

MOUNT VERNON RESIDENTIAL ESTATE

HOME OWNERS' ASSOCIATION CONSTITUTION

A statutory body established in terms of Section 29
of the Stellenbosch Municipality Land Use Planning
By-law of 2015

CONTENTS

1. ESTABLISHMENT IN TERMS OF STATUTE.....3

2. INTERPRETATION.....4

3. MAIN BUSINESS OF THE ASSOCIATION5

4. MAIN OBJECTIVES OF THE ASSOCIATION5

5. DOMICILIUM CITANDI ET EXECUTANDI7

6. FINANCIAL YEAR END7

7. MEMBERSHIP & MEMBER OBLIGATIONS7

8. LEVIES9

9. WASTE MANAGEMENT11

10. GENERAL SERVICES CONDITIONS11

11. DEALING WITH THE COMMON AREAS12

12. RESPONSIBILITY FOR THE COMMON AREAS.....12

13. ESTATE RULES.....12

20. PROCEEDINGS OF THE TRUSTEES.....19

21. GENERAL MEETINGS OF THE ASSOCIATION19

22. NOTICE OF MEETINGS20

23. VENUE OF MEETINGS20

24. QUORUM FOR GENERAL MEETINGS20

25. PROCEDURE AT GENERAL MEETINGS.....21

26. PROXIES FOR GENERAL MEETINGS.....21

27. VOTING22

28. SPECIAL RESOLUTION22

29. OTHER PROFESSIONAL OFFICERS.....23

30. ACCOUNTS23

31. DEPOSIT AND INVESTMENT OF FUNDS24

32. SERVICE OF NOTICES24

33. INDEMNITY24

34. AMENDMENTS TO CONSTITUTION25

35. MANAGING AGENT25

36. ARBITRATION25

37. OWNER'S ASSOCIATION WHICH FAILS TO MEET AN OBLIGATION OR CEASES TO FUNCTION26

38. EFFECTIVE DATE26

MOUNT VERNON RESIDENTIAL ESTATE HOME OWNERS' ASSOCIATION

CERTIFICATE OF APPROVAL

This is to certify that the Constitution of the Mount Vernon Residential Estate Owners' Association was this day approved by me on behalf of the Municipality of Stellenbosch in terms of section 29(3) of the Stellenbosch Municipality Land Use Planning By-Law of 2015.

SIGNED AT STELLENBOSCH on this the day of 20.....

SIGNATURE

1. ESTABLISHMENT & LEGAL STATUS OF THE ASSOCIATION

- 1.1 The Mount Vernon Estate Residential Home Owners' Association is constituted, as a statutory body, in terms of Section 29 of the Stellenbosch Municipality Land Use Planning By-law, 2015.
- 1.2 The Association shall have legal personality, perpetual succession, and be capable of suing and being sued in its own name.
- 1.3 The Association shall not be for profit, but for the benefit of its Members.
- 1.4 The provisions of the Companies Act shall not apply in respect of the Association.
- 1.5 None of the Members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association.

2. INTERPRETATION

In these presents:

- 2.1. The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:
 - 2.1.1. Accountants / Auditors means the Accountants / Auditors of the Association;
 - 2.1.2. Association means Mount Vernon Residential Estate Home Owners' Association;
 - 2.1.3. Business Day means weekdays other than Saturdays, Sunday and Public Holidays;
 - 2.1.4. CHAIRPERSON means the CHAIRPERSON of the Board of Trustees;
 - 2.1.5. Common areas mean the private road/s, common areas, refuse rooms and access gate and entrance security within the Estate;
 - 2.1.6. Completion of the Estate means the date of transfer of the last erf in the Estate to the relevant purchaser thereof from the Developer or the date of completion of any outstanding works (as certified by the Developer's Architect or Engineers) on any of the properties by the Developer, whichever event occurs last;
 - 2.1.7. Council / Local Authority means Stellenbosch Municipality or its successors in title;
 - 2.1.8. Day/s shall mean all calendar days;
 - 2.1.9. Developer means Mt Vernon Developments (Proprietary) Limited (Registration Number 2021/894974/07);
 - 2.1.10. Development Period means the period commencing on the date of establishment of the Association and terminating on the date that all the Erven in the Estate have been sold and transferred by the Developer or until the Developer notifies the Association in writing that the Development Period has ceased, whichever occurs first;
 - 2.1.11. Design Manual means design guidelines and terms and conditions to control all aspects of the Architectural and Aesthetic design of all Erven, as amended from time to time in terms of this Constitution or as required by the Local Authority or the Developer during the Development Period;
 - 2.1.12. Erven (erf) means an erf/erven resulting from the subdivision of the original erf/erven or any erf/erven subsequently incorporated into the Estate;
 - 2.1.13. Estate means the residential Estate known as Mount Vernon Residential Estate, as situated and constructed and developed on a portion of the original parent ERF 4152 KLAPMUTS, in the Municipality of Stellenbosch, Division Paarl, Province of the Western Cape, excluding Erf 4520 and Erf 4521;
 - 2.1.14. Estate Manager means any person or entity appointed by the Developer during the Development Period and thereafter by the Association to provide management services to the Association, subject to and in terms of the provisions of this Constitution;
 - 2.1.15. General Plans means such plans as are registered with the Surveyor General depicting the subdivision of the original erf included in the Estate, in phases;
 - 2.1.16. in writing means written, printed, e-mailed or partly one and partly another, and other modes of representing or producing words in a visible form;

- 2.1.17. Landscape Guidelines means the landscape plan and guidelines prescribed by the Developer, as amended from time to time in terms of this Constitution or as approved by the Local Authority, if so required;
 - 2.1.18. Managing Agents are the agents as may be duly appointed from time to time for the purpose of managing the Erven in the Estate;
 - 2.1.19. Maintenance means the upkeep and or repair of the services, property and amenities which shall be the responsibility of the Association entirely and for which the Local Authority shall not be accountable;
 - 2.1.20. Member means a Member of the Association;
 - 2.1.21. Month means calendar month;
 - 2.1.22. Office means the registered office of the Association;
 - 2.1.23. Phase means such erven and/or Private Areas included in each individual general plan registered during the development of the Estate;
 - 2.1.24. Ordinary Resolution means a resolution passed at a general meeting of the Association;
 - 2.1.25. Property/ies means ERF 4152 KLAPMUTS, in the Municipality of Stellenbosch, Division Paarl, Province of the Western Cape;
 - 2.1.26. Registered Owner means an owner of an erf;
 - 2.1.27. Services means such facilities, utilities, services and amenities as may be provided on the Estate, including (but not limited to) electricity, roads, verges, parking bays, water supply and stormwater, sewage and waste removal and all other services within the estate;
 - 2.1.28. Special Resolution means a resolution passed at a special general meeting in accordance with the provisions of clause 28 below;
 - 2.1.29. these presents means this Constitution, rules and regulations and by-laws of the Association from time to time in force;
 - 2.1.30. Trustees means the Board of Trustees of the Association;
 - 2.1.31. Trustee means one of the Board of Trustees;
 - 2.1.32. Vice-CHAIRPERSON means the Vice-CHAIRPERSON of the Board of Trustees;
 - 2.1.33. Year means calendar year;
- 2.2. Unless the context otherwise requires:
- 2.2.1. words importing the singular number only shall include the plural number, and vice versa;
 - 2.2.2. words importing any one gender only shall include the other gender;
 - 2.2.3. words importing natural persons shall include firms and corporate bodies;
- 2.3. The Head Notes to the clauses in this Constitution shall not affect the interpretation of any of the provisions to which they relate and are for reference purposes only.

3. MAIN BUSINESS OF THE ASSOCIATION

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

4. MAIN OBJECTIVES OF THE ASSOCIATION

4.1 The Association shall have as its objectives the matters referred to in Sections 29 and 30 of the Stellenbosch Municipality Land Use Planning By-Law of 2015. Without detracting from the generality thereof, its main objective shall be to ensure compliance with the conditions of subdivision imposed by the Local Authority when approving the Estate, and to enforce the provisions of its constitution and more specifically but not limited to the following:

- 4.1.1 to oversee, maintain and control the Estate.
- 4.1.2 to ensure the general high standard of the Estate.

- 4.1.3 to promote, advance and protect the Estate and the collective interests of the Association and its Members.
- 4.1.4 the regulation and control of harmonious development of the Estate.
- 4.1.5 the promotion of a high standard of improvement on the Estate.
- 4.1.6 to administer and enforce the estate rules from time to time made in terms hereof.
- 4.1.7 to ensure the maintenance, upkeep and upgrading where required, of services and amenities serving the Estate, such as, but not limited to, the sewage, water, electricity and storm water systems, refuse collection, security fences, private open spaces and lamp posts.
- 4.1.8 to take transfer of, and to maintain and insure where necessary, the common property and improvements thereon in the Estate, and to control the usage thereof and/or the services belonging to the Association or falling under its control.
- 4.1.9 to enforce compliance by the members with the conditions of the design guidelines as applicable.
- 4.1.10 to take action, including the imposition of fines or the institution of proceedings in a court of law, as may be deemed fit by the trustees, in relation to the non-compliance by any member of any of the requirements of this Constitution; and the Association shall have the power to do all such acts as are necessary to carry out the foregoing objects including, but not restricted to, the powers specifically contained in this Constitution.
- 4.1.11 to take transfer of the private open spaces and private roads.
- 4.1.12 to insure the Association against public liability.
- 4.1.13 if necessary, to enter into services agreements with the Local Authority or any other Authority or Suppliers of Services regarding the supply of services to the Estate.
- 4.1.14 to enforce conditions of subdivisional approval or management plans listed in the Constitution.
- 4.1.15 to ensure and enforce compliance by the Association and its members with any environmental conditions and obligations imposed by the Local Authority.
- 4.1.16 to impose and collect levies as contemplated in clause 8 below;
- 4.1.17 to control all buildings, and/or structures erected or to be erected on the Erven to ensure that the material, finish and architecture of same matches the general appearance of the Estate as well as the maintenance thereof in a neat and tidy condition;
- 4.1.18 to limit and control future extensions on the Erven and Common Areas to ensure that the material, finish and architecture thereof matches the general appearance of the Estate;
- 4.1.19 to monitor and enforce compliance by the Registered Owners and the Association with the relevant subdivision conditions imposed by the Local Authority;
- 4.1.20 to bear the running cost of all street lighting within the Estate, as well as any consumption charges relating to the Common Areas;
- 4.1.21 to accept the cession of any rights and delegation of any duties to the Association under any other agreement(s) entered into by the Developer for the benefit of the Association;
- 4.1.22 to prescribe measures for the landscaping and development of Erven on the Estate, and for the architectural design and building of improvements to Erven on the Estate to ensure a harmonious and aesthetic development of the Estate, and to prescribe measures for the maintenance of such standards of development;
- 4.1.23 to register, where necessary, various service or other servitudes over the Common Areas in the Estate in favour of the Local Authority or other Entities and to register servitudes in favour of the Erven in the Estate over other land owned by the Association as are from time to time required and to register servitudes in favour of the Estate over certain Erven to protect common services. All overland storm water escape routes are to be maintained and kept free of all obstruction and protected by servitudes where they traverse private property;
- 4.1.24 to acquire and hold servitudes in the Association's favour for access to the Estate and for the supply of services, including communication, surveillance and water to the Estate;

- 4.1.25 to maintain and ensure compliance with the Access and Right of Way Servitude granted over Erf 4408 Klapmuts (entrance road of the Estate) in favour of the Remainder of Farm No 748/36 Klapmuts;
- 4.1.26 to formulate, enforce, modify, amend, add and delete the Estate conduct rules and regulations;
- 4.1.27 to enforce the provisions of the Constitution;
- 4.1.28 to appoint personnel and / or agents to manage the affairs of the Association;
- 4.1.29 to accredit agents appointed by Registered Owners in respect of the resale of their Erven, in accordance with such criteria as the Association may stipulate from time to time;
- 4.1.30 to accredit service providers or contractors in respect of services to be rendered to Members, including, but not limited to, pool cleaning and garden service contractors;
- 4.1.31 to ensure that Members commence and complete the construction of the dwellings to be erected on the respective Residential Erven in accordance with the time periods and provisions stipulated in the Estate Rules. .

5. DOMICILIUM CITANDI ET EXECUTANDI

- 5.1. The Trustees shall from time to time determine the address constituting the domicilium citandi et executandi of the Association, subject to the following: -
 - 5.1.1. Such address shall be the address of the Managing Agents of the Association;
 - 5.1.2. The Trustees shall give notice to all Members of any change of such address.
- 5.2. The domicilium citandi et executandi of each Member shall be the street address of the Erf registered in their name; provided that he shall be entitled from time to time to change the said domicilium but that any new domicilium selected shall be in the Republic, and that the change shall only be effective on receipt of written notice thereof by the Association at its domicilium.

6. FINANCIAL YEAR END

- 6.1 The financial year end of the ASSOCIATION is the **end of FEBRUARY** of each year, or such other date as the trustees may decide from time to time.

7. MEMBERSHIP & MEMBER OBLIGATIONS

- 7.1. Membership of the Mount Vernon Residential Estate Home Owners Association shall be compulsory for every Registered Owner of an Erf.
- 7.2. Such Membership shall commence simultaneously with the transfer of the Erf into the name of the Transferee.
- 7.3. Membership of the Associations shall be limited to the Registered Owners of the Erven provided that:
 - 7.3.1. 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;
 - 7.3.2. 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 shall nominate one owner to represent them and vote at meetings of the Association;
 - 7.3.3. Where any person is the Registered Owner of more than one Erf, such person shall be regarded to be a Member and shall have the rights and obligations of a Member in respect of each of the Erven registered in the person's name, it being recorded that the provisions of this clause shall also be applicable to the Developer whilst it is the

Registered Owner of an Erf or Erven;

- 7.3.4. The Developer alone may constitute the Association until 51% (fifty one percent) of the Erven in the Estate have been sold and transferred.
- 7.3.5. Corporate bodies or juristic persons which are the registered owners of Erven shall nominate a natural person to represent the owner for all purposes related to this constitution.

7.4. When a Member ceases to be the registered owner of an Erf, he shall ipso facto cease to be a Member of the Association.

7.5. No Member shall be entitled to:

7.5.1. sell or transfer an erf or portion thereof unless:

- 7.5.1.1. it is a condition of the sale and transfer of such an Erf that the transferee becomes a Member of the Associations and agrees in writing to abide by the rules of the Constitution of the Association and all obligations outlined therein, by signing a declaration to this effect.
- 7.5.1.2. it is a condition of the sale and transfer of such an Erf that the registration of transfer of that Erf into the name of that transferee shall ipso facto constitute the transferee as a Member of the Association.
- 7.5.1.3. a Clearance Certificate is issued by the Association certifying that all outstanding levies and liabilities owing to the Association and applicable to that Erf have been fully paid.

7.5.2. erect any buildings and/or structures of any nature whatsoever (including but not limited to masts, aerials, flagpoles, pergolas, satellite dishes, statues, security cameras) nor to make any alterations, modifications or renovations to such buildings and/or structures ("the proposed work") on his Erf without the written approval of the Trustees, which approval shall only be given once

- 7.5.2.1. detailed plans of the proposed work have 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
- 7.5.2.2. 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
- 7.5.2.3. 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 as determined by the trustees from time to time, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature; and
- 7.5.2.4. 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 by the trustees subject to the provisions of Building Procedures Guidelines;

provided that the foregoing shall not be interpreted as detracting from the sole and final responsibility of the Local Authority to approve or reject building plans and provided further that prior to the completion of the Estate (in terms of the approved conditions of approval and plans), the developer and his appointed architect shall have the relevant authority to approve all plans

envisaged herein.

7.5.3. make any alterations or additions to or demolish any part of the buildings erected on the subdivision, including boundary walls and fences, or change the exterior colour scheme or materials of such buildings without the written consent of the Association, nor shall they permit the exterior of the building to deteriorate and become untidy or dirty.

7.6. No member, owner or resident may enclose, alter or amend any external boundary fencing in any way whatsoever unless prior written consent has been obtained from the trustees.

7.7. The provisions of clause 7.5 shall not apply to the Developer, its successor/s in title or assigns as Developer.

7.8. The Registered Owner of an erf may not resign as a member of the association and shall remain a member and be bound by the provisions of the Constitution for as long as such owner is the registered owner of any erf in the Estate.

7.9. The Trustees may, by regulation, provide for the issue of a Membership certificate, which certificate shall be in such form as may be prescribed by the Trustees.

7.10. The rights and obligations of a Member shall not be transferable, and every member shall:

7.10.1. to the best of his ability further the object and interest of the Association;

7.10.2. observe all by-laws and regulations made by the Association or the Trustees;

7.10.3. be jointly liable with all the Members for all expenditure incurred in connection with and by the Association, and the Association must recover such expenditure from all its members in equal shares;

7.10.4. ensure that the Estate and more particularly the private areas and/or common areas are maintained in good and tidy condition and in compliance with standards set from time to time by the Trustees;

provided that nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the Mortgagee of that Member's Erf.

7.11. No member ceasing to be a member of the Association for any reason shall, (nor shall any such member's executors, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such member or his estate any arrears of subscriptions or other sums due from him to the Association at the time of his so ceasing to be a member.

8. LEVIES

8.1. The Trustees shall from time to time, impose levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or which the Trustees reasonably anticipates the Association will incur by way of maintenance, repair, improvement and keeping in order and good condition all of the private areas and/or common areas, specifically including landscaping, all township services, sewage, the security systems to be installed on the common areas and /or for payment of all rates and other charges payable by the Association in respect of the common areas, and/or for the services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the common areas and the Association's affairs. In calculating levies, the trustees shall consider, income, if any, earned by the Association.

- 8.2. The Trustees shall estimate the 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 is reasonably practical to such estimated amount. The Trustees may include in such levies 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 succeeding month of such year.
- 8.3. The Trustees may from time to time, and provided that 30 (thirty) calendar days' notice is given to the Members, impose special levies upon the Members in respect of all such expenses as are mentioned in 8.1 (which are not included in any estimate made in terms of 8.2) and such levies may be made in a lump sum or by such instalments and at such time or times as the Trustees shall deem fit. Any special levies imposed by the Trustees may be apportioned between 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.
- 8.4. Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. A Member's successor in title to an Erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of the Erf, and from then on to pay the levies attributable to that Erf.
- 8.5. No Member will be allowed to transfer his Erf until the Association has issued a clearance certificate certifying that the Member has at the date of transfer fulfilled all his financial obligations to the Association.
- 8.6. The levies payable by Members shall be the same in respect of each Residential Erf and as such no distinction will be made with regard to the size of the Residential Erf, the price paid in respect thereof, whether or not it is improved and irrespective of the extent of any improvements.
- 8.7. The Trustees shall at all times ensure that the maintenance and control of the Common Areas and the expenditure incurred in respect thereof is conducted in a manner which is fair and equitable to all the Members of the Association.
- 8.8. No Member shall be entitled to any of the privileges of membership, including voting at any meeting, unless and until he shall have paid all levies and any other sum (if any) which shall be due and payable to the Association by such Member.
- 8.9. Where:
- 8.9.1. (two) or more Erven have been consolidated, levies shall be payable in respect of each such Erf as they existed prior to consolidation and as if such consolidation had not occurred; and
 - 8.9.2. an Erf has been subdivided into 2 (two) or more portions, levies shall be payable in respect of each new erf which comes into existence as a result of such subdivision.
- 8.10. The Association shall decide which of the expenses of the Estate, not expressly dealt with herein, are to be paid out of the fund of the Association or directly by its Members.
- 8.11. A Member shall make payment of the monthly levies by virtue of debit order drawn on the

member's banker, should the Trustees so demand after a Member has defaulted in timeous payment of his monthly levies on more than 2 (two) occasions in any financial year of the Association.

- 8.12. The developer will be liable to pay normal levies, excluding reserve funds, and special levies payable by members in terms of this Constitution in respect of unsold erven and in addition thereto during the development period the developer shall pay the shortfall between the income derived from levies paid by owners in terms of this constitution and all income from other sources and the actual operating expenditure of the association in accordance with the association's approved budget.
- 8.13. The Developer will furthermore be responsible for the maintenance of all the internal on-site municipal and private civil engineering services constructed in each phase of the Estate, until such time as 80% (eighty percent) of all the erven in such phase have been transferred from the Developer whereafter the services in such phase will be handed over to the Home Owners Association in respect of private services, and to the Local Authority in respect of public services.

9. WASTE MANAGEMENT

- 9.1. The Trustees shall ensure that the provisions of the Waste Management Plan of the Estate are in accordance with the Solid Waste requirements and policies of the Local Authority, and that it specifically makes provision for the following:
 - 9.1.1. Reduction of waste
 - 9.1.2. Re-usage of waste
 - 9.1.3. Recycling of waste
 - 9.1.4. Sorting, collection and removal of waste
 - 9.1.5. Monitoring measures to ensure the Waste Management Plan is adhered to
 - 9.1.6. Record-keeping of all incidents regarding dumping or poor waste management within the Estate.
- 9.2. The Trustees shall ensure that all Members and Residents adhere to the policies, procedures and conditions of the Waste Management Plan.

10. GENERAL SERVICES CONDITIONS

- 10.1. Members shall without compensation be obliged to allow gas mains, electricity, telephone and television cables and/or wires, other electronic infrastructure and main and/or other water pipes and foul sewers and storm water pipes, ditches, and channels of any other erven to be conveyed across their property concerned and shall furthermore without compensation be obliged to allow surface installations such as street lights, mini substations, meter kiosks and service pillars to be installed thereon if considered necessary by the Association in such manner and position as may from time to time be reasonably required, this shall include the right of access to the property at any reasonable time for the purpose of constructing, altering, removing or inspection of any works connected with the above.
- 10.2. Members shall be obliged to receive material or permit excavation on the land unit as may be required to allow use of the full width of an abutting street and to provide a safe and proper slope to its bank where necessitated by differences between the level of the street as finally constructed and the level of the land unit unless he or she elects to build retaining walls to the satisfaction of and within a period to be determined by the Local Authority.
- 10.3. Members shall be obliged, without compensation to permit access to their property for the purpose of maintaining, cleaning, renovating, repairing, renewing, altering and adding to any wall, roof,

pipe, gutter, wiring or other structure or thing, and shall not do anything which will prevent or hinder any such access or work from being done.

- 10.4. Any Members having overland stormwater escape routes situated on their property shall be obliged to keep these areas free of all obstruction.

11. DEALING WITH THE COMMON AREAS

- 11.1. Neither the whole nor any portion of the common areas shall be:

- 11.1.1. sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 11.1.2. mortgaged; or
- 11.1.3. subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude, (save those enjoyed by the members in terms hereof and the servitudes in favour of the Local Authority or other Entities as required by the conditions of subdivision) without the specific prior written consent of the Local Authority and the sanction of a special resolution of the Association (and no member shall be entitled to unreasonably vote against any such special resolution which may be proposed); or
- 11.1.4. built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, without the sanction of a special resolution of the Association.

- 11.2. The conditions and limitations contained in clause 11.1 above shall not apply to the Developer during the Development Period.

- 11.3. The common areas will be obliged to accept overland storm water and will function as overland storm water escape routes as required by the Local Authority, provided that the member shall be responsible for discharging any overland stormwater in such a manner that it does not cause any damage or erosion to the common areas.

12. RESPONSIBILITY FOR THE COMMON AREAS

- 12.1. The Association shall take title to the common areas.
- 12.2. The Association acknowledges that the Local Authority 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 areas, all services therein and any structure or thing erected on or contained therein.

13. ESTATE RULES

- 13.1. Subject to the provisions of this constitution and to any directions given by the Association in general meetings and to any conditions imposed by the Local Authority or the developer or any other statutory body, the trustees may make rules, codes of conduct and may vary or modify the same, in connection with:
- 13.1.1. the nature, architectural design and position of buildings, structures, installations and equipment relating to any erf ensuring at all times that these rules comply to the conditions of the Design Manual;
 - 13.1.2. the external appearance of and the maintenance of the common areas, and the buildings or other improvements erected thereon;
 - 13.1.3. 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 erven;
 - 13.1.4. the time period in which members are to commence and complete the construction of a dwelling on their erf together with penalties and provisions should members not commence and complete the construction within the stipulated time period.

- 13.1.5. the nature, content and design of the gardens relating to any erf including the establishment and maintenance of landscaping in these areas ensuring at all times that these rules are consistent with the Landscape Guidelines;
- 13.1.6. the nature of the common areas adjacent to any erf including the establishment and maintenance of landscaping in these areas by the member concerned;
- 13.1.7. the installation, operation and maintenance of irrigation in the common areas;
- 13.1.8. the members' rights of use, occupation and enjoyment of the common areas;
- 13.1.9. the determination or control of security measures;
- 13.1.10. the control of the building operations and the conduct of Building Contractors on the Estate;
- 13.1.11. the control of the number of residents permitted on any one erf;
- 13.1.12. the control and conduct of persons for the prevention of nuisance of any nature to any resident;
- 13.1.13. the control and conduct of persons using the common areas;
- 13.1.14. the use of the Clubhouse and Recreational Areas;
- 13.1.15. Estate Agent Conduct;
- 13.1.16. the keeping of animals including the right to prohibit, limit, restrict and control the keeping of animals;
- 13.1.17. the use of roads, infrastructure, services amenities and facilities in the common areas;
- 13.1.18. the furtherance and promotion of any of the objectives of the Association and for the better management of the affairs of the Association and for the advancement and protection of the interests of the members and residents
- 13.1.19. waste management;
- 13.1.20. conclusion of agreements with the local authorities governing the matters set out in clause 13, and any other incidental matters thereto, and
- 13.1.21. the prescription of penalties for non-compliance with any of the terms and conditions of the Constitution and of the rules and regulations made in terms of the Constitution.

provided that prior written approval in respect of such rules and codes of conduct or any amendment thereof be obtained from the Developer for the duration of the development period. Once the Estate is complete, the trustees will no longer be required to obtain prior written consent and approval from the Developer.

- 13.2. For the enforcement of any rules or any of the provisions of this constitution generally the trustees or the manager may:
 - 13.2.1. give notice to the member concerned to remedy any breach within such period as they may determine;
 - 13.2.2. take or cause to be taken such action as they deem fit to remedy the breach of which the member concerned may be guilty and debit the cost thereof, which shall be a debt due to the Association, to his levy account, and which shall be payable as part of his levy on the first day of the following month; and
 - 13.2.3. impose a fine on the member concerned which amount shall be a debt due to the Association, shall be debited to his levy account and shall be payable as part of his levy on the first day of the following month.

- 13.3. Each member undertakes to the Association that he/she shall comply with:
 - 13.3.1. The provisions of this Constitution;
 - 13.3.2. Any regulations made in terms of this Constitution;
 - 13.3.3. Any agreements entered into by the Home Owner's Association insofar as those agreements may directly or indirectly impose obligations on him/her.

- 13.4. Should the trustees or manager institute legal proceedings against any member or resident for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled

to recover all legal costs so incurred from the member concerned, calculated as between attorney and client, including tracing fees and collection commission.

- 13.5. In the event of any breach of the rules or of any of the provisions of this constitution by any person residing on a member's erf or his guests, employees, contractors, or agents, such breach shall be deemed to have been committed by the member himself; but without prejudice to the foregoing, the trustees or manager may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, in addition to any action which might be taken against the member concerned.
- 13.6. Without prejudice to any of the rights the Trustees or the Association may be granted under this Constitution, should any member fail to pay any amount due by that Member on the due date, then such Member shall pay interest thereon at the publicly quoted prime rate of interest charged by the Association's bankers from time to time, plus two percent, calculated from the due date for payment until the actual date of payment of such amount.
- 13.7. 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. BUILDING WORKS

- 14.1. Registered Owners shall ensure
- 14.1.1. Compliance with the time periods to commence and complete the construction of a dwelling on their erf as stipulated in the Estate Rules;
 - 14.1.2. that all building works comply with the terms and conditions as set out in the Building Procedures Guidelines; and
 - 14.1.3. that their Builder or Contractor and sub-Contractors comply with the Building Contractor Code of conduct.

15. BREACH

- 15.1. Should any member:
- 15.1.1. fail to pay on the due date any amount due by that member in terms of this constitution or any regulation made there under and remain in default for more than 7 days after being notified in writing to do so by the trustees; or
 - 15.1.2. commit any breach of any of the provisions of this constitution or any regulation made there under 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 of the Association or any other member may have in law, including the right to claim damages, and/or the right of the trustees to impose fines to such owners as determined from time to time:

- 15.1.2.1. to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of his obligations in terms of this constitution or any regulation made there under, as the case may be; or
- 15.1.2.2. to suspend all or any services to the erf owned by that member; and/or

15.1.2.3. in the case of clause 15.1.2 , to remedy such breach and immediately recover the total cost incurred by the trustees or the Association in so doing from such member.

- 15.2. Should the trustees institute any legal proceedings against any member pursuant to a breach by that member of this constitution or any regulation made there under, 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.
- 15.3. 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 thereon at the publicly quoted prime rate of interest charged by the Association's bankers from time to time calculated from the due date for payment until the actual date of payment of such amount. The member shall also be liable for an administrative fee levied in respect of late payments, which fee will be determined by the Trustees from time to time.

16. TRUSTEES AND THE REMOVAL AND ROTATION OF TRUSTEE MEMBERS

- 16.1. There shall be a Board of the Trustees of Association which shall consist of not less than three (3) and not more than seven (7) Members.
- 16.2. Save in the case of the Developer, its nominees or appointees, every Trustee must be a Member of the Association or the spouse / partner of a Member, or an authorised representative of the member where the member is not a natural person.
- 16.3. Save as set forth in clause 18 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, but shall be eligible for re-election to the Trustees Committee at such meeting.
- 16.4. A Trustee shall be deemed to have vacated his office as such upon:
- 16.4.1. his estate being sequestrated, whether provisionally or finally, or his surrendering his estate.
 - 16.4.2. his making any arrangement or compromise with his creditors.
 - 16.4.3. his conviction for any offence involving dishonesty.
 - 16.4.4. his becoming of unsound mind or being found mentally handicapped.
 - 16.4.5. his resigning from such office in writing delivered to the Secretary.
 - 16.4.6. his death.
 - 16.4.7. his being removed from office by a Special Resolution of the Members.

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 Trustees.

- 16.5. Upon any vacancy occurring on the Trustee Committee prior the next Annual General, the vacancy in question shall be filled by a Member nominated by those remaining for the time being of the Trustee Committee.

17. STATUS OF THE DEVELOPER

Until such time as the completion of the Estate, the following provisions shall apply in addition to the conditions in these presents:

- 17.1. The developer shall be entitled:
 - 17.1.1. to nominate and appoint the majority of the trustees, which trustees do not need to be Members of the Association;
 - 17.1.2. to a number of votes equal to the number of votes of all the other members of the Association plus 1 (one) vote;
 - 17.1.3. to require that the trustees enforce the rights granted to it in terms of this Constitution against any member who in the opinion of the developer is not complying with his obligations as a member, and in particular, without restricting the generality of the foregoing, has failed to maintain all buildings and other improvements on their erf by giving such member written notice in which their failure to comply with the particular provisions is detailed and calling upon them to remedy such failure within a prescribed period of not more than 30 days failing which, the developer shall be entitled at the sole cost of that member to carry out all such work as may be required to maintain such building and other improvements on the members erf;
 - 17.1.4. to erect such signage, flagpoles, messages and/or other forms of notices or advertising on the Estate including the common areas, the private road area and/or the exterior walls (if any) of the Estate, subject to the regulations and by-laws of the Council appertaining to signage from time to time;
 - 17.1.5. to scrutinize, approve and submit all building plans to the relevant authority to obtain the relevant approvals until the completion of the Estate;
 - 17.1.6. to sign consents for the transfer of erven within the Estate on behalf of the Association;
 - 17.1.7. to sign all documentation and do all such things and take such action as may be required in the running and operation of the estate, until such time that the first Annual General Meeting has occurred;
 - 17.1.8. to enter into service agreements with any Service Suppliers for the rendering of services of whatsoever nature to the estate, as they deem necessary;
 - 17.1.9. for the duration of the development period, to veto any decision made or function exercised by the Trustees of the Association. This right shall lapse once the Estate is completed.
- 17.2. The developer shall be entitled during the Development Period, to appoint an estate manager to manage the affairs of the Association on the following terms and conditions:
 - 17.2.1. It shall be within the absolute discretion of the Developer to determine the terms and conditions of the appointment of such a manager, including the fees and/or remuneration payable.
 - 17.2.2. Any fees and/or remuneration payable to the Estate Manager shall be paid by the Association and not the Developer.
 - 17.2.3. The appointment of the Estate Manager may extend beyond the Development Period, provided that the Developer shall endeavour to procure, when making such appointment, that the appointment may, if so required by the Association at a general meeting, and subject to the requirements of the law, be terminated on reasonable notice after the end of the Development Period.
 - 17.2.4. After the Development Period, the Association shall be responsible for the appointment of any successive Estate Managers, it being contemplated that the affairs of the Association shall at all times be entrusted to a professional manager with appropriate executive powers so as to conform to the requirements of good corporate governance.
 - 17.2.5. Subject to this Constitution, and the terms of his appointment, the Estate Manager shall manage and control the business and affairs of the Association under instruction and

guidance of the Trustees.

- 17.3. Neither the trustees nor any member of the Association shall prevent or hinder in any way the developer and its subcontractors from:
- 17.3.1. gaining access to and egress from the Estate;
 - 17.3.2. continuing any building operations at the Estate; and/or
 - 17.3.3. marketing and selling any of its unsold erven, including the advertisement of the sale of such erven on the common areas and/or at the Estate;
- 17.4. Upon the completion of the Estate, the rights of the developer in terms of the provisions of this clause shall immediately terminate ipso facto and no longer be of any force and effect.
- 17.5. In the event of a dispute as to whether or not the Estate has been completed as envisaged herein, the decision of the architect appointed by the Developer for the Estate shall be final and binding.
- 17.6. The Developer may in one transaction alienate all its rights and all undeveloped land vested in it in respect of the Estate, in which event, it shall be entitled to cede to the transferee all its rights in terms of these presents, provided that it simultaneously delegates to such transferee all its obligations in terms hereof, and such transferee shall be entitled to exercise all such rights, subject to the performance of all such obligations.
- 17.7. The Developer may alienate to any person any undeveloped Erf or Erven in the Estate, and such transferee shall be entitled to the rights that the Developer had in respect of such Erf. Except in the case referred to in 17.6 above, however, the Developer shall not be entitled to alienate its rights generally as Developer conferred on it in terms hereof.
- 17.8. Notwithstanding that the Developer may have alienated any Erf or Erven within the Estate in terms of this clause; it shall continue to have the rights conferred upon it as developer in terms hereof for as long as any Erf in the Estate remains registered in its name.
- 17.9. The Developer may at any time abandon in whole or in part the particular rights as Developer conferred upon it during the Development Period, provided that nothing hereinbefore contained shall be construed as depriving the Developer of any rights it may have in terms hereof as an ordinary Member of the Association.

18. OFFICE OF TRUSTEES

- 18.1. The Trustees shall appoint from amongst themselves, a CHAIRPERSON and Vice-CHAIRPERSON.
- 18.2. During the Development Period, the first CHAIRPERSON, and Vice-CHAIRPERSON, shall be appointed by the Developer, and such office bearers shall hold their respective offices until the First Annual General Meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.
- 18.3. Within fourteen (14) days of the holding of such Annual General Meeting, the Trustees shall meet and shall elect from its own number the CHAIRPERSON and Vice-CHAIRPERSON, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the offices of the CHAIRPERSON or Vice-CHAIRPERSON 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 at a time, the Trustees shall immediately meet to appoint one of their number to replace such office vacated.
- 18.4. Save as otherwise provided in these presents, the CHAIRPERSON shall preside at all meetings of the Trustees, and all general meetings of Members, and shall perform all duties incidental to the office

of CHAIRPERSON and such other duties as may be prescribed by the Trustees or at all meetings of Members, provided however, that any invitees (that is any Member that is not a trustee) shall not be entitled to vote at any meeting of the Trustees.

- 18.5. The Vice-CHAIRPERSON shall assume the powers and duties of the CHAIRPERSON in the absence of the CHAIRPERSON, or his inability or refusal to act as CHAIRPERSON, and shall perform such other duties as may from time to time be assigned to him by the CHAIRPERSON or the Trustees.
- 18.6. 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 CHAIRPERSON, Vice-CHAIRPERSON, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees of salary in respect of the performance of such duties.

19. FUNCTIONS AND POWERS OF THE TRUSTEES

- 19.1. Subject to the express provisions of these presents, the Trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in these presents, 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 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 Trustees which would have been valid if such regulation had not been made.
- 19.2. The Trustees shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 19.3. The Trustees may, should it so decide, investigate any suspected or alleged breach by a member or Trustee of these presents, in such reasonable manner as it shall decide from time to time.
- 19.4. The Trustees shall have the right to appoint committees consisting of such number of their members and such outsiders, including a manager as they deem fit and to delegate to such committees such of their function, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the trustees may from time to time deem necessary.
- 19.5. The Trustees may appoint an architectural review committee and a landscaping review committee to exercise the powers set out above and elsewhere in this Constitution. Members of such review committees shall not be required to be Members of the Association.
- 19.6. Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected by the Developer, all plans for buildings, out-buildings, structures, additions, alterations and landscaping shall be approved by the Trustees or architectural review committee (if so appointed) and/or the landscaping review committee (if appointed and if applicable), or any person designated by them for the purpose.
- 19.7. The Trustees may make Conduct Rules, Regulations and directives and guidelines, not inconsistent with this Constitution, or any regulations or by-laws prescribed by the Association at a general meeting and shall be entitled to cancel, vary or modify any of the same from time to time.

20. PROCEEDINGS OF THE TRUSTEES

- 20.1. The Trustees may meet together in person, or remotely via electronic platforms, for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 20.2. Meetings of the trustees shall be held at least once every quarter, provided that if all the trustees in writing have waived the above requirement in respect of a particular quarter, then no meeting of the trustees need be held for that quarter.
- 20.3. The quorum necessary for the holding of any meeting of the Trustees shall be 2 (two) trustees provided that during the development period, the developer or his representative is present.
- 20.4. The CHAIRPERSON shall preside as such at all meetings of the Trustees, provided that should at any meeting of the Trustees the CHAIRPERSON not be present within five (5) minutes after the time appointed for the holding thereof, then the Vice-CHAIRPERSON shall act as CHAIRPERSON at such meeting, provided further that should the Vice-CHAIRPERSON also not be present within five (5) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a CHAIRPERSON for the meeting, who shall thereupon exercise all the powers and duties of the CHAIRPERSON in relation to such meeting.
- 20.5. A Trustee or nominated person shall take minutes of every Trustees meeting, although not necessarily verbatim, which minutes shall be reduced to writing without delay after the meeting will have closed and shall then be certified correct by the CHAIRPERSON of the meeting. All minutes of Trustees meetings shall after certification as aforesaid be placed in a Trustees Minute Book to be kept in accordance mutatis mutandis, with the provisions of the law relation to the keeping of minutes of directors of companies. The Trustees Minute Book shall be open for inspection at all reasonable times by a Trustee, the Accountants, the Association Members, the Managing Agent and Local Authority.
- 20.6. All competent resolutions recorded in the minutes of any Trustees 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 Trustees shall be of any force or effect, nor shall it be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustees.
- 20.7. Save as otherwise provided in these presents, the proceedings at any Trustees meeting shall be conducted in such reasonable manner and form as the CHAIRPERSON of the meeting shall decide.
- 20.8. A resolution by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee duly convened.

21. GENERAL MEETINGS OF THE ASSOCIATION

- 21.1. The Developer must call the first meeting of the members of the Association within 60 (sixty) days of transfer of 51% (fifty one percent) of the erven within the Estate.
- 21.2. Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time.
- 21.3. All general meetings other than Annual General Meetings shall be called special general meetings, due notice having been given.

- 21.4. The Trustees, may, whenever they think fit, convene a special general meeting.
- 21.5. In addition to any other matters required by these presents to be dealt with at an Annual General Meeting, the following matter shall be dealt with at every Annual General Meeting:
- 21.5.1. 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;
 - 21.5.2. the consideration of the report of the Auditors;
 - 21.5.3. the consideration of the total levy for the calendar year during which such Annual General Meeting takes place;
 - 21.5.4. the consideration appointment of the Auditors;
 - 21.5.5. Chairperson's report;
 - 21.5.6. Consideration, discussion and adoption of the annual financial statements;
 - 21.5.7. Appointment of Trustees for the coming year;
 - 21.5.8. Matters arising out of previous meetings, general matters, and any special items.

22. NOTICE OF MEETINGS

- 22.1. An Annual General Meeting and a meeting called for the passing of a special resolution, shall be called by twenty-one (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 fourteen (14) days' notice in writing at the least. 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 these presents, 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 Trustees to such persons as are under these presents 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 these presents, be deemed to have been duly called if it is so agreed:
- 22.1.1. in the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote thereat; and
 - 22.1.2. 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 seventy-five percent (75%) of the total voting rights of all Members.
- 22.2. The accidental omission to give notice of a meeting or of any resolution to any Member, or to give any other notification, or present any document required to be given or sent in terms of these presents to any such Member, 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, or any resolution passed at any meeting.

23. VENUE OF MEETINGS

- 23.1. General Meetings of the Association shall take place at such place(s) as shall be determined by the Trustees from time to time, and shall include remote or virtual meetings.

24. QUORUM FOR GENERAL MEETINGS

- 24.1. No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall

be of such of the Members entitled to vote, as together for the time being, represent one third of the total votes of all Members of the Association entitled to vote, for the time being save that not less than three (3) members must be personally present.

- 24.2. If within half an hour (thirty minutes) from the time appointed for the holding of a general meeting a quorum is not present, the meeting shall stand adjourned for fifteen (15) minutes, and if at such adjourned meeting a quorum is not present, the members present shall be a quorum.

25. PROCEDURE AT GENERAL MEETINGS

- 25.1. The CHAIRPERSON shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice-CHAIRPERSON shall act as CHAIRPERSON at such meeting, provided further that should the Vice-CHAIRPERSON also not be present within five minutes of the time appointed for the holding of such meeting, then the Members present as such meeting entitled to vote, shall vote to appoint a CHAIRPERSON for the meeting, who shall thereupon exercise all the powers and duties of the CHAIRPERSON in relation to such meeting.
- 25.2. The CHAIRPERSON 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.
- 25.3. Whenever a meeting is adjourned for ten (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.
- 25.4. Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

26. PROXIES FOR GENERAL MEETINGS

- 26.1. A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. 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 CHAIRPERSON of the Board of Directors of the Company or by its secretary, and where an Association of persons, by the secretary thereof.
- 26.2. The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, shall be deposited at the office at any time before the time appointed for the commencement of the 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 twelve (12) months from the date of its execution.
- 26.3. 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 trustees at least one hour before the time fixed for the holding of the meeting.

27. VOTING

- 27.1. At every general meeting, every Member in person or by proxy and entitled to vote shall have one 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 vote.
- 27.2. Save as expressly provided for in these presents, no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his Membership, 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.
- 27.3. At any general meeting a resolution put to the vote of the meeting shall be decided by a show of hands, unless either prior to or on the declaration by the CHAIRPERSON of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 27.4. Notwithstanding the provisions of 27.2 or 27.3 aforesaid, voting on the election of a CHAIRPERSON of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote, unless a poll is, before or on the declaration of the result of the show of hands, demanded by the CHAIRPERSON or any of the Members in terms of clause 27.5 below.
- 27.5. When a poll is demanded, regard shall be had, in computing the majority of the poll, to the number of votes cast for and against the resolution.
- 27.6. 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.
- 27.7. 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 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 CHAIRPERSON of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 27.8. 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 CHAIRPERSON 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 of validity for the procedure at such meeting, such declaration by the CHAIRPERSON 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 CHAIRPERSON of the meeting as to the result of any voting at the meeting.

28. SPECIAL RESOLUTION

- 28.1. 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 one-fourth 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 three-fourths 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 three-fourths of the total votes to which the members present in person or by proxy are entitled.

28.2. If less than one-fourth 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 21 days after the date of the meeting and the provisions of clause 28.3 shall apply in respect of such adjournment.

28.3. 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 three-fourths of such members shall be deemed to be a special resolution even if less than one-fourth of the total votes are represented at such adjourned meeting.

29. OTHER PROFESSIONAL OFFICERS

29.1. Save as specifically provided in this Constitution, the Trustees shall at all times have the rights to engage on behalf of the Association, the services of Auditors, Accountants, Attorneys, Advocates, Architects, Engineers, any other professional person of firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustees and on such terms as the Trustees shall decide. In the event the anticipated expenditure incurred in respect of the above, is likely to exceed 5 % (five percent) of the total annual levy for the year in question, the trustees shall notify the members by way of written notification advising of the anticipated amount and giving a detailed motivation for the reasons why it is deemed necessary to incur such expenditure.

30. ACCOUNTS

30.1. The Trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association.

30.2. The Association in general meeting of the Trustees, 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.

30.3. At each Annual General Meeting the Trustees 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 the proper balance sheet made up as the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustees and the Accountants or Accounting Officer, and there shall be attached to the notice sent to Members convening each Annual General Meeting, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

30.4. Should the trustee 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.

31. DEPOSIT AND INVESTMENT OF FUNDS

- 31.1. The Trustees shall cause all monies received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank or financial Institution in the name of the Association and, subject to any direction given or restriction imposed at a General Meeting of the Association, such monies shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.
- 31.2. Any funds not immediately required for disbursements may be invested in a savings or similar account with any of the top five Bank / financial Institution in South Africa approved by the Trustees from time to time.
- 31.3. Interest on monies invested shall be used by the Association for any lawful purpose.

32. SERVICE OF NOTICES

- 32.1. A notice shall be in writing and shall be given or served by the Association upon a member, either personally or by post in a pre-paid registered letter, or via email, properly addressed to the member at the address of the erf owned by him or email address provided by such owner to the trustees or Managing Agent.
- 32.2. No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any Member may require the Association, by notice, to record an address other than the address of the erf owned by him within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
- 32.3. 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, shall be sufficient to prove that the letter containing the notice was properly sent and delivered.
- 32.4. Any notice by email shall be deemed to have been served at the time when the email containing the same was sent, and in proving the giving of the notice by email, it shall be sufficient to prove that the email containing the notice was properly addressed and posted.
- 32.5. 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 the meeting.

33. INDEMNITY

- 33.1. 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 capacity as CHAIRPERSON, Vice- CHAIRPERSON, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 33.2. Every Trustee Member, every servant, agent and employee of the Association , and the Auditors or Accounting Officer shall be indemnified by the Association against (and it shall be the duty of the Trustees 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 his/their respective duties, including in the case of a Trustee Member , his duties as CHAIRPERSON or Vice-CHAIRPERSON. 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 him jointly or severally

in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

- 33.3. A Trustee Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or Accounting Officer or of any of the other Trustee Members, whether in their capacities as Trustee Members or as CHAIRPERSON or Vice-CHAIRPERSON, or for any loss or expense sustained or incurred by the Association through the insufficiency of title to any Property acquired by the Trustees for or on behalf of the Association, or for the insufficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss of 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 judgement or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty of breach of trust.

34. AMENDMENTS TO CONSTITUTION

- 34.1. This constitution, or any part thereof, shall not be repealed or amended, and no new rules shall be made, save by a special resolution adopted at an Annual General Meeting or Special General Meeting of the Members.
- 34.2. Until completion of the Estate, the Developer may without approval of the Members, amend, substitute and/or repeal any provisions of the Constitution.

35. MANAGING AGENT

- 35.1. 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.
- 35.2. The Developer shall be entitled to appoint the managing agent for the first 3 years, calculated from the date of establishment of the Association, in consideration for which the Association shall pay a market related fee to be mutually agreed from time to time and, failing such agreement, to be determined by arbitration in terms of clause 36.

36. ARBITRATION

- 36.1. In the first instance and provided that it has jurisdiction, all disputes will be referred to the Community Schemes Ombud Service (CSOS) to resolve the dispute. Should the Community Schemes Ombud Service not have the necessary jurisdiction to preside over the dispute, the dispute will be referred to arbitration.
- 36.2. Any dispute, question or difference arising at any time between a Member or between Members and Trustees out of or regarding:
- 36.2.1. any matters arising out of this Constitution; or
 - 36.2.2. the rights and duties of any of the parties mentioned in this Constitution; or
 - 36.2.3. 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, provided that clause 36.1 hereof is not applicable.

- 36.3. 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 twenty-one (21) Business Days after it has been demanded.

- 36.4. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 36.4.1. primarily an accounting matter- an independent auditor;
 - 36.4.2. primarily a legal matter - a practicing counsel or attorney of not less than ten (10) years standing;
 - 36.4.3. any other matter – the Managing Agents as appointed by the Trustees.
- 36.5. If agreement cannot be reached on whether the question in dispute falls under clauses 36.2.1, 36.2.2 or 36.2.3 or upon a particular arbitrator, within three (3) Business Days after the arbitration has been demanded, then:
- 36.5.1. the President for the time being of the Cape Law Society shall determine whether the question in dispute falls under clauses 36.2.1, 36.2.2 or 36.2.3; or
 - 36.5.2. the President for the time being of the Cape Law Society shall nominate the arbitrator in terms of clause 36.4.3 within seven (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 36.3.
- 36.6. The arbitrator shall make his award within seven (7) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of the 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.
- 36.7. The decision of the arbitrator shall be final and binding and may be made an Order of the Cape Provincial Division of the Supreme Court of South Africa upon the application of any party to the arbitration.
- 36.8. Notwithstanding anything to the contrary contained in clauses 36.4 to 36.6 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.

37. OWNER'S ASSOCIATION WHICH FAILS TO MEET AN OBLIGATION OR CEASES TO FUNCTION

- 37.1. In the event that the Association ceases to function or carry out its obligations, Section 30 of the Stellenbosch Municipality Land Use Planning By-Law of 2015 will apply.

38. EFFECTIVE DATE

The provisions hereof shall come into force simultaneously with the first passing of the first transfer of an Erf in the Cape Town Deeds Registry.