



BLOUWATERBAAI ■ WEST COAST

CONSTITUTION OF
BLUE BAY VILLAGE
OWNERS' ASSOCIATION

Version 2.1.2

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1. TERMINOLOGY, INTERPRETATION AND ANNEXURES

- (1) The words and expressions used herein shall, for the purposes of this Constitution, have the meanings assigned to them as follows:

Act	The Sectional Title Schemes Management Act, No 8 of 2011.
Accounting Officer	A person qualified to perform the duties of an accounting officer in terms of section 60(2) of the Close Corporation Act No 69 of 1984.
Association	Blue Bay Village Owners' Association.
Architect	Such architect as may be appointed by the Developer from time to time and, after the Completion Date, by the Executive Committee.
Attorney	Such attorney, being a practising conveyancer, as may be appointed by the Developer from time to time and, after the Completion Date, by the Executive Committee.
Auditor	An auditor qualified to act as such in terms of the Public Accountants and Auditors Act No 51 of 1951.
Budget	An itemized financial estimate of income and expenditure of the Association and/or of the Schemes for the ensuing Financial Year.
Building and Environmental Manual	Building and Environmental Manual applicable to the Village as determined in terms of Clause 9 hereof.
Communal Property	Portions of the Village and facilities and services as are available for the use and enjoyment of owners and Occupiers of one or more Schemes, including private open space but excluding the common property of any sectional title scheme.
Commencement Date	The date upon which the first Erf or Unit is transferred by the Developer to an Owner.
Completion date	Date of transfer of last Erf or Unit by the Developer to an Owner, or such earlier date as the Developer may determine by written notice to the Association.
Component	A portion of the development in which one of the three types of housing is situated, namely General Housing, Town House, or Sectional Title.

Developer	Blouwaterbaai Vakansie Oord, No 2006/176664/23, or its successors in title.
Development Period	The period from the Commencement Date until the Completion Date.
Directive	A directive issued by the Executive Committee in accordance with the provisions of Clause 6(13)(a).
Dwelling	A building intended as a single residence constructed on an Erf.
Erf	A residential Erf situated in the Village.
Exclusive use area	In respect of a sectional title scheme situated within the Village, an exclusive use area as defined in the Act.
Extension Land	Such additional adjoining land as the Developer may add to the Village within a period of five years from establishment of the Association.
Fund	A common fund for performing all functions of the Association and including separation of Fund accounts for individual schemes, to defray all expenses and other financial obligations incurred as contemplated in Clause 7(1).
Land	The land upon which the Village is situated or to be situated, namely Portion 13 (a portion of Portion 5) of the Farm Pienaarspoort No 197, Vredenburg, held under Deed of Transfer No T 53161/1991, together with any Extension Land.
Levies	Financial contributions by Owners determined in terms of Clause 7(2).
Levy Clearance Certificate	A certificate issued in terms of the provisions of Clause 7(8).
LUPO	Land Use Planning Ordinance (Cape), No 15 of 1985, substituted by the Western Cape Land Use Planning Act, No 3 of 2014.
LUPO Scheme	A housing scheme in the Village, not being a sectional title scheme, established in terms of LUPO.
Manager	A manager or managing agent appointed in terms of Clause 6(16).
Management Rules	The management rules prescribed under the Act, as may be amended for each sectional title Scheme.
Member	A member of the Association, being an Owner.

Municipality	Municipality of Saldanha Bay.
Occupation date	The date upon which an owner or Occupier has taken occupation of a Dwelling.
Occupier	A lessee or other occupant of a dwelling.
Office	Such place or address as may be determined by the Executive Committee or, during the Development Period, by the Developer.
Ombud Act	The Community Schemes Ombud Service Act, No 9 of 2011.
Ombud Service	The service provided in terms of the Ombud Act.
Owner	The registered owner of an Erf or a Unit, having obtained transfer from the Developer, or any successor in title of such person.
Registered mortgagee	A mortgagee as described in the Act.
Representatives	The Representatives appointed in terms of Clause 6(3), and, during the Development Period, the Representatives appointed by the Developer.
Rules	Rules established in pursuance of Clause 9 of this Constitution.
Scheme	A development scheme, whether a sectional title scheme or LUPO scheme, developed or to be developed as a component Scheme within the boundaries of the Village.
Section	A section in a Scheme, being a sectional title scheme, as defined in the Act.
Shared Expenses	Financial obligations and expense items related to matters common to all Schemes, including but not limited to roads, public open spaces, services and facilities, and administrative expenses of the Association, but excluding expenses relating to the common property of any sectional title scheme.
Special items	Expense items which are assigned to a particular scheme exclusively.
Village Plan	The draft subdivisional plan attached hereto as Annexure A.
Unit	In respect of a Scheme being a sectional title scheme, a unit as defined in the Act.
Village	The entire development known as Blue Bay Village, comprising Schemes established or to be established on

	the land described as: Portion 13 (a portion of Portion 5) of the farm Pienaars Poort No 197, situate in the Municipality Vredenburg-Saldanha, Western Cape Province; measuring 10,1788 ha; held under Deed of Transfer No T 53161/1991.
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- (2) The following rules shall apply in respect of the interpretation of this Constitution:
- (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 all other 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 Member or on the Association, then, notwithstanding that it is only contained in the definitions clause of this Constitution, effect shall be given to it as if it were a substantive provision of this Constitution.

- (h) Annexures to this Constitution are deemed to be incorporated in, and form part of, this Constitution.
 - (i) If any provision in an Annexure to this Constitution, or in the Constitution or Rules of a Scheme should be in conflict with any provision of this Constitution, the provision of this Constitution shall prevail.
- (3) The Following Annexures accompany this Constitution: -
- (a) Annexure A: VILLAGE PLAN
 - (b) Annexure B: HOUSE RULES
 - (c) Annexure C: BUILDING AND ENVIRONMENTAL MANUAL
 - (d) Annexure D: TRI-PARTITE AGREEMENT

2. STATUS

- (1) This is the Constitution of Blue Bay Village Owners' Association, herein referred to as the Association, a juristic person being a master association with specified powers and functions as described in this Constitution, for the development schemes known or to be known as: -
- (a) a LUPO housing (General Housing) Scheme consisting of free-standing dwellings on individual Erven to be known as Blue Bay Village Residential;
 - (b) a LUPO housing (Town House) Scheme of higher density, being semi-detached dwellings on separate Erven, to be known as Blue Bay Town Houses;
 - (c) A sectional title scheme to be known as Marcus and to be established on Erf 52;
 - (d) A sectional title scheme to be known as Malgas and to be established on Erf 53;

- (e) A sectional title scheme to be known as Vondeling and to be established on Erf 54; and
- (f) A sectional title scheme to be known as Jutten and to be established on Erf 56;

hereinafter individually referred to as the Schemes, or jointly as the Village.

- (2) The Association shall be deemed to be established on the date of registration of transfer of the first Erf or Unit in any Scheme from the Developer to an Owner, and this Constitution, the Rules and the Building and Environmental Manual, as may be amended from time to time, shall then become and remain binding upon the Association, the Schemes, the Developer and all Owners and, as may be applicable, upon all Occupiers.
- (3) All functions and powers of the Schemes are assigned to the Association;
- (4) All functions and powers of the trustees of the schemes are assigned to the Executive Committee.
- (5) The Association has the capacity to acquire and own movable and immovable property, to deal therewith, dispose thereof and to acquire, grant and dispose of real rights in its own name. It may enter into contracts, acquire rights and obligations, and sue or be sued in its own name.
- (6) The *domicilium citandi et executandi* of the Association shall be a physical address within the magisterial area in which the Village is situated, as may be determined by the Executive Committee from time to time.
- (7) The Association may not pay out any of its Funds to members, except to rectify errors or in terms of a court order, or in settlement of a claim for damages, or upon partial or complete destruction of the Village.

3. OBJECTIVES

The objectives of the Association and this Constitution are: -

- (1) to procure, ensure and regulate membership of all Owners in the Village;
- (2) to procure the inclusion of the area at present being administered under the Pienaarspoort Property Owners' Association as a part of the Village, under the authority of this Constitution;
- (3) to serve as a Master Owners' Association for the Schemes, including sectional title Schemes, to manage, administer and control all aspects of exclusive and common interest of such Schemes, including administration and financial management, maintenance of Communal Property, improvements, services and facilities, to the exclusion of the functions and powers which would normally vest in the Schemes, as contemplated in Regulation 6(4) to the Act;
- (4) in the case of sectional title Schemes, to serve *in lieu* of management rules as contemplated in Section 10 of the Act;
- (5) to ensure the viability of the Village as a residential township;
- (6) to establish a fund or funds to defray the expenses of the Association and of the Schemes, and to determine and collect Levies for the purposes of the said fund from Owners;
- (7) to enforce Owners' obligations in terms of this Constitution, the Building and Environmental Manual, and Rules created in terms hereof;
- (8) to ensure compliance with all legal requirements of the Municipality or any other authority, including the conditions of establishment and rezoning imposed by such authorities, and in particular to control building activities in the Village and to perform maintenance and management of open areas, in terms of building and environmental guidelines;
- (9) to perform and ensure proper maintenance and promotion of harmony in the physical and social environment of the Village;

- (10) 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 Executive Committee;
- (11) to control the transfer of Erven and Units in the Village and ensure compliance with financial requirements of the Village, conditions imposed by the Municipality and conditions imposed by the Developer in any Agreement of Sale between the Developer and the first Owner of an Erf or Unit;
- (12) to take transfer of, maintain and where necessary to ensure the roads, the Private Open Space and improvements thereupon in the Village, and to control the usage thereof and of the facilities belonging to the Association or falling under its control;
- (13) to establish, maintain and enforce suitable rules and building, architectural and environmental guidelines; and
- (14) in general, to manage, protect and promote the common and diverse interests of Members as homeowners in the Village;

and the Association shall have powers to perform such acts as are necessary and reasonably required to accomplish the fulfilment of the foregoing objectives including, but not restricted, to powers specifically contained in this Constitution, the Rules and the Building and Environmental Manual.

4. MEMBERSHIP

- (1) Membership of the Association shall be automatic, compulsory and limited to and for every Owner and the Developer.
- (2) Membership shall commence: -
 - (a) for the Developer, simultaneously with the first transfer of an Erf or Unit to an Owner;

- (b) for an Owner, simultaneously with the transfer of an Erf or Unit into such person's name;
- (3) Where any Erf or Unit is registered in the name of more than one person, all the registered owners of such Erf or Unit shall be deemed jointly and severally to be one Member.
- (4) When a Member ceases to own an Erf or a Unit in the Village, he or she shall automatically cease to be a Member of the Association.
- (5) The Developer's membership shall terminate upon transfer of the last Unit in the Village, subject to the reservations stipulated in Clause 14(1).
- (6) An Owner may not resign as a Member of the Association, nor may his or her membership or entitlements in terms of this Constitution be ceded or transferred to another, and every Member must: -
 - (a) to the best of his or her ability adhere to and promote the objects and interests of the Association;
 - (b) observe and comply with the provisions of the Act (as may be applicable), this Constitution, its Annexures, the Rules, Building and Environmental Manual, and Directives made by the Executive Committee.
- (7) The *domicilium citandi et executandi* of a Member shall be the address of the Section or Erf registered in his or her name: Provided that such Member shall be entitled from time to time to change the said *domicilium* but that any new *domicilium* selected shall be a physical address situated in the Republic, and that the change shall only be effective on receipt of written notice thereof by the Association at its Office.

5. FUNCTIONS AND POWERS OF THE ASSOCIATION

- (1) The Association shall exercise the powers and perform the functions entrusted to the individual Schemes as set out in this Constitution, the Act (where applicable), the Rules, and Building and Environmental Manual, and shall exercise and perform such ancillary powers and

functions as are not in conflict with the provisions of the said authorities, as may be necessary in pursuit of its objectives.

- (2) The Association accepts assignment and delegation of the functions and powers in respect of each Scheme including, for the purposes of Regulation 6(4) of the Act, each sectional title Scheme.
- (3) It shall be a specific duty of the Executive Committee to comply with the requirements of the Act and the Management Rules in respect of maintenance plans for each sectional title Scheme.

6. EXECUTIVE COMMITTEE, REPRESENTATIVES, MEETINGS, FUNCTIONS AND POWERS, MANAGER

6. (1) General

- (a) The functions and powers of the Association and of the Schemes and their trustees shall, subject to the provisions of this Constitution, the Act (where applicable), the Rules and Building and Environmental Manual, and further subject to such legitimate restrictions and directives issued by Members at a general meeting of the Association, be performed and exercised by the Executive Committee consisting of Representatives appointed in terms of the provisions hereof.
- (b) In respect of each sectional title Scheme, the Executive Committee shall exercise the powers and perform the functions normally assigned to trustees in sectional title schemes.

6. (2) Qualifications of Representatives

Subject to provisions prevailing during the Development Period, a Representative or an alternate Representative shall not be required to be an Owner or a nominee of an Owner who is a juristic person, in order to qualify for office as a Representative, provided that :-

- (a) the majority of the Representatives are Owners, spouses of Owners, or nominees of an entities which are Owners;

- (b) to qualify as an Owner for the purposes of appointment as a Representative, he or she may be an Owner in any Scheme; and
- (c) the Manager or any of his or her employees or an employee of the Association may not be a Representative unless he or she is also an Owner;

6. (3) Appointment of Representatives

- (a) Representatives shall be appointed at each annual general meeting of the Association and shall hold office until the appointment of new Representatives at the next annual general meeting, (but shall be eligible for re-election if so nominated), or until termination of their appointment in any other manner described herein.
- (b) Upon notice of an annual general meeting, each Member shall be provided with a nomination form, to be returned to the Office within 14 days indicating the nomination of three persons to represent the Scheme in which such nominating Member is an Owner; provided that nominations are not restricted to candidates which are Owners in a particular Scheme.
- (c) The Executive Committee and Manager (if any) must collate and count the returned nominations, and obtain the written acceptance of nominees. At the annual general meeting each Scheme shall be deemed to have proposed as Representatives the three persons having received the most nominations by its Members.
- (d) Provided that the conditions imposed by Clause 6(2) have been complied with, the Representatives so proposed by each Scheme shall automatically be deemed to be appointed as Representatives for the subsequent financial year, commencing their duties immediately after the annual general meeting, and the Representatives so appointed shall form the Executive Committee during such period.

- (f) The names of the Representatives appointed according to the above procedures shall be announced at each annual general meeting.

6. (4) Vacancies and Alternates

- (a) The Executive Committee may fill any vacancy in their number. Any Representative so appointed shall hold office until conclusion of the next Annual General Meeting when he or she shall retire but be eligible for re-election.
- (b) The Executive Committee may appoint another person, whether or not he or she is an Owner, to act as an alternate Representative during the absence or inability of any Representative to act.
- (c) An alternate Representative shall have the powers and be subject to the duties of a Representative as set out in this Constitution.
- (d) An alternate Representative shall cease to hold office if the principal ceases to be a Representative, or if the alternate Representative's appointment is revoked by the Executive Committee.

6. (5) Remuneration

- (a) Unless otherwise determined by an ordinary Members' resolution, Representatives who are Owners shall not be entitled to any remuneration in respect of their services as such.
- (b) The Association may remunerate Representatives who are not Owners at such rate as may be determined by an ordinary Members' resolution, provided that an alternate Representative shall claim his or her remuneration, if any, from the Representative whom he or she replaced and not from the Association, unless the Association has been instructed in writing by such Representative to pay any portion of his or her remuneration to such alternate Representative.

- (c) Representatives shall be entitled to have refunded to them any disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers.

6. (6) Validity of Acts by Executive Committee

- (a) Any act performed by the Executive Committee shall, notwithstanding that it is after the performance of the Act discovered that there was some defect in the appointment or the continuance in office of any Representative, be as valid as if such Representative had been duly appointed or had duly continued in office.

6. (7) Indemnity

- (a) Every Representative, agent or other officer or servant of the Association shall be indemnified by the Association against all costs, losses, expenses and claims which he or she may incur or become liable for by reason of any act done by him or her in the discharge of his or her duties, unless such costs, losses, expenses or claims are caused by the *mala fide* or grossly negligent act or omission of such person.
- (b) The Executive Committee shall pay such indemnity out of the funds of the Association.
- (c) The indemnity referred to above shall not apply in favour of any Manager appointed by the Association.

6. (8) Removal from Office and Replacement

- (a) A Representative shall cease to hold office as such upon his or her death, or expiry of his or her term of office, or if -
 - (i) by notice in writing to the Association, he or she resigns his or her office;
 - (ii) he or she is or becomes of unsound mind;

- (iii) if he or she surrenders his or her estate as insolvent, or if his or her estate is sequestrated, whether provisionally or finally;
 - (iv) if he or she is convicted of an offence which involves dishonesty;
 - (v) if by resolution of a general meeting of the Association, he or she is removed from office, provided that the intention to vote upon the removal from office has been specified in the notice convening the meeting;
 - (vi) if he or she is or becomes disqualified in terms of Section 69 and/or 71 of the Companies Act, 2008 from being appointed or acting as a Director of a company.
- (b) The Association may, at a General Meeting, appoint another Representative in the place of any Representative who has ceased to hold office, for the unexpired part of the term of office of the Representative so replaced.

6. (9) Meetings of Executive Committee

- (a) The Representatives may give notice convening meetings, meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. It shall not be necessary to give notice to any Representative for the time being absent from the Republic but notice of any such meeting shall be given to his or her alternate, if one has been appointed, and such an alternate is in the Republic.
- (b) Notwithstanding the general power to convene meetings pursuant to sub-Clause (a) above, any Representative may at any time convene a meeting of the Executive Committee by giving to the other Representatives not less than seven (7) days written notice of a meeting proposed by him or her, 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.

- (c) Any mortgagee holding a first mortgage bond over a Unit shall, if he so requires of the Executive Committee in writing, be entitled to receive reasonable notice of all meetings of the Executive Committee and the nominee of any such first mortgagee shall be entitled to attend and speak at all meetings of the Executive Committee but shall not, in his or her or her capacity as such, be entitled to vote thereat.
- (d) A Member shall be entitled to attend and speak at any meeting of the Executive Committee but shall not in his or her capacity as such, be entitled to vote thereat.

6. (10) Quorum at Meetings of Executive Committee

- (a) At any meeting of the Executive Committee, 50% of the Representatives shall form a quorum.
- (b) If the number of incumbent Representatives falls below the number necessary to form a quorum, the remaining Representative or Representatives may continue to act, but only for the purpose of appointing or co-opting additional Representatives to make up the quorum, or for the purpose of convening a General Meeting of Members.
- (c) If at any meeting of the Executive Committee a quorum is not present within 30 minutes of the appointed time for the meeting, such meeting shall stand adjourned to the next business day at the same time and the Representatives then present, who shall not be less than two (2), shall then form a quorum.

6. (11) Chairman And Vice-Chairman

- (a) At the commencement of the first meeting of the Executive Committee after an Annual General Meeting at which Representatives have been appointed, the Representatives shall elect a Chairman and Vice-Chairman from their number who shall both hold office as such until conclusion of the next Annual General Meeting of the Association.
- (b) The Representatives at an Executive Committee Meeting or the Association at a Special General Meeting, in respect of either of which notice of the intended removal from office of the Chairman or Vice-Chairman has been given, may remove the Chairman and/or Vice-Chairman from his or her office.
- (c) Should a Chairman vacate his or her office or no longer hold office because he or she had been removed by the Representatives or the Association, the Vice-Chairman shall, unless another Chairman is elected by the Representatives, fulfil the duties of the Chairman for the remainder of the Chairman's period of office.
- (d) 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 Vice-Chairman at such meeting shall fulfil the duties of the Chairman and shall have the same voting rights as the Chairman.
- (e) In the event that neither the Chairman nor the Vice-Chairman is present or is for any reason unable to preside at any meeting, the Representatives present at such meeting shall choose another Chairman for such meeting who shall have the same voting rights as the Chairman.

6. (12) Voting at Meetings of Executive Committee

- (a) All matters at any meetings of the Executive Committee shall be determined by the majority of the votes of the Representatives present and voting.
- (b) At Executive Committee meetings, the Chairman shall have a casting vote in addition to his or her deliberative vote.
- (c) A Representative shall be disqualified from voting in respect of any contract, or any litigation or proposed litigation, with the Association or any of the Bodies Corporate, by virtue of any interests he or she may have therein.
- (d) A resolution in writing signed by all the Representatives for the time being present in the Republic and being not less than sufficient to form a quorum, shall be as valid and effective as if it had been passed at a meeting of the Executive Committee duly convened and held.

6. (13) Functions, Powers and Duties of the Executive Committee

- (a) Subject to any restriction imposed or directive given at a General Meeting by means of an ordinary Members' resolution, the powers of the Executive Committee shall include the following:-
 - (i) to appoint for and on behalf of the Association such agents and employees as they deem fit in connection with:-
 - (aa) the control, management maintenance and administration of the Communal Property; and
 - (bb) the performance and exercise of any or all of the functions, duties, and powers of the Association;
 - (ii) to delegate to one or more of the Representatives such of their powers and duties as they deem fit and at any time to revoke such delegation;

- (iii) to form sub-committees for the consideration of specific issues. The members of such sub-committees may be such individuals as the Representatives in their discretion think fit and need not only be members of the Association, provided that the Chairman of any such sub-committee should be a Representative. Provided further that such sub-committees shall have no powers to bind the Association in law, or to make resolutions, which should in every instance be referred to the Executive Committee.

6. (14) Insurance

(a) Insurance of Sectional Title Component.

- (a) (i) At the first meeting of the Executive Committee or as soon thereafter as possible, and annually thereafter, the Executive Committee shall take steps to insure the buildings in sectional title Schemes only, and all improvements to the common property of such Schemes, to the full replacement value thereof against:-

- (aa) fire, lightning and explosions;

- (bb) riot, civil commotion, strikes, lockouts, labour disturbances or malicious persons acting on behalf of or in connection with any political organization;

- (cc) storm, tempest and flood;

- (dd) earthquake;

- (ee) aircraft and other aerial devices or articles dropped therefrom;

- (ff) bursting or overflowing of water tanks, apparatus or pipes;

- (gg) impact with any of the said buildings or improvements by any road vehicle, horses or cattle;
 - (hh) housebreaking or any attempt thereat;
 - (ii) loss of occupation or loss of rent in respect of any of the above risks;
 - (jj) such other perils or dangers as the Executive Committee or any holder of first mortgage bonds over not less than 25% in number of the units in a particular Scheme, may deem appropriate;
 - (kk) subsidence cover.
- (ii) The Executive Committee shall at all times ensure that, in the policy of insurance referred to above –
- (aa) There is specified a replacement value of each Section (excluding the owner's interest in the land), in accordance with the schedule of values as approved in terms of sub-Clause (a)(iii) below.
 - (bb) Any 'average' clause is restricted to refer to individual sections and not to apply to the building/s as a whole;
 - (cc) There is included a clause in terms of which the policy is valued and enforceable by any mortgagee against the insurer notwithstanding any circumstances whatsoever which would otherwise entitle the insurer to refuse to make payment of the amount insured unless and until the insurer on not less than 30 days' notice to the mortgagee shall have terminated such insurance.

- (iii) Before every Annual General Meeting, the Executive Committee shall cause to be prepared schedules reflecting their estimate of -
 - (aa) the replacement value of the buildings and all improvements to the common property of the respective Schemes; and
 - (bb) the replacement value of each section (excluding the owner's interest in the land), the aggregate of such values of all sections being equal to the value referred to in Sub-Clause (a)(ii) above and such schedules shall be laid before the Annual General Meeting for consideration and approval;
- (iv) The Executive Committee shall, on the written request of a mortgagee and satisfactory proof thereof, record the cession by to such mortgagee of the member's interest in the application of the proceeds of the policy of insurance effected in terms of Sub-Clause (a)(ii) above.
- (v) An Owner may at any time procure such additional insurance cover in respect of his or her Section in terms of a separate insurance policy, but shall himself or herself be responsible for such policy and premiums thereon.
- (vi) It is recorded that, whilst the above provisions relate to the Sectional title Component of the Village only, Owners in other parts of the Village shall procure their own insurance in respect of their dwellings.

- (b) Insurance in respect of the Association
 - (b) (i) At the first meeting of the Executive Committee or as soon thereafter as is possible, it shall take all reasonable steps: -
 - (aa) to insure the Association and Representatives and to keep them insured against liability in respect of:-
 - (1) death, bodily injury or illness; and
 - (2) loss of, or damage to, property, occurring in connection with the common property, for a sum of liability of not less than R300 000,00 (Three Hundred Thousand Rand), which sum may be increased from time to time as directed by the Members in General Meeting; and
 - (bb) to procure to the extent, if any, as determined by the Members of the Association in a General Meeting, a fidelity guarantee in terms of which shall be refunded any loss of money belonging to the Association or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by any insured person being any person in the service of the Association and/or Representatives and any person or persons acting in their capacity as Manager of the Association.
 - (ii) The Members may direct the Executive Committee to insure against such other risks as they may determine by ordinary resolution.
- (c) Insurance of Communal Property and other Village Assets.

At the first meeting of the Executive Committee, or as soon thereafter as possible, and annually thereafter, the Executive Committee shall prepare a schedule of fixed and movable assets of the Association, other than items insured under sub-Clause (a), and take steps to insure such assets according to their discretion but subject to any directives by Members in respect of such insurance.

6. (15) Prohibition of Loans, Signing of Documents, General

- (a) The Executive Committee may not make loans on behalf of the Association to Members or to Representatives.
- (b) No document signed on behalf of the Association shall be valid and binding unless it is signed by TWO (2) Representatives, or by one Representative and the Manager, except a Levy Clearance Certificate which may be signed by one Representative or the Manager.
- (c) The Executive Committee shall be authorised and obliged to perform all functions in respect of the issue of Levy Clearance Certificates, and they may delegate such functions, including the signing of such certificates to the Manager.
- (d) Without detracting from the scope of the additional duties specified herein and subject to the relevant provisions, the Executive Committee shall in respect of the Village exercise the powers and perform the functions assigned to trustees of the Schemes in terms of Sections 3, 4, and 5 of the Act, and as contemplated in Regulation 6(4), as may be applicable, including doing all things reasonably necessary for the control, management and administration of the affairs and of the common property of the bodies corporate of the sectional title Schemes, and all things reasonably necessary for the enforcement of the provisions of the Constitution, the Building and Environmental Manual, and the Rules.
- (e) The Executive Committee may from time to time issue written Directives to amplify the provisions of the Rules, as may be

referred to in the Rules, provided that such Directives may only relate to the practical implementation of a Rule and may not constitute a new Rule.

6. (16) Appointment of a Manager

- (a) The Manager may be a person or an entity and shall initially be appointed by the Developer in terms of a Management Contract.
- (b) After the Completion Date the Executive Committee may from time to time appoint a Manager, in terms of a Management Contract, provided that a Manager appointed by the Developer shall not be dismissed before expiry of a period of 12 months from the Completion Date.
- (c) The Developer or the Executive Committee, as the case may be, must ensure that the Management Contract contain all relevant provisions of this Clause.
- (d) Appointment of a Manager shall be valid in respect of the Association and of each Scheme, to the exclusion of the power of a Scheme to appoint a manager.
- (e) If so resolved by the Members at a general meeting after the Completion Date, the Executive Committee may appoint a Managing Agent or an Executive Managing Agent as intended by prescribed Management Rule 28.

6. **(17) Functions and Powers of the Manager, Managing Agent or Executive Manager**

- (a) The functions and powers of a Manager, Managing Agent, or Executive Managing Agent shall be as described herein and shall be performed and exercised in respect of the Association and of each Scheme, to the exclusion of a right of such appointment by any Scheme. Such person or entity must: -
- (i) devote his full attention, to the degree necessary to perform all his duties properly, to the management and administration of the Scheme, on behalf of the Trustees;
 - (ii) comply with all relevant provisions of this Constitution, the Rules and any other applicable provisions or regulations, statutory or otherwise, and obey and execute any reasonable directives and instructions which may be issued from time to time by the Executive Committee;
 - (iii) exercise the utmost good faith towards the Association, its Members, the Associations and the Executive Committee, both in carrying out his duties hereunder, and in all his dealings with the Executive Committee, Members, and the Association;
 - (iv) strictly preserve the confidentiality of all information gained in respect of the affairs of the Association, Executive Committee and Members;
 - (v) keep full records of his administration and report to the Executive Committee on all matters which in his opinion detrimentally affect the value or amenity of any Erf or Unit in the Village.
- (b) The Manager, Managing Agent, or Executive Managing Agent must perform such administrative functions of the Executive Committee in respect of the Association and of the Schemes as are assigned to him in terms of his appointment and as are stipulated in this Constitution, and in particular the Manager must, in respect of the Association and where applicable, in respect of each Scheme:-

- (i) collect all Levies due by Schemes and by Owners and all other monies due to the Association or a Scheme including the collection of arrear Levies and other amounts due, and liaise with the Attorney in this regard;
- (ii) collect from Members and pay to the Ombud Service such levies as are prescribed in the Regulations to the Ombud Act.
- (iii) in respect of the sectional title schemes, perform such duties in respect of reserve funds as required in terms of the Act.
- (iii) deposit all monies received on behalf of the Association or a Scheme as soon as reasonably possible in the relevant banking account;
- (*) keep separate books of account and banking accounts for the administrative and reserve funds of the sectional title schemes;
- (iv) verify all accounts, statements and invoices received for payment, and effect payment of all necessary expenditure and obligations. All payments must be done by cheque, signed in a manner from time to time approved by the Executive Committee;
- (v) invest any surplus funds in interest bearing bank accounts in a manner from time to time approved by the Executive Committee;
- (vi) maintain and keep separately, proper accounting books and records as per generally accepted accounting practice, and as required by this Constitution and the rules of a Scheme, or by other relevant statutory provisions;
- (vii) submit the necessary returns and payments to all statutory authorities, including those relating to Income Tax, Value Added Tax, employees' PAYE and/or SITE, Workmen's Compensation, UIF, and Municipal rates;

- (viii) prepare regular cash flow analyses, reports, and interim financial statements, if, as, and when required by the Executive Committee, or when circumstances require that the financial situation be reported to the Executive Committee;
- (ix) immediately report to the Executive Committee any irregularity in the books of account or other records of the Association or a Scheme, or any circumstance, whether relating to the finances of the Association or a Scheme or otherwise, of which the Executive Committee should take cognisance, or of which they require to be advised;
- (x) prepare a maintenance, repair and replacement plan for the Village and for every Scheme, as required by the provisions of the Act.
- (xi) prepare the individual Budgets for submission to Members at annual general meetings, including the separate budgets for future maintenance, as required for the sectional title schemes in terms of prescribed Management Rule 26(1)(e);
- (xi) prepare draft annual financial statements for audit purposes, arrange the annual audit by the Auditor or Accounting Officer, and effectively liaise and co-operate with the Auditor or Accounting Officer;
- (xi) Employ, supervise and control employees of the Association or of a Scheme, pay their wages, and keep proper records of their employment, benefits, absence, leave and sick leave;
- (xiii) Obtain quotations for all repairs and maintenance to Village property as may be required, and accept quotations and instruct contractors to perform such work, with the approval of the Executive Committee;
- (xiv) Supervise, inspect and control all repairs and maintenance work performed in terms of his instructions;

- (xvi) Obtain valuations of Communal Property and in respect of the Sectional Title Schemes for insurance purposes, arrange for adequate insurances as may be required in terms of this Constitution, and conduct all insurance claims in respect of such policies.
- (xvii) Compile, maintain, render for perusal, and furnish copies of, records, this Constitution, the Rules, and the Building and Environmental Manual.
- (xviii) Take appropriate steps to enforce the provisions of this Constitution, the Rules, Building and Environmental Manual;
- (xix) Receive and effectively attend to all enquiries and complaints of Owners and exercise diplomacy in handling conflicts;
- (xx) Convene all general meetings and Executive Committee meetings and keep proper minutes of such meetings;
- (xxi) Perform the functions and duties required by general secretarial practice, including those relating to proxies, quorums, voting, nominations, minutes, and interpretation and implementation of the relevant provisions of the Act and Management Rules;
- (xxii) Perform all functions and duties ancillary to the above, or as may reasonably be required from time to time by the Executive Committee; and
- (xxiii) Prepare and submit to the Ombud Service all documentation required from the Association and the Schemes in terms of the provisions of the Ombud Act.

7. FINANCIAL FRAMEWORK

7. (1) General

The Association shall perform the administrative functions entrusted to it by or under this Constitution and such functions shall include: -

- (a) to establish for administrative expenses a Fund in respect of the Association, and a separate Fund in respect of each Scheme, sufficient in the opinion of the Members for the repair, upkeep, control, management and administration of the Communal Property, and, in respect of a sectional title Scheme, its common property, for the payment of all expenses relating to the Association or to each Scheme, including reasonable provision for future maintenance and repairs as required in terms of the Act, and for the discharge of any duty or fulfilment of any other obligation of the Association or Scheme;
- (b) to require the Owners, whenever necessary, to make contributions in the form of Levies to such Funds; provided that in respect of a sectional title Scheme, an Owner of a section entitled to the right of exclusive use of a part or parts of the common property, shall be responsible for all expenses relating to such area.
- (c) to determine and raise from time to time the Levies payable for the purposes aforesaid, according to the provisions of this Constitution.

7. (2) Determination of and Liability for Levies

As from the date of transfer of an Erf or Unit in his or her name, every Member shall be liable for payment of Levies, and it shall be the duty of the Executive Committee to determine and collect Levies from the Members in accordance with the provisions and in the proportions set forth in this Clause. The liability of Members to pay Levies, and the apportionment thereof, shall with effect from the date upon which the Association comes into being, be borne by the

Members in accordance with the following rules in respect of an Erf or Unit in each of the Schemes:

- (a) In respect of expenses relating to a particular sectional title Scheme, such expenses shall be apportioned to the Units in such Scheme according to their respective participation quotas, or such other formula as may be provided for in the Management Rules.
- (b) In respect of expenses relating to any other particular Scheme, such expenses shall be apportioned to the Erven in such Scheme on an equal basis.
- (c) In respect of Shared Expenses, such expenses shall be apportioned as follows:
 - (i) Expenses shall first be assigned to the three Components in the ratio 115:75:25 in respect of, respectively, the Sectional Title, General Housing, and Town House Components.
 - (ii) The portion of expenses assigned to the Sectional Title Component shall then be assigned to each sectional title Scheme according to the ratio of the number of residential sections in each such Scheme.
 - (iii) Expenses assigned to individual sectional title Schemes, shall then be assigned to units according to their respective participation quotas, or such other formula as may be provided for in the Management Rules.
 - (iv) Expenses assigned to the Town House Component shall be assigned to residential Erven equally.
 - (v) Expenses assigned to the General Housing Component shall be assigned to residential Erven equally.
- (d) At every Annual General Meeting of the Association, the Members shall approve, with or without amendment, a Budget in respect the Association, reflecting Shared Expenses, and an Administrative Budget and Maintenance Budget, as required in terms of the Management Rules for each sectional

title Scheme. Such Budgets must be prepared by the Executive Committee and shall be the basis for determination of the amounts estimated to be levied upon the Members during the ensuing financial year. The Budgets of the individual Schemes shall include adequate provisions for: -

- (i) a reserve fund for maintenance requirements during future financial years, as required in terms of s 3(b) of the Act and the provisions of the Management Rules;
 - (ii) contingencies; and
 - (iii) a proportionate contribution to Shared Expenses as reflected in the Budget of the Association.
- (e) Within FOURTEEN (14) days after each Annual General Meeting, the Executive Committee shall, by making a resolution:
- (i) determine the amounts to be levied upon each Owner in respect of the ensuing year according to the foregoing conventions;
 - (ii) determine the instalments in which such amounts are payable;
 - (iii) advise each Owner in writing of such amount and the applicable instalments;

and such Levies shall become due and payable by the Owners to the Association, in the instalments determined, as from the date of the Executive Committee resolution, provided that in the event of an Owner defaulting in the payment of any such instalment, and persisting in such default after a written demand in terms of which payment within 14 days is demanded, the full balance of Levies due for the remainder of the financial year shall immediately become due and payable.

- (f) The Executive Committee may, from time to time, when necessary, make special Levies upon the Members or call upon them to make special contributions in respect of all such

expenses as are not included in any Budgets, and such Levies may be made payable in one sum or by such instalments and at such time or times as the Executive Committee shall determine, provided that-

- (i) payment of such special Levies shall be apportioned according to the conventions specified in Clause 7(2)(c); and
 - (ii) the Executive Committee may determine special Levies in respect of one or more Schemes, as may be necessary.
- (g) The Executive Committee shall, in order to properly regulate the cash flow of the village, at the beginning of each financial year but prior to the Annual General Meeting, pass a resolution in terms whereof they maintain or increase the annual Levies imposed by the Executive Committee subsequent to the previous annual general meeting, to meet estimated expenditure for the ensuing financial year. Such interim Levies shall operate from the beginning of that financial year until the determination of Levies for that financial year as contemplated in sub-clause (d) above. The Owners shall be obliged to pay such interim Levies provided that, once the final Levies are calculated, Owners shall be credited with the amounts of the interim Levies actually paid and continue with payment of the final Levies from that date onwards.
- (h) An Owner shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses, including administrative expenses, and charges incurred or levied by the Association in obtaining the recovery of arrear Levies or any other arrear amount due and owing by such Owner to the Association, or in enforcing compliance with this Constitution, the Building and Environmental Manual, Rules, or the Act.
- (i) The Executive Committee shall be entitled to charge interest on arrear amounts at such rate as they may from time to time

determine, subject to a maximum rate prescribed for incidental credit agreements under the National Credit Act, No 34 of 2005.

7. (3) **Endowment Levy**

- (a) Except in the case of the first sale of an Erf or Unit in the Village by the Developer to an Owner, upon every subsequent alienation of any Erf or Unit, an Endowment Levy calculated at 0,5% of the selling price of such transaction or, if no selling price exists, the fair value thereof determined to the satisfaction of the Executive Committee, shall be payable by the Owner to the Association.
- (b) All such Endowment Levies received by the Association shall be received as contributions to the Fund apportioned to the Schemes according to the ratio determined in Clause 7(2), and deposited to the banking accounts of the individual Schemes.

7. (4) **Deposit and Investment of Monies**

- (a) The Executive Committee must, in respect of each Scheme, cause all monies received by the Association to be deposited to the credit of separate, dedicated accounts each for the Association and for each Scheme, with a registered commercial bank in the name of the Association and, subject to any directive given or restriction imposed at a general meeting of the Association, such monies shall only be withdrawn for the purpose of payment of the expenses of such Scheme or the Association, as the case may be, or for investment purposes of any surplus funds, provided that such investments shall only be made in the name of the Association, for account of the relevant Scheme, or of the Association, as the case may be.
- (b) The Executive Committee may authorise the Manager to administer and operate the accounts referred to above.

- (c) Subject to the abovementioned separation of funds, any funds not immediately required for disbursement may be invested in a savings or similar account with any registered South African commercial bank approved by the Executive Committee from time to time.
- (d) Subject to the abovementioned separation of funds, interest on monies invested may be used by the Association for any lawful purpose as contemplated in this Constitution.

7. (5) Books of Account and Records

- (a) The Executive Committee shall, in respect of the Association and of each Scheme, cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association including: -
 - (i) a record of the assets and liabilities of the Association or Scheme;
 - (ii) a record of all sums of money received and expended on behalf of the Association or a Scheme and the matters in respect of which such receipts and expenditure occurred;
 - (iii) a register of Owners showing in each case their Erf or Unit and their addresses; and
 - (iv) an individual ledger account in respect of each Owner.
- (b) On the application of any Owner, registered mortgagee or of the Manager, the Executive Committee shall make all or any of the books of account and records available for inspection by such Owner, mortgagee or Manager.

7. (6) Financial Statements and Report

- (a) The Executive Committee shall cause to be prepared, and shall lay before every Annual General Meeting for consideration, in respect of the Association and of each

Scheme, financial statement in conformity with generally accepted accounting practice, which statements shall fairly represent the state of affairs of the Association and its finances and transactions as at the end of the financial year concerned.

- (b) The Executive Committee shall further cause to be prepared and shall lay before every annual general meeting a report signed by the Chairman reviewing the affairs of the Association during the past year.
- (c) The Executive Committee shall cause copies of the Budget, schedules, audited statements and reports referred to above, to be delivered to each Member, and to any mortgagee which has advised the Association of its interest, at least FOURTEEN (14) days before the date of the annual general meeting at which they are to be considered.

7. (7) Audit

At every annual general meeting, the Association shall appoint an Auditor to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting. It shall be the task of the Auditor or Accounting Officer to-

- (a) audit the books of the Association;
- (b) Audit the books of each Scheme;
- (c) advise upon and prepare tax returns;
- (d) advise any financial or administrative irregularities in a report to the Executive Committee; and
- (e) certify that in his or her opinion the Budgets make reasonable provision for the probable expenses, including any liabilities arising from previous years and in respect of future maintenance, of the Association and the Schemes during the ensuing financial year.

7. (8) Transfer of Units and Erven

- (a) No transfer of a Unit or Erf may be effected without a Levy Clearance Certificate issued by Executive Committee or the Manager on behalf of the Association. In this regard the provisions of section 15B(3)(a) of the Sectional Titles Act 95 of 1986 shall, mutatis mutandis, be deemed to apply to all transfers.
- (b) The Association may withhold the issue of a levy clearance certificate -
- (i) if any monies due in respect of such Erf or Unit remains unpaid;
 - (ii) if any building additions exist in respect of such Erf or Unit, which have not been properly authorised and registered, as the case may be, in terms of the Act, this Constitution, the Rules and the Building and Environmental Manual;
 - (iii) if the Owner of the Erf or Unit is substantially in breach of the provisions of the Act, this Constitution, the Rules or the Building and Environmental Manual to an extent reasonably to justify withholding such certificate; or
 - (iv) unless and until a tripartite agreement in the format of Annexure D to this Constitution, is signed by all parties thereto, provided that signing on behalf of the Association may not be unreasonably withheld.
- provided that upon submission of an undertaking acceptable to the Executive Committee, it may issue such Levy Clearance Certificate.
- (c) In addition to Levies and other monies which may be due, the Owner shall become liable for payment, and the Executive Committee must procure payment of an Endowment as determined in terms of Clause 7(3).
- (d) In order to ensure compliance with the various provisions of this Constitution, upon selling or alienation by an Owner of his

Erf or Unit, such Owner shall instruct the Attorney to perform such conveyancing to the exclusion of any other conveyancer; provided that after the Completion Date, the Members may by ordinary majority resolve to appoint another conveyancer as the Attorney.

7. (9) No Refunds, or Distribution of Profits or Assets, or Withholding of Levies

- (a) The Members shall not be entitled to a refund of Levies lawfully levied upon them and duly paid by them.
- (b) No portion of the profits or gains of the Association shall be distributed to any Member, or any other person, except upon destruction or deemed destruction of the building/s or where such profit or gain is of a capital nature.
- (c) The Assets of the Association may not be distributed to any person or entity, except to an entity intended to substitute the Association and with similar objectives.
- (d) No Member shall be entitled to withhold, or apply set-off, in respect of any Levies lawfully raised.

8. GENERAL MEETINGS

8. (1) Notice

- (a) General meetings of Members shall be convened in accordance with the provisions of this Constitution.
- (b) An annual general meeting shall be held within FOUR (4) months of the end of each financial year.
- (c) Unless otherwise decided at a general meeting or by the Executive Committee, the financial year of the Association shall run from the first day of July of each year to the last day of June of the following year.
- (d) All general meetings other than the annual general meeting shall be called special general meetings.

- (e) The Executive Committee may, whenever they think fit, and shall upon a request in writing made either by Members entitled to 25% of the total votes of all sections, or by any mortgagee holding mortgage bonds over not less than 25% in number of the units, convene a special general meeting. If the Executive Committee should fail to call a meeting so requested within FOURTEEN (14) days of the request, the Members or mortgagee concerned shall be entitled themselves to call the meeting.
- (f) At least FOURTEEN (14) days' notice of every general meeting, specifying the place within the magisterial district where the Village is situated, the date and the hour of the meeting and, in the case of special business, the general nature of such business, shall be given:-
 - (i) to all Members;
 - (ii) to all holders of registered mortgage bonds over units who have advised the Executive Committee of their interests; and
 - (iii) to the Manager.
- (g) The holders of registered mortgage bonds and the Manager shall have the right to attend a meeting herein referred to and to speak at such meetings, but shall not, in their respective capacities as such, be entitled to vote thereat.
- (h) The notice referred to in sub-Clause (f) shall be deemed to have been sufficiently given and delivered if it was sent by pre-paid post addressed to the *domicilium* of the party as determined according to this Constitution, and to any mortgagee as aforesaid at the address of such mortgagee as reflected in the records of the Management Association.
- (i) Inadvertent omission to give the notice to any person entitled to such notice or the non-receipt of such notice by such person shall not invalidate any proceedings at any such meeting.

- (j) A general meeting of the Association may be called on shorter notice than that specified in sub-Clause (f), provided it is so ratified by Members at the meeting.
- (k) A Special General Meeting for the purposes of a unanimous or special resolution may be convened for a date 30 days or less after notice has been given to all Members if, in the opinion of the Represent Executive Committee it is necessary due to the urgency of a matter or due to the specific nature of a matter, to convene the meeting with such shorter period of notice.

8. (2) Business at Annual General Meeting

The following business must be transacted at an annual general meeting: -

- (a) Approval of the Budgets, with or without amendment.
- (b) Approval with or without amendment of the schedules of replacement values.
- (c) The appointment of an Auditor or Accounting Officer.
- (d) The appointment of Representatives.
- (e) Any special business of which due notice has been given.
- (f) The giving of directives or the imposing of restrictions to the Executive Committee.
- (g) Determination of the *domicilium citandi et executandi* of the Association.
- (h) Submission for consideration of a report by the Executive Committee on maintenance and improvements effected by them during the past financial year.
- (i) Consideration, and if necessary amendment, of the Shared Expenses Schedule.

8. (3) Quorum

- (a) No business shall be transacted at any general meeting unless a quorum of Members is present in person or by proxy at the time when the meeting proceeds to business.

- (b) A quorum at a general meeting shall be the number of Members holding at least 20% of the votes in number, present in person or by proxy or by representation by proxy; provided that a contingent of at least 10% of Owners in each Scheme is present or so represented.
- (c) For the purposes of a, unanimous resolution in terms of the Act in respect of a sectional title Scheme, a quorum for that Scheme shall be as determined in section 1(1) of the Act; provided that:-
 - (i) an ordinary quorum must be present at the meeting; and
 - (ii) the quorum requirements of section 1(1) of the Act shall apply only in respect of Owners in the sectional title Scheme concerned.
- (d) Except in the case of a unanimous resolution in respect of a Scheme, (in respect of which the provision of sub-Clause (c) shall apply), if within half-an-hour from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time, and if at the adjourned meeting a quorum is not present within half-an-hour of the time appointed for the meeting, the Members present in person or by proxy and entitled to vote shall form a quorum.

8. (4) Chairman

- (a) The chairman of the Executive Committee shall preside as chairman at every general meeting of the Association, unless otherwise resolved by members of the Association at such meeting.
- (b) If there is no such chairman or if, at any meeting, the chairman of the Executive Committee is not present within 15 minutes after the time appointed for the holding of the meeting, or if he or she is unwilling or unable to act as chairman, the vice-chairman shall act as chairman and, in the

event that he or she is also unwilling or unable to act as chairman, the Members present shall elect a person present to be chairman.

8. (5) Voting at General Meetings

- (a) At any general meeting an ordinary resolution put to the vote shall be decided on a show of hands.
- (b) On a show of hands the Owner or Owners of a Unit or Erf, or if the Owner is a juristic person, its representative, shall have one vote in respect of each Unit held by such Owner.
- (c) A declaration by the chairman that a resolution has been carried on a show of hands, shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (d) For the purpose of a unanimous or special resolution voting shall be conducted by poll.
- (e) For the purposes of a unanimous or special resolution in terms of the Act, relating to a sectional title Scheme, voting shall be conducted between the Owners of the particular Scheme only and shall be reckoned in accordance with the provisions of section 1(1) of the Act.
- (f) Except in cases where a special or unanimous resolution is required a Member shall not be entitled to vote at any general meeting if: –
 - (i) any Levies payable by him or her in respect of his or her unit or exclusive use area have not been duly paid; or
 - (ii) he or she persisted in breach of any provisions of the Act or the Rules notwithstanding written warning by the Executive Committee or Manager to refrain from breaching such provision: Provided that any mortgagee shall be entitled to vote as such Member's proxy at any general meeting.

- (g) Where an Owner of a Unit or Erf is as such a trustee for a beneficiary of a trust, he or she shall exercise voting rights in respect of the Unit or Erf to the exclusion of persons beneficially interested in the trust and such persons shall not be entitled to vote.
- (h) When two or more persons are entitled to exercise one vote jointly, that vote shall be exercised only by one person (who may or may not be one of them) jointly appointed by them as their proxy.
- (i) Votes at a General Meeting may be cast either personally or by proxy, whether on a poll or on a show of hands.
- (j) A proxy shall be appointed in writing under the hand of the appointer, or his agent duly appointed in writing, and shall be handed to the Chairman prior to the commencement of the meeting; provided that the foregoing provisions shall not apply in the case of any proxy created and contained in any registered mortgage bond, if such mortgage bond or a copy certified by a conveyancer, is produced at the meeting.
- (k) A proxy need not be an Owner, but shall not be the Manager or any of his or her employees, or an employee of the Association.

8. (6) Minutes

- (a) The Executive Committee must:-
 - (i) cause minutes to be kept of their proceedings;
 - (ii) cause minutes to be kept of all meetings of the Association in minute book of the Association;
 - (iii) include in the minute book of the Association a record of all resolutions of the Association; and
 - (iv) keep all minute books in perpetuity.
- (b) On the written application of any Member or registered mortgagee of a unit, the Executive Committee shall make all minutes of their proceedings and the minutes of the

Association available for inspection by such Member or mortgagee, not later than two weeks from the date of the request.

9. RULES AND BUILDING AND ENVIRONMENTAL MANUAL

(1) The Developer has established Rules, attached hereto as Annexure B, in the nature of conduct rules, and the Association shall, from time to time, revise such Rules by means of a resolution adopted by not less than 75% of Members present or represented at a general meeting; provided that, in respect of any sectional Title Scheme, the procedures prescribed in sections 1(1) and 10(2)(b) of the Act shall be complied with; provided further that the Developer shall be entitled to amend the Rules during the Development Period.

(2) (a) The Developer has established Building and Environmental Manual, attached hereto as Annexure C, including and in respect of: -

- (i) physical alterations and attachments to buildings;
- (ii) management and maintenance of open areas in the Village; and
- (iii) an Operational Environmental Management Plan for the Resort Boat Launching Site;

which shall become effective and binding upon the Association, the Schemes and all Owners on the Commencement Date.

(b) It is recorded that the Municipality has, upon approval of the subdivision and rezoning of the Land, imposed conditions including that an Environmental Management Plan be incorporated in this Constitution, providing for the

rehabilitation, maintenance and management of the river and river banks, the establishment of a public footpath, and the rehabilitation, maintenance and management of open areas within the Village. The Building and Environmental Manual is compiled, and must be maintained, in pursuance of such conditions.

- (c) It is further recorded that the Municipality has, upon approval of the subdivision and rezoning of the Land, imposed conditions relating to buildings, including that architectural guidelines be prepared by an architect and approved by the Aesthetics Committee of the Municipality, that all building plans be prepared and proposed by an architect. The Building and Environmental Manual is compiled, and must be maintained, in pursuance of such conditions.
- (d) During the Development Period the Developer may amend the Building and Environmental Manual from time to time.
- (e) The Executive Committee shall, after the Completion Date, further develop, and from time to time propose suitable amendments to the Building and Environmental Manual, and submit such proposed amendments to Members for approval by ordinary resolution at a general meeting.
- (f) Any such amendments to the Building and Environmental Manual shall be subject to approval by the Municipality and/or the Aesthetics Committee of the Municipality.

10. MEMBERS' OBLIGATIONS AND RESTRICTIONS UPON OWNERSHIP

- (1) In respect of a sectional title Scheme, an Owner of a Section entitled to the right of exclusive use of a part or parts of the Common Property, shall be responsible for the maintenance thereof and to keep it in a clean neat condition to the satisfaction of the Executive

Committee, and for payment of all expenses relating to such exclusive use areas; provided that that if such Owner fails to maintain such exclusive use area to a standard acceptable to the Executive Committee, and fails to rectify such failure after expiry of 30 days from the date of posting of a written notice, it may have the necessary done at the cost of the Owner concerned.

- (2) A Member must: -
- (a) to the best of his or her ability adhere to and promote the objects and interests of the Association;
 - (b) observe and comply with the provisions of the Act, this Constitution, its Annexures, the Rules, Building and Environmental Manual, and Directives made by the Executive Committee;
 - (c) in a sectional title Scheme, allow any person authorised in writing by the Executive Committee at all reasonable hours on notice (except in case of emergency, when no notice shall be required), to enter his or her Section or exclusive use area for the purpose of inspecting it and maintaining, repairing or renewing pipes, wires, cables and ducts existing in the section and capable of being used in connection with the enjoyment of any other section or the common property;
 - (d) in all Schemes, allow any person authorised in writing by the Executive Committee at all reasonable hours on notice (except in case of emergency, when no notice shall be required), to enter his or her Erf, Dwelling, Section or exclusive use area for the purpose of inspecting it to ensure that the provisions of the Act, this Constitution, the Rules and the Building and Environmental Manual are being observed;
 - (e) forthwith carry out all work that may be ordered by any competent public or local authority in respect of his or her Erf, Dwelling, or Section, and pay all charges, expenses and

assessments that may be payable in respect of his or her Erf or Section;

- (f) repair and maintain his or her Dwelling or Section in a state of good repair and, in respect of an Erf, keep it in a clean, neat and well maintained condition;
- (g) use and enjoy the Communal Property and, where applicable, Common Property in such a manner as not to cause a nuisance or unreasonably to interfere with the use and enjoyment thereof by other Owners or other persons lawfully on the premises;
- (h) not use his Erf, Dwelling, Section or exclusive use area, or allow it to be used, in such a manner or for such purpose as may cause a nuisance to any Occupier of a Dwelling or Section;
- (i) notify the Association forthwith of any change of ownership in his or her Erf or Unit and of any mortgage or other dealing in connection with his or her Section; and
- (j) not use nor allow his or her Dwelling or Section to be used for any other purpose than as a residence, and in particular it may not be used for the purposes of: -
 - (i) a lodge, guest house or similar usage;
 - (ii) time-share, share block, or fractional ownership arrangement;
 - (iii) letting for a period less than three consecutive months; or
 - (iii) conducting any business;
- (k) not use his or her Erf, Dwelling, Section, exclusive use area or any part of the Communal Property, or common property, or permit it to be used, in such a manner or for such purpose as may be injurious to the reputation of the Village;

- (l) not contravene, or permit the contravention, of any law, by-law, ordinance, proclamation or statutory regulation, or the conditions of any licence, relating to or affecting the occupation of the Dwelling or Section or the Communal Property or Common Property, or the carrying on of business in the Village, or so contravene or permit the contravention of the conditions of title applicable to his or her Dwelling, Erf, Section or exclusive use area;
- (m) in the case of a Section, not make alterations without complying with the provisions of the Act and the Building and Environmental Manual, and in any event, not make alterations which are likely to impair the stability of the building or the use and enjoyment of other sections, the Common Property or any exclusive use area;
- (n) in the case of an Erf, not make alterations without complying with the provisions of the Building and Environmental Manual;
- (o) not do anything to his Erf, Dwelling, Section or exclusive use area which is likely to prejudice the harmonious appearance of the Village;
- (p) not construct or place any structure or building improvement on his exclusive use area, without the prior written consent of the Executive Committee, which shall not be unreasonably withheld, provided that the provisions of section 24 and section 25 or other relevant provisions of the Act or the rules, may not be contravened;
- (q) in respect of a Section, maintain the hot water installation which serves such Section, or, where such installation serves more than one Section, the Owners concerned shall maintain such installations *pro rata*, notwithstanding that such appliance is situated in part of the common property and is insured in terms of the policy taken out by the Association;

- (r) not allow the occupation of a Dwelling or of a Section in excess of a number equal to 2 persons per bedroom.
 - (s) not allow any person to reside on an exclusive use area, or on an Erf (other than in the Dwelling on such Erf).
- (3) In the event of any transgression of the above or of any other provisions of this Constitution, the Executive Committee may take such action as permitted by law or this Constitution, including the imposition of a penalty or penalties in terms of Clause 11(2).

11. RESOLUTION OF DISPUTES AND PENALTIES

11. (1) Resolution of Disputes

- (a) Should any dispute, question, or difference arise between Members/Owners or between a Member/Owner and the Association, out of or in respect of: -

- (i) the interpretation of;
- (ii) the effect of;
- (iii) their respective rights or obligations under; or
- (iv) a breach of (save for non-payment of Levies or any other amount due by a Member/Owner in terms of this Constitution);

of this Constitution, the Rules or the Building and Environmental Manual, such dispute shall be decided according to the provisions of the Ombud Act, alternatively by arbitration in the manner set out in this Clause.

- (b) The arbitration referred to in sub-Clause (a) shall:
- (i) be conducted in an informal 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;

- (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;
 - (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; and
- (c) The arbitrator shall be a practising advocate or attorney of not less than 10 (ten) 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.
- (d) The arbitrator shall in giving his award have regard to the principles contained in the Act, this Constitution, the Rules and the Building and Environmental Manual, and he shall decide the matter as submitted to him or her according to what he or she considers just and equitable in the circumstances.
- (e) 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 or her decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other or both of the disputing parties, or by the Association as he or she in his or her sole discretion may deem fit.
- (f) 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;
 - (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, the Association and the Executive Committee 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 the Act, this Constitution, including the Rules and the Building and Environmental Manual, and in particular, 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 Executive Committee 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.
- (h) Upon the appointment of an Ombud by the legislature, disputes referred to above may be addressed in terms of the relevant legislation.

11. (2) Imposition of Penalties

- (a) If the conduct of an Owner or an Occupier of a Dwelling or a Section, or his or her visitors or guests, constitutes a nuisance in the opinion of the Executive Committee, or if an Owner, Occupier, visitor or guest contravenes, breaches, disobeys or disregards any provision of this Constitution, the Act (where applicable), the Rules, or Building and Environmental Manual, the Executive Committee may furnish the Owner and Occupier with a written notice which may in the discretion of the Executive Committee be delivered by hand or by registered post. In the notice the particular conduct, which constitutes a nuisance, must be adequately described or relevant provision of the Constitution, Act or Rule that has allegedly been contravened, must be clearly indicated, and the offender must be warned that if, after expiry of fourteen (14) days from the

date of the notice, he or she persists in such conduct or contravention, a fine will be imposed on the Owner.

- (b) If the Owner or Occupier nevertheless after the notice period persists in that particular conduct or in the contravention of that particular provision, the Executive Committee may convene a meeting of the Executive Committee to discuss the matter and to impose a fine.
- (c) A written notice by which the alleged offender (whether Owner or Occupier), is informed of the purpose of the meeting and invited to attend, must be sent to the Owner and Occupier at least 14 (fourteen) days before the meeting is held. At the meeting the Owner and/or Occupier must be given the opportunity to:-
 - (i) present his or her own case;
 - (ii) present any evidence, including calling of witnesses, to substantiate his or her case;
 - (iii) cross-examine any witnesses called on behalf of the body corporate;
 - (iv) effect disclosure of any relevant documents.
- (d) After the owner or Occupier has been given the opportunity to present his or her case, the Executive Committee may by way of a resolution of 75% of the Representatives present at the meeting with a minimum of six Representatives, impose an *initial penalty* for the first offence and a *subsequent penalty* for every similar offence thereafter.
- (e) Should the Owner or Occupier not attend the meeting without providing a reasonable request for postponement, the Executive Committee, in their sole discretion, may continue with the meeting and impose a penalty in the absence of the Owner or Occupier.
- (f) Any fine imposed in terms of sub-rule (4) may, if it is not paid within 14 (fourteen) days after the offender and Owner (if the offender is not an Owner) has been notified of the imposition of

the fine, be added to the Levies which such Owner is obliged to pay in terms the provisions of this Constitution.

- (g) The Members may, at a general meeting, from time to time, determine the maximum amounts of the *initial* and *subsequent* penalties.

11. (3) Building Penalties

- (a) The PURCHASER, who is purchasing a vacant erf, must commence the building of the structure within a period of two (2) years after registration of the property into the Purchaser's name with the provision that once the building has commenced it must be finalized within twelve (12) calendar months.
- (b) The PURCHASER / new Owner may apply in writing to the Developer for an extension of the abovementioned period for the completion of the works, which application shall be duly supported by written motivation and having regard to the size of the proposed dwelling and the complexity of the building operation. The Developer shall have the sole and absolute discretion to grant or refuse an extension in time for the completion of the works.
- (c) Should the PURCHASER / new Owner and or his/ her / their Successors in Title fail to affect the commencement of the building within the prescribed time period the following penalties will be imposed:
 - (i) The penalty imposed for the first year after the expiry of the period will be an amount equal to 50 PERCENT of the imposed monthly levies;
 - (ii) The penalty within the second year will escalate to an amount being double the monthly levies;
 - 1. Should the PURCHASER not have commenced the building within the second year after the expiry period, the Owner's Association holds the

right to purchase back the property at the price with which it was sold.

- b. Should the PURCHASER commence the building work, but same is not completed within the prescribed twelve months, the Owner's Association will have the right to purchase the property back from the Owner at the price at which it was sold- whatever having been constructed will be the property of the Owner's Association.

12. AMENDMENTS TO THE CONSTITUTION

- (1) Before and during the Development Period the Developer may from time to time amend the Constitution, all Annexures hereto, the Rules and the Building and Environmental Manual, by virtue of this provision.
- (2) After the Completion Date this Constitution may be amended by unanimous resolution of all Members.
- (3) After the Completion Date the Annexures to this Constitution may be amended as follows:-
 - (a) Annexure A: Village Plan – during the Development Period the Developer may amend the Village Plan from time to time and thereafter by unanimous resolution of the Executive Committee in the presence of all Representatives;
 - (b) Annexure B: Rules – a resolution adopted by not less than 75% of Members present or represented at a general meeting; provided that, in respect of any sectional Title Scheme, the procedures prescribed in sections 1(1) and 10(2)(b) of the Act shall be complied with.
 - (c) Annexure C: Building and Environmental Manual – Ordinary Members' resolution at a general meeting. Any such amendments to the Building and Environmental Manual shall be subject to approval by the Municipality and/or the Aesthetics Committee of the Municipality.

- (d) Annexure D: Tripartite Agreement – amendment by Executive Committee or, during the Development Period, the Developer.

13. PROVISIONS APPLYING DURING THE DEVELOPMENT PERIOD

During the Development Period the following provisions shall apply: -

- (1) Developer shall be allowed to appoint all Representatives to the Executive Committee, with or without regard to nominations received from Members and which Representatives need not be Owners.
- (2) At any general meeting of Members, a person or persons nominated by the Developer shall be entitled to exercise a number of votes equal to twice the number of Members existing at such time.
- (3) The Developer shall not be responsible for payment of levies in respect of Erven or Units not transferred, but shall in terms of agreement reached with the Association from time to time, pay the balance of expenses relating to the undeveloped part of the Village. Accordingly the budget of the Association shall only be in respect of developed portions of the Village, with reference to transferred Erven and/or Units.
- (4) During the Development Period the Developer shall be entitled to amend this Constitution and its Annexures.

14. EXCLUSION OF PARTS OF THE VILLAGE AND ASSIMILATION OF PIENAARS POORT PROPERTY OWNERS' ASSOCIATION

- (1) Irrespective of whether the Development Period has expired or not:-
 - (a) The land parcels numbered 86, 87, and 90 to 102 on the Village Plan, Annexure A to this Constitution, are for all purposes excluded from the provisions of this Constitution,

including the payment of levies, until the transfer of each such land parcel from the Developer to another person, whereupon such land parcel shall, for all purposes, be deemed to be included in the Village and the provisions of this Constitution and its Annexures shall, as from the date of such transfer, apply to such land parcel.

- (b) The Developer and the Association shall from time to time negotiate and agree in writing as to a reasonable contribution payable to the Association in respect of the said land parcels towards relevant expenses, including security.
- (2) Upon conclusion of the Developer's negotiations with the owners of the five (5) erven described as Erven 11861 to 11862 on the Village Plan, Annexure A to this Constitution, are intended to be included as part of the Village and become subject to the provisions of this Constitution.

15. CONTRACTUAL ARRANGEMENTS WITH HOTEL

- (1) Without detracting from the general power of the Association to enter into contracts with third parties as determined in terms of this Constitution, the Association shall enter into an agreement or agreements, to be revised annually and recorded in writing, with the owner of the Hotel in order to arrange details of usage of, and payment of pro rata expenses relating to facilities of the Village used by the Hotel, including security, access control, passage, access to and usage of the boat launching area, and related matters.
- (2) It shall be a duty of the Executive Committee to negotiate the terms of such agreements from time to time, for which purpose the Executive Committee is authorised to agree to terms in their discretion, and to conclude such contracts on behalf of the Association.
