



**Onverwacht Home Owners Association
Onverwacht Estate
Wellington
7654**

ONVERWACHT ESTATE :

CONSTITUTION

- **Discussed and approved at AGM of 25 May 2016**

This document is the Constitution of the Onverwacht Resort Development Home Owner's Association and replaces all previous documents with immediate effect.

1. NAME

The name of the Association is the ONVERWACHT RESORT DEVELOPMENT HOME OWNERS' ASSOCIATION.

2. DEFINITIONS

In the constitution unless the context indicates the contrary:

- 2.1 "The Association" shall mean the Onverwacht Resort Development Home Owners' Association.
- 2.2 "Common Areas" shall mean the entire area of the Resort, excluding the individual residential erven, as depicted on General Plan 4809/1993 and 5824/1993 and 7312/2005 including the roads owned by the Association, being erven 9714 and 9814 Wellington, and common servitude areas as depicted on the general plans and / or diagrams and including any facilities or amenities howsoever acquired by the Association for the use and benefit of its' members.
- 2.3 "The Resort" shall mean the Onverwacht Resort, situated on Erven 9205 and 9206, Wellington, and shown on general Plans no 4809/1993, 5824/1993 and 7312/2005.
- 2.4 "Person" shall include a company, club, trust, close corporation, partnership or other association of persons entitled by the law to hold title to immovable property.
- 2.5 "Member" shall mean a Member as defined in Par. 4 hereof.
- 2.6 "Levies" shall mean the amounts determined in accordance with pars. 5.3 and 5.4 payable by each member as a contribution towards the costs and expenses of the Association.
- 2.7 "Financial Year" shall mean the Association's financial year, which shall commence on 1 March, and terminate the last day of February of the following year.
- 2.8 "Internal" shall mean the area and associated infrastructure within the boundaries of the area depicted on General Plans 4809/1993, 5824/1993 and 7312/2005.
- 2.9 "Resident Member" shall mean a member who resides at Onverwacht for at least seven months of the year.

3. OBJECTS AND POWERS

The main purpose and object of the Association shall be to control, manage, maintain and administer the Resort and the Common Areas for the benefit of all the members. Such purpose shall include the control and maintenance of services and amenities, including internal sewerage, water reticulation, storm water and road networks, situated in the Resort for the maintenance of which the Local Authority is not responsible in terms of the Land Use Planning Ordinance 15/1985.

Without derogating from the generality of the foregoing, the Association shall be entitled and have the power to:

- 3.1 determine, maintain, promote and enforce standards of conduct within and relating to the Resort in such a way that Members may derive the maximum collective benefit from the Resort.
- 3.2 promote a spirit of co-operation amongst the members so as to create a congenial atmosphere in the Resort.
- 3.3 determine, maintain, promote and enforce acceptable aesthetic, environmental, architectural and building standards, styles and design criteria for the resort, in order to achieve and maintain an integrated and harmonious character and style within and relating to the resort.
- 3.4 insure the Common Areas and/or any improvements or amenities thereon against such risks as may be considered reasonable.
- 3.5 comply with any notice or order by a competent local authority relating to the Common Area or improvements thereon.
- 3.6 establish a levy fund sufficient in the opinion of the Association for the repair, upkeep, control, management and administration of the Common Areas and the Resort generally (insofar as any such expenses do not relate to any individual residential erven in the resort or to any individual member/s), for the payment of any rates and taxes, the supply of any electrical current, water, sewerage, fuel and sanitary or other obligation incurred by the Management association in the conduct of its business.
- 3.7 determine from time to time the amounts required for the purpose of the levy fund, and to require the members to contribute to the levy fund in terms of Par. 5 below.
- 3.8 open and operate a banking account/s in the name of the Association; and invest and re-invest moneys of the Association not immediately required, in such manner as may from time to time be determined.
- 3.9 employ such employees as may deem reasonable and necessary, conclude and carry out contracts or agreements for any of the purposes of the Association.
- 3.10 purchase, hire, lease or otherwise acquire, or to sell or exchange, immovable or movable property in the name of the Association for the purposes of fulfilment of its functions and objects for the common benefit of the members, provided that no immovable property or real right shall be alienated without the prior approval of at least 75% of the Members present (in person or by proxy) at a General Meeting of the Association.
- 3.11 borrow monies required by it in the performance of its duties and exercise of its powers, and to secure the repayment of monies borrowed by it and interest thereon by the hypothecation of its immovable or movable property or the cession of claims for payment of unpaid levy contributions, provided these have been approved by at least 75% of the Members present in person or by proxy at a General Meeting of members called for that purpose.

- 3.12 where practicable, establish lawns, gardens and other facilities in the Common Areas for the benefit of the Members.
- 3.13 appoint a Management Committee, which subject to directions from the Members of the Association, shall exercise all the powers of the Association and perform all functions, which are conferred on it by the Association
- 3.14 make, amend and repeal rules and regulations, which shall be binding upon Members as they form part of this constitution, provided these have been approved by at least 75% in number of members present (in person or by proxy) at a General Meeting of Members called for that purpose.
- 3.15 sue and defend actions and motion proceedings in the name of the Association and to appoint legal representatives for this purpose provided the Association acts in terms of Par. 6.5.

4. MEMBERS

- 4.1 The members of the Association shall be registered owners from time to time of the residential erf in the Resort as shown on the general plan. Where any erf is registered in the name of a company, close corporation or trust, one nominated director, close corporation member or trustee may represent such entity as member.
- 4.2 Membership of the Association shall be evidenced by registered ownership in the Deeds registry in Cape Town of one or more erven in the Resort area. Membership shall be transferred by the registration of a Deed of Transfer in the Deeds Registry at Cape Town, passing transfer of one or more erven in the Resort.
- 4.3 Upon registration of ownership of an erf in the name of a person, such person shall become a Member of the Association which membership shall be obligatory and effective for as long as the person remains the registered owner of the erf concerned. No person shall be entitled to resign from or cease to be a member of the Association while remaining the registered owner of an erf in the Resort area.
- 4.4 All Members shall be obliged to comply with the provisions of the constitution and the rules.
- 4.5 In the event of any Member wishing to transfer ownership of any erf or erven in the Resort registered in his name, such Member shall be obliged to inform the transferee of the provisions of this constitution and the provisions of any Rules or Codes of Conduct that may be applicable from time to time, and to obtain from the transferee the written acknowledgement and consent referred to in paragraph 4.3 above.
- 4.6 A member shall furthermore be obliged to inform the management committee of the Association at least thirty days prior to the expected date of registration of transfer, and shall provide the management committee with full particulars relating to the transaction pursuant to which transfer is to be effected, and the transferee concerned.

5. VOTES AND LEVIES

- 5.1 Unless otherwise indicated herein, each member shall on a poll vote be entitled to one (1) vote per property which shall be done by ballot.
- 5.2 Every member shall be entitled to enjoy the Common Area but shall be obliged to pay levy contributions as determined by the Association in terms of Par 5.3 and 5.4, which can, if so decided by the Association, be paid in equal monthly instalments.

- 5.3 The management committee shall prepare, or shall procure the preparation, of annual budgets of expenses for the Association, pursuant to Par 3.6 which budget shall be presented to Members at a General Meeting 1 (one) month before the end of the financial year. The budget shall be approved by simple majority in number of the members present in person or by proxy, and entitled to vote at the General Meeting.
- 5.4 The Levy contribution payable by each member shall be determined by the Association each year with reference to the annual budget approved in terms of Par 5.3.
- 5.5 Any member, who is in arrears with payment of levies due by him for one or more properties, shall be precluded from voting.
- 5.6 All decisions taken at a General Meeting shall be carried by a simple majority of those members present in person or by written proxy and entitled to vote unless otherwise determined herein.
- 5.7 A proxy may be submitted electronically, by mail or handed in at the meeting prior to voting. Such a proxy is an open proxy for all general matters and no proxies will count for changing the constitution.

6. MANAGEMENT

- 6.1 The affairs of the Association shall be managed and controlled by a Management Committee of the Association elected at a General Meeting.
- 6.2. The Management Committee will consist of at least seven (7) persons who shall be appointed in the following portfolios:
- Chairman (without deciding vote);
 - Vice Chairman;
 - Secretary;
 - Treasurer; and
 - At least 3 additional members
- 6.2.1 *The Chairman will be elected by the Members of the Association at a General Meeting by ballot.*
- 6.2.2 *No Committee member may occupy more than one portfolio during the same term*
- 6.2.3 *The Management Committee will be entitled to co-opt an additional member, should a vacancy occur. If the committee consists of less than five elected members, a special general meeting must be called to elect additional members.*
- 6.2.4 *The Committee Members may give notice convening meetings, meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.*
- 6.2.5 *At a meeting of the Committee Members, 50 per cent of their number shall form a quorum.*
- 6.2.6 *All matters at any meeting of the Committee Members shall be determined by a majority of those present and voting, unless otherwise determined herein.*
- 6.3 The Management Committee shall be entitled to appoint a Managing Agent and to assign to such Managing agent any of its rights and obligations in terms of this constitution, provided however, that at least 75% in number of the Members of the Association present (in person or by proxy) at a General Meeting have approved the appointment of a Managing Agent. A

Managing Agent need not be a member of the Association. An Estate Manager may be appointed who will receive a retainer for attending to the day to day running of the Resort.

- 6.4 No document signed on behalf of the Association shall be valid and binding unless it is signed by at least two out of three signatories elected by the Management Committee.
- 6.5 The Management Committee must ensure that the Association's powers are limited to commit the members financially to funds in accounts held in the name of the Association. Should extra-ordinary funds be required from the members, 75% of members present (in person or by proxy) at a Special General Meeting have to pass such expenditure. Should an emergency arise such as sewer or water problems this limitation of the Association's powers does not apply.
- 6.6 The Management Committee has the power to prohibit the transfer of any erf, unless all monies due to the Association by the member concerned have been paid or adequately insured.

7. MEETINGS

- 7.1 The Association shall have at least one general meeting per financial year, and the Annual General Meeting shall be held on a date fixed by the Committee.
- 7.2 Special General Meetings may be called by the Management Committee whenever considered desirable and shall be called if at least ten members of the association request in writing that such a meeting is called. If such a request is received by the Committee Members they shall arrange the Special General Meeting within 14 days failing which the owners concerned may themselves call such meeting.
- 7.3 At least 30 days written notice shall be given to all members of each general meeting which notice shall specify time, date and place of the meeting, and shall include a proxy form. Items to be discussed at the Annual General Meeting shall be submitted to the Management Committee not later than 14 (fourteen) days before the Annual General Meeting.
- 7.4 At all meetings the chair shall be taken by the Chairman of the Management Committee, or in his absence, by a member elected to act as such.
- 7.5 The Chairman shall not have a casting vote.
- 7.6 Quorum
 - 7.6.1 *A quorum at the AGM meeting or other special general meetings will consist of at least 25% (twenty five percent) of the association members who are not in arrears in respect of levies. Payment must reflect in the bank account by midnight the day before the meeting. These members must be present personally. Proxies on paper or by person will not be counted for the Quorum.*
 - 7.6.2 *If within half an hour from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time. Should the venue not be available, at least 24 hours notice of the new venue will be given.*
 - 7.6.3 *If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the owners present in person and entitled to vote shall form a quorum.*
 - 7.6.4 *A quorum at committee meetings will consist of at least four (4) members in person of whom one must be the chairman or vice chairman.*

- 7.7 Minutes, which will be considered the official report of all meetings and decisions, must be distributed within 14 days of such meeting.

8. BUILDING, ARCHITECTURAL AND DESIGN REQUIREMENTS

8.1 The Association shall have power to:

8.1.1 frame and enforce conditions on members in order to harmonize and maintain the coherent architectural style and design criteria of the Resort and all buildings therein, which shall include the power to prescribe, limit or specify the materials to be used in all buildings erected or to be erected in the Resort, as far as the external appearance is concerned.

8.1.2 do such acts as are necessary to accomplish the purpose expressed or implied herein, which act shall include inter alia, the examination and approval or refusal of building plans, whether such be for new constructions, renovations, alterations or additions.

8.1.3 compel members to comply with its requirements, and failing compliance therewith, to take steps to remedy such non-compliance at the cost of such member, and without in any way limiting the generality of the a foregoing, to call upon a member in writing to remove or alter within a specified period, anything erected contrary to the requirements laid down pursuant hereto and failing which, to apply for an appropriate order.

8.1.4 appoint professional advisors, e.g. an architect to scrutinize all plans to ensure that the necessary architectural and building standards have been met.

8.2 Notwithstanding any other conditions imposed by the Association in terms of 8.1 above the following shall apply:

8.2.1 Every dwelling shall consist of at least one apartment on a second floor or an apartment with a double volume.

8.2.2 The minimum footprint of the main dwelling on a stand will be 130 square meters.

8.2.3 A second dwelling (Cottage) can be erected on a stand with a maximum footprint of 100 sq meters including a single garage, and without a garage a footprint of 80 sq meters. The total footprint of buildings cannot exceed the footprint percentage as stipulated in clause 8 of the Onverwacht Estate Building Rules and Guidelines.

8.2.4 Second dwellings must be connected by a common wall to main building.

8.3 Members shall be obliged to submit all building plans for new external constructions, renovations, alterations or additions to the Management Committee for examination and approval prior to the submission of such plan to the local authority for approval and the Management Committee shall make known its decision to the applicant within two (2) weeks of the plan being submitted to it.

8.4 No member shall be entitled to dump materials or goods on the Common Area or on any erf in the Resort and if in breach thereof, the member shall be liable for the payment of the cost of rectifying the damage and/or cost of removal of the material or goods. Notwithstanding the aforementioned, such member may be liable for a fine.

9. WATER METERS

9.1 The Association shall:

- 9.1.1 *install, maintain, inspect and take regular readings of individual water meters on individual erven.*
- 9.1.2 *replace and / or test any water meter / connection that is damaged or tampered with.*
- 9.1.3 *claim reimbursement of all cost and damages from a member due to repairs to a damaged meter / connection as a result of force, negligence and / or vandalism.*
- 9.1.4 *claim money from a member for the reasonable cost of testing a water meter if it was found to test within legal limits.*
- 9.1.5 *ensure that the owner must allow free access to read / inspect / repair the system at any time necessary for correct functioning of water meter system.*

10. STATUS OF THE ASSOCIATION

The Association shall be an Association:

- 10.1 with legal personality, capable of suing and being sued in its own name.
- 10.2 none of whose members in their personal capacity shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest and be controlled by the Management Committee.
- 10.3 not for profit, but for the benefit of the owners and occupants of immovable property situated in the Resort area.

11. GENERAL

- 11.1 If any one erf is held by more than one person at any time, the liability of such joint owners hereunder shall be joint and several.
- 11.2 No indulgence granted or allowed by the Association to any Member shall constitute a waiver of any right of the Association and no waiver by the Association of any right it may have shall be of any force or effect unless reduced to writing and signed by the Association or its duly authorized agent.
- 11.3 Each member shall be liable to the Association for all such legal costs of an Attorney and Client scale in enforcing any of its rights against the member or in recovering any amounts owing by the member to the Association or endeavouring to do so.
- 11.4 Any Magistrate's Court having jurisdiction in terms of Section 28 of the Magistrate's Court Act No 32 of 1944, as amended, shall have jurisdiction in respect of any claim by the Association against a Member notwithstanding that the amount of the claim might otherwise exceed the monetary jurisdiction of that court.
- 11.5 The Members of the Association shall in General Meeting from time to time choose the *Domicile Citandi et Executandi* of the Association.
- 11.6 The *Domicilium Citandi et Executandi* of each Member shall be the address of the Erf registered in his name, provided that such Member shall be entitled from time to time to change the said *Domicilium* but that any new *Domicilium* selected shall be situated in the Republic and that the change shall only be effective on receipt of written notice thereof by the Association at its *Domicilium*.

12. WINDING-UP OF THE ASSOCIATION

- 12.1 The Association may be wound up by a resolution of the Members in General

Meeting duly convened that:

12.1.1 ninety percent (90%) of the total member of the OHOA in a ballot are in favour thereof

12.1.2 the relevant public authorities consent thereto.

12.2 In the event of such winding up, it shall be the duty of the Management Committee or a Receiver appointed by it, to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the rest to all the members in accordance with the number of erven registered in the name of each member.

13. BREACH

13.1 Should any member: -

13.1.1 fail to pay on due date the amount payable by such member in terms of this Constitution and remain in default for more than 7 (seven) days after written demand; or

13.1.2 commit any other breach of any of the provisions of this Constitution or any regulations/rules made there under and fail to commence to remedy that breach within a period of 7 (seven) days after the receipt of written notice to that effect and complete the remedying of such breach within a reasonable time; then and in either event, the Management Committee Members shall be entitled on behalf of the Association, without prejudice to any other which the Management Committee Members of the Association or any other member may have in law, including the right to claim damages: -

13.1.3 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 regulation/rule made there under, as the case may be; or

13.1.4 in the case of clause 13.1.2 to remedy such breach and immediately recover the total cost incurred by the Management Committee Members or the Association in so doing from such member;

13.1.5 Should the Management Committee Members institute any legal proceedings against any member pursuant to a breach by that member of this Constitution or any regulation/rule made there under, then without prejudice to any rights which the Management Committee Members or the Association or any other member may have in law, the Management Committee Members shall be entitled to recover from such member all costs, including all legal costs as agreed to with any attorney (to the maximum as prescribed in the Guidelines of the Cape Law Society) and incurred by the Association, tracing fees, collection commission, Advocate's fees, expenses, as well as all other costs and expenses, administrative or otherwise, incurred by the Association in instituting such legal action against a member.

13.2 Without prejudice to any of the rights of the Management Committee Members or the Association granted under this Constitution, should any member be in breach in terms of either or both of clauses 13.1.1 and 13.1.2, the Committee shall be entitled to impose penalties on such member, which penalties will be determined from time to time by the Management Committee.

14. ARBITRATION

14.1 Should any dispute, question or difference arise between members or between a member/s and the Association or the Management Committee Members, out of or in regard to:

14.1.1 *the interpretation of;*

14.1.2 *the effect of;*

14.1.3 *their respective rights or obligations under;*

This Constitution or any of its ancillary documents (save for non-payment of levies or any other amount due by a member or owner in terms of this Constitution) which the parties are unable to resolve within a reasonable timeframe to the satisfaction of all parties involved, or via the exercise of normal common law rights then such dispute shall be decided by arbitration in the manner set out in this clause.

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

14.3 The arbitration referred to in clause 14.1 shall:

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

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

14.3.3 *be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.*

14.4 The arbitrator shall be a practising senior counsel or attorney of not less than 5 (five) years standing appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing such agreement within the 7 (seven) day period, appointed by the President of the Cape Law Society.

14.5 The arbitrator shall in giving his award have regard to the principles contained in this Constitution, the Regulations/Rules, and he shall decide the matter as submitted to him according to what he considers just and arriving at his decision.

14.6 The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration hearing in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other or both of the disputing parties or by the Association as he in his sole discretion may deem fit.

14.7 Each of the parties to the arbitration irrevocably agrees that the decision of the arbitrator made at such arbitration proceedings:

14.7.1 *shall be final and binding on each of them; and*

14.7.2 *shall be carried into effect immediately; and*

14.7.3 *may be made an order of the High Court.*

14.8 Notwithstanding anything to the contrary contained in this clause, the Management Committee Members shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Constitution, including the regulations/rules, or for any order of an urgent nature.

15. SERVICES ARISING FROM SUBDIVISION OF ERF 9206 WELLINGTON TO FORM THE RESORT

The Association will be entitled to the rights as contained in clause 27 of the Drakenstein Municipality: Municipal Land Use Planning by Law, 2015 (PN7528 dated 13 November 2015) to the effect that any person who is at any time the owner of any portion in the resort must, in order for the OHOA to maintain, repair and replace any existing infrastructure –

- 15.1 allow without compensation that the following be conveyed across his or her land unit in respect of other land units originating from the subdivision:
- 15.1.1 Gas mains;
 - 15.1.2 Electricity cables;
 - 15.1.3 Telephone cables;
 - 15.1.4 Television cables;
 - 15.1.5 Other electronic infrastructure;
 - 15.1.6 Main and other water pipes;
 - 15.1.7 Foul sewers;
 - 15.1.8 Storm water pipes; and
 - 15.1.9 Ditches and channels;
- 15.2 allow the following on his or her land unit if considered necessary and in the manner and position as may be reasonably required by the Association:
- 15.2.1 Surface installations such as mini-substations;
 - 15.2.2 Meter kiosks; and
 - 15.2.3 Service pillars;
- 15.3 allow access to the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works referred to in paragraph 15.1 and 15.2; and
- 15.4 receive material or permit excavation on the land unit as may be required to allow use of the full width of an abutting street and to provide a safe and proper slope to its bank where necessitated by differences between the levels of the street as finally constructed and the level of the land unit, unless he or she elects to build retaining walls to the satisfaction of and within a period to be determined by the Association.