



(Tel no: 062 023 5543 Email address: manager@admiralidland.co.za Physical address: c/o Admiral Island Gate House, Admiral Island, Port Owen Drive, Port Owen, 7365)

**CONSTITUTION OF
ADMIRAL ISLAND
AND
PELICAN BAY
HOMEOWNERS ASSOCIATION
2024 V1**

Table of Contents

1.	ESTABLISHMENT, STATUS AND REGULATION OF CONSTITUTION	3
2.	INTERPRETATION OF THE CONSTITUTION	4
3.	DEFINITIONS	4
4.	AMENDMENT OF THE CONSTITUTION	8
5.	STATUS OF THE HOMEOWNERS' ASSOCIATION AND RELATED MATTERS	9
6.	OBJECTIVES, AUTHORITY, DUTIES, RESPONSIBILITIES & FUNCTIONS OF THE HOMEOWNERS ASSOCIATION	10
7.	MEMBERSHIP	12
8.	LEVIES	14
9.	RULES OF THE HOA	15
10.	PENALTIES, REMEDIAL ACTIONS AND RELATED MATTERS	16
11.	TERMINATION OF MEMBERSHIP	17
12.	BOARD OF TRUSTEES	18
13.	TERM OF OFFICE OF BOARD OF TRUSTEES	18
14.	VACANCIES ON BOARD OF TRUSTEES	18
15.	REMOVAL OF TRUSTEE FROM BOARD OF TRUSTEES	19
16.	ROLES AND RESPONSIBILITIES OF BOARD OF CHAIRPERSON AND VICE CHAIR	20
17.	MANDATE, ROLES AND RESPONSIBILITIES OF BOARD OF TRUSTEES	20
18.	MEETING PROCEEDINGS OF THE BOARD OF TRUSTEES	22
19.	ANNUAL GENERAL MEETING OF THE HOA	23
20.	SPECIAL GENERAL MEETINGS	24
21.	NOTICE OF MEETINGS: CONDONATION	25
22.	MEETING VENUES	25
23.	QUORUM	25
24.	GENERAL MEETINGS : PROCEDURES	25
25.	PROXIES	27
26.	GENERAL MEETINGS : VOTING	27
27.	SERVING OF NOTICES	28
28.	PROFESSIONAL SERVICE PROVIDERS	28
39.	FINANCIAL YEAR END	28
30.	ANNUAL AUDITED FINANCIAL STATEMENTS AND MONTHLY MANAGEMENT ACCOUNTS	28
31.	BREACH BY MEMBERS	30

32.	DISPUTE RESOLUTION AND ARBITRATION	31
33.	EFFECTIVE DATE	32
34.	FAILURE TO MEET OBLIGATIONS OR CEASING TO FUNCTION	33
35.	POMA	34
36.	LIQUOR LICENCES	34
37.	FORMAL ANNEXURES	34

1. ESTABLISHMENT, STATUS AND REGULATION OF CONSTITUTION

- 1.1 The Admiral Island and Pelican Bay Homeowners' Association is a body corporate constituted in terms of section 29 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) and continues to exist by virtue of section 40(9) of the Land Use Planning Act, 2014 (Act 3 of 2014), read with section 66(7) of the Bergrivier Municipality By-Law on Municipal Land Use Planning, 2020.
- 1.2 The Admiral Island & Pelican Bay Homeowners Association (the HOA) (formerly known as respectively "The Admiral Island Homeowners' Association" and "Pelican Bay Village Homeowners' Association") was established as a Homeowners' Association in accordance with section 29 of the 1985 Ordinance, subject to the conditions imposed by that section, and the further conditions imposed by the Bergrivier Municipality when the subdivision known as Admiral Island and Pelican Bay Estate situate in the Bergrivier Municipality, Administrative District Piketberg, Western Cape Province was approved.
- 1.3 The legal status of the Admiral Island and Pelican Bay Estate and the Constitution of the HOA are therefore regulated by, and subject to, the relevant provisions of the 2014 Act, the relevant provisions of the 2020 By-law and all other applicable laws.
- 1.4 The Constitution of the HOA may include objectives not contained in section 29 of the 2020 By-law, aimed at resolving specific matters related to the establishment of the Estate, compliance with good governance practices, advancing and protecting the interests of Members, enhancing the effective and efficient functioning of the Estate and the HOA, and anything incidental thereto, but may not contain provisions that conflict with any law. The Constitution may, however, introduce design guidelines more restrictive than the rules provided for in the zoning scheme (see section 29(4) and (8) of the 2020 By-law).
- 1.5 The Constitution empowers the HOA, among others, to have control over facilities and the maintenance thereof, services and amenities arising from the establishment of the Estate, and must provide for compulsory membership by the owners of land (erven) in the Estate, who are jointly liable for expenditure incurred in connection with the HOA.
- 1.6 The Constitution may further contain, but not limited to, any other applicable provision required to comply with good governance practices, the advancement and protection of the interest of its Members, the enhancement of the effective and efficient functioning of the Estate and the HOA as well as anything incidental thereto.
- 1.7 A condition relating to the restriction against alienation in favour of the HOA has been registered against the Title Deeds of all the subdivided portions in terms of the Approved Subdivision currently known as Admiral Island and Pelican Bay Estate, to ensure that all prospective purchasers of any subdivided portion of the Approved Subdivision, and their successors in title, are made aware of the

compulsory membership of the HOA for every owner of such subdivided portion, and that they are made aware of the contents of the Constitution of the HOA.

- 1.8 It is acknowledged that the first meeting of The Admiral Island Homeowners' Association and Pelican Bay Village Homeowner's Association was respectively called and held as envisaged in Section 29(3)(c) and that trustees for the respective Homeowners' Associations were elected at such meeting.

2. INTERPRETATION OF THE CONSTITUTION

- 2.1 The HOA Constitution must be interpreted against the backdrop of the constitutional value framework set out in the Constitution of the Republic of South Africa, 1996, the provisions of applicable national and provincial legislation and the By-laws of the Bergrivier Municipality, which prevail over the HOA Constitution and the Rules.
- 2.2 If a conflict occurs between any provision in the Rules and any provision of this Constitution, the provisions of this Constitution prevails.

3. DEFINITIONS

- 3.1 Unless the context clearly requires a different meaning, words importing the singular number includes the plural, and vice versa, and words signifying any one gender only shall include all genders or gender identity.
- 3.2 The headings to the clauses in this Constitution are for reference purposes only and are not definitive in the interpretation of the provisions.
- 3.3 Any reference to clauses and clause numbers, refer to clauses and clause numbers of this Constitution.
- 3.4 The following words shall, unless the context clearly indicates a different meaning, have the meaning assigned to it in this clause:

1985 Ordinance	means the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985);
2014 Act	means the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014);
2020 By-law	means the Bergrivier Municipality By-law on Municipal Land Use Planning, 2020;
AGM	means an Annual General Meeting of the Members of the HOA as contemplated in clause 19;
Annual Budget	means a document tabled annually by the Board of Trustees at an AGM for consideration, ratification or amendment by the Members, as the case may be, detailing the financial information set out in clause 30.1.2;
Approved Subdivision	means the approval of the subdivision currently known as Admiral Island and Pelican Bay Estate situate in the Bergrivier Municipality, Administrative District Piketberg, Western Cape Province;
Architectural Design Rules	means the Admiral Island and Pelican Bay HOA Architectural Design Rules (previously known as the "Admiral Island Architectural Design Guideline") contemplated in clause 9.1.1 and attached as Annexure A to the Constitution;
Attendance (at meetings)	means attendance in person, by proxy or by electronic conferencing technology;

Attorney	means a legal practitioner who is admitted and enrolled under the Legal Practice Act, 2014 (Act 28 of 2014);
Auditors	means a firm of auditors appointed by the HOA in terms of clause 19.4.6 , accredited to perform an audit in terms of the Auditing Professions Act, 2005 (Act 26 of 2005), and registered with the South African Institute of Chartered Accountants (SAICA);
Board (also Board of Trustees)	means, unless the context clearly indicates differently, the Board of Trustees elected by the Members at a General Meeting from time to time in terms of this Constitution, and includes those Trustees co-opted by the elected Board of Trustees;
Business Days	means weekdays, other than Saturdays, Sundays and South African Public Holidays;
Chairperson	means the Chairperson of the Board of Trustees, elected in accordance with clause 12.2 of this Constitution;
Clearance Certificate	means a Written certification by the HOA that the owner of an Erf has paid in full all Debts due and payable to the HOA, including any such additional amount the HOA may determine when an Erf is transferred, and confirming that the owner has complied with the Architectural Design Rules relating to the Estate;
Clearance Fee	means an additional amount determined by the HOA in accordance with this Constitution, over and above the Clearance Levy imposed by the HOA, to cover administrative costs associated with the issuing of a Clearance Certificate;
Clearance Levy	means a Levy imposed by the HOA which is payable in advance to the HOA, prior to the issuing of a Clearance Certificate and determined in accordance with clause 8.15;
Communal Property	means property, amenities and facilities of the HOA which may be used by Members, residents and the public, subject to this Constitution, the Rules and the restrictions applicable to the Public Servitudes within the perimeter of the Estate;
Conflict of Interest	means an actual or potential situation where a Trustee is in a position to derive personal benefit, financial or otherwise, from actions taken or decisions made in their capacity as Trustee, and includes if the private interests of the Trustee interferes, or potentially may interfere, with the interests of the HOA which the Trustee is required to serve in the performing of their duties;
Constitution	means the Constitution of the HOA;
CSOS	means the Community Scheme Ombud Service, a national public entity that regulates the conduct of parties within community schemes in terms of the CSOS Act;
CSOS Act	means the Community Schemes Ombud Service Act, 2011 (Act 9 of 2011) and includes the Regulations made in terms of that Act;
Day	means calendar days (any day in the ordinary sense);

Debt	means any amount, howsoever arising, owed and payable by a Member to the HOA, including but not limited to, amounts in respect of Monthly-, Special-, Statutory-, Penalty- and Clearance Levies, Clearance Fees, late payment of amounts due and payable to the HOA; and legal fees;
Deliver	means the delivery of any Notice, either physically or electronically, to a Member in accordance with the addresses captured in the HOA's Member Register;
Differentiated Levy	means a Differentiated Levy imposed by the HOA on Erven where business rights have been approved as contemplated in clause 8.9;
Entitled to Exercise	means Members who are eligible to vote and participate in the formal Membership Rights activities of the HOA;
Erf	means an Erf, regardless of its zoning, situated within the perimeter of the Estate;
Estate	means Admiral Island and Pelican Bay Estate, established in 2005 and subdivided and developed in accordance with the Approved Subdivision;
Estate Manager	means a person employed by the HOA in the position of Estate Manager, or a position with a similar status, as the case may be, in accordance with the management structure approved by the Board and includes any person duly appointed to act in the capacity of Estate Manager;
Financial Year	means the HOA's financial year being 1 July to 30 June of the following year;
General Meeting	means any properly constituted meeting of Members contemplated in clauses 19 and 20, incorporating Annual General Meetings and Special General Meetings;
General Rules	means the rules all Members of the HOA agree to abide by for purposes of respectful and harmonious community living, and include the matters set out in clause 9.1.2;
HOA (also "Association")	means the Admiral Island and Pelican Bay Homeowners' Association as more fully described in clause 1;
Levy (also levies)	means an amount payable by a Member to the HOA as a Debt, determined from time to time by the Members at a General Meeting, or imposed by a statutory body, and depending on the context, refers to Monthly-, Special-, Statutory-, Penalty- Clearance or differentiated Levies;
Levy-related Debt	means a Debt arising from the non-payment of Monthly-, Special-, Statutory- or Penalty Levies, inclusive of the interest on such Levies;
Management	means the Board of Trustees, Estate Manager or their delegates;
Managing Agent	means a person other than an employee of the HOA or a legal entity, who is registered with the Property Practitioners Regulatory Authority (PPRA) and contracted to the HOA to provide certain agreed governance, management, administrative and related support services to the HOA;
Member	means an owner, or collectively, the co-owners of an Erf or Erven, situated within the perimeter of the Estate and reflected as an owner or co-owner in

	the records of the Deeds Registry concerned in accordance with the Deeds Registries Act, 1937 (Act 47 of 1937);
Member Eligible to Vote	means a Member who has paid in full all Levies due and payable to the HOA as contemplated in clause 7.22;
Membership Register	means the document and the information prescribed in clauses 7.13 to 7.15;
Membership Right	mean the rights of Members embedded in this Constitution;
Month	means a calendar month, and Monthly shall mean once every month;
Monthly Levy	means a Monthly amount payable by a Member to the HOA as a Debt, determined by the Members at a General Meeting, and payable as prescribed in clause 8.6;
Municipality	means the Bergvrievier Municipality or its successor in title;
Notice	means any Written communication from the HOA or its authorised delegates or agents and “Notified” has a cognate meaning;
PAIA	means the Promotion of Access to Information Act, 2000 (Act 2 of 2000);
PAJA	means the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);
Penalty	means, depending on the context, an additional amount payable to the HOA as a Debt, arising from the non- or late payment of any Levy, or the transgression of the Constitution or the Rules, calculated in accordance with the Schedule of Transgressions and Penalties contained in the Rules;
Penalty Levy	means an amount payable by a Member to the HOA as a Debt for the transgression of the provision of the Constitution, or the Rules, as indicated in the Notice delivered to a Member and calculated with reference to the amount of the Monthly Levy;
Policy- and Procedure Framework	means the collection of documents referred to in clause 17.5;
POMA	means the Port Owen Marina Authority;
POPIA	means the Protection of Personal Information Act, 2013 (Act 4 of 2013) and includes the Codes and Regulations made in terms thereof;
Present (at the Meeting)	means a Member Eligible to Vote who is present in person at a General Meeting, or participates in the meeting by signing in on an online electronic platform indicated by the Board;
Private Open Space	means any area designated as private open space in terms of the Approved Subdivision;
Property of the HOA	means the property registered or to be registered in the name of the HOA in the Deeds Registry;
Proxy	means a person authorised to vote on behalf of another Member as contemplated in clause 25;
Rules	means the rules contemplated in clauses 9.1 and 9.2 relating to the Estate and incorporating the Architectural Design Rules, the General Rules and the rules made by the Board, as amended from time to time;

Schedule of Transgressions and Penalties	means the list of possible transgressions of the Constitution or the Rules, the concomitant penalties, and indicating any remedial actions that the HOA may impose, where applicable;
SGM	means a Special General Meeting contemplated in clause 20;
Special Levy	means an amount approved by the Members at a General Meeting to finance special capital or other approved projects, and payable as determined by the Members at a General Meeting, by Members to the HOA as a Debt;
Special Resolution	means a decision of the Members taken in accordance with, and as set out in clauses 20.7;
Statutory Levy	means an amount payable by a Member to the HOA as a Debt, arising from a statutory obligation of the HOA or a Member;
Trustee	means one of the members of the Board;
Unbudgeted Expenditure	means expenditure not approved in the Annual Budget, totalling more than a certain percentage (as determined at the AGM from time to time) of the Annual Budget which the Board may incur only with the pre-approval of the Members at a General Meeting, except in the case of expenditure necessitated by an Urgent Matter, or imposed on the HOA by the Municipality, or otherwise prescribed by law, in which case Members must be advised in Writing of the decision of the Board within 3 (three) Business Days;
Urgent Matter	means a matter, which, if not addressed before the next General Meeting, could cause irreversible harm or prejudice to the Estate, the Members, or the residents, and include, among others, emergencies and disasters contemplated in clause 9.7
Written (also "in Writing")	means hand-written, type-written, printed, lithographed, electronically processed, or any other process producing words in visible form;
Year	means a calendar year.

4. AMENDMENT OF THE CONSTITUTION

- 4.1 Members of the HOA subject to clause 20.2, or the Board, may propose amendments to the Constitution and the proposed amendments must be circulated to Members by the Board at least 21 (twenty-one) Days before an AGM or a properly constituted SGM set for this purpose, inviting Members to submit comments on the proposed amendments in Writing to the Board on or before 7 (seven) Days before the scheduled meeting.
- 4.2 Comments received on the proposed amendments must be consolidated by the Board and tabled and considered at the meeting contemplated in clause 4.1.
- 4.3 At the meeting contemplated in clause 4.1, the Members of the HOA may resolve to amend the Constitution, with 75% (seventy-five per cent) of the Members Present at the Meeting voting in favour of the proposed amendments, at which time, subject to clause 4.4, the amendments become effective.
- 4.4 If any amendments to the Constitution require the Municipality's approval to ensure compliance with the statutory terms and conditions applicable to the Estate, as contemplated in

29(6) of the 2020 By-law, such amended clauses of the Constitution only become effective once approved by the Municipality, but the remainder of the Constitution not requiring the approval of the Municipality becomes effective as contemplated in clause 4.3.

- 4.5 The HOA may not pass any resolution which has the effect of dissolving the HOA without the specific consent of the Municipality.
- 4.6 The HOA must submit the prescribed Scheme Governance Documentation to CSOS, when so directed in accordance with the CSOS Act, in support of CSOS's quest to monitor and promote good governance in community schemes.
- 4.7 This Constitution and any amendment thereof must be submitted by the Board to the Municipality within 10 working days of a resolution being taken by the Members in terms of clause 4.3, and all Members acknowledge that the latest copy submitted to the Municipality and whereof receipt has been acknowledged or amendments have been approved by the Municipality, as the case may be, is presumed to contain the operative provisions of the Constitution.
- 4.8 The Members of the HOA acknowledge that the Municipality is exempt from liability for any damage which may be caused by the Municipality's acknowledgement of receipt of a constitution of the HOA or an amendment thereof, or by the loss of a constitution lodged with the Municipality as contemplated in clause 4.7.

5. **STATUS OF THE HOMEOWNERS' ASSOCIATION AND RELATED MATTERS**

- 5.1 The HOA is regarded as an Association envisaged in section 29(1) of the 2020 By-law and is a juristic person, has perpetual succession and is capable of suing and being sued in its own name, and of acquiring movable and immovable property (see sections 29(2) and 66(7) of the 2020 By-law).
- 5.2 The Communal Property and all other Property of the HOA must be held, and where possible, registered, in the name of the HOA and managed, maintained and controlled in accordance with the HOA's statutory and Constitutional mandate.
- 5.3 Save for exercising their Constitutional right to hold the HOA and the Board accountable at any time, for the management, maintenance, and control of the assets of the HOA, Members have no claim or right to any of the assets of the HOA.
- 5.4 The HOA functions as a non-profit association and manages the assets of the HOA exclusively for the benefit of its Members, with due consideration to its role and responsibilities as a member of the broader Velddrif community.
- 5.5 The HOA may not, directly, or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person or entity who is a Member, or a Trustee, except:
 - 5.5.1 as reasonable remuneration for goods delivered or services rendered to the HOA, at the discretion of the Board, or at the direction of the HOA;
 - 5.5.2 as payment of, or reimbursement for, expenses incurred to advance a stated objective of the HOA;
 - 5.5.3 as a payment of an amount due and payable by the HOA in terms of a bona fide agreement between the HOA and the Member; or
 - 5.5.4 in respect of all relevant legal obligations binding on the HOA.

- 5.6 The HOA may operate an access control system to verify the identity of all persons entering and exiting the Estate in accordance with the main objective to enhance the security of all Members and residents.
- 5.7 Members, residents, guests, service providers, contractors, and the members of the public may only be allowed access to the Estate after complying with the verification and identification processes and procedures of the HOA, and agreeing to the Rules of the Estate as envisaged in clause 9, especially relating to road use, traffic rules and speed limits imposed by the HOA, and the payment of any Penalty for the contravention of such.
- 5.8 Upon dissolution of the HOA, as contemplated in section 15(2)(p) and 30(1)(a) of the 2020 By-law, and after compliance with sections 15(2)(q), 29(7)(a), 30(3) and 30(4) of the 2020 By-law regarding the joint liability of Members, the net value of the HOA must be distributed equally to the Members at the time of the dissolution.

6. **OBJECTIVES, AUTHORITY, DUTIES, RESPONSIBILITIES & FUNCTIONS OF THE HOMEOWNERS' ASSOCIATION**

- 6.1 The main objectives of the HOA are the following:
 - 6.1.1 to formally represent the collective mutual interests of the area, suburb and neighbourhood of the Estate, in accordance with the conditions of approval of the Approved Subdivision;
 - 6.1.2 to develop and promote the characteristic, culture and ethos of the Estate;
 - 6.1.3 to, through its Board of Trustees, promote and encourage community living in a way that Members derive maximum collective benefit therefrom; and
 - 6.1.4 to strive to attain the strategic outcomes envisioned by Members to ensure the short- and long- term sustainability and financial independence of the Estate, and the unlocking of the full value of the investment of Members in the Estate at all levels.
- 6.2 In order to achieve the objectives contemplated in clause 6.1, and without limiting the mandate and responsibilities of the HOA, and with due regard to the statutory frameworks that apply to the HOA, the HOA is responsible for performing the following functions:
 - 6.2.1 to enforce the conditions of approval of the subdivision or management plans derived in terms thereof;
 - 6.2.2 to implement and enforce the Constitution, the management, oversight and control of all financials, administration, security, aesthetic and environmental standards of the Estate and, to protect the indigenous vegetation, wildlife and natural beauty of the Estate;
 - 6.2.3 to control, administer, manage, maintain, repair, improve and keep in good order and condition, as the case may be, all property owned by the HOA, incorporating specifically all roads, stormwater systems, potable water, sewage, electrical reticulation, buildings, the security access control system, fences and gates, as well as such services and amenities on the Communal Property, where applicable;
 - 6.2.4 to maintain all services and amenities that are not owned by, or governed by means of an existing service agreement with the Municipality, for the benefit of all Members;
 - 6.2.5 to manage Private Open Spaces;
 - 6.2.6 to insure all communal buildings, structures, services and amenities where possible;

- 6.2.7 to maintain an asset register, together with certified copies of all existing contracts, to be updated annually and to be retained for safekeeping by the Board to whom this function has been delegated;
- 6.2.8 to control and manage all aspects of the implementation of the architectural guidelines as set out in the Architectural Design Rules, as well as the aesthetics and amenities of the Estate, the maintenance of all buildings, infrastructure, and Communal Areas, and the delivery of quality and efficient services to the HOA;
- 6.2.9 to enforce the Rules of the Estate as imposed by the HOA and amended from time to time;
- 6.2.10 subject to clause 6.2.11, to provide, maintain, inspect, test, service, repair, improve and keep in good order and condition, as the case may be, the following services, amongst others, and to employ the necessary staff for that purpose:
 - 6.2.10.1 security, incorporating the electric fence and including all security equipment relating or belonging to the Estate;
 - 6.2.10.2 landscaping of the Communal Property;
 - 6.2.10.3 any form of solar-or alternative energy source, installed on the Estate;
 - 6.2.10.4 all recreational, sports and play facilities, where applicable;
 - 6.2.10.5 the borehole, water tanks, water pumps, irrigation system, or desalination plant installed on the Estate, if any, ensuring the optimum and efficient use of water resources within the Estate;
 - 6.2.10.6 garden lighting and security lighting;
 - 6.2.10.7 where applicable, sidewalks, roads, verges and other Common Areas and services;
- 6.2.11 to enter into service agreements and other necessary agreements with the Municipality or any other authority or supplier of services in connection with the Estate and to outsource any of its functions listed in this clause to the most suitable organisation or contractors;
- 6.2.12 to institutionalise governance and management processes and procedures as per its Rules and Policy- and Procedure Framework, for purposes of, amongst others, the following:
 - 6.2.12.1 to implement, control and enforce all governance- and management processes, policies and procedures;
 - 6.2.12.2 to control the maintenance, alteration, extension and renovation of all buildings or structures erected or to be erected on any Erf and to ensure compliance with the Architectural Design Rules and building and construction rules;
 - 6.2.12.3 to ensure compliance with the landscape design guidelines (if any),
 - 6.2.12.4 to ensure that no improvements on the Estate may occur until and unless the HOA has consented to the improvements and approved the necessary plans for which the HOA is entitled to charge an architectural scrutiny fee, prior to the Municipality receiving the plans for consideration;
 - 6.2.12.5 to ensure that no erf may be converted to sectional title, rezoned, consolidated or subdivided without the Written consent of the Board, prior to the Municipality receiving the applications for such consideration;
 - 6.2.12.6 to ensure compliance with any existing or future legislation that may affect the main business of the HOA;

- 6.2.12.7 to ensure compliance with the conditions attached to the establishment of the Estate; and
- 6.2.12.8 to ensure compliance with the CSOS Act,
- 6.2.13 to develop internal capacities and competencies enabling the HOA to perform all its obligations arising from the statutory provisions applicable to the Estate, with specific reference to the administration and finances of the HOA;
- 6.2.14 to assess proposed new developments within the perimeter of the Estate with a view to actively supporting only those that are aligned with the ethos of the Estate as described in clause 6.1 and to maintain basic aesthetic standards;
- 6.2.15 to provide any other services to the Members that may be decided upon at a General Meeting.

7. MEMBERSHIP

- 7.1 Membership of the HOA is compulsory for any person or legal entity who, in terms of the Deeds Registries Act, 1937, is reflected in the records of the Deeds Registry concerned, as the registered owner or co-owner of an Erf or Erven situated within the perimeter of the Estate. A person or legal entity reflected as the registered owner in the Deeds Registry is, subject to proof of the contrary, regarded to be the registered owner of the property. Upon registration of ownership, membership of the HOA is automatic, and Members must comply with this Constitution.
- 7.2 Membership of the HOA is restricted to the registered owners of any Erf situated within the Estate.
- 7.3 Where a Member is a legal entity (Trust, Company, Close Corporation, or other, whether incorporated or not) the legal entity—
 - 7.3.1 must designate a person to represent it in matters regarding the HOA;
 - 7.3.2 must provide acceptable proof of authority in Writing to the HOA evidencing the authority of the person who may represent the legal entity;
 - 7.3.3 the shareholders, directors, trustees or members of such a legal entity, as the case may be, are personally liable, jointly and severally, for the due performance of all Membership obligations in terms of this Constitution and the Rules.
- 7.4 Where the registered ownership of an Erf vests in more than one person or legal entity, the collective is regarded as one Member of the HOA only, provided that all co-owners are jointly and severally liable for their obligations. Where legal entities become co-owners, clause 7.3 must be complied with.
- 7.5 Where an Erf is owned by more than one person, such co-registered owners must designate one of them to represent the others as Member.
- 7.6 Members acknowledge that the Registrar of Deeds may not register the transfer of any land unit, arising from the Approved Subdivision, without the consent of the HOA, whose consent may not be unreasonably withheld.
- 7.7 A Member may not sell, donate, grant any option or pre-emptive right in respect of, or alienate or transfer, or in any way deal with its Erf, without the prior written consent of the HOA and the HOA may not provide consent to that effect, unless it is a condition of the sale and transfer that—
 - 7.7.1 the buyer agrees to become a Member of the HOA by virtue of their registered ownership and subscribes in Writing to the values and the terms and conditions embedded in the HOA's Constitution and the Rules, as amended from time to time, and any agreement concluded by the HOA with the Municipality or any other external service provider, person, or entity;

- 7.7.2 the HOA has issued a Clearance Certificate;
 - 7.7.3 the buyer has indicated in Writing, to the satisfaction of the Board, a satisfactory payment method with respect of the payment of the Monthly Levy; and
 - 7.7.4 the buyer acknowledges its understanding and undertakes in Writing to commit to the due performance of, and compliance with, all Membership obligations in terms of the Constitution and the Rules of the HOA.
- 7.8 The registered owner of an Erf may not resign as a Member of the HOA.
- 7.9 The Board may, if so requested, issue a membership certificate to a Member in such form as may be determined by the Board.
- 7.10 The rights and obligations of a Member are not transferable, except insofar as a limitation of a Member's rights is required, and agreed with the Member, with a view to securing a bond, loan or any other security on an Erf.
- 7.11 Members of the HOA must subscribe, among others, to the following:
- 7.11.1 the furthering of the main objectives of the HOA as described in clause 6.1;
 - 7.11.2 building and protecting the good name and reputation of the Estate;
 - 7.11.3 compliance with the Constitution and all the Rules, as amended and updated from time to time;
 - 7.11.4 conserving and restoring, where necessary, the natural habitat of the Estate;
 - 7.11.5 practising good neighbourliness in accordance with the law, the Rules, and generally accepted conventions and sensitivities.
- 7.12 Members of the HOA must ensure that their guests, visitors and tenants comply with the Members obligations described in clause 7.11, where applicable.
- 7.13 The HOA must compile and maintain a Register of Members and ensure that the Membership Register is kept at its administrative office and at the offices of its Managing Agent.
- 7.14 Every Member must provide the HOA with the information required to maintain the Membership Register and the onus rests solely upon Members to update the information contained in the Membership Register, as Members will be liable and accountable for all consequences resulting from any inaccurate information furnished.
- 7.15 The HOA is committed to protecting the personal information of Members as required by POPIA and it must take appropriate steps to ensure full compliance with the prescripts of that Act and related Regulations.
- 7.16 Among the information required from Members will be Written details of their service address for physical service (of documents and Notices, among others), and an email address for email service, the updating whereof remains the Members' sole responsibility as set out in clause 7.14.
- 7.17 The HOA shall regard the physical address of the Erf of a Member as the *domicilium citandi et executandi* of the Member where documents pertaining to legal action must be served, unless the Member informed the HOA in writing prior to the service of any documents to change the physical address for service of documents then that address must be used.
- 7.18 The *domicilium citandi et executandi* for any tenant or occupier of an Erf for purposes of legal action and Notices, is the physical address of the Erf.

- 7.19 Members must provide the HOA with Written details of their email address for email service of documents and Notices.
- 7.20 All Notices sent by email shall be deemed to be received upon despatch thereof, without the requirement of a delivery note or read receipt.
- 7.21 The *domicilium citandi et executandi* for the HOA for purposes of legal action and to Deliver Notices, is at the registered business address of the Managing Agent, as appointed from time to time, or by serving the notice by e-mail, but in such instance, with prior consent of the office of the Managing Agent.
- 7.22 A Member is not entitled to any Membership Rights, including the right to participate or vote at a General Meeting if the Member is in arrears for 60 days or more regarding any Levy-related Debt due and payable by the Member to the HOA.

8. LEVIES

- 8.1 Members of the HOA are jointly liable for expenditure incurred in connection with the HOA by virtue of section 29(7) of the 2020 By-law.
- 8.2 The HOA may impose levies upon the Members for—
- 8.2.1 the payment of all management and administrative expenses necessary to ensure the proper functioning of the HOA;
 - 8.2.2 recovering and meeting all the expenses which the HOA has incurred, or reasonably anticipated to incur;
 - 8.2.3 the maintenance and repair of existing facilities;
 - 8.2.4 the payment for services rendered to the HOA and its Members;
 - 8.2.5 expenses related to approved projects as mandated by the Members at a General Meeting;
- 8.3 Levies are due and payable in equal Monthly instalments in advance on the first day of the month, except for Special Levies, Clearance Levies, or where a decision to the contrary has been taken by Members at an AGM or SGM.
- 8.4 When determining the amount and nature of Levies, the Board must calculate the amount and the cash-flow needed by the HOA to meet its annual and medium-to-long term financial needs by taking into account the estimated shortfall or surplus, if any, which may have resulted from the previous or the current Financial Years, the income earned by the HOA, accumulated reserves, and advise the HOA on any adjustment of existing levies or the introduction of any other Levy.
- 8.5 Levies imposed by the HOA must only be aimed at achieving a break-even Annual Budget, to finance approved projects and to ensure the availability of adequate reserves to timeously replace or upgrade equipment and infrastructure or to comply with applicable statutory provisions in this regard.
- 8.6 Subject to clause 8.3, the total Levy payable by Members must be borne by Members in equal shares, calculated per Erf owned, with due regard to clause 8.8 which applies to consolidated Erven within the Estate.
- 8.7 Depending on the decision of Members at an AGM or an SGM set for this purpose, Special Levies may be made payable in a lump sum or instalments or a combination thereof payable at such time or times as resolved by the Members at the aforementioned meetings.

- 8.8 The HOA may impose a Levy applying to a consolidated Erf comprising the total amount of the respective Levy amounts that would have applied to each of such consolidated Erf's former components.
- 8.9 The HOA may, acting on the advice of the Board, impose Differentiated Levies on Erven based on the approved and registered business rights on these properties, and other approved business activities performed from these properties which may not require formal registration, and any other relevant factor as the HOA may determine.
- 8.10 The HOA may, in addition, levy an amount on the Erven referred to in clause 8.9, to be held in reserve with a view to covering possible damage to infrastructure, the upgrading or early replacement of infrastructure or other risks associated with the business activities.
- 8.11 Levies, including Differentiated Levies, must be revised annually and take effect from the start of the new Financial Year.
- 8.12 Any Levy amount due by a Member is a Debt due by the Member to the HOA and is payable by a Member without deduction, set-off or exchange and free of bank charges.
- 8.13 A Member's obligation to pay a Levy ceases upon that Member ceasing to be the registered owner of an Erf, without prejudice to the HOA's right to recover any debt due and payable that may be in arrears.
- 8.14 Subject to clause 8.13, levies paid by a Member are not repayable by the HOA when they cease to be a Member.
- 8.15 A Member's successor in title of an Erf is liable to pay the applicable Levy from the date upon which the successor in title becomes a Member pursuant the transfer of the Erf, and the previous Member is entitled to a refund representing the balance of any Levy amount paid in advance as a Clearance Levy provided that all debts have been settled by the Member.

9. **RULES OF THE HOA**

- 9.1 The Board may from time-to-time make, amend, or repeal Rules not inconsistent with this Constitution regarding—
 - 9.1.1 Architectural Design Rules that prescribe matters pertaining to the architectural and general external appearance and all related construction aspects of all buildings on the Estate, and includes the regulation of jetties, and matters related thereto;
 - 9.1.2 General Rules relating to, amongst others,—
 - 9.1.2.1 security and access to the Estate and amenities;
 - 9.1.2.2 the furtherance and promotion of any of the objects of the HOA, and the better management of the affairs of the HOA and for the advancement and protection of the interests of the members and residents;
 - 9.1.2.3 access to, and the occupation, enjoyment and use of the Common Area and the buildings erected thereon, by Members, their family, guests, tenants, employees and other invitees, including the prohibition or restriction of such access, occupation, enjoyment or use;
 - 9.1.2.4 use of streets, infrastructure, amenities and facilities in the common areas;
 - 9.1.2.5 traffic rules, speed limits, and related matters;
 - 9.1.2.6 the keeping and control of pets and other animals on the Estate;

- 9.1.2.7 the establishment and running of home businesses on the Estate;
 - 9.1.2.8 the preservation of the natural environment, vegetation and fauna on the Estate;
 - 9.1.2.9 short-term rentals;
 - 9.1.2.10 building and construction matters not included in the Architectural Design Rules contemplated in clause 9.1.1;
 - 9.1.2.11 the conduct of persons for the prevention of nuisance of any nature to any resident, and to promote good neighbourliness;
 - 9.1.2.12 dispute resolutions and disciplinary measures;
 - 9.1.2.13 schedule of transgressions and penalties.
- 9.2 The Board may make and implement, or amend, any other rules relating to–
- 9.2.1 the daily operational and administrative functioning of the HOA and the Estate; and
 - 9.2.2 the practical implementation of the General Rules.
- 9.3 The Architectural Design Rules may only be amended by following the same procedure to amend the Constitution.
- 9.4 The General Rules may be amended by an Ordinary Resolution and require a vote of 50% (fifty per cent) plus 1 (one) of Members forming a quorum at a General Meeting.
- 9.5 All Rules of the Estate must be enforced by the Board and are binding and equally applicable to all Members without any form of discrimination.
- 9.6 Any Rule applicable to a Member will, equally in context, be applicable to their visitors, tenants, occupants, employees, service providers, contractors, invitees, trusts and its beneficiaries, and apply even if the Rule does not have a specific reference to them. Members are accountable not only for their own actions but also for the actions of their visitors, tenants, occupants, employees, service providers, contractors, and invitees.
- 9.7 If an emergency or a disaster occurs, the Board may issue new Rules, or amend, interpret and align existing Rules, which will take immediate effect with a view to managing the emergency or disaster, and to give effect to any statutory directives, where applicable and apply for the duration of the emergency or disaster period.
- 9.8 The Rules must be issued within the constitutional mandate of the Board and have no force and effect to the extent that it conflicts with any by-law of the Municipality, any other law, this Constitution or any decision taken by Members at the AGM or of any SGM.
- 9.9 Except for the issuing, amending, and repealing procedure relating thereto, the Rules have the same status as this Constitution.
- 10. PENALTIES, REMEDIAL ACTIONS AND RELATED MATTERS**
- 10.1 The Board may impose Penalties arising from the non- or late payment of any Levy, or the transgression of the Constitution or the Rules.
- 10.2 The Board must, based on the determinations made at a General Meeting, prepare and update an appropriate Schedule of Transgressions and Penalties, which forms an integral part of the Rules, containing, among others, the detail of the instances when Penalties may be imposed, the related amount, the procedure to be followed by the Board when imposing a Penalty, the rights and obligations of transgressors, and the consequential effect of non-compliance.

- 10.3 Penalties must be treated as a Debt and imposed in accordance with the Rules, and a Penalty may be debited to a Member's Levy account.
- 10.4 If a Member fails to pay a Debt on the due date and remains in default for more than 7 (seven) Days after being Notified, the Board may institute legal proceedings against such Member for payment of the Debt, without prejudice to any other right or remedy which the Board or the HOA or any other Member may have in law, including the right to claim damages.
- 10.5 If a Member transgresses the Constitution or the Rules and the transgression requires remedying action, the Board must Deliver a Notice to that effect to the Member instructing that the transgression be remedied within a period determined by the Board and in the manner specified in the Notice. If the Member fails to complete the remedying actions specified in the Notice within the period determined by the Board in the Notice, the Board may, without prejudice to any other right or remedy which the HOA or the Board or any other Member may have in law, including the right to claim damages, effect the remedying actions and immediately recover the total cost incurred by the HOA in so doing from the Member. The cost incurred by the HOA is regarded as a Debt and may be debited to the Member's Levy account.
- 10.6 If the Board institutes any legal proceedings against any person or legal entity to recover a Debt or any other amount owed and payable to the HOA, the Board may, subject to the ruling of a competent court and the taxation of costs, as applicable, recover from such person or legal entity all legal costs incurred by the HOA on the scale as between attorney and client, and, if the person or legal entity is a Member, to debit the amount to the Member's Levy account, without any further notice.
- 10.7 The HOA may not issue a Clearance Certificate unless all Debts owed by the Member applying for a Clearance Certificate have been paid in full, or the Member has entered into a formal Written agreement with the Board, subject to the terms and conditions determined by the Board in the agreement. The HOA reserves the right, subject to clause 32.3 not to issue a Clearance Certificate in instances of non-Levy-related Debts, regardless of any dispute that may exist regarding the respective Debts.
- 10.8 Without prejudice to any of the rights of the HOA or the Board under this Constitution, if any person or legal entity fails to pay any Debt on the due date, then such person or entity must pay compounded interest thereon at 24% (twenty-four per cent) per annum, calculated from the due date of payment until the actual date of payment.

11. TERMINATION OF MEMBERSHIP

- 11.1 A Member may not terminate their membership of the HOA while remaining the registered owner of an erf in the Estate.
- 11.2 Membership of the HOA terminates automatically upon the date of transfer and registration of a Member's property in the name of another person in the Deeds Registry in accordance with the Deeds Registries Act, 1937.
- 11.3 The former Member does not (nor do any of such Members' successors in title, in whichever capacity) have any claim upon or interest in the funds or any other asset of the HOA based on the membership of the HOA related to the transferred property.
- 11.4 The termination of membership of the HOA due to the transfer of a property to another person, is without prejudice to the rights of the HOA and does not release such Member, their estate, or successor in title, as the case may be, from any liability to the HOA in respect of any Debt, the cause of

which arose prior to the transfer of such property, nor otherwise relieve such former Member from any other obligations owed to the HOA during the period of their membership.

12. BOARD OF TRUSTEES

12.1 The HOA must have a Board of Trustees consisting of the following persons:

12.1.1 not less than 3 (three) and not more than 6 (six) Members elected at an AGM;

12.1.2 not more than 3 (three) Members co-opted by the elected Trustees for their knowledge and expertise in matters relating to the HOA;

12.1.3 the outgoing Chairperson contemplated in clause 13.4, who remains a member of the Board until the new Chairperson contemplated in clause 12.2 is elected.

12.2 At the first meeting of the Board of Trustees following a General Meeting, the elected Trustees must elect a Chairperson and a Vice Chairperson from their own ranks.

12.3 Elected and co-opted Trustees must be Members Entitled to Exercise their Membership Rights.

12.4 Co-opted Members of the Board of Trustees are full and accountable members of the Board with voting rights.

12.5 A Member is automatically disqualified from being an elected or co-opted Trustee if the Member—

12.5.1 ceases to be a Member of the HOA;

12.5.2 is no longer Eligible to Vote;

12.5.3 is a minor;

12.5.4 is disqualified from being a director of a company as envisaged in the Companies Act, 2008 (Act 71 of 2008);

12.5.5 is an unrehabilitated insolvent.

13. TERM OF OFFICE OF BOARD OF TRUSTEES

13.1 Subject to clauses 13.4, 14 and 15, the term of office of elected Trustees is the period from the date on which the Trustees were elected to the date of the first following AGM.

13.2 Subject to clauses 14 and 15, the term of office of co-opted Trustees is the period between the date of co-option by the Board and the date of the first following General Meeting.

13.3 A Trustee may be re-elected or co-opted, as applicable, multiple times.

13.4 To ensure continuity, the Chairperson of the Board at the time of an AGM remains in office until the first meeting of the Board following the AGM, which must be held within 14 (fourteen) Days following the AGM, at which time the new Chairperson and Vice Chairperson of the Board must be elected as prescribed in Clause 12.2.

14. VACANCIES ON BOARD OF TRUSTEES

14.1 A vacancy of an elected Trustee occurs if—

14.1.1 the term of office of the Trustee expires as contemplated in clause 13.1;

14.1.2 a Trustee resigns;

- 14.1.3 a Trustee dies;
- 14.1.4 a Trustee is removed from office as contemplated in clause 15;
- 14.1.5 a Trustee is declared insolvent or is liquidated, whether provisionally or finally sequestrated;
- 14.1.6 a Trustee is absent for three consecutive meetings without leave of absence being consented to by the Chairperson of the Board;
- 14.1.7 a Trustee becomes disqualified as contemplated in clause 12.5 ;
- 14.1.8 a Trustee ceases to be a Member of the HOA in the circumstances contemplated in clause 11.2,

provided that anything done in good faith in their capacity as a Trustee, by a person who ceases to be a Trustee, remains valid.

- 14.2 If one or more vacancies on the Board occur prior to the next AGM, the vacancy may be filled by the Board by way of co-opting a Member of the HOA eligible to be elected to the Board in terms of this Constitution. The term of office of the co-opted Trustee ends at the following AGM.
- 14.3 If the position of Chairperson or Vice Chairperson becomes vacant the Board must meet as soon as possible to elect a new Chairperson or Vice Chairperson, as the case may be.
- 14.4 If only one of the Trustees remains on the Board, that Trustee must—
 - 14.4.1 within 72 (seventy-two) hours of becoming the sole Trustee, co-opt new Trustees until the minimum number of Trustees required to form the Board has been reached to enable the Board's immediate continuity; and
 - 14.4.2 within 14 (fourteen) days of becoming the sole Trustee, call an SGM to allow for the election of the required number of Trustees.
- 14.5 Notwithstanding clause 12.1.1, the sole remaining Trustee in the circumstances contemplated in clause 14.4, and thereafter together with the co-opted Members as contemplated in clause 14.4.1, constitute a fully functioning Board as if the Board had been elected and constituted in terms of clause 12.1.
- 14.6 If there are no Trustees remaining, all authority and control passes to the Managing Agent, who in such instance must within 72 (seventy-two) hours of becoming aware of the situation, call for a SGM, to allow for the election of new Trustees, at which time the authority and control reverts back to the Board.

15. REMOVAL OF TRUSTEE FROM THE BOARD

- 15.1 A person may be removed as Trustee of the Board, whether elected or co-opted, by a two-thirds majority vote taken by the Board if the Trustee—
 - 15.1.1 in the view of the Board, has breached any provision of the Constitution, the Rules or any agreement between the HOA and any external authority or service provider;
 - 15.1.2 has been found guilty of any offence in terms of any South African law that would impact negatively on the Trustee's ability to perform the functions of a Trustee;
 - 15.1.3 has brought the name and reputation of the HOA, the Board or the Estate into disrepute;
 - 15.1.4 has undermined the legitimacy and functioning of the governance and management structures of the HOA, thereby impacting negatively on the ability of the Board or Management to effectively pursue the objectives of the HOA.

- 15.2 Before a Trustee is removed in terms of clause 15.1, the Board may place a Trustee who is being investigated on precautionary suspension if the Board is of the view that the continued presence and participation of the Trustee will undermine the functioning of the Board and the legitimacy of the governance structures of the HOA.
- 15.3 Before the Board takes a decision to place a Trustee on precautionary suspension the Board must—
- 15.3.1 inform the Trustee of the investigation being conducted and the allegations made against the Trustee;
 - 15.3.2 inform the Trustee in writing of the intention to place them on precautionary suspension and the reasons therefor;
 - 15.3.3 provide the Trustee with a reasonable time and opportunity to respond to the allegations made; and
 - 15.3.4 consider the responses provided by the Trustee of the intention by the Board to place the Trustee on precautionary suspension.
- 15.4 A Trustee may not be placed on precautionary suspension for a period exceeding three months unless the nature of the investigation and the progress therewith requires an extension of the period which may not exceed a further month.

16. ROLES AND RESPONSIBILITIES OF CHAIRPERSON AND VICE CHAIRPERSON

- 16.1 The Chairperson must preside at all meetings of the Board and all General Meetings except where—
- 16.1.1 it would be a conflict of interest to do so; or
 - 16.1.2 any other eventuality justifies the recusal of the Chairperson from a meeting or vacating the chair of the meeting.
- 16.2 The Chairperson must perform all the duties of the office of the Chairperson and those incidental thereto, including—
- 16.2.1 duties assigned to the Chairperson by the Board;
 - 16.2.2 duties assigned to the Chairperson by the Members at a General Meeting.
- 16.3 The Vice Chairperson must—
- 16.3.1 perform any duties assigned to them by the Chairperson from time to time;
 - 16.3.2 assume the authority and duties of the Chairperson if the Chairperson is absent, or refuses to act as Chairperson, or for whatever reason is incapable of performing his or her duties.

17. MANDATE, ROLES AND RESPONSIBILITIES OF THE BOARD OF TRUSTEES

- 17.1 The roles and responsibilities of the Board of Trustees are as set out in this Constitution and as documented by the Board from time to time.
- 17.2 The Board must decide on the Board portfolios, the associated mandate, roles and responsibilities, and allocate such to members of the Board, with due regard to the duties of scheme executives as contemplated in the CSOS Act, and the specialised skills, knowledge, and experience of the Trustees.
- 17.3 The Board may allocate certain portfolios, responsibilities and specific tasks to the co-opted members, the Estate Manager, the Managing Agent and to any subcommittee established by the Board for a particular purpose.

- 17.4 Without derogating from the generality of the mandate and roles and responsibilities of the Board in terms of this Constitution, the Rules and applicable legal frameworks, the roles and responsibilities of the Board include the following:
- 17.4.1 to, with the assistance of the Estate Manager, give effect to the decisions taken at a General Meeting aimed at achieving the HOA's objectives;
 - 17.4.2 to support the HOA to comply fully with the terms and conditions applicable to the establishment and continued functioning of the Estate in accordance with applicable laws;
 - 17.4.3 to oversee and direct the day-to-day functioning of the Estate as managed and controlled by the Estate Manager;
 - 17.4.4 to conclude and sign agreements, where necessary, regarding matters related to the effective and efficient functioning of the HOA, with due regard to the Constitutional and legal mandate of the Board, and the obligation of executing specific tasks, priorities and timeframes identified and decided by the Members at a General Meeting;
 - 17.4.5 to manage and monitor the income and expenditure related to the Annual Budget, with due regard to the decisions taken by the HOA regarding Unbudgeted Expenditure and all applicable legislative provisions, and to report quarterly to the HOA on progress and any significant budgetary movements;
 - 17.4.6 to report regularly and appropriately to the Members on the activities of the Board, in particular the progress made regarding important aspects pertaining to the core mandate and functions of the Board, the specific tasks and projects mandated by the HOA, and the challenges and opportunities experienced in the execution of the Board's mandate;
 - 17.4.7 to enhance the interests of the HOA and its Members and to protect the good name and reputation of the Estate, by taking appropriate actions to give effect to the aforementioned responsibilities;
 - 17.4.8 to, through the Chairperson or his or her delegated representative, act as the internal and external communication and liaison body in all matters affecting the HOA, the Members and the Estate;
 - 17.4.9 to develop and regularly update a Policy and Procedure Framework as contemplated in 17.5 which must be accessible to all Members and staff of the HOA.
- 17.5 The Policy and Procedure Framework contemplated in clause 17.4.9 must comply with all applicable legal provisions regarding all aspects of the governance and management of the Estate, and it must include, among others, the following:
- 17.5.1 Policies and procedures relating to the management of the HOA, including—
 - 17.5.1.1 good financial management, control and reporting;
 - 17.5.1.2 Unbudgeted Expenditure;
 - 17.5.1.3 administrative processes and procedures regarding the roles of members of the Board overseeing various portfolios;
 - 17.5.1.4 the protection and use of personal information of Members;
 - 17.5.1.5 access to information and confidentiality;
 - 17.5.1.6 procurement;
 - 17.5.1.7 human resources;

17.5.1.8 any other matter to ensure the effective management of the Estate,
adopted and implemented from time to time;

17.5.2 Standard operating procedures adopted and implemented from time to time regarding the functioning of the Board and the HOA;

17.5.3 Guidelines developed from time to time;

17.5.4 Codes of conduct implemented from time to time.

17.6 The Board may vary, cancel or modify any of its own decisions and resolutions from time to time, including its decisions regarding Board portfolios, and the number, mandate and composition of subcommittees or task teams of the Board.

17.7 The Board must conduct or commission an investigation into the affairs of the HOA should it suspect a contravention of any law, especially those placing a legal duty on the HOA to report any crime or suspicion thereof, any alleged breach of the provisions of this Constitution or the Rules of the HOA or the Board.

17.8 The Board must provide guidance to the HOA to develop a three to five-year development and management strategy for the Estate containing among others the strategic intent, priorities, goals and outcomes, an implementation plan articulating infrastructure and resource requirements and needs, timeframes and responsibilities, key milestones and reporting of progress.

17.9 Trustees may be reimbursed for all reasonable and bona fide expenses incurred by them related to the execution of their duties as Trustees.

18. MEETING PROCEEDINGS OF THE BOARD OF TRUSTEES

18.1 The Board must meet Monthly to give effect to its roles and responsibilities and to execute its mandate as contemplated in Clause 17 above.

18.2 The Board must, subject to the provisions of this Constitution, determine its meeting procedures and related matters to ensure that the Board functions effectively and efficiently.

18.3 The Board must meet in person or by applying available on-line communication options, or a combination of the aforementioned.

18.4 The quorum for meetings of the Board is 50% (fifty per cent) plus 1 (one) of the Trustees, not counting any vacancies.

18.5 A member of the Board may issue a proxy to any other Trustee, to attend any Board meeting and to represent such Trustee and vote in terms of the proxy so issued.

18.6 If there is an equality of votes cast by the Trustees relating to any matter, the Chairperson has an obligatory casting vote in addition to his or her vote as the Chairperson of the Board.

18.7 The Chairperson must preside at all meetings of the Board, provided that if at any meeting of the Board, the Chairperson is not Present within 15 (fifteen) minutes after the starting time determined for the holding of the meeting, then the Vice Chairperson shall act as Chairperson of the meeting, provided further that should the Vice Chairperson also not be Present within 15 (fifteen) minutes of the time determined for the holding of the meeting, the Trustees Present must elect from their ranks a Chairperson for the meeting, who must exercise all the authority and duties of the Chairperson in relation to such meeting.

18.8 The Board must keep Minutes of the meetings and the Minutes must at least reflect—

- 18.8.1 the decisions taken by the Board;
- 18.8.2 the financial implications of the decisions taken, if any;
- 18.8.3 whether the financial implications have been budgeted for and approved in the Annual Budget or not, and the proposed funding thereof, where applicable, if not budgeted for.
- 18.9 The minutes must be prepared by the Board as soon as possible after the meeting in the agreed format, and submitted to the Chairperson for revision and consideration, and thereafter formally submitted to the following meeting of the Board for approval and sign-off by the Chairperson.
- 18.10 Signed Minutes become part of the official records of the HOA.
- 18.11 The minutes of the meeting of the Board are accessible at all reasonable times to a Trustee, the Auditors, the Members, and the Municipality, subject to the provisions of POPIA, and subject to the signing of an undertaking by the individuals, groups, or professional individuals or their principals, to respect the confidentiality of the content of the minutes and the use thereof for the purpose indicated in the request to gain access only.
- 18.12 Only the decisions of the Board recorded in the minutes of properly constituted meetings and that fall within the mandate and authority of the Board, are valid and of full force and effect, and remain as such until varied or rescinded by an authorised authority.
- 18.13 A resolution signed by all the Trustees by means of a round-robin process is valid as if it had been passed at a duly convened meeting of the Board.

19. ANNUAL GENERAL MEETINGS OF THE HOMEOWNERS' ASSOCIATION

- 19.1 The HOA must hold a General Meeting of Members of the HOA at least once each Year, which must be constituted as its AGM, and held within 6 (six) months after the end of the HOA's Financial Year.
- 19.2 An AGM must be called for by the Board, or the Managing Agent on instruction by the Board, with at least 21 (twenty-one) days' written Notice to the Members.
- 19.3 The Notice to Members announcing the AGM must—
 - 19.3.1 specify the date, place, and time of the AGM;
 - 19.3.2 provide an agenda of the AGM;
 - 19.3.3 must contain a description of the business that is to be conducted under each item of the agenda of the AGM, together with the rationale and motivation for each proposal that is to be tabled; and
 - 19.3.4 include all relevant supporting documentation.
- 19.4 In addition to any other matter timeously placed on the agenda by the Board of its own accord, or at the request of Members at least 14 (fourteen) days before the scheduled date of the AGM, the following matters must be on the agenda of an AGM for consideration:
 - 19.4.1 the consideration of the Chairperson's Annual Report;
 - 19.4.2 the election of Members to the Board of Trustees;
 - 19.4.3 the consideration of resolutions proposed by the Board;
 - 19.4.4 the consideration of proposed amendments to resolutions proposed by Members for adoption by such meeting, submitted in accordance with clause 24.6, and the voting upon any such proposed resolutions;
 - 19.4.5 the consideration of the Annual Financial Statements for the previous Financial Year and any other related presentation or report;
 - 19.4.6 the consideration of the Report of the Auditors and their fees for services delivered;
 - 19.4.7 the appointment or confirmation of the appointment of Auditors and their fee structure for the next Financial Year;

- 19.4.8 the consideration of the appointment, if necessary, of any other person or firm or entity to deliver specified professional or other services to the HOA;
- 19.4.9 the consideration of the proposed Annual Budget of the HOA for the current financial cycle, for purposes of ratification, or amendment thereof;
- 19.4.10 the consideration of the Levy contemplated in clause 8, for the next financial cycle;
- 19.4.11 the submission of any policy or Rule for approval, amendment, or noting, as applicable; and
- 19.4.12 the submissions to CSOS as contemplated in clause 30.2.2 of this Constitution.

19.5 When calculating the 21 (twenty-one) days' Notice contemplated in clause 19.2, the day of issuing the Notice must be excluded and the day of the meeting included.

19.6 Provision must be made for Members to attend and participate in the meeting in person, and by way of an appropriate online platform.

19.7 Notice of the AGM must be served in accordance with clause 27.

20. SPECIAL GENERAL MEETINGS

20.1 All General Meetings other than an AGM are called "Special General Meetings" (SGMs).

20.2 The Board may, whenever circumstances so necessitate, convene a SGM in accordance with the provisions of this Constitution, and the Board must convene a SGM when requested by at least 30 (Thirty) Members of the HOA submitting a Written request to the Board to do so, and attaching the proposed resolutions to be passed at the proposed SGM, accompanied with the rationale and motivation for each proposal that is to be tabled.

20.3 An SGM must be called with at least 21 (twenty-one) days' written Notice to the Members of the HOA.

20.4 When calculating the 21 (twenty-one) days' Notice contemplated in clause 20.3, the day of issuing the Notice must be excluded and the day of the meeting included.

20.5 A Notice calling for an SGM must—

20.5.1 include an agenda;

20.5.2 specify the date, place and time of the SGM;

20.5.3 set out why the SGM is being called and provide details of the proposed resolution and the rationale and motivation therefor;

20.5.4 indicate the implications of the adoption of the resolution for the HOA and its Members in general;

20.5.5 state the financial or any other implications on the HOA if the resolution were adopted;

20.5.6 where a Special Resolution contemplated in clause 20.7 is required, in addition to the information listed in clauses 20.5.1 to 20.5.5, include the following:

20.5.6.1 the possible carry through impact on the financial wellbeing of the HOA; and

20.5.6.2 the effect the adoption of the Special Resolution may have on the ability of the HOA to achieve its objectives and to function effectively and efficiently.

20.6 Notice of the SGM must be served in accordance with clause 27.

20.7 A Special Resolution is required in the following instances:

20.7.1 any amendment to this Constitution;

- 20.7.2 material changes to the area of, intended use of or construction of, or any improvements on, any portion of the Communal Property or Public Open Space, as the case may be;
- 20.7.3 the sale, letting, alteration or other disposal of, sub-divisions, transfer, mortgage or other encumbrance of the Communal Property.

20.8 At an SGM where a Special Resolution is proposed the Meeting may not discuss any other matter not related to the proposed Special Resolution.

21. NOTICE OF MEETINGS: CONDONATION

21.1 Non-compliance with the Notice periods for General Meetings prescribed in clauses 19.2 and 20.3 may be condoned by a 75% (seventy-five per cent) majority of the Members Present at the General Meeting.

21.2 The accidental or unintentional omission to give Notice of a meeting or any decision, or to give any other Notification, or Present any document required to be given or sent in terms of these provisions, or the non-receipt of any such Notice, Notification or document by any Member or other person entitled to receive the same, does not invalidate the proceedings of, or any decision passed at, any General Meeting.

22. MEETING VENUES

22.1 All General Meetings of the HOA must take place at venues or places determined by the Board from time to time, within a 30km (thirty kilometre) range from the Estate, provided that appropriate infrastructure must be available to enable online Attendance and participation by Members.

23. QUORUM

23.1 No business may be transacted at any General Meeting of the HOA unless a quorum is Present when the Meeting proceeds to business.

23.2 The quorum required for any General Meeting of the HOA is the total number of Members Eligible to Vote and Present at the Meeting, representing at least 34% (thirty-four per cent) of the total number of votes of Members, provided that at least 35 (thirty-five) Members must be Present in person or attending via the online platform provided by the Board.

23.3 If within 30 (thirty) minutes from the scheduled time of a General Meeting a quorum is not Present, the meeting, if convened at the request of Members, must be dissolved, but in any other case it stands adjourned to the same Day in the next week, at the same place and time, or subject to clause 22.1 at such other place as the Chairperson of that meeting may determine, and if at such adjourned meeting a quorum is not Present within 30 (thirty) minutes from the scheduled time of the meeting, the Members Present constitute a quorum.

23.4 Subject to clause 23.1, once a General Meeting of the HOA constituted in accordance with this Constitution is quorate, it remains quorate for as long as at least 51% (fifty-one per cent) of the number of Members constituting a quorum is Present at the Meeting.

23.5 If a Meeting of the HOA becomes inquorate, for whatever reason, the Members Present may discuss, or continue to discuss, the matters on the agenda of the Meeting and formulate recommendations for consideration at a quorate Meeting.

24. GENERAL MEETINGS: PROCEDURES

- 24.1 At a General Meeting the Meeting may not discuss any other matter not included in the agenda.
- 24.2 The Chairperson must preside at all General Meetings, provided that should he or she not be Present within 15 (fifteen) minutes after the scheduled time for the meeting, then the Vice Chairperson must act as Chairperson of the meeting, provided further that should the Vice Chairperson also not be Present within 15 (fifteen) minutes of the scheduled time of the meeting, then the Members Present at the meeting Entitled to Exercise their Membership Rights, must vote to appoint a Chairperson for the meeting, who must thereupon exercise all the authority and duties of the Chairperson at the meeting.
- 24.3 When Written Notice is given by the Board to Members of a General Meeting to be held, the Chairperson may set out the rules of engagement for the meeting, including the time limitations for representations by Members, and the manner in which presentations are made by Members. The Chairperson may invite, allow or refuse any person to speak or to make written or oral representations in accordance with the rules of engagement.
- 24.4 The Chairperson may, with the consent of any General Meeting at which a quorum is Present, and if so directed by the Meeting, adjourn a meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business announced in the initial Notice of the General Meeting, provided that where a General Meeting is adjourned for 10 (ten) Days or more, Notice of the General Meeting must again be given in the same manner as the initial Notice for such a General Meeting as set out in this Constitution. Except as aforesaid, Members are not entitled to any further Notice of the adjourned General Meeting, or of the business to be transacted at that adjourned General Meeting.
- 24.5 A Member wishing to submit a general or special resolution for consideration by the HOA may only do so at an SGM and by complying with clause 20.2.
- 24.6 If a Member wishes to submit a proposed amendment to a resolution on the agenda of a General Meeting, the Member must—
- 24.6.1 submit the proposed amendment to the resolution to the HOA in Writing at least 14 (fourteen) Days before the scheduled date of the General Meeting, whereafter the Board must within 48 (forty-eight) hours distribute same to members for consideration with a revised Agenda;
 - 24.6.2 submit the proposed amendments to the proposed resolution in the format prescribed by the Board and indicated in the relevant Notice of the General Meeting; and
 - 24.6.3 provide the HOA with proof of support in Writing from at least 15 (fifteen) other Members in good standing for the proposed amendment when submitting the proposed amendment to the resolution to the HOA.
- 24.7 A Member may submit an agenda item for discussion at a General Meeting by—
- 24.7.1 submitting the discussion point to be added to the Agenda to the HOA at least 14 (fourteen) Days before the scheduled date of the General Meeting, whereafter the Board must within 48 (forty-eight) hours distribute same to Members as an amendment to the Agenda;
 - 24.7.2 submitting the discussion point in the format prescribed by the Board and indicated in the relevant Notice of the General Meeting; and
 - 24.7.3 providing to the HOA proof of support in Writing from at least 5 (five) other Members in good standing when submitting the agenda item for discussion.
- 24.8 A Member may not during the proceedings at a General Meeting table a new or proposed amendment to a resolution under consideration at that meeting.

24.9 Except where prescribed differently in this Constitution, General Meetings must be conducted in accordance with generally accepted meeting practices.

25. **PROXIES**

25.1 A Member Entitled to Exercise Membership Rights, may be represented at a General Meeting by Proxy, by a person who need not be a Member of the HOA.

25.2 A Proxy must be in Writing and must be signed by the Member concerned or their duly authorised agent and must be in the format determined by the Board.

25.3 A person may not hold more than two Proxies and that person may cast a vote for each Erf owned by the Member Entitled to Exercise Membership Rights who issued the Proxy to that person.

25.4 A "person" for purposes of clause 25 means a natural person who is Present at such General Meeting.

25.5 Where ownership of an Erf vests in more than one natural person all the co-owners must sign the Proxy unless one co-owner provides written proof that he or she is authorised to act on behalf of the other co-owners.

25.6 Where ownership of an Erf vests in a legal entity or a trust, the person legally authorised to act on behalf of that legal entity must sign the Proxy and must provide a written resolution to act on behalf of the entity in this matter.

25.7 A Member must submit a Proxy and the supporting documentation indicating the authority to act, where applicable, to the HOA by emailing or hand-delivering it to the Administrative Office of the HOA or the Managing Agent, during Business Days at least 48 (forty-eight) hours prior to the scheduled time of the General Meeting.

26. **GENERAL MEETINGS: VOTING**

26.1 At any General Meeting, a Member Present has 1 (one) vote for each Erf registered in the Member's name. If an Erf is registered in the name of more than one person or legal entity, the registered owners jointly have 1 (one) vote only.

26.2 Only Members of the HOA Entitled to Exercise their Membership Rights, are entitled to vote on any matter serving before the Meeting,

26.3 At any General Meeting a resolution put to the vote must be decided as follows:

26.3.1 by written ballot completed by a Member or their proxy; or

26.3.2 by using the voting facility provided for those Members who are acknowledged as Present at the Meeting by signing in on the online facility provided by the Board.

26.4 An Ordinary Resolution is required for all instances except where a Special Resolution is required as contemplated in clause 20.7.

26.5 An Ordinary Resolution or the amendment of an Ordinary Resolution is carried by a simple majority of the votes of the Members Present at the Meeting, and an abstention may not be counted as a vote for or against the resolution in question.

26.6 A Special Resolution for matters prescribed in clause 20.7, or the amendment of a Special Resolution, requires a two-thirds majority of the votes of the Members Present at the Meeting, and an abstention may not be counted as a vote for or against the resolution in question.

- 26.7 If, in the case of a simple majority vote there is an equality of votes, the Chairperson has an obligatory casting vote in addition to his or her vote as a Member Present at the Meeting.
- 26.8 A declaration by the Chairperson as to the result of any voting at a meeting is regarded to be a true and correct statement of the outcome of the voting and voting procedure unless any Member Present at a Meeting has, before the closure of the Meeting, objected to any declaration made by the Chairperson as to—
- 26.8.1 the result of any voting at the meeting; or
- 26.8.2 the validity of the voting procedure.
- 26.9 An entry in the Minutes of the Meeting reflecting that any motion has been carried or lost, with the number of votes recorded in favour or against such motion, is conclusive evidence of the vote so recorded, provided that the entry conforms with the declaration made by the Chairperson.
- 26.10 The Board must endeavour, through its instructions to the Managing Agent, to advise all Members in Writing of the results and outcome of all votes cast at any General Meeting, within 3 (three) Business Days after such General Meeting.

27. SERVING OF NOTICES

- 27.1 The Board must issue Notices of General Meetings to Members by email sent to the email addresses recorded in the Membership Register for the Members.
- 27.2 Any Notice sent to the email address recorded in the Membership Register is regarded as proof of transmittal of the Notice to the Member.
- 27.3 The accidental or unintentional omission to give Notice of a Meeting to, or the non-receipt of a Notice of a Meeting by a person entitled to receive it, does not invalidate the proceedings of a General Meeting.

28. PROFESSIONAL SERVICE PROVIDERS

- 28.1 The Board may, subject to the provisions of this Constitution and the procurement policy of the HOA, procure the services of an Accountant, Auditor, Attorney, Advocate, Architect, Engineer, or any other professional person or firm, for reasons regarded as necessary by the Board and on such terms and conditions as the Board decides.
- 28.2 The services contemplated in clause 28.1 may not be procured unless the costs associated therewith were approved in the Annual Budget or within the ambit of the policy pertaining to Unbudgeted Expenditure.
- 28.3 The Board at all times has the right to engage on behalf of the HOA, the services of professional service providers described in clause 28.1 for any reasons thought necessary by the Board and on such terms as the Board may decide.

29. FINANCIAL YEAR END

- 29.1 The Financial Year-end of the HOA is 30 June of each Year.

30. ANNUAL AUDITED FINANCIAL STATEMENTS AND MONTHLY MANAGEMENT ACCOUNTS

30.1 GENERAL

- 30.1.1 Members may have access to the audited annual financial statements and monthly management accounts on Business Days and during business hours, subject to the terms and conditions determined by the Board regarding the time and manner, and subject to any laws regulating the protection and confidentiality of information.
- 30.1.2 At each AGM the Board must table—
- 30.1.2.1 a proper income and expenditure account for the immediately preceding Financial Year, together with an audited balance sheet of the last Financial Year-end;
 - 30.1.2.2 proper and extensive reports prepared by the Board and the appointed Auditors relating to the information contained in paragraph 30.1.2.1; and
 - 30.1.2.3 any significant movements of funds or other report reflecting on matters affecting the future financial sustainability of the HOA including the reserve funds contemplated in clause 30.4.
- 30.1.3 The Notice sent to Members convening an AGM must include a copy of the accounts, balance sheet and reports contemplated in clause 30.1.2 and any other documents required by law to accompany the same.

30.2 AUDITED FINANCIAL STATEMENTS AND SUBMISSIONS TO COMMUNITY SCHEME OMBUD SERVICE (CSOS)

- 30.2.1 The Auditors appointed in terms of clause 19.4.6 read with clause 30 must examine the financial accounts and related documents and information of the HOA annually and determine and verify the correctness of the income and expenditure account and balance sheets contemplated in clause 32.1.
- 30.2.2 The HOA must, in accordance with, and in the format contemplated in, the CSOS Act, annually submit to CSOS an Annual Return, the Annual Financial Statements of the HOA, and any other document or information required in terms of that Act.

30.3 INSURANCE AND INDEMNITY

- 30.3.1 The HOA must ensure that the insurance cover of the HOA is based on a proper risk assessment and provides adequate cover against replacement value, standard risks, and the amounts prescribed by the CSOS Act, and related regulations and directives regarding public liability and fidelity insurance.
- 30.3.2 The HOA must obtain a replacement valuation at least every 3 years of all buildings and improvements to the Communal Property and it is obliged to insure and adjust the insurance value accordingly.
- 30.3.3 The HOA must by way of appropriate insurance coverage provide full indemnity to members of the Board against any form of public liability arising from the bona fide execution of their duties as Trustees.
- 30.3.4 The Board as a collective, is not liable to the HOA for any expenditure, loss or damage suffered by the HOA arising from the unauthorised or illegal acts of any fellow Trustee, employee, professional service provider, or advisor, including, among others, the Auditors of the HOA.
- 30.3.5 The Trustees individually and as a collective, as well as every servant, agent and employee of the HOA, are not liable to the HOA—

- 30.3.5.1 for any expenditure, loss or damage suffered as a result of the insufficiency or deficiency of title to any property acquired by the Board for or on behalf of the HOA;
- 30.3.5.2 for the insufficiency or deficiency of any security in or upon which any of the monies of the HOA must be invested;
- 30.3.5.3 for any expenditure, loss or damage arising from the insolvency or tortious act of any person with whom any monies, securities of effects are deposited;
- 30.3.5.4 for any expenditure, loss or damage caused by any error of judgement or lack of oversight on the part of a Trustee;
- 30.3.5.5 for any other expenditure, loss, damage or misfortune which may happen during a Trustee's term of office, in whichever capacity on the Board;
- 30.3.5.6 for any contract entered into, or any act or deed committed by such person or persons resulting from the execution of any of the duties of their office or in relation thereto,

unless the said expenditure, loss, damage or misfortune occurred as a result of gross negligence, unauthorised actions, mala fides or illegal behaviour and the like.

30.3.6 A Trustee may not be held liable for the acts, receipts, neglects or defaults—

31.3.6.1 of the Auditors;

31.3.6.2 of any of the other Trustees, or

31.3.6.3 of any Member of the HOA acting in any delegated capacity on behalf of the Board of Trustees,

unless the same happens through lack of bona fides or breach of duty or breach of trust by the Trustee.

30.4 RESERVE FUND

30.4.1 The HOA must at all times maintain a Reserve Fund as prescribed by the CSOS Act.

30.4.2 The Board must conduct a Reserve Fund study every 3 (Three) years to calculate the amount that the HOA and Members must comply with.

30.4.3 The HOA may not deplete the Reserve Fund below the minimum threshold calculated at an amount equal to the value of 25% (twenty-five per cent) of the annual operational budget of the HOA, as approved annually by Members at an AGM.

30.4.4 The Reserve Fund is an entirely separate fund and must be clearly defined and presented in the Financial Statements of the HOA.

30.4.5 Reserve funds may only be used if a resolution to utilise such funds is approved by Members at a General Meeting. The resolution must include a provision as to how these depleted funds will be replenished.

31. BREACH BY MEMBERS

31.1 The Board may investigate any suspected or alleged breach of the Constitution or the Rules by any person.

31.2 If a Member—

- 31.2.1 fails to pay on any due date any amount due by that Member in terms of this Constitution or any of the Rules, and the Member remains in default for more than 7 (seven) Days after being Notified by the Board in Writing to pay the amount due; or
- 31.2.2 commits any other breach of any provision of this Constitution or the Rules and fails to remedy the breach within the time period specified by the Board in a Written Notice to that Member,

then, subject to clause 31.5, without prejudice to any other rights or remedies which the Board or any other Member may have in law, including the right to claim damages, the Board may institute legal proceedings on behalf of the HOA for payment of the overdue amount or to remedy the breach, or to recover any costs and expenses incurred by the HOA to remedy the breach on behalf of the Member, as the case may be.

- 31.3 If the Board institutes legal proceedings against a Member for any breach contemplated in clause 31.2, the HOA may claim from that Member any interest contemplated in clause 31.4 on the due amount, including attorney/client fees, tracing fees and collection commission, and any related costs incurred by the Board or the HOA.
- 31.4 If a Member fails to pay any amount due on any due date, then that Member must pay interest thereon at the annual compounded rate of 24% (twenty-four per cent) per annum calculated from the due date for payment until the actual date of payment of such amount.
- 31.5 If there is a dispute between the Board and a Member as to whether the Member has failed to pay any due amount contemplated in clause 31.2.1 or breached the Constitution or any Rule as contemplated in clause 32.2.2, then the dispute resolution process set out in clause 32 must be followed.

32. DISPUTE RESOLUTION AND ARBITRATION

- 32.1 The Board must, in the first instance, institute a dispute resolution process to attempt to resolve any dispute regarding—
 - 32.1.1 any matter arising out of this Constitution;
 - 32.1.2 the rights and duties of any of the parties mentioned in this Constitution;
 - 32.1.3 the interpretation of this Constitution or the Rules; or
 - 32.1.4 whether or not a breach contemplated in clause 31.2 has been committed.
- 32.2 For purposes of holding an internal dispute resolution meeting, the complainant must motivate, sign and lodge the complaint with the Board, who must notify the complainant of the proposed procedure to resolve the dispute.
- 32.3 Where the dispute between a Member and the HOA pertains to a non-Levy related Debt resulting in a delay in issuing a Clearance Certificate as contemplated in clause 10.7, the HOA must agree to the issuing of the Certificate after the affected Member has submitted sufficient Written proof, certified by an Attorney, that the Member has paid into the Attorney's Trust Account an amount equivalent to the disputed outstanding Debt, and that the payment was made on condition that the Member will employ all reasonable measures to have the dispute resolved expeditiously in accordance with clause 32, and on condition further that the funds paid into the Trust Account of the Attorney, will be released without delay and paid into the HOA's bank account, should the matter be resolved in favour of the HOA.
- 32.4 All parties undertake to engage in any such dispute with a view to resolve the dispute within a reasonable timeframe and in good faith.

- 32.5 If the dispute is not resolved internally, a party to a dispute may make an application for relief to the CSOS.
- 32.6 If the dispute falls outside of the jurisdiction of the CSOS or if referred to do so by the CSOS, and notwithstanding anything to the contrary, the Board may institute legal proceedings on behalf of the HOA in any Court having jurisdiction for the purposes of obtaining, remedying, restraining or interdicting any breach, and to claim damages resulting from such breach of any of provisions of the Constitution of the Rules.
- 32.7 Despite clauses 32.1 and 32.2, and if the dispute falls outside the jurisdiction of the CSOS, the parties may agree to submit the dispute to- and decide such dispute by arbitration.
- 32.8 If a dispute is referred for arbitration, the following applies:
- 32.8.1 The arbitration must be held in terms of the Arbitration Act, 1965 (Act 42 of 1965) at a venue in the greater Cape Town area;
- 32.8.2 Except as otherwise specifically provided herein, the arbitrator must be, if the question in dispute is:
- (a) primarily an accounting matter - an independent accountant;
 - (b) primarily a legal matter - an attorney registered with the Western Cape Legal Practice Council of not less than 10 (ten) years' standing, or a senior advocate of the Cape Bar Association of not less than 5 (five) years' standing, or in the absence of agreement between the parties, a nominee of the President of the Cape Bar Council;
 - (c) primarily a building or construction related matter - the chairperson of the Association of Architects of SA (AASA) at the time or his or her nominee;
 - (d) any other matter - an independent and suitably qualified person appointed and agreed upon between the parties to the dispute which arbitrator shall then, determine the dispute.
- 32.8.3 If agreement cannot be reached on whether the question in dispute falls under clauses 32.8.2(a) to (d) or if agreement cannot be reached upon a particular arbitrator in terms of clause 32.8.2(d), within 3(three) Business Days after the arbitration has been requested, then—
- (a) the President for the time being of the Western Cape Legal Practice Council or its successor must determine whether the question in dispute fails under clauses 32.8.2(a) to (c); or
 - (b) the President for the time being of the Western Cape Legal Practice Council must nominate the arbitrator from the category listed in 32.8.2(c) within 7(seven) Business Days after the parties have failed to agree.
- 32.8.4 The arbitrator must make their award within 7 (seven) Business Days after completion of the arbitration and must in giving their award, have regard to the principles laid down in terms of this Constitution.
- 32.8.5 The arbitrator may determine, as part of the award, that the cost of the arbitration may be paid either by one or the other of the disputing parties or by the HOA as they in their sole discretion may deem fit.
- 32.8.6 The decision of the arbitrator is final and binding and may be made an order of the Cape Provincial Division of the High Court of South Africa or its successor, upon application by any party to the arbitration.

33. **EFFECTIVE DATE**

33.1 The provisions of this Constitution take effect after following due internal processes regarding the revocation of the existing Constitution and the adoption of this Constitution, on the date of adoption of this amended Constitution by the SGM set for this purpose, as provided for in clause 4, but also taking into account that if the amendment of certain clauses of this Constitution require the consent of the Municipality as referenced in clause 4.4, such amended clauses of the Constitution shall only become effective as provided for in clause 4.4, without affecting the effective date of the remainder of the clauses of the Constitution, as envisaged herein.

34. FAILURE TO MEET OBLIGATIONS OR CEASING TO FUNCTION

34.1 If the HOA fails to meet its obligations as set out in clauses 6.2.3, 6.2.4 and 6.2.8 read together with clause 8, the status of the HOA must be reported to the Municipality by the last functioning Chairperson, after giving Notice of the Chairperson's intention to do so to all Members.

34.2 If the HOA ceases to function or fails to meet any of its obligations resulting from this Constitution, any Member may apply to—

34.2.1 the Municipality to—

(a) disestablish the HOA in terms of section 15(2)(p) of the 2020 By-law, or

(b) rectify a failure of the HOA in respect of the control over- or maintenance of the services listed in section 29(3)(b) of the 2020 By-law, by taking appropriate action in terms of section 15(2)(q) of the 2020 By-law, or

34.2.2 the High Court to appoint an administrator, who must exercise the powers of the HOA to the exclusion of the Board.

34.3 If the Municipality believes that the community is adversely affected by the failure of the HOA to function, the Municipality may take appropriate action to rectify the failure, in which event—

34.3.1 the Municipality may recover any expenditure incurred to take appropriate action, from the HOA or its Members, who are jointly liable, and

34.3.2 the amount of any expenditure recovered is regarded as an expenditure incurred in connection with the HOA for the purposes of recovering expenditure incurred in connection with the HOA from its Members.

34.4 If the Association ceases to function effectively or carry out its obligations, the Municipality may give the HOA a binding instruction to—

34.4.1 hold a meeting and to reconstitute itself; or

34.4.2 dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of relevant provisions in the title deed.

34.5 If the HOA is dissolved as contemplated in clause 34.4.2, the members must jointly pay the costs of the transfer to the Municipality of the HOA's property which contains the internal engineering services and private open spaces and the upgrading of the internal engineering services to the standards of the Municipality.

34.6 If the HOA ceases to function, and an owner wishes to transfer an Erf in such circumstance, the owner must obtain the consent of at least 20 (twenty) registered owners of Erven, at the time within the previously defined Estate, which would have qualified as 20 (twenty) Members of the HOA, had it still existed, which consent is regarded to be the consent of the HOA.

35. **POMA**

35.1 Members are bound by, and must comply with, all rules issued from time to time by the Port Owen Marina Authority (POMA) regarding the waterways adjoining the Estate and all matters relating to jetty rights.

35.2 Members acknowledge and agree that the final positioning of jetties by Members is subject to approval by the Board and POMA.

36. **LIQUOR LICENCES**

36.1 No new liquor licences will be allowed or approved within the Estate. Existing holders of Liquor Licences must abide by the applicable legislation governing liquor licences, as amended from time to time.

37. **FORMAL ANNEXURES**

37.1 The following annexures are attached:

ANNEXURE "A" – ADMIRAL ISLAND AND PELICAN BAY HOA ARCHITECTURAL DESIGN RULES