

# ROYAL PALM HOME OWNERS' ASSOCIATION

## CONSTITUTION

Including amendments approved at the AGM June 2018

Version 8

### 1 NAME AND CONSTITUTION

- 1.1 The name of the Association is "**Royal Palm Home Owners' Association**".
- 1.2 The Association will be constituted upon approval by the Development Tribunal, of the residential housing estate known as "Palm Lakes", in terms of Chapter V of the Development Facilitation Act.

### 2 DEFINITIONS

- 2.1 The singular shall include reference to the plural and vice versa.
- 2.2 Any one gender shall include a reference to another gender and to a body corporate and vice versa.
- 2.3 The headings to clauses of this agreement are for the purposes of reference only and shall not govern their interpretation.
- 2.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.
- 2.5 If any period is referred to in this agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the day shall be the next succeeding business day.
- 2.6 Any reference to days (other than a reference to business days), months or years shall be reference to calendar days, months or years, as the case may be.
- 2.7 Unless the context clearly indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them hereunder:
- |        |                                    |  |
|--------|------------------------------------|--|
| 2.7.1  | "the Act"                          | the Companies Act 71 of 2008   |
| 2.7.2  | "the Association"                  | Royal Palm Home Owners' Association;   |
| 2.7.3  | "architectural design guidelines"  | the architectural design guidelines published by the Association   |
| 2.7.4  | "the auditors"                     | the firm of auditors appointed by the Association from time to time;   |
| 2.7.5  | "the board of trustees"            | the board of trustees of the Association who are responsible for the management and the affairs of the Association;  |
| 2.7.6  | "the common property"              | the private open space, conservation erven and roads within the estate;  |
| 2.7.7  | "the constitution"                 | the constitution of the Association as contained in this document;   |
| 2.7.8  | "the design review committee"      | the design review committee appointed by the Association from time to time;  |
| 2.7.9  | "the Developer"                    | Royal Palm Property Holdings Limited (registration number 2002/022582/07);   |
| 2.7.10 | "the Development Facilitation Act" | the Development Facilitation Act, 67 of 1995;  |
| 2.7.11 | "the estate"                       | the land, including Palm Ridge and Palm View, together with all improvements and services thereon.   |
| 2.7.12 | "the general plan"                 | a general plan relating to the land or a portion thereof, as approved by the Surveyor General;   |
| 2.7.13 | "improvement"                      | any improvement on an erf within the estate or on the common property;   |
| 2.7.14 | "the levy"                         | the monetary contribution payable by a member, as stipulated by the Association, which may be amended from time to time, payable on a monthly basis to meet the object and purpose of the Association as provided for in clause 3 hereunder; |
| 2.7.15 | "local authority"                  | the KwaDukuza Municipality or the Ilembe District Municipality, as the case may be;  |

2.7.16	“member”	a member of the Association being a person registered as the lawful owner of a special residential erf or a sectional title unit within the estate;
2.7.17	“occupant or occupier”	any person lawfully occupying a residential erf or a sectional title unit by virtue of an agreement concluded with a member, and any person occupying through him;
2.7.18	“owner”	the registered owner of a residential or other erf or a sectional title unit;
2.7.19	“Palm Ridge”	that part of the estate known as “Palm Ridge”.
2.7.20	“Palm Valley”	that part of the estate known as “Palm Valley”.
2.7.21	“residential erf “	a portion of the land within the estate, which is zoned as a special residential site, as depicted on a general plan;
2.7.22	“secretary”	the secretary to the board of trustees;
2.7.23	“Sectional Titles Act”	the Sectional Titles Act, 95 of 1986 (as amended) and any regulations in force thereunder from time to time;
2.7.24	“sectional title body corporate”	a body corporate of a building or complex, established in terms of the Sectional Titles Act;
2.7.25	“sectional title units”	units in a building or complex held under sectional title deeds.

### 3 OBJECT AND PURPOSE

- 3.1 The main object and purpose of the Association is to promote, advance and protect the common interests of its members with respect to their ownership, use and enjoyment of erven and the common property comprising the estate.
- 3.2 The Association is to provide for:
- 3.2.1 the promotion and enforcement of standards in keeping with the character of the estate, more particularly as regards the external appearance of all buildings and structures to be erected on the erven with the specific purpose that the members derive the maximum collective benefit;
  - 3.2.2 the control over and protection of areas regarded as common to all members and all the facilities thereon and related aspects but excluding common property areas within Sectional Title schemes and or private erven
  - 3.2.3 the maintenance of the common property and the services and amenities thereon, all external verges on common property, all landscaping, perimeter walling, entrance gates, refuse and storage areas;
  - 3.2.4 the maintenance, repair and improvement of the private roads and private open spaces and keeping same in good order and condition;
  - 3.2.5 the construction, control, repair, replacement and maintenance of all services (other than those services, if any, provided and maintained by the local authorities);
  - 3.2.6 compliance by members and occupiers with all obligations as may have been imposed herein and any other rules that may be created from time to time including the imposition of fines by the Trustees on members for non-compliance;
  - 3.2.7 compliance with and ensuring that all members and occupiers similarly comply with such requirements imposed by the Development Tribunal, in terms of the Development Facilitation Act, on the approval of the estate, including *inter alia* the rezoning, subdivision, land use controls and the environmental management plan;
  - 3.2.8 concluding any service agreements with the relevant authorities to ensure the good management and maintenance of erven and the improvements constructed thereon within the estate;
  - 3.2.9 the determination and provision of adequate security for the estate for the benefit of all members and occupiers;
  - 3.2.10 the levying of fines to contractors who undertake building works on the estate and/or any erven; and
  - 3.2.11 the determination of, levying and collection of levies by members for services provided by the Association.

4 **MEMBERSHIP**

- 4.1 Membership of the Association shall be compulsory and limited exclusively to registered owners of residential erven and sectional title units on the estate which membership shall commence simultaneously with the transfer of the residential erf or sectional title unit into the name of the member.
- 4.2 When any member is more than one person or entity, all the registered owners of that residential erf or sectional title unit shall be deemed, jointly and severally, to be one member of the Association and shall have one vote for purpose of any resolution that may be required by the Association.
- 4.3 When a member ceases to be the registered owner of a residential erf or a sectional title unit, he shall immediately cease to be a member of the Association.
- 4.4 The registered owner of a residential erf or sectional title unit may not resign as a member of the Association.
- 4.5 The rights and obligations of a member are not transferable and every member shall:
- 4.5.1 to the best of his ability further the aims and objects of the Association; and
- 4.5.2 observe and be bound by this constitution and all rules and regulations promulgated by the Association or by the board of trustees from time to time.
- 4.6 Nothing contained in this constitution shall prevent a member from ceding his rights in terms of this constitution as security to the mortgagee of that member's residential erf or sectional title unit, provided the mortgagee accepts to be bound by the terms and conditions of this constitution.
- 4.7 No member shall have the right or be authorised to bind or incur expenses on behalf of the Association unless such member receives the prior written approval of the board of trustees in respect thereof. Each member shall nevertheless be liable *pro rata* for any expenditure incurred in connection with the main object or purpose of the Association and for anything done by the Association with the intention of benefiting its members.
- 4.8 No member shall be entitled to transfer a residential erf or a sectional title unit unless and until the Association (or the relevant party to which such function has been delegated) has, in writing, consented to the transfer, and the following conditions of title are so imposed in the deed of sale and title deed to such residential erf or sectional title unit and the purchaser of the residential erf or sectional title unit shall be bound thereby, namely:
- 4.8.1 the residential erf or sectional title unit, or any part thereof, shall not be transferred without the prior written consent of the Association of which the purchaser and his successors-in-title, for so long as they are the registered owners of the residential erf or sectional title unit, shall be obliged to be a member and bound by the Association's constitution, rules and regulations;
- 4.8.2 no improvements, alterations, restructuring, repairs, changes to the external colour scheme, building work of any nature or alteration of access shall be effected to any residential erf or sectional title unit, without the prior written approval of the Association which shall be at the sole discretion of the Association and such approval which shall only be given once satisfactory plans or, documentation relevant thereto, has been submitted to the Association for consideration by the design review committee; the member submitting plans/documentation for consideration by the Association shall be responsible for the payment of all or any expenses that may be incurred by the Association in relation to the consideration of the application made by the member which shall include all costs incurred by the trustees or their nominees in relation thereto, such costs to be reasonable and market related;
- 4.8.3 a residential erf or sectional title unit may not be transferred to a third party within 2 (two) years of transfer of such site or unit being registered in favour of the member, without the prior written consent of the Association, which shall have the sole and absolute discretion to grant or refuse such consent, provided that such consent shall not be withheld in the event the member has erected a dwelling house on the residential erf, or the sectional title unit is complete, as the case may be, and the local authority has issued a certificate of occupation therefor, and provided that the provisions of clause 4.9 below have been complied with.
- 4.8.4 An agreement of sale of a residential erf or a sectional title unit shall be completed using the Association's standard Agreement of Sale documentation.
- 4.9 A consent to transfer, as contemplated above, shall be withheld by the board of trustees until all of the following have been complied with:
- 4.9.1 the transferee (or proposed member) and the proposed occupants of the residential erf or sectional title unit have agreed in writing (in a manner and form acceptable to the Association) to be bound by this constitution and the rules of the Association;
- 4.9.2 levies and any other amounts due to the Association by the member (and all occupants claiming occupation through him) of the residential erf or sectional title unit to be transferred, have been paid-up to date of transfer and/or provision has been made to the satisfaction of the Association for the payment thereof against registration of transfer;
- 4.9.3 all improvements on the residential erf or sectional title unit (sought to be transferred) but which have not been approved by the design review committee of the Association as contemplated herein, have been removed to the sole

satisfaction of the design review committee or the approval of the design review committee has been given in respect of such improvements, as contemplated herein.

- 4.10 The board of trustees may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the board of trustees.
- 4.11 No member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and any other sum (if any), which shall be due and payable to the Association in respect of his membership thereof and/or removed any structures or improvements not approved by the design review committee, to such committee's satisfaction.
- 4.12 No member shall, by reason of membership of the Association, be entitled to share in or receive any profit of the Association.
- 4.13 The liability of each member as a member of the Association shall be limited to R1-00 (one rand) together with such other amount as may be owing by a member to the Association, from time to time, from whatsoever cause arising.
- 4.14 The Association shall maintain at its office a register of members which shall be open to inspection by members.

## 5 CESSATION OF MEMBERSHIP

No member ceasing to be a member of the Association for any reason shall, (nor shall any such member's executors, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such member or his estate any arrears or levies or other sums due from him to the Association at the time of his so ceasing to be a member.

## 6 BOARD OF TRUSTEES

- 6.1 There shall be a board of trustees to manage the affairs of the Association which shall consist of at least 5 (five) but not exceeding 10 (ten) members.
- 6.2 The board of trustees shall consist, unless agreed to otherwise in writing by the Developer, of not less than 50% (fifty percent) of trustees nominated by the Developer for so long as the Developer owns at least 1 (one) residential erf or sectional title unit within the estate.
- 6.3 At a meeting of the trustees 50% (fifty percent) of the number of trustees, but not less than 3 (three) shall form a quorum. If the number of trustees falls below the number necessary to form a quorum, the remaining trustees, who shall not be less than 2 (two), may continue to act, but only for the purpose of convening a general meeting of members.
- 6.4 Nominations for the election of members as trustees at any annual general meeting shall be given in writing, accompanied by the written consent of the nominee, and are to be received at the domicilium of Royal Palm Home Owners' Association not later than seven (7) days before the meeting. Should insufficient nominations have been received to make up 50% of the trustees, further members may, with their consent, be nominated at the meeting itself. All nominations should be accompanied by a brief introduction (approximately 100 words) of the nominee. A nominee for a residential trustee must be a member within the estate. All owners are to be circulated with the names of the people nominated and their introduction prior to the AGM.

## 7 REMOVAL AND ROTATION OF TRUSTEE MEMBERS

- 7.1 Subject to the provisions of clause 6.2 above, and save as provided for in clause 7.2 below, each trustee shall continue to hold office until the annual general meeting following his appointment, at which meeting each trustee shall be deemed to have retired from office upon the election or re-election of the new trustees, but each trustee will be eligible for re-election or reappointment to the board of trustees at such meeting.
- 7.2 A trustee shall be deemed to have vacated his office as such upon:
- 7.2.1 his estate being sequestrated, whether provisionally or finally, or him surrendering his estate;
- 7.2.2 his making any arrangement or compromising with his creditors;
- 7.2.3 his conviction for any offence involving dishonesty;
- 7.2.4 his becoming of unsound mind or being found to be a lunatic;
- 7.2.5 his resigning from such office in writing delivered to the secretary; or
- 7.2.6 his death,

provided that anything done in the capacity of a trustee in good faith, by a person who ceases to be a trustee, shall be valid until the fact that he is no longer a trustee has been recorded as such in the minute book of the board of trustees.

- 7.3 Upon any vacancy occurring on the board of trustees prior to the next annual general meeting, the vacancy in question shall:
- 7.3.1 be filled by a person nominated by the Developer in the event that the vacancy has arisen as a result of a trustee nominated by the Developer ceasing to be a trustee;
- 7.3.2 be filled by a person nominated by those remaining for the time being on the board of trustees, in the event that a trustee who was not nominated by the Developer has ceased to be a trustee, provided that in the event that more persons are nominated than there are vacancies available on the board of trustees, the vacancy shall be put to a vote amongst the remaining trustees and the vacancy shall be filled by that nominee obtaining the most votes by the remaining trustees.
- 7.4 Nothing in sub-clause 7.3 shall prejudice the right of the Developer to appoint trustees in accordance with the provisions of clause 6.2 above.
- 7.5 The Developer may at his discretion replace a trustee nominated by him.

## 8 OFFICE OF TRUSTEES

- 8.1 The trustees shall appoint from amongst themselves, a chairman, vice-chairman and a secretary, provided that whilst the Developer is a member of the Association, the Developer shall be entitled to appoint the chairman of the board of trustees.
- 8.2 The first chairman, vice-chairman and secretary shall be appointed by the Developer, and such office bearers shall hold their respective offices until the first annual general meeting following the date of their appointment, provided that any such office shall *ipso facto* be vacated by the trustee holding such office upon his ceasing to be a trustee for any reason.
- 8.3 Within 7 (seven) days of the holding of such annual general meeting, the board of trustees shall meet and shall elect from its own number the chairman, vice-chairman and secretary, who shall hold their respective offices until the annual general meeting held next after their said appointment, provided that the office of the chairman or vice-chairman shall *ipso facto* be vacated by the trustee holding such office upon his ceasing to be a trustee for any reason. No one trustee shall be appointed to more than one of the aforesaid offices.
- 8.4 In the event of any vacancy occurring in any one of the aforesaid offices at any time, the board of trustees shall appoint one of their number as a replacement to such office at the next trustee meeting.
- 8.5 Save as otherwise provided in this constitution, the chairman shall preside over all meetings of the board of trustees and all general meetings of members, and shall perform all duties incidental to the office of chairman and such other duties as may be prescribed by the board of trustees or by the members, and to allow or to refuse to permit invitees to speak at any such meetings, provided, however, that any such invitees shall not be entitled to vote at any such meetings.
- 8.6 The vice-chairman shall assume the powers and duties of the chairman in the absence of the chairman, or his inability or refusal to act as chairman, and shall perform such other duties as may from time to time be assigned to him by the chairman or by the board of trustees.
- 8.7 The trustees shall be entitled to be reimbursed all reasonable and *bona fide* expenses incurred by them in or about the performance of their duties as trustees, chairman, vice-chairman or secretary, 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.
- 8.8 The Developer may appoint alternate trustees for the trustees appointed by it.

## 9 FUNCTIONS AND POWERS OF THE BOARD OF TRUSTEES

- 9.1 Unless otherwise provided for, the board of trustees shall manage and control the affairs of the Association, shall have full powers in the management of such affairs and 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 either by virtue of the provisions of the Act or by this constitution required to be exercised or done by the Association in general meeting, subject nevertheless to any regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the board of trustees which would have been valid if such regulation had not been made.
- 9.2 The board of trustees shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.

- 9.3 The board of trustees shall have the right to co-opt onto the board of trustees any person or persons chosen by it. A co-opted trustee shall enjoy all the rights, including the right to vote if so allowed, and be subject to all the obligations of the trustees.
- 9.4 The board of trustees may, should it so decide, investigate any suspected or alleged breach by any member or trustee, in such reasonable manner as it shall determine from time to time.
- 9.5 The board of trustees may make regulations and/or by-laws, and add or amend to the conduct rules not inconsistent with this constitution, or any direction given at any general meeting:
- 9.5.1 as to the settlement of disputes, generally;
- 9.5.2 for the furtherance and promotion of any of the objects of the Association;
- 9.5.3 for the better management of the affairs of the Association;
- 9.5.4 for the advancement of the interests of members;
- 9.5.5 for the regulation and control of the conduct of members and occupants while in the estate, whether on residential erven, sectional title units, common property held by a sectional title body corporate, or on the common property and the private open spaces;
- 9.5.6 governing the manner and methods of the use of the common property by or on behalf of the members of the Association or any occupant;
- 9.5.7 for the conduct of board of trustees meetings and general meetings;
- 9.5.8 to assist it in administering and governing its activities generally, and shall be entitled to cancel, vary or modify any of the same from time to time; and
- 9.5.9 to amend the architectural design guidelines to meet the objects and goals of the Association as provided for in this constitution;
- 9.5.10 to appoint the design review committee, including the appointment of an independent architect and the consideration payable to such architect from time to time.
- 9.6 The trustees shall have at least the following powers exercisable on behalf of the Association, to:
- 9.6.1 open bank accounts and to draw, sign and endorse cheques and make deposits and otherwise operate on bank accounts opened on behalf of the Association;
- 9.6.2 effect fixed and other deposits and to effect and deal with all other kinds of investments;
- 9.6.3 purchase, lease or acquire in any manner, including the financing thereof through a financial institution, moveable and immovable property, or rights in such property, including the rights of use or occupation thereof.
- 9.6.4 demand, sue for and recover from any person or persons whosoever all such sum or sums of money which now are, or shall or may at any time hereafter be owing or belonging to the Association;
- 9.6.5 settle and adjust accounts as they think fit and proper, and, if deemed advisable, to compound for the same and accept a part for the whole;
- 9.6.6 grant receipts, acquittances and releases for any payment, delivery or other settlement;
- 9.6.7 commence, prosecute or defend and at their discretion to settle or abandon any actions, suits, applications or other proceedings at law in any of the courts or before any tribunal or board and to proceed to the final end and determination of any such proceedings and in that respect to institute and prosecute appeal proceedings and also to accept service of process and to consent to judgment in any such proceedings;
- 9.6.8 submit any matters in dispute to arbitration, and to sign all necessary documents and take all necessary steps for that purpose;
- 9.6.9 effect the pledge or cession of any movable property, including insurance policies and other rights or claims, which may at any time be owned by the Association and for any indebtedness or other obligation contracted or to be contracted on the Association's behalf;
- 9.6.10 prove claims against insolvent estates, assigned estates, companies and close corporations in liquidation or under judicial management and to attend meetings of creditors of any such insolvent estate, assigned estates or companies and close corporations in liquidation or under judicial management and to vote for the Association thereat;
- 9.6.11 carry on business of whatsoever nature as the trustees may from time to time deem appropriate;
- 9.6.12 enter into any partnership, joint venture or other Association with any other persons, firm or company for the doing or performance of any transaction or series of transactions within the powers of the trustees in terms hereof;

- 9.6.13 take out and deal with insurance of all kinds;
- 9.6.14 engage the services of professional practitioners, agents and advisors of whatsoever nature and tradesmen of whatsoever nature for the performance of work and rendering of services necessary or incidental to the affairs of the Association;
- 9.6.15 vary any investment made realizing the same and/or substituting therefore any other investment which the trustees are empowered to make; and
- 9.6.16 choose *domicilium citandi et executandi*.

## 10 LEVIES PAYABLE BY THE MEMBERS

- 10.1 The board of trustees may from time to time assess levies payable by the members for the purpose of meeting all the expenses which the Association has incurred, or to which the board of trustees reasonably anticipates the Association will incur by way of landscaping and maintenance of gardens, the painting of the exterior of all improvements within the estate excluding houses on residential and other erven, the maintenance of estate roads and services thereon, the maintenance of the security systems to be installed on the common property, the provision of internet and intranet services, the maintenance of the estate's driving range, putt-putt, gym, croquet lawns, play parks, horse-riding facilities, skateboard park, aviary, bird hides, and other recreational facilities including video streaming, and/or for payment of all rates and other charges payable by the Association in respect of the common property, and/or for the services rendered to it and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the common property and the Association's affairs. In calculating levies, the board of trustees shall take into account, income, if any, earned by the Association.
- 10.2 The board of trustees may estimate the amount which may be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as may result from the preceding year, and levy a levy which is to be payable by the members according to the size and value of their erven.
- 10.3 The board of trustees may include in the levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 10.4 Every levy shall be made payable by equal monthly installments due in advance on the first day of each and every succeeding month of such year.
- 10.5 The board of trustees may, from time to time, levy a levy payable by the members in respect of all such expenses (which are not included in any estimate made in terms of clause 10.2) and such levies may be levied in the sum or payable in such installments as the board of trustees may determine.
- 10.6 All members shall be liable for a once-off special levy per residential erf or sectional title unit purchased, the amount of which levy shall be determined by the trustees from time to time and which levy shall be utilized for improvements to facilities within Palm Lakes Estate.
- 10.7 Members shall be liable for a once off special levy per residential erf or sectional title unit towards the Palm Lakes Home Owners' stabilization fund that will be available for any unforeseen occurrences for the benefit of the Home Owners' Association the amount of which special levy shall be determined by the trustees from time to time.
- 10.8 Members shall be liable for a special levy on the sale of their residential erf or sectional title unit the amount of which special levy shall be determined by the trustees from time to time and which is payable on registration of transfer. This special levy is to be limited to a maximum of 1% of the gross selling price.
- 10.9 The board of trustees may draw a distinction between the services rendered by the Association to different residential erven or sectional title units and may, where the board of trustees considers it equitable to do so, assign to any owner a greater or lesser share of the costs that may be reasonable in the circumstances.
- 10.10 Any amount due by a member by way of a levy shall be a debt due and owing by him to the Association. A member shall not be obliged to pay any future levies to the extent after and as from the date he ceases to be a member but shall remain liable for those levies invoiced but not yet paid and arrear levies. No levies paid by a member shall under any circumstances be repayable by the Association upon his ceasing to be a member. A member's successor-in-title to a residential erf or sectional title unit shall be liable as from the date upon which he becomes a member pursuant to the transfer of that residential erf or sectional title unit to pay the levies attributable to that residential erf or sectional title unit.
- 10.11 All legal costs as between attorney and client, charges, disbursements including fees incurred by the Association in successfully enforcing or defending its claim, shall be for the account of the Member and be payable on demand.
- 10.12 Any special levy imposed by the trustees in terms of clause 10.5 may be apportioned between the members by the trustees in an apportionment which the trustees may regard as reasonable, regard being had of the direct benefits which the member(s) may derive from the proposed expenditure for which the special levies are imposed. The trustees shall be entitled to recover from certain members or groups of members, by means of the imposition of

special levies, expenditure incurred by the Association which the trustees in their sole discretion consider to benefit primarily or only such members or groups of members.

- 10.13 The person who is the registered owner at the time any special levy is raised is the person responsible for the payment of the full special levy even though there may be some relaxation in the number of months over which the special levy may be paid.
- 10.14 Any overdue payment of levies shall bear compound interest from the date when it is due to the date when payment is actually made at rate of interest charged at 2% per month or at such rate as may be determined by the board of trustees from time to time.
- 10.15 In the event that the Association has to register as a VAT (Value Added Tax) vendor, the Association may be obliged to pay VAT calculated on the levies levied payable by the members and, in such an event, the members will be obliged to pay such VAT that may be levied by the Association on receipt of a VAT invoice.
- 10.16 Notwithstanding anything contained in this clause 10, the Developer shall determine the amount payable in respect of levies on residential and other erven, and sectional title units, which have not been transferred to a third party and are still registered in favour of the Developer. In determining this amount, the Developer shall take cognizance of the services rendered to such erven and sectional title units.
- 10.17 All levies received from members shall forthwith be deposited in a separate account which the Association shall open and keep with a financial institution.
- 10.18 In the event of there being a dispute with regard to the amount of levy payable by a member, such dispute shall be referred to the auditors who shall act as experts and not as arbitrators and whose decision thereon shall be final and binding on the member and the Association.
- 10.19 Each member shall be obliged to make payment of the above mentioned levy or special levy by way of a stop order or debit order if call upon to do so by the committee members of the association. Should a member fail to comply with a request by the committee members to pay by stop order or debit order then the association shall be entitled to charge such member an administration fee in an amount to be decided by the committee members for each month that payment is made in any way other than by stop order or debit order.

## 11 OTHER PROFESSIONAL OFFICERS

Save as specifically provided otherwise in this constitution, the board of trustees shall at all times have the rights to engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, architects, engineers, and other professional persons or firms and/or any other employee/s whatsoever, for any reasons deemed necessary by the board of trustees and on such terms as the board of trustees shall decide.

## 12 PROCEEDINGS OF THE BOARD OF TRUSTEES

- 12.1 The board of trustees may meet, adjourn and otherwise regulate their meetings as they deem fit, subject to this constitution.
- 12.2 Meetings of the board of trustees shall be held at least once every quarter, provided that if 80% (eighty percent) of the trustees shall in writing have waived the above requirement in respect of a particular quarter then no meeting of the board of trustees needs be held for that quarter.
- 12.3 The chairman shall preside as such at all meetings of the board of trustees, provided that should at any meeting of the board of trustees the chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the vice-chairman shall act as chairman at such meeting, provided further that should the vice-chairman also not be present within a further 15 (fifteen) minutes of the time appointed for the holding of such meeting, those present of the trustees shall vote to appoint a chairman for the meeting, who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.
- 12.4 A trustee shall take minutes of every board of trustees meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall to the extent it is so, be certified correct by the chairman of the meeting. All minutes of board of trustees meetings shall after certification as aforesaid be placed in a board of trustees minute book to be kept in accordance *mutates mutandis* with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The board of trustees minute book shall be open for inspection at all reasonable times by a trustee, the auditors, the members and the local authority.
- 12.5 All competent resolutions recorded in the minutes of any board of trustees meeting 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 board 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 board of trustees.
- 12.6 A resolution signed by all the trustees shall be valid in all respects as if it had been duly passed at a meeting of the board of trustees duly convened.



**13 GENERAL MEETINGS OF ASSOCIATION**

- 13.1 The Association shall, before the month of August in each calendar year, hold a general meeting as its annual general meeting. This meeting shall be in addition to any other general meetings during that year, and shall specify the meeting as such in the notices calling it, in terms of clause 14 below.
- 13.2 Such annual general meeting shall be held at such time and place subject to the foregoing provisions, as the board of trustees shall decide from time to time.
- 13.3 All general meetings other than annual general meetings shall be called special general meetings.
- 13.4 The board of trustees, may, whenever they think fit, convene a special general meeting, and a special general meeting shall also be convened on the request of not less than 10% (ten per centum) of all members of the Association.

**14 NOTICE OF MEETINGS**

- 14.1 The annual general meeting and a meeting called for the passing of a special resolution, shall be called with not less than 21 (twenty one) days notice in writing, and a special general meeting, other than one called for the passing of a special resolution, shall be called with not less than 14 (fourteen) days notice in writing.
- 14.2 In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and:
- 14.2.1 in the case of special business, in addition to any other requirements contained in the constitution, the general nature of that business shall be given; and
- 14.2.2 in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given.

**15 SERVICE OF NOTICES**

- 15.1 A notice shall be in writing properly addressed to the member at the address of the residential erf or sectional title unit owned by him, and shall be given or served by the Association upon him by physical delivery or by post to that address, or where the member has elected in writing, to his electronic email address.
- 15.2 No member shall be entitled to have a notice served on him at any physical address other than an address within the Republic of South Africa. Any member may require the Association, by notice, to record a physical address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
- 15.3 Any notice sent in accordance with 15.1 shall be deemed to have been served on the day but one following that on which the notice was sent.
- 15.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

**16 VENUE OF MEETINGS**

General meetings of the Association shall take place at such place/s as shall be determined by the board of trustees from time to time.

**17 QUORUM**

- 17.1 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 in aggregate not less than 5% (five percent) of the voting rights in the Association, present in person or by proxy, and entitled to vote.
- 17.2 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved, and in any other case it shall stand adjourned to the same day in the next week, at the same place and time, and if at such adjourned meeting, the members present shall constitute a quorum.
- 17.3 Where a meeting has been adjourned in terms of clause 17.2, the Association shall, within 3 (three) days of the adjournment of such meeting, send written notice of such adjournment to each member stating:
- 17.3.1 the date, time and place to which the meeting has been adjourned;
- 17.3.2 the matter before the meeting when it was adjourned; and
- 17.3.3 the grounds for adjournment.

18 **AGENDA AT MEETINGS**

The following matters shall be dealt with at every annual general meeting:

- 18.1 the consideration of the chairman's report to the trustee's committee;
- 18.2 the election of the board of trustees;
- 18.3 any resolutions proposed for adoption by such meeting and the voting upon any such resolutions
- 18.4 the consideration of any other matters raised at the meeting
- 18.5 the consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting and the approval and adoption thereof; and
- 18.6 the consideration of the report of the auditors and the approval and the acceptance thereof.
- 18.7 the consideration of the budgets for the association for the current year of operation and the approval thereof.

19 **PROCEDURE AT GENERAL MEETINGS**

- 19.1 The chairman shall preside, as such, at all general meetings, provided that should he not be present within 30 (thirty) minutes after the time appointed for the holding thereof, then the vice-chairman, shall act as chairman at such meeting, provided further that should the vice-chairman also not be present within 30 (thirty) minutes of the time appointed for the holding of such meeting, then the members present at such meeting entitled to vote, shall vote to appoint a chairman for the meeting, who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.
- 19.2 The chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for 10 (ten) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjournment meeting.
- 19.3 Except as otherwise provided for herein, all general meetings shall be conducted in accordance with generally accepted practice.

20 **PROXIES**

- 20.1 A member may be represented at a general meeting by a proxy, who need not be a member of the Association. The instrument appointing a proxy shall be in writing signed by the member concerned or his duly authorized agent in writing, but need not be in any particular form, provided that:
  - 20.1.1 where a member is more than one person, any one of those persons shall sign the instrument appointing a proxy on such member's behalf;
  - 20.1.2 where a member is a company, the same shall be signed either by the chairman of the board of directors of the company or by its secretary;
  - 20.1.3 where a member is an Association of persons, the same shall be signed by the secretary thereof;
  - 20.1.4 where a member is a close corporation, the same shall be signed by any member;
  - 20.1.5 where a member is a trust, the same shall be signed by any trustee.
- 20.2 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a certified copy thereof shall be deposited at the principal place of business of the Association at any time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy, shall be valid after the expiration of 12 (twelve) months from the date of its execution.
- 20.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the board of trustees at least one hour before the time fixed for the holding of the meeting.

21 **VOTING**

- 21.1 At every general meeting, every member in person or by proxy and entitled to vote shall have one vote for each residential erf or sectional title unit registered in his name. The Developer shall be entitled to a single vote in respect to each unregistered residential erf or sectional title unit held by it.
- 21.2 Save as expressly provided for herein, only a member who is duly registered shall be entitled to be present or to vote on any question, either personally or by proxy at any general meeting provided that any member who is under suspension or is in arrears with his member's levies shall not be so entitled to be present or to vote as contemplated herein at any general meeting.
- 21.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands.
- 21.4 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall not be voted upon.
- 21.5 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a simple majority of all the votes cast thereon, 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, whether on a show of hands or on a poll, the chairman of the general meeting shall be entitled to a casting vote in addition to his vote as member.
- 21.6 Notwithstanding anything contained in this constitution, any resolution or the amendment of a resolution:
- 21.6.1 which would have the effect of amending or repealing any part of this constitution; or
- 21.6.2 which would have the effect of amending or repealing clause 31 of this constitution which clause precludes subdivision or rezoning of the erven or the erection of more than one dwelling per residential erf or sectional title unit; or
- 21.6.3 which would have the effect of amending or repealing clauses 32 or 33 dealing with the aesthetics approval and the architectural guidelines;
- shall require a 75% (seventy five percent) majority of all members entitled to vote before the resolution may be passed, which shall be known as a special resolution.
- 21.7 Unless any member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the meeting, such declaration by the chairman 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 chairman of the meeting as to the result of the voting at the meeting.
- 21.8 Notwithstanding any other provision of this constitution, any rule and/or regulation passed in pursuance hereof and/or any code, the Developer shall have an overriding right and shall be entitled, but not obliged, to veto any decision of the Association until the Developer has sold and registered transfer to members of at least 75% (seventy five percent) of the erven comprising the land.

## 22 FINANCIAL YEAR END

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

## 23 ACCOUNTS

- 23.1 The accounts and books of the Association shall be open to the inspection of members at all reasonable times during normal business hours.
- 23.2 At each annual general meeting the board of trustees shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Such annual financial statements shall be accompanied by proper and extensive reports of the board of trustees and the auditors which shall be attached to the notice sent to members convening each annual general meeting. The abovementioned annual financial statements of the Association shall be framed in accordance with the provisions of the Act and any other documents required by law to accompany same.

## 24 AUDIT

- 24.1 At least once every year, the financial statements of the Association shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by the auditors.

24.2 The auditors shall perform such duties as are performed by auditors of any registered company.

**25 INDEMNITY**

25.1 All members of the board of trustees and the auditors shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a trustee member, in his capacity as chairman or vice-chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court.

25.2 Every member of the board of trustees, every servant, agent and employee of the Association, and the auditors shall be indemnified by the Association against all costs, losses and expenses including travelling expenses which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including the case of a trustee member, his duties as chairman or vice-chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act deed or letter has been done or written in good faith. It shall be the duty of the board of trustees to pay out of the funds of the Association.

25.3 A trustee member shall not be liable for the acts, receipts, neglect or default of the auditors or of any of the other members of the board of trustees, whether in their capacities as trustee members or as chairman or vice-chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the board of trustees for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or fortuitous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of *bona fides* or breach of duty or breach of trust.

**26 BREACH**

26.1 Should any member:

26.1.1 fail to pay any of his levies when they are due and continue not to pay within seven (7) days after having received notice by the board of trustees; or

26.1.2 fail to comply with any provision of this constitution, including without limitation, failing to adhere to the architectural design guidelines, and not make any effort to comply with that provision within a reasonable period after having been called upon to do so by the trustees to comply with the provision;

then, in addition to the right to claim damages or any other legal right, including but not limited to applying to the High Court of South Africa for a mandatory interdict to force compliance by the member for which the member hereby authorizes such action, the trustees may proceed with legal action against that member for the appropriate remedy or, if clause 26.1.2 applies, rectify that member's failure to comply and claim all the costs of doing so from that member immediately.

26.2 If the trustees proceed with legal action against any member, that member will have to pay all of the trustee's legal and other costs which have been incurred in connection with the legal action on the attorney and own client scale.

**27 WATER**

27.1 Each residential erf and each sectional title body corporate shall have a municipal water supply for household use and the members shall be obliged to pay the local authority for such water consumed. Where the Association is billed directly by the local authority for such water then a sub-meter shall be installed by the Association at the cost of each relevant member who shall pay to the Association from time to time for such water used in the manner determined by the Association.

**28 RATES AND TAXES**

Each member shall pay such rates and taxes as are levied in respect of his residential erf or sectional title unit to the relevant local authority.

**29 TRANSFER OF COMMON PROPERTY**

It is recorded that as soon as reasonably possible after the coming into operation of the Association, the Developer will endeavor to transfer the common property to the Association which shall thereafter be responsible for the maintenance and upkeep thereof.

**30 DEALINGS WITH THE COMMON PROPERTY**

- 30.1 Neither the whole nor any portion of the common property shall be:
- 30.1.1 sold, alienated, otherwise disposed of, subdivided or transferred; or
- 30.1.2 subjected to a mortgage; or
- 30.1.3 subjected to any rights, whether registered in the Deeds Registry or not, of use, occupation or servitude (save those enjoyed by the members); or
- 30.1.4 built upon, improved or enhanced in value by the construction of buildings, erection of facilities or amenities at a cost of more than Two Hundred and Fifty Thousand Rand (R250 000)
- other than as contained in this constitution and in the approved layout plan, without the sanction of a special resolution of members.
- 30.2 On any upgrade up to the value of Two Hundred and Fifty thousand Rand (R250 000) the trustees will have the authority to proceed on a trustee resolution. This amount cannot be spent more than twice in any financial year.
- 30.3 For unforeseen and or ad-hoc maintenance expenditure that has not been budgeted for, the trustees may authorize expenditure up to One Hundred Thousand Rand (R100 000).

**31 NO SUBDIVISION OR REZONING AND NOT MORE THAN ONE DWELLING**

- 31.1 No member shall be entitled to subdivide or rezone his residential erf or sectional title unit without the prior written consent of the Association and the local authority.
- 31.2 No more than one dwelling, together with such outbuildings as are ordinarily required to be used in connection therewith, shall be erected on any member's residential erf or sectional title unit.
- 31.3 To the extent a member consolidates 2 (two) erven such member shall be responsible to pay twice the levies and/or other charges levied by the Association.

**32 BUILDING STANDARD RULES**

- 32.1 No member shall be entitled to build on his residential erf or sectional title unit or effect any improvement thereto or erect any structure thereon without having received the prior written approval of the design review committee which may be established by the board of trustees from time to time.
- 32.2 No member shall be entitled to alter any construction thereon or to alter or vary the design or façade of his building, dwelling or improvements so constructed, without having received the prior written approval of the design review committee.
- 32.3 Prior to providing approval in terms of clause 32.1 or 32.2 above, the design review committee may require the following information and/or documentation to be lodged with them:
- 32.3.1 drawings and plans of the proposed construction, alteration or improvement;
- 32.3.2 details of materials to be used;
- 32.3.3 a geotechnical report in respect of the land to be developed;
- 32.3.4 a detailed survey of the land to be developed;
- 32.3.5 such fee as may be determined by the design review committee from time to time;
- 32.3.6 any other documentation or information that the design review committee considers necessary.
- 32.4 The approval of the design review committee in terms of this clause 32 shall not preclude the member from obtaining such approval as may be necessary from the local authority.
- 32.5 No member shall be entitled to undertake any form of alteration and/or construction of a proposed and/or existing building, dwelling or improvement on his residential erf or sectional title unit (and any other property situated on the land) other than in accordance with such code of conduct prescribed by the board of trustees from time to time, and before and until such member shall have:
- 32.5.1 procured that his contractor has read and understood the code of conduct and shall have signed an undertaking to abide by such code of conduct;

32.5.2 delivered the undertaking provided for in clause 32.3.1 above and shall have received the Association's acceptance thereof in writing; and

32.5.3 the contractor shall have received, from the Association, his written certificate to commence construction.

### 33 **AESTHETICS APPROVAL**

33.1 Only improvements which are in harmony with and enhance the desired architectural character of the estate and which improvements are sympathetic in style to each other may be built on a residential erf or sectional title unit. For this purpose the design review committee shall appoint an architect to ensure compliance with the architectural design guidelines attached hereto. The design review committee shall further be responsible for the management and control of building activities within the estate.

33.2 The design review committee approval procedure shall consist of the following:

33.2.1 the designation of a suitably qualified and experienced registered architect as review authority for all building plans;

33.2.2 the approval of all building plans, such building plans which shall be drafted by registered architects or architectural draftsmen and submitted by a member for the improvement of his residential erf or sectional title unit; and

33.2.3 the ruling of the design review committee or its appointed agent shall be final and binding on the member.

33.3 The Association shall be entitled to charge fees, as contemplated in the architectural design guidelines.

33.4 A member will be required to apply to the design review committee for a plan compliance certificate upon completion of his construction works and fees shall be determined by the Association for the period between the issuance of the certificate to commence construction and the plan compliance certificate.

33.5 In order to maintain the architectural character of the estate for the benefit of all members, the Association shall be responsible for painting the exterior of all buildings within the estate on the common property, but excluding buildings on residential erven and sectional title units.

### 34 **MANAGING AGENT**

The Developer shall appoint the first managing agent/s to manage the affairs for the Association in order to meet the object and purpose of the Association. The said appointment shall be for an initial period of 5 (five) years from the date of transfer of the first residential erf or sectional title unit from the Developer to a member, such appointment to remain until terminated by the Association, such termination which may not be within the initial 5 (five) year appointment referred to herein.

### 35 **GENERAL**

35.1 The board of trustees or its agents shall not be liable for any injury or loss or damage of any description.

35.2 which any member or occupier of property or any member of his family, his employee or servant or his relative, friend, acquaintance, visitor, invitee or guest may sustain, physically or to his or their property, directly or indirectly, in or about the common property or in the individual property by reason of any defect in the communal area, its amenities or for any act done or for any neglect on the part of the trustees or any of the Association's employees, servants, agents or contractors.

35.3 The board of trustees or its representatives and servants shall not be liable or responsible in any manner whatsoever for the receipt or the non-receipt and delivery or non-delivery of goods, postal matter or any other property.

35.4 The board of trustees or its representatives or servants or agents shall be entitled to have access to any erven on the estate for the sake of maintenance of services and gardens or painting the exterior of buildings.

35.5 A member shall not use or permit his home to be used for any purpose which is injurious to the reputation of the estate.

35.6 All members and occupiers shall meet all rules that may be imposed by the board of trustees for the benefit of the members in the estate, more particularly, in relation to those that exist for entry and exit to the estate which shall include taking responsibility for the guests and employees.

35.7 All members and occupiers shall meet all security measures that may be imposed by the trustees from time to time for the benefit of the members in the estate and members and occupiers shall similarly ensure that their guest meet such security measures as may be imposed by the board of trustees from time to time.