

CONSTITUTION  
OF  
DIGTEBY ESTATE  
HOME OWNERS ASSOCIATION

*Version 3.2*

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## CONSTITUTION

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### 1. NAME AND STATUS OF THE ASSOCIATION

- 1.1 The name of this Association is DIGTEBY HOME OWNERS' ASSOCIATION.
- 1.2 It is recorded that the Association was established without capital in terms of Ordinance 15 of 1985, herein referred to as LUPO, on the date of registration of transfer of the first Erf in the Estate from the Developer to an Owner, it being a subdivision of the Remainder of Farm 1307 Stellenbosch, situated in the Municipality of Stellenbosch, and that it is an association:-
  - 1.2.1 with legal personality capable of suing and being sued in its own name, and which may acquire immovable and movable property;
  - 1.2.2 which exists independently from the Members and no Member in his personal capacity shall have any right, title or interest to or in the property, funds or assets of the Association, which property, funds and assets are vested in the Association and managed and controlled by the Trustee Committee; and
  - 1.2.3 which shall not operate for profit, but only for the benefit of its Members.

## 2. DEFINITIONS

In this Constitution:

2.1. the following words and expressions shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

**'Architectural Guidelines'** means the general architectural guidelines for Estate as determined by the Association, also named the Urban Design Architecture and Landscape Framework, which are subject to change from time to time;

**'Association'** means the Digteby Estate Home Owners Association as hereby constituted;

**'Auditors'** means the Auditors of the Association;

**'business day'** means weekdays other than Saturdays, Sundays and Public holidays;

**'Chairman'** means the Chairman of the Trustee Committee;

**"Common Property"** means the road as indicated on the plan of subdivision and the *private open spaces* and other areas and facilities which are designated for the communal use of all Members;

**"Communal Services"** means the private combined water system as well as the sewage reticulation system (including the sewage pump station) which serve all Erven;

**‘Constitution’** means this Constitution including the Architectural Guidelines and Regulations of the Association from time to time in force;

**‘Erf’** means every erf within the Estate, excluding erven zoned as *‘private open spaces’*, arising from the subdivision of the Remainder of Farm 1307 Stellenbosch, situate in the Stellenbosch Municipality, and **‘Erven’** is the plural;

**‘Estate’** means the residential estate known as Digteby Estate, comprising of all of the Erven and the Common Property;

**‘Member’** means a Member of the Association qualifying as such in terms of the provisions of clause 6 hereunder;

**‘Municipality’** means the Municipality of Stellenbosch or its successor from time to time, succeeding to its present statutory responsibilities;

**‘Office’** means the office of the Association as may from time to time be determined by the Trustee Committee;

**‘Owner’** means the registered owner of an Erf in the Estate, being a Member of the Association.

**‘month’** means a calendar month;

**‘property’** means an Erf in the Estate including any improvements thereon;

**‘Regulations’** means regulations, also named ‘Rules’ or ‘Conduct Rules’ made in terms of Clause 11 hereof;

**'Special Resolution'** means a resolution passed 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 passed, on a show of hands, by not less than three-fourths of the total number of Members present at such meeting who, at a minimum, form a quorum for a general meeting;

**'Trustee'** means a member of the Trustee Committee;

**'Trustee Committee'** means the board of Trustees of the Association, appointed in terms of the provisions of Clause 14 hereof, and **'Trustees'** shall have a similar meaning;

**'year'** means a calendar year;

**'in writing'** means written, printed, lithographed or transmitted in electronic format or partly one and partly another, and other modes of representing or producing words in a visible form;

**'vice-chairman'** means the vice-chairman of the Trustee Committee.

### 3. RULES OF INTERPRETATION

3.1 Unless the context clearly indicates a contrary intention:-

3.1.1 the singular includes the plural and vice versa, and reference to any one gender shall include the other genders; and

- 3.1.2 natural person includes a legal person, club, partnership, trust or other association of persons who, according to law may obtain legal rights in respect of immovable property.
- 3.2 Paragraph headings of this Constitution are added for reference purposes only and shall not influence the interpretation of any provisions related thereto.
- 3.3 This document, the Architectural Guidelines and Regulations form the entirety of the Constitution relating to the Association and any alteration or addition thereto may only be enforced once it is done according to the requirements herein and has been constituted in writing.
- 3.4 Where any days are prescribed in this Constitution, the Architectural Guidelines and Regulations, it must be calculated with the exclusion of the first day and inclusion of the last day, unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 3.5 Any provision in this Constitution which may by law be prohibited or cannot be enforced shall not influence the validity or enforcement of the remainder of the provisions stipulated in this Constitution and in this regard this Constitution is divisible.
- 3.6 In the case of any conflict or contradiction between the provisions of this Constitution and the provisions set out in the Regulations

and Architectural Guidelines, the terms and conditions in this Constitution shall prevail.

#### 4. OBJECTS AND OBJECTIVES OF THE ASSOCIATION

4.1 The objects and objectives of the Association are:-

4.1.1 to manage, control and administer all aspects of common interest to Members, including the Common Property and Communal Services;

4.1.2 to exercise and execute the powers and duties referred to in the Western Cape Land Use Planning Act;

4.1.3 to establish a fund for all expenses of the Association, including a provision for future maintenance;

4.1.4 to determine and collect Levies from Members for purposes of the said fund;

4.1.5 to control, maintain and upgrade the Common Property and Communal Services for the joint benefit of Members;

4.1.6 to take transfer of, insure, maintain and control the usage of the Common Property and any facilities established on the Common Property;



- 4.1.7 to create suitable Rules / Regulations for the management of the Township, including such rules of conduct as the Trustee Committee or the Members may deem necessary;
  - 4.1.8 to oversee the transfer of Erven in the Estate;
  - 4.1.9 to enforce Member's obligations in terms of this Constitution, the Architectural Guidelines and the Regulations created in terms hereof; and
  - 4.1.10 ensure compliance with all legislative requirements.
- 4.2 In general the Association and the Trustee Committee must and may attend to:-
- 4.2.1 the landscaping and maintenance of pavements and private open spaces within the Estate; and
  - 4.2.2 the maintenance of the security fencing enclosing Estate as well as any security controls and/or structures which may be erected;
  - 4.2.3 the maintenance and management of communal recreational facilities established with Estate;
  - 4.2.4 the promotion, advancement and protection of the communal and group interests of the Members generally;

And must:-

- 4.2.5 promote and maintain the harmony in the physical and social environment of the Estate;
- 4.2.6 promote, encourage, and ensure that Owners maintain at all times the external appearance of their Properties in a clean and tidy condition and to maintain high standards in this regard so as to ensure that the appearance of their Properties are aesthetically pleasing and desirable and further to take steps to enforce the maintenance of such standards where deemed necessary in the opinion of the Trustee Committee;
- 4.2.7 protect and promote the interests of the Association and of Owners, as far as the Estate is concerned; and
- 4.2.8 to take such steps and perform such actions as may be necessary to achieve its objectives.

## 5. FINANCIAL YEAR END

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

## 6. MEMBERSHIP

- 6.1. Membership of the Association is compulsory and automatic for every registered owner of an Erf.

- 6.2. Such Membership shall commence automatically upon registration of a deed of title of an Erf into the name of the Transferee.
- 6.3. Membership of the Association shall be limited to the registered owners of the Erven; provided that 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.
- 6.4. When a Member ceases to be the registered owner of an Erf, he shall automatically cease to be a Member of the Association.
- 6.5. A Member shall not be entitled to:-
- 6.5.1. use his Erf or any improvements thereon or permit the use thereof in such manner or for such purposes as in the discretion of the Trustee Committee shall be injurious to the reputation of the development of the Estate.
- 6.5.2. sell or transfer an Erf unless it is a condition of the sale and transfer that:-
- 6.5.2.1.the transferee shall become a Member of the Association, and that registration of transfer of that Erf into the name of that transferee shall *ipso facto* constitute the transferee as a Member of the Association; and

6.5.2.2. he first obtains the written consent of the Association which consent shall be given provided all monies due by the transferor to the Association are paid or provision acceptable to the Trustee Committee is made for such payment.

6.6. A registered owner of an Erf may not resign as a Member of the Association.

6.7. 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.

6.8. The rights and obligations of a Member are not transferable except as provided for in this Constitution, and every Member must:-

6.8.1. observe all provisions of this Constitution, the Regulations and the Architectural Guidelines made by the Association or the Trustee Committee;

6.8.2. to the best of his ability promote the objectives and interests of the Association;

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

## 7. LEVIES AND FINANCIAL MATTERS

7.1. The Trustee Committee must:-

- 7.1.1 from time to time, impose 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 require by way of maintenance, repair, improvement and keeping in good order and condition within the Estate all communal features and facilities, including security controls and structures, all landscaping, all communal road areas, as well as all communal recreational and other facilities in respect of Estate, and/or for general maintenance or other services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, and the Association's affairs. In calculating levies the Trustee Committee shall take into account income, if any, earned by the Association;
- 7.1.2 the Trustee Committee must estimate the amount which is 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 calculate and impose a levy upon the Members, in accordance with the formula as stipulated in 7.4 below;
- 7.1.3 the Trustee Committee must include in such levies an amount to be held in reserve to meet any anticipated future expenditure not of an annual nature; and

- 7.1.4 subject to the provisions of 7.5, such levies shall be payable monthly in advance not later than on the 7th day of each and every succeeding month.
- 7.2 The Trustee Committee, may from time to time, impose special levies upon the Members in respect of all such expenses as are mentioned in 7.1 which are not included in any estimate made in terms of 7.1; provided that
- 7.2.1 such levies may be made payable in the sum or in such instalments and at such time or times as the Trustee Committee may determine; and
- 7.2.2 any special levies imposed by the Trustees in terms of clause 7.2 must 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 particular Member(s) may derive from the proposed expenditure for which such special levies are imposed.
- 7.3. Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay levies shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover any arrear levies; provided that
- 7.3.1 no levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member; and

- 7.3.2 as from the date upon which he becomes a Member pursuant to the transfer of an Erf, such Member becomes liable to the Association for payment of the further pro rata monthly levies in respect of such Erf.
- 7.4 The total amount(s) payable by all the Members pursuant to the provisions of 7.1 shall be equally apportioned between and recovered from all Members and shall be payable by the Members as monthly levies.
- 7.5 Although levies are payable monthly, the total balance of his annual levies shall become immediately due and claimable, in the event of any Member falling in arrear with payment of his monthly levies for more than one calendar month.
- 7.6 No Member shall be entitled to any of the privileges of Membership, including voting powers, unless the member shall have no unpaid levies or other sum (if any) which shall be due and payable to the Association in respect of or arising out of his Membership to a value greater than two month's levies.
- 7.7 Any Member against whom action must be taken for recovery of arrear levies, shall be liable to the Association for payment of the costs incurred, on an attorney and client scale, and shall furthermore be liable for payment of interest on the amounts in arrear, 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 the amounts due.

7.8 The Trustee Committee must cause all monies received by the Association to be deposited to the credit of the account or accounts of the Association and, subject to any instructions issued by Members in general meeting, such monies may only be withdrawn for the purpose of payment of the expenses of the Association: Provided that the Trustee Committee may: –

7.8.1 deposit, invest and re-invest in the name of the Association with registered financial institutions as defined in Section 1 of the *Financial Institutions (Protection of Funds) Act, 2001 (No 28 of 2001)* any monies not immediately required in the manner it may from time to time determine;

7.8.2 use interest earned on such monies for any lawful purpose in the interest of the Association; and

7.8.3 authorise the managing agent to administer and operate such account or accounts on behalf of the Association.

7.9 The Association may not distribute its monies to any person other than to a similar association of persons succeeding in the status, rights and obligations of the Association.

## 8. SECURITY FENCE

8.1 The Association is responsible for the maintenance and upkeep of the entire perimeter security fence enclosing the Estate, including any required improvements thereto.



- 8.2 The Members who are owners of Erven of which the boundaries are demarcated by the security fence must permit the Trustee Committee and/or employees or contractors appointed by the Trustee Committee reasonable access to their Erven for purposes of the carrying out of maintenance, repairs, improvement and/or replacement of the security fence. Members shall restrain their plants from interference with the security systems.

## 9. BUILDING DEPOSIT

- 9.1 Each Member must, when submitting to the Trustees for approval the detailed plans for the construction of new improvements or alterations to existing improvements on the Member's Erf in terms of clause 6.5.3, pay to the Trustees a building deposit in an amount as may be determined from time to time by the Trustees, which amount shall be retained by the Trustees in trust until completion by the Member/his contractors of such improvements, as approved by the Trustees, subject to receipt of a certificate of compliance issued by the municipal building inspectorate.
- 9.2 Upon completion of the building activities on the Erf, the Trustees shall, if they are satisfied that no damage has been effected by the Member or any of his contractors or workmen to any of the landscaped areas within Estate and that the improvements have been constructed in accordance with duly approved plans, release the building deposit to the Member. In the event of any landscaped areas as aforesaid having been damaged due to the building activities, the Member must, within 15 (fifteen) days of

having been requested to do so in writing by the Trustees, have the damage repaired 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 in terms of 9.1 above shall then be utilised to defray the expenses of the independent contractor. It is, however, recorded that should the damage caused by the Member be such that the deposit is not sufficient to cover the costs of the repairs, the claim of the Trustees against the Member shall not be limited to the amount of the said deposit.

## 10. ARCHITECTURAL GUIDELINES

- 10.1 All Members are bound by the provisions of the Architectural Guidelines in respect of any building works or alterations within the Estate.
- 10.2 The Trustee Committee may, in liaison and with the consent of the Municipality draft and adopt Architectural Guidelines, and may amend, amplify, clarify, repeal or add to the provisions of the Architectural Guidelines. In the event of the provisions of the Architectural Guidelines being amended or added to and such amendment materially affecting further development of any Erven, the Trustees must by written notice inform all Members of the amendment.
- 10.3 Copies of the Architectural Guidelines are available at the Office against payment of a fee to be determined by the Trustee Committee from time to time.

10.4 An Owner may not erect any buildings and/or structures of any nature whatsoever, nor make any alterations, modifications or renovations to such buildings and/or structures ("the proposed work") on his Unit Erf without the written approval of the Trustees, which approval shall only be given: –

10.4.1 after detailed plans of the proposed work have been submitted to the Trustees, or any person nominated by the Trustees (who may be an Architect, registered with the South African Council of Architects or the Institute of South African Architects);

10.4.2 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

10.4.3 provided that the foregoing shall not be interpreted as detracting from the sole and final responsibility of the Municipality to approve or reject building plans.

## 11. CONTRACTS AND REGULATIONS

11.1 The Trustee Committee may from time to time:-

11.1.1 make Regulations as provided for in 11.4;

- 11.1.2 conclude agreement(s) with the local authorities governing the matters set out in 11.4 and any other incidental matters.
- 11.2. All Members, including the Trustees, are bound by and must comply with:-
- 11.2.1. the provisions of this Constitution;
- 11.2.2. any Regulations made in terms hereof;
- 11.2.3 the Architectural Guidelines; and
- 11.2.4 the provisions of any agreements referred to in 11.1.2 insofar as those agreements may directly or indirectly impose obligations on him.
- 11.3 In addition to the provisions of 11.1 above, the Members are also authorised to make Regulations by means of a Special Resolution at a general meeting, as provided for in Clause 15.
- 11.4 Regulations, including Conduct Rules, may be made by the Trustee Committee or by the Members, governing *inter alia*:-
- 11.4.1 security control measures for the Estate;
- 11.4.2 the landscaping and maintenance of sidewalks and open space areas within Estate;
- 11.4.3 the provision of and utilisation of recreational areas within Estate;

11.4.4 Speed limits in respect of motor vehicles;

11.4.5 Restrictions upon the powers of the Trustee Committee;

11.4.6 for the furtherance and promotion of any of the objectives of the Association;

11.4.7 for the better management of the administration and affairs of the Association;

11.4.8 for the advancement of the interests of Members;

11.4.9 for the conduct of Trustee Committee meeting and general meetings; and

11.4.10 to assist in administering and governing its activities generally and shall be entitled to cancel, vary or modify any of the same from time to time.

## 12. BREACH AND IMPOSITION OF PENALTIES

12.1 Should any Member:-

12.1.1 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 (seven) days after being notified in writing by the Trustees to comply; or

12.1.2 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 (seven) days after the receipt of written notice to that effect by the Trustees and complete the remedying of such breach with in a reasonable time;

then and in either such event, the Trustees shall be entitled on behalf of the Association, to impose a penalty upon such member.

12.2 The imposition of such penalty shall be 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 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any Regulation made thereunder, as the case may be; or in the case of clause 12.1.2, to remedy such breach and immediately recover the total cost incurred by the Trustees or the Association in so doing from such Member.

12.3 Should the Trustees 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.

12.4 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 must 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.

- 12.5 In the event of any breach of the provisions of this Constitution, Architectural Guidelines, or the Regulations, by a Member or by members of any Member's household, his tenants or his visitors, guests, employees, contractors or occupiers, such breach shall be deemed to have been committed by the Member himself, but, without prejudice to the foregoing, the Trustee Committee shall be entitled to take such legitimate steps against the person actually committing the breach as they in their discretion deem fit, with or without proceedings against the Member.
- 12.6 If the conduct of a Member or Occupier or the family members, guests, visitors, employees, contractors, clients or customers of the Member or occupier constitute/s a nuisance in the opinion of the Trustee Committee, or a contravention of a provision of the this Constitution or the Regulations, the Trustee Committee must by written notice inform the Member of the nuisance or contravention and warn the Member that if he or the occupier fails to remedy the contravention, or persist in such conduct or contravention, or if such conduct or contravention is repeated, a penalty will be imposed on the Member.
- 12.7 If, notwithstanding the written notice in terms of clause 12.6, the Member or the occupier fails to remedy the contravention or

persists in the conduct or contravention, or if such conduct or contravention is repeated, the Trustee Committee may by written notice impose a penalty on the Member.

12.8 The penalty imposed under clause 12.7 above, shall become due on the date of the written notice and must be paid within 30 (thirty) days from the date of the written notice. Should the penalty remain unpaid it shall be recoverable from the Member in the same manner as applies to arrear levies, together with interest at the rate applicable to arrear levies.

12.9 The Trustee Committee must from time to time determine the categories of contraventions and the amounts of the penalties in respect of the various contraventions and in respect of first and successive contraventions, subject to any directions given or restrictions imposed by the Members at a general meeting.

12.10 A penalty may be imposed in respect of each separate contravention. In the event of a continuing contravention, the Member shall be deemed to be guilty of a separate contravention for every 24 hours or part thereof during which such contravention continues and shall be liable in respect of each such separate contravention.

12.11 A Member may within 30 (thirty) days of the date of the written notice referred to in clause 12.7, lodge an objection against the penalty imposed with the Trustee Committee.

12.12 Upon receipt of the objection, the Trustee Committee may: -



- 12.12.1 withdraw or reduce the penalty; or
  - 12.12.2 schedule a Trustee Committee meeting for the purpose of considering the objection and invite the Member to attend and/or to be represented.
- 12.13 At the Trustee Committee meeting referred to in clause 12.12.2 above, the Member or his representative shall have the right to:-
- 12.13.1 present his case;
  - 12.13.2 present any evidence, including the calling of witnesses, to substantiate his case;
  - 12.13.3 cross-examine any person called as witness in support of the charge;
  - 12.13.4 have access to documents produced in evidence;  
and
  - 12.13.5 submit mitigating factors.
- 12.14 Failure of the Member charged or his representative to attend the Trustee Committee meeting referred to in sub-clause 12.12.2 shall not render the proceedings at the meeting void. Should the Member not attend the meeting without providing a reasonable request for postponement, the Trustee Committee may, in their sole discretion, continue with the meeting and consider the objection in the absence of the Member.

12.15 Upon the conclusion of the meeting, the Trustee Committee must deliberate the evidence and if so resolved, they may:-

12.15.1 uphold the penalty; or

12.15.2 withdraw or reduce the penalty.

12.16 The Trustee Committee must notify the Member of the outcome of the proceedings in writing and, in the event of the penalty having been upheld, it shall become due and payable 7 (seven) days after delivery of such notice, and the further provisions of Clause 12.4 shall apply.

### 13. CESSATION OF MEMBERSHIP

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

### 14. TRUSTEE COMMITTEE

14.1 There shall be a Trustee Committee for the Association which must consist of not less than 3 (three) and not more than 6 (six) Trustees appointed by the Members.

14.2 Save as set forth in 14.3 below, each Trustee appointed by the Members shall continue to hold office until the Annual General

Meeting next following his said appointment, at which meeting each Trustee shall be deemed to have retired from office as such but shall be eligible for re-election to the Trustee Committee at such meeting.

14.3 A Trustee shall be deemed to have vacated his office as such upon:-

14.3.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;

14.3.2 his making any arrangement or compromise with his creditors;

14.3.3 his conviction for any offence involving dishonesty;

14.3.4 his becoming of unsound mind or being found lunatic;

14.3.5 his resigning from such office in writing delivered to the secretary;

14.3.6 his death;

14.3.7 his being removed from office by a Special Resolution of the Members;

provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid.

14.4 Upon a Trustee having vacated his office, the Trustee Committee may 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. Such co-opted Trustee shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting each Trustee shall be deemed to have retired from office as such but shall be eligible for re-election to the Trustee Committee.

14.5 Within 7 (seven) days of the holding of an Annual General Meeting, the Trustee Committee must meet and shall elect from its own number a Chairman and vice-chairman, who shall also serve as Chairman and vice-chairman of the Association, and shall hold their respective offices until the Annual General Meeting held next after their said appointment.

14.6 No one Trustee shall be appointed to more than one of the aforesaid offices.

14.7 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.

14.8 In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee must immediately meet to appoint one of their number as a replacement in such office.

14.9 Save as otherwise provided in these presents, the Chairman must preside at all meetings of the Trustee Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed

by the Trustee Committee or by the 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.

14.10 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.

14.11 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.

14.12 A trustee member shall not serve more than four consecutive years, unless a suitable replacement could not be elected.

## 15. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

15.1 Subject to the provisions of this Constitution, the Trustee Committee must 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 directives or restrictions as may be imposed by the Association in general meeting from time to time, provided that no such directive or restriction shall invalidate any prior act of the Trustee Committee which would have been valid if such directive or restriction had not been made.

- 15.2 Further to 15.1, the Trustee Committee will be bound to the provisions of the Regulations in respect of their decisions and actions.
- 15.3 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time, which does not mean that any actions taken under previous decisions and resolutions will automatically be undone or invalid.
- 15.4 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee of these presents or the Regulations, in such reasonable manner as it shall decide from time to time.
- 15.5 Subject to the powers of Members to make Regulations, the Trustee Committee may make Regulations, including Conduct Rules, which Regulations must not be inconsistent with the provisions of this Constitution or with any Regulations made by the Members in general meeting as to the matters listed in Clause 11, as to:-

- 15.5.1 the conduct of owners and residents;
  - 15.5.2 the furtherance and promotion of any of the objectives of the Association;
  - 15.5.3 the better management of the affairs of the Association;
  - 15.5.4 the advancement of the interests of Members;
  - 15.5.5 disputes generally;
  - 15.5.6 the conduct of Trustee Committee meetings and general meetings; and
  - 15.5.6 to assist in administering and governing its activities generally and shall be entitled to amend, add to or repeal such Regulations from time to time, provided that Regulations made by the Members may not be amended, added to or repealed by the Trustee Committee.
- 15.6 Notwithstanding the powers assigned to the trustees in the above provisions, or anywhere else in this Constitution or in the Regulations, the following actions must first be approved by the members at a general meeting:-
- 15.6.1 incurring any expense if such expenditure should result in an over-expenditure of more than 20% of the budget;
  - 15.6.2 change of security service providers, managing agents or landscaping service providers; or

15.6.3 significant change of estate infrastructure.

## 16. PROCEEDINGS OF THE TRUSTEE COMMITTEE

16.1 The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of these presents and any relevant Regulations.

16.2 Meetings of the Trustee Committee must be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Trustee Committee need be held during such quarter.

16.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be 3 (three) Trustees.

16.4 The Chairman must 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 (five) minutes after the time appointed for the holding thereof, then the vice-chairman must 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 must 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.



- 16.5 A Trustee must take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes must be reduced to writing without undue delay after the meeting has closed and must then be certified correct by the Chairman of the meeting. All minutes of Trustee Committee meetings must 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 must be open for inspection at all reasonable times by a Trustee, the Auditors, the Association Members and representatives of the Local Authority.
- 16.6 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.
- 16.7 Save as otherwise provided in these presents or the Regulations, the proceedings at any Trustee meeting must be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

16.8 A resolution in writing 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.

## 17. GENERAL MEETINGS OF THE ASSOCIATION

17.1 The Association shall within 4 (four) months of each of its financial year end, 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 20 below calling it.

17.2 Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustee Committee must decide from time to time.

17.3 All general meetings other than Annual General Meetings shall be called special general meetings.

17.4 The Trustee Committee, may, whenever they think fit, convene a special general meeting.

## 18. NOTICE OF GENERAL MEETINGS

18.1 Notice of all general meetings must be given to:-

18.1.1 all members of the Association;

18.1.2 the managing agent.

18.2 An Annual General Meeting and any special general meeting called for the passing of a Special Resolution, must be called by 21 (twenty-one) days' notice in writing at the least, and a special general meeting, other than one called for the passing of a Special Resolution, must be called by 14 (fourteen) days' notice in writing at the least.

18.3 In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place; the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in these presents, the general nature of that business, and in the case of a Special Resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee,

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

18.4.1 in the case of an Annual General Meeting, by 75% of the Members entitled to attend and vote thereat; and

18.4.2 in the case of a special general meeting, by a majority of at least 75% (seventy five percent) of the total voting rights of all Members having a right to attend and vote at the meeting.

18.5 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.

## 19. VENUE OF GENERAL MEETINGS

General Meetings of the Association shall take place at such place/s as must be determined by the Trustee Committee from time to time.

## 20. QUORUM

20.1 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 one-quarter of the total votes of all Members of the Association entitled to vote, present in person or by proxy, save that not less than 10 (ten) Members must be personally present.

20.2. If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the following week, at the same place and time, or at such other place as the Chairman of the meeting may 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.

## 21. AGENDA AT GENERAL MEETINGS

21.1 In addition to any other matters required by these presents to be dealt with at an Annual General Meeting, the following matters must be dealt with at every Annual General Meeting, namely:-

21.1.1 consideration of the Chairman's report to the Association;

21.1.2 election of the Trustees to serve on the Trustee Committee;

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

21.1.4 consideration of the financial statements of the Association for the expired financial year preceding the date of such meeting;

21.1.5 consideration of the report of the Auditors;

21.1.6 consideration of the estimate of expenses and the levies referred to in clause 7 for the succeeding calendar year; and

21.1.7 consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting.

## 22. PROCEDURES AT GENERAL MEETINGS

22.1 The Chairman must preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the vice-chairman, shall act as Chairman at such meeting, provided further that should the vice-chairman also not be present within 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 shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

22.2 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. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

22.3 Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

## 23. PROXIES

23.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where Membership in respect of an Erf consists of more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf; and where a Member is:-

23.1.1 a company, the proxy may be signed by the Chairman of the board of directors of the Company or by its secretary;

23.1.2 a close corporation, the proxy may be signed by any of its Members;

23.1.3 a trust, the proxy may be signed by any of its trustees; and

23.1.4 an association of persons, by the secretary or chairman thereof.

23.2 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 must 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.

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

23.4 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the prior 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.

23.5 Should a Member be absent from the Estate for a continuous period in excess of three (3) weeks, a proxy must be appointed by such Member prior to his absence in accordance with this clause 25, failing which a Member shall not be entitled to vote at any special general meeting called during such Member's absence.

## 24. VOTING

24.1 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 the Erf is registered in more than one person's name, then they shall jointly have one vote for every Erf so registered.

24.2 Save as expressly provided for in these presents, no person other than a Member duly registered and who shall not have unpaid levies or other sum (if any) which shall be due and payable to the



Association in respect of or arising out of his Membership to a value greater than two month's levies, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

24.3 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 person entitled to vote at such meeting.

24.4 Notwithstanding the provisions of 24.3 aforesaid, 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.

24.5 Every resolution and every amendment of a resolution proposed for adoption by a general meeting must be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.

24.6 An ordinary resolution, being 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.

24.7 Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the 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.

## 25. APPOINTMENT OF PROFESSIONAL OFFICERS AND EMPLOYEES

Save as specifically provided otherwise in this Constitution, the Trustee Committee has at all times the right to engage on behalf of the Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other professional persons or firms and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the Trustee Committee may 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 *per centum*) of the total annual levy for the year in question unless authorised by a Special Resolution.

## 26. AUDIT

Once at least in every year, before each annual general meeting, the accounts of the Association must be examined and the correctness of the income and expenditure account and balance sheets ascertained and certified by the Auditors.

## 27. BOOKS OF ACCOUNT

27.1 The Association in general meeting or the Trustee Committee, may from time to time make reasonable Regulations as to the time and manner of the inspection by the Members of the accounts and books of the Association, subject to prescribed conditions, the accounts and books of the Association at reasonable times during normal business hours.

27.2 At each Annual General Meeting the Trustee Committee must lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association together with a proper, audited balance sheet made up as at the expired financial year end of the Association. Every such balance sheet must be accompanied by proper and extensive reports of the Trustee Committee and the Auditors, and there must be attached to the notice sent to Members convening each Annual General Meeting, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

## 28. SERVICE OF NOTICES

- 28.1. All notices must be in writing and must 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 him or by electronic transmission, should the Member have listed with the Association his electronic mail address.
- 28.2. 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.
- 28.3. Any notice by registered post shall be deemed to have been served at the time when the letter containing the same was posted, and for proving the giving of the notice by post it shall be sufficient to prove that the letter containing the notice was properly addressed and posted. Any notice transmitted by telefax or electronic mail shall be deemed to have been received by the addressee on the date upon which it was transmitted.
- 28.4. The accidental omission to give notice of a meeting, or the non-receipt of notice of a meeting by, any person entitled to received notice shall not invalidate the proceedings of that meeting.

## 29. INDEMNITY

- 29.1 All Trustees and the Auditors shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their respective capacities.
- 29.2 Every Trustee, every servant, agent and employee of the Association, and the Auditors shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee to pay out of the funds of the Association) all costs, losses and expenses (including traveling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a Trustee, his duties as Chairman or vice-chairman.
- 29.3 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.
- 29.4 A Trustee shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustees, whether in their capacities as Trustee 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 which whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight or his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of *bona fides* or breach of duty or breach of trust.

## 30. DISPUTES

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

30.1.1 any matters arising out of this Constitution, the Regulations or the Architectural Guidelines; or

30.1.2 the rights and duties of any of the parties mentioned in this the above-mentioned documents; or

30.1.3 the interpretation of the above-mentioned documents;

must be addressed in terms of the provisions of the Community Schemes Ombud Service Act, No 9 of 2011.

## 31. AMENDMENTS TO CONSTITUTION

- 31.1 This Constitution, or any part thereof, may not be repealed, added to or amended, save by a Special Resolution of the Members and save further that such proposed amendment, addition or repeal may not be inconsistent or in contravention of any current legislation.
- 31.2 No amendment, addition or repeal of any provisions of this Constitution shall be valid or of any effect, without the approval thereof by the Municipality, as determined by the Western Cape Land Use Planning Act and by the regulations of the Municipality.
- 31.3 Any amendments to this Constitution must be submitted to the Commissioner for the South African Revenue Service.

## 32. WINDING UP

- 32.1 The Association may, with the written consent of the Municipality, be wound up by Special Resolution.
- 32.2 In the event of such winding up, the Trustee Committee, or a suitably qualified person appointed by it, shall convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the rest to a similar association of persons succeeding the Association and which is also exempt from income tax in terms of Section 10(1)(e)(iii) of the *Income Tax Act, 1962* (No 58 of 1962). If the Association is not succeeded by such an association, the remaining money shall then be paid to such fund as may be required by law.

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