



## CONSTITUTION

### AAN DE WIJNLANDEN HOME OWNERS ASSOCIATION

a body corporate established by agreement between all its members and  
in terms of Section 29 of the Land Use  
Planning Ordinance, No 15 of 1985

*G. Haredean*  
19/6/18  
G. Haredean

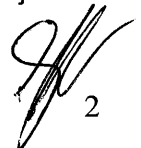
1. **ESTABLISHMENT OF THE ASSOCIATION**

**AAN DE WIJNLANDEN** Home Owners Association is constituted as a body corporate in terms of Section 29 of the Land Use Planning Ordinance, No 15 of 1985 and will come into existence with the registration in the Deeds Office of the first of the erven in the development.

2. **INTERPRETATION**

2.1 In this constitution, unless the context otherwise indicates:

- 2.1.1 **“Association”** means the **AAN DE WIJNLANDEN HOME OWNERS ASSOCIATION** to be established in respect of the development on Erf 6851 Eerste River and future adjacent properties being the remaining extent of The Farms 643 , 644 and Portion 1 of the Farm 644, Division Stellenbosch and subject to the transfer thereof to the developer , will be incorporated in the development;
- 2.1.2 **“ARC”** means means the Architectural Review Committee;
- 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 **“common areas”** mean the private roads, private open space, conservation areas, security access, entrance gate/s, perimeter fencing/walling, common landscaping, dams and amenities within the development and which specifically excludes Common Property
- 2.1.7 **“Common Property”** means, in relation to a Sectional Title Development, the land included in the scheme and such parts of the building or buildings that are not included in a Section
- 2.1.8 **“completion of the scheme”** means the date of handover of the last building site or registration of an erf or unit in the development to the relevant title holder hereof;
- 2.1.9 **“Council”** means the City of Cape Town or its successor/s;
- 2.1.10 **“Developer”** means Purple Plum Properties 82 (Proprietary) Limited (Registration No 2003/007014/07) or its successor/s in title or assigns;
- 2.1.11 **“development”** means the approval and conditions imposed from the relevant authorities for a phased residential estate on Erf 6851 and the remaining extent the Farms 643, 644 and Potion 1 of the Farm 644, Stellenbosch Division and subject to



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the transfer of Frams 643, 644 and Portion 1 of The Farm 644, Stellenbosch Division to the developer, will form part of and consisting of single and/or group residential erven and/or sectional title development and the construction of dwellings, amenities, roads, infrastructure and the installation of services, thereon ;

- 2.1.12 “development period” means the period from the establishment of the Association until the development has been completed and all the erven and units within the development have been sold and transferred by the Developer and any building operations by or on behalf of the developer, completed;
- 2.1.13 “erven” mean the registered erven and sections in the development excluding the common area and reference to an “erf” shall have the corresponding meaning;
- 2.1.14 “estate rules” mean the rules referred to in clause 11.1;
- 2.1.15 **“Aan de Wijnlanden Home Owners Association”** means the body corporate established in terms of Section 29 of the Land Use Planning Ordinance No 15 of 1985 of which the registered owners of the erven and Sectional Title development are the members of the Association ;
- 2.1.16 “member” means a member of the Association as defined in clause 5 below;
- 2.1.17 “month” means calendar month;
- 2.1.18 “office” means the registered office of the Association;
- 2.1.19 “Ordinance” means the Land Use Planning Ordinance No 15 of 1985 and includes any statutory amendment or re-enactment thereof;
- 2.1.20 “owner” means any registered owner an erf or Section within the development;
- 2.1.21 “the prime rate” means the prime bank overdraft rate of interest charged by Absa Bank Limited or its successor/s from time to time and more commonly known as its prime rate (in the case of a dispute, the rate may be certified by any manager or assistant manager of any branch of the said bank whose certificate shall be final and binding on the members);
- 2.1.22 “special resolution” means a resolution passed at a special general meeting in accordance with the provisions of clause 27 below;
- 2.1.23 ‘Sectional Title Development’ means the development of an Erf in terms of and subject the provisions of the Sectional Titles Act;
- 2.1.24 “Section” means any Section as defined in the Sectional Titles Act;



- 2.1.25 “Sectional Titles Act” means the Sectional Titles Act, Act Number 95/1986, as amended;
- 2.1.26 “this constitution” means this constitution and regulations and by-laws of the Association from time to time in force;
- 2.1.27 “trustee committee” means the board of trustees of the Association;
- 2.1.28 “trustee” means one of the trustee committee;
- 2.1.29 “vice-chairman” means the vice-chairman of the trustee committee;
- 2.1.30 “year” means a period of 12 calendar months calculated from 28 February of each and every calendar year.

- 2.2 Words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include the feminine and neuter genders, and *vice versa*, and words importing persons shall include partnerships, trusts and bodies corporate, and *vice versa*.
- 2.3 The head notes to the paragraphs to this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

### 3. PURPOSE DESCRIBING THE MAIN BUSINESS

The main business of the Association is to carry on the promotion, advancement and protection of the members and maintenance of the common areas, excluding common property of a Sectional Title Development.

#### STATUS OF THE ASSOCIATION

- 4.1 The Association shall be an Association:
  - 4.1.1 with legal personality, capable of suing and being sued in its own name;
  - 4.1.2 none of whose members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in and be controlled by the Trustee Committee in terms hereof;
  - 4.1.3 not for profit, but for benefit of the members;
  - 4.1.4 with the right to acquire, hold, lease and alienate property, both movable and immovable
- 4.2 The Association is not permitted to distribute its funds to any person other than to a similar Association of persons.
- 4.3 On dissolution the remaining assets must be distributed to a similar Association of persons, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act.
- 4.4 Funds of the Association available for investment may only be invested with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990) and in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).

### 5 OBJECTS OF THE ASSOCIATION

The objects of the Association shall be the following:

- 5.1 the control and compliance over all aspects of all buildings with regard to alterations, colour schemes or improvements and landscaping within the development;
- 5.2 the maintenance, control and management of the common areas, excluding the common property of a Sectional Title Development;
- 5.3 the control, administration and management of private open space, private streets and other services and amenities arising from the subdivision and buildings on land under the association's control for the benefit of all members;
- 5.4 the association's ownership of private open space, private streets and internal engineering services arising out of the subdivision concerned;
- 5.5 the obligation to enforce certain conditions of subdivision approval or management plans listed in the conditions;
- 5.6 the promotion, advancement and protection of the communal and group interests of the members generally in regard to the development ;

5.7 to enter into service agreements and other necessary agreements with the local authority or any other authority or supplier of services in connection with the development;

5.8 to generally do all such things as may be necessary or requisite to give effect to and implement the objects of the Association and to do all such things ancillary or incidental to the objects;

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

## **6 MEMBERSHIP OF THE ASSOCIATION**

- 6.1 Membership of the Association shall be compulsory for every registered owner of an erf and section, which owners are jointly liable for the expenditure incurred in connection with the association.
- 6.2 Such membership shall commence simultaneously with the registration of transfer of the erf or section into the name of the transferee and shall be obliged to comply with the provisions of this constitution.
- 6.3 Membership of the Association shall be limited to the registered owners of erven and sections provided that:
- 6.3.1 a person who is entitled to obtain a certificate of registered title to any such erf shall be deemed to be the registered owner thereof;
- 6.3.2 where any such owner is more than one person, all the registered owners of that erf shall be deemed jointly and severally to be one member of the Association and nominate one owner to represent them and vote at meetings of the Association.
- 6.4 When a member ceases to be the registered owner , such person shall *ipso facto* cease to be a member of the Association.
- 6.5 A member shall not be entitled to:
- 6.5.1 sell or transfer unless it is a condition of the sale and transfer that:
- 6.5.1.1 the transferee agrees in writing to become a member of the Association and to be bound by the provisions of this constitution;
- 6.5.1.2 the registration of transfer of that erf/section into the name of the transferee shall *ipso facto* constitute the transferee as a member of the Association;
- 6.5.1.3 the member first obtains the written consent of the Association which consent shall be given provided the transferee of such erf/section agrees in writing to become a member of the Association and to be bound by the constitution of the Association and provided further that the member has paid all levies and any other amounts owing by such member in terms of this constitution as at the date of registration of transfer of the erf/section to the transferee.

6.5.2 Without the written approval of the trustees and subject to any rule and regulation adopted for the development:

6.5.2.1 erect any new buildings and/or structures of any nature whatsoever on his erf;

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

6.6 The approval of the trustees as contemplated in clause 5.5.2 shall only be given:

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

6.6.2 the member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the trustees or their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature;

6.6.3 the member has signed a building agreement and paid to the trustees a deposit in such amount as the trustees may from time to time determine as a building deposit which amount shall be held in trust by the trustees subject to the provisions of clauses 7 and 28 below;

6.6.4 after approval by the members at a general meeting and compliance with any rule and regulations adopted for the development.

Provided that the provisions of this clause shall not be interpreted as detracting from the sole and final responsibility of Council to approve or reject building plans .

6.7 The registered owner shall not be entitled to resign as a member of the Association and the registered owner shall remain a member for as long as such owner is the registered owner in the Development.

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

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

6.9.1 to the best of the ability of such member further the objects and interests of the Association;

6.9.2 observe all by-laws and regulations made by the Association or the trustee committee.



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

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

- 7.1 The trustee committee shall from time to time make levies upon the members for the purpose of meeting all the expenses which the Association has incurred, or to which the trustee committee reasonably anticipates the Association will be put by way of the following:

- 7.1.1 the maintenance, management, repair, improvement and keeping in order of the common areas, including specifically landscaping and conservation areas, all services and sewage treatment and security within the development;
- 7.1.2 the promotion, advancement and protection of the communal and group interests of the members generally in regard to the development, including security and security systems, personnel and staff;
- 7.1.3 payment of all rates and other charges payable by the Association in respect of the common areas;
- 7.1.4 all services rendered to the Association and/or for payment of all expenses necessarily or reasonably incurred in connection with the management and objects of the Association and its affairs;

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

- 7.2 The trustee committee shall prepare a budget of the estimated amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency (if any) as shall result from the preceding year, and shall impose a levy upon the members' as nearly as is reasonably practical to such estimated amount.
- 7.3 The trustee committee may include in such budget levies in an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.
- 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 shall think fit.
- 7.5 Any amount due by a member by way of a levy shall be a debt due by such member to the Association and shall attract interest at prime overdraft rate of Absa Bank from time to time.





- 7.6 The obligation of a member to pay levies to the Association shall cease upon such member ceasing to be a member of the Association, without prejudice to the right of the Association to recover arrear levies.
- 7.7 No levies paid by a member to the Council and/or the Association shall under any circumstances be repayable by the Council and/or the Association upon such member ceasing to be a member.
- 7.8 A member's successor in title to the erven shall be liable as from the date upon which such successor becomes a member pursuant to the transfer of such erf, to pay the levy attributable to the erf.
- 7.9 Members of the Association shall be entitled to elect to pay levies by means of any of the following methods:
- 7.9.1 the issue of a debit order against his banking account;
  - 7.9.2 and advance payment of all levies due for the full year; or
  - 7.9.3 the issue of twelve post dated cheques in respect of levies due for each month of the ensuing year.
- 7.10 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.
- 7.11 No member shall be entitled to any of the privileges of membership unless and until such member shall have paid every levy or other amount (if any) which shall be due and payable to the Association in respect of the membership of such member.
- 7.12 During the development period the Developer shall not be obliged for any levies or to pay the shortfall between the income derived from Levies and Special Levies and the actual expenditure of the Association. During and after the Development Period, the Developer, shall have no liability or obligation to pay or contribute to any Levies or Special Levies.
- 7.13 An Owner of a Land Unit that has been transferred by the Developer to such Owner, will be liable for payment of 50% (Fifty) of the Levies and or Special Levies as from date of registration of transfer of such Land Unit in favour of the Owner until date of occupation of the Dwelling or Section, by an Owner or any Occupant, in which instance and from which date such Owner will become liable for the payment of 100% (One Hundred) of the Levies and/or Special Levies payable by the Owner. The Developer, will however, not be liable for the payment of any Levies or Special Levies in this regard. The Developer will however be liable for the payment of Levies and Special Levies in the instance of occupation of any Dwelling or Section registered in the name of the Developer, from which date the Developer will be liable for the payment of 100% (One Hundred) of the Levies and/or Special Levies, as the case may be, due and payable to the Association in respect of such a Dwelling or Section.
- 7.14 The Levy for each and every Owner shall be the same amount and shall not be determined in accordance with a quota.

## 8 BUILDINGS AND ALTERATIONS AND DESIGN MANUAL

8.1 The Association shall be entitled to:

- 8.1.1 implement and enforce conditions on members in order to harmonise the architectural styles and design criteria of , comply with the design manual and the materials and colours to be used with regard to any refurbishment, alterations or additions.
- 8.1.2 Do such acts as are necessary to accomplish the purposes expressed or implied herein which acts shall include, inter alia, the examination and approval of the relevant building plans as necessary for any construction, renovation and / or alterations within the development and request the members to enters into a building agreement.
- 8.1.3 Appoint such advisors as are necessary to scrutinize the relevant plans referred to herein.
- 8.1.4 Impose a scrutiny fee on members for the services as mentioned herein.
- 8.1.5 The provisions of this clause shall not be applicable in relation to any of the works to be undertaken by the Developer prior to the completion of the Development.

## 9 DEPOSIT FOR DAMAGE

- 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 his erf in terms of clause 5.5.2, pay to the trustees a deposit in an amount to be determined from time to time by the trustees which amount shall be retained by the trustees in trust until completion by the member and/or its contractors of such work.
- 9.2 Upon completion of all such building and other activities, the trustees shall if they are satisfied that no damage has been effected by the member or any of its contractors to the common areas and/or landscaped areas and/or conservation areas within the development and that the work has been constructed in accordance with duly approved plans, release the building deposit to the member, excluding any interest thereon which will accrue to the Association.
- 9.3 In the event of any landscaped area and/or the common areas and/or conservation areas having damage due to such work, the member shall within 10 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 required in terms of the provisions of clauses 7.1, 7.2 and 7.3 hereof prior to the completion of the development.

## 10 DEALING WITH COMMON AREAS

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

- 10.1 sold, let, alienated or otherwise disposed of or subdivided or transferred; or
- 10.2 mortgaged or encumbered in any manner whatsoever; or
- 10.3 subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude, save those enjoyed by the members in terms hereof; or
- 10.4 built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities.

without the specific prior written consent of the Council (which shall not be unreasonably withheld) 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).

## 11 RESPONSIBILITY FOR THE COMMON AREA

- 11.1 The Association shall take title to those areas of the common area which are registerable;
- 11.2 The Association acknowledges that the Council shall not be responsible for, and the Association shall be solely responsible for the care, repair, maintenance, cleaning, upkeep, improvement and property control of the common area, all services therein and any structure or thing erected on or contained therein, including the private road and parking thereon.
- 11.3 The Association shall be responsible for the constant maintenance of the Stormwater infrastructure as per the attached Maintenance Schedule (Annexure A)

## 12 CONTRACTS AND REGULATIONS

- 12.1 The trustee committee may from time to time:
  - 12.1.1 make regulations and rules, amend and or cancel them, governing *inter alia*:
    - 12.1.1.1 the members' and their guests and or tenants, rights of use and enjoyment of the common areas and behaviour and usage by members and their guests and or tenants of the erven;
    - 12.1.1.2 the external appearance of and the maintenance of the buildings on the erven and of the common areas

and the buildings or other improvements erected thereon;

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

12.1.2 enter into agreement(s) with the local authorities governing the matters set out in clause 12.1.1 and any other incidental matters;

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

12.2 Each member undertakes to the Association to comply with:

12.2.1 the provisions of this constitution;

12.2.2 any regulations and rule made in terms of clause 12.1.1 above;

12.2.3 any agreements referred to in clause 12.1.2 and 11.1.3 above insofar as those agreements may directly or indirectly impose obligations on such member.

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

### **13 BREACH OF THIS CONSTITUTION**

13.1 Should any member:

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

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

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

13.1.3 to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of his or her obligations in terms of this constitution or

any regulation made in terms of this constitution, as the case may be; and/or

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

13.1.5 in the case of clause 13.1.2 above, to remedy such breach and immediately recover the total cost incurred by the trustees or the Association in so doing from such member.

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

13.3 Without prejudice to all or any of the rights the trustees or the Association granted under this constitution, should any member fail to pay any amount due by that member on due date, then such member shall pay interest thereon at the prime rate of interest charged by the Association's bankers calculated from the due date for payment until the actual date of payment of such amount, both dates inclusive.

#### **14 TRUSTEE COMMITTEE**

14.1 There shall be a board of trustees of the Association which shall consist of one trustee per phase as more fully set out in the SDP of the development .

14.2 Every trustee must be a member of the Association or an authorised representative of the member where the member is not a natural person;

14.3 During the development period, the Developer shall be entitled to appoint the Chairman and 1 trustee and to appoint 1 alternate to each such trustee and to remove, replace and fill any vacancy in any such appointment as trustee or alternate trustee. During the Development Period, all the Trustees shall be appointed or removed and replaced as the case may be, by the Developer, subject to the condition that the Developer will not be obliged to appoint any Trustees during the Development Period, provided that the Developer or its nominated representatives, will act as Trustees during the Development Period.

14.4 At any meeting of the trustee committee, the trustees present at the meeting shall each have 1 vote, save that during the development period, the trustee appointed by the Developer shall have the same number of votes and all the other trustees plus 1 additional vote.

14.5 Until the first trustees of the Association are appointed, the Developer shall be entitled to carry out all the functions and duties of the trustees in terms of this constitution.

14.6 The Developer, during the Development Period, and thereafter, the Board may appoint a Professional Trustee to serve as a Trustee on the Board for a predetermined period of time, as and when the Board is of the opinion that the need for such a Professional Trustee has occurred. The Professional Trustee must be familiar with the operation and management of the Estate. The Professional Trustee may attend Board meetings but will only serve in an advisory capacity and will no voting rights whatsoever. The Developer, or the Board, as the case may be, must agree on the fee structure of the Professional Trustee prior to his appointment and is subject to the allowance for professional fees in the budget of the Association and the availability of such funds.

## **15 REMOVAL AND ROTATION OF TRUSTEE MEMBERS**

15.1 Save as set forth in clause 15 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.

15.2 A trustee shall be deemed to have vacated his or her office as such upon:

15.2.1 his or her estate being sequestered, whether provisionally or finally, or his surrendering his estate;

15.2.2 his or her making any arrangement or compromise with his creditors;

15.2.3 his or her conviction for any offence involving dishonesty;

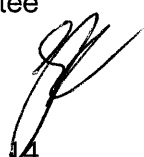
15.2.4 his or her becoming of unsound mind or being found lunatic;

15.2.5 his or her resigning from such office in writing delivered to the secretary;

15.2.6 his or her death;

15.2.7 his or her being removed from office by a resolution of the majority of the trustees, subject to clause 15.3 below;

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.



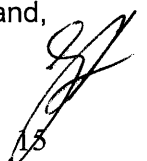
- 15.3 Where any trustee vacates or is deemed to have vacated his or her office as such, then the vacancy may only be filled by the party who appointed such trustee.

## 16 OFFICE OF TRUSTEES

- 16.1 The trustees shall appoint from amongst themselves, a chairman and vice-chairman.
- 16.2 The first chairman and vice-chairman shall be appointed by the Developer until the expiration of a period of 12 months after the registration of transfer of the first of the erven in the development to the purchaser thereof, and such office bearers shall hold their respective offices until the end of each year provided that any such office shall *ipso facto* be vacated by the trustee holding such office upon his or her ceasing to be a trustee for any reason.
- 16.3 Within 7 days of the holding of the annual general meeting, the trustee committee shall meet and shall elect from its own number the chairman and vice-chairman, who shall hold their respective offices until the end of the following year, provided that the office of the chairman or vice-chairman shall *ipso facto* be vacated by the trustee holding such office upon his ceasing to be a trustee for any reason. No one trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the trustee committee shall immediately meet to appoint one of their number as a replacement in such office.
- 16.4 Save as otherwise provided in this constitution, the chairman shall preside at all meetings of the trustee committee, and all general meetings of members, and shall perform all duties incidental to the office of chairman and such other duties as may be prescribed by the trustee committee or 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.
- 16.5 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 other duties as may from time to time be assigned to him by the chairman or the trustee committee.
- 16.6 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 fees or salary in respect of the performance of such duties.

## 17 FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

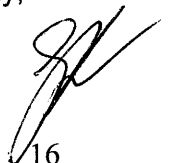
- 17.1 Subject to the express provisions of this constitution, the trustee committee shall manage and control the affairs of the Association, and shall have full powers in the management and direction of such business and affairs and,



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save as may be expressly provided in this constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by this constitution required to be exercised or done by the Association in general meeting, subject nevertheless to such regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the trustee committee which would have been valid if such regulation had not been made.

- 17.2 The trustee committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 17.3 The trustee committee shall have the right to co-opt onto the trustee committee any person or persons chosen by it. Any co-opted trustee shall enjoy all the rights and be subject to all the obligations of the trustees, but no co-opted trustee shall have any vote at any meeting of the trustee committee.
- 17.4 The trustee committee may should it so decide, investigate any suspected or alleged breach by any member or trustee of this constitution in such reasonable manner as it shall decide from time to time.
- 17.5 The Developer, during the Development Period, and thereafter, the Board is empowered to sign, execute and to enter into on behalf of the Association all and any contracts as may be required to give effect to the provisions of this Constitution, including, the appointment of a Management Company, and is empowered to delegate the management of the affairs and the business of the Association, whether in whole or in part, to such Management Company.
- 17.6 The Developer, during the Development Period, and thereafter, the Board shall at all times have the power and right to engage on behalf of the Association the services of Accountants, Auditors, Attorneys, Engineers, Town Planners, or any other professional firm or person or other employees whatsoever, for any reason deemed necessary by the Board, on such terms as the Board may decide.
- 17.7 The trustee committee may make regulations and by-laws not inconsistent with this constitution or any regulations or by-laws prescribed or adopted by the Association in general meeting:
- 17.7.1 as to disputes generally;
  - 17.7.2 for the furtherance and promotion of any of the objects of the Association;
  - 17.7.3 for the better management of the affairs of the Association;
  - 17.7.4 for the advancement of the interests of members;
  - 17.7.5 for the conduct of trustee committee meetings and general meetings; and
  - 17.7.6 to assist it in administering and governing its activities generally,



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

## 18 PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 18.1 The trustee committee may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this constitution.
- 18.2 Meetings of the trustee committee shall be held at least three times a year.
- 18.3 The quorum necessary for the holding of any meeting of the trustee committee shall be 50% of the elected board of trustees .
- 18.4 The chairman shall preside as such at all meetings of the trustee committee, provided that should at any meeting of the trustee committee the chairman not be present within 5 minutes after the time appointed for the holding thereof, then the vice-chairman shall act as chairman at such meeting, provided further that should the vice-chairman also not be present within 5 minutes of the time appointed for the holding of such meeting, those present of the trustees shall vote to appoint a chairman for the meeting, who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.
- 18.5 A trustee or someone appointed by the board of trustees, 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 *mutatis mutandis*, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The trustee committee minute book shall be open for inspection at all reasonable times by a trustee, the auditors, and the members.
- 18.6 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.
- 18.7 Save as otherwise provided in this constitution, the proceedings at any trustee meeting shall be conducted in such reasonable manner and form as the chairman of the meeting shall decide.
- 18.8 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.



## **19 FIRST MEETING**

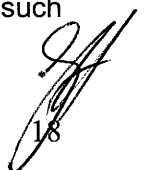
- 19.1. The developer applying for the approval of subdivision, must call the first meeting of the Home Owners' Association within 60 (sixty) days of the transfer of 60% of the land units arising from the subdivision or within two years of the transfer of the first land unit, whichever is the earlier.
- 19.2. Members of the Home Owners' Association must at the first meeting of the association elect the trustees of the Association.
- 19.3. The developer applying for the approval of subdivision must within 60 (sixty) days of the first meeting notify the City that the meeting has taken place and provide the City with a copy of the minutes of the meeting.

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

- 20.1 The Association shall within 90 (ninety) days after the end of the financial year of the Association hold a general meeting as its annual general meeting, in addition to any other general meetings, during that year, and shall specify the meeting as such in the notices in terms of clause 21.1 below calling it.
- 20.2 Such annual general meeting shall be held at such time and place, subject to the foregoing provisions, as the trustee committee shall decide from time to time.
- 20.3 All general meetings other than annual general meetings shall be called special general meetings.
- 20.4 The trustee committee may whenever they think fit convene a special general meeting for any purpose.
- 20.5 General meetings of the Association shall take place at such place/s as shall be determined by the trustee committee from time to time.

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

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



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persons as are under this constitution entitled to receive such notices from the Association provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this constitution, be deemed to have been duly called if it is so agreed:

21.2.1 in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote there at; and

21.2.2 in the case of a special general meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 75% of the total voting rights of all members.

21.3 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of this constitutions, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

## **22 QUORUM FOR GENERAL MEETINGS**

22.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.

22.2 The quorum necessary for the holding of any general meeting shall be such of the members entitled to vote, as together for the time being, represent one-half of the total votes of all members of the Association entitled to vote in person or by proxy, for the time being save that not less than 25% of members must be personally present.

22.3 If within 30 minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

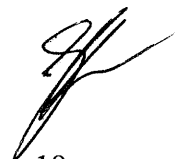
## **23 AGENDA AT GENERAL MEETINGS**

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

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

23.2 the election of the trustee committee;

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



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- 23.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
- 23.5 the consideration of the report of the auditors;
- 23.6 the consideration of the total levy (as referred to in clause 7 for the calendar year during which such annual general meeting takes place; and
- 23.7 the consideration and fixing of the remuneration of the auditors for the financial year of the Association preceding the annual general meeting.

## **24 PROCEDURE AT GENERAL MEETINGS**

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

## **25 PROXIES FOR GENERAL MEETINGS**

- 25.1 A member may be represented at a general meeting by a proxy who need not be a member of the Association.
- 25.2 The instrument appointing a proxy shall be in writing signed by the member concerned or his duly authorised agent in writing, but need not be in any particular form provided that where a member is more than one person, any one of those persons may sign the instrument appointing a proxy on such member's behalf, where a member is a company, the same may be signed by the chairman of the board of directors of the company or by its secretary, and where an association of persons, or a body corporate, by the chairman thereof.
- 25.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person

named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date of its execution.

- 25.4 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the trustee committee at least one hour before the time fixed for the holding of the meeting.
- 25.5 Should a member be absent from the recorded domicilium address which the trustees may have for such member for a continuous period in excess of 30 days, a proxy must be appointed by such member prior to his absence in accordance with clauses 25.1 and 25.3 above, failing which a member shall not be entitled to vote, at any special general meeting, called during such member's absence.

## 26 VOTING AT GENERAL MEETINGS

- 26.1 At every general meeting, each member in person or by proxy and entitled to vote shall have one (1) vote for each erf/section registered in his name, provided that if an erf/section is registered in more than one person's name then they shall jointly have one (1) vote.
- 26.2 Save as expressly provided for in this constitutions, no person other than a member duly registered, and who shall have paid every levy and other amount (if any) which shall be due and payable to the Association in respect of or arising out of the membership of such member, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 26.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the chairman of the result of the show of hands, a poll is demanded by any member entitled to vote at such meeting.
- 26.4 Notwithstanding the provisions of clause 26.3 above, voting on the election of a chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy, and entitled to vote, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or any of the members in terms of clause 26.5 below.
- 26.5 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.
- 26.6 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 26.7 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an



equality of votes, whether on a show of hands or on a poll, the chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.

26.8 Unless any member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety of validity of the procedure at such meeting, such declaration by the chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the chairman of the meeting as to the result of any voting at the meeting.

## **27 SPECIAL RESOLUTION**

27.1 A resolution by the Association shall be a special resolution if at a general meeting of which not less than 21 clear days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which members holding in aggregate not less than 30% of the total votes of all the members entitled to vote thereat, are present in person or by proxy, the resolution has been passed, on a show of hands, by not less than 75% of the number of members of the Association entitled to vote on a show of hands at the meeting who are present in person or by proxy or, where a poll has been demanded, by not less than 75% of the total votes to which the members present in person or by proxy are entitled.

27.2 If less than 30% of the total votes of all the members entitled to attend the meeting and to vote thereat are present or represented at a meeting called for the purpose of passing a special resolution, the meeting shall stand adjourned to a date not earlier than 14 days and not later than 30 days after the date of the meeting and the provisions of clause 24.3 shall apply in respect of such adjournment.

27.3 At the adjourned meeting, the members who are present in person or by proxy and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than 75% of such members shall be deemed to be a special resolution even if less than 30% of the total votes are represented at such adjourned meeting.

## **28 OTHER PROFESSIONAL OFFICERS**

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



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## 29 ACCOUNTS OF THE ASSOCIATION

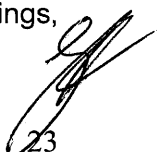
- 29.1 The Association in general meeting or the trustee committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations,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

## 30 SERVICE OF NOTICES

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

## 31 INDEMNITY

- 31.1 All trustee members shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a trustee member, in his or her capacity as chairman or vice-chairman, whether defending any proceedings,



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civil, criminal or otherwise, in which relief is granted to any such person/s by the court.

31.2 Every trustee member, every servant, agent and employee of the Association, shall be indemnified by the Association against (and it shall be the duty of the trustee committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of their respective duties, including in the case of a trustee member, his or her duties as chairman or vice-chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by such person jointly or severally in connection with the discharge of his or her duties, provided that any such act, deed or letter has been done or written in good faith.

31.3 A trustee member shall not be liable for the acts, receipts, neglects or defaults of the auditors or of any of the other trustee members, whether in their capacities as trustee members or as chairman or vice-chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the trustee committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his or her part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his or her office/s or in relation thereto, unless the same shall happen through lack of *bona fides* or breach of duty or breach of trust.

## 32 ARBITRATION

32.1 Any dispute, question or difference arising at any time between member or between members and trustees out of or in regard to:

32.1.1 any matters arising out of this constitution; or

32.1.2 the rights and duties of any of the parties mentioned in this constitution; or

32.1.3 the interpretation of this constitution;

shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.

32.2 Arbitration shall be held in Cape Town informally and otherwise upon the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 business days after it has been demanded.

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





32.3.1 primarily an accounting matter - an independent accountant;

32.3.2 primarily a legal matter - a practising counsel or attorney of not less than 10 years standing;

32.3.3 any other matter - an independent and suitably qualified person appointed by the auditors;

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

32.4 If agreement cannot be reached on whether the question in dispute falls under clauses 32.3.1, 32.3.2 or 32.3.3 or upon a particular arbitrator in terms of clause 32.3.3, within 3 business days after the arbitration has been demanded, then:

32.4.1 the President for the time being of the Law Society of the Cape of Good Hope or its successor/s shall determine whether the question in dispute falls under clauses 32.3.1, 32.3.2 or 32.3.3 above; or

32.4.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of clause 32.3.1 within 7 business days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 business days referred to in clause 32.2 above.

32.5 The arbitrator shall make his award within 7 days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.

32.6 The decision of the arbitrator shall be final and binding and may be made an order of the Cape Provincial Division of the High Court of South Africa or its successor/s upon the application of any party to the arbitration.

32.7 Notwithstanding anything to the contrary contained in clauses 32.1 to 32.7 inclusive, the trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

### **33 AMENDMENTS TO CONSTITUTION**

33.1 During the Development Period, this Constitution may from time to time be amended by the Developer, without the need to be approved by the Association in a GM, so as to comply with the requirements from time to time of the Local Authority in relation to the conditions of establishment for the Estate or any subdivisions thereof, or any other land which may be added to the Estate by the Developer, in his sole discretion.

33.2 Notwithstanding anything to the contrary herein contained, during the Development Period, the Developer may without the approval of the



Members or any Sub-Members of the Association, amend, substitute and repeal any provision of this Constitution, with the approval of the Local Authority. Any such amendments as contemplated herein will only be communicated by the Developer to the Management Company and the Developer will therefore not be obliged to communicate these changes to the Members. 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.

33.3 This constitution, or any part thereof, shall not be repealed or amended, and no new rules shall be made, save by a special resolution adopted at an annual general meeting or a general meeting of the members, subject to clause 33.4 below.

33.4 Notwithstanding the provisions of clause 33.1 above, this constitution shall not be amended without the written consent of the Council which consent shall not be unreasonably withheld.

33.4.1 The constitution of the Home Owners' Association may be amended in accordance with the provisions of the constitution provided that an amendment concerning a matter in section 5.3, 5.4 or 5.5 herein, becomes effective only when certified by the City Council.

33.4.2 The constitution of the Home Owners' Association and any amendment thereof must be lodged within the City and the latest copy duly lodged with the City, and which the City has certified, is presumed to contain the operative provisions of the Constitution.

33.4.3 The City is exempt from liability for any damage which may be caused by its certification of a constitution of the Home Owners' Association or an amendment thereof or by the loss of a constitution lodged with the City.

#### **34 EFFECTIVE DATE**

This constitution came into force with the registration of the first erf in the development in the Deeds Office.

#### **35 MANAGING COMPANY/AGENT**

35.1 The Developer shall be entitled (but not obliged, and at their own discretion) to manage, or to appoint a Management Company for the Estate, during the Development Period, which appointment shall be valid and binding on the Association during the Development Period and for a period of 10 (Ten) years after the termination of the Development Period. For the avoidance of doubt, it is recorded that only one Management Company may



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be appointed for the whole of the Estate irrespective of whether such appointment is made during the Development Period, or thereafter.

35.2 During the Development Period, the Developer has the irrevocable power and authority to appoint the Management Company of the Estate during the aforesaid period and to determine the terms and conditions of such appointment.

35.3 During the Development Period, the Developer will determine the fees or remuneration to be paid by the Association to the Management Company 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.

### **36 USE AND OCCUPATION**

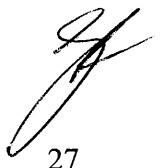
36.1 The members shall ensure that their respective activities and uses in the development shall be carried out with reasonable and diligent care and with due and proper consideration for other members. This shall likewise apply to guests, lessees, servants or members while they are on the development;

36.2 No member shall cause or permit such conduct either on his own erf or elsewhere in the development as shall cause a nuisance or disturbance to other members in the quiet enjoyment of their own premises or which is likely to or in any way may tend to effect detrimentally the benefit, enjoyment, rights of occupation and interest of any other member or adjacent property owner. Such conduct will include, but will not be limited to, the usage of radio, television and hi-fi sets, recording equipment and the like or the playing of musical instruments to the extent that it will be audible beyond the boundaries of the premises of the member concerned;

36.3 No caravans, tents or structures of a temporary nature shall be allowed to be parked or erected ;

36.4 No member shall be entitled to dump materials or goods on the common property or roads in the development.

### **37 STATUS OF DEVELOPER**



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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 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 generality of the foregoing, has failed to maintain all buildings 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 days, failing which, the developer shall be entitled at the sole cost of that member to carry out all such work as may be required to maintain such building and other improvements on its erf;

37.1.2 to erect such signage, flagpoles, messages and/or other forms of notices or advertising on the development including the common areas, the private road area and or the exterior walls (if any) of the development, subject to the regulations and by-laws of the Council appertaining to signage from time to time;

37.1.3 to scrutinize, approve and submit all building plans to the relevant authority to obtain the relevant approvals until the completion of the scheme;

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 or services operations at the development; and / or

37.2.3 marketing , selling and transfer free of any cost for clearance certificate, any of its unsold erven or units, including the advertisement of the sale of such erven or units on the common areas and/or at the development.

37.3 the Developer shall not be required to obtain the consents referred to in clause 5.5.2 prior to completion of the scheme;

37.4 upon the completion of the scheme, the rights of the developer in terms of the provisions of this clause 35 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 scheme shall be final and binding.

## 38 MARKETING AND SALES



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38.1 During the Development Period the member shall:

38.1.1 not be entitled to erect any marketing material, sign boards or the like on the erf;

38.1.2 appoint only such broker or brokers as the Developer may appoint for the marketing and the selling of all the erven or units forming part of the Development for the on-sale and/or lease by the member;

38.2 The members acknowledge that the restrictions recorded in clause 38.1 above are imposed for the general benefit of all parties acquiring erven or units forming part of the development, from the Developer and are imposed to enable the Developer to co-ordinate and control all marketing and sales activities to be done in order for such marketing and sales to be done on a co-ordinated basis and in a manner beneficial to all parties.

38.3 No business of a Property Sales Agent/Agency or Property Letting Agent/Agency, may ever be conducted from any erf or section, save for such Agencies appointed by the Developer during the Development Period, which appointments may be binding on the Association for an indefinite period of time, in the sole and absolute discretion of the Developer.

### **39 Future Development**

38.1. It is the intention of the Developer to develop and incorporate the development of The Farms 643, 644 and Portion 1 of the Farm 644 Stellenbosch into the development. All the terms and conditions contained in this Constitution shall mutatis mutandis be applicable and the definition of Association, Development and erven shall mean to incorporate the subdivision and development of the Farms 643, 644 and Portion 1 of the Farm 644 Stellenbosch.

### **40 GENERAL**

39.1 The Developer may at any time in writing, cede and assign all or any of its rights or obligations in terms of this Constitution to any transferee of its choice and such transferee shall be entitled to take transfer of all such rights and obligations.



39.2 During the Development Period, the Developer may, at any time in writing, abandon in whole or in part, any of its rights.

39.3 The centerline of any common boundary wall between of any of the Erven, will be the common boundary between the relevant Erven and must be split 50/50 between the adjacent Erven. The common boundary wall must be constructed by the Owner who first commences with construction of a Dwelling on his Erf and he must be reimbursed 50% (Fifty) of the construction costs of the common boundary wall by Owner who commences afterwards with construction of his Dwelling.

#### 40. **FAILURE OF HOA TO MEET OBLIGATIONS**

40.1. If the HOA fails to meet any obligations in this Constitution respectively and the City believes that the community is adversely affected by the failure, the City may take appropriate action to rectify the failure.

40.2. The City may recover any expenditure in respect of the action contemplated above from the HOA or its members, who are jointly liable.

40.3. The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the HOA for the purposes of recovering expenditure incurred in connection with the Association from its Members.

40.4. If the HOA ceases to function effectively or to carry out its obligations, the City may give the Association a binding instruction to:

- a) hold a meeting and to reconstitute itself; or
- b) dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of relevant provisions in the title deed.

40.5. In determining whether to act in terms of the above, the City must have regard to:

- a) the purpose of the Association;
- b) who will take over the maintenance of internal engineering services and other obligations which the Association is responsible for, if at all;
- c) the costs of upgrading the internal engineering services and other infrastructure if the City is to take over the infrastructure;
- d) the impact of the dissolution of the Association on its members and the community;



e) any written representations from the Association and its members.

40.6. If the Association is dissolved, the members must jointly pay the costs of:

- a) the transfer to the City of the Association's property which contains the internal engineering services and private open spaces;
- b) the upgrading of the internal engineering services to the standards of the City.

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

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