

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

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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 Schemes Management Act, No. 8 of 2011 as amended from time to time, and any regulations made and in force thereunder.
Agreement of Sale	the agreement under which a Unit is sold or purchased.
Alienation	to divest of ownership of a Unit by way of a sale, exchange, donation, deed, endorsement, reservation, cancellation, intestate- or testate succession, cession, assignment, court order, insolvency, liquidation, prescription, or expropriation or otherwise, 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	Units owned by Members, which entitle such Members to assistance from the Care Provider.
Association	the Oude Westhof Village Management Association.
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.

Body Corporate	a Body Corporate of a Scheme in the Village, as described in section 2(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.
Budget	an itemised estimate of the anticipated income and expenses of the Association for the ensuing Financial Year, including the funds to be held in reserve.
Business Day	every weekday other than a Saturday, Sunday, or proclaimed public holiday.
Care Centre	the Frail Care Centre of the Village situated in Oude Westhof Village 1, managed and owned by the 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.
Caregiver	a person employed by or on behalf of an Owner or Occupant to provide Home-based Care to an Owner or Occupant in the Village.
Care Provider	OWOBV (Pty) Ltd, Registration number 2016/182577/07, a private company with a share capital duly incorporated in terms of the provisions of the Companies Act, being the entity established by the Association and the successor in title of the CPOA in respect of the Village.
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 known as remainder Erf 37827 Bellville, comprising of a lounge, dining room, offices, swimming pool, kitchen, launderette and all other facilities as may be provided from time to time.

Common Amenities and Facilities	the Common Property in respect of the Village and the common amenities, services and facilities referred to in clause 6 of this Constitution and such further common amenities, services and facilities as may be provided from time to time.
Common Property	the Common Property as defined in the Sectional Titles Act of a Scheme and/or of the Schemes.
Community Schemes Ombud Service Act	the Community Schemes Ombud Service Act, No. 9 of 2011 as amended from time to time, and any regulations made and in force thereunder.
Companies Act	the Companies Act, No. 61 of 1973 or where applicable, the Companies Act, No. 71 of 2008, as amended from time to time, and any regulations made and in force thereunder.
Conduct Rules	the Conduct Rules adopted for the Association as referred to in clause 39 of the Constitution, which serves as, and in lieu of, the conduct rules of each of the Bodies Corporate as referred to in section 10(2)(b) of the Act.
Constitution	the Constitution of the Association, which serves as, and in lieu of, the Management Rules of each of the Bodies Corporate.
CPOA	Cape Peninsula Organisation for the Aged 003-044 NPO, a non-profit organisation with its head office situated at 231 Main Road, Newlands.
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.
Electronic Communication	data communication as defined in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002.

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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 Care Centre, as the case may be.
Exclusive Use Area	a part or parts of the Common Property for the exclusive use by the Owner or Owners of one or more Sections.
Exit Levy	the contribution or Levy payable by a Member or the Transferor to the Association at the Alienation of his or her Unit.
Fair Market Value	in respect of a Unit, is the deemed amount at which a willing seller would sell and a willing buyer would buy the Unit, 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 at the Seller's costs, 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 Care Centre, arising from the subdivision of Section No. 61, from the Care Provider as the first purchaser thereof.

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Home-based Care	care provided to an Owner or Occupant in their homes (Sections) to address impairments related to old age, physical and/or cognitive impairment, disease or other illness and generally to maintain such person's maximum level of comfort.
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, including Electronic Communication and "Written" shall have a corresponding meaning.
Kaikoura Capital	Kaikoura Capital (Pty) Limited, registration number 2002/029619/07, a private company with a share capital duly incorporated in terms of the provisions of the Companies Act.
Lessee/s	the lessee/s of a Section, as approved In Writing by the Trustees.
Levies	the contributions payable by Members to the Association in terms of section 3 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 Sectional Titles Act.
Little Swift Investments	Little Swift Investments 92 (Pty) Ltd, registration number 2004/004692/07, the Developer of Oude Westhof Village 5, a private company with a share capital duly incorporated in terms of the provisions of the Companies Act.



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 Sectional Titles Act in relation to any amending sectional plan in respect of a Scheme which was registered during the specific year. The Trustees shall at the beginning of each Financial Year calculate and where necessary adjust the Management Participation Quotas of all the Sections in the Village.
Management Rules	in relation to a Scheme, the rules referred to in section 10(2)(a) of the Act.
Manager	a person as may be appointed by the Trustees as an employee of the Association in terms of clause 17 or 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 Owner/s of a Section, the Spouse of the Owner, or the Lessee/s of a Section or the other Occupant/s of a Section, nominated In Writing by the Owner/s or Transferee/s 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 and provided further that the maximum number of Nominated Occupants per Section shall be limited to two (2) Nominated Occupants per Section.

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 Administration Office of the Association with the following address: Oude Westhof Village Management Association, Administration Office, 26 Van Riebeeckshof Road, Bellville, 7530 which shall be the Service Address or the <i>domicilium citandi et executandi</i> of the Association in terms of section 3(1)(o) of the Act.
Older Persons Act	the Older Persons Act, No. 13 of 2006, as amended from time to time, and any regulations made and in force thereunder.
Ordinary Resolution	at any general meeting an ordinary resolution put to the vote of the meeting shall be decided on an ordinary majority of the votes of the Owners present in person or represented by proxy or authorised representative at the meeting.
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.

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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 a 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 Bondholder	the holder of a mortgage bond registered in respect of a Section who has provided the Association with its particulars.
Registration Date	the date when the Member became the registered owner of the Unit, being the date of registration of transfer of the Unit from the Transferor to the Transferee in the Cape Town Deeds Registry, or where applicable the date when the Right was registered or cancelled in the Cape Town 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. 65 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 <i>usufruct</i> , <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 as disclosed in the Agreement of Sale.

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Scheme	a sectional title scheme as defined in the Sectional Titles 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 Sectional Titles Act.
Sectional Titles Act	the Sectional Titles Act, No. 95 of 1986, as amended from time to time, and any regulations made and in force thereunder.
Service Address	the <i>domicilium citandi et executandi</i> of a Member or where applicable of a Nominated Occupant or other Occupant, or of the Association.
Services	the services provided at the 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 the 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.
Transferee	the person or juristic person to whom a Unit is Alienated or transferred.
Transferor	the Owner, the executor of his or her estate or any other person Alienating or transferring a Unit.
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.

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Trustee	a Trustee of the Association 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 the Bodies Corporate individually.
Unit	a Unit in any Scheme, as defined in the Sectional Titles Act, or the <i>bare dominium</i> of a Unit, or a share thereof, or a Right in respect thereof, as may be applicable.
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.
Visitors	the family members, visitors, guests, Carers, employees, workers, contractors, agents or service providers of Owners, Nominated Occupants or other Occupants of Sections, who are present in the Village.
Year	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 of the Association, then, notwithstanding that it is only contained in the definition clause of this Constitution, effect shall be given to it as if it were a substantive provision in 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 known as the Oude Westhof Village Management Association was established as a master association, being a common law association, for the Bodies Corporate and Village. This Constitution shall also serve as the Management Rules of each of the Bodies Corporate for the purposes of section 10(2)(a) of the Act.
- (2) The Association was established with effect on the 29<sup>th</sup> of April 2009 being the date of filing of the original Constitution as the 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. The Constitution was filed at the Cape Town Deeds Registry as the substituted Management Rules of Oude Westhof Village 5 on the 25<sup>th</sup> of September 2014.

- (3) The Owners of Units in the Schemes must be Members of the Association and the functions and powers of the respective Bodies Corporate have been assigned to the Association. The schedule of conditions referred to in section 11(3)(b) of the Sectional Titles Act of each Scheme contains a condition restricting the transfer of a Unit without the consent of the Association.
- (4) This amended Constitution has been formulated by the Association in terms of section 10(2)(a) of the Act and regulation 6(4) promulgated under the Act.
- (5) The Association shall, subject to the provisions of the Act, the Sectional Titles Act, the Older Persons 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.
- (6) The provisions of the Companies Act shall not apply in relation to the Association.
- (7) 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 or of the Village;
  - (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 for 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 Sectional Titles Act, the Older Persons 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.
- (8) The address of the Office is the address constituting the Service Address or the *domicilium citandi et executandi* of the Association in terms of section 3(1)(o) of the Act.
- (9) The Trustees may designate a postal address, fax, email or other address as an alternate Service Address of the Association.

### 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 the functions and exercise all the 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 the financial administration, of the Bodies Corporate and of the Association, and to the exclusion of the Bodies Corporate, to exercise and perform all the powers, functions and duties assigned to the Bodies Corporate in terms of the Act and the Sectional Titles Act;
  - (b) enforce compliance with the provisions of the Act, the Sectional Titles Act, the Older Persons 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 of 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 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, No. 58 of 1962.
- (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, No. 58 of 1962 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 of a Unit in the Village.
- (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 in the Cape Town Deeds Registry, being the Registration Date.
- (3) 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 of the Association.
- (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 the registration of 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 bondholder 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 Sectional Titles Act, the Older Persons 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 Service Address of a Member which will also be the address for the purposes as contemplated in sections 6(3)(c) and 6(4) of the Act 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 Service Address but that any new Service Address selected shall be situated in the Republic of South Africa, and that the change shall only be effective on receipt of Written notice thereof by the Association at its Office.
- (9) A Member may designate a postal address, fax number in the Republic of South Africa, or an email or other address as an alternate Service Address. The alternate Service Address of the Member is effective when the Association receives notice of such alternate Service Address.
- (10) The Service Address for any legal process or delivery of any other document to a Nominated Occupant or other Occupant is the physical address of the Section, occupied by him or her.

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

- (1) The Association shall exercise the powers and perform the functions entrusted to the individual Bodies Corporate as set out in the Act, the Sectional Titles Act, the Older Persons 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:
- (a) To purchase or acquire all the shares in the Care Provider and generally, to do or cause to be done whatsoever shall be requisite, to enable transfer of the Unit comprising the Care Centre to the Care Provider, including but not limited to make a loan to the Care Provider on such terms and conditions as the Trustees shall decide.

- (b) 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 assets, in the manner and on terms and conditions as it sees fit, with the right also to replace such borrowings or security.
  - (c) To exercise the voting power attached to the shares in the Care Provider as the Association considers appropriate, through the Trustees of the Association.
  - (d) To prohibit the sale of shares in the Care Provider, unless authorised by Unanimous Resolution of the Members.
  - (e) To make loans from the Association's funds on the authority of a Special Resolution of the Members.
  - (f) To make loans from the Association's funds to Members on the authority of a resolution of the Trustees to enable such Members to continue to reside in the Village.
  - (g) To register mortgage bonds over Units as security for loans to Members.
- (2) The Association may exercise any power and perform any function conferred upon a Body Corporate by or under the Act, the Sectional Titles Act and the Constitution.

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

- (1) Members and Nominated Occupants shall enjoy access and reasonable usage of the Common Amenities and Facilities, irrespective of whether they are situated on the Common Property of any particular Scheme, subject to compliance with 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 in respect thereof.
- (c) The Care Centre and all services, facilities and amenities provided in respect thereof, subject to agreement with the 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 and other recreational facilities.
- (g) The refuse/garden house.
- (h) The television-installation and related equipment.
- (i) The boreholes and all irrigation equipment and facilities.
- (j) Such further amenities, facilities and services as may at any time be provided by the Association in respect of the Common Property or any part thereof.

#### **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 8 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.

#### **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 the majority of Trustees shall be Owners or the representatives of juristic persons who are Owners or the Spouses of Owners.

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

- (1) The Trustees shall be elected at each annual general meeting of the Association, and a Trustee shall, subject to clause 16, hold office until the next annual general meeting of the Association following his or her appointment, but they shall be eligible for re-election at the annual general meeting, 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 is to be held: 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. Furthermore, 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.

#### **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 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, the Sectional Titles Act, the Older Persons Act, the Retired Persons Act and the provisions of 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.
  - (e) To enter into Written and signed contracts on behalf of the Association.
  - (f) To join organisations and subscribe to services to further its objectives.
  - (g) To approach the Community Schemes Ombud Service for relief in terms of the Community Schemes Ombud Service.
- (3) The Trustees 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.
- (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 sections 3, 4, 5 and 7(2) of the Act and generally perform all the duties and functions of the trustees of a body corporate in terms of the Act, the Sectional Titles Act and the Community Schemes Ombud Service 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 a 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 present in the Republic of South Africa.
- (2) A Trustee may at any time convene a meeting of the Board of Trustees by giving to the other Trustees and all Registered Bondholders 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 Registered Bondholder holding a 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 Registered Bondholder 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.
- (6) The Trustees may make arrangements for attendance at a meeting of the Board of Trustees by Skype, Zoom, Microsoft Teams or by any other method, provided that the method of attendance:
  - (a) must be accessible to all Trustees and persons who are entitled to attend the meeting;
  - (b) enables all persons participating in the meeting to communicate with each other during the meeting; and

- (c) enables the chairperson to confirm, with reasonable certainty, the identity of the participants.
- (7) A person who attends a meeting by any method provided in clause (6) is deemed to be personally present at the meeting.

## **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, each Trustee shall have one (1) vote and 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 or she may have therein.
- (4) A resolution In Writing signed by the majority of the Trustees, shall be as valid and effective as if it had been passed at a meeting of the Trustees duly convened and held.

### **OTHER:**

## **22. INSURANCE**

- (1) The insurance policies of the Association in terms of sections 3(1)(h) and (i) of the Act —
- (a) may provide cover against —
- (i) risks referred to in regulation 3;
  - (ii) risks that Members resolve must be covered by insurance; and
  - (iii) risks that holders of registered first mortgage bonds over not less than 25 per cent in number of the Sections by Written notice to the Association may require to be covered by insurance;
- (b) must specify a replacement value for each Unit and Exclusive Use Area, excluding the Member's interest in the land included in the Schemes or Village; provided that any Member may at any time by Written notice to the Association require that the replacement value specified for that Member's Unit or Exclusive Use Area be increased at the Member's cost;
- (c) must restrict the application of any "average" clause to individual Units and Exclusive Use Areas, so that no such clause applies to the buildings as a whole;

- (d) must include a clause in terms of which the policy is valid and enforceable by any Registered Bondholder 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 terminates the insurance on at least thirty (30) days' notice to the bondholder; and
  - (e) may include provision for "excess" amounts.
- (2) A Member is responsible —
- (a) for payment of any additional premium payable on account of an increase in the replacement value referred to in clause (1)(b);
  - (b) for any excess amount that relates to damage to any part of the buildings that the Member is obliged to repair and maintain in terms of the Act or this Constitution,
- and must furnish the Association with Written proof from the insurer of payment of that amount within seven (7) days of Written request.
- (3) The Association must obtain a replacement valuation of all buildings and improvements that the Association must insure at least every three years and present such replacement valuation to the annual general meeting.
- (4) The Association must prepare for each annual general meeting schedules showing estimates of —
- (a) the replacement value of the buildings and all improvements to the Common Property; and
  - (b) the replacement value of each Unit, excluding the Member's interest in the land included in the Schemes or the Village, the total of such values of all Units being equal to the value referred to in clause (4)(a).
- (5) On Written request by any Registered Bondholder and the furnishing of satisfactory proof, the Association must record the cession to that Registered Bondholder of that Member's interest in any of the proceeds of the insurance policies of the Association.
- (6) The Association must take out public liability insurance to cover the risk of any liability it may incur to pay compensation in respect of—
- (a) any bodily injury to or death or illness of a person on or in connection with the Common Property; and

- (b) any damage to or loss of property that is sustained as a result of an occurrence or happening in connection with the Common Property,
- for an amount determined by Members in general meeting, but not less than Ten Million Rand or any such higher amount as may be prescribed by the Minister in any one claim and in total for any one period of insurance.
- (7) The Association shall take out insurance for an amount determined by Members in general meeting to cover the risk of loss of funds belonging to the Association or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by a Trustee or an employee or other agent of the Association.
- (8) The Association, authorised by a Special Resolution of the Members, may insure any additional insurable interest the Association has —
- (a) in the land and buildings included in the Schemes and the Village; and
- (b) relating to the performance of its functions, for an amount determined in that resolution.
- (9) The Association is, for the purposes of effecting any insurance under section 3(1)(h) of the Act, considered to have an insurable interest for the replacement value of the building and must, for the purposes of effecting any other insurance under that section, be considered to have an insurable interest in the subject matter of such insurance.

### **23. LEVIES AND LIABILITIES**

- (1) Members shall be liable for payment of Levies to the Association 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 3(1) of the Act (or pay Ordinary Levies to the Association in respect their Sections), or may in terms of section 15(1) of the Act be held liable for the payment of a judgment debt of the Association or of any of the Bodies Corporate, shall be borne by the Members in accordance with the Management Participation Quota of their respective Sections. The liability of Members to pay Additional Levies to the Association in respect of their Exclusive Use Areas, shall be determined according to the costs related to their Exclusive Use Areas, with reference to section 3(1)(c) of the Act.

- (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 as Ordinary Levies in respect of Sections and Additional Levies in respect of Exclusive Use Areas;
  - (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 on the date of the Trustees' resolution, in the instalments as determined.
- (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 expenses of the Association not budgeted for, 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 with the authorisation of the Association by Special Resolution in terms of section 5(1)(h) of the Act extends his or her Section during a Financial Year in accordance with section 24 of the Sectional Titles 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.
- (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 Sectional Titles Act, the Older Persons 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 or services rendered in relation to their Sections. 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 (numeral)

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 is a liability due to the Association and shall be paid to the Association by or on behalf of the Member or Transferor before or on the Registration 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, and failing timeous payment the Trustees may charge interest on the amount due in terms of clause 23(9) above.
- (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 Care Provider, the First Purchasers of Assisted Living Units in the 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 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 reserve 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.
- (18) If a Member fails to pay any Levies in full to the Association on due date, the Association may institute an action for the recovery thereof in any competent court or apply to the Community Schemes Ombud Service for an appropriate order.



**24. RECORD OF THE CONSTITUTION, THE CONDUCT RULES, THE 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 Occupant of a Unit, or
  - (c) a prospective purchaser of a Unit, or
  - (d) a Registered Bondholder, or
  - (e) the Auditor

supply to any such person a copy of the Constitution, the Conduct Rules, the Directives and/or of 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 Bondholder 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 Registered Bondholder, 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 Bondholders 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, Registered Bondholders 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, or a Registered Bondholder, the Trustees shall make all or any of the books of account and records available for inspection by such Owner, or a Registered Bondholder, at the Office.
  - (3) The Trustees shall cause all books of account and records to be retained for a period as may be prescribed by law 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 (1) other 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 Registered Bondholder 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 Registered Bondholders.
- (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 the 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 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 registered 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 and of the Act.
- (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 Registered Bondholder 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 Registered Bondholder concerned shall be entitled themselves to call the meeting.
- (6) At least fourteen (14) days Written notice of every general meeting, specifying the place, 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; and
  - (b) all Registered Bondholders who have advised the Trustees of their interests.
- (7) The Registered Bondholders 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 service address of the Member or to any Registered Bondholder as aforesaid, to the address of such Registered Bondholder as reflected in the records of the Association, or
  - (c) by e-mail to the e-mail address of the person or entity as reflected in the records of the Association, or
  - (d) by fax to the fax number of the person or entity as reflected in the records of the Association.
- (9) Inadvertent omission to give the notice referred to in clause 32(6) to any person or entity entitled to such notice or the non-receipt of such notice by such person or entity shall, save in the case of the Registered Bondholders 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 Resolution 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.
- (12) The Association may make arrangements for attendance at an annual general meeting or special general meeting by Skype, Zoom, or Microsoft Teams or by any other method, provided that the method of attendance:
- (a) must be accessible to all Members and persons who are entitled to attend the meeting;
  - (b) enables all persons participating in the meeting to communicate with each other during the meeting; and

- (c) enables the chairperson to confirm, with reasonable certainty, the identity of the participants.
- (13) A person who attends a meeting by any method provided in clause (12) is deemed to be personally present at the meeting.

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

- (1) 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 of the Association for the next Financial Year.
  - (c) The determination of the extent of the insurance cover by the Association in terms of clauses 22(6), 22(7) and 22(8);
  - (d) The appointment of an Auditor to audit the annual financial statements of the Association.
  - (e) The determination of the number of Trustees for the ensuing year;
  - (f) The election of Trustees for the ensuing year.
  - (g) Any special business of which due notice has been given.
  - (h) The giving of directions or the imposing of restrictions referred to in section 7(1) of the Act.
  - (i) Submission for consideration of a report by the Trustees on maintenance and improvements effected by them during the past Financial Year.
  - (j) Report on the lodgement of any amendments to the Constitution and Conduct Rules adopted by the Association in terms of this Constitution and *mutatis mutandis* under section 10 of the Act and, if applicable, table a consolidated set of the Constitution and Conduct Rules.
  - (k) Consideration of the audited financial statements of, and a report in respect of, the affairs of the 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 the number of Members holding at least eighty percent (80%) of the votes 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 the number of Members holding at least twenty percent (20%) of the votes 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 Resolution 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 of the meeting.



**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 Resolution 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 (1) vote in respect of each Unit owned 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 (1) vote per Unit. Accordingly, for the purpose of a Unanimous Resolution or Special Resolution the value of the vote of the Owner or Owners of a Unit shall be one (1) vote per Unit.
- (3) Except in cases where a Special Resolution or a Unanimous Resolution is required under the Act or in terms of 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 Sectional Titles Act, the Retired Persons Act, the Older Persons Act, the Constitution, the Conduct Rules or of the Architectural Guide notwithstanding Written warning by the Trustees to refrain from breaching such provision:

Provided that any Registered Bondholder 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 (1) 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 an employee of the Association.

**GENERAL:**

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

- (1) In addition to his or her obligations in terms of section 13 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 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;
  - (c) shall not do anything to his or her Section or Exclusive Use Area, which is likely to prejudice the aesthetic appearance of the Village;
  - (d) 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;
  - (e) 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;

- (f) shall permit any person authorized In Writing by the Trustees, 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 Sectional Titles Act, the Older Persons Act, the Retired Persons Act, the Constitution, the Conduct Rules and the Architectural Guide are being observed.
- (2) The Association shall take all reasonable steps to ensure that a Member or any Occupant of a Section or Exclusive Use Area does not—
- (a) use the Common Property so as to unreasonably interfere with other persons lawfully on the premises, in breach of section 13(1)(d) of the Act;
  - (b) use a Section or Exclusive Use Area so as to cause a nuisance, in breach of section 13(1)(e) of the Act;
  - (c) contravene the provisions of any —
    - (i) law or by-law relating to the use of a Section or an Exclusive Use Area; or
    - (ii) conditions of a license relating to use of the building or the Common Property, or the carrying on of a business in the building; or
    - (iii) conditions of title applicable to Sections or Exclusive Use Areas;
  - (d) make alterations to a Section or an Exclusive Use Area that are likely to impair the stability of the building or interfere with the use and enjoyment of other Sections, the Common Property or any Exclusive Use Area;
  - (e) do anything to a Section or Exclusive Use Area that has a material negative affect on the value or utility of any other Section or Exclusive Use Area;
  - (f) subject to the provisions of section 13(1)(g) of the Act, use a Section or Exclusive Use Area for a purpose other than for its intended use as—
    - (i) shown expressly or by implication on a registered sectional plan or an approved building plan;
    - (ii) can reasonably be inferred from the provisions of the applicable town planning by-laws or the Constitution of the Association; or

- (iii) is obvious from its construction, layout and available amenities;
  - (g) construct or place any structure or building improvement on an Exclusive Use Area which in practice constitutes a Section or an extension of the boundaries or floor area of a Section without complying with the requirements of the Act and the Sectional Titles Act; provided that the Trustees may by Trustee resolution —
    - (i) give consent for such a structure or building improvement, if they are satisfied that it does not require compliance with such requirements;
    - (ii) prescribe any reasonable condition in regard to the use or appearance of the structure or building improvement; and
    - (iii) withdraw any consent if the Member or other Occupant of a Section breaches any such condition.
- (3) The provisions of the Act, the Sectional Titles Act, the Older Persons Act, the Retired Persons Act, this Constitution, the Conduct Rules and the Architectural Guide, and the duties of Owners in relation to the use and occupation of Sections, Exclusive Use Areas and the Common Property shall be binding on all Owners, Nominated Occupants, and other Occupants of Sections. The Owner of the Section or Exclusive Use Area shall take all reasonable steps to ensure compliance with the provisions of the Act, the Sectional Titles Act, the Older Persons Act, the Retired Persons Act, the Constitution, the Conduct Rules and the Architectural Guide by the Nominated Occupants, and other Occupants of his or her Section or Exclusive Use Area and the Visitors to his or her Section or Exclusive Use Area.
- (4) If an Owner fails or refuses to:
  - (a) carry out work in respect of that Member's Section ordered by a competent authority as required by section 13(1)(b) of the Act; or
  - (b) repair or maintain his or her Section in a state of good repair as required by section 13(1)(c) of the Act; or
  - (c) 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)(e) above,

and any such failure persists for a period of thirty (30) days after the giving of Written notice by the Trustees to carry out work or to repair or maintain, the Trustees shall be entitled to remedy the Owner's failure and to recover the reasonable cost of doing so from such Owner, provided that in the case of an emergency, no demand or notice need be given to the Owner concerned.

**39. CONDUCT RULES AND ARCHITECTURAL GUIDE**

- (1) The Association approved Conduct Rules, which Conduct Rules shall serve as, and in lieu of, the Conduct Rules of the Bodies Corporate in the Village. The initial Conduct Rules of the Association were filed as the substituted Conduct Rules of the respective Bodies Corporate at the Cape Town Deeds Registry and came into operation on the date of filing thereof on the 29<sup>th</sup> of April 2009. The Conduct Rules of the Association were filed in the Cape Town Deeds Registry as the substituted Conduct Rules of Oude Westhof Village 5 on the 25<sup>th</sup> of September 2014.
- (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 10 of the Act.
- (3) The Trustees have developed an Architectural Guide in respect of physical alterations and attachments to buildings in the Village, which became 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.

**40. MANAGER AND OTHER EMPLOYEES**

The Trustees may employ a Manager and other employees for the Association as they deem necessary for the control, management and administration of the Village, the maintenance of the Common Property and to perform such functions, duties and powers on behalf of the Association and the Trustees as may be agreed upon.

**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, the Sectional Titles 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 Sectional Titles Act, the Older Persons Act, the Retired Persons Act, this Constitution, the Conduct Rules or the Architectural Guide to an extent to reasonably 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 approval of estate agents for the Village and to introduce approval procedures for estate agents and to approve estate agents who comply with their requirements.
- (2) A Member or other Transferor of the Unit may only appoint an approved 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 approved 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. All lease agreements in respect of Sections in the Village shall be concluded in terms of the standard Written lease agreement 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 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 approved 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. The number of Nominated Occupants per Section shall be limited to a maximum of two (2) Nominated Occupants per Section.
- (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 with Written notice to the Manager. 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 or the Trustees and an Owner or between Owners arising out of or in connection with or related to the Act, the Sectional Titles Act, the Older Persons 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 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 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 chairperson for the time being of the Western Cape Provincial Council (Legal Practice Council) 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 Sectional Titles Act, the Older Persons 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.
- (8) The foregoing shall be without prejudice of the Association, the Trustees or of an Owner to institute court proceedings or to apply to the Community Schemes Ombud Service for an appropriate order in terms of the Community Schemes Ombud Service Act.

#### **46. APPLICABILITY OF THE ACT, THE SECTIONAL TITLES ACT, THE OLDER PERSONS ACT AND THE 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, the Sectional Titles Act, the Older Persons Act and the Retired Persons Act.

#### **47. DELIVERY OF NOTICES TO MEMBERS OR NOMINATED OCCUPANTS**

- (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 service 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.
- (3) A notice by the Association to a Nominated Occupant or other Occupant in terms of this Constitution, the Architectural Guide or the Conduct Rules shall be deemed to have been duly given and delivered, if:
  - (a) delivered by hand to the Nominated Occupant or other Occupant at the address referred to in clause 4(10) of the Constitution with a Written acknowledgment of receipt; or
  - (b) sent by prepaid registered mail to the address referred to in clause 4(10) of the Constitution; or
  - (c) transmitted by e-mail to the e-mail address of the Nominated Occupant or other Occupant as reflected in the records of the Association; or
  - (d) transmitted by fax to the fax number of the Nominated Occupant or other Occupant as reflected in the records of the Association.
- (4) In all cases where a notice is given to a Nominated Occupant or other Occupant in terms of this Constitution, the Architectural Guide or the Conduct Rules, it must also be delivered to the applicable Member.

#### **48. CARE CENTRE**

- (1) The Association is the shareholder of the share capital of the Care Provider. The Care Provider has purchased the Care Centre from the CPOA.
- (2) The Trustees shall exercise the votes of the Association (as the sole shareholder in the Care Provider) at the general meetings of the Care Provider. The Directors of the Care Provider must be Trustees of the Association.
- (3) No shares in the Care Provider may be sold without the authorisation of the Members of the Association by Unanimous Resolution.
- (4) The audited financial statements of the 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.

- (5) The Care Centre is managed by the Care Provider. Accommodation in the Care Centre is available to Occupants and to the general public. The Care Centre is not a registered sub-acute hospital and is not recognised and covered by Medical Aid Funds. The primary healthcare contract concluded between the Association and the Care Provider governs the primary healthcare services available to all Occupants of Units and the additional services provided to Occupants of the Assisted Living Units.
- (6) The Nominated Occupants, to the exclusion of other Occupants, shall have unconditional priority of accommodation and treatment in the Care Centre. The enjoyment of this privilege is subject to the conditions, including payment of the charges, as notified of by the Care Provider. Preferential access and use of the Care Centre shall further be given to Occupants of Sections in the Village. For this purpose, 'preferential access' shall mean in preference to the exclusion of persons who are not Nominated Occupants or Occupants.
- (7) The Association may in its discretion, after consultation with the Occupant's medical practitioner and immediate family or responsible person, house an Occupant in the Care Centre and/or refer the Occupant to a hospital or medial institution or to any other institution, if in the opinion of the Association it is in the interest of the Association and the Occupant to do so. The decision of the Association shall be final and binding, subject to the provisions of clause 48(8) below.
- (8) Where an Occupant is an older person as defined in the Older Persons Act, the Association may house such Occupant in the Care Centre, provided that the Association has obtained the consent of the Occupant. If the Occupant's mental condition renders him or her incapable of giving such consent, a person authorised in terms of any law or court order may give the required consent.
- (9) In the absence of the consent of such a person as indicated in clause 48(8) above, the required consent may be given by the Spouse of the Occupant concerned, or in the absence of such Spouse, by an adult child or sibling or other family member of the Occupant, provided that such consent may only be given after a registered medical practitioner has certified that a delay in the admission of the Occupant may result in irreversible damage to the Occupant's health.
- (10) Notwithstanding the provisions of clause 48, an Occupant who is an older person as defined in the Older Persons Act, who is capable of understanding, must be informed of the intended admission even if his or her mental condition renders him or her incapable of giving the required consent.

- (11) The Nominated Occupants have a perpetual and preferential right of access to, and use of, the facilities of the Care Centre, subject to the following:
- (a) The Association in conjunction with the Care Provider will be entitled to set commercially competitive rates for the services and facilities provided subject however to the condition that the rate charged to Nominated Occupants for occupation in the Care Centre shall be at a rate based on the annual budgeted costs of the Care Provider. Nominated Occupants will be entitled to three (3) free days accommodation in each calendar year (non-cumulative) in the Care Centre with only one (1) unused day from a previous year that may be transferred to the next year to a maximum of four (4) days per calendar year.
  - (b) A Nominated Occupant shall be deemed to be of unsound mind or incapable of managing his or her own affairs or to be a Trustee and/or physically or mentally incapable of continuing to reside in a Section in the Village should any two medical practitioners together with the Association and the immediate family or responsible person so testify In Writing. In the event of consensus not being reached between the parties, the provisions of the common law shall apply.

#### **49. CAREGIVERS**

All Caregivers employed to offer Home-based Care to Owners or Occupants in the Village must be first approved by the Trustees, which approval will be subject to such person being in possession of a certificate indicating that the person received training as a Caregiver from an institution accredited by the South African Qualification Authority. If Home-based Care is to be provided by the Caregiver to an older person as defined in the Older Persons Act, the Caregiver must be registered as such at the Department of Social Development of South Africa and must provide a registration certificate to the Trustees.

#### **50. IMPOSITION OF PENALTIES**

- (1) If the conduct of a Member, or of a Nominated Occupant or other Occupant of a Section, or of a Visitor to a Section constitutes a nuisance in the opinion of the Trustees or a contravention of a provision of the Constitution, the Architectural Guide or the Conduct Rules, the Trustees must by Written notice inform the Member of the nuisance or contravention and warn the Member that if the Member, or Nominated Occupant or other Occupant fails to remedy the contravention, or persists in, or repeats such conduct or contravention, a penalty will be imposed on the Member concerned.

- (2) If, notwithstanding the Written notice in terms of clause 50(1) above, the Member, or Nominated Occupant or other Occupant fails to remedy the contravention or persists in or repeats such conduct or contravention, the Trustees may, by Written notice impose a penalty on the Member concerned. The Written notice must stipulate the reason for the imposition of the penalty and must provide that if the Member objects to the imposition of the penalty, the Member must submit the objections with a motivation against the penalty imposed to the Trustees within thirty (30) days of the Written notice.
- (3) The penalty imposed under clause 50(2) above will be effective on the date of the Written notice and must be paid within thirty (30) days of the date of the Written notice. Should the penalty remain unpaid, it shall be added to the Member's levy statement and shall be recovered from the Member in the same manner as applies to arrear Levies, together with interest at the rate applicable to arrear Levies.
- (4) The Trustees shall, from time to time, determine the amounts of penalties in respect of the various contraventions and in respect of first and successive contraventions, subject to the directions given or restrictions imposed by the Members at general meetings of the Association.
- (5) A penalty may be imposed in respect of each separate contravention. In the event of a continuing contravention, the Member shall be deemed to be guilty of a separate contravention for every 24 hours or part thereof during which such contravention continues and shall be liable for a penalty in respect of each such separate contravention.
- (6) A Member may at every step of the process as described in this clause submit objections to the Association by Written notice to the Trustees, which notice must specify the reasons for his objections. A Member may within thirty (30) days of the date of the Written notice in terms of clause 50(2) submit the objections with a motivation against the penalty imposed to the Trustees.
- (7) Upon receipt of the objections, the Trustees may:
  - (a) withdraw or reduce the penalty; or
  - (b) schedule a meeting of the Trustees for the purpose of considering the objections and invite the Member to attend.
- (8) At the said meeting of the Trustees referred to in clause 50(7)(b) above, the Member shall have the right to:
  - (a) present his case;

- (b) present any evidence, including the calling of witnesses to substantiate his case;
  - (c) cross-examine any person called as a witness in support of the charge;
  - (d) have access to documents produced in evidence; and
  - (e) produce mitigating factors.
- (9) The failure of the Member charged to attend the meeting of the Trustees referred to in clause 50(7)(b) shall not render the proceedings at the meeting void. Should the Member or his representative not attend the meeting of the Trustees without providing a reasonable request for postponement, the Trustees may in their sole discretion continue with the meeting of the Trustees and consider the objections in the absence of the Member.
- (10) Upon the conclusion of the meeting of the Trustees, the Trustees shall deliberate the evidence, and if so resolved, they may:
- (a) uphold the penalty; or
  - (b) withdraw or reduce the penalty.
- (11) If the Member does not agree with the resolution of the Trustees in terms of this clause, the Member may without prejudice to the other rights or remedies that may be available in law:
- (a) request the Trustees to refer the matter to a general meeting of the Members for their instructions; and/or
  - (b) institute proceedings in a court or tribunal for the judicial review of the resolution of the Trustees.
- (12) The aforementioned provisions may, where appropriate, also be applied *mutatis mutandis* (with the necessary changes having been made) to Nominated Occupants, other Occupants of Sections and to Visitors to Sections.

## **51. EXCLUSION OF LIABILITY**

- (1) A Member, or Nominated Occupant, or other Occupant of a Section or any other person present on the Common Property or using the facilities or services of the Association does so entirely at their own risk and none of them shall have any claim against the Association or the Trustees of whatsoever nature arising from such use.

- (2) No Member, Nominated Occupant, or other Occupant or other person shall have a claim against the Association, the Trustees or any of the agents, employees or contractors of the Association of whatsoever nature arising from the use of the Common Property, or the facilities or services of the Association nor for anything which may befall any person during the course of such use, whether caused by human or animal agency, natural phenomena or otherwise.
- (3) The Association and the Trustees, employees, agents or contractors of the Association shall not be liable for any injury to any person (including loss of life) or loss or damage of any property, which a person may suffer or sustain whether directly or indirectly in or about the Common Property, regardless of the cause thereof. The Association shall not be responsible for any theft of property occurring within the Village.
- (4) Any claims shall be limited to the amount recovered by the Association from the receipt of the proceeds of the public liability insurance of the Association, if any.
- (5) The Association shall not be liable for any damage suffered by a Member or Nominated Occupant or other Occupant of a Section by reason of power surges.

## **52. AMENDMENT OF THIS CONSTITUTION**

This Constitution may be amended from time to time by the Members by means of a Unanimous Resolution.

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