



# DE WIJNLANDEN

## CONSTITUTION

(As revised by General Meetings of the Association held 22 April, 2007, 7 October, 2008, 2 September, 2009, 29 September 2009, 29 September 2010, 13 April 2011, 6 September 2012, 29 November 2012, 17 September 2013, 28 September 2015, 21 September 2016, 28 February 2017 and 21 September 2017)

**DE WIJNLANDEN**

**HOME OWNERS' ASSOCIATION**

Established in terms of Section 29 of the Land Use  
Planning Ordinance, No 15 of 1985

## 1. ESTABLISHMENT OF THE ASSOCIATION

De Wijnlanden Home Owners Association is constituted as a body corporate in terms of Section 29 of the Land Use Planning Ordinance, No 15 of 1985, in accordance with the conditions imposed by the City of Cape Town when approving in terms of Sections 25(1) and 42 of the Ordinance of the subdivision of Erven 772 and 774 Eerste River and shall come into existence simultaneously with the registration in the Deeds Office of the first of the erven in the subdivision.

## 2. INTERPRETATION

2.1 In this constitution, unless the context otherwise indicates:

- 2.1.1 "Association" means the De Wijnlanden Home Owners Association;
- 2.1.2 "auditors" means the auditors of the Association;
- 2.1.3 "business day" means weekdays other than Saturdays, Sundays and public holidays;
- 2.1.4 "chairman" means the chairman of the Trustee Committee;
- 2.1.5 "common areas" mean the private roads, visitors parking areas, private open space, conservation areas, security gate, security electrical fencing perimeter, clubhouse and sport facilities and amenities within the development;
- 2.1.6 "Council" means the City of Cape Town or its successor/s;
- 2.1.7 "design manual" means the design manual to control all aspects of the design of all buildings, improvements and landscaping within the development as amended from time to time in terms of this constitution or as required by the Council from time to time;
- 2.1.8 "erven" mean the single title registered erven in the Estate excluding the common areas and reference to an "erf" shall have the corresponding meaning;
- 2.1.9 "estate rules" means the rules referred to in 13.1;
- 2.1.10 "the estate" means all erven, including the common areas, contained in or created through inclusion in the remainder of Erf 6852, Eersterivier whether or not created subsequently as a result of subdivision and/or consolidation of any such erf or erven or portions thereof or any other cause'
- 2.1.11 "member" means a member of the Association;
- 2.1.12 "month" means calendar month;
- 2.1.13 "office" means the registered office of the Association;
- 2.1.14 "Ordinance" means the Land Use Planning Ordinance No 15 of 1985 and includes any statutory amendment or re-enactment thereof;
- 2.1.15 "owner" means any registered owner of an erf within the estate;
- 2.1.16 "the prime rate" means the prime bank overdraft rate of interest charged by the Estate's bankers or its successor/s from time to time and more commonly known as its prime rate (in the case of a dispute, the rate may be certified by any

manager or assistant manager of any branch of the said bank whose certificate shall be final and binding on the members);

- 2.1.17 "special resolution" means a resolution passed at a special general meeting in accordance with the provisions of clause 27 below;
- 2.1.18 "this constitution" means this constitution and regulations and by-laws of the Association from time to time in force;
- 2.1.19 "Trustee Committee" means the board of trustees of the Association;
- 2.1.20 "trustee" means one of the Trustee Committee;
- 2.1.21 "vice-chairman" means the vice-chairman of the Trustee Committee;
- 2.1.22 "year" means a period of 12 calendar months calculated to start and run over the same period set for the financial year in terms of paragraph 7.1 of this Constitution.

2.2 Words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include the feminine and neuter genders, and *vice versa*, and words importing persons shall include partnerships, trusts and bodies corporate, and *vice versa*.

2.3 The head notes to the paragraphs to this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

2.4 In any reference herein to the giving of any written notice the giving of such notice per electronic mail shall be regarded as being competent notice.

### **3. PURPOSE DESCRIBING THE MAIN BUSINESS**

The main business of the Association is to carry on the promotion, advancement and protection of the members of the Association and the maintenance and control of the common areas.

### **4. STATUS OF THE ASSOCIATION**

4.1 The Association shall be an Association:

- 4.1.1 with legal personality, capable of suing and being sued in its own name;
- 4.1.2 none of whose members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in and be controlled by the Trustee Committee in terms hereof;
- 4.1.3 not for profit, but for benefit of the members;
- 4.1.4 with the right to acquire, hold, lease and alienate property, both movable and immovable
- 4.1.5 which acquires ownership of private open space, private streets and internal engineering services upon the establishment of the Association in terms of clause 1.

4.2 The Association is not permitted to distribute its funds to any person other than to a similar Association of persons.

- 4.3 On dissolution the remaining assets must be distributed to a similar Association of persons, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act.
- 4.4 Funds of the Association available for investment may only be invested with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990) and in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).
- 4.5 Any amendments to clause 4 of the Constitution must be submitted to the Commissioner for the South African Revenue Service.
- 4.6 If the Association fails to meet any obligations in this Constitution respectively and the City believes that the community is adversely affected by the failure, the City may take appropriate action, as provided for by this Constitution, to rectify the failure.
- 4.6.1 The City may recover any expenditure in respect of the action contemplated above from the Association or its members, who are jointly liable.
- 4.6.2 The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association for the purposes of recovering expenditure incurred in connection with the Association from its Members.
- 4.6.3 If the Association ceases to function effectively or to carry out its obligations, the City may give the Association a binding instruction to:
- 4.6.3.1 hold a meeting and to reconstitute itself; or
- 4.6.3.2 dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of relevant provisions in the title deed
- 4.6.4 In determining whether to act in terms of the above, the City must have regard to:
- 4.6.4.1 the purpose of the Association;
- 4.6.4.2 who will take over the maintenance of internal engineering services and other obligations which the Association is responsible for, if at all;
- 4.6.4.3 the costs of upgrading the internal engineering services and other infrastructure if the City is to take over the infrastructure;
- 4.6.4.4 the impact of the dissolution of the Association on its members and the community;
- 4.6.4.5 any written representations from the Association and its members.
- 4.6.5 If the Association is dissolved, the members must jointly pay the costs of:
- 4.6.5.1 the transfer to the City of the Association's property which contains the internal engineering services and private open spaces;
- 4.6.5.2 the upgrading of the internal engineering services to the standards of the City.

- 4.6.6 In the event that the Association has ceased to function and an owner wishes to transfer a land unit in that event, the owner must obtain the consent of at least 60% (Sixty Percent) of the members of the Association, which consent is deemed to be the consent of the Association.

## 5. OBJECTS OF THE ASSOCIATION

The objects of the Association shall be the following:

- 5.1 the control over all aspects of the design, aesthetics and maintenance of all buildings, improvements and landscaping within the development;
- 5.2 to ensure compliance with the estate rules;
- 5.3 the maintenance, control and management of the common areas within the development;
- 5.4 the promotion, advancement and protection of the communal and group interests of the members generally in regard to the development;
- 5.5 to enter into service agreements and other necessary agreements with the local authority or any other authority or supplier of services in connection with the development;
- 5.6 to generally do all such things as may be necessary or requisite to give effect to and implement the objects of the Association and to do all such things ancillary or incidental to the objects;
- 5.7 without detracting from the generality of the foregoing, to ensure that all erven shall have been developed as soon as is reasonably possible,
- 5.8 to enforce the conditions of subdivision approval or management plans listed in the conditions registered with the City of Cape Town;

provided however, that nothing in this constitution shall in any way detract from or relieve the Council or any other authority from any of its duties and obligations or any services which it is required to provide by law to property owners or occupiers of any land or buildings within the development.

## 6. MEMBERSHIP OF THE ASSOCIATION

- 6.1 Membership of the Association shall be compulsory for every registered owner of an erf.
- 6.2 Such membership shall commence simultaneously with the registration of transfer of the erf into the name of the transferee.
- 6.3 Membership of the Association shall be limited to the registered owners of erven provided that:
  - 6.3.1 a person who is entitled to obtain a certificate of registered title to any such erf shall be deemed to be the registered owner thereof;
  - 6.3.2 where any such owner is more than one person, all the registered owners of that erf shall be deemed jointly and severally to be one member of the Association and nominate one owner to represent them and vote at meetings of the Association.
- 6.4 When a member ceases to be the registered owner of an erf, such person shall *ipso facto* cease to be a member of the Association.

- 6.5 A member shall not be entitled to:
- 6.5.1 sell or transfer an erf unless it is a condition of the sale and transfer that:
    - 6.5.1.1 the transferee agrees in writing to become a member of the Association and to be bound by the provisions of this constitution;
    - 6.5.1.2 the registration of transfer of that erf into the name of the transferee shall *ipso facto* constitute the transferee as a member of the Association;
    - 6.5.1.3 the member first obtains the written consent of the Association which consent, may not be unreasonably withheld, and shall be given provided:
      - 6.5.1.3.1 the transferee of such erf agrees in writing to become a member of the Association and to be bound by the constitution of the Association;
      - 6.5.1.3.2 the member has paid all levies and any other amounts owing by such member to the Association as at the date of registration of transfer of the erf to the transferee;
  - 6.5.2 Without the written approval of the trustees:
    - 6.5.2.1 erect any new buildings and/or structures of any nature whatsoever on his erf;
    - 6.5.2.2 make any changes or alterations to existing buildings and/or structures on his erf, including changes to the external colour scheme;
  - 6.5.3 In any manner subdivide an erf without the prior written approval of the Association.
- 6.6 The approval of the trustees as contemplated in clause 6.5.2 shall only be given:
- 6.6.1 after detailed plans of the proposed work has been submitted to the trustees, or any person nominated by the trustees (who may be an architect, registered with the South African Council of Architects or the Institute of South African Architects); and
  - 6.6.2 after the trustees or their nominee are satisfied that the proposed work is in accordance with the Design Manual for the purposes of which the trustees or their nominee shall be the sole arbiter and their decision shall be final and binding on the member; and
  - 6.6.3 after the member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the trustees or their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature;
  - 6.6.4 after the member has paid to the trustees a deposit in such amount as the trustees may from time to time determine as a building deposit which amount shall be held in trust by the trustees subject to the provisions of clauses 10 and 32 below.

- 6.6.5 after the member and his/her building contractor has signed a Builders Conduct and Site Development Agreement with the Association as specified by the Trustee Committee from time to time.

Provided that the provisions of this clause shall not be interpreted as detracting from the obligation of members to obtain approval of building plans from Council.

- 6.7 The registered owner of an erf shall not be entitled to resign as a member of the Association and shall remain a member for as long as such owner is the registered owner of any erf in the Development.
- 6.8 The Trustee Committee may by regulation provide for the issue of a membership certificate which certificate shall be in such form as may be prescribed by the Trustee Committee.
- 6.9 The rights and obligations of a member shall not be transferable and every member shall:
- 6.9.1 to the best of the ability of such member further the objects and interests of the Association;
- 6.9.2 observe all by-laws and regulations made by the Association or the Trustee Committee.
- 6.9.3 ensure that an erf owned by him shall have been developed by the commencement of construction of a dwelling, and the completion of such dwelling, in conformity with the architectural guidelines, within the time limits set by resolution or regulation of the Trustee Committee.
- 6.9.4 in the event of a member failing to comply with his obligations under 6.9.3 above, the Trustee Committee, for and on behalf of the Association, shall, without derogation from any other right/s which the Association may have, impose on such member a levy equal to such number of times of the then current levy referred to in Clause 8 as the Trustee Committee determines from time to time. This penalty levy which shall be payable monthly in advance and until such time as construction of the said dwelling is commenced, or until completion of the said dwelling, as the case may be, and whether or not the failure to commence construction or complete the dwelling was attributable to such member, or any predecessor in title.
- 6.9.5 Ensure that any damages or alterations to existing buildings and/or structures on his erf be completed within such period as may be stipulated in terms of 9.1.1.
- 6.9.6 For the purposes of 6.9.3 and 6.9.4 above, "commencement of construction" shall mean the clearing and fencing of the erf, the establishment of a site office/store and builders' toilet facilities, and the excavation and throwing of foundations; "completion" shall mean when either the member's or the Association's architect certifies the dwelling suitable for occupation.
- 6.9.7 For the purposes of 6.9.5 "completion" shall mean when either the member's or the Association's architect certifies the changes and/or alterations as being complete in terms of the relevant approved plans.
- 6.9.8 Comply with any agreements referred to in Clause 13.
- 6.10 No member ceasing to be a member of the Association for any reason shall, nor shall any such member's executor, curators, trustees or liquidators, have any claim upon or interest in the funds or other property of the Association, but this clause shall be without

prejudice to the rights of the Association to claim from such member or the estate of such member any arrears of subscriptions or other sums due from him to the Association at the time of his so ceasing to be a member.

- 6.11 No member shall let or otherwise part with the occupation of his property, unless the proposed lessee or occupier has agreed in writing to be bound by the provisions of this Constitution, design manual and the estate rules.
- 6.12 The provisions of this Constitution, the design manual and the estate rules, including but not limited to Security requirement compliance, shall be binding on all owners, lessees and occupants of erven, and it shall be the duty of the owner to ensure compliance with the provisions of the Constitution, the design manual and the estate rules by the lessee or other occupant of his erf, including the family members, guests, visitors, workers or contractors of the owner, the lessee or occupant. In the event of any breach of this Constitution, design manual or the estate rules by a lessee or other occupant of an erf or the family members, guests, visitors, workers or contractors of the owner, the lessee or occupant such breach shall be deemed to have been committed by the owner himself. Without prejudice to the foregoing, the Trustee Committee shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the owner.
- 6.13 Any dispute will be managed according to the dispute resolution process of the estate as determined by the Trustees from time to time.
- 6.14 All data collected by the estate relating to all aspects of operation and management will be handled in accordance with the estates' data protection policy.

## **7. FINANCIAL AFFAIRS**

- 7.1 The financial year end of the Association shall be on a date determined by members in General Meeting;
- 7.2 The fiscal year of the Association shall normally be a twelve month period always ending on the financial year-end date, the period to be reduced or increased only when necessary to accommodate changes to the year-end date and approved by members in General Meeting.

## **8. LEVIES PAYABLE BY THE MEMBERS**

- 8.1 The Trustee Committee shall from time to time make levies upon the members for the purpose of meeting all the expenses which the Association has incurred, or to which the Trustee Committee reasonably anticipates the Association will be put by way of the following:
  - 8.1.1 the maintenance, management, repair, improvement and keeping in order of the common areas, including specifically landscaping, all services and sewage treatment and retention dams within the development;
  - 8.1.2 the promotion, advancement and protection of the communal and group interests of the members generally in regard to the development, including security and security systems, personnel and staff;
  - 8.1.3 payment of all rates and other charges payable by the Association in respect of the common areas;



- 8.1.4 all services rendered to the Association and/or for payment of expenses necessarily or reasonably incurred in connection with the management and objects of the Association and its affairs;
- 8.1.5 employees and staff employed by the Association.

and in calculating the levies, the Trustee Committee shall take into account the income (if any) earned by the Association.

- 8.2 The Trustee Committee shall prepare a budget of the estimated amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency (if any) as shall result from the preceding year, and shall impose a levy upon the members' equal as nearly as is reasonably practical to such estimated amount .
- 8.3 Levies imposed in terms of 8.2 above shall be deemed payable in advance in equal monthly instalments on the first day of every month
- 8.4 The Trustee Committee may include in such budget levies in an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.
- 8.5 The members, at the Annual General Meeting, shall approve the budget and the levies payable by members.
- 8.6 The Trustee Committee may from time to time make special levies upon the members in respect of all such expenses as are mentioned in this clause 8 (which are not included in any estimate made in terms of clause 8.2) and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall think fit, provided that:
- 8.6.1 The Trustee Committee shall, in writing, announce to all members the imposition of the levy and the reasons therefore as soon as the Trustee Committee has resolved to impose the same;
- 8.6.2 Where feasible the Trustee Committee shall not commit itself to expenditure for which they intend to raise a Special levy until 14 (fourteen) days after the announcement of the special levy, calculated from the date of posting/sending/mailling the notice. If before this period has expired, a Special General meeting is called by the Members in terms of clause 20.3 to discuss the levy, then the Trustee Committee shall not commit itself to the expenditure until it has been approved at the Special General Meeting, unless the situation is of such an urgent nature that no delay can be countenanced and immediate action is required.
- 8.7 Any amount due by a member by way of a levy or penalty shall be a debt due by such member to the Association and shall attract interest (compounded monthly) at prime overdraft rate of the Estate's bankers, plus a percentage as determined by the Trustee Committee from time to time. Any newly determined percentage will be applied in the same percentage to all such outstanding amounts/debtors and be valid for as long as such interest is attracted or a new interest percentage is determined, whichever comes first.
- 8.8 The obligation of a member to pay levies to the Association shall cease upon such member ceasing to be a member of the Association, without prejudice to the right of the Association to recover arrear levies or any other amounts whatsoever owing to the Association.

- 8.9 No levies paid by a member to the Council and/or the Association shall under any circumstances be repayable by the Council and/or the Association upon such member ceasing to be a member.
- 8.10 A member's successor in title to the erven shall be liable as from the date upon which such successor becomes a member pursuant to the transfer of such erf, to pay the levy attributable to the erf.
- 8.11 Members of the Association shall be entitled to elect to pay levies by means of any of the following methods:
- 8.11.1 Members of the Association shall pay levies:
- 8.11.1.1 in 12 equal monthly instalments by means of any of the following methods:
- 8.11.1.1.1 the issue of a debit order against his account;
- 8.11.1.1.2 electronic fund transfer; or
- 8.11.1.1.3 or such other method as the Trustee Committee may determine from time to time
- 8.11.1.2 by means of an advance payment of all levies due for the full year;
- 8.11.2 Members electing to pay levies in terms of 8.11.1.2 above shall receive a discount as determined by the Trustee Committee from time to time.
- 8.11.3 Members who require a monthly invoice in any form other than by e-mail shall pay a service fee as determined by the Trustee Committee from time to time.
- 8.12 Any special levies imposed by the trustees in terms of clause 8.6 may be apportioned between the members by the trustees in an apportionment which the trustees may regard as reasonable, regard being had of the direct benefits which the member(s) may derive from the proposed expenditure for which the special levies are imposed.
- 8.13 No member shall be entitled to any of the privileges of membership unless and until such member shall have paid every levy or other amount (if any) which shall be due and payable to the Association in respect of the membership of such member.

## **9. BUILDINGS AND ALTERATIONS AND DESIGN MANUAL**

- 9.1 The Association shall be entitled to:
- 9.1.1 having regard to the design manual frame, implement and enforce conditions on members in order to harmonise the architectural styles and design criteria of and the materials and colours to be used in all buildings erected within the scheme including any refurbishment, alterations or additions thereto.
- 9.1.2 Do such acts as are necessary to accomplish the purposes expressed or implied herein which acts shall include, inter alia, the examination and endorsement of the relevant building plans as necessary for any construction, renovation and / or alterations within the development.
- 9.1.3 Appoint such advisors as are necessary to scrutinize the relevant plans referred to herein.

- 9.1.4 Impose a scrutiny fee on members for the services as mentioned herein.
- 9.1.5 The provisions of this clause shall not be applicable in relation to any of the works to be undertaken by the Developer prior to the completion of the scheme.
- 9.2 The trustees may in liaison and with the consent of the Council amend, amplify, clarify or add to the provisions of the design manual.
- 9.3 In the event of the provisions of the design manual being amended or added to and such amendment or addition will materially affect any further development of any property in the development, the trustees shall by written notice inform all members of the amendment or addition to the design manual.
- 9.4 All buildings and other structures erected on any erven within the development shall comply with the provisions of the design manual.
- 9.5 No site occupation of any erf within the development shall be permitted until written acknowledgement of the design guideline has been received from the registered owner thereof.

## **10. DEPOSIT FOR DAMAGE**

- 10.1 Each member shall, when submitting to the trustees for approval the detailed plans for the construction of any building and/or improvements, or alterations or additions to existing improvements on his erf in terms of clause 6.2.5, pay to the trustees a deposit in an amount to be determined from time to time by the trustees which amount shall be retained by the trustees in trust until completion by the member and/or its contractors of such work.
- 10.2 Upon completion of all such building and other activities, the trustees shall if they are satisfied that:
  - 10.2.1 no damage has been effected by the member or any of its contractors to the common areas and/or landscaped areas within the development; and
  - 10.2.2 the work has been constructed in accordance with duly approved plans; and
  - 10.2.3 all rules and regulations of the Association have been adhered to, but after deduction of all, if any, monies due to the Association by the member, release the building deposit to the member, excluding any interest thereon which will accrue to the Association
- 10.3 In the event of any landscaped area and/or the common areas having been damaged due to such work, the member shall within 15 days of having been requested to do so in writing by the trustees, rectify the damage to the satisfaction of the trustees, failing which, the trustees shall be entitled to appoint an independent contractor to repair the damage and the amount paid to the trustees as a building deposit shall be utilised to defray the expenses of the independent contractor. If, however, the deposit is not sufficient to cover the cost of such repairs, the trustees shall be entitled to recover the shortfall from the member.

## **11. DEALING WITH COMMON AREAS**

- 11.1 Neither the whole nor any portion of the common areas shall be:
  - 11.1.1 sold, alienated or otherwise disposed of or subdivided or transferred; or

11.1.2 mortgaged or encumbered in any manner whatsoever; or

11.1.3 built upon, improved or enhanced in value by the construction of buildings, facilities or amenities, which are of a permanent nature, requiring the approval of the Council;

without the sanction of a Special Resolution of the Association.

## 12. RESPONSIBILITY FOR THE COMMON AREA

12.1 The Association shall take title to those areas of the common area which are registerable;

12.2 The Association acknowledges that the Council shall not be responsible for, and the Association shall be solely responsible for the care, repair, maintenance, cleaning, upkeep, improvement and property control of the common area, all services therein and any structure or thing erected on or contained therein.

## 13. CONTRACTS AND REGULATIONS

13.1 The Trustee Committee may from time to time:

13.1.1 Make, amend or cancel rules and regulations governing *inter alia*:

13.1.1.1 the members' rights of use and enjoyment of the common areas and the development;

13.1.1.2 the external appearance of and the maintenance of the common areas and the buildings or other improvements erected thereon;

13.1.1.3 the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on the erven,

13.1.2 enter into agreement(s) with the local authorities governing the matters set out in clause 13.1.1 and any other incidental matters;

13.1.3 enter into any other agreement(s) for the purpose of achieving the objects of the Association, including (but not limited to) agreements with security organisations to provide security to the whole or any part of the development.

13.1.4 Update the estates' data protection policy to address ongoing new data types and handling.

13.1.5 Update the estates' dispute resolution policy to align to evolving best practice.

13.2 Each member undertakes to the Association to comply with:

13.2.1 the provisions of this constitution;

13.2.2 any regulations made in terms of clause 13.1.1 above;

13.2.3 any agreements referred to in clause 13.1.2 and 13.1.3 above insofar as those agreements may directly or indirectly impose obligations on such member.

13.3 All officials, employees and contractors employed by the Association, local authority and/or any public service company shall, at all times, have reasonable access to the

erven and common areas for purposes of inspecting and/or maintaining all services supplying and/or traversing any part thereof.

#### **14. BREACH OF THIS CONSTITUTION**

14.1 Should any member:

14.1.1 fail to pay on due date any amount due by that member in terms of this constitution or any rule or regulation made thereunder and remain in default for more than 7 days after being notified in writing to do so by the trustees; or

14.1.2 commit any other breach of any of the provisions of this constitution or any regulation made thereunder and fail to commence remedying that breach within a period of 7 days after the receipt of written notice to that effect by the trustees and complete the remedying of such breach within a reasonable time;

then and in either such event the trustees shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the trustees or the Association or any other member may have in law, including the right to claim damages:

14.1.3 to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of his or her obligations in terms of this constitution or any rule or regulation made in terms of this constitution, as the case may be; and/or

14.1.4 to suspend all or any services to the erf owned by that member; and/or

14.1.5 in the case of clause 14.1.2 above, to remedy such breach and immediately recover the total cost incurred by the trustees or the Association in so doing from such member.

14.1.6 Notwithstanding the provisions of clause 14.1 above, the Trustee Committee shall be entitled to impose fines on owners, in respect of any breach of this constitution, the design manual or the estate rules by the owner, resident or his or her family member, guest, visitor, worker or contractor.

14.2 Should the trustees of the Association institute any legal proceedings against any member pursuant to a breach by that member of this constitution or any rule or regulation made thereunder, then without prejudice to any other rights which the trustees or the Association or any other member may have in law, the trustees shall be entitled to recover from such member all legal costs incurred by the trustees or the Association, including attorney/client charges, tracing fees and collection commission.

Without prejudice to all or any of the rights the trustees or the Association granted under this constitution, should any member fail to pay any amount due by that member on due date, then such member shall pay interest (compounded monthly) thereon at the prime rate of interest of the Association's bankers, plus a percentage as specified by the Trustee Committee from time to time calculated from the due date for payment until the actual date of payment of such amount, both dates inclusive.

#### **15. TRUSTEE COMMITTEE**

15.1 There shall be a board of Trustees of the Association which shall consist of not less than 4 and not more than 10 members. Every Trustee must be a member or the lawful spouse of a member of the Association provided that the spouse of a Trustee member shall not have a vote unless such spouse is also a member in terms of clause 6 hereof; or an

authorised representative of the member where the member is not a natural person, except in the circumstances pertaining to section 15.4 which shall apply.

- 15.2 At any meeting of the Trustee Committee, the trustees present at the meeting shall each have 1 vote, save as provided in clause 15.3.
- 15.3 In the case of an equality of votes, the chairman of that Trustee Committee meeting shall have a casting vote in addition to his deliberative vote as Trustee Committee member.
- 15.4 Should the number of Trustees required in terms of Section 15.1 fall below the minimum of 4 then the vacancy of one Trustee shall be filled by the Estate Manager and should there be two vacancies then the Managing Agent shall be appointed to fill the second vacancy. These Trustee(s) will be ex-officio Trustee(s) with voting rights for a maximum of 45 days from date of appointment and the then Trustees fulfilling the requirements of Section 15.1 shall call a Special General Meeting within 45 days of the vacancy / vacancies occurring, at which any Trustee(s) vacancies shall be filled.

In the event that three or more Trustees have resigned when there is a minimum of four, then the Managing Agent shall call a Special General Meeting giving a minimum of 14 days notice for election of the vacancies created by the resignation of the Trustees to meet the Constitutional requirement of a minimum of four Trustees.

## **16. REMOVAL AND ROTATION OF TRUSTEE MEMBERS**

- 16.1 Save as set forth in clause 17 below, each trustee shall continue to hold office until the annual general meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office as such, and shall be eligible for re-election to the Trustee Committee at such meeting.
- 16.2 A trustee shall be deemed to have vacated his or her office as such upon:
- 16.2.1 his or her estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
  - 16.2.2 his or her making any arrangement or compromise with his creditors;
  - 16.2.3 his or her conviction for any offence involving dishonesty;
  - 16.2.4 his or her becoming of unsound mind or being found lunatic;
  - 16.2.5 his or her resigning from such office in writing delivered to the secretary;
  - 16.2.6 his or her death;
  - 16.2.7 his or her being removed from office by a resolution of the majority of the trustees;
  - 16.2.8 his or her failing to attend three consecutive meetings of the Trustee Committee;
  - 16.2.9 him or her being in default and indebted to the Association for the payment of any levy, penalty or other amount, despite having been duly notified of such default;

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

## 17. OFFICE OF TRUSTEES

- 17.1 Within 10 days of the holding of an Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number the chairman and vice-chairman, who shall hold their respective offices until the end of the following year, provided that the office of the chairman or vice-chairman shall *ipso facto* be vacated by the trustee holding such office upon his ceasing to be a trustee for any reason. No one trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement in such office.
- 17.2 Save as otherwise provided in this constitution, the chairman shall preside at all meetings of the Trustee Committee, and all general meetings of members, and shall perform all duties incidental to the office of chairman and such other duties as may be prescribed by the Trustee Committee or by members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 17.3 The vice-chairman shall assume the powers and duties of the chairman in the absence of the chairman, or his inability or refusal to act as chairman, and shall perform such other duties as may from time to time be assigned to him by the chairman or the Trustee Committee.
- 17.4 Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as trustees and/or chairman, vice-chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

## 18. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

- 18.1 Subject to the express provisions of this constitution, the Trustee Committee shall manage and control the affairs of the Association, and shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by this constitution required to be exercised or done by the Association in general meeting, subject nevertheless to such regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.
- 18.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 18.3 The Trustee Committee shall have the right to co-opt onto the Trustee Committee any person or persons chosen by it. Any co-opted trustee shall enjoy all the rights and be subject to all the obligations of the trustees, but no co-opted trustee shall have any vote at any meeting of the Trustee Committee.
- 18.4 The Trustee Committee may should it so decide, investigate any suspected or alleged breach by any member or trustee of this constitution in such reasonable manner as it shall decide from time to time.
- 18.5 The Trustee Committee may make rules, regulations and by-laws not inconsistent with this constitution or any regulations prescribed in the Association in general meeting and shall be entitled to cancel, vary or amend any of the same from time to time:
- 18.5.1 as to disputes generally;

- 18.5.2 for the furtherance and promotion of any of the objects of the Association;
  - 18.5.3 for the better management of the affairs of the Association;
  - 18.5.4 for the advancement of the interests of members;
  - 18.5.5 for the conduct of Trustee Committee meetings and general meetings; and
  - 18.5.6 to assist it in administering and governing its activities generally.
- 18.6 The Trustee Committee may within any financial year authorise expenditure not budgeted for from reserve funds in order to address emergencies on condition that such expenditure does not exceed a maximum of 12% of the approved annual budget. In the event that such expenditure would exceed such 12% then the Committee must advertise by e-mail/ordinary mail to all property owners its intention to spend and should within a period of 14 calendar days not more than 40 property owners object to such expenditure, then the expenditure will be deemed to have been approved. In the event of such objection the Trustee Committee shall be obliged to call a Special General meeting as provided for in Clause 21 of the Constitution.

## 19. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 19.1 The Trustee Committee may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this constitution.
- 19.2 Meetings of the Trustee Committee shall be held at least once every month provided that if all the trustees shall in writing have waived the above requirement in respect of a particular month, then no meeting of the Trustee Committee need be held for that month.
- 19.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be 4 (four) trustees.
- 19.4 The chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the chairman not be present within 5 minutes after the time appointed for the holding thereof, then the vice-chairman shall act as chairman at such meeting, provided further that should the vice-chairman also not be present within 5 minutes of the time appointed for the holding of such meeting, those present of the trustees shall vote to appoint a chairman for the meeting, who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.
- 19.5 Minutes shall be taken at every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the chairman of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee minute book to be kept in accordance *mutatis mutandis*, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee minute book shall be open for inspection at all reasonable times by a trustee, the auditors, and the members.
- 19.6 All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the members or any of the trustees unless such resolution is competent within the powers of the Trustee Committee.



- 19.7 Save as otherwise provided in this constitution, the proceedings at any trustee meeting shall be conducted in such reasonable manner and form as the chairman of the meeting shall decide.
- 19.8 A resolution of the trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened if the voting on such resolution is conducted by the trustees via e-mail in such form as the Trustee Committee may determine from time to time or if the resolution is signed by all the trustees.
- 19.9 At any meeting of the Trustee Committee a resolution or decision put to the vote of the meeting shall be decided on a show of hands, unless otherwise determined by the Chairman, and the Minutes of such meeting shall record the number of votes for and against, as well as the number of abstentions.
- 19.10 Any member of the Trustee Committee who has a personal interest in any issue under discussion by a meeting of the Trustee Committee and on which a resolution by the Trustee Committee is required, shall declare such interest. The Chairman shall, whether such declaration has been made or not, be entitled to require that any Trustee Committee member excuse him or herself from any discussion of or voting on any such issue in which the Chairman in his discretion is of the opinion that such member has a personal interest.

## **20. GENERAL MEETINGS OF THE ASSOCIATION**

- 20.1 The Association shall within 90 ( ninety) days after the end of the financial year of the Association hold a general meeting as its annual general meeting, in addition to any other general meetings, during that year, and shall specify the meeting as such in the notices in terms of clause 21.1 below calling it.
- 20.2 Such annual general meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.
- 20.3 All general meetings other than annual general meetings shall be called special general meetings.
- 20.4 The Trustee Committee may whenever they think fit convene a special general meeting for any purpose and shall be obliged to convene a Special General Meeting if called upon to do so by written request from Members owning not less than 40 erven.
- 20.5 General meetings of the Association shall take place at such place/s as shall be determined by the Trustee Committee from time to time.

## **21. NOTICE OF MEETINGS OF THE ASSOCIATION**

- 21.1 An annual general meeting and a meeting called for the passing of a special resolution, shall be called by 21 days notice in writing at the least and a special general meeting other than one called for the passing of a special resolution shall be called by 14 days notice in writing at the least.
- 21.2 In each case, the notice shall be exclusive of the day on which it is given and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in this constitution, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee to such persons as are under this constitutions entitled to receive such notices from the Association provided that a general meeting of the Association shall, notwithstanding

that it is called by shorter notice than that specified in this constitutions, be deemed to have been duly called if it is so agreed:

- 21.2.1 in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
- 21.2.2 in the case of a special general meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 75% of the total voting rights of all members.
- 21.3 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of this constitutions, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

## **22. QUORUM FOR GENERAL MEETINGS**

- 22.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.
- 22.2 The quorum necessary for the holding of any general meeting shall be such of the members entitled to vote, as together for the time being, represent 25% of the total votes of all members of the Association entitled to vote, for the time being save that not less than 4 (four) members must be personally present.
- 22.3 If within 30 minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

## **23. AGENDA AT GENERAL MEETINGS**

In addition to any other matters required by this constitution to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:

- 23.1 the consideration of the chairman's report to the Members;
- 23.2 consideration of the nominations received, calling of nominations from the floor and the Election of Trustees;
- 23.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 23.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
- 23.5 the consideration of the report of the auditors;
- 23.6 the consideration and approval of the budget and the total levy (as referred to in clause 8) for the calendar year during which such Annual General Meeting takes place; and
- 23.7 the consideration and fixing of the remuneration of the auditors for the financial year of the Association preceding the annual general meeting.

- 23.8 the approval of the appointment of the auditors proposed for the year following the annual general meeting.

#### **24. PROCEDURE AT GENERAL MEETINGS**

- 24.1 The chairman shall preside as such at all general meetings provided that should he not be present within 15 minutes after the time appointed for the holding thereof, then the vice-chairman, shall act as chairman at such meeting provided further that should the vice-chairman not be present within 15 minutes of the time appointed for the holding of such meeting, then the members present at such meeting entitled to vote shall vote to appoint a chairman for the meeting who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.
- 24.2 The chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.
- 24.3 Whenever a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 24.4 Except as otherwise set forth in this constitution, all general meetings shall be conducted in accordance with generally accepted practice.

#### **25. PROXIES FOR GENERAL MEETINGS**

- 25.1 A member may be represented at a general meeting by a proxy who need not be a member of the Association.
- 25.2 Subject to the provisions of clause 26.7, the instrument appointing a proxy shall be in writing signed by the member concerned or his duly authorised agent in writing, but need not be in any particular form provided that where a member is more than one person, any one of those persons may sign the instrument appointing a proxy on such member's behalf, where a member is a company, the same may be signed by the chairman of the board of directors of the company or by its secretary, and where an association of persons, or a body corporate, by the chairman thereof.
- 25.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 2 months from the date of its execution.
- 25.4 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustee Committee at least one hour before the time fixed for the holding of the meeting.
- 25.5 Should a member be absent from the recorded domicilium address which the trustees may have for such member for a continuous period in excess of 30 days, a proxy must be appointed by such member prior to his absence in accordance with clauses 25.1 and 25.3 above, failing which a member shall not be entitled to vote, at any special general meeting, called during such member's absence.

## **26. VOTING AT GENERAL MEETINGS**

- 26.1 At every general meeting, each member in person or by proxy and entitled to vote shall have one (1) vote for each erf registered in his name, provided that if an erf is registered in more than one person's name then they shall jointly have one (1) vote.
- 26.2 Save as expressly provided for in this constitution, no person other than a member duly registered, and who shall have paid every levy and other amount (if any) which shall be due and payable to the Association in respect of or arising out of the membership of such member, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 26.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the chairman of the result of the show of hands, a poll is demanded by any member entitled to vote at such meeting.
- 26.4 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 26.5 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 26.6 Unless any member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the chairman of the meeting as to the result of any voting at the meeting.
- 26.7 Notwithstanding the provisions of Clauses 25 and 26 hereof, at the election of Trustee Committee members, members who are entitled to vote, shall vote:
- 26.7.1 If present in person; or
- 26.7.2 By way of a properly completed ballot paper, in such form as the Trustee Committee may determine from time to time, handed to the Managing Agent or alternatively the Estate Manager alternatively the Chairman of the Association, at least 24 hours prior to the relevant General Meeting.
- 26.8 **MEMBERS ACTING OTHER THAN IN A MEETING**
- 26.8.1 Save for the provisions of this Constitution, a Resolution that could be voted on at a General Meeting of Members may instead be –

- 26.8.1.1 submitted by the Trustees for consideration to the Members entitled to exercise their voting rights in relation to the Resolution; and
  - 26.8.1.2 voted on in writing by such Members within a period of 10 days after the Resolution was submitted to them.
- 26.8.2 A Resolution contemplated in clause 26.8.1 –
- 26.8.2.1 will be seen as conducted in writing by members if it is in the form of electronic mail, facsimile, secure polling software or post; and
  - 26.8.2.2 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as Resolution, as the case may be, at a properly constituted meeting of Members; and
  - 26.8.2.3 if adopted, will have the same effect as if it had been approved by voting at a meeting.
- 26.8.3 Within 10 (ten) days after adopting a Resolution in terms of the provisions of this clause 26.8, the Association shall deliver a statement describing the results of the vote or election to every Member who was entitled to vote on or consent to it.
- 26.8.4 Any business of the Association that is required by this Constitution to be conducted at an Annual General Meeting, may not be conducted in the manner as set out in this clause 26.8.
- 26.8.5 Amendment of this Constitution can only be conducted as provided for in clause 33 and may not be conducted in the manner as set out in this clause 26.8.

## **27. SPECIAL RESOLUTION**

- 27.1 A resolution by the Association shall be a special resolution if at a general meeting of which not less than 21 clear days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which members holding in aggregate not less than 25% of the total votes of all the members entitled to vote thereat, are present in person or by proxy, the resolution has been passed, on a show of hands, by not less than 75% of the number of members of the Association entitled to vote on a show of hands at the meeting who are present in person or by proxy or, where a poll has been demanded, by not less than 75% of the total votes to which the members present in person or by proxy are entitled.
- 27.2 If less than 25% of the total votes of all the members entitled to attend the meeting and to vote thereat are present or represented at a meeting called for the purpose of passing a special resolution, the meeting shall stand adjourned to a date not earlier than 14 days and not later than 30 days after the date of the meeting and the provisions of clause 24.3 shall apply in respect of such adjournment.
- 27.3 At the adjourned meeting, the members who are present in person or by proxy and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than 75% of such members shall be deemed to be a special resolution even if less than 25% of the total votes are represented at such adjourned meeting.

## **28. OTHER PROFESSIONAL OFFICERS**

Save as specifically provided otherwise in this constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, architects, engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide, subject to any of the provisions of this constitutions, provided that any expenditure incurred in respect of the above, shall not exceed 5% of the total annual levy for the year in question unless authorised by a special resolution.

## **29. ACCOUNTS OF THE ASSOCIATION**

- 29.1 The Association in general meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of members at all reasonable times during normal business hours.
- 29.2 At each annual general meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the auditors if appointed, and there shall be attached to the notice sent to members convening each annual general meeting, as set forth in clause 21.1 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.
- 29.3 Should the trustees or the majority of the members so require, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the auditors at least once a year.

## **30. SERVICE OF NOTICES**

- 30.1 A notice shall be in writing and shall be given or served by the Association upon any member, either personally or by post in a prepaid registered letter or by electronic mail, properly addressed to the member at the address of the erf owned by such member, or in the case of electronic mail, properly addressed to the last electronic mail address appointed in writing including by e-mail for such purposes by the member.
- 30.2 No member shall be entitled to have a notice served on such member at any address not within the Republic of South Africa, but any member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
- 30.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted. Any notice by electronic mail shall be deemed to have been served at the time when the electronic mail was forwarded, and in proving the giving of the notice by electronic mail, it shall be sufficient to prove that the electronic mail containing the notice was properly addressed and forwarded.
- 30.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

## 31. INDEMNITY

- 31.1 All trustee members shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a trustee member, in his or her capacity as chairman or vice-chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court.
- 31.2 Every trustee member, every servant, agent and employee of the Association, shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of their respective duties, including in the case of a trustee member, his or her duties as chairman or vice-chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by such person jointly or severally in connection with the discharge of his or her duties, provided that any such act, deed or letter has been done or written in good faith.
- 31.3 A trustee member shall not be liable for the acts, receipts, neglects or defaults of the auditors or of any of the other trustee members, whether in their capacities as trustee members or as chairman or vice-chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his or her part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his or her office/s or in relation thereto, unless the same shall happen through lack of *bona fides* or breach of duty or breach of trust.

## 32. ARBITRATION

- 32.1 Any dispute, question or difference arising at any time between member or between members and trustees out of or in regard to:
- 32.1.1 any matters arising out of this constitution; or
  - 32.1.2 the rights and duties of any of the parties mentioned in this constitution; or
  - 32.1.3 the interpretation of this constitution;
- shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.
- 32.2 Arbitration shall be held in Cape Town informally and otherwise upon the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 business days after it has been demanded.
- 32.3 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 32.3.1 primarily an accounting matter - an independent accountant;

- 32.3.2 primarily a legal matter - a practising counsel or attorney of not less than 10 years standing;
- 32.3.3 any other matter - an independent and suitably qualified person appointed by the auditors;

as may be agreed upon between the parties to the dispute and, failing agreement, the arbitrator shall be appointed in terms of clause 32.4 below.

- 32.4 If agreement cannot be reached on whether the question in dispute falls under clauses 32.3.1, 32.3.2 or 32.3.3 or upon a particular arbitrator in terms of clause 32.3.3, within 3 business days after the arbitration has been demanded, then:
  - 32.4.1 the President for the time being of the Law Society of the Cape of Good Hope or its successor/s shall determine whether the question in dispute falls under clauses 32.3.1, 32.3.2 or 32.3.3 above; or
  - 32.4.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of clause 32.3.1 within 7 business days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 business days referred to in clause 32.2 above.
- 32.5 The arbitrator shall make his award within 7 days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 32.6 The decision of the arbitrator shall be final and binding and may be made an order of the Cape Provincial Division of the High Court of South Africa or its successor/s upon the application of any party to the arbitration.
- 32.7 Notwithstanding anything to the contrary contained in clauses 32.1 to 32.7 inclusive, the trustees 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 these provisions.

### **33. AMENDMENTS TO CONSTITUTION**

- 33.1 This constitution, or any part thereof, shall not be repealed or amended, save by a special resolution adopted at an Annual General Meeting or a General Meeting of the members, subject to clause 33.2 below.
- 33.2 Notwithstanding the provisions of clause 33.1 above, any amendment concerning a matter in section 62(1)(a) of the Cape Town Municipal Planning By-Law 2015 becomes effective only when certified by the City.
- 33.3 This constitution and any amendment thereof must be lodged with the City and the latest copy duly lodged with the City, and which the City has certified in terms of section 62(2) or 62(4) of the City of Cape Town Municipal Planning By-Law 2015, is presumed to contain the operative provisions of the constitution.
- 33.4 The City is exempt from liability for any damage which may be caused by its certification of this constitution or any amendment thereof or by the loss of the constitution lodged with the City.



**34. EFFECTIVE DATE**

This constitution shall come into force when the first erf in the development is registered in the Deeds Office.

**35. MANAGING AGENT**

The trustees shall be entitled to appoint a managing agent from time to time to control, manage and administer the common property and to exercise such power and duties as may be entrusted to the managing agent, including the power to collect levies and to appoint a supervisor.

**36. MARKETING AND SALES**

Members shall not be entitled to erect any marketing material, sign boards or the like on their erven

**37. VINEYARDS**

37.1 The Erf formerly numbered 198 and previously referred to as "being the proposed vineyards" in the Estate, designated on the original development plan as the open area surrounded by the inner circle of, inter alia, Simons Way is:-

- 37.1.1 Erf 7050;
- 37.1.2 the vineyards;
- 37.1.3 privately owned;
- 37.1.4 zoned Agricultural Zone I.

37.2 The vineyards' owner obtained the vineyards as a going concern for farming purposes in the production of grapes and must preserve, maintain, cultivate and harvest the vineyards as such, as part of the Estate's core concept.

37.3 The members and their guests will have limited access and only on designated pathways to Erf 7050 being the vineyard which is privately owned. The owner of Erf 7050 will be entitled to close or fence the area should it be deemed necessary.

37.4 The members of the Estate acknowledge that:

- 37.4.1 spraying applications whether fungicidal, insecticide or organic spraying and other treatments will be effected on the vineyards;
- 37.4.2 the vineyards will be working areas which will be cultivated, maintained and harvested during the year;

37.5 Provided that the owner of the vineyards continue to allow members and their guests free access as referred to in clause 37.3 above, Erf 7050 will be exempt from paying levies.

37.6 Notwithstanding clause 37.5 above, normal levies in accordance with clause 8 hereof, will immediately become due and payable from the date of any application to erect any building or structure on Erf 7050. In addition, the respective penalty levies will be payable until the completion of any building or structure.

37.7 Erf 7050 shall be maintained according to the aesthetics requirements of the Estate, with all grass and servitudes being neatly mowed and all agricultural plantings cleared and managed to acceptable standards for an actively managed farming concern in line with the vineyards of the winelands area, and the landscaping of the Estate.

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