

**CONSTITUTION  
OF THE  
OUDE WESTHOF VILLAGE  
MANAGEMENT ASSOCIATION**

[This Constitution shall serve as, and in lieu of, the Management Rules of each of the Bodies Corporate mentioned herein]

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## 1. DEFINITIONS AND INTERPRETATION

(1) In this Constitution, the following words and expressions shall, unless the context clearly indicates otherwise, have the following meanings:

Act	the Sectional Titles Act, No. 95 of 1986, as amended from time to time and any regulations made and in force thereunder, and subsequent to the date of its coming into effect, the Sectional Titles Schemes Management Act, 2011 (Act 8 of 2011) as amended from time to time, and any regulations made and in force thereunder. Any reference to a section of the Act herein shall, subsequent to said date, be deemed to be a reference to a corresponding section in the latter act.
Agreement of Sale	the agreement under which a Unit, or the bare dominium or a share therein or a Right in respect thereof is sold or purchased.
Alienation	to divest of ownership of a Unit, or the bare dominium of a Unit, or a share thereof, or a Right in respect thereof by way of a sale, exchange, donation, deed, endorsement, reservation, cancellation, intestate- or testate succession, cession, assignment, court order, insolvency, liquidation, prescription, or expropriation, and irrespective of whether the Alienation is subject to a suspensive or resolutive condition, and 'Alienate' or 'Alienating' shall have a corresponding meaning, provided that it shall be deemed to be an Alienation when a company, close corporation or trust that owns a Unit nominates a new Nominated Occupant/s in respect of the Section, without the simultaneous transfer of the Unit and 'Deemed Alienation' shall have a corresponding meaning.
Architectural Guide	the Architectural Guide adopted for the Association as referred to in clause 39 of this Constitution.
Assisted Living units	sectional title units owned by individual Members, which entitle such Members to assistance from the Health Care Provider.
Association	the Oude Westhof Village Management Association.

Body Corporate	a Body Corporate of a Scheme in the Village, as described in section 36(1) of the Act, being the Body Corporate of Oude Westhof Village 1, or the Body Corporate of Oude Westhof Village 2, or the Body Corporate of Oude Westhof Village 3, or the Body Corporate of Oude Westhof Village 4, or the Body Corporate of Oude Westhof Village 5.
Bodies Corporate	the Bodies Corporate of Oude Westhof Village 1, Oude Westhof Village 2, Oude Westhof Village 3, Oude Westhof Village 4 and Oude Westhof Village 5.
Budget	an itemised estimate of the anticipated income and expenses of the Association during the ensuing Financial Year.
Business Day	every weekday other than a Saturday, Sunday, or proclaimed public holiday.
Chairman	the Chairman for the time being of the Board of Trustees.
Clubhouse	the Clubhouse facility situated on the Common Property of Oude Westhof Village 1, previously known as remainder Erf 37827 Bellville, comprising a lounge, dining room, offices, swimming pool, kitchen, launderette and all other facilities provided.
Common Amenities and Facilities	such common areas situated within the Village and the common amenities, services and facilities as are referred to and stipulated in clause 6 of this Constitution.
Common Property	the Common Property as defined in the Act of a Scheme and/or of the Schemes.
Conduct Rules	the Conduct Rules adopted for the Association as referred to in clause 39 of the Constitution.
CPOA	Cape Peninsula Organisation for the Aged.
Developer/s	the Trust, Kaikoura Capital and/or Little Swift Investments, being the juristic persons who procured the establishment of a Scheme or the Schemes.

Entrance Levy	the contribution or Levy payable by a Member to the Association, in his or her capacity as a First Purchaser in Oude Westhof Village 5, or as a First Purchaser of an Assisted Living Unit in the Health Care Centre, as the case may be.
Exclusive Use Area	an Exclusive Use Area as defined in the Act.
Exit Levy	the contribution or Levy payable by a Member or the Transferor to the Association at the Alienation of his or her Unit, the bare dominium or a share therein or a Right in respect thereof.
Fair Market Value	in respect of a Unit, is the amount at which a willing seller would sell and a willing buyer would buy it, which amount shall be determined by the Trustees, and in determining the amount the Trustees may in their sole discretion accept the Sale Price (if any) as the Fair Market Value or rely upon the valuation/s of a third party or parties, irrespective of whether such party or parties is or are sworn appraiser/s or not: Provided that if the Transferor complains about the amount, the Trustees shall appoint a sworn appraiser to determine the Fair Market Value, which determination shall be binding upon the Transferor and the Association.
Financial Institution	a financial institution as defined in section 1 of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001.
Financial Year	the period from the 1 <sup>st</sup> of March of each year to the last day of February of the following year.
First Purchaser in Oude Westhof Village 5	a purchaser who purchased a Unit in Oude Westhof Village 5 from Little Swift Investments as the first purchaser thereof.
First Purchaser of an Assisted Living Unit	a purchaser who purchased an Assisted Living Unit in the Health Care Centre, arising from the subdivision of Section No. 61, from the Health Care Provider as the first purchaser thereof.

Health Care Centre	the Health Care Centre of the Village situated in Oude Westhof Village 1, managed and owned by the Health Care Provider, and consisting of the Frail Care, Respite Care and daily clinic and all services provided thereby, but excluding the Assisted Living Units arising from the subdivision of Section No. 61, which may be privately owned.
Health Care Provider	OWOBV (Pty) Ltd, Registration number 2016/182577/07, being the entity established by the Association and the successor in title of the CPOA in respect of the Village.
In writing	written, printed or lithographed, or partly one or partly another and other modes of representing or producing words and/or figures in visible form.
Kaikoura Capital	Kaikoura Capital (Pty) Limited, registration number 2002/029619/07, a private company with a share capital registered in terms of the provisions of the Companies Act.
Lessee/s	the lessee/s of a Section, approved in writing by the Trustees.
Levies	the contributions payable by Members to the Association in terms of section 37(1) of the Act read with clause 23 of this Constitution.
Levy Clearance Certificate	a certificate issued by the Association on behalf of a Body Corporate, as contemplated in section 15B(3)(a)(i)(aa) of the Act.
Little Swift Investments	Little Swift Investments 92 (Pty) Ltd, registration number 2004/004692/07, the Developer of Oude Westhof Village 5.
Management Participation Quota	the management participation quota of a Section shall be a percentage expressed to four decimal places, and arrived at by dividing the floor area, correct to the nearest square metre, of the Section as indicated on the relevant sectional plan, by the floor area, correct to the nearest square metre, of all the Sections in the Village, and as may be adjusted once a year by the Trustees, in terms of the provisions of the Act. The Trustees shall at the beginning of each Financial Year calculate and where necessary adjust the Management Participation

	Quota.
Manager	a person as may be appointed by the Trustees as an employee of the Association in terms of clause 17 of this Constitution.
Managing Agent	a Managing Agent as may be appointed in terms of clause 40 of this Constitution.
Member	a Member of the Association as described in clause 4 of this Constitution.
Month	a calendar month.
Nominated Occupant/s	the Occupant/s of a Section, nominated in writing by the Owner or Transferee of the Section and approved in writing by the Trustees: provided that there shall always be a Nominated Occupant for a Section irrespective of whether the Section is let or not.
Notarial Servitude	the servitude of right of way, access and use and the additional rights and duties, as may be applicable, as concluded between the Bodies Corporate of Oude Westhof Village 1, Oude Westhof Village 2, Oude Westhof Village 3, Oude Westhof Village 4 and Oude Westhof Village 5 respectively.
Occupant/s	the Nominated Occupant/s, Lessee/s or other occupant/s of a Section, approved in writing by the Trustees.
Office	the <i>domicilium citandi et executandi</i> of the Association as determined from time to time in terms of clause 2(6) of this Constitution.
Ordinary Resolution	at any general meeting an ordinary resolution put to the vote of the meeting shall be decided on an ordinary majority of Owners present or represented.
Oude Westhof Village 1	the scheme known as Oude Westhof Village SS No. 344/2000, established on remainder Erf 37827, Bellville.
Oude Westhof Village 2	the scheme known as Oude Westhof Village 2 SS No. 158/2002, established on Erf 30929, Bellville a portion of Erf 37896 Bellville.



Oude Westhof Village 3	the scheme known as Oude Westhof Village 3 SS No. 179/2005, established on Erf 39655, Bellville a portion of Erf 35973 Bellville.
Oude Westhof Village 4	the scheme known as Oude Westhof Village 4, SS No. 722/2007 established on Erf 39654, Bellville.
Oude Westhof Village 5	the scheme known as Oude Westhof Village 5, SS No. 138/2014 established on Remainder Erf 37896, Bellville.
Owner	the registered owner of any Unit in the Village.
Prime Rate	the prime bank overdraft rate of interest charged by Nedbank Limited or its successor/s from time to time and more commonly known as its prime rate (in the case of a dispute, the rate may be certified by any manager or assistant manager of any branch of the said bank whose certificate shall be final and binding on the Members).
Registered Auditor	a person or firm registered as an auditor with the Independent Regulatory Board of Auditors established in terms of section 3 of the Auditing Profession Act, No. 26 of 2005.
Registered mortgagee	any mortgagee of whom the Association has been notified in writing as contemplated in section 44(1)(f) of the Act.
Registration date	the date the Member became the registered owner of the Unit, or the bare dominium or share therein, or the date the Right was registered or cancelled in the Deeds Registry.
Retired Person	a person who is 50 years of age, or older.
Retired Persons Act	the Housing Development Schemes for Retired Persons Act, No 68 of 1988, as amended from time to time and any regulations made and in force thereunder.
Right	a long term lease agreement, or a personal servitude of usufruct, <i>usus</i> or <i>habitatio</i> to be registered in the Cape Town Deeds Registry in respect of a Section or the cancellation of such Right.

Sale Price	the sale price or purchase price of a Unit, the bare dominium or a share therein or in respect of a Right as disclosed in the Agreement of Sale.
Scheme	a sectional title scheme as defined in the Act, being a scheme in the Village, consisting of Oude Westhof Village 1, or Oude Westhof Village 2, or Oude Westhof Village 3, or Oude Westhof Village 4, or Oude Westhof Village 5.
Section	a Section in any Scheme, as defined in the Act.
Services	the services provided at the Health Care Centre, Clubhouse and /or in the Village.
Special Resolution	a resolution passed at a general meeting of the Association, which complies with the provisions of the Act in respect of a special resolution, provided that such provisions shall apply to the Association in its entirety in respect of every such resolution, and not to Bodies Corporate individually.
Spouse	the spouse, wife, common law wife, husband, common law husband, or lifelong companion of a person and as may be defined in applicable legislation.
Transfer Date	the date of registration of the transfer of the Unit, or the bare dominium or share therein, or a Right in respect thereof from or by the Transferor to a Transferee, or where applicable, the date when the Right is cancelled.
Transferee	the person or juristic person to whom a Unit, the bare dominium or a share therein, or Right in respect thereof is Alienated or transferred or in whose favour the Right is reserved.
Transferor	the Owner, the executor of his or her estate or any other person Alienating or transferring the Unit, the bare dominium or a share therein or a Right in respect thereof.
Trust	the Trustees for the time being of the Oude Westhof Village Trust, a Trust registered with the Master of the High Court in terms of the provisions of the Trust Property Control Act under registration number IT 979/2000.

Trustee	a Trustee for the time being, a member of the Board of Trustees.
Trustees	the Board of Trustees of the Association.
Unanimous Resolution	a resolution passed at a general meeting of the Association, which complies with the provisions of the Act in respect of a Unanimous Resolution, provided that such provisions shall apply to the Association in its entirety in respect of every such resolution, and not to Bodies Corporate individually.
Unit	a Unit in any Scheme, as defined in the Act.
Vice-Chairman	the Vice-Chairman for the time being of the Board of Trustees.
Village	the entire development consisting of the Schemes, and where required by the context, the Association.
Year	a calendar year.

- (2) The following rules shall apply in respect of the interpretation of this Constitution:
- (a) The clause headings are for convenience and shall be disregarded in construing this Constitution.
  - (b) Unless the context clearly indicates a contrary intention, words importing:
    - (i) the singular number only shall include the plural, and the converse shall also apply;
    - (ii) the masculine gender shall include the feminine, and neuter genders, and the neuter gender shall include the masculine and feminine genders;
    - (iii) a reference to natural persons shall include legal persons, and the converse shall also apply.
  - (c) Words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause.
  - (d) If there is a conflict between the words and numerals in the interpretation of a clause, the words shall prevail.

- (e) If any provision in a definition in this Constitution is a substantive provision conferring rights or imposing obligations on any of the Members or the Association, then, notwithstanding that it is only in the definition clause of this Constitution, effect shall be given to it as if it were a substantive provision of this Constitution.
- (f) If any provision of this Constitution is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.
- (g) When any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or proclaimed public holiday.

## **2. STATUS OF THE ASSOCIATION AND CONSTITUTION**

- (1) The Association shall be known as the Oude Westhof Village Management Association and is established as a master association for the Bodies Corporate. This Constitution shall also serve as the Management Rules of each of the Bodies Corporate for the purposes of section 35(2) of the Act.
- (2) The date of establishment of the Association shall be the last date of filing of this Constitution as substituted Management Rules of Oude Westhof Village 1, Oude Westhof Village 2, Oude Westhof Village 3 and Oude Westhof Village 4, respectively at the Cape Town Deeds Registry.
- (3) The Association shall, subject to the provisions of the Act and the Retired Persons Act, be responsible for the enforcement of this Constitution, the Conduct Rules and the Architectural Guide, and for the control, administration and management of the Common Property for the benefit of all Members.
- (4) The provisions of the Companies Act, No. 71 of 2008, shall not apply in relation to the Association.
- (5) The Association shall have perpetual succession and be capable of suing and of being sued in its corporate name in respect of:
  - (a) any contract made by it;
  - (b) any damage to the Common Property of any Scheme;
  - (c) any matter in connection with the land or building/s for which the Association is liable or for which a Body Corporate is liable or which the Owners are jointly liable;

- (d) any matter arising out of the exercise of any of its powers or the performance or non-performances of any of its duties under the Act, the Retired Persons Act, the Constitution, the Conduct Rules or the Architectural Guide; and
  - (e) any claim against the Developer in respect of a Scheme, if so determined by Special Resolution.
- (6) The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association as required by section 37(1)(m) of the Act, subject to the following:
- (a) Such address shall be situated in the magisterial district in which the Scheme is situated and shall be the address of the Chairman or other resident Trustee duly appointed in general meeting or in the magisterial district in which the offices of any duly appointed Managing Agent are situated being the address of such Managing Agent;
  - (b) No change of such address shall be effective until written notification thereof has been received by the Registrar;
  - (c) The Trustees shall give notice to all Owners of any change of such address.

### **3. OBJECTIVES OF THE ASSOCIATION**

- (1) The objectives of the Association are to function as a master association in respect of the Village and to perform all functions and exercise all powers of the Bodies Corporate, and to manage and control all the affairs of the Bodies Corporate, and in particular to:
- (a) attend to the management and administration, including financial administration, of the Bodies Corporate and the Association, and to the exclusion of the Bodies Corporate, to exercise and perform all powers, functions and duties assigned to Bodies Corporate in terms of the Act;
  - (b) enforce compliance with the provisions of the Act, the Retired Persons Act, the Constitution, the Conduct Rules and the Architectural Guide;
  - (c) promote and manage the collective interests of all its Members; and
  - (d) determine, regulate, maintain and manage the Common Amenities and Facilities and the reciprocal rights and duties of Members in respect thereof.
- (2) The Association does not pursue any pecuniary gain for itself or any of its Members and will not be permitted to distribute any of its funds other than in accordance with the provisions of the Act and this Constitution.

- (3) The main object of the Association is to manage the collective interests common to all its Members, which includes expenditure applicable to the Common Property of such Members and the collection of Levies for which such Members are liable.
- (4) The Association is not permitted to distribute its funds to any person other than to a similar association of persons.
- (5) On dissolution of the Association, the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(e) of the Income Tax Act.
- (6) Funds available for investment may only be invested or re-invested with registered financial institutions as defined in section 1 of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001.
- (7) The Association is not or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Service.
- (8) The Association shall submit annual returns for income tax together with financial statements to the South African Revenue Services or similar relevant government departments as required.

#### **4. MEMBERSHIP**

- (1) Membership of the Association is compulsory and automatic for every Owner.
- (2) Membership shall commence for registered owners of Units in the Village on the date of establishment of the Association as referred to in clause 2(2) above. Thereafter membership shall commence simultaneously with the registration of transfer of a Unit into the name of the Transferee.
- (3) Membership of the Association shall be limited to, and compulsory for all registered owners of Units, provided that where any such registered owner is more than one person, all the registered owners of that Unit shall be deemed jointly and severally to be one Member.
- (4) When a Member ceases to own a Unit in the Village, he or she shall automatically cease to be a Member of the Association.

- (5) The Developer's membership shall terminate upon transfer of its last Unit in the Village.
- (6) A registered owner may not resign as a Member of the Association, nor may his or her membership be ceded to another. Provided that nothing contained in this Constitution shall prevent a Member from ceding his or her rights in terms of this Constitution as security to the mortgagee of his or her Unit.
- (7) The rights and obligations of a Member shall not be transferable, and every Member shall:
  - (a) to the best of his or her ability adhere to and promote the objects and interests of the Association;
  - (b) observe and comply with the provisions of the Act, the Retired Persons Act, this Constitution, the Conduct Rules, the Architectural Guide, and the Directives made by the Trustees in accordance with clause 17(7) of the Constitution.
- (8) The Trustees may provide for the issue of a membership certificate, which certificate shall be in such form as the Trustees may prescribe.
- (9) The *domicilium citandi et executandi* of a Member shall be the address of the Section registered in his or her name: Provided that such Member shall be entitled from time to time to change the said *domicilium* but that any new *domicilium* selected shall be situated in the Republic, and that the change shall only be effective on receipt of written notice thereof by the Association at its Office.

## **5. FUNCTIONS AND POWERS OF THE ASSOCIATION**

The Association shall exercise the powers and perform the functions entrusted to the individual Bodies Corporate as set out in the Act, the Retired Persons Act, this Constitution, the Conduct Rules and the Architectural Guide, and such ancillary functions, which may not be in conflict with the provisions of the said authorities, as may be necessary in pursuit of its objectives. The Association will have the following additional powers:

- (1) To purchase or acquire all the shares in the Health Care Provider and generally, to do or cause to be done whatsoever shall be requisite, to enable transfer of the Unit comprising the Health Care Centre to the Health Care Provider, including but not limited to make a loan to the Health Care Provider on such terms and conditions as the Trustees shall decide.

- (2) Upon authorisation of the Members by Special Resolution, to borrow moneys required by it in the performance of its functions or the exercise of its powers or for any of the objects of the Association and upon such terms and conditions as the Trustees shall decide, including but not limited to the payment of liabilities; the preserving or acquiring of any assets or investments; the subscription of shares; with powers from time to time to consent to any alteration or variation of the terms applicable thereto; and as security for any money so borrowed, the Association will be entitled to mortgage, pledge (either generally or specifically) or otherwise encumber, all or any portion of the Association's funds, in the manner and on terms and conditions as it sees fit, with the right also to replace such borrowings or security.
- (3) To exercise the voting power attached to the shares in the Health Care Provider as the Association considers appropriate, through the Trustees of the Association.
- (4) To prohibit the sale of shares in the Health Care Provider, unless authorised by Unanimous Resolution of the Members.
- (5) To make loans to Members to enable such Members to continue to reside in the Village.

## **6. THE COMMON AMENITIES AND FACILITIES**

- (1) Members shall enjoy access and reasonable usage of the Common Amenities and Facilities, irrespective whether they are situated on the Common Property of any particular Scheme, subject to the reasonable conditions imposed from time to time by the Trustees.
- (2) For the purposes of this Constitution, the Common Amenities and Facilities shall consist of:
  - (a) The Common Property of all Schemes and in particular all accesses, roads, walkways, open areas and underground services situated on the Common Property.
  - (b) The Clubhouse and all services, facilities and amenities provided by it.
  - (c) The Health Care Centre and all services, facilities and amenities provided by it, subject to agreement with the Health Care Provider.
  - (d) The swimming pool and all surrounding recreational amenities.
  - (e) The security system, security gate, security walls, intercom system and the security services provided.



- (f) All dining facilities, including meals and concessions as may apply and other recreational facilities.
- (g) The refuse/garden house.
- (h) The administrative services as provided by the Association and the Office.
- (i) The television-installation and related equipment.
- (j) The boreholes and all irrigation equipment and facilities.
- (k) Such further amenities, facilities and services as may at any time be provided by the Association.

**TRUSTEES:****7. FIDUCIARY POSITION OF TRUSTEES**

Each of the Trustees shall stand in a fiduciary relationship to the Village and to each of the Bodies Corporate, in accordance with the provisions of section 40 of the Act, as may be amended from time to time.

**8. NUMBER OF TRUSTEES**

The number of Trustees shall be determined from time to time by the Members of the Association in general meeting, provided that there shall not be less than ten (10) Trustees and provided that the Health Care Provider shall appoint one additional Trustee to the Board of Trustees.

**9. QUALIFICATIONS OF TRUSTEES**

A Trustee or an alternate Trustee shall not be required to be an Owner or a nominee of an Owner who is a juristic person, in order to qualify for office as a Trustee, provided that:

- (1) the majority of the Trustees (excluding the Trustee appointed by the Health Care Provider) are Owners, spouses of Owners, or representatives of an entity, which is an Owner;
- (2) to qualify as an Owner for the purposes of appointment as a Trustee, he or she may be an Owner in any of the Schemes; and
- (3) the Managing Agent or any of his or her employees or an employee of the Association may not be a Trustee unless he or she is also an Owner.

**10. NOMINATION AND ELECTION OF TRUSTEES AND TENURE OF OFFICE**

- (1) Trustees shall be elected at each annual general meeting of the Association, and shall, subject to clause 16, hold office until the next annual general meeting, but they shall be eligible for re-election, if so nominated.
- (2) Nominations by Owners for the election of Trustees at any annual general meeting of the Association shall be given in writing, accompanied by the nominated person's written consent, to be received at the Office not less than forty eight (48) hours before the annual general meeting: Provided that Trustees may also be elected by way of nominations with the nominee's accompanying consent given at the annual general meeting itself, should the Trustees have received insufficient nominations to comply with the provisions of clause 8 above: Provided further that no nomination or appointment as Trustee, of a person in breach of clause 37(3)(a) or 37(3)b), may be made or accepted.

**11. VACANCY IN NUMBER OF TRUSTEES**

The Trustees may fill any vacancy in their number. Any Trustee so appointed shall hold office until the next annual general meeting when he or she shall retire and be eligible for re-election as though he or she had been elected at the previous annual general meeting.

**12. ALTERNATE TRUSTEES**

- (1) The Trustees may appoint another person, whether or not he or she is an Owner, to act as an alternate Trustee during the absence or inability of a Trustee to act.
- (2) An alternate Trustee shall have the powers and be subject to the duties of a Trustee as set out in this Constitution.
- (3) An alternate Trustee shall cease to hold office if the principal ceases to be a Trustee, or if the alternate Trustee's appointment is revoked by the Board of Trustees.

**13. REMUNERATION OF TRUSTEES**

- (1) Unless otherwise determined by a Special Resolution, Trustees who are Owners shall not be entitled to any remuneration in respect of their services as such.

- (2) The Association may remunerate Trustees who are not Owners at such rate as may be determined by the Association, provided that an alternative Trustee shall claim his or her remuneration, if any, from the Trustee whom he or she replaced and not from the Association, unless the Association has been instructed in writing by such Trustee to pay any portion of his or her remuneration to such alternate Trustee.
- (3) Trustees shall be entitled to have refunded to them any disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers.

#### **14. VALIDITY OF ACTS OF TRUSTEES**

Any act performed by the Board of Trustees shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or the continuance in office of any Trustee, be as valid as if such Trustee had been duly appointed or had duly continued in office.

#### **15. INDEMNITY**

- (1) Every Trustee, agent or other officer or servant of the Association shall be indemnified by the Association against all costs, losses, expenses and claims which he or she may incur or become liable for by reason of any act done by him or her in the discharge of his or her duties, unless such costs, losses, expenses or claims are caused by the *mala fide* or grossly negligent act or omission of such person.
- (2) The Trustees shall pay such indemnity out of the funds of the Association.
- (3) The indemnity referred to above shall not apply in favour of any Managing Agent appointed by the Association in accordance with clause 40.

#### **16. REMOVAL OF TRUSTEES FROM OFFICE AND REPLACEMENT**

- (1) A Trustee shall cease to hold office as such if:
  - (a) by notice in writing to the Association, he or she resigns his or her office;
  - (b) he or she is or becomes of unsound mind;
  - (c) he or she surrenders his or her estate as insolvent, or if his or her estate is sequestrated, whether provisionally or finally;
  - (d) he or she is convicted of an offence which involves dishonesty;

- (e) by Ordinary Resolution of a general meeting of the Association, he or she is removed from office, provided that the intention to vote upon the removal from office has been specified in the notice convening the meeting;
  - (f) he or she is or becomes disqualified in terms of section 69 of the Companies Act, No. 71 of 2008 as may be amended, from being appointed or acting as a Director of a company.
  - (g) he or she is absent from three (3) consecutive trustees' meetings without an apology.
  - (h) he or she is in arrears for more than sixty (60) days with any Levies and amounts payable in respect of his or her Unit or Exclusive Use Area (if any) and if he or she fails to bring such arrears up to date within seven (7) days of being notified in writing to do so.
- (2) The Association may, at a general meeting, appoint another Trustee in the place of any Trustee who has ceased to hold office in terms of clause 16(1) above, for the unexpired part of the term of office of the Trustee so replaced, provided that the Trustees had not yet acted in terms of clause 11 to fill the vacancy.

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

- (1) The functions, duties and powers of the Association shall, subject to the provisions of the Act and this Constitution and to any restriction imposed or directive given at a general meeting, be performed or exercised by the Trustees holding office in terms of this Constitution.
- (2) Subject to any restriction imposed or directive given at a general meeting, the powers of the Trustees shall include the following:
- (a) To appoint for and on behalf of the Association such agents and employees as they deem fit in connection with:
    - (i) the control, management and administration of the Common Property; and
    - (ii) the performance and exercise of any or all of the functions, duties, and powers of the Association;
  - (b) To delegate to one or more of the Trustees such of their powers and duties as they deem fit and at any time to revoke such delegation;

- (c) To form sub-committees for the consideration of specific issues. The members of such sub-committees may be such individuals as the Trustees in their discretion think fit and need not only be Members of the Association, provided that the Chairman of any such sub-committee shall be a Trustee, appointed by the Trustees. Provided further that such sub-committee shall have no power to bind the Association in law, or to make resolutions, which should in every instance be referred to the Board of Trustees, at every subsequent Board meeting. Provided further that such sub-committee shall keep proper records and minutes of their meetings.
- (d) To perform all functions in respect of the issue of Levy Clearance Certificates.
- (3) The Association must not make loans from the Association's funds without the authority of a Special Resolution of the Members, provided that the Trustees may make loans on behalf of the Association to Members against registration of a mortgage bond against their Units as security to enable such Members to continue to reside in the Village.
- (4) No document signed on behalf of the Association shall be valid and binding unless it is signed by two (2) Trustees, or by one (1) Trustee and the Manager or Managing Agent, except a Levy Clearance Certificate, which shall be signed by two (2) Trustees.
- (5) Without detracting from the scope of the additional duties specified herein and subject to the provisions of relevant clauses, the Trustees shall in respect of the Village perform the functions assigned to Trustees of the Bodies Corporate by section 37 and section 39 of the Act.
- (6) The Trustees shall do all things reasonably necessary for the control, management and administration of the affairs and of the Common Property of the Bodies Corporate and shall do all things reasonably necessary for the enforcement of the provisions of the Constitution, the Conduct Rules and the Architectural Guide.
- (7) The Trustees may from time to time issue Directives to amplify the provisions of the Constitution or the Conduct Rules, provided that such Directives may only relate to the practical implementation of a provision of this Constitution or of the Conduct Rules and may not constitute a new clause of the Constitution or new Conduct Rule.
- (8) The Association may with the authorisation of the Members by Special Resolution borrow moneys required by it in the performance of its functions or the exercise of its powers or for any of the objects of the Association.

**TRUSTEES' MEETINGS:****18. WHEN TO BE HELD AND NOTICE**

- (1) The Trustees may give notice convening meetings, meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. It shall not be necessary to give notice to any Trustee for the time being absent from the Republic, but notice of any such meeting shall be given to his or her alternate, if one has been appointed, and such an alternate is in the Republic.
- (2) A Trustee may at any time convene a meeting of the Board of Trustees by giving to the other Trustees and all first mortgagees referred to in clause 18(3) below, not less than seven (7) days written notice of a meeting proposed by him or her, which notice shall specify the reason for calling such a meeting, provided that in cases of urgency such shorter notice as is reasonable in the circumstances may be given.
- (3) Any mortgagee holding a first mortgage bond over a Unit shall, if he so requires of the Trustees in writing, be entitled to receive reasonable notice of all meetings of the Trustees.
- (4) The nominee of any such first mortgagee shall be entitled to attend and speak at all meetings of the Trustees but shall not, in his or her capacity as such, be entitled to vote thereat.
- (5) A Member shall be entitled to attend and speak at any meeting of the Trustees but shall not in his or her capacity as such, be entitled to vote thereat.

**19. QUORUM AT TRUSTEES' MEETINGS**

- (1) At a meeting of Trustees, sixty per cent (60%) of the Trustees shall form a quorum.
- (2) If the number of incumbent Trustees falls below the number necessary to form a quorum, the remaining Trustee or Trustees may continue to act, but only for the purpose of appointing or co-opting additional Trustees to make up the quorum, or for the purpose of convening a general meeting of Members.
- (3) If at any meeting of Trustees a quorum is not present within thirty (30) minutes of the appointed time for the meeting, such meeting shall stand adjourned to the next Business Day at the same time and the Trustees then present, who shall not be less than two (2), shall then form a quorum.

**20. CHAIRMAN AND VICE-CHAIRMAN OF THE TRUSTEES**

- (1) At the commencement of the first meeting of Trustees after an annual general meeting at which Trustees have been elected, the Trustees shall elect a Chairman and Vice-Chairman from their number who shall both hold office as such until the next annual general meeting of the Association.
- (2) The Trustees at a Trustees' Meeting or the Association at a special general meeting, in respect of either of which notice of the intended removal from office of the Chairman or Vice-Chairman has been given, may remove the Chairman and/or Vice-Chairman from his or her office.
- (3) Should a Chairman vacate his or her office or no longer hold office because he or she has been removed by the Trustees or the Association, the Vice-Chairman shall, unless another Chairman has been elected by the Trustees, fulfil the duties of the Chairman for the remainder of the Chairman's period of office.
- (4) If the Chairman vacates the chair during the course of a meeting or is not present or is for any other reason unable to preside at any meeting, the Vice-Chairman at such meeting shall fulfil the duties of the Chairman and shall have the same voting rights as the Chairman.
- (5) In the event that neither the Chairman nor the Vice-Chairman is present or is for any reason unable to preside at any Trustees' meeting, the Trustees present at such meeting shall choose another Chairman for such meeting who shall have the same voting rights as the Chairman.

**21. VOTING AT TRUSTEES' MEETINGS**

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

## 22. INSURANCE

- (1) At the first meeting of the Trustees or as soon thereafter as possible, and annually thereafter, the Trustees shall take steps to insure all the buildings, including Sections, Common Property and all improvements to the Common Property to the full replacement value thereof, subject to negotiation of such excess, premiums and insurance rates as in the opinion of the Trustees are most beneficial to Owners, against:
  - (a) fire, lightning and explosions;
  - (b) riot, civil commotion, strikes, lockouts, labour disturbances or malicious persons acting on behalf of or in connection with any political organisation;
  - (c) storm, tempest and flood;
  - (d) earthquake;
  - (e) aircraft and other aerial devices or articles dropped therefrom;
  - (f) bursting or overflowing of water tanks (including hot water cylinders), apparatus or pipes;
  - (g) impact with any of the said buildings or improvements by any road vehicle, horses or cattle;
  - (h) housebreaking or any attempt thereat;
  - (i) loss of occupation or loss of rent in respect of any of the above risks;
  - (j) land slide and subsidence;
  - (k) such other perils or dangers as the Trustees or any holder of first mortgage bonds over not less than twenty five percent (25%) in number of the Units in a particular Scheme may deem appropriate.
- (2) The Trustees shall at all times ensure that, in the policy of insurance referred to above:
  - (a) There is specified a replacement value of each Section (excluding the Owner's interest in the land), in accordance with the schedule of values as approved in terms of clause 22(3) below, or as may be required at any time by any Owner in terms of clause 22(4).
  - (b) Any "average" clause is restricted to refer to individual Sections and not to apply to the building/s as a whole;



- (c) There is included a clause in terms of which the policy is valued and enforceable by any mortgagee against the insurer notwithstanding any circumstances whatsoever which would otherwise entitle the insurer to refuse to make payment of the amount insured unless and until the insurer on not less than thirty (30) days' notice to the mortgagee shall have terminated such insurance.
- (3) Before every annual general meeting, the Trustees shall cause to be prepared schedules reflecting their estimate of:
- (a) the replacement value of the buildings and all improvements to the Common Property of the respective Schemes; and
- (b) the replacement value of each Section (excluding the Owner's interest in the land), the aggregate of such values of all Sections being equal to the value referred to in clause 22(2)(a) above,
- and such schedules shall be laid before the annual general meeting for consideration and approval in terms of clause 33;
- (4) An Owner may at any time increase the replacement value as specified in the insurance policy in respect of his or her Section: Provided that such Owner shall be liable for payment of the additional insurance premium and shall forthwith furnish the Association with proof thereof from the insurer.
- (5) The Trustees shall, on the written request of a mortgagee and satisfactory proof thereof, record the cession to such mortgagee of the member's interest in the application of the proceeds of the policy of insurance effected in terms of clause 22(2)(a) above.
- (6) At the first meeting of the Trustees or as soon thereafter as is possible, the Trustees shall take all reasonable steps:
- (a) to insure the Owners and Trustees and to keep them insured against liability in respect of:
- (i) death, bodily injury or illness; and
- (ii) loss of, or damage to, property,
- occurring in connection with the Common Property, for a sum of liability of not less than R5 000 000,00 (Five Million Rand), which sum may be increased from time to time as directed by the Members in general meeting; and

- (b) to procure to the extent, if any, as determined by the Members of the Association in a general meeting, a fidelity guarantee in terms of which shall be refunded any loss of money belonging to the Association or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by any insured person being any person in the service of the Association or the Bodies Corporate and/or Trustees and any person or persons acting in their capacity as Managing Agent of the Association.
- (7) The Members may by Ordinary Resolution direct the Trustees to insure against such other risks as they may determine.
- (8) The Association shall be liable for any excess payable in respect of an insurance claim for the repair or replacement of any hot water installation.
- (9) The Owner of a Section is responsible for any excess payment in respect of his or her Section payable in terms of a contract of insurance entered into by the Association: Provided that Owners may by Special Resolution determine that the Association is responsible for excess payments in respect of specified damage.

### **23. LEVIES AND LIABILITIES IN TERMS OF SECTIONS 37(1) AND 47 OF THE ACT**

- (1) Members shall be liable for payment of Levies and it shall be the duty of the Trustees to determine and collect Levies from the Members in accordance with the provisions and in the proportions set forth in this clause.
- (2) The liability of Members to make contributions, and the proportions in which the Members shall make contributions for the purposes of section 37(1) of the Act, or may in terms of section 47 of the Act be held liable for the payment of a judgment debt of the Association or any of the Bodies Corporate, shall be borne by the Members in accordance with the following determination made in terms of Section 32(4) of the Act, namely in accordance with the Management Participation Quota attaching to each Member's respective Section.
- (3) The Members shall, at every annual general meeting, approve, with or without any amendments, the Budget prepared by the Trustees. Such Budget shall be the basis for determining the amounts to be levied upon the Members by the Association during the ensuing financial year.
- (4) Within fourteen (14) days after each annual general meeting, the Trustees shall, by passing a Trustees' resolution:
  - (a) determine the amounts to be levied upon each Owner in respect of the ensuing year;

- (b) determine the instalments in which such amounts are payable;
- (c) advise each Owner in writing of such amount and the applicable instalments;

and such Levies shall become due and payable, in the full instalments determined, upon the date of the Trustees' resolution, provided that in the event of an Owner defaulting in the payment of any such instalment or part thereof, and persisting in such default after a written demand in terms of which payment within fourteen (14) days is demanded, the full balance of Levies due for the remainder of the Financial Year shall immediately become due and payable.

- (5) The Trustees may, from time to time, when necessary, impose Special Levies upon the Members or call upon them to make special contributions in respect of all such expenses as are mentioned in clause 23(2) above (which are not included in the Budget made in terms of clause 23(3) above), and such Levies and contributions may be made payable in one sum or by such instalments and at such time or times as the Trustees shall think fit.
- (6) An Owner who extends his or her Section during a Financial Year in accordance with section 24 of the Act shall from the date of completion of the construction of his or her extension be liable to the Association for an adjusted Levy, calculated by the Trustees in accordance with the new Management Participation Quota of his or her Section as determined by the Trustees. The adjusted Levy shall be due and payable upon the date of the trustees' resolution, and shall be paid in instalments as determined by the Trustees. An Owner who extended his or her Section prior to the commencement of this Constitution shall from the date of commencement of this Constitution be liable to the Association for an adjusted Levy, calculated by the Trustees in the manner mentioned above.
- (7) After the expiry of a Financial Year and until they become liable for contributions in respect of the ensuing Financial Year, Owners are liable for contributions in the same amounts and payable in the same instalments as were due and payable by them during the expired Financial Year: Provided that the Trustees may, if they consider it necessary and by written notice to the Owners, increase the contributions due by the Owners by a maximum of ten percent (10%) to take account of the anticipated increased liabilities of the Association.
- (8) An Owner shall be liable for and pay all legal costs, including costs as between attorney and own client, collection commission, expenses, including administrative expenses, and charges incurred or levied by the Association in obtaining the recovery of arrear Levies or any other arrear amount due and owing by such Owner to the Association, or in enforcing compliance with the Act, the Retired Persons Act, this Constitution, the Conduct Rules or the Architectural Guide.

- (9) The Trustees shall be entitled to charge interest on arrear amounts at such rate as they may from time to time determine, provided that it will not be more than the Prime Rate plus five percent (5%).
- (10) The Trustees shall be entitled to impose Directives from time to time with reference to the payment of levies and for the purpose of credit control.
- (11) Owners shall be liable to the Association for the payment of the service charges as determined by the Trustees in respect of any services rendered by the Association to them. Specifically pertaining to the purchase of electricity from the Association, any shortfall with reference to the tariff paid by the Owner and the higher tariff paid by the Association, may be recovered from the Owner concerned.
- (12) Upon Alienating his or her Unit, the Member or Transferor of the Unit shall pay an Exit Levy to the Association, calculated according to the following formula:

$$\text{Exit Levy (R)} = \frac{\text{Fair Market Value (R)} \times \text{Period (months)}}{1200}$$

The key to the formula is as follows:

**Fair Market Value = the Fair Market Value of the Unit on the date of Alienation**

**Period = the Period of ownership of the Unit (in months), calculated from the Registration Date to the date of Alienation, provided that the number of months shall be rounded off to the nearest higher integer**

Provided that If the period of ownership is one hundred and twenty (120) months or more, the Exit Levy shall be calculated at ten percent (10%) of the Fair Market Value of the Unit on the date of Alienation.

- (13) The Exit Levy referred to in clause (12) above shall be paid to the Association by or on behalf of the Member or Transferor before or on the Transfer Date, or within six (6) months of the date of Alienation, or within six (6) months of the date of death, whichever of these shall first occur.
- (14) No Exit Levy shall be payable at the time when a Unit is Alienated to the surviving Spouse of a Member, but the Exit Levy shall become payable at the first subsequent Alienation of the Unit and the Exit Levy shall then be calculated in accordance with clause (12) above for the entire period of ownership of the Unit (in months) by the first dying Spouse as well as by the surviving Spouse, from the earliest Registration Date of the Unit to either of the spouses or to them jointly until the date of the first subsequent Alienation of the Unit by the surviving Spouse, irrespective whether or not the Unit is Alienated to a new Spouse or not.

- (15) The provisions of clauses 23(12), (13) and (14) shall apply *mutatis mutandis* to a Deemed Alienation, the Alienation of the bare dominium of, or a share, in a Section, the registration or cancellation of a Right in respect of a Section and a marriage in community of property, provided that the Exit Levy shall be calculated from the earliest Registration Date, as may be applicable.
- (16) On the date of registration of transfer of the Units to them by Little Swift Investments, the First Purchasers in Oude Westhof Village 5 shall, as Members of the Association, each be liable for the payment of the Entrance Levy to the Association in the amount as specified in their Agreements of Sale concluded with Little Swift Investments, copies of which are filed in the Office. On the date of registration of transfer of the Assisted Living Units to them by the Health Care Provider, the First Purchasers of Assisted Living Units in the Health Care Centre shall, as Members of the Association, each be liable for the payment of the Entrance Levy to the Association in the amount as specified in their Agreements of Sale concluded with the Health Care Provider, copies of which shall be filed in the Office.
- (17) The purpose of the Entrance Levies and Exit Levies shall be to stabilise the Levies of the Association. The Entrance Levies and Exit Levies shall be paid into the Levy Fund and shall only be used in furtherance of the objects of the Association, including to defray expenses for which the Association are liable. The Entrance Levies and Exit Levies may not be distributed to the Members of the Association.

#### **24. RECORD OF THE CONSTITUTION, CONDUCT RULES, DIRECTIVES AND THE ARCHITECTURAL GUIDE AND THEIR AVAILABILITY**

- (1) The Trustees shall keep a complete record of the Constitution, Conduct Rules, Directives and the Architectural Guide, as in force from time to time.
- (2) The Trustees shall, on the application of –
- (a) an Owner of a Unit, or
  - (b) an occupier of a Unit, or
  - (c) a prospective purchaser of a Unit, or
  - (d) the holder of any registered sectional mortgage bond, or
  - (e) the Managing Agent, or
  - (f) the Auditor
- supply to any such person a copy of the Constitution, Conduct Rules, Directives and/or the Architectural Guide in force, and may require them to pay a reasonable charge therefor.

**25. IMPROVEMENTS TO THE COMMON PROPERTY OR THE REMOVAL THEREOF**

- (1) The Trustees may, if the Members of the Association by Unanimous Resolution so decide, effect or remove improvements of a luxurious nature on the Common Property.
- (2) The Trustees may, if the Members of the Association by Special Resolution so decide, effect or remove improvements of a non-luxurious nature on the Common Property.
- (3) Notwithstanding the provisions of clause 25(2), should the Trustees wish to effect or remove any non-luxurious improvements to the Common Property, they shall give written notice of their intention to effect or remove a non-luxurious improvement to the Common Property to all Members and such notice shall:
  - (a) indicate the intention of the Trustees to proceed with the non-luxurious improvement or removal thereof upon the expiry of a period of not less than thirty (30) days from the date of posting such notice; and
  - (b) provide details of the improvement or removal thereof as to:
    - (i) the cost thereof;
    - (ii) the manner in which it is to be financed and the effect upon Levies paid by Members;
    - (iii) the need, desirability, and effect thereof;

and after expiry of such notice period the Trustees may proceed with effecting such improvement or with the removal thereof: Provided that, at the written request of any Member, a special general meeting shall be convened in order to discuss and deliberate upon the proposals contained in the notice, at which meeting the Members may approve such proposals by means of a Special Resolution, with or without amendments: Provided further that in the event of such special general meeting being called, the Trustees shall not proceed with their proposals until the holding of such meeting, whereupon they shall be bound by any Special Resolution ensuing therefrom.

**26. MINUTES**

- (1) The Trustees shall:
  - (a) keep minute books of all their proceedings, including all special meetings of the Board of Trustees and meetings of Sub-committees.

- (b) cause minutes to be kept of all meetings of the Association in the minute books of the Association;
  - (c) include in the minute book of the Association a record of all the Unanimous and Special Resolutions and other resolutions of the Association.
- (2) The Trustees shall keep all minute books in perpetuity.
- (3) On the written application of any Member or registered mortgagee of a Unit, the Trustees shall make all minutes of their proceedings and the minutes of the Association available for inspection by such Member or mortgagee, not later than two (2) weeks from the date of the request.

## **27. BOOKS OF ACCOUNT AND RECORDS**

- (1) The Trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Village including:
- (a) a record of the assets and liabilities of the Association;
  - (b) a record of all sums of money received and expended by the Association and the matters in respect of which such receipts and expenditure occurred;
  - (c) a register of Owners and of registered mortgagees of Units and of all other persons having real rights in such Units (insofar as written notice shall have been given to the Trustees by such Owners, mortgagees or other persons) showing in each case their addresses; and
  - (d) individual ledger accounts in respect of each Owner.
- (2) On the application of any Owner, registered mortgagee or of the Managing Agent, the Trustees shall make all or any of the books of account and records available for inspection by such Owner, mortgagee or Managing Agent, at the Office.
- (3) The Trustees shall cause all books of account and records to be retained for a period of six (6) years after completion of the transactions, acts or operations to which they relate.

## **28. BUDGET, FINANCIAL STATEMENTS AND REPORT**

- (1) Before every annual general meeting, the Trustees shall cause to be prepared, a Budget, which shall be laid before the annual general meeting of the Association for consideration.

- (2) The Budget shall include a reasonable provision for contingencies.
- (3) The Trustees shall cause to be prepared, and shall lay before every annual general meeting for consideration, a financial statement in conformity with generally accepted accounting practice, which statements shall fairly present the state of affairs of the Association and its finances and transactions as at the end of the Financial Year concerned.
- (4) The financial statement shall include information and notes pertaining to the proper financial management by the Association, including:
  - (a) an analysis of the periods of debts and the amounts due in respect of Levies, Special Levies and other contributions;
  - (b) an analysis of the periods and the amounts due, owing by the Association to the creditors and in particular to any public or local authority in respect of rates, taxes and charges for consumption or services, including but not limited to, water, electricity, gas, sewerage and refuse removal;
  - (c) the expiry dates of all insurance policies.
- (5) The Trustees shall further cause to be prepared and shall lay before every annual general meeting a report signed by the Chairman and one Trustee, reviewing the affairs of the Association during the past year.
- (6) The Trustees shall cause copies of the Budget, audited statements and reports referred to above, to be delivered to each Member, and to any mortgagee which has advised the Association of its interest, at least fourteen (14) days before the date of the annual general meeting at which they are to be considered.
- (7) The Trustees shall keep copies of the schedules of insurance replacement values at the Office, where it shall be available for inspection by the Members and mortgagees.
- (8) The Trustees shall cause to be prepared, and shall lay before every annual general meeting for consideration, the audited financial statements of, and a report in respect of, the affairs of Health Care Provider.

## **29. AUDIT**

At every annual general meeting, the Association shall appoint a Registered Auditor to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting. It shall be the task of the Registered Auditor to:

- (a) audit the books of the Association; and



- (b) advise the Trustees of any financial or administrative irregularities in a report to the Trustees.

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

- (1) The Trustees shall cause all monies received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, subject to every directive given or restriction imposed at a general meeting of the Association, such monies shall only be withdrawn for the purpose of payment of the expenses of the Association or for investment purposes of any surplus funds, provided that such investments shall only be made in the name of the Association.
- (2) The Trustees may authorise an employee or the Managing Agent to administer and operate the accounts referred to in clause 30(1) above, subject to such conditions and restrictions as they may impose.
- (3) Any funds not immediately required for disbursement may be invested with any Financial Institution or Institutions approved by the Trustees from time to time, provided that at least fifty percent (50% ) of the funds shall be invested with any registered South African commercial bank/s approved by the Trustees from time to time.
- (4) Interest on monies invested may be used by the Association for any lawful purpose as contemplated in this Constitution.

### **31. NO REFUNDS OR DISTRIBUTION OF PROFITS OR ASSETS**

- (1) The Members shall not be entitled to a refund of Levies lawfully levied upon them and duly paid by them.
- (2) No portion of the profits or gains of the Association shall be distributed to any Owner of a Unit or to any other person except upon destruction or deemed destruction of the building/s or where such profit or gain is of a capital nature.

### **GENERAL MEETINGS:**

#### **32. GENERAL MEETINGS OF MEMBERS**

- (1) General meetings of Members shall be convened in accordance with the provisions of this Constitution.
- (2) An annual general meeting shall be held within four (4) months of the end of each Financial Year.

- (3) Unless otherwise decided at a general meeting or by the Trustees, the Financial Year of the Association shall run from the first day of March of each year to the last day of February of the following year.
- (4) All general meetings other than the annual general meeting shall be called special general meetings.
- (5) The Trustees may, whenever they think fit, and shall upon a request in writing made either by Members entitled to twenty five percent (25%) of the total numbers of all Sections or by any mortgagee holding mortgage bonds over not less than twenty five percent (25%) in number of the Units, convene a special general meeting. If the Trustees fail to call a meeting so requested within fourteen (14) days of the request, the Members or mortgagee concerned shall be entitled themselves to call the meeting.
- (6) At least fourteen (14) days written notice of every general meeting, specifying the place within the magisterial district where the scheme is situated, the date and the hour of the meeting and, in the case of special business, the general nature of such business, shall be given to:
  - (a) all Members;
  - (b) all holders of registered mortgage bonds over Units who have advised the Trustees of their interests; and
  - (c) the Managing Agent.
- (7) The holders of registered mortgage bonds and the Managing Agent shall have the right to attend a meeting herein referred to and to speak at such meetings, but shall not, in their respective capacities as such, be entitled to vote thereat.
- (8) The notice referred to a person or entity referred to in clause 32(6) above shall be deemed to have been sufficiently given and delivered, if sent or delivered:
  - (a) by hand with a written acknowledgement of receipt, or
  - (b) by pre-paid registered post addressed to the domicilium address of the Member, and to the managing agent or any mortgagee as aforesaid, to the address of such managing agent or mortgagee as reflected in the records of the Association, or
  - (c) by e-mail to the e-mail address as reflected in the records of the Association, or
  - (d) by fax to the fax number as reflected in the records of the Association.

- (9) Inadvertent omission to give the notice referred to in clause 32(6) to any person entitled to such notice or the non-receipt of such notice by such person shall, save in the case of the persons contemplated in clause 32(6)(b), not invalidate any proceedings at any such meeting.
- (10) A special general meeting of the Association may be called on shorter notice than that specified in clause 32(6), provided it is, in the opinion of the Trustees justified by the circumstances and such shorter notice is condoned by the meeting by way of an Ordinary Resolution.
- (11) A special general meeting for the purposes of a unanimous or special resolution may be convened for a date thirty (30) days after notice has been given to all Members. The Trustees may convene such a meeting at shorter notice if, in the opinion of the Trustees, it is necessary due to the urgency of a matter or due to the specific nature of a matter, to convene the meeting with such shorter period of notice. All Members present and entitled to attend and vote at such special general meeting in person or by proxy or by representation by proxy must condone the shorter notice period.

### **33. BUSINESS AT THE ANNUAL GENERAL MEETING**

- (1) All business at any general meeting other than business referred to in clause 33(2) shall be special business.
- (2) The following business shall be transacted at an annual general meeting:
- (a) Consideration of the audited financial statements and report.
  - (b) Approval with or without amendment of:
    - (i) the schedules of replacement values; and
    - (ii) the Budget (the itemised estimate of all anticipated income and expenditure).
  - (c) The appointment of an Auditor.
  - (d) The determination of the number of Trustees for the ensuing year;
  - (e) The election of Trustees for the ensuing year.
  - (f) Any special business of which due notice has been given.
  - (g) The giving of directions or the imposing of restrictions referred to in section 39(1) of the Act.
  - (h) Determination of the *domicilium citandi et executandi* of the Association.

- (i) Submission for consideration of a report by the Trustees on maintenance and improvements effected by them during the past Financial Year.
- (j) The confirmation by the Trustees that any amendment, substitution, addition or repeal of the Constitution and/or Conduct Rules (as contemplated in section 35(5) of the Act) have been submitted to the Registrar of Deeds for filing as contemplated in section 35(5)(c) of the Act.
- (k) Consideration of the audited financial statements of, and a report in respect of, the affairs of the Health Care Provider.

#### **34. QUORUM AT GENERAL MEETINGS**

- (1) No business shall be transacted at any general meeting unless a quorum of Members is present in person or by proxy at the time when the meeting proceeds to business.
- (2) A quorum at a general meeting shall be the number of Members holding at least twenty percent (20%) of the votes in number, present in person or by proxy or by representation recognized in law, and entitled to vote provided that:
  - (a) the quorum for the passing of a Unanimous Resolution shall be eighty percent (80%) of the Members in number and value present in person or by proxy or by representative recognized in law and entitled to vote.
  - (b) the quorum for the passing of a Special Resolution shall be twenty percent (20%) of the Members in number and value present in person or by proxy or by representative recognized in law and entitled to vote.
- (3) If within half-an-hour from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time, and if at the adjourned meeting a quorum is not present within half-an-hour of the time appointed for the meeting, the Members present in person or by proxy or by representative recognized in law and entitled to vote shall form a quorum.
- (4) Provided that at the adjourned meeting constituted without the necessary quorum as in clause 34(3) above, no Unanimous or Special Resolution may be passed.

**35. CHAIRMAN OF GENERAL MEETING**

- (1) The Chairman of the Trustees shall preside as Chairman at every general meeting of the Association, unless otherwise resolved by Members of the Association at such meeting.
- (2) If there is no such Chairman or if, at any meeting, the Chairman of the Trustees is not present within fifteen (15) minutes after the time appointed for the holding of the meeting, or if he or she is unwilling or unable to act as Chairman, the Vice-Chairman shall act as Chairman and, in the event that he or she is also unwilling or unable to act as Chairman, the Members present shall elect a person present to be Chairman.

**36. VOTING AT GENERAL MEETINGS**

- (1) At any general meeting a resolution, except a Special Resolution or an Unanimous Resolution, put to the vote of the meeting shall be decided on a show of hands unless prior to or on the declaration by the Chairman of the result of the vote, a poll is demanded by any person entitled to vote at such meeting or the Chairman.
- (2) For the purpose of a Unanimous or Special Resolution voting shall be conducted by poll.
- (3) A declaration by the Chairman that a resolution has been carried on a show of hands shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

**37. VOTES**

- (1) On a show of hands the Owner or Owners of a Unit, or if the Owner is a juristic person, its representative, shall have one vote in respect of each Unit held by such Owner.
- (2) For the purpose of a poll, the value of the vote of the Owner or Owners of a Unit shall be one vote per Unit. Accordingly for the purpose of a Unanimous or Special Resolution the value of the vote of the Owner or Owners of a Unit shall be one vote per Unit.
- (3) Except in cases where a Special Resolution or a Unanimous Resolution is required under the Act or in this Constitution, a Member shall not be entitled to vote at any general meeting if:
  - (a) any Levies payable by him or her in respect of his or her Unit or Exclusive Use Area have not been duly paid; or

- (b) he or she persisted in breach of any provisions of the Act, the Constitution, the Conduct Rules or the Architectural Guide notwithstanding written warning by the Trustees, or the Managing Agent to refrain from breaching such provision:

Provided that any mortgagee shall be entitled to vote as such Member's proxy at any general meeting even though the Member may be prohibited by the provisions of this clause from voting.

- (4) Where an Owner of a Unit is as such a trustee for a beneficiary of a trust, he or she shall exercise voting rights in respect of the Unit to the exclusion of persons beneficially interested in the trust and such persons shall not be entitled to vote.
- (5) When two or more persons are entitled to exercise one vote jointly, that vote shall be exercised only by one person (who may or may not be one of them) jointly appointed by them as their proxy, provided that either one of them may demand a poll.
- (6) Votes at a general meeting may be cast either personally or by proxy, whether on a poll or on a show of hands.
- (7) A proxy shall be appointed in writing under the hand of the appointer, or his or her agent duly appointed in writing, and shall be handed in at the Office, at least 24 hours prior to the commencement of the meeting; provided that the foregoing provisions shall not apply in the case of any proxy created and contained in any registered mortgage bond, if such mortgage bond or a copy certified by a conveyancer, is produced at the meeting.
- (8) A proxy need not be an Owner, but shall not be the Managing Agent or any of his or her employees, or an employee of the Association.

**GENERAL:**

**38. DUTIES OF OWNERS AND OCCUPIERS OF SECTIONS**

- (1) In addition to his or her obligations in terms of section 44 of the Act, an Owner:
- (a) shall not use his or her Section, Exclusive Use Area or any part of the Common Property, or permit it to be used, in such a manner or for such purpose as shall be injurious to the reputation of the Village;

- (b) shall not contravene, or permit the contravention, of any law, by-law, ordinance, proclamation or statutory regulation, or the conditions of any licence, relating to or affecting the occupation of Sections or the Common Property, or the carrying on of business in the Village, or so contravene or permit the contravention of the conditions of title applicable to his or her Section or any other Section or to his or her Exclusive Use Area or any other Exclusive Use Area;
  - (c) shall not make alterations, which are likely to impair the stability of his or her Section or the use and enjoyment by other Members of any other Section, the Common Property or any Exclusive Use Area;
  - (d) shall not do anything to his or her Section or Exclusive Use Area, which is likely to prejudice the aesthetic appearance of the Village;
  - (e) shall, when the purpose for which an Exclusive Use Area is intended to be used, is shown expressly or by implication on or by a registered sectional plan, or specified in this Constitution or the Conduct Rules, not use, nor permit such Exclusive Use Area to be used, for any other purpose: Provided that with the written consent of all Members such Exclusive Use Area may be used for another purpose;
  - (f) shall not construct or place any structure, building or improvement on his or her Exclusive Use Area, without the prior written consent of the Trustees, which shall not be unreasonably withheld and that the provisions of section 24 and section 25 or other relevant provisions of the Act, the Constitution, the Architectural Guide or the Conduct Rules, will not be contravened;
  - (g) shall maintain the hot water installation which serves his or her Section, or where such installation serves more than one Section, the Owners concerned shall maintain such installations pro rata, notwithstanding that such appliance is situated in part of the Common Property and is insured in terms of the policy taken out by the Association;
  - (h) shall repair and maintain his or her Exclusive Use Area in a state of good repair and keep it in a clean and neat condition as required by and to the satisfaction of the Trustees;
  - (i) permit any person authorized in writing by the Association, at all reasonable hours on notice (except in case of emergency, when no notice shall be required), to enter his or her Section or Exclusive Use Area for the purpose of maintenance or for the purposes of ensuring that the provisions of the Act, the Retired Persons Act, the Constitution, the Conduct Rules and the Architectural Guide are being observed.
- (2) An Owner who exercises his or her rights in terms of section 60(3) of the Act shall bear all costs to give effect thereto.

- (3) The provisions of the Act, the Retired Persons Act, this Constitution, the Conduct Rules and the Architectural Guide, and the duties of an Owner in relation to the use and occupation of Sections and Common Property shall be binding on all Owners, lessees and occupants of Sections, and it shall be the duty of the Owner to ensure compliance with the provisions of the Act, the Retired Persons Act, the Constitution, the Conduct Rules and the Architectural Guide by his or her lessee or occupant of his or her Section, including the family members, guests, visitors, employees or contractors of the Owner, the lessee or occupant.
- (4) If an Owner:
- (a) fails to repair or maintain his or her Section in a state of good repair as required by section 44(1)(c) of the Act; or
  - (b) fails to repair or maintain his or her Exclusive Use Area in a state of good repair and in a clean and neat condition as required by the Trustees in accordance with clause 38(1)(h) above,

and any such failure persists for a period of thirty (30) days after the giving of written notice to repair or maintain given by the Trustees, or by the Managing Agent on their behalf, the Association shall be entitled to remedy the Owner's failure and to recover the reasonable cost of doing so from such Owner.

### **39. CONDUCT RULES AND ARCHITECTURAL GUIDE**

- (1) The Association shall create Conduct Rules in terms of section 35(2)(b) of the Act by Special Resolution, which shall serve as, and in lieu of, the Conduct Rules of the Body Corporate of Oude Westhof Village 1, the Body Corporate of Oude Westhof Village 2, the Body Corporate of Oude Westhof Village 3 and the Body Corporate Oude Westhof Village 4. The Conduct Rules must be filed as the substituted Conduct Rules of the respective Bodies Corporate at the Cape Town Deeds Registry. The Conduct Rules will come into operation on the last date of filing thereof.
- (2) The Conduct Rules of the Association may be substituted, added to, amended or repealed from time to time by Special Resolution of the Association and in accordance with the provisions of section 35 of the Act.
- (3) The Trustees shall develop an Architectural Guide in respect of physical alterations and attachments to buildings in the Village. The Architectural Guide shall become effective and binding upon all Owners upon approval thereof by Special Resolution. The Architectural Guide may be amended from time to time by Special Resolution.



- (4) The Conduct Rules of the Association as referred to in clause 39(1) and as may be amended from time to time in terms of clause 39(2) shall serve as, and in lieu of, the Conduct Rules of the Body Corporate of Oude Westhof Village 5. The Conduct Rules must be filed as the substituted Conduct Rules of the Body Corporate of Oude Westhof Village 5 at the Cape Town Deeds Registry. The Conduct Rules will come into operation on the date of filing thereof.

#### **40. THE APPOINTMENT, POWERS AND DUTIES OF A MANAGING AGENT**

- (1) (a) Subject to the provisions of section 39(1) of the Act, the Trustees may from time to time, and shall if required by a registered mortgagee of twenty five percent (25%) of the Units or by the Members in a general meeting, appoint in terms of a written contract a Managing Agent to control, manage and administer the Common Property, the administration of the affairs of the Association, including any obligations of the Association to a public or local authority, on behalf of the Owners, and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect Levies and to appoint a supervisor or caretaker.
- (b) A Managing Agent is appointed for an initial period of one year and thereafter such appointment shall automatically be renewed from year to year unless the Association notifies the Managing Agent to the contrary: provided that notice of termination of the contract may be given by the Trustees in accordance with a resolution taken at a trustee meeting or an Ordinary Resolution taken at a general meeting.
- (2) (a) The Trustees shall ensure that there is included in the contract of appointment of any Managing Agent a provision to the effect that if he is in breach of any of the provisions of his or her contract, or if he or she is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Trustees may, without notice, cancel such contract of appointment, and that the Managing Agent shall have no claim whatsoever against the Association or any of the Owners as a result of such cancellation.
- (b) Any one or more of the Owners or mortgagees of Sections may, if the Managing Agent is in breach of the provisions of his or her contract or if he or she is guilty of any conduct which at common law would justify the termination of a contract between master and servant, require the Trustees to cancel the Managing Agent's contract in terms of clause 40(2)(a). The foregoing provisions shall in no way detract from the Trustees' rights to cancel the Managing Agent's contract.

- (c) Any Owner or mortgagee who required the Trustees to cancel the Managing Agent's contract in terms of clause 40(2)(b) shall furnish the Trustees with such security as they in their discretion may determine for the payment of and shall indemnify the Trustees and the Association against:
- (i) all litigation costs reasonably incurred by the Trustees in enforcing such cancellation against the Managing Agent; and
  - (ii) all other costs and damages arising out of such cancellation, purported cancellation or litigation for which the Trustees or the Association might be liable up to the time such Owner or mortgagee formally notifies the Trustees that he no longer requires them to pursue the action.
- (d) The Trustees shall not be required to cancel the contract of appointment of the Managing Agent unless and until the Owner or mortgagee requiring cancellation in terms of clause 40(2)(b) has furnished them with the security and indemnity as specified in clause 40(2)(c).
- (3) The contract with the Managing Agent shall further provide for the appointment to be revoked, and such Managing Agent shall cease to hold office, if:
- (a) where the Managing Agent is a juristic person, an order is made for its provisional or final liquidation or, where the Managing Agent is a natural person, he or she applies for the surrender of his or her estate as insolvent or his or her estate is sequestrated either provisionally or finally or, where the Managing Agent is a company, it is placed under judicial management; or
  - (b) the Managing Agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the Managing Agent is a company or a close corporation, any of its directors or members is convicted of an offence involving an element of fraud or an element of dishonesty, or;
  - (c) a Special Resolution of the Members of the Association is passed to that effect: Provided that in such event the Managing Agent so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.

- (4) The Managing Agent shall keep full records of his or her administration and shall report to the Association and to all holders of registered sectional mortgage bonds who have notified the Association of their interests in terms of clause 32(6)(b) of all matters which in his or her opinion detrimentally affect the value or amenity of the Common Property and any of the Sections.
- (5)
  - (a) The Trustees shall give reasonable prior notice to the Managing Agent of all meetings of the Trustees and he or she may with the consent of the Trustees be present thereat.
  - (b) The Trustees shall from time to time furnish to the Managing Agent copies of the minutes of all meetings of the Trustees and of the Association.

#### **41. RESTRICTION ON TRANSFER**

- (1) No Alienation or transfer in respect of a Unit may be effected unless the Association has granted its consent to such transfer, evidenced by a Levy Clearance Certificate issued by the Trustees on behalf of the Association.
- (2) The Association may withhold the issue of a Levy Clearance Certificate if:
  - (a) any Levies or any other monies due in respect of such Unit have not been paid, or remains unpaid or inadequate provision has been made in respect of the payment thereof; or
  - (b) any building additions exist in respect of such Section, which have not been properly authorised and registered, as the case may be, in terms of the Act, this Constitution, the Conduct Rules and the Architectural Guide;
  - (c) if the Owner of the Unit is substantially in breach of the provisions of the Act, the Retired Persons Act, this Constitution, the Conduct Rules or the Architectural Guide to an extent reasonably to justify withholding such certificate; or
  - (d) the format and content of the Agreement of Sale does not substantially comply with the format and content prescribed by the Trustees; or
  - (e) the Trustees do not approve of the Nominated Occupant/s in respect of the Section as nominated by the Transferee in terms of clause 43 of this Constitution.

**42. SALE OF UNITS**

- (1) Whereas the Village is a scheme for retired persons with specific requirements and attributes and the Association recognizes the needs of its Members to have assistance from competent and informed estate agents, the Trustees are authorised to formulate a policy for the accreditation of estate agents for the Village and to introduce accreditation procedures for estate agents and to grant accreditation to estate agents who comply with their requirements.
- (2) A Member or other Transferor of the Unit may only appoint an accredited estate agent to secure a prospective purchaser for the Unit, unless the Member or other Transferor sells the Unit himself or herself, without making use of the services of an estate agent.
- (3) The accredited estate agent's commission shall not exceed 3.5% (excluding value-added-tax) on the purchase price of the Unit, provided that nothing prohibits the Members of the Association by Ordinary Resolution in general meeting to vary, whether up or down, the percentage of the estate agent's commission.
- (4) All Agreements of Sale shall be concluded in terms of the standard written Agreement of Sale as prepared and required by the Trustees from time to time.
- (5) The Owner shall ensure that the prospective purchaser shall disclose in the Agreement of Sale all information required by the Trustees, including the full names and identity numbers of the Nominated Occupant/s. No person other than a retired person (of 50 years of age or older) and the spouse of the retired person may occupy a Section.
- (6) All agreements of sale shall be subject to a suspensive condition that it must be approved in writing by the Trustees, failing which the agreement shall lapse. The Trustees shall provide the approval or refusal (as the case may be) expeditiously, acting reasonably.
- (7) All transfers of Units shall be conducted by the Attorney appointed from time to time by the Trustees, in order to protect the interests of the Association in such transaction. Notwithstanding the foregoing, the Attorney shall be the agent of the Transferor.

**43. NOMINATION OF NOMINATED OCCUPANT/S**

- (1) Every Owner or Transferee of a Unit shall nominate a Nominated Occupant/s in respect of his or her Section and shall for this purpose furnish the Trustees with a written nomination of the proposed Nominated Occupant/s and with any further documents as may be prescribed by the Trustees.

- (2) Before granting their written approval of a Nominated Occupant/s in respect of a Section, the Trustees shall be entitled to:
- (a) be satisfied as to the suitability of the proposed Nominated Occupant/s in relation to need and compatibility, bearing in mind that the Village has been established to provide accommodation to Retired Persons;
  - (b) require such reasonable proof as the Trustees may deem fit that the Nominated Occupant/s has/have attained the age of 50 years, or where applicable to require proof that he or she is the Spouse of the Retired Person;
  - (c) require a medical certificate from a qualified medical doctor certifying that the proposed Nominated Occupant/s is/are medically fit and self-sufficient to occupy the Section and to live independently;
  - (d) require payment of the Exit Levy in the case of a Deemed Alienation.

#### **44. AGE RESTRICTION AND OCCUPATION OF SECTIONS**

- (1) A Section shall only be occupied by the Nominated Occupant/s as approved in writing by the Trustees and shall not be otherwise occupied by any other person/s, provided that:
- (a) it shall be deemed not to be a breach of this clause for the Owner or the Nominated Occupant/s of a Section, to let the Section, subject to the Trustees approving the Lessee/s and/or Occupant/s in writing;
  - (b) it shall be deemed not to be a breach of this clause for the Lessee/s or Nominated Occupant/s of a Section to part with occupation, whether on a sub-lease or other basis, during the temporary absence on holiday or otherwise of such Nominated Occupant/s or Lessee/s, provided that the Trustees have consented thereto in writing, which consent will not unreasonably be withheld;
  - (c) a Nominated Occupant/s or Lessee/s may temporarily house his or her family members, guests, or visitors in his or her Section for a period of up to twenty one (21) days during any calendar month. Any extension of such period will require the prior written consent of the Trustees.
- (2) No Owner or Nominated Occupant/s of a Section shall let or grant a right of occupancy in respect of his or her Section, without the written consent of the Trustees, who may attach reasonable conditions to their consent. To obtain the written consent of the Trustees, the Owner or Nominated Occupant/s of the Section shall apply to the Trustees in writing and shall furnish the Trustees with the following information and documentation:

- (a) a copy of the lease agreement, the terms of which must be agreed to by the Trustees;
  - (b) the particulars and contact details of the intended Lessee/s or Occupant/s;
  - (c) proof that the intended Lessee/s or Occupant/s has/have attained the age of fifty (50) years or, where applicable is the Spouse of the Retired Person;
  - (d) a medical certificate from a qualified medical doctor confirming that the proposed Lessee/s or Occupant/s is/are medically fit and self-sufficient to occupy the Section and to live independently.
- (3) Subject to the provisions of this Constitution and the Conduct Rules, no person other than a Retired Person and his or her Spouse may occupy a Section in the Village, and the number of Occupants residing in the Section shall be restricted to two (2) Occupants per Section. Either both Occupants shall be Retired Persons, or one Occupant shall be a Retired Person, and the other Occupant shall be his or her Spouse, who may be younger than 50 years.

#### **45. DISPUTE RESOLUTION**

- (1) Any dispute between the Association and an Owner or between Owners arising out of or in connection with or related to the Act, the Retired Persons Act, this Constitution, the Conduct Rules or the Architectural Guide save where an interdict or any other form of urgent relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of these provisions.
- (2) If such dispute arises, the aggrieved party shall notify the other interested party or parties in writing and copies of such notification shall be served on the Trustees and Managing Agent, if any, and should the dispute or complaint not be resolved within fourteen (14) days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration: Provided that, if an Owner declares a dispute with the Association, it shall be sufficient notice if notification is served on the Trustees and the Managing Agent, if any, and such Owner will not be required to serve notice on each of the other Owners.
- (3) Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties or, in the instance of a stated case as contemplated above, the Trustees, shall appoint an arbitrator who shall be an independent and suitably experienced and qualified person as may be agreed upon between the parties to the dispute.

- (4) If the parties cannot agree as to the arbitrator to be appointed in terms of clause 45(3) within three (3) days after arbitration has been demanded, the President for the time being of the Cape Law Society or his or her nominee shall upon written application appoint an arbitrator within seven (7) days after he or she has been required to make the appointment so that the arbitration can be held and concluded without delay.
- (5) Arbitration shall be held informally or otherwise as the arbitrator may determine. The arbitrator shall have the right to require that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with. Where possible the arbitration shall be concluded within twenty-one (21) days after the matter has been referred to for arbitration in terms of clause 45(2) provided that security for costs has been furnished, if required by the arbitrator
- (6) The arbitrator shall make his or her award within seven (7) days from the date of the completion of the arbitration and shall in making his or her award, have regard to the principles laid down in terms of the Act, the Retired Persons Act, this Constitution, the Conduct Rules and the Architectural Guide. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as he or she may determine and as he or she in his or her discretion, may deem appropriate having regard to the outcome of the arbitration.
- (7) The decision of the arbitrator shall be final and binding and may be made an Order of the High Court upon application of any party to be affected by the arbitration.

#### **46. TRANSITIONAL PROVISIONS**

- (1) The Village is, at the time of adoption of this Constitution, being managed by joint Board of Trustees appointed by Oude Westhof Village 1, Oude Westhof Village 2, Oude Westhof Village 3 and Oude Westhof Village 4.
- (2) The adoption of this Constitution by the Owners shall constitute a formal ratification of all acts performed and steps taken by the said joint Board of Trustees for the benefit of the Bodies Corporate.

#### **47. APPLICABILITY OF THE ACT AND RETIRED PERSONS ACT**

In applying the provisions of this Constitution, the Conduct Rules and the Architectural Guide the Trustees and Members shall at all times conduct their affairs subject to the applicable provisions of the Act and the Retired Persons Act.

#### **48. AMENDMENT OF THIS CONSTITUTION**

This Constitution may be amended from time to time by the Members by means of a Unanimous Resolution: Provided that the Members may by means of a Special Resolution, approve amendments to the Constitution by which the liability of the Owner of any Section to pay Levies to the Association, is modified.

#### **49. OUDE WESTHOF VILLAGE 5**

All the members of the Body Corporate of Oude Westhof Village 5 Sectional Title Scheme, being the registered owners of Units in the said Scheme, shall be members of the Association and the functions and powers of the Body Corporate of Oude Westhof Village 5 shall be assigned to the Association. This Constitution, as may be amended from time to time, shall serve as, and in lieu of, the Management Rules of the Body Corporate of Oude Westhof Village 5. This Constitution shall be filed as the substituted Management Rules of the Body Corporate of Oude Westhof Village 5 at the Cape Town Deeds Registry and shall come into operation on the date of filing thereof.

#### **50. DELIVERY OF NOTICES**

- (1) A notice by the Association to a Member in terms of this Constitution, the Architectural Guide or the Conduct Rules shall be deemed to have been sufficiently given and delivered, if:
  - (a) delivered by hand to the Member with a written acknowledgement of receipt, or
  - (b) sent by pre-paid registered post addressed to the *domicilium* address of the Member, or
  - (c) transmitted by e-mail to the e-mail address of the Member as reflected in the records of the Association, or
  - (d) transmitted by fax to the fax number of the Member as reflected in the records of the Association.
- (2) A notice sent or delivered by registered post shall be deemed to have been received on the 5th (fifth) day after the date of posting. A notice by hand, fax or e-mail shall be deemed to have been delivered on the date of delivery by hand or transmittal by fax or e-mail.

#### **51. HEALTH CARE CENTRE**

- (1) The Association is the shareholder of the share capital of the Health Care Provider. The Health Care Provider has purchased the Health Care Centre from the CPOA.



- (2) The Trustees shall exercise the votes of the Association (as the sole shareholder in the Health Care Provider) at the general meetings of the Health Care Provider. The Directors of the Health Care Provider must be Trustees of the Association.
- (3) No shares in the Health Care Provider may be sold without the authorisation of the Members of the Association by Unanimous Resolution.
- (4) The audited financial statements of the Health Care Provider must be provided to the Members of the Association with the notice convening each annual general meeting, and must be considered at each annual general meeting of the Association.

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