



# Langebaan Country Estate

## CONSTITUTION OF THE OWNERS' ASSOCIATION

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Langebaan Country Estate Joint Venture

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Whereas the Developer is at present developing certain land, herein after described, for residential and leisure purposes and whereas such land will comprise a Township to be administered by an Owners' Association and Sub-Associations, subject to the provisions of the Land Use Planning Ordinance No 15 of 1985, and, where applicable, the Sectional Titles Act No 95 of 1986.

Now therefore this document shall henceforth serve as the Constitution of the said Owners' Association.



## 1. INTRODUCTION

This document is the Provisional Constitution of the development known as the Langebaan Country Estate. All Members are bound by the provisions hereof and whatever is legitimately done, performed or resolved in terms thereof.

In order to adapt this Constitution to accommodate the needs and interests of members, but preserving the realistic and reasonable interests of the Developer, the Developer, through its appointed trustees, shall retain the right to amend its provisions from time to time, until conclusion of the Development Period as described herein.

After conclusion of the Development Period, members shall be able to exercise control through its appointed trustees and as otherwise provided for in this Constitution in its present or amended form.

## 2. OBJECTIVES

Subject to the rights, functions and powers reserved by the Developer in terms of this constitution, the objectives of the Association shall be as follows:

- (a) To serve as an Owners' Association for the Members thereof, to manage, administer and control all aspects of common interest to such Member Associations, including Private Open Spaces and common assets, improvements and facilities.
- (b) To establish a fund for expenses of the Association, including a provision for future expenses.
- (c) To determine and collect levies for the purposes of the said fund from Members.
- (d) To enforce Members' obligations in terms of this Constitution, the Guide, and any Rules created in terms thereof.
- (e) To ensure compliance with the legal requirements of any Local Authority, including the conditions of establishment and rezoning imposed by any competent authority.
- (f) To maintain all common land, services, facilities, installations and other common assets according to the standards envisaged by the Developer, and where necessary, to repair and replace such services, facilities, installations and other assets.
- (g) In general:
  - (i) To ensure the maintenance and promotion of harmony in the physical and social environment of the Township.
  - (ii) To promote and encourage Owners to maintain at all times the external appearances of their properties in a clean and tidy condition and to maintain



high standards in this regard so as to ensure that the appearance of their properties are both aesthetically pleasing and desirable when viewed from the outside and further to take steps to enforce the maintenance of such standards where deemed necessary in the opinion of the Trustees.

- (iii) To protect and promote the interests of the Association, Member Associations and Owners, as far as the Township is concerned.
- (h) To control the transfer of Erven and Units in the Township and ensure compliance with the conditions imposed by the Local Authority and conditions imposed by the Developer in Agreements of Sale.
- (i) To take transfer of, maintain and insure, where necessary, the roads, the Private Open Space and Improvements thereupon in the Township and control the usage thereof and of the facilities belonging to the Association or falling under its control.
- (j) To create suitable Rules for the management of the Township, including such rules of conduct as the Trustees may deem necessary.

And the Developer and the Association shall have the powers to perform such acts as are necessary and reasonably required to accomplish the fulfillment of the foregoing objects including, but not restricted, to powers specifically contained in this Constitution.

### 3. DEFINITIONS

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

**Alienate** means to alienate any Erf or part thereof and includes alienation by way of sale, exchange, donation, deed, intestate or testate succession, cession, assignment, court order, insolvency or liquidation, irrespective of whether such alienation is subject to a suspensive or resolutive condition and “alienation” shall have a corresponding meaning.

**Architect** means such architect or architects or their successors, as may be appointed by the Developer from time to time, or subsequent to the Development Period, by the Trustees.

**Association** means the LANGEBAAN COUNTRY ESTATE OWNERS ASSOCIATION (the Association).

**Auditors** means the Auditors of the Association as may be appointed from time to time by the Developer and, subsequent to the Development Period, by the Trustees.

**Chairman** means the Chairman of the Trustees, who shall also serve as chairman at general meetings.



**Constitution** means this document with the annexures thereto, drawn in terms of Section 29 of Ordinance No. 15 of 1985, as may be amended from time to time.

**Contractor** means an accredited building contractor as approved by the Developer, employed by an Owner of an Erf for the construction of Improvements.

**Commercial Erf** means Erven which are intended for commercial, administrative or other purposes, any subdivisions or consolidations thereof, and any other erven which may in future be approved for such purposes.

**Developer** means Langebaan Country Estate Joint Venture or its nominees, cessionaries or successors in respect of the whole or any part of the Development.

**Developer Trustee** means a Trustee appointed by the Developer.

**Development** means the development scheme and/ or schemes executed or to be executed by the Developer in order to establish and complete the Township.

**Development Period** means the period terminating upon construction of 75% of houses, commercial units and sections in the proposed Township, or upon the date of all erven and Units having been transferred, or upon the Developer notifying the Trustees of termination of the Development Period, whichever occurs first.

**Erf** and **Erven** mean unless otherwise indicated, every Erf in the Township collectively, together with every GR Erf and Commercial Erf collectively and includes immovable property transferred or to be transferred in accordance with the provisions hereof to the Association.

**Estate Manager** means Managing Agent, as defined hereunder.

**GR Erf** means every Erf in the Township which enjoys general residential use rights.

**Guide** means the architectural guidelines prepared or to be prepared for and applicable to the Township, and includes all/ any amendments made thereto from time to time.

**Improvements** mean any structure of whatever nature constructed or erected or to be constructed or erected on an Erf, common property or Section.

**Levy** means the levy due to the Association by an Owner.

**Local Authority** means the Local Authority having jurisdiction over the Township.

**LUPO** means the Land Use Planning Ordinance No 15/ 1985 (as amended) and includes any substituted legislation.



**Managing Agent** means any person or body appointed by the Developer or the Association as an independent contractor, or as an employee, to undertake any of the functions of the Association.

**Member** means every owner of an Erf or a Unit in the Township, as evidenced by registration in the Cape Town Deeds Registry and, until transfer of the last Erf or Unit, the Developer.

**Member Trustee** means a trustee or trustees appointed by owners other than the Developer

**Owner** means the registered Owner of an Erf and/ or Unit in the Township

**Private Open Spaces** means all areas generally designated as private open space on the Estate Site Plan of the Township as may be amended from time to time, including all roads, pavements, gardens and other open areas for common usage.

**Resolution** means a resolution passed at any meeting of the Association by an ordinary majority of the total votes.

**Rules** mean such Rules as the Developer or the Association may make from time to time for the proper management, control and maintenance of the Township, and other relevant matters, including Conduct Rules.

**Section** means a section shown as such on a sectional plan of any part of the Township developed as a sectional title scheme, as defined in the Sectional Titles Act No 95 of 1986, as amended from time to time.

**Sub-Association** means an owner's association or body corporate founded for the various portions or sub-developments of the Township.

**Township** means the entire Township developed or to be developed on the land comprising the Remainder of Portion 1 (Meeuwe Klip) of the Farm Oliphants Kop No 191 in the Saldanha Bay Municipality, Division of Malmesbury, Province of the Western Cape, which is subdivided or to be subdivided into a Township to be known as Langebaan Country Estate in accordance with approval obtained from the Local Authority, generally in accordance with the Estate Site Plan or any amendment thereof, and includes all/ any extension(s) of the Township approved by the Local Authority upon application by the Developer.

**Trustee** means the Developer Trustees and the Member Trustees of the Association, collectively from time to time and includes alternate and co-opted Trustees.

**Unit** means a Section together with such Section's undivided share in the common property of the relevant sectional title scheme.



#### **4. INTERPRETATION**

- (a) The clause headings are for convenience and shall be disregarded in construing this Constitution.
- (b) Unless the context clearly indicates a contrary intention:
  - (i) the singular shall include the plural and vice versa; and
  - (ii) a reference to any one gender shall include the other genders; and
  - (iii) a reference to natural persons includes legal persons and vice versa.
- (c) Words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause.
- (d) 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.
- (e) Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- (f) If any provision of this Constitution is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.
- (g) 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.
- (h) Annexures to this Constitution are deemed to be incorporated in and form part of this Constitution.

#### ***STATUS, FUNCTIONS AND MEMBERSHIP***

#### **5. ESTABLISHMENT**



It is recorded that the Association was established on the date of registration of transfer of the first Unit or Erf in the Township from the Developer to an Owner, and this Constitution, as may be amended from time to time, is binding upon the Developer and Owners.

## **6. STATUS**

- (a) The Association shall, subject to the provisions of this Constitution, be responsible for the control, administration and management of the Township for the benefit of all Members and Owners, and this Constitution shall be binding upon all Members and upon sectional title bodies corporate located within the Township.
- (b) The Association shall have perpetual succession and shall be capable of suing and being sued in its own name in respect of:
  - (i) any contract made by it;
  - (ii) any damage to the Private Open Space or other property of the Association;
  - (iii) any matter in connection with the land or improvements for which the Association is liable;
  - (iv) any matter arising out of the exercise of its powers or the performance or non-performance of its duties;
- (c) It is recorded that the Association has been established as a non-profit making institution for the purposes and objectives set out in this Constitution.
- (d) No Owner in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the Trustees on behalf of its Members, according to the objects of the Association.

## **7. MEMBERSHIP**

- (a) The Members of the Association shall consist of the Developer and every registered owner of an Erf in the Township, such membership commencing automatically on the date of registration of transfer in his name and ceasing automatically on the date upon which the last Erf owned by him is transferred to another.
- (b) Membership shall be automatic and compulsory. No Member may resign or cede his membership to another.
- (c) The Developer shall cease to be a Member upon transfer of the last Erf or Unit in the Township to another.
- (d) Each Member shall, for the duration of his membership of the Association, also be a member of the Sub-Association created for the area within which his Erf or Unit is



situated. Such membership shall be involuntary and compulsory and every Member shall be bound by the provisions of the Sub-Constitution of such Sub- Association.

## 8. FUNCTIONS

- (a) The functions to be performed by the Association shall include:
  - (i) the establishment of a fund to defray the expenses of the Association relating to maintenance, repairs, renewal, upgrading, security, insurance, landscaping, statutory rates, taxes and charges and administrative expenses, including reasonable provision for future expenses resulting from maintenance, repairs, renewal and upgrading when necessary;
  - (ii) to determine and collect contributions from Owners in order to maintain the fund of the Association;
  - (iii) to properly maintain the Private Open Space and all assets of the Association;
  - (iv) to ensure compliance with the provisions of this Constitution, any law, ordinance or by-law relating to the scheme, the Guide and Rules established in terms hereof, by all Owners and occupiers.
- (b) To ensure that high environmental, building and social standards are maintained within the Township.
- (c) Such other functions and duties as may be referred to elsewhere in this Constitution.
- (d) Such ancillary functions as may be necessary to achieve the Objects and to perform the functions referred to herein.
- (e) To accommodate the establishment of Sub-Associations and to perform such duties as may be assigned to it in this regard.
- (f) In general to control, manage and administer the Township for the benefit of all Owners.

## 9. DOMICILIUM OF ASSOCIATION

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

- (a) such address shall be the address of the Chairman or of a resident Trustee nominated by the Trustees or the address of any duly appointed Managing Agent;
- (b) the Trustees shall give notice to all Members of any change of such address.



## 10. THE BUDGET AND LEVIES

- (a) The Trustees must, as soon as possible after the end of each financial year, prepare a budget of income and expenditure for the next financial year in respect of the Private Open Spaces, all assets of the Association and all administrative and other expenses relating thereto for which the Association is responsible, (excluding any expenses assigned to a Sub-Association) and any amount proposed to be held in reserve in respect of future maintenance, repairs or capital expenditure. Provision should be made for at least the following:
- (i) expenses in respect of security
  - (ii) maintenance expenses
  - (iii) insurance premiums
  - (iv) landscaping expenses
  - (v) expenses and charges in respect of services
  - (vi) statutory rates, taxes and charges
  - (vii) administrative expenses, including the cost of a managing agent, if applicable
  - (viii) banking and auditing expenses, including that of the Sub-schemes
  - (ix) provision for future maintenance and repairs or capital expenditure.
  - (x) contributions to Golf Club.
  - (xi) such other items as the Developer, or subsequent to the Development Period, the Trustees, may add to the above items.
- (b) In compiling the budget:
- (i) Expenses relating to the entire Township for which the Association is responsible, (excluding any expenses assigned to a Sub-Association) shall be taken into account.
  - (ii) The Developer shall be responsible for expenses relating to any undeveloped portions of the Township in terms of agreements and reconciliations concluded between the Developer and the Trustees from time to time.
  - (iii) Liability for payment of the above levies to the Association shall vest in the individual Owners.
- (c) Until conclusion of the Development Period, the budget shall be approved by the Trustees, whereafter it must be approved by the Members by ordinary resolution at the Annual General Meeting.

## 11. COLLECTION OF LEVIES



(a) Immediately upon approval of the budget, the Trustees shall pass a resolution in terms of which the total amount of the approved budget is allocated to individual Owners on the following basis-

(i) equally, in respect of all Owners other than residential sectional title owners;

(ii) 50% of the above, in the case of sectional title Owners;

and upon the posting of a notice in this regard to an Owner, such contributions shall become due and payable by such Owner, calculated from the first day of the month subsequent to the day of approval of the budget, to the Association, in such installments, if any, as the Trustees may determine.

(b) Levies due by any Member to the Sub-Association of which he is also a member, shall be added to the levy statement of that Member and shall be deemed to be a levy due to the Association recoverable by the Association in terms of these provisions.

(c) No Owner shall enjoy the privileges of usage of the Public Open Spaces or facilities unless he shall have paid every levy, or other sum (if any) which may be due and payable to the Association in terms of this Constitution.

(d) All levies are due and payable, in advance, on the first day of each month and every Owner must arrange for their payment to the Association by debit order.

(e) Upon taking transfer of an Erf, the Owner becomes liable for payment of levies in respect of the unpaid portion of levies for that financial year, excluding arrears. In respect of the month during which transfer takes place, a pro rata apportionment is to be made.

(f) The Trustees may from time to time, when necessary, make special levies upon the Owners in respect of all expenses which have not been included in the budget and such levies may be made payable in one sum or in such installments as the Trustees may determine in their own discretion.

(g) If an Owner fails to pay its levies in full to the Association on due date, the Association may institute an action for the recovery thereof in any competent court.

(h) Where any Erf or Unit is owned by more than one person, all the registered Owners of that Erf or Unit shall be jointly and severally liable for the due performance of any obligation to the Association.

(i) An Owner shall be liable for all legal costs, including attorney and client costs, collection commission, expenses, and other charges incurred by the Association in obtaining the recovery of arrear levies or any other arrear amounts due to it, or enforcing compliance with this Constitution, any annexure thereto, or the Rules.



- (j) The Association shall be entitled to charge simple interest on any arrear amounts at such a rate as the Trustees may from time to time determine. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment provided that any portion of a month will be regarded as a full calendar month for the purposes of this calculation.
- (k) No more than two original Erven may be consolidated. Upon consolidation of any two Erven, such consolidated Erf shall be liable for levies equal to the total of the levies for the two erven previously.
- (l) The equal apportionment of levies may be altered to a differentiated quota in respect of particular Erven and Units, in terms of a resolution by the Developer, for the duration of the Development Period, or subsequently in terms of a Trustees' resolution.
- (m) Any differentiation made by the Trustees in terms of the foregoing provision, must be reasonable and justifiable and shall be subject to final determination by arbitration in terms of clause 42, in the event of any Member or Members objecting to such determination in writing within 60 days of having been notified in writing of the intended differentiation.

### ***THE TRUSTEES AND MANAGEMENT***

#### **12. THE OFFICE AND QUALIFICATIONS**

- (a) The Trustees of the Association shall comprise 5 (five) Developer Trustees and 2 (two) Member Trustees until the first annual general meeting of the Association after conclusion of the Development Period, whereupon the Trustees shall comprise of a number of Member Trustees equal to the number of Sub-Associations which are functional, plus 2 (two) Developer Trustees until the withdrawal of the Developer Trustees by notification by the Developer, upon which all Trustees shall be Member Trustees, in a number equal to the number of Sub-Associations.
- (b) A Trustee shall be an individual but need not himself be an Owner provided that the majority of Member Trustees shall be Owners or representatives of Owners which are judicial entities.
- (c) No Owner may be appointed as a Trustee if he is in arrear with his levy payments.
- (d) Not later than fourteen (14) days before the date on which the annual general meeting is to take place, Owners must nominate their proposed trustees in writing, upon the basis that Owners of a particular Sub-Association shall nominate one trustee to represent them. The persons nominated as Trustees by the various Sub-Associations, shall be regarded as the elected Member Trustees. The Developer shall nominate and appoint the Developer Trustees at the meeting.



- (e) The Developer shall appoint the first Developer Trustees and (if so desired) Member Trustees before the first Annual General Meeting.
- (f) A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.
- (g) Subject to the provisions of sub-clause (h), each Member Trustee shall continue to hold office until the annual general meeting of the Association following his appointment, at which meeting each Member Trustee shall be deemed to have retired from office as such but will be eligible for re-election at such meeting. The Developer shall, by written notice to the Trustees, be entitled to remove any Developer Trustee appointed by the Developer and upon such removal or upon any Developer Trustee ceasing to hold office for any other reason, by written notice, appoint in their stead another person or persons.
- (h) A Trustee shall be deemed to have vacated his office as such upon:
  - (i) his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
  - (ii) his making any arrangement or composition with his creditors;
  - (iii) his conviction for any offence involving dishonesty;
  - (iv) his becoming of unsound mind and being found lunatic;
  - (v) within 14 (fourteen) days of receipt of written notice of resignation given to the other Trustees by the relevant Trustee, or by its constituent Member Association or, in the case of a Developer Trustee, by the Developer.
  - (vi) his death;
  - (vii) his being removed from office by a resolution of Trustees;
  - (viii) his being disentitled to exercise a vote in terms of this Constitution provided he is a Member Trustee.
- (i) Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in sub-clause (h), 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 Minute Book of the Trustees. Should the office of a Trustee fall vacant prior to the next annual general meeting of the Association, the vacancy in question may be filled by the Developer if the vacancy is in respect of a Developer Trustee and by the remaining Member Trustees if the vacancy is in respect of a Member Trustee and the person so appointed shall hold office until the next annual general meeting.



- (j) Within 21 (twenty-one) days of the holding of each annual general meeting of the Association the Trustees shall meet and shall elect from their own number a Chairman who shall hold office until the annual general meeting held next after his appointment, provided that the office of Chairman shall *ipso facto* be vacated upon his ceasing to be a Trustee for any reason. In the event of any vacancy occurring in the aforesaid office, the Trustees shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.
- (k) Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustees and all general meetings of the Association and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustees or by Members and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings.
- (l) If the Chairman vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Trustees present at such meeting shall choose another Chairman for such meeting.
- (m) If any Chairman vacates his office as Chairman or no longer continues in office for any reason, the Trustees shall elect another Chairman who shall hold office as such for the remainder of the period of office of the first mentioned Chairman.
- (n) A Member 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.
- (o) No contract concluded on behalf of the Trustees shall be valid and binding unless it is signed by the Chairman and one Trustee, the latter specifically appointed as authorised signatory in terms of a resolution of Trustees whereby the Trustees bind the Association.
- (p) Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as Trustees and/ or Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
- (q) Trustees may not make loans on behalf of the Association to Members or to themselves.

### **13. FUNCTIONS, POWERS AND DUTIES OF TRUSTEES**

- (a) Subject to the express provisions of this Constitution, the Trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs, including the right of



appointment and dismissal of any Managing Agent, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association.

- (b) Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, managing agents, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the Trustees on such terms as the Trustees shall decide.
- (c) The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- (d) The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee of this Constitution in such reasonable manner as they shall decide from time to time.
- (e) The Trustees may make rules not inconsistent with this Constitution or any other rules prescribed by the Association in general meeting:
  - (i) as to the resolution of disputes generally;
  - (ii) for the furtherance and promotion of any of the objects of the Association;
  - (iii) for the better management of the affairs of the Association;
  - (iv) for the advancement of the interests of Members;
  - (v) for the conduct at meetings;
  - (vi) to levy and collect contributions from Owners in accordance with this Constitution;
  - (vii) to levy and recover from Owners moneys which are necessary to defray the necessary expenses of the Local Authority in the event of the Local Authority imposing any levies and imposts against the Association;
  - (viii) to assist it in administering and governing its activities generally.
- (f) Without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include:
  - (i) the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and Improvements of all Erven and Units in the Township in accordance with the provisions of the Guide. The



- Trustees shall be entitled to require any Owner, who shall be obliged, to repaint or renovate his Improvements if in the reasonable opinion of the Trustees such Improvements require essential repairs or have become dilapidated;
- (ii) the making of, entering into and carrying out of agreements with third parties on behalf of the Association for any purposes of the Association;
  - (iii) the employment on behalf of the Association of agents, servants and any other party and the payment of such persons;
  - (iv) the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as sewage, electricity supply, landscaping, maintenance of private roads, refuge facilities, removal of refuse and suchlike, where applicable;
  - (v) the institution or defense of actions in the name of the Association and to appoint legal representatives for such purpose.

#### **14. FINANCIAL YEAR END**

The financial year end of the Association is the last day of February of each year.

#### **15. BOOKS OF ACCOUNT**

- (a) The Trustees shall cause proper books of account and records to be kept so as to record and fairly to explain the transactions and financial position of the Association including:
  - (i) a record of the assets and liabilities of the Association;
  - (ii) a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur;
  - (iii) a register of Members Associations and their members, showing in each case their addresses;
  - (iv) individual ledger accounts in respect of every Member Association and of its members.
- (b) The Trustees shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate.
- (c) The Association in annual general meeting or the Trustees may from time to time make reasonable rules as to the time and manner of the inspection by Members of the



accounts and books of the Association, or any of them, and subsequent to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

- (d) At each annual general meeting the Trustees 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 practice and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees.

## **16. DEPOSIT AND INVESTMENT OF FUNDS**

- (a) The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.
- (b) Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution or any registered bank approved by the Trustees from time to time.
- (c) Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.

## **17. AUDIT**

- (a) Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.
- (b) The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards.

## **18. MANAGING AGENT**

- (a) The Trustees shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a Managing Agent to control, manage and administer the Township and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies, provided that a Managing Agent shall be appointed for a year at a time, and unless the Trustees notify the Managing Agent to the contrary, such appointment will be automatically renewed from year to year.
- (b) The Trustees shall ensure that there is included in the contract of appointment of a Managing Agent a provision to the effect that if the Managing Agent is in breach of any of the provisions of his contract or if he is guilty of conduct which at common law



would justify the termination of a contract between master and servant, the Trustees may, without notice, cancel such contract of employment and the Managing Agent shall have no claim whatsoever against the Trustees and/ or the Association as a result of such cancellation.

- (c) With effect from the date of commencement of the Association or as soon as required and practically possible thereafter, the Developer Trustees will appoint the first Managing Agent for a period of 60 (sixty) months.

## **MEETINGS**

### **19. TRUSTEE MEETINGS AND RESOLUTIONS**

- (a) The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this Constitution.
- (b) Meetings of the Trustees shall be held at least once every 6 (six) months.
- (c) The Chairman always has the right to convene meetings of Trustees, in a manner as may be decided by the Trustees from time to time.
- (d) A Trustee may, provided he has the support in writing of 2 (two) other Trustees, at any time convene a meeting of Trustees by giving to the other Trustees not less than 14 (fourteen) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- (e) A resolution in writing signed by all the Trustees shall be valid and effectual as if it had been passed at a meeting of Trustees duly called and constituted.
- (f) The quorum necessary for the holding of any meeting of Trustees shall be 5 (five) Trustees present personally provided that, until conclusion of the Development Period, no less than 4 (four) Trustees present are Developer Trustees.
- (g) Any resolution of the Trustees shall be carried by a simple majority of all votes cast.
- (h) The Chairman shall preside as such at all meetings of Trustees provided that, should at any meeting of Trustees the Chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the Trustees shall vote to appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- (i) The Trustees shall:
  - (i) ensure that minutes are taken of every meeting of Trustees, although not necessarily verbatim, which minutes shall be reduced to writing without undue



delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting;

- (ii) cause such minutes to be kept of all meetings of the Trustees in a minute book of meetings of Trustees kept for that purpose;
  - (iii) keep all books of meetings of Trustees in perpetuity;
  - (iv) on the written application of any Member, make all minutes of their proceedings available for inspection by such Member.
- (j) All Resolutions recorded in the minutes of any meeting of Trustees 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 Trustees 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.
- (k) Save as otherwise provided in this Constitution, the proceedings at any meeting of Trustees shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

## **20. ANNUAL GENERAL MEETINGS**

- (a) The Association shall, at a date, place and time determined by the Developer, hold its first general meeting which shall be in the nature of an annual general meeting. Thereafter, within 3 (three) months of each financial year end of the Association, it shall hold subsequent annual general meetings.
- (b) Such annual general meetings shall be held at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time.

## **21. NOTICES OF MEETINGS**

- (a) An annual general meeting shall be called by not less than 21 (twenty one) days notice to all Trustees and Owners, and a special general meeting by not less than 14 (fourteen) days notice to all Trustees and Owners, as provided in clause 5.3 (b). The notice shall specify the place, the day and the hour of the meeting and, in the case of special business in addition to any other requirements contained in this Constitution, the general nature of that business and the reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the Trustees, to such persons as are, under this Constitution, entitled to receive such notices from the Association.
- (b) Notice of the annual general meeting shall be by posting thereof to each Member at his domicilium citandi et executandi, and delivery to the Developer and each trustee.



- (c) The non-receipt of notice of a meeting by any person entitled to receive notice, other than the Developer, shall not invalidate the proceedings of that meeting.

## **22. QUORUM**

- (a) The quorum necessary for the holding of any general meeting shall be 15%(fifteen per centum) the Members, present personally or by proxy, provided that during the Development Period, at least one Developer Trustee must be present.
- (b) If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the Members present or represented by proxy shall constitute a quorum, provided that during the Development Period, at least one Developer Trustee must be present.

## **23. AGENDA AT ANNUAL GENERAL MEETINGS**

In addition to any other matters required by legislation or by this Constitution to be dealt with at any annual general meeting, the following matters shall be dealt with at every annual general meeting:

- (a) consideration of the Chairman's report;
- (b) the announcement of the appointment of the new Developer Trustees;
- (c) election of new Member Trustees;
- (d) consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting;
- (e) the consideration and confirmation of the budget as presented by the Trustees;
- (f) any other business pertinent to such meeting, including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions.

## **24. PROCEDURE AT MEETINGS**

- (a) The Chairman shall preside as such at all meetings provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Trustees present at such meeting shall vote to appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.



- (b) Save as otherwise provided in this Constitution, the proceedings at any meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- (c) The Chairman may, adjourn a meeting from time to time and from place to place. No notice need to be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for 30 (thirty) days or more, in which event notice is to be given in the same manner as the original meeting. No business shall be transacted at any adjourned meeting other than the business that might have been transacted at the meeting from which the adjournment took place.
- (d) Unless any Member present shall, before closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted. An entry in the minutes of the Association to the effect that any resolution has been adopted or rejected, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.
- (e) Owners shall be entitled to attend all general meetings and shall, subject to the discipline exercised by the Chairman, be allowed to speak.

## **25. VOTING AT MEETINGS**

- (a) At every meeting of Trustees and at all general meetings:
  - (i) every Member shall have one vote, irrespective of the number of Erven or Units registered in his name; and
  - (ii) the Developer shall at all times, until conclusion of the Development Period, hold a number of votes representing 51% of the number of Members.
- (b) No owner being in arrear with his levy payments, shall be entitled to speak or vote at a meeting

## **26. MINUTES OF GENERAL MEETINGS**

- (a) The Trustees shall:
  - (i) ensure that minutes are taken of every general meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting;



- (ii) cause such minutes to be kept of all meetings of the Trustees in a minute book of meetings of Trustees, and in a general minute book in respect of the general meetings;
  - (iii) keep all minutes of all meetings in perpetuity;
  - (iv) on the written application of any Owner, make all minutes of the proceedings available for inspection by such Owner, without being obliged to produce copies.
- (b) All Resolutions recorded in the minutes of any 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 Resolution shall be of any force or effect, or shall be binding upon the Members, Trustees or Owners, unless such Resolution is competent within the powers of the Trustees.

### ***MEMBERS AND OWNERS' RIGHTS AND OBLIGATIONS***

#### **27. GENERAL**

- (a) Every Member is obliged to comply with:
  - (i) the provisions of this Constitution, its annexures, and all rules or regulations passed by the Association or the Trustees;
  - (ii) the provisions of the Guide;
  - (iii) any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member; and/ or upon owners;
  - (iv) any directive given by the Association and/ or the Trustees in enforcing the provisions of this Constitution.
- (b) Every Member and the members of Member Associations shall to the best of his ability, further the objects and interests of the Association.
- (c) Members shall be jointly and severally liable for debts and expenditure incurred by the Association.
- (d) An Owner shall not be entitled to alienate or transfer an Erf, Commercial Erf, GR Erf or Unit without the written consent of the Developer during the Development Period and, thereafter, of the Trustees which consent shall not be unreasonably withheld provided that all levies due in respect of such Erf or Unit have been paid or secured to their satisfaction, and there has been compliance with the provisions of this Constitution, and the provisions of the Rules and Guide.



- (e) No more than two original Erven may be consolidated. An Owner shall not consolidate an Erf with another Erf without the written consent of the Developer during the Development Period and, thereafter, by the Trustees.

## 28. DOMICILIUM OF OWNER

- (a) The *domicilium citandi et executandi* of each Owner at which all documents and notices may be delivered, shall be the street address of the Owner's Erf or Unit.
- (b) It shall be competent to give any notice to an Owner/ Member by telefax where the Owner/ Member has advised the Trustees in writing of his telefax number.
- (c) Notice should be deemed to have been properly served on the date of posting or disposal thereof to the Member/ Owner's domicilium address, or elected telefax number.

## 29. CONDUCT AND CONDUCT RULES

- (a) Each Owner shall:
  - (i) maintain his Erf and/ or Section in accordance with the Guide and the Rules respectively, including the rules applicable to sectional title schemes;
  - (ii) maintain in a neat and tidy condition and in a state of good repair all Improvements on his Erf / Section / exclusive use area, as the case may be;
  - (iii) in respect of Erven, establish and maintain a garden according to a standard acceptable to the Trustees, as well as maintaining the road verge bordering his Erf;
  - (iv) in respect of Erven, be responsible for the maintenance of external and boundary walls inclusive of regular painting thereof;
  - (v) not park any commercial type vehicle, boat, caravan, trailer, or a vehicle not in good working order, on any roadway in the Township and such vehicle, boat, caravan, or trailer shall be parked on the Owner's Erf, where applicable, so as not to be visible from the street forming a boundary of such Erf;
  - (vi) not do or suffer to be done on any Erf or in any Section anything which, in the opinion of the Trustees, is noisome, unsightly, injurious, hazardous, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any Owner, tenant or occupier of any Erf or Section in the Township;



- (vii) not, during construction/erection of Improvements, permit the erection of more than 1 (one) advertising board on an Erf and such permitted board shall not have a surface area exceeding 1 (one) square metre and shall be removed immediately upon conclusion of the building contract for the Improvements;
  - (viii) not erect or permit the erection of any advertising boards on any Erf or near any Section without the written approval of the Developer during the Development Period, and, thereafter, of the Trustees;
  - (ix) adequately insure the Improvements on his Erf and, if requested by the Trustees, furnish proof of such insurance to them and, in the event of total/partial destruction, he shall, within a reasonable time period, make good such damage or reconstruction in accordance with the original approved plans or, in the event of total destruction in accordance with the Guide;
- (b) if the erection of structures to house animals or birds or the construction/erection of garden/tool shed(s) is permitted, such structures shall be screened from public view and the animals or birds so housed shall not constitute a disturbance or nuisance to Owners or their tenants or occupiers and the Trustees shall, in their absolute discretion, be entitled to require the permanent removal from the Township of any animals or birds and such structures, which, in the opinion of the Trustees, are unsightly or constitute a disturbance or nuisance;
  - (c) comply with all security procedures and directives implemented and issued from time to time by the Trustees;
  - (d) generally ensure that gardening and landscaping of his Erf / Section is undertaken so as to be compatible with the gardening and landscaping of adjoining Erven / Units;
  - (e) ensure that his dog is kept on a leash in all open areas within the Township and is controlled to ensure that other animals are not interfered with and, in particular, that no nuisance whatsoever is caused by such dog and that the dog does not cause uncleared fouling of sidewalks within the Township or on the Club Course or on open spaces within the Township;
  - (f) adhere strictly to the terms of servitudes granting access to Erven and Sections;
  - (g) ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on open areas of the Township and that planting on his Erf does not interfere with pedestrian traffic or obscure the vision of motorists;
  - (h) tolerate access to irrigation pipe lines;
  - (i) not erect any structure over the sewage system;



- (j) shall pay a deposit as may be determined by the Trustees from time to time, in respect of any damage that may be caused to the property of the Association by such Owner, his family, employees, contractors, visitors, agents or any other person whatsoever, before the commencement of any building operations. The said deposit without interest shall be refunded to the Owner upon completion of building operations to the satisfaction of the Association, on condition that all his obligations towards the Association have been discharged.

### **30. USAGE (RESTRICTIONS)**

- (a) No Owner shall apply for the rezoning of his Erf or Unit with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his Erf or Unit for any purpose other than the permitted use applicable upon establishment of the Township without the prior written consent of the Developer or, subsequent to the Development Period, by the Trustees in terms of an ordinary resolution of the Association.
- (b) In respect of (a), the following must be complied with:
  - (1) any Owner wishing to conduct a business on his Erf or who wishes to use his Erf for purposes other than residential, shall apply in writing to the Trustees for permission to do so. The Trustees shall be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or to approve the application subject to such conditions as the Trustees deem necessary;
  - (2) an application in terms of the foregoing shall contain a full description of the proposed business or usage, including but not limited to:
    - (i) the type of business;
    - (ii) the number of full time and/ or part time staff;
    - (iii) the times and duration of the business operation, including the number of days per week;
    - (iv) the projected growth of the business operation;
    - (v) whether any alteration to the existing Improvements is proposed;
    - (vi) in which portion of the Improvements the business activity is to be located;
    - (vii) the number and type of vehicles which will be regularly involved in the business operation;



- (viii) the estimated number of visitors per week resulting from the business operation;
  - (ix) the estimated number of deliveries necessitated by the business operation;
  - (x) what provision is to be made for parking;
  - (xi) the likely impact of the business operation on neighboring properties and the neighborhood in general.
- (3) The Trustees shall not approve any such application unless they are satisfied that the application complies with the following:
- (i) the business operation will not detrimentally alter the character of the neighborhood or affect the privacy and rights of neighbors;
  - (ii) the number of employees involved in the running of the business operation will not exceed 2 (two);
  - (iii) the Owner or occupier will reside permanently on the Erf in respect whereof the application is made;
  - (iv) owners who are affected by the application consent thereto in writing;
  - (v) adequate provision has been made for parking within the Erf and the landscaping of the Erf will be suitable for the type of business contemplated and that no parking of vehicles off the Erf within the Township will result from the business operation;
  - (vi) the granting of the application will not have any significant effect on the density of traffic in the Township;
  - (vii) non-residents will not be afforded uncontrolled access into the Township;
  - (viii) no signage will be erected;
  - (ix) the hours of the business operation will be confined between 08h00 and 18h00 on weekdays and no business will be conducted on Saturdays, Sundays and proclaimed public holidays.
- (4) Should any Owner to whom permission has been granted for the conduct of a business change any aspect of such business then such Owner shall submit a



fresh application in accordance with the provisions hereof to continue such business.

- (5) No Owner to whom approval has been granted shall be entitled to erect any sign or advertisement on his Erf or on any of the common areas in the Township in connection with such business save with the approval of the Association.
  - (6) No person shall be entitled to conduct a guest house or similar establishment in any portion of the Township, other than the Hotel, in respect of the Hotel and the Estate Lodges and the Trustees shall not at any time or under any circumstances be entitled to approve such usage.
- (c) No Owner shall permit the number of occupants of his Erf to exceed 2 (two) persons per bedroom. The word “occupants” shall include but shall not be limited to any person who resides or stays on such Erf on a regular or occasional basis irrespective of whether such person is related to or is financially dependent upon the Owner or whether such person pays rental or gives any other form of consideration in respect of such Erf or any portion thereof.
  - (d) Subdivision of any Erf may only be allowed subject to the written consent of the Developer or, subsequent to the Development Period, by the Trustees in terms of an ordinary resolution of the Association.

### **31. ENVIRONMENTAL, ARCHITECTURAL AND LANDSCAPING GUIDE**

- (a) The Guide constitutes an integral part of this Constitution and it may be amended, substituted, added to or repealed at the instance of the Trustees, subject to the Trustees’ discretion to interpret the provisions of the Guide and the power of the Trustees to allow minor deviations or delegate a discretion to allow minor deviations, to a Aesthetics and Environmental Committee appointed by the Trustees, of which the Architect shall be a member. All rulings by the Aesthetics and Environmental Committee shall be subject to the overriding discretion of the Trustees.
- (b) All landscaping, plants and all Improvements shall be of approved design and of sound construction and shall comply with the provisions of the Guide.
- (c) No construction or erection of or addition to, Improvements on an Erf may commence prior to the approval of plans for such Improvements and, in this regard:
  - (i) a full set of proposed building plans which indicate both construction and design details shall be submitted to the Aesthetics and Environmental Committee;
  - (ii) thereafter, the approved plans shall be submitted to the Local Authority for approval;



- (iii) having obtained the approval of the Local Authority, the Owner shall comply with all terms, conditions and changes required by the Aesthetics and Environmental Committee, conditions and standards imposed by the Local authority insofar as these may be additional to the requirements of the Guide read with the plans.
  - (iv) a scrutiny fee determined by and payable to the Aesthetics and Environmental Committee shall be payable by the Owner.
- (d) Approval of building plans will not be granted by the Local Authority without the prior written approval of the Aesthetics and Environmental Committee thereto which approval shall be evidenced by an endorsement by the Aesthetics and Environmental Committee.

## 32. BREACH

- (a) The Trustees may on behalf of and in the name of the Association institute legal proceedings against Members which are in breach of any of the Provisions of this Constitution, the Rules or the Guide.
- (b) The Trustees may on behalf of and in the name of the Association serve notice on such Member in breach, calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance:
  - (i) enter upon the Erf or Section or exclusive use area, (as the case may be) to take such action as may be reasonably required to remedy the breach and the Owner concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand; and/ or
  - (ii) call upon such Member/ Owner in writing to remove or alter within a specified period any portion of the Improvements or any addition erected contrary to the provisions of this Constitution read with the Rules and the Guide and, failing which, the matter shall be referred to a special meeting of the Association convened to afford Members/ Owners the opportunity to give directives to the Trustees. The Resolution of the Association at such meeting shall be binding upon such defaulting Member/ Owner and shall be implemented by the Trustees; and/ or
  - (iii) institute proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary and such Member/ Owner shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief.
- (c) If any Member fails to make payment on due date of levies or other amounts payable by such Member/ Owner, the Trustees may give notice to such Member/ Owner requiring him to remedy such breach within such period as the Trustees may



determine and should he fail to timeously remedy his breach, the Trustees may, on behalf of the Association, institute legal proceedings against such Member/ Owner without further notice and such Member/ Owner will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association in obtaining recovery, including interest and any arrear amounts at a rate to be determined by the Trustees from time to time.

- (d) Nothing in the foregoing shall derogate from or in any way diminish the right of the Association to institute proceedings in any court of competent jurisdiction for recovery of any money due by any Member/ Owner arising from any cause of action whatsoever or for any other relief.
- (e) In the event of any breach of this Constitution by the members of any Owner's household or his invitees or lessees, such breach shall be deemed to have been committed by the Owner himself but, without prejudice to the foregoing, the Trustees shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the Owner.

### ***THE DEVELOPER***

#### **33. GENERAL**

The Developer shall not be obliged to pay levies in respect of any portion of the Township, and the Developer's obligation in respect of expenses shall be governed by the provisions of this Constitution.

#### **34. PHASED DEVELOPMENT**

- (a) The Developer intends to develop and market the Township in phases as the Developer deems fit and, for as long as the Developer is a Member of the Association, the Developer shall enjoy unrestricted rights with regard to the marketing of the Township and, in particular, the right to erect signage within the Township, and to perform all activities normally associated with development and building operations.
- (b) The Developer shall, in its absolute discretion, be entitled to exclude land or include further land in the Development, increase or decrease the number of erven, and/ or vary the layout and/ or zoning and/ or size and/ or boundaries of Erven and/ or the extent and position of streets comprising the Township and the Association and Members shall be bound thereby and shall have no claim of whatever nature against the Developer arising there from. Insofar as the consent of an Owner is required for any of the foregoing, the Developer (represented by any one of its Directors) is irrevocably granted a power of attorney to grant any/ all such consents on behalf of Owners, as may be required.



### **35. TRANSFER OF LAND**

The Developer shall, free of consideration, transfer to the Association the Private Open Space and private roads demarcated as such on the approved surveyor's diagrams in respect of the Township from time to time. Upon registration of transfer to the Association, the risk in such Private Open Space and private open roads passes to the Association and the Association becomes responsible for the maintenance and upkeep thereof as well as for the rates and taxes and all charges attaching thereto.

#### ***RELATIONSHIP WITH GOLF CLUB***

### **36. MEMBERSHIP**

- (a) The Golf Club shall accept at least one person per Erf or Unit as a member subject to their normal conditions of acceptance. Further persons may apply for membership which may be granted at the Golf Club's discretion. Membership is not transferable and subsequent owners of the Erf or Unit must apply for membership in the normal manner.
- (b) The Owner, and any other member of his household, if a member of the Golf Club, is obliged to abide by the constitution, rules, and discipline of the Golf Club and the Golf Club may terminate membership forthwith in the event of non-compliance, without recourse.

#### ***GENERAL***

### **37. INDEMNITY**

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



### **38. 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 Chairman, 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 Trustees, or any sub-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 meeting of Trustees, 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.

### **39. RISK**

Any person using any of the services, land or facilities of the Association does so entirely at his own risk.

### **40. AMENDMENT OF CONSTITUTION**

- (a) No provision hereof shall be added to, amended, substituted or repealed without the prior consent in writing of:
  - (i) the Local Authority, and
  - (ii) the Developer during the Development Period.
- (b) Subject to the right of the Developer to amend the Constitution until conclusion of the Development Period, any amendment, substitution, or repeal of a provision of this Constitution shall require the approval of at least 60% (sixty per centum) of the total number of votes of Members of the Association present or represented at a general meeting called specifically for such purpose, provided that a special quorum of 30% (thirty per centum) of the Members are present or represented by proxy thereat, and that the notice of such meeting shall, in addition to complying with the requirement for the convening of a meeting, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.

### **41. IMPOSITION OF PENALTIES**

- (a) If the conduct of an Owner, an occupier or their visitors, constitutes a nuisance in the opinion of the Trustees, or if an Owner or occupier contravenes, breaches, disobeys or disregards this Constitution or any Rules or the Guide, the Trustees may furnish the Owner and occupier (if applicable) with a written notice which may in the discretion of



the Trustees be delivered by hand or by registered post. In the notice the particular conduct which constitutes a nuisance must be adequately described or the clause or rule that has allegedly been contravened must be clearly indicated, and the Owner must be warned that if he or his occupier or visitor persists in such conduct or contravention, a fine will be imposed on him.

- (b) If the Owner, occupier or visitor nevertheless persists in that particular conduct or in the contravention of that particular clause or rule, the Trustees may convene a meeting of Trustees to discuss the matter and to impose a fine.
- (c) A written notice by which he is informed of the purpose of the meeting and invited to attend, must be sent to the Owner and occupier (if applicable) at least 7 (seven) days before the meeting is held. At the meeting the Owner and occupier (if applicable) must be given the opportunity to present his case, orally or by way of a submission in writing, but except in so far as may be permitted by the chairperson, he may not participate in the affairs of or voting at the meeting.
- (d) After the Owner or occupier has been given the opportunity to present his or her case, the Trustees may by way of a special resolution (75% of the trustees present at the meeting with a minimum of four trustees), impose upon the Owner, an *initial penalty* for the first offence and a *subsequent penalty* for every identical offence thereafter.
- (e) Any fine imposed in terms of (d), may if it is not paid within 14 days after the Owner has been notified of the imposition of the fine, be added to the contribution which an Owner is obliged to pay in terms of 3.1 and claimed by the Association as part of the monthly levy payable by the Owner.
- (f) The Trustees may, from time to time, determine the amount of the *initial* and *subsequent* penalties.
- (g) Notwithstanding sub-rules (a) to (g), in suitable circumstances the Trustees may apply to a Court having jurisdiction, for an order or interdict if an Owner or occupier contravenes, breaches, disobeys or disregards this Constitution, its annexures, or any rules or regulations passed by the Association or the Trustees.

## 42. ARBITRATION

- (a) Should any dispute, question or difference arise between Members/ Owners or between a Member/ Owner and Trustees out of or in regard to:
  - (i) the interpretation of;
  - (ii) the effect of;
  - (iii) their respective rights or obligations under;



- (iv) a breach of (save for non-payment of levies or any other amount due by a Member/ Owner in terms of this Constitution),

this Constitution, such dispute shall be decided by arbitration in the manner set out in this clause.

- (b) In respect of any claim arising from non-payment of levies or any other amount due by a Member/ Owner to the Association in terms of this Constitution, the Association and Trustees shall continue to enjoy common law rights and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.
- (c) The arbitration referred to in clause (a) shall:
  - (i) be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and
  - (ii) commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded; and
  - (iii) be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.
- (d) The arbitrator shall be a practising senior counsel or attorney of not less than 5 (five) years standing appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing such agreement within the 7 (seven) day period, appointed by the President of the Cape Law Society.
- (e) The arbitrator shall in giving his award have regard to the principles contained in this Constitution, the Rules and the Guide, and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by him in arriving at his decision.
- (f) The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- (g) Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings:



- (i) shall be final and binding on each of them; and
  - (ii) shall be carried into effect immediately; and
  - (iii) may be made an order of any Court to whose jurisdiction the parties are subject.
- (g) Notwithstanding anything to the contrary contained in this clause 9.6, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Constitution, including the Rules and the Guide.

#### **43. ALIENATION AND DEVELOPMENT OF PRIVATE OPEN SPACES**

Subject to the rights of the Developer during the Development Period, it is recorded that Owners have a shared interest in the Private Open Spaces of the Association and it may only be alienated, developed, destroyed or substantially altered if authorised by a resolution supported by not less than 80% of all Members, subject to a special quorum of 50% and the written consent of every Owner of an Erf adjacent to the affected part of the Private Open Spaces.

#### **44. SUB-ASSOCIATIONS**

- (a) The Developer shall, in his entire discretion, divide the Township in Sub-Associations consisting of sub-home owners' associations and sectional title bodies corporate, any of which could consist of residential or commercial or other appropriate portions or facilities, including a retirement resort, if he so chooses.
- (b) Each Sub-Association shall have its own constitution or Management and Conduct Rules, as the case may be, which will initially be formulated by the Developer in his entire discretion. All Members shall be bound by the provisions of the constitution or rules applicable to his Sub-Association.
- (c) Each Sub-Association shall be empowered to approve a budget and to determine its own levies relating to expenses which are not of a general nature to the Township, and shall delegate the collection of such levies and other administrative functions to the Association.
- (d) Each Sub-Association shall be entitled to representation on the board of Trustees of the Association, as from such date as the Sub-Association becomes functional, in the entire discretion of the Developer.



#### 45. INCOME TAX EXEMPTION

- (a) Should the provision of this Clause conflict with any other provisions of the Constitution, the provisions of this Clause 45 shall prevail.
- (b) The sole object of the Association shall be to manage collective interests common to all its members, which includes expenditure applicable to the common property of such members and the collection of levies for which such members are liable.
- (c) The Association is not permitted to distribute its funds to any person other than to a similar Association of persons.
- (d) 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 act.
- (e) Any amendments to the Constitution must be submitted to the Commissioner for the South African Revenue Services.
- (f) 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 become payable by any person under the Income Tax Act or any other Act administered by the commissioner for the South African Revenue Service.
- (g) Annual income tax return must be submitted to the Tax Exemption Unit.