

*Mountain Crest*  
Private Estate

**CONSTITUTION  
OF THE  
HOME OWNERS ASSOCIATION**



## CONSTITUTION OF THE HOME OWNERS ASSOCIATION

### 1. ESTABLISHMENT IN TERMS OF STATUTE

Mountain Crest Private Estate Home Owners Association is constituted as an Home Owners Association and established in terms of section 29 of the Drakenstein Municipality: Municipal Land Use Planning By-Law, 2015 (‘the By-Law’), in accordance with the conditions imposed by the **Drakenstein Municipality** and shall come into existence simultaneously with the registration in the Deeds Office of the first of the erven (as hereinafter defined).

### 2. INTERPRETATION

2.1 The following words shall, unless otherwise requires, have the meanings hereinafter assigned to them:

- 2.1.1 “Association” means **Mountain Crest Private Estate Home Owners Association** which will come into existence upon the transfer of the first unit arising from the subdivision or part thereof. The Association has, as its members, all the owners of land units in the Association’s area, who are jointly liable for the expenditure incurred in connection with the Association;
- 2.1.2 “architectural guidelines” means the architectural guidelines of the Development, as attached hereto and marked “**Annexure A**”
- 2.1.3 “auditors” means the auditors of the Association;
- 2.1.4 “business day” means weekdays other than Saturdays, Sundays and Public Holidays;
- 2.1.5 “chairman” means the chairman of the trustee committee;
- 2.1.6 “private open spaces and private streets” means all property not owned individually, within the borders of **Mountain Crest Private Estate**, and include entrances, open areas, spaces and parks;
- 2.1.7 “completion of the development” means the date of transfer of the last building site and/or erf in the development to the relevant title holder thereof;
- 2.1.8 “Council” means the **Drakenstein Municipality** or its successors/s;
- 2.1.9 “Developer” means **Mimprop (Pty) Ltd** and includes its successor/s in title or assignees;
- 2.1.10 “Development” means the subdivision of Erf 8426, Paarl into a number of individual erven, as determined by the Developer with the approval of Council, in the development known as **Mountain Crest Private Estate**;
- 2.1.11 “erven” mean the erven in the development created as a result of the subdivision excluding the private open spaces and private streets, and any reference to an “erf” shall have the corresponding meaning;
- 2.1.12 “in writing” means written, printed, emailed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;

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- 2.1.13 “member” means every registered owner of an erf. If a member consists of more than one person, such persons shall be jointly and severally liable in *solidium* for all obligations of a member in terms of this Constitution;
- 2.1.14 “month” means calendar month;
- 2.1.15 “office” means the registered office of the Association;
- 2.1.16 “estate” means all works relating to the development in terms of the various agreements between the Developer, the relevant authorities and future and/or current members of the Association;
- 2.1.17 “special resolution” means a resolution passed at a special general meeting in accordance with the provisions of clause 29 below;
- 2.1.18 “these presents” means this Constitution and regulations and by-laws of the Association from time to time in force;
- 2.1.19 “trustee committee” means the board of trustees of the Association;
- 2.1.20 “trustee” means one of the trustee committee;
- 2.1.21 “vice-chairman” means the vice-chairman of the trustee committee;
- 2.1.22 “year” means 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 the words importing any one gender only shall include the other two genders.

### 3. MAIN BUSINESS

The main business of the Association is to carry on the promotion, advancement and protection of the registered owners for the time being of the erven.

### 4. MAIN OBJECTS

The main objects of the Association are:

- 4.1 the control over:
  - 4.1.1 all buildings, and/or structures erected or be erected on the erven; and
  - 4.1.2 the maintenance of all private open spaces, entrances, common services, refuse and store areas, common landscaping and amenities on the private open spaces, private streets and external verges;
- 4.2 commenting to local authority on whether building plans comply with relevant architectural guidelines;
- 4.3 maintenance and upkeep of the landscaping, once established;
- 4.4 the promotion, advancement and protection of the communal and group interests of the members generally;

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- 4.5 to take ownership of the private open spaces, private streets and internal engineering services arising out of the subdivision concerned, except for areas vesting in the local authority, and to maintain and repair the private open spaces and private streets, including but not limited to storm water and water supply piping, sewers and roads;
- 4.6 if necessary, to enter into services agreements with the local authority or any other authority or supplier of services;
- 4.7 to enforce certain conditions of subdivision approval or management plans listed in the conditions of subdivision and to provide for further development, where relevant, which must form part of the Association and the procedures for incorporating the development;
- 4.8 and in general, to act in accordance with the collective, mutual interest of its members.

## 5. FINANCIAL YEAR END

The financial year-end of the Association is the last day of the second month after the coming into existence of the Association or such other month end as determined by the members at a general meeting.

## 6. MEMBERSHIP OF THE ASSOCIATION

- 6.1 Membership of the Association shall be compulsory for every registered owner of an erf. The Developer shall pay no levies on any erven registered in his name.
- 6.2 Such membership shall commence simultaneously with the transfer of the erf into the name of the transferee, after which levies will become payable.
- 6.3 Membership of the Association shall be limited to the registered owners of the erven provided that:
  - 6.3.1 a person who is entitled to obtain a certificate of registered title to any such erf shall be deemed to the registered owner thereof;
  - 6.3.2 where any such owner is more than one person, all the registered owners of that erf shall be deemed jointly and severally to be one member of the Association and nominate one owner to represent them and vote at meetings of the Association.
- 6.4 When a member ceases to be the registered owner of an erf, he shall *ipso facto* cease to be a member of the Association.
- 6.5 No person may apply to the Registrar of Deeds for the registration of, and the Registrar of Deeds may not register, a land unit arising from the subdivision without the consent of the Association, which consent may not be unreasonably withheld.

A member shall not be entitled to:

- 6.5.1 sell or transfer an erf unless it is a condition of the sale and transfer that:
  - 6.5.1.1 the transferee becomes a member of the Association;
  - 6.5.1.2 the registration of transfer of the erf into the name of that transferee shall *ipso facto* constitute the transferee as a member of the Association;
  - 6.5.1.3 the member obtains the written consent from the Association which consent shall not be unreasonably withheld and given, provided the purchaser of such erf agrees in writing to abide by the rules of the Constitution of the Association and provided

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further that the member has paid all levies and any other amounts owing by him to the Association as at the date of transfer of the erf;

6.5.1.4 in the event where the Association has ceased to function and the member is unable to obtain the consent referred to in 6.5.1.3, the member must obtain consent from at least 60% (sixty percent) of the members of the Association, which consent shall be deemed to be consent of the Association;

6.5.1.5 the member obtains the written consent of the Developer which consent shall be given, provided that the Member has complied and abided by the management and conduct rules of the Constitution of the Association and provided that the Member has paid the fee of obtaining such consent in the amount of R1 900.00 (one thousand nine hundred Rand), which fee shall escalate annually in accordance with the rates of the Consumer Price Index (CPI).

6.5.2 without the prior written consent of the trustees and approval of Council:

6.5.2.1 erect any new buildings and/or structures of any nature whatsoever on his erf, including but not limited to, satellite dishes;

6.5.2.2 make any changes or alterations to existing structures and/or buildings on his erf, including changes to the external colour scheme.

6.5.3 Use, alter or change its erf or the building(s) and/or structures erected thereon if such use, alteration or changes are in contravention of the existing zoning conditions, the National Building Regulations and the National Health Regulations.

6.6 The approval of the trustees as contemplated in clause 6.5.2 shall only be given:

6.6.1 after detailed plans of the proposed work has been submitted to the trustees, or any person nominated by the trustees (who may be an architect, registered with the South African Council for the Architectural Profession (SACAP); and

6.6.2 the trustees or their nominee are satisfied that the proposed work is in accordance with the architectural guidelines, for the purposes of which the trustees or their nominee shall be the sole arbiter and their decision shall be final and binding on the member; and

6.6.3 the member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the trustees or their nominee, such costs to be based on the recommended tariff of the South African Council for the Architectural Profession (SACAP) for work of a similar nature; and

6.6.4 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 in trust by the trustees, subject to the provisions of clause 19 below; provided the a foregoing shall not be interpreted as detracting from the sole and final responsibility of the Council to approve or reject building plans.

6.7 The registered owner of an erf may not resign as a member of the Association and shall remain a member for as long as such owner is the registered owner of any erf in the development.

6.8 The trustee committee may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the trustee committee.

6.9 The rights and obligations of a member are not transferable and every member shall:

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6.9.1 to the best of his ability, further the objects and interests of the Association;

6.9.2 observe all rules and regulations made by the Association or the trustee committee, 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.

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

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

7.1 The Association shall recover expenditure incurred in connection with the Association, from its members. The trustee committee shall charge levies upon the members for the purpose of meeting all expenses which the Association has incurred, or to which the trustee committee reasonably anticipates the Association will be put by way of maintenance, repair, improvement and keeping in order and condition of the private open spaces and private streets including, specifically landscaping, all township services, sewage treatment, the security systems to be installed on the private open spaces and private streets and/or payment of all rates and other charges payable by the Association in respect of the private open spaces and private streets, and/or for the services rendered to it, and/or payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the private open spaces and private streets and the Association's affairs. In calculating levies the trustee committee shall take into account, income, if any, earned by the Association.

7.2 The trustee committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency from the preceding year, if any, and shall make a levy, as near as reasonably practical to such estimated amount. The trustee committee 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 and every succeeding month of such year.

7.3 The Developer reserves the right to install a fibre optic network in respect of the development, which will serve and provide the members with telecommunication and data services within the estate. In the event that the Developer does elect to install the aforesaid fibre optic network, an additional, compulsory monthly levy to be determined by the Developer shall be charged upon the members for which the members will receive telecommunication services and internet data. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year. Such compulsory levy will be subject to change at discretion of the Developer, provided that any change shall be reasonable and market related.

7.4 The trustee committee, may from time to time, make special levies upon the members in respect of all such expenses as are mentioned in this clause 7 (which are not included in any estimate made in terms of clause 7.2), and such levies may be made in the sum or by such instalments and at such time or times as the trustee committee deems fit.

7.5 Any amount due by a member by way of a levy, interest, fine or any other amount shall be a debt due by him/her to the Association. The obligation of a member to pay a levy shall cease upon him/her ceasing to be a member of the Association, without prejudice of the Association's right to recover arrear levies. No levies paid by a member shall under any circumstances be repayable by the Association upon him/her ceasing to be a member. A member's successor in title to an erf shall be liable as from the date upon which he/she becomes a member pursuant to the transfer of that erf, to pay the levy attributable to that erf.

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- 7.6 The total estimated levy as contemplated in clauses 7.1, 7.2 and 7.3 should be the same for each erf in the development.
- 7.7 Levies are payable to the Home Owners Association from the date of transfer of the erven into the name of the Purchaser.
- 7.8 Members of the Association shall be entitled to elect to pay levies by means of any of the following methods:
- 7.8.1 the issue of a stop-order against his banking account;
  - 7.8.2 an advance payment of all levies due for the full year; or
  - 7.8.3 electronic bank transfers.
- 7.9 Any special levies imposed by the trustees in terms of clause 7.4 may be apportioned between the members by the trustees in an apportionment, which the trustees may regard as reasonable, regard being had of the direct benefits, which the member(s) may derive from the proposed expenditure for which the special levies are imposed.
- 7.10 No member shall be entitled to any of the privileges of membership unless and until he/she has paid every subscription and other sum (if any), which shall be due and payable to the Association in respect of his/her membership thereof.
- 7.11 Interest will be charged at a rate of prime plus 5% (five percent) per annum on levies not paid on the first day of the month.
- 7.12 The Association shall recover expenditure incurred in connection with the Association, from its members. The trustee committee shall charge levies upon the members for the purpose of meeting all expenses which the Association has incurred, or to which the trustee committee reasonably anticipates the Association will be put by way of maintenance, repair, improvement and keeping in order and condition of the private open spaces and private streets including, landscaping, all township services, sewage treatment, the security systems to be installed on the private open spaces and private streets and/or payment of all rates and other charges payable by the Association in respect of the private open spaces and private streets, and/or for the services rendered to it, and/or payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the private open spaces and private streets and the Association's affairs, as applicable. In calculating levies the trustee committee shall take into account, income, if any, earned by the Association.

## **8. BUILDING, ARCHITECTURAL AND DESIGN REQUIREMENTS**

The Association shall be entitled to:

- 8.1 Frame, implement and enforce conditions on members in order to harmonise the architectural styles and design criteria of, and the materials and colours to be used in all buildings erected within the estate, including any refurbishments, alterations and additions thereto, subject to these not being in conflict with legislation;
- 8.2 Do such acts as are necessary to accomplish the purposes expressed or implied herein, which acts shall include, *inter alia*, the examination and endorsement of the relevant building plans as necessary for any construction, renovation and/or alteration within the estate for submission to Council;
- 8.3 Appoint such advisors as are necessary to scrutinise the relevant plans referred to herein;

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- 8.4 Impose a scrutiny fee on members for the services as mentioned herein;
- 8.5 The provisions of this clause shall not be applicable in relation to any of the works to be undertaken by the Developer prior to the completion of the estate.

## **9. BUILDING DEPOSIT**

- 9.1 Each member shall, when submitting to the trustees for approval the detailed plans for the construction of any building and/or improvements, or alterations or additions to existing improvements on its erf in terms of clause 6.5.2, pay to the trustees a building deposit in an amount to be determined from time to time by the trustees, which amount shall be retained by the trustees in trust until completion by the member and/or its contractors of such work.
- 9.2 Upon completion of all building and other activities on the erf, the trustees shall, if they are satisfied that no damage has been effected by the member or any of its contractors to the private open spaces and private streets and/or landscaped areas within the development, and that the work has been constructed in accordance with a duly approved plan, release the building deposit to the member.
- 9.3 In the event of any landscaped area and/or private open spaces and private streets having damage due to such work, the member shall within 15 (fifteen) days of having been requested to do so in writing by the trustees, rectify the damage to the satisfaction of the trustees, failing which the trustees shall be entitled to appoint an independent contractor to repair the damage and the amount paid to the trustees as a building deposit shall be utilised to defray the expenses of the independent contractor. If however, the damage caused is not sufficient to cover the cost of such repairs, the trustees shall be entitled to recover the shortfall from the member.
- 9.4 The Developer shall not be required to pay any deposit in terms of the provisions of clause 9.1, 9.2 and 9.3 hereof prior to the completion of the estate.

## **10. DEALING WITH THE PRIVATE OPEN SPACES AND PRIVATE STREETS**

Neither the whole, nor any portion of the private open spaces and private streets shall be:

- 10.1 sold, let, alienated, otherwise disposed of, subdivided or transferred or mortgaged; or
- 10.2 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 Council as required by the conditions of subdivision referred to in clause 1 above); without the specific prior written consent of the Council 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
- 10.3 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. RESPONSIBILITY FOR THE PRIVATE OPEN SPACES AND PRIVATE STREETS**

- 11.1 The Association shall take transfer of the properties being the private open spaces and private streets and shall be responsible for the costs of transfer and be responsible for municipal rates and taxes and charges on the property from the formation of the Association until date of registration of transfer. Such transfer to take place before or together with transfer of the last erf.
- 11.2 The maintenance and upkeep of the landscaping, internal road and civil and electrical services are the responsibility of the Association.



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- 11.3 The Association is aware and permits that an internal electrical network is installed in the common road reserve on the sidewalk and that the following conditions with regard to the services servitude will be inserted into the Title Deed of such properties namely:-
- 11.3.1 The local authority shall have the right to lay, relay, construct, erect, maintain, repair, renew, inspect, replace or remove such cable, lines, wires, miniature substations, distribution kiosk and allied equipment or appurtenances relating thereto in the road reserve/servitude area as it may in its sole discretion deem necessary for the purpose of the supply of electricity generally.
  - 11.3.2 The local authority, which terms shall include its employees, servants, contractors or its agents generally, shall at all times have the right of free and unobstructed access to and the right to be upon the property and any of its private open spaces and private streets at any time in the exercise of its aforementioned rights, and for those purposes shall be entitled to bring onto the property such vehicles, machinery or equipment generally as it may consider necessary, and to store excavated materials on the property on a temporary basis, should the local authority deem this to be necessary in exercising the rights conferred upon it in terms of this agreement.
  - 11.3.3 In the event of excavation of the existing, or installation of new services at any stage by the local authority in the road reserve/servitude area, the local authority will not be held liable for any damage or repair of any wall and/or ground surface to its original state.
  - 11.3.4 The local authority undertakes to take reasonable measures to protect the owner's buildings, fencing and all other improvements to the property, and as far as reasonably possible, to carry out its operations in such way to minimise any interference with the owner's normal use of the property, and wherever reasonably possible, to notify the owner in advance of any contemplated works or repairs to be undertaken.
  - 11.3.5 No buildings, walls or structures of any description shall be erected within or over the road reserve/servitude without the prior written consent of the local authority, which consent it shall be entitled to withhold in its sole discretion. No plants with big or invasive root systems shall be planted in the road reserve/servitude area or on the property in such a way as to make possible the invasion of the servitude area by the root systems, without the consent in writing of the local authority's electrical engineering or such other official as may from time to time be designated to fulfil his function.
  - 11.3.6 No excavation or filling shall be carried out within the road reserve/servitude area without the prior consent of the local authority, and the local authority shall be entitled to withhold such consent in its own discretion.
  - 11.3.7 No stakes, pegs, pins or similar object shall be driven into the road reserve/servitude area.
  - 11.3.8 No plant or material shall be stored in the road reserve/servitude area without the consent in writing of the local authority, nor shall the owner do or permit to be done anything on the property or in the servitude area which may destroy, damage or undermine the cables or equipment which the local authority may in terms hereof lay or install in the servitude area or bring onto the property. Should the local authority incur any costs as a result of the non-compliance by the owner with the provisions of this paragraph, the local authority shall be entitled to recover such costs from the owner.
  - 11.3.9 Nothing herein contained shall have the effect of derogating from any rights or from the protection to which the local authority or the owner may be entitled from time to time by virtue of statute or at common law relative to the electrical installation in the servitude area. Without derogating from the generality of the a foregoing, the provisions hereof shall not be

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construed so as to derogate from such rights or protection as may be afforded to the local authority as supplier of electricity (or "undertake") or of the owner in terms of the Occupational Health and Safety Act No 85 of 1993, the Electricity Act No 41 of 1987, the Municipal Ordinance No 20 of 1974 or any regulations, bylaws or other subsidiary legislation promulgated thereunder.

11.3.10 Any damage caused to the services within the road reserve/servitude area by the owner, his invitees, employees, servants or contractors, and any damage caused to the said services as a result of the failure of the owner to comply fully with these conditions, shall be made good by the local authority at the cost of the Association.

11.4 The maintenance and repairs to the private open spaces and private streets shall be the sole responsibility of the Association, including the maintenance and repairs, to the satisfaction of the local authority, of the boundary wall and fence on the perimeter of the Development.

## 12. LOCAL AUTHORITY

The Association agrees to and acknowledges the following power of duties of the Local Authority:-

- 12.1 If, for whatsoever reason, the Association becomes dysfunctional, the Local Authority may take over the duties and obligations of the Association.
- 12.2 In such an event as contemplated in 12.1, the Local Authority may take steps as it deems necessary and appoint a competent person to fulfil the functions of the Association. Any costs in this regard will be for the account of the members.
- 12.3 The Local Authority may at all times gain access to the Development in order to maintain the public roads and services.

## 13. CONTRACTORS, REGULATIONS AND ACCESS

13.1 The trustee committee may from time to time:

13.1.1 make regulations governing *inter alia*:

- 13.1.1.1 the members' right of use, occupation and enjoyment of the private open spaces and private streets;
- 13.1.1.2 the external appearance of, and the maintenance of the private open spaces and private streets and the building or other improvements erected thereon;
- 13.1.1.3 the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modifications and renovation to such buildings and/or structures or erven.

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

13.2 Each member undertakes to the Association that he/she shall comply with:

- 13.2.1 the provisions of this Constitution;
- 13.2.2 any regulations made in terms of clause 13.1.1;

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13.2.3 any agreements referred to in clause 13.1.2, insofar as those agreements may directly and indirectly impose obligations on him/her.

13.3 All officials, employees and contractors employed by the Association, local authority and/or any public service company shall, at all times, have reasonable access to the erven and private open spaces and private streets for purposes of inspecting and/or maintaining all services supplying and/or traversing any part thereof.

## 14. BREACH

14.1 Should any member:

14.1.1 fail to pay on due date any amount due by that member in terms of this Constitution or any regulation made there under and remain in default for more than 7 (seven) days after being notified in writing to do so by the trustees or managing agent; or

14.1.2 commit any breach of any of the provisions of this Constitution or regulation made there under and fail to remedy that breach within a period of 7 (seven) days after the receipt of written notice to that effect by the trustees or managing agent;

The trustees shall have the right:

14.1.3 to institute legal proceedings on behalf of the Association against such member 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

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

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

14.1.6 to impose a penalty fine of an amount deemed to be reasonable by the trustees for payment by the member. Any penalty amount payable by an owner and/or tenant to the Association in terms of the conduct rules shall be deemed an additional levy in respect of such member's unit.

14.2 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, administration, tracing fees and collection commission.

14.3 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 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, calculated from the due date for payment until the actual date of payment of such amount.

## 15. STATUTORY AND GENERAL

15.1 An owner –

15.1.1 shall not use his erf or permit to be used, in such a manner or for such purpose as shall be injurious to the reputation of the development;

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- 15.1.2 shall not contravene, or permit the contravention, of any law, by-law, ordinance, proclamation or statutory regulation, or the conditions of any licence, relating to or affecting the occupation of the erf, or the carrying on of business on the property, or so contravene or permit the contravention of the conditions of title applicable to his erf or any other erf;
- 15.1.3 shall not make alterations which are likely to impair the use and enjoyment of other erven or the private open spaces and private streets;
- 15.1.4 shall not do anything to his erf which is likely to prejudice the harmonious appearance of the estate;
- 15.1.5 shall not use any private open spaces and private streets or portion thereof for any purpose other than intended in terms of its zoning and by resolution of the Association;
- 15.1.6 shall not construct or place any structure or building improvement on his erf without the prior written consent of the trustees and the local authority;
- 15.1.7 shall be bound by the architectural guidelines for any erections or additions to any structure, including the covering and enclosure of patios.
- 15.2 No Member will be entitled to demolish, paint or change or in any way decorate or add to any part or portion of any fence that the Developer may construct on the perimeter of the development.
- 15.3 The Trustee Committee will be the only persons entitled to perform any of the actions referred to in 15.2 above in respect of such fence.
- 15.4 No alteration or addition or change to the colour scheme may be made to any building or structure on the unit without the consent of all the members of the Association.
- 15.5 The provisions of these rules and of the conduct rules, and the duties of the owner in relation to the use and occupation of sections and common property shall be binding on the owner of any erf and any lessees or other occupant of any such property and it shall be the duty of the owner to ensure compliance with the rules by his lessee or occupant, including employees, guests and any member of his family, his lessee or his occupant.
- 15.6 If any owner fails to repair or maintain his erf in a state of good repair and any such failure persists for a period of 30 (thirty) days after the giving of written notice by the trustees or the managing agent on their behalf, to repair or maintain, the Association shall be entitled to remedy the owner's failure and to recover the reasonable costs of doing so from such owner.
- 15.7 Any dispute between the Association and an owner or between owners shall be determined in terms of these rules.
- 15.8 If such disputes arises, the aggrieved party shall notify the other interested party or parties in writing and copies of such notification shall be served on the trustees. Should the dispute or complaint not be resolved within 14 (fourteen) days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration.
- 15.9 Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties shall appoint an arbitrator who shall be an independent, and suitably experienced and qualified person as may be agreed upon between the parties of the dispute.

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- 15.10 Arbitration shall be held informally or otherwise as the arbitrator may determine. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with. Where possible the arbitration shall be concluded within 21 (twenty one) days after the matter has been referred to for arbitration in terms of sub-rule (2) or security for costs has been furnished.
- 15.11 The arbitrator shall make his or her award within 7 (seven) days from the date of the completion of the arbitration and shall, in making his or her award, have regard to the principles laid down in terms of these rules. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as he or she may determine and as he or she in his or her discretion, may deem appropriate having regard to the outcome of the arbitration.
- 15.12 The decision of the arbitration shall be final and binding and may be made an order of the High Court upon application of any party to be affected by the arbitration.

## **16. TRUSTEE COMMITTEE**

- 16.1 There shall be a board of trustees for the Association, which shall include a minimum of 3 (three) trustees and a maximum of 5 (five) trustees, provided that:
- 16.1.1 during the development period, and at the first annual general meeting, the Developer shall be entitled to elect trustees and nominate a representative to act as chairman. Notwithstanding the aforesaid, the Developer shall be entitled to remain the sole trustee of the Association until completion of the development and registration of the last erf in the development to a purchaser;
- 16.1.2 after the development period, the trustees shall be elected by the members at the annual general meeting and the trustee committee shall determine the chairman.
- 16.2 Every trustee must be a member of the Association or an authorised representative of the member where the member is not a natural person.
- 16.3 The chairman of the board of trustees of the Association shall be the Developer concerned or his nominee, who shall hold office until the completion of the estate, whereupon he shall retire, but shall be eligible for re-election.

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

- 17.1 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, and shall be eligible for re-election to the trustee committee at such meeting.
- 17.2 A trustee shall be deemed to have vacated his office as such upon:
- 17.2.1 his estate being sequestrated (provisionally or finally), or surrendered;
- 17.2.2 him making any arrangement or compromise with his creditors;
- 17.2.3 his conviction for any offence involving dishonesty;
- 17.2.4 him becoming of unsound mind or being found lunatic;
- 17.2.5 his resignation from such office in writing delivered to the secretary;



17.2.6 his death;

17.2.7 his removal 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 trustee committee.

17.3 Upon any vacancy occurring in the trustee committee prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the trustee committee.

## **18. OFFICE OF TRUSTEES**

18.1 Subject to clause 37.1.1, the first trustees must be appointed at the first general meeting, 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 him/her ceasing to be a trustee for any reason.

18.2 The Developer shall remain the sole chairman of the trustees until completion of the estate and the provisions of clause 37 shall apply. Thereafter the trustees shall be entitled, within 60 (sixty) days of the holding of the annual general meeting, to meet and elect from amongst themselves, a new chairman and if necessary, a vice-chairman, who shall hold their respective offices until the annual general meeting held next after their said appointment, provided that the office of the chairman or vice-chairman shall *ipso facto* be vacated by the trustee holding such office upon him 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.

18.3 The chairman shall have a casting, as well as deliberative vote at trustees meetings, save for where there are only 2 (two) trustees.

18.4 Save as otherwise provided in these presents, the chairman shall preside at all meetings of the trustee committee, and all general meetings of members, and shall perform all duties incidental to the office of chairman and such other duties as may be prescribed by the trustee committee or members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall be entitled to vote at any such meetings.

18.5 The vice-chairman shall assume the powers and duties of the chairman in the absence of the chairman, or his inability or refusal to act as chairman, and shall perform such duties as may from time to time be assigned to him by the chairman or the trustee committee.

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 chairman, vice-chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration in respect of the performance of such duties.

## **19. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE**

19.1 Subject to the express provisions of these presents, 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 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, and as are not by these presents required to be exercised or done by the Association in general meeting, subject nevertheless to such regulations as may be prescribed by the

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Association in a general meeting from time to time, provided that no regulation made by the Association in a general meeting shall invalidate any prior act of the trustee committee which would have been valid if such regulation had not been made.

- 19.2 The trustee committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 19.3 The trustee committee shall have the right to co-opt onto the trustee committee any member or members chosen by it. A co-opted trustee shall enjoy all the rights and be subject to all the obligations of the trustees.
- 19.4 The trustee committee may, should it be decided, investigate any suspected or alleged breach by any member or trustee of these presents, in such reasonable manner as it shall decide from time to time.
- 19.5 The trustee committee may make regulations and rules, consistent with this Constitution, or any regulations or rules prescribed in the Association in a general meeting:
  - 19.5.1 as to disputes generally;
  - 19.5.2 for the furtherance and promotion of any of the objects of the Association;
  - 19.5.3 for the better management of the affairs of the Association;
  - 19.5.4 for the advancement of the interests of members;
  - 19.5.5 for the conduct of trustee committee meetings and general meetings; and
  - 19.5.6 to assist it in administering and governing its activities generally, and shall be entitled to cancel, vary or modify any of the same from time to time.
- 19.6 The trustees shall cause all moneys received by the Association to be deposited or credited to an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a general meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or in investment on behalf of the Association.
- 19.7 Any act performed by the trustees shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment of continuance in office of any trustee, be as valid as if such trustee had been duly appointed or had duly continued in office.
- 19.8 At the first meeting of the trustees or so soon thereafter as is possible and annually thereafter, the trustees shall take steps to insure any buildings and improvements to the private area, to the full replacement value thereof against –
  - 19.8.1 Fire, lighting and explosion;
  - 19.8.2 Riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organisation;
  - 19.8.3 Storm, tempest and flood;
  - 19.8.4 Earthquake;
  - 19.8.5 Aircraft and other aerial devices or articles dropped therefrom;

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- 19.8.6 Bursting or overflowing of water tank, apparatus or pipes;
  - 19.8.7 Impact with any of the said buildings or improvements by any road vehicle;
  - 19.8.8 Housebreaking or any attempted threat;
  - 19.8.9 Loss of occupation or loss of rent in respect of any of the above risks;
  - 19.8.10 Such other perils or dangers as the trustees or any owner may deem appropriate.
- 19.9 At the first meeting of the trustees, or as soon thereafter as is possible, the trustees shall take all reasonable steps to insure the owners and the trustees and to keep them insured against liability in respect of:-
- 19.9.1 death, bodily injury or illness; and
  - 19.9.2 loss of, or damage to property
- occurring in connection with the private area, for a sum of liability of not less than R100,00 (one hundred Rand), which sum may be increased from time to time as directed by the owners in a general meeting.

## 20. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 20.1 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 of these presents.
- 20.2 Meetings of the trustee committee shall be held at least once every quarter, provided that if all the trustees agreed upon, and have waived the above requirement in respect of a particular quarter, then no meeting of the trustee committee need be held for that quarter.
- 20.3 The quorum necessary for the holding of any meeting of trustee committee shall be 50% (fifty percent) of the total number of trustees.
- 20.4 The chairman shall preside as such at all meetings of the trustee committee, provided that, should at any meeting of the trustee committee the chairman not be present with 5 (five) minutes after the time appointed for the holding thereof, then the vice-chairman shall act as chairman at such meeting, provided further that should the vice-chairman also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, those present of the trustees shall vote to appoint a chairman for the meeting, who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.
- 20.5 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 will have closed and shall then be certified correct by the chairman of the meeting. All minutes of trustee committee meetings shall after certification as aforesaid be placed in a trustee committee minute book to be kept in accordance *mutates mutandis*, with the provisions of law relating to the keeping of minutes of meetings of directors of companies. The trustee committee minute book shall be open for inspection at all reasonable times by a trustee, the auditors, and the members.
- 20.6 All competent resolutions recorded in the minutes of any trustee committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the trustee committee shall be of any force or effect, or shall be binding upon the members or any of the trustees unless such resolution is competent within the powers of the trustee committee.



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- 20.7 Save as otherwise provided in these presents, the proceedings at any trustee meeting shall be conducted in such reasonable manner and form as the chairman of the meeting shall decide.
- 20.8 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.
- 20.9 No document, referred to in clause 6.6, signed on behalf of the Association shall be valid and binding unless it is signed by a trustee and the managing agent or 2 (two) trustees.

## **21. FIRST, ANNUAL AND GENERAL MEETINGS OF THE ASSOCIATION**

- 21.1 The Developer shall, within 60 (sixty) days of the transfer of 60% (sixty percent) or more of the erven arising from the subdivision or within 2 (two) years of the transfer of the first erven, whichever is the earlier, call a meeting of the members of the Association.
- 21.2 The Developer shall within 60 (sixty) days of the meeting referred to in 21.1 notify Council that the meeting has taken place and provide Council with a copy of the minutes of the meeting.
- 21.3 The Trustees of the Association shall arrange an annual general meeting of the Association which is to be held at least once per year.
- 21.4 All general meetings other than annual general meetings shall be called special general meetings.
- 21.5 The trustee committee, may, whenever they think fit, convene a special general meeting.

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

- 22.1 An annual general meeting and a meeting called for the passing of a special resolution, shall be called by 14 (fourteen) days' notice in writing or by email at the least, and a special general meeting, other than one called for the passing of a special resolution, shall be called by 21 (twenty one) days' notice in writing or by email 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, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the trustee committee to such persons as are under 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 the 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 there at; 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 75% (seventy five percent) of the total voting rights of all members.
- 22.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.



### **23 VENUE OF GENERAL MEETINGS**

General meetings of the Association shall take place at such place/s as shall be determined by the trustee committee from time to time.

### **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 such of the members entitled to vote, as together for the time being, represent 20% (twenty percent) of the total votes of all members of the Association entitled to vote, for the time being save that not less than 3 (three) members must be personally present.

24.2 If within half an hour from the time appointed for the holding of a general meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time and if a quorum is not present within half an hour of the time appointed for the meeting, the owners present in person or by proxy and who are entitled to vote shall form a quorum.

### **25 AGENDA AT GENERAL MEETINGS**

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

25.1 the consideration of the chairman's report to the trustee committee;

25.2 the election of the trustee committee;

25.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;

25.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;

25.5 the consideration of the report of the auditors;

25.6 the consideration of the total levy (as referred to in clause 7) for the calendar year during which such annual general meeting takes place;

25.7 the consideration of insurance in terms of clause 19.8 and 19.9; and

25.8 the consideration and fixing of the remuneration of the auditors for the financial year of the Association preceding the annual general meeting.

### **26 PROCEDURE AT GENERAL MEETINGS**

26.1 The chairman shall preside as such at all general meetings, provided that should he/she not be present within 5 (five) minutes after the time appointed for the holding thereof, then the vice-chairman shall act as chairman at such meeting, provided further that should the vice-chairman also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, then the members present at such meeting entitled to vote, shall vote to appoint a chairman for the meeting, who also thereupon exercise all the powers and duties of chairman in relation to such meeting. The managing agent may also chair any general meeting.

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- 26.2 The chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.
- 26.3 Whenever a meeting is adjourned for 10 (ten) 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.
- 26.4 Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

## **27. PROXIES FOR GENERAL MEETINGS**

- 27.1 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 and signed by the member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a member is more than one person, any one of those persons may sign the instrument appointing a proxy on such member's behalf, where a member is a company, the same may be signed by the chairman of the board of directors of the company or by its secretary, and where an association of persons, by the secretary thereof.
- 27.2 the instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be handed to the chairman or be deposited or e-mailed to the trustees at the domicilium of the Association at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from its execution.
- 27.3 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 trustee committee at least one hour before the time fixed for the holding of the meeting.
- 27.4 Should a member be absent from the recorded domicile address which the trustees may have for such member for a continuous period in excess of 3 (three) weeks, a proxy must be appointed by such member prior to his absence in accordance with clauses 27.1 and 27.2, failing which a member shall not be entitled to vote, at any special general meeting, called during such member's absence.

## **28. VOTING AT GENERAL MEETINGS**

- 28.1 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 his name and provided if an erf is registered in more than one person's name, then they shall jointly have one vote.
- 28.2 Save as expressly provided for in these present's no person other than a member duly registered, and who shall have paid every levy and other amounts (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.
- 28.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands and declaration by the chairman shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded, unless either prior to or on the declaration by the chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.

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- 28.4 Notwithstanding the provisions of clause 28.3 aforesaid, voting on the election of a chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided by the trustees.
- 28.5 When a poll is demanded, regard shall be had, in computing the majority on the poll, to the number of votes cast for and against the resolution.
- 28.6 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 in abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.

## 29. SPECIAL RESOLUTION

- 29.1 A resolution by the Association shall be a special resolution if at a general meeting of which not less than 14 (fourteen) 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 three-fourths of the total votes of all the members entitled to vote at the meeting, are present in person or by proxy, and the resolution has been passed on a show of hands, by not less than three-fourths of the number of the members entitled to vote 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.
- 29.2 If less than three-fourths of the total votes of all the members entitled to attend the meeting and vote at the meeting, 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 (fourteen) days and not later than 30 (thirty) days after the date of the meeting and the provisions of clause 26.3 shall apply in respect of such adjournment.
- 29.3 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 member shall be deemed to be a special resolution even if less than one-fourth of the total votes are represented at such adjourned meeting.

## 30. OTHER PROFESSIONAL OFFICERS

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

## 31. ACCOUNTS

- 31.1 The Association in general meetings or the trustee committee, may from time to time make reasonable condition 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.
- 31.2 At each annual general meeting, the trustee committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a

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proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the trustee committee and the auditors if appointed, and there shall be attached to the notice sent to members convening each annual general meeting, as set forth in clause 22.1 above, copies of such accounts, balance sheet and reports and any other documents required by law to accompany same.

31.3 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.

## **32. SERVICE OF NOTICES**

32.1 A notice shall be in writing or by email and shall be given or served by the Association upon any member, either personally or by post, properly addressed to the member at the address of the erf owned by him. Any notice of any meeting may also only be notified by email. It is not necessary to notify by post or personally. It is each owner's own responsibility to notify the managing agents, who has been appointed by the trustees to do the administration, of their correct email address. It is also each owner's responsibility to notify the managing agents of any changes to their email addresses.

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.

32.3 Any notice by post shall be deemed to have been served at the time when the letter containing 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 addressed and posted.

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 chairman or vice-chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court.

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, but 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 chairman or vice-chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by 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 of any of the other trustee members, whether in their capacities as trustee members or as chairman or vice-chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency of 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/her office/s or in relation thereto, unless same shall happen through lack of bona fides or breach of duty or breach of trust.

#### **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 matter 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 Arbitration shall be held in Cape Town informally and otherwise upon the provisions of the Arbitration Act No. 42 of 1965 (as amended or replaced from time to time) it being intended that, if possible, it shall be held and concluded within 21 (twenty one) business days after it has been demanded.
- 34.3 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 34.3.1 primarily an accounting matter – an independent accountant;
  - 34.3.2 primarily a legal matter – a practicing counsel or attorney of not less than 10 (ten) years' standing;
  - 34.3.3 any other matter – an independent and suitably qualified person appointed by the auditors; as may be agreed upon between the parties to the dispute.
- 34.4 If agreement cannot be reached on whether the question in dispute falls under clauses 34.3.1, 34.3.2 or upon a particular arbitrator in terms of clause 34.3.3, within 3 (three) business days after the arbitration has been demanded, then:
- 34.4.1 the President for the time being of the Law Society of the Cape of Good Hope or its successor/s shall determine whether the question in dispute falls under clauses 34.3.1, 34.3.2 or 34.3.3; or
  - 34.4.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of clause 34.3 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 34.2 above.
- 34.5 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.
- 34.6 The decision of the arbitrator shall be final and binding and may be made an order of the High Court of South Africa, Cape Town or its successor/s upon the application of any party to the arbitration.

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34.7 Notwithstanding anything to the contrary contained in clauses 34.1 to 34.7 inclusive, the trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

## 35. AMENDMENTS OF THE CONSTITUTION

35.1 This Constitution, or any part thereof, shall not be repealed or amended save by a special resolution adopted at an annual general meeting or a general meeting of the members and subject further to the prior written consent of the Council being obtained for such amendment.

35.2 The Constitution of the Association and any amendment thereof must be lodged with the Council and the latest copy duly lodged with the Council, and which the Council has certified in terms of subsection (2) or (4), is presumed to contain the operative provisions of the Constitution.

35.3 The Council is exempt from liability for any damage which may be caused by its certification of a Constitution of an home owners' association or an amendment thereof or by the loss of a Constitution lodged with the Council.

## 36. EFFECTIVE DATE

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

## 37. STATUS OF DEVELOPER

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

37.1 the Developer shall be entitled:

37.1.1 to remain the sole trustee/chairman of the Association until completion of the development, but reserves the right to also nominate and appoint a pro rata proportion of the trustees to the board of trustees, such proportion being the same proportion as exists between the total number of all the erven and the total number of all the erven of which the Developer is the registered owner at the relevant time, subject to the provision that until completion of the development has been achieved, the Developer shall always be entitled to appoint at least one trustee to the board of trustees;

37.1.2 At a meeting of the members, the Developer shall hold a number of votes equal to the number of properties owned at the time of voting plus an amount of votes equal to 50% (fifty percent) of the erven sold, whether such vote is by show of hands or poll. At a meeting of the trustees, the Developer (as the Chairman of the trustees) will have an amount of votes equal to the total number of trustees appointed, whether such vote is by poll or show of hands;

37.1.3 To require that the trustee committee enforces the rights granted to it in terms of these presents against any member who, in the opinion of the Developer, is not complying with his obligations as a member, and in particular, within restricting the finality of the a foregoing, has failed to maintain all building and other improvements on its erf by giving such member written notice in which his failure to comply with the particular provisions of these presents is detailed and calling upon him to remedy such failure within a prescribed period of not more than 30 (thirty) 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 improvement on its erf;

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Private Estate

- 37.1.4 to erect such signage, flagpoles, messages and/or other forms of notices or advertising on the development including the private open spaces and private streets, the private road area and/or the exterior walls (if any) of the development, subject to the regulations and by-laws of Council appertaining to signage from time to time;
- 37.1.5 to scrutinise, approve and submit all building plans to the relevant authority to obtain the relevant approvals until the completion of the estate;
- 37.1.6 to amend this Constitution during the development period, without the need to be approved by the Association in a general meeting, so as to comply with the requirements from time to time of the Local Authority in relation to the conditions of establishment for the development or any subdivisions thereof, or any other land which may be added to the development by the Developer, in its sole discretion. Any such amendments will only be communicated by the Developer to the appointed managing agent and the Developer will not be obliged to communicate these changes to the members;
- 37.1.7 to cede and assign all or any of its rights or obligations in terms of the Constitution, in writing, to any transferee of its choice and such transferee shall be entitled to take transfer of all such rights and obligations.
- 37.2 Neither the trustee committee nor any member of the Association shall prevent or hinder in any way the Developer from:
- 37.2.1 gaining access to and egress from the development;
- 37.2.2 continuing any building operations at the development; and/or
- 37.2.3 marketing and selling any of it unsold erven, including the advertisement of the sale of such erven on the private open spaces and private streets and/or at the development.
- 37.3 The Developer shall not be required to obtain the consents referred to in clause 6.5.2 prior to completion of the estate.
- 37.4 Upon the completion of the development the rights of the Developer in terms of the provisions of this clause 37 shall immediately terminate *ipso facto* and no longer be of any force and effect.
- 37.5 In the event of a dispute as to whether or not the development has been completed as envisaged herein, the decision of the architect appointed by the Developer for the estate shall be final and binding.
- 37.6 the Developer shall pay no levies on any erven registered in his name. The Developer is willing to advance funds initially when the levies of the first erven registered is insufficient to cover the monthly expenses of the Association. The Association shall then be obliged, once it has sufficient reserve funds in the account of the Association (but by no later than 12 months after the establishment of the Association), to refund the Developer for all advance payments in this regard. All amounts in terms of this clause 37.6 shall bear interest at the prime interest rate.
- 37.7 No provision of this Constitution shall be added to, amended, substituted or repealed without the prior written consent of the Developer for the duration of the development period.

## 38. STATUS OF THE ASSOCIATION

The Association shall be an association:

- 38.1 within legal personality, capable of suing and being sued in its own name as has perpetual succession;





- 38.2 none of whose members in their personal capacity shall have any right, title or in the funds or assets of the Association, which shall vest in and be controlled by the trustee committee in terms hereof; and
- 38.3 not for profit, but for benefit of the owners and occupants of properties in the development.

### **39. MANAGING AGENT**

- 39.1 The Developer shall be entitled (but not obliged, and at their own discretion) to manage or to appoint a single managing agent for the development, during the development period, which appointment shall be valid and binding on the Association during the development period and for a period of 5 (five) years after the termination of the development period.
- 39.2 The Developer has the irrevocable power and authority to appoint the managing agent of the development during the aforesaid period and to determine the terms and conditions of such appointment.
- 39.3 Subject to the provisions of this Constitution and the terms of its appointment, the managing agent shall have full power to manage and control the business and affairs of the Association or such portion thereof as may be determined by the Association in a general meeting, and may exercise all such powers of the Association and do all acts on behalf of the Association itself.
- 39.4 During the development period, the Developer will determine the fees or remuneration to be paid by the Association to the managing agent and the other terms and conditions of its appointment, which fees will be agreed upon by the parties to the relevant agreement, provided that fees thus payable must be allowed for in the budget of the Association.
- 39.5 After the development period and upon the termination of an appointment of the managing agent by the Developer, or in the event that an existing managing agent's appointment is terminated, a successor managing agent shall from time to time be appointed by the Association in a general meeting and the members shall determine the fees or remuneration to be paid by the Association to such managing agent and all the other terms and conditions of their appointment, it being contemplated that at all times the affairs of the Association will be entrusted in whole or part to a professional managing agent with appropriate executive powers so as to conform to the requirements of good corporate governance.

### **40. RIGHTS OF REGISTERED MORTGAGEES**

- 40.1 No application may be made to the High Court for the appointment of an Administrator of the Association, unless notification is given and notice by the respective mortgagees.
- 40.2 The trustee members shall cause copies of the schedules, estimates, audit statements and reports to be delivered to the respective mortgagees and at least 14 (fourteen) days before the date of the annual general meeting at which they are to be considered.
- 40.3 All mortgagees must be notified within 30 (thirty) days from the date of any change to the managing agent, together with a copy of the agreement between the Association and the managing agent.
- 40.4 The Association hereby irrevocably waives, in favour of any mortgagee, any rights or restrictive conditions registered in the title deed of any erf in its favour, in the instance of foreclosure procedures being instituted by the relevant mortgagee against any such member.



## **ANNEXURE A – ARCHITECTURAL GUIDELINES**