

# **C O N S T I T U T I O N**

**of the**

## **WINELANDS ESTATE HOME OWNERS ASSOCIATION**

**A statutory body established in terms of Section 29 (1) as read with  
Section 42 of the Land Use Planning Ordinance 15 of 1985**

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## 1. PREAMBLE

It is recorded that the Winelands Estate Home Owners Association is constituted as a statutory body in terms of Section 29 of LUPO, in accordance with the conditions imposed by the Local Authority, when approving the sub-division of the Land referred to in clause 2.1.14 below. Once adopted, this Constitution repeals and replaces all previous constitutions of the Association.

## 2. INTERPRETATION

In this document:

- 2.1 The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:
- 2.1.1 "**The Adjacent Farm**" means Portion 35 (a portion of Portion 29) of the Farm Simonsvlei No. 791, Drakenstein Municipality, Division of Paarl, Province of the Western Cape;
  - 2.1.2 "**The Association**" means the Winelands Estate Home Owners Association, its nominee or assigns;
  - 2.1.3 "**The Auditors**" means the Auditors of the Association;
  - 2.1.4 "**Business Day**" means weekdays other than Saturdays, Sundays and public holidays;
  - 2.1.5 "**Chairperson**" means the Chairperson of the Trustee Committee;
  - 2.1.6 "**The Common Areas**" means the private roads, open spaces, pump station, Gate House and all other property registered in the name of the Association;
  - 2.1.7 "**The Council**" means the Drakenstein Municipality, or its successors;
  - 2.1.8 "**the Design Guidelines**" means the architectural and landscape Design Guidelines, as amended with the approval of the Council dated October 2002 for the development of improvements on the Residential Erven;
  - 2.1.9 "**The Developer**" means Turnaround Trading 16 (Pty) Ltd (Registration No. 2003/005897/07);
  - 2.1.10 "**The Development Period**" means the period commencing on the creation of this Association and terminating on the date that all services as defined in Clause 2.1.24, the Pump Station and the Gate House have been completed and handed over to the Association.;
  - 2.1.11 "**The Erven**" means all the Erven located on the Estate be they Residential, Non-Residential or Common Areas;
  - 2.1.12 "**The Estate**" means Winelands Estate to be established on the Land, and comprising of the Common Areas, the Residential Erven and Non-Residential Erven;
  - 2.1.13 "**The Farming Association**" means the Winelands Farming Association established for the purposes of undertaking, contracting and managing all agricultural activities on the Estate, for and on

behalf of its members;

- 2.1.14 "**The Land**" means Portions 10 to 17 of Farm 789 , Portions 3 to 22, 24 and 25 of Farm 1234, Portions 1 to 6 of Farm 1765, as well as the Adjacent Farm, all of which are situated in the Drakenstein Municipality, Division of Paarl, Province of the Western Cape;
- 2.1.15 "**Levy**" means the levy referred to in Clause 9;
- 2.1.16 "**Local Authority**" means the Drakenstein Municipality;
- 2.1.17 "**LUPO**" means the Cape Land Use Planning Ordinance, No. 15 of 1985;
- 2.1.18 "**Member(s)**" means a member/members of the Association;
- 2.1.19 "**Month**" means a calendar month;
- 2.1.20 "**Non-Residential Erven**" means erven other than Residential Erven and which are not allocated for residential purposes;
- 2.1.21 "**The Office**" means the registered office of the Association;
- 2.1.22 "**Registered Owner**" means the registered owner of any of the Residential Erven;
- 2.1.23 "**The Residential Erven**" means the Agricultural Land Units other than Non-Residential Erven and Common Areas and which erven are numbered 10 to 16 of Farm 789, Portions 3 to 22 of Farm 1234, Portions 1 to 6 of Farm 1765, and includes the Adjacent Farm;
- 2.1.24 "**Services**" means such facilities, utilities, services and amenities as may be provided on the Estate in terms of clause 12, including (but not limited to) electricity, road services and reserves, stormwater, water, sewage and waste removal;
- 2.1.25 "**Special Resolution**" means at least 75% of the votes of all Members who are present at a meeting or represented by Proxy;
- 2.1.26 "**A Trustee**" means one of the Trustee Committee;
- 2.1.27 "**The Trustee Committee**" means the Board of Trustees of the Association;
- 2.1.28 "**In writing**" means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
- 2.1.29 "**Year**" means a calendar year.

2.2 Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and *vice versa* and words importing any one gender only shall include the other gender.

### 3 CREATION OF ASSOCIATION

The Association is constituted as a Body Corporate in terms of Section 29 of LUPO,

in accordance with the conditions imposed by the City of Cape Town when approving in terms of Sections 25 (1) and 42 of LUPO, the sub-division of the Land and will come into existence simultaneously with the registration in the Deeds Office of the first of the Erven.

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

- 4.1 The Association shall:
  - 4.1.1 have legal personality and be capable of suing and being sued in its own name; and
  - 4.1.2 not operate for profit, but for the benefit of the Members.
- 4.2 No member shall have any right, title or interest in or to the funds or assets of the Association in his personal capacity, all of which shall vest in the Association.

#### **5 MAIN OBJECTS**

The main object of the Association is the matters referred to in section 29 (2) (b) and (c) of LUPO, and more specifically:

- 5.1 to control the design and construction of and any alterations to all buildings, and/or structures erected or to be erected on all Erven, including the landscaping thereof, in accordance with the Design Guidelines, the conditions of approval of sub-division of the Land, site development plan, any applicable landscape management plan and any other plan, manual, guidelines, policy, contract and the like of any authority and to which the development of the Land may be subject or which may hereafter be imposed, and the requirements of the Council or other authority;
- 5.2 to comply with, and to ensure compliance by Members with, the conditions imposed by the Council pursuant to the Council's approval for subdivision of the Land, including but not limited to:
  - 5.2.1 ensuring that Registered Owners complete construction of the dwellings to be erected on the respective Residential Erven within 1 (one) year from date of registration of transfer of the relevant Residential Erven into the Registered Owner's name from the Developer (first transfer), alternatively, within such time period stipulated in the Agreement of Sale concluded between the Developer and the Registered Owner ("the Completion Date"). For purposes of this clause 5.2.1, complete construction" means a completed dwelling for beneficial occupation, constructed and completed in accordance with the Design Guidelines and certified in accordance with the provisions of Clause 7.10.
  - 5.2.2 the promotion of environmental sensitivity and awareness amongst Members.
- 5.3 to take transfer of the Common Areas and improvements thereon from the Developer at no consideration;
- 5.4 to control and maintain the Services and its infrastructure within the Estate, and in order to achieve this, to maintain, repair, replace and/or utilise any part

of the Services located within the Estate.;

- 5.5 to promote, advance and protect the communal and group interests of the Members generally;
- 5.6 to enter into service agreements with the Local Authority or any other authority or supplier of services;
- 5.7 to implement and maintain security measures and systems for controlled access to the Estate;
- 5.8 to prescribe measures for the landscaping and development of Erven on the Estate, and for the architectural design and building of improvements to Residential Erven on the Estate so as to ensure a harmonious and aesthetic development of the Estate, and to prescribe measures for the maintenance of such standards of development;
- 5.9 to register where necessary various service or other servitudes over common areas in the Estate in favour of the Local Authority and/or similar developments located in close proximity to the Estate and/or adjoining properties and to register servitudes in favour of the Erven in the Estate over other land owned by the Association, or to register servitudes in favour of the Association over other property, as are from time to time required;
- 5.10 to acquire by way of lease or ownership or otherwise, erven in the Estate constituting common areas for the purposes of road access to the Estate and to register transfer of ownership thereof in the name of the Association; to acquire and hold servitudes in the Association's favour for access to the Estate and also for the supply of services, including communication, surveillance and water to the Estate;
- 5.11 to formulate, enforce, modify, amend, add and delete the Estate and/or Conduct Rules and Regulations and where necessary, subject to the approval of Members, impose fines or other sanctions as it may deem fit;
- 5.12 to appoint a Manager to manage the affairs of the Association and as such, delegate the management of the Association's affairs to an outside agency;
- 5.13 to include in the Title Deeds of the Common Areas to be transferred to the Association, that, after the Development Period all such Common Areas shall not be sold, alienated, otherwise disposed of or transferred to any other party, nor Mortgaged;
- 5.14 to accredit architects and builders to be utilised by Registered Owners in respect of any design and construction work to be conducted on Residential Erven, in accordance with such criteria as the Association may stipulate from time to time;
- 5.15 to accredit Estate Agents appointed by Registered Owners in respect of the resale of their Residential Erven, in accordance with such criteria as the Association may stipulate from time to time;
- 5.16 to contract with an Estate Agency or Agencies for the purposes of establishing an exclusive or non-exclusive on-site Estate Agent or Agents to attend to sales and re-sales of Residential Erven;
- 5.17 to enter into agreements with other developments or land owners located in close proximity to the Estate and/or adjoining properties with regard to the

sharing of facilities or services of any nature whatsoever, including but not being limited to security, landscaping, gardening, agricultural services, water, sewerage, electricity, roads, whether or not for the purposes of sharing the cost thereof, or indeed ratify any agreements previously concluded in this regard;

- 5.18 to accredit service providers or contractors in respect of services to be rendered to members of the Association, including but not limited to pool cleaning and garden service contractors;
- 5.19 to grant or refuse a Registered Owner consent to transfer his Residential Erf, depending as to whether or not there has been compliance with this Constitution, the Farming Association Constitution, the Conduct Rules or such other Rules / determinations made by the Association from time to time;
- 5.20 to include in the Title Deeds of Residential Erven that transfer of such erven shall be subject to the Association granting its written consent in respect of such transfer;
- 5.21 appoint Trustees to serve on the Committee of the Farming Association; or
- 5.22 to raise levies, open and operate bank accounts, invest money, pay for services and goods, and generally act in such a manner so as to give effect to the provisions of this Constitution.

## **6 FINANCIAL YEAR END**

The financial year end of the Association is the end of **February** of each year.

## **7 MEMBERSHIP AND OBLIGATIONS**

- 7.1 Membership of the Association shall be limited to and compulsory for all the Registered Owners provided that:
  - 7.1.1 a person who is entitled to obtain a certificate of registered title to any such Residential Erf shall be deemed to be the Registered Owner thereof;
  - 7.1.2 where any such Registered Owner is more than one person, all the Registered Owners of that erf shall be deemed jointly and severally to be one Member and as such their liability shall be joint and several.
- 7.2 Membership of the Association shall commence simultaneously with the transfer of the Residential Erf into the name of the Registered Owner.
- 7.3 When a Member ceases to be the Registered Owner he shall *ipso facto* cease to be a Member of the Association.
- 7.4 A Registered Owner may not resign as a Member of the Association.
- 7.5 The rights and obligations of a Member shall not be transferable and every Member shall:
  - 7.5.1 to the best of his ability further the objects and interests of the Association;

- 7.5.2 observe all regulations made by the Association or the Trustee Committee.
- 7.6 No Member shall let or otherwise part with the occupation of his Residential Erf without obtaining the prior written agreement of the proposed occupier that he will be bound by the provisions of this Constitution.
- 7.7 The Member shall be liable for the acts or omissions of all persons occupying his Residential Erf, whether lawfully or unlawfully, including but not limited to lessees, guests, employees, invitees, contractors and agents.
- 7.8 Where a Registered Owner wishes to alienate or transfer his Residential Erf or in the event that the said Erf is owned by a company or close corporation or Trust, should the shareholder/s or member/s or Trustees / Beneficiaries wish to alienate all of their shares or membership interest in such entity (hereinafter referred to as a "resale") he shall not be entitled to do so unless:
  - 7.8.1 the transferee becomes a Member of the Association and upon the registration of transfer of the Residential Erf into the name of the transferee, he shall *ipso facto* become a Member of the Association;
  - 7.8.2 he obtains a clearance certificate from the Association which shall be given provided:
    - 7.8.2.1 the transferee of such Residential Erf agrees in writing to accept and abide by the Constitution of the Association and of the Farming Association;
    - 7.8.2.2 all amounts owing by the Registered Owner to the Association and Farming Association have been paid or secured to the satisfaction of the said Associations;
    - 7.8.2.3 all obligations of the Registered Owner in terms of this Constitution, the Constitution of the Farming Association and Conduct Rules have been complied with in full; and
    - 7.8.2.4 he pays to the Association the fees pertaining to such certificate as determined by the Association from time to time;
  - 7.8.3 the Estate Agent appointed by the Registered Owner for the purposes of securing a Purchaser in respect of his Residential Erf has been accredited by the Association;
  - 7.8.4 the Registered Owner utilizes the standard Deed of Resale document as may be prescribed by the Association from time to time.
- 7.9 In the event that the Registered Owner should fail to complete construction in accordance with the provisions of Clause 5.2.1 hereof, the following shall apply:
  - 7.9.1 the Association shall be entitled to have the Residential Erf landscaped at the cost of the Registered Owner in the event that the Registered Owner should fail to commence construction by the Completion Date until such time as the Registered Owner



commences construction or until the completion of the construction on his Residential Erf; and

- 7.9.2 the Registered Owner shall pay double the amount of levies payable by the Registered Owner in respect of each month or part thereof beyond the prescribed Completion Date that the Owner has failed to complete construction on his Residential Erf.
- 7.10 No Member shall be entitled to take occupation or allow any other person to take occupation of any dwelling or part thereof erected upon his Residential Erf until such time as the construction of such dwelling and the landscaping of the erf has been fully completed, an application has been lodged with the Local Authority for the issue of a Certificate of Occupation in respect of such dwelling, the Member's Architect has issued a written Certificate certifying that the dwelling has been constructed and completed in accordance with the plans as approved by the Association, and the Aesthetics Committee appointed by the Association has satisfied itself that the building of the dwelling and the landscaping has indeed been completed in accordance with the plans as approved by the Association, whereupon it shall issue a Certificate of Completion.
- 7.11 In the event that a member should take occupation or allow occupation to be taken of his dwelling or part thereof, without first obtaining the Certificates as aforesaid, then and in such event the Association shall be entitled, without prejudice to any other rights that it may have, to have the Member and/or all persons occupying the dwelling or part thereof, evicted therefrom or to refuse the Member and/or all persons occupying the dwelling or part thereof access to the Estate, or to charge such penalty levies as may be determined by the Association from time to time, calculated from the date upon which the said Member took occupation of the dwelling and the date upon which the Certificates of Completion are finally issued.
- 7.12 Residential Erven shall be used for residential purposes only and as such, owners shall not conduct any commercial activity thereupon and/or therefrom.

## **8 APPROVAL FOR PROPOSED WORK**

- 8.1 A Member shall not without the prior written approval of the Association:
- 8.1.1 erect any building and/or structures of any nature whatsoever on his Erf or undertake any landscaping thereon;
- 8.1.2 make any changes, additions or alterations to existing buildings and/or structures on his Erf, including changes to external colour scheme;
- 8.1.3 install solar panels or fix burglar bars to any external windows or doors of the buildings on his Erf;
- 8.1.4 erect or construct any pergolas, patio awnings, shade ports, car ports, washing lines, satellite dish, television, radio or any other type of antennae, wendy houses, walls or any other structures which may affect the external appearance of the improvements on his Erf.
- 8.2 The consent of the Association as contemplated in Clause 8.1 may only be

given:

- 8.2.1 after detailed plans of the proposed work as prepared by an architect registered with the South African Council for the Architectural Profession or such other suitably qualified person/s and who have been accredited by the Association, have been submitted to the Association's Aesthetics Committee;
- 8.2.2 if the proposed work complies with the documents and requirements set out in clause 8.1 above;
- 8.2.3 if the Member has made payment of all costs which may be incurred in obtaining this approval, including any scrutiny fees as determined by the Trustees from time to time, which may be payable to the Association's Aesthetics Committee;
- 8.2.4 if the Builder appointed by the Member has been accredited by the Association;

it being recorded however that, notwithstanding the aforesaid, the Association may, in its sole and absolute discretion, refuse to grant consent in respect of any of the structures referred to in Clause 8.1.4.

- 8.3 The Trustees shall be entitled to determine a scrutiny fee from time to time, which shall be payable by the Member in respect of the scrutiny and approval of plans by the Association's Aesthetics Committee of the proposed work, payable in full to the Association upon first lodgement of any plans relating to the proposed work to the Association.
- 8.4 The Trustees shall be entitled to determine a Sidewalk Deposit and a Builders' Management Fee, payable by the Member so as to provide for the repairs of damage caused by the Member's builder as well as for the management and control of the building process on his erf, which deposit and fee shall be payable by the Member concerned in such amount and on such terms and conditions as may be determined by the Trustee Committee from time to time.
- 8.5 After obtaining the written approval of the Trustees for the proposed work, the Member shall submit the building and landscaping plans (if applicable) to the Council for approval, with the approval of the Trustees evidenced by an endorsement of the relevant plans as well as the payment of any fees payable to the Council for the scrutiny and approval of the plans by the Council.
- 8.6 After obtaining the approval of the Council for the proposed work, the member shall comply with all conditions, standards and requirements imposed by the Council and the Association.

## **9 LEVIES**

- 9.1 Only the owners of Residential Erven shall be jointly liable for expenditure incurred by the Association with all levies being equal.
- 9.2 The Trustees shall calculate the total amount of levies payable by owners of Residential Erven, as well as the amount of levies payable by each such individual member for the purpose of meeting all the expenses which the Association has incurred, or which the Trustee Committee reasonably anticipates the Association will require in respect of:

- 9.2.1 facilities and services in connection with the Estate;
  - 9.2.2 the payment of all expenses necessarily or reasonably incurred or to be incurred in connection with the management of the Association and its affairs; and
  - 9.2.3 any reserves which the Trustees may deem necessary.
- 9.3 In calculating levies the Trustees shall take into account income, if any, earned by the Association, the penalties payable in terms of Clause 7.9.2, and the credit or shortfall from the previous year.
- 9.4 A Member shall be liable to pay levies with effect from the first month following the month in which the Member takes transfer of the Residential Erf in his name. The Registered Owner who is the Transferor of the Residential Erf shall accordingly be liable for the payment of levies calculated up to the last day of the month during which the transfer takes place to the Transferee and accordingly shall not be entitled to a refund from the Association of any levies calculated from the date of transfer to the end of the month in which the transfer took place.
- 9.5 Once the Trustees have calculated the estimated budget and levies, the proposed budget and levies shall be presented at a General Meeting for the approval by the Members. The levies shall be calculated by dividing the Total Expenditure by the number of Residential Erven, so that all erven shall pay equal levies. However, where charges for certain services such as electricity and water are metered separately, each owner shall be liable to pay the metered charges pertaining to such particular service.
- 9.6 Every such levy shall be payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year and shall be paid by way of a debit order in favour of the Association or by any other method as determined by the Trustees from time to time.
- 9.7 The Trustees may also from time to time, propose special levies upon the Members in respect of all such expenses as are mentioned in Clause 9.2, and such levies may be made in the sum or by such instalments and at such time or times as the Trustees shall think fit, subject to the condition however that, should the proposed special levy exceed 10% of the annual levy, then approval shall be obtained by the Members in respect of the special levy.
- 9.8 Any amount due by a Member by way of a levy shall be a debt due by him to the Association and is payable free of exchange, deduction or set off. The obligation of a Member to pay a levy shall, subject to the provisions of Clause 9.4 above, cease upon his ceasing to be 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 a Residential Erf shall subject to the provisions of Clause 9.4 be liable as from the date upon which he becomes a Member pursuant to the transfer of that erf, to pay the levy attributable to that erf.
- 9.9 Subject to clause 9.11 and save in respect of a Special Levy, the total levy payable shall be borne jointly by the Members in equal shares.
- 9.10 For as long as the Developer is a Registered Owner, the Developer shall not be required to pay any levies which are of a capital nature or which may

constitute reserves, although the amount as may constitute the capital and/or reserve shall only become payable by the Developer once the said Erf is transferred by the Developer to the buyer thereof.

- 9.11 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid all levies and any other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 9.12 Where two or more Residential Erven have been consolidated, levies shall be payable in respect of each such Residential Erf as they existed prior to consolidation and as if such consolidation had not occurred.
- 9.13 Arrear levies shall bear interest calculated at 2% above the publicly quoted prime rate of interest as charged by the Association's Bankers from time to time, from due date of payment until the actual payment, calculated monthly in arrears. Furthermore, Members who are in arrears with their monthly levies shall be charged an administrative fee as may be determined by the Trustees from time to time.
- 9.14 New home owners will be charged a buy in levy at an amount determined annually by the trustees, and which amount shall be payable prior to the date of transfer of the property.

## **10 DEALING WITH THE COMMON AREAS**

- 10.1 After the Development period and once transferred to the Association, neither the whole nor any portion of the Common Areas, or any improvements thereon shall be:
  - 10.1.1 sold, alienated, otherwise disposed of, subdivided or transferred; or
  - 10.1.2 mortgaged; or
  - 10.1.3 subjected to any rights other than those contained in the present existing title deed of the Land, or to be imposed in the title deed(s) of the Common Area as required by any relevant authority or as contained in this Constitution, whether registered in a Deeds Registry or not, of use, occupation or servitude.
- 10.2 The Association is hereby empowered to take transfer and shall take title to the Common Areas at no consideration and as soon as is legally possible subject to the condition however that the Developer will only be obliged to tender transfer of the Common Areas to the Association once all improvements thereon (if any) have been completed.
- 10.3 The Association acknowledges that the Council shall not be responsible for, and the Association shall be solely responsible for the construction, care, repair, maintenance, cleaning, upkeep, improvements and proper control of the Common Areas, all services therein (other than services provided and/or maintained by the Council, if any) and all amenities and improvements located or to be located on or within the Common Areas.
- 10.4 The Council shall at no time in the future assume ownership of the Common Areas.

## **11 THE FARMING ASSOCIATION**

- 11.1 Each Registered Owner shall automatically become a member of the Farming Association with effect from the date upon which the Residential Erf is transferred into his name, and shall so remain a member until the said property is sold and transferred to the new owner, who shall then become a member of the Farming Association.
- 11.2 By virtue of the compulsory membership of the Farming Association, all Registered Owners shall be bound by the Constitution of the said Association.
- 11.3 In as much as the Developer has undertaken to plant vineyards and/or olive trees and establish irrigation systems on the various Residential Erven, the Trustees of the Association, authorised and empowered by its members to reach agreement with the Developer with regard to the establishment of the said vineyards and/or olive groves, including but not limited to the type of cultivar, number of vines / trees, specifications relative to the irrigation systems, water sources and time frames.
- 11.4 The Trustees of the Association shall serve on the Board of Trustees of the Farming Association.

## **12 SERVICES**

- 12.1 The Developer shall be responsible for the maintenance of services until such time as each service has been completed and handed over to the Association by the Developer. However, the Association shall be liable to collect levies in respect of the use of the services, which levies shall be dealt with in accordance with the provisions of Clause 9.11.
- 12.2 The Council may, at its discretion, elect to assume the obligation to repair and maintain water, sewage and electricity services ("the Council Services") on the Estate, provided that a written agreement is concluded between the Council and the Association which agreement shall include the following provisions:
  - 12.2.1 The Council Services will be provided to each Member on an individually metered basis;
  - 12.2.2 The Association shall allow the Council's staff 24 (twenty-four) hour access to all elements of the systems on the Estate in respect of Council Services;
  - 12.2.3 All elements of the systems in respect of Council Services must comply fully with the Council's specifications and requirements;
  - 12.2.4 Council shall, after repairs to systems in respect of Council Services, be obliged to re-instate and repair at their own cost, roads, verges, footways as well as any other damage caused by the Council, their employees or contractors;
  - 12.2.5 Full servitude rights of way will be granted by the Association to the staff of the Council, and their vehicles, along all roads and pipeline cable routes for the purposes of inspection, maintenance and repair of the Council Services;

12.2.6 The Common Area shall be metered and the Association shall be liable for the payment of all costs relating to Council Services.

12.3 It is recorded that separate meters have been installed upon each residential erf so as to allow owners to be invoiced separately by the Council in respect of the electricity and water charges.

12.4 The Association shall be responsible for internal collection of refuse on the Estate which shall be removed from the Estate by the Council from a centralised collection point. The cost of the internal refuse collection will be borne by the Association and paid for through the levies.

### **13 MANAGER**

13.1 The Trustee Committee shall be entitled to appoint a manager or managers (individuals or corporations) to manage the affairs of the Association and the Farming Association.

13.2 Subject to this Constitution and the terms of his appointment, the Manager shall have the full power to manage and control the business and affairs of the Association, and may exercise all such powers of the Association and do all acts on behalf of the Association as may be exercised by the Association itself.

13.3 All instructions issued to the Manager by the Trustee Committee shall be in writing and shall only be issued by a Trustee duly authorised by the Trustee Committee.

### **14 CONTRACTS AND REGULATIONS**

14.1 Without limiting the powers referred to in Clause 20 hereof, the Trustee Committee may from time to time:

14.1.1 Make regulations governing, *inter alia*:

14.1.1.1 the Members' rights of use, occupation and enjoyment of the Common Areas;

14.1.1.2 the external appearance of and the maintenance of the Common Areas and the buildings or other improvements erected thereon;

14.1.1.3 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 Residential Erven, subject always to the Design Guidelines and the requirements of the Council;

14.1.1.4 the conduct of Members generally;

14.1.2 Enter into agreement(s) with the local authorities governing the matters set out in sub-Clause 15.1 and any other incidental matters;

14.1.3 Enter into agreement(s) with the Council and other parties for the provision of Services on the Estate, or enter into agreements with other estates as envisaged in Sub-Clause 5.17;

- 14.1.4 Impose penalties or other sanctions which it considers appropriate in its sole discretion against Members who are in default of any of their obligations in terms of this Constitution, including the terms of payment of such penalties. Without detracting from the generality of the foregoing, the Trustees shall be entitled to impose penalties in the event of a Member not commencing or completing construction of his dwelling as provided in clause 5.2.1.
- 14.2 Each Member undertakes to the Association that he shall comply with:
  - 14.2.1 the provisions of this Constitution and the Constitution of the Farming Association;
  - 14.2.2 any regulations made in terms of sub-Clause 14.1.1;
  - 14.2.3 any agreements referred to in sub-Clause 14.1.2 insofar as those agreements either directly or indirectly impose obligations on him.

## **15 BREACH**

- 15.1 Should any Member:
  - 15.1.1 fail to pay on 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 (seven) days after being notified in writing of such default by the Trustee Committee; or
  - 15.1.2 commit any other breach of the provisions of this Constitution or any regulation made there under and fail to commence remedying that breach within a period of 7 (seven) days after the receipt of written notice to that effect by the Trustee Committee and complete the remedying of such breach within a reasonable time;

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

  - 15.1.3 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any regulation made there under, as the case may be; or
  - 15.1.4 in the case of Clause 15.1.2, to remedy such breach and immediately recover the total costs incurred by the Trustees or the Association in so doing from such Member.
- 15.2 Should the Trustee Committee 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 Trustee Committee or the Association or any other Member may have in law, the Trustee Committee / Association / Member (as the case may be) shall be entitled to recover from such Defaulting Member all legal costs incurred by it, including attorney and own client charges calculated on the non-litigious tariff recommended by the Law Society of the Cape of Good Hope (or its successors), tracing fees and collection commission.

- 15.3 Without prejudice to all or any of the rights granted to the Trustee Committee of the Association 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 calculated at 2% (two percent) above the publicly quoted prime rate of interest charged by the Association's bankers from time to time calculated from the due date of payment until the actual date of payment of such amount. A certificate issued by the Association's bankers as to the prime rate applicable shall constitute *prima facie* proof thereof.
- 15.4 Members who are in breach of this Constitution or its Rules shall, in addition to any other penalty or sanctions prescribed by this Constitution, Conduct or other Rules, be liable to pay an administration fee in an amount as determined by the Trustees from time to time.

## **16 CESSATION OF MEMBERSHIP**

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, reserves or other property of the Association. This clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrears of levies or other sums due from him to the Association at the time of his so ceasing to be a Member.

## **18. MANAGEMENT AND TRUSTEES**

- 18.1 The affairs of the Association shall be managed and controlled by a Board of Trustees (the "Trustee Committee") consisting of not less than 3 (three) and not more than 5 (five) Trustees elected by the Members at a general meeting.
- 18.2 The Trustees, shall after proposal and seconding, be elected by ballot or show of hands (if the meeting so determines) of those members who attend the general meeting of the Association, and successive Trustees shall be elected likewise at each successive annual general meeting of the Association, provided that no member shall be eligible for election unless he shall have been duly nominated and seconded in writing by other members and such written nomination, duly endorsed by the nominee, shall have been handed to the secretary not later than the day preceding the meeting and provided further that such nominee's levies for the current year shall have been duly paid.
- 18.3 A Trustee shall be a Registered Owner, or in the event that the Erf is owned by a Corporate entity, a Director, Shareholder, Member or Trustee of the said entity.
- 18.4 The Trustee Committee shall consist of a chairman, vice chairman, secretary/treasurer and 2 (two) trustees. The Trustees shall from their ranks elect a Chairman. A quorum for any meeting of the Trustee Committee shall consist of 3 (three) trustees. Should a quorum not be formed as aforesaid, the meeting shall stand adjourned until a time to be decided upon by the chairman. All matters at any meeting shall be determined by a majority of those present and voting. In the event of an equality of votes, the chairman of any meeting shall have a casting vote.
- 18.5 The trustees shall cease to hold office:
- 18.5.1 At every annual general meeting, but shall be eligible for re-



election;

- 18.5.2 By notice to the Trustee Committee if he resigns his office;
  - 18.5.3 If he is removed from office by the majority vote of the trustees;
  - 18.5.4 If he absents himself from 3 (three) consecutive meetings of the trustees without leave of absence;
  - 18.5.5 Upon his Estate being sequestrated, whether provisionally or finally;
  - 18.5.6 Upon the commission by him of any act of insolvency;
  - 18.5.7 Upon his conviction of any offence involving dishonesty;
  - 18.5.8 Should the Trustee be in breach of any of the provisions of this Constitution or the Conduct Rules or should the Trustee dispute such breach, in the event that the majority of the Trustees resolve that the said Trustee is indeed guilty of such breach; or
  - 18.5.9 Should the Trustee be disqualified from being a Director of a Company in accordance with the provisions of the Companies Act 61 of 1973 and/or the 71 of 2008.
- 18.6 Vacancies on the Trustee Committee may be filled by co-option at the instance of the majority vote of the Members.
- 18.7 Trustees shall receive no remuneration but will be entitled to a refund of reasonably incurred expenses in the execution of their duties.
- 18.8 No Trustee shall be liable to the Association or any Member thereof or to any other person whomsoever, for any act or omission by himself, the Association or its servants or agents. Every Trustee is indemnified by the Association against any loss suffered by him in consequence of any purported liability provided that such Trustee has, upon the basis of information known to him, acted in good faith, without intent and without gross negligence and/or without dishonesty.
- 18.9 Meetings of the Trustees shall be held quarterly at or near the Estate and minutes shall be kept of all meetings and decisions.
- 18.10 Proper books of account of the administration and finances of the Association shall be kept and financial accounts shall be audited annually by the Auditors.

## **19 OFFICE OF TRUSTEES**

- 19.1 The Trustees shall appoint from amongst themselves, a Chairperson and Vice-Chairperson.
- 19.2 Subject to Clause 18.6, the Chairperson and Vice-Chairperson 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.
- 19.3 Unless appointed at the General Meeting, within 7 (seven) days of the holding of such Annual General Meeting, the Trustee Committee 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 office 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. 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.

- 19.4 Save as otherwise provided herein, the Chairperson 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 the Chairperson and such other duties as may be prescribed by the Trustee Committee or of 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.
- 19.5 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 Trustee Committee.
- 19.6 Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in connection with 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 or salary in respect of the performance of such duties.

## **20 FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE**

- 20.1 Subject to the express provisions of this Constitution, the Trustee Committee 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 herein, may exercise all such powers of the Association, as are required to be exercised or done by the Association in general meeting, subject nevertheless to such regulation 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.
- 20.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 20.3 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee in such reasonable manner as it shall decide from time to time.
- 20.4 The Trustee Committee may make regulations which are not inconsistent with this Constitution, or any regulations prescribed in the Association in general meeting:
  - 20.4.1 as to disputes generally;
  - 20.4.2 for the furtherance and promotion of any of the objects of the Association;
  - 20.4.3 for the better management of the affairs of the Association;

- 20.4.4 for the advancement of the interests of Members;
- 20.4.5 for the conduct of Trustee Committee meetings and general meetings;
- 20.4.6 to assist it in administering and governing the Association's activities generally;

and shall be entitled to cancel, vary or modify any of the same from time to time.

- 20.5 Save as otherwise provided in this constitution, the trustees shall at all times have the right to engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, architects, engineers, town planners, managing agents, environmental consultants, and any other person or 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.
- 20.6 The Trustees shall further have the power to:
  - 20.6.1 require that any construction of any sort on the Estate shall be supervised to ensure that the provisions of this constitution and the Estate rules are complied with and that all such construction is performed in a proper and workmanlike manner;
  - 20.6.2 issue architectural and landscape Design Guidelines, environmental management plans and contracts or instructions in respect of the Estate, and to ensure that these documents and instructions are complied with at all times;
  - 20.6.3 determine the criteria for the accreditation of architects, builders, estate agents and other service providers or contractors employed by Registered Owners or the Association.
  - 20.6.4 enter into agreements with other developments or properties located in close proximity to the Estate with regard to the sharing of facilities or services or with a view of sharing the cost of services, including but not being limited to security, landscaping, gardening and agricultural services.
- 20.7 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 functions, 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.
- 20.8 The trustees may appoint an architectural review committee to exercise the powers set out above in clause 20.7 Members of the architectural review committee shall not be required to be Members of the Association.
- 20.9 All plans for buildings, landscaping, out-buildings, structures, additions and alterations shall be approved by the Trustees or architectural review committee (if so appointed), or any person designated by them for the purpose.
- 20.10 The Trustees shall further have the power to make Estate and/or Conduct

Rules in regard to *inter alia*:

- 20.10.1 the siting of all buildings and improvements on the Erven, the use of motor vehicles and the parking of vehicles, including trucks, caravans, trailers and boats and the use of the roads;
- 20.10.2 the use of Common Areas, and the restrictions for the use and enjoyment thereof;
- 20.10.3 the right to prohibit restrict or control the keeping of any animals which they regard as dangerous or a nuisance;
- 20.10.4 the conduct of any persons within the Estate for the prevention of nuisance of any nature to any member;
- 20.10.5 the use of services, recreational areas, amenities and facilities including the right to charge a reasonable fee for the use thereof;
- 20.10.6 the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of the members and/or the residents of the Estate;
- 20.10.7 the maintenance of all buildings, out buildings, structures, improvements of any nature and landscaping of Erven on the Estate;
- 20.10.8 the control of the number of occupiers permitted on any one Residential Erf;
- 20.10.9 the admission of any person to the Estate, and the eviction of any person not entitled to be thereon;
- 20.10.10 maintenance of Common Areas;
- 20.10.11 refuse disposal;
- 20.10.12 use of waterways, dams and amenities relating thereto;
- 20.10.13 installation of air conditioning units and television and radio antennae and/or satellite dishes;
- 20.10.14 littering;
- 20.10.15 responsibility of the members for the activities of domestic employees and their guests and access of such persons to the Estate;
- 20.10.16 security;
- 20.10.17 letting and re-selling of Erven;
- 20.10.18 the imposition of fines and other penalties;
- 20.10.19 the accreditation of Estate agents for sales and re-sales of Residential Erven and the appointment of an exclusive on-site Estate Agent or Agents to conduct sales and re- sales;
- 20.10.20 the accreditation of architects in respect of the submission of plans

- for any works to be conducted on Residential Erven;
  - 20.10.21 the accreditation of builders contracted to conduct construction work on Residential Erven;
  - 20.10.22 the accreditation of service providers or contractors in respect of work to be conducted on behalf of members or the Association on the Estate; and
  - 20.10.23 establish guidelines, should it so elect in its sole and absolute discretion, so as to allow members to conduct approved activities from his property.
- 20.11 For the enforcement of any of the rules made by the trustees in terms of this clause, or of any of the provisions of this constitution generally, the trustees may:
- 20.11.1 give notice to the member concerned requiring him to remedy such breach within such period as the trustees may determine; and/or
  - 20.11.2 take or cause to be taken such steps, as they may consider necessary to remedy the breach of the rule or provision of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be deemed to be a debt owing by the member concerned to the Association; and/or
  - 20.11.3 take such action including the imposition of a fine, or proceedings in court, as they may deem fit.
- 20.12 Should the trustees institute any legal proceedings against any Member or resident on the Estate 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 or resident concerned, calculated as between attorney and own client, including tracing fees and collection commission.
- 20.13 In the event of any breach of the rules by the Members or any Member's household or his guests or lessees, such breach shall be deemed to have been committed by the Member himself, who shall be jointly and severally liable with such wrongdoer to and in favour of the Association. However, without prejudice to the foregoing, the trustees may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 20.14 Notwithstanding anything to the contrary herein contained, the trustees may in the name of the Association enforce the provisions of any rules by criminal action or civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel, as they may deem fit.
- 20.15 The Association may in general meeting itself make any rules in regard to any matter and may also vary or modify any rule made by it or by the trustees from time to time.
- 20.16 The Association shall generally have the power and shall perform the functions so as to implement and invoke the objects of the Association referred to in Clause 5.

## **21 PROCEEDINGS OF THE TRUSTEE COMMITTEE**

- 21.1 The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions hereof.
- 21.2 Meetings of the Trustee Committee shall be held at least once every quarter.
- 21.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be 3 (three).
- 21.4 The Chairperson shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairperson not be present within 15 (fifteen) 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 15 (fifteen) 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.
- 21.5 A Trustee shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting and shall then be certified correct by the Chairperson 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 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, the Members and Local Authority.
- 21.6 All 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.
- 21.7 Save as otherwise provided herein, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
- 21.8 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.
- 21.9 Resolutions put to the vote at meetings of the Trustee Committee shall be carried by a simple majority.
- 21.10 In the case of an equality of votes, the Chairperson of the Trustee Committee shall have a casting vote.

## **22 GENERAL MEETINGS OF THE ASSOCIATION**

- 22.1 The Association shall hold a general meeting as its Annual General Meeting, in addition to any other general meetings during that year, as soon as possible after the end of each financial year, it being the intention that each Annual General Meeting shall take place not later than 3 (three) months after

each financial year. Notwithstanding the foregoing, the first Annual General Meeting of the Association is only required to take place by no later than the end of the financial year following which the Association comes into existence. The Association shall specify the meeting as such in the notices, in terms of Clause 23 below calling it.

- 22.2 General Meetings shall be held at such time and place (upon or in the proximity of the Estate or electronically), subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.
- 22.3 All general meetings other than Annual General Meetings shall be called special general meetings.
- 22.4 Subject to Clause 22.5 the Trustee Committee, may, whenever they think fit, convene a special general meeting.
- 22.5 Where the Members who hold at least 51% of the total votes resolve to call a special meeting, the Trustee Committee shall be obliged to call such meeting.

## **23 NOTICE OF MEETINGS**

- 23.1 An Annual General Meeting and a meeting called for the passing of a Special Resolution, shall be called by no less than 21 (twenty one) days notice in writing, and a special general meeting, other than one called for the passing of a Special Resolution, shall be called by no less than 14 (fourteen) days notice in writing. 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. In the case of a Special Resolution, the said Notice shall specify the terms, the effect of the resolution and the reasons for it.
- 23.2 A general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified as aforesaid, be deemed to have been duly called if it is so agreed:
  - 23.2.1 in the case of a meeting called as the Annual General Meeting or Special General Meeting called for the passing of a Special Resolution by all of the Members present and who are entitled to attend and vote thereat; and
  - 23.2.2 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% (seventy five percent) of the total number of votes.
- 23.3 Notwithstanding the provisions of clauses 23.1 and 23.2, the trustees may from time to time elect to call an electronic general meeting with a notice period of 2 (two) weeks followed by a voting period of at least 7 (seven) days.

## **24 VENUE OF MEETINGS**

Save in the instance of an electronic meeting, all Meetings of the Association shall take place at or near the Estate as determined by the Trustee Committee from time to time.

## **25 QUORUM**

- 25.1 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 such of the Members entitled to vote, as together for the time being, represent at least one-half plus one of the total votes of all Members of the Association entitled to vote.

- 25.2 If within half an hour 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 Chairperson 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.
- 25.3 Once at least 50% plus one of the eligible members have cast their vote in an electronic meeting, this shall constitute a quorum.

## **26 AGENDA AT MEETINGS**

In addition to any other matter that may be required to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

- 26.1 the Chairperson's report;
- 26.2 the election of the Trustee Committee;
- 26.3 the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting;
- 26.4 the consideration and approval of the balance sheet and income statement of the Association for the last Financial Year of the Association preceding the date of such meeting;
- 26.5 the consideration and approval of the report of the Auditors; and
- 26.6 the consideration and approval of the total Levy, for the calendar year during which such annual general meeting takes place, the total Levy being the sum of all the levies to be collected from members.

## **27 PROCEDURE AT GENERAL MEETINGS**

- 27.1 The Chairperson shall preside as such at all general meetings, provided that should he not be present within 15 (fifteen) 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 15 (fifteen) 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 Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 27.2 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. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as



aforsaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

27.3 Except as otherwise set forth herein, all general meetings shall be conducted in accordance with generally accepted practice.

## **28 PROXIES**

28.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The Proxy shall be entitled to vote at a general meeting on behalf of that Member. 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 1 (one) person, any 1 (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 person, by the secretary thereof.

28.2 The said proxy shall be deposited at the office of the Association Secretary at least 24 (twenty four) hours prior to the time appointed for the commencement of the meeting.

28.3 No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months calculated from the date of its execution.

## **29 VOTING**

29.1 Subject to the provisions of below, at every general meeting, the following provisions shall apply in regard to voting:

29.1.1 subject to the provisions of Clause 29.1.2, every other Member in person or by proxy and entitled to vote shall have the number of votes for each Residential Erf registered in his name, as set out below, provided that if a Residential Erf is registered in more than one person's name, or in the event that the Erf is registered in the name of an entity, then and in such event the Owner/s shall be obliged to appoint a representative by way of a Proxy to vote on their/its behalf;

29.1.2 in the event of 2 (two) or more Residential Erven being consolidated, then the Member in question shall continue to have the same number of votes he held prior to consolidation, as if such consolidation had not taken place.

29.2 Save as expressly provided for herein, 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.

29.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, by paper ballots or electronic voting at the discretion of the trustees provided that the system allows full traceability and an audit trail. Further that the trustees may from time to time use online

voting to get input or feedback from home owners without calling a formal meeting. The electronic feedback period will be open for feedback for at least 2 (two) weeks and all alternative views and comments must be published. Special General Meetings where changes to the constitution are proposed or an Annual General Meetings may not be conducted via electronic meetings, but electronic voting can be employed to facilitate the voting process at any meeting. The trustees may elect to call other general meetings electronically by way of round robin via electronic voting.

- 29.4 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.
- 29.5 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.
- 29.6 An ordinary resolution (that is a resolution other than a Special Resolution) shall be carried on a simple majority of all the votes cast thereon as provided for in clause 29.1 above. A Special Resolution shall be carried by a majority of no less than 75% (seventy five per cent) of the total votes of Members who are present in person or represented and who are entitled to vote. An abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, the Chairperson of the general meeting shall be entitled to a casting vote in addition to its deliberative vote.
- 29.7 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, or to the propriety or validity of 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.

## **30 ACCOUNTS**

- 30.1 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.
- 30.2 At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the 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, 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.

### **31 AUDIT**

At least once a year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

### **32 SERVICE OF NOTICES**

- 32.1 A notice shall be in writing and shall be given or served by the Association upon any Member, by hand or by post in a prepaid registered letter, properly addressed to the Member at the address of the Residential Erf owned by him.
- 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 within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices. The notice by the Member to change his address shall be in writing and addressed to the Association by way of pre-paid registered mail.
- 32.3 Any notice given by post shall be deemed to have been received within 5 (five) days from the date on which the letter was posted whereas a letter delivered by hand shall be deemed to have been received on the same date that it was delivered.
- 32.4 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.

### **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, 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 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/s 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, Consultants, Service Providers 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 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 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 or breach of trust.

- 33.4 However, in each case where a claim is made against any of the Trustees or other persons referred to hereinbefore, then and in such event the Trustee Committee shall be entitled, as against the aforesaid indemnity, to take cession of any claim and thereupon defend any action that may be instituted, contest and/or settle any claim.

## **34 ARBITRATION**

- 34.1 Any dispute, question or difference arising at any time between Members or between Members and Trustees out of or in regard to:

34.1.1 any matters arising out of this Constitution; or

34.1.2 the rights and duties of any of the parties mentioned in this Constitution; or

34.1.3 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.

- 34.2 Notwithstanding clause 34.1, a party declaring a dispute in respect of payment of levies, is not obliged to refer the dispute to arbitration and may institute court proceedings.

- 34.3 Arbitration shall be held in Cape Town informally and otherwise in terms of 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 (twenty one) Business Days after it has been demanded.

- 34.4 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:

34.1.1 primarily an accounting matter - an independent accountant of not less than 10 (ten) years' standing;

34.1.2 primarily a legal matter - a practising counsel or attorney of not less than 10 (ten) years' standing;

34.1.3 any other matter - an independent and suitably qualified person appointed by the Auditors;

as may be agreed upon between the parties to the dispute.

34.5 If agreement cannot be reached on whether the question in dispute falls under sub-Clauses 34.1.1, 34.1.2, 34.1.3, or upon a particular arbitrator in terms of sub-Clause 34.4, within 3 (three) Business Days after the arbitration has been demanded, then:

34.5.1 the President for the time being of the Law Society of the Cape of Good Hope (or its successors) shall determine whether the question in dispute falls under sub-clauses 34.1.1, 34.1.2 or 34.1.3 and / or

34.5.2 the President for the time being of the Law Society of the Cape of Good Hope (or its successors) shall nominate the arbitrator in within 7 (seven) 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 (twenty one) Business Days referred to in Clause 34.3.

34.6 The arbitrator shall make his award within 7 (seven) 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.

34.7 The decision of the arbitrator shall be final and binding and may be made an Order of the Cape of Good Hope Provincial Division of the High Court of South Africa (or its successors) upon the application of any party to the arbitration.

34.8 Notwithstanding anything to the contrary contained herein, 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 the provisions.

## **35 AMENDMENTS TO CONSTITUTION**

35.1 This constitution, or any part thereof, as contained herein shall not be repealed or amended, and no new clauses shall be made, save by a Special Resolution adopted at an Annual General Meeting or Special General Meeting of the Members.

35.2 Further to clause 35.1 above, any amendment or alteration of this Constitution and which affects the rights and/or obligations of the Developer, shall during the Development Period, be subject to the prior written consent of the Developer and in respect of any amendment or alteration to Clauses 1, 2, 4, 5, 7, 11, 12, 36 and 39 of the Constitution shall be subject to the prior written consent of the Council.

## **36 DEVELOPMENT ON COMMERCIAL SITE**

It is recorded that the Developer intends establishing certain commercial enterprises upon the Commercial Site, inclusive of parking bays and open spaces.

## **37 SERVICE SHARING / ROADS**

37.1 It is recorded that the access road to the Estate will be located upon the Commercial Site and will be constructed by the Developer at its own cost.

- 37.2 However, the Developer shall register a servitude in respect of the use of the said road in favour of the Association (not exclusively) so as to gain access and exit from the Estate, and the Association shall be liable for 50% (Fifty percent) of the costs relating to the maintenance and upkeep of the road, as well as the landscaping costs of the road verges.
- 37.3 Accordingly, the Trustees are hereby authorised and empowered to negotiate with the Developer for the purposes of reaching agreement relative to the percentage of the said maintenance costs to be borne by the Association, and to perform all acts and sign all documents as may be necessary so as to secure the registration of the aforesaid servitude.
- 37.4 The Association is further authorised and empowered to conclude agreements with the Developer and other service providers relative to the sharing of any services, upon such terms and conditions as the Association may deem fit.

## **38 GENERAL**

- 38.1 In the recovery of a debt owed by a Member to the Association, it shall be justifiable for a court to order execution of a judgment or order in respect of such debt against a member's residential erf on the Estate if there is not found sufficient movable property to satisfy such judgment or order.
- 38.2 A sale in execution of a member's residential erf pursuant to such an order shall not constitute an infringement of that member's right to adequate housing or any breach of any of the member's rights in terms of the Constitution of the Republic of South Africa, given the socio-economic status of the Member enabling him to become a Member.
- 38.3 No exercise of its powers by the Trustee Committee in terms of this Constitution and done in good faith and in the interests of the Association shall constitute an infringement of a Member's rights in terms of the Constitution of the Republic of South Africa, including but not limited to:
- 38.3.1 the approval of, or failure to approve, any building plan;
  - 38.3.2 any decision or action in respect of Communal Areas or nature areas;
  - 38.3.3 any decision or action in respect of facilities or services.

## **39 PROVISIONS RELATING TO TAX**

- 39.1 As the main object of the Association is the management of the collective interest common to all of its members, its functions shall include the payment of all expenditure applicable to the common property and facilities which are available to the members, as well as the collection of levies for which such members are liable.
- 39.2 Save for the expenses and liabilities which the Association is liable to pay, it shall not distribute its funds to any person other than to a similar association

of persons.

- 39.3 On dissolution of the Association, the remaining assets shall 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 No. 58 of 1962.
- 39.4 Any amendments to this Clause 39 shall be submitted to the Commissioner for the South African Revenue Service for approval.
- 39.5 Funds available for investment shall 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 Exchange Control Act, 1985 (Act No 1 of 1985).
- 39.6 The Association will not knowingly be a party to, nor will it knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would be or would have become payable by any person under the Income Tax Act of 1962 or any other Act administered by the Commissioner for the South African Revenue Service.
- 39.7 The Association shall submit annual Tax Returns of income tax together with Financial Statements to the Tax Exemption Unit.

#### **40 SALES**

- 40.1 Registered Owners who wish to appoint an Estate Agent to sell their Residential Erf, or in the event that the said Erf is owned by a Close Corporation, Company or Trust, the sale of the majority membership interest, shares or beneficial interest respectively, then and in such event the said Owner shall be obliged to use the services of an Estate Agent who has been accredited by the Association.
- 40.2 Should the Registered Owner utilise the services of an Estate Agent who is not accredited by the Association, the Association shall be entitled to refuse its consent for the transfer of the said Erf in accordance with Clause 7.8.
- 40.3 In the event that the Registered Owner should dispose of his property as envisaged in Clause 40.1 and not have utilised the services of an Estate Agent, then and in such event the Association shall be entitled to require such owner to pay a fee in addition to the usual fees charged in respect of the granting of the Clearance Certificate.

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Trustee Name and Surname: \_\_\_\_\_

Date: \_\_\_\_\_

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Trustee Name and Surname: \_\_\_\_\_

Date: \_\_\_\_\_

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Trustee Name and Surname: \_\_\_\_\_

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