

## **ANNEXURE X-ORDINARY AND SPECIAL RESOLUTIONS**

### **1. ORDINARY RESOLUTION 1**

Introduction:

- 1.1 It is in the best interest of the members that the Estate be developed expeditiously.
- 1.2 In order to ensure that Eye of Africa Developments (Pty) Ltd is in a position to expedite the development of the Estate it is and has been necessary to allow third parties to develop portions of the Estate and for this purpose the Board of Directors in the past has extended the concessions granted to the Developer in terms of Article 12.16 to third parties who have developed or are developing sectional title developments or a number of stands in the Estate and to exempt such parties, units and erven from paying levies (including late building penalties) until such erf or the relevant sectional title unit is transferred into the name of a third party.
- 1.3 It will be beneficial to ensure that there is no confusion or disputes as to which parties are entitled to such concessions and, insofar it is necessary, the decisions of the Board of Directors must be ratified.

#### **PROPOSED ORDINARY RESOLUTION 1**

The past decisions of the Board to exclude parties (including but not limited to Green Pearl Properties (Pty) Ltd, Valobex 173 CC, Sunset Properties 121 CC and Anloma Trust IT 10570/2005) who develop sectional title schemes or a number of erven in the Estate from paying the administrative levy of 0.25% of the selling price of the member's erf or sectional title unit when such erf or sectional title unit is sold and from paying levies (including late building penalties) until such erf or the relevant sectional title unit is transferred into the name of a third party, be ratified.

### **2. PROPOSED SPECIAL RESOLUTION 1**

Introduction-See introduction to Ordinary Resolution 1

#### **PROPOSED SPECIAL RESOLUTION 1**

Article 2.1.14 and definition of Developer be amended as follows:

**“Developer”** means:

- 2.1.14.1 Eye of Africa Developments (Pty) Ltd (Registration Number 2005/021292/07), its Successors in Title and its Nominees; and
- 2.1.14.2 for the purposes of Article 12.16 and the liability to pay levies (including late building penalties), any person or entity that develops any sectional title scheme within the Estate or who develops two or more Erven within the Estate and who is designated by Eye of Africa Developments (Pty) Ltd or its Successor in Title or the Board, as a developer of such section or erven.

### 3. PROPOSED SPECIAL RESOLUTION 2

Introduction:

- 1.1 In terms of Article 19.11 the Developer is entitled to add new Erven to the Estate and to add the phases onto the Estate by the addition of land which does not at present form part of the Estate and or to constitute such land as extensions of the township by which the Estate is formed.
- 1.2 It is therefore clear that the Estate is meant to include these additional phases, land and erven and that therefore the definition of **“Estate”** in Article 2.1.18 is not fully defined.
- 1.3 Therefore, the definition must be extended to include property added in terms of Article 19.11 of the MOI.

### PROPOSED SPECIAL RESOLUTION 2

The definition of **“Estate”** in article 2.1.18 is amended to read:

**“Estate”** means the residential and golf estate situated on Eye of Africa Township Extension 1, comprising of residential erven, streets, open spaces, Golf Course and other specific use erven and all other land which is added by the Developer in terms of Article 19.11.

### 4. PROPOSED ORDINARY RESOLUTION 2

Introduction:

- 1.1 The Board agreed with the Developer and the Club (and such agreement has been in force for a number of years) that in calculating the payments due to the Club in terms of Article 12.1.6, the 20% would be calculated on all amounts paid to the Company including but not limited to monthly levies, levies payable in terms of Article 12.16 and late building penalties.
- 1.2 To avoid any disputes, it is opportune to ratify (insofar it is necessary) the agreement concluded between the Board, the Developer and the Club and to properly define the term **“Levy”** in Article 2.1.25.

### PROPOSED ORDINARY RESOLUTION 2

The agreement concluded between the Board, the Developer and the Club that the Club would be entitled to twenty percent of all amounts received by the Club from Members (including but not limited to monthly levies, late building penalties and the levy payable in terms of Article 12.16), be ratified.

### 5. PROPOSED SPECIAL RESOLUTION 3

Introduction-See introduction to proposed Ordinary Resolution 2

### **PROPOSED SPECIAL RESOLUTION 3**

Clause 2.1.25 be amended to read as follows:

“2.1.2.5 – “Levy” means all amounts paid by members to the Company including but not limited to the Monthly Membership Fee payable by each Member in terms of this MOI and levied by the Board to defray the cost of managing and administering the Company, and Common Company property, late building levies and penalties and the levy referred to in Article 12.16.”

### **6. PROPOSED SPECIAL RESOLUTION 4**

Introduction:

- 1.1 Article 16 provides that the directors are entitled to be repaid all reasonable and qualified expenses incurred by them provided that they are not “entitled to any remuneration for performance of their duties in terms hereof”.
- 1.2 The directors elected by the members (i.e. other than those appointed by the Developer) receive R4 500 per month plus R2 750 per meeting limited to four meetings per month and R4 500 per workshop over and above their standard directors’ fees.
- 1.3 The directors spend a large amount of time in their duties as directors and it would be appropriate to pay remuneration to the directors.

### **PROPOSED SPECIAL RESOLUTION 4**

Article 16 be amended to read as follows:

“The Directors are entitled to be repaid all reasonable and qualified expenses incurred by them respectively in or about the performance of their duties as Directors as well as to a reasonable monthly remuneration (to be set initially by the Board and thereafter by the Members at each Annual General Meeting) in regard to the performance of the Directors of their duties.”

### **7. PROPOSED SPECIAL RESOLUTION 5**

Introduction:

1. Article 23.5 provides that in the case of an equality of votes the Chairperson of a meeting would be entitled to a second or a casting vote whereas Article 25.8 provides that the Chairperson shall be entitled to a casting vote.
2. The two articles are in contradiction to each other.

### **PROPOSED SPECIAL RESOLUTION 5**

Article 25.8 be deleted and, the word “Chairman” be replaced wherever it appears with the word “Chairperson” throughout the MOI.

## **8. SPECIAL RESOLUTION 6**

Introduction:

- 1.1 Article 9.3 provides that the Developer has the sole right to appoint the Managing Agent during the development period.
- 1.2 Article 36 provides that the Managing Agent will be appointed by the Board.
- 1.3 The two articles contradict each other.
- 1.4 In order to take away the contradiction the words “Subject to Article 9.3”, should be added at the beginning of Article 36.

The words **“Subject to Article 9.3 be added at the beginning of Article 36”**.

## **9. ORDINARY RESOLUTION 3**

Introduction:

- 1.1 Over the years the Board has made numerous decisions.
- 1.2 Some parties are now challenging such decisions as to whether such decisions were valid because of the fact that they were passed with the participation of Directors which are alleged to have had a conflict of interest when such decisions were made.
- 1.3 Whilst it is denied that such conflict of interest occurred, it is necessary for the optimum running of the Home Owners Association and in order to have certainty that all past decisions of the Board are, insofar it is necessary, be ratified by the shareholders.

### **PROPOSED ORDINARY RESOLUTION 3**

The shareholders ratify all previous decisions and resolutions made by the Board of Directors prior to the date of the passing of this ordinary resolution.

## **10. INTRODUCTION TO RESOLUTIONS REFERRED TO IN THE PETITION**

The purpose of these amendments is to:

- 10.1 Modernise the governance framework of the Association;
- 10.2 Align the MOI with current best practice in residential estate governance;
- 10.3 Ensure that voting control resides with registered property owners;
- 10.4 Clarify and limit rights reserved by the Developer; and
- 10.5 Promote transparent and democratic participation by Members.

**11. SPECIAL RESOLUTION 7 (RESOLUTION 1 ON THE PETITION): AMENDMENT OF DEFINITION OF “ESTATE” (CLAUSES 2.1.8 AND 19.7 – 19.11)**

**Current wording—clause 2.1.8 and 19.7 – 19.11:**

The definition of “Estate” in clause 2.1.18 is fixed to General Plan SG No. 5452/2007, but Developer claims power to add phases / unilaterally. Clauses 19.7 to 19.11 grant the Developer unilateral authority, automatic rights of extension, and an irrevocable power of attorney to add land to the Estate.

**Proposed amendment to clause 2.1.8:**

“Estate” means the land depicted on the General Plan SG No. 5452/2007 only, as may be amended from time to time through the formal municipal planning processes applicable under SPLUMA and the Midvaal Local Municipality’s by-laws.

No land, phase or portion may be added to the Estate without:

- (i) The necessary municipal approvals; and
- (ii) Approval by the Members by Special Resolution.”

**Proposed amendment to clauses 19.7 to 19.11:**

The provisions in the current MOI granting the Developer unilateral authority, automatic rights of extension, or any irrevocable power of attorney to add land to the Estate found in these clauses is deleted in its entirety.

**12. SPECIAL RESOLUTION 8 (RESOLUTION 2 ON THE PETITION): AMENDMENT OF “DEVELOPMENT PERIOD” (CLAUSE 2.1.15)**

**Current wording—clause 2.1.15:**

Sets the Development Period as ending only when the Developer notifies the Association in writing that development has ceased.

**Proposed amendment to clause 2.1.15**

“**Development Period**’ means the period commencing on the date of incorporation of the Association and terminating on the earliest of:

- (i) The date on date which not less 80% (eighty percent) of the Erven within the Estate have been transferred to purchasers other than the Developer; or
- (ii) The date falling 20 (twenty) years after the date of incorporation of the Association; or
- (iii) The date upon which the Developer notifies the Association in writing that the development has ceases;

whichever occurs first.”

**13. SPECIAL RESOLUTION 9 (RESOLUTION 3 ON THE PETITION): AMENDMENT TO VOTING RIGHTS (CLAUSE 25.1)**

**Current wording—clause 25.1:**

Allocates one vote per Erf or Unit, with significant additional voting rights for the Developer during the Development Period.

**Proposed amendment to clause 25.1:**

“Each Member shall be entitled to 1 (one) vote per Erf registered in the Member’s name as reflected in the records of the Deeds Office. Only a registered owner may exercise the vote attached to an Erf. The Developer shall not be entitled to any votes in respect of Erven not yet transferred to third-party purchasers, nor in respect of Erven that have already been transferred to other Members.

**14. SPECIAL RESOLUTION 10 (RESOLUTION 4 ON THE PETITION): VOTING RIGHTS RELATING TO SPECIAL RESOLUTIONS (NEW CLAUSE AFTER 25.1)**

**Current position:**

The Developer’s extra votes give it permanent blocking minority.

**Proposed New Clause 25.1A:**

“For purposes of any Special Resolution tabled in terms of the Act or the MOI, the Developer shall only be entitled to exercise votes attached to Erven actually registered in its name. No additional, deemed, notional, shadow, or non-transfer-based votes shall accrue to the Developer when voting on Special Resolutions.”

**15. SPECIAL RESOLUTION 11 (RESOLUTION 5 ON THE PETITION): AMENDMENTS OF BOARD COMPOSITION (CLAUSES 14.1 AND 18.2)**

**Current wording—Clause 14.1.2:**

The Developer may appoint and remove three directors during the Development Period. Quorum requires Developer Director. No Resolution can pass unless supported by Developer Director.

**Proposed amendment of clause 14.1:**

“14.1.1           Until otherwise determined by the Members by way of an ordinary resolution, the Board, shall consist of 7 (seven) Directors.

14.1.2           During the Development Period the Developer is entitled to appoint and remove 2 (two) persons as Directors by giving written notice to that effect. The remaining Directors shall be elected by the Members in General Meeting by way of ordinary resolution and may be removed by the Members by way of ordinary resolution at any time, the Developer being entitled in voting on the election of such Directors, to exercise the voting rights conferred upon it in terms of the provisions of 25.1.

14.1.3 The Members will elect 5 (five) Directors by way of ordinary resolution save that the Company in a General Meeting.”

**Proposed amendment to clause 18.2 and 18.4:**

“18.2 The *quorum* for Board meetings shall be 4 (four) Directors.”; and

“18.4 No Directors shall hold a veto or casting vote, and the presence or support of a Developer-appointed Director shall not be a requirement for any Board decision or *quorum*.”

**16. SPECIAL RESOLUTION 12 (RESOLUTION 6 ON THE PETITION): AMENDMNED OF RULE-MAKING AUTHORITY (CLAUSE 13.16 – 13.18)**

**Current wording (summary)—clause 13.18:**

Estate Rules, Architectural Guidelines and Landscaping Guidelines may not be amended without Developer consent.

**Proposed amendment to clause 13.16 – 13.18:**

“13.16 All committees established in terms of the MOI, including the Architectural Review Committee and Landscaping Committee, shall include at least 2 (two) Directors elected by the Members.

13.17 Upon transfer of 50% of the Erven (excluding Erven owned by the Developer), the Developer shall not be entitled to appoint a majority of the members of any committee,

13.18 Estate Rules, Architectural Guidelines and Landscaping Guidelines may only be made, amended, or repealed by the Members in General Meeting, acting by Special Resolution.” (this is a new clause)

Current clause 13.18 granting the Developer exclusive or overriding authority in respect of rule-making or committee composition is deleted.

**17. SPECIAL RESOLUTION 13 (RESOLUTION 7 ON THE PETITION): AMENDMENT OF LEVY AND FINANCIAL OBLIGATION PROVISIONS (CLAUSES 12.7 AND 41.3)**

**Current wording—clauses 12.7 and 41.3:**

Developer exempt from levies on unsold Erven. Members are bound by Developer contracts.

**Proposed amendment to clauses 12.7 and 41.3:**

“12.7 The Developer shall be liable for full levies in respect of all Erven registered in its name, including unsold Erven.”; and

“41.3 The Board may not conclude any long-term or high-value contract (including service agreements of a duration exceeding 3 years, or of a value exceeding an amount determined by the Members from time to time) without approval by the Members by

ordinary resolution.”

**18. SPECIAL RESOLUTION 14 (RESOLUTION 8 ON THE PETITION): APPOINTMENT OF MANAGING AGENT (CLAUSE 36)**

**Current wording—clause 36:**

The Managing Agent is appointed solely by the Board.

**Proposed amendment to clause 36:**

“The Managing Agent shall be appointed by the Board, subject to ratification by the Members at the next Annual General Meeting. The Developer shall have no unilateral right to appoint or dismiss the Managing Agent.”

**19. SPECIAL RESOLUTION 15 (RESOLUTION 9 ON THE PETITION): PHASED DEVELOPMENT (CLAUSE 8)**

**Current wording—clause 8:**

The Developer may subdivide Erven and is granted an irrevocable power of attorney for such purposes.

**Proposed amendment to clause 8:**

“8.1 During the Development Period, the Developer may subdivide Erven forming part of the Estate, subject to all applicable legislation.

8.2 Where Member consent is required, the Developer shall take reasonable steps to consult with Members and obtain such consent through a transparent and participatory process.

8.3 Each Member acknowledges the intention of phased development and undertakes to consider subdivision proposals in good faith and with due regard to the best interests of the Estate.”

**20. SPECIAL RESOLUTION 16 (RESOLUTION 10 ON THE PETITION): STATUS AND POWERS OF THE DEVELOPER (CLAUSES 19.7 – 19.11)**

**Current wording—clause 19.7 – 19.11:**

The Developer may rezone, subdivide, and add phases at its own discretion with irrevocable Member consent. The Developer may add phases / Erven and holds an irrevocable power of attorney.

**Proposed amendment to clauses 19.7 – 19.11:**

“19.7 No rezoning, subdivision, consolidation, extension, or addition of land to the Estate may be undertaken without:

- (i) Compliance with all applicable municipal planning laws; and

(ii) Approval by the Members by Special Resolution.

19.8 The Developer may propose the addition of new phases or Erven to the Estate, subject to all planning approvals and Member consultation. Any such proposal shall require approval by the Members in a manner determined by the Association. No irrevocable power of attorney is granted to the Developer for this purpose. Any documentation required to implement an extension of the Estate shall be executed pursuant to a Special Resolution of the Members.

19.9 The Developer may not unilaterally or indirectly extend the Development Period through the addition of land or phases.”

This section is shortened according to the above amendments.

**21. SPECIAL RESOLUTION 17 (RESOLUTION 11 ON THE PETITION): AMENITIES AND FACILITIES (CLAUSES 19.4 – 19.6)**

**Current wording—clauses 19.4 – 19.6:**

The Developer may establish and operate amenities for its own benefit. The Homeowners’ Association is excluded.

**Proposed amendment of clauses 19.4 – 19.6:**

“19.4 The Association shall be consulted in respect of any amenities, facilities or infrastructure proposed or established by the Developer within the Estate.

19.5 Members shall not incur any liability or cost relating to Developer-owned or Developer-operated amenities unless approved by the Members at a General Meeting.”

These clauses will be consolidated to effect the above amendment.

**22. SPECIAL RESOLUTION 18 (RESOLUTION 12 ON THE PETITION): AMENDMENT OF TRANSFER LEVY (CLAUSE 12.16)**

**Current wording—clause 12.16:**

0.25% exit levy payable by Members (but not the Developer) upon sale and transfer.

**Proposed amendment to clause 12.16:**

“Each Member, including the Developer, shall pay to the Home Owner’s Association an administrative levy of 0.25% of the selling price of the Member’s Erf or Sectional Title Unit when such Erf or Sectional Title Unit is sold which amount shall be paid on date of transfer of the Unit or Erf and shall be secured by an attorney’s letter of undertaking or guarantee prior to the Homeowner’s Certificate being issued.”

Any exemption previously benefiting the Developer is withdrawn.

**31.1. SPECIAL RESOLUTION 19 (RESOLUTION 13 BUT REFERRED TO AS 8 ON THE PETITION): CLUB LEVY (CLAUSE 12.16)**

**Current wording—clause 12.1.6:**

Payment of a monthly social membership levy to the Club which levy shall be an amount equal to 20% of the monthly Levy payable per

Member.

**Proposed amendment to clause 12.1.6:**

The levy is capped at the average cost of 3 quotes as provided by turf companies specialising in Sports Turf and Golf Courses. The monthly levy should be reduced from the 20% to a percentage comparable to the running costs as determined above.

- Reviewed Annually using independent benchmarking to ensure ongoing equity.
- Increases above CPI require special member approval.

**23. SPECIAL RESOLUTION 20 (RESOLUTION 13 ON THE PETITION): INTRODUCTION OF “RESERVED MATTERS” SECTION**

**Current position:**

Not clearly regulated. Board (Developer-controlled) can decide major issues.

**Proposed new section:**

A new section titled “Reserved Matters” is inserted into the MOI, providing that the following matters shall require approval by the Members by Special Resolution:

- (i) The annual budget and levies;
- (ii) Any long-term or high-value contract;
- (iii) Any amendment of Estate Rules or Guidelines;
- (iv) Any expansion, rezoning or subdivision of the Estate;
- (v) Acquisition or disposal of immovable property;
- (vi) Amenities or facilities with financial implications for Members; and
- (vii) Any matter affecting the rights or obligations of Members.

**24. SPECIAL RESOLUTION 21 (RESOLUTION 14 ON THE PETITION): DIRECTOR TRAINING AND CONTINUING PROFESSIONAL DEVELOPMENT (NEW CLAUSE 14A)**

**Current position:**

No requirements for training or professional development.

**Proposed new clause 14A:**

**14A. DIRECTOR TRAINING AND CONTINUING PROFESSIONAL DEVELOPMENT**

- 14A.1 Each Director shall register as a member of the Institute of Directors in South Africa (hereinafter referred to as “IoDSA”) within 12 (twelve) months of election of appointment.
- 14A.2 Each Director shall complete IoDSA-accredited governance training within the same 12 (twelve) month period mentioned above.
- 14A.3 Directors shall maintain a minimum of 15 (fifteen) Continuing Professional Development (hereinafter referred to as “CPD”) points per annum.
- 14A.4 The Board shall include in its annual report a statement on Directors’ compliance with these requirements.
- 14A.5 A Director who fails to comply with this clause shall be disqualified from re- election.”

**15. EXPLANATORY NOTE (does not form part of the Special Resolutions)**

The proposed amendments to the MOI contained in the Petition are intended, in summary, to:

- a. Align the governance of the Association with the Act and current best practice for residential estates.
- b. Clarify and limit the special rights previously afforded to the Developer, including its voting rights and appointment powers.
- c. Confirm that voting rights attach to Erven through their registered owners only, thereby removing so-called “phantom voting” rights.
- d. Enhance Member participation and control in relation to the making of rules, the appointment of the Managing Agent and future development or extension of the Estate.
- e. Phase out Developer’s exceptional powers within a defined, time-bound framework and strengthen the collective rights of Homeowners over the common property and the governance of the Estate.