of their duties as Trustees or as Chairperson in good faith.
- 22.2. Unless otherwise determined by an Ordinary Resolution, Trustees shall not be entitled to any other remuneration, fees, or salary in respect of the performance of such duties.

23. FUNCTIONS, POWERS, AND DUTIES OF THE TRUSTEES

- 23.1. Subject to the provisions of this Constitution and subject to any directions given or restrictions which may be imposed by the Members by Ordinary Resolution at a GM, the Board shall perform the functions, powers and duties of the Association.
- 23.2. Without detracting from the scope of the additional duties specified in the Constitution, the Board shall perform the functions referred to in clause 5.2 of the Constitution.
- 23.3. The Board shall do all things reasonably necessary for the control, management, and administration of the Development in terms of the powers conferred upon the Association by clause 5.3 of the Constitution.
- 23.4. Without in any way limiting the powers granted, the powers of the Board shall include:
- 23.4.1. to delegate to one or more Trustees such of their powers and duties as they deem fit and at any time to revoke such delegation;
 - 23.4.2. to delegate the management of the affairs and the business of the Association, in whole or in part, to the Management Company;
 - 23.4.3. to form committees for the performance of designated tasks on behalf of the Trustees;
 - 23.4.4. to establish and manage social clubs;
- and generally, any such power, reasonably necessary to fulfil the objectives of the Association.

- 23.5. The Board shall do all things reasonably necessary for the enforcement of the Constitution, the A & D Guidelines, the Builders Code of Conduct and the Residential Code of Conduct. The Board may, should they so decide, investigate any suspected or alleged breach of the Constitution, the A & D Guidelines, the Builders Code of Conduct or the Residential Code of Conduct by any Member or Occupant in such reasonable manner as they shall decide from time to time.

24. MANAGEMENT COMPANY

- 24.1. The Developer shall be entitled to appoint a Management Company for the Association, during the Development Period, which appointment shall be valid and binding on the Association during the Development Period. Only one Management Company may be appointed for the OMPOA and each Sub-Association and where applicable each Body Corporate irrespective of whether such appointment is made during the Development Period, or thereafter.
- 24.2. During the Development Period the Developer has the irrevocable power and authority to appoint the Management Company and to determine the terms and conditions of such appointment.
- 24.3. Subject to the provisions of this Constitution and the terms of its appointment, the Management Company shall have full power to manage and control the business and affairs of the Association or such portion thereof as may be determined by the Board and may exercise all such powers of the Association and do all acts on behalf of the Association itself.
- 24.4. During the Development Period the Developer will determine the fees or remuneration to be paid by the Association to the Management Company and the other terms and conditions of its appointment, which fees will be agreed upon by the parties to the relevant agreement, provided that the fees thus payable must be allowed for in the Budget of the Association and be market related.
- 24.5. After the Development Period and if an existing Management Company's appointment is terminated, the Board shall appoint a Management Company, provided the Management Company must be the Management Company of the OMPOA. The Board shall determine the fees or remuneration to be paid by the Association to the Management Company and all the other terms and conditions of the appointment of the Management Company. It is contemplated that the affairs of the Association will at all times be entrusted in whole or in part to a professional Management Company with appropriate executive powers so as to conform to the requirements of good corporate governance.

25. GENERAL MEETING OF THE ASSOCIATION

- 25.1. The Developer must convene the first AGM within two years of the establishment of the Association. For the duration of the Development Period the Developer shall be entitled to act as the Chairperson of the Association.
- 25.2. The Association shall within 6 (Six) months after the end of its Financial Year (at least one AGM per year) hold a GM as its AGM. The AGM shall be held on such date and

at such time and place as the Board shall decide from time to time.

25.3. All general meetings (GMs) other than annual general meetings (AGMs) shall be called special general meetings (SGMs). SGMs shall be held on such date and at such time and place as the Board shall decide from time to time. The Board may at any time convene an SGM. The Board must convene a SGM meeting upon receipt of a request in writing received from Members holding at least 1/3 (one third) of the votes of the Members. The agenda of a SGM shall be limited to those matters included in the notice of the SGM.

25.4. The following matters shall be dealt with at every AGM:

- 25.4.1. confirm proxies, nominees and other persons representing Members;
- 25.4.2. determine that there is a quorum;
- 25.4.3. elect a person to chair the meeting, if necessary;
- 25.4.4. approve the agenda of the meeting;
- 25.4.5. the approval of the minutes of the previous AGM of the Association;
- 25.4.6. deal with matters arising from these minutes and any unfinished business;
- 25.4.7. the consideration of the report by the Board or the Management Company;
- 25.4.8. the consideration of the financial statements of the Association for the preceding Financial Year;
- 25.4.9. the consideration and approval, with or without amendment, of the Budget as presented by the Board;
- 25.4.10. to consider and approve insurance for the Association;
- 25.4.11. the election of the Trustees;
- 25.4.12. any other business pertinent to such meeting, including any Ordinary Resolution or Special Resolution proposed for adoption;
- 25.4.13. the consideration of any matters raised at the meeting, including any resolution proposed for adoption by the meeting and the voting upon any such resolution;
- 25.4.14. the giving of directions to or the imposing of restrictions on the Board.
- 25.4.15. dissolve the meeting.

25.5. The Board may make arrangements for attendance at a GM by Skype, Zoom, Microsoft Teams or by any other method, provided that the method of attendance:

- 25.5.1. must be accessible to all Members and persons who are entitled to attend the meeting;

- 25.5.2. enables all persons participating in the meeting to communicate with each other during the meeting; and
- 25.5.3. enables the Chairperson to confirm, with reasonable certainty, the identity of the participants.
- 25.6. A person who attends a meeting by any method provided in clause 25.5 is deemed to be personally present at the meeting.

26. PROCEDURE AT GENERAL MEETINGS

- 26.1. The Chairperson shall preside as such at all GMs provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then one of the Trustees shall act as Chairperson of the GM who shall thereupon exercise all the powers and duties of the Chairperson in relation to such GM. If no Trustee is able to act as Chairperson, Members present at such GM shall vote to appoint a Chairperson for the GM.
- 26.2. The Chairperson may, with the consent of any meeting at which a quorum is present (and if so directed by the GM), adjourn the meeting from time to time and from place to place. No notice needs to be given of the adjourned GM save for an announcement at the meeting of the date, time, and venue of the adjourned GM, unless the GM is to be adjourned for 30 (thirty) days or more, in which event notice is to be given in the same manner as the original GM.
- 26.3. No business shall be transacted at any adjourned GM other than the business that might have been transacted at the meeting from which the adjournment took place.
- 26.4. Save as otherwise provided in the Constitution, the proceedings at any GM shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.

27. NOTICES OF GENERAL MEETINGS

- 27.1. An AGM shall be called by not less than 21 (twenty one) Clear Days' notice in writing and any other GM shall be called by not less than 14 (fourteen) Clear Days' notice in writing. The notice of an AGM shall be given to all Members and shall be exclusive of the day on which it is posted or e-mailed and of the day for which it is given, and shall specify the place, the day and the hour of the meeting. A meeting called by shorter notice shall be deemed to have been duly called if it so agreed by an Ordinary Resolution of the Members having the right to attend and to vote at the relevant meeting.
- 27.2. The notice of the GM shall specify the date, time and place of the meeting and the business of the meeting. If a Special Resolution is proposed for adoption, the notice must specify the Special Resolution proposed for adoption.
- 27.3. The notice of a GM may be delivered by prepaid post or may be transmitted by e-mail to the e-mail addresses of the Members.

- 27.4. The accidental omission to give notice of a GM or of any resolution or to transmit any document required to be given or sent in terms of this Constitution, shall not invalidate the proceedings of any GM or any resolution passed at any GM. Furthermore, the non-receipt of notice of a meeting, by any Member entitled to receive such notice, shall not invalidate the proceedings at that GM. It is the responsibility of each Member to ensure that he has received all the documents relevant to the GM to be held.

28. PROXIES

- 28.1. A Member may be represented at a GM:
- 28.1.1. in the case of an individual Owner or joint Owner by any one of the registered owners;
 - 28.1.2. in the case of the Member being a Company, by a proxy being a director or shareholder, duly authorised thereto by a resolution; or
 - 28.1.3. in the case of the Member being a Close Corporation, by a proxy being a member or member trustee, duly authorised thereto by a resolution; or
 - 28.1.4. in the case of the Trust, by a proxy being a trustee, duly authorised thereto by a resolution; or
 - 28.1.5. by a proxy who must himself be a Member.
- 28.2. The proxy together with the original or a certified copy of a resolution, power of attorney or other authority under which it is signed, must be lodged with the Board or the Management Company at least 48 (forty eight) hours before the commencement of the GM or adjourned GM concerned.
- 28.3. Notwithstanding the provisions of clause 28.2 , the Chairperson of the meeting may agree to accept a proxy tendered at any time to him before the commencement of the GM or during the GM. All such documents must be available for inspection by any person at the meeting concerned.
- 28.4. The document appointing a proxy will only be valid for the specific GM and for the adjournment thereof.
- 28.5. The document appointing a proxy shall be in such form that is acceptable to the Chairperson of the GM or adjourned GM in respect of which it is tendered and the decision of the Chairperson as to what is or is not acceptable will be binding on all the Members.
- 28.6. A vote given in accordance with the terms of a document appointing a proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Board or the Managing Agent at least 1 (one) hour before the time fixed for the holding of the meeting.

29. QUORUM

- 29.1. No business shall be transacted at any GM unless a quorum of Members is present in person or by proxy when the GM proceeds to business and when any resolution is to be passed. The quorum necessary for the holding of any GM shall be at least 25% (twenty-five) percent of the Members, present in person or by proxy.
- 29.2. If, within 15 (fifteen) minutes after the time appointed for the commencement of the GM, a quorum is not present, the GM shall stand adjourned to the same day in the next week, at the same place and time or to such other day, time and place as the Chairperson may determine. If, at such adjourned GM, a quorum is not present, the Members then present in person or by proxy shall constitute a quorum, provided that, where the meeting was called at the request of the Members in terms of clause 25.5.3, the meeting shall be dissolved.

30. ADJOURNMENT BY CHAIRPERSON

- 30.1. The Chairperson of a GM may adjourn the meeting from time to time and from place to place if the meeting approves of such adjournment by Ordinary Resolution. In the event of such an adjournment:
 - 30.1.1. No notice needs to be given of the adjourned meeting save for an announcement at the original 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 from the original meeting;
 - 30.1.2. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

31. VOTING AT GENERAL MEETINGS

- 31.1. Subject to the provision of this Constitution, all resolutions at GMs shall be passed by Ordinary Resolution. At every GM any Ordinary Resolution shall be carried on a simple majority of all the votes cast thereon. Any Special Resolution proposed for adoption at a GM shall be carried by at least 75% (seventy five percent) of the votes cast on the resolution. An abstention shall not be counted as a vote for or against the resolution in question.
- 31.2. At every GM every Member present in person or by proxy and entitled to vote shall have one vote for each Erf registered in the Member's name. If an Erf is registered in the names of more than one person, they jointly have one vote and shall decide on a nominee to cast the vote.
- 31.3. At every GM and unless the Chairperson of the meeting otherwise directs or the Members demands a poll, all voting shall be on a show of hands of the Members present in person or by proxy and entitled to vote. A poll shall be taken in such manner as the Chairperson directs.
- 31.4. Notwithstanding the provisions of clause 31.3 aforesaid, voting on any question of adjournment, shall be decided on a show of hands by an Ordinary Resolution.

- 31.5. Any Member who is in arrears with his Levies or any other amounts due to the Association for more than 1 (one) month, shall not be entitled to vote at a GM, either in person or by proxy.
- 31.6. A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:
 - 31.6.1. written notice of the revocation is received by the Association prior to the meeting concerned, or
 - 31.6.2. the Chairperson agrees to accept written or oral notice of such revocation at the meeting.
- 31.7. No objection shall be raised to the admissibility of any vote except at the GM or adjourned meeting at which the vote objected to, is cast and every vote not disallowed at such GM will be valid for all purposes.
- 31.8. If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter such difficulty or dispute must be determined by the Chairperson, whether or not observers have been appointed to count the votes, and his decision will be final and conclusive.
- 31.9. A declaration made in good faith by the Chairperson of a GM to the effect that, either on a show of hands or on a poll, a resolution has or has not been passed shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed, as the case may be.
- 31.10. An Ordinary Resolution agreed to in writing by or on behalf of Members holding an ordinary majority of the votes of all the Members of the Association shall be as valid as if it had been passed at a duly convened GM. A Special Resolution agreed to in writing by or on behalf of Members holding at least 75% (seventy five percent) of the votes of all the Members of the Association shall be as valid as if it had been passed at a duly convened GM.

32. MINUTES OF GENERAL MEETINGS

- 32.1. The Board must ensure that minutes are taken of every GM of the Association, although not necessarily word for word. The minutes must be reduced to writing within 30 (thirty) days after the GM and the draft minutes must be sent to the Members. The minutes must be approved by the Members at the following GM of the Association and must then be certified as correct by the Chairperson of the meeting. The Board must keep all minutes of GMs of the Association in perpetuity.
- 32.2. On the written application of a Member, the Board must make the minutes of GMs available for inspection by or on behalf of the applicant during reasonable hours on Business Days and/or furnish them with the copies as may be required against payment of the required charges.

- 32.3. All resolutions recorded in the minutes of GMs 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 Trustees, unless such resolution is competent within the powers of the Association.

33. BOOKS OF ACCOUNT AND FINANCIAL STATEMENTS

- 33.1. The Board shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association.
- 33.2. At each AGM the Board shall lay before the Association financial statements for the immediately preceding Financial Year of the Association. Such financial statements shall be drawn up in accordance with generally accepted accounting practise and shall be accompanied by such additional reports as may be necessary at the discretion of the Board.
- 33.3. The Board shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transaction, acts or operations to which they relate.
- 33.4. On the written application of a Member, the Board shall make all or any of the financial statements, books of account and records available for inspection by or on behalf of the Member during reasonable hours on Business Days and/or furnish them with the copies as may be required against payment of the required charges.
- 33.5. The Auditors shall be appointed by the Board from time to time. Once at least in every year, the accounts of the Association shall be examined, and the correctness of the financial statements shall be ascertained by the Auditors. The duties of the Auditors shall be regulated in accordance with general practise and applicable professional standards.

34. DEPOSIT AND INVESTMENT OF FUNDS

- 34.1. The Board shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered South African commercial bank in the name of the Association. Subject to any directions given or restrictions imposed by an Ordinary Resolution of the Members, such moneys shall only be withdrawn from the bank account for the purpose of payment of the expenses of the Association or for investment purposes.
- 34.2. Any funds of the Association not immediately required for disbursements may be invested in a savings account, money market account or similar account with any registered South African commercial bank or with a Financial Institution approved by the Board from time to time.
- 34.3. The Board may authorise a Management Company to administer and operate the accounts referred to in clause 30.1 above, subject to such conditions and restrictions as they may impose.

- 34.4. The Association shall use interest on moneys invested for any lawful purpose in the interest of the Association.

35. SERVICE ADDRESSES OF MEMBERS AND OCCUPANTS

- 35.1. The service address of the Developer shall for the duration of the Development Period be the following address: c/o Ashburton Investments, Chardonnay House, The Vineyards Office Estate, Cape Town, 7530, South Africa.
- 35.2. The Developer may by written notice to the Association alter its service address, provided that such new address may not be a post office box or post restante and provided that such address shall be situated within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notice by the Association.
- 35.3. The service address for any legal process or delivery of any notice or other document to a Member in terms of this Constitution shall be the street address of Member's Erf. A Member may by written notice to the Association alter his service address, provided that such new address may not be a post office box or post restante and provided that such address shall be situated within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notice by the Association.
- 35.4. The service address for any legal process or delivery of any other document to a tenant or Occupant shall be the street address of the Erf rented or occupied by the tenant or Occupant.

36. DELIVERY OF NOTICES

- 36.1. A notice by the Association to a Member or Occupant in terms of the Constitution, the Residential Code of Conduct, the A & D Guidelines or the Builders Code of Conduct shall be in writing and shall be delivered either by hand or by prepaid post properly addressed to the Member or Occupant at his service address. It shall be competent to transmit the notice to a Member or Occupant by e-mail where the e-mail address of the Member or Occupant is recorded with the Board.
- 36.2. The signature to any notice given by the Association may be written or printed, or partly written and partly printed.
- 36.3. Any notice to a Member or Occupant:
- 36.3.1. sent to him by prepaid post in a correctly addressed envelope to his service address, shall be deemed to have been received on the 5th day after the date when the notice was posted; or
 - 36.3.2. if delivered by hand to the Member or Occupant, or to a responsible person at the service address of the Member or Occupant, shall be deemed to have been received on the day of delivery; or
 - 36.3.3. if sent by e-mail to the recorded e-mail address of the Member or Occupant, shall be deemed to have been received on the 1st day after the date of the e-mail.

- 36.4. Notwithstanding anything to the contrary herein contained, a written notice actually received by a Member or Occupant shall be adequate written notice to such Member or Occupant notwithstanding that it was not delivered in accordance with clause 36.1 above.

37. INDEMNITY

- 37.1. The Developer, the Board, the Management Company and each servant, agent or employee of the Association shall be and they are hereby indemnified by the Association against any liabilities bona fide (in good faith) incurred by them in their respective capacities in the proper discharge of any of their duties including, without limitation, the costs of defending any proceedings, civil, criminal or otherwise arising out of the due execution by them of their duties, and including all costs, losses and expenses, including traveling expenses which they or any of them may incur or becomes liable for by reason of any contract entered into, or any act or deed done, by them in the due discharge of any of their respective duties.
- 37.2. A Trustee or the Developer shall not be liable for the act or omission of the Management Company or of any of the other Trustees whether in their capacity as such or as Chairperson or for any loss or expense sustained or incurred by the Association occasioned by any bona fide error of judgement or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties in relation thereto, unless same shall have occurred as a result of mala fides (bad faith), breach of duty or breach of trust.
- 37.3. The Developer is irrevocably indemnified against any loss or any possible damages or claim for damages that the Association, a Member, Occupant, Invitee or contractor may suffer on the Common Property, including all water bodies on the Estate, or as a result of any installation of any Service or facility, or any act or conduct by the Developer in the exercising of the Development Rights, whether that such damage was caused by any wilful or negligent act of the Developer.

38. BREACH OF THIS CONSTITUTION OR ANNEXURES

- 38.1. The Board or the Management Company may on behalf of and in the name of the Association institute legal proceedings against any Members or Occupants who are in breach of any of the provisions of the Constitution, the A & D Guidelines, the Builders Code of Conduct or the Residential Code of Conduct.
- 38.2. If a Member commits a breach of any provision of the Constitution, the A & D Guidelines, the Builders Code of Conduct or the Residential Code of Conduct by failing to pay on due date any Levies, penalties, or any other amounts payable by such Member to the Association, the Board or the Management Company may give notice to such Member requiring him to remedy such breach within a period of 10 (ten) days from the date of the notice. Should the Member fail to timeously remedy the breach, the Board may on behalf of the Association institute legal proceedings against the Member without further notice in any court of competent jurisdiction for the payment of the overdue Levies, penalties and/or other amounts.

- 38.3. Save for clause 38.2above, if a Member commits any other breach of any provision of the Constitution, the A & D Guidelines, the Builders Code of Conduct or the Residential Code of Conduct and fails to commence to remedy that breach within a period of 10 (ten) days from the date of the written notice to that effect by the Board or the Management Company, and to complete the remedying of such breach within a reasonable time or as may be specified in the notice, then the Board or the Management Company shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Association, or the Board or any other Member, may have in terms of the Constitution, or in law, including the right to claim damages, to:
- 38.3.1. enter upon the Erf to take such action as may reasonably be required to remedy the breach and the Member shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand and may be added to the levy account of the Member; and/or
 - 38.3.2. impose a fine on the Member in terms of clause 40 of the Constitution; and/or
 - 38.3.3. institute legal proceedings in any court of competent jurisdiction for such relief as the Board may consider necessary; and/or
 - 38.3.4. apply in terms of the CSOS Act for an appropriate as the Board may consider necessary.
- 38.4. In the event that the Board institute proceedings against a Member in terms of the foregoing provisions, the Board shall be entitled to recover from such Member all costs, including all legal costs on the scale as between attorney and own client together with collection commission, advocate's fees, tracing fees, collection fees, administrative costs and all other expenses and charges incurred by the Association in obtaining recovery of arrear Levies or other amounts due to the Association, or in enforcing compliance with the provisions of the Constitution, the A & D Guidelines, the Builders Code of Conduct or the Residential Code of Conduct
- 38.5. Should any Member fail to pay any amount due by that Member to the Association on the due date, then such Member shall pay interest on the amount outstanding from time to time at the Prime Rate plus 5% (five percent) per annum.
- 38.6. In the event of any breach of this Constitution, the A & D Guidelines, the Builders Code of Conduct or the Residential Code of Conduct by an Occupant of an Erf or Invitee, such breach shall be deemed to have been committed by the Owner of the Erf but, without prejudice to the foregoing, the Board shall be entitled to take or cause to be taken such steps against the person who committed the breach as they may in their discretion deem fit, with or without proceedings against the Owner of the Erf.
- 38.7. Nothing in this clause shall be construed as prohibiting or preventing the Board, if considered necessary by them, from applying to court for an interdict or other urgent relief against any Member in breach of the Constitution, the A & D Guidelines, the Builders Code of Conduct or the Residential Code of Conduct or in the event of a threatened or impending or ongoing breach by such Member of the Constitution, the A & D Guidelines, the Builders Code of Conduct or the Residential Code of Conduct.

- 38.8. Nothing in this clause shall derogate from or in any way diminish the right of the Board (as they may, in their sole and absolute discretion resolve) to refer a dispute for dispute resolution proceedings in terms of clause 39 of the Constitution.
- 38.9. Aforesaid provisions may, where applicable, also be applied mutatis mutandis (with the necessary changes having been made) to Occupants, and Invitees.

39. DETERMINATION OF DISPUTES

- 39.1. Should any deadlock or dispute (other than a dispute in respect of which urgent relief may be obtained from a court of competent jurisdiction) arise or a deadlock exist in relation to any matter which requires consensus between a Member or Members and/or between a Member and the Board in the widest sense (hereinafter collectively referred to as a "dispute") in connection with—

- 39.1.1. the interpretation of;
- 39.1.2. the effect of;
- 39.1.3. their respective rights or obligations under;
- 39.1.4. a breach of (save for non-payment of Levies or any other amount due by a Member in terms of the Constitution),

the Constitution, the A & D Guidelines, the Builders Code of Conduct, or the Residential Code of Conduct such dispute will, unless resolved amongst the persons to the dispute or by an internal dispute resolution mechanism, be referred to and be determined by mediation or arbitration in terms of this clause 39, provided that a person to the dispute has demanded the dispute resolution by written notice to the other persons (to the dispute) and provided further that the person desiring such dispute resolution has first resorted to the internal dispute resolution mechanism in terms of clause 39.2, before either proceeding with mediation and arbitration procedures in terms of the ensuing provisions of clause 39.

- 39.2. In the event of any dispute arising, the parties to the dispute must in the first instance engage each other in good faith with a view to resolving the dispute within a period 7 (seven) Business Days after the date on which the dispute was referred to them. For the purpose of engaging and as an internal dispute mechanism the parties to the dispute may engage telephonically, and/or in writing and/or schedule a joint meeting and/or refer the dispute to the Board for consideration at a Board meeting, which meeting/s must be recorded in writing.
- 39.3. Only in the event of the dispute not being resolved by the internal dispute mechanism as contemplated in clause 39.2 may the dispute be referred to a mediator and/or arbitrator as contemplated in the ensuing provisions of clause 39.
- 39.4. Prior to any dispute as aforesaid being determined by arbitration, immediately upon any person (to the dispute) requesting such arbitration, the dispute will be referred forthwith to a mediator for attempted resolution by such mediator, on the following basis:

- 39.4.1. the mediation will be conducted by a mediator selected by agreement between the persons (to the dispute) and failing such agreement within seven (7) Business Days after a written request by the aggrieved person (to the dispute) to the others for such mediation, nominated on the application of either person by the chairperson for the time being of the Legal Practice Council Western Cape, or its lawful successor;
- 39.4.2. the persons (to the dispute) will not be entitled to be represented at any hearing before or at any meeting or in any discussion with the mediator except personally if an individual Member, or by a director of the company or member of a close corporation or trustee of a trust, who is the Member, or by a Trustee in the instance of the Association provided that, during the Development Period, such Trustee shall be a Developer Trustee;
- 39.4.3. the mediator will, as he deems fit, follow formal and/or informal proceedings and receive evidence on submission, orally or in writing, sworn or unsworn, at joint meetings, with the persons (to the dispute) or separately as from any person whom he considers can assist in the formulation of his opinion, provided that:
 - 39.4.3.1. each person (to the dispute) will be given reasonable opportunity of presenting evidence and submissions and of responding to evidence and submissions of any other person (to the dispute); and
 - 39.4.3.2. each person (to the dispute) will be given full details of any evidence on submission received by the mediator from any other person (to the dispute) or any other person otherwise than at a meeting where all the persons (to the dispute) are present;
 - 39.4.3.3. the mediator will have the power to propose to the persons (to the dispute) compromise settlements or agreements for the whole or portion of the dispute;
- 39.4.4. the mediator will as soon as reasonably practicable give to each of the persons (to the dispute) his written opinion on the dispute, recording the details of any agreement reached between the persons (to the dispute) during the mediation;
- 39.4.5. the mediator's opinion will become binding on the persons (to the dispute) only to the extent correctly recorded as being agreed by the persons in the mediator's written opinion or otherwise as recorded in writing to the persons (to the dispute) subsequent to the receipt of the mediator's opinion;
- 39.5. the disputes on any matter still unresolved after the application of the foregoing provisions will be resolved by arbitration as set out below;

- 39.5.1. save for reference to any portion of the mediator's opinion which has become binding in terms of clause 39.4.5 no reference will be made by or on behalf of any person (to the dispute) in any proceedings after mediation, to the mediator's opinion, or to the fact that any particular evidence was given, and to any submission statement or admission made in the course of the mediation; and/or
 - 39.5.2. in respect of the nature of the mediator's opinion, each of the persons will pay his own costs arising from this mediation and the persons (to the dispute) will pay in equal shares the fees and disbursements of the mediation based upon a scale of fees as agreed between the mediator and the persons (to the dispute) before the commencement of the mediation, and failing which agreement as determined by a nominee of the chairperson for the time being of the Legal Practice Council Western Cape, or its lawful successor, as being fair and reasonable regard being had to the work done by the mediator.
- 39.6. Any person subject to the provisions of this Constitution may demand that a dispute be determined by arbitration by written notice given to any other person subject to this Constitution.
- 39.7. This clause 39 will not preclude any party (subject to the provisions of this Constitution) from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 39.8. The arbitration will be held –
 - 39.8.1. at a mutually acceptable place or venue in Paarl or in Cape Town;
 - 39.8.2. with only the legal and other representatives of the persons to the dispute present thereat;
 - 39.8.3. mutatis mutandis in accordance with the provisions of the Superior Courts Act, as amended, the rules promulgated in terms of that Act and the practice of the Western Cape High Court otherwise in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), as amended;

it being the intention that the arbitration will be held and completed within 21 (twenty-one) Business Days after it was demanded.
- 39.9. The arbitrator, who will be a single arbitrator, will be, if the matter in dispute is principally-
 - 39.9.1. a legal matter, a practising advocate or attorney of at least ten (10) years' standing;
 - 39.9.2. an accounting matter, a practising chartered accountant and registered auditor of at least ten (10) years' standing;
 - 39.9.3. any other matter, any independent person; agreed upon between the persons to the dispute.

- 39.10. Should the persons to the dispute fail to agree whether the dispute is principally a legal, accounting, or other matter within 7 (seven) Business Days after the arbitration was demanded, the matter will be deemed to be a legal matter.
- 39.11. Should the persons to the dispute fail to agree on an arbitrator within 7 (seven) Business Days after the expiry of the period referred to in clause 39.10, the arbitrator will be appointed at the request of any person to the dispute by the provincial director for the time being of the Legal Practice Council Western Cape, or its lawful successor or nominee.
- 39.12. The decision of the arbitrator will be final and binding on the persons to the dispute and may be made an order of the High Court at the instance of any of the persons to the dispute.
- 39.13. The persons to the dispute are deemed to have consented to the jurisdiction of the Western Cape High Court in respect of any proceedings referred to in clause 39.12.
- 39.14. The persons to the dispute must and will keep the arbitration, including the subject matter of the arbitration and the evidence heard during the arbitration, confidential and not disclose it to anyone except for purposes of an order to be made in terms of clause 39.12.
- 39.15. The provisions of this clause 39 -
- 39.15.1. constitute an irrevocable consent by the persons to any proceedings in terms of this Constitution and no person (subject to this Constitution) will be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and
- 39.15.2. are severable from the rest of this Constitution and will remain in effect despite the termination of or invalidity for any reason of this Constitution.
- 39.16. The above remedies subsist without prejudice to the right of the Board or any other party to the dispute to institute legal proceedings by an application, action or otherwise in any court having jurisdiction for any matter relating to this Constitution or the Annexures or relating to the Estate and Association.
- 39.17. The above remedies subsist without prejudice to the right of any part to apply to CSOS in terms of the CSOS Act, upon the failure of the internal dispute resolution mechanism referred to in clause 39.2above.

40. IMPOSITION OF PENALTIES

- 40.1. If the conduct of a Member, Occupant or Invitee constitutes a nuisance in the opinion of the Board or a contravention of a provision of Constitution, the A & D Guidelines, the Builders Code of Conduct or the Residential Code of Conduct, the Board may by written notice inform the Member of the nuisance or contravention and warn the Member that if the Member or the Occupant fails to remedy the contravention, or persists in, or repeats such conduct or contravention, a penalty will be imposed on the Member concerned.

- 40.2. If, notwithstanding the written notice in terms of clause 40.1above, the Member or Occupant fails to remedy the contravention or persist in or repeats such conduct or contravention, the Board may, by written notice impose a penalty on the Member. A written notice must be addressed to the Member specifying the penalty imposed, the reasons for imposing the penalty and informing the Member that if he disputes the decision of the Board, he must submit a signed and motivated complaint to the Board within 10 (ten) days after the date of the written notice.
- 40.3. The penalty imposed under clause 40.2above, shall become due on the date of the written notice and must be paid within 10 (ten) days after the date of the written notice. Should the penalty remain unpaid, it shall be added to the Member's levy statement and shall be recovered from the Member in the same manner as applies to arrear Levies, together with interest at the interest rate applicable to arrear Levies.
- 40.4. The Board shall, from time to time, determine the amounts of penalties in respect of the various contraventions and in respect of first and successive contraventions, subject to the directions given or restrictions imposed by the Members on the Board by Ordinary Resolution passed at GMs of the Association.
- 40.5. A penalty may be imposed in respect of each separate contravention. In the event of a continuing contravention, the Member shall be deemed to be guilty of a separate contravention for every 24 hours or part thereof during which such contravention continues and may be liable for a penalty in respect of each such separate contravention.
- 40.6. A Member may at every step of the process as defined in this clause submit a signed and motivated complaint to the Board. If a Member disputes the decision of the Board to impose a penalty or the amount of the penalty imposed, the Member must within 10 (ten) days after the date of the written notice in terms of clause 40.2 submit a signed and motivated complaint to the Board.
- 40.7. Upon receipt of the complaint, the Board may:
- 40.7.1. withdraw or reduce the penalty; or
 - 40.7.2. schedule a Board meeting for the purpose of considering the objection and invite the Member to attend the meeting and/or to be represented at the meeting.
- 40.8. At the said Board meeting referred to in clause 40.7.2 above, the Member shall have the right to:
- 40.8.1. present his case and any evidence, including the calling of witnesses to substantiate his case;
 - 40.8.2. cross-examine any person called as a witness in support of the charge;
 - 40.8.3. have access to documents produced in evidence; and
 - 40.8.4. produce mitigating factors.

- 40.9. The failure of the Member charged to attend the Board meeting referred to in clause 40.7.2 and 40.8 shall not render the proceedings at the meeting void. Should the Member or his representative not attend the Board meeting without providing a reasonable request for postponement, the Board may in their sole discretion continue with the Board meeting and consider the objection in the absence of the Member.
- 40.10. Upon the conclusion of the Board meeting, the Board shall deliberate the evidence, and if so resolved, they may:
- 40.10.1. uphold the penalty; or
- 40.10.2. withdraw or reduce the penalty.
- 40.11. The aforementioned provisions may, where appropriate, also be applied mutatis mutandis (with the necessary changes having been made) to Occupants and Invitees

41. CONDITIONS IMPOSED BY LOCAL AUTHORITY

During the Development Period, this Constitution may from time to time be amended, without the need to be approved by the Association in GM, so as to comply with the requirements from time to time of the Local Authority in relation to the conditions of establishment for the Development.

42. AGREEMENTS CONCLUDED ON BEHALF OF THE ASSOCIATION

- 42.1. The Developer may enter into agreements and appoint any service provider on behalf of the Association for the Development Period, which agreements and/or appointments will be automatically effective and binding on the Association and its Members during and after the Development Period, for the duration of the agreement, but provided that such service provider fulfil all its obligations and all the other terms and conditions of the agreement thus concluded.
- 42.2. It is recorded that the Members will be bound by all contracts concluded by the Developer for the leasing or purchase of all equipment or infrastructural assets, or for the provision of security for the Estate, or for the provision of any other service or supplies for the Estate which the Developer may consider necessary in its discretion, even where such contracts or commitments include the payment of costs or outgoings on an ongoing basis. It is recorded, without limitation, that the Developer intend to conclude contracts, inter alia, but not limited to, for the hire or supply of electronic surveillance, monitoring and detection equipment for security purposes relating to the perimeter of the Estate.

43. DEFAMATION PRIVILEGE

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

44. EXCLUSION OF LIABILITY

- 44.1. Any person present on the Common Property or using any facilities or Services of the Association within the Estate, does so entirely at his own risk. The right of admission to the Estate is reserved in favour of the Developer and/or the Association, as the case may be.
- 44.2. Subject to clause 44.4 a Member or Occupant shall not have any claim against the Association, the Board, the Management Company, or any of the employees of the Association of whatsoever nature arising from the use of the Common Property or the facilities or Services of the Association nor for anything which may befall any person during the course of such use, whether caused by human or animal agency, natural phenomena or otherwise.
- 44.3. Subject to clause 44.4 the Association, the Board, the Management Company, and the employees of the Association shall not be liable for any injury to any person (including loss of life) or loss or damage of any property, which a person may suffer or sustain whether directly or indirectly in or about the Common Property, regardless of the cause thereof.
- 44.4. Any claim by a Member or any other person present in the Development shall be limited to the amount actually recovered by the Association from the receipt of proceeds of the public liability insurance of the Association, if any. If and to the extent that the Association does not have any such public indemnity liability insurance or the proceeds received are insufficient, no such person shall have any claim against the Association, except in the case of bad faith or gross negligence.

45. AMENDMENT OF THE CONSTITUTION AND ANNEXURES

- 45.1. The provisions of the Constitution may be added to, amended, substituted, or repealed from time to time by the Developer in its sole discretion for the duration of the Development Period. Any such amendments as contemplated herein will only be communicated by the Developer to the Management Company and the Developer will therefore not be obliged to communicate these changes to the Members.

- 45.2. The provisions of the Constitution may be added to, amended, substituted, or repealed from time to time by a Special Resolution of the Association.
- 45.3. The amendment, addition, substitution, or repeal of any clause of the Constitution by the Members shall be effective on the adoption of a Special Resolution. If the amendment affects the Municipality or any provision mentioned in section 29(3) of the MPBL, the Constitution, as approved by the Association, shall be submitted to the Municipality for approval and will only become effective on the date of such approval.
- 45.4. The Site Development Plan may be amended from time to time by the Developer in its sole discretion for the duration of the Development Period.
- 45.5. The A & D Guidelines may be compiled, added to, amended, substituted, or repealed from time to time by the Developer in its sole discretion for the duration of the Development Period and thereafter by a Board resolution.
- 45.6. The Builders Code of Conduct may be compiled, added to, amended, substituted, or repealed from time to time by the Developer in its sole discretion for the duration of the Development Period and thereafter by a Board resolution.
- 45.7. The Residential Code of Conduct may be compiled, added to, amended, substituted, or repealed from time to time by the Developer in its sole discretion for the duration of the Development Period and thereafter by a Board' resolution.
- 45.8. Any amendment, addition, substitution, or repeal of any clause of the Constitution shall, on becoming effective, be submitted to the Commissioner, Tax Exemption Unit of the South African Revenue Services for the purpose of re-evaluating the status of the Association as tax exempt.

46. ASSOCIATION CEASES TO FUNCTION

- 46.1. If the Association ceases to function or carry out its obligations, any affected person, including a Member of the Association may in terms of section 30(1) of the MPBL apply:
 - 46.1.1. to disestablish the Association subject to the amendment of the conditions of approval to remove the obligation to establish an owners' association, and the amendment of the title conditions pertaining to the Association, to remove any obligation in respect of an Association.
 - 46.1.2. for appropriate action by the Municipality to rectify a failure of the Association to meet any of its obligations in respect of the control over or maintenance of services contemplated in subsection 29(3)(b) of the MPBL;
or
 - 46.1.3. to the High Court to appoint an administrator who must exercise the powers of the Association to the exclusion of the Association, or
- 46.2. In considering an application in terms of the section 30(1)(a) of the MPBL, the Local Authority must have regard to:
 - 46.2.1. the purpose of the Association;

- 46.2.2. who will take over the control over and maintenance of services for which the Association is responsible; and
 - 46.2.3. the impact of the disestablishment of the Association on the Members of the Association and the community concerned.
- 46.3. The Association make arrangements for the transfer of the Common Property in the event that the Association ceases to function.
- 46.4. The Municipality or the affected person may recover from the Members of the Association the amount of any expenditure incurred by the Municipality or that affected person, as the case may be, in respect of any action taken in terms of this clause. The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association.
- 46.5. In the event that the Association has ceased to function, and an Owner wishes to transfer an Erf in that event, the Owner must obtain the consent of at least 60% (Sixty Percent) of the Members of the Association, which consent is deemed to be the consent of the Association.

47. WINDING UP OF ASSOCIATION

- 47.1. The Association may be wound up by Special Resolution of the Members in GM or by an order of the High Court.
- 47.2. In the event of such winding up, it shall be the duty of the Board to comply with the conditions imposed in terms of the Special Resolution or court order of the High Court and with applicable legislation.

48. DEVELOPER'S RIGHTS, POWERS, DUTIES AND EXEMPTIONS

- 48.1. The Developer shall, as from the date that the Constitution comes into force until the first AGM of the Association, be empowered to perform and have all the powers, functions, and duties of the Association and the Board in terms of the Constitution. The responsibility for the day-to-day management of the Association's affairs shall, subject to such restrictions as may be contained in this Constitution, automatically be transferred from the Developer to the Association on date that the first general meeting when the Board is elected.
- 48.2. The Developer may during the Development Period execute and to enter into on behalf of the Association all and any agreements as may be required to give effect to the provisions of this Constitution and the OMPOA Constitution.
- 48.3. The Developer shall for the duration of the Development Period be entitled to appoint a Management Company in respect of the Development and is empowered to delegate the management of the affairs and the business of the Association, whether in whole or in part, to such Management Company.
- 48.4. The Developer shall be entitled for the duration of the Development Period to register such servitudes as may be required.

- 48.5. The Developer shall for the duration of the Development Period be entitled to appoint an Architect in respect of the Development.
- 48.6. The Developer shall for the duration of the Development Period have the power and right to engage on behalf of the Association the services of accountants, auditors, attorneys, engineers, town planners, or any other professional firm or person or other employees whatsoever, for any reason deemed necessary by the Developer, on such terms as the Developer may decide.
- 48.7. The Developer is authorised to open a banking account with a commercial bank or Financial Institution of the Developer's choice in the name of the Association.
- 48.8. No business of a Property Sales Agent/Agency or Property Letting Agent/Agency, may ever be conducted from any Erf in the Development, save for such Agencies appointed by the Developer during the Development Period, which appointments may be binding on the Association for an indefinite period of time, in the sole and absolute discretion of the Developer. This clause may not be repealed, except with the written consent of the Developer.
- 48.9. The Developer or its nominee shall have the right to conduct an estate agency business in the Development.
- 48.10. The Developer shall for the duration of the Development Period be entitled to formulate a policy and rules for the approval of estate agents for the Association. The Developer may approve estate agents for the Association to attend to marketing/sales and letting of Erven in the Estate. The Developer may approve estate agents for the Association to attend to marketing/sales and rentals of Erven in the Estate to enable Owners to have assistance from competent and informed estate agents when selling or letting their properties. An estate agent must apply to the Developer for approval and must provide the Developer with his fidelity fund certificate and such further documents as may be required. An Owner must appoint an estate agent approved by the Developer to secure a prospective purchaser for his Erf. An Owner must appoint an estate agent approved by the Developer to secure a prospective tenant for his Erf.
- 48.11. The Developer shall for the duration of the Development Period be entitled to appoint Developer Trustees. For the duration of the Development Period, the Developer Trustees shall have a right to veto any resolution of the Board.
- 48.12. For the duration of the Development Period no general meeting of the Association shall proceed unless the Developer is represented at the meeting.
- 48.13. For the duration of the Development Period no Ordinary Resolution or Special Resolution shall be of any force or effect unless the Developer vote/s in favour thereof. For the duration of the Development Period, the Developer shall on a show of hands or on a poll be entitled to the number of votes equal to the number of Erven in the Development from time to time plus one vote.
- 48.14. For the duration of the Development Period the Developer shall be exempt from paying fines to the Association.

- 48.15. For the duration of the Development Period the Developer will not be required to submit building plans to the Board for approval in respect of any buildings or improvements constructed by the Developer on any Erf in the Development.
- 48.16. During the Development Period, this Constitution may from time to time be amended by the Developer to comply with the requirements from time to time of the Local Authority.
- 48.17. No provision of this Constitution shall be added to, amended, substituted, or repealed without the prior written consent of the Developer for the duration of the Development Period.
- 48.18. The Developer may at any time, during the Development Period, in writing, cede delegate and/or assign all or any of its rights or obligations in terms of this Constitution to any transferee of its choice and such transferee shall be entitled to take cession/delegation of all such rights and obligations.
- 48.19. During the Development Period, the Developer may, at any time in writing, abandon in whole or in part, any of its rights which it is entitled to in terms of this Constitution, in which event the abandoned rights of the Developer will cease and vest in the Association, the Board or the Members, as the case may be.