

# CONSTITUTION OF THE HOMEOWNERS ASSOCIATION

(draft version March 2015)

SHARK BAY ESTATE

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*at Langebaan*

## 1. INTERPRETATION

- 1.1 In these rules, unless inconsistent with or otherwise indicated by the context –
- 1.1.1 “*Architectural Guidelines*” means the general and specific architectural guidelines of the estate from time to time comprising, inter alia, the sketch plan submission requirements as well as all the landscaping requirements;
- 1.1.2 “*the Association*” means the Shark Bay Estate Homeowners Association, presently an unincorporated Association but intended to be an incorporated company not for gain in terms of Section 8 of the Companies Act read with schedule 1 thereof (further referred to below);
- 1.1.3 “*Chairman*” means the Chairman of the Trustees (later Directors) of the Association appointed in terms of the Constitution from time to time;
- 1.1.4 “*Common areas*” means land registered in the name of National Parks;
- 1.1.5 “*Constitution*” means this constitution read with the Memorandum of Incorporation once adopted;
- 1.1.6 “*Consulting Architects*” means the Architects appointed as such by the seller, (presently Leon Smith or Peet Kok) namely Leon Smith Architects (Pty) Ltd, Unit 66B, Eden on the Bay, Big Bay, telephone number (021) 554 8900;
- 1.1.7 “*Consulting Landscape Architects*” means the Architects appointed as such by the seller, namely Terra+ Landscape Architects (presently Ankia Bormans) telephone number 082 448 4645;
- 1.1.8 “*Consulting Thatcher*” means the Thatcher appointed as such by the seller, namely, Rob Louw of Robbi Thatch, telephone number 021 975 1535;
- 1.1.9 “*Contractors Code of Conduct*” means the general and specific rules applicable to all contractors which forms part of this Constitution;
- 1.1.10 “*Developer*” means Dormell Properties 391 Proprietary Limited, a Company duly registered as such in terms of the Companies Act, as amended.
- 1.1.11 “*the Developer’s Property*” means Remainder of the farm Oostewal no 292, Saldanha Bay Municipality measuring 82,6072 hectares in extent and held under Deed of Transfer Number T25548/2005;
- 1.1.12 “*Directors*” means the Directors for the time being of the Association, upon incorporation, or their alternates, as the case may be;
- 1.1.13 “*the Estate*” means the Shark Bay Estate;

- 1.1.14 "*the Manager*" means the person appointed to that office by the Association from time to time;
- 1.1.15 "*Municipality*" means the Saldanha Bay Municipality;
- 1.1.16 "*member*" means a member of the Association;
- 1.1.17 "*Memorandum of Incorporation*" means the Memorandum of Incorporation of the Without Gain Company registered or to be registered;
- 1.1.18 "*National Parks*" means South African National Parks;
- 1.1.19 "*owner*" or "*homeowner*" means the registered owner of an erf;
- 1.1.20 "*resident*" means any person who is resident at the Estate and includes members of their family, their guests and tenants;
- 1.1.21 "*the rules*" means the rules contained in this document and as amended or imposed separately by the Association from time to time;
- 1.1.22 "*unit*" means an erf or sectional title unit capable of individual tenure in terms of the Sectional Titles Act No 95 of 1986 as amended, or the Deeds Registries Act No 47 of 1937, as amended, which forms part of the Estate;
- 1.1.23 "*vehicle*" means any form of conveyance, whether self-propelled or drawn by machine, animal or otherwise;
- 1.1.24 "*workers*" means domestic workers, laborers and subcontractors employed or appointed by owners and/or residents;
- 1.1.25 any reference to the singular includes the plural and *vice versa*;
- 1.1.26 any reference to natural persons includes legal persons and *vice versa*;
- 1.1.27 any reference to gender includes the other genders;
- 1.1.28 words and phrases defined in the constitution bear corresponding meanings herein;
- 1.2 The clause headings in these rules have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.3 If any period is referred to in these rules by way of reference to a number of days, the

days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the day shall be the next succeeding business day.

- 1.4 These rules shall be governed by, construed and interpreted in accordance with the law of the Republic of South Africa.

## **2. INTRODUCTION**

- 2.1 Shark Bay Estate ("the Estate") is a prestigious, residential estate boasting unsurpassed views of the world famous Langebaan lagoon and positioned in the National Parks. The Estate has been designed to promote optimal integration with the natural environment and long-term sustainability of the eco-system.
- 2.2 The purpose of this set of rules and code of conduct is to govern the conduct of residents, their employees and visitors and to advance the objects of the Association through better management of its Affairs.
- 2.3 Living on the Estate will mean being part of a community of people who share a unique lifestyle. These rules provide the framework for protecting this lifestyle through an acceptable code by which members shall live and interact with each other so as to achieve symbiotic harmony amongst each other.

## **3. PROCEEDINGS OF THE ASSOCIATION**

- 3.1 The Estate is generally managed and controlled by the Association. The Board of Directors of the Association ("the board") in terms of the Memorandum of Incorporation, is given the power for the management, control, administration, use and enjoyment of the Estate. This is initially an Association with members and trustees (referred to below) and with its functions to be delegated to a company as referred to below.
- 3.2 Until such time as the company is formed, its functions will be fulfilled by the established body in the form of an association, with all owners being members with equal votes (but with the developer having a veto right on all decisions until such time as the last property is transferred), and with a board of trustees appointed by the members (with the developer being an automatic and unalterable trustee with a veto right in respect of decisions as aforesaid).
- 3.3 Until such time as the company has been established, administrative management of the association will be conducted *mutatis mutandis* in accordance with Companies Act on the basis of trustees being treated as directors.
- 3.4 Once the company has been established, the provisions below apply
- 3.5 The board has the power to substitute, add to, amend or repeal any rules in accordance with clause 24.1 hereunder. Subject to the Constitution of the Association, the Board is empowered to carry out all functions and powers designated to the Association in these Rules. The Board also has the right to impose financial penalties (fines) to be paid by

those members who do not comply with the Rules. Fines, where imposed, shall be deemed to be a part of the levies due by the Owner. Furthermore, the Board may enforce provisions of any rule, including by application to the courts.

- 3.6 Notwithstanding anything else contained herein or in the Memorandum of Incorporation or in the rules (with the provisions of this sub clause being unalterable and entrenched), the developer and its property are not bound in any manner whatsoever to this Constitution nor any rules established in terms thereof nor any provisions in the Memorandum of Incorporation providing for any prohibitions on the developer or its property.
- 3.7 The Association collects levies from all owners, being a percentage of 1% of the sales, and then in addition a fixed monthly amount which is equal in respect of each owner (initially R250 per month per property owner).
- 3.8 The provision that monthly levies must always be equal per owner, is unalterable and entrenched (with the amount of such being in the discretion of the board).
- 3.9 The Association will pay over to the National Park's Board (for the general management of the common areas) the levies collected in terms of clause 3.7 above.
- 3.10 Until the last property is transferred within the development, the developer may (in its discretion and unilaterally) cause the amendment of this Constitution, the Memorandum of Incorporation and any adopted rules.

#### **4. AIMS AND OBJECTIVES**

- 4.1 To promote the development and maintenance of all properties within the Estate and to ensure that all such properties are developed and maintained in such a way as to derive maximum benefit for the entire Estate community.
- 4.2 To enforce the provisions relating to the development and architectural controls for the Estate, as set out in the Architectural Guidelines ("the Guidelines"). In particular, and in no way detracting from the generality of the aforesaid, to ensure that all buildings and other structures erected on the Estate as well as any external fixtures or fittings attached thereto, comply with the controls and generally to ensure that the external appearance of all buildings and other structures and all gardens and other areas on the Estate, comply with the standards set out in the aforesaid documents.
- 4.3 To promote, advance and protect the interests of members generally and to co-operate and liaise with the Local Authority, Provincial Government, National Parks Board and all other appropriate authorities for the benefit of the Association and its members.
- 4.4 To represent the interests of members and to provide a united voice by which such interests may be expressed.
- 4.5 To collect levies and other contributions towards funds of the Association for the attainment of the objectives of the Association.
- 4.6 To regulate the day to day running of the Estate, including:

4.6.1 The conduct of any person within the Estate and the prevention of any nuisance to any member.

4.6.2 Imposing fines and other penalties upon members disobeying this Constitution, the Guidelines or the Rules.

## **5. DISTURBANCES**

5.1 Any conduct, save for normal gardening activities, which disturbs or tends to disturb the peace and tranquility of the Estate and residents, is not permitted.

5.2 Excessive and unnecessary noise by vehicles, appliances, tools, pets and/or excessive noise by individuals (which noise shall be determined by the Board or its Manager in their sole and unfettered discretion from time to time) as well as other nuisances attributable to a resident, constitutes a disturbance of the peace in terms of these rules.

5.3 Generators may only be installed with the prior permission of the Board and must comply with the specifications in place from time to time. Generators may only be used during power outages.

## **6. PARTIES AND FUNCTIONS ON THE ESTATE**

6.1 Ordinary dinner parties and other social gatherings of reasonable proportions are part of normal living and of good social interaction. They pose few, if any, problems. However, the holding of large celebratory functions at private residences within the Estate is discouraged for reasons of disruption to security, parking and the general disturbance of the peace and inconvenience to other residents.

6.2 Special permission for a function to be held within the Estate, where more than 30 people may be attending, must be sought, prior to the proposed date of such function. Those planning to host an event or party as outlined in this clause must obtain permission from the Estate Manager.

6.3 , In the event of permission being granted, cognizance shall be taken by the Association of the position of the residents in relation to neighbours, parking availability, times of function, type of music to be provided, size and position of any proposed marquee, requirements for security and guards, as well as other matters of importance to the situation, all of which may result in the possible imposition of restrictions and/or special conditions as may be deemed fit by the Board. Restrictions imposed on any function shall be strictly adhered to and will be deemed to be incorporated in, and form part of these Rules.

## **7. DOMESTIC REFUSE**

7.1 All refuse shall be kept in suitable containers which shall not be visible from any road, except when placed in containers for purposes of collection by the Local Authority, the manager or waste collection contractors, provided that the manager may, from time

to time, by notice in writing to all residents-

- 7.1.1 prescribe the type and size of refuse containers to be obtained and used;
- 7.1.2 provide directives in regard to any place designated for refuse removal.
- 7.1.3 require the payment of a reasonable charge for the provision of such containers.
- 7.2 It shall be the duty of every resident to ensure that any directive given by the Manager from time to time is observed and implemented.
- 7.3 General household refuse and refuse bags may not be placed on the pavement, except on the date the refuse is removed. Owners should make their own arrangements for the removal of garden refuse unless this is limited to two bags.
- 7.4 Where, in the opinion of the Manager, any refuse is of such size and nature that it cannot be expediently removed by the Local Authority or by waste collection contractors, the Manager shall give the resident wishing to dispose of such refuse such directives for its disposal as he may deem fit.

## **8. ANIMALS**

- 8.1 The local Authority by-laws relating to pets will be strictly enforced.
- 8.2 Dogs may only be kept on properties where a suitable walled enclosure prevents a dog from straying off the owner's property.
- 8.3 No member may keep more than two dogs and two cats on the property, unless they have written approval from the Association.
- 8.4 No poultry, pigeons, aviaries, wild animals or rabbits may be kept on the Estate.
- 8.5 Pets are not allowed to roam the streets.
- 8.6 Pets must be walked under the control of the owner in public areas. Pets must not be a danger to other owners or to their pets.
- 8.7 Should any excrement be deposited in a street or other public area, the owner of the pet shall immediately remove it. Failure to do so means the pet's owner will be liable for an immediate spot fine.
- 8.8 Every pet must wear a collar with a tag indicating the name, telephone number and address of its owner, and is to be registered with the Association's offices. Stray pets without identification will be apprehended and handed to the Municipal Pound or SPCA.
- 8.9 The Association reserves the right to have a pet removed should it become a nuisance within the Estate. An independent contractor contracted by the association shall carry out the removal. The cost of the removal shall be for the account of the owner and shall form part of the levy.
- 8.10 The Association has an unfettered discretion in this regard, but will not exercise the right

without first having directed a notice to the owner furnishing details of the complaint and the complainant and afford the owner a reasonable opportunity to eliminate the cause of the complaint.

## **9. SECURITY**

- 9.1 No person shall do anything which is, or might be, prejudicial to the security of any residents and resident are to report incidents affecting security to the Estate Manager.
- 9.2 *Bona fide* guests residing with an owner are permitted to walk, jog or cycle on the Estate provided they keep to designated roads and pathways.
- 9.3 Other than those contained herein, the Board and/or the Manager may from time to time prescribe further rules in respect of security on the estate.

## **10. DOMESTIC WORKERS AND LABOURERS**

- 10.1 Workers are obliged to abide by these rules and the Constitution. Residents are obliged to familiarize their workers with these rules and the Constitution and to ensure that they are aware of the relevant provisions.
- 10.2 Residents shall use their best endeavours to ensure that none of their employees –
  - 10.2.1 behave or engage in conduct unbecoming of the high standard of the estate; and/or
  - 10.2.2 engage in any strikes or other labour action on or about the estate, it being recorded that the Association and/or the manager shall be entitled to procure compliance with the aforesaid in their discretion and any costs associated therewith shall be for the account of such resident or owner, as the case may be.

## **11. TRAFFIC**

- 11.1 The main road running through the Estate from Langebaan to the West Coast National Park is a Provincial Road and excluded from these provisions. The other roads on the Estate are in fact public roads registered in the name of the Municipality. Because of this and for the safety of all road users, it is necessary to apply the provisions of the Road Traffic Act 29 of 1989 (as amended). The roads are for the use of all, which places extra responsibility and awareness on all who use these roads and particularly on all adults and especially parents who need to educate and control their kids. For the purpose of the rules below these roads are deemed the roads in the Estate referred to below.
- 11.2 Speed Limit
  - 11.2.1 The speed limit throughout the Estate is as designated by the traffic signs. A Maximum speed limit of 40km/h shall apply, provided that lower speed

- limits may be imposed by the Association where this is deemed necessary.
- 11.2.2 Any person found driving in excess of the prescribed speed limit, or in a dangerous manner, will be reported to the appropriate authorities. The modes and methods of speed measuring shall be in the sole discretion of the Board, and such measured speed shall be conclusive proof of the speed driven by any person.
- 11.3 The movement and control of traffic and pedestrians are subject to these rules and such further directives as may be issued the Manager with regard thereto.
- 11.4 Unless written consent is obtained from the Manager, heavy vehicles are not allowed access onto the Estate on Saturdays, Sundays, or public holidays, nor before 08:00 and after 18:00 on week days. Only single axle construction vehicles of 8 tons and less and tipper trucks of 6 cubic metres and less will be allowed onto the Estate.
- 11.5 Motorised vehicles shall be driven on roads only and only by persons who hold valid current international or South African drivers' licenses.
- 11.6 Persons, animals and birds shall at all times have the right of way on and about the estate. Vehicles shall be brought to a stop whenever necessary.
- 11.7 The Association may, in conjunction with the Municipality and National Parks Board, by means of appropriate signage, give directives as to the use of roads or any portion of roads and common areas. Failure by any person to obey such signage shall constitute a contravention of these rules.
- 11.8 No person shall drive or ride any vehicle within the estate in such manner that would constitute an offence under any traffic ordinance. All vehicles shall be in a good and roadworthy condition. Without limiting the generality of the foregoing, vehicles emitting excessive noise, smoke and/or oil are prohibited.
- 11.9 The driving of vehicles is confined to designated roads and driveways, provided that non-motorised vehicles may be used on those areas (if applicable) specifically designated by the Association for that purpose.
- 11.10 The Board reserves the right to introduce any traffic calming measures, including but not limited to speed-humps and pedestrian crossings, which in, its sole discretion, deems necessary from time to time, in conjunction with the Municipality.
- 11.11 Trailers, caravans, boats, trucks or lorries must be parked in a place that is at all times out of public sight. The Association shall not be under any obligation to provide any storage facilities or designated places for the storage of any of these types of vehicles.
- 11.12 Quad bikes must be garaged and must not be ridden for leisure purposes anywhere on the Estate.

- 11.13 There are clearly marked restricted areas for emergency vehicles which must only be used for that purpose and in respect whereof the entrances must be kept clear.
- 11.14 No helicopters shall be permitted to land on the Estate except in case of emergency.

## **12. COMMON AREAS AND ENVIRONMENTAL ASPECTS**

- 12.1 All common areas are registered in the name of National Parks which is the legal owner of such areas and as such will determine all rules for the usage of such common areas. The National Park's Board shall be entitled to control all aspects of the environment on or about the common areas, including but not limited to the management and control of fauna and flora and the maintenance and upkeep thereof.
- 12.2 No person shall do anything or omit to do anything that may, in the opinion of the National Park's Board be likely to have a detrimental effect on the environment or that is likely to unreasonably interfere with the use and enjoyment of common areas by residents.
- 12.3 Littering and camping are prohibited. Fires may not be lit on or about common areas except in places specifically designated by the National Park's Board for that purpose. Fires may not be lit on individual properties, other than in properly constructed braai fireplaces or bomas designed for that purpose, or manufactured braais, including a Weber or similar braai. Extreme caution should be exercised in hot or windy weather when the risk of fire is high.
- 12.4 No person shall (without the prior written authority of the National Park's Board) pick or plant any flowers or plants on or about the common areas.
- 12.5 The National Park's Board shall be entitled to prohibit or restrict access to any part of the common areas, in order to preserve the natural fauna and flora.
- 12.6 No person shall discharge any firearm, air-rifle, crossbow or similar weapon or device on or about the Estate. Hunting and trapping in any manner are strictly prohibited.
- 12.7 No person shall anywhere on the Estate disturb, harm, destroy or permit to be disturbed, harmed or destroyed any wild animal, domestic animal, reptile or bird.
- 12.8 No boreholes may be drilled by residents on the Estate without the prior approval of the National Park's Board and the Association.

## **13. LETTING AND RESALE**

- 13.1 These rules apply to and are binding upon all tenants and all future purchasers. An owner (or his agent) who intends to let a unit shall furnish his tenant with a copy of these rules and make them binding on such tenant.

- 13.2 The Association considers short-term leasing/letting of six (6) days or less as a commercial activity which is prohibited in terms of the Constitution.
- 13.3 Sub-letting is permitted but this shall be limited to one such tenant and which sub-tenant must and shall be similarly bound to this Constitution.
- 13.4 Members or their agents shall give the Association prior written notice of any tenants or guests who are to occupy the member's residence in the absence of that member. Every tenant shall be required to register at the offices of the manager within 1 (one) week after arrival and to sign a declaration that he is acquainted with these rules and acknowledges that these rules are binding on him. Similarly any tenant who sub-lets is obliged to register and comply as above.
- 13.5 If any tenant, guest, employee or other invitee of any member fails to comply with any of the provisions of these rules, the Association shall be entitled to act in terms of clause 25 below.
- 13.6 Estate agents shall be required to abide by such rules and directives relating to advertising, access to the estate, the holding of show houses and the like as the Association may from time to time reasonably determine. Any agent who fails to abide by any such rules and directives may be denied access to the estate and its principle as owner being liable towards the Association.
- 13.7 A Member may not in any manner alienate a property unless:
- 13.7.1 The proposed transferee has irrevocably and in writing bound himself to become a member of the Association and to observe this Constitution for the duration of his ownership of the erf;
- 13.7.2 The Association has given its written consent thereto and has issued a clearance confirmation that all amounts owing to the association by such member have been paid and that the member is not in breach of any of the provisions of this Constitution and
- 13.7.3 The proposed transferee acknowledges that upon the registration of transfer of the erf into his name he shall ipso facto become a member of the Association.
- 13.8 Upon any re-sale, on transfer a levy of 1% of the purchase price at the time is payable by the owner, as per clause 3.7 above.

## **14. CONDUCT**

- 14.1 No washing of any nature (including but not limited to garments and household linen) may be hung or placed to dry except in the areas specifically designated for that purpose.

- 14.2 All washing lines and similar devices must be placed below the level of garden/yard walls, or be properly screened, in order that they are not readily visible from any road and/or other unit.
- 14.3 No unauthorized persons are allowed on any unit where building operations are in progress.
- 14.4 No person shall make or cause to be made any undue disturbance or noise or do anything or allow anything to be done that may constitute a nuisance in the sole and unfettered discretion of the Board and/or the Manager, to other residents. In particular and without limiting the generality of the foregoing:
- 14.4.1 burglar alarm sirens must automatically switch off and comply with any regulations which the Association may issue with regard thereto from time to time.
- 14.4.2 the use of noisy machinery and power tools in the open (i.e. outside a purpose built workshop), outside of normal working hours must be avoided and is permitted only occasionally and in exceptional circumstances and shall be exercised reasonably.
- 14.4.3 all building work, whether undertaken by a contractor or by the resident, must be performed during the hours stipulated by the Association from time to time for building contractors, unless written approval is given by the Association for building operations, to take place outside such hours.
- 14.4.4 loud music and other undue noise is not permitted.
- 14.5 In order to maintain the low density residential nature of the Estate, no member or tenant shall accommodate or allow the accommodation of more than 2 (two) persons per bedroom in any dwelling on the estate.
- 14.6 Notwithstanding anything else contained herein, members are generally precluded from any activities having a negative impact on the principles of nature conservation, including but not limited to not allowing alien vegetation.

## **15. SYNDICATION OWNERSHIP**

Syndication ownership is limited to two owning entities or persons, whether it be two natural persons as co-owners, two entities or trusts in a joint venture or partnership (whether registered as such or not), or otherwise.

## **16. COMMERCIAL ACTIVITIES**

- 16.1 Subject to the Constitution, owners who envisage conducting a commercial business

enterprise from the Estate must seek and obtain written permission from the Association.

16.2 Such business operating from a dwelling is subject to the following and any other restrictions:

16.2.1 There is to be at least one *bona fide* resident occupying the building from which the business is to be undertaken.

16.2.2 A maximum of 30% of the gross floor area of the dwelling may be utilized for the business, provided that such area may not exceed 60 square metres.

16.2.3 The display names, logos, advertising material and notice boards, is prohibited.

16.2.4 No door-to-door marketing and/or selling is permitted.

16.2.5 The storage of goods of any nature, and the presence of hazardous waste, is prohibited.

16.2.6 The display of goods contemplated to be sold, shall be located inside the dwelling place and shall not be visible from the outside/street.

16.2.7 The loading and off-loading of goods by means of a private or commercial vehicle may not take place unless the mass is 3500kg or less (loading capacity) does not exceed 3500kg, loading capacity included.

16.2.8 All visitors' vehicles shall be parked on the premises. No parking whatsoever is permitted on the pavement or on gardened or conservation areas.

16.2.9 The parking of a motor vehicle shall not impact neighbours' premises and/or pavements.

16.2.10 a Maximum of one person may be employed in addition to the owner.

16.2.11 No industry or manufacturing enterprise likely to cause disturbance to residents, is permitted.

16.2.12 No disturbances, noises, smells, radioactive emissions, or general nuisances that may cause public discomfort will be permitted.

16.3 The following business undertakings will not be considered or permitted:

Creche

Funeral undertaking

Visitors information bureau  
 Building Society  
 Bank agency  
 Towing service  
 Vehicle workshop  
 Carwash bay  
 School  
 Panel beater  
 Parcel delivery services  
 Travel agency  
 Shooting range  
 Blasting contractors  
 Butchery and/or meat-processing enterprise  
 Dog parlour  
 Seafood supply/ wholesalers  
 Bakery  
 Vehicle sales showroom and offices  
 Entertainment centre  
 Any manufacturing enterprise  
 Packaging and/or cartage contractors

- 16.5 The undertaking may not generate excessive traffic. A Maximum of two simultaneous visitors is permitted. The number of visitors may not adversely affect the Estate. Visiting times will be restricted to 09:00 – 18.00 on business week days only.
- 16.6 The permission granted in terms of this clause to a homeowner can be terminated in the sole discretion of the Association, if the owner contravenes the rules that govern business enterprises on the Estate.
- 16.7 The homeowner shall have no claim whatsoever against the Association for damages, howsoever caused.
- 16.8 Written consent of all immediate neighbours to conduct the enterprise must be obtained and must accompany a request for the permission to the Association to conduct the business.
- 16.9 In the event that visitors occupy the business premises for a significant period of time, the Association may charge an appropriate fee, to be added to the relevant homeowner's levies.
- 16.10 Should any owner (to whom permission has been granted for the conduct of a business) wish to change any aspect of such business, then such owner shall submit a fresh application in accordance with the provisions of these rules to commence such business.

## 17. BUILDING REQUIREMENTS AND CONSTRUCTION

- 17.1 The provisions of this Constitution, the architectural guidelines relating to the construction of buildings and the Contractors Code of Conduct must be strictly complied with.
- 17.2 Without limiting the generality of paragraph 17.1, no building or structure or alteration shall be erected on the Estate unless the plans, specifications and construction thereof comply with the architectural guidelines and the sketch plans and working drawings referred to in these rules and unless the association has approved the building plans in writing. All building plans to be provided by the consulting architect at a market related fee.
- 17.3 a Scrutiny fee determined by the Association from time to time shall be levied in respect of the scrutiny of any working drawings by the consulting architects. Construction must comply with the most recent scrutinized plans, including "as built" plans.
- 17.4 Before any construction project is commenced, the homeowner shall cause the contractor undertaking the construction to pay to the Association a deposit in an amount determined by the Association in order to provide cover for the repair of any damage caused by the contractor or his employee or sub-contractors to property, including trees and plants, or to the National Park's Board or to any other homeowner. Upon the completion of the construction project, the deposit less any amounts necessary to rectify any damage caused as aforesaid, will be repaid to the contractor. No interest will be paid by the Association on deposits.
- 17.5 During the course of construction of any building, the Association shall be entitled to direct the relevant owner or his appointed contractor to effect improvements to the quality of any aspects of the construction, should the Association deem such improvements to be necessary.
- 17.6 The Association shall be entitled to direct the relevant owner to effect maintenance work to his home, should the Association deem such maintenance necessary.
- 17.7 Should any dispute arise in connection with the architectural guidelines, including without limitation, the application and/or interpretation thereof, the consulting architect's decision in respect of any such dispute shall be final and binding upon the parties to the dispute and if necessary the consulting architects can make the necessary amendments to the architectural guidelines where such guidelines are, in the sole discretion of the consulting architects, lacking or vague.
- 17.8 The appointment of building contractors is subject to the prior written approval of the Association, which approval shall not be unreasonably withheld. All members will be obliged to use the services of the consulting thatcher at a market related fee.
- 17.9 Every building contractor shall be required to abide by the rules, the architectural guidelines and any other rules made by the Association regulating the conduct of

building contractors from time to time and to sign such prescribed undertakings as may be determined by the Association with regard thereto. A Building contractor will not be allowed to undertake and proceed with any building work on the estate until such time as the undertakings referred to in this clause have been given and thereafter adhered to. Without derogating from the generality of the foregoing, builders must specifically also adhere to the Contractors Code of Conduct, prescribed by the Association.

- 17.10 Any building contractor shall be required to abide by these rules, the architectural guidelines and any other rules issued by the Association regulating the conduct of building contractors from time to time.
- 17.11 A member shall be obliged to have finally completed the building of his/her home and landscaping within a period of 36 (thirty six) months from having taken transfer from the Developer of the Estate with the owner and his purchaser being liable, jointly and severally. Where an undeveloped property is acquired from someone other than the developer, building must be completed within the time period.
- 17.12 Once building has commenced, members must finally complete same within 18 (eighteen) months, which includes builders' holidays and rain affected days unless written consent has been obtained from the Association.
- 17.13 In the event of the member failing or neglecting to erect a dwelling as set out in clause 17.11 and 17.12 and failing further to remedy such breach after due written notice to effect the required completion within such reasonable time as determined and stipulated in such notice by the Association in its entire discretion, the owner shall become liable for monthly penalty levies payable to the Home Owner's Association, applicable for each month of non-completion, calculated on the following scale:
- Completion overdue by less than three full calendar months calculated from date of transfer, shall incur a monthly penalty levy (payable in addition to the normal monthly levy) equal to twice the normal monthly levy.
  - Completion overdue by more than three months but less than six full months, shall incur a monthly penalty levy calculated at four times the normal monthly levy.
  - Completion overdue by more than six months but less than nine months shall incur a monthly penalty levy calculated at six times the normal monthly levy and
  - Completion overdue by more than nine months shall incur a monthly penalty levy calculated at eight times the normal monthly levy.

All penalty levies shall be payable monthly, upon demand, and shall incur interest at the maximum statutory rate should it not be paid within fourteen days from date of dispatch of the formal demand for payment thereof. Should the Home Owners' Association be obliged to incur legal costs in order to collect penalty levies due, then the said association shall be entitled to recoup its costs calculated at the scale as between attorney and own client, including collection commission.

- 17.14 For the purpose of these rules, final completion shall mean that all items and snagging for both exterior and interior shall be fully completed, landscaping finished and that all contractors and sub-contractors will have moved off site and all rubble, litter and rubbish

shall have been removed from the site and its vicinity.

- 17.15 For the avoidance of doubt an owner who is in breach of the provisions of both 17.11 and 17.12 will only be liable for the penalty levy under either the one or the other, but not both.
- 17.16 No residents may effect any alterations, additions or extensions to the exterior of any building without adhering to the provision of this clause 17 (*mutatis mutandis*)
- 17.17 No member of the Association shall be entitled to build a tennis or netball court, nor to erect basketball hoops thereto, on any property within the development.
- 17.18 No residential unit or section thereof on the Estate may be occupied prior to obtaining written consent by the Association thereto, including with reference to confirmation that the building is substantially complete and capable of final completion within 30 (thirty) days of the date of occupation. In order to obtain this approval the following minimum stipulations must have been adhered to:
- 17.18.1 All structures and pipes must have been completed in accordance with the building plans, approved by the Local Authority.
- 17.18.2 The sewerage line, electricity and water must be connected to the points provided on the sewerage, electricity and water mains provided by the Municipality.
- 17.18.3 All exterior work including walls, palisades, pergolas, boundary walls, driveways, water features and swimming pools must be completed according to the plans approved by the local authority.
- 17.18.4 All the structures must be painted to the satisfaction of the Association and in accordance with the architectural guidelines.
- 17.18.5 The entire area of the unit not covered by structures or drive-ways must be landscaped to the satisfaction of the Association and according to the architectural guidelines.
- 17.19 Notwithstanding anything else contained herein, members will be obliged to employ the services of the Consulting Architects, Consulting Landscape Architects and Consulting Thatcher. All consultants will be obliged to work for a market related fee.

## **18 FIRE PREVENTION AND HAZARDOUS SUBSTANCES**

- 18.1 No person shall bring or permit any person to bring any substances onto the estate or permit the storage of any substances on the estate which may constitute a fire hazard or a threat to the health of any resident or other person or which may result in the contamination of the estate.

- 18.2 Fireworks are strictly prohibited.
- 18.3 Each dwelling must have at least one 4.5kg DCP fire extinguisher.
- 18.4 Fires may not be lit on any erven other than in properly constructed braai and fireplaces or bomas designed for that purpose or manufactured braais, including a Weber or similar braai. Fires may not be lit on any common property.
- 18.5 Common sense should be exercised with regard to the fire risk in windy or hot weather.

## **19. LANDSCAPING, POOLS AND JUNGLE GYMS**

- 19.1 The nature, content and design of the gardens on any property, (including the establishment and maintenance of landscaping) in these areas and all pools must be properly maintained and shall be subject to the Architectural Guidelines relating to landscaping and standards required by the Association. Should the standards not be adhered to, the Association shall take such steps as it may deem necessary in order to ensure that the required standards are adhered to and will charge the owner accordingly. Gardens and trees planted shall not unduly detract from the views and the reasonable enjoyment of the property by any owner. The Board may determine whether a particular garden transgresses this rule.
- 19.2 The Association is not liable for any damage, loss or injury suffered by to any accidents or injury to any person caused by swimming pools.
- 19.3 Jungle gyms, swings, trampolines, portable or temporary swimming pools and similar equipment must be placed below the level of garden/yard walls in order that they are not readily visible from any road and/or other property.
- 19.4 Notwithstanding anything else contained herein, members will be obliged to employ the services of the consulting Landscape Architect at a market-related fee.

## **20. LEVIES**

- 20.1 Owners must pay levies in full and in advance by the 7<sup>th</sup> day of each and every month.
- 20.2 Owners in arrears at the 7<sup>th</sup> of the month shall pay interest (at the rate determined by the Board) and such interest shall be applied to the full amount overdue, from the 1<sup>st</sup> of the month up until the date of payment.
- 20.3 Owners still in arrears after a further 30 days must immediately pay the full amount overdue, plus the next levy due, plus interest on the full overdue amount up until the date of payment.
- 20.4 Owners in arrears after 60 days shall have their overdue account and the full interest

thereon, handed over for collection and possible legal action. Any costs incurred by these proceedings and all additional interest up to the date of final settlement shall be for the owner's account on an attorney and client scale. Any interest on, or collection fees for overdue levies, shall be considered to be part of the levy and treated as such.

- 20.5 Levy amounts may not be reduced or withheld or set off for whatever reason, against real, perceived, partial or non-provision of services, or for any other reason.
- 20.6 Owners who are "away" at month-end must make arrangements to ensure the levies are paid by due date (being "on holiday", "away overseas" or "away on business" and like excuses are not acceptable reasons for late payment of levies).
- 20.7 Members are encouraged to effect payment by way of debit orders on the first day of each month, which can be signed for at the offices of the Association, and which are controlled by the Association and submitted to the Bank by the Association's accounting agent. The Association reserves the right to levy a surcharge on members who do not use the debit order facility.
- 20.8 Property owner's levies will become payable by the owner of the property upon registration. The owner shall pay the first three months' levies in advance upon signature of his transfer documentation (agreed to be as per paragraph 3.7 above).

## **21. MUNICIPAL RATES AND TAXES**

The owner of each property is responsible to the Municipality for the payment of rates. The Association has no control over the basis of valuation and rates payable by the property owner to the Municipality.

## **22. ELECTRICITY SUPPLY, GENERATORS**

- 22.1 The provision of electricity to each property will be the responsibility of the Municipality.
- 22.2 The Association shall not be liable for damages, expenses or costs by any interruption in supply, variation of voltage, variation of frequency, or any failure to supply electricity.
- 22.3 Generators may only be installed with the prior written permission of the Board. Current specifications will be available from the Estate Manager. Generators may only be used during power outages.

## **23. WATER**

- 23.1 Collection of rainwater is permitted, provided that the design of such method is permitted in terms of the Architectural Guidelines and approved by the Association.

- 23.2 The provision of running water to each property will be the responsibility of the Municipality.
- 23.3 The Association shall not be liable for damages, expenses or costs caused by any interruption in supply or failure to supply water to residents.
- 23.4 The Association shall not be liable for damages, expenses or costs caused by flooding and excess storm water.

## **24. RULES OF THE HOME OWNERS ASSOCIATION**

- 24.1 As from the date of proclamation of the Estate (date of first transfer) these rules shall apply and all Residents and Owners shall be required to abide thereby. Subject to any entrenched rules, the Board has the power to make, add to, amend or repeal these rules subject to the approval of the Developer. Any such variations will become applicable to all Owners as defined with effect from their adoption.
- 24.2 These rules may be re-printed on a regular basis, and may include any changes or amendments made in the preceding period.
- 24.3 For the purpose of these rules, “owner” or “member” means a Purchaser, Co-owner, Trustee, Lessee, Family Member, Invitee, Employee, Customer / Client or Guest.
- 24.4 Any existing practices in conflict with the new rules shall cease immediately, unless as set out in 24.5 below:
- 24.5 Where a specific conflict arises between a new rule and an existing practice of long standing and an owner feels legitimately aggrieved, the Board may on request via the Manager, or in its own right, provide for consideration to allowing the partial or total relaxation of the new rule, to permit the existing practice to remain, or be suitably adjusted and reconciled. Any decision resulting from such consideration shall be entirely in the Board’s discretion and shall be binding on all parties.
- 24.6 In the event of any breach of the rules by the members of an owner’s household, his guests, lessees, clients, invitees or employees, such breach shall be deemed to have been committed by the owner himself, but without prejudice to the foregoing, the Board may take or cause to be taken such steps against the person actually committing the indiscretion as they in their discretion may deem fit.

## **25 FINES AND PENALTIES**

- 25.1 The Association shall investigate (in such manner as it deems fit) written complaints received from residents relating to the behavior and/or conduct of other residents and persons on or about the Estate and shall take such steps with regard thereto as it may deem fit. The Association shall be entitled on its own initiative to investigate the conduct of any person or persons and to take such action as it may deem fit, whether or not

complaints are received.

- 25.2 If any person contravenes or fails to comply with any of the provisions of these rules or any conditions imposed by the Board or the Association in terms of these rules, the directors shall be entitled (without limiting any other rights afforded to them in terms of these rules) to impose such fines as may be approved by the Association from time to time against the person concerned. If the person concerned is a family member, guest, tenant or other invitees of a member, that owner will be liable for the payment of such fine. Any fine imposed on an owner and/or his family members, tenants, guests or other invitee may be added to the owner's levy and shall be deemed to be a debt due and payable by the owner concerned to the Association forthwith on demand.

## **26 ENFORCEMENT OF THE RULES**

- 26.1 For the purposes of the enforcement of any of the rules, the directors may take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which a resident may be guilty, and the Association may take such action, including court proceedings, as it may deem fit.
- 26.2 In the event of any member disputing the fact that he has committed a breach of any of the rules, a committee of 3 (three) directors appointed by the chairman for that purpose, shall adjudicate upon the issue at such time and in such manner and according to such procedure as the chairman may direct.
- 26.3 Notwithstanding the foregoing, the directors may in the name of the Association enforce the provisions of any rules by proceedings in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.

## **27 GENERAL RULES**

In general, where no specific rules have applicability, the Board reserves the right to mandate the Manager to issue rules from time to time in his discretion, subject to the Association's written approval.