

**CONSTITUTION**  
**(UPDATED VERSION)**  
**(2025)**

OF

**OUTENIKUASBOSCH**  
**HOMEOWNERS ASSOCIATION**

MUNICIPALITY MOSSEL BAY  
MUNISIPALITEIT MOSSELBAAI

12-08-2025

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**raubenheimers** attorneys

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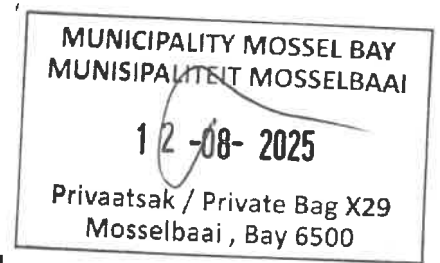
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**OUTENIKUASBOSCH  
HOMEOWNERS ASSOCIATION**



**1 NAME**

The name of the association is Outeniquasbosch Homeowners Association.

**2 DEFINITIONS AND INTERPRETATIONS**

- 2.1 In this constitution, unless inconsistent with or otherwise indicated by the context, the following terms shall have the following meanings assigned to them:
- 2.1.1 **"AGM"** means the annual general meeting of the Association as referred to in clause clauses 9.1.1 and 9.1.3;
- 2.1.2 **"alienate"** with reference to any erf or any part thereof, includes alienation by way of sale, exchange, donation, inheritance, cession, assignment and letting for more than 10 (ten) years to the same person, irrespective of whether such alienation is subject to a suspensive or resolutive condition, and **'alienation'** shall have a corresponding meaning;
- 2.1.3 **"the approvals"** means all statutory approvals relating in any manner to the zoning and development of Outeniquasbosch including but not limited to approvals granted in terms of LUPO, LUPA, any Record of Decision issued by a national or provincial Department of Environmental Affairs and Development Planning and any approval relating to the construction of roads and the supply of water, electricity, sewer and refuse removal services;
- 2.1.4 **"the Architectural Design Manual"** and **"ADM"** means the manual describing the architectural design of buildings in the development and matters related thereto approved in writing by the developer before the first transfer of an erf in the development in the name of a member, as amended from time to time in terms of clause 10.1.6;
- 2.1.5 **"the Architectural Rules"** means the rules relating in general to the approval and execution of building plans and matters incidental thereto approved in writing by the developer before the first transfer of an erf in the development in the name of a member, as amended from time to time in terms of clause 10.1.7;
- 2.1.6 **"the Association"** means the Outeniquasbosch Homeowners Association established in terms of Section 29(1) of LUPO read with

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LUPA, and **"the HOA"** shall have the same meaning

- 2.1.7 **"auditors"** means the auditors of the Association appointed by the AGM from time to time;
- 2.1.8 **"clear days"** means the number of days required for a written notice to members, which shall be exclusive of the day on which it is served or deemed to be served and the day for which it is given;
- 2.1.9 **"the Committee"** means the management committee referred to in clause 7;
- 2.1.10 **"the common property"** means the erven comprising the private open spaces, roads and erven set aside for accommodating the electrical, water, sewerage and waste storage services of the development, any land which may be designated in any manner or in terms of any law or condition of approval for purposes of use in common by the members and/or the public (which shall include all fences and access control areas of the development), all of which are to be registered in the name of the Association, and **"communal areas"** shall have a corresponding meaning;
- 2.1.11 **"the/this Constitution"** means the Constitution set out in this document as amended from time to time;
- 2.1.12 **"the Construction Rules"** means the rules relating in general to the execution of building work in the development approved in writing by the developer before the first transfer of an erf in the development in the name of a member, as amended from time to time in terms of clause 10.1.8;
- 2.1.12A **"control"** in relation to a corporate entity shall, when used in this Constitution, have the meaning assigned to the term in terms of section 2(2) of the Companies Act, 2008, and 'change of control' shall have a corresponding meaning;  
[INSERTED : 21/06/2025]
- 2.1.12B **"corporate entity"** means a company registered in terms of the Companies Act, 2008, a close corporation registered in terms of the Close Corporations Act, 1984 and a trust duly registered with the Master of the High Court;  
[INSERTED : 21/06/2025]
- 2.1.13 **"the CSOS Act"** means The Community Schemes Ombud Services Act, 9 of 2011, including the Regulations made in terms of the said Act;
- 2.1.14 **"the developer"** means Meros (Pty) Limited, registration number

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1972/009278/07 and its successor(s) in title and assigns,

- 2.1.15 **"the development"** means –
- 2.1.15.1 when referred to as a geographical area, the township laid out on portions 9, 15 and 16 (Morgenster) of the Farm Outeniquasbosch 149, Mossel Bay and portions 10 and 28 of the Farm Hartenbosch 217, Mossel Bay, and **"Outeniquasbosch"** shall have a corresponding meaning; and
- 2.1.15.2 when used as a verb, the improvement of erven in the development with residential housing properties or other facilities in accordance with the approved zoning and Architectural Design Manual, subject to any statutory approvals pertaining to the development;
- 2.1.16 **"the development period"** means the period starting from the first transfer of an erf in the development by the developer to a third party and ending when the developer owns less than 10 erven in the development or when the developer in writing to the Association waives all rights granted to the developer in terms of this Constitution, whichever occurs first;
- 2.1.17 **"erf"** means an erf as defined in section 102 of the Deeds Registries Act, 1937 (Act No 47 of 1937) which is registrable as defined in section 1 of the Alienation of Land Act, 1981 (Act No 68 of 1981), and **"property"** shall have a corresponding meaning;
- 2.1.18 **"facilities"** means all and any facilities or amenities of whatsoever nature which may be provided within Outeniquasbosch for purposes of use in common by the members, including but not limited to any swimming pools, tennis courts, clubhouse or suchlike facilities;
- 2.1.19 **"family"** with reference to the occupation of a property zoned for residential purposes, a single family as provided for in terms of the zoning scheme applicable to the property, subject to clause 5.17;
- 2.1.20 **"financial year"** means March of any year to the end of February of the following year;
- 2.1.21 **"the game management plan"** means the written plan for the management of game within the development prescribed by the developer and if required in law, approved by any competent authority, as amended from time to time;

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- 2.1.22 "good standing" in relation to a member or a person nominated for selection as a member of the Committee means a person who is not in arrears by more than 30 (thirty) days with payment of any amount owing to the Association;
- 2.1.23 "LUPA" means Western Cape Land Use Planning Act, No 3 of 2014 and the By-Law on Municipal Land Use Planning for Mossel Bay Municipality;
- 2.1.24 "LUPO" means the Western Cape Land Use Planning Ordinance, 1985, Ordinance No 15 of 1985, as amended, and "the Ordinance" shall have a corresponding meaning;
- 2.1.25 "levy" or "levies" means the levy or levies referred to in clause 12;
- 2.1.26 "the managing agent" means any person appointed by the Committee as an independent contractor to undertake specified management functions in respect of the development;
- 2.1.27 "member" means an owner who, automatically becomes a member of the Association upon the registration of a property in his name;
- 2.1.28 "the municipality" means when referred thereto as –
- 2.1.28.1 an entity, Mossel Bay Municipality as a municipality described in Section 2 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), including a duly authorized official of Mossel Bay Municipality; and
- 2.1.28.2 a geographical area, the area of jurisdiction of Mossel Bay Municipality as determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998);
- 2.1.29 "owner" means a person in whose name a property in the development is registered in the Deeds Registry, Cape Town;
- 2.1.30 "person" includes a company, close corporation, trust, partnership or other association of persons capable of owning immovable property;
- 2.1.31 "prescribed" or "determined" means determined by the Committee or the HOA in general meeting, as the case may be;
- 2.1.32 "prime rate" means the publicly quoted basic rate of interest (percent, per annum, compounded monthly in arrear and calculated on a 365 day year irrespective of whether or not the year is a leap year) from time to time published by Standard Bank of South Africa Limited or its successor-in-title as being its prime overdraft rate, as certified by any manager of the

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said bank, whose appointment and designation ~~need not be proved and~~  
whose certificate shall be prima facie proof of the rate of interest  
concerned and the period during which it applied;

- 2.1.33        **"the reserve fund"** means the capital sum of the reserve fund contributions together with the interest earned on the capital sum as more fully referred to in clause 4.18;
- 2.1.34        **"the reserve fund contributions"** means the amounts payable to the Association upon the transfer of a property as more fully set out in clause 4.17;
- 2.1.35        **"rules"** means those rules enacted from time to time by the Association in general meeting or by the Committee, as the case may be, to control, regulate and manage the general conduct and behavior of members, their families, guests, visitors, contractors, employees and invitees in the development;
- 2.1.36        **"the schedule of contraventions and penalties"** means the schedule of contraventions and penalties applicable in respect thereof approved in writing by the developer before the first transfer of an erf in the development in the name of a member as amended from time to time in terms of clause 17.4;
- 2.1.37        **"services"** means such utilities, facilities and services as may be provided to, by or on behalf of the Association for use by the owners and residents within Outeniquasbosch;  
[AMENDED : 21/06/2025]
- 2.1.38        **"SGM"** means a Special General Meeting as referred to in clause 9.1.4;
- 2.1.39        **"short term letting"** means letting of a property in the development for a period of less than 2 (two) months at a time;
- 2.1.40        **"special resolution"** means a resolution adopted with the supporting vote of at least 75% of the total number of voting rights present or represented at the meeting exercised in favour of the resolution;
- 2.1.40A       **"spouse"** in relation to a member, means a spouse as defined in terms of the Income Tax Act, 1962, and a spouse as defined in terms of the Intestate Succession Act, 1987, whichever may be applicable;  
[INSERTED : 21/06/2025]
- 2.1.41        **"statutory approval"** means any approval, consent or authorisation granted by a competent authority at any sphere of government in respect of or relating to the development;

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- 2.1.42 "visitors" in relation to a property, means any visitor, including goods deliveries, service providers, building contractors, maintenance entities or any other person not residing at the property;
- 2.1.43 "VAT" means Value-Added Tax in terms of the VAT Act;
- 2.1.44 "the VAT Act" means the Value-Added Tax Act, 1991, as amended;
- 2.1.45 any reference to the singular includes the plural and *vice versa*;
- 2.1.46 any reference to natural persons includes legal persons and *vice versa*;
- 2.1.47 any reference to any gender includes the other genders.
- 2.2 The clause headings in this Constitution have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.3 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 2.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, effect shall be given to it as if it were a substantive clause in the body of the Constitution, notwithstanding that it is only contained in the interpretation clause.
- 2.5 If any period is referred to in this Constitution by way of reference to a number of days (excluding a reference to "clear 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 (being any day other than a Saturday, Sunday or South African public holiday), in which case the day shall be the next succeeding business day.
- 2.6 This Constitution shall be governed by, construed and interpreted in accordance with the law of the Republic of South Africa.
- 2.7 The provisions of the Architectural Rules, the Architectural Design Manual, the Construction Rules and the schedule of contraventions and penalties must be read with the provisions of this Constitution and shall be binding on the members as if these documents are incorporated into this Constitution : provided that should there be any discrepancy between the provisions of this Constitution and that of any of the said documents, the provisions of the Constitution shall prevail.
- 2.8 Where any consent or approval is required for any act by a member, such consent or approval shall be in writing and duly signed by the Association, and shall be required to be given prior to the member taking action.

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- 2.9 In the event of a member consisting of more than one person, they shall be jointly and severally liable *in solidum* for all their obligations in terms of this Constitution.
- 2.10 Any notice which is required to be in writing may be given by electronic communication or faxed to the addressee's e-mail address or fax number of which the person concerned notified the Association or which he normally uses in his communication with the Association.
- 2.11 Any requirement of this Constitution providing that an act must be 'acceptable' shall mean acceptable to the Committee and if it is required that an act shall be performed 'satisfactorily', it shall mean satisfactorily to the Committee.
- 2.12 Any waiver, relaxation, extension of time, delay or failure (together referred to as "relaxation") by the Association in exercising any right in terms of this Constitution shall not be construed as a waiver of that right and shall not operate as an estoppel against the Association or affect the ability of the Association subsequently to exercising or enforcing any of its rights and the obligations of any member, nor shall any relaxation constitute a waiver of any other right. The waiver of any right in terms of this Constitution shall be binding on the Association only to the extent that the waiver has been reduced to writing and signed by the duly authorized representative(s) of the Association.
- 2.13 The provisions of clause 10, the Architectural Rules and the Architectural Design Manual shall be interpreted with due regard to the contextual framework set out in paragraphs 1 and 3 of the Architectural Design Manual, which allows for flexibility in the enforcement of the Architectural Design Manual without jeopardizing the principle that the parameters prescribed in terms of the Architectural Design Manual have been designed to ensure the establishment of a housing estate in which the architectural appearance of no house shall detrimentally affect the value of any house or houses or not be in keeping with the "look and feel" of the development as projected in paragraphs 1 and 3 of the Architectural Design Manual.

### **3 THE OBJECTIVES AND THE STATUS OF THE ASSOCIATION**

- 3.1 The objectives of the Association are:
- 3.1.1 To further and maintain the standards and in particular the unique and distinctive character of the development in such a way that the members get the greatest joint benefit from it.
- 3.1.2 To further and maintain the aesthetic appearance, environmental

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character and architectural style of the development in accordance with the design principles as described in the Architectural Design Manual in order to maintain a harmonious development.

- 3.1.3 To generally manage the development and to represent owners in any matters affecting their collective interest.

3.2 The Association is:

- 3.2.1 A juristic person, capable of suing and being sued in its own name, and it shall have all of the legal powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power or having any such a capacity, or this Constitution provides otherwise.

- 3.2.2 An Association of which none of its members shall in their personal capacity have any right, title and interest in the property, funds or assets of the Association, which shall vest in and shall be controlled by the Committee in terms of this Constitution.

- 3.2.3 An Association without profit motive, established for the benefit of the owners.

3.3 The main business of the Association shall include the following:

- 3.3.1 To maintain and control the common property.
- 3.3.2 To provide security services for Outeniquasbosch and to control access to and egress from Outeniquasbosch.
- 3.3.3 The promotion, advancement and protection of the communal and group interests of the members generally in regard to Outeniquasbosch and that of residents and visitors to Outeniquasbosch.
- 3.3.4 To provide water, electrical and suchlike services to owners and to enter into service or other applicable agreements with owners and the Municipality or any other authority or supplier of services for these purposes.
- 3.3.5 To manage, control and regulate all building and construction work in the development and for purposes thereof to enforce the Architectural and Construction Rules, subject thereto that the Association shall not be responsible for any quality control and related actions, which shall be and remain the duty of the owner.

[AMENDED : 24/06/2023]

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- 3.3.6 To manage, control and regulate the manner in which owners and persons for whose conduct they are responsible use the common property and generally behave in the development and for purposes thereof to enforce penalties for prescribed contraventions.

#### **4 ESTABLISHMENT AND MEMBERSHIP**

- 4.1 The Association is constituted as a Homeowners association in terms of LUPO read with LUPA, and in accordance with the approval and the conditions imposed by Mossel Bay Municipality in their letter of 7 May 2015, signed by the Director: Development and Planning as it applies to the zoning and subdivision of the development.
- 4.2 The Association has as members the owners of properties arising from the subdivision of the development, which members are co-liable for expenses incurred by the Association to fulfil its objectives. Membership of the Association is limited to the registered owners of properties in the development: provided that –
- 4.2.1 where any such registered owner comprises of more than one person, all the registered owners of that property are jointly and severally deemed to be one member of the Association;
- 4.2.2 a person who is entitled to register a certificate of registered title in respect of any property, is deemed to be the registered owner thereof.
- 4.3 Membership shall commence simultaneously with registration of transfer of a property into the name of the transferee. When a member ceases to be a registered owner of a property, he shall then *ipso facto* cease to be a member of the Association.
- 4.4 No owner shall be entitled to sell or transfer in any manner his erf (or any part thereof) unless it is a condition of such alienation that –
- 4.4.1 the transferee shall become a member of the Association;
- 4.4.2 the registration of transfer of the erf into the name of the transferee shall *ipso facto* constitute the transferee as a member of the Association;
- 4.4.3 the member first obtains the written consent of the Association, which consent shall be given provided that -
- 4.4.3.1 the transferee of such erf agrees in writing to be bound by the provisions of the Constitution;

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4.4.3.2 such member has paid all levies and other amounts owing by such member to the Association as at the date of transfer of the erf;

4.4.3.3 such member has otherwise duly complied with all of the obligations of such member in terms of the Constitution.

4.5 The owner may not resign as a member of the Association. Membership of the Association shall be compulsory for every registered owner of a property in Outeniquasbosch.

4.6 The rights and obligations of a member are not transferable and each member shall -

4.6.1 to the best of his ability promote the objectives and interests of the Association;

4.6.2 comply with the provisions of the Constitution, all decisions of this Association and all rules made by the Committee.

4.7 The Association shall, in order to give effect to the provisions of this clause 4, be entitled to register any of these provisions as conditions of title against the title deeds of properties in the development in such terms as may be advised by conveyancers nominated by the Association or the developer.

The developer or the Association may in particular register the following wording (or such similar wording as may be advised by the conveyancers nominated by the developer or the Association) for these purposes:

**"(a) The transferee and his successors-in-title shall be a member of the Outeniquasbosch Homeowners Association. The transferee or his successors-in-title may not alienate or dispose of or transfer the property without having obtained the written consent of the said Association.**

**(b) The transferee and his successors-in-title are bound to comply with the terms of all environmental authorisations imposed in terms of the National Environmental Management Act 107 of 1998 and any suchlike legislation."**

4.8 The servitudes referred to in clause 4.7 shall be applicable *ad infinitum* on every erf in Outeniquasbosch and may only be varied or cancelled with the written consent of the developer or the Association, approved by special resolution at an AGM or SGM.

4.9 For purposes of this clause 4 it is recorded that section 40(9) of LUPA provides as follows:

*"An owners' association or home owners' association that came into being by*

*virtue of a condition imposed under the Ordinance and that is in existence immediately before the commencement of this Act is regarded as an owners' association that came into being by virtue of a condition imposed by a municipality in accordance with this Act and in terms of applicable by-laws".*

- 4.10 Where an erf is owned by more than one person, all such registered owners shall together have the rights and obligations of one member of the Association.
- 4.11 The Association shall maintain a membership register.
- 4.12 No person 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 property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such member or the estate of such member any levies in arrears or other sums due by such member to the Association at the time of such person so ceasing to be a member.
- 4.13 The Association shall exist irrespective of any change in its membership.
- 4.14 No member shall be entitled to have his property transferred to a third party unless the Association shall have issued a levy clearance certificate as more fully referred to in clause 4.15.
- 4.15 A levy clearance certificate shall not be issued unless all amounts owing by the member to the Association shall have been paid in full and the levies payable in respect of the property concerned have been paid up to the last day of the month during which registration of transfer of the property is expected.
- 4.16 The Committee, with the written consent of the developer, or the Association in general meeting, may determine the levies payable by a member for purposes of obtaining a levy clearance certificate.  
[AMENDED : 04/06/2022]
- 4.17 Upon registration of transfer of a property the registered owner (including the developer) shall pay to the Association a levy equal to 1,0% of the amount at which the property was disposed of, provided that if, in the opinion of the Committee, the price or stated value is not market related, the Committee may, at the expense of the member have the property valued by a valuer determined by the Committee, who shall act as an expert and not as an arbitrator and whose decision shall be final and binding.  
[AMENDED : 04/06/2022] [AMENDED : 24/06/2023]
- 4.18 The following provisions shall apply in respect of the levy payable referred to in clause 4.17 (defined in clause 2.1.34 as the "reserve fund levy"):

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[AMENDED : 04/06/2022]

- 4.18.1 Transfer of the property shall not be effected unless the Association has been furnished with a guarantee or letter of undertaking to its satisfaction that the reserve fund levy shall be paid to the Association against registration of transfer.  
[AMENDED : 04/06/2022]
- 4.18.2 The transferring attorney shall be entitled to deduct the reserve fund levy from the proceeds of the sale and to pay such amount over to the Association against registration of transfer of the property.  
[AMENDED : 04/06/2022]
- 4.18.3 The provisions of clauses 4.7 and 4.8 shall apply *mutatis mutandis* to the reserve fund levy.  
[AMENDED : 04/06/2022]
- 4.18.4 The reserve fund levies shall be invested by the Association in a ring-fenced account and the interest earned on the investment and the capital sum of the investment (defined in clause 2.1.33 as "**the reserve fund**") shall subject to clause 4.18.5 be used to subsidise the levies payable from time to time with the aim that the reserve fund shall be increased to and be maintained at a level at which it would be possible to not only prevent the levies from annually increasing but to decrease the levies. For purposes hereof the reserve fund shall with due regard to the provisions of clause 4.18.5 as soon as possible after the establishment thereof be increased to an amount equal to the aggregate sum of the annual levies times two (for purposes of which the formula shall be based on the number of erven already transferred from the general plan(s) of the development without having regard to erven not yet so transferred) (and be maintained at that level) before it is employed to subsidise the levies.  
[AMENDED : 04/06/2022]
- 4.18.5 The Committee may when deemed expedient, use a portion of the reserve fund to pay for major or exceptional maintenance or repair work, in event whereof the reserve fund shall as soon as possible thereafter be replenished to the minimum level referred to in clause 4.18.4 if the fund was reduced to an amount under the said minimum level.
- 4.19 The obligation to contribute towards the reserve fund shall not apply under the following circumstances:
- 4.19.1 A joint owner of property who acquires the sole ownership of the whole or a portion of the property, in respect of so much of the value of the property in which sole ownership is acquired as represents his share in

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the joint ownership of that property.

- 4.19.2 A surviving or divorced spouse who acquires the sole ownership in the whole or any portion of the property registered in the name of his/her deceased or divorced spouse where that property or portion is transferred to that surviving or divorced spouse as a result of the death of his/her spouse or dissolution of their marriage or union.
- 4.19.3 A spouse in a marriage in community of property in respect of the acquisition of an undivided half-share in property by operation of law in respect of a property owned by the other spouse prior to the date of contraction of the marriage.
- 4.19.4 Transfer is being effected to an heir or legatee in respect of property of the deceased acquired by intestate or testamentary succession or as the result of a redistribution of assets of a deceased estates in the process of liquidation.
- 4.19.5 Transfer is being effected by the trustees of a family trust (i.e. a trust designed primarily for the benefit of persons in a close family relationship including parents, spouses, children and further descendants) to a beneficiary who is a parent or child in the family concerned, provided that no transferee may directly or indirectly pay any compensation for or in respect of the property.  
[AMENDED : 21/06/2025]
- 4.19.6 If a mortgage bond is registered over the property in favour of a Bank and the Bank forecloses and the property is subsequently sold in terms of a court order.  
[INSERTED : 24/06/2023]
- 4.19.7 For the avoidance of doubt it is provided that –
- 4.19.7.1 if no purchase consideration is payable on the transfer of an erf, or on the transfer of an interest in an erf, then the said levy shall be due and payable on the fair and reasonable market value of the erf, determined by the valuer referred to in clause 4.17;
- 4.19.7.2 the obligation to contribute towards the reserve fund shall also apply to the transfer of any interest in the registered owner if such transfer involves the transfer of a share or shares in a company, a member's interest in a close corporation and the changing of trustees and beneficiaries of a trust in a manner which effectively involves a change of control in respect of the trust.

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## **5 STATUTORY AND GENERAL DUTIES**

- 5.1 No member shall transgress any law, ordinance, regulation, proclamation or other statutory provision or measure having the force of law, or the conditions of any licence or approval that pertains to or affects the occupation of his property or the common property, or the conditions of title pertaining to his property, nor allow them to be transgressed.
- 5.2 Over and above his obligations in terms of clause 5.1 in relation to all applicable laws, approvals and conditions of title, each member -
- 5.2.1 shall see to it that all occupants of his property or visitors to his property shall comply with the provisions of this Constitution to the extent that it relates to the conduct and behaviour of a member;
- 5.2.2 warrants in respect of any tenant of his property that –
- 5.2.2.1 he will furnish his tenant with a copy of this Constitution as an annexure to the agreement of lease with the tenant;
- 5.2.2.2 he accepts responsibility for the conduct of his tenants and their visitors;
- 5.2.2.3 he shall, in advance, notify the Committee and the managing agent of the date on which a tenant shall commence occupying the property and the agreed duration of the lease in question as well as the tenant's name and contact details;
- 5.2.2.4 he shall not be entitled to allow the tenant to take occupation of the property before the provisions of clauses 5.2.2.1 and 5.2.2.3 have been complied with; and
- 5.2.2.5 he warrants that the tenant and his visitors shall comply with the provisions of this Constitution as far as it relates to the required conduct and behaviour of an owner of a property in terms of this Constitution and he accepts responsibility for the acts of his tenant and such tenant's visitors.
- 5.3 No member shall do anything on his property that could possibly change or harm the aesthetic appearance of the development.
- 5.4 No member shall erect or construct a structure or make an improvement on the property otherwise than in accordance with and as approved in terms of the Architectural Design Manual.
- 5.5 No member shall erect any advertising boards or signage of whatsoever kind on the property other than security service provider signs and house names.

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- 5.6 No member shall place or store any refuse or refuse containers so that it shall be visible from any other houses or the common property. All refuse shall be placed at such place or places as are required for removal thereof by the municipality from time to time.
- 5.7 No member shall keep more than 2 (two) domestic animals/pets on any property, which must be kept in such a way that it shall not cause a nuisance or a hazard or unduly interfere with the peaceful use and enjoyment by a member of his or her property or the common property.
- 5.8 No member shall allow animal faeces to be deposited on or in any erf, street, pavement, park or recreational area, and should it happen, the member shall be responsible for the immediate removal of the excrement.  
[AMENDED : 21/06/2025]
- 5.9 The Association shall have the right to demand that a resident remove a pet should such pet become a continuous nuisance or a danger in the development.
- 5.10 Poultry, racing pigeons, aviaries, rabbits, wild animals, livestock or the like shall not be permitted to be kept by residents in the development, whether as pets or otherwise.
- 5.11 Each member shall always behave and act in a way that is in the best interest and to the best advantage of all other members of the Association and the inhabitants of any of the properties.
- 5.12 No person shall –
- 5.13.1 drive any vehicle or motorcycle on any part of the common property except on the demarcated roads, nor may the member allow his guests, visitors or any person in respect of whom he has any vicarious liability, to do so;
- 5.13.2 use any unlicensed vehicle or motorcycle within the development unless approval has been obtained from the Committee;
- 5.13.3 allow any vehicle or motorcycle to be used within the development by a person who is unlicensed in terms of any legislation that may be applicable; and
- 5.13.4 drive any vehicle or motorcycle after sunset without the lights being switched on.
- 5.14 The owner shall allow reasonable access to the property to the Municipality and the Association or its appointed contractors for purposes of refuse removal, water meter reading, maintenance, inspection of services or any other related purpose deemed necessary by the Municipality or the Association. Members shall only make use of the refuse removal service

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provider contracted by the Association. The cost of refuse removal will be included in the levy. For the purpose of having the refuse collected, members must place the refuse in suitable bags (black, green or blue) on the sidewalk only on the designated days of collection. No building material, building rubble or suchlike matter shall be accepted for removal and the Committee may prescribe the maximum number of refuse bags per week for removal.

[AMENDED : 17/06/2024]

- 5.15 The Association shall give effect to the provisions of the CSOS Act (including, but not limited to paying to the Community Schemes Ombud Service established in terms of the CSOS Act the prescribed amounts and to file with the Community Schemes Ombud Service all annual returns, annual financial statements and other prescribed documents or information as provided for in terms of the CSOS Act) and each member shall, as part of the levy payable in terms of clause 12 pay the amount applicable to the member in terms of the CSOS Act.
- 5.16 No member shall park any vehicle of any kind (including a motorcycle), nor allow any such vehicle to be parked at any place where it may obstruct any traffic or cause any hindrance in the use of the street or other place that may lawfully be used by other persons. Driving any vehicle in an off-limit(s) area is strictly prohibited.  
[AMENDED : 21/06/2025]
- 5.17 Unless otherwise authorised by the Association in general meeting, no property zoned for residential purposes may permanently be occupied by more than 6 (six) persons (from which are excluded occasional guests and holidaymakers).
- 5.18 Irrespective of any security measures the Association may from time to time introduce or have in place in respect of the development, each owner shall be responsible for his own security and that of all occupants of his property or visitors to his property and they may not do anything that may jeopardize or compromise any security arrangements at the development.
- 5.19 No litter, rubble or refuse may be dumped or discarded anywhere in the development. Building rubble must be stored in a waste skip or similar container which must be emptied weekly.
- 5.20 No drunk or disorderly conduct in any communal area of the development shall be allowed.
- 5.21 No fires may be lit in any communal areas with the exception of braais in specifically demarcated communal areas.

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- 5.22 Flora as well as any natural features such as dead wood, rocks and items of archaeological significance may not be damaged, removed or moved from any open space.
- 5.23 No wild animals may be chased, trapped or interfered with in any way except by the Association in the carrying out of its conservation duties.
- 5.24 No slaughtering of animals or butchery activities may be carried out within the development;
- 5.25 No bathing, boating (including the use of radio controlled boats) or other water sports shall be allowed in the dams or public water features and no domestic animals may be allowed to swim therein. Canoes may be used on the river but not on any of the dams and no power-driven boats shall be allowed on the rivers.
- 5.26 Members may not encroach the cadastral boundaries of their properties with any construction and/or landscaping. Any encroachment onto common property will be summarily removed by the Association at the cost of the offending member.
- 5.27 The use of fireworks, in any manner whatsoever, within the development is strictly prohibited.
- 5.28 In accordance with the rules of the South African Aviation Authority, Remotely Piloted Aircraft Systems (RPAS) such as drones, hovercrafts or any other remote-controlled flying objects such as Model Aircraft may not be operated in the development. Toy Aircraft (designed and intended for use in play by children) may only be operated in the development for recreational purposes without causing a nuisance or endangering other residents, must be no more than 30 grams in weight, and may not possess photography, videography or surveillance capabilities. Drones for commercial use such as specialized aerial services, professional photography/videography, land surveying, game counting or other defined purpose may only be used with the prior written consent of the Committee.
- 5.29 No member shall sink a well, drill a borehole or extract subterranean water at any place on the development.
- 5.30 No member shall extract water from, or discharge any effluent into, the waterways, dams or boreholes within the development.
- 5.31 No power generators of whatever kind shall be allowed on properties zoned for residential use, subject thereto that a generator shall be allowed during the period of construction of a house on condition that the generator must be positioned so as to not cause a nuisance regarding noise or fumes.

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[AMENDED : 24/06/2023]

- 5.32 The use and operation of electric power tools, lawnmowers, grass trimmers, outdoor power equipment and the like shall only be allowed between the following hours:

Monday to Friday: 07:00 to 18:00

Saturday: 08:00 to 17:00

[AMENDED : 21/06/2025]

- 5.33 Members shall ensure that their employees (including domestic workers, gardeners and au-pairs) do not loiter in the development, particularly at the gates, road circles, in the streets and on pavements.
- 5.34 The Association shall have the right to impose penalties in consequence of a contravention of traffic offences. Such penalty shall not be deemed a fine in terms of any law, but a penalty mutually agreed to by Members and the Association to ensure the safe and orderly use of the roads in the development to the benefit of all its users.
- 5.35 The speed limit in the development for all kinds of transportation shall be restricted to 40 km/h or such lower speed limit(s) as may be displayed on signs erected on the roads in the development.  
[AMENDED : 26/06/2021]
- 5.36 Bicycles of any kind may within the residential areas only be ridden on the demarcated roads and not in the parks or on the sidewalks.  
[AMENDED : 24/06/2023]
- 5.37 No quad bikes are permitted to be driven in the residential areas of the development.  
[AMENDED : 24/06/2023]
- 5.38 Each member shall be obliged to keep tidy and maintain his property in such a way that it remains aesthetically and otherwise acceptable to the Committee.
- 5.39 No enterprise (including but not limited to short term letting) shall be conducted from any property zoned for residential purposes or any part thereof without the prior written consent of the Association and provided further that all conditions of the relevant town planning scheme and title deed have been complied with.
- 5.40 Members acknowledge that the development is a residential estate and agrees that no guesthouse, bed and breakfast or suchlike enterprise shall be operated in the development.

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- 5.41 In the event of any breach of any of the provisions of this Constitution by any tenant and/or occupant, the member shall be held liable jointly and severally for such breach and any penalty imposed by the Association in terms of this Constitution.
- 5.42 No private or estate agent "for sale", "to let", "sold" or the like boards shall be erected anywhere in the development.
- 5.43 Door-to-door calls ("cold canvassing") of residents by estate agents or any other marketing agent is prohibited.
- 5.44 Only show houses "by appointment" are permitted. Clients are to be collected from the security gate, escorted to the property concerned and escorted back out the gate.
- 5.45 Garden fences, walls and outbuildings forming part of the streetscape shall be meticulously maintained at all times, and no ornaments, decorative items or suchlike matter may be attached or installed on outside boundary walls, fences or retaining structures that may be visible from any street, neighbouring property or the common property.  
[AMENDED : 17/06/2024]
- 5.46 Washing lines must be suitably screened from visibility from any other property and communal area, and no windows may be covered by cardboard, newspapers, black bags or any other unsightly materials or objects. All window coverings must be in keeping with general aesthetic appearance of the development.  
[AMENDED : 17/06/2024]
- 5.47 Caravans, mobile campers, trailers, boats, (old) cars not used on a regular basis for normal traveling and related purposes, equipment, tools, engine and vehicle parts and the like, as well as any accommodation for pets, shall be located out of view and totally screened from any other property and communal area.
- 5.48 No heavy duty industrial or commercial vehicles may be parked or stored in the development unless completely screened out of sight on own property. Construction vehicles and plant equipment are to be parked on the construction site within the screened area.
- 5.49 The following provisions shall apply in respect of golf carts:
- 5.49.1 The provisions of clauses 5.13 and 5.36 shall apply *mutatis mutandis* to golf carts.
- 5.49.2 Golf carts must be fitted with and display an identification sign and number applied for and issued by the Association, the cost of which

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shall be for the account of the owner.

- 5.49.3 Only battery operated golf carts shall be permitted.
- 5.49.4 The maximum speed for golf carts shall be 30 km/h.  
[AMENDED : 24/06/2023]
- 5.50 Members shall comply with the security rules and other security directives as published from time to time by the Association, including but not limited to access to or egress from the development, monitoring and supervision of staff, and safety precautions (including with respect to children, pets, vehicles, fire prevention and control, and emergency protocols).
- 5.51 The access control system for permanent workers, temporary workers, contractors and their representatives must be diligently enforced by every member. No visitor or any category of employee may enter the development without being issued with the requisite authorisation.
- 5.52 Domestic workers and gardeners must at all times be in possession of and visibly display their security access cards issued by and obtainable from the HOA at the prevailing cost from time to time.  
[AMENDED : 24/06/2023] [AMENDED : 17/06/2024]
- 5.53 No person may use an access card belonging to another person.
- 5.54 No resident may issue instructions to or countermand the standing instructions issued to security personnel.
- 5.55 No electric fences of any kind for security or related purposes may be erected on any residential erf. The Committee may, however, make rules and authorise the erection of low voltage fences to discourage game and wild animals to roam onto erven.  
[AMENDED : 21/06/2025]
- 5.56 The Association in conjunction with residents residing along the electrified boundary fence shall keep the fence clear of any vegetation. Residents shall advise any visitors of the dangers pertaining to such electric fences. Such residents shall allow security staff to enter their properties on reasonable notice to inspect or repair the electric fence when required.
- 5.57 All classes of visitors to the development must produce either a valid original driver's license, or valid original identity book or passport for access to the development, failing which such visitors may be refused entry.
- 5.58 Deliberate obstruction of access to and egress from the development is prohibited.

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5.59 No resident may employ private security guards to patrol the outside of his property. Should private security be required, the resident may only make use of the security company contracted by the Association by prior arrangement and all costs will be for the account of the resident. Private security guards may not carry unconcealed arms and may under no circumstances patrol or walk about outside the boundaries of a property.

#### 5.60 SPECIFIC RULES IN RESPECT OF THE NATURE RESERVE

- Feeding of game and wild animals are strictly prohibited.
- No night game viewing shall be allowed without prior approval from the Association and under no circumstances may torches or other lights be shone at animals.
- Hiking and cycling are only allowed on demarcated hiking and cycling trails, but only after sunrise and before sunset
- Motorized vehicles (including but not limited to quad bikes, motorbikes and golf carts) may, subject to any other provisions, only be used on paved and tarred roads, as well as existing farm vehicle roads in the nature reserve, but excluding routes marked with signs restricting access.  
[AMENDED : 17/06/2024]
- Braai's may only be made at the places designated for that purpose and at no other place in the veld : Provided that all fires shall be extinguished afterwards.
- No free ranging exotic birds may be kept.
- No fish ponds in gardens are allowed with exotic plants such as water hyacinth, parrot's feather and water fern, as these plants can be spread by birds to the dams with negative consequences.
- Wild animals in distress must be reported to Security immediately and no such animals may be interacted with.
- No camping shall be allowed.

#### 5.61 ENVIRONMENTAL LAWS

The Association shall be responsible for compliance with the environmental laws conditions subject to which the development was approved and the costs to do so shall for all purposes be deemed to form part of the Association's working expenditure.

## 5.62 PETS

- 5.62.1 Properties where pet animals are kept, must be enclosed in such a way that the pet animals cannot escape from the property.
- 5.62.2 All dogs and cats must wear a collar with a tag indicating the name and telephone number of its owner.
- 5.62.3 Pet animals shall at all times be kept on a leash and under the direct control of a responsible person when outside the owner's property.
- 5.62.4 Pet animals not on a leash found outside its owner's property, as well as any stray pet animal, may be picked up by a representative of the Association and a picture of the animal sent to residents in order to identify the owner. The owner of the pet animal concerned will be liable to pay the applicable penalty to the Association as stipulated in the Schedule of Contraventions and Penalties.
- 5.62.5 In the case where a problem pet animal is too aggressive for the representative of the Association to remove the same, a practicing veterinarian will be called in to dart/immobilize the pet animal. The cost associated with such procedure will be recovered from the owner of the pet animal. The owner shall to the satisfaction of the Association indemnify the Association and the veterinarian against any claims should the pet animal die as a result of the procedure referred to.
- 5.62.6 In the case where a pet animal injures or kills a wild animal, the costs incurred (including the veterinary cost of treating such an injured animal) will be the responsibility of the owner of the pet animal. If the injured animal were to die, the owner of the pet animal responsible for the death shall bear the cost of replacing the animal concerned.
- 5.62.7 No rabbits may be kept as pets to prevent cross-breeding with indigenous wild rabbits in case of escape.
- 5.62.8 It is recorded that wild animals roam the communal areas and may pose a threat to pet animals and their companions. Neither the Association nor the developer shall bear any responsibility for any loss or injury caused by any wild animals.  
[AMENDED : 17/06/2024 (ENTIRE CLAUSE REPLACED)]

## 5.63 TRUCKS

Unless otherwise determined by the Committee –

- 5.63.1 trucks may only enter the development at the construction entrance and may only use the road for construction vehicles up to the southern

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boundary of the school site on the development;

5.63.2 paved or tarred roads may not be used by trucks other than single axle tippers and fixed body ("vastebak") trucks: Provided that double axle fixed body ("vastebak") trucks are allowed but may not drive into or onto any erf and may only park in a street; no interlinks, except the fixed body ("vastebak") section shall be allowed.

5.64 No person may occupy a property unless the Committee and Mossel Bay Municipality shall have issued an occupation certificate in respect of the property. Subject to any other rights the Association may have (including the right to impose a penalty) any transgression of this provision shall be referred to the Municipality for appropriate action in terms of the National Building Regulations and Building Standards Act 103 of 1977 or any other legislation that may be applicable.

[AMENDED : 26/06/2021]

#### 5.65 SPECIFIC RULES IN RESPECT OF THE NON-RESIDENTIAL ERVEN

5.65.1 For the purposes of this clause 5.65, "non-residential erven" means the school erf (erf no. 7702), the business erven (erven 6032 and 6035), the gatehouse erf (erf no. 6034), the storage erf (erf no. 6036), the hotel erf (zoned General Residential Zone V), the resort erven (zoned Resort Zone II), the clubhouse (erf no. 7373), the equestrian centre erven, the utility zone erven and any other erven created in the development of which the primary use is not residential.

5.65.2 For the purposes of this clause 5.65 it is recorded that –

5.65.2.1 due to the land use rights applicable to the non-residential erven compared with the residential erven it is necessary and appropriate that not all rules shall apply equally to the non-residential erven in comparison with the residential erven;

5.65.2.2 recognition must be given to the contribution made by the land uses exercised on the non-residential erven in enhancing the value and attractiveness of the development;

5.65.2.3 it is accepted that the land uses of the non-residential erven may of necessity impact on the land use rights of residential erven, which impact is set off by the creation of facilities and services requiring investments that may be substantial for the benefit of the development at large.

5.65.3 The following provisions shall in particular apply in respect of the non-residential erven:

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- 5.65.3.1 The Architectural Design Manual shall be applied with due regard to the zoning and land use rights applicable to these erven in relation to erven of which the primary use is for residential purposes, taking into account the difference in the uses to which the properties are put and the commercial design features necessitated by the uses concerned.
- 5.65.3.2 The school erf and the business erven shall have entrance gates separate from that of other parts of the development and the owners of these erven shall be responsible for manning and managing their entrance gates as well as for making their own security arrangements for these erven.
- 5.65.3.3 The non-residential erven shall be entitled to install and use power generators provided that it shall be of the silent type.
- 5.65.3.4 The school erf and the business erven shall upon completion of the buildings to be erected on these erven be fenced off from the residential component of the development by clear view fencing with a height of not less than 1,8 meters, but not exceeding 2,4 meters, which fencing shall be installed at the expense of the owners of these erven. The other non-residential erven may be fenced off in accordance with the requirements determined by the Committee.
- 5.65.3.5 The business erven shall not without the prior written consent of the Committee be entitled to install a gate between these erven and the residential component of the development.
- 5.65.3.6 The school erf may install a gate between the erf and the residential component of the development provided that this gate shall, to the satisfaction of the Committee, be managed by the owner of the school so as to avoid unregulated and unauthorised access from the school erf onto the residential component of the development.
- 5.65.3.7 Learners of the school may in groups, under the supervision of a parent who resides in Outeniquasbosch, a teacher at the school or a responsible person chosen by the headmaster of the school, participate in and undertake outdoor activities (as part of a group) such as walking, running, jogging, cycling, horse-riding, game management and activities at the river, subject thereto that the Committee or the developer may require of such persons to provide the HOA and/or the developer with an indemnity determined by them.

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- 5.65.3.8 Should the learners of the school under supervision of any person referred to in clause 5.65.3.7 engage in overnight tenting or outdoor activities on the school erf, it shall take place within the clear view fenced off lawn area subject thereto that no disturbance or noise shall be allowed after 22:00.
- 5.65.3.9 Any activities as referred to in clauses 5.65.3.7 and 5.65.3.8 must in advance be arranged with the security services of Outeniquasbosch for purposes of access to Outeniquasbosch and in order for the Outeniquasbosch security service to remain informed of all planned activities at all times. All such security arrangements shall be the responsibility of the headmaster and the staff of the school.
- 5.65.3.10 Rules may from time to time be enacted to address matters relating to the non-residential erven only or to some of the non-residential erven in particular taking into account the zoning and land use rights of the erf or erven in question, which rules may for purposes of the control and management of non-residential erven differ from rules applicable to residential erven to the extent required by their primary uses in terms of the zoning of these erven and the land use rights therefrom arising.
- 5.65.3.11 To the extent that the provisions set out in this clause 5.65 are at variance with any other provisions of this Constitution, the provisions set out in this clause 5.65 shall prevail.
- 5.65.3.12 Notwithstanding any other provisions of this Constitution, non-residential erven may be used in accordance with their primary uses provided for in terms of the Integrated Zoning Scheme By-Law applicable to these erven.  
[INSERTED : 21/06/2025]
- 5.66 No owner may apply for the rezoning of an erf of which the primary use in terms of the Integrated Zoning Scheme By-Law applicable to the development is a dwelling house (or similar use) or apply for a consent use in respect of such erf in terms of the Integrated Zoning Scheme By-Law applicable to the erf.  
[INSERTED : 21/06/2025]

## **6 MISCELLANEOUS MATTERS**

- 6.1 Should the member fail to repair or maintain his property as referred to in clause 5.38, the Committee may serve notice on such member to take such steps as may be specified in the notice to repair or maintain the property, as

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the case may be, within the period specified by the Committee. Should the member fail to so repair or maintain his property, the Committee may, subject to any other rights it may have (including the right to enforce compliance), appoint a contractor to carry out the works concerned and to recover the costs thereof from the member, which costs shall be deemed to be a debt owed to the Association.

- 6.2 The Committee shall be obliged in giving such notice to act reasonably. In the event of any dispute, the member shall bear the onus of establishing that the Committee acted unreasonably.
- 6.3 The Association may enter into agreements with any third party for the provision of facilities and service to the members and to levy a reasonable charge in respect of the provision thereof.
- 6.4 Should any member fail to pay any amount owing to the Association on due date, any such amount shall bear interest at a maximum of 24% per annum capitalised monthly in arrear (provided that the interest rate shall not exceed the maximum rate of interest payable per annum under the National Credit Act, 2005 (Act 34 of 2005)).  
[AMENDED : 21/06/2025]
- 6.5 Owners shall –
- 6.5.1 bear the costs for the supply and installation of the water and electricity meters for their erven; and
- 6.5.2 bear the costs of the water and electricity supplied to their erven,
- at the rates determined by the developer before the first transfer of an erf in the development in the name of a member, and thereafter as determined by the Committee from time to time. All accounts of the Association for water and electricity shall be paid within 14 (fourteen) days of date of statement into such bank account the Association may direct.
- 6.6 Any person using any of the services, land or facilities within the development (irrespective of the ownership thereof) does so entirely at his own risk and hereby indemnifies the owner and the person in control of such service, land or facility against all claims for loss or damages.  
[AMENDED : 17/06/2024]
- 6.7 For the avoidance of doubt it is provided that the provisions of this clause 6.7 shall not affect the developer's rights to obtain Surveyor-General approved general plans or diagrams in respect of the statutory approved erven footprint areas of the development or to obtain amendments of such general plans or diagrams within the approved footprint areas.  
[INSERTED : 21/06/2025]

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- 6.8 Should two or more erven be consolidated, the levies for the individual erven so consolidated shall fall away and be replaced with a single levy for the consolidated erf, which provisions shall apply *mutatis mutandis* to any subdivisions.

[INSERTED : 21/06/2025]

## 7 POWERS OF THE COMMITTEE

- 7.1 The control, management and administration of the Association shall vest in the Committee, which may exercise all the powers of the Association and transact all business on behalf of the Association as if it was transacted by the Association itself, save for matters reserved for the AGM or SGM.
- 7.2 Without limitation to the generality of the aforementioned powers, the powers of the Committee shall include the following, but not be limited thereto:
- 7.2.1 To perform such actions as may be necessary for realising the objectives of the Association.
- 7.2.2 The entering into, conclusion and execution of contracts in respect of any of the objectives and purposes of the Association.
- 7.2.3 The setting of applicable standards, designs and styles of all houses and other buildings in the development as more fully provided for in terms of clause 10.
- 7.2.4 The making, amendment and rescission of rules to give effect to the provisions of this Constitution, which rules shall be binding upon members as if they form part of this Constitution : Provided that such rules shall, subject to clauses 7.2.11, 7.3 and 10, be approved by majority vote at an AGM or a SGM : Provided further that if any such rules shall be at variance with the provisions of the Constitution, the provisions of the Constitution shall prevail.
- 7.2.5 The employment and remuneration of agents, employees and service providers and the termination of their services.
- 7.2.6 To institute and defend legal actions and other proceedings (including any application in terms of the CSOS Act) in the name of the Association and to appoint legal representatives for that purpose.
- 7.2.7 Where necessary, enter into and conclude agreements with the Mossel Bay Municipality or any other entity for electricity, gas, water, sanitation or any other services to be provided or rendered in respect of the development.

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- 7.2.8 Setting and charging contributions and levies payable by members from time to time and as often as they may deem necessary and expedient: Provided that unless otherwise determined by the Association in general meeting, the levies for all residential properties shall be equal.
- 7.2.9 Proposing and recommending to the Association in general meeting the amendment of the Constitution.
- 7.2.10 The formation of sub-committees and the delegation to such sub-committees of such powers as may be necessary.
- 7.2.11 The making of rules relating to security at the development and the management of any security system in respect of the development, which rules shall not require approval at an AGM or a SGM.
- 7.3 The Committee may, in consultation with the Architectural and Aesthetics Committee referred to in clause 10.1 from time to time make rules in regard to –
- 7.3.1 the code of conduct applicable to all builders, contractors (including subcontractors) and suppliers within the development or any building, construction or any other work carried on within the development;
- 7.3.2 the preservation of the natural environment vegetation and fauna within Outeniquasbosch including the right to control, and if necessary, order the removal of vegetation, and the right to prohibit and/or control the erection of fences, and walls whether upon or within the boundaries of any erven,
- which rules shall not require approval at an AGM or a SGM.
- 7.4 For the enforcement of any the provisions of the Constitution and any rules made by the Committee, the Committee may -
- 7.4.1 give notice to the member concerned requiring such member to remedy such breach within such period as the Committee may determine;
- 7.4.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule or provision of which the member may be guilty;
- 7.4.3 take such action, including proceedings in court, as the Committee may deem fit.
- 7.5 In the event of the Committee instituting any legal proceedings against any member or resident for the enforcement of any of the rights of the Association

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in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the member or resident concerned, calculated as between attorney and own client, including tracing fees and collection commission as taxed or agreed to by the member.

[AMENDED : 21/06/2025]

- 7.6 In the event of any breach of the provisions of this Constitution or any rules of the Association by a member of any member's household, his guests, visitors or tenants, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the Committee may take or cause to be taken such steps against the person actually committing the breach, as the Committee may in its sole discretion deem fit.
- 7.7 Should the Committee decide that one of the members of the Architectural and Aesthetics Committee (as referred to in paragraph 2.1.1 of the Architectural Rules) must be an environmentalist, the Committee shall prescribe the qualifying requirements for appointment.
- 7.8 In all instances in which the Committee or any person referred to in this Constitution may prescribe any form, document, procedure, amount (including any penalty amount), qualifying requirement or suchlike matter, the matter concerned shall for all purposes be deemed to have been so prescribed as from the date on which it is first published on the Association's website and it shall be effective as from the date of such publication unless the Committee or the person concerned, as the case may be, determines a later commencement date. For the avoidance of doubt it is provided that any resolution passed by the Association in general meeting shall be effective as from the date on which the resolution is so passed.

## **8 COMPOSITION AND FUNCTIONING OF THE COMMITTEE**

- 8.1 The Committee shall have 5 (five) members, 3 (three) of whom shall, during the development period be appointed by the developer and 2 (two) of whom shall be persons elected by way of majority vote by members for a term of 2 (two) years at a time : Provided that the first Committee shall comprise of the 3 (three) members appointed by the developer and they shall serve as such until the election of the members' representatives at the first AGM of the Association. After the development period, all members of the Committee shall be elected by way of majority vote by the members.
- 8.2 The developer may at any time replace any member of the Committee appointed by him.

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- 8.3 Unless otherwise provided, the provisions of this clause 8 relating to the election, qualifying requirements, vacation of office and rotation shall only apply to the members of the Committee elected by the owners.
- 8.4 A member of the Committee need not be a registered owner of a property in the development, but must be a shareholder or member of the company or close corporation concerned, or be a trustee or beneficiary of the trust concerned, or be the spouse of such person or of the registered owner, or have a direct financial interest in the registered owner who is not a natural person.  
[AMENDED : 08/10/2020]
- 8.5 All the members of the Committee shall, once such members have been duly nominated and seconded, be elected by way of ballot or a show of hands (should the meeting so decide) by the members present at an AGM or SGM.
- 8.6 Unless otherwise approved by the Association in general meeting no member shall be eligible for election unless duly nominated in writing and seconded by a member, which nomination shall also be signed and accepted in writing by the nominee, and submitted to the managing agent, and in the absence of a managing agent, the Committee, no later than the day preceding the meeting. No person shall be so eligible unless he or the registered owner contemplated in clause 8.4 is in good standing.
- 8.7 A member of the Committee shall be deemed to have vacated his office as such upon -
- 8.7.1 his/her having become disqualified to act as a director in terms of the provisions of the Companies Act, 2008;
- 8.7.2 his/her estate being sequestrated, whether provisional or finally;
- 8.7.3 his/her conviction for any offence involving theft or dishonesty;
- 8.7.4 his/her becoming incapable of carrying out his/her duties as a member of the Committee as decided by at least 60% of the Committee members;
- 8.7.5 his/her removal as a member of the Committee in terms of the provisions of clause 8.8;
- 8.7.6 his/her resigning from such office in writing.
- 8.8 An elected member of the Committee may be removed as a member of the Committee by a 60% majority vote at an SGM called for that purpose or at an AGM.

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- 8.9 Upon any vacancy occurring in the Committee prior to the next annual general meeting, the vacancy in question shall, subject to clause 8.2, be filled by a person nominated by those remaining for the time being of the members of the Committee.
- 8.10 The members of the Committee shall at their first meeting after they have been so elected, from their number, by majority vote, elect the chairperson: Provided that the chairperson shall, during the development period, be appointed by the developer.
- 8.11 The chairperson shall preside at all meetings of the Committee and in his absence the other members of the Committee shall from their number appoint an acting chairperson for that meeting unless a deputy-chairperson has been appointed.  
[AMENDED : 24/06/2023]
- 8.12 The chairperson shall during the development period, have a 2<sup>nd</sup> (second) and casting vote.
- 8.13 Committee members shall not be entitled to any remuneration for their services unless otherwise determined by the Association in general meeting: Provided that the members of the Committee shall be refunded any approved direct expenses incurred for the benefit of the Association.
- 8.14 A Committee member's term of office is valid from his appointment at the AGM until it terminates at the AGM after 2 (two) years.
- 8.15 A managing agent shall –
- 8.15.1 be selected by the Committee by a majority of votes; and
- 8.15.2 be appointed with an annually renewable contract stating the conditions of appointment, duties and services to be rendered.
- 8.16 All decisions of the Committee shall be taken by majority vote, passed at meetings where a quorum is present at all times, and the Committee may by majority vote revoke or amend any resolution so taken.
- 8.17 Committee meetings shall as far as possible be held each month, or as otherwise determined by the Committee.
- 8.18 The Committee shall cause an attendance register to be kept of their meetings, the particulars of which shall be included in the chairperson's report at the annual general meeting as referred to in clause 9.1.3.
- 8.19 The Committee shall exercise financial management by:
- 8.19.1 Carrying out monthly reviews of income and expenditure against the approved budget and scrutinising bank statements by means of

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financial reports provided by the managing agent;

- 8.19.2 Preparing an annual operational budget of income and expenditure, and a capital expenditure budget, to be submitted to the AGM for consideration;
- 8.19.3 Adhering to expenditure limits approved at the AGM unless an emergency occurs where an existing facility fails and must be maintained in operation;
- 8.19.4 Not exceeding the overall pro-rata budget for any period of 4 (four) months unless circumstances make it unavoidable (which circumstances have to be reported on at the next AGM).
- 8.19.5 Requiring two signatures or authorisations for investment account transactions, being one of 2 (two) Committee members and the managing agent, and two signatures or authorisations for current account transactions, on the aforesaid basis, or the signatures of 2 (two) Committee members approved by the Committee in the absence of a managing agent.
- 8.20 In addition to such other powers and duties as may be delegated to him or her by the Committee from time to time, the chairperson shall:
  - 8.20.1 preside and maintain order at all meetings of the Committee;
  - 8.20.2 appoint the time and place of each meeting of the Committee and, subject to these provisions, may on not less than 5 (five) days' notice convene the Committee for the dispatch of business, or adjourn or otherwise regulate the meetings of the Committee as he or she may deem fit;
  - 8.20.3 ensure that each meeting of the Committee is duly convened and constituted and that these provisions and any rules made by the Committee for the conduct of meetings are adhered to and that the proper procedure is duly followed;
  - 8.20.4 convene a meeting of the Committee members, on not less than 5 (five) days' notice, upon the request of any 2 (two) or more members of the Committee;
  - 8.20.5 be entitled to determine that a meeting of the Committee shall be conducted by electronic communication or one or more Committee members may participate in a meeting by electronic communication in accordance *mutatis mutandis* with the provisions of section 73(3) of the Companies Act, 2008.

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- 8.21 In the event of the chairperson being absent or otherwise unable to perform his or her duties in terms hereof, any deputy chairperson and, failing him or her, any other Committee member appointed by the Committee for such purpose, shall exercise the powers and perform the functions of the chairperson for so long as the chairperson remains absent or unable to perform his or her duties and for this purpose such deputy chairperson or other Committee member shall be deemed to have all such powers and functions of the chairperson as the chairperson himself or herself might have.
- 8.22 The chairperson shall have the power to delegate any of his or her powers and duties to the deputy chairperson as he or she may deem desirable or necessary and may add to, vary or revoke any such delegation of powers or duties as he or she may deem fit.
- 8.23 The quorum necessary for the holding of any meeting of the Committee shall be 3 (three) members present in person at such meeting. If no quorum is present within 15 (fifteen) minutes after the time appointed for commencement of such meeting, then it shall stand adjourned for 7 (seven) days, or if that is not a business day then the next business day thereafter, and those members present at the adjourned meeting shall constitute a quorum.
- 8.24 The Committee shall cause minutes to be kept of every Committee meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and be approved at the next Committee meeting. All minutes of Committee meetings shall, after approval, be placed in a minute book.
- 8.25 A decision that could be voted on at a meeting of the Committee may instead be adopted by written consent of a majority of the Committee members, given in person or by electronic communication provided that each Committee member has received notice in writing of at least 5 (five) days of the matter to be decided.

## **9 ANNUAL GENERAL AND SPECIAL GENERAL MEETINGS**

### **9.1 MEETINGS**

- 9.1.1 The Association shall annually within 4 months of closure of the financial year of the Association, on a date determined by the Committee hold its AGM. At least 21 (twenty-one) days' written notice of the meeting, together with the agenda, must be sent by e-mail, delivered by hand or posted to all the members.
- 9.1.2 The documents referred to in the agenda for discussion at the AGM

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must be sent by e-mail, delivered by hand or posted to all the members at least 10 (ten) days before the AGM.

- 9.1.3 The AGM shall be held for the following purposes:
- 9.1.3.1 to confirm the minutes of the previous AGM;
  - 9.1.3.2 to receive and consider the chairperson's report and the Annual Financial Statements;
  - 9.1.3.3 to appoint the auditors;
  - 9.1.3.4 to receive and consider the operational budget referred to in clause 8.19.2 and the levy/levies referred to in clauses 12.1 and 12.3 determined by the Committee;
  - 9.1.3.5 to elect the members of the Committee in terms of clause 8.1;
  - 9.1.3.6 to deal with any other business laid before it : Provided that no amendments to the rules or this Constitution shall be approved unless the notice of the AGM shall in detail have set out the proposed amendments and stated the reasons for the amendments (which requirements shall also apply to amendments to be approved at a SGM): Provided further that unless a member has notified the Committee of a matter the member requires to be placed on the agenda and any motion proposed in respect of such matter, if any, before the notice has been given of the meeting in terms of clause 9.1.1, no motion that will bind the members may be approved.  
[AMENDED : 24/06/2023]
- 9.1.4 The Committee can when they in their discretion deem it essential and must upon written request of 51% (fifty one percent) of the members, call a special general meeting with not less than 14 (fourteen) days' written notice of the meeting to all the members, setting out the business to be transacted at the meeting. Should the committee fail to convene the meeting thus requested within 14 (fourteen) days of receipt of such written valid request, the members concerned may convene the meeting themselves.
- 9.1.5 The chairperson of the Committee shall preside at each AGM or SGM and he may appoint any person (who need not be a member) to preside as chairperson at an AGM or SGM. Should the chairperson of the Committee not exercise the aforesaid powers, the members of the Committee may appoint a person to preside as the chairperson at an AGM or SGM in the absence of the chairperson of the Committee or if

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he did not himself make such appointment.  
[AMENDED : 24/06/2023]

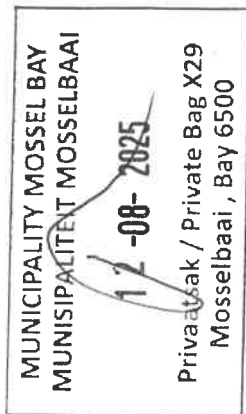
- 9.1.6 A meeting shall not be invalid merely because a member has incidentally not received a notice of the meeting or a notice was incidentally not sent to the member.
- 9.1.7 An AGM or SGM may not commence and no decisions may be taken unless a quorum is present. The quorum needed for holding an AGM or SGM is 15% (fifteen percent) of the members (including proxies) that are eligible to vote.
- 9.1.8 If within 15 (fifteen) minutes after the time appointed for the commencement of a general meeting or within such extended period as the chairperson, or in his/her absence, the deputy-chairperson may allow, a quorum is not present, the meeting shall be dissolved if it was convened on requisition. In all other cases the meeting shall stand adjourned to the same place at the same time and the same day plus 1 (one) day of the next week (or if that day is not a business day, the 1<sup>st</sup> (first) business day following the non-business day). Where a meeting is postponed / adjourned, the Committee shall within 4 (four) days after the date of the meeting so postponed / adjourned, by notice in writing sent by e-mail, delivered by hand or posted to all members, notify members of the postponed / adjourned meeting. If a quorum is not present at such adjourned meeting, the members present in person or by valid proxy, shall constitute a quorum.
- 9.1.9 If an AGM or a SGM has commenced and the meeting cannot continue or be concluded because a quorum is no longer available or for another reason, then the meeting may be adjourned but must be resumed in no more than 14 (fourteen) days. The Committee shall within 4 (four) days after the date of the meeting so adjourned, by notice in writing sent by e-mail, delivered by hand or posted to all members, notify members of the postponed meeting.
- 9.1.10 A member is not eligible to vote or to appoint a proxy unless his contributions, levies and other amounts due, are paid up to the end of the month preceding the month during which notice is given of the AGM or SGM, as the case may be.
- 9.1.11 At all meetings, a matter is put to the vote by a show of hands by the members present (including proxies) unless a poll is demanded or the chairperson announces a poll before voting takes place. Subject to any other provisions, the majority vote shall be binding.
- 9.1.12 The chairperson shall not have a 2<sup>nd</sup> (second) or casting vote.

## 9.2 PROXIES

- 9.2.1 Votes at an AGM or SGM may be cast by a member or, subject to clause 9.2.5, by a proxy.
- 9.2.2 A proxy must be appointed in writing under the signature of the member or his agent, who was appointed properly and in writing, and the appointment must be delivered to the Chairperson before the meeting commences, failing which it shall not be of any force or effect.
- 9.2.3 A proxy need not be a member, but may not be an employee of the Association and must reside in the development.
- 9.2.4 Proxies should, when possible and required, also be valid for a postponed AGM or SGM and for the resumption of an adjourned AGM or SGM.
- 9.2.5 A person appointed as a proxy may only be given a maximum of four (4) appointments for any AGM or SGM.
- 9.2.6 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

### OUTENIKUASBOSCH HOMEOWNERS ASSOCIATION

"I/We, \_\_\_\_\_, of \_\_\_\_\_, being a member(s) of the Association hereby appoint \_\_\_\_\_ of \_\_\_\_\_ or failing him \_\_\_\_\_ of \_\_\_\_\_, failing him the chairman of the meeting as my/our proxy to vote for me/us and on my/our behalf at the annual general or general meeting (as the case may be) of the Association to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof as follows:



|                        | In favour of | Against | Abstain |
|------------------------|--------------|---------|---------|
| Resolution No<br>_____ | _____        | _____   | _____   |
| Resolution No<br>_____ | _____        | _____   | _____   |
| Resolution No<br>_____ | _____        | _____   | _____   |

(Indicate instruction to proxy by way of a cross in the space provided above.)

Unless otherwise instructed, my/our proxy may vote as he thinks fit.

Signed this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Signature

(NOTE : A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his stead, and such proxy need not also be a member of the Association but must reside in Outeniquasbosch).

A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.

### 9.3 NOTICES

- 9.3.1 A notice sent by post need not be registered and shall be deemed to be delivered to the member on the day following the date of the mailing of such notice.
- 9.3.2 A notice delivered by hand at the property owned by the member shall be deemed to be received on the date of delivery thereof.
- 9.3.3 A notice sent by e-mail to the member's e-mail address, shall be deemed to be delivered to the member on the date following the date of successful transmission of the electronic message.
- 9.3.4 For purposes of any notices to members, the Committee and the managing agent shall be entitled to choose any of the modes of communication referred to in clauses 9.3.1 to 9.3.3 and shall for purposes thereof be entitled to rely on the information at its disposal

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and any previous mode of communication with the member. The committee shall as far as reasonably possible use the method of giving notice requested in writing by a member.

- 9.3.5 No person other than a member shall be entitled to receive a notice of general meetings.
- 9.3.6 The signature to any notice given by the Association may be written or printed, or partly written and partly printed.
- 9.3.7 All members are obliged to furnish the Association with their contact details including home and postal addresses, email address and home and mobile telephone numbers and the onus rests with members to ensure that updated information is conveyed to the Association.
- 9.3.8 The provisions of this clause 9.3 regarding notices to members shall apply *mutatis mutandis* to all documents to be sent to a member in terms of this Constitution or the rules.

#### 9.4 ADJOURNMENT BY THE CHAIRPERSON WITH CONSENT OF GENERAL MEETING

- 9.4.1 The chairperson may adjourn a general meeting from time to time and from place to place if the general meeting approves of an adjournment by majority vote. In the event of such an adjournment -
- 9.4.1.1 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 thirty days or more in which event notice is to be given in the same manner as for the original meeting);
- 9.4.1.2 only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

#### 9.5 VOTING AND VOTING RIGHTS OF MEMBERS

- 9.5.1 The members shall be entitled to vote only on the matters before the general meeting concerned.
- 9.5.2 At every general meeting -
- 9.5.2.1 each member, present in person or by proxy and entitled to vote, shall have one vote for each erf registered in his name;
- 9.5.2.2 if an erf is registered in the name of more than one (1) person, then all such co-owners shall jointly have only one vote;

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- 9.5.2.3 the developer shall, during the development period have 1 (one) vote per erf registered in his name plus 3 (three) votes for each erf transferred to a member (for purposes of which even comprising the common property shall not be taken into account irrespective of in whose name it is registered).
- 9.5.3 A member who is not in good standing shall be entitled to be present at a general meeting but shall not be entitled to speak or vote on any matter.
- 9.5.4 Resolutions shall be passed by simple majority vote, save with respect to amendments of this Constitution.
- 9.5.5 If a poll is duly demanded it shall be taken in such manner as the chairperson of the meeting may direct either at once or after an interval or adjournment.
- 9.5.6 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.
- 9.5.7 A vote cast under a proxy, power of attorney or other authority which has been revoked shall nevertheless be valid unless:
- 9.5.7.1 written notice of the revocation is received by the Association prior to the meeting concerned; or
- 9.5.7.2 the chairperson of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 9.5.8 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.
- 9.5.9 A declaration made in good faith by the chairperson of a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed (whether by a simple majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed.

- 9.5.10 Any resolution which could be passed at a general meeting may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of the members entitled to vote subject to the requirements of clause 9.5.4.

## **10 BUILDING, ARCHITECTURAL AND DESIGN REQUIREMENTS**

- 10.1 The Committee shall have the power:
- 10.1.1 To introduce and enforce measures to harmonize the architectural style and design principles and building material in the development, so as to give effect to the purposes and objectives of the Architectural Design Manual.
  - 10.1.2 To perform whatever actions may be necessary to realise the objectives and goals contained in the Constitution and in the Architectural Design Manual, expressed or implied, which actions shall include the inspection, approval or rejection of building plans, whether they be in respect of new constructions, renovations, alterations or additions.
  - 10.1.3 To enforce compliance with the criteria, requirements and standards referred to in clause 10.1.1, failing which the necessary steps shall be taken to remedy such non-compliance at the cost of such member and without limiting the generality of the foregoing, to give a member written notice to remove or change within a specific period of time anything that was erected that is contrary to the applicable requirements, failing which application may be made to a Court for an applicable court order.
  - 10.1.4 To obtain professional advice in order to inspect and scrutinise all plans so as to ensure that the necessary architectural requirements and control measures have been complied with.
  - 10.1.5 To pay reasonable compensation to the professionals referred to in clause 10.1.4 for their services.
  - 10.1.6 In consultation with the members of the Architectural and Aesthetics Committee referred to in the Architectural Rules who are not members of the Committee (as defined in clause 2.1.9) to amend the Architectural Design Manual: Provided that no such amendment shall apply retrospectively: Provided further that any such amendment shall during the development period require the developer's written approval.
  - 10.1.7 In consultation with the members of the Architectural and Aesthetics Committee referred to in the Architectural Rules who are not members of the Committee (as defined in clause 2.1.9) to amend the Architectural

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Rules: Provided that no such amendment shall apply retrospectively.  
Provided further that any such amendment shall during the development period require the developer's written approval.

- 10.1.8 In consultation with the members of the Architectural and Aesthetics Committee referred to in the Architectural Rules who are not members of the Committee (as defined in clause 2.1.9) to amend the Construction Rules: Provided that no such amendment shall apply retrospectively: Provided further that any such amendment shall during the development period require the developer's written approval.
- 10.2 Members shall be obliged to submit all building plans for new constructions, renovations, alterations and additions to the Association for inspection and approval, before such plans are submitted to the municipality for approval. The Association shall inform the applicant of its decisions within 14 (fourteen) days of the submission of such plan.
- 10.3 For the avoidance of doubt it is provided that all building plans shall be subject to approval by both the Association and the local authority (i.e. Mossel Bay municipality) and the member shall comply with the conditions of approval of both of them. The Association shall, in the event of a dispute regarding the approval of any building plan, if paragraph 1.16 of the Architectural Rules is not invoked, be entitled to refer the matter to a qualified architect, who shall act as an expert and not as an arbitrator and whose decision shall, in the absence of a clear manifest error, be final and binding on the Association and the member.  
[AMENDED : 21/06/2025]
- 10.4 No member shall have any claim against the Association or any member of the Committee arising from or in connection with any approval granted by the Association or any refusal of an application and the Association shall not be deemed to have given the member any advice regarding the design or any other feature of any improvements arising from comments on building plans or any conditions of approval thereof.
- 10.5 The Committee may determine and impose –
- 10.5.1 the charges payable by members for the approval of building plans, which charges shall be paid upon submission of such plans;  
[AMENDED : 04/06/2022] [AMENDED : 21/06/2025]
- 10.5.2 the deposits and other amounts payable by members in terms of the Construction Rules and the conditions relating to such amounts (all deposits to be held free of interest by the Association);  
[AMENDED : 24/06/2023]

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- 10.5.3 monthly construction charges payable by members during the period of any building and related work undertaken on their properties.
- 10.6.1 Building plans will be assessed for approval as more fully set out in the Architectural Rules read with the Architectural Design Manual. Assessment whether or not any building has been constructed or changed in accordance with the approved building plans shall equally take place as provided for in terms of the Architectural Rules read with the Architectural Design Manual.
- 10.6.2 No person shall be entitled to occupy a house in the development for the first time after the construction thereof or after structural changes have been made unless a person authorised by the Committee has certified that the house has been constructed in accordance with the approved building plans and that all requirements of the Architectural Rules and Architectural Design Manual have been complied with.
- 10.6.3 With due regard to the provisions of clause 5.64 no person shall be entitled to apply for or obtain from the municipality a certificate to occupy a house in the development constructed or structurally changed without a certificate issued by the Association as referred to in clause 10.6.2.
- 10.6.4 In the event of any dispute regarding the question whether or not a building has been constructed or changed in accordance with the approved building plans or compliance with the Architectural Rules read with the Architectural Design Manual, the Association shall be entitled to refer the matter to a qualified architect for determination, who shall act as an expert and not as an arbitrator and whose decision shall, in the absence of a manifest error, be final and binding on the Association and the member, and whose cost shall be borne by the party determined by the expert..  
[AMENDED : 17/06/2024] [AMENDED : 21/06/2025]
- 10.7 For the avoidance of doubt it is provided that the amendments of the Architectural Design Manual, the Architectural Rules and the Construction Rules shall not be regarded as amendments of the Constitution as referred to in clause 19.

## 11 COMMUNAL AREAS AND COMMUNAL FACILITIES

- 11.1 The Association shall be responsible for maintaining the common property (irrespective of whether or not it is registered in the name of the developer) and the facilities and shall have the right to supplement the function of the

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local authority in respect of the maintenance of existing services or the provision of additional services.

- 11.2 For the purposes of clause 11.1, the Association shall be entitled to employ the services of independent contractors.
- 11.3 The Association shall at all times promote environmental awareness and responsibility within Outeniquasbosch and its members from time to time.
- 11.4 Management and maintenance of all facilities and private open spaces owned by the Association shall vest in the Association, and the local authority shall have no responsibility in this regard.
- 11.5 The Association shall be responsible to the Municipality and all other organs of state for compliance with –
- 11.5.1 the conditions of approval of the township of Outeniquasbosch;
- 11.5.2 the conditions of approval in terms of any laws relating to the environment;
- 11.5.3 the terms of the services agreement between the developer and the Municipality,
- to the extent that it relates to the successors-in-title of the developer.
- 11.6 The developer may at any time at his cost during the development period transfer the common property to the Association and the Association shall not be entitled to refuse to take transfer of any erven or portion of the development forming part of the common property.
- 11.7 The developer may before the end of the development period –
- 11.7.1 register such servitudes over the common property as may be required to give effect to any conditions of approval of the development or which the developer may regard or be advised are necessary or expedient for purposes of providing certainty regarding the rights and obligations of the persons concerned; and
- 11.7.2 apply for the subdivision and rezoning of any portion of the common property in order to create an erf or erven for the establishing of facilities for the development or for the establishing of any services (which erf or erven shall vest in the developer with the right to dispose thereof); and  
[AMENDED : 21/06/2025]
- 11.7.3 register in favour of the developer or of a company or property to be

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nominated by the developer such servitudes as the developer may deem necessary or expedient to lead or convey water, electricity, telecommunication and electronic data transmission lines and suchlike services over the common property, the terms and conditions of which shall be determined by the developer's attorneys in accordance with generally accepted provisions for servitudes of this nature (including exclusive rights as far as telecommunication and electronic data transmission lines or services are concerned).

- 11.8 The Association may not at any time during the development period apply for the subdivision and/or rezoning of any portion of the common property. Should the Association after the development period apply for the subdivision and/or the rezoning of any portion of the common property it may not be done without the approval of at least 75% of all members, and then only subject to the prior written consent of the developer, which shall be a prerequisite, and subject thereto that any erf so created or rezoned shall vest in the developer free of charge. The developer may have the provisions of this clause registered against the title deed(s) of the common property.  
[AMENDED : 21/06/2025]

## 12 LEVIES

- 12.1 The Committee shall maintain a levy fund and determine the levies (both general and specific) to be imposed upon the owners (borne by them in accordance with the number of properties owned by them) for the purpose of meeting all the expenses which the Association has incurred, or which the Committee reasonably anticipates the Association will be put to by way of payment of all charges payable by the Association, the services rendered to it, and for payment of all expenses necessarily or reasonably incurred including (but not limited to) all such expenses incurred or to be incurred in respect of payments to be made in terms of the CSOS Act and the costs arising from meeting the Association's financial obligations in terms of the said Act (including but not limited to taking out fidelity insurance as provided for in terms of the regulations made in terms of the CSOS Act), the maintenance, repair, improvement and keeping in order and good condition all facilities under its control and the fulfilment of any other duties or obligations of the Association.
- 12.2 The Committee shall estimate the levy amount which shall be required by the Association to meet the budgeted expenses during each financial year, together with such estimated deficiency (if any) as shall result from the preceding financial year, and shall determine a levy equal to or as near as is reasonably practical to such estimated amount. The Committee may include in such levies an amount to be held in reserve to meet

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anticipated future expenditure not of an annual nature. Every such levy shall be payable as and when determined by the Committee.

- 12.3 The Committee shall annually not later than on 30<sup>th</sup> November on the Association's website publish the Association's draft operational budget for the next financial year together with the estimated amount of the levies for the following financial year and invite members to comment on the draft operational budget and estimated levies by not later than 15<sup>th</sup> January of the following year.
- 12.4 The Committee shall consider the members' comments and proposals contemplated in clause 12.3 and on or before 31<sup>st</sup> January determine the levies that shall take effect on the 1<sup>st</sup> day of the following financial year and on or before 31<sup>st</sup> January notify the members of the levies as determined.
- 12.5 The developer shall at the outset determine the levies that will apply up to the end of the first financial year during which the first transfer of an erf in the development to a third party occurs.
- 12.6 Notwithstanding any other provisions the Committee may, if deemed necessary, propose a special levy, as a once-off payment or spread over a period.
- 12.7 In event of the Committee for any reason whatsoever failing to prepare and/or give due notice of the determination referred to in clause 12.4, every member shall, until served with such notice, continue to pay the levy previously imposed and shall after such notice pay such levy as may be specified in the notice, in the manner specified in the notice, together with any arrear levies.
- 12.8 The levy for all residential properties in the development shall be a uniform amount.
- 12.9 The levies payable in respect of erven zoned for any purpose other than residential purposes shall be determined by the Committee on the basis that the levy per erf shall not be less than the levy determined in respect of residential erven and having regard to the impact which such erf (compared to a residential erf) may have on the facilities and services of the development: Provided that for as long as any such erf is undeveloped, the levies payable in respect of such erf shall be the same as the levies applicable to erven zoned for residential purposes.
- 12.10 All levies shall be payable in advance by the member to the Association not later than on the 1<sup>st</sup> (first) day of each month (irrespective of whether or not the property is rented out and irrespective of whether or not the member has received an invoice for the levy).

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- 12.11 The AGM or SGM may by special resolution adjust the levies determined by the Committee: provided that the levies shall at all times be sufficient to cover the budgeted expenses of the Association.
- 12.12 In the event of any owner failing to pay any levy on due date –
- 12.12.1 such levy may be recovered from such owner by action instituted in the Magistrates Court or any other court of competent jurisdiction;
- 12.12.2 the defaulting owner shall pay all the costs incurred by the Association in the recovery of the levy including all legal costs at a scale as between an attorney and own client as taxed or agreed to by the member.  
[AMENDED : 21/06/2025]
- 12.12.3 legal action will be instituted for the recovery of any levy which is outstanding for more than 1 (one) month after the due date;  
[AMENDED : 08/10/2020]
- 12.12.4 any levy not paid within 1 (one) month after the due date shall notwithstanding any other provisions of this Constitution as from the first day of the next month bear interest as provided for in terms of clause 6.4.  
[INSERTED : 08/10/2020]
- 12.13 A member's obligation to pay the levy to the Association lapses when he ceases to be a member of the Association, without prejudice to the right of the Association to recover overdue levies. A member's successor-in-title to a property shall be liable for future levies from the date upon which he becomes the owner of the property in question.
- 12.14 No member shall be entitled to transfer his property unless all his levies to the Association have been paid, and unless he has informed the managing agent or the Committee of the name, telephone number and address of his successor-in-title and has obtained clearance from the Association that the member has complied with the aforesaid requirements and has otherwise fulfilled all his obligations in terms of this Constitution.
- 12.15 No person shall, while he is a member or thereafter, be entitled to claim from the Association any levies paid to the Association.
- 12.16 All amounts payable by the member to the Association shall be deposited into the Association's bank account by either a bank deposit or an electronic funds transfer (EFT), for purposes of which both the name of the member and erf number are to be furnished for identification purposes.
- 12.17 Should any dispute arise at any time between the members and the Committee in regard to the determination or calculation of the levies, the decision of the auditors (acting as experts and not as arbitrators) in regard

to such dispute shall be final and binding on the members and the Committee.

- 12.18 In the event of any dispute arising in regard to the determination or calculation of any levy, every member shall until the determination of such dispute, pay the levies determined by the Committee.
- 12.19 The *domicilium citandi et executandi* of the member shall for all purposes be at the street address of his or her property.
- 12.20 The Committee shall be entitled to determine the credit control and debt collection procedures to be followed in respect of all amounts owing to the Association.
- 12.21 Notwithstanding any other provisions, the developer shall only pay levies on erven registered in his name to the extent that a general plan in respect thereof shall have been approved by the Surveyor-General and an erf forming part of such general plan shall have been transferred by the developer to a third party, and then only from 3 (three) years after the date of first transfer of an erf in the phase concerned to a purchaser thereof.
- 12.22 The developer shall not be required to or be liable for payment of any levies on the common property.
- 12.23 For the avoidance of doubt it is provided that no levies shall be payable in respect of any portion of the development unless it is an erf as referred to in clause 2.1.17.

### 13 FINANCIAL AND FISCAL DETERMINATIONS

- 13.1 To the extent that the Association enjoys income tax exemption on revenue, funds available for investment may only be invested at such institutions as the Commissioner for the South African Revenue Service (SARS) may authorise or determine.
- 13.2 To the extent that the Association enjoys income tax exemption on revenue, Annual income tax returns supported by the Associations' Annual Financial Statements must be submitted to the Tax Exemption Unit at SARS.
- 13.3 The Association enjoys income tax exemption on revenue (excluding levies) to a maximum of R 50 000 per annum according to section 10(1)(e)(ii) of the Income Tax Act (Act no. 28 of 1997) but may lose this status if it consciously was a party to or was consciously present or allowed that its position be used as a part of a transaction, action or scheme where the

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only objective was to reduce, delay or avoid responsibility for any tax, right or levy that would have been or become payable by a person in terms of the Income Tax Act or any other act administered by the Commissioner for SARS.

#### 13.4 ACCOUNTING RECORDS

- 13.4.1 Proper accounting books and records must be kept of the finances and administration of the Association. Financial statements shall be prepared and audited annually by a chartered accountant as soon as possible after the end of each financial year. The accounting books and records must be kept for a period of at least 6 (six) years after finalization of the transactions, actions or proceedings. The Committee shall decide when accounting documents older than 6 (six) years can be destroyed.
- 13.4.2 Proper accounting records shall not be deemed to be kept if there are not kept such account accounting records as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.
- 13.4.3 The accounting records shall be kept at the Association's principal place of business or such other place or places as the Committee thinks fit, and shall always be open to inspection by the Committee members.
- 13.4.4 The Committee shall from time determine whether and to what extent and at what times and places and under what conditions the accounting records of the Association shall be open to inspection by members not being Committee members, and no member (not being a Committee member) shall have any right of inspecting any accounting records or documents of the Association except as determined or authorized by the Committee.
- 13.4.5 A copy of the annual financial statements which are to be laid before the Association in annual general meeting shall, not less than 15 (fifteen) days before the date of the meeting, be sent to every member of the Association: Provided that this clause shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.

#### 14 BREACH

14.1 Should any member –

14.1.1 fail to pay on the due date any amount due by that member in terms

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of this Constitution or any rules made thereunder and remain in default for more than 7 days after being notified in writing to do so; or

- 14.1.2 commit any breach of any of the provisions of this Constitution or any rule made thereunder and fail to commence remedying that breach within the period determined by the Committee after the receipt of written notice to that effect and complete the remedying of such breach within a reasonable time,
- 14.1.3 then and in either such event, the Committee shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Committee or the Association or any other member may have in law, including the right to claim damages, to impose fines upon such member as determined in terms of this Constitution; and
- 14.1.4 to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any rules made there-under, as the case may be.
- 14.2 No member shall be entitled, in proceedings against him by the Association or any member of the Association, to raise the defence of acquiescence or waiver of rights, or that the Association or the member concerned, as the case may be, did not take action against another member for the same or a similar transgression, failure to comply or default in respect of any of the provisions of this Constitution.

## 15 DETERMINATION OF DISPUTES

- 15.1 Subject to clauses 9.5.6, 12.15, 15.4, 15.5 and 17, any disputes arising out of or in connection with this Constitution must be determined in accordance with clause 15.2 read with clause 15.3, except where an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 15.2 Any party to a dispute who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties concerned within 14 (fourteen) days after such notice, either of the parties to the dispute may refer the same to determination in terms of the provisions of clause 15.3.
- 15.3 If a party exercises his right in terms of clause 15.2 to refer the dispute for determination, such dispute shall be referred to the following persons who shall in each case have a minimum of 10 (ten) years' experience in their field:

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- 15.3.1 If the dispute is primarily an accounting or financial matter, a practicing chartered accountant.
- 15.3.2 If the dispute is primarily a legal matter or a matter relating to the behaviour and or conduct of a Member, a practicing attorney or advocate.
- 15.3.3 If the dispute primarily relates to the nature of buildings, structures, installations or equipment, a practicing architect or a professional engineer.
- 15.3.4 If the dispute is primarily one relating to the aesthetics of a building on an erf, a practising architect.
- 15.4 If the parties are unable to agree on the appointee as provided for in clause 15.3 within 3 (three) days of being requested to do so, the adjudicator shall be an independent person nominated by the auditors at the request of any of the parties.
- 15.5 The person appointed in respect of any of the matters referred to in clauses 15.3.1, 15.3.3 and 15.3.4 shall in all respects act as an expert and not as an arbitrator, and the person appointed in respect of a matter referred to in clause 15.3.2 shall act as an arbitrator. The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 15.6 The parties shall use their best endeavours to procure that the decision of the adjudicator shall be given within 21 (twenty one) days or so soon thereafter as possible.
- 15.7 The decision of the adjudicator shall be final and binding on the parties to the dispute and may be made an order of any competent court at the instance of any of the parties to the dispute.
- 15.8 The costs of and incidental to any such proceedings, including the fees of the adjudicator, shall be in the discretion of the adjudicator who shall be entitled to direct the allocation of the costs.
- 15.9 The provisions of this clause 15 constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that they are not bound by such provisions.
- 15.10 The provisions of this clause 15 shall be deemed to be severable from the remainder of the Constitution and shall remain binding and effective as between the parties notwithstanding that this Constitution may otherwise be cancelled, amended or declared of no force and effect for any reason.

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- 15.11 In the event of arbitration as referred to in clause 15.5, such arbitration shall, subject to the provisions of this clause 15, be held in terms of the Arbitration Act, No 43 of 1965.
- 15.12 Notwithstanding anything to the contrary contained in this Constitution the Committee shall be entitled to institute legal proceedings of whatsoever nature on behalf of the Association by way of application, action or otherwise in any court having jurisdiction for any purpose whatsoever relating to any matter in respect of any of the provisions of this Constitution, including The Architectural Design Manual and any rules made in terms of this Constitution.
- 15.13 The provisions of clauses 15.1 to 15.5 shall not prevent the Association or any member to make an application as provided for in terms of Section 38(1) of the CSOS Act if the Association or the member is a party to or affected materially by a dispute (as defined in terms of Section 1 of the CSOS Act).

## 16 INDEMNITY

- 16.1 No Committee member shall be liable to the Association or any member thereof or any other person whomsoever for any act or omission by himself or by the Association or the Association's employees or agents. The members of the Committee shall be and remain indemnified against all costs, claims, legal actions, expenses, losses or damage sustained by such Committee member as a result of any alleged act or omission in the performance of his duties provided that such Committee member with the information at his disposal acted in good faith and without gross negligence and dishonesty.
- 16.2 The Association may purchase insurance to cover any expenses and liability it may lawfully incur in terms of the provisions of clause 16.1.
- 16.3 Each member hereby indemnifies the Association and each member of the Committee and, as a stipulation for the benefit of a third party, any veterinarian who may perform any procedure or act in respect of the pet of an owner or any member of his family or invitee as provided for in terms of the Game Management Plan for Outeniquasbosch, against any claim and all costs arising from or in connection with such procedure or act.

## 17 FINES AND PENALTIES

- 17.1 Save as provided in clause 17.4, the Committee may determine penalties for any transgression of any of the provisions of this Constitution and the rules made in terms of this Constitution, which penalties -

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- 17.1.1 may be by way of fixed amounts for specific transgressions or may be by way of a maximum amount depending on the severity of the transgression and whether or not it is a first transgression and whether or not the conduct constituted a deliberate act of ignoring the provisions of the Constitution or rules and a refusal to comply after a notice to refrain from or to discontinue the conduct in question;
- 17.1.2 may be amended by the Association in general meeting.
- 17.2 If the conduct of an owner or occupier or the family members, guests or employees of the owner or occupier in the opinion of the Committee constitutes a contravention of any provision of this Constitution or the rules the Committee may, without prejudice to any other rights or remedies which the Committee may have in law or in terms of this Constitution (including the right to obtain a court order to compel an owner to comply with this Constitution and any rules of the Association) –
- 17.2.1 by written notice inform the owner of the nuisance or contravention and warn the owner that if he fails to remedy the contravention within the period determined by the Committee, or persist in such conduct or contravention, or if such conduct or contravention is repeated, a penalty will be imposed on the owner; or
- 17.2.2 by written notice impose a penalty on the owner, which notice shall state the reasons for the imposition of the penalty, if despite the written notice referred to in clause 17.2.1, the owner fails to remedy the contravention, or if the owner persist in the conduct or contravention, or if such conduct or contravention is repeated; or
- 17.2.3 summarily and without warning, by written notice impose a penalty on the owner, which written notice shall state the reasons for the imposition of the penalty.
- 17.3 The penalty imposed under clauses 17.2.2 or 17.2.3, becomes due and payable on the date of the written notice and shall be debited against the owner's levy account. Should the penalty remain unpaid it shall bear interest at the rate applicable to arrear levies. Payment of penalties will take preference above levies and any payment received after the imposition of a penalty shall be deemed to be allocated firstly to the payment of the penalty irrespective of any allocation by the owner.
- 17.4 The Committee may from time to time determine and amend the categories of contraventions and the amounts of the penalties in respect of first and subsequent contraventions, subject to the possible reviewing thereof by the Association in general meeting as referred to in clause 17.1.2.

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- 17.5 A penalty may be imposed in respect of each separate contravention. In the event of a continuing contravention, the owner shall be deemed to be guilty of a separate contravention for every 24 hours or part thereof during which such contravention continues and shall be liable in respect of each such separate contravention.
- 17.6 An owner shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the Association in obtaining the recovery of arrear levies, or any other arrear amounts, including penalties due and owing by such owner to the Association, or in enforcing compliance with the provisions of this Constitution, or any rules made in terms hereof.
- 17.7 An owner may within 21 (twenty one) days of the date of the written notice referred to in clauses 17.2.2 or 17.2.3, lodge an objection against the penalty imposed with the Committee.
- 17.8 Upon receipt of the objection, the Committee may -
- 17.8.1 withdraw or reduce the penalty, or
- 17.8.2 schedule a Committee meeting for the purpose of considering the objection and invite the owner to attend, or to be represented.
- 17.9 At the Committee meeting referred to in clause 17.8.2 above, the owner or his representative shall have the right to -
- 17.9.1 present his case;
- 17.9.2 present any evidence, including the calling of witnesses, to substantiate his case;
- 17.9.3 cross-examine any person called as witness in support of the charge;
- 17.9.4 have access to documents produced in evidence;
- 17.9.5 produce mitigating factors.
- 17.10 The failure of the owner or his representative to attend the Committee meeting referred to in clause 17.8.2 above shall not render the proceedings at the meeting void. Should the owner or his representative not attend the Committee meeting without providing a reasonable request for postponement, the Committee may, in their sole discretion, continue with the meeting and consider the objection in the absence of the owner.
- 17.11 Upon the conclusion of the Committee meeting, the Committee shall deliberate the evidence and if so resolved, they may -

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- 17.11.1 uphold the penalty; or
- 17.11.2 withdraw or reduce the penalty.
- 17.12 Any notice to an owner in terms of this clause, will be regarded as having been properly given if such notice is -
  - 17.12.1 delivered to the owner by hand, in which event it shall be regarded as having been received on delivery; or
  - 17.12.2 delivered by registered post to the owner to his *domicilium citandi et executandi*, in which event it shall be regarded as having been received on the 5th day after the date of postage; or
  - 17.12.3 delivered to the owner by fax or e-mail to the fax number or e-mail address of the owner, in which event it shall be regarded as having been received on the date of transmission.

## 18 DISSOLUTION OF THE ASSOCIATION

- 18.1 The Association can be dissolved by a decision of the members at an AGM or SGM, provided that –
  - 18.1.1 60% (sixty percent) of all voting rights are present or represented in accordance with the provisions of this Constitution and 80% (eighty percent) of the voting rights present or represented at the meeting are exercised in favour thereof; and
  - 18.1.2 The Local Authority approves the decision.
- 18.2 Upon such dissolution the Committee shall be obliged to convert into cash the Association's assets, settle all the debts and meet all the liabilities of the Association.
- 18.3 In the event that there remains, after the settlement of debts and liabilities, any assets, properties or funds (excluding levies), the Association may not divide such assets, properties or funds amongst members of the Association and must transfer it to a similar Association of persons who are also exempted from the payment of income tax in terms of section 10(1)(e) of the Income Tax Act.

## 19 AMENDMENT OF CONSTITUTION

- 19.1 This Constitution can only be amended at an AGM or SGM, provided that 60% (sixty percent) of all voting rights are present or represented in accordance with the provisions of this Constitution and 75% (seventy five

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percent) of the voting rights present or represented at the meeting are exercised in favour thereof.

- 19.2 A motion by members for amendment to this Constitution or the rules shall be in writing and signed by at least 20 (twenty) members and delivered to the managing agent and in the absence of a Managing Agent, the Committee.
- 19.3 Unless specifically otherwise decided, amendments to the Constitution shall take effect on the date of approval thereof at a SGM or AGM, as the case may be.  
[AMENDED : 21/06/2025]
- 19.4 Amendments to the Constitution shall after approval thereof at a SGM or AGM, as the case may be, be submitted to the municipality if so required in terms of any Act or By-law, the Community Schemes Ombud Service established in terms of the CSOS Act and, as long as the Association enjoys income tax exemption, the Commissioner for the South African Revenue Services.  
[INSERTED : 21/06/2025]
- 19.5 The making of rules by the Association in general meeting as provided for in terms of clause 2.1.35 (which may not be at variance with or have the effect of circumventing the provisions of this Constitution and the Architectural Rules and Architectural Guidelines or which may render the same unenforceable or inoperative) and the amendment thereof shall take place by majority vote as provided for in terms of clause 9.1.11.  
[INSERTED : 21/06/2025]

## **20 EXEMPTION FROM INCOME TAX IN TERMS OF SECTION 10(1)(e)(i)(cc) OF THE INCOME TAX ACT**

In order to comply with the conditions of the South African Revenue Services in respect of income tax exemption the following provisions form part of this Constitution:

- 20.1 The sole object of the Association is to manage the collective interests common to all its members, which includes expenditure applicable to the common property of such members and the collection of levies for which such members are liable.
- 20.2 The Association is not permitted to distribute its funds to any person other than to a similar association of persons.
- 20.3 On dissolution the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of

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section 10(1)(e)(i)(cc) of the Act.

- 20.4 Any amendments to the memorandum and articles of association must be submitted to the Commissioner for the South African Revenue Service.
- 20.5 Funds available for investment may only be invested with a deposit- taking institution as defined in terms of Section 1 of the Banks Act No. 94 of 1990.  
[AMENDED : 04/06/2022] [AMENDED : 21/06/2025]

**DATE: 26 September 2019**

**Signed : D van Zyl (Director)**  
**MEROS (PTY) LTD**

**D van Zyl (Director)**

**CShell114 (Pty) Ltd**

**Reg No 2005/030913/07**