

CONSTITUTION

IMHOFF MANOR HOMEOWNERS' ASSOCIATION

AUGUST 2024

[AWAITING APPROVAL BY CITY OF CAPE TOWN]

Index

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CONSTITUTION OF THE IMHOFF MANOR HOMEOWNERS' ASSOCIATION

1 DEFINITIONS

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

1.1.1 “**Alienate**” means in relation to any Erf or Unit, the transfer of any rights in respect thereof and, without derogating from the generality of the foregoing, includes to alienate by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency or liquidation, irrespective of whether such alienation is subject to a suspensive or resolutive condition and “**Alienation**” shall have a corresponding meaning;

1.1.2 “**Architect**” means the controlling architect as appointed from time to time as such by the Developer during the Development Period and thereafter by the Association;

1.1.3 “**Auditors**” means the Auditors of the HOA from time to time;

1.1.4 “**Body Corporate**” means a body corporate of any Sectional Title Scheme falling within the Development;

1.1.5 “**Business Day**” means any day other than a Saturday, Sunday or South African public holiday;

1.1.6 “**Business Unit**” means any Erf or Unit zoned in terms of the Town Planning Scheme for commercial or business purposes or which is used for business purposes with the consent of the Local Authority and the Association;

1.1.7 “**By-Law**” means the City of Cape Town Municipal Planning By-Law, 2015 (as amended);

1.1.8 “**Chairperson**” means the chairperson of the Trustees appointed in terms of this Constitution from time to time;

- 1.1.9 “**Commencement Date**” means the first registration of transfer of an Erf from the Developer to a purchaser;
- 1.1.10 “**Common Property**” means –
- 1.1.10.1 in the case of an Erf on which a Sectional Title Scheme is developed, common property as defined in the Sectional Titles Act, which is not subject to an exclusive right of use by a member in terms of that Sectional Title Scheme;
- 1.1.10.2 the land registered in the name of the Association, including, but not limited to, Private Spaces; and
- 1.1.10.3 any portion of the Development which is not subject to an exclusive right in favour of a Member;
- 1.1.11 “**Constitution**” means this constitution which governs the HOA, including all annexures hereto, as may be amended from time to time in accordance with its terms;
- 1.1.12 “**Contractor**” means a building contractor approved by the Developer during the Development Period, and thereafter by the Association in terms of this Constitution in terms of criteria determined by the Developer or the Association, as the case may be, and employed by a Registered Owner of an Erf or Unit for the construction of Improvements;
- 1.1.13 “**Developer**” means Imhoff Manor (Pty) Ltd, registration number 2019/585493/07, a private company with limited liability duly incorporated in accordance with the laws of the Republic of South Africa or its successor in title with reference to the said entity’s rights and obligations as Developer;
- 1.1.14 “**Developer Trustee**” means a trustee appointed by the Developer;
- 1.1.15 “**Development**” means the portions of the Land marked as C1 to C8 on the phasing plan diagram annexed as **Appendix 2** hereto, but excluding the MHOA Assets;

- 1.1.16 **“Development Period”** means the period commencing on the Commencement Date and enduring until all the Erven have been transferred from the Developer; alternatively, on the date on which the Developer notifies the Association in writing that it terminates the Development Period;
- 1.1.17 **“Distressed Sale”** means –
- 1.1.17.1 a distressed sale or a sale in execution where a bank or financial institution as mortgage bond holder in respect of an Erf or Unit legally attaches and sells such Erf or Unit due to failure of the relevant Registered Owner to fulfil its obligations towards such mortgage bond holder;
- 1.1.17.2 a sale where a bank or financial institution as mortgage bond holder in respect of an Erf or Unit assists a Registered Owner with the sale of such Erf or Unit in accordance with the requirements of the relevant mortgage bond holder’s formal programmes to assist distressed customers to sell their immovable properties in instances of failure of the relevant Registered Owner to fulfil its obligations towards the relevant mortgage bond holder; and/or
- 1.1.17.3 where a bank or financial institution as mortgage bond holder in respect of an Erf or Unit legally attached an Erf or Unit due to failure of the relevant Registered Owner to fulfil its obligations towards the said mortgage bond holder and took transfer of the said Erf or Unit and thereafter sold such Erf or Unit;
- 1.1.18 **“Estate Agent”** means an Estate Agent approved and listed by the Developer during the Development Period and thereafter by the Association in terms of this Constitution in terms of a criteria determined by the Developer during the Development Period and thereafter by the Association and contracted by an Owner of an Erf for the letting and/or reselling of his Erf or Erven;

- 1.1.19 “**Estate Rules**” means such estate rules as are made and amended from time to time by the Association and/or the Trustees in terms of the provisions hereof;
- 1.1.20 “**Financial Year**” means the financial year of the HOA, as determined by the Trustees from time to time;
- 1.1.21 “**HOA**” or “**Association**” means the Imhoff Manor Estate Homeowners’ Association, which is bound by the provisions of its constitution and was established in accordance with sections 61 and 62 of the By-Law in respect of the Imhoff Manor Estate;
- 1.1.22 “**Imhoff Lifestyle Estate**” means the development consisting of –
- 1.1.22.1 the Development; and
- 1.1.22.2 the Imhoff Residential Estate;
- 1.1.23 “**Land**” means Remaining Extent Farm 1529, Registration Division Cape RD, Province of the Western Cape as set out in **Appendix 1** hereto;
- 1.1.24 “**Erf**” means every Erf that was created as a result of the subdivision of the land comprising the Development and “**Erven**” means the plural of Erf;
- 1.1.25 “**Guide**” means the design guidelines annexed hereto and which have been prepared for and are applicable to the Development, including all/any amendments made thereto from time to time;
- 1.1.26 “**HDSRP Act**” means the Housing Development Schemes for Retired Persons Act No. 65 of 1988 (as amended);
- 1.1.27 “**Housing Interest**” means the right of an occupant in a Retirement Village Scheme to exclusive use and occupation of a unit in such Retirement Village Scheme, as contemplated in the HDSRP Act;
- 1.1.28 “**Improvements**” means any structure of whatever nature constructed or erected or to be constructed or erected on an Erf;

- 1.1.29 “**Levy**” means the levy referred to in clause 18 hereof;
- 1.1.30 “**Local Authority**” means the relevant local authority having jurisdiction over the Development which, at date of approval of the Development, is the City of Cape Town;
- 1.1.31 “**Managing Agent**” means any person or body appointed by the Developer during the Development Period and the Association thereafter as an independent contractor to undertake any of the functions of the Association
- 1.1.32 “**Member**” means –
- 1.1.32.1 the Developer in its capacity as such during the Development Period;
- 1.1.32.2 all Registered Owners of any Erf and all Registered Owners of a subdivision of an Erf; and
- 1.1.32.3 in respect of any Erf on which is established a Sectional Title Scheme, the Body Corporate and the Registered Owners of any Units,
- it being recorded that if a Member consists of more than one person such persons shall be jointly and severally liable in solidum for all obligations in terms of this Constitution;
- 1.1.33 “**Member Trustee**” means a trustee appointed by the Members;
- 1.1.34 “**MHOA**” means the Imhoff Lifestyle Estate Master Homeowners’ Association, a voluntary association of persons, which is bound by the provisions of this Constitution and is established in accordance with the provisions of sections 61 and 62 of the By-Law;
- 1.1.35 “**MHOA Assets**” means –
- 1.1.35.1 Erf 276 Kommetjie, City of Cape Town, Province of the Western Cape as reflected on **Appendix 2** hereto;
- 1.1.35.2 Erf 291 Kommetjie, City of Cape Town, Province of the Western Cape as reflected on **Appendix 2** hereto; and

- 1.1.35.3 the assets owned by the MHOA, as listed in the MHOA Constitution;
- 1.1.36 “**MHOA Constitution**” means the constitution of the MHOA, as amended from time to time;
- 1.1.37 “**Ombud**” means the ombud appointed in terms of the Community Schemes Ombud Service Act No. 9 of 2011 (as amended);
- 1.1.38 “**Ordinary Resolution**” means a resolution passed at an annual general meeting or any other general meeting of the Association by an ordinary majority of the total votes represented at such meeting by members present in person or by proxy;
- 1.1.39 “**Prime Rate**” means a rate of interest per annum which is equal to the Developer’s commercial bank’s published minimum lending rate of interest per annum, compounded monthly in arrears, charged by the said bank on the unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time (and in the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose decision shall be final and binding);
- 1.1.40 “**Private Spaces**” means all Erven on the Development which are identified as private roads, private open spaces, lakes, waterways and pathways;
- 1.1.41 “**Record Date**” means the date referred to in clause 26.4 below on which date the identity of the Members will be determined;
- 1.1.42 “**Registered Owner**” means the registered owner of an Erf or Unit or a share thereof who is, in terms of the Deeds Registries Act No 47 of 1937, as amended, reflected in the records of the Deeds Registry concerned as a registered owner or joint owner of the Erf or Unit;
- 1.1.43 “**Resident**” means any person lawfully occupying an Erf or Unit which shall include but not be limited to –
- 1.1.43.1 a Tenant; and /or

- 1.1.43.2 an occupant of the Retirement Village Scheme, i.e. a party who holds a Housing Interest in respect of a unit in a Retirement Village Scheme, including third parties to whom such occupant has granted the right to occupy his/her unit in the Retirement Village Scheme; and / or
- 1.1.43.3 guests and employees of a Registered Owner or Tenant, as the case may be, and persons who reside with a Registered Owner or Tenant, as the case may be; and / or
- 1.1.43.4 an occupant of a Retirement Village Scheme; and
- 1.1.43.5 an occupant of a guesthouse in the Development.
- 1.1.44 “**Retirement Village Scheme**” means any retirement village scheme established on the Development in accordance with the HDSRP Act;
- 1.1.45 “**Sectional Titles Act**” means the Sectional Titles Act No 95 of 1986, as amended;
- 1.1.46 “**Sectional Titles Scheme**” means any scheme established in terms of the Provisions of the Sectional Titles Act;
- 1.1.47 “**Site Development Plan**” means the preliminary Site Development Plan in respect of the Development attached as **Appendix 3** hereto;
- 1.1.48 “**Special Resolution**” means a resolution passed at an annual general meeting or any other general meeting of the Association by a special majority, i.e. 75% (seventy five percent) of the total votes represented at such meeting by members present in person or by proxy;
- 1.1.49 “**Tenant**” means a person leasing an Erf or a Unit from the Registered Owner thereof;
- 1.1.50 “**Town Planning Scheme**” means an operative town planning scheme applicable to the Development from time to time;

- 1.1.51 “**Trustee**” means the Developer Trustees and the Member Trustees of the Association, collectively from time to time and includes alternate and co-opted Trustees;
- 1.1.52 “**Unit**” means a unit as that term is defined in the Sectional Titles Act;
- 1.2 The clause headings are for convenience and shall be disregarded in construing this Constitution.
- 1.3 Unless the context clearly indicates a contrary intention:
- 1.3.1 the singular shall include the plural and vice versa; and
- 1.3.2 a reference to any one gender shall include the other genders; and
- 1.3.3 a reference to natural persons includes legal persons and vice versa.
- 1.4 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.
- 1.5 When any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 1.6 Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 1.7 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.
- 1.8 If any provision in a definition in this Constitution is a substantive provision conferring rights or imposing obligations on any of the Members then, notwithstanding that it is only in the definition clause of this Constitution, effect

shall be given to it as if it were a substantive provision in the body of this Constitution.

- 1.9 The annexures to this Constitution are deemed to be incorporated in and form part of this Constitution.

2 RECORDAL

- 2.1 The Local Authority when approving the application for subdivision of the Land, imposed a condition in terms of section 61 of the By-Law whereby the MHOA and the HOA has to be established.

- 2.2 The MHOA accordingly has to be established to protect the communal interests of its Members in respect of the MHOA Assets and to establish shared services agreements with neighbouring properties where the communal interest of the Members is shared with such neighbouring properties and the HOA has to be established to protect the communal interest of its Members.

- 2.3 The Developer is desirous of establishing the Association for regulating and controlling harmonious development of the Development and for the promotion, advancement and protection of the communal interests of all owners and occupiers of the Development.

3 COMMENCEMENT DATE

The HOA, as contemplated in terms of section 61 of the By-Law, will come into existence on the Commencement Date, i.e. simultaneously with the first registration of transfer of an Erf from the Developer to a Registered Owner.

4 STATUS

- 4.1 The HOA shall:

- 4.1.1 have legal personality and be capable of suing and being sued in its own name; and

- 4.1.2 not operate for profit but for the benefit of the Members.

- 4.2 No Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the HOA which shall vest in and be controlled by the Trustees in their collective capacities as such.

5 OBJECTIVES

- 5.1 The HOA shall have as its objectives:
- 5.1.1 to ensure compliance with the conditions for Environmental Authorisation and Land Use Planning rights imposed by the relevant Authorities when approving the establishment of the Development and specifically –
 - 5.1.1.1 to be a member of the MHOA and to enforce the provisions of the MHOA and the rules of the MHOA vis-à-vis its own Members;
 - 5.1.1.2 to oversee, maintain and control the Development;
 - 5.1.1.3 ensure the general high standard of the Development;
 - 5.1.1.4 generally to carry on, promote, advance and protect the communal interest of the Members, and in particular in so promoting such communal interests to provide, promote and maintain essential and community services, amenities and activities within the Development;
 - 5.1.1.5 to manage the collective interest common to all its Members, which includes expenditure applicable to the Common Property and the collection of levies for which Members are liable;
 - 5.1.2 the regulation and control of harmonious development of the Development;
 - 5.1.3 to implement and maintain security measures and systems for controlled access to the Estate;
 - 5.1.4 to incorporate any adjoining property/ies into and within the ambit of the HOA and to incorporate owners of any such adjoining property/ies and any subdivisions thereof as Members of the HOA;
 - 5.1.5 to promote a high standard of Improvements on the Development;

- 5.1.6 to administer and enforce the Guide;
- 5.1.7 to ensure the maintenance, upkeep, upgrading and installation, where required, of the Association's infrastructure, the common services serving the Development, such as, but not limited to, the sewerage and drinking water reticulation and storm water systems, security fences and Private Spaces, according to the approved Site Development Plan. It is recorded that the entire sewerage system of the Development is a private (i.e. not Municipal) system as is the water reticulation system;
- 5.1.8 the payment of the bulk electrical account (in the event that the Developer elects to hand the electrical network over to the Association), the bulk water and sewerage accounts jointly with Registered Owners in the Development;
- 5.1.9 to enter into service agreements with the Local Authority or any other authority or supplier of services;
- 5.1.10 ensuring adherence to drought restrictions and conditions as and when imposed by the Local Authority;
- 5.1.11 managing and maintaining individual water connections, including water meters to each individual Erf and the sub-bulk water(s) to the Development;
- 5.1.12 to control the transfer of Erven and Units in the Development;
- 5.1.13 to ensure adherence to the conditions imposed by the Local Authority in respect of any Erf;
- 5.1.14 to ensure adherence to the conditions imposed by the Developer in the agreement of sale between the Developer and the first Registered Owner of an Erf or Unit;
- 5.1.15 to take transfer of, maintain and insure, where necessary, the roads, the Private Spaces and improvements thereupon in the Development and control the usage thereof and of the facilities belonging to the Association or falling under its control;

- 5.1.16 to register where necessary various service servitudes over Private Areas in favour of the Local Authority and to register servitudes in favour of the Erven in the Development over other land owned by the Association as are from time to time required;
 - 5.1.17 the preservation of the natural environment, including vegetation and flora and fauna on the Development;
 - 5.1.18 to regulate the conduct of any person and the prevention of nuisance of any nature to any person within the Development;
 - 5.1.19 to introduce traffic calming measures and to enforce such measures by issuing fines to any person who fails to adhere to such measures;
 - 5.1.20 to impose fines and other penalties that may be payable by and enforced against Members, Residents, any occupants of any Erf or Unit or any visitor to the Development;
 - 5.1.21 in order to give effect to the abovementioned objects, to make rules to accomplish these objectives;
 - 5.1.22 control over and maintenance of buildings, services or amenities arising from the subdivision of the Development;
 - 5.1.23 the enforcement of conditions of approval or management plans; and
 - 5.1.24 the implementation and enforcement of the provisions of this Constitution.
- 5.2 The Association shall have the power to do all such acts as are necessary to accomplish the fulfilment of the foregoing objects, including, but not restricted, to powers specifically contained in this Constitution.

6 MEMBERSHIP

- 6.1 The Association shall have as its Members:

- 6.1.1 the Developer for as long as the Developer remains a Registered Owner of any portion of the Development and, without detracting from the generality of the foregoing, specifically including any Erf;
- 6.1.2 every Registered Owner upon registration of transfer of an Erf or Unit into his name provided that where a Registered Owner comprises more than one person, such persons shall be deemed jointly to be one Member of the Association and shall be responsible jointly and severally for the obligations of such membership. A Registered Owner of an Erf or Unit shall be a Member of the Association until he ceases to be the registered Owner of such Erf or Unit; and
- 6.1.3 in respect of any Erf on which is established a Sectional Title Scheme, the Body Corporate of that Sectional Title Scheme and the individual owners of Units.

7 MEMBERS' AND RESIDENTS' OBLIGATIONS

- 7.1 Every Member and Resident, insofar as may be applicable, is obliged to comply with:
 - 7.1.1 the provisions of this Constitution and all rules or regulations passed by the Association or the Trustees;
 - 7.1.2 the provisions of the Guide;
 - 7.1.3 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member or Resident; and
 - 7.1.4 any directive given by the Association and/or the Trustees in enforcing the provisions of this Constitution.
- 7.2 The rights and obligations of a Member are not transferable and every Member shall:
 - 7.2.1 to the best of his ability, further the objects and interests of the Association; and

- 7.2.2 observe all directives made or given by the Association and/or the Trustees.
- 7.3 The Members shall be jointly liable for expenditure incurred in connection with the Association as more fully later referred to herein.
- 7.4 A Member shall not be entitled to alienate or transfer an Erf without the written consent of the Developer for as long as the Developer is a Member and, thereafter, by the Trustees which consent shall not be unreasonably withheld provided there has been compliance with the provisions of this Constitution.
- 7.5 Such consent by the Association in terms of clause 7.4 above shall be withheld if –
- 7.5.1 the Member in question is indebted to the Association in respect of Levies or any other amounts which the Association may in terms of this Constitution be entitled to claim from him, i.e. if the Association has not issued a clearance that all amounts owing to the Association by such Member have been paid;
- 7.5.2 the Member as member of a Body Corporate is indebted to such Body Corporate in respect of any amounts which the Body Corporate may be entitled to claim from him, i.e. if the Body Corporate has not issued a clearance that all amounts owing to it by such Member as a member of the Body Corporate have been paid to it;
- 7.5.3 in the case of an Erf, the proposed transferee has not agreed in writing to become a Member of the Association and to observe the Constitution for the duration of his ownership of the Erf;
- 7.5.4 in the case of a Unit, the proposed transferee has not agreed in writing to become a member of the applicable Body Corporate and to observe the Constitution for the duration of his ownership of the Unit;
- 7.5.5 the proposed transferee does not acknowledge that upon the registration of the Erf or Unit (as the case may be) into his name, he shall ipso facto become a Member of the Association;

- 7.5.6 the proposed transferee does not acknowledge that upon the registration of the Unit into his name, he shall ipso facto become a member of the applicable Body Corporate; and
- 7.5.7 in those cases where an Erf or Unit is owned jointly and subject to an arrangement whereby the co-owners are entitled to occupy the Erf or Unit at particular times during the year, the Association is not satisfied that the transferee of an undivided share in the Erf or Unit is aware of such arrangements and has bound himself thereby.
- 7.6 A Member, other than the Developer, shall not consolidate or subdivide an Erf with one or more Erven without the prior written consent of the Developer during the Development Period and thereafter the prior written consent of the Association.
- 7.7 When granting a request for consolidation of Erven, the Association reserves the right to impose conditions regarding the building parameters of the property and levies payable so as to ensure that the levy base of the Association is not unduly compromised.
- 7.8 This will, however, not limit the rights of the Developer to consolidate Erven that have not been transferred and for the avoidance of doubt, such consolidated property will only attract one Levy after the Developer disposes thereof to a third party purchaser.
- 7.9 No Member shall let or otherwise part with occupation of his Erf or Unit without the consent of the Association, which consent shall only be withheld if the Association is not satisfied that the provisions of the Estate Rules, and any other by-rules or regulations made in terms of this Constitution, have been complied with and/or is not satisfied that the Resident of the Erf or Unit has in writing agreed to be bound by same.
- 7.10 A Member may not resign from the Association.
- 7.11 The provisions of this Constitution shall be binding upon all Members, persons on the Development and Residents.

7.12 No Member or Resident, other than the Developer, shall be entitled to sink any borehole on any Erf except with the written approval of the Association.

8 STATUS OF THE DEVELOPER

8.1 No person or any Member or Resident of the Association shall prevent or hinder in any way the Developer from:

8.1.1 gaining access to and egress from the Development;

8.1.2 continuing its building and/or construction operations at the Development;

8.1.3 marketing and selling any Erven;

8.1.4 generally carrying on its business operations, provided that the provisions of clause 8.1.1 shall not be interpreted as allowing the Developer access onto any of the Erven already transferred to a Member unless 48 hours prior written notice has been given to the Member concerned, unless such access is required to conduct its normal building operations or to inspect work in progress. The Developer shall make good any subsequent damage to plants, property or improvements thereon to the satisfaction of the Member. No Member shall be entitled to refuse the Developer immediate access if the required notice has been given; and

8.1.5 having the sole right of appointment and dismissal of any Managing Agent during the Development Period;

8.1.6 the accreditation of Estate Agents for the HOA's panel of Estate Agents.

8.2 The Developer has reserved the right and shall be entitled to build and establish on the Development hospitality amenities, retirement villages and related amenities, self-storage units, a school, farms, and a hotel or guest house and any other sport, lifestyle and recreational facilities and amenities as it in its sole discretion deems fit. The Developer has furthermore reserved the right to subdivide from the Development any of the sites for such aforesaid amenities and facilities as separate Erven and shall be entitled to dispose of and/or operate

the aforementioned amenities and facilities for its own benefit, separate and independent from the remainder of the Development.

- 8.3 The Developer has reserved the right in its sole discretion, to establish and locate the amenities and facilities referred to in clause 8.2 on any portion of the Development, save such Erven that have already been sold to Registered Owners other than the Developer, with the approval of the Local Authority.
- 8.4 The Association will not be entitled to change, amend or impact on the rights of the Developer or his successors in title in respect of the amenities and facilities referred to in clause 8.2 above without obtaining the written consent of the Developer or his successors in title beforehand.

9 DEVELOPER'S RIGHTS

- 9.1 If the Developer Alienates all its rights in and title to all undeveloped land still vested in it at the time of the transaction to a single transferee, then the Developer shall be entitled to cede to such transferee all its rights and powers in terms of this Constitution without requiring the consent of the Association or any of the Members and the transferee shall be entitled to exercise all such rights and powers upon transfer of the Developer's rights in and title to all the remaining undeveloped land still vested in the Developer to the transferee.
- 9.2 The Developer may at any time after the construction of such number of dwellings or Sectional Title Schemes as it may determine, abandon in whole or in part the particular rights conferred upon it during the Development Period, provided that nothing herein contained shall be construed as depriving the Developer of any rights it may have in terms hereof as an ordinary Member.

10 INCORPORATION OF FURTHER PHASES

The Developer has a continuing and permanent interest to ensure that certain basic provisions are entrenched in perpetuity to ensure the success of the Development. Accordingly, none of the following provisions may be deleted or varied in any way, in terms of clause 45 below without the prior written consent of the Developer –

- 10.1 the Developer has the right at any time and from time to time to extend or alter the area or composition of the Development by requiring the Association to incorporate into the Development any part/s of any adjoining properties (developed or not) owned by the Developer from time to time as further phases of the Development which the Developer shall be entitled to develop as it may deem fit;
- 10.2 should any further property be incorporated into the Development, the Developer shall be entitled to require that the first and all subsequent Owners of Erven therein become Members of the Association in respect of those parts from such date as the Developer may determine, and on the same terms and conditions as are applicable to the other Members of the Association. The Members shall be bound by any such requirement of the Developer.

11 TRANSFER OF LAND

The Developer shall, free of consideration, transfer to the Association the Private Spaces indicated on the approved Site Development Plan and the risk therein shall pass to the Association upon transfer thereof to the Association where after the maintenance and upkeep shall be the responsibility of the Association as well as liability for rates and taxes and all charges attaching thereto.

12 ACCESS AND SERVITUDES

- 12.1 There shall be one permanent entrance to the Development, as indicated on the diagram annexed as **Appendix 2** hereto and the HOA shall allow access for all members of its Members and their residents and guests through such entrance, subject to such rules and security measures promulgated from time to time by the HOA regulating access control.
- 12.2 It is recorded that officials, employees and contractors employed by the HOA, Local Authority and/or any public or private service company shall, at all times, have reasonable access to the Development via the HOA's roads and main security gatehouse for purposes of inspecting and/or maintaining all services on the Development.

- 12.3 The Developer shall have the right to register servitudes in respect of the installation of civil services over the Private Areas and/or Erven in the Development. The HOA shall accordingly be obliged and is hereby irrevocably authorised and empowered on behalf of the Members to grant the registration of such servitudes over Private Areas. In the event of such services being installed by the Developer it will retain the obligation to restore the Association property or private property after installation of such services.
- 12.4 The HOA shall do all things necessary and in its power to ensure that the employees, contractors or authorised representatives of Eskom and the Local Authority shall have 24 hour access any day of the week to the Development in order to erect, inspect, maintain or replace infrastructure of the electrical substations on the relevant subdivided portions of the Imhoff Lifestyle Estate on which such substations are erected.

13 INTERNAL WORKS

- 13.1 All internal works on the Development shall be a private combined system and shall be indicated as such on all documents and plans and will be owned by the HOA with effect from the Commencement Date unless the Local Authority decides to retain ownership of any internal works, it being recorded that internal works to be owned by the HOA it will be transferred to the HOA by the Developer with effect from the Commencement Date or as soon as reasonably possible thereafter for no consideration but subject at all times to the provisions of the MHOA Constitution.
- 13.2 All Internal Works owned by the MHOA shall be –
- 13.2.1 a joint and several responsibility (including but not limited to the administration of the joint account and operation and maintenance of the relevant systems) of the members of the MHOA, which includes the HOA; and
- 13.2.2 constructed in accordance with the operational infrastructure management plan approved by the Local Authority.

14 THE GUIDE

- 14.1 The Guide constitutes an integral part of this Constitution and for as long as the Developer is a Member the Guide may be amended, substituted, added to or repealed only at the instance of the Developer and, thereafter, by the Association.
- 14.2 All landscaping, plants and all Improvements shall be of approved design and of sound construction and shall comply with the provisions of the Guide.
- 14.3 No construction or erection of Improvements on an Erf may commence prior to the approval of plans for such Improvements and, in this regard –
- 14.3.1 a full set of proposed building plans which indicate both construction and design details shall be submitted to the Association for approval by the Architect;
- 14.3.2 thereafter, the approved plans shall be submitted to the Local Authority for approval;
- 14.3.3 having obtained the approval of the Local Authority, the Member shall comply with all conditions and standards imposed by the Local Authority insofar as these may be additional to the requirements of the Guide read with the plans; and
- 14.3.4 the scrutiny fee payable to the Architect will be paid by the Member, such scrutiny fee to be determined by the Trustees, from time to time.
- 14.4 Approval of building plans will not be granted by the Local Authority without the prior written approval of the Architect thereto which approval shall be evidenced by an endorsement by the Architect.
- 14.5 No Improvements may be effected by a Member other than by a Contractor. The Developer and, after the Development Period, the Association shall designate a list of contractors who will be allowed to do building work of whatever nature in the Development.

- 14.6 In order to ensure that prospective purchasers or tenants are correctly advised of their rights and obligations relative to the Development, Members who wish to re-sell or let their properties, are obliged to appoint an Estate Agent who is accredited by the Developer during the Development Period and, thereafter, by the Association.
- 14.7 A Member will have no claim for damages or loss against the Developer or the Association, arising from whatever cause as a result of any acts or omissions of a Contractor and hereby indemnifies the Developer and Association against any claim from any third party arising from the construction of such Improvements.

15 RESTRICTIONS

- 15.1 Subject to the provisions set out hereunder, no Member shall apply for the rezoning of his Erf or Unit (whichever is applicable) with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his Erf or Unit (as the case may be) for any purpose other than the permitted use applicable upon establishment of the Development. No Member shall be allowed to use his Erf or Unit (as the case may be) for the supply of temporary accommodation for consideration and/or letting out on a short-term basis, i.e. for periods shorter than three months.
- 15.2 No Member or Resident shall conduct any business on an Erf or Unit (as the case may be) other than the uses envisaged here-in or use his Erf or Unit for purposes other than residential purposes unless the Trustees have approved the use to which the Erf or Unit is to be put in writing and the Local Authority has, to the extent that it may be necessary, granted the necessary approvals authorising such use in terms of applicable laws and regulations and there has been compliance with the following –
- 15.2.1 any Member wishing to conduct a business on his Erf or Unit or who wishes to use his Erf or Unit for purposes other than residential, shall, during the Development Period, apply in writing to the Developer for permission to do so and thereafter to the Trustees for permission to do so. The Developer or Trustees (as the case may be) shall be entitled in their absolute discretion to refuse such application or to approve the application

unconditionally or to approve the application subject to such conditions as the Developer or the Trustees (as the case may be) deem necessary;

15.2.2 an application in terms of the foregoing shall contain a full description of the proposed business or usage, including but not limited to –

15.2.2.1 the type of business;

15.2.2.2 the number of full-time and/or part-time staff;

15.2.2.3 the times and duration of the business operation, including the number of days per week;

15.2.2.4 the projected growth of the business operation;

15.2.2.5 whether any alteration to the existing Improvements is proposed;

15.2.2.6 in which portion of the Improvements the business activity is to be located;

15.2.2.7 the number and type of vehicles which will be regularly involved in the business operation;

15.2.2.8 the estimated number of visitors per week resulting from the business operation;

15.2.2.9 the estimated number of deliveries necessitated by the business operation;

15.2.2.10 what provision is to be made for parking; and

15.2.2.11 the likely impact of the business operation on neighbouring properties and the neighbourhood in general;

15.2.3 the Trustees shall not approve any such application unless they are satisfied that the application complies with the following –

- 15.2.3.1 the business operation will not detrimentally alter the character of the neighbourhood or affect the privacy and rights of neighbours;
- 15.2.3.2 the number of employees involved in the running of the business operation will not exceed 2 (two);
- 15.2.3.3 the Member will reside permanently on the Erf or Unit in respect whereof the application is made;
- 15.2.3.4 comment has been obtained from the Members who are affected by the application and made available for consideration by the Trustees;
- 15.2.3.5 adequate provision has been made for parking within the Erf and the landscaping of the Erf will be suitable for the type of business contemplated and that no parking of vehicles off the Erf within the Development will result from the business operation;
- 15.2.3.6 the granting of the application will not have any significant effect on the density of traffic in the Development;
- 15.2.3.7 non-residents will not be afforded uncontrolled access into the Development;
- 15.2.3.8 no signage will be erected; and
- 15.2.3.9 the hours of the business operation will be confined between 08:00 and 18:00 on weekdays and no business will be conducted on Saturdays, Sundays and proclaimed public holidays;
- 15.2.4 should any Member to whom permission has been granted for the conduct of a business change any aspect of such business then such Member shall submit a new application in accordance with the provisions hereof to continue such business;
- 15.2.5 no Member to whom approval has been granted shall be entitled to erect any sign or advertisement on his Erf or Unit or on any of the Common

Property in connection with such business save with the approval of the Association; and

15.2.6 the Trustees shall not at any time or under any circumstances be entitled to approve the use of an Erf or Unit for the supply of temporary accommodation for consideration, other than in respect of any guesthouses which may be established by the Developer.

15.3 No Member shall be entitled to –

15.3.1 at any time operate a guest house on his Erf or Unit, provided that this prohibition shall not apply to any guest houses operated by the Developer or his successors in title from time to time where the necessary zoning approval has been obtained in respect of such guest houses; and/or

15.3.2 lease his Erf or Unit for any period less than 3 (three) months,

without the approval of the Developer during the Development Period and thereafter without the approval of the Trustees.

15.4 Notwithstanding anything else herein contained, the Developer shall be entitled to have commercial offices on the Development in which it can conduct its business activities and shall be entitled to do all things reasonably necessary to lawfully establish such offices on the Development and for the avoidance of doubt, the Developer shall be entitled to deal with such offices on the same terms as provided for in clause 8.2 above.

15.5 No Member shall permit the number of occupants of his Erf or Unit to exceed 2 (two) persons per bedroom. The word “occupants” shall include but shall not be limited to any person who resides or stays on such Erf or Unit on a regular or occasional basis irrespective of whether such person is related to or is financially dependent upon the Member or whether such person pays rental or gives any other form of consideration in respect of such Erf or Unit or any portion thereof.

16 REGULATION OF THE DEVELOPMENT

- 16.1 The Association may, in its discretion, permit the Members and Residents, subject to the provisions of this Constitution, to use the Private Spaces and shall do so unless by Special Resolution it is otherwise resolved for good reason.
- 16.2 The Trustees may from time to time and whenever they deem necessary, limit, restrict, or suspend such use in relation to any part of such Private Spaces for good reason.
- 16.3 The Trustees shall take such measures as are necessary to ensure that the general public, with the exception of the Members, their guests, lessees, and members of their families and such other persons as the Trustees may reasonably permit, are excluded from the Development.
- 16.4 No resolution for the winding-up of the Association and the transfer of its assets shall be taken unless the Association shall have made adequate provision for the rights of Members to obtain access to their Erven and Units and their rights of exclusive use of any areas to be safeguarded, if necessary, by registration of servitudes at the cost of the Member concerned if the Member so requires.
- 16.5 Notwithstanding that Erven may be held either individually or in undivided shares by Members, Members shall be obliged at all times to allow any persons lawfully within the Development access over or to any servitude areas on or adjacent to an Erf by means of any formed or paved access way including drive-ways, parking areas and pathways.
- 16.6 No Member shall operate or conduct a time-sharing scheme as contemplated in the Property Time-Sharing Control Act No 71 of 1983, as amended, in respect of any dwellings or Units owned by him save where such scheme arises from co-ownership or syndication involving not more than 2 (two) Members per bedroom unit, unless the Association by Special Resolution resolves otherwise.
- 16.7 Notwithstanding that Members hold title to their Erven individually, it is recorded that the Development is of a homogenous nature and that the Association shall be vested with the overall control of all matters affecting the Development. To this end, the Members agree:

- 16.7.1 in the event of a Member being a Body Corporate, to cede and delegate its powers and duties to the Association;
- 16.7.2 in the event of any association of Members being formed within the Development, specifically for owners of certain Erven or Units or for certain classes of Members, to do all in their power to procure that the powers and duties of any such associations are ceded and delegated to the Association; and
- 16.7.3 the Association shall be entitled, in turn, to cede and delegate the powers and duties ceded and delegated in terms of clauses 16.7.1 and 16.7.2 above to such other person or entity as it may deem fit without requiring the consent of any Member to do so.
- 16.8 No Member shall be entitled to subdivide or rezone any Erf or Unit during the Development Period without the prior written consent of the Developer and thereafter without the prior written consent of the Association, it being recorded that such subdivision or rezoning will at all times also be subject to the prior approval of the Local Authority.
- 16.9 The Alienation by a shareholder of all or the majority of his shares in a company owning an Erf or Unit, or by a person of his member's interest in a Close Corporation owning an Erf or a Unit, or by a beneficiary of his interest in a Trust owning an Erf or Unit, shall be deemed to be the Alienation of an Erf or Unit and the provisions of clauses 17.1 to 17.3 above shall apply *mutatis mutandis* to such transaction.

17 LEVY STABILISATION FUND

- 17.1 In order to minimise the increase in levies charged by the HOA to the Members, a levy stabilisation fund ("**the Levy Stabilisation Fund**") will be set up for the benefit of the HOA, which will be administered by the trustees of the HOA or by the Managing Agent and accordingly –
- 17.1.1 as and when an Erf or Unit is resold by a Member other than the Developer, such selling Member will be obligated to pay an amount equivalent to 3.5% (three comma five per cent) of the net selling price (less agent's

commission) directly to the HOA and therefore to such Levy Stabilisation Fund against registration of transfer ("**Stabilisation Fund Levy**"); and

- 17.1.2 no transfer of any Erf or Unit by a Member other than the Developer will be allowed unless the Trustees have issued a levy clearance certificate / consent to transfer in terms of this Constitution.
- 17.2 The Stabilisation Fund Levy can be adjusted annually by the Trustees in accordance with the provisions of this Constitution, provided such increase shall not be more than the prevailing rate of inflation in South Africa at the time of such increase.
- 17.3 The Stabilisation Fund Levy shall not be payable in the event of –
- 17.3.1 a Distressed Sale
- 17.3.2 transfer of an Erf or Unit from an individual to a family trust where such individual is the founder of the trust and a beneficiary of the trust; and
- 17.3.3 transfer of an Erf or Unit from an individual or trust to a private company for estate planning purposes;
- 17.3.4 transfer of an Erf or Unit of a deceased Member in terms of in terms of that members' Last Will and Testament, or in terms of the rules prescribed by the Intestate Succession Act 81 of 1987 ; or
- 17.3.5 transfer of an Erf or Unit to a direct family member of the Member or in terms of a court order.
- 17.4 The Alienation by a shareholder of his shares in a company owning an Erf or Unit, or by a person of his member's interest in a Close Corporation owning an Erf or a Unit, or by a beneficiary of his interest in a Trust owning an Erf or Unit, shall be deemed to be the Alienation of an Erf or Unit and the provisions of clauses 17.1 to 17.3 above shall apply *mutatis mutandis* to such transaction.

18 LEVIES

- 18.1 The Trustees shall –
- 18.1.1 establish and maintain a levy fund for the purposes of meeting all expenses of the Association for the control, management and administration of the Development and for payment of the costs of supplying any services required by the Association and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association;
- 18.1.2 estimate the amount which will be required by the Association to meet its expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature, including all expenses relating to the Sectional Title Schemes administered by the Association; and
- 18.1.3 require Members whenever necessary to make contributions to such fund for the purposes of satisfying the expenses referred to in clauses 18.1.1 and 18.1.2, equal as nearly as is reasonably practical to such estimated amount.
- 18.2 The Trustees may, from time to time, determine special levies which will become payable by Members with effect from such date as the Trustees shall determine in respect of such expenses referred to in clause 18.1 (which are not included in any estimate made in terms of clause 18.1.2) and such special levies may be imposed and shall be payable in one sum or by such instalments and at such time or times as the Trustees shall deem fit.
- 18.3 Any amount due by a Member by way of a levy shall be a debt due by him to the Association payable within such time as determined by the Trustees. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Member. No levies paid by a Member shall be repayable by the Association upon his ceasing to be a Member. A Member's successor in title to an Erf or Unit shall be liable as from the date upon which he

becomes a Member pursuant to the transfer of such Erf or Unit to pay the levies attributable to that Erf or Unit. No Member other than the Developer shall be entitled to transfer his Erf or Unit until the Trustees have consented thereto in writing and have certified that the Member has, at the date of transfer, paid all amounts owing by him to the Association.

18.4 In the event that the Association ceases to function for any reason the consent referred to in clause 18.3 above which is required from the Trustees for a Member's Erf or Unit to be transferred shall be obtained –

18.4.1 during the Development Period, by the Developer and 51% of the Members giving written consent to such transfer; and

18.4.2 after the Development Period, by 51% of the Members giving written consent to such transfer.

18.5 In calculating levies, the Trustees shall take into account all of the income, if any, earned by the Association.

18.6 The decision of the Trustees in calculating the levies shall be final and binding on all Members.

18.7 In calculating the levy payable by any Member, the Trustees shall as far as reasonably possible –

18.7.1 assign those costs arising directly out of the Erf or Unit itself to the Member owning such Erf or Unit;

18.7.2 assign those costs relating to the Development generally to the Registered Owners of all Erven equally provided, however, that the Trustees may in any case where they consider it equitable so to do –

18.7.2.1 assign to any Business Unit such greater share of the costs and expenses mentioned in this clause 14 as they may consider reasonable in the circumstances; and

- 18.7.2.2 assign to any Member any greater or lesser share of the costs and expenses as they may consider to be reasonable in the circumstances; and
- 18.7.3 if applicable, assign a proportion of those costs attributable generally or specifically to a particular Sectional Title Scheme (“**the Sectional Title Levy**”), it being agreed that the Body Corporate of such Sectional Title Scheme shall determine the pro-rata portion due by each Registered Owner of a Unit in the said Sectional Title Scheme in respect of such Sectional Title Levy and shall be responsible for collecting such pro-rata amounts from each Registered Owner of a Unit, which Registered Owners agree to be jointly and severally liable with the Body Corporate to the Association for payment of each such pro-rata portion of the Sectional Title Levy.
- 18.8 If applicable, the Bodies Corporate acknowledge and agree that any increase in levies payable by the Registered Owners of Units in each Body Corporate as members of such Body Corporate will be market related and will be communicated to the Association prior to such increase taking effect.
- 18.9 The Association may come to an agreement with the Developer for the repayment by the Association to the Developer of ongoing costs or expenses incurred by the Developer for the provision of services and the facilities within the Development.
- 18.10 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the Association or, if applicable, to the Body Corporate of which he is a member (as the case may be).
- 18.11 All levies, other than special levies which will be payable in accordance with the provisions of clause 18.2, are due and payable monthly in advance on the first day of each and every month free of any deductions or set-off of any nature, commencing from such date as the Trustees will determine.
- 18.12 Members shall be liable for payment of interest on outstanding amounts at a rate determined by the Trustees from time to time but not exceeding the maximum annual rate permitted by law. Interest calculated at the determined rate is

recoverable from the date on which the amount is due and payable to the date of payment provided that any portion of a month will be regarded as a full calendar month for the purposes of this calculation.

- 18.13 The Developer shall not be obliged to pay levies in respect of any portion of the Development, and, without detracting from the generality of the foregoing, specifically including any Erf or Unit, for as long as he remains the Registered Owner thereof.
- 18.14 During the Development Period, the Developer shall be liable to fund by way of a loan payment from the Developer (“**Operational Loan**”) to the Association any shortfall between the income of the Association by its Members and the Association’s operational expenses (“**Operating Losses**”) in the instances provided for in clauses 18.15.1 and 18.15.2 below.
- 18.15 The Operating Losses (if any) will be calculated retrospectively by the Association’s auditors at the end of each financial year of the Association and the Operational Loan will be payable by the Developer to the Association within 30 days from date of demand for payment by the Trustees if and when –
- 18.15.1 the Association's income is less than the operational expenses (thereby resulting in Operating Losses); and
- 18.15.2 the Association’s accumulated reserves are not sufficient to fund Operational Losses.
- 18.16 The repayment of Operational Loan will –
- 18.16.1 form part of the Association’s annual budget;
- 18.16.2 accrue interest at the Prime Rate; and
- 18.16.3 be repayable before the end of the subsequent financial year, or such longer period agreed to by the Developer in writing.
- 18.17 The Association shall not be allowed to charge Members charges for water and, if applicable, electricity that are higher than the charges of the Local Authority to

the Association for water and, if applicable, electricity, at any stage of a municipal financial year. The Association will be allowed to levy the Members for maintenance and operating losses in respect of water and, if applicable, electricity.

18.18 The Association shall be allowed to introduce fines for Members who fail to comply to the Local Authority's bylaws and water restriction conditions.

18.19 Levy income will be exempt from tax in terms of the provisions of Section 10(1)l of the Income Tax Act No 58 of 1962, as amended, provided that –

18.19.1 the sole object of the Association is to manage the collective interest common to all its Members, which includes expenditure applicable to the Common Property and the collection of levies for which Members are liable; and

18.19.2 the Association is not permitted to distribute its funds to any person other than to a similar association of persons.

19 ALIENATION AND OCCUPATION

19.1 A Member shall not be entitled to Alienate or transfer an Erf or a Unit (as the case may be) without the written consent of the Developer for as long as the Developer is a Member and, thereafter, by the Trustees which consent shall not be unreasonably withheld provided there has been compliance with the provisions of this Constitution.

19.2 Such consent shall be withheld if –

19.2.1 the Member in question is indebted to the Association in respect of Levies or any other amounts which the Association may in terms of this Constitution be entitled to claim from him, i.e. if the Association has not issued a clearance that all amounts owing to the Association by such Member have been paid;

19.2.2 if applicable, the Member as member of a Body Corporate is indebted to such Body Corporate in respect of any amounts which the Body Corporate

may be entitled to claim from him, i.e. if the Body Corporate has not issued a clearance that all amounts owing to it by such Member as a member of the Body Corporate have been paid to it;

- 19.2.3 in the case of an Erf, the proposed transferee has not agreed in writing to become a Member of the Association and to observe the Constitution for the duration of his ownership of the Erf;
- 19.2.4 if applicable, in the case of a Unit, the proposed transferee has not agreed in writing to become a member of the applicable Body Corporate and to observe the Constitution for the duration of his ownership of the Unit;
- 19.2.5 the proposed transferee does not acknowledge that upon the registration of the Erf or Unit (as the case may be) into his name, he shall *ipso facto* become a Member of the Association;
- 19.2.6 if applicable, the proposed transferee does not acknowledge that upon the registration of the Unit into his name, he shall *ipso facto* become a member of the applicable Body Corporate;
- 19.2.7 in those cases where an Erf or Unit is owned jointly and subject to an arrangement whereby the co-owners are entitled to occupy the Erf or Unit at particular times during the year, the Association is not satisfied that the transferee of an undivided share in the Erf or Unit is aware of such arrangements and has bound himself thereby; and
- 19.2.8 the amount payable in terms of clause 17.1 above has not been paid, or a satisfactory undertaking to pay against transfer has not been furnished to the Association.
- 19.3 No Member shall let or otherwise part with occupation of his Erf or Unit without the consent of the Association, which consent shall only be withheld if the Association is not satisfied that the provisions of the Estate Rules, and any other by-rules or regulations made in terms of this Constitution, have been complied with and/or is not satisfied that the Resident of the Erf or Unit has in writing agreed to be bound by same.

- 19.4 The provisions of this Constitution shall be binding upon all Members, persons on the Development and Residents.

20 CO-OWNERS AND BODIES CORPORATE

- 20.1 Where any Erf or Unit is owned by more than 1 (one) person or in the event of a Body Corporate being a Member, the co-owners or Body Corporate concerned shall elect one of their number as a liaison officer and shall notify the Association of the name and address of such liaison officer. Any notices which may be required to be given in respect of such Erf or Sectional Title Scheme, regarding the appearance or maintenance or repair thereof or the appearance or maintenance or repair of any Unit shall be given to the liaison officer and served upon such liaison officer and shall be deemed for purposes of this Constitution to have been served upon the Member concerned.
- 20.2 In the event of the co-owners failing to elect a liaison officer as aforesaid, service of notice upon any one of the co-owners shall be deemed to be service upon all the co-owners.
- 20.3 Notwithstanding the provisions of clause 20.1 above, any notice required to be served upon any Body Corporate shall be deemed to have been properly served if served in terms of clause 44 at the address given as the domicilium citandi et executandi of that Body Corporate.
- 20.4 In the event of any Erf or Unit being owned in undivided shares by more than 1 (one) Registered Owner on the basis that each owner of an undivided share shall be entitled to occupy the Erf or Unit for a particular period in each year, the Registered Owners shall as between them arrange the annual allocation of occupation periods to each particular co-owner and shall provide the Managing Agent with an occupation roster, if required to do so.

21 BREACH

- 21.1 The Trustees may on behalf of and in the name of the Association institute legal proceedings in accordance with the provisions of this clause 15.

- 21.2 If any Member or Resident fails in the observance of any of the provisions of this Constitution with regard to Improvements and/or the provisions of the Guide and/or fails to comply with any rules or regulations made in terms thereof, the Trustees may on behalf of and in the name of the Association serve notice on such Member or Resident calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance:
- 21.2.1 enter upon the Erf to take such action as may be reasonably required to remedy the breach and the Member or Resident concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand; and/or
- 21.2.2 call upon such Member or Resident in writing to remove or alter within a specified period any portion of the Improvements or any addition erected contrary to the provisions of this Constitution read with the Guide and, failing which, the matter shall be referred to a special meeting of the Association convened to afford Members or Residents the opportunity to give directions to the Trustees. The Resolution of the Association at such meeting shall be binding upon such defaulting Member or Resident and shall be implemented by the Trustees.
- 21.3 If any Member or Resident fails to make payment on the due date of levies or other amounts payable by such Member or resident, the Trustees may give notice to such Member or Resident requiring him to remedy such breach within such period as the Trustees may determine and should he fail to timeously remedy his breach, the Trustees may, on behalf of the Association, institute legal proceedings against such Member or Resident without further notice and such Member or Resident will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association in obtaining recovery. Any notice given in terms of this clause shall attract a fee as determined by the Association and payable by such member or Resident.
- 21.4 Nothing in the foregoing shall derogate from or in any way diminish the right of the Association to institute proceedings in any court of competent jurisdiction for

recovery of any money due by any Member arising from any cause of action whatsoever or for any other relief.

- 21.5 In the event of any breach of this Constitution by the members of any Member's or Resident's household or his invitees or lessees, such breach shall be deemed to have been committed by the Member or Resident himself but, without prejudice to the foregoing, the Trustees shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the Member or Resident.

22 TRUSTEES

- 22.1 The Trustees of the Association shall comprise 3 (three) Developer Trustees (for the duration of the Development Period), a maximum of 3 (three) alternate Developer Trustees (for the duration of the Development Period) and 2 (two) Member Trustees. Upon the termination of the Development Period, the Trustees for the Association shall comprise 5 (five) Member Trustees; provided that the Association may, in general meeting, vote to increase or decrease the number of Trustees.
- 22.2 A Trustee shall be an individual but need not himself be a Member provided that the majority of Member Trustees shall be Members.
- 22.3 A trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.
- 22.4 The Developer shall appoint the first Developer Trustees upon formation of the Association.
- 22.5 Each Member Trustee shall continue to hold office until the annual general meeting of the Association following his appointment, at which meeting each Member Trustee shall be deemed to have retired from office as such but will be eligible for re-election at such meeting. The Developer shall, by written notice to the Trustees, be entitled to remove any Developer Trustee appointed by the Developer and upon such removal or upon any Developer Trustee ceasing to

hold office for any other reason, by written notice, appoint in their stead another person or persons.

- 22.6 A Trustee shall be deemed to have vacated his office as such upon:
- 22.6.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
 - 22.6.2 his making any arrangement or composition with his creditors;
 - 22.6.3 his conviction for any offence involving dishonesty;
 - 22.6.4 his becoming of unsound mind and or being found lunatic;
 - 22.6.5 his resigning from such office in writing;
 - 22.6.6 his death;
 - 22.6.7 his being removed from office by a resolution approved by the majority of the remaining Trustees; and
 - 22.6.8 his being disentitled to exercise a vote in terms of this Constitution provided he is a Member Trustee.
- 22.7 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 22.6, anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustees. Should the office of a Trustee fall vacant prior to the next Annual General Meeting of the Association, the vacancy in question may be filled by the Developer if the vacancy is in respect of a Developer Trustee, by the remaining Member Trustees if the vacancy is in respect of a Member Trustee and the person so appointed shall hold office until the next Annual General Meeting.
- 22.8 The Chairperson shall be appointed by the Trustees by majority vote and shall hold office until the first annual general meeting provided that such office shall ipso facto be vacated by the Trustee who was appointed Chairperson upon his ceasing to be a Trustee for any reason.

- 22.9 Within 21 (twenty-one) days of the holding of each annual general meeting of the Association the Trustees shall meet and shall elect from their own number the Chairperson who shall hold office until the annual general meeting held next after his appointment, provided that the office of Chairperson shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. In the event of any vacancy occurring in the aforesaid office, the Trustees shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.
- 22.10 Save as otherwise provided in this Constitution, the Chairperson shall preside at all meetings of the Trustees and all general meetings of the Association and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by the Trustees or by Members and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings and provided further that a Member's spouse shall be entitled to speak at any meeting.
- 22.11 If the Chairperson vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Trustees present at such meeting shall choose another Chairperson for such meeting.
- 22.12 If any Chairperson vacates his office as Chairperson or no longer continues in office for any reason, the Trustees shall elect another Chairperson who shall hold office as such for the remainder of the period of office of the first mentioned Chairperson.
- 22.13 A Trustee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute, with the Association, by virtue of any interest he may have therein.
- 22.14 No contract concluded on behalf of the Trustees shall be valid and binding unless it is signed by the persons who are specifically appointed as authorised signatory in terms of the Resolution of Trustees whereby the Trustees bind the Association.
- 22.15 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as Trustees and/or

Chairperson, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties unless otherwise determined by the Trustees.

- 22.16 Trustees may not make loans on behalf of the Association to Members or to themselves.

23 FUNCTIONS, POWERS AND DUTIES OF TRUSTEES

- 23.1 Subject to the express provision of this Constitution, the Trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any Managing Agent, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and as are not by this Constitution required to be exercised or done by the Association in general meeting subject however to such regulations as may have been made by the Association in general meeting provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustees which would have been valid if such regulation had not been made.
- 23.2 Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, managing agents, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the Trustees on such terms as the Trustees shall decide.
- 23.3 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 23.4 The Trustees shall have the right to co-opt any person or persons chosen by them. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees provided that such co-opted Trustee shall only serve until the next annual general meeting.

- 23.5 The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member, Resident or Trustee of this Constitution in such reasonable manner as they shall decide from time to time.
- 23.6 The Trustees may make regulations and rules not inconsistent with this Constitution or any regulations or rules prescribed by the Association in general meeting –
- 23.6.1 as to the resolution of disputes generally;
- 23.6.2 for the furtherance and promotion of any of the objects of the Association;
- 23.6.3 for the better management of the affairs of the Association;
- 23.6.4 for the advancement of the interests of Members;
- 23.6.5 for the conduct of Trustees at meetings of Trustees and meetings of the Association;
- 23.6.6 to levy and collect contributions from Members in accordance with clause 14;
- 23.6.7 to levy and recover from Members moneys which are necessary to defray the necessary expenses of the Local Authority in the event of the Local Authority imposing any levies and imposts against the Association;
- 23.6.8 to assist it in administering and governing its activities generally; and
- 23.6.9 to impose fines in respect of Members and Residents not complying with this constitution or any rules imposed by the Association.
- 23.7 Without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include:
- 23.7.1 the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and Improvements of all Erven in the Development in strict accordance with the provisions of the Guide which shall be additional to the powers of the Developer for as long as the

Developer is a Member. The Trustees shall be entitled to require any Member, who shall be obliged, to repaint or renovate his Improvements if in the reasonable opinion of the Trustees such Improvements require essential repairs or have become dilapidated;

- 23.7.2 entering into of agreements with third parties on behalf of the Association for any purposes of the Association;
- 23.7.3 the employment on behalf of the Association of agents, servants and any other party and the payment of such persons;
- 23.7.4 the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as common sewage, electricity supply, water supply, landscaping, maintenance of private roads, refuse facilities, removal of refuse and suchlike, where applicable; and
- 23.7.5 the institution or defence of actions in the name of the Association and to appoint legal representatives for such purpose.

24 PROCEEDINGS OF TRUSTEES

- 24.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this Constitution.
- 24.2 Meetings of the Trustees shall be held at least once every 6 (six) months.
- 24.3 The Chairperson always has the right to convene meetings of Trustees.
- 24.4 A Trustee may, provided he has the support in writing of 2 (two) other Trustees, at any time convene a meeting of Trustees by giving to the other Trustees not less than 14 (fourteen) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.

- 24.5 A decision that could be voted on by the board of Trustees may instead be adopted by written consent of a majority of the Trustees, given in person or by electronic communication, provided that each Trustee has received notice of the matter to be decided. A decision made in the manner contemplated in this clause is of the same effect as if it had been approved by voting at a Trustee meeting.
- 24.6 The quorum necessary for the holding of any meeting of Trustees shall be 3 (three) Trustees present personally provided that, for as long as the Developer is a Member, no less than 2 (two) Trustees present are Developer Trustees. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the Trustees then present shall be a quorum.
- 24.7 Each Trustee will have 1 (one) vote in respect of each resolution or decision of Trustees.
- 24.8 Any Resolution of the Trustees shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a Resolution, the Chairperson shall have a second or casting vote.
- 24.9 The Chairperson shall preside as such at all meetings of Trustees provided that, should at any meeting of Trustees the Chairperson not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the Trustees shall vote to appoint a Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 24.10 A Trustee may be represented at a meeting of Trustees by a proxy provided such proxy is a Trustee.
- 24.11 The instrument appointing a proxy shall be in writing and signed by the Trustee concerned but need not be in any particular form. The proxy shall be deposited with the Chairperson at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.

- 24.12 The Trustees shall:
- 24.12.1 ensure that minutes are taken of every meeting of Trustees, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairperson of the meeting;
 - 24.12.2 cause such minutes to be kept of all meetings of the Trustees in a minute book of meetings of Trustees kept for that purpose;
 - 24.12.3 keep all books of meetings of Trustees for a period of at least 10 (ten) years; and
 - 24.12.4 on the written application of any Member, make all minutes of their proceedings available for inspection by such Member.
- 24.13 All Resolutions recorded in the minutes of any meeting of Trustees shall be valid and of full force and effect as therein recorded with effect from the passing of such Resolutions and until varied or rescinded, but no Resolution or purported Resolution of Trustees shall be of any force or effect or shall be binding upon the Members or any of the Trustees unless such Resolution is competent within the powers of the Trustees.
- 24.14 Save as otherwise provided in this Constitution, the proceedings at any meeting of Trustees shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
- 24.15 The Trustees may vote upon and pass Resolutions by way of email correspondence, subject to the following conditions:
- 24.15.1 each of the Trustees must be included in all email correspondence relating to any decision to be taken by the Trustees by email;
 - 24.15.2 no decision shall be taken by email if any of the Trustees requires that the matter be decided at a meeting of the Trustees;

- 24.15.3 the necessary quorum required for a decision to be taken by email will be achieved if a majority of the Trustees vote in favour of the decision by return email to each of the other Trustees; and
- 24.15.4 all Resolutions passed by email shall be recorded in the minute book containing the minutes of the meetings of the Trustees and shall be ratified at the following or any subsequent meeting of the Trustees.

25 MANAGING AGENT

- 25.1 For the duration of the Development Period, the Developer shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a Managing Agent to control, manage and administer the Development and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies, provided that a Managing Agent shall be appointed for a year at a time, and unless the Developer notifies the Managing Agent to the contrary, such appointment will be automatically renewed from year to year.
- 25.2 After termination of the Development Period, the Trustees shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a Managing Agent to control, manage and administer the Development and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies, provided that a Managing Agent shall be appointed for a year at a time, and unless the Trustees notify the Managing Agent to the contrary, such appointment will be automatically renewed from year to year.
- 25.3 The Association shall take out fidelity insurance to the satisfaction of the Trustees for all monies held by the Managing Agent on behalf of the Association from time to time.
- 25.4 The Developer or the Trustees (as the case may be) shall ensure that there is included in the contract of appointment of a Managing Agent a provision to the effect that if the Managing Agent is in breach of any of the provisions of his contract or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Trustees may, without

notice, cancel such contract of employment and the Managing Agent shall have no claim whatsoever against the Developer, Trustees and/or the Association as a result of such cancellation.

26 GENERAL MEETINGS OF THE ASSOCIATION

26.1 The Association shall, within 12 (twelve) months of the date of commencement of the Association hold a general meeting as its first annual general meeting. Thereafter, within 6 (six) months of the Financial Year end of the Association it shall hold second and subsequent annual general meetings.

26.2 Such annual general meetings shall be held at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time, but subject to such meeting being held within the jurisdiction area of the Simons Town Magistrate's Court or by way of electronic communication as per clause 44 below.

26.3 The Trustees may, whenever they deem fit, convene a general meeting, and a general meeting shall also be convened –

26.3.1 during the Development Period on a requisition of a majority of the Trustees if such demand describes the specific purpose for which the meeting is proposed; and

26.3.2 after the Development Period on a requisition of Members if such demand describes the specific purpose for which the meeting is proposed and in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

26.4 The Record Date is –

26.4.1 in the case of determining the Members who are entitled to receive notice of a Members meeting, the earlier of the date on which the Association gives notice of such meeting in compliance with the provisions of this Constitution

and the date on which the Association is required to give notice of such meeting in terms of this Constitution; and

26.4.2 in the case of determining the Members who are entitled to participate in and vote at any meeting of Members, the date of the meeting,

unless the Estate Rules provide otherwise.

27 MEMBERS MEETINGS HELD BY WAY OF ELECTRONIC COMMUNICATION

27.1 For purposes of this clause 27 the term “**Electronic Communication**” has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002.

27.2 The Association may conduct any Members meeting entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication and the power of the Association to do so is not limited or restricted by this Constitution. Accordingly –

27.2.1 any Members meeting may be conducted entirely by Electronic Communication; or

27.2.2 one or more Members, or proxies for Members, may participate by Electronic Communication in all or part of any Members meeting that is being held in person,

so long as the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

27.3 Any notice of any meeting of Members at which it will be possible for Members to participate by way of Electronic Communication shall inform Members of the ability to so participate and shall provide any necessary information to enable Members or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Member or proxy concerned.

28 NOTICES OF MEETINGS

- 28.1 Any meetings of the Members shall be called by giving not less than 15 (fifteen) Business Days' notice. The notice shall specify the place, the day and the hour of the meeting and, in the case of special business in addition to any other requirements contained in this Constitution, the general nature of that business and the reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the Trustees to such persons as are, under this Constitution, entitled to receive such notices from the Association; provided that a general meeting or an annual general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is agreed to by not less than 60% (sixty per centum) of Members having a right to attend and vote at the meeting.
- 28.2 The accidental omission to give notice of any Resolution or to present any document required to be given or sent in terms of this Constitution, shall not invalidate the proceedings at or any Resolution passed at any meeting.
- 28.3 Notice of the annual general meeting and/or a general meeting shall be sent to Members by email or by hand to the *domicilium citandi et executandi* of such Member as contemplated in clause 44.
- 28.4 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

29 PROXIES

- 29.1 A Member may be represented at an annual general meeting and/or general meeting by a proxy who must be a Member of the Association.
- 29.2 The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing but need not be in any particular form provided that where a Member is more than one person any one of those persons may sign the instrument appointing a proxy on such Member's behalf. Where a Member is a company, the proxy may be signed by any person authorised by resolution of the board of directors of the company or by its

secretary and, where a close corporation, by any member of such close corporation and, where an association of persons, by the secretary thereof and, where a trust, by a person duly authorised by the trustees of such trust.

- 29.3 The instrument appointing a proxy shall be lodged with the Association at least 24 (twenty four) hours before the scheduled time for the commencement of the meeting or adjourned meeting concerned. The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.
- 29.4 Notwithstanding the foregoing, the Chairperson of the meeting may agree to accept a proxy tendered at any time before or during the meeting.
- 29.5 The trustees may also require, if circumstances so necessitate, the instrument appointing the proxy to be accompanied by a power of attorney or other authority under which it is signed.

30 QUORUM

- 30.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be Members holding an aggregate of not less than 15% (fifteen percent) of the total of all Members entitled to vote at such general meeting, present in person or by proxy, provided that there will always be at least 3 (three) Members present in person and provided further that, for the duration of the Development Period, the Developer is present in person or by proxy.
- 30.2 If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In all other cases, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the Members present shall constitute a quorum.
- 30.3 If at such second adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum, provided that, for the duration of the Development Period,

the Developer is present in person or by proxy for the first meeting and for the first adjourned meeting in order for a quorum to be constituted. The Developer need not be present at the second adjourned meeting for a quorum to be constituted.

31 AGENDA AT MEETINGS

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

31.1.1 the consideration of the Chairperson's report;

31.1.2 the election of Member Trustees;

31.1.3 the consideration of the financial statements of the Association for the last Financial Year of the Association preceding the date of such meeting, as approved by the Trustees;

31.1.4 the presentation of the budget, as determined and approved by the Trustees, it being recorded that such budget and levies, as determined by the Trustees, are binding on Members and are presented for information purposes at the annual general meeting; and

31.1.5 any other business pertinent to such meeting, including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions.

32 PROCEDURE AT MEETINGS

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

32.2 The Chairperson may, with the consent of any meeting at which a quorum is present (and if so directed by the meeting), adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business that might have been transacted at the meeting from which the adjournment took place. No notice need to be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for 30 (thirty) days or more, in which event notice is to be given in the same manner as the original meeting. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

33 VOTING

33.1 At every annual general meeting or general meeting –

33.1.1 the Developer, during the Development Period, shall have 1000 (one thousand) votes in addition to its votes in respect of its unsold Erven;

33.1.2 every Member that is a Registered Owner of an Erf, including the Developer, in person or by proxy, and entitled to vote shall have 1 (one) vote for each Erf registered in his name;

33.1.3 if an Erf is registered in the name of more than 1 (one) person then all such co-owners shall jointly have 1 (one) vote;

33.1.4 in the event of any Member, including the Developer, holding undeveloped land in the Development, such Member shall have 1 (one) vote for each separate piece of land depicted as an Erf on the general plan of the Development and registered in his name;

33.1.5 the Members that are Registered Owners of Units in a specific Sectional Title Scheme and the relevant Body Corporate shall have a total number of votes per Sectional Title Scheme equal to the number of Normal Levies payable by such Body Corporate to the Association, as determined in accordance with the provisions of clause 18.7.3 above, which votes shall be exercised at general meetings by a representative appointed by the

relevant Body Corporate from time to time for such purpose and in accordance with the provisions of clause 33.11 below;

33.1.6 save as expressly provided for in this Constitution, no person other than a Member, and who shall have paid every Levy and other sum, if any, which shall be due and payable to the Company in respect of or arising out of his Membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting;

33.1.7 if a Member is a juristic person, such Member shall be represented by such representative as the Member may determine provided that the Chairperson may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairperson as to his right to represent the Member;

33.1.8 if a Member comprises more than 1 (one) person, such Member shall be represented by such representative as the Member may determine provided that :-

33.1.8.1 the Chairperson may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairperson as to his right to represent the Member;

33.1.8.2 if such persons cannot decide unanimously, then the person whose name stands first in the register of Members shall be entitled to cast the vote; and

33.1.8.3 the vote(s) cast to the satisfaction of the Chairperson shall be final and binding upon all persons constituting the relevant Member, irrespective of any error or absence of authority.

33.2 Unless the Chairperson of the meeting otherwise directs, all voting shall be in writing, by way of a secret poll, which shall be taken during the course of the meeting in such manner as the Chairperson of the meeting may direct.

- 33.3 After the Development Period, voting on the election of a Chairman of a general meeting (if necessary) or any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.
- 33.4 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.
- 33.5 An Ordinary Resolution or the amendment of an Ordinary Resolution, shall be carried on a simple majority of all the votes cast thereon, by Members present in person or by proxy and entitled to vote at the meeting, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 33.6 A vote cast under a proxy, power of attorney, or other authority, which has been revoked, shall nevertheless be valid unless :-
- 33.6.1 written notice of the revocation is received by the Association prior to the meeting concerned; or
- 33.6.2 the Chairperson of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 33.7 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairperson of the meeting whose decision shall be final and conclusive.
- 33.8 If any difficulty or dispute arises regarding the admission or rejection of a vote, or regarding any other matter, such difficulty or dispute is to be determined by the Chairperson, whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.

- 33.9 Read with clause 33.7, unless any Member present in person or by proxy at a general meeting shall, before the closure of the meeting, have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairperson of the meeting as to the result of any voting at the meeting.
- 33.10 Any resolution which could be passed at a general meeting (other than a Special Resolution) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the Members entitled to vote.
- 33.11 A Body Corporate shall be entitled to attend any annual general meeting or general meeting of the Association, but may only vote in respect of matters which also materially and directly impact upon the rights and obligations of the Registered Owners of Units as members of the Association.

34 SPECIAL RESOLUTIONS

- 34.1 Any Special Resolution or an amendment of a Special Resolution, shall be caused at a general meeting of which not less than 15 (fifteen) Business Days' notice has been given specifying the intention to propose the resolution as a Special Resolution, the terms and effect of the resolution and the reasons for it and at which –
- 34.1.1 Members holding in the aggregate not less than 25% (twenty five percent) of the total votes of all the Members, are present in person or by proxy; and
- 34.1.2 the resolution has been passed on a show of hands by not less than 75% (seventy five percent) of the number of Members entitled to vote on a show of hands at the meeting who are present in person or by proxy, or where a

poll has been demanded, by not less than 75% (seventy five percent) of the total votes to which the Members present in person or by proxy are entitled.

34.2 Special Resolutions are required for the following matters:

34.2.1 after the Development Period, for Erven forming Private Spaces to be –

34.2.1.1 sold;

34.2.1.2 mortgaged; or

34.2.1.3 subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation and servitude, save as specified in the said conditions of establishment, and save as such rights as are enjoyed by the Members in terms hereof, without the sanction of a special resolution of the Association;

34.2.2 the Association may, in its discretion, permit the Members, subject to the provisions of this Constitution, to use the Private Spaces and shall do so unless by special resolution taken at an extraordinary general meeting called for the purpose, it is otherwise resolved for good reason;

34.2.3 for a Member to operate or conduct a time-sharing scheme as contemplated in the Property Time-Sharing Control Act No 71 of 1983, as amended, in respect of any dwellings or Units owned by him save where such scheme arises from co-ownership or syndication involving not more than 2 (two) Members per bedroom per unit, unless the Members by special resolution resolve otherwise;

34.2.4 amending this Constitution;

34.2.5 ratifying actions by the Association or the Trustees in excess of their authority in terms of this Constitution;

34.2.6 disposing of all or a greater part of the assets of the Association;

34.2.7 increasing the levy contributions payable by the Members by 80% (eighty percent) or more from one year to the next; and

34.2.8 winding-up or dissolving the Association.

35 MINUTES OF MEETINGS OF THE ASSOCIATION

35.1 The Trustees shall:

35.1.1 ensure that minutes are taken of every meeting of the Association, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairperson of the meeting; and

35.1.2 cause such minutes to be kept of all such meetings of the Association in a minute book of meetings of the Association kept for the purpose.

35.2 The Trustees shall keep all minute books of meetings of the Association for a 10 (ten) year period.

35.3 On the written application of any Member the Trustees shall make all minutes of the proceedings and/or meetings of the Association available for inspection by such Member.

35.4 All Resolutions recorded in the minutes of any meetings of the Association shall be valid and of full force and effect as therein recorded, with effect from the passing of such Resolutions, and until varied or rescinded, but no Resolution or purported Resolution of the Association shall be of any force or effect, or shall be binding upon the Members or any of the Trustees, unless such Resolution is competent within the powers of the Association.

35.5 Save as otherwise provided in this Constitution, the proceedings at any meeting of the Association shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.

36 FINANCIAL YEAR END

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

37 ACCOUNTS

- 37.1 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 Association including:
- 37.1.1 a record of the assets and liabilities of the Association;
 - 37.1.2 a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur;
 - 37.1.3 a register of Members showing in each case their addresses; and
 - 37.1.4 individual ledger accounts in respect of each Member.
- 37.2 On the application of any Member the Trustees shall make all or any of the books of account and records available for inspection by such Member.
- 37.3 The Trustees shall cause all books of account and records to be retained for a period of 10 (ten) years after completion of the transactions, acts or operations to which they relate.
- 37.4 The Association in general meeting or the Trustees may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by Members of the accounts and books of the Association, or any of them, and subsequent to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 37.5 At each annual general meeting the Trustees shall lay before the Association financial statements for the immediately preceding Financial Year of the Association or, in the case of the first period since the date of commencement of the Association, made up for that period. Such financial statements shall be drawn up in accordance with generally accepted accounting practise and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees.

38 DEPOSIT AND INVESTMENT OF FUNDS

- 38.1 The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank or money market unit trust fund in the name of the Association and, subject to any direction given or restriction imposed at a general meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.
- 38.2 The Trustees will set up reserve accounts for funds that are held over and above one year's working capital requirements. These reserves may be invested in accordance with the Association's investment policy as approved by the Trustees from time to time.
- 38.3 Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.

39 AUDIT

- 39.1 The Trustees have the right to appoint or remove the Association's Auditors from time to time.
- 39.2 Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.
- 39.3 The duties of the Auditors shall be regulated in accordance with general practise and applicable professional standards.

40 INDEMNITY

- 40.1 All the Trustees managers, servants, agents or employees of the Association are indemnified by the Association against any liabilities bona fide incurred by them in their capacities as such and in the case of the Chairperson in his capacity as Chairperson, as well as for all costs, losses and expenses (including travelling expenses) which they may incur or become liable for by reason of any authorised contract entered into, or any authorised act or deed done, in the discharge of any

of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.

- 40.2 A Trustee shall not be liable for the acts, or omission of the Auditors or of any of the other Trustees whether in their capacities as Trustees or as Chairperson or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which moneys of the Association are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited or for any loss or damage occasioned by any error of judgement or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto unless occurring as a result of mala fides, breach of duty or breach of trust.

41 DEFAMATION PRIVILEGE

- 41.1 Every Member of the Association and every Trustee shall be deemed by virtue of his membership or, as the case may be, his holding office as a Trustee, to have waived as against every other Member, the Chairperson, every other Trustee, and everybody else engaged to perform the function or duty on behalf of or for the benefit of the Association, or the Trustees, or any sub-committee, all claims and rights of action which such Member or Trustee might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee, or any reference to such Member or Trustee, provided that the following are present –
- 41.1.1 the statement, report, complaint, notice or reference (“**the Relevant Statement**”) is made in the performance or exercise of any right, function or duty of the person making the Relevant Statement; and
- 41.1.2 the Relevant Statement is made at a Trustees’ meeting, Members’ meeting, disciplinary hearing, litigation proceedings or arbitration proceedings or any other formal proceedings convened in terms of this Constitution or the Estate Rules (“**the Formal Proceedings**”) or any other meeting related to the furtherance of such Formal Proceedings.

42 OWN RISK

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

43 ARBITRATION

43.1 Should any dispute, question or difference arise between Members, Trustees, Residents, the Association or either one of them as the case may be in regard to:

43.1.1 the interpretation of;

43.1.2 the effect of;

43.1.3 their respective rights or obligations under;

this Constitution and / or the Estate Rules, such dispute shall, subject to a Member's right to refer such dispute to the Ombud for determination, be decided by arbitration in the manner set out in this clause 43.

43.2 In respect of any claim arising from non-payment of levies or any other amount due by a Member to the Association in terms of this Constitution, the Association and Trustees shall continue to enjoy common law rights and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.

43.3 The arbitration referred to in clause 43.1 shall:

43.3.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and

43.3.2 commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded; and

- 43.3.3 be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.
- 43.4 The arbitrator shall be a practicing senior counsel or attorney of not less than 5 (five) years standing appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing such agreement within the 7 (seven) day period, appointed by the Chairperson of the Cape Bar.
- 43.5 The arbitrator shall in giving his award have regard to the principles contained in this Constitution and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by him in arriving at his decision. The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 43.6 Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings:
- 43.6.1 shall be final and binding on each of them;
- 43.6.2 shall be carried into effect immediately; and
- 43.6.3 may be made an order of any Court to whose jurisdiction the parties are subject.
- 43.7 Notwithstanding anything to the contrary contained in this clause 43, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Constitution, including the Guide.

44 DOMICILIUM

- 44.1 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:
- 44.1.1 such address shall be the address of the Chairperson or of a resident Trustee nominated by the Trustees or the address of any duly appointed Managing Agent;
- 44.1.2 the Trustees shall give notice to all Members of any change of such address.
- 44.2 The *domicilium citandi et executandi* of each Member shall be the street address of the Member's Erf.
- 44.3 The *domicilium citandi et executandi* of each Resident shall be the street address of the Erf or Unit which such Resident occupies.
- 44.4 It shall be competent to give notice by email where the Member's or Resident's email address is recorded with the Trustees.
- 44.5 A Member or Resident who has furnished an electronic address to the Association or to his Body Corporate authorises the Association to use that electronic address and to use electronic communication to give any notices, documents, records, legal process or statements or notices of availability of the foregoing which the Association is required to or wishes to serve upon the Member or Resident.
- 44.6 A Member or Resident may by notice in writing to the Trustees alter his domicilium, provided such new address may not be a post office box or post restante and provided such address is within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notification.
- 44.7 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Member or Resident shall be adequate written notice or communication to such Member or Resident notwithstanding that it was not sent to or delivered at his *domicilium citandi et executandi*.

- 44.8 Any notice to a Member or a Resident:
- 44.8.1 delivered by hand to a responsible person at his *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery;
or
- 44.8.2 sent to him by electronic mail shall be deemed to have been received on the date and at the time recorded by the computer used by the Association, unless there is conclusive evidence that it was delivered on a different date or at a different time.

45 AMENDMENT

- 45.1 No provision hereof shall be added to, amended, substituted or repealed without the prior consent in writing of:
- 45.1.1 the Local Authority if such amendment affects the Local Authority if it in any way amounts to an amendment of the requirements set out in section 29(3) of the By-Law, and
- 45.1.2 the Community Scheme Ombud Service, only insofar as may be applicable;
and
- 45.1.3 the Developer for as long as the Developer is a Member.
- 45.2 Clause 17 and this clause 45 may not be amended without the Developer's prior written consent.
- 45.3 Subject to the provisions of clause 45.2, such addition, amendment, substitution, or repeal shall require the passing of a Special Resolution adopted at an annual general meeting or general meeting of the Members, subject thereto that during the Development Period the Developer shall be entitled to add, amend, substitute, or repeal this Constitution in its sole and absolute discretion, subject to the prior consent in writing of the Local Authority.
- 45.4 The Developer shall be entitled to make additions or amendments to this Constitution, in its discretion, provided that –

45.4.1 such addition or amendment is required by a financial institution, as a prerequisite or condition for the Developer to secure development finance in respect of the Estate; and

45.4.2 such addition or amendment is approved by the Local Authority.

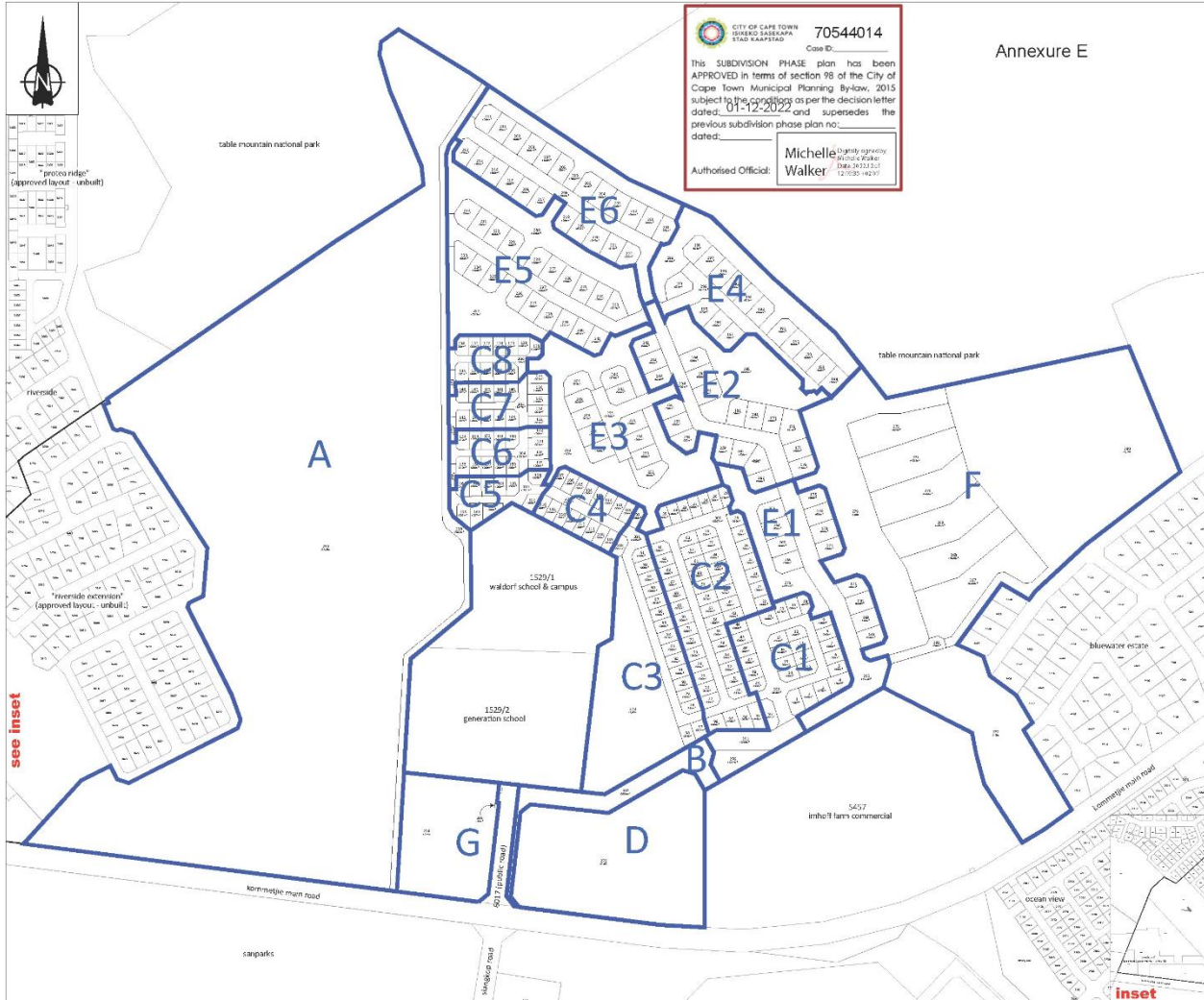
46 DISSOLUTION OF ASSOCIATION

Upon dissolution of the Association for any reason whatsoever, the Association's remaining assets shall be distributed to a similar association of persons which is exempt from income tax under section 10(1)(e) of the Income Tax Act No. 58 of 1962.

PLAN OF SUBDIVISION

APPENDIX 2

PHASING PLAN OF IMHOFF LIFESTYLE ESTATE



The copyright in this drawing, including detail and design shown

1. Phasing of the development is proposed as follows:

Phase	Plots Nos(s)
A	290, 308
B	307
C1	1 - 21, 44 - 49, 92, 276, 291, 299
C2	22 - 43, 50 - 77, 93 - 96, 300
C3	78 - 91, 108, 273, 301
C4	100 - 107, 109 - 116, 302
C5	117, 118, 160 - 167, 303
C6	119 - 122, 150 - 159, 283, 304
C7	123 - 127, 140 - 149, 282, 305
C8	128 - 139, 281, 306
D	275
E1	168 - 173, 263 - 266, 276, 278, 292
E2	176 - 184, 242 - 244, 256 - 262, 285, 294
E3	245 - 255, 295, 284
E4	185 - 199, 286, 296
E5	223 - 241, 287, 288, 297
E6	200 - 222, 289, 298
F	267 - 272, 277, 279, 280, 293
G	274, 309

- The proposed timeline for the completion of the entire subdivision is the validity period of the subdivision on approval, i.e. 5 years plus the potential extension of a further 5 years.
- Each phase will sequentially link to the previous phase's engineering services until the entire development is operational. Thus, once a phase is linked to the engineering services, it will be able to function independently and in sequence.
- Connections are to be implemented according to the engineer's detailed drawings with inlets in the private roads to subsequent phases.
- Phases under construction will be boarded off from already developed phases in order to mitigate any impact on surrounding and internal land units not located within the phase to be developed.

REVISIONS:

NO.	DATE	DESCRIPTION
1	15/09/2021	1529/04/02
2	15/09/2021	1529/04/01

PROJECT	IMHOFF'S GIFT proposed consolidation, rezoning and subdivision of the remainder of cape farm 1529 & erf 5112 kommetjie
DRAWN BY	phasing plan
CHECKED BY	red cliff property (pty) ltd
DATE	15/09/2021
SCALE	1:4000 (A3)
DATE	april 2022

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SITE DEVELOPMENT PLAN